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October 1, 2021

Washington Update

This Week In Congress

Senate – The Senate amended and passed a continuing (CR) to fund the government beyond the September 30 expiration date to December 3 (H.R. 5305). The CR includes $28.6 billion for natural disasters, $6.3 billion for Afghan relocations, and an extension of the National Flood Insurance Program. The Senate-passed version of CR does not include a suspension of the debt limit. The Senate confirmed the nominations of Rohit Chopra to be Director of the Consumer Financial Protection Bureau, Tracy Stone-Manning to be Director of the Bureau of Land Management, and Todd Robinson, Mary Catherine Phee, Monica Medina, Jessica Lewis, and Karen Donfried to be Assistant Secretaries of State.

House – The House passed the CR, as amended by the Senate, which was then signed into law by President Biden. The House passed standalone legislation to suspend the debt ceiling through December 2022 (S. 1301). The House delayed a scheduled vote on the bipartisan infrastructure package, the Infrastructure Investment and Jobs Act (H.R. 3684). A vote on the bipartisan infrastructure package could occur later today or be further delayed.

Next Week In Congress

Senate – The Senate may vote on invoking cloture on the House-passed bill to suspend the debt ceiling. The Senate could also consider the Women's Health Protection Act (H.R. 3755), the Iron Dome Supplemental Appropriations Act (H.R. 5323), and a short-term extension of surface transportation programs. The Senate will continue its consideration of pending nominations.

House – The House is currently scheduled to hold a committee work week and meet in pro forma session, but the schedule could change depending on the status of negotiations on the bipartisan infrastructure package and the $3.5 trillion reconciliation package.

TAX

Senate Passes Continuing Resolution to Fund the Government into December as Debt Limit Efforts Remain Ongoing

Key Points:

- *The Senate blocked a spending bill combined with a debt limit suspension on Monday. The House then passed a clean debt ceiling suspension, but that is unlikely to move in Senate in near term.*
- *Secretary Yellen warned Congressional Leadership that the Department of Treasury will exhaust their extraordinary measures on October 18 if Congress fails to act.*

On Wednesday, it was announced that an agreement has been reached among the bipartisan leadership of both the House and Senate to move a "clean" continuing resolution (CR) - with no debt limit extension included – that will keep the federal government funded through December 3, 2021. The Senate passed the legislation on Thursday by a vote of 65-35. The legislation then passed the House by a vote of 254-175 and was signed by President Biden. Earlier this week, the House passed a clean debt ceiling suspension in a 219-212 vote. All Democrats except Representatives Golden (D-ME) and Schrader (D-OR) supported the bill and every Republican but Representative Kinzinger (R-IL) opposed it. This package is likely to fail in the Senate, as Senate Republicans have argued Democrats need to shoulder the burden of passing a debt limit increase, and the bill will not meet the 60-vote threshold needed.

It is unclear how Democrats will proceed on the debt limit in the Senate. Earlier this week, Treasury Secretary Yellen sent a letter to Congressional leadership of both parties warning them that the Department of Treasury will likely exhaust their extraordinary measures if Congress fails to raise the debt ceiling by October 18, 2021. Secretary Yellen and Chairman Powell both stressed the importance of raising the debt ceiling in hearings this week before both the Senate Banking, Housing, and Urban Development Committee and the House Financial Services Committee.

Reconciliation Discussions Remain Ongoing

Key Point:

- *Reconciliation discussions remain ongoing on a number of topics, including bank transaction reporting thresholds.*

Discussions are ongoing among moderate Senate Democrats, the White House, and Democratic Leaderships on the Administration's Build Back Better agenda, which has a proposed price tag of $3.5 trillion or higher. Previously, Senate Democrats such as Senators Manchin (D-WV) and Sinema (D-AZ) indicated that they would not support a package as large as $3.5 trillion.

For example, Senator Manchin has pointed out his fundamental concerns about possible inflation that a large package could drive, and has consistently urged a slower pace of consideration for the reconciliation package. A document surfaced this week that outlines Senator Manchin's proposed compromise to Senate Leader Schumer from earlier this year. In the document, Senator Manchin indicated his top number was $1.5T – though reports this week suggested Manchin and the White House discussed a top line of $2.1T though no agreement seems to have been reached. On tax issues, Senator Manchin proposed a top corporate rate of 25% (matching public statements) a (book) minimum corporate tax of 15%, a top individual rate at 39.6% and cap gains rate of 28%.

