

September 29, 2017

## Washington Update

### This Week in Congress

**House** – The House passed H.R. 2824, **Increasing Opportunity and Success for Children and Parents through Evidence-Based Home Visiting Act**, H.R. 3823, the **Disaster Tax Relief and Airport and Airway Extension Act of 2017**, and H.R. 2792, the **Control Unlawful Fugitive Felons Act of 2017**.

**Senate** – The Senate confirmed **William Emanuel** to be a Member of the National Labor Relations Board; passed S.1866, **Hurricane Relief Act**, S.870 and **Creating High-Quality Results and Outcomes Necessary to Improved Chronic Care Act of 2017**.

**Sent to the President** – The House and Senate both passed H.R. 3823, the **FAA extension (6 months) and hurricane relief bill**.

### Next Week in Congress

**House** – The House may consider H.R. 36, the **Pain-Capable Unborn Child Protection Act** and H.Con.Res. 71, the **Budget**.

**Senate** – The Senate will resume consideration of **Ajit Varadaraj Pai** to be Chairman of the FCC (re-nomination).

## TAX

### **Big Six Release Tax Reform Framework**

#### *Key Points*

- *Framework calls for 20 percent corporate rate and a transition to a territorial tax system with a global minimum tax.*
- *The high-level template contains relatively few specifics on the necessary policy tradeoffs, with the individual tax-committees tasked with filling in the details.*

On Wednesday, the Big Six released their updated tax plan, a *Unified Framework for Fixing Our Broken Tax Code*. The generously formatted 9-page document is very high-level and

designed to serve as a “template” for the tax-writing committees to fill-in the blanks as they draft legislation. The plan calls for a 20 percent corporate rate, a 25 percent passthrough rate, and a 35 percent top individual rate with the possibility of future increases to top rate if necessary to preserve the current tax code’s

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progressivity. It also would allow businesses to immediately begin expensing for the cost of new investments in assets other than structures made after September 27, 2017 for at least five years. The framework calls for a transition to a territorial tax regime with a 100 percent exemption for foreign dividends received by U.S.-owned companies and a deemed repatriation of accumulated foreign earnings at reduced tax rates. The framework also leaves the door open to possible corporate integration, a priority of Senate Finance Committee Chairman Hatch (R-UT) who noted that the tax-writing committees “may consider methods to reduce the double taxation of corporate earnings.”

The framework largely avoids identifying the broad revenue raisers that would be necessary to achieve the lower tax rates, including the elimination of state and local tax deduction as proposed by the House tax Blueprint. Under the framework, the deduction for net interest expense incurred by C corporations would be partially limited and the Sec. 199 domestic production deduction would be eliminated. Although most other special exclusions, credits and deductions would be repealed, the framework would retain the credits for research and development (R&D) and low-income housing.

### House and Senate Plan Action on Budget Seen as Necessary For Tax Reform

#### Key Points

- *Budget Committee Chairman Diane Black expects House to vote on FY2018 budget next Thursday; Senate Budget Committee looks to consider budget resolution sometime next week.*
- *Approving a budget is necessary for Republicans to pass tax reform with a simple majority.*

The release of the Big Six unified framework appears to have been successful at breaking the deadlock in the House of Representatives over a key piece necessary for tax reform using the protections of reconciliation. The House Budget Committee moved their FY2018 budget resolution out of Committee in July but stalled due to a demand by the House Freedom Caucus for more details about the tax plan. With the release of more details in the form of the Big Six framework, the Freedom Caucus announced their support of the budget and the tax plan. Budget Committee Chairman Diane Black (R-TN) said on Thursday that Republicans had enough votes to pass a fiscal 2018 budget resolution, adding that she expects the House to vote on Thursday, Oct. 5.

Similarly, following last week’s budget deal between Senators Pat Toomey (R-PA) and Bob Corker (R-Tenn.), the Senate Budget Committee has signaled they will consider the budget resolution next week. Released text of the resolution show that it would allow the Finance Committee to add up to \$1.5 trillion to the deficit over the next ten years. It is expected that the full Senate will then consider the budget the following week. Senator Toomey said, “I think within probably the following week we’ll be on the Senate Floor with a budget.”

Following passage in the House and Senate, the differing budget resolutions will have to be reconciled through conference, unless the House were to pass the Senate’s resolution.

#### Upcoming Dates

**September 30: FY 2017 ends and CHIP, NFIP, and Perkins Loan authorizations expire**

**December 31, 2017: Title VII of FISA expires**

Passing a joint budget resolution is necessary for the Republicans' efforts to enact tax reform this year. Approving the budget is a necessary step to pass tax reform using budget reconciliation, which would allow passage in the Senate with a simple majority. House Ways and Means Chairman Kevin Brady (R-TX) has said they will not release draft tax legislation until the budget is approved by Congress.

### Upcoming Hearings and Events

#### **October 3**

**International Tax System:** The Senate Finance Committee will meet on Tuesday, October 3, to examine the international tax system as it pertains to tax reform. For the purpose of the hearing, the Joint Committee on Taxation released a [report](#) that examines the issues related to the U.S. taxation of cross-border income. Chairman Orrin Hatch (R-UT) said the hearing will give members the opportunity to “hear from experts on how modernizing the international tax structure will not only make American companies more competitive in the 21<sup>st</sup> century economy but also, will make our country a more inviting place to invest and do business, keeping and growing jobs at home.” Hearing witnesses include: Bret Wells, Professor of Law at the University of Houston; Dr. Kimberly Clausing, Professor of Economics at Reed College; Stephen Shay for Harvard Law School; and Itai Grinberg from Georgetown Law.

