



# Washington Update

April 1, 2015

March was a busy month in Washington with a host of items crowding the congressional agenda. The primary issue this month was debate over the budget resolutions for Fiscal Year 2016 (FY16). Lawmakers made significant progress on permanently replacing Medicare’s flawed Sustainable Growth Rate (SGR) formula. The Supreme Court played a role in the month’s developments with the Justices hearing high-profile cases on the Affordable Care Act (ACA) and power plant regulations. March also saw movement on a range of other issues from the release of new rules governing fracking to the continued discussions surrounding the Federal Communication Commission’s (FCC) release of sweeping and controversial new Internet regulations.

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## APRIL CONGRESSIONAL OUTLOOK

Lawmakers will return from the Easter recess with a wide range of issues on the congressional agenda. House and Senate Republicans are working to meet a statutory deadline for a unified budget resolution by April 15. Although that goal has rarely been met in recent years, Republicans are pushing hard to reconcile differences between the

House and Senate budgets soon after the recess.

In the Senate, the top item on the agenda after the recess is to pass a permanent solution to Medicare's SGR. The Senate is expected to take up and pass the bipartisan House-passed SGR bill during the week of April 13, sending it to the President for signature.

The Senate is also expected to continue debate on human trafficking legislation. The bill generated controversy over the inclusion of anti-abortion language that Democrats oppose. The continuing debate over that legislation also delayed a vote on Loretta Lynch's nomination for Attorney General. Two other bills that could move in April are trade promotion authority and cybersecurity legislation. Finally, Senators are expected to begin serious discussions on how to handle the impending expiration of the current highway bill extension, which is set to lapse at the end of May.

In the House, legislators will take up a death tax repeal bill upon returning to Washington, in addition to possible action on cybersecurity legislation. Finally, Members could turn to appropriations bills by the end of the month, with Military Construction & Veterans Affairs and Energy & Water first up on the list. Discussion over the budget may impact the timing of these and other appropriations bills.

## TOP ISSUE – GOVERNMENT FUNDING AND THE BUDGET

The federal budget dominated discussions in Washington this month with both the House and Senate passing a budget resolution for FY16. While budget resolutions are non-binding and do not have the force of law, the legislation allows lawmakers to lay out their funding goals and policy agenda. This year marks the first time since 2006 that Republicans will have the chance to pass a budget resolution through a fully Republican-controlled Congress.

### *The Budget*

The House jumpstarted the debate when House Budget Chairman Tom Price (R-GA) released his [budget blueprint](#) on March 17. Among its provisions, the House Republican proposal would balance the budget in a decade and:

- Cut \$5.5 trillion in federal spending;
- Slow the growth of the federal deficit from \$7.6 trillion over ten years to \$1.3 trillion;
- Repeal the ACA in full; and
- Restructure Medicare into a partially privatized system.

One point of contention among House Republicans was how to treat military spending. Under the Budget Control Act (BCA) of 2011, defense programs are affected by the automatic cuts known as sequestration when annual spending exceeds caps established by the BCA. The threat of sequestration is set to return in FY16 following a two year reprieve by the 2013 Murray-Ryan budget deal. Some members of the House Republican Conference wanted to further alleviate the defense cuts and increase military spending, a move that was opposed by both Republican deficit hawks and House Democrats. Ultimately, Republican leaders advanced a compromise on the House floor by which additional funding would be directed to the Department of Defense through the Overseas Contingency Operations (OCO) accounts. While OCO funding is partially subject to sequestration, the account has greater flexibility, particularly as it applies to spending on military personnel.

With concerns from the defense hawks addressed, the House [passed](#) its budget resolution by a vote of 228-199. Seventeen Republicans voted with all Democrats to oppose the budget.

Senate Budget Committee Chairman Mike Enzi (R-WY) released the Senate Republican [budget proposal](#) on March 18. Like its House counterpart, the plan would balance the budget in ten years. Among its other provisions, the proposal:

- Cuts \$5.1 trillion in federal spending;
- Slows the growth of the deficit over ten years to \$1.6 trillion;
- Presumes that that ACA will be repealed; and
- Proposes finding \$430 billion in savings from Medicare.

