

September 8, 2017

## Washington Update

### This Week in Congress

**House** – The House passed the “**Clyde-Hirsch-Sowers RESPECT Act**” (H.R. 1843); the “**Bob Dole Congressional Gold Medal Act**” (S. 1616); the “**Financial Stability Oversight Council Insurance Member Community Act**” (H.R. 3110); and the “**Improving Access to Capital Act**” (H.R. 2864).

**Senate** – The Senate passed the “**Early Hearing Detection and Intervention Act of 2017**” (S.652); the “**National Clinical Care Commission Act**” (S.920); the “**Social Security Number Fraud Prevention Act of 2017**” (H.R.624); and the “**John F. Kennedy Center Reauthorization Act of 2017**” (S.1359).

### Next Week in Congress

**House** – The House will resume consideration of the minibus appropriations bill (H.R. 3354).

**Senate** – The Senate will consider the “**National Defense Authorization Act**” (H.R. 2810).

## TAX

### President Trump Continues Tax Reform Push

#### Key Points:

- *President Trump meets with Big Six on tax reform and traveled to North Dakota to deliver second speech on need for tax reform; joined onstage by Senator Heidi Heitkamp.*
- *House Speaker Paul Ryan Aims for Corporate Tax Rate in Low-to Mid-20 Percent.*

On Tuesday, President Donald Trump met 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. The next day, President Trump gave a speech on tax reform in North Dakota alongside the state’s Democratic Senator Heidi Heitkamp. In the speech, Trump reiterated his call for a 15 percent corporate tax rate saying his administration is “working with Congress to develop a plan.” Separately, President Trump published an op-ed in the *Milwaukee Journal Sentinel*. In the article, Trump again stated that a lower corporate tax rate would benefit

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American workers by writing “large corporations have changed their business models to export jobs to other countries and then ship their goods back to the United States.”

At a tax forum on Thursday, House Speaker Paul Ryan said the GOP tax plan will aim for a “realistic” corporate tax rate in the low-to mid-20 percent. In response to a question about reaching a 15 percent corporate tax rate, Speaker Ryan said that the “numbers are hard to make that work.” Ryan said the goal is to introduce a plan this fall and pass tax code revamp later this year. However, Ryan would not commit to releasing a plan this month saying “I’ll leave it up to the tax writers as to when they’ll release their template.”

### White House Official Indicates Progress On Tax Reform Framework

*Key Point:*

- *White House Official Says Big Six meeting resulted in real progress; Possible that the public release of this framework could come by the end of the month or sooner.*

Following a Thursday meeting between Republican leaders and the Administration, an unnamed White House official said the group made final decisions on a tax reform framework. Speaking on the condition of anonymity, the official said, “We’re getting a lot closer to finalization. There were some very specific items that had been outstanding that were put on the table today and consensus was reached.” The official noted that it was his optimistic belief that a markup of a tax bill could happen in late September or early October. The official also noted that a public release of the framework could come by the end of the month or sooner. Following the meeting, House Ways and Means Committee

Chairman Kevin Brady commented that the meeting had resulted in “real progress.”

### Senate Finance Committee Chairman Orrin Hatch Initiates Tax Reform Hearings

*Key Point:*

- *Senate Finance Committee Chairman Orrin Hatch schedules tax reform hearing next week.*

Senate Finance Committee Chairman Orrin Hatch scheduled a tax reform hearing for September 14 to focus on how individuals file their taxes. In a statement, Hatch said the tax code is broken and “that’s why Congress and the administration are working to create a tax system for individuals that is simpler, fairer and will deliver much-needed relief to middle-class families.” Congress and the White House have discussed reducing the number of individual tax brackets from seven to three while increasing the standard deduction.

Hatch has invited four witnesses: Lily Batchelder, who was former chairman Max Baucus's top tax aide and now teaches tax law at New York University; Alex Brill, research fellow at the American Enterprise Institute; Ramesh Ponnuru, a visiting fellow at AEI; and Iona Harrison, senior vice president at Pioneer Realty.

#### Upcoming Dates

**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

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 Banking Committee Approves Nominations and FSOC Insurance Bill, Holds Hearing on North Korea Sanctions***

#### *Key Points:*

- *The Committee favorably reported the nominations of Joseph Otting to be Comptroller of the Currency and Randal Quarles to be Vice Chairman of the Federal Reserve Board.*
- *The Committee also favorably reported the FSOC Insurance Member Continuity Act.*
- *The hearing focused on the use of potential new sanctions to combat North Korea's nuclear program.*

On September 7, the Senate Banking Committee held an executive session and approved the following nominations and legislation:

- The nomination of Mr. Joseph Otting to be Comptroller of the Currency by a vote of 13-10, with one Democratic Member, Senator Heidi Heitkamp (D-ND), voting in favor.
- The nomination of the Honorable Randal Quarles to be a Member of the Board of Governors of the Federal Reserve System and Vice Chairman for Supervision of the Board of Governors of the Federal Reserve System, by a vote of 17-6, with Senator Jon Tester (D-MT), Senator Mark Warner (D-VA), Senator Heidi Heitkamp (D-ND), Senator Joe Donnelly (D-IN), and Senator Chris Van Hollen (D-MD)

voting in favor along with all Republicans on the Committee.

