

Washington Update

March 1, 2016

Legislators addressed a host of issues in February. Congressional leaders continued to formulate their strategy to advance a budget and Fiscal Year 2017 (FY17) appropriations bills, while President Obama submitted his final budget request of his presidency. In the House, reauthorization of federal aviation programs stalled over proposed privatization of air traffic control while both chambers sought a path forward on the Puerto Rican debt crisis. Lawmakers passed a customs bill conference report containing a permanent moratorium on taxation of Internet access. In healthcare, the Obama Administration released Affordable Care Act (ACA) enrollment numbers, and the Senate approved a new head of the FDA.

Election season began in earnest at the beginning of the month with the Iowa Caucuses. The hotly contested campaign for each party's nomination continued through February and into March, with former Secretary of State Hillary Clinton and businessman Donald Trump cementing early frontrunner status. The race for the White House and the congressional agenda were both rocked by the news of the passing of Supreme Court Justice Antonin Scalia, opening a contentious debate in the middle of an election year.

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CONGRESSIONAL OUTLOOK FOR MARCH

Plenty of items await legislators in March. Both House Speaker Paul Ryan (R-WI) and Senate Majority Leader Mitch McConnell (R-KY) have vowed to return their chambers to regular order, and the two leaders are expected to continue to press forward on an accelerated budget and appropriations schedule in March.

Outside of appropriations, legislation coming before lawmakers in the coming months will likely fall into two categories: partisan messaging bills and bipartisan proposals. In terms of partisan messaging, Republicans will continue to introduce measures drawing election year contrasts between the two parties. This could include regulatory reform, repeal of the Department of Labor's fiduciary rule, and changes to ACA-related programs and taxes. Appropriations bills are also likely to include Republican-favored policy riders, including repeal of carbon emission regulations, prohibition on allowing unvetted Syrian refugees into the country, and language defunding Planned Parenthood.

A second tier of legislation will seek to establish bipartisan consensus on several issue fronts. In the Senate, this may include action on opioid legislation, criminal justice reform, GMO labelling, and veterans' healthcare reform. Senate leaders will continue to negotiate a compromise on relief aid for the ongoing water infrastructure crisis in Flint, Michigan, which would also allow a pending energy reform bill to advance. While work on a long-term reauthorization of federal aviation programs will continue in both houses, a short-term FAA extension will be required before legislators depart for the Easter recess. Action on the growing debt crisis in Puerto Rico is expected in March, with a House Natural Resources Committee markup coming around the middle of the month.

House Republicans will continue with their task forces designed to gather input from Republican Conference members across five issue sets: National Security, the Economy, Healthcare, Poverty Reduction, and Constitutional principles. The Task Forces are each hosting "Idea Forums" as the first step of Speaker Ryan's ambitious plan to generate and present a proactive, reform-driven Republican message. The forums began convening in February and will continue in March, with the aim of developing policy proposals prior to the party conventions in mid-July.

Key dates to keep in mind for 2016 include:

- Mid-March – House and Senate may consider their respective Budget Resolutions if they find agreement
- March 31 – Federal Aviation Administration (FAA) authorization expires
- April – House and Senate expected to begin floor consideration of appropriations bills

- 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
- September 30 – NDAA and Intelligence Authorizations expire
- September 30 – EB-5 Immigrant Investor Program expires
- November 8 – Election Day
- December 16 – Targeted adjournment sine die

SUPREME COURT VACANCY

Much of this ambitious congressional agenda could be dramatically affected by ongoing debate over the recent vacancy on the Supreme Court. On February 13, Supreme Court Justice Antonin Scalia passed away after serving nearly thirty years on the Court.

Scalia's death sent immediate shock waves through Washington. Senate Republican Leader Mitch McConnell quickly staked out the GOP position by calling for the President to refrain from nominating a Scalia replacement and allow his presidential successor to make the appointment. Senate Judiciary Committee Chairman Chuck Grassley (R-IA) followed suit and stated that he would not hold confirmation hearings for a Supreme Court nominee this year. The White House and congressional Democrats levelled scathing criticism against the Republican position. President Obama announced that he would nominate a candidate to fill the vacancy, and Senate Democrats launched a public campaign to pressure Republican leaders to consider the eventual nominee.

