

April 27, 2018

Washington Update

This Week in Congress

- **House** – The House passed the “**Innovators to Entrepreneurs Act of 2018**” (H.R. 5086); the “**Operation of the Federal Columbia River Power System**” (H.R. 3144); the “**Music Modernization Act**” (H.R. 5447); the “**Iran Human Rights and Hostage-Taking Accountability Act**” (H.R. 4744); and the “**FAA Reauthorization Act**” (H.R. 4).
- **Senate** – The Senate passed the “**Northern Mariana Islands U.S. Workforce Authorization Act**” (S.2325); and confirmed **Mike Pompeo** to be Secretary of State; **Richard Grenell** to be **Ambassador to Germany**; **Rohit Chapra**, **Noah Joshua Phillips**, **Joseph Simons**, **Christine S. Wilson**, and **Rebecca Slaughter** to be Federal Trade Commissioners.

Next Week in Congress

- **House** – The House is in recess until Monday, May 7.
- **Senate** – The Senate is in recess until Monday, May 7.

TAX

Ways and Means Chairman Says Second Round of Tax Cuts a Real Possibility

Key Points:

- *Both House Ways and Means Committee Chair Kevin Brady (R-TX) and Council of Economic Advisers Chair Kevin Hassett confirm a second round of individual tax cuts is a real possibility*
- *No timeline has been released and any new legislation would require 60 votes in the Senate in order to pass*

House Ways and Means Committee Chairman Kevin Brady (R-TX) told reporters that a second phase of tax cuts in 2018 is real and that

individual and passthrough tax cuts should be made permanent. Chairman Brady said this week, “My belief is that 2.0 is real.” He added that the individual and pass-through tax cuts are “long term, but they're not permanent. We think that's important.” Brady also indicated that changes to retirement incentives could be included in the bill and he would like the

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legislation to do more to help people save more.

Kevin Hassett, Council of Economic Advisers Chairman echoed Brady's comments but noted a lack of timeline for any new legislation. He explained that whether a bill can be produced "given a limited number of days that are available to the Senate is something you should ask [Senate Majority Leader] Mitch McConnell (R-KY)." Currently, individual and passthrough rates are set to expire in 2025. Any new legislation making the cuts permanent would require 60 votes in the Senate.

Joint Committee on Taxation Continues Work on Identifying Technical Corrections and Bluebook

Key Point:

- *JCT Chief of Staff Thomas Barthold said the Committee has been working on technical corrections since before TCJA was enacted but it is up to the Senate Finance Committee and the House Ways and Means Committee to introduce legislation.*

On Wednesday, Joint Committee on Taxation's (JCT) chief of staff Thomas Barthold said the staff at JCT have been working on technical corrections since before the Tax Cuts and Jobs Act (TCJA) was enacted into law. Barthold added that "technical corrections from our perspective are: what is the member's intent in the legislation? If the member's intent was clear, and it's not clearly reflected or clearly effectuated in the legislation, then perhaps a technical correction is required." JCT is hoping to develop an initial list of technical corrections to the tax law and introduce it in legislative language before the end of the year, but there were no hard deadlines. He said, "It will be the responsibility of the House Ways and Means Committee as well as the Senate Finance

Committee to introduce the legislation at the end of the day."

JCT is also in the process of preparing their explanation of the TCJA known as the Bluebook. Barthold explained that the Bluebook drafting process will also be used to "identify some areas where we think technical corrections might be needed." He added, "We hope to write better some of the explanations of some of the provisions, perhaps with a few more examples. But the Bluebook is not a matter of trying to expand the policy or change the policy in any way."

Senate Finance Committee Holds First Hearing on New Tax Law

Key Point:

- *Republican Senators tout the TCJA as a success for the business community while hearing expert testimony from former CBO Director, two tax lawyers, and a small business owner from Pennsylvania*

On Tuesday, the Senate Finance Committee held a hearing on the impacts of the recently passed Tax Cuts and Jobs Act (TCJA). According to Chairman Orrin Hatch (R-UT); "More than 500 companies have announced wage hikes, increased benefits, more jobs, and increased investment or expansion in the United States thanks to the new law." Witnesses at the hearing included David Cranston Jr. or Cranston Material Handling Equipment Corporation; Former Congressional Budget Office (CBO) Director Douglas Holtz-Eakin; David Kamin of the NYU School of Law; and Brooklyn Law School professor Rebecca Kysar. In his opening statement, Holtz-Eakin said TCJA addressed some of the "most glaring flaws in the business tax code" by lowering the corporate rate and increasing incentives to invest in equipment. Republican Senators

touted the increase of investment across the economy and argued that there is a new sense of optimism within the private business sector.

- *Chairman Clayton reiterated his view that cryptocurrencies that operate like securities should be regulated as such.*

IRS Provides Relief for 2018 HSA Contribution Limit

Key Point:

- *The IRS issued relief to treat \$6900 as the maximum deductible health savings account contribution for 2018*

On Thursday, the Internal Revenue Service (IRS) announced relief for taxpayers regarding a reduction in the 2018 maximum contribution limits for health savings accounts (HSAs). A change in the inflation adjustment calculations for 2018 under the Tax Cuts and Jobs Act reduced the maximum deductible HSA contribution for taxpayers with family coverage under a high-deductible health plan by \$50, to \$6,850. The IRS issued Rev. Proc. 2018-27 that will allow people with family coverage under high-deductible health plans to treat \$6,900 as the maximum deductible health savings account (HSA) contribution for 2018.

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

House Appropriations Considers SEC Budget Request

Key Points:

- *The Fiscal Year 2019 budget request for the SEC is \$1.658 billion, which Chairman Jay Clayton stated will allow the SEC to modernize IT and improve cybersecurity.*
- *Chairman Clayton stated the proposed Regulation Best Interest is focused on ensuring the duty owed to investors matches the investor's expectations.*

On April 26, the House Appropriations Committee's Subcommittee on Financial Services and General Government held a [hearing](#) to discuss the Fiscal Year 2019 (FY19) budget request for the Securities and Exchange Commission (SEC). Chairman Tom Graves (R-GA) expressed appreciation for the SEC vote on proposed Regulation Best Interest, which is designed to better protect the interests of retail investors. Ranking Member Mike Quigley (D-IL) expressed concern the SEC's FY19 budget request of \$1.658 billion does not bolster enforcement. SEC Chairman Jay Clayton in his [testimony](#) stated Congress's recent funding for the SEC will help with efforts to modernize IT and improve cybersecurity. He noted the FY19 budget request will enable the SEC to hire 100 new employees and that it relies on the SEC having continued access to the Reserve Fund for cybersecurity investments. Clayton explained the request will support key enforcement priorities and will allow for enhancements in examinations of investment advisers.

Chairman Graves asked about the SEC's review of the proxy process. Clayton stated that the proxy access area is one that needs review and possible modernization. He noted the influence of proxy advisory firms and suggested that recent actions have shown that the "plumbing" is out of date. Chairman Graves and Representative Jamie Herrera Beutler (R-WA) noted the recent vote by the SEC to gather comments on a package of proposals related to a best interest standard for broker-dealers. Chairman Clayton stated the SEC is focused on ensuring that the duty owed to investors matches the client's expectations and that the client understands that duty. He suggested fiduciary principles should apply and

they have sought to harmonize the duties while recognizing the differences between a broker-dealer's duties and an investment adviser's duties. Related to questions about cryptocurrencies, Chairman Clayton acknowledged that this is a complicated issue but he reiterated his view that cryptocurrencies that operate like securities should be regulated as such. Representative Sanford Bishop (D-GA) noted that 35 percent of investment advisers have never been examined. Chairman Clayton stated that the SEC has shifted to a risk-based prioritization of whom they examine and they are attempting to increase the number of investment advisers they examine every year. He noted they have examined 15 percent of investment advisers this year.

