



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Betsy Shotwell

**SUBJECT:** SEE BELOW

**DATE:** September 12, 2017

Approved

*D. DSYL*

Date

*9/14/17*

## INFORMATION

**SUBJECT: SQUIRE PATTON BOGGS' ANALYSIS OF FEDERAL LEGISLATIVE AND REGULATORY ACTION RELEVANT TO GENERAL LOCAL GOVERNMENT INTERESTS**

The City's Federal lobbyist firm of Squire Patton Boggs, LLP (SPB) provided the attached comprehensive analysis of actions on notable federal legislation and regulatory issues from April 2017 through the memorandum's publication date of August 30. Detailed updates were previously provided by the firm, including an analysis of the President's first 100 days in office, and included with the City Manager's Office's Informational Memorandum issued on April 26, 2017.

Congress returned from its August recess on September 5 facing an end-of-September fiscal cliff, with federal funding and the debt ceiling both expiring at the end of the month. The threat of a government shutdown and default were further complicated by the costly impacts of Hurricanes Harvey and Irma.

Squire Patton Boggs provided the following update on September 8:

Following a surprise agreement between President Trump and Democratic leaders, Congress approved a comprehensive package providing a \$15.25 billion down payment for hurricane recovery, and a three-month extension of the federal budget, the nation's borrowing authority, and the flood insurance program. The House also debated over 200 amendments to its second FY 2018 spending bill and, save for an early weekend adjournment due to the impending hurricane, may have completed that as well. The Senate Appropriations Committee also approved two additional FY 2018 appropriations bills.

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Continuing Resolution (CR)/Debt Ceiling/Disaster/Flood Insurance

Congress was facing an end-of-September fiscal cliff, with federal funding and the debt ceiling both expiring at the end of the month.

On Wednesday, the House passed a \$7.85 billion disaster recovery bill (the *READ Act* (H.R. 601)), providing emergency funds to the Federal Emergency Management Administration (FEMA) and the Small Business Administration (SBA) for hurricane recovery efforts. Following the President's agreement with Senate Minority Leader Charles Schumer (D-NY) and House Minority Leader Nancy Pelosi (D-CA), the final bill included:

- A three-month Continuing Resolution, preventing a government shutdown by maintaining federal funding at FY 2018 levels through December 8;
- An extension of the nation's borrowing authority (debt ceiling), also through December 8;
- A three-month extension of the Flood Insurance Program, which was also set to expire on September 30; and
- In addition to the \$7.85 billion for FEMA and SBA, the Senate included \$7.4 billion for the Department of Housing's Community Development Block Grant program; thereby bringing the total of disaster relief funding to \$15.25 billion.

While the House vote on the stand-alone disaster package was 419-3, the House vote on the final package was 316-90, reflecting Republican displeasure with the CR and debt ceiling agreement. The Senate approved the package by a vote of 80-17, also with only Republican dissent. The President signed the measure on Friday afternoon.

FY 2018 Appropriations

The House made significant progress last week on a package of its remaining eight FY 2018 spending bills (H.R. 3354). Over 900 amendments were introduced and the Rules Committee determined nearly 450 were in order. Through both en bloc and individual votes, the House made its way through approximately half of the amendments, leaving 200 left for consideration this week.

Of note, adopted amendments approved thus far include:

- Increased funding for FEMA Pre-Disaster Mitigation (\$7 million), SAFER (\$20 million), and UASI (\$5 million) programs.
- Prevention of funds from being distributed to "sanctuary cities" (this was adopted as part of the Transportation-Housing bill, but is written to apply to the entire Act).
- Removal of the long-standing exemption from rescission for Surface Transportation Block Grant Program (STBGP) suballocated dollars that would have the effect of encouraging states to more heavily cut local obligation authority – including STBGP, CMAQ, TA, and PL – to pay for an \$800 million rescission in the bill.

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The House will resume amendment votes when it returns from the weekend and is expected to vote on the full package this week.

In the Senate, appropriators approved their seventh and eighth FY 2018 spending bills – Labor, HHS, and Education (LHHS) and State-Foreign Operations (SFOPS). SPB will provide additional details, but for the most part, appropriators continue to ignore the President’s requests for program reductions/eliminations. For example, a Democratic amendment to the SFOPS bill adding \$10 million for a U.N. climate panel was approved by the committee.

The House-approved minibuses (H.R. 3354 and the July-passed H.R. 3219) won’t be taken up by the Senate (and they exceed the Budget Control Act spending caps by \$72 billion) and it is unclear when/if the Senate will bring any of its bills to the floor; however, each chamber’s efforts will be used as starting points for negotiations on a final FY 2018 spending package.

For reference, an updated programmatic funding chart will be circulated by SPB on completion of the House minibus bill.

#### FY 2018 Budget Resolution

Also since the publication of SPB’s quarterly report, the parliamentarian ruled that the FY 2017 budget resolution, which included reconciliation instructions for healthcare reform, will expire on September 30 (which gives the Senate only eight legislative days to pass a healthcare reform package; we’re hearing that a new Senate bill could be released this week). As such, the House and Senate Budget Committees will renew their focus on FY 2018 budget resolutions which will include reconciliation instructions for tax reform. Senate Budget Committee Chairman Michael Enzi (R-WY) still intends to mark up the Senate resolution before the end of the month and House Budget Committee Chairwoman Diane Black (R-TN) hopes to bring the House resolution to the floor the week of September 25.

#### Deferred Action for Childhood Arrivals (DACA)

Added to the above issues at hand, Attorney General Jeff Sessions officially announced on Tuesday, September 5, that the Trump Administration will rescind the Deferred Action for Childhood Arrivals (DACA) program. DACA was implemented under the Obama Administration in 2012 and provides protected legal status to roughly 800,000 undocumented immigrants who arrived in the United States as children.

The Department of Homeland Security (DHS) has delayed the implementation of the DACA rescission until March 5, 2018, to provide Congress the opportunity to pass DACA-related legislation. The Administration’s decision was made following threats from several states, led by the Attorney General of Texas, to file litigation challenging the legality of the DACA program. In announcing the rescission, DHS argues that the DACA program is unlawful and could not be adequately defended in court. Following this announcement, State Attorney General Xavier

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Becerra announced that California would sue the federal government to overturn the President's order.

Squire Patton Boggs' attached report includes SPB's analysis of the Budget and FY 2017 Appropriations, the firm has also included updates on the status of major policy issues including: immigration, homeland security, public safety, health care, taxation, transportation, energy and environment, water, housing and community development, workforce and job training, telecommunications, cybersecurity, and trade.

This analysis will assist the City as we carry forward San Jose's 2017 Federal Legislative Priorities and continue to develop strategies to work effectively with the Administration and the 115<sup>th</sup> Congress and build relationships with stakeholders at the local, regional, state and national level.

Squire Patton Boggs will continue to update the City Council as priority issues of interest to the City are deliberated in Washington, D.C.

/s/

BETSY SHOTWELL

Director, Intergovernmental Relations

For more information, please contact Betsy Shotwell, Director of Intergovernmental Relations at (408)535-8270.

Attachment:

Squire Patton Boggs Analysis of Federal Legislative and Regulatory Action Relevant to General Local Government Interests

## Memorandum

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**From:** Squire Patton Boggs LLP  
**Date:** August 30, 2017  
**Subject:** Federal Legislative and Regulatory Action Relevant to General Local Government Interests

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This memorandum provides a comprehensive update for local governments and their partners highlighting actions on notable federal legislation and regulatory issues since April 2017. It is important to note that the memorandum provides only a high-level perspective on events, as detailed updates were provided as events unfolded in Congress and the administration.

Congress returns on September 5 with only 12 legislative days to address a host of complex issues as it tries to avert a government shutdown and a default on the national debt, while also dealing with end-of-month deadlines on programs such as children's health insurance, the reauthorization of the Federal Aviation Administration, and flood insurance. All this comes after a contentious internecine battle in the Republican Party in July, which resulted in the dramatic failure of its attempt to repeal and replace the Affordable Care Act. While Congress was in recess over August, President Trump continued to criticize Senate Majority Leader Mitch McConnell's (R-KY) leadership, which has contributed to an uneasy relationship between the White House and some Congressional Republicans.

Most notably, the September 30 deadline to fund the federal government or face a shutdown, which President Trump is threatening if Congress does not fund his border wall, is the most pressing congressional concern. Democrats are unanimous in their opposition to the proposed wall, and many Republicans are as well. Tied into this deadline is the need to raise the debt ceiling by September 29 to allow the federal government to pay for past spending and prevent a default on the national debt. Republicans are also divided on this issue, although both Senate Majority Leader McConnell and House Speaker Paul Ryan (R-WI) have said that there will be no delay in raising the debt ceiling. An already complicated scenario for resolving the FY 2018 appropriations process and the debt ceiling is now further muddled by the need to take up a bill for Hurricane Harvey aid.

Divisions among Republicans also provided challenges to the reauthorization of the National Flood Insurance Program even prior to the arrival of Hurricane Harvey. There will likely be a short-term extension of current law while the various issues are sorted out. The Federal Aviation Administration (FAA) also needs to be reauthorized by the end of the month, but Republicans are at odds over the plan to create a nonprofit, non-governmental air traffic corporation. In 2016, the House passed an FAA

reauthorization that included the plan, while the Senate bill did not. Controversy over the proposal stymied passage of the bill last year (Democrats are also largely opposed to the proposed changes to the air traffic control system) and the committees have introduced similar legislation this year. Another program that will expire on September 30 is the Children’s Health Insurance Program (CHIP), which covers nine million low- and middle-income children. States are likely to have enough funding to keep their programs going until December 2017, but unless the program is reauthorized, states will start to run out of funding by early December. There is speculation that the CHIP reauthorization might also provide a vehicle for further attempts at health care legislation.

On top of this, the fall will see a strong push by the Republican leadership in both chambers, along with the White House, to tackle some kind of tax reform or tax cut package. The “Big Six” (which includes Treasury Secretary Steve Mnuchin, National Economic Council Chairman Gary Cohn, Senate Majority Leader McConnell, Senate Finance Committee Chairman Orrin Hatch, House Speaker Ryan and House Ways and Means Chairman Kevin Brady) have been negotiating tax reform for months and issued a preliminary set of principles to guide the tax-writing committees in both chambers. At risk for local governments in this process are the tax-exempt status of municipal bonds and State and Local tax deductibility, among other issues.

Finally, it is anticipated that, in the coming months, the President’s long awaited proposed legislation for an infrastructure package will be released. Because of all the aforementioned priorities lined up for this fall, it is unclear when Congress and the administration will turn their attention to infrastructure.

**ISSUE AREA REVIEW AND FORECASTS**

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## **PRESIDENTIAL EXECUTIVE ORDERS**

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Since our last update in April 2017, President Trump has signed 19 executive orders:

- Promoting Agriculture and Rural Prosperity in America;
- Reviewing Designations Under the Antiquities Act;
- Enforcing Statutory Prohibitions on Federal Control of Education;
- Improving Accountability and Whistleblower Protection at the Department of Veterans Affairs;
- Implementing an America – First Offshore Energy Strategy;
- Establishing the Office of Trade and Manufacturing Policy;
- Addressing Trade Agreement Violations and Abuses;
- Establishing the American Technology Council;
- Promoting Free Speech and Religious Liberty;
- Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure;
- Establishing a Presidential Advisory Commission on Election Integrity;
- Expanding Apprenticeships in America;
- Amending Executive Order 13597;
- Reviving the National Space Council;
- Allowing Additional time for Recognizing Positive Actions by the Government of Sudan and Amending Executive Order 13761;
- Establishing a Presidential Advisory Council on Infrastructure;
- Assessing and Strengthening the Manufacturing and Defense Industrial Base and Supply Chain Resiliency of the United States;
- Establishing Discipline and Accountability in the Environmental Review Process for Infrastructure; and
- Imposing Sanctions with Respect to the Situation in Venezuela.

## **BUDGET/APPROPRIATIONS**

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### **FY 2017 OMNIBUS**

Despite congressional rejection of the proposed program eliminations and \$18 billion in non-defense spending reductions the President submitted in his FY 2017 budget supplemental, he signed the FY 2017 omnibus spending bill ([P.L. 115-31](#)) on May 5 after strong bipartisan votes in the House and Senate. The \$1.07 trillion package adhered to the discretionary budget caps established in the 2015 bipartisan budget agreement, and included an additional \$15 billion in defense spending, which is half of what the President requested. The bill also provided an additional \$1.5 billion in border security funding directed to technology and repair of existing infrastructure, but not for construction of a wall along the U.S.-Mexico border. The bill did not eliminate funding for Planned Parenthood or Obamacare, and provided increases for the National Institutes of Health, disaster recovery, health benefits for retired coal miners, and funding to address the opioid epidemic. The bill also restored year-round Pell Grants.

