

October 27, 2017

## Washington Update

### This Week in Congress

**House** – The House passed H.R. 732, **Stop Settlement Slush Funds Act of 2017**, H.R. 1698 **Iran Ballistic Missiles and International Sanctions Enforcement Act**, H.R. 469, the **Sunshine for Regulations and Regulatory Decrees and Settlements Act of 2017**, H.Con.Res. 71, the **FY2018 budget resolution**.

**Senate** – The Senate passed S. 1766, to reauthorize the **SAFER Act of 2013**, S. 266, the **Energy Conservation Standards for External Power Supplies**, H.R. 304, **Protecting Patient Access to Emergency Medications Act of 2017**, H.J.Res. 111, the **resolution of disapproval with respect to the CFPB arbitration rule**, H.R. 2266, **Emergency Supplemental Appropriations** (emergency supplemental for aid to Puerto Rico, the Virgin Islands and western wildfires).

### Next Week in Congress

**House** – The House is expected to take up the H.R. 2936, the **Resilient Federal Forests Act of 2017**, and H.R. 849, **Protecting Seniors' Access to Medicare Act of 2017**.

**Senate** – The Senate is expected to take up the nominations of **Trevor N. McFadden** to be United States District Judge for the District of Columbia and **Amy Barrett** to be U.S. Circuit Judge for the Seventh Circuit.

## TAX

### House Clears Budget, Ways and Means Committee Announces Tax Reform Timeline

#### *Key Points*

- *The House passed the Senate version of the FY 2018 budget and paved the way for tax reform to be passed in the Senate with a simple majority vote.*
- *The final budget removes language calling for deficit-neutral tax legislation and includes provisions allowing for \$1.5 trillion in tax cuts.*

- *Expect the House to release a draft on Nov. 1; a markup to begin on Nov. 6; and a floor vote during the week of Nov. 13.*
- *The Senate Finance Committee could begin its markup process the week of Nov. 13 in an effort to get a floor vote prior to Thanksgiving.*

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On Thursday, the House passed the FY 2018 budget by vote of 216 to 212. The vote was close due to Republicans in high-taxed states concerned with the lack of a deal reached on the state and local tax deduction. With the House passing the Senate version of the budget, the tax-writing committees in both chambers now have an additional ten to twelve legislative days to pass a tax bill. The final budget included an amendment offered by Senate Budget Chairman Michael Enzi (R-WY) that increases defense spending caps, avoids instructions for \$202 billion in mandatory spending cuts, and did not include House language that called for deficit-neutral tax legislation. The budget also allows tax legislation to include \$1.5 trillion of tax breaks and permits the Senate to pass a bill with a simple majority vote.

Following the passage of the budget, House Ways and Means Committee Chairman Kevin Brady (R-TX) issued a statement outlining the timeline for tax reform. According to his statement, the House Ways and Means Committee is expected to introduce the House tax reform legislation on Wednesday, November 1. The Ways and Means Committee would then begin to markup the bill the following week on Monday, November 6, with the bill moving for consideration on the House floor during the week of November 13. The Senate schedule has yet to announce their exact timeline, but it has been reported that the Senate Finance Committee is considering holding a markup of its own tax bill on the week of November 13 as well. Senate Majority Whip John Cornyn (R-TX) said the goal is for the Senate to pass a bill before Thanksgiving, with the possibility of holding the Senate in session for a portion of the Thanksgiving holiday week.

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## **FINANCIAL SERVICES**

### **Treasury Releases Report on Asset Management and Insurance**

#### *Key Point:*

- *The report detailed recommendations to improve the regulation of asset management and insurance.*

On October 26, the Department of the Treasury released its third of four reports responding to the President's [Executive Order](#) on Core Principles for financial regulation. The [Asset Management and Insurance report](#) focuses on the following four areas: "Ensuring appropriate evaluation of systemic risk and solvency; Promoting efficient regulation and rationalizing the regulatory framework...; Rationalizing U.S. engagement in international forums to promote the U.S. asset management and insurance industries, and encourage firm competitiveness; and Enhancing consumer access to a variety of relevant products and services."

The asset management recommendations included changes to systemic risk and stress testing, liquidity risk management, derivatives rules, exchange traded funds (ETFs), business

#### **Upcoming Dates**

***December 8:*** Flood Insurance and EB-5 regional visas authorizations lapse.

***December 31:*** Year-end expirations-Title VII of FISA, Oil Spill Liability Trust Fund taxes, and Medical device and health insurer tax moratorium.

***March 5, 2018:*** DACA deadline.

***March 31, 2018:*** FAA Reauthorization expires.

continuity and transition planning, CFTC and SEC dual registration, fund disclosures and delivery, the Volcker Rule, international engagement, and the fiduciary rule and standards of conduct. The insurance recommendations included systemic risk evaluations and capital initiatives.

Recommendations from the report for both asset management and insurance are listed below.

### ***Asset Management:***

#### **Systemic Risk and Stress Testing**

- Treasury's position is that entity-based systemic risk evaluations of asset managers or their funds are generally not the best approach for mitigating risks arising from asset management. Instead, primary federal regulators should focus on potential risks arising from asset management products and activities, and on implementing regulations that strengthen the asset management industry as a whole.
- The FSOC should maintain primary responsibility for identifying, evaluating, and addressing systemic risks in the U.S. financial system, and the SEC should remain the primary federal regulator of the asset management industry in the United States.
- Treasury supports legislative action to amend Dodd-Frank to eliminate the stress testing requirement for investment advisers and investment companies.

#### **Liquidity Risk Management**

- Treasury supports the 15 percent limitation on illiquid assets.
- Treasury supports the SEC adopting a principles-based approach to liquidity risk management rulemaking and any

associated bucketing requirements. The SEC should take appropriate action to postpone the currently scheduled December 2018 implementation of Rule 22e-4's bucketing requirement.

#### **Derivatives**

- The SEC should consider a derivatives rule that would include a derivatives risk management program and an asset segregation requirement, but reconsider what, if any, portfolio limits should be part of the rule. The SEC should also reconsider the scope of assets that would be considered qualifying coverage assets for purposes of the asset segregation requirement.
- The SEC should examine the derivatives data that will be reported by funds starting next year and publish analysis based on empirical data regarding their use of derivatives.

#### **Exchange Traded Funds**

- The SEC should move forward with a "plain-vanilla" ETF rule that allows entrants to access the market without the cost and delay of obtaining exemptive relief orders, subject to conditions the SEC determines appropriate and in the public interest. To this end, the SEC should either re-propose or propose a new rule on ETFs for public comment.
- The SEC should consider establishing a single process for ETF and related approvals rather than allowing SEC divisions to set multiple and sometimes conflicting requirements.

#### **Business Continuity and Transition Planning**

- The current SEC proposal on business continuity and transition planning should be withdrawn. With the existing

principles-based rule already in place, there is no compelling need for additional rulemaking in this area.

- The SEC and its staff should continue to work with investment companies, investment advisers, and other relevant parties to recommend improvements to business continuity plans, to the extent that such plans are determined not to be sufficiently robust, and to address new issues as they arise.

#### **Dual CFTC and SEC Registration**

- The CFTC should amend its rules so that an investment company registered with the SEC and its adviser are exempt from dual registration and regulation by the CFTC as a CPO. To address concerns of de facto commodity pools operating without sufficient oversight, the CFTC and the SEC should work together to identify a single regulator for these entities, with the goal that oversight of these entities will either remain with the SEC or be transferred to the CFTC and NFA.
- The CFTC and the SEC should cooperate to share information provided by their respective regulated entities so that disclosures made to one agency can address the information needs of the other agency to monitor the markets for securities and derivatives transactions.
- The CFTC should amend its rules to exempt private funds and their advisers from registration as CPOs if the advisers are subject to regulatory oversight by the SEC. Treasury also recommends that the CFTC review and determine what, if any, exemptions should be made available for SEC exempt reporting advisers.

#### **Modernizing the Delivery of Fund Disclosures**

- The SEC should finalize its proposed rule to modernize its shareholder report disclosure requirements and permit the use of implied consent for electronic disclosures.
- The SEC should explore other areas for which the delivery information to investors through an electronic medium using implied consent is appropriate and consistent with investor protection; however, investors should retain the choice to continue to receive paper disclosures.

#### **Asset Management Reporting and Disclosure Requirements**

- The SEC, CFTC, SROs, and other regulators should work together to rationalize and harmonize the reporting regimes. Where possible, duplicative forms should be combined and any unnecessary or inconsistent data collection should be eliminated. Treasury recommends that regulators continue to update reporting requirements to utilize structured data where appropriate.

#### **Volcker Rule**

- Regulators should take further action to reduce the burden of the Volcker Rule on asset managers and investors. The relevant agencies should continue to refrain from enforcing the Volcker Rule's proprietary trading restrictions against foreign private funds that are not "covered funds" under the rule until a permanent solution to the identified challenges is implemented.
- The agencies should also forbear on enforcement of the restriction on funds sharing names with banking entities,

consistent with Treasury's Banking Report.

- Congress should revise the definition of "banking entity" to encompass only insured depository institutions, their holding companies, foreign banking organizations, and affiliates and subsidiaries of such entities that are at least 25 percent owned or otherwise controlled by such entities.

### International Engagement

- The United States should play a leading role in international standard-setting bodies such as the FSB and IOSCO, particularly with respect to financial market supervision and asset management where U.S. firms and markets are the largest in the world.
- Treasury recommends further improvements to the FSB and SSB processes to better promote transparency, accountability, and appropriate representation with respect to policymaking.
- Treasury recommends that U.S. representatives to FSB and IOSCO review the particular processes used by each international standard-setting body and work to ensure that they utilize a collaborative process that includes, where appropriate, economic analysis and subject matter expertise at the relevant standard setting body.
- Treasury recommends that the FSB transition away from using the term "shadow banking" to describe registered investment companies and their investment advisers.
- The U.S. members of the FSB should work to revise the G-SIFI framework so that it appropriately takes into account the differentiated ways that sectors are structured and manage risks.

