

Washington Update

May 29, 2015

Congress adjourned for its Memorial Day recess after a month of intense legislative activity. The Senate advanced fast-track trade legislation backed by the Administration and a short-term extension of surface transportation programs. Legislators finalized the joint budget resolution and continued work on appropriations bills for Fiscal Year 2016 (FY16). The month ended in a stalemate over renewing the PATRIOT Act, with the Senate adjourning before coming to an agreement on how to reauthorize the expiring programs. When lawmakers return, negotiating a compromise on the PATRIOT Act extension and proposed reforms will be the top priority.

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CONGRESSIONAL OUTLOOK FOR SUMMER

Lawmakers face a host of outstanding items when they return from their Memorial Day recess for two busy months before the August District Work Period. The most urgent items will be deadline driven. The Senate will return from its recess early on Sunday, May 31 to try again on reauthorizing the PATRIOT Act before it expires at midnight. Both chambers will also decide whether to extend the Export-Import Bank's charter or let it expire at the end of June. Legislators will also continue discussions on how to deal with the expiring short-term Highway Bill extension and related funding issues before the current short-term extension expires on July 31.

The Senate is expected to begin floor proceedings on the National Defense Authorization Act (NDAA) in early June as well as the appropriations bill for the Department of Defense. Assuming the Patriot Act is reauthorized, the chamber will also take up cybersecurity legislation, an issue the House acted on in April. The Senate Judiciary Committee is also likely to begin marking up its patent reform bill.

In the House, lawmakers will take up Trade Promotion Authority legislation that passed the Senate in May. The chamber is expected to consider legislation repealing the Affordable Care Act's (ACA) medical device tax and continue to advance FY16 appropriations bills. They may also take up the 21st Century Cures bill. Like the Senate, the House could begin committee work on its version of patent reform legislation.

One key development that could change the course of the congressional agenda in July is the outcome of *King v. Burwell*, which is pending before the Supreme Court. The case deals with the constitutionality of ACA health insurance subsidies when insurance is purchased through a federal exchange instead of one set up by a state. The Court is expected to hand down its decision in the case in late June. If the Court strikes down the subsidies, dealing with the aftermath would likely dominate the agenda, with legislators looking for a way to respond to millions of Americans losing subsidy support. Republicans are currently discussing options to replace the subsidies, but a consensus has yet to emerge.

ISSUE—TRADE

Trade was the dominant topic in May, with the Senate passing fast-track legislation and a number of other trade bills.

Trade Promotion Authority

Following months of bipartisan negotiations, the Senate passed a [bill](#) in May that would fast-track trade agreements currently being negotiated by the Obama Administration. The Trade Promotion Authority (TPA) bill 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.

The battle over TPA led to tension between the White House and Senate Democrats. One particularly contentious issue during the debate was that of foreign currency manipulation. Senators Rob Portman (R-OH) and Debbie Stabenow (D-MI) introduced an amendment that called on trade negotiators to demand strong currency manipulation protections in the finalized agreements, an issue that Senator Chuck Schumer (D-NY) has long championed. Most Republicans and the Administration opposed the amendment, with the White House issuing a veto threat on any measure that includes the currency manipulation language. As a concession, Senate Finance Chairman Hatch and Ranking Member Ron Wyden (D-OR) included language giving trade negotiators several options for dealing with currency manipulation in the negotiations.

Despite this and other objections, the Senate passed TPA on May 22. To secure the support of key Democrats as well as Republicans in manufacturing states, the measure also renews the Trade Adjustment Assistance program, which provides financial support, job search, and retraining to Americans who lose their job due to foreign trade agreements.

TPA now moves to the House where additional obstacles await. Many House Democrats share their Senate counterparts' reservations regarding the bill and the pending trade agreements. Additionally, some Republican members have expressed concern that the bill would give the Administration too much power over the negotiation of the final trade deals. The House could take up TPA as early as the first or second week of June.

Trade Preference and Customs Enforcement

In addition to TPA, the Senate passed two additional trade-related bills in May. On May 14, the Senate approved a customs enforcement [bill](#). To secure support among pro-trade Democrats for the TPA bill, the customs enforcement measure included tough currency manipulation language. The bill passed on a bipartisan vote of 78-20, though Republican leaders in the House have indicated that it would be difficult to advance the bill given concerns about the currency provisions.