44 Offices in 21 Countries

Squire Patton Boggs (US) LLP is part of the international legal practice Squire Patton Boggs, which operates worldwide through a number of separate legal entities.

Please visit [squirepattonboggs.com](http://squirepattonboggs.com) for more information.

The omnibus wrapped up the FY 2017 appropriations process, funding the remaining 11 of 12 spending bills (the Military Construction-Veterans Affairs bill was the vehicle for the *Continuing Resolution* ([P.L. 114-223](#)) approved in September 2016).

#### **PRESIDENT TRUMP’S FY 2018 BUDGET REQUEST**

On May 23, President Trump submitted his \$4.09 trillion FY 2018 budget request to Congress. His plan, *A New Foundation for American Greatness*, proposes to reduce federal spending by \$3.6 trillion over 10 years, \$1.7 trillion of which would come from cuts to entitlement programs for the poor, such as: Medicaid (\$839 billion); the Supplemental Nutrition Assistance Program (SNAP) (\$193 billion); Temporary Assistance to Needy Families (\$21 billion); the Earned Income Tax Credit and the Child Tax Credit (\$40 billion by reducing eligibility); and the Children’s Health Insurance Program (CHIP) (20 percent). The President also requests \$1.6 billion for a southern border wall.

Like his “Skinny Budget” preview, the President’s full FY 2018 budget request proposes to eliminate a number of key programs and agencies, including:

- Community Development Block Grant
- HOME Investment Partnerships Program
- HUD Veteran Affairs Supportive Housing (VASH)
- Choice Neighborhoods
- Community Services Block Grant
- Low Income Home Energy Assistance Program (LIHEAP)
- Advanced Research Projects Agency-Energy (ARPA-E)
- Advanced Technology Vehicle Manufacturing Program
- Transportation Security Administration (TSA) Law Enforcement Grants
- Manufacturing Extension Partnership program
- 21<sup>st</sup> Century Community Learning Centers
- State Criminal Alien Assistance Program
- TIGER Grants
- Economic Development Administration
- Appalachian Regional Commission
- Corporation for National and Community Service
- Corporation for Public Broadcasting
- Institute of Museum and Library Services
- National Endowment for the Arts
- National Endowment for the Humanities
- United States Interagency Council on Homelessness

#### **FY 2018 APPROPRIATIONS**

Despite a late start and no budget resolution to guide their efforts, appropriators made significant progress over the summer on FY 2018 spending bills. Before adjourning for the August recess, the House Appropriations Committee completed all 12 of its spending bills and the Senate Appropriations Committee approved six (Agriculture, Commerce-Justice-Science (CJS), Energy & Water, Legislative Branch, Military Construction-Veteran Affairs (MilCon-VA), and Transportation-Housing (THUD)). For the most part, appropriators continued to reject the significant cuts and program eliminations proposed by President Trump. *See the attached programmatic funding chart for details.*



On July 27, the House passed a \$790 million “minibus” spending package ([H.R. 3219](#)), including the Defense, Energy & Water, Legislative Branch, and the Military Construction-Veterans Affairs bills. Of note, House leaders included \$1.6 billion in the Defense bill for border wall construction in the Rio Grande Valley and the San Diego region.

Upon their return next week, House leaders are expected to bring the remaining eight FY 2018 spending bills - Agriculture, CJS, Financial Services, Homeland Security, Interior-Environment, Labor-Health and Human Services-Education (LHHS), State-Foreign Operations, and THUD - to the floor in an omnibus package. Amendments to the bill were due to the Rules Committee on August 25 (according to the committee, they received over 900 amendments for consideration).

Neither the minibus nor the anticipated omnibus is expected to receive 60 votes in the Senate. The topline spending level of \$1.13 trillion in the House bills, including a \$72 billion increase in Defense spending, exceeds the \$1.065 trillion cap established in the *Budget Control Act of 2011* (BCA/[P.L. 112-25](#)). The BCA caps FY 2018 defense spending at \$549 billion and non-defense spending at \$515.7 billion. As mandated by the BCA, any deviation from those sequestration-level caps must be achieved through a bipartisan agreement, and Democrats will fight for domestic spending increases equivalent to defense increases. Congress reached such agreements in 2013 and 2015, but in a significantly different political environment.

Therefore, as has become the normal course, a Continuing Resolution (CR) will be necessary to prevent a government shutdown on October 1. The CR may also address initial emergency funding for Hurricane Harvey recovery. While FEMA has sufficient funds to handle immediate needs, additional funding will be needed in the short-term. As noted above, President Trump has threatened to veto any FY 2018 spending bill that does not provide funding for the border wall, including the CR. However, congressional leaders, and even the leadership of the Freedom Caucus, support a CR without border wall funding. While not confirmed by the White House, congressional leaders are hopeful the President will support an initial short-term CR without wall funding. However, the shutdown threat could get stronger if Congress produces another CR or final FY 2018 package without border wall funding.

### **FY 2018 BUDGET RESOLUTION**

Also expected on the House floor in September is the chamber’s FY 2018 budget resolution ([H.Con.Res. 71](#)). In addition to setting budget parameters, the resolution can include procedural directives, known as reconciliation instructions, that enable certain budgetary measures to pass the Senate with a majority vote instead of the typical 60 votes required to advance legislation. The FY 2018 budget resolution is expected to include reconciliation instructions to move tax reform.

The Senate Budget Committee has yet to release its FY 2018 budget resolution; Chairman Michael Enzi (R-WY) said he intends to hold a markup in September.

Before an FY 2018 budget resolution can be approved, however, the parliamentarian must first decide whether the FY 2017 budget resolution expires at the end of the fiscal year (September 30) or upon approval of the FY 2018 budget resolution. This decision is critical if Republicans want to take another try at repealing and/or replacing the Affordable Care Act (Obamacare).

## DEBT LIMIT

Lending to another “fiscal cliff” scenario, Treasury Secretary Steven Mnuchin says the nation’s borrowing authority (debt ceiling) must be raised before the end of September (the debt limit expired on March 15, but the Treasury Department has been able to use “extraordinary measures” to extend that deadline). However, Republicans differ on whether to do a “clean” increase or to require equivalent spending reductions, as they did during the Obama Administration. Secretary Mnuchin is requesting a clean debt ceiling increase, which is supported by the White House, while the House Freedom Caucus is pushing for cuts to mandatory spending to offset the increase, which will likely fail the 60-vote Senate threshold. As such, Republicans leaders are said to prefer a clean increase, which will require Democratic support to pass the House. A combination debt ceiling/FY 2018 Continuing Resolution is a possibility for end-of-September action.

## IMMIGRATION/HOMELAND SECURITY/SANCTUARY CITIES/PUBLIC SAFETY

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### BORDER WALL/IMMIGRATION

The President’s FY 2018 budget request proposed a \$2.9 billion funding increase for U.S. Customs and Border Protection (CPB), which includes \$1.6 billion for 32 miles of new border wall construction. It also requests a \$1.1 billion spending increase for U.S. Immigration and Customs Enforcement (ICE) and \$79 million for 75 new immigration judges, 40 Deputy U.S. Marshals, 12 attorneys focused on securing land along the U.S. southern border, and 15 attorneys for civil litigation assistance. As noted above, the recently-passed House FY 2018 “minibus” appropriations bill included \$1.6 billion in the Defense spending bill for the border wall, but inclusion of border wall funding in any FY 2018 appropriations bill will be met with strong Democratic opposition.

In Congress, Senator John Cornyn (R-TX) and House Homeland Security Committee Chairman Mike McCaul (R-TX) have introduced separate border security bills, respectively: *Building America’s Trust Act* ([S. 1757](#)) and *Border Security for America Act of 2017* ([H.R. 3548](#)).

The *Building America’s Trust Act* ([S. 1757](#)) would authorize approximately \$15 billion over four years for a long-term border security and interior enforcement strategy. Alongside authorizing and requiring the deployment of a wall system, fencing, levees, technology, and other physical barriers along the southern border, the bill would:

- Increase the number of Border Patrol agents, ICE officers, immigration judges, and federal prosecutors;
- Authorize partnerships between the Department of Homeland Security (DHS) and state and local law enforcement to help identify and remove criminal illegal immigrants;
- Impose tough penalties on federal funds for jurisdictions who fail to comply with federal immigration enforcement request; and
- End “catch and release” of criminal illegal immigrants and repeat immigration violators by giving DHS additional tools to investigate, apprehend, and swiftly remove criminals from the United States.

Chairman McCaul’s *Border Security for America Act* ([H.R. 3548](#)), which was last referred to the House Transportation and Infrastructure Subcommittee on Water Resources and Environment on July 31, would:

- Provide \$10 billion for the deployment and/or construction of a border wall, fencing, technology, air assets, and other barriers;
- Allocate \$5 billion to improve, modernize, and enhance ports of entry;
- Add 5,000 Border Patrol Agents and 5,000 CBP Officers;
- Identify visa overstays through full deployment of the Biometric Entry-Exit System at all air, land, and sea ports of entry; and
- Double the Operation Stonegarden grant program at \$110 million for state and local law enforcement to aggressively fight drug trafficking, smuggling, and other crimes on the southern border.

On June 16, then-DHS Secretary John Kelly issued an internal memo rescinding the Deferred Action for Parents of Americans (DAPA) Program, claiming there is no “credible path forward to litigate the currently enjoined policy.” Notably, the memo did not rescind the Deferred Action for Childhood Arrivals (DACA) Program and specifically notes that the memo would not impact the DACA Program, an initiative providing protected status to undocumented immigrants who entered the U.S. as children.

However, recent reports have suggested that President Trump is considering rescinding that Obama-era policy. In June, 10 Republican state attorneys general urged the Trump administration to rescind the DACA program by September 5, and cautioned they would file a legal challenge to the program in a Texas federal court if it is not terminated.

On August 2, President Trump announced his support for legislation introduced by Senators Tom Cotton (R-AK) and David Perdue (R-GA) to overhaul to the nation’s immigration system. The *Reforming American Immigration for a Strong Economy Act* (RAISE Act/[S. 354](#)) is designed to establish a skills-based immigration points system, focus family-sponsored immigration on spouses and minor children, eliminate the Diversity Visa Program, and set a limit on the number of refugees admitted annually to the United States. Specifically, the bill would:

- Establish a system to more favorably consider green card applicants based on factors including English language proficiency, education, and employment skills;
- Employ family-based visa preferences to focus the provision of green cards on the children and siblings of U.S. citizens and legal permanent residents rather than on extended family;
- Eliminate the visa diversity lottery, which provides 50,000 green cards annually to individuals from countries with low U.S. immigration rates;
- Cap refugee admissions at 50,000 per year, a provision also included in the President’s executive order titled “Protecting The Nation From Foreign Terrorist Entry Into The United States”; and
- Reduce legal immigration to 539,958 individuals annually over a 10-year period, a 50 percent reduction from the 1.05 million legal immigrants admitted to the U.S. in 2016.

The RAISE Act is unlikely to pass the Senate as two Republican Senators – Lindsey Graham (R-SC) and John McCain (R-AZ) – have publically expressed opposition to the bill.

## **SANCTUARY CITIES**

The President’s FY 2018 budget request for DHS proposed significant changes to 8 U.S.C. 1373 (Sec. 1373), which restricts state and local jurisdictions from implementing policies that prohibit the sharing of an individual’s citizenship status or immigration information with the federal government. Noncompliance

with Section 1373 has been referenced by Attorney General Jeff Sessions as the threshold for a jurisdiction's designation as a "sanctuary city."

The President's proposal would amend current law to apply Sec. 1373 to the Department of Homeland Security (DHS) in its entirety, as opposed to the Immigration and Naturalization Service (INS) under current law. The budget request would make the following changes to Sec. 1373:

- Expand the scope of information covered under the statute to include the sharing of an individual's removability, scheduled release date and time, home address, or contact information;
- Require jurisdictions to detain undocumented immigrants for 48 hours or provide adequate notice of the release of an individual at the request of DHS; and
- Condition Department of Justice (DOJ) and DHS grants on compliance with Sec. 1373.

