

# Washington Update

May 4, 2015

April saw a spate of legislative progress in Washington. Against long odds, lawmakers were able to pass a long-awaited permanent fix to Medicare’s physician payment formula. Negotiators moved closer to advancing a unified budget resolution for Fiscal Year 2016 (FY16), while the House kick-started the appropriations process by passing two FY16 spending bills. Legislators also moved fast-track trade legislation out of key committees and began debate on the recent nuclear deal with Iran and seeking to ensure a role for Congress. Finally, as several legislative deadlines approach, lawmakers continued discussions on how to move forward on several expiring programs, including the Highway Bill, the PATRIOT Act, and the Export-Import Bank.

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## CONGRESSIONAL OUTLOOK FOR MAY

The Bipartisan Policy Center (BPC) released a [report](#) in April that shows a “healthier” and more active Senate. According to the report, “the first three months of the 114th Congress showed a burst of energy, with congressional committees reporting bills in higher numbers than during recent Congresses,” and consideration of legislation on the Senate floor has also increased. This newfound level of productivity will be tested as Congress is set to debate a host of controversial, deadline-driven agenda items in May.

Key laws are set to expire at the end of the month, and much of the congressional schedule will be taken up by discussions on whether and how to renew them. The Highway Bill and key sections of the PATRIOT Act will both expire after May 31. Additionally, the Export-Import Bank, which has drawn the ire of several key Republican leaders, is set to expire at the end of June. All three items will receive ample attention in the coming month, although the final status of the Ex-Im Bank will probably not be decided until June.

Both chambers are also expected to wrap up the budget process, with the House voting last week to approve a unified budget and the Senate expected to follow suit by the end of the first week of May. Legislation that would fast-track approval of trade agreements as well as a bill that would give Congress the power to review the tentative nuclear agreement with the government of Iran will also receive considerable floor time. In the House, legislators will continue work on several appropriations bills. In the Senate, the Judiciary Committee is expected to move forward on patent reform this month with a possible markup before the Memorial Day recess, although the recently introduced reform bill has not yet managed to bridge the divide between the biotech/pharmaceutical/university sector and the high tech sector on a number of key issues.

## ISSUE – HEALTH

In April, Congress accomplished a long-time goal by passing a permanent [replacement](#) to Medicare’s Sustainable Growth Rate (SGR) formula for physician reimbursement. The flawed payment model had previously been “patched” seventeen times to prevent major cuts to doctor payments. The new measure provides a 0.5 percent annual payment increase to physicians through 2019 and then transitions to an incentive-based model to prompt participating physicians to participate in alternative payment systems. The proposal, which President Obama signed into law on April 17, carried a price tag of \$210 billion over ten years. Of that total, \$70 billion was offset by reforms, including increased Medicare premiums for higher-income Americans. The law also extended the Child Health Insurance Program for two years.

## ISSUE – TAXES

Discussion on comprehensive tax reform continued at a slow pace this month. With the emerging general consensus that comprehensive reform would be difficult to accomplish in 2015, many have floated ideas of a pared down approach of international only, corporate only, or a combination of both. One of the key challenges facing a slimmed down approach is how to address reform for pass-through entities. To generate input on this issue, Senate Finance Committee Chairman Orrin Hatch (R-UT) and House Ways and Means Committee Chairman Paul Ryan (R-WI) sent letters to members of the Coalition for Fair Effective Tax Rates, a coalition of mainly associations with small business members, asking for feedback on how best to reduce the effective tax rates for pass-through entities.

Senate Finance members also continued work this month on their tax reform working groups. Their findings are expected to be finalized at the end of May, but uncertainty remains about how much consensus members will be able to find on the issues.

## ISSUE—TRADE

Trade issues came into sharp focus this month as lawmakers discussed the path forward on Trade Promotion Authority (TPA) legislation. TPA would expedite consideration of pending trade agreements: the Transatlantic Trade and Investment Partnership (TTIP) and the Trans-Pacific Partnership (TPP).

TPA bills often include goals and guidelines for administrations to follow when negotiating trade agreements. More importantly, they also contain provisions to expedite congressional consideration, including banning amendments to treaties under consideration, mandatory floor action, and time-limited debate.

