

---

# Window on Washington - February 5, 2018 Vol. 2, Issue 5

Feb 05, 2018

## Outlook for This Week in the Nation's Capital

**Another Shutdown?** Congress needs to pass another short-term spending bill by Friday in order to keep the government open, but some House Republicans are against the plan for a fifth continuing resolution that would fund the government until March 23. Defense hawks are refusing to commit to another stopgap without a long-term spending agreement and negotiations on the budget caps have largely stalled over the past week. Negotiators have almost reached an agreement on increasing defense spending by \$80B over the two-year agreement but have not yet been able to come close to a deal on non-defense spending levels. Another group of House Republicans, the Freedom Caucus, is also threatening to withhold their support of the CR without Speaker Ryan agreeing to push for a more conservative immigration package. Meanwhile, negotiations on DACA in the Senate, which caused the shutdown last month, have largely stalled as well.

**Nunes Memo.** Democrats are saying they plan to release their own memo that will largely rebut what was in the Nunes memo, but the White House will need to approve this memo. If the White House does not, it will further call into question the partisan nature of the Nunes memo. While the outcomes caused by this are still being realized, it has caused tensions to increase between multiple parties- House Democrats and Republicans; House Intelligence Committee and Senate Intelligence Committee; the Trump Administration and the FBI; the Intelligence Community and its oversight committees. The impact on the relationship between the Intelligence Community and Congress could be felt for years to come.

**Positive Economic Progress.** The economy added 200,000 jobs in January, up from a 160,000 increase in December, and the nation could soon see unemployment drop below 4 percent. While the Dow was down on Friday, the stock market has seen growth over the past year. While the shutdown is largely seen as the reason for why the Democratic lead in the general Congressional ballot has closed to only 6 points, the economy could be a factor that keeps Republicans within reach for the elections this November if it continues to trend positively.

## Last Week in the Nation's Capital

### Congress

#### *Budget*

**GOP Looking at Extending Government Funding Through March 23:** House and Senate staff are working on a stopgap funding bill that would keep the government operating through March 23, though Republican leaders haven't yet made a final decision on the plan. Lawmakers have been working toward a vote on another temporary government spending bill early this week, before the current funding expires on Feb. 8. ([Bloomberg](#))

**House Appropriations Chairman's Retirement Triggers Race for the Coveted Role:** Representative Frelinghuysen (R-NJ) announced that he would not be running for re-election next year and therefore leaving his role as House Appropriations Chairman. Since his announcement, four members have stated they would be interested in the position- Rep. Aderholt of Alabama, Rep. Granger of Texas, Rep. Simpson of Idaho, and Rep. Cole of Oklahoma. Aderholt has the most seniority but that is not the determining factor for the position. ([Clark Hill Insight](#))

#### *Tax Reform*

**Apple Plans to Reduce \$163B Cash Holdings After GOP Tax Law:** Apple intends to reduce its large cash holdings of \$163 billion to "approximately zero" following passage of the Republican tax reform plan. Apple Chief Financial Officer Luca Maestri declined to offer specifics, but said the process could include using the holdings to buy new companies, or offer dividends and stock buybacks, in an interview with the Financial Times. The tax law signed by President Trump allows companies to bring back their foreign profits at a significantly discounted tax rate. ([The Hill](#))

#### *Debt Ceiling*

**CBO Re-estimates When Debt Ceiling Will Be Reached:** The Congressional Budget Office moved up its estimate of when lawmakers must raise the U.S. legal borrowing limit to avert a default on the country's debt. With less money projected to come in to the federal government because of the tax bill, the CBO now estimates that the special accounting measures Treasury has been using since December will be tapped out sometime in early March. Previously the agency had estimated Treasury's extraordinary measures would be exhausted in late March or early April. ([CNN Money](#))

#### *Health*

**"Right to Try" Bill May Get House Floor Vote Soon:** President Trump gave "Right to Try" legislation a push in his State of the Union address and the bill may now get a vote in the House after being stuck for months after the Senate passed its version in August. The bill is designed to make it easier for dying patients to get access to experimental medicines. Opponents say that there is an existing program in place, called compassionate use, that offers similar access to unapproved drugs and this new legislation could slow the process needed to ensure a new drug or treatment is safe and effective for a broader group of patients. ([Bloomberg](#))

**House Will Hold Hearings on Bills to Fight Opioid Crisis:** The House Energy and Commerce Committee announced it will begin holding legislative

---

hearings on measures to fight the opioid crisis the week of February 26. The panel said measures will include "modernizing federal laws to adapt for new treatments and technologies, like how drugs are taken or administered, as well as how to dispose of unused opioids." ([The Hill](#))

