

Washington Update

December 1, 2015

In spite of an abbreviated November schedule, legislators pushed forward on myriad of legislative issues. Appropriations subcommittees began negotiations to produce an omnibus spending package to fund the federal government through the end of Fiscal Year 2016 (FY16). A conference committee continued its work to reconcile the differences between both chambers' Highway bills. House Republicans chose a new chairman of the House Ways and Means Committee and continued work on tax extenders. Senate Republicans worked behind the scenes to craft a budget reconciliation package to undo major portions of the Affordable Care Act (ACA), while the Administration prepped for a global summit on climate change in Paris and responded to terrorist attacks that occurred in the same city in November.

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CONGRESSIONAL OUTLOOK FOR DECEMBER

Lawmakers will face two impending deadlines as they return from their Thanksgiving recess. On December 4, the current extension of the Highway Bill is set to lapse. On December 11, government funding will expire.

Negotiators are believed to be close to an agreement on separate bills to reauthorize Highway Bill programs and keep the government open. Congress is expected to vote on the Highway Bill reauthorization this week and the omnibus appropriations package next week.

Lawmakers are also expected to renew the expired tax extenders before leaving for the holidays, possibly as part of a larger bill that makes some of the tax breaks permanent on both sides of the political divide. Other legislation that could advance before the end of the year includes: Congressional Review Act legislation scrapping the President's Clean Power Plan, a conference report reforming No Child Left Behind, budget reconciliation legislation that repeals key portions of the ACA, and action on strengthening the vetting process for Syrian refugees.

ISSUE—GOVERNMENT FUNDING

Discussions continued in November over an omnibus appropriations bill to fund the federal government through FY16 while Senate GOP leaders prepped a final reconciliation legislative package that they hope to send to the President's desk with a simple majority vote in December.

Budget and Government Funding

The two-year budget deal approved by Congress in October raised spending caps on both domestic and defense spending for FY16 and FY17 and set the stage for negotiations on an omnibus spending package to fund the government through the end of FY16. Current funding for the federal government expires on December 11.

The chief obstacle for negotiators will be balancing the need to pass a funding bill by mid-December and demands from rank-and-file Republicans to include provisions on controversial subjects. Democrats are opposed to adding policy riders to the spending package, but Republicans continue to push for a wide range of provisions that would block funding for specific divisive activities at the Environmental Protection Agency, Internal Revenue Service, and Department of Labor. Funding for Planned Parenthood and addressing the process for vetting Syrian refugees will also continue to be part of the discussion. Despite the hurdles, lawmakers remain cautiously optimistic that Congress will succeed in approving the omnibus before the December funding deadline. If not, a short-term continuing resolution will need to be passed to allow for more time to negotiate the omnibus.

Reconciliation and ACA Repeal

The Senate continued to work in November to advance a House-passed [reconciliation package](#) to repeal key portions of the ACA. Under reconciliation procedures, the legislation, which would roll back the employer and individual mandates, medical device and Cadillac taxes, and other controversial provisions, would only need a simple majority to pass the chamber, avoiding a Democratic filibuster. Despite these favorable rules, the legislation continued to face internal hurdles within the GOP caucus.

Moderates, including Senators Lisa Murkowski (R-AK), Mark Kirk (R-IL), and Susan Collins (R-ME), have expressed concerns over the provisions of the bill that repeal funding for Planned Parenthood. Conversely, conservative Senators Mike Lee (R-UT), Ted Cruz (R-TX), and Marco Rubio (R-FL) pledged to vote against the House reconciliation bill, believing it does not go far enough in repealing the ACA. Republican leaders indicated that the Planned Parenthood language would remain and have crafted a package that repeals additional portions of the Affordable Care Act, which many believe will woo conservatives to vote for the final package.

