

# Washington Update

October 5, 2016

Much of Congress' time in September was spent on negotiating an agreement to fund the government past the end of the month, which lawmakers accomplished shortly before adjourning until after the election. Zika and flood disaster relief were included in the funding package, while legislators got a significant step closer to providing aid for Flint, Michigan and other municipalities dealing with contaminated water supplies.

Also in September, the President's Clean Power Plan went to court while a House panel approved a replacement to the Dodd-Frank Act. Renewing an FDA priority review voucher program was a key healthcare-related priority this month, and Freedom Caucus members continued their push to impeach the IRS Commissioner.

Lawmakers will return to Washington on the week of November 14 to deal with the lame duck session post-election. Top agenda items will include must-pass government funding for the remainder of Fiscal Year 2017 and a several other legislative priorities, including 21<sup>st</sup> Century Cures, the Water Resources Development Act, and the National Defense Authorization Act.

## Contents

ISSUE—GOVERNMENT FUNDING .....	2
ISSUE—HEALTH .....	2
ISSUE—TAX.....	4
ISSUE—ENERGY.....	5
ISSUE—TECHNOLOGY.....	6
ISSUE—FINANCIAL SERVICES.....	6
ISSUE—DEFENSE POLICY .....	7
ISSUE—TRANSPORTATION.....	7
OTHER ISSUES .....	7
RECENT POLLING.....	9

## ISSUE—GOVERNMENT FUNDING

Congress averted a government shutdown when legislators approved a short-term Continuing Resolution (CR) funding the government through December 9. The CR was necessary following lawmakers' inability to send any of the twelve annual [appropriations bills](#) to the President's desk for Fiscal Year 2017 (FY17) prior to the September 30 deadline. In addition to funding the government temporarily, the CR included a noncontroversial appropriations bill for full-year funding of Military Construction and Veterans Affairs, along with Zika funding (see Health section), and disaster relief for several states hit by recent flooding.

Congress' top priority during the lame duck session will be to negotiate an agreement to fund the government past December 9. Members have floated several different options. Some appropriators are calling for an omnibus spending package funding the government through the FY17, giving the new President and new Congress a fresh slate to begin the FY18 appropriations process. Others, including many on the right flank in Congress, have argued for another short-term CR that would carry funding through to March. A hybrid of the two options would be to advance a CR for some of the more controversial appropriations bills combined with one (or more) smaller spending packages of noncontroversial appropriations bills (a "minibus") funded through the end of FY17.

## ISSUE—HEALTH

Lawmakers dealt with several healthcare-related items in September, including Zika funding.

### *Zika Funding*

After months of negotiations and failed attempts to pass legislation to combat the spread of the Zika virus, Congress successfully included funding to fight the disease that has swept across South America and begun to find a foothold in the U.S. The CR included \$1.1 billion to respond to Zika. Senate Democrats previously stalled Zika legislation, calling for more funds to fight the disease while also objecting to attempts to pair the funding with controversial measures dealing with Affordable Care Act (ACA) funding and restricting funds from going to a Planned Parenthood chapter in Puerto Rico.

### *21<sup>st</sup> Century Cures*

One item that is on the short list for consideration in the lame duck session is the Senate package of bills similar to the House's [21<sup>st</sup> Century Cures Act](#), which seeks to modernize the Food and Drug Administration (FDA) and the National Institute for Health (NIH). Though the House passed the Cures bill in July 2015, the Senate has moved at a more

measured pace. As time ran short in September, House and Senate discussions merged to try to break the logjam over how much funding to include for NIH and FDA as well as how to pay for it. However, these efforts failed to reach a conclusion before Congress wrapped up its work this month, and House Energy and Commerce Chairman Fred Upton (R-MI) announced that he hoped a deal would be ready at the beginning of the lame duck session. Senate Majority Leader Mitch McConnell (R-KY) also has stated his commitment to moving the Cures legislation when Congress reconvenes after the election.

