

Washington Update

July 6, 2015

June was a busy month for Congress as lawmakers pushed forward with a robust legislative agenda. Despite setbacks, legislators passed Trade Promotion Authority, giving the United States needed leverage in ongoing trade negotiations. Work also progressed on the appropriations process for Fiscal Year 2016 (FY16). The Supreme Court handed down a major decision on the Affordable Care Act (ACA) subsidies, giving the White House another victory and preserving one of the President’s signature legislative achievements. Discussions on tax and patent reform continued, while events abroad demanded attention from the Administration. As lawmakers return to DC this week, they will have only a month to resolve outstanding issues before leaving town for their August recess. Chief among these will be passing legislation to extend the federal Highway program beyond July 31.

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CONGRESSIONAL OUTLOOK FOR SUMMER

When lawmakers return in July, Congress will have a little under a month to address a host of items before adjourning again for the month-long August recess. The most pressing issue will be the expiring Highway Bill and the cash-strapped Highway Trust Fund. During consideration of the Highway Bill, Republican leaders are expected to acquiesce to demands from Democrats and some Republicans to allow for a vote to renew the Export-Import Bank charter, which expired on June 30.

The Senate will kick off debate this week on bipartisan legislation to rewrite and reform the No Child Left Behind Act. The Senate also may move forward on cybersecurity legislation if leaders can agree on an orderly amendment process. Other items that could see action on the Senate floor in July include Iran sanctions legislation, the Toxic Standards Control Act (TSCA,) and votes on popular spending bills, such as the Military Construction-Veterans Affairs, Homeland Security and Defense appropriations bills.

In the House, lawmakers are expected to continue to take action on appropriations bills. The 21st Century Cures Act may also come up for a vote if the Energy & Commerce Committee can find agreeable payfors. Lastly, the Innovation Act, a patent reform bill, may see floor time. However, the bill continues to face strong objections from the biotechnology and pharmaceutical industry over the inter partes review process, which allows patents to be contested under a less protective standard than federal district court.

The House and Senate also hope to finalize and pass a conference report to modernize the customs process, which was part of the package of trade bills that Congress considered in June. Budget reconciliation is one final item to watch for before or after the August recess. Republicans are trending toward using the reconciliation process (simple majority vote) to put legislation on the President's desk for the first time that would repeal and replace key portions of the Affordable Care Act. These efforts will be opposed by Democrats and President Obama, who will most certainly veto any legislation repealing major aspects of his signature health care law.

ISSUE—TRADE

Trade continued to dominate the agenda in June, with the Congress passing fast-track legislation and a number of other trade bills.

Trade Promotion Authority

Legislation to grant Trade Promotion Authority (TPA) to the President travelled a tumultuous path in Congress. In May, the Senate passed TPA legislation that would expedite consideration of two trade agreements close to being signed: the Transatlantic Trade and Investment Partnership (TTIP) and the Trans-Pacific Partnership (TPP). TPA also would remain in effect for six years to expedite consideration of future trade agreements by the next President.

In the House, Democrats were initially successful in procedurally blocking the TPA bill by voting en masse against a bill extending Trade Adjustment Assistance (TAA), a program long championed by Democrats that provides financial assistance to Americans who have lost their jobs as a result of free trade. The move was a major blow to the President's trade agenda and prevented the House from taking further action on TPA at that time.

Following the defeat in the House, Speaker John Boehner (R-OH), Senate Majority Leader Mitch McConnell (R-KY), and the White House developed a new plan to advance the stalled legislation. On June 18, the House approved a procedural rule that allowed the chamber to take up a TPA [bill](#) separate from Trade Adjustment Assistance (TAA). By separating the bills, the House Republican leaders were able to secure enough Republican and pro-trade Democratic votes to pass TPA by a vote of 218-208. The legislation was subsequently approved in the Senate by a vote of 60-38.

In accordance with the deal struck between Republicans and the White House, President Obama held the TPA bill at his desk to give Congress time to pass TAA legislation. TAA was attached to another package of trade provisions, including the African Growth and Opportunity Act and trade preference programs for Haiti and 120 other developing countries. Congress passed the package, which President Obama signed into law with the TPA bill on June 26.

With Trade Promotion Authority enacted, American negotiators will work to quickly finalize the TPP and TTIP deals. Congress must then approve the agreements under the expedited rules of TPA, including a prohibition on amendments and a mandatory floor vote.