### Economic Growth and Informed Choices

- Treasury supports the current efforts at the DOL to re-examine the implications of the Fiduciary Rule. Treasury believes it is appropriate to delay full implementation of the Fiduciary Rule until the relevant issues, including costs of the rule and exemptions, are evaluated and addressed to best serve investors, and believes that such assessment and resolution of standard of conduct issues should include participation by the SEC and other regulators.
- Treasury believes that conflicts of interest should be addressed in a manner that preserves, to the extent possible, access to a wide range of asset classes, investment products, business models, distribution channels, and other relevant features of financial services that benefit American workers and their families.
- Within the federal regulatory framework, Treasury believes that the SEC and DOL should work together to address standards of conduct for financial professionals who provide investment advice to IRA and non-IRA accounts.
- Treasury recommends that the DOL and the SEC engage with state insurance regulators regarding the impact of the standards of care on the annuities market.
- Treasury encourages the SEC, the DOL, and the states to work together to implement a regulatory framework appropriately tailored to both preserve investor choice and protect retirement investors in an efficient and effective manner.

**Insurance:****Systemic Risk and the Insurance Industry**

- Treasury’s position is that entity-based systemic risk evaluations of insurance companies are generally not the best approach for mitigating risks arising from insurance. Instead, insurance regulators should focus on potential risks arising from insurance products and activities, and on implementing regulations that strengthen the insurance industry as a whole. Insurance regulation at the federal level should be conducted in coordination with the states.
- FIO and the other U.S. members of the IAIS should support the IAIS’ work on the activities-based approach because it a more appropriate method of assessing potential systemic risk in the global insurance market. The U.S. members of the IAIS should advocate for the development of an activities-based framework that is proportionate and appropriately tailored to the U.S. insurance market. The IAIS should reassess its existing G-SII policy measures, including how to improve the IAIS’ 2014 guidance on liquidity management and planning. FIO and the other U.S. members of the IAIS should also take steps to improve the IAIS G-SII assessment methodology and consider how to increase transparency with respect to the assessment methodology’s development. U.S. members of the IAIS should advocate that the IAIS enhance its work on cross-sectoral consistency with other financial sectors – such as through work with the Basel Committee on Banking Supervision.
- The group capital initiatives by the NAIC, the states, and the Federal Reserve should be harmonized, to the extent possible, to mitigate duplicative and unnecessary regulatory burdens for U.S. insurers. The Secretary will direct FIO to consult with the state insurance regulators, the NAIC, and the Federal Reserve on their respective group capital initiatives to produce the best outcomes for U.S. insurers, U.S. policyholders, and the U.S. insurance market. The Secretary will direct FIO to coordinate this work. FIO will then advocate for the U.S. approach to group capital in international forums.
- The ICS should recognize the diverse approaches to solvency regulation taken by various jurisdictions around the globe. A core goal should be to ensure that the ICS initiative accommodates the U.S. insurance business model and the existing state-based regulatory system. Such standards should also be developed in a manner that recognizes the variety of supervisory approaches to valuation and accounting requirements, and definitions of what constitutes capital. The IAIS should reexamine its current timeline to deliver ICS Version 2.0 in 2019. The IAIS should postpone ICS Version 2.0 until a later date to allow further consultation with IAIS members and stakeholders on the development of an ICS that is implementable in all major insurance markets.

**SEC Announces Measures to Facilitate Cross-Border Implementation of MiFID II’s Research Provisions***Key Points:***Preserving Solvency: Capital Initiatives**

- *The SEC issued three no-action letters aimed at providing market participants more clarity related to MiFID II's research provisions.*
- *SEC Commissioner Kara Stein voiced concern that the no-action letters do not properly address concerns.*

On October 26, the Securities and Exchange Commission (SEC) [issued](#) three no-action letters intended to provide market participants with greater certainty regarding their U.S. regulated activities as they attempt to comply with the European Union's (EU) Markets in Financial Instruments Directive (MiFID II) before the January 3, 2018 implementation date. The no-action letters were issued to provide a path for compliance with the research requirements of MiFID II while still meeting U.S. securities laws. Under the no-action letters: "(1) broker-dealers, on a temporary basis, may receive research payments from money managers in hard dollars or from advisory clients' research payment accounts ([Staff Letter: \(No-action relief to SIFMA\)](#)); (2) money managers may continue to aggregate orders for mutual funds and other clients ([Staff Letter: \(No-action relief to ICI\)](#)); and (3) money managers may continue to rely on an existing safe harbor when paying broker-dealers for research and brokerage." ([Staff Letter: \(No-action relief to SIFMA AMG\)](#)). The no-action letters provide temporary relief and allow staff the time to monitor the impacts of MiFID II on the research marketplace and determine whether more action is needed.

SEC Chairman Jay Clayton stated,

"Today's no-action relief was designed with input from a range of market participants to reduce confusion and operational difficulties that might arise in the transition to MiFID II's research provisions. Staff's letters take a measured approach in an area where

the EU has mandated a change in the scope of accepted practice, and accommodate that change without substantially altering the U.S. regulatory approach. These steps should preserve investor access to research in the near term, during which the Commission can assess the need for any further action."

Following release of the no-action letters, SEC Commissioner Kara Stein released a [statement](#) in which she suggested that the no-action letters do not properly address investor's concerns but merely "kicks the can down the road." She stated that this inaction may be costly to investors and taking 900 days to determine whether additional action is needed is "simply unreasonable."

### **OFR Releases Report on Systemically Important Bank Designation**

*Key Point:*

- *The report suggested utilizing a multifactor approach to the \$50 billion asset threshold for bank SIFI designations.*

On October 26, the Office of Financial Research (OFR) released a [viewpoint paper](#) entitled, "Size Alone is Not Sufficient to Identify Systemically Important Banks." The report recommended utilizing a multifactor approach to the current \$50 billion asset threshold for bank designations. The report stated that "Some large banks may not be systemically important; and conversely, some smaller banks might be."

OFR Director Richard Berner issued a [statement](#) in support of the report's findings. In the statement, he contended that:

"Regulators already use such an approach to identify global systemically

important banks (G-SIBs). They consider size and four other factors to measure a bank's systemic importance: (1) interconnectedness, (2) substitutability, (3) complexity, and (4) cross-jurisdictional activity. The eight G-SIBs based in the United States face the most stringent standards.

Our analysis indicates that a multifactor approach could replace the \$50 billion asset-size threshold that some U.S. regulations use to identify U.S. banks that are not G-SIBs, but warrant enhanced regulation.”

On October 12, the House Financial Services Committee favorably reported the Systemic Risk Designation Improvement Act ([H.R. 3312](#)) by a vote of 47 to 12. The bill, introduced by Representative Blaine Luetkemeyer (R-MO), would repeal the \$50 billion asset threshold and replace it with a consideration of a particular institution's “systemic indicator scores,” which reflects size, interconnectedness, cross-jurisdictional activity, substitutability, and complexity. A companion bill ([S. 1893](#)) has been introduced by Senators Claire McCaskill (D-MO) and David Perdue (R-GA).

### Senate Banking Committee Holds Hearing on SEC Nominations

#### Key Points:

- *The Committee discussed the nominations of Hester Peirce and Robert Jackson to be SEC Commissioners, as well as David Ryder to be Director of the U.S. Mint.*
- *Topics raised at the hearing included executive compensation, cybersecurity, the Consolidated Audit Trail, the Department of Labor fiduciary duty rule, and mandatory arbitration.*

On October 24, the Senate Banking Committee held a [hearing](#) to discuss the nominations of (1) Mr. David Ryder, Nominee to be Director of the United States Mint; (2) Ms. Hester Peirce, Nominee to be a Member of the Securities and Exchange Commission; and (3) Mr. Robert Jackson Jr., Nominee to be a Member of the Securities and Exchange Commission. Chairman Mike Crapo (R-ID) said Peirce and Jackson are well-qualified to fill out the vacant positions at the SEC, and he stressed the importance of each portion of the SEC's three part mission of protecting investors, ensuring fair and orderly markets, and facilitating capital formation.

Ranking Member Sherrod Brown (D-OH) said Peirce has a broad understanding of the issues under the SEC's purview. He commended Jackson's experience, particularly related to corporate governance and executive compensation. He urged the SEC to finalize the executive compensation provisions in the Dodd-Frank Act (DFA). He said the SEC was recently the victim of a cyberattack, stressing the need for the SEC and businesses to be up front with the public when a breach occurs. He emphasized the need for a strong enforcement program at the SEC.

Chairman Mike Crapo (R-ID) asked what areas the SEC should prioritize in the next year. Peirce said while the rulemaking agenda will take up a lot of time, the SEC should also examine how well the supervisory function is working, particularly the oversight of the self-regulatory organizations (SROs). She stressed the need to examine market structure, both for equities and fixed income, and said the SEC should take a long-term view of those markets. She said cybersecurity will be an important area to keep an eye on. Jackson said cybersecurity will be a top priority, and important investor protections in the DFA, including clawbacks of erroneous executive compensation, still need to

be implemented. He stated that there should be greater focus on enforcement, particularly on insider trading.

Senator Elizabeth Warren (D-MA) said the DFA directed the SEC to issue new rules to protect investors, noting that the SEC still has not completed 20 of these rules seven years after enactment. She noted that the recent SEC agenda did not include many of these pending rules. She asked if the SEC has an obligation to fulfill unfinished Congressional mandates before engaging in discretionary rules and projects. Peirce said the SEC is obligated to implement rules as directed by Congress, but she could not say in what order they are required to implement them. Warren said the SEC is required to follow the law, suggesting that they are engaging in “lawless behavior.”

Senator Tom Cotton (R-AR) pointed to the data breaches at the SEC and the Office of Personnel Management (OPM). He questioned whether it is appropriate for the SEC to seek data through the Consolidated Audit Trail (CAT) given the concerns about data security. Peirce said she has concerns with data protection, and that if confirmed she would examine if the SEC needs this data and if it can protect it. Jackson questioned whether the CAT needs to collect personally identifiable information (PII) and whether the SEC can adequately protect it, but he stated the CAT is important to investor protection.

