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Hearing to fill Treasury's no. 2 spot addresses oversight and tax issues, Treasury suspends Corporate Transparency Act's enforcement

In a March 6 nomination hearing to fill the deputy Treasury secretary position, Senate Republican and Democratic taxwriters focused on a variety issues including extending the soon-to-expire (and expired) provisions of the Tax Cuts and Jobs Act of 2017 (P.L. 115-97); the Department of Government Efficiency's (DOGE) recent actions with respect to the Treasury Department and the Internal Revenue Service; the nation's debt level, and more.
URL: https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.htm

Michael Faulkender, a former Treasury official in the first Trump administration, would, if confirmed take the number two spot at the Treasury Department under Secretary Scott Bessent.

Opening statements

Finance Committee Chairman Mike Crapo of Idaho applauded Faulkender's experience, and noted that his background involving investment considerations for multinational corporations, corporate capital structures, risk management, and corporate liquidity and executive compensation are relevant for the deputy Treasury secretary position.

"Mr. Faulkender, I have reviewed your background and responses to all questions we posed to you during our rigorous review process. Based upon your public and private sector experience, academic credentials and areas of focus and training, you are highly qualified to serve as Deputy Treasury Secretary in this Administration."

For his part, Ranking Member Ron Wyden of Oregon announced that today's hearing is as much about oversight as it is a hearing on Michael Falukender's nomination, and he focused largely on issues that concerned DOGE access to Treasury's payment systems, the firing of IRS employees, working families receiving their tax refunds this filing season which started on January 27, and IRS enforcement measures.

Wyden also called for a Senate hearing to examine the privacy issues regarding confidential taxpayer data. "And when I say privacy, I say the security of your family and your finances," he declared.

In his opening statement, the nominee applauded the first Trump administration's success in building a thriving economy that "was a model for the rest of the world" and its work to "streamline regulations in critical investments" across our nation, enact pro-growth policies through tax reform, "realize energy independence," and promote economic growth.

"A return to that economy is the baseline for this administration, not simply the goal."

He also acknowledged that the United States currently has “an affordability crisis,” with “mortgage rates and the cost of housing too high, inflation remains persistent, families are paying more than ever before.” He recommended redoubling efforts to promote policies that support all Americans.

“We must recommit ourselves to being the best place in the world to start new businesses, build new factories, and research groundbreaking new technologies by reprivatizing the economy, shrinking the regulatory overreach….slashing the inflationary spending, making pro-growth tax reform permanent, and rebalancing trade arrangements.”

The deputy secretary advises and assists the head of the department in the supervision and direction of the Treasury’s activities and plays a key role in formulating and executing department policies and programs and will likely be integral to assisting Bessent in defining and articulating the administration’s position on any upcoming tax legislation.

Broad range of issues

Finance Committee members addressed a broad range of topics covering tax and oversight issues.

Permanence: Sen. Steve Daines (R-Mont.) cautioned the panel about what he considered to be the “upcoming tax cliff” and the need to “permanently” extend the soon-to-expire (and expired) provisions of the TCJA to avoid a $4.6 trillion tax increase. Faulkender agreed with making the tax cuts permanent. (Sen. Daines and several other GOP taxwriters have already endorsed making tax cuts permanent and have said they will not support a package that *only* provides temporary tax relief).
URL: https://www.daines.senate.gov/wp-content/uploads/2025/02/Senate-Finance-Letter-to-President-Trump_Tax-Permanency.pdf

“The benefit of permanence is that when businesses make long-term capital decisions they are wanting to project the benefits of those investments not just over the short horizon for which a tax code may be in place but they want to think about it over the entire duration of the capital allocation,” Faulkender said. He also argued that a significant number of business owners file as individuals because they are structured as partnerships or sole proprietorships, and just like the corporate tax rate was made permanent in 2017, he advocated for making the individual and pass through tax rates permanent this time around.

Current policy baseline: There was an exchange between Sen. Elizabeth Warren (D-Mass.) and Faulkender on using a “current policy” baseline to measure the price tag of extending the provisions in the TCJA. Warren strongly argued that, if the Republicans’ use of the “current policy” to measure the price tag of extending the tax cuts results in no expense (a $0 cost), then under that theory, providing relief in other matters, like for the child tax credit, would also not incur a price tag. She referred to the current policy baseline measurement as “magic math,” an argument that other Democratic lawmakers have made.

Though, it is worth noting that Treasury Secretary Scott Bessent said in an interview at an event hosted by the Economic Club of New York that he supported the “current policy” baseline measurement to score the extension of the TCJA provisions.

