

# Washington Update

January 4, 2016

Lawmakers wrapped up 2015 with a flurry of legislative accomplishments. Legislators successfully passed a measure to fund the federal government through the remainder of Fiscal Year 2016 (FY16). Paired with the spending bill, Congress approved legislation renewing a host of expired tax extenders, and made a handful of those provisions permanent. Lawmakers also passed a multi-year Highway Bill that reauthorizes surface transportation programs for five years. December saw Congress delay several taxes related to the Affordable Care Act (ACA), reform cybersecurity laws, and pass resolutions condemning the Administration’s new carbon rules.

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## CONGRESSIONAL OUTLOOK FOR JANUARY AND 2016

Legislators effectively cleared the decks in December. The passage of several landmark pieces of legislation in 2015 allows Congress to enter 2016 with a relatively light agenda of must-do items.

The top priority for both chambers will be turning to the appropriations process for Fiscal Year 2017. The two-year budget deal that passed in October established the top line spending numbers for FY17, allowing appropriators to immediately begin work on the twelve annual spending bills. Both House Speaker Paul Ryan (R-WI) and Senate Majority Leader Mitch McConnell (R-KY) have vowed to return their chambers to regular order, with an orderly and timely appropriations process key to that goal. The ambitious aim of passing each individual appropriations bill across the House and Senate floor combined with the shortened summer session due to the earlier party conventions will lead to an aggressive schedule by the Appropriations Committees on both sides of the Capitol, with spending bills possibly hitting the House floor as early as March.

In the Senate, lawmakers are expected to turn to the [customs bill conference report](#) shortly after returning from the holiday break on January 11. The measure, which contains a range of provisions strengthening customs enforcement, passed the House in December. The House is expected to take up a legal reform bill and the Senate's amended reconciliation bill when the chamber reconvenes on January 5.

January will also include President Obama's last State of the Union address, which is scheduled for January 12. In his address, the President is expected to lay out his congressional agenda for his final year in office. The parties will also hold their planning retreats in January.

More broadly, 2016 is likely to be defined by election year politics, with the presidential campaign dominating the news cycle and influencing the congressional agenda. Four sitting Senators are seeking their party's nomination (three Republicans, one Democrat). Additionally, Speaker Ryan has vowed to present an alternative for voters by developing a positive, message-driven GOP agenda, including renewed efforts on international tax reform.

## ISSUE—GOVERNMENT FUNDING

Prior to the holidays, Congress successfully extended funding for the federal government through FY16 and took a step closer to sending the President reconciliation legislation that would repeal large parts of the ACA.

### *Budget and Government Funding*

Congress approved an omnibus spending [package](#) in December renewing government funding through the end of September 2016. The legislation came after months of negotiations and the October two-year budget deal that raised spending caps on both domestic and defense spending for FY16 and FY17.

Final passage of the \$1.1 trillion omnibus came after two months of intense negotiations. The bipartisan bill also included several policy changes. While Republicans pushed for a slew of policy riders, they walked away with fewer victories that they would have liked but touted the inclusion of provisions lifting the federal prohibition on exporting oil, reforms to the Visa Waiver Program, and pared back funding for the Environmental Protection Agency (EPA) as legislative victories. Democrats managed to prevent GOP attempts to include riders that would have defunded Planned Parenthood and imposed stricter controls on Syrian refugees entering the country, among many others.

The omnibus drew criticism from both Tea Party-aligned Republicans and progressive Democrats. Despite concerns from the left and right flanks, both chambers passed the legislation on a strong bipartisan vote. The bill was signed into law by the President on December 18.

### *Reconciliation and ACA Repeal*

On December 3, the Senate approved a House-passed [reconciliation package](#) to repeal key portions of the ACA, including a rollback of the employer and individual mandates and repeal of federal subsidies for health insurance. The bill also defunds Planned Parenthood. Under reconciliation rules, the bill only needed a simple majority to pass the chamber, allowing it to avoid a Democratic filibuster. The final legislation passed on a vote of 52-47. The House will need to approve the Senate changes to the original measure. A vote on the amended legislation is expected to occur during the first week in January.

