

# Washington Update

May 3, 2016

Legislators returned from the April recess and immediately began work on several pressing issues. Despite the lack of a budget resolution, appropriators began work on spending measures for Fiscal Year 2017 (FY17) at the committee level. Lawmakers attempted to address several health crises, including the growing opioid abuse epidemic and the spread of the Zika virus. In April, both chambers continued the discussion on tax reform, and the Senate advanced a bipartisan bill reauthorizing federal aviation programs. The Administration released its final fiduciary duty rule, while Congress began its annual debate over the defense reauthorization bill.

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## **CONGRESSIONAL OUTLOOK FOR MAY**

Much of the three-week congressional work period in May will focus on FY17 appropriations bills. Negotiations over a budget resolution have failed thus far in both chambers. Nevertheless, the Senate began work on appropriations on the floor at the end of April and the House is expected to do the same following May 15 deadline after which appropriations bills may be considered without a budget in the House.

In the House, members are also expected to advance legislation on several other fronts. Upon returning from recess, House floor time will be used to debate a variety of member proposals dealing with the opioid abuse crisis. The House is also expected to consider the FY17 National Defense Reauthorization Act (NDAA). If House and Senate negotiators can hammer out compromise legislation, a final vote on the Toxic Substances Control Act may also receive a vote in May. The House could also act on legislation addressing the debt crisis in Puerto Rico ahead of a July 1 deadline for another large bond payment, but it is likely that floor action gets pushed until June.

In the Senate, floor time in May is expected to be taken up largely by consideration of appropriations bills, including Energy and Water; Commerce, Justice, and Science (CJS); Military Construction and Veterans Affairs (MilConVA); and Transportation, Housing, and Urban Development (THUD). The Senate may also turn to its version of NDAA later in the month. Finally, the chamber could begin consideration of a water resources development bill (WRDA), which has now been reported out by the Senate Environment and Public Works Committee and includes a compromise proposal regarding the Flint water crisis.

Key 2016 dates include:

- July 1 – Puerto Rico bond payment due
- July 15 – FAA authorization expires
- July 15 – Congress adjourns until September 6
- July 18-21 – Republican National Convention
- July 25-28 – Democratic National Convention
- September 30 – End of Fiscal Year, government funding expires
- September 30 – EB-5 Immigrant Investor Program expires
- November 8 – Election Day
- December 16 – Targeted adjournment sine die

## **ISSUE—GOVERNMENT FUNDING**

Though lacking a unified budget resolution, lawmakers continued work on appropriations bills this month.

### *Federal Budget*

Efforts to pass a FY17 budget resolution have stalled. In the Senate, Majority Leader Mitch McConnell deferred to the House, stating that the Senate would wait for the House to advance a fiscal blueprint. However, continued opposition from hardline conservatives within the House Republican Conference have sidelined GOP leaders' attempt to draft and pass a budget. Speaker of the House Paul Ryan (R-WI) admitted in April that he does not have enough House Republican support to pass the measure at this time, but there may be one last push in May to pass a budget along with a "sidecar" bill that would cut \$30 billion from various mandatory spending programs.

### *Appropriations Process*

The delayed budget process has not stopped appropriators from beginning their work on the twelve annual spending bills. Appropriators in both chambers began in earnest in April to approve funding measures for several agencies. (See [here](#) for a summary of appropriations activity.)

In the Senate, the Appropriations Committee advanced measures for CJS, Energy and Water, MilCon/VA, and THUD. In April, the full Senate was set to approve the Energy and Water funding bill, but was delayed after Democrats objected to the possibility of a vote on Senator Tom Cotton's (R-AR) amendment relating to Iran's nuclear program, which they viewed as a deal breaker. Senate Democrats voted twice last week to block the Energy and Water funding bill, but Senate leaders are working to resolve the issue and are likely to return to the bill the second week of May. The Senate is likely to move to the THUD bill after completing work on Energy and Water.

The House Appropriations Committee advanced measures for Agriculture, Energy and Water, and MilCon/VA. Consideration of these and other spending bills by the full House will be delayed until mid-May. House rules require the chamber pass a budget resolution before approving appropriations measures. However, the rules are relaxed after May 15, and House leaders have indicated that they will push for quick consideration of the spending bills after that deadline. MilCon/VA is expected to be the first appropriations bill to receive floor action.

