

April 28, 2017

# Washington Update

## This Week in Congress

- **House** – The House passed the “**Fannie and Freddie Open Records Act of 2017**” (H.R. 1694) and the “**Register of Copyrights Selection and Accountability Act of 2017**” (H.R. 1695). The House also passed a FY 2017 continuing resolution to fund the government through May 5.
- **Senate** – The Senate confirmed the nominations of Sonny Perdue to be Secretary of Agriculture; Jim Acosta to serve as the Secretary of Labor; and Rod Rosenstein to be Deputy Attorney General. The Senate agreed to a FY 2017 continuing resolution to fund the government through May 5.

## Next Week in Congress

- **House** – The House is expected to vote on a FY 2017 omnibus appropriations act before the expiration of a continuing resolution on May 5. The House is also scheduled to vote on the “**Working Families Flexibility Act of 2017**” (H.R. 1180).
- **Senate** – The Senate will resume consideration of Jay Clayton to be Member of the Securities and Exchange Commission. The Senate is expected to vote on a FY 2017 omnibus appropriations act before the expiration of a continuing resolution on May 5.

## TAX

### **Trump Administration Releases Tax Reform Plan**

#### *Key Points*

- *Proposed 15 percent corporate tax rate would also apply to passthroughs*
- *Tax plan does not address the border adjustment tax proposed by House Republicans*

Secretary of the Treasury Steven Mnuchin and National Economic Council Director Gary Cohn released the Trump Administration’s tax plan during a press conference this week. The comprehensive tax reform plan was laid out in a one-page overview of the Administration’s “core principles.” Mnuchin said that while these principals are nonnegotiable, the

Administration will work on Congress on the details of the plan.

The proposal includes a 15 percent corporate tax rate, which would also apply to passthrough entities; moving to a territorial tax system (the Administration said it is working with Congress on repatriation tax rate); and “eliminating tax breaks for special interests.” The plan also includes a one-time tax on funds being held overseas, but did not specify what that tax rate would be on those funds. Mnuchin stated that key pieces of the business tax plan are still

### Table of Contents

<b>Taxes</b>	<b>1</b>
<b>Trade</b>	<b>4</b>
<b>Financial Services</b>	<b>5</b>
<b>Energy &amp; Environment</b>	<b>10</b>
<b>Defense</b>	<b>14</b>
<b>Health</b>	<b>17</b>
<b>Transportation &amp; Infrastructure</b>	<b>18</b>
<b>Technology</b>	<b>19</b>

being worked out, such as the interest deduction, saying “we do think some level of expensing is important.” He added that “[w]e’re sensitive to that certain industries are very sensitive to interest deductibility, and we want to make sure that we don’t do anything that creates uncertainty in the economy.”

On the individual side, the plan would reduce the current seven tax rates to three: 10 percent, 25 percent and 35 percent; however the income brackets have been defined yet. The plan would also double the standard deduction; repeal the Alternative Minimum Tax, the Estate Tax, and the 3.8 percent net investment income tax; and eliminate all individual deductions except the mortgage and charitable deductions. The White House clarified that 401(k) plans, which are exemptions not deductions, would not be impacted after press secretary Sean Spicer said the plan would maintain “charitable giving and mortgage interest, and that’s it.”

Mnuchin said the proposal is designed to get the U.S. economy to 3 percent growth and “will pay for itself” with economic growth, eliminating deductions, and closing loopholes. The Committee for a Responsible Federal Budget’s “[rough estimate](#)” is that the plan would add \$5.5 trillion to the deficit over the next decade while the Tax Foundation said the plan does not include enough detail to model an estimate.

In a [statement](#), Republican Leadership in the House and Senate said the proposal would serve as “critical guideposts” in tax reform efforts. The plan does not address the border adjustment tax was not mentioned proposed by House Republicans and which Speaker of the House Paul Ryan (R-WI) and House Ways and Means Committee Chairman Kevin Brady (R-TX) remain publicly in favor of. However, they have acknowledged that the provision needs to

be adjusted, with Brady saying “we’re still developing, you know, the refinements on it.”

House Ways and Means Committee Republicans have a scheduled retreat this weekend through Monday on tax reform, and what they conclude and what path they take after that retreat could prove significant.

Mnuchin and Cohn said the Administration will hold listening sessions with stakeholders to receive their input, and will continue working with the House and Senate to develop the details of a plan throughout the month of May.

### **JCT Score for Three Year C Corp Rate Cut Shows Even Temporary Ineligible for Reconciliation**

#### *Key Point*

- *Leaked JCT score says tax reform may need to be revenue neutral in the long term or it will be ineligible for reconciliation*

This week Speaker of the House Paul Ryan’s (R-WI) staff leaked a Joint Committee on Taxation (JCT) score showing that tax reform may need to be revenue neutral in the long term or it will be ineligible for reconciliation. The score also said that business tax cuts specifically have significant out year revenue impacts even when temporary and ending long before the ten year window ends – meaning if there are out year revenue losses Congress

#### **Upcoming Dates**

**May 5: FY 2017 CR expires**

**September 30: FY 2017 ends and FAA extension and SCHIP authorization expire**

**Fall 2017: CBO’s projections of when Treasury exhausts extraordinary measures**

cannot simply “sunset” the changes in year 10 as they did with the Bush tax cuts (on individuals).

JCT indicated a temporary corporate tax cut of only three years would still cause Byrd Rule issues under reconciliation, which makes passage of any revenue losing bill in the Senate under reconciliation likely impossible on a party-line basis: “... non-negligible revenue loss in the tax years immediately following the budget window notwithstanding the temporary nature of the tax reduction. This is due largely to an increased amount of credits becoming eligible to be carried forward into tax years following 2020 and the lowering of the repatriation baseline resulting from a temporary increase of repatriation of foreign earnings during the period of reduced tax. under reconciliation because the reconciliation rules would prevent because of the out-year losses from companies bringing revenues home during the low tax window and carrying forward credits into out years.”

### **Presidential Executive Order on Identifying and Reducing Tax Regulatory Burdens**

#### *Key Points*

- *Of the regulations that could be impacted, only the Section 385 debt equity regulations were declared significant under EO 12866*

On Friday, April 21, the White House released an [executive order](#) (EO) directing the Department of the Treasury (Treasury) to review all significant tax regulations issued by Treasury on or after January 1, 2016. Of all the regulations, only the Section 385 regulations were previously declared significant under EO 12866, which is generally a \$100 million impact.

- Note, the prior designation as significant under EO 12866 shall not be

controlling, so the list of eligible regulations could be broader than simply 385 regulations;

- This interim report shall be completed no later than 60 days from the date of this order;
- No later than 150 days from the date of this order, the Secretary shall prepare and submit a report to the President that recommends specific actions to mitigate the burden imposed by regulations identified;
- The Secretary shall take appropriate steps to cause the effective date of such regulations to be delayed or suspended, to the extent permitted by law, and to modify or rescind such regulations as appropriate and consistent with law, including, if necessary, through notice and comment rulemaking; and
- The Secretary shall submit for publication in the Federal Register a summary of the actions taken in response to the report no later than 10 days following the finalization of such actions.

### **Upcoming Hearings and Events**

#### **May 2**

***Tax-Exempt Federal Lands:*** The Senate Energy and Natural Resources Committee will hold a hearing on federal payments to local governments provided through the Secure Rural Schools and Community Self Determination Act and the Payment in Lieu of Taxes program and the need to provide greater fiscal certainty for resource-dependent communities with tax-exempt federal lands.

#### **May 3**

***IRS Oversight:*** The House Appropriations Subcommittee on Financial Services and General Government will hold a hearing on

“IRS Oversight.” Witnesses include Treasury Inspector General for Tax Administration Russell George and National Taxpayer Advocate Nina Olson.

