

December 1, 2017

Washington Update

This Week in Congress

House – The House passed H.R. 3905, the **Minnesota’s Economic Rights in the Superior National Forest Act**; H.R. 4182, the **Ensuring a Qualified Civil Service Act**; H.R. 3017, the **Brownfields Enhancement, Economic Redevelopment, and Reauthorization Act** and H.R. 1699, the **Preserving Access to Manufactured Housing Act**.

Senate – The Senate passed H.R. 1892, the **Honoring Hometown Heroes Act** and confirmed **Gregory Katsas**, to be US Circuit Judge for the District of Columbia Circuit. The Senate also passed, by unanimous consent, several bills related to American Indians and began debate on tax reform legislation.

Next Week in Congress

House – The House is expected to take up the conference report to H.R. 1, the **Tax Cuts and Jobs Act**, H.R. 477, the **Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act of 2017**; H.R. 3971, the **Community Institution Mortgage Relief Act of 2017** and H.R. 38 the **Concealed Carry Reciprocity Act of 2017**.

Senate – The Senate is expected to go to continue work on nominations and a Continuing Resolution to fund the government.

TAX

Senate Continues to Move Forward with Tax Bill

Key Points

- *The Senate Budget Committee moved the tax bill to the Senate Floor.*
- *The full Senate passed the motion to begin debate on the legislation; a vote is expected for Friday night.*
- *The House will vote on Monday to go to conference.*
- *Updated Senate bill includes a 23 percent passthrough deduction, a \$10,000 state and*

local property tax deduction, and new repatriation rates to match the House version.

On Tuesday, the Senate Budget Committee approved the tax bill’s reconciliation instructions by a party line vote of 12 to 11.

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A day later, the full Senate voted to begin formal debate by another party line vote of 52 to 48. The Senate bill is expected to change following the release of a Joint Committee on Taxation analysis which found that the legislation would increase federal deficits by an estimated \$1 trillion over 10 years—accounting for economic growth the bill would produce. According to an aide for Senator Ron Johnson (R-WI), the Senate bill will include a 23 percent pass-through deduction—an increase from the original 17.4 percent proposal. Senator Mike Rounds (R-SD) also stated that the final bill will include a \$10,000 state and local property tax deduction. According to Senator Johnson (R-WI), the Senate plans to revise the provision for repatriation rates to match the House bill—a 7 percent rate for illiquid assets and a 14 percent rate for liquid assets.

The Senate will continue to vote on amendments throughout the day on Friday, leading up to a potential final passage by Friday night. Both Senate Majority Leader Mitch McConnell (R-KY) and Senate Majority Whip John Cornyn (R-TX) have expressed confidence that Republicans have enough votes to pass the legislation. House Majority Leader Kevin McCarthy (R-CA) said the House is scheduled to vote on Monday to go to conference.

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

Regulators Speak at Federal Reserve Bank of New York Conference on Treasury Market Structure

Key Point:

- *SEC Chairman Jay Clayton stated that the early focus for the Fixed Income Market Structure Committee will be on the corporate and municipal bond markets, particularly related to liquidity. He said he expects the Advisory Committee to hold its first meeting in January.*
- *Treasury Secretary Steven Mnuchin spoke in support of passing tax reform legislation. He also expressed support for reducing regulatory burdens.*

On November 28, the Federal Reserve Bank of New York (FRBNY) held its third annual [conference](#) on “The Evolving Structure of the U.S. Treasury Market.” Treasury Secretary Steven Mnuchin, Securities and Exchange Commission (SEC) Chairman Jay Clayton, and Commodity Futures Trading Commission (CFTC) Chairman J. Christopher Giancarlo spoke at the conference. The event also included panels on: (1) Evolution of Treasury Repo Market and Regulations; (2) Clearing and Settlement in the Treasury Market; and (3) a panel with executive investors.

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.

CFTC Chairman J. Christopher Giancarlo, in a [statement](#), defined liquidity in trading markets as the degree to which financial assets may be easily bought or sold with minimal price impact by ready and willing buyers and sellers. He said liquidity is vastly different today than in the past, largely due to changes in technology and regulation. Giancarlo said many have observed that higher risk-based capital requirements have made it less desirable for banks to hold inventory and make markets in riskier asset classes like corporate bonds. He stated that some observe that the leverage ratio has made it less desirable for banks to hold inventory and make markets in safer assets like Treasury bonds. He said the debate focuses on whether there is a policy mix that provides contemporary markets with the optimal balance of healthy trading liquidity and systemic risk reduction. He said participants have provided anecdotal evidence on the challenges in executing large trades. Giancarlo stated that preliminary analysis in the context of U.S. Treasury futures indicates that large-trade liquidity, measured by the average price impact and the standard deviation of the price impact of large trades, is not as abundant as what bid-ask spreads and market depth alone suggest. He stated that the next step in this research program is to complete the relevant time series analysis and draw inferences about trends in large-trade liquidity in U.S. Treasury futures. He said the ability to efficiently execute large size transactions is critically important to U.S. financial markets. He stressed the need to assure the ability of U.S. markets to efficiently serve large institutional participant's trading large size orders without unnecessarily increasing cost and/or volatility.

SEC Chairman Jay Clayton emphasized the need to avoid duplicative and fragmented regulation. He said oversight of the Treasury market is shared by a variety of regulators, noting that the SEC and other regulators

examine the participants in the market. He stated that Treasury securities are an important benchmark in the fixed income markets, which are also overseen by multiple regulators. Clayton also emphasized the importance of open communication between regulators and market participants. He said he has instructed SEC staff to engage with and learn from market participants.

Clayton noted that the SEC had recently created a Fixed Income Market Structure Advisory Committee (FIMSAC). He said FIMSAC's initial focus will be on the corporate and municipal bond markets. He said FIMSAC will help to identify opportunities for regulatory improvements. He said the corporate and municipal debt markets are particularly important to individual investors, companies, and national infrastructure. He stated that individuals are increasingly participating in these markets through exchange traded funds (ETF), pension funds and other pooled vehicles. He said FIMSAC will help ensure that the SEC's regulatory approach meets the needs of Main Street investors, as well as state and local governments. He asserted that FIMSAC's membership will represent the views of retail and institutional investors, small and large issuers, trading venues, issuers, FINRA and the Municipal Securities Rulemaking Board (MSRB). He stated that he intends to hold the first public meeting of FIMSAC in early January.

Clayton said he expects that early in its tenure FIMSAC will tackle the issue of bond market liquidity. He said questions have been raised about whether reductions in some dealers' inventories have affected broad bond market liquidity to a meaningful extent, and if so, to what extent have these reductions been caused by regulatory requirements, market forces, or both. He suggested that FIMSAC should examine: (1) the impact of the growth of bond

funds and exchange traded products (ETP) on the liquidity of the underlying fixed income securities; (2) whether regulatory measures should be taken to address the liquidity effects of ETPs; and (3) whether the rise of electronic matching platforms is affecting liquidity positively or negatively. Clayton stated that outside of the liquidity issue FIMSAC should examine the impact of the proliferation of ETPs. He said some observers argue that ETPs have been highly beneficial for retail participants, while others argue that bond funds and ETPs create market volatility concerns. He stated that FIMSAC should examine: (1) whether the SEC should implement pre-trade transparency measures in these markets; (2) what are the potential costs and benefits of regulatory-only pre-trade transparency and public pre-trade transparency; and (3) how is technology changing the market, particularly algorithmic trading strategies. He emphasized that he and the SEC recognize the differences between the equity markets and the fixed income markets.

