

March 2, 2018

Washington Update

This Week in Congress

- **House** – The House passed the “**Congenital Heart Futures Reauthorization Act of 2017**” (H.R. 1222); the “**Action for Dental Health Act of 2017**” (H.R. 2422); the “**Allow States and Victims to Fight Online Sex Trafficking Act of 2017**” (H.R. 1865); and a measure changing capital requirements for systemically important banks (H.R. 4296).
- **Senate** – The Senate passed the “**Taiwan Travel Act**” (H.R. 535); the “**TARGET Act**” (H.R. 1625); the “**Rural Wireless Act**” (H.R. 1621); and confirmed **Elizabeth L. Branch, A. Marvin Quattlebaum, and Terry A. Doughty** to be United States District Judges; **Russel Vought** to be Deputy Director of the Office of Management and Budget; **William Northey** to be Under Secretary of Agriculture for Farm and Foreign Agricultural Services; **Gregory Doud**, of Kansas, to be Chief Agricultural Negotiator, USTR; **Jason Kearns** to be a Member of the United States International Trade; **Denis Sheato** to be Deputy United States Trade Representative; and **C.J. Mahoney** to be a Deputy United States Trade Representative (Investment Services, Labor, Environment, Africa, China, and the Western Hemisphere).

Next Week in Congress

- **House** – The House may consider the “**Blocking Regulatory Interference from Closing Kilns Act of 2017**” (H.R. 1917); and the “**Satisfying Energy Needs and Saving the Environment Act**” (H.R. 1119).
- **Senate** – The Senate may consider the “**Economic Growth, Regulatory Relief, and Consumer Protection Act**” (S. 2155); and the nominations of **Karen Gren Schole, Tilman Eugene Self III, and Terry A. Doughty** to be United States District Judges.

TAX

Internal Revenue Service Releases Tax Withholding Calculator

Key Point:

- *IRS releases withholding calculator that allows taxpayers to see how newly passed tax bill affects employee tax return.*

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On Wednesday, the Internal Revenue Service (IRS) released its withholding calculator, along with the new Form W-4. The calculator allows employees to input their estimated 2018 income, the number of claimed children they have, and the results help an individual adjust their income withholding on the updated Form W-4. Treasury Secretary Steven Mnuchin said the calculator “will allow employees to see the tax cuts properly reflected in their withholding.”

Tax Cuts and Jobs Act Guidance

Key Points:

- *The spending bill which must be passed by March 23 could include a fix for the tax treatment of grain sales to cooperatives.*
- *Treasury and IRS release notice that clarifies carried interest provision for passthrough entities.*
- *Regulations for GILTI, BEAT, and FDII unlikely to occur until fall 2018 at the earliest.*
- *House Ways and Means’ Subcommittee on Tax Policy announces hearing on tax extenders for March 14.*

House Ways and Means Committee Chairman Kevin Brady (R-TX) said they are working on including a fix to equalize the tax treatment of grain sales to agricultural cooperatives and other supplier in the next spending bill, which must be passed before March 23. The provision would be retroactive to January 1. The recently passed Tax Cuts and Jobs Act (TCJA) included a provision that made it more attractive to sell grain to cooperatives by allowing a deduction based on sales rather than net profit.

The IRS and Treasury issued a notice this week for passthrough entities that excludes S corporations from being able to circumvent the new requirement to hold a partnership interest for three years in order to qualify for long-term

Upcoming Dates

- **March 23, 2018:** Government funding expires
- **March 31, 2018:** FAA Reauthorization expires

capital gains treatment. The recently passed TCJA created ambiguity due to lack of clarification for whether the longer holding period for carried interest held through a corporation included both S corporations and C corporations.

According to Dana Trier, the now-former Treasury Department Deputy Assistant Secretary for Tax Policy following his sudden resignation late last week, it is unlikely that regulations will be issued for many international provisions included in the recent tax bill. Trier said regulatory guidance on the global intangible low-taxed income (GILTI), the base erosion anti-abuse tax (BEAT), and the new provision on foreign-derived intangible income (FDII) – until the fall at the earliest. He also said that regulations on the section 199A deduction for passthrough businesses would also likely be an early fall project. Previously, Trier had hoped to finish all of the items on the updated priority guidance plan by June 30.

The House Ways and Means Committee’s Subcommittee on Tax Policy Subcommittee will hold a hearing on March 14 entitled: “Post Tax Reform Evaluation of Recently Expired Tax Provisions.” The hearing will take place on Wednesday, March 14, at 10:00 am. Witnesses for the hearing have not yet been announced.

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

FINANCIAL SERVICES

Senate Begins Process to Consider Financial Regulatory Relief Bill

Key Points:

- *The Senate will vote on invoking cloture on the motion to proceed to the bill on Tuesday. The Senate is expected to have sufficient votes to proceed to considering the bill.*
- *The bill would raise the bank SIFI designation threshold, exempt small banks from the Volcker Rule, and reduce regulatory burdens for community banks, among other issues.*

On March 1, Senate Majority Leader Mitch McConnell (R-KY) filed a motion to invoke cloture on the motion to proceed on the Economic Growth, Regulatory Relief, and Consumer Protection Act ([S. 2155](#)). The Senate will likely hold a cloture vote on the motion to proceed on Tuesday, March 6. Given the number of Democratic and Republican cosponsors, the Senate is expected to have sufficient votes to invoke cloture on the motion to proceed, which would mean the Senate would then begin considering the bill and amendments. The Senate is expected to consider a bipartisan manager's amendment that would include additional provisions to the bill.

The Senate Banking Committee favorably reported S. 2155 on December 5, 2017 by a vote of 16-7, with Democratic Senators Jon Tester (MT), Mark Warner (VA), Heidi Heitkamp (ND), and Joe Donnelly (IN) joining all Republicans in supporting the bill.

Cosponsors currently include 12 Democratic Senators, one Independent Senator and 13 Republican Senators.

Several of the provisions of the bill include raising the threshold for labeling banks as systemically important financial institutions (SIFI) from \$50 billion to \$250 billion, exempting banks with less than \$10 billion in assets from the Volcker Rule, expanding consumer access to mortgages, reducing compliance burdens for community banks, altering capital levels for custodial banks, and requiring the banking regulators to classify certain municipal securities as level 2B high quality liquid assets (HQLA) under the Liquidity Coverage Ratio rule. A section-by-section summary of the bill as reported by the Committee is available [here](#).

House and Senate Committees Hold Hearings with Federal Reserve Chairman Powell

Key Points:

- *The hearings included discussion on a wide range of monetary policy and regulatory issues, including SIFI designation thresholds, community bank regulatory burden, the Volcker Rule, and stress testing.*
- *Members of both parties on the Senate Banking Committee spoke in support of S. 2155, the Economic Growth, Regulatory Relief, and Consumer Protection Act.*

This week, the House Financial Services Committee and the Senate Banking Committee held hearings on the Federal Reserve's semi-annual [Monetary Policy Report and](#) received testimony from Federal Reserve Board Chairman Jerome Powell.

House Financial Services Committee Chairman Jeb Hensarling (R-TX) stated that it is now a good time to reestablish Congressional

oversight over the Federal Reserve and stressed that it must improve its own transparency. He added that the Federal Reserve has had an outsized regulatory role under the Dodd-Frank Act, and that formal rule making must be subject to rigorous cost-benefit analysis.

House Financial Services Committee Ranking Member Maxine Waters (D-CA) expressed concern that the hard-earned economic recovery will be undermined by the “reckless” policies of the President and Republicans in Congress. She argued that Republicans have forgotten about the tremendous economic harm caused by the 2008 crisis.