One evolving issue on reconciliation is the Treasury proposal to require banks to report all inflows and outflows on consumer accounts of over $600 on a 1099 form. Senator Lummis (R-WY) questioned Secretary Yellen on this issue during the Senate Banking Committee hearing earlier this week. However, it was reported earlier this week this reporting threshold was on the table and there are proposals to raise this requirement from $600 to $10,000. That threshold would still include virtually any taxpayer who has a business or a side employment if they get paid amounts or have expenses that total more than $10,000 during the year. This reporting requirement could be used to offset a partial repeal of the State and Local Tax (SALT) deduction, another goal of many Congressional Democrats.

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

Secretary Yellen and Chairman Powell Testify Before Congress

Key Point:

- *The hearings focused on a wide range of issues, including the debt ceiling, climate change, international taxation, emergency lending programs, inflation, and digital as*

This week, Treasury Secretary Janet Yellen and Federal Reserve Chairman Jerome Powell testified before the Senate Banking Committee and the House Financial Services Committee.

In her testimony, Secretary Yellen stated that it is imperative that Congress address the debt limit. She said Treasury will likely exhaust its extraordinary measures by October 18, at which point it would have very limited resources which would be depleted quickly, and America would default for the first time and it would likely result in a financial crisis and economic recession. She said the debt ceiling has been raised or suspended 78 times in the past, almost always with bipartisan support.

House Financial Services Chairwoman Maxine Waters (D-CA) stated Democrats are seeking to put the Build Back Better Agenda into law to address workforce and childcare needs of American families. She said the package is fully paid for and she highlighted her efforts to work with the Department of Treasury to get aid to renters and homeowners. She added the Federal Reserve has also played a part in the response to the pandemic and she highlighted the vital role of the 13(3) lending facilities in stabilizing financial markets last year. She expressed openness to exploring how facilities like these can be utilized to impact those most in need.

Senate Banking Committee Ranking Member Patrick Toomey (R-PA) criticized Democrats for trying to force through a large tax and spending bill which he said would threaten economic growth. He stated that the bill would expand the welfare state, raise taxes on employers, and diminish investment by raising capital gains taxes. Toomey expressed concern the Federal Reserve has entered into political areas like global warming and racial justice, which he said undermine the Fed's independence and distract from the Fed's traditional responsibilities such as controlling inflation. Toomey expressed concern that the Treasury Department exceeded its authority with its international tax agreement. He said the agreement is built on two pillars, the first of which would allow foreign countries to tax American companies based on their sales overseas, which he described as a tax revenue transfer to other countries and has been a priority for those countries for a long time. He stated that the second pillar is a global minimum tax (GMT) regime, which he stated is an attempt by the Biden Administration to justify burdensome tax increases on U.S. companies. He stated that the first pillar of the agreement would require a treaty ratified by two thirds of the Senate, which is unlikely to occur.

In both hearings, Republicans raised concerns about inflation and expressed opposition to Democrats' spending proposals. Ranking Member Toomey stated if the government goes on a spending binge this will require more borrowing to pay for it. He expressed concern Democrats are seeking to spend trillions of dollars while ignoring Republican warnings about the borrowing that will come with it. He recalled earlier this year certain economic sectors saw temporary price spikes, but he added now this has spread to most sectors of the economy. He added the Federal Reserve is still buying $120 billion in securities every month and he asked if the current inflation is broader than previously expected. Chairman Powell responded in the affirmative, and he added supply side restrictions have become worse than they were earlier this year. He highlighted the mismatch between demand and supply, and he stressed he believes inflation will come down eventually. Toomey added the Federal Reserve has consistently been low when estimating inflation.

Ranking Member Patrick Toomey (R-PA) stressed he is intrigued by the prospect of a "properly designed" central bank digital currency (CBDC). He added this CBDC could produce instant zero cost payments, interoperability with smart contracts and increase international competitiveness. He underscored the need to protect the privacy of Americans when designing this currency. He added the Federal Reserve is not properly set up to be a retail bank and he emphasized privately created digital currencies should be able to coexist with a digital dollar. He asked how important it would be to have Congressional authorization if the U.S. is to create a digital dollar. Powell agreed this is critical work and he noted the relevant parts of the law were constructed before a digital currency was possible. He stressed it would be ideal if this were to be a product of authorizing legislation from Congress.

Senator Elizabeth Warren (D-MA) announced that she would oppose Powell's renomination for an additional term as Federal Reserve Chairman. She stated that during his tenure Powell has taken many actions to weaken regulatory oversight of the nation's largest banks. She asserted that renominating Chairman Powell would mean betting that a Republican majority would not drive the economy over a cliff by deregulating the nation's largest banks.

