

WHAT'S NEW IN WASHINGTON



June 2018

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Lawmakers have returned from the Memorial Day recess and are facing a packed legislative agenda over the summer. With the announcement this week of a shortened August recess, the Senate will have more time to address nominations, legislation and the annual appropriation bills to fund the federal government beyond the end of the fiscal year (September 30).

House lawmakers are set to begin consideration of a host of bills designed to combat the growing opioid crisis, with the chamber expected to take action on dozens of bills from several committees in the week of June 11. Later in the month, the House may take up other items, including the PROSPER Act, a workforce development bill that also seeks to streamline student financial aid. The House is also set to advance on June 7 a rescissions package rolling back several of the budgetary outlays secured in the Bipartisan Budget Act of 2018 and the subsequent omnibus spending bill that passed in March.

The farm bill continues to be high on the House agenda, but it is still being blocked by an unrelated impasse on immigration between moderate and conservative Republicans. The Senate is expected to act on a bipartisan farm bill later in June, though it could slip into July.

The Senate will continue its slog to confirm President Trump's nominations, but also will seek to move a number of legislative items, including the National Defense Authorization Act (NDAA), which the House passed in May. The NDAA could be followed by action on reauthorization of the Water Resources Development Act.

Amidst all of this activity, lawmakers will continue their work on the 12 annual appropriations bills to fund the federal government. In order to avoid a massive year-end omnibus appropriations bill, the House and Senate are expected to move a series of mini-omnibus bills, referred to as "minibus" bills, where two or three separate appropriations bills are packaged into a single vehicle. The first of these minibus packages will move in June and is expected to contain Legislative Branch Appropriations, Energy and Water Appropriations, and Military Construction and Veterans Affairs Appropriations. More spending bills are expected to follow that package this summer.

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Trump Disrupts Global Status Quo Through Trade and Foreign Policy

President Trump Plays Disrupter

North Korea

President Trump's strategy to disrupt the global status quo through trade and foreign policy has reaped tangible benefits with respect to North Korea. **Or has it?** What does the administration seek to gain from the on and off—and on again—June 12 summit between President Trump and Chairman Kim? Has the United States been down

this road before, as many commentators have warned? In the form of a summit, is the administration gifting the Kim regime with the very platform of international legitimacy that it has long sought? It is unlikely that a summit will bring much clarity with respect to these questions.

White House officials have argued that the administration's harsh sanctions and threat of military force are responsible for setting in motion the circumstances leading to the summit in the first place. Originally, the U.S. called for nothing short of complete, verifiable, irreversible dismantling of North Korea's nuclear program. However, President Trump's wording and expectations indicated a certain softening after he met with North Korean envoy Kim Yong Chol at the White house on June 1. At the press conference, President Trump asserted of the sanctions, "[They are] going to remain what [they are] now," but backtracked on the hallmark of his policy, the so-called "maximum pressure campaign." He said, "I don't even want to use the term 'maximum pressure' anymore because we're getting along." Absent this amped-up leverage, and without the commitment to denuclearization, some fear that June 12 could become a "get-to-know-you" summit, where the President is simply molded by the North Koreans into concessionary positions that have tried—and failed—before.

There is a notable difference, however. If the summit is a flop—and the President wishes to return to sanctions and a policy of maximum pressure—he will likely have to go it alone. Indeed, one reason that sanctions may be having a stronger effect than in the past is that there are greater efforts by China to enforce them. Due to North Korea's recent charm offensive with its Chinese and South Korean neighbors, however, it is less likely that they will continue to support and sustain such a pressure-filled approach of economic sanctions.

Iran

Some have criticized President Trump for being more willing at present to make concessions to North Korea than to Iran, which has no nuclear weapons. Early last month, on May 8, 2018, the President announced that the U.S. would cease its participation in the Joint Comprehensive Plan of Action (JCPOA). The agreement had brought sanctions relief to Iran in exchange for Iran's compliance with key nuclear-related commitments.

