

October 6, 2017

## Washington Update

### This Week in Congress

- **House** – The House passed the “**Pain-Capable Unborn Child Protection Act**” (H.R. 36) and the “**Budget**” (H. Con. Res. 71).
- **Senate** – The Senate confirmed **Ajit Varadaraj Pai** to be a member of the Federal Communications Commission; **Randal Quarles**, to be a Member of the Board of Governors of the Federal Reserve System; **Lee Francis Cissna**, to be Director of U.S. Citizenship and Immigration Services; **Bruce J. Walker** to be an Assistant Secretary of Energy (Electricity Delivery and Energy Reliability); and **Howard R. Elliott** to be Administrator of the Pipeline and Hazardous Materials Safety Administration. The Senate passed the “**Strengthening State and Local Cyber Crime Fighting Act of 2017**” (H.R. 1616).

### Next Week in Congress

- **House** – The House may consider the “**Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017**” (S. 585).
- **Senate** – The Senate is in recess until October 16.

## TAX

### House and Senate Make Progress on Budget Resolutions, Necessary Step for Tax Reform

#### *Key Point:*

- *House passes FY 2018 budget with tax reform instructions; following Senate Budget Committee passage, full Senate expected to consider budget following a scheduled recess next week.*

On Thursday, the House passed their fiscal year 2018 budget resolution by a vote of 219-206, taking an important procedural step toward tax reform legislation. The House budget includes instructions for a revenue-neutral tax bill, after including feedback effects from additional economic growth. The House plan also calls for \$203 billion in mandatory

spending cuts over a decade—a key difference with the Senate version.

Also on Thursday, the Senate Budget Committee approved their version of the fiscal year 2018 budget. The Senate budget resolution includes tax reform instructions that would allow for tax cuts of \$1.5 trillion over the 10-year budget window. The Senate is not in session next week, and is expected to

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consider the budget resolution when they return. The two chambers will then have to resolve the differing bills during conference negotiations, unless the House decides to pass the Senate's resolution. 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 Committee Chairman Kevin Brady has said they will not release draft tax legislation until the budget is approved by Congress.

### Senate Finance Committee Holds Hearing on International Tax Reform

#### Key Points:

- *Increased taxation on foreign-owned corporations, global minimum tax discussed.*
- *Chairman Hatch reiterates point that the Senate tax reform bill will be separate from outside analysis.*

On Tuesday, the Senate Finance Committee held a hearing focusing on international tax reform.

A stated goal of the hearing was to examine how Congress can update the U.S. system of taxing cross-border income to create more jobs and investment in the U.S.

The hearing included testimony from several witnesses, two of which proposed to increase taxation on foreign-owned corporations. In his testimony, University of Houston professor Bret Wells called for implementing a base erosion surtax. According to Wells, for corporate tax reform to be sustainable, the tax system must ensure that profits earned within the U.S. are subject to tax. He would apply the new surtax to cross-border deductible payments such as interest and royalties. Similarly, Itai Grinberg, professor of law at Georgetown University Law Center, called for an approach that would apply an inbound minimum tax to alleviate the “structural tax

disadvantage of being a U.S.-resident” company.

Other witnesses focused their testimony on a proposal for a global minimum tax on U.S.-headquartered companies, which was mentioned in the Big Six unified framework released last week. According to Stephen Shay of Harvard Law School, a minimum tax should be calculated on a per-country basis, preferably at 80 percent of the corporate rate. He also proposed that the rules for foreign tax credits reformed to prevent companies from using them to erode the bite of a minimum tax. However, Professor Grinberg, warned the committee that a country-by-country approach would be complex and “pretty unadministrable.”

In terms of revenue neutrality, Senator John Thune (R-SD) posed a question regarding tax reform impacting economic growth. Bret Wells, from the University of Houston, said base protection measures which level the playing field would provide additional revenue for Congress to meet other needs. Wells called for regulations that apply to U.S. and foreign countries to raise the revenue needed and to ensure that winners and losers are not created through tax reform.

### Treasury Department releases Second Report to the President on Regulatory Revisions

#### Key Points:

- *Recommends portion of Section 385 regulations be repealed.*
- *Treasury notes: “Tax reform is expected to*

#### Upcoming Dates

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

*obviate the need for the distribution regulations and make it possible for these regulations to be revoked.”*

The Treasury Department released its [Second Report to the President on Identifying and Reducing Tax Regulatory Burdens](#).

The report recommends withdrawing Section 2704 proposed regulations on the estate tax, certain valuation discounts and Section 103 proposed regulations on municipal bonds and the political subdivision test.

The report also recommends revoking in part Section 7602 final regulations on the use of outside attorneys by the IRS in audits; Section 707 and 752 regulations on partnership liability allocations and recourse issues and Section 385 final and temporary regulations on documenting and potentially re-characterizing certain intercompany debt as equity. Concerning the Section 385 regulations, which were the subject of intense scrutiny when proposed, Treasury recommends repealing the documentation portions, but leaves the distribution regulations in place pending tax reform.

Finally, the report recommends substantially revising Section 367 final regulations on transfers of goodwill and going concern value to foreign corporations; Section 337(d) temporary regulations on REIT/RIC spin-off transactions and Section 987 final regulations on income and currency gain or loss.

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

## **FINANCIAL SERVICES**

### ***Treasury Releases Report on Capital Markets***

#### **Key Point:**

- *The Treasury released the Capital Markets report, the second report in a series of reports related to the President’s Executive Order on Core Principles for regulation of the financial system.*

On October 6, the Treasury released the [second report](#) in a series of responses to the President’s Executive Order on Core Principles for the regulation of the financial system. The Capital Markets report covers the following broad topics: (1) Access to Capital; (2) Equity market structure; (3) The Treasury market; (4) Corporate Bond Liquidity; (5) Securitization; (6) Derivatives; (7) Financial Market Utilities; (8) Regulatory Structure and process; and (9) International aspects of capital markets regulation.

Some of the recommendations in the report include the following. A complete list of the recommendations is available in the report and listed in Appendix B.

- **Access to Capital**
  - Repeal of conflict minerals, mine safety, resource extraction, and pay ratio rules of the Dodd Frank Act
  - Allowing companies other than emerging growth companies (EGCs) to be allowed to test the waters with qualified institutional buyers (QIBs) or accredited investors and extending length of time a company may be considered an EGC
  - Significantly revising the \$2,000 holding requirement for shareholder proposals
  - Modifying rules to broaden eligibility for status as smaller reporting companies and non-

- accelerated filers (up to \$250 million)
- Expand Regulation A eligibility to include Exchange Act reporting companies
- **Equity market structure**
  - Encourages the Securities and Exchange Commission (SEC) to evaluate whether to allow issuers to determine the tick size for trading their stocks, and whether to limit potential tick sizes to a small number of standard options to manage complexity
  - Allowing issuers of less liquid stocks to suspend unlisted trading privileges (UTP) for their securities and select the exchanges and venues on which their securities will trade.
  - Recommends the SEC update rules to mitigate potential conflicts from maker-taker exchange models and payment for order flow arrangements
  - Suggests the SEC consider whether SRO rules establishing data fees are “fair and reasonable”, “not unreasonably discriminatory”, and an “equitable allocation”
  - Supports an access fee pilot program
  - Recommends that the SEC exempt less liquid stocks from the restrictions on maker-taker rebates and PFOF if it would promote greater market making
  - Recommends the SEC consider amending rules to enable competing market data consolidators to provide an alternative to the Securities Information Processors (SIPs).
- Recommends SEC consider amending the Order Protection Rule (OPR) to give protected quote status only to exchanges that offer meaningful liquidity and opportunity for price improvement.
- **Treasury market**
  - Recommends further study of potential solutions by regulators regarding clearing and settlement arrangements in Treasury interdealer broker market
  - Reiterates recommendations in the Banking Report to amend regulation to improve availability of secured repo financing
- **Corporate Bond Liquidity**
  - Reiterates recommendations from the Banking Report to
  - improve secondary market liquidity
- **Securitization**
  - Recommends banking regulators rationalize the capital required for securitized products and that bank capital requirements for securitization exposures account for the magnitude of credit risk sold or transferred
  - Recommends the Federal Reserve consider adjusting the global market shock scenario for stress testing to fully consider the credit quality of underlying collateral
  - Recommends high-quality securitizations with a proven track record receive consideration as level 2B high quality liquid assets (HQLA) for purposes of the liquidity