The tension between the parties reflects the high stakes. Justice Scalia had long been the intellectual leader on the conservative side of the Court, professing an originalist and textualist view of the Constitution. Republicans fear that confirming an Obama nominee would shift the Court to the left. President Obama has already seen two of his nominees successfully confirmed to the Court, and conservatives fear that another liberal-leaning justice would force a leftward path for the Court for many years to come.

The ongoing dispute over the vacancy could have ancillary effects on the congressional agenda. Some observers fear that the Republican opposition to holding hearings or votes on a Scalia replacement could prompt a significant backlash from Senate Democrats. In particular, Democrats could slow Senate proceedings or block legislation all together, especially for appropriations. As of now, Senate Minority Leader Harry Reid has stated that Democrats have no plans to obstruct the Senate in response to the GOP's refusal to confirm Obama's eventual nominee, but the situation will become more heated after President Obama names his nominee.

ISSUE—GOVERNMENT FUNDING

Lawmakers continued discussion over government funding issues in February.

Presidential Budget

On February 9, President Obama submitted his final [budget request](#) to fund FY17. The proposal calls for \$4.1 trillion in both mandatory and discretionary spending for the fiscal year. The request contains a host of spending priorities for the left, including increased funding to cut carbon emissions, expanded early childhood education, development of cybersecurity defenses, and support for clean energy. The proposal would also double the budget of market overseers at the Securities and Exchange Commission (SEC) as well as allocating funds for additional Medicaid grants under the ACA. As projected by the Office of Management and Budget (OMB), the budget would stimulate modest growth over ten years, with the deficit holding steady and debt slowly rising.

Leaders in the Republican-controlled Congress attacked the measure for its high price tag and the taxes required to fund it. Fiscal hawks immediately pointed to the OMB projections, citing the proposal's failure to curb government spending, shrink the deficit, and reduce the debt. With Republicans firmly in control of both chambers, the President's budget proposal will be largely ignored, with leaders already expressing opposition to allowing the measure a Budget Committee hearing. However, authorizers and appropriators have continued with a normal hearing schedule for individual department budgets.

Summary of the President's budget proposal can be found [here](#).

Congressional Budget Process

Last October, lawmakers approved a two-year budget deal that raised spending caps on both domestic and defense spending for FY16 and FY17. Some in Congress have argued that a new budget resolution is unnecessary since that deal already set the topline numbers for FY17. However, Speaker Ryan has indicated that he hopes to move a budget to fulfill the commitment to regular order and to preserve the option of a Republican president being able to use the budget reconciliation process in 2017. House Republicans indicated that they will delay a final decision on the budget until March due to continuing disagreement from the Freedom Caucus as well as the Republican Study Committee. It remains to be seen if Republican leaders can secure the support of the rank-and-file members to pass a budget at the spending level negotiated by then-Speaker Boehner last October.

In the Senate, Leader McConnell has indicated that he prefers to pursue regular order and pass a FY17 budget. Others in the Senate, particularly those in tight re-election races, are concerned about the partisan potshots that occur in the Senate budget vote-

a-rama. If the House does not move forward with a budget resolution, it is unlikely that the Senate will take up the task this year.

Budget resolutions do not have the force of law and do not require the President's signature, but they can be used to establish a reconciliation process that allows for future budget-related legislation to pass and become law with a simple majority.

Appropriations Process

While Republican leaders continue to strategize on the path forward for a budget resolution, House and Senate appropriations are moving ahead. In February, several [House](#) and [Senate](#) Appropriations subcommittees convened hearings to examine the funding needs for federal departments and agencies under their jurisdiction. Lawmakers hope to take House floor action on the first of the twelve appropriations bills as soon as April, which will be several weeks earlier than usual. The Senate will follow shortly after with a goal of bringing the first appropriations bill to the floor by mid-April.

ISSUE—TAX

During February, tax leaders in Congress reviewed the tax provisions included in the President's budget request while also attempting to move forward on tax reform. Both the House Ways & Means Committee and Senate Finance will continue a robust discussion on tax reform, but neither chamber is expected to act on tax reform in 2016.

Presidential Budget Tax Provisions

President Obama's budget request included a host of tax policy changes, totaling 145 separate tax proposals. Among the tax provisions is language to expand the Earned Income Tax Credit, increased cigarette excise taxes to fund preschool education, and a community college tax credit. Like the budget as a whole, the tax provisions received a chilly reception from congressional Republicans.

