

September 21, 2018

Washington Update

This Week in Congress

House – The House is in recess until September 25.

Senate – The Senate passed S.2554, the **Patient Right to Know Drug Prices Act**, H.R. 6, the **SUPPORT for Patients and Communities Act** and the conference report accompanying H.R.6157, the **Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019**.

Next Week in Congress

House – The House may consider H.R. 6760, **Protecting Family and Small Business Tax Cuts Act of 2018**; H.R. 6757, the **Family Savings Act of 2018** and H.R. 6756, the **American Innovation Act of 2018** (all bills part of “Tax Reform 2.0”) and H.R.6157, the **Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019**.

Senate – The Senate may consider the nomination of **Jackie Wolcott** to be Representative of the United States of America to the International Atomic Energy Agency and to be Representative of the United States of America to the Vienna Office of the United Nations.

TAX

Dividend Equivalent Rules Effective Date Further Delayed

Key Points:

- *On Thursday, the IRS announced Notice 2018-72 that will further delay the effective dates for several provisions in regulations designed to stop foreign investors from avoiding U.S. withholding tax.*
- *The notice will delay the effective dates of parts of regulations issued under tax code section 871(m) and extend the phase-in period for other withholding tax deadlines.*

The Internal Revenue Service (IRS) announced in Notice 2018-72 that it will further delay the effective dates for several provisions in regulations designed to stop foreign investors from avoiding U.S. withholding tax. The IRS

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said that it will delay the effective date of parts of regulations issued under tax code section 871(m) and extend the phase-in period for other withholding tax deadlines. According to the notice the IRS received comments from market participants asking for additional time to refine their systems as well as design, build and test new withholding and reporting systems.

While Congress enacted section 871(m) in 2010, and it became effective for certain types of contracts that year, the full scope of section 871(m) has been the subject of ongoing discussions between the Treasury Department, the IRS and industry participants.

Senate Finance Committee Approves Treasury Nomination

Key Points:

- *On Tuesday, the Senate Finance Committee approved Michael Faulkender to become Treasury Assistant Secretary for Economic Policy.*
- *It is unclear whether his nomination will be slowed by Senate Finance Committee Democrats.*

On Tuesday, the Senate Finance Committee approved Michael Faulkender to become Treasury Assistant Secretary for Economic Policy in a 25-2 vote. However, Faulkender joins other top nominees for Treasury and IRS posts awaiting a Senate floor vote, and it remains unclear whether his nomination, like theirs, will be slowed by Finance Committee Democrats. Senate Finance Ranking Member Ron Wyden (D-OR) has previously placed holds on Treasury nominees until he receives certain requested information and also over concerns over donor disclosure rules for politically active organizations. Senate Finance Chairman Orrin Hatch (R-UT) said, in regard to Faulkender, that he would “play a crucial

role in analyzing and reporting on economic developments in the United States and across the globe – a particularly important position as we continue to see the ongoing benefits of the new tax law.”

Upcoming Tax Events

September 26th

Taxpayer Use of Online Tools: House Ways and Means Oversight Subcommittee, hearing entitled “IRS Taxpayer Authentication: Strengthening Security While Ensuring Access,” at 10:45 A.M. in 2020 Rayburn House Office Building. The hearing will focus on how the IRS authenticates taxpayers using online tools and applications, as well as how the agency addresses weaknesses in its authentication process.

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

FINANCIAL SERVICES

Senate Banking Committee Discusses Fintech

Key Points:

- *Chairman Mike Crapo (R-ID) called on the government to act responsibly with data and look towards policy that encourages innovation.*
- *Steven Boms (Allon Advocacy) stated there is broad support for a national standard within the fintech industry.*

On September 18, the Senate Banking, Housing and Urban Affairs Committee held a [hearing](#) entitled “Fintech: Examining Digitization, Data, and Technology.” Chairman Mike Crapo (R-ID) said digitization and big data are constantly evolving. He noted

consumers have countless options to access their financial information and make transactions. He emphasized that the Committee should look towards policy that encourages innovation. Crapo expressed concern for transparency regarding data analytics, aggregation and usage. He called for the government and private companies to act responsibly with data and ensure consumer protection. Ranking Member Sherrod Brown (D-OH) said Wall Street banks support technological advances because it allows financial institutions to calculate and mitigate the risks of complex financial innovations. Brown said he is interested in new technologies to benefit consumers, not large banks. He suggested the Treasury report embraces the short-sightedness of pre-crisis regulators, exalts the benefits of financial innovation, describes regulation as barriers, and strips consumer protection laws.

Several Senators stressed the importance of data protection and asked whether a national data breach standard is needed. Saule Omarova (Cornell University) suggested just because it is unified does not mean it is a better standard. She stated state laws sometimes do better and she suggested a federal standard should create minimum protections if the states were removed from the game. Stuart Rubinstein (Fidelity Wealth Technologies) expressed support for a national data breach standard explaining that in a breach speed is important and having a national standard would help companies understand their responsibilities. Steven Boms (Allon Advocacy) stated there is broad support for a national breach standard within the fintech industry. Brian Knight (Mercatus Center at George Mason University) suggested looking at whether the state system is actually causing problems. Senator Jack Reed (D-RI) suggested there is a need for constant opt in and opt out options. Rubinstein noted Fidelity allows consumers to have a dash board

where they can monitor the third parties they have provided access to.

