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April 6, 2017

Washington Update

This Week in Congress

- **House** – The House passed the **"Encouraging Employee Ownership Act of 2017 (H.R. 1343)**; the "**Supporting America's Innovators Act of 2017" (H.R. 1219)**; and the **"Self-Insurance Protection Act" (H.R. 1304)**.
- **Senate** – The Senate confirmed **Judge Neil Gorsuch to be an Associate Justice of the Supreme Court** by a vote of 54-45. The Senate also voted to confirm **Elaine Duke as Deputy Secretary of Homeland Security** by a vote of 85-14.

Next Week in Congress

- **House** –The House will be in recess until April 25.
- **Senate** – The Senate will be in recess until April 24.

TAX

Brady and Roskam Engage Democrats; White House Weighs Options

Key Points:

- *Brady reaches out to Democrats on GOP tax reform plan*
- *Tax Policy Subcommittee plans public hearings on tax overhaul to start next month*
- *House Agriculture Committee holds hearing on House Tax Blueprint*

On April 5, House Ways and Means Committee Chairman Kevin Brady (R-TX) met with committee Democrats to discuss the House GOP tax Blueprint and future plans for developing legislation. Brady and Tax Policy Subcommittee Chairman Peter Roskam (R-IL) told the Committee Democrats that tax reform hearings could begin in the next month. According to Roskam, the hearing topics have yet to be formalized. The Blueprint lays out high-level priorities for tax reform, and some members have called for a more public deliberation process for a tax overhaul because the speed of negotiations around the health care repeal bill sank it last month.

The Trump Administration continues to consider their options for tax reform. Last week, President Donald Trump was briefed by his top economic advisers on a variety of potential tax reform options. Following that briefing, earlier this week reports surfaced that some within the Administration would open to considering alternative revenue sources which included a carbon tax or value-added tax (VAT). However, those reports were quickly repudiated and the White House issued a statement saying those taxes were not really under consideration – a possible indication of progress within the Administration.

Despite an official pivot to taxes following the

Table of Contents

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failure to clear health care legislation through the House, Congress must still clarify which vehicle will be used to move tax legislation. Congressional leadership has the option to use the existing FY 2017 budget reconciliation instructions for Affordable Care Act (ACA) repeal and replace legislation. Alternatively, they could attempt to repurpose that bill for tax legislation. Some in the Senate have voiced support for using the FY 2017 budget reconciliation bill for tax reform as it would save time in having to draft and clear a much more complicated full FY 2018 budget reconciliation bill.

Agriculture Committee Considers Implications of Tax Reform

On April 5, the House Agriculture Committee held a hearing titled "Agriculture and Tax Reform: Opportunities for Rural America" to hear from farm groups on their priorities and concerns as lawmakers work toward a broad tax overhaul. Witnesses at the hearing called for the preservation of the interest deduction, cash accounting and the full repeal of the estate tax. The Blueprint would repeal the estate tax but also eliminate the ability to deduct net interest. And while the GOP plan would not eliminate cash account, previous plans have proposed eliminating cash basis accounting for all entities with annual gross revenue of more than $10 million.

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.

FINANCIAL SERVICES

House Panel Holds Hearing on Non-Nuclear Sanctions against Iran

Key Points:

- *Representatives Keith Rothfus (R-PA) and Brad Sherman (D-CA) expressed opposition to the sale of aircraft to Iran by Boeing, and Committee Chairman Jeb Hensarling (R-TX) also issued a press release in opposition to the sale.*

On April 4, the House Financial Services Committee's Monetary Policy and Trade and Terrorism and Illicit Finance Subcommittees held a hearing entitled "Increasing the Effectiveness of Non-Nuclear Sanctions Against Iran." Monetary Policy and Trade Subcommittee Chairman Andy Barr (R-KY) stated that since the Joint Comprehensive Plan of Action's (JCPOA) implementation date Iran has continued to support Hezbollah and other dissidents in the region. He noted last April that even President Barack Obama suggested that Iran was violating the "spirit" of the agreement. Barr explained Iran has tested missiles and dozens of Syrian children were recent gassed in a chemical attack, and that the U.S. should think of new ways to deepen the impact of non-nuclear sanctions. He stated non-nuclear sanctions should undermine Iran actions and drive a change of behavior. Terrorism and Illicit Finance Subcommittee Chairman Stevan Pearce (R-NM) stated that Iran was first designated as a state sponsor of terrorism in 1994 and that Iran continues to fund international terror groups despite the harm to its own economy. He stated this meeting will look at how the sanctions have succeeded and how they can be strengthened.

Upcoming Dates
April 24: **Senate returns from recess**
April 25: **House returns from recess**
April 28: **FY 2017 CR expires**
September 30: **FY 2017 ends and FAA extension expires**

Monetary Policy and Trade Subcommittee Ranking Member Gwen Moore (D-WI) stated she supports the JCPOA. She stated that political entanglements between the Trump Administration and "unsavory" individuals continue to "crop up." Moore suggested this Subcommittee should use its subpoena power to question some individuals. Terrorism and Illicit Finance Subcommittee Ranking Member Ed Perlmutter (D-CO) stated that he would like to see how the JCPOA has worked thus far. He suggested it has lessened nuclear tension but he noted the Islamic Revolutionary Guard Corps (IRGC) remains a destabilizing force. Perlmutter noted the IRGC moves money through many businesses and knowing the beneficial ownership of those companies is important. He explained the Subcommittee will look at the connections of money laundering to Russia.

Representatives Keith Rothfus (R-PA) and Brad Sherman (D-CA) raised concerns with the recently announced sale of Boeing aircraft to Iran. Rothfus suggested that these aircraft could be repurposed to send weapons and fighters into other countries. Sherman contended that sanctions should be imposed on companies servicing Mahan Airlines in Germany, France and Japan.

Additionally, House Financial Services Committee Chairman Jeb Hensarling (R-TX) issued a press release opposing the sale of aircraft to Iran in which he stated:

> Boeing's deal with the Islamic Republic of Iran, whose airlifts to the Assad regime have been well documented, was announced on the same day we received reports of a chemical weapons attack killing dozens of Syrian civilians, including at least 11 children. It is appalling that the Obama Administration negotiated aircraft sales to Iran, and we must now ensure that the ayatollahs can't use U.S. jets to carry out atrocities in the region. U.S. and foreign financial institutions are also on notice: no one will be able to pretend they didn't understand the risks involved in bankrolling these deals.

SEC Holds Meeting of the Equity Market Structure Advisory Committee

Key Points:

- *The Advisory Committee discussed a preliminary recommendation from the Regulation NMS Subcommittee on Rule 611, the order protection rule.*
- *They also discussed preliminary recommendations from the Trading Venues Regulation Subcommittee on SRO liability limits and on cross-market surveillance under the Consolidated Audit Trail.*

On April 5, the Securities and Exchange Commission (SEC) convened a meeting of the Equity Market Structure Committee (Advisory Committee, or EMSAC) to discuss: (1) Rule 611 and Preliminary Recommendations (Regulation NMS Subcommittee); and (2) Regulatory Centralization and Preliminary Recommendations Relating to SRO Rule-Based Limitations of Liability (Trading Venues Regulation Subcommittee). The Market Quality Subcommittee and the Customer Issues Subcommittee also provided status report updates.