Treasury Secretary Steven Mnuchin argued it is critical that the federal government is able to operate at the lowest possible cost. He said the Treasury has begun taking into account the Federal Reserve's System Open Market Account (SOMA) redemptions when considering debt issuance. He stated the Treasury anticipates announcing gradual adjustments to nominal coupon and 2-year floating rate note auction sizes at the February 2018 refunding. Mnuchin recalled that in July, FINRA began collecting Treasury post-trade data through TRACE from its member SEC registered broker-dealers and said the data is currently being analyzed. He noted there are gaps in the data because not all Treasury market participants are FINRA members. He said Treasury and regulators are looking to fill these data gaps to make the post-trade data more complete and useful to the official sector.

He said Treasury is considering whether to make this data public. He stated their first priority is to "do no harm" to the Treasury market. He said there is a need to balance the interests of all stakeholders that participate in the Treasury market in a way that is least disruptive to the liquidity and functioning of the Treasury market. He noted the policy of public transparency around the TRACE data is currently under review.

Mnuchin said he is committed to a return to higher sustained levels of GDP growth. He said tax reform and regulatory relief are essential to this plan. He expressed support for the Tax Cuts and Jobs Act. He stressed the importance of a tax code that encourages capital investment and labor force participation. He said reducing the corporate tax rate will make it more profitable to own and operate a company in the U.S. He also expressed support for lowering the top rate on pass-through entities like LLCs, S-corps, and partnerships. He argued lower rates will incentivize domestic investors to keep their money in the U.S. and foreign investors to bring their money to the U.S.

Mnuchin expressed support for President Trump's "one in, two out plan" for reducing regulations. He noted Executive Order 13772 issued by the President on February 3, 2017, directed the Treasury to identify statutes and regulations that inhibit the operation of the financial system in accordance with certain core principles. He said these principles include fostering economic growth through more rigorous regulatory analysis and making sure regulation is efficient, effective, and appropriately tailored. He recalled Treasury set forth recommendations advocating for recalibrating capital and liquidity regimes put in place in recent years. He said one of the recommendations in the report was to rationalize and simplify the Volcker Rule. He

expressed concern about the decline in the number of public companies, which is down nearly 50 percent over the last 20 years. He said Treasury's recommendations aim to reduce burdens in public company reporting requirements, reduce filing requirements, and better align rules providing critical support to new issue offerings, including research. He argued the government must appropriately calibrate evaluations to ensure it considers the differences between banks, asset managers, and insurance companies.

House Financial Services Panel Holds Hearing on Ginnie Mae and Sustainable Housing Finance

Key Point:

- *The hearing focused on proposals to expand the role of Ginnie Mae as part of housing finance reform.*

On November 29, the House Financial Services Committee's Subcommittee on Housing and Insurance held a [hearing](#) on "Sustainable Housing Finance: The Role of Ginnie Mae in the Housing Finance System." The Subcommittee received testimony from Michael R. Bright, Acting President, Government National Mortgage Association (Ginnie Mae).

Chairman Sean Duffy (R-WI) said this was the Subcommittee's fourth hearing on housing finance reform. He noted that Ginnie Mae is in a different position than the government sponsored enterprises (GSE), largely due to the differences in their structures. He said Ginnie Mae has been able to put the private sector in a first dollar loss position. He expressed interest in learning more about the Ginnie Mae model and how to bring more private capital into the housing system. He noted that Bright and former Federal Housing Finance Agency (FHFA) Director Ed DeMarco have put out a

[paper](#) on how to expand Ginnie Mae's role in the housing market and put the federal government in a fourth dollar loss position. He said putting more layers of private capital ahead of the federal government should be the goal of any housing finance reform plan. Duffy noted that hundreds of private sector participants use the Ginnie Mae securitization platform. He questioned differences between Ginnie Mae's platform and FHFA's Common Securitization Platform (CSP). He stressed the need to move forward with housing finance reform in a bipartisan manner, noting that he has had multiple meetings with the Ranking Member on this issue.

Ranking Member Emanuel Cleaver (D-MO) said the Subcommittee has held multiple hearings on the state of the housing finance system. He expressed interest in Bright's views on the role of Ginnie Mae in the housing system. He said Ginnie Mae has a "large footprint in a small office," noting that they have less than 200 employees. He said a small amount is appropriated to Ginnie Mae, stressing the need to ensure they are sufficiently funded. He said Ginnie Mae is engaged in a modernization initiative, which he wants to learn more about. He said any housing finance reform package must include a government backstop, retain the 30 year fixed rate mortgage, and include strong affordability goals.

House Panel Holds Hearing on Sanctions Effectiveness

Key Points:

- *Chairman Andy Barr (R-KY) emphasized the need to use the strongest possible sanctions to bring about behavioral change in North Korea.*
- *Ranking Member Gwen Moore (D-WI) raised concerns about the President's commitment to human rights and his*

relationships with Russian President Vladimir Putin and Philippines President Rodrigo Duterte.

On November 30, the House Financial Services Committee's Subcommittee on Monetary Policy and Trade held a hearing entitled "Evaluating the Effectiveness of U.S. Sanctions Programs." The Subcommittee received testimony from the Honorable Marshall Billingslea, Assistant Secretary for Terrorist Financing, U.S. Department of the Treasury and Mr. John E. Smith, Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

Chairman Andy Barr (R-KY) said sanctions are increasingly being used as a part of the foreign policy tool kit. He stated that sanctions are key to bringing about behavioral change, emphasizing that they should be calibrated accordingly. He stressed the need to tailor secondary sanctions especially carefully. He noted that the House passed the Otto Warmbier North Korea Nuclear Sanctions Act ([H.R. 3898](#)), which he cosponsored, on a bipartisan basis. He said the bill would sanction every section of the North Korean economy. He said the termination of sanctions should be tied to a narrow set of realistic objectives. Barr said the U.S. must communicate clearly the rationale for both the imposition and lifting of sanctions. He emphasized that the executive branch must communicate clearly with Congress when it wields its sanctions authority. He said Congress will increasingly look to the Treasury Department, particularly the Office of Terrorism and Financial Intelligence (TFI) in shaping the goals, scope and strategy of sanctions and to answer for sanctions shortcomings. He entered into the record an op-ed in the *Wall Street Journal* which suggested maximum pressure has not yet been applied to North Korea. Barr said there is a need for Treasury to exhaust all options available.

Ranking Member Gwen Moore (D-WI) said she is concerned with the Administration's foreign policy and its commitment to implementing sanctions programs. She suggested that the U.S. has become isolated and weak, with even England debating whether the President is welcome in their country. She raised concerns with the President's relationship with Vladimir Putin and human rights violators. She expressed concern with reports that the Department of State eliminated the Office of the Coordinator for Sanctions Policy. She said the Administration does not appear to be implementing sanctions on Russia. She expressed interest in the Treasury's efforts to follow Congressional intent and vigorously enforce sanctions against Russia.