ISSUE – HEALTH

Healthcare news was dominated by a Supreme Court decision upholding a key portion of the ACA while Congress continued to debate the 21st Century CURES Act and a permanent repeal of the medical device tax.

King v. Burwell

In a 6-3 decision authored by Chief Justice John Roberts in the case of *King v. Burwell*, the Court upheld the right of the federal government to offer insurance premium subsidies to income-eligible Americans living in states where government officials had not implemented a state-based insurance exchange. Critics of the subsidies argued before the Court in March that the federal government overstepped its legislative mandate, since the text of the ACA did not include provisions expressly allowing the issuance of subsidies for insurance purchased through the federal exchange system. The

Court rejected that argument, finding that the subsidies fell within the intent of the ACA to provide healthcare to all Americans.

The Court's decision was hailed as a major victory for the White House. The outcome is likely to further enshrine a key element of President Obama's legacy. Republicans, however, were critical of the Court's decision and have vowed to continue efforts to repeal and replace the law. As has been the case for quite some time, disagreement has emerged among Republican lawmakers on how to go about changing the law. Some legislators have argued for the use of budget reconciliation to repeal the law. Others are calling for a more measured response focused on targeted fixes to portions of the law that the President might actually support. Timing on a repeal vote remains ambiguous but could come as early as July.

One particularly thorny issue for Republican critics of the law is the cost of repeal. The nonpartisan Congressional Budget Office (CBO) released a report that found that a full repeal of the ACA would add an additional \$353 billion to the federal deficit. Republican leaders have yet to coalesce around a plan to pay for the repeal, but they will likely need to find additional payfors, such as cuts to other domestic spending priorities, that Democrats are not likely to embrace.

21st Century Cures Act

The House Energy and Commerce Committee's [21st Century Cures Act](#) is expected to be considered on the House floor this week. 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.

Health, Education, Labor, and Pensions Committee Chairman Lamar Alexander (R-TN) has promised to bring similar legislation to his committee early in 2016.

Medical Device Tax Repeal

The House voted to repeal the ACA's medical device tax in June on a bipartisan vote of 280-140. Forty-six Democrats voted with Republicans to repeal the 2.3 percent excise tax that many in the medical device industry have criticized for stifling medical innovations.

IPAB Repeal

Also in June, the House passed a bill repealing the ACA's Independent Payment Advisory Board (IPAB), the body tasked with ensuring that Medicare savings are achieved in the event that growth targets for the program are exceeded in a given year. IPAB has long been criticized by Republicans for being a rogue process that could potentially make major changes to Medicare without congressional approval. Eleven Democrats voted with Republicans to repeal the panel, but the President has issued a veto threat for the legislation.

ISSUE—TRANSPORTATION

Debate over the Highway Bill and funding for the Highway Trust Fund (HTF) continued in June as the clock continued to tick down to the July 31 expiration of the Highway Bill.

Senate, Environment and Public Works (EPW) Committee Chairman Jim Inhofe (R-OK) and Ranking Member Barbara Boxer (D-CA) introduced a six year surface transportation reauthorization bill, titled the [“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 bill would authorize a new program to fund projects of high importance and would establish a new federally-funded freight program. The EPW Committee unanimously approved the measure on June 24.

House Republicans are expected to push for a short-term extension through the end of the year, but congressional Democrats and the White House oppose additional short-term deals. In the Senate, a multi-year approach is expected to emerge, likely in the two to four year range. It remains to be seen which approach will become law before July 31: (1) the Senate GOP approach of a two to four year highway bill, or (2) the House GOP approach of a five month extension of the highway bill with the goal of passing a comprehensive Highway bill paid for in part by repatriation and international tax reform.

While the Senate made progress on the substance of a Highway Bill, lawmakers continued to struggle to find a way to keep the HTF solvent. The fund is expected to be depleted by the end of July due in large part to dwindling revenue from the gas tax. Several ideas have been floated to fund the HTF. One such proposal, raising the gas tax, was shot down by Chairman Ryan at a Ways & Means Committee hearing in June and is opposed by Republicans in general.

Some lawmakers have floated a second proposal, generating revenue through deemed repatriation of American companies’ overseas profits. While legislators continue to discuss the idea, opposition remains if repatriation is used to pay for spending instead of international tax reform.

