

Washington Update

October 5, 2015

Congress returned from its August Recess with a list of deadlines fast approaching, including the funding for the federal government. Congress managed to avert a government shutdown at the last minute through a temporary funding measure, and began negotiations with the White House over spending caps, debt ceiling, and a possible year-end appropriations agreement. Republicans were unable to block President Obama’s nuclear agreement with Iran, but were able to agree to finalize the conference report for the National Defense Authorization Act, which will be voted on in the Senate in the coming days.

Washington experienced historic highs and lows in September with Pope Francis delivering the first papal address to a Joint Meeting of Congress, just a day before the shock resignation announcement from Speaker John Boehner.

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OCTOBER CONGRESSIONAL OUTLOOK

October is expected to be a packed month for the Congressional agenda with Speaker John Boehner (R-OH) set to resign from Congress at the end of the month.

Speaker Boehner and Leader McConnell have opened talks with the White House over a possible budget compromise to ameliorate the effects of Budget Control Act spending caps. The leaders could also broker a larger deal that may address the debt ceiling, a long-term Highway Bill reauthorization, international tax reform, and the expired tax extenders. Speaker Boehner is committed to solving as many issues as possible in his remaining month in Congress, but both he and Leader McConnell will need to thread the needle between Democrats who want to increase domestic spending and conservatives who have concerns over spending levels and controversial issues such as federal dollars flowing to the Affordable Care Act (ACA) and Planned Parenthood.

Reconciliation is expected to play a big part in the coming month. The House will likely pass a reconciliation package in early October, with action in the Senate to take place soon thereafter. The reconciliation bill will repeal much of the ACA and defund Planned Parenthood but will face strong opposition from Democrats and a certain veto from the White House.

The Senate is expected to address the defense authorization conference report in the first full week of October and send the bill to the President, who has threatened to veto the measure. Leader McConnell is also expected to continue to move for votes on appropriations bills, which Democrats have continued to block due to opposition to spending levels. In the House, lawmakers will likely vote on a new Highway Bill before going to conference with the Senate to hammer out the differences.

BOEHNER RESIGNATION AND HOUSE LEADERSHIP RACES

Washington was rocked by the sudden announcement in late September that Speaker Boehner would resign from Congress effective October 30. Speaker Boehner had come under intense pressure from conservative House Republicans, who opposed efforts to fund the government through any measure that did not defund Planned Parenthood. Led by the right wing House Freedom Caucus, conservative members threatened to move a "motion to vacate" resolution to oust Boehner as Speaker should he move a Continuing Resolution (CR) without the defunding language included. Instead, Speaker Boehner shocked the Capitol by announcing his intent to resign.

The announcement quickly altered the political landscape within the Beltway and changed the calculus on several legislative fronts. Politically, Speaker Boehner's decision to step down set off a chain reaction within the House Republican Conference as the leadership team began a reshuffle. Current Majority Leader Kevin McCarthy (R-CA) announced that he will pursue the speakership, facing off against a conservative

challenge from Rep. Daniel Webster (R-FL). In early October, Rep. Jason Chaffetz (R-UT) also jumped into the leadership race.

In order to secure the gavel, a candidate must receive an absolute majority of the votes cast on the floor of the House by roll call. Leader McCarthy is viewed as having the greatest chance of success and has begun to court votes from across the Republican spectrum. However, should conservatives in the Freedom Caucus view McCarthy as too much of an extension of the Boehner Speakership, they may coalesce behind an alternative and deny the Majority Leader a promotion. The initial leadership election is scheduled for October 8, when the Republican Conference will choose a candidate for Speaker. However, the floor roll call vote will not take place until October 29

The rest of the House Republican leadership team is also in flux, but will not be voted on until after the new speaker is elected at the end of the month. Rep. Cathy McMorris Rodgers (R-WA) announced that she will remain in her position as House Republican Conference Chair. The Majority Leader and Whip positions, however, will draw competitive races. Below is a list of declared candidates for each leadership position:

- **Speaker:** McCarthy, Webster, Chaffetz
- **Majority Leader:** Steve Scalise (R-LA), Tom Price (R-GA)
- **Whip:** Patrick McHenry (R-NC), Dennis Ross (R-FL), Markwayne Mullin (R-OK), Pete Sessions (R-TX)

ISSUE—GOVERNMENT FUNDING

The most pressing issue that faced Congress upon its return from the August recess was expiring government funding, the outcome of which was heavily impacted by Speaker Boehner's announcement.