House Financial Services Panel Discusses Cybersecurity for the Consolidated Audit Trail

Key Points:

- *Chairman Bill Huizenga (R-MI) stated the CAT will cost \$2.4 billion in one time implementation costs and \$1.7 billion in ongoing costs.*
- *Ranking Member Carolyn Maloney (D-NY) noted the CAT was supposed to be up and running two weeks ago but even though SEC Chairman Clayton denied the delay the reporting has yet to begin.*

On November 30, the House Financial Services Committee's Subcommittee on Capital Markets, Securities and Investment held a [hearing](#) entitled "Implementation and Cybersecurity Protocols of the Consolidated Audit Trail." During the hearing the Committee discussed the draft legislation [H.R. _____](#), the "American Customer and Market Information Protection Act," which would "amend the Securities Exchange Act of 1934 to require certain entities to develop internal risk

control mechanisms to safeguard and govern the security of information reported to, stored by, or accessed from the consolidated audit trail.” Chairman Bill Huizenga (R-MI) stated historically there has been no single database for market orders and executions which is why the Consolidated Audit Trail (CAT) has been proposed. He noted the CAT will cost \$2.4 billion in one time implementation costs and \$1.7 billion in ongoing costs. He expressed concern over the amount of personally identifiable information (PII) which will be collected by the CAT as well as proprietary information. Huizenga suggested that insufficient data controls will only undermine confidence in the markets. He stated the SEC cannot afford to get this wrong. Ranking Member Carolyn Maloney (D-NY) stated following the Flash Crash in 2010 it should have been easy for regulators to rebuild the trades that occurred that day but instead it took the SEC over 4 months to issue a report and that report was inconclusive. Maloney noted seven years later there is still not a fully functioning audit trail. She noted the CAT was supposed to be up and running two weeks ago but the exchanges requested another delay. She stated SEC Chairman Clayton denied the delay but the reporting has yet to begin.

Several Members raised concerns over the fact that a Chief Information Security Officer (CISO) has not been hired. Thesys Technologies CEO, Mike Beller stated that the hiring of the CISO is a collaborative process and they are working diligently to find a person to fill that position. When asked whether the exchanges are “exploiting fear” to further delay the CAT, Cboe President and COO, Chris Concannon stated that many breaches have occurred in important systems recently. He stated the plan participants are concerned about “getting this right.” He stated the Operating Committee meets weekly and they have cybersecurity specialists working on the

issues of personally identifiable information (PII) and proprietary information. Lisa Dolly (Pershing) stated the technical specifications have not been released in enough detail. She suggested the broker-dealers will need at least 12 months from release of final technical specifications to build out their systems. Many concerns were raised about the CAT including PII. Tyler Gellasch (Healthy Markets Association) suggested that there are alternatives to inclusion of PII such as use of unique Legal Entity Identifiers (LEI). Beller noted that there are additional controls built in for the PII including encryption at rest, holding the PII in separate data centers, and restricting who can access the PII.

Senate Banking Committee Considers the Nomination for Federal Reserve Chair

Key Points:

- *The Senate Banking Committee approved three nominations for the Department of Housing and Urban Development.*
- *Federal Reserve Chair nominee Jerome Powell suggested that the Volcker Rule could be rewritten to exempt banks with less than \$10 billion in assets.*
- *Powell expressed support for the Orderly Liquidation Authority and suggested that too big to fail no longer exists.*

On November 28, the Senate Banking Committee held a [hearing](#) on the nomination of Jerome Powell to be Chairman of the Board of Governors of the Federal Reserve System. At the beginning of the hearing the Committee also held a markup and approved the following nominations: Brian D. Montgomery, to be Assistant Secretary for Housing – Federal Housing Commissioner, U.S. Department of Housing and Urban Development (HUD) was approved by a vote of 18 to 5; Robert Hunter Kurtz, to be Assistant Secretary for Public and Indian Housing, HUD was approved by a voice

vote; and Suzanne Israel Tufts, to be Assistant Secretary for Administration, HUD was approved by a voice vote. Chairman Mike Crapo (R-ID) in a [statement](#), said he was encouraged by Powell sharing specific areas where the Federal Reserve's rules and regulations can be amended and eased such as the Volcker Rule and stress tests. He said he also was encouraged by Powell's support of reducing the Federal Reserve's asset holdings. Ranking Member Sherrod Brown (D-OH) in a [statement](#), stated he is disappointed with the Trump Administration breaking the tradition of re-nominating the previous Federal Reserve Chairman and the administration's lack of diversity to appointed positions. Brown expressed his concern about the direction federal regulation has taken under the current administration. He explained the administration is making unfounded claims to roll back regulations put in place after the Financial Crisis of 2008. He noted financial watchdogs are now being run by former bankers which he said may make the financial watchdogs ineffective. Brown emphasized that loosening the rules for financial institutions is not the proper step to maintaining a strong economy.

Several Senators raised concern over the size of the Federal Reserve's balance sheet, asking what the "new norm" will be. Powell stated that the new balance sheet will be larger than it was before the crisis but smaller than it currently is. He suggested the proper amount is probably closer to \$2.9 to 2.4 billion but will be based on demand for cash and the demand for reserves. Related to tailoring regulations, Powell stated that tailoring regulations is an important job of regulators. He stated that the determination about asset thresholds is one for Congress to make but noted that size is only one indicator of risk. When asked about the Volcker Rule, Powell stated that the rule could be applied more simply for smaller banks. He expressed support for a re-write of the Volcker

Rule and eliminating it for those banks with less than \$10 billion in assets. Chairman Mike Crapo (R-ID) asked whether the [Economic Growth, Regulatory Relief and Consumer Protection Act](#) will provide relief while still allowing the Federal Reserve to regulate those institutions. Powell stated it does. Senator Jack Reed (D-RI) asked about the importance of the Orderly Liquidation Authority (OLA). Powell explained that bankruptcy is the preferred method to resolve a firm but he acknowledged that there are situations when some sort of additional backstop such as an OLA is needed. Senator John Kennedy (R-LA) asked whether too big to fail is still an issue to which Powell suggested there are no longer too big to fail banks.

Upcoming Events

December 5

Federal Reserve Chair Nomination/Regulatory Reform Legislation: The Senate Banking Committee will hold an executive session to vote on the nomination of the Honorable Jerome H. Powell to be Chairman of the Board of Governors of the Federal Reserve System. The Committee will also markup the Economic Growth, Regulatory Relief and Consumer Protection Act ([S. 2155](#)).

December 6

Federal Advisory Committee on Insurance: The Treasury Department's Federal Insurance Office (FIO) will hold a meeting of the Federal Advisory Committee on Insurance (FACI). The agenda for the meeting includes discussions of cyber regulation, the effect of natural catastrophes on the insurance market, and Treasury's October 2017 report titled "A Financial System That Creates Economic Opportunities, Asset Management and Insurance."

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

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.”

Office of Financial Research: The House Financial Services Committee’s Subcommittee on Oversight and Investigations will hold a hearing entitled “Examining the Office of Financial Research.”

Financial Regulation: The House Financial Services Committee’s Subcommittee on Financial Institutions and Consumer Credit will hold a hearing entitled “Legislative Proposals for a More Efficient Federal Financial Regulatory Regime: Part II.”