#### **October 4**

**Modernizing the Tax Code:** On October 4<sup>th</sup>, the House Small Business Committee will hold a hearing on “Modernizing the Code for the Nation’s Job Creators.” According to the committee, the hearing will examine how the current tax code affects small businesses and how proposed changes to the Small Business Owners’ Tax Simplification Act of 2017, [H.R. 3717](#), could impact job creation. Hearing

witnesses include: Kristie Arslan from the Small Business & Entrepreneurship Council; Taylor Peake on behalf of “MotionMobs;” Miguel Centeno of Shared Economy CPA; and Caroline Bruckner of the American University Kogod Tax Policy Center.

*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 Holds SEC Oversight Hearing**

##### *Key Point:*

- *Committee members raised concerns related to the SEC data breach, the Equifax data breach, the fiduciary duty rule, capital formation, and other issues.*

On September 26, the Senate Banking Committee held a [hearing](#) on “Oversight of the U.S. Securities and Exchange Commission.” SEC Chairman Jay Clayton testified on the recently announced SEC data breach, the Equifax data breach, and the fiduciary duty rule, as well as several other issues. Clayton’s written testimony also outlined his agenda for the SEC.

Chairman Mike Crapo (R-ID) said the SEC must be aware that its work carries risk, and he commended Clayton for beginning a review of the SEC’s cybersecurity preparedness. He said he was disturbed to learn that the SEC suffered a breach of its EDGAR system in 2016, but the SEC did not report it to the public or the commissioners until it was discovered in the recent review. He stressed that the SEC must protect the data it collects, particularly as the Consolidated Audit Trail (CAT) goes into effect. Crapo said the CAT will be collecting

personally identifiable information (PII), suggesting that the Equifax breach highlights the need to protect this information. He also urged the SEC to review cyber risk disclosure guidance for public companies. Crapo applauded Clayton for his work on standards of conduct for investment advisers and broker-dealers, expressing opposition to the Department of Labor (DOL) fiduciary duty rule. He said the SEC is best positioned to establish consistent standards for all investors. He emphasized the importance of promoting capital formation, expressing interest in ways to encourage companies to go public without discouraging the availability of capital in the private market. He urged Clayton to comment on additional ways Congress can promote capital formation, noting that they recently passed a number of securities bills.

Ranking Member Sherrod Brown (D-OH) said the SEC breach raised concerns with the security of the data held by the Commission. He stressed the need for regulators and companies to be upfront with the public when breaches occur. He expressed concern that the SEC “swept this under the rug.” Although he acknowledged that the breach took place under Clayton’s predecessor, he expressed concern that Clayton failed to disclose the breach immediately. He said the SEC cannot expect companies to do the right thing when the SEC has not. He stated that the SEC must do more to ensure cybersecurity at the companies they regulate. Brown stressed the importance of protecting investors. He stated that the SEC still needs to finish implementing Dodd-Frank Act (DFA) provisions on derivatives and executive compensation.

In his testimony, Clayton said during his time at the SEC he has devoted a substantial portion of his efforts to examining agency operations. He said he has identified four areas where enhancements are needed: (1) cybersecurity; (2)

retail investor protection; (3) market integrity, including market structure, risk and resiliency; and (4) capital formation. He said the SEC should not limit its access to sensitive information, due to the importance of its market oversight role. He emphasized the importance of cyber risk management, resilience and recovery. In his written testimony, Clayton expressed support for moving forward with: proposed rules on order routing disclosures and alternative trading system (ATS) disclosures; an access fee pilot program; establishing a Fixed Income Market Structure Advisory Committee and meeting as early as December; harmonizing swaps and security-based swaps rules with the Commodity Futures Trading Commission (CFTC); potential enhancements to capital formation; evaluating next steps on standards of care for broker-dealers and investment advisers; the initiative to modernize and simplify disclosure requirements; increase the number of investment adviser examinations; and increase the number of inspections to assess Regulation SCI compliance.

Senator Tim Scott (R-SC) said the DOL fiduciary duty rule has had a negative impact on many Americans. He expressed support for the 18 month delay proposed by the DOL. He asked about the SEC’s coordination with the DOL on this issue. Clayton said he has issued a request for updated views on the effects of the DOL rule and what actions the SEC should take. He stated that any rulemaking must: (1) allow for investor choice; (2), provide clarity to investors on the obligations owed to them; (3) provide consistency between types of accounts; and (4) involve coordination between regulators. Scott stressed the need for the SEC and the DOL to work together, and he noted that state insurance regulators are the experts on fixed income annuities. Senator Jon Tester (D-MT) asked when a harmonized fiduciary duty rule could be expected. Clayton stated this

is a priority for him. He stated they are pushing this one and this is at the top of his list.

Ranking Member Sherrod Brown (D-OH) noted Commissioner Piwowar in a recent speech suggested that companies that go public should be able to require arbitration. Brown asked whether Clayton will support preserving access to the courts and reject mandatory arbitration clauses. Clayton stated he will not prejudge that issue. He noted this is also a state's rights issue. He stated he cannot say that there will never be a situation where the courts would be off the table.

