



Washington Update

May 2, 2014

Legislative action slowed in the middle of April as lawmakers left town for a two week recess, but the lull in activity did not prevent several important developments before and after the break. The budget and appropriations process for Fiscal Year 2015 (FY15) moved along while both chambers looked for ways to renew the expired tax extenders. The challenges surrounding transportation funding continued as Highway Trust Fund insolvency grows closer. The positive enrollment numbers for the Affordable Care Act (ACA) grabbed most of April's headlines, as a successful end to enrollment helped bolster ACA supporters. A failed cloture vote on a minimum wage increase in the Senate at the end of April promises to be a major talking point for Democrats throughout the campaign season.

ISSUE—FUNDING THE FEDERAL GOVERNMENT

In April, legislators continued laying out their plans to fund the federal government for the next fiscal year. House Budget Committee Chairman Paul Ryan (R-WI) released his [budget](#) on April 1. The budget proposes to cut spending by \$5.1 trillion over a decade. The savings largely come from changes to social welfare programs, divestment from Fannie Mae and Freddie Mac, and repealing the ACA. On April 10, the measure passed the House by a vote of 219-205, with all Democrats opposing the Ryan budget on grounds that the bill cut domestic spending programs.

Senate Democrats have thus far resisted calls to produce a budget for FY15 saying that the topline numbers established in the December budget agreement are sufficient. At this point, it is unlikely that Senate Democrats will produce their own budget or act on the House version, sparing vulnerable Democrats from taking tough votes.

Appropriations

Regardless of what happens with the budget, the House and Senate Appropriations Committees have already begun their work on [FY15 spending bills](#) that will spell out specific funding levels for various federal agencies and programs. The House Appropriations Committee is moving forward on appropriations bills with record speed.

The first two bills have already passed the full House with Military Construction and Veterans Affairs on April 30 by a vote of 416-1 and Legislative Branch on May 1 by a vote of 402-14. The Commerce, Justice and Science bill is next on the docket for the House Appropriations Committee.

The Senate Appropriations Committee has yet to markup any appropriations bills.

The appropriations process is expected to continue throughout the summer. The House is seeking to pass all appropriations bills before the August district work period begins, while the Senate appropriations schedule is expected to be less ambitious.

ISSUE—TAXES

Lawmakers directed much of their attention in April to a package of about 55 expired corporate and individual tax provisions, known collectively as tax extenders. Senate Finance Committee Chairman Ron Wyden (D-WA) released his tax extenders [proposal](#), which the full Committee approved on April 3. Chairman Wyden originally proposed scrapping several provisions that have been included in previous tax extenders packages, but the Committee added most of them back into the bill. The \$85 billion proposal is a two-year bill that would retroactively renew the extenders from January 1, 2014, until December 31, 2015, allowing individuals and corporations to take advantage of the tax provisions for income earned in both 2014 and 2015.

Chairman Wyden stated during the mark-up that this would be the last tax extenders bill and that he expected the two year bill to provide enough time to complete a tax code overhaul, negating the need for future extensions of the piecemeal provisions.

The legislative timeline for the Senate extenders package remains somewhat ambiguous. Senate Majority Leader Harry Reid (D-NV) has promised action on the bill “sooner rather than later.” Leader Reid is expected to bring the legislation to the floor for consideration soon after the Senate returns from its Easter recess, but the bill could also slip to June if leaders cannot come to an agreement on the amendment process.

While the Senate has moved quickly on its tax extenders package, the House is moving at a slower, more methodical pace, with Ways and Means Committee Chairman Dave Camp promising longer deliberations on extender provisions that he thinks should be made permanent.

The Ways and Means Committee held its first hearing on tax extenders in April, and more are expected, with Chairman Camp suggesting that deliberations could go well into the summer months. During that hearing, Camp identified six extenders that he wanted to renew on a permanent basis, with some changes and improvements. On April 29, the Committee held a mark-up of these extenders, including the R&D tax credit, subpart F exemption for active financing income, and section 179 expensing. While the

original bills had bipartisan cosponsors, no Committee Democrats supported the bills during the mark-up, citing concern that they were not paid for. Camp responded that Congress has never paid for tax extenders. The Senate tax extenders bill was also not paid for.

