

PUBLICATION

The Washington Report

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In Washington, the Government Relations and Public Policy Group focuses on serving our clients by helping to design and implement government relations and public policy strategies. As part of that effort, we have launched a monthly Washington, D.C. Update newsletter to ensure Baker Donelson clients remain up-to-date on the fast moving world of Washington, D.C. Below is a special version of the Washington, D.C. Update that includes both our look forward at what we expect to happen in the remainder of 2016, as well as a few issue-specific updates.

In 2015, we witnessed significant legislation in a variety of issue areas including cybersecurity, transportation, trade and health care. The legislation in 2015 also set the stage for future legislation on international affairs, mental health and the military health care system. However, this year, much of the optimism experienced in 2015 has been dashed as old disputes reemerged and members of Congress shifted their energy to the 2016 election. There had been a hope that the two-year Bipartisan Budget Agreement (passed in 2015) would allow for a return to regular order in the appropriations process, ending the cycle of last-minute budgeting and appropriating and Continuing Resolutions. However, given the delays to recent appropriations proposals, progress in that direction seems unlikely and we expect Congress to pass a Continuing Resolution to keep the government in operation from the start of the fiscal year (October 1) through the election.

During his State of the Union address, President Obama called on Congress to act on three specific issues: revisiting the presidential authority to use military force against the Islamic State, approving the Trans-Pacific Partnership trade agreement and lifting the Cuban trade embargo. Yet, given the political state of gridlock, enactment of these proposals in this year will be an uphill battle. Given delays in Congress, President Obama has elected to focus his final year on regulatory efforts to advance his policy agenda and has introduced important regulatory proposal on issues such as the environment, financial regulation and health care.

Obama Administration Regulations

As is normal during the final year of a presidential administration, the Obama Administration is pushing forward with a variety of new regulations it hopes to implement before leaving office in January 2017.

Significant regulatory proposals include:

- **MACRA Implementation Rule:** On April 27, the Center for Medicare and Medicaid Services (CMS) released its long-awaited proposed regulation implementing the Medicare Access and CHIP Reauthorization Act (MACRA). As proposed, beginning in 2017, Medicare physicians and other eligible clinicians will have the option of participating in either the merit-based incentive payment system (MIPS) or alternative payment models with the goal of moving clinicians toward greater health care transformation. In doing so, eligible Medicare clinicians will have the opportunity to be excluded from MIPS program requirements and receive a five percent bonus payment from 2019 through 2024 and a higher fee schedule update after 2026. The MIPS replaces a patchwork of programs rewarding or penalizing clinicians based on their performance across four categories – quality, advancing care information, clinical practice improvement activities and cost.

- **Fiduciary Rule:** As expected, on April 9, the Obama Administration finalized the so-called Fiduciary Rule. The rule, which was formally adopted by the Department of Labor, requires retirement investment advisors to act solely for the benefit of their clients. Democrats say this will prevent conflicts of interest. Republicans who fear it will raise the cost of investment advice have moved to challenge the rule under the Congressional Review Act, which grants Congress 60 days to pass a disapproval measure, thus preventing the rule from coming into force. On April 28, the House passed its version of the disapproval legislation on a party line vote. That follows Senate introduction of a similar measure on April 18 by Senate Labor Committee Chairman Lamar Alexander (R-TN), Senator Johnny Isakson (R-GA) and Sen. Mike Enzi (R-WY). The measure is co-sponsored by 41 Senate Republicans.

Zika Supplemental Appropriations Request

On February 22, President Obama asked Congress to consider an emergency supplemental appropriations request for approximately \$1.9 billion to respond to the Zika virus. The request, according to the White House, "supports the necessary steps to fortify our domestic health system, detect and respond to any potential Zika outbreaks at home, and to limit the spread in other countries." Congressional Democrats came out in favor of the proposal, while Congressional Republicans expressed skepticism, calling for the Administration to spend unused funds allocated to fight Ebola and then request other necessary funding through the regular appropriations process. The Obama Administration initially pushed back against Republican arguments, but, on April 7, the White House announced it will repurpose \$589 million to aid in the fight against Zika – \$510 million of the remaining funds from the fight against the Ebola virus and \$79 million from other accounts used to fight epidemics and to stockpile vaccines.