#### *Transportation*

**GOP Chairman - Republicans' Reactions 'Mixed' on Gas Tax Increase:** House Transportation and Infrastructure Committee chairman Bill Shuster (R-PA) said he received a "mixed" reaction when he brought up the gas tax during an infrastructure meeting at the GOP retreat. Shuster said the subject "was the elephant in the room" during a working session that included several lawmakers, Transportation Secretary Elaine Chao and White House economic adviser Gary Cohn. Proponents of raising the levy argue doing so is necessary to keep the Highway Trust Fund afloat. Money from the 18.4-cent-per-gallon tax goes into the fund to pay for road projects, but that tax has not been raised since 1993, eroding the fund's purchasing power over time. ([The Hill](#))

#### *Banking/Housing*

**Trump Speech Bodes Ill for Banks' D.C. Priorities:** The busy legislative agenda laid out by President Trump in the State of the Union speech Tuesday night casts doubt on how quickly Congress can move on financial services legislation, particularly a housing finance reform package. The president's speech included calls for Congress to enact immigration reform, as well as spending for infrastructure investment and the military, without mention of core policy issues of interest to the financial services industry. Trump touted his administration's steps to ease regulations across industries, but steered clear of a pending bill that would provide targeted relief for banks from provisions of the Dodd-Frank Act. ([American Banker](#))

#### *Justice*

**GOP Releases Nunes Memo Over FBI Objections:** Republicans on Capitol Hill, backed by President Donald Trump, defied pleas from the FBI and Democrats and released a previously classified memo alleging misconduct by senior FBI officials investigating Trump's presidential campaign. Republicans say the memo exposes anti-Trump bias among top law enforcement officials who helped launch a federal probe into whether the Kremlin infiltrated Trump's campaign team. Democrats and former law enforcement and intelligence officials counter that the GOP is playing partisan politics with secret intelligence and distorting facts of the Trump-Russia investigation. ([Politico](#))

#### *Labor*

**Some Democrats Urge Trump Administration to Drop Tip-Pooling Plan:** Three Democrats in the U.S. Congress on Thursday called on the Trump Administration to withdraw a proposal that would allow restaurants and other employers to pool workers' tips, a measure that has drawn fire from restaurant workers and labor advocates. U.S. Senator Patty Murray of Washington and Representatives Robert Scott of Virginia and Mark Takano of California cited a news report that accused the U.S. Department of Labor of failing to disclose the results of an analysis that determined pooling tips could cost workers billions of dollars. The lawmakers said the Labor Department may have violated federal law by withholding information, after Bloomberg Law reported that the department had shelved the analysis. ([Reuters](#))

#### **Executive Branch**

##### *Trade*

**New Trade Case on Imports of Cast Iron Soil Pipe from China:** New U.S. antidumping (AD) and countervailing duty (CVD) petitions were filed on January 25 against imports of cast iron soil pipe from China. The Department of Commerce and the International Trade Commission (ITC) will next determine whether to launch AD and/or CVD duty and injury investigations, respectively, on these products. If Commerce finds dumping or unfair subsidization in its preliminary determinations, currently scheduled for April 20, 2018 (CVD) and July 5, 2018 (AD), importers will be charged the calculated duties upon the products' entry in the U.S. market. ([Clark Hill Insight](#))

##### *HHS*

**CDC Director Resigns:** Dr. Brenda Fitzgerald, director of the US Centers for Disease Control and Prevention, resigned after Politico reported Fitzgerald's purchase of tobacco stock after she took the position at the nation's top public health agency. Such an investment is considered to be at odds with the mission of the CDC. ([CNN](#))

**CMS Proposes Changes to Medicare Advantage and Medicare Part D:** CMS proposed a 1.84% average rate increase for Medicare Advantage plans in 2019 and implementing a supply limit for initial fills of prescription opioids for acute pain for the Part D program. ([FierceHealthcare](#))

##### *Department of Energy*

**FY19 Budget Request Expected to Cut Clean Energy Research:** The Trump Administration is poised to ask Congress for deep budget cuts to the Energy Department's renewable energy and energy efficiency programs, slashing them by 72 percent overall in fiscal 2019, according to draft budget documents. The document also suggests substantial staff cuts, down from 680 in the enacted 2017 budget to 450 in 2019. ([The Washington Post](#))

##### *DOD*

---

**Defense Department Releases Nuclear Posture Review:** The Nuclear Posture Review recommends adding a low-yield warhead for submarine-launched ballistic missiles, as well as the addition of a nuclear-capable submarine-launched cruise missile to America's arsenal. These capabilities are seen as a needed direct response to actions taken by Russia' military over the past decade. ([Defense News](#))

