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# Congressional & Administration News

### What to Know in Washington: Talks on Immigration, Spending

By Zachary Sherwood | April 12, 2019

Bloomberg Government

Congress left Washington yesterday for a two-week break, but there’s plenty of deal-making to do behind the scenes as lawmakers look to lay the groundwork for a busy spring agenda when they return.

Senate Majority Leader Mitch McConnell (R-Ky.) said yesterday he hopes to reach what so far have been elusive bipartisan breakthroughs on immigration, infrastructure and budget caps.

“It’s time to act” on immigration, he told reporters. “It’s long past due for us to sit down in a bipartisan basis and try to fix as much of this problem as we can.”

The situation on the U.S.-Mexico border “can’t be solved without legislation because the current asylum laws aren’t working out well, given the vast number of people who are coming here and seeking asylum,” McConnell added. He didn’t rule out including Democratic priorities like language addressing young undocumented immigrants who came to the U.S. as children and are known as dreamers.

“That’s what a negotiation produces, some kind of an understanding about how many of these different issues you can get enough agreement to solve,” he said.

McConnell said separately that talks have begun among his staff, Speaker Nancy Pelosi’s (D-Calif.) staff and the White House on a two-year deal on budget caps to clear a path for appropriations. Congress also must increase the debt limit later this year. McConnell said he’s still working to pass disaster relief, which has been mired in a dispute over how much to spend on Puerto Rico.

**White House Detainee Plan:** Meanwhile, the Washington Post reported last night that White House officials proposed moving immigrant detainees to districts of President Donald Trump’s political opponents. The report said administration officials proposed moving detained immigrants to “sanctuary cities” in November and again in February amid the government shutdown. Pelosi’s district was among those officials wanted to target, according to the report.

The legal department at U.S. Immigration and Customs Enforcement rebuffed the idea as inappropriate, and a White House official and DHS spokesman told the Washington Post in a statement that the proposal is no longer under consideration.

**Coming Up in Congress**

**ACA, Drug Bills on Radar for May:**Bills to tackle rising drug prices and shore up Obamacare are headed for House votes in early May, Democrats said yesterday, as they seek to show they’re making progress on key priorities for voters. The slate of legislation coming to the House floor after the two-week spring recess have wide support among Democrats, and the drug-pricing bills also have backing from House Republicans.

However, the next steps on tackling prescription drug prices and health-care costs may prove tougher to find agreement on. “We have been very successful at extending coverage and the politics of that were tough,” Rep. Donna Shalala (D-Fla.) said. “The politics of containing costs is tougher, and it’s different politics because there are winners and losers when you’re talking cost containment.”

**Infrastructure Effort Could Reach $2 Trillion:**Congressional Democrats are laying the groundwork for a broad infrastructure package that could reach $2 trillion in new investment, and they are hoping to make it a bipartisan push with a House vote by June or July, several members said during a retreat in Leesburg, Va.

House and Senate Democratic leaders will meet with Trump in the coming weeks, Pelosi and Senate Minority Leader Chuck Schumer (D-N.Y.) said at news conferences yesterday. However, Schumer wouldn’t engage in discussing potential pay-fors, like whether he’d support raising the gas tax.

**Disaster Aid:**Trump yesterday encouraged Senate Republicans to negotiate a deal with House Democrats on disaster aid, aiming to end a standoff over money for Puerto Rico and bring a bill to the Senate floor soon after the two-week recess ends, Senate Appropriations Chairman Richard Shelby (R-Ala.) said.

Several senators met with the president yesterday and discussed “trying to make some overtures to the Democrats to settle this disaster package,” Shelby told reporters afterward. Trump made suggestions, instructed the White House and Senate Appropriations staff to coordinate, and encouraged Republicans to make an offer to Democrats, Shelby said.

**Saudi Alliance Makes Khashoggi Issue ‘Tough':**The U.S. alliance with Saudi Arabia has made it difficult for Congress to find the right way to respond to the murder six months ago of columnist and government critic Jamal Khashoggi, McConnell said yesterday. “What clearly happened is outrageous and unacceptable. On the other hand, Saudi Arabia is an important ally against the Iranians, so it is a difficult problem to figure out exactly the most appropriate response.”

