

Washington Update

May 27, 2022

This Week In Congress

Senate – The Senate failed to invoke cloture on a motion to proceed to the Domestic Terrorism Prevention Act ([H.R. 350](#)). The Senate voted down a Congressional Review Act resolution ([S.J. Res. 46](#)) to disapprove the Department of Justice and Department of Homeland Security’s asylum rule. The Senate confirmed the nominations of Dara Lindenbaum to be a Member of the Federal Election Commission, Paul Rosen to be Assistant Secretary of the Treasury, Sandra Thompson to be Director of the Federal Housing Finance Agency, Henry Christopher Frey to be Assistant Administrator of the Environmental Protection Agency, Marcia Stephens Bloom Bernicat to be Director General of the Foreign Service, Jane Hartley to be Ambassador to the United Kingdom, Christopher Coes to be Assistant Secretary of Transportation, and Steven Cliff to be Administrator of the National Highway Traffic Safety Administration.

House – The House held a committee work week and met in pro forma session.

Next Week In Congress

Senate – The Senate will be in recess and meet in pro forma session. The Senate is scheduled to reconvene on June 6.

House – The House will be in recess and meet in pro forma session. The House is scheduled to reconvene on June 7.

TAX

Senate HELP Committee Releases Discussion Draft of Retirement Legislation

Key Points:

- *The Senate HELP Committee released a discussion draft of retirement legislation which is likely to be paired with the SECURE Act 2.0.*
- *The Senate Finance Committee is likely to take action on the SECURE Act 2.0 in the coming work period.*

On Thursday, the Senate Health, Education, Labor and Pensions (HELP) Committee released a discussion [draft](#) of the Retirement Improvement and Savings Enhancement to Supplement Healthy Investments for the Nest Egg (RISE & SHINE) Act. Chairwoman Murray (D-WA) and Ranking Member Burr (R-NC) also released a section-by-section summary of the discussion [draft](#). The Chairwoman and Ranking Member worked in bipartisan fashion with their colleagues on the Senate HELP Committee following a hearing earlier this year to develop the discussion draft to help bolster American's retirement security. The legislation:

- Increases the dollar limit for mandatory distributions from workplace retirement plan into an IRA.
- Enables 403(b) retirement plans to participate in multiple employer plans (MEPs) and pooled employer plans (PEPs).
- Requires the DOL, Treasury, and the PBGC to review reporting and disclosure requirements for retirement plans.
- Removes the requirement for employers to provide certain notices to employees who have not elected to participate in a workplace retirement plan, such as a 401(k).
- Reduces the requirement for part-time workers to participate in an employers' retirement savings plan from three years of service with the employer to two years.
- Provides employers the option to offer pension-linked emergency savings accounts.

The package builds off legislation in the House of Representative—the “Securing a Strong Retirement Act of 2021” (SECURE Act 2.0) ([H.R. 2954](#)), and the “Retirement Improvement and Savings Enhancement Act” (RISE Act) ([H.R. 5891](#))—as well as the “Retirement Security & Savings Act” ([S. 1770](#)) introduced by Senators Cardin (D-MD) and Portman (R-OH). The

Senate HELP Committee also announced that the Committee will mark up the legislation in “the coming weeks.”

Those familiar with the discussions expect this legislation to be combined with the Finance Committee work product to become the Senate’s version of the SECURE Act 2.0, which was passed in the House on March 29.

Majority Leader Schumer (D-NY) and Senator Manchin (D-WV) Continue Discussions on Reconciliation Package

Key Point:

- *Senate Majority Leader Schumer (D-NY) and Senator Manchin (D-WV) have been continuing ongoing discussions concerning a possible future reconciliation package.*

Over five months ago Senator Manchin (D-WV) announced he would not be supporting the passage of the “Build Back Better Act” ([H.R.5376](#)) through the process of budget reconciliation. However, earlier this week, during a speech at the World Economic Forum in Davos, Switzerland, Senator Manchin stated he believes lawmakers would be able to get something done. During the same speech he emphasized that any package must fight inflation, reduce the deficit, and address climate change. These comments are consistent with Senator Manchin’s past comments on reconciliation. In addition, Senator Manchin told reporters last week that all 50 Democrats would support a package which combats rising prescription drug prices. Senator Manchin and Majority Leader Schumer (D-NY) met last week and again this week to discuss the elements of what a reconciliation package would look like.

