



*Week of 4-18-16
Volume 16 | Issue 13*

Congressional Overview

The Senate passed their FAA Reauthorization Bill and then turned to the energy bill (S 2012). After work on the energy bill was finished, the chamber began debate on the Senate Energy-Water Appropriations Bill (S 2804). Senators agreed to proceed to the appropriations bill without procedural votes. The House, meanwhile, was unable to move forward with a budget blueprint and leadership worked on a Puerto Rico bailout bill. On the floor, the House focused on a series of IRS reform bills to follow Tax Day.

Senate Passes FAA Reauthorization Bill

On Monday evening, the Senate voted 89-5 to limit debate on its FAA reauthorization bill, setting up a vote on final passage on Tuesday. By adding the Senate's aviation provisions to the House bill, the Senate was able to include an extension of tax-based funding for the Airport and Airway Trust Fund. The Senate adopted a Thune amendment, by unanimous consent, that would require the Transportation Department to assess the status of improvements to the ADS-B aircraft tracking and broadcast system as part of the FAA's NextGen air traffic control systems. The Senate bill is a marked contrast to the House's FAA reauthorization proposal (HR 4441), which proposed to spin off national air traffic control to a separate corporate entity, leaving the FAA in charge of safety oversight. That bill has made it through the House Transportation and Infrastructure Committee but has met resistance from Democrats and Republicans in both chambers.

House Majority Leader Sets Goal to Complete Opioid Legislation by End of April

After the Senate passed the Comprehensive Addiction and Recovery Act, House Majority Leader Kevin McCarthy (R-CA) set a goal for the chamber: to complete legislation addressing the opioid epidemic by the end of April, setting the bills up for votes on the floor in May. Also, the House Judiciary Committee will take up bills on the prevention, intervention and enforcement of drug laws.

Factors the PBGC Must Consider when Facilitating MEP Mergers

The Pension Benefit Guaranty Corporation (PBGC) can facilitate mergers between multiemployer defined benefit plans to strengthen both their viability and the agency's, but the PBGC must weigh several factors in deciding whether to provide financial assistance to aid with mergers. The most important factor is how to certify that helping out will not impair the agency's ability to meet existing obligations. The Multiemployer Pension Reform Act of 2014 (MPRA) clarified that the PBGC has the authority to facilitate mergers, and can do so with or without financial assistance.

The agency is working on proposed regulations regarding mergers, and it is aiming to have them out soon. The PBGC has to coordinate the proposal with its sister Employee Retirement Income Security Act agencies, the Department of Labor and the Department of Treasury. Mergers are designed to save plans money and make them more financially secure by enabling them to combine resources. When determining whether the PBGC will offer financial assistance with mergers, the agency must consider whether:

- One or more of the plans is in critical and declining status.
- Financial assistance will reduce the agency's expected long-term loss with respect to the plans.
- The assistance is necessary for the merged plan to become or remain solvent.

The agency must then certify that its ability to meet existing financial assistance obligations to other plans will not be impaired by giving assistance in the proposed merger. All funding must then come from the PBGC's multiemployer pension insurance program.

Senate Looking to Break Modern Records on Spending Bill Consideration

On April 13, Senate leaders announced plans to break all modern records by moving the chamber's first spending bill, the FY 17 Energy-Water appropriations bill, this week. The last time an appropriations bill was debated this early was in 1974. However, to beat their previous record, Senate leaders have to make an end-run around the House, which is supposed to start the appropriations process. Instead of waiting for new House-passed bills, Senate leaders plan to use leftover spending bills from last year that never were enacted into law. It's unclear what would happen to the Senate-passed bills when they go back to the House.

McConnell has made passage of all 12 regular spending bills his top legislative priority this year, partly to prove that Republicans have ended the dysfunction in Congress. The last time all 12 bills were passed on time without the need for a Continuing Resolution was in 1994. No doubt, plenty of obstacles stand in the way of McConnell's goal, which include the threat of policy riders triggering Democratic opposition and a condensed legislative calendar designed to accommodate the presidential nominating conventions and congressional re-election campaigns.

With no budget resolution in place to establish spending limits, Senate Budget Chairman Mike Enzi (R-WY) announced he will file official topline limits for discretionary spending after April 15 (as permitted by last year's bipartisan budget deal). Democrats expressed support for the early action and Senate Minority Leader Harry Reid (D-NV) stated "I feel pretty good about the appropriations process and I think that's a good first bill to move, and I hope we can get it done."

Senate Budget Chairman Holds Hearing on Budget Process Overhaul

Senate Budget Chairman Enzi continued his second of four hearings in his attempt to overhaul the budget process. Advocates of a two-year budget process say it would give government agencies more financial stability and a better ability to plan, but senators stopped short of endorsing a biennial cycle for the more detailed appropriations bills. Chairman Enzi said he's optimistic that a bipartisan overhaul bill can be written and released next month for prompt committee action, but do not look for Senate floor action anytime soon. Finally, Chairman Enzi said he does not want his measure to interfere with passage of all 12 regular appropriations bills and this overhaul bill could be considered as soon as they finish the appropriations process.