Continuing Resolution

Most of September saw the debate over government funding become mired in a partisan stalemate. Tea Party conservatives in both chambers united to oppose any CR that would not defund Planned Parenthood following the release of a series of controversial videos showing employees of the organization discussing fetal tissue sales. The White House and congressional Democrats strongly opposed defunding efforts, making it highly unlikely that a CR without funding for Planned Parenthood would pass the Senate or survive a presidential veto.

Conservative legislators pressed their leadership to hold the line against Planned Parenthood and pass a CR defunding the organization. Republican leaders, wary of the prospect of repeating the unpopular 2013 government shutdown, remained determined to keep the government funded while also working to find alternatives to address the Planned Parenthood controversy. The House held hearings on Planned Parenthood, and additional inquiries are likely. The House passed standalone legislation defunding the

organization, but Senate Republicans did not have enough votes to advance its own defunding bill.

All of these moves were designed to allow Republicans to unite in their opposition to Planned Parenthood while also averting a shutdown. Tea Party conservatives remained undaunted, however, and threatened to remove Speaker Boehner should he move to pass a “clean” CR without any defunding language.

Speaker Boehner’s resignation announcement changed the dynamic and removed conservatives’ leverage. With the fear of being ousted removed, Speaker Boehner easily passed the CR on September 30 after the Senate successfully advanced the measure earlier that day. The bill funds the government until December 11. Speaker Boehner’s successor is likely to face similar challenges from the right when the funding issues reemerge in the holiday season.

Budget and Sequestration

After a two year hiatus thanks to the 2013 Ryan-Murray budget deal, stringent spending caps established by the Budget Control Act are set to return in Fiscal Year 16 (FY16). Democratic opposition and Republican defense hawks’ unease with reductions in military spending have led to calls for a deal to increase the BCA caps for FY16 and possibly FY17. However, conservatives in both chambers strongly oppose lifting the BCA caps without corresponding spending cuts elsewhere.

Speaker Boehner and Leader McConnell indicated that they have begun negotiations with the White House on a bipartisan budget deal. Republicans will likely insist that any spending increases be offset by corresponding savings, similar to the Ryan-Murray agreement. The announcement immediately drew the ire of conservatives in the Freedom Caucus, foreshadowing the difficulties leaders will have in the coming months in negotiating and passing an agreement.

Debt Limit

The deadline to raise the statutory limit on federal debt is drawing closer. While the deadline predictions have varied greatly, Treasury Secretary Jack Lew most recently said November 5 is expected to be the default date. The debt ceiling has been a controversial topic in Congress for the past several years with Tea Party conservatives opposing increases in the debt limit without corresponding cuts to spending, a doctrine which Democrats fiercely oppose. Due to the new sooner-than-expected deadline, there is some hope that the limit will be dealt with before Speaker Boehner resigns.

The House Ways and Means Committee passed two debt ceiling-related bills in September. The [first](#) would prioritize payments to Social Security and debt obligations should the debt ceiling be breached. The [second](#) would require the Administration to present to Congress an outline for short and long-term debt reduction proposals. Both bill are awaiting action on the House floor.

Ultimately, any debt ceiling package will have to be negotiated between Republicans and the White House and overcome potential opposition from Tea Party Republicans.

Reconciliation

In September, Republican lawmakers began the long-awaited reconciliation process. The budget resolution passed in the House and Senate earlier this year included reconciliation instructions, a legislative procedure used to bring public spending into compliance with direct spending, revenue, and debt limit levels enacted by Congress. The appeal of reconciliation is that the process allows a bill to circumvent a Senate filibuster. As such, Republicans have long eyed reconciliation as a tool to aid in the passage of key agenda items that face steep Democratic opposition. Chief among these policy goals is a repeal of the ACA.