Senator Manchin has also signaled that he would support raising taxes on corporations to pay for portions of the package. However, this part of the proposal would likely receive some pushback from moderate Senator Sinema (D-AZ) who has explained she would not support tax rate increases on corporations in the past. When asked about where things stand with Senator Manchin, Majority Leader Schumer replied Wednesday: “We’re making progress, got more to do. But we’re making some progress. I’m feeling decent.” Democrats had set an unofficial deadline to move a reconciliation package of Memorial Day, however, this deadline will not be met. The reconciliation option technically expires September 30, 2022, meaning any bill must be enacted by then to receive the procedural protections the process offers.

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

SEC Issues Proposed Rules on ESG Fund Names and Disclosures

Key Points:

- *The SEC issued a proposed rule aimed preventing misleading or deceptive fund names.*
- *The Commission also issued a proposal to enhance the disclosures around funds' and advisers' incorporation of environmental, social, and governance ("ESG") factors.*

On May 25, the Securities and Exchange Commission (SEC) held an [open meeting](#) and approved two proposed rules: (1) amendments to the rule under the Investment Company Act that addresses investment company names that may mislead investors about an investment company's investments and risks; and (2) amendments to rules and reporting forms for registered investment advisers, certain advisers exempt from registration, registered investment companies, and business development companies to provide standardized environmental, social, and governance ("ESG") disclosure to investors and the Commission.

The [proposed rules](#) to amend the Investment Company Names Rule were approved by a vote of 3-1, with Commissioner Hester Peirce voting no. The SEC released a [fact sheet](#) describing the proposal, which includes the following summary:

The Names Rule currently requires funds with certain names to adopt a policy to invest 80 percent of their assets in the investments suggested by that name. The proposal would expand this requirement to apply to any fund name with terms suggesting that the fund focuses in investments that have, or investments whose issuers have, particular characteristics. This would include, for example, fund names with terms such as "growth" or "value" and those indicating that the fund's investment decisions incorporate one or more environmental, social, or governance ("ESG") factors. Further, to address the rule's application to derivatives investments, the proposal would require a fund to use a derivatives instrument's notional amount, rather than its market value, for the purpose of determining the fund's compliance with its 80 percent investment policy.

The [proposed rules](#) on ESG disclosures for investment advisers and investment companies were approved by a vote of 3-1, with Commissioner Hester Peirce voting no. The SEC released a [fact sheet](#) summarizing the proposed rule, which states:

The proposal would require funds that consider ESG factors in their investment process to disclose additional information regarding their strategy. The amount of required disclosure depends on how central ESG factors are to a fund's strategy and follows a "layered" framework, with a concise overview in the prospectus supplemented by more detailed information in other sections of the prospectus or in other disclosure documents, all of which would be reported in a structured data language. The proposal identifies the following three types of ESG funds:

- **Integration Funds.** Funds that integrate ESG factors alongside non-ESG factors in investment decisions would be required to describe how ESG factors are incorporated into their investment process.
- **ESG-Focused Funds.** Funds for which ESG factors are a significant or main consideration would be required to provide detailed disclosure, including a standardized ESG strategy overview table.
- **Impact Funds.** A subset of ESG-Focused Funds that seek to achieve a particular ESG impact would be required to disclose how it measures progress on its objective.

Advisers that consider ESG factors would be required to make generally similar disclosures in their brochures with respect to their consideration of ESG factors in the significant investment strategies or methods of analysis they pursue and report certain ESG information in their annual filings with the Commission.

Both proposals will be subject to 60-day comment periods after publication in the *Federal Register*.

House Financial Services Holds Hearing on NFIP Reauthorization

Key Points:

- *Members of both parties emphasized the need to pass a long-term reauthorization bill for the NFIP.*
- *Ranking Member Hill (R-AR) stressed the need to reform NFIP and allow for greater participation by private flood insurance.*

On May 25, the House Financial Services Committee's Subcommittee on Housing, Community Development and Insurance held a [hearing](#) entitled "Reauthorization and Reform of the National Flood Insurance Program."

