

October 5, 2018

Washington Update

This Week in Congress

- **House** – The House is out of session until November 13.
- **Senate** – The Senate passed HR 4921, the **STB Information Security Improvement Act**; H.R. 302, a five-year **FAA extension**; H.R. 6, the **SUPPORT for Patients and Communities Act** (Opioids Package); and H.R. 3359 the **Cybersecurity and Infrastructure Security Agency Act of 2017**.

Next Week in Congress

- **House** – The House is in recess until November 13.
- **Senate** – The Senate will consider the nomination of **Brett Kavanaugh** to be Associate Justice, United States Supreme Court.

TAX

IRS Issues Guidance Continuing to Allow Deductions For Business Meals

- *Taxpayers may continue to deduct 50 percent of the cost of business meals provided during entertainment events if purchased separately from the event.*

On Wednesday, the Internal Revenue Service (IRS) issued guidance clarifying that taxpayers may generally continue to deduct 50 percent of meals while entertaining clients and customers, clearing up confusion about whether tax law changes last year had completely eliminated that benefit. To qualify for the deduction, the food and beverages that are provided during entertainment events will not be considered entertainment if purchased separately from the event. A provision in last year's Tax Cuts and Jobs eliminated the deduction for so-called entertainment expenses, raising concerns about how to handle any associated business

meals. According to the IRS, the amendments specifically deny deductions for expenses for entertainment, amusement, or recreation, but do not address the deductibility of expenses for business meals.

Under the proposed guidance, taxpayers may continue to deduct 50 percent of the cost of business meals if the taxpayer (or an employee of the taxpayer) is present and the food or beverages are not considered lavish or extravagant. The meals may be provided to a

Table of Contents

Taxes	1
Financial Services	2
Defense	5
Health	6
Transportation	8
Technology	10
Trade	11

current or potential business customer, client, consultant or similar business contact. Food and beverages that are provided during entertainment events will not be considered entertainment if purchased separately from the event

The Department of the Treasury and the IRS said that they will publish proposed regulations clarifying when business meal expenses are deductible and what constitutes entertainment.

Charles Rettig sworn in as IRS Commissioner

- *Senate confirmed 64-33 in September; caps eight-month nomination process*

Charles Rettig, a tax lawyer with Hochman, Salkin, Rettig, Toscher and Perez was nominated in February to be IRS Commissioner and sworn in October 1 after a lengthy confirmation delay. His nomination was received positively in the Senate Finance Committee and he was approved by that committee in July, though along party lines. However, opposition in the committee grew following IRS-issued guidance regarding the reporting of names of donors to tax-exempt organizations, though Rettig did not play a role in drafting that guidance. Finance Committee member Senator Bob Menendez (D-NJ) then placed a hold on his nomination after the Treasury Department proposed regulations to block states' efforts to work around the SALT deduction cap in the 2017 tax reform bill. Ultimately he was confirmed with the support of 15 Democrats, including five Democrats on the Finance Committee who voted against him in committee. Acting Commissioner David Kautter will remain Assistant Secretary for Tax Policy.

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

Senate Banking Discusses Implementation of the Economic Growth, Regulatory Relief, and Consumer Protection Act

Key Points:

- *Chairman Mike Crapo (R-ID) suggested the financial regulators should be focused on tailoring regulations; tailoring the Liquidity Coverage Ratio (LCR); reassess the advanced approaches thresholds; provide relief from the Volcker Rule; and examine whether the regulations that apply to standalone operations of foreign banks should be tailored at the same time.*
- *FDIC Chairman Jelena McWilliams stated the proposed rulemaking for a simplified leverage ratio should be out soon.*
- *Federal Reserve Vice Chairman for Supervision Randal Quarles stated that the proposal for streamlined stress testing for bank between \$100 and \$250 billion in assets should be expected before the end of the year.*