Senator Mike Rounds (R-SD) and Senator Tim Scott (R-SC) raised concerns with the Department of Labor’s (DOL) fiduciary duty rule. Rounds asked for the nominees’ views on this issue. Jackson said the SEC should have an important role in the development of fiduciary standards. He said investors should have consistency in their protections. Peirce said she has concerns with the DOL rule as written,

stressing the need for the relevant parties to work together to craft an appropriate rule.

Senator Tim Scott (R-SC) asked if the current shareholder resubmission threshold furthers fair and efficient markets. Jackson said an appropriate balance must be struck. He said shareholders should be able to hold management accountable, suggesting that shareholders proposals are one of the best ways for them to do so. He suggested that the SEC should examine whether repetitive proposals advance the goal of accountability.

### **Senate Passes Resolution to Repeal the CFPB Rule Banning Mandatory Arbitration**

#### *Key Point:*

- *The resolution provides for congressional disapproval of the CFPB rule banning the inclusion of mandatory arbitration clauses in certain financial products contracts.*

On October 24, the Senate passed H.J.Res.111, which provides for congressional disapproval and repeal of the Consumer Financial Protection Bureau’s (CFPB) rule banning the inclusion of mandatory arbitration clauses in certain financial products contracts. The resolution passed by a vote of 51 to 50, with Vice President Mike Pence casting the tie-breaking vote. The resolution passed the House by a 231 to 190 vote on July 25. The resolution will now go to the President for his signature. The White House issued a [Statement of Administration Policy](#) indicating that the President would sign the resolution into law. The resolution would repeal the CFPB rule and prohibit the reissuance of a rule in substantially the same form unless otherwise authorized by Congress.

House Financial Services Committee Chairman Jeb Hensarling (R-TX) issued a [press release](#)

expressing support for the resolution, in which he stated:

“This is a victory for consumers, a defeat for the wealthy trial lawyers lobby and a rejection of the unchecked, unconstitutional and unaccountable CFPB. Instead of carrying water for the Democrats’ favored special interests, the CFPB should actually work to protect consumers. I commend the Senate for joining the House in fighting for consumers and for draining the bureaucratic swamp of yet another political regulation. Laws that Americans live under must be written by their elected representatives, not unelected and unaccountable bureaucrats. It’s good to see Congress reclaim its legislative authority and operate as our Constitution requires.”

House Financial Services Committee Ranking Member Maxine Waters (D-CA) issued a [press release](#) criticizing the resolution. She stated that:

“The shameful move to repeal the forced arbitration rule will rob consumers who have been wronged by financial institutions of their right to join together and have their day in court, and allow financial institutions to get off the hook when they commit wrongdoing. In voting to nullify the rule, Congressional Republicans have sided with companies like Equifax and Wells Fargo over the consumers they have harmed.”

Earlier in the week the Treasury Department released a [report](#) examining the arbitration rule. As noted in a Treasury [press release](#), the report “outlines important limitations to the data behind CFPB’s rule and explains that CFPB did

not appropriately consider whether prohibiting arbitration clauses would advance consumer protection or serve the public interest.” The report contended that the rule will “impose extraordinary costs—generating more than 3,000 additional class action lawsuits over the next five years, imposing more than \$500 million in additional legal defense fees, and transferring \$330 million to plaintiffs’ lawyers.” CFPB Director Richard Cordray sent a letter to the Treasury criticizing both the content and the timing of the report.

### **CFTC Issues Order Extending the Current De Minimis Threshold**

#### *Key Points:*

- *The order would maintain the swap dealer de minimis threshold at \$8 billion until December 2019.*
- *The threshold had been set to decrease to \$3 billion on December 31, 2018.*

On October 26, the Commodity Futures Trading Commission (CFTC) issued an [order](#) establishing a new de minimis threshold phase-in termination date. The order will maintain the threshold for swap dealer registration at \$8 billion for an additional year until December 31, 2019. The threshold had been set to decrease to \$3 billion on December 31, 2018. As described in a CFTC [press release](#), “the one-year extension provides the CFTC additional time to complete the current data analysis and for the CFTC to consider appropriate further action.” The press release went on to state:

As described in the Order, significant progress is being made in analyzing additional swap data that will be useful for the Commission to assess appropriate amendments to the de minimis exception rule. However, any such modifications, if implemented,

would not become effective until some point in 2018, after the CFTC completes the proposal, public comment, and final rule amendment process as required by the Administrative Procedure Act.

### House Financial Services Panel Discusses the Federal Government's Role in the Insurance Industry

#### Key Point:

- *Chairman Sean Duffy and Representative Denny Heck (D-WA) have introduced legislation to refine how the Federal Insurance Office enters into international agreements.*
- *Chairman Duffy suggested that Congress should have a vote on the covered agreements and the FIO should focus on international negotiations.*

On October 24, the House Financial Services Committee's Subcommittee on Housing and Insurance held a [hearing](#) entitled, "The Federal Government's Role in the Insurance Industry." The hearing focused on the role the federal government should play in the regulation of insurance, the role of the Federal Insurance Office (FIO) and whether reforms are needed, international negotiations, and the state-based insurance model. Chairman Sean Duffy (R-WI) raised concerns with the covered agreement process and noted that he has been working with Representative Denny Heck (D-WA) on legislation, the Federal Insurance Office Reform Act of 2017 ([H.R. 3861](#)), to refine how the Federal Insurance Office enters into international agreements. He suggested Congress should have a direct say in whether the U.S. enters into an international agreement. Ranking Member Emanuel Cleaver (D-MO) expressed support for state insurance regulation but he stated the Federal government should play the role laid out in the Dodd-Frank Act (DFA). He noted the signed

covered agreement will allow U.S. insurance to continue to operate internationally without additional burdens.

Representative Denny Heck (D-WA) stated insurance has been the one area which avoided the federal "power grab." He asked how to protect this "inevitable" trend of federal involvement expanding. Germania Insurance President Paul Ehlert stated the two bills before the subcommittee are a good step and there should not be federal duplication of what the states are already doing. University of Minnesota Law School Professor Daniel Schwarcz stated the present dynamic is healthy, with the federal government playing some role but not regulating. Shelter Insurance Companies President and CEO Rick Means stated this system has worked for 150 years, and he questioned why another level of bureaucracy is needed. Connecticut Insurance Commissioner Katharine Wade stated the two bills will help bolster the state based system, but she added there needs to be recognition of the state based system in international negotiations. When asked by Chairman Duffy about the covered agreement process, Wade stated that the clarifications from the Administration have been helpful but she noted that the process did not include enough state involvement. Chairman Duffy reiterated that Congress should have a vote on the covered agreement. Representative Bill Posey (R-FL) suggested that the U.S. should be moving its standards forward, not conforming to other's standards. Ehlert stated Texas is the ninth largest market, yet the U.S. is yielding to EU regulators. He stated the state based system should not be superseded by international agreements. When asked how the role of the FIO has changed under the different Administrations, Means stated over the last few months there has been some improvement with the FIO and better cooperation with the

states with regard to collaboration on international standards setting and more dialog.

### House Financial Services Panel Discusses Housing Finance Reform

#### Key Points:

- *Witnesses at the hearing agreed that an explicit government guarantee is needed in the housing market.*
- *Ranking Member Emanuel Cleaver (D-MO) stated an affordable housing crisis underway.*

On October 25, the House Financial Services Committee's Subcommittee on Housing and Insurance held a [hearing](#) entitled "Sustainable Housing Finance: Private Sector Perspectives on Housing Finance Reform." The hearing focused on the conservatorship of the Government Sponsored Entities (GSEs), the need for reform of the housing finance sector, and the role of smaller financial institutions in the housing finance system. Chairman Sean Duffy (R-WI) explained there have been a number of proposals to reform the housing finance sector and he hopes to hear which of those would be best to focus on. Ranking Member Emanuel Cleaver (D-MO) stated an affordable housing crisis underway, noting the National Low Income Housing coalition report which showed that there is no state, city or county in which a minimum wage worker can afford to rent an apartment. Cleaver expressed hope that housing reform can be worked on in a bipartisan manner and he stressed the need to retain the 30 year fixed mortgage.

Several Members raised the issue of the GSEs serving as a backstop to the housing market. When asked how that backstop should be priced, Brenda Hughes (First Federal Savings, on behalf of the American Bankers Association (ABA)) and Samuel Vallandingham (First State Bank, on behalf of the Independent Community Bankers of America (ICBA)) stated

that the backstop should be funded through the guarantee fees. Ranking Member Maxine Waters (D-CA) asked what would occur if the government guarantee were removed. Vallandingham stated costs to consumers would go up and Hughes stated that her bank would not be able to serve as many consumers as they do. Nikitra Bailey (Center for Responsible Lending) stated the cost of credit would go up and rural communities would lose access to credit. Representative Dennis Ross (R-FL) and Representative Blain Luetkemeyer (R-MO) noted that the GSEs need to be recapitalized and they asked how this should occur. Kevin Chavers (BlackRock, on behalf of the Securities Industry and Financial Markets Association (SIFMA)) stated the concern over recapitalization is that it sends a message about recapitalization and release. Richard Stafford (Tower Federal Credit Union, on behalf of the National Association of Federally-Insured Credit Unions (NAFCU)) stated NAFCU supports modest recapitalization to allow them to not have to go to the Treasury for another draw. Hughes stated the legislative reforms should be completed and capital restrictions set to allow the GSEs to work towards those capital requirements.

### Senate Banking Committee Holds Hearing on HUD Nominees

#### Key Point:

- *Chairman Mike Crapo (R-ID) and Senators Bob Corker (R-TN) and Mark Warner (D-VA) emphasized the need to move forward with housing finance reform.*

On October 26, the Senate Banking Committee held a [hearing](#) to discuss the nominations of (1) The Honorable Brian Montgomery, to be Assistant Secretary for Housing - Federal Housing Commissioner, U.S. Department of Housing and Urban Development (HUD); (2) Mr. Robert Hunter Kurtz, to be Assistant

Secretary for Public and Indian Housing, HUD; and (3) Ms. Suzanne Israel Tufts, to be Assistant Secretary for Administration, HUD. Chairman Mike Crapo (R-ID) commended the experience and expertise of the nominees. He noted that the FHA has not had Senate-confirmed leadership in three years, and that Brian Montgomery is an ideal candidate to lead the FHA, given that he previously served in that role. He urged his colleagues to confirm the witnesses, as well as other pending HUD nominees, in a timely manner.