On April 21, DOJ sent letters to nine jurisdictions requiring them to demonstrate compliance with Sec. 1373 in order to receive federal funding under certain grant programs. The letters cite requirements included in FY 2016 Edward Byrne Memorial Justice Assistance Grant Program (Byrne JAG) applications that made awards conditional on Sec. 1373 compliance. Jurisdictions were informed that they must submit documentation and legal opinions verifying Sec. 1373 compliance by June 30, 2017.

On May 22, Attorney General Jeff Sessions released a memorandum clarifying that the sanctuary city provisions in President Trump's executive order (EO) titled "Enhancing Public Safety in the Interior of the United States" will apply only to DHS and DOJ grants.

Additionally, on July 25, Attorney General Jeff Sessions announced new requirements for recipients of FY 2017 Byrne JAG funding. According to DOJ, the new requirements are designed to "increase information sharing between federal, state, and local law enforcement." To receive FY 2017 Byrne JAG funding, applicants are now required to:

- Certify compliance with Sec. 1373;
- Permit DHS personnel to access any detention facility to meet with an undocumented immigrant and make inquiry into that individual's removability; and
- Provide at least 48-hour advance notice to DHS regarding the scheduled release date and time of an undocumented immigrant in a jurisdiction's custody when requested by DHS.

On June 29, the House passed two sanctuary-related legislative measures: the *No Sanctuary for Criminals Act* ([H.R. 3003](#)) and *Kate's Law* ([H.R. 3004](#)) by votes of 228-195 and 257-167, respectively. The *No Sanctuary for Criminals Act* is designed to significantly expand the scope of Sec. 1373 by restricting state and local jurisdictions from implementing policies that prohibit the sharing of an individual's citizenship status or immigration information with the federal government. The legislation would also restrict jurisdictions considered to be non-compliant with Sec. 1373 from receiving federal funding under certain grant programs, including State Criminal Alien Assistance Program (SCAAP), Community Oriented Policing Services (COPS), and Byrne JAG. The other piece of legislation, *Kate's Law*, would sharply increase mandatory minimums for undocumented immigrants who repeatedly re-enter the United States following deportation.

Similar legislation was considered by the Senate in the 114<sup>th</sup> Congress. Both bills failed to reach the 60-vote threshold required to invoke cloture. We expect H.R. 3003 and H.R. 3004 to have similar difficulty passing the Senate in the 115<sup>th</sup> Congress.

Since our last update in April, we have also seen litigation filed against the administration's sanctuary actions. Earlier this year, the City and County of San Francisco and the County of Santa Clara, California submitted separate complaints for declaratory and injunctive relief to the U.S. District Court for the Northern District of California. The lawsuits challenged the constitutionality of President Donald Trump's EO titled "Enhancing Public Safety in the Interior of the United States."

On April 25, U.S. District Judge William Orrick issued a temporary injunction in favor of Santa Clara and San Francisco. In issuing the injunction, Judge Orrick argued that under the sanctuary provisions of the EO, municipalities will experience constitutional injury caused by the EO's violation of the separation of powers doctrine and depriving jurisdictions of their Tenth and Fifth Amendment rights.

Additionally, the State of California and the City of Chicago have filed separate complaints for injunctive and declaratory relief against Attorney General Jeff Sessions. The lawsuits were launched to challenge DOJ's announcement that FY 2017 Byrne JAG applicants must certify compliance with new federal immigration enforcement requirements. In its complaint, the City of Chicago contends that the new requirements are unauthorized and unconstitutional. The City argues that the new requirements are contrary to Chicago's long-standing policies that promote cooperation between local law enforcement and immigrant communities, ensure access to essential city services for all residents, and make city residents safer.

On August 16, Attorney General Sessions and Thomas Homan, Acting Director of Immigration and Customs Enforcement (ICE), delivered remarks on sanctuary policies at a press conference in Miami, Florida. The Attorney General suggested that sanctuary jurisdictions "tie the hands" of local law enforcement officials, and discounted claims from city leaders that such policies help reduce crimes by encouraging illegal immigrants to approach law enforcement, noting that no evidence exists to support such assertions. He applauded certain local governments for their willingness to comply with federal immigration detainer requests, while harshly condemning other municipalities by name.

## **PUBLIC SAFETY**

On April 27, House Homeland Security Committee Chairman Mike McCaul (R-TX) introduced the *Community Counterterrorism Preparedness Act* ([H.R. 2188](#)). The legislation is designed to provide direct federal assistance to increase local jurisdictions' preparedness relating to acts of terror.

The *Community Counterterrorism Preparedness Act* would authorize \$39 million in federal grant funding for first responder training and attack preparedness in large metropolitan areas. Federal funds would be made available for all emergency response providers across all jurisdictions that are currently or have previously received Urban Area Security Initiative (UASI) funding. The legislation was approved by the House Homeland Security Committee on July 15, but has not yet been brought up for a vote on the House floor.

On July 20, the House passed the *Department of Homeland Security Authorization Act of 2017* ([H.R. 2825](#)), which would reauthorize DHS, by a vote of 368-41, with nine Republicans and 32 Democrats voting in opposition. If passed by the Senate, it will be the first DHS reauthorization agreed to by Congress since the agency was established following the 9/11 terrorist attacks. Most notably, the bill would make a variety of updates to counterterrorism, emergency preparedness, and maritime security programs within DHS, as well as to the Transportation Security Administration (TSA), Federal Emergency Management

Agency (FEMA), Coast Guard, Secret Service, U.S. Citizenship and Immigration Services, and ICE. The legislation further authorizes \$800 million each year through 2022 for UASI.

#### **REPEAL OF BAN ON PROHIBITED AND CONTROLLED MILITARY EQUIPMENT TRANSFERS**

On Monday, August 28, President Trump signed an EO titled “Restoring State, Tribal, and Local Law Enforcement’s Access to Life-Saving Equipment and Resources.” The EO revokes Executive Order 13688, titled “Federal Support for Law Enforcement Equipment Acquisition,” which was signed by President Barack Obama on January 16, 2015.

EO 13688, which was signed in the wake of riots in Ferguson, MO, established an interagency Law Enforcement Equipment Working Group co-chaired by the Secretary of Defense, Attorney General, and Secretary of Homeland Security. The Working Group was charged with the following:

- Identifying agency actions that can improve federal support for the acquisition of controlled equipment by law enforcement agencies (LEAs), including by providing LEAs with controlled equipment that is appropriate to the needs of their community;
- Ensuring that LEAs are properly trained to employ the controlled equipment they acquire; ensuring that LEAs adopt organizational and operational practices and standards that prevent the misuse or abuse of controlled equipment; and
- Ensuring LEA compliance with civil rights requirements resulting from receipt of federal financial assistance.

The Obama Administration implemented recommendations issued by the Working Group to place restrictions on state, local, and tribal law enforcement’s acquisition of certain military and military-styled equipment, firearms, and tactical vehicles provided by the federal government.

President Trump’s EO rescinds the Working Group’s recommendations, reducing federal and civilian oversight over LEA equipment transfers and enhancing access to previously prohibited and controlled equipment transfers from the federal government.

#### **MARIJUANA**

In April, following the creation of the Department of Justice’s (DOJ) Task Force on Crime Reduction and Public Safety, Governors Bill Walker (R-AK), Jay Inslee (D-WA), John Hickenlooper (D-CO), and Kate Brown (D-OR) sent a joint letter to the Trump Administration requesting it consult with them before embarking on any marijuana-related changes to regulatory and enforcement systems. Attorney General Jeff Sessions sent a July response letter to each of the four governors and noted that Congress has determined marijuana is a “dangerous drug and that the illegal distribution and sale of marijuana is a crime,” and called into question the adequacy of each states’ marijuana regulation. Further, he said DOJ would remain committed to enforcing the Controlled Substances Act to address threats to public health and safety, but he looked forward to working with the leadership from each of these states. It should be noted that DOJ’s marijuana task force recommended maintaining the Obama Administration’s currently policy on marijuana outlined by the Cole Amendment and has not pushed for a crackdown at this time.

All four governors have replied to Attorney General Sessions defending their states’ regulations and safety standards and pointed out that Attorney General Sessions cited outdated data or incomplete information in July 24 letters to each state.

Shortly before August recess, Senator Cory Booker (D-NJ) introduced a bill called the *Marijuana Justice Act* ([S. 1689](#)) that would legalize marijuana on a federal level. The bill would offer incentives to states that want to transition into making marijuana legal a local decision. States in which minorities are imprisoned at a higher level for offenses related to the drug would be penalized and lose federal money for the construction of prisons. Individuals currently serving time for violating a cannabis law would be given a new hearing, and those with convictions on record at a federal level would be able to have them expunged. The bill would establish a Community Reinvestment Fund to facilitate growth of communities most targeted by the “War on Drugs” by building libraries and supporting re-entry programs. The bill does not have a House companion and is unlikely to gain much traction during this congressional session.

The Senate Appropriations Committee marked up the Commerce-Justice-Science (CJS) funding measure in late July and approved two marijuana-related amendments. Senator Pat Leahy (D-VT) offered an amendment approved by the committee to prohibit the federal government from intervening in state operations of medical marijuana. The full amendment can be found [here](#). Additionally, Senator Jeff Merkley (D-OR) offered an amendment approved by the committee to prohibit the federal government from interfering with any activity under a state law that authorizes the use, distribution, possession, or cultivation of industrial hemp. The full amendment can be found [here](#).

## HEALTHCARE

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### AFFORDABLE CARE ACT (OBAMACARE) REPEAL AND REPLACE

On May 4, the House of Representatives narrowly approved the *American Health Care Act* (AHCA/[H.R. 1628](#)) to repeal and replace major parts of the *Affordable Care Act* (ACA/[H.R. 3590](#)).

On June 22, Senate Republicans unveiled their healthcare reform bill, the *Better Care Reconciliation Act of 2017* (BCRA/[Amendment to H.R. 1628](#)), as an amendment to the AHCA. Like its House counterpart, the Senate Republican health proposal would not offer a wholesale repeal of the ACA, but rather make substantial adjustments to the Act.

Both proposals would effectively eliminate the ACA’s individual and employer mandates, repeal large swaths of new taxes and fees, and roll back a variety of patient protections. AHCA and BCRA would also establish a fund to support states with specific efforts to improve access to health insurance and services. Additionally, both provisions would make a number of substantial changes to the Medicaid program, including limiting enrollment eligibility and amending federal matching rates. Most notably, AHCA and BCRA would convert Medicaid financing to a per capita cap model (per enrollee limits on federal payments to states) beginning in 2020, while requiring nondisabled, non-elderly, and non-pregnant adults to satisfy work requirements if enrolled in a state’s Medicaid program.

With only a slim Republican majority in the Senate, there was some uncertainty whether Republican leadership could muster the 50 votes needed to start debate on the House-passed AHCA, even with Vice President Mike Pence providing a tie-breaking vote and utilizing the budget reconciliation process to sidestep the filibuster. With several Republican senators wavering, Senator John McCain (R-AZ) returned to Washington after being diagnosed with brain cancer; in his presence, the motion to proceed on the measure passed (51-50). While Senator McCain voted for the motion, he implored leadership to “return to regular order” and not rush the reform process.

In late July, the Senate considered several other measures to repeal portions of ACA, though some of them were expected to fail.

- One vote focused on a modified version of BCRA, developed by a Senate Republican working group. It included changes championed by Senator Ted Cruz (R-TX), which would allow insurers to offer – under certain circumstances – insurance plans that do not meet ACA standards, as well as changes proposed by Senator Rob Portman (R-OH), which would provide \$100 billion to a stability fund and assist low-income individuals transitioning from Medicaid. Because the measure did not fit under reconciliation rules, it required 60 votes for passage. As expected, it failed (43-57).
- The Senate also considered a measure modeled after a bill from the 114<sup>th</sup> Congress, which was vetoed by then-President Barack Obama. The measure, known as a “straight repeal,” would have repealed some of the most well-known ACA provisions for two years, including the individual and employer mandates and various taxes, and not provided a replacement plan. As expected, this substitute amendment also failed (45-55).

The Senate proceeded to take up consideration of the *Health Care Freedom Act (HCFA/Amendment to H.R. 1628)*, also known as the “skinny repeal.” This substitute amendment, negotiated at the last minute and revealed by Majority Leader Mitch McConnell (R-KY) hours before the vote, was not considered a comprehensive policy proposal; rather, due to consistent intra-party divisions, HCFA was seen as a strategic vehicle to move the repeal debate to a conference committee, permitting negotiations with the House and additional time for Republicans to come to consensus.

