

April 13, 2018

## Washington Update

### This Week in Congress

- **House** – The House passed the “**End Banking for Human Traffickers Act of 2018**” (H.R. 2219); the “**Combat Online Predators Act**” (H.R. 4201); the “**Financial Stability Oversight Council Improvement Act**” (H.R. 4061); the “**Stress Test Improvement Act**” (H.R. 4293); and the “**Volcker Rule Regulatory Harmonization Act**” (H.R. 4790).
- **Senate** – The Senate passed the “**AGOA and MCA Modernization Act**” (H.R. 3445); and confirmed **John F. Ring** to be a member of the National Labor relations Board; **Patrick Pizzella** to be Deputy Secretary of Labor; and **Andrew Wheeler** to be Deputy Administrator of the EPA.

### Next Week in Congress

- **House** – The House may consider the “**Protecting Children from Identity Theft Act**” (H.R. 5192); the “**Taxpayer First Act**” (H.R. 5444); and the “**21<sup>st</sup> Century IRS Act**” (H.R. 5445).
- **Senate** – The Senate may consider a bill to amend the “**White Mountain Apache tribe Water Rights Quantification Act of 2010**” (S.140).

## TAX

### Treasury and OMB Sign Deal Granting White House Review of Tax Regulations

#### Key Points:

- *Office of Management and Budget and Treasury Department release new Memorandum of Agreement that gives the White House new authority over the review process of proposed tax regulation.*
- *The Office of Information and Regulatory Affairs will now have the ability to analyze proposed regulations that impact the economy by \$100 million or more.*

On Thursday, the Office of Management and Budget (OMB) and the Treasury Department released a joint “Memorandum of Agreement” (MOA) that will require a systemic review of tax regulations by the White House. The new

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MOA specifically gives OMB new authority to review tax regulations before taking effect.

The Office of Information and Regulatory Affairs (OIRA) within OMB will now be able to analyze proposed regulations that are inconsistent with other planned agency actions, raise “novel” legal or policy issues, or could impact the economy by \$100 million or more. Under the agreement, the Treasury Department will not publish in the Federal Register any “tax regulatory action” unless OIRA has reviewed or waived its review of such actions.

The agreement provides that the OIRA review will generally conclude after 45 days, with an exception for extensions that have been mutually agreed to by OMB and Treasury. It also includes a 10-day expedited review procedure that allows the Secretary or Deputy Secretary of the Treasury, with the concurrence of the OIRA Administrator, to designate regulations implementing the Tax Cut and Jobs Act of 2017 for expedited release. In such cases, OIRA review will be limited to no more than 10 business days. The expedited review period can be extended by mutual agreement by the parties. Should a disagreement occur between the two agencies, OIRA will host a principals meeting to resolve any differences, with unresolved issues potentially being elevated to the President.

In announcing the deal, Treasury Secretary Steven Mnuchin said that the “updated review framework will increase scrutiny of regulations most likely to impose new costs, while preserving Treasury’s ability to ensure taxpayers receive timely, clear rules and guidance on how to comply with our tax code. Under today’s agreement, Treasury will continue to swiftly and successfully implement historic tax reform while still avoiding needless regulatory costs and delays.”

## ***Ways and Means Committee Advances IRS Reform Legislation; House to Vote on Package Next Week***

### *Key Points:*

- *House Ways and Means Committee passes package of IRS reform legislation to restructure areas of the IRS dealing with taxpayer service, IRS Appeals, and the U.S. Tax Court.*
- *The House is expected to vote on the legislation next week to coincide with the April 17 tax filing day.*

On Wednesday, The House Ways and Means Committee voted unanimously to advance a package of 12 bipartisan bills aimed at reforming and updating the Internal Revenue Service (IRS). The legislation included [H.R. 5444](#), the “Taxpayer First Act” introduced on April 10 by Oversight Subcommittee Chairman Lynn Jenkins (R-KS) and ranking member John Lewis (D-GA.). The bill would create a new independent IRS Office of Appeals and establish an income threshold for referring taxpayers to the agency’s private debt collection program. The committee also passed H.R. 5445, the “21st Century IRS Act,” legislation to enhance cybersecurity and prevent identity fraud, modernize the agency’s information technology systems, and improve customer service.

According to Oversight Committee Chairman Jenkins, the full House would vote on the package next week to coincide with tax filing day on April 17. Under one scenario, the House would consider the Taxpayer First Act and 21st Century IRS Act together, while the smaller individual bills would be voted on under suspension, a fast-track process typically reserved for non-controversial legislation.

The House Ways and Means Committee unanimously approved the following bills:

- [H.R. 5444](#), Taxpayer First Act
- [H.R. 5445](#), 21st Century IRS Act
- [H.R. 1512](#), Social Security Child Protection Act of 2017
- [H.R. 2901](#), Volunteer Income Assistance Permanence Act of 2017
- [H.R. 4403](#), Moving Americans Privacy Protection Act
- [H.R. 5192](#), Protecting Children from Identity Theft Act
- [H.R. 5437](#), to require the Treasury secretary to establish a program for issuing identity protection personal identification numbers
- [H.R. 5438](#), to allow Treasury employees to provide taxpayers with information about low-income taxpayer clinics
- [H.R. 5439](#), to provide a single point of contact at the IRS for tax-related identity theft victims
- [H.R. 5440](#), to require notice from the Treasury secretary about any closure of a taxpayer assistance center
- [H.R. 5443](#), to require electronic filing of annual returns for exempt organizations and provide for making those returns available publicly
- [H.R. 5446](#), to restrict to perishable goods the immediate sale of seized property by the Treasury secretary

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

## **FINANCIAL SERVICES**

### ***CFPB Acting Director Mulvaney Testifies on the Semi-Annual Report of the CFPB***

#### *Key Points:*

- *The CFPB Semi-annual report recommended funding the CFPB through the appropriations process, requiring formative legislative approval of major CFPB rules, ensuring the CFPB*

*Director answers to the President in the exercise of executive authority, and creation of an independent Inspector General (IG) for the agency.*

- *Acting Director Mulvaney stated the CFPB is reviewing their data collection practices and will be issuing a report to Congress.*
- *Mulvaney stated that the CFPB will be following the APA in its review of the payday lending rule and no determinations about the rule have been made thus far.*

On April 11 and 12, Consumer Financial Protection Bureau (CFPB) Acting Director Mick Mulvaney testified before the [House Financial Services Committee](#) and the [Senate Banking Committee](#) on the [Semi-annual report of the CFPB](#). House Financial Services Chairman Jeb Hensarling (R-TX) stated when Richard Cordray was Director, the CFPB was the most unaccountable agency and it is still that way under Mulvaney. He stated the CFPB is unaccountable because it is not subject to appropriations or the courts. House Financial Services Ranking Member Maxine Waters (D-CA), in a [statement](#), suggested Mulvaney is not the Acting Director of the CFPB because he was illegally appointed by President Trump. She explained that the Vice Chairman is supposed to act as Director in the absence of a confirmed appointee. She suggested that Mulvaney's position at the CFPB erodes its independence. Senate Banking Committee Chairman Mike Crapo (R-ID) expressed concern over the "big data" being collected by companies and the government. He noted the GAO has highlighted deficiencies in the CFPB's data collection practices and he applauded Mulvaney for taking these deficiencies seriously and halting the collection of consumer data until reforms can be made. He expressed support for reforms to the CFPB such as making it a commission, putting it under the appropriations process, and conducting a safety and soundness check.

Senate Banking Committee Ranking Member Sherrod Brown (D-OH), in a [statement](#), explained that before Mulvaney's arrival, the CFPB got \$12 billion in relief for 29 million Americans and initiated a handful of enforcement actions every month on behalf of the consumers. Brown stated that Mulvaney's appointment at the CFPB was only made possible by ignoring the law that created the CFPB, which says that the Deputy Director should be in charge of the agency. He suggested that Mulvaney is attempting to do such a bad jobs at running the CFPB that Congress takes away the CFPB's ability to protect consumers.

