

August 4, 2017

## Washington Update

### This Week in Congress

- **House** – The House is in recess until September 5.
- **Senate** – The Senate confirmed **Marvin Kaplan** to the National Labor Relations Board; passed the “**FDA Reauthorization Act**” (H.R. 2430); confirmed **Christopher Wray** to be Director of the Federal Bureau of Investigation, **Kevin Christopher Newsom** to be United States Circuit Judge for the Eleventh Circuit and **Neil Chatterjee** and **Robert Powelson** to serve as Federal Energy Regulatory Commission (FERC) Commissioners.

### Next Week in Congress

- **House** – The House is in recess until September 5.
- **Senate** – The Senate is in recess until September 5.

## TAX

### Treasury Assistant Secretary for Tax Policy Nomination Clears Senate

#### *Key Points:*

- *Senate confirms David Kautter to be Treasury Assistant Secretary for Tax Policy as part of larger unanimous consent agreement.*

David J. Kautter, President Donald Trump’s nominee to serve as Assistant Secretary of the Treasury for Tax Policy, was confirmed by the Senate on August 3. Kautter’s nomination was cleared as part of a larger unanimous consent agreement reached before the Senate adjourned for the August recess. Kautter had been approved unanimously by the Senate Finance Committee on July 20.

Kautter had previously served as Ernst & Young’s Director of National Tax, the managing director of the Kogod Tax Center at

American University, and leader of RSM US LLP’s Washington National Tax group.

### Tax Legislation To Move Through Regular Order This Fall; White House Sets Ambitious Tax Reform Timeline

#### *Key Points:*

- *Senator Orrin Hatch (R-UT) said he intends to hold multiple hearings and a full markup when the Senate returns in September.*
- *White House Legislative Affairs Director Marc Short said he expects tax reform to clear Congress by November.*

Senate Finance Committee Chairman Orrin

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Hatch (R-UT) opened a hearing on nominations with some clarifying remarks on the expected process for tax reform legislation once Congress returns from the August recess. According to Hatch “[i]n the fall, the main priority of the Committee will surely be tax reform.” He stated that “I intend to work with my colleagues to draft and report tax reform legislation through regular order...[and] [t]hat will mean hearings and a markup here in the committee.” Ranking Member Ron Wyden (D-OR) welcomed the bipartisan approach but questioned whether Hatch could persuade Senate Majority Leader Mitch McConnell (R-KY) who has pledged to pass tax reform with only Republican votes.

Earlier in the week, White House Legislative Affairs Director Marc Short described his expectations for an “aggressive” tax reform timeline. According to Short, he expects that markups of tax reform legislation will begin in September, with legislation passing the House in October, and the Senate in November.

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

## **FINANCIAL SERVICES**

### **Senate Finance Committee Holds Hearing on Affordable Housing**

#### *Key Points:*

- *Members of both parties expressed support for the Affordable Housing Credit Improvement Act, which would enhance the low income housing tax credit.*

On August 1, the Senate Finance Committee held a hearing entitled “America’s Affordable Housing Crisis: Challenges and Solutions.” The hearing focused on the “Affordable Housing

Credit Improvement Act of 2017” ([S. 548](#)), the low income housing tax credit (LIHTC), and needed reforms to the affordable housing system. Chairman Orrin Hatch (R-UT) referenced his guiding principles for tax reform: (1) fairness; (2) efficiency; (3) simplicity; and (4) American competitiveness. Stressing the need for bipartisan solutions, he said 26 percent of American renters spent more than half of their household income on rent last year, with the burden falling particularly hard on low income families.

Ranking Member Ron Wyden (D-OR) said the LIHTC is a key part of the “tax reform puzzle.” He explained Senator Maria Cantwell (D-WA) and Hatch sponsored S. 548, which he has co-sponsored. Wyden said this bill would enhance the LIHTC to address the housing scarcity problem. He noted he will be offering other proposals, including linking important services to low income housing.

Senator Benjamin Cardin (D-MD) stated affordable housing is more challenging today than ever before and stronger tools are needed. He expressed support for S. 548 and also noted the importance of historic housing credits, the new market tax credit, and incentives for energy efficiency, among others.