On October 2, the Senate Banking Committee held a [hearing](#) to receive an “Implementation of the Economic Growth, Regulatory Relief, and Consumer Protection Act.” Chairman Mike Crapo (R-ID) in a [statement](#), suggested shortly after the Dodd-Frank Act (DFA) was signed into law, Congress began to see some of the unintended cumulative regulatory burden it had on certain financial institutions. He noted the primary purpose of the recently enacted the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA, S.2155) is to make targeted changes to simplify and improve the regulatory regime for community banks, credit unions, midsize banks and regional banks to promote economic growth. He stated although agencies have started to consider this law in some of their statements and rulemakings, there is still a lot of work to do on the bill’s implementation. He stressed

that agencies should: significantly tailor regulations for banks with between \$100 billion and \$250 billion in total consolidated assets, with a particular emphasis on tailoring the stress testing regime; tailor the Liquidity Coverage Ratio (LCR) for regional banks with more than \$250 billion in total consolidated assets; reassess the advanced approaches thresholds; provide meaningful relief from the Volcker Rule for all institutions; and examine whether the regulations that apply to the standalone U.S. operations of foreign banks should also be tailored at the same time and in a similar manner as U.S. banks. Ranking Member Sherrod Brown (D-OH) stated S. 2155 was described as reducing burdens on small banks but in reality is full of concessions to the big banks. Brown suggested that capital at banks is still too low and he stated that the “collective amnesia” in Congress is “astounding.”

Chairman Crapo noted S. 2155 required the regulators to develop a simple leverage ratio and he asked when the Notice of Proposed Rulemaking (NPR) should be expected. FDIC Chairman Jelena McWilliams stated that the hope to have the proposed rule out soon and they are approaching this rulemaking from a simplicity perspective. She suggested the system needs to be commensurate with the risk profile of the banks below \$10 billion in assets. Chairman Crapo also asked about the rulemaking for streamlined and tailored stress testing. Federal Reserve Vice Chairman for Supervision Randal Quarles stated for banks between \$100 and \$250 billion the NPR is a priority. He expressed his hope that it will be released before the end of the year. He noted they are replacing the term “periodic” with the term “annually.”

Members of the Committee expressed interest in the global systemically important bank (G-SIB) surcharge. Quarles stated that the

surcharge is part of a complex set of regulations applied to large firms. He stated they are attempting to ensure there is a level playing field internationally. Senator Patrick Toomey (R-PA) expressed concern that it has taken so long to see progress on tailoring enhanced prudential standards. Quarles stated he has been surprised with the pace as well. He noted one issue in terms of timing is that the Federal Reserve was waiting until the legislative instructions related to tailoring were clear. Senator Jon Tester (D-MT) noted the time he spent working on the provisions of the EGRRCPA related to insurance capital standards. Quarles stated that they are working to increase transparency of that process and they are making progress on the international standard setting bodies embracing transparency. When asked about the Treasury’s recommendation for continued U.S. engagement in international forums and progress being made towards promotion of U.S. competitiveness, Quarles stated the Federal Reserve supports these goals. He explained with respect to the insurance standard setting bodies and the international financial bodies themselves, it is in the best interest of the U.S. to make their views known. Senator Tester suggested that the provisions in S.2155 are a “big step” forward for transparency in international insurance regulations. He suggested the House legislative efforts to go beyond S. 2155 are misguided and S. 2155 should be allowed to “play out.”

Federal Reserve Seeks Public Comment on Real-Time Interbank Settlement

Key Point:

- *The Federal Reserve Board is requesting public comments on potential actions to facilitate real-time interbank settlement of faster payments.*

On October 3, the Federal Reserve Board [released](#) a request for public comment on

actions that could be taken to support faster payments in the U.S. The potential actions would “facilitate real-time interbank settlement of faster payments and build on collaborative work with the payment industry through the Federal Reserve System’s Strategies for Improving the U.S. Payment System (SIPS) initiative.” Views are being sought on two potential actions: (1) “the development of a service for real-time interbank settlement of faster payments 24 hours a day, seven days a week, 365 days a year (24x7x365)”; and (2) “the creation of a liquidity management tool that would enable transfers between Federal Reserve accounts on a 24x7x365 basis to support services for real-time interbank of faster payments, regardless of whether those services are provided by the private sector or the Federal Reserve Banks.” Federal Reserve Governor Lael Brainard stated that “[a] 24/7 economy with 24/7 real-time payments needs 24/7 real-time settlement. That is where we believe the Federal Reserve and the private sector need to make investments for the future.” Comments are due by December 14, 2018.

