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# Window On Washington - May 29, 2018, Vol. 2, Issue 21

May 29, 2018

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

**Recess Week.** Both the House and Senate are in recess this week.

**Opioid Legislation.** Majority Leader McCarthy has said that the House is planning to consider its expansive package of opioid-related bill during the week of June 11. The package could include over 60 separate pieces of legislation that were previously approved by the Energy and Commerce and Ways and Means Committees. The Senate is continuing its work on opioid bills as well with the Judiciary Committee approving multiple bills last week. The Senate is expected to take up its package of legislation later in the summer.

**Immigration Movement?** In response to growing discord within House Republicans, House Speaker Ryan has agreed to bring up immigration legislation in June. The conservative House Freedom Caucus insisted on a vote on a hard-line immigration bill by Congressman Goodlatte and when the vote did not occur, they voted against the farm bill and it subsequently failed. The Goodlatte bill would provide DACA recipients with a temporary, three-year legal status; end family-based migration; and end the diversity visa lottery program. It does not have the support of numerous moderate Republicans and instead, numerous moderate Republicans have signed onto a discharge petition that would force the House to vote on a bipartisan immigration package. All but one Democrat has signed onto the petition and as of last Thursday, the petition was only three signatures short of the required 218. Ryan and others in Republican leadership are hopeful that a deal could be reached before the petition has enough signatures and Goodlatte has expressed support for amending portions of his bill in order to gain more bipartisan support.

## Last Week in the Nation's Capital

### CONGRESS

#### *Budget*

**McConnell Sets 'Minibus' Strategy for Appropriations Process:** Senate Majority Leader Mitch McConnell said that he intends to pass spending bills for fiscal 2019 in groups of "minibuses," marking a departure from the previous year's dysfunctional appropriations process. The Kentucky Republican also set a goal of passing the first two appropriations bills on the Senate floor in June. McConnell said the strategy had been agreed to in consultation with Minority Leader Senator Charles Schumer, the bipartisan leaders of the Senate Appropriations Committee and House Speaker Paul Ryan. ([The Hill](#))

**House Appropriations Committee Approves Transportation, Housing and Urban Development Funding Bill:** The House Appropriations Committee approved the fiscal year 2019 Transportation, Housing and Urban Development funding bill on a vote of 34-17. The bill includes an allocation of \$71.8 billion in discretionary spending – \$1.5 billion above the fiscal year 2018 enacted level and \$23.8 billion above the request. ([House Appropriations Committee](#))

**Senate Committee Approves Energy & Water Development Appropriations Bill:** The Senate Appropriations Committee advanced its FY19 Energy and Water Development and Related Agencies Appropriations Act that funds U.S. Department of Energy (DOE) programs and critical infrastructure projects administered by the Army Corps of Engineers and Bureau of Reclamation. The \$43.766 billion measure is \$566 million above the FY18 enacted level and \$7.24 billion above the President's budget request. For the fourth year in a row, the Committee approved the highest-ever level of funding for the DOE Office of Science. ([Senate Appropriations Committee](#))

**Senate Committee Advances Agriculture Appropriations Bill:** The Senate Committee on Appropriations approved the FY19 Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Bill, which provides \$145.1 billion in funding to support federal agriculture, conservation, and nutrition programs. The bill includes \$6.1 billion above the President's budget request and \$710 million below the FY18 enacted level. It would increase FDA's budget by roughly 5 percent and includes \$66 million for opioid prevention efforts. ([Senate Appropriations Committee](#))

**302(b) Allocations Agreed to in House and Senate Appropriations Committee:** The House and Senate Appropriations Committee have largely agreed to similar discretionary funding allocations for each of the 12 appropriations bill with the largest difference being in Homeland Security. The chart below shows the allocations; amounts are in billions. ([Clark Hill Insight](#))

Appropriations Title	FY18 Enacted	FY19 House 302(b)s	FY19 Senate 302(b)s
Agriculture	\$23.3	\$23.3	\$23.2
Commerce-Justice-Science	\$59.6	\$62.5	\$63.0
Defense	\$589.5	\$606.5	\$607.1
Energy-Water	\$43.2	\$44.7	\$43.8
Financial Services	\$23.4	\$23.4	\$2.7
Homeland Security	\$47.7	\$52.5	\$48.3
Interior-Environment	\$35.3	\$35.3	\$35.9
Labor-HHS-Education	\$177.1	\$177.1	\$179.3
Legislative Branch	\$4.7	\$4.9	\$4.8
Military Construction - VA	\$92.0	\$96.0	\$97.1
State-Foreign Operations	\$42.0	\$46.0	\$46.4
Transportation-HUD	\$70.3	\$71.8	\$71.4
<b>Grand Total</b>	<b>\$1,208.1</b>	<b>\$1,244.0</b>	<b>\$1,223.0</b>

