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August 3, 2018

# Washington Update

**This Week in Congress**

**House** – The House is in recess until September 4.

**Senate** – The Senate passed S. 1182, a **Four Month Extension to the National Flood Insurance Program**; H.R. 5554, **To amend the Federal Food, Drug, and Cosmetic Act to reauthorize user fee programs relating to new animal drugs and generic new animal drugs**; agreed to go to conference on H.R. 2, the **Farm Bill**, H.R. 6187, the **Interior, Environment, Financial Services and General Government, Agriculture, Rural Development, Food and Drug Administration, and Transportation, Housing and Urban Development Appropriations Act**; H.R. 2345, the **National Suicide Hotline**; confirmed **Britt Grant** to be U.S. Circuit Judge for the Eleventh Circuit and six U.S. District Court Judges.

**Next Week in Congress**

**House** – The House is in recess until September 4.

**Senate** – The Senate is in recess until August 15.

## TAX

### Treasury and IRS Release Proposed Regulations on Repatriation Tax

*Key Point:*

- *The IRS released proposed regulations implementing the section 965 transition or repatriation tax under the Tax Cuts and Jobs Act (TCJA). The proposed rules relate to the untaxed foreign earnings of foreign corporations with U.S. ownership.*

This week the Department of the Treasury released proposed regulations covering the section 965 transition or repatriation tax (REG-104226-18) under the Tax Cuts and Jobs Act (TCJA). The proposed rules address a one-time transition tax on untaxed foreign earnings of certain foreign corporations owned by U.S. shareholders. The TCJA treats these foreign earnings as repatriated and places and 15.5 percent tax on cash or cash equivalents, and an 8 percent tax on the remaining earnings. Generally, the transition tax can be paid in installments over an eight-year period when a taxpayer files a timely election. In a statement announcing the proposed regulations Treasury Secretary Steven Mnuchin said, "The Tax Cuts and Jobs Act creates a historic opportunity for American companies to bring capital back

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home from overseas to invest in our domestic economy and create jobs for hardworking Americans."

The proposed rules are only the first in an expected series from the Treasury needed to clarify the new tax law. Treasury is reportedly close to issuing guidance on the 20 percent deduction for pass-through businesses under section 199A, while more international guidance is expected later in the fall. The 249-page proposed rule package provides definitions of specified foreign corporation, post-1986 earnings and profits, exploration and production (E&P) deficit foreign corporation, accumulated post-1986 deferred foreign income, cash measurement dates, cash position and derivative financial instruments, accounts receivable and accounts payable, short-term obligations, pro rata share, and domestic passthrough entities.

The Joint Committee on Taxation (JCT) estimated that the one-time repatriation tax will raise $339 billion in government revenues over the next decade. Stakeholders will have 60-days to provide comments on the proposed rules.

**Senate Finance Committee Advances Treasury and IRS Nominations; Ranking Member Wyden Places Hold on Treasury Nominees**

*Key Points:*

- *The Senate Finance Committee advanced the nominations of Justin Muzinich to be Deputy Secretary of the Treasury and Michael Desmond to be Chief Counsel for the Internal Revenue Service (IRS) and an Assistant General Counsel in the Department of the Treasury.*
- *Senate Finance Ranking Member announced a hold on floor debate for all Treasury nominees until Treasury responds to oversight requests.*

On Wednesday, the Senate Finance Committee approved the nominations of Justin Muzinich to be Deputy Secretary of the Treasury and Michael Desmond to be Chief Counsel for the IRS and an Assistant General Counsel in the Treasury Department. Following the markup, Senator Hatch said: "Both Muzinich and Desmond have demonstrated that they are qualified, competent and ready to get to work to ensure that tax reform is implemented as Congress intended. I am pleased that the Finance Committee did its part to advance their nominations and hope that they receive a fair and quick confirmation by the full Senate." Muzinich's nomination was approved on a party-line 14-13 vote. Desmond's nomination was approved 25-2, with only Senators Bob Menendez (D-NJ) and Sheldon Whitehouse (D-RI) opposed.

Following the committee vote, Senate Finance Committee Ranking Member Ron Wyden (D-OR) announced that he was placing a hold on floor debate for Treasury nominees until "the department quits stonewalling our oversight requests." According to Wyden, "When Mr. Muzinich came before this committee last week, it was a struggle to get straight answers to questions that ought to have been low-hanging fruit." In particular, Wyden has expressed frustration with the recent Treasury decision to no longer require certain non-profit donor information to be collected and with the consideration of Treasury using its authority to index capital gains to inflation. Wyden said that Senate Majority Leader Mitch McConnell (R-KY) could "go through the procedural hoops" to circumvent the formal hold by "filing cloture and the like." However, Wyden noted that committee Democrats will use the time the hold provides to explain how Treasury has been unresponsive to their requests.