The bill's passage will fulfill the GOP pledge to repeal President Obama's signature legislative achievement. As expected, the White House has indicated that the President will veto the measure, and Republicans will not have the votes needed to override a veto.

## **ISSUE—TRANSPORTATION**

Congress passed a historic multi-year transportation bill in December as well as legislation reforming the Surface Transportation Board. Transportation leaders failed to bring forth an FAA reauthorization bill, but promised to return to the issue in 2016.

### *FAST Act*

On December 1, legislators negotiating a long-term Highway Bill released the conference report for the [Fixing America's Surface Transportation \(FAST\) Act](#). The legislation authorizes \$305 billion over five years to be spent on highway, transit, and rail projects. The FAST Act included a wide range of pay-fors including some controversial provisions, such as sales from the strategic oil reserves and fees charged to banks by the Federal Reserve. Both houses of Congress passed the measure with significant bipartisan support, and the President signed the FAST Act on December 4, making it the first multi-year transportation bill signed into law in nearly a decade.

### *Surface Transportation Board Reform*

In December, Congress approved a [bill](#) that would move the Surface Transportation Board (STB) out of the Department of Transportation and establish it as an independent agency. The legislation also expands STB membership from three to five. The new agency will continue to have oversight of proposed railroad mergers, rail rates, and services. The bill passed without significant opposition in either chamber and was signed into law on December 18.

### *FAA Reauthorization*

Reauthorization of the Federal Aviation Administration (FAA) will be pushed to 2016. House Transportation and Infrastructure Chairman Bill Shuster (R-PA) and Peter DeFazio (D-OR) both indicated that a proposal to reauthorize and revamp the FAA will not be unveiled until the new year, citing the tight December congressional agenda as the reason for the delay. The FAA is currently authorized through March 2016.

## **ISSUE—TAX**

Republican and Democratic tax leaders came to an agreement on a landmark tax extenders package in December.

### *Tax Extenders*

On December 18, Congress passed [legislation](#) known as the Protecting Americans from Tax Hikes (PATH) Act, which will extend the package of personal and corporate tax provisions known as tax extenders. The \$680 billion bill came together after several months of negotiations and included both permanent and multi-year extensions of the expired extenders, including:

### Permanent Extensions

- Research & Development Tax Credit
- Section 179 expensing
- State and local sales tax deductions
- Active finance exception
- Earned Income Tax Credit
- Child Tax Credit
- American Opportunity Tax Credit

### Multi-Year Extensions

- Bonus depreciation (phased out after five years)
- Work Opportunity Tax Credit (five years)
- Controlled-foreign corporation look-through rule (five years)
- Wind and Solar Production Tax Credits (five years)
- Railroad Track Maintenance Credit (two years)

The remainder of the some fifty extenders were included in the bill with extensions for 2015 retroactively and 2016 prospectively.

The legislation passed with the omnibus spending package. During debate over the measure, Republican deficit hawks and Democrats criticized the legislation due to the bill's lack of pay-fors to offset the tax breaks. Despite opposition, the measure easily passed and was signed into law by the President on December 18.

### *Tax Reform*

While debate over a comprehensive rewrite of the tax code is likely to continue in the new year, both House Speaker Ryan and Leader McConnell said that it is unlikely that a tax reform bill will become law in 2016. Speaker Ryan stated that a tax overhaul will likely have to wait until President Obama leaves the White House. More broadly, continuing disagreements between the parties in Congress over whether tax reform should be deficit neutral or produce new government revenue is also likely to stall reform efforts. Nevertheless, legislators are expected to continue debating tax reform ideas throughout 2016. One area that could receive increased attention is international tax reform, which will likely continue to be in the spotlight as more U.S. corporations pursue growth strategies that rely on foreign acquisitions and tax inversions. The House and Senate tax-writing committees are expected to continue efforts to educate members on tax reform, vet proposals from outside groups, and put forward new reform ideas in preparation for 2017.

