

May 5, 2017

Washington Update

This Week in Congress

- **House** – The House passed the “**American Health Care Act of 2017**” (H.R. 1628); the “**Consolidated Appropriations Act, 2017**” (H.R. 244); and the “**Working Families Flexibility Act of 2017**” (H.R. 1180).
- **Senate** – The Senate passed the “**Consolidated Appropriations Act, 2017**” (H.R. 244) and agreed to **H.J. Res. 66**, to disapprove of the Department of Labor rule relating to savings arrangements established by States for non-governmental employees. The Senate also confirmed the nomination of Jay Clayton to be a member of the Securities and Exchange Commission.

Next Week in Congress

- **House** – The House will be in recess.
- **Senate** – The Senate is expected to vote on the confirmations of Scott Gottlieb to be Commissioner of the Food and Drug Administration; Robert Lighthizer to serve as the U.S. Trade Representative; and Heather Wilson to be Secretary of the Air Force.

TAX

House Passes ACA Repeal With \$999 Billion in Tax Cuts

Key Points:

- *CBO has not yet issued a score on the bill as amended*

The “American Health Care Act” (AHCA) ([H.R. 1628](#)), the ACA repeal bill passed by the House this week, includes almost \$1 trillion in tax cuts, which would account for about one-third of the House Republican tax reform outline. If the legislation is ultimately enacted, it would give Congressional Republicans an amount of ‘headroom’ in tax reform – so that if they are seeking revenue neutral tax reform they would have a smaller baseline to hit.

The AHCA repeals the “Patient Protection and Affordable Care Act’s (P.L. 111-148, 111-152)

(ACA) premium tax credits starting in 2020, which is replaced by advanceable, refundable age-adjusted tax credits. The credits are available in full to those making \$75,000/150,000 joint filers annually. The AHCA also lifts the \$500,000 cap on health insurers to deduct executive compensation; repeals the 10 percent indoor tanning bed excise tax and repeals the 3.8 percent tax net investment income.

Other health-related tax provisions repealed in the AHCA include: the health insurer tax; the Medicare Hospital Insurance surtax; the increase in medical expense deduction floor;

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and limits on flexible spending accounts.

The Congressional Budget Office has not yet issued an estimate on the amended bill.

Ways and Means Republicans Hold Weekend Retreat

Key Points:

- *Chairman committed to an offset bill so that tax reform can be permanent*

Republican members of the House Ways and Means Committee met last weekend following the release of President Donald Trump's tax reform proposal. After the retreat, Chairman Kevin Brady (R-TX) committed to offsetting any tax reform plan so that it will be permanent even if passed using the budget reconciliation process. Speaker of the House Paul Ryan (R-WI) also said this week that the tax plan must be revenue neutral over a ten year period.

Members said that the Committee intends to move forward with the GOP blueprint while working with the Senate and Administration to get to a unified final proposal. The Committee is not expected to hold a markup of any legislation until there is such a unified plan. The House Freedom Caucus is working on its own tax reform plan, which will not include the border adjustment proposal according to Representative Jim Jordan (R-OH). Members have indicated that the proposal may not be revenue neutral. The position aligns with the Trump Administration, which has said that tax reform will pay for itself through economic growth.

Hatch Discusses Tax Reform on Senate Floor

Key Points:

- *Chairman Hatch says Republicans are in 80 percent agreement on tax reform proposal*

Senate Finance Committee Chairman Orrin Hatch (R-UT) discussed tax reform on the Senate floor this week. He said that that tax reform will require presidential leadership if it is going to be successful, and said that the fact President Donald Trump "is willing to meaningfully engage with Congress and the public on these issues should be viewed as a welcome sign for all tax reform advocates, regardless of their party affiliation." He opined that the Trump Administration's tax reform proposal will make the U.S. "more competitive in the international marketplace and reduce the tax burden on millions of middle-class families." Hatch acknowledged that filling in the specifics of the tax proposal "is going to take some time" but expressed confidence that the Senate Finance Committee can be ready to move in "relatively short order."

Hatch said he hopes tax reform "will be a bipartisan exercise" as "tax reform should not have to be a partisan exercise." He observed "there are a lot of ideas out there on tax reform, and no shortage of competing interests," and emphasized that "no idea should be considered more important than the broader goals of tax reform." He reported "a great deal of consensus among Republicans on the most important tax reform policies and principles" saying that Republicans agree "on roughly 80

Upcoming Dates

May: Trump Administration submits the balance of its FY 2018 budget request

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

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

percent of the key issues.” He called on those involved in the tax reform efforts to be open to adjusting expectations and flexible on preferences on their remaining differences in order to ultimately pass a final package.

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

FINANCIAL SERVICES

Senate Confirms Jay Clayton to Serve as Chairman of the SEC

Key Points:

- *The Senate confirmed Jay Clayton to serve as Chairman of the SEC by a vote of 61-37.*

On May 2, the Senate confirmed Jay Clayton to serve as Chairman of the Securities and Exchange Commission (SEC) by a 61-37 vote. No Republican Senators voted against the nomination, and the following Democratic Senators voted in favor: Michael Bennet (D-CO), Tom Carper (D-DE), Heidi Heitkamp (D-ND), Angus King (I-ME), Joe Manchin (D-WV), Bill Nelson (D-FL), Jeanne Shaheen (D-NH), Jon Tester (D-MT) and Mark Warner (D-VA).

Clayton was sworn into office on May 4 by U.S. Supreme Court Justice Anthony Kennedy as the 32nd Chairman of the SEC. Clayton’s confirmation leaves the SEC with two vacant commissioner spots. President Donald Trump has yet to announce nominations for these positions.

Thomas Curry to Step Down as Comptroller of the Currency; Keith Noreika to Serve as Acting Comptroller

Key Points:

- *Comptroller of the Currency Thomas Curry will step down on May 5.*
- *Keith Noreika will serve as Acting Comptroller of the Currency.*

On May 3, the Office of the Comptroller of the Currency (OCC) announced in a [press release](#) that Comptroller of the Currency Thomas Curry will step down on May 5, 2017. Curry completed his five year term on April 9, 2017.

Secretary of the Treasury Steven Mnuchin also issued a [press release](#) announcing his intention to appoint Keith Noreika as a Deputy Comptroller and designate him the First Deputy Comptroller. Noreika will serve as Acting Comptroller upon Curry’s departure. Noreika is currently a partner at Simpson Thacher & Bartlett LLP specializing in banking regulation. President Donald Trump has not yet announced a nominee to serve as Comptroller of the Currency.

House Financial Services Committee Approves the Financial CHOICE Act

Key Points:

- *The Committee approved the Financial CHOICE Act, which would repeal or modify various aspects of the Dodd-Frank Act, and make other changes to various financial regulatory matters.*
- *The Committee voted down Democratic amendments, including those related to the CFPB, the Volcker Rule, and the Orderly Liquidation Authority.*

On May 2-4, the House Financial Services Committee held a [markup](#) of the Financial CHOICE Act ([H.R. 10](#)), which was introduced by Chairman Jeb Hensarling (R-TX). The Committee favorably reported the bill, as amended by Hensarling’s substitute, by a party

line vote of 34-26. The bill may be considered by the House as early as mid-May.