On July 28, Senators John McCain (R-AZ), Lisa Murkowski (R-AK), and Susan Collins (R-ME) voted against HCFA, thus defeating the measure in a 49-51 vote. While each Senator’s reasoning for voting against HCFA varied, their three votes combined were enough to halt Senate Republican efforts.

The path forward on health reform is still unclear. The reconciliation instructions focused on health care may expire at the end of the fiscal year (see budget/appropriations section for detail), and it is widely expected that this procedural process will be utilized solely for tax reform in FY 2018. If Senate leadership were to attempt to bring up additional reforms in September, it would require another vote on a motion to proceed, and while Senator McCain is expected to return to Washington next week, his vote would remain uncertain.

The Trump Administration continues to strongly disapprove of the lack of congressional momentum. Despite repeated threats, the President made August’s federal cost-sharing reduction payments to compensate insurers for subsidizing low-income Obamacare enrollees’ copayments, coinsurance, and deductible responsibilities. Some lawmakers have advocated for legislation to make these payments permanent, as their sudden elimination would likely destabilize insurance markets.

Last week, the Senate Health, Education, Labor, and Pensions (HELP) Committee announced that it has scheduled two bipartisan healthcare hearings: one on September 6 with state insurance commissioners and another on September 7 with governors. Additionally, Senate Finance Committee Chairman Orrin Hatch (R-UT) has announced his intent to hold bipartisan healthcare hearings in September.

HELP Chairman Lamar Alexander (R-TN) and Ranking Member Patty Murray (D-WA) have committed to working on a bipartisan stabilization measure that would include funding for ACA’s cost-sharing reduction



payments and allow additional flexibility for states by loosening Section 1332 waiver requirements. Senators Bill Cassidy (R-LA), Lindsey Graham (R-SC), and Dean Heller (R-NV) are also continuing to push their own health reform proposal, which would shift federal funding and decision making to the states.

Funding for the Children's Health Insurance Program (CHIP) expires at the end of September, and some observers have suggested that the President and/or Congress may utilize children's health as a vehicle for reform.

## **OPIOID CRISIS**

Programs designed to combat the opioid crisis at the Department of Justice (DOJ) were funded at \$103 million in FY 2017, and similar funding levels have been proposed in the House (\$103 million) and Senate (\$111 million) for FY 2018. While President Trump requested only \$20 million for DOJ's opioid programs in his FY 2018 budget request, it is expected the program will continue to receive robust funding as members of Congress are actively called on by state and local leaders, health care providers, law enforcement, and addiction advocates to help address the opioid epidemic.

Similarly, proposed FY 2018 funding in the House appropriations bill for opioid-related programs at the Department of Health and Human Services (HHS), including State Targeted Response to Opioid Crisis Grants and Substance Abuse Block Grants, are protected at near FY 2017 levels despite President Trump's request to reduce spending on the programs. The Senate has not released its Labor-HHS-Education spending package, but is expected to do so when it returns from August recess.

In August, the Commission on Combating Drug Addiction and the Opioid Crisis (Commission), created by President Trump in March of this year and led by New Jersey Governor Chris Christie, released a list of recommendations to combat the national opioid crisis. The Commission's recommendations included urging President Trump to declare the crisis a federal state of emergency.

On August 10, President Trump and Health and Human Services Secretary Tom Price announced that the administration would implement the Commission's recommendation and declare a federal state of emergency. The administration has not yet issued a formal emergency declaration under either the Stafford Act or Public Health Service Act, and has not offered specifics regarding what additional resources might be made available by the emergency declaration.

## **ZIKA**

Following a public health crisis in 2016, Congress included emergency spending for a Zika outbreak to address diagnostics, surveillance, and vaccine development. This year, the United States has only seen one case of locally transmitted Zika in Texas, while the other 199 cases have been travel related and quickly treated, according to the Centers for Disease Control and Prevention (CDC).

Anthony Fauci, director of the U.S. National Institute of Allergy and Infectious Diseases (NIAID) at the National Institutes of Health (NIH), explains that large portions of the population have likely become immune to the virus and reduced the number of people susceptible to the virus, to the point it can no longer easily move between humans and mosquitoes.

While the crisis has died down, the House Appropriations Committee has proposed funding the Public Health Preparedness and Response account at \$1.45 billion, slightly more than \$1.4 billion in FY 2017.

Further, the House included report language in the FY 2018 appropriations bill related to Zika. The House Labor-HHS-Education (LHHS) Subcommittee included language to direct CDC and other health agencies to continue studying the effects of Zika on babies born to mothers who were infected with the disease during pregnancy.

The following language was also included in the House LHHS appropriations bill:

- **“Vector-Borne Diseases.**—Vector-borne diseases, such as Lyme disease, West Nile Virus, and Zika, have high human consequences and are a growing threat to public health. The impacts of these diseases and the effectiveness of programs for surveillance, prevention, and control should be better gauged and understood. Therefore, the Committee directs CDC to include goals and performance indicators for each high-priority vector-borne disease in its annual Congressional Justification. Additionally, within 90 days of enactment, the Committee directs CDC to submit a report to the Committees on Appropriations of the House of Representatives and the Senate, that: (1) Compares funding for high priority vector-borne diseases to the burden of disease as defined by Disability Adjusted Life Years (DALYs), and (2) Includes estimates for the burden of each high-priority vector-borne disease on the U.S. economy, including direct medical costs, indirect medical costs, nonmedical costs, and productivity losses.
- **Vector Control Guidelines.**—The Committee requests that CDC maintain an online guide for use by States and local communities with a full scope of vector control options, tools, and other factors State and local jurisdictions may consider as they develop plans to carry out vector control activities to control Zika and other related 36 diseases carried by insects. The Committee encourages CDC to update the guidelines annually.
- **Zika.**—The Committee continues to support CDC’s preparedness and response efforts to control outbreaks of Zika virus infection. The Committee strongly encourages CDC to invest in innovative vector control technologies to enhance current vector-borne disease control efforts, including those discussed by the World Health Organization’s Vector Control Advisory Group, which outlines new and existing vector control tools for use in response to Zika virus outbreaks. The Committee also notes CDC’s report of research from Brazil showing that some infants exposed to Zika who were born without microcephaly nevertheless did develop it later or developed other neurological problems. Therefore, the Committee expects CDC to continue to work closely with the vector control unit in Puerto Rico and to address not only basic surveillance and research but also the use of new approaches to limit the spread of infected *Aedes Aegypti* mosquitoes through innovative vector control technologies which can be effective in environments and locations not amenable to traditional pesticides.”

## TAX

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### TAX REFORM

During the first half of the year, the House Ways and Means Committee held several hearings on tax reform, which covered a myriad of issues (international, corporate, families, individuals, etc.). Thus far, much of the discussion surrounding tax reform in the House has been based on the House Republican “Blueprint” – an approximately 30-page document released in June 2016 that was meant to serve as

talking points for the campaign. Though many of the principles in the Blueprint are still on the table, there is increased discussion on how to tailor those policies. Recently, Republican leaders in the House, Senate, and the administration agreed, in the face of mounting opposition, to set aside the border adjustment tax (BAT), which had been a central proposal in the Blueprint.

Though the Senate Finance Committee has not released its own tax reform proposal, Senate Majority Leader Mitch McConnell (R-KY) and Senate Finance Committee Chairman Orrin Hatch (R-UT) are both actively engaged with House Speaker Ryan (R-WI) and House Ways and Means Chairman Kevin Brady (R-TX), as well as with Treasury Secretary Mnuchin and National Economic Advisor Gary Cohn, now known collectively as “The Big Six.” Finance Committee Republicans have begun to organize informally into working groups tasked with focusing on specific tax policy issues, with much of the work informed by previous tax reform proposals. Both sides of the aisle claim they want a bipartisan tax reform process, but the reality is that it will almost certainly be achieved through budget reconciliation, a procedure that allows the Senate to pass legislation with a simple majority vote. This presumes that the Senate is committed to moving past its attempts to repeal the Affordable Care Act using the FY 2017 reconciliation process and that the House can resolve concerns of some Republican holdouts and pass a budget resolution with reconciliation instructions for tax reform.

It appears that the administration is better prepared for tax reform than it was for healthcare, with high-level interest and participation at Treasury and elsewhere. The Big Six recently released a joint statement on tax reform, which provided a high level overview of those principles where they have agreement. We anticipate that the Big Six may release additional principles which are intended to guide the tax writing committees in September. Right now, the plan is for the House to take up their bill on the floor as early as October and the Senate in November. There is still healthy skepticism that tax reform is doable in 2017, but Republican leadership maintains their commitment to achieving tax reform this year.

Status of some specific tax policy issues includes:

- **Municipal Bonds** – Cities, counties, the Security Industry and Financial Markets Association (SIFMA), and others have mounted a long-standing campaign to preserve the tax-exempt status of municipal bonds. Much of the tax writers’ attention, at least publically, has been centered on broader issues, thus there has been little discussion of policies like municipal bonds. Last month, however, during a hearing before the House Financial Services Committee on fixed-income markets, the issue was raised. The testimony cited that elimination of the tax exemption for municipal bonds would be devastating, negatively impact liquidity in the market, and put new costs on municipalities. Additionally, then-President-Elect Trump, in a meeting with the leadership of the U.S. Conference of Mayors, supported the tax exemption; more recently, it was reported that the Municipal Bonds for America Coalition had sought – and received – assurances that the exemption would not be eliminated.
- **Housing Tax Credits** – The Blueprint would eliminate “special interest deductions and credits in favor of providing lower tax rates for all businesses and eliminating taxes on business investments.” The tax-writing committees, however, have not gotten to the point of identifying which credits will be maintained and which removed. One of the best-positioned credits to be maintained is the Low-Income Housing Tax Credit (LIHTC) program. Before Congress left for the August recess, the Senate Finance Committee held a hearing on the LIHTC, which demonstrated strong bipartisan interest in not only maintaining the program, but also finding ways to expand it. Earlier this year, Chairman Hatch and Senator Maria Cantwell (D-WA) reintroduced the *Affordable Housing Credit Improvement Act* ([S. 548](#)), which was discussed in detail at the hearing and is likely

to form the basis for any kind of expansion or reform of the program. It is expected that other tax credits, such as the Historic Tax Credit, will likely not fare as well.

- **State and Local Tax Deduction (SALT)** – This deduction has been the focus of recent local government efforts on tax reform. With the removal of the BAT as a revenue generator, Republicans are looking for ways to finance the lowering of rates. SALT is a very large revenue generator and is viewed by Republicans as a subsidy mostly to Democratic-leaning areas with higher taxes. The risk of this being on the chopping block is very real. The U.S. Conference of Mayors has been leading other advocacy groups in engaging lawmakers on the need to preserve the deduction. The Government Finance Officers Association (GFOA) has compiled a [list of the impacts of the deduction](#) by every congressional district on their website as a tool to inform members of Congress of the impacts. This analysis found that more than 50% of the SALT deduction went to taxpayers with adjusted gross incomes under \$200,000.

### **HIGH QUALITY LIQUID ASSETS (HQLA)**

In March, Rep. Luke Messer (R-IN) introduced bipartisan legislation, the *Municipal Finance Support Act of 2017* ([H.R. 1624](#)), that includes municipal bonds among assets that banks need to hold to weather a financial shock. Early last year, the same bill passed the House by voice vote. The bill would require bank regulators to consider municipal bonds as high-quality liquid assets for the purposes of minimum capital requirements. In late July, the House Financial Services Committee took up the bill. As originally drafted, the bill would have allowed a municipal bond to qualify as a “2A” liquid asset (subject to a 15 percent cut in valuation for purposes of meeting capital requirements). During the committee markup, the bill was amended to allow a municipal bond to qualify as no less than a “2B” (which are subject to up to a 50 percent cut). This was done to ease consideration of the legislation in the Senate where legislation has been introduced to allow municipal bonds to qualify as no more than a 2B asset.

The bipartisan Senate version ([S. 828](#)) was introduced by Senator Mike Rounds (R-SD). Legislation is required in response to a rule established in 2014 by the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System, and the Office of the Comptroller of the Currency (OCC) that established minimum liquidity requirements for large banking organizations. The rule identified high-quality liquid assets (HQLA) that banks could hold to meet the requirement. Despite including instruments such as foreign sovereign debt among the acceptable investment categories, the rule excludes investment-grade municipal securities from its definition of HQLA.