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

## **TRADE**

### **President Trump Says NAFTA Negotiations Starting Promptly; Reported Draft Executive Order to Withdraw Not Expected to Be Signed At This Time**

#### *Key Points:*

- *President Trump agreed not to terminate NAFTA “at this time” but left the option open if “we can’t come to a satisfactory conclusion”*

This week, President Donald Trump stated that he would renegotiate North American Free Trade Agreement (NAFTA) after announcing he intended to withdraw from the agreement. Following a conversation with Mexican President Enrique Peña Nieto and Canadian Prime Minister Justin Trudeau, the White House indicated the President “agreed not to terminate NAFTA at this time and the leaders agreed to proceed swiftly, according to their required internal procedures, to enable the renegotiation of the NAFTA deal to the benefit of all three countries.”

There were reports that Trump would sign an executive order, drafted by National Trade Council Director Peter Navarro and White House Chief Strategist Steve Bannon, to withdraw from the agreement. Trump clarified that if he does not believe the renegotiations result in “a fair deal for the United States,

meaning a fair deal for our workers and our companies, I will terminate NAFTA.” He also stated, however, that “we’re going to give renegotiation a good, strong shot.”

### **Senate Finance Approves USTR Nominee with Waiver; NAFTA Negotiation Congressional Notification Expected With Confirmation**

#### *Key Points:*

- *Robert Lighthizer’s nomination to serve as USTR was favorably reported out from the Finance Committee by a unanimous vote*
- *The formal NAFTA negotiation notification will be transmitted once Lighthizer is in place at USTR and can sign it, triggering a 90 day period before negotiations can formally begin.*

The Senate Finance Committee unanimously supported the nomination of Robert Lighthizer to be United States Trade Representative (USTR). His nomination requires a waiver, which is expected to be done in conjunction with the coal miner health provisions in the FY 2017 omnibus appropriations act that will be considered by Congress in the next week. The formal North American Free Trade Agreement (NAFTA) negotiation notification will be transmitted once Lighthizer is in place at USTR and can sign it, triggering a 90 day period before negotiations can formally begin.

### **Trump Administration Initiates Aluminum Investigation on Trade**

#### *Key Points:*

- *If evidence of a national security threat from aluminum imports is found, the President is authorized to unilaterally “adjust imports.”*

President Donald Trump signed a [Presidential Memorandum](#) to initiate a “Section 232”

investigation (i.e., Section 232 of the Trade Expansion Act of 1962) into the trade actions of countries such as China and Russia to determine if the increase of aluminum imports is a threat to U.S. national security. This investigation is similar to another 232 investigation initiated last week on steel.

The national security focus includes the fact that the U.S. has only one remaining smelter that mass produces high purity aluminum used in U.S. fighter jets. The U.S. has a standing trade complaint with the World Trade Organization (WTO) supported by Canada and Japan and others and Secretary of Commerce Wilbur Ross indicated that WTO complaint may be “subsumed” by the new investigation. If the Department of Commerce finds evidence of a national security threat from aluminum imports, the President is authorized to unilaterally “adjust imports.” Presidents Richard Nixon and Gerald Ford used this trade provision under Section 232 to grant relief during the oil crisis of the 1970s.

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## **FINANCIAL SERVICES**

### **CFTC Holds Meeting of the Market Risk Advisory Committee**

#### *Key Points:*

- *The Advisory Committee discussed cybersecurity, the state of the market, and recommendations on CCP default management.*

On April 25, the Commodity Futures Trading Commission (CFTC) held a [meeting](#) of its Market Risk Advisory Committee (MRAC or

the Advisory Committee). The Advisory Committee discussed the staff response to the CCP Risk Management Subcommittee recommendations for CCP default management, cybersecurity, and the state of the market.

In his concluding remarks, Acting Chairman J. Christopher Giancarlo said the Committee Members raised both short and long term concerns about the markets the CFTC oversees. He stressed the need to ensure that the markets serve healthy risk transfer and economic growth. He said the new Administration has placed an emphasis on promoting broad-based and sustainable economic growth.

MRAC Sponsor and CFTC Commissioner Sharon Bowen thanked the Acting Chairman for his commitment to this Advisory Committee and his continued work on keeping the markets safe. Bowen noted the importance of staying vigilant on CCP risk management and of cybersecurity, explaining it is one of the most important topics in the market place. She stated that the Advisory Committee will look at liquidity, the leverage ratio, the repo market and uncleared margin. She noted that the Advisory Committee would hold its next meeting in June.

### **House Committee Holds Hearing to Discuss the Financial CHOICE Act**

#### *Key Points:*

- *Republicans expressed support for provisions of the bill repealing the Orderly Liquidation Authority, eliminating SIFI designations, and reforming the CFPB. Democrats came out in opposition to these provisions.*
- *Representative Ted Budd (R-NC) argued in support of repealing the Durbin Amendment,*

*while Representative Dennis Ross (R-FL) contended that it should be retained.*

- *The Committee will hold a Minority hearing on April 28 to further discuss the bill, and the Committee will markup the bill on May 2.*

On April 26, the House Financial Services Committee held a [hearing](#) entitled “A Legislative Proposal to Create Hope and Opportunity for Investors, Consumers, and Entrepreneurs.” The hearing focused on the [Financial CHOICE Act](#) (H.R. 10) introduced by Chairman Jeb Hensarling (R-TX). As [requested](#) by Ranking Member Maxine Waters (D-CA) and other Democratic Members of the Committee, the Committee will hold a [Minority hearing](#) on Friday, April 28 to further discuss the bill. The Committee is scheduled to markup the bill on May 2.

Hensarling stated it has been almost seven years since the Dodd Frank Act (DFA) was passed and he suggested the economy is stuck in the slowest recovery in history. Hensarling stated the Financial CHOICE Act will replace the government fiat with market discipline, and there will be economic opportunity for all and bank bail outs for none. He stated checking fees have increased, the number of households under or un-banked has increased, there are 15,000 fewer credit cards since 2008, and banks have had to hire more compliance officers. He expressed concerns over the Consumer Financial Protection Bureau (CFPB) and explained the CHOICE Act re-patterns the CFPB to enforce consumer protection laws rather than “making it up.” He stated the bill reduces burdens for banks which meet simple requirements. He stated the CHOICE Act repeals the Financial Stability Oversight Council’s (FSOC) authority to designate systemically important financial institutions (SIFIs) and repeals the previous designations. He stated the bill repeals the Volcker rule as it

has made capital markets less liquid. He stated the bill will unleash opportunities for economic growth and provide regulatory relief for job creators. He stated the DFA will be replaced with simpler capital reserve requirements.

Waters in a [statement](#) suggested this is another “dead on arrival” version of the “Wrong Choice Act.” She stressed that this bill will dismantle Wall Street Reform, gut the CFPB, and return to the system which allowed predatory Wall Street activities which crashed the economy. She stated this Act paves the path back to economic ruin by rolling back protections for consumers. Waters stated the CFPB prevents the “peddling” of toxic products and the CFPB has returned over \$12 billion to consumers. Waters suggested the Democrats will fight this bill and “stand up” for Main Street. Waters submitted a [letter](#) from all of the Democrat Members of the Committee on the intent to hold a Minority hearing on the CHOICE Act.

Hensarling and Representatives Dennis Ross (R-FL), Sean Duffy (R-WI), Ann Wagner (R-MO) and Tom Emmer (R-MN) spoke in support of the provisions of the Financial CHOICE Act repealing the authority of the FSOC to designate systemically important financial institutions (SIFI). They contended that this authority codifies Too Big to Fail into law and hurts smaller financial institutions.