The hearing focused on the following legislation:

- [H.R. ____](#), the “The National Flood Insurance Program Reauthorization Act of 2022.” (Rep. Waters)
- [H.R. 7842](#), the “The Protecting Families and the Solvency of the National Flood Insurance Program Act of 2022.” (Rep. Casten)
- [H.R. ____](#), the “The National Flood Insurance Program Administrative Reform Act of 2022.” (Rep. Velázquez)
- [H.R. ____](#), a bill to cancel the indebtedness of the National Flood Insurance Program, and for other purposes. (Rep. Waters)
- [H.R. ____](#), a bill to limit the annual increases in premiums and surcharges under the National Flood Insurance Program, and for other purposes.

Chairman Emanuel Cleaver (D-MO) said the hearing was part of a bipartisan effort to get a long-term reauthorization of the National Flood Insurance Program (NFIP). He noted flooding is the costliest natural disaster facing the U.S. and he stated 90 percent of all natural disasters are floods. He stressed federal data indicates that climate change is supercharging the impacts of floods. He highlighted the important role played by insurance companies in helping those who have experienced significant loss to recover and achieve greater financial stability. He stressed the program must be affordable and accessible for those who need it. He stated the NFIP is the principal provider of flood insurance in the U.S. and providers nearly \$1.3 trillion in coverage. He explained the last long-term reauthorization of the NFIP occurred when Congress passed the bipartisan “Biggert-Waters Flood Insurance Reform Act of 2012” ([H.R. 1309](#)). He stated since the end of FY2017 the NFIP has had 19 short-term reauthorizations and has even experienced brief lapses. He added that according to information from the National Association of Realtors, around 40,000 home sales are lost every month that the NFIP’s authority lapses. He noted the NFIP’s authorization is currently set to expire on September 30, 2022. He added the NFIP also seeks to mitigate and reduce the nation’s comprehensive flood risk through flood plain management, flood mapping, and flood mitigation. He underscored the need to focus on how the nation builds and invests in infrastructure that is ready to meet the needs of climate change.

Ranking Member French Hill (R-AR) stressed floods are the most common and most expensive natural disasters American communities face, and he stated floods were responsible for 57 deaths in 2020. He added he is pleased with the bipartisan approach to this topic. He expressed concern the majority has not held a hearing on the NFIP since 2019. He stated the Majority has left this program on autopilot through a number of short-term reauthorizations. He recalled that since the last full NFIP reauthorization expired in 2017 the program has been extended on a short-term basis 21 times without any reforms attached. He expressed concern the committee has tainted past flood reauthorization with

partisan flood reform proposals without any Republican input. He stated fixing the NFIP is not easy, but it is important, and he stressed any fix must support the Federal Emergency Management Agency's Risk Rating 2.0 methodology. He also stated any reform must allow for greater private flood insurance options for policyholders. He explained there are many areas in which bipartisan agreement can be found, including: (1) supporting enhanced pre-flood mitigation; (2) ending discounts for properties each year; (3) eliminating fraud in the claims process; and (4) considering means tested affordability programs which help low-income policyholders.

Senate Confirms Sandra Thompson as FHFA Director

Key Points:

- *Thompson was confirmed as Director of the FHFA by a vote of 49-46.*
- *The Senate also confirmed Paul Rosen to be Assistant Secretary of the Treasury for Investment Security.*

On May 25, the Senate confirmed Sandra Thompson to serve as Director of the Federal Housing Finance Agency (FHFA) by a vote of 49-46. Thompson has served as Acting Director of FHFA since June 2021. Thompson previously served as FHFA's Deputy Director of the Division of Housing Mission and Goals (DHMG).

The Senate also confirmed Paul Rosen to serve as Assistant Secretary of the Treasury for Investment Security by voice vote. In role, Rosen will oversee the Committee on Foreign Investment in the United States (CFIUS).