- The Financial Stability Oversight Council Insurance Member Continuity Act (S. 1463), introduced by Chairman Mike Crapo (R-ID), which would modify the term of the independent member of the Financial Stability Oversight Council (FSOC). The bill was favorably reported by voice vote.

The Committee also held a hearing entitled “Evaluating Sanctions Enforcement and Policy Options on North Korea.”

Chairman Mike Crapo (R-ID) said the hearing would focus on the use of sanctions to deal with North Korea, noting that Kim Jong-Un is bringing the world to a brink of disaster. He said Kim Jong-Un has stated that North Korea has developed a hydrogen bomb which can be placed onto an intercontinental ballistic missile (ICBM), though experts are unsure whether the bomb recently tested was a hydrogen bomb. Crapo said the U.S. cannot accept a nuclear-armed North Korea, and that only the strongest sanctions will enable the U.S. to solve this situation through diplomacy. He noted that Senator Pat Toomey (R-PA) and Senator Chris Van Hollen (D-MD) introduced the Banking Restrictions Involving North Korea (BRINK) Act (S. 1591), which would impose additional sanctions on North Korea. He stated that Senator Ed Markey (D-MA) and Senator Cory Gardner (R-CO) have also introduced sanctions legislation. Chairman Crapo said this situation will require a change in policy towards China, noting that the Committee previously held a Subcommittee hearing on secondary sanctions against China.

Ranking Member Sherrod Brown (D-OH) said North Korea's nuclear program is a threat to

the U.S. and its allies. He questioned how best to target the money that flows into Pyongyang from other nations, including China. He said Congress could require the Administration to set clear policy goals and measure whether China is complying. He stated that sanctions must be part of a broader strategy to force North Korea to the negotiating table, as they were with Iran. He expressed concern with the President's threats to walk away from the Iran nuclear deal, suggesting that it will send a message to North Korea that the U.S. does not follow through on its commitments.

Senators Pat Toomey (R-PA) and Chris Van Hollen (D-MD) spoke in support of the BRINK Act. They noted that the bill would impose tough sanctions on North Korea, similar to those imposed on Iran. Toomey suggested that Chinese banks would discontinue their business with North Korea if they were threatened with being cut off from the global financial system. Toomey contended that sanctions which can only be eased by an affirmative joint resolution from Congress are not likely to be constructive. He stressed the need for the Administration to have flexibility, suggesting that the BRINK Act would provide such flexibility while still involving Congress. Van Hollen said the bill would create a clear structure of escalating sanctions, while providing the Administration with some flexibility. He said the bill would publicly name banks which are working with North Korea.

### ***House Panel Holds Hearing on FINRA Oversight***

#### ***Key Point:***

- *The Subcommittee heard from FINRA CEO Robert Cook, and examined a variety of issues including capital formation, maker-taker exchange model, the fiduciary duty rule, and the Consolidated Audit Trail.*

On September 7, the House Financial Services Committee's Subcommittee on Capital Markets, Securities, and Investment held a hearing entitled "Oversight of the Financial Industry Regulatory Authority." The Subcommittee received testimony from Financial Industry Regulatory Authority (FINRA) CEO Robert Cook. Chairman Bill Huizenga (R-MI) stated FINRA is the primary regulatory authority for broker-dealers and plays an important role in ensuring the markets are fair for investors. He noted many have suggested that FINRA has shifted into more of a federal regulatory role. Huizenga noted the significant changes which have been undertaken at FINRA since Robert Cook was hired. He said "FINRA 360" is a multi-year initiative focused on continued improvement and ensuring that any changes will be made in phases. He stated Cook has engaged in a listening tour about what FINRA is doing well and what can be done better.

Chairman Bill Huizenga (R-MI) expressed concern with the declining number of companies going public, noting that SEC Chairman Jay Clayton has shared similar concerns. He asked how FINRA can encourage more companies to go public and promote other ways to raise capital. Cook said FINRA is committed to promoting capital formation. He noted that FINRA recently requested comment on all of its rules on capital raising. He stated that FINRA finalized a new ruleset for capital acquisition brokers, which is meant to be tailored and streamlined. He said 30 capital acquisition brokers have registered. He said FINRA regulates a number of funding portals under the JOBS Act.

Representative Stephen Lynch (D-MA) asked if FINRA will examine best execution and conflicts within the "maker-taker" exchange

model. Cook said best execution is a vital part of ensuring that customers receive the best prices. He stated that the SEC's Equity Market Structure Advisory Committee (EMSAC) has examined this issue and called for a pilot program. He noted that FINRA issued guidance on best execution and reviewed firms' best execution practices. Lynch said he as a bill to create a pilot program, but he has not been successful in getting it passed.

Representatives Bruce Poliquin (R-ME) and Ann Wagner (R-MO) spoke in opposition to the Department of Labor's fiduciary duty rule, contending that it will prevent small savers from obtaining access to financial advice. Cook said smaller firms are concerned about the compliance burdens of the rules. He stated that large firms have indicated that they are able to comply. He added that it would be helpful to have a uniform standard.