Representative Warren Davidson (R-OH) asked how Secretary Yellen views digital assets for purposes of tax reporting. Secretary Yellen responded that the IRS will issue detailed regulations that will answer this question soon. Davidson expressed concern that regulation on this issue is extremely outdated. Representative Ted Budd (R-NC) recalled in a July hearing Chairman Powell stated, "you would not need stablecoins, you would not need cryptocurrencies if you had a digital U.S. currency." He asked if Chairman Powell plans to ban the use of cryptocurrency. Chairman Powell responded in the negative and he said when he made this statement, he immediately felt like he had misspoken. He added that stablecoins are outside the current regulatory framework and it is important they be regulated.

Representative Al Lawson (D-FL) stated many financial institutions conduct scenario analysis to assess credit market liquidity related to physical and transition risk related to climate change. He asked if this is a good tool in assessing climate related financial risk. Chairman Powell responded his goal is to ensure supervised institutions can manage risks related to climate change and he stressed scenario analysis will be used to accomplish this goal. He added overall the Federal Reserve is seeking to ensure banks understand the risks posed by climate change and to ensure they have the processes in place to manage climate change risk.

Representative Sean Casten (D-IL) asked how the Department of Treasury is responding to the Biden Administration's Executive Order on Climate-Related Financial Risk. Yellen responded that her department plans to issue a report in late October, which is within the 180-day time frame, on incorporating climate change risks into regulatory frameworks.

SEC Issues Proposed Rules to Enhance Proxy Voting Disclosures by Investment Companies

Key Points:

- *The SEC issued a proposed rule to enhance disclosures by mutual funds, ETFs, and other registered investment companies regarding their proxy voting.*
- *The proposal would implement a Dodd-Frank Act requirement regarding disclosure of say on pay votes.*

On September 29, the Securities and Exchange Commission (SEC) held an open meeting and approved proposed form amendments to enhance the information certain registered investment companies report about their proxy votes. The Commission proposed a new rule and form amendments to require institutional investment managers subject to section 13(f) of the Securities Exchange Act of 1934 to report proxy votes relating to executive compensation matters, as required by section 14A of the Exchange Act. The proposed rules were approved by a vote of 4-1, with Commissioner Hester Peirce voting no.

The issued a press release and fact sheet with additional details on the proposals. The fact sheet notes:

> The proposed amendments to Form N-PX would enhance the information mutual funds, exchange-traded funds, and other registered management investment companies ("funds") currently report annually about their proxy votes and make that information easier to analyze. The Commission also proposed new rule 14Ad-1 under the Securities Exchange Act of 1934 ("Exchange Act") and amendments to Form N-PX to require an institutional investment manager subject to section 13(f) of the Exchange Act ("manager") to report annually on Form N-PX how it voted proxies relating to executive compensation matters (commonly referred to as "say-on-pay" votes), as required by section 14A of the Exchange Act.

The proposed reporting requirements for managers, if adopted, would complete implementation of section 951 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").

The reports would be available on the Commission's EDGAR system. For funds, the Commission also proposed amendments to Forms N-1A, N-2, and N-3 that would require funds to disclose that they will post proxy voting records on their websites and make the records available to investors upon request, free of charge in both cases.

The comment period on the proposed rule will be open for 60 days after publication in the Federal Register.

House Financial Services Holds Hearing on the Future of Banking

Key Point:
- *Chairman Ed Perlmutter (D-CO) expressed concern that fintech companies are not subject to the same rules and regulations as banks and credit unions.*
- *Ranking Member Blaine Luetkemeyer (R-MO) argued that Dodd-Frank Act regulations have hurt small banks and contributed to industry consolidation.*

On September 29, 2021, the House Financial Services Committee's Subcommittee on Consumer Protections and Financial Institutions held a hearing entitled "The Future of Banking: How Consolidation, Nonbank Competition, and Technology are Reshaping the Banking System." The hearing focused on the following bills:
- H.R. 2311, the "Credit Union Governance Modernization Act of 2021."
- H.R. 4395, the "Payment Choice Act of 2021."
- H.R. 4590, the "Promoting New and Diverse Depository Institutions Act."
- H.R. ____, the "Bank Merger Review Modernization Act of 2021."
- H.R. ____, the "Close the ILC Loophole Act."
- H.R. ____, the "Financial Services Worker Bill of Rights Act."
- H.R. ____, the "NCUA Oversight of Third-Party Vendors Act."