Ranking Member Sherrod Brown (D-OH) stated that the open positions at HUD have been vacant for far too long. He said in the last Congress the Committee refused to act on almost any nominee. He said Democrats are cooperating on nominees under President Trump, while Republicans did not cooperate under President Obama. He stressed the need to ensure HUD has an adequate workforce. He said HUD will play an important role in the recovery in Puerto Rico. He suggested that the administration is undermining HUD by proposing to cut its budget by 15 percent, which would eliminate funding for 250,000 Section 8 housing choice vouchers and cut the Public Housing Capital Fund by 70 percent.

Chairman Mike Crapo (R-ID) and Senators Bob Corker (R-TN) and Mark Warner (D-VA) emphasized the need to move forward with housing finance reform. Corker said Congress has been struggling with housing finance issues for years. He stated that he hopes to address Fannie Mae and Freddie Mac on a bipartisan basis, as do the Chairman and Ranking Member. He stated that the current housing finance system is not sustainable, and FHA must also be a part of housing finance reform. He asked if the FHA should be addressed with the Fannie Mae and Freddie Mac. Montgomery responded in the affirmative. He said the GSEs cannot be addressed without also considering

the FHA. Senator Warner said members of both parties recognize the need for housing finance reform, stating that the current status of the GSEs being in conservatorship is not a long-term solution. He stressed the need for housing finance reform to be done in a bipartisan manner, allow competition in the private market and appropriate risk transfers of first dollar losses, while still including support for low income and first time homebuyers.

## Upcoming Events

### November 1

***Ex-Im Bank Nominations:*** The Senate Banking Committee will hold a hearing on the nominations of: The Honorable Scott Garrett, to be President of the Export-Import Bank (Ex-Im Bank); Kimberly Reed, to be First Vice President of the Ex-Im Bank; The Honorable Spencer Bachus III, to be a Member of the Board of Directors of the Ex-Im Bank; Judith Delzoppo Pryor, to be a Member of the Board of Directors of the Ex-Im Bank; and Mark Greenblatt, to be Inspector General of the Ex-Im Bank.

***Credit Data Security:*** The House Energy and Commerce Committee's Subcommittee on Digital Commerce and Consumer Protection will hold a hearing entitled "Securing Consumers' Credit Data in the Age of Digital Commerce."

***Disaster Recovery:*** The House Financial Services Committee's Subcommittee on Oversight and Investigations will hold a hearing entitled "Examining the Community Development Block Grant-Disaster Recovery Program."

***Data Security:*** The House Financial Services Committee's Subcommittee on Financial Institutions and Consumer Credit will hold a

hearing entitled “Data Security: Vulnerabilities and Opportunities for Improvement.”

**FEMA Preparedness:** The House Homeland Security Committee will hold a hearing on “Assessing FEMA’s Preparedness and Response Capabilities.” FEMA Administrator Brock Long will testify at the hearing to discuss FEMA’s priorities and to provide an update on response and recovery efforts of recent hurricanes and wildfires.

### November 2

**Consumer Advisory Board:** The Consumer Financial Protection Bureau (CFPB) will hold a meeting of its Consumer Advisory Board to discuss the Bureau’s “Know Before You Owe: Reverse Mortgages” resources, financial well-being tools and resources, trends and themes, and the final rule on payday, vehicle title, and certain high-cost installment loans.

**Housing Finance:** The House Financial Services Committee’s Subcommittee on Housing and Insurance will hold a hearing entitled “Sustainable Housing Finance: Private Sector Perspectives on Housing Finance Reform, Part II.”

### November 3

**Access to Capital:** The House Financial Services Committee’s Subcommittee on Capital Markets, Securities, and Investment will hold a hearing on “Legislative Proposals to Improve Small Businesses’ and Communities’ Access to Capital”.

*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

### Senate Committee Advances EPA Nominees

#### Key Points:

- *The Senate Environment and Public Works Committee voted to send four nominations for EPA posts to the full Senate.*
- *Committee Democrats strongly opposed the nominees for the Office of Chemical Safety and Pollution Prevention and the Office of Air and Radiation.*

On October 25, the Senate Environment and Public Works Committee conducted a [business meeting](#) and voted to report the following nominations to the full Senate:

- Michael Dourson, to be Assistant Administrator for the Office of Chemical Safety and Pollution Prevention of the EPA by an 11 to 10 vote;
- William Wehrum, to be Assistant Administrator for the Office of Air and Radiation of the EPA by an 11 to 10 vote;
- Matthew Leopold, to be Assistant Administrator for the Office of General Counsel of the EPA by voice vote; and
- David Ross, to be Assistant Administrator for the Office of Water of the EPA by voice vote.

In his [opening statement](#), Chairman John Barrasso (R-WY) declared that the four EPA “nominees have proven themselves to be well-qualified, experienced, and dedicated public servants.” He also asserted: “Their confirmation will fill critically important roles in ensuring that all Americans benefit from clean air, clean water, and clean land.”

In his [opening statement](#), Ranking Member Tom Carper (D-DE) argued that William Wehrum “has continued to side with polluters

over science and doctors almost every time.” Carper signaled that the Democrats would fight Dourson’s nomination vigorously, claiming that he “has essentially sold his science to the highest bidder...”

## FERC Receives Comments on the Grid Reliability Rule

### Key Points:

- *The Federal Energy Regulatory Commission received a high volume of comments, reflecting intense interest from electric grid stakeholders, on the proposed “Grid Resiliency Pricing Rule”.*
- *Secretary of Energy Rick Perry submitted the proposal last month, directing the Commission to consider it under a fast-track process.*
- *The proposal would incentivize coal and nuclear power generation.*

This week, the Federal Energy Regulatory Commission (FERC) received comments on the Notice of Proposed Rulemaking (NOPR) titled “Grid Resiliency Pricing Rule”. FERC published the [NOPR](#) on October 10, and is considering it at the request of Secretary of Energy Rick Perry under the authority provided by Section 403 of the Department of Energy Organization Act ([42 U.S.C. 7173](#)). This law requires FERC to “consider and take final action on any proposal made by the Secretary...in an expeditious manner in accordance with such reasonable time limits as may be set by the Secretary...” Perry called for FERC to complete action on the rule within 60 days of publication of the NOPR.

The NOPR would require FERC to oversee implementation of incentive pricing for electric generation that promotes “resilience”, including for those generation sources, such as coal and nuclear, that can maintain a 90-day supply of fuel on site.

The Commission received a flood of comments by Monday’s initial deadline. The volume of submissions was so high that it led to technical issues with FERC’s electronic docketing system, triggering an extension of the deadline to Tuesday.

### Comments included:

- In their [comments](#), the Pennsylvania Public Utility Commission called “the Proposed Rule...a hastily drafted effort to institute cost of service rate treatment of specific generation resources, namely coal and nuclear, on an unreasonable short timeframe throughout competitive wholesale electric markets on a ‘one size fits all basis’...”
- Senator Joe Manchin (D-WV) delivered [comments](#) supporting the NOPR, observing that “in recent years, a perfect storm [has] led to coal-fired baseload power plants from being unable to compete in regional electric markets, particularly deregulated or competitive markets.”
- The American Iron and Steel Institute filed [comments](#) in opposition to the NOPR: “AISI member companies do not support the...proposed rule regarding electric grid reliability and resiliency...as it would result in a substantial increase in electric costs for industrial energy customers, including steelmaking operations, with questionable, if any, benefits.”
- In their [comments](#), reflecting the interest of many parties in a more deliberative process, the Industrial Energy Consumers of America (IECA) encouraged “FERC to solicit a public comment period of at least 90 days, followed by a response to comment period afterwards... [and] to hold a

technical conference before the comments deadline.”

- In its [comments](#), ExxonMobil Power and Gas Services warned that the NOPR “would increase costs for consumers, discriminate against natural gas (as well as other power generation sources), and unravel the competitive market structure that FERC has promoted for two decades.”
- The Ohio Coal Association submitted [comments](#) in support of the proposal, calling on “...the Commission [to] act expeditiously to approve the Proposed Rule and require each Commission-approved regional transmission organization and independent system operator...to revise their tariffs to ensure that eligible grid reliability and resiliency resources (as defined in the Proposed Rule) receive payments for electric energy and capacity that ensure their recovery of costs and a fair return on equity.”

All comments can be accessed through FERC’s [eLibrary](#), by searching for docket number RM18-1.

In a [speech](#) last week, FERC Chairman Neil Chatterjee remarked that the “DOE NOPR contemplates and builds on FERC’s existing regulatory initiatives on price formation.” He also emphasized that the NOPR has started “a conversation that I believe we need to have” regarding grid reliability. However Chatterjee also emphasized FERC’s status as an independent agency: “But let me be clear. I remain committed to upholding the Commission’s independence on this, and the many other issues that may come before us. That’s a sentiment that I am sure my colleagues would firmly agree with.”

FERC has set a November 7, deadline for submission of reply comments on the NOPR.

### Agencies Issue E.O. 13783 Regulatory Review Final Reports

#### Key Points:

- *On October 25, the EPA, Department of Energy, and other agencies issued their final reports on review of regulations affecting “the development or use of domestically produced energy resources”.*
- *The reports identify planned and ongoing actions to reform or repeal regulations affecting energy production and delivery.*

On Wednesday, federal agencies issued reports regarding regulatory review conducted pursuant to [Executive Order 13783](#). President Trump signed the “Promoting Energy Independence and Economic Growth” Executive Order on March 28, 2017. The Order directs a number of actions to repeal or revise Obama Administration policies targeting greenhouse gas (GHG) emissions and climate change. It also requires federal departments and agencies to “review existing regulations that potentially burden the development or use of domestically produced energy resources and appropriately suspend, revise, or rescind those that unduly burden the development of domestic energy resources.”