“[I]f we don’t use current policy, the current CBO protocol – and this is why I think now being on the inside, we’ve gotten into this spending mess…the current baseline for any tax policy gets re-scored. I don’t know why we’re calling this extending the tax cuts. It is the current tax policy. Extending the current tax policy gets re-scored. Extending current spending, the spending that got put in, does not get re-scored.”

Also this week Thomas A. Barthold, Chief of Staff for the Joint Committee on Taxation (JCT) responded to a letter from five Senate taxwriters, including Sen. Warren, regarding the scoring methods used by the JCT to measure the cost of proposed changes to the tax code. Barthold noted that the JCT’s default approach to providing members of Congress with revenue estimates is to measure these effects relative to the present law baseline, though, he acknowledged that members have asked for the JCT to measure the budgetary effects under an alternative baseline. Barthold also noted that, as part of a routine response from a member of Congress for an estimate of the various provisions of the TCJA, the JCT staff would ordinarily provide the “estimate relative to the relevant present law baseline reporting for the 10-year budget period.” (text of February 19 letter from the five senators to Barthold.)
URL: https://www.warren.senate.gov/imo/media/doc/jct_response_to_warren.pdf
URL: https://www.warren.senate.gov/imo/media/doc/warren_letter_re_current_policy_baseline.pdf

Bonus depreciation: Sen. James Lankford (R-Okla.) mentioned President Trump’s reference to fully expensing bonus depreciation in his address to Congress on March 4 and argued that taking the expense immediately does not change the amount of revenue the Treasury receives, but it merely changes the timing of receipt, though he argued that it makes “a tremendous impact on the economics of the nation” as it appears that there is a “huge cost.” Faulkeneder agreed that there is very little change in gross receipts that the Treasury receives, but that, for budget scoring purposes, it looks more costly.

Pillar Two: Lankford also addressed the Pillar Two framework which is designed to ensure that large multinational companies pay a minimum tax rate of 15 percent in each jurisdiction in which the company operates. He said that former-Treasury Secretary Janet Yellen had endorsed a Pillar Two tax structure which would have benefited foreign countries at the cost of the American economy.

The nominee stated in an exchange with Sen. Marsha Blakburn (R-Tenn.) that there is a concern that both Pillar One and Pillar Two “disproportionately targeted American firms and there are not enough safeguards in those negotiations to recognize the tax structure we have in the United States…” He said that the president issued an order calling on the Treasury Department to reevaluate our participation in the OECD negotiations to ensure that “US firms are not disproportionately discriminated against the way other countries tax US multinational companies in their jurisdictions.” (For prior coverage, see *Tax News & Views*, Vol. 26, No. 3, Jan. 21, 2025.)
URL: https://dhub.deloitte.com/Newsletters/Tax/2025/TNV/250121_1.html

The US has not taken any action to come into compliance with either Pillar One or Pillar Two of the OECD framework, a two-part international agreement signed on to by the Biden administration in 2021 with 140 other countries.

Foreign-derived intangible income (FDII): Falukender stated that the FDII provision in the TCJA is an important tool to ensure that "US operators" have an incentive to engage in economic activity in the United States rather than abroad. The passage of the TCJA, he argued, simultaneously brought down the corporate rate from 35 percent to 21 percent and raised the tax rate that would be paid by a company on its activity occurring abroad. Since then, he maintained that "we have not seen tax inversions take place…we saw those come to an end."

IRS taxpayer data: Faulkender addressed questions from a number of Democratic Finance Committee members on access to the IRS' internal systems including taxpayer accounts. The senators were concerned that confidential taxpayer information is being shared with individuals working for the DOGE. The nominee stressed that the structure of the IRS' systems that were created decades ago are being reviewed to make improvements, and that two people have been identified to access and evaluate these systems (and have undergone regular IRS onboarding). He said that one individual is from OPM and the other is a Treasury employee and that they have received the onboarding and ethics training and explanations as to their access to taxpayer information as agreed to between the IRS and the Office of Personnel Management (OPM). This agreement, as published by *Tax Notes* this week, states that Galvin Kliger from OPM had been detailed to the IRS "to provide assistance in developing and implementing more efficient and effective tax administration processes [that are] beneficial to all taxpayers" for a period not to exceed 120 days.

Faulkender emphasized that "[i]t is the secretary's intent that that person does not have access to taxpayer information."

IRS layoffs: Sen Wyden asked Faulkender whether he was aware of a plan to cut the number of IRS employees in half. The nominee stated that he "is not aware of a plan nor [has he] been briefed on any plan to cut the number of employees by half." (Sen. Ron Wyden, along with 10 other Democratic senators, penned a letter to Gene L. Dodaro, Comptroller General of the General Accountability Office and urged him to investigate the impact of the recent firings of probationary federal workers.)
URL: https://www.warren.senate.gov/imo/media/doc/letter_from_senator_warren_to_gao_re_health__safety.pdf

Energy tax credits: Wyden referred to the importance of the clean energy tax credits as the "biggest investment in fighting climate change" and asked Faulkender about his position on these credits.

