

Washington Update

June 3, 2016

Legislators are returning from the Memorial Day recess following a productive month. Both chambers continued work on spending measures for Fiscal Year 2017 (FY17) and moved forward on reauthorizing defense programs. The House and Senate each passed emergency funding measures, albeit at different spending levels, to combat the spread of the Zika virus. The tax-writing committees were busy in May, further investigating the validity of tax reform proposals. Republicans continued to push back on the Administration’s fiduciary duty rule, and other members called on the FCC to delay rules regarding television set-top boxes.

All of this was set to the back drop of an intensifying presidential campaign that increasingly looks to be a battle between former Secretary of State Hillary Clinton and businessman Donald Trump.

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CONGRESSIONAL OUTLOOK FOR JUNE

Lawmakers will have a short amount of time to consider legislation upon returning from their Memorial Day recess. Both chambers are set to recess in mid-July for the party conventions, leaving only a month and a half to address a host of topics.

Both chambers are expected to continue to move forward with FY17 appropriations bills, although the House will likely continue to face challenging votes on partisan amendments that could derail the process. GOP House leadership is expected to exert more control over the amendment process in attempt to avoid unrelated partisan amendments that could stymie the appropriations process.

House and Senate negotiators will continue their work on hammering out compromises on several pieces of legislation through conference committees, including bills on opioid abuse, federal energy policy, and Zika funding, which is part of the MilConVA appropriations bill.

In the House, legislators are expected to quickly consider legislation to aid in Puerto Rico's ongoing debt crisis ahead of a large interest payment due on July 1. Members will feel the pressure to advance legislation reauthorizing federal aviation programs, which are set to expire on July 15. House Republicans are also planning to release a broad GOP policy agenda in June, entitled "[Confident America](#)." House Speaker Paul Ryan (R-WI) will rollout white papers covering six policy areas: national security, tax reform, regulatory reform, health care, poverty and opportunity, and constitutional authority.

The Senate is expected to return immediately to consideration of the FY17 defense authorization bill. The chamber also will look to pass additional spending measures (including Defense and Commerce, Justice, and Science), the Puerto Rico legislation, and the compromise to modernize the Toxic Substances Control Act, which passed the House with an overwhelming vote just prior to the Memorial Day recess.

Key 2016 dates include:

- July 1 – Puerto Rico bond payment due
- July 15 – FAA authorization expires
- July 15 – Congress adjourns until September 6
- July 18-21 – Republican National Convention (Cleveland)
- July 25-28 – Democratic National Convention (Philadelphia)
- September 30 – End of Fiscal Year 2016, government funding expires
- September 30 – EB-5 Immigrant Investor Program expires
- November 8 – Election Day
- December 16 – Targeted adjournment sine die

ISSUE—GOVERNMENT FUNDING

Congress moved forward with the appropriations process in May without an FY17 budget resolution. Leaders in both chambers had hoped to pass a budget before moving to the twelve annual spending bills, but opposition from hardline conservatives within the House Republican Conference prevented Congress from advancing a budget resolution. Instead, legislators used the topline numbers agreed to in the October 2015 budget deal and moved forward on appropriations.

In the Senate, the Appropriations Committee advanced measures for Agriculture and the Legislative Branch. The full Senate approved the Energy & Water appropriations bill as well as a measure combining the Transportation, Housing, and Urban Development (THUD) and the Military Construction & Veterans Affairs (MilConVA) appropriations measures. Spending bills awaiting floor action include Agriculture; Commerce, Justice, and Science (CJS); and the Legislative Branch.

By mid-May, the House was able to begin work on appropriations measures. House rules prohibit legislators from taking up spending bills before May 15 without first adopting a budget resolution. Once the mid-May deadline passed, the House began in earnest to advance appropriations bills. The House Appropriations Committee approved funding legislation for CJS, Defense, Legislative Branch, and THUD. These measures join two other bills—Agriculture and Energy & Water—awaiting floor action. On May 19, the House passed its first FY17 appropriations bill, advancing its MilConVA measure.

Further House action on appropriations bills was thrown into doubt after controversial votes stoked partisanship in the lower chamber. House Democrats attempted twice to add an amendment to spending bills that would prohibit federal contractors from discriminating against LGBT people. With some support from House Republicans, Democrats succeeded in adding the language to the Energy & Water appropriations bill. As a result, over half of Republican members voted against the measure on final passage. Nearly all Democrats also voted against the measure due to the inclusion of several policy riders, leading to the bill's defeat.