The Financial CHOICE Act would repeal and modify some Dodd-Frank Act provisions, including repealing the Orderly Liquidation Authority and replacing it with a bankruptcy process for large, complex financial institutions. It would also provide an option of regulatory relief if a bank is highly capitalized and well managed. Among other provisions, the bill would also: repeal the authority of the Financial Stability Oversight Council (FSOC) to designate firms as systemically important financial institutions (SIFIs) but retain the FSOC as an inter-agency entity to monitor risks; institute reforms to the Consumer Financial Protection Bureau (CFPB); repeal the Volcker Rule; repeal the Durbin amendment relating to debit interchange fees; eliminate the Office of Financial Research (OFR); institute reforms to the Securities and Exchange Commission (SEC) and the Federal Reserve; require regulators and some self-regulatory organizations to conduct more rigorous cost-benefit analyses; provide other regulatory relief; and include a number of provisions intended to foster greater capital formation.

The Committee rejected a number of Democratic amendments, including proposals related to the Volcker Rule, the Department of Labor’s fiduciary duty rule, the Orderly Liquidation Authority, shareholder proposal thresholds, CFPB reform, mandatory arbitration, and Federal Reserve independence.

Senate Banking Committee Discusses Flood Reform

Key Points:

- *Chairman Mike Crapo (R-ID) and Ranking Member Sherrod Brown (D-OH) expressed*

support for working in a bipartisan manner on reauthorization of the National Flood Insurance Program.

- *Witnesses stressed the need to focus on mitigation and agreed that the private market can play a role in the flood sector.*

On May 4, the Senate Banking Committee held a [hearing](#) on “Reauthorization of the National Flood Insurance Program [NFIP], Part II.” The hearing focused on the need to reauthorize the NFIP, possible reforms to the NFIP, the need for more mitigation and better mapping, and whether more private insurance is needed in the flood insurance space.

Chairman Mike Crapo (R-ID) noted the NFIP expires at the end of September unless reauthorized by Congress. He suggested working together and balancing reforms that protect taxpayers and assist consumers, Congress can reauthorize the NFIP on time. He encouraged the Federal Emergency Management Agency (FEMA) to continue its implementation of previous reforms. He also asked questions such as: how to offer consumers more choice by growing the private market and ensuring shared risk by both the government and private sector; how new and better technologies can be better incorporated in mapping; how to continue toward risk-based rates while balancing affordability; and how long the Program should be reauthorized. He noted that he and Ranking Member Sherrod Brown (D-OH) continue to work on this issue in a bipartisan manner and have been gathering priorities for the Program from Committee members.

Brown noted flooding is the most common and costly natural disaster facing constituents. He stated the NFIP seeks to combat the effects of flooding through four interrelated components: flood insurance; floodplain

management; floodplain mapping; and mitigation. He noted because these activities are intertwined, it will be important for Congress be aware of how policy changes in one area may affect others.

Several Members raised the issue of FEMA's current mapping efforts. Greater New Orleans, Inc. President and CEO Michael Hecht (on behalf of the Coalition for Sustainable Flood Insurance) stated that nationwide mapping is essential because it will help with better tying the costs of flood insurance to the actual risks. Taxpayers for Common Sense Vice President Steve Ellis (on behalf of SmarterSafer Coalition) and Association for State Floodplain Managers Senior Policy Advisor Larry Larson both agreed that continued mapping is essential and suggested that the new LIDAR technology will help make the maps better. Senators Tim Scott (R-SC), Thom Tillis (R-NC), and Elizabeth Warren (D-MA) noted the importance of mitigation. Senator Warren explained the Government Accountability Office (GAO) found that for every dollar spent on mitigation \$4 is saved. Larson stated subsidizing mitigation instead of subsidizing insurance is the "way to go" and will over the long run help reduce the costs of the NFIP. Brown asked about the possibility of means tested vouchers and how this could be structured. Larson stated low cost mitigation loans would be a good idea, and subsidies for mitigation are more important. Hecht stated that as more funds can be put into mitigation the need to subsidize "down the road" would be eliminated.

When asked about the possibility of private sector involvement in the flood sector, Larson stated that the private sector can play a role but he noted that mapping and mitigation cannot be forgotten. He suggested a need for dedicated appropriations for the mapping

program. Ellis noted that there are already "first dollar" private insurance policies in Florida. Senator Jon Tester (D-MT) asked whether private insurance would be able to "cherry pick" the best policies. Ellis stated an analysis by the Reinsurance Association of America (RAA) of the Florida wind storm situation found that the private sector took policies from all over the state. He noted the private insurers in Florida are writing in the high risk zones.

Senate Banking Committee Discusses the U.S.-EU Covered Agreement

Key Points:

- *The Senate Banking Committee discussed the U.S. -EU covered agreement and whether more clarification is needed before the agreement is signed.*

On May 2, the Senate Banking Committee held a [hearing](#) on "Examining the U.S. - EU Covered Agreement." The hearing focused on the clarity of the U.S.-EU covered agreement, state involvement in the process and what impacts will be seen in the markets.

Chairman Mike Crapo (R-ID) noted Title V of the Dodd-Frank Act (DFA) authorized the Federal Insurance Office (FIO) and the U.S. Trade Representative (USTR) to enter into "covered agreements" with foreign jurisdictions regarding prudential regulation of insurance and reinsurance. He explained the covered agreement represents more than a year of negotiations and addresses three main areas of prudential insurance supervision: reinsurance; group supervision; and information sharing. At the conclusion of the hearing Crapo noted the Committee will be looking at an issue with the expiring term of the independent insurance expert on the Financial Stability Oversight Council (FSOC) and whether a holdover for

that position is possible past the September expiration of the term.

Ranking Member Sherrod Brown (D-OH) in a [statement](#) explained the U.S. state-based insurance system is unique throughout the world and has largely served the nation well. He suggested Congress should fight to maintain it, including by rejecting efforts by Europe to impose its Solvency II Accord, or insurance capital rules, on U.S. insurers. He stated the covered agreement offers U.S. and EU reinsurers relief from both requirements to have a local presence and local collateral.

Crapo noted there are some concerns over the clarity of the agreement and some are calling for a letter to clarify the terms of the agreement. He asked whether the agreement would be facing the same opposition if there was more clarity. Tennessee Department of Commerce and Insurance Commissioner Julie Mix McPeak (on behalf of the National Association of Insurance Commissioners) stated if the ambiguities are clear then there would not be as much opposition. Former Director of the Federal Insurance Office (FIO) Michael McRaith stated having a second document restating the agreement does not answer what would happen in five years. He suggested the agreement is clear on its face but might need some coordination going forward. Brown raised concerns over Europe imposing Solvency II on insurers. McRaith stated the purpose of the agreement is that in the U.S. the state regulators will determine how to regulate U.S. insurance groups. He stated the EU will supervise its companies at the group level and in the U.S. the states will have the authority and the capacity to decide how U.S. groups will be regulated. When asked whether the Federal Insurance Office has served its role, University of Pennsylvania Associate Professor of Legal Studies and Business Ethics David Zaring

stated it serves an important coordinating function to create a forum to ensure a consistent U.S. approach can be shown in international debates.

