December 22, 2017

Washington Update

This Week in Congress

- The House and Senate passed the **"Tax Cuts and Jobs Act" (H.R. 1)**. President Trump signed the bill this morning in the Oval Office. Congress also passed a Continuing Resolution funding the government through January 19.

- **House** – The House passed the **"STEM Research and Education Effectiveness and Transparency Act" (H.R. 4375)**; the **"Keep America's Refuges Operational Act" (H.R. 3979)**; the **"Women in Aerospace Education Act" (H.R. 4254)**; the "**Supporting Veterans in STEM Careers Act" (H.R. 4323)**; the "**Systemic Risk Designation Improvement Act of 2017" (H.R. 3312)**; the "**Combating Human Trafficking in Commercial Vehicles Act" (S. 1536)**; the "**Corporate Governance Reform and Transparency Act" (H.R. 4015)**; and the "**Jobs for Our Heroes Act" (S. 1393)**.
- **Senate** – passed the **"Raise the Wage Act" (S.1242)**; the **"Honor Our Commitment Act of 2017" (S. 699)**; the **"Gateway Arch National Park Designation Act" (S.1438)**; and confirmed **J. Paul Compton, Jr.** to be an General Counsel of HUD; **Owen West** to be an Assistant Secretary of Defense; **Jennifer Gillian Newstead** to be Legal Adviser of the Department of State; **Robert J. Jackson, Jr.** and **Hester Maria Peirce** to be members of the Securities and Exchange Commission and **Linda Capuano** to be EIA Administrator.

Next Week in Congress

- **House** – The House is adjourned until January 3.
- **Senate** – The Senate is adjourned until January 3.

TAX

President Trump signs Tax Reform into Law

Key Points:

- *After consecutive days of votes, the House and Senate passed the conference committee approved tax legislation; President Trump signed the bill into law on Friday morning.*
- *Included in the final bill is a 21 percent corporate rate; a 20 percent pass-through deduction; the repeal of the corporate AMT; and modified repatriation rates.*

Table of Contents

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- *Senate Finance Committee Chairman Orrin Hatch proposes new tax extender legislation; House Ways and Means Committee Chairman Kevin Brady said the issue will be addressed in the New Year.*

On Tuesday, the Senate passed H.R. 1 by a vote of 51-48. The House passed the bill the following day by a vote of 224-201. President Trump signed the bill this morning in a private ceremony. Included in the final version are a 21 percent corporate rate, effective immediately in 2018; a 20 percent pass-through deduction; and the repeal of the corporate Alternative Minimum Tax. Also modified from previous versions were the repatriation rates, which are now 15.5 percent for liquid assets and 8 percent for illiquid assets. Congress included a statutory pay-as-you-go (PAYGO) waiver in the Continuing Resolution passed on Thursday evening to fund the government through January 19. A PAYGO waiver was needed in order to prevent the automatic sequestration of mandatory spending programs such as Medicare that would have occurred next year.

On Wednesday, Senate Finance Committee Chairman Orrin Hatch (R-UT) proposed the Tax Extender Act of 2017 (S. 2256), which would extend tax breaks for the biodiesel, nuclear, and renewable energy industries. The retroactive tax credits and deductions expired in 2016 and the legislation would make them available again for the tax years of 2017 and 2018. House Ways and Means Chairman Kevin Brady (R-TX) expects the issue to be considered in the New Year.

For more information about tax issues you may email or call Christopher Hatcher at 202-659-8201. Nick Karellas, Henry Homans, and Ryan Schnepp contributed to this section.

FINANCIAL SERVICES

House Passes Systemic Risk and Proxy Advisor Bills

Key Point:

- *The House passed the Systemic Risk Designation Improvement Act, which would reform the systemically important bank designation process, and the Corporate Governance Reform and Transparency Act, which would require proxy advisory firms to register with the SEC.*

This week the House passed of pair of financial services bills. On December 19, the House passed the Systemic Risk Designation Improvement Act (H.R. 3312), introduced by Representative Blaine Luetkemeyer (R-MO), by a vote of 288-130. The bill would replace the current $50 billion asset threshold for bank systemically important financial institutions (SIFI) designations with a “systemic indicator score” based on size, interconnectedness, cross-jurisdictional activity, substitutability, and complexity relative to other banking organizations.