SEC Division of Trading and Markets Acting Director Heather Seidel said the Regulation NMS and Trading Venues Regulation Subcommittees will continue to refine their recommendations with the goal of holding final votes at the next EMSAC meeting. She stated that the Market Quality and Customer Issues Subcommittees will continue to discuss preliminary recommendations for the next EMSAC meeting. She added that SEC staff has been assessing the EMSAC recommendations, particularly the parameters for an access fee pilot program and a recommendation for consideration by the Commission.

Acting Chairman Michael Piwowar said the EMSAC previously advocated for a pilot program on access fee caps, which helps inform Commission action. He noted that he has directed SEC staff to develop a rulemaking to identify parameters for a pilot program and said he hopes to vote on such a proposal in the near future. He pointed to the new Special Study of Securities Markets being conducted at Columbia University, which has a targeted completion date of 2020, as complementing the work of the EMSAC.

Commissioner Kara Stein noted that the EMSAC began its examination of the order protection rule at its first meeting in 2015. She stated that the markets have changed dramatically since the passage of Regulation NMS, with a significant increase in market fragmentation. She said the increase in trading on dark pools means that displayed limit orders interact with a much smaller amount of volume. She said the purpose of Rule 611 was to ensure that investors do not get inferior prices. She questioned: (1) whether investors need this particular protection; (2) what incentives impact routing and execution; (3) how those incentives affect behavior; (4) how these effects measured; and (5) the pros and cons of modifying Rule 611.

House Passes Two Financial Services Bills

Key Points:

- *The House approved the Encouraging Employee Ownership Act and the Supporting America's Innovators Act.*

This week the House passed a pair of financial services bills. On April 4, the House passed the "Encouraging Employee Ownership Act of 2017" (H.R. 1343) by a vote of 331-87. The bill, introduced by Representative Randy Hultgren (R-IL), would direct the Securities and Exchange Commission to revise its rules so as to increase the threshold amount for requiring issuers to provide certain disclosures relating to compensatory benefit plans. A companion bill (S. 488) introduced by Senators Pat Toomey (R-PA) and Mark Warner (D-VA) was approved by the Senate Banking Committee on March 9 by a voice vote, but it has not yet been considered by the full Senate.

On April 6, the House passed the "Supporting America's Innovators Act of 2017" (H.R. 1219) by a vote of 417-3. The bill, introduced by Representative Patrick McHenry (R-PA), would amend the Investment Company Act of 1940 to expand the investor limitation for qualifying venture capital funds under an exemption from the definition of an investment company. A companion bill (S. 444) introduced by Senators Heidi Heitkamp (D-ND) and Dean Heller (R-NV) was approved by the Senate Banking Committee on March 9 by a voice vote..

House Panel Holds Hearing on Financial Regulatory Reform

Key Points:

- *Committee Republicans raised concerns with the CFPB's structure and operations, particularly their regulations regarding indirect auto lending and payday loans.*

On April 6, the House Financial Services Committee's Financial Institutions and

Consumer Credit Subcommittee held a hearing entitled "Examination of the Federal Financial Regulatory System and Opportunities for Reform." Chairman Blaine Luetkemeyer (R-MO) said financial companies are dealing with "regulatory quicksand," as they are faced with contradictory rules and aggressive enforcement. He stated that consumers are facing reduced availability and greater costs for credit. He pointed to the regulatory burdens from the Federal Reserve's Comprehensive Capital Analysis and Review (CCAR) rule, noting that firms receive little feedback from the Federal Reserve in response. Luetkemeyer expressed concern with the Consumer Financial Protection Bureau's (CFPB) practice of regulation through enforcement. He questioned whether federal financial agencies want a stable economy or more control. He stressed the need for a reasonable regulatory structure which fosters innovation and economic opportunity, while allowing for robust consumer protection.

Representative David Scott (D-GA) emphasized the importance of ensuring the health of the financial system. He stressed the need to strike an appropriate balance on consumer protection. He said the U.S. has seen positive gains in employment for 77 consecutive months, though these gains are not large enough and there have been losses in urban centers. He stated that small business lending is trending upwards and housing debt is beginning to dip back below prior peaks. Scott said while there are positive trends, improvements are still needed in some areas. He stated that certain regulations are impeding the ability of the unbanked and underbanked to obtain access to financial services, such as the CFPB's regulation of indirect auto lending. He said he would welcome a constructive, bipartisan discussion of the Dodd-Frank Act (DFA), but described repeal of the DFA through the Financial CHOICE Act as a "non-starter."

Chairman Blaine Luetkemeyer (R-MO) and Representatives Dave Trott (R-MI), Bill Posey (R-FL), Barry Loudermilk (R-GA), David Kustoff (R-TN), Ed Royce (R-PA), and Andy Barr (R-KY) raised concerns with the CFPB's structure and operations. Posey and Loudermilk stated that the CFPB consumer complaint database contains unverified information and fails protect consumers' personal information. Kustoff stated that the CFPB has not adequately defined what constitutes an abusive practice. Representatives Roger Williams (R-TX) and Robert Pittenger (R-NC) expressed opposition to the CFPB's regulation of indirect auto lending. Williams also spoke in opposition to the CFPB's proposed rule on payday lending.

Representative Carolyn Maloney (D-NY) spoke in support of the Orderly Liquidation Authority (OLA) created by Title II of the DFA. She said the OLA allows large, complex non-bank financial institutions to be wound down in an orderly fashion. She expressed opposition to efforts to repeal the OLA.

House Financial Services Subcommittee Discusses Federal Reserve Mandates

Key Points:

- *The House Financial Services Subcommittee on Monetary Policy and Trade discussed the dual mandate of the Federal Reserve and whether a change in governance structure is needed.*
- *Chairman Andy Barr (R-KY) suggested the dual mandate should be narrowed to focus on price stability.*

On April 4, the House Financial Services Committee's Monetary Policy and Trade

Subcommittee held a hearing entitled "Examining the Federal Reserve's Mandate and Governance Structure." The hearing focused on the current structure of the Federal Reserve and the Federal Open Market Committee (FOMC); whether the current dual mandate of the Federal Reserve needs to be changed; and whether the Federal Reserve balance sheet needs to be reduced. Chairman Andy Barr (R-KY) stated the first step towards more economic recovery will be for the Federal Reserve to be focused on price stability rather than the current dual mandate. He suggested that the Federal Open Market Committee (FOMC) needs more diversity and the District Bank presidents should have voting rights. Ranking Member Gwen Moore (D-WI) expressed concerns over proposals to require a more formulaic monetary policy and removal of employment from the mandate.

