

January 7, 2022

Washington Update

This Week In Congress

Senate – The Senate confirmed Anne Witkowsky to be Assistant Secretary of State.

House – The House was in recess and met in pro forma session.

Next Week In Congress

Senate – The Senate is expected to begin consideration of legislation related to voting rights. The Senate may also vote on legislation to impose sanctions related to the Nord Stream 2 pipeline ([S. 3436](#)). The Senate will continue its consideration of pending nominations, including Amitabha Bose to be Administrator of the Federal Railroad Administration and Alan Davidson to be Assistant Secretary of Commerce for Communications and Information.

House – The House is expected to consider the Guard and Reserve GI Bill Parity Act ([H.R. 1836](#)), the Ensuring Veterans' Smooth Transition Act ([H.R. 4673](#)), and the Senate amendment to the NASA Enhanced Use Leasing Extension Act ([H.R. 5746](#)).

TAX

Build Back Better on Hold in the New Year

Key Point:

- *The Build Back Better Act is currently on hold at the start of 2022 as Senator Manchin (D-WV) indicates he has not been engaged in any discussions in the new year.*

After moderate Democratic Senator Manchin (D-WV) announced at the end of 2021 he would not support President Biden's \$1.75 trillion spending proposal the "Build Back Better Act" ([H.R. 5376](#)), Democrats held out hope the Senator could be convinced to vote for the package in 2022. However, this week Senator Manchin (D-WV) made it clear he has not been having conversations with the Administration about moving the package forward. This does not mean the package is dead, but negotiations have yet to restart. Senator Manchin also mentioned to reporters he would be amenable to supporting a number of the climate change provisions in the legislation. The senator's original concerns with the legislation included the size of the Child Tax Credit provision and a number of scoring tactics Democratic members used to shrink the official score of the package. Senate Majority Leader Schumer (D-NY) released a Dear Colleague [letter](#) on January 3 focusing on voting rights in the aftermath of the one year anniversary of the January 6 events at the Capitol, but not covering plans on Build Back Better in any detail.

At this point, the expectation is there will be a cooling off period of some length, then the Biden Administration will try to find a compromise and changes that will bring Senator Manchin's support. While not a given, the Build Back Better legislation is far from dead. Meanwhile, little legislative action (like the Byrd bath where Byrd Rule challenges are made to the Senate Parliamentarian) appears to be occurring.

Several Tax Measures Expired on January 1, 2022, Unless BBB Is Enacted or Congress Extends Them

Key Point:

- *The BBB bill includes a number of green energy incentives, enhanced child credits and other tax incentives that otherwise expired at the end of 2021; as well as other policies that related to a change in tax law on January 1, 2022.*
- *If BBB is not enacted, Congress may consider acting on these tax issues.*

The Build Back Better bill has a number of policies that would have extended tax measures that otherwise expired on January 1, 2022. If Congress does not enact the Build Back Better Act, then it may need to consider extensions or changes to these policies in another legislative vehicle. An example of some of the policies include:

- Increased refundable child credit (sec. 24)
- Increase in State low-income housing tax credit ceiling (sec. 42(h)(3)(I))
- Beginning-of-construction date for renewable power facilities eligible to claim the electricity production credit or investment credit in lieu of the production credit (secs. 45(d) and 48(a)(5))
- Credit for qualified fuel cell motor vehicles (sec. 30B(k)(1))
- Credit for alternative fuel vehicle refueling property (sec. 30C(g))
- Credit for two-wheeled plug-in electric vehicles (sec. 30D(g)(3)(E)(ii))
- Credit for certain nonbusiness energy property (sec. 25C(g))

Another key provision which expired at the end of 2021 was a provision which allowed for the full expensing of research and development (R&D) when calculating a corporation's taxable income, instead requiring those expenses be amortized starting in 2022. A legislative fix to delay "R&D Amortization" was included in the "Build Back Better Act" ([H.R. 5376](#)) but in the absence of its passage Congress will need to consider if an independent legislative fix is needed.

