Washington Update

REPUBLIC CONSULTING LLC

December 3, 2013

Lawmakers spent November attempting to move forward on some outstanding fiscal and domestic policy issues. By and large, the month belonged to healthcare. The problems with the rollout of the Affordable Care Act (ACA) continued to dominate the news in November and are likely to draw further scrutiny from Congress over the next few months. Fresh off the government shutdown, legislators were also busy dealing with fiscal matters. The House and Senate conferees made little progress in negotiating a compromise on the budget, due by December 13, to extend government funding beyond the current CR expiration date of January 15, 2014. The Farm Bill, tax reform and the debt ceiling limit are also still looming on the radar. Finding bipartisan agreement on these major issues was further complicated this month when Senate Majority Leader Harry Reid moved forward with the so-called "nuclear option" to limit the ability of the minority party to advise and consent regarding executive branch nominees.

ISSUE— GOVERNMENT FUNDING AND THE BUDGET

The mid-October deal brokered by Senate Majority Leader Harry Reid (D-NV) and Minority Leader Mitch McConnell (R-KY) to reopen the government after the shutdown extended federal funding until January 15, 2014. The budget conference committee, which was established by the Reid-McConnell deal, continues to work on a compromise between the chambers' two competing budget resolutions to avoid another shutdown.

The House and the Senate passed drastically different budgets earlier this year. The House Republican budget exacted spending cuts and entitlement reforms to reduce the deficit without raising new revenues. Senate Democrats took the opposite approach by calling for one trillion in new revenues. Led by House Budget Chairman Paul Ryan (R-WI) and Senate Budget Chairman Patty Murray (D-WA), the budget conference must work through these issues to reconcile the differences by December 13. However, the lack of an enforcement measure in the Reid-McConnell deal means that the conference committee could continue to work past this date if they have not yet reached a resolution.

The differences between the two budget resolutions, especially over the question of new tax revenues, make it unlikely that conferees will produce a grand bargain. Instead, the group is more likely to come up with a smaller agreement on funding levels for Fiscal Year (FY) 2014 and possibly FY2015. The conference committee could also consider including sequestration relief and/or reconciliation instructions for tax reform, a tool that allows for expedited consideration of policy measures in the Senate with only a simple majority needed for passage. Absent an agreement by the conference committee, the government is likely to continue operating on short-term continuing resolutions.

On December 3, it was reported that Chairman Ryan and Chairwoman Murray were getting closer to a small-scale deal in the budget negotiations. The rumored compromise would set the top line budget number at around $1 trillion, a figure that strikes a balance between the lower, Republican-favored number of $967 billion (instituted by the Budget Control Act of 2011) and the higher figure of $1.058 trillion favored by the Democrats. The deal is also said to provide about $80 billion in relief to programs affected by sequestration through budgetary savings in other areas and the inclusion of new revenue, possibly through fee increases.

Chairman Ryan and Republicans have refused to consider any new tax revenue, but Chairwoman Murray and her Democratic colleagues have said that the option should remain on the table. The inclusion of fee increases and other new, non-tax revenue sources—including auctioning broadband spectrum, higher fees on airport security, and changes to federal retirement benefits—may provide the compromise needed to move forward.

The deal still faces several challenges if it is to move forward. Ryan and Murray will need to convince rank and file members that the compromise top line number is the best way forward. They will also need to navigate the waters of how to pay for sequestration relief without angering Republicans who do not want any new taxes and Democrats who may balk at any proposals to shift sequestration cuts to mandatory entitlement programs

Despite the progress on the budget, Speaker John Boehner (R-OH) has made contingencies should the budget conference committee fail to provide top line numbers before the expiration of the current CR on January 15. The Speaker has said that he is prepared to move a bill funding the federal government at a rate of $967 billion if the budget negotiators cannot reach a deal. In the past, Democrats have criticized this number for being too low, but Leader Reid is rumored to be open to the bill if it would prevent a future shutdown.

ISSUE—DEBT CEILING

The debt ceiling saw no legislative action this month. The Reid-McConnell plan that reopened the government also lifted the statutory debt limit just days before it was set to be breached. The limit was lifted until February 7, 2014, but the Treasury Department could use extraordinary measures to push back the actual default date. On November 22, the Congressional Budget Office (CBO) announced that Treasury could use those measures to push the actual default date into March and possibly later, giving legislators some additional time to pass an increase in the limit.

ISSUE—SEQUESTRATION

There was little progress on sequestration this month, despite the second round of sequestration cuts set to kick in on January 15, 2014. Democrats continue to worry about the effects of sequestration on domestic spending while Republicans are becoming increasingly concerned about cuts to the defense budget. The best hope for ameliorating some or all of the impact of sequestration will be in the budget conference. However, any sequestration relief would need to be paid for with either alternative spending cuts or new revenue. If conferees are unable to come to an agreement, another option would be to provide increased flexibility for agencies in determining how sequestration cuts are implemented to help blunt some of the impact.

