

January 4, 2019

Washington Update

This Week in Congress

House – The House convened the **116th Congress**; voted **Representative Nancy Pelosi (D-CA) as Speaker of the House**; approved the **Rules of the House for the 116th Congress**; and approved two bills to **restore funding to the federal government**.

Senate- The Senate ratified the **Executive Treaty #7: UNConvention on the Assignment of Receivables in International Trade**; approved a series of **nominations**; approved the nominations of **William Charles McIntosh**, to be an Assistant Administrator of the EPA; and convened the **116th Congress**.

Next Week In Congress

House – The House may consider: **S. 1333 – Tribal HUD-VASH Act of 2017**; **S. 2765 – RBIC Advisers Relief Act of 2018**; Concurring in the Senate Amendment to **H.R. 6227 – National Quantum Initiative Act**; **H.R. 7279 – Water Infrastructure Improvement Act**; a House Amendment to Senate Amendment to **H.R. 88 – Retirement, Savings, and Other Tax Relief Act of 2018** and the **Taxpayer First Act of 2018**; and **S. 756, First Step Act**.

Senate – The Senate may consider **S.1, to make improvements to certain defense and security assistance provisions and to authorize the appropriation of funds to Israel, to reauthorize the United States-Jordan Defense Cooperation Act of 2015**.

TAX

New Senate Finance Members Announced

Key Points:

- *Republican Senators Steve Daines (R-MT), Todd Young (R-IN), and James Lankford (R-OK) will join Democratic Senators Catherine Cortez Masto (D-NV) and Maggie Hassan (D-NH) as the newest members of the Senate Finance Committee.*
- *Senators James Lankford and Steve Daines are the first senators to serve simultaneously on both Appropriations and Finance since 1944.*
- *House Ways and Means Committee assignments expected later next week.*

Senate Majority Leader Mitch McConnell (R-KY) announced the list of Republican committee assignments on Thursday. For the Senate Finance Committee, Senators Steve Daines (R-MT), Todd Young (R-IN) and James Lankford (R-OK) are the newest additions. Both Lankford and Daines will become the first senators since 1944 to serve

Table of Contents

Taxes	1
Financial Services	3
Energy & Environment	5
Health	6
Trade	7

simultaneously on the Appropriations and Finance committees. In addition to the changes, Senator Chuck Grassley (R-IA) will take the gavel from retired Senator Orrin Hatch (R-UT) and is now the new chairman of the committee.

Senate Democratic Leader Chuck Schumer (D-NY) previously announced in December that Senators Catherine Cortez Masto (D-NV) and Maggie Hassan (D-NH) were being added to the Finance Committee.

House Ways and Means Chairman Richard Neal (D-MA) said that membership for the committee would be decided the week of January 7, along with Ways and Means subcommittee chairs, noting that the funeral of former President George H.W. Bush delayed the selection.

New Changes in House Rules Package Allows Tax Increases Without Supermajority; Brady Offers Draft Legislation to Make Technical Corrections

Key Points:

- *The House approved a new Rules package that eliminates the mandatory use of dynamic scoring and reinstates the “pay as you go” rules.*
- *House Ways and Means Ranking Member Kevin Brady (R-TX) offered, on the last day of the 115th Congress, draft legislation to make technical corrections to the TCJA.*

Earlier this week, the House approved a rules package 234 to 197 that includes a provision to eliminate the use of dynamic scoring by congressional estimators to calculate the budgetary effects of certain legislation. In addition, the package has another provision that reinstates the “pay as you go” rules that makes it mandatory to offset both spending increases and tax cuts. The provision would replace the Republican’s “cut-go rule” that required only increases in mandatory spending to be offset.

On January 2nd, before the 115th Congress officially ended, House Ways and Means Committee Chairman Kevin Brady (R-TX), offered draft legislation to make technical corrections to the Tax Cuts and Jobs Act (TCJA). The Joint Committee on Taxation (JCT) offered a description of the discussion draft as well. The bill would round individual tax bracket points applicable to heads of household down to the nearest \$25 increment, make corrections to aspects of the section 199A passthrough business income deduction, and make corrections addressing international anti-base-erosion measures, bonus depreciation, and unrelated business income taxes.