On April 16, Chairmen Hatch and Ryan [announced](#) that they had reached a deal with Senate Finance Committee Ranking Member Ron Wyden (D-OR) on a TPA bill. In addition to putting the pending agreements on a fast track to a vote in Congress, the proposal would also renew the Trade Adjustment Assistance program, which provides financial support, job search, and retraining to Americans who lose their job due to foreign trade.

Republicans generally support the bill, but the debate over fast-tracking the pending trade agreements opened a fault line this month within the Democratic Party. The White House is aggressively pushing Congress to pass TPA, believing that the legislation will give trade negotiators leverage to wrap up the agreements. However, the bulk of congressional Democrats remain opposed to TPA. Led by Senator Elizabeth Warren (D-MA), several Democratic lawmakers and labor groups pushed back on TPA with the aim to slow the process down.

Both the Senate Finance and Ways and Means Committees approved the legislation. The bill is awaiting consideration in both chambers, which is expected to begin in early May. While Senate leaders feel confident they will find enough votes to pass TPA, the House vote is on shakier ground with few Democrats willing to publicly support TPA and a number of conservative Republicans opposing the idea of giving the President more authority. Two aspects of the trade debate have the potential to unravel the fragile bipartisan coalition supporting TPA: (1) currency manipulation and (2) Trade Adjustment Assistance.

## **ISSUE – GOVERNMENT FUNDING AND THE BUDGET**

Congress continued work on the budget and appropriations this month, with legislators getting closer to passing a joint budget resolution.

### *The Budget*

Lawmakers from both chambers spent much of the month working to negotiate a joint budget resolution conference report after the Senate and House passed budgets in March. The budget conference committee worked to hammer out the differences between the two bills, reaching a [compromise](#) in late April. The House passed the joint budget resolution on April 30, and the Senate is expected to pass the measure during the first full week of May.

### *Appropriations*

Legislators also began working on the annual appropriations process this month. The House Appropriations Committee approved two spending bills for FY16: [Military Construction/Veterans Affairs](#) and [Energy & Water](#), both of which were subsequently passed by the full House. In May, the House could act on several additional spending bills, including Legislative Branch; Transportation, Housing, and Urban Development; and Commerce, Justice, and Science. The Senate has yet to act on any appropriations bills, but the Appropriations Committee continues to convene hearings on the spending measures.

Over the coming months, both chambers will continue to act on the twelve annual spending bills. Lawmakers have until the end of the fiscal year (September 30, 2015) to complete work on appropriations bills. If Congress fails to do so, a Continuing Resolution will be required to temporarily continue government funding.

## ISSUE—TECHNOLOGY

Technology issues—net neutrality, patent reform, cybersecurity, and the PATRIOT Act—saw movement this month.

### *Net Neutrality*

In April, Rep. Doug Collins (R-GA) introduced a [joint resolution](#) expressing disapproval of the [rules](#) submitted by the Federal Communications Commission's (FCC) that enshrines net neutrality in Internet regulation and reclassifies Internet services providers as a common carrier under Title II of the Telecommunications Act of 1934. The bill would undo the rule through a vote under the Congressional Review Act. The bill has been backed by House Judiciary Chairman Bob Goodlatte, a key supporter. In the Senate, Senator Rand Paul (R-KY) introduced a counterpart [bill](#) that also seeks to use the Congressional Review Act procedures to avoid a Senate filibuster.

Other legislators have been more cautious, with technology leaders in Congress continuing to work on finding a bipartisan legislative solution.

### *Patent Reform*

Efforts to reform the U.S. patent system moved forward this month. In the Senate, lawmakers introduced the [PATENT Act](#). Among other provisions, the bill would set new uniform standards for parties pleading a patent infringement suit and would curb abusive letters sent to patent holders by requiring these communications to contain additional substantive information. Chairman Chuck Grassley (R-IA) has stated his desire to move to a markup before the Memorial Day recess, but differences still need to be resolved between the biotech/university groups and the high tech world.