Several Senators raised concerns over how the agreement will impact the markets. McRaith stated primary insurers will not have to add billions in capital and compliance costs because of the EU insurance regulation regime. He explained 39 states have adopted reinsurance collateral reform at the state level and the expectation is that it will help further reduce costs. McPeak noted that the states that have adopted the model law have reduced collateral requirements but this agreement fully drops collateral requirements. She suggested that insurers will be attempting to find other ways to cover that risk and the uncertainty around what mechanisms will be available causes uncertainty, which increases prices. Transatlantic Reinsurance Company President & CEO Michael Sapnar (on behalf of the American Insurance Association, American Council of Life Insurers, Council of Insurance Agents and Brokers and Reinsurance Association of America) explained if the covered agreement is not adopted, the globally operating insurance companies would have to move capital out of the U.S. and that capital would be available for EU customers first. Western National Mutual Insurance Company President & CEO Stuart Henderson (on behalf of the National Association of Mutual Insurance Companies) suggested that reinsurance companies would have lower costs because they would not be required to have offices in the EU and there would be no collateral requirements in the U.S. He stated regulators in the U.S. will require more capital in the U.S. and therefore costs will go up.

Upcoming Hearings and Events

May 8

FSOC Meeting: The Financial Stability Oversight Council (FSOC) will meet in executive session to discuss “the April 21, 2017, presidential memorandum on Council designations; an update on the annual reevaluation of the designation of a nonbank financial company; a discussion of interagency regulatory collaboration and the February 3, 2017, executive order on core principles for financial regulation; a discussion of the Council’s 2017 annual report; and an update on bank holding companies’ living wills and resolution planning.”

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.

Sanctions: The Senate Banking Committee’s Subcommittee on National Security and International Trade and Finance will hold a

hearing entitled “Secondary Sanctions Against Chinese Institutions: Assessing Their Utility for Constraining North Korea.” The scheduled witnesses are Adam Szubin, Former Acting Secretary of the Treasury and Acting Under Secretary for Terrorism and Financial Intelligence; and the Honorable Juan Zarate, Chairman of the Financial Integrity Network and Former Deputy Assistant to the President and Deputy National Security Advisor for Combating Terrorism.

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.

Housing Finance: The Senate Banking Committee will hold a hearing entitled “The Status of the Housing Finance System After Nine Years of Conservatorship.” Federal Housing Finance Agency Director Mel Watt is scheduled to testify.

May 16

Nominations: The Senate Banking Committee will hold a hearing to consider the nominations of: Sigal Mandelker to be Under Secretary of Treasury for Terrorism and Financial Crimes; Marshall Billingslea to be Assistant Secretary of the Treasury for Terrorist Financing; Heath Tarbert to be Assistant Secretary of the Treasury for International Markets and Development; and Mira Radielovic Ricardel to be Under Secretary of Commerce for Export Administration.

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.

Domestic and International Policy: The Senate Banking Committee will hold a hearing entitled “Domestic and International Policy Update.” Treasury Secretary Steven Mnuchin is scheduled to testify.

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

Energy Subcommittee Reviews Hydropower and Pipeline Legislation

Key Points:

- *The House Energy Subcommittee held a hearing focused on legislation related to permitting for hydroelectric projects and pipelines.*
- *The Subcommittee heard testimony from Federal Energy Regulatory Commission officials and industry representatives.*

On Wednesday, the House Energy and Commerce Committee’s Energy Subcommittee held a [hearing](#) entitled “Legislation Addressing Pipeline and Hydropower Infrastructure Modernization.” The hearing agenda included the following bills: (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 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](#)”.

The first panel of witnesses testified on behalf of the Federal Energy Regulatory Commission (FERC) and discussed topics related to the legislative proposals, including: interagency coordination; FERC’s permitting process for reviewing and approving pipelines, including cross-border natural gas pipelines; FERC’s use of data obtained through aerial and remote surveys; and concerns related to FERC’s lack of a quorum and the Commission staff’s capacity to take on the additional responsibilities in pipeline permitting. The second panel of witnesses provided the industry perspective on the legislative proposals.

In his opening statement, Subcommittee Vice Chairman Pete Olson (R-TX) said that legislation to improve the process to permit cross-border energy infrastructure and promote interagency coordination for review of natural gas pipelines will bring more certainty to the permitting process, which will encourage investments, create jobs, and lower prices for consumers. He noted that the discussion draft promoting cross-border energy infrastructure would codify a uniform and transparent process to authorize cross-border oil and

natural gas pipelines and electric transmission facilities.

Full Committee Ranking Member Frank Pallone Jr (D-NJ) said that the “Promoting Interagency Coordination for Review of Natural Gas Pipelines Act” discussion draft “resembles similar legislation” from the 114th Congress. He asserted that there is likely bipartisan support for the “purported goal of the draft to enhance agency coordination and speed up FERC’s review of natural gas pipelines;” however, he also argued that the bill is a solution in search of a problem. He reported that in the previous three years, FERC approved more pipelines each year than the one preceding it, with roughly 90 percent of pipeline projects being certificated within one year. He noted that under the Trump Administration the number of approvals “has taken a dive”. Pallone contended that the trend “has nothing to do with the permitting process” and explained that “approvals are down because FERC has lacked a quorum for three months and the President has yet to nominate anyone to any of the three open slots.”

FERC Office of Energy Projects Director Terry Turpin explained in his [testimony](#) that the Office of Energy Projects has a lead role in carrying out FERC’s responsibilities in siting infrastructure projects including: licensing, administration, and safety of non-federal hydropower projects; authorization of interstate natural gas pipelines and storage facilities; and authorization of liquefied natural gas terminals. He reported that since 2000, FERC has authorized: nearly 18,000 miles of interstate natural gas transmission pipeline totaling more than 159 billion cubic feet per day of capacity; over one trillion cubic feet of interstate storage capacity; and 23 facility sites for the import and export of liquefied natural

gas (LNG). He added that FERC has also issued 15 Natural Gas Act Section 3 authorizations and Presidential Permits for border crossing facilities in the past 10 years. Turpin said that FERC’s review process for interstate natural gas facilities includes a pre-filing review to engage with stakeholders, including other agencies, with the goal of identifying and resolving issues before the filing of an application. He emphasized that FERC is committed to the timely review of proposed interstate natural gas facilities.

Administration Takes Step Towards Undoing the “Waters of the United States” Rule

Key Points:

- *The Trump Administration is advancing a proposed rulemaking that would revoke the Obama Administration’s “Waters of the United States” rule.*
- *This week, the EPA submitted a proposed rule to the Office of Management (OMB) and Budget. The text of the proposed rule will be made public following OMB review.*

On May 2, the Environmental Protection Agency (EPA) submitted a Notice of Proposed Rulemaking (NPRM) titled “Definition of ‘Waters of the United States’ – Recodification of Preexisting Rules” to the Office of Management and Budget (OMB). The OMB will review the NPRM prior to its public release and publication in the *Federal Register*.

