

June 1, 2018

# Washington Update

## This Week in Congress

- **House** – The House is in recess until Tuesday, June 5.
- **Senate** – The Senate is in recess until Monday, June 4.

## Next Week in Congress

- **House** – The House may consider the Senate Amendment to the “**Project Safe Neighborhoods Grant Program Authorization Act of 2018**” (H.R. 3249); the “**Water Resources Development Act of 2018**” (H.R. 8); and the “**Energy and Water Development and Related Agencies Appropriations Act, 2019**” (H.R. 5895).
- **Senate** – The Senate may consider the nomination of **James Rudolph Evans** to be Ambassador to Luxembourg and **Robert Earl Wier** to be United States District Judge for the Eastern District of Kentucky.

## FINANCIAL SERVICES

### *Regulators Propose Revisions to Volcker Rule*

#### *Key Points:*

- *The proposed revisions to the Volcker Rule are intended to address uncertainty and complexity.*
- *FDIC Chairman Martin Gruenberg stated the goal is to “preserve the core principals of the Volcker Rule”.*
- *The agencies noted that this proposal does not address the changes made in the recently passed Economic Growth, Regulatory Relief, and Consumer Protection Act as those will be addressed in a separate rulemaking.*

On May 30 and May 31, the [Federal Reserve](#) and the Federal Deposit Insurance Corporation (FDIC) held meetings and voted to propose revisions to the Volcker Rule. The Federal

Reserve’s [Notice of Proposed Rulemaking on Proprietary Trading and Hedge Fund and Private Equity Fund Restrictions of Section 13 of the Bank Holding Company Act](#) and the FDIC’s [Notice of Proposed Rulemaking: Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds](#) will be subject to a 60 day comment period.

Federal Reserve Chair Jerome Powell, in a

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[statement](#), suggested the joint agency proposal is faithful to both the text and the spirit of the law, while addressing some of the uncertainty and complexity that now make it difficult for firms to know how best to comply, and for supervisors to know that they are in compliance. He suggested the goal is to replace overly complex and inefficient requirements with a more streamlined set of requirements that are tailored by focusing the most comprehensive compliance regime on the firms that do the most trading.

FDIC Chairman Martin Gruenberg [stated](#) the central goal, from his standpoint, is to preserve the core principles of the Volcker Rule as the agencies seek to provide greater clarity and simplicity to facilitate compliance. He noted the following are preserved in the proposal: the fundamental definition of proprietary trading is unchanged; the definition of “covered funds” remains robust; the prohibition on high-risk trading strategies and high-risk assets remains intact; the supervisory framework remains robust; robust metrics reporting requirements remain in place; and meaningful CEO attestation requirements are retained.

The proposal focuses on creating three categories of banking entities based on the size of their trading assets and liabilities that will be used to tailor the requirements of the rule. Banking entities with \$10 billion or more in consolidated trading assets and liabilities would be considered as having significant trading activities and would be subject to the most extensive set of requirements. Banking entities with trading assets and liabilities between \$1 and \$10 billion would be categorized as moderate and would be subject to a reduced compliance requirement. Those with less than \$1 billion in trading assets and liabilities would be categorized as having limited activities. The proposal establishes a presumption of compliance for these institutions, and no

specified compliance program would be required beyond the normal risk management framework. Other proposed changes to the Volcker Rule include revisions to the term “trading account” by replacing the short-term intent-based prong with a new accounting-based prong; modification of the eligibility requirements that apply when a banking entity seeks to rely on exemptions from the proprietary trading and covered fund prohibitions; modifications to the requirements related to market making, underwriting, and hedging covered fund interests; and simplification of the trading activity information required of certain banking entities.

The agencies noted that on May 24, 2018 the Economic Growth, Regulatory Relief, and Consumer Protection Act (S.2155) was enacted, including the provision in the Act that exempts small banking entities with limited trading assets and liabilities from the statutory prohibitions on proprietary trading and covered fund activities. The agencies noted that the agencies’ proposed Volcker Rule modifications do not propose any changes that would implement these revisions. However, they suggested they will not enforce this proposal in a manner that would be inconsistent with the new statutory amendments. The agencies will address these statutory amendments through a separate rulemaking proposal. The SEC and CFTC will be taking up the proposal at meetings next week.

