This Week in Congress

- **House** – The House passed the “Midnight Rules Relief Act of 2017” (H.R. 21); the “Federal Advisory Committee Act Amendments of 2017” (H.R. 70); the “GAO Access and Oversight Act of 2017” (H.R. 72); and the “Thoroughly Investigating Retaliation Against Whistleblowers Act” (H.R. 69).
- **Senate** – The Senate began consideration of S.Con.Res.3, the FY 2017 budget resolution.

Next Week in Congress

- **House** – The House will vote on the “Regulatory Accountability Act of 2017” (H.R. 5); the “SEC Regulatory Accountability Act” (H.R. 78); the “Commodity End-User Relief Act” (H.R. 238); and the “Helping Angels Lead Our Startups Act” (H.R. 79).
- **Senate** – The Senate will resume consideration of S.Con.Res.3, the FY 2017 budget resolution and vote on amendments to the resolution in a process referred to as “vote-a-rama.”

**TAX**

Republicans Focus on Tax Reform as Debate over Border Adjustable Tax and Tariffs Continues

Key Points:

- President-elect Trump continues to target companies who manufacture products outside of the U.S. and then import them into the country
- Speaker Ryan says tax reform proposal will move through regular order in the House

This week, President-elect Donald Trump twice tweeted that manufacturers that do not make their products in the U.S. should “pay big border tax” on any product they try to import back into the country. A major component of the House Republicans tax reform blueprint is the border adjustability provision, which would raise an estimated $1.2 trillion by imposing new taxes on imports and exempting exports from taxes. During the campaign, Trump often suggested a tariff on imported goods, the change in terminology to a “border tax” may be significant.

In general, the border adjustable tax proposed by House Republicans in their Tax Reform Blueprint would appear to accomplish the same policy goals as a tariff suggested in the past by Trump, and unlike tariffs have the support of key House Republicans like Speaker of the House Paul Ryan (R-WI) and House Ways and Means Committee Chairman Kevin Brady (R-TX). Trump switching terms to a border tax
could mean he is aligning with that aspect of the House tax reform proposal.

Imposing new tariffs, on the other hand, face broader opposition from Congressional Republicans. This week, Senator Rob Portman (R-OH) cautioned against Trump’s proposal to impose tariffs, saying “it will end up hurting our consumers here because everything at Walmart’s going to go up dramatically because they’ll retaliate against us.” He called for a “level playing field” through tax reform and reduced regulations to eliminate incentives for companies to move abroad. Portman also predicted that if the U.S. is “cracking down on unfair imports, our workers will be fine as long as we do the other things that are badly overdue to make our country competitive.”

Ryan echoed a similar sentiment to Portman, stating in an interview that the House is “not going to be raising tariffs.” He said that comprehensive tax reform “is the better way of addressing imbalances, leveling the playing field without starting trade wars, without having the adverse effects that you get with protectionism or trade wars.”

In the same interview, Ryan stated that comprehensive tax reform “will be done in regular order through the Ways and Means Committee, through the regular legislative process, and done as part of our spring budget.” He reported that the committee “is going through the painstaking process of flushing out all of the details” of a proposal.

**Tax Writing Committees Announce New Committee Members**

**Key Points:**
- Ways and Means expected to add another member when Representative Price is confirmed as HHS Secretary

House Democrats have not yet released committee rosters for 115th Congress

House Ways and Means Committee Chairman Kevin Brady (R-TX) announced three new Republican Members to the Committee for the 115th Congress: Representatives Carlos Curbelo (R-FL), David Schweikert (R-AZ), and Jackie Walorski (R-IN). A fourth Republican will be added to the Committee assuming that Representative Tom Price (R-GA) is confirmed to serve as the Secretary of Health and Human Services.

Representative Brian Higgins (D-NY) is returning to the committee for the Democrats after previously serving on the committee before Republicans took control of the House in the 112th Congress. Representatives Terri Sewell (D-AL) and Suzan DelBene (D-WA) are also joining the committee. Democrats will add another member after Representative Xavier Becerra (D-CA) is confirmed as California’s Attorney General.

Senator Bill Cassidy (R-LA) was named to the Senate Finance Committee for the 115th Congress. In late December, Senator Claire McCaskill (D-MO) was named to the Finance seat vacated by incoming Minority Leader

**Upcoming Dates**

- **January 20, 2017:** Inauguration Day
- **February 6, 2017:** President to submit FY 2018 budget request
- **February 15, 2017:** CBO releases annual budget and economic outlook
- **March 15, 2017:** Debt limit suspension ends
- **April 28:** FY 2017 CR expires
- **September 30, 2017:** FY 2017 ends and FAA extension expires
Chuck Schumer (D-NY).

JCT Issues Report on Expiring Tax Provisions Set

Key Points:

- Report lists federal tax provisions that expired or are scheduled to expire in 2016–2026

The Joint Committee on Taxation issued the List of Expiring Federal Tax Provisions 2016–2026, which contains a listing of Federal tax provisions that expired or are scheduled to expire in 2016–2026.

For more information about tax issues you may email or call Christopher Hatcher at 202-659-8201. Laura Simmons contributed to this section.