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

FINANCIAL SERVICES

FDIC Chair McWilliams, SEC Commissioner Roisman to Resign

Key Points:

- *FDIC Chair Jelena McWilliams announced that she will resign in February. McWilliams had recently clashed with the FDIC's Democratic board members over the release of an RFI on bank mergers.*
- *SEC Commissioner Elad Roisman announced that he will resign by the end of January.*

On December 31, Federal Deposit Insurance Corporation (FDIC) Chair Jelena McWilliams [announced](#) that she intends to resign effective February 4, 2022. McWilliams has served as Chair since June 5, 2018. FDIC Board Member Martin Gruenberg will serve as Acting Chair upon McWilliams' resignation.

Earlier in December, Chair McWilliams had clashed with the Democratic members of the FDIC Board over the release of a [request for information](#) (RFI) on the rules and regulations governing bank merger transactions. Gruenberg, Acting Comptroller of the Currency Michael Hsu, and Consumer Financial Protection Bureau (CFPB) Director Rohit Chopra voted to issue the RFI, without participation from McWilliams. McWilliams issued a statement asserting that the RFI had not been approved by the FDIC and would not be published in the Federal Register. She also [penned an op-ed](#) in the Wall Street Journal entitled "A Hostile Takeover of the FDIC."

Additionally, on December 20, Securities and Exchange Commission (SEC) Commissioner Elad Roisman [announced](#) that he intends to resign by the end of January. Roisman has served a member of the Commission since September 11, 2018.

The White House has not announced nominees to replace McWilliams or Roisman.

Senate Banking Panel Holds Hearing on Community Development Financial Institutions

Key Point:

- *Members expressed bipartisan support for CDFIs and emphasized the important role they play in communities.*

On January 5, the Senate Banking, Housing and Urban Affairs Committee's Subcommittee on Housing, Transportation, and Community Development held a [hearing](#) entitled "Exploring how Community Development Financial Institutions Support Underserved Communities." Chairwoman Tina Smith (D-MN) said the hearing would explore how the federal government can help support the innovative work of community development financial institutions (CDFIs) and how the federal government and CDFIs can work to address the challenges facing the industry. She stated too often families of color have faced the most significant burden brought on by the pandemic. She expressed concern that according to the Federal Reserve the typical net worth in the U.S. this year is only 15 percent of that of a white family. She noted while many factors influence this disparity, one significant factor is lack of access to capital

and financial services. She recalled when the CDFI fund was established in 1994 there were around 80 CDFIs, and today there are more than 1,000 CDFIs in the U.S. She lauded the critical role played by these institutions in many underserved communities such as urban areas and tribal areas. She highlighted a number of projects funded in Minnesota by CDFIs along with support from the New Markets Tax Credit (NMTC). She stressed Congress looks to CDFIs as community institutions to help implement vital programs such as the New Markets Tax Credit. She expressed support for bipartisan legislation by Senator Cardin (D-MD) and Senator Blunt (R-MO) to expand this tax credit program. She recalled earlier this week she, along with Ranking Member Rounds (R-SD), introduced legislation to make the CDFI Bond Guarantee Program permanent, and to adjust some of the program's loan requirements to allow smaller CDFIs to participate. She also explained in 2020 Congress set aside \$20 billion for the Paycheck Protection Program (PPP) and Congress entrusted CDFIs to make more than 100,000 PPP loans in the first months of this program. She lauded historic investments made by Congress in subsequent COVID-19 relief legislations in CDFIs and minority depository institutions (MDIs). She expressed hope this hearing will help the Committee find areas of bipartisan cooperation on these vital issues.