### **OCC Requests Public Comment on**

#### **Upcoming Dates**

**September 5:** Congress returns  
**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

## Revisions to the Volcker Rule

### Key Points:

- *The OCC requested comments on ways to reduce the compliance burdens of the Volcker Rule on banking entities while still accomplishing the intent of the rule.*

On August 2, the Office of the Comptroller of the Currency (OCC) issued a [request for comment](#) on revisions to the Volcker Rule. The OCC also issued a [press release](#), which explained:

The agency today sent to the *Federal Register* for publication a notice that solicits public input on whether certain aspects of the implementing regulation should be revised to better accomplish the purposes of section 619 while decreasing the compliance burden on banking entities and fostering economic growth. In particular, the OCC invites input on ways to tailor the rule's requirements and clarify key provisions that define prohibited and permissible activities. The agency also seeks input on how the federal regulatory agencies could implement the existing rule more effectively without revising the regulation. The public is invited to provide supporting data that can inform specific changes to the regulation, and help assess the effectiveness of implementation efforts to date.

In the press release, Acting Comptroller of the Currency Keith Noreika stated “[a] bipartisan consensus has emerged that the Volcker Rule needs clarification and recalibration to eliminate burden on banks that do not engage in covered activities and do not present systemic risks.”

The request for comment will be open for 45 days after the date of publication in the *Federal Register*.

## Senate Panel Examines Insurance Fraud

### Key Points:

- *Subcommittee Chairman Jerry Moran (R-KS) suggested the size of the insurance market makes it a prime target for fraud.*
- *Ranking Member Richard Blumenthal (D-CT) reiterated the need to preserve the state based regulation of insurance but emphasized that states have an obligation to do better and be more rigorous in their oversight.*

On August 3, the Senate Commerce Committee's Consumer Protection, Product Safety, Insurance, and Data Security Subcommittee held a [hearing](#) entitled “Insurance Fraud in America: Current Issues Facing Industry and Consumers.” Chairman Jerry Moran (R-KS), in a [statement](#), explained insurance fraud is a major concern for both insurers and consumers. He noted that the size of the insurance market makes it a target for fraud and abuse. Moran stated insurance fraud schemes are constantly evolving and he looks forward to hearing how technology is being utilized to prevent these abuses. Ranking Member Richard Blumenthal (D-CT) stated insurance fraud hurts businesses and consumers who are charged higher premiums. He stated insurance companies have stalled payment of claims citing obscure provisions and used Social Security numbers to cut payments. He also stated Wells Fargo forced unwanted insurance on auto loan borrowers through “force-placed insurance.”

Moran and Senator Shelley Moore Capito (R-WV) raised concerns over fraud related to natural catastrophes such as flood and

tornadoes. Oklahoma Insurance Commissioner John Doak (testifying on behalf of the National Association of Insurance Commissioners (NAIC)) said there is a high propensity for fraud associated with natural catastrophes, particularly against seniors. He recommended requiring out of state contractors to register with the local municipality and show that they have insurance and recourse. When asked about the costs of fraud committed by insurers, Insurance Information Institute Chief Executive Officer Sean Kevelighan stated that the vast majority of insurers work closely with their regulators and want to provide the appropriate protection. He noted that 90 percent of claims associated with Hurricane Sandy were paid in the first six months. Coalition Against Insurance Fraud Executive Director Dennis Jay said the industry does not like the few bad apples out there, suggesting that the majority of claims are perpetrated by “rogue” insurance adjusters and agents. He stated that insurers are doing a better job of policing these “rogue” agents due to pressure from regulators and a desire to protect their reputation. Moran asked about the use of technology to combat insurance fraud. Jay said the use of technology to combat fraud has exploded in the past few years. He noted some concerns over privacy issues have been raised and will need to be worked out. Doak said NAIC has formed an innovation task force, which is examining emerging technologies.

In concluding remarks, Doak stressed the need to preserve the state-based system of insurance regulation. Blumenthal said the Attorney General of New York previously argued for turning regulation of insurance over to the federal government. He noted that he opposed moving to federal regulation of insurance, but emphasized that states have an obligation to do better and be more rigorous in their oversight.

## **Senate Confirms Nominees to Financial Regulatory Posts**

### *Key Point:*

- *The Senate confirmed nominees to serve at the Department of the Treasury, the CFTC, OPIC, the Department of Commerce, HUD, and other agencies.*

On August 3, the Senate confirmed over 60 nominees to various federal positions by unanimous consent. Nominees confirmed included the following for the Department of the Treasury, Commodity Futures Trading Commission, Overseas Private Investment Corporation, Department of Commerce, and Department of Housing and Urban Development.

