

November 10, 2017

## Washington Update

### This Week in Congress

**House** – The House passed H.R. 3441, the **Save Local Business Act**; H.R. 3991, the **Risk-Based Credit Examination Act**; H.R. 4173, the **Veterans Crisis Line Study Act of 2017**; H.R. 3043, the **Hydropower Policy Modernization Act of 2017** and H.R. 2201, the **Micro Offering Safe Harbor Act**.

**Senate** – The Senate passed H.R.1370, the **Department of Homeland Security Blue Campaign Authorization Act of 2017**; H.R.3031, the **TSP Modernization Act of 2017**; S.1015, the **National Suicide Hotline Improvement Act**; H.R.3243, the **FITARA Enhancement Act of 2017**; and confirmed **Melissa Sue Glynn**, to be Assistant Secretary of Veterans Affairs and **Randy Reeves**, to be Under Secretary of Veterans Affairs for Memorial Affairs.

### Next Week in Congress

**House** – The House is expected to take up the conference report to the **National Defense Authorization Act for Fiscal Year 2018** and H.R. 1, the **Tax Cuts and Jobs Act**.

**Senate** – The Senate is expected to take up the nomination of **Derek Kan** to be Under Secretary of Transportation for Policy.

## TAX

### House Ways and Means Committee Sends Tax Bill to the Floor

#### *Key Points*

- *By vote of 24-16, the House Ways and Means Committee completed its consideration of “The Tax Cuts and Jobs Act.”*
- *The bill includes a 20 percent corporate tax-rate; a 25-percent pass-through rate; updated repatriation rates for foreign held assets; and other key provisions.*
- *A full House vote could occur sometime next week.*

On Thursday, the House Ways and Means Committee completed the markup of [H.R. 1](#), the “Tax Cuts and Jobs Act” and voted 24-16,

along party lines, to send the legislation to the House Floor. Prior to passage, the Committee adopted an amendment which made significant revisions and additions to the underlying bill. The amendment included: (1) a new 9 percent tax rate for small businesses; (2) the preservation of an adoption tax break; (3) a 14 percent repatriation rate for cash equivalent

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assets and a 7 percent rate for illiquid assets; (4) an additional one-year delay for the repeal of the estate tax; (5) preserving the current-law effective tax rates on income from dividends; (6) requiring that certain research or experimental expenditures are capitalized and amortized over a 5-year period—15 years for expenditures attributable to research outside the U.S.; and (7) preserving the tax treatment of nonqualified deferred compensation.

Overall, the bill includes a 20 percent corporate tax-rate beginning in 2018; and a 25 percent pass-through rate, qualified businesses can categorize 70 percent of their income as wages subject to the individual tax rates, and 30 percent as business income, taxable at the 25 percent rate; or they can set ratio of owner's wage income to business income based on the level of their capital investment. The bill also includes a limitation on the deduction of business interest which would disallow the deduction for net interest expense in excess of 30 percent of the business's adjusted taxable income. Immediate expensing on new property and equipment, which applies to property of 20 years or less, is also included in the bill. The bill repeals the \$1 million deduction limit for commissions and performance-based compensation on certain highly paid officers of a publicly traded company from the definition of 'covered employee' and preserves the deduction for advertising.

### Senate Finance Committee Releases Its Tax Bill

#### Key Points

- *The Senate Finance Committee released a detailed outline of its tax bill and will release legislative text on Sunday.*
- *Senate proposes delayed 20 percent corporate tax-rate.*
- *The committee will begin to consider the bill on Monday.*

On Thursday evening, the Senate Finance Committee released its tax reform [proposal](#). Differing from the House bill, the Senate proposal delays the inclusion of a 20 percent corporate tax-rate until 2019. The proposal also includes seven individual tax brackets and eliminates the deduction of state and local taxes.

For pass-through businesses, the Senate outline provides a 17.4 percent deduction for non-wage income, the deduction would not be available for many service businesses. In regards to accumulated offshore income, liquid assets would be taxed at 10 percent and illiquid assets would yield a 5 percent rate. According to Senator Chuck Grassley (R-IA), carried interest will be worked through during the markup process. For interest deductibility, the proposal restricts the deduction for businesses to 30 percent of EBITDA, interest not allowed as a deduction would be allowed to be carried forward indefinitely.

### Timeline for Tax Reform

#### Key Points

- *House Ways and Means Committee completes markup and sends bill to the House Floor; a vote is expected next week.*
- *The Senate Finance Committee released a detailed outline of its tax bill and will begin the markup process on Monday.*

#### 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.

The House is expected to begin consideration of H.R. 1 next week, with the probability of making further amendments to the bill prior to reaching the floor at the House Rules Committee and to prior to the bill reaching the Floor. The likely changes will come either as a manager's amendment through the Rules Committee or through amendments on the Floor that are necessary to solidify support for final passage including improvements the deduction of state and local taxes as well as other key issues. The House Rules Committee will meet on Wednesday to consider the bill. A full-House vote could occur sometime late next week.

The Senate released a tax reform outline on Thursday. An updated draft, which will be used as the base text, will be released on Sunday and the Senate Finance Committee markup will begin on Monday afternoon. The Senate Finance Committee would like to clear the bill from Committee by the end of the week. The full Senate would then consider the bill after returning from the Thanksgiving holiday recess period. Depending on the outcome of next week, the full-Senate could vote on a tax bill before December.