### Regulators Issue Proposal on Simplifying Capital Rules

*Key Point:*

- *The FDIC, the OCC, and the Federal Reserve approved a proposed rule to simplify capital rules for community banks.*

On September 27, the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Federal Reserve issued a joint [notice of proposed rulemaking](#) (NPR) on “Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996.” In March 2017, the agencies submitted a report to Congress in which they committed to reduce regulatory burdens on community banks. As described in the NPR, the “majority of the proposed simplifications would apply solely to banking organizations that are not subject to the advanced approaches capital rule (non-advanced approaches banking organizations).” The NPR explained that:

Specifically, the agencies are proposing that non-advanced approaches banking organizations apply a simpler regulatory capital treatment for: (i) mortgage

servicing assets; (ii) certain deferred tax assets arising from temporary differences; (iii) investments in the capital of unconsolidated financial institutions; and (iv) capital issued by a consolidated subsidiary of a banking organization and held by third parties (minority interest). More generally, the proposal also includes revisions to the treatment of certain acquisition, development, or construction exposures that are designed to address comments regarding the current definition of high volatility commercial real estate exposure under the capital rule's standardized approach.

The NPR will be subject to a 60 day comment period from the date of publication in the Federal Register.

Additionally, at a September 27 open meeting the FDIC received an [update](#) from staff on “Projected Deposit Insurance Fund Losses, Income, and Reserve Ratios for the Restoration Plan.”

### President Trump Signs FSOC Insurance Member Continuity Act into Law

*Key Point:*

- *The President signed legislation to allow the FSOC independent member with insurance expertise to serve an additional 18 months beyond the expiration of their term.*

On September 27, President Trump signed the Financial Stability Oversight Council Insurance Member Continuity Act ([H.R.3110](#)) into law. The Senate passed the bill on September 19 by unanimous consent after the House passed the bill by a roll call vote of 407-1 on September 5.

H.R. 3110 would allow the Financial Stability Oversight Council's (FSOC) independent

member with insurance expertise to serve an additional 18 month beyond the end of their term or until a replacement is confirmed. If the bill were not enacted, the FSOC would have been left with a vacancy until a replacement is confirmed. The term of Roy Woodall, the current FSOC independent member with insurance expertise, was set to expire on September 30.

### **Congress Passes the Fair Access to Investment Research Act**

#### *Key Point:*

- *The bill would direct the SEC to create a safe harbor for research reports on exchange traded funds.*

On September 27, the House passed the Fair Access to Investment Research Act ([S. 327](#)) by voice vote. The bill was introduced by Senator Dean Heller (R-NV) and had previously passed in the Senate on September 11 by unanimous consent. The bill will now go to the President for his signature.

S.327 would direct the SEC to develop a safe harbor research reports published by broker-dealers related to exchange traded funds (ETF). As noted in a CBO [summary](#) of the bill, “under current law, such reports would be considered an offering for sale and the broker or dealer would be required to file a registration statement with the Securities and Exchange Commission (SEC) for that offering.”

### **Flood Insurance Provisions Stripped from FAA Extension Bill**

#### *Key Points:*

- *The House passed legislation to extend the authorization of the FAA for six months. The legislation included language clarifying that private flood insurance fulfills the mandatory purchase requirement.*

- *The Senate adopted an amendment striking the flood insurance provisions before passing the bill.*

On September 27, the House passed the Disaster Tax Relief and Airport and Airway Extension Act of 2017 (H.R. 3823) by a roll call vote of 264-155. The bill would reauthorize the Federal Aviation Administration (FAA) for six months and provide some tax relief for areas affected by Hurricanes Irma, Harvey and Maria. The authorization for the FAA is scheduled to expire on September 30.

The House-passed bill also included the Private Flood Insurance Market Development Act ([H.R. 1422](#)), introduced by Representatives Dennis Ross (R-FL) and Cathy Castor (D-FL), which would clarify that lenders can accept private flood insurance for the purposes of meeting the mandatory purchase requirement. H.R. 1422 was favorably reported out of the House Financial Services Committee on June 21 by a roll call vote of 58-0.

This provision would not have an effect on the reauthorization of the National Flood Insurance Program (NFIP), which is scheduled to expire on December 8, 2017.

While the FAA and disaster relief provisions of the bill had bipartisan support, there was opposition to flood insurance provisions. Senator Bill Nelson (D-FL) expressed opposition to the including the flood insurance provisions in the bill, and Senators Bill Cassidy (R-LA) and John Kennedy (R-LA) issued a [statement](#) calling for the flood insurance provisions to be struck from the bill. They asserted that those provisions should be considered as part of a comprehensive flood insurance reform package, rather than as part of FAA reauthorization. On September 28, Senators Bill Cassidy (R-LA) and Mike Rounds (R-SD) offered an amendment to strike the

flood insurance provisions of the bill, which was adopted. The Senate subsequently passed H.R. 3823, as amended, by unanimous consent.

### Senate Banking Committee Holds Hearing on North Korea Sanctions

#### Key Points:

- *Under Secretary for Terrorism and Financial Crimes, Sigal Mandelker stated that the Administration is applying the maximum diplomatic and sanctions pressure to counter the threat posed by North Korea.*
- *Several Senators raised concerns that the State Department and the President are pursuing inconsistent strategies related to North Korea.*

On September 28, the Senate Banking Committee held a [hearing](#) on “Evaluating Sanctions Enforcement and Policy Options on North Korea: Administration Perspectives.” Under Secretary for Terrorism and Financial Crimes, Sigal Mandelker stated that the Administration is applying the maximum diplomatic and sanctions pressure to counter the threat posed by North Korea. She explained the U.S. is targeting coal, labor and the sale of weapons and other goods as well as designating dozens of people. Susan Thornton, Acting Assistant Secretary of the Bureau of East Asian and Pacific Affairs, stated there is a clear and aggressive strategy to counter the threat of North Korea. She noted the U.S. is maintaining pressure on China to ensure they help prevent the missile program.

