

November 17, 2017

Washington Update

This Week in Congress

- **House** – The House passed the **Tax Cuts and Jobs Act** (H.R. 1); the **Federal Acquisition Savings Act of 2017** (H.R. 3071); the **21st Century Flood Reform Act** (H.R. 2874); the **Connected Government Act** (H.R. 2331); and adopted the Conference Report to accompany the **National Defense Authorization Act** (H.R. 2810).
- **Senate** – The Senate passed the **FEMA Accountability, Modernization and Transparency Act** (H.R. 1679); the **Protecting Young Victims from Sexual Abuse Act** (S. 534); the **VALOR Act** (H.R. 3949); confirmed **Derek Kan** to be Under Secretary of Transportation; **Stephen Gill Bradbury** to be General Counsel to the Department of Transportation; **Joseph Otting** to be Comptroller of the Currency; and Adopted the Conference Report to accompany the **National Defense Authorization Act** (H.R. 2810).

Next Week in Congress

- **House** – The House is in recess until Tuesday, November 28.
- **Senate** – The Senate is in recess until Monday, November 27.

TAX

House Passes Tax Bill

Key Points:

- *House passes H.R. 1, the Tax Cuts and Jobs Act by a vote of 227-205.*
- *No amendments were offered on the House floor; the bill did not include repeal of the individual mandate.*

On Thursday, the House passed H.R. 1, the Tax Cuts and Jobs Act, by a largely party line vote of 227-205, with 227 Republicans voting in favor and with 192 Democrats and 13 Republicans voting against the bill (2 Democrats did not vote). The bill was considered under closed-rule which did not allow for additional amendments to be offered during the floor consideration. Prior to the

floor vote, the House Rules Committee acted to report out H.R. 1. During the Rules Committee hearing, there were 140 amendment filed but none were adopted. The final bill as passed did not include repeal of the individual mandate.

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Senate Finance Committee

Key Points:

- *The Senate Finance Committee reported out its version of tax reform with a party line vote of 14-12.*
- *The bill would delay the implementation of a 20-percent corporate tax rate until 2019; applies 17.4-percent pass-through rate; repeals the individual mandate; and includes other key provisions.*
- *A full Senate vote is expected during the week of November 30.*

The Senate Finance Committee favorably reported out its version of the Tax Cuts and Jobs Act late Thursday evening. The final vote on the measure was 14-12 (along party lines). Before reporting out the measure, the committee adopted Chairman Orrin Hatch's Manager's Amendment that included several changes to the underlying bill. The amendment included modifications to the Orphan Drug Tax Credit by changing the underlying credit rate to 27 percent and would strike certain limitations on expenses related to drugs previously approved. Relating to carried interest, the amendment would also impose a three year holding period for long term capital gains with respect to partnership interest received in connection with performing services. Notably, the amendment would also restore the full value of the Historic Tax Credit with modifications. Additionally, the amendment added clarifying language to exclude public utilities and electric cooperatives from the limitations on the deductibility of interest. More changes to the plan will likely be offered when the plan is debated by the full Senate including modifications to the tax treatment of passthrough businesses

Overall, the Senate bill reduces the corporate tax rate from the current 35 percent to 20 percent—effective after a one year delay in

2019. For pass-through income, the Senate bill proposes a 17.4-percent deduction. A one-time repatriation tax of 10 percent for liquid assets and 5 percent for illiquid assets would also apply under the Senate bill—compared to 14 percent for liquid assets and 7 percent for illiquid assets proposed in the House legislation. Regarding limitation on business interest expense, the Senate bill provides a 30 percent limitation on a much broader measure of income compared to the House bill. Also differing from the House bill, the Senate bill would repeal the individual mandate.

Key international provisions in the Senate bill rely on what it calls a base erosion minimum tax—or base erosion anti-abuse tax. The tax would be a 10-percent tax on certain deductible payments made to a foreign related party for the year. Unlike the House bill, the Senate provision would not include payments for the cost of goods sold and could be offset somewhat by a percentage of R&D tax credits. For foreign income that U.S. companies generate from patents, copy rights, and other intellectual property; a minimum 12.5 percent tax would be implemented. The Senate bill also allows a 100-percent deduction for the foreign-source portion of dividends received from specified 10-percent owned foreign corporations by U.S. shareholders.

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.

Updated Timeline for Tax Reform

Key Points:

- *Senate Budget Committee will review the bill following Thanksgiving and will send it to the Senate floor for a vote during the week of November 30.*
- *If passed by the Senate, a House-Senate conference committee is required to reconcile the differences between the two bills—unless the House was to adopt the Senate version.*

Under the budget reconciliation rules, the Senate tax bill passed by the Senate Finance Committee is first reported to the Senate Budget Committee. Following the Budget Committee, the full Senate will consider the tax bill during the week of November 30. During consideration by the full Senate, there is the potential for additional changes to the bill as amendments are adopted on the Senate floor. If passed in the Senate, the House and Senate bills would then have to be reconciled in a House-Senate conference committee, unless the House was to adopt the Senate legislation.

