

July 14, 2017

## Washington Update

### This Week in Congress

- **House** – The House passed the “National Defense Authorization Act for Fiscal Year 2018” (NDAA) (H.R. 2810); “Medical Controlled Substances Transportation Act of 2017” (H.R. 1492); the “FDA Reauthorization Act of 2017” (H.R. 2403); the “Enhancing Detection of Human Trafficking Act” (H.R. 2664) and the “Gaining Responsibility on Water Act of 2017” (H.R. 23).
- **Senate** – The Senate confirmed **William Francis Hagerty IV** to be Ambassador to Japan; **David C. Nye** to be U.S. District Judge for the District of Idaho and **Neomi Rao** to be Administrator of the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget.

### Next Week in Congress

- **House** – The House may consider the “Ozone Standards Implementation Act of 2017” (H.R. 806); “21st Century Aviation Innovation, Reform, and Reauthorization Act” (H.R. 2997) (FAA Reauthorization); and “Promoting Interagency Coordination for Review of Natural Gas Pipelines Act” (H.R. 2910).
- **Senate** – The Senate will vote on the cloture motion on the nomination of **Patrick M. Shanahan** to be Deputy Secretary of Defense and vote on the motion to proceed to the “Better Care Reconciliation Act of 2017” (H.R. 1628).

## TAX

### Treasury Releases Interim Report Identifying Burdensome Regulations

#### *Key Points:*

- *Interim Treasury Department report identifies Section 385 debt-equity regulations and Section 2704 regulations as possible targets for modification or rescission.*
- *Final report due September 18 will make specific recommendations for changes to identified regulations.*

Late on July 7, the Department of the Treasury (Treasury) released its report (Notice 2017-38) identifying significant tax regulations that could pose an undue burden on taxpayers, exceed

statutory authority, or add undue complexity. The Treasury notice identified eight regulations that met the requirements of the Executive Order 13789 issued in April 2017. The regulations identified as burdensome include the regulations under Section 385 implementing rules that would recharacterize certain related party debt transactions as equity, curbing the practice of “earnings stripping,” and proposed regulations under Section 2704 aimed at preventing taxpayers from taking

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certain estate valuation discounts.

Treasury is requesting comments on whether the regulations described by the notice should be completely rescinded or modified to further the goal of reducing taxpayer burdens and complexity. Public comments in response to the notice are due by Aug. 7, 2017.

Treasury must submit a final report to the president by September 18 “recommending ‘specific actions to mitigate the burden imposed by regulations identified in the interim report,’” the notice said. It asks for public comments by August 7. Treasury will then have until September 18, 2017 to submit a final report to the President recommending “specific actions to mitigate the burden imposed by regulations identified in the interim report.”

### **Taxes on High Earners Remain in Latest Draft of Senate Health Bill**

#### *Key Points:*

- *New version of Senate health care legislation would retain ACA taxes including 3.8 percent net investment tax and additional payroll tax*
- *Senate tentatively looking to hold procedural vote on bill next week*

On July 13, Senate Republicans released a new version of the “Better Care Reconciliation Act of 2017,” their health care repeal and replace legislation. According to a summary released alongside the legislation, the revised bill would leave in place the 3.8 percent net investment income tax, the 0.9 percent additional Medicare individual payroll tax, and the remuneration tax on executive compensation for certain health insurance executives. It would repeal taxes that “contribute to premium increases” including the health insurance tax, the tax on indoor tanning services and medical device tax. The

“Cadillac tax” on high cost employer sponsored plans would be repealed through January 1, 2026. The new bill would also include a provision to allow people to use their Health Savings Accounts (HSAs) to pay for their insurance premiums.

The previous Senate plan released on June 22 largely mirrored the House-passed repeal legislation calling for the delay or repeal of all Affordable Care Act (ACA) taxes. Senate Majority Leader Mitch McConnell (R-KY) has indicated that the Senate could hold a motion-to-proceed vote on the bill as early as next week. McConnell said that he expects a new estimate from the Congressional Budget Office (CBO) will be released before the vote.

### **Ways and Means Tax Policy Subcommittee Holds Hearing with Focus on Small Businesses**

#### *Key Points:*

- *Chairman Roskam says the House Ways and Means Committee is working on rules that would allow small business owners and farmers to continue to deduct interest*

This week the House Ways and Means Committee’s Tax Policy Subcommittee held a hearing to explore how tax reform would benefit small business owners. This was the first tax reform hearing held this Congress by

#### **Upcoming Dates**

***September 30:*** FY 2017 ends and FAA, SCHIP, and NFIP authorizations expire

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

***December 31, 2017:*** Title VII of FISA expires

the Subcommittee and follows two full Committee tax hearings held in May. Both witnesses and Members primarily focused on the need to for tax relief for small businesses owners and the need to simplify the tax code.

In response to concerns expressed by the witnesses about the loss of the interest deduction, Subcommittee Chairman Pete Roskam (R-IL) said the committee had received the message and understood small business owners' concern with the proposal. He said the committee was "actively working" on the issue and "would get to a good place on that." He also mentioned that the committee was "very mindful" of concerns with preventing abuse of the lower rate targeted for passthrough businesses. Roskam said that the committee is working on rules to prevent any manipulation of the preference.

### House Budget Committee Markup Delayed (Again)/New Demands from Freedom Caucus

#### *Key Points:*

- *House Budget Committee was forced to delay a markup of the FY 2018 budget as Republican members were unable to resolve differences over mandatory spending.*
- *House Freedom Caucus members say they will not support budget without including*

This week, the House Budget Committee was forced to delay their markup of the FY 2018 budget due to continued disagreements over cuts to mandatory spending and tax instructions. This marks the third such delay of the Committee markup of the budget resolution. The Committee had originally hoped to have the FY 2018 budget marked up and passed by the House prior to the July 4 recess break.

House Freedom Caucus Chairman Mark Meadows (R-NC) told reporters that a budget resolution would not pass the House without more than \$200 billion in mandatory cuts and without a tax agreement in place. Other members have said that the budget must include instructions stipulating that future tax reform will not include the border adjustment tax. In addition, members of the Tuesday Group sent a letter to the Budget Committee objecting to the suggested \$200 billion in entitlement cuts.

The passage of matching FY 2018 budget resolutions by the House and Senate is a necessary step to use the expedited reconciliation procedures for tax reform. Enacting tax reform through budget reconciliation would limit debate and allow passage with a simple majority of votes in the Senate.

### Upcoming Hearings and Events

#### July 18

***Nominations:*** The Senate Finance Committee will consider the nomination of David Kautter to be Assistant Secretary of the Treasury for Tax Policy.

#### July 19

***Tax Reform:*** The Senate Finance Committee will hold a hearing on "Comprehensive Tax Reform: Prospects and Challenges."

***Tax Reform:*** The Ways and Means Tax Policy Subcommittee will hold a hearing on "How Tax Reform Will Simplify Our Broken Tax Code and Help Individuals and Families."

*For more information about tax issues you may [email](mailto:christopher.hatcher@williamsandjensen.com) or call Christopher Hatcher at 202-659-8201. Nick Karellas contributed to this section.*

## FINANCIAL SERVICES

### CFPB Issues Final Rule on Arbitration Clauses

#### Key Points:

- *The CFPB issued a final rule that would restrict providers of certain financial products from including mandatory arbitration clauses in contracts.*
- *House Financial Services Committee Chairman Jeb Hensarling (R-TX) and Senator Tom Cotton (R-AR) announced that they intend to utilize the Congressional Review Act to repeal the rule.*

On July 10, the Consumer Financial Protection Bureau (CFPB) issued a [final rule](#) which would restrict providers of certain financial products from including mandatory arbitration clauses in consumer contracts. Section 1028 of the Dodd-Frank Act (DFA) required the CFPB to study the use of arbitration clauses and gave the Bureau the authority to impose limitations on arbitration clauses if it is in the public interest. In its [press release](#) announcing the rule the CFPB stated:

Many consumer financial products like credit cards and bank accounts have arbitration clauses in their contracts that prevent consumers from joining together to sue their bank or financial company for wrongdoing. By forcing consumers to give up or go it alone – usually over small amounts – companies can sidestep the court system, avoid big refunds, and continue harmful practices. The CFPB's new rule will deter wrongdoing by restoring consumers' right to join together to pursue justice and relief through group lawsuits.

CFPB Director Richard Cordray gave [remarks](#) in support of the final rule, stating:

Our research showed that these little-known clauses are bad for consumers. They may not be aware that they have been deceived or discriminated against or even when their contractual rights have been violated. Moreover, very few people have the time or the money to fight on their own over a small amount of money, which is commonly the stakes in consumer financial matters, even though they can involve the same harm to millions of consumers. In most situations, hiring a lawyer to handle the consumer's own individual case is not practicable.

Senate Banking Committee Ranking Member Sherrod Brown (D-OH) issued a [press release](#) in support for the rule, which stated:

Ohio consumers deserve the ability to seek relief through the justice system when they've been wronged by a bank or payday lender. But too often, banks rob consumers of this ability through forced arbitration clauses snuck into their contracts... This unfair tactic rips off consumers and leaves them with no place to turn for relief. This rule will ensure that Ohioans can see their day in court if they are scammed.

