

September 7, 2018

Washington Update

This Week in Congress

House – The House passed the “**Biometric Identification Transnational Migration Alert Program Authorization Act**” (H.R. 6439); the “**Empowering Students Through Enhanced Financial Counseling Act**” (H.R. 1635); the “**Ensuring Small Scale LNG Certainty and Access Act**” (H.R. 4606) and the “**Community Security and Safety Act of 2018**” (H.R. 6691).

Senate – The Senate passed the “**Protecting Religiously Affiliated Institutions Act of 2018**” (S.994); “**Children’s Hospital GME Support Reauthorization Act of 2018**” (H.R.5385); the “**Know the Lowest Price Act**” (S.2553); “**To amend section 203 of the Federal Power Act**” (H.R.1109); “**Fair RATES Act**” (S.186); a bill to “**provide protections for certain sports medicine professionals who provide certain medical services in a secondary State**” (H.R.302); “**Sage-Grouse and Mule Deer Habitat Conservation and Restoration Act of 2017**” (S. 1417); “**Tribal Social Security Fairness Act of 2018**” (H.R.6124); confirmed **Elad L. Roisman** to be a Member of the Securities and Exchange Commission; **Dominic W. Lanza**, to be US District Judge for the District of Arizona; **Charles J. Williams** to be US District Judge for the Northern District of Iowa; **Marilyn Jean Horan** to be US District Judge for the Western District of Pennsylvania; **William F. Jung** to be US District Judge for the Middle District of Florida; **Kari A. Dooley** to be US District Judge for the District of Connecticut; **Robert R. Summerhays** to be US District Judge for the Western District of Louisiana; **Eric C. Tostrud** to be US District Judge for the District of Minnesota; **Alan D. Albright** to be US District Judge for the Western District of Texas.

Next Week in Congress

House – The House may consider the “**Save American Workers Act of 2017**” (H.R. 3798); the conference report on the **Energy and Water, Legislative Branch, Military Construction and Veterans’ Affairs Appropriations Act of 2019** (H.R. 5895) and the “**Water Resources Development Act of 2019**” (H.R. 8).

Senate – The Senate may consider a bill “**to ensure that health insurance issuers and group health plans do not prohibit pharmacy providers from providing certain information to enrollees**” (S. 2554); an Act to provide for opioid use disorder prevention, recovery, and treatment, and for other purposes (H.R. 6).

TAX

House Ways and Means Committee Releases Updated “Tax Reform 2.0” Outline; Committee Vote Expected Next Week

Key Points:

- *Ways and Means Republicans release updated Tax Cut 2.0 outline that expands retirement savings options for small businesses.*
- *Bill would also include measures to enable small businesses to join together to make 401(k) plans more affordable, give employers additional time to put new retirement plans in place, and simplify the rules for participation in employer plans.*
- *Bill is expected to cost \$628 billion and will be considered by the committee next week.*

On Thursday, the House Ways and Means Committee Republicans released an updated “Tax Reform 2.0” framework outline. Consistent with the original plan released in late July, the proposed legislation would make individual tax cuts permanent, enhance retirement and family savings options, and allow new companies to deduct more of their start-up costs. The latest edition would also expand retirement savings options by “allowing small businesses to join together to create a 401(k) plan more affordably” and provide employers with more time to put retirement plans in place. To promote innovation and start-ups, the updated outline proposes to allow “start-ups to expand by bringing in new investors without triggering limits on their access to tax benefits like the R&D credit for activities conducted in their early years.”

It has been reported that House Republicans are still debating whether the legislation will also be paid for by including a permanent extension of the \$10,000 cap on state and local

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tax deduction, which could cost some votes by some high-tax state Republicans. According to an estimate released by the Joint Committee on Taxation on September 4, an extension of the expiring tax provisions would cost about \$627 billion over the 10-year budget window.

Ways and Means Committee Chairman Kevin Brady (R-TX) said this week that: “It’s full steam ahead on 2.0 because the main question here is, will we make tax cuts for families and small businesses permanent as we did for corporations? The answer is yes.” The Committee said it will release legislative text prior to the markup expected to be held on Thursday, September 13.

IRS Clarification on State and Local Tax Deduction

Key Points:

- *IRS releases clarification that allows businesses to make business-related payments to charities or government entities and still be allowed to deduct the payments as business expenses if they received a state or local tax credit under section 162.*
- *The clarification comes just two weeks after the IRS proposed rules to circumvent the new cap on SALT deductions.*

On Wednesday, the Internal Revenue Service (IRS) released clarification that businesses can continue to deduct charitable donations as normal business expenses, and not a charitable

contribution. Just two weeks ago, the IRS proposed rules to prevent state efforts intended to circumvent the new cap on state and local tax (SALT) deductions. The rules would force taxpayers to subtract from their federal charitable deduction any state incentives such as tax credits received in connection with the donation.

The recently released clarification means that businesses that make business-related payments to charities or government entities would still be allowed to deduct the payments as business expenses if they received a state or local tax credit under section 162. The guidance comes at a time when House Republicans are considering how to treat the SALT deduction. The issue caused Republican members in high-tax states such as New York and New Jersey to vote against the Tax Cuts and Jobs Act (TCJA).

Senate to Vote on Charles Rettig Nomination for IRS Commissioner

Key Points:

- *Senate Majority Leader Mitch McConnell files cloture to force vote on the nomination of Charles Rettig to be IRS commissioner.*
- *The move would allow Republicans to bypass Democrat objections.*

On Thursday, Senate Majority Leader Mitch McConnell (R-KY) filed cloture on the nomination of Charles Rettig to be the next IRS commissioner, setting up a Senate vote on September 12. Nominated by President Trump in February, Rettig is a partner at Hochman, Salkin, Rettig, Toscher & Perez PC. The cloture vote, if successful, would allow Republicans to bypass objections from Senate Democrats who have blocked Rettig's posting in reaction to an IRS revenue procedure ending required disclosures of the names of donors to tax-exempt organizations other than section 501(c)(3) groups.