- coverage ratio (LCR) rule and the net stable funding ratio (NSFR)
- **Derivatives**
    - Suggests greater harmonization between the SEC and Commodity Futures Trading Commission (CFTC), and includes several suggestions for margin requirements for uncleared swaps
    - Recommends CFTC and SEC provide clarity around the cross-border scope of regulations
    - Recommends CFTC complete its position limits rules with a focus on deterring market manipulation and other fraud
  - **Financial Market Utilities**
    - Recommends Federal Reserve review risk posed by lack of Federal Reserve Bank deposit account access for FMUs
    - Recommends future CCP stress testing by CFTC incorporate additional products and scenarios
  - **Regulatory Structure and process**
    - Recommends CFTC and SEC conduct comprehensive review of roles and responsibilities of self-regulatory organizations (SROs)
    - Reaffirms enhanced cost-benefit analysis for agencies and SROs
  - **International aspects of capital markets regulation**
    - Recommends US agencies coordinate policy before and after international engagements

*Key Point:*

- *OMB Director Mick Mulvaney outlined 15 proposals to reform the NFIP, including establishing a means-tested affordability program, addressing repetitive loss properties, and eliminating the WYO non-compete clause.*

On October 4, Office of Management and Budget (OMB) Director Mick Mulvaney sent a [letter](#) to Congressional leaders outlining the Administration's flood insurance reform proposals. The letter suggested that the National Flood Insurance Program (NFIP) is not designed to handle catastrophic losses like those caused by Hurricanes Harvey, Irma and Maria, and that it is not fiscally sustainable in its current form.

The letter outlined fifteen proposals for reform of the NFIP: (1) Establish means-tested affordability program for policyholders earning less than 80 percent of area median income (AMI) starting in 2021; (2) Identify and address multiple-loss properties; (3) Authority to transfer funds between the Reserve Fund and the National Flood Insurance Fund; (4) Increase the Reserve Fund Assessment; (5) Phase out new NFIP policies for newly-constructed homes and commercial; (6) Amend and modernize the NFIP "Part A" authorities and improve program design; (7) Remove barriers to switching to private policy; (8) Eliminate the Write Your Own (WYO) company non-compete clause; (9) Eliminate "pain points" related to proof of loss; (10) Make data available to the private market; (11) Disclose flood risk before real estate transactions close; (12) Use replacement cost value in setting rates; (13) Distinguish between coastal and inland areas in setting rates; (14) Address Endangered Species Act complexities with the NFIP; and (15) Study the efficacy of the mandatory purchase requirement.

### *White House Releases Flood Insurance Reform Proposals*

In September, Congress included a short-term extension of the program, which is set to expire after December 8, 2017.

### ***House Financial Services Committee Holds SEC Oversight Hearing***

#### ***Key Points:***

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

On October 4, the House Financial Services Committee held a hearing to examine the agenda, operations and budget of the Securities and Exchange Commission (SEC). SEC Chairman Jay Clayton testified on the recently announced SEC data breach, and his written testimony outlined the regulatory agenda for the SEC. Chairman Jeb Hensarling (R-TX) commended Clayton for the changes he has made during his tenure at the SEC. He said the previous SEC chair failed to develop a capital formation agenda, but he said Clayton has emphasized the need to reverse the decline in IPOs. He stated that SEC disclosure requirements should be focused on materiality, rather than on social goals. Hensarling said the Committee has serious concerns about the cybersecurity systems and the data breach at the SEC. He urged the SEC to delay the implementation date of the Consolidated Audit Trail (CAT) until the appropriate safeguards are in place to protect the data collected.

Chairman Jeb Hensarling (R-TX) and Representatives Ann Wagner (R-MO) and Claudia Tenney (R-NY) spoke in opposition to the Department of Labor's (DOL) fiduciary duty rule and asked about the SEC's efforts to address this issue. Clayton said he has focused on this issue, including working with Secretary of Labor Alexander Acosta to address it. He stressed the importance of investor choice and the need for clarity and consistency in the

market. Clayton said the next step would be a rule proposal, which the SEC is working on with the DOL.

Representatives Bill Huizenga (R-MI), Randy Hultgren (R-IL) and Warren Davidson (R-OH) raised concerns with the security of the data collected by the CAT. Davidson stated that he is working on legislation related to cybersecurity and the CAT. Clayton said the SROs have an obligation to get the CAT up and running, noting that this obligation includes ensuring appropriate cybersecurity. He said the SEC will not take CAT data until they are sure it is secure. Representative Joyce Beatty (D-OH) asked if it is necessary for the CAT to collect Social Security numbers and what value this information has to the SEC. Clayton said he has examined the value of collecting PII. He stated that it can be valuable in certain cases, such as in investigations of insider trading. He stated that he is examining whether this data needs to be collected all the time.

Representative Carolyn Maloney (D-NY) said the SEC is working on an access fee pilot program. She suggested that the pilot should have a zero rebate or fee bucket. Clayton said a pilot is under consideration, and while nothing definitive has been decided, a zero rebate bucket is under consideration.

Representatives David Scott (D-GA) and Gwen Moore (D-WI) stated that they are working with Representative Keith Rothfus (R-PA) on the Consumer Financial Choice and Capital Markets Protection Act ([H.R. 2319](#)), which would modify the SEC's rules on money market funds (MMFs). Clayton said he is aware of the shift in assets in the MMF space. He stated that he is examining this issue. He said it is too early to say whether the SEC was right or wrong.

### ***House Passes the Municipal Finance Support Act***

#### *Key Point:*

- *The House passed legislation to allow municipal obligations to be treated as level 2B high quality liquid assets.*

On October 3, the House passed the Municipal Finance Support Act ([H.R. 1624](#)) by a voice vote. The bill, introduced by Representative Luke Messer (R-IN), would require Federal banking agencies to treat certain municipal obligations as level 2B high quality liquid assets (HQLA). The bill was previously reported out of the House Financial Services Committee on July 25, by a vote of 60-0. The Committee adopted an amendment requiring that regulators treat municipal bonds as no lower than level 2B liquid assets, rather than level 2A as originally introduced.

The bill has been referred to the Senate Banking Committee for consideration, where companion legislation (S.828) has also been introduced.

### ***Senate Confirms Randal Quarles as a Federal Reserve Board Governor***

#### *Key Point:*

- *The Senate confirmed Quarles as a member of the Federal Reserve by a vote of 65-32.*

On October 5, the Senate confirmed Randal Quarles as a member of the Federal Reserve Board of Governors for the remainder of a 14-year term expiring January 31, 2018, by a vote of 65-32. By unanimous consent, the Senate also confirmed Quarles for his nomination to a 4-year term as the Federal Reserve's Vice Chairman for Supervision.

Quarles' confirmation leaves the Federal Reserve with two vacant board member positions. In addition, Chair Janet Yellen's term

as chair expires on February 3, 2018, while her term as a member of the Board expires on January 31, 2024. President Trump has yet to announce a nominee to serve as chair.