UPCOMING EVENTS

October 10

Data Privacy: The Senate Commerce, Science, and Transportation Committee will hold a hearing entitled, “Consumer Data Privacy: Examining Lessons from the European Union’s General Data Protection Regulation and the California Consumer Privacy Act.” Witnesses will include: Dr. Andrea Jelinek, Chair, European Data Protection Board; Alastair Mactaggart, Board Chair, Californians for Consumer Privacy; Laura Moy, Executive Director and Adjunct Professor of Law, Georgetown Law Center on Privacy & Technology; and Nuala O’Connor, President and CEO, Center for Democracy and Technology.

Advisory Committee on Community Banking: The Federal Deposit Insurance Corporation (FDIC) will hold a meeting of its Advisory Committee on Community Banking.

October 11

SEC Open Meeting on Security Based Swaps:

The Securities and Exchange Commission (SEC) will meet in an open meeting to consider whether to reopen the comment period and request additional comment on: “(1) capital, margin, and segregation requirements for security-based swap dealers and major security-based swap participants, and amendments to Rule 15c3-1 for broker-dealers proposed in October 2012; (2) amendments proposed in May 2013 that would establish the cross-border treatment of security-based swap capital, margin, and segregation requirements; and (3) an amendment proposed in April 2014 that would establish an additional capital requirement for security-based swap dealers that do not have a prudential regulator.”

Cryptocurrency/Blockchain: The Senate Banking Committee will hold a hearing entitled “Exploring the Cryptocurrency and Blockchain Ecosystem.”

October 18

Fannie Mae and Freddie Mac Oversight:

The Senate Banking Committee will hold a hearing entitled, “Oversight of Pilot Programs at Fannie Mae and Freddie Mac.” The witnesses will be: Sandra Thompson, Deputy Director of the Federal Housing Finance Agency’s Division of Housing Mission and Goals; Timothy Mayopoulos, CEO of Fannie Mae; and Donald Layton, CEO of Freddie Mac.

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.

October 29

SEC Fixed Income Market Structure Advisory Committee: The Securities and Exchange Commission Fixed Income Market Structure Advisory Committee (FIMSAC) will meet to discuss updates and presentations from the subcommittees.

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.

DEFENSE

New Counterterrorism Strategy Released

Key Point:

- *Following a new National Security Strategy, the Administration articulates its approach on counterterrorism*

This week, the Trump Administration released a new “[National Strategy for Counterterrorism](#)” (Strategy) which replaces the 2011 “[National Strategy for Counterterrorism](#)” issued by the Obama Administration. The Administration claimed that the Strategy builds “on the National Security Strategy and the Administration’s progress to date...[and] outlines how the United States will combat terrorism at home and abroad and keep America safe.”

The Administration stated that “[w]hile we have made much progress, additional challenges remain...[and] must continually

work to stay ahead of an adaptive enemy.” The Administration states that “[t]his means that we must undertake additional efforts to prevent terrorists from acquiring or using weapons of mass destruction (WMD) and other advanced attack capabilities...[and] [w]e must prevent terrorists from exploiting new technologies in today’s dynamic information environment, and we must counter terrorists’ ability to recruit and radicalize online and through other means.” The Administration asserted that “experience has taught us that preparedness and prevention must be integral parts of our counterterrorism strategy.”

The White House provided this [summary](#) of the new Strategy:

THE PATH TO VICTORY: President Donald J. Trump is releasing a new National Strategy for Counterterrorism that will protect American citizens and interests at home and abroad.

- Today, President Trump is releasing his National Strategy for Counterterrorism, the United States’ first robust and fully-articulated strategy on counterterrorism since 2011.
- The Administration is outlining a new approach to counter and prevent the evolving terrorist threat, making it clear that we will take all steps necessary to keep our country safe.
- President Trump’s National Strategy for Counterterrorism focuses on:
 - Pursuing terrorists to their source;
 - Isolating terrorists from their sources of support;
 - Modernizing and integrating the United States’ counterterrorism tools;

- Protecting American infrastructure and enhancing resilience;
- Countering terrorist radicalization and recruitment; and
- Strengthening the counterterrorism abilities of our international partners.

Organization (NATO) Allies and partners.

A NEW APPROACH: The new strategy builds on lessons learned from past counterterrorism efforts and offers a new path toward strengthening the security of Americans.