House Financial Services Committee Chairman Jeb Hensarling (R-TX) issued a [press release](#) opposing the final rule, in which he stated:

This bureaucratic rule will harm American consumers but thrill class action trial attorneys. In releasing this rule today, Director Cordray ignored a prior request by the acting Comptroller

of the Currency that he work with the OCC to resolve its potential safety and soundness concerns. As a matter of principle, policy, and process, this anti-consumer rule should be thoroughly rejected by Congress under the Congressional Review Act... Congress must work with President Trump to make good on this mandate by fundamentally reforming the CFPB and dismantling the Administrative State.

Senator Tom Cotton (R-AR) also issued a [press release](#) in which announced that he intends to begin the process of utilizing the Congressional Review Act (CRA) to repeal the final rule. Cotton stated:

The CFPB has gone rogue again, abusing its power in a particularly harmful way. The Bureau's new rule on arbitration clauses ignores the consumer benefits of arbitration and treats Arkansans like helpless children, incapable of making business decisions in their own best interests. This morning I've started the process of rescinding this rule using the Congressional Review Act. The last thing Americans need is more anti-business regulation that will prompt frivolous lawsuits while hurting consumers.

Under the CRA, Congress has 60 days of session in which it can overturn Executive Branch regulations effecting third parties by a simple majority vote. The CRA is not subject to the filibuster in the Senate as floor debate is limited to 10 hours, and no amendments are in order.

### **House and Senate Hold Hearings with Federal Reserve Chair Janet Yellen**

#### *Key Points:*

- *Federal Reserve Chair Janet Yellen testified before the House Financial Services and Senate Banking committees to give the semi-annual monetary policy report.*
- *A wide range of regulatory issues were also raised, including SIFI designation thresholds, the Volcker Rule, capital requirements, stress testing, and the Orderly Liquidation Authority (OLA). Chair Yellen expressed support for modifying the Volcker Rule and raising the bank SIFI designation thresholds, but opposed to repealing the OLA and other DFA provisions.*

This week the House Financial Services Committee and the Senate Banking Committee held hearings to receive the Federal Reserve's Semi-Annual [Monetary Policy Report](#). Federal Reserve Chair Janet Yellen testified at both hearings.

On July 12, the House Financial Services Committee hearing focused on the Monetary Policy Report, payments of interest on excess reserves, how the Federal Reserve intends to return to normalized monetary policy, the recently released Treasury report "A Financial System That Created Economic Opportunities," and ways to reduce regulatory burdens. Chairman Jeb Hensarling (R-TX), in a [statement](#), stated he is pleased that the Federal Reserve seems to be on track towards some normalization. Hensarling noted alarm over the current size of the Federal Reserve's balance sheet and he expressed concern over the Federal Reserve's purchase of mortgage backed securities (MBS). He stated the Federal Reserve has been paying interest on reserves and he suggested interest on excess reserves should not become a permanent part of monetary policy.



Ranking Member Maxine Waters (D-CA), in a [statement](#), stated the “Financial CHOICE Act” would diminish the ability of the Federal Reserve to fulfill its mandate, subject financial banking regulators to the appropriations process, and change the makeup of the Board. She expressed concern over the nomination of Randall Quarles since he has expressed support for provisions which would undo Dodd-Frank Act (DFA) reforms.

At the July 13, Senate Banking Committee hearing, Chairman Mike Crapo (R-ID) said promoting economic growth remains a top priority for the Committee. He said he and Ranking Member Sherrod Brown (D-OH) requested economic proposals from the public, which are available on the Committee’s website. He noted that they are working together on legislation. He suggested that there is growing bipartisan support for economic growth legislation, and there is particular interest on legislation to tailor regulation, change the systemically important financial institution (SIFI) threshold for banks, exempt certain firms from stress testing, fix the Volcker Rule, and simplify small bank capital rules. He said regulations designed for the most systemic institutions should not be applied to non-systemic institutions. He stressed the need to address the \$50 billion SIFI threshold, noting that a number of regulators have expressed support for doing so. He said reforming the housing finance system is one of his top priorities in this Congress.

Brown noted that the Federal Reserve has laid out a plan to sell off assets acquired during the crisis and banks are making record profits. He suggested that the success in the banking system is not being reflected on Main Street. He said he is troubled by calls from Republicans to roll back regulations. He raised concerns with the Treasury report, the

“Financial CHOICE Act”, and the House appropriations bill that includes modifications to the Dodd-Frank Act, suggesting that they are meant to benefit Wall Street. Brown said the DFA improved the capitalization of banks, and he disputed claims that banks passing stress tests show that regulations can be softened. He suggested that banking watchdogs should not attempt to weaken safeguards in order to boost bank profits. Brown said he would support Yellen’s reappointment as Chair of the Federal Reserve.

Crapo said there is growing consensus that Congress should change the \$50 billion SIFI threshold, fix the Volcker Rule, exempt certain firms from stress testing, and reduce the burdens on community banks. He asked if Yellen supports these changes. Yellen responded in the affirmative. Ranking Member Sherrod Brown (D-OH) said he supports modest changes to the DFA, but he said the Treasury report called for weakened capital requirements and consumer protection. Yellen said she is not in favor of reducing capital for the most systemic banks. She said consumer protections are also important. She said she agrees with some of the provisions in the report on tailoring regulations. Brown asked if the recommendations in the Treasury report would make a financial crisis more likely. Yellen responded, “Some of them, yes.”

Representative Frank Lucas (R-OK), Representative Randy Hultgren (R-IL), and Senator Mike Rounds (R-SD) expressed concern with the treatment of centrally cleared customer margin under the Supplementary Leverage Ratio (SLR). Lucas said including this margin in the denominator artificially reduces the number of clearing members available to users. He said the recent Treasury report recommended removing this margin from the denominator, noting that Governor Jerome

Powell has also called for a review of this issue. Yellen said the SLR may be having unintended consequences. She said she is committed to addressing these consequences, but she could not provide a definite timetable for changes. Rounds asked if the Federal Reserve can handle this issue or if legislation is needed. Yellen said she does not believe legislation is necessary.

Representative Al Green (D-TX) said a May 2017 Washington Post article stated that the nation's banks are sitting on \$131 billion in excess capital. He said the article indicated that if capital requirements were lowered then dividends could be returned to shareholders. He stated that banks are making large profits and bank lending is high. He asked if capital requirements should be lowered to allow more dividends. Yellen said there should be strong capital requirements in order to ensure the safety and soundness of the banking system. She said she is comfortable with the level of risk-based capital requirements that are in place at this point. She asserted that the most systemic firms should have the largest capital buffers. She said once those buffers are in place the Federal Reserve does not object to dividends or stock repurchases.

Senator Chris Van Hollen (D-MD) said the "Financial CHOICE Act" would impose a leverage ratio which would allow banks to avoid DFA safeguards. He suggested that a leverage ratio would allow banks to take on riskier assets. He questioned whether both risk-based capital and a leverage ratio should be maintained. Yellen said a simple leverage ratio imposes the same capital charge on a junk bond as a Treasury bill. She said this can result in banks taking on a great deal of risk. She said risk-based capital is the most important form of capital regulation, suggesting that a leverage ratio should serve as a backup.

Crapo and Senator John Kennedy (R-LA) asked about Yellen's views on modifying the Volcker Rule. Yellen said it is a complex rule, but there should be a multi-agency effort to simplify implementation. Kennedy asked if the Volcker Rule should be eliminated. Yellen responded in the negative, but said she would look for ways to simplify it.

Senator Tim Scott (R-SC) stressed the importance of having insurance expertise on the Financial Stability Oversight Council (FSOC), noting that Roy Woodall's term as the independent insurance expert is set to expire. He asked if Yellen would support legislation to maintain the insurance expertise on the FSOC. Yellen agreed that there is a need to maintain insurance expertise on the FSOC, but said she did not have a specific policy recommendation.

Van Hollen stressed the importance of the safeguards implemented in the DFA. He asked if the Orderly Liquidation Authority (OLA) should be maintained. Yellen said it is essential to maintain the OLA. She said bankruptcy should be the preferred route for resolution, but the OLA is an important safeguard.

Senator Mike Rounds (R-SD) said the Committee has considered adjusting the thresholds in the DFA. He noted that former House Financial Services Committee Chairman Barney Frank (D-MA) has said the \$50 billion asset threshold for banks was a mistake, suggesting that it should have been set at \$125 billion and indexed to inflation. He asked if the thresholds should be raised or changed to focus on business models. Yellen said she would favor an increase if Congress decides to stay with a dollar threshold. She said an approach based on business models would also be workable.