Several Senators raised concerns over an inconsistent strategy coming from the President and the State Department. Thornton stated that State Department’s primary goal is the de-nuclearization of North Korea. Mandelker suggested a clear message is being sent to North Korea. She explained the primary goal is de-nuclearization through sanctions, revenue seizures, and front company exposure.

When asked whether China’s policy towards North Korea is changing, Mandelker suggested China is sending a clear message to its banks and businesses that all ties with North Korea must be shut down. When asked what must be done to prevent countries and companies from enriching the North Korean regime by facilitating illegal transactions, Mandelker said the Treasury Department now has the power to place secondary sanctions on financial institutions, suggesting that they continue pressure where UN sanctions fall short. Thornton said the new executive order also allows the State Department to ferret out the illicit underground networks North Korea uses to fund their nuclear proliferation.

### Upcoming Events

#### October 3

**Wells Fargo:** The Senate Banking Committee will hold a hearing entitled “Wells Fargo: One Year Later.” Wells Fargo CEO Timothy Sloan is scheduled to testify.

**Equifax Data Breach:** The House Energy and Commerce Committee’s Subcommittee on Digital Commerce and Consumer Protection will hold a hearing entitled “Oversight of the Equifax Data Breach: Answers for Consumers.” Former Equifax CEO Richard Smith will testify at the hearing.

**Housing Finance:** The House Financial Services Committee will hold a hearing entitled “Sustainable Housing Finance: An Update from the Director of the Federal Housing Finance Agency [FHFA].” FHFA Director Melvin Watt will testify at the hearing.

#### October 4

**Equifax Data Breach:** The Senate Banking Committee is scheduled to hold a hearing entitled “An Examination of the Equifax

Cybersecurity Breach.” Former Equifax CEO Richard Smith will testify at the hearing.

***Equifax Data Breach:*** The Senate Judiciary Committee’s Subcommittee on Privacy, Technology and the Law will hold a hearing entitled “Equifax: Continuing to Monitor Data-Broker Cybersecurity.”

***SEC Oversight:*** The House Financial Services Committee will hold a hearing entitled, “Examining the SEC’s Agenda, Operations, and Budget.” SEC Chairman Jay Clayton will testify at the hearing.

#### **October 5**

***Equifax Data Breach:*** The House Financial Services Committee will hold a hearing entitled, “Examining the Equifax Data Breach.”

#### **October 11**

***CFTC Agenda:*** The House Agriculture Committee will hold a hearing to discuss the agenda for the Commodity Futures Trading Commission (CFTC). CFTC Chairman J. Christopher Giancarlo is scheduled to testify at the hearing.

#### **October 12**

***Investor Advisory Committee:*** The SEC will hold a meeting of its Investor Advisory Committee (IAC). The agenda for the meeting includes: (1) Discussion Regarding Blockchain and Other Distributed Ledger Technology and Implications for Securities Markets; (2) Overview of Law School Clinic Advocacy Efforts on Behalf of Retail Investors; and (3) Discussion Regarding Electronic Delivery of Information to Retail Investors (which may include a Recommendation of the Investor as Purchaser Subcommittee).

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

## **ENERGY & ENVIRONMENT**

### **Hearing for Pipeline Safety Nominee**

On September 27, the Senate Commerce Committee held a [hearing](#) to discuss the nomination of Howard Elliott to be the Administrator of the Pipeline and Hazardous Materials Safety Administration (PHMSA) as well as three other nominations.

Senators raised several questions related to pipeline safety and rail transportation of crude oil, including:

- Chairman John Thune (R-SD) focused on the “Fixing America’s Surface Transportation (FAST) Act” ([P.L. 114-94](#)) provisions regarding the sharing of information about hazardous liquids transported by rail with first responders. Elliott responded that we “can never do enough to help improve and enhance the capability of our first responders.”
- Surface Transportation and Merchant Marine Infrastructure, Safety and Security Subcommittee Chair Deb Fischer (R-NE) asked Elliott about PHMSA’s failure to complete action on 12 of the 42 mandates included in the “Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011” ([P.L. 112-90](#)). Elliot told her that, if confirmed, he would work to identify and complete the most critical mandates. Fischer remarked that “they all need to be done...and they’re all late.” Fischer noted the provision in the “Protecting our Infrastructure of Pipelines and Enhancing Safety (PIPES) Act” ([S. 2276](#), [P.L. 114-183](#)), which directed PHMSA to hire more inspectors. She also asked about concerns raised regarding PHMSA consolidating pipeline safety



rulemakings into “mega-rules” that are subject to delays in promulgation. Elliott responded that he would focus on pursuing the mandates and regulations that deliver the “greatest safety measures to the public.”

- Senator Ed Markey (D-MA) contended that aging and leaking natural gas distribution pipelines cost consumers billions of dollars, contribute to global warming, and pose a risk to public safety and the environment. He claimed that over the past decade consumers have paid \$20 billion to address leaking natural gas pipelines. He noted that the 2016 “PIPES Act” included two provisions he authored: (1) directing PHMSA to evaluate reporting requirements for leaks from natural gas pipelines; and (2) requiring PHMSA to evaluate state-level policies which may create incentives or barriers to repairing and replacing leaking natural gas pipelines. He noted that in response to those provisions PHMSA concluded that it should harmonize its reporting requirements for lost or unaccounted for natural gas with the Energy Information Administration (EIA). He asked if Elliott would commit to quickly completing that harmonization. Elliott said he would examine this topic promptly if confirmed. Markey also raised the issue of providing Congress with copies of pipeline oil spill response plans.
- Senator Roger Wicker (R-MS) asked about an Association of American Railroads proposed standard to accelerate the phase-out of tank cars. He asked Elliott whether he has an opinion on a private association promulgating a requirement that supersedes a federal regulation. Elliott replied that “PHMSA has a duty to

consider all views”, adding that he is not prepared to say whether the Department of Transportation would support the proposal. He promised to “evaluate the matter fairly, impartially, and comprehensively.”

