

March 24, 2017

Washington Update

This Week in Congress

- **House** – The House passed the “**Small Business Health Fairness Act of 2017**” (H.R. 1101); and the “**Competitive Health Insurance Reform Act of 2017**” (H.R. 372). The House did not vote on the “**American Health Care Act of 2017**” (H.R. 1628).
- **Senate** – The Senate passed **S.J. Res.34**, which repeals the Federal Communications Commission rule relating to “Protecting the Privacy of Customers of Broadband and Other Telecommunications Services” and **H.J. Res. 83**, to disapprove of the Department of Labor rule relating to “Clarification of Employer’s Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness”.

Next Week in Congress

- **House** – The House is expected to vote on the “**Self-Insurance Protection Act**” (H.R. 1304) and the “**Protecting Access to Care Act of 2017**” (H.R. 1215).
- **Senate** – The Senate will vote on cloture on the Protocol to the North Atlantic Treaty of 1949 on the Accession of Montenegro.

TAX

Mnuchin Discusses Tax Reform

Key Points

- *The Secretary of the Treasury says Administration has been designing tax reform proposal “from scratch” for past two months*
- *Administration is not looking at House border adjustment tax “as is”*

The White House will release its tax reform proposal “pretty soon” according to Secretary of the Treasury Steven Mnuchin. He said that they have been working the past two months on the proposal and designing it “from scratch.” Mnuchin stated that there will “absolutely” be tax reform by this coming fall. Regarding the border adjustment tax, a key component of the House Blueprint plan, Mnuchin expressed concern that exporters will be impacted by a stronger dollar, and reported the White House is not looking at the House

Republican proposal “as is.” He said that they are considering carve-outs, noting that the energy sector would be hurt by the House proposal. He explained that the strength of the dollar is important long-term, but reiterated that there would be issues for the economy in the short-term. However, he noted the short-term impact would be for the markets to determine.

Mnuchin reported that there will be changes in how carried interest is taxed, stating “we want to tax hedge funds.” He said it is “absolutely possible” that real estate will be taxed

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differently, emphasizing that they are focused on middle income taxpayers. He called it premature to say if the Trump Administration will propose a 15 or 20 percent corporate tax rate, reporting that they are looking at all options. Mnuchin said that they are looking at certain aspects of the Blueprint “as is” for pay-fors.

ACA Repeal Bill Includes \$999 Billion in Tax Cuts

Key Points

- *If enacted, the cuts would be a significant move towards achieving revenue neutral tax reform*

The House Republican legislation to repeal the Affordable Care Act includes almost \$1 trillion in tax cuts, which would account for about one-third of the House Republican tax reform outline. If ultimately enacted, that change would allow Congressional Republicans that amount of ‘headroom’ in tax reform – so that if they are seeking revenue neutral tax reform they would have a smaller baseline to hit. If not, it is possible that makes revenue neutral tax reform more difficult.

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.

TRADE

White House Expected to Send Congress 90 Day NAFTA Notice Soon

Key Points

- *Briefing indicates that notice of renegotiations are imminent*

The Trump Administration pre-briefed the House Ways and Means Committee and the

Senate Finance Committee on North American Free Trade Agreement (NAFTA) negotiating goals this week, which is a precursor to issuing the 90 day notice of entering renegotiations. It is expected the formal notice to Congress of the Administration’s intent to enter into renegotiations of NAFTA could come very soon.

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

FINANCIAL SERVICES

House Panel Holds Hearing on De Novo Financial Institutions

Key Points:

- *Republicans raised concerns that regulatory burdens are preventing new bank formations and causing community bank consolidation.*

On March 21, the House Financial Services Committee’s Financial Institutions and Consumer Credit Subcommittee held a [hearing](#) entitled “Ending the De Novo Drought: Examining the Application Process for De Novo Financial Institutions.” The hearing focused on the factors affecting the rate of de novo financial institution formations, including regulatory burdens and interest rates. Chairman Blaine Luetkemeyer (R-MO) suggested the de novo process in some cases is managed by “overzealous” examiners “paralyzed” by the

Upcoming Dates

March 30: CBO releases Long-Term Budget Outlook

April 28: FY 2017 CR expires

September 30: FY 2017 ends and FAA extension expires

fear of making mistakes. He noted banks and credit unions making it through the charter process are then faced with an “onslaught” of financial regulations. Luetkemeyer stated from 2000 to 2008 there were more than 1,300 de novo bank charters and 75 new credit union charters granted. He explained from 2010 to 2016 there were only 5 de novo bank charters and 16 new credit union charters.

Ranking Member Lacy Clay (D-MO) stated since the financial crisis there have been relatively few de novo charters. He expressed support for community financial institutions; however, he expressed concern that the “Financial CHOICE Act” would only make the future of small financial institutions much “bleaker.” He suggested the consolidation of banks began over 30 years ago and he suggested that by rolling back the limits on consolidation of banks, the Financial CHOICE Act will most likely further harm small banks. He stated business lending is up 75 percent since the Dodd-Frank Act (DFA) and much of the DFA places more requirements on the larger banks to further level the playing field.

Many Republican members raised concerns that burdensome regulations are impeding de novo financial institutions formations and leading to the closure of small financial institutions. Representative Dennis Ross (R-FL) contended that the Qualified Mortgage (QM) rule is preventing community banks from making mortgage loans.

Ranking Member Lacy Clay (D-MO) and Representatives David Scott (D-GA), Nydia Velazquez (D-NY) and Denny Heck (D-WA) noted that the Federal Reserve has put out research indicating that the largest contributor to the low rate of new bank formation was low interest rates and distressed demand for banking services.

Representative Ed Royce (R-CA) raised concerns with the Durbin Amendment on debit card interchange fees, stating that proponents of it claimed the exemption for low asset institutions would protect community banks and credit unions, but he indicated this has not come to fruition. He asked how the Durbin Amendment has affected decisions on creating new financial institutions, whether the exemption for low asset institutions has been effective, and what services consumers have lost as a result of the Durbin Amendment. FirstCapital Bank of Texas Chairman Ken Burgess (on behalf of the American Bankers Association) said the Durbin Amendment has given money away to another industry, which has negatively affected startups and has provided no benefits for consumers. He said his bank falls under the threshold for the exemption, but their income from interchange fees has declined. He stated that banks have had to increase pricing or eliminate certain products to protect their bottom line.

SEC Approves Rule to Shorten the Settlement Cycle for Trades

Key Points:

- *The SEC approved an amendment to securities rules to shorten the standard settlement cycle from three business days after the trade date (T+3) to two business days after the trade date (T+2).*

At a March 22, [open meeting](#) the Securities and Exchange Commission (SEC) voted unanimously to approve “an amendment to Rule 15c6-1 under the Securities Exchange Act of 1934 to shorten the standard settlement cycle for most broker-dealer transactions from three business days after the trade date to two business days after the trade date.”

Acting Chairman Michael Piowar said that shortening the settlement cycle from T+3 to T+2 is a commonsense change with broad support that is long overdue. He said financial markets have evolved significantly since Rule 15c6-1 was put in place in 1993, with new products and technologies emerging. He emphasized the benefits of moving to T+2, suggesting that it would reduce risk and improve capital efficiency. He said the rule has a compliance date of September 5, 2017, noting that market participants have already begun preparations for that date. He stated that it will be incumbent on market participants to do their respective parts to ensure the market is ready for a smooth transition to T+2.

Commissioner Kara Stein stated that despite advances in the technological realm the final portion of the settlement process is not instantaneous. She described T+3 as severely outdated, noting that much of the world has moved to shorter settlement cycles. She noted that longer settlement cycles are associated with risk and inefficiencies. She said moving to T+2 is a positive step, but more can and should be done. She said technological improvements could enable T+1 and end of the day settlement cycles. She said the Commissioners have directed the staff to report within 3 years on the possibility of moving to a shorter settlement cycle.

SEC Acting Chairman Announces Access Fee Pilot Program Initiative

Key Points:

- *SEC Acting Chairman Michael Piowar announced that he has directed SEC staff to draft a proposed rulemaking to implement a pilot program examining the impacts of different access fee caps on equities trading.*

In a March 23 [speech](#) before Columbia University's Program in the Law and Economics of Capital Markets, Securities and Exchange Commission (SEC) Acting Chairman Michael Piowar gave remarks about the Program's newest project, the "new Special Study of the Securities Markets." In discussing the New Special Study, he also announced that he has directed SEC staff to design an access fee pilot that could be proposed via SEC rulemaking. He stated that:

With Dodd-Frank rulemaking on pause, the Commission will finally be able to put market structure issues at the forefront. The work of this group, and that already done by the Commission's Equity Market Structure Advisory Committee (EMSAC), will be an invaluable contribution to potential market structure reforms.

Piowar noted that the EMSAC has recommended that the SEC conduct an access fee pilot, which would test how various levels of access fee caps under Rule 610 of the Securities Exchange Act of 1934 affect equities trading. He said members of Congress have also encouraged the Commission to act prudently with respect to such a pilot, and that "the key to its success lies in the details of the design."