### ***CFPB Finalizes Payday Lending Rule***

#### *Key Point:*

- *The rule implements a full payment test which requires lenders to assess borrowers' ability to repay.*

On October 5, the Consumer Financial Protection Bureau (CFPB) issued a [final rule](#) on payday, vehicle title, and certain high-cost installment loans. The rule imposes a "full payment test" which requires lenders to assess a consumer's ability to repay a loan. A CFPB [fact sheet](#) stated that:

Lenders are required to determine whether the borrower can pay the loan payments and still meet basic living expenses and major financial obligations both during the loan and for 30 days after the highest payment on the loan. For payday and auto title loans that are due in one lump sum, full payment means being able to afford the total loan amount, plus fees and finance charges within two weeks or a month. For longer-term loans with a balloon payment, full payment means being able to afford the payments in the month with the highest total payments on the loan.

The fact sheet further explained that "ability-to-repay protections apply to loans that require consumers to repay all or most of the debt at once, including payday loans, auto title loans, deposit advance products, and longer-term loans with balloon payments." It also noted, "Consumers may take out a short-term loan of up to \$500 without the full-payment test if it is

structured to allow the borrower to get out of debt more gradually.”

Additionally, the rule would impose a 30 day “cooling-off period” after a sequence of three covered short-term loans or longer-term balloon-payment loans.

The rule will go into effect 21 months after the date of publication in the Federal Register.

## **UPCOMING EVENTS**

### **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.

***SEC Open Meeting:*** The SEC will hold an open meeting to consider two items: (1) whether to propose amendments based on the recommendations in the staff’s Report on Modernization and Simplification of Regulation S-K, as required by Section 72003 of the Fixing America’s Surface Transportation Act, and to modernize and simplify certain disclosure requirements in Regulation S-K and related rules and forms; and (2) certain parallel amendments to investment company and investment adviser rules and forms.

***Financial Services Markup:*** The House Financial Services Committee will hold a [markup](#) of 23 financial services related bills, including legislation dealing with bank systemic risk designations, the Consolidated Audit Trail, data security, capital formation, protection of source code, commercial real estate, the Home Mortgage Disclosure Adjustment Act, the Consumer Financial Protection Bureau, the

fiduciary duty rule, and sanctions on North Korea.

### **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).

***HUD Oversight:*** The House Financial Services Committee will hold a hearing entitled “The Future of Housing in America: Oversight of the Department of Housing and Urban Development.” Secretary of Housing and Urban Development Ben Carson will testify at the hearing.

### **October 18**

***Advisory Committee on Economic Inclusion:*** The Federal Deposit Insurance Corporation (FDIC) will hold a meeting of its Advisory Committee on Economic Inclusion (ComE-IN).

*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**

### **FERC Proceeds with “Grid Resiliency” Proposal**

*Key Points:*

- *FERC is seeking public comments on a proposed rule to incentivize generating capacity*

*that can support the “reliability and resiliency” of the electric grid.*

- *The proposal would provide incentives for operation of coal and nuclear power generation.*
- *Secretary of Energy Rick Perry submitted the rule to FERC on September 28, utilizing a statutory process that requires the Commission to consider the proposal “in an expeditious manner”.*
- *FERC has set a deadline for initial public comments on the proposed rule of October 23, and on Wednesday issued a series of questions for commenters to address.*

On October 2, the Federal Energy Regulatory Commission (FERC) issued a [“Notice Inviting Comments”](#) on the [“Grid Resiliency Pricing Rule”](#) Notice of Proposed Rulemaking (NOPR). Initial comments are due on October 23, 2017. Reply comments are due by November 7, 2017. Secretary of Energy Rick Perry submitted the NOPR to FERC on September 28, 2017 under the authority provided by Section 403 of the Department of Energy Organization Act ([42 U.S.C. 7173](#)). In his [transmittal letter](#) to FERC, Perry describes the NOPR as requiring “Commission-approved organized [electricity] markets to develop and implement market rules that accurately price generation resources necessary to maintain the reliability and resiliency of our Nation’s electric grid...” The NOPR would allow “the full recovery of costs of certain eligible [generating] units physically located within the Commission-approved organized markets...[that are] able to provide essential energy and ancillary reliability services and have a 90-day fuel supply on site in the event of supply disruptions caused by emergencies, extreme weather, or natural or man-made disasters.” The proposal would incentivize the operation of nuclear and coal-generating facilities that are best positioned to meet the standard for storage of a 90-day fuel supply on site.

On October 4, FERC issued a [series of questions](#) for parties to address in comments on the proposed rule. Questions include:

- “What is resilience, how is it measured, and how is it different from reliability?”
- “What levels of resilience and reliability are appropriate?”
- “What impact has the retirement of [coal and nuclear] resources had on reliability and resilience...to date?”
- “Is fuel diversity within a region or market itself important for resilience?”
- “As the proposed rule focuses on preventing premature retirements, should a final rule be limited to existing units or should new resources also be eligible for cost recovery? Should it also include repowering of previously retired units?”
- If technically capable of sustaining output for a sufficient duration (and meeting other relevant requirements), should resources such as hydroelectric, geothermal, dual-fuel with adequate on-site storage, generating units with firm natural gas contracts, or energy storage (each of which might have a demonstrable store of energy to draw upon to sustain an electrical output, if not necessarily fuel) also be eligible?”
- “The proposed rule defines eligible resources as having a 90-day fuel supply. How should the quantity of a given resource’s 90 days of fuel be determined?”
- “As the proposed rule references the need for resilience due to extreme weather events, including hurricanes, should there be any other eligibility criteria for the resource or fuel supply (e.g., storm hardening)?”
- “The proposed rule lists compensable costs that should be included in the rate as operating and fuel expenses, costs of

capital and debt, and a fair return on equity and investment. Are there other costs that would be appropriate to be included in the rate? Would any of the listed costs be inappropriate for inclusion?”

In his transmittal letter to FERC, Perry called on the Commission to “consider and complete a final action on the rule proposed therein within 60 from the date of the publication...in the Federal Register.” Perry’s transmittal letter also detailed the Department’s arguments for promulgating and implementing the rule, emphasizing that “more work needs to be done to preserve [the]...generation resources that have the essential reliability and resiliency attributes needed to keep the lights on for all Americans in times of crisis—including on-site fuel supplies and the ability to provide voltage support, frequency services, operating reserves, and reactive power.”

### Hearing for EPA Nominees

#### Key Points:

- *On Wednesday, the Senate Environment and Public Works Committee held a hearing on four nominees for EPA posts, as well as the nomination of a Nuclear Regulatory Commission member to another term.*
- *The nominees for the posts of Assistant Administrator for Toxic Substances, and Assistant Administrator for Air and Radiation faced extensive questioning and the most vocal opposition for the Committee’s Democrats.*

On October 4, the Senate Environment and Public Works Committee held a [hearing](#) on the following nominees: 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.

In his [opening statement](#), Chairman John Barrasso (R-WY) praised the four nominees, saying “[e]ach one is a well-qualified individual and will bring a wealth of experience and expertise to a critically important role in protecting America’s public health and safety.” Barrasso criticized Senate Democrats for what he called “blind opposition to all of this administration’s EPA nominees”.

In his [opening statement](#), Ranking Member Tom Carper (D-DE) declared his “serious and unresolvable concerns with” the nominations of Wehrum and Dourson. Carper asserted that Dourson has a “long record of recommending chemical safety standards that are as much as thousands of times less protective than those recommended by regulators.” Carper noted that he opposed Wehrum’s nomination to the same post in the Bush Administration “due to concerns that he deferred too frequently to industry rather than protecting public health”.

The nominees responded to Senators’ questions on a range of environmental policy issues.

