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RE: CONGRESSIONAL UPDATE

This Week in Congress: The Government reopened this week with the House debating legislation that would raise pay for civilian federal employees, along with legislation that would close the pay gap between men and women. The Senate considered Middle East legislation that would include a provision targeting the movement to boycott, divest from and sanction Israel. There are roughly 15 days until the government runs out of funding again.

BACK PAY BILL FOR CONTRACTORS: Rep. Norcross (D-NJ) introduced legislation on Tuesday that would provide back pay to federal contractors furloughed by the government shutdown. Norcross' bill would pay contractors up to \$1,400 per week for lost wages. It is supported by the AFL-CIO, the Communications Workers of America, and the International Association of Machinists and Aerospace Workers. Sen. Smith (D-MN) introduced similar legislation that would reimburse federal contractors at a rate equal to \$50,000 of their yearly income, or twice the federal poverty level for a family of four.

COST OF GOVERNMENT SHUTDOWN: A separate Congressional Budget Office (CBO) report estimated that the partial government shutdown cost the economy \$11 billion, of which \$3 billion won't be recovered. The White House took umbrage at the CBO's analysis of the shutdown with White House economist Larry Kudlow stating, "I won't acknowledge any of that right now."

ECONOMY: Per the Congressional Budget Office (CBO), the economy will grow 2.3% this year, short of the Trump administration's target of 3% or more, and slow to 1.7% in 2020 and 1.6% in 2021. The budget deficit is expected to increase to \$897 billion for the 12-month period ending in September, compared with \$779 billion a year earlier. , the report said.

EARMARKS: The House Democratic Leadership appears to be in strong support for reviving earmarks and I'm hearing from Senate and House staff representing both parties that they will give them serious consideration with one exception, they will be referred to as "congressionally directed spending." This support is not unanimous, but it is growing in both parties as Republicans and Democrats alike say too much power has shifted to the executive branch. Per Sen. Murkowski (R-AK), chairwoman of the Energy and Natural Resources Committee, is one of the most outspoken proponents for bringing back earmarks with her statement "this is something that was clearly set out in the Constitution as the role of the legislative branch. Nowhere does it say, you think about what these priorities are going to be and then give it up to the [federal] agencies to determine what the priority is." House Republican leadership considered ending the earmark ban at the beginning of 2018, but ultimately decided not to and President Trump at the time encouraged the return to earmarks, remarking, "I hear so much about earmarks ... and how there was a great friendliness when you had earmarks."

Per the Congressional Research Service (CRS), congressional earmarks reached their peak in the middle of Bush's administration, when the fiscal 2005 defense spending bill included 2,506 earmarks worth \$9 billion and the energy and water development bill included 2,313 earmarks worth \$4.9 billion.

TRADE: This week, U.S. China trade discussions continued and Treasury Secretary Mnuchin expected "significant progress" with one month left before President Donald Trump ratchets up tariffs, but cautioned against a solution this week. The World Trade Organization reviewed whether those duties broke international trade rules and on Tuesday, the U.S. Trade Representative heard from industries about their priorities for potential U.S.-U.K. negotiations.

HOUSE COMMITTEE ASSIGNMENTS:

House Committee on Education and Labor: Rep. Virginia Foxx (R-NC), Senior Republican of the Committee on Education and Labor, announcement of new Republican members who will serve on the committee in the 116th Congress:

Returning Republican Members:

- Rep. Virginia Foxx, North Carolina
- Rep. Phil Roe, Tennessee
- Rep. Glenn Thompson, Pennsylvania
- Rep. Tim Walberg, Michigan
- Rep. Brett Guthrie, Kentucky
- Rep. Bradley Byrne, Alabama
- Rep. Glenn Grothman, Wisconsin
- Rep. Elise Stefanik, New York
- Rep. Rick Allen, Georgia
- Rep. Francis Rooney, Florida
- Rep. Lloyd Smucker, Pennsylvania
- Rep. Jim Banks, Indiana

New Republican Members:

- Rep. Mark Walker, North Carolina
- Rep. James Comer, Kentucky
- Rep. Ben Cline, Virginia
- Rep. Russ Fulcher, Idaho
- Rep. Van Taylor, Texas
- Rep. Steve Watkins, Kansas
- Rep. Ron Wright, Texas
- Rep. Dan Meuser, Pennsylvania
- Rep. William Timmons, South Carolina
- Rep. Dusty Johnson, South Dakota

House Budget Committee: Yesterday House Budget Committee Ranking Member Steve Womack (AR) announced the Republicans who will be serving on the House Budget Committee for the 116th Congress.

They include:

Rep. Rob Woodall (GA)
Rep. Bill Johnson (OH)
Rep. Jason Smith (MO)
Rep. Bill Flores (TX)
Rep. George Holding (NC)
Rep. Chris Stewart (UT)
Rep. Ralph Norman (SC)
Rep. Chip Roy (TX)
Rep. Dan Meuser (PA)
Rep. William Timmons (SC)
Rep. Dan Crenshaw (TX)
Rep. Kevin Hern (OK)
Rep. Tim Burchett (TN).