## **TRANSPORTATION/INFRASTRUCTURE**

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### **INFRASTRUCTURE PROPOSAL**

The President’s FY 2018 budget request proposed \$5 billion in funding in FY 2018 to begin a ten-year plan to spend \$200 billion to promote \$1 trillion in infrastructure investment. In addition to the \$200 billion in direct federal funding, the \$1 trillion investment will include incentivized non-federal funding and expedited projects that would not have happened but for the administration’s involvement.

A fact sheet distributed with the President’s FY 2018 budget request lists four key principles that will guide the administration’s infrastructure proposal:

- Make Targeted Federal Investments. Proposes focusing federal funding on projects that address high-priority problems to a region or the nation, or projects that provide long-term changes to how infrastructure is designed, built, and maintained.
- Encourage Self-Help. Providing support for states, tribes, and localities that raise their own dedicated revenues for infrastructure.
- Align Infrastructure Investment with Entities Best Suited to Provide Sustained and Efficient Investment. Looking for opportunities to appropriately divest from certain functions when the private sector could deliver the services more efficiently, and disposing of underused capital assets so they can be put to their highest and best use.
- Leverage the Private Sector. Pursuing public-private partnerships to capture valuable benefits through better procurement methods, market discipline, and a long-term focus on maintaining assets.

Secretary of Transportation Elaine Chao has said the administration would issue proposed legislation for an infrastructure package this fall, though few details have been released. Congress is currently focused on several other policy priorities ahead of an infrastructure package, including tax reform, raising the debt ceiling, and FY 2018 appropriations, among others. Because of these other priorities, it is unclear when Congress and the administration will turn their attention to an infrastructure package.

#### **Executive Order 13807**

On August 15, President Trump signed an executive order (EO) titled “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects.” The EO is designed to facilitate the implementation of infrastructure projects by increasing the efficiency of federal environmental review and permitting processes, thereby shortening the time needed for such processes. The EO states that inefficiencies in environmental reviews and permit decisions or authorizations have delayed infrastructure investments, increased project costs, and blocked infrastructure improvements that would benefit the economy, society, and environment.

The EO highlights several policy principles relating to infrastructure development, which include: 1) ensuring federal authorities make informed decisions concerning the environment impacts of infrastructure projects; 2) providing transparency and accountability to the public regarding environmental review and permitting decisions; 3) conducting environmental reviews and permitting processes in a coordinated, consistent, predictable, and timely manner; and 4) making timely decisions with the goal of completing all federal environmental reviews and permitting decisions for major infrastructure projects within two years.

#### **INFRASTRUCTURE COUNCIL**

President Trump recently disbanded the Administration’s Council on Infrastructure. The President announced the Council in January, noting that it would be led by Richard LeFrak and Steven Roth, but did not formally establish the Council until July 19 when he signed EO 13805. When other advisory councils were recently disbanded, the administration also announced that the Council on Infrastructure would be disbanded.

## **TRANSPORTATION APPROPRIATIONS**

The President's FY 2018 budget proposed the same obligation levels for highway and transit formula programs financed from the Highway Trust Fund (HTF) as in the Fixing America's Surface Transportation (FAST) Act. Most of the highway and transit programs in the FAST Act, which authorized \$305 billion over fiscal years 2016 to 2020, are contract authority funded from the HTF and therefore not subject to appropriations. However, the administration proposed significantly reducing the Capital Investment Grant (New Starts/Small Starts) program and eliminating the Transportation Investment Generating Economic Recovery (TIGER) grant program.

The House and Senate Appropriations Committees Transportation, Housing and Urban Development (THUD) Subcommittees passed their respective FY 2018 THUD appropriations bills in July.

The House bill has been included in a package of eight appropriations bills and the House is expected to vote on the package in September. For the Department of Transportation (DOT), the bill includes \$17.8 billion in discretionary appropriations and \$76.7 billion in total Department resources, which is \$700 million below FY 2017 enacted levels. This funding reduction is primarily derived from cuts to the New Starts program and the TIGER grant program, which collectively lose \$1.15 billion when compared to FY 2017 funding levels.

The New Starts program received \$2.4 billion in FY 2017, but the House THUD bill provides only \$1.75 billion for the program, which is \$521 million more than the Trump Administration's budget request. However, \$400 million of the funding is dedicated to the New York-New Jersey Gateway Program. The House THUD bill entirely eliminates the TIGER grant program, which received \$500 million FY 2017, matching the Trump Administration's budget request.

The Federal Aviation Administration (FAA) is funded at \$16.56 billion, which is \$153 million more than FY 2017 and \$435 million above the budget request.

The Senate THUD bill includes \$19.47 billion in discretionary appropriations for DOT, which is \$978 million above the FY 2017 enacted level. The Senate bill provides \$2.133 billion for New Starts/Small Starts. All current transit projects with full funding grant agreements (FFGAs) are fully funded, and the bill provides additional funding for projects that are expected to enter into an FFGA in FY 2018, including \$454 million for New Starts projects, \$146 million for Core Capacity projects, and \$168 million for Small Starts projects. The Committee report also directs DOT to continue to advance eligible projects into project development and engineering in the capital investment grant evaluation, rating, and approval process in all cases where the project meets statutory criteria. The bill also provides \$550 million for the TIGER grant program – \$50 million above the FY 2017 enacted level.

The Senate THUD bill would fund FAA at \$16.97 billion, which is \$563 million more than the FY 2017 enacted level. The bill provides \$1.1 billion for FAA Next Generation Air Transportation Systems (NextGen) programs. The bill increases the cap on passenger facility charges (PFCs) from \$4.50 to \$8.50. Large hub airports that raise their PFCs would forego Airport Improvement Program (AIP) funding, which would then be directed to smaller airports.

## **FEDERAL AVIATION ADMINISTRATION (FAA) REAUTHORIZATION**

The current extension of FAA programs expires on September 30 and Congress is expected to pass a short-term extension to provide additional time to consider a long-term FAA reauthorization legislation. Both the House Transportation and Infrastructure (T&I) Committee and the Senate Commerce, Science, and Transportation Committee have marked up their FAA reauthorization bills, the *21<sup>st</sup> Century Aviation Innovation, Reform, and Reauthorization Act* ([H.R. 2997](#)) and the *Federal Aviation Administration Reauthorization Act of 2017* ([S. 1405](#)) respectively.

The House's *21<sup>st</sup> Century AIRR Act* includes T&I Committee Chairman Bill Shuster's (R-PA) proposal to remove air traffic control (ATC) responsibilities from the FAA and create a nonprofit, non-governmental air traffic corporation. The ATC corporatization measure has enjoyed more support in the current Congress than last year, with two House Democrats and additional House Republicans voicing support, but it remains to be seen whether Chairman Shuster can build enough support for the bill to pass the full House. The deadline to file floor amendments on the bill was Monday, July 17. However, floor consideration has not been scheduled. Despite changes made to the bill intended to broaden support, the general aviation (GA) community and most Democrats, including Ranking Member Peter DeFazio (D-WA) and other democratic members of the T&I Committee, remain opposed to the ATC corporatization provision. Additionally, some Republican appropriators have voiced their opposition to the provision. ATC corporatization enjoys the support of the Trump Administration. Adding to the difficulty of passing the House's *21<sup>st</sup> Century AIRR Act*, the Congressional Budget Office recently revised its score of the bill to project that the bill would increase the deficit by \$98.5 billion over ten years.

The Senate *FAA Reauthorization Act* is much less controversial, and was approved by voice vote by the Senate Commerce Committee on June 29. The Senate's bill does not include the ATC corporatization proposal, and Commerce Committee Chairman John Thune (R-SD) has said that the provision would probably not secure enough support in the Senate to pass, noting the provision would likely have to be included in conference committee to become law. Commerce Committee Ranking Member Bill Nelson (D-FL) has said that Democrats will not support the Senate's bill unless a controversial provision to relax co-pilot training hour requirements is removed. He noted that the bill would likely pass by unanimous consent without the provision.

## **AUTOMATED VEHICLES (AVs)**

The Department of Transportation (DOT) is expected to update the Federal Automated Vehicles Policy (FAVP) this fall, and recently published a notice that DOT and the National Highway Traffic Safety Administration (NHTSA) have submitted a document titled "Voluntary Guidance on Automated Driving Systems" for regulatory review. The initial FAVP was published by the Obama Administration in September 2016 and has been voluntary for AV manufacturers, technology providers, and other associated companies. The Trump Administration is expected to continue the voluntary nature of the FAVP and to focus on fostering innovation while continuing to emphasize safety.

The House Energy and Commerce Committee recently passed AV legislation, the SELF DRIVE Act, unanimously. The bill addresses state and local preemption, cybersecurity requirements, and setting standards for AVs. However, consumer groups and some associations, including the National Association of City Transportation Officials (NACTO) and the National League of Cities (NLC), have since voiced concerns about the legislation. While the Senate Commerce Committee is also developing AV legislation, legislative text has not yet been released.

## ENERGY AND ENVIRONMENT

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### COMPREHENSIVE ENERGY LEGISLATION UPDATE

Last year, Congress failed to pass comprehensive energy legislation just prior to the end of the 114<sup>th</sup> Congress. However, efforts continue in 2017 to reintroduce similar bills.

**Senate Action** -- On June 28, Senate Energy and Natural Resources Committee Chairman Lisa Murkowski (R-AK) and Ranking Member Maria Cantwell (D-WA) introduced a comprehensive, bipartisan energy bill, the *Energy and Natural Resources Act of 2017* (ENRA/[S. 1460](#)). The bill is almost identical to the legislation the Senate passed last year, but includes items that were agreed to in conference with the House prior to the end of last Congress.

The current bill is an all-encompassing piece of legislation that includes 11 titles and aims to modernize and reform the nation's energy and resource policies. The nearly 900-page bill would affect all energy sectors, including oil, gas, coal, nuclear and renewables, and includes policy changes that would also affect municipal governments.

The legislation includes provisions that propose changes that could impact local governments in a number of areas including: grants; energy efficiency; workforce development; housing and residential buildings; water; fleet management; federal buildings; the Land and Water Conservation Fund; governance of federal lands; climate change; and renewable energy. Notably, the bill also includes the former SAVE Act, which would allow for cost savings from the implementation of energy efficiency and renewable energy systems in homes to be considered in underwriting mortgages. The bill also targets for reform traditional policy approaches to natural resources, including federal lands management, National Park System management, sportsmen's issues, water infrastructure, and land conservation.

Chairman Murkowski is seeking floor time for consideration of the bill when the Senate returns in September.

**House Action** -- Meanwhile, leadership in the House has expressed little to no interest in engaging in another comprehensive energy bill and has indicated that the chamber would rather pass smaller bills grouping discrete elements of similar energy topics. Notably, the House Energy and Commerce Committee advanced eight bills over the summer, a majority of which were passed by the House, with a few that await further action. These include:

- *Enhancing State Energy Security Planning and Emergency Preparedness of 2017* ([H.R. 3050](#)) (passed by the House);
- A bill to amend the Federal Power Act with respect to the criteria and process to qualify a conduit hydropower facility ([H.R. 2786](#)) (passed by the House);
- *Promoting Cross-Border Energy Infrastructure Act* ([H.R. 2883](#)) (passed by the House);
- *Ozone Standards Implementation Act of 2017* ([H.R. 806](#)) (passed by the House);
- *Promoting Interagency Coordination for Review of Natural Gas Pipelines Act* ([H.R. 2910](#)) (passed by the House);
- *Brownfields Enhancement Economic Redevelopment and Reauthorization* ([H.R. 3017](#)) (awaits House floor vote);
- *Hydropower Policy Modernization Act of 2017* ([H.R. 3043](#)) (awaits House floor vote); and



- *Nuclear Waste Policy Amendments Act of 2017* ([H.R. 3053](#)) (passed by House Energy and Commerce Committee; referred to House Armed Services Committee, Subcommittee on Strategic Forces).

## **REDUCING REGULATION AND CONTROLLING REGULATORY COSTS**

On March 28, President Trump signed Executive Order 13783, titled “Promoting Energy Independence and Economic Growth.” The EO requires the heads of agencies to review all existing regulations, orders, guidance documents, policies, and any other similar agency actions that potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources.

On May 8, President Trump issued a follow up [memo](#) titled, “Memorandum For: Regulatory Reform Officers and Regulatory Policy Officers at Executive Departments and Agencies,” which provided guidance for implementing the EO and also added renewable energy to the list defined as “domestically produced energy resources.”