Democratic Members of both Committees raised concerns with Mulvaney's ability to adequately serve as both the Director of the OMB and the CFPB. Concerns were raised about Mulvaney's statements while serving in Congress about the need to eliminate the CFPB. Acting Director Mulvaney responded to these concerns by explaining that he has been given a job and it is his duty to uphold the law. Republican Members of both Committees expressed their concerns over the structure of the CFPB and its "unaccountability." When asked what reforms should be made to the CFPB, Mulvaney suggested that the CFPB should be placed under the appropriations process, require congressional affirmation of major CFPB rulemakings; make the CFPB Director answerable to the President; and create an independent Inspector General (IG) for the agency. He noted that a five-person commission structure would also be a useful reform. Several Senators and Representatives raised concerns that under Mulvaney the CFPB has not initiated any new enforcement actions. Mulvaney explained that the CFPB has over 100 ongoing investigations and 25 court cases. He noted that the CFPB also has several cases in the "sue or settle" bucket. Senate Banking Chairman Mike Crapo (R-ID) as well as several

other Representatives and Senators raised concerns over the CFPB's data collection practices and their ability to protect the data they collect. Mulvaney stated that the CFPB is undertaking a review of their data collection practices and until that time has undertaken a data collection freeze. He noted they are working with the Department of Defense (DOD) on data collection and will be releasing a report on their data collection policies. Several concerns were raised about the CFPB payday lending rule. Mulvaney stated that the CFPB is following the Administrative Procedure Act (APA) and has issued a notice of their intent to revisit this rule. He reiterated that they have not made any pre-determinations on the outcome of this review. He stated they will gather all the data and "may" come to a different conclusion.

### ***Federal Reserve and OCC Propose Rule to Tailor the Enhanced Supplementary Leverage Ratio***

#### *Key Point:*

- *The Federal Reserve and the OCC issued a proposed rule to modify the calculation of the enhanced supplementary leverage ratio for GSIBs.*

On April 11, the Federal Reserve and the Office of the Comptroller of the Currency (OCC) issued a [proposed rule](#) to modify the enhanced supplementary leverage ratio (ESLR) standards for U.S. top-tier bank holding companies identified as global systemically important bank holding companies (GSIBs) and certain of their insured depository institution subsidiaries. Federal Reserve Chairman Jerome Powell and Vice Chairman for Supervision Randal Quarles voted in favor of the proposal, while Governor Lael Brainard voted in opposition.

A Federal Reserve [press release](#) stated that:

Currently, firms that are required to comply with the "enhanced supplementary leverage ratio" are subject to a fixed leverage standard, regardless of their systemic footprint. The proposal would instead tie the standard to the risk-based capital surcharge of the firm, which is based on the firm's individual characteristics. The resulting leverage standard would be more closely tailored to each firm.

A Federal Reserve staff memo explained the proposal would:

- Replace the current 2 percent leverage buffer that applies uniformly to all GSIBs with a leverage buffer tailored to each GSIB, set at 50 percent of each firm's GSIB risk-based capital surcharge (GSIB surcharge);
- For covered IDIs, replace the current 6 percent threshold at which such IDIs [insured depository institution] are considered "well capitalized" under the prompt corrective action (PCA) framework with a threshold set at 3 percent plus 50 percent of the GSIB surcharge applicable to the IDI subsidiary's GSIB holding company; and
- Make a corresponding change to each GSIB's external TLAC [Total Loss Absorbing Capacity] leverage buffer and long-term debt requirement, and make other, minor amendments to the TLAC rule.

***House Financial Services Panel Holds Hearing on CFIUS Reform Legislation***

*Key Point:*

- *While members of both parties stressed the need to enhance CFIUS, several members raised concerns that the language in FIRRMA is overly broad.*

On April 12, the House Financial Services Committee's Subcommittee on Monetary Policy and Trade held a [hearing](#) to consider the Foreign Investment Risk Review Modernization Act of 2017 (FIRRMA) ([H.R. 4311](#)), which was introduced by Representative Robert Pittenger (R-NC).

Chairman Andy Barr (R-KY) commended Representative Robert Pittenger (R-NC) for introducing legislation to modernize the review of foreign investment in the U.S. He noted that the Committee on Foreign Investment in the United States (CFIUS) was last updated in 2007 and since then several deals have been stopped when CFIUS found threats which could not be mitigated. He noted that each deal was stopped for reasons related to Chinese companies taking control of technology which could pose a national security threat. He emphasized that not all deals with China are bad and not all bad deals are with China, but there is a need to modernize CFIUS. Barr said the Administration supports FIRRMA and has provided constructive feedback. He noted that the Committee is reviewing proposals to enhance the bill further. He said he hopes to work on the bill in a bipartisan and bicameral manner through regular order. He emphasized that CFIUS should be focused on real threats and not on all joint ventures and investments. He stated that Congress should work to stop troublesome investments by Chinese state-controlled enterprises bent on obtaining technologies which could threaten U.S. national security, while being careful not to drive away unobjectionable deals. He stressed that national

security can be enhanced without harming the economy.

Representatives Denny Heck (D-WA), Ed Royce (R-CA) and Robert Pittenger (R-NC) spoke in support of FIRRMA, emphasizing that it is focused on closing gaps, while ensuring the U.S. remains open to investments which do not harm national security. Pittenger stated the recent edits to the bill were meant to streamline it and focus it more clearly on national security. He asserted that CFIUS reform is an urgent national security matter.

Representatives Tom Emmer (R-MN), Warren Davidson (R-OH), and Trey Hollingsworth (R-IN) raised concerns that the language in FIRRMA is overly broad and would have a chilling effect on investment. Emmer noted that the medical device industry has raised concerns with the proposed expansion of CFIUS oversight and how it could impact technologies not previously considered. He stated that they are concerned with the broad terms of critical and emerging technologies.

### ***House Passes Three Financial Services Bills***

*Key Point:*

- *The House passed bills to reform the FSOC’s SIFI designation process, the stress testing regime, and the Volcker Rule.*

This week the House passed a three financial services bills:

- The Financial Stability Oversight Council Improvement Act of 2017 ([H.R. 4061](#)), introduced by Representative Dennis Ross (R-FL), which would amend the Dodd-Frank Act (DFA) to require the Financial Stability Oversight Council (FSOC), when determining whether to subject a

U.S. or a foreign nonbank financial company to supervision by the Federal Reserve, to consider the appropriateness of imposing heightened prudential standards as opposed to other forms of regulation to mitigate identified risks to U.S. financial stability. The bill passed the House by a vote of 297-121.

- The Stress Test Improvement Act of 2017 ([H.R.4293](#)), introduced by Representative Lee Zeldin (R-NY), which would amend the stress testing process for bank holding companies by requiring certain bank holding companies to conduct company-run stress tests once a year rather than semiannually. The bill passed the House by a vote of 245-174.
- The Volcker Rule Regulatory Harmonization Act ([H.R.4790](#)), introduced by Representative French Hill (R-AR), which would amend Section 619 of the Dodd-Frank Act to streamline the regulatory authority over the Volcker Rule by granting the Federal Reserve the exclusive rulemaking authority and identifying the primary federal agency for the sole examination and enforcement authority over an entity. The bill passed the House by a vote of 300-104.

### ***SEC Remarks on Equity Market Structure***

*Key Points:*

- *SEC Chairman Jay Clayton noted the SEC will be voting on proposals to enhance ATS operational transparency and proposals to enhance the transparency of broker order routing practices.*
- *SEC Division of Trading and Markets Director Brett Redfearn stated the Division plans on holding a series of roundtables on market structure for thinly-traded securities,*

*access to markets and market data, and regulatory approaches to combat retail fraud.*

On April 10, SEC Chairman Jay Clayton and Division of Trading and Market Director Brett Redfearn gave remarks at the Equity Market Structure Symposium at the University of Chicago. In his [remarks](#), Chairman Clayton suggested that a key responsibility as a regulator is to ensure that as technology changes, regulations continue to drive efficiency, integrity and resilience. He reiterated five principles that will guide his tenure at the SEC when it comes to equity market structure. He noted the first is fidelity to the SEC's three part mission; the second is remaining focused on the long-term interests of Main Street investors; the third is facilitating transparency; the fourth is retrospective review; and the fifth is that meaningfully assessing regulatory initiatives requires both coordination with other regulators and communication with stakeholders. Clayton noted both the work of the Equity Market Structure Advisory Committee (EMSAC) in making recommendations to the SEC and the Department of Treasury report on U.S. capital markets (Capital Markets Report). He noted the SEC took the EMSAC and Treasury report into consideration when proposing the transaction fee pilot last month. He noted that the SEC will most likely be voting in the coming months on two transparency proposals: the 2015 proposal to enhance alternative trading system (ATS) operational transparency, and the 2016 proposal to enhance transparency of broker order routing practices. He stated that the Division of Trading and Markets will also be hosting a series of staff roundtables devoted to equity market structure topics that were raised through the EMSAC, the Capital Markets Report, and otherwise. He noted the initial roundtable, occurring on April 23, will address the challenges associated with liquidity for thinly-traded securities, access to markets

and market data, and regulatory approaches to addressing retail fraud. Clayton explained that a general comment file will be located on the SEC website for people to submit comments on equity market structure issues.

