

Washington Update

January 20, 2023

This Week In Congress

Senate – The Senate was in recess and met in pro forma sessions.

House – The House was in recess and the Republican Steering Committee finished recommending open slots on committee rosters.

Next Week In Congress

Senate – The Senate will reconvene on Monday, January 23, and resume consideration of nominations.

House – The House will reconvene on Tuesday, January 24 and is expected to consider the Strategic Production Response Act ([H.R. 21](#)) as early as Wednesday under a modified open rule.

TAX

Joint Committee on Taxation Lists Expired or Expiring Tax Provisions Through 2034

Key Point:

- *The Joint Committee on Taxation (JCT) [published](#) tax provisions that expired in 2022 or will expire before 2034.*

The JCT noted in the document that a provision is considered expiring if “on a statutorily specified date, the provision terminates or reverts to the law in effect before the current version of the provision.” A description of expiring or expired provisions over the next two years is described below. The JCT outlined tax provisions that expired in 2022, which include railroad track maintenance credits, allowance of full deduction for business meals provided by a restaurant, special rules for health and dependent care flexible spending arrangements, and the temporary delay of designation of multiemployer plans as endangered, critical, or critical and declining status. In 2023, Airport and Airway Trust Fund excise taxes will expire. In 2024, a number of energy provisions expire, though some may have been supplanted by incentives in the IRA. For years and details beyond 2023, here is a link to the [JCT report](#).

U.S. Hits Debt Ceiling, Extraordinary Measures and Debate Underway

Key Points:

- *Last week, Treasury warned that the debt limit would be reached soon. The limit was hit on January 19, and Treasury Secretary Yellen sent a [letter](#) to all members of Congressional leadership that the debt limit had been reached.*
- *Speaker McCarthy (R-CA) has pushed for negotiations with the White House to seek spending cuts before the U.S. defaults early this summer.*
- *On January 17, White House Press Secretary Jean-Pierre emphasized the President is not negotiating spending cuts to raise the debt limit.*

Treasury Secretary Yellen this week warned that the extraordinary measures the Treasury has undertaken to prevent the U.S. from defaulting on its debt will be exhausted in early summer 2023. The White House has long insisted it will not negotiate any deal except a clean debt ceiling increase. Speaker McCarthy, as part of his bid for the speakership, agreed to pursue spending cuts as a condition for a debt ceiling increase. White House Press Secretary Jean-Pierre suggested the White House is not open to negotiating around the debt ceiling and stated the Biden Administration position as “[i]t is essential for Congress to

recognize that dealing with the debt ceiling is their constitutional responsibility.” Meanwhile, Financial Services Chair McHenry (R-NC) has suggested Republicans will work toward a deal and indicated that the U.S. would not default on its debt obligations. Any new developments in the progress of discussions and this issue will be noted in future Washington Updates.

For more information about tax issues you may [email](#) or call Christopher Hatcher at 202-659-8201. Jackson Notes contributed to this section.

FINANCIAL SERVICES

CFTC Commissioner Discusses Potential Future Cryptocurrency Legislation

On January 18th, Commodity Futures Trading Commission (CFTC) Commissioner Christy Goldsmith Romero gave a [speech](#) entitled “Crypto’s Crisis of Trust: Lessons Learned from FTX’s Collapse.” She stated that the “crypto industry is in a crisis of trust” and outlined lessons from the collapse of FTX, including “how gatekeepers failed customers in the unregulated crypto market and serious questions surrounding the due diligence by venture capital, pension, hedge funds, and other equity investors.”

In the speech, Romero said that any bill related to CFTC authority in the crypto space would benefit from including several additional requirements or tools including: “(1) greater authority to stop digital asset products from listing on an exchange by not permitting crypto exchanges to self-certify products; (2) requiring crypto exchanges and other new registrants to use an independent self-regulatory organization; and (3) authorizing CFTC access to information about unregulated affiliates of a crypto registrant where necessary for the CFTC to fulfill its supervisory responsibilities.”