Corporate Integration and International Tax Reform

Senate Finance Committee Chairman Orrin Hatch (R-UT) continued his work on a corporate integration proposal this month that would ease the current system of double taxation of corporate profits, which is levied first at the corporate level and then on dividends paid to shareholders. The plan has yet to be released, but reports suggest that the proposal would allow companies to deduct dividends paid from their overall tax rate, while shareholders would pay taxes on dividends as gross income. In theory, this may incentivize companies to pay out more dividends than they would under the current system. The draft is expected in March.

Across the Capitol, House Ways and Means Chairman Kevin Brady (R-TX) convened in a [hearing](#) in February on international tax reform in which most witnesses emphasized lowering the corporate tax rate as the most important step to making the U.S. more

competitive. However, the hearing highlighted the existing gulf between the two parties, with Democrats pushing for penalties on companies that invert to low-tax jurisdictions while Republicans continue to advocate lower rates to lure corporations back to the United States. Tax Policy Subcommittee Chairman Charles Boustany (R-LA) stated after the hearing that he is working on a new tax reform draft that would include a revised innovation box, territorial system, and a lower corporate tax rate.

ISSUE—HEALTH

The President's budget included several healthcare proposals while the Administration released final ACA enrollment figures. In Congress, the Senate confirmed a new head of the FDA and began work on opioid abuse legislation.

Healthcare Provisions in the President's Budget

The President's budget request contained several healthcare provisions related to drug pricing. Among them were provisions that would require drug companies to publicly disclose R&D costs and other data, establish a federal-state Medicaid negotiating pool for high cost prescriptions, and lower marketing exclusivity for biologic pharmaceuticals to seven years. Additionally, the budget request would also modify the Cadillac Tax by adjusting the forty percent levy on high-cost health plans to account for regional differences in costs. The budget proposal also contained a request for Congress to shore up the shortfall for ACA exchanges totaling \$535 million. Finally, the President's budget requested a supplemental \$1.8 billion to fund research, testing, and public health management of the Zika virus, a disease that has quickly grown into a global health epidemic.

ACA Enrollment

On February 4, the Department of Health and Human Services (HHS) announced that nearly thirteen million Americans enrolled in insurance plans through the state and federal exchanges, with 9.6 million enrolling through HealthCare.gov. The figure met the Congressional Budget Office prediction and exceeded HHS' own projection, prompting HHS Secretary Sylvia Matthews Burwell to deem the enrollment push as a success. The open enrollment period ended on January 31.

FDA Nomination

On February 24, the Senate confirmed Dr. Robert Califf to serve as the Commissioner of the Food and Drug Administration (FDA), overcoming opposition from a small group of Senators that had held up the nomination due to concerns over whether the FDA has been sufficiently aggressive in fighting opioid abuse, as well as Califf's perceived ties to pharmaceutical industry. The nomination was confirmed by a strong bipartisan vote of 89-4.

Opioid Legislation

One of the many issues that Commissioner Califf will now contend with is the increasingly dire opioid abuse epidemic. Opioid addiction has become a major topic in Congress and on the presidential campaign trail. In February, legislators began work on [legislation](#) to address the crisis. Senators Rob Portman (R-OH) and Sheldon Whitehouse (D-RI) introduced the measure, which would redirect nearly \$78 billion in existing substance abuse prevention and treatment funds to programs designed to deal with opioid abuse. The Senate voted to proceed to the bill on Monday, February 29, and will continue to try to find a time agreement on amendments. The Senate is likely to complete work on the legislation by the first week in March, though some Democrats may stall the bill's progress over concerns that the bill does not sufficiently increase funding for the initiatives, although \$389 million is authorized.

ISSUE—ENERGY

The Senate continued to seek a compromise over provisions in its energy reform package, and the President proposed an oil tax while also dealing with the fallout over the Supreme Court's stay of his Clean Power Plan.

Senate Energy Legislation

The Senate's sweeping energy [legislation](#) continues to stall on the floor as parties hammer out a compromise over controversial issues. The bill is the fruit of efforts by Senate Energy Committee Chairman Lisa Murkowski and Ranking Member Maria Cantwell (D-WA) to pass the first major energy bill in eight years. Among other provisions, the bill would streamline approval processes for natural gas export projects, reauthorize weatherization and state energy programs, and require federal agencies to take into consideration the impact proposed rules could have on grid reliability.

