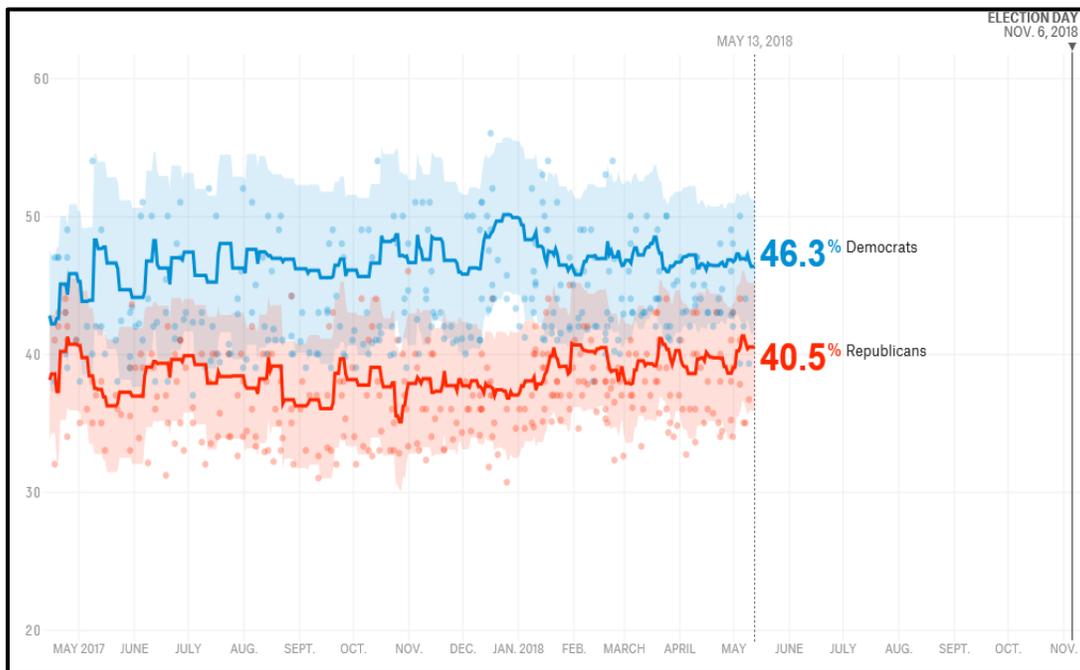


# Tax Policy Update

May 15, 2018

## NUMBER OF THE WEEK: 5.8



Source: FiveThirtyEight

The percentage that Democrats are leading Republicans by in a generic congressional ballot for 2018, according to a May 13 estimate by [FiveThirtyEight](#).

It's still a ways from Election Day, but House Minority Leader Nancy Pelosi (D-CA) is making no secret of her intent to roll back parts of the GOP tax law if Democrats take control next Congress. Pelosi said that Democrats would revisit the law and enact changes to benefit the middle class, create jobs, and reduce the deficit. For example, extending the individual tax cuts beyond 2025 would be a top priority.

## LEGISLATIVE LANDSCAPE

**Making the Cut.** House Republicans have introduced legislation ([H.R. 3](#)) for the administration's \$15 billion rescissions package. The *Spending Cuts to Expired and Unnecessary Programs Act* targets unused funds that were appropriated in past fiscal years.

Under the proposal, the Treasury Department would take a \$227 million hit — the following accounts are in the crosshairs:

- Treasury Forfeiture Fund
- Community Development Financial Institution Fund Program
- Capital Magnet Fund

Interestingly, even though the rescissions package would reduce *budget authority* by \$15 billion, the Congressional Budget Office (CBO) [estimates](#) that it would only reduce *outlays* (read: actual spending) by \$1 billion over a 10-year period. And that's because much of the targeted funds would have remained unspent anyway under current law.

The legislation could hit the House floor for debate as early as this week. The GOP is hoping to take a vote before the Memorial Day recess. Whether there's enough support remains unclear, as both House and Senate appropriators have cast a wary eye at the proposal.

**Say Redesign One More Time.** A series of IRS reform related bills passed by the House on April 17 are still pending in the Senate, but it is unclear as to how the upper chamber will proceed. The Senate Finance Committee is currently reviewing the House bills and will craft its own package in the coming weeks.

According to intel gathered by the *Tax Policy Update* team, Senate Finance Committee Chairman Orrin Hatch (R-UT) and Ranking Member Ron Wyden (D-OR) are unlikely to hold a markup for the bill. All changes will need to be made during the drafting process. Additionally, the regulation of paid return preparers may still be in play, though it is unlikely that this politically fraught provision will make it into the final bill.

Last week, Chairman Hatch said that he is working closely with Ranking Member Wyden, as the committee moves forward with legislation. Sens. Rob Portman (R-OH) and Ben Cardin (D-MD) are heading up efforts for the committee. Both have indicated that they hope to introduce a package of noncontroversial bills, though Sen. Portman would like to hold hearings on the provisions. This will likely push the release of a bill until after Memorial Day recess.