House Democrats 2019 Initial Tax Outlook

Key Points:

- *House Ways and Means Committee Chairman Richie Neal (D-MA) said he hopes to schedule hearings on the impact of the TCJA by the end of January and is also looking to hold hearings on issues such as healthcare early in the year.*
- *Neal said the Ways and Means Committee is looking to revive a host of temporary tax provisions but is unclear whether the package would move as separate legislation or as part of a must-pass bill.*
- *Newly-elected Representative Alexandria Ocasio-Cortez (D-NY) floats idea of having a 60- to 70-percent income tax rate for the highest-earning taxpayers in order to combat carbon emissions.*

The new House Ways and Means Committee chair, Richie Neal (D-MA), told reporters this week that he hopes to schedule hearings on the impact of the Tax Cuts and Jobs Act by the end of the month. While the Committee could hold hearings on other issues, such as healthcare, first; the goal is to schedule hearings on the 2017 GOP tax law as soon as possible.

Chairman Neal said the committee is already working on how to best to revive a host of temporary tax provisions known as extenders, but he was unclear whether the package would move as separate legislation or as part of a larger, must-pass bill. With the change in the “Pay-Go” rule, presumably any tax extender package will need to be offset in the House.

In another early tax agenda development, Representative Alexandria Ocasio-Cortez (D-NY) has discussed the idea of having an income tax rate as high as 60 to 70 percent on the highest-earning Americans in order to fund programs to reduce carbon emissions. In a press interview, the new Congresswoman suggested the increase in tax rates could support her “Green New Deal” objective of eliminating the use of fossil fuels within twelve years. While such a dramatic proposal seems unlikely to move, it does represent an aggressive change in direction and a view from the progressive wing of the House Democrats, so is worth noting.

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

FINANCIAL SERVICES

Republicans Announce Senate Banking Committee Membership

Key Point:

- *Senators Martha McSally (R-AZ) and Kevin Cramer (R-ND) will join the Committee, replacing Senators Bob Corker (R-TN) and Dean Heller (R-NV).*

On January 3, the 116th Congress convened. Subsequently, Senate Republican leadership issued a [press release](#) announcing their committee assignments. The new Republican members of the Senate Banking Committee will be Senator Martha McSally (R-AZ) and Senator Kevin Cramer (R-ND). They replace Senator

Bob Corker (R-TN), who retired, and Senator Dean Heller (R-NV), who lost his re-election bid, on the Committee. Subcommittee chairmen and ranking members have not yet been publicly announced. The full membership of the Senate Banking Committee Majority is below:

Senator Mike Crapo (R-ID) - *Chairman*
 Senator Richard Shelby (R-AL)
 Senator Pat Toomey (R-PA)
 Senator Tim Scott (R-SC)
 Senator Ben Sasse (R-NE)
 Senator Tom Cotton (R-AR)
 Senator Mike Rounds (R-SD)
 Senator David Perdue (R-GA)
 Senator Thom Tillis (R-NC)
 Senator John Kennedy (R-LA)
 Senator Martha McSally (R-AZ)
 Senator Jerry Moran (R-KS)
 Senator Kevin Cramer (R-ND)

Senate Democrats previously announced their committee assignments for the 116th Congress on December 13. The Democratic members of the Senate Banking Committee for the 116th Congress are below:

Senator Sherrod Brown (D-OH) – *Ranking Member*
 Senator Jack Reed (D-RI)
 Senator Bob Menendez (D-NJ)
 Senator Jon Tester (D-MT)
 Senator Mark Warner (D-VA)
 Senator Elizabeth Warren (D-MA)
 Senator Brian Schatz (D-HI)
 Senator Chris Van Hollen (D-MD)
 Senator Catherine Cortez-Masto (D-NV)
 Senator Doug Jones (D-AL)
 Senator Tina Smith (D-MN)
 Senator Kyrsten Sinema (D-AZ)

SEC and CFTC Reduce Operations in Response to the Government Shutdown

Key Points:

- *The SEC and the CFTC will be limited to essential functions during the shutdown.*
- *The FDIC, OCC, Federal Reserve, and CFPB will continue to operate normally.*

Due to an impasse over border security funding, the federal government has remained in a partial shutdown since December 22, 2018. The shutdown has affected different federal financial regulators in varying ways. The Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) are operating normally, as they are fee-funded and unaffected by the congressional appropriations process. The Federal Reserve is also operating normally, as is the Consumer Financial Protection Bureau (CFPB), which receives its funding from the Federal Reserve rather than the appropriations process.