The Obama Administration EPA and U.S. Army Corps of Engineers (USACE) promulgated the [final rule](#) titled “Clean Water Rule: Definition of “Waters of the United States”” on June 29, 2015. The agencies declared that the final rule “is a definitional rule that clarifies the scope of ‘waters of the United States’ consistent with the Clean Water Act

(CWA), Supreme Court precedent, and science.” Opponents of the rule expressed concern that it would extend federal Clean Water Act jurisdiction to insubstantial and intermittent bodies of water and water features. Upon publication of the “Waters of the United States” NPRM in 2014, the U.S. Chamber of Commerce issued a [statement](#) warning that the rule would “make virtually every river, stream, and creek in the U.S. subject to the authority of the Clean Water Act [and] would put the agency effectively in charge of zoning the entire country”.

On February 28, President Trump signed an Executive Order titled “Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule” ([E.O. 13778](#)). The Executive Order directed the EPA and USACE to review the final rule. On March 6, the EPA and USACE published a [notice](#) announcing that the agencies plan a “new rulemaking...to provide greater clarity and regulatory certainty concerning the definition of ‘waters of the United States,’ consistent with the principles outlined in the Executive Order and the agencies’ legal authority.”

Upcoming Hearings and Events

May 9

Water Resources: The Senate Environment and Public Works Committee will hold a [hearing](#) titled “Water Resources: The Role of the Public and Private Sectors”.

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

May 10

Endangered Species Act: The Senate Environment and Public Works Committee will hold a [hearing](#) titled “Conservation, Consultation, and Capacity: State Views on the Need to Modernize the Endangered Species Act.”

Water Resources and Hydropower

Legislation: The Senate Energy and Natural Resources Committee’s Subcommittee on Water and Power will hold a hearing on the following bills: (1) A bill “to establish a procedure for the conveyance of certain federal property around the Dickinson Reservoir in the State of North Dakota” ([S. 440](#)); (2) The “Water Supply Permitting Coordination Act” ([S. 677](#)); (3) The “Clean Water for Rural Communities Act” ([S. 685](#)); (4) The “Western Area Power Administration Transparency Act” ([S. 930](#)); (5) The “New Mexico Drought Preparedness Act” (S. 1012); (6) Legislation “to amend the Public Utility Regulatory Policies Act of 1978 to exempt certain small hydroelectric power projects that are applying for relicensing under the Federal Power Act from the licensing requirements of that Act” (S. 1029); and (7) Legislation “to require the Federal Energy Regulatory Commission to submit to Congress a report on certain hydropower projects” (S. 1030).

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. Laura Simmons contributed to this report. Updates on energy and environment issues are also available on [twitter](#).

DEFENSE

Congress Passes FY 2017 Omnibus; Defense Funding Increased

Key Points:

- *Defense hawks prevail in boosting defense funding while the Trump Administration received only part of their FY 2017 supplemental request*
- *This may signal a continued rise in OCO funding that is not capped by the Budget Control Act*

This week, Congress sent the “Consolidated Appropriations Act, 2017” ([H.R. 244](#)) to the White House that represents the agreed upon final bill to fund the federal government for the balance of fiscal year (FY) 2017. This package contains 11 of the 12 annual appropriations bills as the FY 2017 Military Construction-Veterans Affairs bill was enacted last summer. House and Senate negotiators opted not to include a number of President Donald Trump’s articulated priorities (e.g. the entire \$30 billion supplemental request for national security

programs and \$1.4 billion for beginning construction of a border wall with Mexico.)

As the House Appropriations Committee explained in its [press release](#), H.R. 244 “provides a total of \$1.163 trillion in base and Overseas Contingency Operations (OCO)/Global War on Terror (GWOT) funding for the operations of the federal government...[and] [b]ase discretionary funding alone in the bill meets the caps in current law, providing \$1.07 trillion.” The Committee explained that “[t]he bill includes \$93.5 billion in total OCO/GWOT funding to provide needed resources and training for our troops in the field, to combat the threat of the Islamic State of Iraq and the Levant (ISIL) and other enemies around the world, to support U.S. allies, and to fund diplomatic and humanitarian missions.” The Obama Administration’s amended OCO request was for \$85.3 billion.

In its [summary](#), the Committee explained that [Division C](#) of H.R. 244 (i.e. the DOD title) “provides \$593 billion, an increase of \$19.9 billion over the fiscal year 2016 enacted level and \$16.3 billion more than the Obama Administration’s request” for the Department of Defense (DOD). The Committee stated that “[t]his includes: - \$516.1 billion in base discretionary funding – an increase of \$2 billion above current levels; and - \$76.6 billion in OCO/ GWOT funding.” The Committee stated that “[t]his amount includes \$14.8 billion in new funding requested by the Trump Administration...[and] [w]hen combined with the \$5.8 billion in supplemental funding enacted in the Continuing Resolution that passed in December, the total Defense funding for fiscal year 2017 is \$598.5 billion, an increase of \$25.7 billion over fiscal year 2016 and \$22.1 billion more than President Obama’s original request.”

The Committee noted the following “Bill Highlights”:

- Military Personnel and Pay – The agreement includes \$132.3 billion – \$128.7 billion for base requirements and \$3.6 billion for OCO/GWOT requirements – to provide for 1,305,900 active duty troops and 813,200 Guard and Reserve troops. The agreement includes \$1.6 billion above the request for increased end strength, to include military personnel and operational support costs.
- Operation and Maintenance – Included in the legislation is \$223 billion – \$167.6 billion for base requirements and \$55.4 billion for OCO/GWOT requirements – for operation and maintenance. In total, this is \$9.4 billion above fiscal year 2016. This funding supports key readiness programs to prepare our troops for combat and peacetime missions, including flight time and training, equipment and facility maintenance, and base operations.
- Research and Development – The bill contains \$73.7 billion – \$72.3 billion for base requirements and \$1.4 billion for OCO/GWOT requirements – for research, development, testing, and evaluation of new defense technologies. Total funding is \$3.7 billion above the fiscal year 2016 level and \$1.9 billion more than the previous Administration’s request, and will help to advance the safety and success of current and future military operations and prepare our nation to meet a broad range of future security threats.
- Equipment Procurement – The legislation provides a total of \$123.3 billion – \$108.4 billion for base requirements and \$14.9 billion for OCO/GWOT requirements – for equipment and upgrades. Funding for base and GWOT requirements is \$12.3 billion above the previous Administration’s request and \$4.7 billion above the fiscal year 2016 level. These funds support our nation’s military readiness by providing the necessary platforms, weapons, and other equipment our military needs to train, maintain the force, and conduct successful operations.
- For example, the bill includes:
 - \$21.2 billion to procure 13 Navy ships, including three DDG-51 guided missile destroyers,
 - Three Littoral Combat Ships,
 - One LPD-17, and advance procurement for the polar icebreaker recapitalization project;
 - \$8.2 billion for 74 F-35 aircraft;
 - \$1.1 billion for 14 F/A-18E/F Super Hornet aircraft;
 - \$1.2 billion for 62 UH-60 Blackhawk helicopters;
 - \$774 million for 52 remanufactured AH-64 Apache helicopters, \$262 million for 7 new Apaches, and \$72 million to support advanced procurement needs for an additional 10 aircraft;
 - \$702 million for 145 Patriot MSE missiles;
 - \$275 million for 20 MQ-1 Gray Eagle unmanned aerial vehicles;
 - \$187 million for 28 Lakota light utility helicopters;
 - \$1.8 billion for 11 P-8A Poseidon aircraft;

- \$2.6 billion for 15 KC-46 tanker aircraft;
- \$1.3 billion for 17 C/HC/KC/MC-130J aircraft; and
- \$210 million for HMMWV modernization for the active Army, Army National Guard and Army Reserve.
- Defense Health and Military Family Programs – The bill contains \$34.1 billion for base and GWOT requirements – \$1.5 billion above the fiscal year 2016 enacted level and \$314 million above the previous Administration’s request – for the Defense Health Program to provide care for our troops, military families, and retirees.
- Force Structure – The bill rejects the Obama Administration’s proposed troop reductions. Instead, the bill provides increases above fiscal year 2016, including funds for an additional 1,000 active-duty Army soldiers, 1,000 Army National Guard soldiers, 1,000 Army Reserve soldiers, and 1,000 active-duty Marines.

