

March 10, 2017

Washington Update

This Week in Congress

- **House** – The House passed the “**Lawsuit Abuse Reduction Act of 2017**” (H.R. 720); the “**Fairness in Class Action Litigation and Furthering Asbestos Claim Transparency Act of 2017**” (H.R. 985); the “**Department of Defense Appropriations Act, 2017**” (H.R. 1301); and the “**Innocent Party Protection Act**” (H.R. 725).
- **Senate** – The Senate passed **H.J. Res. 44**, to disapprove of the DOI rule that establish the procedures used to prepare, revise, or amend land use plans pursuant to the Federal Land Policy and Management Act of 1976; **H.J. Res. 58**, to disapprove of the Department of Education rule relating to teacher preparation issues; and **H.J.Res.37**, disapproving the rule relating to the Federal Acquisition Regulation for DOD, GSA, and NASA. The Senate also voted to invoke cloture on the nomination of **Seema Verma** to serve as the Administrator of the Centers for Medicare and Medicaid Services.

Next Week in Congress

- **House** – The House is expected to consider the “**VA Accountability First Act of 2017**” (H.R. 1259); the “**Veterans 2nd Amendment Protection Act**” (H.R. 1881); and **H.R. 1367**, to improve the authority of the VA Secretary to hire and retain physicians and other employees.
- **Senate** – The Senate will resume consideration of the nomination of Seema Verma to be Administrator of the Centers for Medicare and Medicaid Services.

TAX

Ways and Means Passes Tax Titles of ACA Repeal; CBO Estimate Expected Next Week

Key Points:

- *JCT estimates the tax provisions will cost \$600 billion over 10 years*
- *The American Health Care Act includes repeal of the employer mandate and the Cadillac tax in 2025*

The House Ways and Means Committee approved the tax titles of the “[American Health Care Act](#)” (AHCA), which is the Republican plan to replace the Affordable Care Act (ACA).

The plan repeals the employer and individual mandates and expands the use of Health Savings Accounts (HSAs) by almost doubling the contribution limit. The Joint Committee on Taxation (JCT) [estimates](#) the proposal, which does not include any offsets, will cost \$600 billion through FY 2026. However, the Congressional Budget Office has not yet issued a cost estimate on the proposal.

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The AHCA repeals the ACA’s premium tax credits starting in 2020, which is replaced by advanceable, refundable age-adjusted tax credits. The credits are available in full to those making \$75,000/150,000 joint filers annually. The AHCA also lifts the \$500,000 cap on health insurers to deduct executive compensation; repeals the 10 percent indoor tanning bed excise tax and repeals the 3.8 percent tax net investment income.

Other health-related tax provisions repealed in the AHCA include: the health insurer tax; the Medicare Hospital Insurance surtax; the increase in medical expense deduction floor; limits on flexible spending accounts;

Treasury Notifies Congress of Debt Limit Deadline

Key Points:

- *Treasury will begin taking extraordinary measures when the debt limit is reinstated on March 16*
- *CBO expects extraordinary measures to be sufficient until Fall 2017*

Secretary of the Treasury Steve Mnuchin [informed](#) Congressional leaders that the Department of the Treasury (Treasury) will begin utilizing “extraordinary measures” when the statutory limit on the U.S. debt is reinstated on March 16. Treasury reported it will suspend the sale of State and Local Government Series (SLGS) securities as of March 15 and use additional measures “until the debt limit is either raised or suspended.”

The Congressional Budget Office [estimated](#) that the Treasury “would most likely be able to continue borrowing and have sufficient cash to make its usual payments until sometime in the fall of this year without an increase in the debt

limit, though an earlier or later date is possible.”

Upcoming Hearings and Events

March 14

USTR Nomination: The Senate Finance Committee will hold a hearing to consider the nomination of Robert Lighthizer to serve as the U.S. Trade Representative. Lighthizer’s confirmation will require a 60 vote waiver to serve USTR because he represented foreign countries (China and Brazil) in the early 1990’s.

March 15

Agriculture and Tax Reform: The House Agriculture Committee will hold a hearing to examine “Agriculture and Tax Reform: Opportunities for Rural America.”

American Health Care Act: The House Budget Committee is expected to hold a markup of the “American Health Care Act.”

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

Upcoming Dates

March 15, 2017: Debt limit suspension ends

April 28: FY 2017 CR expires

September 30, 2017: FY 2017 ends and FAA extension expires

FINANCIAL SERVICES

House Panel Holds Hearing on Flood Insurance Reform

Key Points:

- *Members on both sides of the aisle stressed the need to reauthorize the NFIP before it expires on September 30, 2017.*
- *Chairman Sean Duffy (R-WI) and Representatives Dennis Ross (R-FL) and Blaine Luetkemeyer (R-MO) urged FEMA to expand its use of reinsurance in the NFIP.*
- *Duffy, Full Committee Chairman Jeb Hensarling (R-TX) and other Committee Republicans emphasized the need to bring greater private sector participation into the flood insurance market.*

On March 9, the House Financial Services Committee's Housing and Insurance Subcommittee held a [hearing](#) entitled, "Flood Insurance Reform: FEMA's Perspective." The hearing focused on the pending reauthorization of the National Flood Insurance Program (NFIP), which is set to expire on September 30, 2017.

Chairman Sean Duffy (R-WI) said one of the Subcommittee's top priorities is timely reauthorization of the NFIP. He said several key themes have emerged in meetings with stakeholders: (1) the need to avoid a lapse of the program; (2) the need for policies to be accessible and affordable; (3) in the desire for the growth of a robust private market which can offer consumers additional choices; (4) consumers are upset with the accuracy of Federal Emergency Management Agency (FEMA) flood maps and the time needed for maps to be approved; (5) Congress should explore new options for mitigation and community resiliency; (6) the financial integrity of the NFIP is weak; and (7) Congress must

adjust the egregious claims processing problems which were highlighted following Hurricane Sandy. Duffy stated that the Subcommittee would hold another hearing next week to receive community perspectives on the NFIP.

Representative Dennis Ross (R-FL) said Congress has a responsibility to reauthorize the NFIP, suggesting that it needs significant reforms. He said NFIP has a debt of more than \$24 billion. He noted that he had reintroduced the "Flood Insurance Market Parity and Modernization Act" ([H.R. 1422](#)), which passed the House unanimously last year. Ross said Congress must place the NFIP on sound financial footing and ensure that there is no lapse in the program. He said Congress must also focus on mitigation, suggesting that spending on mitigation leads to savings when disasters occur. Full Committee Chairman Jeb Hensarling (R-TX) stressed the need to expand the role of the private sector in the flood insurance market, and he also emphasized the need to address repetitive loss properties, noting that about 2 percent of NFIP properties are accounting for 24 percent of the losses.

Ranking Member Emanuel Cleaver (D-MO) stressed the need to work in a bipartisan manner to reauthorize the NFIP before it expires. He emphasized that flood insurance must remain affordable, and he urged FEMA to complete the Affordable Framework mandated by Congress. He said Congress must explore ways to improve flood maps and provide adequate funding to do so. Full Committee Ranking Member Maxine Waters (D-CA) emphasized the need for a long-term authorization of the NFIP, pointing to the problems which have resulted from short-term extensions in the past. She said there is no viable plan to reduce the NFIP's debt, suggesting that Congress should forgive it. She

suggested that the Committee should set up a task force on flood insurance. She said the Trump Administration is considering cuts to FEMA, TSA and the Coast Guard to pay for a border wall. She said she will not support any increase in premiums to pay down the NFIP's debt.

Duffy, Ross and Representative Blaine Luetkemeyer (R-MO) urged FEMA to expand its use of reinsurance in order to avoid further increases in the NFIP debt. Ross suggested that there is additional capacity in the reinsurance market. Luetkemeyer suggested that if NFIP had purchased reinsurance which kicked in at \$1 billion they would not have had to increase their debt in 2016. FEMA Federal Insurance and Mitigation Administration Deputy Associate Administrator Roy Wright said the NFIP bought a reinsurance attachment at \$4 billion last year, which is where the optimization of the pricing began to kick in.