#### Tax Reform

**IRS to Crack Down on Connecticut and Other States Tax Workarounds:** The Internal Revenue Service and the Treasury Department said Wednesday they intend to issue regulations to rein in an attempt by Connecticut and other states to get around a new limitation on the deductibility of state and local taxes. In its notice, the IRS and Treasury Department made clear that federal law — not states — controls the characterization of payments. ([The CT Mirror](#))

#### Health

**Senate to Consider Ban on Prescription Drug 'Gag Clauses':** The Senate health committee plans to vote on a bill next month banning "gag clauses" that can hide potential savings on prescriptions from consumers at the pharmacy counter. Specifically, the bill would ban clauses in contracts between pharmacies, insurers and middle men that keep pharmacies from proactively telling customers they could save money on a prescription if they paid out of pocket instead of through insurance. ([The Hill](#))

**'Right-To-Try' Bill Passes Congress:** With a House of Representatives last week, Congress passed legislation that could give terminally ill patients a way to independently seek drugs that are still experimental and not fully approved by the US Food and Drug Administration. The House voted 250-169 in favor of the bill, which the Senate passed in August. The bill will now be sent to President Trump, who is expected to sign it. ([CNN](#))

**CBO: ObamaCare Premiums to Rise 15 Percent:** ObamaCare premiums are expected to rise an average of 15 percent next year, an increase largely due to the GOP's repeal of the law's individual mandate, according to a Congressional Budget Office (CBO) analysis. The CBO estimates that gutting the requirement that Americans have health insurance or face a tax penalty will contribute to about a 10 percent rise in premiums for 2019, with insurers expected to see healthier people dropping out of the marketplaces, leaving sicker enrollees on the plans. ([The Hill](#))

#### Transportation

**GOP Plans to Introduce Infrastructure Bill This Summer:** House Transportation and Infrastructure Committee Chairman Bill Shuster is working with other members of the committee to unveil an infrastructure bill this summer. Shuster has maintained that any infrastructure proposal must be bipartisan, forward-looking and fiscally responsible. ([The Hill](#))

**House Transportation Committee Unanimously Approves Water Resources Development Act:** The Transportation and Infrastructure Committee unanimously approved the bipartisan Water Resources Development Act (WRDA) of 2018, legislation that provides for improvements to the Nation's ports, inland waterways, locks, dams, flood protection, ecosystem restoration, and other water resources infrastructure. The bill also authorizes proposed U.S. Army Corps of Engineers civil works activities and provides reforms to the Corps. ([House Transportation and Infrastructure Committee](#))

**Senate Panel Also Unanimously Approves Water Infrastructure Bill:** The Senate Environment and Public Works Committee unanimously passed its bipartisan water infrastructure bill, putting the biennial legislation on track in the upper chamber. The bill calls for a drinking water pilot program, under the guidance of the Environmental Protection Agency administrator, in certain regions for Indian tribes. It also requests several studies on the Water

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Infrastructure Finance and Innovation Act, including one by the Governmental Accountability Office to assess how the law could be used better in both rural and small communities. In contrast, the House bill remained tightly focused on Army Corps programs. ([The Hill](#))

#### *Immigration*

**GOP Leaders Scramble to Contain Immigration Rebellion:** The leaders are attempting to broker a deal that satisfies competing factions of their restive conference and defuses a push by mutinous centrists threatening to force action to protect young undocumented immigrants in a series of head-to-head floor votes that would highlight deep GOP divisions over an issue that has long been radioactive within the party. The dispute has centered largely on what legal protections should be extended to those living in the country illegally, and to whom they should apply — thorny enough questions on their own. But the leaders' effort was further complicated on Thursday, when President Trump warned that he'd veto any bill to shore up the Deferred Action for Childhood Arrivals program if it fails to fund his favored wall at the U.S.-Mexico border. ([The Hill](#))