The Senate rules make the budget process longer and more arduous in the upper chamber. Senate budget resolutions are privileged legislation, meaning they are not subject to the Senate filibuster and can be passed with a simple majority. However, prior to a vote on final passage, the Senate engages in a long and rapid fire series of votes on dozens of amendments, a process known as the “vote-a-rama.” The Senate began the vote-a-rama on March 26 and voted on the amended budget in the early hours of March 27. In total, the Senate voted on 61 amendments.

- Passed on roll call vote: 24
- Passed on voice vote: 9
- Failed on roll call vote: 14
- Failed on a point of order: 4
- En Bloc: 10

The final budget passed on a vote of 52-46, with two Republicans joining all Senate Democrats in opposing the measure.

The path forward is uncertain. By law, Congress is required to produce a unified budget resolution by April 15, a deadline lawmakers last met in 2002. There remains wide differences between the House and Senate budgets, but both chambers' GOP leadership have committed to keeping the April 15 deadline. One issue that will need to be worked out is how to treat the impending return of sequestration. Neither budget resolutions repeal and replace sequestration, indicating that some form of the cuts is likely to stay as long as Republicans remain in power. But with defense hawks continuing their push for increased funds to the military, there may be room for negotiation.

### *Debt Ceiling*

One issue that was not addressed in the budget resolution was the debt ceiling. The country officially hit the debt limit on March 15. Immediately, Treasury enacted "extraordinary measures" to push back the actual default date, which is likely to arrive in October. The Republican-controlled Congress will need to decide over the coming months how to proceed on the debt limit, but GOP leaders are likely to face obstacles from some conservative Republicans who are expected to continue to call for spending cuts as a condition for raising the debt limit, a move that Democrats and the White House oppose.

## **ISSUE—ENERGY**

March saw some major energy developments, including moves by the Administration to tighten regulations on fracking and a high-profile Supreme Court challenge to air pollution standards.

### *Fracking Rules*

This month the Department of the Interior finalized new rules regulating hydraulic fracturing, also known as "fracking." Over the past several years, energy companies have drastically expanded the use of fracking to remove natural gas from the ground. Among several provisions, the rules set new standards for disclosure and waste management. The new regulations, which apply to only federal lands, were met with fierce criticism from Republicans in Congress. In the Senate, Environment and Public Works Committee Chairman Jim Inhofe (R-OK) introduced [legislation](#) that would give authority to the states to regulate fracking. The bill currently has twenty-eight Republican co-sponsors.

While any legislative efforts to block the new rules are likely to run into a White House veto, energy producers are not waiting for Congress to act. Several companies have already filed suit against the government, which has the potential to delay implantation of the rules until after they are fully litigated.

### *Supreme Court EPA Case*

Also this month, the Supreme Court heard oral arguments in a case challenging the Environmental Protection Agency's (EPA) Mercury and Air Toxics Standards. The 2012 rules limited the acceptable levels of mercury, arsenic, and metals that can be admitted into the air. At stake is whether the rules failed to properly take into consideration the financial impact that tighter standards would have. During the arguments, the majority of Justices seemed amiable to the EPA's argument that the agency performed an adequate cost-benefit analysis of the regulations' impact. The rules are set to go into effect in a few short weeks, but the Court could rule on the case as late as June.

## **ISSUE—FINANCIAL SERVICES**

There were several developments on financial services issues this month, including a significant decision at the Federal Reserve (The Fed) that could have future implications on how the central bank approaches interest rates.

### *Fed Interest Rates*

Following a policy meeting this month, the Fed officially dropped the word "patient" from its description of how the central bank will treat interest rates. The simple change elicited a major reaction. Analysts and investors took the change as a small but significant sign that the Fed could shortly begin to raise interest rates, which have remained low since the 2008 financial crisis. Some observers continue to caution against rate hikes, warning that the economy is still too fragile for rates to begin to climb. Others worry that if the Fed waits much longer, the central bank could be ill-prepared to counteract inflation, which some analysts predict will pick up soon.

### *CFPB and the Budget*

Financial services were pulled into the budget debate this month. Both the House and Senate budget resolutions included language that would subject the Consumer Financial Protection Bureau (CFPB) to annual congressional appropriations. Currently, the agency receives its funding from the Federal Reserve. Democrats remain opposed to the change, fearing that CFPB funding would get bogged down in Dodd-Frank politics in Congress.