Several Members expressed concerns over the current dual mandate of the Federal Reserve. Representative Mia Love (R-UT) suggested the dual mandate is doing more harm than good and Representative Warren Davidson (R-OH) asked whether the dual mandate is working. Charles Calomiris (Columbia Business School) stated the Federal Reserve should be focused on price stability with employment as a secondary objective. He explained making the Federal Reserve be systematic means the Federal Reserve can be held accountable by Congress. He suggested the Federal Reserve has changed its targets without justification. Representatives Roger Williams (R-TX), Robert Pittenger (R-NC), and French Hill (R-AR) raised concerns over the Federal Reserve's growing balance sheet. Berenberg Capital Markets, LLC Chief Economist for Americas and Asia Dr. Mickey Levy stated this is large balance sheet damaging and very risky. He stated if interest rates rise the large balance sheet could result in huge losses. He stated the fact that the Federal Reserve owns so many mortgage-backed securities means they have stepped outside the normal bounds of monetary policy.

House Hearing Semi-Annual Report of the CFPB

Key Points:

- *The House Financial Services Committee held a hearing on the Semi-Annual report from the Consumer Financial Protection Bureau (CFPB), and Chairman Jeb Hensarling called on the President to immediately remove Director Cordray.*
- *Ranking Member Maxine Waters (D-CA) noted last week she, along with 40 other Members of Congress, filed an amicus brief in support of the structure of the CFPB.*

On April 5, the House Financial Services Committee held a hearing on "The 2016 Semi-Annual Reports of the Bureau of Consumer Financial Protection." In addition to the Semi-Annual Report of the CFPB, other issues were discussed such as the structure of the CFPB, payday lending and direct auto lending rules, and CFPB involvement in insurance regulation. Chairman Jeb Hensarling (R-TX) noted that the President can remove the CFPB Director for cause and he urged that he should do so immediately. Hensarling suggested the CFPB's actions have made credit less available and more expensive in many cases and that it has often abused its powers. Ranking Member Maxine Waters (D-CA) noted last week she, along with 40 other Members of Congress, filed an amicus brief in support of the structure of the CFPB.

Representatives Mia Love (R-UT) and Robert Pittenger (R-NC) raised concerns over the checks and balances on the CFPB. Love stated that the Financial Stability Oversight Council

(FSOC) has the only "check" on the power of the CFPB and they can only veto final regulations if those regulations put the safety and soundness of the financial system at risk. She suggested that sets the bar high. Representative Ann Wagner (R-MO) raised concerns over the CFPB's handling of the recent Wells Fargo case, suggesting that the CFPB failed to take appropriate action and only did so after others brought the case to their attention. CFPB Director Richard Cordray stated that the CFPB had received whistleblower tips long before the news articles were published and without the CFPB's action the global settlement would not have been reached.

Several Members raised concerns over the CFPB's proposed payday rules, suggesting the rule will result in consumers having fewer options. Cordray stated that the intention of the rule is to ensure that people have access to these small dollar loans without being trapped in a cycle of debt. He asserted that 14 states have outlawed payday loans and consumers in those states still have access to credit. Related to the pre-paid card rule, Representatives Carolyn Maloney (D-NY) and Scott Tipton (R-CO) noted that the current rule is being delayed and asked whether the CFPB will reconsider any of the proposals in the rule prior to it going into effect. Cordray stated that the market is constantly changing, and that the CFPB has been listening to industry and they are considering changes related to linking pre-paid cards to digital wallets and error resolution for pre-paid card not registered. Representative Dennis Ross (R-FL) noted the importance of the state based regulation of insurance. He asked whether the CFPB has any jurisdiction over insurance. Cordray stated they have some jurisdiction in terms of mortgage insurance. He noted insurance is typically regulated at the state level and is typically outside the scope of the CFPB.

Senate Banking Committee Approves the Nomination of Jay Clayton to Lead the SEC

Key Points:

- *The Senate Banking Committee voted 15 to 8 to approve the nomination of Jay Clayton to be Chair of the SEC. Democratic Senators Jon Tester (MT), Mark Warner (VA), and Heidi Heitkamp (ND) voted with Republicans in favor of the nomination.*
- *The Senate will have to vote on Clayton's nomination before he is confirmed.*

On April 4, the Senate Banking Committee met in executive session to approve the nomination of Jay Clayton to be Chairman of the Securities and Exchange Commission (SEC) by a roll call vote of 15 to 8. Senators Jon Tester (D-MT), Senator Mark Warner (D-VA), and Senator Heidi Heitkamp (D-ND) voted against party lines to vote in favor of the nomination. Ranking Member Sherrod Brown (D-OH) said that Clayton's "deep ties to Wall Street" will leave him "hopelessly conflicted" in the SEC's most high profile enforcement actions. Brown suggested that the SEC needs to be led by an independent chair and for that reason he cannot vote in favor of the nomination. The Senate is scheduled to be in recess the next two weeks, so Senate may not consider the Clayton nomination before May.

SEC Adopts JOBS Act Amendments

Key Points:

- *The SEC adopted amendment to the JOBS Act to increase the amount that companies can raise through crowdfunding by adjusting for inflation.*

- *The SEC also approved amendments that adjust for inflation the threshold used to determine eligibility for benefits offered to "emerging growth companies" (EGC).*

On April 5, the Securities and Exchange Commission (SEC) adopted an amendment to increase the amount of money that companies can raise using crowdfunding to adjust for inflation. The SEC also approved an amendment that adjusts for inflation the threshold used to determine eligibility for benefits offered to emerging growth companies (EGCs) under the "Jumpstart Our Business Startups (JOBS) Act" (P.L. 112-106). The JOBS Act, enacted in April 2012, requires the SEC to make inflation adjustments to certain rules at least once every five years, and these amendments are intended to reflect that requirement.

Draft Legislation Released on International Insurance Standards and Covered Agreements

Key Points:

- *Representatives Sean Duffy (R-WI) and Denny Heck (D-WA) released draft legislation to make changes to the international insurance standards setting and covered agreements processes.*
- *Feedback is requested by April 20.*

This week, House Financial Services Committee's Housing and Insurance Subcommittee Chairman Sean Duffy (R-WI) and Congressman Denny Heck (D-WA) released draft legislation that would make changes to the international insurance standards setting and covered agreements processes. The draft bill would include state insurance regulator involvement in negotiations of international insurance standards and covered agreements. It would also treat such agreements as rules for the purposes of the Congressional Review Act, which provides a process for Congress to overturn a rule using an expedited consideration procedure in the Senate. Duffy and Heck have requested stakeholder feedback on the draft bill by April 20.