Representatives Brad Sherman (D-CA) and French Hill (R-AR) raised concerns with the data security of the Consolidated Audit Trail (CAT). Hill asked if CAT implementation should be delayed. Cook said there have been many delays already, but stressed the need to ensure that personally identifiable information (PII) is protected. He questioned whether PII needs to be collected; suggesting that large trader IDs could be used instead. Representative Warren Davidson (R-OH) stressed the need to avoid duplication between the CAT and existing audit trails. He asked if there is transition path to phase out the existing audit trails. Cook said the goal is for CAT to replace the existing audit trails. He said FINRA has a rule filing pending with the SEC to phase out the existing audit trail. He said the intent is to ensure that the CAT has adequate data integrity before phasing out the current audit trail.

### ***House Panel Holds Hearing on Combatting Financing of Lone Wolf Terrorist Attacks***

#### *Key Points:*

- *The hearing focused on ways to disrupt the financing on small scale and "lone wolf" terrorist attacks.*
- *Representative Carolyn Maloney (D-NY) expressed support for legislation related to beneficial ownership.*

On September 6, the House Financial Services Committee's Subcommittee on Terrorism and Illicit Finance held a hearing entitled "Low Cost, High Impact: Combatting the Financing of Lone-Wolf and Small-Scale Terrorist Attacks." Chairman Stevan Pearce (R-NM) stated the hearing would examine issues related to small scale acts of terrorism and the methods used to fund them. He noted a 50 percent increase in small scale attacks in the U.S. He noted there is now more of a chance of small scale terrorist attack in the U.S. than a large one because of the lower costs. Pearce explained the low financial cost presents a challenge to track the funding. He noted terrorist organizations are turning to new methods to finance and transfer funds. He stated that cooperation between policymakers, law enforcement and financial institutions is needed to identify and disrupt these actions.

Ranking Member Ed Perlmutter (D-CO) noted the recent increase in "lone wolf" attacks, explaining that these attacks are often self-financed which makes them harder to detect and prevent. Perlmutter suggested Congress must look at ways to prevent the financing of these attacks. He stated he would like to hear how to recognize patterns and other ways to disrupt lone wolf terrorist financing.

Representative Keith Rothfus (R-PA) asked if lone wolves have a favored method for financing attacks. Joseph Moreno (Partner, Cadwalader, Wickersham & Taft) said he was not aware of a favorite, suggesting that there are a variety of products available. He stated that lone wolves are focused on anonymity. He said limits could be placed on how and what can be purchased with prepaid cards. He noted that people can buy packs of 4, 8 or 12 prepaid cards, suggesting that these cards could be limited to use at certain storefronts or that limits could be placed on the aggregation of multiple cards. He said there could also be requirements for the purchaser to have the physical card, possibly with a chip.

Representative Carolyn Maloney (D-NY) suggested that criminals in her district have used real estate to launder money. She said she has worked on legislation related to beneficial ownership. She asked if beneficial ownership requirements could help to combat terrorism financing. Frederick Reynolds (Global Head of Financial Crime, Barclays) said he is very supportive of beneficial ownership legislation.

### ***Federal Reserve Releases Report on Next Steps for the Payment System***

#### *Key Point:*

- *The Federal Reserve released its report on efforts to improve the payment system in five areas: speed, security, efficiency, international payments, and collaboration.*

On September 6, the Federal Reserve released a report entitled “Strategies for Improving the U.S. Payment System: Federal Reserve Next Steps in the Payments Improvement Journey.” As noted in a Federal Reserve press release the report follows up on a January 2015 report which called on payment industry stakeholders to focus on five goals: speed, security,

efficiency, international payments, and collaboration.

The press release described the Federal Reserve’s strategies and tactics for achieving those five goals:

Faster payments tactics include efforts to facilitate industry development of a faster payments ecosystem as described by the Faster Payments Task Force in its final report, issued on July 21. The Federal Reserve is chairing and facilitating an interim collaboration work group chartered by the task force to establish a governance framework and will support other collaborative faster payments work efforts.

Federal Reserve plans also call for pursuing settlement services that address the future needs of a ubiquitous real-time retail payments environment and exploring and assessing the need, if any, for Federal Reserve engagement as a service provider, beyond providing settlement services, in the faster payments ecosystem.

Federal Reserve work to reduce fraud risk and advance the safety, security and resiliency of the payment system will expand beyond its Secure Payments Task Force to include a comprehensive analysis of payment security vulnerabilities, potential mitigation approaches, and misalignment of incentives that may hinder progress.

Efforts to enhance the efficiency of both domestic and cross-border payments will continue to focus on collaborating with stakeholders to better understand barriers to

improvement and pursuing adoption of standards and other solutions to address them.

### Upcoming Hearings and Events

#### September 12

**Federal Reserve:** The House Financial Services Committee will hold a joint hearing of its Subcommittee on Financial Institutions and its Subcommittee on Consumer Credit Monetary Policy and Trade entitled “Examining the Relationship between Prudential Regulation and Monetary Policy at the Federal Reserve.”

