

PUBLICATION

Washington, D.C. Update – November 2015

November 12, 2015

Congress Reaches Bipartisan Budget Agreement

In the final week of October, congressional leaders and the White House reached an agreement on a wide variety of measures to "clean the barn" for Speaker John Boehner's (R-OH) successor. The Bipartisan Budget Act of 2015 (BBA), which was negotiated in secret between House and Senate Republican and Democratic leaders and the White House, moves Washington forward and includes a variety of measures that helped to attract support from both parties. The Act was signed into law by President Obama on November 2.

The agreement was not without significant opposition, and many in the House Freedom Caucus objected to the "behind closed doors" negotiations and the rules under which the bill was introduced, limiting amendments, debate and opportunities for input. The House passed the agreement by a vote of 266 to 167, with 79 Republicans voting "no." The Senate passed the agreement by a vote of 64 to 35, with Republicans accounting for all of the "no" votes.

Spending: The BBA lifts the spending caps associated with sequestration, and increases discretionary spending by \$80 billion over the next two years (\$50 billion in FY16 and \$30 billion in FY17). The spending will be spread equally between defense and non-defense. However, the budget fight continues as the BBA only sets the topline numbers for the next two years. Congressional appropriators still need to agree on how best to spend this money before the existing Continuing Resolution (CR) agreement expires on December 11 or risk a government shutdown. The bill also provides an additional \$32 billion in exempt emergency discretionary spending spread over two years for the Overseas Contingency Operations (OCO) funds used to fight the war against ISIS and for operations in Afghanistan.

Debt Limit: The agreement suspends the debt limit until March 2017, pushing the issue until after the presidential election.

Health Care: The BBA also makes a number of changes to the Affordable Care Act, including the repeal of the mandate requiring companies with more than 200 employees to automatically enroll new employees into qualifying health plans. The Act also applies Medicaid inflation-based rebates, currently available on brand drugs, to generic drugs and codifies the definition of provider-based, off-campus hospital outpatient departments – making them ineligible for reimbursement under the Outpatient Prospective Payment System.

Offsets: In order to pay for the additional \$80 billion in spending over the next two years, the BBA cuts federal spending and raises revenue in a number of places, including mandating that when the Department of Agriculture negotiates with crop insurers, the insurers must accept a lower rate of return; closing several loopholes in Social Security eligibility; updating civil asset penalties amounts; and increasing Pension Benefit Guarantee Corporation premiums, among others.

Takeaway: The BBA is a significant step forward for a Congress that has been long mired in partisan trench warfare. However, the agreement does not remove the threat of a government shutdown and new appropriations legislation must be enacted by December 11 in order to keep the government open. The agreement does preclude the possibility of a potentially disastrous government default until after the next presidential election.

House Elects Paul Ryan as Speaker

On October 29, Congressman Paul Ryan (R-WI) was elected the 54th Speaker of the House after he received 236 votes from members of the House of Representatives. Speaker Ryan replaces John Boehner (R-OH), who, when he announced his intention to retire from Congress, set off a firestorm that exposed deep fault lines in the House Republican Conference. Speaker Ryan (then chairman of the tax-writing Ways and Means Committee) initially refused to run for the position but was convinced to take on the challenge after Majority Leader Kevin McCarthy (R-CA) failed to earn the support of a majority of House Republicans, leaving the party without a consensus choice after the House Freedom Caucus refused to support him. Though Speaker Ryan was able to gain the support of the vast majority of the House Republican Conference, some members of the House Freedom Caucus expressed reservations and offered the new Speaker only qualified support.

Takeaway: Speaker Ryan has a number of significant challenges before him, not least of which is how to move forward on his policy priorities while maintaining the support (or at least acquiescence) of the House Freedom Caucus. Speaker Ryan has already indicated that he will run the House as a more open institution than his predecessor and has said he will devolve some power from the Speaker's office to the rank and file. On the policy side, Speaker Ryan is expected to push for tax reform, deficit reduction and entitlement reform.

With Election Looming, House Plans for Fewest Working Days in a Decade

Both the House and the Senate have released their 2016 calendars and are expected to be in session for 111 and 149 days, respectively. The House's 111 workdays are the fewest since 2006. Both chambers are expected to be out of session for nearly the entirety of August and October and will only be in session for two weeks in July, typically a very busy period in Washington, in order to attend the Republican National Convention (July 18 – 21) and the Democratic National Convention (July 25 – 28).

