

Washington Update

February 1, 2016

2016 started slowly and was highlighted by President Obama delivering his last State of the Union address. GOP congressional leaders began the year with a bicameral retreat and promised to promote big ideas in five key issue areas to contrast their agenda with that of the Democrats. GOP leaders reiterated a strong commitment to regular order with an emphasis on moving each appropriations bill individually.

Looking ahead, the Senate is expected to use February as a window of time to pursue bipartisan legislation, which could include the energy infrastructure bill (currently on the Senate floor), an Iran sanctions bill, the Sportmen’s Act, and the Customs Conference Report. The House is expected to make an attempt to overturn the Presidential veto of the ACA repeal legislation and to focus on bills ranging from the Iran sanctions bill to a bill to block the Department of Labor’s efforts to crack down on the fiduciary rule for investment advisers. The House is also taking the lead on legislation to reauthorize the Federal Aviation Administration, which expires on March 31.

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CONGRESSIONAL OUTLOOK FOR FEBRUARY AND 2016

Legislators returned to Washington in the new year with a somewhat lighter agenda. The flurry of legislative activity in December on spending, expiring tax provisions and cybersecurity (among other issues) effectively cleared the decks heading into 2016. With fewer legislative deadlines and landmines, House Speaker Paul Ryan (R-WI) and Senate Majority Leader Mitch McConnell (R-KY) vowed to return their respective chambers to regular order. While commendable, the this commitment will be challenged by a compressed congressional calendar due to earlier party conventions and the presidential election. Both Speaker Ryan and Leader McConnell have emphasized restoring regular order to the appropriations process, promising accelerated consideration of individual spending bills for Fiscal Year 2017 (FY17)

Outside of the push for regular order, Speaker Ryan has also laid out an ambitious plan designed to develop and showcase ideas from the Republican majority. Borne from the belief that the GOP must present a proactive agenda rather than just attacking Democrats, Speaker Ryan laid out five issue areas that House Republicans will explore:

- National Security
- The Economy
- Healthcare
- Fighting Poverty
- Constitutional Principles

Speaker Ryan plans to form task forces to identify problems and propose solutions in each area. The House standing committees will play a significant role in investigating the issue areas as well. Speaker Ryan hopes to have a unified congressional Republican platform by the Republican National Convention. However, some members fear that Republicans are not being aggressive enough by pursuing a process that may end up being geared more toward generating big ideas in lieu of difficult votes on the House floor.

The Senate will focus more on conducting business through regular order. The rules of the Senate make it unlikely that large and likely controversial policy proposals that may be debated in the House will advance in the upper chamber before a new President is elected.

In addition to the appropriations process, other expected agenda items include FAA reauthorization, finalizing the TSCA modernization bill, National Defense Authorization Act, and the Customs Conference Report. In addition, there's a second category of policy areas where bipartisan common ground may be identified, including legislation dealing

with Puerto Rico's debt crisis, sentencing reform, patent reform, child nutrition reauthorization, GMO labeling, tax treaties, 21st Century Cures Act, and mental health.

The GOP-controlled chambers are also expected to hold votes on controversial topics in order to draw election year contrasts between the two parties, including votes on legislation blocking the Department of Labor's fiduciary rule, reinstating the 40-hour workweek rule for insurance coverage, and blocking the joint employer rule.

Amid all of this activity, there are a few deadline-driven agenda items that will need to be addressed in the coming months, including reauthorization of the defense and federal aviation programs. Key dates for 2016 include:

- February 9 – White House Budget released
- Early-to-mid March – House and Senate may consider their respective Budget Resolutions
- Late March – House begins considering appropriations bills
- March 31 – Federal Aviation Administration (FAA) authorization expires
- July 15 – Congress adjourns through September 6
- July 18-21 – Republican National Convention
- July 25-28 – Democratic National Convention
- September 30 – End of Fiscal Year
- September 30 – Internet tax moratorium expires
- 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

STATE OF THE UNION

President Obama delivered his final State of the Union address in January. In his hour-long speech, the President recapped the greatest successes over his seven year tenure while also laying out his congressional agenda for the coming year. In the address, he called on Congress to renew efforts to level the economic playing field, make college more affordable, strengthen entitlements, address climate change, and other issues. The text of his speech can be found [here](#).