Ranking Member Sherrod Brown (D-OH) asked whether consumers should have the ability to require a fintech company to remove their data. Omarova stated that a consumer's right to share also assumes that the firms have a right to share, which is what needs to be protected against. She suggested there need to be protections that prevent aggregators from "insider trading" on consumer data. Knight stated consumers should have to right to have data removed. He suggested that limitations should revolve around disclosure and the consumer should be able to remove consent at any time.

Federal Advisory Committee on Insurance Holds Meeting on Risk Transfer

Key Point:

- *The meeting included panels on public sector risk transfer and the activities of the Federal Insurance Office.*

On September 18, the Federal Insurance Office's (FIO) Federal Advisory Committee on Insurance (FACI, Advisory Committee, or Committee) held an open meeting. The meeting included panels on: (1) FIO Activities and Priorities; and (2) Public Sector Risk and Risk Transfer.

Steven J. Dreyer (Director, Federal Insurance Office) noted that last year FIO's role was refined under the Treasury's report on asset management and insurance. He said the report identified five pillars of FIO's mission: (1) promote the state-based insurance regulatory system; (2) provide insurance policy expertise to the federal government, state regulators, and industry; (3) provide coordinated leadership on insurance issues; (4) protect the U.S. financial system and economy by advising the Treasury

Secretary and the Financial Stability Oversight Council (FSOC) on insurance matters affecting financial stability; and (5) promote access to insurance products and administer the Terrorism Risk Insurance Program (TRIP). Dreyer said the report identified 31 recommendations related to insurance. He said one of these recommendations was that international capital standards be developed in a way that accommodates the U.S. system. He said another recommendation involved improving access to long-term care, noting that they are looking at the National Association of Insurance Commissioners' (NAIC) recommendations on long-term care. He stated that another recommendation was for FIO to support the activities-based or holistic approach to addressing systemic risk in the insurance industry, rather than the traditional entity-based approach. He said FIO is also examining the link between insurance and infrastructure development. He said other priorities for FIO are cyber risk and fulfilling the promise of the National Association of Registered Agents and Brokers (NARAB). He stated that Terrorism Risk Insurance Act (TRIA) will expire at the end of 2020 and FIO is examining this issue in anticipation.

Richard Ifft (Senior Policy Analyst, Federal Insurance Office) said FIO released its bi-annual [report](#) on the effectiveness of TRIP on June 19, 2018. He said the 2015 TRIA reauthorization required FIO to examine the impact of the program on the availability of private coverage. He stated that the reauthorization also required Treasury to collect data on TRIP on an annual basis, noting that Treasury has conducted three data calls in response to the reauthorization. He noted that the October 2017 Treasury report on asset management and insurance urged FIO to coordinate with state regulators to reduce data reporting inconsistencies and compliance costs. He stated that FIO engaged with state

regulators, NAIC, and industry to accomplish this goal. He said Treasury is working with state regulators and NAIC to streamline and improve future data calls. He said this approach has reduced burdens on the industry overall. Ifft said the 2018 TRIP effectiveness report found that the program has been effective in making terrorism risk insurance available and affordable. He stated that there has been a rise in the availability of private reinsurance, but this does not apply to nuclear, biological, chemical or radiological weapons (NBCR) risk. He said Treasury has not observed any aspects of the program which have discouraged insurers from offering coverage for acts of terrorism. He said the program continues to serve as an important backstop to workers compensation insurance. He said Treasury's estimate of total earned premium for terrorism risk from 2003-2017 was \$37.6 billion, excluding captive insurers. He said Treasury will be putting out a report on the role of small insurers in TRIA in 2019. He stated that FIO will issue another effectiveness report in 2020.

The Advisory Committee received a [presentation](#) from John Tedeschi (Executive Vice President, Guy Carpenter) and John Seo (Co-Founder and Managing Principal, Fermat Capital Management) on public sector risk and risk transfer. Tedeschi stressed the need for public entities to pursue risk transfer rather than arrange financing post-event. He suggested that this will help to speed up the availability of funds following a disaster. He asserted that parametric insurance and catastrophe bonds can bring money into the system rapidly. He emphasized the success of the National Flood Insurance Program (NFIP) risk transfer program. He said NFIP was the first government agency to purchase reinsurance, acquiring \$1 billion of protection. He stated that they subsequently purchased an additional \$1.4 billion of reinsurance and \$500 million of insurance securities. He said the

reinsurance program paid a total recovery of \$1 billion within 9 days of notice following Hurricane Harvey. He stated that this case showed how government programs can utilize reinsurance. Tedeschi said Fannie Mae and Freddie Mac are also engaging in an enormous de-risking. He said Fannie Mae and Freddie Mac have transferred over \$80 billion for risk on \$2.8 trillion of mortgages, of which 25 percent was put into reinsurance and 75 percent was put into the global capital markets.

Seo said capital markets can provide the financial capacity needed to absorb even the largest U.S. risk events. He said the insurance industry should work with state, federal, and local governments to create a coordinated operational framework of insurance-centered services to efficiently and effectively process and settle claims produced by a major catastrophe. Seo recommended that the government create a nationwide inventory of private and governmental assets looking out 5-10 years, examining growth rate, inflation and density effect.