Chairman Ed Perlmutter (D-CO) expressed concern that certain new innovations such as credit default swaps "got us into a lot of trouble" in recent years. He added since the financial crisis there have been many clear financial innovation tools such as banking apps which have had significant benefits to consumers. He highlighted the rise of artificial intelligence (AI) and algorithmic-based decisions, and explained these technologies can provide great benefits to consumers, but they also raise new consumer protection issues. He expressed concern over the recent consolidation in the banking sector and he lamented the fact that the amount of new bank charters has fallen to a record low. He added the number of credit unions has fallen from 15,000 in 2004 to less than 5,000 today. He stated fintech companies have captured a larger and larger scale of consumer mortgage and lending markets, but he noted these firms are not often subject to the same rules and regulations banks and credit unions are. He stressed today's hearing is about ensuring the future banking system is consumer driven and competitive.

Ranking Member Blaine Luetkemeyer (R-MO) recalled in 2009 there were over 9,000 Federal Deposit Insurance Corporation (FDIC) insured banks and today there are only 4,900. He added the number of banks with less than $100 million in assets has declined 92 percent since 1989. He stressed consolidation in the banking sector has been occurring for many decades, but he observed post Dodd-Frank regulations are hurting small and mid-sized banks. He added that a 2020 FDIC study found that in the year 2000 the most efficient size for a community bank was $350 million in assets and in 2019 the most efficient size was $3.2 billion. He highlighted the recent rise of fintech firms which he stressed have "spurred innovation," and he added much of this innovation has come through bank-fintech partnerships. He lauded the success of these partnerships which has allowed fintech firms to be supervised by banking regulators. He urged Congress to work to alleviate costs for small financial institutions through regulatory firms. He also underscored the need to understand the costs put in place by regulation for de novo institutions, and he implored his colleagues to work to ensure the bank-fintech model remains intact. He expressed concern Democrats are seeking to dismantle this ecosystem while he stressed Republicans are seeking to put solutions in place to reduce banking deserts and increase financial innovation. He also expressed concern that Democrats have put forth proposals to turn the Consumer Financial Protection Bureau (CFPB) into a public credit bureau and establish postal banking. He stressed a government takeover of the banking system is a terrifying idea and is one of the most harmful ideas put forth by liberal progressives like Senator Bernie Sanders (I-VT).

Senate Banking Committee Holds Hearing on Export-Import Bank and NCUA Nominations

Key Points:

- *Chairman Brown (D-OH) argued that the Export-Import Bank plays a key role in supporting U.S. exports and economic competition with China.*
- *Ranking Member Toomey (R-PA) criticized the Export-Import Bank as an example of "crony capitalism at its worst."*

On September 30, the Senate Banking Committee held a hearing to consider the following nominations of Owen Edward Herrnstadt, Member Designate, The Export-Import Bank of the United States; the Honorable Judith DelZoppo Pryor, First Vice President Designate, The Export Import Bank of the United States; and the Honorable Todd M. Harper, Member Designate, National Credit Union Administration (NCUA).

Chairman Sherrod Brown (D-OH) expressed support for confirming the three nominees and emphasized the importance of having a confirmed board at the Export-Import Bank. In a statement, he said:

> A confirmed EXIM board is important to continue the bipartisan work started under President Trump to rebuild the capability of the Bank. American workers and businesses need a fully functioning EXIM to ensure a level playing field for American exports.
>
> The pandemic slowed all economic activity, but China continued its massive deployment of export financing to assist their state-backed companies. In 2020, EXIM's medium- and long-term export credit financing was a tenth of the amount offered by the Chinese government to their exporters.
>
> I worked with former Chairman Crapo, Chairwoman Waters and Ranking Member McHenry on the 2019 reauthorization to ensure that EXIM is focused on economic competitiveness with China and expanding small business support.
>
> Our nominees today will be charged with continuing implementation of the bipartisan reauthorization.

Ranking Member Patrick Toomey (R-PA) raised concerns with the nominations. He expressed concerns with Harper's prior statements regarding climate change regulations, stating "Our nation's credit unions and the 120 million members they serve deserve a regulator that's focused on the risks in front of them, not a regulator that's more interested in misusing its authority to pursue extreme policies for which it has no expertise." In his opening statement, Ranking Member Toomey emphasized that he remains "deeply skeptical of EX-IM and its role in the global economy." He added:

> Since joining the Senate, I've advocated for sensible reforms to EX-IM, but proponents of EX-IM continue to block any reform efforts. In my view, it was ill-advised for Congress to reauthorize EX-IM in 2019 for a historic seven years without major reforms to protect federal taxpayers. Taxpayers ultimately bear the consequences of undue risk taking at the bank.
>
> Let's be clear: EX-IM wins business by either systemically underpricing risk that private markets would otherwise absorb or taking on risk that private markets would not bear at any price. Since 2018, EX-IM's default rate has tripled to 1.5%, and may soon breach the 2% statutory cap on defaults.
>
> Congress has laid out a clear corrective measure in the event the default rate cap is breached. EX-IM must temporarily freeze lending that exceeds its current book of business until the default rate drops back below the 2% statutory cap.
>
> Unfortunately, the Biden administration wants to avoid such reasonable taxpayer protections. Instead, the Biden administration is asking that Congress double EX-IM's default rate cap to 4 percent. Instead of fixing the problem, the Biden administration wants to ignore the problem of rising defaults by changing the metrics and simply tolerating still more defaults. These defaults can lead to taxpayer bailouts of EX-IM as has happened in the past.