## **ISSUE—TAX**

Both chambers were busy with tax issues in April.

### *House Tax Update*

House Ways and Means Chairman Kevin Brady (R-TX) announced in April that his Committee will roll out a broad blueprint for comprehensive tax reform in June. In his statements, Chairman Brady reiterated that action on tax reform will likely have to wait until the new Congress is convened in 2017. The proposal is likely to be the culmination of work done by the Committee and the House GOP Task Force on tax reform, part of

House Republican Leadership’s “Agenda Project” to put forth new policy ideas for a GOP agenda going into 2017.

Also in the House in April, Ways and Means Subcommittee on Tax Policy Chairman Charles Boustany (R-LA) held a second [hearing](#) in his series to review a variety of fundamental tax reform proposals put forward by House members. On April 13, the Subcommittee heard testimony from Rep. Bob Goodlatte (R-VA) on his proposal to set a termination date for the current tax code and Rep. Roger Williams (R-TX) on his proposal to “Jumpstart America” through tax reform. Chairman Boustany’s hearings are expected to help guide Ways and Means leaders as they draft their blueprint for comprehensive tax reform.

### *Senate Tax Update*

In the Senate, Finance Committee Chairman Orrin Hatch (R-UT) held a [hearing](#) on business tax reform to follow up on the Committee’s Business Income Tax Working Group report published last year. At the meeting, Chairman Hatch announced that he is continuing work on his corporate integration proposal, which is expected to offer a deduction to companies for paying dividends to shareholders thereby eliminating double taxation. The plan could be unveiled as early as June.

Also in April, Senate Finance Committee Ranking Member Ron Wyden (D-OR) released draft [legislation](#) to simplify capital depreciation rules for investments made by companies. Wyden said his proposal would make it easier for small businesses that currently have to perform complex calculations per asset, and instead allow “pooling” of like assets.

## **ISSUE—HEALTH**

Congress addressed several healthcare-related items in April, including opioid legislation, biopharma innovation legislation, and discussions over the spread of the Zika virus.

### *Opioid Legislation*

Efforts to address the growing opioid abuse epidemic pressed forward in April. The House Energy and Commerce (E&C) Committee advanced a [dozen](#) bills dealing with the opioid crisis. The legislation comes a month after the Senate advanced the Comprehensive Addiction and Recovery Act (ACA) to redirect nearly \$78 million in existing substance abuse prevention and treatment funds to programs designed to deal with opioid abuse. Despite the progress, Democrats in both chambers continue to pressure Republicans to increase overall funding within the bills for opioid programs.

The full House is expected to take up the opioid bills as a package in the second week of May. If the package passes, healthcare leaders from both chambers will work to smooth out the differences between the opioid proposals.

### *21<sup>st</sup> Century Cures*

The Senate continued its work on a package of bills similar to the House's [21<sup>st</sup> Century Cures Act](#). Passed by the House in July 2015, the Cures Act seeks to modernize the Food and Drug Administration (FDA) and the National Institute for Health (NIH). In April, the Senate Health, Education, Labor, and Pensions (HELP) advanced several [bills](#) that are companion measures to the Cures Act. These join a handful of other Cures-related [bills](#) that have already been approved by the HELP Committee.

A timeline for consideration of these measures, which are expected to be packaged together, remains ambiguous. Senate Democrats have pledged to block the package from coming to the floor unless it includes new mandatory funding for NIH. Leader McConnell has pledged to work with HELP Chairman Lamar Alexander (R-TN) and Ranking Member Patty Murray (D-WA) on a funding agreement that would allow the package to advance, but timing and payfors remain uncertain.

With the short congressional calendar and lack of a deadline forcing action on Cures, it is possible that the effort is unsuccessful this year. In that event, the must-pass FDA reauthorization process in 2017 could be a possible vehicle for some of these reforms and modernizations.

### *Zika Update*

Following months of growing concerns over the rapid spread of the Zika virus, which can cause serious birth defects if a pregnant mother is infected, Congress took steps in April to provide resources to combat the global health crisis.

