



## Washington Update

March 3, 2015

Congress pushed forward on several issues in February. Lawmakers clashed over how to move forward on expiring appropriations for the Department of Homeland Security (DHS) amid President Obama’s recent actions on immigration. Members debated options on several other soon-to-be expiring programs, including the Highway Bill and the most recent “doc fix” for Medicare’s Sustainable Growth Rate payments. The Affordable Care Act (ACA) experienced spates of good and bad news while the Administration fended off Republican attacks over new net neutrality rules from the Federal Communications Commission.

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## MARCH CONGRESSIONAL OUTLOOK

Legislative activity in March will continue to focus on deadline-driven and agenda-driven items. Lawmakers will begin to work heavily on the budget resolution process, setting topline numbers to form the foundations of the forthcoming appropriations bills. Given the timing of the Easter Recess in early April, the House and Senate are both aiming to finish their budget resolutions by the end of March. In the Senate, the budget resolution debate will feature the “vote-a-rama” process where the Senate will cast rapid-fire votes on dozens of amendments.

Other items set to expire in the coming months are the Debt Limit (although the true deadline is more likely to fall in the late summer or early fall timeframe), the Doc Fix, and the current Highway Bill extension. Key dates include:

- **Mar. 6:** DHS funding expires
- **Mar. 15:** Debt Limit suspension expires
- **Mar. 31:** Current Doc Fix of the SGR formula expires
- **Apr. 15:** Deadline for Congress to produce a budget for FY16
- **May 31:** Highway Bill expires

Outside of the deadline-driven items, Congress is also expected to continue discussions on human trafficking legislation, cybersecurity, trade promotion authority and patent reform.

## ISSUE—ENERGY

The Keystone pipeline and the Administration’s plans to reduce carbon emissions were the dominant energy issues this month.

### *Keystone XL*

The big energy issue in February continued to be TransCanada’s Keystone XL pipeline project. In January, the newly-minted Republican Congress quickly passed legislation approving the pipeline in the face of Democratic objections that the move would commandeer the Executive Branch’s power to approve international infrastructure projects. The White House opposed the bill, and President Obama promptly vetoed the measure. Though the legislation drew bipartisan support during its initial passage, Republicans do not have enough votes to override the President’s veto.

Despite the bill’s demise, the official Administration review of the project is ongoing. Republicans have long accused the White House of unnecessarily delaying a final decision on the project. President Obama has yet to indicate when he will decide on the project’s fate. However, some analysts have suggested that falling gas prices have taken public pressure off of the President to approve the pipeline’s construction.

### *EPA Power Plant Rules*

Debate continued to swirl in February over the Administration's controversial rules to curb carbon emissions from existing and future coal-fired power plants. Both the Senate Environment and Public Works and House Energy and Commerce Committees held hearings probing the proposed rules. Republicans questioned senior Environmental Protection Agency (EPA) officials on the long-term effects of the regulations. During each hearing, Republican members expressed their opposition to the rules, calling them onerous and unworkable. Democrats supported the proposed regulations and defended the EPA's actions as necessary to combat the effects of climate change.

The fate of the regulations remains uncertain. In January, the EPA announced a delay in releasing the final rules. The timetable for finalizing the rules remains ambiguous, with EPA officials suggesting the regulations will be completed by "mid-summer." Following the rules' release, they are expected to be immediately be challenged in court by a range of parties, including state governments and energy producers. The litigation process could take years, delaying full implementation of the rules.

## **ISSUE—FINANCIAL SERVICES**

There were several hearings of note on financial services and banking issues this month. The Senate Banking Committee convened two hearings on regulatory relief for community banks. At the hearing Chairman Richard Shelby (R-AL) indicated the need to balance the benefits of regulatory relief and the costs and effects of deregulation. Some Senate Democrats expressed a concern that deregulation could benefit the country's largest banks. In a second hearing, the Committee probed methods to aid small banks, including a proposal to streamline financial privacy notifications that banks are required to provide to customers.

