

September 28, 2018

Washington Update

This Week in Congress

- **House** – The House passed the “**Encouraging Small Business Innovators**” (H.R. 6368); the “**Expanding Contracting Opportunities for Small Business Act of 2018**” (H.R. 6369); the “**FDR Historic Preservation Act**” (H.R. 5420); the “**Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019**” (H.R. 6157); the “**Empowering Financial Institutions to Fight Human Trafficking Act**” (H.R. 6729); the “**Family Savings Act of 2018**” (H.R. 6757); the “**American Innovation Act of 2018**” (H.R. 6756); the “**Protecting Family and Small Business Tax Cuts Act of 2018**” (H.R. 6760); and the “**House Amendment to Senate Amendment to H.R. 6 – SUPPORT for Patients and Communities Act**” (H. Res. 1099).
- **Senate** – The Senate passed “**The Sam Farr and Nick Castle Peace Corps Reform Act of 2018**” (H.R. 2259); the “**Transit Rail Inspection Practices Act of 2018**” (S. 3139); the “**Veterans' Compensation Cost-of-Living Adjustment Act of 2018**” (H.R. 4958); an act “**To reauthorize and amend the Marine Debris Act to promote international action to reduce marine debris**” (S. 3508); “**the Congressional Award Act**” (S. 3509); an act “**To amend the DNA Analysis Backlog Elimination Act of 2000**” (H.R. 4854); the “**National Earthquake Hazards Reduction Program Reauthorization Act**” (S. 1768); an act to amend the “**Missing Children’s Assistance Act**” (S.3354) and confirmed **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; **Peter A. Feldman** to be a Commissioner of the Consumer Product Safety Commission and **Lisa Porter** to be a Deputy Under Secretary of Defense.

Next Week in Congress

- **House** – The House is in recess until November 13.
- **Senate** – The Senate will vote on a motion to proceed on the nomination of Brett Kavanaugh to be Associate Justice, United States Supreme Court on Saturday, September 29.

TAX

House Passes “Tax Reform 2.0”

Key Points:

- *The House passed three tax related bills this week in a package touted as “Tax Reform 2.0”*
- *The Family Savings Act would expand section 529 college savings accounts, create universal savings accounts, and repeal the maximum age for IRA contributions*
- *The American Innovation Act would expand start-up business deduction limits*
- *The Protecting Family and Small Business Tax Cuts Act of 2018 would make permanent the TCJA’s individual tax cut rates*

This week the House completed action on the three bills that comprise what has become known as “Tax Reform 2.0.” On Thursday, the House passed bills to expand retirement-savings incentives and tax breaks for startup businesses. The Family Savings Act ([H.R. 6757](#)), a bill that would expand 529 college saving plans accounts, create universal savings accounts and make other retirement plan changes, passed on a vote of 240 to 177. [H.R. 6756](#), the American Innovation Act, passed the House on a 260 to 166 vote. The bill would expand start-up business deduction limits and allow start-up businesses to immediately deduct their start-up or organizational expenses. The bill would also allow new businesses to retain their built-up benefits if ownership changes.

On Friday morning the House passed the “centerpiece” of the effort, [H.R. 6760](#), the Protecting Family and Small Business Tax Cuts Act of 2018 on a 220 to 191 vote. The bill would permanently extend the tax cuts just enacted last December as part of the Tax Cuts and Jobs Act. Those include lower individual tax rates, the larger standard deduction and

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child tax credit, the doubled estate-tax exemption, a 20 percent deduction for income of partnerships and other similar businesses and the \$10,000 cap on the deduction for state and local taxes. The Joint Committee on Taxation (JCT) scored the extension bill at costing \$631 billion over the budget window.

The effort is largely viewed as a political maneuver ahead of the elections with the Senate unlikely to take up any of the House bills. There is some belief that some of the proposed retirement changes, which are identical to those in bipartisan Senate retirement legislation, could find their way into a year’s end tax bill.

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

FINANCIAL SERVICES

SEC Holds Roundtable on Combatting Retail Investor Fraud

Key Point:

- *SEC Chairman Jay Clayton highlighted the Commission’s efforts to combat retail investor fraud.*

On September 26, the Securities and Exchange Commission (SEC) held an equity market structure [roundtable](#) on combatting retail investor fraud. The first panel of the

roundtable focused on “Types of Fraudulent and Manipulative Schemes Currently Targeting Retail Investors,” and the second panel dealt with “Enhancing the Ability of Broker-Dealers to Combat Retail Investor Fraud,” with subpanels on: (1) Rule 15c2-11; (2) Broker-Dealer Registration; and (3) Suspicious Activity Reports. There was also a panel that addressed “Additional Ways to Combat Retail Investor Fraud,” including discussions on transfer agents, trading halts, and investor education.