#### *Energy & Environment*

**Senate Energy-Water Bill Advanced Amid Nuclear Weapons Debate:** The Senate Appropriations Committee advanced 30-1 a \$43.8 billion draft Energy-Water fiscal 2019 spending measure before entering into a lengthy consideration of how to dispose of 34 metric tons of weapons-grade plutonium and the development of new low-yield nuclear weapons. The bill would boost spending for the Energy Department, Army Corps of Engineers and related programs by \$566 million compared to fiscal 2018 enacted appropriations and is \$7.2 billion more than the Trump administration requested. The House version would fund the same agencies at \$44.7 billion. ([Roll Call](#))

**House Energy Subcommittee Holds Fourth DOE Modernization Hearing:** The House Energy Subcommittee met to review four bills that address development, regulation, and competitiveness of advanced nuclear energy technologies: The bills that were reviewed include H.R. 1320, Nuclear Utilization of Keynote Energy Act; Advanced Nuclear Fuel Availability Act Discussion Draft; Nuclear Energy Competitiveness Discussion Draft; Report on Pilot Program for Micro-Reactors Discussion Draft. Rep. Greg Walden (R-OR) said the bills would provide critical ingredients to bolster DOE's national security and energy security mission by promoting the safe and peaceful use of nuclear technology among other things. To access the Majority Memorandum, witness testimony, and an archived webcast, please click [here](#). (Clark Hill Insight)

**Senate Confirms Caputo, Wright, and Baran to Serve as US NRC Commissioners:** The US Senate confirmed Thursday, by unanimous consent, the appointments of Annie Caputo and David Wright to serve five-year terms on the Nuclear Regulatory Commission, and confirmed Commissioner Jeff Baran for a second five-year term. ([Platts](#))

#### *Defense*

**The White House Wants 37 Items Gone from the NDAA:** A Statement of Administration Policy on the draft fiscal year 2019 National Defense Authorization Act, which was released on May 22, detailed 37 items that the White House objects to, but it stopped short of threatening a presidential veto. ([Defense News](#))

**Senate Panel Advances \$716B Defense Policy Bill:** The Senate Armed Services Committee released details of its version of a \$716 billion annual defense policy bill, which was sent to the Senate floor in a closed-door 25-2 vote. The committee's version of the National Defense Authorization Act (NDAA) would authorize about \$617.6 billion for the Pentagon's base budget and \$21.6 billion for defense-related programs of the Energy Department. It would also authorize about \$68.5 billion for a war fund known as the Overseas Contingency Operations (OCO) account. ([The Hill](#))

**House Easily Passes \$717B Defense Authorization Bill:** The House effortlessly passed its \$717 billion defense policy bill for fiscal 2019, with more than 100 Democrats backing the measure alongside Republicans. The House's version of the National Defense Authorization Act (NDAA) passed 351-66, with 131 Democrats siding with 220 Republicans to support the bill. Among those who voted against the bill were seven Republicans. Of the \$717 billion authorized, the House NDAA includes \$617 billion in base spending, \$69 billion for the Overseas Contingency Operations war fund and \$22 billion for nuclear weapons programs under the Energy Department. ([The Hill](#))

#### *Justice*

**Judiciary Committee Approves Five Measures to Combat Opioid Crisis:** The Senate Judiciary Committee, led by Chairman Chuck Grassley of Iowa, approved five pieces of legislation that will address the national opioid crisis. The five bills are S.2645 Access to Increased Drug Disposal Act of 2018, S.2535 Opioid Quota Reform Act, S.2789 Substance Abuse Prevention Act, S.207 Synthetic Abuse and Labeling of Toxic Substances Act of 2017, and S.2838 Using Data to Prevent Opioid Diversion Act of 2018. For short descriptions of the bills, please click [here](#). ([Senator Grassley Press Releases](#))

### **EXECUTIVE BRANCH**

#### *Bureau of Consumer Financial Protection*

**OCC Encourages Lending to Underserved Borrowers:** On May 23, 2018, the Office of the Comptroller of the Currency ("OCC") issued a bulletin, titled "Description: Core Lending Principles for Short-Term, Small-Dollar Installment Lending" (the "Bulletin"), outlining the OCC's new stance on short-term, small-dollar installment loan and encouraging national banks, federal savings associations and federal branches and agencies of foreign banks to offer such loan products. The Bureau of Consumer Financial Protection Acting Director Mick Mulvaney immediately applauded the OCC's announcement, calling the

