

March 23, 2018

Washington Update

This Week in Congress

- **House** – The House passed the “Omnibus Appropriations Bill” (H.R. 1625); the “Alleviating Stress Test Burdens to Help Investors Act” (H.R. 4566); the “Trinkett Wendler, Frank Mongiello, Jordan McLinn, and Matthew Bellina Right to Try Act of 2018” (H.R. 5247); the “Surface Transportation Security Improvement Act of 2018” (H.R. 5131); the “Strengthening Aviation Security Act of 2018” (H.R. 4467); and the “Strengthening Local Transportation Security Capabilities Act of 2018” (H.R. 5089).
- **Senate** – The Senate passed the “Omnibus Appropriations Bill” (H.R. 1625); the Secret Service Recruitment and Retention Act” (H.R. 3731); the “Veterans Health Administration Leave” (S. 899); the “Allow States and Victims to Fight Online Sex Trafficking Act of 2017” (H.R. 1865); and the “Childhood Cancer STAR Act” (S. 292). The Senate confirmed **Kevin K. McAleenan** to be Commissioner of U.S. Border Protections; **Thomas E. Workman** to be a Member of the Financial Stability Oversight Council; and **Anne Marie White** to be Assistant Secretary of Energy.

Next Week in Congress

- **House** – The House is in recess until April 10.
- **Senate** – The Senate is in recess until April 9.

TAX

Congress Moves \$1.3 Trillion Spending Bill to President’s Desk, A Couple Tax Items Included

Key Points:

- *Included is \$11.43 billion for the IRS which includes \$320 million for upgrades and \$350 million for cybersecurity and other items.*
- *Republicans and Democrats made a deal to add corrective language for the “grain glitch” and add a provision that increases the low-income housing tax credit ceiling by 12.5 percent.*

- *No timetable for decision on tax extenders.*

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Congress passed a \$1.3 trillion spending bill early Friday morning with Thursday's House passage by a 256-167 vote and an early Friday Senate of 65-32. Included in the omnibus is \$11.43 billion for the Internal Revenue Service— of which \$320 million is allocated for upgrades to schedules, forms, and systems necessary for implementing the recently passed Tax Cuts and Jobs Act (TCJA). An additional \$350 million is appropriated towards IRS customer support, fraud prevention, and cybersecurity.

Also included in the spending bill is corrected language for the “grain glitch” related to cooperatives and the new passthrough 20% deduction. The TCJA mistakenly gave a competitive advantage to farmers who sell to cooperative grain suppliers under the section 199A passthrough business income deduction. The adjustment will allow farmers to continue to get a 20 percent passthrough deduction without any change when selling to independent operators. When selling to a cooperative, farmers would now receive a 20 percent deduction reduced by amounts the farmer would have had to reduce it under the former 199 deduction. Cooperatives can pass through some or all of the deduction to patrons, as they did with the former 199 deduction.

The modified provision will increase revenue by \$108 million if FY 2018 through 2027 [according](#) to the Joint Committee on Taxation (JCT), which also provided a [technical description](#) of the changes. Democrats were able to add a provision that boosts the state housing credit ceiling by 12.5 percent in the low-income housing tax credit for tax years 2018, 2019, 2020, and 2021. That LIHTC provision reduces revenue by \$2.72 billion in FY 2018 through 2027. The provision also adds a new form of average income test used to determine if one qualifies for the credit.

Other TJCA technical changes were not included in the bill, though technical corrections to prior tax bills were included. Likewise, temporary tax provisions known as tax extenders were not included in the omnibus bill. After hearing from industry groups during a March 14 hearing, House Ways and Means Committee's Tax Policy Subcommittee Chairman Vern Buchanan (R-FL) will announce a strategy for analyzing the value of the extenders.

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

Congress Passes \$1.3 Billion Omnibus Spending Package

Key Points:

- *The omnibus spending package would fund the SEC at \$1.652 billion and the CFTC at \$249 million for FY2018.*
- *The package also includes regulatory reforms for business development companies, including increasing the leverage limit from 1:1 to 2:1.*

This week Congress passed a \$1.3 trillion omnibus spending package, which would fund the federal government through September 30, 2018. The spending package would fund the Securities and Exchange Commission (SEC) at \$1.652 billion for Fiscal Year (SEC) 2018, which is \$47 million above the FY17 level. The spending bill would fund the Commodity Future Trading Commission (CFTC) at \$249 million for FY2018, which is \$1 million below its FY17 level.

The omnibus incorporates the Small Business Credit Availability Act ([H.R. 4267](#)), which passed the House Financial Services

Committee on November 15, 2017, by a vote of 58-2. The legislation, introduced by Representative Steve Stivers (R-OH), includes several regulatory reforms for business development companies (BDCs), including increasing the leverage limit from 1:1 to 2:1, and requiring the SEC to streamline the offering, filing, and registration processes for BDCs.

Additionally, the omnibus includes the Small Business Access to Capital After a Natural Disaster Act ([H.R. 4792](#)), which would direct the SEC's Advocate for Small Business Capital Formation to identify any unique challenges to small businesses in areas affected by hurricanes or other natural disasters when identifying problems that small businesses have with securing access to capital. The bill, introduced by Representative Nydia Velazquez (D-NY), passed the House by voice vote on January 29, 2018.

The bill would also extend the National Flood Insurance Program (NFIP) through the end of July 2018.

House Financial Services Examines Transnational Criminal Organizations

Key Points:

- *Chairman Stevan Pearce (R-NM) explained that large transnational criminal organizations (TCOs) earn over \$870 billion annually, which allows them to influence governments in the most vulnerable countries.*
- *Representative David Kustoff (R-TN) has introduced the "National Strategy for Combatting the Financing of Transnational Criminal Organizations Act" ([H.R. 4768](#)).*

On March 20, the House Financial Services Committee's Subcommittee on Terrorism and Illicit Finance held a [hearing](#) entitled "Exploring the Financial Nexus of Terrorism,

Drug Trafficking, and Organized Crime." Chairman Stevan Pearce (R-NM) noted that large transnational criminal organizations (TCOs) cross borders to further their profits and they generate over \$870 billion annually, which allows them to influence governments in the most vulnerable countries. He thanked Representative David Kustoff (R-TN) for his bill, the "National Strategy for Combatting the Financing of Transnational Criminal Organizations Act" ([H.R. 4768](#)). Pearce explained the bill would require the development of a national strategy to combat TCOs. Ranking Member Ed Perlmutter (D-CO) stated according to the United Nations Office on Drugs and Crime, drug trafficking accounts for all the revenue of TCOs. He stated the opioid epidemic spans coast to coast and in 2016 there were over 4,200 opioid related deaths in the U.S. Perlmutter suggested Congress must work to shut down those that are responsible for the availability of these drugs.

Chairman Pearce noted he has received briefings that ISIS is no longer getting as much money from the sale of oil. Celina Realuyo (National Defense University) stated financial targeting has been successful in regards to ISIS, noting that by going after the entire supply chain, there has been a decline of 80 percent in ISIS profits. She stated this disruption has not allowed ISIS to be able to pay their foreign fighters. Chairman Pearce also asked about the need for coordination between the different agencies. Derek Maltz (Pen-Link, Ltd.) stressed the need for basic cooperation between the agencies and accountability when information is not shared. Ranking Member Ed Perlmutter (D-CO) noted concern over the role Russia has been playing and he asked about the Russian Mafia. Louise Shelley (George Mason University) explained as drugs began to flow out of Afghanistan Russia began to become more involved in the drug trade. She stated

there is an unusual confederation of political leaders and criminal organizations in Russia. Realuyo expressed hope that more sanctions will be levied against Russia and the “tentacles” of the Russian Mafia investigated. Joseph Humire (Center for a Secure Free Society) explained that the Russian Mafia is “rampant” in Latin America. He stated the Department of Defense’s “four plus one” strategy could be utilized in South America as well.