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

FINANCIAL SERVICES

Bipartisan Senate Agreement Reached on Regulatory Reform Package

Key Points:

- *Senate Banking Committee Chairman Mike Crapo (R-ID) announced a bipartisan agreement on a financial regulatory reform package.*
- *Ranking Member Sherrod Brown (D-OH) expressed his opposition to the bill and “rolling back” Dodd-Frank Act protections.*

On November 13, Senate Banking Committee Chairman Mike Crapo (R-ID), along with eight Democratic Senators and one independent Senator, [announced](#) they reached an agreement on a regulatory [reform package](#) aimed at fostering economic growth and improving the financial regulatory framework, particularly for smaller financial institutions. In March, Chairman Crapo and Ranking Member Sherrod Brown (D-OH) [requested](#) proposals to foster economic growth.

One of the more significant changes in the [legislative package](#) would be raising the threshold for labeling banks as systemically important financial institutions (SIFI) from \$50 billion to \$250 billion. Several other measures include exempting banks with less than \$10 billion in assets from the Volcker Rule, expanding consumer access to mortgages, reducing compliance burdens for community banks, altering capital levels for custodial banks, and requiring the banking regulators to classify certain municipal securities as level 2B high quality liquid assets (HQLA) under the Liquidity Coverage Ratio rule. .

Following the announcement of the deal, Ranking Member Sherrod Brown issued a [statement](#) expressing opposition to the deal: “I understand my colleagues’ interest in agreeing to this legislation, but disagree on the wisdom of rolling back so many of Dodd-Frank’s protections with almost no gains for working families.”

The original co-sponsors of the agreement include: Republican Senators Bob Corker (R-TN), Tim Scott (R-SC), Tom Cotton (R-AR), Mike Rounds (R-SD), David Perdue (R-GA), Thom Tillis (R-NC), John Kennedy (R-LA), Jerry Moran (R-KS), and Democrat Senators Joe Donnelly (D-IN), Heidi Heitkamp (D-ND), Jon Tester (D-MT), Mark Warner (D-VA), Tim Kaine (D-VA), Angus King (I-ME),

Joe Manchin (D-WV), Claire McCaskill (D-MO), and Gary Peters (D-MI). The Committee has stated that they plan on taking up the measure soon and it is expected that will take place the first week of December. It is unclear exactly when the full Senate would take up the package.

Treasury Department Releases Report on FSOC Designations

Key Point:

- *The report provided recommendations to improve the designation process for nonbank financial companies and financial market utilities.*

On November 17, the Treasury Department released a [report](#) on the Financial Stability Oversight Council's (FSOC) process for the designation of systemically important financial institutions (SIFI). The report was released in response to an April 21, 2017 Presidential Memorandum. The report included recommendations, summarized below, for nonbank financial institution designations and financial market utility (FMU) designations.

Recommendations for Nonbank Financial Company Designations:

- Treasury recommends that the Council prioritize its efforts to address risks to financial stability through a process that emphasizes an activities-based or industry-wide approach, specifically recommending a three-step process for assessing and addressing potential systemic risks.
- The Council should revise its interpretive guidance to provide for assessment of the likelihood of a firm's material financial distress, in order to assess the extent to which a designation would promote U.S. financial stability.

- The Council should revise its interpretive guidance to provide that it will designate a nonbank financial company only if the expected benefits to financial stability outweigh the costs that designation would impose.
- The Council's analyses of the "exposure transmission channel" should take into account factors that would reduce the losses a nonbank financial company's counterparties and other market participants would experience in the event of the company's material financial distress.
- The Council's analyses of the "asset liquidation transmission channel" should quantitatively evaluate and specifically explain the means by which a company's asset fire sale could disrupt trading or funding markets or cause significant losses or funding problems for other companies with similar holdings.
- The Council should enhance its communication with nonbank financial companies under review for a potential determination.
- The Council should undertake greater engagement with a nonbank financial company's primary financial regulator during FSOC evaluation of the company for a potential determination.
- The Council should publicly release the explanation of the Council's basis for any future nonbank financial company determinations and rescissions of determinations, redacting information as necessary.
- The Council should provide a clear "off-ramp" to designated nonbank financial companies for achieving a rescission of their designations. Recommends: FSOC articulate to the company the key risks that led to the designation including the factors most

important in leading to the determination; a more transparent process for annual reevaluations; and a process to enable a company to discuss changes it could make to address the systemic risks.

Recommendations for FMU Designations:

- Treasury recommends that the Federal Reserve, CFTC and SEC continue to coordinate the supervision of designated FMUs and continue to work collaboratively on effective resolution strategies focused on ensuring the continuity of FMU services provided.
- Treasury recommends that the Council consider incorporating cost-benefit analyses into its evaluations of FMUs for potential designation.
- Treasury recommends that the Council enhance communication with FMUs during Stage 2 of its process.
- Treasury recommends that the expertise of the primary financial regulatory agencies be leveraged to inform any consideration of whether to designate an FMU, and also to inform strategies for regulating and supervising designated FMUs.

- Treasury recommends that the Council publicly release the explanation of the Council's basis for any future FMU designations, redacting information as necessary.

House Passes Flood Insurance Reform and Reauthorization Bill

Key Point:

- *The House passed legislation to reauthorize the National Flood Insurance Program for five years, while making significant reforms to the program.*

On November 14, the House passed the 21st Century Flood Reform Act ([H.R. 2874](#)) by a vote of 237-189. H.R. 2874 would reauthorize the National Flood Insurance Program (NFIP) for five years, while making reforms to the program.