On May 30, the Department of Energy (DOE) issued a Request for Information (RFI), in which DOE asked for comment on rules of the department that “unnecessarily obstruct, delay, curtail, or otherwise impose significant costs on the siting, permitting, production, utilization, transmission, or delivery of energy resources.”

In our discussions with DOE officials, they noted that they have never had such a volume of response to an RFI. The agency is currently sorting through the comments in order to make recommendations to Secretary Rick Perry as to which changes the agency can pursue without issuing notice and comment, and which changes the agency will make a proposal to initiate a statutory change, which would be accompanied by a notice and comment period. The agency has an internal deadline of reporting next steps to the Office of Management and Budget by September 24.

## **DOE ENERGY GRID REPORT**

On April 14, Energy Secretary Rick Perry ordered a 60-day study to examine baseload energy resources in the US. The Secretary noted that the need for the study was to examine the reliability of the electricity grid and to analyze possible “market-distorting effects of federal subsidies that boost one form of energy at the expense of others.” The results of the study are intended to inform the agency’s future policy directions.

The [study](#), which was released later than intended on August 24, is titled, “Staff Report to the Secretary on Electricity Markets and Reliability.”

While there was initial concern from the renewable energy industry as well as Senator Chuck Grassley (R-IA) that the study could be biased against renewable energy, such as solar and wind, those fears appear to have been allayed in the final report. The report largely found that renewable energies are not the cause of early coal/nuclear plant retirements, and that the pressure for those comes instead from recent cheaper natural gas. With regard to the concern over utilities possibly losing revenue due to net-metering obligations for renewable energy, the study found that net-metering has little impact on utility retail rates, noting:

“...some studies have quantified the retail rate impacts of net metering to all residential customers (i.e., participants and non-participants) and found that current and projected levels of net metering have very little impact, especially compared to broader drivers of retail rate increases in the electric industry.”

## **WATER**

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### **WATER INFRASTRUCTURE FINANCE AND INNOVATION ACT (WIFIA)**

On July 19, the Environmental Protection Agency (EPA) announced it received [43 letters of interest](#) from both public and private entities in response to its FY 2017 Water Infrastructure Finance and Innovation Act (WIFIA) [Notice of Funding Availability](#) (NOFA). After a robust, statutorily-required review process, the WIFIA Selection Committee chose the following 12 prospective borrowers' projects to submit applications for loans:

- Miami-Dade County, Florida - [Ocean Outfall Discharge Reduction and Resiliency Enhancement Project](#)
- San Francisco Public Utilities Commission, California - [Southeast Water Pollution Control Plant Biosolids Digester Facilities Project](#)
- Metropolitan St. Louis Sewer District, Missouri - [Deer Creek Sanitary Tunnel and Sanitary Relief](#)
- City of Omaha, Nebraska - [Saddle Creek Combined Sewer Overflow Retention Treatment Basin](#)
- Orange County Water District, California - [Groundwater Replenishment System Final Expansion](#)
- City of San Diego, California - [Pure Water San Diego](#)
- Indiana Finance Authority, Indiana - [Indiana Finance Authority FY 2017](#)
- King County, Washington - [Georgetown Wet Weather Treatment Station](#)
- Baltimore City Department of Public Works, Maryland - [Comprehensive Infrastructure Repair, Rehabilitation and Replacement Program](#)
- Maine Water Company, Maine - [Saco River Water Treatment Facility](#) (*Private*)
- City of Morro Bay, California - [Water Reclamation Facility Project](#) (*Small Community*)
- City of Oak Ridge, Tennessee - [Water Treatment Plant Design and Construction](#)

The WIFIA program received support from the Trump Administration in its FY 2018 budget request, which requests the program be funded at \$20 million for the upcoming fiscal year. In its FY 2018 Interior-Environment Appropriations legislation, the House proposes WIFIA be funded at \$30 million for the upcoming fiscal year. The Senate has yet to introduce its FY 2018 Interior-Environment Appropriations legislation.

### **WATERS OF THE U.S. (WOTUS) RULE**

On July 27, the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (USACE) published their [proposed rule](#) to initiate the first step in a comprehensive, two-step process intended to review and revise the definition of “Waters of the United States” (WOTUS) consistent with President Trump’s February 28 executive order (EO) directing the agencies to revise the rule. Specifically, the proposed rule would rescind the Obama Administration’s 2015 WOTUS definition and recodify the regulatory text that existed under the Clean Water Act prior to the 2015 definition of WOTUS. As the proposed rule would recodify the identical regulatory text that was in place prior to the 2015 rule and

that is currently in place as a result of the U.S. Court of Appeals for the Sixth Circuit's stay of the 2015 Obama Administration rule, this action would not change current practice with respect to how the definition applies. The comment period, which was recently extended, will close on September 27, 2017.

EPA and USACE have actively sought input from states and local governments on this issue. On May 8, the agencies sent a letter to state governors soliciting comments as to how the agencies should rewrite the agency's rule. Comments from state and local governments were due on June 19. National organizations, such as the U.S. Conference of Mayors, also had informal discussions with EPA on the WOTUS earlier this year.

On August 28, the agencies announced their plan to hold [ten teleconferences](#) to hear from stakeholders on their recommendations to revise the definition of WOTUS. Nine of the teleconferences will be tailored to a specific sector: agriculture; conservation; small entities; construction and transportation; environment and public advocacy; mining; industry (energy, chemical, oil/gas); scientific organizations and academia; and stormwater, wastewater management, and drinking water agencies. One of the teleconferences will be open to the public at large. The teleconferences will begin September 19, 2017.

Currently, the agencies are moving forward with the second step of rulemaking, through which they intend to reevaluate and revise the definition of WOTUS. As directed in President Trump's EO, the agencies plan to propose a new definition by taking into consideration the principles that Justice Scalia outlined in the [Rapanos plurality opinion](#).

#### **DRINKING WATER SYSTEM IMPROVEMENT ACT**

On July 27, the House Committee on Energy and Commerce approved the *Drinking Water System Improvement Act* ([H.R. 3387](#)) by voice vote. There is currently no companion bill in the Senate. The legislation would amend the Safe Drinking Water Act to reauthorize and increase funding for the Drinking Water State Revolving Fund, allowing \$8 billion in spending over five years, and reauthorize funding for Public Water System Supervision grants, allowing \$750 million in spending over five years.

The legislation would also:

- Require states to spend a minimum share of federal dollars on disadvantaged communities;
- Encourage removal of lead service lines;
- Create a grant program to provide assistance to schools for the replacement of drinking water fountains with unsafe lead levels; and
- Open the eligible uses of the Drinking Water State Revolving Fund to cover costs associated with preconstruction activities and replacing or rehabilitating aging treatment, storage, or distribution facilities.

#### **WATER SUPPLY PERMITTING COORDINATION ACT**

On June 22, the House passed the *Water Supply Permitting Coordination Act* ([H.R.1654](#)) by a vote of 233-180. The bill was subsequently sent to the Senate. The legislation would streamline the federal permitting process for surface water storage projects (such as dams and reservoirs) by establishing the Bureau of Reclamation (BOR) as the lead agency for coordinating all reviews, permits, licenses, or other approvals or decisions required to construct new surface water storage projects on federal lands in the Western United States.

Specifically, it would require BOR to identify appropriate federal agencies and provide notification of the opportunity for the agencies to participate in the permitting process as cooperating agencies. The state in which the project is located may choose to participate in the project as a cooperating agency, thus making all state agencies subject to the bill. Additionally, the bill charges BOR with coordination responsibilities in the preparing of a unified environmental review document for the project, setting timelines for project reviews and determinations, and maintaining a consolidated administrative record in an electronic form to allow the material to be available to various parties.

#### **EPA'S NEW WATER FINANCE CLEARINGHOUSE**

On July 26, EPA's Water Infrastructure & Resiliency Finance Center launched its [Water Finance Clearinghouse](#), a web-based portal to help communities locate information to inform financing decisions for their drinking water, wastewater, and stormwater infrastructure needs. The Clearinghouse features two searchable data sets: one focused on available federal, state, and local funding sources for water infrastructure, and the second contains resources, such as reports, tools, and webinars on financing mechanisms and approaches. It contains over 300 funding sources and 320 resources on stormwater and green infrastructure financing.

The Clearinghouse is updated in real time. States, federal agencies, and other water sector stakeholders have the ability to suggest edits, new resources, or funding options at any time through the Contributor Portal. Additionally, stakeholders can use this interactive feature to manage how their programs and initiatives are displayed in the Clearinghouse.

#### **NATIONAL FLOOD INSURANCE PROGRAM**

The National Flood Insurance Program (NFIP) is currently set to expire on September 30, and while forming reauthorization legislation, lawmakers have been considering potential reforms and improvements to the program, which is currently over \$23 billion in debt. Congressional reform efforts have primarily focused on the need to improve the accuracy of NFIP flood mapping, ensure the program's long term financial stability, reduce policy holders' premium costs, enhance U.S. flood resilience, and increase private flood insurance coverage.

On June 21, the House Committee on Financial Services passed the following bills, which were combined into one legislative package:

- The *National Flood Insurance Program Policyholder Protection Act of 2017* ([H.R. 2868](#)), a bill to protect National Flood Insurance Program policyholders from unreasonable premium rates and to require the Program to consider the unique characteristics of urban properties;
- The *21st Century Flood Reform Act* ([H.R. 2874](#)), a bill to achieve reforms to improve the financial stability of the Program, to enhance the development of more accurate estimates of flood risk through new technology and better maps, to increase the role of private markets in the management of flood insurance risks, and to provide for alternative methods to insure against flood peril;
- The *National Flood Insurance Program Administrative Reform Act of 2017* ([H.R. 2875](#)), a bill to make administrative reforms to the Program to increase fairness and accuracy and protect the taxpayer from program fraud and abuse, and for other purposes;

- The *Repeatedly Flooded Communities Preparation Act* ([H.R. 1558](#)), a bill to amend the National Flood Insurance Act of 1968 to ensure community accountability for areas repetitively damaged by floods;
- The *Flood Insurance Market Parity and Modernization Act* ([H.R. 1422](#)), a bill to amend the Flood Disaster Protection Act of 1973 to require that certain buildings and personal property be covered by flood insurance;
- A bill to require the use of replacement cost value in determining the premium rates for flood insurance coverage under the National Flood Insurance Act ([H.R. 2565](#)); and
- The *Taxpayer Exposure Mitigation Act of 2017* ([H.R. 2246](#)), a bill to repeal the mandatory flood insurance coverage requirement for commercial properties located in flood hazard areas and to provide for greater transfer of risk under the Program to private capital and reinsurance markets.

However, after passing the legislative package in the committee on a party-line vote, House Financial Services Committee Chairman Jeb Hensarling (R-TX) has struggled to secure support for the proposal among the Republican conference. Several Republican Members of Congress, including Majority Whip Steve Scalise (R-LA), have expressed concern regarding several provisions in the legislative package and have stressed the importance of ensuring NFIP reauthorization legislation reduces premium costs.

While Senate Banking, Housing, and Urban Affairs Committee Chairman Mike Crapo (R-ID) and Ranking Member Sherrod Brown (D-OH) have released their own reauthorization legislation, the committee has not yet passed a final proposal. Senators Bob Menendez (D-NJ), John Kennedy (R-LA), and Kirsten Gillibrand (D-NY) have each introduced separate NFIP reauthorization and reform bills.

The tragic floods caused by Hurricane Harvey will undoubtedly play into further legislative efforts this fall. It is highly likely that a short-term extension of existing law will need to be passed before September 30.

## **NUTRITION**

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### **FARM BILL**

With the 2014 Farm Bill expiring on September 30, 2018, the House and Senate Agriculture Committees are working to reauthorize current Farm Bill programs. The Farm Bill provides nutrition assistance for low-income households through programs, such as the Supplemental Nutrition Assistance Program (SNAP) and the Emergency Food Assistance Program (TEFAP). The Farm Bill also supports the distribution of foods in schools. To date, the House Agriculture Committee's Subcommittee on Nutrition has held four SNAP-related hearings.

