

WHAT'S NEW IN WASHINGTON



May 2018

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When Congress returns from a one-week recess on May 7, we expect the focus to be on nominations, appropriations and the opioid crisis.

The fiscal year 2019 (“FY19”) appropriations process is in full swing as appropriators in both chambers continue to draft the 12 annual spending bills that fund the government. The House and Senate are unified around the goal of avoiding the massive year-end omnibus appropriations bill and are expected to package two or three appropriations bills into individual bills, commonly referred to as “mini-bus”(as opposed to omnibus) appropriations bills, over the course of the summer session. Early contenders to be considered in the first mini-bus package include Military Construction-Veterans Affairs Appropriations; Legislative Branch Appropriations; and Transportation, Housing and Urban Development Appropriations. While the Senate and House may be able to get one or two mini-bus packages to the President’s desk this summer, it is likely that several bills will be left behind, and, thus, Congress will still need to pass a short-term Continuing Resolution funding the government past the end of FY18 on September 30.

In late April, the House overwhelmingly approved a reauthorization of the Federal Aviation Administration (FAA). Looking forward, the Senate will begin work on its version of the proposal, though scarce floor time may delay consideration by the full Senate. The current FAA authorization runs through September 30.

Congressional efforts to combat the opioid crisis will also continue in earnest. The Senate Health, Education, Labor and Pensions (HELP) Committee has already advanced a bipartisan opioid package, which is likely to be combined with other opioid legislation and considered on the Senate floor sometime this summer. In the House, the Energy and Commerce Subcommittee on Health reported out nearly 60 opioid bills at the end of April. The full Energy and Commerce Committee will continue the effort in the coming weeks.

Finally, the Senate will continue the slog of confirming President Trump’s nominees for key positions in the administration. Just before the recess, the Senate confirmed Mike Pompeo to be Secretary of State. Senate Republican Majority Leader Mitch McConnell also has teed up six more Circuit Court judicial nominees for the week of May 7, which will continue the record-setting pace of confirmations to the all-important federal appeals courts. In the coming weeks, the Senate also is expected to turn to the yet-to-be-named replacement nominee to lead the Department of Veterans Affairs following Dr. Ronny Jackson’s decision to withdraw his nomination amid several controversies.

Here are a few things that we believe are worth focusing on since our last issue:

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Unfinished Campaign Promises – What's Next

Almost a year and a half after the election, there still remain several objectives outlined during the campaign that President Donald Trump has not accomplished in his administration. While his most notable shortcoming to accomplish a set campaign goal has been the failed repeal of the Affordable Care Act, there are still issues that his administration has yet to address.

A cornerstone of the legislative agenda of President Trump when he entered office was a massive infrastructure plan. After expending significant political capital on a failed health care reform and the passage of tax reform the lift for an infrastructure overhaul has been put on hold. In February 2018, the White House released its official

vision to turn \$200 billion in federal money into \$1.5 trillion for fixing America's infrastructure by leveraging local and state tax dollars, and private investment, but it has not yet gained traction in Congress.

Throughout his campaign, President Trump also spoke several times on the need to hold China and Russia accountable for their currency devaluation. While he has published some incendiary tweets, coined "warning shots" by Treasury Secretary Steve Mnuchin, no action has been taken against the offending countries.

Other unmet goals from the Trump campaign also remain. A promised additional investment for school choice has not been made, but the Department of Education, under Secretary Betsy DeVos, has made policy changes to promote the practice. In foreign policy, President Trump also has yet to pull out of the Iran nuclear deal, which he has previously called "the worst deal ever."

It remains unclear whether President Trump will address these issues in the remaining two and a half years of his term. However, with House Republicans facing a tough 2018 election cycle, it is likely that he will look to have another legislative "win" before the fall.

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House, Senate Committees Move Forward on Opioids

On April 24, the Senate HELP Committee voted 23-0 to advance bipartisan opioid legislation. The Opioid Crisis Response Act (S. 2680) includes 40 bills from 38 senators, including proposals to accelerate research on nonaddictive pain medications, support state prescription drug-monitoring programs, expand access to substance use disorder treatment services and improve detection of illegal imported drugs. HELP Committee Chairman Lamar Alexander (R-TN) suggested that the full Senate could take up the bill sometime this summer. The Committee agreed to several amendments during the markup, but rejected an amendment offered by Sen. Bernie Sanders (I-VT) to impose civil penalties on companies that market opioid products as nonaddictive.