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

## **FINANCIAL SERVICES**

### **House Financial Services Panel Continues Examination of Housing Finance Reform**

#### *Key Point:*

- *Ranking Member Emanuel Cleaver (D-MO) stressed the need to maintain the 30 year fixed rate mortgage and to have an explicit government guarantee.*

On October 25, the House Financial Services Committee's Subcommittee on Housing and Insurance held a [hearing](#) entitled "Sustainable Housing Finance, Part III." Chairman Sean Duffy(R-WI) suggested it is time for the housing finance sector to be reformed and he expressed hope that they can work across party lines on the issue. Ranking Member Emanuel Cleaver (D-MO) stated this is the third in a series of hearings on housing finance reform. He explained the Committee is serious about trying to do something which will keep the mortgage financing system functioning at a high level. He noted the general consensus that housing finance reform must maintain the 30 year fixed mortgage and there must be an explicit government guarantee.

When asked about the possibility of having a robust private housing market, Moody's Analytics Chief Economist Mark Zandi stated that to go fully privatized without an explicit catastrophic guarantee would result in higher borrowing costs and those with less than stellar credit would be locked out of the market because rates would be so high. Representative Denis Ross (R-FL) suggested a government backstop is needed because the private sector cannot adequately price the risk of a downturn. He asked whether the market would self-regulate if there were a private market. Peter Wallison (American Enterprise Institute) stated there is a tradeoff between underwriting standards and housing prices. He stated if down payments are reduced then the amount of debt a homeowner takes on is increased. He explained that puts upward pressure on the housing prices and therefore impacts the ability of lower income to purchase houses. Representative Al Green (D-TX) asked whether there should be any government involvement in the housing market. Zandi stated if long-term fixed rate mortgages are

desired then an explicit government guarantee paid for by borrowers is needed.

### **SEC Chairman Clayton Provides Remarks on Governance and Transparency**

#### *Key Points:*

- *SEC Chairman Jay Clayton announced that the published near-term SEC agenda will be shorter than in the past.*
- *Chairman Clayton stated that the SEC will continue to focus on Dodd-Frank Act mandatory rulemakings as well as looking at the proxy process.*

On November 8, SEC Chairman Jay Clayton gave [remarks](#) at the PLI 49<sup>th</sup> Annual Institute on Securities Regulation. He noted that over the years the SEC's near-term agenda has "swelled" but noted that the SEC has limited resources to actually accomplish this agenda. He stated that as a result over the past ten years the SEC has completed on average only a third of the rules on the Commission's near-term agenda. He explained that the next near-term agenda, which will be published in the coming months as part of the Unified Agenda, will be shorter than previous SEC agendas. He suggested this is rooted in the idea of increasing transparency and accountability. He suggested that a shorter near-term agenda does not mean that the work of the SEC is slowing down and he noted progress which has been made in the past few months on two listed rulemakings. He stated the Commission was mindful when crafting the near-term agenda to reserve capacity for the SEC to react to major events or changes in the broader regulatory landscape.

Regarding the agency's five-year strategic plan, Clayton stated the numbers included in the plan will be lower than in the past. He noted the current plan developed in 2014 contains 66 strategic initiatives and 58 performance goals and indicators, but the new plan will be smaller

and reflect: the key challenges and trends facing the markets and regulatory programs; the agency's most important strategic priorities; and the initiatives the SEC is pursuing to help attain those goals. Related to the longer-term agenda, Clayton stated he has discussed how to achieve the unfinished mandatory Dodd-Frank Act (DFA) rulemakings with Commissioners Piwowar and Stein.

Chairman Clayton noted an issue not on the near-term agenda but which deserves some discussion is the proxy process. He suggested the SEC should be "lifting the hood" and taking a hard look at whether the needs of shareholders and companies are being met. He stated in 2010 the SEC solicited comments from the public on several proxy matters and he suggested reopening the comment file on that concept release to solicit updated feedback. Clayton noted increased concern over the fact that the voices of long-term retail investors may be underrepresented or selectively represented in corporate governance. He noted that non-participation rates in the proxy process are high and he suggested this might be a sign that the proxy process is too cumbersome and needs updating. Clayton stated while he is supportive of rules that allow shareholder proposals, he is searching for a way to reconcile the multiple positions and find common ground. He noted that questions exist over the proper level of ownership required to submit a shareholder proposal as well as whether the current resubmission thresholds are too low. Finally, Clayton noted that the Division of Enforcement will continue to focus on issues such as fee disclosures, Penny stocks, transaction processing, initial coin offerings, and investor education.

## House Panel Holds Hearing on Federal Reserve Reform Proposals

### Key Point:

- *The Committee examined proposals to amend the Federal Reserve's emergency lending authority, increase transparency in the conduct of monetary policy, and make changes to the operations of Federal Reserve.*

On November 7, the House Financial Services Committee's Monetary Policy and Trade Subcommittee held a [hearing](#) on "Examining Federal Reserve Reform Proposals." The three legislative bills analyzed in the hearing were: (1) H.R. \_\_\_\_\_, "[Independence from Credit Policy Act of 2017](#)"; (2) H.R. \_\_\_\_\_, "[Congressional Accountability for Emergency Lending Programs Act of 2017](#)" and (3) H.R. \_\_\_\_\_, "[Monetary Policy Transparency and Accountability Act of 2017](#)." The Financial Services Committee is scheduled to markup these and about 20 other bills on November 14.

