Washington Update

REPUBLIC CONSULTING LLC

January 3, 2014

Despite the partisan battles that have led to near constant gridlock in the Capitol over the past few years, lawmakers ended 2013 on a positive note. Democrats and Republicans were able to overcome their differences to produce a bipartisan compromise on the federal budget, helping to alleviate the threat of another government shutdown while also providing some sequestration relief. As Congress moves into 2014, this newfound bipartisanship will be put to the test when legislators must pass an omnibus appropriations bill to fund the government by January 15 and agree to raise the debt ceiling by spring. Aside from fiscal issues, Washington saw movement on healthcare issues—including proposals to permanently replace the Sustainable Growth Rate (SGR)—while progress moved at a slower pace on other key initiatives like tax reform and the Farm Bill.

Below is a recap of the events of December followed by a 2014 PREVIEW section and a polling update.

ISSUE—BUDGET AND SEQUESTRATION

A provision in the October deal to reopen the government, authored by Senate Majority Leader Harry Reid (D-NV) and Senate Minority Leader Mitch McConnell (R-KY), called for the creation of a budget conference committee tasked with reconciling the differences between the two chambers' budget resolutions. While members of the conference committee initially tried to lower expectations, the group was able to broker a compromise just days before the December 13 deadline.

On December 10, Senate Budget Chairwoman Patty Murray (D-WA) and House Budget Chairman Paul Ryan (R-WI) announced an agreement that would set the topline discretionary spending numbers for Fiscal Year 2014 (FY14) and Fiscal Year 2015 (FY15) while simultaneously providing some sequester relief in each of those two fiscal years through savings and new revenue from increased fees. The deal:

- Sets FY14 level at $1.012 trillion (about $45 billion more than the sequester level for FY14 of $967 billion);
- Sets FY15 level at $1.014 trillion (about $19 billion more than the sequester level for FY15 of $995 billion);

- Provides a total of $85 billion in savings over 10 years, with $63 billion of the savings being used to restore spending in areas previously hit by the sequester;
- Provides for the remaining $23 billion to go to deficit reduction;
- Splits sequester relief evenly between defense and non-defense programs.
- Achieves savings primarily through an increase in aviation security service fees, as well a 1.3% increase for federal employee retirement contributions (only for employees hired after December 31, 2013); and
- Does not change the FY16 number, which is already set at $1.016 trillion under the Budget Control Act sequester numbers.

The House passed the budget deal on December 12 by a vote of 332-94 with majorities of both parties voting for passage. The Senate passed the bill on December 18 by a vote of 64-36. Nine Republicans voted for the measure.

The passage of the compromise budget resolution helps avert the possibility of another shutdown of the federal government. Congress will still need to agree on appropriations bills that spell out specific agency and programmatic funding levels for the remainder of FY14 by January 15, 2014, when the current short-term appropriations bill (the "Continuing Resolution" or CR) expires. With the topline spending number agreed upon, the job of the House and Senate Appropriations Committees becomes much simpler.

The budget deal also exposed underlying tensions between congressional Republicans and some outside conservative groups. Organizations like Heritage Action, FreedomWorks, and the Club for Growth have been harshly critical of some Republicans in Congress for what they perceive to be a lack of sufficient effort in fighting against the Obama agenda. These groups uniformly attacked the budget deal even before the details of the compromise were released. The attacks led House Speaker John Boehner (R-OH) to publicly rebuke the groups for opposing the agreement before having all of the facts. Ultimately, the deal received a great deal of Republican support in spite of conservative criticism, but tensions between these groups and congressional Republicans are likely to continue in the forthcoming mid-term Republican primaries.

ISSUE—THE DEBT CEILING

While the Murray-Ryan deal removed the immediate threat of a government shutdown and mitigated some of the effects of sequestration for the next two years, it did not address another key fiscal issue: the debt ceiling. The Reid-McConnell deal in October included a provision to increase the debt ceiling until February 7, 2014. There are competing views on when exactly the federal government will breach the limit. The Treasury contends that even if it uses "extraordinary measures" to push the actual default date back, the debt ceiling will likely need to be increased sometime in the early spring. However, the Congressional Budget Office (CBO) has suggested that increased tax revenues through the first part of 2014 could push back the actual default date even further, possibly until May or June.