House Passes Legislation Exempting Non-Banks from Stress Tests

Key Point:

- *The House passed a bill to exempt certain non-bank financial institutions from stress testing requirements.*

On March 20, the House passed the Alleviating Stress Test Burdens to Help Investors Act ([H.R. 4566](#)), by a vote of 395-19. The legislation, introduced by Representative Bruce Poliquin (R-ME), would exempt non-bank financial institutions that are not under supervision by the Federal Reserve from the Dodd-Frank Act’s stress testing requirements. The House adopted an amendment by House Financial Services Committee Ranking Member Maxine Waters (D-CA) that would allow the Federal Reserve to stress test non-bank financial firms if the test is requested by a majority vote of the Financial Stability Oversight Council (FSOC), is conducted in a way that considers the company’s business model, and is not already required by the primary regulator. With the adoption of the amendment, Ranking Member Waters supported the bill. The bill was favorably reported by the House Financial Services Committee on January 17, 2018 by a vote of 47-8.

House Financial Services Committee Approves Eight Bills

Key Point:

- *The Committee favorably reported legislation related to the supplementary leverage ratio, the Volcker Rule, SEC registration requirements, small bank examinations, and derivatives.*

On March 21, the House Financial Services Committee held a markup and approved the following eight financial services bills.

- The Protecting Veterans Credit Act of 2017 ([H.R. 2683](#)), introduced by Representative John Delaney (D-MD), which would amend the Fair Credit Reporting Act (FCRA) to exclude from consumer report information: (1) Certain medical debt incurred by a veteran if the hospital care or medical services relating to the debt predates the credit report by less than one year; and (2) A fully paid or settled veteran’s medical debt that had been characterized as delinquent, charged off, or in collection. The Committee favorably reported H.R. 2683, as amended, by a vote of 59-0.
- A bill to require the appropriate Federal banking agencies to recognize the exposure-reducing nature of client margin for cleared derivatives ([H.R. 4659](#)), introduced by Representative Blaine Luetkemeyer (R-MO). The Committee favorably reported H.R. 4659 by a vote of 45-15.
- The Volcker Rule Regulatory Harmonization Act ([H.R. 4790](#)), introduced by Representative French Hill (R-AR), which would amend Section 619 of the Dodd-Frank Act (DFA) to grant the Federal Reserve the exclusive rulemaking authority over the Volcker Rule and identify the primary federal agency for the sole examination and enforcement authority over an

entity. The Committee favorably reported H.R. 4790, as amended, by a vote of 50-10.

- The Ensuring Quality Unbiased Access to Loans (EQUAL) Act of 2017 ([H.R. 4861](#)), introduced by Representative Trey Hollingsworth (R-IN), which would repeal the Federal Deposit Insurance Corporation (FDIC) “Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products” (78 Fed. Reg. 70552; November 26, 2013).
- The Public Company Registration Act ([H.R. 5051](#)), introduced by Representative Sean Duffy (R-WI), which would amend section 12(g) of the Securities Exchange Act of 1934 to raise the threshold for companies to register as a public reporting company with the Securities and Exchange Commission (SEC) from 500 non-accredited investors to 2,000, with the \$10 million threshold indexed for inflation. The Committee favorably reported H.R. 5051 by a vote of 34-26.
- The Small Bank Exam Cycle Improvement Act of 2018 ([H.R. 5076](#)), introduced by Representative Claudia Tenney (R-NY), which would amend the Federal Deposit Insurance Act to increase the qualifying asset threshold for insured depository institutions eligible for 18-month on-site examination cycles from \$1 billion to \$3 billion. The Committee favorably reported H.R. 5076, as amended, by a vote of 60-0.
- The Practice of Law Technical Clarification Act of 2018 ([H.R. 5082](#)), introduced by Representative Alex Mooney (R-WV), which would amend the Fair Debt Collection Practices Act to exclude from the definition of “debt collector” any law firm or licensed

attorney engaged in litigation activities in connection with a legal action in a court of law to collect a debt on behalf of a client to the extent that such legal action is served on the defendant debtor, or service is attempted, in accordance with the applicable statute or rules of civil procedure. The Committee favorably reported H.R. 5082 by a vote of 35-25.

- The Derivatives Fairness Act ([H.R. 5323](#)), introduced by Representative Warren Davidson (R-OH), which would amend Title I of the Dodd-Frank Act to add a new section 177 entitled “Credit Valuation Adjustment.” The bill would exempt from the Credit Valuation Adjustment (CVA) capital charge non-cleared derivatives with “end-user” Counterparties. The Committee favorably reported H.R. 5323 by a vote of 34-26.

FDIC Holds Open Meeting

Key Point:

- *The FDIC approved a final rule to implement an increase in the appraisal threshold for commercial real estate transactions.*

On March 20, the Federal Deposit Insurance Corporation (FDIC) held an [open meeting](#) and approved the following items:

- [Update of Projected Deposit Insurance Fund Losses, Income, and Reserve Ratios for the Restoration Plan.](#)
- [Final Rule to Implement Increase in Appraisal Threshold for Commercial Real Estate Transactions.](#)

The final rule summary states:

The final rule increases the threshold level at or below which appraisals are not required for commercial real estate

transactions from \$250,000 to \$500,000. The final rule defines commercial real estate transaction as a real estate-related financial transaction that is not secured by a single 1-to-4 family residential property. It excludes all transactions secured by a single 1-to-4 family residential property, and thus construction loans secured by a single 1-to-4 family residential property are excluded. For commercial real estate transactions exempted from the appraisal requirement as a result of the revised threshold, regulated institutions must obtain an evaluation of the real property collateral that is consistent with safe and sound banking practices.

UPCOMING EVENTS

April 5

Agricultural Advisory Committee: The Commodity Futures Trading Commission (CFTC) will hold a meeting of its Agricultural Advisory Committee meeting to discuss items related to price discovery and risk management in agricultural markets.

April 9

Fixed Income Market Structure Advisory Committee: The Securities and Exchange Commission's Fixed Income Market Structure Advisory Committee (FIMSAC) will hold its second meeting.

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

Upcoming Hearings and Events

March 26-28

PHMSA Regulation of Natural Gas

Pipelines: The Pipeline and Hazardous Materials Safety Administration (PHMSA) will convene a [meeting](#) of its Gas Pipeline Advisory Committee (GPAC). The GPAC will consider “the proposed rule titled, ‘Safety of Gas Transmission and Gathering Pipelines,’ which was published in the Federal Register on April 8, 2016, (81 FR 20722) and on the associated regulatory analysis.”

April 5

Pipeline Safety Information-Sharing: The Pipeline and Hazardous Materials Safety Administration (PHMSA) will convene a [meeting](#) of the Voluntary Information-Sharing System Working Group. The meeting “will include briefings on topics such as mandate requirements, integrity management, data types and tools, in-line inspection repair and other direct assessment methods, subcommittee considerations, geographic information system implementation, lessons learned, examples of existing information-sharing systems, safety management systems, and more.”

April 12

Department of Energy Budget: The House Energy and Commerce Committee's Energy Subcommittee will hold a hearing on the Department of Energy's Fiscal Year 2019 budget. Secretary of Energy Rick Perry is scheduled to testify.

April 17

FERC Budget: The House Energy and Commerce Committee's Energy Subcommittee will hold a hearing on the Federal Energy Regulatory Commission's (FERC) Fiscal Year 2019 budget. The five FERC commissioners are scheduled to testify.