On December 20, the House passed the Corporate Governance Reform and Transparency Act (H.R. 4015), introduced by Representative Sean Duffy (R-WI), by a vote of 238-182. The bill provides for the registration of proxy advisory firms with the SEC, disclosure of proxy firms’ potential conflicts of interest and codes of ethics, and the disclosure of proxy firms’ methodologies for formulating proxy recommendations and analyses.

Treasury and FHFA Reach Agreement to Allow the GSEs to Retain $3 Billion Capital Buffers

Key Point:

- *The Treasury Department and FHFA announced modifications allowing Fannie Mae and Freddie Mac to retain capital buffers of $3 billion each.*

On December 21, the Treasury Department and the Federal Housing Finance Agency (FHFA) announced that they had reached an agreement to modify the Preferred Stock Purchase Agreements (PSPA) to allow Fannie Mae and Freddie Mac to maintain a capital buffer of $3 billion each.

A press release issued by the Treasury Department explained that:

> The dividend payment owed to Treasury will be calculated each quarter using the $3 billion capital buffer as a baseline. To compensate taxpayers for the dividends they would have received absent these letter agreements, Treasury's liquidation preference for the Preferred Stock held in Fannie Mae and Freddie Mac will increase by $3 billion as of December 31, 2017. Additionally, any failure by Fannie Mae or Freddie Mac to declare and pay a full quarterly dividend will result in the automatic, immediate termination of its capital buffer.

FHFA Director Mel Watt issued a press release in support of the modifications, in which he stated:

> The Federal Housing Finance Agency (FHFA), as conservator of Fannie Mae and Freddie Mac, and the Department of the Treasury have agreed to reinstate a $3 billion capital reserve amount under the Senior Preferred Stock Purchase Agreements for each Enterprise beginning in the fourth quarter of 2017. While it is apparent that a draw will be necessary for each Enterprise if tax legislation results in a reduction to the corporate tax rate, FHFA considers the $3 billion capital reserve sufficient to cover other fluctuations in income in the normal course of each Enterprise's business. We, therefore, contemplate that going forward Enterprise dividends will be declared and paid beyond the $3 billion capital reserve in the absence of exigent circumstances.

House Financial Services Committee Chairman Jeb Hensarling (R-TX) issued a press release criticizing the modification, in which he stated:

> I'm very disappointed at FHFA and Treasury's decision to roll back these vital taxpayer protections. There is simply no

Upcoming Dates

- **January 1, 2018:** Medical device, Cadillac tax, employer mandate, and health insurer tax moratorium, Oil Spill Liability Trust Fund taxes
- **January 19, 2018:** Flood Insurance and EB-5 regional visas authorizations lapse; Title VII of FISA
- **March 5, 2018:** DACA deadline.
- **March 31, 2018:** FAA Reauthorization expires

> good reason, policy or otherwise, why we should be putting the GSEs' balance sheets ahead of the interest of taxpayers. In fact, the Congressional Budget Office evaluated this issue last year and said that such a change not only converts a potential draw on federal funds into an immediate draw, but increases 'the explicit federal backstop for the GSEs—and thus the risk to taxpayers.' Taxpayers remain explicitly on the hook for more than $250 billion of future GSE loses, and literally trillions more in implicit GSE backing. Americans deserve better, and we need to reform our broken financing system now, not tomorrow, not next Congress, not next crisis. Now.

Next year, both the Senate Banking Committee and House Financial Services Committee plan to consider legislation to reform the GSEs and the housing finance system.

Senate Confirms Nominations of Hester Peirce and Robert Jackson to be SEC Commissioners

Key Point:

- *Hester Peirce and Robert Jackson were confirmed to be members of the SEC by a voice vote.*

On December 21, the Senate confirmed the nominations of Hester Peirce and Robert Jackson Jr. to be members of the Securities and Exchange Commission (SEC) by voice vote. Peirce was confirmed for a term expiring June 5, 2020, while Jackson was confirmed for a term expiring June 5, 2019.