Chairman Andy Barr (R-KY) noted the differing opinions of monetary policy over the last decade and that uncertainty surrounding monetary policy slows economic growth. He said monetary policy is effective when it is communicated in a simple manner. He noted the "Monetary Policy Transparency and Accountability Act of 2017" addresses what members of Congress and experts from both sides of the aisle see as an opportunity to better manage "our fiscal house" and increase the nation's financial resiliency by protecting households from bailouts and holding Congress account for tough decisions. He said the "Congressional Accountability for Emergency Lending Programs Act of 2017" takes an important step in addressing the bipartisan Warren-Vitter framework for congressional approval for emergency lending. He also noted that the "Independence from

Credit Policy Act of 2017" maintains the Federal Reserve's role as the originator of emergency loans while insulating the its monetary authority from compromising political pressures to overreach into credit policy.

Ranking Member Gwen Moore (D-WI) called for the new head of the Federal Reserve to discuss with Chairwoman Janet Yellen the benefits of the emergency lending authority in Section 13(3) of the Federal Reserve Act, as amended by the Dodd-Frank Act.

## House Panel Holds Hearing on International Financial Institutions

### Key Point:

- *The Committee examined the Administration's priorities for international financial institutions including the World Bank, the IMF, and the Export-Import Bank.*

On November 8, the House Financial Services Committee's Subcommittee on Monetary Policy held a [hearing](#) entitled: "Administration Priorities for the International Financial Institutions." The Subcommittee received testimony from David Malpass, Under Secretary for International Affairs, U.S. Department of the Treasury.

Chairman Andy Barr (R-KY) said international financial institutions (IFIs) like the International Monetary Fund (IMF) and World Bank need to focus on clear objectives and demonstrable results. He noted the World Bank has assisted governments that stifle their citizens' economic freedom, it has committed \$2.5 billion to China this year, and World Bank leadership has requested a capital increase. He argued the World Bank is "more excited" about fundraising rather than showing its shareholders what it has accomplished and he

stressed the need for changes. He said the IMF involvement in Greece for seven years has tarnished the IMF's reputation. He argued for clearer guidelines regarding the IMF's interaction with regional financing arrangements. He advocated for IFIs concentrating on clearly defined objectives and results.

Ranking Member Gwen Moore (D-WI) said Malpass' discussions of the benefits of private capital over development finance misstate the role of development finance. She noted investment banks do not have conversations with governments about their social or economic policies. She noted the World Bank examines social stability, governance, and inequality. She noted the growing problem of income and wealth inequality, and she questioned what domestic policies could be put in place to reduce inequality and ensure that the benefits of capitalism are shared.

Chairman Andy Barr (R-KY) noted that Scott Garrett and Spencer Bachus have been nominated for positions at Ex-Im. He asked about Malpass' priorities for global export subsidy negotiations and how the Administration will advance the interests of U.S. businesses. Malpass said increasing global wage growth is the best way to reduce inequality. He argued the best way to achieve this is to "have markets functioning." He stated the World Bank must not crowd out the private sector. He said this also applies to Ex-Im. He argued government organizations should not operate in areas where private financing is available.

## Upcoming Events

### November 14

***Financial Services Bills Markup:*** The House Financial Services Committee will hold a [markup](#) of 23 financial services bills, including

those related to proxy advisory firms, mortgage lending, TRID (TILA/RESPA Integrated Disclosure), conflict minerals, Dodd-Frank Act reform, Regulation A+, living wills, stress tests, business development companies, bank operational risk requirements, and Iran.

### November 16

***FSOC Meeting:*** The Financial Stability Oversight Council will meet in an open and an executive session. The open session agenda includes: "revisions to the Council's regulations under the Freedom of Information Act, in accordance with the FOIA Improvement Act of 2016; and an update on the work of the Alternative Reference Rates Committee." The executive session agenda includes "a discussion of the Council's 2017 annual report."

### November 28

***Federal Reserve Chairman Nomination:*** The Senate Banking Committee will hold a hearing on the nomination of Jerome Powell to be Chairman of the Federal Reserve.

*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 Set to Vote on Opening Alaska Area to Oil and Gas Development**

#### *Key Point:*

- *The Senate Energy and Natural Resources Committee will vote next week on legislation to authorize oil and gas development in the Coastal Plain area of the Arctic National Wildlife Refuge.*

On November 15, the Senate Energy and Natural Resources Committee will hold a [business meeting](#) to consider "legislation to authorize the Secretary of the Interior to

establish and administer a competitive oil and gas program in the non-wilderness portion of the Arctic National Wildlife Refuge, known as the ‘1002 Area’ or Coastal Plain.” The legislation will be considered under the reconciliation process as part of the larger tax reform package.

As described in a Committee [summary](#), the legislation:

- “repeals the prohibition on development from the Coastal Plain contained in section 1003 of the Alaska National Interest Lands Conservation Act”;
- “directs the Secretary to manage the oil and gas program on the Coastal Plain in accordance with the Naval Petroleum Reserves Production Act of 1976”;
- “requires the Secretary to conduct at least two area-wide lease sales”;
- “directs the Secretary to issue any necessary rights-of-way or easements across the Coastal Plain for the exploration, development, production, or transportation associated with the oil and gas program”; and
- “limits surface development on federal land on the Coastal Plain to 2,000 acres”.

In announcing the proposal, Committee Chair Lisa Murkowski (R-AK) declared, the “legislation... will put Alaska and the entire nation on a path toward greater prosperity by creating jobs, keeping energy affordable for families and businesses, generating new wealth, and strengthening our security—while reducing the federal deficit not just by \$1 billion over ten years, but tens or even hundreds of billions of dollars over the decades to come.”

In a [press conference](#) this week, Committee Ranking Member Maria Cantwell (D-WA) reiterated her objections to the proposal. She

declared that “scientists today say [development and the wildlife refuge] can’t coexist.” She added that, “instead of admitting that they can’t coexist...[Republicans] want to change the law that mandates drilling and changes the status of [the] refuge to make sure that that drilling actually happens.”