South Carolina Governor Nikki Haley delivered the Republican [response](#) to the President's address. In her rebuttal, Governor Haley spoke of expanding opportunity for all and strengthening America at home while defending U.S. interests abroad. She also called for a more restrained tone and approach on heated issues like Syrian refugees and immigration.

ISSUE—GOVERNMENT FUNDING

Lawmakers began discussion on government funding issues this month.

Budget Resolution

In December, Congress approved an omnibus spending [package](#) 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.

While the two-year budget deal established topline budget numbers for FY17, Republican leaders in the House are planning to introduce a budget resolution 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, which can become law by a simple majority. The Budget Committee is aiming to markup the budget resolution on February 25, with floor action possibly the first week of March.

In the Senate, the chances of a budget resolution remain uncertain. Leader McConnell has indicated that he prefers to pursue regular order and markup and pass a FY17 budget. While many GOP senators like the idea of passing a budget that includes reconciliation instructions for a potential GOP President in the White House in 2017, many others fear the negative impact on Republicans running in 2016 on the wide range of politically explosive amendments that have become a regular fixture with the hours-long budget resolution vote-a-rama process.

Budget resolutions do not have the force of law and do not require the President's signature, but 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

Closely related to the budget is the annual appropriations process. With a compressed congressional calendar reducing the amount of floor time this year, legislators are expected to pursue accelerated consideration of the twelve annual appropriations bills. Appropriators will be working closely with members of the Budget Committee and will likely introduce the first spending bill shortly after the House is expected to pass its budget in mid-March. Lawmakers hope to take House floor action on appropriations bills as soon as April, which is several weeks earlier than usual.

Passing appropriations bills under regular order with an ambitious timetable is a high priority for Republicans, but will face difficult hurdles. While some spending bills, such as Defense Appropriations or the Military Construction/Veterans Affairs bill, generally enjoy bipartisan support, more controversial bills could stall and become election year proxy battles over policy. For example, Republicans are likely to include language in the Interior Appropriations measure provisions to roll back funding for Environmental

Protection Agency (EPA) implementation of the President's Clean Power Plan, a move opposed by both congressional Democrats and the White House. Democrats, on the other hand, look to force difficult votes for Republicans on a wide range of hot-button issues, like striking a long-standing rider in the Labor, Health and Human Services bill that prohibits research into gun violence.

CBO Projections

On January 25, the Congressional Budget Office's (CBO) biannual economic projections for the coming decade. In its [report](#), the nonpartisan agency estimated that the federal deficit for FY17 will exceed \$544 billion, a 24 percent increase from FY16. The projection is also up from the CBO's August 2015 deficit estimate of \$414 billion. The news came after six years of shrinking deficits, and the increase is largely attributed to the tax deal that was signed into law in December. The report further projects that the annual budget deficit will rise to \$1 trillion by 2022 and result in \$9.4 trillion in additional debt by 2026, a debt load not seen since the end of World War II.

Reconciliation and ACA Repeal

In January, the House passed a Senate-approved [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 defunded Planned Parenthood. Reconciliation rules allowed Congress to avoid the Senate's filibuster threshold and send the measure to the President, who vetoed the bill. Neither the House nor the Senate have sufficient votes to override the veto.

The reconciliation process, however, gave Republicans a vehicle to put an ACA repeal bill on the President's desk and provided a bit of a trial run for Republicans. Should the GOP take back the White House and maintain control of both house of Congress, the Republican majority would be likely to return to reconciliation and use the process to repeal and replace the ACA, a long-term goal of the party.

ISSUE—TAX

January saw continued discussion from tax leaders on the importance of moving forward with tax reform discussions.

Final OECD Recommendations on BEPS

Lawmakers indicated that they would further investigate the effects of the Organisation for Economic Co-Operation and Development's (OECD) [recommendations](#) on Base Erosion and Profit Shifting (BEPS) that the multinational organization released in October. Among other suggested regulations, the report included guidelines on transfer pricing, permanent establishment rules, and dispute resolution.

In January, the European Commission released a [draft](#) law that would implement the OECD recommendations. Among its provisions, the plan would allow national treasuries of European Union (EU) members to collect taxes on profits deemed to be European that have been shifted to low-tax jurisdictions. Moreover, the proposal would allow EU members to levy an exit tax on assets moving to non-European banks in tax havens.