Ranking Member Mike Rounds (R-SD) stated CDFIs are critical in rural South Dakota as they provide services to underserved communities. He explained it is because of these institutions that many Americans can buy their first home or launch a business. He stressed native CDFIs are unique because they are linked to the local culture and are passionate about creating opportunities for long term growth in those communities. He emphasized CDFIs also laid the groundwork for new investment in tribal communities by providing access to capital and financial assistance. He explained oftentimes native CDFIs are the first encounter native families have with financial institutions. He stated many Native Americans who open a bank account at these native CDFIs are often the first in their family to ever open a bank account and begin their journey to financial independence and financial literacy. He also observed a study by the Minneapolis Federal Reserve found that the presence of CDFIs in local communities leads to more robust credit building. He added this study also found the presence of a CDFI in a native community can improve the credit outcomes of those in that community. He noted that a challenge for these native CDFIs is adequate capital access as demand in these areas continues to rise. He lauded his past work to increase access to capital and he highlighted the introduction of the "American Rural Homeownership Improvement Act" ([S. 2092](#)), which would expand the United State Department of Agriculture (USDA) 502 lending program. He agreed with the Chairwoman that this hearing could be an area of bipartisan cooperation.

Upcoming Hearings and Meetings

January 11

Federal Reserve Nomination: The Senate Banking Committee will hold a hearing on the nomination of Jerome Powell for an additional term as Chairman of the Federal Reserve Board.

CDBG Program: The House Financial Services Committee’s Subcommittee on Oversight and Investigations will hold a hearing entitled “Ensuring Equitable Delivery of Disaster Benefits to Vulnerable Communities and Peoples: An Examination of GAO's Findings of the CDBG Program.”

January 13

Federal Reserve/FHFA Nominations: The Senate Banking Committee will hold a hearing on the nominations of Lael Brainard to be Vice Chair of the Federal Reserve Board and Sandra Thompson to be Director of the Federal Housing Finance Agency.

For more information about financial services issues you may email [Joel Oswald](#), [Mablet Makonnen](#), or [Alex Barcham](#).

ENERGY & ENVIRONMENT

Energy and Environment Regulatory Outlook for 2022

Key Points:

- *Cabinet departments and federal agencies are working on environmental and energy regulations, some of which will be finalized in 2022.*
- *President Biden established priorities for these regulations in a series of executive orders, with a distinct focus on climate change and environmental justice.*

As the Biden Administration begins its second year, agencies are expected to make further progress on promulgating energy and environment regulations. Some of the key agency activities that are underway include:

- **Regulation of Power Sector Greenhouse Gas Emissions:** The Environmental Protection Agency (EPA) is drafting new proposed regulations to control greenhouse gas (GHG) emissions from electric utilities, even as the U.S. Supreme Court is set to hear arguments on the agency’s authority to promulgate such rules on February 28 in *West Virginia v. EPA*. The [Unified Agenda of Regulatory and Deregulatory Actions](#) projects that the EPA will publish the NPRM for “Emission Guidelines for Greenhouse Gas Emissions from Fossil Fuel-Fired Existing Electric Generating Units” by July, 2022, and a final rule by July, 2023.
- **Waters of the United States:** The EPA and U.S. Army Corps of Engineers (USACE) are developing regulations to tighten requirements for protection of wetlands and other water features, which have been subject to changes in direction between the Obama, Trump, and Biden administrations. On December 7, 2021, the EPA and USACE published the [NPRM](#) titled “Revised Definition of ‘Waters of the United States’”. The agencies are also planning a second proposed rule “to consider further revisions to the agencies’ first rule...[that] proposes to include revisions reflecting on additional stakeholder engagement and implementation considerations, scientific developments, and environmental justice values.” The EPA is expected to publish the final version of the first rule sometime in 2022. The [Unified Agenda](#) projects publication of the NPRM for the second rule by February, 2022.

