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Washington Update

August 4, 2014

Legislators wrapped up their summer work in July before leaving town for the August recess, but not without some last minute drama over the Highway Trust Fund (HTF) and the border supplemental bill. Ultimately, lawmakers passed a funding extension for HTF, staving off a financial crisis. Congress also moved forward on several tax items and continued to hold oversight hearings on the Affordable Care Act (ACA) implementation.

CONGRESSIONAL OUTLOOK

When lawmakers return after Labor Day, they will have a host of issues to confront in the short period of time before they resume full-time campaign activity leading up to the November 4 mid-term election. Congress is currently scheduled to be in session the week of September 29 for last minute items, but they are expected to wrap up federal funding legislation and other expiring items by September 19.

There are several must-pass items that both chambers are expected to address upon their return. At the top of the list is government funding. Congress will need to move quickly to pass a continuing resolution (CR) to fund the government past the current authority which expires on September 30. The final CR may also include a temporary extension of the Export-Import (Ex-Im) Bank, which would allow for additional time to debate the controversial reauthorization. Finally, legislators are expected to act on the Internet tax moratorium, which is set to expire in the fall.

In addition to these pressing items, the Senate may also take up several other bills designed to motivate the Democratic base, including possible votes on college affordability, a minimum wage increase, and bills reversing the Supreme Court decisions on employer contraception coverage and campaign finance disclosure.

ISSUE—FUNDING THE FEDERAL GOVERNMENT

Legislators continued their work on laying out funding priorities for Fiscal Year 2015 (FY15), with current government funding set to expire at the end of September.

Both the House and Senate Appropriations Committees spent July working on several FY15 spending bills, which spell out specific funding levels for various federal agencies and programs. The House Appropriations Committee approved the Financial Services and Interior appropriations bills in July. Also during the month, the full House passed both the Financial Services and the Energy and Water bills. The chamber previously approved measures for Commerce, Justice, and Science (CJS); Defense; Homeland Security; the Legislative Branch; Military Construction and Veterans Affairs (MilCon VA); and Transportation, Housing, and Urban Development. Several bills still await final action by the House.

While the full Senate has yet to pass an appropriations bill for the coming fiscal year, the Appropriations Committee continues to favorably report spending measures to the Senate floor calendar. In July, the Committee approved a bill for Defense agencies and programs. The Defense bill joins seven other appropriations bills awaiting a vote by the full Senate.

Despite some progress on appropriations, Congress is unlikely to wrap up the process before FY14 funding runs out on September 30. As such, congressional leaders are expected to pursue a CR to temporarily extend federal funding through the beginning of FY15. In July, Speaker John Boehner (R-OH) announced that the House will take up the issue after members return from the August recess and suggested that the CR would fund the federal government until early December, leaving decisions over further funding to the lame duck Congress.

The greatest challenge to passing a CR is timing. Congress will have only a handful of working days in September to deal with the impending funding crisis. However, the memories of the 2013 government shutdown will likely provide incentive for both sides to negotiate a deal before funding runs out.

ISSUE—TAXES

Congress moved forward on several tax-related items in July, but continued to struggle in finding a way forward for the Internet Tax Moratorium Act extension.

Tax Extenders

Legislators made some progress in July on the expired corporate and individual tax provisions known as "tax extenders." The House passed a package that included five of the expired tax breaks. The bill would permanently extend provisions related to charitable giving, including tax benefits for charitable contributions using retirement funds as well as a deduction for food inventory donations. The House previously approved a number of bills to permanently reauthorize several other extenders, including Section 179 expensing provisions for small businesses and the R&D tax credit.

On the Senate side, Finance Committee Chairman Ron Wyden (D-OR) previously introduced a comprehensive tax extenders bill with a two year extension, but the legislation stalled on the floor of the Senate over a disagreement on amendments, leading Senate Majority Leader Harry Reid (D-NV) to suggest that the issue will likely be pushed off until the lame duck session.

Should they wait until after the election to address the issue, lawmakers will have a limited amount of time to negotiate a deal on tax extenders. Two factors that will affect talks are the tax provisions' steep price tag and a perception that some of the provisions are narrowly tailored to special interests. Any deal is likely to make the extenders retroactive to income earned in 2014.