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

EPA Finalizes Renewable Fuel Standard for 2018

Key Points:

- *On Thursday, the EPA announced the final renewable fuel blending requirements for 2018.*
- *The action sets forth the volumes of biofuels that must be blended into the U.S. transportation fuel supply, continuing implementation of the Renewable Fuel Standard (RFS), enacted by Congress in 2005 and 2007.*
- *Next year’s RFS again sets renewable fuel totals that fall short of the levels set by statute. The agency is doing so because of limits on the total amount of biofuel that can be blended into the fuel supply primarily as “E10” gasoline, as well as the slow growth of cellulosic biofuel production.*

On November 30, the Environmental Protection Agency (EPA) issued a [press release](#) announcing the “renewable fuel volumes under the Renewable Fuel Standard (RFS) program for 2018, and biomass-based diesel for 2019.” As detailed in the press release, the 2018 volumes are set as follows:

Final 2018 RFS	
Blended Biofuel	Volume in Billions of Gallons
Cellulosic Biofuel	.288
Biomass-Based Diesel	2.1
Advanced Biofuel	4.29
Total Renewable Fuel	19.29

The RFS establishes the requirements for blending ethanol and other biofuels into the

transportation fuel supply. Congress established the RFS in the “Energy Policy Act of 2005” ([P.L. 109-58](#)) and expanded the requirements in the “Energy Independence and Security Act of 2007” ([P.L. 110-140](#)). The RFS sets annual targets for renewable fuels, including ethanol, advanced biofuels and cellulosic biofuels.

The EPA published the [Notice of Proposed Rulemaking \(NPRM\)](#) titled “Renewable Fuel Standard Program: Standards for 2018 and Biomass-Based Diesel Volume for 2019,” beginning the process for establishing next year’s RFS, on July 21, 2017.

The “blend wall,” which was reached when the amount of gasoline and other conventional fuels available could not absorb the RFS targets for biofuels, has impeded implementation of the program. Most biofuels are blended into the transportation fuel supply as gasoline with ten percent ethanol (E10), which contributes to the overall blending constraints. To reflect the impact of the blend wall, recent years’ RFS volume totals have lagged below those set in statute. This is again the case under the 2018 RFS announced this week.

RFS Implementation: 2014-2018		
Year	Statute Renewable Fuel	EPA Renewable Fuel
2014	18.15	16.28
2015	20.5	16.93
2016	22.25	18.11
2017	24.0	19.28
2018	26.0	19.29
Volume in billions of gallons.		

FERC Chairman Chatterjee Discusses Pipeline Permitting

Key Points:

- *On November 30, FERC Chairman Neil Chatterjee delivered remarks before the Natural Gas Roundtable focusing on the process for reviewing and approving natural gas pipelines.*
- *He addressed efforts to improve the efficiency of the permitting process even as opposition to pipelines creates delays.*

On Thursday, Federal Energy Regulatory Commission (FERC) Chairman Neil Chatterjee spoke at the Natural Gas Roundtable. His remarks focused on efforts to improve the FERC review process for certificates for interstate natural gas pipelines.

Chatterjee began his remarks by stating that he would “not be speaking at length” about the “Grid Reliability Pricing Rule” Notice of Proposed Rulemaking (NOPR). He also remarked that he would not “have any breaking news today” regarding the timing of the swearing-in of Kevin McIntyre as his successor as FERC Chairman.

Chatterjee briefly discussed the Commission’s work in eliminating the backlog that resulted from the February through August period when FERC lacked a quorum. He noted that since the quorum was restored FERC has approved 8 billion cubic feet per day in natural gas pipeline capacity.

He explained that one of his goals on the Commission is to improve the efficiency of the review process for natural gas pipelines. Chatterjee noted that the review process for the Atlantic Coast Pipeline was 25 months, while approval of the Mountain Valley Pipeline took 24 months. He said he is working to ensure that these extended timelines do not become

“the new normal.” Chatterjee suggested that increased stakeholder participation in the pipeline review process is the “prime factor” in longer approval timelines.

Chatterjee made the following observations regarding the pipeline review process:

- “Opposition to natural gas pipeline projects has become much more ideologically driven... [as part of] a national ‘keep it in the ground’ movement.”
- “Determined ideological resistance [to pipelines] has greater financial backing... [from] well-funded, sophisticated national environmental advocacy organizations.”
- Pipeline opponents employ sophisticated legal strategies that target a variety of issues, including the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), and the Clean Water Act.
- Pipeline opponents are increasingly “looking to the courts to obtain relief.”
- In some cases, delays result from other state and federal agencies failing to provide required input.
- Incomplete applications by pipeline sponsors also result in delays.

Chatterjee remarked that the “sources of delay are not going to go away soon.” He added, however, that the FERC staff and commissioners are always looking for ways to improve the efficiency of the review process.

He said that the Commission is undertaking a voluntary review of agency policies consistent with the goals of [Executive Order 13783](#), which directed federal agencies to review “actions that potentially burden the safe, efficient development of domestic energy resources.” Chatterjee added that FERC is complying with the permit streamlining

provisions of the “FAST Act.” The Commission is also considering whether proprietary data analytics tools could improve the efficiency of the pipeline review process. He noted that earlier this year FERC issued a “Guidance Manual for Environmental Report Preparation for Applications Filed under the Natural Gas Act.”

Upcoming Hearings and Events

December 5

Energy Legislation: The Senate Energy and Natural Resources Committee’s Energy Subcommittee will hold a [hearing](#) on the following bills: the “Reliable Investment in Vital Energy Reauthorization Act” ([S. 1336](#)); the “Energy Storage Goals and Demonstration Projects Act” ([S. 1455](#)); the “Rare Earth Element Advanced Coal Technologies Act” ([S. 1563](#)); the “Advancing Grid Storage Act” ([S. 1851](#)); the “Reducing the Cost of Energy Storage Act” ([S. 1876](#)); the “Small Scale LNG Access Act” ([S. 1981](#)); and the “Ceiling Fan Energy Conservation Harmonization Act” ([S. 2030](#)).

Nominations: The Senate Energy and Natural Resources Committee will hold a [hearing](#) on the following nominations: Dr. Timothy Petty to be an Assistant Secretary of the Interior for Water and Science; and Dr. Linda Capuano to be Administrator of the Energy Information Administration (EIA).

December 6

Nomination: The Senate Environment and Public Works Committee will hold a [hearing](#) on the nomination of R.D. James to be Assistant Secretary of the Army for Civil Works.

Fish Recovery Legislation: The House Natural Resources Committee’s Water, Power and Oceans Subcommittee will hold a [hearing](#)

on the “Endangered Fish Recovery Programs Extension Act of 2017” ([H.R. 4465](#)).

December 7

EPA Mission: The House Energy and Commerce Committee’s Environment Subcommittee will hold a [hearing](#) titled “The Mission of the Environmental Protection Agency.”

Department of Interior: The House Natural Resources Committee’s Oversight and Investigations Subcommittee will hold a [hearing](#) titled “Transforming the Department of the Interior for the 21st Century.”

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

SASC Hearing

Key Points:

- *The Committee heard from witnesses outside the Pentagon on how the National Defense Strategy should be drafted and the considerations policymakers should keep in mind.*

On November 30, the Senate Armed Services Committee held a [hearing](#) titled “Testimony From Outside Experts on Recommendations for a Future National Defense Strategy.”