Rohit Chopra Confirmed as Director of the CFPB; Dan Berkovitz to be SEC General Counsel

Key Point:

- *Rohit Chopra was confirmed as Director of the CFPB by a vote of 50-48.*
- *The SEC announced that Dan Berkovitz will be replacing John Coates as the agency's General Counsel.*

On September 30, the Senate confirmed Rohit Chopra for a five-year term as Director of the Consumer Financial Protection Bureau (CFPB) by a vote of 50-48. Chopra previously served as a member of the Federal Trade Commission (FTC) - a position he was confirmed to in 2018 – and earlier at the Department of the Treasury as part of the team tasked with launching the CFPB following the passage of the Dodd-Frank Act (DFA). He also served as a Special Advisor to the Secretary of Education with a focus on student loan debt.

Additionally, this week the Securities and Exchange Commission (SEC) announced that Commodity Futures Trading Commission (CFTC) Commissioner Dan Berkovitz would be joining the agency as General Counsel effective November 1. Berkovitz recently announced that he would be stepping down from the CFTC on October 15. The SEC also noted that current General Counsel John Coates will step down in October, with SEC Solicitor Michael Conley serving as Acting General Counsel until Berkovitz joins the agency.

NFIP Authorization Extended Through December 3

Key Point:

- *Congress passed a continuing resolution, which extended the authorization for the National Flood Insurance Program to December 3, 2021.*

On September 30, the House and Senate passed a continuing resolution (CR) to fund the government beyond the previous September 30, 2021 expiration date to December 3, 2021 (H.R. 5305). The CR passed the Senate by a vote of 65-35 and the House by a vote of 254-175.

The CR included several additional measures, including an extension of the authorization of the National Flood Insurance Program (NFIP) to December 3, 2021. The extension will prevent a lapse in the program and allow the NFIP to continue issuing new policies. Congress could seek to pass a longer-term reauthorization in the coming weeks, but will more likely provide an additional short-term extension as part of another government funding bill.

The CR also included $28.6 billion for natural disaster recovery.

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Upcoming Hearings and Meetings

October 5

SEC Oversight: The House Financial Services Committee will hold a hearing entitled "Oversight of the U.S. Securities and Exchange Commission: Wall Street's Cop Is Finally Back on the Beat."

Nominations: The Senate Banking Committee will hold an executive session to vote on the nominations of Brian Eddie Nelson, to be Under Secretary for Terrorism and Financial Crimes, Department of the Treasury; Elizabeth Rosenberg, to be Assistant Secretary for Terrorist Financing, Department of the Treasury; Julia Ruth Gordon, to be an Assistant Secretary of Housing and Urban Development; David Uejio, to be an Assistant Secretary of Housing and Urban Development; and Solomon Jeffrey Greene, to be an Assistant Secretary of Housing and Urban Development.

Afghanistan: The Senate Banking Committee will hold a hearing on "Afghanistan's Future: Assessing the National Security, Humanitarian and Economic Implications of the Taliban Takeover." The witnesses at the hearing will be Adam M. Smith, Partner, Gibson Dunn and Crutcher, former Treasury Department senior advisor, and former Director, Multilateral Affairs, National Security Council; the Honorable Sue Eckert, Senior Associate, Center for Strategic and International Studies, and lecturer, Jackson Institute for Global Affairs, Yale University; Dr. Orzala Nemat, Director, Afghanistan Research and Evaluation Unit; and Thomas Joscelyn, Senior Fellow, Foundation for Defense of Democracies.

October 7

Nominations: The Senate Banking Committee held a hearing to consider the following nominations: Mr. Matthew Axelrod, Assistant Secretary of Commerce Designate; Ms. Alanna McCargo, President Designate, Government National Mortgage Association Department of Housing and Urban Development; Mr. James Arthur Jemison II, Assistant Secretary Designate, Housing and Urban Development; and Mr. Mark Colon, Assistant Secretary Designate, Housing and Urban Development.