SEC Chairman Jay Clayton, in a [statement](#), said serving and protecting Main Street investors is a top priority for the SEC. He said he is troubled by the relative propensity for retail investor fraud, particularly in the penny stock and digital asset markets. He noted that the SEC has created a Retail Strategy Task Force to address this issue. He said in May the SEC launched the SEC Action Lookup for Individuals (SALI) tool, which is a new online search feature that enables retail investors to research whether the person trying to sell them investments has a judgment or order entered against them in an enforcement action. He said the SEC also participates in a group led by the Department of Justice (DOJ) focused on combatting fraud. Clayton said the SEC is examining whether the current regulatory framework is appropriately tailored to help prevent fraudulent activity before it occurs. He stated that they will consider whether to enhance the oversight of broker-dealers and investment advisers. He questioned whether the SEC can enhance the ability of broker-dealers, investment advisers and other industry participants to identify and combat retail fraud.

Brett Redfearn, Director of the Division of Trading and Markets, said this was the second in a series of roundtables on issues under the purview of the Division of Trading and Markets. He noted that in October they will hold a two day roundtable on market data and

market access. He stated that seniors and members of affinity groups continue to be preyed upon by fraudsters, noting a recent SEC case against a Ponzi-like scheme which took in more than \$300 million and the SEC’s actions to suspend 309 issuers in 2017. Redfearn said well-tailored regulation and investor education can help to address retail investor fraud.

House Financial Services Conducts Oversight of the SEC Division of Investment Management

Key Points:

- *SEC Division of Investment Management Director Dalia Blass stated the proxy advisory industry is a low margin, high volume industry and the lack of competition is related to economies of scale.*
- *Blass stated that Regulation Best Interest takes the fiduciary duties that already exist and tailors those for the broker-dealer space.*

On September 26, the House Financial Services Committee’s Subcommittee on Capital Markets, Securities and Investment held a [hearing](#) on “Oversight of the SEC’s Division of Investment Management.”

Chairman Bill Huizenga (R-MI) stated over 100 million individuals representing nearly 60 million households or roughly 45 percent of U.S. households hold funds that fall under the purview of the Division of Investment Management (IM). He noted additionally, of the over 13,000 registered investment advisers approximately half of those advisers serve 35 million retail investor clients with over \$12 trillion in retail client assets under management. He expressed support for the SEC moving forward to propose rules for a standard of care for broker-dealers and other financial professionals.

Chairman Huizenga suggested the IM Division made the right decision to withdraw the 2004 No Action Letters and staff guidance related to proxy advisory firms in advance of the November roundtable that will more closely discuss this issue. Ranking Member Carolyn Maloney (D-NY) expressed concern over the withdrawal of two No Action Letters related to proxy advisors. She expressed interest in hearing what developments necessitated the withdrawal of these important letters. SEC Division of Investment Management Director Dalia Blass stated that the SEC has conducted outreach on the proxy advisory industry and the two No Action Letters received a lot of “air time.” She noted the SEC has decided to hold a roundtable in November on the issue and decided to rescind the No Action Letters to allow for more fulsome discussion. When asked why there is little competition in the proxy advisory industry Blass stated that it is a low margin, high volume industry and it is an issue of economies of scale.

Chairman Huizenga and Representative French Hill (R-AR) noted the June 2017 proposal to modernize the ETF framework. Blass stated that the ETF industry was operated under exemptive orders, which was an inconsistent process. She stated the proposal aims to create a transparent framework for a segment of the ETF industry. When asked whether any issues have been seen following passage of the 2014 rule on money market funds, Blass stated that the rule was designed to address structural risks. She noted that during implementation the SEC did see a shift in the makeup of the funds from prime to government funds. Related questions about Regulation Best Interest, Blass stated that the proposal took the principles of existing fiduciary duties and tailored those to broker-dealers in a way that would allow for continued choice.

House Financial Services Conducts Oversight of the FHFA

Key Point:

- *Fannie Mae CEO Timothy Mayopoulos stated that Fannie Mae has learned its lessons from the financial crisis and has imposed good and sustainable credit standards.*

On September 27, the House Financial Services Committee held a [hearing](#) entitled “Oversight of the Federal Housing Finance Agency’s role as conservator and regulator of the Government Sponsored Enterprises.” During the hearing the accusations of sexual harassment raised against FHFA Director Mel Watt were discussed, as well as policy issues related to the two government sponsored enterprises (GSEs), Fannie Mae and Freddie Mac. Chairman Jeb Hensarling (R-TX) noted Fannie Mae and Freddie Mac remain thinly capitalized, buy high risk loans, and are still embroiled in scandals. He stressed housing finance is in dire need of reform and the Federal Finance Housing Agency (FHFA) is in dire need of oversight. Ranking Member Maxine Waters (D-CA) stated FHFA plays a critical role in the housing system and the Committee has the responsibility to conduct agency oversight.