In February, President Obama requested \$1.8 billion in emergency spending to fight the epidemic, and in April, some GOP appropriations leaders indicated that they will provide at least some additional emergency funds. Senate Appropriations Chairman Thad Cochran (R-MS) stated that he expects to produce a bipartisan Zika emergency supplemental spending measure. Though there is continuing uncertainty on how a Zika supplemental would progress through the Senate, observers suggest that the measure will likely be added as an amendment to another bill.

House Republicans have been more resistant to moving emergency funding. In April, House Majority Floor Leader Kevin McCarthy (R-CA) announced that there would be no standalone Zika legislation. Instead, Leader McCarthy stated that increased Zika funds would have to move through the traditional appropriations process. Congressional Democrats blasted the comments, but Leader McCarthy defended his position, emphasizing the need for additional details on the Administration's anti-Zika plan before

approving new funds. House Republican leaders are also under pressure from hardline conservative lawmakers to provide a spending offset to any additional Zika funding, although emergency supplemental bills traditionally have not been paid for.

### *CMMI Medicare Part B Demo*

Congress continued its review of a proposed plan by the Centers for Medicare and Medicaid Services' (CMS) Center for Medicare and Medicaid Innovation (CMMI) that would establish a five year demonstration project. The demo would experiment with Medicare Part B payments for prescription drugs administered by physicians. For regions included in the demo, the proposal would change the payment formula to include the drug's average sales price plus 2.5 percent paired with an additional flat fee of \$16.80.

Congressional Republicans joined with the biopharma industry, patient advocacy groups, and the physician community in opposing the CMMI project. In April, Senate Finance Committee Republicans sent a [letter](#) to CMS calling on the agency to shutter the demonstration project, citing the potential adverse effects the plan could have on the sickest Americans. The letter further cited the potential for decrease quality of care and increases in Medicare costs as reason to postpone the project. House Republicans led by Reps. Charles Boustany (R-LA), John Shimkus (R-IL) and Tom Price (R-GA) sent a similar [letter](#), which was signed by more than 240 House members including a few Democrats. The Republican letters urged CMMI to withdraw the proposed rule.

House and Senate Democrats sent their own letters expressing concern with the demo project, but stopped short of asking the Administration to pull the proposed project. Rep. Richie Neal (D-MA) led the House [letter](#) and Senators Wyden and Chuck Schumer (D-NY) headed up the [Senate letter](#).

In addition to the letters, Rep. Larry Bucshon (R-IN) said he plans to introduce a Congressional Review Act resolution that would block the proposed rule.

## **ISSUE—TRANSPORTATION**

The Senate advanced a reauthorization bill for Federal Aviation Administration (FAA) programs in April with an overwhelmingly bipartisan vote. Senate approval comes after months of negotiations and would set spending levels at \$33 billion through FY17. In the House, it remains unclear how Transportation and Infrastructure (T&I) Committee Chairman Bill Shuster (R-PA) will proceed with his version of FAA reauthorization. Chairman Shuster previously introduced a reauthorization [bill](#) that advanced out of T&I, but floor consideration has stalled amid opposition to controversial language that would create a plan to privatize air traffic controllers.

In March, legislators passed a temporary FAA extension, and lawmakers remain hopeful that they will be able to hammer out a final deal by the time the legislative stop gap runs out on July 15.

## **ISSUE—ENERGY**

The Senate wrapped up consideration of a landmark energy package while deferring action on several expiring energy tax provisions

### *Senate Energy Legislation*

In April, the Senate approved [legislation](#) that would overhaul federal energy programs. Among other provisions, the bill would speed up approval of LNG export applications, require improvements in building and appliance efficiency, and advance efforts to shield the nation's electric grid from cyberattacks. The bill had stalled over efforts to add funds to combat the ongoing water crisis in Flint, Michigan and elsewhere, but the measure passed after those provisions were stripped from the bill.

Lawmakers will now work to iron out the differences between the Senate and [House](#) versions of the bill, though it remains unclear whether there will be a formal conference committee.