*For more information about tax issues you may email or call Christopher Hatcher at 202-659-8201. Nick*

*Karellas, Henry Homans, and Ryan Schnepp contributed to this section.*

## FINANCIAL SERVICES

### Senate Passes Minibus Funding Package

*Key Point:*

- *The Senate passed a $154 billion package to provide funding for financial services, agriculture, interior, and transportation agencies.*

On August 1, the Senate passed a "minibus" funding package (H.R. 6147), which combined four Fiscal Year (FY) 2019 appropriations bills: (1) Interior, Environment and Related Agencies; (2) Financial Services and General Government (FSGG); (3) Agriculture; and (4) Transportation, Housing and Urban Development (THUD). The bill provides a total of $154.176 billion for the covered agencies. The Senate passed the bill by a vote of 92-6.

H.R. 6147 passed the House on July 19 by a vote of 217-199. The bill will now go back to the House for a vote or the two chambers will come together in a conference committee to work out the differences between the bills.

Both the House and Senate versions of bill would fund the Securities and Exchange Commission (SEC) at $1.695 billion, which is $201 million below the FY 2018 enacted amount and $4 million below the President's FY2019 Budget Request. Both bills would fund the Federal Deposit Insurance Corporation (FDIC) at $42.98 million, which is $3.84 million above the FY 2018 enacted amount and the same as the President's FY2019 Budget Request.

The House version of the bill would fund the Internal Revenue Service (IRS) at $11.6 billion for FY2019, while the Senate version would fund the IRS at $11.3 billion. Both amounts are above the $11.135 in the President's FY2019 Budget Request.

The House version included $161 million for the Treasury Department's Office of Terrorism and Financial Intelligence (TFI), while the Senate version matches the President's request for $159 million.

The House bill did not provide funding for the Commodity Futures Trading Commission (CFTC), as it is included in the agriculture package. The Senate bill would fund the CFTC at $282 million, which is consistent with the President's Budget Request.

The White House has released Statements of Administration Policy (SAP) regarding both the House and Senate bills. Both SAPs raised concerns that the bill would fund multiple agencies above the level in the President's FY2019 Budget Request. However, the SAPs did not indicate whether the President would sign or veto the bills if they were to reach his desk.

### Treasury Department Releases Report on the Regulatory Landscape for Fintech

*Key Point:*

- *Some of recommendations in the report included the creation of the regulatory sandbox, repeal of the CFPB's payday lending rule, creation of a national data breach standard, and support for an OCC fintech charter.*

On July 31, the Treasury Department released a report entitled "A Financial System That Creates Economic Opportunities: Nonbank Financials, Fintech, and Innovation." As described in a Treasury press release the report focuses on "identifying improvements to the regulatory landscape that will better support nonbank financial institutions, embrace financial technology, and foster innovation." Treasury also released a fact sheet highlighting the key findings of the report.

The report is divided into four sections: (1) Embracing Digitization, Data, and Technology; (2) Aligning the Regulatory Framework to Promote Innovation; (3) Updating Activity-Specific Regulations; and (4) Enabling the Policy Environment.

Below are some of the key recommendations in each section:

**Embracing Digitization, Data, and Technology**

- Treasury recommends that the Bureau [CFPB] affirm that for purposes of Section 1033 [of the Dodd-Frank Act], third parties properly authorized by consumers, including data aggregators and consumer fintech application providers, fall within the definition of "consumer" under Section 1002(4) of Dodd-Frank for the purpose of obtaining access to financial account and transaction data.
- Treasury recommends that regulators such as the SEC, Financial Industry Regulatory Authority, DOL, and state insurance regulators recognize the benefits of consumer access to financial account and transaction data in electronic form and consider what measures, if any, may be needed to facilitate such access for entities under their jurisdiction. However, Treasury recommends against further legislative action to expand the scope of Section 1033 at this time.
- Treasury recommends that the Bureau work with the private sector to develop best practices on disclosures and terms and conditions regarding consumers' use of products and services powered by consumer financial account and transaction data provided by data aggregators and financial services companies.
- Treasury recommends that any potential solution discussed in the prior recommendation address the standardization of data elements as part of improving consumers' access to their data. Any solution should draw upon existing efforts that have made progress on this issue to date. If necessary, Congress and financial regulators should evaluate whether federal standards are appropriate to address these issues.
- Treasury recommends that Congress enact a federal data security and breach notification law to protect consumer financial data and notify consumers of a breach in a timely manner.