### *Financial Services Legislation*

The House Financial Services Committee held a markup this month and [passed](#) eleven bipartisan regulatory relief bills, with the goal to make access to credit more affordable at community banks and credit unions.

## **ISSUE—FOREIGN AFFAIRS**

Foreign policy played a prominent role in Washington this month. On March 3, Israeli Prime Minister Benjamin Netanyahu addressed a joint session of Congress. The speech was subject to weeks of controversy that was set off by Speaker John Boehner's (R-OH) invitation to the Prime Minister to speak before Congress. The White House and Democrats harshly criticized the invitation, calling it an infringement on the Administration's power to handle foreign policy and dignitaries. The White House further argued that it would be improper for the Prime Minister to be received in Washington a few weeks before the Israeli Knesset elections, which ultimately returned Netanyahu to another term as Prime Minister.

The underlying issue that prompted Speaker Boehner's invitation and served as the main subject of the Prime Minister's speech was the ongoing negotiations over Iran's nuclear program. For months, the United States and its allies have been working to broker a deal that will prevent Iran from obtaining nuclear weapons. Both Republicans and the Netanyahu government have been critical of the negotiations. Indeed, forty-seven Republican Senators signed a letter to the Iranian government warning them that any agreement would face tough scrutiny in a GOP-controlled Senate and could be modified or amended by future presidents. The letter drew immediate condemnation from the White House and Democrats and underscored the ongoing tension between the parties on the issue.

Negotiators failed to meet the March 31 deadline for a deal, but the parties are continuing discussions. The ultimate outcome of the negotiations remains to be seen. Ongoing crises in the Middle East, many of which are being fomented by Iranian-backed groups, could sour the proceedings. So too could fresh U.S. sanctions on Iran, which congressional leaders, including Senate Foreign Relations Committee Chairman Bob Corker (R-TN), have delayed pending the outcome of the nuclear talks.

## **ISSUE – HEALTH**

A long-awaited fix to the Medicare physician reimbursement system moved forward in Congress this month while the Administration fought off another court challenge to the ACA.

### *Medicare Physician Reimbursement*

One of the top health developments this month was action on the Sustainable Growth Rate (SGR), the Medicare formula for physician payments. Congress has long sought a permanent replacement for the flawed SGR. In March, the House released a bipartisan bill that would transition Medicare reimbursement from a system based on volume to one that incentivizes value and quality. The bill is only partially paid for with \$70 billion in provider cuts and additional Medicare means-testing for wealthier seniors.

The bill also included a two year extension of the Children's Health Insurance Program (CHIP). Some Democrats initially opposed the deal, preferring to pair the permanent SGR fix with a four year CHIP extension, but the [bill](#) ultimately passed the House by an overwhelming vote of 392-37.

Though the legislation is likely to pass the Senate, a vote on the bill was delayed until after the Easter recess due to concerns by a few senators that the process was rushed. The delay means that the current SGR funding patch, known as the "doc fix," technically expires on April 1. However, the Centers for Medicare and Medicaid Services announced that the agency will be able to delay payments to physicians, thereby avoiding major disruption in reimbursement until the Senate returns to Washington and passes the bill. President Obama has promised to sign the bill.

### *King vs. Burwell*

Another high-profile health development this month was oral arguments before the Supreme Court on a marquee ACA case. On March 4, the Court heard arguments in the case of *King vs. Burwell*. The issue in dispute was whether the Obama Administration overstepped its authority by offering subsidy support to low-income Americans residing in jurisdictions that did not implement a state-based insurance exchange who were attempting to purchase insurance through the federal exchange. Opponents of the Administration's actions argued that the law did not provide statutory authority for the Department of Health and Human Services (HHS) to extend the subsidies to federal exchange insurance plans.

Arguing on behalf of the government, Solicitor General Don Verrilli argued that the ACA provides for flexibility in enacting the law, which the government believes applies to HHS' actions. Furthermore, supporters of the law argued that it was never Congress' intent for Americans to be denied access to subsidy support simply based on their geographic location.