Senate Banking Committee Chairman Mike Crapo (R-ID) stated that discussions have helped build a common ground for the Economic Growth, Regulatory Relief, and Consumer Protection Act ([S. 2155](#)). He noted this bipartisan bill now has 13 Democrat and 13 Republican cosponsors. Crapo stated the bill seeks to make targeted changes for small and regional banks to promote economic growth. He stated consumers and businesses will benefit by right sizing regulations. Crapo noted the work Vice Chairman Randall Quarles has done thus far and he urged the Senate to approve his full nomination.

Senate Banking Committee Ranking Member Sherrod Brown (D-OH), in a [statement](#), expressed concern with the deregulatory elements of S. 2155, particularly related to foreign banks. He stated Wall Street may be focused on rate hikes but he suggested the Federal Reserve needs to remain focused on consumer protection and ensure that regulations are enforced.

Representatives Tom Emmer (R-MN), Robert Pittenger (R-NC), Scott Tipton (R-CO), and Bruce Poliquin (R-ME) stressed the need to provide regulatory relief to small banks. Powell

emphasized his commitment to appropriately tailoring regulations. He said the Federal Reserve is mindful of the decline in community banks, especially in rural areas. He stated that the Federal Reserve has reduced the burdens from call reports, reduced the frequency of examinations, simplified capital requirements, and taken action to address the lack of appraisers.

Representative Stephen Lynch (D-MA) pointed to an article suggesting that exchange traded funds (ETFs) are contributing to the volatility of the market. He asked if complex ETFs pose a broader risk to the market. Powell said the market was orderly during the recent volatility. He suggested that ETFs were not “at the heart” of what occurred during the volatility, but the Federal Reserve is examining the causes of the volatility.

Chairman Jeb Hensarling (R-TX), Chairman Mike Crapo (R-ID) and Representative French Hill (R-AR) raised concerns with the Volcker Rule. Hensarling said the lack of clear delineation between proprietary trading and market making makes enforcement of the Volcker Rule difficult. He asked if more discretion should be given to trading desks. Powell said the Federal Reserve is looking at revising the Volcker Rule, and he said they are the natural choice to lead this effort. Crapo (R-ID) asked if banks with less than \$10 billion in assets should be exempted from the Volcker Rule. Powell agreed that it would be sensible to do so.

Chairman Mike Crapo and Senator Jon Tester (D-MT) and Mark Warner (D-VA) expressed support for the provision of S. 2155 to raise the systemically important bank designation threshold from \$50 billion to \$250 billion. They emphasized that the Federal Reserve would retain the discretion to impose enhanced prudential standards for banks between \$50

billion and \$250 billion in assets. Powell stated the bill applies to banks of \$250 billion and under, and that the Federal Reserve could still apply enhanced prudential standards to those below that \$250 billion amount when called for. He stated they are looking to strengthen and hold on to the enhanced standards for the larger banks.

House Small Business Discusses GAO Report on Red Tape for Community Banks

Key Points:

- *The GAO report found that banks see mortgage transaction reporting under the Home Mortgage Disclosure Act (HMDA), mortgage disclosure and closing requirements under Truth In Lending Act (TILA), Real Estate Settlement Procedures Act (RESPA), and BSA/AML reporting requirements as the most burdensome.*
- *GAO is working on an additional report that will look at the actual impact of these regulations on banks.*

On February 27, the House Small Business Committee held a [hearing](#) entitled “How Red Tape Affects Community Banks and Credit Unions: A GAO Report.” The hearing focused on a [report](#) conducted by the GAO that identified a number of financial regulations that hurt smaller financial institutions.

Chairman Steve Chabot (R-OH) stated hard working Americans are starting to see more money in their paychecks due to the tax reform bill but the Committee continues to hear that access to capital remains an issue. He stated small community banks play an outsized role in lending to small businesses. Chabot stated the Dodd-Frank Act (DFA) was passed after the financial crisis and the regulatory burdens have trickled down to the community and small banks. Ranking Member Nydia Velazquez (D-NY) explained many DFA provisions only

apply to those with over \$10 billion in assets. She stated the GAO concluded that many of the increased costs stem from a misunderstanding of the rules not the rules themselves. She added that the GAO also found that the regulations serve an important role in creating stability in the markets.

When asked what regulations small and community banks found the most burdensome, Michael Clements (GAO) stated that banks mentioned mortgage transaction reporting under the Home Mortgage Disclosure Act (HMDA), mortgage disclosure and closing requirements under Truth In Lending Act (TILA)- Real Estate Procedures Act (RESPA), and BSA/AML reporting requirements. Clements noted that the GAO report includes 20 recommendations for the various agencies including several for the CFPB related to the TILA-RESPA integrated disclosures (TRID). He stated that GAO is conducting additional research on the impacts of these regulations on smaller banks and that this research should be released in the next few months. Several Members asked about suspicious activity reports (SARs), and Clements stated that the banks surveyed reported that the SARs reports are time consuming and complex. He suggested that the banks need a better understanding about what the SARs data is used for.

UPCOMING EVENTS

March 6

Treasury Budget: The House Appropriations Committee’s Subcommittee on Financial Services and General Government will hold a hearing to discuss the FY2019 budget for the Department of the Treasury. The Committee will receive testimony from Treasury Secretary Steven Mnuchin.

Department of Labor Budget: The House Appropriations Committee’s Subcommittee on Labor, Health and Human Services, Education

and Related Agencies will hold a hearing to discuss the FY2019 budget for the Department of Labor. The Committee will receive testimony from Secretary of Labor Alexander Acosta.

Budget Views and Estimates: The House Financial Services Committee will hold a markup of a letter explaining the Committee's views and estimates on matters within its jurisdiction or functions to be set forth in the concurrent resolution on the budget for fiscal year 2019.

March 7

Insurance Regulation: The House Financial Services Committee's Subcommittee on Housing and Insurance will hold a hearing to discuss the State Insurance Regulation Preservation Act ([H.R. 5059](#)).

Data Security: The House Financial Services Committee's Subcommittee on Financial Institutions and Consumer Credit will hold a hearing entitled "Legislative Proposals to Reform the Current Data Security and Breach Notification Regulatory Regime."

CFTC Budget: The House Appropriations Committee's Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies will hold a hearing to discuss the FY2019 budget for the Commodity Futures Trading Commission (CFTC). The Committee will receive testimony from CFTC Chairman J. Christopher Giancarlo.

Senior Scams: The Senate Special Committee on Aging will hold a hearing entitled "Stopping Senior Scams."

Economic Report: The Joint Economic Committee will hold a hearing on the Economic Report of the President. Council of

Economic Advisers Chairman Kevin Hassett is scheduled to testify before the Committee.

March 8

Investor Advisory Committee: The SEC will hold a meeting of its Investor Advisory Committee (IAC). The agenda for the meeting includes discussions on: (1) Regulatory Approaches to Combat Retail Investor Fraud; (2) Cybersecurity Risk Disclosures (which may include a Recommendation of the Investor as Owner Subcommittee); (3) Financial Support for Law School Clinics that Support Investors (which may include a Recommendation of the Committee as a Whole); (4) Dual-Class Share Structures (which may include a Recommendation of the Investor as Owner Subcommittee); and (5) Efforts to Combat the Financial Exploitation of Vulnerable Adults.

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

ENERGY & ENVIRONMENT

Hearing on LNG Exports and Geopolitics

Key Point:

- *On Tuesday, a House subcommittee heard testimony about the geopolitical implications of growing U.S. natural gas exports.*

On February 27, the House Natural Resources Committee's Subcommittee on Energy and Mineral Resources held a [hearing](#) entitled: "Liquefied Natural Gas and U.S. Geopolitics."