**Aligning the Regulatory Framework to Promote Innovation**

- Treasury recommends that if states are unable to achieve meaningful harmonization across their licensing and supervisory regimes within three years, Congress should act to encourage greater uniformity in rules governing lending and money transmission to be adopted, supervised, and enforced by state regulators.
- Treasury recommends that the OCC move forward with prudent and carefully considered

applications for special purpose national bank charters. OCC special purpose national banks should not be permitted to accept FDIC-insured deposits, to reduce risks to taxpayers. The OCC should consider whether it is appropriate to apply financial inclusion requirements to special purpose national banks. The Federal Reserve should assess whether OCC special purpose national banks should receive access to federal payment services. It is important that a charter not provide an undue advantage to newly chartered firms relative to the banks that have operated within the existing regulatory system for years. Striking the right balance to appropriately enable a tailored regulatory framework is important.

**Updating Activity-Specific Regulations**

- Treasury recommends that Congress codify the "valid when made" doctrine to preserve the functioning of U.S. credit markets and the longstanding ability of banks and other financial institutions, including marketplace lenders, to buy and sell validly made loans without the risk of coming into conflict with state interest-rate limits. Additionally, the federal banking regulators should use their available authorities to address challenges posed by *Madden*.
- Treasury recommends that Congress codify that the existence of a service or economic relationship between a bank and a third party (including financial technology companies) does not affect the role of the bank as the true lender of loans it makes. Further, federal banking regulators should also reaffirm (through additional clarification of applicable compliance and risk-management requirements, for example) that the bank remains the true lender under such partnership arrangements.
- Treasury recommends that Ginnie Mae pursue acceptance of eNotes and supports the measures outlined in its Ginnie Mae 2020 roadmap to more broadly develop its digital capabilities.
- Treasury recommends the FHLBs [Federal Home Loan Banks] explore ways to address their concerns regarding eNotes with the goal of accepting eNotes on collateral pledged to secure advances.
- Treasury recommends that federally supported mortgage programs explore standardizing the most effective features of a successful loss mitigation program across the federal footprint. Such standardization should broadly align a loss mitigation approach that facilitates effective and efficient loan modifications when in the financial interest of the borrower and investor, promotes transparency, reduces costs, and mitigates the impact of defaults on housing valuations during downturns.
- Treasury recognizes and supports the broad authority of states that have established comprehensive product restrictions and licensing requirements on nonbank short-term, small-dollar installment lenders and their products. As a result, Treasury believes additional

federal regulation is unnecessary and recommends the Bureau [CFPB] rescind its Payday Rule.

- Treasury agrees with the approach taken by the Faster Payments Task Force and notes that collective action and agreement can be a very powerful tool in creating a faster payments system that works for all stakeholders. However, now that the foundational work has been completed, Treasury recommends that the Federal Reserve set public goals and corresponding deadlines consistent with the overall conclusions of the Faster Payments Task Force's final report.
- Treasury recommends that the Federal Reserve move quickly to facilitate a faster retail payments system, such as through the development of a real-time settlement service, that would also allow for more efficient and ubiquitous access to innovative payment capabilities. In particular, smaller financial institutions, like community banks and credit unions, should also have the ability to access the most-innovative technologies and payment services.

**Enabling the Policy Environment**

- Treasury recommends that federal and state financial regulators establish a unified solution that coordinates and expedites regulatory relief under applicable laws and regulations to permit meaningful experimentation for innovative products, services, and processes. Such efforts would form, in essence, a "regulatory sandbox" that can enhance and promote innovation.
- Treasury recommends that Congress enact legislation authorizing financial regulators to use other transaction authority for research and development and proof-of-concept technology projects. Regulators should use this authority to engage with the private sector to better understand new technologies and innovations and their implications for market participants, and to carry out their regulatory responsibilities more effectively and efficiently. Using the expertise of the private sector in developing regulatory tools will generally produce more optimal solutions than restricting input to be entirely in-house.