**EPA:** The Environmental Protection Agency (EPA) released its “[Final Report on Review of Agency Actions that Potentially Burden the Safe, Efficient Development of Domestic Energy Resources Under Executive Order 13783](#)”. In the report, the EPA announces new deregulatory initiatives and recaps actions that are already underway, such as the rulemaking to repeal the Clean Power Plan.

An EPA [press release](#) summarizes four new initiatives:

1. “New Source Review reform (NSR) – EPA is establishing an NSR Reform Task Force to review and simplify the NSR application and permit process.”
2. “National Ambient Air Quality Standards (NAAQS) reform – EPA plans to use the newly formed Ozone Cooperative Compliance Task Force to review administrative options to meaningfully improve air quality as it relates to ozone. EPA will also work to streamline the approval of state air pollution plans, and eliminate EPA’s backlog of state pollution plans.”
3. “Robust Evaluations of the Employment Effects of EPA regulations – Regulations impose high costs on American workers, particularly in the energy sector. Five environmental statutes state that EPA conduct continuing evaluations of potential shifts in employment that may result from implementation of these statutes. The Agency historically has not conducted these assessments. EPA intends to conduct these evaluations consistent with the statutes.”
4. “Reestablishing the Smart Sectors Program – EPA recently relaunched the Smart Sectors program to re-examine how it engages with American businesses to reduce unnecessary regulatory burdens, while protecting human health and the environment.”

An appendix to the report provides “summaries of the actions that EPA has taken on (1) rules that were identified specifically for review in E.O. 13783; and (2) other energy-related rules identified for review by EPA pursuant to E.O. 13783.” These include: the [Notice of Proposed Rulemaking \(NPRM\)](#) to repeal the Clean Power Plan [final rule](#); the efforts to address the “Oil and Natural Gas Sector: Emission Standards for New,

Reconstructed, and Modified Sources” [final rule](#); and the [NPRM](#) to repeal the Waters of the United States [final rule](#).

**DOE:** As described in a [press release](#), the Department of Energy’s (DOE) “[Final Report on Regulatory Review Under Executive Order 13783](#)” includes the following recommendations:

1. “streamline natural gas exports;”
2. “review national laboratory policies;”
3. “review National Environmental Policy Act (NEPA) regulations; and”
4. “review the DOE Appliance Standards Program.”

Regarding natural gas exports, the Department’s report notes that it published an [NPRM](#) on September 1, 2017 on “Small-Scale Natural Gas Exports”. The NPRM proposes to issue permits for small-scale exports to non-Free Trade Agreement countries if the project “application satisfies the following two criteria: The application proposes to export natural gas in a volume up to and including 0.14 billion cubic feet (Bcf) per day (Bcf/d), and DOE’s approval of the application does not require an environmental impact statement (EIS) or an environmental assessment (EA) under the National Environmental Policy Act of 1969 (NEPA).” The NPRM explains that the exports of these qualified small-scale projects would be “deemed to be consistent with the public interest under the” Natural Gas Act.

The report further states that the DOE’s Regulatory Reform Task Force “will also consider whether future rulemakings can allow for expedited processing of larger-scale exports of natural gas consistent with applicable law and DOE’s statutory authority.”

**U.S. Army Corps of Engineers (USACE):** The USACE issued a [report](#) titled “Review of 12 Nationwide Permits Pursuant to Executive

Order 13783”, which included recommendations for modifying some of those permits. The USACE issues nationwide permits (NWP) for activities that have a de minimis impact on the environment, but would otherwise require individual approvals under the Clean Water Act or the Rivers and Harbors Act of 1899. In a [press release](#) accompanying the report, the Corps noted that it reviewed 12 permits and proposed changes to nine: “NWP 3, Maintenance; NWP 12, Utility Line Activities; NWP 17, Hydropower Projects; NWP 21, Surface Coal Mining Activities; NWP 39, Commercial and Institutional Developments; NWP 49, Coal Remaining Activities; NWP 50, Underground Coal Mining Activities; NWP 51, Land-Based Renewable Energy Generation Projects; and NWP 52, Water-Based Renewable Energy Generation Pilot Projects.”

- NWP 3: This permit covers “the repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill” that does not alter the use of the structure or fill. The USACE recommends modifying NWP 3 “to authorize small amounts of riprap to protect...structures and fills, without a [pre-construction notification] PCN requirement.”
- NWP 13: This permit “authorizes discharges of dredged or fill material into waters of the United States and structures or work in navigable waters for crossings...associated with the construction, maintenance, or repair of utility lines...” The Corps recommends streamlining the pre-construction thresholds by specifying that the PCN requirement would only apply to “utility lines crossing navigable waters subject to section 10 of the Rivers and Harbors Act of 1899 and for utility activities resulting in the loss of greater

than 1/10 acre of waters of the United States.”

- NWP 17: This permit authorizes small hydropower projects, currently defined as those with less than 5000 kilowatts (kW) of total generating capacity. The USACE “recommends modifying this NWP to change the generating capacity threshold...from 5,000 kW to 10,000 kW...”

## Upcoming Hearings and Events

### October 31

***Grid Resiliency Pricing Rule:*** The Bipartisan Policy Center will hold a [forum](#) titled “Grid Rule: Former FERC Commissioners and Stakeholders Weigh In”. Speakers include: James Hoecker, Former Chair, FERC; Betsy Moler, Former Chair, FERC; Pat Wood, Former Chair, FERC; Martin Durbin, Executive Vice President and Chief Strategy Officer, American Petroleum Institute; John Moore, Director of the Sustainable FERC Project, Natural Resources Defense Council; William Murray, Vice President, State and Electric Public Policy, Dominion Energy; Rich Powell, Executive Director, ClearPath Foundation; and Paul Stockton, Managing Director, Sonecon, LLC.

### November 2

***ANWR:*** The Senate Energy and Natural Resources Committee will hold a [hearing](#) “on the potential for oil and gas exploration and development in the non-wilderness portion of the Arctic National Wildlife Refuge, known as the “1002 Area” or Coastal Plain...”

***Energy Infrastructure and Hurricane Recovery:*** The House Energy and Commerce Committee’s Energy Subcommittee will hold a [hearing](#) titled “The 2017 Hurricane Season: A Review of Emergency Response and Energy Infrastructure Recovery Efforts.”

**Water Resources Legislation:** The House Natural Resources Committee’s Water, Power and Oceans Subcommittee will hold a [hearing](#) on the following legislation: the “Hydrographic Services Improvement Amendments Act” ([H.R. 221](#)); the “Keep America’s Waterfronts Working Act” ([H.R. 1176](#)); and a bill “[t]o amend the White Mountain Apache Tribe Water Rights Quantification Act of 2010 to clarify the use of amounts in the WMAT Settlement Fund” ([S. 140](#)).

### **November 16**

**FERC Meeting:** The Federal Energy Regulatory Commission (FERC) will hold its monthly [open meeting](#).

### **November 17**

**Pipelines and Coastal Areas:** The Pipeline and Hazardous Materials Safety Administration (PHMSA) will hold “a one-day [public meeting](#) to discuss applicable definitions and available geospatial information system (GIS) data sources for marine coastal waters, coastal beaches and the Great Lakes, pertaining to Coastal Ecological Unusually Sensitive Areas (USA).”

### **November 29-30**

**Pipeline Safety Information-Sharing:** The Pipeline and Hazardous Materials Safety Administration’s (PHMSA) Voluntary Information-Sharing (VIS) System Working Group will hold a [meeting](#) “to discuss the objective and scope of the VIS effort, lessons learned from past incidents, best practices, examples of existing information-sharing systems, safety management systems, and the establishment of subcommittees.”

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

## **DEFENSE**

### **NDAA Conference Committee Begins; Deal May Be Soon on Budget Caps**

#### *Key Points:*

- *The FY 2018 NDAA could soon be finalized.*
- *Agreement may be near on the budget caps on discretionary spending.*

This week, the conference committee for the “National Defense Authorization Act for Fiscal Year 2018” (NDAA) ([H.R. 2810/S. 1519](#)) met for the first time for the ceremonial passing of the gavel. Shortly before the meeting, Senate Armed Services Committee Chairman John McCain (R-AZ) predicted that agreement on a final bill could be reached in the near future. One of the major outstanding issues concerns the top-line for the Pentagon’s authorization in both bills exceeding the cap on defense spending for FY 2018 of \$549 billion. The Senate’s bill would authorize \$640 billion and the House \$621 billion. However, this week, House Minority Leader Nancy Pelosi (D-CA) remarked to reporters that she thinks negotiations between Republicans and Democrats will soon yield a deal on raising the caps on discretionary spending. However, she did not indicate whether the agreement would result in identical increases for the defense and non-defense caps or if such a package needs to be offset.

### **GAO Details Issues With F-35 Sustainment Plan; DOD Provides Detail on F-35 Review**

#### *Key Points:*

- *The report on the Pentagon’s plan to sustain the F-35 lacks key metrics and incentives.*
- *The head of the DOD’s review of the Joint Strike Fighter sketches the parameters of the deep dive.*

This week, the Government Accountability Office (GAO) issued its [assessment](#) of the Department of Defense's (DOD) plans to sustain the nearly 3,200 F-35 Joint Strike Fighters the Pentagon is planning to buy and deploy over the next 60 years. The GAO found problems with the DOD's sustainment plans that lack key metrics, are not aligned with current funding, and may encounter problems due to the delayed and overlapping development and building of the F-35.

The GAO noted that the F-35 is the “most ambitious and costly weapon system in history, with sustainment costs alone for the three U.S. military services estimated at \$1.12 trillion over a 60-year life cycle.” The GAO stated that the DOD “is sustaining over 250 F-35s and plans to triple the fleet by the end of 2021, but is facing sustainment challenges that are affecting warfighter readiness...[and] [t]hese challenges are largely the result of sustainment plans that do not fully include key requirements or aligned (timely and sufficient) funding.” The GAO acknowledged that the “DOD is taking steps to address some challenges, but without more comprehensive plans and aligned funding, DOD risks being unable to fully leverage the F-35's capabilities and sustain a rapidly expanding fleet.”