Piowar explained that an access fee pilot could be designed as a National Market System (NMS) plan or as an SEC rulemaking. He noted that among other differences, "an SEC rulemaking would include a comprehensive economic analysis at the proposal stage, whereas an NMS plan would not." In further explaining his rationale for choosing the SEC rulemaking, he stated:

I have come to believe that the SEC rulemaking process would be more

appropriate for such an important undertaking as the access fee pilot. While it would certainly be more labor-intensive to initiate, it would avoid the inevitable struggles between market participants, each with its own point of view informed by its own business model. Accordingly, I have asked Commission staff to design the specific parameters of an access fee pilot that we can propose via SEC rulemaking. I look forward to being able to bring an access fee pilot proposal up for a Commission vote in the near future and, if we are successful, I encourage each of you to review and submit your feedback through the public comment process.

Piwowar also provided several pieces of “unsolicited advice” as the Program works on its New Special Study. Among other suggestions, he advised on the importance of focusing on incentives, such as asking the following questions:

What incentives underlie the current equity market structure? What gives rise to the complexity of order types and the variety of competing business models? Why are traders directing flow to so-called “dark” pools rather than “lit” markets? I have no doubt there are numerous market-based and government-based incentives at play. Once those are clear, you will be better poised to consider whether the current system of regulation is supportive of or burdensome to markets.

House Panel Holds Hearing on the JOBS Act

Key Points:

- *The hearing examined the effectiveness of JOBS Act provisions such as crowdfunding, Regulation A+, and confidential filing.*

On March 22, the House Financial Services Committee’s Capital Markets, Securities, and Investment Subcommittee held a [hearing](#) entitled “The JOBS Act at Five: Examining Its Impact and Ensuring the Competitiveness of the U.S. Capital Markets.” Subcommittee Chairman Bill Huizenga (R-MI) said the JOBS Act consisted of six bills which originated in the House Financial Services Committee. He stated that these bills were meant to lift burdensome securities regulations for smaller companies. He noted that Securities and Exchange Commission (SEC) Acting Chairman Michael Piwowar has said the JOBS Act has forced the SEC to look at capital formation in a new way. He stated that the JOBS Act was meant to remedy the SEC’s inaction on capital formation. Huizenga said the SEC’s implementation of the JOBS Act had languished, and he expressed concern that the SEC prioritized politicized regulations, such as the conflict minerals and pay ratio rules, over facilitating capital formation. He stressed the need to build on the JOBS Act and further modernize securities regulations.

Ranking Member Carolyn Maloney (D-NY) noted that she was a sponsor of the JOBS Act, but stated that the Committee should examine whether Regulation A+ and Regulation Crowdfunding are working as intended, if they have created any investor protection problems, and if any improvements are needed. She contended that the data indicates that these regulations are working broadly as intended, though there is room for improvement. She said crowdfunding is typically being used by companies with no other way to raise capital and usually only to raise a small amount. She noted that the median amount raised through

crowdfunding is \$171,000. Maloney said Regulation A+ is being used by a wider range of companies, including both small startups and larger companies. She suggested that Regulation A+ is being used as a supplement to other funding methods. She expressed concern that the Financial Industry Regulatory Authority (FINRA) has already had to terminate one crowdfunding portal for allowing several fraudulent companies to offer securities on their platform.

Representative Randy Hultgren (R-IL) asked if venture exchange would improve liquidity and price discovery for small company securities, and whether “intelligent” tick sizes would improve liquidity for these securities. He also asked about the results of the tick size pilot program. NASDAQ OMS Executive Vice President and General Council Edward Knight said it is too early to assess the tick size pilot program, though it does appear additional liquidity is being generated. He stated that the venture exchange bill had important features, noting that the current market does not work for small cap companies. He said having small cap stocks trade across 11 exchanges and 40 dark pools fragments liquidity. He said the venture exchange bill would allow the listing company to aggregate liquidity on one market and allow the exchange to adjust the tick size. He said the Saudi Arabian stock exchange has intelligence tick sizes, and that NASDAQ petitioned the SEC on intelligent tick sizes, but has not received a response.

Senate Banking Committee Holds Hearing on Nomination of Jay Clayton to be SEC Chairman

Key Points:

- *Republicans generally stressed the need to reduce regulatory burdens in order to expand*

the IPO market and promote capital formation.

- *Some Democrats expressed concern that Clayton’s conflicts of interest could impede the SEC’s ability to engage in enforcement.*

On March 23, the Senate Banking Committee held a [hearing](#) to consider the nomination of Jay Clayton to be Chairman of the Securities and Exchange Commission (SEC). Chairman Mike Crapo (R-ID), in a [statement](#), said Clayton has extensive experience in the capital markets, noting that Clayton has said that capital formation will be one of his main areas of focus. He stressed the need to help companies find ways to go public. Crapo said the SEC is tasked with ensuring that securities market rules are still appropriate, suggesting that they should do retrospective reviews. He also emphasized the need for the SEC to conduct robust cost benefit analysis.

Ranking Member Sherrod Brown (D-OH) raised concerns with President Donald Trump’s selection of multiple Goldman Sachs officials for his economic team. He said Americans are worried that the markets are rigged against them. He stated that financial advisers should be required to put their clients’ interests first. He expressed opposition to removing protections against fraud and abuse. Brown suggested that Clayton spent his career defending Wall Street, which could create a situation where Clayton would have to recuse himself too often. He expressed concern that Clayton’s prior roles representing Wall Street firms pose conflicts of interest for the position of SEC chairman. He also emphasized the importance of the pay ratio rule, the fiduciary rule, the political expenditure disclosure rule, and resource disclosure rules.

Several Democratic Senators raised concerns that Clayton’s experience as a securities lawyer

would create conflicts of interest and impede his ability to participate in enforcement proceedings. Senator Elizabeth Warren (D-MA) suggested that Wall Street companies could hire Clayton's former firm, Sullivan & Cromwell, in order to force Clayton to recuse himself and avoid enforcement. Clayton responded that his recusal would not mean that companies would avoid enforcement. Warren also raised concern with Carl Icahn's role in the Trump Administration, noting that Icahn is advising the President on regulatory reform while investing in companies which would be affected by these reforms.

Crapo and several other Republican Senators raised concerns with the decline in the number of IPOs in the U.S. They suggested that this decline is a result of increasing regulatory costs associated with going public, and they urged Clayton to work to reduce regulatory burdens and promote capital formation. Clayton stated that it should be less costly upfront to become a public company. He stated that he would like to see more companies go public so more people have the opportunity to participate in growth.

Crapo also urged Clayton to continue the SEC's equity market structure review. Clayton suggested that there should be a constant assessment of whether the market is working and agreed that the SEC should continue its equity market structure review. Senator Mark Warner (D-VA) recommended that the SEC move forward with pilot program on the maker-taker model.

House Financial Services Panel Considers the Structure of the CFPB

Key Points:

- *House Financial Services Oversight and Investigations Subcommittee discussed the*

design of the CFPB and whether its current structure is constitutionally sound.

- *Republican Subcommittee Members expressed concerns over the lack of accountability of the CFPB and lack of Congressional oversight.*

On March 21, the House Financial Services Committee's Oversight and Investigations Subcommittee held a [hearing](#) entitled "The CFPB's Unconstitutional Design." The hearing focused on the structure of the Consumer Financial Protection Bureau (CFPB), whether the proper "checks and balances" are in place for the CFPB, whether the President can remove the CFPB Director, and the *PHH Corp. v. CFPB* court case. Chairman Ann Wagner (R-MO) said the Obama Administration showed a disregard for the Constitution in creating the CFPB and Congress must engage in appropriate checks and balances to restore accountability. She said the CFPB exemplifies a "Washington knows best" mindset and suggested the CFPB needs to be brought back under the appropriations process. Ranking Member Al Green (D-TX) said Republicans are abusing their power by siding with a mortgage company in a pending litigation (*PHH Corp v. CFPB*).

Several Members asked how the structure of the CFPB could be improved. Gibson, Dunn & Crutcher LLP Partner Theodore Olson stated that the CFPB should be brought back under Congressional oversight through the appropriations process and the Director should be under the oversight of the President as an Executive Branch officer. Olsen suggested the agency should be structured like other Executive Branch agencies. Chairman Ann Wagner asked whether the CFPB Director should be removable at will. University of Virginia School of Law Professor Saikrishna Prakash stated the CFPB Director should be removable by the President. He noted the

Supreme Court has been unclear what “for cause” actually means. Constitution Accountability Center Chief Counsel Brianne Gorod suggested the current removal provisions are constitutional and should not be changed.

