

June 29, 2018

Washington Update

This Week in Congress

House – The House passed H.R. 299, the **Blue Water Navy Vietnam Veterans Act**; H.R. 5783, the **Cooperate with Law Enforcement Agencies and Watch Act of 2018**; H.R. 4294, the **Prevention of Private Information Dissemination Act of 2017**; H.R. 2083, the **Endangered Salmon and Fisheries Predation Prevention Act**; H.R. 5841, the **Foreign Investment Risk Review Modernization Act** and H.R. 6157, the **FY 2019 Defense Appropriations Bill**.

Senate – The Senate passed H.R. 5895, the **Energy, Water, Legislative Branch, Military Construction, Veterans Affairs Appropriations Bill**; S. 2385, the **Authenticating Local Emergencies and Real Threats (ALERT) Act of 2018**; H.R. 2, the **Farm Bill**; S. 2245, the **KIWI Act**; H.R. 2029, **Pesticide Registration**; H.R. 5956, the **Northern Mariana Islands U.S. Workforce Act**; S. 2559, **ratification of the Marrakesh Treaty and passage of implementation bill**, S. 2559 and a [series](#) of **Hydroelectric bills** authorizing and extending construction.

Next Week in Congress

House – The House is in recess until July 10th.

Senate – The Senate is in recess until July 9th.

TAX

Chairman Brady Says Tax Reform 2.0 Will Include Multiple Bills; Moving This Fall

Key Points:

- *Ways and Means Chairman Kevin Brady (R-TX) indicated a bill could be marked up following the August recess.*
- *Brady said the bill will address retirement and education provisions, as well as permanence of the individual tax cuts.*

House Ways and Means Committee Chairman Kevin Brady (R-TX) said this week that an upcoming tax bill commonly referred to as “Tax Reform 2.0” will not be a single bill but,

likely to be “a package of two, three, or four approaches with permanency being one of them.” As for process, Chairman Brady said that they will begin circulating a draft with the House Republican conference after they return

Table of Contents

Taxes	1
Financial Services	3
Energy & Environment	9
Defense	11
Health	15
Transportation & Infrastructure	17
Technology	19
Trade	23

from the Fourth of July break and incorporating the feedback before releasing a legislative outline in early August. Chairman Brady said that the House would hold votes on the legislation in the fall with the ultimate timing up to House Leadership.

Chairman Brady has said the second tax reform bill would address retirement and education provisions. According to Brady, “We think the time is right to help families save more and earlier in their life whether it’s for health care or school or for their kids or retirement in the long-term—thinking through some ideas there.” In a Friday morning interview on Fox Business, Brady added that clarifying international taxes will be part of the upcoming Tax Cuts 2.0 “and beyond.”

The House Ways and Means Committee is also planning a July markup of legislation designed to make health savings accounts (HSA) more accessible and lower healthcare costs for families. Brady said earlier in June that a healthcare tax package is being developed to make HSAs more user-friendly and increase their use for preventative healthcare. Brady did not announce what specific legislation would be included in the package.

Senate Finance Committee Holds Hearing on Nomination of Charles Rettig to be IRS Commissioner

Key Points:

- *The hearing was relatively non-adversarial, despite Democratic objections to his lack of experience and work in private practice. The hearing focused on restoring public trust, simplifying the tax code, updating IT Systems, charitable deductions and tax evasion.*
- *Senate Finance Committee Chairman Orrin G. Hatch (R-UT) said he intends to move “as fast as we can” on the nomination process of Charles Rettig.*

President Trump’s nominee to replace Assistant Secretary for Tax Policy and Acting Commissioner David Kautter as IRS Commissioner faced Senate Finance Committee members in a hearing on Thursday. In his opening statement, Charles “Chuck” Rettig explained that as Commissioner his overriding goal will be to strengthen and rebuild the trust between the IRS, the American people, and their representatives in Congress. He asserted that public trust is critical to the successful operation of the IRS, especially in its work with the Treasury Department to enact the recent tax reform legislation.

Ranking Member Ron Wyden (D-OR) said Rettig has spent his entire career in private tax practice in Beverly Hills, California helping rich people avoid taxes. He also suggested his lack of experience managing large organizations was a concern. Rettig said he will make it clear to Americans that the IRS is “impartial, non-biased, and colorblind” for all purposes. Many Senators expressed their concerns with the IRS computer and phone systems and other outdated technology. Also addressed were the effects of the Tax Cuts and Jobs Act on charitable giving. The Committee also questioned Rettig about his past work, questioning whether he could work for all Americans or only wealthy Americans.

Senate Finance Committee Chairman Orrin G. Hatch (R-UT) said he intends to move “as fast as we can” on the nomination process of Charles Rettig. Following the hearing, Hatch said that it would take three to four weeks at the most to confirm Rettig. If confirmed, Rettig’s term as IRS Commissioner would run through November 2022.

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

Senate Banking Committee Holds Hearings on Capital Formation and Corporate Governance Proposals

Key Points:

- *The capital formation hearing included discussion on legislation related to money market funds, angel investors, emerging growth companies, testing the waters, RBIC advisers, and auditing.*
- *The corporate governance hearing focused on proposals related to proxy advisory firms, the accredited investor definition, disclosures of short sales, cybersecurity disclosures, and insider trading.*
- *The hearings were intended to examine legislation in advance of an anticipated legislative package of securities bills the Committee hopes to consider.*

This week, the Senate Banking Committee held two hearings to examine legislation in advance of an anticipated securities bill package.

On June 26, the Committee held a [hearing](#) to examine legislative proposals intended to increase access to capital and reduce regulatory burdens. Chairman Mike Crapo (R-ID) said he would work with Ranking Member Sherrod Brown (D-OH) and other Senators on the Committee on these proposals. Crapo stated many of the bills have passed the House Financial Services Committee with bipartisan support. The focus of the Committee was on the following bills:

- The Helping Angels Lead Our Startups (HALOS) Act ([S. 588](#)), cosponsored by Senators Brian Schatz (D-HI), Pat Toomey (R-PA), Heidi Heitkamp (D-ND), and Thom Tillis (R-NC), which

would require the Securities and Exchange Commission (SEC) to revise Regulation D to allow small companies to hold demo days without violating general solicitation or general advertising bans.

- The Consumer Financial Choice and Capital Markets Protection Act ([S. 1117](#)), sponsored by Senators Pat Toomey (R-PA), Mike Rounds (R-SD), and Bob Menendez (D-NJ), which would allow a money market fund to use stable net asset value (NAV).
- The Fostering Innovation Act ([S. 2126](#)), sponsored by Senator Thom Tillis, which would exempt Emerging Growth Companies (EGC) from certain auditor attestation requirements.
- The Encouraging Public Offerings Act ([S. 2347](#)), sponsored by Senators Chris Van Hollen (D-MD) and Thom Tillis (R-NC), which would allow all companies to utilize the testing the waters provision prior to an initial public offering (IPO).
- The Rural Business Investment Company (RBIC) Advisers Relief Act ([S. 2765](#)), sponsored by Senators John Kennedy (R-LA) and Doug Jones (D-AL), which would amend the Investment Advisers Act of 1940 to exempt investment advisers who only advise certain rural business investment companies.
- The Small Business Audit Correction Act ([S. 3004](#)), sponsored by Senators Tom Cotton (R-AR) and Doug Jones (D-AL), which would amend the Sarbanes-Oxley Act to exclude certain non-custody brokers and dealers in good standing from certain Sarbanes-Oxley requirements..

Ranking Member Sherrod Brown (D-OH) expressed concern that some of the bills being

considered could reduce consumer protections and harm financial stability. He noted that Congress recently passed the Economic Growth, Regulatory Relief, and Consumer Protection Act ([S. 2155](#)) and regulators are working to roll back post-crisis reforms. He said the bills being examined at the hearing are meant to build on the Jumpstart Our Business Startups (JOBS) Act, but he questioned whether the JOBS Act actually helped to create jobs. He stressed the need to look at what the Securities and Exchange Commission (SEC) can do to enhance public trust in the markets. He noted that he sent a letter to SEC Chairman Jay Clayton raising concerns with the recent trends in enforcement. He said a study showed that companies exempted from auditing requirements have higher rates of accounting restatements. He suggested that Congress should focus on passing bills which strengthen, rather than weaken, investor confidence. He said exemptions and carve outs have not resulted in more IPOs, but have denied consumers protections and eroded confidence in the market.