Senate Banking and House Financial Services Committees Approve Securities Legislation

Key Points:

- *The Senate Banking Committee and the House Financial Services Committee approved securities bills aimed at ETF research, expanding the threshold for qualifying venture capital funds, requiring the SEC to refund overpayments of section 31 fees, amend the Investment Company Act to terminate the exemption for companies located in the Territories, and increase the threshold for disclosures required by the SEC relating to compensatory benefit plans.*
- *The House Financial Services Committee also approved a bill to require the SEC to provide an assessment of any finding or recommendation of the annual government-business forum on capital formation.*

On March 9, the Senate Banking, Housing and Urban Affairs Committee and the House Financial Services Committee held markups and approved five securities bills:

- The “Fair Access to Investment Research Act of 2017” ([S. 327/H.R. 910](#)), which would direct the Securities and Exchange Commission (SEC) to provide a safe harbor related to certain investment fund research reports. S. 327 was introduced by Senators Dean Heller (R-NV) and Gary Peters (D-MI), while H.R. 910 was introduced by Representative French Hill (R-AR).
- The “Supporting America’s Innovators Act of 2017” ([S. 444/H.R. 1219](#)) which would amend the Investment Company Act of 1940 to expand the investor limitation for qualifying venture capital funds under an exemption from the definition of an investment company. S. 444 was introduced by Senators Heidi Heitkamp (D-ND) and Dean Heller (R-NV), while H.R. 1219 was introduced by Representative Patrick McHenry (R-NC).
- The “Securities and Exchange Commission Overpayment Credit Act” ([S. 462/H.R. 1257](#)) which would amend the Securities Exchange Act of 1934 to require the Securities Exchange Commission to refund or credit excess payments made to the Commission. S. 462 was introduced by Senators Dean Heller (R-NV), Heidi Heitkamp (D-ND), Joe Donnelly (D-IN) and Pat Toomey (R-PA). H.R. 1257 was introduced by Representative Gregory Meeks (D-NY).
- The “US Territories Investor Protection Act of 2017” ([S. 484/H.R. 1366](#)), which would amend the Investment Company Act of 1940 to

terminate an exemption for companies located in Puerto Rico, the Virgin Islands, and any other possession of the United States. S. 484 was introduced by Senators Robert Menendez (D-NJ) and Orrin Hatch (R-UT). H.R. 1366 was introduced by Representative Nydia Velazquez (D-NY).

- The “Encouraging Employee Ownership Act of 2017” ([S. 488/H.R. 1343](#)) which would direct the Securities and Exchange Commission to revise its rules so as to increase the threshold amount for requiring issuers to provide certain disclosures relating to compensatory benefit plans. S. 488 was introduced by Senators Pat Toomey (R-PA) and Mark Warner (D-VA). H.R. 1343 was introduced by Representative Randy Hultgren (R-IL).

The House Financial Services Committee also approved:

- The “Small Business Capital Formation Enhancement Act” ([H.R. 1312](#)), introduced by Representative Bruce Poliquin (R-ME), which would require the Securities and Exchange Commission (SEC) to assess any finding or recommendation of the of the annual government-business forum on capital formation, and disclose the action the SEC intends to take with respect to the finding or recommendation.

Since both committees advanced very similar bills, it is likely that the bills could ultimately be enacted. Senate Banking Committee Chairman Mike Crapo (R-ID) stated the Committee will continue to work in a bipartisan manner on several other common sense bills. Ranking Member Sherrod Brown (D-OH) agreed that

the Committee can tackle several other “low hanging fruit” in a bipartisan manner.

Upcoming Hearings and Events

March 14

Flood Insurance: The Senate Banking Committee will hold a hearing entitled “Reauthorization of the National Flood Insurance Program, Part I.” Roy Wright, Deputy Associate Administrator for Insurance and Mitigation, Federal Emergency Management Agency (FEMA) will testify at the hearing.

USTR Nomination: The Senate Finance Committee will hold a hearing to consider the nomination of Robert Lighthizer to be United State Trade Representative.

March 15

JOBS Act: The House Financial Services Committee’s Subcommittee on Capital Markets, Securities, and Investment will hold a hearing entitled “The JOBS Act at Five: Examining Its Impact and Ensuring the Competitiveness of the U.S. Capital Markets.”

Russia Sanctions: The Senate Banking Committee will hold a hearing entitled “Assessing U.S. Sanctions on Russia: Next Steps.” Those scheduled to testify include: Eric Lorber, Senior Advisor, Center on Sanctions and Illicit Finance, Foundation for Defense of Democracies (FDD); Dr. Rodney D. Ludema, Associate Professor of Economics, Georgetown University (formerly Chief Economist, U.S. Department of State); and Elizabeth Rosenberg, Senior Fellow and Director, Energy, Economics and Security Program, Center for a New America Security (CNAS).

Department of Labor Secretary Nomination: The Senate Health, Education, Labor and Pensions Committee will hold a hearing to consider the nomination of Alexander Acosta to be Secretary of Labor.

March 16

Flood Insurance: The House Financial Services Committee’s Subcommittee on Housing and Insurance will hold a hearing entitled, “Flood Insurance Reform: A Community Perspective.”

De Novo Financial Institutions: The House Financial Services Committee’s Subcommittee on Financial Institutions and Consumer Credit will hold a hearing entitled “Ending the De Novo Drought: Examining the Application Process for De Novo Financial Institutions.”

Monetary Policy: The House Financial Services Committee’s Subcommittee on Monetary Policy and Trade will hold a hearing entitled, “Sound Monetary Policy.”

March 23

SEC Nomination: The Senate Banking Committee may hold a hearing on the nomination of Jay Clayton to be Chairman of the Securities and Exchange Commission (SEC).

March 28

Financial Institutions: The Senate Banking Committee may hold a hearing entitled “Fostering Economic Growth: The Role of Financial Companies.”

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

ENERGY & ENVIRONMENT

Recap of Energy, Environment, and Regulatory Reform Actions

Key Point:

- *President Trump and Congress are working to implement regulatory reform and energy and environment policies through Executive Orders, agency actions and Congressional Review Act resolutions.*

The Trump Administration and the 115th Congress are engaged in actions to reduce federal regulations and address energy and environment policy issues. The President has issued Executive Orders and has taken other actions intended to direct federal agencies in setting policy, in some cases to reexamine and reverse Obama Administration policies. Congress has focused its initial efforts on these issues through Congressional Review Act resolutions repealing Obama Administration regulations.

Executive Orders:

Since January 20, President Donald Trump has issued 15 Executive Orders directing implementation of federal policies including:

- ***Approval of High Priority Infrastructure Projects:*** On January 24, Trump signed an Executive Order titled “Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects” ([EO 13766](#)). The order establishes a process for designation of “high priority” infrastructure projects and sets deadlines for “completion of environmental reviews and approvals of such projects...” The Executive Order provides for designation of high priority projects based on the request of

a state governor, federal department or agency head, or the Chairman of the White House Council on Environmental Quality (CEQ). Within 30 days of the request, the CEQ Chairman must “decide whether an infrastructure project qualifies...[based on] consideration of the project’s importance to the general welfare, value to the Nation, environmental benefits, and such other factors as the Chairman deems relevant.”

- **“Two-for-One” Repeal of Regulations:** On January 30, Trump signed an Executive Order titled “Reducing Regulation and Controlling Regulatory Costs” ([EO 13771](#)) which, provides that “for every one new regulation issued, at least two prior regulations be identified for elimination”. On February 3, the White House issued a [memorandum](#) titled “Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017...” The memorandum provides agencies with information on how to implement the “Regulatory Cap for Fiscal Year 2017” established by Executive Order 13771.
- **Deregulation Implementation:** On February 24, Trump signed an Executive Order titled “Enforcing the Regulatory Reform Agenda” ([EO 13777](#)). The Executive Order establishes mechanisms intended to reduce regulations, including by implementing Executive Order 13771. Executive Order 13777 directs federal agencies to appoint “Regulatory Reform Officers” and to establish “Regulatory Reform Task Forces”. As described in a White House [press release](#), the Executive Order directs each agency’s Regulatory Reform Task

Force to: “evaluate existing regulations and identify candidates for repeal or modification”; and “focus on eliminating costly and unnecessary regulations.”