Three House committees have advanced reconciliation bills that contain several policy changes. The Ways and Means Committee [marked up](#) legislation to repeal a number of controversial ACA provisions including the individual mandate, employer mandate, medical device tax, “Cadillac” tax, and the Independent Advisory Board (IPAB). The House Energy and Commerce Committee also [advanced](#) reconciliation legislation to defund Planned Parenthood for one year and repeal the ACA’s Prevention and Public Health Fund. Finally, the House Education and Workforce Committee [approved](#) a reconciliation measure to repeal the ACA’s auto-enrollment mandate for large companies. The House Budget Committee will compile all three measures into a reconciliation package during a markup on October 9 before the final bill is sent to the House floor.

Republicans were given a boost in their efforts to repeal the ACA through reconciliation when the Congressional Budget Office (CBO) released an analysis of the reconciliation bills. CBO predicted that the Ways and Means reconciliation plan would shave \$37 billion off the federal deficit between 2016 and 2025. However, the report also suggested that the measure could increase the deficit by \$5 billion in each of the following four decades. The CBO analysis estimated that the Energy and Commerce legislation would reduce the deficit by nearly \$12.5 billion in the next decade while the Education and Workforce measure would produce \$8 billion in savings over the same period.

The reconciliation package is expected to pass the House shortly after the Columbus Day recess and then quickly receive floor consideration in the Senate. Democrats in both chambers will oppose the measure and the President will inevitably veto it. Nevertheless, Republicans are pushing forward with the effort in order to fulfill campaign promises to repeal the ACA and to put the President on defense by forcing him to use his veto pen on significant policies.

ISSUE—TAX

Lawmakers continued work on several tax related issues in September.

Tax Reform

Questions continued to swirl in Washington over whether lawmakers can successfully navigate a path toward international tax reform in conjunction with a long-term Highway Bill. Ways and Means Chairman Paul Ryan (R-WI) has been calling for a pared down version of tax reform that would combine international reform measures with deemed repatriation and possibly an “innovation box” concept, but the efforts have not fully gained traction yet. Chairman Ryan held out hope for some form of tax reform. The Chairman has been working closely with Senators Chuck Schumer (D-NY) and Rob Portman (R-OH) in an attempt to solve two problems at once – how to pay for infrastructure spending and how to address a serious need for international tax reform. In early October, however, press reports indicated that the group had reached an impasse. While Chairman Ryan and Senator Schumer still hope to find a way forward, the efforts have temporarily stalled.

Senate Majority Leader McConnell and Senate Finance Committee Chairman Orrin Hatch (R-UT) are opposed to the efforts to use tax reform revenue to pay for highway spending on the premise that tax reform revenue should pay for lowering tax rates, not increasing government spending.

Innovation Box

In September, Rep. Charles Boustany (R-LA) announced that he would be revising his draft “innovation box” [legislation](#) that would set a lower tax rate on profits earned from certain qualified intellectual property. Before the August recess, Rep. Boustany unveiled the bill with Rep. Richard Neal (D-MA) which would significantly reduce the current 35 percent corporate rate to a 10 percent rate on income derived from IP. The legislation is supported by Chairman Ryan and could provide a sweetener in international tax reform negotiations.

Extenders

The Ways and Means Committee advanced legislation in September to make permanent [five](#) expired tax extenders, including bonus depreciation and the active financing exemption. The move is in line with the House’s strategy of passing permanent extender bills, but Democrats have balked at the costs associated with permanency. The legislation is awaiting action on the floor, but the Senate has shown no indication that it will take up the standalone measures. An extender package may advance toward the end of the year in a year-end omnibus appropriations bill or possibly in the highway bill conference report that could happen before the end of October. One way or another, most observers believe that extenders are likely to be renewed for 2015 (retroactively) and 2016. Others take a more pessimistic view and predict that extenders will only be renewed retroactively for 2015.

ISSUE—TRANSPORTATION

Congress continued to discuss the Highway Bill and rail developments while also extending aviation programs.