SEC Commissioner Robert Jackson Speaks on Exchange Regulation

Key Point:

- *Commissioner Jackson called for changes to exchange regulation, suggesting that the SEC has not updated its regulations to adapt to for-profit exchanges.*

On September 19, Securities and Exchange Commission (SEC) Commissioner Robert Jackson Jr. gave a [speech](#) at a George Mason University Law and Economics Center event on “Rethinking Exchange Regulation.” Jackson argued that the SEC must adapt to the new world of for-profit exchanges. He explained that the exchanges were not-for-profit for over a century, but about a decade ago exchanges became private corporations, “designed –

perhaps even obligated – to maximize profits.” He stated that SEC has “far too often continued to treat the exchanges with the same kid gloves we applied to their not-for-profit ancestors.”

Jackson noted four “puzzling practices” in the markets: the two-tier system for stock-price information; legal limits on exchange liability when they harm investors; the structure of stock exchanges; and payments exchanges make to brokers who send orders their way. He added that there is now a rare bipartisan way forward. He stated that “stock exchanges have been better at extracting rents than regulators have been at stopping them.”

Jackson discussed the path forward, and he noted that the SEC proposed a pilot study that will test the effects of rebates on market conditions. He said an important part of the pilot is the “no-rebate bucket” that will allow the SEC to observe how markets respond to the absence of rebates. He also stated that the stock markets would benefit from greater transparency about how exchanges make their money. He said a clear and uniform approach to disclosing revenues across exchanges and over time would go a long way in giving investors a clearer view regarding the costs they pay to invest in public companies. He also stated that his office will work closely with Division of Trading and Markets Director Brett Redfearn in regard to equity market structure roundtable discussions, particularly regarding the upcoming roundtable on market data. He said it is now time for the Commission to have a market-wide conversation about how exchanges make their rules and prices. He also asserted that the SEC should also review whether it makes sense to allow for-profit exchanges to write rules of the game for their customers and competitors while also enjoying immunity from civil liability.

Upcoming Hearings and Events

September 25

HUD Oversight: The House Financial Services Committee’s Subcommittee on Housing and Insurance will hold a hearing entitled “HUD Office of Inspector General Report: HUD’s Oversight of the Alexander County (IL) Housing Authority.”

September 26

SEC Oversight: The House Financial Services Committee’s Subcommittee on Capital Markets, Securities, and Investment will hold a hearing entitled “Oversight of the SEC’s Division of Investment Management.” SEC Director of the Division of Investment Management, Dalia Blass, is expected to testify.

Sanctions: The House Financial Services Committee’s Subcommittee on Monetary Policy and Trade will hold a hearing entitled “Administration Goals for Major Sanctions Programs.”

Retail Investor Fraud: The Securities and Exchange Commission (SEC) will hold a roundtable to discuss “the types of fraudulent and manipulative schemes currently targeting retail investors, and enhancing the ability of broker-dealers and others to combat retail investor fraud.”

September 27

CFPB Advisory Committees: The Consumer Financial Protection Bureau (CFPB) will hold a joint meeting of its Consumer Advisory Board, Community Bank Advisory Council, and Credit Union Advisory Council. The event will include remarks from CFPB Acting Director Mick Mulvaney.

Regulatory Policy: The Senate Homeland Security and Governmental Affairs Committee’s Subcommittee on Regulatory Affairs and Federal Management will hold a hearing entitled “Examination of the Effects of Regulatory Policy on the Economy and Business Growth.”

FHFA: The House Financial Services Committee will hold a hearing entitled “Oversight of the Federal Housing Finance Agency’s role as conservator and regulator of the Government Sponsored Enterprises.”

September 28

Financial Markets: The House Financial Services Committee’s Subcommittee on Financial Institutions and Consumer Credit will hold a hearing entitled “Examining Opportunities for Financial Markets in the Digital Era.”

October 2

EGRRCPA, Regulatory Reform Implementation: The Senate Banking Committee may hold a hearing (rescheduled from September 13) to examine implementation of the Economic Growth, Regulatory Relief, and Consumer Protection Act. The witnesses at the hearing will be Comptroller of the Currency Joseph Otting, Federal Reserve Vice Chairman for Supervision Randal Quarles, FDIC Chair Jelena McWilliams, and National Credit Union Association (NCUA) Chairman J. Mark McWatters.

October 3-5

Security Traders Association Market Structure Conference: The Security Traders Association will hold its 85th Annual Market Structure conference. Those scheduled to

speakers include: Robert Cook, FINRA President and CEO; Brett Redfearn, SEC Director of the Division of Trading and Markets; and Congressman Bill Huizenga.

October 5

Technology Advisory Committee: The Commodity Futures Trading Commission (CFTC) will hold a meeting of its Technology Advisory Committee (TAC). Topics will include presentations from certain TAC subcommittee (“potentially including the Automated and Modern Trading Markets; Distributed Ledger Technology and Market Infrastructure; and Virtual Currencies subcommittees”); and discussion on “how RegTech is opening up the possibility of machine readable and executable regulatory rulebooks” and the “potential role for regulators to facilitate RegTech.”

For more information about financial services issues you may [email](#) or call Joel Oswald at 202-659-8201. Alex Barcham and Rebecca Konst contributed to the articles.

ENERGY & ENVIRONMENT

Upcoming Hearings and Events

September 25

Department of Energy and Quantum Computing: The Senate Energy and Natural Resources Committee will hold a [hearing](#) on “DOE’s Efforts in the Field of Quantum Information Science.” Scheduled witnesses are: Energy Undersecretary for Science Paul Dabbar; Supratik Guha, professor in University of Chicago’s Institute for Molecular Engineering; Todd Holmdahl, corporate vice president for Quantum at Microsoft; and Irfan Siddiqi, director of Berkeley Quantum.