Senator Joni Ernst (R-IA) asked Wehrum if he would uphold the Renewable Fuel Standard (RFS) program, which mandates the blending of set volumes of ethanol and other biofuels into the transportation fuel supply. Wehrum said he would uphold the law. Ernst asked Wehrum if he believes the major regulatory actions that change underlying operation of the RFS should be subject to public notice and comment. Wehrum said he agrees because if the RFS regulations are changed those changes

should be implemented through notice and common rulemaking.

Ranking Member Carper asked Wehrum how it is good for public health if the Mercury and Air Toxics Rule is revoked. Wehrum said the U.S. Supreme Court found the EPA did not properly take into account the rule's costs and therefore the standards need to be revised.

Senator John Boozman (R-AR) asked Ross how he plans to change the EPA-state dynamic. Ross said he strongly believes in cooperative federalism. He added it is important to work personally with the states and listen to what they have to say.

Senator Ben Cardin (D-MD) asked about the Chesapeake Bay Program, which he called a “unique program” that brings together all stakeholders, including the states. Ross called the Bay “a treasure”. Cardin noted that the Committee voted to reauthorize the Program at higher funding levels than current appropriations. Cardin also emphasized the importance of the “federal government’s significant role” in the Chesapeake Bay Program.

## Upcoming Hearings and Events

### October 11

**Pending Legislation:** The House Natural Resources Committee’s Subcommittee on Federal Lands will hold a [hearing](#) on pending legislation.

**Outer Continental Shelf Energy Revenue Distribution:** The House Natural Resources Committee’s Subcommittee on Energy and Mineral Resources will hold a hearing on the “[Accessing Strategic Resources Offshore \(ASTRO\) Act](#).”

### October 12

**Department of Energy:** The House Energy and Commerce Committee’s Energy Subcommittee will hold a [hearing](#) titled, “Department of Energy Mission and Management Priorities”. Secretary of Energy Rick Perry is scheduled to testify.

**Columbia River Power System/Federally Integrated Fish Species:** The House Natural Resources Committee’s Subcommittee on Water, Power and Oceans will hold a hearing on: legislation “to provide for operations of the Federal Columbia River Power System pursuant to a certain operation plan for a specified period of time” ([H.R. 3144](#)); and the “Federally Integrated Species Health (FISH) Act” ([H.R. 3916](#))

*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

### SASC/HASC Hearings on Afghanistan

*Key Points:*

- *Top Trump Administration defense officials explain more on the new strategy for operations in South Asia and diplomatic efforts*
- *McCain threatens to use Congressional means of impeding the Administration if officials are not more engaging and forthcoming*

At an October 3 [hearing](#), the Senate Armed Services Committee heard testimony from Secretary of Defense James Mattis and the Chairman of the Joint Chiefs of Staff General James Dunford Jr. on the status of operations in Afghanistan.

Chairman John McCain (R-AZ) stated that as “Mattis and [U.S. Force Afghanistan Commander] General [John] Nicholson have

already testified to this committee, America is losing the war in Afghanistan...[and] [t]hat is unacceptable.” He asserted that “[m]uch of the responsibility for this failure rests with the prior administration, which was consistently more interested in leaving Afghanistan than succeeding there.” McCain stated that “[w]hen [President Donald Trump] announced a new strategy for Afghanistan and South Asia on August 21, it came after months of delay and indecision, but it was encouraging in some respects.” He contended that “[a]t the same time, in the six weeks since the President made his announcement, this Committee and the Congress, more broadly, still does not know many of the crucial details of this strategy.” McCain claimed that “[t]his is totally unacceptable... I repeat, this is totally unacceptable.” He said that “I must say it is bizarre that, for a hearing of such importance, our witnesses failed to submit written testimony to this committee.” McCain explained that “[w]e want to be your partners, but this Committee will not be a rubber stamp for any policy or president.” McCain stated that “[w]e must be well-informed...[and] convinced of the merits of the Administration’s actions.” He remarked that “unfortunately, we still have far more questions than answers about this new strategy.

Ranking Member Jack Reed (D-RI) noted that Trump’s speech represents a continuation of the U.S.’ missions of counterterrorism and capacity building “to ensure that extremist groups never again use Afghanistan as a base to attack the United States.” He noted that Nicholson “testified before this committee that the conflict in Afghanistan had reached a stalemate, and stated the need for enhanced authorities and several thousand more troops to carry out the train, advise and assist mission at lower levels within the Afghan national defense and security forces, and across the Ministry of Defense and the Ministry of

Interior.” Reed contended that “[w]hile I support the increase in troops and additional authority, some have suggested that we have already been down this path, that a surge in the past of over 100,000 troops could not create the conditions on the ground to successfully bring this conflict to an end.” He added that “what we’ll ask you in many different ways what will be different about this effort that will bring about a change that didn’t happen in previous efforts, with even greater troop numbers and associated authorities.” Reed stated that “this conflict will not be won on the battlefield” and Trump claimed that “military efforts in Afghanistan will serve to set the conditions for the ultimate goal of the South Asia strategy, a peace settlement between the government of Afghanistan and the Taliban that protects U.S. interests.” He noted that Trump asserted that “the strategy will integrate all instruments of American power: diplomatic, economic and military; [h]owever, we have heard very little about the diplomatic and economic aspects of the plan.”

Mattis stated that “[o]ur goal is a stabilized Afghanistan, achieved through an Afghan- led, Afghan-owned peace process.” He stated that “[w]ar is principally a matter of will, and the international community is making clear that it will stand alongside the Afghans committed to this fight.” Mattis stated that “[a]s we have shifted to a conditions-based strategy, not time-based or troop-number-focused, ambiguity has been removed.” He stated that “[t]he elements of this strategy are a tangible demonstration of our resolve...[and] [a]ll this will be carried out by, with and through our Afghan partners and within the coalition framework, ensuring this campaign is politically, fiscally and militarily sustainable.”

Dunford stated that “Mattis directed the department to conduct a detailed failure analysis to identify the root causes for the lack

of progress in Afghanistan...[a]nd he directed we provide targeted solutions.” He said that “[i]nformed by these findings, our commanders developed and Secretary Mattis approved a new operational approach to break the stalemate and bolster Afghan capabilities.” Dunford claimed that “[t]he new approach supports the president’s broader strategy by expanding our advisory efforts to the tactical level, increasing the combat support we provide through our Afghan partners and enhancing authorities to our commanders.” He explained that “[w]e believe these adjustments will improve the ability of the Afghans to conduct offensive operations, defend critical terrain and reduce Afghan casualties...[and] [t]he emphasis is on providing effective support to the over 300,000 Afghans we have trained and equipped, so they can secure their own country.”

McCain said that “16 years ago, I think most of us would have been surprised to think that, 16 years later, we would still be involved in a conflict in Afghanistan.” He asserted that “[w]e’ve had as many as 100,000 troops in Afghanistan at one time or another, and it didn’t end the conflict...[and] I’d like for you to tell me how the inclusion of 2,500 is going to change the battlefield equation, including the fact that we have a classic West Point textbook example of an enemy that is based in a sanctuary, that has a sanctuary in Pakistan.” McCain stated that “[a]nd then I’d like to finally repeat again, we have had a lack of communication and a lack of information to this committee that, to me, is very disturbing...[b]ut I want to tell you again, we will not accept a lack of information, a lack of strategy, a lack of coordination with this committee.” He noted that “there are several methods, thanks to the Constitution, that we have to try to force a change in that relationship.”

Reed said “following the [McCain’s] comments about the need to essentially describe in more detail this strategy, which conceptually seems to be appropriate, but the devil, as they say, is in the details, specifically with respect to Pakistan.” He asked what the U.S. will do with respect to Pakistan and the options being considered. Mattis stated that “we’re working with the international community, including Secretary General [Jens] Stoltenberg of NATO, to ensure that we go in with a unified NATO position vis-a- vis Afghanistan.” He noted his trip to India “to further integrate what the Indians are doing in terms of development aid and diplomatic efforts, to ensure that South Asia’s stability and peace are prioritized not just by us, or not just by us in Afghanistan, but across South Asian.” Mattis added that he could discuss further options in private with Reed regarding Pakistan.