House Financial Services Holds Hearing on Central Bank Digital Currency

Key Points:

- *Federal Reserve Vice Chair Lael Brainard discussed the potential benefits and risks of a CBDC, while stressing the Federal Reserve will not move forward without authorization from Congress.*
- *Ranking Member Patrick McHenry (R-NC) argued that the potential benefits of a CBDC could be achieved through private sector alternatives.*

On May 26, the House Financial Services held a [hearing](#) entitled "Digital Assets and the Future of Finance: Examining the Benefits and Risks of a U.S. Central Bank Digital Currency."

Federal Reserve Vice Chair Lael Brainard testified and explained there has been explosive growth in the digital financial ecosystem from the development of new digital assets

facilitated by digital asset platforms. She added in recent weeks two widely used stablecoins have come under considerable pressure. She noted this recent turmoil makes clear that the actions the federal government takes now should be robust to the future evolution of the financial system. She explained this evolution should frame the conversation around whether there may be conditions in the future which may give rise to the need for a central bank digital currency (CBDC). She emphasized that no decision has been made around whether a U.S. CBDC will be a part of the nation's future. She acknowledged both the risks of acting too quickly and the risks of not acting at all. Brainard suggested a CBDC could facilitate and enable private sector innovation through its role as this settlement layer. She noted in some circumstances a widely used CBDC could serve as a substitute for deposits. She added a CBDC would be attractive to risk averse users during times of trouble which is why the Federal Reserve wants to ensure banks are a part of the intermediary system if a CBDC were created. She stated it is prudent to think about the risks relating to the development of a CBDC if other countries develop and release their own CBDC. She emphasized the U.S. cannot take the dollar's dominance for granted.

Chairwoman Maxine Waters (D-CA) noted cryptocurrencies have the potential to offer several efficiencies in the payment system, but she expressed concern over "clear risks" associated with some cryptocurrencies and stablecoins. She highlighted the "dramatic collapse" of Terra which resulted in investors losing \$40 billion in a product that was always supposed to return \$1 for every \$1 invested. She expressed concern if the U.S. does not lead in the digital asset space this could threaten the dollar's leadership status. She observed over 90 countries are seeking to develop CBDCs including China which rolled out their CBDC at their Winter Olympics. She stressed if the U.S. is to roll out a CBDC it must include mechanisms to protect the user's privacy while protecting against money laundering and other illicit uses.

Ranking Member Patrick McHenry (R-NC) noted prior to the reports being released by the Federal Reserve Committee Republicans released a set of principles designed to guide the country's evaluation of a CBDC. He suggested that most of the benefits of a CBDC described the Federal Reserve's report could be realized through private sector alternatives. He added the Committee does not know how a CBDC would impact the Federal Reserve's ability to enact its monetary functions. He asserted no one has made a compelling case as to why Congress should expand the Federal Reserve's mandate into retail banking or how a CBDC would not politicize the Federal Reserve. He contended there will be significant harm to the financial system if Congress moves without listening to all sides of the issue.

Representative Barry Loudermilk (R-GA) noted the Federal Reserve has said its intention is to move forward only with clear support from Congress and the Executive Branch. He

expressed concern with the phrase “intention” and asked for confirmation that a CBDC will not be created without an authorizing law from Congress. Brainard replied the Federal Reserve does not intend to proceed without authorization.

Upcoming Hearings and Meetings

June 2

Insurance: The Treasury Department’s Federal Insurance Office (FIO) will hold a meeting of the Federal Advisory Committee on Insurance (FACI). The agenda for the meeting includes discussion of topics related to climate-related financial risk and the insurance sector.

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

ENERGY & ENVIRONMENT

Senate Commerce Committee Considers Fuel Price Legislation

Key Points:

- *On May 25, a Senate panel considered legislation to expand the Federal Trade Commission’s authority to target market manipulation in transportation fuels.*
- *The Committee’s party line vote was tied, but the full Senate may still consider the legislation.*

On Wednesday, the Senate Commerce Committee held an [executive session](#) to mark up pending legislation, including the “Transportation Fuel Market Transparency Act” ([S. 4217](#)). The legislation would expand Federal Trade Commission (FTC) rules targeting price manipulation in transportation fuel markets, as well as enhance federal data collection. The Committee deadlocked on the bill on a 14-14 party-line vote. However, the Senate Majority Leader still has a process available to bring the bill to the floor.

