

# Washington Update

April 4, 2016

Legislators left for the Easter recess with much awaiting them upon their return in April. The Fiscal Year 2017 (FY17) budget process was delayed in March to allow Republican leaders time to address concerns from the rank-and-file over a budget resolution that adheres to the previously agreed upon spending levels. Though Congress failed to pass a long-term FAA reauthorization, lawmakers acted to extend the current authorization through mid-July. In foreign affairs, President Obama made a historic visit to Cuba, and Europe was rocked by yet another terrorist attack. The FBI dropped its lawsuit against Apple while a Senate panel reviewed nominations for the nation’s top Wall Street watchdog. Amidst all of this, President Obama nominated Judge Merrick Garland to the Supreme Court.

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## CONGRESSIONAL OUTLOOK FOR APRIL

Congress will return from its Easter recess with a host of issues to address, and government funding will be at the top of the list. Despite concerns from the rank-and-file, both House Speaker Paul Ryan (R-WI) and Senate Majority Leader Mitch McConnell (R-KY) have vowed to put forward a budget this year. Nevertheless, appropriators in both chambers have begun work on the twelve annual spending bills for FY17 while the top-level budget details are weighed. Transportation leaders in both houses will also continue to work across the Capitol on an FAA reauthorization package, although the House and Senate are currently taking substantively different approaches to a long-term measure.

In the Senate, legislators will continue to look for a path forward on several stalled measures, including a bipartisan energy bill. The Senate is expected to pass the [Defend Trade Secrets Act](#) on April 4 and spend most of the first two weeks of the month considering its version of the FAA reauthorization. The Senate may also turn back to the GMO labeling bill in April, though limited floor time could pose a challenge.

House policy makers will be taking the lead on a measure to address the debt crisis in Puerto Rico as the territory's default date draws nearer. The House will also make a decision on whether to put a budget resolution on the floor in April. If the House does not, it is unlikely that the Senate will consider a budget resolution either.

Key 2016 dates include:

- April – House and Senate expected to begin floor consideration of appropriations bills
- July 15 – FAA authorization expires
- July 15 – Congress adjourns until September 6
- July 18-21 – Republican National Convention
- July 25-28 – Democratic National Convention
- September 30 – End of Fiscal Year
- September 30 – NDAA and Intelligence Authorizations expire
- September 30 – EB-5 Immigrant Investor Program expires
- November 8 – Election Day
- December 16 – Targeted adjournment sine die

## SUPREME COURT VACANCY

Following the death of Supreme Court Justice Antonin Scalia in February, lawmakers engaged in a furious debate over whether the vacancy should be filled before President Obama's successor is sworn in next January. Senate Republicans argue that the position should not be filled during an election, and that the next president should nominate

Justice Scalia's successor. The White House and Democrats have criticized the Republican approach and called on the Senate to confirm a replacement.

The debate came to a head in March when President Obama nominated Judge Merrick Garland to the vacant seat. Judge Garland, the Chief Judge on the DC Circuit of Appeals, was immediately praised by Senate Democrats, but Republicans maintained their opposition to his nomination. Senate Judiciary Chairman Chuck Grassley (R-IA) also reiterated that his committee would not hold confirmation hearings on the nomination, though some Republicans have softened their position and agreed to meet with Judge Garland.

The ongoing battle over whether to consider the Garland nomination could have implications on the Senate agenda. While Democrats have vowed not to hold up legislation in protest of Senate inaction on the nomination, some observers worry that the situation could devolve further, leading to gridlock in the upper chamber.

## **ISSUE—GOVERNMENT FUNDING**

Lawmakers continued to struggle in March on a path forward for a federal budget for FY17 while appropriators slowly began their work on spending measures.

### *Federal Budget*

In October, Congress approved a two-year budget deal that raised spending caps on both domestic and defense spending for FY16 and FY17. While some legislators argued that a separate budget for FY17 is unnecessary given that the topline spending numbers were set by the October compromise, Republican leaders remain committed to regular order, including adherence to the traditional budgetary process.