Doubts have emerged that the debt ceiling proceedings will mirror the bipartisanship exhibited in the budget negotiations. Chairman Ryan and Senate Republican Leader McConnell suggested in December that Republicans will not accept a clean debt ceiling increase and stated that discussions are ongoing among Republicans on what exactly they should request in debt ceiling talks. Any Republican demands are likely to run into challenges, not the least of which is President Obama's recent policy of refusing to negotiate over the debt limit.

ISSUE—TAX REFORM

Progress continued to move slowly on tax reform in December. Though some believed that the budget conference committee may include tax reform instructions, the deal contained no such provisions, continuing the uncertainty on how and when the process will move forward. House Ways & Means Committee Chairman Dave Camp (R-MI) is expected to eventually produce legislation in the new year, but it will likely have to wait until after January, which will be consumed by action on government funding.

In the Senate, Finance Committee Chairman Max Baucus (D-MT) continued to move forward with his own plans for a rewrite of the tax code, although President Obama's nomination of the Chairman as ambassador to China may hinder tax reform's progress overall. (See PREVIEW section below for a discussion of the potential impact of Senator Ron Wyden [D-OR] assuming the role of Senate Finance Committee Chairman.) In November, Chairman Baucus released draft proposals addressing three keys areas of tax policy: international tax reform, tax administration, and cost recovery and tax accounting. Chairman Baucus released his fourth proposal on December 18 which addresses tax issues related to the energy industry.

The proposal calls for sweeping changes to the types of energy companies that can receive tax breaks in an attempt to simplify the current system, which would save about $75 billion over the next ten years. The discussion draft calls for a shift in the tax code to incentivize investment in natural gas, nuclear power, and other low-carbon sources by creating two new clean energy incentives that would be tied to EPA-set greenhouse gas levels. The draft asks for comments on whether the Committee should consider a carbon tax. The plan would also eliminate many popular incentives for energy efficiency measures used by individuals and businesses.

Overall, the efforts to make tax reform a reality still face many challenges. First and foremost is the question over new tax revenue. The Senate's original budget resolution included provisions that would raise about $1 trillion in new tax revenue. Conversely, the House budget resolution included no new tax increases. Though the Murray-Ryan budget deal did include fee increases as revenue raisers, it stopped short of imposing any new taxes.

There is also the question of whether or not tax writers could abandon the idea of comprehensive tax reform, which would include reforms to the individual, corporate and international side of the code. Republicans and most Democrats have agreed on addressing tax reform in a comprehensive manner, but it is possible that some may begin to advocate for peeling off some reform measures as stand-alone bills if comprehensive tax reform is not possible.

Finally, tax reform could be tripped up by the ever lingering political challenges, as well as Baucus' nomination. House Republican leadership successfully convinced Chairman Camp to delay the release of his tax bill so that House Republicans could focus on the troubled ACA rollout. However, leaders are also rumored to be hesitant to bring up the issue at all and force their members to take tough and controversial votes during an election year.

ISSUE—HEALTHCARE

December saw several developments on healthcare issues. The Administration's top priority was to begin rebuilding the image of the President's signature law after an abysmal rollout. The Department of Health and Human Services (HHS) spent most of November attempting to remedy the systemic technical failures of the online federal insurance marketplace, Healthcare.gov. The White House and HHS set the end of November as the Administration's deadline to get the site up and running smoothly, a goal that seems to have been met for most of December. But while the issues with Healthcare.gov have diminished, several other ACA-related problems have emerged.

First, there is the issue of enrollment numbers. In a conference call with reporters, HHS Secretary Kathleen Sebelius announced that 2.1 million people had signed up for coverage through the federal and state exchanges by the end of December, about half of those enrolled through Healthcare.gov. In addition, approximately 3.9 million people were made eligible for Medicaid or the Child Health Insurance Program (CHIP), though Secretary Sebelius admitted that the figure includes some renewals.