### ***Department of the Treasury***

- David Malpass to be Under Secretary for International Affairs
- Brent James McIntosh to be General Counsel
- Andrew Maloney to be a Deputy Under Secretary for Legislative Affairs
- David Kautter to be Assistant Secretary for Tax Policy
- Christopher Campbell to be Assistant Secretary for Financial Institutions

### ***Commodity Futures Trading Commission***

- J. Christopher Giancarlo to be Chairman
- Brian Quintenz to be a Commissioner
- Rostin Benham to be a Commissioner

### ***Overseas Private Investment Corporation***

- Ray Washburne to be President
- David Steele Bohigian to be Executive Vice President

### ***Department of Commerce***

- Karen Dunn Kelley to be Under Secretary for Economic Affairs
- Richard Ashoosh to be Assistant Secretary for Export Enforcement
- Elizabeth Erin Walsh to be Assistant Secretary for Global Markets
- Mira Radielovic Ricardel to be Under Secretary for Export Administration

### ***Department of Housing and Urban Development***

- Neal J. Rackleff, to be an Assistant Secretary
- Anna Maria Farias, to be an Assistant Secretary

### **Upcoming Hearings and Events**

#### **September 13-15**

***STA Annual Conference:*** The Security Traders Association (STA) will hold its 84th Annual Market Structure Conference. The scheduled speakers include SEC Commissioner Michael Piwowar, Representative Bill Huizenga (R-MI), and FINRA President and CEO Robert Cook. The panels scheduled for the conference include: (1) Capital Formation: The New Playbook; (2) eBrokers: No Sleeping Giants; (3) Regulatory & Competitive Challenges Shaping Buy- and Sell-Side Trading Desks; (4) Listed Options: Caught in the Crossfire; (5) Recommendations of the SEC Equity Market Structure Advisory Committee; (6) MiFID II: European Regulation Comes to the U.S.; and (7) Consolidated Audit Trail: The Industry Prepares.

*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 this section.*

### **ENERGY & ENVIRONMENT**

### **Court Orders EPA to Proceed with Implementation of Oil and Gas Sector Methane Rule**

#### *Key Points:*

- *The U.S. Court of Appeals directed the EPA to implement the Obama Administration’s regulations limiting emissions from the oil and gas sector.*
- *The Trump Administration is working to delay implementation of parts of the rule. The Court’s order affects administrative relief announced by the agency. Separate efforts are underway to promulgate new rules that would also delay implementation.*

On July 31, the U.S. Court of Appeals for the District of Columbia Circuit issued an order that the Court’s “Clerk issue the mandate to the agency forthwith” implementing the Court’s July 3, 2017 [order](#) vacating the Environmental Protection Agency’s (EPA) 90-day stay of provisions of the “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources” final rule. In a July 13 order, the Court granted the EPA a 14-day delay in enforcement of the order vacating the stay.

The Obama Administration’s EPA published the [final rule](#), which establishes requirements for the oil and gas sector to reduce emissions from new equipment and facilities on June 3, 2016. The rule establishes best system of emissions reduction (BSER) requirements “for certain new, modified, and reconstructed equipment, processes, and activities across the oil and natural gas source category”.

Since taking office, the Trump Administration has targeted the rule as one of the Obama Administration regulations it seeks to repeal or modify. On April 4, 2017, the EPA published a [notice](#) announcing that it is “reviewing the

2016 Oil and Gas New Source Performance Standards and, if appropriate, will initiate reconsideration proceedings to suspend, revise or rescind this rule.” On April 18, 2017, the EPA announced, through a [letter](#) to industry trade associations, that it would reconsider portions of the final rule. In separate action from the administrative stay that is the subject to the Court of Appeals’ actions, the EPA is working on rulemakings that would delay implementation dates for the rule. On June 16, the EPA published: a Notice of Proposed Rulemaking ([NPRM](#)) “to stay for two years certain requirements” of the rule; and an [NPRM](#) “to stay for three months certain requirements that are contained within the Final Rule...”

## EPA Advances Ozone Rule Implementation

### Key Points:

- *The EPA announced this week that it would proceed with a key step in implementing the Obama Administration’s 2015 rule tightening the ground-level ozone air quality standard.*

Reversing an earlier decision, the Environmental Protection Agency (EPA) announced on Thursday that it “is moving forward with 2015 ozone designations, [and will work] with states to help areas with underlying technical issues, disputed designations, and/or insufficient information.” The EPA announced the decision in a [press release](#), which notes that the agency “may take future action to use its delay authority and all other authority legally available to the Agency to ensure that its designations are founded on sound policy and the best available information.” The EPA had previously [announced](#) that it was “extending the deadline for promulgating initial area designations, by

one year, for the 2015 ozone National Ambient Air Quality Standards (NAAQS).”