ISSUE—TAX REFORM

Tax reform received renewed interest in December as several key lawmakers made moves to continue the process of rewriting the federal tax code. Senate Finance Committee Chairman Max Baucus (D-MT) released three discussion drafts targeting three different tax areas. The first draft proposal released was on international tax reform, which calls for the U.S. to switch from a worldwide tax system to one of two hybrid options that combine components of a worldwide system and a territorial system. Both options would generate an estimated $2 trillion in new tax revenue from overseas income.

Baucus' second draft proposal dealt with tax administration, which seeks to improve the tax code by making it simpler and safer for Americans. The draft would streamline the tax filing process through changes to filing requirements, tax-related identity theft and other tax fraud laws, and reporting requirements for banks and insurance companies.

Finally, the third draft proposal released by Baucus this month suggested reforms to cost recovery and tax accounting rules. The draft would raise revenue through changes to accounting rules that would then be used to lower the corporate tax rate. The draft scales back a number of traditional tax breaks businesses can currently take to write-off investments and other expenses. It would also repeal the LIFO accounting method.

While there was talk all year about Baucus and Ranking Member Orrin Hatch (R-UT) working together on tax reform drafts in a bipartisan fashion, Hatch ultimately did not sign onto Baucus' drafts. The fear among Republicans continues to be that Chairwoman Murray and other Democratic budget conferees could cherry pick revenue-raising provisions from the draft proposals and attempt to include them in the budget conference report.

While the Senate saw a lot of activity on the tax reform front in November, the issue stalled in the House. Ways and Means Chairman Dave Camp (R-MI), who has repeatedly expressed his desire to produce and markup a tax reform bill before the end of the year, stated that he may wait until 2014 to produce legislation. Camp's comments came after a meeting with House Republican leaders in which they reportedly expressed reservations about moving forward with tax reform. Chief among these concerns was a belief that Republicans should focus on the continuing saga over the botched rollout of the ACA. Other concerns include needing more time for House members to get comfortable with the tough choices on tax reform and an increasing uneasiness in the business community about the possible sacrifices they may be asked to make in order to achieve a lower overall tax rate.

While tax reform appears to be off the table for 2013, its future in 2014 is also uncertain. As the schedule inches closer to the mid-term elections and the odds of any bipartisan agreement worsen, GOP leaders are wary of engaging in a high-profile rewrite of the tax code that would certainly include many controversial votes for members in tough re-election fights.

ISSUE—HEALTHCARE

Healthcare issues commanded most of Washington's attention in November as the Obama Administration attempted to do damage control for the disastrous rollout of the ACA. On October 1 (the same day that the federal government shut down), the federal and state governments launched their own insurance marketplaces provided for under the ACA. Throughout October, the federal website, Healthcare.gov, experienced serious disruptions and technical glitches.

Members of Congress from both sides of the aisle blasted the Department of Health and Human Services (HHS) and the White House for inadequately preparing for the implementation of one of the ACA's centerpiece provisions. The outcry only grew stronger in November when HHS announced that only 106,000 people signed up for insurance using either the federal or state online exchanges with only 27,000 of those enrolling via Healthcare.gov. The numbers fell far short of the Administration's first month benchmark of 500,000, and are a long way from the White House's ultimate goal of 7 million enrollees. The numbers, paired with the persistent glitches, set off a firestorm among lawmakers, with many high-profile Democrats joining Republicans in calling for the Administration to improve the system.

Aside from the technical issues with the federal exchange, many have raised concerns about low enrollment numbers and, of those who have enrolled, the high number of new Medicaid patients. Administration officials have pushed back by pointing out that Medicaid outreach efforts were already underway in most states. Others have raised concerns about low enrollment among young, healthy people, but the Administration insists that this group is more likely to select a plan closer to the end of the enrollment period.

The White House was dealt another blow with the public outcry over cancelled private insurance plans. Through October and November, many Americans received notifications from providers that their current plans would be cancelled due to the ACA. Republicans pounced on the news and claimed that the cancellations were in direct violation of President Obama's longstanding pledge that if Americans liked their plan, they could keep it. The criticism intensified as the cancellations continued, and many Democrats put pressure on the White House to rectify the situation. Eventually, President Obama announced that he would direct HHS to allow insurance companies to reissue the plans for a year, even if they do not meet the Administration's minimum standards. However, a number of state insurance commissioners have said they will not be able to comply. It is also not clear if insurance companies will be able to reissue the cancelled plans since most providers have already set their rates for 2014. The President's announcement was also not enough to quell the anger from Congress. Members introduced bills in both the House and Senate that would enshrine the President's policy change in statute. Notably, Democratic Senator Mary Landrieu (LA) introduced the legislation in the Senate, and 39 Democrats broke rank to vote for the House measure when it passed on November 15.