Much of the hearing focused on the accusations of Simone Grimes against FHFA Director Mel Watt and the actions of the Office of Inspector General related to this issue. Representative Ted Budd (R-NC) asked about cybersecurity and the significant personally identifiable information (PII) stored by the GSEs. Inspector General Laura Wertheimer explained the OIG has seen multiple failures to perform the supervisory activities the GSEs have planned related to cybersecurity. Several Members raised concerns over Fannie Mae’s relocation to new facilities. FHFA Director Mel Watt stated that he

approved the use of \$732 million to relocate the Northern Virginia workforce to a renovated building and the net effect of that decision was a \$330 million return to taxpayers. Representative William Lacy Clay (D-MO) asked about the use of appraisal waivers. Freddie Mac CEO Donald Layton stated that appraisals are expensive and often inaccurate. He stated the government has found a less expensive way to conduct appraisals that presents a savings to the borrower. Representative French Hill (R-AR) noted the increase in the debt-to-income ratio for Fannie Mae borrowers. Fannie Mae CEO Timothy Mayopoulos stated that Fannie Mae has learned its lessons from the financial crisis and has imposed good and sustainable credit standards. He noted Fannie Mae considers credit and the ability to repay.

UPCOMING EVENTS

October 2

Regulatory Reform Implementation: The Senate Banking Committee will hold a hearing 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 speak include: Robert Cook, FINRA President and CEO and Brett Redfearn, SEC Director of the Division of Trading and Markets.

October 3-4

FinTech Conference: The Commodity Futures Trading Commission (SEC) will hold a two-day conference with domestic and international financial regulators, fintech innovators and experts to examine fintech topics

October 3

Bankruptcy: The Senate Judiciary Committee will hold a hearing entitled “Big Bank Bankruptcy: 10 Years After Lehman Brothers.”

October 4

Money Laundering: The Senate Banking Committee will hold a hearing entitled “Combating Money Laundering and Other Forms of Illicit Finance: Regulator and Law Enforcement Perspectives on Reform.” The witnesses at the hearing will be Kenneth Blanco, Director, Financial Crimes Enforcement Network (FinCEN); Steven D’Antuono, Section Chief, Financial Crimes Section, Federal Bureau of Investigation (FBI); and Grovetta Gardineer, Senior Deputy Comptroller for Compliance and Community Affairs, Office of the Comptroller of the Currency.

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.”

October 18

Elder Financial Exploitation: The Consumer Financial Protection Bureau (CFPB) will hold a field hearing in Baton Rouge, Louisiana on preventing elder financial exploitation. The event will include remarks from CFPB Acting Director Mick Mulvaney.

October 25-26

Market Data/Access: The SEC will hold a two-day roundtable on market data and market access.

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 AND ENVIRONMENT

House Passes Strategic Petroleum Reserve Legislation

Key Point:

- *On Tuesday, the House passed legislation to allow private leasing of some of the crude oil storage space in the Strategic Petroleum Reserve.*

On September 25, the House of Representatives approved the “Strategic Petroleum Reserve Reform Act” ([H.R. 6511](#)) by a voice vote. The legislation authorizes the Department of Energy to lease some of the Strategic Petroleum Reserve’s (SPR) storage capacity to private sector entities and foreign allies. Congress established the SPR in 1975 to provide an emergency supply source of petroleum. At its peak, the SPR held 727 million barrels of crude oil in a series of underground caverns in Louisiana and Texas. In recent years Congress authorized a series of sales of a significant portion of the SPR’s inventory.

As described in the Energy and Commerce Committee report ([H.Rept. 115-965](#)), the legislation:

- “Authorizes the Secretary of Energy to establish and carry out a program to lease underutilized SPR facilities to the private sector or a foreign government”;
- Directs the Department of Energy to: “[impose] fees to offset associated operations and maintenance costs;...ensure the lease does not impair the government’s ability to utilize the SPR in an emergency; and,...ensure a lease to a foreign government does not impair national security”; and
- Directs the Department of Energy “to establish and carry out a pilot program to lease up to 200 [million barrels] of petroleum products at SPR facilities within 180 days of enactment”.

During House floor debate, the bill’s sponsor, Representative Joe Barton (R-TX) explained that there is “quite a bit of excess capacity right now in the Strategic Petroleum Reserve....[since Congress has] authorized the sale of about 300 million barrels between now and 2028.” Barton noted that if those sales proceed, “we will have almost half of the SPR without any crude oil in it.” He also noted that “[o]il producers all over the United States are scrambling for ways to store all the oil that we are producing while it is waiting to be refined or shipped overseas.”

Upcoming Hearings and Events

October 2

Pending Legislation: The Senate Energy and Natural Resources Committee will hold a markup of pending legislation.

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.

EPA Science in Regulation: The Senate Environment and Public Works Committee’s Subcommittee on Superfund, Waste Management and Regulatory Oversight will hold a hearing on “Oversight of the Environmental Protection Agency’s Implementation of Sound and Transparent Science in Regulation”.

For more information about energy and environment issues you may [email](#) or call Frank Vlossak at 202-659-8201. Alex Barcham contributed to this report. Updates on energy and environment issues are also available on [twitter](#).

DEFENSE

President Will Likely Sign FY 2019 DOD Appropriations Act

Key Points:

- *The bill to fund the DOD goes to the White House*
- *The President has indicated he will sign the bill*

This week, the House sent an appropriations package that would fund the Department of Defense (DOD) to the White House by a [361-61 vote](#). Last 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](#)). According to public remarks, President Donald Trump said he will sign the bill thus averting a government shutdown.