House Ways and Means Chairman Kevin Brady (R-TX) noted that he doesn't envision any issues on the Senate side, though he does expect it to take some time for the committee to

reach an agreement on a final bill. Chairman Brady was told that the Senate will likely use the House bill as a “baseline.” The Senate will likely recycle parts of [S. 3156](#) and [S. 3157](#), two bills on taxpayer rights and identity theft protection that were marked up by the Senate Finance Committee in 2016.

Check out the *Tax Policy Update* team’s [comparison](#) of the 2016 taxpayer identity theft legislation marked up by the Senate and the House-passed [Taxpayer First Act](#).

**Oh, That’s Nice.** Congress has a habit of cramming hearings in before members depart for the holiday. There is [a slew of hearings this week](#) ahead of the Memorial Day recess — here are three noteworthy ones:

- The **House Ways and Means Committee** will hold a May 16 hearing to highlight the positive economic impacts of the 2017 tax reform law — this is the first of a series of hearings that will give GOP members an opportunity to pat themselves on the back ahead of the midterms.
- The **House Education and Workforce Committee** will hold a subcommittee hearing on May 16 to explore legislative options to enhance retirement security.
- The **Joint Select Committee on Multiemployer Pension Plans** will hold its second hearing of the year on May 17 — this one will focus on the structure and financial outlook of the Pension Benefit Guaranty Corporation.

**Don’t Bet the Farm on NAFTA.** Capitol Hill watchers are keeping an eye out on two big items this week — the 2018 farm bill and NAFTA.

The farm bill ([H.R. 2](#)) is expected to hit the House floor as early as Wednesday. Republicans remain split on the measure, and Democrats are opposed to the bill’s work requirements for food stamp recipients. Given the disagreements, passage in the House is up in the air. As for the Senate, the bill as written is a non-starter.

Agricultural issues are proving to be a headache in the NAFTA renegotiations as well. The trade representatives are unlikely to reach an agreement in principles this week, which means lawmakers won’t be able to use fast-track authority to approve the trade deal in 2018.

House Speaker Paul Ryan (R-WI) has marked May 17 as the deadline for administration officials to produce an agreement. Under the Trade Promotion Authority, Congress must be given a 90-day notice of the administration’s intention to sign and enter into a trade agreement.

## REGULATORY WORLD

**Tea from ABA's 2018 May Meeting.** The *Tax Policy Update* team's Dan Chung attended the American Bar Association's Section of Taxation meeting last week, where tax practitioners and policymakers convened to discuss various tax issues and topics. Here are his field notes:

- Interest Expensing – 163(j): Guidance is expected late summer or fall. Brett York, attorney-advisor at the Treasury, is the point person on this issue. Treasury plans to add other factors that will alter the calculation of adjusted taxable income — a figure that companies use to determine how much of their business interest expense they can deduct.
- Pass-through Deduction – 199A: Guidance is expected mid- to late-July.
- GILTI – 951A: Guidance is expected late summer. There have been questions on whether taxpayers can include a “gross-up” in the GILTI basket (note: this is the amount equal to the taxes deemed to have been paid on the income that must be included in the corporation's gross income under tax code Section 78).
- BEAT – 59A: Guidance should be ready by November or December. Kevin Nichols, senior counsel at Treasury, is the point person for this issue.

On the energy front, Treasury's Hannah Hawkins indicated that regulators are still working on guidances relating to the solar investment tax credit, Section 45J, Section 45Q, and 163(j) allocation for public utilities.

**Get in Formation.** The Office of Information and Regulatory Affairs has updated its Unified Agenda of Regulatory and Deregulatory Actions for Spring 2018, providing a comprehensive look at the federal agencies' rulemaking plans in the near-term. Based on a preliminary review, the *Tax Policy Update* team has flagged some of the regulatory items that may be of interest to our clients. The list below is not meant to be exhaustive, but it provides a snapshot of what some of the key agencies in the energy, financial services, and tax policy space are up to over the next few months. Full agency listings are available [here](#).

### **Select Regulatory Items in the Unified Agenda (Spring 2018)**

- Small Scale Natural Gas Exports (DOE)
- Disclosure of Payments by Resource Extraction Issuers (SEC)
- Personalized Investment Advice Standard of Conduct (SEC)
- Self-Certification of Nonbeverage Product Formulas (TREAS)
- Proposal Regarding Labeling Wines Containing Added Distilled Spirits (TREAS)