Commissioner Romero stated any crypto legislation should include: (1) “the complete ban on commingling customer assets with company assets;” (2) “resolution of conflicts of interest with respect to insiders and affiliated entities;” (3) “broad application of the Bank Secrecy Act;” (4) “strong cybersecurity requirements;” (5) “broker fiduciary duties to customers;” (6) “clear, plain-English disclosures to customers, delivered in a manner that effectively informs customers of their rights and risks;” and (7) “appropriate regulation of decentralized finance.”

Commissioner Romero argued that the CFTC’s current self-certification process does not provide the CFTC with sufficient oversight over exchanges listing cryptocurrencies. She urged Congress to avoid self-certification because: (1) “a new and different type of market

requires greater CFTC oversight;" (2) "concerns about a spot exchange's ability to certify that the digital asset is not readily susceptible to market manipulation;" and (3) "oversight is necessary to prevent abuse of the self-certification for regulatory arbitrage." Romero noted that she is "open-minded" to hearing from the public about "appropriate" alternatives that Congress could consider.

Upcoming Hearings and Meetings

January 25

SEC: The Securities and Exchange Commission (SEC) will hold an [open meeting](#) to discuss the prohibition against conflicts of interest in certain securitizations.

February 13

CFTC: The CFTC's Global Markets Advisory Committee (GMAC) will hold a [meeting](#) to discuss "the Committee's structure, formation of subcommittees, and potential topics relating to global market structure and digital asset markets for the GMAC to prioritize in making policy recommendations to the CFTC."

For more information about financial services issues you may email [Joel Oswald](#) or [Mahlet Makonnen](#). Nicholas May contributed to this section.

ENERGY & ENVIRONMENT

House Will Debate Tying SPR Releases to Oil and Gas Leasing on Federal Lands

Key Points:

- *The House of Representatives will consider legislation to require a plan to increase oil and gas leasing on federal lands in order to conduct non-emergency releases from the Strategic Petroleum Reserve.*
- *The House will debate the bill under a "modified open rule", which will allow Members to offer a potentially large number of amendments.*

Next week, the House will debate and vote on the "Strategic Production Response Act" ([H.R. 21](#)). The legislation would require, for any future non-emergency Strategic Petroleum Reserve (SPR) drawdowns, development of a plan by the Secretary of Energy "to increase the percentage of Federal lands (including submerged lands of the Outer Continental Shelf)...leased for oil and gas production by the same percentage as the percentage of petroleum in the [SPR] that is to be drawn down..." The legislation would also cap the increase in the percentage of federal lands leased for oil and gas production to 10 percent.

The Strategic Petroleum Reserve is the national stockpile of crude oil managed by the Department of Energy. Last year, the Biden Administration conducted the largest ever drawdown of the SPR in response to oil supply disruptions following the Russian invasion of Ukraine. As of last Friday, the Reserve holds 371.6 million barrels of oil.

Under the rules adopted for the 118th Congress ([H.Res. 5](#)), the House will consider H.R. 21 under a “modified-open amendment process”. As described in a House Rules Committee [announcement](#), Members wishing to offer amendments must submit the text “into the Congressional Record for pre-printing at least one day prior to consideration.” Amendments must be “germane and comply with the rules of the House and the Congressional Budget Act.”

FERC Approves Rule on Bulk Electric System Cybersecurity

Key Point:

- *At its January 19th meeting, the Federal Energy Regulatory Commission approved a final rule requiring development of cybersecurity standards for bulk electric systems.*

On Thursday, the Federal Energy Regulatory Commission (FERC) held its first monthly open meeting of the year, also the first presided over by Chairman Willie Phillips. President Biden named Phillips as Chairman on January 3, following the departure of former Chairman Richard Glick.

During the meeting, Phillips announced that FERC will hold an environmental justice and equity roundtable in the spring, which he said “will provide an opportunity for FERC to hear from stakeholders on how the Commission can better incorporate environmental justice and equity considerations.” A [press release](#) notes that the “Commission will issue a notice in coming weeks that will identify when and how the roundtable will be conducted.”