House Financial Services Panel Holds Oversight Hearing on the SEC Division of Corporation Finance

Key Point:

- *The Subcommittee examined the Division's efforts to foster capital formation and encourage companies to go public.*

On April 26, the House Financial Services Committee's Capital Markets, Securities, and Investment Subcommittee held a [hearing](#) entitled, "Oversight of the SEC's Division of Corporate Finance," with William Hinman (Director, Division of Corporation Finance, Securities and Exchange Commission) testifying. Hinman said the Corporate Finance Division seeks to ensure that investors have access to the information they need to make informed decisions. He said the declining number of U.S. public reporting companies has caused the division to consider how to make the public company alternative more attractive. He added that companies who go from private to public companies end up benefiting from the shift. He noted that in July 2017, the division expanded its non-public review

process for draft registration statements which now applies to all IPOs and allows follow-on offerings to be submitted on a draft basis. He said this saves companies money and allows them to better access market windows. He added that the division has taken steps to issue interpretations of pay-ratio disclosure requirements and cybersecurity disclosures. Hinman said steps have been taken to create more capital formation avenues while maintaining robust investor protections under the new exemptions. He said small companies and their investors can benefit from reduced regulations and stated the division is working to make its disclosure regime more effective. He mentioned that staff has looked at ways to raise the financial thresholds below which companies qualify to scale disclosures for smaller companies. He added that the decision is working to fill other rulemaking responsibilities such as conflict minerals and executive compensation. He also mentioned that there is consideration for extending the "Test-the-Waters" provision in the Jobs Act for a wider range of participants.

Chairman Bill Huizenga (R-MI) expressed concern regarding the declining number of public companies that has reduced the number of options for investors. He argued that going public provides companies with many benefits and said initial public offerings are good for the public as well. He said U.S. capital markets are becoming less and less attractive. He stated that making capital formation the priority will help maximize opportunities for all Americans.

Ranking Member Carolyn Maloney (D-NY) said the Division of Corporation Finance is arguably the most important division within the SEC. She explained the role of the division and stressed the importance of their work as investors will not invest unless they have confidence in their investment. She said investors are eager to invest in public

companies due to the confidence they have in the disclosure framework that has been developed in recent years. She expressed concern that the SEC staff has been laying the groundwork for restricting investors to sue public companies, noting that if the SEC allows companies to use forced arbitration clauses, it would be the end of class-action lawsuits for securities fraud. She explained that the SEC has always taken the position that forced arbitration clauses violate the “anti-waiver” provision of the Securities Act and added that a change would be a major shift in policy in regard to capital markets.

Chairman Huizenga noted the decrease in the number of IPOs and he asked about the division’s capital formation agenda. Hinman said the division is doing a number of things that require rulemaking which extends the timeline. He added that companies find it more useful to time the rulemaking alongside their IPOs. He noted that the division has been working to streamline its guidance and to make it more transparent to users. He noted Rule 3-13 of Regulation S-X to provide waivers of financial statement requirements when the statements will not serve investors. He said the time it takes for companies to go through that process has been decreased.

Treasury Releases Report Highlighting Regulatory Reform Accomplishments

Key Point:

- *The Department of the Treasury released a report on steps taken following President Trump’s executive order on the regulatory reform agenda.*

On April 24, the Treasury Department released a [report](#) entitled “Regulatory Reform Accomplishments Under President Trump’s Executive Order.” The report highlights the steps taken following the issuance of Executive

Order 13777 “Enforcing the Regulatory Reform Agenda.” According to the report, the Treasury has eliminated, proposed to be eliminated, or modified 305 regulations; reduced the number of regulations on Treasury’s regulatory agenda by a net of 94; has over 250 specific recommendations to reform or reduce burdens on financial institutions; and has taken zero regulatory actions under Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs.”

The report highlights the following deregulatory actions:

- Withdrawal of the notice of proposed rulemaking (NPR) relating to restrictions on the liquidation of an interest in a corporation or a partnership;
- Withdrawal of the NPR defining political subdivisions for purposes of tax-exempt bonds under section 103 of the IRC;
- Withdrew the remaining provisions of a 2005 NPR that would have required an exchange or distribution of net value for certain corporate formations and reorganizations to qualify for tax-free treatment under the IRC; and
- Extended for six months the compliance date for certain recordkeeping requirements for Qualified Financial Contracts (QFRs).

On February 3, 2017 the President signed Executive Order 13772 instructing the Treasury to report on the extent to which existing financial regulations promote the Administration’s “Core Principles” for financial regulation. Since that time Treasury has issued three reports. In addition, the Treasury has issued a report on the FSOC designation process and the CFPB arbitration rule.

Treasury reports the following progress on recommendations included in these reports:

- Following the Treasury’s June 2017 report on banks and credit unions in August 2017

- the OCC published a request for input on how the Volcker Rule could be revised.
- Senator Mike Crapo (R-ID) introduced and the Senate has passed the Economic Growth, Regulatory Relief, and Consumer Protection Act. The bill reflects several Treasury recommendations including a small bank exemption from the Volcker Rule, a simpler regulatory regime for highly capitalized community banks, and a higher threshold for subjecting a bank holding company to enhanced prudential standards.
 - The Congressional Review Act (CRA) was used to repeal the CFPB's Arbitration Rule.
 - CFPB announced greater flexibility for small lenders and will engage in rulemaking to reconsider aspects of the 2015 HMDA rules.
 - In November and December 2017, heads of the Federal Reserve, FDIC and OCC announced in letters to Capitol Hill that they intend to seek public comment on the leveraged lending guidance and make related changes.
 - In November 2017, the Federal Insurance Office announced the consolidation of two separate data collections from industry on terrorism risk insurance.

Treasury's June 2017 Request for Information following Executive Order 13771 and 13777 generated many public comments related to revising FinCEN and Bank Secrecy Act (BSA) regulations, and FinCEN is in the process of reviewing their regulations. Treasury's Fall 2017 Unified Agenda included one burden-reducing FinCEN regulation, the "Report of Foreign Bank and Financial Account (FBAR)" rule. FinCEN has announced that it will finalize a proposed rule that clarifies which persons will be required to file FBAR reports and what information is reportable.

FSOC Votes to Change Bylaws

Key Point:

- *FSOC voted to amend their bylaws to remove limitations on the authority of an officer acting under delegated authority.*

On April 24, the Financial Stability Oversight Council (FSOC) unanimously [approved](#) changes to their bylaws related to the ability to delegate authority. Under the resolution, when a member of the FSOC recuses themselves from a matter they may delegate their authority related to that matter to another individual in their agency that "was appointed by the President with the advice and consent of the Senate or who is the first assistant to the office of such individual for purposes of the Federal Vacancies Reform Act of 1998," then that officer may serve as the replacement for such voting member with respect to that matter, irrespective of the limitations included in the bylaws to the extent permitted by the Dodd-Frank Act.

UPCOMING EVENTS

May 2

Academic Research Council: The Consumer Financial Protection Bureau (CFPB) will hold a meeting of its Academic Research Council.

May 3-4

CFPB Research Conference: The CFPB will hold a research conference focused on "high-quality consumer finance research, with academic and government researchers presenting their research papers."

May 10

FACI Meeting: The Federal Advisory Committee on Insurance (FACI) will hold a meeting to discuss: blockchain initiatives, "insurtech" and economic development, and auto insurance in an age of autonomous vehicles.

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.

DEFENSE

House Armed Services Begins FY 2019 NDAA Markups

Key Points:

- *The House Armed Services Committee begins its markup of the FY 2019 NDAA*
- *The Senate Armed Services Committee pushes back its markup by two weeks*

This week, the House Armed Services Committees released portions of their marks and committee report language for the “National Defense Authorization Act (NDAA) for Fiscal Year 2019” ([H.R. 5515](#)). The balance of the legislative and report language will be held until the full Committee markup scheduled for May 9. The Subcommittees held markups on April 26, all of which were customarily abbreviated with Members holding amendments until the full Committee markup.

Additionally, there were reports this week that the Senate Armed Services Committee will push back its planned markup of its FY 2019 NDAA from the week of May 9 to the week of May 21. It is unclear what role, if any, Chairman John McCain’s (R-AZ) absence played in this decision.