TRADE

Robert Lighthizer Nominated to Serve as U.S. Trade Representative

Key Points:

- Lighthizer is a trade attorney and former Deputy USTR
- Trump transition team has indicated USTR may not be lead trade negotiator for incoming Administration

Robert Lighthizer was selected to serve as the U.S. Trade Representative (USTR) for the incoming Trump Administration. He was a deputy trade representative during the Reagan Administration and represented the U.S. steel industry as a trade attorney. His appointment to USTR may lead to a greater focus on China and anti-dumping efforts may be more aggressive.

The role of the USTR under the Trump Administration is unclear at best. While the USTR has historically been the chief negotiator in U.S. trade deals, a Trump spokesman stated that Secretary of Commerce-designate Wilbur Ross “will ultimately direct much of the administration’s trade policy at the direction of President-elect Trump.” The USTR will remain a separate entity from the Department of Commerce and be responsible for “all the functions that the USTR normally would do,” however, Ross “will be playing a big role in any trade particulars in this administration.”

No Details Available for Incoming Trump Administration’s Plan to Renegotiate or Withdraw from NAFTA

Key Points:

- President-elect Trump has said renegotiating or withdrawing from NAFTA is a top priority of the Administration

While President-elect Donald Trump said he intends to begin the process of renegotiating or withdrawing from the North American Free Trade Agreement (NAFTA) on his first day in office, incoming Trump Administration Press Secretary Sean Spicer reported that the incoming Administration is not yet ready to provide a detailed explanation of how it plans to renegotiate the trade agreement. Specifically, Spicer said that “the exact policy formulation with respect to NAFTA will come in time, but just know his commitment is to the American people and to restoring our manufacturing base and economic growth.” Regarding when details will be made available, Spicer predicted “I think we’ll continue to see further developments on how he’s going to implement in the coming weeks and more importantly after he becomes president.”

Upcoming Hearings and Events

TBD
Lighthizer Confirmation Hearing: The Senate Finance Committee may hold a confirmation hearing for U.S. Trade Representative-designate Robert Lighthizer during the week of January 16.

For more information about trade issues you may email or call Christopher Hatcher at 202-659-8201. Laura Simmons contributed to this section.

FINANCIAL SERVICES

115th Congress Committee Assignments Announced

Key Points:
- Republican members of the House Financial Services Committee and the Senate Banking Committee were announced this week.
- House Financial Services Committee leadership and subcommittee chairmanships were also announced.

Earlier this week the House and Senate announced some of their committee assignments for the 115th Congress.

The Senate Banking Committee will have a ratio of 12 Republicans to 11 Democrats. The ratio was 12 Republicans to 10 Democrats in the 114th Congress. The new members of the Committee on the Republican side are Senators David Perdue (R-GA), Thom Tillis (R-NC), and John Kennedy (R-LA). They will replace Senators Mark Kirk (R-IL), David Vitter (R-LA) and Jerry Moran (R-KS). The new members on the Democratic side are Senators Brian Schatz (D-HI), Chris Van Hollen (D-MD), and Catherine Cortez Masto (D-NV), replacing Senators Charles Schumer (D-NY) and Jeff Merkley (D-OR).

The new members on the Republican side of the House Financial Services Committee will be Representatives Lee Zeldin (R-NY), Dave Trott (R-MI), Barry Loudermilk (R-GA), Alex Mooney (R-WV), Tom MacArthur (R-NJ), Warren Davidson (R-OH), Ted Budd (R-NC), David Kustoff (R-TN), Claudia Tenney (R-NY) and Trey Hollingsworth (R-IN).

New Democratic members of the Committee are expected to be announced next week.

House Financial Services Committee Chairman Jeb Hensarling (R-TX) also announced the subcommittee chairs and leadership of the Committee, which will include Representative Patrick McHenry (R-NC) as the Vice Chairman and Representative French Hill (R-AR) as the Republican Whip. Subcommittee Chairs and Vice Chairs will be:

- Subcommittee on Capital Markets: Chairman Bill Huizenga (R-MI); Vice Chairman Randy Hultgren (R-IL)
- Subcommittee on Financial Institutions and Consumer Credit: Chairman Blaine Luetkemeyer (R-MO), Vice Chairman Keith Rothfus (R-PA)
- Subcommittee on Housing and Insurance: Chairman Sean Duffy (R-WI); Vice Chairman Dennis Ross (R-FL)
- Subcommittee on Monetary Policy and Trade: Chairman Andy Barr (R-KY); Vice Chairman Roger Williams (R-TX)
- Subcommittee on Terrorism and Illicit Finance: Chairman Steve Pearce (R-NM); Vice Chairman Robert Pittenger (R-NC)
- Subcommittee on Oversight and Investigations: Chairman Ann Wagner (R-MO); Vice Chairman Scott Tipton (R-CO)
Jay Clayton Announced as Nominee for SEC Chairman

Key Points:
- Clayton is a partner with Sullivan and Cromwell, focusing on capital markets offerings, regulatory and enforcement proceedings.

On January 4, President-elect Donald Trump announced that he will nominate Sullivan and Cromwell partner Jay Clayton to serve as Chairman of the Securities and Exchange Commission (SEC). As noted in his biography, Clayton’s practice “involves public and private mergers and acquisitions transactions, capital markets offerings, regulatory and enforcement proceedings, and other matters where multidisciplinary advice and experience is valued.” In his statement announcing the nomination, Trump said:

Jay Clayton is a highly talented expert on many aspects of financial and regulatory law, and he will ensure our financial institutions can thrive and create jobs while playing by the rules at the same time. We need to undo many regulations which have stifled investment in American businesses, and restore oversight of the financial industry in a way that does not harm American workers.

