

May 25, 2018

## Washington Update

### This Week in Congress

**House** - The House passed H.R. 5515, **National Defense Authorization Act for Fiscal Year 2019**; H.R. 5682, **FIRST STEP Act**; S. 204, **Trickett Wendler, Frank Mongiello, Jordan McLinn, and Matthew Bellina Right to Try Act of 2017**; S. 292, **Childhood Cancer STAR Act**; S. 2155, **Economic Growth, Regulatory Relief, and Consumer Protection Act**; H.R. 3832, **Veterans Opioid Abuse Prevention Act**.

**Senate**- The Senate confirmed **Dana Baiocco**, to be a Commissioner of the Consumer Product Safety Commission; **Brian D. Montgomery**, to be an Assistant Secretary of Housing and Urban Development; and **Jelena McWilliams**, of Ohio, to be Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation.

### Next Week in Congress

**House** - The House is in recess.

**Senate** - The Senate is in recess.

## TAX

### **Treasury and IRS Issue Warning to States Looking to Avoid State and Local Tax Limit**

#### *Key Point:*

- *The Department of the Treasury and the IRS announced plans to issue proposed regulations that would address charitable contributions as a way to work around the SALT deduction cap.*

On Wednesday, U.S. Department of the Treasury and the Internal Revenue Service (IRS) announced plans to issue proposed regulations in the near future addressing the

various state and local tax (SALT) deduction workaround legislation adopted or being considered by state legislatures. States including New York, Connecticut, and New Jersey have passed legislation that would allow taxpayers to

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receive a credit against their state and local taxes for contributions to certain organizations or funds designated by the state. In [Notice 2018-54](#), released May 23, the IRS and Treasury informed taxpayers that the “proposed regulations will make clear that the requirements of the Internal Revenue Code, informed by substance-over-form principles, govern the federal income tax treatment of such transfers.”

The recently passed Tax Cuts and Jobs Act (TCJA) capped the individual SALT deduction at \$10,000 per year but did not affect the ability for taxpayers to fully deduct their charitable contributions. The soon-to-be released guidance will address the federal income treatment of those payments and will aim to guide taxpayers through the federal contribution deduction and the new federal cap on SALT deductions.

### Ways and Means Subcommittee Hears From Small Businesses; Tax Reform 2.0 Update

#### Key Points:

- *House Ways and Means Tax Subcommittee holds its second in a series of hearings that focus on the impacts of the Tax Cuts and Jobs Act.*
- *House Ways and Means Committee Chairman Kevin Brady (R-TX) reiterated that frequent talks between House Republicans and the White House have occurred as “phase two” of tax reform moves forward.*
- *Congressional Democrats release economic agenda that includes new incentives for generating clean energy.*
- *Democrats propose eliminating tax cut for nation’s top 1 percent in order to raise teacher salaries.*

On Wednesday, the House Ways and Means Committee’s Tax Subcommittee held a [hearing](#) entitled “Growing Our Economy and Creating Jobs” that focused on the TCJA and its impact on small businesses. Witnesses for the hearing included: Larry Gray, Owner of Alfermann Gray Co. CPAs, LLC; Michael Baach, President and Chief Executive Officer of Philpott Solutions Group; John Horne, Owner of Anna Maria Oyster Bars; Philip Homan, President of LORAM Maintenance of Way; and John Arensmeyer, Founder of Small Business Majority.

According to Subcommittee Chairman Vern Buchanan (R-FL) “Recent data on small businesses is encouraging. The National Federation for Independent Business reported small business profit growth at a 45-year high. The percentage of small businesses that are expanding their employment is at its highest level since 1999. And the percentage of small businesses reporting plans for expansion, increased hiring and higher wages, is at or near record highs.” Michael Baach of Philpott Solutions Group echoed Buchanan’s sentiment as he explained that his company has recently invested \$5 million as a result of TCJA. He noted that it “had been probably 20 years combined [since] we invested that much because things were going the other way...this \$5 million is only the beginning.”

House Ways and Means Committee Chairman Kevin Brady (R-TX) continues to tease out details of a possible tax legislation or “Tax Reform 2.0” being considered this year. In an interview with Fox News, Chairman Brady said, “We are working very closely with the President on that timetable in the House. And we will be consulting, and are, with the Senate on what [are the] best policies and format and timing for them as well.” He added that “you have to start with permanence because you can’t overestimate the importance for growth

and for certainty there.” Among the issue being considered, Brady said that he wanted to give Americans incentives to “save more and earlier in the life,” and that lawmakers were looking at proposals that would require small and medium-sized business employees to opt out of 401(k) plans, rather than to opt in.

On the other side of the aisle, House Minority Leader Nancy Pelosi (D-CA) and Senate Minority Leader Charles E. Schumer (D-NY) unveiled a plan that would pay for a boost in education spending by rolling back tax benefits that the top 1 percent of U.S. taxpayers got under the new tax law. Their proposal entitled “A Better Deal for Teachers & Students,” would dedicate \$50 billion to states and school districts over the next 10 years to increase teacher pay and recruitment. It also would establish a new \$50 billion fund for school infrastructure and resources.

*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**

### **Regulatory Reform Package Signed into Law**

#### *Key Point:*

- *The House passed and the President signed a regulatory reform bill aimed primarily at reducing burdens on community banks and credit unions.*

On May 22, the House passed the Economic Growth, Regulatory Relief, and Consumer Protection Act ([S. 2155](#)) by a vote of 258-159. The bill was signed into law by President Trump on May 24.

S. 2155, which was introduced by Senate Banking Committee Chairman Mike Crapo (R-ID), passed the Senate on March 14 by a vote of 67-31. After House passage of the bill, Chairman Crapo issued a [press release](#) in which he stated:

This is a moment years in the making, and I thank my colleagues in the Senate and the House of Representatives for their partnership and contributions to this effort over the years. This step toward right-sizing regulation will allow local banks and credit unions to focus more on lending, in turn propelling economic growth and creating jobs on Main Street and in our communities. This is an important moment for small financial institutions, small businesses, and families across America.

Several of the provisions of the bill include: raising the threshold for labeling banks as systemically important financial institutions (SIFI) from \$50 billion to \$250 billion; exempting banks with less than \$10 billion in assets from the Volcker Rule; expanding consumer access to mortgages; reducing compliance burdens for community banks; altering capital levels for custodial banks; requiring the banking regulators to classify certain municipal securities as level 2B high quality liquid assets (HQLA) under the Liquidity Coverage Ratio rule; and allowing SEC reporting companies to use Regulation A+ as an option to raise capital.

House Financial Services Committee Chairman Jeb Hensarling (R-TX) issued a [press release](#) praising S. 2155 and calling for Congress to move forward with a subsequent package of reforms focused on the capital markets:

Thanks to hard work and leadership in both the House and the Senate, this pro-growth, bipartisan package will provide much-needed regulatory relief to Main

Street banks and credit unions. This bill takes a major step toward allowing the banking system to serve the needs of American businesses and American families instead of working in the interest of Washington bureaucracy. I look forward to continuing to work with my colleagues on both sides of the aisle and in both chambers to build on the progress we achieved here with an additional package of bipartisan pro-growth capital formation provisions to unleash the full potential of our economy.

### Senate Banking and House Financial Services Committees Approve CFIUS Reform Legislation

#### Key Point:

- *The Senate Banking and House Financial Services Committee unanimously passed legislation to modernize the CFIUS process for reviewing transactions that could result in control of a U.S. business by a foreign entity.*

On May 22, the Senate Banking Committee and the House Financial Services Committee held separate markups and approved bills to modernize and enhance the process used by the Committee on Foreign Investment in the United States (CFIUS) for reviewing transactions that could result in control of a U.S. business by a foreign entity.