### **EPA Announces Public Hearing and Extends Comment Period for Clean Power Plan Repeal**

#### *Key Points:*

- *The EPA will hold a public hearing on the proposed rule to repeal the Clean Power Plan on November 28-29 in Charleston, West Virginia.*
- *The EPA also announced that it will extend the public comment period on the repeal proposal through January 15, 2018.*

On November 8, the Environmental Protection Agency (EPA) published a [notice](#) announcing a “public hearing and extension of comment period” for the Notice of Proposed Rulemaking (NPRM) to repeal the Clean Power Plan. EPA published the [NPRM](#), titled “Repeal of Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Generating Units”, on October 16, 2017, with an original public comment deadline of December 15. Wednesday’s notice extended the comment period through January 15, 2018, and announced a public hearing on November 28 and 29. The EPA noted that if it “receives a high volume of requests, we may continue the public hearing to November 30.” The [hearing](#) will convene at 9:00 a.m. on November 28 at the West Virginia Capitol Complex in Charleston.

The NPRM would rescind the Obama Administration’s [final rule](#) establishing the Clean Power Plan, which the EPA published on October 23, 2015. The Clean Power Plan

was intended to reduce greenhouse gas (GHG) emissions from the existing sources in the power generation sector. States would play the central role in implementing the Clean Power Plan, however the program would be enforced by the EPA, which could step in to establish a Federal Implementation Plan (FIP) for any state that failed to meet the requirements of the regulations. The Supreme Court issued a stay on enforcement of the rule on February 9, 2016.

## Upcoming Hearings and Events

### November 14

***Puerto Rico and Virgin Islands Recovery Efforts:*** The Senate Energy and Natural Resources Committee will hold a [hearing](#) on “hurricane recovery efforts in Puerto Rico and the U.S. Virgin Islands.”

### November 15

***Emissions Control Innovations:*** The Senate Environment and Public Works Committee will hold a [hearing](#) titled “Promoting American Leadership in Reducing Air Emissions Through Innovation”.

### 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 28-29

***Clean Power Plan Repeal:*** The Environmental Protection Agency (EPA) will hold a hearing on the [Notice of Proposed Rulemaking \(NPRM\)](#) titled “Repeal of Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Generating Units”. The NPRM would rescind the Obama Administration’s [final rule](#) establishing the Clean Power Plan, which the EPA published on October 23, 2015.

### 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.”

### December 13-15

***Pipeline Safety:*** The Pipeline and Hazardous Materials Safety Administration (PHMSA) will hold [meetings](#) of its Gas Pipeline Advisory Committee (GPAC) and its Liquid Pipeline Advisory Committee (LPAC). The GPAC meeting will “discuss topics and provisions of the proposed rule titled ‘Safety of Gas Transmission and Gathering Pipelines’”. A joint meeting of the GPAC and LPAC will “discuss a variety of policy issues and topics relative to pipeline safety.”

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

## **DEFENSE**

### **NDA Conference Report Released; Bill Could Be Considered Before Thanksgiving**

#### *Key Point:*

- *House and Senate Armed Services reach compromise on final NDAA that could be considered before Thanksgiving.*

This week, the conferees on the “National Defense Authorization Act for Fiscal Year 2018” ([H.R. 2810](#)) reached agreement on a final bill, filed a [conference report](#), and released the [Joint Explanatory Statement](#). The package also authorizes a \$7.9 billion [supplemental request](#) submitted by the Administration last week that “includes an additional \$4.0 billion to support urgent missile defeat and defense enhancements to counter the threat from North Korea, \$0.7 billion to repair damage to U.S. Navy ships, and \$1.2 billion in support of my Administration's South Asia strategy.” At present, Republican leadership in both chambers plan on bringing the bill to the floor before the Thanksgiving recess, meaning the package could be sent to the White House earlier than is customary.

In the Joint Explanatory Statement, the conferees explained that the Administration had requested \$665.7 billion overall in defense funding, of which “\$579.3 billion was requested for base DOD programs, \$65.8 billion was requested for Overseas Contingency Operations, \$20.5 billion was requested for national security programs in the Department of Energy and the Defense Nuclear Facilities Safety Board, and \$210.0 million for defense-related activities.” The conferees explained that “[t]he total request of \$665.7 billion also includes the additional amounts from the November 2017 budget amendment.” The conferees said that “[t]he conference agreement would authorize \$692.1 billion in FY 2018,

including \$605.5 billion for base DOD programs, \$65.7 billion for Overseas Contingency Operations, \$20.6 billion for national security programs in the Department of Energy and the Defense Nuclear Facilities Safety Board, and \$300.0 million for defense-related activities.”

The House Armed Services Committee released its [summary](#) of the conference report, and the Senate Armed Services Committee released its [summary](#), as well. The two Committees summarized the package differently. The Senate Armed Services Committee explained that:

The National Defense Authorization Act (NDAA) authorizes funding above the President’s fiscal year 2018 budget request to meet the immediate needs of restoring readiness, rebuilding capacity, and recapitalizing capabilities. The NDAA authorizes a base defense budget of \$626.4 billion for the Department of Defense and the national security programs of the Department of Energy. This includes authorization for the administration’s \$5.9 billion budget amendment for bolstering missile defense, repairing U.S. Navy ships after recent collisions at sea, and supporting the strategy for Afghanistan and South Asia. The bill also authorizes \$65.8 billion for Overseas Contingency Operations (OCO). In total, the NDAA supports a topline of \$700 billion for national defense (Function 050), for a total of \$26.1 billion above the President’s request.