The GAO noted that the “DOD's F-35 program is at a critical juncture.” The GAO stated that “[w]ith aircraft development nearing completion within the next few years, DOD must now shift its attention and resources to sustaining the growing F-35 fleet.” The GAO stated that “[w]hile production accelerates, DOD's reactive approach to planning for and funding the capabilities needed to sustain the F-35 has resulted in significant readiness challenges—including multi-year delays in establishing repair capabilities and spare parts shortages.” The GAO contended that “[t]here is little doubt that the F-35 brings unique

capabilities to the U.S. military, but without revising sustainment plans to include the key requirements and decision points needed to fully implement the F-35 sustainment strategy, and without aligned funding plans to meet those requirements, DOD is at risk of being unable to leverage the capabilities of the aircraft it has recently purchased.”

GAO made the following recommendations to the DOD:

- The Under Secretary of Defense for Acquisition, Technology, and Logistics, in coordination with the F-35 Program Executive Officer, should revise sustainment plans to ensure that they include the key requirements and decision points needed to fully implement the F-35 sustainment strategy and aligned funding plans to meet those requirements. (Recommendation 1)
- The Under Secretary of Defense for Acquisition, Technology, and Logistics, in coordination with the F-35 Program Executive Officer, should re-examine the metrics that it will use to hold the contractor accountable under the fixed-price, performance-based contracts to ensure that such metrics are objectively measurable, are fully reflective of processes over which the contractor has control, and drive desired behaviors by all stakeholders. (Recommendation 2)
- The Under Secretary of Defense for Acquisition, Technology, and Logistics, in coordination with the F-35 Program Executive Officer, should, prior to entering into multi-year, fixed-price, performance-based contracts, ensure that DOD has sufficient knowledge of the actual costs of sustainment and technical characteristics of the aircraft after baseline development is complete

and the system reaches maturity. (Recommendation 3)

- The Under Secretary of Defense for Acquisition, Technology, and Logistics, in coordination with the F-35 Program Executive Officer, should take steps to improve communication with the services and provide more information about how the F-35 sustainment costs they are being charged relate to the capabilities received. (Recommendation 4)

This week, Department of Defense Director of Defense Pricing Shay Assad provided insight into the DOD's detailed review of the cost of the F-35, which he indicated would be completed within a year. In late January, Secretary of Defense James Mattis directed a review of the Joint Strike Fighter, following tweeted criticisms of the cost growth by President Donald Trump.

Assad said that over the next few weeks the team will meet with Lockheed Martin and BAE Systems and Northrop Grumman, both of which make portions of the F-35's fuselage. Assad said that "[m]any of the things we're talking about are just practices that have occurred in the past, this will just be much more rigorous...[s]o we'll lay it out with the companies." He said that "we'll also lay out for them: here's our plan in terms of your subcontractor base, and this is what we want to do, and then get off and get the work done." Assad asserted his belief that it is possible to get the F-35A unit cost below \$80 million per fighter. He contended that "I think our view is we believe there is opportunity in the entire chain, from Lockheed Martin to Northrop to BAE to their subcontractors. We want to work with the companies collaboratively to get on that path for improvement

## Upcoming Hearings and Events

### October 30

**AUMF:** The Senate Foreign Relations Committee will hold a [hearing](#) titled "The Authorizations for the Use of Military Force: Administration Perspective."

### October 31

**Navy Collisions:** The Senate Armed Services Committee will hold a hearing on recent Navy collisions.

### November 1

**Afghanistan:** The House Oversight & Government Reform Committee's National Security Subcommittee will hold a [hearing](#) titled "Overview of 16 Years of Involvement in Afghanistan."

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

## HEALTH

### **CBO Score for Alexander-Murray Released; Conservative Alternative Proposed**

#### *Key Points:*

- *The Congressional Budget Office found the Alexander-Murray market stabilization proposal would reduce the deficit by \$3.8 billion.*
- *Senator Orrin Hatch (R-UT) and Representative Kevin Brady (R-TX) have proposed a more conservative approach to market stabilization.*

On October 25, the Congressional Budget Office (CBO) released its score of the market stabilization plan proposed by Senators Lamar Alexander (R-TN) and Patty Murray (D-WA). It found the "Bipartisan Health Care Stabilization Act of 2017" would reduce the federal deficit by \$3.8 billion by 2027. CBO

said it would also not substantially alter the number of people with health insurance. Recall CBO found in August that not funding the cost-sharing reduction (CSR) payments would increase the federal deficit by \$194 billion through 2026.

The bill appears to have enough support in the Senate to pass; however, Senate Majority Leader Mitch McConnell (R-KY) stated he will not bring it to the Floor for a vote without President Trump's approval. The plan has also been challenged by conservatives.

Senator Orrin Hatch (R-UT) and Representative Kevin Brady (R-TX) offered a new bill which would fund the CSR payments. In addition, it would temporarily repeal the individual mandate from 2017 to 2021. Employer mandate penalties incurred from 2015 to 2017 would be refunded. The proposal would also expand the use of health savings accounts. Brady asserted the bill "not only helps treat some of Obamacare's symptoms" but will also take "steps to cure Obamacare's underlying illness through patient-centered reforms that deliver relief from federal mandates, protect life, and increase choices in health care.

This week, a federal court in California stuck down an emergency motion for an injunction that would have forced the Administration to continue making CSR payments. The judge was skeptical cutting off the payments would cause immediate injury to residents given that many states already took steps to mitigate harm if the payment were ended.

## Opioid Epidemic Declared a Public Health Emergency

### Key Points:

- *President Trump signed a Presidential Memoranda directing the Secretary of the*

*Department of Health and Human Services to declare the opioid epidemic a public health emergency.*

- *The Administration said an additional announcement will be forthcoming. The current declaration does not contain any additional funding.*

On October 27, President Donald Trump signed a Presidential Memoranda directing the Secretary of the Department of Human Services (HHS) to declare the opioid epidemic a public health emergency. The Administration did not announce any new funding for the epidemic.

According to Administration officials, the emergency declaration will allow for greater access to opioid treatment through telemedicine including remote prescribing. The federal government will also allow states to temporarily shift the use of federal grant funds to target the opioid epidemic. The Administration stated it is planning an additional announcement to address the crisis.

Advocates criticized the step for lacking any request for specific funds. Senator Bill Cassidy (R-LA) noted there was already a great deal of funding included in 21st Century Cures. Administration officials said there have been ongoing talks with Congress on funding for the epidemic in the year-end spending bill. Senator John Cornyn (R-TX) stressed the Administration needs to provide a clearer plan before talking about funding.

## Upcoming Hearings and Meetings

### October 30

*Opioid Epidemic:* The Clinton Foundation and the Johns Hopkins Bloomberg School of Public Health will hold a summit on "The Opioid Epidemic: From Evidence to Impact."

**October 31**

**Prevention:** The National Coalition on Health Care will hold a discussion on “Prevention Across the Lifespan.”

**Health IT:** The Senate Health, Education, Labor and Pensions Committee will hold a hearing on “Implementation of the 21st Century Cures Act: Achieving the Promise of Health Information Technology.”

**November 1**

**Opioids:** The George Washington University and ICF International will hold a forum on “Opioid Use: An Epidemic of Addiction, Not Abuse.”

**ONDCP:** The President’s Commission on Combating Drug Addiction and the Opioid Crisis will hold its fifth public meeting to discuss and vote on its Final Report.

**November 2**

**Opioids:** Howard University’s College of Pharmacy will hold an interdisciplinary policy symposium on “The Opioid Use Disorder Crisis.”

**Pathogens:** The House Energy and Commerce Committee will hold a hearing on “Concerns Over Federal Select Agent Program Oversight of Dangerous Pathogens.”

**November 3**

**Opioids:** The Brookings Institute will hold a conference on “Policy Approaches to the Opioid Crisis.”

**Addiction:** Third Way will hold a discussion on “Addiction 101: What Causes Addiction and How Can We Address It?”

**FDA:** The National Press Club will host a Headliners Luncheon with FDA Commissioner Scott Gottlieb.

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

**TRANSPORTATION****UAS Presidential Memorandum***Key Points:*

- *The President directs DOT and FAA to stand up and run a pilot program for the state and local jurisdictions to use drones in innovative ways.*

On October 25, President Donald Trump signed a Presidential Memorandum “[Unmanned Aircraft Systems Integration Pilot Program](#)” which requires the Secretary of Transportation and the Federal Aviation Administration (FAA) to “establish a unmanned aircraft systems (UAS) Integration Pilot Program (Program) to test the further integration of UAS into the national airspace system (NAS) in a select number of State, local, and tribal jurisdictions.” The Program terminates after three years.

The Program must be established within 90 days. Actual agreements with at least five jurisdictions must be entered into within 180 days after the Program is created, and the jurisdictions must then “plan to begin integration of UAS into the NAS in their jurisdictions within 90 days after the date on which the agreement is established.” The Secretary and the FAA have to choose at least five jurisdictions to, most notably, “the integration of civil and public UAS operations into the NAS below 200 feet above ground level, or up to 400 feet above ground level if the Secretary determines that such an adjustment would be appropriate.” The Presidential Memorandum details the considerations and criteria the Secretary and

the FAA must use in selecting jurisdictions and directs them to use the FAA's waiver authority under 14 CFR Part 107 and Certificates of Waiver or Authorization under section 333 of the "FAA Modernization and Reform Act of 2012" (P. L. 112-95).

The President articulated the Program's objectives:

- (i) test and evaluate various models of State, local, and tribal government involvement in the development and enforcement of Federal regulations for UAS operations;
- (ii) encourage UAS owners and operators to develop and safely test new and innovative UAS concepts of operations; and
- (iii) inform the development of future Federal guidelines and regulatory decisions on UAS operations nationwide.

Additionally, the Secretary must provide annual reports to the President with interim findings and conclusions during the execution of the Program. And, "the Secretary shall use the information and experience yielded by the Program to inform the development of regulations, initiatives, and plans to enable safer and more complex UAS operations, and shall, as appropriate, share information with the Secretaries of Defense and Homeland Security, the Attorney General, and the heads of other executive departments and agencies."