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.

Upcoming Hearings and Events

October 2

Russian Involvement in Middle East: The Senate Foreign Relations Committee will hold a [hearing](#) titled “Russia's Role in Syria and the Broader Middle East.”

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

HEALTH**House Passes Final Opioid Legislation***Key Points:*

- *The House passed the final opioid legislative package 393-8.*
- *The Senate is expected to take up the package in the coming weeks allowing the President to sign it into law before the midterm elections.*

On September 28, the House voted to pass the final opioid package 393-8. The package was the result of final negotiations between the House and Senate to reconcile remaining differences. The legislation is expected to be passed by the Senate in the coming weeks allowing the President to sign it into law before the midterm elections.

The legislation contains dozens of proposals which were the work of multiple committees in the House and Senate. It includes:

- A temporary suspension of the Medicaid institutions for mental disease (IMD) exclusion.
- Requiring state Medicaid programs to cover medication-assisted treatment (MAT) including methadone and counseling for opioid use disorders from FY 2021 to FY 2025.
- Expand Medicaid coverage for opioid treatment services provided in opioid treatment programs with bundled payment for the full cycle of care.
- Measures to help address the shipment of fentanyl through U.S. mail.
- Codifies rules allowing qualified physicians to provide MAT to up to 275 patients; permanently allowing nurse practitioners and physician assistants to prescribe MAT; and allowing clinical nurse specialists, nurse anesthetists, and midwives to prescribe MAT for FY 2019 through FY 2023.

In addition, the legislation authorizes \$500 million annually for FY 2019 through FY 2021 for Opioid State Targeted Response Grants which were originally created in the 21st Century Cures Act. Funding authorizations are provided for a range of programs including first responder training to administer overdose reversal drugs; Centers for Disease Control and Prevention grants for evidence-based prevention activities; and mental and behavioral health training. It includes a program for the Health Resources and Services Administration to establish a loan forgiveness program for those working as substance abuse treatment providers in high-need areas.

One measure that did not make it into the final bill were measures passed by the House to modify privacy rules for substance use records. The proposal would have allowed substance use records to be disclosed without patient consent to health plans, clearinghouses, providers, or federally assisted substance use treatment programs. The disclosure would still need to comply with the Health Insurance Portability and Accountability Act (HIPAA).

Congress Passes FY 2019 HHS Funding*Key Points:*

- *This week, Congress approved appropriations for the Department of Health and Human Services for FY 2019. The package also included funding for the Department of Defense and a continuing resolution to fund the government through December 7, 2018.*
- *President Trump signed the measure September 28.*

On September 26, the House passed an appropriations conference report 361-61 which included funding for the Department of Health and Human Services (HHS) as well as a continuing resolution to fund the remainder of the government through December 7, 2018.

The Senate previously passed the conference report 93-7. President signed the conference report, which also includes FY 2019 funding for the Department of Defense, avoiding a government shutdown.

HHS receives \$90.5 billion for FY 2019, an increase of \$2.3 billion. Included in this funding is \$39.1 billion for the National Institutes of Health (NIH), an increase of \$2 billion; \$7.9 billion for the Centers for Disease Control and Prevention (CDC), a decrease of \$354 million; \$5.7 billion for the Substance Abuse and Mental Health Services Administration (SAMHSA), an increase of \$584 million; and \$2 billion for the Public Health and Social Services Emergency Fund an increase of \$868 million.

The bill also includes \$6.6 billion across the bill to address the opioid crisis. Within this, NIH is expected to \$774 million of its base funding for opioid misuse, addiction treatment, and pain research. In addition, \$500 million in dedicated funding provided equally to the National Institute of Neurological Disorders and Strokes and the National Institute on Drug Abuse for research related to opioid addiction, development of opioid alternatives, pain managed, and addiction treatment. The CDC receives \$475,579,000 for Prescription Drug Overdose prevention activities. SAMHSA receives \$1.5 billion for State Opioid Response Grants of \$50 million is direct to Indian tribes or tribal organizations and 15 percent is set aside for states with the highest age-adjusted mortality rate related to opioid use disorders.

Congress Approves Two Bills to Prohibit Gag Clauses

Key Points:

- *The House passed two Senate bills designed to remove gag clause that prevent patients from*

paying the lowest price possible for prescription drugs.

- *The two bills are headed to President Trump for signature.*

On September 25, the House passed two bills banning pharmacy gag clauses under suspension of the rules. The Know the Lowest Price Act of 2018 (S. 2553) sponsored by Senator Debbie Stabenow (D-MI) specifically prohibits a prescription drug plan under Medicare or Medicare Advantage from restricting a pharmacy from informing an enrollee of the difference between the price of the drug under the plan and the price of the drug if the enrollee were to pay out-of-pocket. Senator Stabenow's legislation passed the Senate on September 4 by unanimous consent. A similar bill, Patient Right to Know Drug Prices Act (S.2554), sponsored by Senator Susan Collins (R-ME), seeks to prohibit pharmacy benefit managers from restricting a pharmacy from informing an individual of the difference between the cost of the drug under the plan and the cost of the drug without insurance. The bill applies to plans offered in the individual market and plans sponsored by private employers. Senator Collins' bill also includes a provision requiring extends reporting requirements for manufacturers of biologics and biosimilars to submit patent settlement agreements to the Federal Trade Commission and the Department of Justice.