## UPCOMING EVENTS

### June 4

*CFTC Open Meeting:* The Commodity Future Trading Commission will hold an open meeting to consider four items: (1) Final Rule: Indemnification (Amendments to the Swap Data Access Provisions of Part 49 and Certain Other Matters); (2) Proposed Rule: Volcker

Rule (Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds); (3) Proposed Rule: De Minimis Exception (Amendments to Swap Dealer Registration De Minimis Exception); and (4) Establishment of Subcommittees for the CFTC Technology Advisory Committee.

### **June 5**

***SEC Open Meeting:*** The Securities and Exchange Commission will hold an open meeting to consider four items: (1) “whether to adopt a new rule as well as amendments to rules and forms to provide certain registered investment companies (“funds”) with an optional method to transmit shareholder reports”; (2) “whether to issue a release requesting comment about processing fees for delivering shareholder reports and other materials to fund investors”; (3) “whether to issue a release requesting comment from individual investors and other interested parties on how to enhance the delivery, design, and content of fund disclosures, including shareholder reports and prospectuses”; and (4) “whether to propose amendments to rules adopted under section 13 of the Bank Holding Company Act related to prohibitions and restrictions on proprietary trading and certain interests in, and relationships with, hedge funds and private equity funds (commonly known as the “Volcker rule”).”

### **June 6**

***Homelessness:*** The House Financial Services Committee’s Subcommittee on Housing and Insurance will hold a hearing on the Homeless Children and Youth Act of 2017 ([H.R. 1511](#)).

***CFPB Transparency:*** The House Financial Services Committee’s Subcommittee on Financial Institutions and Consumer Credit will hold a hearing entitled “Improving

Transparency and Accountability at the Bureau of Consumer Financial Protection.”

***Gig Economy:*** The House Small Business Committee will hold a hearing entitled “Millennials and the Gig Economy.”

### **June 7**

***Markup of Financial Service Bills:*** The House Financial Services Committee may meet to markup financial services bills.

### **June 8**

***Elder Abuse:*** The Consumer Financial Protection Bureau (CFPB) will hold a town hall meeting on fighting financial exploitation of the elderly.

*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.*

## **HEALTH**

### **President Trump Signs Right to Try Legislation**

#### *Key Point:*

- *President Donald Trump signed the Right to Try legislation intended to provide terminally ill patients access to investigational drugs.*

On May 30 at a White House ceremony, President Donald Trump signed the “Trickett Wendler, Frank Mongiello, Jordan McLinn, and Matthew Bellina Right to Try Act of 2017” (S. 204) also known as Right to Try. The bill seeks to give terminally ill patients access to investigational treatments that have not yet been approved by the Food and Drug Administration (FDA).

Trump stressed this bill is about giving patients access. He noted it take a long time for products to get FDA approval and terminally ill

patients do not have an abundance of time. He asserted Americans will no longer have to travel to other counties to receive treatment.

FDA Commissioner Scott Gottlieb stressed the agency remains committed to enhancing access to promising investigational medicines for those unable to access products through clinical trials. He explained the legislation creates a new pathway aimed at increased access to unapproved, investigational treatments and the FDA’s implementation “will build on [its] long-standing efforts to help patients and families.

The legislation has not been without its critics. House Energy and Commerce Committee Ranking Member Frank Pallone (D-NJ) expressed concern the bill removes FDA’s ability to serve as the gatekeeper and protector of patients. Others have pointed out the FDA already has an expanded access pathway for patients. Right to Try laws are already in place in 40 states.

**Upcoming Hearings and Meetings**

**June 6**

**HHS:** The House Education and the Workforce Committee will hold a hearing entitled “Examining the Policies and Priorities of the U.S. Department of Health and Human Services.”

**Biodefense:** The House Energy and Commerce Committee will hold a hearing entitled “Examining the Reauthorization of the Pandemic and All-Hazards Preparedness Act.”