A [press release](#) issued by House Financial Services Committee Chairman Jeb Hensarling (R-TX) stated that the bill would:

- Provide affordable NFIP coverage for current policyholder.
- Expedite the implementation of policyholder monthly installment payment of premiums.
- Establish a flood damage savings account for individual policyholders to facilitate either the reduction or elimination of NFIP premiums.
- Improve safety by modernizing FEMA's approach to designating and addressing multiple-loss properties.
- Include the Ross-Castor Flood Insurance Market Parity and Modernization Act (H.R. 1422) to provide greater private market access, competition and consumer choice.
- Allow localities, who elect to use their own resources, to develop their own map alternatives to NFIP flood maps using better and cost-effective technology at an accelerated pace, subject to FEMA standards and approval.
- Require consideration of unique characteristics of coastal and local inland properties that are oftentimes over-charged.
- Require, for the first time, FEMA to conduct an annual independent actuarial study of the NFIP fund to determine whether the government program is collecting revenue sufficient to cover its long-term expected losses.

- Require the Administrator to use risk transfer tools, such as reinsurance or catastrophe bonds, to reduce direct taxpayer exposure to insurance losses.
- Formalize an appeals process that was established for consumers when they dispute their claims.
- Improve disclosure requirements for standard flood insurance policies.

The White House issued a [Statement of Administration Policy](#) (SAP) which indicated that the President would sign the bill if it were sent to his desk. The SAP stated that:

The Administration appreciates the intent behind H.R. 2874, which is to encourage better risk management by the NFIP through the incremental phase-out of certain subsidized policies. The Administration continues to support more immediate accounting for past repeated flood claims as well as additional measures to expand the private flood insurance market, such as by phasing out the availability of Federal flood insurance for newly constructed buildings and commercial buildings, and by encouraging private risk pooling through reforms to existing law. Further, the Administration believes that FEMA should retain its current authorities to adjust and increase premiums on properties that should transition to risk-based rates.

The bill will now go to the Senate for consideration. The NFIP expires December 8, 2017.

Senate Confirms Joseph Otting to Serve as Comptroller of the Currency

Key Point:

- *The Senate confirmed Joseph Otting to serve as the Comptroller of the Currency by a vote of 54-43.*

On November 16, the Senate confirmed Joseph Otting to serve as the Comptroller of the Currency by a vote of 54-43. Senators Joe Donnelly (D-IN) and Heidi Heitkamp (D-ND) were the only Democrats to vote in favor of the nomination. Otting previously served as the President and CEO of OneWest Bank and as Vice Chairman of U.S. Bancorp. Otting will replace Keith Noreika, who has served as Acting Comptroller since May 5, 2017.

House Financial Services Committee Favorably Reports 23 Bills

Key Point:

- *The Committee passed legislation related to mortgage disclosures, Iran, the Volcker Rule, proxy advisory firms, the Federal Reserve, Regulation A, business development companies, living wills, and other reforms.*

On November 14-15, the House Financial Services Committee held a [markup](#) and approved the following twenty-three financial services bills:

- The “Mortgage Choice Act of 2017” ([H.R. 1153](#)), introduced by Representative Bill Huizenga (R-MI), would amend the Truth in Lending Act definitions relating to points and fees in connection with a mortgage transaction. The Committee favorably reported H.R. 1153 by a vote of 46-13.
- The “Iranian Leadership Asset Transparency Act” ([H.R. 1638](#)), introduced by Representative Bruce Poliquin (R-ME), would require the Secretary of the Treasury to submit a report to Congress on the estimated total assets under direct or indirect

- control by certain senior Iranian leaders. The Committee favorably reported H.R. 1638, as amended, by a vote of 43-16.
- The “Investor Clarity and Bank Parity Act” ([H.R. 3093](#)), introduced by Representative Michael Capuano (D-MA), would amend the Volcker Rule to permit certain investment advisers to share a similar name with a private equity fund, subject to certain restrictions. The Committee favorably reported H.R. 3093 by a voice vote.
 - The “Securing Access to Affordable Mortgages Act” ([H.R. 3221](#)), introduced by Representative David Kustoff (R-TN), would provide exemptions under the Truth in Lending Act and the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. The Committee favorably reported H.R. 3221 by a vote of 32-26.
 - The “Protecting Consumers’ Access to Credit Act of 2017” ([H.R. 3299](#)), introduced by Representative Patrick McHenry (R-NC), would amend the Revised Statutes, the Home Owners’ Loan Act, the Federal Credit Union Act, and the Federal Deposit Insurance Act to require the rate of interest on certain loans remain unchanged after transfer of the loan. The Committee favorably reported H.R. 3299 by a vote of 42-17.
 - The “TRID Improvement Act of 2017” ([H.R. 3978](#)), introduced by Representative French Hill (R-AR), would amend the Real Estate Settlement Procedures Act of 1974 to modify requirements related to mortgage disclosures. The Committee favorably reported H.R. 3978 by a vote of 53-5.
 - The “Corporate Governance Reform and Transparency Act of 2017” ([H.R. 4015](#)), introduced by Representative Sean Duffy (R-WI), would require registration and impose other requirements on proxy advisory firms. The Committee favorably reported H.R. 4015 by a vote of 40-20.
 - The “Restoring Financial Market Freedom Act of 2017” ([H.R. 4247](#)), introduced by Representative Ted Budd (R-NC), would repeal title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which provides for enhanced supervision of financial market utilities designated as systemically important. The Committee favorably reported H.R. 4247 by a vote of 32-27.
 - [H.R. 4248](#), which would amend the Securities Exchange Act of 1934 to repeal certain disclosure requirements related to conflict minerals, introduced by Representative Bill Huizenga (R-MI). The Committee favorably reported H.R. 4248 by a vote of 58-0.
 - The “Family Self-Sufficiency Act” ([H.R. 4258](#)), introduced by Representative Sean Duffy (R-WI), is intended to promote the development of local strategies to coordinate use of assistance under the United States Housing Act of 1937. The Committee favorably reported H.R. 4258 by a vote of 58-0.
 - The “Regulation A+ Improvement Act of 2017” ([H.R. 4263](#)), introduced by Representative Tom MacArthur (R-NJ), would increase the Regulation A+ threshold to \$75 million. The Committee favorably reported H.R. 4263 by a vote of 37-23.
 - The “Small Business Credit Availability Act” ([H.R. 4267](#)), introduced by Representative Steve Stivers (R-OH), would amend the Investment Company Act of 1940 to allow greater leverage