Trump Administration May Send More Troops To Afghanistan

Key Points:

- *More U.S. troops could be going to Afghanistan to bolster Afghan forces*
- *An announcement may be made at this month’s NATO Summit*

For weeks, rumors have emanated from the White House and Pentagon that the Trump Administration might send additional troops in Afghanistan at a time when the fighting has intensified and Russia may be providing

weapons to the Taliban. It is possible that the Trump Administration could announce additional troops at the North Atlantic Treaty Organization (NATO) Summit in Brussels later this month. However, these troops would likely be charged with aiding and assisting Afghan security forces, and figures used by unnamed senior Administration officials fluctuate between 3,000 and 5,000 more troops. At present, there are roughly 9,000 U.S. troops in Afghanistan and a few thousand more NATO troops.

Fighting continues to be fierce but mostly waged by Afghan forces. In a [report](#) this week, the Special Inspector General for Afghanistan Reconstruction found that:

Afghanistan remains in the grip of a deadly war. Casualties suffered by the Afghan National Defense and Security Forces (ANDSF) in the fight against the Taliban and other insurgents continue to be shockingly high: 807 were killed in the first six weeks of this year. Likewise, civilian casualties in 2016 were the highest since the United Nations Assistance Mission in Afghanistan began reporting them in 2009.

Department of Defense officials have been publicly explaining the need for more NATO troops to backstop Afghan forces. Last month, Secretary of Defense James Mattis remarked during a visit to Afghanistan that “2017 is going to be another tough year for the valiant Afghan security forces and the international troops who have stood, and will continue to stand, shoulder to shoulder with Afghanistan against terrorism.” In testimony before the Senate Armed Services Committee in February, General John Nicholson said “I have adequate resourcing in my counter-terrorism

mission...[but] [i]n my train advise and assist mission, however, we have a shortfall of a few thousand.”

Upcoming Hearings and Events

May 9

CYBERCOM: The Senate Armed Services Committee will hold a [hearing](#) on the U.S. Cyber Command.

Nominations: The Senate Armed Services Committee will hold a [hearing](#) on the following nominations: the Honorable David L. Norquist to be Under Secretary of Defense (Comptroller); Mr. Robert B. Daigle to be Director of Cost Assessment and Program Evaluation, Department of Defense; and Ms. Elaine A. McCusker to be Principal Deputy Under Secretary of Defense (Comptroller).

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

HEALTH

House Passes American Health Care Act

Key Points:

- *The House narrowly passed the American Health Care Act by roll call vote 217-213.*
- *Several Republican Senators have already raised concerns with the current version of the bill.*

On May 4, the House finally passed the “American Health Care Act” (AHCA) ([H.R. 1628](#)) by a narrow margin 217-213. Twenty Republicans voted against the bill and no Democrats voted for it. The bill is likely to face changes in the Senate with several Republicans saying the Senate will draft its own version.

Republicans were finally able to reach consensus on the AHCA after an additional amendment was added this week by Representatives Fred Upton (R-MI) and Billy Long (R-MO). Both had expressed concern the bill did not adequately protect those with pre-existing conditions. The amendment added an additional \$8 billion to be spread over five years that could be used in states that have an approved waiver. The funds are supposed to help those with pre-existing conditions pay for their premiums. The amendment was able to garner more support from moderate Republicans.

President Donald Trump praised passage of the AHCA declaring: “[y]es, premiums will be coming down...[y]es, deductibles will be coming down...[b]ut very importantly, it’s a great plan and ultimately that’s what it’s all about.” House Speaker Paul Ryan (R-WI) emphasized the “Patient Protection and Affordable Care Act’s (P.L. 111-148, 111-152) had to be repealed because “the problems facing American families...are just too dire and too urgent.”

The bill now goes to the Senate. Republicans only need 51 votes to pass the bill through the reconciliation process. However, several Republican Senators have already raised concerns with the current draft of the bill. Following passage, Senator Rob Portman (R-OH) stated he continues to have concerns the bill does not adequately protect the Medicaid expansion population.

Senate Republican Whip John Cornyn (R-TX) stressed the Senate will not be setting any deadlines and will instead go “through the issues methodically.” Senate Majority Leader Mitch McConnell (R-KY) has formed a working group that includes leadership, moderates, conservatives, and chairmen of the

key committees to work out consensus. Republicans can only afford two defections.

Upcoming Hearings and Events

May 8

ACA: The National Academy of Public Administration and the American University School of Public Affairs will hold a forum on “The Future of the Affordable Care Act.”

May 9

CHIP: The Senate Finance Committee will hold a hearing on “The Children’s Health Insurance Program (CHIP): The Path Forward.”

May 10

User Fees: The Senate Health, Education, Labor and Pensions Committee will hold a markup of the “Recognize, Assist, Include, Support, and Engage (RAISE) Family Caregivers Act”; and S.934, the “Food and Drug Administration Reauthorization Act.”

Veterans’ Care: The Veterans’ Affairs Committee will hold a hearing on “Examining the Veterans Choice Program and the Future of Care in the Community.”

May 11

21st Century Cures: Intel will host a discussion on “Harnessing the Power of Precision Medicine Through the 21st Century Cures Act.”

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

TRANSPORTATION AND INFRASTRUCTURE

Omnibus Increases Most Transportation Funding

Key Points:

- *Congress opts to increase transportation funding over FY 2016 enacted levels, which may signal that the Trump Administration’s proposed deep cuts to these accounts will not come to pass for FY 2018*

This week, Congress sent the “Consolidated Appropriations Act, 2017” ([H.R. 244](#)) to the White House that represents the agreed upon final bill to fund the federal government for the balance of fiscal year (FY) 2017. This package contains 11 of the 12 annual appropriations bills as the FY 2017 Military Construction-Veterans Affairs bill was enacted last summer. House and Senate negotiators opted not to include a number of President Donald Trump’s articulated priorities (e.g. the entire \$30 billion supplemental request for national security programs and \$1.4 billion for beginning construction of a border wall with Mexico.)

As the House Appropriations Committee explained in its [press release](#), H.R. 244 “provides a total of \$1.163 trillion in base and Overseas Contingency Operations (OCO) / Global War on Terror (GWOT) funding for the operations of the federal government...[and] [b]ase discretionary funding alone in the bill meets the caps in current law, providing \$1.07 trillion.”