Despite strong bipartisan support for the measure, the legislation has stalled due to disagreements over the level of federal response to the ongoing water crisis in Flint, Michigan. Negotiators have tentatively agreed to a compromise package that would provide \$850 million in aid toward fixing water infrastructure and addressing related health issues in Flint and elsewhere. Senate leaders are hopeful that a deal will be reached later this week to allow both the Flint relief legislation and the Murkowski-Cantwell energy legislation to come to the Senate floor.

Oil Tax Proposal

In the President's budget request, the Administration proposed a \$10-per-barrel crude oil tax to fund nearly \$300 billion in transportation and infrastructure projects over the coming decade. Republicans quickly criticized the plan, arguing that the cost would be transferred to the American consumer. Like the President's budget as a whole, the oil tax is unlikely to receive serious consideration in the Republican-controlled Congress.

Supreme Court Stay

The Obama Administration was dealt a blow when the Supreme Court handed down an order staying Environmental Protection Agency (EPA) regulations imposing limits on carbon emissions from coal-generated power plants, the so-called Clean Power Plan (CPP). In a 5-4 ruling, the Court issued the stay, taking the unusual move of halting implementation of regulations that have yet to be ruled on by a lower court. The White House expressed concern that the order presaged a Court hostile to the CPP. However, resolution of the issue was thrown into doubt upon the death of Justice Scalia, who supported the order. Cases dealing with the regulations are not yet ready for Supreme Court review, but many analysts are uncertain of the effect a changed Court dynamic would have on the ultimate fate of the CPP.

ISSUE—TRANSPORTATION

Lawmakers continued to struggle in February to negotiate a compromise on legislation reauthorizing the Federal Aviation Administration (FAA). In February, the House Transportation and Infrastructure Committee advanced Chairman Bill Shuster's (R-PA) FAA reauthorization and reform [bill](#), but the measure continues to languish over disagreements between the two parties on the controversial proposal to privatize air traffic controllers. In the Senate, Senate Commerce Committee Chairman John Thune (R-SD) and Ranking Member Bill Nelson (D-FL) are preparing to unveil their own reauthorization bill. Given the compressed timeframe, Congress is expected to approve another short-term FAA extension past the March 31 deadline, allowing negotiators additional time to reach a compromise. At this point, the Senate appears to have momentum in pursuing a bipartisan agreement to reauthorize the FAA.

ISSUE—TECHNOLOGY

The battle over encryption reached a boiling point in February while legislators successfully passed a permanent moratorium on Internet taxation.

Apple vs. FBI

In February, news broke that Apple, Inc. refused to assist the Federal Bureau of Investigations (FBI) in hacking into the iPhone of the individuals who carried out a terrorist attack in San Bernardino, California last year. Claiming a moral obligation to protect the privacy of its customers, Apple refused to develop a software program that would allow FBI investigators to penetrate the encrypted phone, citing the potential misuse of such a technology in future, unrelated cases. Apple won the first round of court proceedings in late March when a federal judge in New York City rejected the federal government's request to force Apple to comply with the FBI order to hack into the terrorists' iPhone. The government is expected to appeal the decision, and the case could linger on. The episode showcases the increasing tensions between the technology

sector and the federal government over the latter's techniques in the continuing struggle to battle terrorist organizations' use of encryption to plan and execute acts of violence.

Internet Tax Freedom Act

In February, Congress successfully passed the Internet Tax Freedom Act, a permanent moratorium on taxing Internet access. The measure passed as a provision in the [customs bill conference report](#). In recent years, legislators have struggled to pass the bipartisan measure, with proponents of the [Marketplace Fairness Act \(MFA\)](#), which would allow for broader collection of Internet sales taxes by states, having sought to tie the two measures together. In February, Leader McConnell brokered a deal with MFA supporters, promising them a future vote on their legislation in exchange for allowing the customs bill conference report to advance. The final vote was 75-20.

ISSUE—FOREIGN POLICY

The President made a final attempt to close the U.S. prison camp facility in Guantanamo Bay Cuba, fulfilling his 2008 pledge to shutter the facility. President Obama announced in February that he will seek to close the facility and safely transfer prisoners to other detention sites in the U.S. Republicans quickly criticized the plan, calling the proposal a threat to national security. Others were concerned that detainees would be given a trial in the U.S., as opposed to a military tribunal. The plan faces further resistance from Republicans in Congress, but the White House has not ruled out an executive order to transfer the prisoners.