Chairman John McCain (R-AZ) noted that “[l]ast year, this Committee wrote into the National Defense Authorization Act, a requirement for the Secretary of Defense to develop and implement a National Defense Strategy... [and] [t]he intent of this document was to prioritize a set of goals and articulate a strategy for the U.S. military to achieve war fighting superiority over our adversaries.” He explained that “[t]he National Defense Strategy is part of this Committee’s broader effort to help guide the Pentagon to develop a more strategic approach in response to an increasingly dangerous world.” McCain claimed that “we can’t buy our way out of our current strategic problem.” He contended that “[e]ven after Congress appropriates adequate funds, the Department will have a tough road to reverse current trend lines, restoring readiness, modernizing the force and reforming acquisition will all be necessary to renew American power.” McCain asserted that “ultimately, all of these efforts will be in vain without clear strategic direction.”

Ranking Member Jack Reed (D-RI) stated that “[t]he Department of Defense (DOD) faces many complicated and rapidly evolving challenges.” He noted that “[t]his is not the first time in our nation’s history as we’ve had to confront multiple threats from abroad, but is an incredibly dangerous and uncertain time.” Reed asserted that “[c]rafting a defense strategy that provides guidance to policymakers on how to most effectively confront [nation-state adversaries and other threats] and I would add challenges that are emerging through artificial intelligence, autonomous vehicles and cyber innovations is not a simple task.” He noted that “during the fall of 2015 when this Committee

held a series of hearings to evaluate potential revisions to the Goldwater Nichols Act, one of the predominant themes was that the Department suffered from a tyranny of consensus when crafting defense strategy.” Reed contended that “[w]hile consensus should not be discounted, crafting strategy focuses on the lowest the common denominator” this approach results in the most difficult problems being delayed or avoided.

Center for Strategic Budgetary Assessments President and Chief Executive Officer Thomas Mahnken identified the “six topics that the National Defense Strategy (NDS) should address, and... [the] one topic that undergirds them all:

- First, the NDS should address the threats and challenges that the United States faces and determine the priority for addressing them.
- Second, the NDS should provide both a global and regional look at U.S. defense strategy and set priorities there.
- Third, the NDS should provide focus on spending priorities on readiness, force size, and modernization.
- Fourth, the NDS should balance the need to fight and win wars with the need to deter and compete in peacetime.
- Fifth, the NDS should speak to how the United States can work more effectively with our allies.
- Sixth, the NDS should put forward a force planning construct to guide the shape and size of U.S. forces.

Mahnken claimed that the “the answers the NDS provides to these six questions will help answer one that is much greater and more consequential, and that is this: What role will the United States play in coming decades?”

RAND Corporation Senior Defense Research Analyst David Ochmanek contended that “the United States now fields forces that are, at once, larger than needed to fight a single major war, failing to keep pace with the modernizing forces of great-power adversaries, poorly postured to meet key challenges in Europe and East Asia, and insufficiently trained and ready to get the most operational utility from many of DOD’s active component units.” He said “[p]ut more starkly, RAND’s war games and simulations suggest that U.S. forces could, under plausible assumptions, lose the next war they are called upon to fight.” Ochmanek stated that “[i]n light of this, it is a matter of increasing urgency that the nation invest in new military capabilities, posture, and operational concepts designed to meet the manifold challenges presented by U.S. adversaries.”

Johns Hopkins School of Advanced International Studies Associate Professor Mara Karlin stated that as the DOD drafts its NDS, “it is wrestling with the following dilemmas, many of which will remain relevant for years to come:

- Conflict Spectrum: The U.S. military must be able to credibly confront challenges across the spectrum of conflict, including nuclear, high-end conventional, gray zone, and counter-terrorism. These potential challengers include China, Russia, North Korea, Iran, and violent non-state actors (e.g.; ISIL 2.0; Hizballah). It should prioritize countering the former while limiting the stressors of the latter.
- Regional Focus: The Asia-Pacific and Europe are the priority theaters for the U.S. military as it competes with rivals; however, the United States cannot remain a global power if it dismisses other regions. China is the long-term challenge for the United States given its consequential military modernization

over two decades. While the U.S. military remains preeminent, the imbalance is worsening. China is making it harder for the U.S. military to project power across Asia, and neither time nor geography work to the U.S. advantage. Russia is a medium-term challenge for the United States. Moscow's use of force in Europe and the Middle East has been rotten, but more worrying is its military's modernization over the last decade and its dangerous doctrine euphemistically known as "escalate to deescalate." In reality, its doctrine is "escalate to escalate" as no clear-eyed observer would consider limited nuclear use de-escalatory. Moreover, the Russian way of war considers society and military fair game, blurs the line between conflict and peace, and wields cyber tools to sow doubt and faith in U.S. institutions. In the wake of the 2011 uprisings, the Middle East will remain fragile for decades to come. The counter-terrorism fight there and in Africa will continue, degrading readiness. Containing the regional chaos when and where possible, and limiting the toll it takes on the military, should be a priority.

- Today vs. Tomorrow: The U.S. military must be able to counter near-term threats and exert U.S. presence globally while also preserving readiness and modernizing the future force to effectively fight and win future wars. It should prioritize the latter.
- Nuclear vs. Conventional Investments: The U.S. military must maintain a credible nuclear deterrent while not allowing it to overwhelm investment in conventional capabilities. Nuclear weapons must not be hived off in budget, strategy, or future force

discussions; trade space between the nuclear and conventional portfolios requires meaningful adjudication.

- Reliance on Allies/Partners: Allies and partners are the United States' comparative global advantage. The U.S. military will always fight alongside allies and key partners; however, some will be more capable than others and the United States will perennially face an expectations mismatch between our needs and capabilities, and theirs.
- Inheritance from 15+ Years of War: The U.S. military must reconcile all it has inherited from the longest period of war in U.S. history, particularly given the inconclusive nature of the conflicts in Iraq and Afghanistan. The opportunity costs of this inheritance are profound. They include a force whose predominant experience has been countering terrorists and insurgents; frayed equipment; a readiness crisis; a bias for ground forces; muddled accountability, a disinterested American public, a nadir of civil-military relations; and, above all, neuralgia over the conflicts' loss of blood, treasure, and limited results."

Upcoming Hearings and Events

December 6

Terrorist Threats: The Senate Homeland Security and Governmental Affairs Committee will hold a [hearing](#) titled "Adapting to Defend the Homeland Against the Evolving International Terrorist Threat."

December 7

Acquisition Reform: The Senate Armed Services Committee will hold a [hearing](#) titled "Department of Defense Acquisition Reform Efforts."

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

HEALTH

Senate Begins Confirmation Process for HHS Secretary

Key Points:

- *The Senate Health, Education, Labor and Pensions Committee held a hearing on the nomination of Alex Azar to serve as Secretary for the Department of Health and Human Services.*
- *The Senate Finance Committee will also need to hold a hearing on the nominee and will ultimately vote on the nomination.*

On November 29, the Senate Health, Education, Labor and Pensions Committee held a hearing on the nomination of Alex Azar to serve as Secretary for the Department of Health and Human Services (HHS). Chairman Lamar Alexander (R-TN) praised Azar's past experience at HHS as well as in the private sector. He identified the opioid crisis, health care costs, and implementation of 21st Century Cures as important areas of focus for the next Secretary.