The House Armed Services Committee stated that:

The FY18 NDAA Conference Report supports funds for base budget requirements of \$634.2 billion, a \$26.4

billion increase for essential readiness recovery above the President's combined initial and amended budget requests. This level is informed by in-depth committee oversight, as well as additional requirements identified by the military services and validated by Secretary Mattis. Committee oversight indicates that the Department can efficiently spend these additional funds in FY18. The series of tragic accidents that struck across the military highlight Conferees' concerns about the readiness of the Force. Those concerns are further reinforced by extensive Armed Services Committee Oversight. The NDAA addresses important readiness shortfalls including: increased end strength, Aviation Readiness, increased Naval presence, Ground Forces, facilities maintenance, Missile Defense, and critical munitions.

## Upcoming Hearings and Events

### November 14

**DOD Nominations:** The Senate Armed Services Committee will hold a [hearing](#) to consider the following nominations: Mr. Anthony M. Kurta To Be Principal Deputy Under Secretary Of Defense For Personnel And Readiness; Mr. James E. McPherson To Be General Counsel Of The Department Of The Army; and Mr. Gregory E. Maggs To Be A Judge Of The United States Court Of Appeals For The Armed Forces.

**Use of Nuclear Weapons Authority:** The Senate Foreign Relations Committee will hold a [hearing](#) titled "Authority to Order the Use of Nuclear Weapons."

**U.S. Role in Asia-Pacific:** The Senate Foreign Relations Committee's East Asia, The Pacific, and International Cybersecurity Policy

Subcommittee will hold a [hearing](#) titled "American Leadership in the Asia-Pacific, Part 4: View from Beijing."

### November 16

**DOD Nominations:** The Senate Armed Services Committee will hold a [hearing](#) to consider the following nominations: the Honorable John C. Rood To Be Under Secretary Of Defense For Policy; and Mr. Randall G. Schriver To Be Assistant Secretary Of Defense For Asian And Pacific Affairs.

**New Counterterrorism Guidance:** The Senate Foreign Relations Committee will hold a [closed briefing](#) on "New Counterterrorism Guidance."

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

## HEALTH

### **Federal Trade Commission Holds Meeting on Competition in the Prescription Drug Market**

#### *Key Points:*

- *The Federal Trade Commission held an event focused on addressing competition in prescription drug markets and actions the agency can take to ensure competition.*
- *Food and Drug Administration Commissioner Scott Gottlieb announced a new, streamlined process for shared Risk Evaluation and Mitigation Strategy.*

On November 8, the Federal Trade Commission (FTC) hosted an event entitled "Understanding Competition in Prescription Drug Markets: Entry and Supply Chain Dynamics" to examine generic drug markets and the strategies used by brand-name companies to delay generic competition from entering the market. The all-day event also

evaluated the role of pharmacy benefit managers (PBMs) in the pharmaceutical supply chain.

Acting Chairman of the Federal Trade Commission Maureen K. Ohlhausen and U.S. Food and Drug Administration (FDA) Commissioner Scott Gottlieb were the keynote speakers at the event. Both speakers praised the Hatch-Waxman Act and the delicate balance the legislation brought to the drug market. Despite the praise, both Acting Chairman Ohlhausen and Commissioner Gottlieb acknowledged there are problems with the system and pledged to work together to make the markets work the way they are designed to. Ohlhausen stated antitrust enforcement is not a cure-all and not a solution to every concern in the marketplace. She emphasized FTC is not a price or a sector regulator.

Conversations throughout the day highlighted the methods used by brand-name companies to delay generic entry to the marketplace, most notably pay-for-delay, product hopping, and market consolidation. Solutions to combat the anti-competitive tactics include judicial scrutiny, better education for patients and physicians, and better funding for the FDA Office of Generic Drugs to expedite the review of generic applications.

The second and third panel of the meeting focused on the intermediaries in the supply chain. Several speakers argued the current system is complicated and dysfunctional, and PBMs have too much market power. A shift to outcomes-based reimbursement was cited as a potential solution to the imbalance in the pharmaceutical supply chain.

During the FTC meeting, Gottlieb announced new steps the FDA will be taking to improve review of Risk Evaluation and Mitigation Strategies (REMS) to improve generic drug

access. The FDA will take a two-prong approach that (1) continues to find ways to encourage the use of shared REMS between all innovator and generic companies; and (2) explore steps the FDA can take to reduce the likelihood brand companies use REMS as a way to slow the entry of generic competition. The FDA released a [draft guidance](#) describing how applicants can submit collective sets of files to the FDA that represent all participating firms for a shared system REMS. The FDA is also considering waiving the requirement that an innovator and generic utilize a shared system REMS. This would free generic entrants from having to reach an agreement with the brand firm and also prevent brand firms from using these negotiations to delay entry.

## Upcoming Hearings and Meetings

### November 13

**Opioids:** The American Enterprise Institute will hold a briefing on “The Opioid Crisis: What Can Congress Do?”

**Antimicrobial Resistance:** AdvaMed and the Infectious Disease Society of American will hold an Antimicrobial Resistance Aware Fair on the global threat of antimicrobial resistance with leaders from the diagnostics industry, the pharmaceutical industry, researchers and patient groups.

### November 14

**Drug Pricing:** Real Clear Politics will hold a discussion on “Examining the Pharmaceutical Supply Chain from Production to Patient.”

**Gene Editing:** The Senate Health, Education, Labor and Pensions Committee will hold a hearing on “Gene Editing Technology: Innovation and Impact.”

