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Washington Update

<u>This Week in Congress</u>

- **<u>House</u>** – The House passed the **"Make America Secure Appropriations Act, 2018" (H.R. 3219)**, which includes the **"Department of Defense Appropriations Act, 2018,"** the **"Energy and Water Development and Related Agencies Appropriations Act, 2018,"** the **"Legislative Branch Appropriations Act, 2018,"** and the **"Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2018."**.
- **<u>Senate</u>** – The Senate voted to proceed to the **"American Health Care Act" (H.R. 1628)** but rejected the following bills offered as amendments under the reconciliation process: the **"Better Care Reconciliation Act,"** the **"Obamacare Repeal Reconciliation Act,"** and the **"Health Care Freedom Act."** The Senate passed the **"Wounded Officers Recovery Act of 2017" (H.R. 3298)** and confirmed **David Bernhardt** to be Deputy Secretary of the Interior.

<u>Next Week in Congress</u>

- **<u>House</u>** – The House is scheduled to recess until September 5.
- **<u>Senate</u>** –The Senate will vote on cloture for the confirmation of **Kevin Christopher Newsom**, to be United States Circuit Judge for the Eleventh Circuit.

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<u>TAX</u>

"Big Six" Release Joint Statement on Tax Reform, Setting Aside the Border Adjustment Tax

Key Points:

- *Joint statement released Congressional Republicans and White House announce that border adjustment tax will be set aside as tax-writing committees work on drafting tax legislation.*
- *The statement commits only to reducing rates as much as possible, with tax reform legislation moving through regular order in the fall.*

On July 27, the group known as the "Big Six" released a joint statement of broad principles on tax reform, saying that fixing the tax code is the "single most important action needed to grow the economy." In the five-paragraph joint statement, House Speaker Paul Ryan (R-WI), Senate Majority Leader Mitch McConnell (R-KY), Secretary of the Treasury Steven Mnuchin, National Economic Council Director Gary Cohn, Senate Finance Committee Chairman Orrin Hatch (R-UT), and House

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Ways and Means Committee Chairman Kevin Brady (R-TX) said "the time has arrived for the two tax-writing committees to develop and draft legislation that will result in the first comprehensive tax reform in a generation."

The most notable development was the decision to set aside the House Blueprint's proposed border adjustment tax that would have imposed a tax on imports and exempted export income. In the statement the parties said "[w]hile we have debated the pro-growth benefits of border adjustability, we appreciate that there are many unknowns associated with it and have decided to set this policy aside in order to advance tax reform." The border adjustment tax had been estimated to raise over $1 trillion in revenue needed to help finance a corporate tax rate cut and was also viewed a solution to help prevent the shifting of foreign income.

In addition, the statement signaled agreement on the top-level goals of tax reform legislation, while leaving many important questions unanswered. The release is careful in not targeting specific tax rates for businesses and individuals, only saying that, the goal is a plan that "reduces rates as much as possible." Similarly, the statement calls for a legislation that "allows unprecedented capital expensing, places a priority on permanence, and creates a system that encourages American companies to bring back jobs and profits trapped overseas." The statement is silent on items including ways to pay for the tax cuts, whether the plan would be revenue neutral, and any possible interaction with expensing with the ability of businesses to deduct interest.

The statement sets the expectation that filling in the details on the legislation will be the task of the respective tax-writing committees in the fall. According to the release, legislation will "move through the committees this fall, under regular order, followed by consideration on the House and Senate floors." The statement says President Donald Trump "fully supports these principles and is committed to this approach."

For more information about tax issues you may email or call Christopher Hatcher at 202-659-8201. Nick Karellas and Ryan Schnepp contributed to this section.

FINANCIAL SERVICES

House Votes to Repeal the CFPB Mandatory Arbitration Rule

Key Points:

- *The House passed the resolution to repeal the CFPB mandatory arbitration rule by a vote of 231-190.*

On July 25, the House passed H.J. Res. 111 by a roll call vote of 231-190. The resolution would utilize the Congressional Review Act (CRA) to repeal the Consumer Financial Protection Bureau (CFPB) rule restricting providers of certain financial products from including mandatory arbitration clauses in consumer contracts. The CRA resolution is not subject to filibuster in the Senate, therefore requiring only a simple majority vote, and is limited to 10 hours of floor date. Representative Walter Jones (R-NC) was the lone Republican to vote in opposition to the

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**

resolution.

House Financial Services Committee Chairman Jeb Hensarling (R-TX) issued a press release praising the resolution, while House Financial Services Committee Ranking Member Maxine Waters (D-CA) put out a press release opposing the resolution.

Senate Banking Committee Chairman Mike Crapo (R-ID) has introduced S.J. Res. 47 to repeal the mandatory arbitration rule, which currently has 26 co-sponsors, all of whom are Republicans. The Senate has not yet taken any action on the resolution.

Senate Banking Committee Holds Hearing on OCC, Federal Reserve Nominees

Key Points:

- *Chairman Mike Crapo (R-ID) expressed interest in regulatory reform issues, including SIFI designation thresholds, the Volcker Rule, stress testing, and capital requirements.*
- *Democrats raised concerns with Joseph Otting's tenure at OneWest, particularly related to the use of robo-signings.*

On July 27, the Senate Banking Committee held a hearing to consider the nominations of: (1) Mr. Joseph Otting to be Comptroller of the Currency; and (2) the Honorable Randal Quarles to be a Member and Vice Chairman for Supervision, Board of Governors of the Federal Reserve System. The position of Vice Chairman for Supervision was created by the Dodd-Frank Act, but until now no one had previously been nominated to fill the position.

Chairman Mike Crapo (R-ID) said prior to leaving the Federal Reserve former Governor Daniel Tarullo highlighted areas where regulatory relief could be provided, including changing the $50 billion bank Systemically Important Financial Institution (SIFI) threshold, simplifying the Volcker Rule, simplifying the capital regime for community banks, revisiting the Supplementary Leverage Ratio (SLR), raising the $10 billion threshold for company run stress tests, and eliminating the qualitative portion of Comprehensive Capital Analysis and Review (CCAR). Quarles noted that he agrees with all of those changes. In response to a question about other areas of regulatory relief that should be examined, Quarles said transparency should be a theme of the Federal Reserve's regulatory activities. He said there is a lack of transparency surrounding the CCAR stress tests, suggesting that this can be improved without reducing the effectiveness of the tests.