Senate HELP Committee Considers the Nomination of Alex Acosta to be Secretary of Labor

Key Points:

- *Republican Committee Members expressed concerns over job creation in the U.S. and the burdens created by Department of Labor regulations such as the overtime rule, the “joint employer” rule, and the fiduciary duty rule.*
- *Alex Acosta stated the Department of Labor has been instructed by the President to review the fiduciary duty rule. He suggested the rule goes beyond addressing the standard of conduct for investment advisers.*

On March 22, the Senate Health, Education, Labor and Pensions Committee held a [hearing](#) on the nomination of Alex Acosta to be Secretary of Labor. Chairman Lamar Alexander (R-TN) stated too many of the federal government’s actions have impeded job creation and employment. He noted the influx of major rules from the Department of Labor (DOL) such as the overtime rule, the fiduciary rule, the “joint employer” rule, and the EEO-1 form which all impact employment. He stated there is a need to create training programs to help people keep pace with these changes and he suggested a strong Secretary of Labor must focus on these issues. Ranking Member Patty Murray (D-WA) stated workers have made it clear that they want a Secretary of Labor who will stand up for their rights. She expressed serious concerns over Acosta’s nomination, questioning his commitment to defending the rights of all workers.

Several Senators raised questions about the Department of Labor’s overtime rule. Acosta stated that it is a “shame” that it has taken so long for this rule to be adjusted because that makes the impacts that much larger. When asked, he stated that workers who earn overtime pay should receive it but he cautioned that he will have to consider the current litigation on this issue and whether the Secretary of Labor has the authority to implement a rule with such a large dollar threshold. When asked about job creation and whether certain programs will be cut under the President’s proposed 20 percent budget cut, Acosta stated he would have to look at all of the programs to determine their rates of return. He suggested that across the board cuts would not be appropriate nor would cuts to specific programs. He stated that cuts to specific programs in specific localities might be made based on the returns being achieved in that locality. Senator Elizabeth Warren (D-MA) noted the fiduciary duty rule is supposed to go into effect soon, yet President Trump is working on a 60 day delay for the April 10 implementation date. She asked whether Acosta will delay that rule. Acosta stated there is an Executive Order asking the DOL to look at the fiduciary rule, and if any of the criteria set out in the Executive Order are met the DOL is instructed to repeal and rewrite the rule. He suggested the rule goes beyond addressing the standard of conduct for investment advisers.

House Judiciary Panel Discusses the Financial Institution Bankruptcy Act

Key Points:

- *The House Judiciary Committee’s Subcommittee on Regulatory Reform, Commercial and Antitrust law discussed the Financial Institution Bankruptcy Act, which*

has been reintroduced this Congress after having passed the House in the last Congress.

- *The Financial Institution Bankruptcy Act would utilize a “single point of entry” process by which assets are transferred to a bridge company so that the subsidiaries of the entity can continue to operate during the bankruptcy proceedings.*

On March 23, the House Judiciary Committee’s Regulatory Reform, Commercial and Antitrust Law Subcommittee held a [hearing](#) on the “The Financial Institution Bankruptcy Act of 2017” ([H.R. 1667](#)), which would “amend title 11 of the U.S. code in order to facilitate the resolution of an insolvent financial institution in bankruptcy.” The hearing focused on the bankruptcy process created under the bill, the transfer of assets to a bridge company, and whether any additional changes are needed to the bill. Chairman Tom Marino (R-PA) stated last Congress the Financial Institution Bankruptcy Act (FIBA) passed the House under suspension of the rules and the Committee will build on last year’s bill while considering whether any additional changes are needed. He explained that the bill creates a system under which a large financial institution can be resolved using the bankruptcy code. Ranking Member David Cicilline (D-RI) stated bankruptcy is the preferred method under the DFA, but he suggested the current bankruptcy code is not adequate to deal with resolution of these large financial institutions. He explained this bill will improve the bankruptcy system for large financial banks.

When asked about concerns with the single point of entry system Kirkland & Ellis, LLP Partner Stephen explained systemically important financial institutions (SIFIs) have constructs which do not facilitate bankruptcy, but the single point of entry helps deal with this. He stated the filing determination and the

transfer determination are subject to court oversight which is critical. When asked whether the Lehman collapse would have happened if FIBA were in place, Stanford University Professor John Taylor stated that under FIBA a new firm would have been created over the weekend with no contagion. Marino noted that concerns have been raised over the two day window for the transfer of assets. He asked whether this window is too small. U.S. District of Delaware Bankruptcy Judge Mary Walrath stated that critical filings are made on the first day and the judges are used to working within tight timelines. She suggested that more judges be designated so that there are two in each circuit.

Senate Banking Committee Requests Proposals to Foster Economic Growth

Key Points:

- *Chairman Mike Crapo (R-ID) and Ranking Member Sherrod Brown (D-OH) request proposals to promote economic growth and allow consumers to better participate in the economy.*

On March 20, Senate Banking Committee Chairman Mike Crapo (R-ID) and Ranking Member Sherrod Brown (D-OH) jointly announced a request for “legislative proposals to increase economic growth.” A [press release](#) put out by the Committee stated that they will be collecting proposals from March 20 to April 14. The press release noted that “the submissions should clearly identify three to five priority proposals that will promote economic growth and/or enable consumers, market participants and financial companies to better participate in the economy.” The release requested that each proposal include: (1) “Brief description of the proposal;” (2) “Impact on economic growth;” (3) “Impact on the ability of consumers market participants and financial

companies to participate in the economy;” (4) “Legislative language; and” (5) “Other background material as appropriate.”

Upcoming Hearings and Events

March 28

Financial Institutions: The Senate Banking Committee will hold a hearing entitled, “Fostering Economic Growth: The Role of Financial Companies.” Witnesses will include: The Honorable Robert Heller, Former Governor, Board of Governors of the Federal Reserve System; The Honorable Donald Powell, Former Chairman, Federal Deposit Insurance Corporation; The Honorable William Spriggs, Professor of Economics at the Howard University and Chief Economist of AFL-CIO; and Ms. Deyanira Del Rio, Co-Director of the New Economy Project.

SIFI Designation Process: The House Financial Services Committee’s Subcommittee on Oversight and Investigations will hold a hearing entitled, “The Arbitrary and Inconsistent Non-Bank SIFI Designation Process.” Witnesses will include: Dr. Douglas Holtz-Eakin, President of the American Action Forum; Dr. Paul Kupiec, Resident Scholar at the American Enterprise Institute; Professor David Zaring, Associate Professor at The Wharton School, University of Pennsylvania; and Alex Pollock, Distinguished Senior Fellow at R Street Institute.

Bank Lending: The House Financial Services Committee’s Subcommittee on Financial Institutions and Consumer Credit will hold a hearing entitled, “The State of Bank Lending in America.” Witnesses will include: Scott Heitkamp, President and Chief Executive Officer of ValueBank Texas, on behalf of the Independent Community Bankers of America; Holly Wade, Director at the National

Federation of Independent Businesses (NFIB); David Motley, President of Colonial Companies, on behalf of the Mortgage Bankers Association; and Michael Calhoun, President of the Center for Responsible Lending.

FDIC Advisory Committee on Community Banking:

The Federal Deposit Insurance Corporation (FDIC) Advisory Committee on Community Banking will meet. The agenda includes: community banking initiative update; the Handbook for Organizers of De Novo Institutions; the report to Congress on regulatory review under the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA); credit risk trends and supervisory expectations; and the Youth Savings Pilot and symposium.

March 29

Volcker Rule: The House Financial Services Committee’s Subcommittee on Capital Markets, Securities, and Investment will hold a hearing entitled, “Examining the Impact of the Volcker Rule on the Markets, Businesses, Investors, and Job Creators.”

March 30

CFPB Credit Union Advisory Council: The Consumer Financial Protection Bureau (CFPB) will hold a meeting of its Credit Union Advisory Council. The Council will discuss the Bureau’s Requests for Information on alternative data and consumer access to financial records.

Secretary of Labor Nomination: The Senate Health, Education, Labor and Pensions Committee will meet to vote on the nomination of Alexander Acosta to be Secretary of Labor.

April 5

Equity Market Structure Advisory Committee: The Securities and Exchange Commission (SEC) will hold a meeting of its Equity Market Structure Advisory Committee (EMSAC). The meeting will focus on potential recommendations and updates from the four subcommittees.

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

Administration Delays Energy and Environmental Regulations

Key Points:

- *This week, the Department of Energy and Environmental Protection Agency took action to extend the delay in effective dates of regulations promulgated in the final weeks of the Obama Administration.*
- *House Energy and Commerce Committee Democrats have challenged the actions, claiming that agencies' actions violate the Administrative Procedure Act.*

Earlier this week, the Environmental Protection Agency (EPA) and Department of Energy further postponed the effective dates of regulations that were initially delayed to March 21, under the Trump Administration's directive to federal agencies on pending regulations and final rules that had not yet become effective as of January 20. This action was directed through a [memorandum](#) issued by White House Chief of Staff Reince Priebus on January 20, which directed federal departments and agencies to delay the effective date of any rule published in the Federal Register that was not yet effective for a period of 60 days following issuance of the memo. Congressional Democrats have

raised objections to the EPA and Department of Energy actions announced this week.