- The new strategy focuses the United States on countering all terrorists with the intent and ability to harm our country.
- The strategy emphasizes the use of all of America’s tools to prevent and counter terrorism, strengthening military approaches while delivering a new emphasis on non-military capabilities.
 - Many United States Government agencies have important roles to play, including our law enforcement, diplomatic, and treasury officials.
- The strategy places America first, emphasizing strong borders, strengthening security at points of entry, protecting critical infrastructure, and facilitating preparedness.
- However, America First does not mean America alone. The new strategy commits us to expand our partnerships at home and abroad to encourage partners’ assistance in counterterrorism activities.
 - This includes working with our North Atlantic Treaty

DEFEATING TERROR: Thanks to President Trump’s leadership, the United States has accelerated efforts to defeat terrorists and protect the United States from global threats.

- Under President Trump, the United States and global partners have decimated ISIS and pushed the group to the brink of extinction in Iraq and Syria.
 - Nearly all of the territory previously held by ISIS has been recaptured.
 - More than 7.5 million people have been freed from the group’s oppressive rule.
- At President Trump’s urging, NATO members agreed to strengthen the alliance’s counterterrorism actions and capabilities.
- In December 2017, President Trump issued a new National Security Strategy that focused, in part, on combatting terrorism.

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

HEALTH

Congress Passes Opioid Legislation

Key Points:

- *The Senate passed the final opioid legislative package 98-1.*
- *The bill now goes to the President who is expected to sign the bill.*

On October 3, the Senate passed the final opioid legislative package 98-1. Senator Mike

Lee (R-UT) was the only member to vote against the bill. This follows the House's vote on September 28 passing the bill 393-8. The President is expected to sign the bill but has not yet announced if there will be a signing ceremony.

President Donald Trump praised passage of the legislation calling it "an extraordinary bipartisan effort." He stressed the "SUPPORT for Patients and Communities Act (H.R. 6) makes important investments that will lift people out of addiction, help keep illicit drugs out of our communities, expand public awareness and prevention initiatives to stop addiction before it starts, and save lives.

Senate Health, Education, Labor and Pensions Committee Chairman Lamar Alexander (R-TN) stated "this legislation represents the work of 8 committees in the House and 5 committees in the Senate who have worked to reach consensus about how to help address the opioid crisis." House Energy and Commerce Committee Chairman Greg Walden (R-OR) and Health Subcommittee Chairman Michael Burgess (R-TX) said in a joint statement that "this comprehensive bill provides critical support to desperate communities all across the country and gives those fighting on the front lines new tools to help treat addiction and slow the flow of illicit drugs across our borders."

FDA Issues Draft Guidance on Citizen Petitions

Key Point:

- *The Food and Drug Administration issued new draft guidance to address the use of citizen petitions subject to section 505(q) of the federal Food, Drug, and Cosmetic Act.*

On October 2, the Food and Drug Administration (FDA) issued new draft guidance continuing Commissioner Scott

Gottlieb's goal to address gaming of the drug approval system. The latest guidance is aimed at addressing citizen petitions subject to section 505(q) of the Food, Drug, and Cosmetic Act. There have been concerns citizen petitions have been used to block generic entry. In a statement, Gottlieb noted there has been no evidence of generic delay; however, the process requirements under 505(q) can add resource burdens on the generic drug review process.

The draft guidance outlines some of the factors FDA will consider in determining whether a petition is submitted with the primary purpose of delaying the approval of a generic application. If the FDA determine the purpose was delay, it will consider whether the petition can be denied on that basis, and the determination will be part of the petition response available in the citizen petition docket. As a further deterrent to dissuade companies from using these petition, the FDA will highlight petitions determined to have the primary purpose of delay in its annual report to Congress. The guidance also outlines how the FDA will refer these matters to the Federal Trade Commission which oversees anticompetitive business practices.

Read the draft guidance [here](#).

Upcoming Hearings and Meetings

October 10

Seniors: The Alliance for Health Policy will hold its "Aging in America" Summit.