- ***Renewable Fuel Standard:*** The EPA is working to finalize rules setting the requirements for blending ethanol and other biofuels into the U.S. transportation fuel supply for 2020 through 2022, as well as map out future requirements for 2023 and beyond. On December 21, 2021, the EPA published the [NPRM](#) titled “Renewable Fuel Standard (RFS) Program: RFS Annual Rules” to set 2020, 2021, and 2022 blending volumes. The [Unified Agenda of Regulatory and Deregulatory Actions](#) projects that the EPA will publish an NPRM setting post-2022 blending requirements by May, 2022, with a final rule due by the end of the year.
- ***HFCs:*** Congress included the “American Innovation and Manufacturing (AIM) Act” as part of the omnibus appropriations bill signed into law by President Trump on December 27, 2020. The legislation directs the EPA to phase down the production and use of hydrofluorocarbons (HFCs) to 15 percent of their average annual levels from 2011 through 2013 by 2036. HFCs are a greenhouse gas which are utilized in air conditioning and refrigeration. The EPA is developing a proposed rule, which, as described in the [Unified Agenda](#), would restrict “fully, partially, or on a graduated schedule, the use of HFCs in sectors or subsectors including the refrigeration, air conditioning, aerosol, and foam sectors, and establish[] recordkeeping and reporting requirements, and address[] other related elements of the AIM Act.” The EPA anticipates publication of the NPRM by June, 2022, and the final rule by April, 2023.
- ***FERC Approval of Natural Gas Pipelines:*** On February 18, 2021, FERC issued a [Notice of Inquiry \(NOI\)](#) titled “Certification of New Interstate Natural Gas Facilities”. The Commission is using the NOI to develop an updated Certificate Policy Statement that will govern how it will assess applications for natural gas pipelines under the Natural Gas Act, including such issues as the need for new infrastructure, the use of eminent domain, and environmental justice.
- ***Pipeline Valve and Leak Detection Requirements:*** On February 6, 2020, the Pipeline and Hazardous Materials Safety Administration (PHMSA) published the [NPRM](#) titled “Pipeline Safety: Valve Installation and Minimum Rupture Detection Standards”. The NPRM would require “the installation of remote-control valves (RCV), automatic shutoff valves (ASV), or equivalent technology, on all newly constructed and fully replaced gas transmission and hazardous liquid lines” while accommodating “locations where it is not economically, technically, or operationally feasible...” PHMSA, in its monthly [update](#) on the status of pending pipeline safety rulemakings, projects publication of the final rule by March 29, 2022.
- ***Requirements for Natural Gas Distribution Systems:*** Congress, in the “PIPES Act of 2020”, directed PHMSA to promulgate a series of regulations to enhance the safety of natural gas distribution systems. Congress included the provisions in the legislation in response to the September 13, 2018, Merrimack Valley incident. The rules are expected to include requirements addressing: integrity management plans; incident communications with the public and emergency responders; recordkeeping for pressure controls; and the monitoring and controlling of system operating pressures. PHMSA’s regulatory status [update](#) projects publication of the NPRM by July 5, 2022.
- ***Oil and Natural Gas Sector GHG Emissions:*** On November 15, 2021, the EPA published the [NPRM](#) titled “Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review”. The

rule includes two key components: updated and expanded regulations of methane emissions from new sources, and standards for State implementation and enforcement of rules governing existing sources. The agency is expected to issue a final rule in the coming months and plans a second rulemaking in 2022 that could potentially address: “(1) Ways to mitigate methane from abandoned wells, (2) measures to reduce emissions from pipeline pigging operations and other pipeline blowdowns, (3) ways to minimize emissions from tank truck loading operations, and (4) ways to strengthen requirements to ensure proper operation and optimal performance of control devices.”

- ***Implementation of the Infrastructure Investment and Jobs Act:*** On November 15, the President signed the “Infrastructure Investment and Jobs Act” ([H.R. 3684](#), P.L. 117-58). The legislation provides \$550 billion in funding for highways, transit, rail, water, energy, and other infrastructure over five years. A Department of Energy [fact sheet](#) describes new federal money allocated for energy, with an emphasis on renewable energy, including: battery development; clean hydrogen; electric grid enhancement; maintenance of existing nuclear generation capacity; hydropower; carbon capture; and advanced nuclear power.

