

PUBLICATION

Washington, D.C. Update – June 2016

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June 1, 2016

With the national party conventions less than eight weeks away, the House and Senate continue to push forward on Fiscal Year 2017 (FY17) appropriations legislation (despite possible floor obstacles detailed below) and other items considered high priority by Congressional floor leaders. However, when Congress returns in early June from the Memorial Day holiday recess, it will have only nine "legislative" weeks to enact all 12 individual spending bills by the October 1 fiscal year deadline, an unlikely outcome that will likely result in a year-end "Omnibus" spending package. The legislation, which collectively funds the daily operations of the federal government, gives members the opportunity to weigh in on spending and policy priorities and preferences. Emergency funding legislation to address the Zika virus, Puerto Rico stabilization legislation and defense policy legislation are also high priority issues for floor leaders before the July presidential conventions. Meanwhile, the Obama Administration continues to focus on finalizing regulations in order to cement President Obama's legacy before he leaves office in January. However, as the calendar moves closer to a new Congress and presidential administration in January, major regulations issued by the outgoing Obama Administration in the future are at increased risk of potential invalidation under the Congressional Review Act, a legislative procedure that gives Congress and the President the opportunity to overturn major regulations.

Fiscal Year Deadline Fast Approaching

Despite the record-setting pace for considering FY17 legislation, Congress will not have enough time to enact all 12 FY17 bills into law by the October 1 fiscal year deadline. However, the House and Senate are positioning themselves to pass a Zika virus emergency response funding bill before the July 4 recess in combination with the regular FY17 bill that funds the Department of Veterans Affairs (VA) and Defense Department military construction activities (see Zika story below). Obstacles to meeting the October 1 deadline for the remaining FY17 spending bills include the abbreviated election-year calendar, presidential politics, poison pill floor amendments and continued opposition by fiscal hardliners. Odds remain strong that much of the FY17 spending legislation will have to be finalized after the November 8 election in a year-end catch-all "Omnibus" spending package.

So far, the success for the House and Senate Appropriations committees has been with spending bills with broad bipartisan floor support in both chambers, such as measures funding military construction, the VA and the Department of Transportation. Moving forward, the problem for House and Senate floor leaders is two-fold. First are those spending bills most susceptible to controversial policy riders and "poison pill" amendments. The regulatory agenda of the outgoing Obama Administration has come under increased attack by legislators and business groups seeking to use the appropriations process to block or modify controversial labor, environment, financial, health care and immigration regulations. Spending bills targeted for such amendments may not survive the floor (especially in the Senate) and are prime candidates for bypassing "regular order" and getting directly rolled into a post-election year-end package. These include measures funding the departments of Labor, Health and Human Services, Education and Interior; the Environmental Protection Agency; the Internal Revenue Service and the Consumer Financial Protection Bureau.

The second problem is the position of House Republican fiscal conservatives whose opposition to last fall's sequestration relief agreement helped torpedo efforts by Speaker Paul Ryan (R-WI) to pass a budget resolution, a top election-year priority of the Speaker. Republican hardliners appear willing to support FY17

bills at higher spending levels for national security-related bills, but they may withhold floor support for domestic spending measures, especially if they are unable to attach amendments blocking or scaling back the Obama Administration's regulatory agenda. Without assurances from hardliners, Speaker Ryan's only choice may be to rely on Democrats to pass some of the domestic spending bills or hold them back for direct inclusion in a year-end spending package.

Takeaway: Despite floor obstacles and the abbreviated election-year schedule, individual FY17 appropriations bills represent some of the few remaining "must pass" bills of the 114th Congress – the federal government cannot operate without them. Hence, the spending bills offer excellent opportunities for getting favored policy initiatives and projects into law.

Obama Administration Finalizes a Number of Significant New Regulations

The Obama Administration seeks to cement its legacy by implementing an expansive regulatory agenda before President Obama leaves office in January 2017. Since the start of the new year, the Administration has issued a large number of final rules before they can be potentially overturned by the next Congress and President under the Congressional Review Act. That Act gives Congress 60 legislative days to enact a joint resolution of disapproval of "major" executive branch rules. The joint resolution requires presidential approval in order for the rules to be invalidated. Recently finalized regulations include:

- *Methane Emissions:* As part of President Obama's Climate Action Plan, on May 12, the Environmental Protection Agency (EPA) finalized Clean Air Act regulations limiting emissions of methane and volatile organic compounds from additional new, modified and reconstructed sources in the oil and gas industry. The final rule addresses new and heavily modified equipment, but does not apply to existing rigs, well pads and auxiliary equipment. The EPA estimates the rules will cost companies around \$530 million in 2025, but claims \$690 million in savings from reduced waste, with a potential net benefit of \$160 million. The agency said the regulations would lower methane emissions by 510,000 tons in 2025, the equivalent of 11 million metric tons of carbon dioxide. The rules have been heavily criticized by the oil and gas industry.
- *Electronic Cigarettes:* On May 4, the Food and Drug Administration (FDA) issued a final rule banning the sale of electronic cigarettes to minors. The agency also expanded its authority to regulate e-cigarettes, cigars and hookah tobacco in much the same way it already regulates traditional cigarettes. The rules also require companies to get FDA approval for any products marketed after February 15, 2007. E-cigarette makers will also have to go back to the FDA within two years for approval of the products they already sell.
- *Overtime Pay:* On May 18, the Department of Labor (DOL) issued a final rule modifying the salary and compensation levels needed for salaried employees to be exempt from overtime pay requirements. The compliance date is December 1. The regulations, last updated more than a decade ago, would let full-time salaried employees earn overtime if they make up to \$47,476 per year, more than double the current threshold of \$23,660 per year. The DOL estimates the rule would benefit 4.2 million additional workers.