However, leaders in both chambers continue to face challenges in uniting rank-and-file Republicans in support of a budget. Conservatives in the House and Senate are wary of supporting the \$1.07 trillion topline number set by the October compromise, with the House Freedom Caucus pushing for \$30 billion less in overall spending. In a further sign of the difficulties facing leadership, the Senate Budget Committee announced that it would delay consideration of a budget until after March. Additionally, some in the Senate, particularly those in tight re-election races, are concerned about the partisan attacks that are likely to occur during the marathon floor votes on budget amendments known as the vote-a-rama.

On March 15, House Budget Committee Chairman Tom Price (R-GA) introduced a [budget resolution](#) for FY17. The legislation is funded at the \$1.07 trillion level and would balance the budget in a decade. On March 23, the Budget Committee marked up the measure. Two members of the Freedom Caucus who are on the Committee, Reps. Dave

Brat (R-VA) and Marlin Stutzman (R-IN), voted against the budget, indicating continued conservative resistance to the measure.

Should the House fail to approve a budget, Speaker Ryan could come under pressure to soften his position of not moving individual spending bills until the House passes a budget resolution. Legislative experts believe that House rules allow for the chamber to move appropriations bills to the floor for a vote after May 15 even if the House does not approve a budget, although this has not been done before. In the Senate, last year's budget deal gave the Budget Committee the authority to set the topline numbers in the absence of a budget resolution after April 15, allowing appropriations bills to move forward. However, neither leader is conceding the budget fight yet.

### *Appropriations Process*

The delayed budget process has not stopped appropriators from beginning their work on the twelve annual spending bills. Lawmakers have begun drafting FY17 appropriations measures using the \$1.07 trillion topline number set by the October budget compromise. In March, the first appropriations bill advanced when the House Appropriations Subcommittee on Military Construction and Veterans Affairs (MilCon/VA) approved its funding measure. The MilCon/VA [bill](#) is funded at \$1.8 billion over the FY16 level.

House leaders had originally hoped to bring the first appropriations bills to the floor for consideration as early as April, but that hinges on approval of a budget resolution according to Speaker Ryan. The Senate is hoping to have its first appropriations bill on the floor by mid-April.

## **ISSUE—TAX**

Lawmakers debated several tax related issues in March.

### *Tax Extenders*

Some legislators indicated in March that they will press for a new deal to renew some of the personal and corporate tax provisions, known as tax extenders, set to expire at the end of 2016. As a part of the omnibus spending negotiations in December, Congress approved legislation that permanently renewed a handful of the extenders while also temporarily extending others for between two and five years, retroactively covering 2015.

Senate Finance Committee Ranking Member Ron Wyden (D-OR) announced in March that he intends to push for the renewal of several renewable energy incentives that will expire in December. Finance Chairman Orrin Hatch (R-UT) has indicated that he is open to addressing the expiring provisions. Conversely, tax leaders in the House have expressed opposition to addressing extenders. Ways and Means Chairman Kevin Brady,

along with Tax Policy Subcommittee Chairman Charles Boustany (R-LA), opposed reopening the extenders debate. Chairmen Brady and Boustany believe the issue to be resolved and that legislators intended for the expiring extenders to lapse permanently, though House leaders remain open to addressing extenders within a larger tax reform proposal.

One possible angle for Ranking Member Wyden would be to attach an extension of the extender provisions to a long-term reauthorization of the FAA, which is currently being debated in both chambers. However, if extenders are addressed this year, it is more likely to be a lame duck exercise

While the debate over how to handle extenders continued in March, legislators were also hit by a new [report](#) from the Joint Committee on Taxation (JCT) that the year-end extenders deal (along with a couple miscellaneous tax cuts enacted last year) is expected to increase the deficit by \$652.8 billion over the next decade.

### *Tax Reform and Corporate Integration*

In March, Chairman Boustany began a series of hearings before his Tax Policy Subcommittee to review a variety of fundamental tax reform proposals, focusing on plans introduced by House members. The first [hearing zeroed in on cash flow and consumption-based proposals](#), with Reps. Devin Nunes (R-CA), Michael Burgess (R-TX), and Bob Woodall (R-GA) presenting their ideas to Subcommittee members. The next hearing in the series will take place on April 13 and will focus on income-based tax reform proposals.