**FinTech:** The Senate Banking Committee will hold a hearing entitled “Examining the FinTech Landscape.” Witnesses will include: Lawrence Evans, U.S. Government Accountability Office (GAO); Eric Turner, S&P Global Market Intelligence; and Frank Pasqual, Professor of Law, University of Maryland.

#### 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: auditor attestation report under Section 404(b) of the Sarbanes-Oxley Act; final report of the Advisory Committee to the Commission; and awards pursuant to written compensatory benefit plans.

**North Korea:** The House Financial Services Committee’s Subcommittee on Monetary Policy and Trade will hold a hearing entitled “A Legislative Proposal to Impede North Korea’s Access to Finance.”

#### September 14

**CFIUS:** The Senate Banking Committee will hold a hearing to discuss the Committee on Foreign Investment in the United States (CFIUS). Witnesses will include: The Honorable Clay Lowery, Rock Creek Global Advisors, and former Assistant Secretary for the U.S. Treasury; and The Honorable Kevin Wolf, Akin Bump Strauss Hauer & Feld LLP, and former Assistant Secretary for Export Administration, U.S. Department of Commerce.

#### 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 the articles.*

### ENERGY & ENVIRONMENT

#### **Hearing on FERC, DOI Nominees**

##### *Key Point:*

- *Senate Energy and Natural Resources Committee held a hearing on nominees for the Department of Interior and the Federal Energy Regulatory Commission (FERC).*

On September 7, the Senate Energy and Natural Resources Committee held a [hearing](#) on nominees for the Department of Interior and the Federal Energy Regulatory Commission (FERC): Joseph Balash, nominated to be Assistant Secretary of the Interior for Land and Minerals Management; Richard Glick, nominated to be a FERC Commissioner; Kevin McIntyre, nominated to be a FERC Commissioner; and Ryan Nelson, nominated to be Solicitor of the Department of the Interior.

In her opening statement, Chairwoman Lisa Murkowski (R-AK) said the FERC nominees will have to address a significant backlog of matters that accumulated during the Commission's lack of a quorum from February through August. She expressed confidence that "that Mr. McIntyre will be a capable Chairman upon his confirmation." Murkowski also endorsed Glick's nomination and thanked him for his work for the Committee. She noted that, according to the Congressional Research Service, "the value of energy commodities flowing through FERC-regulated wires and pipes is approximately three percent of the nation's GDP."

Ranking Member Maria Cantwell (D-WA) expressed strong support for the nomination of Glick in her opening statement. She said that Glick "understands the importance of FERC's role in protecting the public interest, in ensuring just and reasonable rates for natural gas and electric consumers, and in keeping our energy markets fair and free from manipulation."

If confirmed by the full Senate, Glick and McIntyre will join FERC Acting Chair Neil Chatterjee, Commissioner Cheryl LaFleur, and Commissioner Robert Powelson. Glick has

served as Counsel to the Senate Energy and Natural Resources Committee's Democrats and McIntyre has headed the energy practice group at the law firm of Jones Day. President Trump announced that he will designate McIntyre as Chairman of FERC upon his conformation. The President designated Chatterjee as Acting Chairman when he was confirmed.

The Senate confirmed Chatterjee and Powelson on August 3, restoring FERC's quorum. The first [meeting](#) of the Commission under its new quorum is scheduled for September 20. Since Chatterjee and Powelson were sworn in, the Commission has begun to clear their backlog of policy matters and pending applications, including certificates for interstate natural gas pipelines, through issuance of notational orders.

## Upcoming Hearings and Events

### September 12

#### ***Energy Department National Laboratories:***

The Senate Energy and Natural Resources Committee's Energy Subcommittee will hold a [hearing](#) on "Fostering Innovation: Contributions of the Department of Energy's National Laboratories". Scheduled witnesses are: Brian Anderson, Director of West Virginia University's Energy Institute; Paul Kearns, Interim Laboratory Director of the Argonne National Laboratory; Anuja Ratnayake, Director of Emerging Technology Strategy for Duke Energy; Bill Tumas, Associate Laboratory Director for Materials and Chemical Science and Technology at the National Renewable Energy Laboratory.

#### ***Electricity Industry Reliability:***

The House Energy and Commerce Committee's Subcommittee on Energy will hold a [hearing](#) titled "Powering America: Defining Reliability in a Transforming Electricity Industry".

Scheduled witnesses are: Paul Bailey, President and CEO of the American Coalition for Clean Coal Electricity; Gerry Cauley, President and CEO of the North American Electric Reliability Corporation; Marty Durbin, Executive Vice President and Chief Strategy Officer for the American Petroleum Institute; Patricia Hoffman, Acting Energy Undersecretary for Science and Acting Assistant Energy Secretary for the Office of Electricity; Tom Kiernan, CEO of the American Wind Energy Association; and Maria Korsnick, President and CEO of the Nuclear Energy Institute; and Steve Wright, General Manager of the Chelan Public Utility District, on behalf of National Hydropower Association.