However, the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) are limited to only essential functions during the shutdown. While the SEC is a fee-funded agency, it is subject to the appropriations process. The SEC has released its [Operations Plan](#) for a lapse in appropriations, which notes that the Anti-Deficiency Act restricts the operations of the agency during a lapse. The plan notes that of the 4,436 current SEC full-time employees only 285 will be retained during the shutdown. The Electronic Data Gathering, Analysis, and Retrieval (EDGAR) filing system will remain in operation throughout the shutdown. CFTC Chairman J. Christopher Giancarlo released a [statement](#) regarding the operations of the CFTC in the event of an appropriations lapse:

In the event of a lapse of appropriations, the CFTC will be required to cease operations not excepted by the Anti-Deficiency Act. But regardless of any shutdown, the CFTC will ensure its

market-critical functions continue to be carried out. Among other things, during any shutdown a small team of CFTC employees will continue to monitor futures and swaps markets, ensure essential enforcement activities are carried out, and evaluate market activity across futures and swaps to identify any potential impact on the clearing system. Staff performing these excepted functions will be in communication with key market participants, which will continue their own market and risk surveillance activities.

Upcoming Hearings and Events

January 28

Fixed Income Market Structure: The SEC is scheduled to hold a meeting of its Fixed Income Market Structure Advisory Committee (FIMSAC). The agenda for the meeting includes updates and presentations from subcommittees.

For more information about financial services issues you may [email](#) or call Joel Oswald at 202-659-8201. Alex Barham and Rebecca Konst contributed to the articles.

ENERGY & ENVIRONMENT

House to Focus on Climate Change in 2019

Key Points:

- *The new Democratic majority in the House will make climate change policy a priority in the 116th Congress.*
- *The newly-established Select Committee on the Climate Crisis will hold hearings on the issue, as will standing committees such as the House Energy and Commerce Committee.*

Climate change and policies to reduce greenhouse gas (GHG) emissions have emerged as a priority for the new Democratic majority in the U.S. House of Representatives. Incoming House Speaker Nancy Pelosi (D-CA) has announced the creation of the Select Committee on the Climate Crisis, which will conduct hearings on the issue. The new Chairman of House Energy and Commerce Committee, Congressman Frank Pallone (D-NJ), has pledged to “push an aggressive agenda to...combat climate change...” in the 116th Congress. Pallone also [announced](#) that the panel’s first hearing of the year will focus on climate change.

On January 3, the House voted [234-197](#) to adopt the resolution establishing the chamber’s rules for the 116th Congress ([H.Res. 6](#)), which includes provisions to establish the Select Committee on the Climate Crisis. In a [letter](#) to her fellow House Democrats on the rules package, Pelosi declared that the panel “will spearhead our effort to engage the American people on the urgency of the climate crisis on public health, on reducing air pollution, on the economy..., on national security..., and on our sacred moral responsibility to protect God’s creation for our children.”

The House rules package grants the Select Committee the authority “to investigate, study, make findings, and develop recommendations on policies, strategies, and innovations to achieve substantial and permanent reductions in pollution and other activities that contribute to the climate crisis...” The rules package specifies a deadline of March 31, 2020 for the Select Committee to submit “policy recommendations” to the relevant standing committees of the House.

Pelosi designated Representative Kathy Castor (D-FL), a member of the House Energy and

Commerce Committee, as Chair of the Select Committee. In a [statement](#), Castor emphasized the need to “act with urgency to reduce carbon pollution...by unleashing American ingenuity and creating clean energy jobs to power our future.”