Subcommittee Chairman Paul Gosar (R-AZ) said the U.S. shale revolution has changed the way hydrocarbons are accessed and led to the U.S. becoming the world's largest producer of natural gas. He explained that liquefaction of natural gas into LNG allows it to be transported anywhere in the world. Gosar

mentioned that the U.S. became a net exporter of natural gas last year for the first time. He said this new development has geopolitical implications, noting that the proposed Nord Stream 2 Pipeline from Russia to Germany would allow Russia to supply 75 percent of Europe's natural gas demand. He said outside of Europe, demand for natural gas has skyrocketed in Asia. He explained that China is on track to double its natural gas use by 2030 while India is planning on expanding its import capacity by constructing 11 terminals.

Ranking Member Alan Lowenthal (D-CA) said natural gas production in the U.S. is at record levels, and explained that the turnaround occurred during the Obama Administration. He noted that global carbon emissions continue to rise and argued that climate change was evident during 2017. He added that China and India are leading the world in creating new renewable energy technologies. He explained that developing more renewable energy and increasing investments in innovative technologies is a “win-win” for the climate and U.S. economic competitiveness.

Senate Hearing Focuses on Energy Sector Cybersecurity

Key Points:

- *The Senate Energy and Natural Resources Committee held a hearing on Thursday on energy sector cybersecurity issues.*
- *The Department of Energy has proposed establishing an office of Cybersecurity, Energy Security, and Emergency Response (CESER).*
- *Both Chairman Murkowski and Ranking Member Cantwell called for legislation to address energy cybersecurity.*

On March 1, the Senate Energy and Natural Resources Committee held a hearing “to examine private sector and government challenges and opportunities to promote the

cybersecurity and resiliency of our nation's critical energy infrastructure.”

Chairman Lisa Murkowski (R-AK), in her [opening statement](#), noted that cyberattacks are a continuing threat. She said bad actors range from nation states to terror groups, and that the issue is not limited to energy infrastructure. She stated that energy infrastructure is a high value target for cyberattacks. Murkowski noted the Committee has learned about issues stemming from the increased digitalization of energy infrastructure, and has repeatedly heard that protection of resources is the shared responsibility of federal, local and private entities. She noted the “Energy Policy Act of 2005” ([P.L. 109-58](#)) imposed mandatory reliability standards for cybersecurity in the electric sector, and that the “Fixing America's Surface Transportation (FAST) Act” ([H.R. 22](#)) codified the Department of Energy (DOE) as the sector-specific agency for cybersecurity. She said Congress made efforts to facilitate information sharing by protecting sensitive information from public disclosure. Murkowski asserted that capabilities and efforts to combat cyber-attacks are intensifying. She noted the DOE is creating an office of Cybersecurity, Energy Security, and Emergency Response (CESER) to specifically address the issue. She emphasized the importance of protecting national infrastructure, preventing attacks and increasing resiliency. She asserted that common sense and cooperation, rather than increased regulations, could be the best approach. She called for bipartisan legislation to address the issue.

Ranking Member Maria Cantwell (D-WA) contended that cyber-attacks are among the greatest threats facing the U.S., and the Committee needs to act expeditiously. She said foreign entities now engage in cyberattacks. She noted that Russia took out part of Ukraine's electric grid in 2015 and 2016, and the Russian

government has developed a cyber weapon with the potential to threaten the U.S. electricity system. She said that the Trump Administration has established a cyber office, but emphasized the need to be more aggressive. She asked the DOE to respond to a request, sent in January 2017, to perform a threat assessment for the electric grid. She stressed the need to protect the reliability of the grid from cyber-attacks.

Cantwell also advocated for legislation aiming to expand the cybersecurity workforce. She noted IBM estimates that by 2020 there will be 1.5 million unfilled cyber positions across industries. She said that the curriculum needs to be well established and cover different aspects of cybersecurity. Cantwell expressed hope that Congress would pass cybersecurity legislation given the recent threats.

In his [testimony](#), Bruce Walker, Assistant Secretary, Department of Energy, Office of Electricity Delivery and Energy Reliability (DOE-OE) explained that establishing secure infrastructure is a major focus of the DOE. He asserted the mission of his office is to strengthen, transform and improve access to energy sources. He stated DOE is committed to working with public and private sector partners to protect against physical and cyber threats. He noted the Secretary is establishing the Cybersecurity, Energy Security, and Emergency Response (CESER) office, which will help fulfill the national security responsibilities of the agency, and increase focus on cybersecurity preparedness. He stated the office will also focus on partnerships with industry to assess and diminish threats. Walker noted President Trump has requested \$95 million in Fiscal Year (FY) 2019 for CESER, with a focus on early stage research and development activities to work with the National Labs to improve critical grid infrastructure. He asserted these activities will

develop the next generation of cybersecurity systems and devices including sharing time critical data with industry for cyber events. He stated that national security agencies have noted the increasing frequency and danger of cyber threats. He said energy is a valuable target because of the sector's assets, including Defense Critical Energy Infrastructure (DCEI). He noted the FAST Act designated DOE as the sector specific agency for cybersecurity. He said as a result, the Secretary of Energy could issue a state of emergency to restore infrastructure. Walker said DOE is focused on cyber support efforts to enhance visibility of operational networks, increase cyber awareness, assist in planning across local, state, and federal levels, and leverage research in DOE National Laboratories to drive cybersecurity innovation.

Upcoming Hearings and Events

March 6

USGS Nomination: The Senate Energy and Natural Resources Committee will hold a hearing on the nomination of James Reilly to be Director of the U.S. Geological Survey.

Interior Department Maintenance Backlog:

The House Natural Resources Committee's Subcommittee on Oversight and Investigations will hold a [hearing](#) on "Exploring Innovative Solutions to Reduce the Interior Department's Maintenance Backlog".

Future of Fusion Energy Research:

The House Science, Space and Technology Committee's Subcommittee on Energy will hold a [hearing](#) on "The Future of U.S. Fusion Energy Research".

March 7

Pending Legislation: The House Natural Resources Committee will hold a [markup](#) to consider pending legislation.

Future Transportation Fuels and Vehicles:

The House Energy and Commerce Committee's Subcommittee on Environment will hold a [hearing](#) on "The Future of Transportation Fuels and Vehicles".

March 8

Superfund Legislation: The Senate Environment and Public Works Committee's Subcommittee on Superfund, Waste Management and Regulatory Oversight will hold a hearing on legislation "to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to provide an exemption from certain notice requirements and penalties for releases of hazardous substances from animal waste at farms" ([S. 2421](#)).

For more information about energy and environment issues you may [email](#) or call Frank Vlossak at 202-659-8201. Alex Barcham and Thomas McGrath contributed to the articles. Updates on energy and environment issues are also available on [twitter](#).

DEFENSE**Rogers Appears Before SASC*****Key Point:***

- *The NSA/Cyber Command head discusses the threats facing the agency as other nation-states and cyber actors continue to challenge the U.S. in cyberspace*

This week, the head of United States Cyber Command and the National Security Agency testified at a Senate Armed Services Committee [hearing](#) on the FY 2019 budget request for Cyber Command. In what will likely be his last appearance before the Committee, Admiral Michael Rogers discussed the current state of operations at Cyber Command and the threats and challenges facing the combatant command.

