

Fall Preview

September 8, 2015

Congress returns from the August recess this week with a packed agenda for the remainder of 2015. The House and Senate will kick off the fall legislative session by taking up a resolution disapproving of the President’s nuclear agreement with Iran.

The other immediate concern will be securing funding to keep the federal government running into Fiscal Year 2016 (FY16). In addition to the funding deadline, legislators will also contend with several expiring programs that also will require extensions (short-term or otherwise) to continue after September 30. Congress will have only about a dozen legislative days to deal with these outstanding items, and this timeline is expected to be partially disrupted by Pope Francis’ address to a Joint Session of Congress on September 24.

This report examines the upcoming legislative battles that will dominate the congressional calendar during the fall months.

Contents

| | |
|---------------------------------------|---|
| FALL PREVIEW – IN BRIEF | 2 |
| ISSUE – GOVERNMENT FUNDING | 3 |
| ISSUE—TRANSPORTATION | 4 |
| ISSUE – TAX EXTENDERS | 5 |
| ISSUE – HEALTH..... | 5 |
| ISSUE—ENERGY..... | 6 |
| ISSUE—DEFENSE AND FOREIGN POLICY..... | 6 |
| OTHER ISSUES | 7 |
| KEY DATES | 9 |
| RECENT POLLING..... | 9 |

FALL PREVIEW – IN BRIEF

Lawmakers will face a deadline-driven agenda in September, with government funding set to lapse starting on October 1 and a host of federal programs with expiring authorizations, including:

- Internet Tax Moratorium
- Child Nutrition Programs and WIC
- Temporary Assistance for Needy Families
- TANF Supplemental Grants
- TANF Contingency Fund
- Child Care Entitlement Program
- FAA Authorization
- Pipeline Safety Act
- Several immigration programs:
 - EB-5 Immigrant Investor Program
 - CONRAD 30 Waiver Program
 - Religious Workers Visa Program
 - E-Verify

Legislators' first priority will be to negotiate a plan to fund the government into Fiscal Year 2016, but lawmakers will also need to address these other expiring programs. With the limited number of session days, some or all of the expiring items will likely be attached to the expected Continuing Resolution (CR) that will provide for a short-term funding extension. While this would only be a temporary fix, it would allow Congress additional time to negotiate longer-term solutions for many of these programs.

Looking past the immediate deadline of September 30, the current extension of the Highway Bill is set to expire on October 29, but may see another short-term authorization, allowing the Department of Transportation to spend available funds into December. Congress is likely to run into more deadlines in December when the debt limit may need to be increased and the expired tax extenders will need to be extended retroactively before year-end. A House-Senate conference committee on the highway bill could be a vehicle later in the year to carry any final deal that could emerge on appropriations, spending limits, policy riders, tax extenders, debt ceiling and other expiring programs.

Efforts to advance broader policy priorities will also drive debate in the fall. Republican leaders have lined up a host of possible legislative items in a variety of policy areas, ranging from a reconciliation bill repealing portion of the Affordable Care Act to a resolution disapproving of the Iran nuclear agreement to legislation fighting the Administration's recently released regulations on carbon emissions. These contentious issues are likely to prompt fierce debates as Republican priorities run up against Democratic opposition.

ISSUE – GOVERNMENT FUNDING

Federal funding will be the most immediate issue facing legislators when they return from the August recess.

Continuing Resolution

Despite the full set of appropriations bills passing both chambers' Appropriations Committees for the first time in six years, the process came to a grinding halt in July after conflicts arose over Confederate flag displays at federal cemeteries and funding for Planned Parenthood. It is unlikely that lawmakers will have enough time to come to an agreement on any of the twelve annual spending bills before Fiscal Year 2015 (FY15) comes to an end on September 30.

As leaders have continued negotiations over the August recess in hopes of staving off a government shutdown at the end of September, conservative Republicans have come out strongly in favor of pulling all funding for the organization following the release of a series of controversial videos showing Planned Parenthood employees discussing fetal tissue sales. Republican leaders have to balance conservative outrage over Planned Parenthood with the reality that any spending bill that strips funding for the group will most certainly die in the Senate due to fierce Democratic opposition. President Obama would also likely veto any bill that defunded the organization.