September 26

PFAS Contamination: The Senate Homeland Security and Governmental Affairs Committee’s Federal Spending, Oversight and Emergency Management Subcommittee will hold a [hearing](#) “The Federal Role in the Toxic PFAS (per- and polyfluoroalkyl substances) Chemical Crisis.” Scheduled witnesses include: Peter Grevatt, director of the EPA’s Office of Ground Water and Drinking Water; Deputy Assistant Defense Secretary for Environment, Safety and Occupational Health Maureen Sullivan; Linda Birbaum, director of the National Institute of Environmental Health Sciences and National Toxicology Program at the National Institutes of Health; Brian Lepore, director of defense capabilities and management at the Government Accountability Office; Andrea Amico, co-founder of Testing for Pease; and Arnold Leriche, community co-chair of the Wurtsmith Restoration Advisory Board.

Ocean Pollution: The Senate Environment and Public Works Committee will hold a [hearing](#) titled “Cleaning Up the Oceans: How to Reduce the Impact of Man-Made Trash on the Environment, Wildlife, and Human Health?” Scheduled witnesses are: Jonathan Baillie, executive vice president and chief scientist at the National Geographic Society; Cal Dooley, president and CEO of the American Chemistry Council; Bruce Karas, vice president of environment and sustainability at Coca-Cola North America; and Kara Law, research professor for SEA Semester.

September 27

Energy Sector Cybersecurity: The House Energy and Commerce Committee’s Energy Subcommittee will hold a [hearing](#) titled “DOE Modernization: The Office of Cybersecurity, Energy Security, and Emergency Response.”

Assistant Secretary of Energy for Cybersecurity, Energy Security, and Emergency Response (CESER) Karen Evans is scheduled to testify.

October 3

Pipeline Safety Information Sharing: The Pipeline and Hazardous Materials Safety Administration (PHMSA) will convene a [meeting](#) of its Voluntary Information-Sharing System Working Group.

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 Passes FY 2019 DOD Appropriations Act: House Likely To Follow Next Week

Key Points:

- *The bill to fund the DOD advances to the House.*
- *The President's response is uncertain.*

This week, by a [93-7 vote](#), the Senate agreed to the [conference report](#) for the “Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019” ([H.R. 6157](#)). The House was out of session this week and is expected to clear the package to fund the DOD next week. However, it is unclear whether President Donald Trump will sign the bill after remarks this week about the lack of funding in the bill for a border wall and his statements following his signing of the “Consolidated Appropriations Act, 2018” ([P.L. 115-141](#)) about never again agreeing to an omnibus appropriations bill.

In a [summary](#), the House Appropriations Committee touched on the salient points of the DOD title of the bill:

- **Overseas Contingency Operations (OCO)/Global War on Terrorism (GWOT)** – The legislation includes \$67.9 billion in OCO/GWOT funding. This will provide the needed resources for preparation and operations in the field to fight ongoing threats, including funding for personnel requirements, operational needs, the purchase of new aircraft to replace combat losses, combat vehicle modifications, additional Intelligence, Surveillance, and Reconnaissance (ISR) assets, and maintenance of facilities and equipment. It also provides critical support to our key allies, such as Israel, Ukraine and Jordan, to resist aggression.
- **Military Personnel and Pay** – The legislation includes \$143.2 billion – \$138.5 billion for base requirements and \$4.7 billion for OCO/GWOT requirements – to provide for 1,338,100 active-duty troops and 817,700 Guard and Reserve troops. The bill fully funds the requested 16,400 end-strength increase and the 2.6 percent pay raise for the military.
- **Operation and Maintenance** – Included in the legislation is \$243.2 billion – \$193.7 billion for base requirements and \$49.5 billion for OCO/GWOT requirements – for operation and maintenance. Funding for base requirements is \$5.4 billion above fiscal year 2018. This funding supports key readiness programs to prepare our troops for combat and peacetime missions, including flight time and battle training, equipment and

- facility maintenance, and base operations.
- Within this amount, the bill includes \$290 million above the request to invest in facility sustainment, restoration, and modernization programs, and \$20.6 billion total for depot maintenance. This funding will help rebuild our forces to ensure our troops have the training and equipment they need.
 - **Research and Development** – The bill contains \$96.1 billion – \$94.9 billion for base requirements and \$1.2 billion for OCO/GWOT requirements – for research, development, testing, and evaluation of new defense systems and technologies. Funding for base requirements is \$6.6 billion above the fiscal year 2018 level, and will help to support current military operations and to prepare our nation to meet a broad range of future security threats.
 - Specifically, this funding will support research and development of: the F-35 Joint Strike Fighter; space security programs; nuclear force modernization; the Ohio-class submarine replacement; Future Vertical Lift; the Israeli Cooperative Programs; and other important research and development activities, including those within the Defense Advanced Research Projects Agency (DARPA).
 - **Equipment Procurement** – The legislation provides a total of \$148 billion – \$135.4 billion for base requirements and \$12.6 billion for OCO/GWOT requirements – for equipment and upgrades. Funding for base requirements is \$4.8 billion above the request. These funds support our nation’s military readiness by providing the necessary platforms, weapons, and other equipment our military needs to train and operate both for both the current fight and future fights.
 - **Defense Health and Military Family Programs** – The bill contains a total of \$34.4 billion – \$34 billion for base requirements and \$352 million for OCO/GWOT requirements – \$278 million above the request – for the Defense Health Program to provide care for our troops, military families, and retirees.
 - Specifically, the bill provides \$374 million for cancer research, \$125 million for traumatic brain injury and psychological health research, and \$318 million for sexual assault prevention and response. All of these funding levels represent increases above the President’s request.
 - **Reductions and Rescissions to Save Tax Dollars** – The bill reflects commonsense decisions to save taxpayer dollars where possible in areas that will not affect the safety or success of our troops and missions, such as \$3.8 billion in savings from rescissions of unused prior-year funding.