Later on October 3, Mattis and Dunford appeared at a House Armed Services Committee [hearing](#) on U.S. strategy in South Asia. Chairman Mac Thornberry (R-TX) stated that “US strategy in Afghanistan has been to train an Afghan army that can fight Al Qaeda, the Taliban, and the Islamic State, and then largely to withdraw.” He added that “[a]fter 16 years, it’s not surprising that many people think that strategy has failed...[and] [i]n fact, it hasn’t really been tried.” Thornberry asked Mattis and Dunford to opine “on the extent to which the lack of stability in approach, the lack of stability in commitment, the lack of stability in funding, as we begin the ninth consecutive year under a [continuing resolution] to what extent those Washington driven aspects have contributed to Afghanistan not being as successful so far as we would like it to be.”

Mattis responded that “war is primarily a matter of willpower and what we have to demonstrate, based on where the situation is at this time, is an implacable will that the

international community, and that means America first among all of them, is going to stand by this effort.” He stated “that has to do with standing by certain policies, standing by the Afghan military, standing by budgets -- you know, predictability so we keep our own military strong.” Mattis asserted that “[i]t’s all part of setting a cohesive framework within which we can achieve tangible results and not face what Ranking Member [Adam] Smith (D-WA) rightly is concerned with, a prolonged stalemate.” He claimed that “[w]hen you set timelines, you’re telling the enemy what you will not do...we will not fight past a certain day...[and] [w]hen you set troop caps, you’re saying what you won’t do.”

Smith said to Mattis that “I guess what you’ve outlined is kind of what we’ve all been hoping for 16 years, is if we just stay there long enough, in great enough numbers, Afghanistan will eventually be able to defend itself and we won’t have to be there anymore.” He asked “what is the confidence you have that this change can address not just whatever shortcomings might have been in previous administration strategies, but the reality of Afghanistan and Pakistan.” Mattis responded that “[t]he Taliban could hope repeatedly that whether we’ve over-stayed what timeline we gave ourselves, we had still said we’re leaving as soon as we can.” He contended that “[w]hat we’re saying now is there’s going to be an end to the war.” Mattis asserted that “[i]t’s going to end because we don’t want the threat to America...[w]e don’t want the threat to our allies...[a]nd the best way to do that, as Secretary General Stoltenberg put it, make certain the Afghans have a force that can deal with this internally.”

*For more information on defense issues you may [email](mailto:Michael.Kans@williamsandjensen.com) or call Michael Kans at 202-659-8201.*

## **HEALTH**

### **Committees Report CHIP Reauthorization Legislation**

#### *Key Points:*

- *The Senate Finance Committee favorably reported the Keep Kids’ Insurance Dependable and Secure (KIDS) Act of 2017 by voice vote.*
- *The House Energy and Commerce Committee favorably reported the Helping Ensure Access for Little Ones, Toddlers, and Hopeful Youth by Keeping Insurance Delivery Stable Act of 2017 (HEALTHY KIDS Act) by roll call vote 28-23.*

On October 4, both the Senate Finance Committee and the House Energy and Commerce Committee marked up legislation to reauthorize the Children’s Health Insurance Program (CHIP).

Senate Finance Committee Chairman Orrin Hatch (R-UT) stated CHIP remains a prime example of how government can work in a bipartisan manner. Ranking Member Ron Wyden (D-OR) stressed debating amendments in the Committee would have put children at risk and thanked Committee members for not offering amendments. The bill was favorably reported by voice vote.

The House Energy and Commerce Committee debated several amendments to the legislation. The Committee adopted amendments to provide Medicaid relief in the Virgin Islands and allow parent mentors to qualify for CHIP outreach and enrollment grants. Democrats offered several amendments which were all rejected. Chairman Greg Walden (R-OR) noted the House’s version of CHIP extension is nearly identical to the bill advanced by the Senate Finance Committee. He expressed support for a pay-for which would require Americans making over \$500,000 a year to pay more for their Medicare Part B and D

premiums. Ranking Member Frank Pallone (D-NJ) expressed concern efforts continue to sabotage the Affordable Care Act which will directly harm CHIP and community health centers. The Committee favorably reported the bill on a party line vote 28-23.

## Upcoming Hearings and Meetings

### October 11

**Universal Health Care:** The Center for Global Development will hold a discussion on “What’s In, What’s Out? Designing Benefits for Universal Health Coverage.”

**340B:** The House Energy and Commerce Committee will hold a hearing on “Examining How Covered Entities Utilize the 340B Drug Pricing Program.”

**Opioids:** The House Energy and Commerce Committee will hold a “Member Day: Testimony and Proposals on the Opioid Crisis.”

### October 11-13

**MACRA:** Global Health Care will hold a summit on Medicare Access and CHIP Reauthorization Act Merit-Based Incentive Payment System/Alternative Payment Models.

### October 12

**Opioids:** The U.S. Chamber of Commerce will host a discussion on “The Opioid Epidemic: From the Front Lines to the Boardroom, Best Practices & Recommendations for Addressing Substance Use.”

### October 17

**Drug Pricing:** The Senate Health, Education, Labor and Pensions Committee will hold a

hearing on “The Cost of Prescription Drugs: How the Drug Delivery System Affects What Patients Pay, Part II.”

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

## TRANSPORTATION

### **Committee Examines Rail As Part of An Infrastructure Package**

#### *Key Point:*

- *Members and witnesses discussed how the Trump Administration might best benefit passenger, freight, and short line rail through use of grants, loans, tax credits, and other funding mechanisms*

On October 4, the House Transportation Committee’s Railroads, Pipelines, and Hazardous Materials Subcommittee held a [hearing](#) entitled “Building a 21st Century Infrastructure for America: Rail Stakeholders’ Perspectives.” Topics discussed in the hearing include, but are not limited to: (1) Rail Projects; (2) Northeast Corridor; (3) Public-Private Partnerships; (4) Positive Trail Control; (5) Tank Car Updates; (6) Route Restoration; (7) Buy America; (8) CREATE Project; (9) Railroad Rehabilitation and Improvement Financing Program; (10) Border Adjustment Tax; (11) Amtrak; (12) High Speed Rail; (13) Short Line Rail; (14) Government Review; and (15) Freight.

Chairman Jeff Denham (R-CA), in a [statement](#), noted that much has been said about an infrastructure package, but today the Subcommittee wants to understand from stakeholders just what such a package should look like and how it could help rebuild and improve the nation’s infrastructure. He suggested that while they have accomplished

quite a lot over the last several years, an infrastructure package provides an opportunity to build upon these past successes. Denham stated that as has been done with other major pieces of legislation, the Subcommittee needs to be pragmatic and needs all parties' input in order to deliver a bipartisan plan. He explained railroads are an integral part of North America's infrastructure network and, in turn, the nation's economic competitiveness. He noted from the building of the nation's first railroad in 1828 until now, both passenger and freight railroads have played a central role in the nation's development. Denham suggested the U.S. freight system is the best in the world, and passenger rail has been seeing increased ridership. However, he stressed that the nation should not "stand pat" and, as an infrastructure package is developed, it should address all modes, including rail.