Ranking Member Sherrod Brown (D-OH) said Quarles served as the Undersecretary of the Treasury for Domestic Finance in the years leading up to the financial crisis. He expressed concern that Quarles had been "asleep at the switch" or willfully "turning a blind eye to Wall Street abuses and excesses." He said Quarles's statements in 2006 that the economy was strong and banks were well-capitalized were wrong.

Several Democratic Senators raised concerns with Otting's tenure at OneWest. Brown said the *Columbus Dispatch* reported that OneWest denied loan modifications or "gave the runaround" to borrowers. He noted that Otting signed a consent order for shoddy servicing and improper foreclosures related to robo-signing, and that Otting permitted his bank to break the rules while making life harder for homeowners. He expressed concern that as a regulator Otting will allow banks to skirt the rules. Otting said he signed the consent order, but OneWest did not confirm or deny the accusations made. He said OneWest's error rate for mortgage servicing was incredibly low.

Senator Pat Toomey (R-PA) expressed opposition to the Orderly Resolution Authority (OLA) created by the DFA; instead calling for resolving large financial institutions through bankruptcy. He stated that he introduced legislation to amend the Bankruptcy Code to allow it to work for large, complex institutions, and he questioned whether it is appropriate to amend the Bankruptcy Code for this purpose. Quarles said the discretion of regulators should be as constrained as possible, stressing the need to create certainty in the market. He stated that the right approach to resolution is to enhance the Bankruptcy Code.

Toomey said he objects to both the concept of the designation of non-bank SIFIs and the "flawed" designation process used by the Financial Stability Oversight Council (FSOC). He said the designation process is opaque and there is no clear process for de-designation. He suggested that there should be no additional designations until the process is reformed. Otting stressed the need to provide greater clarity in the designation process before any additional designations are made.

Senator Tim Scott (R-SC) said the Federal Reserve and the OCC are both bank regulators at their core, but due to the SIFI designation process they are now overseeing insurance companies. He stressed the need to reform the designation process. He said insurance has primarily been regulated at the state level, suggesting that the SIFI designations are a deviation from a system that has worked well. He said FSOC members lack expertise in the insurance industry, and he asked if the business of insurance poses the same systemic risk as banking. Quarles said insurers do not pose the same systemic risks as banks. He stated that life insurance could theoretically have a run, but it is a remote and historically unprecedented possibility, adding that the risks of banks and insurance companies are different. Otting agreed that insurance companies do not pose the same risks as other financial institutions. Scott asked if the nominees support legislation to ensure that there is always a voting member on FSOC with insurance expertise, to which Otting and Quarles responded in the affirmative.

Senator Catherine Cortez Masto (D-NV) asked if there are areas where additional consumer protection is needed. Otting said there is a great deal of discussion about small dollar lending. He stated that the DFA created a complicated regime which requires $125 loans to be underwritten like mortgages. He suggested that these products should be brought back into the banking sector. Masto asked if this should be done "to the exclusion of the CFPB," to which Otting responded in the negative.

The Committee also approved the following six nominations, which have not yet received a vote by the full Senate:

- Mr. J. Paul Compton, Jr., to be General Counsel, U.S. Department of Housing and Urban Development, by a roll call vote of 15-7.
- Ms. Anna M. Farias, to be Assistant Secretary for Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, by voice vote.
- Mr. Neal J. Rackleff, to be Assistant Secretary for Community Planning and Development, U.S. Department of Housing and Urban Development, by voice vote.
- Mr. Richard Ashooh, to be Assistant Secretary for Export Administration, U.S. Department of Commerce, by voice vote.

- 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, by voice vote.
- Mr. Christopher Campbell, to be Assistant Secretary for Financial Institutions, U.S. Department of the Treasury, by voice vote.

House Financial Services Committee Approves Four Bills

Key Points:

- *The Committee unanimously approved legislation related to municipal financing, Regulation A+, the FSOC independent insurance expert, and the World Bank.*

On July 25, the House Financial Services Committee held a markup and unanimously approved four bills:

- The "Municipal Finance Support Act of 2017" (H.R. 1624), introduced by Representative Luke Messer (R-IN), which was amended by an amendment in the nature of a substitute, that requires the Federal banking regulators to treat municipal bonds as no lower than level 2B liquid assets (rather than level 2A, as introduced). The Committee favorably reported H.R. 1624, as amended, by a vote of 60-0.
- The "Improving Access to Capital Act" (H.R. 2864), introduced by Representative Kyrsten Sinema (D-AZ), which would direct the Securities and Exchange Commission (SEC) to allow current SEC reporting companies to use Regulation A to raise capital. The Committee favorably reported H.R. 2864, as amended, by a vote of 59-0.
- The "Financial Stability Oversight Council Insurance Member Continuity Act" (H.R. 3110), introduced by Representative Randy Hultgren (R-IL), which would amend the Financial Stability Act of 2010 to modify the term of the independent member of the Financial Stability Oversight Council (FSOC). The Committee reported H.R. 3110 by a vote of 60-0.
- The "World Bank Accountability Act of 2017" (H.R. 3326), introduced by Representative Andy Barr (R-KY), which is intended to increase accountability, combat corruption, and strengthen management effectiveness at the World Bank. The Committee favorably reported H.R. 3326, as amended, by a vote of 60-0.

The Committee also considered a resolution:

- H. Res. 442, a resolution of inquiry directing the Secretary of the Treasury to provide certain documents in the Secretary's possession to the House of Representatives relating to President Trump's financial connections to Russia, certain illegal financial schemes, and related information. The resolution was introduced by Ranking Member Maxine Waters (D-CA). The Committee unfavorably reported the resolution by a vote of 34-26.

House Financial Services Receives Testimony from Treasury Secretary

Key Points:

- *Secretary Mnuchin noted concerns with the Volcker Rule and suggested he would not be opposed to its repeal.*
- *Secretary Mnuchin suggested regulations need to be tailored to ease burdens on community banks, there is need to reform the housing*

finance system and the QM rule, and the Volcker Rule needs to be addressed. He suggested the most important focus should be on the asset limits for SIFI designation

On July 27, the House Financial Services Committee held a hearing entitled "The Annual Testimony of the Secretary of the Treasury on the State of the International Financial System." The hearing focused on a variety of topics including the Volcker Rule, tailoring regulations, the SIFI designation threshold, beneficial ownership, tax reform, and needed reforms to the Dodd-Frank Act. Chairman Jeb Hensarling (R-TX), in a statement, explained the international financial system "rests heavily" on the U.S. markets and he stressed that the U.S. cannot afford to lose this status. He noted the recently released Department of the Treasury (Treasury) report mirrors many of the reforms included in the "Financial CHOICE Act" (H.R. 10). Ranking Member Maxine Waters (D-CA), expressed concerns over the Treasury report and the proposals to roll back the CFPB and provisions of the Dodd-Frank Act (DFA) such as stress testing and living wills.