- **Waters of the United States:** On February 28, Trump signed an Executive Order titled “Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule” ([EO 13778](#)). The Executive Order directs the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (USACE) to review the [final rule](#) published on June 29, 2015 that was intended to define what wetlands, rivers, streams, lakes, ponds, bodies of water, and other water features that are subject to federal regulation under the Clean Water Act. On March 6, the EPA and USACE published a [notice](#) announcing that the agencies plan a “new rulemaking...to provide greater clarity and regulatory certainty concerning the definition of ‘waters of the United States,’ consistent with the principles outlined in the Executive Order and the agencies’ legal authority.”

Other Presidential Actions:

On January 24, the President issued four memoranda on issues related to manufacturing and infrastructure:

- **Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing:** In this [memorandum](#), Trump directed the Secretary of Commerce to receive public comment on “Federal actions to streamline permitting and reduce regulatory burdens for domestic

manufacturers.” After completing a 60-day public comment period the Secretary of Commerce is directed, within 60 additional days to “submit a report to the President setting forth a plan to streamline Federal permitting processes for domestic manufacturing and to reduce regulatory burdens affecting domestic manufacturers.”

- **Keystone XL:** In a [memorandum](#) to the Secretaries of State, Interior, and Army, Trump invited “TransCanada Keystone Pipeline, L.P. (TransCanada), to promptly re-submit its application to the Department of State for a Presidential permit for the construction and operation of the Keystone XL Pipeline for the importation of petroleum from Canada to the United States.” The memorandum further directed the Secretary of State “to reach a final permitting determination, including a final decision as to any conditions on issuance of the permit that are necessary or appropriate to serve the national interest, within 60 days of TransCanada’s submission of the permit application.” On February 10, the State Department published the “[Notice](#) of Receipt of TransCanada Keystone Pipeline, L.P.’s Reapplication for a Presidential Permit To Construct, Connect, Operate, and Maintain Pipeline Facilities on the Border of the United States and Canada”.
- **Dakota Access Pipeline (DAPL):** In a [memorandum](#), Trump directed the Secretary of the Army to “instruct” the Assistant Secretary of the Army for Civil Works and the USACE to: “review and approve in an expedited manner, to the extent permitted by law and as warranted, and with such conditions as are necessary or

appropriate, requests for approvals to construct and operate the DAPL, including easements or rights-of-way to cross Federal areas...” On February 8, the USACE issued a [press release](#) announcing that it “granted an easement to Dakota Access, LLC allowing the installation of a thirty-inch diameter light crude oil pipeline under Federal lands managed by the Corps at Oahe Reservoir.”

- **Use of U.S. Steel and U.S. Materials and Equipment in Pipelines:** This [memorandum](#) from the President directed the Secretary of Commerce to, within 180 days, “develop a plan under which all new pipelines, as well as retrofitted, repaired, or expanded pipelines, inside the borders of the United States, including portions of pipelines, use materials and equipment produced in the United States, to the maximum extent possible and to the extent permitted by law...” The memo further specifies that steel “produced in the United States” only includes steel for which “all manufacturing processes...from the initial melting stage through the application of coatings, occurred in the United States...”

Agency Actions:

- **Withdrawal of Oil and Gas Sector Information Collection Request:** On March 7, the Environmental Protection Agency (EPA) published a “[Notice Regarding Withdrawal of Obligation To Submit Information](#)”, which rescinded the agency’s Information Collection Request (ICR) regarding emissions from existing oil and gas sector sources. A [press release](#) announcing the action

stated that the “withdrawal is effective immediately, meaning owners and operators – including those who have received an extension to their due dates for providing the information – are no longer required to respond.” EPA Administrator Scott Pruitt said the “action will reduce burdens on businesses while we take a closer look at the need for additional information from this industry.”

Congressional Review Act:

Congress has utilized the Congressional Review Act (CRA) to repeal three Obama Administration regulations to date, with the House and Senate voting on additional resolutions to rescind other rules. Congress enacted the CRA as part of the “Contract with America Advancement Act” (P.L. 104-121) in 1996 and it is codified at [5 U.S.C. 801-808](#). The CRA established an expedited process for Congress to review new federal regulations and, by passage of a joint resolution, to repeal regulations. The expedited process limits the time for debate in the Senate to ten hours. If a disapproval resolution is passed and signed by the President, the targeted rule is “deemed not to have had any effect at any time.” Once Congress rescinds a rule through the CRA, an agency may not issue another regulation that is “substantially similar” without subsequent authorization by law.

Energy and environment-related CRA resolutions acted on as of March 10, include:

- ***Oil, Gas and Mineral Payments Disclosure:*** On February 14, Trump signed into law the joint resolution “Providing for congressional disapproval...of a rule submitted by the Securities and Exchange Commission relating to ‘Disclosure of Payments by

Resource Extraction Issuers” ([H.J.Res. 41](#)). The joint resolution repeals the Securities and Exchange Commission’s (SEC) [final rule](#), which was published on July 27, 2016.

- ***Stream Protection Rule:*** On February 16, the President signed into law the joint resolution “Disapproving the rule submitted by the Department of the Interior known as the Stream Protection Rule” ([H.J.Res. 38](#)). The Department of Interior’s Office of Surface Mining Reclamation and Enforcement (OSMRE) published the [final](#) “Stream Protection Rule” on December 20, 2016. According to the Obama Administration’s Department of Interior, the final rule was intended to “better protect water supplies, surface water and groundwater quality, streams, fish, wildlife, and related environmental values from the adverse impacts of surface coal mining operations...”
- ***Federal Land Management and Planning:*** On February 7, the House approved the resolution titled “Disapproving the rule submitted by the Department of the Interior relating to Bureau of Land Management regulations that establish the procedures used to prepare, revise, or amend land use plans pursuant to the Federal Land Policy and Management Act of 1976” ([H.J.Res. 44](#)) by a [234-186](#) vote. The Senate approved H.J.Res. 44 on March 7 by a [51-48](#) vote. The Bureau of Land Management (BLM) published the [final rule](#) titled “Resource Management Planning” on December 12, 2016. The rule would have rewritten “regulations that establish the procedures used to prepare, revise, or amend land use plans pursuant to the

Federal Land Policy and Management Act (FLPMA)...[and was intended to affirm] the important role of other Federal agencies, State and local governments, Indian tribes, and the public during the planning process...”

- ***BLM Venting and Flaring Rule:*** On February 3, the House approved, by a [221-191 vote](#), a resolution “Providing for congressional disapproval...of the final rule of the Bureau of Land Management relating to ‘Waste Prevention, Production Subject to Royalties, and Resource Conservation’” ([H.J.Res. 36](#)). The BLM published this [final rule](#) on November 18, 2016. As described by the BLM, the regulations “would require operators to take various actions to reduce waste of gas, establish clear criteria for when flared gas would qualify as waste and therefore be subject to royalties, and clarify the on-site uses of gas that are exempt from royalties.”

Upcoming Hearings and Events

March 14

Energy Infrastructure: The Senate Energy and Natural Resources Committee will hold a [hearing](#) “on opportunities to improve American energy infrastructure”. Scheduled witnesses are: Stefan Bird, Chief Executive Officer, Pacific Power; Carl Imhoff, Manager, Electricity Market Sector, Pacific Northwest National Laboratory; Clay Koplin, Chief Executive Officer, Cordova Electric Cooperative; Jeffrey Leahy, Deputy Executive Director, National Hydropower Association; Diane Leopold, CEO and President, Dominion Energy; Terry O’Sullivan, General President, Laborers’ International Union of North America; and Ethan Zindler, Head of Policy Analysis, Bloomberg New Energy Finance.

March 15

Hydropower: The House Energy and Commerce Committee’s Energy Subcommittee will hold a [hearing](#) titled “Modernizing Energy Infrastructure: Challenges and Opportunities to Expanding Hydropower Generation”.

Invasive Species: The Senate Environment and Public Works Committee will hold a [hearing](#) titled “Examining Innovative Solutions to Control Invasive Species and Promote Wildlife Conservation.”

Marine Monuments: The House Natural Resources Committee’s Subcommittee on Water, Power and Oceans will hold a [hearing](#) titled “Examining the Creation and Management of Marine Monuments and Sanctuaries”

March 16

Drinking Water Infrastructure: The House Energy and Commerce Committee’s Environment Subcommittee will hold a [hearing](#) titled “Reinvestment and Rehabilitation of Our Nation’s Safe Drinking Water Delivery Systems”.