- for business development companies (BDCs) and to direct the Securities and Exchange Commission (SEC) to revise certain BDC rules. The Committee favorably reported H.R. 4267 by a vote of 58-2.
- The “Monetary Policy Transparency and Accountability Act of 2017” ([H.R. 4270](#)), introduced by Representative Andy Barr (R-KY), would amend the Federal Reserve Act to require increased transparency in the conduct of monetary policy. The Committee favorably reported H.R. 4270 by a vote of 33-26.
 - The “Independence from Credit Policy Act of 2017” ([H.R. 4278](#)), introduced by Representative French Hill (R-AR), intended to ensure that the operations of the Board of Governors of the Federal Reserve System remain independent from the credit policy of the United States. The Committee favorably reported H.R. 4278 by a vote of 33-26.
 - The “Expanding Investment Opportunities Act” ([H.R. 4279](#)), introduced by Representative Trey Hollingsworth (R-IN), would direct the SEC to revise any rules necessary to enable closed-end companies to use the securities offering and proxy rules that are available to other issuers of securities. The Committee favorably reported H.R. 4279 by a vote of 52-2.
 - The “Expanding Access to Capital for Rural Job Creators Act” ([H.R. 4281](#)), introduced by Representative Ruben Kihuen (D-NV), would amend the Securities Exchange Act of 1934 to expand access to capital for rural-area small businesses. The Committee favorably reported H.R. 4281 by a vote of 60-0.
 - [H.R. 4289](#), which would amend the Dodd-Frank Act to repeal certain disclosure requirements related to coal and mine safety, introduced by Representative Alex Mooney (R-WV). The Committee favorably reported H.R. 4289 by a vote of 33-25.
 - The “Financial Institution Living Will Improvement Act of 2017” ([H.R. 4292](#)), introduced by Representative Lee Zeldin (R-NY), would reform the living will process under the Dodd-Frank Act. The Committee favorably reported H.R. 4292 by a vote of 60-0.
 - The “Stress Test Improvement Act of 2017” ([H.R. 4293](#)), introduced by Representative Lee Zeldin (R-NY), would reform the Comprehensive Capital Analysis and Review process, and the Dodd-Frank Act stress test process. The Committee favorably reported H.R. 4293 by a vote of 38-21.
 - The Prevention of Private Information Dissemination Act of 2017” ([H.R. 4294](#)), introduced by Representative David Kustoff (R-TN), would amend the Financial Stability Act of 2010 to provide a criminal penalty for unauthorized disclosures of certain individually identifiable information by officers or employees of a Federal department or agency. The Committee favorably reported H.R. 4294 by a vote of 60-0.
 - [H.R. 4296](#), which would place requirements on operational risk capital requirements for banking organizations established by an appropriate Federal banking agency, introduced by Representative Blaine Luetkemeyer (R-MO). The Committee favorably reported H.R. 4296 by a vote of 42-18.
 - The “Congressional Accountability for Emergency Lending Programs Act of 2017” ([H.R. 4302](#)), introduced by

Representative Scott Tipton (R-CO), would amend the Federal Reserve Act relating to the Federal Reserve emergency lending programs. The Committee favorably reported H.R. 4302 by a vote of 34-25.

- The “Strengthening Oversight of Iran’s Access to Finance Act” ([H.R. 4324](#)), introduced by Representative Roger Williams (R-TX), would require the Secretary of the Treasury to make certifications with respect to United States and foreign financial institutions’ aircraft-related transactions involving Iran. The Committee favorably reported H.R. 4324 by a vote of 38-21.

Richard Cordray Announces His Resignation as Director of the CFPB

Key Point:

- *CFPB Director Cordray announced that he will resign by the end of November.*

On November 15, Consumer Financial Protection Bureau (CFPB) Director Richard Cordray announced his intention to resign by the end of November. Cordray has served as the head of the Bureau since 2011, ultimately being confirmed in 2013 after opposition from Senate Republicans. It has been reported that Cordray is expected to pursue the Democratic nomination to serve as governor of Ohio in the 2018 election.

House Financial Services Committee Chairman Jeb Hensarling (R-TX) issued a [press release](#) following Cordray’s announcement, in which he stated:

We are long overdue for new leadership at the CFPB, a rogue agency that has done more to hurt consumers than help them. The CFPB tramples on the fundamental economic rights of

American citizens, taking away their choices and opportunities. The extreme overregulation it imposes on our economy leads to higher costs and less access to financial products and services, particularly for Americans with lower and middle incomes. It has routinely denied market participants their due process rights. All this harm is made even worse by the fact that the CFPB is structurally unconstitutional and completely unaccountable to the American people.