While these numbers indicate an upward trend in enrollment, some analysts believe the figures are being over-interpreted and point to other numbers that should give the Administration cause to be concerned. While the pace of growth has increased, Medicaid enrollment is still far ahead of private insurance enrollment. These and other trends could make it difficult for the Administration to reach the 7 million enrollee mark by the end of March.

Murray-Ryan Healthcare Provisions

The Murray-Ryan budget deal had several healthcare-related provisions, which included:

- Continuing the 2 percent Medicare sequester in 2022 and 2023, providing $22 billion in savings;
- Shifting more health care costs onto federal workers enrolled in the Federal Employees Health Benefits Program by increasing contributions for new employees after December 31, 2013;
- Extending the Medicare "doc fix" and other Medicare extenders for three months until March 31, 2013;
- Rebasing the ACA cuts to disproportionate share hospitals through 2023; and
- Setting up new criteria for long-term care hospitals to receive higher payment rates.

Sustainable Growth Rate

As mentioned above, the Murray-Ryan budget included a three month "doc fix," the short-term patch to prevent major cuts in Medicare reimbursement rates due to the flawed Sustainable Growth Rate (SGR) formula. The provision was included to allow lawmakers more time to negotiate over the emerging, bipartisan bill to permanently replace the SGR with an alternative method for calculating payments while encouraging quality measures.

In July, the House Energy and Commerce Committee (E&C) unanimously passed an SGR repeal and replace bill. The House Ways and Means Committee passed its version of the SGR repeal on December 12. Finally, the Senate Finance Committee also approved a similar bill on December 12. The Ways and Means and E&C Committees will need to reconcile the differences between their bills before bringing it to the full House for a vote.

The various leaders involved have largely come to an agreement over the substance of the bill, but legislators have yet to agree on a way to pay for the measure. If Congress cannot find a way to fund the bill at the end of the three month extension provided under the Murray-Ryan deal, lawmakers will have to once again look at a short-term patch to prevent the SGR cuts.

ISSUE—FARM BILL

The Farm Bill remains in legislative limbo with some progress made by House and Senate conferees in December. Farm and energy related programs had been operating on an extension of the 2008 Farm Bill, but the extension expired in September 2013. Most of the effects of the expired Farm Bill have yet to be felt, but if Congress does not pass new legislation, the country will revert back to New Deal era farm policy, which in the short-term would have the biggest impact on dairy prices.

Previously, the Senate passed a 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.

There were hopeful signs that some progress was being made in conference negotiations prior to the holiday break. Reports surfaced that suggested the conferees are getting closer to a compromise on cuts to SNAP funding, which is a major sticking point. The amount of cuts is likely to be closer to the Senate's number.

On December 12, the House passed a one month extension of the 2008 Farm Bill in order to give conferees more time to negotiate a deal. Senate Democrats opposed the one month extension and did not act on the House extension before leaving Washington for the holiday break.

Agriculture Secretary Tom Vilsack has reassured the farm community that the absence of a short term extension at the beginning of 2014 will not immediately lead to dramatic changes in farm policy, including a sharp rise in dairy prices.

2014—A PREVIEW

With a tumultuous year behind it, Congress will return to Washington in 2014 with a bevy of important issues that will need to be addressed.

Fiscal Issues

The most immediate issue facing Congress will be government funding. The CR that was a product of the Reid-McConnell deal and is currently funding the federal government will expire on January 15. Under the current schedule, the two chambers will have only eight legislative days to produce funding legislation before the CR expires.

There has been some debate over how legislators will go about allocating money under the top level set forth by the Murray-Ryan budget compromise. Under regular order, a successful joint budget resolution would be followed by appropriators from both chambers producing the 12 annual appropriations bills that spell out specifically how much funding each government agency and program will receive. Given the compressed timeframe, that seems an unlikely track.