Tax Reform

The Senate Finance Committee continued its investigation of tax reform in a hearing entitled "The U.S. Tax Code: Love It, Leave It, or Reform It." The hearing probed the inefficiencies and loopholes in the corporate tax code, particularly on the international side. Despite the continued attention on the issue of inversions, there is no chance of passing a tax reform bill in this Congress.

Inversions

The Senate Finance hearing repeatedly focused on corporate inversions, an issue that became a flashpoint in July. Throughout the hearing, Chairman Wyden and other Democrats vigorously attacked this practice of reincorporating a company overseas following a merger with a foreign entity. While inversions occur for many reasons, some are undertaken in order to secure a lower tax burden than in the U.S. Over the past month, Democrats have become increasingly vocal in their attacks on the practice, particularly as prominent U.S. companies announced their intentions to move abroad. Congressional Democrats have argued in favor of moving legislation to make it more difficult for companies to invert.

The Obama Administration also has pushed Congress to act, with Secretary of the Treasury Jacob Lew sending a letter to Congress calling for legislative action. In his letter, Secretary Lew warned of the long-term consequences of allowing corporations to move off-shore, but also reiterated the Administration's position that the best way to address the situation is through reforming tax code to bring down the corporate tax rate while also closing tax loopholes.

Republicans have approached inversions more cautiously. Senate Finance Ranking Member Orrin Hatch (R-UT) indicated that he would be willing to consider proposals to curb inversions so long as legislation did not increase taxes or add to the federal deficit, did not include retroactive tax punishments, and moved America closer to a territorial tax system. However, Republicans remain committed to their position that the best way to reduce inversions is through a tax reform package that reduces the U.S. corporate tax rate.

The Senate Finance Committee may look to move an anti-inversion bill in September, but it would be difficult for anything to become law on the issue in this Congress due to the limited remaining legislative days and reluctance from Republicans to act on the issue outside of comprehensive tax reform. While some have encouraged President Obama to act on inversions through an executive order, Lew has said the Administration lacks the authority to do so.

Internet Tax Moratorium

In July, Congress also dealt with the current federal moratorium on taxing Internet access, which is set to expire on November 1. On a voice vote, the House passed a bill to permanently extend the moratorium. The Senate has similar legislation pending with near unanimous bipartisan support, but faces one primary hurdle to passage: a bipartisan group of senators are seeking to merge the moratorium extension with controversial legislation called the Marketplace Fairness Act (MFA). The MFA legislation, which would allow states to collect sales tax for online purchases, is unlikely to pass the House.

Should Congress fail to extend the moratorium in the near future, Internet providers in various jurisdictions may be required by law to provide advance notice to customers that their services could be subject to additional taxation.

The Internet tax moratorium extension will be on a very short list of “must-pass” items in September, and is likely to break free from the controversial MFA legislation.

ISSUE—HEALTHCARE

Washington saw several healthcare developments in July, including pivotal court challenges to the ACA and a breakthrough on reforming the Department of Veterans Affairs (VA).

ACA Court Challenges

The Obama Administration was dealt a serious blow in July when a federal appeals court ruled unconstitutional a key Administration policy. In a 2-1 decision, the Court of Appeals for the District of Columbia ruled in *Halbig v. Burwell* that the IRS lacked the authority to provide eligible Americans with subsidies to purchase health insurance in online exchanges that are not operated by states. Complicating the issue, the Fourth Circuit Appeals Court ruled that the subsidies were constitutional, mere hours after *Halbig* decision was handed down.

At the heart of both cases is the ambiguity of the ACA’s legislative text regarding who is eligible for insurance subsidies. In its decision the DC Court of Appeals ruled that, as written, the ACA only authorized subsidies for individuals using state-based exchanges and not those on the federal exchange. Analysts predicted that if the decision stands, it could result in sharp premium increases for nearly five million Americans that live in the 36 states that do not operate their own exchange. Conversely, the Fourth Circuit Court ruled that while the law's text may be vague, the IRS had broad authority in interpreting the statute to allow subsidies for consumers in the federal exchange.