Under a short-term extension scenario, another possible solution is a transfer from the Treasury’s General Fund, an idea that Chairman Ryan has said may be necessary to stave off the immediate crisis.

ISSUE – GOVERNMENT FUNDING

Legislators continued their [work](#) on the FY16 appropriations bills. In June, the House Appropriations Committee approved spending bills for [Defense](#); [Financial Services](#); [Interior and Environment](#); [Labor, Health and Human Services, and Education](#); and [State and Foreign Operations](#). Also in June, the full House passed the funding measures for [Commerce, Justice, and Science \(CJS\)](#), Defense, and [Transportation and Housing and](#)

[Urban Development \(THUD\)](#). The House previously passed appropriations bills for [Energy and Water](#), [Military Construction and Veterans Affairs \(MilCon/VA\)](#), and the [Legislative Branch](#).

The Senate also acted on appropriations bills. The Senate Appropriations Committee approved funding legislation for [CJS](#), [Homeland Security](#), [Interior and Environment](#), [THUD](#), and the [Legislative Branch](#). The Committee previously approved bills for [MilCon/VA](#) and [Energy and Water](#). The full Senate has yet to vote on any appropriations bills.

Both Committees are on par to mark up the remaining appropriations bills by mid-July, which would be the first time in six years that the Committees have passed out the full complement of annual spending bills. Despite this progress, Democratic concerns over the bills are likely to continue to slow down the process on the Senate floor.

The major area of disagreement between the two parties has been the overall funding levels included in appropriations bills. Sequestration, the automatic spending cuts that are triggered when spending exceeds the caps established by the Budget Control Act (BCA), could return in FY16 if the BCA spending levels are not adhered to in the appropriations bills. The GOP in both houses have stuck with the spending caps for that reason, but Democrats have increasingly voiced opposition to the caps on domestic spending, arguing that the caps are too stringent.

In June, Senate Democrats blocked the Defense appropriations bill from consideration and have vowed to oppose all appropriations bills on the Senate floor, a move that they hope will ultimately bring Republicans to the table to negotiate on raising the BCA caps for FY16. Likewise, the White House has threatened to veto all of the Republican funding measures. Over the coming months, Republican leaders will attempt to convince moderate and red state Democrats to support the spending bills, sending them to the President's desk and increasing the political pressure to sign them into law.

Lawmakers will have until the end of the fiscal year (September 30, 2015) to complete work on appropriations bills. If Congress fails to do so, a Continuing Resolution will be required to temporarily continue government funding.

ISSUE—TECHNOLOGY

Congress completed its work on surveillance legislation in June while continuing debate on net neutrality and cybersecurity.

PATRIOT Act/NSA Reform

In early June, the Senate concluded its work on the PATRIOT Act and NSA reform. At the end of May, Democrats and several Republicans blocked Leader McConnell's attempts to temporarily extend the PATRIOT Act to allow negotiators time to develop an

agreement on a permanent replacement. Without an extension, the law expired on May 31. Ultimately, the Senate passed the House-backed [USA Freedom Act](#) which reins in the bulk data collection program at the National Security Agency. President Obama signed the bill into law on June 2.

Net Neutrality

Republicans in Congress continued their fight against the Federal Communications Commission's (FCC) [rules](#) that enshrine net neutrality in Internet regulation and reclassifies Internet service providers as common carriers under Title II of the Telecommunications Act of 1934. The House Appropriations Committee approved a bill in June that would require the FCC to delay implementation of the new rules until after multiple lawsuits challenging the new rules are resolved. Democrats on the Committee criticized the bill, suggesting that it would give telecommunications companies incentive to prolong the suits.

Cybersecurity

As the Senate debated the National Defense Authorization Act (NDAA) in June, Leader McConnell announced that he would be attaching the [Cybersecurity Information Sharing Act](#) (CISA) to the bill just days after the Office of Personnel Management announced that four million federal employees' records had been hacked. Democrats heavily attacked the move, complaining about the limited number of amendments to be debated. Along with libertarian-oriented Republicans, Democrats were able to block the amendment.

ISSUE—PATENT REFORM

Patent reform advanced in June, with both chambers moving their bills through committee markups. On June 4, the Senate Judiciary Committee approved the [Patent Act](#) on a 16-4 vote. On June 11, the House Judiciary Committee followed suit and passed its patent reform bill, the [Innovation Act](#), by a vote of 24-8.