## SEC Chairman Jay Clayton Announces Roundtable on Proxy Voting

*Key Point:*

- *Topics to be discussed at the roundtable include (1) the voting process; (2) retail shareholder participation; (3) shareholder proposals; (4) proxy advisory firms; (5) technology and innovation; and (6) other commission action.*

On July 30, SEC Chairman Jay Clayton released a statement announcing that Commission staff will host a roundtable on the proxy process. Clayton stated, "In light of the many changes in our markets, technology, and how companies operate since then, SEC staff will host a roundtable this fall to hear from investors, issuers, and other market participants about whether the SEC's proxy rules should be refined." Clayton did not announce a specific date for the roundtable.

Clayton stated the topics which may be discussed at the roundtable include: (1) the voting process; (2) retail shareholder participation; (3) shareholder proposals; (4) proxy advisory firms; (5) technology and innovation; and (6) other commission action.

**Upcoming Hearings and Events**

**September 17**

***Credit Access:*** The Consumer Financial Protection Bureau (CFPB) will hold a symposium entitled "Building a Bridge to Credit Visibility."

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

**DEFENSE**

**Senate Passes NDAA Conference Report**

*Key Point:*

- *Senate sends final NDAA to White House.*

This week, the Senate passed the conference report for the "John S. McCain National Defense Authorization Act for Fiscal Year 2019" (H.R.5515) by an 87-10 vote, sending the package to the White House.

With respect to topline funding authorizations, in the Joint Explanatory Statement, the conferees explained:

> The budget request for national defense discretionary programs within the jurisdiction of the Committees on Armed Services of the Senate and the House of Representatives for fiscal year 2019 was $708.1 billion. Of this amount, $617.1 billion was requested for base Department of Defense programs, $69.0 billion was requested for Overseas Contingency Operations (OCO), $21.8 billion was requested for national security programs in the Department of Energy and the Defense Nuclear Facilities Safety Board, and $214.0 million for defense-related activities. The conference agreement would authorize $708.1 billion in fiscal year 2019, including $616.9 billion for base Department of Defense programs, $69.0 billion for OCO, $21.9 billion for national security programs in the Department of Energy and the Defense Nuclear Facilities Safety Board, and $300.0 million for defense-related activities.

The House Armed Services Committee made available this summary, and the Senate Armed Services Committee released its own summary.

**SIGAR Criticizes U.S. Stabilization Efforts**

*Key Point:*

- *Special IG details failures in U.S. and NATO efforts to change Afghanistan into a country that would no longer host forces hostile to western nations.*

Amidst word of the Trump Administration holding face-to-face talks with the Taliban, the Special Inspector General for Afghanistan Reconstruction (SIGAR) released its 40th quarterly report on U.S. efforts in Afghanistan that focused on the lessons to be learned from over 15 years of trying to rebuild and stabilize Afghanistan.

Regarding U.S. stabilization efforts and funding, SIGAR stated that

> In total, U.S. Agency for International Development (USAID), the Department of Defense (DOD), and the Department of State implemented more than $4.7 billion in stabilization efforts and programs between 2002 and

2017. About 75 percent of these stabilization efforts took place after 2009, and nearly 60 percent took place between 2009 and 2011. Unfortunately, these efforts did not generally succeed—perhaps unsurprisingly, given the country's long history of violence, poverty, illiteracy, active insurgent and terrorist groups, pervasive corruption, weak institutions, and other problems documented in SIGAR reports. Today, the United States is trying other means of achieving the goal of a stable Afghanistan. Meanwhile, whether with or without stabilization programs, Afghanistan is clearly not yet stable.

SIGAR contended that "[s]ome of the factors contributing to meager results in stabilization" operations in Afghanistan are summarized in the SIGAR lessons-learned report's seven key findings:

1. The U.S. government greatly overestimated its ability to build and reform government institutions in Afghanistan as part of its stabilization strategy.
2. The stabilization strategy and the programs used to achieve it were not properly tailored to the Afghan context.
3. The large sums of stabilization dollars the United States devoted to Afghanistan in search of quick gains often exacerbated conflicts, enabled corruption, and bolstered support for insurgents.
4. Because the coalition prioritized the most dangerous districts first, it continuously struggled to clear them of insurgents. As a result, the coalition couldn't make sufficient progress to convince Afghans in those or other districts that the government could protect them if they openly turned against the insurgents.
5. Efforts by U.S. agencies to monitor and evaluate stabilization programs were generally poor.
6. Successes in stabilizing Afghan districts rarely lasted longer than the physical presence of coalition troops and civilians.
7. Stabilization was most successful in areas that were clearly under the physical control of government security forces, had a modicum of local governance in place prior to programming, were supported by coalition forces and civilians who recognized the value of close cooperation, and were continuously engaged by their government as programming ramped up.