Reaction came quickly in Washington. The White House responded to the *Halbig* decision with promises to appeal the ruling through a request for *en banc* review by the full appeals court, which currently has a majority of judges appointed by Democratic presidents. Administration officials expressed confidence that the full court would conclude that the IRS interpreted the ambiguous language correctly and that legislative intent was never to exclude access to subsidies simply based on who operated the exchange. Meanwhile, Republicans seized on the *Halbig* decision, using it to buttress their argument that the Obama Administration has overstepped its legal bounds in implementing the ACA.

ACA - Employer Mandate

Members of both parties have begun to question the long-term feasibility of the ACA's mandate for employers to provide health insurance coverage for employees. The Obama Administration has delayed the implementation of the mandate twice in the past two years, and even supporters of the healthcare law wonder if the mandate should remain. ACA proponents claim that the mandate was never central to the law.

Opponents of the mandate—which requires employers to provide coverage if they have more than 50 full-time employees—claim that some small businesses are having to move workers to part-time work to get below the fifty employee threshold and avoid the costs of complying with the mandate. These critics argue that this trend will continue as the mandate is currently set to be phased in at the beginning of 2015.

Though high-profile Democrats like Virginia's Senator Mark Warner have called on the Administration to further delay the mandate or lessen the burden on smaller businesses, any future delay will likely be complicated by the current GOP legal challenges to the President's authority to delay the provision. In a party line vote on July 31, the House authorized Republican leadership to file a lawsuit against the Obama Administration, claiming that the Department of Health and Human Services (HHS) overstepped its legal and constitutional authority by delaying the mandate without first gaining congressional approval, among other issues. The lawsuit was met with scorn from Democrats, who argue that the legal challenge is a political ploy.

The lawsuit will now go to a federal court judge to decide whether the House has legal standing to bring the case, a question on which legal experts have disagreed. In the meantime, both parties are expected to heavily use the lawsuit to motivate their bases ahead of the November mid-term election.

ACA - Exchange Funds

Administrators of state-run online insurance exchanges are hoping that HHS will provide them with more time to use federal dollars, which they were supposed to use by the end of 2014. These states are not requesting new funding sources, but want HHS to allow them to continue to spend previously appropriated dollars in 2015. Already, a handful of states have formerly requested an extension, and several more have indicated an interest in applying for additional time.

Veterans Affairs

The beleaguered VA received good news in July as the Senate unanimously confirmed Robert McDonald as the new Secretary of the VA. Secretary McDonald will come to the VA's helm as the department continues to deal with the fallout over several patient access scandals. In addition to the new Secretary, Senator Bernie Sanders (I-VT) and Congressman Jeff Miller (R-FL) unveiled compromise legislation this month that would institute several reforms geared toward improving service to veterans. Among other provisions, the bill would allocate $17 billion to the VA to improve veteran wait times, hire more medical professionals, and make it easier to fire underperforming senior executives. The bill easily passed the House and Senate and was sent to the President at the end of July.

340B Program and Orphan Drugs

The Health Resources and Services Administration (HRSA) announced in July that it will continue requiring drug manufacturers to provide a 340B program discount on orphan drug medications when used for an off-label purpose. The decision comes months after the DC Court of Appeals invalidated the HHS regulation. Through an interpretive rule change, HRSA said it will continue to require discounts for orphan drugs when they are used off-label for something other than the intended "orphan condition." Orphan drugs are used to treat rare diseases and conditions and are technically carved out of the 340B program. The pharmaceutical industry opposed the decision, but believes that the rulemaking is outside of HRSA's authority and could be reversed in pending court challenges.

ISSUE—TRANSPORTATION

Congress finally came to a solution on the stopgap Highway Trust Fund (HTF) measure this month and President Obama issued an executive order to establish the Build America Investment Initiative.