### *ACA*

In September, there were several updates related to the ACA. Before leaving for the election, the House passed legislation that would defer the individual mandate to purchase insurance for Americans that were enrolled in plans sold by co-ops that failed in 2016. Democrats oppose the measure, and President Obama is certain to veto the legislation if it reached his desk, pointing toward other ACA programs to help consumers that lost coverage.

Also in September the U.S. Census Bureau announced that the uninsured rate dropped to 9.1 percent in 2015, a 1.3 percent drop from 2014. In raw numbers, 29 million Americans were uninsured throughout 2015, down from 33 million in 2014. The data coincided with news from the Centers for Disease Control that the uninsured rate had further dropped to 8.6 percent in the first quarter of 2016.

### *Miscellaneous*

There were several other health-related issues that came to the fore in September. Senator Ron Johnson (R-WI) unsuccessfully attempted to advance his bill that would prohibit the federal government from blocking so-called right-to-try laws in the state. Currently on the books in 32 states, right-to-try laws permit terminally ill patients to use experimental drugs that have yet to be approved by the Food and Drug Administration (FDA) so long as the medication has completed Phase 1 trials. The bill further exempts pharmaceutical manufacturers, distributors, physicians, and patients from liability. The bill has 43 co-sponsors, including two Democrats, but the measure failed to move by unanimous consent before the Senate adjourned for the election.

Several House Democrats expressed continued opposition to the Medicare Part B drug pricing demonstration program. The demo would experiment with Medicare Part B payments for prescription drugs administered by physicians. For regions included in the demo, the proposal would change the payment formula to include the drug's average sales price plus 2.5 percent paired with an additional flat fee of \$16.80. Democrats are concerned with the scope of the demonstration and the short time frame given to educate Medicare beneficiaries. Republicans sent a [letter](#) late in September, arguing that the experiment could limit patient access to necessary medications and impede physicians' ability to pay for the treatments best suited for their patients. Faced with

sustained criticism, officials at the Centers for Medicare and Medicaid Services (CMS) are expected to modify the demo before the final version is released in the coming months.

Finally, the CR contained provisions extending the FDA's rare pediatric disease priority review voucher program through 2016. The program provides drug manufacturers developing medicines to treat rare pediatric conditions with a voucher that fast-tracks FDA review of another drug.

## **ISSUE—TAX**

Discussion around several tax issues continued in September.

### *House Tax Update*

House Speaker Paul Ryan (R-WI) stated in September that Donald Trump's tax plan is growing increasingly similar to the House Republicans' plan, citing how both proposals, to varying degrees, seek to drive down rates to stimulate growth. Speaker Ryan also reiterated that Congress will take the lead in writing future tax bills.

Ryan and other Republicans attacked Hillary Clinton's announcement in September of her support for significantly raising the estate tax rate. Clinton previously supported raising the rate from 40 percent to 45, but her new plan calls for a 50 percent rate on estates worth more than \$10 million. Billion dollar estates would face a 65 percent tax rate. Clinton's position brings her in line with her primary opponent, Senator Bernie Sanders (I-VT), and others on the left wing of the Democratic Party.

### *Senate Tax Update*

Observers are still waiting for Senate Finance Chairman Orrin Hatch's (R-UT) long-discussed corporate integration proposal, which would ease the current system of double taxation of corporate profit that are levied first at the corporate level and then on dividends paid to shareholders. Hatch suggested in September that his draft is nearly complete. Some of the challenge remains in working on the proposal's score with the Joint Committee on Taxation.

Also on the Senate's radar are several expiring energy tax provisions that were inadvertently given a shorter extension than others in the end-of-2015 tax extenders package ([the PATH Act](#)). Democrats have been pressuring Republicans to address the mistake all year. In September, Leader McConnell stated that he was still committed to taking a look at the extenders before the end of the year. However, action in the Senate could run into resistance in the House, where some GOP tax leaders are not eager to reopen discussion on extenders. There is also some disagreement over whether the energy provisions were given a short-life span by accident or purposely.