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. Beyond the discussions among Chairman Ryan and Senators Schumer and Portman, no substantive progress was made in September on a long-term replacement for the current Highway Bill. Prior to the August recess, the Senate passed the Developing Reliable and Innovative Vision for the Economy” (DRIVE) Act, a six year Highway Bill that also included three years’ worth of funding. House Transportation and Infrastructure (T&I) Committee Chairman Bill Shuster (R-PA) announced that his committee would begin the process of moving forward with a multiyear transportation bill now that the talks over international tax reform have stalled.

Getting to a long-term Highway Bill hinges on funding. In September, the Department of Transportation announced that internal projections indicate that the Highway Trust Fund, which finances the Highway Bill, will not need another cash infusion until later in 2016. The projections could remove some of the urgency for agreeing on a long-term bill, instead resulting in a short-term bill to authorize HTF money to be spent.

FAA Reauthorization

Congress successfully passed an [extension](#) of Federal Aviation Administration (FAA) programs in September. The bill extends FAA programs for six months, giving Congress additional time to devise a long-term solution. T&I Chairman Shuster and Ranking Member Peter DeFazio (D-OR) have pledged that this will be the only short-term extension and have vowed to find a long-term solution before the six-month period lapses.

Rail

While Congress made moves to extend government funding, the CR that passed both chambers did not include an extension of the deadline for rail operators to implement positive train control (PTC) technology. Under current law, operators are required to deploy PTC systems by the end of the year. Ranking Member DeFazio suggested in September that a Highway Bill would be the best vehicle to push back the PTC implementation deadline. The railway industry has pushed Congress to extend the deadline, citing the technical and financial difficulties in fully deploying PTC systems by the congressionally-mandated deadline. Senate Commerce Committee Chairman John Thune (R-SD) has led the charge in the Senate to push for a more reasonable implementation goal for PTC technology.

ISSUE—HEALTH

In addition to the unveiling of reconciliation legislation to repeal the ACA, Congress dealt with several other healthcare issues in September.

ACA Issues

September saw news on several ACA-related issues. On September 16, the Census Bureau announced that the number of uninsured Americans decreased by 8.8 million over the past year, close to a 3 percentage point reduction from 2013. The decrease in uninsured was most significant in states that opted to expand Medicaid. The news was a boon to supporters of the ACA. However, conservatives were bolstered by a CBO report that concluded that a repeal of the individual mandate would produce \$311 billion in savings over ten years and reduce the deficit by \$305 billion over the same period.

Also in September, legislators continued their attempts to repeal the tax on high-cost employment health plans, also known as the 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. Repeal of the Cadillac Tax was included in reconciliation legislation that would neuter most of the ACA. Repeal efforts were bolstered by a surprise source: Hillary Clinton. The presidential candidate joined Republicans when she broke with the Obama Administration and came out in favor of a Cadillac Tax repeal, giving hope to opponents that the provision will ultimately be scrapped.

ISSUE—PATENT REFORM

Lawmakers continued their work in September on legislation that would reform patent laws to fight so-called “patent trolls.” In the Senate, sponsors of the [PATENT Act](#) circulated language that would give companies more flexibility to defend their patents when challenged in the inter-partes review (IPR) system at the Patent and Trademark Office. The offer of language to address IPR abuses is seen as a nod to the manufacturing, pharmaceutical and biotech industries, though the language may not be sufficient to address concerns that the IPR process is biased against patent holders. The timeline to move the PATENT Act in the Senate and similar legislation in the House ([Innovation Act](#)) remains ambiguous, but sponsors of both bills expressed hope that the legislation could move forward in both chambers in this Congress. Still, it remains to be seen how the patent reform legislation makes it over the House and Senate floor absent an agreement to add meaningful reform of the IPR system.

ISSUE—ENERGY

The Administration’s regulations curbing carbon emissions from power plants will continue to move forward this fall. The Environmental Protection Agency (EPA) announced in September that the agency would post the final [rules](#) to the Federal

Register in mid to late October. Conservatives have harshly criticized the rule, but energy companies will not be able to sue until the regulations are officially published.