On March 20, the EPA published a [final rule](#) to further delay the effective date of five rules published by the Obama Administration in December, 2016, and January, 2017:

- The [final rule](#) titled "Addition of a Subsurface Intrusion Component to the Hazard Ranking System", which was published on January 9, 2017.
- The [final rule](#) titled "Formaldehyde Emission Standards for Composite Wood Products", which was published on December 12, 2016.
- The [final rule](#) titled "Revisions to the Guideline on Air Quality Models: Enhancements to the AERMOD Dispersion Modeling System and Incorporation of Approaches to Address Ozone and Fine Particulate Matter", which was published on January 17, 2017.
- The [final rule](#) titled "Pesticides; Certification of Pesticide Applicators", which was published on January 4, 2017.
- The [final rule](#) titled "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation/ Termination or Suspension of Permits; Procedures for Decisionmaking", which was published on January 9, 2017.

On March 21, the Department of Energy published the following final rules postponing the effective dates of rules issued in the last weeks of the Obama Administration:

- A [final rule](#) delaying the effective date of the [final rule](#) titled "Energy

Efficiency Standards for the Design and Construction of New Federal Low-Rise Residential Buildings’ Baseline Standards Update”, which was published on January 10, 2017.

- A [final rule](#) delaying the effective date of the [final rule](#) titled “Energy Conservation Program: Test Procedures for Central Air Conditioners and Heat Pumps”, which was published on January 5, 2017.
- A [final rule](#) delaying the effective date of the [final rule](#) titled “Energy Conservation Program: Test Procedure for Walk-in Coolers and Walk-in Freezers”, which was published on December 28, 2016.
- A [final rule](#) delaying the effective date of the [final rule](#) titled “Energy Conservation Program: Test Procedures for Compressors”, which was published on January 4, 2017.
- A [final rule](#) delaying the effective date of the [final rule](#) titled “Energy Conservation Program: Energy Conservation Standards for Ceiling Fans”, which was published on January 19, 2017.

House Energy and Commerce Committee Democrats have argued that both agencies’ actions violate the Administrative Procedure Act. A [letter](#) sent to Office of Management and Budget Director (OMB) Mick Mulvaney on March 20, by House Energy and Commerce Committee Ranking Member Frank Pallone (D-NJ), Energy Subcommittee Ranking Member Bobby Rush (D-IL), Environment Subcommittee Ranking Member Paul Tonko (D-NY), and Representative Doris Matsui (D-CA), asks for immediate withdrawal of the EPA and Department of Energy rules delaying implementation of the Obama Administration regulations. The Democrats argue that “[t]hese

‘final rules’ are not valid and stand to create dangerous confusion among regulated entities if they are not withdrawn.” Citing the U.S. Court of Appeals decision in *NRDC v. Abraham*, the letter declares that “[j]udicial precedent makes clear that changing the effective date of a rule is a substantive amendment of that rule, and is therefore subject to all of the requirements for rulemaking – including publication thirty days before the effective date and notice and comment.” The Democrats also pose questions for Mulvaney, including a request for correspondence between EPA Administrator Scott Pruitt with industry trade associations including the American Petroleum Institute and the National Association of Manufacturers.

Energy and Commerce Committee Reviews Ozone Legislation

On March 22, the House Energy and Commerce Committee’s Environment Subcommittee held a hearing on the “Ozone Standards Implementation Act of 2017” ([H.R. 806](#)).

As described in the Committee’s staff [memo](#) for the hearing, the “Ozone Standards Implementation Act” would:

- Allow more time for implementation of the 2015 ozone National Ambient Air Quality Standards (NAAQS), allowing states until October 26, 2024;
- “[E]xtend the current NAAQS review cycle for criteria pollutants from 5 years to 10 years”;
- Postpone the next revision of ozone standards until at least October 26, 2025;
- Require that the Environmental Protection Agency (EPA) publish “implementing regulations and guidance” concurrently with

promulgation of revised NAAQS to better assist states in implementation; and

- Require studies and reports on foreign sources of air pollution, and the atmospheric formation of ozone.

Representative Pete Olson (R-TX) introduced H.R. 806 on February 1, 2017. The EPA most recently revised the ozone NAAQS through a rulemaking process that included the November 25, 2014 publication of a [Notice of Proposed Rulemaking \(NPRM\)](#) to tighten the NAAQS from 75 parts per billion (ppb) to 65-70 ppb. On October 26, 2015, EPA published the [final rule](#), which set the NAAQS for ground-level ozone to 70 ppb.

In his [opening statement](#) at the March 22 hearing, Environment Subcommittee Chairman John Shimkus (R-IL) remarked that the “Ozone Standards Implementation Act makes practical reforms to the Clean Air Act to streamline implementation of national air quality standards by state and local authorities.” He asserted that, under current law, “state and local regulators expend resources and time keeping up with a never-ending succession of rules...[which] undermines their ability to focus on assessing the performance of existing public-health measures.”

Full Committee Ranking Member Frank Pallone (D-NJ) argued in his [opening statement](#) that the legislation is “a compilation of misguided proposals that weaken or delay the protections in the law – strategies that won’t make air pollution magically go away.”

Committee Approves Nuclear Energy Legislation

Key Points:

- *A reauthorization of NRC is marked up and reported out of committee*

On March 22, the Senate Environment and Public Works Committee voted 18-3 to favorably report the “Nuclear Energy Innovation and Modernization Act” ([S. 512](#)) to the Senate. In his [opening statement](#), Chairman John Barrasso (R-WY) declared that the bill “is comprehensive, innovative nuclear energy legislation...[that] seeks to modernize the Nuclear Regulatory Commission by providing a flexible regulatory framework for licensing advanced nuclear reactors, while maintaining the ability of the commission to assess a variety of technologies and still meet its mission of ensuring safety and security.” The Committee held a [hearing](#) on the legislation on March 8, 2017.

State Department Approves Keystone XL Border-Crossing Permit

Key Points:

- *On Friday morning, the State Department approved the cross-border permit application submitted by TransCanada to construct the Keystone XL Pipeline.*
- *The company submitted its original application for the project in 2008, and President Obama rejected a later application in 2015.*
- *In his first days in office, President Trump invited TransCanada to resubmit the application and directed the Department of State to review it within sixty days of its receipt.*

On March 24, the Department of State announced that it approved the application by TransCanada to construct the Keystone XL Pipeline across the U.S.-Canada border. A [press release](#) issued by the Department stated that it “reviewed TransCanada’s application in accordance with Executive Order 13337 (April

30, 2004) and the January 24, 2017 Presidential Memorandum Regarding Construction of the Keystone XL Pipeline.” The Department added that in making the decision finding “that issuance of this permit would serve the national interest, the Under Secretary considered a range of factors, including but not limited to foreign policy; energy security; environmental, cultural, and economic impacts; and compliance with applicable law and policy.”

On January 24, 2017, President Donald Trump issued a [memorandum](#) to the Secretaries of State, Interior, and Army directing prompt consideration of an application by TransCanada for a border-crossing permit. The memorandum 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”.

Upcoming Hearings and Events

March 28

Water Resources Legislation: The Senate Environment and Public Works Committee will hold a [hearing](#) on: “a bill to amend the Federal Water Pollution Control Act to provide

for technical assistance for small treatment works” ([S. 518](#)); the “Water Infrastructure Flexibility Act of 2017” (S. 692); and the “Long Island Sound Restoration and Stewardship Act” (S. 675).

Dependence on Foreign Minerals: The Senate Energy and Natural Resources Committee will hold a [hearing](#) on “the United States’ increasing dependence on foreign sources of minerals and opportunities to rebuild and improve the supply chain in the United States.”

Grid Cybersecurity: The Senate Energy and Natural Resources Committee’s Energy Subcommittee will hold a [hearing](#) “to examine the cybersecurity threats to the U.S. electric grid and technology advancements to minimize such threats and to receive testimony on [S. 79](#), the Securing Energy Infrastructure Act.”

Endangered Species Act and Infrastructure: The House Natural Resources Committee’s Oversight and investigations Subcommittee will hold a [hearing](#) titled “ESA Consultation Impediments to Economic and Infrastructure Development”

Department of Energy Research: The House Science, Space, and Technology Committee will hold a [hearing](#) titled “Prioritizing Basic Research at the Department of Energy”. Scheduled witnesses are: Dr. Steven Koonin, Director, Center for Urban Science and Progress, New York University; Dr. Venky Narayanamurti, Benjamin Peirce Research Professor of Technology and Public Policy, John A. Paulson School of Engineering and Applied Sciences, Harvard University; and Nicolas Loris, Thomas A. Roe Institute for Economic Policy Studies, The Heritage Foundation.

Office of Fossil Energy: The Natural Gas Roundtable will host a [luncheon](#) with guest speaker Robert Smith, Deputy Assistant Secretary for Oil and Natural Gas for the Department of Energy's Office of Fossil Energy.