In his [remarks](#), Division of Trading and Markets Director Brett Redfearn discussed the pilots being run by the SEC as well as the upcoming roundtables. He noted there are currently 17 pilots being run by the Division of Trading and Markets and he suggested that these pilots should be structured efficiently to minimize direct costs. He noted the Tick Size Pilot is set to expire on October 2 and the SEC will need to decide whether to extend the pilot. He noted the deadline for the joint assessment of the impact of the Tick Pilot was extended until July 3, 2018. Redfearn explained given currently available data, he would suggest that the Tick Pilot be allowed to expire. In relation to the Transaction Fee pilot, he expressed his support for inclusion of the test group prohibiting rebates. Redfearn then turned to the three staff roundtables that the Division has planned. He noted the first roundtable will look at market structure for thinly-traded securities. He noted that today there is a single equity market structure for all NMS stocks and the SEC is questioning whether this structure is appropriate for thinly-traded securities. He noted the Capital Markets Report suggested allowing issuers of less liquid stocks to suspend unlisted trading privileges (UTP) for a stock so that it would trade on a smaller number of venues until liquidity reached a minimum threshold. He stated this and other issues will be discussed at this roundtable. Redfearn explained the roundtable on access to markets and market data would look at issues such as the sale of market data; the impact of getting data at slower speeds; the impacts of greater transparency into the economies of market data distribution by the exchanges and the Securities Information Processors (SIPs); the pros and

cons of the existing single consolidator model for SIP data; and differing views on the governance model of the SIP. Finally, Redfearn noted the SEC also plans on holding a roundtable on regulatory approaches to combat retail fraud. He noted this roundtable will look at the long-term interest of Main Street investors. He added his view that this roundtable could also look at issues such as digital assets and penny stocks.

## **UPCOMING EVENTS**

### **April 17**

***Federal Reserve Oversight:*** The House Financial Services Committee will hold a hearing on the efforts, activities, objectives, and plans of the Federal Reserve. Federal Reserve Vice Chairman for Supervision Randal Quarles will testify at the hearing.

***Nomination Hearing:*** The Senate Banking Committee will hold a hearing to discuss the nominations of: Mr. Jeffery Nadaner, to be Assistant Secretary of Commerce for Export Enforcement; the Honorable Thelma Drake, to be Federal Transit Administrator, Department of Transportation; and Mr. Seth Daniel Appleton, to be Assistant Secretary of Housing and Urban Development for Policy Development & Research.

***Housing Choice Voucher Program:*** The House Financial Services Committee's Subcommittee on Housing and Insurance will hold a hearing entitled "Housing Choice Voucher Program: An Oversight and Review of Legislative Proposals."

***FDIC Open Meeting:*** The Federal Deposit Insurance Corporation (FDIC) will hold an open meeting to consider one item: Interagency Regulatory Capital Rule: Implementation and Transition of the Current Expected Credit Losses Methodology for Allowances and

Related Adjustments to the Regulatory Capital Rule and Conforming Amendments to Other Regulations.

### **April 18**

***HUD Budget:*** The Senate Appropriations Committee's Subcommittee on Transportation, Housing and Urban Development, and Related Agencies will hold a hearing on the FY2019 budget for the Department of Housing and Urban Development (HUD).

***SEC Open Meeting:*** The Securities and Exchange Commission (SEC) will hold an open meeting to consider three items: (1) whether to propose new and amended rules and forms to require registered investment advisers and registered broker-dealers to provide a brief relationship summary to retail investors; (2) whether to propose a rule to establish a standard of conduct for broker-dealers and natural persons who are associated persons of a broker-dealer when making a recommendation of any securities transaction or investment strategy involving securities to a retail customer; and (3) whether to propose a Commission interpretation of the standard of conduct for investment advisers.

### **April 19**

***Federal Reserve Oversight:*** The Senate Banking Committee will hold a hearing on the efforts, activities, objectives, and plans of the Federal Reserve. Federal Reserve Vice Chairman for Supervision Randal Quarles will testify at the hearing.

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

## **ENERGY & ENVIRONMENT**

**Secretary Perry Testifies on the Fiscal Year 2019 Department of Energy Budget**

*Key Point:*

- *Secretary of Energy Rick Perry appeared before the Energy Subcommittee of the House Energy and Commerce Committee to discuss the Department's Fiscal Year 2019 budget proposal.*

On Thursday, the House Energy and Commerce Committee's Energy Subcommittee held a hearing on "The Fiscal Year 2019 Department of Energy Budget". Secretary of Energy Rick Perry testified. As described in the Committee's [background memorandum](#), the hearing focused on: (1) "Funding priorities;" (2) "Major budget changes;" (3) "Cybersecurity and emergency response;" (4) "National energy policy and energy reliability priorities;" and (5) "Management and security reforms".

In his [testimony](#), Perry outlined the major funding proposals included in the Fiscal Year 2019 budget:

- "\$15.1 billion for the National Nuclear Security Administration (NNSA), \$2.2 billion or 16.7 percent above the FY 2017 enacted level."
- The establishment of the "the Office of Cybersecurity, Energy Security, and Emergency Response (CESER)", which "will allow more coordinated preparedness and response to emerging cyber and physical threats and natural disasters and support the Department's national security responsibilities."
- "\$61 million for Electricity Delivery to support transmission system resource adequacy and generation diversity, move forward with new architecture approaches for the transmission and distribution system to enhance security and resilience, and advance energy storage."
- "\$120 million, including \$30 million in defense funds, to resume licensing for

the nuclear waste repository at Yucca Mountain and implement a robust interim storage program."

- "\$2.1 billion for the applied energy programs...[focusing] resources on early-stage, cutting-edge R&D conducted by the scientists and engineers at our 17 National Laboratories..."
- \$696 million for programs conducted by the Office of Energy Efficiency and Renewable Energy.
- "\$5.4 billion for the Office of Science to continue and strengthen American leadership in scientific inquiry."
- "\$175.1 million, \$47.5 million below the FY 2017 enacted level, to support the [Strategic Petroleum] Reserve's operational readiness and drawdown capabilities."
- "\$77 million for the Power Marketing Administrations (PMAs)."

**Upcoming Hearings and Events****April 17**

***FERC Budget/Oversight:*** The House Energy and Commerce Committee's Subcommittee on Energy will hold a [hearing](#) on "Oversight of the Federal Energy Regulatory Commission and the FY2019 Budget".

**April 18**

***Power Counties Act:*** The House Natural Resources Committee's Subcommittee on Energy and Mineral Resources will hold a [hearing](#) on the "Power Counties Act" ([H.R. 3846](#)).

***Pending Business:*** The House Natural Resources Committee will hold a [markup](#) of pending legislation.

***Federal Government Groundwater Protection:*** The Senate Environment and

Public Works Committee will hold a hearing on “The Appropriate Role of States and the Federal Government in Protecting Groundwater”.

## April 19

**FERC Meeting:** The Federal Energy Regulatory Commission (FERC) will hold its monthly open meeting. The [agenda](#) includes: “Uplift Cost Allocation and Transparency in Markets Operated by Regional Transmission Organizations and Independent System Operators”; “Reform of Generator Interconnection Procedures and Agreements”; “Revised Critical Infrastructure Protection Reliability Standard CIP-003-7 - Cyber Security - Security Management Controls”; and “Certification of New Interstate Natural Gas Facilities”.

