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September 1, 2017

Washington Update

<u>This Week in Congress</u>

<u>House</u> – The House is in recess until September 5th.

<u>Senate</u> – The Senate is in recess until September 5th.

<u>Next Week in Congress</u>

<u>House</u> – The House will being to consider the eight remaining appropriations bills.

<u>Senate</u> –The Senate will consider the nomination of Timothy Kelly to be United States District Judge for the District of Columbia.

<u>TAX</u>

President Trump Gives Opening Pitch For Tax Reform

Key Points

- *President Trump renewed call for 15% business tax rate, allowing companies to repatriate foreign earnings and a middle class tax cut to allow families to keep more of their paychecks.*
- *On Tuesday, the 'Big Six' will meet with President Trump to discuss tax reform.*
- *The White House reportedly will not release its own report outlining tax reform.*

On Wednesday, President Donald Trump gave a speech billed by the White House as a "kickoff event" for passing major tax reform legislation this fall. In the speech, Trump called for bipartisan support from Congress to pass legislation that would lower the corporate tax rate and simplify the tax code. In the speech, President Trump outline broad goals saying he wants to "work with Congress, Republicans and Democrats alike, on a plan that is pro-growth, pro-jobs, pro-workers—and pro-American." Specifically, Trump said he wants to lower the business tax rate to 15% and change the tax laws to allow companies to repatriate foreign earnings. His other core principles included the elimination of loopholes that benefit the wealthiest and trimming tax rates for the middle class. He wants the tax

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code to encourage companies to build and hire within the United States without difficult tax burdens. Calling his plan "The American Model," he wants companies to bring jobs and wealth back to the U.S. Hearings are expected in the House and Senate throughout September and likely into October.

White House Officials Offer Different Views of Status of Tax Reform

Key Points

- Treasury Secretary Steven Mnuchin says the administration has a "very detailed" tax plan ready.
- The plan has been presented to members of Congress and will be released to the public by the end of September.
- Chief Economic advisory and Director of the National Economic Council Gary Cohn said today that there was only a broad outline.

In remarks made to CNBC on Thursday, Treasury Secretary Steven Mnuchin said the administration has a "very detailed" tax plan ready. He said the plan has been presented to [key] members of Congress and will be released to the public by the end of September. In the interview Mnuchin said, "The House and the Senate are now socializing the plan with their members. We're going to release a blueprint, it's going to go to committee and we're going to turn this into a bill that the president will sign."

In a separate interview, Mnuchin told *The Wall Street Journal* that he expected a tax blueprint with more specifics to come out in the coming weeks, but that "it's not a 100-page bill with every single detail."

Mnuchin's comments appear to contradict recent reports that that the White House would not release its own tax plan, and instead would wait for Congress to release draft legislation. President Trump is scheduled to meet this coming Tuesday with the group known as the Big Six, which includes leaders of the House and Senate, the chairmen of both tax-writing committees, Treasury Secretary Steven Mnuchin and National Economic Council Director Gary Cohn to discuss tax reform. Cohn's comments this morning have added to the confusion in recent weeks about how much the White House will be involved in the process.

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

Regulators Announce Delay in Basel III Implementation, Intent to Simplify Capital Requirements

Key Points:

- *The Federal Reserve, FDIC and OCC jointly announced that they will delay implementation of Basel III capital requirements for banks with less than $250 billion in consolidated assets.*

Upcoming Dates
September 5: Congress returns
September 29: Treasury indicated this date is when Treasury will exhaust extraordinary measures for the U.S. debt limit
September 30: FY 2017 ends and FAA, CHIP, NFIP, and Perkins Loan authorizations expire
December 31, 2017: Title VII of FISA expires

- *The agencies noted that the delay was being proposed in anticipation of a proposal to simplify regulatory capital requirements.*

On August 22, the Federal Reserve, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) issued a joint Notice of Proposed Rulemaking (NPR) to extend the existing capital treatment for certain regulatory capital deductions and risk weights. The NPR would delay the implementation of capital requirements under Basel III, "in preparation for a forthcoming proposal that would simplify regulatory capital requirements." The extension would apply to banking organizations that are not subject to the agencies' advanced approaches capital rules. As noted in an OCC press release:

> Banking organizations that are not subject to the advanced approaches capital rules are generally those with less than $250 billion in total consolidated assets and less than $10 billion in total foreign exposure. Firms that are subject to the advanced approaches rules would not be affected by this proposal and would remain subject to the fully phased-in requirements for these exposures beginning on January 1, 2018.