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

Financial Regulators Extend Comment Period on Volcker Rule Revisions

Key Point:

- *The comment period was extended by 30 days to October 17, 2018.*

On September 4, the Federal Reserve, Federal Deposit Insurance Corporation (FDIC), Commodity Futures Trading Commission (CFTC), Office of the Comptroller of the Currency (OCC), and the Securities and Exchange Commission (SEC) issued a 30 day [extension](#) the comment period on the Notice of Proposed Rulemaking regarding revisions to the Volcker Rule. The comment period will now expire on October 17, 2018, rather than September 17, 2018.

Senate Confirms Elad Roisman as an SEC Commissioner

Key Point:

- *The Senate confirmed Roisman for a five year term by a vote of 85-14.*

On September 5, the Senate confirmed Elad Roisman to be a member of the Securities and Exchange Commission (SEC) by a vote of 85-14. Roisman was confirmed to a term expiring June 5, 2023. Roisman's nomination was favorably reported by the Senate Banking Committee on August 23 by voice vote. The Commission will now have all five seats filled; at least until the term of Commissioner Kara Stein expires at the end of the year.

Senate Banking Committee Holds Hearing on Russia Sanctions

Key Point:

- *The Committee discussed legislative proposals to enhance the sanctions regime against Russia.*

On September 6, the Senate Banking Committee held a [hearing](#) entitled “Outside Perspectives on Russia Sanctions: Current Effectiveness and Potential for Next Steps.” Chairman Mike Crapo (R-ID) said the Committee was holding the second of three hearings on sanctions against Russia for malign activities. He said the Committee recently received testimony from the Administration on implementation of the Countering America’s Adversaries Through Sanctions Act (CAATSA). He noted that the Administration has sanctioned Russian state-owned banks and energy companies. He said malicious cyber operations remain a significant strategic threat to the U.S. He said Russia is still in Crimea, engaging in disruptive activity in Ukraine and Syria, and interfering in democratic elections in the U.S. and other nations. He stated that sanctions on Russia are complicated by Russia’s integration into the global economy. He said Putin must pay for his actions and the U.S. has the ability to impose real costs on Russia.

Ranking Member Sherrod Brown (D-OH) stressed the need to bolster the sanctions toolbox and ensure that the Administration uses the tools available to them. He said while sanctions have had an impact on Russia’s economy, they have not affected Russian behavior. He suggested that the Administration is merely “checking the box.” He said Russia is continuing to engage in malign activities, such as interfering in U.S. elections. He said Russia has aided sanctions evasion around the world. He stated that sanctions have been undercut by President Trump’s unwillingness to speak out against Putin. Brown called on the President to

clearly state how he will use CAATSA, issue an executive order outlining the sanctions consequences for malign activity, and follow through on that order if necessary.

Ranking Member Sherrod Brown (D-OH) and Senators Brian Schatz (D-HI), Elizabeth Warren (D-MA), Joe Donnelly (D-IN), Bob Menendez (D-NJ), and Chris Van Hollen (D-MD) questioned what additional legislative steps could be taken to enhance the sanctions regime against Russia. Van Hollen spoke in support of the Defending Elections from Threats by Establishing Redlines (DETER) Act ([S. 2313](#)), which he introduced with Senator Marco Rubio (R-FL). Van Hollen said the DETER Act would say upfront what the penalties will be for election interference. He asked about the need to announce penalties upfront rather than imposing them after the fact. Michael McFaul, former U.S. Ambassador to the Russian Federation (2012-2014), said it is very hard for Putin to move back from a position. He stressed the need to impose prospective sanctions to deter interference. Daniel Fried, former Coordinator for Sanctions Policy, U.S. Department of State (2013-2017), and former Assistant Secretary of State for European and Asian Affairs (2005-2009), said he supports prospective sanctions as a deterrent. He said he likes the focus of the DETER Act and many of the sanctions in the Defending American Security from Kremlin Aggression Act (S. 3336). He stated that it is problematic that the Administration cannot maintain a consistent policy on Russia, mostly due to the actions of the President.

The Committee will hold another hearing on Russia sanctions on September 12, focusing on potential “new tools” that could be used.

House Financial Services Panel Discusses the Future of Coins and Banknotes

Key Points:

- *House Financial Services Subcommittee discussed the future of banknotes and coins.*
- *Bureau of Engraving and Printing Director Leonard Olijar stated that cash will remain an integral part of society going forward.*

On September 5, the House Financial Services Committee's Subcommittee on Monetary Policy and Trade held a hearing entitled "The Future of Money: Coins and Banknotes." Chairman Andy Barr (R-KY) stated despite all the focus on innovative ways to settle transactions and the increased use of debit and credit cards, coins are still an integral part of the economy. He stated there is still a large amount of coin and bank notes circulating. Barr stated it is up to Congress to ensure the U.S. Mint and the Bureau of Engraving and Printing (BEP) remain effective. Ranking Member Gwen Moore (D-WI) stated this is an appropriate time to discuss this matter.

Several Members raised questions about the costs of coins and whether there is a need to print as many bank notes given the movement towards a cashless society. U.S. Mint Director David Ryder stated that the Mint has been investigating alternative metals for minting coins and ways to increase circulation of pennies already in circulation. He suggested there are several alternatives that can result in cost savings. Bureau of Engraving and Printing Director Leonard Olijar stated that the public "loves" the dollar note. He suggested that the GAO conducted a study and found that after ten years there would still be a net cost of converting to a dollar coin. He stated their research has shown that cash will remain an integral part of society. When asked about the need for a new facility for the Bureau of Engraving and Printing, Olijar stated that it is a

security issue to have only one printing facility. He stated that the current DC facility would not be able to be upgraded to handle the new security protocols they need to implement. Both Olijar and Ryder stated that counterfeiting remains a large concern but that they and the U.S. Secret Service remain focused on combating it.