Both House Speaker John Boehner (R-OH) and Senate Majority Leader Mitch McConnell (R-KY) have vowed to keep the government running, fearing the political impact of allowing funding to lapse. Memories of the political fallout from the 2013 government shutdown remain fresh, and leaders in both chambers are working to hammer out a proposal that will appease conservatives and keep the government running.

Most observers predict that a funding bill will likely take the form of another short-term CR that would extend funding to October 29 (to align with the expiring Highway Bill) or into mid-December, giving legislators more time to broker a long-term funding agreement.

Budget and Sequestration

One chief challenge that will need to be overcome to advance a longer-term spending package is the threat of sequestration, the automatic spending cuts that are triggered when spending exceeds the caps established by the Budget Control Act (BCA). After a two year hiatus, sequestration is set to return in FY16 if the BCA spending caps are exceeded. Democrats fiercely oppose the cuts, and some Republican defense hawks are wary of reductions in military spending. Leaders have yet to emerge with a deal similar to the 2013 Murray-Ryan budget that temporarily shut off sequestration and allowed for higher spending levels. Conservatives in both chambers oppose lifting the caps without corresponding cuts elsewhere, despite a recent report from the Congressional Budget Office (CBO) that predicted that loosening of the caps would boost the economy by 0.4 percent, or approximately a half million jobs.

Debt Limit

The statutory limit on federal debt will also complicate negotiations over a long-term funding bill. The CBO reported in August that the debt ceiling will likely need to be increased by Congress in late November or early December. These are conservative estimates, and GOP leaders have expressed hopes that the actual default date will fall sometime in early January. Regardless, Democrats and the White House are likely to put pressure on Republicans to act in a timely fashion to increase the debt limit.

Congressional leaders will need to strike a balance between the need to raise the debt ceiling and the adamant opposition of conservatives to any deal that increases the limit without corresponding reductions in spending or entitlement reform.

ISSUE—TRANSPORTATION

Legislators will quickly need to chart a course on several transportation matters upon returning from the recess.

Highway Bill and Highway Trust Fund

In July, Congress successfully passed a three month extension of the Highway Bill, reauthorizing the programs until October 29. While funding the federal government will dominate most of the congressional agenda in September, transportation leaders will continue to negotiate a long-term solution for the expiring Highway Bill. One possible vehicle is the Senate-passed [DRIVE Act](#), which Leader McConnell has vowed to take to conference with the House.

While there is tentative agreement on much of the substance of the legislation, the main hurdle continues to be sustainable funding for the Highway Trust Fund (HTF). The DRIVE Act includes three years of funding made of a hodge podge of payfors, many of which face opposition. In the House, Ways & Means Committee Chairman Paul Ryan (R-WI) is hoping to find a path forward that marries international tax reform (and the revenue it generates) with the Highway Bill.

While the three month extension expires on October 29, the bill included enough funding to take the programs into December. Given the additional funding already in place, it is possible that Congress will pass another short term extension to give members additional time to negotiate a compromise. If the House is able to pass its own Highway bill and go to conference with the Senate, the DRIVE Act could become a vehicle to carry other deadline-driven items such as a final omnibus appropriations bill or tax extenders, as well as other expiring programs.

FAA Reauthorization

Another pressing issue for Congress upon its return is the reauthorization of the Federal Aviation Administration (FAA) and its programs. The FAA's current legislative authority is set to lapse on September 30. Legislators will need to work quickly within the short

September calendar either to approve a reauthorization bill for the agency or include a short-term extension on the CR.

ISSUE – TAX EXTENDERS

In December 2014, Congress renewed the expired package of personal and corporate tax provisions known collectively as tax extenders. The bill retroactively extended the tax package for income earned in 2014. Legislators deferred action on extenders for 2015 income with the hope of pursuing comprehensive tax reform. However, with tax reform unlikely to happen this year, lawmakers will need to decide before the end of year if and which extenders to renew and for how long.