### DOT Releases Draft Strategy

#### Key Points:

- *The Department details its priorities for the next four years that are informed by the Administration's emphasis on reducing regulations.*

This week, the U.S. Department of Transportation (DOT) has released for comment its draft [Strategic Plan for FY 2018-2022](#). Agencies are required to implement new Strategic Plans by the second February of a new presidential term, and the DOT is circulating its draft Strategic Plan for comments, which are due by November 13.

The DOT's Strategic Plan has been informed by a number of Trump Administration initiatives, including the January Executive Order "Reducing Regulation and Controlling Regulatory Costs" (EO 13771). As a point of reference, here is the DOT's [current Strategic Plan](#) drafted and implemented during the second term of the Obama Administration.

The DOT explained that "[t]he Strategic Plan...presents the long-term objectives an agency hopes to accomplish at the beginning of each new term of an Administration by describing general and long-term goals the agency aims to achieve, what actions the agency will take to realize those goals, and how the agency will deal with challenges and risks that may hinder achieving results." The DOT added that "[e]ach DOT Operating Administration is responsible for developing its own strategic plan that aligns with the DOT Strategic Plan and their own legislative and statutory requirements."

The DOT stated its four strategic goals:

- *Safety:* Reduce Transportation-Related Fatalities and Serious Injuries Across the Transportation System.
- *Infrastructure:* Invest in Infrastructure to Ensure Mobility and Accessibility and to Stimulate Economic Growth, Productivity and Competitiveness for American Workers and Businesses.
- *Innovation:* Lead in the Development and Deployment of Innovative Practices and Technologies that

Improve the Safety and Performance of the Nation's Transportation System.

- *Accountability*: Serve the Nation with Reduced Regulatory Burden and Greater Efficiency, Effectiveness and Accountability.

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

## **TECHNOLOGY**

### **FISA Reauthorization Marked Up As Competing Bill Released**

#### *Key Points:*

- *The Senate Intelligence Committee marked up a reauthorization aligned with the Administration and Intelligence Community's priorities.*
- *Wyden, Paul, and others introduce a bill that would end many of the NSA's surveillance programs criticized by civil liberties and privacy advocates.*
- *The House Judiciary floats a second version of the USA Liberty Act that is mostly technical.*

Earlier this week, in a closed session, the Senate Intelligence Committee marked up and reported out a reauthorization of Title VII of the Foreign Intelligence Surveillance Act (FISA) by a 12 to 3 vote according to Chairman Richard Burr's (R-NC) [press release](#). On the same day, Senator Ron Wyden (D-OR), Senator Rand Paul (R-KY), and ten other Democrats introduced the "Uniting and Strengthening America by Reforming and Improving the Government's High-Tech Surveillance (USA RIGHTS) Act," a competing bill. Finally, the House Judiciary Committee is circulating another draft of the USA Liberty Act with technical changes.

In advance of the closed markup, Senate Intelligence Committee Chairman Richard Burr

(R-NC) reportedly circulated a [draft reauthorization](#), the "FISA Amendments Reauthorization Act of 2017." It is unclear if this was the base text used. Nonetheless, the draft reauthorization would extend the Title VII programs until December 31, 2025, would allow the National Security Agency (NSA) and other agencies to continue the practice of "about" collection, and strip the Privacy and Civil Liberties Oversight Board (PCLOB) of its status as an agency.

Wyden, Paul, and the other co-sponsors unveiled their "[USA RIGHTS Act](#)," which would circumscribe the authority available under Title VII. The bill would reauthorize the expiring provisions for four years, would require search warrants for so-called backdoor searches, would codify the currently self-imposed Intelligence Community's ban on "about" searches, foreclose the possibility of collecting domestic communications, and would expand the authority and mission of PCLOB. Representatives Zoe Lofgren (D-CA) Ted Poe (R-TX) and Beto O'Rourke (D-TX) introduced a companion bill in the House.

Moreover, the House Judiciary Committee has circulated a revised version of the "Uniting and Strengthening American Liberty Act of 2017" (USA Liberty Act) ([H.R. 3989](#)), which tracks closely with the first version and contains technical fixes and clarifications. The most notable change is the new Section 109 that expresses the sense of Congress regarding surveillance under Section 702, which "should be conducted within the bounds of treaties and agreements to which the United States is a party, and there should be no targeting of non-United States persons for any unfounded discriminatory purpose or for the purpose of affording a commercial competitive advantage to companies and business sectors of the United States."

## Equifax Hearing

### Key Points:

- *Democrats on the House Financial Services Committee conduct a follow up hearing on the Equifax breach.*
- *However, the heads of the credit reporting agencies declined invitations to testify.*

On October 25, the House Financial Services Committee held a follow up [hearing](#) to an October 5 [hearing](#) on “Examining the Equifax Data Breach” that was requested by the Democratic members of the Committee. Topics discussed in the hearing included: (1) Legislative Proposals; (2) Credit Freezes; (3) Social Security Numbers; (4) Safeguards Rule; (5) State Laws; and (6) Arbitration.

The following witnesses were invited to testify at the hearing, but did not attend:

- Mr. James Peck, President and Chief Executive Officer, TransUnion
- Mr. Paulino do Rego Barros, Jr., Interim Chief Executive Officer, Equifax
- Mr. Brian Cassin, Chief Executive Officer, Experian

Ranking Member Maxine Waters (D-CA) stated this hearing will continue to look at the massive data breach of Equifax. She stated unfortunately the CEOs of the three credit bureaus have failed to appear at the hearing. Waters stated Equifax has failed to adequately handle every aspect of this breach. She noted they failed to update problems with their systems, failed to notify law enforcement, and failed to protect consumers. Waters explained Equifax is not the only credit bureau suffering from cyber breaches. She noted the breach at Experian last year. She called for a complete overhaul for the credit reporting system. She noted her bill the “Comprehensive Consumer Credit Reporting Reform Act of 2017” ([H.R.](#)

[3755](#)) which would place the burden for correcting mistakes on the bureaus. She suggested it is time to ensure there are adequate protections to keep consumers safe. Waters stated the credit bureaus should have immediately provided credit freezes.

Representative Dan Kildee (D-MI) stated the Equifax breach should never have happened. He stated for a company that’s business revolves around collecting consumer data it is unthinkable that this breach occurred. He noted concern over potential insider trading and he stated that they have requested that the Securities and Exchange Commission (SEC) investigate this possibility.

Massachusetts Assistant Attorney General Sara Cable stated on September 19, Massachusetts filed the first state suit against Equifax. She stated almost half the population of the state was impacted by this breach. She noted the suit alleged that the breach was preventable, yet Equifax failed to take proper actions to prevent the breach. Cable stated this breach is not unique. She suggested that businesses are not doing what they can to protect consumer data. She stated in 2016 Massachusetts received notice of over 4,000 data breaches. She explained that many companies fail to follow the Massachusetts law and are “hoarding” vast amounts of data in their networks without securing it. She stated far too often consumer information is not being treated as the valuable commodity that it is.

National Consumer Law Center Staff Attorney Chi Chi Wu stated NCLC has long advocated for the need to reform the credit reporting system. She stated one in twenty consumers have a complaint against the credit reporting agencies. Wu stated the credit reporting companies have under-invested in security. She suggested that the Consumer Financial Protection Bureau (CFPB) should be given the

authority over the credit reporting industry. She stated H.R. 3755 would provide needed reforms to the industry. She stated that free credit locks should be mandatory. Wu stated the repeal of the arbitration rule will only increase the environment of impunity.

Georgetown University Law Center Deputy Director Center on Privacy and Technology Laura M. Moy said consumers are frustrated over the lack of control with their data. She said Congress cannot lead from behind and must provide consumers with stronger regulations. She argued for the Committee to consider the following: (1) preemption of state law is not the answer and federal legislation is needed to prevent consumer harm; (2) legislation must be flexible to capture emerging technology; and (3) legislation should provide robust enforcement measures on the state and local levels.

### Cyber Workforce Hearing

#### Key Points:

- *Two subcommittees look at the options for cooperation between the private and public sectors in fostering growth in the U.S.' cyber workforce.*

On October 24, the House Education and the Workforce Committee's Higher Education and Workforce Development Subcommittee and the House Homeland Security Committee's Cybersecurity, Infrastructure Protection, and Security Technologies Subcommittee held a joint [hearing](#) on "Public-Private Solutions to Educating a Cyber Workforce." Topics discussed in the hearing included: (1) Public-Private Partnerships; (2) Recruitment; (3) Curriculum; (4) Workforce Training; (5) Minority and Women Students; (6) Military Involvement; and (7) Puerto Rico.

Higher Education and Workforce Development Subcommittee Chairman Brett Guthrie (R-KY) said there is a shortage of cyber employees and noted a study that stated the demand for cyber jobs will increase to 1.8 million jobs by 2022. He noted the "Strengthening Career and Technical Education for the 21st Century Act" ([H.R. 2353](#)), which allows states to dedicate additional resources towards high-demand industries such as cybersecurity.

Higher Education and Workforce Development Subcommittee Ranking Member Susan Davis (D-CA) said cyber-attacks have become more common and the need for cyber infrastructure will continue to grow. She said the fundamental building block to prevent cyber-attacks is highly-skilled cybersecurity workers. She stressed the importance of including minority workers in the cyber industry. She noted the innovative methods of the Northern Virginia Community College to recruit more students to the cyber industry. She called for a public-private partnership to grow the talent pool and raise awareness for cybersecurity careers. Davis said business must review their hiring practices that may create unnecessary barriers during the hiring process.

Cybersecurity, Infrastructure Protection, and Security Technologies Subcommittee Chairman John Ratcliffe (R-TX) said the risks of cybersecurity are broadly shared by all industries. He stated that the availability of qualified professionals to deal with the challenges of future cyber-attacks is limited. He noted that more than 200,000 cybersecurity jobs in the U.S. are unfilled and said the difficulty to fill the jobs will increase. He called for intellectual capital that better reflects the needs for cyber warfare. He said the rate of innovation is "truly astonishing" and called for education and government collaboration.