## Senate Approves Nominations

### Key Points:

- *Before adjourning for the August recess, the Senate approved two nominees to the Federal Energy Regulatory Commission, as well as the nominee to be Deputy Secretary of Energy.*
- *Once sworn-in the two new FERC commissioner’s will restore that body’s voting quorum. The Commission has operated without a quorum since February 3.*

On August 3, the Senate approved, by unanimous consent, the nominations of Neil Chatterjee, energy policy advisor to Senate Majority Leader Mitch McConnell (R-KY), and Pennsylvania Public Utility Commission Commissioner Robert Powelson to the Federal Energy Regulatory Commission (FERC). President Donald Trump [submitted the two nominations](#) on May 10, and the Senate Energy and Natural Resources Committee approved them on June 6. FERC has operated without a quorum since February 3, 2017, when former Chairman Norman Bay resigned leaving the Commission with only two commissioners. On August 2, the President [submitted nominations](#) for the two remaining vacancies: Jones Day energy attorney Kevin McIntyre, and Senate Energy and Natural Resources Committee counsel Richard Glick. The Senate Energy and Natural Resources Committee will hold a [hearing](#) on the McIntyre and Glick nominations on September 7.

Also on Thursday, the Senate [voted 79-17](#) to confirm Dan Brouillette to be Deputy Secretary of Energy.

## Upcoming Hearings and Events

**August 23**

**Fisheries:** The Senate Commerce Committee will hold a [hearing](#) titled “Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act: Oversight of Fisheries Management Successes and Challenges.”

**September 7**

**Nominations:** The Senate Energy and Natural Resources Committee will hold a [hearing](#) on pending nominations: Joseph Balash to be Assistant Secretary of the Interior for Land and Minerals Management, and Richard Glick and Kevin McIntyre to be Members of the Federal Energy Regulatory Commission.

*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****Senate Clears Defense Nominations***Key Points:*

- *In an unusually productive week, the Senate confirmed a number of pending national security nominees, but the SASC Chairman urged the White House to speed up its nomination process.*

This week, the Senate reached agreement on confirming a number of Trump Administration nominees, including many at the Department of Defense (DOD). Among those nominees confirmed are:

- Richard Spencer as Secretary of the Navy
- Ryan McCarthy as Undersecretary of the Army
- Ellen Lord as the Undersecretary of Defense for Acquisition, Technology and Logistics

- Robert Daigle as Director of Cost Assessment and Program Evaluation
- General Paul Selva for a second term as the Vice Chairman of the Joint Chiefs of Staff

However, even with the confirmation of a number of DOD nominations, Senate Armed Services Committee Chairman John McCain (R-AZ) asserted in a [statement](#) that “I hope the White House will expeditiously send the Senate nominations for the many positions that remain unfilled at the Department of Defense.”

**Administration Thinking Through Afghanistan Options***Key Points:*

- *The Trump Administration is divided between those who want a larger troop commitment and those inclined to withdraw, with the latter group possibly including the President.*
- *Trump suggested in public that the current commander on the ground may need to be relieved.*
- *A SIGAR quarterly report again found a mixed situation.*
- *The Administration’s deliberations are occurring against a backdrop of potential Congressional action on a new AUMF.*

In a few different media outlets, the Trump Administration signaled that it is no closer to the strategy promised to Congress by July on how to handle U.S. involvement in Afghanistan. Unnamed Administration officials in one article suggested that a withdrawal of U.S. troops is being considered, while in an interview President Donald Trump made the case for relieving the commander in Afghanistan of his current duties. Other media accounts suggest Trump is considering a shakeup of his national security team by

sending current National Security Advisor Lieutenant General H.R. McMaster to command U.S. forces in Afghanistan with Central Intelligence Agency Director Mike Pompeo being tapped to succeed McMaster in the White House. Amidst these competing messages, at least one key Member on Capitol Hill is signaling his displeasure at the state of affairs.

The Trump Administration has been grappling with how to proceed in Afghanistan since the beginning of the year. McMaster, and other stakeholders, have been pushing for a troop increase to help stabilize the Afghan government, creating space to work with Pakistan, India and other countries in the region to decide upon a plan to end hostilities. Yet, other White House officials, such as White House Chief Strategist Steve Bannon have resisted further engagement in Afghanistan and have reportedly been pushing to withdraw troops. Even among those aligned with ramping up the U.S. military presence, there have been tensions. According to accounts, McMaster was forced to revise his Afghanistan strategy after Secretary of State Rex Tillerson and Secretary of Defense James Mattis refused to support a more ambitious broadly reaching plan. Despite reaching agreement on a plan to deploy 3,900 more troops to Afghanistan, McMaster and others allegedly failed to persuade the President to sign on. In a National Security Council Principals meeting last month, Trump reportedly pushed back against this plan and questioned why the U.S. is still fighting in Afghanistan after 16 years. Moreover, it remains to be seen what role new White House Chief of Staff General John Kelly will play in the shaping of Administration policy in the White House beyond trying to formalize communication between staff and the President.