## House Financial Services Panel Holds Hearing on Regulatory Relief for Community Financial Institutions

### Key Points:

- *The Subcommittee discussed nine legislative proposals to provide regulatory relief to community financial institutions.*

On July 12, the House Financial Services Committee’s Financial Institutions and Consumer Credit Subcommittee held a [hearing](#) entitled “Examining Legislative Proposals to Provide Targeted Regulatory Relief to Community Financial Institutions.” The hearing discussed the following bills:

- [H.R. 864](#), the “Stop Debt Collection Abuse Act of 2017” introduced by Representative Mia Love (R-UT), would amend the Fair Debt Collection Practices Act (FDCPA) related to debt collectors;
- [H.R. 924](#), the “Financial Institutions Due Process Act of 2017” introduced by Representative Keith Rothfus (R-PA), would amend the Federal Financial Institutions Examination Council Act of 1978 to establish a three-judge independent examination review panel to mediate examination findings, compel timely completion of final examination reports, and compel timely completion of written determinations for permission, regulatory interpretation, or reporting guidance;
- [H.R. 1457](#), the “Making Online Banking Initiation Legal and Easy Act of 2017” (MOBILE Act) introduced by Representative Scott Tipton (R-CO), would authorize a financial institution, with an individual’s consent, to record personal information from a swipe, copy, or image of such individual’s

driver’s license or personal identification card and store the information electronically for the purpose of verifying the identity of a customer and preventing fraud or criminal activity;

- [H.R. 2133](#), the “Community Lending Enhancement and Regulatory Relief Act of 2017” (CLEAR Act) introduced by Representative Blaine Luetkemeyer (R-MO), includes fifteen sections which makes a number of revisions to mortgage lending requirements and CFPB authorities;
- [H.R. 2148](#), the “Clarifying Commercial Real Estate Loans” introduced by Representative Robert Pittenger (R-NC), would amend the Federal Deposit Insurance Act to clarify capital requirements for certain acquisition, development, or construction loans;
- [H.R. 2396](#), the “Privacy Notification Technical Correction Act” introduced by Representative Dave Trott (R-MI), would amend the Gramm-Leach-Bliley Act to exempt from its annual privacy policy notice requirement any financial institution which meets certain conditions;
- [H.R. \\_\\_\\_\\_\\_](#), the “Access to Affordable Mortgages Act of 2017” to be introduced by Representative David Kustoff (R-TN), would amend the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and the Truth in Lending Act to exempt from property appraisal requirements certain higher-risk mortgage loans of \$250,000 or less if such a loan appears on the balance sheet of the creditor of the loan for at least three years;
- [H.R. \\_\\_\\_\\_\\_](#), the “Ensuring Quality Unbiased Access to Loans Act of



2017” (EQUAL Act) to be introduced by Representative Trey Hollingsworth (R-IN), would repeal the Office of the Comptroller of the Currency (OCC) “Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products” (78 Fed. Reg. 70624; November 26, 2013), and the Federal Deposit Insurance Corporation (FDIC) “Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products” (78 Fed. Reg. 70552; November 26, 2013). The bill would also require the OCC and FDIC to follow a transparent process when issuing any subsequent deposit guidance; and

- [H.R. \\_\\_\\_\\_\\_](#), to be introduced by Representative Claudia Tenney (R-NY), would amend the Federal Deposit Insurance Act to simplify the process for national banks and federal savings associations to obtain deposit insurance.

Chairman Blaine Luetkemeyer (R-MO) stated the Subcommittee has spent time exploring burdens facing community institutions, which has led to the creation of the bills being considered. He noted Representative Claudia Tenney (R-NY) introduced a bill to streamline the de novo process, Representative Keith Rothfus (R-PA) introduced a bill to amend the appeals process, and others have introduced bills to balance access to credit. Luetkemeyer stated the Community Lending Enhancement and Regulatory Relief Act ([H.R. 2133](#)), or the CLEAR Act, aims to make mortgages more affordable and ease requirements on small institutions. Luetkemeyer stated the greatest impact of the Dodd-Frank Act (DFA) rules has been on consumers. He explained the supervisory and regulatory structure leaves little room for innovation. He stated it is past time

to demand a reasonable regulatory structure and these bills seek to make modest changes to the regulatory structure.

Ranking Member William Lacy Clay (D-MO) stated he is willing to consider and support tailored regulatory relief for small financial institutions. However, he stressed the need to ensure that the relief is provided for smaller banks and not the larger banks and will not expose consumers to abusive or predatory practices. Clay stated Congress must understand the true state of the financial system and reject the false claims that the DFA harms consumers. He called on his colleagues to work together to ensure Congress does not slash funding for the Community Development Financial Institution (CDFI) Fund which provides needed funding for community financial institutions.

Representative Dave Trott (R-MI) asked if the CFPB’s unfair, deceptive, or abusive acts or practices (UDAAP) authority is necessary to hold financial institutions accountable. He suggested that it creates uncertainty and confusion. George Mason University School of Law Associate Professor J.W. Verret said the existing law provides more than enough authority for the CFPB to go after bad actors. He suggested that the CFPB’s use of its authority to go after abusive practices has stretched the rule of law. He stressed the need for balance in cost-benefit analysis, including on data collection.

Representative Nydia Velazquez (D-NY), Clay, and Representative Al Green (D-TX) raised concern with Section 7 of H.R. 2133, which amends the Equal Credit Opportunity Act to require intent to discriminate. Center for Responsible Lending Director of Federal Advocacy Scott B. Astrada expressed opposition to rolling back data collection,

particularly related to discriminatory behavior and disparate impact.

Representative Trey Hollingsworth (R-IN) stressed the need to ensure consumers have access to a wide range of products. He said consumers “loved” deposit advance products, but in 2013 the OCC and the FDIC issued guidance that requires these products to be underwritten like loans. He described this policy change as a “travesty” which made these products too expensive for banks to offer. He expressed support for the EQUAL Act, which would rescind this guidance. Verret said the Federal Reserve has indicated that half of all families in the U.S. could not cover a \$400 emergency without selling something or taking out a loan. He stressed the need for products like deposit advance products. He suggested that the EQUAL Act would be helpful. He said the CFPB’s portfolio default regulations are particularly egregious. He suggested that the EQUAL Act takes a very reasonable approach.

The Committee may hold a markup of these bills later this month.

### **House Financial Services Panel Holds Hearing on the Impacts of the Department of Labor’s Fiduciary Duty Rule**

#### *Key Points:*

- *The House Financial Services Capital Markets Subcommittee hearing focused on the market impacts of the Department of Labor’s fiduciary duty rule and Representative Ann Wagner’s (R-MO) draft bill which would amend the Securities Exchange Act of 1934 to establish a “best interest” standard of conduct for brokers and dealers.*

On July 12, the House Financial Services Committee’s Capital Markets, Securities and Investment Subcommittee held a [hearing](#)

entitled “Impact of the DOL Fiduciary Rule on the Capital Markets.” The hearing focused on the following draft bill:

- [H.R. \\_\\_\\_\\_\\_](#), introduced by Representative Anne Wagner (R-MO) which would amend the Securities Exchange Act of 1934 to establish standards of conduct for brokers and dealers that are in the best interest of their retail customers.

Chairman Bill Huizenga (R-MI) stated millions of Americans use an investment adviser or broker-dealer to help with their investment choices and he suggested the Department of Labor (DOL) fiduciary rule is driving up costs. He noted the American Action Forum has reported that the DOL fiduciary rule is the most costly legislation in 2016. Ranking Member Carolyn Maloney (D-NY) stated she supports the fiduciary rule because it provides critical protections for Americans. She noted Secretary Acosta has stated the fiduciary rule is important and should not be thrown out. She noted President Trump required a review of the start date of the rule and the Department found that it could not justify delaying the rule and the core components would go into effect June 9. Wagner explained that her discussion draft would apply a workable best interest standard when providing investment advice without restricting access. She noted the bill would also move this issue under the expertise of the SEC.

Huizenga and Representative Trey Hollingsworth (R-IN) asked whether the DOL fiduciary duty rule should be delayed. 1st Global President David Knoch, Transamerica Senior Director and Head of Industry and Regulatory Strategy Mark Halloran, Janney Montgomery Scott LLC President Jerome Lombard, and American Action Forum President Douglas Holtz-Eakin all stated that

the rule should be delayed. Holtz-Eakin added that the best solution would be for there to be a single standard created by the SEC and the DOL. AARP Financial Security and Consumer Affairs Director Cristina Martin Firvida stated that the rule should not be delayed as “conflicted advice” is costing American investors millions.

Several Members asked whether the DOL fiduciary duty rule will result in lower and middle income investors being left with only robo-advice. Holtz-Eakin stated his primary concern is that investors will no longer have the choice of how to get their advice. He reiterated that those at risk will be the smaller investors who cannot afford to be in fee for services accounts. Firvida suggested innovation is occurring and already traditional advisers are adopting robo-services. Many questions were asked about the impacts of the DOL rule on investor’s choice, fees, the products available, and what the DOL rule means for retirees. Knoch stated that already the DOL rule has impacts the ability of firms to offer simple IRA accounts. He noted at his firm the number of accounts has dropped by 20 percent and he expects that to continue. He stated firms are concerned over the prospect of additional litigation and some have indicated they will exit the business altogether. Holtz-Eakin explained that the American Action Forum has done research which found that the DOL rule was the most costly legislation of 2016 because of the increased likelihood of litigation and the move to fee-based accounts. Lombard stated there have been disruptions already in the markets especially in the fixed income products. He noted some firms have stopped offering mutual funds and client costs are rising. Halloran noted that some investors are being told they can no longer utilize their current advisor. He noted with his account he would have to move from paying 25 basis

points to paying 75 basis points to keep the same adviser. When asked about the impact of the rule on annuities, Halloran explained that those investors with smaller balances tend to rely on annuities. He stated the DOL rule greatly impacts that business model and therefore is impacting those smaller investors.