National Park Service and Forest Service: The House Natural Resources Committee’s Federal Lands Subcommittee will hold a [hearing](#) titled “Identifying Innovative Infrastructure Ideas for the National Park Service and Forest Service”.

June 26-27

EIA Energy Conference: The Energy Information Administration (EIA) will hold its annual [Energy Conference](#). Conference topics include: “U.S. exports of crude oil and petroleum products”; “Renewable finance and project costs”; “The energy-water nexus and induced seismicity”; “The future of nuclear

power”; “Gasoline fuel quality and octane supply”; “Big data and energy information”; “Natural gas infrastructure to serve growing markets”; “Coal and natural gas competition”; and “Human behavior and energy use in buildings”.

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

DEFENSE

House Passes FY 2017 DOD Appropriations Conference Report; Senate Timeline Unclear

Key Points:

- *The House passes the compromise FY 2017 Pentagon funding bill by large bipartisan margins, and the Senate will take up the bill sometime in the next six weeks*

On March 8, the House took up and passed the conference report for the “Department of Defense (DOD) Appropriations Act, 2017” ([H.R. 1301](#)) by a [371-48 vote](#). Last week, the House and Senate Appropriations Committees released the [bill text](#) and [joint explanatory statement](#). However, given that DOD appropriations do not expire until April 28, it is not clear when the Senate will take up the bill. Moreover, Senate Democratic opposition to any bill increasing defense funding without a commensurate funding increase for non-defense programs may result in the bill being blocked.

In its [press release](#), the House Appropriations Committee stated that “[t]he bill closely reflects the Defense Appropriations bill the House passed last summer, and is consistent with the final National Defense Authorization Act for

FY 2017 (P.L. 114-328).” The Committee stated that “[t]he legislation funds critical national security needs, including military operations and readiness programs, as well as health and quality-of-life programs for our troops and military families.” The Committee stated that “[i]n total, the bill provides \$577.9 billion, an increase of \$5.2 billion over the fiscal year 2016 enacted level and \$1.6 billion more than the Obama Administration’s request...[which] includes \$516.1 billion in base discretionary funding – an increase of \$2 billion above current levels – and \$61.8 billion in Overseas Contingency Operations (OCO)/Global War on Terrorism (GWOT) funding – \$3.2 billion above current levels.” The Committee stated that “[w]hen combined with the \$5.8 billion in supplemental funding enacted in the December Continuing Resolution (P.L. 114-254), total Defense funding for fiscal year 2017 is \$583.7 billion, an increase of \$10.9 billion over FY 2016.”

In its [Statement of Administration Policy \(SAP\)](#), the Office of Management and Budget (OMB) explained that “[t]he Administration supports House passage of H.R. 1301...[which] funds critical national security needs.” OMB stated that “[t]he Administration is committed to working with the Congress on a sustained effort to rebuild the military.” The OMB stated that “[i]n the coming weeks, the Administration plans to request additional FY 2017 appropriations to improve the warfighting readiness of the military and provide the resources needed to accelerate the defeat of the Islamic State of Iraq and Syria (ISIS).”

Panel Looks At Independent Fleet Assessment

Key Points:

- *A House subcommittee examined three assessments of the Navy’s fleet plans and*

sounded a number of similar themes, including new needed capabilities and a larger fleet

On March 8, the House Armed Services Committee's Seapower and Projection Forces Subcommittee held a [hearing](#) titled "An Independent Fleet Assessment of the U.S. Navy."

Chairman Rob Wittman (R-VA) said that "we transition from looking at the Navy's force structure assessment to considering three separate future fleet architecture studies...[that] were directed by Congress and completed in recent months." He said that "[t]hese three fleet architecture studies take a different path and consider what the composition of the fleet could be in the future...[and] [s]ome of their proposals include new ship classes, increased usage of unmanned vehicles and redesign ship configurations, just to name a few." Wittman stated that "I think there's broad agreement with the Navy and the three independent studies on several themes:

- First of all, the Navy today is insufficient to address the challenges of tomorrow. I think everyone would agree that the 274 ships of the Navy fleet today are insufficient for a variety of reasons and lead to a variety of bad alternatives including most prominently Air Force aircraft carrier gaps.
- I also believe there's general agreement that the future conflict will reside in a contested environment requiring additional large surface combatants in more robust weapons. Advancements in naval gunfire with the electromagnetic railgun and hypervelocity projectile are essential to getting on the right side of the cost curve.
- I also believe that all the studies agree that the United States has asymmetrical

advantage in the undersea domain. Maintaining this advantage will require increasing the build rate of the Virginia attack submarine and introducing the Virginia payload module into the next block of attack submarines.

- As the small surface combatants, I believe there's general agreement on extending the capabilities associated with the Littoral Combat Ship.
- I also see our amphibious force with its complement of Marines as to the ability of our nation to deter aggression.
- As to our pre-eminent strike capability, the aircraft carrier, I believe that there's general agreement that we need to expand this capability but continue to reduce cost associated with the Ford-class aircraft carrier. I do not believe any members of this subcommittee are willing to accept an almost \$13 billion unit cost for the USS Gerald R. Ford and efforts need to be taken to reduce overall cost.

Ranking Member Joe Courtney (D-CT) in a [statement](#) submitted for the record said that "[l]ast year, the Navy concluded a nearly yearlong re-assessment of its force structure needs that came to that same conclusion...[and] [a]mong other things, the new Force Structure Assessment, or FSA, increased the total fleet requirement from 308 ships in their 2014 plan to 355." He said that "[w]hile the new FSA serves a new benchmark for the Navy and Congress to strive to meet, it leaves many key elements needed to achieve the larger fleet unanswered. He said that "we recently heard testimony in the full committee that the Navy continues to face significant challenges in meeting repair and maintenance requirements on its ships and submarines today." Courtney stated that "we need to be mindful that achieving and sustaining the 355-

ship Navy will be an effort beyond any single budget year, session of Congress, or presidential Administration.” He said that “[n]either the FSA nor the studies presented here today, however, lay out a detailed ‘how to’ guide on how Congress should move towards the larger 355-ship fleet.”

Rear Admiral Jesse Wilson Jr. said that “[t]here independent studies for our future fleet architecture in the 2030 timeframe were conducted and the leads of each team are here today to brief the findings of their studies: the Navy-led Project Team, MITRE’s National Security Engineering Center and the Center for Strategic and Budgetary Assessments.” He said that “[t]hese studies are a starting point in the analysis that the Navy will use to develop our future fleet architecture and design.” Wilson said that “[n]one of them, including the Navy Project Team study, has been endorsed by the Chief of Naval Operations as a comprehensive solution set to focus our future fleet development.” He stated that “[w]e will continue to incorporate what we have learned from them into our ongoing research and development and rapid fielding, our war-gaming, experiments, concept development and strategic thinking...[and] [t]hey will contribute to the high velocity learning that is necessary to strengthen our naval power to outpace our peer competitors and future threats.”

Navy Assessment Division Deputy Director Charles Werchado said that the while Navy Project Team Future Fleet Architecture Study “is not an official Navy Study, it was independent by design and does not represent an official Navy position.” He said that “although the study is focused on the architecture of the future fleet, it also explores how that fleet might be used including alternative concepts of operations.” Werchado stated that “[t]he study was conducted with the

goal of defeating a near-peer competitor with a robust anti-surface capability while also deterring another threat actor in any theater.” He said that “[t]he project team designed the distributed fleet architecture which would allow the Navy of the future to accomplish its missions providing strong and sustained forward presence to influence geopolitical events, respond to crises, reassure allies and deter potential aggressors.”

The MITRE Corporation Naval Research Development Test & Evaluation Portfolio Manager Dr. Sunoy Banerjee said that “MITRE recommended that 322-ship fleet in 2030 built around three major themes:

- The first, improving missile defense capabilities through the fielding of the hypervelocity projectile in the existing five-inch deck guns in the surface force and an aerial layer missile system to be deployed within the carrier air wings to deal with more advanced missile threats. Our preliminary campaign modeling these two innovations significantly improve the survivability of the naval force.
- Second, improving the long-range strike through fielding of new supersonic cruise missiles and ballistic missile capabilities into the surface and submarine force. These capabilities enable the naval force to protect power into -- while the carrier force is maneuvering into striking range of the carrier air wing.
- Third, increased force size while controlling cost via a high-low mix of platforms.