The Trump Administration is beginning to face unrest in Congress regarding plans for Afghanistan. In public hearings before Congress, Mattis had committed to delivering a strategy for Afghanistan by July, and some Members are expressing displeasure at not having received any plan. This week, Senate Armed Services Committee Chairman John McCain (R-AZ) even stated he will draft a strategy and add it to the FY 2018 National Defense Authorization Act (NDAA). In a [statement](#), McCain asserted that “[m]ore than six months after President Trump’s inauguration, there still is no strategy for success in Afghanistan...[and] [e]ight years of a ‘don’t lose’ strategy has cost us lives and treasure in Afghanistan.” He declared that “[w]hen the Senate takes up the National Defense Authorization Act in September, I will offer an amendment based on the advice of some of our best military leaders that will provide a strategy for success in achieving America’s national interests in Afghanistan.” Should such an amendment be added to the NDAA, it may be another sign the Congress, particularly the Senate, may be taking a more prominent role in foreign and military affairs as evidenced by the passage of a bill to limit the President’s discretion on lifting sanctions imposed by the Obama Administration on Russia.

Likewise, Trump’s comments to NBC that he may relieve U.S. Forces Afghanistan and the Resolute Support Mission General John Nicholson Jr. were met with statements of disagreement. McCain and Senator Lindsey Graham (R-SC) both made statements cautioning the White House against removing Nicholson from command. According to media reports, this was not the first time Trump has discussed such a change. In a July 19, meeting with Mattis and the Chairman of the Joint Chiefs of Staff General James

Dunford, Trump emphasized that Nicholson should be relieved because the U.S. is “losing.”

In addition to the gains made by the Taliban and associated factions, this week, the Special Inspector General for Afghanistan Reconstruction (SIGAR) issued another mixed “[quarterly report](#) on the status of the U.S. reconstruction effort in Afghanistan.” SIGAR acknowledged that “[i]nsurgents and terrorists carried out a number of deadly high-profile and insider attacks this quarter.” SIGAR noted that “[a]t the same time, there were some positive developments this quarter...[because] President Ashraf Ghani has already begun implementing policies laid out in his forthcoming four-year reform plan for the Afghan National Defense and Security Forces (ANDSF).” SIGAR stated that “[i]n addition, ANDSF force strength also increased for the second quarter in a row...[and] [t]he number of districts under the control of the government also appears to have stabilized at 59.7%, the same as last quarter.”

Additionally, Congress may soon opt to revisit the Authorization for the Use of Military Force (AUMF) (P.L. 107-40) enacted in 2001 that has allowed the current and two previous Administrations to conduct operations in Afghanistan and elsewhere throughout the Middle East. Some Members would like to a narrower, more tightly defined AUMF while others would like a broader authorization to allow the Trump Administration wider latitude in operations.

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

## **HEALTH**

**Senate Passes FDA User Fees Bill; Confirms HHS Nominees**

### *Key Points:*

- *The Senate passed the Food and Drug Administration Reauthorization Act (H.R. 2430) by a roll call vote of 94-1. The bill now goes to the President.*
- *The Senate also cleared a number of nominees for positions at the Department of Health and Human Services.*

Before leaving for the August recess, the Senate passed the “Food and Drug Administration (FDA) Reauthorization Act” (FDARA) ([H.R. 2430](#)) by a roll call vote of 94-1. Senator Bernie Sanders (I-VT) was the only person to vote against the bill citing the bill’s failure to address prescription drug prices. The Senate made no amendments to the House bill so it now heads to President Donald Trump for his signature.

FDARA will reauthorize the user fee programs for prescription drugs, generic drugs, biosimilars, and medical devices through 2022. Senate Health, Education, Labor and Pensions Committee Chairman Lamar Alexander (R-TN) stressed this funding pays for one-quarter of the FDA “which has a critical role in approving the safety and effectiveness of drugs, treatments, and devices.” He noted passage of FDARA “will help ensure advancements in research supported by the 21st Century Cures can turn into lifesaving treatments and cures.”

The Senate also cleared a series of nominees for the Department of Health and Human Services by unanimous consent: Elinore F. McCance-Katz to be Assistant Secretary for Mental Health and Substance Use; Lance Allen Robertson to be Assistant Secretary for Aging; Jerome M. Adams to be Surgeon General; and Robert P. Kadlec to be Assistant Secretary for Preparedness and Response.