An FDIC press release stated that "the agencies are proposing to extend the existing transition provisions for a targeted set of items: mortgage servicing assets, certain deferred tax assets, investments in the capital instruments of unconsolidated financial institutions, and minority interests."

FDIC Vice Chairman Thomas Hoenig issued a statement in which he expressed support for the delay, but also stressed that additional action is needed to provide relief to community banks. He stated that:

> While this step to freeze the phase-in of Basel rules is important, our actions do not go far enough in providing the permanent and comprehensive relief that community banks so badly need and that I have long been advocating. Along the lines of my recommendations from 2015, such relief might be better achieved and sustained if predicated on a bank's activities and amount of tangible equity rather than asset size. Eligible banks would realize relief from not only Basel risk-based capital, but also from stress testing, appraisal requirements, exam frequency, and many other rules as outlined in the term-sheet for traditional banks. About 90 percent of the approximately 5,700 U.S. commercial banks meet the criteria defining the business activities of a traditional bank, and two-thirds have capital levels that would allow us to credibly roll back these regulations. I hope the NPR we are approving is the first step in a more comprehensive approach to simplifying and easing the regulatory burden for community banks.

The proposal will be subject to a 30 day comment period.

Department of Labor Proposes Delay for Parts of the Fiduciary Rule

Key Point:

- *The Department of Labor proposed an 18 month delay in the special transition period for the fiduciary rule's Best Interest Contract Exemption and the Principle Transactions Exemption.*

On August 31, the Department of Labor (DOL) proposed an 18 month extension, from January 1, 2018 to July 1, 2019, to the special transition period for the fiduciary rule's Best Interest Contract (BIC) Exemption and the Principle Transactions Exemption as well as certain amendments to the Prohibited Transaction Exemption 84-24. The DOL proposal states:

> The primary purpose of the proposed amendments is to give the Department of Labor the time necessary to consider possible changes and alternatives to these exemptions. The Department is particularly concerned that, without a delay in the applicability dates, regulated parties may incur undue expense to comply with conditions or requirements that it ultimately determines to revise or repeal. The present transition period is from June 9, 2017, to January 1, 2018. The new transition period would end on July 1, 2019. The proposed amendments to these exemptions would affect participants and beneficiaries of plans, IRA owners and fiduciaries with respect to such plans and IRAs.

Comments must be submitted on or before September 15, 2017.

In addition, on August 30, the DOL announced an enforcement policy in Field Assistance Bulletin (FAB) 2017-03 related to the arbitration provision in the BIC Exemption and Principal Transaction Exemption. These exemptions include arbitration provisions, which make the exemptions unavailable "if the financial institution's contract with a retirement investor includes a waiver or qualification of the retirement investor's right to bring or participate in a class action or other representative action in court."

Federal Reserve Adopts Final Rule on Restrictions Qualified Financial Contracts of GSIBs

Key Point:

- *The Federal Reserve Board adopted a final rule requiring GSIBs to use qualified financial contracts which limit termination rights that arise from the failure of a GSIB or its affiliates.*
- *The rule is aimed at promoting the orderly resolution of GSIBs.*

At a September 1, open meeting the Federal Reserve Board voted unanimously to approve one item: Final Rule Establishing Restrictions on Qualified Financial Contracts of Systemically Important U.S. Banking Organizations and the U.S. Operations of Systemically Important Foreign Banking Organizations.

Chair Janet Yellen, in a statement, said the rule would support the Federal Reserve's strategy to reduce the potential systemic effect of the failure of a global systemically important bank

(GSIB). She stated that the financial crisis showed that when a large financial institution gets into trouble, its failure can destabilize other firms and the broader financial system. She explained that one reason this might happen is that the very largest banks are interconnected through substantial volumes of financial contracts. She stated that should these Qualified Financial Contracts (QFCs) unravel all at once at a failed GSIB, an orderly resolution of that firm can become far more difficult, sparking asset fire sales that can consume many firms. Yellen said the final rule will require GSIBs to use QFCs that limit termination rights that arise from the failure of a GSIB or its affiliates, so that there is time to transfer QFCs from a failed firm to a solvent one. She contended that this requirement will help manage the risk to the financial system when a GSIB fails, and will thus strengthen the resiliency of the financial system as a whole.