In the release, Clayton stated:

If confirmed, we are going to work together with key stakeholders in the financial system to make sure we provide investors and our companies with the confidence to invest together in America. We will carefully monitor our financial sector, as we set policy that encourages American companies to do what they do best: create jobs.

Trump has yet to announce who will be nominated to fill the two remaining vacancies at the SEC.

CFTC Chairman Timothy Massad Announces Resignation

Key Points:
- Chairman Massad will resign effective January 20, 2017.

On January 3, Commodity Futures Trading Commission (CFTC) Chairman Timothy Massad issued a statement announcing that he will resign effective January 20, 2017. This action typically occurs with a transition of the White House from one party to another. Massad has served as Chairman since June 2014.

Massad’s resignation will leave the CFTC with only two confirmed commissioners for some period of time: J. Christopher Giancarlo and Sharon Bowen. Typically a quorum of three members is required for the CFTC to conduct business, however if there are less than three commissioners a quorum consists of the number of commissioners in office. The practical effect of a two member Commission is that any rulemaking would have to be non-controversial and unanimous in order to be approved.

Upcoming Hearings and Events

January 9
Financial Services Bills: The House Rules Committee will meet to formulate rules for floor consideration of the Regulatory Accountability Act of 2017 (H.R. 5) and the Helping Angels Lead Our Startups (HALOS) Act (H.R.79).

January 10
Financial Services Bills: The House Rules Committee will meet to formulate rules for floor consideration of the SEC Regulatory Accountability Act (H.R.78) and the Commodity End-User Relief Act (H.R.238).

January 11
Financial Stability Oversight Council: The Financial Stability Oversight Council will meet in an executive session. The preliminary agenda for the meeting includes “market developments, a discussion of the quantitative thresholds applied in Stage 1 of the Council’s nonbank financial company designation process, a discussion of the Council’s 2017 annual report, and a discussion of recent developments relating to money market mutual funds.”

January 12
HUD Secretary Nomination: The Senate Banking Committee will hold a hearing on the nomination of Dr. Benjamin Carson to be Secretary of the Department of Housing and Urban Development (HUD).

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

ENERGY & ENVIRONMENT

Environmental Regulations Likely First Targets for Congressional Review Act Repeal

- Congress is expected to begin considering disapproval resolutions to rescind regulations promulgated in the waning months of the Obama Administration.
- The House and Senate will consider the disapproval resolutions under the expedited process established by the Congressional Review Act.
- Regulations targeting natural gas venting and flaring on federal lands and the final “Stream Protection Rule” are expected to be among the first Congressional Review Act resolutions to be considered.

House Majority Leader Kevin McCarthy (R-CA) indicated that two of the first Obama Administration regulations targeted for repeal using the expedited process of the Congressional Review Act (CRA) would be: the Office of Surface Mining Reclamation and Enforcement’s (OSMRE) “Stream Protection Rule”; and “methane emissions standards”.

While McCarthy did not specify the rule he referred to as the “methane emission standards”, one rule clearly falls within the CRA’s time limit for action. The Bureau of Land Management (BLM) published the final rule on “Waste Prevention, Production Subject to Royalties, and Resource Conservation” on November 18, 2016 and it is eligible for CRA repeal. The Environmental Protection Agency (EPA) finalized its regulations for new source oil and gas sector methane emissions in May, and that rule is widely viewed as falling outside of the cutoff for CRA consideration.

As described by the BLM, the “Waste Prevention, Production Subject to Royalties, and Resource Conservation” regulations are intended “to reduce waste of natural gas from venting, flaring, and leaks during oil and natural gas production activities on onshore Federal and Indian leases.” The new regulations “would
require operators to take various actions to reduce waste of gas, establish clear criteria for when flared gas would qualify as waste and therefore be subject to royalties, and clarify the on-site uses of gas that are exempt from royalties.”

The Department of Interior’s Office of Surface Mining Reclamation and Enforcement (OSMRE) published the final “Stream Protection Rule” on December 20, 2016. The final rule is intended to “better protect water supplies, surface water and groundwater quality, streams, fish, wildlife, and related environmental values from the adverse impacts of surface coal mining operations and provide mine operators with a regulatory framework to avoid water pollution and the long-term costs associated with water treatment.” Senate Majority Leader Mitch McConnell (R-KY) issued a press release immediately following announcement of the rule declaring, “When the new Congress convenes next month, I will also introduce a resolution of disapproval under the CRA to overturn this egregious regulation and work with my colleagues to use every tool available to turn back this regulatory assault on coal country.”

The CRA provides for expedited consideration of disapproval resolutions in the Senate:
- If the Senate agrees to a motion to proceed to the resolution, debate on the floor is limited to ten hours and no amendments to the resolution or motions to proceed to other business are in order. The Senate may pass the resolution with a simple majority.
- While the Congressional Review Act prevents filibusters, Democrats can be expected to force the Senate to use the entire ten hours to debate each disapproval resolution. Each CRA resolution can rescind only one regulation. This will limit the number of rules that Congress and the President can revoke using this process.