The outcome of the case may depend on the views of two Justices. Chief Justice John Roberts, who was the deciding vote in the 2012 case upholding the ACA in its totality, said very little during the oral arguments, leaving his views a mystery. Justice Anthony Kennedy seemed to back the government's argument, which is a marked difference from the 2012 ACA case in which he voted to overturn the healthcare law and authored the pointed dissent. The Court's decision will be handed down before the end of the current term in June.

### *ACA Repeal*

Both the House and Senate budget resolutions include provisions that chip away at the ACA. The House budget fully repeals the law. In the Senate, the budget presumes that the ACA will be repealed. This would generate a \$2 trillion savings with the elimination of subsidy support. However, the federal government would also lose \$1 trillion in tax revenue authorized by the ACA. The Senate resolution also includes reconciliation

instructions for the Finance and Health, Education, Labor, and Pensions (HELP) Committees to each produce \$1 billion in savings by July. This is viewed as a place holder for an ACA replacement bill or legislation reacting to the decision by the Supreme Court in *King vs. Burwell*, possibly through reconciliation.

## ISSUE – TAXES

This month's budget discussion had implications for a handful of tax-related issues, while tax reform continues to make slow progress.

### *Tax Reform*

Both the Senate and House budget resolution were light on specific plans for tax reform. This follows comments made by Senate Finance Committee Chairman Orrin Hatch (R-UT) that tax reform would not be included in reconciliation instructions.

Meanwhile, the Senate Finance working groups continue to investigate ways to reform the federal tax code. They are expected to produce consensus ideas by the end of May.

### *Tax Extenders*

Both the House and Senate budgets treated tax extenders as if they will not be renewed, mainly for budgetary purposes. The extenders expired at the end of 2014, and there has been little movement to renew them, deferring to the tax reform process first.

However, the House has voted to make a handful of tax extenders permanent, including Section 179 expensing, basis adjustment for charitable property donations, tax-free IRA distributions to charities, and tax deductions for charitable contributions to food inventories.

## ISSUE—TECHNOLOGY

While most of Washington's attention was focused on the budget process, technology issues also saw some movement.

### *Net Neutrality*

The debate continues to swirl around the Federal Communications Commission's (FCC) recent adoption of new [rules](#) that enshrine net neutrality in Internet regulation, including regulating Internet service as a common carrier under Title II of the Telecommunications Act of 1934. Republicans have strongly opposed imposing Title II regulations on Internet service providers, and this month, lawmakers were able to vent their frustrations. Both the [Senate Commerce](#) and [House Energy & Commerce Committees](#) held FCC oversight hearing this month at which they pressed all five FCC Commissioners on a host of matters, including the new net neutrality rules.

The issue was also a topic of an amendment introduced during the Senate’s vote-a-rama. Commerce Committee Chairman John Thune (R-SD) presented a proposal that originally condemned the new FCC rules. However, Chairman Thune later revised the amendment to support open Internet policies, which led to bipartisan support and indicates that broader bipartisan agreement may be possible on future Internet regulation legislation.

### *Patent Reform*

Efforts to reform patent laws moved slowly this month. Senators Rob Portman (R-OH) and Mark Warner (D-VA) urged both party’s Senate leadership to quickly bring a Senate patent reform bill to the floor as soon as the Senate Judiciary Committee completes work on the forthcoming legislation. Meanwhile, the House continues to discuss Judiciary Chairman Bob Goodlatte’s (R-VA) patent reform [bill](#), which seeks to crack down on frivolous litigation brought by so-called “patent trolls.”

Also this month, both the [Senate Judiciary](#) and [House Judiciary](#) Committees convened hearings on the flaws in the current patent application and litigation systems.

### *Data Breach Bill*

There was movement on data breach legislation this month. The House Energy & Commerce Subcommittee on Commerce, Manufacturing, and Trade approved a [discussion draft](#) that would establish new notification standards when companies suffer a data breach. The bill was approved on a largely party-line vote.

### *Children’s Privacy Bill*

Legislation establishing new privacy protections for children K-12 stalled this month over concerns that it falls short of protecting children’s data. One point of contention is that the draft legislation does not prevent educational companies from mining data and selling it for commercial gain. The bill’s sponsors, Reps. Luke Messer (R-IN) and Jared Polis (D-CO), are reviewing the bill and will introduce a revised version in the coming weeks.