Center for Strategic and Budgetary Assessments (CSBA) Senior Fellow Bryan Clark said that “I wanted to make five main

points regarding the Fleet Architecture Study that we conducted at CSBA:

- First, as Admiral Wilson mentioned, great power competition is going to be the defining feature of the security environment that we're looking at here which is the 2030s. The China and Russia already have the desire to pursue objectives in their near broad and accrete influence in territory.
- The second point is the emergence of this great power competition is going to put the onus on us to deter conflict with those great powers.
- The third main point is because of this and because the objectives of these adversaries if you think about the Baltics for Russia or Taiwan for China or the Senkaku Islands for China, they're all relatively close to those countries. So our forces, our Naval forces in particular, are going to have to be able to persist, survive and then fight in these highly contested environments near the adversary's territory thinking about the South and East China seas when it comes to China or potentially the Baltic or certainly the North Atlantic when it comes to Russia.
- Our fourth packages that emerge from those operating concepts are designed to be able to combine manned and unmanned systems, autonomous unmanned systems and those unmanned platforms to be able to conduct long-range sensing or counter-Intelligence, Surveillance, and Reconnaissance (ISR) operations and conduct long-range strike with the distributed force that allows a force with a large number of distributed platforms to be able to have the same kind of fire power as we will get from a traditional carrier striker, for example.

- The fifth point I want to bring up is that this more improved fleet and the fleet that's capable of deterring great power conflict in the 2030s is going to be larger than today's fleet and more expensive. Our study found that the 340 to 380-ship Navy we believe we need is going to cost 15 to 20 percent more to buy, to maintain and operate, and to man than today's fleet. So we need to be prepared for the fact that entering into a great power competition and being able to win or at least sustain an advantage in that competition is going to be more expensive.

Hearing on Global Nuclear Environment

Key Points:

- *In light of the pending NPR, a Senate Armed Services Committee subcommittee evaluated U.S. nuclear policy and its stockpile in comparison to near peer nations and other number armed nations*
- *Witnesses focused on Russia's planned modernization and expansion of its arsenal*

On March 8, the Senate Armed Services Committee's Strategic Forces Subcommittee held a [hearing](#) titled "Global Nuclear Weapons Environment."

Chairman Deb Fischer (R-NE) said that "[t]he committee meets today to receive testimony on the global nuclear weapons environment...[and] to set the stage for the committee's review of the President's FY 2018 budget request as it pertains to nuclear matters." She said that "[t]his hearing comes as the Administration begins work on a nuclear posture review...[and] I believe the policy foundations of our nuclear deterrent and modernization programs remains sound."

Ranking Member Joe Donnelly (D-IN) said that “[w]e’ve asked our witnesses to review and assess what has changed in the world since the last Nuclear Posture Review in 2010.” He said that “[w]e know Russia has become increasingly aggressive toward the U.S. and our allies...[and] now have public reports of serious violations of the Intermediate-Range Nuclear Forces (INF) Treaty, a landmark agreement signed by President Reagan and Mikhail Gorbachev in 1987” Donnelly stated that “[l]ikewise, we have reports that North Korea is within reach of developing an intercontinental ballistic missile (ICBM)...[and] [w]hether that missile can carry a nuclear warhead is still on debate, but we must prepare for the worst-case.” He stated that “[m]eanwhile, China is developing a nuclear-armed submarine to patrol the Pacific holding U.S. at risk and impacting the stability of South and Southeast Asia.”

Former Strategic Command Commander General C. Robert Kehler said that “I just want to highlight three points for you to consider:

- First, as tempting as it is to call today’s situation a new Cold War, I think it’s very important to remember that we live in far more complicated and uncertain times today. The diverse strategic threat that we face is far more complex than the singular threat we faced during the Cold War -- to effectively deter dangerous actors who have widely different motives, objectives and capabilities requires us to carefully tailor our deterrent strategies, our plans and our capabilities to match them.
- Second, nuclear weapons are not gone from world affairs, and it doesn’t look to me like they’re going to be gone anytime soon. Since the end of the Cold War, the United States has

deemphasized the role and prominence of our nuclear weapons. Nevertheless, nuclear weapons continue to perform a critical foundational role in our defense strategy and the strategies of our allies and partners.

- Third, the U.S. has had a critical point regarding the future of our nuclear capability. Over the last 10 years, we have conducted 18 to 20 studies that depends on which ones you count on our nuclear posture and our nuclear forces, and the issues that we’ve had in our nuclear forces. And all -- although some of those I have participated indirectly, by the way -- and all have said the same thing, “The systems are at the end of their service lives.” We are rapidly expanding whatever margins are left, and we are out of time.

Missouri State University’s Defense Strategic Studies’ Department Head and Professor Dr. Keith Payne said that “[t]he starting point for my remarks is to observe that the threat environment has worsened dramatically since the 2010 Nuclear Posture Review.” He stated that “[t]he Putin regime is rearming Russia and changing European borders with the goals of overturning the despised Western post-Cold War order and restoring Russia’s power position.” Payne stated that “[f]urther, Russia believes it has exploitable political and military advantages that enable it to coerce and deter the west with nuclear first strike threats or limited nuclear employment.” He said that “the West must end Russian misperceptions that limited nuclear employment is a winning strategy, and the Moscow’s resolve and readiness to break the West are greater than the West’s resolve and readiness to prevent them from doing so.”

Harvard's Kennedy School's Belfer Center for Science and International Affairs Executive Director for Research Dr. Gary Samore said that "in my view, the basic nuclear landscape is not likely to change dramatically in the next five to 10 years in terms of the number of countries that possess nuclear weapons." He said that "nine countries have nuclear weapons -- the U.S., Russia, China, U.K., France, India, Pakistan, Israel and North Korea...[a]nd all of those countries view nuclear weapons as essential to their defense and their foreign policy objectives." Samore stated that "[n]one of them are prepared to give them up and all of them will take the necessary steps to maintain, modernize and expand their nuclear forces in order to meet their interest...[and] we're not likely to see any significant move toward nuclear disarmament in that time period." He said that "I think the number of additional countries seeking to acquire nuclear weapons is very limited." Samore stated that "[s]o the bottom line, nuclear weapons will remain an enduring feature of the international security landscape and U.S. defense for the foreseeable future...[and] [a]s a result, I think we'll need to maintain and modernize our nuclear forces."

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

HEALTH

House Committee Advance ACA Repeal and Replace Legislation

Key Points:

- *The House Energy and Commerce Committee and House Ways and Means Committee advanced the American Health Care Act which contains the repeal and replace language for the ACA.*

- *The legislation now heads to the House Budget Committee next week.*

In lengthy markups this week, the House Energy and Commerce Committee and the House Ways and Means Committee advanced the "American Health Care Plan" which contains the budget reconciliation language to repeal and replace the Affordable Care Act (ACA). The legislation now goes to the House Budget Committee next week.

Energy and Commerce Chairman Greg Walden (D-OR) said "the House took a decisive step forward in fulfilling a promise to the American people that has been years in the making: repealing and replacing Obamacare with affordable, patient-centered reforms." House Ways and Means Committee Chairman Kevin Brady (R-TX) asserted "the legislation will provide relief" and "empower individuals and families by providing them – not Washington – with control over their health care dollars and decisions."

Democrats on both committees criticized the lack of Congressional Budget Office (CBO) score demonstrating how much the bill will cost and the effect on coverage. Amendments were offered at both markups that would have prevented the bill from taking effect until the CBO ensured the bill provide coverage for all.

House Conservatives have raised their own concerns that the bill does not go far enough to repeal the ACA. The Republican Study Committee is pushing for two changes: (1) change the structure of the tax credits to make partially refundable; and (2) freezing enrollment in Medicaid expansion during the 115th Congress. The House Freedom Caucus has not taken a position yet but several members have indicated they would not support it.

Senate Majority Leader Mitch McConnell (R-KY) has said the Senate will take up the bill the House passes. Some Republican Senators have expressed their skepticism about the current House version. Senators Rob Portman (R-OH), Shelley Moore Capito (R-WV), Cory Gardner (R-CO), and Lisa Murkowski (R-AK) have pledged to vote against any repeal bill that eliminates the ACA's Medicaid expansion in a letter to McConnell.