Since enactment, the CRA has only been used successfully once to repeal the outgoing Clinton Administration’s Occupational Safety and Health Administration (OSHA) ergonomics rule.

Upcoming Hearings and Events

January 11-12
Gas Pipeline Safety: The Pipeline and Hazardous Materials Safety Administration (PHMSA) will convene a meeting of the Gas Pipeline Advisory Committee. The meeting will focus on “the proposed rule, ‘Safety of Gas Transmission and Gathering Pipelines’ published in the Federal Register on April 8, 2016, (81 FR 20722), and the associated regulatory analysis.” The proposed rule would establish new requirements for: how operators inspect natural gas transmission pipelines, including in-line inspections (ILI); what actions they take in response to those inspections; and how they verify the maximum allowable operating pressure (MAOP) of pipelines. In developing the MAOP requirements, PHMSA is implementing Section 23(a) of the “Pipeline Safety, Regulatory Certainty and Job Creation Act of 2011” (P.L. 112-90), which directed the agency to implement requirements for verifying the MAOP for older “grandfathered” natural gas pipelines. The proposed rule also imposes new regulatory requirements on certain gas gathering lines, and includes additional new requirements that implement other provisions of the “Pipeline Safety, Regulatory Certainty, and Job Creation Act.”

For more information about energy and environment issues you may email or call Frank Vlossak at 202-
DEFENSE

SASC Will Likely Hold Mattis Nomination Hearing

Key Points:
- SASC likely to hold confirmation hearing next week
- Congress still needs to pass a waiver for Mattis to be confirmed as Secretary of Defense
- Dearth of defense nominees may be due to friction between Mattis and Trump Transition team over proposed subordinates

Despite no official announcement, it appears that the Senate Armed Services Committee will meet on January 12 to consider the nomination of Secretary of Defense-designate General James Mattis. The hearing would be held two days after the Committee holds a related hearing titled “Civilian Control of the Armed Forces.” Mattis’ nomination could be brought swiftly to the Senate floor after the hearing provided a waiver has been passed by the House and Senate. Because there is a statutory bar on general officers serving as Secretary of Defense within seven years of retirement, before Mattis’ nomination could be confirmed by the Senate a waiver must be passed. The “Further Continuing and Security Assistance Appropriations Act, 2017” (P.L. 114-254) provided an expedited process for a waiver that requires 60 affirmative votes in the Senate. However, thus far, it appears that Senate Democrats are choosing to try to derail other Trump nominations.

Media reports suggest friction between Mattis and the Trump Transition team as Mattis has reportedly rejected a number of potential nominees to head top DOD positions. To date, other than Secretary of the Army-designate Vincent Viola, almost all of the top defense positions remain unfilled. Reportedly, Mattis was not pleased with Viola’s nomination and was allegedly assured of significant input in the selection of his subordinates. Another alleged issue is that Mattis has been pushing to name Republicans to DOD positions who vowed not to support President-elect Donald Trump during his campaign, which apparently has been rejected by the Transition team.

Coats Named As DNI-Designate; Trump Relations With IC Remain Rocky

Key Points:
- Former Senator likely to be named Trump’s DNI
- Former CIA Director resigns from Trump Transition team
- Trump floats both plans to reform IC and investigation into alleged leaks

On January 5, according to reports, President-elect Donald Trump will nominate former Senator Dan Coats (R-IN) as the next Director of National Intelligence. Coats served on the Senate Intelligence and Armed Services Committees and has subject matter expertise but has been a prominent critic of Russia.

Concurrently, there are also reports that Trump intends to implement reforms to the Intelligence Community (IC) agencies that he has been at odds with over their conclusions that Russia interfered with the 2016 election. How Coats would fit into any scenario under which the IC is reformed remains to be seen. Also this week, former Central Intelligence Agency Director James Woolsey announced that he was no longer part of the Trump Transition team reportedly because of planned reforms at IC agencies.
On January 6, Trump called for the House and Senate Intelligence Committees to investigate IC agencies to determine whether there were improper leaks to NBC News regarding Russian interference in the election. Trump tweeted:

I am asking the chairs of the House and Senate committees to investigate top secret intelligence shared with NBC prior to me seeing it.

Trump’s calls for an investigation came the same day he was set to receive a briefing from IC agencies on its evidence.

SASC Delves Into Foreign Cyber Threats, Namely Those Posed By Russia

Key Points:

- First hearing on alleged Russian hacking of U.S. election is held with the DNI, top Pentagon intelligence official, and NSA head
- IC witnesses claim Russia engaged in widespread activities

On January 5, the Senate Armed Services Committee held a hearing entitled “Foreign Cyber Threats to the United States.” Topics discussed during the hearing included, but were not limited to: (1) WikiLeaks; (2) Intelligence Community; (3) Information Sharing; (4) Cybersecurity Strategy; (5) Cyber Workforce; (6) Responses to Cyber Attacks; (7) National Guard; (8) Foreign Nation States; and (9) Election Interference.