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

## DEFENSE

### Hearings on DOD Cyber Capabilities

#### *Key Point:*

- *At two hearings this week, the House Armed Services Committee examined capabilities and gaps in the DOD’s and U.S.’s cyber operations*

On April 11, 2018 the House Armed Services Committee held a [hearing](#) entitled: “Cyber Operations Today: Preparing for 21st Century Challenges in an Information-Enabled Society” with testimony from former Secretaries of Homeland Security Michael Chertoff and Jeh Johnson and former National Security Agency (NSA) Director General Keith Alexander. Topics discussed included but were not limited

to: (1) Public-Private Partnerships, (2) Cyber Policy, (3) Cyber Response, (4) Ransomware, (5) Education and Retention.

Chairman Mac Thornberry (R-TX) said “cyber is a new domain of warfare.” He mentioned that funding has been increased in cyberspace defense, but the U.S. requires more to face this threat. He said adversaries manipulate the democratic process and pose diverse threats. He stated that the U.S. government needs to increase its ability to respond as billions of devices with little security are expanded throughout the globe. He said Congress and the U.S. need to work quickly to blunt cybersecurity threats.

Ranking Member Adam Smith (D-WA) asked the witnesses how the Department of Defense (DOD) can better coordinate its efforts to combat cybersecurity threats. He noted that there is no uniform strategy in terms of leadership within the DOD. He said the DOD does not have a clear plan. He said cyber disinformation campaigns have “taken cyber to a whole new level.” He said China and Russia have been “incredibly aggressive” and are ahead of the U.S. He asked the witnesses to explain a better cyber strategy as opposed to the one currently implemented. He mentioned attacks on the Office of Personnel Management (OPM) and Yahoo which compromised the information of millions of Americans. He noted that this is “theft on an industrial scale.” He said data can have negative effects on civilian lives and critical infrastructure. He said progress has been made on unity of effort, but more needs to be done. He said the DOD, the Department of Homeland Security (DHS), and the Federal Bureau of Investigation (FBI) need to have a more unified strategy. He called for more security clearances for private sector workers. He argued that further clearances would provide incentives for private sector workers.

He said the U.S. should not rely solely on offensive cyber abilities to respond to attack. He commented that sanctions and diplomatic responses should be considered.

Thornberry said “the threat is going up far faster than our response” in regard to cybersecurity. He asked the witnesses if they agreed and what Congress could do to improve response. Chertoff said there is no lack of capability, but there is no unified doctrine. He said the “Support Anti-Terrorism by Fostering Effective Technologies Act (SAFETY Act) of 2002” (P.L. 107-296) provides incentives for the private sector to increase the number of tools available. Alexander agreed that threats are increasing exponentially and the U.S. is falling behind. He said there is no “common operational picture for cyber.” He noted that the U.S. does not have the ability to defend itself at network speed. Johnson said that the cybersecurity situation of the U.S. will get worse before it gets better. He stated that adversaries are becoming more “aggressive, creative, and tenacious.” He encouraged private sector industries to adopt minimum cybersecurity standards.

Smith said the U.S. does not have a clear policy to respond to cyber-attacks and adversaries have become emboldened. He asked the witnesses to describe an ideal Rules of Engagement (ROE) policy. Alexander said cyber-attacks should be stopped by the Administration by blocking. He added that nation-states can be more readily identified through use of network speed. Chertoff stated that nation-states such as Russia use criminal elements that make detection more difficult. He added that many attacks do not originate from adversaries, and the U.S. may need to revisit policies in regard to attacking from within the country. Smith asked the witnesses to explain the DOD’s plan to move further into the cloud and how that could impact

cybersecurity. Alexander encouraged moving information into the cloud and added that it could provide better security.

On April 11, 2018 the House Armed Services Committee’s Emerging Threats and Capabilities Subcommittee held a [hearing](#) titled “A Review and Assessment of the Department of Defense Budget, Strategy, Policy, and Programs for Cyber Operations and U.S. Command for Fiscal Year 2019.” Topics discussed included but were not limited to: (1) Whole-of-Government Approach; (2) Cyber Capabilities; (3) Cyber Training.

Chairman Elise Stefanik (R-NY) stated that adversaries, particularly dictatorships like Russia and China, leverage cyber information and communications technology for geopolitical and economic gain. She asserted that dictatorships use information technology against their own people. She noted the 2018 [Worldwide Threat Assessment](#) stated that Iran and North Korea continue to increase their offensive cyber capabilities and techniques. She said state and non-state actors present cyberattack threats, and that U.S. cyber superiority is no longer assured. She expressed concern that the U.S. does not have a strategy to adequately oppose adversarial cyber advances. She stated that military cyber resilience has improved but said that is less true of other government areas such as critical infrastructure. She advocated for interagency partnerships to develop a whole-of-government strategy for cybersecurity. She argued the Department of Defense (DOD) should take the lead in this strategy. She emphasized the importance of developing cyber resilience and response protocols.

Ranking Member James Langevin (D-RI) said 2018 would be an important year for U.S. Cyber Command. He noted that, following legislative action out of the Subcommittee,

Cyber Command will become a unified combatant command after the confirmation of the next commander. He stated a cyber posture review is being conducted for the first time and the legislative framework is in place for the notification of sensitive cyber operations. He said cyber evaluations of major defense systems are being conducted to assess risk and mitigate vulnerabilities. He stated cyber abilities supporting Overseas Contingency Operations (OCO) are also increasing. He asserted that all Cyber Mission Force (CMF) teams are expected to achieve full operational capability (FOC) by the end of 2018. He emphasized these are positive steps but insufficient for maintaining U.S. cyber superiority. He argued the CMF teams must have a framework for rapid deployment based on legal, policy, and operational authorities. He said existing frameworks are too ambiguous to clearly deploy the CMF against all mission sets. He emphasized the need to develop an international framework for cyber warfare, particularly criteria for the use of cyber weapons outside of warzones. He expressed concern about a cyber doctrine developing a cold war framework where actions are taken via proxies. He stated the U.S. must work with allies to diligently develop and enforce rules on malicious actors.

National Security Agency Director and U.S. Cyber Command Commander Admiral Michael Rogers stated that the cyberspace domain has evolved significantly since the development of Cyber Command eight years prior. He stated cyberattacks threaten U.S. national security and economic well-being. He noted Russia and China as the greatest concerns. He said rogue nations like Iran have growing capabilities and are employing aggressive methods in malicious cyberspace activities. He stated that several nation-states have mounted sustained campaigns against U.S. defense contractors to identify and steal key technologies, platforms,

and systems. He asserted that adversaries are increasing their efforts with little concern for consequences. He argued the U.S. needs to change its responses to alter this dynamic. He noted three Cyber Command mission priorities: 1) the defense of the Department of Defense Information Networks (DODIN); 2) the support of other joint-force commanders through the application of offensive cyber capabilities; and 3) the defense of critical U.S. infrastructure when directed by the President. He emphasized Cyber Command seeks to deliver both a strategic and operational advantage for combatant commanders and policymakers. He noted Joint Force Headquarters DODIN has achieved FOC, Joint Task Force Ares has integrated cyber operations in the campaign to defeat the Islamic State of Iraq and Syria (ISIS), and cyber training resources have increased. He asserted that in the following year Cyber Command will be elevated to a unified combatant command to provide mission ready cyber operations forces to other combatant commanders. He stated several hundred people will be moved this month into the new cyber and joint-operations center at Fort Meade. He said Cyber Command delivered the first of several foundational toolkits enabling the CMF to work against adversary networks. He noted a project to develop an unclassified collaboration venue to leverage private sector and academic resources and expertise. He stated the Cyber Excepted Service (CES) will improve recruitment of top cyber talent. He said Command success is intertwined with continued integration of the U.S. National Guard. He asserted the CMF will reach FOC by the end of 2018 and will shift focus from developing the force to active operations. He stated recommendations for the procedures to break the “dual hat” arrangement between U.S. Cyber Command and the National Security Agency (NSA) will be submitted to the President.