House Financial Services Committee Discusses GSE Reform

Key Point:

- *The House Financial Services Committee discussed housing finance reform, and Chairman Jeb Hensarling (R-TX), along with Representative John Delaney (D-MD), announced the release of a bipartisan discussion draft legislation aimed at reforming the housing finance system.*

On September 6, the House Financial Services Committee held a [hearing](#) entitled "A Failure to Act: How a Decade without GSE Reform Has Once Again Put Taxpayers at Risk." Chairman Jeb Hensarling (R-TX), in a [statement](#), explained September 6, 2018 is the 10 year anniversary of the federal takeover of the failed housing government sponsored enterprises, Fannie Mae and Freddie Mac (the GSEs). Hensarling stated the GSEs' "anti-competitive" government charters and increasing affordable housing mandates created a "toxic mess of systemic risk." Hensarling noted the Committee passed the PATH Act in the 113th Congress to reform the housing finance system and he noted he is reintroducing the PATH Act this week. He announced that he has decided to partner with Representative John Delaney (D-MD) to propose a [bipartisan compromise housing reform plan](#) that preserves the government guarantee in the secondary mortgage market. Hensarling explained this discussion draft will repeal the GSEs' charters, permanently ending their

monopoly, and transition to a system that allows qualified mortgages backed by an approved private credit enhancer with regulated, diversified capital resources to access the explicit, full government securitization guarantee provided by Ginnie Mae. He expressed his belief that the plan will preserve much of what is demanded in the current system: liquidity; the TBA market; and the 30-year pre-payable fixed mortgage. Ranking Member Maxine Waters (D-CA) stated the PATH Act failed to get bipartisan support. She stated it is a priority that underserved borrowers are not over-looked and she stressed the need for a strategy for access to affordable housing.

Several Members raised the need to maintain affordable housing. Nikitra Bailey (Center for Responsible Lending) suggested that the GSEs did what they were supposed to do when private capital left the market. She suggested that excessive risk-based pricing should be eliminated. Edward Pinto (American Enterprise Institute) suggested a product with a 20-year term and buying down the interest rate to equalize the cost. Edward DeMarco (Housing Policy Council) stated that the GSEs should not continue as government sponsored enterprises. He suggested their special protections should go away and they should compete on the same footing as everyone else. Pinto stated there should be no government guarantee. Phillip Swagel (University of Maryland School of Public Policy) stated that if nothing is done then innovation will be stifled.

Upcoming Hearings and Events

September 12

Russia: The Senate Banking Committee will hold a hearing entitled “Countering Russia: Assessing New Tools.”

FSOC: The Financial Stability Oversight Council will hold an executive session. The preliminary agenda for the meeting includes consideration of the Council’s Fiscal Year 2019 budget, a preliminary discussion of the Council’s 2018 annual report, a discussion of an application to the Council from a bank holding company or its successor under Section 117 of the Dodd-Frank Act, and an update on the annual reevaluation of the designation of a nonbank financial company.

September 13

Financial Services Legislation Markup: The House Financial Services Committee may meet to markup several financial services bills.

Investor Advisory Committee: The Securities and Exchange Commission (SEC) will hold a meeting of its Investor Advisory Committee (IAC). The agenda for the meeting includes: (1) Discussion Regarding the U.S. Proxy Voting Infrastructure (which may include two separate panel discussions); (2) Discussion Regarding the Commission’s Proposed Transaction Fee Pilot in NMS stocks (which may include a Recommendation of the Market Structure Subcommittee); and (3) Discussion Regarding the Implications of Passive Investing.

EGRRCPA, Regulatory Reform Implementation: The Senate Banking Committee will hold a hearing to examine implementation of the Economic Growth, Regulatory Relief, and Consumer Protection Act. The witnesses at the hearing will be Comptroller of the Currency Joseph Otting, Federal Reserve Vice Chairman for Supervision Randal Quarles, FDIC Chair Jelena McWilliams, and National Credit Union Association (NCUA) Chairman J. Mark McWatters.

Sanctions: The House Foreign Affairs Committee will hold a hearing on “Oversight of U.S. Sanctions Policy.” The witnesses at the hearing will be Manisha Singh, Assistant Secretary of State for Economic and Business Affairs and Marshall Billingslea, Assistant Treasury Secretary for Terrorist Financing and Financial Crimes.

Disaster Response: The House Oversight and Government Affairs Committee will hold a hearing entitled “Evaluating Federal Disaster Response and Recovery Efforts.” The witnesses at the hearing will be Brock Long, Administrator, Federal Emergency Management Agency (FEMA); Major General Scott A. Spellmon, Deputy Commanding General for Civil and Emergency Operations, U.S. Army Corps of Engineers; and Lynn R. Goldman, Dean of the Milken Institute School of Public Health.

September 17

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

September 18

FinTech: The Senate Banking Committee will hold a hearing entitled “Fintech: Examining Digitization, Data, and Technology.”

September 20

Investor Roundtable: The SEC will hold an investor roundtable to discuss the Commission’s recently proposed rules regarding the obligations of financial professionals to investors.

September 21

High Frequency Trading: The SEC’s Division of Economic and Risk Analysis (DERA) and New York University’s Salomon Center will a half-day dialogue on high-frequency trading and liquidity resiliency.

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

ENERGY & ENVIRONMENT

House Passes Bill to Expedite Small-Scale LNG Export Projects

Key Point:

- *On Thursday the House passed legislation that would streamline the Department of Energy’s approval of facilities that process and export relatively small volumes of liquefied natural gas.*

On September 6, the House of Representatives approved the “Ensuring Small Scale LNG Certainty and Access Act” ([H.R. 4606](#), [H.Rept. 115-842](#)) by a [260-146](#) vote.

The bill specifies that the Department of Energy (DOE), in its review of applications for liquefied natural gas (LNG) imports and exports shall deem the “importation or exportation of natural gas...to be consistent with the public interest, and [approve the] application for such importation or exportation...without modification or delay” provided that the application:

- Proposes imports or exports that do “not exceed 0.14 billion cubic feet per day”; and
- “[D]oes not require an environmental impact statement or an environmental assessment under the National Environmental Policy Act of 1969”.