Senator Jim Inhofe (R-OK) remarked that "[a]s we approach the eighth anniversary of the Cyber Command, we should recognize the remarkable progress [Rogers has] made in taking what was a very niche war-fighting concept and establishing around it a full-fledged war-fighting command." He added that "[l]ater this year, we anticipate that you will achieve full operational capability of the 6,200-person Cyber Mission Force." Inhofe cautioned that "[d]espite the many successes, there are still significant challenges." He said the Committee is concerned "about a hollow cyber force due to the lack of priority across the services to deliver the required tools and capabilities and personnel" and sees the U.S. at being at a disadvantage with responsibilities for cybersecurity dispersed across the Department of Defense (DOD), Department of Homeland Security (DHS), and the Federal Bureau of Investigation (FBI). Inhofe declared "[w]e can't just wait for a major cyber-attack and then try to get this thing right."

Ranking Member Jack Reed (D-RI) claimed that "[o]ne of the great threats facing our democracy is influence operations, a type of information warfare which are mostly conducted through cyberspace, the domain and theater of operations of Cyber Command." He noted that "Russia engaged in a sophisticated influence campaign during the 2016 election cycle." Reed asserted that "China has been engaged in information operations against their own citizens...[and] have also engaged in massive theft of intellectual property conducted against U.S. companies for their own economic gain." He said that "North Korea's attack on Sony America was an attempt to silence an entertainment company from exercising its right to free speech, and thereby send a message across the world." Reed said that "[w]hile our adversaries are freely conducting information operations, Cyber Command is still predominantly designed to conduct

technical operations, to either defend or attack computer systems, to sustain or impede the function of computers and networks.”

Inhofe said that “the three agencies approach that we have responsible for defending against” cyber-attacks are “the FBI as the lead for law enforcement, [DHS] as the lead for critical infrastructure and defending government computer networks, and thirdly, the DOD as the lead for defending the homeland, defending military computer networks, and developing and employing military cyber capabilities.” He added that “no one agency has all the authorities required to defend and protect the homeland.” Inhofe asked “did we set it up wrong to start with” and “[w]hat does need to be done to encourage a more whole-of-government” approach? Rogers responded that “I think it’s less an issue of people not understanding what their respective roles are within the structure you outlined...[a]nd instead I think the challenge is how do we integrate those capabilities into a tighter hole.” He conceded that “one of the challenges with the current structure...while I think people understand their respective roles, it is not optimized for speed and agility.”

Reed asked whether Russia is trying to “achieve a strategic objective” by trying to influence U.S. elections and public opinion. Rogers responded that “Yes...I believe they are attempting to undermine our institutions.” Reed asked whether Cyber Command has been granted authority by the President and Secretary of Defense “to disrupt Russian election hacking operations where they originate,” and Rogers replied that his agency has not been given such authority. Reed said that “essentially, we have not taken on the Russians yet...[and] [w]e’re watching them intrude on our elections, spread misinformation, become more sophisticated, try to achieve strategic objectives that you have recognized, and we’re just essentially sitting

back and waiting.” Rogers said “I don’t know if I would characterize it as ‘we’re sitting back and waiting,’ but “[i]t’s probably fair to say that we have not opted to engage in some of the same behaviors that we are seeing, if I could just keep it at that.”

Upcoming Hearings and Events

March 6

Worldwide Threats: The Senate Armed Services Committee will hold a [hearing](#) titled “Worldwide Threats.”

Aviation Programs: The Senate Armed Services Committee’s Seapower Subcommittee will hold a [hearing](#) titled “Navy and Marine Corps Aviation Programs.”

Africa: The House Armed Services Committee will hold a [hearing](#) titled “National Security Challenges and U.S. Military Activities in Africa.”

FY 2019 Navy Budget Request: The House Armed Services Committee’s Seapower and Projection Forces Subcommittee will hold a [hearing](#) titled “Department of the Navy FY 2019 Budget Request for Seapower and Projection Forces.”

Marine Corps Readiness: The House Armed Services Committee’s Readiness Subcommittee will hold a [hearing](#) titled “Marine Corps Readiness Posture.”

March 7

Acquisition Reform: The House Armed Services Committee will hold a [hearing](#) titled “Assessing Military Service Acquisition Reform.”

F-35: The House Armed Services Committee’s Tactical Air and Land Forces Subcommittee

will hold a [hearing](#) titled “The F-35 Joint Strike Fighter (JSF) Lightning II Program.”

STRATCOM: The House Armed Services Committee will hold a [hearing](#) titled “U.S. Strategic Forces Posture and the Fiscal Year 2019 Budget Request.”

FY 2019 Navy and Marine Corps Request: The House Appropriations Committee’s Defense Subcommittee will hold a [hearing](#) titled “FY19 Budget Hearing - Navy and Marine Corps.”

March 8

European Command: The Senate Armed Services Committee will hold a [hearing](#) titled “United States European Command.”

Transportation Command: The House Armed Services Committee will hold a [hearing](#) titled “Mobility and Transportation Command Posture.”

For more information on defense issues you may [email](#) or call Michael Kans at 202-659-8201.

HEALTH

Senate Introduces CARA 2.0

Key Points:

- *Senator Rob Portman (R-OH) introduced the “Comprehensive Addiction Recovery Act (CARA) 2.0”*
- *The bill authorizes \$1 billion annually as well as policy changes including imposing a three-day limit on initial opioid prescriptions for acute pain and improving access to treatment.*

On February 27, Senator Rob Portman (R-OH) introduced the “Comprehensive Addiction Recovery Act (CARA) 2.0” ([S. 2456](#)). The bill is cosponsored by Senators Sheldon Whitehouse (D-RI), Shelley Moore Capito (R-WV), Amy

Klobuchar (D-MN), Dan Sullivan (R-AK), Maggie Hassan (D-NH), Bill Cassidy (R-LA) and Maria Cantwell (D-WA). The bill builds on the reforms in the original CARA legislation to help combat the opioid epidemic. CARA 2.0 increases funding authorizations along with new policy initiatives.

The bill would impose three-day limit on opioid prescriptions for acute pain. This aligns with recommendations from the Centers for Disease Control and Prevention. CARA permitted physician assistants and nurse practitioners to prescribe buprenorphine; CARA 2.0 would make this change permanent. CARA 2.0 would also allow states to waive the current 100-patient cap for physicians to treat with buprenorphine. Physicians and pharmacists would be required to use their state prescription drug monitoring programs (PDMP) when prescribing or dispensing opioids. Opioid manufacturers would be subject to increased civil and criminal penalties for failing to report suspicious orders for opioids or maintaining effective diversion controls.

In addition to these policy reforms, CARA 2.0 would also increase the funding authorization for several CARA items to \$1 billion per year for fiscal years 2019 through 2023. For example, funding to expand evidence-based medication assisted treatment would increase from \$25 million to \$300 million and first responder training and access to naloxone would also increase to \$300 million. It also would increase funding for Veterans Treatment Courts, treatment for pregnant and postpartum women, programs to support newborns exposed to substances, and a national infrastructure for recovery support services.

Portman said CARA 2.0 is “a road map for Congress to build on CARA's successes since becoming law.” He predicted “CARA 2.0 is

going to help turn the tide with this epidemic. The bill increases federal funds for specific evidence-based programs to better protect vulnerable groups, including infants, young adults, pregnant and postpartum women, veterans, as well as resources for community programs, medication-assisted treatment and first responders.”

A section-by-section summary of the bill is available [here](#).