**Costs:** The House Ways and Means Committee will hold a hearing entitled “Lowering Costs and Expanding Access to Health Care through Consumer-Directed Health Plans.”

**June 7**

**Opioids:** The Partnership for Safe Medicines will hold a briefing on “Lives Lost Due to Illegal Fentanyl and Counterfeit Drugs.”

**Opioids:** The American Enterprise Institute will hold a discussion on “The Opioid Crisis and Foster Care Families: Policies to Protect Children and Treat Parents.”

**June 8**

**Costs:** The Cato Institute will hold a book discussion on “Overcharged: Why Americans Pay Too Much for Health Care.”

**June 12**

**Drug Pricing:** The Senate Health, Education, Labor and Pensions Committee will hold a hearing on “The Cost of Prescription Drugs: Examining the President’s Blueprint ‘American Patients First’ to Lower Drug Prices.”

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

**TRANSPORTATION AND INFRASTRUCTURE**

**GAO Recommends FTA Promulgate Statutorily Required Transit Rulemakings**

*Key Point:*

- *The federal transit oversight agency has not completed three required regulations, which may be impeding the efficient delivery of transit systems*

The Government Accountability Office (GAO) released an [assessment](#) of the Capital Investment Grants program (CIG), specifically

at how the Federal Transit Administration (FTA) “has not addressed three statutory provisions concerning the Capital Investment Grants program contained in the Moving Ahead for Progress in the 21st Century Act (MAP-21) and the Fixing America’s Surface Transportation Act (FAST Act).” FTA officials told the GAO they did not plan to meet Congress’ required rulemakings because the Administration would close out the CIG program, and after Congress provided a historic level of funding for FY 2018 the FTA did not indicate to the Gao they will comply with the requirements.

The GAO found that “FTA has not:

- issued regulations regarding the evaluation and rating process for Core Capacity Improvement projects, which are a category of eligible projects within the program;
- established a program of interrelated projects designed to allow for the simultaneous development of more than one transit project within the Capital Investment Grants program; or
- implemented a pilot program designed to create a fast-track approval process for transit projects that meet specific statutory criteria.

The GAO noted that “[t]hroughout this review, FTA officials told GAO they do not have immediate plans to address these three statutory provisions.” The GAO stated that “[o]fficials cited a proposal by the President to phase out the CIG program as one of the factors influencing this decision.” The GAO stated that “[h]owever, in March the Consolidated Appropriations Act, 2018, provided the program with more than \$2.6 billion and required FTA to continue to administer the program in accordance with the procedural and substantive requirements specified in statute.” The GAO noted that

“FTA officials told GAO that they are reviewing the Act and determining next steps...[h]owever FTA officials did not indicate that they intend to address these provisions.” The GAO cautioned that “[i]f FTA does not implement the outstanding provisions, FTA and project sponsors—that is, local transit agencies—may be missing opportunities to deliver transit projects more efficiently.”

### **FTA Releases Final Rule On Private Investment Project Procedures**

#### *Key Point:*

- *Transit project sponsors may now be able to work with P3s and private investors to develop transit systems*

ON May 30, the Federal Transit Administration (FTA) released a [final rule](#) that could clear the way for more “public-private partnerships and private investment in public transportation capital projects.” In short, the new regulations “establishes procedures by which FTA recipients contemplating public transportation capital projects may seek a waiver or modification of a mandatory FTA regulation, policy, procedure, or guidance document in order to address impediments to the use of public-private partnerships (P3s) and private investment in public transportation capital projects.” The attached rule, Private Investment Project Procedures, arises from a statutorily required rulemaking mandated by the “Moving Ahead for Progress in the 21st Century Act” (MAP-21) (P.L. 112-141) and takes effect on June 29, 2018.

The FTA explained that “Private Investment Project Procedures (PIPP) are intended to encourage project sponsors to seek modifications of Federal requirements such that the modification will accelerate the project development process, attract private investment and lead to increased project

management flexibility, more innovation, improved efficiency, and/or new revenue streams.” However, per MAP-21, “the PIPP may not be used to waive any requirement under the National Environmental Policy Act (NEPA)...or any other provision of Federal statute.” The FTA asserted that “[t]hus, the PIPP will allow for innovations in project delivery while maintaining FTA's stewardship responsibilities.” The FTA also articulated its expectations that “the lessons learned from projects approved under the PIPP to aid FTA in developing more effective approaches to project planning, project development, finance, design, construction, maintenance, and operations.”