The House Armed Services Committees made available their marks and summaries:

Tactical Air and Land Forces Subcommittee’s [Mark](#) and Summary:

- Authorizes multiyear procurement authorities for F/A-18E/F Super Hornet aircraft to **generate better cost**

- **savings for the taxpayer and provide needed capability to the Navy;**
- The proposal supports Air Force efforts to **develop a 21st century Advanced Battle-Management System (ABMS) to mitigate anti-access, area-denial challenges of potential adversaries by integrating the JSTARS Recap program as the foundational platform for ABMS.** The mark requires the Secretary of the Air Force to continue the **Joint Surveillance Target Attack Radar System Recapitalization (JSTARS Recap) program** which will significantly increase Battle-Management, Command and Control, and Ground-Moving Target Indicator intelligence capabilities and capacity over what’s provided to the combatant commanders today, and to minimize operational risk to joint warfighters as concluded in multiple years of past Air Force analyses;
- Works to facilitate mitigation efforts to **better address physiological episodes in tactical and training aircraft**, and requires the Secretary of the Navy and the Secretary of the Air Force to certify that any new aircraft will all have the most recent technological advancements necessary to mitigate PEs;
- Directs the Secretary of the Army to conduct a **cost-benefit assessment and analysis of using multi-year procurement contracts for armored brigade combat team vehicle modernization** to generate better cost-savings and better stability in the industrial base;
- Works to **strengthen and improve ISR investment strategies** in order to more efficiently and effectively meet

- combatant commander ISR requirements;
- Requires the Secretary of Defense to **provide a detailed cost estimate and baseline schedule for the F-35 continuous capability development and delivery program**;
 - Works to **improve short range air defense (SHORAD) as well as indirect fires protection capability**. Directs the Secretary of the Army to provide an accelerated acquisition strategy for the Army's interim maneuverable SHORAD initiative, as well as identify requirements that are similar to both the SHORAD and counter-UAS missions;
 - Advances the development and procurement of **lighter, stronger, and more advanced personal protective equipment systems for all warfighters**;
 - Sets the conditions and encourages the Department to **explore opportunities to accelerate the Future Vertical Lift program** in order to meet national security challenges.

Emerging Threats and Capabilities (ETC) Subcommittee's [Mark](#) and Summary:

Specifically, the ETC proposal:

Supports defense innovation, emerging technologies, and advances in Artificial Intelligence:

- Places **emphasis on policy and programs to advance Artificial Intelligence, machine learning, quantum computing, and other technologies of national security consequence**;
- Fully **supports innovation efforts of the Defense Advanced Research Projects Agency (DARPA), and Defense Innovation Unit**

Experimental (DIUx) to ensure technological superiority and overmatch for our warfighters against current and future threats;

- **Advances hypersonic and directed energy weapons research, development, and transition efforts** within DoD;
- Recommends to the Full Committee additional funds to **accelerate Artificial Intelligence, and machine learning programs, as well as directed energy, and hypersonics programs**.

Strengthens cyber warfare capabilities and enhances congressional oversight:

- Prioritizes the **readiness of U.S. Cyber Command, cyber mission forces, and cyber warfare tools and capabilities**, including initiatives to strengthen the cyber workforce;
- Provides a pilot-authority to **improve coordination between DOD and the Department of Homeland Security**, to strengthen defense of critical infrastructure and networks;
- Enhances resiliency of **DOD networks, weapons systems, supply chains, and capabilities**;
- Strengthens congressional oversight of **sensitive cyber military operations and cyber warfare tools and capabilities**;
- Bolsters international **partnerships for cyber warfare and influence operations** to counter aggression, cyber, and information warfare threats.

Reinforces counterterrorism and unconventional warfare capabilities:

- **Authorizes U.S. Special Operations Command programs and activities**, including ongoing efforts in Iraq, Syria, Afghanistan, Yemen, Somalia, and Eastern Europe;

- Extends **critical authorities for special operations and personnel recovery programs**;
- Improves congressional oversight of **ongoing counterterrorism and sensitive activities**;
- Fully authorizes and strengthens **Countering Weapons of Mass Destruction (CWMD) programs** and activities, including the creation of a **Principal Advisor for CWMD to more effectively oversee** policies and activities within the Department.

Strategic Forces Subcommittee's [Mark](#) and Summary:

Nuclear

- Requires the Under Secretary of Defense for Acquisition and Sustainment to make a decision on **sustaining one or more large solid rocket motor manufacturers** in the defense industrial base prior to awarding the next contract in the GBSD program;
 - Recommends that the Full Committee authorize funding for a safe, secure and reliable nuclear arsenal, recommending that the Full Committee add **funding above the budget request level for the National Nuclear Security Administration's (NNSA) nuclear weapons activities and defense nuclear nonproliferation program**, including efforts to modernize the nuclear weapons stockpile and address NNSA's aging facilities and infrastructure;
 - Provides for the **Under Secretary of Defense for Research and Engineering to sit on the Nuclear Weapons Council**, which coordinates nuclear weapons programs and policy
- between the Department of Defense and the National Nuclear Security Administration.

Conventional Prompt Strike

- Recommends the Full Committee authorize **funding above the President's Budget Request to accelerate development and testing for a conventional prompt strike operational capability**, and requires a report addressing ambiguity concerns.

Missile Defense

- Recommends the Full Committee authorize funding above the President's Budget Request to **continue development of critical directed energy, space sensing, and hypersonic defense capabilities by the Missile Defense Agency to address the increasing threat, in both capacity and complexity**;
- Continues the committee's commitment to **ensure quality of life is prioritized for the Sailors and personnel that will be operating the Aegis Ashore site in Poland** with appropriate housing accommodations;
- Requires the Director of the Missile Defense Agency **establish a boost phase intercept program using kinetic interceptors**, and initiate development of a missile defense tracking and discrimination space sensor layer;
- Requires the Director of the Missile Defense Agency to **continue development for the Homeland defense radar in Hawaii** to deliver an operational capability in fiscal year 2023;
- Recommends the Full Committee authorize the President's Budget request of \$500 million for **Israeli Missile Defense co-development and co-production of the Iron**

Dome, David's Sling, and Arrow weapon systems.

National Security Space

- Establishes U.S. Space Command as a new sub-unified command within U.S. Strategic Command, to ensure joint space warfighting receives the resources and emphasis that it needs;
- Major Commands in the Air Force are organized into numbered Air Forces (NAF). To ensure prioritization of space within the Service, the proposal **directs the Secretary of the Air Force to establish a new numbered Air Force dedicated to space warfighting** and reorganize the current 14th Air Force to a space support mission;
- Directs the Deputy Secretary of Defense to **develop a plan to establish a separate alternative acquisition system for defense space acquisition to include the space vehicle, ground segment, and terminals**;
- Requires **evaluation and enhanced security of the supply chain for protected satellite communications program and overhead persistent infrared systems**;
- Requires the Department of Defense to **consider the risks, benefits, and cost savings with respect to using small- and medium- size buses** for strategic and tactical satellite payloads;
- Directs the Department of Defense to provide the Committee a briefing on the its **efforts to use commercial items for a follow-on wideband communications system**;
- Continues our commitment to **support innovation in national security space launch** while recognizing the need to maintain risk at acceptable levels to ensure mission success.