Pursuant to the Treasury Department's Office of Foreign Assets Control guidance, sanctions will be imposed following either a 90-day or a 180-day wind-down period, depending on the activities subject to sanctions. The FAQs provide guidance with respect to implications on certain specific and general licenses, activities authorized during the wind-down periods and potential future measures.

The decision by the U.S. to reimpose sanctions on Iran that were waived or lifted pursuant to the JCPOA will have far-reaching impact on U.S. and non-U.S. persons that have benefited from sanctions relief over the course of the prior two years. This decision also drastically changes the risk calculus for all companies contemplating new opportunities that potentially intersect with Iran or Iranian parties.

Trade War Kicks Off with Tariff Retaliation

The global trade atmosphere is tense and unpredictable right now, since a trade war is no longer imminent, but active. The U.S. is currently in the middle of the North American Free Trade Agreement (NAFTA) negotiations and issuing tariff applications based on Section 301 and Section 232 investigation outcomes. The tariff actions appear to target U.S. allies, including our NAFTA trading partners, while the proposed \$50 billion tariffs with China have momentarily been placed on hold as a series of meetings are held between the two countries.

In addition to this, on May 23, the U.S. Department of Commerce launched another Section 232 investigation into auto imports. The press release argues that the steady increase in reliance of imports of foreign-produced auto parts and the decrease of domestic high-tech manufacturing has weakened the U.S. economy and likens that to a threat to national security. This action ostensibly attacks our allies and partners that have deeply integrated supply chains with the U.S. automotive sector.

On May 31, there was a temporary reprieve from the trade fears as trade ministers of the U.S., Japan and the European Union released a joint statement outlining the concerns of the countries on non-market-oriented policies of third countries. The countries agreed to further cooperate with like-minded partners to address trade-distorting practices, and they issued a statement on forced technology transfers and policies, referencing the use of such practices by State-Owned Enterprises. Such an agreement signals to our trading partners that there is respect and strength in protecting international trade secrets and intellectual property.

This meeting and these statements served as only a temporary win, since the country exemptions on tariffs for steel and aluminum under Section 232 expired at midnight on the same day. On June 1, the U.S. reinstated tariffs on steel on all countries of origin, except Argentina, Australia, Brazil and South Korea. For aluminum, the tariffs have been applied to all countries, except Argentina and Australia. Some of our strongest allies, including the European Union, Canada, Mexico and Japan, which are now all subject to tariffs, have begun to take and/or discuss retaliatory measures against the U.S.

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House Set to Begin Consideration of Opioid Legislation

On May 16, the House Ways and Means Committee advanced seven bipartisan bills to address the opioid crisis. The bills make a number of changes to prevent opioid misuse among seniors and to expand access to addiction treatment services. The House Energy and Commerce Committee, meanwhile, has advanced 57 bills to the House floor. The House is expected to begin consideration of opioid legislation the week of June 11. Senate committees are also moving ahead on opioids, though at a slower pace. Following up on the Senate Health, Education, Labor and Pensions Committee's passage of the Opioid Crisis Response Act (S. 2680), the Judiciary Committee on May 24 advanced legislation to reauthorize the Office of National Drug Control Policy, along with other measures, to crack down on illicit drug trafficking. Members of the Senate Finance Committee have introduced nearly two dozen opioid-related bills in recent weeks, and the Committee is expected to mark up legislation soon.

The administration is also continuing its focus on the opioid crisis. Speaking at the 2018 BIO International Convention, Dr. Janet Woodcock, director of the Food and Drug Administration Center for Drug Evaluation and Research, announced that the agency will soon be issuing new guidances to sponsors of non-opioid pain therapies that may reduce the use of opioids.