Grassley also plans to address complaints about the U.S. Patent and Trade Office's new Inter Partes Review (IPR) system, which was created under the America Invents Act in 2011. Critics say the IPR system treats patent owners unfairly which has resulted in higher numbers of patent invalidation decisions.

Chairman Goodlatte introduced a similar [bill](#) in the House in February, though the chamber has yet to take action on the legislation. The House Energy and Commerce Committee marked up a [bill](#) in late April that would curb patent trolls from sending threatening letters.

### *Cybersecurity*

The House advanced two information sharing bills this month that would allow companies to share information about cyberthreats. The [first bill](#) would remove corporate liability when sharing information about a breach with the federal government, and the [second bill](#) would designate the Department of Homeland Security as the lead civilian interface for sharing information about cybersecurity threats and attacks. This round of cybersecurity activity in the House did not include the data breach [bill](#) passed the Energy and Commerce Committee in March.

The Senate Intelligence Committee passed the [Cybersecurity Information Sharing Act](#) (CISA) in March, but the packed floor calendar along with an ongoing discussion about whether to include data breach legislation prevented its consideration. Ultimately, if consensus is not reached on the various approaches to data breach, the Senate will likely move ahead with CISA.

### *PATRIOT Act/NSA Reform*

Key provisions of the PATRIOT Act are set to expire at the end of May, and Congress will turn its attention to a possible reauthorization of the bill in the coming weeks. This month, Senate Majority Leader Mitch McConnell (R-KY) introduced legislation that would reauthorize the PATRIOT Act until 2020. Leader McConnell also indicated that he would bring the bill directly to the Senate floor for a vote in the coming weeks. The legislation was met with fierce criticism from Democrats, who, along with some Republicans, oppose provisions in the law that allowed the National Security Agency's (NSA) bulk data collection program.

Leader McConnell's announcement came as both the House and Senate are expected to consider NSA reform legislation that would end the data collection program, which was revealed to the public by Edward Snowden in 2013. In the House, a bipartisan group of lawmakers introduced the [USA Freedom Act](#) at the end of April. The bill would end the NSA's bulk data collection program and would institute new privacy and transparency oversight initiatives. The House Judiciary Committee passed the bill on April 30 by a vote of 25-2. The Senate has yet to act on a version of the legislation.

## **ISSUE—ENERGY**

April saw some major energy developments, including moves by Congress to roll back the Administration's carbon rules and new regulations related to wastewater from fracking.

### *Carbon Rule Hearing*

In April, the House Energy and Commerce Subcommittee on Energy and Power held a [hearing](#) on the Environmental Protection Agency's (EPA) proposed rule curbing carbon emissions from existing power plants. The hearing was convened by Chairman Ed Whitfield (R-KY) and investigated the rule's impact. Additionally, the hearing looked at Chairman Whitfield's Ratepayer Protection Act. This [bill](#) would give states the legal authority to delay compliance with the proposed carbon rule until all lawsuits challenging the regulation are completed. The full Energy and Commerce Committee approved the bill in late April.

At the hearing, Republicans criticized the EPA for overstepping its authority. Chairman Whitfield stated that he believes his draft bill would allow states to avoid costly implementation of the proposed rule prior to the court's ruling on the regulation's

constitutionality. Democrats attacked the measure, with the EPA's acting air chief Janet McCabe stating that the bill is premature given that the proposed rule has not yet been finalized.

### *Fracking Wastewater Rules*

In April, the EPA released a proposed rule that would prevent municipal water treatment plants from accepting wastewater produced from hydraulic fracturing, also known as fracking. Currently, no water treatment plants accept this form of wastewater, but many have received requests. The EPA's proposed regulations are a preventive measure to provide regulatory certainty.

## **ISSUE—FINANCIAL SERVICES**

Discussions continued this month over whether to reauthorize the Export-Import (Ex-Im) Bank, a federal export credit agency that finances and insures foreign purchase of American exports. Many Republicans, including House Financial Services Committee Chairman Jeb Hensarling (R-TX), oppose reauthorizing Ex-Im, and this month House Majority Whip Steve Scalise (R-LA) indicated that he believes the Bank is on track to expire. However, Democrats and some Republicans in both chambers are calling on Congress to reauthorize the Bank. The Bank's current authorization expires at the end of June.