April 26

EPA Budget: The House Energy and Commerce Committee's Environment

Subcommittee will hold a hearing on the Environmental Protection Agency's (EPA) Fiscal Year 2019 budget. EPA Administrator Scott Pruitt is scheduled to testify.

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

FY 2018 Omnibus Boosts Defense Funding

Key Points:

- *Congress reached agreement on a final FY 2018 funding package that provides the most funding for the DOD since FY 2010, resulting in increases in many DOD and national security programs*
- *Both chambers passed the bill ahead of the expiration of government funding under the current CR*

This week, Congress sent the “The Consolidated Appropriations Act, 2018” ([H.R. 1625](#)) to the White House less than 24 hours before funding for the federal government was set to expire. The House passed the bill by a 256-167 vote on March 22 and then early on March 23, the Senate did the same by a 65-32 vote. The omnibus appropriations bill for the current fiscal year makes available funds to meet the current caps on discretionary spending even though the White House had publicly pushed for a lower level of non-defense funding. On the defense side, the Department of Defense (DOD) and national security programs will receive the highest level of funding since FY 2010. According to a House Appropriations Committee [summary](#) of Division C of H.R. 1625 (the FY 2018 DOD Appropriations Act), the bill:

provides a total of \$654.6 billion for the Department of Defense. This includes \$589.5 billion in discretionary and \$65.2 billion in Overseas Contingency Operations (OCO)/Global War on Terrorism (GWOT) funding. When combined with fiscal year 2018 funding previously approved by Congress, the overall Defense total for fiscal year 2018 is \$659.5 billion, an increase of \$61.1 billion over the 2017 enacted level, which is fully consistent with the recently enacted budget agreement and the National Defense Authorization Act of 2018.

The “Bipartisan Budget Act of 2018” ([P.L. 115-123](#)) raised the cap on defense funding set in the “Budget Control Act of 2011” (P.L. 112-25) by \$80 billion in FY 2018 and \$85 billion in FY 2019. The non-defense funding cap was increased by \$63 billion in FY 2018 and \$68 billion in FY 2019.

The pre-Bipartisan Budget Act of 2018 for defense and non-defense discretionary funding were:

- \$549 billion and \$515 billion for FY 2018
- \$562 billion and \$530 billion for FY 2019

The new caps are:

- \$629 billion and \$579 billion for FY 2018
- \$647 billion and \$597 billion for FY 2019

The Congressional Budget Office (CBO) released its [cost estimate](#) showing a total that FY 2018 appropriations meet the caps of \$629 billion and \$579 billion for defense and non-defense funding. The CBO also projects a total \$1.420 trillion in discretionary budget authority for FY 2018, which includes OCO, emergency

and other discretionary funding not counted against the caps. The CBO noted that the FY 2018 total also “include[s] the fiscal year 2018 budgetary effects of supplemental appropriations for fiscal year 2017 that were provided in the Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (Division B of P.L. 115-56), as well as the supplemental appropriations and full-year authorities provided for fiscal year 2018 by the Additional Supplemental Appropriations for Disaster Relief Requirements Act of 2017 (Division A of P.L. 115-72), the Department of Defense Missile Defeat and Defense Enhancements Appropriations Act, 2018 (Division B of P.L. 115-96), the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (Subdivision 1 of Division B of P.L. 115-123), and the Further Extension of Continuing Appropriations Act, 2018 (Subdivision 3 of Division B of P.L. 115-123).”

The House Appropriations Committee provided additional detail on the DOD portion of the bill:

- **Overseas Contingency Operations (OCO)/Global War on Terrorism (GWOT)** – The legislation includes \$65.2 billion in OCO/GWOT funding.
- **Military Personnel and Pay** – The legislation includes \$137.7 billion – \$133.4 billion for base requirements and \$4.3 billion for OCO/GWOT requirements – to provide for 1,322,500 active-duty troops and 816,900 Guard and Reserve troops. The bill includes \$221.7 million above the request for additional end strength, and fully funds a 2.4 percent pay raise for the military.
- **Operation and Maintenance** – Included in the legislation is \$238 billion – \$188 billion for base requirements and \$50 billion for

OCO/GWOT requirements – for operation and maintenance. Funding for base requirements is \$20.4 billion above fiscal year 2017. This funding supports key readiness programs to prepare our troops for combat and peacetime missions, including flight time and battle training, equipment and facility maintenance, and base operations.

- **Research and Development** – The bill contains \$89.2 billion – \$88.3 billion for base requirements and \$0.9 billion for OCO/GWOT requirements – for research, development, testing, and evaluation of new defense technologies. Funding for base requirements is \$5.6 billion above the request and \$16 billion above the fiscal year 2017 level, and will help to support current military operations and to prepare our nation to meet a broad range of future security threats.
- **Equipment Procurement** – The legislation provides a total of \$144.3 billion – \$133.9 billion for base requirements and \$10.4 billion for OCO/GWOT requirements – for equipment and upgrades. Funding for base requirements is \$19.9 billion above the request and \$25.4 billion above fiscal year 2017. These funds support our nation’s military readiness by providing the necessary platforms, weapons, and other equipment our military needs to train, maintain the force, and conduct successful operations.

For more information on defense issues you may [email](mailto:Michael.Kans@williamsandjensen.com) or call Michael Kans at 202-659-8201.

HEALTH

President Trump Announces Opioids Plan

Key Points:

- *President Donald Trump announced the Administration's plan to address the opioids epidemic.*
- *The plan includes many elements addressing prevention, treatment, and law enforcement. During his remarks, the President especially focused on step law enforcement can take to stop the flow of illegal drugs.*

On March 19, President Donald Trump announced the Administration's new plan to address the opioid epidemic at an event in New Hampshire. The President's "Initiative to Stop Opioids Abuse and Reduce Drug Supply and Demand" focused on three main areas to address the opioid crisis: reducing demand; cutting off the supply of illicit drugs; and helping those struggling with addiction.

To reduce demand for opioids, the initiative will launch a nationwide campaign to raise public awareness on the dangers of opioid and other drug use. It will also support research into new innovative technologies designed to prevent addiction and decrease the use of opioids for pain management. It also sets the goal of cutting nationwide opioid prescription fills by one-third within three years; ensure 75 percent of opioid prescriptions reimbursed by federal health care programs are issued using best practices; and ensure all federally-appointed health care providers adopt best practices for opioid prescribing within two years.

A large portion of the President's initiative focuses on cutting off the supply of illicit drugs. It will keep drugs out of the U.S. by securing borders; requiring advance electronic data for all international mail; and engage with

China and Mexico to reduce the supply of heroin and other illicit opioids. The initiative will also form the Department of Justice Prescription Interdiction and Litigation Task Force which will expand Opioid Fraud and Abuse Detection Unit's efforts to prosecute negligent doctors, pharmacies and distributors; and deploy appropriate criminal actions to hold opioid manufacturers accountable. President Trump's plan will also strengthen criminal penalties for dealing and trafficking including seeking the death penalty where appropriate.

The initiative would also seek to help those suffering from addiction by supporting evidence-based treatment and recovery services. It will ensure first responders are supplied with naloxone. It will incentivize state and local jurisdictions to improve nationwide overdose tracking system to ensure resources are deployed to hard-hit areas. It will also support expanded access to evidence-based treatment if every state, especially medication-assisted treatment.

Read the fact sheet on the plan [here](#).

HHS Secretary Names New CDC Director

Key Point:

- *Department of Health and Human Services Secretary Alex Azar announced Robert R. Redfield, MD will be named Director of the Centers for Disease Control and Prevention.*

On March 21, Department of Health and Human Services Secretary Alex Azar named Robert R. Redfield to be the Director of the Centers for Disease Control and Prevention (CDC). Redfield replaces former CDC Director Brenda Fitzgerald who resigned two months ago.