Several Republican members raised concerns over the impacts of the Volcker Rule on the markets, and Secretary of the Treasury Steven Mnuchin stated that the regulators are working on the Volcker Rule and it will be part of the discussion at the next Financial Stability Oversight Council (FSOC) meeting on Friday, July 28. He noted the Treasury report includes some suggestions and he would not be opposed to its repeal. When asked about the importance of tailoring regulations, Mnuchin stated that the Treasury Department is focused on making sure community banks and regional banks can properly grow.

Hensarling and Representative Blaine Luetkemyer (R-MO) asked about the bank SIFI designation threshold and whether it should be reformed. Mnuchin stated that there has been bipartisan discussion to alter the threshold, suggesting it should be raised to at least $250 to $300 billion. He added that the regulators should be allowed to make further exemptions for simple, non-complex banks. Representative Carolyn Maloney (D-NY) asked about the need to have beneficial ownership information and she noted her bill, the Corporate Transparency Act (H.R. 3098). Mnuchin stated that this has been raised as a concern by the G-7 as well. He noted it is a complex issue as the beneficial ownership information is needed over the life of the company not just at its inception. However, he expressed concern over Treasury being the ultimate repository for this information.

When asked what most needs to be dealt with in the Dodd-Frank Act, Mnuchin stated that regulations need to be tailored to ease burdens on community banks, there is need to reform the housing finance system and the qualified mortgage (QM) rule, and the Volcker Rule needs to be addressed. He suggested the most important focus should be on the asset limits for SIFI designation.

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

August 1

Superfund: The Senate Environment and Public Works Committee will hold a hearing titled "Oversight of the U.S. Environmental Protection Agency's Superfund Program".

August 2

Water Security and Drought Preparedness: The Senate Energy and Natural Resources Committee will hold a hearing "to examine increasing water security and drought preparedness through infrastructure, management and innovation."

Markup of Pending Legislation: The Senate Commerce Committee will hold a markup of pending legislation, including the following bills: the "Concrete Masonry Products Research, Education, and Promotion Act of 2017" (S. 374); the "American Fisheries Advisory Committee Act (S. 1322); the "Coordinated Ocean Monitoring and Research Act" (S. 1425); and the "Great Lakes Environmental Sensitivity Index Act" (S. 1586).

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 Passes Security Themed Minibus

Key Points:

- *Along party lines, the House sends a bundle of four appropriations bills to the Senate before the August Recess*
- *Three of the bills fund national security programs*

This week, after considering over 120 amendments, the House passed the "Make America Secure Appropriations Act, 2018" (H.R. 3219 (115)) by a 235-192 vote with 5 Democrats voting for the package and 5 Republicans voting against the bill. The package consists of the "Department of Defense Appropriations Act, 2018" along with the "Energy and Water Development and Related Agencies Appropriations Act, 2018" (H.R. 3266 (115)), the "Legislative Branch Appropriations Act, 2018" (H.R.3162 (115)), and the "Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2018" (H.R.2998 (115))

On June 29, the House Appropriations Committee marked up and reported out (H.R. 3219 (115)). In its press release after the full Committee markup, the Committee asserted that "[t]he legislation provides a total of $658.1 billion for the DOD…[which] includes $584.2 billion in discretionary funding – an increase of $68.1 billion above the FY 2017 enacted level and $18.4 billion above the President's Defense budget request." The Committee noted that "[t]he bill also provides $73.9 billion in Overseas Contingency Operations (OCO)/Global War on Terrorism (GWOT) funding." The Committee also released the draft Committee Report.

In its summary, the Committee explained that the "Department of Defense Appropriations Act, 2018" contains the following:

- **Military Personnel and Pay** – The legislation includes $138.3 billion – $133 billion for base requirements and $5.3 billion for OCO/GWOT requirements – to provide for 1,324,000 active-duty troops and 822,900 Guard and Reserve troops. The bill includes $1 billion above the request for additional end strength, and fully funds a 2.4 percent pay raise for the military.
- **Operation and Maintenance** – Included in the legislation is $241 billion – $192 billion for base requirements and $49 billion for OCO/GWOT requirements – for operation and maintenance. Funding for base requirements is $3.1 billion

above the request and $24.1 billion above fiscal year 2017. This funding supports key readiness programs to prepare our troops for combat and peacetime missions, including flight time and battle training, equipment and facility maintenance, and base operations. Within this amount, the bill includes $1 billion above the request to fill readiness shortfalls, $500 million above the request to invest in facility sustainment, restoration, and modernization programs, and $16.6 billion total for depot maintenance. This funding will help rebuild our forces to ensure our troops have the training and equipment they need.

- **Research and Development** – The bill contains $84.3 billion – $82.7 billion for base requirements and $1.6 billion for OCO/GWOT requirements – for research, development, testing, and evaluation of new defense technologies. Funding for base requirements is $10.3 billion above the fiscal year 2017 level, and will help to support current military operations and to prepare our nation to meet a broad range of future security threats. Specifically, this funding will support research and development of: the F-35 Joint Strike Fighter; space security programs; the new Air Force bomber program; a next-generation JSTARS aircraft; the Ohio-class submarine replacement; Future Vertical Lift; the Israeli Cooperative Programs; and other important research and development activities, including those within the Defense Advanced Research Projects Agency (DARPA).
- **Equipment Procurement** – The legislation provides a total of $149 billion – $132.5 billion for base requirements and $16.5 billion for OCO/GWOT requirements – for equipment and upgrades. Funding for base requirements is $18.6 billion above the request and $24.1 billion above fiscal year 2017. These funds support our nation's military readiness by providing the necessary platforms, weapons, and other equipment our military needs to train, maintain the force, and conduct successful operations. For example, the bill includes: $21.5 billion to procure 11 Navy ships, including funding for one carrier replacement, two DDG-51 guided missile destroyers, two Virginia-class submarines, and three Littoral Combat Ships; $9.5 billion for 84 F-35 aircraft; $1.8 billion for 24 F/A-18E/F Super Hornet aircraft; $1.05 billion for 56 UH-60 Black Hawk helicopters; $117.5 million for 12 MQ-1 Gray Eagle unmanned aerial vehicles; $1.2 billion for 7 P-8A Poseidon aircraft; $2.4 billion for 15 KC-46 tanker aircraft; $348 million for 116 Stryker Double V-Hull upgrades; $1.09 billion for the upgrade of 85 Abrams tanks; $483 million for the upgrade of 145 Bradley fighting vehicles; $332 million for the Israeli Cooperative Programs; $298 million for the Evolved Expendable Launch Vehicle (EELV); $100 million for National Guard High Mobility Multipurpose Wheeled Vehicle (HMMWV) recapitalization; and $1 billion for the National Guard and Reserve Equipment Account.
- **Defense Health and Military Family Programs** – The bill contains $34 billion for base requirements – $150 million above the fiscal year 2017 enacted level and $267 million above the request – for the Defense Health Program to provide care for our troops,

military families, and retirees. Specifically, the bill provides $282 million for cancer research, $125 million for traumatic brain injury and psychological health research, and $277 million for sexual assault prevention and response. All of these funding levels represent increases above the President's request.