The recommendation to prohibit gag clauses was included in the Trump Administration's Blueprint to Lower Drug Prices and Reduce Out-of-Pocket Costs that was released in May 2018. Gag clauses were also the subject of a recent House Energy and Commerce Committee hearing entitled "Opportunities to Improve Health Care." The two bills are now headed to President Trump for signature.

Upcoming Hearings and Meetings

October 3

Health System: The Economist Group will hold a discussion on “Leading on Value: Solutions for an Evolving Health Care System.”

Costs: The Senate Aging Committee will hold a hearing on “Patient-Focused Care: A Prescription to Reduce Health Care Costs.”

Rare Disease: The Senate Health, Education, Labor and Pensions Committee will hold a hearing on “Rare Diseases: Expediting Treatments for Patients.”

October 5

Children’s Health: The Alliance for Health Policy will hold a briefing on “Improving Care for Children with Complex Medical Needs.”

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. Michaela Boudreaux contributed to this section.

TRANSPORTATION AND INFRASTRUCTURE**Conference Report For FAA Reauthorization Released; Short Term Extension Moves***Key Points:*

- *A final deal on a multi-year reauthorization is reached*
- *The House sent a week-long extension to the Senate*

Last weekend, the House Transportation and Infrastructure and Senate Commerce, Science, and Transportation Committees released a five-year Federal Aviation Administration (FAA) reauthorization with an eye toward having the package pass before the September 30 deadline for FAA authorities. However, it does not appear Congress will be able to clear this package by month’s end, so an extension ([H.R. 6897](#)) through October 7 was passed by the House and is expected to be moved by the Senate next week. 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](#)).

The “FAA Reauthorization Act of 2018” ([H.R. 302](#)) is also the vehicle for a number of other bills. According to the House Transportation and Infrastructure Committee’s [press release](#), the bill also contains “the Disaster Recovery Reform Act of 2018, a three-year reauthorization of the Transportation Security Administration (TSA), and a four-year reauthorization of the National Transportation Safety Board.” H.R. 302 also has “sports

medicine licensure legislation, the BUILD Act of 2018, a requirement for an assessment of the situation in Syria, the Preventing Emerging Threats Act of 2018, and supplemental appropriations for disaster relief.”

A House Transportation and Infrastructure Committee released a [summary](#) of the FAA title:

MODERNIZES AIRPORT INFRASTRUCTURE

- Provides stable funding for the Airport Improvement Program (AIP), which issues grants to public use airports of all sizes for planning and development purposes.
- Removes Passenger Facility Charge (PFC) restrictions to allow airports to more effectively finance projects.
- Streamlines the PFC application process for airports.
- Reforms the Federal Contract Tower Program and updates FAA’s dated cost benefit analysis for current contract towers.
- Creates a remote air traffic control tower pilot program to deploy new advanced technologies and lower costs of air traffic control services.
- Directs DOT to establish an Office of Spaceports to provide guidance, support licensing activities for spaceports, and promote infrastructure improvements.

IMPROVES SERVICE FOR CUSTOMERS

- Directs FAA to set minimum pitch (leg room), width and length requirements for passenger seats in commercial flights.
- Prohibits involuntary bumping of passengers who have already boarded, and requires clarification of regulations

- regarding compensation for bumped passengers.
- Establishes the position of Aviation Consumer Advocate at DOT to help consumers resolve their air travel complaints.
- Requires DOT to review airline policies for traveling during pregnancy and considerations for such passengers requesting advance boarding.
- Sets new requirements for airlines to promptly return fees for services, such as seat assignments or early boarding, purchased but not received.
- Prohibits use of cell phones for in-flight calls on commercial aircraft.
- Requires sanitary, private rooms for nursing mothers in all large and medium commercial airport terminals.
- Ensures new technologies are incorporated in consumer complaint options.
- Requires airlines, in the event of a widespread disruption of their computer systems, to prominently post online what services they will provide impacted passengers.
- Addresses consumers with disabilities issues, including restroom accessibility and service animals on planes; studies on airport accessibility, airline employee training, and in-cabin wheelchair restraint systems; and establishment of an advisory committee for passengers with disabilities.
- Extends the Advisory Committee for Aviation Consumer Protection.
- Reauthorizes the Essential Air Service Program and the Small Community Air Service Development Program.
- Provides FAA with additional tools to mitigate impacts of airport noise, including the establishment of regional ombudsmen, to facilitate greater community involvement.