Takeaway: The compressed calendar means that the majority of Congress' work for the year will take place toward the start of 2016, with the attention shifting to the regulatory sphere and the election as the year progresses.

Budget Reconciliation

On October 23, the House passed H.R. 3762, the budget "reconciliation bill." The Restoring Americans' Healthcare Freedom Reconciliation Act of 2015 implements Republican efforts to generate budgetary savings over a ten-year period under the so-called "reconciliation" process by repealing certain provisions of the Affordable Care Act (ACA).

Although the bill easily passed the House, with all but seven Republicans voting in favor, Senate Majority Leader Mitch McConnell (R-KY) is having difficulty coming up with 51 Republican votes to pass the measure. Senate Democrats oppose the legislation and Senate Republican leaders are mulling options for amending the House-passed bill to attract additional GOP votes. H.R. 3762 repeals the ACA's individual mandate; the employer mandate; the medical device tax; the tax on "Cadillac" health plans; and the Prevention and Public Health Fund. Prior to final House passage, language repealing the ACA-created Independent Payment Advisory Board (IPAB) was removed to avoid procedural concerns in the Senate. The House legislation also prohibits states from reimbursing health care providers and entities that offer abortion services under the Medicaid program (such as Planned Parenthood). Three Senate Republicans will not vote for the House bill because it does not go far enough in repealing the ACA, while several moderate Republicans, including those up for reelection in 2016, are concerned over the Planned Parenthood language. Concerns had been raised that parts of the bill may be too broad to qualify for the expedited reconciliation process. However, these concerns have been dispelled by a ruling from the Senate Parliamentarian. Additionally, Majority Leader McConnell's office said there will be a substitute amendment to fix parts of the bill that would violate the so-called "Byrd Rule." President Obama has said he will veto the legislation.

Takeaway: Unless Senate leaders can assemble a 51-vote majority, the use of the reconciliation process to attack the ACA may be seen as a wasted effort. If the efforts fail, Congressional Republicans insistent on defunding Planned Parenthood may be compelled to pursue the issue elsewhere, such as the final FY16 spending package or some other must-pass year-end bill.

Kevin Brady Elected Chairman of House Ways and Means Committee

Rep. Kevin Brady (R-TX) has been elected chairman of the powerful House Ways and Means Committee, succeeding former Chairman Paul Ryan (R-WI), who stepped down after he was elected Speaker of the House. Rep. Brady defeated Rep. Pat Tiberi (R-OH) after both made closed-door presentations to the House Republican Steering Committee's roughly 30 members. Before the vote, Rep. Brady told the press that his priorities are quick passage of the Trans-Pacific Partnership, advancing tax reform and replacing the Affordable Care Act. Prior to his election, Rep. Brady had served as the Chairman of the Ways and Means Health Subcommittee.

Takeaway: According to reports, Speaker Ryan forcefully advocated on behalf of Rep. Brady's bid for the chairmanship. Rep. Tiberi, who was defeated by Chairman Brady, had been a close ally of former Speaker Boehner, and was considered a favorite in the race. Speaker Ryan could have chosen to vote without giving an endorsement – instead he spoke on behalf of Rep. Brady, perhaps providing insight into his leadership style and the strong connection between the two men. Several members of the panel said Ryan's impassioned plea delivered the chairmanship to Brady.

National Defense Authorization Act Passes House and Senate, President Obama Expected to Sign

On November 5, the House overwhelmingly approved the revised National Defense Authorization Act for Fiscal Year 2016 (NDAA), H.R. 1735, by a vote of 370 to 58. On November 10, the Senate also easily passed the NDAA, by a vote of 91 to 3. Once the House passes a technical correction, the bill will head to the President's desk where he is expected to sign it.

Takeaway: The new NDAA measure has been met with a wide degree of support from Members of Congress on both sides of the aisle, as well as from leaders in the Pentagon. The bill will raise defense spending by \$33 billion in FY2016, \$25 billion of which comes from the base defense budget and \$8 billion from the Overseas Contingency Operations (OCO) account.