Upcoming Hearings and Events

January 17

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

January 19

Energy Research and Development: The Bipartisan Policy Center will hold an [event](#) titled “Energy Innovation: Fueling America’s Economic Engine.” The event will include “a panel discussion on the crucial role of government in energy innovation.”

January 23

Waters of the United States: The Environmental Protection Agency (EPA) is scheduled to hold a [public hearing](#) on the [Notice of Proposed Rulemaking \(NPRM\)](#) titled “Revised Definition of ‘Waters of the United States’” at the Reardon Convention Center in Kansas City, Kansas.

January 24

Annual Energy Outlook: The Bipartisan Policy Center will host an [event](#) featuring the release of the Energy Information Administration’s (EIA) Annual Energy Outlook.

TBD

Organizational Meeting: The House Energy and Commerce Committee will hold its organizational meeting for the 116th Congress.

Climate Change: House Energy and Commerce Committee Chairman Frank Pallone (D-NJ) has [announced](#) that the Committee’s first hearing of the 116th Congress will be on “[a]ssessing the environmental and economic impacts of climate change.”

Pipeline Safety: The [meetings](#) of the Pipeline and Hazardous Materials Safety Administration’s (PHMSA) Gas Pipeline Advisory Committee (GPAC) and Liquid Pipeline Advisory Committee (LPAC) will be rescheduled for after the conclusion of the government shutdown. The GPAC was originally scheduled to meet on January 8, “to discuss the gathering line component of the proposed rule titled “Safety of Gas Transmission and Gathering Pipelines.” The GPAC and LPAC were scheduled to hold a joint meeting on January 9, and 10, “to discuss a variety of policy issues and topics relevant to both gas and liquid pipeline safety.”

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

Court Grants Permanent Injunction to Hospitals in 340B Case

Key Points:

- *The U.S. District Court for the District of Columbia granted the American Hospital Association and other plaintiffs a permanent injunction against the 2018 changes to*

reimbursement rates for drugs purchased through the 340B program.

- *The Court has directed the parties to submit additional briefs on an appropriate remedy.*

On December 27, the U.S. District Court for the District of Columbia granted a permanent injunction against the Department of Health and Human Services (HHS) 340B reimbursement rule that had become effective in January 2018. The plaintiffs in the case were American Hospital Association, Association of American Medical Colleges, America’s Essential Hospitals, Northern Light Health, Henry Ford Health System, and Fletcher Hospital Inc. In its ruling, the Court found HHS had exceeded its authority to adjust reimbursement rates when it enacted the final rule.

In the rule, HHS set out to change reimbursement rates for Medicare Part B drugs in the 340B program that in HHS’ view better reflected actual acquisition costs for covered entities. The reimbursement rate changed from average sales price (ASP) plus six percent to ASP minus 22.5 percent. The Court noted this was approximately a 30 percent reduction from the standard expressly set by Congress. The Court found HHS acted outside its authority as the agency made fundamental changes to the statutory scheme and not a mere adjustment to the rates.

As a remedy, the Plaintiffs sought retroactive Part B reimbursements for 2018 based on the 2017 rates. Recognizing that these payments would need to offset in other parts of the Medicare Part B program due to budget neutrality requirements, the Court ordered the parties to submit briefs within 30 days with suggestions for an appropriation remedy.

Upcoming Hearings and Meetings

January 15

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Health Policy: The Council for Affordable Health Coverage and the Partnership for Employer-Sponsored Coverage will hold a conference on “The Price of Good Health: Health Policies & Politics in the 116th Congress.”

Medicare: The Urban Institute will hold an event entitled “Using Encounter Data in Medicare Advantage Risk Adjustment.”

January 16

Innovation: Politico will host a discussion on “Health Care Innovators: New Players Meet Long-Established Regulations.”

January 17-18

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

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

TRADE

U.S., China to Discuss Trade Next Week

Key Points:

- *Members of the Office of the U.S. Trade Representative (USTR) and Department of the Treasury will travel to China next week for the first formal negotiations since the G20 summit.*
- *White House National Economic Council Director Larry Kudlow on Friday expressed optimism about negotiations and suggested U.S.*

CEOs could help convince China to change its trade practices.