House Energy and Commerce Begins Work on Opioid Legislation

Key Points:

- *The House Energy and Commerce Committee held its first in a series of three hearings on legislation to address the opioid epidemic.*
- *The first hearing focused on how to balance enforcement and patient safety.*

On February 28, the House Energy and Commerce Committee’s Subcommittee on Health held an oversight [hearing](#) entitled: “Combatting the Opioid Crisis: Helping Communities Balance Enforcement and Patient Safety.” The hearing covered the following legislation:

- [H.R. 2063](#), Opioid Preventing Abuse through Continuing Education (Opioid PACE) Act of 2017
- [H.R. 2851](#), Stop the Importation and Trafficking of Synthetic Analogues (SITSA) Act of 2017
- [H.R. 4275](#), Empowering Pharmacists in the Fight Against Opioid Abuse Act
- [H.R. 5041](#), Safe Disposal of Unused Medication Act
- [H.R. _____](#), Special Registration for Telemedicine Clarification Act of 2018
- [H.R. _____](#), Ensuring Patient Access to Substance Use Disorder Treatments Act of 2018

- [H.R. _____](#), Improving Access to Remote Behavioral Health Treatment Act of 2018
- [H.R. _____](#), Tableting and Encapsulating Machine Regulation Act of 2018

Chairman Michael Burgess (R-TX) emphasized the focus of this hearing was reforms to the Controlled Substances Act. He asserted any solution requires a bipartisan approach. Ranking Member Gene Green (D-TX) stressed the misuse of opioids is a serious national crisis affecting public health and economic welfare. He called upon the Committee to authorize the necessary resources to address this crisis.

The first panel focused on what the Drug Enforcement Agency (DEA) can do to address the inflow of synthetic opioids like fentanyl and prevent diversion. Topics discussed in the first panel included, but were not limited to: (1) Scheduling; (2) Education Initiatives; (3) Research; (4) State and Federal Registrations; (5) Law Enforcement; (6) False Labeling; (7) Pill Presses; (8) Drug Imports; (9) Telemedicine; (10) Automation of Reports and Consolidated Orders System; (11) Marketing; (12) Drug Takebacks; and (13) Dark Web.

The second panel featured witnesses from the pharmaceutical industry, pharmacists, doctors, law enforcement, and addiction specialists. Members sought input on the bill being considered by the Committee and other ways to address the opioid epidemic. Topics discussed in the second panel included, but were not limited to: (1) Synthetic Drugs; (2) Education Programs; (3) Addictive Recovery and Treatment Drugs; (4) Scheduling; (5) PDMPs; (6) Drug Takebacks; (7) Research; (8) Access to Treatment and Telehealth; (9) Machines and Equipment; (10) Hospice; (11) CARA Implementation; and (12) Treatment and Payment.

Upcoming Hearings and Meetings

March 6

Insurance Market: The Brookings Institution will hold a discussion on “What’s Ahead for the Individual Health Insurance Market?”

March 7

Mental Health: The Center for American Process will hold a discussion on “How Cities and States Are Leading the Way on Mental Health.”

Mental Health: The National Council for Behavioral Health will hold a briefing on “Integrating Care for Americans with Mental Illness and Addiction: Saving Lives and Reducing Costs.”

March 8

Influenza: The House Energy and Commerce Committee will hold a hearing on “Examining U.S. Public Health Preparedness for and Response Efforts to Seasonal Influenza.”

Opioids: The House Senate Health, Education, Labor and Pensions Committee will hold a hearing on “The Opioid Crisis: Leadership and Innovation in the States.”

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

TRANSPORTATION

Senate EPW Considers Trump Administration’s Infrastructure Proposal

Key Point:

- *Lawmakers tried to elicit more detail on the financing of the Trump Administration’s*

proposal but the Secretary of Transportation offered little more than is in public documents amidst her repeated expression of wanting to work in a bipartisan basis

On March 1, the Senate Committee on Environment and Public Works held a [hearing](#) entitled: “The Administration’s Framework for Rebuilding Infrastructure in America.” Topics discussed in the hearing included: (1) Permitting; (2) Water Infrastructure; (3) California Automobile Standards; (4) Federal Funding; (5) Gateway Project; (6) 75th Street Corridor Improvement Project; (7) Project Delivery; (8) Columbia River Tribes; (9) Buying American; (10) Hours of Service; (11) Poplar Island; (12) Rural Broadband; (13) Cedar Rapids Flood Mitigation; and (14) Highways.

Chairman John Barrasso (R-WY) said infrastructure drives the prosperity of the nation. He argued infrastructure has not been prioritized for too long and said federal regulations have made it difficult to improve infrastructure systems. He stated President Donald Trump’s plan prioritizes streamlining, which allows projects to be completed quicker and more cheaply. He noted the plan calls for a two-year-or-less limit for federal approval of projects. He argued the plan also prioritizes rural infrastructure. He stressed rural communities need to be represented in infrastructure improvements. He stated everyone benefits from improved infrastructure in rural communities. He said the Committee is working on water infrastructure legislation that will hopefully pass later in the year. He advocated for bipartisan work on infrastructure legislation.

Ranking Member Thomas Carper (D-DE) said infrastructure is a shared responsibility between the Administration and Congress. He argued it is difficult for states to make up the slack when they receive less federal funding. He stated

governors are reluctant about a deal that will require states to spend more of their money on roads. He noted a model of the President's proposal showed that it would spur at most an additional \$30 billion in state infrastructure spending. He argued this is not a significant figure in terms of infrastructure. He expressed concern about the proposal to give projects incentive awards based almost entirely on the percentage of non-federal money they would raise, regardless of project quality and benefits. He expressed disappointment about proposals to reduce bedrock environmental protections. He said there are ways to speed up projects that will not lead to environmental damage. He suggested permitting agencies should have enough funding to complete reviews quickly and said government could enhance coordination tools. Carper noted major rulemakings to implement provisions from the "Fixing America's Surface Transportation" (FAST Act) (P.L. 114-91) and the "Moving Ahead for Progress in the 21st Century (MAP-21) Act" (P.L. 112-141) have not been finalized. He advocated for long term funding and program certainty, as inadequate funding is the most common factor delaying water and transportation projects. He argued against proposals to cut funding for all new transit capital projects and Amtrak and he emphasized the importance of the Transportation Investment Generating Economic Recovery (TIGER) grant program. He noted the proposal to spend \$200 billion on infrastructure is paired with a budget that would cut \$240 billion from existing infrastructure programs. He also noted that the Army Corps of Engineers (ACOE) has a \$96 billion project backlog and the budget would only provide \$6 billion in funding. He expressed surprise that the Administration's infrastructure plan devoted 15 pages to permitting and had no mention of "pay-fors." He advocated for more states adopting a vehicle-miles-travelled tax rather than a simple

gasoline tax, especially given the future increase in non-gasoline vehicles.

Secretary of Transportation Elaine Chao said infrastructure is the backbone of the economy. She noted traffic congestion costs drivers \$160 billion annually and said one quarter of the nation's bridges are structurally deficient. She argued highway fatalities have been ignored for too long. She said the proposal is designed to change how infrastructure is built, financed, and maintained across the nation. She asserted the proposal will stimulate at least \$1.5 trillion in total infrastructure spending with a minimum of \$200 billion in direct federal funding. She listed the guiding principles of the proposal: (1) use federal dollars as seed money; (2) provide for the needs of rural America; (3) streamline permitting to speed up project delivery; and (4) reduce unnecessary and overly burdensome regulations. She argued the proposal would empower state and local governments to make infrastructure decisions. She noted half of the new federal infrastructure funds would go to incentivizing state and local investments and a quarter would be dedicated to addressing rural infrastructure. She said the plan has a workforce component to help workers access the skills needed to build these projects. She stated the plan includes the "One Federal Decision" mandate to help speed up the delivery of new infrastructure and reduce costs. She observed the Department of Transportation (DOT) is working on streamlining the permitting process for complicated multi-agency projects. She asserted that costs associated with new DOT regulations decreased by \$312 million in 2017 and said the costs will be decreased by at least \$500 million in 2018.