NASA

**The James Webb Space Telescope Finally Takes Shape:** The most advanced and powerful optical observatory ever built is at long last a single spacecraft after completing final tests of various components, but it must still undergo yet another set of environmental and deployment tests during 2018 at Northrop before it's loaded onto a ship for transport to French Guiana. That will likely take place in early 2019, or about three months before the spacecraft's launch on an Ariane 5. NASA has not yet provided a more specific launch window for JWST than March to June of 2019. ([Space News](#))

**SpaceX and ULA Poised to Face Off in the Next Round of Military Launch Competition:** The U.S. Air Force recently announced plans to award space launch contracts later this year for five satellites that include some of the military's most sensitive big-ticket payloads. The competition comes less than two years since SpaceX became a legitimate competitor in a market that used to be entirely owned by United Launch Alliance, a partnership of Lockheed Martin and The Boeing Company. ([Space News](#))

Interior

**Document Reveals Ambitious Reorganization Timeline:** New Interior Department regional boundaries will be in place this year, and the agency's massive reorganization will begin in Alaska. While the department's timeline for jump-starting the reorganization is ambitious, the FAQs acknowledged that fully implementing the changes will "take several years because there are a lot of details that will need to be worked out over time." ([E&E News](#))

DOJ

**DOJ Files Motion to Dismiss Menendez Indictment:** The Justice Department moved to dismiss charges against Sen. Bob Menendez (D-N.J.) after a federal judge tossed out several charges against the lawmaker. U.S. District Judge William Walls moved to acquit Menendez and his co-defendant, Salomon Melgen, of seven of the 18 charges they faced in their corruption and bribery trial. ([The Hill](#))

CFPB

**CFPB is Constitutional, But Makes \$100 Million Mistake In Interpreting the Law:** The D.C. Circuit Court of Appeals issued its long awaited decision in PHH v. Consumer Financial Protection Bureau, holding by a 7-3 decision that the Consumer Financial Protection Bureau's (CFPB or Bureau) single-Director structure, which provides that its Director can be removed only "for cause," is constitutional. What has received scant recognition, however, is the court's confirmation that the Bureau was wrong on several grounds in its imposition of a \$109 million penalty against PHH. With this second holding, the ruling is far from a sweeping win for the CFPB, and its implications are profound for curtailing widely criticized Bureau practices of regulating by enforcement and retroactive imposition of new interpretations of the law. ([Clark Hill Insight](#))

Russian Investigation

**GOP Memo Criticizing FBI Surveillance is Released:** The four-page, newly declassified memo written by the Republican staffers for the House Intelligence Committee said the findings "raise concerns with the legitimacy and legality of certain (Justice Department) and FBI interactions with the Foreign Intelligence Surveillance Court (FISC)," calling it "a troubling breakdown of legal processes established to protect the American people from abuses related to the FISA process." This release intensifies a fight between the White House and Republican lawmakers, on one side, and the nation's top law enforcement agency over claims the FBI hid the political motivations of a key figure supplying them information in the case. ([The Washington Post](#))

White House

**First Trump State of the Union Address Makes Appeal for Unity:** Speaking to a joint session of Congress, Mr. Trump hailed what he called the "extraordinary successes" of his administration's first year, and largely steered clear of the nationalist rhetoric, political attacks and confrontational tone that have been his calling cards both as a candidate and as a commander in chief. ([The New York Times](#))

**Trump Announces Plan to Keep Guantanamo Bay Open:** President Trump announced Tuesday evening that he would rescind an Obama-era policy intended to shut down the contentious Guantanamo Bay military prison, issuing a new executive order that will instead allow new "enemy combatants" to be sent to the prison. The new order will keep open the prison at U.S. Naval Station Guantanamo Bay in Cuba, ensuring there is an appropriate place to keep terrorists captured on the battlefield, Trump said in his first State of the Union address. ([Law 360](#))

Supreme Court

Tax

**Supreme Court to Revisit Tax Nexus Test:** The U.S. Supreme Court has agreed to hear *South Dakota v. Wayfair, Inc.* Its decision has the potential to change the way online retailers and other remote vendors do business by permitting states to collect sales tax on remote transactions. Many remote vendors are reluctant to charge state sales taxes to customers in states in which the vendors have no physical presence. With the rise of consumers'

---

preference for ordering goods and services online as opposed to traditional brick-and-mortar shopping, many states feel cheated out of sales tax revenue.  
(Clark Hill Insight)