Representatives Bruce Poliquin (R-ME), Keith Rothfus (R-PA) and Dave Trott (R-MI) spoke in support of repealing the Orderly Liquidation Authority (OLA) created by Title II of the DFA. They suggested that doing so would end the potential for bailouts. Waters (D-CA) and Representative Carolyn Maloney (D-NY) spoke in defense of the OLA, suggesting that it creates an orderly process through which large

non-bank financial institutions can be wound down.

Representatives Blaine Luetkemeyer (R-MO), David Kustoff (R-TN), Andy Barr (R-KY), Bill Posey (R-FL), Roger Williams (R-TX) and Barry Loudermilk (R-GA) stressed the importance of the provisions of the Financial CHOICE Act reforming the CFPB. They raised concerns with the structure of the Bureau and its consumer complaint database. Representatives Josh Gottheimer (D-NJ) and Nydia Velazquez (D-NY) emphasized the important role played by the CFPB in protecting consumers.

Representatives Ed Royce (R-CA) and French Hill (R-AR) spoke in support of the provisions revising the resubmission thresholds for proxy votes. Representatives Randy Hultgren (R-IL), Trey Hollingsworth (R-IN) and French Hill (R-AR) expressed support for repealing the Volcker Rule, contending that it is impossible for banks to distinguish between prohibited proprietary trading and permissible market making.

Representative Ted Budd (R-NC) expressed opposition to Durbin Amendment, and he asked if it is helping the American public. Heritage Foundation Senior Research Fellow Norbert Michel said the Durbin Amendment failed, as price controls always do. He said is not helping consumers, and the evidence shows that the Durbin Amendment was either ineffective or harmful. He said the idea that large retailers would pass the savings from the Durbin Amendment on to consumers was a “fantasy.” CATO Institute former President and Chief Executive Officer John Allison said the Durbin Amendment has been particularly bad for low income consumers. He described the Durbin Amendment as a subsidy for big merchants like Walmart. He said banks have

cut free checking as a result of the Durbin Amendment. He stated that the Durbin Amendment has reduced the incentive for banks to invest in new technologies consumers might want. Representative Dennis Ross (R-FL) raised concerns with the debit reform repeal provisions of the Financial CHOICE Act, noting a broad spectrum of the retail community has stressed the need to maintain debit reform. He said the CEO of Badcock Home Furnishing told him that their savings from debit reform allowed them to open new stores and pass on savings to consumers.

### **Senate Banking Committee Discusses Russian Sanctions**

#### *Key Points:*

- *The Senate Banking Committee looked at the current sanctions against Russia and the possible need to further expand those sanctions.*
- *Chairman Mike Crapo (R-ID) called for a codification of the Executive Orders related to Russia and a “deepening” of current sanctions.*

On April 27, the Senate Banking Committee held a [hearing](#) on “Countering Russia: Further Assessing Options for Sanctions.” The hearing focused the interference of Russia in the recent U.S. election, current sanctions against Russia, the need to codify the current sanctions against Russia, and the need to possibly expand current sanctions against Russia. Chairman Mike Crapo (R-ID) stated that U.S. sanctions have had a limited impact on the Russian economy, but Russia’s economy had been severely impacted by the global downturn in oil prices. He said sanctions should not target the Russian people, but rather those responsible for Russia’s hostile activities. Crapo said a good starting point would be codification of the Executive Orders (EO) and a deepening and broadening of sanctions against certain economic sectors. Ranking Member Sherrod Brown (D-OH) said

U.S.-EU unity is essential if multilateral sanctions against Russia are to be effective. He said there must be a consistent policy to combat Russian aggression. He said Russia should not receive any sanctions relief until they comply with the Minsk Agreement, emphasizing that the Administration should strengthen rather than weaken sanctions.

When asked how the Kremlin is able to evade or circumvent sanctions, Financial Integrity Network President and Co-Founder Chip Poncy said there are holes in the financial system, which prevents the U.S. from knowing who holds certain assets. He noted that there is a final rule which will impose beneficial ownership requirements next year, which he suggested will help to address this issue. Brown noted Russian efforts to influence U.S. elections, and he asked how the U.S. could deter this behavior. Harvard Kennedy School of Government Professor Nicholas Burns said President Vladimir Putin has set out to undermine the U.S.'s position around the world. He stressed the need to strengthen the U.S. military in Europe and the need to send a message that the U.S. will defend its NATO allies. He expressed strong opposition to reducing the budget of the State Department and the United States Agency for International Development (USAID).

Senator Richard Shelby (R-AL) stated not enough has been done in the banking sector in terms of sanctions. Poncy suggested going after the conduct associated with corruption. He stated what is needed is a task force to study where the leadership money actually is and to go after the illicit conduct. Senator Catherine Cortez-Masto (D-NV) asked whether FinCEN would be an integral part of that sanctions system. Poncy stated FinCEN is a critical component of the task force. Senator Joe Donnelly (D-IN) asked how effective it is to

restrict access to the Society for Worldwide Interbank Financial Telecommunication (SWIFT) payment transfer system. Burns stated he is all for deeper and tougher sanctions but he stated if they “go to” SWIFT, Putin might take that as an existential threat. Senator Chris Van Hollen (D-MD) asked about developing a broader strategy for combatting cyber attacks and hacking. He noted he will introduce legislation to establish a working group to coordinate efforts for responding to cyber attacks. Burns agreed with the need for bipartisanship. He stated the United Kingdom, Germany, France and Israel have capacity here and the U.S. needs to work with them on this.

### House Panel Holds Hearing on Terrorism Financing

#### Key Points:

- *Members raised concerns with FinCEN's collection of Suspicious Activity Reports, suggesting that banks submit large numbers of reports to avoid liability and that FinCEN cannot sort through such a large amount of data.*

On April 27, the House Financial Services Committee's Terrorism and Illicit Finance Subcommittee held a [hearing](#) entitled “Safeguarding the Financial System from Terrorist Financing.” Chairman Stevan Pearce (R-NM) stated most Americans are fortunate to have a secure means to save their money. He stated the goal of the Subcommittee is to ensure markets for legitimate users are safe and secure. He explained this is the first in a series of hearings the Subcommittee will hold on the Bank Secrecy Act and the regulatory structure the U.S. has in place to combat money laundering and terrorism finance.

Ranking Member Ed Perlmutter (D-CO) stated that the Financial Crimes Enforcement

Network (FinCEN) plays a critical role in safeguarding the financial system through the collection of Suspicious Activity Reports (SAR). He stated FinCEN has collected over 200 million filings. He noted most financial payments flow through or touch the U.S. financial system which means it is important for the U.S. to have a strong and safe system. He explained it is important to consider how the current system is functioning and discuss whether additional safeguards are needed.

Full Committee Ranking Member Maxine Waters (D-CA) stated one of the key issues this Subcommittee will look at is the adequacy of information sharing requirements. She noted the benefits and efficiency which would accrue from increased information sharing between institutions and with the government. She stated these efforts must be cognizant of the need to protect privacy and civil liberties. Waters stated there is a responsibility to solicit views from all interested stakeholders. She suggested there is a gap related to the real estate sector in terms of money laundering risk. She expressed concern that FinCEN continues to exempt most real estate from anti-money laundering (AML) considerations.

Pearce and Representatives Tom Emmer (R-MN), Mia Love (R-UT), Bruce Poliquin (R-ME) and Ed Royce (R-CA) raised concerns with FinCEN's data collection practices. They noted that FinCEN collects more than 54,000 SARs per day, suggesting that banks are submitting large amounts of reports to avoid liability and that FinCEN cannot sort through such a large amount of data.

Representatives Carolyn Maloney (D-NY) and Bill Foster (D-IL) expressed support for expanding disclosures requirements for beneficial ownership.