March 29

Cold War Cleanup: The Senate Environment and Public Works Committee will hold a [hearing](#) titled "Cleaning up our nation's Cold War legacy sites".

Energy Tax Policy: The House Energy and Commerce Committee's Energy Subcommittee will hold a [hearing](#) titled "Federal Energy Related Tax Policy and its Effects on Markets, Prices, and Consumers". A Committee [press release](#) notes that "the tax code has played a significant role in driving energy policy by providing targeted incentives for fossil fuels, nuclear power, renewable energy, and energy efficiency technologies". According to the press release, the hearing is intended to "examine the history of energy-related tax policies and their effect on energy and electricity markets, prices, and most importantly on consumers."

Climate Science: The House Science, Space, and Technology Committee will hold a [hearing](#) titled "Climate Science: Assumptions, Policy Implications, and the Scientific Method". Scheduled witnesses are: Dr. Judith Curry, President, Climate Forecast Applications Network, and Professor Emeritus, Georgia Institute of Technology; Dr. John Christy, Professor and Director, Earth System Science Center, NSSTC, University of Alabama at Huntsville and State Climatologist, Alabama; Dr. Michael Mann, Professor, Department of Meteorology and Atmospheric Science, Pennsylvania State University; and Dr. Roger

Pielke Jr., Professor, Environmental Studies Department, University of Colorado.

March 30

Alaska Infrastructure, Energy, and Minerals: The Senate Energy and Natural Resources Committee will hold a [hearing](#) on "the potential for infrastructure improvements to create jobs and reduce the cost of living through all-of-the-above energy and mineral production in Alaska."

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

DOD Budget and Readiness Hearing

Key Points:

- *Secretary of Defense and Chairman of the Joint Chiefs of Staff testify for the first time on the FY 2017 supplemental and FY 2018 budget requests*
- *Mattis explains his plan to modernize and increase readiness of the force*

On March 22, the Senate Appropriations Committee's Defense Subcommittee held a hearing entitled "Defense Readiness/Budget Update" to review the readiness levels and the budgetary situation at the Department of Defense (DOD). Topics discussed included, but were not limited to: (1) Russia & NATO; (2) Middle East & ISIS; (3) Asia-Pacific; (4) Scope of Strategic Challenges; (5) Air Fleet; (6) Shipyards; (7) Servicemen and their Families; (8) Nuclear Deterrent; (9) Soft Power and Budgetary Cuts to Agencies; (10) Budgetary Restrictions; (11) Funding Request; (12) Readiness; (13) Civilian Hiring Freeze.

Chairman Thad Cochran (R-MS) in a [statement](#) said the fiscal year (FY) 2017 DOD Appropriations agreement has been approved by the House of Representatives. He said he looks forward to the Senate completing work on that bill in the coming weeks. He noted the fiscal year is well under way and the members of the Defense Subcommittee understand the importance of enacting defense appropriations legislation. He stated "as we complete our work on the 2017 defense appropriations agreement, we also recognize that a request for additional appropriations in FY 2017 has been submitted to Congress." He welcomed comments from the witnesses on the budget amendment and the submission for FY 2018. He said he is ready to hear from witnesses on priorities and efforts to increase military readiness and strengthen the DOD.

Ranking Member Dick Durbin (D-IL) in a [statement](#) said the Trump Administration has proposed \$30 billion in additional defense spending: \$25 billion to rebuild readiness, and \$5 billion to increase spending on Afghanistan and the counter-Islamic State of Iraq and the Levant (ISIL) campaign. He stated he has concerns with this proposal. He explained he believes the proposal does little to restore the

readiness levels of American armed forces in the short term. He cited "only \$8 billion is for near-term training and maintenance activities." He said he is also concerned that the \$5 billion in Overseas Contingency Operations (OCO) funding is being requested without a strategy to support it. He said he hopes the witnesses can provide insights on what the President's counter-ISIL strategy may be. He added the Administration's proposal does not address the issue of sequestration. He contended that if "Congress enacted this package tomorrow as-is, as the Office of Management and Budget (OMB) has submitted it, it would trigger an immediate across-the-board sequestration of military programs." He stated it is clear that there are holes in America's armed forces that need to be fixed and he hopes the witnesses can provide explanation for why they believe this spending package needs to be passed.

Secretary of Defense James Mattis said the security situation facing the U.S. has become more challenging and looming threats have outstripped the level of resources that have been allocated to defense. He said the \$30 billion budget request in FY 2017 will help address the worsening security situation confronting the U.S. around the globe. He said the budget request is important but must also be accompanied by continuity of effort that is not possible under another continuing resolution. He contended the last six years of sequestration's effects, budget cuts, and repeated continuing resolutions have damaged the U.S. military's readiness to a degree that will take time to recover. He added the FY 2017 budget request represents the first step in a three-phased multi-year effort to restore readiness. Mattis explained in FY 2017, "we will fill in readiness gaps that must be initiated this year; in FY 2018, we will seek to balance the force with a budget that precludes further damage stemming from continuing resolutions

and sequestration; and by FY 2019, I expect our force growth will be on track and sustained with high quality troops supported by equipment programs, permitting us to adapt to the changing character of modern war.” He said the request represents a consolidated effort to fill current warfighting readiness needs, including \$25 billion of additional funding for maintenance, spare parts, training time, flying hours, munitions stocks, and manpower, as well as funding to support the services’ highest-priority unfunded requirements. He noted the request also includes \$5 billion to accelerate the campaign to defeat ISIL, address emerging requirements for Operation Freedom’s Sentinel, and provide support to other global counterterrorism operations.

House OGR Hearing on DBB

Key Points:

- *Members examined a report commissioned and then allegedly suppressed by the Pentagon that pointed to over \$125 billion in waste and bloat*

On March 21, the House Oversight and Government Reform Committee held a [hearing](#) entitled “\$125 Billion in Savings Ignored: Review of DOD’s Efficiency Study” to discuss the findings from a Defense Business Board (DBB) study which concluded that the Department of Defense (DOD) could save \$125 billion by instituting operational reforms and reducing “back-office” (non-combat) operations. The Committee also sought to investigate any deliberate suppression of DBB’s findings, as well as DOD’s progress in implementing necessary human resource and administrative cuts. Topics discussed included, but were not limited to: (1) DBB Report; (2) DOD Wasteful Spending; (3) Information Technology (IT); (4) Trump Administration’s Budget; and (5) DOD Culture.

Chairman Jason Chaffetz (R-UT) said that the DOD efficiency report concluded that reducing funding for DOD back-office functions could save money. He stated that the DOD hid the report. He said that the growing use of government contractors was a cause for money waste. He said that money waste reduced the efficiency of the U.S.’s armed services.

Ranking Member Elijah Cummings (D-MD) said that the DOD was tasked with defending the U.S. He stated that it was the Committee’s duty to ensure that funding was used effectively. He said that the funds used ineffectively by the DOD could have been used to support other military and non-military programs. He remarked that thirty-one Committee members had signed a letter requesting information about the DOD’s report. He stated that Senate Armed Services Committee Chairman John McCain (R-AZ) and House Armed Services Committee Chairman Mac Thornberry (R-TX) had released a joint statement condemning the DOD’s wasteful spending. He said DOD waste was not new. He remarked that the DOD was the only federal agency to never pass an independent audit. He stated that President Donald Trump’s budget request ignores the billions that could be saved by making the DOD more efficient. He said that Trump’s budget cuts back on programs that advance the U.S.’s domestic and foreign interests. He said that Trump’s budget endangers the U.S.’s national security and noted that Trump’s budget negatively impacts poor communities by cutting back on supportive programs.

Department of Defense Acting Deputy Chief Management Officer David Tillotson III said that the DOD did not suppress the report. He remarked that the report was publicly available and discussed with Members of Congress. He stated that the DOD undertook two actions to

create the report, including: (1) Contracting Ryan Consulting to identify costly back-office functions that could be made more efficient; and (2) chartering the DBB to create a plan to reduce back-office costs. He said that the DOD had taken many steps towards becoming more efficient in the past. He said that there were several challenges to making the DOD more efficient. He said that DOD building leases had been allowed to lapse, a problem state delegations were slow to respond to. He noted that the DOD needed a Base Realignment and Closure (BRAC) round, but that more actions needed to be taken to make the DOD more efficient.

Center of American Progress Senior Fellow Dr. Lawrence Korb said that revelations about the DOD's wasteful spending came at a time of proposals to increase U.S military spending. He remarked that the Overseas Contingency Operations (OCO) accounts had been used to fund items from the base budget. He said that the Goldwater-Nichols Reform Act was successful at improving the DOD's effectiveness. He noted that the Act empowered the Chairman of the Joint Chiefs of Staff (JCS) to increase their number of staff. He said that empowering the Chairman of the JCS did not result in layoffs in the Service Chiefs' offices, however. He stated that the Act resulted in a net increase of DOD employees. He stated that when the Defense Intelligence Agency (DIA) and Defense Logistics Agency (DLA) were created, the intention was for these agencies to transfer their responsibilities to a unified organization. He noted that neither the DIA nor DLA did this by laying off workers. He said approving Trump's defense budget request would not improve the effectiveness of the DOD.