Assistant Secretary of Defense for Homeland Defense and Global Security Kenneth P. Rapuano stated that his priority is to ensure the U.S. is organizing, resourcing, and posturing in cyberspace for a conflict with “great-power competitors.” He stated DOD has prioritized the three themes of the 2018 National Defense Strategy (NDS): 1) increasing lethality; 2) strengthening alliances; and 3) reforming DOD practices. He stated individuals and entities which operate networks must take appropriate steps to implement best practices in connected devices and systems. He emphasized hardening critical systems. He noted cybersecurity experts estimate that 90 percent of cyberattacks could be defeated by the implementation of cyber hygiene practices and the sharing of best practices. He stressed the key to cybersecurity is to minimize vulnerabilities. He asserted that minimizing risk would free resources for deterrence responses against cybercrimes. He stated DOD will leverage information collection mechanisms to provide timely indicators and warnings to private operators. He said if a cyberattack were to occur, the Department of Homeland Security (DHS) and DOD would take the lead in investigating and recovering from the incident. He asserted that DOD resources are most effectively used to offensively target malicious cyber threats and counter-attack during an attack. He stated DOD performs defensive network operations daily to ensure the resiliency of technologies and weapons systems. He said DOD is evaluating vulnerabilities as directed in the National Defense Authorization Act (NDAA). He emphasized DOD must be prepared to engage in conflict below the threshold of conventional war. He argued the U.S. should work with allies to apply diplomatic and economic pressure on adversaries. He expressed support for the President’s request of \$8.6 billion for cybersecurity funding in FY 2019.

## Upcoming Hearings and Events

### April 17

***FY 2019 DOD Budget Request:*** The Senate Appropriations Committee’s Defense Subcommittee will hold a hearing on the FY 2019 Department of Defense budget request for the National Guard and Reserve.

### ***PACOM and NORTHCOM Nominations:***

The Senate Armed Services Committee will hold a [hearing](#) on the following nominations: Admiral Philip S. Davidson for reappointment to the grade of admiral and to be Commander, United States Pacific Command; and General Terrence J. O’Shaughnessy for reappointment to the grade of general and to be Commander, United States Northern Command, and Commander, North American Aerospace Defense Command.

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

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

***DOD Innovation:*** The House Armed Services Committee will hold a [hearing](#) titled “Promoting DOD’s Culture of Innovation.”

***FY 2019 DOD Budget Request:*** The House Armed Services Committee’s Strategic Forces Subcommittee will hold a [hearing](#) titled “Fiscal Year 2019 Budget Request for Missile Defense and Missile Defeat Programs.”

***Export Control Legislation:*** The House Foreign Affairs Committee will hold a [markup](#) of four bills, including the “Export Control Reform Act of 2018” ([H.R.5040](#)).

**U.S.-Taiwan:** The House Foreign Affairs Committee’s Asia and the Pacific Subcommittee will hold a [hearing](#) titled “Reinforcing the U.S.-Taiwan Relationship.”

**Iran and Terrorism:** The House Homeland Security Committee’s Counterterrorism and Intelligence Subcommittee will hold a [hearing](#) titled “State Sponsors of Terrorism: An Examination of Iran’s Global Terrorism Network.”

#### **April 18**

**New Technologies:** The Senate Armed Services Committee’s Emerging Threats and Capabilities Subcommittee will hold a [hearing](#) titled “Accelerating New Technologies to Meet Emerging Threats.”

**Air Force Modernization:** The Senate Armed Services Committee’s Airland Subcommittee will hold a [hearing](#) titled “Air Force Modernization.”

**DOD 4th Estate:** The House Armed Services Committee will hold a [hearing](#) titled “Oversight and Reform of the Department of Defense ‘4th Estate.’”

**FY 2019 DOD Budget Request:** The House Armed Services Committee’s Readiness Subcommittee will hold a [hearing](#) titled “Fiscal Year 2019 Energy, Installations and Environment Budget Request.”

**FY 2019 DOD Budget Request:** The House Armed Services Committee’s Tactical Air and Land Forces Subcommittee will hold a [hearing](#) titled “Ground Force Modernization Budget Request for Fiscal Year 2019.”

**Middle East:** The House Foreign Affairs Committee will hold a [hearing](#) titled “U.S. Policy Toward a Turbulent Middle East.”

#### **April 19**

**Global Threats:** The Senate Appropriations Committee’s Defense Subcommittee will hold a closed hearing on intelligence programs and global threats.

**Navy Posture:** The Senate Armed Services Committee will hold a [hearing](#) titled “Posture of the Department of the Navy.”

**Army Readiness:** The House Armed Services Committee’s Readiness Subcommittee will hold a [hearing](#) titled “Army Fiscal Year 2019 Budget Request Readiness Posture.”

**Military Health:** The House Armed Services Committee’s Military Personnel Subcommittee will hold a [hearing](#) titled “Military Health System Reform: Pain Management, Opioids Prescription Management and Reporting Transparency.”

*For more information on defense issues you may [email](#) or call Michael Kans at 202-659-8201. Jackson McLendon and Thomas McGrath contributed to this section.*

### **HEALTH**

#### **Congress Continues Work on Opioids Legislation**

##### *Key Points:*

- *The Senate Health, Education, Labor and Pensions Committee held a hearing on the Opioid Crisis Response Act of 2018. The Committee plans to hold a markup of the bill April 24.*
- *The House Energy and Commerce Committee concluded its hearing series to discuss opioid legislation with the final hearing focused on Medicare and Medicaid. The Committee would like to send a package to the President before Memorial Day.*

On April 11, the Senate Health, Education, Labor and Pensions (HELP) Committee held a hearing on draft legislation. The “Opioid Crisis Response Act of 2018” would work to address the opioid crisis across federal agencies. Measures include spurring the development of non-addictive painkillers; encouraging responsible prescribing; improving detection and seizure of illegal drugs; strengthening prevention; addressing the effects of the opioid crisis on infants, children, and families; and improving access to treatment.

At the hearing, HELP Committee Chairman Lamar Alexander (R-TN) suggested the opioid crisis will require an “all hands on deck” approach. He explained the bill was drafted using input from governors across the nation and was informed by the six hearing the Committee has held. Ranking Member Patty Murray (D-WA) stressed the Opioid Crisis Response Act was drafted with serious attention to the concerns observed by the Committee. She asserted this legislation will not be the last step that the Committee will take to address the crisis, but it is a big step. Chairman Alexander announced the Committee intends to hold a markup of the bill on April 24.

The draft legislation and a summary can be read [here](#).

This week, the House Energy and Commerce Committee also concluded its hearing series to discuss legislation to address the opioid crisis. The final hearing focused on addressing the opioid crisis for Medicare and Medicaid beneficiaries. The bills covered range of issues including neonatal abstinence syndrome; provider and patient education on opioids; and increasing access and coverage of treatment.

Health Subcommittee Chairman Michael Burgess (R-TX) called for thinking creatively to

address the opioid crisis. He pointed out one issue is the physician workforce noting Congress can pass bills to improve access to treatment, but if there are not enough physicians equipped with the proper tools, access will not improve. Ranking Member Gene Green (D-TX) expressed concern about the number of bills under consideration given the crisis is hitting communities across the country, and there should adequate time to closely examine legislation. Full Committee Chairman Greg Walden (R-OT) reiterated his intent to send a package of bills to the President by Memorial Day.

Read the latest bills considered by the Committee [here](#).

### **CMS Issues Final Rule for ACA Exchanges in 2019**

#### *Key Points:*

- *The final rule affecting plan year 2019 provides additional flexibility for essential health benefits, improve affordability, strengthen program integrity, and reduces unnecessary regulatory burdens.*
- *The Centers for Medicare and Medicaid Services also released a guidance document on further hardship exemptions from the individual mandate.*

On April 9, the Centers for Medicare and Medicaid Services (CMS) released a final rule, “HHS Notice of Benefit and Payment Parameters for 2019,” governing insurance plans sold in the individual market in 2019. CMS Administrator Seema Verma said “too many Americans are facing skyrocketing premiums...and every year consumers are faced with the threat of fewer choices.” The final rule provides states with additional tools stabilize health insurance markets and empower individuals to find coverage to fit their needs.