Chairman John McCain (R-AZ) stated the hearing is about broad range of cybersecurity challenges confronting the United States including threats from countries like Russia, China, North Korea, and Iran, as well as non-state actors from terrorist groups to transnational criminal organizations. He said in recent years, there has been a growing series of cyberattacks by multiple actors on citizens, businesses, military, and government. He noted “there is no escaping the fact that this Committee meets today for the first time in this new Congress in the aftermath of an unprecedented attack on our democracy.” He said President Barack Obama directed Director of National Intelligence James Clapper to lead a comprehensive review of Russian interference in the election with the goal of informing the American people as much as possible. McCain said the point of the review is not to question the outcome of the presidential election and nor should it be. He stressed “our nation must move forward” but it is important to move forward with full knowledge of the facts. He explained in October, the American Intelligence Community concluded unanimously that the Russian Government directed compromises of e-mails from U.S. persons and institutions, including from U.S. political organizations. He added the Intelligence Community also assessed that disclosures of alleged hacked e-mails were consistent with the methods and motivations of Russian-directed efforts, and that these thefts and disclosures were intended to interfere with the U.S. election process.

Ranking Member Jack Reed (D-RI) said in addition to stealing information from the Democratic National Committees and the Clinton campaign, and cherry-picking what information it leaked to the media, the Russian government also created and spread fake news and conspiracies across the vast social media landscape. He argued at the very least, the effect of Russia’s actions was to erode the faith of the American people in our democratic institutions. He added these and other cyber tools remain highly active and engaged in misinforming the American political dialogue even today. He said there is much that is
unknown, but Russia’s involvement in these intrusions does not appear to be in doubt. Reed contended these Russian cyberattacks should be judged within the larger context of Russia’s rejection of the post-Cold War international order and aggressive actions against its neighbors. He explained Russia’s current leaders and Putin in particular, perceive the democratic movements in the former Soviet states, the West’s general support for human rights, press freedoms, the rule of law and democracy, as well as the North Atlantic Treaty Organization (NATO) and European Union (EU) enlargement as a threat to what they believe is Russia’s sphere of influence.

Director of National Intelligence James Clapper, Jr., said he is aware of the great interest in recent Russian interference in the U.S. Presidential election. He said the recently released Joint Analysis Report provides details on the tools and infrastructure used by the Russian government to interfere with the electoral system. He said, per Obama’s request, a comprehensive report on the situation will be ready next week with Congressional briefings to follow. He said cyber threats have had the result of compromising public trust in institutions and systems. Clapper noted Russia has increased cyber espionage operations and has targeted infrastructure. He said China also continues to conduct cyber espionage operations. He added Iran and North Korea have improved their capabilities in the cyber domain. He stated terrorist organizations such as the Islamic State of Iraq and the Levant (ISIL) utilize the internet to recruit and coordinate operations. He called for the strengthening of the partnership between the government and the private sector. He remarked cyber operations have also been effective at compromising the integrity of data and chipping away at public trust broadly. Clapper stressed the importance of considering all instruments of national power in response to a cyber-attack. He said National Security Agency (NSA) and Cyber Command should be separated because the dual-hat arrangement is no longer satisfactory.

Under Secretary Of Defense For Intelligence Marcel Lettre II said the Department of Defense (DOD) views cyber through the lens of three themes: (1) threats that must be addressed; (2) what is being done now; and (3) what lies ahead. He said the DOD’s leadership believes the U.S. confronts no fewer than five challenges across all operating domains. He said DOD is countering Russian aggression, managing historic change in the Asian Pacific with China, checking Iran in the Middle East, pushing back against North Korea’s nuclear provocations, and finally continuing the fight against terrorism. Lettre said all of these challenges present significant cyber threats. He said the DOD has for years pursued a strategic plan to achieve superiority in the cyber operating domain and built the means and methods that will strengthen U.S. defenses. He observed since 2009, DOD has matured cyber command to insure clear accountability and command structure. He said there is much more work to be done.

NSA Director and Cyber Command Commander Admiral Michael Rogers said the environment of cyber security has changed greatly over the course of the last year. He said the interconnectivity is now a part of our daily lives has its benefits as well as its vulnerabilities. He stressed the importance of keeping pace with change in the cyber security domain in order to provide policymakers and operational commanders with the intelligence they need to keep the U.S. safe. He said this is a global issue but there have been recent examples in the U.S. such as Russian interference in the Presidential election. He said NSA focuses on the foreign
actor but shares its information with other intelligence agencies. Rogers stated Russia has a history of hacking into other government’s infrastructure and institutions. He argued “we must make it more difficult for malicious actors to do us harm.” He called for increased investment in attracting a talented and motivated cyber security workforce. He said cyber command is “well along in deploying our cyber mission force to bolster the Department of Defense’s ability to defend the nation against cyber threats.”

CBO Issues Summary An Analysis of the Navy’s FY 2017 Shipbuilding Plan

Key Points:
- CBO finds that Navy would need to receive historic levels of funding to effectuate shipbuilding plans

On January 4, the Congressional Budget Office (CBO) released a summary of its upcoming analysis of the Navy’s most recent 30-year shipbuilding plan that would require roughly 33% more funding per year than the historical level of appropriations provided for shipbuilding activities. Additionally, the CBO has once again noted that if Congress were to grant the Navy’s request, there is the likelihood that other programs would need to be cut at the Department of Defense (DOD) so as to avoid violating the spending caps assuming that uncapped Overseas Contingency Operations (OCO) funds are not again used to functionally circumvent the statutory limits on defense spending. The Navy submitted its “Report to Congress on the Annual Long-Range Plan for Construction of Naval Vessels for Fiscal Year 2017” in July 2016.