**Committees Plan Bipartisan Hearings on Health Reform in September**

*Key Points:*

- *The Senate Health, Education, Labor and Pensions Committee will hold its first hearing the week of September 4, on health care reform.*
- *The Senate Finance Committee will also begin holding hearings on federal health care policy including reauthorizing the Children’s Health Insurance Program (CHIP)*

On August 1, Senate Health, Education, Labor and Pensions Committee Chairman Lamar Alexander (R-TN) and Ranking Member Patty Murray (D-WA) announced the Committee will hold a series of hearings aimed at developing bipartisan legislation to address the Affordable Care Act’s insurance markets. The first hearing will be held the week of September 4.

Alexander said the hearings will feature a range of health policy experts including state insurance commissioners, patients, and insurance industry representatives. He also encouraged President Trump to continue paying the cost-sharing reductions through September stressing without them “Americans will be hurt.” The committee hopes to have legislation before September 27 which is when insurers must make final determinations on 2018 rates.

Senate Finance Committee Chairman Orrin Hatch (R-UT) announced the Committee will begin holding hearings on health care in September. This will include hearings on the Children’s Health Insurance Program (CHIP) which is set to expire September 30. He stated he has “heard a lot of demands from Members of the committee for a health care hearing,” noting he intends to hold hearings shortly after the August recess.

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

## **TRANSPORTATION AND INFRASTRUCTURE**

### **Commerce Reports out Transportation Nominations**

*Key Points:*

- *While some transportation nominees have been confirmed, higher profile nominations have been held over, possibly due to Democratic objections.*

Before departing for the August recess, the Senate confirmed a number of Trump Administration nominees, including some named to transportation-related positions. However, the Senate held off on potentially more contentious transportation nominees, meaning that they would be confirmed, if at all, in September at the earliest.

The Senate confirmed David Pekoske to be Transportation Security Administration (TSA) Administrator, Mark Buzby to be United States Maritime Administration (MARAD) Administrator and Robert Sumwalt to be National Transportation Safety Board (NTSB) Chairman. However, the Senate held off on the following nominations:

- Steven Bradbury to be Department of Transportation General Counsel
- Ron Batory to be Federal Railroad Administration Administrator
- Derek Kan to be Undersecretary of Transportation for Policy

During the Senate Commerce, Science, and Transportation Committee confirmation hearing earlier in the week, Bradbury was questioned by a number of Democratic

Members regarding his representation of Takata and his role in drafting the memoranda the Bush Administration relied upon in conducting what some have termed “enhanced interrogation” techniques but others have deemed “torture.” The articulated opposition may have slowed Bradbury’s nomination and the others, too.

### FTA Proposes Rule To Attract Private Capital To Public Transportation Projects

#### Key Points:

- *A draft rule would allow public transportation agencies to seek waivers or modifications of FTA regulations and guidance in order to attract and secure private investment in capital projects.*
- *This rulemaking fits the Trump Administration’s push for greater private investment in transportation projects but was required by MAP-21 and the FAST Act.*

The Federal Transit Administration (FTA) has released a [notice of proposed rulemaking](#) (NPRM) to implement “new, experimental procedures to encourage increased project management flexibility, more innovation in project funding, improved efficiency, timely project implementation, and new project revenue streams” for capital projects governed by Chapter 53 of Title 49 of the U.S. Code (the statutes that govern public transportation.) This rulemaking is designed to help public transit projects attract private sector investment in either public-private partnerships (P3s) or “private investment in public transportation capital projects.” The FTA is acting pursuant to authorizations in the last two surface transportation authorizations, but it is important to note that transit agencies selected to participate cannot be granted waivers of any provisions of the National Environmental Policy Act (NEPA) or any federal statute.

Under the proposed Private Investment Project Procedures (PIPP), modifications or waivers would be granted from FTA regulations, practice, procedure, or guidance documents for public transportation capital projects. In the larger scheme, this rulemaking fits the Trump Administration’s desire that more private financing be used to fund public sector infrastructure needs.

The FTA stated that the “Moving Ahead for Progress in the 21st Century Act” (MAP-21) ([P. L. 112-141](#)) and the “Fixing America’s Surface Transportation (FAST) Act” ([P. L. 114-94](#)) authorized and required agency action regarding “the use of public-private partnerships and private investment in public transportation capital projects.” The FTA explained that “[u]nder the proposed rule, recipients funding a public transportation capital project subject to 49 U.S.C. chapter 53 with FTA (e.g. Capital Investment Grants aka New Starts), Railroad Rehabilitation and Improvement Financing (RRIF), Transportation Infrastructure Finance and Innovation Act (TIFIA) or other Federal financial assistance could request a modification or waiver, in whole or in part, of a specific FTA regulation, practice, procedure or guidance document (including a circular) that may be an impediment to the use of P3s or private investment in that project.”