In Washington, Republicans, who generally oppose the OECD plan, quickly responded to the Commission's proposal. House Ways and Means Chairman Kevin Brady (R-TX) attacked the plan for what some view as punitive policy changes directed toward U.S. companies and called on Congress to renew its push for international tax reform. Both the Ways and Means and Senate Finance Committees are expected to further investigate the effects of the BEPS project recommendations on American companies and workers, though it remains to be seen whether the efforts will spur legislative language to reform the international portion of the tax code.

Corporate Integration

Senate Finance Committee Chairman Orrin Hatch (R-UT) announced in January that he is preparing a proposal 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. While details of the plan remain scarce, reports suggest that the proposal would allow companies to deduct dividend taxes from their overall rate. The appeal of such a plan is that it would allow lawmakers to skirt the issue of reducing overall corporate tax rates, which remain the highest in the industrialized world. The measure would also mitigate the appeal of corporate tax inversion in which companies relocate abroad to avoid the high U.S. tax rates, such as the recent inversion between the Minnesota-based Johnson Controls and the Irish-headquartered Tyco. The idea has drawn bipartisan interest, but questions still linger over a variety of challenges, including how lawmakers would resolve the shortfall in revenues that the proposal would cause and how charitable organizations would be impacted.

ISSUE—HEALTH

CBO updated ACA enrollment numbers in January while also sending up red flags on Medicare funding. President Obama's nomination to head the FDA continued to stall in the Senate, and Vice President Biden took on a new role within the Administration.

ACA Enrollment

CBO estimated that thirteen million Americans would enroll in coverage for the year through the ACA using HealthCare.Gov, with eleven million receiving subsidies. This is lower than previous CBO predictions, but surpasses the Department of Health and Human Services (HHS) goal of ten million. CBO also predicted that the total number of consumers enrolled in Medicaid expansions under the ACA would be 14.5 million in

2025, up from the agency's previous projection of 11.5 million. The open enrollment period ends on January 31.

Medicare Funding

The CBO report raised red flags concerning the future solvency of Medicare Part A. The Agency projected that Medicare's hospital insurance trust fund will be depleted by 2026, four years earlier than the Medicare Board of Trustees predicted. CBO estimated that Medicare enrollment will rise by 30 percent in the coming decade, causing much of the additional strain on the trust fund. Moreover, the agency projected the number of Medicare enrollees to rise from 55 million today to 80 million in the next twenty years.

The news was met with calls to develop a solution, but election year politics will likely prevent any strong action from Congress, avoiding a potentially potent political issue.

FDA Nomination

The nomination of Dr. Robert Califf to head the Food and Drug Administration (FDA) has stalled. Califf, who currently serves as the Deputy Commissioner of the FDA, was nominated for Commissioner in September. Senator Lisa Murkowski (R-AK) initially put a hold on the nomination over labelling of genetically modified salmon. In January, Senators Bernie Sanders (I-VT) and Ed Markey (D-MA) put holds on the nomination due to Califf's ties to the pharmaceutical industry and the FDA's handling of the opioid epidemic, respectively. It remains unclear when and how the nomination will move forward.

Cancer Research

In his final State of the Union address, President Obama called on the federal government to recommit resources to researching and curing cancer. One of only a handful of new policy proposals the President presented in his speech, Vice President Joe Biden was tasked to lead the National Cancer Advisory Board in developing recommendations for understanding and treating cancer. The task force will be comprised of officials from across the federal government, including cabinet and agency heads. The group will present a report by the end of the year. It remains unclear what resources will be dedicated to the task force's effort or what the government will do with the findings, but the White House remains determined to use the group to produce a final and lasting legacy item of the Obama Administration.

ISSUE—ENERGY

In January, the Senate began work on broad energy [legislation](#). 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.

Though the bill drew wide support in the Committee last September, the legislation has drawn bipartisan criticism for not including stronger incentives for nuclear and hydropower. Several members have already filed amendments to strengthen these sections, and other amendments are expected. Despite these criticisms, the bill is expected to pass.

ISSUE—TRANSPORTATION

Congress' top transportation priority in the coming months will be to reauthorize the Federal Aviation Administration (FAA). The current FAA authorization is set to lapse on March 31. House Transportation and Infrastructure Committee Chairman Bill Shuster (R-PA) has pledged to bring forward draft reauthorization legislation in the coming weeks, possibly as soon as the first week of February.