Before final passage, the House considered two amendments to the bill:

- An [amendment](#) offered by Representative Diana DeGette (D-CO), which would require that “export applications...show that the natural gas to be exported was produced using available techniques to minimize methane emissions from leaks or venting”. The House rejected the amendment by a [195-210 vote](#).
- An [amendment](#) offered by House Energy and Commerce Committee Ranking Member Frank Pallone (D-NJ), which would require the Department of Energy to hold a hearing and receive public input before approving a covered facility’s import or export permit. The House rejected the amendment by a [176-227 vote](#).

The legislation is similar to regulations recently promulgated by the Department of Energy. On July 25, the DOE published the [final rule](#) titled “Small-Scale Natural Gas Exports.” The rule revises existing “regulations to provide that DOE will issue an export authorization upon receipt of any complete application that seeks to export natural gas, including liquefied natural gas (LNG), to countries with which the United States has not entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas and with which trade is not prohibited by U.S. law or policy ...provided that the application satisfies the following two criteria: The application proposes to export natural gas in a volume up to and including 51.75 billion cubic feet (Bcf) per year (Bcf/yr) (equivalent to 0.14 Bcf per day (Bcf/d)), and DOE’s approval of the application does not require an environmental impact statement (EIS) or an environmental assessment (EA) under the National Environmental Policy Act...”

Subcommittee Approves Strategic Petroleum Reserve Legislation

Key Point:

- *On September 6, the House Energy and Commerce Committee’s Energy Subcommittee voted to advance the “Strategic Petroleum Reserve Reform Act” to the full committee.*

On Thursday, the Energy Subcommittee of the House Energy and Commerce Committee voted to report the “Strategic Petroleum Reserve Reform Act” ([H.R. 6511](#)) to the full committee by voice vote.

As described in a committee [background memo](#), the legislation:

- “amends Section 168 of the Energy Policy and Conservation Act to authorize the Secretary of Energy to carry out a program to lease underutilized Strategic Petroleum Reserve (SPR) facilities to the private sector or foreign governments”;
- includes protections to ensure that leases do not impair national security or the ability of the Secretary to utilize the SPR in response to an energy emergency”;
- “establishes a pilot program to lease SPR capacity for up to 200 [million barrels] of petroleum products.”

In his [opening statement](#), Subcommittee Chairman Fred Upton (R-TX) said that the bill responds to changes in global oil markets driven by increases in U.S. production. He also said that the legislation provides a “sensible, innovative solution” to the excess capacity in the SPR that will result from congressionally-mandated oil sales.

In his [opening statement](#), Subcommittee Ranking Member Bobby Rush (D-IL)

expressed support for the legislation, noting that the “bill will not only help to repurpose the SPR, but it will also actually bring in extra revenue by leasing storage space to friendly foreign allies and private companies.”

Upcoming Hearings and Events

September 10

Columbia River Power System: The House Natural Resources Committee will hold a field [hearing](#) titled, “The Federal Columbia River Power System: The Economic Lifeblood & Way of Life for the Pacific Northwest”.

September 11-12

Pipeline Safety Research and Development: The Pipeline and Hazardous Materials Safety Administration (PHMSA) will hold a “[Pipeline Safety Research and Development Forum](#)”. “The forum allows public, government and industry pipeline stakeholders to develop a consensus on the technical gaps and challenges for future research.” The forum is intended to develop “a national research agenda...[that] is aligned with the needs of the pipeline safety mission, makes use of the best available knowledge and expertise, and considers stakeholder perspectives.”

September 13

LNG Exports to Europe: The Senate Energy and Natural Resources Committee will hold a [hearing](#) on “the role of U.S. liquefied natural gas in meeting European energy demand.”

Advanced Nuclear Technology: The Senate Environment and Public Works Committee will hold a [hearing](#) titled, “Advanced Nuclear Technology: Safety and Associated Benefits of Licensing Accident Tolerant Fuels for Commercial Nuclear Reactors.”

September 20

FERC Meeting: The Federal Energy Regulatory Commission (FERC) will hold its monthly [open meeting](#).

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

Inhofe Named Chairman

Key Point:

- *The second ranking Republican on Senate Armed Services will now chair the committee.*

On September 5, Senator James Inhofe (R-OK) was named as the successor to the late Senate Armed Services Committee Chairman John McCain (R-AZ). Inhofe has been operating as the de facto chairman during McCain’s absence from the Senate for cancer treatment. Inhofe has the most seniority on the Republican side of the dais and previously served as Ranking Member from 2013-2015.

Inhofe released a [statement](#) articulating his goals and views:

America is facing new and unprecedented threats that are different from anything we’ve seen before. As chairman, it will be my priority to address these threats while maintaining a staunch commitment to service members and their families, as well as continue the bipartisan tradition of rigorous accountability and oversight of the Defense Department. I look forward to working with Ranking Member Reed and the entire committee as we continue to ensure our military is

ready and able to defend America against growing threats from around the world.

Upcoming Hearings and Events

September 13

Threats to the US: The Senate Homeland Security & Governmental Affairs Committee will hold a [hearing](#) titled “Evolving Threats to the Homeland.”

Russia’s Role in The Middle East: The Senate Foreign Relations Committee will hold a [hearing](#) titled “Russia’s Role in Syria and the Broader Middle East.”

Army Futures Command: The House Armed Services Committee’s Readiness Subcommittee will hold a hearing titled “Army Futures Command: Will it help?”

September 14

Syria: The House Armed Services Committee’s Oversight and Investigations Subcommittee will hold a hearing titled “U.S. Strategy in Syria.”

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

HEALTH

Congress Works on Legislation to Address “Gag Clauses”

Key Points:

- *This week, the Senate passed a bill to address the use of “gag clauses” in contracts between Medicare Part D or Medicare Advantage plans and pharmacists. The Senate may also consider a bill addressing these clauses in private insurer contracts.*

- *The House Energy and Commerce Committee’s Health Subcommittee approved a draft bill addressing both Medicare and private insurers’ use of gag clauses.*

On September 4, the Senate passed the “Know the Lowest Price Act” ([S. 2553](#)) by unanimous consent. The bill requires a Medicare prescription drug plan (PDP) or Medicare Advantage organization to ensure each prescription drug plan offered by the sponsor does not restrict or penalize a pharmacy for informing an enrollee of any difference in cost between paying under the plan or paying out-of-pocket. This requirement would apply to plan years beginning January 1, 2020.