Denham explained the goal of this hearing will be to gather opinions and reexamine the federal government's role, as well as discuss what has worked in the past and what needs to be changed. He suggested that while they should prioritize investment and ensure they invest in projects that will increase efficiency, safety, and reliability, policy reforms can also add value by reducing the cost of projects. Specifically, Denham stated there is opportunity here to make reforms to cut through red tape and ensure rail projects are not unnecessarily left behind due to burdensome processes. He explained doing so can help support a strong, efficient railroad industry, to prevent the highways from becoming more congested, so that shippers can get their products to market, and to create good paying American jobs. He stated today, the Subcommittee will take the first step by hearing from stakeholders on how to accomplish these goals as they develop an infrastructure package. He expressed his interest in hearing about ways they can continue to improve on existing funding

programs, like Railroad Rehabilitation and Improvement Financing (RRIF) and railroad grant programs. Denham noted stakeholders can provide unique opinions on best ways to improve the infrastructure through enhanced safety, reliability, efficiency; they can discuss expansion opportunities for such programs; and offer ways to leverage investments and promote public-private partnerships.

Full Committee Ranking Member Peter DeFazio (D-OR) stated this is the third hearing on infrastructure initiatives. He noted the promises made during the campaign yet noted that no concrete details have been released. He stated he has started a "clock" on the costs of congestion in America. DeFazio stated the most substantive thing from the Administration has been statements on asset recycling. He noted problems with that proposal. He explained 24 states have already enacted higher gas taxes and other means to raise funds but there is no willing partner in the federal government in terms of infrastructure. He suggested there should be a look back provision when considering funding going forward so that states that have already taken action do not miss out. DeFazio stated rail needs more focus as it is more efficient than trucking. He stated he was sad that the President has again made attempts to "kill" Amtrak.

Association of American Railroads President and Chief Executive Officer Edward Hamberger stated freight railroads operating in the U.S. are the best in the world. He noted they are getting safer and they are efficient. He noted rail is 4 times more fuel efficient than trucks. Hamberger explained the demand for freight movement will only grow. He suggested it is in the nation's best interest that the benefits of freight rail continue to accrue. He stated rail has been spending more on infrastructure than ever before, namely \$74

million a day. Hamberger stated freight rail infrastructure is in its best state ever. He stated government regulators should not be given control over rail as investments would shrink and rail services would become slower. He suggested incenting more public-private partnerships as this expands the number of projects which can be implemented. He noted the Chicago CREATE program. Hamberger stated rail grade crossings are another area which needs dedicated funding. He stated the 45G short line tax credit is an important program which should be continued. He stressed the need to eliminate outdated regulations. He applauded efforts to address the burdensome permitting process and suggested more should be done. He stated modal inequities need to be addressed. He stated most modes of transportation operate on publicly funded systems. Hamberger applauded the reaffirmation of the “user pays” policy and he suggested a weight-distance tax for trucks. He added that commuter rails need funding as well.

Amtrak Co-Chief Executive Officer Charles “Wick” Moorman stated Amtrak is focused on transforming the company. He stated they are focused on increasing safety, reliability and efficiency. He noted Amtrak has been in business for 46 years and is a proven industry leader in the delivery of rail passenger services. Moorman noted the record years of increased ridership. He stated passenger rail is a vital part of the infrastructure but funding is not keeping pace. He noted issues with the Northeast Corridor (NEC) and the aging system. He endorsed the development of a comprehensive infrastructure plan with rail investments. Moorman stated they need additional resources. He explained there are four crucial elements of an infrastructure package. First, he suggested the need to rebuild the NEC. Second, he explained the state supported corridors need to be supported and expanded.

Third, Moorman stated long distance services need to be reexamined to ensure it is doing what is needed. He articulated the need for help to ensure those lines have the funding they need. Finally, he stated there is a lot of aging equipment. He noted they are engaging in self-help but he stated federal help will be needed to replace some of this equipment. He explained they have a “ready to build” campaign and he stated there is a historic opportunity to invest in passenger rail.

## Upcoming Hearings and Events

### October 11

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

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

## TECHNOLOGY

### Equifax Breach Hearings

#### *Key Points:*

- *In four hearings, the former Equifax CEO is pressed by Republican and Democratic Members on why the company didn’t better handle PII and whether federal regulations may have been violated*
- *Members on both sides suggested data security and breach notification legislation may be an appropriate response with some announcing plans to reintroduce bills from last Congress*

This week, there were four hearings on the Equifax breach as Members on both sides of the aisle questioned former CEO Richard

Smith on why the company's cybersecurity and information technology (IT) practices resulted in one of the largest breaches of personally identifiable information in American history. Many Members took issue with the sale of stock by some top officials the day before the breach was announced, and others questioned whether Equifax would ultimately profit from the breach by charging consumers fees for credit protection.

#### *House Energy and Commerce Committee*

On October 3, the House Energy and Commerce Committee's Digital Commerce and Consumer Protection Subcommittee held a [hearing](#) entitled: "Oversight of the Equifax Data Breach: Answers for Consumers." Topics discussed at the hearing included, but were not limited to: (1) Breach Timeline; (2) Stock Sales; (3) Remediation; and (4) Legislation.

Chairman Bob Latta (R-OH) said Americans deserve to know how their information was exposed and how Equifax is trying to solve the problem. He stated the ubiquity of the internet has led to new challenges in protecting privacy. He said the Equifax breach is "unprecedented" and unique because of the sensitivity of the information stolen. He wondered how hackers accessed the system without being detected. He also wondered what processes and procedures were in place in the event of a breach and if they were followed. He noted the retirement of top Equifax executives after the breach.

Ranking Member Jan Schakowsky (D-IL) stressed how "massive" the Equifax breach was. She said the breach is not "shocking." She argued credit agencies are a "treasure trove" for hackers. She noted people do not have control over what information they share with credit agencies. She said the government should not allow credit agencies to self-regulate. She noted how difficult it is to correct inaccuracies in

credit reports. She noted this is the third major breach of Equifax in the last two years. She said hackers exploited a known vulnerability. She noted some executives sold stock a few days after the breach but before it was reported. She said the Equifax Twitter account directed consumers to the wrong website. She said Equifax "deserves to be shamed." She noted Equifax lobbied for the "FCRA Liability Harmonization Act" (H.R.2359), which would protect companies like Equifax from class-action lawsuits. She argued credit agencies need embedded regulators. She said she is reintroducing the "Secure and Protect Americans' Data Act" (H.R. 4187) from the 114th Congress, which would establish data security standards and require fast reporting of data breaches.

Full Committee Chairman Greg Walden (R-OR) asked if personal financial data is vital to Equifax. Smith said it is vital. Walden noted Equifax is a \$13 billion company that possesses data on 820 million people worldwide. He asked if the information technology (IT) team notified the security team that they were using software with a known vulnerability. Smith said the security team notified the IT team of the vulnerability after the initial notification. He stated protocol was followed. Walden wondered how this happened when "so much is at stake." He said laws cannot "fix stupid." He asked if the human error was that people did not know the Apache software was running. Smith clarified that the human error was an individual failing to communicate that a patch should be applied. Walden asked if the individual knew the software was being used and needed to be patched but did not communicate this to the team that does patching. Smith said this is correct. Walden asked if there are any internal audits. Smith said the scanning device was the "double-check." He stated they are still investigating why the scanner did not detect the vulnerability. Walden

asked how regularly Equifax detects “incidents” or “suspicious movements.” Smith replied that there are millions of suspicious movements each year. He said it is not uncommon to have incidents.

Full Committee Ranking Member Frank Pallone (D-NJ) noted Smith expanded Equifax’s business in packaging and selling other people’s data. He asked how this deal benefits consumers. Smith said Equifax is part of a federally-regulated ecosystem that provides consumers with credit. He said credit bureaus allow consumers to access credit. Pallone asked if Equifax’s free credit lock service will require consumers to consent to Equifax sharing or selling information it collects from the service to third parties. Smith said it will be a web-enabled application that will allow consumers to lock and unlock their credit data. Pallone asked if consumers will opt-in to additional marketing arrangements when they use the service. Smith said Equifax is looking to create a service rather than a product. Pallone asked if consumers will be able to easily restrict the sharing of their data with third parties. Smith said he envisions that the consumer will be able to choose which companies have access to his or her data. Pallone noted TrustedID already offers a credit lock. Smith said the difference is that once the new service is released, consumers will more easily be able to toggle their credit lock. Pallone asked why Equifax did not extend the credit freeze program instead. Smith said the credit freeze process is cumbersome for the consumer.