### *Treasury's Earnings Stripping Proposal*

The Treasury sent its anti-inversion proposal to the White House in early October for review. The proposed regulations would make changes to IRC Section 385 by reclassifying certain debt financing instruments as equity, among other changes. According to Treasury, the regulations are designed to combat earnings stripping, the process by which a post-inverted company moves profits to lower-tax jurisdictions and debt to the U.S. subsidiaries in order to lower the corporate tax rate here in the United States. The Office of Information and Regulatory Affairs is permitted up to 90 days to review the rules, but may not take that long, with the regulations possibly being released in final form as soon as the end of the month.

Members on both sides of the aisle have joined the chorus of business groups in criticizing the proposal for being too broad and inadvertently impact regular business operations.

### *Koskinen Impeachment Proceedings*

Efforts by some on the right flank of the House Republican Conference to impeach Internal Revenue Service (IRS) Commissioner John Koskinen moved forward in September when the House Judiciary Committee held a hearing on potential impeachment. The hearing gave Freedom Caucus Republicans the opportunity to lob hostile questions at Koskinen over his handling of the political targeting scandal that pre-dated his appointment as well as other ongoing scandals at the tax-collecting agency. In June, the House Oversight Committee voted to censure Koskinen, and the Freedom Caucus is expected to continue to put pressure on House leadership to move forward with a vote on the House floor. If Republican leaders concede to this request, Koskinen would be the first executive branch appointee to be impeached since 1876.

## **ISSUE—ENERGY**

The President's Clean Power Plan (CPP), an attempt to curtail greenhouse gas emissions, arrived in front of a panel of federal appeals judges in September. Ten judges on the D.C. Circuit of Appeals heard oral arguments, but the court is not expected to rule on the issue until after the election. Ultimate resolution of the constitutionality of the CPP could be affected by who wins the presidential election and what party controls the Senate. The loser of the case is most certain to appeal to the Supreme Court. With the vacancy on the Court created by the death of Justice Antonin Scalia remaining unfilled, the future ideological tilt of the Court is likely to be determined by the 2016 elections, creating uncertainty in how the Court would rule on the CPP or even if it would take up the appeal.

## ISSUE—TECHNOLOGY

Washington saw developments on two hotly contested tech issues this month: internet governance and set-top boxes.

### *ICANN*

Efforts to prevent the U.S. government from relinquishing oversight of the Internet Corporation for Assigned Names and Numbers (ICANN), the organization tasked with managing the stability and secure operation of the Internet, failed this month. On September 30, the 18-year contract allowing the U.S. Department of Commerce's National Telecommunications and Information Administration (NTIA) to oversee ICANN activities expired, and ICANN became an autonomous non-profit. Senate Commerce Committee Chairman John Thune (R-SD) and Senator Ted Cruz (R-TX) had attempted to insert language into the CR preventing the shift. Additionally, four state Attorneys-General filed a lawsuit to block the transition, but were denied an injunction. ICANN transition had become a minor issue in the presidential campaign in the lead up to the September 30 termination, with Donald Trump attacking the Obama Administration for what he said amounted to handing over the Internet to foreigners.

### *Set-Top Boxes*

Federal Communications Commission (FCC) Chairman Tom Wheeler postponed consideration of his controversial set-top box proposal at a September 29 meeting. Wheeler's plan would require television companies to provide free apps to streaming devices and smart televisions to allow for displaying cable content. The two Republican commissioners have strongly opposed the measure, and one Democratic commissioner expressed concerns. The same day the proposal was pulled from the agenda, Chairman Thune called on the FCC to publicly release the proposal and reopen it for comment as Chairman Wheeler makes revisions to the plan.

## ISSUE—FINANCIAL SERVICES

Financial services developments in the past month included a legislative action on a Dodd-Frank alternative and news on federal interest rates.