The resignation of the Bureau’s director is an excellent opportunity to enact desperately needed reforms. The Bureau has an important mission. Properly designed and led, it can truly protect consumers by ensuring they have access to competitive markets that are vigorously policed for fraud. That’s the best way to provide consumers with more affordable choices for the financial products and services they want and need. Americans deserve the opportunity to choose the checking account they want, the mortgage they want and the credit card they want. I look forward to working with President Trump’s choice for CFPB director to protect consumers.

UPCOMING EVENTS

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.

November 30

SEC Annual Small Business Forum: The Securities and Exchange Commission (SEC) will hold its 36th Annual Government-Business Forum on Small Business Capital Formation in Austin, Texas. SEC Chairman Jay Clayton and Commissioners Michael Piwowar and Kara Stein will participate in the forum. Panels and sessions will focus on the following topics: how capital formation options are working for small businesses; exempt securities offerings; and smaller registered and Regulation A securities offerings.

December 7

Investor Advisory Committee: The SEC will hold a meeting of its Investor Advisory Committee (IAC). The agenda for the meeting includes “remarks from Commissioners; a discussion of a recommendation of the Investor as Purchaser Subcommittee regarding electronic delivery of information to retail investors; a discussion regarding retail investor protections and transparency in municipal and corporate bond markets; a discussion regarding cybersecurity risk disclosures (which may include a recommendation of the Investor as Owner Subcommittee); a discussion regarding dual-class share structures (which may include a Recommendation of the Investor as Owner Subcommittee); a discussion regarding retail investor disclosure: what works, what doesn’t, and best practices; subcommittee reports; and a nonpublic administrative work session during lunch.”

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

DEFENSE

Passage of FY 2018 NDAA

Key Points:

- *The FY 2018 NDAA goes to White House after issues arising from provisions regarding drugs and medical devices were resolved*
- *As talks are ongoing with FY 2018 budget caps, the DOD may not enjoy the full benefit of the NDAA’s authorization levels*

This week, the House and Senate cleared the [conference report](#) for the “National Defense Authorization Act for Fiscal Year 2018” (NDAA) ([H.R. 2810](#)), sending the package to the President. However, the House and Senate first had to reach agreement on provisions that could have allowed the Department of Defense (DOD) to impinge the Food and Drug Administration’s (FDA) authority with respect to approval of drugs and medical devices for injured service members. Once this [bill](#) passed both chambers, the NDAA could be passed.

Thus far the White House has not indicated any problems with the bill, so it appears the package will be signed into law. However, absent further action by the Congress and White House, the DOD will not be able to benefit from the higher authorized funding levels. Yet, it appears Republicans and Democrats are making progress on a deal to raise the discretionary spending caps that could allow the DOD to receive more funding for its base budget than currently allowed. But, whether a deal on the spending caps would match the authorization level in the FY 2018 NDAA is unclear.

In the [Joint Explanatory Statement](#), the conferees explained the final bill “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 topline authorization for defense activities

would exceed the spending cap for FY 2018, and were Congress to appropriate up to this level, a sequester of defense funds would be triggered, with military personnel and Overseas Contingency Operations (OCO) accounts being exempted. The cap for defense discretionary spending in FY 2018 is \$549 billion.

Republican and Democratic leadership in both chambers have been negotiating an omnibus FY 2018 appropriations act that may include provisions revising upwards the caps on discretionary spending set in the “Budget Control Act of 2011” (P.L. 112-25). Reports indicate that Democrats have rejected a Republican offer of increasing the cap on defense spending by \$54 billion in both FY 2018 and FY 2019 with an increase on the cap for non-defense spending of \$37 billion for both years. Democrats have long insisted that any increase in the caps be equal between the two categories of discretionary spending. Each of the three previous packages to raise the BCA caps have increased the funding in both categories by equal amounts.

For more information on defense issues you may email or call Michael Kans at 202-659-8201.

HEALTH

Individual Mandate Repeal Included In Senate Tax Reform Bill

Key Points:

- *The Senate tax bill would repeal the individual mandate for all months after December 31, 2018.*
- *Senate Republican Leadership has said the Alexander-Murray proposal to fund the cost-sharing reduction payments will be included in an end-of-year spending bill.*

Senate Finance Chairman Orrin Hatch (R-UT) offered an updated “chairman’s mark” of the tax bill on November 15 which added repeal of the Affordable Care Act’s (ACA) individual mandate. The repeal would be effective after December 31, 2018.

The Congressional Budget Office (CBO) found repeal would save \$338 billion over 10 years. These savings would come from the government paying fewer premium subsidies. CBO also found 13 million more people would be uninsured over a decade and premiums would rise by 10 percent.

Senator Susan Collins (R-ME) expressed concern about including the individual mandate because “it complicates tax reform” and will impact premiums. Senator Lisa Murkowski (R-AK) stated her vote for the tax bill may be contingent upon passing the Alexander-Murray bill which would fund the cost-sharing reduction (CSR) payments.

Senate Democrats were quick to criticize repeal. Senate Minority Leader Chuck Schumer (D-NY) asserted Republicans are throwing the “health care system into chaos.” Senator Mazie Hirono (D-HI) said “the definition of stupidity is doing the same thing over and over again and expecting a different result.” Senate Finance Ranking Member Ron Wyden (D-OR) argued “Republicans are choosing to pay for corporate tax cuts by raising premiums for middle class families and ripping away health care altogether from millions more.”