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

## **TECHNOLOGY**

### Senate Sends DIGIT Act to House

#### Key Points:

- *The Senate clears a bill that would establish a process for the federal government to assess the current state of IOT and determine a path*

*towards safer and more secure adoption and utilization.*

- *A House companion bill has been referred to committee.*

On August 3, the Senate took up and passed by voice vote with an amendment in the nature of a substitute the “Developing Innovation and Growing the Internet of Things Act” (DIGIT Act) ([S. 88](#)) that would task the Department of Commerce (Commerce), the Federal Communications Commission (FCC), the National Telecommunications and Information Administration (NTIA), and other federal stakeholders with generating recommendations and a report to Congress on how the federal government can best foster the growth of the Internet of Things (IOT). This process is predicated on significant input from non-federal stakeholders and would likely provide the basis for future federal legislation to assist the growth of IOT. There is a House companion bill ([H.R. 686](#)) that has not been acted upon.

Commerce must “convene a working group of Federal stakeholders (Working Group) for the purpose of providing recommendations and a report to Congress relating to the aspects of the IOT.” The Working Group would:

- (1) identify any Federal regulations, statutes, grant practices, budgetary or jurisdictional challenges, and other sector-specific policies that are inhibiting, or could inhibit, the development of the IOT;
- (2) consider policies or programs that encourage and improve coordination among Federal agencies with jurisdiction over the IOT;
- (3) consider any findings or recommendations made by the steering committee and, where appropriate, act to implement those recommendations.

Additionally, the Working Group would “examine

- (A) how Federal agencies can benefit from utilizing the IOT;
- (B) the use of IOT technology by Federal agencies as of the date on which the working group performs the examination;
- (C) the preparedness and ability of Federal agencies to adopt IOT technology in the future; and
- (D) any additional security measures that Federal agencies may need to take to—
  - (i) safely and securely use the IOT, including measures that ensure the security of critical infrastructure; and
  - (ii) enhance the resiliency of Federal systems against cyber threats to the IOT.

There would also be established a Steering Committee comprised of “a wide range of stakeholders outside of the Federal Government with expertise relating to the IOT, including” but not limited to “information and communications technology manufacturers, suppliers, service providers, and vendors.” The Steering Committee would assist the Working Group by providing advice regarding:

- the identification of any Federal regulations, statutes, grant practices, programs, budgetary or jurisdictional challenges, and other sector-specific policies that are inhibiting, or could inhibit, the development of the IOT;
- whether adequate spectrum is available to support the growing IOT and what legal or regulatory barriers may exist to providing any spectrum needed in the future;

The Steering Committee would report to the Working Group within one year, and the Working Group would report its recommendations to Congress within 18 months.

The FCC and NTIA would be charged with issuing “a notice of inquiry seeking public comment on the current, as of the date of enactment of this Act, and future spectrum needs of the Internet of Things.” The FCC would then submit a report to the committees of jurisdiction “summarizing the comments submitted in response to the notice of inquiry.”

### **Senators Introduce Bill To Use Federal Acquisition To Drive Greater Cybersecurity in IOT Devices**

#### *Key Points:*

- *A bill was released that would require federal contractors offering IOT to the federal government to certify certain security features of the devices.*
- *The legislation would leverage the federal government’s buying power to drive broader changes in the IOT market.*

This week, Senators Mark Warner (D-VA), Cory Gardner (R-CO), Ron Wyden (D-OR), and Steve Daines (R-MT) introduced the “[Internet of Things \(IOT\) Cybersecurity Improvement Act of 2017](#)” ([S. 1691](#)) that would require federal agencies to use contract clauses to ensure the security of IOT devices sold to or used by the government by placing the onus on federal contractors to vouch for the security and correct vulnerabilities of these devices. In their [summary](#), the Senators claimed the bill “is aimed at addressing the market failure by establishing minimum security requirements for federal procurements of connected devices.” If enacted as drafted, the bill may drive the development and

proliferation of industry practices to secure and patch IOT in the private sector as well because the federal government is one of the biggest buyers of goods and services.