Governor Jerome Powell, in a statement, said the final rule is aimed at improving the resolvability of the largest firms. He stated that "without this final rule, the substantial numbers of QFCs that the largest firms have outstanding could be terminated when it or one of its affiliates enters bankruptcy, risking a systemic disruption." He said this final rule would help ensure that appropriate temporary stays would apply to a broad range of the foreign and domestic QFCs of a failed GSIB, regardless of whether the resolution is conducted under the Federal Deposit Insurance Act, the Dodd-Frank Act, or the Bankruptcy Code. Powell said the final rule should help avoid the threat of a disorderly and mass unraveling of QFCs, as occurred in the case of Lehman Brothers, which intensified and prolonged the financial crisis. He noted that the final rule is tailored to apply only to GSIBs. He said that because this final rule requires GSIBs to amend a large number of their contracts, the Federal Reserve modified the timeline from the proposal to adopt a phased-in approach to give more time to conform contracts with less complex and less risky counterparties, such as community banks, pension funds, and insurance companies.

The final rule will go into effect 60 days after its publication in the *Federal Register*.

Upcoming Hearings and Events

September 6

Terrorism Financing: The House Financial Services Committee's Subcommittee on Terrorism and Illicit Finance will hold a hearing entitled "Low Cost, High Impact: Combatting the Financing of Lone-Wolf and Small-Scale Terrorist Attacks."

September 7

Credit Union Advisory Council: The Consumer Financial Protection Bureau (CFPB) will hold a meeting of its Credit Union Advisory Council. The agenda for the meeting includes panels entitled: (1) Know Before You Owe: Overdraft; and (2) Financial empowerment initiatives.

Regulatory Reform: The House Financial Services Committee's Subcommittee on Financial Institutions and Consumer Credit will hold a hearing entitled "Legislative Proposals for a More Efficient Federal Financial Regulatory Regime."

FINRA Oversight: The House Financial Services Committee's Subcommittee on Capital Markets, Securities, and Investment will hold a hearing entitled "Oversight of the Financial Industry Regulatory Authority." Robert Cook, President and CEO of FINRA, will testify at the hearing.

Nominations and Markup: The Senate Banking Committee will meet in executive session to vote on the nominations of Joseph Otting to be Comptroller of the Currency and of Randal Quarles to be a Member of the Federal Reserve Board and Vice Chairman for Supervision of the Federal Reserve Board.

North Korea Sanctions: The Senate Banking Committee will hold a hearing entitled, "Evaluating Sanctions Enforcement and Policy Options on North Korea." Witnesses will include: Adam Szubin, Distinguished Practitioner in Residence, Strategic Studies, Johns Hopkins University School of Advanced International Studies; Anthony Ruggiero, Senior Fellow, Foundation for Defense of Democracies; and Dr. John Park, Director of the Korea Working Group and Adjunct Lecturer in Public Policy, Harvard Kennedy School.

September 8

SEC Forum on ETPs: The Securities and Exchange Commission (SEC) and New York University (NYU) will host a forum to examine exchange-traded products (ETPs) and the implications for investors. The agenda includes remarks from Commissioner Michael Piwowar and Commissioner Kara Stein, as well as discussions on the following topics: the effect of ETPs on Financial Markets; implications for investors; and the future of ETPs.

September 13

Small and Emerging Company Advisory Committee: The Securities and Exchange Commission (SEC) will hold a meeting of its Advisory Committee on Small and Emerging Companies. The agenda for the meeting includes matters relating to rules and regulations affecting small and emerging companies under the federal securities laws.

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

Federal Energy Response to Hurricane Harvey

Key Points:

- *Federal agencies are responding to the disruptions in energy markets in the wake of Hurricane Harvey's landfall and flooding in Texas.*
- *Agencies are working with the private sector to restore production and logistical capacity and alleviate disruptions in fuel and energy supplies.*

The Department of Energy, Environmental Protection Agency (EPA), and the Pipeline and Hazardous Materials Safety Administration (PHMSA) are among the federal agencies responding to the damage caused by Hurricane Harvey. The storm's extensive and historic flooding in Houston and surrounding areas has had a significant impact on energy production, processing, and distribution. Ongoing federal efforts to address these issues include:

- ***Strategic Petroleum Reserve:*** On Thursday, the Department of Energy announced that it would release one million barrels of crude oil from the Strategic Petroleum Reserve (SPR) to the Phillps 66 refinery in Lake Charles, Louisiana. The Department's Office of Fossil Energy has posted "Guidance for Requesting Emergency Oil Exchange from the SPR," which "provides SPR contacts and guidance for requesting emergency oil exchange assistance, should physical events impede your supplies and no immediate supply alternatives remain." Refineries are the typical recipients of SPR sales and exchanges.
- ***Clean Air Act Waivers for Gasoline:*** The Environmental Protection Agency (EPA) has issued a series of waivers from Clean Air Act requirements for Reid vapor pressure (RVP) standards and reformulated gasoline (RFG). In a press release issued on Thursday, the EPA announced an expanded waiver of "requirements for reformulated gasoline and low volatility conventional gasoline through September 15" in 38 states.
- ***Pipeline Safety:*** PHMSA notes in an announcement that it "continues to be in contact with pipeline operators in the path of Hurricane Harvey", and that "[o]perators continue to aggressively implement their hurricane preparedness plans, and are taking actions to minimize the impact of the storm." The agency also highlights regulatory guidance for pipeline operators responding to extreme weather events including: the advisory bulletin on "Pipeline Safety: Potential for Damage to Pipeline Facilities Caused by the Passage of Hurricanes"; and the advisory bulletin on "Pipeline Safety: Potential for Damage to Pipeline Facilities Caused by Flooding, River Scour, and River Channel Migration".
- ***Updates:*** The Department of Energy's Office of Electricity Delivery & Energy Reliability is posting "Situation Reports", which detail: "Electricity Sector Impacts"; and "Oil and Natural Gas Sector Impacts", including updates on offshore and onshore production, ports, refining, and pipelines. The Energy Information Administration (EIA) is also monitoring and reporting on supply and price developments, including a post today titled "Hurricane Harvey adds uncertainty to gasoline prices for the upcoming Labor Day weekend."

DOE Releases Report on Electric Grid

Key Point:

- *Last week, the Department of Energy published a report on recent developments in electricity generation and transmission and issues related to "the long-term reliability of the electric grid".*

On August 23, the Department of Energy (DOE) released the "Staff Report to the Secretary on Electricity Markets and Reliability." Secretary of Energy Rick Perry requested the report in a memorandum issued on April 14, 2017. Perry directed the Department to provide "a study to explore critical issues central to protecting the long-term reliability of the electric grid…"

The report notes recent significant changes in the electric sector, including natural gas replacing coal as "the leading source of electricity generation" in 2016. The report's findings declare that "[t]he biggest contributor to coal and nuclear plant retirements has been the advantaged economics of natural gas generation." The findings also cite the "low growth of electricity demand", as well as environmental regulations, as contributing to power plant retirements.

The report includes a series of policy recommendations:

- The Federal Energy Regulatory Commission (FERC) "should expedite its efforts with states, [Regional Transmission Organizations]/[Independent System Operators], and other stakeholders to improve energy price formation in centrally-organized wholesale electricity markets."
- "…FERC should study and make recommendations regarding efforts to require valuation of new and existing [Essential Reliability Services] by creating fuel-neutral markets and/or regulatory mechanisms that compensate grid participants for services that are necessary to support reliable grid operations."
- "…DOE should facilitate programs and regional approaches for electricity sector workforce development."
- DOE "should continue to prioritize energy dominance and implementing" the "Promoting Energy Independence and Economic Growth" Executive Order (E.O. 13783).
- "DOE and related Federal agencies should accelerate and reduce costs for the licensing, relicensing, and permitting of grid infrastructure such as nuclear, hydro, coal, advanced generation technologies, and transmission."
- "DOE should review regulatory burdens for siting and permitting for generation and gas and electricity transmission infrastructure and should take actions to accelerate the process and reduce costs."
- "Utilities, states, FERC, and DOE should support increased coordination between the electric and natural gas industries to address potential reliability and resilience concerns associated with organizational and infrastructure differences."
- "DOE and FERC should support well-functioning commodity markets for natural gas by expeditiously processing liquefied natural gas export and cross-border natural gas pipeline applications."

In a statement, FERC Chairman Neil Chatterjee said that the "report highlights many activities that the Commission is carefully considering, including examining ways to enhance wholesale electric capacity markets and improve price formation in those markets, to increase electric and gas coordination, and to assure bulk power system reliability and resilience."

Upcoming Hearings and Events

<u>September 6</u>

Public Utility Regulatory Policies Act (PURPA): The House Energy and Commerce Committee's Energy Subcommittee will hold a hearing titled: "Powering America: Reevaluating PURPA's Objectives and its Effects on Today's Consumers." Scheduled witnesses are: Darwin Baas, Director of the Department of Public Works for Kent County, Michigan; Todd Glass, Counsel for the Solar Energy Industry Association; Terry Kouba, Vice President for Iowa Operations at Alliant Energy; Frank Prager, Vice President for Policy and Federal Affairs at Xcel Energy; Kristine Raper, Commissioner of the Idaho Public Utilities Commission; and Stephen Thomas, Senior Manager for Energy Contracts at the Domtar Paper Company. As described in the Committee's background memo, the "hearing will solicit the views of industry stakeholders, explore the statute's current effects on consumers, and consider whether reforms to modernize the Public Utilities Regulatory Policies Act of 1978…are appropriate due to changes in the power generation sector."