The Senate also passed [legislation](#) renewing both the Generalized System of Preferences and the African Growth and Opportunity Act. Both programs lower trade barriers to imports from developing nations. The bill passed on a vote of 97-1.

ISSUE—TECHNOLOGY

There was a whirlwind of activity this month on technology issues, including a protracted battle over the PATRIOT Act and NSA reform.

PATRIOT Act/NSA Reform

Congress failed to reach an agreement on expiring national security and intelligence programs before leaving for the Memorial Day recess. The Senate worked late into the night on May 22, debating whether and how to reform intelligence programs included in the PATRIOT Act, which is set to expire on May 31. Lawmakers from both sides of the aisle have urged Congress to pass reforms ending the National Security Agency's (NSA) data collection program, which was revealed to the public by Edward Snowden in 2013. The House overwhelmingly passed the [USA Freedom Act](#), which would rein in the data collection program while renewing other key provisions of the PATRIOT Act.

In the Senate, lawmakers called for an immediate vote, with Senator Rand Paul (R-KY) coming to the Senate floor and delivering a ten hour speech urging senators to support reform efforts. However, a handful of Republicans opposed the USA Freedom Act, and Leader McConnell moved to temporarily extend the PATRIOT Act to give legislators more time to work out a compromise, which was also blocked by opponents of the law. The Senate was unable to advance legislation before adjourning.

The Senate is scheduled to return to Washington, DC on Sunday, May 31 in a last ditch attempt to reauthorize the programs before midnight. While efforts are underway to broker a compromise, the most likely result under difficult time constraints is Senate passage of the House-passed USA Freedom Act

Net Neutrality

Congressional Republicans continued their attacks this month 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. Rep. Doug Collins (R-GA), who introduced a [joint resolution](#) in April that would use the Congressional Review Act to disapprove of the rules, suggested this month that Republicans could use the appropriations process to deny the FCC the funds needed to carry out the new regulations. Senator Paul introduced companion [legislation](#) in the Senate. Rep. Collins' comments come as telecom leaders in both chambers attempt to negotiate a more measured bipartisan response to the rules.

Cybersecurity

Cybersecurity legislation stalled this month as the Senate diverted its attention to TPA and the expiring PATRIOT Act. In April, the House passed two cybersecurity bills dealing with [data breaches](#) and [cyber threats](#), but the Senate has yet to act on them or its own [Cybersecurity Information Sharing Act](#), which was favorably reported out of the Senate

Intelligence Committee. Assuming the Senate is able to quickly resolve the PATRIOT Act, cybersecurity legislation will be on the short list for Senate floor action in June.

FCC Legislation

The House Energy and Commerce Communications Subcommittee advanced a host FCC-related [bills](#). Among these bills is legislation to require the FCC chairman to post internal procedures to the Commission's website, require the FCC to publish rules immediately upon adoption, and allow three or more FCC Commissioners to meet in private without needing to call a public meeting. The full Committee has yet to schedule a markup for these bills.

ISSUE—PATENT REFORM

Both the Senate and House Judiciary Committees announced in May that they were delaying markups of patent reform until June. The committees' leaders attributed the delay to ongoing negotiations to reform the Patent and Trademark Office's (PTO) Inter Partes Review (IPR) process for challenging patents. The biotech and pharmaceutical industry are concerned that the IPR process at the PTO allows for the invalidation of patents under a lower burden of proof than a patent challenge in federal district court. In fact, current law allows for an anomaly in that a patent can survive a challenge in federal court and then later be struck down on similar grounds through the IPR process at the PTO. The technology industry is opposing any changes to the IPR process. The nature of the IPR reform will likely determine whether patent reform moves easily this year or not. Lawmakers are expected to markup both the [Senate](#) and [House](#) bills in June.

ISSUE—TRANSPORTATION

Congress took action on the expiring Highway Bill while also considering its options in light of a deadly Amtrak derailment this month.

Highway Bill

Before adjourning for the Memorial Day recess, Congress passed a short-term [extension](#) of the current Highway Bill (MAP-21). The legislation reauthorizes MAP-21 through July 31. Many lawmakers had hoped to pass a deal that would reauthorize the federal surface transportation programs through the end of the year, but negotiations fell apart in the Senate.