Chairman Mike Crapo (R-ID) and Senators Bob Menendez (D-NJ), Pat Toomey (R-PA), and Mike Rounds (R-SD) spoke in support of S. 1117, suggesting that the SEC's floating net asset value (NAV) rule has led to decreased demand for municipal debt and higher borrowing costs. Chris Daniel, Government Finance Officers Association (GFOA) said the changes to SEC Rule 2a-7 harmed local governments by forcing them out of prime funds and into low yielding U.S. government funds.

On June 28, the Senate Banking Committee held a [hearing](#) to consider legislative proposals related to corporate governance. The bills examined at the hearing included:

- The Corporate Governance Reform and Transparency Act ([H.R. 4015](#)),

introduced by Representative Sean Duffy (R-WI), which would provide for the registration of proxy advisory firms with the Securities and Exchange Commission (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.

- The Fair Investment Opportunities for Professional Experts Act ([S. 2756](#)), introduced by Senator Thom Tillis (R-NC), which would amend the Securities Act of 1933 to direct the SEC to revise the regulations of the Commission regarding the qualifications of natural persons as accredited investors.
- The Brokaw Act ([S. 1744](#)), introduced by Senator Tammy Baldwin (D-WI), which would require the SEC to amend Rule 13d and require disclosure of short sales.
- The Compensation for Cheated Investors Act ([S. 2499](#)), introduced by Senator Elizabeth Warren (D-MA), which would require the Financial Industry Regulatory Authority (FINRA) to establish a relief fund to provide investors with the full value of unpaid arbitration awards issued against brokerage firms or brokers regulated by the Authority.
- The Cybersecurity Disclosure Act ([S. 536](#)), introduced by Senator Jack Reed (D-RI), which would promote transparency in the oversight of cybersecurity risks at publicly traded companies.
- The Expanding Access to Capital for Rural Job Creators Act ([S. 2953](#)), introduced by Senator Doug Jones (D-AL), which would amend the Securities Exchange Act of 1934 to require the Advocate for Small Business Capital

Formation within the SEC to report on issues encountered by rural-area small businesses.

- Draft legislation, the 8-K Trading Gap Act, to be introduced by Senator Chris Van Hollen (D-MD), which would direct the SEC to issue rules to restrict officers and directors from profiting by trading on inside information during the 8-K trading gap.

Chairman Mike Crapo (R-ID) said the bills being considered would expand the definition of an accredited investor, shorten the Schedule 13D filing window, increase the disclosure of short positions, require FINRA to create a relief fund to cover unpaid arbitration awards, draw attention to cyber experience at the board level, address concerns that a gap exists between a firm learning of and disclosing a material event, and address the unique challenges facing rural business. He said that several members have expressed interest in addressing the role of proxy advisory firms, stating that the Committee would examine a House bill on this issue. He urged members to examine ways to modify these bills to gain more support.

Ranking Member Sherrod Brown (D-OH) suggested that too often corporate boards and executives are focused on preserving their jobs and maximizing their compensation rather than on investing in their company and community. He suggested that corporations are overly focused on buying back stock and handing out executive bonuses. He said Wells Fargo boosted its CEO's pay last year by 36 percent to \$17 million, in spite of their ongoing controversies. He stated that the tax bill sparked record levels of stock buybacks. He said SEC Commissioner Robert Jackson found that executives were more likely to sell their stock immediately after buybacks than at other times. Brown stressed that shareholders should

play a key role in holding executives accountable. He raised concerns with H.R. 4015, suggesting that it would make it harder for public retirement systems to use research and analysis from proxy advisors. He suggested that some of the other proposals would enhance transparency, pointing to S. 536 (cybersecurity disclosure) and the 8-K Trading Gap Act.

Chairman Mike Crapo (R-ID) said the Brokaw Act would require investors to disclose short positions, but he noted that short selling also helps to provide liquidity and facilitate price discovery. He asked about the impact of the proposed disclosures in the Brokaw Act. Tom Quaadman (U.S. Chamber, Center of Capital Markets Competitiveness) said short sales are an important hedging tool and are important for liquidity purposes. He stated that the Brokaw Act would expose proprietary trading platforms and could harm investors. He said light should be shined on abuses, but suggested that the SEC should more carefully examine this issue before mandates are imposed. Professor John Coates (Professor of Law and Economics, Harvard Law School) said he has concerns that disclosures could discourage investors from taking short positions against companies which are in trouble, noting that taking short positions have helped to uncover serious frauds. He expressed doubt that the SEC could learn more than what they know today. He suggested that the Brokaw Act should be enacted with a sunset and the SEC should be directed to study the bill's impact.

Senator Tim Scott (R-SC) said public company management should be held accountable by shareholders, but expressed concern that the balance between both sides is "beginning to tip." He said two proxy advisors control up to 38 percent of shareholder votes in the U.S. He suggested that these firms need an increased level of oversight, noting that one of the firms

offers consulting services. Quadman said ISS's consulting service tells companies that if they use their service they will get a better score and that Glass-Lewis has a significant conflict of interest as they are owned by two activist pension funds and does not disclose if they have a financial interest in a firm. He said conflicts have been addressed for credit rating agencies and financial analysts, suggesting that similar action should be taken for proxy advisors.

Federal Reserve Releases Findings from Study on Online Lenders and Products

Key Point:

- *The report offered three key findings: (1) participants already are familiar with online lending; (2) participants preferred websites with detailed product information; and (3) participants found sample online products confusing.*

On June 28, the Federal Reserve published a [report](#) entitled, "Browsing to Borrow: "Mom & Pop" Small Business Perspectives on Online Lenders." The report examined "small business owners' perceptions of online lenders and their understanding and interpretation of the information that online lenders use to describe their credit products."

The report included three key findings:

- "Participants already are familiar with online lending. Nearly all of the study's participants were at least somewhat familiar with online lending for small businesses, and most were familiar with at least one or two lenders on a list of the more prominent firms. While some had positive views of online lenders, more had negative initial impressions of the industry. These negative impressions appear to be based, in part, on sales calls from lenders or brokers

and frequent email and mail solicitations."

- "Participants preferred websites with detailed product information. When browsing online lender websites, participants reacted most favorably to sites that they thought offered the most detailed information on products, costs, and borrower qualifications. Participants were most skeptical of sites that provided limited information, especially those that withheld product details until visitors entered their business and contact information."
- "Participants found sample online products confusing. When presented with three sample online products, participants found the descriptions difficult to understand or lacking detail about costs and features. However, participants responded positively to a sample disclosure table clearly displaying interest rate, payment amount, fees, and other product terms. Importantly, nearly all said this level of detail, even if estimated or presented as a range, should be available to potential borrowers before they apply and turn their businesses' financial data over to the lenders."

House Financial Services Conducts Oversight of HUD

Key Points:

- *HUD Secretary Ben Carson stated that GSE reform is the last piece of financial reform to be addressed.*
- *Carson stated that fair housing is still a main focus of HUD.*

On June 27, the House Financial Services Committee held an oversight [hearing](#) on the Department of Housing and Urban Development (HUD), with HUD Secretary

Ben Carson testifying. Chairman Jeb Hensarling (R-TX) suggested the data shows that HUD has failed far too many for far too long and he noted over the last 20 years HUD's budget has more than doubled, growing faster than any other federal budget function, including Social Security, education and national defense. Hensarling stated HUD's resources have not been the problem, their focus has been. He applauded Carson for his efforts to root out discrimination and promote affordable housing. Ranking Member Maxine Waters (D-CA), in a [statement](#), suggested Carson has taken actions that are deeply problematic and are harmful to hardworking Americans. She stated the Administration has released plans that will triple rents for the lowest income households and put 2.7 million Americans at risk of eviction and homelessness. She expressed concern over Carson's actions to undermine fair housing and stop implementation of the HUD's Affirmatively Furthering Fair Housing rule, which requires that federal agencies and recipients of federal housing funds take proactive steps to affirmatively further fair housing.