- Addresses consumer issues in the air ambulance industry by establishing an advisory committee to make recommendations on consumer protections, and improves the process for filing complaints with DOT.
- Addresses sexual misconduct in passenger aviation by establishing a national task force to review current practices, protocols, and requirements for air carriers' responses to sexual misconduct allegations, and increases the civil penalty for interfering with cabin or flight crew.

STREAMLINES AND REFORMS THE FAA CERTIFICATION AND REGULATORY PROCESSES

- Streamlines the FAA certification process to ensure U.S. companies can compete globally and get their products to market on time.
- Creates a Safety Oversight and Certification Advisory Committee (SOCAC) that will collaborate with industry to streamline certification and regulatory processes and establish clear FAA performance objectives and metrics.
- Improves FAA workforce training and development for FAA inspectors and engineers.
- Enables manufacturers to fully utilize their delegated certification authorities.
- Addresses delays in foreign certification of U.S. products.
- Streamlines regulatory reform efforts for the commercial space transportation sector.
- Authorizes the FAA to certify new civil supersonic aircraft that reduce sonic booms.

ENHANCES AVIATION SAFETY

- Ensures efficient utilization of FAA safety workforce and enhances safety training.
- Strengthens the voluntary safety reporting program for pilots.
- Addresses alternative methods of tracking aircraft over oceans, including international collaboration for developing standards to improve tracking.
- Directs a review and update of FAA's comprehensive cybersecurity plan.
- Addresses transportation of lithium batteries by air, including fostering collaboration between federal and international agencies; providing consistency with international regulations; and allowing exceptions for medical device batteries to remote areas.
- Improves rest and duty rules for flight attendants and pilots in part 135 operations.
- Requires FAA to review cabin evacuation assumptions to ensure everyone can safely evacuate an airliner in an emergency within the required timeframe.
- Extends training requirements related to recognizing signs of human trafficking.
- Enhances hot air balloon safety by requiring medical certificates required for aircraft operation to balloon operators.
- Establishes industry groups to develop recommendations and strategies for encouraging youth and recruiting women to enter the U.S. aviation workforce.

PROMOTES SAFE, EFFICIENT INTEGRATION OF UNMANNED AIRCRAFT SYSTEMS (UAS)

- Advances low-altitude UAS traffic management (UTM) systems and services.
- Fosters development of sense-and-avoid and other technologies at UAS test ranges.
- Provides greater flexibility to FAA to approve advanced UAS operations.
- Updates the special rule for model aircraft.
- Provides the Department of Homeland Security and the Department of Justice with the authority to protect covered facilities and assets when there is a security risk posed by an unmanned aircraft.
- Includes new provisions to address privacy protections for unmanned aircraft.
- Improves UAS test range rules, including more protections for proprietary information.
- Directs FAA to update existing regulations to authorize the carriage of property by operators of small UAS and authorizes DOT to update existing regulations for UAS package delivery.
- Directs the National Academy of Public Administration to assess FAA's small UAS registration system and requires DOT to develop and track metrics to assess system compliance and effectiveness.
- Requires the GAO to study financing options related to UAS regulation and safety oversight.

Upcoming Hearings and Events

October 3

PTC: The Senate Commerce, Science & Transportation Committee will hold a [hearing](#) titled "Implementation of Positive Train Control."

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

TECHNOLOGY

Senate Hearing On Data Privacy

Key Points:

- *Technology witnesses discuss data security and privacy legislation*
- *Republican and Democratic Members agree on need for federal legislation but differ on details*

On September 26, the Senate Commerce, Science, and Transportation Committee held a [hearing](#) entitled "Examining Safeguards for Consumer Data Privacy." Topics discussed included but were not limited to: (1) European and Californian Privacy Laws; (2) FTC; (3) Federal Privacy Framework; (4) Targeted Advertising; (5) Personally Identifiable Information; (6) China; (7) Data Privacy; and (8) Political Bias.

Chairman John Thune (R-SD) stated the question is no longer whether or not a federal law is needed to protect consumers' privacy. He said the question is what shape that law should take. He expressed interest in hearing how the witnesses are complying, or planning to comply, with the European Union's General Data Protection Regulation (GDPR) and the California Consumer Privacy Act (CCPA). He said he would like to hear opinions on the advantages and disadvantages of both laws, and the steps they believe the federal government should take to help protect consumer privacy. He concluded that he believes there is a strong desire by both Republicans and Democrats, and by both industry and public interest groups, to work in good faith to reach a consensus on a national consumer data privacy law that will help consumers, promote innovation, reward organizations with little to

hide, and force shady practitioners to clean up their act.

Ranking Member Bill Nelson (D-FL) stated this is not the committee's first hearing on data privacy. He said in fact, the committee has held many hearings on this issue throughout the years because consumers have been hit by the misuse of their personal information and by data breaches left and right.

