



ML Strategies Update

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JUNE 5, 2015

## CONGRESS RETURNS FROM MEMORIAL DAY RECESS

The House and Senate return this week from the annual Memorial Day recess for a four-week work period that runs through June. Both chambers then break for one week for Independence Day. After that, the House is scheduled to be in session for four weeks and the Senate in session for five weeks, leading up to the August recess.

Before leaving DC for Memorial Day, Congress had a fairly productive six-week work period that saw final passage of a Budget Resolution, the Iran Nuclear Agreement Review Act, the Energy Efficiency Improvement Act, a short-term extension of highway funding, a bill making technical amendments to the Workforce Innovation and Opportunity Act, the Justice for Victims of Trafficking Act, and a long-awaited permanent solution to the Medicare Sustainable Growth Rate, or "Doc Fix". The Senate also confirmed Loretta Lynch to serve as the 83<sup>rd</sup> Attorney General.

Before leaving for the Memorial Day recess, the House passed, by a wide margin, the USA Freedom Act, which would end the bulk collection of U.S. citizen's phone records by the National Security Agency (NSA). Within the first three days back, the Senate agreed to the House-passed bill, and was almost immediately signed into law by President Obama.

Now, nearly halfway through the calendar year, there remain several significant legislative measures that are expected to move, some during June and July, and others perhaps later in the year.

### WHAT TO EXPECT IN JUNE & JULY

#### **Fiscal Year 2016 Appropriations**

With the next fiscal year starting on October 1<sup>st</sup>, the House and Senate will continue to press ahead on the 12 annual spending bills.

In the House, where all spending bills must originate, two bills have already passed, and several others have been approved by the Appropriations Committee. The House is expected to pass the majority of their bills by the end of July. The expectation is that the House-passed spending bills will include a number of policy riders that would limit

expenditures on a wide range of programs, including Obama Care, the Dodd-Frank financial services reform bill implementation, or perhaps the Administration's greenhouse gas (GHG) rule. The President will reject all of those, but could give in on others, such as the Waters of the U.S. rule or the ozone rule, particularly if there is bipartisan opposition to such rules.

While the Senate Appropriations Committee is working to move bills out of committee, and has advanced two measures thus far, the process could hit a roadblock in that chamber. Although the President's budget request came in at approximately \$1.91 trillion, Senate appropriations subcommittees are marking up their bills to a topline of \$1.17 trillion, which is essentially the same as marking at current budget levels – or as if Congress was going to pass a Continuing Resolution. Senate Democrats are being encouraged by their leadership to engage in the committee mark-up process, but leadership has, at the same time, announced that they will block any motion to proceed to any of the appropriations bills on the Senate floor until there is an agreement on sequestration relief. That agreement is not likely to happen until sometime in November, well after the start of the next fiscal year.

### **National Defense Authorization Act (NDAA)**

The House approved its annual NDAA in May, and the Senate is now considering its version of the bill, with debate likely to continue into next week during which time we could see potentially hundreds of amendments offered. While Democrats allowed the Senate to take up the bill without a procedural vote, the fate of the bill remains unclear. On June 2<sup>nd</sup>, the White House issued a [Statement of Administration Policy \(SAP\)](#) threatening to veto the Senate bill, primarily because it authorizes an additional \$38 billion in Overseas Contingency Operations (OCO) funding to provide sequestration relief for the Department of Defense (DOD). As noted above, Democrats are seeking to ensure that non-defense programs receive the same relief from sequestration. For this reason, Minority Leader Harry Reid (D-NV) left open the possibility of a filibuster. Regardless, a final conference bill is unlikely to be cleared until later this year.

### **Export-Import Bank of the United States**

With an authorization that is set to expire on June 30<sup>th</sup>, Senator Maria Cantwell (D-WA) mounted a valiant, but ultimately unsuccessful, effort to reauthorize the bank before the Senate left for Memorial Day. The Senator was promised, however, that the Senate would vote on reauthorization of the Bank in June; although reports are that Senator Mark Kirk (R-IL) was promised a vote in July. How the Bank reauthorization will play out in the coming weeks is unclear. The Senate Banking Committee and House Financial Services Committee are holding hearings this week on the Bank, with testimony from Bank president Fred Hochberg and others. In the House of Representatives, reauthorization of the Bank faces a serious challenge with Financial Services Committee chair Jeb Hensarling (R-TX) strongly opposed. Speaker John Boehner (R-OH) has expressed concerns that an abrupt end to the Bank would lead to the loss of thousands of jobs, and has indicated that Chairman Hensarling should come up with a plan to overhaul or wind down Bank operations, while Majority Leader Kevin McCarthy (R-CA) and Majority Whip Steve Scalise (R-LA) oppose reauthorization.