Chairman Jeb Hensarling (R-TX) noted HUD issued an advanced notice of proposed rulemaking (ANPR) on the 2013 disparate impact rule and Treasury issued a report in October 2017 suggesting HUD reconsider use of disparate impact and questioning its applicability under McCarran-Ferguson. Secretary Carson stated they are concerned over discrimination of any type. He stated he is not convinced that this is where the energies of HUD should be directed. Several Members voiced concern over discrimination in housing and recent HUD actions related to affordable housing. Carson stressed that discrimination is not acceptable in any format. He suggested the rent reform proposal was offered because "there are so many perverse things in the system that have not been changed in decades."

He explained the goal is to help people actually move out of affordable housing. Related to GSE reform, Carson stated that it is the last piece to address. He noted ten years later the GSEs are still in conservatorship. He suggested taxpayer exposure needs to be decreased and private capital needs to be increased.

SEC Considers Rules on ETFs, Liquidity Risk Management, XBRL, and Smaller Reporting Company Definition

Key Points:

- *SEC Chairman Jay Clayton suggested these proposals are emblematic of the push to update SEC rules.*
- *Commissioners Kara Stein and Robert Jackson voted against the liquidity risk management amendments and the proposed changes to the whistleblower program.*

At a June 28, [open meeting](#) the Securities and Exchange Commission (SEC) voted: unanimously to "adopt amendments to the definition of "smaller reporting company" and other rules and forms in light of the new definition" ([Item 1](#)); 4 to 1 to "adopt amendments to rules and forms to require the use of the Inline eXtensible Business Reporting Language (XBRL) format for the submission of operating company financial statement information and fund risk/return summary information and related changes" ([Item 2](#)); unanimously to "propose rule 6c-11 under the Investment Company Act of 1940 that would permit exchange-traded funds that satisfy certain conditions to operate without first obtaining an exemptive order from the Commission, as well as related form amendments" ([Item 3](#)); 3 to 2 to "adopt amendments to Form N-PORT and Form N-1A related to disclosures of liquidity risk management for open end management investment companies" ([Item 4](#)); and 3 to 2 to "propose amendments to the Commission's

existing rules that govern the whistleblower award program” ([Item 5](#)).

Chairman Jay Clayton stated the agenda items are emblematic of the movement to update SEC rules. He stated this meeting shows measureable progress on SEC issues. Related to the XBRL rule, Commissioner Hester Peirce stated she could not support the rule as it would be picking one type of reporting method over others without any evidence that it is actually helpful to investors. Commissioners Kara Stein and Robert Jackson voted against the amendments related to liquidity risk management and those related to the whistleblower program. Commissioner Stein suggested the full liquidity risk paradigm should be allowed to operate before it is changed. Commissioner Jackson noted the quick work the SEC has undertaken on this rule and he suggested other rules should be moved forward ahead of discretionary rules such as this. Related to the proposals for the Whistleblower program, Commissioner Stein suggested the program has more than paid for itself and should not be changed and Commissioner Jackson suggested the proposal would create uncertainty about the amounts of awards and result in fewer people coming forward.

On the ETF proposal, Chairman Jay Clayton noted ETFs are part of the statutory “sandbox” built into the Investment Company Act of 1940. He explained this proposal would bring greater consistency to the regulatory framework for ETFs and would eliminate the cost and expense of the exemptive process for most ETFs. He noted the proposal would cover most ETFs in operation today; however, the exemptive order process would continue to apply to certain ETFs. Commissioner Kara Stein stated this proposal will level the regulatory playing field and would result in the majority of ETFs being covered by similar requirements, and that higher risk ETFs will be

“sent down a separate lane” for a closer look. Commissioner Robert Jackson stated the proposal brings much needed consistency to the ETF process, but he expressed concern that the SEC is not doing enough to protect investors against leveraged ETFs. He suggested leveraged ETFs are rarely good for average investors and he expressed concern that the average investor will find out too late that a leveraged ETF is too risky. Commissioner Hester Peirce stated this rule is long overdue, but she also noted concern that the proposal does not address the problem of getting ETFs listed under Exchange Act rules. She expressed issue with the proposal’s requirement to manage custom baskets in the best interest of shareholders and suggested they should be managed in the best interest of the fund.

Upcoming Hearings and Events

July 12

MRAC: The Commodity Futures Trading Commission (CFTC) will hold a meeting of its Market Risk Advisory Committee (MRAC). The meeting will focus on the current initiatives to reform the London Interbank Offered Rate (LIBOR), including the development and adoption of alternative interest rate benchmarks.

Credit Bureaus: The Senate Banking Committee may hold a hearing to discuss credit bureaus and the Fair Credit Reporting Act.

July 16

FIMSAC: The SEC will hold a meeting of its Fixed Income Market Structure Advisory Committee (FIMSAC). The meeting agenda includes updates and presentations from the subcommittees.

July 17

Federal Reserve: The Senate Banking Committee may hold a hearing to consider the Federal Reserve’s Semiannual Monetary Report to Congress. Federal Reserve Chairman Jerome Powell is expected to testify at the hearing.

- *The proposal would continue implementation of the Renewable Fuel Standard, enacted by Congress in 2005 and 2007.*
- *The EPA is again proposing renewable fuel totals that would fall short of the levels set by statute.*

July 19

CFPB and Ex-Im Bank Nomination Hearing: The Senate Banking Committee is expected to hold a hearing to consider the nominations of Ms. Kathleen Laura Kraninger, be Director of the Consumer Financial Protection Bureau (CFPB); and Ms. Kimberly A. Reed, to be President of the Export-Import Bank.

On June 25, the Environmental Protection Agency (EPA) issued a [press release](#) announcing “a proposed rule under the Renewable Fuel Standards (RFS) program that would set the minimum amount of renewable fuels that must be supplied to the market in calendar year 2019, as well as the biomass based diesel volume standard for calendar year 2020.” The [Notice of Proposed Rulemaking \(NPRM\)](#) includes “the annual percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel that apply to gasoline and diesel transportation fuel produced or imported in...2019.” In the NPRM, the agency notes that it utilized the “statutory waiver authority that is available when the projected cellulosic biofuel production volume is less than the applicable volume specified in the statute... [to propose] volume requirements for cellulosic biofuel, advanced biofuel, and total renewable fuel that are below the statutory volume targets.” Public comments on the NPRM are due by August 17, 2018.

July 24

SEC and GNMA Nomination Hearing: The Senate Banking Committee is expected to hold a hearing to consider the nominations of Mr. Elad L. Roisman, to be a Member of the Securities and Exchange Commission; and Mr. Michael R. Bright, to be President of the Government National Mortgage Association (GNMA or Ginnie Mae).

The 2019 volumes are proposed as follows:

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

ENERGY & ENVIRONMENT

EPA Issues Proposed Renewable Fuel Requirements for 2019

Key Points:

- *On Monday, the EPA announced the proposed renewable fuel blending requirements for 2019.*

	Final 2018	Proposed 2019
Cellulosic Biofuel	.288	.381
Biomass Based Diesel	2.1	2.1 (set by prior rulemaking)
Advanced Biofuel	4.29	4.88
Implied Conventional	15.0	15.0

Biofuel		
Total Renewable Fuel	19.29	19.88
In billions of gallons.		

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

Committee Approves Onshore Drilling Legislation

Key Points:

- *On Wednesday, the House Natural Resources Committee approved bills that would expedite the permitting of oil and gas drilling on federal lands.*
- *The Committee also approved a bill to use a portion of onshore lease revenues to provide states with education funding.*
- *The Committee began consideration of the permitting legislation last week.*

On June 27, the House Natural Resources Committee continued a [markup](#) which began on June 20, 2018. The Committee approved the following bills dealing with energy permitting and federal lease revenues:

- The “Streamlining Permitting Efficiency in Energy Development (SPEED) Act” ([H.R. 6088](#)), introduced by Representative John Curtis (R-UT), which would “amend the Mineral Leasing Act to authorize notifications of permit to drill...” The Committee favorably reported H.R. 6088, as amended, by a vote of 18-12.