ISSUE—FINANCIAL SERVICES

Republicans on the House Financial Services Committee laid out their agenda for the year. On the list were plenty of Republican priorities, including repealing Dodd-Frank, paring back the Financial Stability Oversight Council's power to label institutions as "systemically important," repealing the Volcker Rule, and placing the Consumer Financial Protection Bureau under the authority of a bipartisan commission as well as the congressional appropriations process. The Committee may also pursue bipartisan initiatives, including increasing access to startup capital and increasing the speed of a securitization platform for government-sponsored enterprises.

OTHER ISSUES

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

TSCA Modernization

The [Toxic Substances Control Act \(TSCA\)](#) continues to stall in Congress. Both chambers have passed versions of the bill, but negotiators have yet to broker a compromise version. The legislation reflects months-long efforts to update 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. Senator David Vitter (R-LA) has promised to reach a compromise by the end of March, but doubt remains that the differences will be ironed out in the coming weeks.

Trans-Pacific Partnership

Congress continued to debate a path forward in February on consideration of the Trans-Pacific Partnership (TPP), a multi-lateral free trade agreement among a dozen Pacific Rim nations. President Obama met with congressional leaders in February to discuss a path forward. In recent months, bipartisan criticism of the agreement has increased. Lawmakers have expressed concern over several of TPP's provisions, including measures on biologics, financial services, and tobacco. Leaders in Congress have indicated that final consideration of TPP may not occur until after President Obama's successor is sworn in.

Puerto Rico

Congress further investigated the growing debt crisis in Puerto Rico in February. The House Natural Resources Committee held additional oversight hearings. Republicans have thus far rejected Democratic calls to allow Puerto Rico to file for bankruptcy, preferring to establish a strong fiscal control board with the ability to assist with and enforce debt restructuring. Complicating the process is the fact that at least three House committees hold some form of jurisdiction in the Puerto Rico issue, which could slow passage of the legislation. The Natural Resources Committee is expected to mark up its portion of the relief bill in mid-March. Speaker Ryan previously set a March 31 deadline for action on Puerto Rico, but it remains unclear what can be completed by the deadline.

2016 PRESIDENTIAL ELECTION

February saw the Iowa Caucuses kick off the 2016 presidential election following a year-long primary campaign full of unexpected surprises. On the Democratic side, former Secretary of State Hillary Clinton, long seen as the Democratic frontrunner, has struggled to put down the insurgent challenge of the populist-backed Senator Bernie Sanders (VT-I). Following a closer-than-expected win in Iowa, Senator Sanders won the New Hampshire primary in a landslide. Secretary Clinton has regained her footing

following strong showings in Nevada and South Carolina, and she is expected to continue to do well in states with large minority populations. Nevertheless, the Sanders campaign has the resources to draw out the contest past the Super Tuesday primaries on March 1.

On the Republican side, businessman Donald Trump continues to defy conventional political wisdom and gallop toward the Republican nomination. Candidates across the political spectrum have failed to halt the Trump momentum, and many analysts are beginning to concede that Trump will ultimately become the Republican nominee, raising concerns among many in the GOP about his general election viability and the effect on tough Senate races.

Republic Consulting has produced an [election presentation](#) with more information and will continue to update the slide deck as the primary contests progress.

RECENT POLLING

Job Approval: President Obama

Poll	Date	Results
Gallup	Feb 28	Approve 49, Disapprove 46
Rasmussen Reports	Feb 28	Approve 50, Disapprove 50
Reuters/Ipsos	Feb 24	Approve 47, Disapprove 48

Job Approval: Congress

Poll	Date	Results
Associated Press/GfK	Feb 15	Approve 15, Disapprove 84
The Economist/ YouGov	Feb 15	Approve 9, Disapprove 70
Gallup	Feb 7	Approve 14, Disapprove 81

Direction of the Country

	Date	Results
Rasmussen Reports	Feb 25	Right Direction 29, Wrong Direction 63
Reuters/Ipsos	Feb 24	Right Direction 25, Wrong Direction 61
CBS News	Feb 16	Right Direction 31, Wrong Direction 62