- **Reductions and Rescissions to Save Tax Dollars** – The bill reflects commonsense decisions to save taxpayer dollars where possible in areas that will not affect the safety or success of our troops and missions. Some of these savings include: $1 billion from lower-than-expected fuel costs, $345 million due to favorable economic conditions, and $1.5 billion in savings from rescissions of unused prior-year funding.

On July 12, the Committee marked up and reported out "Energy and Water Development and Related Agencies Appropriations Act, 2018" and provided this summary of the defense-related provisions:

- The bill totals $37.56 billion – $209 million below the fiscal year 2017 enacted level and $3.24 billion above the President's budget request. The bill provides strong national security investments, including increases above fiscal year 2017 for nuclear weapons programs. The bill also protects funding for critical national and regional waterways – which handle commerce valued at more than $2 trillion annually – through the Army Corps of Engineers, and programs that encourage energy independence and economic competitiveness.
- **Nuclear Security** – To address our national security needs and meet emerging threats from around the globe, the bill provides a total of $13.9 billion for the Department of Energy's (DOE) nuclear weapons security programs, including Weapons Activities, Defense Nuclear Nonproliferation, and Naval Reactors – a $976 million increase above the fiscal year 2017 level. This funding will uphold the nation's nuclear deterrence posture, maintain the safety and readiness of our weapons stockpile, and allow the U.S. to meet any nuclear threat. This includes:
  - $10.24 billion for Weapons Activities – $921 million above the fiscal year 2017 enacted level – to maintain a strong nuclear deterrence posture;
  - $1.486 billion for Naval Nuclear Reactors – $66 million above the fiscal year 2017 enacted level; and
  - $1.83 billion for Defense Nuclear Nonproliferation – $76.5 million below the fiscal year 2017 enacted level. This includes $340 million in funding to help fulfill the international commitment by the U.S. to construct the Mixed Oxide (MOX) Fuel Fabrication Facility to dispose of surplus plutonium.
- **Environmental Cleanup** – Included in the legislation is $6.4 billion for environmental management activities, $24.6 million below the fiscal year 2017 enacted level. This includes $5.4 billion for Defense Environmental Cleanup, the same as fiscal year 2017,

to safely clean sites contaminated by previous nuclear weapons production.

Paul Blocks Senate Consideration of NDAA

Key Points:

- *The Senate will likely not take up the NDAA until September after a unanimous consent agreement is blocked*

On July 28, after the Senate rejected the "Health Care Freedom Act," the so-called "skinny" repeal bill, Senator Rand Paul (R-KY) objected to Senate Majority Leader Mitch McConnell's (R-KY) unanimous consent request to proceed to the "National Defense Authorization Act for Fiscal Year 2018" (NDAA) (H.R. 2810). After Paul's objection blocked Senate consideration of the NDAA, Senate Minority Leader Chuck Schumer (D-NY) explained that Senate Armed Services Committee Chairman John McCain (R-AZ) and Ranking Member Jack Reed (D-RI) had "arrived at a bipartisan agreement on a list of amendments that can be agreed to," and Schumer claimed "we can finish this bill."

McConnell then moved to have the Senate take up a judicial nomination when the body reconvenes next week. Additionally, McCain will leave Washington next week for treatment of his cancer. It therefore remains unclear when the Senate will take up its NDAA.

A spokesperson for Paul explained that the Senator wanted agreement on two of his amendments. He said that "Senator Rand Paul requested two bipartisan amendments, one on ending indefinite detention [at Guantanamo Bay, Cuba] and one on [authorizations for the use of military force] (AUMF)." The spokesperson added that Paul "looks forward to working with leadership and the committee to get this done soon."

Trump Orders Review of National Security of Manufacturing and Supply Chains

Key Points:

- *In an executive order, the President tasks the Secretary of Defense with looking at and reporting on the U.S.' vulnerabilities of the Defense Industrial Base and supply chains that could lead to policy, regulatory, and legislative changes*

Late last week, President Donald Trump signed an executive order (EO) that tasks the Secretary of Defense (Secretary) to conduct a sweeping investigation of the Defense Industrial Base (DIB) and associated "supply chains" to ascertain the U.S.'s national security vulnerabilities arising primarily from a lack of domestic production capabilities. The Secretary must then submit a report within 270 days of the issuance date of the EO (on or about April 21, 2018) that will broadly identify gaps in a wide range of national security capabilities and then "recommend[]…legislative, regulatory, and policy changes."

This EO is of a piece with other Trump Administration EOs that explicitly link national security and job creation, and also in that the EO does not immediately call for action (rather a report that may lead to follow on action.) Trump stated that "[s]trategic support for a vibrant domestic manufacturing sector, a vibrant defense industrial base, and resilient supply chains is therefore a significant national priority." Trump claimed that "[a] comprehensive evaluation of the defense industrial base and supply chains, with input from multiple executive departments and agencies (agencies), will provide a necessary assessment of our current strengths and weaknesses." The Secretary is directed to conduct this evaluation in concert with other national security stakeholders.