Upcoming Hearings and Events

March 28

FY 2017 Supplemental Request: The Senate Armed Services Committee will hold a [closed hearing](#) titled "Department of Defense Worldwide Policy and Strategy and the Fiscal Year 2017 Defense Supplemental Budget Request."

Iran: The Senate Foreign Relations Committee will hold a [hearing](#) titled "The View from Congress: U.S. Policy on Iran."

CENTCOM: The House Appropriations Committee's Defense Subcommittee will hold a [closed hearing](#) titled "US Central Command Hearing."

Russia: The House Armed Services Committee will hold a [hearing](#) titled "Military Assessment of Russian Activities and Security Challenges in Europe."

Navy Fighters: The House Armed Services Committee's Tactical Air and Land Forces Subcommittee will hold a [hearing](#) titled "Naval Strike Fighters—Issues and Concerns."

March 29

Defense Health Programs: The Senate Appropriations Committee's Defense Subcommittee will hold a [hearing](#) titled "Defense Health Program & Military Medicine Funding."

Defense Industrial Base: The Senate Armed Services Committee's Readiness and Management Support Subcommittee will hold a [hearing](#) titled "Health of the Department of Defense Industrial Base and its Role in Providing Readiness to the Warfighter."

Modernization: The Senate Armed Services Committee's Airland Subcommittee will hold a [hearing](#) titled "Air Force Modernization."

U.S.-Mexico: The Senate Foreign Relations Committee’s Western Hemisphere, Transnational Crime, Civilian Security, Democracy, Human Rights, and Global Women’s Issues Subcommittee will hold a [hearing](#) titled “The U.S. -Mexico Relationship: Advancing Security and Prosperity on Both Sides of the Border.”

Asia-Pacific: The Senate Foreign Relations Committee’s East Asia, The Pacific, and International Cybersecurity Policy Subcommittee will hold a [hearing](#) titled “American Leadership in the Asia-Pacific, Part 1: Security Issues.”

EUCOM: The House Appropriations Committee’s Defense Subcommittee will hold a [closed hearing](#) titled “US European Command Hearing.”

Middle East: The House Armed Services Committee will hold a [hearing](#) titled “Military Assessment of the Security Challenges in the Greater Middle East.”

Security of Space Assets: The House Armed Services Committee’s Strategic Forces Subcommittee and House Homeland Security Committee’s Emergency Preparedness, Response, And Communications Subcommittee will hold a [joint hearing](#) titled “Threats To Space Assets and Implications For Homeland Security.”

Military Pilots: The House Armed Services Committee’s Military Personnel Subcommittee will hold a [hearing](#) titled “Military Pilot Shortage.”

March 30

U.S. Foreign Policy: The Senate Foreign Relations Committee will hold a [hearing](#) titled

“The Road Ahead: U.S. Interests, Values, and the American People.”

TRANSCOM: The House Armed Services Committee’s Readiness Subcommittee will hold a [hearing](#) titled “The Current State of U.S. Transportation Command.”

INF Treaty Violations: The House Armed Services Committee’s Strategic Forces Subcommittee will hold a [hearing](#) titled “Consequences and Context for Russia’s Violations of the INF Treaty.”

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

HEALTH

House Continues to Negotiate Passage of American Health Care Act

Key Points:

- *The House had hoped to pass the American Health Care Act March 23.*
- *Republicans continue to struggle to reach the necessary 215 votes due to opposition from conservatives.*

The House continues to negotiate the “American Health Care Act” which will repeal the Affordable Care Act. Leadership had hoped to pass the bill March 23 but progress stalled during Rules Committee’s meeting on March 22.

Republicans have struggled to garner enough support to pass the legislation. Members of the House Freedom Caucus have long criticized the bill for failing to fully repeal and replace the ACA. Caucus members met with President Donald Trump Thursday in an attempt to work out a deal. Members characterized the meeting

as positive but according to Representative Paul Gosar (R-AZ) “nothing new was agreed upon.” House Freedom Caucus Chairman Mark Meadows (R-NC) said there were not enough votes to pass the bill. Passage will require 215 votes meaning Republicans can lose only 22 votes.

Conservatives have sought a series of changes including ending the mandate for essential health benefits. Attempts to appeal to conservative Members have led to centrists dropping their support for the bill. Representative John Faso (R-NY) expressed concern about elimination minimum insurance coverage requirements.

The White House continues to remain optimistic the legislation will be passed. White House Press Secretary Sean Spicer said “we’re focused on getting it done and winning.”

Congress Continues Hearings on FDA User Fees

Key Points:

- *The Senate Health, Education, Labor and Pensions Committee and the House Energy and Commerce Committee both held hearings this week on the reauthorization of the Food and Drug Administration’s user fee agreements.*
- *President Donald Trump proposed increasing user fees in his budget released last week.*

On March 21, the Senate Health, Education and Labor Committee held a hearing entitled “FDA User Fee Agreements: Improving Medical Product Regulation and Innovation for Patients.” Topics discussed in the hearing included, but were not limited to: (1) impacts of user fee agreements (2) FDA approval of medical devices; (3) FDA coordination ; (4) drug pricing; (5) drug development tools; (6)

American Health Care Act; (7) federal hiring freeze; (8) Trump Administration’s Budget Proposal; (9) opioid epidemic; (10) FDA guidance; (11) post-market surveillance; (12) user fee requirements; and (13) hearing aids.

Chairman Lamar Alexander (R-TN) explained all four different user fee agreements will need to be reauthorized by September 30 including PDUFA (Prescription Drug User Fee Act), MDUFA (Medical Device User Fee Amendments), GDUFA (Generic Drug User Fee Amendments), and BsUFA (Biosimilar User Fee Act). He noted after the April 4 hearing with patients and manufacturers, the Committee will move to markup on the legislation. Ranking Member Patty Murray (D-WA) declared that the already finalized user fee agreements reflect thorough negotiation and will help support the growth of the FDA, as well as policies passed in 21st Century Cures last year.

On March 22, the House Energy and Commerce Committee held a hearing entitled “Examining the FDA’s Prescription Drug User Fee Program.” Topics discussed included, but were not limited to: (1) consequences of failing to reauthorize PDUFA; (2) drug development process; (3) implementation of the 21st Century Cures Act; (4) breakthrough designation programs; (8) biomarkers; (9) President Trump’s comments on the user fee agreements; (10) opioid deterrents; (11) pediatric drug development and treatment; (12) Oncology Center of Excellence; and (13) consequences of failing to reauthorize PDUFA; (14) product labeling; (15) Trump Administration’s Budget Proposal; (16) use of real world evidence; and (17) incentives for research and clinical trials.

Chairman Michael Burgess (R-TX) stressed the reauthorization provides an opportunity to

review and improve the delivery of innovative drugs and treatments. He said he is encouraged that PDUFA VI will dedicate resources to compliment the implementation of the 21st Century Cures Act, including incorporating patient input in product development. Ranking Member Gene Green (D-TX) noted prior to PDUFA, the review time for standard applications was 28 months, and has since been reduced to 12 months. He said first cycle approval has increased 95 percent.

On March 16, President Donald Trump released his first budget proposal. He called for increasing user fees to \$2 billion in 2018, up from \$1 billion this year arguing “industries that benefit from FDA’s approval can and should pay for their share.” It also includes administrative actions to improve regulatory efficiency but does not provide many details.

Upcoming Hearings and Events

March 28-29

Health IT: Healthcare IT Connect will hold its eighth annual State Health Information Technology Connect Summit.

March 28

User Fees: The House Energy and Commerce Committee will hold a hearing on “Examining the FDA’s Medical Device User Fee Program.”

March 29

Research: The House Oversight and Government Reform Committee will hold a hearing on “Federally Funded Cancer Research: Coordination and Innovation.”

HHS: The House Appropriations Committee will hold a “Budget Hearing – Department of Health and Human Services.”

Defense Health: The Senate Appropriation Committee will hold a hearing on review of the defense health program and military medicine funding.

Insurance Innovation: The Cato Institute will hold a discussion on “Can Health Insurance Innovation Reduce Prices and Drive Cost-Effective Care?”

Alzheimer’s: The Senate Special Committee on Aging will hold a hearing on “The Arch of Alzheimer’s: From Preventing Cognitive Decline in Americans to Assuring Quality Care for Those Living with the Disease.”

March 30

Research: The Brookings Institute will hold a discussion on “Spurring Private Investment in Health R&D Around the World.”