## **ISSUE—FOREIGN AFFAIRS**

Congress continues to debate the recent multinational agreement to limit Iran's ability to establish a nuclear weapons program. In early April, international negotiators announced that they had reached an agreement on the framework of a deal that would scale back Iran's nuclear program in exchange for an easing of existing sanctions. Among the parameters of the tentative [deal](#), Iran would reduce its stores of low-enriched uranium by ninety-eight percent and curb its number of installed centrifuges.

The deal was met with skepticism on Capitol Hill. Republicans and some Democrats openly feared that the deal would not provide adequate obstacles to Iran obtaining a nuclear weapon. These critics also pointed to historic tensions between Iran and the West and expressed concern that the former may have no intention of adhering to the agreement.

Lawmakers reacted to the deal by producing a bipartisan [bill](#) that would give Congress a role in approving the deal. As negotiated by Senate Foreign Relations Committee Chairman Bob Corker (R-TN) and Ranking Member Ben Cardin (D-MD), the legislation would require the Administration to submit the final agreement for review by Congress and produce proof that Iran is in compliance. The bill would also prohibit the President from lifting sanctions while the agreement is under review and would further require the Administration to periodically update Congress on Iran's compliance.

The Senate will continue its work on the bill into the first week of May. Senators have struggled to end debate on the measure, with several hawkish Republicans pushing amendments that, if adopted, could lead to Democratic Senators pulling their support. Leader McConnell may choose to continue the amendment process or move to end debate. However, some Republicans may pull their own support for the bill if their amendments do not receive votes before the Senate moves to final passage.

## **ISSUE—TRANSPORTATION**

Discussion surrounding the expiring Highway Bill and movement on rail policy were the main transportation issues in Washington this month.

### *Highway Bill*

The current Highway Bill is set to expire after May 31 but lawmakers are showing signs that they will pass a short-term reauthorization of the current Highway Bill (MAP-21), possibly for only a few months or past the end of the fiscal year. This course of action became even more feasible following comments made by Secretary of Transportation Anthony Foxx that suggested that the Highway Trust Fund (HTF) would likely remain solvent until late July or early August, providing legislators more time to devise a long-term funding fix for the HTF.

Several proposals have been floated to permanently fix the HTF, which is currently funded by a flat gasoline excise tax. In the House, a bipartisan group introduced a [bill](#) this month that would index the gas tax for inflation. Additionally, the proposal calls for a bicameral, bipartisan committee to develop a long-term funding solution.

Also in April, Senate Environment and Public Works Committee Ranking Member Barbara Boxer (D-CA) and Senator Rand Paul (R-KY) unveiled a [proposal](#) that would fund the HTF with revenue collected through a temporary repatriation tax holiday for overseas corporate profits, although many are skeptical that the proposal would generate enough revenue.

### *Rail updates*

The Department of Transportation released its long-awaited final [rule](#) this month, enshrining new crude-by-rail regulations. The rule will institute tighter construction standards for rail tank cars, force rail companies to retire older cars, mandate new braking systems, and institute a permanent 40 mph speed limit for crude and ethanol trains travelling through urban areas.

## RECENT POLLING

### Job Approval: President Obama

Poll	Date	Results
Gallup	May 1	Approve 46, Disapprove 49
Rasmussen Reports	Apr. 29	Approve 47, Disapprove 51
Reuters/Ipsos	Apr. 24	Approve 44, Disapprove 49

### Job Approval: Congress

Poll	Date	Results
The Economist/ YouGov	Apr. 25	Approve 16, Disapprove 61
Associated Press/GfK	Apr. 23	Approve 19, Disapprove 80
Fox News	Apr. 19	Approve 19, Disapprove 75

### Direction of the Country

	Date	Results
Reuters/Ipsos	Apr. 25	Right Direction 28, Wrong Direction 56
The Economist/ YouGov	Apr. 25	Right Direction 28, Wrong Direction 60
Associated Press/GfK	Apr. 23	Right Direction 38, Wrong Direction 62