Legislators continue to look for a path forward on both the Highway Bill reauthorization and funding for the Highway Trust Fund (HTF). The most likely outcome is another temporary patch to give lawmakers more time to craft a multi-year replacement bill, though the White House and congressional Democrats have balked at any further short-term bills. The Highway Bill is also likely to factor into the debate over tax reform, with many members pushing for generating new HTF revenue through corporate or international tax reform, including repatriation of overseas profits. However, if it

becomes apparent that an agreement cannot be reached on new revenue via tax reform, legislators will need to devise another method to fund highway projects. Another funding alternative that has been floated is a proposal to increase the gas tax, which currently funds the HTF. However, most Republican lawmakers have stiffly resisted this course.

Amtrak Derailment

The May 12 derailment of an Amtrak train which killed eight people and injured hundreds more altered discussion over transportation issues this month. While investigations are ongoing, the National Transportation Safety Board indicated that the train was traveling at nearly double the speed limit. The news led many congressional Democrats to renew their calls for instituting positive train control (PTC) regulations. Congress is considering extending the federally-mandated deadline for rail operators to incorporate PTC technology, but the derailment is likely to put pressure on lawmakers to support increases in funding to deploy PTC systems.

ISSUE – TAXES

Discussion over tax reform continued this month as the House passed another permanent extension of an expired tax extender.

Tax Reform

Tax reform remained a topic of conversation in May. House Ways and Means Committee Chairman Paul Ryan (R-WI) continued to look for a path forward on a rewrite of the federal tax code. While corporate reform was on the table previously, discussions are now pointing toward an international reform package combined with a patent box to encourage domestic investment in innovation. It remains to be seen whether the proposal would be able to generate enough revenue to satisfy demands for HTF funding at the same time as appeasing the business community's calls for a more competitive international tax system.

Also this month, Senate Finance Chairman Orrin Hatch (R-UT) announced that the Committee's tax reform working groups will have additional time to finalize their findings after months of investigating possible changes to the tax code, extending the deadline past May 31. The Committee will determine the new deadline when members return from the Memorial Day recess.

R&D Tax Credit

In May, the House also passed a permanent [extension](#) of the R&D tax credit. The credit expired at the end of 2014 along with the rest of the traditional tax extenders. The permanent renewal is in line with House Republicans efforts to individually renew the extenders. The White House is opposed to the measure and issued a veto threat. While supportive of the R&D credit in general, the Administration and congressional Democrats balked at the \$182 billion price tag.

ISSUE – GOVERNMENT FUNDING AND THE BUDGET

Congress continued work on the budget and appropriations this month and received positive news regarding the nation's debt limit.

The Budget

Congress passed a [final budget](#) for Fiscal Year 2016 in early May. This followed several weeks of negotiations to iron out the differences between legislation passed in both houses. The budget is nonbinding and does not require the President's signature.

Appropriations

Legislators continued their [work](#) on FY16 funding legislation this month. In May, the House Appropriations Committee approved several appropriations bills, including spending measures for [Commerce, Justice, and Science](#), as well as [Transportation and Housing and Urban Development](#). The full House passed the [Energy and Water](#) at the beginning of the month. The chamber previously passed appropriations bills for [Military Construction and Veterans Affairs](#) (MilCon/VA) and the [Legislative Branch](#).

The Senate has moved much slower on appropriations bills. In May, the Senate Appropriations Committee approved bills for [Energy and Water](#) and [MilCon/VA](#), but not appropriations bills have reached the floor yet.

Over the coming months, both chambers will continue to act on the twelve annual spending bills. Lawmakers 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.

One point of contention in the ongoing appropriations process is how to treat sequestration, the automatic spending cuts that are triggered when spending exceeds the caps established by the Budget Control Act (BCA). After a two year reprieve, sequestration is set to come back into force in FY16. Democrats have been critical of sequestration and have generally opposed the appropriations bills currently moving through the deliberative process, which comply with the BCA spending cap numbers.

The battle over sequestration is likely to come to a head in June, when the Senate is expected to take up Defense appropriations. The President has threatened to veto all appropriations bills, but Republican leaders may attempt to call his bluff by sending the Defense bill to his desk first. Republicans have criticized sequestration's impact on military spending, and ultimately may be open to lifting the caps as part of a possible larger deal later this year.