## Upcoming Hearings and Events

### May 2

***Covered Agreement:*** The Senate Banking Committee will hold a hearing entitled "Examining the U.S.-EU Covered Agreement." The witnesses will be: Mr. Michael McRaith, Former Director, Federal Insurance Office, U.S. Department of Treasury; The Honorable Julie Mix McPeak, Commissioner, Tennessee Department of Commerce and Insurance, on behalf of the National Association of Insurance Commissioners; Mr. Michael C. Sapnar, President & CEO, Transatlantic Reinsurance Company, on behalf of the American Insurance Association, American Council of Life Insurers, and the Reinsurance Association of America; Mr. Stuart Henderson, President & CEO, Western National Mutual Insurance Company, on behalf of the National Association of Mutual Insurance Companies; and Mr. David Zaring, Associate Professor of Legal Studies and Business Ethics, The Wharton School, University of Pennsylvania.

***Financial CHOICE Act:*** The House Financial Services Committee will hold a markup of the [Financial CHOICE Act](#).

### May 4

***National Flood Insurance Program:*** The Senate Banking Committee will hold a hearing entitled "Reauthorization of the National Flood Insurance Program, Part II." The witnesses will be: Mr. Steve Ellis, Vice President, Taxpayers for Common Sense, on behalf of the SmarterSafer Coalition; Mr. Michael Hecht, President and CEO, Greater New Orleans, Inc., on behalf of the Coalition for Sustainable Flood Insurance; and Mr. Larry Larson, Director Emeritus, Senior Policy Advisor, Association for State Floodplain Managers.

**May 10**

***Advisory Committee on Small and Emerging Companies:*** The Securities and Exchange Commission (SEC) will hold a meeting of its Advisory Committee on Small and Emerging Companies. The agenda for the meeting includes matters relating to rules and regulations affecting small and emerging companies under the federal securities laws.

***SEC-NYU Dialogue on Securities Market Regulation:*** The SEC's Division of Economic and Risk Analysis (DERA) and New York University's Salomon Center will hold a dialogue on "Reviving the U.S. IPO Market." The agenda for the meeting includes panels on: (1) Review of the IPO Market; (2) Panel on Regulatory and Other Market Influences; and (3) How to Revive the IPO Market.

***Small Business Lending:*** The Consumer Financial Protection Bureau (CFPB) will hold a field hearing to discuss small business lending. CFPB Director Richard Cordray is scheduled to speak at the event.

**May 11**

***Federal Advisory Committee on Insurance:*** The Treasury Department's Federal Insurance Office (FIO) will hold a meeting of the Federal Advisory Committee on Insurance (FACI). The agenda for the meeting includes discussion of the cyber insurance market; the effect of technological advances on insurers' corporate strategy; and an analysis of insurer infrastructure investment practices.

**May 17**

***CFPB Academic Research Council:*** The Consumer Financial Protection Bureau (CFPB) will hold a meeting of its Academic Research Council to discuss methodology and direction for consumer finance research at the Bureau.

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

**ENERGY & ENVIRONMENT****Hearing Reviews Pipeline, Rail and Hazardous Materials Safety Regulations***Key Points:*

- *The House Railroads, Pipelines, and Hazardous Materials Subcommittee heard testimony from industry representatives on the safety regulations of the Department of Transportation's Pipeline and Hazardous Materials Safety Administration.*
- *There was discussion of the need to ensure safety while avoiding unnecessarily burdensome regulations.*

On April 26, the House Transportation and Infrastructure Committee's Railroads, Pipelines and Hazardous Materials Subcommittee held a [hearing](#) titled "Building a 21st Century Infrastructure for America: The State of Railroad, Pipeline, and Hazardous Materials Safety Regulations and Opportunities for Reform".

Chairman Jeff Denham (R-CA) declared in his opening statement that "safety is our top priority" but added that "the breadth of regulation has grown significantly." Denham and other Members focused on the differences between prescriptive regulations and performance-based regulations, with Denham and Republicans indicating their preference for the latter. Democrats, such as Representative Elizabeth Esty (D-CT) contended that prescriptive regulations play an important role in maintaining safety. Ranking Member Michael Capuano (D-CT) told the witnesses that "I'm glad to hear that some of you said there is a need for prescriptive regulation."

Some Members, including Denham, expressed concern regarding the failure of the Pipeline and Hazardous Materials Safety Administration (PHMSA) to implement congressional mandates directed as part of the “Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011” (P.L. 112-90). Full Committee Ranking Member Peter DeFazio (D-OR) argued that PHMSA is “a pretty much dysfunctional agency”, and asserted that former PHMSA Administrator Marie Therese Dominguez was “trying to clean up a...dysfunctional agency.” Capuano also remarked that “I haven’t been terribly thrilled with the implementation of the [2016 ‘Protecting our Infrastructure of Pipelines and Enhancing Safety’] PIPES Act.”

Pipeline industry witnesses emphasized the need for regulatory certainty, while expressing concerns regarding major pending rulemakings: the “Safety of Onshore Hazardous Liquid Pipelines”; the “Safety of Gas Transmission and Gathering Pipelines”; and the “Safety of Underground Natural Gas Storage Facilities.” Interstate Natural Gas Association of America (INGAA) President and Chief Executive Officer Don Santa emphasized three problems with the PHMSA rulemaking process: failure to utilize consensus-building; inclusion of too many issues in a single rulemaking; and delays created by the Office of Management and Budget (OMB) pre-filing process.

Discussion regarding rail safety regulations included questions about implementation of positive train control (PTC) and the use of automated safety and inspection technologies. Full Committee Ranking Member DeFazio noted that the freight rail industry has made significant investments in positive train control (PTC). He asked BNSF Railway Executive Vice President Roger Nober whether BNSF would

support a rollback in the requirement to implement PTC. Nober replied that BNSF is “planning to have...our system up and running by 2018”, adding that “we will meet the deadline.” He explained that there are remaining issues with interoperability and “bugs” that need to be resolved.

DeFazio also repeatedly stressed his interest in addressing the risks posed by lithium ion batteries transported by aircraft, citing the 2010 UPS cargo aircraft accident.

## **Order Directs Review of National Monuments**

### *Key Points:*

- *President Trump signed an executive order this week directing a review of presidential designations and expansions of large national monuments over the last twenty years.*
- *The Secretary of Interior will conduct the review and is required to provide an interim report in 45 days and a final report in 120 days. The reports will include recommendations for potential Presidential and legislative actions regarding the covered national monuments.*

On April 26, President Donald Trump signed an [Executive Order](#) titled “Review of Designations Under the Antiquities Act”. The Order directs the Secretary of Interior to review national monuments designated since January 1, 1996 that are 100,000 acres or more in size. The review will also include existing monuments expanded by presidential proclamation under the Antiquities Act, “where the designation after expansion covers more than 100,000 acres.” The Secretary of Interior may also review any monuments where he “determines that the designation or expansion was made without adequate public outreach and coordination with public stakeholders.”

The Executive Order also directs the Secretary to prepare two reports for the President:

- An interim report, due within 45 days, which will specifically examine the designation of the Bears Ears National Monument, as well as “such other designations as the Secretary determines to be appropriate for inclusion in the interim report”. President Obama designated the Bears Ears National Monument, which is located in southeast Utah, by signing [Proclamation 9558](#) on December 28, 2016.
- A final report, due within 120 days, examining all the national monuments covered by the Executive Order.

The Secretary of Interior is directed to include in both reports “recommendations for such Presidential actions, legislative proposals, or other actions consistent with law...” regarding the monuments.

The “Antiquities Act of 1906” ([54 U.S.C. 320301](#)) authorizes the President to “declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated on land owned or controlled by the Federal Government to be national monuments.” It also specifies that the “parcels” designated as national monuments “shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.”