**Trump’s Fed Policy in Spotlight**

**Cain’s Nomination**: Trump has said privately that he knows Herman Cain will have trouble getting confirmed to the Federal Reserve Board, people familiar with the matter said yesterday. Some of Trump’s closest advisers want the FBI to finish its background check before he makes his decision on whether to formally nominate Cain, but others said they are aware of the misgivings of GOP senators and that they wouldn’t be surprised if Cain withdraws. The people spoke hours after Sen. Kevin Cramer(R-N.D.) said he wouldn’t back Cain if Trump nominated him to the Fed, and hopes the president will make another choice.

**Powell Talks to Democrats:**Federal Reserve Chairman Jerome Powell asserted the central bank’s independence in remarks to Democratic lawmakers, telling them the Fed doesn’t consider political pressure in any way, according to two people in the room for the closed-door event. Powell’s appearance last night at the Democratic retreat in Leesburg came as many of the lawmakers gathered there have raised alarms about the Fed’s independence in the face of Trump’s frequent criticisms of the central bank.

Powell declined to discuss the president, according to the people, a comment that was greeted by applause. The chairman told the lawmakers that interest rates are at about the right level given current economic conditions and that the benefits of U.S. economic growth haven’t been as widely spread as the Fed would like. When asked about the potential nominations of Cain and conservative activist Stephen Moore to the Federal Reserve Board, Powell said he doesn’t discuss Fed nominations.

**Politics & Elections**

**Sanders Prepares Taxes:**Sen. Bernie Sanders (I-Vt.), the Democratic socialist who’s built a career promoting policies to raise taxes on millionaires and billionaires, said he plans to make public his federal tax returns by Monday, the annual filing deadline. Sanders has said he’ll release 10 years of returns, and disclosed this week that his literary fame of recent years has catapulted him into the ranks of top earners he’s derided for decades. “I wrote a best-selling book,” Sanders told the New York Times this week. “If you write a best-selling book, you can be a millionaire, too.”

The senator refused to release his full tax returns when he vied for the Democratic presidential nomination in 2016. He’s contending again in 2020 as one of the front-runners, and is attempting to manage the disconnect between decades of rhetoric about the “top 1 percent” and his own position within that group.

**Cybersecurity Election Aid:**The Federal Election Commission delayed a vote on a plan to provide free cybersecurity assistance for campaigns, with the panel’s chairwoman voicing concerns it could the open the door to corporate money in campaigns. Ellen Weintraub said she supported the goal of cybersecurity but questioned whether the proposal could grant broad leeway for providing aid to campaigns outside the limits and restrictions of campaign finance law, including a longstanding ban on corporate contributions to candidates.

“We do not want to inadvertently blow a hole in the corporate contribution ban,” the Democratic chairwoman said at a commission meeting yesterday.

**AOC Says Conservatives Inciting Violence:**Rep. Alexandria Ocasio-Cortez (D-N.Y.) accused conservative activists and a newspaper of inciting violence against a fellow progressive House member, Rep. Ilhan Omar (D-Mich.). Ocasio-Cortez said at the Democratic retreat that The New York Post endangered Omar with a front page yesterday that criticized her comments about the Sept. 11 terrorist attacks.

**In the Courts**

**High Court Tested on Trademark Rights:**A clothing line with a vulgar-sounding name is about to test the U.S. Supreme Court’s commitment to free speech. The justices will hear arguments Monday from a lawyer for Erik Brunetti, who was rejected when he sought federal protection for his “FUCT” trademark. Brunetti is asking the court to strike down a century-old provision that bars the inclusion of “scandalous” and “immoral” trademarks on a U.S. government registry.

Recent history suggests the justices will be skeptical about the prohibition. Two years ago, the court unanimously threw out a similar ban on disparaging trademarks, saying that provision violated the First Amendment.

**Private Tender Offer Suits:** Two computer hardware firms who accidentally left a chart out of their tender offer will try to convince the U.S. Supreme Court not to hold them responsible on Monday. The companies will argue that negligently omitting material information from a tender offer isn’t enough to make them liable to investors — if investors even have the right to sue over the alleged omissions at all.