Following the failed vote, appropriations leaders indicated that they are weighing how to proceed. Speaker Ryan wanted an open amendment process for appropriations, but that resolve may waver in the coming weeks with Republican leadership requiring members to provide advance notice of their amendments (preprinting requirement) or possibly limiting which amendments will be permitted on the floor (structured rule). The first test will come next week when the House takes up the Legislative Branch spending measure, which will require advance notice for amendments.

See [here](#) for a summary of appropriations activity.

ISSUE—TAX

Both the House and the Senate addressed tax issues in May.

House Tax Update

In May, House Ways and Means Chairman Kevin Brady (R-TX) reiterated his commitment to releasing a broad blueprint for comprehensive tax reform by late June or early July. As such, the Ways and Means Committee continued its work this month of investigating issues related to the tax code. On May 25, Tax Policy Subcommittee Chairman Charles Boustany (R-LA) held a [hearing](#) entitled “Perspectives on the Need for Tax Reform.” At the hearing, the Subcommittee heard testimony from economic analysts and tax experts urging legislators to modernize the tax code to make the U.S. more competitive.

Also in May, Chairman Boustany suggested that if tax reform efforts reduce corporate tax rates enough, his proposal for an “innovation box” may be unnecessary. Introduced by Chairman Boustany last year, the innovation box proposal would create a lower tax rate on income related to intellectual property. The announcement came as a surprise to interested industries, but Chairman Boustany pledged to continue to refine his proposal in case the Committee chooses to move forward with the idea.

Finally, the House Judiciary Committee held a [hearing](#) in May on the merits of impeaching Internal Revenue Service (IRS) Commissioner John Koskinen, who declined an invitation to testify before the panel. The hearing was the result of pressure from the House Freedom Caucus on Speaker Ryan to move forward with impeachment proceedings. While he has indicated a disinterest in pursuing the matter, Speaker Ryan permitted the committee of jurisdiction to explore the matter further.

Criticism of Koskinen’s tenure at the IRS fell along party lines at the hearing. Republicans blasted the Commissioner for his handling of the political targeting scandal that predated his appointment as well as other ongoing scandals at the tax-collecting agency. Democrats pushed back on GOP attacks and frequently quoted Senate Finance Chairman Orrin Hatch (R-UT), who previously dismissed the prospects of impeaching Koskinen. The Committee is expected to meet again in June to review the standards of impeachment and whether to move forward.

Senate Tax Update

In the Senate, Chairman Hatch held two hearings on corporate tax integration as he continues to prepare his corporate integration proposal, which is slated for release in June.

The [first](#) hearing focused on efforts to integrate the corporate and individual tax systems. The hearing probed the double taxation of corporate profits under the existing tax code and whether an approach of allowing corporations to deduct dividends paid to

shareholders would help to eliminate biases in the current tax code, promote savings, and help companies bring back overseas earnings. The [second](#) hearing investigated the tax treatment of debt and equity under the current tax code. Chairman Hatch has argued that the current tax code has a bias in favor of debt financing which distorts the economy.

Also in the Senate this month, Finance Committee Ranking Member Ron Wyden (D-OR) introduced [draft legislation](#) reforming taxation of financial derivatives. The proposal would streamline tax provisions and tax derivatives “market to market” and as ordinary income. Senator Wyden’s aim is to help prevent investors from manipulating financial instruments to avoid taxes. The proposal would raise \$16 billion over a decade.

Treasury’s Earnings Stripping Proposal

Interest and concern has continued to build since the Treasury Department’s April release of proposed changes to Section 385, which would reclassify certain debt financing instruments as equity, among other changes. The regulations are designed to combat earnings stripping, the process by which a post-inverted company moves profits to lower-tax jurisdictions and debt to the U.S. subsidiaries in order to lower the corporate tax rate here in the U.S. Many industry associations, [including](#) the U.S. Chamber of Commerce, have called on the Administration to allow for additional time for the comment period as companies continue to review and evaluate the proposed changes. Many are concerned that even wholly domestic companies using intercompany debt will be impacted by the changes. The comment period is set to close on July 7.