### **Highway Trust Fund (HTF)**

As noted above, before departing for Memorial Day Congress approved a two-month short-term extension of the Highway Trust Fund, running through July 31<sup>st</sup>. While this

avoided an immediate challenge, it has made the next step in HTF reauthorization more complicated since the Fund is set to run out around the same time as the new July 31<sup>st</sup> expiration meaning the Congress will have to identify funding offsets for a long-term bill that have thus far been the subject of much debate with little agreement. The Senate Environment and Public Works Committee is scheduled to mark-up a multiyear highway bill on June 24<sup>th</sup>, but look for another short-term extension through the end of the calendar year, or even perhaps only until the end of the current fiscal year.

### **Trade Promotion Authority (TPA)**

The Senate approved TPA, or “fast track authority”, before leaving for the Memorial Day recess and the bill now awaits consideration in the House where its fate is uncertain. TPA would give the President the ability to negotiate free trade agreements and send them to Congress for an up-or-down vote without amendment.

The perception is that the Senate vote, with 62 Senators supporting TPA, is expected to help with House passage, but there are still difficulties. Similar to the situation in the Senate, the currency manipulation provision remains a challenge in the House.

Reports are that the White House believes they have 20 Democratic votes in the House – up from 17 votes last week – and that they are focused on lobbying Democrats from California and Texas to gain their support. It is possible that TPA may be brought up on the House floor even before there are 218 confirmed votes, which could lead to a scramble to get the remaining votes once the bill is already on the floor. Some have suggested that the White House could get up to 30 Democratic votes in the House on TPA, but 25 votes is likely to be a more realistic high mark.

### **Customs Reauthorization**

Also approved in the Senate just before Memorial Day, the Trade Facilitation and Enforcement Act reauthorizes activities of U.S. Customs and Border Protection and also includes provisions to modernize the customs process, including language that would increase the U.S. de minimis duty threshold for low-value imports and provisions related to intellectual property protection. The bill was approved 78-20 and has been sent to the House for consideration where it will likely be moved alongside TPA. Reports are that the Customs bill is being pre-conferenced before it is taken up in the House so that the bill passed by the House can be quickly taken up again by the Senate for final passage so that there is no need for a conference to reconcile any differences.

### **Trade Preferences Legislation**

As a part of its consideration of TPA and Customs reauthorization, the Senate also approved a trade preferences bill, the Trade Preferences Extension Act, by a vote of 97-1. The bill includes a renewal of the African Growth and Opportunity Act (AGOA) and the Generalized System of Preferences. The bill will now go to the House for consideration, although timing is unclear.

### **Toxic Substances Control Act (TSCA) Reform**

First enacted forty years ago, and little altered since, TSCA has seen recent attempts at reform fail. Earlier this year, however, two competing bills were introduced in the Senate. The Frank R. Lautenberg Chemical Safety for the 21st Century Act, which closely follows previous legislation championed by the late Senator Frank Lautenberg (D-NJ), and a

competing measure, the Alan Reinstein and Trevor Schaefer Toxic Chemical Protection Act, which takes a different approach than the Lautenberg bill on state preemption. The Lautenberg legislation was reported out of the Environment and Public Works Committee in April. In the House, the TSCA Modernization Act was approved, nearly unanimously, by the Energy and Commerce Committee this week in a vote of 47-1.

### **Energy Legislation**

Senate Energy and Natural Resources Committee chair Lisa Murkowski (I-AK) and ranking member Cantwell are working closely on a broad-based energy bill and have held three hearings so far with the fourth, and final, hearing scheduled on energy accountability and reform June 9<sup>th</sup>. House Energy and Commerce Committee chair Fred Upton (R-MI) and ranking member Frank Pallone (D-NJ) are working on a similar measure that could be considered before the Senate bill, with the chairman possibly unveiling his energy proposal sometime this month. Reports are that House and Senate staffers are collaborating on this broad energy measure.

### **Elementary and Secondary Education Act (ESEA)**

In April, the Senate Health, Education, Labor, and Pensions Committee unanimously approved the ESEA reauthorization bill, the Every Child Achieves Act, which was introduced by Senate HELP Committee chair Lamar Alexander (R-TN) and ranking member Patty Murray (D-WA) as a means to modernize the previous reauthorization of ESEA, the No Child Left Behind Act. The ESEA reauthorization could see floor time this summer. The House version of ESEA reauthorization, the Student Success Act, was reported out of the Education and the Workforce Committee in February and sent to the House floor, where committee chairman John Kline (R-MN) was caught off guard by conservative opposition to the bill since a nearly identical version had easily passed in the last congress. Chairman Kline remains committed to advancing his bill this congress.