Debt Ceiling

The Bipartisan Policy Center (BPC) released a report in May that suggests the nation may not reach its statutory debt limit until late in the year. Previous analyses have pointed to a default date as early as October. However, following a stronger than

expected tax season, BPC predicted that Congress will likely need to raise the debt ceiling by November or December. Currently, the Treasury Department is using “extraordinary measures” to manage federal government payments and push back the actual default date.

ISSUE—ENERGY

April saw some major energy developments, including moves by Congress to roll back the Administration’s carbon rules and new regulations related to wastewater from fracking.

Carbon Rule Legislation

Opponents of the Environmental Protection Agency’s (EPA) forthcoming rules limiting carbon emissions from existing and future coal-fired power plants launched an effort in the Senate this month to combat the regulations. Senator Shelley Moore Capito (R-WV) introduced [legislation](#) that would weaken the proposed rules. Among its provisions, the bill would not require states to adopt a compliance plan or be subjected to a federal plan if the governor of that state deems the regulations a threat to the state’s economy. Senate Environment and Public Works Committee Chairman Jim Inhofe (R-OK) has promised to advance the legislation quickly through his committee.

The bill has the backing of Leader McConnell, but is likely to face stiff resistance from congressional Democrats and the White House. A similar [bill](#) was introduced in the House by Rep. Ed Whitfield (R-KY) that was approved by the House Energy and Commerce Committee in April.

The Administration opposes both measures and has promised to veto both. The threat was issued as the Office of Management and Budget (OMB) began its review of the EPA’s rules. Following the OMB review, the EPA plans to finalize the regulations in “mid-summer.”

Presidential Climate Address

Also in May, President Obama delivered a speech on the threat of climate change to national security. In his address to the United States Coast Guard Academy, the President warned of the effects of climate change on the military’s ability to defend the U.S. from foreign threats and pointed to terrorist groups in the Middle East who have taken advantage of local droughts to secure control of the region. His remarks came just months before international negotiators are set to meet in Paris for global climate change talks.

ISSUE—FINANCIAL SERVICES

Discussion continued this month over whether to reauthorize the Export-Import (Ex-Im) Bank, a federal export credit agency that finances and insures foreign purchases of American exports. Ex-Im is set to expire on June 30, and opposition from conservative House Republicans has thus far prevented a reauthorization bill from advancing.

The Bank became an issue during the Senate's consideration of TPA legislation, with several pro-trade Democrats refusing to back the trade bill unless it included a reauthorization of Ex-Im. As a result, Republican leaders committed to allowing a vote on Ex-Im reauthorization in June. However, Ex-Im's prospects remain dim in the House, where rank-and-file conservatives are pressuring leadership to let the Bank's authorization expire. Assuming the Senate passes a reauthorization of Ex-Im, Speaker Boehner has said he will allow Ex-Im to be debated on the floor, where it has a chance of passing the House with the support of Democrats and a small block of Republicans.

ISSUE – HEALTH

On May 21, the House Energy and Commerce Committee unanimously approved the [21st Century Cures Act](#). The bill seeks to speed developments in new medical treatments through streamlining approval processes for medical device manufacturers and drug developers. It includes \$10 billion in new NIH medical research dollars and \$550 million for the FDA.

The Senate is likely to move at a more measured pace. Health, Education, Labor, and Pensions Committee Chairman Lamar Alexander (R-TN) has promised to bring similar legislation to his committee early in 2016.

RECENT POLLING

Job Approval: President Obama

| Poll | Date | Results |
|--------------------------|--------|------------------------------|
| Reuters/Ipsos | May 27 | Approve 42, Disapprove 50 |
| Gallup | May 28 | Approve 45, Disapprove 49 |
| The Economist/ YouGov | May 25 | Approve 46, Disapprove 53 |

Job Approval: Congress

| Poll | Date | Results |
|--------------------------|--------|------------------------------|
| The Economist/ YouGov | May 25 | Approve 12, Disapprove 64 |
| Gallup | May 10 | Approve 19, Disapprove 77 |
| CBS News/NY Times | May 3 | Approve 12, Disapprove 80 |

Direction of the Country

| | Date | Results |
|--------------------------|--------|---|
| Reuters/Ipsos | May 27 | Right Direction 26, Wrong Direction 59 |
| The Economist/ YouGov | May 25 | Right Direction 29, Wrong Direction 60 |
| Rasmussen Reports | May 21 | Right Direction 27, Wrong Direction 65 |