



Washington Update

June 2, 2014

Congress continued work on several key issues in May. The appropriations process ramped up in both the House and Senate, while key tax legislation stalled in the Senate. Affordable Care Act issues remained at the forefront of Washington discussions, as several states struggled with operating their online insurance exchanges. Lawmakers made limited progress on transportation reauthorization legislation, but have yet to agree on a solution to the solvency crisis with the Highway Trust Fund. Patent reform also reached a dead end in May.

SUMMER OUTLOOK FOR THE HOUSE AND SENATE

With only eight legislative weeks remaining prior to the August district work period, the House and Senate have a long list of items for possible consideration in June and July. Chief among those are tax extenders, appropriations bills, the defense authorization bill, extension of unemployment insurance, and a sportsmen's bill to allow greater access to federal lands for recreational activities.

ISSUE—FUNDING THE FEDERAL GOVERNMENT

Legislators continued their work on laying out funding priorities for Fiscal Year 2015 (FY15), as government funding is set to expire at the end of September.

The House and Senate Appropriations Committees continued their work this month on the [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. In May, the Committee approved spending bills for Commerce, Justice, and Science; Transportation, Housing, and Urban Development; Agriculture; and Homeland Security. The full House previously approved spending measures for Military Construction and Veterans Affairs (MilCon VA) and the Legislative Branch.

The Senate Appropriations Committee is moving at a more moderate pace. The Committee has approved appropriations bills for Agriculture and MilCon VA. Both bills have yet to see action on the floor of the full Senate.

Additional appropriations bill are expected to be considered in the coming weeks and will 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

Tax extenders remained in the forefront of tax policy discussions in May as lawmakers advanced several measures to address the package of expired corporate and individual tax provisions. The Senate Finance Committee passed Chairman Ron Wyden's (D-WA) tax extenders [proposal](#) in April. The \$85 billion proposal is a two year bill that would retroactively renew the extenders from January 1, 2014, until December 31, 2015.

Though the proposal passed quickly through the Finance Committee, the bill stalled on the floor of the Senate in May. Republicans blocked the bill from proceeding to a final vote, arguing that Senate Majority Leader Harry Reid (D-NV) was blocking efforts to vote on any GOP amendments, including a vote on repeal of or a two year delay of the Affordable Care Act's (ACA) medical device tax. The disagreement over whether to allow amendments has thrown the proposal's timeline into doubt. Negotiations on possible amendments are continuing with the hope of Senate floor action in June or July.

The House Ways and Means Committee has moved slower in its tax extenders deliberations. Chairman Dave Camp (R-MI) has taken a much different approach in renewing the expired extenders, choosing to pass piecemeal bills that make certain extenders permanent rather than a short-term package.

On May 29, the Ways and Means Committee held a markup of six bills, four of which would make expired tax extenders permanent, including several charitable provisions and bonus depreciation. All six bills were approved along partisan lines. This follows an April [markup](#) during which the Committee approved extending several other provisions, including the R&D tax credit, subpart F exemption for active financing income, and section 179 expensing. The R&D tax credit bill has since passed the full House with bipartisan support.

The tax extenders renewal process is expected to stretch well into the summer and, most likely, will end up as an item on the Lame Duck agenda. One hurdle legislators will have to overcome is the question of how long to extend the expired tax provisions. Chairman Camp remains adamant that some provisions, like the R&D tax credit, should be made permanent. Chairman Wyden would prefer to temporarily extend the

provisions, giving Congress time to devise a permanent replacement for the extenders within a larger rewrite of the individual and corporate tax codes.

Another issue is how to pay for the extenders, a topic that House Democrats raised frequently during both markups and during floor consideration of the R&D tax credit. The White House issued a veto threat for the bill, arguing that the credit should be paid for by cutting other tax breaks. Chairman Camp and others have countered that Congress has not typically paid for extenders in the past.

These questions will likely be resolved in a conference committee between the two houses where lawmakers will hammer out a deal to renew the expired extenders.

ISSUE—HEALTHCARE

Healthcare remained a topic of discussion this month with ACA-related updates and a presidential nomination keeping health issues at the forefront in the political discourse ahead of the midterm elections.

ACA – Progress Reports

The Department of Health and Human Services (HHS) announced in May that it will no longer publish monthly reports on the progress of ACA-related programs. With the enrollment period over, HHS said there is no longer a need for monthly updates. HHS promised to look for additional opportunities to share information about the insurance exchanges, but the agency declined to provide specifics on timing or the level of detail in future reports, including whether or not HHS will revive the monthly reports when the next open enrollment period begins.