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

TRANSPORTATION AND INFRASTRUCTURE

FAA Reauthorization Hearing

Key Points:

- *Members looked at the AIP program and PFC as current and future funding sources for aviation programs*
- *The subcommittee also looked at the American aviation, particularly the certification process*

On March 23, the Senate Commerce, Science, and Transportation Committee’s Aviation Operations, Safety, and Security Subcommittee held a [hearing](#) entitled “FAA Reauthorization: Perspectives on Improving Airport Infrastructure and Aviation Manufacturing” to discuss airport infrastructure issues, regulatory

certification processes at the Federal Aviation Administration, and reforms to improve U.S. competitiveness in the global marketplace for aviation products and manufacturing. Topics discussed included, but were not limited to: (1) Passenger Facility Charge; (2) Tax-Exempt Bonds; (3) Airport Improvement Program; (4) Airport Public Safety & Infrastructure Development; (5) Federal Permitting Systems & Certification; (6) Essential Air Service; (7) Measures to Improve Tourism; (8) Diversion of Airport Funds to Non-Aviation Uses; and (9) Airline Cooperation with Local Communities.

Chairman Roy Blunt (R-MO) said that the purpose of the hearing was to analyze the issues associated with the reauthorization of the Federal Aviation Administration (FAA). He noted that civil aviation was important to the American economy in terms of the jobs and economic activity it supported. He stated that the hearing would assess airport infrastructure needs and the funding of capital needs through the FAA's Airport Improvement Program (AIP). He said that the Committee would also analyze the certification process of the FAA and what reforms could be made to improve the competitiveness of U.S aviation products on the global stage. He stated that the relationship between airport operators and airlines was crucial to the creation of airport infrastructure. He commented that the government supports airports through AIP grants to increase safety and capacity, fees on passengers to support terminal projects, and tax-exempt bonds to state and local authorities to fund airport improvements. He pointed out that despite federal assistance, airport infrastructure was not keeping up with demand.

Subcommittee Ranking Member Maria Cantwell (D-WA) said that airports played a significant role in providing jobs and economic

growth to local communities. She stated that the Passenger Facility Charge (PFC) is important to airport expansion efforts across the US. She noted that PFCs were one of three government measures that helped raise airports raise funds, the others being AIP and tax-exempt bonds. She said that Congress needed to look into measures that would improve customers' experiences, including measures that increase the number of food options, a visual paging system, and terminal design that accommodates a larger number of travelers. She noted that many members of Congress were concerned with Contract Tower Programs (CTP). She pointed out that CTPs contributed to aviation safety. She said that she was willing to work with Members to address their concerns. She stated that aviation manufacturing was important to the U.S's economy and technological development. She said that she supported that Export-Import Bank, since it helped the U.S's aviation manufacturing industry maintain its competitiveness. She commented that President Donald Trump should make appointments to the Export-Import Bank's board in order to promote the interests of the U.S aviation industry. She noted that the last Congress, the Senate passed a bill that improved the FAA's certification process. She said that while the language was not included in the "FAA Extension, Safety, and Security Act of 2016" (P.L. 114-190), she would continue to press for its inclusion in future bills.

FAA Associate Administrator for Aviation Safety Peggy Gilligan stated that U.S civil aviation manufacturing industry was doing well. She said that U.S civil aviation manufacturing is the strongest trade sector for net exports. She noted that U.S civil aviation manufacturing supported a significant number of jobs. She said that cooperation between the FAA, airplane manufacturers, operators, and labor

had improved airline safety. She noted that the FAA had improved its certification system. She stated that the FAA had developed a joint industry-agency scorecard to promote airline safety. She commented that the FAA had created an office to monitor the scorecard's metrics. She said that the FAA was working with manufacturers to identify certification areas that could be delegated to industry. She noted that the FAA had developed a Regulatory Consistency Communication Board to address safety and legal issues in a timely manner. She commented that the FAA had recently accepted Canada and Europe's certification system for repairs, parts and modifications. Gilligan said that this measure meant that future technical review was no longer necessary. She said that this measure would soon be extended to Brazil. She stated that the FAA was pursuing measures that would make it easier to include non-required safety equipment on planes. She noted that the FAA had worked with the Committee to develop a new set of design standards for general aviation (GA) aircraft. She noted that the FAA had established a joint committee with industry to identify mutual interests that resulted in the promoting of airline safety.

Government Accountability Office (GAO) Civil Aviation Issues Director Dr. Gerald Dillingham said that some U.S civil aviation firms found it challenging to receive foreign certification for their products. He stated that the FAA had implemented thirteen of the fourteen recommendations made by the Aviation Rulemaking Committee. He said that five of the thirteen measures concerned the Organization Designation Authorization (ODA) program. He commented that these changes allowed the FAA to do more with its limited resources. He remarked that industry benefited from these changes by experiencing less certification issues. He noted that the FAA

had implemented five of the six committee recommendations to promote consistent certification. He said that the FAA had begun to work with the European Union's civil aviation authority to improve the certification process of U.S civil aviation manufacturing products in Europe. He stated that these efforts had resulted in reduced approval time and costs for the U.S civil aviation manufacturing industry. Dillingham remarked that the FAA must continue making changes to its operations based on the recommendations it received.

DeFazio Introduces \$500 Billion Infrastructure Bill

Key Points:

- *The top Democrat on the House committee of jurisdiction followed up with his policy proposal to augment transportation funding with a bill to increase the gas tax, index it, and issue bonds to fund the HTF*

On March 22, House Transportation and Infrastructure Committee Ranking Member Peter DeFazio (D-OR) and cosponsors introduced the "Investing in America: A Penny for Progress Act" ([H.R. 1664](#)) that would raise an estimated \$500 billion for existing transportation programs financed through an increased in the tax on gasoline and other fuels and increase sale of Treasury bonds that would add funds to the Highway Trust Fund.

In his [press release](#), DeFazio stated the "The Investing in America: A Penny For Progress Act" provided funds for "additional investment by authorizing Invest in America 30-year Treasury bonds annually, through 2030...[which] represents a 30 percent increase over current funding levels." DeFazio stated that "in the first year, this bill provides an additional \$630 million for formula and

discretionary freight programs, \$3.2 billion for the Surface Transportation Block Grant Program, and \$85 million for Transportation Infrastructure Finance and Innovation Act (TIFIA).” He stated that “[t]o repay the bonds, the bill indexes gas and diesel user fees, which have not increased since 1993, to two factors: the cost of constructing transportation projects (pursuant to the National Construction Cost Index) and reduced motor fuel usage from Corporate Average Fuel Economy (CAFE) standards.” DeFazio stated that “[t]he bill is estimated to only raise the gas and diesel user fees by approximately 1 cent per year and includes a hard cap of 1.5 cents per year.”

In a [fact sheet](#), DeFazio stated that H.R. 1664 “is modeled on actions States across the country have taken to make the necessary investments in our Nation’s surface transportation system...[and] [s]ince 2013, 17 States have enacted legislation that will increase their State gas taxes.” In a [summary](#), DeFazio stated that the bill “funds the shortfall in the Highway Trust Fund through 2030...[which the Congressional Budget Office (CBO) estimates]...will have a \$139 billion shortfall over ten years.”

Upcoming Hearings and Events

March 28

Self-Driving Cars: The House Energy and Commerce Committee’s Digital Commerce and Consumer Protection Subcommittee will hold a [hearing](#) titled “Self-Driving Cars: Levels of Automation.”

March 29

Deputy Secretary of Transportation Nomination: The Senate Commerce, Science & Transportation Committee will hold a hearing on the nomination of Jeffrey Rosen to be the Deputy Secretary of Transportation.

Transit Safety: The House Oversight and Government Reform Committee’s Government Operations Subcommittee will hold a [hearing](#) titled “WMATA After Safetrack.”

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

TECHNOLOGY

Emerging Technology Hearing

Key Points:

- *The Senate Commerce Committee looked at the cutting edge technologies that could change the technological and cybersecurity landscape*

On March 22, the Senate Commerce, Science and Transportation Committee held a [hearing](#) entitled “The Promises and Perils of Emerging Technologies for Cybersecurity.” The hearing explored the potential cybersecurity impact of emerging technologies, including artificial intelligence, quantum computing, the Internet of Things, and blockchain. Topics discussed in the hearing included, but were not limited to: (1) Cybersecurity Workforce and Education; (2) Russian Cybercrime and Political Interference; (3) IOT and Critical Infrastructure; (4) Regulatory Proposals and Market-based Incentives; (5) Government Interaction with Business; (6) Guidelines and Best Practices; (7) Aging Software; (8) Blockchain; (9) AI; (10) Future Prospects.

Chairman John Thune (R-SD) [stated](#) that emerging cyber technologies stand to offer an array of benefits while also creating new challenges. He noted that by 2020 the number of devices in the Internet of Things (IOT) may exceed 50 billion. He cited a report predicting

that 10% of world GDP will be stored on blockchain technology by 2027. He noted that artificial intelligence (AI) will be able to increasingly mimic human cognition, while quantum computing will be able to handle previously unsolvable data problems. Thune noted that federal agencies have partnered with academia and industry to ensure the U.S. remains the leader in these fields, and that 2016's bipartisan "American Innovation and Competitiveness Act" (P.L. 114-329) charged the Department of Commerce's National Institute of Standards and Technology (NIST) to work with stakeholders to identify cryptography standards. He added that the bipartisan "Cybersecurity Enhancement Act of 2014" (P.L. 113-274) included important provisions for cybersecurity research development and standards. Thune said the nation faces an array of evolving threats, and encouraged the use of public-private partnerships (P3), foundational research and robust cyber initiatives to propel emerging cyber technology. He noted that he and Senator Cory Gardner (R-CO) will be sending letters to Secretary of Commerce Wilbur Ross and Secretary of Transportation Elaine Chao urging them to prioritize the cybersecurity of federal systems.