The Senate Banking Committee favorably reported the Foreign Investment Risk Review Modernization Act (FIRRMA, [S. 2098](#)), as amended, by a vote of 25-0. This week, the Senate Armed Services Committee marked up and advanced the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (NDAA). The Armed Services Committee added FIRRMA (as advanced by the Senate Banking Committee) to the NDAA, which was approved by a 25-2 vote. The

NDAA may be considered by the full Senate in June.

Senate Banking Committee Chairman Mike Crapo (R-ID), in a [statement](#), said he and Ranking Member Sherrod Brown's (D-OH) substitute amendment would ensure the U.S. can respond effectively to efforts by foreign nations to acquire advanced technologies key to U.S. national security. He stated the amendment leverages the natural jurisdiction and authority of the Committee on Foreign Investment in the United States (CFIUS) process with those of the U.S. and multilateral export regimes to review certain inbound and outbound transactions that may involve acquisitions of emerging critical or foundational technologies. He noted the amendment expands CFIUS authorities to include certain investors and buyers. He said the legislation sets up an interagency process, led by the President, to review outbound transactions and joint ventures. He stated the Bureau of Industry and Security (BIS) would determine how, if at all, critical technology can be transferred under the transaction. He expressed support for the bipartisan Manager's Amendment.

Ranking Member Sherrod Brown (D-OH) observed China has aggressively sought to acquire U.S. technology and intellectual property. He stated China has increased its investment in U.S. technology companies and has structured deals so it can gain access to sensitive technology and information while evading CFIUS review. He said the bill will expand CFIUS authority to include real estate transactions near military installations. He explained the bill would extend the time period for CFIUS review of covered transactions from 30 to 45 days, would strengthen enforcement of mitigation agreements for certain covered transactions with national security concerns, and would increase resources for CFIUS so it is

able to review cases in a timely manner. He expressed support for the proposed interagency process to identify emerging and foundational technologies essential to national security that are not yet subject to export controls.

The House Financial Services Committee favorably reported its version of FIRREA (H.R. 5841), as amended by a vote of 53-0. Chairman Jeb Hensarling (R-TX) said CFIUS reform is a matter of national security. He said foreign regimes are taking U.S. intellectual property, and the bill would add a new focus on emerging technologies. He stressed the need to strike an appropriate balance which still allows foreign direct investment in the U.S.

### Senate Committee Considers Status of the Housing Finance System

#### Key Points:

- *FHFA Director Mel Watt stated the FHFA will propose a capital rule for Fannie Mae and Freddie Mac.*
- *Watt stated that the GSEs cannot have one foot in the public sector and one foot in the private sector.*
- *Watt suggested there is a need for a government backstop to maintain the 30 year fixed rate mortgage.*

On May 23, the Senate Banking Committee held a [hearing](#) on “Ten Years of Conservatorship: The Status of the Housing Finance System.” Chairman Mike Crapo (R-ID), in a [statement](#), noted Fannie Mae and Freddie Mac have now been in conservatorship for close to ten years and he suggested the status quo is not a viable option. He explained it is Congress’ role to chart a path forward for the government sponsored enterprises (GSEs). Crapo suggested these overall trends toward greater taxpayer risk and greater government presence in the mortgage market are concerning, and further demonstrate the need

for Congress to turn to housing finance reform expeditiously. Ranking Member Sherrod Brown (D-OH) noted the changes in the GSEs’ activities following the crisis such as reducing their portfolios and maintaining a small capital buffer. He stated in January the GSEs began implementing their duty to serve rule. Federal Housing Finance Agency (FHFA) Director Melvin Watt stated one challenge exacerbated by the conservatorship is the ability to plan for the future. He stated another challenge is maintaining market discipline in the absence of the market forces that normally enforce market discipline. He noted an aligned capital framework was developed and this is used to assess reasonableness fees and guard against the Enterprises making competitive decisions adverse to safety and soundness. He stated the FHFA will soon propose a risk based capital and minimum leverage capital rule.

Chairman Crapo and Senator Bob Corker (R-TN) noted the need for robust capital standards. Watt noted the FHFA is undertaking a proposed capital rule to get public and congressional input. When asked whether the capital standards should be similar to those for banks, Watt explained they are following a format similar to banking capital but he noted there are some differences from bank risk. Chairman Crapo noted that the GSEs will begin issuing a single security in June 2019. Watt stated that a single platform will provide additional liquidity and additional standardization so everyone can know the “rules of the road.” He explained the first stage went well and they are on pace to meet the June deadline. Several Senators asked about the need for a government guarantee. Watt stated what was needed leading up to the financial crisis was someone to make responsible decisions. He explained they have learned that the GSEs cannot have one foot in the public sector and one foot in the private sector because under that framework the taxpayer

takes on the risks and the shareholders take the benefits. He suggested private capital needs to be put ahead of taxpayers in terms of risk but there needs to be a government backstop in order to maintain the 30 year fixed rate mortgage.

### House Financial Services Panel Discusses Capital Formation Legislation

#### Key Points:

- *Chairman Bill Huizenga (R-MI) explained implementation of the JOBS Act has shown that the JOBS Act is not a magic formula so additional reforms are needed to fuel economic growth on Main Street.*
- *Ranking Member Carolyn Maloney (D-NY) stated she is not opposed to the idea of a venture exchange but she expressed concern over preemption of state Blue Sky laws.*

On May 23, the House Financial Services Committee's Subcommittee on Capital Markets, Securities and Investment held a [hearing](#) entitled "Legislative Proposals to Help Fuel Capital and Growth on Main Street." The hearing focused on the following bills:

- [H.R. 5054](#), the "Small Company Disclosure Simplification Act of 2018," to provide an exemption for emerging growth companies and other smaller companies from the requirements to use Extensible Business Reporting Language (XBRL) for financial statements and other periodic reporting.
- [H.R. 5756](#), to require the Securities and Exchange Commission to adjust certain resubmission thresholds for shareholder proposals.
- [H.R. 5877](#), the "Main Street Growth Act," to amend the Securities Exchange Act of 1934 to allow for the registration of venture exchanges.

- [H.R. \\_\\_\\_\\_\\_](#), to direct the Securities and Exchange Commission to revise section 230.163 of title 17, United States Code, to apply the exemption offered in such section to communications made by underwriters and dealers acting by or on behalf of a well-known seasoned issuer.
- [H.R. \\_\\_\\_\\_\\_](#), to direct the Securities and Exchange Commission to increase and align the smaller reporting company and non-accelerated filer financial thresholds.
- [H.R. \\_\\_\\_\\_\\_](#), to direct the Securities and Exchange Commission to conduct a study with respect to research coverage of small issuers before their initial public offerings.
- [H.R. \\_\\_\\_\\_\\_](#), to remove the limitation on large accelerated filers qualifying as an emerging growth company.
- [H.R. \\_\\_\\_\\_\\_](#), to provide a 5 year extension of certain exemptions and reduced disclosure requirements for companies that were emerging growth companies and would continue to be emerging growth companies but for the 5-year restriction on emerging growth companies.
- [H.R. \\_\\_\\_\\_\\_](#), the "Streamlining Disclosure Options to Reduce Redundant Disclosures to Investors Act" to require the SEC to implement rules simplifying the quarterly financial reporting regime.
- [H.R. \\_\\_\\_\\_\\_](#), to require the Securities and Exchange Commission to revise the definition of a qualifying portfolio company to include an emerging growth company, for purposes of the exemption from registration for venture capital fund advisers under the Investment Advisers Act of 1940.
- [H.R. \\_\\_\\_\\_\\_](#), to amend the Investment Company Act of 1940 to increase the percentage of voting shares a

diversified company may hold in a single issuer.