ISSUE—HEALTH

Lawmakers moved to address several outstanding health-related issues in May, including action on Zika funding.

Zika Update

The battle over supplemental funding to combat the rapid spread of the Zika virus came to a head in May. The Senate approved a bipartisan \$1.1 billion emergency funding [amendment](#) to the THUD-MilConVa bill to help fight the disease, which has quickly infected large portions of South and Central America and begun to show up in the United States. The vote came after months of Democratic attacks over delaying the funds, although the Senate package still falls below the \$1.9 billion requested by the Administration. Earlier in the month, the House passed its own Zika bill with \$622 million, offset by spending cuts. In late May, the House approved a resolution to conference with the Senate over Zika funding and MilConVA appropriations, but legislators stripped out the Senate’s THUD language since the House has yet to pass its own THUD appropriations measure.

Before leaving for the Memorial Day recess, the House named its conferees to negotiate a compromise bill with the Senate. The upper chamber could choose its conferees as soon as next week. The negotiators will come under increasing pressure to provide relief quickly, especially as Americans prepare to travel to heavy-hit Brazil for the Olympic Games in August.

21st Century Cures

The Senate is still trying to find a way forward on a package of bills similar to the House's [21st Century Cures Act](#). Passed by the House in July 2015, the Cures Act seeks to modernize the Food and Drug Administration (FDA) and the National Institute for Health (NIH). In May, Senate Health, Education, Labor, and Pensions (HELP) Committee Chairman Lamar Alexander (R-TN) spoke on the Senate floor and announced his hope to bring the Senate Cures package to the floor in June. Chairman Alexander announced that he and other Republicans are negotiating with Democrats over the largest remaining sticking point: NIH funding. Senate Democrats are calling for a funding level higher than the House bill, which provided \$8.75 billion in new funding over five years.

Opioid Legislation

Congress pressed ahead in May with efforts to address the growing opioid abuse epidemic. The House approved [several measures](#) that would provide flexibility to states in setting priorities and carrying out various substance abuse treatment, prevention, and law enforcement measures. The Senate passed its version of the bill in March. Democrats continued to criticize the measure for not including additional financial resources to combat the epidemic and have called on Congress to approve President Obama's request for \$1 billion in new funding. Negotiators from both chambers will now work to resolve the differences between the two approaches in a conference committee.

CMMI Medicare Part B Demo

In May, Congress continued its review of a proposed plan by the Centers for Medicare and Medicaid Services' (CMS) Center for Medicare and Medicaid Innovation (CMMI) that would establish a five year demonstration project. The demo would experiment with Medicare Part B payments for prescription drugs administered by physicians. For regions included in the demo, the proposal would change the payment formula to include the drug's average sales price plus 2.5 percent paired with an additional flat fee of \$16.80.

The House Energy and Commerce Committee held a [hearing](#) entitled "The Obama Administration's Medicare Drug Experiment: The Patient and Doctor Perspective." The hearing probed the Administration's proposal. The majority of criticism came from Committee Republicans, who were concerned that the program would limit patient access to necessary medications and impede physicians' ability to pay for the treatments best suited for their patients. While most Democrats have supported the

proposal in general, many have raised questions about how to improve the pilot program and ensure patient access.

A recent change in the Office of Management and Budget's regulatory agenda put the deadline for publishing a final rule as March 2019, but CMS responded by saying they have not made any changes to the timeline. Skepticism remains over whether the final rule will be released this summer as initially expected or if CMS will go back to the drawing board to make changes or narrow the scope of the demo in response to the outcry from industry, practitioners, patient advocacy groups and Congress.

Uninsured Rate

The Centers for Disease Control (CDC) announced this month that in 2015 the federal uninsured rate fell below double digits for the first time. The CDC reported that 9.1 percent of Americans reported being uninsured, down from 11.5 percent in 2014.

ISSUE—TRANSPORTATION

Little progress was made this month on finding a path forward for reauthorization of Federal Aviation Administration (FAA) programs. In the House, Transportation and Infrastructure (T&I) Committee Chairman Bill Shuster (R-PA) stood firm on his [plan](#) to privatize air traffic controllers. Congressional Democrats have pushed back against the plan, and the Senate passed a reauthorization [bill](#) in April without the controversial changes. Additionally, GOP tax writers and appropriators have chafed at ceding jurisdiction of air traffic controllers to a new independent body that would oversee the air traffic controllers under Chairman Shuster's plan. In May, Chairman Shuster's counterpart in the Senate, Commerce Committee Chairman John Thune (R-SD), put pressure on the House to act. With only a handful of weeks remaining before Congress leaves for the political conventions, the pressure to accept the Senate version or pass another short-term extension is likely to increase ahead of the July 15 expiration of the current FAA authorization.