The Senate is also expected to consider the “Patient Right to Know Drug Prices Act” ([S. 2554](#)) which would prohibit a group health plan or individual health plan from restricting a pharmacy’s ability to inform an enrollee about the difference in price between paying out-of-pocket and under the plan. Those plans must also ensure a pharmacy benefit manager (PBM) providing services under contract with the health plan does not prevent pharmacies from informing enrollees of the price difference. The bill also includes a section on modernizing the reporting of biological and biosimilar products. The bill previously passed the Senate Health, Education, Labor and Pensions Committee by voice vote.

On September 5, the House Energy and Commerce Committee considered a [discussion draft](#) which includes a nearly identical “gag clause” provision as the Stabenow bill for Medicare. This draft also includes a section to the gag clause provisions in S. 2554. On September 7, the Subcommittee approved the discussion draft by voice vote.

Upcoming Hearings and Meetings

September 12

Small-Group: The CATO Institute will hold a discussion on “Reclassification Risk in the Small-Group Health Insurance Market.”

September 13

Value-Based Care: The House Energy and Commerce Committee will hold a hearing on “Examining Barriers to Expanding Innovative, Value-Based Care in Medicare.”

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

TRANSPORTATION & INFRASTRUCTURE

Surface Transportation Innovation Hearing

Key Point:

- *A subcommittee examines how emerging and coming technological innovations like ride-sharing and autonomous vehicles will impact the current and future infrastructure system.*

On September 5, the Highways and Transit Subcommittee of the House Transportation and Infrastructure Committee held a [hearing](#) entitled “Innovation in Surface Transportation.” Topics discussed in the hearing included: (1) Regulations; (2) Cutting Cost; (3) Congestion; (4) Innovations; (5) Rural Transit; and (6) Jobs.

Chairman Sam Graves (R-MO) stated the “Fixing America’s Surface Transportation Act” (FAST Act) (P.L. 114-94) was reauthorized through fiscal year 2020. He said non-federal partners use the programs created by the FAST Act to invest in research in transportation

technologies and other innovations to meet the needs of communities. He noted that the amount of freight traveling on surface transportation is projected to increase significantly in the coming decades. He said the population and amount of freight moving through the U.S. are projected to increase significantly in the coming decades. He asserted that being innovative and utilizing transportation technologies where it makes sense to do so will help America’s surface transportation system move people and goods more safely and efficiently.

Ranking Member Eleanor Holmes Norton (D-DC) stated she believes Congress should pay more attention to the technological advances that are currently happening in transportation. She noted that there is a funding crisis for surface transportation needs. She said Congress should look to possible technological innovations that can help address some of the surface transportation needs more efficiently than current technologies.

Full Committee Ranking Member Peter DeFazio (D-OR) stated he is interested in how new transportation technologies can improve congestion on highways and overall safety.

DriveOhio Executive Director James Barna stated DriveOhio was created by Governor John Kasich as a one-stop shop for those looking to safely develop, test and deploy advanced mobility solutions in Ohio. Barna said they are establishing Ohio’s leadership in this realm by providing a single point of contact and collaboration for the dozens of public and private entities in the state that are involved in the design, development, testing, use, and regulation of autonomous and connected technologies – as well as those responsible for the public policies and infrastructure needed by those technologies. He noted that one of the biggest things they are

learning is the importance of using public-private partnerships to achieve their goals. He said their public-sector partners, including nine state agencies and municipalities from across the state, are participating in working groups along with the automotive industry, academia, and Ohio's world-class research and development institutions. Barna stated one example, which is well underway, is the 33 Smart Mobility Corridor. He explained that it is a 35-mile stretch of U.S. 33 northwest of Columbus, which is being equipped with some of the highest concentrations of connected vehicle infrastructure in the country. He said working with a collaborative team of local governments along the corridor that is overseeing the project, along with the Transportation Research Center, Honda, Bosch, Michael Baker International, and others, DriveOhio is equipping the four-lane, divided highway with fiber-optic cable and wireless roadside sensors. He concluded that to truly maximize investments in this area, there needs to be the ability to connect local and regional projects under a cohesive statewide framework.

ITS America President & Chief Executive Officer Shailen Bhatt stated ITS America is united around a shared vision of a better future transformed by intelligent mobility that is safer, greener, and smarter. She said their mission is to advance the research and deployment of intelligent transportation technologies to save lives, improve mobility, promote sustainability, and increase efficiency and productivity. She noted that for nearly 30 years, ITS America has been educating policy and decision makers at every level of government and in the private sector on policy that supports intelligent transportation technologies. She said their focus is policy that accelerates deployment of connected and automated vehicle technology and smart infrastructure; breathes new life into the transportation infrastructure by expanding investments in technologies that support smart

and sustainable states and cities; and supports new models and modes of transportation including micro-transit, rideshare, car-share, bike-share, and unmanned systems. Bhatt explained that America is entering a technology revolution that will define the way people, goods, services, and information move in the 21st century. She said it is a "whirlwind of innovation" that will change entire industries as well as transform communities large and small as well as urban and rural.

Upcoming Hearings and Events

September 13

Emerging Technologies: The Senate Commerce, Science and Transportation Committee will hold a [hearing](#) titled "Transportation of Tomorrow: Emerging Technologies That Will Move America."

PTC: The House Transportation and Infrastructure Committee's Railroads, Pipelines, and Hazardous Materials Subcommittee will hold a hearing titled "The State of Positive Train Control Implementation in the United States."

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

TECHNOLOGY

Senate Intelligence Hearing With Twitter and Facebook On Foreign Influence Campaigns

Key Point:

- *Lawmakers on both sides pressed social media executives on how their platforms are countering the campaigns waged by Russia, China, and Iran.*

On September 5, 2018, the Senate Intelligence Committee held a [hearing](#) entitled: “Foreign Influence Operations and their use of Social Media Platforms.” Topics discussed included but were not limited to: (1) Platform Goals/Incentives; (2) User Data; (3) Collaboration; (4) Inauthentic Users; (5) Misinformation; (6) Foreign vs. Domestic Users; (7) Speech Policies; (8) Election Security; (9) Intelligence/Law Enforcement Cooperation; and (10) Opioids.