- The “Removing Barriers to Energy Independence Act” ([H.R. 6087](#)), introduced by Representative Liz Cheney (R-WY), which would “authorize the Secretary of the Interior to recover the cost of processing administrative protests for oil and gas lease sales, applications for permits to drill, and right of way applications.” The Committee favorably reported H.R. 6087, as amended, by a vote of 18-13.
- The “Ending Duplicative Permitting Act” ([H.R. 6107](#)), introduced by Representative Steve Pearce (R-NM), which would “clarify that Bureau of Land Management (BLM) shall not require permits for oil and gas activities conducted on non-Federal surface estate to access subsurface mineral estate that is less than 50 percent Federally owned...” The Committee favorably reported H.R. 6107, as amended, by a vote of 18-13.
- The “Education and Energy Act” ([H.R. 5859](#)), introduced by Representative Scott Tipton (R-CO), which would “amend the Mineral Leasing Act to require that a portion of revenues from new federal mineral and geothermal leases be paid to states for use to supplement the education of students in kindergarten through grade 12 and public support of institutions of higher education...” The Committee favorably reported H.R. 5859, as amended, by a vote of 16-11.

On June 20, the Committee approved the “Common Sense Permitting Act” ([H.R. 6106](#)), introduced by Representative Steve Pearce (R-NM), which would “amend the Energy Policy Act of 2005 to clarify the authorized categorical exclusions and authorize additional categorical exclusions to streamline the oil and gas

permitting process...” The Committee favorably reported H.R. 6106, as amended, by a vote of 22-18.

FERC’s Powelson Announces Resignation

Key Points:

- FERC Commissioner Robert Powelson announced yesterday that he would leave the Commission in mid-August.
- President Trump nominated Powelson last year and the Senate voted to confirm him on August 3, 2017.
- Powelson’s departure will leave the Commission with a 2-2 division between Republicans and Democrats.

On June 28, Federal Energy Regulatory Commission (FERC) Commissioner Robert Powelson announced in a [statement](#) that he would “be leaving my position [in]...mid-August.” He declared that it “has been the honor of a lifetime to serve our great nation as a FERC Commissioner.” Powelson will take up his new role as President and Chief Executive Officer of the National Association of Water Companies.

The Commission will be evenly divided on a partisan basis, with two Republican commissioners – Chairman Robert McIntyre and Neil Chatterjee, and two Democratic commissioners – Cheryl LaFleur and Richard Glick.

Regulatory Developments

Energy and environment regulatory actions this week included Wednesday’s EPA publication of a [final rule](#) titled “Mercury; Reporting Requirements for the TSCA Mercury Inventory.” The EPA is “finalizing reporting requirements for applicable persons to provide information to assist in the preparation of an ‘inventory of mercury supply, use, and trade in

the United States,’ where ‘mercury’ is defined as ‘elemental mercury’ and ‘a mercury compound.’” The final rule will become effective August 27, 2018.

Upcoming Hearings and Events

July 31

Grid Reliability: The Federal Energy Regulatory Commission (FERC) will hold a “[Reliability Technical Conference regarding the Bulk-Power System](#)”.

September 11

Pipeline Safety Research and Development: The Pipeline and Hazardous Materials Safety Administration (PHMSA) will hold a “[Pipeline Safety Research and Development Forum](#)”.

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 FY 2019 DOD Appropriations Act; Senate Committee Approves Its Package

Key Points:

- House finishes work on the Pentagon’s funding package the same day the Senate Appropriations Committee marked up and reported out its package.
- It is not clear whether Congress will enact DOD appropriations before the beginning of FY 2019 or the Pentagon will operate under a CR as has been recent practice.

On June 28, the Senate Appropriations Committee marked up and reported out the FY 2019 Department of Defense (DOD)

Appropriations Act ([S.3159](#)) by a 30-1 vote. The package “includes \$675.0 billion, an increase of \$20.4 billion over the FY2018 enacted level...[and] provides \$607.1 billion in base funding and \$67.9 billion for Overseas Contingency Operations (OCO) funding in title IX of the bill” according to the Committee’s [press release](#).

The Committee made available this [summary](#) of the bill:

- **Military Personnel and Pay** – Fully funds an Active Duty end strength of 1,329,461 and a Selected Reserve end strength of 816,900 for a total strength of 2,146,361, an increase of 6,961 servicemembers over FY2018 authorized levels, and supports a military pay raise of 2.6 percent, the largest pay raise for our servicemembers in nearly 10 years. Additionally, the bill supports increased funding above the President’s request for multiple programs including \$5 million to support Reserve Officers’ Training Corps (ROTC) Programs; \$7 million for the State Partnership Program; and \$3 million to support the Advance Trauma Training Program.
- **Readiness** – \$237.2 billion in base and OCO funding for operation and maintenance accounts to improve full spectrum warfighter readiness. The recommended funding level makes significant investments in training, maintenance, and modernization to restore near-term warfighting readiness while setting the conditions for future, sustained readiness. The bill also supports increased funding above the President’s request for multiple programs including: \$350 million for Navy facility sustainment, restoration and modernization; \$350 million for Air Force weapons systems sustainment; \$23 million to fund U.S. Southern Command Intelligence, Surveillance, and Reconnaissance (ISR) requirements; and \$221 million for various Defense-wide programs such as impact aid for schools, innovative readiness training, and multiple initiatives included in S. 2987, the Senate-passed National Defense Authorization Act. Additionally, the bill fully funds the request for flight operations and force related training for Special Operations Command.
- **Shipbuilding** – \$24.0 billion for Navy shipbuilding, including \$2.3 billion in additional funding for high priority shipbuilding and industrial base programs. In total, the bill funds the construction of 13 new ships: two Virginia class submarines; three DDG-51 destroyers; two Littoral Combat Ships; one Expeditionary Sea Base; one Expeditionary Fast Transport; two TAO Fleet Oilers; one Towing, Salvage, and Rescue Ship; and one Cable Ship. Additionally, the bill makes important investments to accelerate future shipbuilding priorities such as: \$500 million in advanced procurement for an LPD Flight II amphibious transport dock; \$350 million in advanced procurement for the LHA 9 amphibious assault ship; \$250 million in advance procurement to purchase an additional DDG-51 in Fiscal Year 2020; and \$250 million for submarine industrial base expansion to increase capacity and create multiple suppliers for critical submarine components.
- **Aviation programs** – \$42.2 billion for the procurement of military aircraft, including an additional \$3.8 billion to address high priority programs across the services, such as \$1.2 billion for eight F-35 carrier variant and four F-35

short takeoff/vertical landing Joint Strike Fighters (Navy & Marine Corps); \$720 million for additional AH-64E Apache Block IIIB New Build aircraft (Army); \$300 million for the O/A-X Light Attack Aircraft program (Air Force); \$320 million for 15 UH-60 Blackhawk helicopters (Army National Guard); and \$240 million for three V-22 Osprey aircraft (Navy). In addition, the bill provides \$120 million for Air Force F-35 advance procurement to increase planned procurements in Fiscal Year 2020 and \$200 million for Navy and Marine Corps aviation spares and repair parts to address maintenance and readiness issues. The bill also provides an additional \$375 million to support the Air Force's Advanced Battle Management System, including additional MQ-9 Reaper unmanned aerial vehicles, support of the battlefield airborne communications node mission, radar and agile communications development, and sustainment of the legacy E-8 JSTARS fleet.

- **Missile Defense** – \$10.5 billion for the Missile Defense Agency (MDA), including \$1.2 billion to support urgent MDA unfunded priorities and emergent threats. The additional funds include \$100 million for the development of a space-based Missile Defense Tracking System (MTS) to detect conventional ballistic missiles and hypersonic glide vehicles; \$85 million to continue research and development of three separate laser scaling efforts; \$46 million to accelerate the development of critical technologies against hypersonic threats; and \$285 million to address a U.S. Pacific Command (USPACOM) Joint Emergent Operational Need. The bill also fully

funds the President's budget request of \$500 million for Israeli Cooperative Programs.