## **ISSUE—TRADE**

This month, Chairman Hatch and House Ways and Means Chairman Paul Ryan (R-WI) continued their efforts to try to build momentum for trade issues. Most notably, the pair spent March making the case for Congress to pass Trade Promotion Authority (TPA) legislation. TPA bills often include goals and guidelines for administrations to follow when negotiating trade agreements. More importantly, they also contain provisions to expedite Senate consideration, including banning amendments to treaties under consideration, mandatory floor action and time-limited debate. Both congressional Republicans and the White House support passing TPA legislation for two pending trade agreements: the Trans-Pacific Partnership (TPP, which focuses on Pacific Rim countries)

and the Transatlantic Trade and Investment Partnership (TTIP, which focuses on European Union countries). Most Democratic lawmakers are skeptical of fast-tracking the agreements. Labor unions remain fiercely opposed to TPA, prompting many Democrats to oppose the legislation.

With the Senate rules requiring sixty votes to move the underlying TPA legislation, Republicans have been courting moderate Democrats to vote for TPA and negotiations are ongoing between Chairman Hatch and Finance Ranking Member Ron Wyden (D-OR) to secure Wyden's support. In March, Senator Wyden expressed deep concerns with TPA, preferring to strengthen the Senate's review authority to ensure that any trade agreement ultimately aligns with the objectives outlined in the TPA deal. These include labor and environmental protections as well as controls against currency manipulation. Wyden's preference would be to include a mechanism in TPA that would allow the Senate to turn off "fast track" consideration and allow amendments under certain circumstances. The Administration fears that allowing the option of Senate amendments would make it more difficult for the US to negotiate trade agreements in the future.

Senate Republicans will continue their efforts to convince Senator Wyden to support TPA legislation. Wyden's support would likely draw additional centrist Democrats on board. Discussions will continue over the Easter recess with the goal of passing a TPA bill out of the Finance Committee in April.

## **ISSUE—TRANSPORTATION**

In March, Department of Transportation (DOT) Secretary Anthony Foxx released the Administration's proposed replacement for the MAP-21 surface transportation authorization that was signed into law in 2012. The revised GROW AMERICA Act comes a year after DOT released a similar proposal. The plan calls for \$478 billion to be spent on transportation programs over six years. Among its provisions, the plan would spend:

- \$317 billion on highways
- \$115 on transit.
- \$18 on freight programs
- \$6 billion to TIFIA
- \$7.5 billion to TIGER grants

To pay for the plan, DOT proposes a one-time fourteen percent repatriation tax on up to \$2 trillion on profits being held overseas by American companies.

In 2014, Congress did not act on DOT's first version of the GROW AMERICA Act, which would have spent \$302 billion over four years. Similarly, lawmakers are moving slowly on reauthorization. Chairman Ryan stated this month that he envisions legislators approving a short-term extension of MAP-21 past the current May 31 expiration date,

possibly to the end of the year. He sees tax reform as a possible way to address the funding issues with the Highway Trust Fund (HTF), a sentiment that has been echoed by other congressional leaders, but it is unlikely that such a large package could come together before the current expiration date.

## RECENT POLLING

### Job Approval: President Obama

Poll	Date	Results
ABC News/Wash Post	Mar. 29	Approve 46, Disapprove 49
Gallup	Mar. 31	Approve 45, Disapprove 49
Rasmussen Reports	Mar. 31	Approve 48, Disapprove 50

### Job Approval: Congress

Poll	Date	Results
ABC News/Wash Post	Mar. 29	Approve 21, Disapprove 73
CBS News	Mar. 24	Approve 22, Disapprove 70
The Economist/ YouGov	Mar. 23	Approve 14, Disapprove 67

### Direction of the Country

	Date	Results
Rasmussen Reports	Mar. 26	Right Direction 29, Wrong Direction 63
CBS News	Mar. 24	Right Direction 30, Wrong Direction 62
The Economist/ YouGov	Mar. 23	Right Direction 28, Wrong Direction 61