**Judge Misconduct Loophole:**Maryanne Trump Barry’s quiet retirement earlier this year from a federal appeals court short-circuited a judicial ethics investigation, allowing the president’s older sister to dodge potentially serious consequences such as loss of full retirement benefits. The former Third Circuit judge faced the civil probe that was triggered by a New York Times report last year about whether she and her siblings, including her brother Donald, benefited from alleged tax schemes linked to her late father. Four complaints of judicial misconduct were filed in October of 2018. At the time, Barry, now 82, was semi-retired and not hearing cases. The Judicial Council of the Second Circuit terminated its inquiry because it can’t investigate retired judges.

The treatment of her case is not without recent precedent, and raises questions about a loophole in the conduct code for federal judges that allows them to avoid scrutiny by stepping down. A proposed ethics bill is making its way through Congress to address the issue.

**What Else to Know**

**North Korea Deal:** Trump rejected calls for confidence-building economic projects with North Korea, in a blow to South Korean leader Moon Jae-in’s efforts to restart nuclear talks with Kim Jong Un. The U.S. president, speaking yesterday during a White House meeting with Moon, said “this isn’t the right time” for inter-Korean projects including reopening a joint industrial park kept shuttered by sanctions. Still, he held out the possibility for other incremental steps that could keep negotiations alive.

**Trade Wars:**Japan is finally stepping into the ring for a fight it had managed to dodge for more than two years: Bilateral trade talks with Trump. The world’s third-biggest economy has a lot at stake in the talks, which are expected to start next week in Washington just as the U.S.’s negotiations with China appear to be winding down. Prime Minister Shinzo Abe is desperate to avoid tariffs or quotas on lucrative auto exports, while Trump wants to crack open Japan’s agricultural market and reduce a $60 billion trade deficit.

**Regulatory Oversight:** Agencies will have to start regularly submitting economic data about all of their rules to the White House regulatory affairs office to avoid potential violations of the Congressional Review Act, under a new memorandum released yesterday. Until now, agencies were only required to send regulations they deemed “significant” for review by the Office of Information and Regulatory Affairs. The problem, according to the new memo, is that OIRA does not consistently receive from agencies the information necessary to determine whether a rule is major and therefore subject to the requirements of the Congressional Review Act.

**FCC to Auction 5G Airwaves:** The U.S. Federal Communications Commission plans to auction the broadest set of airwaves yet to speed the nation’s adoption of super-fast 5G wireless communications, as well as devoting more than $20 billion to improving mobile connections in rural areas. The actions represent the latest steps by the FCC to hasten the arrival of 5G, which will allow such things as driverless cars and remote surgery, while smart machines in homes and factories communicate via the so-called internet of things.

**Transgender Ban Goes Into Effect:**The Pentagon’s new transgender service policy is going into effect today, despite four ongoing federal lawsuits by active-duty troops and opposition from medical professionals. The American Medical Association underscored its view yesterday the military misinterpreted the scientific data on gender dysphoria to craft the exclusionary policy.

**New Farmers Are Growing Share of Industry:**Beginning farmers make up a growing share of all U.S. farmers, the Agriculture Department said. Farmers with 10 years or less of experience made up 27 percent of U.S. producers, according the USDA’s 2017 Census of Agriculture released Thursday. The census is conducted every five years by USDA’s National Agricultural Statistics Service with information gathered directly from farmers and ranchers.

**Lawyer’s Indictment Puts Pressure on Foreign Lobbyists:**The indictment of Gregory Craig, a politically connected lawyer accused of concealing his firm’s work for Ukraine, delivered a warning shot to those who’ve made a business of representing foreign governments and companies. The increasing crackdown on people who fail to register their activities on behalf of foreign clients is prompting some professionals to turn down opportunities and spurring more to formally disclose their work. The Foreign Agents Registration Act, a measure that was previously lightly enforced, is in the spotlight following Special Counsel Robert Mueller’s investigation into Russian interference in the 2016 election.