Rather than pass separate appropriations bills, Congress is expected to move an omnibus bill that combines FY14 discretionary spending bills into a single piece of legislation. The current goal is to have an omnibus appropriations bill on the House floor on January 10 and on the Senate floor by January 13.

Congress will also need to address the looming debt ceiling in short order, although the precise timing is unknown given the flexibility the Treasury Department has to use so-called "extraordinary measures." Republican leaders have already announced that they will seek concessions in return for raising the debt limit. Once again, the White House and Senate Democrats are adamantly opposed to negotiating over the debt ceiling, but that could change. A key factor in determining whether the Administration will be open to compromise is the level of public support the President carries at that time. If his approval numbers continue to slide in the wake of the failures of the ACA rollout, his position will most likely be weaker than in the last debt limit battle in October, possibly forcing him to make concessions to get a debt hike. Alternatively, if the President has recovered or if Republicans find themselves in a weakened state, the President may be able to hold the line and refuse to negotiate.

Tax Reform

Optimists were holding out hope for more progress on tax reform in 2014, including the release of Camp's tax package, but this hope was put in jeopardy on December 20 when President Obama nominated Baucus to serve as ambassador to China. If Chairman Baucus is confirmed by the Senate as expected, it will remove from Congress one of tax reform's greatest proponents and make it far more likely that tax reform does not get done this year.

Baucus' confirmation would also set in motion a domino effect that could have implications for tax policy and other key issue areas. Senator Ron Wyden (D-WA) is presumed to be the next Chairman of the Senate Finance Committee and could take tax reform in a different direction. Senator Wyden most recently authored a tax reform plan in 2011, which has been criticized by Democrats for not raising enough revenue while also coming under attack from Republicans for insufficiently dealing with corporate and international taxation. As chairman of the Finance Committee, however, Senator Wyden will be in a position to set the agenda for any tax reform legislation.

(On a related note, Senate Wyden would have to give up his chairmanship of the Senate Energy Committee in order to replace Chairman Baucus on the Finance Committee. Senator Mary Landrieu (D-LA) is next in line for the Energy gavel, but her moderate positions on energy issues have raised concerns among environmental activists within the Democratic Party. Chairing the Committee would also give Senator Landrieu an edge in energy rich Louisiana as she navigates a tough reelection battle.)

Despite the uncertainty over the future of tax reform, Chairman Baucus is expected to continue the reform discussion until he is confirmed. Finance Committee aides have indicated that Chairman Baucus could release additional discussion drafts, including one on infrastructure. Baucus' efforts to release discussion drafts will allow him to frame the tax reform debate well after he is confirmed and leaves the Senate.

The political challenges facing the tax writers will only become more acute as the year progresses and congressional leaders shift their focus to the mid-term elections.

Wyden would have to work closely with Camp if tax reform is to succeed in 2014. However, if efforts stall, Wyden will have a new partner in 2015 after Chairman Camp relinquishes his gavel due to term limits (unless he is granted a waiver by the Steering Committee). In December, current House Budget Committee Chairman Ryan announced that he would seek to replace Camp as the chairman of Ways and Means in the 114th Congress. Though he is not the next most senior member in line for the gavel, the former Vice Presidential nominee's high profile, teamed with his reputation as being an intellectual powerhouse within the Republican Conference, make him a formidable candidate in the race to replace Camp. Rep. Kevin Brady (R-TX) is also interested in being the next chairman. He is currently Chairman of the Health Subcommittee at Ways and Means and was previously Chairman of the Trade Subcommittee.

In 2014, the two committees will also have to address the issue of "tax extenders," short-term tax provisions that are typically extended annually. The current package expired on January 1, 2014, after Senate Republicans blocked Democratic attempts to pass an extension bill, with Republicans claiming the bill "hijacked" the committee process. Some observers have suggested that Senator Wyden's ascent to the Finance Chairmanship could mean tax extenders are addressed earlier in 2014 than was previously anticipated under Chairman Baucus. Technically speaking, the tax provisions can be extended retroactively at any time in 2014, but businesses are unlikely to wait too long after the expiration date before putting pressure on lawmakers to renew their preferred extenders.