Highway Trust Fund

With the clock ticking down, Congress passed legislation to stave off a funding crisis with the HTF. Dwindling revenue from fuel costs led Department of Transportation (DOT) to announce earlier this year that the HTF would run out of funds on August 29. For months, lawmakers have sought a solution to the funding crisis. In July, the House passed a $10.8 billion bill to extend funding for HTF programs until May 2015. Due to the short timeframe, the Senate was expected to pass the same bill and send it to the President. When it came time for Senate consideration, however, two amendments to the bill passed to shorten the timeframe to December 2014 and to change some of the pay-fors. The House balked at the changes and the Senate eventually relented and passed a clean version of the House bill by a vote of 81-13.

While Congress averted an immediate crisis with the HTF, legislators must still address the long-term solvency issues surrounding the fund. Energy efficient cars have continuously eroded the amount of revenue the HTF collects from the national gasoline tax. As such, Congress will need to determine a new funding model. A number of proposals have emerged to provide long-term stability for the fund, including plans to increase the gas tax for the first time in two decades as well raising extra revenue by closing corporate tax loopholes.

Public Private Partnerships

President Obama signed an executive order in July establishing the Build America Investment Initiative, which sets up a one-stop shop in DOT for cities and states to locate private-sector partners to finance infrastructure projects. The program is being billed as "a government-wide initiative to increase infrastructure investment and economic growth by engaging with state and local governments and private sector investors to encourage collaboration, expand the market for public-private partnerships (PPPs) and put federal credit programs to greater use."

The program also sets up a Build America Interagency Working Group, which will perform a review of policies to locate and address barriers to private investments and partnerships. The group seeks to improve coordination to accelerate financing and completion of regionally and nationally important projects, "particularly those that cross state borders."

Finally, the order set up an Infrastructure Investment Summit, which will be convened by the Treasury Department in September to look at innovative approaches to infrastructure financing.

Oil Train Proposals

During July, the White House and Congress continued debate over regulations governing oil train cars. Oil transportation has come under increased scrutiny over the past several months following high-profile safety incidents. Late in July DOT proposed stricter rules for tank cars that transport flammable fuels. The proposed regulation would require tank cars to be retrofitted to meet new safety standards, set new speed limits, and require upgrades in breaking technology and testing of volatile liquids.

Senator Heidi Heitkamp (D-ND), who previously introduced a rail safety bill and is a leader on rail issues, reacted positively to the proposal, but she expressed concern that the regulations may be too tight. She fears that rail companies would not be able to meet the deadline to upgrade oil cars. Environmental and safety groups criticized the proposal for being inadequate and not written in a way that properly addresses the issue.

ISSUE—MISCELLANEOUS

Several others issues presented themselves in July as crises flared up at home and abroad.

Immigration

Lawmakers were called to deal with a deteriorating situation at the nation's southern border this month as thousands of illegal immigrant children continue to flood into the United States. For weeks leading up to July, national news outlets reported on the heavy influx of unaccompanied migrant children arriving in the U.S. The young immigrants come predominately from Central America, where social upheaval has prompted many parents to send their children on the long journey to America

Upon arrival in the United States, minors from countries other than Canada and Mexico are protected under the 2008 William Wilberforce Trafficking Victims Protection Reauthorization Act. Provisions of that law require a lengthier process for deporting children from countries that are not contiguous to the U.S. and stipulate that HHS manage their care while they reside in country.

To alleviate the financial crunch of dealing with the children, President Obama requested in July that Congress pass a supplemental appropriations bill to give HHS an additional $3.7 billion to fund these operations. Republicans immediately refused to pass the President's proposal, citing the exorbitant cost. House GOP leaders also promised to oppose any Senate supplemental that attached that chamber's immigration reform bill that passed in 2013. Alternatively, House Republicans proposed a bill costing $659 million. The Senate version came in at $2.7 billion.

House Republicans initially struggled to pass their proposal and pulled the bill from consideration on the House floor, facing backlash from conservative members. The following day, GOP leaders secured enough votes to pass a revised supplemental package. The bill is unlikely to advance in the Senate, which failed to pass its proposal before the August recess.
Though Congress failed to come to an agreement on the bill, the issue will be waiting for members when they return in September. .