New DOD Cyber Strategy

Key Point:

- *A new strategy on cyber operations replaces a 2015 document and is being interpreted as allowing a wider range of cyber operations.*

This week, the Department of Defense (DOD) released an unclassified [summary](#) of the 2018 Department of Defense Cyber Strategy (Strategy) in coordination with the White House’s release of a [National Cyber Strategy](#) (NCS). The DOD explained that the new Strategy “represents the Department’s vision for addressing this threat and implementing the priorities of the [National Security Strategy](#) and [National Defense Strategy](#) for

cyberspace...[and] supersedes the 2015 DOD Cyber Strategy.”

The DOD stated the Strategy “directs the Department to defend forward, shape the day-to-day competition, and prepare for war by building a more lethal force, expanding alliances and partnerships, reforming the Department, and cultivating talent, while actively competing against and deterring our competitors.” The DOD claimed that “[t]aken together, these mutually reinforcing activities will enable the Department to compete, deter, and win in the cyberspace domain.” Most notable in the new Strategy is language that some are claiming will allow the DOD to conduct more muscular offensive cyber operations against nations that have waged sustained cyber campaigns against the U.S. The DOD asserted “[w]e will defend forward to disrupt or halt malicious cyber activity at its source, including activity that falls below the level of armed conflict.”

The DOD articulated its “cyberspace objectives:”

1. Ensuring the Joint Force can achieve its missions in a contested cyberspace environment;
2. Strengthening the Joint Force by conducting cyberspace operations that enhance U.S. military advantages;
3. Defending U.S. critical infrastructure from malicious cyber activity that alone, or as part of a campaign, could cause a significant cyber incident;
4. Securing DOD information and systems against malicious cyberactivity, including DOD information on non-DOD-owned networks; and
5. Expanding DOD cyber cooperation with interagency, industry, and international partners.

The DOD provided more detail about how these cyberspace objectives will be achieved:

- BUILD A MORE LETHAL JOINT FORCE
 - Accelerate cyber capability development
 - Innovate to foster agility
 - Leverage automation and data analysis to improve effectiveness
 - Employ commercial-off-the-shelf (COTS) cyber capabilities
- COMPETE AND DETER IN CYBERSPACE
 - Deter malicious cyber activities:
 - Persistently contest malicious cyber activity in day-to-day competition
 - Increase the resilience of U.S. critical infrastructure
- STRENGTHEN ALLIANCES AND ATTRACT NEW PARTNERSHIPS
 - Build trusted private sector partnerships
 - Operationalize international partnerships
 - Reinforce norms of responsible State behavior in cyberspace
- REFORM THE DEPARTMENT
 - Incorporate cyber awareness into DOD institutional culture
 - Increase cybersecurity accountability
 - Seek material solutions that are affordable, flexible, and robust
 - Expand crowd-sourced vulnerability identification
- CULTIVATE TALENT
 - Sustain a ready cyber workforce
 - Enhance the Nation’s cyber talent
 - Embed software and hardware expertise as a core DOD competency

- Establish a cyber top talent management program

Upcoming Hearings and Events

September 25

Nominations: The Senate Armed Services Committee will hold a [hearing](#) to consider the nominations of General Robert B. Abrams, USA for reappointment to the grade of general and to be Commander, United Nations Command/Combined Forces Command/United States Forces Korea and Vice Admiral Craig S. Faller, USN to be admiral and Commander, United States Southern Command.

September 26

DOD Cyber: The Senate Armed Services Committee’s Cybersecurity and Personnel Subcommittees will hold a [joint hearing](#) with open and closed sessions titled “Cyber Operational Readiness of the Department of Defense.”

National Defense: The House Armed Services Committee will hold a [hearing](#) titled “The Impact of National Defense on the Economy, Diplomacy, and International Order.”

Syria: The House Armed Services Committee’s Oversight and Investigations Subcommittee will hold a [hearing](#) titled “U.S. Strategy in Syria.”

September 27

Military Review Boards: The House Armed Services Committee’s Military Personnel Subcommittee will hold a [hearing](#) titled “Update on Military Review Board Agencies.”

September 28

DOD Air Operations Safety: The House Armed Services Committee’s Seapower and Projection Forces Subcommittee will hold a [hearing](#) titled “Contributing Factors to C-130 Mishaps and Other Intra-Theater Airlift Challenges.”

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

HEALTH

Senate Passes Opioid Package

Key Points:

- The Senate approved its opioid package 99-1.
- The House and Senate are working to reconcile their two packages with a goal of having text ready for the House to vote next week before the October recess.

On September 17, the Senate passed its version of comprehensive opioid legislation in a vote of 99-1. Senator Mike Lee (R-UT) was the only Senator to vote against the bill. The legislation combined several bills that had been passed by various Senate committees. The House passed its version in June.