- **Essential Health Benefits**—CMS provides states with additional flexibility in how they select their essential health benefit (EHB) benchmark plan. States will be able to choose from the 50 EHB-benchmark plans used for the 2017 plan year in other states or select specific EHB categories from among the categories used for the 2017 plan year in other states. States will also be able to build their own set of benefits that could potentially become their EHB-benchmark plan.
- **Risk Adjustment**—CMS amends the risk adjustment data validation program to reduce burdens on insurers. The program is also recalibrated for the 2019 benefit year to incorporate new data that reflects the actual experience of individual and small group market enrollees. CMS also provides states greater flexibility in states where the Department of Health and Human Services (HHS) runs the risk adjustment program.
- **Advanced Premium Tax Credit Program Integrity**—The rule requires exchanges to implement stronger checks to verify applicants actually earn the income they to qualify for the tax credit.
- **Medical Loss Ratio**—The final rule amends the requirements to reduce regulatory burden to stabilize insurance market, increase insurer participation, and expand consumer choice.

In addition, CMS also issued a new guidance document on hardship exemptions from the individual mandate. This document expands the hardship exemption to include those living in a county where there is no qualified health plan; who have a hardship because all

affordable plans cover abortion contrary to one's beliefs; or who experience personal circumstances that create a hardship because no affordable plans provide access to necessary specialty care.

The final rule can be read [here](#) and the guidance document can be read [here](#).

## Upcoming Hearings and Meetings

### April 17

**Opioids:** The Food and Drug Administration will hold a meeting on the “Patient-Focused Drug Development on Opioid Use Disorder,” to obtain patients’ perspectives on the impacts of and treatment approaches for opioid use disorder.

**FDA:** The House Appropriations Committee will hold a hearing on the “FY2019 Budget - Food and Drug Administration (FDA).”

### April 18

**Biodefense:** The House Appropriations Committee will hold a “FY2019 Oversight Hearing on Health and Human Services Biodefense Activities.”

**Substance Abuse:** Trust for America’s Health and Well Being Trust will host a briefing on strategies to prevent substance abuse.

### April 19

**Opioids:** The Senate Finance Committee will hold a hearing on “Tackling Opioid and Substance Use Disorders in Medicare, Medicaid, and Human Services Programs.”

**Opioids:** The House Armed Services Committee will hold a hearing entitled “Military Health System Reform: Pain Management,

Opioids Prescription Management and Reporting Transparency.”

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

**TRANSPORTATION AND INFRASTRUCTURE**

**House May Consider Long-Term FAA Reauthorization This Month**

*Key Points:*

- *A long-term reauthorization may be considered this month in the House sans an ATC spinoff*
- *Senate timing is unclear*

During the week of April 23, the House may take up a Federal Aviation Administration (FAA) reauthorization similar to the bill reported out of the House Transportation and Infrastructure Committee last year. However, the bill will almost certainly not contain the language from the “21st Century Aviation Innovation, Reform, and Reauthorization Act” ([H.R.2997](#)) to privatize the FAA’s air traffic control operations but otherwise may track closely with that package. If the House passes the bill, there’s no clarity on when the Senate would take up its bill, the “Federal Aviation Administration Reauthorization Act of 2017” ([S.1405](#)), but this may happen before the expiration of the current extension of authority on September 31, 2018.

**Chao Appears Before Senate Appropriations Committee**

*Key Point:*

- *Members expressed displeasure with the FY 2019 budget request’s topline number, lack of HTF fix, and zeroing out of TIGER*

On April 11, 2018 the Senate Appropriations Committee’s Transportation, Housing and Urban Development, and Related Agencies Subcommittee held a [hearing](#) entitled: “Review the FY2019 Budget Request for the U.S. Department of Transportation.” Topics discussed included but were not limited to: (1) TIGER Grants/CIG Program; (2) TIFIA/RRIF Loans; (3) Expediting Permitting; (4) Rural Infrastructure; (5) Merchant Marines; (6) Air Traffic Control; (7) Infrastructure Proposal; (8) FAA Rules; (9) CAFE Standards; and (10) Drug Impaired Driving.

Chairman Susan Collins (R-ME) expressed support for Congress having raised the budget caps. She said raising the caps allowed an additional \$12.6 million for Transportation, Housing and Urban Development (THUD) programs in the “Consolidated Appropriations Act, 2018” (P.L. 115-141). She stated this funding will provide essential support for the nation’s “crumbling infrastructure.” She noted that the FY 2019 budget request includes \$76.8 billion for the Department of Transportation (DOT). She noted the DOT’s infrastructure proposal which includes \$200 billion in federal spending over ten years. She argued the FY 2019 budget request fails to address the insolvency of the Highway Trust Fund (HTF). She expressed concern pending cuts arising from shortfalls in the HTF and asserted that the Trump Administration has offered no funding solution. She said the Administration is instead focusing on programs which shift costs to states and include only a 20 percent cost federal match. She expressed support for the rural set-aside in the infrastructure proposal. She reiterated her concern that without substantial increased HTF funding, states will face greater surface transportation costs. She expressed concern about the Administration’s proposal to zero out the Transportation Investment Generating Economic Recovery (TIGER) Grants Program. She stated FY 2019

budget request will also cut funding to the Essential Air Service (EAS) Program and Amtrak's long-distance routes. She said Committee members are particularly concerned about how FY 2019 will allocate funding for the Capital Investment Grants (CIG) Program. She noted the budget reduces funding for the Maritime Security Program (MSP). She expressed support for proposed FY 2019 funding for the new training vessel program and addressing sexual assault at the Merchant Marine Academy. She noted Congress extended re-authorization for the Federal Aviation Administration (FAA) through the end of the fiscal year. She expressed concern about efforts to privatize the FAA.

Ranking Member Jack Reed (D-RI) noted the FY 2018 omnibus allowed for an additional \$8 billion in infrastructure spending and safety programs at DOT. He emphasized the Committee's commitment to allocate this spending across modes of transportation and to both rural and urban areas. He expressed support for the THUD funding in the "Consolidated Appropriations Act, 2018." He stated Congress rejected the Administration's proposals to eliminate TIGER Grants and CIGs and funded them at their highest annual level. He argued the additional resources for rail and transit will allow for repair along the Northeast Corridor. He expressed concern that the FY 2019 budget request proposes the same cuts as the Administration's FY 2018 request. He said it is discouraging that the Administration has been slow to allocate funding. He said the CIG Program gives state and local government's resources to address to population growth and congestion challenges. He asserted projects in this program are being unnecessarily delayed by the Trump Administration. He expressed concern that the Administration is deferring or retracting safety and environmental regulations. He stressed the need to develop a comprehensive infrastructure

package with increases in federal funding. He stated increases in increased federal spending in the Trump Administration's infrastructure package are offset by cuts to existing programs in FY 2019.

Secretary of Transportation Elaine Chao stated the FY 2019 proposal and infrastructure package work together to expand state and local partnerships and foster private investment. She stated President Donald Trump is requesting \$77 billion in DOT spending in FY 2019 and 80 percent of that will go to fully funding the fourth year of the "Fixing America's Surface Transportation (FAST) Act" (P.L. 114-94) and funding the authorized levels of the FAA's Airport Improvement Program (AIP). She said the remaining 20 percent of the request funds DOT's discretionary programs. She noted the budget includes \$300 million to replace two of the oldest ships in the United States Maritime Administration (MARAD) school ships fleet. She stated the budget will not continue existing funding levels for the TIGER Grants Program or new projects proposed by the Federal Transit Authority's (FTA) CIG Program. She argued the projects typically funded in these grants could be funded by the model outlined in the Administration's infrastructure proposal. She said DOT will continue to focus on allocating and obligating funds in the FY 2018 omnibus.

### **Major Infrastructure Project Permitting and Approval MOU Released**

#### *Key Point:*

- *White House finalizes effort to speed approval and permitting process for major infrastructure projects*

This week, the White House has released a [Memorandum of Understanding \(MOU\)](#) signed by the heads of the agencies responsible for

environmental reviews of infrastructure projects that aims to speed and streamline the permitting and approval of “major infrastructure project[s].” This MOU flows from the August 2017 [Executive Order \(EO\) 13807](#), an Office of Management and Budget (OMB) and the Council on Environmental Quality (CEQ) [memorandum](#), and some of the authority and direction provided in the “Fixing America’s Surface Transportation (FAST) Act” (P.L. 114-94).