Resources Legislation: The House Natural Resources Committee's Energy and Mineral Resources Subcommittee will hold a hearing on: the "State Mineral Revenue Protection Act" (H.R. 2661); the "Planning for American Energy Act of 2017" (H.R. 2907); and the "Federal Land Freedom Protection Act" (H.R. 3565).

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.

September 20

FERC Open Meeting: The Federal Energy Regulatory Commission (FERC) will hold its first open meeting since the restoration of its quorum.

Postponed

Pipeline Safety: The Pipeline and Hazardous Materials Safety Administration (PHMSA) announced this week that it would postpone meetings of its Liquid Pipeline Advisory Committee (LPAC) and Gas Pipeline Advisory Committee (GPAC) that were originally scheduled for September 6-8.

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

Trump Announces Afghanistan Strategy

Key Points:

- *The President rolls out his Administration's approach to prevailing in Afghanistan without identifying the number of additional troops to be deployed.*
- *Trump portrays his strategy as a break with the previous Administration's.*

On August 21, in a speech, President Donald Trump laid out "our path forward in Afghanistan and South Asia," in which he touted changes in U.S. strategy in the region from the Obama Administration's approach. However, contrary to expectations, Trump did not identify a number of troops that would be committed to Afghanistan to implement the new strategy. An unidentified number of troops will be committed for an unspecified duration to achieve the goals detailed by the President. There are currently between 8,400 and 11,000 U.S. soldiers in Afghanistan, and the proposals that have been circulated in the media could result in an additional 4,000 troops being deployed.

In his remarks, Trump confirmed what has been variously leaked to the media: that Trump began the process of reviewing U.S. engagement in Afghanistan from the perspective that withdrawal was the best policy option. However, many of the same media depictions of the Trump Administration's deliberations describe a process driven by National Security Advisor Lieutenant General H.R. McMaster and Secretary of Defense James Mattis' desire to remake U.S. policy in the region, which encountered resistance from former White House Chief Strategist Steve Bannon among others that preferred withdrawal. Moreover, the Administration's decision came amidst pressure from key defense stakeholders on Capitol Hill that have been pressing for the new strategy promised by Trump during last year's presidential election, including Senate Armed Services Committee Chairman John McCain (R-AZ).

Trump stated that "[a]fter many meetings, over many months, we held our final meeting last Friday at Camp David, with my Cabinet and generals, to complete our strategy…[and] I arrived at three fundamental conclusions about America's core interests in Afghanistan:

- First, our nation must seek an honorable and enduring outcome worthy of the tremendous sacrifices that have been made, especially the sacrifices of lives. The men and women who serve our nation in combat deserve a plan for victory. They deserve the tools they need, and the trust they have earned, to fight and to win.
- Second, the consequences of a rapid exit are both predictable and unacceptable. 9/11, the worst terrorist attack in our history, was planned and directed from Afghanistan because that country was ruled by a government that gave comfort and shelter to terrorists. A hasty withdrawal would create a vacuum that terrorists, including ISIS and al Qaeda, would instantly fill, just as happened before September 11th.
- Third and finally, I concluded that the security threats we face in Afghanistan and the broader region are immense. Today, 20 U.S.-designated foreign terrorist organizations are active in Afghanistan and Pakistan -- the highest concentration in any region anywhere in the world."

Trump stated that "[i]n Afghanistan and Pakistan, America's interests are clear: We must stop the resurgence of safe havens that enable terrorists to threaten America, and we must prevent nuclear weapons and materials from coming into the hands of terrorists and being used against us, or anywhere in the world for that matter." He asserted that "to prosecute this war, we will learn from history…[and] [a]s a result of our comprehensive review, American strategy in Afghanistan and South Asia will change dramatically in the following ways:

- A core pillar of our new strategy is a shift from a time-based approach to one based on conditions. I've said it many times how counterproductive it is for the United States to announce in advance the dates we intend to begin, or end, military options. We will not talk about numbers of troops or our plans for further military activities.
- Another fundamental pillar of our new strategy is the integration of all instruments of American power -- diplomatic, economic, and military -- toward a successful outcome.
- The next pillar of our new strategy is to change the approach and how to deal with Pakistan. We can no longer be silent about Pakistan's safe havens for terrorist organizations, the Taliban, and other groups that pose a threat to the

region and beyond. Pakistan has much to gain from partnering with our effort in Afghanistan. It has much to lose by continuing to harbor criminals and terrorists.
- Another critical part of the South Asia strategy for America is to further develop its strategic partnership with India -- the world's largest democracy and a key security and economic partner of the United States. We appreciate India's important contributions to stability in Afghanistan, but India makes billions of dollars in trade with the United States, and we want them to help us more with Afghanistan, especially in the area of economic assistance and development. We are committed to pursuing our shared objectives for peace and security in South Asia and the broader Indo-Pacific region.
- Finally, my administration will ensure that you, the brave defenders of the American people, will have the necessary tools and rules of engagement to make this strategy work, and work effectively and work quickly."