Other Senate panels, such as the Finance Committee or the Judiciary Committee, may also advance opioid-related proposals for consideration. The Finance Committee recently held a hearing to examine the role of Medicare and Medicaid in tackling the epidemic.

In the House, meanwhile, the Energy and Commerce Committee continues to move forward with its own opioid legislation. On April 25, the panel's Health Subcommittee advanced 56 bills related to the opioid crisis, many of them still in discussion draft form. Subcommittee Chairman Michael Burgess (R-TX) suggested that many of the bills could be tweaked before a full Committee markup, which may occur as early as the week of May 7. A final opioid package could receive a House floor vote in early June, with the goal of sending legislation to the President by the August recess. Additionally, the Energy and Commerce Oversight Subcommittee will hold a hearing with drug distributors on May 8 in relation to the Committee's investigation into alleged pill dumping in West Virginia.

It is unclear whether the House Ways and Means Committee will seek to move opioid legislation. The Committee released a white paper in early April on solutions to combat the opioid epidemic. The report came as a result of feedback received in response to a Request for Information issued earlier this year.

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Technology Privacy Issues in Congress

In the aftermath of Cambridge Analytica's misuse of Facebook's subscriber data, Congress held hearings with Facebook CEO Mark Zuckerberg. Members from both chambers focused on privacy concerns raised by the personal information that Facebook collects and the use of Facebook as a political forum.

There was a general consensus that Facebook's terms of use are inaccessible to the average user and should be simplified to ensure that users are able to understand their privacy rights and make informed choices. Sen. Chuck Grassley (R-IA) explained that, at a minimum, greater and clearer disclosure is needed, noting that many consumers do not comprehend the extent to which their personal information is used. Chairman John Thune (R-SD) and Sen. Bill Nelson (D-FL) both warned that, if Facebook and other technology companies fail to enact meaningful reforms, then Congress will have to increase privacy protections through legislation. Sen. Bill Nelson (D-FL) pointedly explained that, if Facebook will not fix its problems, Congress will. Clarity and sufficient affirmative consent were areas on which members on both sides of the aisle focused and that received broad support for strengthening. Following the hearing, Sens. John Kennedy (R-LA) and Amy Klobuchar (D-MN) co-sponsored draft legislation that would address these and other areas.

Another key area of interest included Facebook's efforts to remove hate speech and prevent foreign actors from interfering in U.S. elections. In regard to hate speech, Sen. Ben Sasse (R-NE) reminded the Senate Judiciary Committee that it is important not to overpolice speech on social media. The Senate Judiciary Committee also discussed the pending Honest Ads Act, a bipartisan bill that increases authentication and disclosure requirements for advertisements on social media platforms. Mr. Zuckerberg endorsed this bill, noting that Facebook will require political advertisers to be verified before posting ads.

Overall, the Cambridge Analytica incident has prompted congressional concerns about the ways in which technology companies may be exploiting user information. Confusion over core issues, such as whether Facebook sells user information and what privacy tools Facebook already offers, suggests that the hearings were only the start of a conversation regarding technology and data privacy issues. Nevertheless, Congress is clearly interested in addressing these issues, and it appears open to feedback from a range of stakeholders, including the very technology companies that are at the core of the concern.

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The Farm Bill Moves out of Committee in the House

On April 12, the House Agriculture Committee introduced the text of H.R. 2, the Agriculture and Nutrition Act of 2018, also known as the “Farm Bill.” The following week, on April 18, the Committee marked up and passed the legislation by a partisan vote after accepting Republican amendments en bloc. Democratic unwillingness was primarily focused on a work requirement provision added to the Supplemental Nutrition Assistance Programs, the antecessor to food stamps. Chairman Mike Conaway (R-TX) has indicated that he would like to take the bill to the House floor during the next May work session. The bill is expected to face amendment proposals on a variety of issues, including nutrition, as well as commodity and crop insurance programs.