The EO directs the Secretary to "provide to the President an unclassified report, with a classified annex as needed, that builds on current assessment and evaluation activities, and:

(a) identifies the military and civilian materiel, raw materials, and other goods that are essential to national security;

(b) identifies the manufacturing capabilities essential to producing the goods identified pursuant to subsection (a) of this section, including emerging capabilities;

(c) identifies the defense, intelligence, homeland, economic, natural, geopolitical, or other contingencies that may disrupt, strain, compromise, or eliminate the supply chains of goods identified pursuant to subsection (a) of this section (including as a result of the elimination of, or failure to develop domestically, the capabilities identified pursuant to subsection (b) of this section) and that are sufficiently likely to arise so as to require reasonable preparation for their occurrence;

(d) assesses the resiliency and capacity of the manufacturing and defense industrial base and supply chains of the United States to support national security needs upon the occurrence of the contingencies identified pursuant to subsection (c) of this section, including an assessment of:

(i) the manufacturing capacity of the United States and the physical plant capacity of the defense industrial base, including their ability to modernize to meet future needs;

(ii) gaps in national-security-related domestic manufacturing capabilities, including non-existent, extinct, threatened, and single-point-of-failure capabilities;

(iii) supply chains with single points of failure or limited resiliency, especially at suppliers third-tier and lower;

(iv) energy consumption and opportunities to increase resiliency through better energy management;

(v) current domestic education and manufacturing workforce skills;

(vi) exclusive or dominant supply of the goods (or components thereof) identified pursuant to subsection (a) of this section by or through nations that are or are likely to become unfriendly or unstable; and

(vii) the availability of substitutes for or alternative sources for the goods identified pursuant to subsection (a) of this section;

(e) identifies the causes of any aspect of the defense industrial base or national-security-related supply chains assessed as deficient pursuant to subsection (d) of this section; and

(f) recommends such legislative, regulatory, and policy changes and other actions by the President or the heads of agencies as they deem appropriate based upon a reasoned assessment that the benefits outweigh the costs (broadly defined to include any economic, strategic, and national security benefits or costs) over the short, medium, and long run to:

(i) avoid, or prepare for, any contingencies identified pursuant to subsection (c) of this section;

(ii) ameliorate any aspect of the defense industrial base or national-security-related supply chains assessed as deficient pursuant to subsection (d) of this section; and

(iii) strengthen the United States manufacturing capacity and defense industrial base and increase the resiliency of supply chains critical to national security.

The Secretary's report to the President must recommend possible policy, regulatory, or legislative changes that could be made to remedy any deficiencies in U.S. manufacturing, the DIB, or supply chains that place at risk U.S. national security. Obviously with policy and regulatory changes, the Administration can act on the basis of current authority, but the Administration could also ask Congress for additional authority to address problems turned up during this review.

For more information on defense issues you may email or call Michael Kans at 202-659-8201.

HEALTH

Senate Fails to Pass Health Care Legislation

Key Points:

- *The Senate failed to pass the Health Care Freedom Act, the skinny repeal, by roll call vote 49-51. Republican Senators John McCain (R-AZ), Lisa Murkowski (R-AK), and Susan Collins (R-ME) voted against the bill.*
- *The American Health Care Act (H.R. 1628) has now been returned to the Senate calendar.*

On July 25, the Senate voted to proceed to debate on the "American Health Care Act" (H.R. 1628), by roll call vote 51-50. Senators Susan Collins (R-ME) and Lisa Murkowski (R-AK) voted against the motion with Vice President Mike Pence serving as the tie-breaking vote. After attempting several different amendments to repeal the "Affordable Care Act" (ACA), the efforts ultimately failed.

Republicans offered an amendment which contained an updated version of the "Better Care Reconciliation Act" which included amendments offered by Senators Ted Cruz (R-TX) and Rob Portman (R-OH). The Cruz amendment, called the "Consumer Freedom Amendment", would allow insurers who sell a plan complying with all the ACA's Title I requirements on the exchange to sell non-compliant plans off the exchange. The Portman amendment would add additional funding for states to assist low-income Americans with purchasing insurance in the private market. It also included wraparound Medicaid support to allow states to provide greater assistance to those transitioning from Medicaid to the private market. Democrats raised a point of order and the motion to waive that point of order failed by roll call vote 43-57. Nine Republicans voted against the motion: Senators Collins, Murkowski, Bob Corker (R-TN), Tom Cotton (R-AR), Lindsey Graham (R-SC), Dean Heller (R-NV), Mike Lee (R-UT), Jerry Moran (R-KS), and Rand Paul (R-KY).

Republicans then offered an amendment which only repealed the ACA with a two year delay. Democrats did not raise a point of order against the amendment. The amendment was rejected by roll call vote 45-55. Senators Collins, Murkowski, Portman, Lamar Alexander (R-TN), Shelley Moore Capito (R-WV), Dean Heller (R-NV), , and John McCain (R-AZ) voted against it.

As the 20 hours of debate expired, Senate Majority Leader Mitch McConnell (R-KY) offered an amendment which contained the "Health Care Freedom Act," the "skinny repeal" of the ACA. The amendment would have repealed the individual and employer mandates; repealed the medical device tax for three years; increased health savings account contributions; funded community health centers; and provided additional flexibility for states' Section 1332 waivers. The Congressional Budget Office (CBO) found when compared to current law, 15 million more people would be uninsured in 2018; 19 million in 2020; and 22 million in 2026. CBO also found premiums would be lower; however, because the actuarial value of benchmark plans would be 58 percent, plans would cover a smaller share of total benefits.

Several Republican Senators sought assurances from House leadership that the House would go to conference on the skinny bill and not vote on it. Senators Graham, McCain, Bill Cassidy (R-LA), and Ron Johnson (R-WI) held a press conference stating they would not vote for the skinny repeal without a strong statement from the House that it would agree to go to conference. House Speaker Paul Ryan (R-WI) said "if moving forward requires a conference committee, that is something the House is willing to do," though also emphasized the Senate must still find a bill it can pass.

Before voting on the amendment, the Senate voted on a motion to commit H.R. 1628 to the Senate Health, Education, Labor, and Pensions Committee. That motion was rejected by roll call vote 48-52. Despite all votes being recorded, the Senate held the vote open as it appeared Republicans worked to secure votes for skinny repeal. Vice President Mike Pence was also at the Capitol in case he would be needed to cast the tie breaking vote. Ultimately, the Health Care Freedom Act was rejected by roll call vote 49-51 with Senators McCain, Murkowski, and Collins voting against it. McConnell moved H.R 1648 be returned to the Senate calendar which was agreed to without objection.

McCain explained his vote saying "while the amendment would have repealed some of Obamacare's most burdensome regulations, it offered no replacement to actually reform our health care system." He also indicated Ryan's statement did not offer enough assurance the House would go to conference. McConnell called the bill's failure a "disappointment." He indicated it was now time for Democrats to present their ideas saying "we'll see how the American people feel about their ideas." President Donald Trump asserted "3 Republicans and 48 Democrats let the American people down" in a tweet following the vote and suggested allowing the ACA implode.