***Electric Grid Resiliency:*** The House Science, Space and Technology Committee will hold a [hearing](#) titled “Resiliency: The Electric Grid’s Only Hope”.

### **September 12-13**

***Full Committee Markup:*** The House Natural Resources Committee will hold a [markup](#) to vote on pending legislation.

### **September 13**

***Accelerating Carbon Capture Deployment:*** The Senate Environment and Public Works Committee will hold a hearing titled “Expanding and Accelerating the Deployment and Use of Carbon Capture, Utilization, and Sequestration.”

***Environmental Regulatory Burden Reduction:*** The House Energy and Commerce Committee’s Subcommittee on Environment will hold a [hearing](#) titled “Big Relief for Small Business: Legislation Reducing Regulatory Burdens on Small Manufacturers and Other Job Creators”. The hearing will consider: the “Blocking Regulatory Interference from

Closing Kilns Act of 2017” ([H.R. 1917](#)); the “Satisfying Energy Needs and Saving the Environment Act” ([H.R. 1119](#)); the “Relief from New Source Performance Standards Act of 2017” ([H.R. 453](#)); and the “Recognizing the Protection of Motorsports Act of 2017” ([H.R. 350](#)).

*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 Set To Move Onto NDAA**

*Key Points:*

- *The Senate will likely take up its NDAA next week after a cloture vote on the motion to proceed on September 11*
- *The Administration details its opposition to a number of provisions but does not threaten to veto the bill*

On September 7, Senate Majority Leader Mitch McConnell (R-KY) filed a motion to invoke cloture on the “National Defense Authorization Act for Fiscal Year 2018” (NDAA) ([H.R. 2810](#)), setting up a vote on September 11 when the Senate returns from the weekend. Senate Armed Services Committee Chairman John McCain (R-AZ) will likely offer the “National Defense Authorization Act for Fiscal Year 2018” ([S. 1519](#)) as a substitute amendment that will serve as the base text for consideration of amendments. After the Senate effort to repeal and replace the Affordable Care Act concluded in July, McConnell tried to bring the NDAA to the floor but was blocked by Senator Rand Paul (R-KY). At that time, Senate Minority Leader Chuck Schumer (D-NY) indicated that McCain and Senate Armed Services Committee

Ranking Member Jack Reed (D-RI) had already worked out a list of amendments to the NDAA acceptable to both sides.

In its [Statement of Administration Policy \(SAP\)](#) on S. 1519, the Office of Management and Budget (OMB) noted that the “bill supports key Administration priorities including ending the defense sequester, rebuilding our military readiness, and modernizing our Armed Forces for the future...[and] authorizes funding for our ongoing efforts to destroy the Islamic State of Iraq and Syria (ISIS), to deter potential adversaries, and to bolster our allies.” However, unlike Obama Administration SAPs on the annual NDAA, there was no veto threat. Nonetheless, the Trump Administration does object to a number of provisions and expressed its hope to work with Congress on those issues. Among the provisions in S. 1519 the White House opposes are:

- **Prohibition on Conducting Additional Base Realignment and Closure Round:** The Administration strongly objects to section 2702 and strongly urges Congress to provide BRAC authorization, as requested, so that DOD can ensure it is not wasting resources on unneeded infrastructure.
  - **Authority to Provide Assistance to Counter ISIS and to the Vetted Syrian Opposition:** The Administration appreciates the expanded authority in sections 1231 and 1232 for small-scale construction of temporary facilities to meet operational needs and force protection requirements in both Iraq and Syria. The Administration objects, however, to language in section 1232 that requires the Secretary to provide a 30-day notice to Congress on new initiatives. This provision will hamper
- **Personnel Limitations:** The Administration strongly objects to section 912, which would modify the definition of personnel in section 143(b) of title 10, United States Code, by adding the contractor personnel counts against the statutory limitation of 3,767 for military, Government civilian, and detailed personnel in OSD and the OSD direct support activities of the Washington Headquarters Services.
  - **Modification of Cost Limitation Baseline for CVN-78 Class Aircraft Carrier Program:** The Administration strongly objects to section 125, which would limit the procurement cost for aircraft carriers after CVN-79 to \$12 billion.
  - **Policy of the United States on Cyberspace, Cybersecurity, and Cyberwarfare:** The Administration strongly objects to section 1621, which would establish United States policy for deterring and responding to cyber-attacks or other malicious cyber-activities against United States interests.
  - **Reductions to Army Networking Programs:** The Administration strongly objects to the severe funding reductions in sections 4101 and 4201, and prohibitive language in sections 112 and 234, which would affect the Warfighter Information Network-Tactical, Distributed Common Ground System-Army, and Army Integrated Air and Missile Defense programs.
  - **Navy Shipbuilding:** The Administration appreciates the Committee’s strong support for Navy shipbuilding; the Administration, however, objects to the authorization

of funding for only one Littoral Combat Ship, one fewer than the Administration requested, as well as the authorization of partial funding for an additional amphibious ship LX(R).