"I support an all of the above energy strategy if the economics of a particular geography are such that if wind or solar is the optimal power source for that area, that's fine." Faulkender added that we should not put a "thumb on the scale" when it comes to the source of energy that any particular locality chooses.

The Finance Committee has not announced a date to vote on whether to confirm Dr. Faulkender.

Corporate Transparency Act

The Treasury Department announced last weekend that it would not enforce any penalties or fines against US citizens or domestic reporting companies or their beneficial owners based on failing to file or update beneficial ownership information (BOI) reports under the Corporate Transparency Act's (CTA) existing regulatory

deadlines. The department expects to issue an interim rule no later than March 21 that is anticipated to narrow the scope of the reporting regime to cover only foreign entities. The Financial Crimes Enforcement Network – a bureau of the Treasury Department – also released an announcement on the new CTA reporting framework and supported Treasury's commitment to reducing regulatory burden on businesses. (For prior coverage, see *Tax News & Views*, Vol. 26, No. 1, Jan. 10, 2025.)
URL: https://home.treasury.gov/news/press-releases/sb0038
URL: https://www.fincen.gov/news/news-releases/fincen-not-issuing-fines-or-penalties-connection-beneficial-ownership
URL: https://dhub.deloitte.com/Newsletters/Tax/2025/TNV/250110_5.html

"This is a victory for common sense," said Treasury Secretary Scott Bessent.

"Today's action is part of President Trump's bold agenda to unleash American prosperity by reining in burdensome regulations, in particular for small businesses that are the backbone of the American economy," Bessent stated.

President Trump underscored Bessent's statements in a social media post last weekend.
URL: https://truthsocial.com/@realDonaldTrump/posts/114096106742782827

"Exciting news!...This Biden rule has been an absolute disaster for Small Businesses Nationwide. Furthermore, Treasury is now finalizing an Emergency Regulation to formally suspend this rule for American businesses. The economic menace of BOI reporting will soon be no more."

The CTA requires businesses to file reports disclosing identifying information about their beneficial owners – individuals who own or control the entity – to FinCEN. The law was passed in 2021 to create a new BOI reporting structure as part of the US government's efforts to make it harder for "bad actors" to hide or benefit from their "ill-gotten gains" through shell companies or other obscure ownership structures, as noted on FinCEN's website. The CTA, which went into effect on January 1, 2024, required a company created or registered to do business before January 1, 2024, to file its initial BOI report by January 1, 2025. This reporting deadline, however, has been postponed many times due to multiple court challenges to the constitutionality of the legislation. Following an earlier FinCEN statement that extended the reporting deadline to March 21, this week's announcements (from Treasury and FinCEN) further extended the reporting deadline for imposing enforcement action against companies that fail to report their respective BOI until at least after a new rule takes effect and the relevant due dates have passed.
URL: https://www.fincen.gov/sites/default/files/shared/FinCEN-BOI-Notice-Deadline-Extension-508FINAL.pdf

Congressional push: Members of Congress have also expressed frustration with the CTA reporting rules, including Republican Rep. Zachary Nunn of Iowa who introduced legislation – the Protect Small Businesses from Excessive Paperwork Act of 2025 (H.R. 736) – that would extend the deadline for certain companies to file its BOI with FinCEN to January 1, 2026. The bill passed the full House under a motion to suspend the rules by a vote of 408-0 on February 10. A bipartisan group of members signed on to the legislation, including Majority Whip Tom Emmer of Minnesota.
URL: https://www.congress.gov/bill/119th-congress/house-bill/736/text

“Iowa’s economy is driven by small businesses – more than half of Iowans are employed by Main Street,” said Rep. Nunn. “Bureaucrats in D.C. sit in their ivory towers, demanding businesses comply with onerous red tape, without considering the burden it puts on businesses. By passing this legislation, we’re taking a step forward to roll back unnecessary regulations and simplify requirements for job creators while still adhering to the law.”

For her part, Rep. Sharice Davids of Kansas – one of the Democratic cosponsors of the bill – said that “[s]mall businesses are the backbone of our economy, and they shouldn’t have to spend unnecessary time and money navigating burdensome, unclear regulations.”

On February 11, the bill was sent to the Senate and referred to the Committee on Banking, Housing, and Urban Affairs, which has yet to take any action on it.

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