Upcoming Hearings and Events

April 10

Extreme Weather and Flooding: The Senate Committee on Commerce, Science, and Transportation will hold a field hearing entitled, "Extreme Weather and Coastal Flooding: What is Happening Now, What is the Future Risk, and What Can we Do About It?" The hearing will be convened by Ranking Member Bill Nelson (D-FL). Witnesses will include: Dr. Dr. Ben Kirtman, PhD, Director of the Cooperative Institute for Marine and Atmospheric Sciences, and Director of the Center for Computational Science, Climate, and Environmental Hazards at the University of Miami; Dr. Leonard Berry, Emeritus Professor of Geosciences at Florida Atlantic University, and Vice President of Government Programs at Coastal Risk Consulting, LLC; Mr. Carl G. Hedde, CPCU, Senior Vice President, and Head of Risk Accumulation and Munich Reinsurance Company of America; and Dr. Jennifer Jurado, PhD, Chief Resiliency Officer, and Director of Environmental Planning and Community Resilience at Broward County.

April 25

Market Risk Advisory Committee: The Commodity Futures Trading Commission's (CFTC) Market Risk Advisory Committee (MRAC) will hold a meeting to discuss: (1) the CFTC staff response to the CCP Risk Management Subcommittee (CRM Subcommittee) "recommendations, which the MRAC adopted… on how Central

Counterparties (CCPs) can further enhance their efforts in preparing for the default of a significant clearing member; (2) cybersecurity trends; and (3) how well the derivatives markets are currently functioning, including the impact and implications of the evolving structure of these markets on the movement of risk across market participants."

April 26
FDIC Summit: The Federal Deposit Insurance Corporation will host an all-day Economic Inclusion Summit to discuss, "Strategies to Bring Consumers into the Financial Mainstream." The summit will include discussion from "representatives from banks; bank trade associations; non-profit organizations; national, state, and local government agencies; and the public." It will "explore strategies for increasing underserved consumers' access to the mainstream financial system".

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

EPA Begins Review of Greenhouse Gas Regulations

Key Points:

- *Following last week's Executive Order to roll back Obama Administration climate policies, the EPA has begun the process of reviewing, and potentially revising or rescinding regulations.*
- *On April 4, the EPA published notices to announce reviews of: the Clean Power Plan; the rule limiting greenhouse gas emissions from new power plants; and the rule targeting methane emissions from new oil and gas sector facilities.*

The Environmental Protection Agency (EPA) initiated its review of greenhouse gas (GHG) regulations pursuant to "Promoting Energy Independence and Economic Growth" Executive Order (E.O. 13783) signed by President Donald Trump on March 28. On April 4, the agency published the following in the *Federal Register:*

- ***Clean Power Plan:*** A notice announcing that "it is reviewing the Clean Power Plan, 80 FR 64662 (October 23, 2015) (CPP), including the accompanying Legal Memorandum, and, if appropriate, will as soon as practicable and consistent with law, initiate proceedings to suspend, revise or rescind this rule." The notice also declares that "[i]f EPA's review concludes that suspension, revision or rescission of this Rule may be appropriate, EPA's review will be followed by a rulemaking process that will be transparent, follow proper administrative procedures, include appropriate engagement with the public, employ sound science, and be firmly grounded in the law." The EPA published the final rule establishing the "Clean Power Plan", officially titled "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units", on October 23, 2015. The regulations would have restricted GHG emissions from existing fossil fuel electric generating facilities. States were to play a central role in implementing the Clean Power Plan, however the program would have been enforced by the EPA, through imposition of a Federal Implementation Plan (FIP) for any state that failed to meet the requirements of the regulations. The Clean Power Plan directed states to take actions reducing GHG emissions from existing power plants by 32 percent below 2005 levels by 2030. The Supreme Court issued an order staying implementation of the Clean Power Plan in February, 2016.

- ***Electric Generating Units New Source Performance Standards (NSPS):*** A notice announcing that "it is reviewing and, if appropriate, will initiate proceedings to suspend, revise or rescind the Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Generating Units." The EPA published the final rule on October 23, 2015. The rule imposed requirements for employing the "Best System of Emission Reduction" (BSER) and emissions limits for new or modified power plants. These BSER requirements effectively prohibited the construction of new coal-fired power plants that did not employ carbon capture and storage technology.
- ***Oil and Gas Sector NSPS:*** A notice announcing that the EPA is "reviewing the 2016 Oil and Gas New Source Performance Standards and, if appropriate, will initiate reconsideration proceedings to suspend, revise or rescind this rule." On June 3, 2016 the EPA published the final rule titled "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources". As described by an EPA fact sheet, the final new source rule set "emissions limits for methane, which is the principal greenhouse gas emitted by equipment and processes in the oil and gas sector." The final rule required emissions reductions for: oil and gas wells; natural gas processing plants; natural gas storage; and natural gas pipelines. Owners and operators of hydraulically fractured wells were required to implement reduced emissions completions. Prior to implementing these reduced emissions completions, owners and operators of covered well were required to "reduce emissions using combustion controls."

This week's actions begin the implementation process for specific rules targeted by Executive Order 12783. The Order also requires federal departments and agencies to "review existing regulations that potentially burden the development or use of domestically produced energy resources and appropriately suspend, revise, or rescind those that unduly burden the development of domestic energy resources."

If the EPA proceeds with repealing or revising rules identified for review under the Executive Order, it will be required to undertake new notice-and-comment rulemaking processes. Furthermore, in order to withstand court challenges, any agency repealing a regulation must also provide a rational explanation for why the rule is no longer appropriate.

Subcommittee Reviews Brownfields Legislation; Senators Introduce Separate Bill

Key Points:

- *On Tuesday, the House Environment Subcommittee held a hearing on a draft bill to improve the EPA's Brownfields Program, which assists in cleaning up and revitalizing contaminated properties.*
- *On Wednesday, a bipartisan group of Senators introduced their own legislation, the "Brownfields Utilization, Investment, and Local Development Act."*

On April 4, the House Energy and Commerce Committee's Environment Subcommittee held a hearing on the "Discussion Draft: Brownfields Reauthorization". In a press release announcing the hearing, Subcommittee Chairman John Shimkus (R-IL) declared that "[t]he EPA's Brownfields Program is an important tool used by states, local government, and private stakeholders to clean up under-used or abandoned industrial and commercial properties in order to economically redevelop these sites to return them to beneficial use". He added that the "hearing will provide us the opportunity to look at ways to promote investment in new infrastructure projects and also better utilize existing infrastructure while seeking to improve the Brownfields Program." Congress established the Brownfields Program when it enacted the "Small Business Liability Relief and Brownfields Revitalization Act" (P.L. 107-118).

In his opening statement, Shimkus explained that the Discussion Draft bill includes provisions to:

- Establish "multipurpose grants that can be used for multiple purposes – including brownfields assessment and cleanup…";
- Provide "liability relief to municipalities who involuntarily acquire brownfields property by virtue of its function as a sovereign";
- Increase "the limit for remediation grants from $200,000 to $500,000 – which…will make it easier for brownfields sites to get cleaned up"; and
- Allow "for a limited amount of the grant funds to be used for administrative costs, which will allow small and rural communities to be able to receive and utilize grant funds".