**November 15**

**Cancer:** The Friends of Cancer Research will hold its 10th annual meeting.

**Healthy Communities:** The Senate Health, Education, Labor and Pensions Committee will hold a hearing on “Encouraging Healthy Communities: Perspective from the Surgeon General.”

**Telemedicine:** The Cato Institute will hold a discussion on “Liberating Telemedicine,” focusing on the requirement that physicians obtain licenses from each state in which their patients are located.

**Opioids:** The Senate Appropriations Committee will hold a hearing on “VA Efforts to Prevent and Combat Opioid Overmedication.”

**Opioids:** Advocates for Opioid Recovery and the Collaborative for Effective Prescription Opioid Policies will hold a briefing on the national opioid emergency and the need for medication assisted treatment.

**November 16**

**Alzheimer’s:** The Hill will hold a discussion on “Preparing for a Treatment: Managing and Delivering an Alzheimer’s Breakthrough.”

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

**TRANSPORTATION****NDAAs Reverses Court on Model UAS Registration; Encourages FAA and DOD To Collaborate***Key Points:*

- *The annual defense policy bill negates a ruling that freed model UAS operators from having to register with the FAA.*
- *The provision also includes authority for FAA and DOD to collaborate on UAS.*

The [conference report](#) for the “National Defense Authorization Act for Fiscal Year 2018” ([H.R. 2810](#)) contains language that reverses a U.S. Court of Appeals ruling that struck down the Federal Aviation Administration’s requirement that “owners of small unmanned aircraft operated for recreational purposes (aka model aircraft) to register with the FAA.” The suit was brought by “a model aircraft hobbyist” who challenged the regulations and an Advisory Circular on the basis that Section 336(a) of the “FAA Modernization and Reform Act” (P.L. 112-95), which bars the FAA from “promulgat[ing] any rule or regulation regarding a model aircraft.” The Court of Appeals for the District of Columbia Circuit agreed with the plaintiff, and the regulations were struck down.

Section 1092(d) provides that:

The [rules](#) adopted by the Administrator of the Federal Aviation Administration in the matter of registration and marking requirements for small unmanned aircraft (FAA-2015-7396; published on December 16, 2015) that were vacated by the United States Court of Appeals for the District of Columbia Circuit in [Taylor v. Huerta](#) (No. 15-1495; decided on May 19,

2017) shall be restored to effect on the date of enactment of this Act.

Section 1092 also provides the FAA and Department of Defense (DOD) the authority to “collaborate on sense-and-avoid capabilities for unmanned aircraft systems.” In the [Joint Explanatory Statement](#), the conferees explained their belief that “it is in the national interest to effectively and expeditiously integrate unmanned aircraft systems into the National Airspace System (NAS)...[and] [i]n particular, the conferees believe FAA and DOD collaboration regarding sense and avoid technology is necessary to facilitate DOD unmanned aircraft into the NAS for operational and testing requirements in an efficient and timely manner.” The conferees added that they “believe that registration of unmanned aircraft is consistent with the long-standing requirement for registration of aircraft under title 49, United States Code, section 44101, and is necessary to promote safety and security among all current and future users of the NAS.”

### Senate Policy Arm Briefs Cases For and Against ATC Privatization

#### Key Point:

- *The Senate Republican Policy Committee explains ATC policy in the context of the FAA’s delayed, over budget NextGen.*

This week, the Senate Republican Policy Committee (Committee) released a [primer](#) on the Federal Aviation Administration’s (FAA) transition to the Next Generation Air Transportation System (NextGen), which the Committee asserted “has been rife with setbacks.” The Committee explained that proponents of privatizing the FAA’s air traffic control operations (ATC) often cite the delays and cost overruns in implementing NextGen as

reason for the policy change. The Committee noted, however, that:

[A]n ATC spinoff would very likely trigger constitutional challenges. A [Congressional Research Service] [report](#) questioned whether courts might determine that a non-governmental ATC corporation would be unconstitutional under the non-delegation doctrine, Due Process Clause, or Appointments Clause. Although [memoranda](#) commissioned by proponents of a spinoff discount these concerns, the move to corporatize the ATC functions would almost definitely be challenged in court.

The House’s long-term FAA reauthorization, the “21st Century Aviation Innovation, Reform, and Reauthorization Act (AIRRACT)” ([H.R. 2997](#)), contains language to spin off ATC operations, while the Senate’s bill, the “Federal Aviation Administration Reauthorization Act of 2017” ([S. 1405](#)), does not.

### Democrats Call on Chao To Reinstate GHG Performance Measure

#### Key Point:

- *House and Senate Members pressure the DOT to reinstate GHG performance measure.*

On November 8, Senator Ben Cardin (D-MD), Representative Earl Blumenauer (D-OR), and 49 other House and Senate Democrats sent a [letter](#) to Secretary of Transportation Elaine Chao articulating their “strong opposition to the U.S. Department of Transportation’s (DOT) proposed rule repealing the national performance measure on carbon pollution from tailpipe greenhouse gas (GHG) emissions on the National Highway System (*Docket No. FHWA-2017-0025*), also known as the ‘GHG

measure” according to their [press release](#). The Members claimed that “[t]he GHG measure requires that state and local officials provide consistent information to measure carbon pollution from on-road mobile sources and set performance-based targets to find unique solutions that work for their regions.” On October 5, the Federal Highway Administration (FHWA) and the DOT issued a [notice of proposed rulemaking](#) to repeal an Obama Administration final rule on performance measures that includes GHGs.