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entry of national banks and federal savings associations into this \$90 billion small-dollar lending market a "win for consumers" that "promote[s] access and innovation in the consumer credit marketplace." ([Clark Hill Insight](#))

#### *DOJ*

**U.S. Launches Criminal Probe into Bitcoin Price Manipulation:** The Justice Department has opened a criminal probe into whether traders are manipulating the price of Bitcoin and other digital currencies, dramatically ratcheting up U.S. scrutiny of red-hot markets that critics say are rife with misconduct, according to four people familiar with the matter. The investigation is focused on illegal practices that can influence prices – such as spoofing, or flooding the market with fake orders to trick other traders into buying or selling, said the people, who asked not to be identified because the review is private. Federal prosecutors are working with the Commodity Futures Trading Commission, a financial regulator that oversees derivatives tied to Bitcoin, the people said. ([Bloomberg News](#))

#### *HHS*

**NIH Issues Funding Announcement for Genome Centers for All of Us Research Program:** The National Institutes of Health's All of Us Research Program issued a funding announcement for Genome Centers to generate genotype and whole-genome sequence data from the samples submitted by participants in the program. The program plans to fund up to two Genome Center awards in 2018, with analyses to begin in the fall. ([GenomeWeb](#))

**HHS 340B Rule Delay Would Put Hospitals at Risk for High Drug Prices:** Safety-net hospitals urged HHS not to postpone a rule setting new ceiling prices for the 340B drug discount program, saying the delay would leave them defenseless against rising costs. Although HHS was supposed to set ceiling prices starting July 1, the agency wants to hold off on the rule for a year. The request is the fifth time the rule has been postponed, and providers had until last week to comment on the proposal. ([Modern Healthcare](#))

#### *DHS*

**Homeland Security Announces 15,000 Additional Seasonal Visas for Companies at Risk of Failure:** The Department of Homeland Security (DHS) announced that it would allow 15,000 more seasonal workers into the country in 2018 under the H-2B visa program, available to businesses at risk of failing without the increased workforce. In a statement, Secretary Kirstjen Nielsen said the move was meant to counter limitations on the program that had caused "a situation where the program unintentionally harms American businesses." ([The Hill](#))

**Department of Homeland Security Unveils Strategy to Guide Cybersecurity Efforts:** On May 15, the U.S. Department of Homeland Security (DHS) released a strategy outlining the Department's approach to identifying and managing national cybersecurity risk. The DHS strategy details a Department-wide approach to address the evolving threats to our nation's cyber and critical infrastructure security. The intent is for this strategy to enable the harmonization and prioritization of DHS planning, programming, budgeting, and operational activities across all DHS cybersecurity mission areas. It will focus on coordinating departmental cybersecurity activities to ensure a unity of effort. ([DHS News](#))

#### *Energy*

**Trump Administration Defends Keystone XL Pipeline in Court:** Trump administration attorneys defended the disputed Keystone XL oil sands pipeline in federal court on Thursday against environmentalists and Native American groups that want to derail the project. President Barack Obama rejected the 1,179-mile (1,800-kilometer) line proposed by TransCanada Corporation in 2015 because of its potential to exacerbate climate change. President Donald Trump revived the project soon after taking office last year, citing its potential to create jobs and advance energy independence. ([U.S. News](#))

#### *Banking & Housing*

**President Trump Signs Dodd-Frank Rollback Bill Into Law:** President Donald Trump signed a major Dodd-Frank rollback into law Thursday, hoping to bring regulatory relief to community banks across the U.S. Last Tuesday the House of Representatives passed S. 2155, also known as the Economic Growth, Regulatory Relief and Consumer Protection Act. The bill rolls back reforms from the 2010 Dodd-Frank Act. The rare bipartisan bill (20 Senate Democrats voted for it) originated in the Senate earlier this year and is targeted at easing regulations on smaller banks. ([Housing Wire](#))

#### *Defense*

**Air Force Creates Office to Help Shake Up Acquisition Process:** The U.S. Air Force has established a new office to streamline how it procures and sustains weapons, platforms and networks. The office, dubbed "AQ Delta" and placed under Assistant Secretary of the Air Force for Acquisition, Technology and Logistics, Will Roper. He is not intended to manage programs, but instead "identify things that are slowing us down and to rewire the system" in the acquisition process, said Air Force Secretary Heather Wilson. ([Military.com](#))