The CBO explained that “[t]he average annual cost of carrying out that plan over the next 30 years—about $21 billion in 2016 dollars, the CBO estimates—would be one-third more than the average amount of funding that the Navy has received for shipbuilding in recent decades.” The CBO stated that “[i]n November 2016, the fleet numbered 272 battle force ships—aircraft carriers, submarines, surface combatants, amphibious ships, combat logistics ships, and some support ships.” The CBO stated that “[t]he Navy’s goal (in military parlance, its requirement), as stated in its 2017 shipbuilding plan and reflecting its 2014 force structure assessment, was to maintain a fleet of 308 battle force ships...[and] toward that end, the Navy would buy a total of 254 ships over the 2017–2046 period: 209 combat ships and 45 combat logistics and support ships.”

The CBO stated that “[i]n mid-December 2016, the Navy released a new force structure assessment, which called for building a fleet of 355 ships...[but] this CBO report assesses the projected outcomes under the 2017 plan against the 308-ship goal set in the 2014 force structure assessment that was in effect when the plan was written, rather than against the larger December number.”

The CBO stated that “[t]he Navy estimates that buying the new ships specified in the 2017 plan would cost $509 billion (in 2016 dollars) over 30 years, or an average of $17.0 billion per year—slightly more than the amount that the Navy estimated the construction of new ships would be under its 2016 plan.” CBO noted that “the historical average of $13.9 billion (in 2016 dollars) in annual funding for new-ship construction.” The CBO stated that “[u]sing its own models and assumptions, CBO estimates that those new ships would cost a total of $566 billion (in 2016 dollars) over 30 years, or an average of $18.9 billion per year.”

The CBO stated that “[t]he Navy’s shipbuilding plan reports only the costs of new-ship
construction...[and] excludes other activities typically funded from the Navy’s budget account for ship construction—such as refueling nuclear-powered aircraft carriers or outfitting new ships with various small pieces of equipment after they are built and delivered—that would, by CBO’s estimate, add $1.8 billion to the Navy’s average annual shipbuilding costs under the 2017 plan.” The CBO stated that it “estimates that with those extra costs included, the average annual cost of the Navy’s 2017 plan would be $20.7 billion per year—10 percent greater than the Navy’s estimate with those additional costs added in.”

The CBO stated that “under current law (i.e. the spending caps of the “Budget Control Act of 2011”), policymakers face a choice between implementing the Navy’s 2017 shipbuilding plan and cutting costs elsewhere in the Navy’s budget (or in DOD’s budget more broadly), scaling back the 2017 plan, or taking some combination of those actions.” The CBO stated that “[f]acing similar constraints, in setting the appropriations for each year from 2013 through 2016, the Congress added $1 billion to $2 billion to the Administration’s request for shipbuilding.”

**CBO Looks At DOD O&M Trends**

**Key Points:**

- An analysis finds that O&M cost growth is due to growth in health care, cost competition, and fuel costs

On January 5, the Congressional Budget Office (CBO) released its assessment of the single largest share of Department of Defense (DOD) funding in an attempt to determine why the Operations & Maintenance (O&M) accounts continue to experience cost growth despite the same number or fewer active-duty military members. In “Trends in Spending by the Department of Defense for Operation and Maintenance,” the CBO noted that “[o]ver the past few decades, funding for O&M has increased substantially, accounting for a growing share of DOD’s budget...[h]owever, efforts to identify the activities that have contributed significantly to the growth in spending are complicated by the diverse nature of the goods and services purchased with O&M funds and limitations associated with available data.” Yet, CBO identified three major drivers of O&M growth and suggested other minor factors that in the aggregate have pushed spending on these accounts higher as a share of DOD funds since 2000.

The CBO noted that “[i]n 2015, about $200 billion (40 percent) of DOD’s base budget of $500 billion was designated for operation and maintenance.” The CBO added that “[a]lthough not part of DOD’s base budget (and thus not the focus of this report), O&M funding for Overseas Contingency Operations (OCO) also accounted for a significant share ($51 billion, or 80 percent) of the $64 billion the Congress appropriated to DOD for OCO in 2015, mostly for the wars in Iraq and Afghanistan.” CBO stated that “[i]n total, funding for O&M (in the base budget and for OCO) accounted for about 50 percent of DOD’s appropriations in 2015.”

CBO noted that “[f]unding for O&M in DOD’s base budget increased by about $64 billion between 2000 and 2012...[a]nd [f]rom a detailed analysis of data for those two years, CBO determined that about 60 percent of that growth could be explained by changes in three large categories—medical care for service members, military retirees, and their families; civilian compensation; and fuel:

- O&M spending for health care for military personnel and their families increased by about $15 billion (from
$16 billion to $31 billion), representing roughly 25 percent of the increase in the O&M budget.

- Spending for civilian compensation (excluding compensation for civilians who provide health care) increased by $17 billion (from $31 billion to $48 billion).
- Spending for fuel increased by $5 billion (from $3 billion to $8 billion).

