

July 7, 2017

## Washington Update

### This Week in Congress

- **House** – The House is in recess until July 11.
- **Senate** – The Senate is in recess until July 10.

### Next Week in Congress

- **House** – The House may consider the “**Gaining Responsibility on Water Act of 2017**” (H.R. 23) and the “**National Defense Authorization Act for FY 2018**” (H.R. 2810).
- **Senate** – The Senate will vote on the nomination of **Neomi Rao** to be Administrator of the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) and will vote to invoke cloture on the nomination of **David C. Nye** to be United States District Judge for the District of Idaho.

## TAXES

### Upcoming Hearings and Events

#### July 13

The House Ways and Means Tax Policy Subcommittee will hold a hearing on “how tax reform will help America’s small businesses grow and create new jobs.”

- *Powell stated that any government guarantee must be explicit and should apply to securities rather than institutions.*

On July 6, Federal Reserve Board Governor Jerome Powell gave a [speech](#) on the need for a “robust, well-capitalized, well-regulated housing finance system.” Powell emphasized the need for housing finance reform, stating:

## FINANCIAL SERVICES

### Federal Reserve Board Governor Powell Speaks on Housing Finance Reform

#### *Key Points:*

- *Federal Reserve Board Governor Powell emphasized the need for action on housing finance reform, outlining guiding principles for such reform.*

The status quo may feel comfortable today, but it is also unsustainable. Today, the federal government’s role in housing finance is even greater than it was before the crisis. The overwhelming majority of new mortgages are issued with government backing in a highly concentrated securitization market. That leaves us with both potential taxpayer liability and systemic risk. It is important to learn the right lessons from the failure of the old system. We can also apply lessons from

post-crisis banking reform. Above all, we need to move to a system that attracts ample amounts of private capital to stand between housing sector credit risk and taxpayers.

In describing his ideas for reform, Powell stated that “the most obvious and direct step forward would be to require ample amounts of private capital to support housing finance activities, as we do in the banking system.” However, he also added “[a]lthough private capital must surely be part of the reform effort, there may be limits to the amount of risk that we can credibly expect the private sector to insure.”

Powell offered five guiding principles for housing finance reform. First, he emphasized the need “to make the possibility of future housing bailouts as remote as possible.” He noted that there is debate about the role of the government in the housing sector, with some proposing government guarantee to cover catastrophic risk, to take effect after a significant stack of private capital is wiped out. Second, he said “[i]f Congress chooses to go in this direction, any such guarantee should be explicit and transparent, and should apply to securities, not to institutions.” Third, he asserted that “we should promote greater competition in this market.” Fourth, Powell contended that “it is worth considering simple approaches that restructure and repurpose parts of the existing architecture of our housing finance system,” suggesting that completely redrawing the system may not be necessary and could complicate the search for a solution. Fifth, he expressed a “need to identify and build upon areas of bipartisan agreement.”

Powell concluded by urging action on housing finance reform while the economy remains healthy, but before memories of the crisis fade

and the current system is accepted as the status quo.

## Upcoming Hearings and Events

### July 12

**Federal Reserve:** The House Financial Services Committee will hold a hearing to discuss the Federal Reserve’s semi-annual Monetary Policy Report. Federal Reserve Chair Janet Yellen is scheduled to testify.

**Community Banks:** The House Financial Services Committee’s Subcommittee on Financial Institutions and Consumer Credit will hold a hearing entitled “Examining Legislative Proposals to Provide Targeted Regulatory Relief to Community Financial Institutions.”

### July 13

**Federal Reserve:** The Senate Banking Committee will hold a hearing on “The Semiannual Monetary Policy Report to the Congress.” Federal Reserve Chair Janet Yellen is scheduled to testify.

**DOL Fiduciary Rule:** The House Financial Services Committee’s Subcommittee on Capital Markets, Securities, and Investment will hold a hearing on the “Impact of the DOL [Department of Labor] Fiduciary Rule on the Capital Markets”.

### July 14

**Fixed Income Markets:** The House Financial Services Committee’s Subcommittee on Capital Markets, Securities, and Investment will hold a hearing entitled, “A Review of Fixed Income Market Structure.”

*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**

**EPA Proposes 2018 Renewable Fuel Requirements**

*Key Points:*

- *On Wednesday, the EPA announced the proposed renewable fuel blending requirements for 2018.*
- *The proposal would continue implementation of the Renewable Fuel Standard, enacted by Congress in 2005 and 2007.*
- *The EPA is again proposing renewable fuel totals that would fall short of the levels set by statute. The agency is doing so because of limits on the total amount of biofuel that can be blended into the fuel supply primarily as “E10” gasoline, as well as the slow growth of cellulosic biofuel production.*

On July 5, the Environmental Protection Agency (EPA) released the [Notice of Proposed Rulemaking \(NPRM\)](#) titled “Renewable Fuel Standard Program: Standards for 2018 and Biomass-Based Diesel Volume for 2019”. The Renewable Fuel Standard (RFS) establishes the requirements for blending ethanol and other biofuels into the transportation fuel supply. Congress established the RFS in the “Energy Policy Act of 2005” ([P.L. 109-58](#)) and expanded the requirements in the “Energy Independence and Security Act of 2007” ([P.L. 110-140](#)). The RFS sets annual targets for renewable fuels, including ethanol, advanced biofuels and cellulosic biofuels.