Upcoming Hearings and Events

March 13

IPAB: The Healthcare Leadership Council will hold a briefing on “What Does the Independent Payment Advisory Board (IPAB) Mean to Medicare Beneficiaries?”

March 15

Biosimilars: The Atlantic will hold a briefing on “The Next Drugs: The Future of Biosimilars.”

Research: Research!America will hold a discussion on “progress and opportunities with lupus research.”

State Health: The Commonwealth Fund will hold a conference call briefing to discuss a new report “Aiming Higher: Results from the Commonwealth Fund Scorecard on State Health System Performance, 2017 Edition.”

March 16

Health Care Reform: Roll Call Live will hold a discussion on “Health Care Decoded,” focusing on “the latest health care developments taking place both inside and outside the Capitol.”

March 17

ACA: The RAND Corporation will hold a discussion on “Repeal, Replace, Repair or

Improve? The Future of the Affordable Care Act (ACA).”

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

TRANSPORTATION AND INFRASTRUCTURE

Rosen Nominated as Deputy Secretary

Key Points:

- *Trump Administration names number 2 official at DOT, pending Senate consideration and confirmation*
- *Rosen served at the DOT in the George W. Bush Administration*

On March 7, the White House announced that former Department of Transportation (DOT) general counsel Jeffrey Rosen has been nominated as Deputy Secretary. In its [press release](#), the White House noted that Rosen served as DOT general counsel from 2003 to 2006 during the Administration of President George W. Bush. Rosen later served in the Office of Management and Budget, and is leaving Kirkland & Ellis to rejoin the DOT.

Senate Hearing On Infrastructure Funding

Key Points:

- *A Senate Appropriations subcommittee hears from industry stakeholders on the most viable means of financing an infrastructure package*
- *Members and witnesses focused on the structural gap on revenues and outlays from the HTF*

On March 8, the Senate Appropriations Committee's Transportation, Housing and Urban Development, and Related Agencies Subcommittee held a [hearing](#) on “Investing in

America: Funding our Nation’s Transportation Infrastructure Needs.”

Topics discussed included, but were not limited to: (1) Highway Trust Fund; (2) Gas Tax; (3) State Infrastructure Spending; (4) Intermodal Transportation; (5) Ports and Waterways; (6) Rail; (7) TIGER Grants; (8) Passenger Facility Charge; (9) Move American Program; and (10) Transit.

Chairman Susan Collins (R-ME) in a [statement](#) explained President Donald Trump intends to invest \$1 trillion in the nation’s infrastructure over the next ten years. She noted the infrastructure of the nation is in disrepair and the American Society of Civil Engineers (A.S.C.E.) has rated roads, transit, and aviation systems as a “D” and bridges are rated “C+”. Collins explained the airports have \$1 billion in infrastructure needs to accommodate growth while the Department of Transportation (DOT) Conditions and Performance log has an \$836 billion back log. She noted much has been done to reduce the back logs but the DOT reports that current funding levels will only maintain the current standards. She stated all levels of government would have to increase spending by 36 percent to deal with the repair needs. Collins stated the state of the roads costs a billion dollars annually in crashes and maintenance costs. She noted 87 percent of voters support increased spending on mass transit and infrastructure. She stated the big question is how to pay for that. Collins stated many states have raised their gas taxes which makes it more difficult for the federal level to be increased. She explained as a result of inadequate tax revenues \$143 billion has been transferred in general revenues and the federal government is expected to have to “plug this hole” in 2018 as well. Collins stated the challenge being faced is finding a way to pay for infrastructure spending without increasing

taxes or having more deficit spending. She stated it is important to explore all sources of revenues. She noted many states are testing a vehicle miles traveled (VMT) user fee model while others have switched to a sales tax. She explained airports are a good source of economic activity. She stated improving the highways and airport infrastructure will require looking at new innovative funding models, including public private partnerships. She noted the DOT has been slow to fully utilize available programs. Collins explained competitive grant programs have worked well in rural areas and the Airport Improvement Program (AIP) has provided funds for critical investments in airports. She stated Congress has a lot of work ahead of them to improve the infrastructure and figuring out how to pay for it.

Ranking Member Jack Reed (D-RI) stated it is an opportune time to look at these issues. He stated it is clear that the current levels of funding are insufficient to bring the infrastructure network into good repair. He suggested there could be good bipartisan agreement in this area. He stated there are mechanisms in place to make smart, bold investments in transportation. Reed expressed concerns that the President’s plan could be based around tax incentives as they will not work in rural communities. He expressed hope that the Administration does not attempt to solve infrastructure “on the cheap.” He expressed concerns over Office of Management and Budget (OMB) Director Mick Mulvaney’s plan. Reed stated \$54 billion in cuts for non-defense cannot be withstood without harming critical programs. He explained there is an \$800 billion maintenance backlog on federal highways. He noted there is a \$90 billion good repair backlog on mass transit. Reed noted DOT’s report confirms that the nation’s transportation system needs the focus of Congress. He suggested the movement to

improve infrastructure needs to benefit the public in terms of jobs and good pay as well.

American Association of State Highway Transportation Officials Chief Operating Officer And Director Of Policy Management Jim Tymon stated the FAST Act provides a level of predictability through 2020 which allows states to plan for larger projects but that stability is threatened by the lack of annual appropriations. He urged the Committee to approve a full year appropriations act which fully funds the FAST Act. Tymon stated a funding increase of at least 35 percent is needed to improve the nation's infrastructure. He stated \$15 billion is spent each year above what is brought in in receipts for the HTF. He noted 90 percent of the HTF revenue is from taxes on fuel. Tymon stated when the FAST Act expires Congress will have to increase the gas tax, find alternative sources of funds, or reduce the programs that the HTF funds. He stated as Congress begins consideration of an infrastructure package there should be a focus on direct funding through existing programs. He stated federal financing support such as public private partnerships are a good idea but are not viable for all transportation projects.

U.S. Chamber of Commerce Transportation Infrastructure Executive Director Edward L. Mortimer stated America's transportation sector is vast and has served as the backbone of the economy. He explained failure to maintain the system has turned small problems into big ones. He noted the U.S. population is expected to grow and the needs for infrastructure spending will continue to grow. Mortimer noted the President's desire to enact an infrastructure package. He stated the package should focus on actual infrastructure projects which their completion will support long term economic growth. He stated the legislation should employ a variety of financing structures

such as direct loan programs, public private partnerships and direct government spending. Mortimer noted that existing programs should be reformed and utilized where possible. He stated expediting permitting, encouraging innovation and embedding new technologies will be essential. He stated it is critical to fully fund the FAST Act. Mortimer suggested the HTF will run out of funds at the expiration of the FAST Act. He stated this shortfall will result in uncertainty and will slow down projects. He stated key stakeholders must partner with Congress to find long term funding for the HTF. He noted the gas tax has not been increased in years and has not kept pace with inflation. He expressed support for adjusting this tax. He noted other funding tools such as the Transportation Infrastructure Finance and Innovation Act (TIFIA) and the Railroad Rehabilitation and Improvement Financing (RRIF). In addition, he suggested the private activity bonds cap should be lifted and tax credit bonds should be allowed.

House Hearing On FAA Reauthorization

Key Points:

- *In the third of its hearings, the House Transportation and Infrastructure looks at the issues related to a FAA reauthorization with a focus on regional airlines*

On March 8, the House Transportation and Infrastructure Committee's Aviation Subcommittee held a [hearing](#) entitled "Building a 21st Century Infrastructure for America: Air Transportation in the United State in the 21st Century." Topics discussed included, but were not limited to: (1) Lithium Batteries; (2) Open Skies Agreements; (3) Passenger Facility Charges; (4) Regional Carriers; (5) Flight Attendant Issues; (6) Air Traffic Control Reform; (7) NextGen; (8) Cybersecurity; and (9) Airline Pricing Data.

