

Washington Update



November 5, 2013

Activity came to a halt at the beginning of October for sixteen days as the federal government shutdown for the first time in seventeen years. Congressional leaders and the White House spent much of the final weeks in September attempting to find a solution to the expiring Continuing Resolution (CR) to fund the government while also searching for consensus to raise the nation's debt limit. Eventually, leaders were able to come to an agreement to reopen the government and increase the federal borrowing limit. The deal provided funding for the federal government until January 15, 2014, and raised the debt ceiling until February 7. Additionally, the agreement called for a budget conference committee to reconcile the Senate and House budget resolutions by December 13, 2013. Thus, while the immediate crisis was averted, more fiscal battles are on the immediate horizon and will have implications for the ongoing debates over sequestration, tax reform, healthcare, and the expired Farm Bill.

ISSUE—GOVERNMENT FUNDING AND THE DEBT CEILING

At midnight on October 1, the federal government shut down when the White House and Republicans could not agree on making changes to delay or defund some portions of the Affordable Care Act in exchange for a CR to fund the agencies and operations of the federal government.

While both political parties suffered in public opinion polls after the shutdown, Republicans received the lion's share of Americans' outrage and struggled to find a way forward that both satisfied their most vocal conservative members and salvaged the party's national brand. Finally, after two weeks, Senate Majority Leader Harry Reid (D-NV) and Minority Leader Mitch McConnell (R-KY) hammered out a deal that would both reopen the government and raise the nation's debt ceiling just hours before it was set to be breached. On October 16, the deal passed the Senate by an 81-18 (54 Democrats and 27 Republicans voting yes) and in the House by a vote of 285-144 (87 Republicans and 198 Democrats voting yes). Among its provisions, the legislation:

- Reopened the government by providing funding through January 15, 2014, at an annualized level of \$986 billion;

- Maintained spending cuts established through the sequestration process in the Budget Control Act of 2011;
- Raised the debt limit through February 7, 2014;
- Instructed the House and Senate to name conferees to a budget conference committee that would seek to produce an agreement over the two chambers' competing budget resolutions by December 13, 2013;
- Provided retroactive pay for furloughed government employees; and
- Required the Department of Health and Human Services (HHS) to implement a system for verifying income eligibility for people receiving health insurance subsidies under the ACA.

While the final compromise fell short of the conservatives' goal of defunding the ACA, it set up an opportunity for Congress to move forward on tax and spending measures. The Reid-McConnell deal calls for a budget conference committee to work out the differences between the chambers' competing budget resolutions, both of which passed in March. The [House](#) and [Senate](#) appointed conferees on October 16, and the conference had its first meeting on October 30.

Budget Negotiations

The budget conference committee consists of seven House members and 22 Senate members. One meeting has been held so far with the next meeting on November 13. The deadline for a conference report is technically December 13, but the committee is expected to continue working if an agreement is not reached by that date.

While some have high hopes for a grand bargain on taxes and spending, the budget conference committee's primary task is to agree upon government funding levels for FY2014 and possibly FY2015. The conference committee could also consider including reconciliation instructions, a tool that allows for expedited consideration of policy measures in the Senate with only a simple majority needed for passage.

The Republican-controlled House and Democrat-controlled Senate passed budget resolutions earlier in 2013 that are profoundly different, particularly over the question of new tax revenue. The House budget would balance the budget over ten years, largely by cutting \$2.7 trillion in funding to several social programs. The House proposal does not include new tax revenue. Conversely, the Senate budget resolution would not balance the budget, but would achieve \$1.95 trillion in deficit reduction, calling for \$975 billion in spending cuts and \$975 billion in new tax revenue.

The wide difference between the parties over revenue makes a grand bargain very unlikely. Republicans are unlikely to accept any tax increases while Democrats are unlikely to accept major cuts to entitlement programs without tax increases.

ISSUE—SEQUESTRATION

As budget conferees seek to negotiate funding levels, chief among the issues of contention will be sequestration. These automatic spending cuts went into effect in 2013 and are impacting both defense and non-defense discretionary spending. Democrats have become increasingly worried about the cuts to domestic programs and fear the second round of the sequester, due to take effect on January 15, 2014. While Republican leaders have touted maintaining sequestration as a “win” in the October CR/Debt Limit deal, some in the party continue to be very concerned about the impact on defense programs.

We believe that a “mini-bargain” could be possible in the Budget Conference Committee where Democrats would get sequester relief in exchange for giving some limited entitlement reform to Republicans. Possible entitlement changes could include: raising the eligibility age for Medicare, requiring additional means-testing for Medicare premiums, or adjust the inflation index used to calculate the rate of growth for Social Security benefits. Also, Republicans may be willing to allow some new revenue, such as airline passenger fees, so long as taxes are not raised.

In the absence of any trade-off allowing higher discretionary spending in exchange for lower entitlement spending, look for Republicans to hold the ground on the sequester spending levels but to allow agencies more flexibility in implementing the sequestration.