- **Munitions** – \$18.5 billion for Missile and Ammunition programs, including \$366 million in additional funding for high priority munitions programs. The bill supports the Department's efforts to expand industry capacity for munitions programs to meet replenishment goals and increased requirements from the National Defense Strategy. Initiatives include an additional \$125 million to expand Joint Air-to-Surface Standoff Missile (JASSM) (Air Force and Navy) and Long Range Anti-Ship Missile (LRASM) (Navy) maximum production rates and an additional \$57 million for the Army's industrial facilities to increase production capacity.
- **Defense Health** – \$34.5 billion for the Defense Health Program, which provides medical services for military personnel and their families, continues advancements in medical research, and implements the next generation of electronic health records. This amount includes an additional \$974 million for defense medical research efforts, including \$330 million for the competitively awarded peer-reviewed medical research program and \$202 million to advance Department of Defense medical research priorities. The bill also recommends \$70 million above the President's request for the Medical Community of Interest [Med-COI], the IT infrastructure backbone of the new electronic health record, in order to support its further deployment.
- **Basic Research Investments** – \$2.8 billion, \$529 million in additional funding not requested by the President,

for basic (non-medical) research for the Army, Navy, Air Force, and Department of Defense.

- **National Guard and Reserve Equipment** – \$900 million for the National Guard and Reserve Equipment Account to modernize our reserve forces and ensure full interoperability with the active duty force. The bill also includes \$120 million for Army Guard and Reserve High Mobility Multipurpose Wheeled Vehicle (HMMWV) Ambulances.

Also on June 28, after consideration of amendments, the House passed the “Department of Defense Appropriations Act, 2019” ([H.R.6157](#)) by a 359-49 vote. In its [summary](#) of their bill, the House Appropriations Committee explained that the bill “provides a total of \$674.6 billion for the Department of Defense...[which] includes \$606.5 billion in base discretionary funding – an increase of \$17.1 billion above the fiscal year 2018 enacted level and \$0.9 billion below the President’s Defense budget request.” The Committee added that “[t]he bill also provides \$68.1 billion in Overseas Contingency Operations (OCO)/Global War on Terrorism (GWOT) funding.” The Committee asserted that “[t]his funding level is consistent with the [the “National Defense Authorization Act for Fiscal Year 2019” ([H.R.5515](#))] which was approved by the House last month, as well as the recently enacted budget agreement.”

The Committee identified the following bill highlights:

- **OCO/GWOT** – The legislation includes \$68.1 billion in OCO/GWOT funding. This will provide the needed resources for preparation and operations in the field to fight ongoing threats, including funding for personnel requirements, operational needs, the

purchase of new aircraft to replace combat losses, combat vehicle modifications, additional Intelligence, Surveillance, and Reconnaissance (ISR) assets, and maintenance of facilities and equipment. It also provides critical support to our key allies, such as Israel, Ukraine and Jordan, to resist aggression.

- **Military Personnel and Pay** – The legislation includes \$144 billion – \$139.3 billion for base requirements and \$4.7 billion for OCO/GWOT requirements – to provide for 1,338,100 active-duty troops and 817,700 Guard and Reserve troops. The bill fully funds the request 15,600 end strength increase and the 2.6 percent pay raise for the military.
- **Operation and Maintenance** – Included in the legislation is \$245.9 billion – \$197.6 billion for base requirements and \$48.3 billion for OCO/GWOT requirements – for operation and maintenance. Funding for base requirements is \$9.3 billion above fiscal year 2018. This funding supports key readiness programs to prepare our troops for combat and peacetime missions, including flight time and battle training, equipment and facility maintenance, and base operations. Within this amount, the bill includes \$1 billion above the request to fill readiness shortfalls, \$1.05 billion above the request to invest in facility sustainment, restoration, and modernization programs, and \$20.6 billion total for depot maintenance. This funding will help rebuild our forces to ensure our troops have the training and equipment they need.
- **Research and Development** – The bill contains \$92.4 billion – \$91.2 billion for base requirements and \$1.2 billion

for OCO/GWOT requirements – for research, development, testing, and evaluation of new defense systems and technologies. Funding for base requirements is \$2.9 billion above the fiscal year 2018 level, and will help to support current military operations and to prepare our nation to meet a broad range of future security threats. Specifically, this funding will support research and development of: the F-35 Joint Strike Fighter; space security programs; nuclear force modernization; continuation of the JSTARS recapitalization program; the Ohio-class submarine replacement; Future Vertical Lift; the Israeli Cooperative Programs; and other important research and development activities, including those within the Defense Advanced Research Projects Agency (DARPA).

- **Equipment Procurement** – The legislation provides a total of \$145.7 billion – \$133 billion for base requirements and \$12.7 billion for OCO/GWOT requirements – for equipment and upgrades. Funding for base requirements is \$2.5 billion above the request. These funds support our nation’s military readiness by providing the necessary platforms, weapons, and other equipment our military needs to train and operate both for both the current fight and future fights.
- **Defense Health and Military Family Programs** – The bill contains a total of \$34.4 billion -- \$34 for base requirements and \$352 million for OCO/GWOT requirements – \$318 million above the request– for the Defense Health Program to provide care for our troops, military families, and retirees. Specifically, the bill provides \$364 million for cancer research, \$125 million for traumatic

brain injury and psychological health research, and \$318 million for sexual assault prevention and response. All of these funding levels represent increases above the President’s request.

- **Reductions and Rescissions to Save Tax Dollars** – The bill reflects commonsense decisions to save taxpayer dollars where possible in areas that will not affect the safety or success of our troops and missions, such as \$870 million in savings from rescissions of unused prior-year funding.

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

HEALTH

Senate Committees Continue to Examine Health Care Costs

Key Points:

- *The Senate Finance Committee questioned Department of Health and Human Services Secretary Alex Azar about the President’s blueprint to address drug prices.*
- *The Senate Health, Education, Labor and Pensions Committee held a hearing examining overall costs in the health care system.*

On June 26, the Senate Finance Committee held a hearing entitled “Prescription Drug Affordability and Innovation: Addressing Challenges in Today’s Market.” Topics discussed in the hearing included, but were not limited to: (1) 340B and rebates; (2) formularies; (3) biosimilars; (4) Trump Administration Blueprint; (5) Affordable Care Act and plans; (6) list price; (7) generics and system gaming; (8) Reducing Drug Waste Act; (9) value-based arrangements; and (10) the family separation policy.

Chairman Orrin Hatch (R-UT) called for lasting solutions that are market-driven asserting the U.S. system is far superior to the alternative of price setting. He suggested Congress explore how value-based arrangements can work within federal health programs. Ranking Member Ron Wyden (D-OR) contended the blueprint is “blue smoke and mirrors,” and there have been no voluntary drops in prices despite the President’s proclamations.

Department of Health and Human Services Secretary Alex Azar reiterated testimony from prior hearings noting four problems with pricing: (1) high list prices; (2) seniors in government programs overpaying; (3) rising out-of-pocket costs; and (4) foreign governments free riding on American investment and innovation. During the questions and answer portion of the hearing, significant time was spent on questions related to the separation of families at the border.

On June 27, the Senate Health, Education, Labor and Pensions Committee held a hearing entitled “How to Reduce Health Care Costs: Understanding the Cost of Health Care in America.” Topics discussed in the hearing included, but were not limited to: (1) Rural/Out-of-Network Costs; (2) Medicare; (3) Price Transparency/Quality Information; (4) Administrative Burden/Consolidation; (5) Prescription Drug Pricing; (6) Legislative Proposals; (7) Value-Based Care; (8) High Deductible Plans; and (9) Disposal of Products.

Chairman Lamar Alexander (R-TN) argued health care costs are confusing, and the complexity of health care costs makes it difficult to assess what is causing the increase. He contended the American people are seeking answers on these rising costs. Ranking Member Patty Murray (D-WA) pointed to the challenge of out-of-network costs and rising premiums.

She expressed concern the Administration has gutted protections for pre-existing conditions, made it easier for insurers to offer “junk plans,” and repealed the individual mandate.

The witnesses advocated for a number of solutions to address health care costs. Some of the witnesses recommended introducing value-based payment reforms. Several witnesses pointed to the lack of transparency in pricing in the health care system and misaligned incentives. One witness emphasized the impact of consolidation in health care.