ISSUE—ENERGY

Negotiators continued to work on a compromise over energy legislation while the D.C. Circuit of Appeals announced its plan for a pending lawsuit challenging the President's Clean Power Plan.

Senate Energy Legislation

Doubts were raised in May over whether Congress will be able to negotiate an agreement on historic energy policy legislation. The shrinking congressional calendar, continuing policy differences, and the approaching election have presented hurdles to a compromise. The Senate approved [legislation](#) in April that would overhaul federal

energy programs. Among other provisions, the bill would speed up approval of LNG export applications, require improvements in building and appliance efficiency, and advance efforts to shield the nation's electric grid from cyberattacks. The House passed its version of the [bill](#) last December and amended the Senate version of the bill in April. The House also appointed conferees to negotiate compromise legislation with the Senate. Legislative champions are optimistic that they will be able to reach an agreement, but with a broad range of opposition coming from industry and environmentalists alike, some skepticism remains.

Clean Power Plan

The D.C. Circuit of Appeals surprised observers in May when the Court announced that oral arguments in a lawsuit against the Administration's [Clean Power Plan](#) would be delayed until September 27, when arguments will be presented to the Court *en banc*. With the entire D.C. Circuit set to hear the appeal, analysts suspect that review of the lawsuit will quicken, with a ruling likely handed down after the election and possibly after the inauguration of the next President.

ISSUE—TECHNOLOGY

Set-top boxes and email privacy legislation were top technology topics in May.

Set-Top Boxes

The Federal Communications Commission (FCC) is preparing to finalize its rulemaking on television set-top boxes. In January, the FCC circulated its [proposal](#) to open up competition in the set-top market. The plan would require cable and satellite providers to allow boxes manufactured by third party device makers to access their content, which supporters of the proposal argue would provide more options to consumers than the cable and satellite boxes currently available.

Industry leaders immediately criticized the proposal and began to push back on the plan. In May, the FCC's electronic comment filing system began experiencing a backlog, forcing a delay in publicly posting comments. Several legislators sent letters to the FCC calling for a delay in finalizing the rule until the backlog could be addressed. Other members called on the agency to delay the regulation due to concerns about compliance costs for smaller players and a possible decrease in programming diversity. However, the FCC declined and the comment period ended on May 23.

In Congress, legislators are considering options to stall the proposal. House Republicans included in their FY17 Financial Services appropriations bill a provision that would delay final implementation of the set-top box rule until a college or university produces a study on the impact of the proposal.

Update to Electronic Communications Privacy Act

The Senate Judiciary Committee delayed a markup on the [Electronic Communications Privacy Act](#) (ECPA) this month in order to negotiate language to address counterterrorism concerns. Privacy advocates are pushing back on an amendment from Senator John Cornyn (R-TX), believing that it would expand the government's authority to conduct further surveillance on Americans. Senator Cornyn remains optimistic that his amendment will be accepted, though a timeline for ECPA consideration before the Judiciary Committee remains ambiguous.

ISSUE—DEFENSE POLICY

The House approved its [version](#) of the FY17 National Defense Authorization Act (NDAA) on May 19, authorizing \$610.5 billion in defense spending for FY17. The bill was approved on a largely party-line vote of 227-147, with 40 Democrats voting with Republicans. The White House issued a veto threat, citing the proposal's reallocation of \$23.1 billion in war-related Overseas Contingency Operations funds to fill the Pentagon's base budget shortfall.

The Senate opened floor debate on its defense authorization [bill](#) at the end of the month. However, Senate Democrats delayed a vote to move forward on the bill, arguing that the Republicans were trying to rush the measure through. Leader McConnell later announced that there is an agreement to continue debate when the chamber returns from its Memorial Day Recess.

ISSUE—FINANCIAL SERVICES

Long-stalled nominees for the Securities and Exchange Commission (SEC) advanced in May, and the Senate took action on the Administration's fiduciary duty rule.