### Upcoming Hearings and Events

#### June 7

**Arctic Maritime Issues:** The House Transportation & Infrastructure Committee’s Coast Guard and Maritime Transportation Subcommittee will hold a [hearing](#) titled “Maritime Transportation in the Arctic: The U.S. Role.”

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

### TECHNOLOGY

#### **Commerce and DHS Release Final Botnet Report With Follow Up Implementation Steps**

##### *Key Point:*

- *Per an EO, the two departments analyzed comments and added implementation steps to its draft report on bots, calling for greater public-private cooperation*

The Departments of Commerce and Homeland Security (Commerce and DHS) released the final “[Report to the President on Enhancing](#)

[the Resilience of the Internet and Communications Ecosystem Against Botnets and Other Automated, Distributed Threats](#)” as required by an executive order. A [draft version](#) was released in January for comment.

[Executive Order 13800](#), “Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure,” named as a goal “resilience against botnets and other automated, distributed threats” and directed Commerce and DHS to “lead an open and transparent process to identify and promote action by appropriate stakeholders” with the goal of “dramatically reducing threats perpetrated by automated and distributed attacks (e.g., botnets).”

Like the draft report, the final report “details 24 actions designed to achieve five goals,” including next steps for Commerce, DHS, and other government agencies. Commerce and DHS stated that “[t]he recommended actions and options include ongoing activities that should be continued or expanded, as well as new initiatives.” Commerce and DHS stated that “[n]o single investment or activity can mitigate all threats, but organized discussions and stakeholder feedback will allow us to further evaluate and prioritize these activities based on their expected return on investment and ability to measurably impact ecosystem resilience.” Commerce and DHS stated that “[t]his report calls for a status update that will evaluate the level of progress made by stakeholders in countering automated, distributed threats.”

Commerce and DHS detailed “Initial Next Steps for Stakeholder Action:”

- The Departments of Commerce and Homeland Security, in coordination with industry, civil society, and in consultation with international partners,

should be tasked with developing an initial road map with prioritized actions within 120 days after approval of this report.

- Stakeholders indicated that federal adoption of “good neighbor” practices that primarily benefit the ecosystem and procurement activities would provide a foundation for further activities to reduce automated, distributed threats. In particular, steps by federal agencies to implement egress filtering to prevent network address spoofing, close reflectors used to amplify traffic volumes, and measure agency compliance (and potentially name and shame bad actors) would demonstrate federal resolve and encourage beneficial action by other parties. NIST, OMB, and DHS should explore steps to ensure that these best practices are properly reflected in federal agency policies, standards, guidelines, and oversight. Similarly, federal procurement activities mandating acquisition of products and services that are more secure or resilient than commonly available today were viewed as an important step toward establishing market incentives.
- As communities form to implement these actions, establishing a venue for regular coordination between these communities will be increasingly important. The value of an IoT security baseline is limited if an assessment scheme cannot be established in a timely manner. Alignment and coordination of investments is needed to maximize impact on the resilience of the infrastructure. Until a mutually agreed party or parties from the private sector are identified, the federal government will provide a coordination and communication mechanism for

continued implementation and will convene periodic meetings of the relevant parties.

- To track progress, the Departments of Commerce and Homeland Security will develop a 365-day status update for the President, due one year after the road map’s initial publication. This update will review: 1) progress the community as a whole is making against the road map; 2) the impacts of those road map activities; 3) a reassessment of the threat of automated, distributed attacks, including whether the threat is increasing or decreasing, and any known reasons for such a change; and 4) whether any adjustments are required to the road map.
- Stakeholders highlighted the importance of international standards, policies, and best practices in promoting international participation and collaboration. By continuing to advocate for industry-led approaches and by actively participating in development of voluntary, consensus-based international standards, the federal government can contribute to pragmatic and effective outcome-based standards that meet the needs of all stakeholders. The federal government is also uniquely positioned to lead the international engagement required to establish broadly accepted policies and best practices and will enhance coordination with stakeholders on these efforts.

