

Washington Update

November 2, 2015

Lawmakers had a busy and productive month in October. In addition to electing a new Speaker of the House, legislators passed a two-year budget deal, debt ceiling increase, and temporary extension of the Highway Bill. The Senate also passed a bipartisan cybersecurity bill. Discussions continued over long-term transportation reauthorization legislation, and the House passed a long-awaited reconciliation package repealing key portions of the Affordable Care Act (ACA). The final two months of the year are expected to yield deals on the highway bill and an omnibus appropriations package to fund the federal government.

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CONGRESSIONAL OUTLOOK FOR NOVEMBER

With the Senate and House in session together for only two weeks in November, lawmakers will work together to address issues running up against impending deadlines. This includes finalizing a deal on a multi-year Highway Bill by November 20 and negotiating an omnibus spending bill to fund the government past December 11. Congress will also spend November looking for a path forward on the vetoed National

Defense Authorization Act and reconcile the House and Senate versions of cybersecurity legislation.

In the House, the newly-minted Speaker Ryan will spend the first month in his new office setting the tone for his tenure and laying out a broad agenda for the coming months, including possible reform measures for House rules to assuage the House Freedom Caucus. In the Senate, lawmakers will first turn their attention to legislation blocking Administration rules affecting waterways in the U.S. The upper chamber is also expected to take up the House reconciliation package that repeals key portions of the ACA.

BOEHNER RESIGNATION AND HOUSE LEADERSHIP RACES

Following Speaker John Boehner's (R-OH) September announcement that he would resign from Congress at the end of October, House Republicans predictably spent much of the month sorting out their conference leadership. Majority Leader Kevin McCarthy (R-CA) was widely seen as the frontrunner to succeed Boehner, setting off a chain reaction of elections for other leadership posts. However, citing a lack of support from the right-wing Freedom Caucus, Leader McCarthy shocked Washington by withdrawing his name from contention on the day of the election.

The development sent the conference scrambling to find a House Republican that could reach the 218 vote threshold needed on the House floor to obtain the Speaker's gavel. A host of candidates from across the House Republican Conference came forward, but none seemed likely to unite the ideologically diverse factions. As such, members launched serious efforts to draft Ways and Means Chairman and 2012 Republican Vice Presidential Nominee Paul Ryan (R-WI) into the race. Initially hesitant to leave his dream chairmanship for the time-consuming and often difficult role as Speaker, Chairman Ryan balked at the prospect of succeeding Boehner. However, he eventually relented and agreed to pursue the position under his own terms, including an insistence on a smaller fundraising role in order to spend time with his young family.

Chairman Ryan quickly secured the support of two of the three main caucuses in the House Republican Conference: the conservative Republican Study Committee and the moderate Tuesday Group. The third, the Freedom Caucus, did not officially endorse Ryan as the group's rules require 80 percent support for an endorsement, but a supermajority of members agreed to support him. Some of the Freedom Caucus' members took issue with Chairman Ryan's conditions, including his request to reform a procedural move known as a "motion to vacate" which the group threatened to use to oust Speaker Boehner if he pursued legislation not to their liking. Despite these reservations, only nine Republicans ultimately voted against Ryan during the Speaker vote on the floor on October 29.

ISSUE—GOVERNMENT FUNDING

With Speaker Boehner on the way out, he realized his goal to “clear the barn” for his successor when he struck a major budget deal with the White House during his last week in office.

Budget and Government Funding

Following a two-year reprieve, stringent spending caps established by the Budget Control Act (BCA) were set to return in Fiscal Year 16 (FY16). In late September, Speaker Boehner and Senate Majority Leader Mitch McConnell (R-KY) announced that they were in talks with the White House to devise a budget deal in the mold of the 2013 Ryan-Murray agreement that temporarily lifted the budget caps. In October, leaders reached an [agreement](#). The deal would allow for a \$50 billion increase in FY16 and a \$30 billion increase in FY17, split evenly between defense and non-defense spending. In each year, the deal allows for an additional \$16 billion to be spent using the Overseas Contingency Operations fund, the separate account used to finance military operations in Iraq and Afghanistan.

The deal is largely paid for through policy changes. The agreement would rescind the ACA requirement that large employers automatically enroll employees in company health plans, which the Congressional Budget Office (CBO) estimates would save \$7.9 billion over a decade. Other pay-fors include changes to hospital payments, reforms for the Social Security Disability insurance program, tax compliance improvements, crop insurance changes, and a drawdown of the Strategic Petroleum Reserve. The full legislative text can be read [here](#).