With respect to the overall situation of U.S. efforts in Afghanistan, SIGAR claimed

> This quarter the commander of NATO's Resolute Support mission and United States Forces-Afghanistan (USFOR-A), General John Nicholson, said the security situation in Afghanistan can best be characterized by "talking and fighting." He added that "violence and progress can coexist" while both sides of the conflict work toward peace. The situation reflects the cornerstone of the U.S. administration's South Asia strategy for American forces and their Afghan and Coalition counterparts: to increase pressure on the insurgency on the battlefield in order to compel them to negotiate and, eventually, to reconcile with the Afghan government.

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

## HEALTH

### Final Rule Released on Short-Term, Limited Duration Health Plans

*Key Points:*

- *The final rule permits the purchase of short-term, limited duration insurance policies that are less than 12 months and can be renewed for up to 36 months.*
- *The plans must include language informing consumers of the type of plan they are purchasing.*

On August 1, the Secretaries of the Departments of Treasury, Labor, and Health and Human Services published a final rule allowing for the sale and renewal of short-term, limited duration health plans. The final rule expands the length of coverage to a maximum of 36 months taking into account any extensions or renewals. The initial period of coverage is less than 12 months. The previous standard only allowed a maximum period of less than three months. The final rule also revises the notice provided for consumers explaining the coverage does not need to comply with Affordable Care Act (ACA) requirements and may not cover certain preexisting conditions or health benefits.

Department of Health and Human Services Secretary Alex Azar stated "President Trump is bringing more affordable insurance options back to the market." He asserted these plans "can provide a much more affordable option for millions of the forgotten men and women left out by the current system." Centers for Medicare and Medicaid Services Administrator Seema Verma echoed the Secretary's remarks saying "the final rule opens the door to new, more affordable coverage options for millions of middle-class Americans who have been priced out of ACA plans."

House Energy and Commerce Committee Chairman Greg Walden (R-OR) and Health Subcommittee Chairman Michael Burgess (R-TX) stressed "this final rule is a win for patients." Senate Health, Education, Labor and Pensions Committee Chairman Lamar Alexander (R-TN) praised the final rule noting the benefits for the "millions of Americans who are between jobs and who pay for their own insurance."

Read the final rule here.

### Senate HELP Continues Hearings on Health Care Costs

*Key Points:*

- *The Senate Health, Education, Labor and Pensions Committee held a hearing on "Reducing Health Care Costs: Decreasing Administrative Spending."*
- *The discussion examined ways administrative burdens can be relieved in Medicare and Medicaid as well as private insurance.*

On July 31, the Senate Health, Education, Labor and Pensions Committee held a hearing entitled "Reducing Health Care Costs: Decreasing Administrative Spending." Topics discussed in the hearing included, but were not limited to: (1) Short-Term Insurance Plans; (2) Federal Goals; (3) Medicare/Medicaid; (4) Foreign Health Care Systems; (5) Electronic Health Records; (6) Prior Authorizations; (7) Rural Health Care; and (8) Standardization.

Chairman Lamar Alexander (R-TN) noted 30 percent of health care spending is waste with administrative costs accounting for eight percent of all health costs. He suggested the federal government is at fault for this burden using electronic health records (EHR) as an example. Ranking Member Patty Murray (D-WA) declared the current system is fragmented and called for simplifying and aligning requirements. The witnesses agreed regulations and requirements need to be streamlined. One witness emphasized the use of prior authorization to avoid wasteful spending and to ensure care is delivered in the most appropriate setting. Another witness noted the challenges with EHRs, especially interoperability.

During the question and answer portion of the hearing, Senators asked questions related to standardization and EHRs. Senator Todd Young (R-IN) asked what Congress could do to reduce high health care costs. Witness David Cutler from Harvard University emphasized the need to reduce the complexity of coding for patients. Additionally, during an exchange with Senator Tina Smith (D-MN), Cutler added there is reluctance for standardization as insurers all have their own unique systems. In relation to EHRs, Matt Eyles from America's Health Insurance Plans encouraged the creation of an electronic system that is interoperable between multiple institutions.

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

## TRANSPORTATION & INFRASTRUCTURE

### Senate Passes FY 2019 T-HUD Package

*Key Points:*

- *The Senate passes the annual transportation funding package as part of a larger set of bills.*
- *However, progress on appropriations before the election may actually be winding down.*

As part of a package of bills, the Senate passed the "Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2019" (T-HUD) (S.3023). The T-HUD funding bill was folded into a larger package: the "Interior, Environment, Financial Services and General Government, Agriculture, Rural Development, Food and Drug Administration, and Transportation, Housing and Urban Development Appropriations Act, 2019" (H.R.6147). The Senate adopted a managers' package in the form of a substitute amendment before passing the package.