Ted Cruz Leading Effort to Block Lame-Duck Congressional Session

Senator Ted Cruz (R-TX) is leading a conservative effort to end any chance of a lame-duck congressional session. Sen. Cruz and other conservatives see huge dangers in having a session after the November elections, which they think could be used to move legislation backed by President Obama or even to confirm his Supreme Court nominee, but others who are disappointed with the current pace of this year's congressional work see the lame duck as virtually the only chance of moving some of their most prized bills.

The Conservative Action Project is circulating a letter urging Speaker Paul Ryan (R-WI) and Majority Leader Mitch McConnell (R-KY) to swear off the prospect of a legislative session in the window between Election Day and the start of a new Congress. Per the letter, "By promising now that there will be no lame duck session of Congress (except, of course, in the case of an unforeseen sudden emergency requiring immediate federal action), the Republican-led Congress can take an important first step in restoring the American people's trust in their government."

U.S. Supreme Court Hears Arguments in Case on President Obama's Immigration Reform Executive Actions

The U.S. Supreme Court heard arguments in the case *United States v. Texas* on Monday. At issue are a pair of 2014 executive actions by President Obama that were taken in response to congressional inaction on immigration reform. One would give limited protection from deportation to undocumented immigrants whose children are American citizens or permanent legal residents. The other would increase the number of undocumented youths (initially 1 million) who were protected under a 2012 executive action. Between the Deferred Action for Parents of Americans (DAPA) and the Deferred Action for Childhood Arrivals (DACA) plans, 4.9 of the nation's 11.3 million undocumented immigrants would be shielded from deportation.

However, both executive actions were swiftly blocked and 26 states sued, arguing that President Obama had exceeded his authority. In Feb. 2015, a federal judge in Texas issued an injunction, which was upheld by a Fifth Circuit panel. The Department of Justice appealed, setting the stage for Monday's arguments before the high court. A ruling is expected by the end of June. The justices told both parties to prepare to answer four fundamental questions:

- Do the states have standing to sue?
- Is the executive action "arbitrary, capricious, or otherwise not in accordance with the law"?
- Did Obama bypass the "notice-and-comment procedures" in the Administrative Procedures Act?
- Did he violate the Constitution's "take care" clause, to "faithfully execute" laws as passed by Congress?

The federal government argued that President Obama acted pragmatically, prioritizing some deportations and deferring others, because Congress appropriates only enough funding to remove 400,000 undocumented immigrants a year. Attorneys for Texas argued that President Obama's actions grant lawful presence to aliens who would otherwise be unlawfully present.

DOL Issues Revised Fiduciary Rule

The Labor Department released a substantially revised final version of its controversial fiduciary rule that's intended to ensure that retirement savers get investment advice in their best interest. Among the key changes to the rule, which is also known as the conflict-of-interest rule, are:

- A clarification of what constitutes retirement advice. Advisers will not act as fiduciaries merely because they recommend that a customer hire them to render advisory or asset management services.
- The rule also clarifies that investment advice does not include communications that a reasonable person would not view as an investment recommendation, such as a newsletter; commentary on television, radio or public media talk shows; remarks made in widely attended speeches and conferences; research papers; marketing materials; and general market data.
- The best-interest-contract exemption (BICE) is available for more advice, such as being available for proprietary products and any assets, not just those listed in the proposed rule. The best BICE is also available for advice to small businesses that sponsor 401(k) plans, as well as advice to individual retirement account owners and plan participants.
- The BICE requirement was eliminated for ERISA plans and their participants and beneficiaries. However, advisory firms must acknowledge in writing that they, and their advisers, are acting as fiduciaries when providing investment advice.
- Flexibility on when to enter into a contract, so that potential clients don't need to sign on the dotted line the moment they walk in the door.
- Only the firm and the client must sign the contract. Under the proposed rule, a firm's advisers also would have had to sign.
- Streamlining and simplification of disclosures, which now focus on the firm's conflicts of interest.
- Data-retention requirements are eliminated. Instead, firms must retain only the records showing they complied with the rule.

- A “level fee” provision that allows advisers and firms only receiving a “level fee” in connection with the advice they provide to rely on the BICE without entering into a contract. To be protected by this provision, special attention must be paid (and documentation kept) to show that certain specific recommendations, including a recommendation to roll over assets from an employer plan to an IRA, are in the customer’s best interest.
- Grandfathering for additional compensation from previously-acquired assets advisers received prior to the BICE.
- A phased-in extended implementation period. The rule will take effect in April 2017, but firms will only be required to comply with more limited conditions in order to take advantage of the BICE, including acknowledging their fiduciary status, adhering to the best-interest standard and making basic disclosures of conflicts of interest. The other requirements will go into full effect on Jan. 1, 2018. During the phase-in period, the DOL will focus on compliance assistance.