Senate leaders plan to move the reconciliation package during the first week of December. Senate rules require up to twenty hours of floor debate followed by a period of rapid-fire votes on a slew of amendments, the so-called vote-a-rama. Similar to the budget resolution vote-a-rama in the Spring, Senators are expected to offer several controversial messaging amendments. Prescription drug pricing is predicted to be a focus for Democrats, while tough votes are also expected on labor, education, and tax issues.

While members on both sides will push amendments that seek to put political opponents on the defensive, rules governing amendments to reconciliation legislation are stricter than those for budget resolution amendments. Chief among these rules is the requirement that an amendment have a direct budgetary impact, making it more difficult for both parties to force votes on tough issues.

ISSUE—TRANSPORTATION

In November, legislators were forced to once again advance a short-term extension of the current Highway Bill, temporarily renewing federal surface transportation programs through December 4. The move came as negotiators continue work on a compromise replacement bill. In November, the House advanced its version of the Highway Bill replacement, the [Surface Transportation Reauthorization and Reform Act](#), and the Senate advanced the [Developing a Reliable and Innovative Vision for the Economy \(DRIVE\) Act](#) in July. Transportation leaders spent the month ironing out the differences between the two bills in a conference committee, but obstacles remain. Chief among these challenges are the funding offsets required for the legislation. Controversial offsets, such as tapping into Federal Reserve surplus funds, have generated bipartisan

and cross-chamber opposition. Another challenge facing conferees is determining how long the multi-year bill should last.

Despite the obstacles, lawmakers in both chambers remain confident that a deal will be reached given the amount of effort and work that has already gone into crafting a multi-year bill. Leaders are confident that the long-term bill can be passed in both chambers by the December 4 deadline.

ISSUE—TAX

The House Ways and Means Committee selected a new chairman and tax leaders continued to look for a path forward on tax extenders in November.

New Ways and Means Chairman

Following several weeks of campaigning, Rep. Kevin Brady (R-TX) defeated Rep. Pat Tiberi (R-OH) to succeed Speaker Ryan as chairman of the House Ways and Means Committee. Additionally, Rep. Charles Boustany (R-LA) was selected to chair the Subcommittee on Tax Policy, formerly known as the Subcommittee on Select Revenue Measures. Both chairmen renewed their commitment to passing comprehensive tax reform.

Tax Reform

A rewrite of the tax code will not pass in 2015 as some had hoped, but reform efforts are expected to gain momentum over the coming year. Speaker Ryan restated his commitment to tax reform in November, denying that the effort was irreversibly stalled. The Speaker clarified to the press that he will not dictate tax reform legislation from his new position but will rely on the committee process to advance reasonable solutions. Nevertheless, the new Speaker is expected to have an outsized influence on the trajectory of tax reform discussions. Speaker Ryan held out hope in November that Congress could advance tax reform legislation in 2016, though many analysts fear that election year politics could impede a bipartisan package and push the effort to 2017.

One recent episode that could spur tax reform discussions is the announcement in November that U.S. pharmaceutical giant Pfizer will merge with Irish drug maker Allergan. The new company will have its headquarters in Ireland, a so-called inversion that will allow the new company to lessen its tax burden. Democrats reacted to the announcement with calls for additional measures to curb tax loopholes. Republicans saw the merger as a symptom of the high U.S. corporate tax rate and reiterated their support of efforts to lower the rate, making America competitive again and removing the incentive to move companies abroad for tax purposes.

Tax Extenders

One of Chairman Brady's first challenges as head of Ways and Means will be working with Chairman Hatch and other tax leaders to negotiate a solution to the expired

package of personal and corporate tax provisions known as tax extenders. The extenders expired at the end of 2014, and Congress has yet to renew the provisions for income earned in 2015.

Negotiations continued through November as lawmakers sought to bridge the differences between the two parties. Key to any compromise will be balancing Republican desires to extend and make permanent key business extenders with Democratic demands that the legislation also extend their priority extenders, including the Child Tax Credit and the Earned Income Tax Credit (EITC). Republicans have expressed opposition in the past to making some of these provisions permanent, given a high level of fraud and improper payments. They are insisting that program integrity measures be accepted if these provisions are to be made permanent.