H.R. 244 provides a total of \$76.2 billion for Department of Transportation programs in [Division K](#), an increase from the \$74.9 billion provided in the FY 2016 omnibus package, according to a Committee [summary](#). The

Committee provided the following summary of this part of the package:

- Department of Transportation (DOT) – The bill includes \$19.3 billion in discretionary appropriations for the Department of Transportation for fiscal year 2017. This is \$681 million above the fiscal year 2016 enacted level and \$6.2 billion below the President’s request. In total budgetary resources, the bill provides \$77.1 billion to improve and maintain our nation’s transportation infrastructure. The bill targets funding to programs and projects that will increase efficiency, safety, reliability, and quality of life for the traveling public, and that will help improve commerce and economic growth.
- Highways – The bill allows \$44 billion from the Highway Trust Fund to be spent on the Federal-aid Highways Program, which is \$905 million above the fiscal year 2016 level. This funding mirrors the levels authorized in the “Fixing America’s Surface Transportation Act” (FAST Act), and will provide much needed improvements to America’s highways and bridges. The bill also includes language to provide permanent regulatory relief from two burdensome additions to the Hours of Service Restart rule made by the previous Administration.
- Air – Included in the legislation is \$16.4 billion in total budgetary resources for the Federal Aviation Administration (FAA) – \$127 million above the fiscal year 2016 enacted level and \$508 million above the request. This will provide full funding for all air traffic control personnel, including 14,500 air traffic controllers, 7,400 safety

inspectors, and operational support personnel. The bill also builds on several years of increased funding by providing \$1 billion for the FAA’s Next Generation Air Transportation Systems (NextGen), and funds Contract Towers at \$159 million. These investments will help ease future congestion and help reduce delays for travelers in U.S. airspace. In addition, the bill rejects the Obama Administration’s proposal for new passenger facility fees.

- Rail – The Federal Railroad Administration is funded at \$1.85 billion, an increase of \$173 million over the fiscal year 2016 enacted level and \$4.4 billion below the request. The bill provides \$1.5 billion for Amtrak. The bill adopts the new Amtrak funding structure as authorized, providing \$328 million for Amtrak’s Northeast Corridor and \$1.2 billion to support the National Network. The bill requires overtime limits for Amtrak employees to reduce unnecessary costs. Rail safety and research programs are funded at \$258 million, \$20 million above the fiscal year 2016 enacted level. This will fund inspectors, training, and research programs. In addition, the bill provides \$98 million in grants for safety improvements and investments to the physical rail infrastructure to help ensure the safety of passengers and local communities. No funding is provided for high-speed rail.
- Transit – The bill provides \$12.4 billion in total budgetary resources for the Federal Transit Administration (FTA) – \$657 million above the fiscal year 2016 enacted level and \$7.5 billion below the request. Transit formula grants total \$9.7 billion – consistent with the authorization level – to help local

communities build, maintain, and ensure the safety of their mass transit systems. Within this amount, \$2.4 billion is provided for Capital Investment Grants, including \$1.5 billion for all current “Full Funding Grant Agreement” (FFGA) transit projects. Core capacity projects receive \$333 million in the bill, and \$408 million is included to fund all state and local “Small Starts” projects that will begin in fiscal year 2017. These programs provide competitive grant funding for major transit capital investments – including rapid rail, light rail, bus rapid transit, and commuter rail – that are planned and operated by local communities.

- TIGER Grants – The legislation funds National Infrastructure Investment grants (also known as TIGER grants) at \$500 million, the same as the fiscal year 2016 enacted level and \$750 million below the request. These grants are awarded by the Department of Transportation to states and local communities for infrastructure construction and improvements.

Senate EPW Looks At Streamlining Permitting

Key Points:

- *In an oversight hearing, a committee of jurisdiction in the Senate looks at the streamlining provisions in MAP-21 and the FAST Act have been implementing and investigated whether further changes to the NEPA review process might speed project approval*
- *Some Members and witnesses pointed to funding gaps and shortfalls as doing more to delay projects than environmental reviews*

On May 3, the Senate Environment and Public Works Committee held a [hearing](#) on “Infrastructure Project Streamlining and Efficiency: Achieving Faster, better and Cheaper Results.” The hearing focused on the need to streamline the permitting process for infrastructure projects, the streamlining which occurred under MAP-21 and the FAST Act and whether that needs to be allowed to be fully implemented before additional changes are made, what additional changes should be made to make infrastructure projects more efficient, and whether the permitting processes can run concurrently. Topics discussed in the hearing included: (1) Formula Based Funding; (2) Additional Streamlining; (3) New Technologies; (4) Funding for Infrastructure; (5) Categorical Exclusions; (6) Citizen Lawsuits; (7) Rural States; (8) Concurrent Processes; (9) Northeast Corridor; (10) Public/Private Partnerships; (11) Waiver Authority; and (12) Broadband.

Chairman John Barrasso (R-WY) in a [statement](#) noted infrastructure is a shared bipartisan priority of all the Members of this Committee and for the President. He suggested the largest hurdles to starting roadwork are getting the needed government approvals and he noted the costs and delays of regulatory red tape can be staggering. Barrasso stated Washington needs to be smarter about these rules and more aware of the effects they have in communities. He stated Congress needs to find ways to get projects started faster, build roads better, and make costs cheaper. He explained simplifying these processes will allow for construction companies to start hiring and for workers to begin building faster. Barrasso suggested it is a common sense way to boost the economy and upgrade public works. He stated if Congress finds ways to streamline review processes, mindful of environmental protection and other public interests, then they can initiate projects

more promptly. He added more efficient and streamlined regulation can enable transportation departments to focus on efforts to improve safety, personal mobility, and facilitate economic growth. He explained less time and money and staff effort would be dedicated to regulatory compliance.

Ranking Member Tom Carper (D-DE) in a [statement](#) noted this hearing's title asks whether the nation is able to build transportation projects 'faster, better and cheaper.' He suggested that has a "nice ring to it," and he agrees with the intent, but I would add one more adjective to that list: smarter. He suggested when it comes to streamlining legislation, being 'smarter' also means understanding how things are working now and allowing the existing streamlining measures to be well on their way to implementation before Congress enacts new ones that are likely to delay the benefits of earlier streamlining measures that are still being implemented. Carper stated one tool designed to help public agencies make smarter decisions is the National Environmental Policy Act (NEPA). He suggested when it works as intended, NEPA ensures that federal decision-makers are better informed through project analysis and community engagement. He added when the NEPA process is well-coordinated, it can improve project outcomes, reduce costs and identify conflicts early enough to resolve them without delay. He noted unfortunately, there are times when coordination is not done well and projects are delayed without good reason.