Chairman Richard Burr (R-NC) said social media has “boundless potential for good,” but there are vulnerabilities related to corruption and misuse. He emphasized that the Committee takes social media misuse very seriously. He said the government needs to be precise about responding to foreign misuse of social media. He noted that Facebook had removed 652 pages, and Twitter removed 284 accounts due to violation of respective company standards. He expressed disappointment that Google did not attend the hearing but commended the company on its security efforts. Burr said many efforts were made by Iran to abuse social media platforms by attempting to manipulate political sentiment. He supported the hiring of the “right security experts” because one single company cannot handle risks and vulnerabilities on its own. He said that while positive things are happening, “this problem is not going away.” He asserted that the government and social media companies should be accountable to the American people. Burr declared that ambiguous policies within social media companies allow malicious actors to spread information throughout the world. He said if the government wanted do more to protect national security, it should collaborate more closely with social media companies.

Ranking Member Mark Warner (D-VA) expressed disappointment in Google for not

sending leadership to discuss structural vulnerabilities. He mentioned that Google Search and YouTube have many results that disseminate misinformation. He said Google has “immense” responsibility in the social media space. He said “it would be an understatement” to say that things have not changed since the 2016 Presidential election. Warner said that Facebook and Twitter were caught “flatfooted” in their reactions to recognizing electoral threats. He congratulated both Facebook and Twitter for removing bad actors but added there is much left to be done. He expressed skepticism that Facebook and Twitter would be able to remove all bad actors. He declared that Russia has not stopped its heavy disinformation campaign. He noted that Microsoft identified multiple Russian attempts to hack political campaigns and attempts to influence social media campaigns. Warner asserted that “Russians are getting better” at these campaigns and Iran is also engaging in similar efforts. He stated that forged documents from high level officials could cause enormous damage to the economy and to democracy. He added that these threats could “weaken privacy, erode truth, and undermine our democracy” on an enormous scale. He emphasized that countering these threats will only become more difficult with the rise of artificial intelligence (AI) and stressed “that future should concern us all.” Warner noted that social media companies face enormous challenges and “Congress has some homework to do.” He said users should have a right to know when they are interacting with bots on social media. He added that users should have better access to terms of service and that current documents are “nearly impossible to read.” Warner asked the witnesses what could be done to address the flawed advertising models that their companies currently utilize. He said smart new solutions need to be adopted to address the status quo and not rely on “ham handed” old style solutions.

Twitter Co-Founder and Chief Executive Officer Jack Dorsey said Twitter is used as a digital “public square” in order for people to express their opinions. He added that digital public spaces are extremely accessible and express messages with great velocity. He said Twitter is proud to support a “simple, free, and open exchange” of ideas. He declared that Twitter has made the world feel smaller, but said it was unprepared for the immense scale of abuse, harassment, propaganda, trolls, and bots that it would face. He added that these efforts do not contribute to “a healthy public square.” Dorsey said several bad actors exploited Twitter in order to have an outsized impact. He asserted that Twitter will work with the Committee in order to preserve its community and its business. He declared that Twitter was not prepared for these threats at its founding, and it takes responsibility while working to fix issues for the future. He stated that Twitter has undertaken efforts in order to reduce artificial amplification of information while becoming more transparent in displaying how advertisements are targeted to users. He said results have been positive, and Twitter has been removing approximately 200 percent more accounts for violation of policies. Dorsey noted that eight to ten million suspicious accounts are examined every week. He declared that Twitter has learned much since 2016 in how to better protect the integrity of elections. He advocated for better tools, stronger policy, and new partnerships (which are currently in place). He said newer changes will not be “fast or easy.” He asserted that Twitter will aim to continue improvements so a healthy public square will be possible.

Facebook Chief Operating Office Sheryl Sandberg said Facebook is actively working to prevent election interference. She stated that free and fair elections are essential to preserving democracy, and Facebook has a role

to play. She noted that Russia used a “comprehensive and multifaceted campaign” in order to undermine U.S. democratic institutions as well as those of U.S. allies. She acknowledged that Facebook was too slow in addressing and acknowledging these efforts. She said this interference was “completely unacceptable.” Sandberg stated that the U.S. is under constant attack from well-funded opponents who seek to undermine U.S. democracy. She said government, law enforcement, and industry need to work together in order to counter future threats. She expressed support for the work of the Committee. She said Facebook has doubled its number of workers in safety and security, and has over 20,000 people that can review reports in 50 languages for 24 hours-a-day. She stated that better machine learning and AI have enabled Facebook to be more proactive in finding abuse. Sandberg noted that for the first three months of 2018, 85 percent of violent content was removed before it was reported. She emphasized that the first line of defense is finding and shutting down fake accounts. She said people need to trust the content that they view on Facebook. She added that Facebook is actively working to limit the distribution of fake news. She said advertising information is available to any Facebook user in order to improve transparency. She asserted that pages with large numbers of followers will be required to confirm their authentic identities. She said these steps may not stop everyone from attempting to “game the system” but they will make it much more difficult. Sandberg noted that in August over 650 pages originating in Iran were removed. She stated that Facebook is focused on protecting the 2018 midterm elections by working with outside experts and law enforcement. She added that Facebook works to counter troll farms as well as sophisticated military attacks. She said Facebook is “more determined than our

opponents” and continues to strengthen its defensive efforts.

House Energy and Commerce Hearing on Twitter

Key Point:

- *Members disagreed on whether Twitter’s algorithms are disadvantaging Republicans and conservatives.*

On September 5, the House Energy and Commerce Committee held a [hearing](#) entitled: “Twitter: Transparency and Accountability.” Topics discussed during the hearing included: (1) Content Manipulation; (2) User Data; (3) Political Bias; (4) Abusive Content; (5) Blockchain; (6) Regulation; (7) Emergency Services; (8) Drugs; (9) Election Interference; (10) Hiring; (11) Fake Accounts; (12) Violence; (13) Verification; (14) Data Collection; (15) Civil Rights; and (16) Advertising.