Ranking Member Patty Murray (D-WA) and other Democrats on the Committee raised concerns about Azar's past experience as an executive in the pharmaceutical industry. Murray expressed concern Azar would be the "fox guarding the hen house" when it came to addressing concerns on rising prescription drug costs.

Azar identified four main priorities if he were to become Secretary: addressing prescription drug prices while still promoting innovation; making health care affordable and tailored to consumer demands; harnessing the power of

Medicare to pay for quality and outcomes; and addressing the opioid epidemic.

Members' questions focused on a range of topics with particular focus on addressing drug pricing and how Azar would approach the Affordable Care Act. Several Senators also expressed concern with the Administration's treatment of women's health issues.

The Senate Finance Committee will also hold a hearing on Azar's nomination which has yet to be scheduled. It will ultimately vote on whether to report out the nomination for confirmation.

Upcoming Hearings and Meetings

December 4-5

Health Law: The American Bar Association's Health Law Section will hold the 15th Annual Washington Health Law Summit.

December 4

Health IT: The Connected Health Initiative and Politico will hold a discussion on "Recognition, Reimbursement, Results: Opportunities Ahead for Remote Monitoring and Connected Health Innovation."

December 5

HIV: Washington Post Live will hold a discussion on "Pathways to Progress: Combating the HIV/AIDS Epidemic."

Complex Care: The National Governors Association will hold a discussion on "Building Complex Care Programs: A Road Map for States."

Opioids: The Senate Appropriations Committee will hold a hearing on "Addressing the Opioid Crisis in America: Prevention, Treatment & Recovery."

December 6-7

Opioids: The Department of Health and Human Services will hold an Opioid Symposium and Code-a-Thon to develop innovative data-driven solutions to the opioid epidemic.

December 7

21st Century Cures: The Senate Health, Education, Labor and Pensions Committee will hold a hearing on “Implementation of the 21st Century Cures Act: Progress and the Path Forward for Medical Innovation.”

December 7-8

MedPAC: The Medicare Payment Advisory Commission will hold a public meeting.

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

TRANSPORTATION & INFRASTRUCTURE**UAV Hearing*****Key Points:***

- *A House subcommittee conducted an oversight hearing of the FAA’s work on implementing provisions from recent reauthorizations aimed at integrating drones into the national airspace.*

On November 29, the House Transportation and Infrastructure Committee’s Aviation Subcommittee held a [hearing](#) entitled: “Unmanned Aircraft Systems: Emerging Uses in a Changing National Airspace.” Topics discussed during Panel I included: (1) FAA Regulations; (2) Remote ID; (3) Testing and Data; (4) Disaster Relief; (5) Local Regulations; (6) Restricted Areas; (7) Drone Manufacturing; and (8) Technical Center. Topics discussed during Panel II included: (1) Local Regulations;

(2) Section 2209; (3) Section 2210; (4) Waivers; (5) Technical Center; and (6) Remote ID Chairman Frank LoBiondo (R-NJ) said drones are creating new industries and transforming existing industries like agriculture. He noted unmanned aircraft systems (UAS) can take off and land anywhere. He said farmers can more efficiently assess their crops with drones. He stated first responders can use UAS to monitor disasters. He said other countries have begun using UAS to deliver goods. He recalled a U.S. Army helicopter collided with an illegally-operated drone, causing hundreds of thousands of dollars of damage to the aircraft. He noted the FAA reported that a UAS can cause more damage to an aircraft than a comparably-sized bird. He said the FAA’s Technical Center plays an important role in facilitating collaboration between government and private industry.

Full Committee Chairman Bill Shuster (R-PA) expressed support for the UAS industry. He said the industry is adding good-paying jobs to the economy. He noted UAS played an important role in recovery efforts during the hurricane season by serving as mobile cellphone towers. He stated government and industry are working together to integrate the technology.

Full Committee Ranking Member Peter DeFazio (D-OR) said drones offer significant promise if they are well-regulated. He stated regulations should make UAS safe but not be too prescriptive. He said the biggest problems right now are with “idiots with toy drones.” He wondered why toy drones are sold without geofencing. He noted drones cause more significant damage to planes than birds do. He expressed support for prosecuting people who illegally operate drones. He said commercial uses should not be hindered by illegally-operated drones. He stated the government is still unsure of what happens if a drone is ingested by a jet engine. He advocated for a

fine larger than \$20,000 for illegally operating a UAS.

Federal Aviation Administration Deputy Administrator Daniel K. Elwell noted there are 95,000 commercial drones operating in the U.S. He predicted that the full economic benefit of drones could equal \$82 billion and 100,000 jobs within the decade. He said the FAA is looking to integrate drones into existing airspace rather than segregate them. He said Part 107 provides a foundation for integration while allowing the FAA to keep pace with innovation. He noted the FAA has issued 70,000 remote pilot certificates and 10,000 authorizations for controlled airspace operations. He stated privacy, physical security, cybersecurity, and enforcement need to be improved. He said the UAS Integration Pilot Program allows the FAA to leverage the experience of stakeholders working in conjunction with state, local, and tribal governments. He said stakeholder engagement is the backbone of integration. He noted stakeholders have demonstrated extended and beyond line of sight operations to support upcoming rulemaking. He argued Congress should support the FAA's efforts by ensuring all UAS operators abide by the same requirements and safety standards that all aircraft abide by in the airspace. He expressed support for remote ID and tracking. He expressed support for the "National Defense Authorization Act for FY 2018" ([H.R. 2810](#)), which reinstates registration rules for all small UAS.

NEPA Hearing

Key Points:

- *The efficacy of the statute governing environmental reviews was reviewed in light of Administration action to shorten and streamline the review process.*

On November 29, the House Natural Resources Committee held a [hearing](#) entitled

"Modernizing NEPA for the 21st Century." The hearing focused on the National Environmental Policy Act (NEPA), how the process is working and whether any reforms are needed. Topics discussed in the hearing included, but were not limited to: (1) Goals of NEPA; (2) Environmental Impacts; (3) Local Involvement; (4) Public Comment; (5) Coordination; (6) Cost-Benefit analysis; (7) Forest Management; (8) NEPA Reform; (9) Litigation; and (10) NEPA Delays.

Chairman Rob Bishop (R-UT) stated the Committee will be examining how to modernize NEPA. He explained NEPA was first intended to assess the impacts of government action on the environment but it has become a sweeping regulation that burdens progress. He stated the provisions of NEPA also created the Council on Environmental Quality (CEQ) which created voluntary guidance that this Administration has rescinded. He stated the issue is that court orders and Executive Actions will not improve how the Act functions. Bishop stated the common refrain is that NEPA is used as a tool to delay needed infrastructure projects. He explained these delays drive up the costs and environmental improvements take a back seat to court cases. He reiterated the environmental reviews can occur in a timely manner and do not need to be exclusive. Bishop noted the myriad of Executive Orders intending to streamline NEPA and he stated Congress has the job of streamlining it. He stressed that open ended regulations result in delays and a broken system.