SNAP accounts for approximately 80 percent of total Farm Bill costs. As it is the main component of the bill, there will likely be attempts to reform the program in order to seek greater efficiencies, reduce costs, promote work among able-bodied adults without dependents, and eliminate potential fraud. Many members of Congress oppose any SNAP funding cuts or purchasing restrictions, arguing that these initiatives would affect the neediest of individuals, especially those who reside in "food deserts," or residential areas without access to a full-service grocery store. Food deserts affect urban and rural recipients alike and are typically defined as areas more than one mile away from a grocery store for urban residents and more than ten miles away for rural residents. These areas often contain small corner markets or convenience stores, which carry significantly less fresh food items and many more pre-

packaged, boxed, or canned goods – goods typically categorized as less nutritious than certain items available at full-service grocery stores. Although it is still too early to predict reforms sought to SNAP or other nutrition programs, we anticipate SNAP to be a highly contentious issue as legislators work to reauthorize Farm Bill programs.

## **NUTRITION GRANTS**

In early August, the United States Department of Agriculture (USDA) [announced](#) it would be awarding 32 grants worth \$16.8 million to encourage healthier food choices among SNAP recipients. The grants are a component of USDA's Food Insecurity Nutrition Incentive program, which was created during the 2014 Farm Bill. Since the program's inception, USDA has spent more than \$65 million to incentivize individuals to make healthy choices.

## **HOUSING AND COMMUNITY DEVELOPMENT**

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### **FISCAL YEAR 2018 FUNDING LEVELS**

Despite the difficult budget climate on Capitol Hill, the Senate Appropriations Committee in its FY 2018 Transportation and Department of Housing and Community Development bill provided some comfort to local officials as it proposed increased or level funding for many housing and community development programs. President Trump's proposed budget would have enacted very deep cuts to many housing programs and eliminated the Community Development Block Grant (CDBG) and the HOME Program. The House Appropriations Committee provided \$2.9 billion for CDBG and \$850 million for HOME, which were both slightly lower than FY 2017 levels. The Senate Appropriations Committee allocated \$1.4 billion more than the current year to the Department of Housing and Urban Development (HUD), and funded CDBG at \$3 billion and HOME at \$950 million. Much of the increase in the Senate bill was dedicated to tenant-based rental assistance. Homeless Assistance Grants (funded at \$2.383 billion in the current year) remained level in the House bill, and were increased to \$2.456 billion in the Senate.

The FY 2018 appropriations process faces many hurdles in the coming months, but the existential threat to CDBG and HOME proposed by the President has been tempered by a Congress where both programs enjoy strong support.

### **MORTGAGE INTEREST DEDUCTION REFORM**

The Trump Administration appears to be considering reforms to the mortgage interest deduction. The White House has said that all deductions are on the table as they work with the House and Senate Republican leadership to come up with a tax reform package. Apparently, there has been some consideration given to lowering the cap on the mortgage interest deductions, which is currently set at the interest on up to \$1 million of mortgage debt. This could help offset tax cuts for individuals and businesses. According to reports, the plan being considered would cut the allowance by half and let homeowners deduct interest paid only on the first \$500,000, which would leave 95 percent of homebuyers unaffected. Housing advocates are urging that the revenues garnered by the proposal be dedicated to affordable housing.

### **HUD NOMINATIONS**

Before Congress left town for the August recess, the Senate confirmed a slate of nominations for senior positions at HUD and other agencies. Included in the confirmations were: Neal Rackleff as Assistant Secretary for the Office of Community Development and Planning and Anna Maria Farias as Assistant Secretary for Fair Housing and Equal Opportunity. They join Secretary Ben Carson as only three Senate-confirmed positions of 12 such positions at HUD. Two other nominations have not yet been taken up by the Senate: Pamela Patenaude for Deputy Secretary and Paul Crompton for General Counsel. No nominations for the remaining seven positions have been made to date.

## **FAIR HOUSING RULE**

Recently, HUD Secretary Ben Carson reiterated that the agency will look to reinterpret the Obama Administration's 2015 [Affirmatively Furthering Fair Housing](#) final rule. It is unclear at this time what form the reinterpretation will take. In mid-July, Senator Michael Lee (R-UT) and Representative Paul Gosar (R-AZ) sent a letter to Secretary Carson requesting that the Secretary rescind the rule. The letter was co-signed by 20 other Republicans in both chambers. Carson had previously indicated that, while he criticized the rule, he would not completely reverse it.

Both Gosar and Lee introduced the *Local Zoning Decisions Protection Act* ([H.R. 482/S. 103](#)) to repeal the fair housing rule. The bills would nullify the rule and the assessment tools associated with the rule. They would also prohibit federal funds from being used for the HUD database containing geospatial information regarding community racial disparities and disparities in access to affordable housing. The bills would also require the HUD Secretary to jointly consult with state, local government, and public housing agency officials to develop recommendations to further the purposes of the Fair Housing Act of 1968 by means other than through regulation. HUD would be required to draft a report based on that consultation and make recommendations by consensus.

## **WORKFORCE AND JOB TRAINING**

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President Trump has put an emphasis on getting Americans back to work in well-paying jobs and issued an [Executive Order](#) (EO) in June calling for doubling the federal investment in apprenticeship programs. The EO will move the role of developing government-funded apprenticeship programs from the Department of Labor (DOL) to third-party private entities, including trade groups, labor unions and businesses. The third parties will set their own bar for success and submit their metrics to DOL for approval. The EO will also double the amount of money for apprenticeship grants, from \$90 million to nearly \$200 million a year. This comes in contrast to the President's proposed budget, which would impose a 36 percent cut to DOL job training programs overall.

The House passed a reauthorization and modernization of the Carl D. Perkins Career and Technical Education Act, which is the law providing federal support to state and local career and technical education (CTE) programs. The bipartisan House bill, the *Strengthening Career and Technical Education for the 21<sup>st</sup> Century Act* ([H.R. 2353](#)), includes the following provisions:

- **Empowers state and local community leaders** by simplifying the application process for receiving federal funds and providing more flexibility to use federal resources to respond to changing education and economic needs;
- **Improves alignment with in-demand jobs** by supporting innovative learning opportunities, building better community partnerships, and encouraging stronger engagement with employers;

- **Increases transparency and accountability** by streamlining performance measures to ensure CTE programs deliver results, empowering parents, students, and stakeholders with a voice in setting performance goals and evaluating the effectiveness of local programs; and
- **Ensures a limited federal role** by reducing the Secretary of Education’s authority, limiting federal intervention, and preventing political favoritism.

Last Congress, the House was able to pass a similar measure, but the Senate was unable to pass its version based on differences in language regarding the role of the Secretary. Following overwhelming support in the House, stakeholders are calling on the Senate to move on the legislation to help fill the skills gap in America’s workforce.

## TELECOMMUNICATIONS

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### NET NEUTRALITY

Federal Communications Commission (FCC) Chairman Ajit Pai is moving to replace the Obama Administration’s net neutrality rules and seek internet service providers to voluntarily agree to maintain an open internet. The rules, approved by FCC under President Obama in early 2015, prohibit broadband providers from giving or selling access to speedy internet, essentially a “fast lane” to certain internet services over others. Currently the proposal to end Title II Net Neutrality is the most commented-on item in FCC’s history – there are close to 20 million filings. The comment period was originally scheduled to end on August 16, but the Commission pushed the date out to August 30 to accommodate more comments. With the Senate confirming two nominees for FCC positions before the August recess, the FCC Chairman now has the votes to roll back the 2015 Open Internet Order. Democrats are concerned about the implications of this, and there is a large surge in grassroots support for net neutrality.

### MOBILE NOW ACT

Senate Commerce Committee Chairman John Thune (R-SD) and Ranking Member Bill Nelson (D-FL) joined forces to reintroduce the *MOBILE NOW Act* ([S. 19](#)) in January. It passed the Senate floor on August 3 and will now move to the House for a vote.

The bill proposes reforms to boost the development of next-generation 5G wireless broadband by ensuring more spectrum is made available for commercial use and by reducing the “red tape” associated with building wireless networks.

There had been concern that Senator Dan Sullivan (R-AK) would offer an amendment that would preempt local government authority in a variety of ways, but his amendment was not allowed.

### PROPOSED RULES ON BROADBAND DEPLOYMENT AND WIRELESS INFRASTRUCTURE

In our last update, we reported that FCC had issued two Notices of Proposed Rulemaking/Notices of Inquiry (NPRM/NOI) titled “Accelerating Wireline/Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment” (17-79/17-83). The NPRM/NOI is intended to streamline regulatory barriers and enhance broadband deployment, but if finalized, could preempt local authority, offer deemed granted rights to city infrastructure, and limit time periods for municipalities to consider deployment



applications. The NPRM/NOI has implications for municipal permitting processes, use agreements, rights of way fees, and local governments' ability to prevent redlining.

At the request of several local representatives, FCC granted a rare 30-day deadline extension for filing public comment on the NPRM/NOI. The National League of Cities (NLC), the U.S. Conference of Mayors (USCM), the Government Finance Officers Association (GFOA), the International Municipal Lawyers Association, the National Association of Counties (NACo), the National Association of Towns and Townships, the National Association of Regional Councils, and the National Association of Telecommunications Officers (NATOA) subsequently submitted a second request for FCC to extend the comment deadline by 30 days to August 17, which was denied.

NLC filed comments on the NPRM/NOI expressing concern regarding FCC's characterization of local governments as barriers to broadband deployment. NLC urged FCC "to work with cities, rather than against them, to ensure that all Americans have access to the best in broadband technology – whether wired or wireless – while preserving control over their own communities through traditional local government deliberations." NATOA, USCM, and GFOA also filed joint public comments urging FCC to maintain a more constructive dialogue with local governments and expressed opposition to regulatory action preempting local siting authority. FCC is currently reviewing comments and reply comments filed on the NPRM/NOI.

Additionally, FCC established the Broadband Deployment Advisory Committee (BDAC), which is charged with issuing recommendations to accelerate broadband deployment and reducing regulatory barriers to infrastructure investment. Of the 30 original representatives selected as voting members of BDAC, only one member was a local representative. Following criticism from municipalities and USCM that FCC had not provided adequate local representation on BDAC, an additional local representative was granted a seat as a voting member on the otherwise industry-dominated panel. BDAC is currently working to develop a Model Code for Municipalities and identify state and local barriers to broadband infrastructure investment.

USCM recently passed a resolution urging the FCC to expand BDAC to increase municipal representation and delay action on the NPRM/NOI until after BDAC has issued its recommendations. It remains unclear if the FCC will provide local governments with additional representation on BDAC or incorporate BDAC's recommendations in revised versions of the NPRM/NOI. BDAC's first set of recommendations are currently due in November 2017.

## **CYBERSECURITY**

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Cybersecurity continued to be a focus for the administration in the second quarter of 2017 and into August. President Trump signed a long-awaited Executive Order (EO) in May, and elevated U.S. Cyber Command to a Unified Combatant Command in August. Some non-Senate confirmation vacancies in the administration related to cybersecurity were also filled, while Secretary of Defense Jim Mattis traveled to Silicon Valley to continue the Pentagon's efforts to collaborate on new technology, including advancements related to cybersecurity.

Advocating for state interests at the National Governors Association (NGA) meeting in June, Virginia Governor Terry McAuliffe (D) urged President Trump and Congress to "invest in the infrastructure of

cybersecurity at the state level.” He also advocated for standalone cybersecurity-focused committees to be created in both chambers of Congress.

Outgoing NGA Chairman McAuliffe also announced at the NGA June meeting that 38 governors across the country had signed on to an agreement to improve state cybersecurity, pledging to: enhance cybersecurity governance; prepare and defend their states from cybersecurity events; and help grow the nation’s cyber workforce. Gov. McAuliffe’s chairmanship initiative – *Meet the Threat: States Confront the Cyber Challenge* – is expected to continue via the [NGA’s Resource Center for State Cybersecurity](#), which Gov. McAuliffe co-chairs with Michigan Gov. Rick Snyder (R), and the [Governor’s Guide to Cybersecurity](#). The Resource Center focuses on four main priorities: 1) leveraging Fusion Centers; 2) developing a skilled cyber workforce; 3) enhancing the cybersecurity of energy systems and infrastructure; and 4) coordinating state and federal government efforts.

On May 11, President Trump signed an [EO to strengthen the cybersecurity of federal networks and critical infrastructure](#). In sum, the order: holds federal agency officials accountable for managing cybersecurity risks to their respective divisions; directs the Director of the American Technology Council to coordinate with other agencies and draft a report (within 90 days of the EO date) on modernizing federal information technology systems; directs agencies to provide the President with a report (within 180 days) related to safeguarding critical infrastructure; and directs agencies to provide the President with a report (within 120 days) on federal workforce development and recruitment.