Chairman Frank LoBiondo (R-NJ) stated air transportation has become so commonplace that people around the world do not think about “what an impact it has on our daily lives.” He noted air travel is routine and readily available to millions of Americans with more than 800 million passengers traveling by air within the U.S. last year – a figure that is projected to grow to one billion within ten years. He lauded the hard work of pilots, flight attendants, mechanics, and others “who take us safely across the country and the world.” He explained air transportation in the U.S. diverse and includes private aviation, mainline airlines, regionals, all-cargo airlines, and charter companies. He argued each of these subsets of the aviation industry play a vital role in meeting various needs of the traveling public and economy. LoBiondo said mainline airlines connect major cities and other countries while regional airlines “help connect many small- and medium-size communities to large hub airports providing them access to the globe.” He noted for other communities and certain travelers, such as small business operators, charter service or fractional ownership may be the only viable air travel option. He added cargo airlines allow factories and supply chain inventories to remain fully stocked and keep goods flowing between businesses and to consumers.

Ranking Member Rick Larsen (D-WA) said U.S. airspace is the busiest and complex in the world. He said the Federal Aviation Administration’s (FAA) NextGen modernization program has delivered over \$2.7 billion in benefits to airlines and operators. He said benefits are expected to produce \$160 billion by 2030. He said NextGen procedures allow Alaska Airlines to fly more precisely into Juneau every day. He said he is excited to hear more about how NextGen programs are improving efficiency. He lauded the U.S.

aviation industry’s safety record. He said he believes current pilot training requirements are non-negotiable but he recognizes that regional airlines are experiencing a pilot shortage. He said at his and Full Committee Ranking Member Peter DeFazio’s (D-OR) request the Department of Transportation’s (DOT) Inspector General reported that some regional airlines are beginning to increase pay for pilots to attract more talent. Larsen said flight attendants save lives and prevent dangerous accidents and must be well-rested. He said federal regulations that apply for flight and duty periods should be reformed. He said he is introducing a bill that increases transparency for passengers “caught up in a large scale network meltdown.”

Alaska Air Group, Inc. Chief Executive Officer Brad Tilden said Alaska Airlines is “bullish” on the U.S. airline industry and believes that with its cost structure, customer orientation, and operational capability, Alaska Airlines is well positioned to take advantage of an improving industry. He stated the industry has changed a lot with today’s four largest airlines comprising more than 80 percent of the domestic market. He noted that pervasive bankruptcy and consolidation in the industry has been painful and challenging, but the industry as whole is now in a different, healthier place because airlines are investing in their facilities, people and products in order to win customers. He contended despite these improvements, it is important that aviation policy support competition in the industry. He said Congress should embrace policies that keep the industry vibrant, including enhancing the ability for smaller carriers to gain access to facilities and share feed traffic with other larger airlines. Tilden noted the many airline perspectives on the Gulf carrier Open Skies issue and said as a smaller airline without a global network of its own, Alaska Airlines needs to partner with

international airlines from all around the globe to have a chance of competing with U.S. airlines that have a global footprint. He argued “it is imperative that the U.S. government do zero harm to the vibrant U.S. Open Skies policy.”

Association of Flight Attendants-CWA International President Sara Nelson stated across the industry flight attendants serve as aviation’s first responders and the last line of defense in aviation security. She said flight attendants need proper rest to do their work, “an orderly and secure cabin free of voice calls, a reality check on the disparate compensation at regional airlines and global competition on a level playing field that pushes U.S. aviation forward instead of choking out this cornerstone of the U.S. economy.” She said fifteen years after 9/11, increased productivity, consolidation with capacity cuts, lower oil prices, and other factors have resulted in U.S. airlines’ return to profitability. She said according to a DOT and FAA report from November 2016, the U.S. aviation industry accounts for five percent of U.S. GDP, contributes \$1.6 trillion in total economic activity and supports nearly eleven million jobs. Nelson said regional carriers, pressured to underbid competitors, have kept relentless downward pressure on wages for flight attendants and other airline workers. She explained flight attendants at regional airlines do the same work as mainline flight attendants and have the same safety and security responsibilities. She noted regional flight attendants make a fraction of what their mainline counterparts earn, up to 42 percent less.

Hours Of Service Rule Study Finds “No Net Benefit”

Key Points:

- *An Obama Administration provision in a rule governing how much commercial drivers may work before a mandated rest is in abeyance after an agency study found no net benefit for a longer rest period*

On March 9, the Federal Motor Carrier Safety Administration (FMCSA) submitted to Congress a statutorily required [report](#) based on a [longer study](#) of the restart provisions in the 2013 [Hours of Service of Drivers Final Rule](#) that found no net benefit for a longer restart period than the 2011 final rule. Consequently, the FMCSA explained that the “[t]he requirement for two off-duty periods of 1:00 a.m. to 5:00 a.m. in...the Agency’s hours-of-service rules will not be enforced, nor will the once-per-week limit on use of the restart...” according to a [fact sheet](#). The Department of Transportation’s Office of Inspector General (OIG) sent a [letter](#) to Congress concurring in the FMCSA’s results, noting its agreement with the agency’s “conclusion that the study did not explicitly identify a net benefit from the use of the two suspended provisions of the restart rule on driver operations, safety, fatigue, and health.”

FMCSA “[t]he study was not able to demonstrate conclusively that the restart rule that went into operational effect on July 1, 2013, provided “a greater net benefit for the operational, safety, health and fatigue impacts”...compared to the restart rule in operational effect on June 30, 2013.” FMCSA added that “[b]ecause the study did not demonstrate that the revised restart rule satisfied even the initial outcome requirements...FMCSA has elected not to re-open the study to assess the additional outcome requirements of the Further Continuing and Security Assistance Appropriations Act, 2017.”

FMCSA noted that the “Consolidated and Further Continuing Appropriations Act, 2015” (P. L. 113-235) required the FMCSA “to investigate the operational, safety, health, and fatigue impacts of these two versions of the restart provisions on commercial motor vehicle (CMV) drivers.” FMCSA explained that “[t]he hours-of-service (HOS) regulations in effect until June 30, 2013, prescribed the following:

- Drivers may drive 11 hours within a 14-hour non-extendable window after coming on duty following 10 consecutive hours off duty.
- Drivers may not drive after 60/70 hours on duty in the most recent 7/8 days.
- Drivers may restart a weekly duty cycle after taking a restart break of 34 or more consecutive hours off duty (commonly referred to as the 34-hour restart rule).

FMCSA stated that “[u]nder the new restart rule that went into effect on July 1, 2013, if CMV drivers choose to use a provision allowing “restart” of the 60- or 70-hour duty-cycle limit, they are required to include at least two nighttime periods—defined as periods from 1 a.m. until 5 a.m. (based on the time zone for their home terminal)—in their restart breaks.” FMCSA added that “[u]se of the 34-hour restart was limited to once every 168 hours.”

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

TECHNOLOGY

House Small Business Looks At Federal Cyber Assistance

Key Points:

- *The Committee and witnesses discussed how effectively federal agencies are cooperating and coordinating on providing help to medium and small businesses that lack the resources of multinationals*

On March 8, the House Small Business Committee held a [hearing](#) entitled “Coordinating Federal Cybersecurity Resources for Small Business.” Topics discussed in the hearing included, but were not limited to: (1) Interagency Collaboration & Coordination; (2) Lawsuits against Small Businesses; (3) National Cybersecurity Standard; (4) Cybersecurity Information for Small Businesses; (5) SBDC Cyber Strategy; (6) Vulnerability of Small Businesses; (7) Overregulation; (8) Specific Cybersecurity Measures.

Chairman Steve Chabot (R-OH) noted that 60% of small businesses that fall victim to a major cyberattack close business within six months with the average damages of a cyberattack on a small business totaling over \$32,000. He argued that the federal government needs to “step up its game” to provide cybersecurity resources to small businesses. He stated that, since the 1990s, the federal government has become increasingly active in protecting America’s critical cyber infrastructure, working with states and localities to buffer businesses’ cyber defenses. Chabot said the federal government has recently been encouraged to engage in greater information sharing practices with businesses through the “overall framework for cybersecurity protocol,” that enables businesses of all sizes to implement best practices for assessing cyber threats and bolster their cybersecurity systems. He noted that last year the House passed the “Improving Small Business Cybersecurity Act,” (P.L. 114-328) implemented through the Department of Homeland Security (DHS) among other agencies.