Specifically, the MOU provides for the establishment of “a cooperative relationship for the timely processing of environmental reviews and authorization decisions for proposed major infrastructure projects under the One Federal Decision (OFD) policy established in EO 13807.” The Administration stated in the MOU that “[f]or each major infrastructure project, agencies will work together to develop a single Permitting Timetable for the necessary environmental review and authorization decisions, prepare a single environmental impact statement (EIS), sign a single record of decision (ROD), and issue all necessary authorization decisions within 90 days of issuance of the ROD, subject to limited exceptions.”

The Administration explained “[t]he purposes of this MOU are to:

- provide a more predictable, transparent and timely Federal review and authorization process for delivering major infrastructure projects;
- establish standard operating procedures for how the Federal Government will make concurrent and synchronized reviews for major infrastructure projects; and
- eliminate duplication of effort among agencies, improve the efficiency of project delivery, make better-informed decisions and promote good

environmental, community and economic outcomes.

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The MOU requires the “lead [federal] agency” to determine which projects are considered “major infrastructure project[s].” Specifically, the lead agency “will decide whether a project sponsor has identified the reasonable availability of funds, and whether the project otherwise meets the definition of “major infrastructure project” under E.O. 13807, and is therefore subject to OFD.” Moreover, “[t]he lead agency’s decision shall be determinative for purposes of this MOU.” The MOU relies on longstanding regulations (40 C.F.R. 1501.5) for a determination of which agency shall be the lead if there is more than one such possible agency.

Thereafter, “[t]he lead agency, in consultation with the project sponsor and cooperating and participating agencies, will develop a Permitting Timetable that identifies the actions and associated milestones for applicable environmental reviews and authorizations.” The MOU requires that “[t]o the maximum extent practicable and permitted by law, the Permitting Timetable will establish a schedule of no more than two years from NOI to publication of a single ROD that will provide for the completion of all required authorization decisions.”

## Upcoming Hearings and Events

### April 17

**PABs and Florida Brightline:** The House Oversight & Government Reform Committee’s Government Operations Subcommittee will hold a [hearing](#) titled “Examining Tax-Exempt Private Activity Bonds for All Aboard Florida’s Brightline Passenger Rail System.”

**STB:** The House Transportation & Infrastructure Committee’s Railroads, Pipelines, and Hazardous Materials Subcommittee will hold a [hearing](#) titled “Oversight of the Surface Transportation Board Reauthorization Act of 2015.”

### April 18

**Infrastructure Materials:** The House Science, Space & Technology Committee’s Research and Technology Subcommittee will hold a [hearing](#) titled “Composite Materials – Strengthening Infrastructure Development.”

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

## TECHNOLOGY

### Facebook Hearings

#### Key Point:

- CEO Mark Zuckerberg apologized for Facebook’s privacy lapses, and Members pressed him on the company’s privacy practices and possible regulation

On April 10, the Senate Commerce, Science, and Transportation Committee and the Senate Judiciary Committee held a [joint hearing](#) entitled “Facebook, Social Media Privacy, and the Use and Abuse of Data.” Topics discussed in the hearing included but were not limited to: (1) Political Speech/Hate Speech; (2)

Cambridge Analytica; (3) Foreign Interference; (4) Facebook Data Collection; (5) Legislation/Regulation; (6) Discrimination; (7) Social Media Addiction; (8) Advertisements; (9) Privacy Policy/Terms of Service; and (10) Mueller Special Counsel Investigation.

Senate Judiciary Committee Chairman Chuck Grassley (R-IA), in a [statement](#), explained that although not unprecedented this is a unique hearing. He noted that the issues covered today range from privacy to data security. He stated there are 44 Members between the two Committees and this is a significant number. Grassley stated the history of Facebook mirrors that of many technological giants. He explained Facebook has exploded over time since its creation. He stated Facebook makes money off of the data stored on mobile devices through advertising revenue. Grassley stated Facebook generated over \$40 billion in 2017. He noted that data collection is occurring at other companies such as Amazon, Google, and Yahoo. He stated the tradeoff for these innovations is providing more data. Grassley stated privacy is a huge issue. He suggested there has been a breach of trust with the Cambridge Analytica (CA) event. He noted the Judiciary Committee will hold a second hearing on privacy and CA. Grassley noted that consumers might not understand what data is collected, used, or misused. He stated the campaigns of Presidents George W. Bush, Barack Obama, and Donald Trump used data collection for personal targeting of voters on social media platforms. He noted the Obama campaign created an app similar to what was utilized on Facebook. He stated the effectiveness of these data gathering apps can be debated but the privacy concerns cannot be ignored. Grassley stated data privacy should be tethered to consumer needs and expectations. He explained consumers should be able to make informed decisions on what data is gathered and shared. Grassley stated the tech

industry has an obligation to respond to concerns about privacy and to restore confidence.

Senate Commerce Committee Chairman John Thune (R-SD) stated this is an extraordinary hearing and added it is extraordinary for a single CEO to testify before almost half of the Senate. He stated Facebook is itself extraordinary. He noted the large number of people that utilize Facebook daily. Thune stated Facebook's incredible reach is why this Committee is here. He stated a quiz app allowed CA to gather data on Facebook users. He noted this is a breach of trust and is unlikely to be a singular event. He noted that Facebook has recently banned a similar company. Thune stated that "the idea that—for every one person who decided to try an app—information about nearly 300 other people was scraped from your service is, to put it mildly, disturbing." He stated the recent revelation that people could breach Facebook's security settings and match e-mails to profiles is concerning. He stated Facebook has taken steps to address these issues. He noted some have warned that the actions Facebook has taken will actually enhance Facebook's ability to market such data themselves. Thune stated both parties to the "bargain" need to understand what data is being used. He stated last month Congress voted to allow law enforcement to go after tech companies that allow sex trafficking to occur on their platforms. He stated in many ways Facebook represents the American dream, but at the same time there is an obligation to ensure that this dream does not become a privacy nightmare.

Senate Judiciary Committee Ranking Member Dianne Feinstein (D-CA) stated this is a real opportunity to lead the industry in making a meaningful commitment to privacy. She noted bad actors are utilizing platforms to gather individual data. She stated on February 16,

former Federal Bureau of Investigation (FBI) Director and Special Counsel Robert Mueller issued an indictment against a Russian based company for targeting the U.S. She stated the Internet Research Agency (IRA) ran a coordinated campaign through Facebook accounts and pages to create discord against the Clinton presidential campaign. Feinstein stated it was also learned that CA exploited 87 million Facebook users' private information. She explained the personal information of 300,000 Facebook users was collected through a quiz and then that was utilized to gather more information on their friends. Feinstein stated it has been reported that this data was sold for \$800,000. She noted CA utilized this data to create digital campaigns for the Trump campaign. She expressed concern that Facebook seems to have known about this breach but did not take action to address it at the time. Feinstein stated Facebook's response to these allegations is vastly important.

Senate Commerce Committee Ranking Member Bill Nelson (D-FL) stated if social media companies do not get their act in order no one will have any privacy anymore. He stated this is personally identifiable information (PII) and if it is not protected from theft, then personal privacy will be eroded. Nelson stated online companies are tracking activities and collecting information. He suggested Facebook has a responsibility to protect this personal information. He noted he had a good discussion with Zuckerberg yesterday, and Zuckerberg admitted that Facebook had failed to protect this PII. He noted CA lied to consumers and Facebook. He asked whether Facebook monitored this app and why consumers were not notified that their PII was compromised. Nelson stated only now has Facebook pledged to protect consumers whose PII had been compromised. He stated since the Committee still does not know what CA has done with this data they will be holding a

second hearing on this issue. Nelson stated if online companies cannot fix these intrusions on privacy then Congress will have to. He asked how consumers can trust these companies to be caretakers of their PII.