Also in the House, the GOP Task Force on Tax Reform met for its first “[Ideas Forum](#).” The task force is one of six such panels set up by Republican leadership to seek input from House Republicans on developing policy proposals across a wide variety of areas. Prior to the March 2 Task Force meeting, its leader, Chairman Brady, released the mission statement for the panel, which included the goals of simplifying the tax code, closing loopholes, and keeping jobs in the United States. The panel will continue its work over the coming months with the goal of developing policy recommendations prior to the July Republican Convention.

In the Senate, Chairman Orrin Hatch continued his work on a corporate integration proposal that would ease the current system of double taxation of corporate profits, which is levied first at the corporate level and then on dividends paid to shareholders. However, in March he announced that release of the plan would be delayed with hopes of unveiling the proposal by May.

## ISSUE—HEALTH

The Administration released updated Affordable Care Act (ACA) figures and a proposed demonstration project for Medicare Part B, while Congress continued deliberation on opioid legislation, funding to combat the Zika virus, and FDA and NIH modernization.

### *ACA Enrollment*

The Department of Health and Human Services (HHS) released updated ACA enrollment figures for 2016 coverage. HHS reported that 8.8 million Americans were fully enrolled in ACA exchange plans and paying their premiums. The number falls slightly below the Administration's 9.1 million target. Additionally, HHS reported that 4.9 million new customers selected ACA exchange plans during the 2016 open enrollment period, which ended on January 31.

### *Opioid Legislation*

In March, the Senate passed [legislation](#) to address the growing opioid abuse epidemic. Senators Rob Portman (R-OH) and Sheldon Whitehouse (D-RI) introduced the measure, which would redirect nearly \$78 million in existing substance abuse prevention and treatment funds to programs designed to deal with opioid abuse. The Senate approved the bill on March 10 with a nearly unanimous vote of 94-1. Though the year-end budget agreement authorized nearly \$400 million for opioid addiction programs, Senate Democrats called on Republicans to include more funding in the bill itself. Republican leaders countered that any increase in funds will go through the regular appropriations process.

Similar legislation in the House has stalled. The House Judiciary Committee has yet to schedule a hearing on a companion [bill](#). Some lawmakers in the House have reservations over the cost of the legislation and whether it provides the tools necessary to combat the opioid crisis.

### *Zika Update*

International concerns continue to mount over the spread of the Zika virus, which can cause birth defects if a pregnant mother is infected. In February, President Obama requested \$1.8 billion in emergency spending to fight the epidemic, but Republican appropriators resisted allocating additional funds. However, Rep. Tom Cole, who chairs the House Appropriations Subcommittee on Labor-HHS, stated that lawmakers are continuing to gather information and devise a plan on how to move forward on funding.

Meanwhile, the Centers for Disease Control (CDC) has amped up efforts to combat the Zika virus. On March 25, the CDC released updated [guidelines](#) to prevent transmission of the disease. Earlier in the month, CDC Director Tom Frieden spoke before Chairman Cole's subcommittee and called on Congress to approve new emergency funding to fight the disease. He also balked at the idea of re-appropriating money from the ongoing effort to contain Ebola, stating that those funds were already committed and needed.

### *21<sup>st</sup> Century Cures Act*

The Senate began work on a package of bills similar to the House's [21<sup>st</sup> 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). Senate Health, Education, Labor, and Pensions (HELP) Committee Chairman Lamar Alexander (R-TN) delayed Senate action on the legislation until 2016. In March, the HELP Committee advanced a series of individual bills that are companion measures to the Cures Act. Democrats raised several objections over the legislation, but expressed a willingness to work with Republicans to iron out differences before the bills hit the floor. The third and final markup for the Cures bills will take place on April 6. It remains unclear when the Senate measures will receive a floor vote.

### *Medicare Part B Demonstration*

In March, the Centers for Medicare and Medicaid Services' (CMS) Center for Medicare and Medicaid Innovation (CMMI) released a proposal for a five year demonstration project to experiment with Medicare payments for prescription drugs administered by physicians, also known as Medicare Part B. Under current CMS guidelines, Part B pays providers the drug's average sales price (ASP) plus six percent, with the add-on percentage intended to help providers cover the costs of purchasing, storing, and administering the drugs. CMMI's proposed demo would change that formula to ASP plus 2.5 percent with an additional flat fee of \$16.80. The demo would also test value-based purchasing methods.