Chairman Bill Huizenga (R-MI) explained implementation of the JOBS Act has shown that the JOBS Act is not a magic formula so additional reforms are needed to fuel economic growth on Main Street. Ranking Member Carolyn Maloney (D-NY) stated some of these bills have been considered by this Committee before. She expressed opposition to H.R. 5054, expressing concern that the proposal would exempt over 50 percent of companies from XBRL. She noted H.R. 5756 would make it more difficult for shareholder to influence management of the companies. She stated that she is not opposed to the concept of allowing venture exchanges (H.R. 5877) but noted the details need to be right.

Chairman Huizenga asked whether this “JOBS 3.0” is worth pursuing. GlycoMimetics CFO Brian Hahn noted the need to extend the 5 year on-ramp for EGCs. Barry Eggers (Lightspeed Venture Partners) stated the JOBS Act has helped but he noted the EGC status does not last long enough. When asked whether there are problems with shareholder activism, Nasdaq Executive Vice President Edward Knight stated that shareholder activism is a major factor in the public markets and is a reason some companies choose to not go public.

Ranking Member Maloney reiterated that she is not opposed to the idea of a venture exchange, but she expressed concern over the preemption of state Blue Sky laws. John Coffee (Columbia University Law School) expressed concern that the venture exchanges will be a thin market and promote “pump and dump” schemes. He stated that as written, anyone could set up a venture exchange and the SEC will be under pressure to “put out the fires.” Thomas Quaadman (Center for Capital Markets

Competitiveness) stated that retail investors have been shut out of the market. He noted the SEC will have robust oversight of the venture exchanges and the platform will allow for liquidity concentration. Knight explained that the SEC will have six months to determine whether an entity would meet the requirements of a venture exchange. He noted that Nasdaq’s listing standards are already exempt from state Blue Sky laws.

### House Financial Services Panel Discusses Insurance for Autonomous Vehicles

#### Key Points:

- Ryan Gammelgard (*State Farm*) stressed the need for insurance companies to have access to the data on AVs.
- Sam Geraci (*American Family Mutual Insurance Company*) suggested the states should retain their traditional role of regulating insurance.

On May 23, the House Financial Services Committee’s Subcommittee on Housing and Insurance held a [hearing](#) entitled, “The Impact of Autonomous Vehicles on the Future of Insurance.” Chairman Sean Duffy (R-WI) explained insurance policies have been impacted by autonomous vehicle (AV) technology as level 1 and 2 AVs are already on the roads. He expressed an interest in what role Congress should play so that innovation is not “crimped” and ensure that laws keep pace with innovation. Ranking Member Emanuel Cleaver (D-MO) noted this technology might reshape the culture. He stated the benefits must be carefully considered and policies addressed. He explained the technology will evolve and the insurance sector needs to consider how they will be impacted. Cleaver stated a shift to AV might shift reliance to commercial coverage and liability.

Several Members raised concerns over insurance companies having access to data. David Carlson (Marsh & McLennan) stated that they are working with several companies to gather data. Ryan Gammelgard (State Farm) stressed the need for insurance companies to have access to data. He noted that when they have tried to get data access built into laws there has been push back from the tech companies. He stated they have heard the claims that it is impossible to detangle the proprietary data from the accident data. Some Members raised concern over the possibility of shifting liability. Gammelgard stated that as the technology changes it will necessitate a review of how policies are written. He noted the introduction of personal mobility polices. He expressed his view that the traditional tort system is adequate. Representatives Keith Rothfus (R-PA) and Ted Budd (R-NC) asked about state involvement. Carlson stated that a “sandbox” needs to be created to discuss these issues. Sam Geraci (American Family Mutual Insurance Company) suggested the states should retain their traditional role of regulating insurance.

### Upcoming Hearings and Events

#### May 30

**Volcker Rule:** The Board of Governors of the Federal Reserve System will [meet](#) to consider a proposed rule on “Proprietary Trading and Hedge Fund and Private Equity Fund Restrictions of Section 13 of the Bank Holding Company Act.”

#### May 31

**Earthquake Mitigation:** The House Science, Space and Technology Committee will hold a field hearing in Huntington Beach, California, entitled, “Earthquake Mitigation: Reauthorizing the National Earthquake Hazards Reduction

Program.” Witnesses will include: Dr. Steven McCabe, director, National Earthquake Hazards Reduction Program; group leader, Earthquake Engineering Group, NIST; Dr. Stephen Hickman, director, Earthquake Science Center, U.S. Geological Survey; Dr. Frank Vernon, research geophysicist, Institute of Geophysics and Planetary Physics, Scripps Institution of Oceanography, UC San Diego; Chris Poland, consulting engineer; NIST Community Resilience Fellow; and Mr. Ryan Arba, branch chief, Earthquake and Tsunami Program, California Governor’s Office of Emergency Services.

#### June 8

**Elder Abuse:** The Consumer Financial Protection Bureau (CFPB) will hold a town hall meeting on fighting financial exploitation of the elderly.

*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

#### Debate over Biofuels Policy Continues

##### Key Points:

- *The Administration is preparing a proposed rule to set renewable fuel volumes for next year.*
- *High-level meetings continue to assess possible administrative changes to federal renewable fuels policies, with supporters and critics of ethanol and other biofuels sparring over proposals.*

The Administration and Congress continue to debate contentious issues over federal biofuels policy. A recent White House meeting set the parameters for potential separate administrative changes that are favored by advocates and critics of efforts to boost the level of biofuels

production. Meanwhile, the Environmental Protection Agency (EPA) has submitted the Notice of Proposed Rulemaking (NPRM) to establish the 2019 Renewable Fuel Standard (RFS) to the Office of Management and Budget (OMB) for final review before publication. The NPRM will set the requirements for blending ethanol and other biofuels into the transportation fuel supply. While the NPRM is not yet public, press reports indicate that it would increase the mandated amount of biofuels volume from 4.29 billion gallons this year to 4.88 billion gallons in 2019.

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 is administered by the EPA, which establishes the annual targets for renewable fuels, including ethanol, advanced biofuels and cellulosic biofuels.

**White House Meeting:** On May 8, President Trump convened another White House meeting on RFS issues, including Agriculture Secretary Sonny Perdue and EPA Administrator Scott Pruitt, along with RFS proponents and critics from the U.S. Senate. The President tasked Pruitt and Perdue with developing a plan for regulatory revisions to the RFS program, including:

- Authorizing year-round sales of 15% ethanol blended in gasoline (E-15). During an April 26, 2018 hearing of the House Energy and Commerce Committee’s Environment Subcommittee, Pruitt said that the decision on the E-15 waiver could come “very soon”.
- Reviewing the impact of the waivers granted by the EPA to small refiners from their obligation to secure Renewable Identification Numbers

(RINs), in compliance with the RFS. Farm state Senators have sharply criticized these waivers, with Senator Chuck Grassley (R-IA) threatening to call for Pruitt’s resignation if the EPA does not cease granting them.

- Examining the possibility of reallocating the waived RINs obligations, possibly to larger refiners. The oil and refining industry is opposed to this proposal.
- Reviewing the potential for allowing exported biofuels to qualify for RFS compliance. The biofuels industry objects to this proposal.

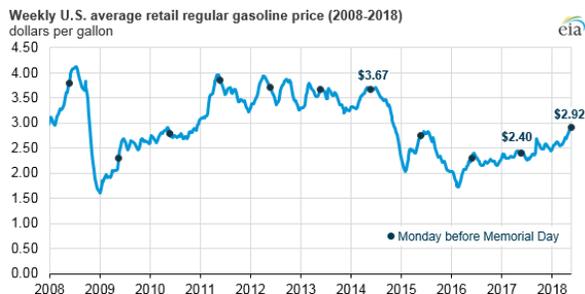
**2019 RFS:** On May 11, the EPA submitted the 2019 RFS NPRM to the OMB for final review before it is published. The goal is to issue a final rule setting the 2019 blending requirements by November. The [Unified Agenda of Regulatory and Deregulatory Actions](#) projects publication of the NPRM in June.