- Senator Tammy Baldwin (D-WI) also asked about FAST Act requirements related to rail transportation of crude oil and hazardous liquids. She noted that a number of these initiatives are still awaiting implementation by the Department of Transportation. Baldwin asked Elliott whether he would commit to implementing those requirements “without delay.” Elliott replied that, if confirmed, he would work to quickly determine why the provisions have not yet been implemented and to prioritize promulgation of regulations that promote the safety of emergency responders and the public.

## Upcoming Hearings and Events

### October 3

**Energy Legislation:** The Senate Energy and Natural Resources Committee’s Energy Subcommittee will hold a [hearing](#) on pending legislation, including: the “Fair Ratepayer Accountability, Transparency, and Efficiency Standards Act” ([S. 186](#)); the “Responsible Disposal Reauthorization Act” ([S. 1059](#)); the “Capitalizing on American Storage Potential Act” ([S. 1337](#)); the “Advanced Nuclear Technologies Act” ([S. 1457](#)); the “Energy Technology Maturation Act” ([S. 1799](#)); the “Parity Across Reviews Act” (S. 1860); and a bill “to amend section 203 of the Federal Power Act” ([H.R. 1109](#)).

**Energy Storage:** The Senate Energy and Natural Resources Committee will hold a [hearing](#) “to examine the status of energy storage technologies, reviewing today’s

technologies and understanding innovation in tomorrow's technologies.”

***Recreation on Federal Lands:*** The House Natural Resources Committee's Federal Lands Subcommittee will hold a [hearing](#) on the “Recreation Not Red-Tape Act” ([H.R. 3400](#)).

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

#### **October 4**

***PHMSA Nomination and Other Matters:*** The Senate Commerce Committee will hold an [executive session](#) to consider legislation and nominations, including the nomination of Howard Elliott to be the Administrator of the Pipeline and Hazardous Materials Safety Administration (PHMSA).

***EPA and NRC Nominations:*** The Senate Environment and Public Works Committee will hold a hearing on the following nominations: Jeffery Baran to be a Member of the Nuclear Regulatory Commission; Michael Dourson, to be the Assistant Administrator for Toxic Substances of the Environmental Protection Agency (EPA); Matthew Leopold to be General Counsel of the EPA; David Ross to be Assistant Administrator for Water of the EPA; and William Wehrum to be Assistant Administrator for Air and Radiation of the EPA.

#### **October 5**

***Improving the Nation's Electricity Markets:*** The House Energy and Commerce Committee's Energy Subcommittee will hold a [hearing](#) titled “Powering America: Consumer-Oriented Perspectives on Improving the Nation's Electricity Markets.”

*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**

### **Dunford Confirmed For Second Term**

#### *Key Point:*

- *Senate clears the Chairman of the Joint Chiefs second nomination.*

This week, Chairman of the Joint Chiefs of Staff General James Dunford, Jr. was confirmed for his second four year term. Dunford was confirmed by voice vote by the Senate shortly after his nomination being reported out of the Senate Armed Services Committee. On September 26, the Senate Armed Services Committee held a [hearing](#) to consider Dunford's renomination.

Chairman John McCain (R-AZ) stated that “[i]n June, you testified, that ‘without sustained, sufficient and predictable funding, I assess that within five years, we will lose our ability to project power.’” He added that “[w]e still don't have sustained, sufficient and predictable funding...[and] I'm not sure we will for the foreseeable future, unless Congress finally steps up to do its job.” Dunford responded that “we've done some very careful analysis about where are the current threats. And we use, largely, Russia and China to benchmark our capabilities.” He asserted that “if you go back to 1999 or 2000, we had what we should have as the United States of America, a nation that thinks and acts globally.” Dunford contended that “[w]e had a significant competitive advantage in our ability to project power when and where needed to advance our national interest.” He contended that “I can't say that today.” Dunford stated that “[w]e are challenged in our ability to project power, both

to Europe and in the Pacific, as a result of those threats, and other nations, to include non-state actors as well, have capabilities on a high end that challenge our ability to project power...[s]o over time, that has eroded.”

Ranking Member Jack Reed (D-RI) said that “[i]n response to the Committee’s pre-hearing policy questions, you indicated that Iran is adhering to its obligations under the Joint Comprehensive Plan of Action or the JCPOA, but you do rightfully point out that they are engaged in extremely destabilizing activities in the region, missile development, activities that can’t be tolerated.” He asked whether the JCPOA is “designed to limit their nuclear capacity” and if “it is currently achieving that objective.” Dunford stated that “it was designed specifically to address what I would describe as one of the five major threats of Iran, the nuclear threat...[but] what the agreement didn’t address was the missile threat, the maritime threat, and Iran’s support of proxies in the cyber activity that they have conducted.”

## Upcoming Hearings and Events

### October 3

**Afghanistan:** The Senate Armed Services Committee will hold a [hearing](#) titled “Political and Security Situation in Afghanistan.”

**ISIL:** The House Armed Services Committee’s Oversight and Investigations Subcommittee will hold a hearing titled “Securing the Peace After the Fall of ISIL.”