Redfield was the founding director of the Department of Retroviral Research within the

U.S. Military's HIV Research Program. After retiring following 20 years of military service in the U.S. Army Medical Corps, he co-founded the University of Maryland's Institute of Human Virology and served as the Chief of Infectious Diseases and Vice Chair of Medicine at the University of Maryland School of Medicine. Redfield made several contributions to early HIV research including the demonstration of the importance of heterosexual transmission. He also oversaw a clinical program providing HIV care and treatment in the Baltimore and Washington, DC communities. Redfield has served on a number of HIV advisory councils for the federal government including the President's Advisory Council on HIV/AIDS and the Office of AIDS Research Advisory Council at the National Institutes of Health.

Azar emphasized Redfield's experience in promoting public health as well as providing care to patients. He said Redfield's "scientific and clinical background is peerless." He noted this experience will allow Redfield to "hit the ground running" to address the CDC's activities to combat the opioid crisis.

Critics have raised questions about past stances Redfield took during the HIV crisis including expressing support for mandatory HIV testing and identifying patients who tested positive by name. Others have suggested wrongdoing by Redfield in his oversight of a failed AIDS vaccine project at the Walter Reed Army Institute of Research. Senate Health, Education, Labor and Pensions Ranking Member Patty Murray (D-WA) sent a letter to President Donald Trump raising concerns about the appointment. She expressed concern about Redfield's "lack of public health expertise and his failure to embrace the science underscoring critical public health work."

This position does not require Senate confirmation.

Energy and Commerce Holds Hearing on Combating the Opioid Crisis

Key Points:

- *The House Energy and Commerce Committee held the second of its three hearings to discuss legislation to combat the opioid crisis.*
- *This hearing was held over two days featuring nearly 20 witnesses to discuss 25 bills focused on prevention and public health solutions.*

The Energy and Commerce Committee's Subcommittee on Health held a two day hearing entitled "Combating the Opioid Crisis: Prevention and Public Health Solutions," which examined 25 bills designed to help combat the opioid crisis. The hearing included a total of 19 witnesses spread over four panels. The event marks the second hearing in a series of three the Committee intends to hold on the crisis. In his opening statement, Chairman Michael Burgess (R-TX) explained the hearing is the result of the Member Day the Health Subcommittee held in October 2017. Representative Fred Upton (R-MI) emphasized there is time reserved to bring the bills to the House floor this spring.

Day one of the hearing was dedicated to witness panels I and II. Panel I included testimonies from the Food and Drug Administration (FDA) Commissioner Scott Gottlieb; Anne Schuchat, Principle Deputy Director of the Centers for Disease Control and Prevention; and Christopher Jones from the Substance Abuse and Mental Health Services Administration. The primary topics of discussion included international mail facilities and FDA inspection authority, abuse-deterrent formulations of drugs, opioid-related infectious diseases, and prescription drug monitoring programs. Panel II included testimonies from

John Holaday, Chief Executive Officer of DisposeRx; Jeffrey Francer, Senior Vice President of the Association for Accessible Medicines; Cartier Esham, Executive Vice President for the Biotechnology Innovation Organization; and Sue Thau, Public Policy Consultant for the Community Anti-Drug Coalitions of America. Panel II discussion was centered on prevention efforts, international mail facilities, and drug disposal methods.

Panel III witnesses on day two of the hearing included, but were not limited to: William Banner, Board President for the American Association of Poison Control Centers; Eric Strain, Director of the Center for Substance Abuse Treatment and Research for the Johns Hopkins University School of Medicine; and Brad Bauer, Senior Vice President for Appriss Health. Discussions from panel III of the hearing were primarily focused on patient privacy and 42 CFR Part 2, prescription drug monitoring programs, and infectious diseases. Panel IV witnesses included, but were not limited to: Alexis Horan, Vice President of Government Relations for Clean Slate Centers; Jessica Hulsey Nickel, Founder, President, and CEO of the Addiction Policy Forum; and Mark Rosenberg Chairman of Emergency Medicine and Chief Innovation Officer, St. Joseph's Healthcare System on behalf of the American College of Emergency Physicians. Members focused on community outreach and medication-assisted treatment, the workforce, and sober living homes.

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

TRANSPORTATION AND INFRASTRUCTURE

FY 2018 Omnibus Passes With Significant Increases For Transportation

Key Points:

- *Congress opted to appropriate funds up to the new, revised cap on non-defense discretionary funding despite public opposition from the White House*
- *Many transportation programs were provided significant increases, including transit and rail programs*
- *The package carries a short-term extension of the FAA but not funding dedicated for the Gateway Project*

This week, Congress sent the “The Consolidated Appropriations Act, 2018” ([H.R. 1625](#)) to the White House less than 24 hours before funding for the federal government was set to expire. The House passed the bill by a 256-167 vote on March 22 and then early on March 23, the Senate did the same by a 65-32 vote. The omnibus appropriations bill for the current fiscal year makes available funds to meet the current caps on discretionary spending even though the White House had publicly pushed for a lower level of non-defense funding.

Additionally, the package extends the expiring authorities and funding of the Federal Aviation Administration (FAA) until September 30, 2018, giving the House and Senate more time to negotiate a long-term reauthorization. However, there are not funds earmarked for the Gateway Project that will replace and expand the rail tunnels between New Jersey and New York despite pushing by Members of those states’ delegations, including Senate Minority Leader Chuck Schumer (D-NY) and House Appropriations Committee Chairman Rodney Frelinghuysen (R-NJ). Nonetheless, the Federal Transit Administration’s (FTA) discretionary grant program to help fund transit projects received an historic increase in

funding, come of which may ultimately be allocated for the Gateway Project.

The “Bipartisan Budget Act of 2018” ([P.L. 115-123](#)) raised the cap on defense funding set in the “Budget Control Act of 2011” (P.L. 112-25) by \$80 billion in FY 2018 and \$85 billion in FY 2019. The non-defense funding cap was increased by \$63 billion in FY 2018 and \$68 billion in FY 2019.

The pre-Bipartisan Budget Act of 2018 for defense and non-defense discretionary funding were:

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Defense Missile Defeat and Defense Enhancements Appropriations Act, 2018 (Division B of P.L. 115-96), the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (Subdivision 1 of Division B of P.L. 115-123), and the Further Extension of Continuing Appropriations Act, 2018 (Subdivision 3 of Division B of P.L. 115-123).”

The House Appropriations Committee released a [summary](#) of the Transportation and Housing and Urban Development division of the omnibus:

- **Infrastructure Funding** – The bill provides an increase of \$10.6 billion above the fiscal year 2017 enacted level to begin to rebuild the nation’s aging infrastructure. This funding is targeted to our nation’s airports, roads, bridges, rail, and community development, and will create jobs and spur economic growth.
- **Department of Transportation (DOT)** – The bill includes \$27.3 billion in discretionary appropriations for the Department of Transportation for fiscal year 2018. This is \$8.7 billion above the fiscal year 2017 enacted level. In total budgetary resources, including offsetting collections, the bill provides \$86.2 billion to improve and maintain our nation’s transportation infrastructure.
- **Air** – The bill includes \$18 billion in total budgetary resources for the Federal Aviation Administration (FAA) – \$1.6 billion above the fiscal year 2017 enacted level. These investments will help ease future congestion and help reduce delays for travelers in U.S. airspace.
- **Highways** – The bill provides \$45 billion from the Highway Trust Fund to be spent on the Federal-aid Highways

Program, which is \$1 billion above the fiscal year 2017 enacted level. This funding mirrors the FAST Act authorized levels and will provide much needed growth and improvements within America's highway system. In addition, the bill provides an extra \$2.5 billion in discretionary highway funding – a total increase of \$3.5 billion for roads and bridges over fiscal year 2017.