### Rising Gasoline Prices Draw the Attention of Congress

*Key Points:*

- *The Department of Energy’s Energy Information Administration reports that average retail gasoline price rose to \$2.92 per gallon as of May 21.*
- *Senators have weighed in on how to best address the increase in prices.*

The Energy Information Administration (EIA) reported in the May 25<sup>th</sup> edition of “[Today in Energy](#)” that retail gasoline prices have reached the highest pre-Memorial Day level since 2014. The EIA found that “regular gasoline prices averaged \$2.92 per gallon (gal) nationally on May 21, up from last year’s price of \$2.40/gal before the holiday weekend.”



Source: Energy Information Administration

The EIA also reported that “higher crude oil spot prices, higher gasoline demand, and falling gasoline inventories are all factors contributing to higher gasoline prices.”

The increase in prices has drawn the attention of Congress. On Wednesday, Senate Energy and Natural Resources Committee Ranking Member Maria Cantwell (D-WA), along with Senate Minority Leader Charles Schumer (D-NY), and Senators Robert Menendez (D-NJ) and Ed Markey (D-MA), sent a [letter](#) to President Trump calling on him to take action. The Senators declared that “the impact of rising fuel prices on our economy and family budgets is significant and widespread.” They called on the President to take a variety of actions, including diplomatic efforts with OPEC nations and other countries. They also asked the President to:

- “Direct the Federal Trade Commission, Commodities Futures Trading Commission, and the Department of Justice to exercise vigorous oversight over oil markets.”
- “Maximize the use of more environmentally friendly and domestically produced biofuel alternatives by protecting the Renewable Fuel Standard.”
- “Abandon your Administration’s stated plan to roll back [vehicle] fuel economy standards...”

The Senators also held a [press conference](#) to discuss these issues.

Senate Energy and Natural Resources Committee Chair Lisa Murkowski (R-AK) issued a [statement](#) responding to the press conference. She said, “I agree that OPEC’s supply restrictions are driving prices higher and should be addressed, but I was stunned to hear my colleagues encouraging more production from the likes of Iran and Saudi Arabia, rather than right here in America, as the solution.” Murkowski also remarked that “[i]f you don’t support access, leasing, production, pipelines, refineries, or the reasonable regulation of all of those, you’ll be left at the mercy of countries that don’t like us.”

## Upcoming Hearings and Events

### June 4-5

***EIA Energy Conference:*** The Energy Information Administration will hold its annual [Energy Conference](#).

### June 20

***Pipeline Safety Information Sharing:*** The Pipeline and Hazardous Materials Safety Administration (PHMSA) will convene a [meeting](#) of its Voluntary Information-Sharing System Working Group. The “meeting will be to discuss and identify recommendations to establish a voluntary information-sharing system.”

*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

### House Passes NDAA/SASC Reports Out NDAA

#### Key Points:

- *The annual Pentagon reauthorization measure was passed by a large bipartisan majority in the House.*
- *The Senate Armed Services Committee marks up and reports out its package in a closed session, and the bill may be brought to the Senate floor in June.*

This week, the House passed its FY 2019 National Defense Authorization Act (NDAA), and the Senate Armed Services Committee marked up and reported its FY 2019 NDAA, setting up the possibility of floor consideration before the August recess.

On May 24, the House finished consideration of the “National Defense Authorization Act for Fiscal Year 2019” ([H.R.5515](#)) and passed the bill by a [351-66 vote](#). The House Rules Committee made available the amendments made in order in two separate rules [here](#) and [here](#), most of which were considered as part of en bloc amendment packages.

On May 23, the Senate Armed Services Committee finished its markup of the “John S. McCain National Defense Authorization Act for Fiscal Year 2019” but only released a [summary](#) of its bill as has been its practice in recent years. The Committee explained that “[t]he NDAA supports the latest budget agreement of \$716 billion in FY 2019 for national defense...[and] authorizes a base defense budget of \$639 billion for the Department of Defense and the national security programs of the Department of Energy.” The Committee stated that “[t]he focus of this funding will be building a joint force that is ready, equipped, and capable of

maintaining military overmatch against potential adversaries” and claimed that “[t]he NDAA also authorizes \$69 billion for Overseas Contingency Operations.”

The Committee contended that the bill “advances four primary themes:

- First, the NDAA adjusts the budget request to align resources in a manner consistent with the priorities and principles of the National Defense Strategy (NDS). After years of warning from senior defense leaders, the NDS addresses the degrading state of U.S. military capabilities vis-a-vis potential competitors. While there are many contributing factors—unstable budgets, sustained high operational tempo, as well as adversaries’ increased investments in military capabilities—the committee believes that reversing this trend should be a high priority for the Department. To encourage these efforts, the NDAA recommends re-prioritizing funds for each of the Services toward requirements that directly support the NDS.
- Second, the NDAA provides one overarching reporting requirement to the Secretary of Defense: a list of detailed and specific questions regarding the roles, missions, and requirements of the military services that the committee believes are raised by the NDS. The NDAA requires the Secretary to re-evaluate the highest priority missions for the DOD, the roles of the joint force in the performance of these missions, and the capabilities required to complete these missions. More specifically, the committee wants the Secretary to update the roles and missions of the military services and to reassess how the NDS impacts end strength

requirements, how the military will conduct the counterterrorism mission at a more sustainable cost to military readiness and resources, and how the focus on competing against peer adversaries and operating in contested environments impacts capability requirements and investments throughout the joint force. The committee believes that serious answers to these and other strategic questions are necessary to inform continued realignments of our defense program and improve the Congress's ability to perform oversight of the DOD's future program and budget requests.

- Third, the NDAA includes reforms to the Office of the Secretary of Defense to support effective implementation of the NDS. The committee believes organizational change will be key to addressing systemic problems and positioning the Department to confront the challenges outlined in the NDS.
- Finally, the NDAA modernizes officer personnel management to bolster the effectiveness, recruitment, and retention of the all-volunteer force. The NDS acknowledges that the current joint force must change to meet the threat of renewed great power competition, calling for a “broad revision” of talent management principles among the Services to increase the lethality and adaptability of the force. The 38-year-old *Defense Officer Personnel Management Act* requires all military services to manage their officer corps in the same general manner within specific constraints. By reforming this system, the NDAA will provide for flexibility in the careers of commissioned officers and better serve the demands of the modern force.

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

## **HEALTH**

### **Senate Committees Report Opioids Bills; Announce Further Markups**

#### *Key Points:*

- *The Senate Commerce, Science, and Transportation and Judiciary Committees marked up legislation this week to address the opioid crisis.*
- *The Senate Finance Committee announced 22 bills it will consider at a further markup.*

On May 22, the Senate Commerce, Science, and Transportation Committee held a markup of two bills to address the opioid epidemic. Chairman John Thune (R-SD) said opioids affect all American industries including transportation. He emphasized the bills considered by the Committee will improve the transparency of drug data and work to combat bogus treatment programs. The Committee favorably reported the following bills by voice vote:

- S. 2842, Opioid Addiction Recover Fraud Prevention Act of 2018, as amended; and
- S. 2848, Fighting Opioid Abuse in Transportation Act, as amended.

On May 24, the Senate Judiciary Committee favorably reported five bills related to the opioid epidemic. Many of the bills focused on reauthorizing the Office of National Drug Control Policy programs and address synthetic opioids. Ranking Member Dianne Feinstein (D-CA) stressed these bill strike a balance between the supply and demand sides of the problem. The Committee favorably reported the following bills by voice vote:

- S. 2645, Access to Increased Drug Disposal Act of 2018, by voice vote;

- S. 2535, Opioid Quota Reform Act, as amended, by voice vote;
- S. 2789, Substance Abuse Prevention Act, as amended, by voice vote;
- S. 207, Synthetic Abuse and Labeling of Toxic Substances Act of 2017, by voice vote; and
- S. 2838, Using Data to Prevent Opioid Diversion Act of 2018, as amended, by voice vote.