The tentative agreement provoked severe backlash from conservatives in both chambers, who are adamant that the federal government stick to the strict spending caps. Even incoming Speaker Ryan was displeased with the process by which the deal was brokered, though he ultimately voted in favor of the agreement. Despite reservations from some of their members, Republican leaders pushed ahead, and the House passed the measure on October 28. The Senate quickly passed the legislation a day later, sending it to the President for his signature.

By setting the spending levels for the next two fiscal years, the budget deal largely removes the threat of a future government shut down materializing this year or during the 2016 election season. The agreement is also expected to smooth the appropriations process for the remainder of this year and next year. That theory will be tested as leaders continue to negotiate an omnibus spending package to extend funding past December 11, when the Continuing Resolution that is currently funding the government expires.

Debt Limit

Also included in the budget deal is a new suspension of the statutory debt ceiling, which the Department of the Treasury had previously announced would be reached on

November 3. The deal would suspend the debt limit until March 2017, largely neutralizing the issue for the 2016 presidential election. Again, conservatives in both chambers opposed an increase in the debt ceiling without corresponding cuts to overall federal spending.

Reconciliation

Republican attempts to repeal the ACA moved forward in October as the House advanced its [reconciliation package](#). On a mostly party line vote of 240-189, House Republicans passed the measure, which includes provisions to repeal the employer and individual mandates, medical device and Cadillac taxes, and federal funding for Planned Parenthood. Seven Republicans voted against the bill while one Democrat voted in favor.

The package now goes to the Senate, where leaders have indicated that they will bring the House version directly to the floor sometime in November. Senate rules established under the Congressional Budget Act of 1974 allow Republicans to pass a reconciliation bill with a simple majority, bypassing a Senate filibuster from Democrats. However, in October, a handful of Republican Senators criticized the House package for not going far enough. Senators Ted Cruz (R-TX), Mike Lee (R-UT), and Marco Rubio (R-FL) expressed a desire for a broader repeal of the ACA, including a rollback of provisions that expand Medicaid and provide federal subsidies. Conversely, moderate Republicans, such as Senators Susan Collins (R-ME) and Mark Kirk (R-IL), expressed wariness of the reconciliation measure's attempts to defund Planned Parenthood. With Democrats united against the reconciliation effort, Leader McConnell will need to balance the wishes from across the ideological spectrum of Senate Republicans in order to have the votes necessary to secure passage. Even if Republicans are able to send the reconciliation package to the White House for signature, President Obama has made clear that he will veto the legislation.

ISSUE—TRANSPORTATION

Congress made significant headway in October on surface transportation reauthorization and rail issues.

Highway Bill

In July, Congress successfully passed a three month extension of the Highway Bill, reauthorizing the programs until October 29. Legislators worked quickly to devise a short-term patch in the weeks leading up to the deadline. On October 27, the House advanced a proposal that would again extend the current Highway Bill through November 20. The Senate quickly followed suit, passing the measure on October 28. Funding for the Highway Bill was not an issue as the Highway Trust Fund is expected to remain solvent until early 2016.

The short-term patch was intended to give transportation leaders additional time to negotiate a long-term reauthorization bill. Earlier in the year, the Senate passed the [Developing a Reliable and Innovative Vision for the Economy \(DRIVE\) Act](#), a six year Highway Bill that also included three years' worth of funding. In October, The House moved forward on its version of a long-term Highway Bill replacement. House Transportation and Infrastructure (T&I) Committee Chairman Bill Shuster (R-PA) unveiled House Republicans' six-year transportation plan, the [Surface Transportation Reauthorization and Reform Act](#), which the T&I Committee quickly approved.

The short-term Highway Bill extension gives lawmakers from both chambers additional time to negotiate the differences between the two transportation reauthorization bills, likely in a conference committee. The full House is expected to consider the bill during the first week of November, but the Ways and Means Committee has yet to produce a package to pay for the legislation. Transportation leaders remain optimistic that any differences, including how to fund the highway programs, can be resolved in a conference committee. Senate Environment and Public Works Committee Chairman Jim Inhofe (R-OK) stated that he believes Congress can get a bill to the President's desk before Thanksgiving.

Rail

October saw developments on several rail issues. The short-term Highway Bill reauthorization included a controversial deadline extension for the implementation of positive train control (PTC) technology. For months, rail operators have implored lawmakers to delay the December 31 deadline to deploy the technically complex and expensive PTC systems. The rail industry scored a victory in the short-term Highway Bill patch, which set December 31, 2018 as the new deadline for full implementation of PTC systems.

Also in October, the Senate Commerce Committee approved the nomination of Sarah Feinberg to lead the Federal Railroad Administration (FRA) by a vote of 19-1. Ms. Feinberg has served as acting FRA Administrator since January. The timeline for a Senate floor vote on the Feinberg nomination remains uncertain

ISSUE—TAX

The election of Ways and Means Chairman Ryan as Speaker of the House is likely to have significant repercussions for tax policy issues in the coming months.