Chairman Greg Walden (R-OR) said Twitter is one of the most downloaded applications in the world. He added that the service allows everyone to broadcast his or her views to the public. He argued that the platform is not without controversy and noted that it has been banned in some countries, such as China. He added that there is concern that the company has used its control to influence content on the site. He explained that Twitter has asserted that the issue stemmed from algorithms. Walden also mentioned “bots” and said the removal of the bots raises questions on how the bots were identified. He recognized the complexity of the service but said the way Twitter manages certain circumstances is vitally important. Walden asserted that it is critical that consumers trust that Twitter lives up to its promises. He said he looks forward to hearing how Twitter bans a user and to learn how there is no unfair bias on the platform.

Ranking Member Frank Pallone (D-NJ) said President Donald Trump has peddled conspiracy theories about Twitter to rile up his base. He explained that Twitter is a valuable tool to bring people together. He noted that far too many Twitter users face bullying and that while Twitter has taken steps to protect users, more needs to be done. He also mentioned consumers use the platform to create division, specifically mentioning Alex Jones. He said nation states have used the platform to create further division in America and argued that the President has made the situation worse. Pallone argued that the President has used the platform to create distrust through the use of conspiracy theories and fabricated news. He said Twitter must do more to regain and maintain the public trust. He stated that Twitter policies have been inconsistent and confusing. He asserted that the company must create clear policies that are applied equally to every user.

Twitter Co-Founder and Chief Executive Officer Jack Dorsey said Twitter does not consider political viewpoints in any policy or enforcement decisions. He explained that many people use Twitter as a digital public square in order to have a conversation with the rest of the world. He argued that a key driver for a thriving public square is the fundamental right of having a free and open exchange of ideas. He said Twitter will always default to a free and open exchange. Dorsey noted that it is important for Twitter to distinguish between people’s opinion and public behavior. He admitted that Twitter recently failed its goal by way of algorithm. He explained that the company will always improve its technology to measure the impartiality of outcomes. He said machine-learning technology is currently experimenting to find ways to ensure impartiality. Dorsey noted that when people follow an individual, the individual has earned its audience. He said it is dangerous to ask Twitter to regulate opinions. He argued that

Twitter helps people connect to something bigger than them.

Representative Michael Doyle (D-PA) asked if social media is being rigged to silence conservatives. Dorsey replied in the negative. Doyle asked if Twitter is shadow banning prominent Republicans. Dorsey replied in the negative. Doyle explained these were statements made by House Majority Leader Kevin McCarthy (R-CA), House Intelligence Committee Chairman Devin Nunes (R-CA), and Trump. He noted the shadow bans were put on 600,000 users whose followers shared a certain pattern of behavior. He asked if Twitter took any action to selectively censor conservatives. Dorsey replied in the negative.

Representative Joe Barton (R-TX) asked if Democratic politicians were subject to shadow bans. Dorsey replied in the affirmative. Barton expressed concern more Republicans received a shadow ban. Dorsey acknowledged the algorithm was not perfect and observed it is not always easy to identify who is a Republican or Democrat. He stated the algorithms do not take into consideration any philosophy, party, or viewpoint. Barton suggested Twitter discriminates against conservatives.

Representative Steve Scalise (R-LA) expressed concern that Twitter has adversely affected conservatives. He noted an advertisement of Representative Marsha Blackburn (R-TN) was banned by Twitter because of pro-life messages. Dorsey acknowledged this was a mistake. Scalise asked if anyone at Twitter was held accountable for this mistake. Dorsey replied Twitter uses these events to improve its processes. Scalise observed Vice found that the only members of Congress that received shadow bans are Republicans. He asked if Twitter is investigating if the people writing the algorithms are injecting their own biases.

Dorsey replied the algorithm was not written with that intention.

Representative Ben Lujan (D-NM) asked if Trump lost followers when Twitter purged bots. Dorsey replied in the affirmative. Lujan asked whether Trump or President Barack Obama lost more followers when bots were purged. Dorsey replied he was unsure. Lujan noted Obama lost more and asked whether Twitter has a conspiracy against Obama. Dorsey replied in the negative. Lujan agreed with this assessment. He asked if Twitter made changes to ensure foreign agents do not influence the 2018 elections. Dorsey replied in the affirmative. Lujan stressed Congress has not passed legislation to protect against future foreign meddling through social media.

NIST Announces Privacy Framework

Key Points:

- *A Department of Commerce agency starts a new multi-stakeholder process to craft voluntary privacy practices for federal and non-federal entities.*
- *The first public meeting will be held in October.*

The National Institute of Standards and Technology (NIST) has announced the launch of “a collaborative project to develop a voluntary privacy framework to help organizations manage risk” for a range of existing and cutting-edge technologies like the Internet of Things (IoT) and artificial intelligence (AI). In its [press release](#), NIST explained that the effort will commence “with a [public workshop](#) on Oct. 16, 2018, in Austin, Texas—in conjunction with the International Association of Privacy Professionals’ [Privacy, Security, Risk, 2018](#) conference.” NIST added this public workshop is “the first in a series planned to collect current practices, challenges and needs in managing privacy risks in ways

that go beyond common cybersecurity practices.”

NIST is aiming to develop this new voluntary privacy framework in the same way as the Cybersecurity Framework, which was open, collaborative, and multi-lateral. NIST explained in its [fact sheet](#) that it “will convene and work with industry, civil society groups, academic institutions, Federal agencies, state, local, territorial, tribal, and foreign governments, standard-setting organizations, and others, conducting extensive outreach through a series of workshops and requests for public comment.”

In terms of the proposed parameters of the new privacy framework, NIST added that

- NIST aims to collaboratively develop the Privacy Framework as a voluntary, enterprise-level tool that could provide a catalog of privacy outcomes and approaches to help organizations prioritize strategies that create flexible and effective privacy protection solutions, and enable individuals to enjoy the benefits of innovative technologies with greater confidence and trust.
- It should assist organizations to better manage privacy risks within their diverse environments rather than prescribing the methods for managing privacy risk.
- The framework should also be compatible with and support organizations’ ability to operate under applicable domestic and international legal or regulatory regimes.