Seapower & Projection Forces Subcommittee's [Mark](#) and Summary:

The Seapower and Projection Forces Subcommittee's proposal:

- Recommends to the Full Committee **support for the 10 ships included in the fiscal year 2019 budget request**, including two *Virginia*-class submarines, three DDG 51 *Arleigh Burke* destroyers; one Littoral Combat Ship (LCS); two T-AO 205 oilers; one Expeditionary Sea Base (ESB); and one T-ATS towing, salvage, and rescue ship. In addition, the proposal recommends adding three battle force ships, including one *Ford*-class aircraft carrier and two additional LCS for a total of 13 ships;
- Specifically **authorizes the procurement of CVN-81**, the fourth *Ford*-class aircraft carrier;
- Recommends long lead time material funding in fiscal year 2019 for **two additional Virginia-class submarines** in fiscal years 2022 and 2023;
- Authorizes the **multiyear procurement** associated with 625 SM-6 missiles at a rate of 125 missiles per year;
- Recommends an **expansion in critical enablers** including LRASM, Tomahawk, MK-48 heavyweight torpedos, and sonobuoys;
- Authorizes the **multiyear procurement of E-2D Advanced Hawkeye and C-130J Super Hercules aircraft**;
- Recommends **full funding for the B-21 Raider program**;
- Establishes a **floor of 479 air refueling tanker aircraft in the Air Force inventory** subject to the results of the

Mobility Capability and Requirements Study 2018;

- Recommends full funding for the VC-25B Presidential Recapitalization Aircraft program;
- Recommends **continuing support for the propulsion and propeller upgrades of Air National Guard and Air Force Reserve C-130H airlift aircraft;**
- Retains the **hospital ship USNS Comfort (T-AH-20)** until a replacement capability can be developed;
- Authorizes the Secretary of Defense to enter into a **contract for 10 foreign-built, used sealift vessels concurrent with a plan to construct 10 new sealift vessels;**
- Limits Military Sealift Command fiscal year 2019 expenditures until the Secretary of the Navy has entered into a **contract for two vessels and has completed the requirements documentation for the construction of the common hull multi-mission platform;**
- Requires Ready Reserve Fleet vessel **upgrades to comply with SOLIS lifeboat and fire suppression requirements;**
- **Restricts the acquisition of foreign-built training ships and requires construction of the National Security Multi Mission Vessel in U.S. shipyards to support these State Maritime Academies training requirements; and,**
- Recommends an **increase in Maritime Security Program (MSP) funding** to ensure retention of 60 MSP vessels.

Readiness Subcommittee's [Mark](#) and Summary:

The Readiness Subcommittee's proposal: Rebuilds troop readiness and makes investments in equipment maintenance by:

- Recommending the Full Committee increase **funding for equipment maintenance, spare parts, and training to rebuild readiness for ships, aircraft squadrons, and ground combat units;**
- Recommending the Full Committee fund **20 Combat Training Center rotations across the Army**—16 Active and 4 Army National Guard;
- Directing the Navy to provide a **clear chain of command for operations, for building readiness, and for shipyard maintenance;**
- Requiring the Navy's Board of Inspection and Survey (INSURV) **Inspections be conducted on a no-notice basis** make details of those inspections unclassified and available to the public;
- Requiring the Secretary of the Navy to provide a **report on ways to optimize surface Navy vessel inspection and crew certifications** to reduce redundancies and the burden on inspection visits that ships undergo;
- **Limiting the amount of time a Navy vessel is forward deployed** overseas to no more than 10 years;
- Ensuring the Navy retains **sufficient ship repair capability and capacity in the Western Pacific** by prohibiting the redevelopment of the Former Ship Repair Facility on Guam.

Ensure infrastructure supports military readiness by:

- Recommending the Full Committee increase funds for **facility sustainment** above the fiscal year 2019 request;

- Establishing a new **Defense Community Infrastructure Program** which will provide for resilient facilities and utilities off-base that directly supporting our military installations;
- Authorizes the Secretary of the military departments to carry out **military construction projects to enhance force protection and safety** on military installations;
- Extends the **Defense Laboratory Modernization Pilot Program** until October 1, 2023, and clarifies that the authority can be used for architectural and engineering services in addition to construction of infrastructure projects.
- Extending **special pay and bonuses** for servicemembers;
- Expanding the Department’s authority to award **constructive service credit** for those entering the military with advanced education, experience, and training to help the military compete with the private sector in recruiting talent with specialized skills;
- Making permanent the **Career Intermision Program**, which allows servicemembers to take a break from active service to pursue personal interests, family needs, professional education, or career opportunities.

Improve oversight by:

- Requiring DOD to **include cyber and space in its quarterly readiness report** to better reflect the National Defense Strategy and to ensure a comprehensive look at readiness across every domain of warfare;
- Directing several **assessments of the military departments’ plans to rebuild readiness, enhance exercises, and modernize training requirements.**

Military Personnel Subcommittee’s [Mark](#) and Summary:

Begins to Rebuild Readiness by helping to recruit and retain America’s best and brightest while also growing the force by:

- Enabling the full funding of the by-law **pay raise for the troops, the highest in 9 years;**
- Authorizing **increased end-strength** across the Army, Navy, Air Force, Naval and Air Reserve, and Air Guard;

Caring for our troops and their families by:

- Enhancing ongoing Military Health System organizational reforms for the Services to transition military medical treatment facilities to the Defense Health Agency by **ensuring no military medical treatment facility will be closed or downgraded** until the completion of the transition to the Defense Health Agency;
- Requiring DOD to assess the ability of the Defense Health Agency to deliver **mental health care services** and review research efforts involving Traumatic Brain Injury, chronic traumatic encephalopathy, and post-traumatic stress disorder;
- Requiring the Secretary of Defense to update and review the policy and procedures related to **wounded warrior care coordination, administrative support, and facility standards;**
- Requiring the Department of Defense to establish a prescription drug monitoring program and share information with state **prescription drug monitoring programs;**
- Overhauling the Transition Assistance Program (TAP) to provide

servicemembers tailored resources and information as they **prepare to enter civilian life.**

Oversight of critical issues, including:

- Requiring the Department of Defense Education Agency (DODEA) to **consolidate juvenile misconduct data** into one centralized reporting database;
- Directing the Secretary of the Army to take steps to **extend the life of Arlington National Cemetery;**
- Requiring the **Army Marketing Group** to implement measures to improve advertising and marketing campaign effectiveness and also to uphold accountability by withholding a portion of funding until required action is taken;
- Improving crime reporting by requiring DOD to establish **centralized oversight to ensure criminal data is transmitted** to the FBI database.

Protecting Servicemembers and their families from Sexual Assault by:

- Expanding eligibility for the **expedited transfer process** following sexual assault to include additional Active Duty personnel and cadets at military service academies;
- Requiring DOD to establish a comprehensive oversight plan for implementation of the Department's **new harassment prevention and response policy;**
- Mandating increased DOD **oversight of those required to register as sex offenders.**

GAO Finds Mixed Progress on DOD's Major Weapons Acquisitions

Key Point:

- *In its 16th annual assessment of major weapons systems, the GAO finds some reduced*

cost growth but the continuance of trends that typically drive costs higher

This week, the Government Accountability Office (GAO) released its annual assessment of how well the Department of Defense (DOD) is managing its major weapon systems acquisition programs. In "[Weapon Systems Annual Assessment: Knowledge Gaps Pose Risks to Sustaining Recent Positive Trends](#)," the GAO offered its "observations on the performance of DOD's 2017 portfolio of 86 major programs, which the department expects to cost \$1.66 trillion in total." The GAO noted that "This year's assessment offers a mixed message for DOD acquisition." The GAO noted that "[o]n the one hand, we observed positive cost performance in the programs that DOD has initiated since 2010, when acquisition reforms began to take root—a trend we first highlighted in our 2016 assessment." The GAO cautioned that "like so many programs before them, most of these newer programs have continued to proceed without the requisite knowledge that our prior work has shown underpins good program outcomes."

The GAO explained that its "analysis shows that programs initiated since 2010 had better cost performance between 2016 and 2017 than the rest of the portfolio—an estimated \$5.6 billion decrease versus a \$60.3 billion increase." The GAO warned that "[i]t is too early to say whether this performance will continue and curb future cost growth." The GAO observed that "[f]uture cost outcomes hinge on how these programs perform once they enter production, when cost growth is most prevalent."

The GAO stated that "[p]rograms that implemented acquisition strategies to promote competition, including competitive award of contracts, reported decreases in total acquisition cost estimates as compared to

others.” The GAO noted that “[i]n 2010, DOD implemented reforms including some aimed at increasing competition to introduce greater affordability and efficiency...[and] individual programs have taken steps to implement acquisition strategies that promote competition.” The GAO found that “[o]f the programs in this year’s assessment that awarded development, test, or production contracts, 61 percent did so competitively.”