Possible legislative vehicles for tax extenders include the year-end omnibus appropriations bill or the Customs conference report. It may also be considered as a standalone bill under regular order given the size and scope of the package.

If negotiators are unable to reach a deal by the end of the year, lawmakers will likely advance a one year retroactive extension for 2015 or a two year bill that covers 2015 retroactively and 2016 prospectively. The White House has warned Congress that the President will not support a two-year bill that does not provide more benefits for working class Americans.

ISSUE—HEALTH

November saw developments on ACA-related issues and leadership of the FDA.

ACA Enrollment

In November, the Department of Health and Human Services (HHS) released updated enrollment figures for the federal insurance exchange. Nearly 550,000 Americans selected plans using HealthCare.Gov, a 17 percent increase from the same point in the 2014 enrollment period. Administration officials hope to have ten million Americans enrolled through the federal exchange by the end of the year.

ACA Co-Ops

The Administration continued to deal with the fallout from the failed state-based health insurance cooperatives. Twelve of the twenty-three co-ops established after the passage of the ACA have indicated that they will cease operations. The co-ops were set up with \$2.4 billion in loans, and the collapse of over half will force nearly 600,000 customers to search for new coverage before the enrollment period closes in 2016. Republicans heavily criticized the co-op failures, using it as further proof of the need to repeal and replace the ACA. The Administration, however, expressed confidence that

the remaining co-ops will be financially stable and promised aid to customers of the shuttered co-ops.

FDA Nominee

In November, the Senate Health, Education, Labor, and Pensions (HELP) Committee held a hearing on the nomination of Robert Califf to serve as the Commissioner of the Food and Drug Administration (FDA). Currently serving as the Deputy FDA Commissioner, Califf received the endorsement of HELP Chairman Lamar Alexander (R-TN) and Ranking Member Patty Murray (D-WA). The HELP Committee is expected to vote on the nomination sometime in December, but the timeline for a floor vote remains ambiguous. Furthermore, the Califf nomination could face bipartisan opposition. Senator Ben Sasse (R-NE) has threatened to block the nomination until the Administration provides a plan to handle the failed co-ops, and some Democrats have expressed discomfort with Califf's ties to the pharmaceutical industry.

ISSUE—CYBERSECURITY

Washington will continue efforts in December to strengthen the nation's cyber defenses.

Cybersecurity Information Sharing Act

Progress was slow in November on the [Cybersecurity Information Sharing Act \(CISA\)](#), which provides companies with liability protections for sharing threat data with federal agencies. Both chambers previously passed the bill, and intelligence leaders are working to reconcile the differences, though a final House-Senate package is not likely to make it to the President's desk until early 2016

U.S.-China Intelligence Meetings

Following a September pledge by both President Obama and Chinese President Xi Jinping to better monitor commercial hacking activity, senior intelligence officials will meet in Washington in December to begin talks on how to implement the agreement. Officials will focus their efforts on better coordination of measures to prevent cyber-attacks.

ISSUE—PATENT REFORM

Prospects for an overhaul of patent laws further dimmed in November when Senate Judiciary Committee Ranking Member Patrick Leahy (D-VT) and Senator Mike Lee (R-UT) agreed at a panel discussion that patent reform would likely take a back seat to criminal justice reform. While both remained optimistic that bipartisan support for patent legislation is strong, a deal remains elusive.

Lawmakers have debated patent reform legislation for months. Committees in both the House and Senate previously passed patent reform bills (the [Innovation Act](#) and [PATENT](#)

[Act](#), respectively), but sustained disagreement over provisions related to the inter-partes review (IPR) system at the Patent and Trademark Office continue to stand in the way of either chamber passing the legislation. Nevertheless, Senate Judiciary Committee proponents of patent reform legislation continue to work to bring all sides together to break the stalemate over the IPR system.