Also during the meeting, the Commission approved the [final rule](#) titled “Internal Network Security Monitoring for High and Medium Impact Bulk Electric System Cyber Systems”, which requires “the North American Electric Reliability Corporation (NERC) to develop and submit within 15 months of the effective date of this final rule for Commission approval new or modified Reliability Standards that require internal network security monitoring within a trusted Critical Infrastructure Protection networked environment for all high impact bulk electric system (BES) Cyber Systems with and without external routable connectivity and medium impact BES Cyber Systems with external routable connectivity.” The rule will be effective 60 days following publication in the Federal Register.

FERC released "[Commission Meeting Summaries](#)" describing actions taken at Thursday's meeting.

Chairman Westerman Announces New House Natural Resources Committee Republicans

On Tuesday, House Natural Resources Committee Chairman Bruce Westerman (R-AR) [announced](#) the panel's new Republican members for the 118th Congress:

- Mike Collins (R-GA);
- John Duarte (R-CA);
- Harriet Hageman (R-WY);
- Wesley Hunt (R-TX);
- Jen Kiggans (R-VA);
- Anna Luna (R-FL); and
- James Moylan (R-GU).

The Committee has jurisdiction over "legislation about American energy production, mineral lands and mining, fisheries and wildlife, public lands, oceans, Native Americans, irrigation and reclamation."

Upcoming Hearings and Events

February 7-10

Energy and Climate Change Policy: The National Association of State Energy Officials (NASEO) will hold its [2023 Energy Policy Outlook Conference](#). The event "will feature in-depth discussions of the critical investments needed for decarbonized, affordable, and resilient electricity, transportation, and buildings systems, as well as the latest developments from Congress and the Administration."

February 16

FERC Meeting: The Federal Energy Regulatory Commission (FERC) will hold its monthly [open meeting](#).

For more information about energy and environment issues you may [email](#) or call Frank Vlossak at 202-659-8201. Updates on energy and environment issues are also available on [twitter](#).

HEALTH

CMS Continues Oversight of Nursing Homes

Key Point:

- *As part of efforts to improve nursing home transparency and oversight, the Centers for Medicare and Medicaid Services announced new steps to reduce the use of antipsychotic medications.*

Improving nursing home transparency and quality has been a major priority of the Biden Administration. As part of this effort, the Centers for Medicare and Medicaid Services announced new actions to ensure antipsychotic medications are being appropriately prescribed in nursing homes. This aligns with the goals outlined in [President Biden's Action Plan for Protecting Seniors by Improving Safety and Quality of Care in the Nation's Nursing Homes](#).

This month, CMS will begin targeted audits to determine if nursing homes are properly assessing and coding those diagnosed with schizophrenia to ensure patients are not being prescribed unnecessary treatments. The use of antipsychotic medications is part of the assessment of nursing home quality and is used in the Five-Star rating for a nursing home. Should the audit uncover a pattern of improper coding for schizophrenia, CMS will downgrade the nursing home's Quality Measure rating to one star.

In addition, CMS intends to publicly display any survey citations that facilities are disputing. Currently, deficiencies are not posted on Care Compete until after the dispute process, which usually takes approximately 60 days, is complete. The goal is to help consumers make more informed decisions when considering a nursing home. Citations will not be included in the Five-Star Quality Rating until the dispute is complete.

The CMS memo to State Survey Agency Directors is available [here](#).

For more information about health care issues you may [email](#) or call Nicole Ruzinski Bertsch at 202-659-8201.

CYBERSECURITY & PRIVACY

White House Releases National Security Memo on Cybersecurity

Key Point:

- On January 19, the White House released a [memorandum](#) entitled, “Improving the Cybersecurity of National Security, Department of Defense, and Intelligence Community Systems.”

The National Security Memorandum (NSM) builds off of the Executive Order on Improving the Nation’s Cybersecurity ([EO 14028](#)) and “establishes methods to secure exceptions for circumstances necessitated by unique mission needs.” Note that the NSM is not the comprehensive National Cyber Strategy the White House plans to release soon.