The GAO noted that “[a]s in previous assessments, DOD programs continue to not fully implement knowledge-based acquisition practices” and found “that most of the 45 current programs have proceeded into system development, through critical design reviews, and into production without completing key knowledge-based practices associated with each of these three points.” The GAO added that “almost all of the 12 future programs GAO reviewed, not yet in DOD’s portfolio, reported that they do not currently plan to fully meet all applicable practices when starting system development.” The GAO explained that “[t]his lack of knowledge and the effects it can have throughout a program’s acquisition life cycle can increase the risk of undesirable cost and schedule outcomes.” The GAO claimed that its “exploratory statistical analysis of 15 programs in production, the major DOD acquisition programs that completed one or more of three specific knowledge-based acquisition practices, among eight key practices GAO evaluated, had significantly lower cost and schedule growth than those that did not.” The GAO stated that “[t]hese three practices were: (1) demonstration that all critical technologies were very close to final form, fit, and function, within a relevant environment, before starting development; (2) completion of a preliminary design review prior to starting development; and (3) release of at least 90 percent of design drawings by critical design review.”

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

HEALTH

House Subcommittee Advances 55 Opioid Bills

Key Points:

- *The House Energy and Commerce Committee’s Health Subcommittee advanced 56 individual bills to address the opioid crisis. It chose not to consider seven bills that had been noticed which will require additional discussions to move forward.*
- *Democrats expressed concern with the pace and volume of legislation moved by Subcommittee.*

On April 25, the House Energy and Commerce Committee’s Health Subcommittee held a markup of legislation to address the opioid crisis. The Subcommittee favorably reported 56 individual bills to the full Committee. Chairman Michael Burgess (R-TX) indicated the full committee would consider the legislation in a couple weeks. The bills covered a wide range of policy areas including preventing the misuse and abuse of opioids; improving access to substance use disorder treatment; clarifying guidance on telemedicine; encouraging greater physician participation in substance use disorder treatment; addressing the crisis in the Medicare and Medicaid populations; and encouraging the development of alternative treatments for pain and treatments for substance use disorder.

Chairman Michael Burgess (R-TX) asserted these bills will make a positive impact when they are signed into law and help remove the stigmas surrounding those suffering from substance use disorder. Full Committee Chairman Greg Walden (R-OR) noted the Committee has also started an investigation into concerns of pill dumping.

Democrats on the committee expressed concern with the pace and volume of the committee's work. Full Committee Chairman Frank Pallone (D-NJ) asserted many of the bills are too much of a work in progress and taking the wrong action could have serious consequences. He pointed out many of the bills lack technical assistance or Congressional Budget Office analysis.

The Subcommittee did not consider seven bills that had previously been noticed. Chairman Burgess stated these bills will require additional discussion and work before they were ready to be reported to the full Committee. Democrats argued many of the bills that did not receive consideration are sponsored by Democrats.

A summary of the bills considered by the Subcommittee can be viewed [here](#).

Senate Committee Advances Opioid Legislation

Key Point:

- *The Senate Health, Education, Labor and Pensions Committee favorably reported the Opioid Crisis Response Act unanimously to the full Senate.*

On April 24, the Senate HELP Committee held a markup of the “Opioid Crisis Response Act” ([S. 2680](#)). Some of the major provisions include:

- **National Institutes of Health (NIH)** – Increases flexibility for NIH to approve high impact, cutting-edge projects that address the opioid crisis more quickly including finding a new, non-addictive painkiller; and updates the mission and reporting requirements for the Interagency Pain Research Coordinating Committee.
- **Food and Drug Administration (FDA)** – Clarifies FDA’s parameters for how to qualify novel addiction treatments for expedited pathways; requires FDA guidance on the risks and benefits of drugs that have a potential to be misused or abused; and modifies the definition of an adverse drug experience to help FDA understand the long term effects of drugs, such as opioids, which may have reduced efficacy over time.
- **Substance Abuse and Mental Health Services Administration (SAMHSA)** – Makes changes to grants authorized in the 21st Century Cures Act to allow HHS to provide additional funds to states that have been hardest hit by the opioid crisis; authorizes a grant program for entities to establish or operate a comprehensive opioid recovery center; expands a Comprehensive Addiction and Recovery Act (CARA) grant program to allow first responders to administer a drug or device to treat opioid use disorder (OUD); supports recovery from OUD for children and adolescents by issuing grants for recovery from substance abuse disorder; and improves coordination and continuation of care and treatment for overdose patients.
- **Centers for Disease Control and Prevention (CDC)** – Supports programs to improve public and provider education on the risk of misuse and abuse of opioids and prescribing guidelines.
- **Drug Enforcement Agency (DEA)** – Clarifies DEA’s ability to develop a regulation to allow qualified providers to prescribe controlled substances in limited circumstances via telemedicine; codifies the ability for qualified

physicians to prescribe medication-assisted treatment (MAT) for up to 275 patients; and permits implantable or injectable buprenorphine products to be delivered by a pharmacy to an administering provider.

- **Health Resources and Services Administration (HRSA)** – Update and improve resources for pain care providers to assess, diagnose, prevent, treat, and manage pain and detect the early warning signs of substance use disorders; and provide loan repayment for substance use disorder treatment providers for practicing in underserved areas.
- **Support for Workers** – Authorizes grants to target workforce shortages for the substance use disorder and mental health treatment workforce and facilitate the alignment of job training and treatment services for individuals affected by OUD; and creates a voluntary grant program to assist medical schools and residency programs in training students to treat and manage opiate dependent patients.

Chairman Lamar Alexander (R-TN) noted the bill contains more than 40 different proposals from more than 38 Senators. He stressed this legislation offers the framework necessary to combat the crisis. Ranking Member Patty Murray (D-WA) emphasized the Committee listened to those on the front lines of the opioid epidemic to craft this legislation. She stated she is working to include even more ideas as the bill moves forward through the process.

CMS Announces Updates to Hospital Payment Rules

Key Points:

- *The Centers for Medicare and Medicaid Services released proposed changes for FY 2019 hospital payment rules.*
- *The proposed changes update Medicare payment policies and rates under the Inpatient Prospective Payment System and the Long-Term Care Hospital Prospective Payment System.*

On April 24, the Centers for Medicare and Medicaid Services (CMS) announced proposed changes to the Medicare Inpatient Prospective Payment System (IPPS) and the Long-Term Care Hospital (LTCH) Prospective Payment System (PPS). The changes seek to advance the agency’s priority of creating a patient-centered health care system by achieving greater price transparency, interoperability, and significant burden reduction so hospitals can operate with better flexibility. The deadline for submitting comments on the proposed rule is June 25, 2018.

CMS Administrator Seema Verma said the “proposed rule demonstrates [CMS]’ commitment to patient access to high quality care while removing outdated and redundant regulations on providers.”

CMS proposes to overhaul the Meaningful Use program, renaming it “Promoting Interoperability.” The changes are intended to make the program more flexible, emphasize measures that require the exchange of information between providers and patients, and incentivize providers to make it easier for patients to obtain their medical records electronically. The proposed rule also eliminates a number of unnecessary, redundant, and process-driven quality measures from a number of quality reporting and pay-for-performance programs. In an effort to improve transparency, the proposed rule would require hospitals to make public a list of their standard charges available online.

The proposed rule can be read [here](#) and a factsheet can be read [here](#).

Upcoming Hearings and Meetings

May 3

Supply Chain: Politico will hold a discussion on “Deconstructing the Prescription Drug Supply Chain.”

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 Passes FAA Reauthorization

Key Point:

- *The FAA reauthorization easily clears the House; the timeline for Senate action is unclear*

On April 27, the House finished considering amendments and passed the “FAA Reauthorization Act of 2018” ([H.R.4](#)), a five-year package, by a [393-13 vote](#). The House had worked through 116 amendments made in order by the House Rules Committee in its [Committee Report](#). The Committee also made available a [section-by-section summary](#) of H.R.4 submitted by the House Transportation and Infrastructure Committee. One of the amendments made in order was a Manager’s Amendment submitted by House Transportation and Infrastructure Committee Chairman Bill Shuster (R-PA) that was subject to significant discussion at the House Rules Committee regarding provisions that were removed that opponents characterized as an attempt to put back into the bill some provisions to bring about a privatization of the FAA air traffic control operations.

However, it is not clear when the Senate will consider that chamber’s package, the “Federal Aviation Administration Reauthorization Act of 2017” ([S.1405](#)), given disagreements over pilot training language in the bill. Nonetheless, the current FAA extension expires on September 30, 2018.