CBO stated that “[b]y contrast, the causes of the remaining 40 percent (or about $25 billion) of the growth in O&M funding during the same period are not well understood.” CBO explained that “[t]o help shed some light on the reasons for growth in those less-understood categories, CBO categorized O&M data for 2000 and 2012 in several different ways to identify some of the other sources of growth in O&M funding.” CBO stated that its “analysis indicates that those other areas that experienced significant growth are not directly associated with combat forces and include administrative and infrastructure-related activities, such as the maintenance of equipment, weapon systems, and property; technical and research services; professional and other services; and purchases of equipment.” CBO stated that it “could not assess the causes of that growth in more detail because sufficient data were not available.”

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

HEALTH

Senate Introduces Budget Resolution to Repeal ACA; Debate Continues on Repeal and Replace

Key Points:

- Senate has introduced a budget resolution which would repeal the Affordable Care Act.
- Debate continues on whether the Affordable Care Act should be repealed without a replacement in place.

On January 3, Senate Budget Committee Chairman Mike Enzi (R-WY) introduced a budget resolution beginning the process to repeal the Affordable Care Act (ACA). Republicans plan to use reconciliation to repeal large portions of the law which would require only 50 votes in the Senate to pass.

The resolution calls on four congressional committee to find a way to reduce the deficit by $1 billion by 2026. It also creates a reserve to act as a legislative placeholder for a future ACA repeal bill. However, before voting on the repeal instructions, the Senate will have to hold a “vote-a-rama” where lawmakers can force a vote on any proposal and drag out passage of the resolution.

Senator Rand Paul (R-KY) has already said he will oppose the budget resolution due to the deficit increases and has also offered a substitute amendment. Paul has also met with members of the House Freedom Caucus to discuss their potential opposition. He expressed concern support for this budget could lead to greater deficit spending on a future budget. Freedom Caucus Chairman Mark Meadows (R-NC) said the group will formally meet next week to consider an official position on the budget. Conservative Senators Ted Cruz (R-TX), Mike Lee (R-UT), and Marco Rubio (R-FL) have expressed support for the resolution but not the revenue, spending, and deficit number included in it.

Meanwhile, debate continues on when a repeal of the ACA should take effect and any potential replacement for the legislation.
President Barack Obama met with Democrats on Capitol Hill while Vice President-elect Mike Pence met with Republicans to discuss the future of the law. Pence stressed the Trump Administration is determined to keep its promise to the American people will begin with “repealing and replacing the failed policy of Obamacare.”

Senate Minority Leader Chuck Schumer (D-NY) has widely criticized Republicans’ plan to repeal the law. He has emphasized Democrats are “united in [their] opposition to these Republican attempts to make America sick again.” Thirteen Senate Democrats have sent a letter to Senate Republican leadership urging them to work to fix rather than repeal the ACA.

Republicans have still not determined how they will repeal and replace the law including how long to delay the date the repeal will take effect. Conservative health care analysts have said a repeal and delay approach could carry too much unnecessary risk and disrupt the insurance market. Senators Paul, Tom Cotton (R-AR), and Bob Corker (R-TN) have also cautioned against moving forward without a replacement plan in place.

Upcoming Hearings and Events

January 9

**ACA:** The National Press Club holds a Newsmaker Luncheon address by HHS Secretary Sylvia Mathews Burwell on the consequences of potential Affordable Care Act repeal.

**Medicare:** The National Academy of Sciences will hold the embargoed release, beginning at 12 p.m., of a new report on “Accounting for Social Risk Factors in Medicare Payment.”

January 12

**Physician-Assisted Suicide:** The Office of Representative Brad Wenstrup, R-Ohio, will host a briefing on “Physician Assisted Suicide: Dangers for U.S. Health Care.”

January 12-13

**Medicare:** The Medicare Payment Advisory Commission (MedPAC) will hold a public meeting to discuss Medicare issues and policy questions and to develop and approve reports and recommendations to the Congress.

January 13

**Health Policy:** The American Enterprise Institute for Public Policy Research (AEI), the Pacific Business Group on Health, and the Center for Health Policy at Brookings hold a discussion on “Fixing Health Care: Practical Lessons from Business Leaders.”

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

TRANSPORTATION AND INFRASTRUCTURE

Chao Nomination Hearing Announced

**Key Points:**
- Secretary of Transportation nominee will receive confirmation hearing next week.

This week, Senate Commerce, Science, and Transportation Committee Chairman John Thune (R-SD) announced that the Committee will hold a nomination hearing for Secretary of Transportation-designate Elaine Chao on January 11. In advance of the hearing, the
Committee released Chao’s nomination questionnaire. Additionally, Senate Democrats may have signaled that they may not choose to delay or try to block her nomination. Committee member Senator Richard Blumenthal (D-CT) remarked that Chao is “one of the more qualified and more likely to be confirmed” Trump Administration nominees.

Infrastructure Plan Possibly Delayed Until Spring; Senate Democrats Insist On Federal Funding

Key Points:
- Republicans suggest any infrastructure package could be put together later in the year
- The Speaker pushes back against Senate Minority Leader’s insistence on direct spending as part of package

This week, Republicans and Democrats continued to position themselves on President-elect Donald Trump’s proposal for an infrastructure package of up to $1 trillion.