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

## HEALTH

### Senate Failed to Pass Health Care Reform Legislation; Bipartisan Talks Resume

#### *Key Points:*

- *Senate Republicans failed to garner the necessary votes to pass legislation to repeal and reform the Affordable Care Act before reconciliation instructions expire.*
- *Senators Lamar Alexander (R-TN) and Patty Murray (D-WA) resumed bipartisan negotiations on a measure to stabilize the individual market.*

This week Senate Republicans had hoped to vote on a final attempt to repeal and replace the Affordable Care Act (ACA). The Graham-Cassidy amendment sought to eliminate the inequality in federal funding states receive under the ACA and brings all states to funding parity by 2026. The proposal would have attempted to equalize treatment between Medicaid expansion and non-expansion states through an equitable block grant distribution. The aim was to provide states with resources and flexibility to allow for innovation that lowers premiums and expands coverage.

The Senate Finance Committee held a hearing on September 25 to discuss the amendment. Both Senators Lindsay Graham (R-SC) and Bill Cassidy (R-LA) testified at the hearing. Other witnesses included state health officials and policy experts. During his opening remarks Chairman Orrin Hatch (R-UT) emphasized the challenges posed by health care legislation and the difficulty in working through these issues. Before the hearing he expressed doubt about passage of the legislation saying “it’s nearly impossible.”

Senators John McCain (R-AZ) and Rand Paul (R-KY) had said they would not vote for the bill the previous week. Following the

Congressional Budget Office (CBO) score which found millions would lose insurance and there would be reduced federal funding for Medicaid, Senator Susan Collins (R-ME) became the third firm “no” vote effectively killing the measure. Senate Republicans decided to not hold a vote leaving no other options to repeal the ACA before reconciliation expires on September 30. Graham and Cassidy met with President Trump on Thursday to discuss ways to revive the legislation in the coming months and expressed commitment to hold congressional hearings.

Senate Health, Education, Labor and Pension Committee Chairman Lamar Alexander (R-TN) and Ranking Member Patty Murray (D-WA) resumed their bipartisan negotiations to stabilize the individual market. Alexander said “it’s a matter of whether we can find consensus among Republicans and Democrats that we believe can be enacted into a result.”

### Upcoming Hearings and Meetings

#### **October 3**

***Drug Pricing:*** The Atlantic will hold a discussion on “At What Cost?,” focusing on how the health care industry can make prescription drugs more affordable.

***Right to Try:*** The House Energy and Commerce Committee will hold a hearing on “Examining Patient Access to Investigational Drugs.”

#### **October 4**

***Health Innovation:*** The Hill will hold a discussion on “Innovating to Improve Patient Health: A Solutions Conversation.”

***Medical Advancement:*** The Brookings Institute will hold a discussion on “What Does 21st Century Medicine Look Like?”

#### **October 5**

***Opioid Crisis:*** The Senate Health, Education, Labor and Pensions Committee will hold a hearing on “The Federal Response to the Opioid Crisis.”

#### **October 5-6**

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

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

### **TRANSPORTATION**

#### **Six-Month FAA Extension Sent To White House**

##### *Key Points:*

- *The FAA is authorized through March, 2018, giving Congress more time to enact a long-term reauthorization.*

This week, Congress passed an extension of Federal Aviation Administration’s (FAA) authority and funding set to expire on September 30, 2017. Earlier in the week, the House rejected a package that included a six-month extension of the FAA in a vote requiring a two-thirds majority. The House subsequently passed the bill, and the Senate followed but only after striking provisions related to flood insurance. The House then passed the bill and sent it to the White House.

On September 25, the House considered the “Disaster Tax Relief and Airport and Airway Extension Act of 2017” ([H.R. 3823](#)) on the suspension calendar but 163 Democrats voted against the package, causing the bill not to pass by a [245-171 vote](#). The bill would extend the FAA’s authorities and funding until March 30, 2018, implement language on private flood

insurance, and provide aid for areas hit by Hurricanes Harvey, Irma, and Maria.

Earlier in the day, House Minority Leader Nancy Pelosi (D-CA) came out against the bill. In her [statement](#), she asserted that:

America's patriotic young Dreamers must have swift action on the bipartisan DREAM Act. In addition, we face urgent deadlines for Community Health Centers, the State Children's Health Insurance Program and issues that relate to affordable flood insurance. Instead of acting on these priorities, House Republicans are advancing a sprawling FAA extension package laden with completely unrelated and inadequate items. The FAA needs long-term certainty for controllers and other dedicated FAA employees, as well as the vital NextGen modernization effort. Unfortunately, Republicans' radical and dangerous campaign to privatize the FAA has prevented action on the long-term reauthorization the FAA needs.

In his [statement](#), Speaker of the House Paul Ryan contended that:

It is a sad day when House Democrats will—in the name of politics—vote against disaster relief and air traffic safety measures. House Republicans have repeatedly stated our commitment to legislate a fix on DACA. However, these are two unrelated and bipartisan initiatives with broad support from both sides of the aisle. It's shameful that politics will trump meaningful relief for families suffering from these devastating hurricanes. House Democrats are willing to shut down air traffic control to make a political point.

However, House Republican Leadership teed up another vote by having the House Rules Committee report out a rule to govern debate. On September 27, the House agreed to the rule by a vote of [223-190](#) and then passed the bill by a [264-155 vote](#) on September 28.

Yet, the Senate was not willing to pass the package in the same form. On September 28, the Senate adopted by voice vote an [amendment](#) to strike the private flood insurance provisions. Earlier in the week, Senators Bill Cassidy (R-LA) and John Kennedy (R-LA) explained in their [statement](#) that “[t]he decision to include this flood insurance measure on the FAA reauthorization bill, and not as part of comprehensive flood insurance reform, is greatly concerning.” They added that “[w]e need Congress to act on a long-term reauthorization of the National Flood Insurance Program (NFIP) that will provide these families with affordable insurance and peace of mind.”