Critics slammed the decision, claiming that it inhibits transparency. Others complained that without monthly reports, it will be difficult for outside observers to gauge the progress of exchanges in the forthcoming enrollment period, which may become an issue of interest to voters ahead of the midterm elections in November.

ACA – Problems with State Exchanges

Several states reported significant problems with their state-based exchanges in May. Exchanges in Maryland, Massachusetts, Nevada, and Oregon all ran into technical problems throughout the enrollment period, with frustrations with the online systems and the contractors that constructed them coming to a head in late April and early May. All four states announced that they would completely or partially scrap their exchanges. Both Nevada and Oregon decided to switch to the federal exchange during the next enrollment period with hopes of reopening a state exchange in the future. Massachusetts will pursue an expensive two-prong strategy to attempt fix the state exchange, defaulting to Healthcare.gov if the state is unable to complete the repairs in time. Finally, Maryland plans to purchase exchange technology from Connecticut to help

repair its own exchange. All four decisions are seen as a failure of each state to adequately construct and manage an operational exchange.

An immediate concern for Congress is if and how to recoup the nearly \$474 million the federal government spent in helping the four states. Senators John Barrasso (R-WY) and Orrin Hatch (R-UT) introduced a [bill](#) in May that would require any state that initially operate its own exchange to pay back federal grant money if they later choose to use the federal exchange instead. The bill is unlikely to move forward in the Democrat-controlled Senate, but the legislation keeps focus on another of the ACA's many problems, providing Republicans with an additional line of attack during the midterm campaign season.

ACA – Wrongfully Awarded Subsidies

Controversy erupted in May following a Washington Post [report](#) that suggested HHS may be improperly awarding subsidies to more than one million Americans for the purchase of insurance. The story further reported that HHS remains stuck on how to fix the problem due to the Department's lack of technological capabilities to identify incorrect payments, notify those receiving them, and recover taxpayers dollars.

The report set off a firestorm among Republicans. Both the House Ways and Means and Energy and Commerce Committees sent letters to HHS and the Treasury demanding the agencies stop payment of insurance subsidies until the issue is resolved. Senate Republicans have also criticized HHS for mismanagement and demanded accountability and greater transparency. It is highly unlikely that the Treasury will halt payments of subsidies, but House Republicans are likely to use their committee power to further probe the issue.

ACA – Final ACA Rules

On May 16, HHS announced the final federal [rules](#) for the ACA for the upcoming enrollment period. Two of the biggest items the regulations addressed were the state insurance navigator programs and risk corridors. The rules allow federal law to pre-empt state restrictions on navigator programs, which have come under heavy scrutiny from Republican governors and state legislatures.

As it pertains to the risk corridor program, the new rules reconfigure the payment formula and pledge to find additional funding sources if the program experiences a budget shortfall in FY15. Some see this as an attempt to reassure insurers that the program will be there to help correct for any spike in costs due to high-risk patients, which will hopefully encourage the insurance companies to avoid sharp premium increases.

ACA – Medical Device Tax

The medical device tax was yet again in the spotlight in May. While debating Chairman Wyden's tax extenders package, Republicans pushed for a vote on an amendment that

would repeal or delay the medical device tax. Despite claims that the tax would stifle medical innovation and Senator Hatch's pledge to find the \$4 billion needed to pay for a two-year delay of the tax, Leader Reid rebuffed attempts to vote on the issue. The impasse over the medical device tax and other amendments has stalled the extenders package. There remains little consensus on how to move forward, with Republicans unrelenting in their call for a repeal or delay vote and Leader Reid adamantly opposing a vote.

Burwell Nomination

The Senate Finance Committee approved the nomination of Sylvia Mathews Burwell to replace retiring HHS Secretary Kathleen Sebelius. The Committee voted 21-3 to favorably report Burwell's nomination to the full Senate. Eight republicans joined all Committee Democrats in voting in favor of Burwell's nomination. A Senate floor vote on the nomination is expected in early June.

Despite the often contentious relationship Republicans have had with HHS and the ACA, the Burwell nomination has sailed through the Senate with markedly little resistance. While Republicans remain steadfastly opposed to the ACA, many GOP Senators commended Burwell on her leadership ability and expressed confidence that she will lead HHS effectively.

Veterans Affairs Scandal

The Obama Administration was rocked by a new scandal in May when the Department of Veterans Affairs (VA) came under heavy criticism for questionable practices at VA hospitals. Concern has grown over the past few months regarding mismanagement at several VA hospitals. In May the, controversy came to a head when reporters discovered that senior management at a Phoenix VA hospital had compiled secret waiting lists in response to severe delays for treatment, which may have led to the death of several veterans. Critics immediately attacked the VA for failing to provide adequate and timely care for veterans, with some raising questions about the legality of the Phoenix VA's practices.