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

HEALTH

Bipartisan Governors Release Plan to Stabilize Markets

Key Points:
- *The proposal by Governors John Hickenlooper (D-CO) and John Kasich (R-OH) call on the federal government to immediately take steps to stabilize the market including continuing the cost-sharing reduction payments and the individual mandate.*
- *The proposal suggests federal-state cooperation could lead to better state-based approaches that can best fit the individual needs of each state and allow for true innovation to help improve coverage and lower costs.*

On August 31, a bipartisan group of governors led by Governors John Hickenlooper (D-CO) and John Kasich (R-OH) released recommendations for health care reform. The letter was also signed by Governors Brian Sandoval (R-NV), Tom Wolf (D-PA), Bill Walker (I-AK), Terence McAuliffe (D-VA), John Bel Edwards (D-LA), and Steve Bullock (D-MT). The proposal emphasizes the continued uncertainty about federal policy is driving up premiums, eliminating competition, and leaving consumers with fewer choices. It offers three guiding principles described below.

The proposal calls on Congress and the Administration to send a strong signal that the individual market will remain viable into the future. First, the Administration should commit to funding the cost-sharing reduction (CSR) payments and Congress should explicitly appropriate funding for these payments through 2019. The Governors' predict this will not only provide assistance to people but also give insurance carriers the confidence they need to stay in the market. Second, Congress should create a temporary stability fund that states can use to create programs, such as reinsurance programs, that reduce premiums and limit losses for providing coverage. Third, Congress should help foster competition by encouraging insurance companies to enter underserved counties through an exemption from the federal health insurance tax in underserved counties. Congress should also allow residents in underserved counties to buy into the Federal Employee Benefit Program. Fourth, the individual mandate should remain in place until Congress can devise a credible replacement. The proposal acknowledges the mandate is unpopular but stresses it is an important incentive for healthy people to enroll in coverage.

The proposal sees stabilizing the markets as only the first step. The Governors' recommend a series of reforms that would help preserve and expand coverage while still controlling costs. They envision each state will choose the state-based approaches which best fit its individual needs. Some of these suggestions include: waiving exchange fees for carriers who are the last remaining carrier in a county; increasing outreach to attract healthy individuals; encouraging younger people to get coverage and continuous coverage; promote appropriate enrollment; pursue strategies to create larger, more stable pools; use of Section 1332 waivers; encouraging the adoption of population-based payments models; and enabling value-based insurance design and wellness incentives.

The proposal also calls on Congress and the federal agencies to work with states to overcome the constraints in federal law and regulation to allow true innovation. It notes states are still the principal regulators of the health insurance markets, so the federal government should be careful to not duplicate these efforts or preempt state authority. The Governors call for streamlining the Section 1332 waiver process including creating an option for states to build on approved waivers in other states. The Department of Health and Human Services (HHS) should also rescind its 2015 guidance on Section 1332 and clarify that states may combine waivers into a comprehensive plan. The proposal also calls on Congress and the Administration to make clear commitments to value-based health care purchasing. It also encourages greater transparency for consumers on health care costs.

The full proposal is available here.

Upcoming Hearings and Meetings

September 6

Individual Markets: The Senate Health, Education, Labor and Pensions Committee will hold a hearing on "Stabilizing Premiums and Helping Individuals in the Individual Insurance Market for 2018: State Insurance Commissioners."

Health Care System: The Senate Homeland Security and Governmental Affairs Committee will hold a hearing on "The History and Current Reality of the U.S. Health Care System."

Appropriations: The Senate Appropriations Committee's Labor, Health and Human Services, Education and Related Agencies Subcommittee will hold a markup of the "Labor, Health and Human Services, Education, and Related Agencies Appropriations Act, 2018."

September 7-8

MedPAC: The Medicare Payment Advisory Commission will hold a public meeting.

September 7

Individual Markets: The Senate Health, Education, Labor and Pensions Committee will hold a hearing on "Stabilizing Premiums and Helping Individuals in the Individual Insurance Market for 2018: Governors."

CHIP: The Senate Finance Committee will hold a hearing on "The Children's Health Insurance Program (CHIP): The Path Forward."