- **TIGER (National Infrastructure Investments)** – The multimodal TIGER program is funded at \$1.5 billion, a \$1 billion increase over the fiscal year 2017 enacted level. This program will fund states' and local communities' most critical transportation projects, and language is included in the bill to ensure that at least 30% of these funds go to rural communities.
- **Rail** – Federal investments in rail infrastructure and safety programs are funded at \$3.1 billion, which is \$1.2 billion over the fiscal year 2017 enacted level. The bill provides a total of \$1.9 billion for Amtrak, of which \$650 million is for Northeast Corridor grants and \$1.3 billion is to support the national network. Also included is funding for the Federal-State Partnership for State of Good Repair grants at \$250 million, which is \$225 million above the fiscal year 2017 enacted level. This funding will address critical rail investments nationwide and on the Northeast Corridor – needs that must be addressed to sustain current rail services. Rail safety and research programs are funded at \$287 million, \$29 million over the fiscal year 2017 enacted level. This will fund inspectors and training, plus maintenance and safety investments to the physical rail

infrastructure, to help ensure the safety of passengers and local communities. Consolidated Rail Infrastructure and Safety Improvements grants are funded at \$593 million, an increase of \$525 million from the fiscal year 2017 enacted level, to fund capital and safety improvements, planning, environmental work, and research. The bill also includes \$250 million for grants to rail operators to install positive train control (PTC) technologies, which will significantly improve the safety of our rail system.

- **Transit** – The bill provides \$13.5 billion in total budgetary resources for the Federal Transit Administration (FTA) – \$1 billion above the fiscal year 2017 enacted level and \$2.3 billion above the request. Transit formula grants total \$9.7 billion – consistent with the FAST Act – to help local communities build, maintain, and ensure the safety of their mass transit systems. Within this amount, \$2.6 billion is included for Capital Investment Grants transit projects. “New Starts” projects are funded at \$1.5 billion, Core Capacity projects at \$716 million, and Small Starts projects at \$400 million. These programs provide competitive grant funding for major transit capital investments – including light rail, bus rapid transit, and commuter rail – that are planned and operated by local communities. The bill limits the federal match for “New Starts” projects to 51 percent. The bill provides an additional \$834 million in transit infrastructure grants compared to the fiscal year 2017 level. This includes \$400 million to help communities modernize their bus systems, and \$400 million for capital assistance to transit systems across the

country to maintain a state of good repair.

- **Maritime** – The bill includes \$980 million for the Maritime Administration, \$457 million above the fiscal year 2017 enacted level. This funding will continue to increase the productivity, efficiency, and safety of the nation’s ports and intermodal water and land transportation. The Maritime Security Program is funded at the full authorized level of \$300 million. In addition, the bill provides \$300 million for a new national security multi-mission vessel and provides \$121 million for the United States Merchant Marine Academy, including \$52 million for capital improvements and repairs.
- **Road Safety** – The bill contains funding for the various transportation safety programs and agencies within the Department of Transportation. This includes \$947 million in total budgetary resources for the National Highway Traffic Safety Administration, an increase of \$36 million over the fiscal year 2017 enacted level, and \$845 million for the Federal Motor Carrier Safety Administration, \$201 million above the fiscal year 2017 enacted level. Also included is \$272 million for the Pipeline and Hazardous Materials Safety Administration, an increase of \$8 million over the fiscal year 2017 enacted level.

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

TECHNOLOGY

Omnibus Increases DHS’ Cybersecurity Funding

Key Points:

- *DHS cybersecurity programs would see another year-over-year increase in funding along with new cyber-related programmatic tasks*
- *Lawmakers included the CLOUD Act, a bill to address how U.S. law enforcement agencies may access the stored electronic communications of U.S. persons being held overseas, mooted a case before the Supreme Court*

This week, Congress sent the “The Consolidated Appropriations Act, 2018” ([H.R. 1625](#)) to the White House less than 24 hours before funding for the federal government was set to expire. The House passed the bill by a 256-167 vote on March 22 and then early on March 23, the Senate did the same by a 65-32 vote. The omnibus appropriations bill for the current fiscal year makes available funds to meet the current caps on discretionary spending even though the White House had publicly pushed for a lower level of non-defense funding. On the defense side, the Department of Defense (DOD) and national security programs will receive the highest level of funding since FY 2010.

The House Appropriations Committee [summarized](#) the Department of Homeland Security division:

In total, the legislation directs \$47.7 billion in discretionary funding for DHS, an increase of \$5.3 billion above the fiscal year 2017 enacted level. In addition, the bill includes \$7.4 billion – \$573 million above the President’s request – for disaster relief and emergency response activities through the Federal Emergency Management Agency (FEMA).

The National Protection and Programs Directorate (NPPD) would be provided

\$1.482 billion, including \$722,908,000 for Cybersecurity, \$243,992,000 of which is for the National Cybersecurity and Communications Integration Center (NCCIC) and \$173,909,000 for Computer Emergency Response Teams (CERT).

In the Joint Explanatory Statement, the Appropriations Committees explained programmatic issues arising from cybersecurity:

NPPD shall brief the Committees not later than 60 days after the date of enactment of this Act on its assessment of election infrastructure vulnerabilities and its work with election officials to prevent cyber intrusions.

Of the total provided, \$3,000,000 is for the establishment of pilot programs to explore and evaluate the most effective methods for cybersecurity information sharing, focusing on regional information sharing; communications and outreach; training and education; and research and development for the improvement of SLTT government capabilities and capacity. NPPD is directed to provide a report on the results of each pilot not later than 270 days after its completion.

The NCCIC is directed to continue providing technical assistance to other federal agencies, upon request, on preventing and responding to data breaches involving unauthorized access to personally identifiable information.

GAO-17-163 made several recommendations designed to ensure that the NCCIC is adhering to its nine implementing principles under the National Cybersecurity Protection Act. Specifically, the report noted that the NCCIC had yet to determine whether those implementing principles are

applicable to its eleven statutory cybersecurity functions and had yet to establish performance metrics for the principles. Not later 90 days after the date of enactment of this Act, NPPD shall brief the Committees on its specific plans to address these GAO recommendations.

The “Bipartisan Budget Act of 2018” ([P.L. 115-123](#)) raised the cap on defense funding set in the “Budget Control Act of 2011” (P.L. 112-25) by \$80 billion in FY 2018 and \$85 billion in FY 2019. The non-defense funding cap was increased by \$63 billion in FY 2018 and \$68 billion in FY 2019.

The pre-Bipartisan Budget Act of 2018 for defense and non-defense discretionary funding were:

- \$549 billion and \$515 billion for FY 2018
- \$562 billion and \$530 billion for FY 2019

The new caps are:

- \$629 billion and \$579 billion for FY 2018
- \$647 billion and \$597 billion for FY 2019

The Congressional Budget Office (CBO) released its [cost estimate](#) showing a total that FY 2018 appropriations meet the caps of \$629 billion and \$579 billion for defense and non-defense funding. The CBO also projects a total \$1.420 trillion in discretionary budget authority for FY 2018, which includes OCO, emergency and other discretionary funding not counted against the caps. The CBO noted that the FY 2018 total also “include[s] the fiscal year 2018 budgetary effects of supplemental appropriations for fiscal year 2017 that were provided in the Supplemental Appropriations for Disaster Relief Requirements Act, 2017

(Division B of P.L. 115-56), as well as the supplemental appropriations and full-year authorities provided for fiscal year 2018 by the Additional Supplemental Appropriations for Disaster Relief Requirements Act of 2017 (Division A of P.L. 115-72), the Department of Defense Missile Defeat and Defense Enhancements Appropriations Act, 2018 (Division B of P.L. 115-96), the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (Subdivision 1 of Division B of P.L. 115-123), and the Further Extension of Continuing Appropriations Act, 2018 (Subdivision 3 of Division B of P.L. 115-123).”

