

# Washington Update

August 10, 2015

Congress had a busy July before heading home for the August summer recess. The legislative agenda was dominated by debate over the expiring Highway Bill, with lawmakers temporarily extending the highway program until the end of October. Government funding for Fiscal Year 2016 (FY16) was thrown into doubt as the appropriations process stalled due to multiple controversies. Discussions over tax and health issues advanced while the President’s plan to curb carbon emissions was met with fierce GOP resistance. Defense and foreign policy issues came to the fore in July, and legislators continued to look for a path forward on a host of other issues, including cybersecurity, patent reform, and the expired Export-Import Bank.

When Congress reconvenes after Labor Day, lawmakers will have approximately a dozen legislative days to deal with a host of deadline driven items. Most notably, Congress will have to quickly find a path forward on federal funding or risk another government shutdown at the end of September.

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## ISSUE — TRANSPORTATION

Debate over the Highway Bill and funding for the Highway Trust Fund (HTF) reached its peak in July as Congress passed a temporary extension of the Highway Bill, just before the July 31 deadline.

### *Highway Bill*

Throughout July, lawmakers struggled to reach a compromise on what to do with the Highway Bill, which was set to expire on July 31, and the Highway Trust Fund (HTF), which was predicted to require an injection of funds by early August.

In the Senate, Environment and Public Works (EPW) Committee Chairman Jim Inhofe (R-OK) and Ranking Member Barbara Boxer (D-CA) continued to push for their “Developing Reliable and Innovative Vision for the Economy” (DRIVE) Act. The [bill](#) would fund surface transportation programs at a level of \$275 billion over six years, which is a three percent increase in overall annual spending compared to current levels. The DRIVE Act picked up a powerful ally in Senate Majority Leader Mitch McConnell (R-KY). Despite opposition to several of the bill’s provisions, including a reauthorization of the expired Export-Import Bank (see Other Issues section), the Senate approved the measure on a bipartisan 65-34 vote. Leader McConnell’s efforts to bring together Senator Boxer and a large number of her Democratic colleagues allowed the Senate to pass the first Highway Bill that extends funding beyond a two year period since SAFETEA-LU (the last long-term Highway Bill) expired in September 2009.

House Republicans balked at the Senate’s DRIVE Act, opposing the pay-fors needed to fund the bill and preferring a short-term extension to allow for more discussion on a long-term funding mechanism like international tax reform and repatriation. As such, the House advanced a [measure](#) extending the Highway Bill until October 29, 2015, while also funding the HTF at \$8 billion through the end of the year. With the clock ticking down, the Senate agreed to the 90-day compromise measure. Leader McConnell has indicated that he looks forward to the House passing its own version of the Highway Bill and going to conference on the bill in the fall.

Uncertainty remains on the path forward for the Highway Bill when Congress returns. House Republican leaders have expressed confidence that the House can markup a long-term bill, push it through the House, and conference the bill with the Senate before the two month extension expires. Some observers remain skeptical that a multi-year bill could be negotiated in such a short time frame, leaving many to believe another temporary extension is likely. Such a course is supported by the fact that the current extension funds the HTF through December, making it easy to simply extend the Highway Bill again should negotiators fail to reach a deal on a multi-year proposal by October 29.

Though both chambers are divided on some substantive elements of a long-term fix, the main issue continues to be funding. With the dwindling gas tax revenues, which fund the

HTF, lawmakers continue to look for a plausible funding mechanism for the transportation programs. With most Republican lawmakers opposed to raising the gas tax, some have pointed to revenue derived from international tax reform and repatriated profits as a way to provide a jolt of funding for a six-year Highway Bill.

#### *FAA Reauthorization*

When Congress returns from its August recess, legislators will also be faced with the approaching deadline to reauthorize the Federal Aviation Administration (FAA) and its programs. The FAA's current mandate is set to expire on September 30.

### **ISSUE — GOVERNMENT FUNDING**

Federal funding issues intensified in July as lawmakers grappled with a stalled appropriations process.