In a [statement](#), House Natural Resources Committee Chairman Rob Bishop (R-UT) praised the Executive Order: “Today’s action sends the powerful message that communities will no longer take a back seat to out-of-state special interest groups. I’m pleased to see President Trump recognize long-standing

abuses of the Antiquities Act. It was created with noble intent and for limited purposes, but has been hijacked to set aside increasingly large and restricted areas of land without public input.”

House Natural Resources Committee Ranking Member Raul Grijalva (D-AZ) issued a [statement](#) criticizing the Executive Order: “Requiring extensive ‘review’ of monuments while abolishing almost all review of new mining or drilling is evidence of bad faith...If this ‘review’ turns out to be a pretext for a smash-and-grab operation designed to destroy a legacy of conservation built over decades, we will fight it all the way.”

### Upcoming Hearings and Events

#### May 1

***EPA Office of Chemical Safety and Pollution Prevention Public Meeting:*** The EPA’s Office of Chemical Safety and Pollution Prevention will hold a public meeting on: “TSCA Subchapters I, II and VI rules and as well as EPCRA Subchapter II § 11023 rules”; and “Subchapter IV (Lead Exposure Reduction) rules.”

#### May 1-2

***Wholesale Energy and Capacity Markets:*** The Federal Energy Regulatory Commission (FERC) will hold a “staff technical conference on wholesale energy and capacity markets”. The [technical conference](#) will “discuss certain matters affecting wholesale energy and capacity markets operated by the Eastern Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs).”

#### May 2

***EPA Office of Water Regulatory Review:*** The EPA’s Office of Water is scheduled to hold a “virtual listening session”.

**May 3**

**Energy Infrastructure Legislation:** The House Energy and Commerce Committee's Energy Subcommittee will hold a hearing titled "Legislation Addressing Pipeline and Hydropower Infrastructure Modernization". The Subcommittee will hear testimony on the following legislation: (1) "[Discussion Draft of H.R. \\_\\_\\_\\_, Promoting Hydropower Development at Existing Non-Powered Dams Act](#)"; (2) "[Discussion Draft of H.R. \\_\\_\\_\\_, Promoting Closed-Loop Pumped Storage Hydropower Act](#)"; (3) "[Discussion Draft of H.R. \\_\\_\\_\\_, Promoting Small Conduit Hydropower Facilities Act of 2017](#)"; (4) "[Discussion Draft of H.R. \\_\\_\\_\\_, Promoting Interagency Coordination for Review of Natural Gas Pipelines Act](#)"; (5) [Discussion Draft of H.R. \\_\\_\\_\\_, Promoting Cross-Border Energy Infrastructure Act](#)"; (6) the "Supporting Home Owner Rights Enforcement Act ([H.R. 1538](#))"; (7) "To extend the deadline for commencement of construction of a hydroelectric project" ([H.R. 446](#)); (8) "To extend the deadline for commencement of construction of a hydroelectric power project" ([H.R. 447](#)); (9) "To reinstate and extend the deadline for commencement of construction of a hydroelectric project"; ([H.R. 2122](#)); and (10) "[Discussion Draft of H.R. \\_\\_\\_\\_, Hydropower Policy Modernization Act of 2017](#)".

**Energy Infrastructure Streamlining:** The Senate Environment and Public Works Committee will hold a [hearing](#) titled "Infrastructure Project Streamlining and Efficiency: Achieving Faster, Better, and Cheaper Results".

**May 4**

**EMP Threat to Energy Infrastructure:** The Senate Energy and Natural Resources Committee will hold a [hearing](#) on "the threat

posed by electromagnetic pulse and policy options to protect energy infrastructure and to improve capabilities for adequate system restoration."

**EPA Pesticide Review:** The EPA's Office of Chemical Safety and Pollution Prevention will meet with the Pesticide Program Dialogue Committee.

**May 9**

**EPA Office of Land and Emergency Management (OLEM) Regulatory Review:** The EPA's Office of Land and Emergency Management will hold a [meeting](#) "to solicit proposals specific to OLEM regulations that could be considered for being repealed, replaced or modified."

**June 26-27**

**EIA Energy Conference:** The Energy Information Administration (EIA) will hold its annual [Energy Conference](#). Conference topics include: "U.S. exports of crude oil and petroleum products"; "Renewable finance and project costs"; "The energy-water nexus and induced seismicity"; "The future of nuclear power"; "Gasoline fuel quality and octane supply"; "Big data and energy information"; "Natural gas infrastructure to serve growing markets"; "Coal and natural gas competition"; and "Human behavior and energy use in buildings".

**June 26-28**

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

*For more information about energy and environment issues you may [email](#) or call Frank Vlossak at 202-*

659-8201. Updates on energy and environment issues are also available on [twitter](#).

## **DEFENSE**

### **SASC Cyber Operations Hearing**

#### *Key Points:*

- *In its first public hearing, the new SASC Cybersecurity Subcommittee examines U.S. and foreign cyber operations*

On April 27, the Senate Armed Services Committee's Cybersecurity Subcommittee held a [hearing](#) entitled "Cyber-Enabled Information Operations." Topics discussed in the hearing included, but were not limited to: (1) cyber deterrence; (2) network security; (3) misinformation campaigns; (4) 2016 election interference; and (5) cyber talent recruitment.

Chairman Mike Rounds (R-SD) noted the Subcommittee has conducted two classified briefings on cyber threats and deterrence. He explained the briefings included a discussion of the report of the Defense Science Board's (DSB) task force on cyber deterrence. He said the hearing will discuss new threat capabilities, particularly those of Russia, to use new tools to obtain information in the new domain of conflict. Rounds said Russian information operations, like those experienced during the 2016 election, are not new and many nation-states aim seek to shape outcomes of elections to enhance their national security advantage. He explained the Soviet Union conducted disinformation operations against the U.S. and allies, and today, Russia has informational capabilities "unimaginable to its Soviet forebear." He stressed the purpose of the hearing was not to debate the outcome of the 2016 Presidential election, but is to learn from past experiences in order to assess how information operations can be enhanced in

terms of the reach, speed, and precision through cyberspace. Rounds expressed hope that the hearing will be forward looking and help lay the foundation for the legislation and oversight necessary to address the national security threat. He argued disinformation and fake news present a unique threat. He stated adversaries aim to leverage the U.S.'s distaste for censorship in order to delegitimize democracy, influence the public discourse, and undermine national security and confidence. Rounds stressed the need for defenses to detect and respond to future efforts. He stated according to the Defense Science Board, the offensive capabilities of adversaries exceed the U.S.'s ability to protect critical infrastructure. He asserted the ability to defend against- cyber enabled information operations will also require a level of deterrence and actions will have consequences. Rounds acknowledged information operations are not new and have been used in one form or another for years. He said the U.S. ability to develop a strategy is critical.

Ranking Member Bill Nelson (D-FL) stated although information warfare has been used for many years, the internet presents new opportunities for "mischief." He explained Putin's regime can directly access the people of the U.S. bypassing traditional media and that it is possible to weaponize information to accomplish a particular objective. Nelson acknowledged even private, sensitive information can be stolen through cyber hacking and then released through established media. He said modern technologies and tools including social media and big data analytics amplify the speed of precise targeting of information operations beyond what was possible during the Cold War. He explained these tools support elements including Russian media that spread misinformation and propaganda, while trying to appear objective.

Nelson argued the government is ill-prepared to defend itself from this information warfare or to deter it using our own information operations. He asserted it is possible to apply the same technologies used by the adversaries to fight back, but will require changes to how the information environment is tasked in the Department of Defense (DOD) and other agencies. He stressed success requires a partnership between the public and technology companies that operate the platforms where the conflict is playing out.