Chairman John Thune (R-SD) asked for examples of provisions within GDPR or CCPA that would be good to include in a national privacy framework. AT&T Inc. Senior Vice President Len Cali responded that both laws are applied uniformly, which would be necessary for a national framework. Thune asked if there are any conflicts between GDPR and CCPA that should be addressed in a federal law. Cali replied that GDPR is overly prescriptive and extremely burdensome. He said because of this many smaller websites have "gone dark" and large companies are further solidifying their market dominance. He added that the rules might also hinder innovation on technologies like Blockchain and others. He said in regards to CCPA, the danger is if other states create and implement their own privacy rules a "patchwork quilt" of privacy rules would be created. He added that the CCPA also has a non-discrimination obligation which is ambiguous and may deny consumers the ability to receive benefits for sharing data. He stated that he is also worried about the notice and consent process in the CCPA because it may end up restricting data far more than anyone anticipated.

Senator Mike Lee (R-UT) asked Google Chief Privacy Officer Keith Enright for an estimate of how much money Google spent in order to comply with the GDPR. Enright replied that Google was working for multiple years in advance of the implementation of the GDPR

just in order to be ready. He said he could not even begin to estimate the cost, especially in terms of man hours. He added that all of the Google employees that were working for years on compliance were not available to work on new products and services. Lee asked for an estimate of how many human hours it took for Google to become compliant with the GDPR. Enright estimated that "it was in the hundreds of years of human time." Lee stated that Congress needs to keep that number in memory when discussing creating a new privacy framework. He said he believes there is a need for a federal privacy framework, but it must not be as burdensome as the GDPR or CCPA.

Senator Richard Blumenthal (D-CT) asked why Congress should not adopt the same standards as the CCPA or the GDPR. He said he does not believe that question has a satisfactory answer. Blumenthal asked the witnesses if any of their companies are planning to move out of the EU or California due to the new laws. All witnesses replied negatively. Blumenthal stated that he believes the industry opposition to CCPA and GDPR rules is not genuine.

Senator Ed Markey (D-MA) stated that any federal law that will preempt the CCPA must at least be as strong as the CCPA. He asserted that because the people of California voted for this privacy law it is reasonable to assume that the rest of the 50 states would also like to pass privacy laws.

Cybersecurity Markups

Key Point:

- *Two committees move federal-facing cybersecurity bills*

On September 26, the Senate Homeland Security and Governmental Affairs Committee held a [markup](#) of several bills. The Committee

favorably reported the following bills en bloc by voice vote, as amended:

- The “Federal Acquisition Supply Chain Security Act of 2018” ([McCaskill-Lankford substitute as twice modified](#)) ([S. 3085](#))
- The “Federal Rotational Cyber Workforce Program Act of 2018” ([Peters substitute amendment as modified](#)) ([S. 3437](#))
- The “DHS Cyber Incident Response Teams Act of 2018” ([Hassan substitute amendment as modified](#)) ([S. 3309](#))
- The “National Cybersecurity Preparedness Consortium Act of 2017” ([Johnson substitute amendment](#)) ([S. 594](#))

The Committee also favorably reported the following bills by voice vote:

- The “Federal Information Systems Safeguards Act of 2018” ([Johnson substitute amendment](#)) ([S. 3208](#))

On September 27, the House Oversight and Government Reform Committee [marked up](#) and reported out a bill that would enshrine the Chief Information Officer and Chief Information Security Officer positions in federal law. The “Federal CIO Authorization Act of 2018” ([H.R. 6901](#)). Additionally, “[t]he head of each agency shall submit to the Federal Chief Information Officer a report on any expenditure on information technology by that agency” and the Office of Management and Budget must “display, on a website accessible to the public, timely, searchable, computer-readable data on the information technology expenditures, projects, and programs of agencies, if such information would otherwise be subject to public disclosure” under FOIA requests.

Upcoming Hearings and Events

October 2

Small Businesses and Telecom: The House Small Business Committee will hold a [hearing](#) titled “21st Century Telecom: Is the FCC Addressing Small Business Concerns?”

October 3

Broadband on Reservations: The Senate Indian Affairs Committee will hold a [hearing](#) titled “Oversight Hearing on "GAO Reports Relating to Broadband Internet Availability on Tribal Lands.”

For more information on technology issues you may [email](#) or call Michael Kans at 202-659-8201. Cullen Neely and Michaela Boudreaux contributed to this section.

TRADE

NAFTA Negotiations Approach Deadline

Key Points:

- *Negotiations with Canada have stalled as the September 30 deadline for releasing a renegotiated NAFTA approaches.*
- *Mexico’s Economy Ministry will release the text of a U.S.-Mexico free trade agreement around 7 pm Eastern today.*
- *U.S. Trade Representative Robert Lighthizer indicated to House Democrats this week that a vote on any NAFTA-like deal was unlikely before February, 2019.*

The text of the Trump administration’s trade agreement with Mexico is due to be released on Friday, with questions still pending on whether or when Canada will join the deal. On Thursday, U.S. lawmakers briefed by U.S. Trade Representative Robert Lighthizer said they expected the text to largely exclude language related to Canada, but added they were still hoping for Canada to join. The

deadline is the result of U.S. fast-track law that requires the text of the agreement to be public for 60 days before leaders can sign it. Mexico and the Trump Administration had said they would prefer that Mexican President Enrique Peña Nieto to sign the deal before the end of his term which ends on December 1. The publishing of the text starts a months-long process for U.S. congressional approval that will require a lengthy analysis by the independent U.S. international Trade Commission and a series of notification periods before an up-or-down vote can occur.