Trans-Pacific Partnership Text Released

On November 5, the much-anticipated final text of the Trans-Pacific Partnership was released for congressional review. The text of the 12-nation deal, which runs 30 chapters and more than 2,000 pages, must be under congressional and public scrutiny for at least 60 calendar days before President Obama can sign the agreement. Congress can hold what are called "mock markups" to evaluate the agreement and draft implementing legislation. Congress can also make suggestions to the Administration that it would like to see in the final implementing legislation. The Administration may elect to accept or reject these changes. After that, the White House will send final implementation language for the agreement to Congress, which, under the rules agreed to in the Trade Promotion Authority legislation, has 90 legislative days to review. The agreement, which cannot be amended, will then be examined by the Senate Finance and House Ways and Means Committees before moving to the full House and Senate for consideration. Senate Finance Committee Chairman Orrin Hatch (R-UT) has said that initial reports "signaled potential trouble for congressional approval." Recently-elected House Ways and Means Chairman Kevin Brady (R-TX) struck a more upbeat tone, saying, "If we decide this is good for America, then we're going to be the leaders."

Takeaway: Spring 2016 offers an opening for congressional consideration of the Trans-Pacific Partnership. If the pact is not considered by April or May, it will be overshadowed by the Presidential election and will most likely be pushed into a lame duck legislative session sometime between November 2016 and January 2017.

Cybersecurity Information Sharing Legislation Advances

The prospects for cybersecurity information sharing legislation improved significantly with the October 27 Senate passage of the Cybersecurity Information Sharing Act of 2015, S. 754. To become law, that version must now be reconciled with House-passed legislation, the Protecting Cyber Networks Act, H.R. 1560, and the National Cybersecurity Protection Advancement Act of 2015, H.R. 1731. S. 754 seeks to address private sector concerns about sharing cyber threat information with the government and other companies, including questions regarding legal liability, antitrust violations, potential misuse of intellectual property, proprietary business information and privacy violations.

The U.S. Chamber of Commerce and the Securities Industry and Financial Markets Association support the legislation. However, led by the Computer and Communications Industry Association, some technology companies are concerned the legislation provides inadequate protection of personal information. Privacy rights advocacy groups share those concerns and oppose the legislation. Cybersecurity information sharing legislation is distinct from the data breach notification legislation pending before the House Energy and Commerce Committee and Senate Commerce, Science and Transportation Committees (H.R. 1770/S. 177). Those bills would establish a national standard governing data security breach notification to be enforced by the Federal Trade Commission.

Takeaway: It is still too early to say how quickly the House and Senate will resolve their differences.

November 20 New Target Date for Completing Highway Bill

The House and Senate are moving quickly to resolve differences between their respective versions of the surface transportation reauthorization legislation (H.R. 22), which authorizes funds for federal highway and transit programs. The new deadline for reaching agreement on the final bill is November 20, when current program authority expires. The Senate passed its version of the bill in July while the House did not pass its own version until November 5. However, because the House is currently in recess, Congress may need to temporarily extend the program into December to give lawmakers additional time to finalize the measure. Both the House and Senate versions of the legislation authorize highway and transit programs for six years, but only finance the program for three years. Although the Senate bill contains \$45 billion in specific offsets to pay for three years, the House recommended no offsets of its own. In passing the bill, the House modified several Senate-passed "offsets" that would pay for the legislation, including floor amendments stripping the Senate bill of specific offsets opposed by the banking industry. That issue will be one of many that House and Senate negotiators will have to resolve in negotiating a final bill.

Takeaway: While House and Senate negotiators are operating under a November 20 deadline, there are rumors that another extension (possibly until December 11) may be needed to give them enough time to come to a final agreement. Note this would be the same date the current FY16 interim government funding bill expires.