## **ISSUE—HEALTH**

The omnibus legislation included several ACA-related provisions, while the Administration also released updated enrollment figures.

### *ACA Tax Delays*

Republicans scored major victories when legislators included in the omnibus spending package delays of several ACA-related taxes. Excise taxes on high cost health plans (also known as the Cadillac tax) and medical device companies will be delayed for two years. The health insurance tax (HIT) will be delayed for one year. The delays come as a significant blow to the White House and the Department of Health and Human Services (HHS), which was relying on the revenue generated from the taxes to fund ACA programs. However, these delays enjoyed bipartisan support among congressional members.

### *ACA Enrollment*

In December, HHS released updated ACA enrollment figures. The Department announced that 2.8 million Americans have selected plans using HealthCare.Gov, including one million new enrollees. The figures only include the 38 states that do not run a state-based exchange. The Administration is hoping to enroll between eleven and fourteen million before the open enrollment period ends on January 31.

### *Agency Funding*

The omnibus spending bill included a funding boost for the National Institute of Health (NIH). The legislation appropriates \$32 billion to the NIH budget, an increase of \$2 billion from FY15. Funding for the Food and Drug Administration will increase by \$133 million to an FY16 budget of \$2.7 billion. The Centers for Disease Control and Prevention will receive \$160 million, a slight increase from last year.

## **ISSUE—CYBERSECURITY**

In December, cybersecurity legislation advanced and discussions continued over ways to combat terrorists' use of technology.

### *Cybersecurity Information Sharing Act*

Negotiators included the final [Cybersecurity Information Sharing Act \(CISA\)](#) in the omnibus. CISA provides companies with liability protections for sharing threat data with federal agencies. Both chambers passed the bill earlier this year, and intelligence leaders were working to reconcile the differences. Passage of CISA was considered a huge legislative victory for the business community, including cable, telecommunications, and a myriad of other companies concerned with the growing threat of hacking attacks.

### *Encryption and Social Media Debate*

While CISA advanced, efforts to increase cybersecurity to prevent terrorist activities continue. Following the November 13 terrorist attacks in Paris by forces loyal to the Islamic State of Iraq and the Levant (ISIL), lawmakers and analysts renewed discussions on terrorists' use of digital encryption and social media platforms to plan and execute attacks. Several public officials have called on Congress to improve agencies' abilities to

crack encrypted messages of suspected terrorists. Additionally, Senate Intelligence Committee Chairman Richard Burr (R-NC) and Ranking Member Dianne Feinstein (D-CA) introduced [legislation](#) this month that would require social media companies to report terrorist content on their sites, a bill that many in the tech sector oppose.

### *Internet Tax Freedom Act*

In January, lawmakers will move forward on a [customs bill conference report](#) that includes a permanent extension of the Internet Tax Freedom Act (ITFA), a moratorium on taxation of Internet access. ITFA enjoys bipartisan support, but has become mired in a larger debate over the [Marketplace Fairness Act \(MFA\)](#), which would allow for broader collection of Internet sales taxes. Supporters of MFA have fought to tie the fate of ITFA to MFA and have vowed to strip out the ITFA provisions from the customs bill through a point of order. ITFA supporters would need sixty votes to block these attempts. Both sides believe they have the votes to achieve their conflicting goals.

## **ISSUE—PATENT REFORM**

A deal on patent reform remains elusive heading into 2016. Earlier this year, committees in both the House and Senate previously passed patent reform bills (the [Innovation Act](#) and [PATENT Act](#), respectively). However, continued inter-industry disagreement over provisions related to the inter-partes review (IPR) system at the Patent and Trademark Office continues to stand in the way of either chamber passing the legislation. Patent reform leaders have called on the affected industries—biotechnology/pharmaceuticals and technology sectors—to resolve the differences among themselves. Absent an agreement among the various groups pursuing reform, a rewrite of patent law will have an uphill climb in 2016.