Healthcare

On the healthcare front, all eyes are focused on the end of March and the closing of the ACA enrollment period. The Administration is a far off from the seven million enrollees it hoped to have by the spring, and how far they fall short of that goal could determine the future of some elements of the ACA. If the numbers are low and the ACA continues to have persistent problems, Republicans may find themselves in a position to force the President to negotiate on the debt limit and other 2014 legislative priorities. Under this scenario, Republicans would likely be able to count on red state Democrats (particularly those Senators up for reelection in 2014) to help pressure the President into reforming some elements of the healthcare law or pushing other more moderate proposals through both Chambers.

Besides the enrollment figures, 2014 may bring additional problems for the ACA, including:

- Lapses in coverage for consumers who could not renew their cancelled plan or select a new plan before the coverage year began;
- Claims by insurers that consumers who enrolled are not covered due to technical glitches with Healthcare.gov;
- Sticker shock among consumers who did not have insurance before and realize that the deductible, premiums, and co-pays they selected may be financially unviable;
- Inability to find doctors who are accepting new patients due to the influx of the newly insured;
- Loss of coverage with certain providers and/or certain medications due to narrowing of networks and limiting of prescription options by insurers; and
- Lack of coverage for eligible Medicaid patients at the beginning of the coverage year due to backlog of applications and technical problems with Healthcare.gov.

Other Legislative Items

Another legislative item that is expected to move forward in the New Year is patent reform. In December, the House passed a bill that would address the issue of patent assertion entities, more commonly known as "patent trolls." The Senate is moving forward on similar legislation. The Senate Judiciary Committee held a marathon hearing in December on the topic, and is expected to markup a patent reform bill by Chairman Patrick Leahy (D-VT) in early 2014.

The President is likely to return to other agenda items that got lost in 2013. Immigration reform is the most likely to resurface. The Senate passed an immigration package in June, but the House has yet to take action. The White House is expected to put pressure on Speaker Boehner and House Republicans to continue the discussion and produce legislation.

Other outstanding issues that Congress is expected to debate in 2014 include:

- Possible reauthorization of extended unemployment insurance benefits;
- Reauthorization of federal water projects in the Water Reauthorization and Development Act;
- Reauthorization of intelligence programs; and
- Reauthorization of the highway bill.

As Congress begins to address these issues, members are expected to also turn their attention to the mid-term elections, and both parties will begin to shape their messages. Republicans plan to focus heavily on the ACA and its persistent problems. Republican leaders are also likely to use the legislative agenda to further their attacks on the healthcare reform efforts, including additional hearings on the beleaguered law. On the flip side, Democrats will attempt to return to economic issues, such as raising the minimum wage. These efforts are already taking shape as Leader Reid announced in December that one of his top priorities upon returning from the holiday recess is to take up legislation to extend unemployment benefits.

RECENT POLLING

Job Approval: President Obama

Poll	Date	Results
Rasmussen Reports	January 2	Approve 47, Disapprove 51
Gallup	January 2	Approve 42, Disapprove 50
Economist/YouGov	December 30	Approve 40 Disapprove 57

Job Approval: Congress

Poll	Date	Results
Economist/YouGov	December 30	Approve 7, Disapprove 77
Fox News	December 16	Approve16, Disapprove 79
ABC News/Wash Post	December 15	Approve 14, Disapprove 83

Generic Congressional Ballot

Poll	Date	Results
Rasmussen	December 29	Democrats 40, Republicans 40
CNN Opinion Research	December 19	Democrats 44, Republicans 49
Fox News	December 16	Democrats 43, Republicans 43

Public Approval of Health Care Law

	Date	Results
Rasmussen	December 28	Support 40, Oppose 56
CNN Opinion Research	December 19	Support 35, Oppose 62
Fox News	December 16	Support 41, Oppose 53