Export-Import Bank Reauthorization Looks Increasingly Likely

The outlook for the Export-Import Bank of the U.S. (Ex-Im Bank) has improved in recent weeks, and reauthorization through 2019 could take place as part of the surface transportation legislation (H.R. 22). The Senate-passed version of the surface transportation measure contains language reauthorizing the Ex-Im Bank through 2019. The House overwhelmingly voted in support of free-standing reauthorization legislation on October 27 (H.R. 597). In passing the surface transportation legislation on November 5, the House rejected a series of floor amendments that would have modified the Senate Ex-Im Bank language, including amendments that would have imposed limitations on the Ex-Im Bank's operations. Rejection of those amendments means that in all likelihood Ex-Im is no longer an "item of disagreement" between the House and Senate in negotiating a final version of the transportation bill. Reauthorizing the Ex-Im Bank as part of the surface transportation measure is the only option available at this time. Although the House overwhelmingly passed a free-standing

reauthorization bill, Senate Majority Leader Mitch McConnell (R-KY), who opposes the Ex-Im Bank, refuses to bring a free-standing Ex-Im Bank reauthorization bill to the Senate floor, insisting that the surface transportation bill be the legislative vehicle for resolving the matter.

Takeaway: Given the overwhelming majority by which the House passed the Ex-Im Bank legislation, the chances of reaching an agreement between House and Senate negotiators are trending upward.

The Appropriations Process Continues Apace

The individual FY 2016 Appropriations bills are currently being negotiated by the House and Senate appropriations committees. So far, the only bill that has passed by the Senate is the popular \$80 billion budget measure for veterans' programs and military construction. It was approved by a vote of 93 to 0. As a result of the Balanced Budget Act of 2015, the appropriations process now includes new funding allocations that are being disbursed to each of the subcommittees. The current stopgap appropriations measure expires on December 11. If all 12 appropriations bills are not passed into law by that time, a full or partial government shutdown would occur.

Takeaway: Many are predicting a tough path forward for Speaker Ryan as he balances the Republican caucus' desire for policy riders limiting executive action and the Democratic caucus and White House's interest in appropriations bills with no policy riders. A likely scenario is for a bill with all 12 individual subcommittees' appropriations bills (aka, an "omnibus") to be passed just before the December 11 deadline.

Medical Innovation Legislation Possible This Year

The House overwhelmingly passed H.R. 6, the 21st Century Cures Act, over the summer, but the process in the Senate has missed several internal deadlines. Senate Health Committee Chairman Lamar Alexander (R-TN) has said he still plans to introduce his bill, the Innovation for Healthier Americans Act, before the end of the year. Aides say the bill will be paired down and less expensive, and have fewer changes to how the Food and Drug Administration (FDA) conducts reviews than HR 6. Several important provisions, such as how to pay for the bill, will be modified by the Senate legislation because revenue sources used in the 21st Century Cures Act have either been used for other bills (such as the Balanced Budget Act of 2015), or because of divergent committee jurisdictions between the House and Senate. Additionally, debate is ongoing over whether funding for the National Institutes of Health (NIH) should become a mandatory entitlement (as proposed by the House-passed 21st Century Cures Act and supported by Senate Health Committee Ranking Member Patty Murray (D-WA)) or remain subject to annual appropriations (as envisioned by Chairman Alexander).

Takeaway: There remains hope that the legislation will advance through the Senate Health, Education, Labor & Pensions Committee before the end of the year, but the outlook is shaky at best.

Mental Health Legislation Advances

Throughout the summer and fall, two pieces of mental health reform legislation have slowly advanced through the legislative process. In the House, the primary legislation advancing is the Helping Families in Mental Health Crisis Act of 2015, H.R. 2646, sponsored by Rep. Tim Murphy (R-PA). On November 4, the legislation was approved by the House Energy and Commerce Health Subcommittee on a nearly party line vote after a long and sometimes acrimonious markup, with Democrats accusing subcommittee Republicans of ignoring their concerns. While the bill now moves on to the full committee for consideration, a markup date has not been set, and additional negotiations between Republican and Democratic members of the Committee may occur before the bill moves forward. A similar, though not identical, measure (S. 1945) has been introduced in the Senate by Senators Chris Murphy (D-CT) and Bill Cassidy (R-LA). It is not expected to move forward until next year.

Takeaway: With the subcommittee passage of H.R. 2646, the focus of the debate now shifts to the full committee. Legislation is also pending in the Senate, where the timeline for action remains uncertain.

Additionally, given the frustrations expressed by subcommittee Democrats, H.R. 2646 may have a difficult path forward without significant compromise between the parties.

For more information, please contact Sheila Burke, chair of the Government Relations and Public Policy Group.