Takeaway: Congress is including policy riders in pending FY17 appropriations bills to block the Administration from implementing various final regulations, including the methane rules for oil and gas drillers, the Waters of the U.S. rule, the EPA's new ozone air quality standard and select financial services regulations, among others. Democrats and the Administration will likely resist such efforts when the final spending legislation is negotiated later this year.

Zika Funding Debate Continues

Congress and the White House are trying to reach agreement on a Zika virus emergency response funding bill before the summer mosquito season. Funding levels and whether to offset the cost of the emergency spending

bill are the two principal sticking points. The White House requested \$1.9 billion in emergency funding through the end of FY17 (September 30, 2017) and agreed to repurpose \$589 million from existing programs to aid in the fight against Zika. The Senate-passed bill provides \$1.1 billion through FY17 without funding offsets. The House-passed bill, however, provides \$661 million through FY16 to be paid for with previously appropriated but yet-to-be-spent funds, including emergency Ebola funds. The White House has threatened to veto the House-passed legislation due to what it considers inadequate funding to meet the challenges posed by the Zika virus and for proposing to offset the cost of the legislation with unspent Ebola funds. Both the House and Senate bills would facilitate the development of countermeasures and vaccines for Zika. The more expansive Senate version also contains funds for enhanced domestic preparedness activities.

Takeaway: Negotiators hope to resolve differences and send final legislation to President Obama when Congress returns from the Memorial Day congressional recess. The final bill might contain funds to support states for enhancing emergency public health response capacity associated with Zika and related disease.

National Defense Authorization Moves Forward

Congress has recently taken up the annual defense authorization measure, the National Defense Authorization Act. The legislation authorizes annual appropriations for Department of Defense (DOD) programs and activities, and gives Congress an opportunity to weigh in on national security policy. The House passed its version of the bill, H.R. 4909, on May 18. The House version calls for a \$602.2 billion top-line budget and was passed by a vote of 277 to 147. Forty Democrats voted with the vast majority of Republicans in favor of the bill, while five Republicans joined 142 Democrats in voting against it. The Senate is on pace to pass its version of the legislation, S. 2943, after Congress returns from the Memorial Day congressional recess. The Senate bill was approved by the Senate Armed Services Committee on May 12.

Takeaway: As in years past, the off-budget emergency Overseas Contingency Operations (OCO) funding account is the most contentious part of the bill. House lawmakers have largely ignored threats from Senate Democrats and the President over the proposed use of off-budget OCO funds to pay for the DOD's "base" budget subject to the discretionary spending caps. The House version of the bill includes \$18 billion in OCO funds for items not requested by the President.

Comprehensive Energy Legislation Still in Play

Although Congress passed landmark legislation ending the 40-year-old ban on U.S. crude oil exports last year, key members of the House and Senate are hopeful that a more comprehensive energy bill can be enacted before the end of the 114th Congress. In December, the House passed the North American Energy Security and Infrastructure Act of 2015 (H.R. 8), a bill opposed by the Obama Administration and House Democrats due to coal, oil and natural gas development provisions. Prospects for a comprehensive bill improved in April when the Senate passed a bipartisan version of the bill (S. 2012, the Energy Policy Modernization Act of 2016) with unanimous Democratic support and all but 12 Republicans. House Energy and Commerce Chairman Fred Upton (R-MI) previously said he would drop provisions most strongly opposed by Democrats from the House bill in order to facilitate agreement with the Senate. But House Natural Resources Committee Chairman Rob Bishop (R-UT) is said to be unhappy with a number of Senate provisions. On May 25, the House requested a formal conference with the Senate to negotiate a final bill.

Takeaway: Despite issues dividing the House and Senate, there is bipartisan support in both chambers for provisions common to both bills, such as energy efficiency, renewable energy, clean vehicle research and development, and energy infrastructure. If House-Senate negotiators are unable to overcome differences over coal, as well as oil and gas, the best of the "low hanging" fruit in both the House and Senate versions could serve as the basis for final bipartisan agreement on a scaled-down version of the legislation.

Ways and Means Bill Would Address Hospital Outpatient Payments

On May 24, the House Ways and Means Committee approved the Helping Hospitals Improve Patient Care Act of 2016 (H.R. 5273). Sponsored by Health Subcommittee Chairman Pat Tiberi (R-OH) and the subcommittee's ranking member, Jim McDermott (D-WA), the legislation modifies the 2015 Bipartisan Budget Act's (BBA) site-neutral Medicare payment rate rules to exempt hospitals that were already building off-campus outpatient centers at the time BBA took effect. The bill also would exempt cancer hospitals from the BBA's payment change, which would have resulted in lower reimbursement rates. The site-neutral policy adopted in the BBA equalizes Medicare payment rates for hospital outpatient departments and hospital-owned physician offices, and was meant to address the practice of hospitals acquiring physician offices and then billing patients at higher rates under the outpatient prospective payment system than the Medicare physician fee schedule. H.R. 5273 also includes provisions relating to the rural community hospital demonstration program, the long term care hospital moratorium, hospital inpatient short-stays, ambulatory surgical centers and the Meaningful Use program.

Takeaway: Hospital industry groups have made passage of H.R. 5273 a top priority. Although the legislation has bipartisan support in the House and the Senate, the abbreviated election-year calendar makes the timing and outcome of the bill uncertain at best.