The “Clarifying Lawful Overseas Use of Data (CLOUD) Act” ([S. 2383/H.R. 4943](#)) was folded into the FY 2018 omnibus (i.e. Division V), which is legislation that addresses data held overseas by multinationals that law enforcement agencies want to access. The bill would moot the issues presented in the *United States v. Microsoft* (i.e. the case before the Supreme Court regarding the communications of a U.S. person being stored on a Microsoft server in Ireland the U.S. government wants to access) because federal law would be amended to require technology companies to comply with U.S. legal process for U.S. persons whose electronic communications are being held overseas. However, there would be judicial procedures under which U.S. companies could seek to quash or modify legal process to compel disclosure of electronic communications for non-U.S. persons outside the country under some circumstances, particularly if the company may violate the laws of some other countries. There would also be a new process by which U.S. technology companies could comply with the warrant requests of some foreign nations without fear of violating U.S. law.

Senators Orrin Hatch (R-UT), Chris Coons (D-DE), Lindsey Graham (R-SC), and Sheldon Whitehouse (D-RI) introduced the Senate version, and Representatives Doug Collins (R-GA), Hakeem Jeffries (D-NY), Darrell Issa (R-CA), Suzan DelBene (D-WA), Tom Marino (R-PA), John Rutherford (R-FL), and Val Demings (D-FL) introduced the House version.

Senate Intelligence Committee Holds Hearing On Election Security and Releases Draft Recommendations

Key Points:

- *With its investigation into Russian interference in the 2016 election ongoing, the Committee heard from the current and former DHS Secretaries and other witnesses on how state and local governments may better protect and secure their election systems from nation-state hacking*
- *The Committee also released its draft recommendations*

On March 21, the Senate Intelligence Committee held an [open hearing](#) entitled: “Election Security.” Topics discussed in the first panel included: (1) Pre-Election Warnings; (2) Department of Homeland Security Cooperation with States; (3) Cybersecurity; (4) Federal Government Action; (5) Department of Homeland Security Risk Assessments; (6) Critical Infrastructure Designation; (7) Media Outlets; and (8) U.S. Retaliation. Topics discussed in the second panel included: (1) Federal Government Interaction; (2) Communication with States; (3) Russian Interference; (4) Cybersecurity; (5) Help America Vote Act; (6) Swing State Targeting; (7) Public Notification; (8) Election Vendors; and (9) Department of Homeland Security Funding.

Chairman Richard Burr (R-NC) said many struggled to understand the Russian attack on the 2016 election. He asserted that since then, the Department of Homeland Security (DHS) has made strides to address the issue. He noted that DHS's ability to understand the problem remains an open question. He stated that Secretary of Homeland Security Kirstjen Nielsen and the support she provides is completely voluntary as election security lays in the hands of the states. He said the issue is urgent but argued that the problems may not be solved for the 2018 and 2020 elections. He stated it is his understanding that appropriators have included money in the fiscal year (FY) 2018 omnibus appropriations bill for grants and funding recommended by the Committee.

Vice Chairman Mark Warner (D-VA) said the Committee remains in the midst of its on-going bipartisan investigation into the attacks during the 2016 election. He stated that it was important for the Committee to release the initial [recommendations](#) of its investigation the 2016 election. He argued that the main goal is to protect the 2018 elections. He also noted that Russian actors were able to hack Illinois election databases along with 20 other states. He added that it is clear that 2016 will not be the last of Russian attempts to disrupt American elections. He said the Putin regime was behind a recent assassination attempt in Europe. He argued that elections at every level are central to democracy. He expressed disappointment with how DHS approached the issue early on. He said officials were caught flatfooted and the response by the new Administration was not much better. He stated that despite evidence of interference, officials on the Federal level and the State levels did not communicate. He referenced the issue of how campaigns practice basic cyber security but said the matter will not be discussed during this hearing. He also called for the President to take a hard stand against Russian interference. He

stated that the problem is not a partisan issue and he applauded Republicans for offering various recommendations. He stated the work in securing funding in the omnibus would improve cybersecurity efforts. He advocated for a standardized cybersecurity policy. He emphasized the need to expedite the security clearance process.

Secretary of Homeland Security Kirstjen Nielsen said recent elections around the globe have been disrupted by foreign actors. She stated that there is no evidence that votes in the 2016 election were changed by Russian attempts although she said it is evident that there were Russian efforts to influence the election. She asserted that the administration of elections is the responsibility of state and local officials. She said states can choose whether to use DHS' services and that not all efforts are utilized by state and local officials. She explained that DHS offers a range of technical services – adding that more than half of the states have signed up for cyber hygiene services. She stressed the importance of information sharing and noted the creation of an Election Infrastructure Information Sharing and Analysis Center (ISAC). She said a collective defense approach makes all elections more secure. She stated that there has been a learning curve for information sharing as many states have different approaches and systems. She explained that there have been steps taken to share information more accurately and rapidly. She said state and local governments must be prepared for any election breach. She stated that DHS is committed to working with election administrations and noted that DHS knows who to contact in every state to share information. She said there is a technology deficit across state and local election systems. She argued that it will take a comprehensive approach to solve this matter.

Former Secretary of Homeland Security Jeh Johnson said that the Russian government orchestrated cyberattacks on the U.S. with the purpose of influencing the 2016 election. He stated that the incident was a wake-up call for the entire nation. He explained that the key question is what the response will be. He agreed with the Committee's draft recommendations. He said that he is pleased that state election officials are taking steps to secure their election infrastructure. He asserted that as a nation, the U.S. must resolve to strengthen its cybersecurity generally and its election system cybersecurity specifically. Johnson declared that nothing less than the U.S.'s system of democracy depends on these efforts.

House OGR/House Homeland Security Joint Hearing On CDM

Key Points:

- *Two subcommittees conducted an oversight hearing on the DHS' capabilities to help federal agencies achieve better visibility into, situational awareness of, and security of their IT systems*
- *Many agencies are still lagging in utilizing DHS' help to hit defined milestones*

On March 20, the House Oversight and Government Reform Committee's Information Technology Subcommittee and the House Homeland Security Committee's Cybersecurity and Infrastructure Protection Subcommittee held a [hearing](#) entitled "CDM: Government Perspectives on Security and Modernization." Topics discussed in the hearing included but were not limited to: (1) Continuous Diagnostics and Mitigation; (2) OPM Breach; (3) Veterans Affairs; (4) Power Grid Safety; and (5) CDM Dashboard Data.

Cybersecurity and Information Technology Subcommittee Chairman John Ratcliffe (R-TX)

noted this was the second Subcommittee hearing this year for the Continuous Diagnostics and Mitigation (CDM) program. He said CDM has potential for improving both cybersecurity and the efficiency of information technology (IT). He asserted CDM can drive progress on network visibility, data-centric security, and the role of increased automation of security tasks and artificial intelligence (AI). He stated Congress needs to roll out CDM improvements to match the increasing threat level. He argued the federal government has a checkered past on IT investments, and federal agencies have issues providing adequate cybersecurity. He stated Chief Information Officers (CIOs) are the point of accountability, but that all stakeholders have some responsibilities. He noted damaging data breaches have plagued agencies. He stated this hearing would attempt to discover lessons from the initial rollout of CDM Phase 1, assess plans to move to Phase 2, and examine a long-term vision for CDM. He stressed that Congress needs to determine the resources necessary for investment and developing a strategy for that investment. He said proper metrics are needed to evaluate the success of the CDM program. He emphasized providing the authorities, tools, and resources that CIOs need to meet their obligations and get CDM correct.