#### *Appropriations*

Legislators continued their [work](#) on the FY16 appropriations bills during the beginning of July. In the House, the Appropriations Committee approved appropriations for [Agriculture](#) and [Homeland Security](#). Despite steady progress on floor votes in May and June, the full House did not pass any appropriations bills in July following a battle on the floor that began over an amendment to the Interior and Environment bill that would have banned the Confederate flag from being displayed on confederate soldiers' graves at national cemeteries. The episode generated significant ill will between the parties and effectively halted the appropriations process.

The chamber previously advanced measures for [Commerce, Justice, and Science \(CJS\)](#), [Defense](#), [Transportation and Housing and Urban Development \(THUD\)](#), [Energy and Water](#), [Military Construction and Veterans Affairs \(MilCon/VA\)](#), and the [Legislative Branch](#). Additionally, spending bills for [Financial Services](#); [Interior and Environment](#); [Labor, Health and Human Services, and Education \(Labor/HHS/Education\)](#); and [State and Foreign Operations](#) are awaiting floor action.

The Senate also acted on appropriations bills, setting a milestone by moving all twelve spending measures out of committee for the first time in six years. The Senate Appropriations Committee approved funding legislation for [Agriculture](#), [Financial Services](#), and [State/Foreign Operations](#). These bills join the other nine appropriations measures awaiting action on the Senate floor: [CJS](#), [Homeland Security](#), [Interior and Environment](#), [THUD](#), [Legislative Branch](#), [Energy and Water](#), [Defense](#), and [Labor/HHS/Education](#). The full Senate has yet to pass an appropriations bill.

#### *VA Funding Patch*

Congress averted a crisis with the Department of Veterans Affairs (VA) this month by attaching a funding provision to the Highway Bill. The VA was facing a funding shortfall that threatened to shutter several hospitals and disrupt veterans care. Secretary Bob

McDonald implored lawmakers in July to allow the VA to shift resources to cover the shortfall. Though legislators initially resisted, Congress relented and allowed the VA to transfer nearly \$3.3 billion to the imperiled accounts.

### *Continuing Resolution*

In addition to the Confederate flag issue that has stalled appropriations action in the House, a new controversy came to a head this month regarding federal funding for Planned Parenthood. After a series of video releases by an outside group that portray Planned Parenthood in a negative light, many Republicans are insisting on defunding the group, leading Democrats to predict a government shutdown at the end of September.

In any event, it has become evident that legislators are unlikely to complete the appropriations process before the end of the fiscal year in September. As such, discussion has turned to approving a continuing resolution (CR) to temporarily extend federal funding past the September 30 expiration date. The CR would likely fund the government until mid-December, though a shorter version extending funds until the end of October to align with the Highway Bill expiration date is also possible.

### *Sequestration*

In addition to controversies, the major area of disagreement between the two parties on appropriations continues to be the overall funding levels included in the bills. Sequestration, the automatic spending cuts that are triggered when spending exceeds the caps established by the Budget Control Act (BCA), would return in FY16 if the BCA spending levels are not adhered to in the appropriations bills. The GOP in both houses has stuck with the spending caps for that reason. On the other hand, Democrats have continued their strong opposition to the caps and have voiced support for relief for domestic funding priorities. In the Senate, Democrats have threatened to block any appropriations bill that adheres to the BCA caps, which would make it unlikely that Congress would be able to send the legislation to the White House. President Obama also opposes the BCA funding levels and has threatened to veto the Republican-backed spending measures.

As the likelihood of a short-term CR increases, few have offered ideas to bridge the divide over sequestration. Some lawmakers have called for negotiations with the White House and congressional Democrats on the spending caps with the hope of forging a compromise in the vein of the 2012 Ryan-Murray budget deal that temporarily turned off sequestration for two spending cycles. If and when Congress passes a CR, legislators could use the extra time to begin budget negotiations. Without a CR, the federal government will shut down when funding runs dry on October 1, 2015.