**Rosenstein Defends Barr on Mueller Report:**Attorney General William Barr is “being as forthcoming as he can, and so this notion that he’s trying to mislead people, I think is just completely bizarre,” outgoing Deputy Attorney General Rod Rosenstein told The Wall Street Journal in an interview. Responding to Democrats’ criticism over the release of the report, Rosenstein said “it would be one thing if you put out a letter and said, ‘I’m not going to give you the report.’ What he said is, ‘Look, it’s going to take a while to process the report. In the meantime, people really want to know what’s in it. I’m going to give you the top-line conclusions.’ That’s all he was trying to do,” Rosenstein said.

**Assange Extradition:** Julian Assange spent seven years in the Ecuadorian embassy in London trying to avoid facing what he believed were imminent American charges. Now, after he finally overstayed his welcome, he will try to buy more time in the U.K. courts. Lawyers for the WikiLeaks founder said he will fight extradition to the U.S., where he faces charges that he took part in a hacking conspiracy with ex-Army analyst Chelsea Manning to disclose classified government material.

While Assange’s attorneys argued that the charges are an illegal attempt to punish a journalist for publishing information, extradition lawyers said that the best he will be able to do is delay his arrival to the U.S. through a process that will likely stretch into 2020.

# Agriculture News

New U.S. Agriculture Census Shows Farmer Age Keeps Rising

By Millie Munshi | April 11, 2019

Bloomberg Government

The average age of American farmers climbed to 57.5 in 2017, up 1.2 years from 2012, the Department of Agriculture said in its first new U.S. agricultural census since 2012.

* There are 2.04 million farms and ranches, down 3.2% from 2012
* The data “tells us both farm numbers and land in farms have ongoing small percentage declines since the last Census in 2012”: USDA
  + “At the same time, there continue to be more of the largest and smallest operations and fewer middle-sized farms”

# Federal Employee News

House Signals New Direction on Workplace Policies

Fedweek | April 9, 2019

The impact of the change of the House to Democratic control is starting to show in the budget process where important policy decisions affecting federal employees and retirees annually are made.

Those leaders have said they don’t plan to draft a budget “resolution” for the fiscal year beginning October 1, instead moving a measure to set broad new spending limits without requiring offsetting cuts or taking positions on specific programs. A budget resolution is a planning document that commonly orders Capitol Hill committees, including the ones overseeing federal workforce matters, to achieve savings.

The Senate Budget Committee already has approved a budget resolution that assumes enactment of a law requiring employees to pay more into the retirement system. However, it is questionable whether that measure now will even receive a full Senate vote, since there will be no House bill to be addressed in a conference between the two. That is a reversal of recent prior years when the House under Republican leadership had passed such measures but stalled when the Senate didn’t produce a counterpart.

As in those years, the focus now is shifting to writing the bills that fund agencies, including the general government appropriations bill that is the main vehicle for decisions including personnel policies and pay and benefits matters. In the first firm step toward writing that bill, Democratic leaders of the House Oversight and Reform Committee recommended no funding for the administration’s request to shift most of OPM’s operations to the GSA, saying they have “grave concerns” about the potential impact on the civil service as OPM’s policy-making role would move into the White House.

Those leaders previously had said they opposed raising retirement contributions as well as the numerous other proposals in the White House budget that would lessen the value of retirement benefits. They further are backing a 3.6 percent raise for January 2020 contrary to the administration proposal to provide no raise. Those and other issues likely will be addressed when the Appropriations Committee writes and moves that bill through the House, which commonly occurs in the summer.

Disputes over Union, Disciplinary Policies Return to Surface

Fedweek | April 9, 2019

After largely lying dormant since last fall, disputes have revived over key federal workplace policies involving disciplinary policies and the role of unions.

At issue is a series of three executive orders issued last May restricting what agencies would agree to bargain over, the amounts and allowable uses of official time, and protections for employees facing discipline for alleged poor performance or misconduct. Several months later a federal judge held invalid many of those provisions, although certain others remain on the books.

Most recently, a federal appeals court heard oral arguments in the administration’s appeal of that decision. As it had before the lower court, the Justice Department argued that the orders were within a President’s discretion and that any challenge to them belongs at the Federal Labor Relations Authority, not in federal court. Federal unions repeated their position that the orders exceeded the bounds of the Civil Service Reform Act and that the FLRA has no authority to decide on the validity of executive orders.