The most high-profile hearings came when Federal Reserve Chair Janet Yellen delivered The Fed's semiannual monetary policy report to the Senate Banking and House Financial Services Committees. At each hearing, Yellen called on Congress to oppose "Audit the Fed" proposals, stating that they would place political pressure on The Fed and hinder the bank's independent nature. In terms of policy, Yellen indicated that The Fed is pleased with the direction of the economy and is still considering proposals to begin raising interest rates.

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

Funding for DHS was a chief concern for lawmakers this month while Congress also began work on the budget and appropriations process for Fiscal Year 2016 (FY16).

### *DHS Funding*

The most pressing issue facing Congress in February was extending expiring funding for DHS. The Department had been operating on a short-term funding extension that passed at the end of December, when all federal agencies save DHS were funded through the end of September 2015. The temporary funding was a response to the President Obama's controversial executive action to delay the deportation of nearly four million undocumented immigrants, a move that was met with fierce opposition from Republican lawmakers.

Republicans in Congress responded to the Administration's action by working to cut off funds to implement the plan. In January, House Republicans passed a [bill](#) on a largely partisan vote that would extend funding, but would also end funding for the President's deferral program and halt the Deferred Action for Childhood Arrivals Program, which allows some undocumented immigrants to stay in the country if they arrived as children. The bill's passage received an immediate veto threat from the White House.

Senate Democrats remained united against the House approach and prevented the legislation from proceeding to a final vote. Facing the threat of a shutdown, Leader McConnell allowed a vote on a "clean" DHS appropriations bill without the immigration defunding language to come to the floor for a vote in exchange for a vote on stand-alone legislation that would defund the President's executive action. The clean DHS appropriations bill passed the Senate, but Democrats prevented passage of legislation reversing the immigration order.

On March 3, Speaker Boehner allowed a vote on the Senate's clean DHS funding bill through the use of an obscure House rule, Rule 22, which permitted the House to "reverse" its earlier vote against the clean DHS bill. With all Democrats and 75 Republicans voting in favor, the bill [passed](#) to extend funding to DHS for the remainder of the fiscal year.

### *Budget and Appropriations*

The White House kicked off the budget process this month when President Obama submitted his FY16 [budget request](#) on February 2. The budget proposal calls for nearly \$4 trillion in federal spending in the coming fiscal year, would expand tax benefits for middle income families, and would alleviate the effects of "sequestration," the automatic spending cuts which are set to go back into effect in FY16.

Following the release of the President's budget request, the Senate and House Budget Committees held hearings on the proposal during which Republicans strongly criticized the President's plan for over-spending and over-taxing. Republican leaders in the House

and Senate will introduce their own budget proposals in the coming weeks. Budget resolutions are traditionally completed in mid-April, meaning that the bulk of budget negotiations will take place throughout the month of March.

Ultimately, the Republican Congress will have the final say on the budget and spending levels for FY16. Congressional budget resolutions are not signed by the President and do not have the force of law. However, Republican leaders will need to produce a budget resolution that can pass the sixty vote threshold in the Senate. One issue that may present an obstacle to passing a budget resolution is how Republicans will use reconciliation, a budget procedure that can be used to limit Senators' ability to filibuster special legislation mandated by reconciliation instructions. Republicans have suggested using the maneuver on a variety of issues, ranging from comprehensive tax reform to a repeal of the ACA. Democrats strongly oppose the use of reconciliation to pass controversial legislation.

Once Congress agrees on a budget resolution and the topline numbers are set, lawmakers will begin work on crafting the twelve annual appropriations bill for FY16. In preparation, the House Appropriations Subcommittees held a series of hearings on departmental funding this month. Under regular order, legislators try to wrap up the appropriations process before the August recess, but that has not happened for several years.