Senate Appropriations Approves FY 2019 HHS Spending Bill

Key Point:

- *The Committee approved \$90.1 billion for the Department of Health and Human Services by roll call vote 30-1.*

On June 28, the Senate Appropriations Committee held a markup of the Labor, Health and Human Services, Education, and Related Agencies Appropriations Act, 2019 (S. 3158). The bill includes \$90.1 billion in discretionary funding for the Department of Health and Human Services, a \$2.3 billion increase above FY 2018 levels. According to Senate Appropriations Subcommittee Chairman Roy Blunt (R-MO), the legislation is the largest non-defense spending bill and dedicates \$2 billion for the National Institutes of Health to advance medical research. The bill also makes investments in combating the opioid crisis through the funding of Certified Community Behavioral Health Centers and the Substance Abuse and Mental Health Services Administration’s State Opioid Response Grant. It also includes \$2.3 billion for Alzheimer’s disease research. The Committee favorably reported the bill, as amended, by roll call vote 30-1.

The House has not completed its work on its FY 2019 appropriations bill for Labor, Health and Human Services, Education, and Related Agencies. The full committee markup has been postponed twice and has yet been rescheduled.

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

TRANSPORTATION & INFRASTRUCTURE

Permitting Hearing

Key Point:

- *A committee examines follow on reforms and pending implementation items for the changes to permitting statutes in the FAST Act.*

On June 27, the Senate Homeland Security & Governmental Affairs Committee held a [roundtable](#) entitled “FAST-41 and the Federal Permitting Improvement Steering Council: Progress to Date and Next Steps.” Topics discussed in the roundtable included but were not limited to: (1) Interagency Cooperation, (2) Worker Protections, (3) FAST Act Sunset Provision, (4) FPISC Policy/Permitting, (5) FPISC Dashboard, (6) Safety, and (7) Natural Disasters.

Senator Rob Portman (R-OH) noted in a [statement](#) that the “Fixing America's Surface Transportation (FAST) Act” (P.L. 114-94) affects all aspects of travel infrastructure (roads, bridges, and airports). He contended that the Obama Administration was slow and the Trump Administration has not been aggressive enough in permit reform. He recommended that the position of Permit Executive Director should be a permanent position. He stated that despite inadequate funding, Congress has “made real progress.” He said delays in moving the program costs

jobs, money, and private investment. He encouraged fixing permit legislation to ensure that the “federal dollar goes even further.” He noted that Title 41 of the FAST Act (FAST-41) focuses on larger infrastructure projects (also known as covered projects). He said more resources are needed in order to advance completion of projects. He noted that over the past year and a half \$1 billion dollars have been saved by the Federal Permitting Improvement Steering Council (FPISC) in avoided costs. He added that this has been done without a Permit Executive Director. He encouraged the appointment of a Permit Executive Director in order to “get infrastructure moving.” He noted that he and Senator Claire McCaskill (D-MO) have introduced the “Federal Permitting Reform and Jobs Act” ([S.3017](#)) which is meant to improve FAST-41. He stated that the bill would remove the 7 year sunset provision in FAST-41. He added that this would allow more projects to be covered in the areas of transport and energy while allowing the permitting council to consult on non-covered projects. He declared that these are “modest common-sense reforms.”

Ranking Member Claire McCaskill (D-MO) said FAST-41 will save taxpayers and local jurisdictions money. She complained that there is not a permanent FPISC executive director and the Trump Administration has allocated only \$1 million for the permitting council. She encouraged increasing the budget to \$10 million due to it already creating savings of over \$1 billion. She said FAST-41 needs to be robust in order to meet the needs of the public and private sector.

Council on Environmental Quality Associate Director for Infrastructure Alexander Herrgott said the FAST Act has always enjoyed bipartisan support and expressed support for FAST-41. He asserted that permitting delays need to be reduced. He said Americans deserve

better infrastructure without the hindrance of having too many decision makers in too many agencies. He stated that multiple federal agencies oversee dozens of federal statutes that project sponsors must navigate. He said “we can do better.” He noted that there can be up to 10 different federal agencies and 16 different permitting decisions involved with a single highway project. He added that the result is a process that takes too long, increases costs, and creates uncertainty. He said federal agency cooperation is imperative to improving this process. He noted that President Donald Trump signed [Executive Order 13807](#) which will require environmental reviews involving multiple agencies within the National Environmental Policy Act (NEPA) process. He said the environmental review process for a project should be completed within two years. He said federal agencies have developed a framework in order to implement the Executive Order. He stated that the Federal Highway Administration (FHWA) has signed an agreement with the U.S. Fish and Wildlife Service (FWS), the Army Corps of Engineers (USACE), the Environmental Protection Agency (EPA), the U.S. Coast Guard, and the National Oceanic and Atmospheric Administration (NOAA) in order coordinate efforts to act on the Executive Order. He added that USACE has implemented a process to increase risk management in “the federal family.” He said many agencies are increasing capacity for projects. He encouraged the use of timetables and performance evaluation systems in the federal permitting process. He added that he supported the One Federal Decision policy being implemented nationwide.

U.S. Chamber of Commerce Federal Regulatory Process Review and Analysis, Environment, Technology, and Regulatory Affairs Division Executive Director Joseph M. Johnson, Ph.D. said the Chamber of Commerce strongly supports FAST-41 and

S.3017. He said that FAST-41 improves interaction between agencies and judicial review reforms. He added that there is transparency generated by the permitting timetable. He noted that streamlining the permitting process is extremely important. He said “our members find this feature indispensable.” He said that uncertainty is reduced and creates more confidence for project sponsors so that waste is reduced. He noted that 97 percent of covered projects in 2017 had timetables and “is a significant step forward.” He said the Chamber of Commerce strongly endorses expediting the permitting process. He asserted that the FAST-41 legislation works, and massive payoffs have been seen in timeline reduction. He encouraged the elimination of the seven year sunset provision, expanding the definition of covered projects, setting a two year goal for permitting covered projects, and expanding the FPISC’s authority in areas of dispute. He noted that the Chamber of Commerce laid out a four point plan to modernize U.S. infrastructure, and FAST-41 is a critical part of that plan.

Center for American Progress Energy and Environmental Policy Senior Vice President Christy Goldfuss said through Congress, FAST-41 has given the federal government needed tools to modernize the way it does business. She expressed concern about amending legislation that would limit existing authorities. She argued that the Administration blames the permitting process as being the main culprit for project delays. She stated that delays are more often created by lack of proper funding. She said the Department of Transportation (DOT) was given a FPISC permitting dashboard by Congress but it is “very much a work in progress.” She stated that the FPISC Executive Director position is vacant and may create concern with project sponsors. She said the Executive Director would have broad authority in able to better

move large projects forward. She said the FAST Act would create a fee structure for project sponsors and further funding for the FPISC permitting dashboard but the current Administration has failed to improve permitting times. She stated that authorities need to be harmonized for different responsibilities on different projects. She said the sunset provision needs to be removed. She emphasized that FAST-41 needs to be in place as it will allow for permitting reform and will “net excellent data” for the Committee. She urged the Committee to work on aged infrastructure while protecting the environment.

For more information on transportation issues you may [email](#) or call Michael Kans at 202-659-8201. Thomas McGrath and Jackson McLendon contributed to the articles.

TECHNOLOGY

VA EHR Hearing

Key Point:

- *The Veterans Affairs Committee announced the formation of a new subcommittee to oversee the VA’s Cerner contract for EHR.*

On June 26, the House Veterans’ Affairs Committee held a [hearing](#) entitled “VA Electronic Health Record Modernization: The Beginning of the Beginning.” Topics discussed in Panel I included but were not limited to: (1) VA Policy, (2), VA Vacancies, (3) VA Funding, (4) EHR Implementation, (5) EHR Interoperability, (6) Whistleblower Protection, and (7) Cerner. Topics discussed in Panel II included but were not limited to: (1) EHR Transition, (2) VA Policy, (3) Cerner, (4) Cybersecurity, (5) EHRM Capabilities, (6) GAO Assessment, and (7) EHR Interoperability.