October 12

Housing: The House Financial Services Committee's Subcommittee on Housing, Community Development and Insurance will hold a hearing entitled, "Zoned Out: Examining the Impact of Exclusionary Zoning on People, Resources, and Opportunity."

October 13

Artificial Intelligence: The House Financial Services Committee's Task Force on Artificial Intelligence will hold a hearing entitled, "Beyond I, Robot: Ethics, Artificial Intelligence, and the Digital Age."

October 14

Cashless Economy: The House Financial Services Committee's Subcommittee on Oversight and Investigations will hold a hearing entitled, "Cashed Out: How a Cashless Economy Impacts Disadvantaged Communities and Peoples."

October 20

International Financial Institutions: The House Financial Services Committee will hold a hearing entitled, "The State of the International Financial System and U.S. Participation in the International Financial Institutions."

October 21

Markup: The House Financial Services Committee hold a markup of pending legislation.

October 26

China: The House Financial Services Committee's Subcommittee on Investor Protection, Entrepreneurship and Capital Markets will hold a hearing entitled, "Taking Stock of 'China, Inc.': Examining Risks to Investors and the U.S. Posed by Foreign Issuers in U.S. Markets."

CFPB: The House Financial Services Committee will hold a hearing entitled "Bringing Consumer Protection Back: A Semi-Annual Review of the Consumer Financial Protection Bureau."

For more information about financial services issues you may email Joel Oswald, Mahlet Makonnen, or Alex Barcham.

ENERGY & ENVIRONMENT

Senators Hear Testimony from FERC Commissioners

Key Points:
- *The four FERC commissioners testified before the Senate Energy and Natural Resources Committee on Tuesday.*
- *In their testimony, FERC Chairman Glick and his three colleagues described pending Commission initiatives.*
- *At the conclusion of the hearing, Chairman Manchin told the commissioners that "we hope that we can get you another FERC nominee as quickly as possible".*

On September 28, 2021, the Senate Energy and Natural Resources Committee held a hearing with the four Federal Energy Regulatory Commission (FERC) commissioners: Chairman Richard Glick; Commissioner Mark Christie; Commissioner Allison Clements; and Commissioner James Danly.

In his testimony, Chairman Richard Glick said that the Commission recently:

- "unanimously approved an Advance Notice of Proposed Rulemaking(ANOPR) inviting the public to comment on potential reforms to improve current transmission planning and cost allocation and generator interconnection processes";
- "issued another Notice of Inquiry [on the interstate natural gas pipeline certification process] seeking additional input including: (1) options for determining whether a proposed pipeline project is needed, (2) approaches for evaluating a proposed project's impact on climate change, and (3) what considerations are required when a proposed project would be sited in an environmental justice community"; and
- initiated, along with the North American Electric Reliability Corporation (NERC), "a joint inquiry into the operations of the bulk electric system during Winter Storm Uri and recently released an interim report suggesting a lack of weatherized generation and problems associated with natural gas production and processing were the main causes of the Texas blackouts."

Testimony of the other commissioners included:

- Commissioner Mark Christie told the Committee that his two highest priorities are maintaining reliability of the electric grid and low costs for consumers. He noted that 90 percent of West Virginia power is produced by coal. He expressed concern if coal is prematurely retired, West Virginians will experience an energy crisis.
- Commissioner Allison Clements stated cyber security, state and federal policies, and consumer protection are part of FERC's goals. She called for FERC to focus on protecting the grid from extreme weather and noted FERC regulation should promote cost-effective high voltage transmission infrastructure. She also expressed support for FERC's recently established Office of Public Participation.
- Commissioner James Danly expressed concern with FERC's process of reviewing natural gas pipelines. He explained that pipeline applications need to be developed in an orderly manner to prevent crises such as occurred in Texas last winter. He expressed support for transmission development but noted if transmission costs are high and production is cheap, consumers will pay more than for locally produced energy. He expressed further concern with resource adequacy in jurisdictional markets.

In his statement at the hearing, Chairman Joe Manchin (D-WV) emphasized the importance of electric reliability and a diverse generation portfolio. He contended that "[i]t makes no sense to take tools out of the toolbox because we know that none of these energy resources are 100% immune to weather disruptions, whether that be freezing wind turbines, disruptions to our natural gas production and delivery systems, or frozen coal stockpiles – all of which we saw happen last winter." Manchin also acknowledged that the energy transition "is going to happen and the people in West Virginia realize that."

Manchin also told the commissioners that "we hope that we can get you another FERC nominee as quickly as possible." On September 9, President Biden announced his intent to nominate Willie Phillips, Chairman of the Public Service Commission of the District of Columbia to fill the Commission seat vacated by Commissioner Neil Chatterjee's resignation on August 30. The Energy and Natural Resources Committee is expected to hold a hearing on Phillips' nomination in the coming weeks.