Ryan's Successor

With Paul Ryan taking up the Speaker's gavel, House Republicans began considering his successor as Ways and Means Chairman. Two candidates announced their intentions to pursue the chairmanship: Rep. Kevin Brady (R-TX) and Rep. Pat Tiberi (R-OH). Both men chair Ways and Means subcommittees. Rep. Brady, chair of the Health Subcommittee is likely to secure the support of the Texas Republican delegation, the largest in the House

Republican Conference, though Rep. Tiberi, chair of the Trade Subcommittee, may benefit from the fact that six other Texans currently hold committee gavels.

The House Republican Steering Committee will select Speaker Ryan's replacement (possibly as early as November 4), subject to ratification by the larger conference. There are few ideological differences between the two frontrunners, and the Steering Committee's decision may rest largely on other issues, such as proficiency in fundraising. Observers have indicated that the race remains tight. Speaker Ryan, who has five votes on the Steering Committee, has given no public indication on a preference for his replacement, but an endorsement would likely secure the chairmanship for either candidate.

Tax Reform

While the chance of any component of tax reform moving forward this Congress remains slim, both Reps. Brady and Tiberi would likely continue Speaker Ryan's efforts to lay the groundwork for a comprehensive rewrite of the tax code. Ryan has reaffirmed his commitment to tax reform and is likely to use his position as Speaker to make the issue a top agenda item, a sharp turnaround from recent years when Republican leadership was hesitant to wade too deeply into the controversial issue. Speaker Ryan will work closely with his successor as Ways and Means chairman to advance the discussion on tax reform.

Tax Extenders

The new Ways and Means chairman will also need to quickly deal with the expired package of personal and corporate tax provisions known as tax extenders. Throughout 2015, the House has followed a piecemeal strategy by passing permanent extensions of individual extenders, but the Senate has yet to take action. The new chairman will be tasked with negotiating with his Senate counterparts on an extenders package before the end of the year. While there is still a desire to put together a deal that includes permanency for some extenders, it is more likely that Congress will ultimately pass either a one year retroactive extension for 2015 or a two year bill for 2015 and 2016. Possible legislative vehicles for tax extenders include the year-end omnibus appropriations bill or possibly the Highway Bill conference report (see Transportation section).

Koskinen Impeachment Resolution

Republicans on the House Oversight and Government Reform Committee began impeachment proceedings against Internal Revenue Service (IRS) Commissioner John Koskinen on October 27 when they filed a resolution to remove him from office. Calls for Commissioner Koskinen's ouster have persisted since July, but GOP anger boiled over in October when the Justice Department announced that it would close its investigation into the IRS political targeting scandal without bringing criminal charges. Republicans were incensed and presented impeachment as a necessary means to

restore public trust in the IRS. It remains unclear when the Oversight Committee will consider the impeachment resolution.

ISSUE—HEALTH

In addition to the House passing reconciliation legislation to repeal the ACA, Congress dealt with several other healthcare issues in October.

ACA Enrollment

The Department of Health and Human Services (HHS) released in October the Administration's ACA enrollment target for 2016. HHS predicted that ten million Americans will be covered through the ACA exchanges next year, up from the nine million for 2015 but far short of initial expectations for 2016 enrollment numbers. The estimate comes despite the individual mandate coming into full implementation, resulting in a \$695 per person or 2.5 percent of income fine for not having health coverage.

COLA Announcement

Late in October, the Obama Administration announced that there would be no cost of living adjustment (COLA) in 2016 for Social Security beneficiaries. The Social Security Administration announced the decision citing a decline in inflation and falling gas prices as the impetus for no COLA increase in the new year. Analysts and lawmakers warned that the decision could have consequences for about one-third of all Medicare seniors who would be hit at the same time with a 52 percent increase in their premium cost. Consequently, Congress included in the two-year budget deal a provision to soften the rate increase through a \$3 per month surcharge that will spread out the impact over a longer period of time. However, premiums for those impacted will still increase by 15 percent.

ISSUE—CYBERSECURITY

The Senate moved forward in October on the [Cybersecurity Information Sharing Act \(CISA\)](#), which provides companies with liability protections for sharing threat data with federal agencies. Republican leaders brought the bill to the floor, where Senators debated the measure and the slate of over twenty amendments agreed to prior to the August recess. The bill eventually passed by a 74-21 vote on October 27. The House passed its version of the bill earlier in the year. House and Senate leaders will work through November to reconcile the differences between the two bills. The process is expected to move slowly, with Senate Intelligence Committee Chairman Richard Burr (R-NC) targeting January as the earliest the bill would be ready.