ISSUE—TAX REFORM

The Reid-McConnell CR/Debt Limit deal and budget conference committee may have implications for tax reform. It is possible the conference committee could include instructions on tax reform, including deadlines for progress and guidelines on tax rates that reform should achieve.

Senate Finance Committee Chairman Max Baucus (D-MT) and House Ways and Means Committee Chairman Dave Camp (R-MI) have spent months building the case for a comprehensive rewrite of the federal tax code, including reforms to international, corporate, and individual tax rates. Both men will be relinquishing their gavels at the end of the 113th Congress and are determined to move tax reform legislation at least through their respective committees before the end of 2014.

While Chairman Camp was initially expected to introduce a tax reform bill this fall, the introduction was delayed due to a variety of factors, including the ongoing work of the conference committee and issues with getting legislative language scored due to shutdown furloughs at the Joint Committee on Taxation. As early as this week, Chairman Baucus may begin releasing what he has called “quick drafts” for tax reform that focus more on the top-line numbers than details. Most observers suspect that Camp will wait

to see which direction the conference committee takes in regard to taxes before releasing a draft bill.

While Congress continues to mull its options on tax reform, some industry leaders are growing increasingly concerned that the process may put their preferred tax provisions on the chopping block. On the House side, Camp has vowed to make any tax reform bill revenue-neutral. He has also pledged to work with his colleagues to lower the corporate tax rate to 25%. In order to achieve both goals, rumors abounded this month that Camp and his fellow Committee members may need to consider eliminating or reforming long-standing tax provisions utilized by the business community, including deductions for advertising and interest and accelerated depreciation for capital investments. While the business community is still strongly supporting corporate tax reform, industry leaders may be hesitant to back a deal that delves into these areas in order to pay for a lower overall rate.

A final tax issue facing Congress is the set of special tax benefits and preferences known as “extenders.” The current extenders bill expires at the end of this year, but the tax committees have yet to indicate any desire to extend them before the end of the year and likely will not address the issue until the fate of tax reform is determined. While unpopular among businesses for planning purposes, Congress could retroactively renew extenders for 2014 in the absence of comprehensive tax reform.

ISSUE—HEALTHCARE

The battle over healthcare reform reached a fever pitch in October as the debate over the ACA forced a government shutdown and a number of major technical programs plagued the ACA rollout.

Led by Senators Ted Cruz (R-TX) and Mike Lee (R-UT), conservatives in both chambers demanded various concessions on the ACA as a condition of passing a new CR to fund the federal government. Their demands varied throughout the crisis, from calling for a full delay in the implementation of the ACA and its individual mandate to demanding repeal of the medical device tax and insurance subsidies for lawmakers, congressional staff, and some Executive Branch appointees. Democrats remained unified in their opposition to Republican proposals, and ultimately, the only ACA concession that conservatives were able to extract in the CR/Debt Limit deal was a provision requiring income verification for Americans applying for insurance subsidies.

In addition to the government shutdown due to arguments over the ACA, October 1 also marked another milestone for the healthcare law with the launch of the online insurance marketplace exchanges. Across the country, states opened their web-based insurance shops with varying degrees of success. However, the federal exchange at Healthcare.gov faced near immediate criticism. Early on, reports came flooding in about

problems with the website. Consumers experienced slow loading speeds and technical glitches, forcing consumers to attempt to enroll via paper application or over the phone. To manage the negative publicity, President Obama made a speech in the White House Rose Garden calling the website malfunctions unacceptable. He pledged that his Administration would do everything to get the website running properly, stating that the HHS would reach out to tech experts to solve the problems. Despite the issues, however, President Obama reiterated his belief that “the essence of the law, the health insurance that’s available to people is working just fine.”

The President’s assurances did not quiet the outrage from Capitol Hill. Republicans immediately pounced on the website problems, reissuing their calls for a delay in the ACA. Several committee hearings were convened to probe the exchange troubles. The House Ways and Means Committee held a hearing in which they grilled Centers for Medicare and Medicaid Services (CMS) Administrator Marilyn Tavenner over the website issues and the House Energy and Commerce Committee held two additional hearings where they questioned HHS Secretary Kathleen Sebelius and the contractors responsible for creating Healthcare.gov. In her testimony, Secretary Sebelius took responsibility for the failures of the website and vowed to fix the issues. Further hearings are expected.

Amid the Republican criticism of the ACA and Obama Administration officials, even some Democrats began to publicly question whether the Administration was prepared for the ACA rollout. House Minority Leader Nancy Pelosi (D-CA) and other top congressional Democrats expressed disappointment in the federal exchange launch. A group of Democrats floated the idea of extending open enrollment past March 31, 2014. Finally, Senator Joe Manchin took a page from his Republican colleagues’ handbook by calling for a delay in the individual mandate. In spite of this frustration with the ACA rollout and calls for changes, congressional Democrats remain committed to the healthcare law and are certain that once the glitches are fixed, the law will operate as intended.