The confirmations of Peirce and Jackson will give the SEC a full five-member commission. Commissioner Kara Stein's term expired on June 5, 2017 and Commissioner Michael Piwowar's term is set to expire on June 5, 2018, however, Members of the Commission may continue to serve approximately 18 months after their terms expire if they are not replaced before then.

Senate Banking Committee Votes Down Garrett Nomination to Lead the Export-Import Bank

Key Point:

- *The Committee rejected the nomination of Scott Garrett to be President of the Export-Import Bank; by a vote of 10-13, with Senator Tim Scott (R-SC) and Senator Mike Rounds (R-SD) voting nay, but the Committee approved other nominees to the Ex-Im Bank.*

On December 19, the Senate Banking Committee held an executive session to consider six nominations to the Export-Import Bank (Ex-Im Bank). The Committee rejected the nomination of the Honorable Scott Garrett to be President of the Export-Import Bank by a vote of 10-13, with Senator Tim Scott (R-SC) and Senator Mike Rounds (R-SD) voting against.

The Committee approved the following nominations:

- Ms. Kimberly A. Reed, Nominee to be First Vice President of the Export-Import Bank, by a vote of 20-3, with Senator Richard Shelby (R-AL), Senator Pat Toomey (R-PA), and Senator Ben Sasse (R-NE) voting nay.
- The Honorable Spencer Bachus III, Nominee to be a Member of the Board

of Directors of the Export-Import Bank, by a vote of 20-4, with Senator Richard Shelby (R-AL), Senator Pat Toomey (R-PA), Senator Ben Sasse (R-NE) and Senator Elizabeth Warren (D-MA) voting nay.
- Ms. Judith Delzoppo Pryor, Nominee to be a Member of the Board of Directors of the Export-Import Bank, by a vote of 20-3, with Senator Richard Shelby (R-AL), Senator Pat Toomey (R-PA), and Senator Ben Sasse (R-NE) voting nay.
- Ms. Claudia Slacik, Nominee to be a Member of the Board of Directors of the Export-Import Bank, by a vote of 20-3, with Senator Richard Shelby (R-AL), Senator Pat Toomey (R-PA), and Senator Ben Sasse (R-NE) voting nay.
- Mr. Mark L. Greenblatt, Nominee to be Inspector General of the Export-Import Bank, by a vote of 23-0.

Chairman Mike Crapo (R-ID) said President Trump has expressed support for Ex-Im. He noted his own support for all six nominees. He stated that Garrett has said he will carry out the President's vision for Ex-Im and will keep the Bank fully functional. He suggested that the best path forward is to approve all of the nominees.

Ranking Member Sherrod Brown (D-OH) said American jobs have been lost due to the "games" played with the Export-Import Bank. He stated 95 foreign export credit agencies have been competing while the Export-Import Bank has stalled. He said the Committee failed to consider any of President Obama's Ex-Im Bank nominees last year. He said there are a large number of deals which cannot move forward because the Bank lacks a quorum. He stated that he supports five of the nominees, but he is opposed to Garrett, describing him as an inappropriate nomination. He said the other nominees support the Bank's mission. He noted that Garrett was a leader in the effort to shut down the Ex-Im Bank, and he said Garrett could not provide a straight answer on why he wants to lead the Bank. He urged the Committee to reject Garrett's nomination.

House Financial Services Committee Chairman Jeb Hensarling (R-TX) issued a press release in which he stated:

> The Export-Import Bank remains the poster child for corporate welfare. If it must remain, it must be under the leadership of a true reformer like Scott Garrett. It is disappointing that his nomination to be president of Ex-Im was voted down by the Senate Banking Committee. Unless and until Scott Garrett is confirmed or until Ex-Im is reformed and out of the corporate welfare business, the Senate should confirm no nominations to the Ex-Im board and President Trump should offer no other nominees.

UPCOMING EVENTS

January 11

Fixed Income Market Structure Advisory Committee: The Securities and Exchange Commission (SEC) will hold the first meeting of its Fixed Income Market Structure Advisory Committee (FIMSAC). The agenda for the meeting includes various administrative items and a discussion of liquidity in the bond markets.