Speaker Boehner and Leader McConnell's stated commitment to return Congress to regular order has given hope that lawmakers will adhere to the traditional funding schedule. The [general timeline](#) of the budget and appropriations process is mandated by Title III of the Congressional Budget Act.

#### *New CBO Director*

Republicans announced this month that economist Keith Hall will replace Doug Elmendorf as the Director of the Congressional Budget Office (CBO), Congress' chief budget and economic analysis unit. Hall previously served on President George W. Bush's Council of Economic Advisors. Some conservatives in Congress had pushed for Elmendorf to be replaced, calling on the GOP leadership to appoint a new CBO director who would more willingly implement so-called "dynamic scoring" in budgetary analysis. Democrats have long criticized the technique and expressed concern for Hall's plans at CBO.

#### *Debt Ceiling*

While the current debt ceiling extension is set to expire on March 15, the Treasury Department often has been able to extend the actual date of default on U.S. debt past the statutory date by instituting "extraordinary measures." Independent analysts have suggested that the actual default date could come as late as the beginning of October. Raising the debt ceiling has become an increasingly partisan issue, and with Republicans

in control of both chambers, GOP leaders are likely to come under pressure again to pursue a “spending cuts-for-debt increase” strategy, which Democrats oppose.

## **ISSUE—HEALTH**

Washington saw several healthcare related developments in February, including higher-than-expected ACA enrollment figures and persistent tax issues for ACA enrollees.

### *ACA Enrollment Figures*

Washington refocused on the ACA this month as several news stories highlighted developments with the healthcare law. In mid-February, the Department of Health and Human Services (HHS) announced that 11.4 million people selected or renewed plans through ACA insurance exchanges during the law’s second open enrollment period. The federal exchange saw 8.6 million Americans enroll with the remaining 2.8 million enrollees coming from the fourteen state-based exchanges. While the overall enrollment exceeded Administration estimates by around 200,000 people, congressional Republicans argued that the success of the exchanges was distorted by automatic re-enrollment of existing plans.

### *ACA Tax Issues*

Despite the increase in enrollees, the ACA faced harsh criticism this month from opponents over tax issues. In a [study](#) released this month, tax preparer H&R Block estimated that more than half of Americans that enrolled in the ACA exchanges will likely be required to pay back a portion of the subsidy assistance they received for 2014. At issue is the reconciliation process that the Internal Revenue Service (IRS) put into place to recoup incorrect payments based on changing income estimates. Enrollees that earned more in 2014 income than they estimated on their original ACA application will have the excess ACA subsidy amount deducted from their tax refund.

The report also indicated that on average uninsured Americans are facing a \$172 fine for failing to obtain legally-mandated health insurance, close to twice as much as the minimum \$95 fine. The Administration announced in February that it will extend the ACA enrollment date until April 30 for individuals that will be affected by the penalty and that also missed the February deadline to enroll.

In a related issue, HHS announced in February that nearly 800,000 enrollees received incorrect ACA subsidy information due to an error with Healthcare.gov which led to 50,000 taxpayers underpaying the federal government. However, the IRS indicated that the agency will not collect on underpayments by those affected, though individuals who overpaid will be permitted to refile.

Republicans in Congress seized on the ACA’s tax issues, demanding answers from the Administration. Already, Republican committee chairmen are planning hearings to

probe these specific incidents, ensuring that the ACA and its implementation will remain a topic of debate in both chambers in the coming months.

#### *Medicare Physician Reimbursement*

Lawmakers continue to look for a way forward on reforming the method of Medicare reimbursement known as the Sustained Rate Growth (SGR). The 2014 law that temporarily shielded physicians from a 24 percent cut in Medicare reimbursement rates, another so-called “doc fix,” is set to expire on March 31.