Earlier in the year, House Republicans pursued a piecemeal legislative strategy on extenders by advancing a number of standalone bills to permanently reauthorize several popular extenders, including the R&D tax credit. In the Senate, a clean two year reauthorization of the extenders package was passed by the Finance Committee in July, but no further action has been taken.

Democrats have expressed concerns about the effect of the extenders on government revenue and may balk at supporting permanency for a select few provisions, although a number of the House bills were bipartisan. It is possible that extenders may be dealt with if a Highways-Tax Reform deal comes together, but at a minimum, extenders will likely be retroactively renewed for 2015.

ISSUE – HEALTH

In addition to a possible ACA repeal vote under reconciliation, Congress is expected to take action on other healthcare issues this fall.

Reconciliation and ACA Repeal

Later this year or early next year, Republicans are expected to once again attempt to repeal parts of the ACA. Unlike previous House-backed efforts that stalled in the Senate, Republicans will be able to use budget reconciliation to send a repeal bill to the President's desk. Under reconciliation, the Senate would be able to advance a repeal bill with a simple majority without having to overcome a Democratic filibuster. Though President Obama will most certainly veto any bill repealing his signature legislative achievement, Republicans are pressing forward. The chief challenge is drafting a bill that adheres to reconciliation rules that require the bill to achieve a specified level of savings. GOP leaders are likely to focus on trying to repeal portions of the law that enjoy bipartisan opposition, including the individual and employer mandates and the Independent Payment Advisory Board. Discussions among Republicans are ongoing and a precise timeline for reconciliation has yet to emerge.

ACA Tax Provisions

The Senate is expected to turn to legislation that repeals the 2.3 percent excise tax on medical devices sometime before the end of the year. There is strong bipartisan support for rolling back the tax, but some members have expressed concerns over how to fill the funding shortfall in ACA-related programs if the tax is repealed.

Momentum is also building for a vote to repeal the tax on high-cost employment health plans, the so-called Cadillac Tax. The tax is set to go into effect in 2018, but has come under more intense scrutiny because of bipartisan fears that the tax may lead to a cut in middle class health benefits.

21st Century Cures

The [21st Century Cures Act](#) is on the short list of bipartisan health bills that could find its way to the President's desk in this Congress. The House-passed bill seeks to speed developments in new medical treatments through streamlining approval processes for medical device manufacturers and drug developers. It also includes about \$8.7 billion in new NIH medical research dollars and \$550 million for the FDA. Despite the measure clearing the House with healthy bipartisan support, Senate Health, Education, Labor, and Pensions (HELP) Committee Chairman Lamar Alexander (R-TN) has indicated that he is inclined to wait until 2016 to advance the Senate's version. In the meantime, concerns are mounting that falling oil prices may threaten the legislation, which is funded in part by selling off a portion of the U.S. Strategic Petroleum Reserve.

ISSUE—ENERGY

Republican legislators are expected to continue to push back against the Obama Administration's recently finalized [rules](#) setting new limits on carbon dioxide emissions from coal-fired power plants. The House previously passed a [bill](#) targeting the rules, and similar [legislation](#) is awaiting floor action in the Senate. The Senate could take action on its version of the bill sometime this fall, but congressional Democrats and the White House will aggressively fight attempts to roll back the rules.

ISSUE—DEFENSE AND FOREIGN POLICY

Debate over finalizing the NDAA and congressional action on the Iran nuclear agreement continued to dominate discussions throughout the recess.

Iran

September is set to be a crucial month in the debate over the international [agreement](#) reached between Iran and western nations curtailing the Iranian nuclear program. Republicans have remained steadfastly opposed to the deal and are supported by a handful of Democratic legislators. Opponents of the deal fear the compromise is too lenient with the Iranian government and argue that the lifting economic sanctions will

allow Tehran to increase funding to terrorist groups operating in the Middle East. The White House and Democratic allies have aggressively defended the deal, going so far as to paint the deal's opponents as warmongers.

Both chambers are set to take up a resolution of disapproval once the body reconvenes in the second week of September. In the Senate, Republican leaders are hopeful that they will have enough votes to surmount a Democratic filibuster. The House is also expected to easily pass the resolution of disapproval. However, the White House has issued a veto threat, and Senate Democrats have the requisite number of votes to sustain the veto and prevent a Republican override. Consequently, the deal is ultimately expected to move forward.