Former National Security Agency Deputy Director John Inglis said cyberspace is a new domain. He explained, as a noun, it is the meld of technology and people and the procedures that bind the two. He said cyberspace as a verb is connectivity, decreasing borders, and the increase of data and information. Inglis identified four trends that make a difference in the discussions; (1) new geography based on opportunities, not borders or jurisdiction; (2) new means of organizing based on values, not proximity; (3) disparities continue to exist and are increasingly reconciled through cyberspace through competition and conflict; and (4) geopolitical tension exists and are reconciled through cyberspace. Inglis explained the four trends reduce the influence of traditional institutions like nation-states by fading borders and flooding data, rather than information. He stated it is increasingly important to consider the scope and scale of cyberspace. He acknowledged information warfare is discrete from cyber warfare. Inglis explained cyber warfare is not a standalone entity and is a component of a larger state of war, while information warfare is a conflict of ideas. He said there are only capabilities that are employed in the execution of strategic aims and the need to define strategic aims. He stressed the U.S. needs to stop reacting but rather anticipate and track well. Inglis acknowledged

Nelson's statements on applying technologies to our adversaries and told the Committee that the U.S. can use the weapons that have been used against the country, but should never compromise its values.

Former Acting Under Secretary Of Defense For Policy Michael Lumpkin observed the Obama Administration and the 114th Congress demonstrated a clear commitment to the issue. He pointed to President Barack Obama's Executive Order 13721 which established the Global Engagement Center (GEC) and the 2017 National Defense Authorization Act (NDAA) which expanded GEC efforts to include counter state propaganda and disinformation efforts. Lumpkin asserted the efforts are a step in the right direction, but the U.S. is still far where it needs to be to have influence in the modern information environment. He stated since the end of the Cold War, technology has changed dramatically. He emphasized that today, the world is hyper connected where information moves in real time and the lines of authority have blurred to the point that information is being consumed by the U.S. and foreign audiences at the same time. He said although much has changed, the U.S.'s thinking of the information has remained unchanged. Lumpkin explained there is a lack of accountability and oversight, an inability to absorb cutting edge information, and access to skilled personnel. He noted adversaries are increasing investment in the information environment, but asserted the good news is that the workforce is committed and passionate.

### **CBO Finds Navy Would Significantly Higher Resources To Buy and Operate 355 Ship Fleet**

*Key Points:*

- *In order to meet its latest fleet proposal, the CBO finds that the Navy would need 38% more for operations and more than 60% more for shipbuilding than Congress has historically provided on an annual basis*

Earlier this week, the Congressional Budget Office (CBO) released an [assessment](#) of the Navy's plan to build a 355 ship Navy at the request of the House Armed Services Committee's Seapower and Projection Forces Subcommittee. CBO "estimated the costs of achieving the Navy's objective within 15, 20, 25, or 30 years...[and] assessed the implications of building and operating a 355-ship fleet, including the number of ship purchases that would be necessary, prospective inventory levels, personnel requirements, and effects on the shipbuilding industry."

CBO stated that "[t]o enlarge the Navy to 355 ships would require a substantial investment of both money and time. CBO estimates that the earliest the Navy could achieve its goal of a 355-ship fleet would be in 2035, or in about 18 years, provided that it received sufficient funding." CBO Noted that "the cost to build and operate a 355-ship fleet would average \$102 billion per year (in 2017 dollars) through 2047, CBO estimates, or more than one-third greater than the amount appropriated for fiscal year 2016 for today's 275-ship fleet." CBO added that "that, over the next 30 years, meeting the 355-ship objective would cost the Navy an average of about \$26.6 billion (in 2017 dollars) annually for ship construction, which is more than 60 percent above the average amount the Congress has appropriated for that purpose over the past 30 years and 40 percent more than the amount appropriated for 2016."

## Upcoming Hearings and Events

### May 2

### ***EU and European Reassurance Initiative:***

The Senate Appropriations Committee's Military Construction, Veterans Affairs, And Related Agencies Subcommittee will hold a [hearing](#) titled "U.S. European Command: Theater Assessment and European Reassurance Initiative (ERI) Progress."

***TRANSCOM:*** The Senate Armed Services Committee will hold a [hearing](#) on the United States Transportation Command.

***Sexual Assault:*** The House Armed Services Committee's Military Personnel Subcommittee will hold a [hearing](#) titled "Overview of the Annual Report on Sexual Harassment and Violence at the Military Service Academies."

### May 3

***Innovation and Research:*** The Senate Appropriations Committee's Defense Subcommittee will hold a [hearing](#) titled "A review of Defense Innovation and Research Funding."

***Department of Defense Laboratories:*** The Senate Armed Services Committee's Emerging Threats and Capabilities Subcommittee will hold a [hearing](#) titled "Department of Defense Laboratories and Their Contributions to Military Operations and Readiness."

***Flexible Personnel Force:*** The Senate Armed Services Committee's Personnel Subcommittee will hold a [hearing](#) on "a flexible personnel system for a modern military."

***LCS:*** The House Armed Services Committee's Seapower and Projection Forces Subcommittee will hold a [hearing](#) titled "Littoral Combat Ships and the Transition To Frigate Class."

### May 4

**SOCOM:** The Senate Armed Services Committee will hold a [hearing](#) on the United States Special Operations Command.

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

## HEALTH

### Republicans Continue to Work on Health Care Bill

#### *Key Points:*

- *The Conservative Freedom Caucus endorsed the American Health Care Act, but centrists remain wary.*
- *Despite talks of a vote before the end of the week, a vote has still not been scheduled.*

On April 26, the House Freedom Caucus endorsed the American Health Care Act (AHCA) with the inclusion of an amendment offered by Representative Tom MacArthur (R-NJ) that would reinstate essential health benefits as a the federal standard and would maintain the prohibition on denying coverage for pre-existing conditions, prohibition on discrimination based on gender, guaranteed issue, coverage of dependents up to age 26, and community rating rules except for waivers. This amendment would also allow states to obtain a limited waiver from certain federal standards including essential health benefits and community rating rules.

Speaker of the House Paul Ryan (R-WI) said the amendment “helps us get to consensus.” It has flipped many conservatives from no votes to yes including Representatives Dave Brat (R-VA), Jim Jordan (R-OH), Mo Brook (R-AL), and Scott DesJarlais (R-TN) who are all members of the Freedom Caucus.

Despite this new support from conservatives, centrists continue to question the AHCA. Members of the moderate Tuesday Group have expressed concern the MacArthur amendment pushes the bill further to the right. Some members have also suggested these changes should have been done through the committees with regular jurisdiction.

Many healthcare and advocacy groups have also come out against the revised AHCA saying millions would lose coverage. The American Medical Association said “nothing in the MacArthur amendment remedies the shortcomings of the underlying bill.” The AARP has asserted the bill put an “age tax” on older Americans.

White House officials had been pushing for a vote by Saturday, April 29. House Majority Leader Kevin McCarthy (R-CA) stated the bill would not be brought to the floor this week. Republicans can only afford 22 defections to pass the bill. Some outlets are reporting as many as 21 Republicans have come out against the amended bill with many other still undecided.

### Senate HELP Approves FDA Commissioner

#### *Key Points:*

- *The Senate Health, Education, Labor and Pensions Committee favorably reported the nomination of Scott Gottlieb to be Commissioner of the Food and Drug Administration 14-9.*
- *No date has been set for a floor vote.*

The Senate Health, Education, Labor and Pensions Committee voted April 27 to favorably report the nomination of Scott Gottlieb to the Commissioner of the Food and

Drug Administration (FDA). The Committee voted 14-9 with Senators Sheldon Whitehouse (D-RI) and Michael Bennet (D-CO) voting with Republicans.