A compromise on the spending bills could center on a deal to increase the BCA spending caps at the request of Democrats in exchange for meaningful riders on key policy issues at the request of Republicans. Finding the pay-fors and the political will to increase the

spending caps will be a challenge, as will deciding which policy riders could make it into a final compromise omnibus spending bill.

### *Debt Limit*

Complicating the funding fight is the matter of the statutory limit on federal debt. On July 29, Treasury Secretary Jack Lew announced that the United States will likely need to raise the debt limit before late October or run the risk of defaulting on the nation's obligations. Since March, the Treasury has been instituting "extraordinary measures" to accommodate the impending debt ceiling, but those measures are set to be exhausted in the fall.

The debt limit has been a contentious issue in recent years. Conservative Republicans are likely to demand that an increase in the debt limit be met with corresponding cuts in spending. Congressional Democrats and the White House oppose the trade-off and will likely maintain their past position that raising the debt limit is non-negotiable.

The debt limit will join the litany of other issues that will need to be addressed in the fall congressional session. As of yet, congressional leaders have yet to present a path forward on the issue, but a debt ceiling increase could be attached to a CR or other must pass legislation in the coming months.

## **ISSUE — TAXES**

The debate over tax reform and the expired tax extenders continued in July.

### *Tax Reform*

Efforts to rewrite the federal tax code trudged along in July. On July 8, Senate Finance Chairman Orrin Hatch (R-UT) and Ranking Member Ron Wyden (D-OR) released [final reports](#) from the Committee's five tax reform working groups, which had been tasked to develop bipartisan policy solutions across several tax areas.

Despite movement from the Senate Finance Committee, the likelihood of Congress passing a comprehensive tax reform package this year remains small. Republican leaders in both chambers have expressed doubt that a deal could be brokered without serious negotiating from the White House and acceptance of Republican-supported principals for tax reform (e.g. revenue neutrality), which Democrats oppose.

One reform area that could see movement on a Highway Bill is international tax reform, including an innovation box recently proposed in the House. On August 29, Reps. Charles Boustany (R-LA) and Richard Neal (D-MA) unveiled draft [legislation](#) that would set a lower tax rate on profits earned from certain qualified intellectual property. The legislation would significantly reduce the current 35 percent rate to a 10 percent rate on income derived from innovations. The legislation is supported by House Ways and

Means Chairman Paul Ryan (R-WI) and could provide a starting point in negotiations over what international tax reform may look like.

### *Tax Extenders*

The Senate took action this month on the expired package of personal and corporate tax provisions known collectively as tax extenders. Congress passed a retroactive one year extension in December for income generated in 2014. Legislators have yet to renew the extenders for 2015 and beyond, deferring to the larger efforts to reform the tax code. With tax reform stalled, however, lawmakers will need to decide which, if any, of the extenders to renew before the end of the year.

The Senate Finance Committee held a [markup](#) on a \$98 billion tax extenders renewal bill that would extend the provisions for two years. The Committee approved the measure on a 23-3 vote. During the markup, Chairman Hatch agreed to defer the debate on whether to make the provisions permanent. Conversely, the House has passed legislation over the past few months permanently extending several extenders, including the R&D tax credit.

Congress has until the end of the year to decide whether to renew the extenders for 2015. While there was some hope that the Finance Committee's extenders package would be added to the Senate's DRIVE Act, that ultimately did not happen and supporters of extenders will be looking for another must-pass vehicle to add extenders to this fall.

### **ISSUE — HEALTH**

On July 10, the House passed the [21<sup>st</sup> Century Cures Act](#) on a bipartisan vote of 344-77. The bill seeks to speed developments in new medical treatments through streamlining approval processes for medical device manufacturers and drug developers and includes about \$8.7 billion in new NIH medical research dollars and \$550 million for the FDA.