Representative Gerald Connolly (D-VA) stated the CDM program provides agencies with hardware and software to strengthen the security of federal networks. He said CDM has great potential to secure networks and provide data on network attack surfaces. He emphasized the need to determine who has access to networks. He noted Russian attacks on the energy grid within the previous week. He expressed concern about inadequate funding for CDM and noted the \$237 million requested in FY 2019 gets dispersed between oversight and agency implementation at the Department of Homeland Security (DHS). He

stated agencies also cover funding shortfalls by shifting funds from other IT priorities. He noted the high costs for agencies to maintain legacy systems. He expressed support for finding net new investment in CDM. He asserted the “Modernizing Government Technology (MGT) Act” (P.L. 115-91) could help by allowing agencies to establish working capital funds to reinvest IT savings and transition to cloud computing. He stated the MGT Act also authorized the Technology Modernization Fund (TMF) at \$250 million for FY 2018 and FY 2019. He said once the TMF is established agencies will be able to borrow from the TMF to finance IT projects and enhance the CDM process. He expressed concern about the shortage of qualified federal employees to implement CDM. He stated freezing civilian pay and demeaning the workforce discourage potential new employees.

Department of Energy (DOE) Chief Information Officer Max Everett said that as the DOE’s CIO, he reports directly to the Secretary and Deputy Secretary. He stated DOE has made cybersecurity a priority for the agency’s internal networks and to fulfill their role as the sector specific agency (SSA) for the energy sector. He stated the Secretary and Deputy Secretary fully support the DOE enterprise plan of action and have directed him to move forward with implementing CDM across the agency’s networks. He stressed that CDM is being implemented at DOE National Laboratories, sites, and Power Marketing Administrations (PMA). He said the new model of managed services and automation has presented challenges in the federal workforce. He emphasized the need to find employees with the technical and business processing skills to operate within this new model. He said CDM can drive modernization by identifying and prioritizing legacy systems to be modernized. He stated it is essential that secure network incentives are aligned across the

government and private sector. He expressed support for the collaborative efforts of agencies like DHS and expressed concern that many agencies view CDM as an imposed mandate. He said visibility is just the first step and the next is identifying actionable information. He noted the example of using CDM-like capabilities to find unmanaged cloud services which present risk. He expressed support for the working capital funds and the TMF in the MGT Act. He stated DOE submitted five proposals to the Office of Management and Budget (OMB) for using the TMF.

Department of Veterans Affairs Acting Chief Information Officer Scott Blackburn said that the Department of Veterans Affairs (VA) is replacing the Veterans Information Systems and Technology Architecture (VistA) with a modern electronic health record that will be interoperable with the VA, the Department of Defense (DOD), and ultimately the health care system. He said the VA has not signed the final deal to develop this system but hopes to announce it soon. He stated two weeks ago VA announced a beta version of Lighthouse Lab, an application programming interface (API) management platform that will allow developers to build out a standard set of APIs. He asserted Lighthouse will be the API gateway which will connect the disparate systems to allow information exchange and innovation. He noted the VA Open API Pledge that 11 major health care systems have signed that will to accelerate the mapping of health data to industry standards, including the current and future versions of Fast Healthcare Interoperability Resources (FHIR). He stated VA is expanding tele-help and online scheduling to better serve veterans and is supporting priority efforts and the Forever G.I. Bill (P.L. 115-48). He said VA is pursuing a buy first strategy to use commercial off-the-shelf solutions and is launching cloud-based software to streamline internal processes. He said VA is

improving data center consolidation by closing existing data centers. He emphasized that the VA's enterprise cybersecurity strategy program (ECSP) is helping to guard against cyber threats. He said as of December 2017, VA has secured 90 percent of medical devices with vulnerabilities and achieved 100 percent enforcement of two-factor authentication for privileged users. He noted CDM is a piece of VA's ECSP, and current efforts include the documenting and defining of hardware application security products and settings deployed across the agency.

President's Management Agenda Released

Key Point:

- *As promised in the FY 2019 budget request, the Trump Administration released its Management Agenda that will implement new CAP goals to drive IT modernization, to achieve greater data transparency, and to develop a 21st Century workforce*

This week the Trump Administration released the [President's Management Agenda](#) (Agenda) that "lays out a long-term vision for modernizing the Federal Government in key areas that will improve the ability of agencies to deliver mission outcomes, provide excellent service, and effectively steward taxpayer dollars on behalf of the American people." The Trump Administration articulated the three pillars that will modernize the government for the 21st Century:

- **Modern information technology** must function as the backbone of how Government serves the public in the digital age. Meeting customer expectations, keeping sensitive data and systems secure, and ensuring responsive, multi-channel access to services are all critical parts of the vision for modern Government.

- **Data, accountability, and transparency** initiatives must provide the tools to deliver visibly better results to the public, while improving accountability to taxpayers for sound fiscal stewardship and mission results. Investments in policy, people, processes and platforms are key elements of this transformation and require cross-agency cooperation to ensure an integrated Data Strategy that encompasses all relevant governance, standards, infrastructure and commercialization challenges of operating in a data-driven world.
- **The workforce for the 21st Century** must enable senior leaders and front-line managers to align staff skills with evolving mission needs. This will require more nimble and agile management of the workforce, including reskilling and redeploying existing workers to keep pace with the current pace of change.

The Trump Administration is looking to implement these policy changes through the Cross-Agency Priority (CAP) Goals mechanism, including:

- [Overview](#)
- [Key Performance Indicators](#)
- [Key Drivers of Transformation](#)
 - [IT Modernization](#)
 - [Data, Accountability and Transparency](#)
 - [People - Workforce for the 21st Century](#)
- [Cross-Cutting Priority Areas](#)
 - [Improving Customer Experience](#)
 - [Sharing Quality Services](#)
 - [Shifting From Low-Value to High-Value Work](#)
- [Functional Priority Areas](#)
 - [Category Management](#)

- [Results-Oriented Accountability for Grants](#)
- [Getting Payments Right](#)
- [Federal IT Spending Transparency](#)
- [Improve Management of Major Acquisitions](#)
- [Mission Priority Areas](#)
 - [Modernize Infrastructure Permitting](#)
 - [Security Clearance, Suitability, and Credentialing Reform](#)
 - [Lab-to-Market](#)

GSA and OMB Release E-Commerce Portal Plan

Key Points:

- *The two agencies tasked with developing and establishing a portal through which federal agencies will be able to buy e-commerce goods have submitted their initial implementation plan to Congress*
- *The plan's timeline depends on three statutory changes in the short-term*

Late last week, the Office of Management and Budget (OMB) and the General Services Administration (GSA) submitted the [initial implementation plan](#) for the e-Commerce Portals as directed by Section 846 of the FY 2018 National Defense Authorization Act (NDAA) (P.L. 115-91). The initial implementation plan is dependent on three statutory changes GSA and OMB are recommending that Congress include in the next NDAA, and without these changes, the timeline the agencies present is not feasible.

GSA explained the initial implementation plan “was developed by GSA in close consultation with OMB, identifies opportunities, recommends legislative changes that allow migration to more commercial practices, and defines the approach and timeline for

implementation.” The agencies stated that “[d]ue to the rapidly changing technology and scale of the implementation, OMB and GSA intend to pursue a phased implementation to benefit from the use of commercial e-commerce portals while continuing to identify ways that acquisition can be improved through evolving technology.”