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

TRANSPORTATION AND INFRASTRUCTURE

FAA Reauthorization Sent To White House

Key Point:

- *The agency will be authorized for the next five years*

This week, the Senate passed the “FAA Reauthorization Act of 2018” ([H.R. 302](#)) by a 93-6 vote, sending the five-year Federal Aviation Administration (FAA) reauthorization to the White House. 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.” The President is expected to sign the first long-term authorization since the “FAA Modernization and Reform Act of 2012” ([P.L. 112-95](#)).

PTC Hearing

Key Point:

- *A Senate committee examines the state of PTC implementation ahead of the December 31, 2018 deadline*

On October 3, the Senate Commerce, Science, and Transportation Committee held a [hearing](#) entitled “Implementation of Positive Train Control.” The hearing focused on the “current

status of implementation of positive train control (PTC), anticipated compliance with the statute, and the challenges with efforts to install and operationalize PTC systems.” Topics discussed in the hearing included but were not limited to: (1) December Deadline; (2) New Jersey; (3) Preventable Accidents; (4) Florida; (5) Gateway Project; (6) FRA Priorities; (7) Innovation; (8) Southwest Chief; (9) Amtrak; (10) Sleep Apnea; (11) Interoperability; (12) Grade Crossings; (13) Hazardous Materials; (14) GAO Report; (15) Waiver Review; (16) Accommodations for Traveling Mothers; and (17) Federal Resources.

Chairman John Thune (R-SD), in a [statement](#), noted that Positive Train Control (PTC) is due to be implemented by December 31. He said the “Positive Train Control Enforcement and Implementation Act of 2015” (P.L. 114-94) affects agriculture and water purification. He suggested the Committee has worked on a bipartisan basis to ensure that PTC is implemented in a timely manner. He said that the bar for Amtrak and Class I railroads “is high.” Thune declared that under Federal Railroad Administration (FRA) Administrator Ronald Batory’s leadership railroads have improved. He said that 93 percent of freight railroads are PTC compliant and passenger locomotives are at 73 percent. He suggested however, “there is clearly more work to do.” He said that Batory has been “instrumental” in updating (FRA) policies. Thune encouraged further introduction of best practices with regulated entities and railroads. He noted that the FRA benefits from federal support in the amount of “well over \$3 billion.” He argued that the FRA should have had an Administrator like Batory much sooner and his confirmation was delayed by obstruction for six months. Thune asserted that commuter railroads need to be PTC compliant by the end of the year.

Ranking Member Bill Nelson (D-FL), in a [statement](#), insisted that PTC must be implemented in order to prevent accidents. He noted that an Amtrak train was recently involved in a head-on collision with a CSX freight train in South Carolina. He said that implementation of PTC will be complicated and expensive, but will be worth the effort. Nelson noted that Florida has provided half a billion dollars in grants in addition to federal support. He stated that many railroads “have not lived up to their end of the bargain” in meeting the 2018 deadline. He emphasized that the Department of Transportation (DOT) needs to aid in the implementation of PTC. Nelson said unnecessary delays in grant funding should “not be a hurdle to those getting the technology in place.” He expressed support for improved safety for commuters on U.S. railways.

Federal Railroad Administration (FRA) Administrator Ronald Batory said PTC is a top priority for the FRA but an alternative schedule may be required in order to complete testing and activate technology on all route miles. He noted that FRA has tracked implementation of PTC since April on a quarterly basis. He observed that PTC is in operation for 66 percent of all route miles, but passenger railroads have made less progress. Batory said that any railroad that has not installed new hardware by June 30 will be considered at most risk for failing to qualify for an alternative schedule. He noted that installation of PTC hardware is one of six criteria required for an alternative schedule. He said FRA is actively involved in further assisting railroads to be compliant with PTC. Batory emphasized that railroads have met with FRA experts in order to properly implement PTC protocols. He said that FRA has awarded \$961 million in grants to support new technology in railroad implementation. He stated that the FRA has supported 28 PTC projects, which include 13

commuter railroads. He said that since 2008 \$2.5 billion has been allocated to PTC implementation. He noted the FRA is working toward a 30-day application period. He expressed support for the Committee’s efforts.