In a speech before the American Medical Association’s national advocacy conference this month, House Budget Chairman Tom Price (R-GA) said that he expects legislators will pass another temporary patch in March that will likely last from four to six months, giving negotiators more time to reach a compromise. A nine month extension (through the end of 2015) has also been rumored. If a deal is reached, Chairman Price suggested that a full-scale repeal could be attached to a reauthorization of the Children’s Health Insurance Program, which is set to expire at the end of the fiscal year on September 30.

## **ISSUE—TAXES**

Tax reform inched forward this month while the House took action on a handful of expired tax extenders.

#### *Tax Reform*

Congress worked to find a path forward on comprehensive tax reform this month. The Senate Finance Committee held two hearings on tax reform in February on lessons learned from tax reform in 1986 and another on the economic importance of tax reform. A third hearing was held on March 3 and reviewed “Fairness in Taxation.”

Finance Chairman Orrin Hatch (R-UT) and Ranking Member Ron Wyden (D-OR) also announced the [members](#) of the working groups that will analyze current tax law across five policy areas and are tasked with putting forward bipartisan ideas that will form the foundation of future legislation. The policy focuses include Individual Income, Business Income Tax, Savings & Investment, International Tax, and Community Development & Infrastructure.

The House is moving slower on a tax rewrite. The House Ways & Means Committee went through a working group process in the 113<sup>th</sup> Congress, and Chairman Paul Ryan (R-WI) is unlikely to repeat the exercise. Chairman Ryan believes that in order to successfully pass tax reform legislation into law, Congress will likely need to move on the issue by the summer.

### *Tax Extenders*

Before the 113th Congress ended, legislators passed a one year extension of the expired tax extenders, making them retroactive for 2014. Congress will need to decide before the end of 2015 if it will renew extenders again and for how long.

While tax reform remains the priority for legislators, House Republicans held two mark-ups in February to permanently extend a number of extender provisions, including:

- **H.R. 644**, A bill to amend the Internal Revenue Code of 1986 to permanently extend and expand the charitable deduction for contributions of food inventory.
- **H.R. 637**, A bill to amend the Internal Revenue Code of 1986 to make permanent the rule allowing certain tax-free distributions from individual retirement accounts for charitable purposes.
- **H.R. 641**, Conservation Easement Incentive Act of 2015.
- **H.R. 640**, A bill to amend the Internal Revenue Code of 1986 to modify the tax rate for excise tax on investment income of private foundations.
- **H.R. 636**, America's Small Business Tax Relief Act of 2015.
- **H.R. 629**, A bill to amend the Internal Revenue Code of 1986 to make permanent the reduced recognition period for built-in gains of S corporations.
- **H.R. 630**, A bill to amend the Internal Revenue Code of 1986 to make permanent certain rules regarding basis adjustments to stock of S corporations making charitable contributions of property.
- **H.R. 622**, A bill to amend the Internal Revenue Code of 1986 to make permanent the deduction of State and local general sales taxes.
- **H.R. 880**, A bill to amend the Internal Revenue Code of 1986 to simplify and make permanent the research credit.

The full House subsequently passed a number of these bills, including Section 179 expensing, basis adjustment for charitable property donations, tax-free IRA distributions to charities, and tax deductions for charitable contributions to food inventories.

The fate of these bills remains to be seen. The White House opposes the standalone permanent bills because they are not offset, but tax extenders have traditionally not been paid for.

## **ISSUE—TECHNOLOGY**

Lawmakers continued work on several technology related issues in January.

### *Net Neutrality*

At the end of the month, the Federal Communications Commission (FCC), on a party line vote, approved new [rules](#) that enshrine net neutrality in Internet regulation. The new rules are meant to ensure that all web traffic is treated equally. The most controversial provision of the rules, however, is the plan to reclassify Internet service providers as

common carriers under Title II of the Telecommunications Act of 1934. The move, which was previously endorsed by the White House, would allow the federal government to regulate broadband service as a utility and faces strong opposition from the telecommunications industry.