Ranking Member Raul Grijalva (D-AZ) stated the majority will once again make the case for weakening NEPA. He suggested the claims of delays repeatedly fail to ring true. He suggested most opponents of modernizing NEPA only want to get out of their NEPA requirements. He noted prior reports have played "fast and

loose” with the facts. He stated since 2011 the majority has renewed their assault on NEPA. Grijalva stated time and again the Democrats have “debunked” the claims that NEPA causes delays and unneeded court cases. Grijalva stated NEPA only requires taking a “hard look” at the environmental impacts of a project. He stated if a project is delayed it is because the project would cause negative impacts. He stated 95 percent of NEPA reviews are completed in a few days using categorical exclusions and only 1 percent requires an environmental impact review. Grijalva stated calls for modernizing NEPA “miss the mark” that NEPA is already flexible and functioning well. He suggested it does not have an expiration date. He stated NEPA is timeless and its focus on sustainability and local involvement remains “visionary.” He explained Democrats are committed that NEPA remain a part of any discussion about national resources.

Former Council on Environmental Quality General Counsel Dinah Bear stated at its heart NEPA is grounded in certain beliefs surrounding the relation between the environment and the government. She stated NEPA should be implemented with common sense and innovation. Bear stated at the federal level NEPA provides the way for the public to know what the government intends and provides a means for the public to be heard. She noted time taken for analysis and public involvement is time well spent. She acknowledged that NEPA is delayed at times for reasons having nothing to do with the environment but she suggested this tends to be because of lack of capacity and resources at the agencies. Bear suggested NEPA capacity has been severely diminished. She stated most of the time costs are because of a lack of staff to conduct the reviews. She suggested that lack of training for employees has also played a role. Bear stated [Executive Order 13807](#) seeks to speed up the review process but she stated

none of these provisions will succeed if there is no staff to implement them. She asked that agencies be directed to prioritize adequate trained staff to implement NEPA. She recommended a study comparing staff with use of consultants.

Common Good Chairman Philip Howard stated America is living on infrastructure build at least 50 years ago. He stated for the past three years Common Good has been writing White Papers and convening public forums and he stated there is broad agreement for the need to expedite the permitting process. He stated NEPA is an important statute which needs to be made more effective. Howard stated under the regulations, environmental reviews are not supposed to be more than 300 pages and last more than a year. He suggested it would be difficult to find a project review which has not taken longer than that. He stated NEPA has become a burdensome regulation with “no end.” He stated NEPA should encourage more public input instead of being open only to those with an “in.” He stated the density of these reports is driven by the fear of litigation. Howard stated the process takes on average 4.6 years with permitting adding additional time.

Upcoming Hearings and Events

December 7

Trucking: The House Transportation and Infrastructure Committee’s Highways and Transit Subcommittee will hold a [hearing](#) titled “Emerging Technologies in the Trucking Industry.”

For more information on transportation issues you may [email](#) or call Michael Kans at 202-659-8201. Rebecca Konst and Riyad Carey contributed to the articles.

TECHNOLOGY

Hearing On Data and Algorithms

Key Points:

- *As part of its continuing examination of data security, a House committee heard from experts on the uses and possible ramifications of vast troves of data and algorithms.*

On November 29, the House Energy and Commerce Committee’s Communications and Technology Subcommittee and Digital Commerce and Consumer Protection Subcommittee held a joint [hearing](#) on “Algorithms: How Companies’ Decisions About Data and Content Impact Consumers.” Topics discussed in the hearing included: (1) Consumer Benefits from Algorithms; (2) Consumer Choice; (3) Regulations; (4) Federal Trade Commission Enforcement; (5); Economic Incentives for Data; (6) Net Neutrality; (7) Edge Providers; (8) Encrypted Data; (9) Personal Healthcare; (10) Consumer Behavior; (11) Broadband Providers; and (12) Machine Learning.

Chairman Bob Latta (R-OH) noted the Equifax data breach that occurred earlier this fall and the recent Uber hack that was discovered last week. He stated that consumers are skeptical on how their personal information is being used in the digitally-driven economy. He said as the number of digital devices increases, consumers will only rely on technology more. He noted the complexity involved with algorithms and said it is important to understand the flow of information and legal disclosures.

Ranking Member Jan Schakowsky (D-IL) asserted that the information consumers see is determined by tech companies. She said the internet has changed the way consumers absorb information. She noted that two-thirds

of Americans receive their news from social media—emphasizing the importance of how companies receive consumer data. She said the line between tailored information and targeted discrimination is critical. She noted net neutrality and argued that destroying the neutrality would destroy digital competitiveness. She stated that media consolidation is a threat to the open internet and argued that Congress has a responsibility to push back on corporate power when it threatens competition and consumer choice.

Chairman Marsha Blackburn (R-TN) stated that the pressure is increasing for tech companies and argued that the response has been worrisome in regards to freedom of speech. She said multi-national companies have been responding to pressures that do not align with American values. She stated that recent net neutrality proposals would only apply to Internet Service Providers (ISPs) and said the proposal would restore authority to the Federal Communications Commission (FCC). She noted her legislation, the “BROWSER Act of 2017” [H.R. 2520](#), that would bring all entities that collect and sell data under the same rules. She stressed the importance of data security and expressed her intention of working in a bi-partisan manner.

Ranking Member Michael Doyle (D-PA) said artificial intelligence is a powerful tool that is reshaping the economic framework of the nation. He noted the recent hacks and stated that credit rating agencies play a critical role in consumer lives. He expressed concern that the hearing is occurring in the shadow of the FCC’s proposed changes regarding net neutrality. He said the need for net neutrality was born out of the long history of protecting consumer privacy. He argued that the privacy rules were implemented due to bad behavior from ISPs. He said repealing the rules will have great consequences for the consumer.

University of Chicago Law School Professor Omri Ben-Shahar said the data driven economy provides enormous convenience and benefits for consumers but argued that the potential harms must be taken seriously. He said it is important to understand the consumer injury prior to exploring potential solutions. He argued that the concept of transparency has historically provided no benefits for consumers. He said mandated disclosure has been the most unsuccessful law in privacy law. He stated that transparency requires that companies provide consumers with disclosure but argued that consumers do not read the disclosures due to the length of text. He said transparency is defeated because it is overused. He argued that if simplification strategies have been attempted, consumers would continue to ignore the transparency tools being offered to them.

Georgetown Law Center on Privacy and Technology Deputy Director Laura Moy said consumers are in need of greater control of their data when they do not have any control at all. She argued that protections by default are needed for data companies and other tech companies. She called for Congress to: (1) not eliminate existing consumer protections— noting the elimination of strong privacy rules applied to broadband providers and the Net Neutrality; (2) provide regulation for any rulemaking agency or enforcement agency; (3) accompany any consumer protection agency with regulations; and (4) to avoid complex challenges with a “one-size-fits-all approach.”

Subcommittee Considers Identity Verification

Key Points:

- *Issues related to authenticating and verifying identities online are considered in the context of the amount of data brokers and hackers hold.*

On November 30, the House Energy and Commerce Committee’s Oversight and Investigations Subcommittee held a [hearing](#) entitled: “Identity Verification in a Post-Breach World.” Topics discussed included, but were not limited to: (1) Data Breaches and the Dark Web; (2) Authentication Methods; (3) Data Brokers; (4) Consumer Protection and Privacy Solutions; and (5) Trustmarks.