January 23

Technology Advisory Committee: The Commodity Futures Trading Commission (CFTC) will hold a meeting of its Technology Advisory Committee (TAC). The agenda for the meeting includes: (1) the scope, plan, and approach for the Committee's efforts in 2018; (2) exploring timely topics and issues involving financial technology in CFTC regulated markets, potentially including blockchain/DLT, data standardization and analytics, algorithmic trading, virtual currencies, cybersecurity, and RegTech; and (3) identifying work streams and/or subcommittee groups that can help generate actionable recommendations to the Commission on select issues.

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 AND ENVIRONMENT

EPA Takes First Step to Replace the Clean Power Plan

Key Points:

- *The EPA issued an Advanced Notice of Proposed Rulemaking (ANPRM) seeking input on how the agency could replace the Obama Administration's Clean Power Plan.*
- *The Clean Power Plan, which is subject to repeal through a separate EPA rulemaking, would have regulated emissions from existing electric generating facilities.*
- *The ANPRM is a preliminary step towards a potential proposed rule.*

On Monday, the Environmental Protection Agency (EPA) released an Advanced Notice of Proposed Rulemaking (ANPRM) titled "State Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units". The ANPRM is the first step in developing a potential replacement rule for the Obama Administration's Clean Power Plan.

The Clean Power Plan: The EPA published the final rule establishing the Clean Power Plan on October 23, 2015. The regulations would restrict greenhouse gas (GHG) emissions from the power sector. States would play the central role in implementing the Clean Power Plan, however the program would be enforced by the EPA. The Clean Power Plan directed states to take actions reducing GHG emissions from existing power plants by 32 percent below 2005 levels by 2030. The Supreme Court issued a stay on enforcement of the rule on February 9, 2016.

Proposal to Repeal the Clean Power Plan: On March 28, 2017, President Trump signed an Executive Order titled "Promoting Energy Independence and Economic Growth" (E.O. 13783), which directed the EPA to "review the [Clean Power Plan]…and, if appropriate…publish for notice and comment proposed rules suspending, revising, or rescinding" the final rule. On April 4, 2017, the EPA published a notice announcing that "it is reviewing the Clean Power Plan…" On October 16, the EPA published a Notice of Proposed Rulemaking (NPRM) titled "Repeal of Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Generating Units", which would rescind the Clean Power Plan. Public comments on this NPRM are due are by January 16, 2018.

Replacement ANPRM: In this week's ANPRM, the EPA is soliciting comments on how "to limit greenhouse gas (GHG) emissions from existing electric utility generating units (EGUs) and…information on the proper respective roles of the state and federal governments in that process, as well as information on systems of emission reduction that are applicable at or to an existing EGU, information on compliance measures, and information on state planning requirements under the Clean Air Act (CAA)." The ANPRM does not propose any specific new regulatory requirements. Instead it seeks comment from the public on a number of issues involved in constructing a possible new rule to limit emissions from existing electric power plants.

Public comments on the ANPRM will be due 60 days following publication in the Federal Register.

FERC to Examine Natural Gas Pipeline Certification Process

Key Points:

- *Newly-installed FERC Chairman Kevin McIntyre announced this week that the Commission would review its current policy for processing and approving applications to construct interstate natural gas pipelines.*
- *According to FERC, the "next steps will be announced in the near future" and the "Commission would invite the views of all stakeholders" in undertaking the review.*

On Thursday, Federal Energy Regulatory Commission (FERC) Chairman Kevin McIntyre announced a review of the current Commission policy for approving interstate natural gas pipelines. McIntyre declared that "the government should constantly be examining our various processes and procedures to see if we can do anything better". He also noted that "[m]uch has changed in the energy world since 1999, and it is incumbent upon us to take another look at the way in which we assess the value and the viability of our pipeline applications." As described in a press release, the "next steps will be announced in the near future" with "the format and scope of the review" still being developed. In addition, the "Commission would invite the views of all stakeholders to ensure that FERC accurately and efficiently assesses the pipeline applications it receives."