While CMMI aims to determine if the existing formula incentivizes providers to use more expensive drugs regardless of outcomes, strong objections were immediately raised by the biopharma industry, patient advocacy groups, and the physician community. Many felt there was a lack of stakeholder input in the creation of the project and that Medicare's sickest population would be affected by the demo without the opportunity to opt out. Republican congressional leaders on healthcare issues immediately spoke out against the proposal.

## **ISSUE—ENERGY**

The Senate failed to come to a compromise over provisions in its energy reform package, and the President's nominee to the Supreme Court faced questions regarding his record on energy policy.

### *Senate Energy Legislation*

Senate [legislation](#) that would overhaul federal energy programs continues to stall in the upper chamber. Introduced by Senate Energy Committee Chairman Lisa Murkowski and Ranking Member Maria Cantwell (D-WA), the bill has languished due to disputes over the federal response to the ongoing water crisis in Flint, Michigan. Senate Democrats

have demanded that the bill address the issue, and a compromise was brokered. However, due to funding concerns, Senator Mike Lee (R-UT) maintained his hold on the legislation in March, preventing the bill from receiving a floor vote. Negotiations are ongoing.

### *Supreme Court Nominee and Energy Policy*

Upon his nomination to fill the vacant seat on the Supreme Court, Judge Garland and his record came under increased scrutiny, including renewed interest in his past positions on energy and environmental policy. If confirmed, Judge Garland would likely be friendlier to arguments from environmentalist than his predecessor, Justice Scalia. His judicial decisions have often found in favor of the Environmental Protection Agency (EPA) and green activists, which could tip the scales in the Administration's favor in upcoming battles over the Clean Power Plan and other EPA regulations.

## **ISSUE—TRANSPORTATION**

Debate over reauthorization of Federal Aviation Administration (FAA) programs intensified in March. With days to go before the current authorization expired, Congress approved a short-term extension, renewing the programs until July 15.

The extension comes after months of negotiations over House Transportation and Infrastructure Committee Chairman Bill Shuster's (R-PA) FAA reauthorization and reform [bill](#). The proposal remains controversial with some members on both sides of the aisle, with Democrats opposing the plan to privatize air traffic controllers. In the Senate, Commerce Committee Chairman John Thune (R-SD) and Ranking Member Bill Nelson (D-FL) easily advanced their own reauthorization [bill](#), which did not include a privatization plan. The full Senate is expected to take up the measure during the first week of April.

The temporary extension gives legislators additional time to negotiate a compromise, but it remains unclear whether lawmakers will be able to broker a deal with the compressed congressional calendar.

## **ISSUE—TECHNOLOGY**

The Federal Bureau of Investigation's (FBI) battle with Apple, Inc. over its encryption service came to an end in March. Following the terrorist attacks in San Bernardino, California in 2015, the FBI had requested Apple write a program that allowed the agency to hack into the locked iPhone of the perpetrators. Citing concerns over the future use of such a program, Apple resisted, and the two parties went to court. However, in March, the FBI announced that it had successfully hacked the terrorists' cell phone without the assistance of Apple. The agency promptly dropped its case against the company.

While the FBI abandoned its case against Apple, the overall debate over encryption, through which terrorist organizations have increasingly plotted acts of terror, rages on. Congress has already convened several hearings on the technology, and lawmakers are likely to continue to pressure technology companies to aid federal agencies in developing tools to break through encryption to monitor terrorist activities.

## **ISSUE—FOREIGN POLICY**

A historic visit to Cuba and horrific terror attacks in Europe dominated foreign policy discussions in March.

### *Presidential State Visit to Cuba*

The First Family made a historic trip to Cuba in March, the first time that a U.S. president has visited the communist island since President Coolidge's state visit in 1928. The trip came following a year of Administration-led efforts to normalize relations between the estranged nations. President Obama met with President Raúl Castro to discuss additional ways to stabilize relations, though the latter continued to defend the regime in Havana.

Republicans continued their criticism of the President's overtures to Cuba, arguing that the Administration is ignoring the ongoing human rights violations. Republican lawmakers also harshly criticized the President for his repeated calls to shutter the terrorist detainee camp at Guantanamo Bay.