The legislation:

- Expands the market manipulation and false information prohibitions established in the “Energy Independence and Security Act of 2007” ([P.L. 110-140](#), [42 USC 17301-17305](#)) to cover “transportation fuels” broadly. The original act targeted “gasoline or petroleum distillates”.
- Prohibits providing “false or misleading information” to any “private sector price reporting agency”, in addition to Federal departments and agencies.
- Increases penalties for violations from \$1 million to \$2 million.

- Establishes the Transportation Fuel Marketing and Enforcement Unit within the FTC
- Directs the Energy Information Administration (EIA) to collect and report more fuel market data.
- Calls for the EIA to “conduct surveys of energy companies to collect detailed and timely information on United States crude oil and transportation fuel markets.”
- Tasks the EIA with identifying and reporting on “the country of original production of crude oil and transportation fuel that may have been resold, refined, blended, stored, or otherwise been exchanged or sold before being imported or exported into the United States”.

Chairwoman Maria Cantwell (D-WA), in her [opening statement](#), emphasized the need to provide federal agencies with “additional tools on the transparency of oil markets as it relates to the petroleum markets.” Cantwell introduced the legislation on May 12, 2022.

In his [opening statement](#), Ranking Member Roger Wicker (R-MS) warned that the bill would “would empower the FTC to harass more small businesses and individuals, but...would do nothing to provide relief to the American people.”

Federal Pipeline Regulator Announces Actions on Carbon Dioxide

Key Point:

- *On May 26, the Pipeline and Hazardous Materials Safety Administration announced regulatory and civil penalties related to carbon dioxide pipelines.*

On Thursday, the Pipeline and Hazardous Materials Safety Administration (PHMSA) announced a series of actions related to carbon dioxide pipeline infrastructure. As described in a [press release](#), the actions include:

- “initiating a new rulemaking to update standards for CO₂ pipelines, including requirements related to emergency preparedness, and response;”
- “issuing a [Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order](#) (NOPV) to Denbury Gulf Coast Pipeline, LLC for multiple probable violations of Federal pipeline safety regulations (PSRs)...”
- “completing a [failure investigation report](#) for the 2020 pipeline failure in Satartia, Mississippi;”
- “issuing an updated nationwide [advisory bulletin](#) to all pipeline operators underscoring the need to plan for and mitigate risks related to land-movements and geohazards that pose risks to pipeline integrity like the 2020 incident in Satartia, Mississippi; and”
- “[conducting research solicitations](#) to strengthen [the] safety of CO₂ pipelines.”

The advisory bulletin on “Pipeline Safety: Potential for Damage to Pipeline Facilities Caused by Earth Movement and Other Geological Hazards” recommends that pipeline owners and operators:

- Take into account “the potential for damage to those pipeline facilities caused by earth movement in variable, steep, and rugged terrain and terrain with varied or changing subsurface geological conditions”;
- Consider that “changing weather patterns due to climate change, including increased rainfall and higher temperatures, may impact soil stability in areas that have historically been stable”; and
- “[C]onsider monitoring geological and environmental conditions, including changing weather patterns, in proximity to their facilities.”

The advisory bulletin applies to hazardous liquid and natural gas pipelines, as well as carbon dioxide pipelines.

Upcoming Hearings and Events

May 31

Hydrogen in New York: The New York State Energy Research and Development Authority (NYSERDA) will hold a webinar on “Hydrogen in NYS: State of the Science,” which is intended to “engage with stakeholders on many of the key topics and considerations shaping the discourse around hydrogen in New York.” The agenda includes: “Hydrogen’s Role in New York Decarbonization Pathways”; “Environmental Justice Considerations for Hydrogen”; “Hydrogen Production Pathways”; “Hydrogen Technology Primers (e.g. Electrolyzers)”; and “Hydrogen Storage & Delivery”.