Vice Chairman Morgan Griffith (R-VA) stated that as the global economy becomes more digital, it also becomes more vulnerable to cyber threats. He said for many years organizations have relied on identity verification known as knowledge-based authentication (KBA). He asserted that most Americans are familiar with KBA; it is the system that asks people to verify their mother’s maiden name, the street they grew up on, or the name of their first dog. He said the effectiveness of KBA depends on the answers to verification questions remaining relatively secret. He noted that with the amount of information that people voluntarily publish on social media KBA’s effectiveness is diminishing. He stated that the National Institute for Standards and Technology (NIST) spent the past several years developing strategies and frameworks for identity verification under their Trusted Identities Group (TIG); which has provided funding to pilot programs looking to develop, implement, and leverage innovative new technologies that move organizations beyond KBA. He added that the private sector has also been working on the issue and created the Fast Identities Online Alliance (FIDO); which provides a forum for collaboration and cooperation around the development of standards-based interoperable technologies. He said companies like Google and PayPal have been working with FIDO and having success.

Full Committee Chairman Greg Walden (R-OR) stated that the KBA system is no longer suitable for verifying identities online, and a more reliable method of identity authentication is needed in the 21st Century marketplace. He noted that according to Verizon, last year 80 percent of data breaches used identity as the point of compromise. He said the main reason KBA is no longer effective is because often the information necessary to compromise identity is readily available online to those who wish to find it. He asserted that social media will continue to grow and as the lives of Americans become more intertwined with the digital marketplace personal data will always be at risk. He said no verification system will be perfect, but it is important for Congress to take steps to reduce vulnerabilities.

Full Committee Ranking Member Frank Pallone (D-NJ) stated that Uber recently revealed that their data was hacked about one year ago, and this breach reportedly exposed the personal information of 57 million riders and drivers. He said the Uber breach is just another example of a company failing to protect the data of its customers; and in Uber's case they withheld the knowledge that they had been breached for a year. He added that the Equifax breach was particularly bad because the data that was stolen included social security numbers (SSN) and birthdays. He said Americans whose data was stolen in the Equifax breach are especially vulnerable to identity theft. He stated that it is important for Congress to consider how consumers, and the holders of consumer information, can verify that individuals are who they say they are online.

Venable Technology Business Strategy Managing Director Jeremy Grant asserted that a key takeaway for the Committee to understand is that cyber attackers have caught up with many of the "first-generation tools"

used to protect and verify identity online. He stated that there are five areas where the government can help the private sector to address the weaknesses of first generation identity verification and authentication tools, and deliver the next generation of solutions that are more secure and better for consumer experiences. He said SSN's should no longer be used as authenticators, but that does not mean the U.S. needs to replace them as identifiers. He added that Congress must recognize that passwords have become useless as a security tool. He noted that multi-stakeholder efforts like the FIDO Alliance have developed standards for unphishable, next-generation multi-factor authentication (MFA) that are now being embedded in most devices, operating systems and browsers, in a way that enhances security, privacy and user experience. He asserted that the government should recognize the significance of this market development that is enabling authentication to move beyond the password, and embrace it. He stated that while authentication is getting easier, identity proofing is getting harder, as attackers have caught up to first-generation solutions like static Knowledge Based Verification (KBV); adversaries have targeted massive data-sets of Americans, in part, so that they have an easier time compromising the questions used in "identity proofing" tools like KBV. He concluded that he believes government should support continued work on identity research and standards.

U.S. PIRG Consumer Program Director Ed Mierzwinski stated that the Equifax breach was an epic failure in many different ways. He said Equifax's only job was to buy and sell consumer credit data, so they should have been more aware of the value of the data they held. He noted that on top of being a credit bureau, Equifax was also a data broker. He said unlike credit bureaus, data brokers are ubiquitous throughout society and are virtually

unregulated. He asserted that Congress should take a long look at the data brokerage market and examine ways to regulate it. He stated that SSN system is flawed and should not be used to authenticate because it creates massive vulnerabilities. He said in response to the Equifax Breach, Congress should make credit freezes free. He said credit freezes are the best way to protect a person from financial identity theft, but they cost money in most states. He concluded that MFA is a positive step in the right direction, but a database full of biometric data does pose a significant privacy threat.

For more information on technology issues you may [email](#) or call Michael Kans at 202-659-8201. Henry Homans and Cullen Neely contributed to the articles.

TRADE

Commerce Department Initiates Investigations into Chinese Aluminum Imports

Key Points

- *There has not been a self-initiated anti-dumping or countervailing duty (AD/CVD) investigation since 1991.*
- *These investigations are usually called for by U.S. industry representatives.*

A statement from the Commerce Department said that the investigation is, “based on information indicating that the United States price of common alloy sheet from China may be less than the normal value of such or similar merchandise and that imports of common alloy sheet from China may be benefiting from countervailable subsidies... The Department also has evidence that imports of common alloy sheet from China may be materially injuring, or threatening material injury to, the domestic industry producing common alloy sheet in the United States.” Secretary Ross said the investigation was self-initiated because it

can be difficult for industries with many small companies to petition for a trade investigation. He also said that the act of self-initiation is important because of “its actual curative effect, its preventative effect, and the psychological effect on the cheaters.” He confirmed that this investigation is separate from the ongoing Section 232 investigations into steel and aluminum. This investigation will follow the standard AD/CVD investigation procedure.

Fifth Round of NAFTA Negotiations Ends without Deals on Contentious Issues

Key Points

- *Canada and Mexico requested technical details on the USTR’s rules of origin proposal.*
- *Negotiators made significant progress on advancing rules for biotech approvals that could result in mutual recognition of approvals between the NAFTA nations.*

During the fifth round of negotiations, Canada and Mexico requested technical specifications of the USTR’s rules of origin proposal so that they could develop a counterproposal for a future round. Canadian Foreign Minister Chrystia Freeland said that at this point Canada “simply cannot agree to” U.S. proposals on rules of origin and dispute settlement. Mexican Economy Secretary Ildefonso Guajardo said that Mexico cannot agree to the rules of origin proposal and that negotiators are trying to “get that information and try to internally, with our own stakeholders, try to define whatever effort we are going to make into regional integration and rules of origin for the regional value content... Eventually we are going to have to put on the table a counterproposal on regional integration.” He also argued that the two year transition included in the proposal is “entirely unrealistic.”

USTR Robert Lighthizer and Vice President Mike Pence met with representatives from the

American Automotive Policy Council (AAPC) this week. The representatives reiterated the auto industry's strong opposition to the rules of origin proposal. The AAPC has recently been calling on governors to pressure the White House to drop or alter the proposal.

USTR Disagrees with Global Forum on Steel Excess Capacity's Report

Key Points

- *The Forum released a report that outlined a set of principles to reduce global steel overcapacity.*

USTR chief of staff Jamieson Greer said the report issued by the Global Forum on Steel Excess Capacity to G20 ministers did not go far enough. He said it “contains many helpful policy prescriptions. But... it could have highlighted the recurring failure of some countries to implement true market-based reforms in the steel sector.” He added that the report “suggests – erroneously in our view – that simply setting capacity reduction targets has been an effective response to the crisis, when in fact meaningful progress can only really be achieved by removing subsidies and other forms of state support and simply letting markets do their work.” He also said the U.S. will continue to remain “fully engaged” in the forum and that the report would not affect future U.S. trade remedies. Meanwhile, China's Assistant Minister of Commerce Li Chenggang said China has “actively resolved excess capacity... China's steel capacity reduction was more than 120 percent of [the] world's total cut... We have taken [a] very responsible approach to the forum.”

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

This Week in Congress was written by Ryan Schnepf.