On May 23, the Senate Finance Committee announced 22 bipartisan bills it will consider to address the opioid crisis. In a joint statement Chairman Orrin Hatch (R-UT) and Ranking Member Ron Wyden (D-OR) stated these potential solutions were developed through stakeholder input, hearings, and other member engagement through the first half of the year. The Committee will convene a markup to further examine these recommendations. Additional policies may be considered as well.

Read a full list of the bills [here](#).

### Senate HELP Passes Biodefense Bill

#### *Key Point:*

- *The Senate Health, Education, Labor and Pensions Committee favorably reported the Pandemic and All-Hazards Preparedness and Advancing Innovation Act.*

On May 23, the Senate Health, Education, Labor and Pensions Committee favorably reported S. 2852, the Pandemic and All-Hazards Preparedness Act and Advancing Innovation Act by roll call vote 22-1. Senator Rand Paul (R-KY) was the only no vote. The bill will improve bio-surveillance to detect potential threats and increase funding for the Project BioShield Special Reserve Fund and the Biomedical Advanced Research and Development Authority.

Chairman Lamar Alexander (R-TN) stressed the U.S. needs to be prepared when disasters strike. He asserted the bill will better protect Americans from natural disasters, bioterror attacks, and pandemic outbreaks. Ranking Member Patty Murray (D-WA) suggested the recent reemergence of the Ebola virus in the Congo should serve as a reminder of the importance of this bill.

### Upcoming Hearings and Meetings

#### May 29

***Opioids:*** The Senate Finance Committee will hold a field hearing on “Examining Efforts to Prevent Opioid Overutilization and Misuse in Medicare and Medicaid.”

#### May 30

***Opioids:*** The House Homeland Security Committee will hold a field hearing on “An Unsecure Border and the Opioid Crisis: The Urgent Need for Action to Save Lives.”

#### June 12

***Drug Pricing:*** The Senate Health, Education, Labor and Pensions Committee will hold a hearing on “The Cost of Prescription Drugs: Examining the President’s Blueprint ‘American Patients First’ to Lower Drug Prices.”

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

## TRANSPORTATION AND INFRASTRUCTURE

### **FY 2019 THUD Bill Marked Up and Reported Out**

#### *Key Point:*

- *The House Appropriations Committee completed work on the bill to fund transportation programs at a significant level above the Administration's request even though Democrats objected to a number of riders and the highway/transit split.*

On May 23, the House Appropriations Committee held a [markup](#) of the “[FY 2019 Transportation, Housing and Urban Development Appropriations Bill](#)” (THUD) and the [FY 2019 Report on the Suballocation of Budget Allocations 302\(b\)s](#). The Committee favorably reported the FY 2019 THUD Appropriations bill, as amended, by a roll call vote of 34-17. The Committee also favorably reported the FY 2019 Report on the Suballocation of Budget Allocations by a roll call vote of 29-22. In a [summary](#) of the salient provisions and funding levels issued along with the mark, the House Appropriations Committee explained the transportation funding levels.

Transportation, Housing and Urban Development, and Related Agencies Subcommittee Chairman Mario Diaz-Balart (R-FL), in a [statement](#), said the bill shows a commitment to rebuilding the nation's infrastructure, especially the Northeast Corridor. He stated the bill provides \$71.8 billion in discretionary budget authority, which is \$1.5 billion above the enacted level and \$23.8 billion above the budget request. He explained the bipartisan caps deal signed by President Donald Trump set the framework for the proposed investments in the bill. He argued the bill shows that there does not necessarily need

to be a separate infrastructure bill. He argued the bill makes a historic down-payment to rebuild the nation's infrastructure. He observed they prioritized formula programs that get money directly to states and localities for housing and transportation investments. He explained it provides \$28 billion in discretionary funds for the Department of Transportation (DOT). He stated it also provides \$88 billion in total funding, including obligation limitations consistent with the “Fixing America's Surface Transportation (FAST) Act” (P.L. 114-94). He said it provides \$750 million for the Better Utilizing Investments to Leverage Development (BUILD) Transportation Discretionary Grants program, which was formerly known as the Transportation Investment Generating Economic Recovery (TIGER) grant program. He noted it also sets aside \$250 million for port infrastructure. He noted the proposed investments of \$1.3 billion for NextGen air traffic control and an additional \$500 million for discretionary airport grants. He stated it also provides \$4.25 billion in federal highway funding, which constitutes a 10 percent increase for highway and bridge projects nationwide. He said rail programs would be funded at \$3.2 billion, which will improve safety through Positive Train Control (PTC) grants. He explained it provides \$13.6 billion for the Federal Transit Administration (FTA), fully funding the FAST Act formula grants. He said the Housing Title will continue to serve the elderly, the disabled, and veterans.

Transportation, Housing and Urban Development, and Related Agencies Subcommittee Ranking Member David Price (D-NC) said the bill will allow them to build on the success of the “Consolidated Appropriations Act, 2018” (P.L. 115-141). He stated the bill preserves the popular TIGER program and balances urban and rural infrastructure. He observed the bill includes flat

funding for the Public Housing Capital Fund, which he argued remains below demonstrated need. He stated Community Development Block Grants (CDBG) will receive level funding at \$3.3 billion. He said the HOME Investment Partnerships Program is often used as gap funding for new affordable housing developments and will receive \$1.2 billion under the bill. He argued that the funding for these housing program numbers should be raised higher and recalled there were large funding increases in the transportation title of the bill that were added late in the drafting process. He explained he would offer two amendments that would address this problem. He said the first would restore parity between highway and transit funding. He stated the second would increase funding for housing programs. He expressed strong opposition to several controversial policy riders that were attached to the bill and attack high-speed rail, harm labor rights, and roll back transportation safety. He said he would offer an amendment that would remove these controversial provisions. He noted House Democrats have been shut out of Committee discussions regarding allocations.

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

## **TECHNOLOGY**

### **CFIUS Markup**

#### *Key Point:*

- *The Senate Banking Committee marked up a revised bill to reform how foreign investment is reviewed.*

On May 22, the Senate Banking, Housing, and Urban Affairs Committee held a [markup](#) of the “Foreign Investment Risk Review Modernization Act of 2017” ([S. 2098](#)). The

Committee favorably reported the [bill, as amended](#), by a roll call vote of 25-0.

Chairman Mike Crapo (R-ID), in a [statement](#), said that the “Foreign Investment Risk Review Modernization Act of 2017” (FIRRMA) was introduced in 2017 to enhance the scrutiny of certain business deals and transactions with Chinese companies. He noted the Committee held three hearings on the subject and had numerous meetings with stakeholders. He said he and Ranking Member Sherrod Brown (D-OH) would be introducing a substitute amendment that would ensure the U.S. can respond effectively to efforts by foreign nations to acquire advanced technologies key to U.S. national security. He stated the amendment leverages the natural jurisdiction and authority of the Committee on Foreign Investment in the United States (CFIUS) process with those of the U.S. and multilateral export regimes to review certain inbound and outbound transactions that may involve acquisitions of emerging critical or foundational technologies. He noted the amendment expands CFIUS authorities to include certain investors and buyers. He said the legislation sets up an interagency process, led by the President, to review outbound transactions and joint ventures. He stated the Bureau of Industry and Security (BIS) would determine how, if at all, critical technology can be transferred under the transaction. He expressed support for the bipartisan Manager’s Amendment.