## **ISSUE—ENERGY**

In December, Congress passed [S.J.Res. 23](#) and [S.J.Res. 24](#), resolutions that would curb the EPA [rules](#) placing new limits on carbon emissions from power plants. Republicans used the Congressional Review Act (CRA) to pass the measures. CRA rules allow the Senate to pass legislation with a simple majority; however, CRA resolutions are subject to a veto, and President Obama has pledged to reject the Republican legislation.

## **ISSUE—FOREIGN POLICY**

Debate over how to best defeat the growing threat of ISIL continued in December. Leader McConnell stated this month that a resolution of Authorization for Use of Military Force (AUMF) is not likely to pass through Congress in the foreseeable future. The White House has long-requested lawmakers to approve an AUMF for use against ISIL, but Congress has failed to deliver. Leader McConnell pointed to Democrats as the

chief obstacle, stating that they would require an AUMF to be too restrictive to accomplish the mission of eliminated ISIL and its affiliates.

## **OTHER ISSUES**

Developments on several other issues occurred during the productive December work weeks.

### *Federal Interest Rates*

For the first time in nearly a decade, the Federal Reserve (Fed) announced that it would raise interest rates. The Fed has maintained a zero interest rate since the height of the Great Recession. Fears over sluggish inflation led Fed Chair Janet Yellen to call for a .25% increase. While many economic analysts have lauded the move as necessary to continue the economy's slow but steady growth rate, others have expressed concerns that the rate hike could lead to more volatile markets, which Democrats fear may endanger Hillary Clinton's campaign for the presidency. The Fed has not ruled out future rate increases, but the bank pledged to move at a measured pace.

### *Export-Import Bank*

In a huge victory for supporters, the Export-Import Bank was reauthorized through a provision included in the FAST Act transportation bill. The Bank, which helps finance American exports, was forced to shutter operations in July when Congress failed to renew its charter. Conservative Republicans oppose the Bank, but negotiators agreed to a four year reauthorization, allowing the Bank to remain active through September 2019.

### *TSCA Modernization*

The [Toxic Substances Control Act \(TSCA\)](#) successfully passed before Congress adjourned for its holiday recess. The bill updates the original 1976 TSCA law, giving the EPA new powers to evaluate and regulate chemical substances while preventing states from crafting their own patchwork of rules.

### *Trade*

Both Speaker Ryan and Leader McConnell expressed doubt regarding the prospects of Congress approving the Trans-Pacific Partnership (TPP) in the coming year. The White House presented TPP, a multi-lateral free trade agreement among twelve Pacific Rim countries, to lawmakers earlier in the year, but bipartisan opposition to the deal has stalled consideration of the agreement. Speaker Ryan and Leader McConnell indicated that while there remains a chance for TPP to be addressed in 2016, final consideration of the pact may be pushed until President Obama's successor takes office.

While TPP is likely stalled for now, the Senate is expected to vote on another trade-related item, the [customs bill conference report](#), when they return in January, clearing it for the President's signature.

## RECENT POLLING

### Job Approval: President Obama

Poll	Date	Results
Gallup	Jan 1	Approve 45, Disapprove 51
Rasmussen Reports	Dec 30	Approve 46, Disapprove 52
Reuters/Ipsos	Dec 30	Approve 41, Disapprove 51

### Job Approval: Congress

Poll	Date	Results
The Economist/ YouGov	Dec 22	Approve 10, Disapprove 70
Monmouth	Dec 13	Approve 16, Disapprove 77
CBS/NY Times	Dec 8	Approve 15, Disapprove 74

### Direction of the Country

	Date	Results
Reuters/Ipsos	Dec 30	Right Direction 26, Wrong Direction 60
Rasmussen Reports	Dec 23	Right Direction 26, Wrong Direction 66
The Economist/ YouGov	Dec 22	Right Direction 26, Wrong Direction 66