The NSM increases cybersecurity for sensitive systems by:

- Specifying how the provisions of EO 14028 apply to National Security Systems (NSS);
- Improving the visibility of cybersecurity incidents that occur on those systems;
- Requiring agencies to act to protect or mitigate a cyber threat to NSS; and
- Requiring agencies to secure cross domain solutions or tools that transfer data between classified and unclassified systems.

For more information outlining the NSM and other Administration actions on critical infrastructure, see the linked White House [fact sheet](#).

National Institute of Standards and Technology Revises Cybersecurity Framework

Key Point:

- On January 19, the National Institute of Standards and Technology (NIST) published a [concept paper](#), seeking additional input on the structure and direction of the Cybersecurity Framework 2.0 (CSF 2.0).

NIST first issued a [Request for Information](#) (RFI) in February 2022 to inform CSF 2.0. NIST emphasizes that “this paper *does not cover all* potential changes that may be made to the CSF 2.0 structure, format, and content, especially specific changes to Categories and Subcategories of the CSF Core.” NIST seeks “input on specific changes, including redlines, to the CSF narrative and Core, as well as to related CSF resources.”

NIST requested feedback on the following questions:

- Do the proposed changes reflect the current cybersecurity landscape (standards, risks, and technologies)?
- Are the proposed changes sufficient and appropriate? Are there other elements that should be considered under each area?
- Do the proposed changes support different use cases in various sectors, types, and sizes of organizations (and with varied capabilities, resources, and technologies)?
- Are there additional changes not covered here that should be considered?
- For those using CSF 1.1, would the proposed changes affect the continued adoption of the Framework, and how so?
- For those not using the Framework, would the proposed changes affect the potential use of the Framework?

All responses should be submitted to cyberframework@nist.gov by March 3, 2023.

GAO Report Finds Cyber Recommendations to Agencies Poorly Implemented

Key Points:

- *On January 19, the Government Accountability Office (GAO) issued a [report](#) outlining the slow pace of agency implementation of cybersecurity safeguards.*
- *The GAO emphasized that a National Security Strategy, which the Biden Administration plans to release soon, would help address lagging implementation.*

GAO urged the federal government to: (1) establish a comprehensive cybersecurity strategy; (2) mitigate global supply chain risks; (3) address the federal cybersecurity work shortage; and (4) ensure the security of emerging technologies. GAO highlighted that of the 335 public recommendations made, 60 percent had not been implemented. The report noted that the development of a National Cybersecurity Strategy is underway.

On supply chain risks, the GAO expressed concern that none of the 23 civilian agencies “had fully implemented all of the seven foundational practices for supply chain risk management.” The report also recommended that a government-wide workforce plan be developed to address the cybersecurity shortage. Lastly, GAO called for addressing connected information technology (IT), Internet of Things (IoT), Operational Technology, and quantum computing.

For more information about cybersecurity issues you may email [Mahlet Makonnen](#) or [Frank Vlossak](#). Jackson Notes contributed to this section.

TRADE

Republican Trade Draft Bill Features USMCA Expansion Plan

Key Points:

- *Sen. Bill Cassidy (R-LA) and Rep. Maria Elvira Salazar (R-FL) published a discussion draft of a bill intended to improve hemispheric economic integration within the Western Hemisphere.*
- *The Americas Partnership program is designed to shepherd countries into joining the U.S.-Mexico-Canada Agreement and discourage the advancement of Chinese influence in Latin America.*
- *The U.S. believes Ecuador, the Dominican Republic, Costa Rica, Panama, Uruguay, and Paraguay will be interested in joining the Americas Partnership program.*

Sen. Bill Cassidy (R-LA) and Rep. Maria Elvira Salazar (R-FL) published a discussion draft of a bill entitled the [Americas Act](#) which is intended to improve hemispheric economic integration within the Western Hemisphere. The bill includes the Americas Partnership program, which is designed to shepherd countries into joining the U.S.-Mexico-Canada Agreement (USMCA) and contain the advancement of Chinese influence in Latin America by creating working groups in member countries to develop uniform regulation across the region. As part of the program, partners receive a path and assistance to join the USMCA common trade zone. However, to join the program, countries must agree to sign a memorandum of understanding with the U.S. that reinforces the core values of the Americas Partnership program and commits partners to enforcing democracy and the rule of law. The U.S. believes Ecuador, the Dominican Republic, Costa Rica, Panama, Uruguay, and Paraguay will be interested in joining the Americas Partnership.