[The Administration also released new standards for ozone pollution levels. The regulations set ozone emission limits at 70 parts per billion, down from 75. The energy industry and Republicans blasted the standards immediately and set hearings to probe the effects. Environmentalists and health advocates were also unhappy, preferring the EPA to lower the limit to 65 parts per billion.](#)

ISSUE—DEFENSE AND FOREIGN POLICY

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

Iran

Congressional debate over the international [agreement](#) brokered between Iran and western nations curtailing the Iranian nuclear program reached a fever pitch in September. Republicans, who strongly oppose the deal, pushed for votes on legislation to disapprove of the agreement. The House held a largely symbolic vote to criticize the deal, but Democrats in the Senate prevented Republican leaders from advancing a resolution of disapproval to a final vote. Consequently, the deal is set to move forward. However, Republican lawmakers are likely to continue their criticism and hold additional hearings probing the deal. The agreement is also expected to continue to be a flashpoint in 2016 presidential politics.

NDAA

Negotiations over the [National Defense Authorization Act \(NDAA\) for Fiscal Year 2016](#) reached a successful conclusion this month. After months of debate, the conference committee voted out a conference committee report. The House passed the measure on October 1. The Senate is expected to take action on the legislation during the week of October 5. The final bill is expected to be approved by the chamber, but President Obama has pledged to veto the measure. Neither chamber has enough votes to override a veto.

Refugee Crisis

The Administration was forced to address the growing crisis in Europe as masses continued to flee from war torn Syria and Iraq. President Obama announced in September that the federal government is prepared to resettle as many 10,000 Syrian refugees within U.S. borders. While international advocates praised the President's willingness to take in the refugees, humanitarian organizations pushed the U.S. to do more to alleviate the plight of fleeing Syrians and Iraqis. Moreover, Republican hawks have continued to pressure the White House to develop a long-term strategy to address the civil war in Syria that has pit the authoritarian regime of Bashar al-Assad against a varying array of opposition, including ISIS forces flowing into the country from Iraq.

OTHER ISSUES

A number of other issues remained unfinished in September and on the congressional radar screen for the fall.

Export-Import Bank

The expired Export-Import (Ex-Im) Bank 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 moderate number of Republicans. Speaker Boehner's resignation will remove an Ex-Im supporter from leadership. His likely successor, Leader McCarthy, vocally opposed resurrecting the Bank. Over the coming weeks, Speaker Boehner may attempt to move an Ex-Im extension to clear the decks before his departure, but such efforts are likely to face fierce resistance from conservative lawmakers. If the Bank is to be revived, it will likely need to hitch a ride on a larger package of must pass items.

Supporters of the law, however, aren't waiting. In September, Ex-Im proponents announced that over thirty Republicans signed on to a discharge petition that would move the bill from committee to the floor for a vote. The vast majority of Democrats are expected to sign on as well. Signers of the discharge petition continue to face opposition from most Republicans, and there is evidence that suggests these opponents may prevail. Historically, discharge petitions have been largely unsuccessful. Additionally, Republican supporters of Ex-Im may come under pressure from leadership to drop their backing of the discharge petition as the vehicle for Ex-Im renewal.

Cybersecurity

Work continues in the Senate on [Cybersecurity Information Sharing Act \(CISA\)](#). Prior to the August recess, the Senate was able to lock in an agreement on 21 amendments that would be considered when the Senate begins debate on CISA. This was a significant development that opens the door for the Senate to turn to CISA when there is an opening on the Senate floor for debate. Additional amendments are a possibility, but the final amendment list is likely to closely resemble those on the initial list of twenty-one amendments. CISA could be on the Senate floor between now and the end of November.

Trade

White House officials announced in early October that international negotiations had reached an agreement on all outstanding issues surrounding the Trans-Pacific Partnership (TPP). The Administration made the announcement following six years of intense negotiations over the agreement which would facilitate free trade among twelve Pacific Rim countries. The agreement seeks to tear down trade barriers and establish new rules in the areas of labor, the environment, e-commerce, and intellectual property, among others. Under the procedures of the Trade Promotion Authority (TPA) legislation that Congress passed earlier in 2015, the trade agreement and its implementing legislation will be scrutinized by Congress through expedited review, with

a floor vote in both chambers coming as early as February 2016. While Democrats opposed the TPA bill and have strong reservations on TPP, some Republicans have also expressed concerns over some of the TPP provisions.

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