- **Defense Industrial Base:** The Administration strongly objects to section 863, which would sunset certain procurement requirements related to sourcing goods exclusively from the national technology and industrial base.
- **Provisions on the Organization and Structure of the Office of the Secretary of Defense (OSD):** The Administration is concerned with sections 901, 902, 910, and 921, which would significantly reorganize DOD and its components.

## Congress Sends CR To White House

### Key Points:

- *A short-term CR combined with a debt limit suspension and emergency funds for Hurricanes Harvey and Irma clears Congress*
- *However, the DOD would receive less funding on an annualized basis than FY 2017 due to lower pending caps for FY 2018*
- *The Armed Services Committees' Chairs decry the CR*

This week, both houses of Congress considered and passed a [bill](#) to fund the federal government through December 8 by a continuing resolution (CR), suspend the debt limit for the same period of time, and appropriate what will likely be the first tranche of emergency funding for areas affected by Hurricanes Harvey and Irma. However, the CR would provide less funding generally than the current FY 2017 funding level for departments for most of the first quarter of FY 2018 because of an across-the-board reduction of 0.6791 percent to ensure that appropriations

remained below the spending caps. The spending caps for FY 2017 are \$551 billion for defense programs and \$518.5 billion for nondefense programs whereas the caps for both categories of discretionary funds drops for FY 2018 to \$549 billion and \$515 billion respectively. Additionally, even with the across the board reduction in the CR, CBO projects that if these funding levels are extended for the duration of FY 2018, the Office of Management and Budget (OMB) would likely need to issue a sequestration order to reduce funding by \$2.432 billion for defense programs and \$2.360 billion for non-defense programs.

With respect to the Department of Defense's (DOD) funding under the CR, the funding level would be at a lower rate than FY 2017 and would not allow for funding new programs proposed for FY 2018 as is common in CRs. In his [statement](#) explaining his no vote on the package, House Armed Services Committee Chairman Mac Thornberry (R-TX) stated that “[c]ontinuing resolutions do enormous, lasting damage to the American military.” He claimed that “[w]e are witnessing an alarming increase in accidents, growing evidence of a force under stress, and an eroding technological position when compared with our adversaries...[and] [n]ot only does this bill fail to remedy those problems, it makes them worse.” In his prepared remarks for the Senate floor, Senate Armed Services Committee Chairman John McCain (R-AZ) stated that “[y]ear after year, we have lurched from one short-term fix to another without doing the hard work of governing and budgeting.” He added that “I have reminded my colleagues that CRs are not only no way to fund the government, they inflict great harm upon those Americans we are constitutionally obliged to provide for—our men and women in uniform.”

## Upcoming Hearings and Events

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**September 12**

**After ISIL:** The House Armed Services Committee's Oversight & Investigations Subcommittee will hold a hearing titled "Securing the Peace After the Fall of ISIL."

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

**HEALTH****Senate HELP Begins Hearings on Market Stabilization***Key Points:*

- *At the first two hearings governors and state insurance commissioners all recommended Congress continue to fund cost-sharing reduction payments and consider reinsurance programs through either a federal structure or greater Section 1332 waiver authority.*
- *Chairman Lamar Alexander (R-TN) emphasized the importance of continuing the cost-sharing reduction payments to ensure stability and certainty in the marketplace to help lower costs.*

On September 6 and 7, the Senate Health, Education, Labor and Pensions Committee held its first two hearings in a series on addressing stability in the individual market. All witnesses spoke of the importance of continuing the cost-sharing reduction (CSR) payments in order to ensure stability in the marketplace. There was also support for reinsurance programs as a way to help lower costs for all consumers in the individual market.

Chairman Lamar Alexander (R-TN) stressed "timing is a challenge" and proposed the Committee "come to a consensus by the end of

next week" on legislation to stabilize the market. He also emphasized both Republicans and Democrats will need to compromise in order for the Committee to be successful. Ranking Member Patty Murray (D-WA) asserted President Trump has undermined outreach and consumer assistance efforts and injected uncertainty into the market.

Topics discussed at the hearings included, but were not limited to: (1) reinsurance programs; (2) single insurers; (3) association health plans; (4) market expansion; (5) plan designs and technology; (6) health care costs; (7) Section 1332 waivers and state flexibility; (8) older Americans/age bands; (9) cost-sharing reduction payments; (10) funding for advertising and navigators; (11) rural communities; (12) opioid epidemic; (13) insurance premiums; and (14) prescription drug pricing.

On September 6, the Committee heard from state insurance commissioners. They all spoke of the need for states to have additional flexibility for Section 1332 waivers as well as a more streamlined process for filing applications. Several emphasized the importance of guaranteeing CSR payments for more than one year as carriers are already looking ahead to 2019 rates.

On September 7, the Committee heard from a bipartisan group of governors. Utah Governor Gary Herbert (R) stressed "it would be irresponsible to allow these markets to collapse" and expressed support continuing the CSR payments to ensure predictability in the market. The governors also spoke in favor of establishing reinsurance programs.

Before each hearing, all Senators were invited to speak with the witnesses and ask questions about market stabilization. Chairman Alexander

reported the meetings were well attended with nearly a quarter of the Senate at both.