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

The 21<sup>st</sup> Century Cures Act (H.R. 6) was unanimously reported out of the House Energy and Commerce Committee last month and could see House floor action during June and July. The bill would overhaul the way in which many healthcare products are regulated by the Food and Drug Administration (FDA). Stakeholder focus will increasingly shift to the Senate, which is not expected to follow the House's aggressive timeline for legislation. Senate Health, Education, Labor, and Pensions Committee chair Alexander has said he does not intend to bring his own legislation to the floor before "early next year."

### **Health Care Legislation**

In the coming weeks and months, both chambers are likely to continue work on standalone opportunities, such as telehealth reimbursement, the Sensible Oversight for Technology which Advances Regulatory Efficiency (SOFTWARE) Act, provisions dealing with dormant therapies for diseases such as ALS, Alzheimer's, and Parkinson's, and the Advancing Care for Exceptional Kids Act of 2015 (ACE Kids Act), that were ultimately not included in the 21st Century Cures Act.

### **Cybersecurity Legislation**

The House has passed two cybersecurity-related measures, the Protecting Cyber Networks Act (H.R. 1560), which addresses cybersecurity information sharing between the

government and private sector, and the National Cybersecurity Protection Advancement Act (H.R. 1731), which addresses cybersecurity information sharing with the National Cybersecurity and Communications Integration Center. The Senate Intelligence Committee has reported out a bipartisan bill, but the measure has not been scheduled as of yet for full Senate consideration. The recent controversy surrounding the Patriot Act has probably delayed any other congressional action on cybersecurity for the time being.

### **Tax Reform**

The Senate Finance Committee will continue the work of its tax reform working groups, although the recommendations of the working groups are not going to be made public. The working groups had been tasked with making their recommendations before the end of May, but committee chair Orrin Hatch (R-UT) and ranking member Ron Wyden (D-OR) have extended the deadline until the end of June. The working groups are focused on individual taxes, business taxes, savings and investment, infrastructure and international issues. In the House, Ways and Means Committee chairman Paul Ryan (R-WI), recently stated that although Trade Promotion Authority and debates over Obamacare are taking up much of the committee's time, they are still focused on tax reform.

### **Patent Reform**

In the first six months of the current congress, patent reform legislation has been introduced in the House and Senate but has faced concerns raised by tech companies, universities, and the pharmaceutical industry. This week, the Senate Judiciary Committee approved its patent reform bill in a 16-4 vote, with committee leaders saying that they will continue to address concerns about the legislation as it heads to the Senate floor. In the House, the Judiciary Committee will mark up its patent reform legislation next week.

### **Dodd-Frank Reform**

Despite the White House having indicated that the president would veto any legislation to change the Dodd-Frank Wall Street reform legislation, last month the Senate Banking Committee approved, along a straight party line vote, the Financial Regulatory Improvement Act (S. 1484), introduced by chairman Richard Shelby (R-AL). The legislation faces a steep challenge on the Senate floor where 60 votes would be needed for the legislation to advance. However, Chairman Shelby has indicated that he intends to push ahead in efforts to modify the Dodd-Frank legislation. This week, Democratic members of the Senate Banking Committee and House Financial Services Committee, joined together to introduce their own, less sweeping, Dodd-Frank reform legislation. The bill, known as the Community Lender Regulatory Relief and Consumer Protection Act, is said to have the unanimous support of all Democratic members of both committees and is intended to offer a more modest "tweaking" of the Dodd-Frank law.

## **LOOKING AHEAD**

Congress returns from the August recess to face September 30<sup>th</sup> deadlines for the Child Nutrition & WIC programs authorization, the Federal Aviation Administration authorization, the Internet tax moratorium, and the end of the current fiscal year.

In waning days of the previous congress last December, Congress approved an extension of dozens of temporary tax provisions that had expired at the end of 2013. The extension only lasted through the end of 2014 – a short two weeks after passage of the legislation – so that taxpayers could claim them when filing their 2014 taxes. Looking ahead, the

coming months could see these tax extenders addressed in any tax reform measure that advances or, more likely, as part of some omnibus bill or must-pass legislation (e.g. the highway bill or debt limit) at the end of the year.

At some point this month, the Supreme Court will issue its ruling on King vs. Burwell. Although no one can predict the ruling with any certainty, proponents of the Affordable Care Act are signaling that there is no contingency plan without a Congressional intervention, should the court decide that subsidies are not allowed in the 34 states that rely on the federal government to administer their insurance marketplaces. On the GOP side, at least three proposals have been introduced that would extend the subsidy period until 2017, but with varying levels of cuts to significant provisions of the health reform law. These cuts range from removing the individual mandate to replacing subsidies in favor of health savings accounts. Ultimately, stakeholders don't expect any specific legislation to mitigate a potential negative ruling for the Obama Administration until after the court's ruling is announced.

Finally, while the exact date is uncertain, at some point later this year the Treasury Department's ability to use "extraordinary measures" for addressing the federal government's debt ceiling will have run its course. Without action by Congress to address the debt ceiling, default becomes a possibility.

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