Aviation Safety Hearing

Key Points:

- *The House Transportation and Infrastructure Committee conducted an oversight hearing of the safety of the U.S. aviation system*
- *The hearing occurred the same day Shuster announced he was dropping his insistence on ATC privatization*

On February 27, the House Transportation and Infrastructure Committee's Aviation Subcommittee held a [hearing](#) entitled: "The State of Aviation Safety." Topics discussed during the hearing included: (1) Commercial Space Launches; (2) Lithium Batteries; (3) Suspected Unapproved Parts (SUP); (4) 21st Century AIRR Act; (5) ATC Privatization; (6) FY 2019 Budget; (7) Aviation Safety; (8) UAS; (9) Partnerships; (10) ADS-B Systems; (11) Pilot Shortages; (12) Student Debt; and (13) In Flight Recorders.

Also on February 27, House Transportation and Infrastructure Committee Chairman Bill Shuster (R-PA) explained in a [statement](#) that he would drop from Federal Aviation Administration (FAA) reauthorization talks his provisions to privatize the FAA's air traffic control (ATC) operations from the House's reauthorization, the "21st Century Aviation Innovation, Reform, and Reauthorization Act" ([H.R.2997](#)). Shuster explained that "[d]espite an unprecedented level of support for this legislation – from bipartisan lawmakers, industry, and conservative groups and labor groups alike – some of my own colleagues refused to support shrinking the federal government by 35,000 employees, cutting taxes, and stopping wasteful spending." He stated that "I intend to work with [Senate Commerce, Science, and Transportation Committee Chairman John] Thune and move forward with a reauthorization bill to provide long-term stability for the FAA." Shuster is seeking a long-term reauthorization by the August recess, and current FAA authorities expire on March 30.

Chairman Frank LoBiondo (R-NJ) said the aviation system is extremely safe. He argued the high level of safety is important but stressed the government must remain vigilant. He recalled an Air Canada jet accidentally lined up to land at a taxiway where four planes were waiting to take off. He noted the margin between a near-miss and one of the worst air incidents in history was less than 25 feet. He stated the general aviation community is large and diverse and spans more than just commercial aircraft. He argued helicopter safety must be an area of focus of the Committee. He said there are too many helicopter crashes in which occupants survive only to be injured or killed in post-crash fires. He recalled two weeks ago, a sightseeing helicopter crashed in the Grand Canyon and the passengers died, though it is unclear whether they died from the impact or the fire. He noted there is a bipartisan consensus to address this issue. He expressed concern about the risk posed by increased drone usage and potential collisions between drones and larger aircraft. He stressed aviation safety must continue to improve and said the Federal Aviation Administration (FAA) is important for this mission. He argued the FAA's Technical Center plays a critical role in the partnership between government and industry.

Ranking Member Rick Larsen (D-WA) argued aviation in the U.S. is safer than it has ever been. He warned against rolling back safety rules, including pilot training rules. He stated any reduction in experience requirements for airline pilots is a nonstarter and said the inclusion of this proposal has kept the Senate's FAA reauthorization bill off the floor for nearly a year (i.e. the "Federal Aviation Administration Reauthorization Act of 2017" (S.1405) He noted there have been near misses in planes landing on crowded taxiways. He expressed interest in hearing from the

witnesses on how to prevent drones from colliding with airplanes. He noted a provision in the “FAA Modernization and Reform Act of 2012” (P.L. 112-95) prohibits the FAA from directly regulating the recreational operation of drones. He wondered what the FAA can do to prevent future collisions between drones and larger aircraft.

FAA Associate Administrator for Aviation Safety Ali Bahrami said this is the safest period in the history of aviation. He told the Subcommittee that the FAA is instilling a culture of safety in the industry and within the agency. He argued the U.S. has the safest aviation system in the world and recalled the last fatal commercial airline crash was in 2009. He said the FAA is actively facilitating policies and management processes that transform safety culture in the FAA and outside organizations. He stated they are restructuring the Flight Standard Service to ensure there is a high level of service. He argued the restructuring will yield benefits for the FAA and the aviation community as a whole. He noted the FAA has gone beyond the reforms that Congress directed in the FAA Modernization and Reform Act of 2012 to improve aircraft certification services. He said FAA will take a systems approach, allowing them to focus on areas of high risk. He expressed support for the Commercial Aviation Safety Team (CAST) and said it has taken a proactive approach that focuses on detecting and mitigating risk. He stated government and industry have voluntarily adopted 100 safety enhancements, and that the FAA has already reached its goal of a 10 percent reduction in fatal general aviation (GA) accidents by the close of FY2018.

National Transportation Safety Board (NTSB) Director of the Office of Aviation Safety John DeLisi said the NTSB is charged with investigating every civil aviation accident and

issuing safety recommendations aimed at preventing future accidents. He stated the U.S. aviation system is experiencing a record level of safety. He noted there were 412 aviation fatalities in 2016, 386 of which occurred in general aviation accidents. He said the top cause of aviation accidents is loss of control during flights. He stated NTSB is working with stakeholders to increase awareness, education, and training to address the risk of these events. He said in 2016 there was a deadly hot air balloon crash in which the balloon struck power lines. He recalled the pilot had been diagnosed with medical conditions that can cause cognitive problems and had taken a number of impairing medications. He noted that commercial balloon pilots are exempt from the requirement to hold a medical certificate and said the NTSB issued a recommendation that the FAA remove this exemption. He recalled in 2015 a helicopter crashed and the pilot was fatally injured while the other two passengers were seriously injured. He said the impact forces were survivable but a post-crash fire caused the most severe injuries. He said the NTSB pushed for the installation of crash-resistant fuel systems (CRFS) in helicopters. He recalled a plane crash in which the airplane did not have a recording system on board, making it so the company was unable to monitor daily operations. He said the NTSB recommended that all Part 135 operators install flight recording devices. He recalled a collision between a drone and helicopter in which the drone operator intentionally flew the drone beyond line of sight and was unaware it had collided with the helicopter.

PTC Oversight Hearing

Key Points:

- *The GAO has projected that 7 of 19 passenger railroads will not meet the deadline for PTC implementation*

- *Members pressed industry witnesses on plans to implement PTC*

On March 1, the Senate Commerce, Science, and Transportation Committee held a [hearing](#) on “Implementation of Positive Train Control.” Topics discussed in the hearing included: (1) Status of PTC Implementation; (2) MTA, Metro North and the Long Island Railroad; (3) Amtrak; (4) FRA; (5) Sleep Apnea; (6) Low-Risk Railroads; (7) Cybersecurity; (8) Interoperability; and (9) Federal PTC Implementation Funding.

Chairman John Thune (R-SD) stated that the Government Accountability Office (GAO) has released a new report that found 7-19 commuter railroads are at risk for not even qualifying for a limited extension to work out software testing and interoperability issues. He said the law is clear, and for passenger or freight rails all PTC hardware must be onboard or in the ground by December 31, 2018. He said if railroads do not comply with the law by the end of the year he expects the Federal Railroad Administration (FRA) to take the enforcement action needed to bring railroads into compliance. He added that railroads should not count on any extensions that Congress added to the statutory framework in 2015. He concluded that if commuter railroads do not comply with the law they are at risk of halting or reducing service.