Senator John Cornyn (R-TX) said the Senate will likely include the Alexander-Murray proposal in an end-of-year spending bill. Recall that proposal would fund the payments for two years in exchange for more flexibility to the states. Schumer insisted Democrats would not help pass Alexander-Murray if it is tied to the tax bill.

Trump Nominates Alex Azar for HHS Secretary

Key Points:

- *President Trump nominated Alex Azar, a former Eli Lilly executive, to serve as Secretary for the Department of Health and Human Services.*
- *The Senate Health, Education, Labor and Pensions Committee will hold a hearing on his nomination on November 29.*

In a tweet on November 13, President Donald Trump said he will be nominating Alex Azar to serve as Secretary for the Department of Health and Human Services (HHS). Former Secretary Tom Price resigned in September. Trump said Azar “will be a start for better healthcare and lower drug prices!”

In January, Azar left Eli Lilly where he most recently served as president of Lilly USA. Before his ten years at the pharmaceutical company, Azar worked at HHS during President George W. Bush’s administration first as general counsel from 2001 to 2005 and then assuming the role of deputy secretary for two years.

Democrats have expressed concern about how Azar’s former position with a pharmaceutical company may impact actions the Administration would take to address prescription drug prices. Senator Bernie Sanders (I-VT) said “at a time when the United States pays, by far, the highest prices in the world for prescription drugs, the last thing we need is to put a pharmaceutical executive in charge of the Department of Health and Human Services.” Sanders stressed he would “vigorously oppose” the nomination. Representative Elijah Cummings (D-MD) likened Azar’s nomination to “a fox guarding the hen house.”

The Senate Health, Education, Labor and Pensions Committee will hold a hearing on Azar’s nomination on November 29. The Senate Finance Committee will ultimately vote on the nomination.

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

TRANSPORTATION

Confirmation of DOT Nominees

Key Point:

- *The Senate confirmed the Undersecretary of Transportation for Policy and the DOT General Counsel*

This week, the Senate confirmed two nominees for top officials in the Department of Transportation (DOT).

On November 13, the Senate voted 90-7 to confirm Derek Kan as the Undersecretary of Transportation for Policy, the third-ranking position in the DOT. In the April [press release](#) announcing his nomination, the White House provided this biography:

Mr. Kan is the General Manager for Lyft in Southern California. He has also served on the Board of Amtrak since 2015, for which he was unanimously confirmed by the Senate. Previously, he was Director of Strategy at a startup in Silicon Valley and also worked as a management consultant at Bain & Company. Earlier in his career, he was a policy advisor to Senate Republican Leader Mitch McConnell and chief economist for the Senate Republican Policy Committee. Before becoming a Hill staffer, Mr. Kan served

as a Presidential Management Fellow at the White House Office of Management and Budget. Mr. Kan received a B.S. from the University of Southern California, an M.Sc. from the London School of Economics, and an M.B.A. from the Stanford Graduate School of Business, where he was an Arjay Miller Scholar.

However, the other top DOT nominee faced a more difficult path to confirmation. On November 14, the Senate confirmed Steven Bradbury by a 50-47 vote because of Democratic opposition to his nomination based on his role in co-writing memoranda regarding “enhanced interrogation” techniques during the George W. Bush Administration. Senator Maggie Hassan (D-NH) explained during consideration of Bradbury’s nomination that:

The general counsel position at DOT oversees and makes critical judgments about legal work that impacts public safety, development, and innovation that drives our economy. Unfortunately, Mr. Bradbury’s previous actions during his time at the Department of Justice showed that he lacks the judgment and commitment to our shared values that are a prerequisite for any lawyer privileged to serve the people of the United States of America.

During his time as the acting head of the Department of Justice’s Office of Legal Counsel, Mr. Bradbury was one of three primary lawyers who helped lay the groundwork for the Bush administration’s defense of what they described as “enhanced interrogation techniques.” The so-called torture memos that Mr. Bradbury helped write were used to justify the Bush

administration’s decision to use torture that included extreme sleep deprivation, cramped confinement, and waterboarding. Mr. Bradbury helped find legal loopholes that were an affront to our American values. And he failed to fulfill the special responsibility all lawyers have to the quality of justice in our legal system.

OIG Details Top Management Challenges At DOT

Key Point:

- *The DOT OIG listed what it sees as the Department’s challenges in the coming year in addition to helping regions of the country recover from hurricanes and other natural disasters*

On November 15, the Department of Transportation’s (DOT) Office of the Inspector General (OIG) released its annual assessment of the DOT’s top management challenges. In the “[2018 Top Management Challenges, Department of Transportation](#),” the OIG explained that its goal is “to provide a forward-looking assessment for the coming fiscal year to aid DOT’s agencies in focusing attention on the most serious management and performance issues.” The OIG noted that the DOT also “faces the unique challenge of planning multiple recovery efforts to restore vital transportation services in communities devastated by major hurricanes.” The OIG identified the following challenges:

- Maintaining Safety and Oversight of a Diverse and Complex Aviation Industry
- Ensuring the Safety and Reliability of Surface Transportation Infrastructure
- Using Data-Driven Approaches and Technology To Reduce Highway and Rail Safety Risks