### Upcoming Hearings and Events

#### July 18

***Sarbanes-Oxley:*** The House Financial Services Committee’s Subcommittee on Capital Markets, Securities, and Investments will hold a hearing entitled “The Cost of Being a Public Company in Light of Sarbanes-Oxley and the Federalization of Corporate Governance.” Witnesses include:

Thomas Farley, President, NYSE Group; John Blake, Senior Vice President of Finance, aTyr Pharma, Inc.; Thomas Quaadman, Executive Vice President, Center for Capital Market Competitiveness, U.S. Chamber of Commerce; Professor J. Robert Brown, Jr., Professor of Corporate Governance, Director, Corporate and Commercial Law Program, University of Denver Sturm College of Law; John Berlau, Senior Fellow, Competitive Enterprise Institute.

***Terrorism Financing:*** The House Financial Services Committee’s Subcommittee on Terrorism and Illicit Finance will hold a hearing entitled “Managing Terrorism Financing Risk in Remittances and Money Transfers.”

***Nomination Hearing:*** The Senate Banking Committee will hold a hearing to consider the following nominations: Mr. J. Paul Compton Jr., to be General Counsel, U.S. Department of Housing and Urban Development; Ms. Anna M. Farias, to be Assistant Secretary for Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban

Development; Mr. Neal J. Rackleff, to be Assistant Secretary for Community Planning and Development, U.S. Department of Housing and Urban Development; Mr. Richard Ashooh, to be Assistant Secretary for Export Administration, U.S. Department of Commerce; Ms. Elizabeth Erin Walsh, to be Assistant Secretary for Global Markets and Director General of the United States and Foreign Commercial Service, U.S. Department of Commerce; and Mr. Christopher Campbell, to be Assistant Secretary for Financial Institutions, U.S. Department of the Treasury.

### July 19

#### ***Independent Regulatory Agency Oversight:***

The House Financial Services Committee's Subcommittee on Oversight and Investigations will hold a hearing entitled "Congressional Oversight of Independent Regulatory Agencies."

***North Korea:*** The House Financial Services Committee's Subcommittee on Monetary Policy and Trade will hold a hearing entitled "Restricting North Korea's Access to Finance."

### July 20

***Housing Finance:*** The Senate Banking Committee will hold a hearing entitled "Housing Finance Reform: Maintaining Access for Small Lenders."

***Monetary Policy:*** The House Financial Services Committee's Subcommittee on Monetary Policy and Trade will hold a hearing entitled "Monetary Policy v. Fiscal Policy: Risks to Price Stability and the Economy."

*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**

### **Upcoming Hearings and Events**

#### **July 18**

***North American Energy:*** The Senate Energy and Natural Resources Committee will hold a [hearing](#) "to examine the status and outlook for U.S. and North American energy and resource security." Scheduled witnesses are: Fatih Birol, Executive Director, International Energy Agency; Brigadier General Stephen Cheney, Chief Executive Officer, American Security Project; Robert Coward, President, American Nuclear Society; Dan McGroarty, Principal, Carmot Strategic Group; Mark Mills, Senior Fellow, Manhattan Institute; and Jamie Webster, Senior Director, Center for Energy Impact, Boston Consulting Group.

***Electric Industry:*** The House Energy and Commerce Committee's Energy Subcommittee will hold a [hearing](#) titled "Powering America: Examining the State of the Electric Industry through Market Participant Perspectives".

***Natural Resources Laws:*** The House Natural Resources Committee's Oversight and Investigations Subcommittee will hold a [hearing](#) titled "Examining Impacts of Federal Natural Resources Laws Gone Astray, Part II".

#### ***Alaska Energy Oil and Gas Development:***

The House Natural Resources Committee's Energy and Mineral Resources Subcommittee will hold a [hearing](#) on "Promoting Oil and Gas Development in Alaska"

#### **July 19**

***Public Lands Legislation:*** The Senate Energy and Natural Resources Committee's National Parks Subcommittee will hold a [hearing](#) on pending legislation, including bills addressing public lands issues.

**Endangered Species Legislation:** The House Natural Resources Committee will hold a hearing on the following Endangered Species Act bills: the “Gray Wolf State Management Act of 2017” ([H.R. 424](#)); the “Listing Reform Act” ([H.R. 717](#)); the “State, Tribal, and Local Species Transparency and Recovery Act” ([H.R. 1274](#)); the “Saving America’s Endangered Species Act” ([H.R. 2603](#)); and the “Endangered Species Litigation Reasonableness Act” ([H.R. 3131](#)).

**Fisheries Issues:** The House Natural Resources Committee’s Water, Power and Oceans Subcommittee will hold a [hearing](#) titled “Exploring the Successes and Challenges of the Magnuson-Stevens Act”

## July 20

**Energy and Interior Nominees:** The Senate Energy and Natural Resources Committee will hold a [hearing](#) on the following nominees: Brenda Burman to be Commissioner of Reclamation of the Department of the Interior; Susan Combs to be an Assistant Secretary of the Interior (Policy, Management and Budget); Paul Dabbar to be Under Secretary for Science of the Department of Energy; Douglas Domenech to an Assistant Secretary of the Interior (Insular Affairs); David Jonas to be General Counsel of the Department of Energy; and Mark Menezes to be Under Secretary of the Department of Energy.

**Water Infrastructure:** The Senate Environment and Public Works Committee’s Subcommittee on Fisheries, Water, and Wildlife will hold a [hearing](#) titled, “Innovative Financing and Funding: Addressing America’s Crumbling Water Infrastructure.”

**Mining:** The House Natural Resources Committee’s Energy and Mineral Resources Subcommittee will hold a [hearing](#) titled

“Seeking Innovative Solutions for the Future of Hardrock Mining”.

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

## DEFENSE

### House Takes Up NDAA and Senate NDAA Released

#### *Key Points:*

- *House passes its NDAA, and the Senate’s NDAA is released, suggesting the bill may come to the Senate floor soon*

This week, the House took up and passed the “National Defense Authorization Act for Fiscal Year 2018” (NDAA) ([H.R. 2810](#)) by a [344-81 vote](#). The Committee released a [Committee Report](#) and a [supplemental Committee Report](#) to accompany the NDAA. The House Rules Committee made in order 278 amendments (found [here](#) and [here](#)) for floor consideration from the [440 amendments submitted](#). Many of these amendments were folded into large packages adopted by voice vote while some of the more contentious provisions were voted upon.

The Committee’s [summary](#) of the NDAA explained that the bill “authorizes funds for base budget requirements of \$631.5 billion, including a \$28.5 billion increase for essential readiness recovery above the President’s budget request...[and] addresses important readiness shortfalls neglected by the President’s request, including: \$7.9 billion for Aviation Readiness, \$5.9 billion for increased Naval presence, \$5.7 billion for Ground Forces, \$2.3 billion for facilities maintenance, and \$2.5 billion for Missile Defense.” The package would fund



uncapped Overseas Contingency Operations (OCO) accounts at \$74.6 billion, which is \$10 billion more than the Administration's request.

This week, the Senate Armed Services Committee released the [text](#) of and [Committee Report](#) to accompany the "National Defense Authorization Act for Fiscal Year 2018" (S. 1519). In the Committee Report, the Committee explained that:

The Administration's budget request for national defense discretionary programs within the jurisdiction of the Senate Committee on Armed Services for FY 2018 was \$659.8 billion. Of this amount, \$574.7 billion was requested for base Department of Defense (DOD) programs, \$20.5 billion was requested for national security programs in the Department of Energy (DOE) and the Defense Nuclear Facilities Safety Board (DNFSB), and \$64.6 billion was requested for Overseas Contingency Operations (OCO). The committee recommends an overall discretionary authorization of \$692.1 billion in FY 2018, including \$610.9 billion for base DOD programs, \$21.0 billion for national security programs in the DOE and the DNFSB, and \$60.2 billion for OCO.

In a [summary](#), the Committee claimed that its bill does the following:

- Authorizes critical funding for the Department of Defense (DOD) to rebuild a ready and capable force by increasing maritime capacity, procuring combat aircraft and munitions, and reducing the shortfall in end strength.
- Ensures the long-term viability of the All-Volunteer Force by improving the quality of life of the men and women of the total force (Active Duty, National

Guard, and Reserves), their families, and DOD civilian personnel through fair pay and policies as well as continued reform of the military health system.