Also this week, Senators Jim Inhofe (R-OK) and Ed Markey (D-MA) introduced the "Brownfields Utilization, Investment, and Local Development (BUILD) Act" (S. 822).

As detailed in a press release, the bill includes provisions that:

- "Expands the eligibility for Brownfields grants for nonprofit organizations to include certain…limited liability corporations, limited partnerships and community development entities."
- "Increases the funding limit for remediation grants to $500,000 for each site, with some exceptions for higher funding, and authorizes multi-purpose grants up to $950,000, which provide greater certainty for long-term project financing."
- "Allows certain government entities that do not qualify as a bona fide prospective purchaser to be eligible to receive grants so long as the government entity did not cause or contribute to a release or threatened release of a hazardous substance at the property."
- "Allows eligible entities to use up to 8 percent of their Brownfields grant funding for administrative costs."
- "Directs EPA in providing grants to give consideration to Brownfield sites located adjacent to federally designated floodplains."
- "Requires EPA to establish a program to provide grants of up to $500,000 to eligible entities and to capitalize a revolving loan fund to locate clean energy projects at Brownfield sites."
- "Reauthorizes the Brownfield program at the same authorized funding level ($250 million per year) through fiscal year 2018."

Upcoming Hearings and Events

May 1-2
Wholesale Energy and Capacity Markets: The Federal Energy Regulatory Commission (FERC) will hold a "staff technical conference on wholesale energy and capacity markets". The technical conference will "discuss certain matters affecting wholesale energy and capacity markets operated by the Eastern Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs)."

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".

June 26-28
Increasing Market and Planning Efficiency through Improved Software: The Federal Energy Regulatory Commission (FERC) will hold a technical conference on "opportunities for increasing real-time and day-ahead market efficiency through improved software."

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

CBO Estimates Higher Spending Than DOD In Most Recent FYDP

Key Points:

- *CBO finds higher cost growth than DOD in its five-year budget plan and in following years, largely because of the coming modernization "bow wave"*

On April 5, the Congressional Budget Office (CBO) released its assessment of the Department of Defense's Future Years Defense Program (FYDP), which "describes the CBO's analysis of the Obama Administration's 2017 defense plan, which was issued in April 2016 and spanned the period from 2017 through 2021." CBO explained that "[b]ecause decisions made now can have longer-term consequences, CBO has projected the costs of that plan through 2032." CBO noted that "[t]he Trump Administration has indicated its intention to substantially change those plans—for example, to increase the size of the military and to reevaluate plans for the procurement of several major weapon systems."

The CBO explained that "[i]n February 2016, DOD estimated that its plans for FY 2017 would cost $583 billion…[which] included $530 billion for base-budget activities (such as day-to-day military and civilian operations and developing and procuring weapon systems) and $54 billion for overseas contingency operations (OCO; mostly for the wars in Afghanistan and Iraq and the Levant)." The CBO stated that "President Obama's proposed budget included that same total amount—but allocated $525 billion for DOD's base budget and $59 billion for OCO to comply with funding caps in the Budget Control Act of 2011, as amended." The CBO noted that "[a]djusted for inflation, funding requested for DOD's base-budget appropriation in 2017 was 1.2 percent less than the amount enacted for 2016."

The CBO stated that "[f]or the years after 2017, DOD estimated that the costs of executing its 2017 plans for the base budget—the FYDP excludes funding for OCO—would have been higher, averaging $543 billion per year between 2018 and 2021…[and] [a]ccording to CBO's extension of DOD's plans and cost assumptions to the years beyond the FYDP period, the cost of those plans would have increased steadily, reaching $598 billion in 2032—about 14 percent more than the proposed 2017 funding." The CBO stated that "[t]hose higher costs would have resulted from a sharp increase in the acquisition of new weapon systems in 2022 and 2023 plus steadily growing costs to operate and support military forces over the projection period." The CBO stated that it "projects even higher costs for DOD's 2017 plans—about 3 percent higher over the next 16 years—under alternative assumptions about policies and prices that more closely match recent experience [by assuming]…that some of DOD's planned cost-saving measures would not have been enacted and that developing and buying weapon systems would have cost more than 2017 estimates indicated."

For more information on defense issues you may email or call Michael Kans at 202-659-8201.

HEALTH

House Rules Approves Additional Amendment for American Health Care Act

Key Points:

- *The House Rules Committee approved an amendment 9-2 to the American Health Care Act which would provide $15 billion to insurers to cover the cost of especially sick patients.*
- *House Majority Leader Kevin McCarthy (R-CA) said recess could be cut short if an agreement is reached to pass the legislation.*

On April 6 the House Rules Committee considered an amendment to the "American Health Care Act" (H.R. 1628), offered by Representatives David Schweikert (R-AZ) and Gary Palmer (R-AL). The amendment was approved by a vote of 9-2.

The Federal Invisible Risk Sharing Program would create a federal insurance pool for those with serious and expensive medical conditions. It would provide $15 billion to insurers over nine years which are expected to bring down premiums for healthy people by subsidizing costs for those with especially high expenses. Administration of the program will transfer to the states in 2020.

House Ways and Means Committee Chairman Kevin Brady (R-TX) stated this amendment "is another example of House Republicans' unwavering commitment to repeal and replace Obamacare and provide immediate relief to those trapped in this failing law." House Minority Leader Nancy Pelosi (D-CA) asserted the amendment "does nothing to diminish the horror" of the efforts to repeal the Affordable Care Act (ACA).

Congress is now heading into recess for two weeks. Following passage of the amendment, House Majority Leader Kevin McCarthy (R-CA) suggested Representatives may be called back early if Republicans can reach an agreement on final legislation. In a memorandum to House Republicans he said, "should we be prepared to advance out bill through the House in the coming two weeks, we will advise Members immediately and give you sufficient time to return to Washington."

The House Freedom Caucus would like to see three ACA regulations removed: essential health benefits, community rating, and guaranteed issue. Caucus members argue these measures drive up the costs of premiums. It is unlikely moderate Republicans would support dropping these three measures.

Senate Holds Hearing on FDA Nominee

Key Points:

- *The Senate Health, Education, Labor and Pensions Committee held a hearing on the nomination of Scott Gottlieb to serve as Commissioner of the Food and Drug Administration.*
- *The Committee will likely vote on the nomination following recess.*

On April 5, the Senate Health, Education, Labor and Pensions Committee held a hearing entitled "Nomination of Scott Gottlieb to serve as Commissioner of the Food and Drug Administration." Topics discussed included, but were not limited to: (1) potential conflicts of interest; (2) promoting Food and Drug Administration (FDA) staff; (3) addressing the opioid crisis; (4) limiting the influence of politics in the approval process; (5) potential reforms to the FDA approval process; (6) increasing approval of biosimilars and generics; (6) addressing prescription drug prices; (7) ensuring development of medical countermeasures; (8) regulation of tobacco products; and (9) ensuring food safety.