- Keeping Modernization on Track and Increasing User Benefits While Fostering Resiliency in the National Airspace System
- Integrating Unmanned Aircraft Systems and Other New Airspace Users Into the National Airspace System
- Maximizing Surface Infrastructure Investments Through Innovative Financing, Improved Project Delivery, and Effective Oversight
- Recalibrating DOT's Cybersecurity Posture To Mitigate Evolving Cybersecurity Threats and Uncertainties
- Enhancing the Department's Management and Oversight of Acquisitions To Achieve Results and Save Taxpayer Dollars
- Improving Mechanisms for Deterring Fraud, Waste, and Abuse
- Managing Response, Recovery, and Rebuilding Efforts for National Disasters and Emergencies

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

TECHNOLOGY

Cyber Information Sharing Hearing

Key Point:

- *A House Homeland Security Subcommittee considers the state of public-private information sharing two years after the passage of a bill to foster greater sharing*

On November 15, the House Homeland Security Committee Cybersecurity and Infrastructure Protection Subcommittee held a [hearing](#) entitled: "Maximizing the Value of Cyber Threat Information Sharing." Topics discussed included, but were not limited to: (1) Strategies to Increase Information Sharing; (2)

Effects of CSA; (3) Reasons Companies Refuse to Share; and (4) the Extent of Cyber Threats.

Chairman John Ratcliffe (R-TX) said in a [statement](#) that the cybersecurity industry method is to prioritize; assess the risks that networks face and prioritize actions to address those risks, and then, keep moving down the list. He said the government must learn from the private sector, assess risks, prioritize mitigation and keep moving. He stated could not agree more with the consensus opinion that the private sector and government need to collaborate. He said automation of cyber threat information and the incorporation of classified and unclassified information are areas the government can work on in order to increase the effectiveness of the information being provided to the private sector.

Ranking Member Jim Langevin (D-RI) stated that there is no "silver bullet" in cybersecurity and Congress should not try to look for one-size-fits-all solutions. He said information sharing is a good tool and should be implemented more broadly, but Congress needs to continue to look for additional ways to improve cybersecurity including encouraging greater private sector cooperation.

Council on Foreign Relations Senior Fellow Robert Knake stated that he believes the "Cybersecurity Act of 2015" (CSA) (P.L. 114-113) "cleared the underbrush" from cyber information sharing. He said companies and organizations no longer have an excuse for why they are not sharing information. He recommended that Congress now focus on incentivizing more information sharing. He stated that one remaining problem continuing to hinder information sharing is classified information. He said classified information needs to be shared with private companies that operate critical infrastructure. He noted that the Department of Defense (DOD) currently

shares some classified information with private contractors when it is necessary. He stated that he believes a Critical Information (CI) network should be created with a classified component and share that with Section 9 companies. He recommended that Congress begin with a pilot program in order to test the feasibility of a CI network. He said he would also support a National Transportation Safety Board (NTSB) for cybersecurity. He said the same way that NTSB officials investigate why a plane crashed or a train derailed, the NTSB for cybersecurity would investigate breaches in cybersecurity. He stated that he thinks the NTSB for cybersecurity would work best if it is voluntary and incentivized by an insurance discount for those who participate.

USTelecom Association Senior Vice President for Cybersecurity, Robert Mayer stated that the wide variety and large volume of cyber threat information sources, along with the growing number of information sharing venues, presents both opportunities and challenges in creating real value to information sharing. He said that since the passage of the CSA, much has been done to reduce obstacles to sharing and to facilitate enabling mechanisms and venues. He said the ultimate goal is to get the right information to the right people at the right time with the appropriate privacy and security safeguards. He asserted that this massive effort will require constant innovation, ongoing evaluation and disciplined resource allocation. He stated that the Communications Sector works on multiple fronts to share cyber threat information, and individual companies use a variety of information sharing platforms and services to achieve their objectives. He said the relationship between the Communications Sector and the DHS National Coordinating Center for Communications (NCC) stands alone among critical infrastructure information sharing partnerships in both depth and length of partnership. He said the relationship

between the Communications Sector Information Sharing and Analysis Center (Comm-ISAC) and the NCC is one that many sectors are attempting to replicate. He stated that Comm-ISAC includes over 65 private sector companies that convene weekly, and on an as-needed basis, to share information about events and threats that have or could have adverse impacts on network service providers and their customers. He noted that five of the largest domestic network service providers have representatives embedded within the NCC and are on-call to respond to government inquiries related to infrastructure-impacting events of either a cyber or physical nature. He asserted that companies will participate in information sharing activities to the extent that they perceive the benefits outweigh, or at least match, the costs. He said that given the pressures on providers to ensure the confidentiality, integrity and availability of their communications networks and systems, any information sharing venue or mechanism that does not produce contextualized, timely, accurate and actionable information that improves providers' security posture will not meet that test of value.

FITARA Oversight Hearing

Key Points:

- *Two House subcommittees review the fifth FITARA Scorecard and find that IT grades are falling*
- *The GAO noted the inclusion of new criteria*

On November 16, the House Oversight and Government Reform Committee's Information Technology and Government Operations Subcommittees held a [hearing](#) entitled "The Federal Information Technology Acquisition Reform Act (FITARA) Scorecard 5.0." Topics discussed included: (1) Cloud Computing; (2) FITATA Scorecard; (3) DOE Challenges; (4) DOE IT Budget; (5) Data Center

Consolidation; (6) Working Capital Fund; and (7) National Laboratories.