House Energy and Commerce Committee Chairman Greg Walden (R-OR) praised passage calling it “an important step forward in our collective fight to end this epidemic...and we look forward to continuing to work together to advance a final legislative package that will be signed into law.”

Senate Health, Education, Labor and Pensions Committee Chairman Lamar Alexander (R-TN) explained the House and Senate are already working together on final text to reconcile the differences between the two packages. He said the intent is to have final text completed by

September 21 to allow the House to vote next week before it leaves for its October recess. The Senate would then be able to take up the bill as soon as the following week.

There are some major areas of difference between the House and Senate bills including suspending the institutions of mental disease (IMD) exclusion; reforms to Medicare and Medicaid; and disclosure of patient substance use and mental health records under 42 CFR Part 2.

Recent reports suggest this timeline may be slipping. Senate Health, Education, Labor and Pensions Committee Ranking Member Patty Murray (D-WA) is reportedly holding back her support for the inclusion of changes to restrictions on sharing patients' substance abuse records despite support from other Democrats, including the Governor of Washington.

Upcoming Hearings and Meetings

September 25

Health Care: The Alliance for Health Policy will hold a webinar on “Health Care in the Courts,” focusing on impending health policy legal decisions.

Rural Health: The Senate Health, Education, Labor and Pensions Committee will hold a hearing on “Health Care in Rural America: Examining Experiences and Costs.”

September 26

Opioids: The Bipartisan Policy Center will hold a discussion on “Tackling the Opioid Epidemic at the Federal and State Levels.”

September 27

Opioids: The American Enterprise Institute will hold a discussion on “the opioid crisis, international law and the global mail system.”

Health Care Costs: The Senate Health, Education, Labor and Pensions Committee will hold a hearing on “Reducing Health Care Costs: Improving Affordability Through Innovation.”

Maternal Health: The House Energy and Commerce Committee will hold a hearing on “Better Data and Better Outcomes: Reducing Maternal Mortality in the U.S.”

Treatment: The Kaiser Family Foundation will hold a discussion on “Medical Overtreatment.”

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

TRANSPORTATION AND INFRASTRUCTURE

Conference Report For FAA Reauthorization May Be Unveiled Next Week

Key Point:

- *A final deal on a multi-year reauthorization may be near.*

Staff talks may have yielded breakthroughs on the sticking points between the House and Senate agreeing on a final bill to reauthorize the Federal Aviation Administration (FAA) ahead of the September 30, 2018 deadline. The House has considered and passed its six-year FAA reauthorization, the “FAA Reauthorization Act of 2018” ([H.R.4](#)), while the Senate has not taken up its four-year bill on the floor, the “Federal Aviation Administration

Reauthorization Act of 2017” ([S.1405](#)). Issues have included language changing the Federal Motor Carrier Safety Administration’s (FMCSA) Hours of Service regulation, provisions allowing the Department of Homeland Security and Department of Justice to counter drones, proposed modifications for the training requirements of regional airline pilots, and others.

If talks fail to yield a bill that can be passed, Congress would likely pass an extension of the current authorities perhaps through early December. The FAA has had its funding and authority extended twice in FY 2018 under the “FAA Extension, Safety, and Security Act of 2016” ([P.L. 114-190](#)), but the agency has not operated under a long-term authorization since the “FAA Modernization and Reform Act of 2012” ([P.L. 112-95](#)).

Upcoming Hearings and Events

September 26

US Space Policy: The Senate Commerce, Science & Transportation Committee’s Space, Science, and Competitiveness Subcommittee will hold a [hearing](#) titled “Global Space Race: Ensuring the United States Remains the Leader in Space.”

Tariffs and the US Auto Industry: The Senate Finance Committee will hold a [hearing](#) titled “Impact of Tariffs on the U.S. Automotive Industry.”

Aviation Workforce: The House Small Business Committee will hold a [hearing](#) titled “Troubled Skies: The Aviation Workforce Shortage’s Impact on Small Businesses.”

September 27

Insider Threats: The House Homeland Security’s Transportation and Protective Security Subcommittee will hold a [hearing](#) titled “Insider Threats to Aviation Security: Airline and Airport Perspectives.”

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

TECHNOLOGY

National Cybersecurity Strategy Released

Key Point:

- *A new national strategy on cybersecurity is released, but National Security Council will implement actual directives or actions in the future.*

This week, the White House released a [National Cyber Strategy](#) (NCS) in tandem with an unclassified [summary](#) of the 2018 Department of Defense Cyber Strategy. The White House claimed the NCS is the first U.S. cyber strategy in 15 years, “identifies bold new steps the Federal Government will take to protect America from cyber threats and strengthen our capabilities in cyberspace,” and “builds on President [Donald] Trump’s Executive Order [“Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure.”](#)”

In the press rollout, National Security Advisor John Bolton stated that the NCS “authorize[s] offensive cyber operations” and that “[o]ur hands are not tied as they were in the Obama administration.” In August, the *Wall Street Journal* and other media outlets reported that President Donald Trump rescinded Presidential Policy Directive 20 (PPD-20), an interagency coordination process for offensive cyber operations that required extensive deliberation

before the Department of Defense's Cyber Command could undertake offensive cyber-attacks. PPD-20 required consultation and buy-in from a range of Administration stakeholders such as the Department of State before Cyber Command could proceed with an attack. With the rollout of the NCS, stakeholders have revealed the existence of a successor document, National Security Presidential Memorandum-13, which "provides a way, within certain policy constraints, for the President to delegate to the Secretary of Defense certain cyberspace authorities to do cyber effects operations for a particular mission" according to Joint Staff Global Operations Deputy Director Brigadier General Alexis Grynkewich.