### *Energy Extenders*

Proponents of a handful of energy-related tax extenders failed to ensure the provisions' fate past the end of the year. The December 2015 extenders deal ([PATH Act](#)) included extensions of various tax extender provisions, but not all extenders were treated equally, with some extended for two years through 2016 and others extended for four or five years or permanently. As it relates to renewable energy investment tax credits, some provisions for wind and solar were extended for five years while proponents argue that others for geothermal and fuel cell technologies were inadvertently left out and only extended through the end of this year.

Since then, Senator Wyden has pushed for these provisions to receive a longer extension. He attempted to add the energy extenders to the FAA reauthorization bill along with a host of other revenue-related provisions, but failed to gain enough support due to the size of the package. Senate Minority Leader Harry Reid (D-NV) reassured supporters of the tax provisions that Leader McConnell had pledged to move the energy tax extenders later in the year.

## **ISSUE—TECHNOLOGY**

The debate over encryption continued in April when Senate Intelligence Committee Chairman Richard Burr (R-NC) and Ranking Member Dianne Feinstein (D-CA) unveiled a

[discussion draft](#) of legislation requiring software and other companies to comply with court-mandated orders to assist authorities in accessing protected consumer data under certain circumstances. The draft comes a month after the Federal Bureau of Investigation concluded its battle against Apple, Inc. to require the tech giant to write a program that allowed the agency to hack into the locked iPhone of the perpetrators of the 2015 terrorist attacks in San Bernardino, California.

Privacy advocates and cryptographers immediately criticized the proposal, calling it an affront to consumer privacy. However, given the increased use of encryption to organize terrorist attacks, the debate over the issue is likely to intensify, with law enforcement and intelligence services pressuring for more tools to head off potential attacks.

### **ISSUE—DEFENSE POLICY**

Legislators began work in April on the FY17 National Defense Authorization Act (NDAA). On April 19, the House Armed Services Committee (HASC) released its NDAA bill, which was marked up by the six subcommittees. HASC subsequently approved the [measure](#), which authorizes \$610.5 billion in defense spending for FY17. The legislation comports with the overall funding request from the Obama Administration, but Democrats are likely to continue to oppose language in the proposal that would allocate \$23.1 billion in war-related Overseas Contingency Operations funds to fill the Pentagon's base budget shortfall. Defense leaders in the House hope to move the bill to the floor by mid-May.

On the Senate side, the Senate Armed Services Committee (SASC) subcommittees are scheduled to mark up its version of the NDAA on May 9, with the full SASC set to mark up the bill on May 11.

### **ISSUE—FINANCIAL SERVICES**

Nominees for the Securities and Exchange Commission (SEC) stalled in the Senate in April while the Department of Labor (DOL) released a final rule on fiduciary standards.

#### *SEC Nominees*

The Senate Banking Committee failed to advance a pair of nominees to serve as SEC commissioners. At an April 7 meeting, Chairman Richard Shelby (R-AL) attempted to move the two nominees, Democratic Lisa Fairfax and Republican Hester Peirce, out of the Committee by voice vote. Opposition from both sides led to a delay of the vote, with Chairman Shelby promising to return the matter soon.

The fate of the SEC nominees remains uncertain. Senator Chuck Schumer (D-NY), the likely next leader of the Senate Democrats, opposed both nominees, unsatisfied by their answers on requiring corporations to disclose to shareholders the extent of their

political involvement. Leading financial sector critic Senator Liz Warren (D-MA) strongly opposed the Republican nominee over past criticisms of some financial regulations. At this point, Democratic opposition to the nominees is likely to block the appointments between now and Election Day.

### *Fiduciary Rule*

On April 6, DOL released its long-awaited final [rule](#) on brokers' fiduciary responsibility to consumers, the so-called fiduciary rule. The final regulation requires brokers to act in the best financial interest of their clients when advising on retirement investing, a higher standard than brokers currently face. Among other provisions, the finalized version of the fiduciary rule simplifies previous versions of the "best interest contract" provisions, allowing brokers to retain their commission payment structure as long as they make a host of disclosures.