*Senate Banking, Housing, and Urban Affairs Committee*

On October 4, the Senate Banking, Housing, and Urban Affairs Committee held a [hearing](#) on “An Examination of the Equifax Cybersecurity Breach.” Topics discussed in the hearing included: (1) Credit Freeze; (2) Social

Security Numbers; (3) Remedial Efforts; (4) Cyber Security; (5) Data Breach; (6) Insider Trading; (7) Mandatory Arbitration; (8) Compensation; and (9) Inaccurate Data.

Chairman Michael Crapo (R-ID) said cybersecurity is one of the largest threats facing the financial industry today. He expressed concern regarding the volume of consumer data that companies collect and store. He called for a meaningful discussion on how Congress and the private sector can address the amount of sensitive data being transferred. Crapo said the ability for consumers to receive credit is what differentiates the country from others. He noted that the data breach impacted 145 million people and exposed names, birthdays, social security numbers, and credit card numbers. He stated the committee is interested in the timeline of the breach, the suspicious trading of Equifax executives, any communication with the Federal Bureau of Investigation (FBI), and the remedial steps Equifax is currently undertaking. Crapo recalled a recent [op-ed](#) which argued that consumers should have the ability to control their own personal data.

Ranking Member Sherrod Brown (D-OH) stated that since 2005, Equifax has transitioned into a data analytics company with the majority of the 145 million affected people not knowing their data belonged to Equifax. He argued that Equifax is not interested in protecting consumer information and used the recent breach as an example of negligence. Brown noted that it has been ten weeks since the latest incident and Equifax has failed to provide sufficient answers. He said the company failed to properly address the overwhelming number of concerned customers with a “sloppy” website, a poorly executed call center, and the forced arbitration clause which was later removed. Brown argued that Equifax is a company that cannot be trusted and called on

the company to forfeit their right to consumer trust.

Senator Ben Sasse (R-NE) said there are a small number of credit bureaus in the United States that evaluate consumer ability to make large purchases. He asked how Equifax is handling the data that has already been accessed. Smith echoed his comments on the five remedial steps the company has done and the proposed products as sufficient methods. Sasse asked for a breakdown of state by state numbers of people impacted by the breach. Smith assured the Committee he would provide the information. Sasse noted the no-bid contract awarded to Equifax by the Internal Revenue Service (IRS). Smith said his understanding was that the contract was a renewal. Sasse asked Smith about insider trading allegations. Smith said the company notified the FBI on August 2 and three executives sold company stock on August 1 while following protocol to clear stock.

Senator Jon Tester (D-MT) asked Smith about initially discovering a potential breach. Smith said on March 8, a notification was distributed notifying suspicious activity. He said there was a communication breakdown regarding the patch in IT. Tester said on July 29, the company realized there was a hack and noted the three high-level executives who sold stock the following days. Tester asked if Equifax is liable for the damaged credit of the affected consumers. Smith reiterated that the services Equifax is offering are the correct remedial steps. Tester expressed concern with the handling of the issue and asserted that the impact of the delayed notification has severe consequences.

#### *Senate Judiciary Committee*

On October 4, the Senate Judiciary Committee's Privacy, Technology, and Law

Subcommittee held a [hearing](#) entitled: "Equifax: Continuing to Monitor Data-Broker Cybersecurity." Topics discussed during Panel I included, but were not limited to: (1) Cybersecurity; (2) Legislation; (3) Arbitration Clause. Topics discussed during Panel II included, but were not limited to: (1) Cybersecurity; (2) Legislation; (3) National Security.

Chairman Jeff Flake (R-AZ) said data brokers have created a culture that does not prioritize data security. He said security is treated as an expenditure that should be minimized. He noted there have been numerous hacks of data broker systems. He said Equifax was exploited by a vulnerability that had been identified by the Department of Homeland Security (DHS). He said hackers were able to repeatedly attack the system over a period of four months. He noted 145.5 million Americans had their personally identifiable information (PII) stolen.

Ranking Member Al Franken (D-MN) recalled the Committee has held multiple hearings on data security. He called data brokers the "perfect target" for hackers. He said the "gross failures" of Equifax led to the hack. He noted those who had their PII stolen face the threat of identity theft for the rest of their lives. He said this breach provides the opportunity for foreign governments to blackmail American citizens. He said Equifax has operated with little regard for American citizens. He stated Equifax does not "have to care" that it lost the data because Americans cannot take their PII elsewhere. He stated people are Equifax's product. He referenced a report that said one in five credit reports contain a significant error. He said Equifax's disregard for consumers was evident in the days after the breach when Equifax included an arbitration clause in its free credit monitoring offering. He questioned whether data brokers should exist.

Senator Thom Tillis (R-NC) asked when the patch was actually applied. Smith said the patch was applied when the portal was shut down. Tillis asked if it is true that the three credit agencies have similar consumer data. Smith said this is true. Tillis asked what is being done as an industry to secure data. Smith said there is an opportunity for the credit bureaus to work together to provide a single service. Tillis asked about public-private partnership. Smith said dialogue with the government would be beneficial. He questioned if the SSN is an effective and secure means of identification. Tillis asked if the credit locking service will only prevent information from being disseminated to institutions or if it will also opt out of business-to-business analytics transactions. Smith said locking a file prevents identity fraud. He said a credit lock is a secure way to prevent identity theft. Tillis advocated for government ensuring that these platforms are secure. He said Congress should focus on preventing future breaches rather than punishing Equifax.

Senator Amy Klobuchar (D-MN) said data breaches are inevitable. She noted the many problems with Equifax's remediation efforts. She asked if Equifax dedicated enough time and resources to remediation. Smith acknowledged that the volume on the website and call centers was overwhelming and they struggled to meet the demand. Klobuchar asked how Equifax can improve its security. Smith replied that the rate of change and increased sophistication of cyber-attacks is "unbelievable." He said Equifax prevents millions of cyber-attacks every year.

#### *House Financial Services Committee*

On October 5, the House Financial Services Committee held a [hearing](#) on "Examining the Equifax Data Breach." Topics discussed in the hearing included: (1) Public Notification; (2) Remedial Efforts; (3) Cybersecurity; (4)

Executive Compensation; (5) Small Businesses; (6) Future Breaches; (7) Insider Trading; (8) Credit Lock; and (9) Cyber Insurance.

Chairman Jeb Hensarling (R-TX), stressed the potential consequences that the breach will have on consumers and noted the lack of disclosure on Equifax's part. He said action by the Federal Trade Commission (FTC) and other regulators is required. He called on Congress to ensure that the appropriate agencies do their job. He said the increasing frequency of attacks clearly demonstrates the need for effective measures that prevent future cyberattacks. He said a consistent national standard for breach prevention that holds companies accountable is essential for consumer safety. He recalled the bipartisan security act that he argued is outdated and is in need of bipartisan legislation.

Ranking Member Maxine Waters (D-CA), said the massive breach at Equifax was a failure of safeguarding consumer data. She said the broken business models of the nation's credit agencies force consumers to use Equifax. She noted Equifax's lack of commitment regarding remedial efforts and called for a minority day hearing that allows the committee to probe more into the breach. She said now is not the time to sell consumers additional products and stressed the need for a complete overhaul of the industry. She noted her bill, the "Comprehensive Consumer Credit Reporting Reform Act of 2017" (H.R. 3755) that would shift the burden resulting from credit bureau mistakes away from the consumer. She said the bill would limit the amount of consumer data that companies are able to handle. Hensarling agreed to schedule a minority-led hearing.