DOT Says It Will Preference Rural Projects in NOFO For Renamed TIGER Grant Program

Key Point:

- *The new BUILD grant program will continue the Administration’s trend of favoring rural projects*

This week, the U.S. Department of Transportation (DOT) released the [FY 2018 Notice of Funding Opportunity \(NOFO\)](#) for the renamed TIGER grants. The new “Better Utilizing Investments to Leverage Development (BUILD) Transportation Discretionary Grants” program is making available the \$1.5 billion Congress appropriated for National Infrastructure Investment grants (aka TIGER grants). As with the Administration’s infrastructure package, the DOT is again stressing the needs of rural communities and “intends to award a greater share of BUILD Transportation Discretionary Grant funding to projects located in rural areas that align well with the selection criteria than to such projects in urban areas.” The DOT will award funds “on a competitive basis for projects that will have a significant local or regional impact.” Applications are due by 8:00 EDT on July 19, 2018 and DOT will have “a series of webinars during the FY 2018 BUILD grant application process” in May and June.

The DOT explained that “[m]any of the selection criteria of BUILD. Transportation grants overlap with previous rounds of

[TIGER] discretionary grants, though the program is refocused on infrastructure investment that will make a positive impact throughout the country.” The DOT stated that “[t]he FY 2018 BUILD Transportation program will continue to give special consideration to projects located in rural areas.” Consequently, the DOT will likely face questions as to how the BUILD grant program meets the requirement in the FY 2018 omnibus and previous practices in preceding rounds of TIGER with respect to distributing funds equitably between urban and rural areas. Whether this will prevent the DOT from following through with its intentions remains to be seen.

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

TECHNOLOGY

Senate Homeland Security Examines Cyber Mitigation

Key Points:

- *Members and witnesses discuss how the U.S. can mitigate risks posed in cyberspace that cannot be conclusively fending off at present*
- *DHS’ role and private sector cyber hygiene are focuses*

On April 24, the Senate Homeland Security & Governmental Affairs Committee held a [hearing](#) entitled “Mitigating America’s Cybersecurity Risk.” Topics discussed in the hearing included: (1) Election Meddling; (2) the Internet of Things; (3) Funding; (4) Cyber Workforce Issues; (5) Kaspersky; (6) DHS Policy and Breach Notification; (7) Private Sector Innovation; and (8) Intellectual Property Theft.

Chairman Ron Johnson (R-WI) said the U.S. is looking to strengthen its offensive cyber

capabilities as North Korea, China, and Russia have made great strides with theirs. He observed that the U.S. is relegated to primarily “playing defense” and risks falling behind. Johnson suggested that the best the U.S. may be able to manage at this point is to mitigate risks. He added that the Department of Homeland Security’s (DHS) National Protection and Programs Directorate (NPPD) needs to be renamed and restructured, but Johnson noted that for reasons he was not party to, the “Cybersecurity and Infrastructure Security Agency Act of 2017” ([H.R.3359](#)) was not added to the “Consolidated Appropriations Act, 2018” (P.L. 115-141). He suggested that this lack of cooperation among committees and Administration stakeholders could result in future difficulties. He said one solution would be for the Senate to pass the “Department of Homeland Security Authorization Act” ([H.R.2825](#)) reported out of the Committee that includes the language elevating, restricting, and renaming the NPPD as the Cybersecurity and Infrastructure Security Agency. Johnson noted that since his arrival in the Senate in 2011, Congress has passed a number of cybersecurity-focused laws, but the key questions are how well they are working; how well they have been implemented; and are they conflicting or overlapping. He said that there is no doubt progress has been made in the past seven years. Johnson said the Committee and Congress were told that information sharing and liability protection were key, but he wondered how widely these authorities were being used. He stated that there need to be fewer turf battles between the National Security Agency (NSA), the DHS, and the Department of Defense (DOD). He asserted that the DHS is the best equipped agency to help the private sector. He said cyber is “a pervasive problem that is not going away.”

Ranking Member Claire McCaskill (D-MO) observed that “hardly a week goes by without a

cyber-attack dominating the headlines.” She said this trend is expected to continue and heighten over time. She noted that cybersecurity and data protection affect all aspects of government. She added that the DHS has been tasked for the protection of all federal systems. She said the DHS is meant to be the hub of information sharing, leading intrusion prevention programs, spearheading response activities, and coordinating the protection of critical infrastructure. McCaskill noted that the DHS has the unique authority to direct another federal agency to take certain steps in the event of a cyber-attack for recovery. She stated that while each department and agency is charged with its own cybersecurity, Congress has made the DHS the primary coordinator of cybersecurity for the civilian federal government. McCaskill said this hearing is an opportunity to assess how well DHS is using those authorities and if these tools are measurably improving the agency’s awareness and security. She added critical infrastructure such as energy and election systems must be protected. She noted the Russian campaign to influence the 2016 election and undermine the American democratic process. She said DHS has taken key steps in assisting states with their election systems but said she has “serious reservations” over the level of preparedness in the U.S. election system. She added that there is only increased awareness of this threat. She contended that the current Administration has maintained an uneven policy on Russia and its behavior in relation to interference with U.S. democratic processes.

Assistant Secretary of Homeland Security Jeanette Manfra said safeguarding cyberspace is a core mission for the DHS. She added that she has personally overseen the tireless effort of DHS staff to improve cybersecurity capabilities. She said cybersecurity is an important yet extremely complex area in regard

to national defense. She complimented Congress in passing legislation to aid in this mission and expressed strong support for the creation of a Cybersecurity and Infrastructure Agency within the DHS. Manfra added that the Administration stands ready to work with Congress to pass legislation to make this change. She said the current threat landscape has become more crowded, active, and dangerous. She noted the breach of Equifax that exposed information of nearly half of all Americans and the WannaCry attack that paralyzed industry from healthcare to hospitality. She said the DHS and the Federal Bureau of Investigation (FBI) have published 8 guides to mitigate damage done by cyber-attacks since June 2017. She argued that Russia is taking advantage of compromised routers in order to extract intellectual property and compromise security. She said DHS is actively working toward defense and recovery in public and private sectors. She applauded the Committee for passing the “Federal Information Security Modernization Act of 2014” (FISMA) (P.L. 113-283) which allows DHS to implement information security policies. She said the DHS has launched a new program to more aggressively defend election infrastructure.

Government Accountability Office (GAO) Information Services Director Gregory Wilshusen stated that the DHS has taken great steps to improve the security of both federal and private systems. He noted that the DHS has also issued several Binding Operational Directives (BODS) that improve the federal-civilian interface and has worked with the National Institute of Standards and Technology (NIST) to create the “Framework for Improving Critical Infrastructure Cybersecurity” (Cybersecurity Framework). He asserted that the DHS needs to be allowed to take more action in order to better mitigate cybersecurity risks. He observed that the

National Cybersecurity Protection System (NCPS) needs to be further strengthened. He asserted that as it stands, the NCPS is limited in preventing intrusion of federal agencies. He encouraged further information sharing capability. He added that the National Cybersecurity and Communications Integration Center (NCCIC) lack metrics to contribute to better performance. He said NCCIC does not centralize authority and this hinders the ability to respond to an attack. He stated that the DHS needs to be better equipped to work with private sector to develop more talent. He said the GAO has made 19 recommendations to DHS in regard to the NCPS.

NPPD Head's Nomination Hearing

Key Point:

- *The Trump Administration's nominee to head the DHS agency responsible for civilian government cybersecurity and assisting the private sector has a positive meeting amidst suggestions from Members that DHS needs to do better*

On April 25, 2018, the Senate Homeland Security & Governmental Affairs Committee held a [hearing](#) entitled “Nomination of Christopher C. Krebs to be Under Secretary, National Protection and Programs Directorate, U.S. Department of Homeland Security.” Topics discussed in the hearing included: (1) Congressional Requests; (2) Risk and Vulnerability Assessments; (3) Election Security; (4) NPPD Responsibilities; (5) Workforce Issues; and (6) Kaspersky.