ISSUE—PATENT REFORM

The stalemate over patent reform legislation continued in October. Committees in both the House and Senate previously passed patent reform legislation (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. Negotiations over an IPR compromise continue, but there are no indications if and when a deal could be voted on in Congress.

ISSUE—ENERGY

October saw movement on Congress' response to the Administration's carbon emissions rules and a change in political dynamic north-of-the-border.

EPA Carbon Rules

Congressional Republicans continued their battle to curb the Environmental Protection Agency's (EPA) [rules](#) placing new limits on carbon emissions from power plants. Leader McConnell joined with Senator Joe Manchin (D-WV) and Shelley Moore Capito (R-WV) to introduce a Congressional Review Act [resolution](#) to block the implementation of the EPA's rules. Congressman Ed Whitfield (R-KY) introduced a similar CRA [resolution](#) in the House. Republicans are confident that they have the votes to pass the resolution in their chamber, but the Senate is still several votes shy of the simple majority required to advance legislation. CRA resolutions are subject to a veto, and President Obama is certain to reject the carbon rule legislation.

Canadian Elections

Canadians went to the polls in October to elect a new government. Voters chose to oust the governing Conservatives in favor of the Liberal Party, led by the 43 year-old Justin Trudeau. The change in power is expected to have an impact on discussions over the Keystone Pipeline. Trudeau's predecessor, Stephen Harper, was a strong proponent of the pipeline and pressured the Obama Administration to make a final decision on the project. The incoming Prime Minister has been less enthusiastic about the pipeline and agreed with environmentalists that it needs strict review. As such, some Keystone supporters fear that the State Department review of the project could linger on, though Secretary of State John Kerry vowed that the election result would have no impact on the Administration's ultimate decision.

ISSUE—NDAA

Congress approved the [National Defense Authorization Act \(NDAA\) for Fiscal Year 2016](#) at the beginning of October, but President Obama followed through on his veto threat and rejected the measure due to the bill authorizing appropriations above the BCA caps.

Defense leaders in Congress initially moved to gather the necessary votes to override the presidential veto. However, the two-year budget agreement makes an override less likely. Instead, with new spending levels in place, NDAA negotiators will work over the coming weeks to shave off the nearly \$5 billion needed to reduce the legislation's cost below the new funding level and pass a revised NDAA.

OTHER ISSUES

The Export-Import Bank and TSCA legislation will continue to be on the congressional radar in November.

Export-Import Bank

Supporters of the expired Export-Import (Ex-Im) Bank made history in late October when they advanced a discharge petition to move an Ex-Im reauthorization [bill](#) to the House floor for a vote. It is the first successful use of a discharge petition since January 2002. With 62 Republican votes, the House passed the bill on a vote of 246-177. The move came as a blow to conservatives, who staunchly oppose the Bank. Further challenges await Ex-Im supporters in the Senate. Leader McConnell opposes passing an Ex-Im reauthorization as a standalone bill, preferring to attach it to broader legislation. One possible vehicle for the Bank's reauthorization is the conference report for a long-term Highway Bill.

TSCA Modernization

The Toxic Substances Control Act (TSCA) remained in limbo in October. Consideration of the [bill](#) has stalled over bipartisan demands for a vote on an amendment reauthorizing the Land and Water Conservation Fund (LWCF). The delay comes despite the bill's sponsors securing a filibuster-proof majority in favor of the legislation. The House passed their [version](#) of the TSCA bill in June. The path ahead remains unclear. If LWCF supporters continue to demand a reauthorization vote and deny unanimous consent on the TSCA bill, it could draw out the process and require Senate leaders to expend scarce floor time to advance the legislation.

RECENT POLLING

Job Approval: President Obama

| Poll | Date | Results |
|-------------------|--------|------------------------------|
| Gallup | Nov 1 | Approve 47, Disapprove 48 |
| Rasmussen Reports | Nov 1 | Approve 49, Disapprove 49 |
| Reuters/Ipsos | Oct 28 | Approve 43, Disapprove 50 |

Job Approval: Congress

| Poll | Date | Results |
|--------------------------|--------|------------------------------|
| The Economist/ YouGov | Oct 27 | Approve 11, Disapprove 68 |
| CBS News/NY Times | Oct 25 | Approve 13, Disapprove 75 |
| AP/GfK | Oct 19 | Approve 16, Disapprove 83 |

Direction of the Country

| | Date | Results |
|--------------------------|--------|---|
| Rasmussen Reports | Oct 29 | Right Direction 27, Wrong Direction 65 |
| Reuters/Ipsos | Oct 28 | Right Direction 24, Wrong Direction 59 |
| The Economist/ YouGov | Oct 27 | Right Direction 26, Wrong Direction 66 |