Ranking Member Sherrod Brown (D-OH) observed China has aggressively sought to acquire U.S. technology and intellectual property. He argued China’s cheating negatively affects American advanced technology companies. He stated China has increased its investment in U.S. technology companies and has structured deals so it can gain access to sensitive technology and information while evading CFIUS review. He said the bill will

expand CFIUS authority to include real estate transactions near military installations. He explained the bill would extend the time period for CFIUS review of covered transactions from 30 to 45 days. Brown stated it would also strengthen enforcement of mitigation agreements for certain covered transactions with national security concerns. He noted it would increase resources for CFIUS so it is able to handle increased case load and review cases in a timely manner. He expressed support for the proposed interagency process to identify emerging and foundational technologies essential to national security that are not yet subject to export controls. He argued U.S. economic security is threatened by foreign investment that falls outside the scope of CFIUS. Brown noted he introduced the “United States Foreign Investment Review Act of 2017” ([S.1983](#)), which is not in the Committee’s jurisdiction. He explained the legislation would require the Secretary of Commerce to review certain foreign investments.

### Senate Banking Cybersecurity Hearing

#### *Key Point:*

- *The cybersecurity of the financial services industry is examined at an oversight hearing as Members seek to gauge progress and areas for improvement.*

On May 24, the Senate Banking, Housing, and Urban Affairs Committee held a [hearing](#) titled “Cybersecurity: Risks to the Financial Services Industry and Its Preparedness.” Topics discussed in the hearing included: (1) Personally Identifiable Information; (2) Service Providers; (3) Coordination; (4) Government Role; (5) Cyber Experience on Boards; (6) Cyber-Hygiene; (7) Information Sharing; (8) FS-ISAC; (9) Cyber Workforce; (10) Disclosures; (11) Legacy Systems; and (12) Breach Notification.

Chairman Mike Crapo (R-ID), in a [statement](#), noted four years ago, the Committee held a similar hearing where he noted that a recently aired ‘60 Minutes’ segment called 2014 “the year of the data breach.” He stated that given the various data breaches over the past few years, most notably the Equifax data breach last year, he is not sure 2014 still holds that title. Crapo stated the financial sector itself is a main target for hackers because, as many have said, ‘that’s where the money is.’ He explained banks are under constant attack every day and because of this, they and other firms in the financial services industry have devoted substantial resources to protecting information systems, and the industry is widely viewed as one of the most advanced sectors in terms of prioritizing cybersecurity. Crapo expressed his interest in learning about the risks to the financial services industry from cyberattacks and cyber threats; the work being done in the financial services industry to increase cyber readiness, combat cyberattacks, and increase resiliency; and what more needs to be done by the private sector and government to help protect companies’ and consumer’s information. He stressed that it is critical that personal data be protected, the consumer impact in the event of a breach be minimized, customers’ ability to access credit and their assets not be harmed, and the financial sector be resilient enough to continue to function despite a cyber breach at a financial sector company.

Ranking Member Sherrod Brown (D-OH), in a [statement](#), noted the Committee last considered cyber preparedness of financial institutions three and a half years ago. He explained since then, sophisticated, targeted cyber-attacks have become all too frequent, exposing the personal information of millions of Americans and costing billions of dollars. Brown stated cutting corners on cybersecurity risks real harm to real people’s lives. He noted each data breach or

cyber heist that makes the news seems larger than the one before, and after a while, people barely raise an eyebrow. He suggested it is clear these risks to the financial system and Americans' personal data are growing. Brown stated today's hearing will give the Committee a window into how the financial services sector is working on cyber preparedness, fighting cyber-attacks, and promoting cooperation among private and public entities. He suggested financial institutions must work diligently not just to maintain standards set by industry and government, but also to improve protections for financial infrastructure and customer data wherever possible. He stated as risks increase and threats become more advanced, financial institutions and government agencies must facilitate and encourage information sharing.

Financial Services- Information Sharing and Analysis Center (FS-ISAC) President and CEO Bill Nelson stated he has been CEO of the Financial Services- Information Sharing and Analysis Center (FS-ISAC) since 2006. He noted the growing sophistication of cyberattacks and the resultant efforts to combat those. He noted the financial services industry benefits greatly from the collaboration that occurs. He noted FS-ISAC has been around since 1999 to protect the financial sector. He noted the benefits of information sharing. He explained that FS-ISAC shares threat information, conducts rapid response, and fosters collaboration. Nelson stated over 7,000 companies are members of FS-ISAC today and they have expanded globally with members in over 44 countries. He stated each day cyber risks evolve and a significant amount of money has been expended to combat these attacks. Nelson stated as these attacks grow in their sophistication the sector has come together in a proactive manner. He stated FS-ISAC has devoted resources for smaller institutions and has enhanced their analysis of threats. He explained they conduct annual attack exercises

and have improved their response capabilities. Nelson noted two new subsidiaries have been created and they have established Sheltered Harbor to enhance resiliency capabilities. He offered four recommendations: encourage regulators to harmonize cyber-regulatory requirements, leverage authorities in the "Cybersecurity Act of 2015" (CSA) and "USA Patriot Act of 2001" to implement more effective information sharing programs, establish cyber-deterrence, and response capabilities and encourage adoption of global cybernorms, and support efforts to develop a technology-capable workforce.

Cyber Threat Alliance President and CEO J. Michael Daniel stated almost everything in the nation is dependent on the internet and cyberspace. He stated the threat is becoming worse because it is becoming broader as more things are connected to the internet. He noted the threat is becoming more prevalent, the threat is becoming more dangerous, and the threat is becoming more disruptive. Daniel stated the financial services industry faces criminal and nation state cyber theft. He stated it is clear that the threat of disruption is becoming a more prevalent threat. He stated on its surface this looks like it should not be a hard problem to fix. However, Daniel suggested that cybersecurity is not just a physical problem. He stated this is also a new environment so the body of law and practice has not matured enough yet. Daniel suggested the government can incent better cyber behaviors. He stated there is a need for more investment and a leveraging of the capabilities of the larger institutions.

### **FITARA Scorecard Hearing**

#### *Key Point:*

- *The House Oversight Committee releases its sixth FITARA scorecard to measure how well the executive branch is implementing*

*legislation to reform and improve IT and cybersecurity.*

On May 23, 2018 the House Oversight Committee's Information Technology and Government Operations Subcommittees held a [hearing](#) entitled "The Federal Information Technology Acquisition Reform Act (FITARA) Scorecard 6.0."

Panel I Topics discussed included but were not limited to: (1) Chief Information Officers; (2) IT Acquisition; (3) IT Acquisition; (4) Telework; (5) Personnel; (6) Legacy Code; and (7) Risk Management. Panel II Topics discussed included but were not limited to: (1) Scorecards; (2) IT Projects; (3) Chief Information Officer Authorities; (4) Software; and (5) DOD IT Budget.

Chairman Will Hurd (R-TX) stated that the Government Accountability Office (GAO) has mentioned that the federal information technology (IT) infrastructure is "high risk" as recently as 2015 and is a priority of the Committee. He encouraged the use of the scorecard to describe digital hygiene for each agency in regard to FITARA. He noted that the latest scorecard adds two new categories, which includes the "Modernizing Government Technology Act" (MGT) (P.L. 115-91). He added that the second category measures cybersecurity practices. He stated that the previous scorecard showed that five agencies showed an increased score, eight agencies maintained the same score, and 11 agencies showed a decreased score. He noted that these scores are not meant to punish but incentivize agencies to improve their cybersecurity practices. He asserted that several agencies do not properly implement a direct reporting method. He urged nine agencies to adjust their direct reporting structures and comply with [Executive Order 13833](#). He said the Department of Agriculture (USDA) received a

D- score, and the Department of Defense (DOD) received an F+ under the scorecard. He said the USDA should be able to fix its IT practices so that it may be more able to lead other agencies. He said the DOD's failing score is partly due to lack of transparency within its large IT infrastructure. He encouraged a bipartisan effort in addressing these poor scores.