### DeFazio Urges Administration To Proceed With Connected Technology Rule

#### Key Point:

- *After Administration seems to delay rule on connected vehicle technology, the top Democrat on the House Transportation and Infrastructure Committee writes OMB to urge proceeding with the Obama Administration’s proposed rule.*

On November 7, House Transportation and Infrastructure Committee Ranking Member Peter DeFazio (D-OR) sent a [letter](#) to Office of Management and Budget (OMB) Director Mick Mulvaney “urging him to act on a Notice of Proposed Rulemaking to bring connected vehicle technology, known as Dedicated Short Range Communications (DSRC) to all vehicles.” He noted that the “Trump Administration has not moved this rulemaking forward and recent press reports suggest it is being abandoned.” The Department of Transportation recently listed the rulemaking on its [long-term agenda](#) even though a [notice of proposed rulemaking](#) was released in January 2017.

DeFazio stated that “I recognize that the Trump Administration is focused on reducing regulatory requirements, but in this case, the automakers who will have to comply with these

requirements are supportive of the rulemaking because it will bring interoperability.” He claimed that “[t]his rulemaking follows decades of hard work to develop a unifying communication standard for the auto industry, assuring that new vehicles can seamlessly communicate.” He stated that “[t]hat technology is now ready for deployment, potentially saving tens of thousands of lives per year...[and] [a]ll that is needed is a rule to finalize the standards.”

### Upcoming Hearings and Events

#### November 15

***Air Emissions Innovations:*** The Senate Environment & Public Works Committee will hold a [hearing](#) titled “Promoting American Leadership in Reducing Air Emissions Through Innovation.”

#### November 16

***Coast Guard Readiness:*** The Senate Commerce, Science & Transportation Committee’s Oceans, Atmosphere, Fisheries, and Coast Guard Subcommittee will hold a [hearing](#) titled “Coast Guard Readiness: How Far Can We Stretch Our Nation’s Only Multi-Mission, Military Force?”

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

## **TECHNOLOGY**

### Data Breach Hearing

#### Key Points:

- *Another committee of jurisdiction examines the Equifax breach and other high profile breaches.*
- *Some Members suggest the parameters of a data security bill.*

On November 8, the Senate Commerce, Science, and Transportation Committee held a [hearing](#) entitled: “Protecting Consumers in the Era of Major Data Breaches.” Topics discussed in the hearing included, but were not limited to: (1) Yahoo Security, (2) Equifax security and practices, (3) state foreign actors and public-private partnerships, (4) legislation and authority, (5) consumer rights and protection.

Chairman John Thune (R-SD) said data breaches do not pose a new issue to the Committee; however, he said he is concerned with new, large scale breaches. He said both the Equifax and Yahoo data breaches are evidence of the consistent threat to consumer data today. He said 145.5 million U.S. consumers had their personal data impacted by the Equifax breach while the Yahoo breach compromised 3 billion user accounts. He maintained companies that collect data on U.S. citizens should step up or face consequences when they fail. He said the hearing will help the Committee better understand challenges faced by the industry and help them better educate consumers. He suggested creating a federal data breach notification standard in order to standardize and better help businesses communicate data breaches with consumers. He also suggested creating reasonable business standards based on size and capabilities of companies. Thune said this was critical in that Equifax met current standards but still failed to secure personal data of its consumers.

Ranking Member Bill Nelson (D-FL) noted the Choice Point breach in 2005 was the first high profile data breach in the U.S. and insisted the trend has continued. He stated criminals can use personal data to commit fraud against consumers and maintained \$5 billion is stolen from the U.S. Treasury on fake federal income tax returns every year. He stated the 2013 Yahoo breach compromised the personal data of 3 billion users. He further said the Equifax

breach poses a unique problem because it erodes consumer trust in companies’ capabilities across the industry. He also mentioned state actors such as Russia now pose a serious threat to the U.S. He said it is critical to hold companies accountable in order to restore consumer trust. He said the Federal Trade Commission (FTC) enforced actions against companies failing to protect consumer data but explained companies are now challenging the FTC’s legal authority. He said the FTC should force companies to adopt minimum requirements and said the agency should have authority over the entire commercial sector, not just financial sector.

Equifax Interim CEO Paulino do Rego Barros, Jr. said his first act as CEO was to address issues with call centers’ responses to consumers. He maintained Equifax will be an industry leader in its response to its consumers. He said his first priority is to better the services of Equifax for consumers. He said he has visited call centers to ensure the experience is better and said the company improved its social media and communication structure. He said this has resulted in reduced backlogs. Secondly, he stated Equifax has adjusted its corporate structure to be more direct and responsive. Also, he stated Equifax is improving its security infrastructure. He explained this included changing the company’s patching and procedures, using new detection tools, and improving their response tools. He mentioned Equifax is also working with industry partners to develop best practices to address cybersecurity threats. He said finally, Equifax plans to open a more secure, easy-to-use application for consumers in order to allow them to automatically freeze their accounts for free. He said he is committed to daily engagement and long-term planning. He emphasized it is the responsibility of the company to restore public trust.

Former Yahoo! CEO Marissa Mayer said Yahoo was the victim of cyber-attacks in 2014 and insisted the company quickly informed law enforcement and users. She said Yahoo worked with the Federal Bureau of Investigation (FBI) to expose the hackers and explained Russian intelligence officers and foreign hackers were responsible for the attacks. She said the Department of Justice (DOJ) announced a 47-count indictment, charging 4 individuals for these attacks. She said in 2016, the FBI notified Yahoo a third-party claimed to have stolen user data from the company. She explained Yahoo determined the data was stolen from the company in August 2013, and while Yahoo was unable to identify the intrusion, she maintained the company promptly notified its users. She maintained Yahoo takes cybersecurity seriously and wants to work with the Committee to ensure better system security. She said international state actors, including Russia, have attacked U.S. companies and maintained this poses a new, unique threat to America. She insisted it is important the U.S. government works with companies to address state actor attacks.