- Continues a comprehensive overhaul of the acquisition system to ensure that our men and women in uniform have the equipment they need to succeed and drives innovation by allocating funds for advanced technology development and next-generation capabilities to ensure America's military dominance.
- Advances our ability to protect our allies, partners, and friends.
- Enhances the capability of the U.S. Armed Forces and the security forces of allied and partner nations to defeat ISIS, al Qaeda, and other violent extremist organizations.
- Improves the ability of the U.S. Armed Forces to counter threats in the information domain, including space, cyber, and electronic warfare.
- Reduces the threats from nuclear weapons and materials by strengthening nonproliferation programs, modernizing our nuclear deterrent, and ensuring the safety, security, and reliability of our nuclear stockpile, delivery systems, and infrastructure.
- Terminates troubled or redundant programs and activities, identifies efficiencies, and reduces unnecessary defense expenditures to make the best use of taxpayer dollars.
- Promotes aggressive and thorough oversight of the Department's programs and activities to ensure compliance with relevant laws and regulations and proper stewardship of taxpayer dollars.

## Upcoming Hearings and Events

### July 18

**Selva Nomination:** The Senate Armed Services Committee will hold a [hearing](#) to consider the renomination of Vice Chairman of the Joint Chiefs of Staff General Paul Selva.

**Nominations Hearing:** The Senate Armed Services Committee will hold a [hearing](#) to consider the following nominations: Honorable John H. Gibson II to be Deputy Chief Management Officer Of The Department Of Defense; Ms. Ellen M. Lord to be Under Secretary Of Defense For Acquisition, Technology, And Logistics; Mr. Lucian L. Niemeyer to be Assistant Secretary Of Defense For Energy, Installations And Environment; Mr. Matthew P. Donovan to be Under Secretary Of The Air Force

**355 Ship Navy:** The Senate Armed Services Committee’s Seapower Subcommittee will hold a [hearing](#) titled “Options and Considerations for Achieving a 355-ship Navy from Former Reagan Administration Officials.”

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

## HEALTH

### Senate Republicans Released Updated Health Care Draft

#### Key Points:

- *Senate Republicans released an updated draft of their health care bill which included more money for state stability funds, additional opioid funding, and an options for insurers to sell more limited plans.*
- *The Congressional Budget Office is expected to release its updated score next week*

On July 13, Senate Republicans published an updated draft of the “Better Care Reconciliation Act,” a substitute amendment to the House-passed American Health Care Act which repeals and replaces the Affordable Care Act (ACA). The Congressional Budget Office (CBO) is expected to release its updated score next week in advance of the Senate’s anticipated vote.

Senate Republicans can only afford to lose two votes in order to pass the legislation. Already Senators Rand Paul (R-KY) and Susan Collins (R-ME) have said they will vote against the bill. Conservative Senator Ted Cruz (R-TX) stated he is in favor of this draft though cautioned “if it’s amended and we lose the protections that lower premiums my view could well change.” Other Senators who opposed the previous draft have yet to take a public stance on the bill.

The updated draft makes the following changes:

- The draft adds an additional \$70 billion to states for the stability funds which can be used to help reduce premiums. This is in addition to the \$112 billion provided in the original bill.
- The new draft bill does not contain any changes from current law to the net investment income tax, the additional Medicare Health Insurance Tax, or the remuneration tax on executive compensation for certain health insurance executives.
- The draft includes an additional \$45 billion dedicated to substance abuse treatment and recovery to address the opioid epidemic.
- The draft would make individuals enrolled in catastrophic plans eligible for the tax credit so long as other eligibility requirements are met.

Individuals would also be able to use health savings accounts to pay for premiums in excess of any tax benefit they already receive.

- The draft would allow anyone in the individual market to purchase a lower premium plan, including with federal tax credit assistance. These higher deductible plans would cover three primary care visits per year as well as federal protections in place that limit an individual's out-of-pocket costs.
- The draft makes some revisions to the Medicaid provisions in the bill.
  - The Disproportionate Share Hospital (DSH) calculation would change from per Medicaid enrollee to per uninsured.
  - States may apply for a waiver for the purpose of continuing and/or improving home and community-based services for aged, blind, and disabled populations.
  - Should a public health emergency be declared, state medical assistance expenditures in a particular part of a state will not be counted toward per capita caps or block grant allocations for that period of declare emergency.
  - States will have an expanded block grant option to allow states to also add the expansion population under the block grant if they opt to do so.
- The draft would create a fund for making payment to specified health insurance issuers for the associated costs of covering high risk individuals enrolled in qualified health plans through the exchange. In order to

qualify for this funding, the issuer must offer sufficient minimum coverage on the exchange that remains subject to the ACA's Title I mandates. This would enable the issuer to also offer coverage off the exchange that would be exempt from the mandates. This provision is a version of the amendment proposed by Cruz and Senator Mike Lee (R-UT).

Full text of the draft bill is available [here](#). Section-by-section summaries are available [here](#) (Titles I and II) and [here](#) (Title III).

### Upcoming Hearings and Events

#### July 17

**Prescription Drugs:** The Center for American Progress will hold a discussion on “The Health Care Fight: Ensuring Access to Prescription Drugs.”

#### July 18

**Mental Health:** The Hill will hold a discussion on “The State of Mental Health Care: Challenges and Solutions.”

**Chronic Care:** The Alliance for Health Policy will hold a summit on “Coordinated Care and Beyond: The Future of Chronic Care.”

**Prescription Drugs:** The Food and Drug Administration will hold a meeting on “The Hatch-Waxman Amendments: Ensuring a Balance Between Innovation and Access.”

**340B:** The House Energy and Commerce Committee will hold a hearing on “Examining HRSA's Oversight of the 340B Drug Pricing Program.”

**Prescription Drugs:** The National Pharmaceutical Council will hold a webinar on

“Same Condition, Different Costs: Should Patients Pay Different Amounts.”

### **June 19**

**Medicare:** The House Ways and Means Committee will hold a hearing on “Efforts to Combat Waste, Fraud, and Abuse in the Medicare Program.”

**Manufacturing:** The Senate Competitiveness Caucus will hold a briefing on “Faster and Safer Drug Production through Continuous Manufacturing.”

### **June 20**

**Prescription Drugs:** The Hill will hold a discussion on “The Prescription Drug Delivery System: Tackling Costs, Ensuring Access.”

**Medicare:** The House Energy and Commerce Committee will hold a hearing on “Examining Bipartisan Legislation to Improve the Medicare Program.”

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

## **TRANSPORTATION AND INFRASTRUCTURE**

### **House Appropriations Releases FY 2018 T-HUD Bill; Subcommittee marks Up Bill**

#### *Key Points:*

- *The House Appropriations Committee’s FY 2018 bill would reduce FTA’s CIG funding; the full Committee marks up the bill next week*

On July 11, the House Appropriations Committee’s Transportation, Housing and Urban Development and Related Agencies Subcommittee held a [markup](#) of the “[FY 2018](#)

[Transportation, Housing and Urban Development Appropriations Bill.](#)” The Subcommittee favorably reported the bill by voice vote, and the full Committee will markup the bill next week.

Chairman Mario Diaz-Balart (R-FL) said the Subcommittee’s bill provides \$56.5 billion in discretionary budget authority, which is \$1.1 billion below the FY 2017 enacted level but \$8.6 billion above the budget request. He stated the bill specifically targets safety, infrastructure, and housing systems for the most at risk populations: the elderly, disabled, and veterans. He said \$17.8 billion in discretionary appropriations and \$76.7 billion in total resources will be allocated to the Department of Transportation (DOT). Diaz-Balart stated the Federal Aviation Administration (FAA) will be funded at \$16.6 billion which is \$445 million above the budget request. He said the increase is provided in order to continue the NextGEN programs and to continue the safety of the country’s air traffic controls system. He stated through the Federal-Aid Highways Program, \$45 billion will be spent to rehab road and bridges as well as to fund the Highway Trust Fund, which would provide growth and improvements in the United States’ highway system. He also stated the Federal Railroad Administration (FRA) will receive \$2.2 billion. He noted that specifically for Amtrak, the bill prioritizes funding for the Northeast Corridor, which Diaz-Balart said is the most critical and congested rail line, addresses the Northeast region’s rail backlog, and invests in the Federal Transit Administration’s (FTA) State of Good Repair grants. He said the Subcommittee did not agree with the Trump Administration’s proposal to cut funding for the Capital Investment Grant Program. Diaz-Balart highlighted the bill provided funding for automated vehicle research and development which he said he believes will help save

thousands of lives. He said the bill will allocate \$300 million for the maritime security program for war and emergencies. He said \$38.3 billion is going to support the Department of Housing and Urban Development (HUD) which is an increase from last year in order to keep pace with inflation. He stated while the Administration proposed different rental reforms the Subcommittee did not include them in the bill because the reforms would require authorization from HUD. He also mentioned the bill restores community development programs including Community Development Block Grant (CDBG), HOME, and Capacity Building grants.

Ranking Member David Price (D-NC) said the bill allocation was a funding decrease and that the bill does not invest enough in housing and transportation infrastructure. He said he did like some sections of the bill such as increases to Section 202 and Section 811 housing programs. He praised the increase to the State of Good Repair program, as well as the increases to FAA funding such as to the NextGEN programs, though he stated he hopes that this is more than a one-time infusion of funding. However, he said the House Transportation and Infrastructure Committee's FAA reauthorization threatens core FAA programs. He expressed concern about the cuts to the DOT and HUD programs including Transportation Investment Generating Economy Recovery (TIGER), CDBG, Section 4, and HOME. He explained funding these is a rebuke of the Trump Administration, but said he believes the Trump Administration budget should not be referenced or used in any way. He noted there is a huge housing capital backlog and infrastructure problems across the United States. Price said the House Appropriations Committee's actions do not significantly reduce the deficit, and would cause extreme damage

across the country. He expressed strong opposition to policy riders that attack high speed rail, roll back transportation safety for the public, and harm labor rights. Price concluded the bill would not garner bipartisan support in its current form.