**Why DO Continues to Fail at IT:** For the third evaluation in a row, the Department of Defense received a failing grade on its Federal Information Technology Acquisition Reform Act scorecard, the only agency to do so in 2018. ([Defense News](#))

#### *Space, NASA & NOAA*

**New Administrator Bridenstine Offers Senators Reassurances on NASA Programs:** In his first congressional testimony since becoming NASA administrator a month ago, Jim Bridenstine sought to reassure Senate appropriators about the status of several agency programs threatened with

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cancellation, as well as his own views on climate change. Appearing before the Senate Appropriations Committee's Commerce, Justice and Science Subcommittee May 23, Bridenstine said he would seek a balance among the agency's priorities in science and exploration, including committing to developing a number of missions that had been targeted for cancellation. ([Space News](#))

**Why Is NOAA's Brand-New, Billion-Dollar Weather Satellite Going Blind?:** A very expensive satellite's first several months in space are going very wrong. The cooling system that the multibillion-dollar device needs in order to properly observe the atmosphere failed to start, leaving the satellite partly blind. Named GOES-17 (Geostationary Operational Environmental Satellite), the glitchy orbiter is a brand-new National Oceanic and Atmospheric Administration (NOAA) satellite. It's the second in an \$11 billion family of four high-resolution, state-of-the-art weather satellites that NOAA developed to replace the aging previous generation of geostationary skywatchers. ([Live Science](#))

**Trump Orders Deregulation to Boost Commercial Space Companies:** President Trump is deregulating space. Mr. Trump on Thursday signed a space policy directive aimed at boosting America exploration of space by streamlining regulations on commercial space activity. He's made cutting federal regulations a cornerstone of his presidency and now is expanding it to the Commerce and Transportation departments' rules for commercial space companies, which face regulatory hurdles that include launch licensing and payload approval. ([The Washington Times](#))

*Trade*

**Trump Officials Weigh 25 Percent Tax on Imported Cars to Force Concessions in NAFTA Talks:** Officials may cite national security grounds to justify a tariff on imported vehicles, a senior administration official said, speaking on the condition of anonymity to discuss internal deliberations. President Trump used the same provision of U.S. trade law in March when he called for tariffs on foreign-made steel and aluminum. ([The Washington Post](#))

**New Trade Case on Imports of Steel Propane Cylinders from China, Taiwan and Thailand:** New US antidumping (AD) and countervailing (CVD) duty investigations were filed on May 21, 2018 by Worthington Industries and Manchester Tank & Equipment Co. (petitioners) against imports of steel propane cylinders from China, Taiwan and Thailand. The petition includes AD (less than fair value) allegations against China, Taiwan and Thailand, and CVD (unfair subsidy) allegations against 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. ([Clark Hill Insight](#))

*Elections*

**Facebook and Twitter Launch New Rules for Political Ads to Counter Misinformation:** Facebook and Twitter will now only allow verified advertisers to post political ads, and users will be able to see who paid for and how much was spent on the ads. The new rules are the latest efforts from the social media platforms to be more transparent ahead of the U.S. midterm elections after the FBI found that Russians used Facebook ads in their attempts to influence the 2016 presidential election. Facebook's new regulations went into effect Thursday and Twitter says they'll start enforcing the new rules later this summer. Facebook's restrictions cover all political ads as well as "issue ads," which cover certain ads across a broad range of topics which initially include health, education, immigration, abortion and civil rights. ([ABC News](#))

*EPA*

**EPA Extends Comment Period on Controversial Science Transparency Rule:** The comment period for the rule, Strengthening Transparency in Regulatory Science, is being extended to August 17. Originally the comment period was only 30 days and was scheduled to close May 30. The agency also announced it will be holding a public hearing for the rule proposal on July 17. ([The Hill](#))

## **SUPREME COURT**

*Labor*

**Supreme Court Upholds the Use of Class Action Waivers in Employee Arbitration Agreements:** On, May 21, 2018, the Supreme Court issued its opinion in *Epic Systems Corp. v. Lewis*, upholding the use of class action waivers in employment agreements. The Court has clearly stated that employers can include class action waivers in employee arbitration agreements without fear of facing NLRA claims or having the waivers invalidated by a court. This decision is certainly a win for employers as they are now able to minimize their exposure to employee class action litigation. ([Clark Hill Insight](#))