### **NIST Releases Cyber Workforce Report and Plan**

#### *Key Point:*

- *An assessment of the U.S.’s cyber workforce points to a shortage and lays out action steps*

This week, the National Institute of Standards and Technology (NIST) released its [report](#) on the U.S. cyber workforce per Executive Order 13800, “Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure.” The report was transmitted through the Departments of Commerce and Homeland Security (Commerce and DHS)

The Executive Order directed Commerce and DHS to:

- 1) Assess the scope and sufficiency of efforts to educate and train the American cybersecurity workforce of the future, including cybersecurity-related education curricula, training, and apprenticeship programs, from primary through higher education; and
- 2) Provide a report to the President 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.

Commerce and DHS announced its key findings and recommendations:

**Key findings include:**

- The United States needs immediate and sustained improvements in its cybersecurity workforce situation.
- Employers increasingly are concerned about the relevance of cybersecurity-related education programs in meeting the needs of their organizations.
- Expanding the pool of cybersecurity candidates by retraining those employed in non-cybersecurity fields and by increasing the participation of women, minorities, and veterans as well as students in primary through secondary school is needed and represents significant opportunities.

- There is an apparent shortage of knowledgeable and skilled cybersecurity teachers at the primary and secondary levels, faculty in higher education, and training instructors.
- Hiring considerations—including lengthy security clearance delays and onboarding processes—severely affect the sufficiency of the cybersecurity workforce.
- Comprehensive and reliable data about cybersecurity workforce position needs and education and training programs is lacking—even though the general context and urgency of the situation are obvious.

**Key recommendations include:**

- The Nation should set an ambitious vision and action plan-of-attack to “Prepare, grow, and sustain a national cybersecurity workforce that safeguards and promotes America’s national security and economic prosperity.”
- The federal government should lead in launching a high-profile national *Call to Action* to draw attention to and mobilize public and private sector resources to address cybersecurity workforce needs.
- The Administration should focus on, and recommend, long-term authorization and sufficient appropriations for, high-quality, effective cybersecurity education and workforce development programs in its budget proposals in order to grow and sustain the cybersecurity workforce.
- Federal departments and agencies must move quickly to address major needs relating to recruiting, developing, and retaining cybersecurity employees and continue to implement the Federal Cybersecurity Workforce Strategy and the Federal Cybersecurity Workforce Assessment Act of 2015 (FCWAA).

- The private and public sectors need to transform, elevate, and sustain the learning environment to grow a dynamic and diverse cybersecurity workforce

## Upcoming Hearings and Events

### June 6

**Gig Economy:** The House Small Business Committee will hold [hearing](#) titled “Millennials and the Gig Economy.”

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

## TRADE

### **232 Tariffs Imposed on Canada, Mexico, and European Union; Canada Retaliates**

#### *Key Points:*

- The Commerce Department announced that the temporary Section 232 steel and aluminum tariff exemptions for Canada, Mexico, and the EU will end on June 1.
- Canada announced it will be applying tariffs on \$12.8 billion worth of U.S. goods on July 1.

On Thursday, President Trump announced the end of temporary exclusions from Section 232 tariffs on steel and aluminum imports from Canada, Mexico and the European Union. The change in policy follows months of U.S. threats to impose tariffs, part of a push to win economic concessions from the neighbors and allies in an effort to cut the U.S. trade deficit. Administration officials said they were still open to deals to drop the metals tariffs. Commerce Secretary Wilbur Ross said, “We continue to be quite willing and indeed eager to have further discussions with all of those parties.”

While discussing the removal of temporary tariff exemptions, Commerce Secretary Wilbur Ross explained that there has not been enough progress made in talks with NAFTA parties or the EU to warrant continuing the exemptions. Secretary Ross observed that “there is no longer a very precise date when they may be concluded and therefore [Canada and Mexico] were added into the list of those who will bear tariffs.” Initially, steel and aluminum exemptions had been granted to Canada and Mexico, conditional on NAFTA progress. But negotiators from the three countries missed an informal deadline in mid-May to reach a deal in time for the U.S. Congress to vote on it before legislators elected in November take office next year. Secretary Ross suggested the NAFTA talks should continue regardless of retaliation from Canada and Mexico. Regarding the EU, Secretary Ross said “the European Commission had as a precondition to other discussions that they be exempted permanently and unconditionally from these tariffs and we were not prepared to meet that condition.”