The statutory requirements for issuing certificates are set forth as part of the federal Natural Gas Act (15 USC Chapter 15B). Section 7(c) of the Act (15 USC 717f(c)) requires an applicant for construction of a natural gas pipeline project to receive "a certificate of public convenience and necessity issued by the Commission…"

FERC established its current policy framework, which will be the subject of the upcoming review, in 1999, as the "Policy Statement on Certification of New Interstate Natural Gas Pipeline Facilities". The Policy Statement delineates the "analytical steps" FERC uses in "deciding whether to authorize the construction of major new pipeline facilities":

- As set forth in the Policy Statement, "the threshold question…is whether the project can proceed without subsidies from [the pipeline operator's] existing customers."
- The second step "is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the existing customers of the pipeline proposing the project, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline."
- If the analysis of the second step determines that "the proposed project will not have any adverse effect on the existing customers of the expanding pipeline, existing pipelines in the market and their captive customers, or the economic interests of landowners and communities affected by the route of the new pipeline, then no balancing of benefits against adverse effects would be necessary."
- If, however, the second step analysis determines that the project will have adverse effects, "the Commission will proceed to evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects…[and o]nly when the benefits outweigh the adverse

effects on economic interests will the Commission then proceed to complete the environmental analysis where other interests are considered."

Interstate Natural Gas Association of America (INGAA) President Don Santa issued a statement in response to Thursday's FERC announcement. He declared that "[t]he interstate natural gas pipeline industry welcomes the opportunity to provide input when FERC initiates its inquiry into whether the 1999 policy statement can be improved upon as a framework for the commission's fulfillment of its responsibilities under section 7 of the Natural Gas Act." He added that "[t]he criteria specified in the policy statement continue to provide FERC with what remains a robust framework for evaluating the range of questions that must be addressed in determining whether a proposed pipeline meets the public convenience and necessity."

"Tax Cuts and Jobs Act" Opens Portion of ANWR to Oil and Gas Development

Key Points:

- *The tax reform package includes provisions that would open up a small portion of the Arctic National Wildlife Refuge (ANWR) to oil and gas drilling and production.*
- *Congress has debated this issue previously, including passing an authorization in 1995 that was vetoed by President Clinton.*

Title II of the tax reform legislation (H.R. 1) authorizes oil and gas development in the Coastal Plain portion of Arctic National Wildlife Refuge. The legislation directs the Secretary of Interior to "establish and administer a competitive oil and gas program for the leasing, development, production, and transportation of oil and gas in and from the Coastal Plain."

As described in the Joint Explanatory Statement of the Committee on Conference, Title II of the bill:

- "repeals the prohibition on development from the Coastal Plain contained in section 1003 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3143)";
- "directs the Secretary [of Interior] to manage the oil and gas program on the Coastal Plain in a manner similar to what is required by the Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6501 et seq.)";
- "sets a 16.67 percent royalty rate for leases and allocates 50 percent of the revenue derived from the program to the State of Alaska, with the remainder going to the Federal Treasury";
- "requires the Secretary to conduct at least two area-wide lease sales within the 10-year budget window – the first lease sale within four years of the Act's enactment and the second lease sale within seven years of enactment";
- "directs the Secretary to issue any necessary rights-of-way or easements across the Coastal Plain for the exploration, development, production, or transportation associated with the oil and gas program"; and
- "authorizes the development of up to 2,000 surface acres of federal land on the Coastal Plain".

Upcoming Hearings and Events

January 16, 2018

FERC Grid Resiliency Pricing Rule: The Bipartisan Policy Center will hold an event titled "Conversation with FERC Commissioners Chatterjee and LaFleur: The Grid Resiliency Pricing Rule".

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

New National Security Strategy Released

Key Points:

- *The Trump Administration lays out its vision on foreign policy and national security*
- *The new strategy hews to the President's views on national security issues and represents a break with previous strategies*

On December 18, the Trump Administration released its National Security Strategy (Strategy), a statutorily mandated document. The new Strategy replaces the 2015 Strategy released by the Obama Administration. However, unlike recent Strategies released by previous Administrations, the new Strategy signals a nominal break with past foreign policy orthodoxies.