As these issues grabbed the headlines, HHS continued to struggle with resolving the technical problems behind Healthcare.gov. Administration officials set a deadline of ensuring that "a vast majority" of participants would be able to access the website by November 30. HHS reported that the site has been "significantly improved" with the completion of the "majority of the fixes." While unconfirmed by HHS, Bloomberg reported that 100,000 people signed up for coverage in November.

Republicans continue to investigate what went wrong, with more Democrats growing concerned that the ACA rollout issues will be a political liability in the mid-term elections. HHS Secretary Kathleen Sebelius will testify before the House Energy & Commerce Committee on December 11 with an update on the ACA rollout.

Prescription Drug Supply Chain Legislation

On November 18, the Senate passed the Drug Quality and Security Act to establish a national prescription drug track-and trace system. For months, legislators had negotiated over the bill, which was combined with a drug compounding bill. The final product will create a uniform set of federal standards to improve the safety of the drug supply chain. The President signed the legislation into law on November 27.

Sustainable Growth Rate

November saw movement on efforts to replace the sustainable growth rate (SGR), the formula used to calculate Medicare payments for physicians. In July, the House Energy and Commerce Committee (E&C) unanimously passed a bill that would permanently repeal the SGR, which is set to expire at the end of 2013, and replace it with an alternative method for calculating payments while encouraging quality measures. Last month, Chairmen Baucus and Camp released legislative framework for another SGR repeal bill. E&C leaders have endorsed the legislation.

The Baucus-Camp proposal will be marked up by the Senate Finance Committee on December 12, but is not expected to include a way to pay for the proposal at this time. If the permanent solution fails to gain traction, lawmakers will have to add another short-term SGR "patch" to the list of to do items before the end of the year, when the current fix expires.

ISSUE—FARM BILL

Conferees continue to negotiate over the expired Farm Bill. While there was a desire from House leaders to get the final bill on the floor by December 13, House Agriculture Committee Chairman Frank Lucas cast doubt on the conference committee's ability to meet that deadline after not making as much progress prior to the Thanksgiving recess as he had hoped.

Farm Bill programs had been operating under a short-term extension of the 2008 Farm Bill, but Congress failed to pass new funding before the bill expired on September 30. Previously, the Senate passed its version of the bill in June on a vote of 66-27. The House passed its version on a 216-208 vote, but stripped out funding for the Supplemental Nutrition Assistance Program (SNAP), also known as food stamps, and voted on it in a separate bill, which included nearly $40 billion in cuts to SNAP over ten years. That bill passed on a 217-210 vote. Just like the budget, the competing Farm Bills are in the process of being reconciled in a conference committee. The House and Senate conferees continue to meet to hammer out the differences between the two bills.

Aside from SNAP funding, conferees will need to reach a compromise on several other issues, including changes to crop insurance and commodity pricing issues.

Given the wide divide over some of the Farm Bill's key issues, like SNAP funding, some observers have indicated that it may be difficult for the conference committee to reach an agreement by the end of the year, possibly prompting Congress to yet again extend the 2008 bill.

ISSUE—SENATE RULES CHANGE

On November 21, the Senate approved a motion that reshaped the future use of the Senate filibuster. On a 52-48 vote, the Senate eliminated the filibuster for most executive and judicial nominees while maintaining the 60-vote threshold for Supreme Court nominees. Three Democrats—Carl Levin (MI), Mark Pryor (AR), and Joe Manchin (WV)—voted with all Republicans against the measure. The move came after months of complaints by Democrats that Republicans were using the filibuster to obstruct the confirmation of President Obama's nominees. Republicans attacked the measure as fundamentally changing the nature of the Senate which will lead to significant repercussions. The long-term consequences of the rules change are unclear. Some analysts believe that the vote is the beginning of the filibuster's ultimate end, arguing that the Senate could further restrict its use in the future. For a more detailed memorandum outlining the changes, please contact Chase Hieneman at Chase@RepublicConsulting.com.

RECENT POLLING

Job Approval: President Obama

Poll	Date	Results
Rasmussen Reports	December 2	Approve 44, Disapprove 55
Gallup	December 1	Approve 41, Disapprove 52
Reuters/Ipsos	November 26	Approve 38 Disapprove 56

Job Approval: Congress

Poll	Date	Results
CBS News	November 18	Approve 11, Disapprove 85
Fox News	November 12	Approve10, Disapprove 85
Gallup	November 10	Approve 9, Disapprove 86

Generic Congressional Ballot

Poll	Date	Results
Rasmussen	December 1	Democrats 38, Republicans 43
CNN Opinion Research	November 20	Democrats 47, Republicans 49
Fox News	November 12	Democrats 40, Republicans 43

Public Approval of Health Care Law

	Date	Results
Gallup	November 24	Support 40, Oppose 54
Rasmussen	November 24	Support 36, Oppose 58
CNN Opinion Research	November 20	Support 40, Oppose 58