Government Accountability Office (GAO) Physical Infrastructure Team Director Susan A. Fleming said “PTC is one of the most promising technological advances in rail safety in decades.” She stated that the GAO has been closely monitoring progress in implementation since 2010. She complained that passenger railroad PTC implementation has been “frustratingly slow.” She stressed that railroads must meet deadlines by December 31. Fleming reiterated that many passenger railroads struggle to implement PTC, which includes equipment installation and field testing. She added that nine passenger railroads remain “on the list” to be improved. She noted that Amtrak has initiated a program called Revenue Service Demonstration (RSD). She said this program has shown progress in a positive way. She said this program is important because it shows progress of the PTC program as well as the 20 passenger rails that utilize RSD. Fleming suggested that extensions could be authorized under new criteria. She asserted that FRA criteria should be provided “much sooner.” She noted that eight passenger railroads anticipate full PTC implementation by December. She said six of 12 commuter railroads have already applied for extensions. She said there are issues regarding “the maturity of the system” as well as with interoperability and FRA’s resources.

For more information on transportation issues you may [email](#) or call Michael Kans at 202-659-8201. Rebecca Konst and Jackson McClendon contributed to this section.

TECHNOLOGY**Senate Sends NPPD Reorganization Bill Back To House***Key Point:*

- *A bill to elevate and rename the DHS' cyber component cleared the Senate with slight changes and goes back to the House*

A slightly amended version of the “Cybersecurity and Infrastructure Security Agency Act of 2018” ([H.R. 3359](#)) was cleared by the Senate on October 3 after being hotlined. Now, the House needs to pass the bill before it can be enacted, and the question is when the House may take up the bill, considering Members have left town to campaign. However, the House is holding pro forma sessions, and it is possible that the measure could be passed by unanimous consent request in the House during one of these sessions. Otherwise, the bill would wait until Congress reconvenes for the lame duck session at which point the House could pass the bill.

Broadly, H.R. 3359 bill would establish the Cybersecurity and Infrastructure Security Agency (CISA or Agency) headed by a Director appointed by the President and confirmed by the Senate. CISA would essentially consist of the National Protection and Programs Directorate (NPPD), which contains most of the Department of Homeland Security’s cyber components, and physical infrastructure protection components of DHS. NPPD’s current responsibilities would be transferred to the newly created Cybersecurity Division within CISA that would be headed by an Assistant Director for Cybersecurity who would oversee the agency’s cybersecurity responsibilities. The espoused policy rationale for this bill is that an agency within DHS would have better means to execute the agency’s

mission than NPPD to protect the federal government’s civilian networks and fulfill its role as the primary recipient and distributor of cybersecurity threat information.

The most notable change in the Senate version is a requirement that DHS submit to Congress a report on its “leadership role” in the deployment of “cloud-based cybersecurity” for the federal government. This requirement arises, in part, from a task contained in the December 2017 “Report to the President on Federal IT Modernization” regarding the establishment as Security Operations Center (SOC) as a Service for federal agencies. Enshrining this requirement in statute suggests DHS has failed to achieve this goal.

Regarding this report, DHS is to work with the Office of Management and Budget (OMB) and the General Services Administration (GSA) on the following:

- (1) information on the plan of the Department for ensuring access to a security operations center as a service capability in accordance with the December 19, 2017 Report to the President on Federal IT Modernization issued by the American Technology Council;
- (2) information on what service capabilities under paragraph (1) the Department will prioritize, including—
 - (A) criteria the Department will use to evaluate capabilities offered by the private sector; and
 - (B) how Federal government- and private sector-provided capabilities will be integrated to enable visibility and consistency of such capabilities across all cloud and on premise environments, as called for in the report described in paragraph (1); and
- (3) information on how the Department will adapt the current

capabilities of, and future enhancements to, the intrusion detection and prevention system of the Department and the Continuous Diagnostics and Mitigation Program of the Department to secure civilian Federal government networks in a cloud environment.

DOJ Updates Best Practices

Key Point:

- *The guidance on how entities should prepare for and respond to cyber incidents was updated for the first time since 2015*

The U.S. Department of Justice’s (DOJ) Criminal Division released an updated “[Best Practices for Victim Response and Reporting of Cyber Incidents](#)” “to help organizations prepare a cyber incident response plan and, more generally, to better equip themselves to respond effectively and lawfully to a cyber incident.” The new guidance builds off the 2015 guidance of the same title and expands it to reflect changes in the cyber landscape since then.