## Upcoming Hearings and Meetings

### September 12

**Research:** The Hill will host a discussion on “Turning Genes into Medicine: Reimagining Our Health Care System.”

**Health Care Costs:** The Senate Finance Committee will hold a hearing on “Health Care: Issues Impacting Cost and Coverage.”

**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.”

**Opioid Crisis:** Senate Homeland Security and Governmental Affairs Committee Ranking Member Claire McCaskill (D-MO) will hold a roundtable discussion on the sales and marketing tactics of Insys Therapeutics and opioid manufacturers.

### September 13

**Cancer Research:** Friends of Cancer research will hold its “Sixth Annual Blueprint for Breakthrough Forum.”

**Opioid Crisis:** The Hill will hold a discussion on “America's Opioid Epidemic: Search for Solutions.”

**Innovations:** Health Affairs will hold a forum on “Understanding the Value of Innovations in Medicine.”

**Over-the-Counter Drugs:** The House Energy and Commerce Committee will hold a hearing

entitled “Modernizing FDA’s Regulation of Over-the-Counter Drugs.”

### 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.”

**Public Health Workforce:** The House Energy and Commerce Committee will hold a hearing entitled “Supporting Tomorrow’s Health Providers: Examining Workforce Programs Under the Public Health Service Act.”

### September 15

**Chronic Pain:** The Alliance for Health Policy will host a discussion on “Integrating Care for Chronic Pain.”

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

## TRANSPORTATION

### **FAA Extension More Likely Than Reauthorization**

#### *Key Points:*

- *Congress faces a September 30 expiration of the current FAA authorization and is likely to pass an extension despite reauthorizations having been marked up in the committees of jurisdiction in both chambers in June*
- *Two assessments of the NextGen system were released this week*

With the expiration of the current authorities of the Federal Aviation Administration (FAA) set to expire on September 30, Congress is

faced with either extending the current authorization in the short-term or considering a long-term reauthorization. However, given other priorities and the fact that neither the House nor the Senate have passed the reauthorizations reported out of the committees of jurisdiction, it appears more likely that a short-term extension will be passed this month despite the push by House Transportation and Infrastructure Committee Chairman Bill Shuster (R-PA) to have the House consider the 21st Century Aviation Innovation, Reform, and Reauthorization Act (AIRRACT)” ([H.R. 2997](#)) this month. However, the inclusion of provisions to privatize the FAA’s air traffic control (ATC) operations in H.R. 2997 makes consideration unlikely given Democratic opposition. Moreover, this week, two seemingly contrary assessments of the FAA’s NextGen were released that may inform reauthorization.

The Department of Transportation’s Office of the Inspector General (OIG) found in its [audit report](#) that the FAA’s oversight and management of the contract to develop and implement the Automatic Dependent Surveillance Broadcast (ADS-B) surveillance system, “a foundational component of FAA’s transition to NextGen,” lacking in a number of respects. The OIG asserted that the agency “has not taken full advantage of provisions in the ADS-B contract to monitor the contractor’s performance and ensure ADS-B meets all performance requirements.” The OIG stated that “[w]ithout full reporting, FAA cannot know whether the ADS-B products and services being provided meet all contractual requirements.”

The Government Accountability Office (GAO) asserted in its [assessment](#) that “NextGen has enhanced surface traffic operations at 39 of the 40 busiest airports in the United States by

providing electronic communications to clear planes for departure, technology that can expedite clearances and reduce errors.” The GAO also found that “[w]hile specific NextGen initiatives and programs have changed over time, FAA’s 2016 cost estimates for implementing NextGen through 2030 for 1) FAA and 2) industry—\$20.6 and \$15.1 billion, respectively—are both within range of 2007 cost estimates.” The GAO claimed that “FAA’s challenges as it continues to implement NextGen include uncertainties regarding future funding; whether aircraft owners equip their aircraft to use NextGen improvements; potential air traffic control restructuring; FAA’s leadership stability; and cybersecurity issues. FAA is taking actions to address challenges within its control by, for example, prioritizing NextGen improvements and segmenting them into smaller pieces that each require less funding.” The GAO stated that “[w]hile it is not possible to eliminate all uncertainties, FAA has adopted an enterprise risk management approach to help it identify and mitigate current and future risks that could affect NextGen implementation...[and] [m]oreover, FAA has implemented most of GAO’s related recommendations.”

## Upcoming Hearings and Events

### September 12

**Coast Guard:** The House Transportation & Infrastructure Committee’s Coast Guard and Maritime Transportation Subcommittee will hold a [hearing](#) titled “Building a 21st Century Infrastructure for America: Coast Guard Stakeholders’ Perspectives.”

**Rail Programs:** The House Transportation & Infrastructure Committee’s Railroads, Pipelines, and Hazardous Materials Subcommittee will hold a [hearing](#) titled

“Building a 21st Century Infrastructure for America: Rail Stakeholders’ Perspectives.”

### **September 13**

***Self-Driving Trucks:*** The Senate Commerce, Science & Transportation Committee will hold a [hearing](#) titled “Transportation Innovation: Automated Trucks and Our Nation’s Highways.”