The legislation requires the Office of Management and Budget (OMB) to “issue guidelines for each executive agency to require” a number of contract clauses for the “acquisition of Internet-connected devices,” including:

- A written certification that the device doesn’t have any security vulnerabilities or defects identified on specified databases and can accept properly authenticated and trusted updates from vendors;
- A requirement that contractors alert the agency in the case of any subsequently discovered vulnerabilities or defects in the device
- A requirement that devices be able to be updated and patched in a timely fashion
- A stipulation that contractors have the responsibility to address any vulnerabilities identified by other contractors in the IOT they have provided by contract to another agency

There would also be a process for contractors to disclose known vulnerabilities at the time of placing a bid and asking for a waiver based on a justification for still using the device and any actions that can mitigate or eliminate the vulnerabilities.

Additionally, OMB and the National Institute of Standards and Technology (NIST) would “define a set of conditions” that any devices could meet in order to be procured that do not meet the de facto security standards that OMB’s guidelines on mandatory contract clauses will bring into being. OMB, NIST and

private sector “industry experts” could add conditions these non-compliant devices would need to meet including “deadlines for removal” and “minimal requirements for gateway products to ensure the integrity and security” of such devices. There are also processes contemplated for compliance of devices through the use of accepted third party standards and agency evaluations procedures for IOT vulnerabilities.

The Department of Homeland Security’s National Protection and Programs Directorate (NPPD) would issue guidelines “for each agency with respect to any Internet-connected device in use of by the United States regarding cybersecurity coordinated disclosure requirements that shall be required of contractors providing such software to the United States Government.” Finally, researchers the cybersecurity of IOT devices would receive a liability shield from the “Computer Fraud and Abuse Act” and copyright laws provided such research is conducted in “good faith.”

## Two Cyber Bills Reported Out

### Key Points:

- *A bill designed to increase the number of students becoming credentialed in cybersecurity and another to increase the assistance available to small businesses were sent to the Senate Floor.*

This week, two Senate Committees marked up and reported out noncontroversial cyber-related bills that could be taken up once the Senate returns in September.

The Senate Commerce, Science, and Transportation Committee marked up a number of bills, including the “Cyber Scholarship Opportunities Act of 2017” ([S.](#)

[754](#)) sponsored by Senators Tim Kaine (D-VA), Roger Wicker (R-MS), Patty Murray (D-WA), David Perdue (R-GA), and Bill Nelson (D-FA). The Committee adopted a [substitute amendment](#) and voted out the bill by voice vote. S. 754 would direct the National Science Foundation (NSF) to conduct a pilot program with 5-10 community colleges to provide scholarships for students studying cybersecurity, expand the Federal Cyber Scholarship-for-Service Program to require that 80 percent of the scholarship recipients are hired by federal agencies, stipulate that scholarship recipients would have to enter into service with a government entity (federal, state, or local) for the same length of time as their scholarship, and widen the eligibility criteria for the “Robert Noyce Teacher Scholarship Program” by specifying that math and science and STEM K-12 teachers can include those accredited in cybersecurity. In his [press release](#), Wicker stated that the bill “would expand the CyberCorps program at the National Science Foundation to community colleges and K-12 institutions across the country...[and] would also expand the Robert Noyce Teacher Scholarship Program to help local education agencies recruit and train highly effective cybersecurity teachers to address the critical need for educators at elementary and secondary schools.” There is a related bill in the House that has not been acted upon: the “Cyber Scholarship Opportunities Act of 2017” ([H.R. 2184](#)).

The Senate Small Business and Entrepreneurship Committee also marked up a cyber-related bill, the “Small Business Cyber Training Act of 2017” ([S. 1428](#)) under which the Small Business Administration (SBA) “shall establish a cyber counseling program, or designate an existing program, under which the Administrator may certify the employees of lead small business development centers in

providing cyber planning assistance to small business concerns” that “shall consider any cyber strategy methods included in the Small Business Development Center Cyber Strategy developed under section 1841(a)(3)(B) of the National Defense Authorization Act for Fiscal Year 2017 ([P. L. 114-328](#)).” The SBA has not yet released this strategy. In its [press release](#), the Committee summarized S. 1428: “[t]he bill requires the Small Business Administration (SBA) to develop new cybersecurity counseling and training programs through the nationwide network of Small Business Development Centers to help small business owners prepare for cyber threats and recover when a cyber attack occurs.” This bill is sponsored by Chairman Jim Risch (R-ID), Ranking Member Jeanne Shaheen (D-NH) and Senators Gary Peters (D-MI), John Kennedy (R-LA), and Tammy Duckworth (D-IL). There are two similar bills that have been introduced in the House that have not been acted on: the “Small Business Cyber Training Act of 2017” ([H.R. 3002](#)) and the “Small Business Development Center Cyber Training Act of 2017” ([H.R. 3107](#)).

*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 Schnepf.*