In terms of chances for enactment of T-HUD appropriations before October 1, the odds appear long. Even though the House Appropriations Committee marked up and reported out its "Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2019" (H.R.6072) in May, the bill has not yet come to the House floor. Moreover, it is customary in election years to enact continuing resolutions to fund the government until after November.

In a summary of the reported bill, the Committee summarized the topline transportation numbers:

- **Transportation** – $26.6 billion in discretionary appropriations for the U.S. Department of Transportation for FY2019. This is $698 million below the FY2018 enacted level. Within this amount, priority is placed on programs to improve the safety, reliability, and efficiency of the transportation system.
- **BUILD Grants** – $1 billion for Better Utilizing Investments to Leverage Development (BUILD) grants, previously known as TIGER grants.
- **Highways** – $46 billion from the Highway Trust Fund for the Federal-aid Highways Program, consistent with the FAST Act. In keeping with the two-year budget agreement's emphasis on infrastructure investments, the bill provides $3.3 billion in additional funding for highway programs, including $90 million to eliminate

hazards at railway-highway grade crossings and $800 million for bridge repairs. The bill maintains flexibility for State Departments of Transportation to repurpose some stagnant project funding for current infrastructure projects.

- **Aviation** – $17.7 billion in total budgetary resources for the Federal Aviation Administration (FAA), which fully funds all air traffic control personnel, including more than 14,000 air traffic controllers, and more than 25,000 engineers, maintenance technicians, safety inspectors, and operational support personnel. The bill provides $1 billion for FAA Next Generation Air Transportation Systems (NextGen) programs and provides not less than $168 million for the Contract Towers program. The bill also provides $750 million in additional funding for airport improvements.
- **Rail** – $2.8 billion for the Federal Railroad Administration (FRA). This includes $1.9 billion to Amtrak for the Northeast Corridor and National Network, continuing service for all current routes. The bill provides $262 million for FRA safety and operations, as well as research and development activities. Additionally, the bill provides $255 million for the Consolidated Rail Infrastructure and Safety Improvement grants program, $300 million for Federal-State Partnership for State of Good Repair grants, and $10 million for Restoration and Enhancement grants.
- **Transit** – $13.5 billion for the Federal Transit Administration (FTA). Transit formula grants total $9.9 billion, from the Mass Transit Account of the Highway Trust Fund, consistent with the FAST Act. In addition, $800 million is provided from the general fund for transit infrastructure grants. The bill provides a total of $2.6 billion for Capital Investment Grants (CIG), fully funding all current "Full Funding Grant Agreement" (FFGA) transit projects, as well as new projects that have met the rigorous criteria of CIG.

In the Committee Report, the Senate Appropriations Committee reiterated

> its support for Federal investment in infrastructure to facilitate the safe and efficient movement of freight and people across the Nation. The Committee recommendation continues increased funding levels provided in the Consolidated Appropriations Act, 2018 for highway, airport, transit, rail, maritime, and housing infrastructure, consistent with the Bipartisan Budget Act of 2018. However, the 2-year budget agreement does not provide the long-term funding structure necessary to maintain and improve our Nation's transportation infrastructure. Therefore, the Committee reiterates that increased funding levels from the general fund for airport, highway, and transit programs that have historically been funded from the Airport and Airway Trust Fund and the Highway Trust Fund are provided to supplement, not to supplant, traditional funding for these programs. The Committee expects the Administration to work with relevant authorizing committees to provide long-term sustainable funding for infrastructure before the FAST Act expires at the end of fiscal year 2020 to ensure a reauthorization bill is enacted on time.

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

## TECHNOLOGY

### DHS Cybersecurity Summit

*Key Points:*

- *Homeland Security convenes top Administration officials and private sector executives to discuss a more coherent approach to securing and defending U.S. cyber infrastructure.*
- *DHS announced creation of a new DHS National Risk Management Center and new ICT Supply Chain Task Force.*

On July 31, the Department of Homeland Security (DHS) hosted a National Cybersecurity Summit. The summit included panels focused on the supply chain, the workforce, information and communications technology (ICT) industry perspectives, and protecting national critical functions.