Upcoming Hearings and Events

January 11

Hydropower: The Senate Energy and Natural Resources Committee will hold a [hearing](#) titled “The Opportunities and Challenges for Maintaining Existing Hydropower Capacity, Expanding Hydropower at Non-Powered Dams, and Increasing Pumped Storage Hydropower”. Scheduled witnesses are: Jennifer Garson, Acting Director of the Water Power Technologies Office, U.S. Department of Energy; Camille Touton, Commissioner, Bureau of Reclamation; Scott Corwin, Executive Director, Northwest Public Power Association; and Malcolm Woolf, President and CEO, National Hydropower Association.

January 12

Water Resources Development Act: The House Transportation and Infrastructure Committee’s Water Resources and Environment Subcommittee will hold a [hearing](#) titled “Proposals for a Water Resources Development Act of 2022: Administration Priorities”. The hearing is intended to: review the “administration’s priorities for a new water resources development act for 2022”; and “provide members with an opportunity to review the [2021 Report to Congress on Future Water Resources Development](#) and several reports of the Chief of Engineers on individual water resources projects that have been submitted to Congress for authorization.” Scheduled witnesses are: Michael Connor, Assistant Secretary of the Army for Civil Works; and Lieutenant General Scott Spellmon, Chief of Engineers and Commanding General, U.S. Army Corps of Engineers.

January 20

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

January 26-27

Environmental Justice: The White House Environmental Justice Advisory Council will hold a [virtual public meeting](#). The agenda includes “discussion and deliberation of draft recommendations to the Chair of the Council on Environmental Quality and the White House Interagency Council on Environmental Justice from the Justice40 Work Group, Climate and Economic Justice Screening Tool Work Group, and the Scorecard Work Group”.

February 16

Electric Transmission: FERC will hold a [meeting](#) of the “Joint Federal-State Task Force on Electric Transmission”. FERC established the Task Force on June 17, 2021, to “focus on topics related to planning and paying for transmission, including transmission to facilitate generator interconnection, that provides benefits from a federal and state perspective.”

February 28-March 1

Biofuels and Greenhouse Gases: The Environmental Protection Agency (EPA) will hold a “[Workshop on Biofuel Greenhouse Gas Modeling](#)”. The workshop is intended “to solicit information on the current scientific understanding of greenhouse gas modeling of land-based crop biofuels used in the transportation sector.” The workshop will develop information for a “range of current and future actions, including EPA’s methodology for quantifying the greenhouse gas emissions under the Renewable Fuels Standard.”

April 28

Winter-Readiness of Generating Units: FERC will hold a [Joint Technical Conference](#) with the North American Electric Reliability Corporation (NERC) concerning winter-readiness of generating units. The agenda includes discussion of “how to improve the winter-readiness of generating units, including best practices, lessons learned, and increased use of the NERC guidelines...”

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

HEALTH**CMS Issues CY 2023 Medicare Advantage and Part D Proposed Rule*****Key Point:***

- *The Centers for Medicare and Medicaid Services issued a proposed rule making changes to Medicare Part D and Medicare Advantage for CY 2023.*

On January 6, the Centers for Medicare and Medicaid Services announced the issue of the Contract Year 2023 Policy and Technical Changes to the Medicare Advantage and Medicare Prescription Drug Benefit Programs. The proposed rule aims to lower beneficiaries’ out-of-pocket costs for prescription drugs and

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improve transparency in the Part D marketplace. The proposal also aims to improve health equity and reduce disparities. The proposal includes provisions to:

- Ensure agreements between Part D plans and pharmacies are reflected in the negotiated price used to determine beneficiary cost-sharing in order to lower costs for beneficiaries.
- Clarify standards for Medicare Advantage (MA) plans during a declaration of disaster or emergency and disruption in access to care.
- Require plan applicants demonstrate they have a sufficient network of contracted providers before CMS will approve a new or expanded MA plan.
- Require enrollee health risk assessments to include questions on housing stability, food security, and access to transportation.
- Allow for integrated materials to dually eligible beneficiaries so they can better understand the scope of Medicare and Medicaid benefits available.

Read a fact sheet on the rule [here](#) and the full rule [here](#).