In the meantime, Senate Agriculture Chairman Pat Roberts (R-KS) and Ranking Democrat Debbie Stabenow (D-MI) are pushing ahead with work on their version. After the House Committee vote, Sen. Stabenow reaffirmed her commitment to work in a bipartisan effort. The Senate has yet to introduce base text and may be facing delays due to pressing concerns over potential trade retaliation from China aimed at the U.S. agriculture industry, in response to U.S. trade actions announced by the Trump administration against China’s intellectual property practices.

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Overseas Engagement by the Trump Administration

New Cuba Flights

In April, the U.S. Department of Transportation awarded U.S.-Havana routes to five major airlines from several cities in the country. The flights include routes between Havana and Miami, Fort Lauderdale, Boston and Houston. The new allocations are a result of smaller U.S. carriers pulling out of the market last year. The approved airlines are leading carriers, including United (via partner Mesa Airlines), American, Delta, Southwest and JetBlue. The frequencies of United’s flights will jump from once a week to daily. Furthermore, JetBlue flights from Boston represent a new gateway.

North Korea Summits

On April 27, South Korean President Moon Jae-in and North Korean leader Kim Jong Un met in Panmunjom, the “peace village,” in the Demilitarized Zone (DMZ) where, among other things, they signed the Panmunjom Declaration pledging that “there will be no more war on the Korean Peninsula.” The meeting was rich in pageantry, but scant in detail, including timing for further negotiations. Regardless, the two Koreas agreed to discuss a peace treaty in either trilateral talks (involving North and South Korea alongside the United States) or quadrilateral talks (bringing China in as well). Notably, neither configuration includes Japan or Russia, who were former members of the Six Party Talks aimed at ending North Korea’s nuclear program. North and South Korea agreed to cease “all hostile acts” along the DMZ by May 1. There is abundant skepticism surrounding next steps. Despite this, many observers agree that, at least atmospherically, the summit was a giant step in the right direction after relations took a nosedive last year.

Some in Congress were quick to praise the President for what they viewed as his role in making the Korea summit a success. Rep. Chris Stewart (R-UT) said, “We have to give the president credit. He did bring this alliance together. He did convince China to do something they’ve never done before, and that is actually enforcing sanctions. He did convince Kim Jong-un that he’s serious.” Similarly, his colleague, Rep. John Curtis (R-UT), said that the President deserves credit as commander in chief “for getting us to a good place” with North Korea.

Others sounded a note of caution. Sen. Edward J. Markey (D-MA), Ranking Member of the East Asia Subcommittee of the Senate Foreign Relations Committee, stated, “While there are positive developments from this meeting...we are at the beginning of a long diplomatic process.” Sen. Dan Sullivan (R-AK), member of the Senate Armed Services Committee, noted that “it is very important to keep in mind that the North Korean leadership regime has never abided by any previous international agreement it has committed to.”

Late May or early June is the time frame being floated for a summit between Kim Jong Un and President Trump. However, nothing yet has been officially decided regarding the time and place. It would be the first time since the Korean War that a sitting U.S. president has met the leader of North Korea. President Trump has repeatedly vowed to “respectfully leave” if the meeting is not “fruitful.”

Syria and Iran Activity

The Trump administration has been especially engaged in the Middle East over the last two weeks. On April 13, a coalition of American, British and French aircraft and ships launched cruise missiles in a precision strike against the Assad regime in Syria in response to a suspected chemical weapons attack on April 7. The attack was reportedly nearly twice as large as a similar strike that targeted a Syrian airfield in April of last year. U.S. Ambassador to the United Nations Nikki Haley expressed her confidence that Syria's chemical weapons program had been "crippled."

On April 26, the Senate confirmed CIA Director Mike Pompeo to be Secretary of State by a 57-42 vote, with six Democratic Senators joining all Republicans. Immediately upon swearing in, Secretary Pompeo briefly flew to Brussels for meetings with NATO ministers followed by four days in Saudi Arabia, Israel and Jordan. Secretary Pompeo used his visit to the Middle East to emphasize Iran's malign behavior throughout the region and beyond. These conversations were of particular interest in light of the impending May 12 deadline imposed by President Trump to decide whether to remain in the Joint Comprehensive Plan of Action (JCPOA). In a meeting with Saudi Foreign Minister Adel al-Jubeir, Secretary Pompeo described Iran as "the greatest sponsor of terrorism in the world." Secretary Pompeo further insisted that the United States is determined to ensure that Iran "never possesses a nuclear weapon" and that the JCPOA in its current form "does not provide that assurance."