Nonetheless, the document is fairly high level and is structured to follow the pillar pattern articulated in the [National Security Strategy](#):

- Pillar I: Protect the American People, the Homeland, and the American Way of Life
- Pillar II: Promote American Prosperity
- Pillar III: Preserve Peace through Strength
- Pillar IV: Advance American Influence

The National Security Council staff will be charged with quarterbacking implementation of the NCS with agencies and the Office of Management and Budget (OMB), meaning possible OMB memoranda or presidential directives to implement the Administration's approach on cybersecurity.

The White House's [fact sheet](#) lists pillars and sub-pillars of the NCS:

- **PROTECTING THE AMERICAN PEOPLE, THE HOMELAND, AND OUR WAY OF LIFE: Strengthening American cybersecurity is central to the National Cyber Strategy.**

- President Trump's National Cyber Strategy will protect American networks by:

- Securing Federal networks and information and our Nation's critical infrastructure
- Combatting cybercrime and improving incident reporting

- **PROMOTING AMERICAN PROSPERITY: President Trump's National Cyber Strategy will help protect cyberspace as an engine of economic growth and innovation.**

- President Trump's National Cyber Strategy will promote American prosperity by:

- Fostering a vibrant and resilient digital economy
- Protecting American ingenuity from threats such as intellectual property theft
- Developing a superior cybersecurity workforce through education and recruitment

- **PRESERVING PEACE THROUGH STRENGTH: The National Cyber Strategy will strengthen efforts to deter destabilizing activity in cyberspace.**

- The National Cyber Strategy will stand up to destabilizing behavior in cyberspace by:

- Promoting responsible behavior among nation states
- Working to ensure there are consequences for irresponsible cyber behavior

- Launching an international Cyber Deterrence Initiative
- Exposing and countering online malign influence and information campaigns
- **ADVANCING AMERICAN INFLUENCE: The National Cyber Strategy will preserve the long-term openness of the internet, which supports and reinforces American interests.**
 - President Trump’s National Cyber Strategy will promote an open and secure internet by:
 - Encouraging Nations to advance internet freedom
 - Advancing a multi-stakeholder model of internet governance
 - Promoting open, interoperable, reliable, and secure communications infrastructure
 - Opening overseas markets for American ingenuity
 - Building international cyber capacity
- **COMMITTED TO A SECURE CYBER FUTURE: President Trump is committed to protecting the cybersecurity of our Nation and is implementing policies that work to achieve that objective.**
 - The President’s National Security Strategy prioritizes keeping America safe in the cyber era.
 - The Trump Administration has released a number of agency-

specific strategies emphasizing the importance of cybersecurity.

Upcoming Hearings and Events

September 26

Data Privacy: The Senate Commerce, Science & Transportation Committee will hold a [hearing](#) titled “Examining Safeguards for Consumer Data Privacy.”

China and U.S. Technology: The House Oversight and Government Reform Committee’s Information Technology Subcommittee will hold a [hearing](#) titled “Countering China: Ensuring America Remains the World Leader in Advanced Technologies and Innovation.”

September 27

DOE and Cybersecurity: The House Energy and Commerce Committee’s Energy Subcommittee will hold a [hearing](#) titled “DOE Modernization: The Office of Cybersecurity, Energy Security, and Emergency Response.”

SSA IT: The House Ways and Means Committee’s Social Security Subcommittee will hold a [hearing](#) “on the State of Social Security’s Information Technology.”

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

TRADE

U.S. Announces Tariffs on \$200 Billion of Chinese Goods, China Responds with Tariffs

Key Points:

- *President Trump on Monday announced the imposition of 10 percent tariffs on \$200*

billion of Chinese goods, set to go into effect on September 24.

- *The tariffs could increase to 25 percent in 2019 if China does not alter its trade practices.*
- *China responded by announcing tariffs on \$60 billion of U.S. goods.*

On Monday, President Trump said he will impose new tariffs on about \$200 billion in Chinese goods and threatened to add hundreds of billions more as part of his campaign to pressure China to change its commercial practices, further ramping up trade tensions between the countries. The U.S. Trade Representative (USTR) on Tuesday released the [final list](#) of \$200 billion worth of Chinese goods that will face a 10 percent tariff. The U.S., in response to industry complaints, took nearly 300 products off the list of those subject to the tariffs announced this week. The products removed included popular consumer products ranging from smart watches, Bluetooth devices, to car seats and bicycle helmets. These tariffs could increase to 25 percent in January if China does not change its trade practices and “engage meaningfully” with the U.S. on trade talks.

The Chinese government responded by announcing plans to impose new tariffs on \$60 billion in U.S. exports, prompting President Trump to reiterate a threat to punch back by hitting Chinese goods worth more than four times that much. The Chinese retaliatory tariffs include: “an additional 5 percent duty on about 1,600 kinds of U.S. products including smaller aircraft, computers and textiles and an extra 10 percent on more than 3,500 items including chemicals, meat, wheat, wine and LNG.” President Trump responded to China’s \$60 billion pledge later Tuesday by declaring that “if there’s retaliation against our farmers and our industrial workers and our ranchers, if any of that goes on we are going to kick in another

\$257 billion.” He added: “We don’t want to do it, but we’ll probably have no choice.” It has been reported that President Trump could issue a formal statement in the next few days directing USTR Robert Lighthizer to begin the process of drafting the next tranche of tariffs that, if fully implemented, would cover virtually all imports of Chinese goods, which totaled \$505 billion in 2017.