In its [press release](#), the Subcommittee touted the below highlights:

- **Department of Transportation (DOT)** – The bill includes \$17.8 billion in discretionary appropriations for the Department of Transportation for fiscal year 2018. This is \$646 million below the fiscal year 2017 enacted level and \$1.5 billion above the President's request. In total budgetary resources, including offsetting collections, the bill provides \$76.7 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.
  - **Air** – Included in the legislation is \$16.6 billion in total budgetary resources for the Federal Aviation Administration (FAA) – \$153 million above the fiscal year 2017 enacted level and \$435 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 over \$1 billion for the FAA's



Next Generation Air Transportation Systems (NextGen), and funds Contract Towers at \$162 million. These investments will help ease future congestion and help reduce delays for travelers in U.S. airspace. In addition, the bill does not include new passenger facility and general aviation fees.

- **Highways** – The bill allows \$45 billion from the Highway Trust Fund to be spent on the Federal-aid Highways Program, which is \$968 million above the fiscal year 2017 level. This funding mirrors the authorized levels and will provide much needed growth and improvements within America’s highway system.
- **Rail** – The Federal Railroad Administration (FRA) is funded at \$2.2 billion, \$360 million over the fiscal year 2017 enacted level and \$1.1 billion above the request. The bill provides a total of \$1.4 billion for Amtrak, of which \$328 million is for the Northeast Corridor grants, and \$1.1 billion is to support the national network. The bill also continues to require overtime limits for Amtrak employees to reduce unnecessary costs. Rail safety and research programs are funded at \$258.3 million, equal to the fiscal year 2017 enacted level. This will fund inspectors and training, plus maintenance and safety investments to the physical rail infrastructure, to

help ensure the safety of passengers and local communities. The bill also provides funding for two authorized grant programs. It funds the Federal-State Partnership for State of Good Repair grants at \$500 million, which will address some of the \$38 billion backlog on the Northeast Corridor – needs that must be addressed simply to sustain current rail services. In addition, the Consolidated Rail Infrastructure and Safety Improvements Grants are funded at \$25 million, a reduction of \$43 million from the fiscal year 2017 enacted level. Eligible activities include capital and safety improvements, planning, environmental work, and research. The bill prohibits funding for high speed rail in California, the California High Speed Rail Authority, and for FRA to administer a grant agreement with the Authority that contains a tapered match. The bill prohibits the Surface Transportation Board from taking action regarding the construction of high-speed rail in California unless the Board has jurisdiction over the entire project.

- **Transit** – The bill provides \$11.75 billion in total budgetary resources for the Federal Transit Administration (FTA) – \$662 million below the fiscal year 2017 enacted level and \$526 million above 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, \$1.75 billion is included for Capital Investment Grants, and \$1 billion for “Full Funding Grant Agreement” (FFGA) transit projects. Core capacity projects receive \$145 million in the bill, \$182 million is included to fund all state and local “Small Starts” projects, and \$400 million is included for new projects that provide both public transportation and inner-city passenger rail service. 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. Bill language limits the federal match for New Starts projects to 50 percent.

- **Maritime** – The legislation includes \$490.6 million for the Maritime Administration, \$31.9 million below the fiscal year 2017 enacted level. This funding level will continue to increase the productivity, efficiency, and safety of the nation’s ports and intermodal water and land transportation. The Maritime Security Program is funded at the full authorized level of \$300 million.

- **Safety** – The legislation contains funding for the various transportation safety programs and agencies within the Department of Transportation. This includes \$927 million in total budgetary resources for the National Highway Traffic Safety Administration (NHTSA) – an increase of \$15 million over the fiscal year 2017 enacted level – and \$758 million is included for the Federal Motor Carrier Safety Administration, \$113.6 million above the fiscal year 2017 enacted level. Also included is \$268 million for the Pipeline and Hazardous Materials Safety Administration, an increase of \$3.7 million over the fiscal year 2017 enacted level.
- **Grants** – The legislation eliminates National Infrastructure Investment grants (also known as TIGER grants), which were funded at \$500 million in fiscal year 2017.

### Chao Testifies On FY 2018 Budget Request

#### *Key Points:*

- *The Secretary of Transportation takes questions on the Administration’s proposed funding cuts, support for privatizing ATC operations, and infrastructure proposal*

On July 13, the Senate Appropriations Committee’s Transportation, Housing and Urban Development, and Related Agencies Subcommittee held a [hearing](#) “to review the President’s Fiscal Year 2018 funding request and budget justification for the U.S. Department of Transportation.” Topics

discussed included, but were not limited to: (1) Trump Administration Infrastructure Proposal; (2) Amtrak; (3) Essential Air Service; (4) Gas Tax; (5) Public-Private Partnerships; (6) Autonomous Vehicles; (7) Capital Investment Grants Program; (8) Sexual Harassment on Airplanes; (9) TIGER Grants Program; (10) Merchant Marine Academy Vessels; (11) Air Traffic Control; (12) Aviation Legislation; (13) Merchant Marine Academy Abuse Case; and (14) Congressional Requests.

Chairwoman Susan Collins (R-ME) said this year is going to be particularly challenging due to the budget caps under current law, which are lower than the budget caps for FY 2017. She noted the

President's budget request proposes to set them even lower. She said the Administration's \$76 billion request for the Department of Transportation (DOT or the Department) includes more than \$3 billion in cuts to its programs. She stated that while she is encouraged that the Administration provides increases for highway, transit and safety programs, funded by the Highway Trust Fund, she is disappointed in several of the reductions in the President's request including reductions to the Transportation Investment Generating Economic Recovery (TIGER) grant program. She contended this program has the flexibility to fund a wide range of transportation projects that promote economic development and job growth on a regional basis. She added the TIGER grant program offers an otherwise unavailable resource for vital infrastructure needs at the local level. She expressed disappointment for the Administration's proposed cuts to the Essential Air Service (EAS) program. She explained this program "keeps much of rural America connected to the transportation network." She observed that under the Administration's proposal, many small and rural communities would be

eliminated and no longer receive air service as a result. She stated she is concerned about the Administration's plan to cut Amtrak's long-distance service. She contended the Administration's decision to prevent transit "New Starts" from moving forward could hurt cities and communities that have already committed local funding in the hope of securing federal funding for projects. She noted the Secretary recently signed one Full-Funding Grant Agreement under the New Starts program. She said she hopes the Secretary will continue to move forward with other projects for which Congress has already provided funding.

Ranking Member Jack Reed (D-RI) stated it is important to get back on track after the Administration's decision to delay closing out the FY 2017 process. He said to pass all twelve appropriations bills, Congress will need a new budget agreement that gets beyond the \$56.5 billion in non-defense discretionary cuts the Administration has proposed for 2018 and the \$1.56 trillion in cuts it wants over the next ten years. He described the President's proposal to privatize the ATC system as "short-sighted" and as a "bad decision." He said the Subcommittee has worked on a bipartisan basis to bolster Federal Aviation Administration (FAA) by providing more than 100 percent of its budget request over the last four years, and 99 percent over the last decade. He said "our consistent investment in Operations and NextGen are showing significant benefits to the airlines and the traveling public." He expressed concern that rather than maintain this trend of supporting the FAA, the Administration is proposing over \$250 million in cuts. He argued the objective of the President's budget is clear – "cut spending to undermine performance, blame government for the resulting inefficiencies, and then hand out public assets to the private sector at bargain

basement prices or at no cost at all.” He contended ATC privatization would place the airlines in charge and leave rural America and smaller urban centers behind while also compromising access, public oversight, and safety.

Secretary of Transportation Elaine Chao stated the President’s FY 2018 budget represents a “bold change of course for our nation and challenges all of us to rethink the way we are setting our priorities.” She explained the budget proposal calls on the Department and Congress to reexamine current spending and continuing commitments to programs that may not be meeting their intended purpose, have outlasted their usefulness, or simply need to be replaced with new initiatives that will better address requirements for the future. She noted the President’s budget requests \$76 billion to support transportation programs in FY 2018. She explained the request fully funds surface transportation programs included in the “Fixing America’s Surface Transportation (FAST) Act” (P.L. 114-94) and provides levels of funding for the majority of other DOT programs roughly in line with FY 2016 levels. She said the budget proposal promises a renewed focus on the state of U.S. infrastructure – targeting ways to streamline approvals, encourage cost-sharing, and prioritize projects with the greatest value to Americans. She remarked American infrastructure is aging and a new, focused approach is needed to address the problem. She said the President has proposed to tackle this problem by seeking long-term reforms on how infrastructure projects are regulated, funded, delivered, and maintained. She said the President’s plan proposes reforms that will incentivize additional state, local, and private funding and will ensure that federal funding is leveraged to maximize and significantly increase total infrastructure investment. She

added the Administration has identified a total federal commitment of \$200 billion for infrastructure improvements.