Ranking Member Robin Kelly (D-IL) said improving the capability of the federal government IT systems is critical to national security. She said oversight is critical, and the scorecard system has been carefully developed to incorporate implementation of the MGT Act. She stated that the MGT Act established certain capital funds that could help modernize legacy IT systems and enhance cybersecurity. She continued that the MGT Act works to improve information security programs. She noted that the 2017 Equifax breach compromised the information of approximately 145 million Americans. She said this highlighted the need for increased cybersecurity, and several agencies have "hit roadblocks." Kelly added that the National Science Foundation (NSF) has improved its score (C- to B+), but the DOD has not (D in 2015 to F+ at current). She expressed concern that 14 agencies received failing grades. She said agencies are failing to consolidate their IT systems. She contended that the DOD has maintained an F grade and has not complied with the Office of Management and Budget (OMB). She noted that the federal government spent over \$95 billion on IT systems in 2017, and the scorecard works to strengthen security while effectively acquiring new IT systems.

U.S. Department of Agriculture Chief Information Officer Gary Washington said the USDA aims to provide food nutrition infrastructure through fact-based data and customer focused decisions. He stated that this

mission is supported by federal, state, and local operators. He noted that Secretary of Agriculture Sonny Perdue supported a new IT structure that was implemented in 2017. He added that this included strengthening data centers, securing information, further enabling data management, and improving consumers' experience with the USDA. He noted that under FITARA the USDA received an A rating. He said the USDA aims to reduce the number of CIOs across the Department. He said the USDA has consistently been recognized "as a leader across FITARA." He added that the USDA has worked to consolidate CIO positions to reduce confusion and create a more uniform policy. He noted that the USDA has re-chartered the Executive IT review board which focuses efforts on the review of strategic IT investment and transactional decisions. He said the USDA takes an innovative approach to IT and project planning while reducing overall risk. He noted that he holds monthly meetings with USDA executives in order to evaluate investments. He said the USDA has closed 18 data centers this year alone. He stated that the USDA is consolidating end user support systems, as well as 74 thousand copies of Adobe Acrobat that saved \$9.2 million dollars. He said the USDA is working diligently to maximize return on investment for the department's customers.

U.S. Government Accountability Office IT Management Issues Director David Powner said that since the creation of the scorecard system in 2015, 58 percent of government software development projects were using a six-month incremental approach. He added that this percentage is now up to 87 percent and 19 of 24 agencies received an A or B on the scorecard. He said that the federal government has closed 7,000 data centers and has saved the U.S. nearly \$4 billion. He stated that there are ten agencies that have software licensing as opposed to three when FITARA

was implemented. He emphasized that cost saving is a primary goal for this initiative, and the GAO predicts \$340 million in savings in this year alone. He said this is a direct result of the efforts of the Committee. He asserted that the establishment of working capital funds under MGT is critical to data center optimization, software licensing, and portfolio stat efforts. He said these three areas can create more savings than the \$100 million Technology Modernization Fund. He stated that the CIO cooperation with agency heads is critical to carrying out IT related responsibilities. He noted that these reports give CIO's a "seat at the management table." He said the recent Executive Order enhances and emphasizes the importance of agency CIO's. He noted that nine agencies did not report appropriately and saw their score decrease by a full letter grade. He said the scorecard includes a cyber grade on 10 cyber metrics that are reported quarterly to OMB. He clarified that these metrics are related to authentication and high impact systems. He noted scorecard rating changes. He encouraged agencies to allow the CIO to report to the agency head, utilize a working capital fund, and have a complete software licensing inventory. He said all of these goals are feasible by the next scorecard. He said the USDA will spend over \$2 billion this year on IT systems but has had nine CIO's since 2004 and six since 2012.

### IoT Legislation Hearing

#### *Key Point:*

- *Members sought to determine the best means of helping the growth of the Internet of Things while keeping consumers and data security in mind.*

On May 22, the House Energy and Commerce Committee's Digital Commerce and Consumer Protection Subcommittee held a [hearing](#) entitled Internet of Things Legislation." Topics

discussed in the hearing included but were not limited to: (1) IoT Innovation; (2) Privacy; (3) Broadband; (4) Employment Effects; (5) Small and Medium-sized Companies; (6) Opioids; (7) Blockchain; (8) Smart City; and (9) Autonomous Vehicles.

Subcommittee Chairman Bob Latta (R-OH), in a [statement](#), noted the hearing would consider the “State of Modern Application, Research, and Trends (SMART) of Internet of Things (IoT) Act” ([H.R.](#)). He said the SMART IoT discussion draft is the result of two years of Subcommittee action to engage with stakeholders. He emphasized that IoT technology is having a real world impact. He noted manufacturers are using IoT technology to maintain machinery and keep production on track. He said farmers are using IoT for grain management, planning and harvesting efficiency, and improved monitoring for temperatures in facilities. He said the discussion draft attempts to clarify the legislative and regulatory framework for IoT technology. He noted the role IoT technology is playing to improve supply chains in oil and gas in order to maximize energy efficiency. He expressed support for the “SELF DRIVE Act” ([H.R. 3388](#)) and said he is pleased to see the progress on that bill carry over to IoT legislation. He asserted that proper application of IoT technology in autonomous vehicles (AVs) will reduce vehicle fatalities, make roads safer, and reduce fuel consumption. He emphasized using a “light touch” regulatory approach to evolving industries. He stated IoT legislation should avoid duplicative processes while addressing issues of privacy and data security. He encouraged interagency collaboration and emphasized transparency for consumers and industry.

Subcommittee Ranking Member Jan Schakowsky (D-IL) stressed that the “SMART IoT Act” is a first step. She said it would

require the Department of Commerce to survey the use of connected devices and examine the federal role in the IoT space. She emphasized this report should provide the foundation for further legislation. She noted concerns with privacy and cybersecurity protections, IoT safety, reliable broadband, and labor market effects. She asserted the U.S. is making insufficient investment in technology. She stressed that a reliance on industry self-regulation will harm consumer safety. She advocated for comprehensive consumer privacy legislation. She expressed support for the “SMART IoT Act” and reiterated that it is the first step in a strategy to ensure data privacy.

U.S. Chamber of Commerce Chamber of Technology Engagement Center Senior Vice President Tim Day stated the Chamber of Commerce established the Chamber of Technology Engagement Center (CTEC) three years ago to understand how technology can empower all Americans. He stated CTEC focuses on AVs, unmanned aircrafts, and telecommunications and emphasized that all of these employ IoT technology. He stated IoT technologies make businesses smarter and more efficient and noted manufacturing, farming and health care benefits. He noted a study which predicted that industrial manufacturing will increase to \$890 billion worldwide by 2020. He said that government will benefit from IoT technologies by improving efficiency of services for citizens. He argued IoT could allow government agencies to bridge the gap between expanding citizen needs and contracting budgets. He asserted wireless providers will invest \$275 million toward building the 5th generation wireless systems (5G) which will add \$500 million in gross domestic product (GDP). He advocated for Congress and agencies to reduce the regulatory burdens, compliance costs, and overlaps. He expressed support for the “Developing

Innovation and Growing the Internet of Things Act” (DIGIT Act) ([S. 88](#)) and the “SMART IoT Act.” He expressed support for Federal Communications Commission’s (FCC) actions on reducing regulatory barriers. He asserted that policymakers need to avoid prescriptive regulations on IoT technologies. He expressed concern about IoT being treated differently than other technologies with regard to privacy regulations.