US and Canada Continue NAFTA Negotiations As Time Runs Short

Key Points:

- *NAFTA negotiations continued in Washington DC this week with no concrete progress announced.*
- *The parties are still seeking to resolve major issues including dairy restrictions and dispute settlement procedures.*

Canadian Foreign Minister Chrystia Freeland concluded another week of NAFTA meetings in Washington, again leaving without an announcement that a deal has been reached to add Canada to the trade deal reached in principle between the U.S. and Mexico. This Thursday was considered by some to be the deadline to get a deal in time to satisfy the requirements under the U.S. trade promotion authority (TPA) law which requires the final text of an agreement be sent to Congress 60 days prior to it being signed by the president. The sides want to sign an accord before Mexico’s incoming president, Andres Manuel Lopez Obrador, takes office Dec. 1. To do so, they would have to publish a deal by Sept. 30, and would need to reach agreement imminently to have time to put it into legal text.

After concluding her meetings, Minister Freeland told reporters “We discussed some tough issues today, the atmosphere continues to be constructive, and we continue to work hard towards a deal.” She was asked whether

they were making progress, and replied: “I chose my words carefully: today we discussed some tough issues, the conversation was constructive.” Freeland added that, “We are really in a continuous negotiation phase. Officials are in pretty much constant contact. It would not be an exaggeration to say they are working 24/7.”

There have been reports that Canada is developing a trade retaliation strategy that would suspend U.S. pharmaceutical patents in Canada. This would allow Canadian pharmaceutical companies to sell and possibly export drugs developed in the U.S. Canada could implement this retaliation if the U.S. chooses to place tariffs on Canadian automobiles and auto parts.

USTR Finalizes Section 201 Solar Product Tariff Exclusions

Key Point:

- *USTR announced the products exempted from the 30 percent tariff on all foreign crystalline silicon photovoltaic cells and modules, which took effect on February 7.*

The USTR on Wednesday released a *Federal Register* notice that lists the goods to be exempt from the 30 percent tariff on solar power product imports. The products to be excluded include: (1) off-grid, 45 watt or less solar panels; (2) 4 watt or less solar panels; (3) solar panels with a maximum rated power of equal to or less than 60 watts; (4) flexible and semi-flexible off-grid solar panels designed for use with motor vehicles and boats; and (5) modules incorporating only CSPV cells that are products of the United States and not incorporating any CSPV cells that are the product of any other country. The Solar Energy Industries Association (SEIA) said its members are “happy to see today’s exclusion ruling and we

hope there are more solar exclusions granted in the near future.”

Upcoming Hearings and Events

September 25

Export Administration Regulations: Commerce Department; Bureau of Industry and Security (F.R. Page 44262) holds a meeting of the Regulations and Procedures Technical Advisory Committee on Export Administration Regulations.

September 26

U.S. Business Opportunities in Africa: Commerce Department; International Trade Administration (F.R. Page 45217) holds a meeting by teleconference of the President's Advisory Council on Doing Business in Africa (PAC-DBIA). Agenda includes: deliberate and consider adopting a report containing recommendations to the President on actions the United States Government could take to mitigate obstacles that U.S. companies face in doing business in Africa; and findings from the Council's June-July 2018 Fact-Finding Trip to Ethiopia, Kenya, Cote d'Ivoire and Ghana, countries PAC-DBIA identified as holding particular promise of business opportunities for U.S. companies

Senate Finance - Tariff Impacts on the U.S. Auto Industry: Senate Finance Committee (Chairman Orrin G. Hatch, R-Utah) hearing on “Impact of Tariffs on the U.S. Auto Industry.”

House Financial Services - Major Sanctions Programs: House Financial Services Committee’s Monetary Policy and Trade Subcommittee (Chairman Andy Barr, R-Ky.) of House Financial Services Committee hearing on “Administration Goals for Major Sanctions Programs.”

September 27

House Foreign Affairs – Pending Legislation: House Foreign Affairs Committee (Chairman Ed Royce, R-Calif.) markup of H.Res.1006, condemning the deteriorating situation in Venezuela and the regional humanitarian crisis it has caused, affirming support for the legitimate National Assembly and the Supreme Court, and urging further regional action in support of democracy in Venezuela; H.Res.1052, affirming United States-Australia cooperation on space research, exploration, and utilization; H.R.1567, the “United States-Mexico Economic Partnership Act”; H.R.4591, the “Preventing Iranian Destabilization of Iraq Act of 2017”; H.R.5273, the “Global Fragility and Violence Reduction Act of 2018”; H.R.6018, the “Trans-Sahara Counterterrorism Partnership Act of 2018”; and H.R.6413, the “STOP Organ Trafficking Act.”

Food Import/Export Inspection Certification Systems: Agriculture Department; U.S. Codex Office (F.R. Page 45207) holds a meeting to provide information and receive public comments on agenda items and draft United States positions to be discussed at the 24th Session of the Codex Committee on Food Import and Export Inspection and Certification Systems (CCFICS) of the Codex Alimentarius Commission (Codex), taking place in Brisbane, Australia in October.

For more information about tax issues you may [email](#) or call Christopher Hatcher at 202-659-8201. Riyad Carey contributed to this section.

This Week in Congress was written by Ryan Schnepf.