In Washington, enraged legislators from both parties called for answers. Several high-ranking Republicans, including Senate Veterans' Affairs Committee Ranking Member Richard Burr (R-NC), demanded the immediate resignation of VA Secretary Eric Shinseki. Secretary Shinseki's defenders argued that scheduling issues at individual hospitals did not rise to the attention of the Shinseki. With support beginning to slip among a few Senate Democrats, Secretary Shinseki resigned on May 30.

The fallout from the scandal is likely to lead to serious congressional investigations. President Obama has yet to name a successor to lead the VA, and given the recent and highly controversial changes to the Senate filibuster rules, the Democratic-controlled Senate is likely to approve whomever the President nominates. However, the individual is still likely to face added scrutiny given the ongoing scandal.

ISSUE—TRANSPORTATION

May saw several developments on transportation issues, including movement on a surface transportation reauthorization bill, discussions over funding of the Highway Trust Fund (HTF), and issues related to the nation's rail infrastructure.

Surface Transportation Reauthorization

Congress last reauthorized federal surface transportation programs in 2012. The Moving Ahead for Progress in the 21st Century Act (MAP-21) reauthorized programs for two years and is set to expire at the end of September. On May 12, Senate leaders on the Environment and Public Works Committee (EPW) [released](#) their version of the MAP-21 replacement. A summary of the legislation can be found [here](#).

The bill reauthorizes federal surface transportation programs for six years at a cost of around \$100 billion. Among its provisions, the legislation would:

- Fund a national freight program to help states improve the movement of goods through key corridors;
- Create a competitive grant program to fund projects of regional and national significance; and
- Increase funding for and improve the Transportation Infrastructure Finance and Innovation Act (TIFIA) program.

A markup of the bill was held on May 15 during which the Committee unanimously approved the legislation. The bill's timeline remains unclear. A vote on the floor of the Senate is unlikely to occur before the bill's funding issues are resolved, which must be addressed by the Senate Finance Committee. EPW Chairman Barbara Boxer (D-CA) has vowed to work closely with Chairman Wyden to create a sustainable funding source for the reauthorization bill.

The House has approached surface transportation reauthorization at much slower pace. House Transportation & Infrastructure Committee Chairman Bill Shuster (R-PA) has set a goal for "spring to early summer" for the release of his version of a transportation reauthorization bill. However, Chairman Shuster has suggested that a long-term bill may fare better in the Lame Duck session following the election. Chairman Boxer has called for passing a long-term reauthorization bill sooner rather than later.

The White House previously released its [version](#) of the reauthorization bill, entitled the GROW AMERICA Act (Generating Renewal, Opportunity, and Work with Accelerated Mobility, Efficiency, and Rebuilding of Infrastructure and Communities throughout America Act). The \$302 billion four-year highway plan is the first comprehensive highway proposal that President Obama has ever produced.

Highway Trust Fund: “The Highway Cliff”

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

The greatest challenge to fixing the HTF is how to increase transportation-dedicated revenues on a long-term basis so that the HTF once again takes in more funds than it pays out, but many have been reluctant to increase the current 18.4 cents per gallon gas tax.

Democrats, including President Obama in his GROW AMERICA Act, have called on Congress to fund the HTF through corporate tax reform. Chairman Camp included a similar proposal in his tax reform plan, but this is unlikely to move forward this year. Some Republicans have floated the idea of finding savings from revamping the U.S. Postal Service Operations, likely by ending Saturday delivery or increasing insurance premiums for postal workers.

The most likely outcome is that the Congress will once again direct the Treasury to fund the HTF through a one-time transfer from the Department’s general fund. Though the move would be a temporary fix, it would allow legislators additional time to reach an agreement over a long-term solution. Since 2008 when the HTF first began to run short, Congress has transferred more than \$50 billion into the HTF from general revenues to keep the fund solvent.

If Congress does not act swiftly, state and federal infrastructure will suffer. States have announced that they will likely have to cancel or indefinitely postpone projects well before the HTF technically runs out of funds given the uncertainty. The Administration has also warned that nearly 700,000 American jobs are directly in jeopardy should Congress not find a way to fund the HTF.

Positive Train Control

The federal government is seeking to ease the installation of positive train control systems, which are designed to automatically slow trains in dangerous situations. In May, the Federal Communications Commission (FCC) announced that it reached a deal with Class I railroads that would allow them to utilize nearly 11,000 poles for testing equipment that communicates a train’s location.

Nevertheless, rail leaders continue to express concerns that operators may be unable to meet the 2015 implementation deadline due to the large amount of time and money required to deploy the complex systems. Senator John Thune (R-SD) has [legislation](#) pending that would extend the deadline, a move Democrats have resisted.