Democrats hailed the decision while Republicans quickly criticized the reclassification of Internet service providers. Some congressional Republicans have called on leaders to introduce legislation strongly opposing the new rules, including the net neutrality provisions. But GOP telecommunications leaders, led by Senate Commerce Committee Chairman John Thune (R-SD) and House Energy & Commerce Chairman Fred Upton (R-MI), have indicated a desire to build a bipartisan coalition that could pass legislation that would take a less burdensome approach.

In the aftermath of the FCC's decision, Republicans intend to hold numerous hearings investigating the new rules and their impact on providers and customers.

#### *Patent Reform*

Progress on patent reform continues to move slowly. In February, House Judiciary Committee Chairman Bob Goodlatte (R-VA) reintroduced his patent reform bill, the [Innovation Act](#). The legislation seeks to crack down on frivolous litigation brought by so-called "patent trolls." In the Senate, Senator Chris Coons (D-DE) announced his intent to introduce a bill that would make changes to the U.S. Patent and Trademark Office's procedures for handling challenged to a patent after it has been issued. Senator Coon's is expected to codify into statute a judicial ruling that requires greater specificity from patent holders when bringing charges of infringement.

Patent reform proposals are expected to face similar challenges experienced in previous reform efforts, including the division between the high tech community and the biotech/pharmaceutical industry over how far the bill should go.

#### *Cybersecurity*

In February, technology and intelligence leaders in Congress laid out their plans to reform cybersecurity laws. Senate Intelligence Chairman Richard Burr (R-NC) and Ranking Member Dianne Feinstein (D-CA) will introduce and markup a bill that seeks to facilitate greater information sharing between the private sector and the government. The legislation is expected to create a voluntary framework for corporations to share "cyber threat indicators" and countermeasures with the government in real time. A similar bill was introduced in the Senate during the last Congress. The current version is expected to become the base bill for consideration on the Senate floor, which could come as early as the week of March 16. The data breach portions of the legislation are being crafted by the Senate Commerce and Judiciary Committees, with the hope of adding those provisions into the Burr-Feinstein bill once it reaches the Senate floor.

## **ISSUE—TRANSPORTATION**

Work continues on Congress' efforts to reauthorize surface transportation programs. The current extension of the 2012 Highway Bill (MAP-21) is set to expire on May 31, 2015, and lawmakers spent February looking continuing to explore options to fund the expiring programs.

This month, both the Senate Environment and Public Works (EPW) and House Transportation and Infrastructure (T&I) Committees held hearings on reauthorizing the legislation. During the T&I hearing, Transportation Secretary Anthony Foxx reiterated the Administration's support for a long-term reauthorization bill. At each hearing, lawmakers continued to debate how to overcome the central challenge to reauthorization: funding the Highway Trust Fund. Options discussed ranged from raising the gas tax to using funds from tax repatriation.

Currently, neither chamber has produced reauthorization legislation. However, EPW Chairman Jim Inhofe (R-OK) stated in February that his committee will now turn to drafting legislative language, working with Ranking Member Barbara Boxer (D-CA) to craft a bipartisan bill.

## RECENT POLLING

### Job Approval: President Obama

Poll	Date	Results
Gallup	Mar. 2	Approve 49, Disapprove 47
Rasmussen Reports	Mar. 2	Approve 49, Disapprove 50
Reuters/Ipsos	Feb. 27	Approve 39, Disapprove 55

### Job Approval: Congress

Poll	Date	Results
CBS News	Feb. 17	Approve 13, Disapprove 63
The Economist/ YouGov	Feb. 16	Approve 18, Disapprove 73
CNN/Opinion Research	Feb. 15	Approve 21, Disapprove 78

### Direction of the Country

	Date	Results
Reuters/Ipsos	Feb. 25	Right Direction 27, Wrong Direction 59
The Economist/ YouGov	Feb. 23	Right Direction 27, Wrong Direction 60
Rasmussen Reports	Feb. 22	Right Direction 31, Wrong Direction 61