Ranking Member Bill Nelson (D-FL) stated that the amount of train derailments that are occurring is unacceptable. He said the railroad industry must do a better job of implementing PTC, and Congress must do more to crack down. He noted that the railroads have had ten years to implement safety features, and although some have made progress, many are far behind. He said that he is not in favor of giving the railroads any additional time to implement PTC, and he supports the

Department of Transportation (DOT) cracking down on companies that have not made any progress.

GAO Director of Physical Infrastructure Susan Fleming stated that the GAO has found, based on third quarter 2017 data, that most of the commuter railroads have made progress in initial implementation activities. She noted that progress varied widely across individual railroads, in part because of their varying size and unique set of circumstances. She added that equipping locomotives with PTC hardware was one of the areas of greatest variance. She stated that over half of commuter railroads may be at risk of failing to meet the December 2018 deadline, or qualify for an extension. She said the GAO has found two shortcomings with the approach of the FRA: (1) it uses an informal and often reactive communications approach; and (2) many commuter railroads did not fully understand the agency’s planned approach for reviewing and granting extensions, or the criteria for applying for an extension. She said that the FRA does not use the information it collects to prioritize resources using a risk-based approach. She asserted that even with sustained commitment from all 25 commuter railroads that have yet to file a safety plan, it is highly unlikely that all will meet the extension or implementation deadline. She concluded that it is highly critical that FRA implement two key recommendations from the GAO: (1) systematically communicate deadline extension criteria information and its planned approach, including how it will handle railroads that do not meet the deadline or extension criteria; and (2) use a risk-based approach to prioritize its recommendations and workload.

DOT Assistant Inspector General Barry J. DeWeese stated that to reduce the number of rail crashes caused by human error, the U.S. rail industry and Congress are working to implement PTC systems, and DOT has

provided \$2.9 billion to date to implement PTC. He noted that \$2.3 billion had been obligated as of September 30, 2017, which was the focus of the Office of the Inspector General's (OIG) work since this was the actual amount available to recipients for expenditure. He explained that PTC projects vary greatly based on the type of railroad, the need for interoperability, and available communication systems. He added that the Department's financial oversight also varies, based on funding sources and other factors, with each organization following its own established oversight mechanisms. He said the OIG's ongoing review has noted that the Department's financial and grant management systems do not always provide the detail necessary to identify PTC-specific costs. He said instead DOT relies on the rail systems to provide accurate information. He noted that the OIG is also finding that only a few funding recipients have used all of their PTC funds despite the approaching mandate. He said some funding recipients are concerned about potential shortfalls in funding to operate and maintain PTC, which could result in funds being shifted from other safety priorities. He concluded that these will be key watch items for the Department and Congress—as rail systems move forward with PTC implementation—to maintain a sense of urgency and ensure that there are no negative effects on the safety of the system despite the improvements that PTC can deliver.

Upcoming Hearings and Events

March 6

Administration's Infrastructure Proposal:

The House Transportation and Infrastructure Committee will hold a hearing titled "Examining the Administration's Infrastructure Proposal."

March 7

Transportation and Fuels: The House Energy & Commerce Committee's Environment Subcommittee will hold a [hearing](#) titled "The Future of Transportation Fuels and Vehicles."

21st Century Infrastructure: The House Transportation and Infrastructure Committee's Highways and Transit Subcommittee will hold a hearing titled "Building a 21st Century Infrastructure for America: Long-Term Funding for Highways and Transit Programs."

Coast Guard: The House Transportation and Infrastructure Committee's Coast Guard and Maritime Transportation Subcommittee will hold a hearing titled "Implementation of Coast Guard Programs."

For more information on transportation issues you may [email](#) or call Michael Kans at 202-659-8201 Cullen Neely, Henry Homans, Riyad F. Carey, and Rebecca Konst contributed to this section.

TECHNOLOGY

DHS Reauthorization Markup Held Over

Key Point:

- *The Senate Homeland Security Committee began its markup of a DHS reauthorization but will hold the bill open for a week in an attempt to work through amendments*

On February 28, the Senate Homeland Security and Governmental Affairs Committee began a [markup](#) of the "Department of Homeland Security Authorization Act" ([H.R. 2825](#)) but postponed consideration of amendments and the underlying bill.

Chairman Ron Johnson (R-WI) said the Department of Homeland Security (DHS) was created 15 years ago. He noted that the House

passed a “full blown authorization,” which the Committee used as a base for its bill. He stated that reauthorizing DHS would be a big step. He noted that the Committee held more than 25 briefings with DHS as it crafted its bill. He stated that the bill would codify what DHS is already doing, strengthen the appropriations process, and codify recommendations from the Government Accountability Office (GAO). He suggested that the bill process should be bipartisan. He stated that he will attempt to incorporate as many amendments as possible over the next week. He stated that he hopes pass the bill through the Senate on a nearly unanimous basis, urging members not to propose partisan amendments.

Ranking Member Claire McCaskill (D-MO) said she hopes the bill process does not become a partisan exercise, but she is concerned that it will happen. She said she will work with Johnson over the next week to dispose of partisan amendments. She stated that members will have the opportunity to speak out on issues of concern, noting that she is not happy with “where we are” on immigration and guns, but emphasized the need to focus on what can be achieved in the bill.

Ninth Circuit Rules for FTC

Key Points:

- *The FTC’s jurisdiction over the non-common carrier activities of telecommunications companies was affirmed by a federal appeals court, meaning that the unfair and deceptive practices of these entities may be regulated by the agency*
- *In an en banc ruling, a 2016 decision was overturned; it is unclear whether AT&T will appeal to the Supreme Court*

The United States Court of Appeals for the Ninth Circuit (Ninth Circuit) sitting en banc

reversed a three-judge panel’s finding in 2016 that the Federal Trade Commission (FTC) could not police unfair and deceptive acts or practices relating to certain activities of telecommunications companies (so-called common carriers). In *FTC v. AT&T Mobility*, the Ninth Circuit found that the non-common carrier activities of telecommunications companies can be regulated by the FTC. If AT&T had prevailed, then all of the activities of companies with a common carrier service would be exempt from the FTC’s authority to regulate unfair and deceptive practices, including data security (e.g. Verizon has a landline service, and hence all their activities would be exempt from the FTC).

This ruling is significant for a few reasons broader than just telecommunications policy. Had the Ninth Circuit ruled for AT&T, then pressure may have increased in Congress to address a potential gap between the FTC and Federal Communications Commission’s (FCC) regulation of the data security practices of telecommunications as the former has traditionally regulated the non-traditional telephone practices of these companies with respect to unfairness and deception. However, any such efforts would surely become part of the net neutrality debate. In the same vein, attempts to address such a gap through data security legislation would run into the same problem. Therefore, the Ninth Circuit’s ruling may have eased the path towards data security legislation just a bit.

The decision turned on whether the FTC has the authority under the FTC Act to regulate the non-common carrier activities of telecommunications companies. In this case, it was AT&T’s throttling of the data plans on some customers’ smartphones that the FTC sought to police. AT&T argued that a provision in the FTC Act carved out common carriers entirely from FTC regulation of unfair and

deceptive practices. The en banc Ninth Circuit disagreed and held that the FTC Act “bars the FTC from regulating “common carriers” only to the extent that they engage in common-carriage activity...[and] [b]y extension, this interpretation means that the FTC may regulate common carriers’ non-common-carriage activities.”

Moreover, the FCC’s implementation of 2015 net neutrality rules and its current effort to rescind these rules have no applicability in this case because, as the Ninth Circuit explained, both sets of regulations are prospective and the conduct in question dates from between 2011 and 2014. Yet, because the FCC is engaged in an effort to rescind the 2015 net neutrality regulations that made internet service providers (ISPs) common carriers, had the Ninth Circuit ruled in AT&T’s favor, there may have been a gap created in federal regulation of the data security practices of telecommunications companies on a going forward basis. If the 2015 net neutrality rules survive the current effort at the FCC to roll back these regulations, then in the future the FTC would be unable to regulate ISPs and mobile data services because these services would be classified as common carriers.