Cybersecurity, Infrastructure Protection, and Security Technologies Subcommittee Ranking Member Cedric Richmond (D-LA) recalled last month's hearing on recruiting cybersecurity professionals. He said women and minorities are vastly underrepresented in cybersecurity and stressed the importance of diversity. He called for non-traditional training models, partnerships through the K-12 level, and a multi-disciplinary approach. He said action, sustained funding from Congress, and leadership are all critical elements of providing adequate cybersecurity.

Texas A&M University System Associate Vice Chancellor Stephen Cambone noted that Texas A&M is a land grant university that looks for ways to improve the workforce. He said the college has been designated by the Department of Homeland Security (DHS) and the National Security Agency (NSA) as a National Center of Excellence in three areas: Cyber Operations, Cyber Defense Education, and Cyber Defense Research. He recommended that Information Sharing and Analysis Centers (ISACs) expand the collaborative benefits of public-private partnerships to include cyber workforce development. He said the information will allow academic programs to address how to face cyber issues. He also called for a government cyber grant program that is modeled after the Sea and Space Grants as a way to build up cybersecurity practices.

IBM Institute for Business Value Security and CIO Lead David Jarvis said cybersecurity professionals are not produced by educational institutions in the U.S. He stressed the importance of aligning the education system with the core aspects of cybersecurity. He applauded the passing of a recent bill and called for easing the pathway of blue-collar workers into the cyber industry. He said IBM is utilizing a new education model, Pathways in Technology Early College High School (P-

TECH), as a way to recruit students, veterans, and female leaders. He noted the partnership with community colleges and called for the institutions to be further supported. He said employers need to engage in regional partnerships such as joint cybersecurity curriculum committees. He recommended Congress eliminates regulations such as the Federal work study program that will improve the flexibility within educational institutions.

Northern Virginia Community College President Dr. R. Scott Ralls said community colleges stand at the forefront of eliminating employment gaps and creating economic opportunity. He said the college allows students to complete a bachelor's degree on site, draws from the rich veteran population in the surrounding area, works with high schools to recruit and provide science, technology, engineering and mathematics (STEM) education, offers apprenticeship and internship experiences for students, certify with Virginia's unique "fast-forward program," and works aggressively to learn and receive feedback from cybersecurity employers in the region.

### Kaspersky Labs Hearing

#### *Key Points:*

- *A committee examines the risks associated with using a Russian cybersecurity firm's products on federal networks previous to a DHS order to cease doing so.*

On October 25, the House Science, Space, and Technology Committee's Oversight Subcommittee held a [hearing](#) on "Bolstering the Government's Cybersecurity: Assessing the Risk of Kaspersky Lab Products to the Federal Government." Topics discussed in the hearing included: (1) Cybersecurity Regulation, Laws, and Authorities; (2) International Cyber Influence; (3) Anti-Virus Software; (4)

Kaspersky Labs; (5) Risk Manage Guidelines and Measures; and (6) Small Businesses.

Subcommittee Chairman Darin LaHood (R-IL) said there may be information that is considered classified and could not be discussed in an open hearing. He said he is interested in finding ways to improve the design, use, and performance of federal information technology (IT) resources. He noted a Senate Intelligence Committee hearing and the concerns raised about Kaspersky Lab products. He said Eugene Kaspersky has been critical of the U.S. government during the process but recent revelations have confirmed U.S. allegations against the Russian government.

Full Committee Chairman Lamar Smith (R-TX) said cybersecurity breaches are so prevalent today that it is hard to keep track. He said the Committee hopes to bring the “National Institute of Standards and Technology (NIST) Cybersecurity Framework, Assessment, and Auditing Act of 2017” ([H.R. 1224](#)) to the House Floor for a vote. He said new revelations in relation to Kaspersky Lab have caused the Committee to take action on the matter. He supported the Administration’s actions on the issue, noting the government wide order for agencies to identify and stop all use of Kaspersky products. He expressed interest in the previous Administration’s decision to include Kaspersky products and the active steps of determining exactly where Kaspersky products present risk to the U.S. government.

Subcommittee Ranking Member Don Beyer (D-VA) said the founder of Kaspersky Labs, Eugene Kaspersky, has been described as the “Bill Gates” of Russia. He noted a recent report that said Israeli intelligence found Russian hackers using Kaspersky software to search for the code names of U.S. intelligence

programs. He said the issue of cybersecurity is now an issue of preserving democracy. He called for bi-partisan support on the matter and asked for an additional hearing with witnesses from the scientific community.

Full Committee Ranking Member Eddie Bernice Johnson (D-TX) said recent concerns raised by the U.S. intelligence agency have led to much greater scrutiny of Kaspersky Lab activities. She expressed confidence in U.S. agencies to eliminate Kaspersky software from all government systems. She said she is concerned with future Russian cyberattacks against the U.S. She said the knowledge of Russian actions in the 2016 elections should motivate lawmakers to discuss how to preserve election integrity in the future.

U.S. General Services Administration Chief Information Officer David Shive stated the mission of the Government Service Administration (GSA) is to deliver the best value in real estate, acquisition, and technology services to the government. He said in regards to technology, GSA’s goal is to deliver technology that provides a secure environment for doing business, while ensuring that both business and IT run efficiently. He noted the “Federal Information Security Modernization Act of 2014” (FISMA) and the comprehensive framework that it provides. He said the FISMA framework supports the IT security program that GSA implemented. He explained that the program assures risks to GSA’s IT systems are assessed and actions are implemented to properly mitigate those risks. He asserted that in accordance with FISMA, GSA adheres to all of the National Institute of Standards and Technology’s (NIST) Federal Information Processing Standards (FIPS) and Special Publications (SP) in implementing GSA’s IT security program. He said GSA continues to review leading edge technologies to ensure the protection from the most sophisticated attacks.

He used next generation anti-virus solutions that use machine learning and artificial intelligence as an example. Shive explained that GSA took a proactive stance and scanned all of its IT assets for the presence of Kaspersky Lab products in June 2017. He said the approach confirmed that there was no installation of Kaspersky Lab products in GSA's on-premise and cloud-based systems.

International Institute for Strategic Studies' Future Conflict and Cybersecurity Director Sean Kanuck stressed the importance of understanding the technical nature of Kaspersky products themselves. He said they are complete network monitoring solutions that can see all activity on their clients' networks. He argued that willful complicity may not be a required element of any foreign intelligence threat related to Kaspersky Lab. He called for a specific focus on the foreign intelligence threat in relation to Russian "cyber posture." He recalled Dan Coats', Director of National Intelligence (DNI), comments on Russia remaining one of the most capable cyber adversaries of the U.S. He argued that a proper review of Kaspersky Labs requires the evaluation of commands that remote administrators may be issuing to client networks through access points. He called for increased resilience and an internal review of one's own enterprise assets.

## Upcoming Hearings and Events

### October 31

**Health IT:** The Senate Health, Education, Labor & Pensions Committee will hold a [hearing](#) titled "Implementation of the 21st Century Cures Act: Achieving the Promise of Health Information Technology."

**2020 Census:** The Senate Homeland Security & Governmental Affairs Committee will hold a [hearing](#) titled "2020 Census: Examining Cost

Overruns, Information Security, and Accuracy."

**Technology Solutions to Russian Disinformation:** The Senate Judiciary Committee's Crime and Terrorism Subcommittee will hold a [hearing](#) titled "Extremist Content and Russian Disinformation Online: Working with Tech to Find Solutions."

**Assistant Attorney General for National Security Nomination Hearing:** The Senate Intelligence Committee will hold a [hearing](#) on the nomination of John Demers to be the Assistant Attorney General for the National Security Division.

### November 1

**Social Media and the 2016 Election:** The Senate Intelligence Committee will hold a [hearing](#) titled "Social Media Influence in the 2016 U.S. Elections."

**Securing Consumers' Credit Data:** The House Energy & Commerce Committee's Digital Commerce and Consumer Protection Subcommittee will hold a [hearing](#) titled "Securing Consumers' Credit Data In The Age Of Digital Commerce."

**Data Security:** The House Financial Services Committee's Financial Institutions and Consumer Credit Subcommittee will hold a [hearing](#) titled "Data Security: Vulnerabilities and Opportunities for Improvement."

**Net Neutrality and Antitrust:** The House Judiciary Committee's Regulatory Reform, Commercial and Antitrust Law Subcommittee will hold a hearing titled "Net Neutrality and the Role of Antitrust."

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

*Homans, Simon Dallas, and Rebecca Konst contributed to this section.*

## **TRADE**

### **Uncertainty about the Future of NAFTA on Capitol Hill**

#### *Key Points:*

- *President Trump again raises possibility of NAFTA withdrawal in meeting with Senators.*
- *Members of both parties voice concern over controversial proposals introduced by administration and continued threats to withdrawal.*

At a meeting with Republican Senators on Tuesday, President Trump said he believes the U.S. must begin the NAFTA withdrawal process to encourage Canada and Mexico to capitulate to U.S. proposals. Then, during an interview on Wednesday, President Trump said that the chances of successfully completing negotiations are “good,” but added, “I think my people are going to have to get tougher. And I told them that.”

Following the controversial proposals tabled by U.S. trade negotiators during the last round of NAFTA talks, many members of Congress have begun to raise concerns with the Administration’s approach and continued threats of withdrawing from the trade agreement. Senate Majority Whip John Cornyn (R-TX) said that, “It’d be a terrible mistake to let NAFTA lapse.” Similarly, Senate Agriculture Committee Chairman Pat Roberts (R-KS) said proposals on automobile rules of origin and investor-state dispute settlement (ISDS) would be “very counterproductive... sometimes when you’re talking about trade you have to use a poker chip that you might not want to use in the end result, so let’s hope that’s the case.” House Rules Committee Chairman Pete

Sessions (R-TX) stressed that Congress needs to “continue sending signals to the Administration on where we would like this to go... I do not believe that the rounds up to today have taken the pathway that I would want to see.”

The fifth round of NAFTA negotiations have been delayed and will now take place in Mexico from November 17 to 21, with additional negotiating rounds scheduled through the first quarter of 2018.

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

*This Week in Congress was written by Ryan Schnepp.*