Camp has said he expects to act on additional tax extender provisions, but has not specified which ones or a timeline. The six bills the Committee has already favorably reported to the full House will likely be voted on in May, with some of the smaller provisions possibly combined together in one bill. The R&D tax credit bill is likely to be voted on by the full House in early May and could potentially become the legislative vehicle for a tax extenders conference committee this summer if the process moves along smoothly.

ISSUE—HEALTHCARE

Healthcare received the lion's share of attention in Washington again this month. April provided a spate of good news for ACA supporters while Republicans continue to attack the law and warn of its negative impacts on the choices and pocketbooks of families across the country.

ACA – Enrollment

Following the disastrous rollout of the federal online insurance exchange in October, observers remained skeptical that the Administration would be able to reach its goal of enrolling seven million Americans. However, thanks to an aggressive public relations campaign that recruited senior Administration officials and celebrities, HHS announced at the beginning of April that over seven million Americans had enrolled in insurance plans through the federal and state exchanges. Additional individuals who were eligible for an enrollment extension added to the numbers, bringing the estimated enrollees to around eight million.

Democrats heralded the news and claimed it as proof that public support for the ACA is strong. President Obama called on Congress to help fix the remaining issues with the ACA and to abandon efforts to repeal and replace the law. The GOP is expected to continue to highlight other problems with dropped coverage and increases in premiums that they attribute to the ACA, while possibly rolling out some alternative health care proposals this summer.

While about eight million have enrolled, getting to an accurate count is a bit more technical for a couple of reasons. First, the Administration has yet to release official numbers on how many enrollees have paid their first month's premium. Karen Ignani, CEO of America's Health Insurance Plans, estimated that about 85 percent are paying ACA premiums. However, the House Energy and Commerce Committee put the estimate of those who had paid their first month's premium as of April 15 at 67 percent, based on information the Committee requested directly from health insurers. Second, the total

exchange enrollment figures likely include a large number of Americans who were previously insured through other means, which Republicans believe distorts the true effectiveness of the law.

ACA – Cost Update

Aside from the enrollment figures, ACA supporters were given additional good news in April as the Congressional Budget Office (CBO) released a study that suggests ACA costs may come in lower than originally projected. The CBO [report](#) indicated that the ACA coverage provisions would cost the federal government \$36 billion this year, \$5 billion less than previously estimated figures. Additionally, the report predicted that insurance premiums will rise by an average of three percent in 2015, far below the double digit increases in previous reports.

ACA – Sebelius Resigns

Amid the ACA success stories that emerged in April, the Department of Health and Human Services (HHS) announced that HHS Secretary Kathleen Sebelius would resign from her post. Secretary Sebelius has been a lightning rod for ACA critics, often taking the blunt of attacks from congressional Republicans and being held largely responsible for the disastrous ACA rollout in October 2013.

On the same day that Secretary Sebelius announced her retirement, President Obama announced that he would nominate White House Office of Budget and Management (OMB) Director Sylvia Mathews Burwell to replace Sebelius at HHS. Both sides remain cautious toward Burwell's nomination. Given Leader Reid's recent changes to Senate filibuster rules governing executive branch nominees, Burwell's nomination is likely to be approved by the Democrat-controlled Senate. However, many Democrats remain concerned that Republicans will turn her confirmation hearings into a proxy battle over the ACA, which could create problems for Democrats if the recent good fortune for the ACA dissipates. Conversely, Republicans are also treading carefully, given that the Senate unanimously approved Burwell's OMB nomination only a year ago. As both sides prepare for the continued debate over ACA implementation, Leader Reid has promised swift action on Burwell's nomination.

ACA – Electoral Impact

The enrollment numbers, CBO report, and even the departure of the controversial Secretary Sebelius were the first glimmers of hope for the beleaguered ACA in months. Already, some Democrats are adjusting their campaign strategy to capitalize on the healthcare law's improved standing. However, while the President has called on his party to aggressively embrace and defend his signature law, most Democrats are still cautious, particularly those running for reelection in Republican-leaning states. Polling shows that vulnerable Democrats still have reason for concern. Despite positive ACA momentum at the national level, the law remains deeply unpopular in most states and susceptible to a drumbeat of unfavorable reports on decreased choices and increased costs to consumers.