SEC Nominees

The Senate Banking Committee succeeded in advancing several stalled nominations this month. On May 19, the Committee approved nominees to the Securities and Exchange Commission (SEC), The Federal Deposit Insurance Corporation, and the U.S. Mint. The nominations had stalled due to opposition to the two nominees for SEC commissioner. Leader McConnell has yet to announce a timeline for their consideration on the floor, but with a compact schedule, he is unlikely to expend much time debating their nominations. Opposition is expected to continue as the nominations hit the Senate floor, with many Democrats critical of the nominees' stance on corporate political spending disclosure and other positions.

Fiduciary Rule

In May, the Senate approved a House-backed joint [resolution](#) formally disapproving of the Department of Labor's long-awaited final [rule](#) on brokers' fiduciary responsibility to consumers, the so-called fiduciary rule. The rule was finalized in April and will require brokers to act in the best financial interest of their clients when advising on retirement investing, a higher standard than brokers previously faced. Republicans and some Democrats have criticized the regulation for unintended consequences, including a reduction of brokers willing to provide services to middle income investors. The measure now goes to the President, who has indicated he will veto it. The rule is also being challenged in court. The U.S. Chamber of Commerce and several other organizations filed a [lawsuit](#) challenging the rule.

Dodd-Frank Replacement

House Financial Services Committee Chairman Jeb Hensarling (R-TX) announced in May that the Committee will be releasing a Dodd-Frank replacement plan in June. Chairman Hensarling has previously pledged to advance a broad replacement of the 2010 law that placed new regulations on the financial sector.

OTHER ISSUES

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

Criminal Justice Reform

In May, the House Judiciary Committee approved a [bill](#) that seeks to raise the federal standard of proof that law enforcement officials are required to demonstrate before seizing an individual's assets, so-called *asset forfeiture*. The legislation would also increase oversight on seizures. The measure was approved by a voice vote.

TSCA Modernization

Negotiators reached [an agreement](#) on a bill to update the original 1976 Toxic Substances Control Act, giving the EPA new powers to evaluate and regulate chemical substances while preventing states from crafting their own patchwork of rules. The House passed the measure on a strong bipartisan vote of 403-13. The bill was set for passage in the Senate, but stalled at the last minute over objections from Senator Rand Paul (R-KY) that more time was needed to read the bill. Senate Environment and Public Works (EPW) Chairman Jim Inhofe (R-OK) expressed optimism that the bill will pass once the Senate returns from the Memorial Day recess.

Puerto Rico

In May, the House Natural Resources Committee approved a [bill](#) that seeks to abate the continuing debt crisis in Puerto Rico. Months in the making, the measure would allow the U.S. island territory to restructure its debt under a federally appointed financial control board. The bill is expected to come to the floor in the second week of June.

The Senate has allowed the House to take the lead on the issue, and the chambers will work together with the goal of sending a bill to the President's desk ahead of the July 1 deadline for Puerto Rico's \$2 billion interest payment.

PRESIDENTIAL POLITICS

The battle for the White House continued to intensify in May. Without further opposition, businessman Donald Trump amassed the necessary number of delegates to secure the Republican nomination. On the Democratic side, former Secretary of State Hillary Clinton is within striking distance of securing her party's nomination, though Senator Bernie Sanders (I-VT) is resisting calls to drop out of the race.

Both parties will hold their political conventions in July:

- July 18-21 – Republican National Convention (Cleveland)
- July 25-28 – Democratic National Convention (Philadelphia)

RECENT POLLING

Job Approval: President Obama

Poll	Date	Results
Rasmussen Reports	Jun 1	Approve 51, Disapprove 48
Gallup	Jun 1	Approve 52, Disapprove 44
Quinnipiac	May 30	Approve 49, Disapprove 48

Job Approval: Congress

Poll	Date	Results
The Economist/ YouGov	May 23	Approve 12, Disapprove 67
Gallup	May 17	Approve 18, Disapprove 78
CBS News	May 8	Approve 14, Disapprove 77

Direction of the Country

	Date	Results
Rasmussen Reports	May 26	Right Direction 28, Wrong Direction 66
Reuters/Ipsos	May 25	Right Direction 26, Wrong Direction 60
The Economist/ YouGov	May 23	Right Direction 26, Wrong Direction 67