Prescription Drug Supply Chain Legislation

During the debate over the FDA User Fee legislation in 2012, a proposal, which was ultimately not included in the final law, aimed to secure the U.S. prescription drug supply chain to protect against counterfeit drugs. After committee hearings and House passage of a stand-alone bill, the relevant House and Senate committees announced a compromise proposal on September 25 that combined the drug supply chain bill with legislation related to pharmaceutical compounding. The House [legislation](#) (H.R. 3204) passed on September 28, and the Senate is expected to move the bill in the coming weeks.

Sustainable Growth Rate

October also saw developments on efforts to replace the sustainable growth rate (SGR), the formula used to calculate Medicare payments to 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 and encouraging quality measures. Late this month, Chairmen Baucus and Camp released [legislative framework](#) for another SGR repeal bill. E&C leaders endorsed the legislation as a step in the right direction, although the bill varies somewhat from the E&C proposal. Both Republicans and Democrats remain hopeful that the flawed SGR formula will be permanently repealed, but the major sticking point will be how to pay for the \$139.1 billion price tag. If the permanent proposal fails to gain traction, lawmakers will have to add another SGR “patch” to the list of to do items before the end of the year.

ISSUE—FARM BILL

The Farm Bill expired on September 30. 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. 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. The 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. Both the [House](#) and the [Senate](#) have appointed their conferees, and on October 30, they met for the first of what is expected to be many meetings on the Farm Bill.

The stakes are high for conferees as the country moves closer to reverting back to New Deal era federal farm policy. Since most crops are now in the dormant season, much of the agriculture sector is currently unaffected by the expiration of Farm Bill programs. Dairy products, however, could see a drastic price change in the beginning of 2014. If Congress is unable to negotiate a compromise over the Farm Bill by January 1, 2014, dairy law will revert back to the 1949 price supports, which is expected to cause dairy prices to spike significantly.

All four of Congress’ agriculture leaders—Senate Agriculture Chairman Debbie Stabenow (D-MI) and Ranking Member Thad Cochran (R-MS) and House Agriculture Committee Chairman Frank Lucas (R-OK) and Ranking Member Collin Peterson (D-MN)—have expressed a desire to avoid this situation and remain committed to passing a new Farm Bill. Nevertheless, many obstacles remain. The greatest sticking point between conferees is likely to be SNAP funding. The Senate Farm Bill only cut \$4 billion while the House nutrition bill cut \$40 billion. Even if conferees manage to reach a compromise on the number, members in each chamber are still likely to object. On the Senate side, Democrats might balk at a number that is too low. Indeed, Senators Kirsten Gillibrand (D-NY) and Bernie Sanders (D-VT) voted against the \$4 billion figure. They and other Democratic Senators may create further challenges for any Farm Bill compromise

if SNAP funding is trimmed too much. Conversely, Conservative Republicans in the House may reject an agreement if the cuts to SNAP are too small. Under this scenario, House leaders may simply refuse to bring up the Farm Bill conference report as a stand-alone. The two remaining options in that scenario would be another short-term extension or the possibility of including the Farm Bill as part of the next CR.

ISSUE—IMMIGRATION

The topic of immigration reform reemerged as an issue in Washington this month after President Obama delivered a speech again calling for a comprehensive overhaul of the country's immigration laws. In remarks given from the White House, President Obama called on Congress to pass immigration reform legislation, which is high on his second term agenda.

The Senate previously passed an immigration [bill](#), but so far, House Republicans have yet to either act on the Senate bill or produce their own legislation. However, a bipartisan group of lawmakers have spent the past few months working on a proposal that would address all of the issues included in immigration reform. Additionally, Leader Pelosi introduced a bill that largely follows the Senate immigration [bill](#). The bill is not expected to move far in the Republican-controlled House. Instead, House Republicans may pursue a strategy by which they pass immigration in piecemeal bills focused heavily on border security rather than a fully comprehensive immigration package.

RECENT POLLING**Job Approval: President Obama**

Poll	Date	Results
Rasmussen Reports	November 3	Approve 48, Disapprove 51
Gallup	November 3	Approve 40, Disapprove 53
GWU/Battleground	October 31	Approve 45 Disapprove 52

Job Approval: Congress

Poll	Date	Results
GWU/Battleground	October 31	Approve 9, Disapprove 87
The Economist/ YouGov	October 28	Approve 9, Disapprove 76
Fox News	October 22	Approve 9, Disapprove 85

Generic Congressional Ballot

Poll	Date	Results
Rasmussen	November 3	Democrats 43, Republicans 37
PPP (D)	October 31	Democrats 44, Republicans 38
GWU/Battleground	October 31	Democrats 44, Republicans 41

Public Approval of Health Care Law

	Date	Results
Rasmussen	November 2	Support 43, Oppose 53
GWU/Battleground	October 31	Support 43, Oppose 53
Gallup	October 28	Support 44, Oppose 47