The appeals court likely will not issue a decision for several months at least. Beyond that lies the prospect that the losing side would appeal to the Supreme Court, delaying resolution by another year or more.

The unions meanwhile are separately asserting that some agencies are setting policies—by refusing to bargain and imposing new contract language—that go beyond what is still allowed by the lower court’s order. Numerous such complaints are pending before the FLRA.

In one of the first to reach a decision, the Federal Service Impasses Panel, an arm of the FLRA, upheld the HHS in a complaint over its move to restrict telework and the allowable use of leave around the late-year holidays, among other contract changes. The NTEU union, which brought that complaint, said the prior policies will remain in effect, though, while other disputes remain pending.

Hope Grows that Pay Period Seven Will Be Lucky for Raise

Fedweek | April 9, 2019

Federal employees for the moment are in something of a lull in the storm over the pay raise, with attention focusing on whether the next pay distribution will contain the recently finalized higher rates and back pay retroactive to January 6.

The current biweekly pay period for most employees, the seventh of the year, ends Saturday (April 13). Pay distributions typically are made about a week later—a few days sooner for employees of agencies, a few days later for others. Payroll processers will have had a full biweekly period to work with since raises ranging from 1.66 to 2.27 percent by locality were specified in an executive order.

Many employees are hoping that the distribution will include the raise, and that they also will receive back pay reflecting the difference between the old and the new rates for those seven pay periods. However, there has been no announcement from either OPM or the major payroll processors—run by DoD, Agriculture, Interior and GSA—either way.

In past similar situations, the back pay in some cases was part of a regular pay distribution and in others it was made as a separate distribution. However, given the complexity of the project, there were some errors that took several more pay cycles to straighten out.

Reminder: COLAS, Pay Raises Different

Fedweek | April 9,2019

A number of federal retirees have been asking about how the federal pay raise will affect them, again illustrating a long-running misunderstanding regarding the differences between raises and COLAs.

Only active employees will receive the raise, which is expected to show up in pay distributions soon—possibly with the next one—and back pay retroactive to January 6 (the start of the first full pay period of the year, the traditional effective date for raises) is to be paid, as well.

Although many employees refer to raises as COLAs—cost of living adjustments—raises are not linked to living costs. Instead, they are negotiated in the annual budget process involving the White House and Congress—which can be lengthy and contentious, as underscored by the latest cycle, which at first resulted in no raise being paid in January only to be overridden later by enactment of a 1.9 percent average raise retroactive. Part of the total raise figure varies by locality based on comparisons of federal vs. non-federal salaries conducted by the Labor Department, resulting in a range from 1.66 to 2.27 percent.

In contrast, federal retiree COLAs are paid each January based on an inflation index comparing the average of the third calendar quarter of a year to the previous year’s third quarter, an announcement made in late October for the upcoming year. The same figure is used to increase benefits under some other retirement programs including Social Security and military retirement.

Payment of a COLA is automatic unless Congress and the White House agree to block it; however, there have been several recent years in which the count finished in negative territory, resulting in no COLA being paid.

While COLAs do not vary by locality, they do vary between the two main federal retirement systems. While CSRS retirees get the full adjustment, FERS annuities are not increased for those under age 62 except for disability retirees, survivor beneficiaries and those who retired from occupations requiring earlier mandatory retirement.

Further, if the inflation number is between 2 and 3 percent, the COLA for FERS retirees eligible to receive one is 2 percent; and if 3.1 percent or more, it is 1 percentage point less (the full adjustment is paid under both systems if it is 2 percent or less). That rule applied when the retiree COLAS were paid in January, when benefits increased by 2.8 percent for CSRS retirees and by 2 percent for FERS retirees who were eligible for the COLA.

In addition, COLAs are prorated for retirees who have been on the annuity rolls for less than 12 months.

The count toward the January 2020 COLA will reach its halfway mark soon with the announcement of inflation figures through March. The annual negotiation on Capitol Hill over a raise for active employees meanwhile has just started, with President Trump once again recommending no raise but some Democrats pushing for 3.6 percent.