Chairman Ron Johnson (R-WI) stated that Krebs is more than qualified for the position and has the support of over 60 career professionals at the Department of Homeland Security (DHS), the Department of Defense (DOD), and the National Security Agency, U.S. Cyber Command, and other agencies. He

professed his hope that this will be last time the Committee will consider the nomination of an Under Secretary of Homeland Security for National Protection and Programs Directorate (NPPD) as legislation to rename, reorganize, and elevate the NPPD will ideally be enacted soon (i.e. the “Cybersecurity and Infrastructure Security Agency Act of 2017” ([H.R.3359](#))).

Senator Heid Heitkamp (D-ND) said that the NPPD has been misnamed and has lacked focus. She thanked Krebs for his willingness to serve by turning down a higher salary in the private sector. She expressed her desire that he be speedily confirmed. Ranking Member Claire McCaskill's (D-MO) [opening statement](#) was made available.

Under Secretary of Homeland Security-designate Christopher Krebs stated that the NPPD's responsibilities have grown substantially since its inception over 10 years ago. He asserted that this growth is driven by a dramatic shift in the threat environment that few could have anticipated at the Department's creation. He said today, America faces the challenge of managing risk in both the physical and digital worlds. He explained that this risk comes from Mother Nature; a diverse group of threat actors including nation states like Russia, China, Iran, and North Korea; as well as cybercriminals, terrorist groups, and other nefarious actors seeking to take advantage America's open society and the proliferation of technology to do harm. He stated that they attack the U.S. anywhere they perceive vulnerability: in the cyber world, through the deployment of tools like BlackEnergy, WannaCry, NotPetya, and SamSam; and in the physical world, by utilizing small arms, improvised explosive devices, vehicles and other readily-available means to target innocent people as they gather to worship, attend a sporting event or concert, travel, or simply transit open public spaces. He said the

government must do everything it can to mitigate threats and enhance the resiliency of infrastructure. He stated that the growth in this mission is also driven by an increasing reliance on linked systems and networks. He explained that where it was once possible to define and defend perimeters around single systems or high-risk assets, America now faces the growing challenge of managing shared risk. He said to put it most simply, perimeters today often overlap or simply do not exist. He noted that as Secretary of Homeland Security Kirstjen Nielsen often says, “Your risk is my risk, and my risk is your risk.” He noted that industry is shifting towards an integrated risk management approach, and as the leader in the federal government for managing risk to federal networks and national critical infrastructure, NPPD must also integrate this approach into its business model. He stated that in all, he sees three primary strategic goals for NPPD: (1) NPPD must defend non-national security systems across civilian agencies and secure federal facilities; (2) NPPD must accelerate efforts to manage systemic physical and cyber risk to critical national functions; and (3) NPPD must raise the security baseline across the country by providing stakeholders with the scalable tools and resources they need to secure their systems and infrastructure. He asserted that the NPPD must work to accomplish these goals by fostering voluntary, incentive-driven partnerships with a wide range of stakeholders. He said if confirmed, he will draw on his private sector experience and understanding of the unique value government offers to ensure NPPD emphasizes an approach that is customer-centric and requirements-driven.

Hearing on Small Businesses and Cybersecurity

Key Point:

- *The Senate Small Business Committee considers governmental and non-governmental*

means to help small businesses be more secure as they come increasingly under cyber attack

On April 25, the Senate Small Business & Entrepreneurship Committee held a [hearing](#) entitled: “Preparing Small Businesses for Cybersecurity Success.” Topics discussed during the hearing included: (1) Ransomware; (2) Small Business Administration; (3) Small Business Cooperative; (4) Convictions; (5) Regulations; and (6) Cybersecurity.

Chairman James Risch (R-ID) said cyberattacks are one of the most significant threats to small businesses. He noted many cyberattacks happen to companies with fewer than 100 employees. He stated China, Russia, and Iran have sophisticated hacking programs. He said Russia attempted to hack the U.S. presidential elections and has managed to damage the economies of other countries. He said the bipartisan “MAIN STREET Cybersecurity Act” ([S.770](#)) would require the National Institute of Standards and Technology (NIST) to develop and distribute a small-business-friendly version of its Cybersecurity Framework. He noted he introduced “Small Business Cyber Training Act” ([S.1428](#)) to train counselors at regional Small Business Development Centers (SBDCs) on educating entrepreneurs on cybersecurity habits. He stated he also supports the “Small Business Advanced Cybersecurity Enhancements Act” ([H.R.4668](#)), which would prepare SBDCs to receive information on breaches in the field when incidents happen. He observed cyberattacks are too frequently the “final nail in the coffin” for struggling small businesses.

Ranking Member Ben Cardin (D-MD) said cyber intrusions are a universal problem. He stated Russia, North Korea, and China are all using cyber intrusions to gain valuable information or compromise systems. He noted small businesses are a prime target for

cyberattacks and 58 percent of data breach victims are small businesses. He observed small businesses may not have a large information technology (IT) staff or the information necessary to protect themselves from cyberattacks. He advocated for educating small businesses on important cybersecurity measures. He argued small businesses are the driving force of the economy and stressed it is important to defend them from cyberattacks.

Information Technology & Innovation Foundation Vice President Daniel Castro stated that 42 percent of small businesses faced cyberattacks in 2015. He argued most small businesses are concerned about cybersecurity but are not taking enough steps to protect themselves. He suggested Congress can take three steps to improve small business cybersecurity: (1) direct the Small Business Administration (SBA) to establish a small business cybersecurity cooperative to create a large pool of willing buyers for various cybersecurity products and services, including cyber risk insurance; (2) direct SBA to develop a low-cost, vendor-neutral certification program for small business employees who serve as a business's cybersecurity expert; and (3) direct SBA to create a free online cybersecurity "boot camp" that will show small businesses how to improve their cybersecurity. He observed many existing cybersecurity resources from government agencies are not frequently updated. He argued small businesses need more practical guidance.

National Cyber Security Alliance (NCSA) Executive Director Russell Schrader stated that one of NCSA's major current partners is the Department of Homeland Security (DHS). He noted many businesses believe they are too small to be the target of a cyberattack. He said NCSA works with small businesses to improve their cybersecurity in cooperation with the NIST "[Framework for Improving Critical](#)

[Infrastructure Cybersecurity](#)" (Framework). He stated NCSA has translated the NIST Framework into a simple, introductory, interactive 3-hour workshop for small businesses. He argued this program empowers small businesses to improve their cybersecurity. He stressed small businesses have important data and are often suppliers to larger companies. He explained NCSA convenes state attorneys general, SBA representatives, the Federal Bureau of Investigation (FBI) InfraGuard, local Federal Trade Commission (FTC) offices, and chambers of commerce to implement this program. He noted the program is currently sponsored solely by the private sector and is free for businesses. He advocated for more resources dedicated to educating and training small business employees on the importance of cybersecurity.

Senate Confirms Five FTC Commissioners

Key Points:

- *The federal government's primary data security regulator will have a full Commission once the nominees confirmed by the Senate are sworn in*
- *However, the current acting Chair will keep her seat until she's confirmed as a federal judge by the Senate, meaning one nominee will have to wait*

On April 26, the Senate confirmed by voice vote all five of President Donald Trump's nominees to the Federal Trade Commission (FTC). Four of the five nominees will be able to begin serving immediately with the fifth having to wait for the resignation of the current acting Chair who is awaiting confirmation to the federal bench. The political composition of the new FTC Commissioners will be 3 Republicans and 2 Democrats as is customary for the President to have 3 Commissioners of his party. However, at present, only four of the nominees, including the Chairman-designate, will officially become Commissioners. In her

[statement](#), Acting FTC Chairman Maureen Ohlhausen congratulated the five nominees and noted that the nominee tapped to fill her place as a Commissioner “will take my seat if I am so fortunate as to be confirmed by the Senate as a Judge on the U.S. Court of Federal Claims.”