OSHA:

- **Silica Rule Guidance:** The Occupational Safety and Health Administration (OSHA) issued a “Frequently Asked Questions (FAQ)” document that applies to all occupational exposures to crystalline silica. The FAQ raises and answers 64 questions, which were developed in consultation with industry and union representatives to provide guidance on the standard’s requirements, such as exposure assessments, regulated areas, methods of compliance, and communicating silica hazards to employees. This document comes after OSHA began enforcing the silica rule on June 23, 2018.

The OSHA mandate lowered the allowable silica exposure level by 50 percent. To meet this requirement, OSHA expects work sites where airborne silica is common to reduce exposure levels by making changes such as improving ventilation, installing filters on vacuum cleaners and air circulators, separating work areas, and as a last resort, providing respirators. Inhaling high levels of silica dust can lead to silicosis, a life-threatening lung disease. OSHA estimates that 2.3 million workers are exposed to silica dust each year.

While the FAQ document does provide clarity, it remains unclear how OSHA defines “feasible” as a requirement for what building and production changes must be made to comply with the new exposure limit. Other topics addressed in the FAQs include acceptable methods for cleaning silica dust off floors and other surfaces, and allowing employers to use objective data, such as air monitoring data from industrywide workplace surveys, to assess whether their workers are exposed to silica at levels triggering the requirement to take protective actions.

- **Final Rule on Beryllium Exposure:** On January 9, 2017, OSHA issued a final rule adopting a comprehensive general industry standard for occupational exposure to beryllium and beryllium compounds. In the proposed final rule, OSHA sought to modify the general industry standard to clarify certain provisions, simplify and improve compliance, and enhance worker protections. Specifically, the rule established a new permissible exposure limit (PEL) of 0.2 micrograms of beryllium per cubic meter, measured as an eight-hour-time-weighted average concentration. The rule also established an action level, which is the level of concentration of harmful or toxic substances that when exceeded, remedial action is required, and a short-term exposure limit (STEL). Under this rule, employers were also required to use engineering and work practice controls to reduce airborne concentrations of beryllium to levels below the PEL and STEL.

Following OSHA’s publication of the 2017 beryllium rule, industry stakeholders raised concerns with several definitions within the rule, citing them as broad in nature. Concerns were also raised regarding the possibility of varying interpretations of these definitions, which may have led to unintended enforcement issues. In response to these criticisms, OSHA signed a settlement agreement in federal court on April 24, 2018, requiring the agency to issue clarifications to the rule. On December 11, 2018, OSHA released a new proposed rule on beryllium to amend certain parts of the

beryllium standard for general industry “to clarify or simplify certain provisions of the general standard.” While the rulemaking is pending, compliance with the proposed rule will be accepted as compliance with the standard.

The proposed final rule modifies several of the general industry standard’s definitions, along with the provisions for methods of compliance, personal protective clothing and equipment, hygiene areas and practices, housekeeping, medical surveillance, communications of hazards, and record keeping. Per OSHA, “the proposed changes would maintain safety and health protections for workers and enhance worker protections overall by ensuring that the rule is well-understood, and compliance is more straightforward.”

OSHA’s new proposed beryllium rule is accepting comments through February 9, 2019. As OSHA prepares to issue their revised final rule on Occupational Exposure to Beryllium and Beryllium compounds, we will keep you updated on any developments regarding the final regulatory language.

- **Job Injury Reporting Requirements Rescinded:**

On January 25, 2019, OSHA rescinded an Obama-era requirement for establishments with 250 or more employees to electronically submit every year information from OSHA Form 300, an annual report of injury and illness cases, and Form 301, which requires a detailed report on each case. Employers are still required to electronically submit Form 300A, which summarizes the information from the other two forms, including the percentage of workers injured and the number of cases. While the rule, which takes effect on February 25, 2019, doesn’t require Forms 300 and 301 to be electronically submitted, these two forms, along with Form 300A must still be completed and available if requested by the agency.

The rule change has been met with mixed reviews from the business and labor communities. Those who support the change, including the U.S. Chamber of Commerce, argue that injury and illness cases are sensitive information, which should not be made public. Rep. Bobby Scott (D-VA), chairman of the House Education and Labor Committee is opposed to the rule change because he believes it “shields employers from accountability for the health and safety of their employees.”

Legal experts expect to be challenged in federal court. We will continue to track developments on the rescinded rule as it is phased in next month or in the event it meets a legal challenge.

NORTH AMERICAN SHALE GAS EXPLORATION: *The Trump Administration Considers Northeast Interstate Pipeline Expansion* - The Trump Administration is considering steps to limit the ability of states to block interstate gas pipelines and other energy projects. The effort, which may be done by executive order, is being aimed at states in the Northeast, where opposition to pipeline projects prevents abundant shale gas in Pennsylvania and Ohio from reaching consumers in New York and other cities. More specifically, New York used a Clean Water Act provision to block the construction of a natural gas pipeline being developed to carry Marcellus Shale gas 124 miles to New England.