June 6-8

Hydrogen: The Department of Energy will hold the Hydrogen Program Annual Merit Review and Peer Evaluation Meeting (AMR). The [virtual meeting](#) will feature presentations on “hydrogen and fuel cell projects funded by DOE”, as well as discussion of the Department’s hydrogen energy programs. The [preliminary agenda](#) includes: “HyShot Updates”; “DOE H2 Program Overview”; and “Subprogram Overviews”.

June 15

Clean Air Act Advisory Committee: The Environmental Protection Agency’s Clean Air Act Advisory Committee will hold a [virtual meeting](#).

June 16

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

June 21-23

Bulk Power System Efficiency: FERC will hold a [technical conference](#) “to discuss opportunities for increasing real-time and day-ahead market efficiency of the bulk power system through improved software.”

July 20

State and Local Coordination on Electric Transmission: FERC will hold a [meeting](#) of its Joint Federal-State Task Force on Electric Transmission. On June 17, 2021, FERC approved an [order](#) establishing the Task Force, which is authorized to “to examine...topics related to planning and paying for transmission, including transmission to facilitate generator interconnection, that provides benefits from a federal and state perspective.”

September 8

New England Energy Issues: FERC will hold a [forum](#) “to discuss the electricity and natural gas challenges facing the New England Region.”

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**Senators Introduce Bill to Crackdown on PBMs***Key Points:*

- *Senators Maria Cantwell (D-WA) and Chuck Grassley (R-IA) the “Pharmacy Benefit Manager Transparency Act of 2022.”*
- *The bill would prohibit pharmacy benefit managers (PBMs) from engaging in unfair practices, incentivize fair and transparent PBM practices, improve competition, and enhance the Federal Trade Commission’s enforcement.*

This week, Senators introduced new legislation to address the behavior of pharmacy benefits managers (PBMs). Senators Maria Cantwell (D-WA) and Chuck Grassley (R-IA) introduced the “Pharmacy Benefit Manager Transparency Act of 2022” to address the role of PBMs in the prescription drug marketplace.

The legislation would prohibit PBMs from engaging in unfair or deceptive practices including “spread pricing” which is when PBMs charge health plans and payers more than what they reimburse the pharmacy; clawing back payments made to pharmacies; and increasing fees or lowering reimbursements to offset changes in federally funded health plans. The bill would attempt to incentivize transparent practices such as passing on rebates to health plans or payers and providing full disclosure of rebates, costs, prices, reimbursements, and fees to health plans, payers, and pharmacies.

To increase oversight and transparency, PBMs would be required to report to the Federal Trade Commission (FTC) the amount of money obtained from spread pricing, pharmacy fees, and clawbacks; any differences in fees between PBM-affiliated pharmacies and non-affiliated pharmacies; and why the cost for the consumer increased or why the reimbursement to a pharmacy decreased. The FTC is required to report its enforcement activities to Congress and whether PBMs are engaging in any unfair or deceptive formulary designs. The bill would also authorize the FTC and state attorneys general to enforce the legislation.

Read the text of the bill [here](#) and a summary [here](#).

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

CYBERSECURITY & PRIVACY

California Privacy Protection Agency Draft Rules Emphasize Oversight and Enforcement

Key Point:

- *The California Privacy Protection Agency (CPPA) is drafting rules to implement the California Privacy Rights Act (CPRA) with an initial focus on administrative enforcement and audit authorities, notably excluding automated decision making, cybersecurity audits, and risk assessments.*

On May 26, the CPPA held a [board meeting](#) to discuss the focused rulemaking approach on audit authorities and administrative enforcement, that excludes automated decision making, cybersecurity audits, and risk assessments. Vinhcent Le, a board member on the subcommittee, noted the approach allows the subcommittee to flesh out the more complex regulations of the CPRA and prioritize immediate rulemaking on broader topics. The CPPA announced in March the rulemaking would be delayed until the end of the year, giving

businesses more time to prepare compared to the original rulemaking effective date of July 1.