With the ongoing appropriations process taking up much of the floor time in the Senate, Judiciary Chairman Chuck Grassley (R-IA) suggested that the Patent Act may have to wait until October to see action on the floor. Conversely, the House may take up the Innovation Act sometime in July.

Though both bills passed with strong support in committee, they still face obstacles. Most notably, there is continued 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.

ISSUE – TAXES

Efforts to rewrite the federal tax code moved slowly in June. Senate Finance Chairman Orrin Hatch (R-UT) announced that he extended for a second time the deadline for the Committee's tax reform working groups to finalize their results after months of investigating possible changes to the tax code and areas of bipartisan consensus. The groups will now have until July 7.

The deadline extension is a further indication of the dwindling prospects for comprehensive tax reform in 2015. In June, Chairman Hatch played down expectations of tax reform happening this year, suggesting that the current efforts will likely have to follow a multi-year process similar to one that led to the successful 1986 tax rewrite. Leader McConnell echoed these sentiments, stating that the Republican Congress would be unlikely to reach an agreement with the White House on Republican-supported principals for tax reform, such as revenue neutrality.

Despite growing doubts regarding tax reform's fate, House Ways and Means Chairman Paul Ryan (R-WI) held out hope in June that Congress could take incremental steps to advance tax reform, particularly on the international side. A sliver of hope remains for a deal to emerge (likely in the Fall timeframe) in which international tax reform is combined with a multiyear Highway Bill. Revenue from repatriation would fill the funding gap for the Highway Trust Fund, in addition to paying for international reform. However, heavy skepticism remains about whether the numbers work and if the international business community would be satisfied. In a recent blog post, Chairman Ryan acknowledged that changes to the tax code may not be possible this year, "but if this common ground doesn't materialize, we'll continue working toward our ideal version for a tax reform."

ISSUE—ENERGY

Energy issues saw movement in June, with the Supreme Court handing down a decision on a key environmental issue and Congress advancing a handful of energy bills.

Supreme Court MATS Decision

In late July, the Supreme Court dealt a blow to the Obama Administration and its environmental agenda. In a 5-4 ruling, the Court held that the Environmental Protection Agency (EPA) erred when crafting the Mercury and Air Toxics Standards (MATS) rule. The 2012 rules limited the acceptable levels of mercury, arsenic and metals that can be emitted into the air. The Court ruled that the EPA failed to properly take into consideration the financial impact that tighter standards would have. Specifically, the Court held that the EPA failed to consider the potential costs of the regulations before deciding to write the rule.

Republicans and coal state Democrats hailed the decision, but the White House and congressional Democrats immediately blasted the ruling and called on the EPA to

quickly revise its cost-benefit analysis process to comply with the decision. The EPA has reiterated its commitment to making the rule a reality and will adjust its internal procedures. However, since the Supreme Court remanded the case back to the D.C. Circuit, the rule will remain in effect until the lower court decides how to implement the Supreme Court's ruling.

Following the ruling, the EPA stated that the MATS decision would have no effect on the forthcoming rule on carbon emissions from coal-generated power plants, which is set to be released later in the summer. On a related note, in June the D.C. Circuit Court of Appeals ruled that companies must wait until the carbon emissions rule is finalized before challenging it in Court.

Energy Legislation

Congress advanced legislation designed to curb the EPA's carbon emissions regulations. In the House, lawmakers approved Rep. Ed Whitfield's (R-KY) [bill](#) that would give states the legal authority to delay compliance with the proposed carbon rule until all lawsuits challenging the regulation are completed. Similar [legislation](#) was introduced by Senator Shelley Moore Capito (R-WV) in the Senate in May, but no action has been taken. Democrats largely oppose both bills.

Republicans are also hoping to advance legislation curbing the EPA's budget when lawmakers return in July. House Republican leadership delayed a vote on the House version of the FY16 [Interior and Environment](#) appropriations bill until early July. The Senate is also expected to wrap up work on its [version](#) over the coming month.

ISSUE—FINANCIAL SERVICES

On June, the authorization for the Export-Import (Ex-Im) Bank, a federal export credit agency that finances and insures foreign purchases of American exports, expired, following months of debate among lawmakers over whether Ex-Im should exist. Democrats and some Republicans strongly supported the Bank, while Republicans had come under pressure from conservatives to allow the Ex-Im charter to expire.