Sustainable Growth Rate (“Doc Fix”)

Negotiations on a bill to replace the flawed Sustainable Growth Rate (SGR) formula stalled at the end of March and ultimately forced Congress’ hand in passing a one year patch to alleviate the looming, deep Medicare cuts for physician services. The bill was signed into law on April 1.

The patch will give the House Ways & Means and Senate Finance Committees time to continue discussions around a policy and pay-for solution.

Medical Device Tax

During the Senate Finance Committee’s debate over tax extenders legislation, Republicans pushed for a vote on an amendment that would repeal the medical device tax, which has been criticized by members of both parties. Chairman Wyden ruled the amendment to be non-germane. Efforts to dismantle the tax have been sidelined as lawmakers address other tax priorities. However, Chairman Camp included a repeal of the tax in his outline for tax reform legislation and Republicans are likely to continue to include medical device tax repeal in any plans to overhaul, replace or relieve the burden of the ACA.

ISSUE—TRANSPORTATION

As the country faces serious infrastructure challenges that will only grow more dire in the coming months, the Administration released its four year highway plan at the end of the month.

Highway Trust Fund: “The Highway Cliff”

Legislators continue to struggle in finding a solution to the impending funding crisis with the Highway Trust Fund (HTF). Declining revenues from fuel taxes have put federal infrastructure funding in serious jeopardy, with the Department of Transportation (DOT) announcing in April that the HTF will become insolvent on August 29.

The announcement sent lawmakers scrambling to find a fix. While some have pushed for an increase in fuel taxes, which would be the first increase in two decades, Republicans in both chambers have ruled the option out. In the absence of a long-term funding plan, the most likely outcome is a transfer from the Treasury’s general fund. Since 2008, Congress has had to transfer more than \$50 billion into the HTF from general revenues in order to keep the fund solvent. While such an option would be a short-term patch, it would allow legislators additional time to negotiate a long-term solution to the HTF’s funding problems.

There is growing concern that if Congress does not act soon, there may be serious disruptions to the American infrastructure system. Analysts have warned that critical state and federal transportation projects may be delayed or cancelled even before HTF

funds are exhausted with agencies forced to shutter projects early over funding uncertainty. Such concerns have only added to the urgency for Congress to act.

Surface Transportation and Rail Reauthorization

In addition to the HTF, Congress will also need to address the surface transportation reauthorization. Legislators passed the most recent two-year authorization bill in 2012. Entitled the Moving Ahead for Progress in the 21st Century Act (MAP-21), the law is set to expire on September 31. Transportation leaders in both chambers have held hearings on reauthorization and remain committed to producing a multi-year reauthorization bill before MAP-21 expires.

Legislators on Capitol Hill are making some progress. On April 10, the main transportation leaders on the Senate Environment and Public Works (EPW) Committee led by Chairman Barbara Boxer (D-CA) announced that they had agreed on principles on how to proceed with the reauthorization process. The Senate plans to pursue a six-year bill, and the Senate Finance Committee will face the monumental task of coming up with a politically palatable method to fund the highway bill.

Chairman Boxer announced that she hopes to unveil her Committee's draft of a reauthorization bill in early May, while House Transportation & Infrastructure Committee Chairman Bill Shuster (R-PA) has set a goal for "spring to early summer" for a House bill.

Legislators have made less progress on a rail reauthorization bill. There have been calls from some to merge rail with surface programs in one authorization bill. Some in Congress have thus far resisted those calls, fearing that rail programs will be relegated to a lower priority as they compete with other surface programs and projects. Nevertheless, on his recent tour across the country raising the need to invest in American infrastructure, DOT Secretary Anthony Foxx reiterated the Obama Administration's commitment to fully support rail development of both passenger and freight systems.