In remarks on the new Strategy, President Donald Trump asserted that "[o]ur new Strategy is based on a principled realism, guided by our vital national interests, and rooted in our timeless values." He claimed that "[t]his Strategy recognizes that, whether we like it or not, we are engaged in a new era of competition." Trump said that "[w]e accept that vigorous military, economic, and political contests are now playing out all around the world…[and] [w]e face rogue regimes that threaten the United States and our allies." He said that "[w]e face terrorist organizations, transnational criminal networks, and others who spread violence and evil around the globe…[and] [w]e also face rival powers, Russia and China, that seek to challenge American influence, values, and wealth." Trump claimed that "[w]e will attempt to build a great partnership with those and other countries, but in a manner that always protects our national interest."

In a summary, the White House asserted that the "Strategy identifies four vital national interests, or "four pillars" as:

I. Protect the homeland, the American people, and American way of life;
II. Promote American prosperity;
III. Preserve peace through strength;
IV. Advance American influence.

The White House stated that "[t]he Strategy addresses key challenges and trends that affect our standing in the world, including:

- Revisionist powers, such as China and Russia, that use technology, propaganda, and coercion to shape a world antithetical to our interests and values;
- Regional dictators that spread terror, threaten their neighbors, and pursue weapons of mass destruction;
- Jihadist terrorists that foment hatred to incite violence against innocents in the name of a wicked ideology, and transnational criminal organizations that spill drugs and violence into our communities.

The White House contended that "[t]he Strategy articulates and advances the President's concept of principled realism.

- It is realist because it acknowledges the central role of power in international politics, affirms that strong and sovereign states are the best hope for a peaceful world, and clearly defines our national interests.
- It is principled because it is grounded in advancing American principles, which spreads peace and prosperity around the globe.

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

HEALTH

Congress Passes Continuing Resolution with Limited CHIP Funding; Market Stabilization Measure Pushed to January

Key Points:

- *The continuing resolution funding the government through January 19, 2018 contains $2.85 billion to fund the Children's Health Insurance Program through March 2018.*
- *The Alexander-Murray market stabilization bill was not part of the final package.*

On December 21, Congress passed a continuing resolution (CR) funding the government through January 19, 2018. Included in the CR is funding for the Children's Health Insurance Program (CHIP) and other health provisions.

The CR provides $2.85 billion for CHIP for October 1, 2017 through March 31, 2018. It also extends authorities that allow the Centers for Medicare and Medicaid Services (CMS) more flexibility to transfer funds to shortfall states. In addition, $750 million is transferred from the Prevention and Publish Health Fund to support extended funding for several programs including Community Health Centers, the National Health Service Corps, Teach Health Center Graduate Medical Education Program, and Type I diabetes programs. The CR also includes a PAYGO waiver which will prevent automatic cuts to Medicare which could have been triggered.

The Alexander-Murray market stabilization bill has been pushed to January. In a statement, Senators Lamar Alexander (R-TN) and Susan Collins (R-ME) said they will "offer it after the first of the year when the Senate will consider the omnibus spending bill, [CHIP] reauthorization, funding for Community Health Centers, and other legislation that was to have been enacted this week." They also noted that in order for it to pass, the bill requires bipartisan support and Democrats have said they cannot support the bill in the current environment.

The White House has expressed support for passing the market stabilization bill and a measure sponsored by Collins and Senator Bill Nelson (D-FL) which would create a reinsurance program. An official said "we believe we will work with the House to get those passed. We think that we'll be in a more comfortable place in January to get that passed." Alexander reportedly received a call from President Trump Thursday morning to "reaffirm his interest in a bipartisan health care bill."

On December 21, the bipartisan House Problem Solvers Caucus introduced the "Bipartisan Market Stabilization and Innovation Act" (H.R. 4695) which would fund the cost-sharing reduction payments; establish a ten-year $115 billion stability fund for state to stabilize the marketplace; streamline the 1332 waiver process; repeal the medical device tax; and alter the employer mandate to provide relief to small businesses. The bill currently has 25 co-sponsors. More details can be read here.