Mexico's Economy Minister Ildefonso Guajardo announced that he would present the text of the bilateral document to Mexico's Senate on Friday evening, two days ahead of the Trump administration's official deadline. The USTR has not confirmed when it will release the text of the agreement, it has been reported that it could be also be released around the same time.

If Canada is not included in the deal prior to the deadline, the Trump Administration would be faced with the decision to exclude Canada from the deal or find a way to work around the deadline. These options include amending the deal after its initial publication, addressing key points of contention in separate agreements, and revising the bilateral agreement to include Canada after the U.S. and Mexico sign. Congressional Democrats have called on the Office of the U.S. Trade Representative (USTR) to slow negotiations in order to ensure Canada's inclusion, and Republicans have expressed similar reticence about voting on a U.S.-Mexico deal, with both parties highlighting the principle of NAFTA as a trilateral framework. The Trump Administration is also anxious to sign the agreement during this session of Congress due to concerns that Democrats would reject any effort to restructure NAFTA if they gain a majority in the midterm elections.

Negotiations between the U.S. and Canada have reportedly made little progress on concerns regarding dairy exports, as the U.S. seeks to roll back the effects of Canada's Class 7 National Ingredient Strategy. U.S. lawmakers have also expressed concern about progress on negotiating new standards for "cultural carveouts," which currently allow Canada to subsidize or favor its domestic audio and video content. President Trump told reporters that Canada has been unwilling to make concessions in the negotiations, and said that without an agreement the U.S. will impose section 232 auto tariffs on Canadian vehicles. Separately, the Congressional Research Service (CRS) has published a rundown of key changes in the U.S.-Mexico agreement. According to the report, the deal would include new rules of origin procedures that require 75 percent of North American motor vehicle content to qualify for duty-free treatment, and a \$16 per hour wage requirement for 40-45 percent of auto content. The agreement limits investor-state dispute settlement to direct expropriations or failure to give national treatment, with exceptions for oil and gas, infrastructure, energy generation, and telecommunications. The deal also includes a ban on local storage requirements for financial services, a doubling of Mexico's de minimis shipment value for digital trade, an extension of intellectual property protections for biologics (10 years) and minimum copyright terms (75 years), and a commitment from both countries to effectively enforce labor laws. Finally, the terms do not include a termination clause, but mandate a review after six year.

U.S., South Korea Sign Revised Free Trade Agreement

Key Points:

- *President Trump said the deal was a "brand new agreement"; most observers view the*

changes as moderate as most chapters were unchanged.

- *Agriculture, automotive, steel sectors impacted*

On the margins of the U.N. General Assembly, President Trump and South Korean President Moon Jae-in signed an updated U.S.-Korea Free Trade Agreement (KORUS). Originally signed in 2007 and updated in 2010, the agreement has been a major goal for President Trump. Among the changes: Korea agreed to allow 50,000 U.S.-manufactured cars to be imported into the country that do not meet Korea's more rigorous safety standards, double the previous number. In addition, the U.S. will extend the phase-out of a 25 percent tariff on light trucks for another 20 years. To avoid Section 232 steel tariffs, South Korea agreed to a quota on steel exports. Pork imports to Korea will now be duty-free and beef tariffs will be cut to 21.3 percent, nearly half the previous rate of 40 percent. That tariff will phase out in 2026.

U.S., Japan Agree to Negotiate Trade Agreement

Key Points:

- *President Trump met with Prime Minister Shinzo Abe at the White House while USTR Lighthizer met with Japanese Minister Toshimitsu Motegi*
- *Agreement is a victory for President Trump, who has stated his preference for bilateral trade deals.*

This week, President Trump and Japanese Prime Minister Shinzo Abe agreed to hold bilateral talks aimed at reaching a trade agreement. U.S. Trade Representative (USTR) Robert Lighthizer told reporters that the two countries would begin with discussions on less controversial items that might yield “an early harvest” in lowering trade barriers. According to a joint statement released by the two

countries: “The United States and Japan will conduct these discussions based on mutual trust, and refrain from taking measures against the spirit of this joint statement during the process of these consultations.”

President Trump said “This was something that for various reasons over the years Japan was unwilling to do. And now they are willing to do. So we’re very happy about that. And I’m sure they will come to a satisfactory conclusion.” The announcement comes as the Commerce Department continues to work on the Section 232 automotive tariff investigation. The Department has until mid-February to finish the report. At the White House meeting, Trump agreed to postpone any imminent automotive tariffs. President Trump previously told the EU he would not impose the tariff if talks remained positive. The White House will likely ask Congress for trade promotion authority to negotiate the deal.

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

This Week in Congress was written by Ryan Schnepf.