In his opening statement, Ranking Member John Barrasso warned of what he called "a witches' brew of reckless energy policies" being pursued by the Biden Administration and Democrats in Congress. He noted that FERC "has the responsibility to ensure Americans have affordable and reliable natural gas and electric service." Barrasso remarked that "FERC Commissioners have the opportunity as well as the obligation to speak the truth about the potential impacts of these policies on all Americans."

Upcoming Hearings Events

October 5

Energy and Natural Resources: The Senate Committee on Energy and Natural Resources will hold a hearing "to examine and consider updates to the Mining Law of 1872."

October 6

International Energy Outlook: The Center for Strategic and International Studies (CSIS) will host a presentation on the release of the Energy Information Administration's (EIA) International Energy Outlook 2021.

Contaminants and Water Quality: The House Committee on Transportation and Infrastructure's Subcommittee on Water Resources and Environment will hold a hearing titled "Emerging Contaminants, Forever Chemicals, and More: Challenges to Water Quality, Public Health, and Communities."

October 7

Winter Fuels Outlook: The Energy Forum will hold a virtual event on the "Winter Fuels Outlook". The discussion will "explore the seasonal weather trends and impact on global demand for all winter fuels including natural gas, propane and crude oil and heating oil…[and] the global supply trends and how climate change and more severe weather events impact the market and volatility of fuel prices."

October 12

Energy and Ancillary Services: FERC will hold the second of a two part technical conference on "energy and ancillary services markets administered by Regional Transmission Organizations and Independent Systems Operators". Participants will discuss "potential energy and ancillary services market reforms..."

National Coal Council: The Department of Energy's Office of Fossil Energy and Carbon Management will hold a virtual meeting of the National Coal Council to address "advanced markets for value-added products from coal".

<u>October 12-15</u>

Hazardous Materials Research and Development: The Pipeline and Hazardous Materials Safety Administration's (PHMSA) Office of Hazardous Materials Safety (OHMS) will hold a forum on "Research, Development & Technology". Forum participants will "present the results of recently completed projects, brief new project plans, and obtain stakeholder input on the direction of current and future research projects on topics including mitigation of climate change, risk management and mitigation, packaging integrity, emerging technology, and technical analysis to aid risk assessment."

<u>October 14</u>

Electric Quarterly Report Requirements: FERC will hold a technical conference "to provide a forum for Commission staff, filers, and data users to discuss potential changes to the current Electric Quarterly Report (EQR) data fields."

<u>October 20</u>

Pipeline Safety Policy: The Pipeline and Hazardous Materials Safety Administration (PHMSA) will convene a meeting of its Gas Pipeline Advisory Committee (GPAC) and its Liquid Pipeline Advisory Committee (LPAC). The meeting will include a discussion of "a variety of policy issues and topics relevant to both gas and liquid pipeline safety."

<u>October 21</u>

FERC Open Meeting: FERC will hold its monthly open meeting.

Pipeline Safety Regulatory Updates: PHMSA will convene a meeting of its GPAC and LPAC. The meeting will be to discuss the "Periodic Updates of Regulatory References to Technical Standards and Miscellaneous Amendments" Notice of Proposed Rulemaking (NPRM), which was published on January 15, 2021. The NPRM would: "incorporate by reference more than 20 consensus standards into the Federal pipeline safety regulations"; and "make non-substantive corrections to clarify regulatory language in certain provisions."

<u>November 19</u>

Greenhouse Gas Emissions of Natural Gas Facilities: FERC will hold a technical conference "to discuss methods natural gas companies may use to mitigate the effects of direct and indirect greenhouse gas emissions resulting from Natural Gas Act sections 3 and 7 authorizations."

For more information about energy and environment issues you may email or call Frank Vlossak at 202-659-8201. Windham Hunter, Jackson Notes, Nicholas May, and Michael Murray contributed to this report. Updates on energy and environment issues are also available on twitter.

HEALTH

HHS Releases Interim Final Rule on Surprise Billing

Key Points:

- *On September 30, the Department of Health and Human Services (HHS), the Department of Labor, the Department of the Treasury, and the Office of Personnel Management (OPM), released an interim final rule with comment period, entitled "Requirements Related to Surprise Billing; Part II."*
- *The rule builds off the Part I requirements released in July and implements new protections against surprise medical bills under the No Surprises Act, which passed Congress in December 2020.*

On September 30, the Department of Health and Human Services (HHS), the Department of Labor, and the Department of the Treasury, and the Office of Personnel Management (OPM), released an interim final rule with comment period, entitled "Requirements Related to Surprise Billing; Part II." The rule establishes protections for consumers against surprise billing and excessive cost sharing. It also adds additional protections under the No Surprises Act, including items in relation to independent dispute resolution, good faith estimates for the uninsured, and external review rights.