On August 18, via a [presidential memorandum](#), President Trump also directed U.S. Cyber Command be elevated to the status of a Unified Combatant Command focused on cyberspace operations. In connection with this elevation, the Secretary of Defense is examining the possibility of separating United States Cyber Command from the National Security Agency; he will announce recommendations on this matter at a later date.

On August 18, President Trump appointed John B. Sherman to serve as Chief Information Officer of the Intelligence Community within the Office of the Director of National Intelligence. Mr. Sherman had previously served as the Deputy Director of CIA’s Open Source Enterprise. He has served in the intelligence community for over 20 years.

Rick Driggers was named in August to serve as Deputy Assistant Secretary of Homeland Security for Cybersecurity and Communications, replacing the retiring Danny Toler. Driggers had previously served as Principal Deputy Director of the National Cybersecurity and Communications Integration Center, DHS’ cyber threat information-sharing hub.

In July, President Trump appointed Christopher Krebs to serve as Assistant Secretary of Homeland Security for Infrastructure Protection. He most recently served as Senior Counselor to the Secretary of Homeland Security, where he advised the Secretary on a range of cybersecurity, infrastructure protection, and resilience issues.

Continuing the Pentagon’s collaboration with Silicon Valley, Secretary Mattis visited Google headquarters in August, where he met with business leaders to discuss innovative new technologies and methods to best leverage advancements in artificial intelligence, cloud computing, and cybersecurity for the Department of Defense (DOD). He also visited the Defense Innovation Unit-Experimental (DIUx) in Silicon Valley, which is the Pentagon’s initiative promoting commercial innovation to solve mission-critical problems facing the military services, combatant commands, and other DOD components. Secretary

Mattis shared with reporters that the department's innovation initiative for the warfighter is a top priority for him, just as it was for his predecessor, Ashton Carter.

## TRADE

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President Trump continued his strong focus on trade matters, initiating investigations and talks aimed at reexamining existing U.S. trade relations and addressing many of the concerns raised during the 2016 elections. One common theme has been the United States' trade deficit in goods with its major trading partners. The Office of the U.S. Trade Representative (USTR) and the Department of Commerce are continuing an examination of existing U.S. trade deficits, as directed by the President in a March 31 Executive Order. Trade deficits have also been a central theme in the newly-launched talks to renegotiate the North American Free Trade Agreement (NAFTA) and discussions with South Korea on the Korea-U.S. Free Trade Agreement (KORUS). However, some experts argue that trade negotiations are not the proper venue for addressing trade deficits, suggesting other policies – including tax reform – can better address this concern.

The Trump Administration is also continuing to use trade enforcement tools to address alleged unfair trade practices. Earlier this year, the Department of Commerce launched investigations under Section 232 of the Trade Expansion Act of 1962, as amended, into the national security implications of importing steel and aluminum. The Section 232 investigations have the support of major U.S. steel producers, but have been met with significant opposition from U.S. importers, manufacturers, and members of Congress concerned that limits or tariffs on steel and aluminum imports could severely impact domestic businesses that rely on inputs not available in sufficient quantities in the United States. Some also caution that any limits to steel and aluminum imports could lead to reciprocal actions by major U.S. trade partners, including the European Union. The Department of Commerce's recommendations have reportedly been delayed following internal White House debate over the Section 232 investigations.

On August 14, following direction from the President to consider such action, Ambassador Lighthizer launched an investigation into Chinese technology transfer, intellectual property, and innovation practices under Section 301 of the Trade Act of 1974, as amended. President Trump has balanced his criticisms for China in the trade arena with his calls for coordination in responding to the North Korean nuclear threat; experts caution that any Section 301 actions could also be met with potential retaliation from China.

Later this year, lawmakers are also expected to consider two major trade-related measures:

- Miscellaneous Tariff Bill (MTB) legislation, implementing duty suspensions and reductions approved by the International Trade Commission over the last year and finalized in recommendations provided to Congress in early August; and
- Reauthorization of the Generalized System of Preferences (GSP) trade preference program, which allows for the duty-free importation of select goods from eligible developing countries.

## NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA)

On August 16, the United States, Mexico, and Canada launched the first round of NAFTA renegotiation talks in Washington, DC. In a joint [statement](#) issued at the conclusion of the round, the three parties provided few substantive details. They confirmed that teams of experts discussed over two dozen negotiating topics, and “negotiating groups began work to advance text and agreed to provide additional text, comments or alternate proposals” before the next round of negotiations begins on September 1 in Mexico City. Officials reportedly have requested all proposals be tabled by the end of the third round (expected in late September), to allow time for the NAFTA parties to review each other’s proposals and begin consolidating final text as soon as possible.

U.S. stakeholders are continuing advocacy efforts both before the administration and within Congress in support of their NAFTA priorities. One area of increasing focus is NAFTA’s Investor-State Dispute Settlement (ISDS) mechanism. On August 23, the heads of the U.S. Chamber of Commerce, National Association of Manufacturers, and Business Roundtable sent a joint letter to senior Trump Administration officials reiterating their support for NAFTA’s ISDS provisions. They emphasized the importance of ISDS to U.S. business, cautioning that “[a]ttempts to eliminate or weaken ISDS will harm American businesses workers and, as a consequence, will serve to undermine business community support for the NAFTA modernization negotiators.” Their letter followed reports that the Trump Administration is considering a proposal to make participation in NAFTA’s ISDS mechanism voluntary, suggesting the U.S. would ultimately opt out and lead to the offshoring of investments away from the United States. The U.S. business community has made clear that ISDS is an important insurance policy for their investments in North America, and are arguing that any efforts to undermine ISDS could erode private sector support for renegotiating NAFTA.

Even as negotiations continue, President Trump has repeated his threats to walk away from NAFTA if talks do not lead to a better deal for the American public. In response to President Trump’s most recent Twitter statements on NAFTA, Mexican government officials released a statement declaring that it will not negotiate NAFTA or any other aspect of U.S.-Mexico relations via social media or the press.

#### **KOREA-U.S. FREE TRADE AGREEMENT (KORUS)**

On July 12, the Trump Administration [requested](#) the first ever special session of KORUS’ Joint Committee under Article 22.2.4 of the deal. In a [letter](#) to his Korean counterpart, Ambassador Lighthizer stated the session “and the follow-on negotiations will provide an opportunity to review progress on the implementation of [KORUS], resolve several problems regarding market access in Korea for U.S. exports, and, most importantly, address our significant trade imbalance.”

The decision to call for a Joint Committee meeting followed calls from the President and senior White House officials to reexamine the trade deal. The President has repeatedly emphasized his focus on addressing trade deficits; in his letter, Ambassador Lighthizer noted “When the KORUS Agreement was negotiated, expectations were high that both of our economies would realize significant gains. However, [the United States’] overall deficit with Korea has increased, and [its] goods deficit has doubled since the Agreement entered into force.” The administration next reached out to a group of industry advisors for input on modifications the U.S. could seek to “modernize” KORUS; unlike NAFTA, which entered into force in the mid-1990s, KORUS came into effect in 2012, barely five years ago, suggesting there may be little room for modernizing the KORUS deal, apart from increased enforcement of existing terms.

Shortly after the July announcement, House Ways and Means Committee Chairman Kevin Brady (R-TX) and Ranking Member Richard Neal (D-MA), along with Senate Finance Committee Chairman Orrin Hatch

(R-UT) and Ranking Member Ron Wyden (D-OR), [wrote](#) to Ambassador Lighthizer and urged he closely consult with Congress during KORUS talks. They noted that the high-level dialogue with Korea presents an “opportunity to address longstanding concerns with respect to implementation of existing commitments on automotive trade, services, customs, and other key matters.” However, U.S. officials have reportedly told lawmakers that they are not seeking any changes to KORUS that would require amending U.S. law or any vote by Congress.

On August 22, the two countries held the special Joint Committee meeting via videoconference. According to USTR, Ambassador Lighthizer remains focused on improving implementation of KORUS and amending or modifying the agreement to benefit American workers, farmers, ranchers, and businesses. However, Korean officials shared that while U.S. officials noted the United States’ trade deficit, they did not offer solutions to address it. Korean officials continue to call for a study of KORUS as a precondition to any renegotiation talks. Discussions are expected to continue over the coming weeks.

#### **SENATE CONFIRMATIONS**

Before the start of the August recess, the Senate confirmed a number of officials to serve in senior trade-related positions in the Trump Administration: 1) David Malpass, Under Secretary of the Treasury for International Affairs; 2) Andrew Maloney, Deputy Under Secretary of the Treasury; 3) Ray Washburne, President of the Overseas Private Investment Corporation (OPIC); 4) David Steele Bohigian, Executive Vice President of OPIC; 5) Karen Dunn Kelley, Under Secretary of Commerce for Economic Affairs; and 6) Elizabeth Erin Walsh, Assistant Secretary of Commerce and Director General of the U.S. and Foreign Commercial Service.

#### **BASE REALIGNMENT AND CLOSURES (BRAC)**

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The House and Senate continue to debate the potential for a new round of Base Realignment and Closures (BRAC). The House-passed minibus, the *Make America Secure Against Appropriations Act of 2018* ([H.R. 3219](#)), includes a provision prohibiting the use of funds to propose, plan for, or execute a new or additional BRAC round. The House’s draft annual defense authorizing measure, the *National Defense Authorization Act* (NDAA/[H.R. 2810](#)), also includes language prohibiting a BRAC round; as part of its floor debate of the measure, the House rejected an amendment proposed by Rep. Tom McClintock (R-CA) that would have removed the BRAC prohibition language from the NDAA.

The Senate is expected to take up its draft FY 2018 NDAA shortly after lawmakers return from the August recess. The draft voted out of the Senate Armed Services Committee, titled the *Defense Force and Infrastructure Review Act of 2017* ([S. 1519](#)), would authorize funding for BRAC activities in the next fiscal year. Senators John McCain (R-AZ) and Jack Reed (D-RI), Chairman and Ranking Member, respectively, of the Senate Armed Services Committee, filed an amendment to the NDAA that would propose a modified BRAC process. Among other things, the bill would require the Defense Department to prepare a force-structure plan and comprehensive infrastructure inventory as part of its budget justification for FY 2019, together with a certification of whether the need exists for the closure or realignment of additional military installation and a certification that a BRAC round would result in substantial annual net savings for the Defense Department upon completion. The proposal would eliminate the BRAC commission, and instead require Congress approve the Defense Department’s proposals. It would also cap the estimated implementation cost to \$5 billion.

If the Senate adopts the McCain-Reed proposal, bicameral NDAA conferees will consider whether to include it in the final defense authorizing measure for the next fiscal year. Regardless, experts argue the proposal marks a significant step forward in the BRAC debate.

## **EXPORT-IMPORT BANK**

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In December 2015, President Obama signed a long-term reauthorization of the U.S. Export-Import (Ex-Im) Bank through September 30, 2019. However, the Bank requires a quorum of three out of a five-member Senate-confirmed Board of Directors to approve deals of more than \$10 million. Currently, the Board of Directors has three vacancies, restricting the Bank's ability to approve such deals.

On June 19, President Trump nominated former Representatives Scott Garrett (R-NJ) and Spencer Bachus (R-AL) to vacant positions at the Ex-Im Bank. Garrett, who was a vocal critic of the Ex-Im Bank during his time in Congress, would serve a four-year term as President. Bachus, a former Chairman of the House Financial Services Committee, would serve as a member of the Ex-Im Bank's Board of Directors. Both nominations require Senate confirmation and could allow the Bank to resume full operations.

However, Garrett's nomination has been met with significant opposition from Ex-Im Bank supporters on the Hill and in the U.S. business community. As a member of Congress, Garrett supported efforts to eliminate the Ex-Im Bank. He stated in 2015 that the agency "embodies the corruption of the free enterprise system." President Trump was reportedly considering whether to withdraw his nomination, though he's made no additional announcements or nominated anyone to fill the final vacancy on the Ex-Im Board. A White House official noted in early August the President is "looking to get a reformer" in the Ex-Im Bank and indicated the administration is also developing a plan to reform the institution. In an August 1 [letter](#) to Senate Banking Committee Chairman Mike Crapo (R-ID), Garrett noted: "Consistent with the President's goal of ensuring our government works for all Americans, I also believe that [the Ex-Im Bank] must be reformed and modernized as outlined by Congress."

If all Democrats unify to oppose Garrett's nomination, he cannot lose more than two Republican votes to be confirmed. Three Republicans have already suggested they would not vote to confirm Garrett.