Center for Democracy and Technology Freedom, Security, and Technology Project Deputy Director Michelle Richardson said that the Center for Democracy and Technology (CDT) is a nonprofit policy organization dedicated to protecting privacy and human rights in the digital space. She asserted the IoT presents unique privacy and security challenges. She noted that IoT devices collect vast personal information which is currently ungoverned. She said serious security breaches of these devices are “not uncommon.” She argued government has a role in establishing standards when security concerns could manifest in extreme threats and when consumers cannot properly understand products. She stated the “SMART IoT Act” should bring about the following purposes: 1) to determine whether voluntary, private industry standards are being created and adopted; and 2) to determine any agency overlap in government oversight. She emphasized that assessing agency overlap should not hinder progress in technologies like AVs. She advocated for employing sector specific experts to understand and oversee the IoT industry. She asserted that one of the largest gaps in IoT oversight is in consumer protections. She said consumers are in a “take-it-or-leave-it” relationship with these technologies and are increasingly forced to engage as connectivity advances. She stated that consumers lack the product knowledge or legal remedies to protect their personal information. She advocated for the Committee

to pursue further action based on the findings of the “SMART IoT Act” report.

*For more information on technology issues you may [email](#) or call Michael Kans at 202-659-8201. Riyad Carey, Thomas McGrath, Rebecca Konst, T. Jackson McLendon and Cullen Neely contributed to the articles.*

## **TRADE**

### **U.S. Suspends Tariffs As Talks with China Continue**

#### *Key Points:*

- *The U.S. has suspended tariffs on \$150 billion in imports of Chinese goods while negotiations with China continue, but President Donald Trump could still impose the tariffs if a deal between the two countries does not progress.*
- *Treasury Secretary Steven Mnuchin announced the parties had created a “framework” that would “substantially reduce the trade deficit by increasing their purchases of goods,” and would address “very important structural issues... to make sure that we have a fair ability to compete there, and also protections about technology.”*

On Saturday, the U.S. and China released a [joint statement](#) touting progress made and “a consensus on taking effective measure to substantially reduce the... trade deficit in goods with China. To meet the growing consumption needs of the Chinese people and the need for high-quality economic development, China will significantly increase purchases of United States goods and services.” Specifically, both sides agreed to “meaningful increases” in U.S. “agriculture and energy exports.” The parties acknowledged that they need to create favorable conditions to facilitate the expansion of trade in manufactured goods and services. China agreed to advance amendments to its

laws that will enhance intellectual property protections.

In an appearance on Fox News, Secretary Mnuchin announced that the countries had agreed to “[put] the trade war on hold,” and added that President Trump “heard these commitments himself and... can always decide to put the tariffs back on if China doesn’t go through with their commitments.” National Economic Council Director Larry Kudlow told reporters that both sides were aiming for a ballpark trade deficit reduction of \$200 billion. Secretary Mnuchin also asserted that the Administration did not “agree to any quid pro quo” regarding ZTE.

Liu He, the Chinese vice premier who led Beijing’s delegation to Washington last week, has also said China is holding off on tariffs for now. “Both sides agreed to avert a trade war and to stop imposing tariffs on each other,” Mr. Liu said, according to the official Xinhua News Agency over the weekend.

The provisional trade agreement was met with mixed reviews from lawmakers, with House Ways and Means Committee Chairman Kevin Brady (R-TX) saying the talks were “encouraging,” while Senator Marco Rubio (R-FL) tweeted that China’s concessions were “things they planned to do anyways. In exchange they get no tariffs, can keep stealing intellectual property [and] can keep blocking our companies while they invest in the U.S. without limits. #Losing.”

### Commerce Department Initiates Section 232 Investigation into Automobile Imports

#### Key Points:

- *Commerce Secretary Wilbur Ross [announced the investigation](#) into the national security implications of automobile imports, saying, “There is evidence suggesting that, for decades,*

*imports from abroad have eroded our domestic auto industry.”*

- *A hearing date and public comment period will be determined soon.*

On Wednesday, Secretary Ross announced that the Commerce Department would be conducting an investigation into the national security effects of automobile imports. He said the investigation “will determine whether imports of automobiles, including SUVs, vans and light trucks, and automotive parts into the United States threaten to impair the national security as defined in Section 232.” In its statement, the Commerce Department said the investigation would examine “whether the decline of domestic automobile and automotive parts production threatens to weaken the internal economy of the United States, including by potentially reducing research, development, and jobs for skilled workers in connected vehicle systems, autonomous vehicles, fuel cells, electric motors and storage, advanced manufacturing processes, and other cutting-edge technologies.”

Congressional reaction to this news was largely negative, with many lawmakers questioning the amount of power the President has over trade. Senate Finance Committee Chairman Orrin Hatch (R-UT) called the investigation “deeply misguided... Taxing cars, trucks and auto parts coming into the country would directly hit American families who need a dependable vehicle, whether they choose a domestic or a global brand.” Senate Foreign Relations Committee Chairman Bob Corker (R-TN) argued “there’s no rational person that could think that we have a national security issue with auto manufacturing.” Senator Sherrod Brown (D-OH), previously a vocal supporter of 232 tariffs on steel and aluminum, said “I don’t know exactly where the president’s going with this... I want to see coherent policy.”

## NAFTA Negotiations Continue to Stall Over Autos Rules

### Key Points:

- *The NAFTA parties missed an informal deadline last week that would have allowed the current Congress to vote on the deal.*
- *The U.S. and Mexico have reportedly reached an impasse regarding automobile rules of origin.*

Sources familiar with NAFTA negotiations have told reporters that the U.S. and Mexico have dug into their positions on automobile rules of origin. This lack of movement is also reportedly preventing progress on other issues including the international dispute resolution panels and creating a sunset clause that would end the deal every five years unless explicitly renewed. Both Mexico and Canada have described those measures as unacceptable. The Mexican trade negotiators have accused the U.S. negotiators of attempting to bully Mexico into agreeing to rules of origin that would not require Congress's approval, also known as a "skinny" deal. However, U.S. negotiators have said that Mexico agreed to new auto rules, but later backed away from that commitment and sought to change the terms of the proposal.

The U.S. has reportedly refused to make concessions on its other contentious proposals, like an optional investor-state dispute settlement (ISDS) and the sunset clause. On Wednesday, President Trump told reporters that "NAFTA is very difficult. Mexico has been very difficult to deal with. Canada has been very difficult to deal with ... but I will tell you that in the end we win." No ministerial meetings are currently scheduled, though technical talks will continue.

## CFIUS Reform Bills Move Through House and Senate Committees

### Key Points:

- *The House Financial Services Committee and the Senate Banking Committee both favorably reported different versions of the Foreign Risk Review Modernization Act (FIRRMA), which would expand the scope of transactions the Committee on Foreign Investment in the United States (CFIUS) is able to review.*
- *The Senate version included an amendment that would prevent President Trump from removing sanctions imposed on Chinese telecommunications companies (including ZTE) without congressional approval.*
- *The Senate attached FIRRMA to the 2019 National Defense Authorization Act (NDAA).*

Earlier this week, House and Senate committees voted unanimously to favorably report different versions of the Foreign Risk Review Modernization Act (FIRRMA), legislation that would give the U.S. greater power to block deals between American and Chinese companies that could risk national security. The congressional effort to strengthen U.S. defenses would expand both the responsibility and resources of the Committee on Foreign Investment (CFIUS) in the U.S. CFIUS is an interagency committee that reviews proposed foreign takeovers of U.S. businesses. It can advise the President to block them on national-security grounds.

The Senate Banking Committee voted 23-2 to adopt an amendment that would require the President to obtain congressional approval before removing sanctions on any Chinese telecommunications company. The Senate Armed Services Committee agreed to attach the Senate committee passed FIRRMA bill as an amendment to the National Defense Authorization Act (NDAA), a must-pass

defense authorization bill. The House Financial Services Committee adopted multiple amendments to the bill before it was favorably reported. The committee accepted an amendment that requires companies to pay a filing fee for CFIUS reviews, a provision that is included in the Senate version. They also adopted an amendment that would allow CFIUS to suspend transactions while they are under investigation. A similar provision is also present in the Senate version. The House has already passed its 2019 NDAA without FIRRMA and is instead expected to pass the standalone bill on the floor.

*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.*