The United States and Taiwan Hold Trade Talks

Key Points:

- *The United States and Taiwan negotiated for four days over a proposed trade deal.*
- *China opposes a trade deal between the United States and Taiwan.*

The United States Trade Representative (USTR) and Taiwan met to negotiate text on several issues in play in the pending trade discussions between the two, labeled the U.S.-Taiwan Initiative on 21st-Century Trade. According to reports, the U.S. offered text related to trade facilitation, small and medium-sized enterprises, and domestic services regulation, as well as other issue areas. The Biden Administration expects its trade initiative with Taiwan to move quickly and reports for the talks suggest the two sides also reached consensus in

several areas and expect to maintain an ambitious negotiating schedule to continue momentum. The discussions do not feature market access issues, such as reducing tariffs, but are styled more like the Indo-Pacific Economic Framework (IPEF) trade talks, focused on other non-tariff issues. The People's Republic of China (PRC) has expressed opposition to the potential trade deal between Taiwan and the United States.

U.S. and European Union Finalize Agreement to Preserve U.S. Access to European Markets

Key Points:

- *The European Union's plans to adjust its tariff-rate quotas became a point of contention at the World Trade Organization.*
- *The United States and the European Union have finalized an agreement to preserve U.S. access to agricultural markets.*
- *The agreement will restore favorable market access for multiple U.S. agricultural products, including rice, almonds, wheat, and corn.*

When the United Kingdom announced its decision to leave the European Union (EU), the EU began working on plans to adjust its tariff-rate quotas (TRQ). However, the EU's plans to adjust TRQ's have become a point of contention for the U.S. and the World Trade Organization (WTO). On January 17, 2023, the United States and the European Union announced a finalized agreement to preserve the United States' access to the European market for various agricultural commodities. The agreement sets new tariff-rate quotas between the United States and the European Union. In a [statement](#) on January 17, 2023, the United States Trade Representative (USTR) said the new tariff-rate quota allocations "are based on the historic pattern of agricultural exports to the 27 EU Member States...The Agreement will restore favorable market access for multiple U.S. agricultural products, including for U.S. rice, almonds, wheat, and corn." Although the European Union and the United States have reached an agreement, the EU is still negotiating Brexit-related agreements with other WTO members.

USTR Receives More Than 1,400 China Section 301 Comments as Part of Four-Year Review Process

Key Points:

- *Comment period for the four-year review of the China Section 301 action on IP protection ended on January 17, 2023.*
- *Over 1,400 comments were received by the United States Trade Representative (USTR).*
- *It is not currently clear what next steps the USTR will take during the review.*

Under Section 301 of the Trade Act of 1974, there is a four-year review of investigations and actions taken under that section. In May of 2022, the Office of the United States Trade Representative (USTR) began the four-year review of the action taken against China regarding “China’s Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation.” As part of this review, the USTR requested [written comments](#) by the public and companies after previously soliciting comments in 2022 by companies and entities interested in maintaining the tariffs under the Section 301 action. The comments opened in November and the deadline was January 17, 2023. The USTR ultimately received 1,497 [comments](#).

Whether and how the USTR will change or extend the Section 301 tariffs on China and how the comments will impact those policy choices remains less clear. The Biden Administration has maintained the tariffs put in place by the Trump Administration with very few changes, but this could be the opportunity to revise them or refashion an exclusion process. However, the Biden Administration has not changed track on the China tariffs in two years, so while an opportunity to change or refine the trade policy on China exists, it is not clear what the Biden Administration will do next.

For more information about trade issues you may [email](#) or call Christopher Hatcher at 202-659-8201. Bridget Doherty contributed to this section.