The “blend wall”, which was reached when the amount of gasoline and other conventional fuels available could not absorb the targeted amounts of biofuels, has impeded implementation of the program. Most biofuels are blended into the transportation fuel supply as gasoline with ten percent ethanol (E10), which contributes to the overall blending

constraints. To reflect the impact of the blend wall, recent years’ RFS volume totals have lagged below those set in statute. That would again be the case in 2018 under Wednesday’s NPRM.

RFS Implementation: 2014-2018		
Year	Statute Renewable Fuel	EPA Renewable Fuel
2014	18.15	16.28
2015	20.5	16.93
2016	22.25	18.11
2017	24.0	19.28
2018	26.0	19.24*
Volume in billions of gallons.		
*Proposed rule.		

In the NPRM, the EPA states that it is “proposing volume requirements for cellulosic biofuel, advanced biofuel, and total renewable fuel that are below the statutory applicable volumes, and lower than the 2017 requirements.” Regarding the blend wall, the EPA notes “that nearly all of the approximately 143 billion gallons of gasoline used for transportation purposes contains 10 percent ethanol (E10)”. The agency also states that “[r]eal-world challenges, such as the slower-than-expected development of the cellulosic biofuel industry, have slowed progress towards meeting Congressional goals for renewable fuels, even as progress has been made in some areas.”

**Update on Trump Administration Energy and Environment Deregulatory Actions**

*Key Points:*

- *The Trump Administration is taking steps to roll back or modify energy and environment regulations, in particular rules promulgated*

during the second term of the Obama Administration.

- *The Administration’s deregulatory agenda includes revisiting the Clean Power Plan, which would limit greenhouse gas emissions from electric generating facilities, and the “Waters of the United States” Rule, which would define the extent of federal jurisdiction under the Clean Water Act.*
- *The effort to roll back rules is supported in some cases by stays imposed by courts on the original regulations, including: the Clean Power Plan; the Waters of the United States Rule; and the Department of Interior’s regulations of hydraulic fracturing on federal lands.*
- *In contrast, the U.S. Court of Appeals for the D.C. Circuit on July 3 vacated an administrative stay of enforcement of certain provisions of Obama Administration regulations targeting methane emissions from oil and gas facilities.*

The Trump Administration continues to work to advance its deregulatory agenda, including through actions targeting Obama Administration energy and environment regulations. In recent weeks agencies have taken action on the following regulations:

- ***Waters of the United States Rule:*** On June 27, 2017, the EPA released a [Notice of Proposed Rulemaking \(NPRM\)](#) titled “Definition of ‘Waters of the United States’ – Recodification of Pre-existing Rules”. The new NPRM would “rescind the definition of ‘waters of the United States’ in the Code of Federal Regulations to re-codify the definition ...which currently governs administration of the Clean Water Act, pursuant to a decision issued by the U.S. Court of Appeals for the Sixth Circuit staying a definition of ‘waters of the United States’ promulgated by the

agencies in 2015.” This NPRM would rescind the Obama Administration EPA’s [final rule](#) titled “Clean Water Rule: Definition of “Waters of the United States”, which was published on June 29, 2015. In issuing the original rule, the EPA declared that it “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.” Following the Obama Administration’s promulgation of the rule, the U.S. Court of Appeals for the Sixth Circuit issued an [Order of Stay](#) blocking implementation. That judicial stay has remained in place since it was issued on October 9, 2016. The EPA notes in issuing the new NPRM that the “regulatory definition of ‘waters of the United States’ in this proposed rule is the same as the definition that existed prior to promulgation of the Clean Water Rule in 2015 and that has been in effect nationwide since the Clean Water Rule was stayed on October 9, 2016.”

- ***Clean Power Plan:*** On March 28, 2017, President Trump signed an Executive Order titled “Promoting Energy Independence and Economic Growth” ([E.O. 13783](#)), which directed the EPA to “review the [Clean Power Plan]...and, if appropriate...publish for notice and comment proposed rules suspending, revising, or rescinding” the final rule. On April 4, 2017, the EPA published a [notice](#) announcing that “it is reviewing the Clean Power Plan...including the accompanying Legal Memorandum, and, if appropriate, will as soon as practicable and consistent with law, initiate proceedings to suspend, revise or rescind this rule.” The Obama

Administration EPA published the [final rule](#) establishing the Clean Power Plan on October 23, 2015. The regulations would restrict greenhouse gas (GHG) emissions from the power generation sector. States would play the central role in implementing the Clean Power Plan, however the program would be enforced by the EPA, which could step in to establish a Federal Implementation Plan (FIP) for any state that failed to meet the requirements of the regulations. The Clean Power Plan would direct states to take actions reducing GHG emissions from existing power plants by 32 percent below 2005 levels by 2030. The Supreme Court issued a stay on enforcement of the rule on February 9, 2016, which has remained in place to date.