Ranking Member Nydia Velazquez (D-NY) stated that, although cyberattacks are often devastating to small businesses, only 31% of small firms take “active measures” to guard against them. She noted that 60% of all targeted cyberattacks last year struck small and medium-sized entities. She argued that, because small businesses lack the resources of their larger competitors to implement effective cybersecurity plans, and because small businesses face disproportionate risk from cyber threats, “it is imperative they have the resources of the federal government at their disposal.” Velazquez noted that federal spending on cybersecurity is expected to rise to over \$20 billion over the next several years, but argued that the presence of over 50 relevant statutes addressing federal cybersecurity responsibilities creates confusion among small firms. She noted that the Department of Defense (DOD), DHS, and the National Institute of Standards and Technology (NIST) have been working to implement small business cybersecurity measures, and that implementation of the “Cybersecurity Act of 2015” (P.L. 114-113) is moving forward. Velazquez expressed pleasure that the FY 2017 National Defense Authorization Act (NDAA) included a provision instructing the Small Business Administration (SBA) to coordinate with DHS to develop a small business cybersecurity strategy.

Federal Trade Commission Acting Chairman Maureen Ohlhausen said the majority of cyberattacks target small and mid-sized companies. She stated that the Federal Trade Commission (FTC) is a small, independent agency with a large role to play in information security, enforcing several statutes and rules placing data security requirements on companies, including the Gramm-Leach-Bliley Act (GLBA), the Children’s Online Privacy

Protection Act (COPPA), the Fair Credit Reporting Act (FCRA), and the FTC Act. She said none of these laws contain prescriptive, detailed legal requirements, arguing that the core requirement of each of them is that companies maintain reasonable security measures. She added that these laws are flexible and scalable to accommodate firms of different sizes. Ohlhausen stated that the Commission has used its authority against approximately 60 companies since 2001 that did not provide “reasonable protections” for consumers’ personal information. She noted that the FTC has recently released cybersecurity guidance for businesses, adding that she has directed FTC staff to create a “one-stop-shop” on the FTC website with cybersecurity resources for small businesses.

National Institute of Standards and Technology (NIST) Information Technology Lab Director Dr. Chuck Romine argued that because 99% of U.S. businesses are small or medium-sized, a cyber-vulnerability common to most of them could pose a threat to national economic security. He said that NIST’s duty to protect federal information technology (IT) systems was reaffirmed in the “Federal Information Security Modernization Act of 2014” (FISMA) (P.L. 113-283). He stated that NIST released a major revision in 2016 to the popular report “Small Business Information Security: The Fundamentals,” which he said was designed for small business professionals with little cybersecurity expertise. He noted that NIST’s Framework for Improving Critical Infrastructure Cybersecurity (the Framework) developed a successful approach for small businesses and other organization to manage cybersecurity risk, adding that it is implemented on a strictly voluntary basis by businesses. Romine stated that the success of the Framework and its Baldrige Performance Excellence program led NIST to release the

Baldrige Cybersecurity Excellence Builder, a self-assessment tool for organizations to better understand the effectiveness of their cybersecurity efforts. He stated that since 2001, NIST has partnered with the SBA and the Federal Bureau of Investigation (FBI) to provide online support for small businesses through cyber workshops, and that in 2016, NIST partnered with the SBA, the FTC, and the Department of Energy (DOE) to provide cybersecurity training webinars to hundreds of small businesses. Romine noted that NIST's National Initiative for Cybersecurity Education (NICE) released the NICE Cybersecurity Workforce Framework in 2016 to help expand America's cybersecurity talent. He stated that the NIST National Cybersecurity Center of Excellence (NCCoE) partners with experts from different fields to promote standards-based solutions to cybersecurity problems in the form of technical practice guides to be used by organizations.

House Homeland Security Assesses DHS-Private Sector Cooperation

Key Points:

- *Members and witnesses discussed what DHS is doing well and areas of improvement in interacting with the private sector on cybersecurity*

On March 9, the House Homeland Security Committee's Cybersecurity and Infrastructure Protection Subcommittee held a [hearing](#) titled "The Current State of DHS Private Sector Engagement for Cybersecurity". The purpose of this hearing was to hear from private sector stakeholders on the value and effectiveness of current engagement with the Department of Homeland Security (DHS) and identify what makes particular outreach efforts and products of value to participating entities. Topics discussed included, but were not limited to: (1)

Measures to Improve AIS; (2) Protecting Civil Liberties and Privacy; (3) Cybersecurity Priorities during the Trump Administration; and (4) Measures to Improve the Security of Public and Private Systems.

Subcommittee Chairman John Ratcliffe (R-TX) said that cybersecurity affected every sector of the U.S.'s economy. He said that cyber-attacks were a threat to keeping private information secure. He stated that information sharing and analysis organizations, the Cyber Information Sharing and Collaboration Program (CISCP), sector coordinating councils, and the Automated Indicator Sharing (AIS) Program were all part of DHS's effort to engage with the private sector. He said that owners and operators of critical infrastructure were on the front lines of cyber security issues. He stated that DHS had made progress in coordinating with different sectors to mitigate cyber risks to the economy. He said that improvements needed to be made to the DHS. He stated that greater cooperation was important to securing the private sector from cyber threats. He said that the Committee would focus on strengthening the DHS's civilian-engagement mission. He stated that the Committee would also promote initiatives that encouraged the private sector to take advantage of the DHS's resources.

Ranking Member Cedric L. Richmond (D-LA) said that cyber issues had dominated the 2016 presidential election. He stated that President Donald Trump had made a promise to develop a critical infrastructure cyber protection plan. He said that directing the Pentagon to take on cybersecurity in the private sector was a departure from the government's previous role. He remarked that legislation in 2015 had made the DHS the primary interface between the government and private sector for cyber security issues. He said that more information

sharing had to take place between the DHS and the private sector. He commented that Congress had enacted legislation he authored last year. He said that this legislation made sure that DHS was carrying out its diverse portfolio of cyber security responsibilities. He said that he wanted to hear more about potential improvements to the National Cybersecurity & Communications Integration Center (NCCIC) from the witnesses.

HITRUST Alliance CEO Daniel Nutkis said that the HITRUST Alliance had developed a security framework for the healthcare industry. He stated that HITRUST Alliance had worked with DHS on three programs, including 1) the Advanced Indicator of Compromise Program, 2) sector guidance for implementing the National Institute of Standards and Technology (NIST) Cybersecurity Framework, and 3) the AIS Program with DHS. He said that the private sector was willing to cooperate with the DHS to share information relating to cyber security. He remarked that the DHS provided useful input during the development of the health sector implementation guide. He said that the DHS's role as an inter-industry hub for cyber security information benefited all industries. He stated that government plans to make a different agency an intermediary for information sharing complicated cyber security efforts.

New America Foundation's Open Technology Institute Policy Counsel & Government Affairs Lead Robyn Greene said that the Cybersecurity Information Sharing Act (CISA) (Title I of the "Cybersecurity Act of 2015" (P.L. 114-113)) had helped protect privacy while addressing cybersecurity issues. She said that there were still privacy issues with CISA. She noted that under CISA, there were weak requirements for the removal of personally identifiable information (PII). She said that these issues

may lead to the unnecessary sharing of PII. She noted that the private sector was also concerned with law enforcement's use of cybersecurity information during investigations unrelated to cyber security efforts. She stated that this undermined Fourth Amendment protections. She said that CISA contained a provision that allows the President to undermine the DHS's role as the hub of information sharing. She remarked that this provision would allow for the establishment of a second intermediary for information sharing. She commented that this intermediary may include a law enforcement or intelligence agency. She said that this would undermine civil liberties and private sector trust. She said that the DHS needed to share more information with the private sector, including more declassified threat indicators. She stated that Congress needed to update government information technology (IT) infrastructure and hire more cyber security experts to prevent another OPM-style cyber-attack. She said that worker shortages may be undermining cooperation between the government and the private sector. She stated that Congress also needed to develop a process for releasing information relating to "zero day" vulnerabilities. She suggested that the government use its influence to promote the adoption of multi-factor authentication and encryption in the private sector.

For more information on technology issues you may [email](mailto:info@williamsandjensen.com) or call Michael Kans at 202-659-8201. Daniel Berrick and Alex Rankin contributed to this section.

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