Appropriations: The Senate Appropriations Committee will hold a markup of the "Labor, Health and Human Services, Education, and Related Agencies Appropriations Act, 2018."

Research: Research America will hold its 2017 National Health Research Forum with the theme "Straight Talk: Is a 'Disease-Free' World Within Reach?"

September 8

Health Care Reform: The Center for American Progress and the American Enterprise Institute will hold a discussion on "Bipartisan Proposal to Stabilize Health Insurance Market."

Individual Markets: The Alliance for Health Policy will hold a briefing on "Stabilizing the Individual Market in Uncertain Times."

September 12

Individual Markets: The Senate Health, Education, Labor and Pensions Committee will hold a hearing on "Stabilizing Premiums and Helping Individuals in the Individual Insurance Market for 2018: State Flexibility."

September 14

Individual Markets: The Senate Health, Education, Labor and Pensions Committee will hold a hearing on "Stabilizing Premiums and Helping Individuals in the Individual Insurance Market for 2018: Health Care Stakeholders."

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

TRANSPORTATION AND INFRASTRUCTURE

Administration Releases Permitting EO

Key Points:

- *The President signed an EO that would seek to revamp the federal environmental review and permitting process as part of a larger push to streamline federal regulation*

Earlier this month, President Donald Trump signed an Executive Order (EO) "Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure." The Administration claimed that "[i]nefficiencies in current infrastructure project decisions, including management of environmental reviews and permit decisions or authorizations, have delayed infrastructure investments, increased project costs, and blocked the American people from enjoying improved infrastructure that would benefit our economy, society, and environment." The White House claimed that "[m]ore efficient and effective Federal infrastructure decisions can transform our economy, so the Federal Government, as a whole, must change the way it processes environmental reviews and authorization decisions." The Administration stated that "Federal agencies should follow transparent and coordinated processes for conducting environmental reviews and making authorization decisions…[which] must include early and open coordination among Federal, State, tribal, and local agencies and early engagement with the public.

According to an Administration fact sheet, the EO would do the following:

- The Executive Order will make the environmental and permitting processes

needed for major infrastructure projects more efficient and effective.
- Rather than allow for a patchwork of agency reviews, this Order implements a One Federal Decision policy under which the lead Federal agency will work with other relevant Federal agencies to complete the environmental reviews and permitting decisions needed for major infrastructure projects.
  - Each agency will sign a joint Record of Decision and all required Federal permits will be issued 90 days later.
- The order establishes a two-year goal to process environmental documents for major infrastructure projects.

- The entire environmental review and permitting process will be reviewed to improve performance across the government and hold every Agency accountable. Under this order:
  - The Council on Environmental Quality (CEQ) will develop and implement an action plan to improve environmental reviews Government-wide.
  - The CEQ will mediate disagreements between Federal agencies so a decision is not delayed amid bureaucratic disputes.
  - The Office of Management and Budget (OMB) will develop a two-year Government-wide modernization goal and ensure Federal agencies take meaningful steps to achieve it.
  - Agencies will modify their strategic plans to include agency-specific goals for improving environmental review and permitting processes, and hold their officials accountable.
  - OMB will establish a performance accountability system and score each agency on their implementation of the Executive Order. Poor performance will be considered in budget formulation and could result in the imposition of available penalties.
  - Agencies will also be held accountable for implementing appropriate best practices that are proven to enhance the environmental review and permitting process.
- The Executive Order makes clear that environmental protections will be maintained, and that the process should focus more on decision-making and good environmental outcomes rather than bureaucratic process.

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

TECHNOLOGY

Draft ATC Report Released On Modernizing Federal IT

Key Points:
- *A new entity released its draft recommendations that would seek to remake federal IT security and procurement through a variety of means.*

On August 30, the American Technology Council (ATC) released its "predecisional" draft "Report to the President on Federal IT Modernization," as required by Executive Order 13800 "Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure." The report is being issued to solicit feedback, particularly from industry stakeholders with comments being due by September 20.

The report "outlines the current and envisioned state of Federal IT, and it provides specific recommendations to jumpstart a new wave of modernization efforts." The ATC noted the proposed plan "incorporates the efforts of key Government stakeholders in identifying ways for the Government to enhance its cybersecurity posture, modernize the Federal IT enterprise, and create a more robust partnership between Government and industry." The ATC stated that "it intends to seek further input to ensure successful implementation of modernization recommendations." The ATC envisions accepting feedback on the report and then "adjudicat[ing] industry feedback" with the Department of Homeland Security, Office of Management and Budget, Department of Commerce, and the General Services Administration.