When the Senate was considering the original TPA bill, Leader McConnell gave assurances to several supporters of Ex-Im that he would allow an amendment on the Bank's renewal at a later date. Leader McConnell suggested in June that an Ex-Im reauthorization could be attached to a must-pass item like a Highway Bill extension in July. It is expected that the Senate has enough votes to pass an Ex-Im reauthorization amendment.

ISSUE—DEFENSE AND FOREIGN POLICY

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

NDA

Following the removal of the CISA provisions, the Senate passed the [National Defense Authorization Act \(NDAA\) for Fiscal Year 2016](#) in June, setting up a conference committee with the House to resolve differences between the two bills. The Senate bill calls for a \$612 billion reauthorization of defense programs and was passed significantly earlier than in recent years.

The conference committee will need to resolve a range of issues, including defense acquisition reform. Additionally, the White House previously threatened to veto the measure in response to Republican efforts to increase defense spending above the BCA caps in the Defense appropriations bills without corresponding increases in domestic appropriations.

Iran Sanctions

Negotiators announced in late June that they were extending the ongoing talks to end Iran's nuclear program by one week following Iranian objections to limits on nuclear research and the timetable to lift sanctions. The White House took a hardline with Iran, with the President demanding the country adhere to the framework and abide by the negotiated terms.

The extension will push the negotiations up to the congressionally-mandated July 9 deadline. If that deadline is not met, Congress will have an additional month to analyze the deal, allowing Republican hawks to continue attacks on the agreement.

Greek Default

Economically beleaguered Greece became the first developed nation to default on a loan from the International Monetary Fund (IMF). The country has been beset by a struggling economy and mounting debt over the past few years. Since gaining power in January on an anti-austerity platform, Greek Prime Minister Alexis Tsipras has battled with international creditors in the so-called Troika—IMF, European Central Bank, and European Commission—over the terms of the country's obligations. The struggle came to a head on July 1, when Greece failed to make a scheduled loan payment to the IMF.

The default sent global markets spinning, with the major U.S. indices seeing a two percent drop on June 29 ahead of the likely Greek default, giving the markets their worst day of the year. Greece instituted emergency capital controls, including forced closure of domestic financial institutions to stave off bank runs. In America, President Obama attempted to soothe investors' anxieties by indicating that the Greek debt issue was primarily a European concern.

Reeling from the default, Prime Minister Tsipras indicated in early July that his government is willing to accept most of the Troika's demands if they are included in an overall agreement addressing Greece's funding for the next two years. International creditors were not overly enthused by Tsipras' counter-proposal, viewing it as insufficient to restart negotiations over increased financing. European and IMF officials expressed concerns of renegotiating the package ahead of a July 5 nationwide referendum in Greece on the current international proposal. This uncertainty increased following the Greek public's resounding rejection of the proposal. Tsipras will now meet with Troika officials to negotiate a new financing package that will keep Greek banks liquid and allow the country to remain a part of the Eurozone.

Cuba

U.S. relations with Cuba continued to warm this month when leaders announced that the two countries would reopen embassies in both nations' capitals for the first time in over half a century. The announcement is the latest in the attempts to normalize the long-strained relations between the U.S. and Cuba and comes after the Administration removed Cuba from the list of state sponsors of terrorism and eased travel restrictions to the island nation.

Republicans and some Democrats blasted the decision and vowed to continue to hinder the Administration's efforts. While the President does not need congressional approval to open a new embassy, the Republican-controlled Congress may choose to block funding for the embassy through an appropriations rider, and the Senate can stall confirmation of a new ambassador to Cuba.

RECENT POLLING

Job Approval: President Obama

Poll	Date	Results
Rasmussen Reports	July 5	Approve 48, Disapprove 52
Gallup	July 3	Approve 45, Disapprove 50
Reuters/Ipsos	July 1	Approve 44, Disapprove 49

Job Approval: Congress

Poll	Date	Results
The Economist/ YouGov	June 29	Approve 14, Disapprove 61
PPP (D)	June 13	Approve 12, Disapprove 77
CBS News/NY Times	May 31	Approve 15, Disapprove 80

Direction of the Country

	Date	Results
Reuters/Ipsos	July 1	Right Direction 31, Wrong Direction 53
The Economist/ YouGov	June 29	Right Direction 32, Wrong Direction 61
USA Today/Suffolk	June 29	Right Direction 26, Wrong Direction 58