Chairman Phil Roe (R-TN) expressed appreciation for the bipartisan efforts of the Committee. He said the health record (HR) budget is consumed by maintenance costs, and the Veterans Information Systems and Technology Architecture (VISTA) program is functional but increasingly complicated. He said it is well past due that the Department of Defense (DOD) and the Department of Veterans Affairs (VA) achieve interoperability because veterans deserve consistent medical record service. He noted that \$15.8 billion will be spent over the next ten years including \$10 billion to Cerner. He remarked that this is a “staggering number.” He noted that the electronic health record (EHR) component of this amount constitutes a “relatively small price tag.” He questioned what this large amount actually purchases. He contended that the IT landscape may be ungovernable. He said modernization could have a major impact on the operation of the Veteran’s Health Administration (VHA). He asserted that if imposed from the top down, the culture will reject modernization efforts. He said transitioning from VISTA is the most difficult aspect of HR modernization. He noted that VHA and VISTA have “built up around each other for decades” yet the DOD does not have a firm grip on where the program “begins and ends.” He said the scale of the EHR effort is daunting but results could be impressive. He said further ease of use and use of analytics would be worth the learning curve for both clinicians and veterans. He expressed confidence in the Electronic Health Record Modernization Office’s (EHRM) ability to tackle this project but said help may be required. He said senior leaders throughout the DOD will be needed in order for modernization to successfully occur. Roe noted that he and Ranking Member Tim Walz (D-MN) recommend the creation of a new subcommittee which will oversee the ERH modernization program as well as other

modernization programs. He said this subcommittee will intensely focus on these programs, and more details will be disclosed over the next few weeks. He observed that the transition from paper records to electronic records is a difficult project.

Ranking Member Tim Walz (D-MN) mentioned that he has been supportive of EHR development for over 12 years. He noted that this is “far more than a database” and also serves as a diagnostic tool. He said this program will require transparency and oversight. He added that “leadership will make or break this project.” He said the Committee will need the backing of the Government Accountability Office (GAO) and the Inspector General (IG) to oversee progress and implementation. He asserted that the GAO must see quarterly information reports while the IG must regularly monitor implementation. He said both organizations must be given direct and frequent access. He contended that Acting Secretary of Veterans Affairs Peter O’Rourke sent him a message at 9:01 AM on the day of the hearing that lacked a necessary attachment related to the hearing. He added that this was an improper electronic transfer regarding the establishment of the EHR office. He declared that issues like this demonstrate the need for further oversight. He said the Committee protects whistleblowers and has uncovered abuses that hurt veterans with the help of the GAO and the IG. He told O’Rourke that the IG and the GAO cannot be held out of issues or audits regarding healthcare modernization. He asserted that VA stonewalling cannot be tolerated. He argued that the GAO and IG need to be involved in every aspect of healthcare modernization. He expressed concern that the Chief Information Officer (CIO) of the modernization program is not testifying before the Committee, and the first document received by the Committee is incomplete. He said this is an inauspicious

start. He observed that critical VA leadership positions are not filled, and Cerner has not been communicating enough with the Committee.

Acting Secretary of Veterans Affairs Peter O’Rourke said five acts of Congress over the previous 18 months have benefited veterans and the VA. He added that they aided governance boards, critical state reviews, and optimized deployment strategies. He said the VA strategy will adapt as technology evolves. He stated that oversight is critical in order for the VA to adhere to timelines, performance quality, and effective risk mitigation strategies. He said the VA has created an interim governing structure of five functional, technical, and programmatic teams. He said these teams were the EHRM Steering Committee, the EHRM Governing Board, the Functional Governance Board, the Technical Governance Board, and the Legacy EHRM Pivot Work Group. He said this structure will be refined over the next few months in order to further enhance results. He expressed hope for the program to be operational by 2020. He said VISTA will continue to serve veterans until EHRM is fully capable. He declared that EHR modernization is a “deep change” which represents a technical and cultural challenge. He added that the human challenge is central to success. He encouraged cooperation with the DOD for joint costs and interoperability. He said this is a “user centric approach to a veteran centric change.” He argued that this will be a great change and expressed hope for the support of Congress and the Trump Administration.

Government Accountability Office Information Technology Management Issues Director David Powner said the GAO is closely examining the performance and costs related to VISTA. He noted that VISTA will continue to be deployed until the EHRM

program is employed. He said the VA spends approximately \$1 billion annually to operate, maintain, and improve VISTA. He added that these costs include EHR material, record hosting, and storage. He said tallying these costs is complicated and difficult. He said VISTA must be understood in order to plan for a new system. He said a critical area is the “health IT environment.” He stated the VA has over 330 applications that support healthcare delivery. He expressed concern over “what the Cerner system is replacing.” He said that unknowns are created by individual facility customizations which have occurred over the years. He said the GAO expects the Cerner program to cost approximately \$16 billion over ten years. He said this price could rise to higher levels. He noted that the program is on GAO’s “high risk list.” He recommended continuous oversight of the EHR program by Congress. He added that the White House needs to be involved with implementation. He encouraged collaboration between the CIO and the VHA. He expressed hope for the VA governance structure to create better transparency. He noted that business change management will be important as many businesses do not change behavior even when new technology is required. He added that this is “definitely a high-risk area for VA.” He said proper cybersecurity measures need to be in place as the VA faces multiple cyber challenges. He argued that the VA needs a new data center optimization strategy.

House Science Hearing on AI

Key Point:

- *A subcommittee dug into the policy implications of greater use of AI and the current uses of AI.*

On June 26, the House Science, Space, & Technology Committee’s Research and Technology Subcommittee held a [hearing](#)

entitled “Artificial Intelligence – With Great Power Comes Great Responsibility.” Topics discussed included but were not limited to: (1) Public-Private Partnerships; (2) The Pace of Change; (3) Employment; (4) Doomsday Scenarios; (5) Ethics; (6) Global Competition; (7) Cybersecurity; (8) Diversity; (9) Government Action; (10) Law Enforcement; and (11) Education.

Chairman Barbara Comstock (R-VA) stated that she is interested in the implications of a future where AI is ubiquitous. She said narrow AI is already pervasive in modern society, but general AI conjures up dystopian visions like from the movie Terminator for many people. She said in reality Artificial General Intelligence (AGI) like that found in dystopian science fiction movies is more than a decade away. She stated that although the implications of AGI will not be realized for a while, it is important to talk about because the implications will be so vast. She noted that Elon Musk has been quoted saying, “AI is a fundamental risk to the existence of human civilization.” She asserted that in the short term her constituents are concerned about the employment issues surrounding the future of AI, and cybersecurity implications. She noted that she has cosponsored the “AI Jobs Act of 2018” ([H.R. 4829](#)), which aims to help the workplace prepare for the ways in which AI will shape the economy of the future.

Ranking Member Daniel Lipinski (D-IL) stated current AI technologies touch a broad range of industries and sectors of the economy including: manufacturing, transportation, energy, healthcare, and many others. He asserted that as the AI capabilities improve it will undoubtedly become a more essential part of peoples’ daily lives and the overall economy. He noted that federal investments in AI research are longstanding, and Congress must consider the appropriate balance of federal

involvement as it attempts to understand the role AI will play in society. He noted that a recent Government Accountability Office (GAO) technology assessment report found that there are many areas where research is still needed, including: (1) how to regulate AI; (2) how to ensure the availability and use of high-quality data; (3) understanding AI's effects on employment and education; and (4) the development of computational ethics to guide the decisions made by software.

GAO Chief Scientist Dr. Tim Persons stated according to experts, AI holds substantial promise for not only improving human life and economic competitiveness in a variety of capacities but also helping to solve some of society's most pressing challenges. He said at the same time, AI poses new risks and has the potential to displace workers in some sectors, requires new skills and adaptability to changing workforce needs, and could exacerbate socioeconomic inequality. He explained that the GAO March 2018 report and his statement will address the following topics: (1) how AI has evolved over time; (2) possible opportunities and future promise, as well as the principal challenges and risks, of AI; and (3) the policy implications and research priorities resulting from advances in AI. Persons stated for the March 2018 report, the Comptroller General of the United States convened a Forum on Artificial Intelligence, a meeting of 21 expert participants held on July 6 and 7, 2017 with the assistance of the National Academy of Sciences. He said the work for the report also included a review of relevant literature and consultation with additional subject-matter experts. He noted that GAO currently has work underway on how automation is affecting labor markets, which the GAO expects to publish in early 2019. He concluded because of the strategic importance of AI in the health care sector, GAO is

planning a forum to develop a technology assessment of this area, as well.