Upcoming Hearings and Events

July 31

Opioid Crisis: The Office of National Drug Control Policy will hold a meeting of the President's Commission on Combating Drug Addiction and the Opioid Crisis.

August 1

Nominations: The Senate Health, Education, Labor and Pensions Committee will hold a hearing on the nominations of Lance Robertson to be assistant Health and Human Services (HHS) secretary for aging; Brett Giroir to be assistant HHS secretary for health; Robert Kadlec to be assistant HHS secretary for preparedness and response; Elinore McCance-Katz to be assistant HHS secretary for mental health and substance use; and Jerome Adams to be medical director in the Regular Corps of the Public Health Service and to be surgeon general of the Public Health Service.

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

TRANSPORTATION AND INFRASTRUCTURE

Senate Appropriations Committee Reports Out FY 2018 T-HUD Package

Key Points:

- *In a bill that largely rejects the Trump Administration's budget request, the Senate Appropriations Committee reports out a bill that largely maintains current funding levels*

On July 27, the Senate Appropriations Committee held a markup of the "FY 2018 Transportation, Housing and Urban Development, and Related Agencies Appropriations Bill," which was reported out of Committee, as amended, by voice vote.

Transportation, Housing and Urban Development, and Related Agencies Subcommittee Chairman Susan Collins (R-ME) asserted the bill accommodated the numerous requests from members of both parties. She stressed vital investments in infrastructure, housing needs, and economic development projects. She noted full funding for Transportation Investment Generating Economic Recovery (TIGER) grants and Community Development Block Grants (CDBG). She stated $21.365 billion for tenant-based Section 8 vouchers, $573 million for Housing for the Elderly, and $147 million for Housing for Persons with Disabilities are all above FY 2017 levels. She emphasized the need for continued investments for veteran and youth homeless initiatives and noted the $2.45 billion appropriated towards Homeless Assistance Grants, $950 million for the HOME Investment partnerships Program (HOME), and $40 million for the Department of Housing and Urban Development-Veterans Affairs Supportive Housing (HUD-VASH) program. She said the bill provides full funding for Federal-aid Highways programs, the Federal Aviation Administration (FAA), and the Federal Railroad Administration (FRA). She explained that the bill rejects the proposed privatization of the air traffic control system and provides greater opportunities for airports to make capacity improvements. She stressed the importance of reducing congestion in airports and improving highways across the country.

Transportation, Housing and Urban Development, and Related Agencies Subcommittee Ranking Member Jack Reed declared the bill affects the way Americans live on a day to day basis. He asserted the bill rejects any shortsighted proposals made by the Trump Administration and emphasized funding levels for HOME, TIGER, and Amtrak. He noted investments made for improving railways and highways, including the $1.61 billion for Amtrak. He supported additional funding for rental assistance programs, the Home Affordable Refinance Program (HARP), and HUD-VASH. He expressed concern regarding infrastructure improvements and HUD assistance programs. He noted the agency still serves only one in four people who need help.

A Committee summary highlighted funding levels in the package:

- Department of Transportation – $19.47 billion in discretionary appropriations for the U.S. Department of Transportation for FY 2018. This is $978 million above the FY 2017 enacted level.
    - *TIGER Grants* – $550 million, $50 million above the FY 2017 enacted level, for TIGER grants (also known as National Infrastructure Investments).
    - Highways – $45 billion from the Highway Trust Fund to be spent on the Federal-aid Highways Program, consistent with the FAST Act. The bill also continues to allow State Departments of Transportation to repurpose old, unused earmarks for important infrastructure projects.
    - *Aviation* – $16.97 billion in total budgetary resources for the Federal Aviation Administration (FAA), $563 million above the FY 2017 enacted level. This will provide full funding for all air traffic control personnel, including more than 14,000 air traffic controllers, and more than 25,000 engineers, maintenance technicians, safety inspectors, and operational support personnel. The bill also provides $1.1 billion for the FAA Next Generation Air Transportation Systems (NextGen), and fully funds the Contract Towers program to help ease future congestion and help reduce delays for travelers in U.S. airspace. In addition, the bill rejects the proposed privatization of the air traffic control system and provides greater flexibilities for airports to make much-needed capacity improvements.
    - *Rail* – $1.974 billion for the Federal Railroad Administration (FRA), $122 million above the FY 2017 enacted level. This includes $1.6 billion for Amtrak for the Northeast Corridor and National Network, continuing service for all current routes. The bill also provides $250.1 million for FRA safety and operations, as well as research and development activities. The bill also provides $92.5 million for the Consolidated Rail Infrastructure and Safety Improvement grants program, of which $35.5 million is for initiation or restoration of passenger rail, $26 million for Federal-State Partnership for State of Good Repair grants, and $5 million for Restoration and Enhancement grants.
    - *Transit* – $12.129 billion for the Federal Transit Administration (FTA), $285 million below the FY 2017 enacted level. Transit formula grants total $9.733 billion, consistent with the FAST Act. The bill provides a total of $2.133 billion for Capital Investment Grants

(New Starts), fully funding all current "Full Funding Grant Agreement" (FFGA) transit projects, which is $280 million below the FY 2017 enacted level.

- Department of Housing and Urban Development (HUD) – $40.244 billion in discretionary appropriations for the U.S. Department of Housing and Urban Development, an increase of $1.4 billion above the FY 2017 enacted level.
  - Rental Assistance – HUD rental assistance programs provide housing assistance for nearly 5 million vulnerable families and individuals. Of those receiving assistance, 57 percent are elderly or disabled. This bill provides necessary increases to continue assistance to all families and individuals currently served by these programs. Included in the bill is: $21.365 billion for tenant-based Section 8 vouchers, $1.07 billion above the FY 2017 enacted level; $6.45 billion for public housing, $103.5 million above the FY 2017 enacted level; $11.5 billion for project-based Section 8, $691 million above the FY 2017 enacted level; $573 million for Housing for the Elderly, $70.6 million above the FY 2017 enacted level, and $147 million for Housing for Persons with Disabilities, nearly $1.0 million above the FY 2017 enacted level.
  - Community Planning and Development – $6.85 billion for Community Planning and Development programs, $47 million above the FY 2017 enacted level. The Community Development Block Grant formula program is funded at $3 billion; the Homeless Assistance Grants are funded at $2.456 billion; the HOME program is funded at $950 million; the Housing Opportunities for Persons with AIDS program is funded at $330 million.