In the Senate, Health, Education, Labor, and Pensions (HELP) Committee Chairman Lamar Alexander (R-TN) indicated that he would not rush the effort to pass a similar bill in the upper chamber and foresees the process stretching into 2016. However, he plans to finish work in the Committee on a Senate version of Cures by the end of the year.

### **ISSUE — ENERGY**

Energy issues came to the fore at the end of July and the beginning of August as the Administration moved forward on controversial new environmental regulations and a Senate panel advanced energy modernization legislation.

### *Carbon Emissions Rule*

In early August, the Obama Administration released its finalized [rule](#) setting new limits on carbon dioxide emissions from coal-fired power plants. The plan seeks to curb carbon emission by 32 percent by 2030. The rule comes after years of contentious debate and is seen as a landmark legacy item for the Obama Presidency.

Democrats welcomed the measure as a much needed tool to combat climate change. Republicans and some coal state Democrats, however, decried the rule. Republican leaders, including Leader McConnell, called the measure a job killer that will likely drive up electric costs for American consumers. Congressional Republicans vowed to fight the rule. In the Senate, legislators are already considering several bills, including language in the Interior and Environment appropriations bill, that seek to neuter the new regulations. The House passed a [bill](#) in June that targets the rule, and Speaker Boehner promised further action. Additionally, several energy companies have promised to challenge the rules in court. Undaunted, the White House and congressional Democrats stated that they are prepared for the coming legal and legislative battles.

### *Energy Modernization Legislation*

On July 30, the Senate Energy and Natural Resources Committee approved [legislation](#) that seeks to modernize U.S. energy policy. The measure, introduced by Committee Chairman Lisa Murkowski (R-AK) and Ranking Member Maria Cantwell (D-WA), would make changes to policies governing energy efficiency, reform the federal permitting process, and reauthorize the Land and Water Conservation Fund. The measure passed on a bipartisan 18-4 vote. With such strong support from both parties, the legislation is likely on the list of items that will pass during this Congress. However, with limited available time on the Senate floor during the fall, consideration of the bill may be pushed to later in the year or 2016.

## **ISSUE — DEFENSE AND FOREIGN POLICY**

The heavy focus on domestic policy in July did not stop several defense and foreign policy related issues coming to the fore.

### *NDAAs*

Legislators remained deadlock over the [National Defense Authorization Act \(NDAA\) for Fiscal Year 2016](#). Both chambers previously passed versions of the annual reauthorization bill, but negotiators have yet to broker a compromise in the conference committee. The main obstacle to a deal continues to be how to handle fees through the Pentagon's TRICARE healthcare program. Senate Armed Services Committee Chairman John McCain (R-AZ) and Ranking Member Jack Reed (D-RI) as well as House Armed Services Ranking Member Adam Smith (D-WA) all support the Senate bill's provisions phasing in increases in co-pays for prescriptions purchased through TRICARE by mail or at retail pharmacies while still allowing free prescriptions at military clinics. They are

opposed by House Armed Services Committee Chairman Mac Thornberry (R-TX). Both sides are continuing negotiations, which may stretch well into the fall.

### *Iran*

International negotiators announced on July 14 that they had reached a [deal](#) on Iran's nuclear program. Western and Iranian diplomats agreed to the tentative agreement, which would ease economic sanctions on the Islamic Republic in exchange for de-escalating its nuclear program. At the center of the deal is Iran's pledge to never "seek, develop, or acquire any nuclear weapons." The highly technical document laid out several steps for Iran to curb its nuclear program and set oversight procedures.

The White House and State Department hailed the agreement as a monumental step forward in resolving tension in the Middle East. Republicans and some Democrats, however, have been sharply critical of the deal. GOP leaders in both chambers are preparing to advance resolutions to disapprove of the measure in September. While Republicans are likely to have the votes needed to send the legislation to the White House, they are unlikely to secure the necessary two-thirds majority vote in each chamber to override the President's most certain veto. As such, the deal is likely to move forward unless Republicans lawmakers can woo enough Democrats to their cause.