ISSUE-ENERGY

In May, the Environmental Protection Agency (EPA) announced that it would release new proposed rules on June 2 governing carbon emissions from existing coal-generated power plants. Previously, the EPA released rules intended to curb emissions from future power plants. President Obama and environmental activists in Congress and around the country have argued that the new rules will both improve public health and combat climate change.

Critics of the new proposed rule have already attacked the decision in force. Congressional Republicans have argued that the new regulations will severely disrupt electricity prices and further stall a struggling economy.

The proposed rules will go through a rigorous public examination, including a public comment period, before being enacted. The Republican-led House Energy and Commerce Committee is expected to examine the proposed rules' effects on the economy, while Senate Republican Leader Mitch McConnell (R-KY) has announced plan to introduce legislation to block the proposed rule. The new proposed EPA rule will grab headlines throughout the summer and promises to be an issue in the fall campaign, especially in key Senate battleground states like Kentucky, Louisiana, Arkansas, North Carolina and West Virginia.

ISSUE—PATENT REFORM

Patent reform is officially on life support for the remainder of the year. For months, the Senate Judiciary Committee has negotiated over a [bill](#) introduced by Chairman Patrick Leahy (D-VT) that would address the issue of patent assertion entities, more commonly known as “patent trolls.” Republicans continued to oppose the measure over the bill’s handling of fee shifting and heightened pleading requirements. Despite efforts to reach a compromise, Chairman Leahy announced in May that he was shelving his bill. Though negotiations may continue at the staff level, the legislation is now likely to be a low priority and not addressed until the lame duck session or the new Congress convenes in 2015.

The House previously passed its version of the [bill](#) in December.

ISSUE—MISCELLANEOUS

Several others issues were addressed during May, including the annual National Defense Authorization Act process and continued discussion about extending unemployment benefits.

National Defense Authorization Act (NDAA)

The House Armed Services Committee marked up the FY15 NDAA [bill](#) on May 8, and the full House approved the measure on May 22 by a strong bipartisan vote of 325-98.

However, the White House has threatened to veto the bill over its limits on the President's ability to shutter the detention facility in Guantanamo Bay in Cuba.

Also on May 22, the Senate Armed Services marked up its [version](#) of the NDAA by a vote of 25-1. The Committee rejected many of the Pentagon's cost-saving measures by reversing some base closures and compensation cuts. The Senate NDAA has yet to be scheduled for a floor vote. Once the Senate passes its version of the bill, a conference committee will resolve the differences.

Unemployment Insurance

Attempts to renew expired long-term jobless benefits remained in gridlock as House Republicans continued to resist calls to pass an extension bill. In April, the Senate passed a bipartisan extension that would extend long-term unemployment benefits. The bill cost \$10 billion and would be offset by extending fees on goods imported through U.S. Customs as well as changes to federal pension laws.

Thus far, the House has rejected attempts to pass the Senate bill or its own alternative version. Consequently, leaders on the issue are unsure of how to move forward. A proposal was floated this month to include an extension in the tax extenders package, though the likelihood of such a move has declined following the challenges the tax extenders bill has faced on the floor of the Senate. Some analysts have suggested that Congress start back at square one and devise a new bill, though there seems to be little appetite for this option among lawmakers.

Regardless of how Congress deals with unemployment insurance, Democrats are expected to use the issue as a part of their national campaign strategy ahead of the midterm election.

Primary Elections Calendar

Several states will be holding party primary elections in the coming weeks. They include:

- June 3 AL, CA, IA, MS, MT, NJ, NM, SD
- June 10 ME, NV, ND, SC, VA
- June 24 CO, MD, NY, OK, UT

RECENT POLLING**Job Approval: President Obama**

Poll	Date	Results
Rasmussen Reports	May 29	Approve 48, Disapprove 50
Gallup	May 28	Approve 45, Disapprove 50
Associated Press/GfK	May 19	Approve 43, Disapprove 56

Job Approval: Congress

Poll	Date	Results
Associated Press/GfK	May 29	Approve 14, Disapprove 85
CBS News	May 19	Approve 12, Disapprove 80
Fox News	May 13	Approve 16, Disapprove 73

Generic Congressional Ballot

Poll	Date	Results
Rasmussen Reports	May 25	Democrats 42, Republicans 38
CBS News	May 19	Democrats 40, Republicans 39
Fox News	May 13	Democrats 43, Republicans 40

Public Approval of Health Care Law

	Date	Results
Gallup	May 25	Support 43, Oppose 51
Rasmussen Reports	May 24	Support 42, Oppose 53
Associated Press/GfK	May 19	Support 28, Oppose 43