### TIFIA Examined At Hearing

#### Key Points:

- *Senate EPW continues its series of hearings on funding options for an infrastructure package with an examination of the TIFIA program*

On July 12, the Senate Environment and Public Works Committee held a [hearing](#) entitled “The Use of TIFIA and Innovative Financing in Improving Infrastructure to Enhance Safety, Mobility, and Economic Opportunity.” Topics discussed included, but were not limited to: (1) Application and Permitting Process; (2) Rural Infrastructure Projects; (3) Assisting Local Governments; (4) Tax-Exempt Facility Bonds; (5) Multimodal Projects; and (6) TIFIA Program Capitalization Level.

Chairman John Barrasso (R-WY) said this hearing is the sixth the Committee has held this year on improving U.S. highways, bridges, and water projects. He stated these hearings have shown that “infrastructure is critical to our nation’s prosperity.” He stressed solutions to address and pay for fixing U.S. infrastructure are not “one-size-fits-all.” He observed private financing, especially for transportation projects, tends to be much less effective in sparsely populated parts of the country. He added private financing can play an important role in and around population centers. He said big-ticket projects that cost billions of dollars are frequently critical for urban areas and often made possible through financing combining federal, state, and local assets. He said leveraging public funding to maximize private investment is a tool the Trump Administration strongly supports. He observed a primary existing mechanism for infrastructure project

financing is the loans and loan guarantees provided by the Transportation Infrastructure Finance and Innovation Act (TIFIA). He stated TIFIA loans have been used successfully for the construction of critical transportation infrastructure. He expressed his belief that “working together in a bipartisan way, this committee can find transportation solutions that work for both rural and urban America.”

Ranking Member Tom Carper (D-DE) stated the TIFIA program at the Department of Transportation (DOT) has been an important source of low-cost financing for dozens of critical projects across the country. He explained a TIFIA loan in Delaware helped leverage other bonds and state funding for a highway project while also providing a lower interest rate and beneficial repayment terms that helped the state take on such a large project. He argued the story is the same across other states. He stressed TIFIA is a critical component of a funding package for large projects that helps to leverage non-Federal funding, including state, local, and private dollars. He said it is important to recognize that TIFIA is not the solution for all types of projects and there are certain types of projects that have not received loans through TIFIA. He observed TIFIA has provided loans for 64 projects total since it was authorized in 1998. He added the majority of these projects have ranged in total cost from approximately \$200 million to \$3 billion. He noted the President has called on Congress to expand the TIFIA program in order to encourage more non-Federal investments. He said Congress should acknowledge that TIFIA is a useful tool, but not a replacement for direct grants to states and cities. He contended Congress should also look for opportunities to make TIFIA available for a wider range of projects including smaller projects and multi-billion dollar investments that have the potential to transform regional

economies. He said the “Fixing America’s Surface Transportation Act” (FAST Act) (P.L. 114-94) expanded eligibility for small and rural projects to use transit-oriented development. He expressed concern that, to date, none of these projects have received TIFIA loans.

Riverside County Transportation Commission Executive Director Anne Mayer said the FAST Act built on important policy reforms in “Moving Ahead for Progress in the 21st Century Act” (MAP-21) (P.L. 112-141) that made TIFIA a more user-friendly program so that self-help regional agencies, such as RCTC, can better leverage its local taxes and tolls to build more infrastructure that improves the nation’s critical infrastructure and local communities. She stated TIFIA provides a flexible and low-cost source of financing that allows state and regional governments to put less money into debt repayments and more money into pavement, tracks, and capital improvements that benefit society. She said the federal government’s ability to provide affordable financing tools that are not otherwise available on the private market is a savings for taxpayers as well as an accelerator of job-creating, transformative, infrastructure improvements. She explained the alternatives are higher-priced financing tools that squeeze limited budgets or pay-as-you-go funding that defers improvements for years or decades. She noted there are many governments around the country, such as RCTC, that have their own revenue streams that can use this program, which is why the expansion of TIFIA in MAP-21 and the FAST Act was critical to meet the demand to upgrade the nation’s infrastructure. She argued that while TIFIA is an essential tool to have in the federal infrastructure toolbox, it is only one tool that benefits a narrow category of projects and should not be seen as a panacea to the nation’s infrastructure deficit. She stressed Congress must continue its strong



support of TIFIA and encourage innovative financing while simultaneously increasing its grant funding commitments, just as many states throughout the nation, including California, have done in recent years.

Transurban North America Group General Manager Jennifer Aument said Transurban's partnership with the Commonwealth for the \$3 billion Express Lanes network on the Capital Beltway and Interstate 95 is among the best examples in the country of how states can effectively engage in public-private partnerships. She stated the 495 and 95 Express Lanes projects are 43 miles of dynamically priced high occupancy toll (HOT) lanes. She explained both projects utilize the TIFIA program and Private Activity Bonds (PABs). She argued this "innovative financing approach enabled the Commonwealth of Virginia to leverage private capital to translate a \$492 million public investment into \$3 billion worth of transportation improvements." She added when factoring in construction costs as well as operations and maintenance the Commonwealth's direct return on its investment is twenty-nine times for the 495 Express Lanes and 110 times for the 95 Express Lanes. She said the projects, which were both delivered on time, under budget and with industry leading safety records, have also provided substantial economic impacts for Virginia – creating more than 28,000 jobs during construction and generating \$6.3 billion in economic activity.

## Upcoming Hearings and Events

### July 17

***FY 2018 T-HUD Appropriations Act:*** The House Appropriations Committee will hold a [markup](#) of the "FY 2018 Transportation, Housing and Urban Development Appropriations Bill."

### July 18

***Road Safety:*** The House Transportation and Infrastructure Committee's Highways and Transit Subcommittee will hold a [hearing](#) titled "FAST Act Implementation: Improving the Safety of the Nation's Roads."

### July 19

***WRDA Implementation:*** The House Transportation and Infrastructure Committee's Water Resources and Environment Subcommittee will hold a hearing titled "Building a 21st Century Infrastructure for America: Implementation of the Water Resources Reform and Development Act of 2014 and the Water Resources Development Act of 2016."

### July 20

***Water Infrastructure:*** The Senate Environment and Public Works Committee's Fisheries, Water, and Wildlife Subcommittee will hold a [hearing](#) titled "Innovative Financing and Funding: Addressing America's Crumbling Water Infrastructure."

*For more information on transportation issues you may [email](#) or call Michael Kans at 202-659-8201. Alex Hopkins, Rebecca Konst, Simon Dallas, and Nick Connolly contributed to this section.*

## **TECHNOLOGY**

### **FITARA Amendment Added To NDAA**

#### *Key Points:*

- *The sponsors of FITARA got language added to the NDAA that would make permanent two expiring provisions and extend another*

During floor debate this week of the "National Defense Authorization Act for Fiscal Year 2018" (NDAA) ([H.R. 2810](#)), the House adopted an [amendment](#) offered by Representatives Gerry Connolly (D-VA) and

Darrell Issa (R-CA) that would make permanent two provisions and extend one sunset date in the “Federal Information Technology Acquisition Reform Act” (FITARA) (Title VIII, Subtitle D of P.L. 113-291) for “federal data center consolidation, transparency and risk management of major IT systems, and IT portfolio, program and resource reviews” according to the House Rules’ [summary](#). The amendment removes the sunset dates for the IT Dashboard and the PortfolioStat process and extends from October 1, 2018 to October 1, 2020 the sunset date for the Data Center Consolidation Initiative (DCCI). The Connolly-Issa amendment was adopted as part of a larger package of amendments agreed to by voice vote. It is not immediately clear whether there is any opposition in the Senate and whether these provisions would be dropped when the two chambers draft a final FY 2018 NDAA.

In Connolly’s [press release](#), he provided background on the expiring provisions:

- IT Dashboard: OMB and agencies are to make publicly available detailed information on federal IT investments, and agency chief information officers (CIOs) are to categorize IT investments by risk. Additionally, if major IT investments are rated as high risk for 4 consecutive quarters, the agencies are to conduct a review of the investment.
- PortfolioStat: Agencies are to annually review IT investment portfolios in order to, among other things, increase efficiency and effectiveness, and identify potential waste and duplication. The Office of Management and Budget (OMB) is required to develop standardized performance metrics, to include cost savings, and to submit quarterly reports to Congress on cost savings.
- DCCI: Agencies are required to provide OMB with a data center inventory, a strategy for consolidating and optimizing the data centers (to include planned cost savings), and quarterly updates on progress made. OMB is required to develop a goal of how much is to be saved through this initiative, and report on progress annually.
- Government Accountability Office (GAO) Reporting Requirements: GAO is required to report on the information provided to OMB on data center consolidation.