GROW AMERICA Act

On April 30, the Administration released its \$302 billion four-year highway plan known as the GROW AMERICA Act (Generating Renewal, Opportunity, and Work with Accelerated Mobility, Efficiency, and Rebuilding of Infrastructure and Communities throughout America Act). This is the first comprehensive highway proposal that President Obama has ever produced.

The bill includes a 22 percent increase for highways and road safety and a 70% increase for transit and other transportation options. The bill also allocates \$19 billion for rail and \$10 billion for a multi-modal freight program.

The Administration's proposal counts on \$150 billion in one-time revenue from corporate tax reform to cover the increased spending and close the HTF gap.

The GROW AMERICA ACT also proposes to relax the federal limits on the use of tolls. Specifically, the proposal would permit states to use tolls to finance repair and reconstruction of existing roads, subject to the approval of the Transportation Secretary.

Positive Train Control

In April, transportation leaders in Congress were hit with a new problem in the ongoing efforts to implement positive train control systems, which are designed to automatically slow trains in dangerous situations. The Association of American Railroads announced that only twenty percent of the nation's freight network will be able to implement the mandatory controls by the 2015 deadline. This is half the earlier estimate of forty percent. Senator John Thune (R-SD) previously introduced [legislation](#) that would delay the mandate, allowing train operators an additional five years to implement the systems. However, Democrats in Congress remain adamant in their calls that the systems become operational on time. The Federal Railroad Administration has complained that the current deadline is unworkable, citing the ample amount of time and money required to fully deploy the complex safety systems.

The GROW AMERICA Act would allocate \$2.35 billion to assist in the implementation of positive train control systems. It also seeks to strengthen federal authority to regular service hours to prevent operator fatigue.

ISSUE—ENERGY

In April, the Obama Administration once again delayed a final decision on the TransCanada Keystone XL pipeline. The announcement came only a few months after the State Department released its final [environmental impact statement](#) in January. The statement found that construction and operation of the pipeline would have a minimaleffect on the environment and climate. Environmental activists cheered the news while Republicans deemed the delay a political ploy.

Observers believe that at least some of the motivation behind the delay was the fear that approval of the pipeline would anger a powerful segment of the Democratic base, leading many of them to stay home on Election Day. The delay has ensured that the pipeline will remain an issue, particularly for vulnerable red state Democrats. Energy Committee Chairman Mary Landrieu (D-LA) and Senator John Hoeven (R-ND) have introduced a bill to require approval of the pipeline. The legislation is co-sponsored by every Senate Republican and 11 Democrats. The Landrieu-Hoeven legislation may get a vote in the Senate as part of a deal to move a popular energy efficiency bill in May.

ISSUE—PATENT REFORM

Efforts to reform federal patent laws hit major roadblocks this month. In December, the House passed a [bill](#) that would address the issue of patent assertion entities, more commonly known as “patent trolls.” The Senate Judiciary Committee was set to take up a similar [bill](#) introduced by Chairman Patrick Leahy (D-VT) this month, but a mark-up was continuously delayed due to ongoing policy disagreements between Republicans and Democrats on the Committee over the bill’s treatment of fee shifting and heightened pleading requirements. The mark-up is now expected to happen in May.

In a sign of progress, it was reported that Committee staffers were circulating amended language that could form the basis of the Committee’s final proposal. The language is a compromise brokered between Senators Chuck Schumer (D-NY) and John Cornyn (R-TX), which helps satisfy the latter’s demand for stronger litigation reforms.

ISSUE—MISCELLANEOUS

Several others issues were addressed during April, including the annual National Defense Authorization Act process, updates on Ukraine, and continued discussion about extending unemployment benefits and raising the minimum wage.

National Defense Authorization Act (NDAA)

Consideration of the FY15 NDAA ramped up at the end of April. The House Armed Services Committee began a series of subcommittee markups on the NDAA, the annual bill that reauthorizes funding for military programs. The markups will continue through the first week of May, with the full Committee taking up the bill on May 7.

The legislation faces several challenges, including many of the same obstacles that nearly derailed the bill in 2013. Chief among these are election year politics and other controversial items, such as new economic sanctions on Iran and immigration reforms, that could be tacked on to the bill. The Senate has yet to begin NDAA proceedings.