DOJ explained that the “updated version includes additional incident response considerations, including ransomware, information sharing pursuant to the Cybersecurity Information Sharing Act of 2015, cloud computing, and working with cyber incident response firms.” The Department claimed that the new iteration “distills lessons learned by federal investigators and prosecutors and input from private sector companies that have managed cyber incidents...[and] includes advice on preventing cyber incidents, as well as advice on working effectively with law enforcement.”

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

TRADE

U.S., Canada, Mexico Reach Trade Deal

Key Points:

- *Congress has 60 days to review the deal before it can be signed. ITC then has 105 to complete its review before Congress can vote on the deal.*
- *The basic structure of NAFTA remains largely intact, though there are some notable changes and additions.*
- *The Administration is considering lifting 232 steel and aluminum tariffs on Canada and Mexico in favor of quotas.*

Negotiators for the U.S., Canada, and Mexico reached a last-minute agreement just before the midnight deadline on Sunday to replace the North American Free Trade Agreement (NAFTA) with the U.S.-Mexico-Canada Agreement (USMCA). The Sunday deadline was significant because under the timetable required under the Trade Promotion Authority (TPA) legislation, the deal can be signed by Dec. 1st, before the current Mexican President leaves office. Under the TPA, Congress has 60 days to study the deal before President Trump can sign the USMCA. The International Trade Commission (ITC) must then conduct an analysis to be completed within 105 days of the deal signing. Following these deadlines, the Congressional trade committees would then be able to officially start consideration of the deal. The ability to gain Congressional approval could be made much more complicated if control of either the House or Senate flips to Democrats. Senator Chuck Grassley (R-IA), next in line as chairman of the Senate Finance Committee, had said that “if the Democrats take the House, the vote will be in the lame duck” session. However, the TPA requirements will push any final approval vote into next year. The Trump Administration has touted the final deal as a significant victory for domestic manufacturers and farmers. In the deal, Canada

agreed to open up some of its dairy market and end its Class 7 dairy pricing scheme, which prevented American dairy producers from competing in Canada. It also includes a provision that could block Canada and Mexico from creating a free trade agreement (FTA) with non-market economies like China. U.S. Trade Representative (USTR) Robert Lighthizer said any of the parties developing an FTA with China “could change the economics of the deal from our point of view.” USMCA includes strengthened rules of origin for automobiles to qualify for zero tariffs. The new auto rules require that an automobile must contain 75 percent regional value content to qualify for duty-free treatment; 40 percent labor value content must come from workers making at least \$16 per hour. The new rules will be implemented in four stages over three years after the deal is ratified.

The USMCA also added a new chapter 33 on “Macroeconomic Policies and Exchange Rate Matters,” designed to prevent the manipulation of foreign currency exchange rates. It obliges the parties to avoid manipulating exchange rates through competitive devaluation and also establishes certain reporting provisions to promote transparency involving monthly and quarterly reports to the International Monetary Fund (IMF). The Trump Administration was not able to push through some of its more contentious proposals. The controversial 5-year sunset clause was replaced with a 16-year deal and an agreement to meet every 6 years to resolve issues and potentially extend the deal. USTR was unable to eliminate investor-state dispute settlement (ISDS).

Finally, there have been reports the Trump Administration is considering replacing the Section 232 steel and aluminum tariffs on Canada and Mexico with quotas. USTR Lighthizer confirmed resolving the 232 tariffs remains a “high priority” but said the Administration will “probably take a few days to catch our breath and then we’ll start talking

about that.” Under USMCA Canada and Mexico would essentially be exempt from any potential 232 automobile and auto part tariffs.

UPCOMING EVENTS

October 8

A New Dawn for Protectionism? From Trade Wars to Mega-Regional Trade Agreements: The Brookings Institution holds a discussion on "A New Dawn for Protectionism? From Trade Wars to Mega-Regional Trade Agreements."

October 10

Andres Manuel Lopez Obrador (AMLO) and the Outlook for North American Free Trade: The Woodrow Wilson Center's (WWC) Mexico Institute holds a discussion on "AMLO and the Outlook for North American Free Trade."

October 12

The World Trade Organization (WTO): Looking Forward: The Center for Strategic and International Studies (CSIS) holds a discussion on "The World Trade Organization (WTO): Looking Forward."

For more information on trade 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.