Information Technology Subcommittee Chairman William Hurd (R-TX) explained that today's hearing is part of the Committee's continuing oversight of federal IT. He noted this began with Government Accountability Office's (GAO) high-risk report and the designation of IT acquisition on that report back in February 2015, and it has been a priority of the Committee ever since. Hurd stated that due to the importance placed on this issue, the Committee staff worked with GAO to develop a Scorecard to assess agencies' FITARA implementation efforts. He noted this bipartisan scorecard has been issued every six months, beginning two years ago, on November 4, 2015. He stated the Scorecard has evolved with each iteration in response to GAO recommendations and stakeholder feedback. Hurd explained Scorecard 5.0 adds a fifth graded category to assess agencies' management of software licenses. He noted this was a previewed category as part of Scorecard 4.0. He stated for Scorecard 6.0, a measure of whether agencies have established working capital funds as authorized by the Modernizing Government Technology (MGT) Act ([H.R. 2227](#)), included in the conference report for the FY 2018 National Defense Authorization Act (NDAA) ([H.R. 2810](#)), will be made a part of the Scorecard.

Information Technology Subcommittee Ranking Member Robin Kelly (D-IL) stated improving the efficiency of the Federal IT systems is essential. She stated FITARA oversight is important as is the Scorecard created by the Committee. She noted the improvements which have been made since the Scorecard was created. She stated progress has been difficult and there is still a long way to go. Kelly noted SBA has fallen in its grades. She stated only 3 agency scores increased on this

Scorecard. He stated the "FITARA Enhancement Act" ([H.R. 3243](#)) introduced by Government Operations Subcommittee Ranking Member Gerald Connolly (D-VA) would extend the time needed to close unneeded data centers and provide support for agency CIOs in their work to consolidate software licenses. She stated overall agencies are struggling with the management of their software licenses.

Department of Energy (DOE) Chief Information Officer Max Everett stated FITARA and the "Federal Information Security Management Act" (FISMA) provide the authority to manage IT technology. He acknowledged the dedicated IT professionals across the agency. Everett stated he now reports directly to the Secretary and Deputy Secretary related to IT. He noted he has regular meetings with the Deputy Secretary. He stated this reporting and working relationship is evidence of this FITARA reform. He explained his office is working on guidance to help the divisions follow FITARA. Everett stated his office is now involved in the hiring process for all IT employees at the agency. He stated 84 data centers have been closed since 2010 for a savings of \$21 million and the plan is to close another 11. He noted that more is needed and they are looking for ways to accelerate that process. Everett stated the National Labs are a critical component of the Department. He stated he has regular meetings with the National Labs CIOs as well as the operating boards. He stated DOE is monitoring the pending MITG Act to gain any additional savings under that. Everett stated the DOE is moving in the right direction and they are seeking to facilitate timely performance of their diverse mission.

GAO Director of IT Management Issues Dave Powner explained for Scorecard 5.0 a fifth category has been added for software licenses.

He stated overall three agency grades went up under this Scorecard, 6 went down and 15 remained the same. He explained of the 6 that grades went down none had a software license inventory. Powner stated that when this category was previewed, no agency had a full inventory and now seven do. He noted another area where progress is needed is optimizing data centers. He stated additional and substantial savings can be realized as better utilization of these centers and equipment are achieved. Powner stated DOE plans on spending \$1.8 billion on IT this year about half for programs at the National Nuclear Security Administration. He stated DOE's current grade is a D+. He noted DOE received an A on incremental development. Powner stated DOE needs to improve their CIO tenure. He stated the 1.7-year tenure is a major issue why IT management has not been better. He stated DOE data center closures will fall short of the Office of Management and Budget (OMB) goals for large and small centers. Powner explained that DOE's license inventory is also not complete. Finally, he noted that DOE CIO has challenges in budgeting and execution. He stated better governance over system acquisitions is needed.

For more information on technology issues you may [email](#) or call Michael Kans at 202-659-8201. Rebecca Konst, Riyad Carey, and Cullen Neely contributed to this section.

TRADE

Fifth Round of NAFTA Negotiations Begin

Key Points:

- The round will largely focus on rules of origin and financial services.

- Canada and Mexico were among the countries that announced they have agreed to “core elements” of TPP.

The fifth round of NAFTA negotiations began on Wednesday in Mexico City, with 28 hours of discussion time dedicated to rules of origin and another 28 dedicated to financial services. The talks are scheduled to end on November 21. U.S. Trade Representative Robert Lighthizer, Canadian Foreign Minister Chrystia Freeland, and Mexican Economy Secretary Ildefonso Guajardo are not in attendance.

Secretary Guajardo recently suggested that Mexico is open to a “sunset clause” without automatic termination, saying: “We’re going to bring a proposal that every five years we evaluate what has been happening with an agenda of analysis of what effects our agreement has had, and based on this each country can decide what they want to do going forward... But it wouldn’t have the impact of a sudden death, because this would send a bad signal to investors.” Two anonymous Canadian officials reported that Canadian negotiators are open to Guajardo’s proposal.

Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam released a joint statement that said they have agreed to “core elements” of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). Former U.S. trade official Wendy Cutler warned that this move shows Canada and Mexico are attempting “to diversify their trading partners and to reduce their dependence on the U.S. market.” Ministers suspended U.S.-supported intellectual property language, potentially a sign that Canada and Mexico will oppose similar language in NAFTA.

NAFTA negotiators will meet for a “mini round” in December to set the schedule for 2018 discussions. The sixth round will likely take place in Canada in January.

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

This Week in Congress was written by Ryan Schnepf.