The ATC summarized the report this way:

> Agencies have attempted to modernize their systems but have been stymied as a result of a variety of factors, including resource prioritization, ability to procure services quickly, and technical issues. Recommendations to address the aforementioned issues are grouped into two categories of effort: the modernization and consolidation of networks, and the use of shared services to enable future network architectures. In addition to specific recommendations, this report outlines an agile process for updating policies and reference architectures to help the Government more rapidly leverage American innovation.

The ATC added that "[t]his report envisions a modern Federal IT architecture where agencies are able to maximize secure use of cloud computing, modernize Government-hosted applications, and securely maintain legacy systems." The ATC stated that "[s]pecific actions in this report focus on the first two areas, where securely maintaining legacy systems is addressed in other areas of EO 13800."

Critical Infrastructure Report Released

Key Points:

- *An advisory committee released a report on the state of U.S. cybersecurity as part of the Administration's larger push to improve cybersecurity.*

This month, an advisory committee released a draft report, "Securing Cyber Assets: Addressing Urgent Cyber Threats to Critical Infrastructure," that found that critical U.S. cyber networks are not properly protected and made recommendations on how to remedy this state of affairs. Per the Trump Administration's cybersecurity Executive Order 13800, Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure, the National Security Council (NSC) tasked the National Infrastructure Advisory Council (NIAC) with examining the current state of U.S. cybersecurity, including the private sector.

The NSC asked NIAC to "assess how existing Federal authorities and capabilities could be employed to assist and better support the cybersecurity of critical infrastructure assets that are at greatest risk of a cyber attack that could reasonably result in catastrophic regional or national effects on public health or safety, economic security, or national security**.**" NIAC found that "the U.S. government and private sector collectively have the tremendous cyber capabilities and resources needed to defend critical private systems from aggressive cyber attacks—provided they are properly organized, harnessed, and focused…[but] [t]oday, we're falling short."

NIAC made the following 11 recommendations:

- "Establish **SEPARATE, SECURE COMMUNICATIONS NETWORKS** specifically designated for the most critical cyber networks, including "dark fiber" networks for critical control system traffic and reserved spectrum for backup communications during emergencies."
- **"FACILITATE A PRIVATE-SECTOR-LED PILOT OF MACHINE-TO-MACHINE INFORMATION SHARING TECHNOLOGIES**, led by the Electricity and Financial Services Sectors, to test public-private and company-to-company information sharing of cyber threats at network speed."
- "Identify best-in-class **SCANNING TOOLS AND ASSESSMENT PRACTICES**, and work with owners and operators of the most critical networks to scan and sanitize their systems on a voluntary basis."
- "Strengthen the capabilities of **TODAY'S CYBER WORKFORCE** by sponsoring a public-private expert exchange program."
- "Establish a set of **LIMITED TIME, OUTCOME-BASED MARKET INCENTIVES** that encourage owners and operators to upgrade cyber infrastructure, invest in state-of-the-art technologies, and meet industry standards or best practices."
- "Streamline and significantly expedite the **SECURITY CLEARANCE PROCESS** for owners of the nation's most critical cyber assets, and expedite the siting, availability, and access of Sensitive Compartmented Information Facilities (SCIFs) to ensure cleared owners and operators can access secure facilities within one hour of a major threat or incident."
- "Establish clear protocols to **RAPIDLY DECLASSIFY CYBER THREAT INFORMATION** and proactively share it with owners and operators of critical infrastructure, whose actions may provide the nation's front line of defense against major cyber attacks."
- **"PILOT AN OPERATIONAL TASK FORCE OF EXPERTS IN GOVERNMENT AND THE ELECTRICITY, FINANCE, AND COMMUNICATIONS INDUSTRIES**— led by the executives who can direct priorities and marshal resources—to take decisive action on the nation's top cyber needs with the speed and agility required by escalating cyber threats."
- **"USE THE NATIONAL-LEVEL GRIDEX IV EXERCISE (NOVEMBER 2017) TO TEST** the detailed execution of Federal authorities and capabilities during a cyber incident, and identify and assign agency-specific recommendations to coordinate and

clarify the Federal Government's unclear response actions."

- "Establish an **OPTIMUM CYBERSECURITY GOVERNANCE APPROACH** to direct and coordinate the cyber defense of the nation, aligning resources and marshaling expertise from across Federal agencies."
- "Task the National Security Advisor to review the recommendations included in this report and within six months **CONVENE A MEETING OF SENIOR GOVERNMENT OFFICIALS** to address barriers to implementation and identify immediate next steps to move forward."

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This Week in Congress was written by Ryan Schnepp.