NDAAs

Debate over the [National Defense Authorization Act \(NDAA\) for Fiscal Year 2016](#) is expected to continue through the fall. The House and Senate are currently confereing the bill. House Armed Service Chairman Mac Thornberry (R-TX) has yet to reach an agreement with Senate Armed Services Chairman John McCain (R-AZ) and both committees Democratic ranking members over prescription costs for military personnel. The current NDAA expires at the end of the year.

OTHER ISSUES

A number of other issues are on the radar screen as Congress returns this month, including the fate of the Export-Import Bank and patent reform.

Export-Import Bank

The expired Export-Import Bank (Ex-Im) remains a controversial issue in Congress. Opposition from conservative Republicans led to the Bank's shuttering at the end of June, despite support from Democrats and a handful of Republicans. The Senate added an Ex-Im extension to the DRIVE Act, but House conservatives are expected to oppose any attempts by GOP leadership to allow a vote on reauthorizing Ex-Im.

Cybersecurity

Following a dustup on the Senate floor over consideration of the [Cybersecurity Information Sharing Act \(CISA\)](#), Senators are expected to return to the issue of cybersecurity sometime this fall. Before adjourning for the August recess, the Senate reached an agreement on the number of amendments (10 Republican, 11 Democratic,) that would be allowed on the bill when it is revisited, including a manager's amendment from Senate Intelligence Committee Chairman Richard Burr (R-NC) and Ranking Member Dianne Feinstein (D-CA). With most of September floor time expected to be taken up by debate over the Iran deal and government funding, it is possible that the Senate will be unable to return to CISA until October.

Patent Reform

The high-pitched battle over patent reform legislation is expected to continue in the fall. In June, the Judiciary Committees in the Senate and House passed the [PATENT Act](#) and the [Innovation Act](#), respectively. Both bills seeks to reform the patent system to clamp down on patent trolls, but the legislation has been mired in cross-industry disagreements. The Inter Partes Review (IPR) process for challenging patents continues to be the primary point of contention between technology firms and pharmaceutical and biotechnology companies.

The timeline for advancing patent reform remains ambiguous and rests primarily on the outcome of ongoing negotiations. Absent an agreement between warring industry factions, patent reform is not likely to make it to the Senate floor in 2015.

TSCA Modernization

The Senate was unable to wrap up consideration of reauthorizing the Toxic Substances Control Act (TSCA) before leaving for the August recess. However, the legislation enjoys broad bipartisan support and will likely be among the items that advance. The TSCA Modernization Act would provide a needed update to the primary law for governing the management of chemicals.

KEY DATES

| Date | Program Expiring |
|------------------------|--|
| Sept 30 | Government Funding; FAA Authorization; Immigration Programs; Internet Tax Moratorium; Others (see “Fall Preview – In Brief”) |
| Oct 29 | Highway Bill |
| Late Nov- Early Dec | Debt Limit |
| Late Dec- Late Jan | Tax Extenders (can be addressed in January, but much more difficult) |

RECENT POLLING

Job Approval: President Obama

| Poll | Date | Results |
|--------------------------|-------------|------------------------------|
| Rasmussen Reports | Sept 7 | Approve 44, Disapprove 55 |
| Gallup | Sept 6 | Approve 49, Disapprove 47 |
| Reuters/Ipsos | Sept 2 | Approve 47, Disapprove 47 |

Job Approval: Congress

| Poll | Date | Results |
|----------------------------------|-------------|------------------------------|
| The Economist/ YouGov | Sept 1 | Approve 11, Disapprove 65 |
| Gallup | Aug 9 | Approve 14, Disapprove 82 |
| CBS News | Aug 2 | Approve 17, Disapprove 74 |

Direction of the Country

| | Date | Results |
|----------------------------------|-------------|---|
| Rasmussen Reports | Sept 3 | Right Direction 27, Wrong Direction 66 |
| Reuters/Ipsos | Sept 2 | Right Direction 27, Wrong Direction 56 |
| The Economist/ YouGov | Sept 1 | Right Direction 28, Wrong Direction 64 |