Speaker of the House Paul Ryan (R-WI) suggested that any infrastructure package would be put together and considered in the spring. He said “[t]hose are the kind of innovative reforms we’re going to be working on between now and our spring budget, which is where we believe we will be able to address the infrastructure issue.” He added that “I do believe we have a problem with infrastructure and that needs to be addressed…but to suggest that the size of a spending package in Washington will determine how much growth we get in the economy, I just reject the whole premise of that question.” Ryan stated that any infrastructure package would be “focused on leveraging private-sector dollars” and reducing regulations for approval and delivery of projects.

House Transportation and Infrastructure Committee Chairman Bill Shuster (R-PA) echoed Ryan in terms of timing by saying this week that “[w]e’re going to start to work on it, but first of all, you’ve got to figure out the pay-fors, which will come, I believe, in the first 100 days.” He added that “[t]hen in the next second 100 days is when we’ll put together a big infrastructure package.”

In a speech on the Senate floor, Senate Minority Leader Chuck Schumer (D-NY) expressed his opposition to any infrastructure package financed through tax credits. He said that “[t]he President-elect said a great many things about rebuilding our infrastructure…[a]nd Democrats welcome that discussion….but how is he going to do it?” Schumer said that “[a] program of tax credits isn’t going to get the job done, no matter how large.” He added that “[w]e need significant, direct spending…[b]ut [h]ow does the President-elect plan to get that done?” Considering that up to eight Democratic votes could be needed for an infrastructure plan to overcome a filibuster, Schumer’s opposition could help ensure that any package that can pass the Senate will not consist entirely of tax credits.

Senate Full Committees Set

Key Points:
- New Chair and Ranking Member take over Senate EPW Committee

This week, Senate Republicans announced their committee assignments, and because Senate Democrats did so last month, full committees are set except if Senator Jeff Sessions (R-AL) is confirmed as Attorney General.
In the 115th Congress, the Senate Commerce, Science, and Transportation Committee will have the following new Members:

- Jim Inhofe (R-OK)
- Mike Lee (R-UT)
- Shelley Moore Capito (R-WV)
- Cory Gardner (R-CO)
- Todd Young (R-IN)
- Tammy Baldwin (D-WI)
- Tammy Duckworth (D-IL)
- Maggie Hassan (D-NH)
- Catherine Cortez Masto (D-NV)

The Senate Environment and Public Works Committee will have the following new Members:

- Jerry Moran (R-KS)
- Joni Ernst (R-IA)
- Kamala Harris (D-CA)
- Tammy Duckworth (D-IL)

Moreover, the Senate Environment and Public Works Committee will have a new Chairman and Ranking Member. Senator John Barrasso (R-WY) will be replacing term-limited Chairman Jim Inhofe, and Senator Tom Carper (D-DE) will replace retired Senator Barbara Boxer (D-CA).

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

TECHNOLOGY

Obama Administration Sanctions Russia For Election Hacking

Key Points:

- An EO on “malicious cyber activities” is expanded to include Russian activities in 2016 and sanctions are imposed on Russia

Late last week, the Obama Administration instituted a number of actions in response to the hacking that the Intelligence Community agencies claim Russia engaged in with respect to the 2016 election. Notably, the Obama Administration amended the April 2015 Executive Order 13694 "Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities" to bring within the scope of activities that may be sanctioned interfering with or undermining elections. In addition to the new Executive Order titled “Taking Additional Steps to Address the National Emergency with Respect to Significant Malicious Cyber-Enabled Activities”, the Administration released an Annex naming Russian individuals and entities to be sanctioned.

In a statement, President Barack Obama explained “I have ordered a number of actions in response to the Russian government’s aggressive harassment of U.S. officials and cyber operations aimed at the U.S. election. “

He stated that “[t]hese actions follow repeated private and public warnings that we have issued to the Russian government, and are a necessary and appropriate response to efforts to harm U.S. interests in violation of established international norms of behavior.”

The Obama Administration used the new authority granted by the new EO that expand the power available to a President to impose sanctions on foreign entities and foreign individuals for “malicious cyber-enabled activities” to punish Russian intelligence agencies, associated entities, and four Russian citizens. The new EO expands the types of “malicious cyber-enabled activities” that may be subject to sanctions to include those “that are reasonably likely to result in, or have materially contributed to, a significant threat to
the national security, foreign policy, or economic health or financial stability of the United States and that have the purpose or effect of...tampering with, altering, or causing a misappropriation of information with the purpose or effect of interfering with or undermining election processes or institutions.”

The Administration took a number of related actions, including:

- **The Department of the Treasury** imposed sanctions on two [additional] Russian individuals for engaging in malicious cyber-enabled activities pursuant to E.O. 13694...Evgeniy Mikhailovich Bogachev and Aleksey Alekseyevich Belan are being designated for their activities related to the significant misappropriation of funds or economic resources, trade secrets, personal identifiers, or financial information for private financial gain” according to a press release;

- the issuance of a “Joint Analysis Report (JAR) which “provid[es] details of the tools and infrastructure used by Russian intelligence services to compromise and exploit networks and infrastructure associated with the recent U.S. election, as well as a range of U.S. government, political and private sector entities” by the Department of Homeland Security (DHS) and Federal Bureau of Investigations, according to a statement released by DHS and the Director of National Intelligence; and

- the expulsion of 35 Russian diplomatic and consular personnel and closure of two Russian facilities in the U.S. allegedly used for intelligence purposes by the Department of State according to its press release.

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

This Week in Congress was written by Laura Simmons.