## **OTHER ISSUES**

Congress dealt with several other issues before leaving for its August recess.

### *Export-Import Bank*

The expired Export-Import Bank (Ex-Im) was given new life in July when an amendment reauthorizing the Bank was added to the Senate's DRIVE Act. A federal export credit agency that finances and insures foreign purchases of American exports, the Bank lapsed following conservative opposition to renewing the Ex-Im charter when it expired on June 30. The reauthorization amendment was allowed a vote on the Senate floor to fulfill a promise made by Leader McConnell to several Ex-Im supporters during the debate over Trade Promotion Authority.

While some Republican leaders in the House have indicated that they will not allow the Bank to be reauthorized in a Highway Bill compromise with the Senate, Speaker John Boehner (R-OH) is likely to come under increasing pressure from Republican Ex-Im supporters to at least allow a vote on reauthorization on the House floor.

### *Cybersecurity*

Consideration of the [Cybersecurity Information Sharing Act \(CISA\)](#) stalled on the Senate floor as Congress left for its August recess. Uncertainty over the bill's prospects continued to grow as leaders failed to reach an agreement on limits to amendments and debate. However, before adjourning, the chamber reached a deal on amendments and approved a motion to permit ten Republican and eleven Democratic amendments to be

filed on the bill when it comes back to the floor. The amendments range from a six-year sunset provision to the definition of cyber threats.

The timeline to bring CISA back to the floor remains ambiguous. Senate leaders continue to negotiate the bill, and the legislation's architects, Senate Intelligence Committee Chairman Richard Burr (R-NC) and Ranking Member Dianne Feinstein (D-CA) may author a manager's amendment to be offered when the bill returns to the floor.

### *Patent Reform*

July saw continued debate on patent reform legislation. The main challenge continues to be the disagreement over the Patent and Trademark Office's (PTO) Inter Partes Review (IPR) process for challenging patents, including the biotechnology and pharmaceutical industry concerns that the IPR process allows a lower burden of proof to be used to invalidate patents than the standard used in district court. A bipartisan group of nearly eighty House members sent a letter to House Republican and Democratic leaders asking them to include a carve out for pharmaceutical companies that would exempt them from the IPR process.

The House was not able to address the need for a solution to the IPR problem, and thus, was forced to postpone floor consideration. Discussions are expected to continue in the fall.

The Senate version of patent reform, the [PATENT Act](#), continues to be a work in progress as Senate Judiciary Committee Chairman Chuck Grassley (R-IA) and Ranking Member Patrick Leahy (D-VT) also seek an elusive consensus on how to deal with the IPR problem.

### *TSCA Modernization*

Legislators continued to work on modernizing the Toxic Substances Control Act (TSCA) this month. Consideration of the Senate [bill](#) took a back seat to the busy pre-August agenda and is still awaiting floor action. The House previously passed a similar [bill](#) in June. EPW Ranking Member Boxer has pushed for the Senate to adopt the House version, but the Senate version is the most likely to pass out of the chamber. With strong bipartisan support, the measure is on the list of items most likely to pass during this Congress.

## RECENT POLLING

### Job Approval: President Obama

Poll	Date	Results
Rasmussen Reports	Aug 9	Approve 47, Disapprove 51
Gallup	Aug 8	Approve 45, Disapprove 50
Reuters/Ipsos	Aug 5	Approve 44, Disapprove 51

### Job Approval: Congress

Poll	Date	Results
CBS News/NY Times	Aug 2	Approve 17, Disapprove 74
The Economist/ YouGov	July 20	Approve 18, Disapprove 56
Associated Press-GfK	July 13	Approve 17, Disapprove 82

### Direction of the Country

	Date	Results
Reuters/Ipsos	Aug 5	Right Direction 29, Wrong Direction 56
NBC News/ Wall St. Jrnl	July 30	Right Direction 28, Wrong Direction 65
Rasmussen Reports	July 30	Right Direction 28, Wrong Direction 66