Ranking Member Bill Nelson (D-FL) [stated](#) that the advent of new cyber technologies will create opportunities for nefarious actors while producing enormous benefits for consumers. He suggested that most Americans do not regularly consider risks to their cybersecurity. He noted that Russian hackers interfered with the 2016 election, expressing the need for information on how Russian, Chinese and other state-based hackers could interfere with the U.S. economy.

IBM Security Threat Intelligence Vice President Caleb Barlow said IBM manages 35

billion customer information technology (IT) security events every day, the vast majority involving the exfiltration of data. He expressed concern about hackers' future ability to alter data rather than just steal it, stating that the public and private sectors must increase cooperation to address evolving security needs. He noted a UN report that 80% of cyber-attacks are conducted by highly sophisticated criminal networks. Barlow described cybercrime as a "significant societal issue," costing the global economy \$445 billion annually. He argued it is necessary to "change the economics for the bad guys" by sharing information openly between data security stakeholders to keep pace with criminal intelligence and make cyber-crime unprofitable. He noted that there is likely to exceed 1.5 million unfilled cybersecurity jobs around the world by 2020 due to the rapid advance of cyber technology.

Former Assistant Secretary of Defense for Homeland Defense and Global Security Eric Rosenbach said the rapid rise of emerging technologies in the IOT will foster economic growth while creating a number of new security risks. He said policymakers and legislators must address the nation's vulnerability to cyberattacks in view of Russia's successful cyber campaign during the 2016 election. He argued that a weak cybersecurity framework could weaken national security strategy in the coming years, and argued for the need to understand China and Russia's strategic cyber perspectives. Rosenbach argued that the Chinese government has invested heavily in supercomputing, AI and blockchain, resulting in genuine achievements. He noted that China possesses the world's fastest supercomputer and could become the world leader in hardware-based AI in the next few years. He said China has established itself as a world leader in fintech and blockchain, with the

potential to disrupt the American-dominated financial sector. He noted the Chinese have programs dedicated to integrating technology advancements into security-focused cyber capabilities. Rosenbach stated that Russian investment in research and development (R&D) is likely a decade behind the U.S. and China, but that President Vladimir Putin has taken a personal interest in closing this gap. He argued that the Russians seek to make up for their military deficits through aggressively investing in cyber offense. He said Russia's experience spreading strategic disinformation is tied to this strategy, and that Russia's cyberattacks against Ukraine succeeded in disabling the country's electric grid. He said Russian interference in the 2016 election is not a partisan matter and should concern all Americans equally.

House Homeland Security On DHS

Key Points:

- *A House Homeland Security subcommittee dug into DHS' aid to the private sector and public sector*

On March 22, the House Homeland Security Committee held a [hearing](#) entitled "A Borderless Battle: Defending Against Cyber Threats" to discuss with cybersecurity experts the evolving cyber threat landscape and the Department of Homeland Security's (DHS) civilian cyber defense mission. Topics discussed included, but were not limited to: (1) Cyber Deterrence; (2) Department of Homeland Security (DHS); (3) 2016 Election Interference; (4) Cyber Workforce; (5) International Law; and (6) Private Sector Partnerships.

Chairman Michael McCaul (R-TX) said "we are in the fight of our virtual lives, and we are not winning." He said cyber adversaries are turning digital breakthroughs into digital bombs and

are overtaking U.S. defenses. He stated nation-states are using cyber tools to steal American secrets and intellectual property and hackers are acquiring financial data and lock down access to healthcare records. He noted as exposure to cyber threats grows, it is important to not only be aware of each individual attack and piece of malware but also the patterns of the sophisticated campaigns and the lifecycle of each threat. He said last week, the Department of Justice (DOJ) indicted two Russian spies for their involvement in the hack of at least 500 million email accounts at Yahoo. He noted in 2015, Chinese hackers stole 20 million security clearances in a breach of the U.S. government's Office of Personnel Management (OPM). He said a recent alleged hack of the Central Intelligence Agency (CIA) has led to Wikileaks publishing over 8000 pages of documents with some of the most highly sensitive cyber weapons. He explained cyber criminals are also targeting the wallets of Americans and placing American democratic institutions at risk. He said the Russian government "sought to undermine democratic institutions and influence our elections." He added "they broke into political institutions, invaded the privacy of private citizens, spread false propaganda, and created discord in the lead up to a historic vote."

Ranking Member Bennie Thompson (D-MS) said cybersecurity is at the forefront of American politics in a way he has never seen before. He said cyber threats represent one of the most pressing security vulnerabilities to the United States and adversaries are coming up with novel ways to exploit these vulnerabilities. He stated a new attack vector was realized during the 2016 election when Russian agents carried out a hacking campaign against U.S. democratic institutions with a specific focus on undermining the candidacy of former Secretary of State Hillary Rodham Clinton. He said "we

may never know if the Russian intervention was the determining factor in such a close election.” He said it has come to light that Russian hackers tried to infiltrate vital networks and voting equipment at the state level. He said an ongoing investigation is looking into connections between President Donald Trump’s inner circle and associates of the Putin regime. Thompson expressed support for a “9/11 style, independent commission” to investigate this issue. He stated it is “disheartening” to see the Trump Administration take a dismissive stance on the investigation. He said the President does not understand that there can be no retribution without attribution. He said he is concerned about the aloof position taken by the administration with regard to the North Atlantic Treaty Organization (NATO) and other key allies. He stressed the importance of reaffirming these important relationships.

Former National Security Agency Director and IronNet Cybersecurity President and CEO former General Keith Alexander said cyber threats are growing in a number of areas and recent Russian intervention in the U.S. presidential election is proof of this phenomenon. He said other actors are also growing in capability and intent including China, Iran, and North Korea. He said the current cyber defense set up is “terrible” primarily because of a lack of coordination between industry and the government. He added the coordination within government must also be better. He stated the private sector does not receive enough information from the government and the only way the U.S. will defend itself from cyber-attacks is by working closely with the industry. He said DHS and the Cyber Threat Alliance (CTA) have “put the pieces in place.” Alexander stressed the importance of clarifying governmental roles and responsibilities and commended the

Committee on the legislation it has introduced and passed to address this issue. He noted there is confusion about the words “protect” and “defend” across government agencies such as DHS, CIA, the Federal Bureau of Investigation (FBI) and the DOJ. He said the financial services sector has seen a good amount of success in coordinating between the private and public sector due in large part to DHS-led efforts. He stressed the importance of information sharing and how it relates to providing for the “common defense” of the country.

Former Special Assistant to the President and Cybersecurity Coordinator and Cyber Threat Alliance President Michael Daniel stated cyber threats are in a state of rapid evolution because the threat space is becoming bigger, more diverse, and more dangerous. He said the addition of more items connected to the internet allows for a large threat space. He added the types of devices are diversifying and actors such as North Korea and Iran seem to be more willing to take actions that lead to destruction or massive disruption. He said the cybersecurity problem is hard because leaders tend to treat it as simply a technology problem that can be solved with only technology solutions. He explained the problem is also connected to economic, political, human behavioral and business issues. He stressed the need to address cyber issues in a holistic manner. He stated cyber space has different rules than the physical world including murky definitions of concepts such as “near” and “far” as well as sovereignty. Daniel said policymakers are also struggling because this issue is new and there is no decades-old policy framework from which to draw inspiration or guidance. He said information sharing is a critical enabler and a necessary, but not sufficient, step to take. He said executive orders from the Obama Administration and private

sector initiatives have all been important first steps. He said his organization is trying to pool information and give information value and a sense of context. He said this model is new and should be an asset for cybersecurity professionals in the public and private sector.

Upcoming Hearings and Events

March 28

Federal Networks: The House Homeland Security Committee’s Cybersecurity and Infrastructure Protection Subcommittee will hold a [hearing](#) titled “The Current State of DHS’ Efforts To Secure Federal Networks.”

Federal IT Acquisition: The House Oversight and Government Reform Committee’s Information Technology and Government Operations Subcommittees will hold a [joint hearing](#) titled “Reviewing Challenges In Federal IT Acquisition.”

Cyber Threats To Electric Grid: The Senate Energy & Natural Resources Committee’s Energy Subcommittee will hold a hearing “to examine the cybersecurity threats to the U.S. electric grid and technology advancements to minimize such threats and to receive testimony on S. 79, the Securing Energy Infrastructure Act.”

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

This Week in Congress was written by Laura Simmons.