ISSUE—ENERGY

November saw movement on Congress' response to the Administration's carbon emissions rules and the beginning of climate change discussions in France.

EPA Carbon Rules

The Senate advanced [S.J.Res 23](#) and [S.J.Res24](#) this month to curb the Environmental Protection Agency's (EPA) [rules](#) placing new limits on carbon emissions from power plants. The House was set to pass the resolutions on December 1. Republicans are using the Congressional Review Act (CRA) to pass the measures. CRA rules allow the Senate to pass legislation with a simple majority; however, CRA resolutions are subject to a veto and President Obama has pledge to reject the Republican legislation.

Paris Climate Conference

Nations from around the globe convened in Paris in November to begin discussions on a global deal to curtail carbon emissions. The Obama Administration has been active in negotiations leading up to the conference, where the President hopes an international agreement can be reached. Republicans in Washington have largely been critical of the conference with some congressional Republicans looking to force the President to seek congressional approval for any U.S. involvement in a climate pact.

ISSUE—NDAA

Congress passed the [National Defense Authorization Act \(NDAA\) for Fiscal Year 2016](#) in November after President Obama vetoed a previous version of the bill. The revised legislation easily secured the support of Congress and the White House following the agreement over funding levels secured by the October two-year budget deal. President Obama signed the legislation into law on November 25.

ISSUE—ATTACKS IN PARIS

France was the victim of terrorism on November 13 when assailants affiliated with the Islamic State of Iraq and the Levant (ISIL) staged attacks on several venues across Paris, resulting in 130 casualties. The violence came less than a year after an al-Qaeda attack at the French satirical magazine Charlie Hebdo, and prompted a swift response from the French government, which ordered increased airstrikes on ISIL targets in war-torn Syria. French President François Hollande vowed to intensify efforts to dislodge ISIL from Syria

and Iraq, working to build a stronger international consensus to deal with the terrorist state.

Domestically, the attacks could have wide-ranging consequences on U.S. policy. The Paris attacks put pressure on the Obama Administration to develop a more detailed long-term plan to deal with ISIL. At the same time, fear of similar attacks in America prompted more than half of U.S. governors (including one Democratic governor) to oppose resettlement of Syrian refugees in their state until screening processes are improved. In Congress, the House passed by a veto-proof majority a [bill](#) to expand screening of refugees entering the U.S., a plan that is opposed by the President, Democrats, and a handful of Republicans.

The attacks also renewed calls for Congress to investigate electronic encryption following reports that the Paris attackers used encrypted files to plan their assault.

ISSUE—TRADE

Congress continued its review in November of the Trans-Pacific Partnership (TPP), a multi-lateral free trade agreement among twelve Pacific Rim countries. Republican leaders, including Speaker Ryan and Chairman Hatch, expressed concerns over the TPP provisions governing periods of exclusivity for biologics. Some lawmakers have called on the Obama Administration to reopen trade talks, a move the White House has deemed infeasible. The best case scenario for TPP is likely to be a vote in the lame duck session following the 2016 elections.

RECENT POLLING

Job Approval: President Obama

Poll	Date	Results
Rasmussen Reports	Nov 30	Approve 49, Disapprove 50
Gallup	Nov 29	Approve 47, Disapprove 47
Reuters/Ipsos	Nov 25	Approve 42, Disapprove 53

Job Approval: Congress

Poll	Date	Results
The Economist/ YouGov	Nov 23	Approve 13, Disapprove 65
PPP (D)	Nov 17	Approve 12, Disapprove 76
Gallup	Nov 8	Approve 11, Disapprove 86

Direction of the Country

	Date	Results
Reuters/Ipsos	Nov 25	Right Direction 24, Wrong Direction 64
Rasmussen Reports	Nov 24	Right Direction 28, Wrong Direction 63
The Economist/ YouGov	Nov 23	Right Direction 26, Wrong Direction 65