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Challenges and Opportunities in the Telecommunications Market

FCC Net Neutrality Decision to Take Effect June 11

On June 11, the Federal Communications Commission's (FCC) Restoring Internet Freedom decision will take effect. In advance of that, Sen. Ed Markey (D-MA) led an effort to stop the order from taking effect using the Congressional Review Act (CRA). The CRA Resolution passed the Senate by a vote of 52-47, with Sens. Susan Collins (R-ME), John N. Kennedy (R-LA) and Lisa A. Murkowski (R-AK) voting with the Democrats. A similar resolution is under way in the House, led by House Energy and Commerce Committee Ranking Member Frank Pallone (D-NJ) and Subcommittee on Communications and Technology Ranking Member Mike Doyle (D-PA). It is highly unlikely to gain sufficient support for passage.

On December 14, 2017, the FCC adopted the Restoring Internet Freedom Order in a 3-2 vote. Over the course of the last five months, the agency has worked to clear the procedural hurdles necessary for the new rules to take effect.

Spectrum Opportunity for Tribal Lands

On May 10, 2018, the FCC released a Notice of Proposed Rulemaking proposing a number of changes to the licensing and regulation of the spectrum currently allocated to the Educational Broadband Service in the 2496-2690 MHz band (2.5 GHz band). In general, the proposals made by the FCC will make the 2.5 GHz band available for use to deliver broadband service.

The item includes a specific proposal for tribal governments to become license holders of the 2.5 GHz spectrum bands over their lands. The proposal seeks comment on opening a filing window in which a tribal government would be permitted to submit an application for a license in the 2.5 GHz band. Importantly, the proposal would allow tribes to seek a license for multiple channels of service in the band, meaning that additional capacity would be available to meet future needs.

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Conservatives Eye Renewed ACA Repeal Effort

Recent reports indicate that a group, consisting of conservative think tanks and Republican lawmakers, is set to release a new health reform proposal in June as part of a renewed effort to repeal the Affordable Care Act (ACA). Among its provisions, the plan is expected to block ACA grant funding to states, end the law's Medicaid expansion and expand health savings accounts. It builds on legislation developed by Sens. Lindsey Graham (R-SC) and Bill Cassidy (R-LA) that failed to pass the Senate last year.

While some Republicans, including Sen. Ron Johnson (R-WI), have already expressed support for the proposal, Majority Leader Mitch McConnell (R-KY) stated that he would return to the issue only if it were clear that the GOP had the votes to pass a repeal bill. In addition, some members have expressed concern that a renewed repeal fight could be a liability for Republicans heading into the midterm elections.

Speculation over ACA repeal comes even as Virginia's Republican-led legislature voted to expand Medicaid last week. Though the White House opposed the expansion, state lawmakers acknowledged that the administration's support for work requirements helped to win over Republicans in the state Senate and House of Delegates.

On a related front, President Trump recently highlighted the administration's health insurance reform initiatives. Speaking at a signing ceremony for "right-to-try" legislation (S. 204) to expand access for critically ill patients to

treatments under development, the President indicated that new regulations are forthcoming to encourage the use of association health plans (AHP) and to expand access to short-term, limited-duration (STLD) insurance. The Labor Department released a proposed rule on AHPs in January, and the Department of Health and Human Services issued a proposed rule in February to increase the maximum duration of STLD coverage.

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Rosie O'Donnell's FEC Dilemma Not Uncommon

Under the Federal Election Campaign Act, and subsequent regulations, the current laws limit political contributions by individuals to any one federal candidate to \$2,700 per election, which applies separately to primary, runoffs and general elections. However, according to public filings disclosed to the Federal Election Commission (FEC), Rosie O'Donnell, the comedian and actor, made excessive contributions to at least five federal Democratic candidates. For example, Alabama Sen. Doug Jones disclosed \$4,700 from O'Donnell in his special general election bid last year, exceeding the legally permissible contribution limit by \$2,000.

Responding to this news, O'Donnell stated that she assumed that ActBlue—an online political contribution platform popular among Democrats—limits donations to the max allowed and that she “just donate[d] assuming they do not accept what is over the limit.” O'Donnell was not necessarily wrong to believe that campaigns are legally required to abide by contribution limits—which they are—but donors, too, are legally liable for excessive contributions. With the 2018 midterms approaching, and many primary elections already passed, O'Donnell's dilemma illustrates the importance of personal and corporate due diligence with regard to political activity, especially for campaign contributions.