Chairman Lamar Alexander (R-TN) praised Gottlieb's background and commitment to lead the FDA. Ranking Member Patty Murray (D-WA) expressed concern over potential conflicts of interest given Gottlieb's past experience investing in and advising the health industry.

### Upcoming Hearings and Events

#### May 1

**PBMs:** The Pharmaceutical Care Management Association will hold the "PBM Policy Forum."

#### May 2

**Drug Pricing:** Brookings Institution will host an event entitled "Reining In Prescription Drug Prices."

**Medicaid:** The House Energy and Commerce Committee will hold a hearing on "Combating Waste, Fraud, and Abuse in Medicaid's Personal Care Services Program."

**Medical Technology:** The House Energy and Commerce Committee will hold a hearing on "Examining Improvements to the Regulation of Medical Technologies."

**Personalized Medicine:** Eric Dishman, director of the National Institutes of Health's All of Us Research Program, part of the Precision Medicine Initiative, will discuss the importance of personalized medicine research during his keynote address at PMC's 13th Annual State of Personalized Medicine Luncheon Address.

**Pharmaceutical Waste:** Alston & Bird environmental attorney Elise Paeffgen will

moderate a panel on "RCRA Developments for Retail and Pharmaceutical Waste."

#### May 3

**Clinical Trials:** The Coalition for Clinical Trials Awareness will host a panel on "How Can the Federal Government Increase Clinical Trials Awareness?" with remarks from Representative Diana DeGette (D-Colo.).

#### May 4

**Autism:** The Food and Drug Administration will hold a meeting of the Patient Focused Drug Development for Autism.

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

### TRANSPORTATION AND INFRASTRUCTURE

#### House Sends MPO Rule Repeal To President

*Key Points:*

- *A bill to undo an FHWA/FTA rule on transportation planning passes the House*

This week, the House took up and passed [S. 496](#) by a 417-3 vote that would "repeal the [rule](#) issued by the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) entitled 'Metropolitan Planning Organization Coordination and Planning Area Reform'" that had been issued by the Obama Administration in December 2016 per a requirement in the "Moving Ahead for Progress in the 21st Century Act" (MAP-21) (P.L. 112-141). The Senate passed S. 496 in March by unanimous consent, so the bill now goes to the White House.

In the [Committee Report](#) for the companion bill reported out of the House Transportation

and Infrastructure Committee, the sponsors of the legislation explained their rationale:

The rule exceeds the planning requirements set forth in statute. Section 134 of title 23 and section 5303 of title 49, United States Code, establish MPOs and describe their responsibilities in the transportation planning process. These sections require MPOs to prepare long-range plans and Transportation Improvement Plans (TIPs) and outline how MPOs should work with other entities, such as state departments of transportation, as they develop these plans. These sections also require the Secretary of Transportation to encourage each Governor of a state with a portion of a multistate metropolitan area and the appropriate MPOs to provide coordinated transportation planning for the entire metropolitan area. However, these sections of law do not mandate that MPOs within the same urbanized area produce a single TIP, or long-range plan. MPOs and state transportation officials have expressed concerns with the rule's requirement that force MPOs to merge, adjust boundaries, or consolidate planning documents. Urbanized areas can span several states and hundreds or thousands of square miles. By forcing MPOs to merge or consolidate TIPs, the rule takes local transportation investment decisions out of the hands of local authorities.

In their final rule, the FHWA and FTA explained that the “rule revises the transportation planning regulations to promote more effective regional planning by States and MPOs... to better align the planning

regulations with statutory provisions concerning the establishment of metropolitan planning area (MPA) boundaries and the designation of MPOs.”

## Upcoming Hearings and Events

### May 3

***Streamlining Infrastructure Projects:*** The Senate Environment & Public Works Committee will hold a [hearing](#) titled “Infrastructure Project Streamlining and Efficiency: Achieving Faster, Better, and Cheaper Results.”

### May 4

***Airline Travel:*** The Senate Commerce, Science, and Transportation Committee's Aviation Operations, Safety, and Security Subcommittee will hold a [hearing](#) titled “Questions, Answers, and Perspectives on the Current State of Airline Travel.”

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

## TECHNOLOGY

### Third Draft Cybersecurity EO Circulated

#### *Key Points:*

- *A new iteration of a cybersecurity executive order is circulated that is substantially similar to the last version*

This week, the Trump Administration circulated a third draft cybersecurity executive order (EO) that tracks very closely with the last leaked version. It is unclear whether the leak of this draft means the White House will not be issuing an EO this week, however, as had been rumored.

The latest draft EO with contains marginal changes from the last document, including:

- The deletion of the section titled “Core Communications Infrastructure” that would have engaged the owners and operators of ISPs and other entities with developing an approach in concert with the federal government on combatting botnets
- Tasking the Secretary of State and others with “report[ing] to the President on their international cybersecurity priorities, including those concerning investigation, attribution, cyber threat information sharing, response, capacity building, and cooperation.”
- Requiring the Secretary of Commerce and others with “assess[ing] the scope and sufficiency of efforts to educate and train the American cybersecurity workforce of the future” and providing a report “with findings and recommendations regarding how to support the growth and sustainment of the nation’s cybersecurity workforce in both the public and private sectors.”
- The Director of National Intelligence would need to “review the workforce development efforts of potential foreign cyber peers in order to help identify foreign workforce development practices likely to affect long-term U.S. cybersecurity competitiveness”
- The Secretary of Defense must “assess the scope and sufficiency of U.S. efforts to ensure U.S. national security-related cyber capability advantage”

The following items were in the previous EO albeit in slightly changed form in some cases:

- Agency heads “will be held accountable by the President for implementing risk

management measures commensurate with the risk and magnitude of the harm that would result from unauthorized access, use, disclosure, disruption, modification, or destruction of IT and data” and that “cybersecurity risk management processes” are aligned with existing Federal Information Security Management Act (FISMA) standards

- Agencies must immediately implement the National Institute of Standards and Technology’s The Framework for Improving Critical Infrastructure Cybersecurity and prepare and submit a “risk management report” within 90 days to the Office of Management and Budget (OMB) and the Department of Homeland Security (DHS), including “mitigation and acceptance choices” and “[a]ny accepted risk from unmitigated vulnerabilities”
- OMB and DHS will then assess each agency’s risk management reports to determine whether in the aggregate the federal government’s enterprise cyber risk is being managed and 60 days after agencies submit their reports, OMB shall submit a plan to the President to:
  - protect adequately the executive branch enterprise should the determination identify insufficiencies;
  - establish a regular reassessment and determination process;
  - address unmet budgetary needs necessary to managing risk to the executive branch enterprise resulting from their determination;
  - clarify, reconcile, and reissue as necessary all policies, standards, and guidelines issued by any agency in furtherance of

- Chapter 35, Subchapter II of Title 44, United States Code (i.e. FISMA) and this order; and
- align these policies, standards, and guidelines with the Framework.
- The Assistant to the President for Intragovernmental and Technology Initiatives will submit a report to the President within 60 days regarding:
  - The technical feasibility and cost effectiveness, with timelines and milestones, of transitioning all agencies, or a subset of agencies, to one or more consolidated network architectures, and any legal, policy, or budgetary considerations relevant to implementing that transition; and
  - The technical feasibility and cost effectiveness, with timelines and milestones, of transitioning all agencies, or a subset of agencies, to shared IT services, including email, cloud, and cybersecurity services, and any legal, policy, or budgetary considerations relevant to implementing that transition
- DHS will lead a review by sector-specific agencies to look at the authorities and capabilities each agency has to support owners and operators of critical cyber infrastructure and to help implement risk management measures
- DHS would report to the President on “existing Federal policies and practices to promote appropriate market transparency of cyber risk management practices by critical infrastructure entities, with a focus on publicly traded critical infrastructure entities”
- DHS would assess the potential scope and duration of a “significant cyber incident” against the U.S. electric grid, readiness for such an attack, and any gaps in assets or capabilities to mitigate such an attack
- The Department of State and a number of other agencies would need to report “on the nation’s strategic options for deterring adversaries and better protecting the American people from those who would use networked technology to defeat or undermine this policy”