In the U.S. and China’s first official trade talks since the G20 90-day tariff hike truce, Deputy USTR Jeffrey Gerrish will lead a delegation that includes USTR Chief Agricultural Negotiator Gregg Doud, Under Secretary of Agriculture for Trade and Foreign Agricultural Affairs Ted McKinney, Under Secretary of Commerce for International Trade Gilbert Kaplan, Treasury Under Secretary for International Affairs David Malpass, and the Department of Energy’s Assistant Secretary for Fossil Energy Steven Winberg. The talks are set to take place on January 7 and 8. China’s National People’s Congress Standing Committee is currently debating a law that would ban the government from using “administrative means for forced technology transfers,” a sign that China may be making progress on structural changes demanded by the U.S.

NEC Director Kudlow appeared on Fox Business on Friday (today) to assuage fears regarding U.S.-China trade. He expressed support for the Administration’s trade approach and recommend U.S. CEOs push China to adopt structural reforms. He said that “Apple technology may have been picked off by China and now China is becoming very competitive with Apple,” going on to suggest that “[Apple CEO] Cook should help us get these trade reforms... Cook can help us by talking to the Chinese.”

Reps. Blumenauer and Pascrell Both Seeking Trade Subcommittee Chairmanship

Key Point:

- *Representatives Earl Blumenauer (D-OR) and Bill Pascrell (D-NJ) are both looking to lead the House Ways & Means Committee’s Trade Subcommittee.*

Representative Pascrell recently sent a [letter](#) to his colleagues soon after the November election in which he expressed his desire to chair the Trade Subcommittee. However, Representative Blumenauer has seniority and appears likely to lead the subcommittee given that its leadership has been determined by seniority in the past. It should be noted that Reps. Blumenauer and Representative Ron Kind (D-WI) passed on the Ranking Member position in the 115th Congress, allowing Pascrell to take the role. Some Democrats believe Rep. Pascrell's more progressive trade positions make him more representative of the caucus. As Ranking Member, Representative Pascrell has also developed a close relationship with USTR Robert Lighthizer, one of President Trump's top trade advisors. The Committee will meet next week to begin the leadership selection process.

Important Trade Dates Upcoming

Key Points:

- *Formal U.S.-Japan trade deal negotiations can begin January 21.*
- *The Commerce Department must submit its Section 232 report on automobiles and auto parts by February 17. President Trump will then have 90 days to choose which action, if any, to take.*
- *Mexico missed the U.S.-Mexico-Canada Agreement's (USMCA) January 1 deadline for passing labor reforms; it is expected to take up the bill in February.*

The U.S. and Japan can begin formal trade negotiations in late January; USTR Lighthizer is also scheduled to meet with Japanese Trade and Industry Minister Hiroshige Seko regarding Chinese trade practices on January 9. Industry representatives are hoping the parties will agree to currency protections, harmonized vehicle standards, and streamlined customs procedures.

The U.S. will also look to get Japan to remove or reduce some of its agriculture tariffs.

The Commerce Department will submit its controversial self-initiated Section 232 report on automobiles and auto parts to President Trump by February 17. Section 232 investigations seek to determine whether a specific import poses a potential threat to national security and were used last year to implement tariffs on steel and aluminum. If Commerce finds auto imports pose a threat, President Trump will have 90 days to decide what to do. He can use one of Commerce's recommendations, implement a trade remedy of his choice, or do nothing. It should be noted that he has repeatedly threatened to put tariffs on auto imports from various countries.

Mexico missed USMCA's ambitious January 1 deadline for passing labor reforms. The USMCA requires that Mexico establish "(i) an independent entity for conciliation and union collective bargaining agreement registration and (ii) independent Labor Courts for the adjudication of labor dispute... entry into force of the agreement may be delayed until such legislation becomes effective." Mexican sources believe the legislation will be brought up in the Chamber of Deputies' first regular session, which is set for February. If the Chamber passes the bill it will head to the Senate. Given Democrats' insistence on strong and enforceable labor provisions in the USMCA, it is unlikely USMCA could pass Congress without Mexico first adopting its labor law.

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

This Week in Congress was written by Rebecca Konst.