In press releases announcing their nominations, the White House provided the below biographies:

- **Joseph Simons of Virginia, for a seven-year term beginning September 26, 2017, and upon confirmation designate chair.** Mr. Simons is currently a partner and co-chair of the Antitrust Group at the law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP. He was previously in charge of antitrust enforcement at the Federal Trade Commission, serving as Director of the Bureau of Competition from 2001 until 2003. Among his accomplishments, Mr. Simons was responsible for overseeing the re-ignition of the FTC’s non-merger enforcement program. Under his leadership, the Bureau initiated over 100 investigations and produced more non-merger enforcement actions in one year than in any other year in the prior two decades or since. Mr. Simons is also a co-developer of “Critical Loss Analysis,” a technique for market definition that has been incorporated into the Department of Justice and FTC Merger Guidelines, as well as applied in numerous court decisions. Mr. Simons received his A.B. in Economics and History from Cornell University in 1980 and his J.D., cum laude, from Georgetown University Law Center in 1983.
- **Rohit Chopra of New York, for the remainder of a seven-year term expiring September 25, 2019.** Mr. Chopra is currently a Senior Fellow at the Consumer Federation of America, where he focuses on consumer protection issues facing young people and military families. From 2010-2015, he served at the Consumer Financial Protection Bureau as Assistant Director, where he oversaw the agency’s work on student financial services issues. The Secretary of the Treasury also appointed him as the agency’s student loan ombudsman. In 2016, Mr. Chopra served as Special Adviser to the Secretary of Education. Prior to his government service, he was an associate at McKinsey & Company, where he served clients in the financial services and consumer technology sectors. Mr. Chopra holds a bachelor’s degree from Harvard University and a master’s in business administration from the Wharton School at the University of Pennsylvania. He was also the recipient of a Fulbright Fellowship. He resides in New York.
- **Christine S. Wilson of Virginia, to be a Member of the Federal Trade Commission.** Ms. Wilson is an antitrust and consumer protection practitioner currently serving as Senior Vice President for Regulatory & International Affairs at Delta Air Lines. For over twenty years, Ms. Wilson has been an advocate of the fundamental principle that competition – not regulation – is the best protection for consumers and the strongest prescription for a healthy economy. Before joining Delta, she was a partner at Kirkland & Ellis LLP in Washington, D.C. During the George W. Bush Administration, she

served as Chief of Staff to FTC Chairman Timothy J. Muris. Both in government and private practice, she has contributed to the sound development of competition law and policy. She has served in the ABA Antitrust Section Leadership, as an advisor to the U.S. government in connection with the International Competition Network, and as Special Assistant to James F. Rill, Co-Chair of the International Competition Policy Advisory Committee. Ms. Wilson received her J.D. from Georgetown University and her B.A. from the University of Florida. She co-founded The Grapevine, a women's network for D.C. antitrust and consumer protection professionals. She and her husband live in Virginia and have two daughters.

- **Noah Joshua Phillips of Maryland, to be a Member of the Federal Trade Commission.** Mr. Phillips currently serves as Chief Counsel to Senator John Cornyn of Texas, the Republican Whip. Since 2011, he has advised Senator Cornyn on issues including antitrust, constitutional law, consumer privacy, fraud, and intellectual property. Prior to his service in the Senate, Mr. Phillips worked as a litigation associate at Cravath, Swaine & Moore LLP, in New York City, and Steptoe & Johnson LLP, in Washington, D.C. He served as a law clerk for Judge Edward C. Prado of the United States Court of Appeals for the Fifth Circuit. Mr. Phillips began his career at Wasserstein Perella & Co., an investment bank in New York City. A Massachusetts native, Mr. Phillips received his A.B., magna cum laude, from Dartmouth College and his J.D. from Stanford Law School, where he

won Moot Court. Mr. Phillips and his wife, Sarah, have three children.

- **Rebecca Kelly Slaughter of Maryland, to be a Member of the Federal Trade Commission for the remainder of a seven-year term expiring September 25, 2022.** Ms. Slaughter is currently chief counsel to Senator Charles Schumer of New York. A native New Yorker, she has worked for Senate Minority Leader Schumer since 2009, advising him on legal, competition, telecom, privacy, consumer protection, and intellectual property matters, among other issues. Prior to joining Senator Schumer's office, Ms. Slaughter was an associate in the D.C. office of Sidley Austin LLP. Ms. Slaughter received her B.A. in Anthropology magna cum laude from Yale University. She received her J.D. from Yale Law School, where she served as an editor on the Yale Law Journal. She currently resides in Maryland with her husband, Justin, and their daughter and son; they are expecting their third child in early April.

For more information on technology issues you may [email](#) or call Michael Kans at 202-659-8201. Cullen Neely, Riyad Carey, and Jackson McClendon contributed to this section.

TRADE

NAFTA Talks Continue in Washington DC

Key Points:

- U.S. Trade Representative (USTR) Robert Lighthizer and Canadian Foreign Minister Chrystia Freeland both cancelled previous engagements to continue the talks.
- The parties are racing against the clock: USTR Lighthizer travels to China on

Tuesday, the 232 tariff exemptions expire May 1, and Trade Promotion Authority (TPA) expires July 1.

With time running out before the expiration of TPA, negotiators from the U.S., Canada, and Mexico engaged in continuous, ministerial-level discussions in Washington DC this week. Because of the tight timeline, USTR Lighthizer was forced to cancel Capitol Hill meetings while Minister Freeland was unable to attend a NATO summit set for Friday; Mexican Economy Minister Ildefonso Guajardo was also in attendance. One of the meetings USTR Lighthizer cancelled was with the pro-trade New Democrat Coalition, which many believe could contain the pivotal votes for NAFTA passage through Congress. In a [letter](#), the Coalition warned USTR that its lack of consultation with Congress could jeopardize votes.

While the three parties are aiming for a May 4 agreement-in-principle, reports have indicated that there are still significant points of contention, including investor-state dispute settlement (ISDS), automobile rules of origin, the sunset clause, agricultural access, pharmaceutical patents, and intellectual property. On Wednesday, Minister Freeland told reporters that the parties had “made some good progress [on automobile rules of origin]. We’re very much working on a set of proposals based on the creative ideas the U.S. came up with in March and I think there was good constructive progress.” However, she also called USTR’s proposed sunset clause “absolutely unnecessary.” It is still unclear if the U.S. is willing to back off its demand for a 5-year sunset clause.

USTR Submits New NAFTA Labor Text to Stakeholders and Lawmakers

Key Points:

- The provision would clarify language that led to a U.S. loss in a 9-year labor dispute against Guatemala under the Central America Free Trade Agreement (CAFTA).
- It says trade agreement parties must show labor violations were the result of “sustained or recurring course of action or inaction” and affected “trade or investment between the parties.”

Earlier this week, the U.S. Trade Representative (USTR) distributed its updated labor provision for the modernized North American Free Trade Agreement (NAFTA) to stakeholders and lawmakers. This language is based on the “May 10” language, which was originally implemented in CAFTA but has been used as the basis for other labor provisions in trade agreements since then. Last year, a group of Senate Democrats wrote a [letter](#) to USTR Robert Lighthizer urging him to eliminate the requirement that a labor law violation must occur “in a manner affecting trade” to constitute a violation of a trade agreement. They also requested that USTR Lighthizer clarify the language that a labor law violation must occur in a “sustained or recurring course of action or inaction.” Further, they requested that USTR create an independent labor monitoring and compliance body to “address entrenched labor issues in Mexico and overcome inadequate monitoring and enforcement of labor obligations.” It appears that USTR has included footnotes to clarify the May 10 language but has not fully adopted the Democrat’s proposals.

Secretary Mnuchin and USTR Lighthizer to Negotiate Trade in China

Key Point:

- On Tuesday, President Trump announced that Treasury Secretary Steven Mnuchin and U.S. Trade

Representative (USTR) Robert Lighthizer would go to China “to negotiate on trade.”

Secretary Mnuchin and USTR Lighthizer will travel to China next week to meet with Chinese negotiators amidst rising trade tensions between the U.S. and China. Earlier this month, the U.S. released a list of recommended tariffs that would target roughly \$50 billion of Chinese goods. Comments on the list are due May 22, after which the USTR will submit a final list of recommended tariffs to President Trump. China then said it would impose 25 percent tariffs on important U.S. exports like soybeans, airplanes and automobiles, after which President Trump threatened additional tariffs on \$100 billion of Chinese goods.

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

This Week in Congress was written by Ryan Schnepf.