The House then agreed to the Senate package.

Nonetheless, now that FAA authority has been extended Congress may turn to a longer term bill. There are two bills in each chamber awaiting floor consideration:

- The “21st Century Aviation Innovation, Reform, and Reauthorization Act (AIRRACT)” ([H.R. 2997](#)); and
- The “Federal Aviation Administration Reauthorization Act of 2017” ([S. 1405](#)).

House Transportation and Infrastructure Committee Chairman Bill Shuster (R-PA) continues to advocate for his proposal to privatize the FAA's air traffic control (ATC) operations, and House Republican Leadership and the White House allegedly are trying to persuade the House Appropriations Committee

regarding the spin-off because it would remove this portion of the FAA from their jurisdiction. However, there is opposition among Senate Democrats and other Members oppose the plan.

In the Senate, the inclusion of language that would allow the FAA to relax the 1500 hour in-flight training requirement for co-pilots for regional airlines was met with threats to block the bill from coming to the Senate Floor. During the markup, Senate Commerce, Science, and Transportation Committee Chairman John Thune (R-SD) folded the provisions into a larger amendment despite the articulated misgivings of some Committee Democrats. Thereafter, Senate Minority Leader Chuck Schumer (D-NY) vowed to block the bill if the language were not removed.

### Upcoming Hearings and Events

#### October 3

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

#### October 4

**Markup:** The Senate Commerce, Science & Transportation Committee will hold a [markup](#) of bills and nominations, including:

- S. \_\_\_\_ Self-driving vehicle legislation (to be introduced), Sponsors: Sens. John Thune (R-S.D.), Gary Peters (D-Mich.)
- [S 1872](#), TSA Modernization Act, Sponsors: Sens. John Thune (R-S.D.), Bill Nelson (D-Fla.), Roy Blunt (R-Mo.), Maria Cantwell (D-Wash.)
- Nomination of Howard R. Elliott, of Indiana, to be Administrator of the

Pipeline and Hazardous Materials Safety Administration, Department of Transportation

**Rail Infrastructure:** The House Transportation & Infrastructure Committee's Railroads, Pipelines, and Hazardous Materials Subcommittee will hold a [hearing](#) titled "Building a 21st Century Infrastructure for America: Rail Stakeholders' Perspectives."

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

### TECHNOLOGY

#### Senate Homeland Security on Worldwide Threats

*Key Point:*

- *Among the issues the Committee examined, a number of cybersecurity aspects were raised.*

On September 27, the Senate Homeland Security and Governmental Affairs Committee held a [hearing](#) on "Threats to the Homeland." During the hearing included witness testimony and questions regarding cybersecurity, drone technology, response to natural disasters, domestic terrorism, funding for federal intelligence agencies, and border security.

Senator Heidi Heitkamp (D-ND) said it is critical to engage with the American public about cybersecurity. She asked which agency is responsible for educating the public on cybersecurity. Acting Secretary of Homeland Security Elaine Duke said it is the responsibility of the Department of Homeland Security (DHS) and the agency has started to educate the public.

Senator Steve Daines (R-MT) said the Columbia Falls School District in Montana received cyber ransomware attacks, causing 30

school closures. He asked if Federal Bureau of Investigation (FBI) Director Christopher Wray was aware of these cyberattacks. Wray said the FBI is investigating the attack and this example demonstrates ransomware is a threat to more than just Fortune 500 companies. He said victims now include hospitals and schools. He stated the FBI has indicted ransomware authors, though and said the FBI uses an approach called “sinkholing” where a hacker is redirected into the hands of law enforcement. Daines asked what the FBI is doing to combat cybercrime. Wray said the FBI is working with partners to exchange information because many attacks transcend boundaries. Daines asked Duke what efforts DHS has taken to address cyberattacks. Duke said cybersecurity has to start with those who own the systems. She said through monitoring and diagnostics, DHS is keeping the critical infrastructure in the private sector aware of threats that may come out. She said DHS also works closely with the FBI to combat cybercrime.

Chairman Ron Johnson (R-WI) asked the importance of cybersecurity in preventing terrorist expansion. Wray said there is a blurring of threats such as nation-states enlisting the aid of hackers for hire and transnational organizations veering more into cybercrime. He stated the modality of the threat has evolved to be more dangerous because more threats are online. He said the FBI is working with international intelligence agencies to thwart international influence in U.S. elections.

### **FITARA Extension Bill Introduced in the Senate**

#### *Key Points:*

- *A bill to extend three expiring provisions in a bill to revamp federal IT reform is introduced in the Senate.*

- *The House has passed these bills in two different forms.*

This week, Senators Steve Daines (R-MI), Mark Warner (D-VA), Jerry Moran (R-KS), and Tom Udall (D-NM) introduced a bill to extend three expiring authorities in the “Federal Information Technology Acquisition Reform Act” (FITARA) that reportedly tracks closely to a House bill reported out of Committee and language in the House passed FY 2018 National Defense Authorization Act (NDAA). The bill would remove the sunset dates in FITARA for the IT Dashboard and the PortfolioStat process and extends from October 1, 2018 to October 1, 2020 the sunset date for the Data Center Consolidation Initiative (DCCI). Bill text for [S. 1867](#) is as of yet unavailable.