### House OGR Hearing on Acquisition

#### Key Points:

- *Two subcommittees questioned the GSA on its recent technology acquisition reorganization*

On July 12, the House Oversight and Government Reform Committee’s Government Operations and Information Technology Subcommittees held a joint [hearing](#) entitled “General Services Administration – Acquisition and Reform” to hear from the new leadership of the Federal Acquisition System (FAS) and Technology Transformation Service (TTS) regarding a recent FAS/TTS organizational change, federal acquisition/technology challenges and potential reform areas. The hearing was also convened to discuss acquisition reform language included in the “National Defense Authorization Act for Fiscal Year 2018” (NDAA) ([H.R. 2810](#)). Topics discussed included, but were not limited to: (1) Procurement Process; (2) Contract Bidding; (3) Conflicts of Interest; and (4) Oversight Inquiries.

Government Operations Subcommittee Chairman Mark Meadows (R-NC) said in June,

the General Services Administration (GSA) announced a realignment of the Technology Transformation Service (TTS) within the Federal Acquisition Service (FAS) that the Committee would like to understand better. He stated he is eager to continue the conversation started at a March 2017 hearing on federal acquisition system challenges and reform. He observed FAS is annually responsible for over \$50 billion in goods and services bought by the federal government while TTS focuses on technology modernization. He noted in May 2016, GSA established TTS as a stand-alone service to consolidate technology-related functions and to assist other agencies with technology transformation. He added just over a year later, GSA has realigned TTS so that it is no longer a stand-alone service, and the Director of TTS now reports to the FAS Commissioner. He stated he would like to hear more from GSA about the thinking behind this realignment. He said the ever-increasing complexity of the system and associated compliance costs have a lot to do with the acquisition and reform challenges. He observed the Federal Acquisition Regulation (FAR) has over 2,000 pages and each agency has associated supplements to the FAR. He said a conservative compliance cost estimate for acquisition regulations is over \$4 billion annually. He expressed concern that the cost of this complexity is passed through in higher costs of goods and services for the customer. He said in January, the Administration issued an executive order on reducing regulation and controlling regulatory costs – which presents an opportunity to reduce complexity in federal acquisition. He explained that in May, he drafted a bill that would codify this executive order. He contended reducing compliance costs and regulation is an issue on which the Congress and Administration are both focused. He noted the Government Operations Subcommittee has been working with House

Armed Services Committee Chairman Mac Thornberry (R-TX) on an online marketplace proposal in the FY 2018 NDAA. He described this proposal as bold and said under it GSA would be directed to establish a program to buy commercial goods by contracting with several online marketplace providers. He added these marketplaces would provide for rapid point-and-click transactions, dynamic pricing, and delivery of goods under standard commercial terms and conditions.

Information Technology Subcommittee Chairman Will Hurd (R-TX) stated in March, “we held a joint subcommittee hearing to review challenges in federal acquisition of IT” and “what we heard was alarming.” He expressed concern that the number of first-time federal vendors has fallen to a 10-year low – down from 24 percent in 2007 to only 13 percent in 2016. He stressed the federal government is supposed to buy commercial, but “with 34 different definitions of commercial item in federal regulations and 138 potentially applicable clauses for such transactions – it is hardly a situation conducive to commercial viability. He said he looks forward to hearing how the reorganization of TTS will help GSA fulfill its mission. He said he is also interested in hearing an update on the Federal Risk and Authorization Management Program (FedRAMP) and ways that Congress can help streamline this cumbersome, but important process. He applauded Thornberry’s efforts to streamline acquisition within the Department of Defense (DOD) and across the federal government-wide.

Government Operations Subcommittee Ranking Member Gerry Connolly (D-VA) stated that GSA’s federal acquisition service plays an important role in federal procurement policy. He noted that during past administrations, both Republican and

Democratic, FAS has been led by career political employees to ensure that political considerations were not involved in the process. He emphasized that anything the government purchases should be done in a non-partisan way. He stated that GSA plays an important role in the acquisition risk and management program, which standardizes the way the government conducts security authorization for cloud services. He noted a stakeholder meeting for the FedRAMP and is pleased with the progress that has taken place since then. Connolly expressed concern that GSA has changed the Commissioner position from a career employee to an appointed position for the first time. He stated that the GSA reorganization consolidated TTS into FAS in order to create efficiency and to revolve funds and stressed that this consolidation does little to address the management challenges facing TTS. He said his confidence in GSA has “eroded further” due to a series of actions that question the agency’s judgement and independence. He emphasized that GSA has resisted oversight and stonewalled the Committee and other committees in Congress. He expressed his concern that GSA has “pulled the plug” on a ten year effort to consolidate the Federal Bureau of Investigation’s (FBI) headquarters into a new location. He stated that political leadership at GSA has used the political weapon before and it is important not to follow that path in this administration.

Information Technology Subcommittee Ranking Member Robin Kelly (D-IL) stated that there has been a series of significant changes within the GSA and deserve greater attention from Congress. She noted that in May of 2016, the GSA launched TTS, which combined the offices of Citizen Services and Innovative Technology, the Presidential Innovation Fellows and 18F in order to build, buy, and create technological solutions. She

stated that the consolidation does make sense but requires further questions. She said that recently it was announced that TTS would merge into FAS and expressed her desire to learn more on how this will affect the work of TTS and FAS. She expressed her concern for the recent proposal to make the head of FAS a political appointee, especially with the expanded role of the FAS. She called for more transparency from GAS and the new Administration.

The General Services Administration’s Federal Acquisition Service Commissioner Alan Thomas stated he comes to GSA as an outsider but with a perspective informed through multiple interactions with the agency from different roles throughout his career. He explained he has led a technology startup in accessing the government marketplace for the first time through IT Schedule 70 and built a \$7 million business line using that access. He added he has participated as a consultant in the merging of the Federal Supply Service and the Federal Technology Service. He said he has also served as a Federal employee and used a GSA-managed Multiple Award Schedule contract called Mission Oriented Business Integrated Services (MOBIS) to acquire professional services in support of an R&D program in his portfolio. He noted that he has managed a rapidly growing business unit for one of the most successful Government-Wide Acquisition Contract (GWAC) Alliant Small Business prime contract holders. He stated as FAS Commissioner his aim is to keep all of these perspectives in mind. He said his goal it to ensure that GSA is providing the best possible products and services to its partners in government and delivering value for American taxpayers. He committed to upholding the values of honesty and transparency in his new role. He stated “I am confident that we will build a high-performing team that executes our

objectives and delivers results for the American people.” He added “I look forward to building upon the existing foundation and working in partnership with this committee to execute an ambitious government reform agenda laid out by the Administration.”

The General Services Administration’s Deputy Commissioner of Technology Transformation Service Rob Cook stated Members of the Committee are very familiar with the problems that plague federal information technology (IT). He observed that this fiscal year, the federal government will spend almost \$85 billion dollars on IT projects. He stated too much of this money is spent on maintaining legacy systems and networks and even more is spent on projects that are over budget or behind schedule. He contended too many systems have been designed for stakeholders instead of users and funding streams are not well aligned to the IT refresh cycle and generally do not provide enough flexibility. He added “we see minimal adoption of agile development practices across the federal landscape and a significant reluctance to implement modular procurement practices.” He said, despite this, the path to a successful IT future is possible and within the federal government’s grasp. He explained such a transformation will require changes to both culture and policy. He said it will require hard work and sustained attention from many people, including high-level executives, program managers, and also Congress. He remarked “by improving how we buy and employ IT, by shifting away from legacy systems, and by continuing the push towards transparency and open data, I am confident that we can significantly improve federal IT and, ultimately, how agencies serve the American people.” He stressed the importance of bringing in top IT talent into the government workforce. He added “we cannot

move the needle” without strong partners throughout various agencies including GSA and the Office of Management and Budget (OMB). He said technology has become too complex to plan everything in advance. He stated GSA and federal IT needs an iterative planning approach that can absorb user feedback in order to enhance the future building of goods and services. He stressed the importance of making systems user-oriented.

### **NIST Asks For Input On Workforce Development**

#### *Key Points:*

- *Per the Trump cybersecurity EO, NIST asks for help in identifying ways to increase the talent pipeline for cybersecurity*

This week, per the “Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure” Executive Order ([EO 13800](#)), the National Institute of Standards and Technology (NIST) issued a [request for information](#) “on the scope and sufficiency of efforts to educate and train the Nation’s cybersecurity workforce and recommendations for ways to support and improve that workforce in both the public and private sectors.” NIST explained that the information submitted will assist the Departments of Commerce and Homeland Security along with other agencies “in conducting an assessment and making recommendations regarding the nation’s cybersecurity workforce.” The EO calls for the agencies to:

- (A) “jointly 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”



(B) “within 120 days of this order, provide a report to the President through the Assistant to the President for Homeland Security and Counterterrorism, 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.”

## Upcoming Hearings and Events

### July 19

**FCC Nominations:** The Senate Commerce, Science, and Transportation Committee will hold a [hearing](#) on the following nominations: Ajit Pai to be a Member of the Federal Communications Commission (Reappointment); Jessica Rosenworcel to be a Member of the Federal Communications Commission (Reappointment); and Brendan Carr to be a Member of the Federal Communications Commission.

*For more information on technology issues you may [email](#) or call Michael Kans at 202-659-8201. Alex Hopkins, Riyad Carey, and Henry Homans contributed to this section.*

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