Additionally, NIST referenced a related regulatory initiative on privacy helmed by another Department of Commerce component agency, the National Telecommunications and

Information Administration (NTIA). In the attached fact sheet, NIST stated:

The U.S. Department of Commerce is developing a forward-thinking approach that supports innovation and strong consumer privacy protections. NIST is leading the development of a voluntary privacy framework as an enterprise risk management tool for organizations while the National Telecommunications and Information Administration is leading the development of a set of privacy principles, and coordinating with the International Trade Administration to ensure consistency with international policy objectives.

Upcoming Hearings and Events

September 13

VA EHR Modernization: The House Veterans’ Affairs Committee’s Technology Modernization Subcommittee will hold a hearing titled “The Role of the Interagency Program Office in VA Electronic Health Record Modernization.”

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

TRADE

NAFTA Negotiations Continuing With Canada

Key Points:

- *President Trump on August 31 notified Congress of his intent to sign the U.S.-Mexico trade agreement in 90 days, though Canada can join “if it is willing.”*

- *Prime Minister Justin Trudeau said on Tuesday Canada will not agree to a deal without a dispute settlement system and cultural carveouts, which allow Canada to protect “cultural industries” with trade barriers.*
- *Section 232 tariffs remain in place on both Canada and Mexico, though GOP lawmakers believe they could be lifted soon.*

Canadian and U.S. trade representatives are continuing to negotiate toward an agreement that results in Canada joining the bilateral deal reached between the U.S. and Mexico last week. Canadian Foreign Minister Chrystia Freeland has repeatedly emphasized Canada is not under time pressure and will only agree “once we have a good deal for Canada.” The U.S. and Canada have yet to agree on difficult issues such as opening up Canada’s dairy markets to U.S. exports, patent protections for certain drugs, and dispute resolution language. Canadian Prime Minister Trudeau weighed in on negotiations and said Canada can only agree to a deal with a dispute settlement system and cultural carveouts. He explained Canada’s position on the cultural carveouts: “We can’t imagine a situation in which an American TV company or network could come up and buy radio stations or buy CTV for example. That would not be good for Canada. It wouldn’t be good for our identity. It wouldn’t be good for our sovereignty.” Prime Minister Trudeau did however indicate Canada could increase access to its dairy market, an issue that President Trump has repeatedly raised.

Last Friday, the White House informed Congress of President Trump’s intent to sign the new U.S.-Mexico trade agreement in 90 days, though the text has not been submitted. Under the procedural requirements of the Trade Promotion Authority (TPA) legislation governing NAFTA, the text of the agreement must be submitted to Congress within 30 days

from the notification of Congress. However, some Senators have questioned whether a bilateral agreement with Mexico would qualify for “fast track status” under TPA.

The U.S. and Mexico have still not finalized government procurement provisions, as Mexican negotiators are open to agreeing to U.S. procurement provisions but are waiting on Canadian negotiators to approve them first. The U.S. is demanding a “dollar-for-dollar” provision that would grant Mexico and Canada the same level of access in the U.S. market as the U.S. has in their markets. Some analysts have called this proposal lopsided and unfair given the size of the U.S. economy relative to that of Canada and Mexico.

After a meeting with White House trade advisor Peter Navarro this week, Senator Ron Johnson (R-WI) and Representative Mike Bost (R-IL) said they believe that “once we come to that [NAFTA] agreement we shouldn’t have tariffs... we would abide by the revised agreement, which would not include tariffs.” Sources have indicated the U.S. is planning to replace its steel and aluminum tariffs on Mexico and instead apply a quota; this would likely apply to Canada if or when it joins the deal.

Comment Period On China Tariffs Ends; Trump Rejects Deal With China

Key Point:

- *The comment period on the proposed 25 percent tariffs on \$200 billion of Chinese goods ended Thursday, giving President Trump the ability to impose tariffs when he so chooses.*

The Administration could move ahead with another round of tariffs on \$200 billion worth of Chinese goods as early as today, after the public comment period ended at midnight on Thursday. The move is expected to be met with

tariffs and other retaliatory measures from Beijing. President Trump originally proposed hitting the \$200 billion in Chinese goods with a 10 percent tariff, but later asked U.S. Trade Representative Robert Lighthizer to consider a 25 percent tariff instead. It has been reported that the duties could range between 5 and 25 percent, depending on the product and could be implemented in stages rather than all at once.

President Trump on Wednesday said, “We’ve done very well in our negotiation with China, but we’re not prepared to make the deal that they’d like to make.” Sources have said China has so far only offered to increase purchases of U.S. goods and has not agreed to substantive changes to the trade practices outlined in the Section 301 report. China has indicated it will retaliate with tariffs on \$60 billion of U.S. goods.

Upcoming Hearings and Events

September 12

Countering Russia- Assessing New Tools: Senate Banking, Housing and Urban Affairs Committee (Chairman Michael D. Crapo, R-Idaho) will hold a hearing on “Countering Russia: Assessing New Tools” with Leon Aron, resident scholar and director of Russian studies at the American Enterprise Institute; Elizabeth Rosenberg, senior fellow and director of the Center for New American Security’s Energy, Economics and Security Program; and Daleep Singh, senior fellow at the Atlantic Council and adjunct professor at Johns Hopkins University testifying.

September 13

Perspectives on U.S. Agricultural Trade: Senate Agriculture, Nutrition and Forestry Committee (Chairman Pat Roberts, R-Kan.)

will hold a hearing on “Perspectives on U.S. Agricultural Trade” with Robert Johansson, chief economist for the Agriculture Department; Agriculture Undersecretary For Trade and Foreign Agricultural Affairs Ted McKinney; and Gregg Doud, chief agricultural negotiator in the Office of the United States Trade Representative testifying.

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

This Week in Congress was written by Ryan Schnepp.