Upcoming Hearings and Meetings

January 11

Variants: The Senate Health, Education, Labor and Pensions Committee will hold a hearing on “Addressing New Variants: A Federal Perspective on the COVID-19 Response.”

January 12

FDA: The Senate Health, Education, Labor and Pensions Committee will hold an executive session to confirm a number of nominees including Robert Califf to be Commissioner of the Food and Drug Administration. The hearing is not currently scheduled to be webcast.

January 13-14

MedPAC: The Medicare Payment Advisory Commission will hold a public meeting.

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

CYBERSECURITY/PRIVACY

Status Update on the Nomination of Final Federal Trade Commissioner

The White House has announced the re-nomination of Georgetown University Founding Director of the Center on Privacy and Technology Alvaro Bedoya for the final commissioner vacancy at the U.S. Federal Trade Commission (FTC). Bedoya’s prior nomination expired at the end of 2021 as the Senate

was debating his confirmation. The Senate Commerce Committee voted 14-14 along party lines to advance the nomination, but it was never considered by full Senate before the year's end

IRS Watchdog Issues Report with Recommendations to Update Vulnerabilities Tool

Key Point:

- *The IRS watchdog has reported that the new internal systems scanning tool used by the IRS to root out vulnerabilities was determined to need more oversight and documentation.*

The Treasury Inspector General for Tax Administration issued a [report](#) recommending six measures the agency should implement to better oversee a tool used by the IRS to root out vulnerabilities. The IRS has agreed to incorporating all the recommendations and announced plans to create benchmarks to address the concerns in a timely schedule.

Federal Agencies Issue Guidance to Address Vulnerabilities Used in Log4j Attacks

Key Point:

- *Following the discovery of the Log4j flaw affecting hundreds of millions of devices globally, the federal government has issued new guidance on how bolster the security of open-source software. Log4j is ubiquitous in software used throughout the technology industry.*

Following the exposure of Log4j vulnerabilities, the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency (CISA) released an [alert](#) providing vendors and affected organizations with a detailed guide on how to deal with potential risks to IT and cloud services. This warning was issued alongside the FBI and National Security Agency (NSA) and the security agencies of the Five Eyes intelligence partners: Australia, Canada, New Zealand, and the United Kingdom. The guidance focused on securing internet-facing devices and systems against Log4Shell-related attacks.

The FTC has also issued a [warning](#) to companies that it “intends to use its full legal authority to pursue companies that fail to take reasonable steps to protect consumer data from exposure as a result of Log4j, or similar known vulnerabilities in the future.” This action comes as lawmakers debate the specifics of a federal law establishing requirements for companies that suffer a breach.

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

TRADE**Canada Expected to Join Mexico in Complaint on U.S. Vehicle Parts***Key Point:*

- *Canada is expected soon to formally join Mexico in their complaint under the U.S.-Mexico-Canada Agreement (USMCA) that the U.S. is not properly applying rules of origin for cars.*

Under the USMCA, Canada and Mexico are expected to request the creation of a tribunal to rule on a dispute regarding how to calculate the percentage of a vehicle that collectively comes from the three countries. Mexico and Canada argue that USMCA states that more regionally produced parts should count toward duty-free shipping than the U.S. allows. Canada and Mexico can seek the formation of a three or five person panel chosen from a previously agreed to [roster](#) of legal and trade experts. Most recently, a USMCA dispute settlement panel sided with the U.S. finding that Canada's reservation of tariff-rate quotas for dairy processors violates the terms of the deal. The panel was requested by the U.S. on May 25, 2021 and the panel issued its final [report](#) to the Parties on December 20, 2021. That action was the first dispute panel decision under the new USMCA process, which may be used on auto parts and other disputes in the coming year.

It is expected that following a formal ask, a panel process on auto rules of origin could at the earliest be finished at the start of July 2022. If the U.S. is found to be at fault, the Biden Administration will be obligated to seek a negotiated resolution. If talks fail, Canada and Mexico could impose a similar suspension of benefits against the U.S., such as tariffs.

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

This Week in Congress was written by Alex Barcham.