### *Dodd-Frank Alternative*

On September 13, the House Financial Services Committee approved [legislation](#) that would replace the 2010 Wall Street and Consumer Protection Act (Dodd-Frank). The Financial CHOICE Act would repeal most of Dodd-Frank, and among its many provisions, would:

- Restructure the Consumer Financial Protection Bureau and make it subject to congressional appropriations
- Repeal the Volcker rule banning proprietary trading
- Impose enhanced penalties for financial fraud

- Repeal the SEC's ability to restrict securities arbitration
- Require additional transparency from the Federal Reserve

The largely party line vote came after heated debate over replacing the regulatory bill, with Republicans arguing that the measure would hold financial institutions accountable while also strengthening the economy. Democrats, who refused to offer a single amendment, countered that the measure would undermine the government's ability to effectively regulate Wall Street. The bill could receive a floor vote in the lame duck, but is likely to face stiff Democratic resistance in the Senate.

### *Federal Interest Rates*

The Federal Reserve announced this month that it would keep interest rates steady, avoiding a potential stock market shock and removing the central bank from the presidential fray until after the election. Fed Chair Janet Yellen also suggested that a delay in rate hikes could allow for more Americans to enter the labor market.

## **ISSUE—DEFENSE POLICY**

Continued disagreement this month pushed final consideration of the FY17 National Defense Authorization Act (NDAA) to the lame duck session. The House passed its [version](#) of the NDAA in May, and the Senate followed suit with its [bill](#) in June. The main challenge facing negotiators is whether to accept the House-backed reallocation of \$18 billion from war funds to the Pentagon's base budget, a move Democrats oppose. The FY16 NDAA is set to lapse at the end of the year, making the FY17 legislation a top priority in the lame duck.

## **ISSUE—TRANSPORTATION**

In September, the House Transportation and Infrastructure Committee approved a [measure](#) that would encourage training to combat hazardous spills on rail lines. The RESPONSE Act would set up a panel within FEMA's National Advisory Council to focus on improving training for first responders to a rail based hazardous material spill. The bill passed the Senate in July 2015 and is awaiting action on the floor.

## **OTHER ISSUES**

A couple of other issues were addressed during the September work period.

### *Water Resources Development Act*

The Senate advanced its version the [Water Resources Development Act](#) (WRDA) in early September. Among other provisions, the bill would overhaul municipal water programs and provide \$220 million in aid to Flint, Michigan and other communities battling public water issues. The issue of funding for Flint became a major challenge during the CR

negotiations, with Democrats demanding that emergency funding be included in any final short-term funding bill. In the end, lawmakers reached a compromise on the CR when the House agreed to include an authorization for Flint funding in its [version](#) of WRDA. The House WRDA measure passed before the chamber adjourned for the recess, setting up final resolution of the competing bills during the lame duck.

### *Coal Miners' Pensions*

On September 21, the Senate Finance Committee approved the chairman's [mark](#) for a bill that seeks to provide a funding fix for coal miners' health and pension benefits. The efforts are a response to the anticipated shortfall for United Mine Workers of America retiree benefits by transferring money from the Abandoned Mine Land Reclamation Fund to the plan, which is on track to insolvency possibly by the end of the year. The House has a companion [bill](#) currently awaiting committee consideration. The proposal is expected to be in the mix for possible action during the lame duck session.

## RECENT POLLING

### Job Approval: President Obama

Poll	Date	Results
Reuters/Ipsos	Oct 3	Approve 51, Disapprove 45
Rasmussen Reports	Oct 3	Approve 50, Disapprove 49
CBS News	Oct 2	Approve 51, Disapprove 43

### Job Approval: Congress

Poll	Date	Results
The Economist/ YouGov	Oct 3	Approve 9, Disapprove 70
Fox News	Sep 29	Approve 18, Disapprove 75
PPP (D)	Sep 28	Approve 13, Disapprove 74

### Direction of the Country

	Date	Results
Reuters/Ipsos	Oct 3	Right Direction 25, Wrong Direction 64
The Economist/ YouGov	Oct 3	Right Direction 35, Wrong Direction 60
CBS News	Oct 2	Right Direction 30, Wrong Direction 63

### Trump v. Clinton

	Date	Results
LA Times/USC	Oct 4	Trump 43, Clinton 48
The Economist/ YouGov	Oct 3	Trump 47 Clinton 43
Reuters/Ipsos	Oct 3	Trump 37, Clinton 44