Ukraine

Washington continues to be attentive to the ongoing situation in Ukraine and Crimea. Following the Russian annexation of the Crimean Peninsula and a globally-condemned referendum on joining the Russian Federation, the White House enacted a package of sanctions against top Russian officials and corporate leaders associated with Russian President Vladimir Putin. In late April, those sanctions were expanded to an additional seven officials and seventeen companies linked to Putin’s inner circle.

Also this month, the Pentagon announced that it would be sending American forces into Poland and other nations in Eastern Europe to conduct joint military exercises. Observers see the actions as a show of American and Western force and a move to dissuade Russia from taking aggressive action elsewhere in the region.

Meanwhile, the situation within Ukraine, Crimea, and other nations throughout the region has deteriorated. Pro-Russian forces have seized key military bases and municipal buildings in both Crimea and the Russian-sympathetic Eastern Ukraine. Other secessionist forces have been emboldened by the Crimean affair, with the breakaway Moldovan province of Transnistria petitioning the Russian government to join the Russian Federation.

Western leaders remain adamant in their opposition to such aggression, but have thus far been quite measured in their response and ceding the fact that Crimea is now inextricably under Russian control. In Washington, however, following a contentious debate, Congress passed a [bill](#) to provide aid to the Ukrainian government in the form of cost of loan guarantees. The President signed the bill into law on April 3.

Unemployment Insurance

On April 7, the Democrat-controlled Senate passed a bill to retroactively extend long-term unemployment insurance by a 59-38 margin, with some Republican support. The bill came after several months of intense negotiations among a bipartisan group led by Senators Jack Reed (D-RI) and Dean Heller (R-NV). The bill costs nearly \$10 billion, which would be offset by extending fees on goods imported through U.S. Customs as well as changes to federal pension laws.

The bill is not expected to be taken up by the House, where Speaker John Boehner (R-OH) has sharply criticized the bill, calling it an unworkable piece of legislation. Speaker Boehner remains concerned that the legislation does not sufficiently offset the cost of the bill and has cited statements from state workforce directors that claim it would be difficult to administer the retroactive nature of the bill's extension of benefits. Still, Democrats plan to continue calling for an extension of UI.

Minimum Wage Vote

Democrats continued to push for an increase in the minimum wage this month. Supporters of an increase, which is a key agenda item for the White House and congressional Democrats, argue that it will result in a realistic, working wage for struggling American families. Opponents say that a minimum wage hike could further stall a still rough economy and could result in the loss of 500,000 jobs. Furthermore, Republicans argue that minimum wage laws should be left to the states, which have a better understanding of labor markets within their borders and can better balance the need to increase wages against the threat of job loss.

On April 30, Senate Republicans blocked a [bill](#) that would have raised the minimum wage to \$10.10 over two years. After the two year phase-in, the legislation would allow the Department of Labor to adjust the minimum wage each year based on inflation. The White House attacked the move by Republicans, citing polling that shows a majority of Americans support an increase. Democrats are expected to make a minimum wage increase a central issue in the mid-term election.

RECENT POLLING**Job Approval: President Obama**

Poll	Date	Results
Rasmussen Reports	May 1	Approve 47, Disapprove 51
Gallup	May 1	Approve 45, Disapprove 49
Economist/YouGov	April 28	Approve 45 Disapprove 52

Job Approval: Congress

Poll	Date	Results
Economist/YouGov	April 28	Approve 8, Disapprove 71
Fox News	April 15	Approve 15, Disapprove 76
National Journal	April 13	Approve 11, Disapprove 80

Generic Congressional Ballot

Poll	Date	Results
Rasmussen Reports	April 27	Democrats 38, Republicans 40
ABC News/Wash Post	April 27	Democrats 45, Republicans 44
Fox News	April 15	Democrats 41, Republicans 44

Public Approval of Health Care Law

	Date	Results
NBC News/Wall St. Jrnl	April 27	Support 36, Oppose 46
ABC News/Wash Post	April 27	Support 44, Oppose 49
Rasmussen Reports	April 20	Support 45, Oppose 51