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

TRANSPORTATION AND INFRASTRUCTURE

Senate EPW Hearing on Freight

Key Point:

- *The committee heard from stakeholders on the current state of FAST Act implementation regarding freight and potential future policy changes*

On December 20, the Senate Environmental and Public Works (EPW) Committee's Transportation and Infrastructure Subcommittee held a hearing on "Freight Movement: Assessing Where We Need Are Now and Where We Need to Go." Topics discussed in the hearing included, but were not limited to: (1) trucking/freight, (2) ports, (3) infrastructure, and (4) NAFTA.

Chairman Jim Inhofe (R-OK) said the economy will only continue to grow if U.S. infrastructure is increased. He stated over 18 billion tons of freight travelled over highways, railways, waterways, and through the air in 2015. He said this will grow to 25 billion tons of freight by 2045 accounting for $37 trillion. He maintained freight delays cost the U.S. an additional $27 billion annually which is passed through to businesses and consumers most often. He said U.S. infrastructure is lagging in the global market place. He said to address infrastructure improvements, Congress passed the "Fixing America's Surface Transportation (FAST) Act" (P.L. 114-94), which authorized $305 billion over 5 years and established a $6.3 billion freight formula program which allows states to invest in freight projects on the National Highway Freight Network. He said this grant program has created a $4.5 billion for freight movement. He stated while the FAST Act improved the highway system, it is critical to continue

Ranking Member Ben Cardin (D-MD) stated the U.S. freight system depends on the multimodal system of infrastructure explaining it is important to maintain highways, railroads, airports, and waterways. He emphasized the risk of a drag on the U.S. economy due to stagnation in infrastructure maintenance. He said trucks lose time waiting in traffic, airports face increased congestion, ports need dredging and modernization, and transit systems have a $100 billion backlog in maintenance. He said business at the Port of Baltimore provides 13,650 direct jobs which he said demonstrates the need of a strong federal partnership.

Parker Towing Company Chairman Tim Parker Jr. (on behalf of the Waterways Council) articulated his support for maintaining a well maintained inland waterways and ports throughout the U.S. He stated the inland waterways system is composed of 12,000 miles of commercially active inland and intracoastal waterways. He said that part of this 11,000-mile system is fuel taxed under which commercial operations pay a diesel fuel tax deposited into the dedicated Inland Waterway Trust Fund. He stated his company advocated in support of raising the tax by 45 percent in 2015 to the current level of 29 cents per gallon. He explained the tax pays for half the cost of new construction and rehabilitation in the inland waterway system. He praised the Committee for policy changes made under the "Water Resources Reform and Development Act of 2014" (P.L. 113-121) particularly the cost-share policy for Olmsted Locks and Dam which changed the 50 percent Inland Waterways Trust Fund and 50 percent General Fund split, to a 15 percent Inland Waterways Trust Fund and 85 percent General Fund split. He said this freed up a lot of money to help other critical repair projects and he encouraged Congress to similarly change the cost-share construction of inland waterways projects.

American Trucking Associations President and CEO Chris Spear said the freight industry will need to move an additional 5 million tons over the next decade and stated trucks moved 71 percent of freight this past year. He said the biggest challenge facing the trucking industry today is traffic. He further stated the condition of roadways contributes to 50 percent of all highway accidents. He said the Highway Trust Fund is projected to be depleted by 2021 which would force states to cancel critical projects. He stated ATA proposes the Build America Fund (BAF) as solution. He explained the BAF would be funded through a new, indexed 20 cent per gallon fee built into the price of transportation fuels collected at the terminal rack. He maintained this would create $340 billion in new revenue over the first 10 years. However, he suggested implementing a 10-year plan to stabilize the BAF with more sustainable user fees because fuel funding is a diminishing revenue source. He encouraged Congress to increase dedicated funding for critical projects in the freight industry such as freight intermodal roads. He concluded the ATA is encouraging a strong federal role in infrastructure development. He explained many states have created regulatory regimes redundant of federal standards which impedes the trucking industry from growing.

For more information on transportation issues you may email or call Michael Kans at 202-659-8201. Cullen Neely and Simon Jackson contributed to this section.