Wyoming Department of Transportation Director William Panos, Director stated infrastructure investment is on the national agenda and each dollar must be used efficiently. He suggested there are ways to ensure the process is more streamlined. He explained when the process is not streamlined money is

spent on personnel and compliance rather than the project itself. He suggested Congress should let the lead agency set the scheduling of reviews and assume that the other agencies will follow that schedule. He suggested an expansion of the list of projects which receive a categorical exclusion from NEPA review. Panos stated smaller projects can be delayed by other requirements and he suggested a time limit should be put on responses from other agencies. He stated rural states should be excluded from the requirement to consider traffic congestion. Panos explained rural states do not experience the traffic as more heavily populated states and compiling the data for this is timely and costly. He expressed concerns over the stewardship agreements between Federal Highway Administration (FHWA) and states. He explained most text in these agreements is standardized. He suggested these provisions should be covered in rulemakings. Panos stated the nation benefits from investment in surface transportation. He stated projects in rural states are unlikely to attract private investors. He suggested the "Fixing America's Surface Transportation (FAST) Act" (P. L. 114-94) will help ensure that rural projects receive the funds they need.

Associated General Contractors of America (AGC) Environmental Law & Policy Consultant Leah Pilconis stated funding has been insufficient for infrastructure projects. She suggested more federal funding is essential to dealing with the backlog. She stated AGC supports streamlining and simplifying the contracting process. She noted several legal and procedural "choke points" which need to be addressed. She recommended the meaningful reforms in "Moving Ahead for Progress in the 21st Century Act" (MAP-21) (P.L. 112-141) and the FAST Act be fully implemented. Pilconis stated leading agencies need to conduct early outreach but she suggested there

needs to be a deadline for the NEPA process. She stated the list of exceptions for NEPA deadlines is too long. Pilconis explained deadlines are not being met and fines are not being collected. She stated there is reluctance for elevating disputes. She stated federal and state reviews need to be conducted concurrently. She stated Congress should strengthen the time limited schedules to make them mandatory and there should be a hard deadline for NEPA review. She suggested a merger of NEPA and Clean Water Act Section 404 permitting processes. She suggested Congress should require the Army Corps of Engineers to issue the 404 permit at the end of the NEPA process based on the information provided during NEPA. Pilconis stated the monitoring, mitigation and other environmental planning work performed during NEPA process must satisfy federal permitting requirements. She stated agencies should break away from requiring “one of a kind” products from the ground up. She suggested allowing a reasonable and measured reform approach to citizen lawsuits. She stated there should be a requirement for legal standing and bonds should be required to be posted.

WSP Parsons Brinckerhoff U.S. Advisory Services President John Porcari stated he has experienced firsthand the frustrations of attempting to complete large transportation projects. He stated streamlining the permitting process is essential. He noted the streamlining provisions in MAP-21 and the FAST Act. He explained in MAP-21 there were five new categorical exclusions created. Porcari stated in the FAST Act deadlines were set and a schedule created which apply to projects beyond transportation. He noted it allowed funding for dedicated staff in the reviewing agencies. He stated it also allows for concurrent consideration of project plans. Porcari noted

the Tappan Zee Bridge used this new process and received approval in thirteen months. He stated in contrast the Columbia River crossing received NEPA approval but not the Coast Guard bridge permit which halted the project. He stated this was a breakdown of coordination. Porcari suggested without passionate project advocates projects do not make it over the “finish line.” He suggested front loading the process and getting all agencies around the table early works. He recommended continuing the liaison program because it is a cost effective investment. He stated NEPA assignment for projects to states has been a time savings. Porcari stated using the Dashboard is also useful. He stated concurrent reviews need to be the norm and other permits needed should also run concurrently with the NEPA process. He suggested any new legislative requirements could harm progress made. He stated reporting back on approval times should be required. He stated the Permitting Council should be tracking all major projects. He stated the President should quickly appoint a chair for that Council.

Upcoming Hearings and Events

May 9

Maritime Policy: The Senate Commerce, Science & Transportation Committee’s Surface Transportation and Merchant Marine Infrastructure, Safety, and Security Subcommittee will hold a [hearing](#) titled “Maritime Transportation: Opportunities and Challenges for the Maritime Administration and Federal Maritime Commission.”

Public-Private Partnerships In Water Infrastructure: The Senate Environment and Public Works Committee’s Transportation and Infrastructure Subcommittee will hold a

[hearing](#) titled “Water Resources: The Role of the Public and Private Sectors.”

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

TECHNOLOGY

White House Creates Trump Creates American Technology Council and Office of Trade and Manufacturing Policy

Key Points:

- *Two new Executive Branch entities could alter how the government buys and uses information technology (IT) and other technologies*

This week, President Donald Trump has issued two executive orders (EO) establish two new entities within the White House that may affect how the federal government buys and deploys information technology (IT): the [American Technology Council \(ATC\)](#) and the [Office of Trade and Manufacturing Policy \(OTMP\)](#).

Trump will chair the new ATC and members include Vice President Mike Pence, Secretary of Defense James Mattis, Secretary of Commerce Wilbur Ross, Secretary of Homeland Security John Kelly, Office of Management and Budget (OMB) Director Mick Mulvaney, Senior Advisor to the President Jared Kushner, and an ATC Director, “who shall be an employee of the Executive Office of the President designated by the President” rumored to be White House Director Of Strategic Initiatives Chris Liddell

The ATC shall be tasked to do the following:

- coordinate the vision, strategy, and direction for the Federal Government’s use of information technology and the delivery of services through information technology;

- coordinate advice to the President related to policy decisions and processes regarding the Federal Government’s use of information technology and the delivery of services through information technology; and
- work to ensure that these decisions and processes are consistent with the policy set forth in section 1 of this order and that the policy is being effectively implemented” (i.e. “[i]t is the policy of the United States to promote the secure, efficient, and economical use of information technology to achieve its missions...[and] [t]o effectuate this policy, the Federal Government must transform and modernize its information technology and how it uses and delivers digital services.”)

The new Office of Trade and Manufacturing Policy (OTMP) will “help improve the performance of the executive branch’s domestic procurement and hiring policies, including through the implementation of the policies described in Executive Order 13788 of April 18, 2017 (Buy American and Hire American)” in “defend[ing] and serv[ing] American workers and domestic manufacturers.”

MGT Act Marked Up

Key Points:

- *Bill to alter how federal government buys information technology (IT), particularly older and outdated systems, is reported out of Committee*
- *Fixes were made to change unfavorable CBO score from last year*

On May 2, the House Oversight and Government Reform Committee held a [markup](#) on the “Modernizing Government

Technology Act of 2017” ([H.R. 2227](#)) and favorably reported the bill by voice vote.

Representative Will Hurd (R-TX) explained that H.R. 2227 is designed to reduce wasteful information technology (IT) spending and strengthen information security by accelerating the government’s transition to a modernized IT system through cloud computing. He called the legislation “an innovative solution and a tremendous step forward in strengthening the government’s digital infrastructure.” Hurd explained the bill authorizes two types of funding: an information technology system modernization and working capital fund within individual Chief Financial Officer (CFO) agencies and a Technology Modernization Fund within the Department of the Treasury to incentivize IT savings and reward cost sensitive and responsible Chief Information Officers. He reported each fund will be authorized \$250 million for fiscal years 2018 and 2019, and the funds will remain available past FY 2019 for use to improve, retire, or replace existing IT systems or for the development, operation, and procurement of information technology products and services. He explained this will eliminate the government’s usual “use it or lose it” approach to authorized IT funding. He said the legislation will achieve savings by streamlining systems IT and transitioning systems to cloud computing.