Chairman Lamar Alexander (R-TN) emphasized the important role of the FDA Commissioner who oversees the safety of both medical and food products. He said the first order of business will be work on the reauthorization of the user fee agreements. Senator Alexander expressed his commitment to reauthorize all the user fees before August 1.

Ranking Member Patty Murray (D-WA) raised concerns about Gottlieb's potential conflicts of interest since he consulted for and invested in companies that could come before the FDA for approval. She also asked how science-based decisions would be support at the FDA and cautioned against allowing politics to influence product approvals.

Upcoming Hearings and Events

April 10

Opioids: The National Center for Complementary and Integrative Health will hold a discussion on "Pain and Opioid Management in Veterans: Evidence, Lessons Learned, and Future Directions in the Use of Collaborative and Integrated Care Approaches."

April 11

Health Management: The Healthcare Leadership Council will hold a briefing on "New Trends for Effective Health Management: Approaches to Improving Outcomes."

Home Visiting: The Home Visiting Coalition will host a briefing on the "Voluntary, Evidence-Based Home Visiting Program," highlighting the "importance of reauthorizing and increasing funding" for the Maternal, Infant, and Early Childhood Home Visiting (MIECHV) program.

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

TRANSPORTATION AND INFRASTRUCTURE

FAST Act Hearing

Key Points:

- *Members and witnesses discussed the projected HTF insolvency towards the end of the current surface transportation authorization and options for funding*

On April 5, the House Transportation and Infrastructure Committee's Highways and Transit Subcommittee held a hearing entitled "FAST Act Implementation: State and Local Perspectives." Topics discussed included, but were not limited to: (1) FAST Act; (2) Streamlining; (3) Funding Sources; (4) Gas Tax; (5) Private Investment; (6) Highway Trust Fund (HTF); (7) Public Safety; (8) FAA Reauthorization; and (9) New Technologies.

Chairman Sam Graves (R-MO) said the "Fixing America's Surface Transportation (FAST) Act" (P.L. 114-94) of 2015 is the first long-term surface transportation reauthorization bill in a decade and an important foundation for the creation of a 21st century infrastructure system. He said the FAST Act is a five-year bill which will provide certainty in funding for non-federal partners. He explained this certainty will allow for smart long-term investments. He said the legislation is forward looking and puts an emphasis on projects of national significance, the movement of freight, the streamlining of project delivery, and innovative solutions to transportation challenges. He said state departments of transportation, transit systems, and local entities have the important task of delivering projects to communities. He noted that the witnesses have a first-hand view of this task and can provide an important perspective on how federal policies are being implemented by the U.S. Department of Transportation (DOT).

Ranking Member Eleanor Holmes Norton (D-DC) said the hearing is an indication that the subcommittee is seeking to get "beyond all of the interest we have heard on infrastructure and see what we can really do." She said a large infrastructure package has been on the minds of administration officials but this package will not "magically appear." She said the FAST Act was a good first step and the first bill of its kind in ten years. She lauded the subcommittee's bipartisan effort but expressed disappointment in that the bill should have been a six year bill and not a five year bill. She argued this "disinvestment" cannot be sustained. She said since the 1950s the U.S. has understood that in order to be a great country, there must be sustained investment in infrastructure projects of various kinds. She noted that the Congressional Budget Office (CBO) has reported that the Highway Trust Fund (HTF) faces a $139 billion shortfall over the next decade if FAST Act funding levels are continued. She said the CBO has also reported that an additional $17 billion is needed annually at the federal level to maintain a state of good repair and reduce bad backlog. She stated she is disappointed in the Trump Administration's "skinny budget" because it aims to cut many popular transportation programs. She said she was pleased to sign a bipartisan letter to urge the Appropriations Committee to continue to fully fund all FAST Act programs, as authorized, for the remainder of FY 2017 and the upcoming FY 2018 budget request.

Oklahoma Department of Transportation Executive Director J. Michael Patterson (on behalf of the American Association of State Highway Transportation Officials (AASHTO)) said the FAST Act's authorization of $305 billion for federal highway, highway safety, transit, and passenger rail programs from 2016 to 2020 "could not have been timelier in spurring our economic growth and investing in our multimodal transportation infrastructure." He said in order to maximize the FAST Act's potential its annual obligation authority must be fully honored in the FY 2017 appropriations process and beyond. He added funding for transportation programs should not be reduced as proposed in the President's FY 2018 budget request. He stated contract authority provided in surface transportation authorizations should not be rescinded and the structural cash flow deficit in the federal HTF must be resolved for the long term. He said direct funding of transportation investment should remain the primary focus since other funding mechanisms often cannot provide the return on investment required by private sector equity holders. He said it is widely recognized that the FAST Act provides only a near-term solution to federal surface transportation funding. He stated the HTF has provided stable, reliable, and substantial highway and transit funding for decades since its inception in 1956, but this is no longer the case. He observed that since 2008, the HTF has been sustained through a series of General Fund transfers now amounting to $140 billion. He said a January 2017 CBO baseline said HTF spending is estimated to exceed receipts by about $17 billion in FY 2021, growing to about $24 billion by FY 2027. He added the HTF is expected to experience a significant cash shortfall in FY 2021, since it cannot incur a negative balance. He said in terms of federal highway obligations, AASHTO estimates that states may see a 40 percent drop from FY 2020 to the following year—from $46.2 billion to $27.7 billion in FY 2021.

Dallas Area Rapid Transit (DART) President and Executive Director Gary Thomas (on behalf of the American Public Transportation Association (APTA)) said DART was created in 1983 when North Texans, in and around the city of Dallas, voted to commit one percent of local sales taxes to fund public transportation. He said today DART is a multi-modal transit agency operating North America's longest light rail system of 93 miles in the fourth largest metropolitan area in the United States. He stated the 2.3 million residents of DART's 13-city, 700- square mile service area count on DART's network of bus, light rail, commuter rail, and paratransit programs to get where they need to go. He said he has witnessed the "astounding economic impact DART has had on our region." He explained new and planned transit oriented development along DART rail lines has generated more than $7 billion in economic growth. He added in 2014 and 2015 this activity was responsible for more than 43,000 jobs, resulting in nearly $3 billion in wages, salaries, and benefits. He said DART was one of the first transit agencies to actively engage car and ride-sharing companies with its first partnership being with ZipCar, a nationwide car-sharing company that approached DART in 2015 about placing two cars at one of its rail stations. He said this model has seen success and engagement with ride-sharing companies has increased. He said DART customers can now access both Uber and Lyft services through DART's GoPass mobile ticketing app, which utilizes the latest technology to provide a seamless, integrated payment system for the complete trip. He said DART is currently using a Federal Transit Administration (FTA) Mobility on Demand (MOD) Sandbox grant to make it easier for car and ride-sharing customers to connect with transit.