Representative Warren Davidson (R-OH) expressed concern regarding the hierarchy within the company. He asked about the structure within the IT department of Equifax.

Smith said the head of IT reports directly to the general counsel which reports directly to the CEO. Davidson asked if there was any failure due to the structure of the company. Smith said changing the structure would not have changed the outcome. Davidson asked how trades within the company are approved and what the typical timeline is. Smith said there is a process of clearing trades that runs through the general counsel. He asserted, to his knowledge, that the individuals involved in the trades during the incident had no knowledge of the data breach. Davidson asked if the information provided to the counsel raised any concern. Smith said on the July 31, the only indication was a suspicious incident. He said the topic of insider trading is a priority of the board and stated that there is an internal investigation.

Representative Carolyn Maloney (D-NY) said consumers rely on the three credit bureaus to safeguard their financial information. She said the bureaus are required to comply with the Federal Trade Commission's (FTC) [Safeguards Rule](#) and called on the Commission to enforce the law. She explained the rule requires that Equifax has an IT program that can properly identify risk to the security of data and provide protection against such risk. She noted the Department of Homeland Security's (DHS) notification which concluded that Equifax systems were vulnerable and she argued that the company violated the Safeguards Rule. She asked Smith if Equifax violated the FTC Safeguards Rule. Smith said the company was in compliance with the rule and argued that the rule does not require 100 percent prevention of cyber breaches.

### FISA Reauthorization Introduced

#### *Key Points:*

- *A bipartisan package of extensions and reforms of Title VII of FISA is introduced*

- *The bill would sunset in six years and has already drawn criticism from civil liberties groups*

On October 5, House Judiciary Committee Chairman Bob Goodlatte (R-VA), Ranking Member John Conyers, Jr. (D-MI), Crime, Terrorism, Homeland Security, and Investigations Subcommittee Chairman Jim Sensenbrenner (R-WI), Crime, Terrorism, Homeland Security, and Investigations Subcommittee Ranking Member Sheila Jackson Lee (D-TX), and Courts, Intellectual Property and the Internet Subcommittee Ranking Member Jerrold Nadler (D-NY) introduced the "USA Liberty Act" ([H.R. 3989](#)), which "reforms and reauthorizes Section 702 of the Foreign Intelligence Surveillance Act (FISA), which is set to expire at the end of this year, to protect both national security and Americans' civil liberties" according to their [press release](#). The bill would extend some current provisions for another six years and revamp others. The provisions in question expire on December 31, 2017.

They further explained the bill:

The USA Liberty Act preserves the core purpose of Section 702: the collection of communications by targeting non-U.S. persons located outside the U.S. in order to identify and thwart terrorist plots against our nation and our citizens. The bill also creates a new framework of protections and transparency requirements to ensure that the government's use of Section 702 accords with principles enshrined in our Constitution that protect individual liberty. It provides new accountability measures to address the unmasking of U.S. persons' identities and new reporting requirements on the number of U.S. persons who have been swept up in Section 702 collection. The

bill also enhances national security by increasing penalties for those who leak classified information and calling on the intelligence agencies to share information with each other and with our allies to combat terrorism.

However, in an October 3 [letter](#), the American Civil Liberties Union and 58 organizations expressed their concern that media reports about a House Judiciary Committee FISA reauthorization “that the reform as described by the *New York Times* and *The Hill* would leave the so-called “backdoor search loophole” wide open.” They urged Members “to ensure that any reform proposal include a full fix requiring all agencies to obtain a warrant based on probable cause to search Section 702 data for information about U.S. citizens and residents in all investigations.”

Senate Intelligence Committee Chairman Richard Burr (R-NC) and Ranking Member Mark Warner (D-VA) are said to be working on their own reauthorization.

### Senate Homeland Reports Out Technology and IT Bills

#### Key Point:

- *In a multi-bill markup, the Committee moves targeted bills*

On October 4, The Senate Homeland Security Committee marked up and reported out a number of bills, including but not limited to:

- The “FITARA Enhancement Act of 2017” ([S. 1867](#))
  - This bill mirrors the companion bill passed by the House, H.R. 3243, which would remove the sunset dates in FITARA for the IT Dashboard and the PortfolioStat process of December 29, 2019 and extends

from October 1, 2018 to October 1, 2020 the sunset date for the Data Center Consolidation Initiative (DCCI). The House-passed “National Defense Authorization Act of FY 2018” (H.R. 2810) also contains this language.

- The “Hack the Department of Homeland Security Act of 2017” ([S. 1281](#))
  - As amended by the Hassan [substitute amendment as modified](#)
  - DHS “shall establish, within the Office of the Chief Information Officer, a bug bounty pilot program to minimize vulnerabilities of Internet-facing information technology of the Department.” Only “approved individual[s], organization[s], or compan[ies]” would be “temporarily authorized to identify and report vulnerabilities.”
- The “Connected Government Act” ([S. 1769](#))
  - As amended by the Hassan [substitute amendment](#)
  - This bill would require federal agencies to make new or updated public websites mobile-friendly to the extent possible
- The “Securely Expediting Clearances Through Reporting Transparency Act of 2017” ([H.R. 3210](#))
  - As amended by the McCaskill/Tester/Johnson [substitute amendment](#)
  - This bill would require the National Background Investigations Bureau (NBIB) a detailed a report on the backlog

of security clearance investigations, the White House must submit “to Congress a report that explains the process for conducting and adjudicating security clearance investigations for personnel of the Executive Office of the President, including White House personnel,” and whether the Suitability and Security Clearance Performance Accountability Council is working at cross purposes with the NBIB.

recommend remedies to President Trump.

U.S. and South Korean negotiators met on Wednesday in Washington, D.C. for a second special session on the U.S. - Korea Free Trade Agreement (KORUS). During the first session, U.S. negotiators called on South Korea to eliminate its remaining agricultural tariffs. At the conclusion of the second session, U.S. Trade Representative (USITR) Robert Lighthizer said that U.S. negotiators will begin “intensified engagement with Korea in an expeditious manner to resolve outstanding implementation issues as well as to engage soon on amendments that will lead to fair, reciprocal trade.” South Korean negotiators presented an analysis of KORUS’s benefits and its effect on the U.S. trade deficit. The Trump Administration identified South Korea’s 25 percent tariff on trucks as a major concern. Republican senators have said President Trump is still considering withdrawing from the agreement and Korean Trade Minister Kim Hyun-chong anticipates that this threat will continue to be used as leverage.

On Thursday, the U.S. International Trade Commission (ITC) ruled that washer imports have seriously injured the U.S. washer industry and can recommend safeguard remedies that could potentially ban imports for up to four years. The ITC began its Section 201 investigation also known as a safeguards investigation in May after Whirlpool asserted that LG and Samsung have relocated their production facilities to avoid antidumping duties. The ITC will vote on remedy on November 21 and must submit its recommendation to President Trump by December 4. President Trump then has the authority to impose tariff increases, quantitative restrictions, and orderly marketing agreements, or some combination of these remedies.

## Upcoming Hearings and Events

### October 12

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

*For more information on technology issues you may [email](#) or call Michael Kans at 202-659-8201. Henry Homans and Riyad Carey contributed to this section.*

## TRADE

### **South Korea Trade Agreement Talks Continue; ITC Approves Safeguard Measures on Washer Imports**

#### *Key Points:*

- During a second special session meeting, negotiators agreed to address KORUS implementation issues and possibly amend the deal.
- ITC voted unanimously that South Korean residential washer imports have injured the U.S. industry and will

*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.*