Under Secretary for the National Protection and Programs Directorate (NPPD) Christopher Krebs stressed the importance of advancing national cybersecurity initiatives. He emphasized that cybersecurity is unique in that it is the only area of national security where the private sector is expected to defend itself. He asserted that the government wants to partner and collaborate with the private sector to enhance national security. He said each panel would have a concrete deliverable or outcome. He stated that there will need to be a collective defense model to enhance cybersecurity.

Secretary of Homeland Security Kirstjen Nielsen said there are concerns that hackers could attack the power grid or medical records. She stressed that the entire government is committed to working with the private sector. She noted that Vice President Mike Pence would be discussing how the government is strengthening cybersecurity across the board. She emphasized that the Department of Homeland Security (DHS) is not waiting for the next intrusion to act. She said the summit is meant to cement partnerships between the government and the private sector. Nielsen said the U.S. is facing an urgent, evolving crisis in cyberspace, suggesting that the threats of cyberattacks now exceed the threats of physical attacks. She emphasized that cyberattacks can have real world consequences. She stated that cyberattacks can be used to hijack infrastructure or compromise the democratic process. She suggested that cyber attackers could steal Bitcoins to finance terrorist regimes. She said the hack of a major credit bureau in 2017 exposed the data of more than half of all Americans. She stated that rogue regimes are probing critical systems constantly.

Nielsen said two years ago a foreign nation launched an influence campaign to interfere in the 2016 election. She said the Intelligence Community "has it right," asserting that this attack came from Russia and was directed at the highest levels. He asserted that the U.S. will not tolerate this meddling. Nielsen said increased connectivity has led to increased systemic risk. She suggested that foreign cyber rivals are becoming more sophisticated. She said there are still challenges with connecting the dots to determine the source of attacks, stressing the need to remove silos and stovepipes. She emphasized the need to punish bad behavior, emphasizing the need to call out attackers, such as North Korea and Russia, and impose costs. She stated that the U.S. has a wide array of response options and will not hesitate to use them. She reiterated that the U.S. will not tolerate foreign interference.

Nielsen said DHS is looking at national critical functions, rather than at specific agencies or companies. She stressed the need to identify single points of failure or interdependencies. She announced that DHS is creating a voluntary supply chain risk management program under Krebs. Nielsen said she is working with Congress to pass legislation to establish a Cybersecurity and Infrastructure Security Agency within DHS. She said this would recast the NPPD into an ambitious operational agency. She said DHS is taking other steps rather than simply waiting for Congress to act. She said DHS is creating an election task force and working with states to protect election infrastructure. She emphasized the importance of collective defense, as any participant could be the weak link in America's cyber defense. She stated that DHS is working to improve its information sharing, particularly related to threat indicators.

Nielsen said the majority of U.S. infrastructure is operated by the private sector, stressing the need to work together. She announced that DHS is launching the National Risk Management Center (NRMC), which is meant to create a cross-cutting approach to protecting critical infrastructure. She said the NRMC will bring willing industry participants together with DHS to help mitigate cyberattacks. She said the NRMC will allow DHS to determine how best to respond to cyber threats. She stated that DHS will begin with a tri-sector approach focused on three areas: (1) financial services; (2) telecommunications; and (3) the energy sectors. She said they will engage in 90 day "sprints" to identify key priorities and conduct joint risk assessments, noting that there will be a major cross-sector exercise this fall. She urged the private sector attendees to work with DHS to develop the NRMC, calling on them to each identify an actionable way they can contribute to the national cyber defense. She said the summit would focus on identifying actionable steps which can be taken.

*For more information on technology issues you may email or call Michael Kans at 202-659-8201. Alex Barcham, Cullen Neely and Thomas McGrath contributed to the articles.*

## TRADE

### U.S., Mexico Continue NAFTA Talks

*Key Point:*

- *The U.S. and Mexico are attempting to finalize auto rules of origin details before reengaging Canada on other North American Free Trade Agreement (NAFTA) issues.*

The U.S. and Mexico are reportedly nearing a final deal on automobile rules of origin after meetings in Washington DC this week. Sources said Mexico has been flexible in meeting U.S. regional value content threshold demands while the U.S. is considering Mexico's proposal that would grant leniency on the third threshold if a company meets two increased regional value content thresholds. The three thresholds are: topline regional value content, regional steel and aluminum content, and labor wage content. The parties are also working to find middle ground between the U.S.'s four-year phase-in proposal and Mexico's ten-year proposal.