The CPRA clarifies the scope of mandated cybersecurity audits and defines what a “business purpose” is under the law. Additional cybersecurity audits and risks assessments could be required. The progress on administrative enforcement and audit authorities provides some clarity for businesses regarding a timeline to prepare to adjust to the new regulations. The rulemaking on the CPRA demonstrates potential difficulties other states that enacted privacy laws could have in implementation.

Meta and Apple Disagree Over Competition and Privacy

Key Points:

- *Meta Platforms criticized Apple for privacy rules that undermine Meta's business practices.*
- *Apple defended their actions as enhancing consumer privacy.*

On July 9, 2021, President Joe Biden issued an Executive Order on Promoting Competition in the American Economy ([EO 14036](#)). This executive order (EO) expressed concern with large technology companies' data collection practices and required the Federal Trade Commission (FTC) to investigate unfair methods of competition: “It is also the policy of my Administration to enforce the antitrust laws to meet the challenges posed by new industries and technologies, including the rise of the dominant Internet platforms, especially as they stem from serial mergers, the acquisition of nascent competitors, the aggregation of data, unfair competition in attention markets, the surveillance of users, and the presence of network effects.”

Apple and Meta submitted comments in response to the National Telecommunications and Information Administration's (NTIA) [request for comment](#) (RFC) regarding “Developing a Report on Competition in the Mobile App Ecosystem.” Meta Platforms stated Apple's new rules that expand privacy by allowing users to request an app specifically not track them harms competition by preventing app developers from learning about consumer behavior. Meta asserted, “Apple's self-serving tactics prevent consumers from realizing the innovation and benefits of a dynamic and otherwise well-functioning mobile app ecosystem.” Apple responded that although the company supports popular Meta apps like Facebook, WhatsApp, and Instagram “the iPhone contains a comprehensive suite of features that place users in control over their own data. One of those features Apple is most proud of is the App Tracking Transparency framework, which requires apps to obtain consent from users before tracking users across other companies' apps and websites.”

NTIA will conduct a study based on the RFC with the goal to consult with the FTC on aspects of competition with apps on mobile phones and tablets. Secretary of Commerce Gina Raimondo will make recommendation to the White House Competition Council based on the report on how to improve competition and reduce barriers to entry.

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

TRADE

Indo-Pacific Economic Framework Launched, Receives General Support and Targeted Criticism

Key Points:

- *Members of Congress called for market-access provisions be included in the Indo-Pacific Economic Framework (IPEF).*
- *U.S. Trade Representative (USTR) General Counsel Peisch recommended pursuing market-access through incentives rather than tariff cuts.*

On Monday, May 23, the IPEF was launched ([White House fact sheet](#)). Members of Congress have criticized the lack of market-access goals, while supporting the overall framework. Chairwoman Cantwell (D-WA) of the Senate Committee on Commerce, Science, and Transportation and Ranking Member Risch (R-ID) of the Senate Committee on Foreign Relations urged President Biden in a May 19 [letter](#) “to pursue a more robust economic and trade agenda in the Indo-Pacific.”

USTR General Counsel Peisch acknowledged in a speech at the Georgetown Law Center that enhancing market-access is “something that [the USTR] absolutely has to do.” She also commented that market-access can be achieved through incentives rather than removing tariffs. She explained, “In looking at this framework and what we’re trying to achieve, we wanted to look past tariffs and think about what kind of incentives, what kind of market opportunities – market access – can we provide through other means. And that’s a question that we’re still taking a look at... We wanted to think outside the box and think about setting up incentives and opportunities that are more aligned with these goals that we’re trying to achieve – around labor, around environment and other issues of importance to the IPEF members.” She added that unlike the U.S.-Mexico-Canada Agreement (USMCA), the IPEF will not include exemptions from certain U.S. trade laws.

President Biden to Consider Section 301 Tariff Relief to Help with Inflation; Senators Urge Biden Administration Not to Remove Section 301 Tariffs on Chinese Goods

Key Point:

- *President Biden made clear, during a press conference in Japan this week, that he is considering possible Section 301 tariff relief.*
- *A bipartisan group of senators urged the Administration to keep the tariffs on Chinese goods.*

The Indo-Pacific Economic Framework (IPEF) was envisioned to counter Chinese influence in the region. Amid the launch of the IPEF, the Biden Administration is considering removing the Section 301 tariff on Chinese goods, primarily to help address inflation. Treasury Secretary Yellen has spoken about the issue on several occasions, and President Biden this week suggested he would be considering the issue with Secretary Yellen soon.