Many Democrats hailed the rule as a necessary check on the financial sector, while Republicans criticized the new regulation on the grounds that it could inadvertently lead to a reduction of brokers willing to provide services to middle income investors. GOP lawmakers in both chambers took action, filing Congressional Review Act legislation that would allow legislators to block the fiduciary rule. The House approved its [resolution](#) disapproving of the rule in late April.

## **OTHER ISSUES**

Developments on several other issues occurred during the April work period.

### *Criminal Justice Legislation*

Efforts to reform the criminal justice system got a major boost in April, with champions rolling out changes to the Senate's [Sentencing Reform and Corrections Act](#) on April 28. Bill sponsor and Judiciary Committee Chairman Chuck Grassley (R-IA) was joined by other sponsors of the bill to unveil the [changes](#) to the proposal and new co-sponsors, including Senators Thad Cochran (R-MS), Mark Kirk (R-IL), Steve Daines (R-MT), and Dan Sullivan (R-AK). Supporters of the legislation are continuing to seek more support among the Senate GOP conference and continue to push Senate leadership to schedule floor time for debate and a vote on final passage, though it remains unclear when that may occur.

In the House, Judiciary Committee Chairman Bob Goodlatte (R-VA) has led his committee in marking up several pieces of criminal justice reform legislation and is expected to markup up additional measures on policing and juvenile justice before packaging all criminal justice bills together for floor action in early summer.

### *Puerto Rico*

Work continues on a [proposal](#) to stave off an impending debt crisis in Puerto Rico. In mid-April, the House Natural Resources Committee was set to markup up legislation that would allow Puerto Rico to restructure debt following the fiscal control board's mediation between creditors and investors. However, internal GOP conflict over the direction of the bill forced a rewrite of the legislation. As a result, Leader McCarthy conceded that Congress would not be able to pass a debt relief bill before a debt payment was due on May 1. He remained confident that legislators would be able to pass the measure before a much larger payment is due on July 1; though the bill continues to face strong opposition from the Freedom Caucus. The mark-up of the legislation is expected in mid-May with floor consideration slated for some time in June.

### *GMO Food Labeling*

Legislators are continuing to look for a path forward on stalled [legislation](#) from Senate Agriculture Committee Chairman Pat Roberts (R-KS) to prohibit states from mandating that products containing genetically modified organisms (GMOs) indicate their presence on product packaging, instead creating a voluntary national standard for foods with GMOs. Chairman Roberts and Agriculture Committee Ranking Member Debbie Stabenow (D-MI) have been negotiating a revised version of the bill. Chairman Roberts wants to wrap up the legislation ahead of a July 1 deadline set by Vermont for companies doing business in the Green Mountain State to include GMO labeling on their products. With the July 1 deadline also on his mind, Leader McConnell spoke on the issue on May 2, stating that he hopes to move legislation soon to prevent the emergence of a state patchwork of labeling laws.

### *Trade*

On April 27, the House approved the [American Manufacturing Competiveness Act](#). The miscellaneous tariff bill (MTB) establishes a new process for manufacturers to obtain temporary tariff waivers, empowering the U.S. International Trade Commission to review the petitions rather than Congress. The Senate has yet to act on its companion [legislation](#), but the proposal has strong bipartisan support. MTBs used to be a regular practice in Congress as needed, but congressional earmark rules included these provisions in the definition of an earmark years ago and prevented any MTBs from moving forward. This bill proposes a solution to get around that problem.

## RECENT POLLING

### Job Approval: President Obama

Poll	Date	Results
Gallup	May 1	Approve 52, Disapprove 45
Rasmussen Reports	May 1	Approve 51, Disapprove 48
IBD/TIPP	Apr 28	Approve 49, Disapprove 44

### Job Approval: Congress

Poll	Date	Results
The Economist/ YouGov	Apr 26	Approve 11, Disapprove 66
CBS News	Apr 12	Approve 14, Disapprove 77
Gallup	Apr 10	Approve 17, Disapprove 79

### Direction of the Country

	Date	Results
Rasmussen Reports	Apr 29	Right Direction 29, Wrong Direction 65
Reuters/Ipsos	Apr 27	Right Direction 23, Wrong Direction 65
The Economist/ YouGov	Apr 26	Right Direction 25, Wrong Direction 66