On July 19, the House Oversight and Government Reform Committee reported by voice vote [H.R. 3243](#), a bill with language basically identical to [amendment](#) added to the “National Defense Authorization Act for Fiscal Year 2018” ([H.R. 2810](#)). The bill was introduced by Representative Gerry Connolly (D-VA) and is proposed for moving on a separate track just in case the language added to the NDAA gets stripped out in conference. Whether the Senate would accept a standalone bill is an open question.

However, this week, the bill received a favorable [cost estimate](#) from the Congressional Budget Office (CBO), which found that the budgetary effects are not “significant”:

Enacting the bill could affect direct spending by agencies not funded through annual appropriations; therefore, pay-as-you-go procedures apply. CBO estimates, however, that any net increase in spending by those agencies would not be significant.

Enacting H.R. 3243 would not affect revenues. CBO estimates that enacting H.R. 3243 would not increase direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

## MAINSTREET Act Passes Senate

### Key Point:

- *Bill to help small businesses with cybersecurity passes by unanimous consent; House bill not yet acted upon.*

This week, the Senate took up and passed the “Making Available Information Now to Strengthen Trust and Resilience and Enhance Enterprise Technology Cybersecurity Act of 2017” or the “MAIN STREET Cybersecurity Act of 2017” ([S. 770](#)) by unanimous consent. This bill would require NIST “to consider small business concerns and disseminate resources to help small businesses reduce cyber risks by using voluntary risk management security measures as articulated in the public-private initiative, the Framework for Improving Critical Infrastructure Cybersecurity (Cybersecurity Framework)” according to the [Committee Report](#). A House version, the “NIST Small Business Cybersecurity Act of 2017” ([H.R. 2105](#)), has been reported out of Committee but has not yet come to the House floor.

## Upcoming Hearings and Events

### October 3

**Equifax Breach:** The House Energy and Commerce Committee’s Digital Commerce and Consumer Protection Subcommittee will hold a [hearing](#) on the Equifax breach with testimony from Equifax CEO Richard Smith.

**DHS Cybersecurity Missions:** The House Homeland Security Committee’s Cybersecurity

and Infrastructure Protection Subcommittee will hold a [hearing](#) titled “Examining DHS’s Cybersecurity Mission.”

**IoT:** House Oversight & Government Reform Committee’s Information Technology Subcommittee will hold a [hearing](#) titled “Cybersecurity of the Internet of Things.”

### October 4

**Equifax Breach:** The Senate Banking, Housing & Urban Affairs Committee will hold a [hearing](#) titled “An Examination of the Equifax Cybersecurity Breach” with testimony from Equifax CEO Richard Smith.

**Equifax Breach:** The Senate Judiciary Committee’s Privacy, Technology and the Law Subcommittee will hold a [hearing](#) titled “Equifax: Continuing to Monitor Data-Broker Cybersecurity.”

**Markup:** The Senate Commerce, Science & Transportation Committee will hold a [markup](#) of bills and nominations, including:

- S. \_\_\_\_ Self-driving vehicle legislation (to be introduced), Sponsors: Sens. John Thune (R-S.D.), Gary Peters (D-Mich.)
- [S 1872](#), TSA Modernization Act, Sponsors: Sens. John Thune (R-S.D.), Bill Nelson (D-Fla.), Roy Blunt (R-Mo.), Maria Cantwell (D-Wash.)
- Nomination of Walter G. Copan, of Colorado, to be Under Secretary of Commerce for Standards and Technology
- Nomination of David J. Redl, of New York, to be Assistant Secretary of Commerce for Communications and Information

**IRS IT Modernization:** The House Ways and Means Committee’s Oversight Subcommittee will hold a [hearing](#) titled



“Internal Revenue Service’s Information Technology Modernization Efforts.”

### **October 5**

**Equifax Breach:** The House Financial Services Committee will hold a [hearing](#) titled “Examining the Equifax Data Breach.”

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

## **TRADE**

### **Third Round of NAFTA Ends with No Deals on Controversial Issues**

#### *Key Point:*

- *The round ended with a chapter on small and medium-sized enterprises nearly finished but little progress on prominent issues.*

The third round of NAFTA renegotiation took place from September 23-27 in Ottawa, Canada. The discussions concluded with all three sides emphasizing the progress that was made while acknowledging how much work still needs to be done. The U.S., Canadian and Mexican negotiators announced the “effective” completion of the chapter on small and medium-sized enterprises and made “significant progress” in key areas. However, there were no deals made on contentious issues like rules of origin and investor-state dispute settlement (ISDS), though the U.S. Trade Representative (USTR) did share proposals on intellectual property, labor, and government procurement. According to USTR Robert Lighthizer, the parties made significant progress in other areas, including competition policy, digital trade, state-owned enterprises, sanitary and phytosanitary measures, customs, and telecommunications. It has been reported that the government procurement proposal will limit Canadian and Mexican access to U.S. government contracts by setting a dollar

threshold for foreign companies bidding on projects.

Negotiators are anticipating that the fourth round, to be held October 11-15 in Washington, D.C., will include discussions on controversial issues. At the conclusion of the round, USTR Lighthizer said that text on the ISDS, auto rules of origin, and the NAFTA sunset clause will be tabled at the fourth round. USTR Lighthizer added that the ISDS and sunset clause proposals are finalized and will have the full backing of all agencies within the administration when they are proposed.

Negotiators have acknowledged the difficulty of finishing the deal by the self-imposed December deadline. When asked whether reaching a deal by year-end remained realistic, USTR Lighthizer said finishing by year’s end is “very, very optimistic, very, very difficult.” Mexico’s Economy Minister Ildefonso Guajardo suggested the parties should begin to consider dates in early 2018 for additional rounds of negotiation.

*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.*