- Dividend Equivalents From Sources Within the U.S. (TREAS)
- REIT Income Tests (TREAS)
- Tax on Property Owned by a C Corporation That Becomes Property of a RIC or REIT (TREAS)
- Definition of Qualifying Energy Property, Sec. 48 Investment Tax Credit (TREAS)
- Sec. 965 Transition Tax (TREAS)
- GILTI (TREAS)
- Sec. 59A (TREAS)
- Regulations Providing Guidance under Sec. 1446(f) (TREAS)
- Foreign Tax Credit Guidance (TREAS)
- Sec. 451(b) Requirements (TREAS)
- Sec. 199A Guidance (TREAS)
- Rules Regarding Business Interest Limitation Under Section 163(j) (TREAS)
- Guidance under Sec. 163(j) Applicable to Pass-Throughs (TREAS)

**FDII Problems.** European Union (EU) finance ministers indicated that the foreign-derived intangible income (FDII) provisions could “face challenges” because it appears to be an illegal export subsidy under World Trade Organization (WTO) rules. Tax practitioners have suggested that FDII falls within the definition of prohibited export subsidies: “the allowance of special deductions directly related to exports or export performance, over and above those granted in respect to production for domestic consumption, in the calculation of the base on which direct taxes are charged.” The EU has not issued a formal WTO complaint about FDII; but earlier in December 2017, five of the EU countries sent a joint letter to Treasury about compliance concerns.

## LINE ITEMS

1. Four states are holding primaries today: Idaho, Nebraska, Oregon, and Pennsylvania. Sens. Deb Fischer (R-NE) and Bob Casey (D-PA) are on the ballots.
2. Senate Banking Committee Ranking Member Sherrod Brown (D-OH) [criticized](#) big banks for failing to reinvest in their workers after receiving “massive tax windfalls” from the GOP tax law.
3. The SEC’s proposed rulemaking on the standard of conduct for broker-dealers and investment advisers has been published in the [Federal Register](#), officially kicking off the public comment period. Comments are due Aug. 7, 2018.
4. On May 15, the Senate Banking Committee will meet to consider the nominations of Richard Clarida to be a member and vice chairman of the Federal Reserve Board of

Governors and Michelle Bowman to be a member of the Federal Reserve System Board of Governors.

5. The White House is planning to nominate Gordon Hartogensis to replace Tom Reeder as director of the Pension Benefit Guaranty Corporation. According to a press release from the administration, Hartogensis is an investor and technology sector leader with experience managing financial equities, bonds, private placements, and software development.

## COMMANDER-IN-TWEET



**Donald J. Trump**   
@realDonaldTrump

Follow

China and the United States are working well together on trade, but past negotiations have been so one sided in favor of China, for so many years, that it is hard for them to make a deal that benefits both countries. But be cool, it will all work out!

12:22 PM - 13 May 2018

19,382 Retweets 96,474 Likes



 11K  19K  96K

## IN THE QUEUE

### Congressional Activity

*Tuesday, 5/15*

#### **Senate Banking Committee**

Meeting to consider the nominations of Thelma Drake to be administrator of the Federal Transit Administration; Jeffrey Nadaner to be assistant secretary of Commerce for export enforcement; and Seth Appleton to be HUD assistant secretary for policy development and research. The committee will also hold a hearing on the nominations of Richard Clarida to be a member and vice chairman of the Federal Reserve Board of Governors and Michelle Bowman to be a member of the Federal Reserve System Board of Governors.

*Wednesday, 5/16*

**House Education and Workforce Committee**

Subcommittee hearing on “Enhancing Retirement Security.”

**House Financial Services Committee**

Subcommittee hearing on the “Oversight of the SEC’s Division of Enforcement.”

**House Appropriations Committee**

Subcommittee markup of the FY 2019 spending bill for Transportation-HUD.

**House Ways and Means Committee**

Hearing on the economic impact of the new tax law.

*Thursday, 5/17*

**Joint Select Committee on Multiemployer Pension Plans**

Hearing on the structure and financial outlook of the PBGC.

**Agency Activity**

*Tuesday, 5/15*

**IRS**

Open meeting of the Taxpayer Communications Project Committee; open meeting of the Taxpayer Assistance Center Improvements Project Committee; open meeting of the Special Projects Committee.

**CFPB**

Open meeting of the Credit Union Advisory Council.

**Other Activity**

*Wednesday, 5/16*

**Woodrow Wilson Center**

Discussion on “Paying for Retirement: The Challenges Facing Global Private Pensions.”

**The Hill**

NAFTA discussion with Reps. Suzan DelBene (D-WA) and Erik Paulsen (R-MN), among others.

**American Enterprise Institute**

Discussion on “Fixing Health Care” with remarks from HHS Secretary Alex Azar.

Thursday, 5/17

**Business Roundtable**

Discussion on U.S. infrastructure with Business Roundtable Chairman Jamie Dimon and NBC's Chuck Todd.

**Washington International Trade Association**

Discussion on the impacts of a trade war with China.

**BakerHostetler**

29<sup>th</sup> Annual Legislative Seminar with special guest House Speaker Paul Ryan.

**POLITICO**

Morning Money live breakfast briefing with House Financial Services Chairman Jeb Hensarling (R-TX) on the state of the U.S. economy and the fiscal fights ahead in 2018.

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