Israel

As the White House and Congress sought solutions on the situation at the U.S. border, another crisis ignited in the Middle East. On July 8, Israel launched a military operation targeting underground tunnels constructed by the terrorist group Hamas. Israeli officials claimed that the tunnels house surface-to-air missiles that Hamas has used to attack Israeli territory.

As the Israel Defense Force (IDF) moved swiftly into Gaza, Israel was sharply criticized by leaders in the region and across the world. The United States and many of its allies, however, reaffirmed support of Israel's right to self-defense. Despite widespread Western support, the IDF has come under fire for the high level of civilian casualties that have resulted from their operation. Israel has responded by blaming Hamas for using civilians as human shields and propaganda tools.

The Obama Administration has remained publicly supportive of Israel's actions, as have many in Congress from both parties. Nevertheless, the White House has called on the Israeli government to practice more caution when seeking out and attacking Hamas targets.

Ukraine

International attention was again refocused this month on the ongoing situation in Ukraine. Since the March annexation of the Crimean Peninsula by the Russian Federation, conditions in Eastern Ukraine have worsened. Amid Western resistance, Russian forces have maintained their control over Crimea while separatist movements elsewhere in the region continue their military campaign against the Ukrainian government.

The conflict came to a head in July when a Malaysia Air passenger plane was shot down over Eastern Ukraine. Intelligence sources pointed to pro-Russian Ukrainian separatists as the culprits. Reaction from Ukraine and Western governments was swift and harsh, both denouncing the militants' actions and suggesting that the Russian government provided the advanced weaponry and training used to down the aircraft.

Western leaders have been united in their condemnation of the role Russia is continuing to play in fomenting unrest in Eastern Ukraine. In July, the White House, in coordination with the European Union, released additional sanctions targeting the Russian government and industries. The new sanctions are sweeping and will impact large swathes of the Russian economy. Two notable provisions are the blanket ban of several Russian banks from engaging in financial transactions in America and a European ban on exporting dual use goods for military end users. The EU will also block Russian access to technology used in the oil sector, a central pillar to the Russian economy.

Russian President Vladimir Putin dismissed the sanctions, spinning them as a positive development that will prompt Russia to be self-reliant. But Western observers note that as sanctions toughen, the Russian business community may slowly turn against President Putin and his methods.

Export-Import Bank

The fate of the Export-Import (Ex-Im) Bank, a federal export credit agency that finances certain sales of U.S. exports to international buyers, remains uncertain. Despite the strong backing of the business community, conservative Republicans in both chambers have balked at reauthorizing the costly agency, whose funding is set to dry up at the end of September.

Upon returning from the August District Work Period, Congress will have only a handful of legislative days to reauthorize the bank before funding runs out and the agency is forced to shut down. Leader Reid has promised action on reauthorization. One proposal that may advance is a bipartisan bill that a group of senators, including Banking Chairman Tim Johnson (D-SD), unveiled in July that would reauthorize the Ex-Im Bank for five years with an elevated lending cap of $160 billion. Senator Joe Manchin (D-WV) is also pushing for language to ease restrictions on Ex-Im financing of overseas coal plants, which may alleviate some GOP concerns.

RECENT POLLING

Job Approval: President Obama

Poll	Date	Results
Rasmussen Reports	August 3	Approve 46, Disapprove 53
Gallup	August 3	Approve 42, Disapprove 53
Associated Press/GfK	July 28	Approve 40, Disapprove 59

Job Approval: Congress

Poll	Date	Results
The Economist/ YouGov	July 28	Approve 7, Disapprove 72
Fox News	July 22	Approve 13, Disapprove 79
Gallup	July 10	Approve 15, Disapprove 80

Generic Congressional Ballot

Poll	Date	Results
Fox News	July 22	Democrats 43, Republicans 41
Rasmussen Reports	July 27	Democrats 41, Republicans 39
CNN/Opinion Research	July 20	Democrats 48, Republicans 44

Public Approval of Health Care Law

	Date	Results
Rasmussen Reports	July 26	Support 39, Oppose 57
CNN/Opinion Research	July 20	Support 40, Oppose 59
Quinnipiac	June 30	Support 43, Oppose 55