TECHNOLOGY

Short-Term FISA Extension Added To CR

Key Points:

- *A month long extension of authority for the Intelligence Community to surveil non-U.S. persons abroad is passed along with a short-term CR*
- *Congress will be faced with full reauthorization and possible reform in January*

This week, as a part of the short term continuing resolution (CR) (H.R. 1370), Congress extended Title VII of the Foreign Intelligence Surveillance Authorization (FISA) until January 19 after plans to attach a full reauthorization to a CR fell through in the House. The House Rules Committee scheduled and then cancelled a December 20 meeting to consider the House Intelligence Committee reported bill, the "FISA Amendments Reauthorization Act of 2017" (H.R. 4478). Despite the intentions of Republican leadership in both chambers to attach a full Title VII reauthorization to a CR, pushback from Republicans and Democrats resulted in a short-term extension be added to the package passed by the Congress on December 21. The Title VII authorities were set to expire on December 31, 2017, and now Congress will have this issue on its agenda in January.

The House Intelligence Committee's summary of H.R. 4478, as reported out of committee, explains the salient provisions:

- The bill supports the Intelligence Community's (IC) continued use of FISA Section 702, but includes several important provisions to enhance transparency and U.S. person privacy. Specifically, the legislation enhances privacy by:
    - Requiring specific FISA Section 702 query procedures, separate from the existing minimization procedures, which must be reviewed by the Foreign Intelligence Surveillance Court (FISC) every year;
    - Adding an optional permissive order requirement for the FBI to view query returns and codifying restrictions on the use of FISA Section 702 communications in criminal prosecutions against U.S. people. Under this legislation, the only way the government may use FISA Section 702

information in a criminal case against a U.S. person is if:
    - the FBI obtained an order from the FISC to view the content of Section 702 communications that were returned after querying its data for criminal purposes,
    - or the Attorney General approves the use of FISA Section 702 collection in a criminal case against a U.S. person, and the crime is national security-related or one of the severe crimes identified in the bill such as murder or kidnapping;
  - Temporarily codifying an end to the NSA's FISA Section 702 "abouts" collection until the government develops new procedures and briefs the congressional intelligence and judiciary committees;
  - Enhancing the Privacy and Civil Liberties Oversight Board by giving their members more flexibility in their meetings and staffing decisions; and
  - Requiring the declassification review and publication of FISA Section 702 minimization procedures.

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

TRADE

Republican Governors Cite Tax Reform to Pressure Administration against Withdrawal

Key Point:

- Republican governors, lawmakers, and industry representatives are warning the administration about consequences of withdrawing from NAFTA.

Iowa Governor Kim Reynolds and three other Republican governors met with Vice President Mike Pence and United States Trade Representative (USTR) Bob Lighthizer last week. After the meeting, Governor Reynolds told the media: "As we look at tax reform at the federal level, the point we made is we could potentially lose all of the opportunity that we'll see from that with the uncertainty it would bring from the investment community if we would withdraw from NAFTA." Senate Agriculture Committee Chairman Pat Roberts (R-KS) relayed to reporters his conversation with President Trump regarding NAFTA, saying: "If we pass the tax bill and you have economic growth… what a paradox of enormous irony if on the other hand you would continue with regards to this bad patch we've been in."

Section 232 Steel Report Delayed by Defense Department Concerns

Key Point:

- After months of saying tax reform was delaying the release of the 232 steel report, it appears Department of Defense (DOD) concerns are now delaying its release.

Section 232 statute requires the Secretary of Commerce to "consult" with the Secretary of Defense regarding the findings and recommended remedies of 232 investigations. In July, Secretary Mattis directed the Defense Logistics Agency to undertake a 60-day review of the use of steel in defense applications. This review by DOD could be a way to improve the legal standing of any remedies, though it could also signal that DOD is not going to allow the investigation to continue. It has been reported the DOD would require exemptions from remedies for Australia, Mexico, Canada, the United Kingdom, Japan and South Korea.

For more information about tax issues you may email or call Christopher Hatcher at 202-659-8201. Riyad Carey and Ryan Schnepp contributed to this section.

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