The White House insists that it has not given up on passing a supplemental appropriation, and on April 18, it submitted an updated version of the supplemental request that redirects previously requested money away from a contingency fund and laboratory construction efforts and toward vaccine research and development. Congress also remains seized of the issue, and on May 14, Senators Patty Murray (D-WA) and Roy Blunt (R-MO) unveiled a bipartisan \$1.1 billion appropriations agreement. Two days later, House Republicans introduced their own bill to provide \$622 million in supplemental funding. The measure is fully paid for, in part by shifting over unspent money that was intended to fight Ebola, the House Appropriations Committee said. Given the vast differential in spending levels between what is being advanced in the Senate, the House and by the White House, the path forward remains far from clear.

Mental Health Reform

Mental health reform, which built significant momentum toward the end of 2015, has slowed to a crawl as advocates in Congress face numerous obstacles to advancing legislation in the House and the Senate. In the House Energy and Commerce Committee, Democrats and Republicans have failed to come to an agreement over how best to move forward and are supporting two separate legislative proposals.

In the Senate, it looked as if bipartisan legislation was advancing with the Senate Health, Education, Labor & Pensions (HELP) Committee passage of S. 2680, the Mental Health Reform Act of 2016, on March 16. However, Senator John Cornyn (R-TX) is pushing to combine his mental health bill with the Senate HELP Committee's legislation. Some Senate Democrats, including Senator Chris Murphy (D-CT), an advocate of mental health reform and a co-sponsor of S. 2680, objects to certain sections of Senator Cornyn's bill that he says would make it easier for mentally ill people to acquire guns. If the controversial provisions are adopted, it could undermine Democratic support for S. 2680. Senator Murphy said such provisions would prevent him from supporting the bill.

FAA Authorization

On April 19, the Senate passed H.R. 636, the Federal Aviation Administration (FAA) Reauthorization Act, by a vote of 95 to 3. The bill authorizes \$33 billion in spending to fund the operations of the FAA through the end of FY17. The current authorization is set to expire on July 15. Senate Commerce, Science and Transportation Committee leadership expected to include a number of amendments related to taxes, but an objection prevented their adoption. The bill does include new airport security measures, provisions that would give the FAA more oversight of unmanned aircraft operators and manufacturing, and several measures that address the deployment of the NextGen air traffic control system. What the Senate bill does not include is the linchpin of its House companion legislation, the privatization of the nation's air traffic control system.

In February, the House Transportation and Infrastructure (T&I) Committee reported its own FAA authorization legislation that sought to spin off the nation's air traffic control system into a private nonprofit organization. The legislation, proposed by Committee Chairman Bill Schuster (R-PA), is widely opposed by both Senate and House Democrats, and many Republicans are lukewarm to the idea. In response to the passage of H.R. 636's passage in the Senate, Chairman Schuster commented "We will take a look at the completed product, but in the House, we will continue to push forward with the AIRR Act. Transformational air traffic control reform is absolutely necessary to end the unacceptable status quo at the FAA and to ensure the future of America's aviation system."

Meanwhile, Senate appropriators included pointed language in a transportation funding bill reported on April 21, urging the authorizers to forego a contentious fight over removing air traffic control from the FAA, and threatening to cut off funding for any such effort. "Given the growing Congressional opposition to removing the ATO (Air Traffic Control Organization) from the FAA, the Committee will prohibit funding for this purpose should there be any effort to bypass the will of Congress," the appropriators wrote.

Despite the prevailing wisdom that a bipartisan accord could be achieved quickly on FAA reauthorization absent the contentious air traffic control privatization measure in the House bill, T&I Chairman Shuster appears to remain committed to the proposal. With the current FAA extension expiring on July 15, and with limited legislative days remaining until Congress adjourns on that day for the Presidential nominating conventions and the summer recess, some believe it may be impossible to reconcile the House and Senate bills by then. In that case, look for possibly another extension authorizing the agency through the election.

For more information or if you would like to be added to our mailing list, please contact Sheila Burke, chair of Baker Donelson's Government Relations and Public Policy Group.