If you are making political contributions, whether on the federal, state or local level, you should keep an internal record of all your donations, retain receipts of checks or online contributions, and take note of certain unique campaign finance rules. For example, prior to a candidate's primary and general election, the max contribution is \$5,400 (\$2,700 per election), but, once the primary passes, the max is only \$2,700. Most people know that U.S. senators are elected once every six years, and members of Congress once every two years. Do not forget that the limits “reset” every two years for members of Congress and only once every six years for senators.

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Slow-Release Waste Regs: EPA Pharmaceutical Rule Coming, Even if Delayed

In its recent Spring 2018 Regulatory Agenda, the U.S. Environmental Protection Agency (EPA) delayed until October 2018 the expected publication of its final rule on [Management Standards for Hazardous Waste Pharmaceuticals](#). Originally slated for a July 2018 promulgation, the rule, when finally imposed, may impact significantly how hospitals, pharmacies, reverse distributors and other health care-related facilities treat pharmaceutical waste.

Specifically, the rule (originally [published in the Federal Register on September 25, 2015](#)) will impose new waste determination requirements. Under the old system, hospitals and other health care facilities could send unused pharmaceuticals to a “reverse distributor,” who would decide whether or not they could be sold or reused for manufacturer credit. As a result, the pharmaceuticals were not wastes, per se, until and unless the reverse distributor so determined. Under the coming rule, once a decision is made to send a pharmaceutical to a reverse distributor, it is deemed a solid waste, subjecting the health care facility itself to the management and reporting provisions of the Resource Conservation and Recovery Act. Additionally, the rule imposes restrictions on the “flushing” of pharmaceuticals and on pharmaceutical waste at long-term care facilities.

The news is not all bad for health care facilities. Several of the proposed pharmaceutical waste provisions are deregulatory: health care facilities are able to adopt more flexible training requirements, labeling standards and accumulation time limits for pharmaceutical waste. Additionally, generators of pharmaceutical waste are no longer required to count hazardous waste pharmaceuticals in determining their status as a waste generator. Still, and despite the brief respite, now is the time for health care facilities to undertake final compliance preparations.

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House and Senate Make Changes to FIRRMA

On May 22 and May 24, respectively, the Senate Banking Committee and the House Financial Services Committee held markups of the Foreign Investment Risk Review Modernization Act (FIRRMA). They passed in similar, but, importantly, varying forms in each chamber. The bills modernize the Committee on Foreign Investment in the United States (CFIUS), an interagency committee tasked with reviewing foreign investment resulting from mergers, acquisitions and other transactions in order to protect national security.

One of the Senate Banking Committee's most significant changes to the bill was its removal of language giving

CFIUS authority to review joint ventures between U.S. and foreign companies. This language would have broadened CFIUS's jurisdiction beyond its current scope, which focuses on inbound foreign investment, to also include outbound foreign investment, particularly when joint ventures result in U.S. companies sharing technology with their foreign partners. The removal of the outbound language effectively leaves joint ventures and any resulting technology transfer under the jurisdiction of export controls. The bill considered by the House Financial Services Committee also did not contain language extending CFIUS's authority to cover joint ventures and thus leaves outbound investment under the jurisdiction of export controls. The House committee did, however, approve language in FIRRMA modernizing and reforming the current export control regime.

Several differences remain between the House and Senate versions of FIRRMA. However, FIRRMA has been added to the Senate's version of the FY19 National Defense Authorization Act (NDAA), while the House already passed the NDAA without FIRRMA attached. Debate on the NDAA began on Wednesday, June 6, in the Senate, and both the House and the Senate will ultimately have to complete a conference committee and pass identical versions of the legislation through their respective chambers before the bill can be signed into law by President Trump.

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