The greatest potential point of contention could emerge over Republican efforts to privatize oversight of air traffic controllers, removing direct regulatory authority from FAA. While Chairman Shuster has not publicly indicated that such provisions will be included in an FAA reauthorization package, many Democrats are adamantly opposed to privatized oversight and would likely seek to block any efforts to sideline the FAA.

ISSUE—PATENT REFORM

Discussions continue over patent reform legislation, though a deal remains elusive. Last 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 (PTO) remains a roadblock to either chamber passing the legislation.

ISSUE—FOREIGN POLICY

Congress has yet to provide the Obama Administration with a resolution of Authorization for Use of Military Force (AUMF) to combat the Islamic State of Iraq and the Levant (ISIL). President Obama sent Congress an AUMF in 2015, but it was rejected. This month, Leader McConnell placed on the Senate calendar an [alternative](#) AUMF from Senator Lindsey Graham (R-SC). Senator Graham's resolution would be far more aggressive in the counteroffensive against ISIL than the Administration's plan. The proposal is an open-ended approval for the President to act in the Middle East, with no

restrictions on duration or scope of a possible military campaign or the use of ground troops.

While Senator Graham's proposal would likely be defeated on the Senate floor, many in Washington saw the move as an attempt by Senate Republican leaders to pressure the Administration to produce an AUMF with a tougher plan to defeat ISIL. Leader McConnell and others have complained that the President's AUMF would tie the hands of the next president.

Most analysts believe that Congress will delay passing an AUMF until President Obama's successor is sworn in.

OTHER ISSUES

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

TSCA Modernization

The [Toxic Substances Control Act \(TSCA\)](#) passed the Senate before Congress adjourned in December. Congressional leaders are now working to resolve the differences between the Senate and House versions. 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.

Customs Conference Report

The Senate could vote on the [customs bill conference report](#) in February. Commerce Committee Chairman John Thune (R-SD) expressed optimism for a vote on the measure in the coming weeks. One of the main sticking points is the inclusion of a permanent extension of the Internet Tax Freedom Act (ITFA), a moratorium on taxation of Internet access. ITFA enjoys bipartisan support, but proponents of the [Marketplace Fairness Act \(MFA\)](#), which would allow for broader collection of Internet sales taxes by states, have sought to tie the two measures together. Supporters of MFA will seek to strip out the ITFA provisions from the customs bill through a point of order. ITFA supporters would need sixty votes to block this attempt. Both sides believe they have the votes to achieve their conflicting goals. There is also the possibility that a deal could be struck to allow Customs and ITFA to move together while allowing MFA an opportunity to move separately.

Puerto Rico

Congress continued to discuss Puerto Rico's worsening debt crisis. At the end of 2015, Speaker Ryan set a deadline of the end of the first quarter of 2016 (March 31) for House legislators to craft a bill to address the territory's fiscal problems. Republicans are relatively united around trying to avoid bankruptcy protections in any relief bill and instead establish a fiscal control board to manage the debt crisis. Three House

committees have jurisdiction over Puerto Rico, including the Natural Sources Committee which will hold a hearing the first week of February on the possibility of establishing a Puerto Rico Financial Stability and Economic Growth Authority.

In the Senate, Senator Hatch has introduced similar [legislation](#), co-sponsored by Senators Murkowski and Chuck Grassley (R-IA), which would establish a "financial responsibility and management assistance authority" run by the country's CFO. Senate Majority Whip John Cornyn (R-TX) has not provided a timeline for passage of that legislation, but he did reject Senate Minority Leader Harry Reid's (D-NV) proposal to form a congressional task force to develop a solution. Reid and other congressional Democrats continue to push Republican leaders to include strong bankruptcy protections in any relief legislation.

RECENT POLLING

Job Approval: President Obama

Poll	Date	Results
Gallup	Jan 31	Approve 49, Disapprove 47
Rasmussen Reports	Jan 31	Approve 48, Disapprove 51
IBD/TIPP	Jan 27	Approve 49, Disapprove 43

Job Approval: Congress

Poll	Date	Results
The Economist/ YouGov	Jan 19	Approve 12, Disapprove 66
Monmouth	Jan 18	Approve 15, Disapprove 78
Gallup	Jan 10	Approve 16, Disapprove 80

Direction of the Country

	Date	Results
Rasmussen Reports	Jan 28	Right Direction 31, Wrong Direction 62
ABC News/WashPost	Jan 24	Right Direction 36, Wrong Direction 60
Reuters/Ipsos	Jan 20	Right Direction 26, Wrong Direction 62