Prior to the release of Part II, the Departments released Part I of the rule to restrict excessive out-of-pocket costs to consumers resulting from surprise billing and balance billing. Part I of the rule bans balance billing for certain emergency services, requires that patient cost-sharing for emergency services at an in-network facility not exceed the rate of in-network providers, and prohibits out-of-network (OON) charges without specific notice and consent for services provided at an in-network facility. These changes are scheduled to go into effect for health care providers and facilities, providers of air ambulance services, group health plans, health insurance issuers, and Federal Employees Health Benefits (FEHB) program carriers on January 1, 2022.

Part II of the interim final rule establishes the federal independent dispute resolution process that OON providers, facilities, air ambulance services, plans, and issuers may use to determine the rate for services following an unsuccessful negotiation. It applies only to services for which balance billing was prohibited by Part I of the rule. The rule also establishes monthly reporting requirements for the certified resolution entities to inform quarterly public reports on payment determinations.

In addition, the new rule requires that good faith estimates for uninsured or self-pay individuals must include anticipated charges for items or services that are reasonably expected to be provided together with the primary item or service, including those provided by other providers and facilities. The rule establishes a patient-provider dispute process for instances in which an uninsured individual receives a bill that is substantially higher than the good-faith estimate and outlines eligibility details for this requirement: (1) the patient received a good faith estimate; (2) the process is initiated within 120 days of receipt of the bill; and (3) the bill is at least $400 more than the good faith estimate. The new rule also expands the scope of adverse benefit determinations eligible for external review to include determinations of compliance with surprise billing and cost sharing protections under the No Surprises Act. All regulations in Part II of the rule take effect on January 1, 2022.

In line with the release of Part II of the interim final rule, the Departments launched a website to share information about the No Surprises Act. The website will house details on how to initiate an independent dispute resolution process in the federal portal and additional information on provisions as they become more relevant to different stakeholders and audiences. Organizations and providers may also apply through the website to become certified independent dispute resolution entities.

Read the full fact sheet here.

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

TRADE

USTR Katherine Tai Says the Biden Administration to Invest in Innovation and Discussed Supply Chain Resilience in U.S.-EU Trade and Technology Council Meeting

Key Point:

- *During a Carnegie Mellon University visit and roundtable discussion, USTR Tai spoke about how the Biden Administration will invest in a new path for supply chain resilience by focusing on innovation.*
- *The U.S.-EU Trade and Technology Council meeting focused on semiconductors, strengthening supply chains, and building a stronger U.S.-EU trade relationship.*

USTR Katherine Tai, Commerce Secretary Gina Raimondo, and Secretary of State Antony Blinken met with European Commission Executive Vice Presidents Valdis Dombrovskis and Margrethe Vestager for the first U.S.-EU Trade and Technology Council meeting. The meeting focused on addressing supply chain vulnerabilities, semiconductor supply chains, improving supply chain transparency, and both sides' concern about non-market economies. The goal of the Council was identified to be a cooperation framework to exchange information and coordinate actions.

Following the meeting, USTR Tai and her newly confirmed Deputy USTR, Jayme White, engaged in round table discussions on investments in innovation, research, and technology. During opening remarks, USTR Tai announced the Biden Administration will take a new approach in investing in supply chain research and innovation to better position the U.S. and rebuild production capacity.

Senator Portman Pushes for Reauthorization of Trade Adjustment Assistance (TAA), Other Trade Initiatives in Broader Trade Package

Key Point:

- *As part of a larger trade package, Senator Portman (R-OH) sent a letter urging the reauthorization of TAA, the Generalized System of Preferences (GSP), a new Miscellaneous Tariff Bill (MTB), trade remedy law reforms, and Trade Promotion Authority renewal.*

In a letter to Senate Finance Committee Chair Wyden (D-OR) and Ranking Member Crapo (R-ID), Senator Portman urged members to reauthorize TAA with reforms to support U.S. jobs. Senator Portman (who served as USTR in the G.W. Bush Administration) stated TAA policy should support U.S. manufacturing by linking TAA to a new MTB and GSP authorization. Senator Portman also noted the need for legislation to tighten trade remedy laws and renew the Trade Promotion Authority to bolster Made in America exports abroad.

The current TAA proposal would increase funding for Trade Adjustment Assistance for Workers program from $450 million to $1 billion.

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