After the EU and Mexico stated their intent to impose retaliatory tariffs, Canada announced it would be imposing tariffs on \$12.8 billion worth of U.S. goods. Canadian Foreign Affairs Minister Chrystia Freeland described the tariffs as “dollar for dollar,” and released [lists of the products](#) to be subject to tariffs. U.S. steel and iron products will face a 25 percent tariff while other aluminum products, and assorted food products will be subject to a 10 percent tariff. Mexican President Enrique Peña Nieto told Canadian Prime Minister Justin Trudeau that Mexico is also planning to retaliate. In May, the EU published a [list](#) of \$3.34 billion worth of U.S. goods that it was planning to subject to a 25 percent tariff. This list is primarily aimed at agricultural, textile, and steel products, though many other products are included.

## 301 Tariffs Likely to be Imposed Shortly After June 15

### *Key Points:*

- The Trump Administration announced it will impose a 25 percent tariff on \$50 billion worth of Chinese goods soon after the final tariff list is released on June 15.
- China has announced its intent to impose tariffs on \$50 billion of U.S. goods.

Despite statements last week from Treasury Secretary Steven Mnuchin that indicated the 301 tariffs would be put on hold, the Administration announced this week that it would be imposing 25 percent tariffs on \$50 billion worth of Chinese goods shortly after the June 15 final list release. The Administration also announced that it “will implement specific investment restrictions and enhanced export controls for Chinese persons and entities related to the acquisition of industrially significant technology. The proposed investment restrictions and enhanced export controls will be announced by June 30, 2018, and they will be implemented shortly thereafter.” The Chinese government has previously suggested it would implement tariffs on \$50 billion worth of U.S. goods if the 301 tariffs went into effect.

Last Friday, the Administration reportedly told lawmakers it had reached a deal that would require ZTE to pay a large fine, change its top management, and hire compliance officers to have U.S. sanctions removed. The President has been scrutinized for his willingness to remove sanctions on ZTE and it remains unclear how this situation will unfold.

## NAFTA Talks At Impasse Over Sunset Clause

### *Key Points:*

- The 232 steel and aluminum tariffs, as well as the Canadian retaliatory tariffs, have increased tensions between the NAFTA parties.
- Canadian Prime Minister Justin Trudeau told reporters that the U.S. demanded he accept a five-year sunset clause before being allowed to meet with President Trump to finalize NAFTA.

During a press conference to announce Canada’s retaliatory tariffs, Prime Minister Trudeau detailed the recent negotiations. He explained that he made an offer “to go down to Washington personally with [Canadian Foreign Affairs Minister Chrystia Freeland] and sit down around a table with the president to work out the final details of NAFTA because there was the broad lines of a decent win-win-win deal on the table that I thought required that final deal making moment.”

Trudeau said he was prepared to travel to Washington this week to try to finalize a rework of the North American Free Trade Agreement, but Vice President Pence, in the phone call, said a meeting would occur only if the “sunset” provision was agreed to in advance. Trudeau said, “I had to highlight that there was no possibility of any Canadian prime minister signing a NAFTA deal that included a five-year sunset clause, and obviously the visit didn’t happen.”

Late Thursday, Trump responded in a statement issued by the White House that “That United States has been taken advantage of for many decades on trade. Those days are over. Earlier today, this message was conveyed to Prime Minister Justin Trudeau of Canada: The United States will agree to a fair deal, or there will be no deal at all.” Ildefonso Guajardo, Mexico’s economy minister and

chief trade negotiator, said the tariff decision led to tension in conversations with U.S. Trade Representative Robert Lighthizer and Secretary Ross, but that talks are continuing.

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

*This Week in Congress was written by Ryan Schnepf.*