### *Attack in Brussels*

On March 22, individuals linked to the Islamic State of Iraq and the Levant (ISIL) carried out a terrorist attack in Brussels, Belgium. During rush hour, the terrorists executed coordinated explosions on the Brussels airport and a subway station. The official death count stands at 32, including four Americans. The attacks renewed concerns that European governments are not adequately combating terror cells in their countries. In America, the attacks increased fears that terrorists are increasingly relying on encryption to plan and execute attacks. Moreover, many legislators have called for increased security at public transportation hubs, but some terror experts have cautioned that there are few preventative measures that law enforcement can take when security barriers are themselves targets, as was the case in Brussels.

## **ISSUE—FINANCIAL SERVICES**

The Senate Banking Committee held a confirmation [hearing](#) in March to assess President Obama's nominees to the Securities and Exchange Commission (SEC). The Committee heard testimony from the Democratic nominee, Lisa Fairfax, and the

Republican nominee, Hester Peirce. Matthew Jeppson was also present as the President's nominee to serve as the Director of the U.S. Mint.

Led by Wall Street critic Senator Elizabeth Warren (D-MA), Committee Democrats pursued a populist line of critique, pressuring the SEC nominees to pledge their support for greater oversight of financial institutions. Several senators raised the question of requiring corporations to report political spending to shareholders, to which both nominees were noncommittal.

The Committee's Chairman, Senator Richard Shelby (R-AL), has not indicated a timeline for a vote on the nominees, but he reiterated that the SEC nominations would move together or not at all.

## **OTHER ISSUES**

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

### *Criminal Justice Legislation*

Efforts to reform the criminal justice system continued in March. Last October, the Senate Judiciary Committee passed a [bill](#) authored by Chairman Grassley that would reform the federal sentencing guidelines while also instituting prison reforms. The legislation has stalled over public safety concerns from a handful of Republican senators. In March, Chairman Grassley and Senator Lee continued to negotiate a compromise on a manager's amendment that would make some additional changes to the measure in hopes of drawing additional Republican support. While a timeline for floor consideration remains elusive, bill supporters remain confident that they can move the legislation in 2016.

### *Puerto Rico*

At the last minute, the House met the first quarter deadline set by Speaker Ryan to put forward a proposal to alleviate the growing debt crisis in Puerto Rico. On March 29, the House Natural Resources Committee [unveiled](#) a discussion draft. The proposal rejects calls for bankruptcy-like debt restructuring, but will permit Puerto Rico to restructure debt following the fiscal control board's mediation between creditors and investors. The measure would give the board the authority to work with the government to streamline services and balance accounts, while also giving the board the power to institute a budget should the government fail to agree on one.

The Committee is expected to mark up the proposal on April 14, but timing for House floor consideration has yet to be determined. Lawmakers will need to work quickly given some estimates that have Puerto Rico defaulting on its debt as early as July 1.

### *Food Labeling*

Congressional action on food labeling legislation stalled in March. The Senate failed to invoke cloture on a [bill](#) from Senate Agriculture Committee Chairman Pat Roberts (R-KS) to prohibit the federal government from mandating that products containing genetically modified organisms (GMO) indicate their presence on packaging. Congressional action came in a month when several food companies announced that they would adhere to Vermont's recently passed GMO labeling law and re-label their products nationwide. With an increasing number of companies accepting the Vermont law as a default nationwide standard, pressure on Congress to act could lessen, though Senator Roberts remains committed to finding a path forward on his legislation.

## RECENT POLLING

### Job Approval: President Obama

Poll	Date	Results
IBD/TIPP	Apr 2	Approve 48, Disapprove 44
Gallup	Apr 2	Approve 52, Disapprove 45
Rasmussen Reports	Mar 31	Approve 49, Disapprove 50

### Job Approval: Congress

Poll	Date	Results
The Economist/ YouGov	Mar 29	Approve 13, Disapprove 66
PPP (D)	Mar 26	Approve 13, Disapprove 79
Fox News	Mar 22	Approve 14, Disapprove 77

### Direction of the Country

	Date	Results
Reuters/Ipsos	Mar 31	Right Direction 24, Wrong Direction 63
The Economist/ YouGov	Mar 29	Right Direction 25, Wrong Direction 64
Rasmussen Reports	Mar 24	Right Direction 28, Wrong Direction 66