Facebook Chief Executive Officer Mark Zuckerberg stated Facebook is an idealistic and optimistic company. He stated as Facebook has grown, people have gained powerful new tools for staying connected, building businesses, and joining social movements. He noted over 70 million small businesses use Facebook to create jobs and grow. He admitted that Facebook has not done enough to protect data. He stated they did not take a broad enough view of their responsibility. He apologized for that shortcoming. Zuckerberg stated they are reviewing their policies and are reforming their policies. He stated they have to make sure that this platform is not being used to harm people and spread misinformation. He stated there is a responsibility to ensure these tools are used for good. He explained it will take time to make the reforms needed but he committed to getting this right. Zuckerberg stated they are getting to the bottom of what CA did and are informing those impacted. He stated CA purchased data from an app. He stated when first contacted, CA responded they had deleted the data but that seems to be a lie. He noted that CA has agreed to a full audit performed by a firm hired by Facebook in conjunction with the investigators of the United Kingdom's Information Commissioner's Office (ICO), the entity that regulates firms like CA. Zuckerberg stated the top priority is the social mission. He stated advertisers and developers will never take priority over that. He explained that if they find that someone has misused data on Facebook they will be banned. He stated he believes deeply in what Facebook does, and he suggested when they look back Facebook will be seen as a positive force in the world.

On April 11, the House Energy and Commerce Committee held a [hearing](#) entitled: "Facebook: Transparency and Use of Consumer Data" at which Zuckerberg also testified. Topics discussed during the hearing included: (1) Facebook's Responsibilities; (2) Future Regulations; (3) Conservative Censorship; (4) Third-Party Applications; (5) Facebook's 2014 Update; (6) Cambridge Analytica; (7) Hate Speech; (8) Transparency; (9) General Data Protection Regulation; (10) BROWSER Act; (11) Federal Trade Commission; (12) Diversity; (13) 2016 Election; (14) My Data Act; (15) Opioids; (16) Terrorism; and (17) Military Personnel.

Chairman Greg Walden (R-OR) said the goal of the hearing is to explore the relationship tech companies have with their users. He noted Cambridge Analytica (CA) and said its actions were deeply disturbing. He questioned if Congress should provide federal supervision over data privacy. He said Facebook has disrupted entire industries and has changed the everyday lives of Americans. He also noted that the company has created thousands of jobs across the nation. He expressed concern that Facebook has not matured at the same rate it has grown. He said if Facebook breaks its promise to protect consumer data, there should be consequences. He hoped that Zuckerberg can help people better understand how data was accessed by third parties during the 2016 elections. He mentioned that future policies will not just impact Facebook but all social media platforms.

Ranking Member Frank Pallone (D-NJ) said Facebook has become an integral aspect of everyday Americans. He also noted that while the platform brings many positives, there are consequences. He mentioned CA and argued that Facebook became a powerful tool for voter suppression. He argued that Facebook is using personal information to conduct highly

targeted advertising. He said current laws are not working. He asserted that there needs to be legislation that regulates data collectors in order to ensure that Facebook and similar companies act responsibly. He stated that additional hearings should take place with other companies that collect data. He reiterated that it is time to pass comprehensive legislation that prevents future events.

Representative Fred Upton (R-MI) said Facebook needs more competition and that regulation may restrict startup companies from competing. Zuckerberg stated that there is competition that Facebook feels every day. In regard to regulation, he noted that it is inevitable that the internet will need oversight. He agreed that any new rules need to be very thought out. Upton asked about content review issues. Zuckerberg said there will be 20,000 additional employees by the end of the year that will focus on content review.

Representative Paul Tonko (D-NY) said Facebook’s business model is based on capitalizing the personal data of its users. He stressed that there needs to be a role for the Federal government. He asked what liability Facebook should have and who should bear it. Zuckerberg said there were a number of changes that were made in 2014 that would have not allowed the CA incident to occur.

**Upcoming Hearings and Events**

**April 17**

***Internet Prioritization:*** The House Energy & Commerce Committee’s Communications and Technology Subcommittee will hold a [hearing](#) titled “From Core to Edge: Perspective on Internet Prioritization.”

**April 18**

***AI:*** The House Oversight & Government Reform Committee’s Information Technology

Subcommittee will hold a [hearing](#) titled “Game Changers: Artificial Intelligence Part III, Artificial Intelligence and Public Policy.”

***Robocalls:*** The Senate Commerce, Science & Transportation Committee will hold a [hearing](#) titled “Abusive Robocalls and How We Can Stop Them.”

**April 19**

***Robocalls and Spoofing:*** The House Energy & Commerce Committee’s Digital Commerce and Consumer Protection Subcommittee will hold a [hearing](#) titled “Do Not Call: Combating Robocalls and Caller ID Spoofing.”

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

**TRADE**

**Trump Administration Considering Use of IEEPA to Restrict Technology Transfer to China**

*Key Point:*

- *Treasury may implement a provision that would allow the Committee on Foreign Investment in the United States (CFIUS) to review transactions that could result in technology or intellectual property transfers to foreign entities, regardless of whether a shift in ownership of the company is involved.*

The Treasury Department has indicated to lawmakers that it would be willing to enact certain provisions of the Foreign Investment Risk Review Modernization Act (FIRRMA) that would expand the scope of transactions CFIUS is able to review. According to lawmakers, Treasury has explained that it is open to using the International Economic Emergency Powers Act (IEEPA) to review

transactions involving the transfer of U.S. technology and intellectual property (IP) to foreign entities, even where there is no transfer of “control” as currently required under existing CFIUS regulations. The potential CFIUS review of technology transfers to foreign entities would mirror one aspect of the pending FIRRMA legislation.

Using IEEPA would require the President to declare a national emergency due to an extraordinary threat from a foreign source and would enable him to regulate commerce. Congress would be able to terminate the finding of a national emergency with a concurrent resolution passed by the House and Senate. Key lawmakers have reported that they are trying to pass FIRRMA before the August recess, though many lawmakers and business representatives still have concerns about the bill. The primary concern is that CFIUS would not have adequate resources to deal with the large increase in cases it would review under its expanded jurisdiction.

This executive action would follow a memorandum issued by President Trump directing the U.S. Government to propose possible restrictions on Chinese investment in U.S. companies due to concerns outlined by the Office of the United States Trade Representative (USTR) in connection with its Section 301 investigation.

### **President Trump Directs USTR to Consider Entering TPP Negotiations**

*Key Point:*

- *Senators report that President Trump told a group of lawmakers and governors on Thursday that he had directed U.S. Trade Representative (USTR) Robert Lighthizer and National Economic Council Director Larry Kudlow to “negotiate U.S. entry into TPP.”*

Following a meeting with lawmakers and governors, Senator Sasse (R-NE) told reporters that President Trump had directed top trade officials to negotiate U.S. entry into the Trans-Pacific Partnership (TPP). The White House disputed this account and said USTR Lighthizer and National Economic Council (NEC) Director Kudlow are only going to “take another look” at the trade deal. Lawmakers present at the meeting have agreed with the White House’s version of events and said the President now has “an interest in moving beyond just bilateral agreements.”

### **USTR Revises its NAFTA Automobile Rules of Origin Proposal**

*Key Point:*

- *U.S. Trade Representative (USTR) Robert Lighthizer has is now requesting a 75 percent threshold for automobiles to be eligible for duty-free treatment. He had previously called for 85 percent regional value content.*

Following informal North American Free Trade Agreement (NAFTA) negotiations in Washington, DC this week, it was reported that USTR Lighthizer lowered his regional content demand from 85 percent to 75 percent. He also changed USTR’s call for five categories of auto parts (organized in terms of how critical they are) down to three categories. In order to be eligible for duty-free benefits, the most critical components would have to meet a 75 percent regional content threshold, less critical components would have to be 70 percent North American content, and the least critical parts would only have to contain 65 percent regional content. USTR’s proposal would also allow countries to earn up to a 25 percent credit toward the regional content rule if critical components are made by workers earning \$15 per hour or more. Industry sources have indicated that this new proposal would be

“especially good for the Big Three” U.S. auto manufacturers. Mexican Economy Secretary Idefonso Guajardo called the proposal “aspirational for Mexico” but argued it is “unattainable in the short term.”

*For more information on trade issues you may [email](#) or call Christopher Hatcher at 202-659-8201. Riyad Carey contributed to this section.*

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