

Washington Update

September 6, 2016

Lawmakers will return from the summer recess with only a few weeks to advance legislation before adjourning until after the November election. The list of things that Congress **may** get done in September is short, and the list of things that **must** get done is even shorter.

Legislators will need to immediately address funding the government into Fiscal Year 2017 (FY17). Congressional leadership is also expected to come under pressure to advance legislation dealing with the spread of the Zika virus.

Lawmakers may also consider a host of other items, including bills addressing reforms to federal energy programs, the National Defense Authorization Act, water resources development reauthorization, CURES healthcare legislation, child nutrition reauthorization and criminal justice reform.

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ISSUE—GOVERNMENT FUNDING

At the top of the congressional agenda will be funding the federal government after September 30, when the fiscal year ends and the CR funding the government will expire. During the spring and early summer, appropriators in both chambers advanced a host of [spending measures](#) for FY17, but none were approved by both chambers before the

summer recess. With less than a month before FY16 funding is set to lapse, options are limited.

Some GOP appropriators and the majority of Democrats prefer a short-term CR into December that would allow an omnibus spending package to be passed in the lame duck that would clear the decks for the new President and Congress. Others, including many on the right flank in Congress, prefer a six month CR funding the government through March and avoiding an omnibus appropriations bill in the lame duck session

The most likely result is a short-term CR that provides funding until after the election, followed by another short-term CR that lasts until March 2017. While there is talk of a lame duck omnibus appropriations bill, a full omnibus appropriations bill is probably unlikely in 2016. The most aggressive yet realistic prediction at this point would be another CR in the lame duck for all controversial appropriations bills coupled with a smaller appropriations package (“mini-bus”) that includes a few of the noncontroversial appropriations bills.

ISSUE—HEALTH

Lawmakers may end up addressing a couple of healthcare related issues this month.

Zika Update

Senator Marco Rubio (R-FL) and congressional Democrats are expected to push for action on the ongoing Zika crisis. Legislation providing supplemental funding to combat the rapid spread of the virus stalled in June after the MilConVA appropriations conference report, which included \$1.1 billion in emergency funding, ran up against opposition from Senate Democrats, who blocked a motion to end debate and proceed to a final vote. Senate Democrats criticized the funding level for being too low to adequately combat the crisis and opposed provisions in the measure that would strip some Affordable Care Act (ACA) funding and restrict funds from going to a Planned Parenthood chapter in Puerto Rico.

The Senate will take another vote on the MilConVA conference report upon members' return. Should Democrats again block the measure, negotiators will begin negotiating a standalone Zika funding bill. Zika legislation could end up being viewed as “must pass,” especially if the Democrats insist on linking the passage of the short-term CR with passage of Zika legislation.

21st Century Cures

Another item that may see action in September is the Senate package of bills similar to the House's [21st Century Cures Act](#), which seeks to modernize the Food and Drug Administration (FDA) and the National Institute for Health (NIH). The House passed the Cures bill in July 2015, but Health, Education, Labor, and Pensions (HELP) Committee

Chairman Lamar Alexander (R-TN) proceeded at a slower pace with the Senate version and announced in June that floor consideration would be delayed until after the summer recess at the earliest. The delay comes as Senate Democrats continue to push for an increase in overall funding for NIH.

Despite the partisan disagreement over funding, House and Senate champions of Cures continue to negotiate, and bipartisan agreement over the substance of the package could place it in line for passage before Congress adjourns for the election. Nevertheless, passage of Cures is a considered longshot but still possible.

ISSUE—ENERGY

Legislation seeking to reform federal energy programs may be another item that sees action during the September work period. The House passed its [measure](#) last December while the Senate approved its [version](#) in April. In July, both chambers reached an agreement to conference the competing bills. Staff negotiators have worked over the late summer to hammer out a compromise over the more controversial provisions, including the House-backed reversal of the planned phase out of fossil fuels from federal buildings. With limited floor time in the Senate, Republican leaders are unlikely to bring up a conference report for floor consideration unless there is a strong bipartisan agreement that allows for quick passage. As such, final action on the reform legislation may be delayed until the lame duck session.

Another item that may be pushed off to the final months of the Obama Administration is consideration of a handful of energy tax provisions, known as extenders. Last December, Congress approved an extenders deal ([PATH Act](#)) that included permanent and short-to-long term extensions of various tax extender provisions. Some Democrats, including Senate Finance Committee Ranking Member Ron Wyden (D-OR), criticized the package saying it inadvertently left out tax incentives for geothermal and fuel cell technologies from a longer extension period. Over the course of 2016, Senator Wyden has attempted to add the extenders to other legislation to no avail. Senate Majority Leader Mitch McConnell (R-KY) has stated that he is open to fixing the omission, but action may be deferred until after the election.