GSA stated that “[i]n support of this initiative, the plan recommends the following legislative changes to simplify and streamline the COTS item buying experience:

- Raise the micro-purchase threshold from \$5,000 for DOD and \$10,000 for civilian Federal Agencies to \$25,000 for purchases through GSA-approved portals, while requiring transactional data be recorded and shared across the Government;
- Revise the statutory definition of ‘commercial e-commerce portal’ to ensure that GSA can include a variety of electronic procurement business models, while enabling a more dynamic and competitive marketplace environment; and
- Amend the application of statutory competition requirements to include the procedures established by the Administrator of General Services for purchasing through the commercial e-commerce portals. A second change is recommended to increase GSA’s flexibility when awarding contracts for commercial e-commerce portals.

GSA stated that “[a] key assumption is that the recommended legislative proposals are passed into law in the FY19 NDAA to allow for the initial rollout to occur later in FY19.”

GSA claimed that “[t]he statutory relief described above is necessary to ensure fully successful implementation of this effort and

would allow for GSA to implement this ahead of the timelines identified in the legislation.” The agencies stated that “GSA and OMB look forward to continue working with the Department of Defense (DOD) (the largest purchaser of COTS items) and agency partners, the supplier community, commercial e-commerce portal providers, and other interested stakeholders in the implementation of this effort.”

GSA stated that it “will meet or exceed the outlined phases identified in the NDAA legislation, which include:

- Phase 1 (90 days): Implementation plan and policy assessment
- Phase 2: (90 days + 1 year) Market Research & Consultation
- Phase 3: (90 days + 2 years) Implementation Guidance
- Phase 4: (by end of FY19) Potential Initial Rollout
- Phase 5: (by end of FY20) Assess and Scale Rollout

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

TRADE

President Trump Announces Section 301 Tariffs on China

Key Points:

- President Trump directed USTR Lighthizer to publish, within 15 days, a list of Chinese goods that should be subject to tariffs.
- He also directed Treasury Secretary Mnuchin to make recommendations on investment restrictions that could go beyond the authority of CFIUS.

On Thursday, President Trump announced tariffs on China based on a Section 301 investigation into Chinese intellectual property (IP) and technology transfer practices. He directed the U.S. Trade Representative (USTR) to publish a proposed list of Chinese goods that should be subject to tariffs. These tariffs will not go into effect until a 30-day notice and stakeholder comment period has been completed. A senior official suggested the tariffs will apply to roughly \$50-\$60 billion of Chinese goods and roughly 1,300 tariff lines, which are likely to be announced in the *Federal Register* as early as next Tuesday. The [USTR fact sheet](#) says there will be 25 percent additional tariffs on products from the “aerospace, information communication technology, and machinery” sectors. The [President’s memorandum](#) also directs the USTR to pursue dispute settlement in the World Trade Organization (WTO) “to address China’s discriminatory licensing practices.” That process began today, as the [USTR challenged certain trade practices and sought WTO consultation](#) with China.

The memorandum also directed Treasury Secretary Steven Mnuchin to “propose executive branch action... to address concerns about investment in the United States directed or facilitated by China in industries or technologies deemed important to the United States.” The Secretary is required to report his progress within 60 days.

Ross and Lighthizer Testify Before Congress, Discuss NAFTA, 232, and 301

Key Points:

- USTR Lighthizer announced, and the White House [later confirmed](#), that Canada, Mexico, Korea, the EU, Australia, Argentina, and Brazil will be temporarily exempt (through May 1)

from 232 tariffs until permanent deals can be made.

- Secretary Ross provided clarity on the process by which specific products can be exempted from 232 tariffs.
- Lighthizer suggested the three NAFTA parties are starting to “converge” on auto rules of origin.

USTR Robert Lighthizer testified before the House Ways and Means Committee on Wednesday and the Senate Finance Committee on Thursday. Ways and Means Chairman Kevin Brady (R-TX) pressed Lighthizer about his proposal to make the North American Free Trade Agreement (NAFTA) investor-state dispute settlement (ISDS) optional for the three parties. Chairman Brady said, “[w]ithout ISDS, Americans’ property is left unprotected against discrimination, foreign seizure, regulatory abuses and other forms of unfair action... This is a key part of passing a strong NAFTA agreement that we’re convinced you’ll negotiate.” USTR Lighthizer repeatedly stated that U.S. sovereignty is compromised by ISDS and suggested it encourages companies to outsource to Mexico. Other lawmakers noted that ISDS was included as a negotiating objective in the 2015 TPA and argued that not including it in NAFTA “would be a direct rebuke to Congress’ explicit direction.” Chairman Brady also urged the Administration to only impose 232 tariffs for “the absolute minimum period” and argued they should sunset after one year.

During the Senate Finance Committee hearing, Chairman Orrin Hatch (R-UT) and Ranking Member Ron Wyden (D-OR) were critical of the Administration for the rollout of the 232 steel and aluminum tariffs. Chairman Hatch said the tariffs are a “significant step in the wrong direction,” and observed, “[t]here is no clarity on country exemptions, and the recently announced process for product exclusions is

prolonged and unnecessarily cumbersome.” Ranking Member Wyden was more supportive of President Trump’s 301 tariff announcement and said he was “encouraged that the Administration is focused on protecting the technologies that China publicly targeted.” Senator Lindsey Graham (R-SC) also endorsed the 301 announcement: “I think it’s long overdue, I congratulate the President for calling China out... His first series of tariffs were too broad... I think these are very much warranted and specific.” Other Senate Republicans expressed concern about the possibility of a trade war with China, specifically regarding the impact this could have on U.S. agriculture. USTR Lighthizer also told the Senate Finance Committee that USTR will begin considering which countries it will pursue bilateral trade agreements with; he suggested Japan, Vietnam, and an African country could be USTR’s first targets for a trade deal.

Commerce Secretary Wilbur Ross also testified before the House Ways and Means Committee on Thursday and provided information on the 232 product exclusion process. “We will be looking for demonstrated manufacturing capability meeting the technical parameters for the specific article in question,” he testified. Secretary Ross went on to explain, “[t]his could include idled capacity that is being brought back online as a committed thing – not as a prospect, not as a possibility – but as a commitment by the U.S. company as well as [one that] will include new, expanded capabilities.” Secretary Ross also confirmed that the Administration is prepared to pursue additional antidumping and countervailing duties (AD/CVD) against countries that attempt to circumvent the tariffs.

President Trump Requests an Extension to Trade Promotion Authority

Key Points:

- President Trump requested a 3-year extension to the Administration’s Trade Promotion Authority (TPA), which is set to expire on June 30.
- Extension is somewhat automatic and is expected, though Congress may use the occasion to remind the Administration it must adhere to TPA objectives.

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.

On Tuesday, President Trump [requested](#) that Congress extend the Administration’s fast-track trade authority until 2021. He cited the Administration’s “determination to use the leverage available to us as the world’s largest economy to open foreign markets, and to obtain more efficient global markets and fairer treatment for American workers” as a reason to extend the authority. Under TPA, a request for an extension is granted unless Congress affirmatively passes a motion of disapproval in one body; and such a resolution of disapproval may not be considered unless it is reported out of either the House Ways and Means or Senate Finance Committees. That procedural step will allow the committees to weigh in on how TPA obligations should be met by the Administration, but actual disapproval appears unlikely at the point, suggested TPA will be extended.

To that point, at a meeting with the Business Roundtable and Farmers for Free Trade, Senate Finance Chairman Hatch stressed the importance of the Administration “ensuring that a modernized NAFTA reflects the negotiating objectives [in TPA].” He said, “Congress will use the extension disapproval process under the Trade Promotion Authority law to emphasize that the Administration must adhere to the TPA negotiating objectives and to encourage the President to seek new agreements with our trading partners.”