Mexican Economy Minister Ildefonso Guajardo left the ministerial meeting on Thursday touting the "very good advancement" on "at least 20 items." Guajardo said the two parties are "very much aligned" on the environment chapter and has previously said that nine chapters had been closed and 10 were almost complete. He added that, "A lot of issues are basically Mexico-U.S. issues and some other issues will require trilateral discussion at some point." Guajardo also acknowledged the negotiators have not discussed the sunset clause, which has been a significant sticking point since the U.S. negotiators first demanded it.

Canadian negotiators have not been present at the meetings and sources have questioned whether this was by choice or not. USTR Lighthizer indicated in a Senate hearing last week that Canada is not as willing to compromise as the U.S. and Mexico. Canadian Ambassador to the U.S. David MacNaughton downplayed concerns about Canada's participation, saying: "Minister Freeland continues to be in frequent contact with Ambassador Lighthizer…. It is completely normal for Mexico and the United States to be negotiating one-on-one to resolve their differences over autos. We expect that Canada will be back at the negotiating table reasonably soon, once the discussions on autos have progressed and we are ready to move on."

**Administration to Consider 25 Percent Tariffs on $200 Billion of Chinese Goods**

*Key Points:*

- *President Trump directed U.S. Trade Representative (USTR) Robert Lighthizer to consider raising the impending tariffs on $200 billion of Chinese goods from 10 percent to 25 percent.*
- *China is considering imposing tariffs on $60 billion of U.S. goods.*

Following the release of a tariff list of $200 billion worth of Chinese goods last month, USTR Lighthizer on Wednesday announced President Trump directed him to consider raising the tariff rate from 10 percent to 25 percent. USTR Lighthizer explained that the "increase in the possible rate of the additional duty is intended to provide the Administration with additional options to encourage China to change its harmful policies and behavior." According to USTR officials, China has refused to cooperate on trade issues and USTR is "in the process of working through the possibility of further tariffs against them." China responded quickly, with its Foreign Ministry spokesman asserting the U.S. "can by no means have its way by pressuring or blackmail… we will definitely take countermeasures to resolutely safeguard our legitimate and legal rights and interests."

This episode comes amidst the renminbi dropping to its lowest level against the U.S. dollar in over a year. President Trump last Thursday remarked that renminbi was "falling like a rock" and expressed concern about the strengthening of the U.S. dollar. This could potentially create even more trade tensions, as President Trump has previously and repeatedly accused China of manipulating its currency. It should be noted currency manipulation was not identified as an issue in the Section 301 report.

On Friday, China announced it is considering imposing additional tariffs on four lists of U.S. goods; a total of 5,207 imports. These goods may be subject to increased duties of 5, 10, 20, or 25 percent. Over 2,400 products, including meat, wine, LNG, and wheat, may face an additional 25 percent tariff. Planes and computers could face a 5 percent tariff increase while textiles and chemicals could face a 10 and 20 percent increase, respectively. China's Ministry of Commerce argued "China's differential tax rate counter-measures are rational and restrained," and explained that the "implementation date of the taxation measures will be subject to the actions of the U.S., and China reserves the right to continue to introduce other countermeasures."

**Senators Introduce Bill to Reform Section 232**

*Key Point:*

- *A bipartisan group of Senators introduced the Trade Security Act of 2018, which would increase the Department of Defense's (DoD) role in the Section 232 process and allow*

*Congress to pass a joint resolution of disapproval on trade restrictions created using the statute.*

Senators Rob Portman (R-OH), Doug Jones (D-AL), and Joni Ernst (R-IA) introduced a bill that would shift Section 232 authority from the Commerce Department to the Department of Defense (DoD). Under the law, the DoD would conduct an investigation to determine if a certain import threatens to impair national security. If the investigation finds a threat, the President would be able to direct the Commerce secretary to consult with USTR and DOD to recommend trade actions to address the threat. The President and the Commerce Department would then determine whether to take action. The existing statute allows Congress to pass a joint resolution of disapproval when the President alters imports of "petroleum or petroleum products." The bill would expand this authority to include all imports.

The Trade Security Act is considered a more moderate version of Senator Bob Corker's (R-TN) bill, which would require congressional approval for any 232 trade action. His attempts to add the bill to the National Defense Authorization Act (NDAA) and farm bill were blocked.

**Upcoming Events**

**August 9**

***U.S. Trade Representative Robert Lighthizer and Japanese Economy Minister Toshimitsu Motegi meeting on trade:*** USTR Lighthizer testified during a Senate hearing last week that Japan is not looking for a bilateral trade agreement with the U.S. but is "willing to work through a variety of issues." Japan is also looking to avoid any potential tariffs on automobile and auto part exports to the U.S.

*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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