Although French President Emmanuel Macron and German Chancellor Angela Merkel were seemingly unable to persuade President Trump to remain in the JCPOA during their separate visits to Washington during the week of April 23, Secretary Pompeo pledged that the United States will continue to work with European Union (EU) allies to fix the deal. However, he insisted that "the President has said that he will leave" if an appropriate deal cannot be reached that addresses areas of concern, such as Iran's ballistic-missile program, expiring limits on Iran's nuclear program and inspections of Iran's nuclear sites.

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Trump Trade Team Travels to China Pausing NAFTA, Extending Tariff Exclusion Deadline

While there were high hopes for an agreement-in-principle this week for NAFTA 2.0, and the negotiating teams have seemingly entered a permanent round, the negotiation was placed on hold until May 7. The pause comes as Trump's trade team, including U.S., Trade Representative Robert Lighthizer, Treasury Secretary Steven Mnuchin and Commerce Secretary Wilbur Ross left for China to address recent trade actions, such as tariffs under Sections 232 and 301, as well as related retaliation issues. Other members of the U.S. delegation include U.S. Ambassador to China Terry Branstad; Larry Kudlow, Assistant to the President for Economic Policy; Peter Navarro, Assistant to the President for Trade and Manufacturing Policy; and Everett Eissenstat, Deputy Assistant to the President for International Economic Affairs. President Trump commented before the trip, "I think we've got a very good chance of making a deal," suggesting that the United States and China may attempt to work out a bilateral free trade agreement at this time. The inclusion of several "China hawks," including Lighthizer and Navarro, in the delegation might put the team in a tense position.

The administration also extended the May 1 country exclusions for the European Union, Canada and Mexico from the 25 percent tariff on steel and 15 percent tariff on aluminum until June 1, and announced agreements-in-principle for exclusions for Argentina, Australia and Brazil.

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In Memory of Rod Lewis

Akin Gump Strauss Hauer & Feld LLP, and especially the American Indian law and policy practice, mourns the passing of our dear friend and colleague Rodney Blaine Lewis. Rod Lewis was a trailblazer in every aspect of his life and devoted his life to serving others. He served his country as an Army Airborne Ranger. He was the first member of an Arizona tribe to be admitted to the Arizona Bar, and he was the first Native American to successfully argue a case before the U.S. Supreme Court (*Central Machinery v. Arizona State Tax Commission*, 448 U.S. 160 (1980)). He was the first Arizona tribal member to serve on the Board of Directors of the Central Arizona Water Conservation District. He served as General Counsel for his own tribe, the Gila River Indian Community, for 30 years, fighting successfully to defend and regain the Community's water rights after negotiating with the federal government, the state of Arizona and more than 30 non-Indian parties to ultimately pass the Community's water settlement in the Arizona Water Rights Settlement Act of 2004.

Affectionately referred to by his tribal clients as a "water buffalo," Rod was well-known throughout Indian Country for his tireless efforts to protect tribal water rights, for not only his own Community, but also for his work on the Crow Tribe Water Rights Settlement Act of 2010 and the Pechanga Band of Luiseño Water Rights Settlement Act of 2016. Those who had the honor and privilege of working with Rod know that you were always greeted with a smile and a kind word. Indian Country lost a warrior, role model and legal advisor, but his legacy lives on through all of the people that he touched, clients that he served and tribes that he helped. Akin Gump's American Indian law and policy practice would not have existed without Rod's guidance and influence. In recognition of his

contributions, two years ago, Akin Gump established a Policy Fellowship position in his name at the firm. We offer our sincerest condolences to his family and thank them for sharing Rod with us. He will forever hold a special place in our practice and our hearts.

To learn more about the life and contributions of Rod Lewis, please click [here](#).

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