Senators Warren (D-MA), Casey (D-PA), Brown (D-OH), Portman (R-OH), Braun (R-IN), Scott (R-FL), Cramer (R-ND), Inhofe (R-OK), and Romney (R-UT) expressed support for “trade action(s) taken against China pursuant to Section 301 of the Trade Act of 1974” in a [May 25 letter](#). The Senators empathized that they “believe it counterproductive to lift or erode the Section 301 tariffs, especially in the hopes that China will somehow become more cooperative on other issues. At present, China remains wedded to a techno-nationalism at odds with American values— something hardly to be rewarded.”

Uyghur Forced Labor Prevention Act to Go into Effect in June; Industry Requests Guidance

Key Points:

- *The Uyghur Forced Labor Prevention Act ([H.R. 1155](#)) will go into effect June 21.*
- *Customs and Border Protection (CBP) will host webinars to clarify vague guidance on the Act's implementation and address industry concerns.*

The Uyghur Forced Labor Prevention Act (UFLPA) “establishes a rebuttable presumption that the importation of any goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in the Xinjiang Uyghur Autonomous Region of the People’s Republic of China, or produced by certain entities, is prohibited by Section 307 of the Tariff Act of 1930 and that such goods, wares, articles, and merchandise are not entitled to entry to the United States. The presumption applies unless the Commissioner of U.S. Customs and Border Protection (CBP) determines that the importer of record has complied with

specified conditions and, by clear and convincing evidence, that the goods, wares, articles, or merchandise were not produced using forced labor.”

While not yet offering much in the way of official guidance yet, the CBP will host [webinars](#) over the next several weeks to clarify guidance and language included in the UFLPA. CBP has also shared generic letters it will issue to importers that may be subject to the UFLPA, including the promise that “[i]n anticipation of the rebuttable presumption becoming effective on June 21, 2022, an implementation strategy and guidance for the trade community will be issued to ensure compliance with the Act.” Finally, the CBP did publish a one page [summary](#) of the Uyghur Forced Labor Prevention Act and forced labor WRO enforcement mechanisms.”

The National Law Review summarized various industry concerns, including: “Clarification on what will satisfy the ‘clear and convincing’ evidentiary standard mandated by the UFLPA; Adoption of a ‘trusted importer’ or similar program that would allow importers to pre-clear goods and proactively disprove allegations of forced labor, without having to receive a withhold release order (WRO) from U.S. Customs and Border Protection (CBP); Establishment of a de minimis exception that would allow importers of products with minor amounts of suspected materials to avoid the necessity of a full audit and investigation; and Delayed enforcement of the act to allow companies time to gather necessary documentation and modify their business practices and supply chains as needed.” Despite these concerns, CBP appears to be preparing to begin enforcement on schedule on June 21.

Dairy Tariff-Rate Quotas Prompt Consultation Request with Canada

Key Point:

- *The Office of the U.S. Trade Representative (USTR) announced it had submitted a consultation request concerning Canada’s authority to impose tariff-rate quotas (TRQs) on U.S. dairy products.*

USTR submitted a formal consultation request this week to Canada over dairy. In doing so, USTR Tai expressed concern with Canada’s TRQs allocation measures, which deny allocation access to eligible applicants, including retailer, food service operators, and other types of importers, and impose new conditions on the allocation and use of the TRQs. USTR Tai accused Canada of undermining the market access it agreed to in the U.S.-Mexico-Canada Agreement (USMCA) in a [statement](#): “[USTR] communicated clearly to Canada that its new policies are not consistent with the USMCA and prevent U.S. workers, producers, farmers, and exporters from getting the full benefit of the market access that Canada committed to

under the USMCA. We will continue to work with USDA to ensure that our dairy industry can bring a wide range of high-quality American products to Canadian customers.”

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

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