***Economic Development:*** The House Transportation & Infrastructure Committee’s Economic Development, Public Buildings, and Emergency Management Subcommittee will hold a [hearing](#) titled “Building a 21st Century Infrastructure for America: Economic Development Stakeholders’ Perspectives.”

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

## **TECHNOLOGY**

### **Bossert Sketches Administration Thinking On Cyber Issues**

#### *Key Points:*

- *The Administration’s top cybersecurity official downplays the possibility of using preemptive cyber attacks and stresses his belief in the need for international cyber norms*

This week, Assistant to the President for Homeland Security and Counterterrorism Tom Bossert made remarks at a Washington, D.C. event suggesting significant changes in U.S. cyber policy by the Trump Administration.

Bossert stated that the Trump Administration would not pursue a policy of striking first in cyberspace in the event of a threat because “[t]here’s very little reason to believe that an offensive cyberattack is going to have deterrence on a cyber adversary.” He noted

that adversaries would likely develop better defenses in response to U.S. attacks. Rather the Trump Administration may use means other than cyber to respond to attacks. Bossert stated “I think what we’ll do on the deterrence side is end up figuring out a means and method outside cybersecurity to apply elements of national power to punish bad behavior commensurate with offense.” He stated that “[w]e want to punish in a way that is real world, not cyber” and “[w]e want to punish in a way that modifies behavior.” This course of action mirrors the Obama Administration’s response to hacking by Russian entities during the 2016 election. In October 2016, Bossert’s predecessor, Lisa Monaco said “[w]e will respond in a time and place and manner of our choosing, and when we do so, we will consider a full range of tools, economic, diplomatic, criminal law enforcement, military, and some of those responses may be public, some of them may not be.”

Bossert laid out his thinking, and perhaps the White House’s, on establishing international cyber norms. He stated that “[w]e first have to decide what it is that we think is and is not acceptable, and what we can live by in terms of a golden rule...[and] [t]hen we can think through what it is we will do to those who violate those rules.” However, given that the Department of State has eliminated the position of Cyber Coordinator formerly held by Chris Painter, there may be conflicting views within the Trump Administration on whether and how to negotiate cyber norms with other nations. An additional unknown factor is whether the Secretary of State has “provide[d] a report to the President, through the Assistant to the President for Homeland Security and Counterterrorism, documenting an engagement strategy for international cooperation in cybersecurity” as required by Executive Order

13800 “Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure.”

Bossert also suggested that the U.S. government’s role in protecting critical cyber infrastructure could be expanded to include the Department of Defense’s Cyber Command having greater access and visibility into some networks to stop attacks as they occur. He noted Israel’s model of cyber defense works along these lines.

### GAO on Data Centers

#### Key Points:

- *The data center consolidation effort begun under the Obama Administration and enshrined in FITARA is not likely to realize projected savings before the sunset of the program at the end of FY 2018*

In its latest [assessment](#) of the Office of Management and Budget’s (OMB) Data Center Optimization Initiative (DCOI), the Government Accountability Office (GAO) found that “[o]f the 24 agencies required to participate...22 collectively reported limited progress against OMB’s fiscal year 2018 performance targets...[and] as of April 2017, 17 of the 22 agencies were not planning to meet OMB’s targets by September 30, 2018.” The GAO also cautioned that “until agencies improve their optimization progress, OMB’s \$2.7 billion initiative-wide cost savings goal may not be achievable.” GAO added that “[o]f the 24 agencies required by OMB to implement automated monitoring tools to measure server utilization by the end of fiscal year 2018, 4 reported in their data center inventories as of February 2017 that they had fully implemented such tools, 18 reported that they had not, and 2 did not have a basis to report on progress because they do not have agency-owned data centers.”

The GAO called on OMB to “direct the Federal CIO to formally document a requirement for agencies to include plans, as part of existing OMB reporting mechanisms, to implement automated monitoring tools at their agency-owned data centers.” The GAO recommended that “Congress should consider extending the time frame for the data center consolidation and optimization provisions of the “Federal Information Technology Acquisition Reform Act” (FITARA) (P.L. 112-391) beyond their current expiration date of October 1, 2018.” In June during consideration of the “National Defense Authorization Act for Fiscal Year 2018” (NDAA) ([H.R. 2810](#)), original FITARA co-sponsors Representatives Gerry Connolly (D-VA) and Darrell Issa (R-CA) succeeded in adding an amendment that would push back the expiration of the DCOI from the end of FY 2018 to the end of FY 2020.

### Upcoming Hearings and Events

#### September 12

**Fintech:** The Senate Banking, Housing, and Urban Affairs Committee will hold a [hearing](#) titled “Examining the Fintech Landscape.”

**Cross Border Data Flows:** The House Energy and Commerce Committee’s Digital Commerce and Consumer Subcommittee will hold a [hearing](#) titled “21st Century Trade Barriers: Protectionist Cross Border Data Flow Policies Impact on U.S. Jobs.”

**Global Threats:** The House Homeland Security Committee will hold a [hearing](#) titled “World Wide Terror Threats.”

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