Equifax Announces That 2017 Breach Revealed Very Sensitive Information of Some Consumers

Key Points:

- *The credit reporting agency announced that names and partial drivers licenses of more than 2 million Americans were stolen last year*
- *Lawmakers generally express varying degrees of concern but it is not clear when data security legislation might be enacted*

The scope of the Equifax widened this week as the company admitted that more than two million Americans had their names and parts of

their drivers licenses stolen in last year’s massive breach. In a March 1 [statement](#), Equifax stated it “was able to identify approximately 2.4 million U.S. consumers whose names and partial driver’s license information were stolen, but who were not in the previously identified affected population discussed in the company’s prior disclosures about the incident.”

In his [response](#), Senate Commerce, Science, and Transportation Committee Chairman John Thune (R-SD) stated that “[t]he company knew the incident affected nearly the entire population of credit-active consumers in the United States and had every reason to believe this number could grow.” He asserted that “Equifax needs to put consumers first and shouldn’t be trying to clean up its mess in a piecemeal fashion...[and] [o]ur Committee will be reaching out to Equifax to get more information about this development and to express our ongoing concern about their response.”

House Energy and Commerce Committee Chairman Greg Walden (R-OR) and Digital Commerce and Consumer Protection Subcommittee Chairman Bob Latta (R-OH) issued a [press release](#) expressing their disappointment. Walden and Latta said that “[t]his latest announcement from Equifax is deeply concerning and raises even more questions about the company’s total failure in safeguarding consumers’ information and providing adequate tools for protection post-breach.” They stated that “[f]ollowing our hearing with the former Equifax CEO, this committee has repeatedly requested documents and information from Equifax as part of our investigation into the data breach that impacted millions of Americans, only to be given partial responses and delay in full disclosure.” Walden and Latta stated that “[w]e now are requesting a briefing with Mandiant, the third-party

company responsible for investigating the breach.”

In her [statement](#), Senator Elizabeth Warren (D-MA) remarked that “I spent 5 months investigating the Equifax breach and found the company failed to disclose the full extent of the hack.” She said that “[t]oday, Equifax acknowledged that 2.4 million more people were affected than initially reported and that driver’s license information was also stolen.” Warren declared that “Equifax can’t be trusted...[and] [t]heir mistakes allowed the breach to happen, their response has been a failure, and they still can’t level with the public.”

Warren referenced the bill she introduced with Senator Mark Warner (D-VA), the “Data Breach Prevention and Compensation Act,” ([S.2289](#)) “to impose massive, mandatory penalties for security breaches from credit reporting agencies.” She also referred to the [report](#) she released in February 2018 that reached the following conclusions:

- Equifax Set up a Flawed System to Prevent and Mitigate Data Security Problems.
- Equifax Ignored Numerous Warnings of Risks to Sensitive Data.
- Equifax Failed to Notify Consumers, Investors, and Regulators about the Breach in a Timely and Appropriate Fashion.
- Equifax Took Advantage of Federal Contracting Loopholes and Failed to Adequately Protect Sensitive IRS Taxpayer Data.
- Equifax’s Assistance and Information Provided to Consumers Following the Breach was Inadequate.
- Federal Legislation is Necessary to Prevent and Respond to Future Breaches.

Upcoming Hearings and Events

March 6

NTIA: The House Energy and Commerce Committee’s Communications and Technology Subcommittee will hold a [hearing](#) titled “Oversight of the National Telecommunications and Information Administration.”

E-Commerce Counterfeits: The Senate Finance Committee will hold a hearing titled “Protecting E-commerce Consumers from Counterfeits.”

March 7

Retail Tech: The House Energy and Commerce Committee’s Digital Commerce and Consumer Protection Subcommittee will hold a [hearing](#) titled “Review of Emerging Tech’s Impact on Retail Operations and Logistics.”

DHS Reauthorization: Senate Homeland Security and Governmental Affairs Committee will continue its markup of the “Department of Homeland Security Authorization Act” ([H.R. 2825](#))

Data Security Legislation: The House Financial Services Committee’s Financial Institutions and Consumer Credit Subcommittee will hold a [hearing](#) titled “Legislative Proposals to Reform the Current Data Security and Breach Notification Regulatory Regime.”

DHS Workforce: The House Homeland Security Committee’s Cybersecurity and Infrastructure Protection and Oversight and Management Efficiency Subcommittee will hold a joint [hearing](#) titled “Examining DHS’ Efforts to Strengthen its Cybersecurity Workforce.”

A.I.: The House Oversight & Government Reform Committee’s Information Technology Subcommittee will hold a [hearing](#) titled “Game Changers: Artificial Intelligence Part II, Artificial Intelligence and the Federal Government.”

For more information on technology issues you may [email](#) or call Michael Kans at 202-659-8201. Alex Barcham contributed to this section.

TRADE

President Trump Announces Steel and Aluminum Trade Remedies

Key Points:

- *President Trump announces steel tariffs will be set at 25 percent and aluminum tariffs will be set at 10 percent.*
- *It is unclear which, if any, countries will be excluded from the tariffs.*

On Thursday morning President Trump held what was advertised as merely a listening session with representatives from ArcelorMittal, U.S. Steel, Nucor, Evraz, JW Aluminum, Century Aluminum, AK Steel, TimkenSteel, and United Aluminum. At a portion of the event open to the press, the President used the occasion to announce his intention to levy new tariffs on imports of steel and aluminum based on a threat to national security under Section 232 of the Trade Expansion Act of 1962. President Trump announced he would impose a 10 percent tariff on aluminum and a 25 percent tariff on steel and said that the official action will be signed “sometime next week.” It should be noted that President Trump did not address potential exclusions from the tariffs for U.S. allies; something that the Department of Defense recommended.

USTR Releases Trade Agenda

Key Points:

- *The Office of the United States Trade Representative (USTR) stressed the links between trade and national security and advocated for strong enforcement of trade deals.*
- *USTR intends to ask Congress to renew “fast track” or Trade Promotion Authority, as its current authority expires on April 1.*

The Office of the United States Trade Representative (USTR) released its agenda on Wednesday with a special emphasis on “new era” of trade policy with five major components: (1) supporting U.S. national security; (2) strengthening the economy; (3) negotiating better trade deals; (4) reforming the multilateral trading system; and (5) aggressively enforcing U.S. trade laws.

USTR addressed China directly, writing: “as a sovereign nation, China is free to pursue whatever trade policy it prefers. But the United States, as a sovereign nation, is free to respond.” They also announced that the U.S. will “use all tools available – including unilateral action where necessary.” With regard to ongoing negotiations of the North American Free Trade Agreement (NAFTA) and the U.S.-Korea Free Trade Agreement (KORUS), USTR said that “trading partners know that the United States will alter – or terminate – old trade deals that are not in our national interest.”

USTR also confirmed that the Trump Administration will request that Congress extend its trade promotion authority. Lighthizer wrote in the report that “We intend to ask the Congress to extend the president’s Trade Promotion Authority - also known as ‘fast track’ authority - to obtain an up or down vote on new trade agreements submitted to

Congress. Based on our discussions with congressional leaders, we believe that there is strong support for such an extension, which would mean that fast-track authority will remain in place until 2021.” The Administration faces an April 1st deadline to renew its “fast track” authority.

For more information on trade 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 Ryan Schnepf.