- ***Hydraulic Fracturing on Federal Lands:*** On March 28, 2017, President Trump signed the “Promoting Energy Independence and Economic Growth” Executive Order ([E.O. 13783](#)), which directed the Secretary of Interior to review and potentially revise or rescind the rule. On June 27, 2017, the Department of Interior’s Bureau of Land Management (BLM) submitted an NPRM, titled “Rescission of the 2015 BLM Hydraulic Fracturing Rule”. The pending NPRM targets the Obama Administration’s [final rule](#) titled “Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands”. The rule would have imposed new requirements on oil and gas operators conducting hydraulic fracturing on federal lands, including requirements for: casing and cementing; management of recovered fluids; and disclosure of chemicals used. On June 21, 2016, the U.S. District

Court for the District of Wyoming issued an [order](#) setting aside the rule.

- ***Oil and Gas Methane Rule:*** On April 4, 2017, the EPA published a [notice](#) announcing that it is “reviewing the 2016 Oil and Gas New Source Performance Standards and, if appropriate, will initiate reconsideration proceedings to suspend, revise or rescind this rule.” On April 18, 2017, the EPA announced, through a [letter](#) to industry trade associations, that it will reconsider portions of the final rule. In responding to the trade associations’ petitions for reconsideration, the EPA found “that the petitions have raised at least one objection to the fugitive methane emissions monitoring requirements included in the final rule...that arose after the comment period, or were impracticable to raise during the comment period.” The EPA also announced that it would: (1) Convene “a proceeding for reconsideration of [the] fugitive emissions monitoring requirements...”; (2) Extend, by 90 days, from June 3, 2017 to September 1, 2017, the compliance date for the rule’s emissions monitoring requirements; and (3) Receive public “comment on the issues raised in the petitions that meet the standard of [the Clean Air Act’s administrative review provisions], as well as any other matter we believe will benefit from additional comment.” On June 16, 2017, the EPA published: an [NPRM](#) “to stay for two years certain requirements” of the rule; and an [NPRM](#) “to stay for three months certain requirements that are contained within the Final Rule...” On July 3, 2017, the U.S. Court of Appeals for the D.C. Circuit issued an [order](#) vacating

the EPA's 90-day stay of provisions of the rule. The Court's order addressed the stay issued in response to the industry petitions for reconsideration, not the 90-day stay proposed in one of the June 16<sup>th</sup> NPRMs. The Trump Administration's actions target the EPA's [final rule](#) titled "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources", published on June 3, 2016. This final rule imposes significant new requirements for the oil and gas industry, including producers and natural gas pipeline operators, to identify and limit methane emissions. The rule would establish best system of emissions reduction (BSER) requirements "for certain new, modified, and reconstructed equipment, processes, and activities across the oil and natural gas source category".

### Upcoming Hearings and Events

#### July 12

***Pending Legislation and Nominations:*** The Senate Environment and Public Works Committee will hold a [business meeting](#) to consider pending legislation and nominations.

***Offshore Oil and Gas Development:*** The House Natural Resources Committee's Energy and Mineral Resources Subcommittee will hold a [hearing](#) titled "Evaluating Federal Offshore Oil and Gas Development on the Outer Continental Shelf".

#### July 13

***Indian Trust Land Acquisition:*** The House Natural Resources Committee's Indian, Insular and Alaska Native Affairs Subcommittee will hold a [hearing](#) titled "Comparing 21st Century Trust Land Acquisition with the Intent of the

73rd Congress in Section 5 of the Indian Reorganization Act".

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

## HEALTH

### Upcoming Hearings and Events

#### July 10-11

***Opioids:*** The Food and Drug Administration will hold a workshop titled "Data and Methods for Evaluating the Impact of Opioid Formulations with Properties Designed to Deter Abuse in the Post-market Setting: A Scientific Discussion of Present and Future Capabilities."

#### July 11

***End-of-Life Care:*** Health affairs will hold a briefing on "Advanced Illness and End-Of-Life Care."

***Long-Term Care:*** The Bipartisan Policy Center will hold a discussion on "Solutions to Long-Term Care Financing in Politically Challenging Times."

#### July 12

***Opioids:*** The House Energy and Commerce Committee will hold a hearing entitled "Combating the Opioid Crisis: Battles in the States."

***Medical Devices:*** The House Energy and Commerce Committee will hold a hearing entitled "Examining Medical Product Manufacturer Communications."

#### July 13

**Caregivers:** The Hill will hold a discussion on “The Cost of Caring: Family Caregivers and Tax Reform.”

**Health Reform:** The Bipartisan Policy Center will hold a discussion on “Future of Health Care: Can Increased State Flexibility Balance Innovation, Cost and Coverage?”

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

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