OpenAI Co-Founder and Chief Technology Officer Greg Brockman stated that his mission is to ensure that AGI — meaning highly autonomous systems that outperform humans at most economically valuable work — benefits all of humanity. He explained that OpenAI has three main arms: (1) capabilities; (2) safety; and (3) policy. He asserted that all three of these areas, working in concert, are crucial to achieve OpenAI's mission. Brockman stated the capabilities arm is one of the most advanced AI research and development teams in the world. He said the safety arm is responsible for developing techniques to ensure that AGI-level systems will operate as their human operators intend. He added that the policy arm is responsible for researching AGI's social challenges and providing information to policymakers. Brockman noted on the capabilities side, one milestone in the field is solving complex strategy games, which capture many of the aspects of the real world not seen in previous milestones like Chess or Go. He said OpenAI recently announced OpenAI Five, a system which has reached the semiprofessional level at one of the most complex games played by humans, a ten-player team strategy video game called Dota 2. He explained that this system devises long-term plans and navigates scenarios far too complex to be programmed in by any human. Brockman said OpenAI is aiming to play against top professionals during the Dota world championships in August with the system. He stated OpenAI Five taught itself the rules of the game by playing 180 years' worth of games against itself each day. He noted for comparison, top human professionals have at least 12,000 hours of gameplay, so OpenAI's system sees as many games each day as 100 human professionals have seen in their lifetimes. Brockman stated on the safety side,

OpenAI recently developed a proof-of-concept technique for allowing humans to monitor the behavior of advanced AI systems. He said they have also collaborated with Alphabet's subsidiary DeepMind to design AI systems which can learn from the implicit preferences of human trainers. He noted on the policy side, OpenAI recently co-authored a report forecasting how malicious actors could misuse AI, including recommendations of how to mitigate these threats. He added that OpenAI is helping to develop the AI Index, an AI measurement and analysis initiative, as part of the Stanford One Hundred Year Study on AI. He concluded that the goal is to use this experience to make recommendations about how policymakers can measure and analyze the impact of AI on society.

AI4ALL Chairperson of the Board and Co-Founder Dr. Fei-Fei Li stated artificial intelligence emerged in the mid-20th century as a quest to build machines with intellectual capabilities similar to those of the human mind. She said as a science, it draws on fields like cognitive science, neuroscience, statistics and mathematics. She said as a technology, it represents some of the most active developments in computer science and engineering, including machine learning (ML)—a family of techniques that use statistical modeling to learn from data. Li noted that today, AI and ML are part of a vibrant, interdisciplinary pursuit, with fields like robotics, natural language processing, computer vision, speech recognition, and even philosophy playing ever-growing roles. She explained that thanks to the recent convergence of three key factors—powerful algorithms, fast computing hardware, and the era of big data—AI has rapidly become a driving force in what some are calling the fourth industrial revolution. She asserted that it can help drive cars, assist with radiology diagnoses, optimize energy consumption, and even track

deforestation from satellites. She stated all told, AI spending is expected to rise from 2017's \$12 billion to \$57.6 billion by 2021, according to International Data Corporation (IDC). Li stated there is good reason to be excited about AI, but this is a nascent field. She said after all, no one has ever created a technology to mimic human qualities so closely, and little is known about the impact it will have on the world. She asserted that guiding AI's development will be an ethical, philosophical and humanistic challenge, and it will require a diverse community of contributors. She concluded that she calls this "Human-Centered AI", and it consists of three simple ideas: (1) AI must be more inspired by human intelligence; (2) AI should strive to enhance humans, not replace humans; and (3) AI must be guided by a concern for its human impact.

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

TRADE

President Trump Backs CFIUS Reform Bill Limits on Chinese Investment

Key Point:

- *President Trump announced his support of the Foreign Investment Risk Review Modernization Act (FIRMA), which would expand the Committee on Foreign Investment in the United States' (CFIUS) jurisdiction.*

President Donald Trump backed away from plans to separately impose tough new restrictions on Chinese investments in the U.S. and U.S. technology exports to China and instead will rely on the Committee on Foreign Investment in the United States (CFIUS) to

deal with concerns about investment from China.

The USTR Section 301 report included a series of objections to China's trade practices, including the state-directed acquisition of American technology. The White House announced on May 29 that, as part of its 301 response – which included tariffs – “the United States will implement specific investment restrictions and enhanced export controls for Chinese persons and entities related to the acquisition of industrially significant technology.” The Treasury secretary was slated to deliver recommendations for restrictions by the end of the month.

After the House passed FIRRMA by a 400-2 vote on Tuesday, President Trump issued a statement of support for the bill, saying the “legislation will provide additional tools to combat the predatory investment practices that threaten our critical technology leadership, national security, and future economic prosperity. Therefore, upon enactment of FIRRMA legislation, I will direct my Administration to implement it promptly and enforce it rigorously, with a view toward addressing the concerns regarding state-directed investment in critical technologies identified in the Section 301 investigation.” It had been reported that President Trump was considering issuing investment restriction plan by declaring a national economic emergency under International Emergency Economic Powers Act of 1977 (IEEPA). That law gives the President broad authority in the case of an “unusual and extraordinary threat” and had been customarily used for sanctions over terrorist acts. While some White House advisers were in favor of this approach, Treasury Secretary Steven Mnuchin and Secretary of State Mike Pompeo convinced President Trump to instead use CFIUS to combat unfair Chinese trade practices.

Last week, the Senate passed its version of FIRRMA as an amendment to the National Defense Authorization Act. The House and Senate versions are similar, though the House bill contains provisions that are not in the Senate version to modernize export controls and regulate dual-use and military exports licensed by Commerce. The bills are expected to enter conference soon.

Senator Brown Blocks Corker's 232 Amendment

Key Point:

- *Senator Sherrod Brown (D-OH) blocked Senator Bob Corker's (R-TN) attempt to attach his bill limiting presidential tariff power to the Farm Bill.*

After an attempt to attach his legislation to the National Defense Authorization Act (NDAA) was blocked by Senator Jim Inhofe (R-OK), Senator Corker attempted to add it as an amendment to the Farm Bill. Corker's bill would require the President to obtain congressional approval before imposing Section 232 tariffs. His attempt to add the legislation to the Farm Bill was also blocked, as Senator Brown argued it would “gut one of our trade enforcement tools, a tool Congress passed and enhanced in the Finance Committee just in the last couple of years -- passed to ensure we protect the industries necessary to defend our country.”

USTR Lighthizer Claims Retaliatory Tariffs Violate WTO Rules

Key Point:

- *U.S. Trade Representative (USTR) Robert Lighthizer this week railed against World*

Trade Organization (WTO) members who have shown “complete hypocrisy” in imposing “groundless” retaliatory tariffs.

In a statement released on Tuesday regarding new tariffs against the United States by certain World Trade Organization (WTO) members, including the European Union, U.S. Trade Representative (USTR) Lighthizer said the members that imposed tariffs in response to the Administration’s steel and aluminum tariffs violated WTO rules. He explained the 232 tariffs were imposed because of national security concerns and “are wholly legitimate and fully justified, both as a matter of U.S. law and WTO rules.” He went on to say, “the European Union has concocted a groundless legal theory to justify immediate tariffs on U.S. exports. Other WTO Members, including China, have adopted a similar approach.” WTO members are only allowed to implement retaliatory tariffs “in response to a safeguard measure... The President’s actions here were taken under a U.S. national security statute -- not under the separate U.S. statute for safeguard measures.”

The EU, China, Mexico, and Turkey have already imposed retaliatory tariffs; India, Japan, and Russia have notified the WTO of their intent to impose tariffs. Canada has also threatened the U.S. with retaliatory tariffs.

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

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