Collins offered a Manager's Package that eleven amendments approved by members on both sides of the Committee. The amendment was adopted by voice vote. In a summary, the Committee described the contents of the package:

- Cochran/Collins/Reed Amendment on Alcohol-Impaired Driving Fatalities: Report language encouraging the National Highway Traffic Safety Administration to increase efforts to reduce drunk driving.
- Boozman Amendment on Child Hyperthermia Prevention: Report language directing the National Highway Traffic Safety Administration to update a report on technology that can serve as a reminder to parents to remove children from the rear seat prior to leaving their vehicle in an effort to prevent child fatalities.
- Moran Amendment on Aviation Incident Reporting Data: Report language directing the Federal Aviation Administration to collaborate with the National Transportation Safety Board and stakeholders to determine additional data points to be collected to better assess safety trends and identify

areas for potential safety improvement within the on-demand air charter community.

- Moran Amendment on Electronic Guidance Library at the FAA: Report language directing the Federal Aviation Administration to complete the electronic guidance library and eliminate outdated or conflicting policies.
- Murkowski Amendment on Terminal Aerodome Forecast: Bill language to permit intermittent large cargo air carriers to land in remote areas using a mix of available meteorological weather reports, in place of National Weather Service (NWS) forecast reports where the NWS does not provide weather coverage.
- Shaheen Amendment on Motorized Vehicles: Report language encouraging the Federal Highway Administration to consider the local economy and community input when providing exceptions to a current prohibiting on motorized vehicles to operate on trails and pedestrian walkways.
- Van Hollen Amendment on Aircraft Noise and Community Outreach: Report language encouraging the Federal Aviation Administration to work with communities on flight path procedures to address aircraft noise.
- Van Hollen Amendment on Aircraft Noise Research: Report language directing the Federal Aviation Administration to continue to prioritize research associated with aviation noise.
- Blunt Amendment on Historic Railroad Corridors: Report language encouraging the Federal Highway Administration to look at regionally focused mix-use projects that integrate historic railroad corridors.
- Shaheen Amendment on Regulatory Relief for Public Housing Agencies: Report language encouraging the Department of Housing and Urban Development to examine the administrative requirements and identify efficiencies for public housing agencies that only administer the Section 8 Housing Choice Voucher program.
- Baldwin Amendment on Assistance to Small Shipyards Program: Bill language allowing prior year recoveries to be used, as authorized.

Senator John Hoeven (R-ND) offered an amendment which would increase the weight limit for longer accommodation vehicles in North Dakota. He stated current levels in the state are 105,000 pounds and called for an increase to 129,000 pounds. He noted South Dakota and Montana both have limits of 129,000 pounds. Reed expressed concern regarding aging highways and opposed the amendment. The amendment was adopted by voice vote. Senator Jeanne Shaheen (D-NH) offered an amendment which would fix technicalities regarding grandfathered weigh exemptions for New Hampshire. The amendment was adopted by voice vote.

For more information on transportation issues you may email or call Michael Kans at 202-659-8201. Riyad Carey, Rebecca Konst, and Simon Dallas contributed to this section.

TECHNOLOGY

House Homeland Security Reports Out Bills To Create DHS Cyber Agency and To Address Zero-Day Exploits

Key Points:

- *A bill to elevate the NPPD into the Cybersecurity and Infrastructure Security Agency Act is sent to the House floor along with a bill to drive the DHS in using discretionary authority to address the government holding of computer vulnerabilities*

This week, the House Homeland Security Committee held a markup of the "Cybersecurity and Infrastructure Security Agency Act of 2017" (H.R. 3359), the "Cyber Vulnerability Disclosure Reporting Act" (H.R. 3202), and other bills, all of which were reported favorably and passed by voice vote without amendment.

The "Cybersecurity and Infrastructure Security Agency Act of 2017" (H.R. 3359) would establish the Cybersecurity and Infrastructure Security Agency (CISA or Agency) headed by a Director and that would be appointed by the President and confirmed by the Senate. The Agency would consist of three divisions, each headed by Assistant Directors. Most notably, the Agency would be charged with executing the Department of Homeland Security's responsibilities under both the Federal Information Security Management Act (FISMA) and the Cybersecurity Act of 2015. Additionally, the Agency would have the following responsibilities, among others:

- lead cybersecurity and critical infrastructure security programs, operations, and associated policy for the Agency, including national cybersecurity asset response activities;
- coordinate with Federal entities and non-Federal entities, including international entities, to carry out the cybersecurity and critical infrastructure activities of the Agency, as appropriate;
- coordinate a national effort to secure and protect against critical infrastructure risks;
- upon request provide analyses, expertise, and other technical assistance to critical infrastructure owners and operators and, where appropriate, provide such analyses, expertise, and other technical assistance in coordination with critical infrastructure sector specific agencies and other Federal departments and agencies;
- to the extent required by law, exercise duties in coordination with sector-specific agencies;

The bill does not authorize any additional funding for the Agency, so it would be stood up on whatever funding NPPD receives. Its, of course, unclear what the Senate Homeland Security Committee thinks of this bill.

The "Cyber Vulnerability Disclosure Reporting Act" (H.R. 3202) is a bill designed to address the recent zero-day exploits problems that arose under the WannaCry ransomware attacks that allegedly used vulnerabilities found and held by the National Security Agency. The bill requires the Secretary of Homeland Security to report on the use of discretionary authority regarding "policies and procedures developed for coordinating cyber vulnerability disclosures" per a provision in the Homeland Security Act of 2002. This bill seems designed to spur DHS action on the zero-day exploit issue, but the Secretary's authority is not binding on the Department of Defense, NSA, Central Intelligence Agency, and other federal stakeholders. Therefore, this bill, if enacted, may be limited in its effect. There are competing bills, notably, the "Protecting our Ability To Counter Hacking (PATCH) Act" (S. 1157/H.R. 2481) that would codify how the government decides which zero day exploits and other vulnerabilities should be shared with the private sector. The current procedures (the Vulnerability Equities Process or VEP) that governs how this information is shared emanates from a Bush era memorandum, National Security Policy Directive 54 (NSPD 54), that was changed through the course of the Obama Administration.