### MGT Act Revised and Reintroduced

#### Key Points:

- *A new version of a bill to fund the replacement of legacy IT systems is drafted to circumvent CBO score issues*

On April 28, Representatives Will Hurd (R-TX), Robin Kelly (D-IL), and Gerry Connolly (D-VA) reintroduced the “Modernizing Government Technology (MGT) Act” “designed to reduce wasteful IT spending and strengthen information security by accelerating the federal government’s transition to modern technology like cloud computing” according to a [press release](#). Senators Jerry Moran (R-KS) and Tom Udall (D-NM) are introducing a companion bill. The Representatives claimed that “[u]nder MGT, savings obtained by federal agencies, by doing things like streamlining IT systems, replacing legacy products and transitioning to cloud computing, can be placed in a working capital fund that can be accessed for up to three years for further modernization efforts.” They asserted that “[t]his approach eliminates the traditional use-it or lose-it approach that has plagued government technology for decades...[and] MGT can help the federal government address growing cyber

threats and provide a more efficient product to the American people.”

The new bill includes some key revisions from last year’s version that was effectively blocked by an unfavorable Congressional Budget Office (CBO) score that found that the bill would “cost \$9 billion over the 2017-2021 period, assuming appropriation of the necessary amounts...[and] would increase direct spending by \$3 billion over the 2017-2019 period because it would allow agencies to spend previously appropriated funds that would otherwise lapse.”

Last year, the House Oversight and Government Reform Committee [met](#) and marked the “Modernizing Government Technology (MGT) Act of 2016” ([H.R. 6004](#)), that differed in significant ways from the IT Modernization Fund the Obama White House called for in its FY 2017 budget request and that was part of Minority Whip Steny Hoyer’s (D-MD) bill, the “Information Technology Modernization Act” ([H.R. 4897](#)). However, H.R. 6004 did not authorize a specific appropriation, whereas the Obama White House and Hoyer’s proposals would have appropriated \$3.1 billion to seed the IT Modernization Fund.

### China Technology Hearing

#### *Key Points:*

- *A House Foreign Affairs subcommittee looks at China’s rise as a technological superpower and threats to U.S. technology businesses*

On April 27, the House Foreign Affairs Committee’s Asia and the Pacific Subcommittee held a [hearing](#) entitled “China’s Technological Rise: Challenges to U.S. Innovation and Security.” Among the topics discussed by the Committee were the economic

and military implications of intellectual property theft. Topics discussed in the hearing included: (1) China’s Space Program; (2) Economic and Military Implications of IP Theft; (3) Characteristics and Solutions to the U.S.’s Trade Deficit with China; (4) Rare Earth Minerals

Chairman Ted Yoho (R-FL) said that China’s economic development was having an impact on U.S-China relations. He noted that the deployment of China’s first air craft carrier was a reflection of China’s growing military strength. He stated that these changes would require a long-term policy response by the U.S. He said that China was undertaking mercantilist policies in order to undermine the U.S advanced technology sector. He stated that these policies included large state subsidies and the theft of intellectual property. He suggested that protecting U.S intellectual property be a priority for the U.S in its approach towards China. He pointed out that China was trying to achieve a dominant stake in the semiconductor industry. He noted that there were economic and political consequences to China’s actions in this industry. He pointed out that there would be security issues if Chinese semiconductors replaced American-manufactured semiconductors. He stated that China was challenging U.S dominance in space. He said that the U.S had already been the victim of cyber-attacks on its critical infrastructure. He noted that despite China’s economic growth, China had not acted responsibly in following international law.

Ranking Member Brad Sherman (D-CA) said that President Donald Trump had capitulated to President Xi Jinping over economic issues in order to secure the Chinese President’s help to deal with North Korea. He noted that China has pursued policies that undermined American exports, including policies such as currency

manipulation, technology transfers, and state subsidies. He said that the U.S.'s trade deficit with China was the longest lasting in history. He pointed out that this trade deficit resulted in American jobs lost. He stated that the trade deficit applied to advanced technology. He pointed out that co-production agreements led to the loss of American jobs and intellectual property. He said that China forced American companies into sacrificing American jobs in order to access China's market. He pointed out that Trump had yet to follow through with his campaign commitment to issue a tariff on Chinese goods. He stated that Trump had also failed to designate China as a currency manipulator.

Heritage Foundation Senior Research Fellow Dean Cheng stated that innovation was a broad term that included changes to production processes. He said that China was focused on developing information technology. He stated that China viewed information as replacing traditional industry in terms of economic importance. He said that there was a misconception in the U.S that China's space program was dependent on advances made abroad. He noted that China's space program had made significant advances when it had no relations with either the U.S or U.S.S.R. He said that China had developed new technologies that had not been developed by even the U.S., including a quantum communication satellite that possessed unbreakable encryption. He said China had anti-satellite capabilities not possessed by any other nation. He stated that China also possessed cyber capabilities that no other nation possessed, including the ability to censor text messages while keeping cellular networks online. He pointed out that while these efforts may contradict American values, they nonetheless reflected China's pursuit of innovation. He noted that China would try to gain access to the U.S market through venture

capital operations. He asked the Committee to consider what impact this would have on the U.S in economic and security terms.

Information Technology and Innovation Foundation President Robert Atkinson said that China's past efforts to increase the trade deficit with the U.S differ from current efforts. He stated that China was pursuing new policies that sought to undermine the U.S's leadership in the advanced technologies sector. He pointed out that this would cause the dollar's value to fall. He said that the Chinese were developing a strategy of eliminating U.S semiconductor imports into China. He stated that the Chinese government was giving subsidies to Chinese firms in order for them to competitively produce semiconductors. He suggested that the U.S government restrict Chinese access to U.S advanced technologies through technology transfers and company acquisitions. He suggested that the U.S rollback China's mercantilist innovation practices. He pointed out that the Japanese and South Korean governments were as concerned with China's economic policies as the U.S was, and therefore would be natural allies in rolling back China's mercantilist practices. He stated that the federal government lacked the resources to translate Chinese trade documents. He proposed the creation of a National Industrial Intelligence Unit for the National Intelligence Council to track China's economic policies and technology development. He noted that the State Department often prevented the United States Trade Representative (USTR) from taking a more hardline approach towards China's economic policies. He said that this was a serious problem. He suggested that the Committee on Foreign Investment in the United States (CFIUS) be updated to allow American firms to purchase Chinese advanced technology firms.

## Upcoming Hearings and Events

### ***NIST Small Business Cybersecurity Act***

**Markup:** The House Science, Space & Technology Committee will hold a [markup](#) of the “NIST Small Business Cybersecurity Act of 2017” ([H.R. 2105](#)).

### **May 3**

***Broadband Infrastructure:*** The Senate Commerce, Science & Transportation will hold a [hearing](#) titled “Investing in America’s Broadband Infrastructure: Exploring Ways to Reduce Barriers to Deployment.”

***FAFSA Data Breach:*** The House Oversight and Government Reform Committee will hold a [hearing](#) titled “Reviewing the FAFSA Data Breach.”

### **May 4**

***Electromagnetic Pulse:*** The Senate Energy & Natural Resources Committee will hold a [hearing](#) “to examine the threat posed by electromagnetic pulse and policy options to protect energy infrastructure and to improve capabilities for adequate system restoration.”

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

*This Week in Congress was written by Laura Simmons.*