Mayor of Atlanta Kasim Reed (on behalf of the United States Conference of Mayors (USCM)) thanked the Committee and the Administration for their help with regard to the collapse of a section of I-85 near Atlanta recently. He said challenges in Atlanta highlight a broader need for an over transportation system. He said since the I-85 collapse, use of the city's transit system has increase by 29 percent. He said alternatives including resilience models will be critically important during the 21st century. He said Atlanta and the state of Georgia are investing in their roads through the passage of a bill that increases the gas tax to fund $1 billion annually for road and bridge repair. He added the city of Atlanta is also moving ahead in its own way through a half-penny sales tax referendum that would generate $2.6 billion for the transit system. He said this referendum passed with 71 percent vote support. He stated it is important to realize that in Georgia and the Atlanta metro area, officials are focusing on roads in partnership with the state but also not leaving transit responsibilities behind. He remarked that "citizens vote with their pocketbooks and businesses vote with their feet." He stated since recent infrastructure investments, the city of Atlanta has won 17 regional or U.S. headquarters of major companies including NCR, Honeywell, GE Digital, and UPS. He said the city has also experienced its largest net increase of jobs into the city in 40 years. He stressed that "none of this would have been possible without the stability provided in the FAST Act." He said investments in infrastructure illicit strong responses from the market and the business community.

National Airspace Hearing

Key Points:

- *In looking at coming technologies and paradigms, the Aviation Subcommittee discussed UAS and other potential cutting edge platforms in U.S. airspace*

On April 4, the House Transportation and Infrastructure Committee's Aviation Subcommittee held a hearing entitled "Building a 21st Century Infrastructure for America: Enabling Innovation in the National Airspace." The purpose of this hearing was to examine the U.S's changing aviation system, which has developed with the introduction and growth of new technologies, innovative business models, and non-traditional users. Topics discussed included, but were not limited to: (1) The Security of UAS Systems; (2) Measures to Support Regional Airlines; (3) Regulating UAS Systems; (4) Development of new UAS Technology; and (5) Miscellaneous.

Subcommittee Chairman Frank LoBiondo (R-NJ) stated that the hearing was being held in preparation for Federal Aviation Administration (FAA) reauthorization. He said that new technologies had caused the airline industry to change. He noted that the overnight delivery system was a reflection of these changes. He stated that unmanned aircraft systems (UAS) had become widely available as a result of lower production costs. He said that UAS were having an impact on how aircraft operated in low-altitude airspace. He stated that changes to the commercial airline industry had had a negative impact on some communities. He pointed out that some communities had lost transportation options. He stated that startups had attempted to fill this void. He stated that cooperation between industry and government was important if consumers and new technological development were to be supported. He said that he was proud to support the FAA Technical Center. He noted that a new complex was under construction to promote research and development. He said that innovation should not come at the expense of safety.

Ranking Member Rick Larsen (D-WA) said that the hearing would discuss how to include new users, aerospace technologies and business operations into the U.S's airspace. He pointed out that new technologies were affecting how air space was used. He asked the witnesses to discuss how these new technologies could be accommodated in the upcoming FAA reauthorization. He said that the UAS industry had developed many jobs in Washington State. He stated that the growth of the UAS industry would benefit the economy. He said that there was a risk of UAS being a danger to manned aircraft and infrastructure. He noted that the Committee held a hearing discussing oversight of the UAS industry during the previous summer. He said that U.S leadership in space transportation and exploration were important for safety and national security reasons.

Federal Aviation Administration William J. Hughes Technical Center Director Shelley Yak said that aviation supported economic activity and jobs. She stated that the government must improve the U.S's airspace to promote safety. She noted that the FAA Technical Center's role was to promote safety through the National Airspace System (NAS) while analyzing what effect new technologies would have on U.S airspace. She said that the Center worked with the private sector to promote safety as well. She noted that the Datacom Program was improving efficiency in the NAS. She pointed out that greater efficiency in the NAS reduced aviation omissions. She noted that tests were taking place to further reduce omissions from lead based fuels. She noted that the FAA had created a pilot program to assess the impact of new technologies, including UAS, on U.S airspace. She noted that the FAA was concerned with cyber security as it related to aerospace critical infrastructure. She invited the Committee to witness the aviation R&D taking place at the FAA Technical Center.

Amazon Prime Air Safety and Regulatory Affairs Director Sean Cassidy stated that UAS had the potential to revolutionize the package delivery industry. He pointed out that UAS systems used by Amazon used technologies to prevent safety mishaps. He said that the U.S was a leader in UAS technology. He suggested that Congress address the safety and security concerns that were prohibiting larger scale rollouts and the deployment of UAS technology. He asked Congress to introduce the means by which commercial operations can be conducted beyond the line of sight to include package drones. He concluded by asking Congress to create a certification and ensuring airworthiness process for commercial UAS. He asked that Congress include language supporting the certification process in the upcoming FAA reauthorization. He noted that Amazon was working with National Aeronautics and Space Administration (NASA) and other bodies to develop a UTM system. He said that proposed UAS legislation was interfering with the FAA's ability to regulate. He stated that Amazon wanted to work with Congress to allow beyond line of site operations for package drones.

For more information on transportation issues you may email or call Michael Kans at 202-659-8201. Alex Hopkins and Daniel Berrick contributed to this section.

TECHNOLOGY

Duke Confirmed as DHS Deputy Secretary

Key Points:

- *A DHS veteran is confirmed in bipartisan vote, making DHS one of the first agencies with a Deputy*

On April 4, the Senate confirmed Elaine Duke to be the Deputy Secretary of Homeland Security by an 85-14 vote, making the Department of Homeland Security (DHS) one of the few departments with a confirmed Deputy Secretary. Duke had served as the Under Secretary of Homeland Security for Management from July 2008 to April 2010, starting during the Bush Administration and continuing under the Obama Administration. She also served as the DHS Chief Acquisition Officer and worked with the DHS Chief Information Officer regarding the acquisition and use of information and communications technology.

Senate Commerce Reports Out MAIN STREET Cybersecurity Act

Key Points:

- *A bill is marked up that would require NIST to modify the Cybersecurity Framework to help small and mid-sized businesses*

This week, the Senate Commerce Committee marked up and reported out the "Making Available Information Now to Strengthen Trust and Resilience and Enhance Enterprise Technology (MAIN STREET) Cybersecurity Act" (S. 770) as amended, that would "provide a consistent set of resources for small businesses to best protect their digital assets from cybersecurity threats" according to a press release from cosponsors Senators Brain Schatz (D-HI) and James Risch (R-ID). Schatz, Risch, and other cosponsors noted that "[i]n 2014, the Senate unanimously passed the "Cybersecurity Enhancement Act of 2014", which codified the industry-led process for the National Institute of Standards and Technology (NIST) Cybersecurity Framework, a comprehensive voluntary guide for organizations and businesses to better manage and reduce cybersecurity risks." The Senators stated that "[w]hile this framework continues to play a key role in improving the cyber resilience of the United States, additional coordinated resources may be necessary to improve the ability of small businesses to use it." The Senators stated that "[t]he MAIN STREET Cybersecurity Act will ensure NIST considers the needs of small businesses as it updates the framework and provide simplified, consistent resources based on the NIST framework specifically for small businesses."