Representative Gerry Connolly (D-VA) said that HR 2227 would reduce agency spending on maintaining legacy IT systems and enhance information security by allowing agency’s to use their own savings to accelerate the transition to cloud computing. He reported that federal agencies are at risk to cyber-attacks every day, and efforts to improve their cybersecurity protections are often stymied by dated IT systems. He noted agencies also have little incentive to retire legacy systems quickly.

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.

NIST Small Business Cybersecurity Bill Marked Up

Key Points:

- *House Committee reports out a bill similar to a Senate bill that would direct NIST to better assist small businesses in fending off cyber-attacks and threats*

On May 2, the House Science, Space, and Technology Committee held a [markup](#) to consider the “NIST Small Business Cybersecurity Act of 2017” ([H.R. 2105](#)), which would require the Director of the National Institute of Standards and Technology (NIST)

to disseminate guidance to help reduce small business cybersecurity risks. The Committee ordered the bill, as amended, to be favorably reported to the House floor by voice vote. The Senate Commerce, Science, and Transportation Committee marked up and reported out a similar bill, the “MAIN STREET Cybersecurity Act of 2017” ([S. 770](#)) in April.

[Chairman Lamar Smith \(R-TX\)](#) said that H.R. 2105 is both timely and important. He explained the legislation directs the NIST to provide small businesses with cybersecurity guidelines, tools, best practices, standards, and methodologies necessary to better protect themselves against cyber-threats. He noted the guidance will be made publicly available on NIST’s and other relevant agencies’ websites. Smith reported that small businesses are frequently targets of cyberattacks yet often have insufficient information to monitor and protect their computer systems. He cited the U.S. National Cyber Security Alliance’s finding that 60 percent of small businesses go bankrupt six months after a cyber-attack. He added that the Ponemon Institute found that recovering from a cyber-attack can cost the average small business \$690,000, and more than \$1 million for middle market companies.

[Ranking Member Eddie Bernice Johnson \(D-TX\)](#) said that NIST published an update of their small business guidance document, using the Framework as a template, in November 2016. Johnson said that in addition to the guidance, NIST assists small businesses directly through their work at the Cybersecurity Center for Excellence and leads the “Small Business Corner” under the National Initiative for Cybersecurity Education. Johnson stated that H.R. 2105 “is consistent with all of these ongoing activities at NIST and with the agency’s mission.” She opined that “ideally” H.R. 2105 would provide resources for NIST

to expand these activities, because the need is clear; however, asserted that Republicans “once again brought up a bill directing the agency to do more with less.” She acknowledged that “every agency should periodically assess their programs and identify opportunities to reprioritize funding and implement new efficiencies;” however, stated that “with respect to NIST in particular, the Majority has piled on one significant new responsibility after another, without providing additional funding.” She reiterated concerns that the House bill contains an explicit unfunded mandate clause and that the Senate version is silent on funding.

[Representative Daniel Webster \(R-FL\)](#) explained the legislation directs the NIST Director to disseminate clear and concise resources, which are defined as guidelines, tools, best practices, standards, methodologies, and other ways of providing information within a year of the Act’s enactment. He noted that the dissemination would be in consultation with heads of other Federal agencies. Webster added that the resources, which are based on the NIST Framework for Improving Critical Infrastructure Cybersecurity, will help small businesses identify, assess, manage, and reduce their cybersecurity risks. He continued that H.R. 2105 also: clarifies that use of the resources by small businesses is voluntary; directs the NIST Director, and heads of Federal agencies that so elect, to make the resources available on their government websites; and specifies that no new funds are authorized to carry out this Act. He pointed out the bill is very similar to S.770, which he said has the support of the National Small Business Association, the National Restaurant Association, and the U.S. Chamber of Commerce.

DHS Mobile Device Study

Key Point:

- *In report required by Cybersecurity Act of 2015, Homeland Security finds many vulnerabilities in mobile devices that could endanger federal cybersecurity and suggests fixes, including possible legislation*

This week, the Department of Homeland Security (DHS) has released a [study](#) required by Section 401 of the “Cybersecurity Act of 2015” (Division N of P.L. 114-113) that tasked DHS with investigating the “threats relating to the security of the mobile devices of the Federal Government; and...submit[ing] an unclassified report to Congress, with a classified annex if necessary, that contains the findings of such study, the recommendations..., the deficiencies, if any,... and the plan developed.”

DHS found that “the use of mobile devices by the U.S. Federal Government is an almost insignificant market share...mean[ing] that the Government’s ability to influence the market cannot be accomplished by purchase power alone, but must instead be achieved via its legislative and regulatory authority.” DHS “found that mobile device security is improving, and advances have been made by mobile operating systems providers....[and] [f]urther improving the landscape are best practices guides issued both by NIST and private industry.” DHS noted that “[d]espite these improvements, many communication paths remain unprotected and leave the overall ecosystem vulnerable to attacks.” DHS stated that “[t]he study provides recommendations on ways the government can begin to address the identified gaps and weaknesses...[and] [t]hese recommendations include programmatic improvements, increased Departmental authorities, adoption of standards and best practices, and areas in need of additional research.”

Among the recommendations made by DHS are:

- Federal Information Security Modernization Act (FISMA) metrics should be enhanced to focus on securing mobile devices through the Federal Chief Information Officer (CIO) Council’s Mobile Technology Tiger Team.
- The DHS Continuous Diagnostics and Mitigation Program should address the security of mobile devices and applications with capabilities to be at parity with other network devices (e.g., workstations and servers), and the National Protection and Programs Directorate’s (NPPD) definition of critical infrastructure should include mobile network infrastructure.
- DHS Science and Technology (S&T) Homeland Security Advanced Research Projects Agency (HSARPA) Cyber Security Division should continue its work in Mobile Application Security to enable the secure use of mobile applications for Government use.
- Federal Departments and Agencies should, where needed, develop or strengthen policies and procedures regarding Government use of mobile devices overseas based on threat intelligence and emerging attacker tactics, techniques, and procedures.

DHS noted the two gaps in its legal authority that could impede securing the Government’s mobile devices, suggesting legislation:

- Gap 1: DHS has no legal authority to require mobile carriers to assess risks relating to the security of mobile network infrastructure as it impacts the Government’s use of mobile devices.

- Gap 2: While DHS has the authority to evaluate voluntarily provided mobile carrier network information, DHS has no legal authority to compel mobile carrier network owners/operators to provide information to assess the security of these critical communications networks.

Upcoming Hearings and Events

May 8

2016 Election: The Senate Judiciary Committee's Crime and Terrorism Subcommittee will hold a [hearing](#) titled "Russian Interference in the 2016 United States Election."

May 9

Cross Border Access To Data: The Senate Judiciary Committee's Crime and Terrorism Subcommittee will hold a [hearing](#) titled "Law Enforcement Access to Data Stored Across Borders: Facilitating Cooperation and Protecting Rights."

May 10

Cybersecurity: The Senate Homeland Security and Governmental Affairs Committee will hold a [hearing](#) titled "Cyber Threats Facing America: An Overview of the Cybersecurity Threat Landscape."

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

This Week in Congress was written by Laura Simmons.