ISSUE—DEFENSE POLICY

Negotiations are ongoing over the FY17 National Defense Authorization Act (NDAA). The House passed its [version](#) of the NDAA in May, and the Senate followed suit with its [bill](#) in June. Negotiators face several hurdles, including disagreement over the House-backed reallocation of \$18 billion from war funds to the Pentagon's base budget, a move Democrats oppose. House Armed Services Committee Chairman Mac Thornberry (R-TX) previously stated his hope to produce a conference report before the end of September,

setting up final passage for some time during the lame duck. The FY16 NDAA is set to expire at the end of the year.

OTHER ISSUES

Several other issues may come to the fore during the September work period.

Criminal Justice Reform

Criminal justice reform legislation could be one of these items. The Judiciary Committees have worked over the past year to advance measures reforming the federal criminal justice system. In October 2016, the Senate Judiciary Committee approved the [Sentencing Reform and Corrections Act](#), and in April, co-sponsors rolled out a series of [changes](#) with bipartisan support. However, continued opposition from some Senate Republicans has stalled the progress of the bill. In September, the House could restart the debate by advancing its own criminal justice reform measures. In July, Speaker of the House Paul Ryan (R-WI) stated that the House was likely to vote in September on a package of reform bills approved by the House Judiciary Committee over the past several months. House Judiciary Chairman Bob Goodlatte (R-VA) has yet to announce which of the several bills his Committee has advanced will be included in the final package.

Coal Miners' Pensions

The clock is ticking down on finding a funding fix for coal miners' health and pension benefits. Coal state lawmakers will pressure leadership to quickly resolve the potential shortfall for United Mine Workers of American retiree benefits during the fall work period. Senator Joe Manchin (D-WV) has a [bill](#) that would transfer money from the Abandoned Mine Land Reclamation Fund to the plan, which is on track to insolvency by the end of the year. The Senate Finance Committee is set to mark up the bill in mid-September, and supporters are expected to push for quick and immediate consideration on the floor, though the packed Senate agenda and limited floor time may push floor action to the lame duck session. The House has a companion [bill](#) currently awaiting committee consideration.

Water Resources Development Act

Senate Environment and Public Works (EPW) Chairman Jim Inhofe (R-OK) and Barbara Boxer (D-CA) are expected to push for consideration of the [Water Resources Development Act](#) (WRDA) in early September. Among other provisions, the bill would overhaul municipal water programs and provide \$220 million in aid to Flint, Michigan and other communities battling public water issues. In June, the Senate bill passed the EPW Committee with a strong bipartisan vote. The House Transportation and Infrastructure Committee approved its WRDA [bill](#) in May, and it is currently awaiting floor action.

Online Sales Tax Legislation

In August, Chairman Goodlatte began circulating an updated draft of an Internet sales tax bill that would attempt to resolve an ongoing issue where many states cannot enforce sales tax collection for online purchases when the seller does not have a physical presence in the state. Despite previous controversial drafts, industry lauded the new proposal as a step in the right direction. Chairman Goodlatte could consider the measure in the Judiciary Committee in September.

Child Nutrition

Both the [House](#) and the [Senate](#) have bills to reauthorize child nutrition programs that could see potential bipartisan action in September or the lame duck session. Legislation is pending floor action in both chambers.

RECENT POLLING

Job Approval: President Obama

Poll	Date	Results
Gallup	Sep 4	Approve 52, Disapprove 44
Rasmussen Reports	Sep 4	Approve 50, Disapprove 49
IBD/TIPP	Sep 1	Approve 50, Disapprove 44

Job Approval: Congress

Poll	Date	Results
The Economist/ YouGov	Aug 29	Approve 10, Disapprove 69
PPP (D)	Aug 28	Approve 8, Disapprove 79
Monmouth	Aug 7	Approve 12, Disapprove 81

Direction of the Country

	Date	Results
Rasmussen Reports	Sep 1	Right Direction 28, Wrong Direction 65
The Economist/ YouGov	Aug 29	Right Direction 27, Wrong Direction 65
Reuters/Ipsos	Aug 29	Right Direction 24, Wrong Direction 63

Trump v. Clinton

	Date	Results
CNN/ORC	Sep 4	Trump 49, Clinton 48
LA Times/USC	Sep 4	Trump 44 Clinton 44
NBC News/SM	Sep 4	Trump 48, Clinton 42