Healthcare Cybersecurity Hearing

Key Points:

- *An oversight subcommittee looks at current state of healthcare cybersecurity*

On April 4, the House Energy and Commerce Committee's Oversight and Investigations Subcommittee held a hearing entitled "Cybersecurity in the Health Care Sector: Strengthening Public-Private Partnerships." In its briefing memorandum, the Committee explained that "[h]ealth care has long struggled to coalesce around the institutions and infrastructure necessary to improve the security posture of the industry due to several complex factors." The Committee claimed that "[t]his hearing presents an opportunity to explore the challenges in health care cybersecurity and to identify opportunities to improve leadership and engagement across the sector." Topics discussed included, but were not limited to: (1) National Health Information Sharing and Analysis Center (ISAC); (2) Medical Devices; (3) Lessons Learned from Other ISACs; (4) Cybersecurity Capabilities; (5) Department of Health and Human Services (HHS); and (6) Research and Development.

Chairman Tim Murphy (R-PA) said strong cybersecurity practices are essential in the healthcare industry. He said along with protecting patient data or information, strong cybersecurity practices focus on patient safety. He observed that for over twenty years a cornerstone of national cybersecurity efforts has been public-private partnerships (P3s). He explained these arrangements are designed to facilitate engagement and collaboration between the government and private sector. He said the P3 has evolved, but "the objective remains the same – unity of effort between those responsible for protecting the nation and those who own and operate the infrastructure that is critical to that mission." He stated the focal points of these efforts are 16 critical infrastructure sectors—one of which is the health care sector. He said each sector is organized around the following key institutions: Sector Specific Agency (SSA), Government Coordinating Council (GGC), Sector Coordinating Council (SCC) and Information Sharing and Analysis Center (ISAC). He said the healthcare sector has "long struggled to coalesce around the public-private partnership model, especially with respect to cybersecurity." He attributed this partially to the fact that cybersecurity is a relatively new challenge for much of this sector. He added as healthcare becomes increasingly digitized, the need to improve cybersecurity must be a priority. He observed that healthcare is "an incredibly diverse and complex sector, with a wide range of industries and institutions of varying sizes, technological sophistication, and resources." He said it is a sector in which cybersecurity often becomes conflated with privacy or compliance. He said this issue is exacerbated by the reality that a successful P3 depends on collaboration and trust with the Department of Health and Human Services (HHS) which he described as "an understandable challenge given the many participants in the sector who are regulated by various entities within HHS."

Ranking Member Diana DeGette (D-CO) said the government and industry are constantly seeing new attacks and vulnerabilities arise against connected information systems. She said information systems connected to the internet are integral to the operation of the American economy and government. She said cyber-attacks and breaches have affected companies from various industries and now the healthcare sector is experiencing an increase in vulnerabilities. She said in 2015, more than 113 million healthcare records were compromised during hacks. She said these attacks are a reminder that all industries are vulnerable. She said she is concerned with vulnerabilities in the healthcare sector as more Americans suffer the loss of personally identifiable information. She said combatting these attacks will require a coordinated effort between government and industry. She stated she is interested to hear more about how ISACs in other industries have provided valuable assistance to industry members and encouraged information sharing. She noted federal agencies also collaborate with ISACs. She said the National Health ISAC share information on vulnerabilities related to healthcare providers, health IT companies, insurers, pharmaceutical companies and medical device manufacturers. She said the National Health ISAC is a relatively new player but she is interested in learning how it can leverage the experience of other industries to assist the healthcare sector in prevented breaches. She said she hopes the Committee will continue to look at more general ways to strengthen American cybersecurity systems included more hearings on topics such as ransomware, hospital cyber-attacks, and the theft of millions of medical records. She said she sent a letter to the Food and Drug Administration (FDA) last year asking about cyber vulnerabilities in medical devices. She said these devices are becoming increasingly vulnerable and the Committee should address the topic.

National Health Information Sharing and Analysis Center President Denise Anderson said ISACs are primarily trusted communities that promote the sharing of timely, actionable and reliable information for their respective critical infrastructure sectors and provide forums for owner and operator sharing around threats, incidents, vulnerabilities, best practices and mitigation strategies. She explained ISACs collaborate with each other daily through the National Council of ISACs' (NCI) daily operations centers cyber call, and the NCI listserver. She stated the NCI also hosts a weekly operations centers physical call and meets monthly to discuss issues and threats. She said the organization is a cross-sector partnership engaged in sharing cyber and physical threats, mitigation strategies and working together and with government partners during incidents requiring cross-sector response as well as addressing issues affecting industry. She said the NCI also conducts and participates in cross-sector exercises, works with the National Infrastructure Coordinating Center (NICC) and the National Cybersecurity and Communications Integration Center (NCCIC) during steady-state and incidents, holds emergency calls as needed and develops joint white papers around threats. She said the ISACs have been "instrumental in embracing, developing and advancing the automatic exchange of data within their memberships and across the ISACs, as well as with government as possible."

Merck & Company, Inc. IT Risk Management Vice President & Chief Information Security Officer Terry Rice said nowhere is the cybersecurity challenge more acute than in the healthcare sector. He noted in the last several years, many high-profile breaches have taken place that resulted in the exposure of hundreds of millions of American health records. He said the industry has also seen how software vulnerabilities in insulin pumps and pacemakers can be exploited to cause potentially lethal attacks. He noted the prevalence of entire hospitals in the U.S. and U.K shutting down to combat ransomware infections in critical systems. He argued that these incidents underrepresent the risk the healthcare sector is experiencing. He said incidents such as these are underreported and many small and medium sized companies lack the capital and personnel to deal with more than the most basic cybersecurity issues. He added the necessity of portability in terms of health information increases the risk of breach more than other sectors. He said recent advances in technology have also opened up a wider array of risks and exposure. He stressed the need for a collaborative effort to combat these attacks and emerging risks. He noted five important opportunities for further partnership and collaboration between HHS and the private sector: (1) appoint a healthcare sector cybersecurity liaison; (2) develop a cybersecurity appendix to Healthcare & Public Sector Specific Plan; (3) increase the quality of cybersecurity intelligence and the speed with which it is shared; (4) facilitate healthcare cybersecurity table top exercises and simulations; (5) collaborate on the implementation of a digital healthcare identity based on leading government and private sector standard that are mature and in place.

For more information on technology issues you may email or call Michael Kans at 202-659-8201. Alex Hopkins contributed to this section.

This Week in Congress was written by Laura Simmons.