Verizon Communications Deputy General Counsel and Chief Privacy Officer Karen Zacharia said Verizon acquired Yahoo in 2017 and explained Yahoo is now part of a new company called Oath which includes HuffPost, Yahoo, and AOL. She said cyber-attacks on Yahoo occurred before the acquisition. She said after acquiring Yahoo, Verizon consulted with forensic experts to review the 2016 attacks and concluded all Yahoo accounts were impacted by the 2013 security incident but explained Social Security Numbers (SSNs), passwords, and sensitive bank account information were not stolen. She claimed that Yahoo did take actions to ensure user protection after the 2016 data breach such as requiring new security questions and updating passwords. She said Verizon is integrating 2

security teams into the company and examining the best practices of each team. She said Verizon is also creating an external advisory board of security experts. She said Verizon and Oath are committing considerable resources to protect its assets and customers.

Entrust Datacard Corp President and CEO Todd Wilkinson said Entrust Datacard provides data protection advice to consumers and companies and insisted personal data is incredibly valuable today which explained the increase in high level breaches as of late. He said according to the 2017 Verizon data breach report, 43 percent of all data breaches can be traced to a malicious phishing attack traced to a bad actor compromising a false identity. He said the most recent security breaches resulted in personally identifiable information (PII) being stolen from companies and their consumers. He said companies face highly complex systems and attacks from international state actors. He insisted there are still best practices that can be used. He contended that the majority of PII has been stolen and can be used to defraud consumers, which is why it is necessary to implement a resilient identity system that can respond to compromise and recover quickly. He said SSNs are an outdated framework which needs to be updated. He said several public-private frameworks have been implemented around the world to provide more secure data for consumers. He explained a new system could provide better security and help consumers recover their PII quicker and more efficiently.

### **DHS Secretary Nomination Hearing**

#### *Key Point:*

- *The Administration's nominee to head DHS answers questions on a range of issues including cybersecurity.*

On November 8, the Senate Homeland Security and Government Affairs Committee met in [executive session](#) and discussed the nomination of Secretary of Homeland Security-designate Kirstjen Nielsen. Topics discussed in the hearing included: (1) Cybersecurity, (2) Border Security, (3) Immigration, (4) DHS Policy, (5) Port/Airport Security, (6) FEMA / Disaster Response, and (7) Climate Change.

Senator James Lankford (R-OK) expressed concern about foreign interference in elections. He asked Nielsen to clarify how she would make elections more secure in the future. Nielsen stated that she wanted to make sure that production of voting machines would be secure from their original source to polling location. She added that it was essential to secure legitimate votes. She recommended using a similar system utilized by California regarding paper ballots.

Senator Steve Daines (R-MT) stated that Nielsen has an extensive background in cybersecurity. He asked how Nielsen would work to make the nation safer from regular attacks. Nielsen stated that the threat to information has changed. She added that data security and information security are under greater threat than they were 15 years ago. She noted that information integrity needs to have more security and multiple contingencies.

Senator Kamala Harris (D-CA) asked for a timeline for cybersecurity solutions on election infrastructure. Nielsen said upon confirmation, she will work immediately on local, state, and federal election systems, but did not provide a specific date.

Senator Maggie Hassan (D-NH) expressed concern over election related cybersecurity. She said the DHS is just beginning to reach out to state chief election officers. She asked Nielsen why this has taken so long. Nielsen countered

by saying that the DHS has been working on the issue for months.

## Upcoming Hearings and Events

### November 14

***Technology and Farming:*** The Senate Commerce, Science & Transportation Committee's Consumer Protection, Product Safety, Insurance, & Data Security Subcommittee will hold a [hearing](#) titled "Technology in Agriculture: Data-Driven Farming."

***Federal Cybersecurity:*** The House Science, Space & Technology Committee's Oversight Subcommittee will hold a [hearing](#) titled "Bolstering the Government's Cybersecurity: A Survey of Compliance with the DHS Directive."

***Public-Private Sector Information Sharing:*** The House Small Business Committee will hold a [hearing](#) titled "Federal Government and Small Businesses: Promoting Greater Information Sharing for Stronger Cybersecurity."

### November 15

***VA EHR:*** The House Appropriations Committee's Military Construction, Veterans Affairs and Related Agencies Subcommittee will hold a [hearing](#) titled "Veterans Affairs Electronic Health Record."

***Information Sharing:*** The House Homeland Security Committee's Cybersecurity and Infrastructure Protection Subcommittee will hold a [hearing](#) titled "Maximizing the Value of Cyber Threat Information Sharing."

***FITARA Oversight:*** The House Oversight & Government Reform Committee's Government Operations and Information Technology Subcommittees will hold a joint

[hearing](#) titled “The Federal Information Technology Acquisition Reform Act (FITARA) Scorecard 5.0.”

**November 16**

**5G Networks:** The House Energy & Commerce Committee’s Communications and Technology Subcommittee will hold a [hearing](#) titled “The Race To 5G And Its Potential To Revolutionize American Competitiveness.”

*For more information on technology issues you may [email](#) or call Michael Kans at 202-659-8201. Simon Dallas and Jackson McLendon contributed to this section.*

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