House Small Business Committee Holds Hearing On Cyber Insurance

Key Points:

- *A committee hears from experts on the burgeoning and growing cyber insurance market, including policy and regulatory challenges*

On July 26, the House Small Business Committee held a hearing entitled "Protecting Small Businesses from Cyber Attacks: the Cybersecurity Insurance Option." Topics discussed in the hearing included, but were not limited to: (1) Cyber Insurance; (2) Cyber Insurance Coverage; (3) Costs; (4) Response to an Attack; (5) Evolution of Cyber Insurance; (6) Patchwork of Regulations; (7) Reinsurance; (8) Attacks on Small Businesses; (9) Retroactive Coverage; (10) Tailoring Policies; (11) Education; (12) Risk Mapping; (13) Law Enforcement; (14) Innovation; and (15) Group Coverage.

Chairman Steve Chabot (R-OH), in a statement, explained cybersecurity has been one of the Committee's top priorities. He noted they have held numerous hearings and worked on meaningful legislation to ensure small businesses have every possible resource to protect themselves against a cyberattack. Chabot stated weeks ago he and Representative Dwight Evans (D-PA) introduced the "Small Business Development Center Cyber Training Act of 2017" (H.R. 3170) to ensure that America's Small Business Development Centers (SBDCs) have the best possible cybersecurity training so that they can better assist small businesses with their cyber strategies. He noted unfortunately, the Committee has also heard too many firsthand accounts from small business owners who have been the victims of cyber attacks. Chabot noted cybersecurity experts have told this Committee about the growing number of cyber threats facing America's 28 million small businesses. He explained in 2016 alone, the Department of Justice recorded nearly 300,000 cybersecurity complaints and this number increases every year. He stated 60% of small businesses that fall victim to a cyberattack close up shop within six months and the estimated average cost of a cyberattack on a small businesses is over $30,000. Chabot suggested it has become clear that Congress needs to "think outside of the box" as they work to thwart cyber attacks. He stated small businesses must also be diligent as they manage their information technology (IT) systems and educate their staffs about the importance of cybersecurity. He explained they should also be creative as they consider different ways to spread risk and manage their cyber strategies. Chabot noted one increasingly feasible solution is cybersecurity insurance. He stated many larger corporations are already exploring this approach to dealing with cyber attacks and he suggested it is likely that small businesses will follow. He acknowledged that the widespread adoption of cybersecurity insurance policies is not without its challenges, both for small businesses and for the insurance providers. He explained small businesses must determine what policies and coverage options make sense for them and also implement basic cybersecurity best practices. Furthermore, he noted the cybersecurity insurance marketplace is remarkably new and many of the providers still lack the historical data to offer appropriate plans to consumers, which drives up the cost to policyholders. However, Chabot stated as they look to improve their models and cyber risk scenarios, cybersecurity insurance will become more viable and more accessible.

Ranking Member Nydia Velazquez (D-NY) stated the internet has transformed how small businesses operate. She stated it offers the opportunity for businesses to sell their products across the world. However, she noted that cyber hygiene tends to fall by the wayside. Velazquez stated this hearing is particularly timely because if Russia was able to attack the U.S. voting system, a small business seems like an easy target. She noted small companies are more at risk than the larger companies. She stated in 2016, 1.1 billion identities were stolen. Velazquez suggested that small businesses that lose customer information tend to have high costs and have a hard time recovering. She stated for the federal government cybersecurity must be a priority and businesses need to help shore up that system. Velazquez explained there is a growing industry around cyber insurance but she noted the challenges of this system. She stated the evolving threats make cyber insurance hard for small businesses and the insurers. She suggested it is clear that these issues are not diminishing but are, in fact, growing.

Zurich Insurance Head of Specialty Products Errors & Omissions Senior Vice President Erica Davis stated Zurich is a member of the American Insurance Association representing 325 major insurers. She noted the cyber landscape continues to evolve and while awareness is growing, businesses are still struggling to understand cyber risk. She explained businesses need to determine whether to retain the risk or to transfer it through an insurance product. Davis noted last fall Zurich released a survey which found that 87 percent of respondents felt that a technology interruption would have a significant impact on their business. She stated insurance is only one price of the cyber risk management puzzle. She stated this has become more of a partnership, with businesses wanting qualified, vetted resources available. Davis noted that cyber insurance has widened to include property loss. She explained in an effort to help customers Zurich began participating in a public-private partnership. She stated underwriting of the cyber insurance risk is evolving and each business needs to be underwritten differently. She suggested finding the right way to underwrite these risks will require collaboration.

Munich Re U.S.Cyber Risk Practice Leader Vice President Eric Cernak explained that more insurers have offered cyber insurance over time. He noted that small businesses are becoming more aware of their risk which has resulted in more insurers providing cyber policies. He explained the most common policy is for loss prevention and includes protections from incidents such as a breach of personal information, cyber extortion, transmission of a virus to another entity, or breaching proprietary information. Cernak stated education is key to increasing the take up rate for cyber insurance. He stated cyberattacks may not be a matter of "if" but "when" and it is essential for businesses to be prepared and protected. He stated the insurance industry needs to continue to reform the process for purchasing insurance. He suggested that the terminology used in coverage forms should be made more standardized. Cernak explained the industry faces several challenges such as the fact that there is no historical loss data; the cause of loss is generated by an active adversary, which is capable of changing tactics and targets to suit their needs based on advances of technology; legislative and regulatory requirements continuously evolve; and cyber insurance poses potential aggregation or accumulation risk for insurers.

Senate Versions of Email Privacy Act and ECPA Reform Introduced

Key Points:

- *Two Senators reintroduce bills to reform the ECPA*

This week, Senators Mike Lee (R-UT) and Patrick Leahy (D-VT) introduced two bills aimed at reforming the "Electronic Communications Privacy Act of 1986" (ECPA), one of which is a companion bill to the House-passed "Email Privacy Act" and a broader reform package. The "Email Privacy Act" (S. 1657) tracks word-for-word with H.R. 387, which the House passed by voice vote in February. A version of H.R. 387 was added as an amendment to the "Financial Services and General Government Appropriations Bill for Fiscal Year 2018" during House Appropriations Committee consideration.

The other bill, the "E-mail and Location Privacy Act" (S. 1654), would implement more significant reforms to ECPA, including

- Requires a warrant for content
- Allows the government to use a subpoena to request content from corporations that may use a third party to run their internal servers
- Contains a rule of construction that the Act does not affect the Wiretap Act or FISA
- Requires warrant for location information (historical and real-time)
- Notice to subscriber of warrant within 10 days of receiving contents
- Gag order reforms, including a requirement that the court's "reason to believe" that notice will result in adverse effects must be "based on specific and articulable facts"
- Suppression remedy available for information obtained in violation of ECPA

For more information on technology issues you may email or call Michael Kans at 202-659-8201.

This Week in Congress was written by Ryan Schnepp.