



Legislative Alert

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Shutdown Ends: Now What?

After a 16 day government shutdown, and a looming default on the federal government's obligations, Congress agreed late yesterday to a compromise negotiated by Senate leaders to reopen the government and extend the debt ceiling. The Senate voted in the early evening 81 to 18 and the House followed suit, voting 285 to 144. In the Senate, all Democrats and both independents who caucus with the Democrats supported the measure, while 18 Republicans voted against it. In the House, all 198 Democrats supported the measure, and were joined by 87 Republicans. President Obama signed the bill shortly after midnight.

The plan, negotiated by Majority Leader Harry Reid (D-NV) and Minority Leader Mitch McConnell (R-KY), funds the government at \$986 billion through a Continuing Resolution (CR) through January 15th, and extends the debt ceiling through February 7th. In addition, the compromise includes an income verification requirement for applicants to the Affordable Care Act (ACA) who would receive subsidies, and stipulates that furloughed federal workers are entitled to retroactive pay. The CR contained other items as well, such as \$450 million to repair flood damage in Colorado, \$100 million for operations of the Federal Aviation Administration (FAA), and additional funds for a dam project on the Mississippi River.

The agreement also requires a budget conference with a report due on December 13th, which would provide a framework for spending, taxes, and entitlements, while possibly addressing the mandatory spending cuts of sequestration. This will be the first budget conference since 2009.

House budget conferees are: Budget Committee Chairman Paul Ryan (R-WI) and Ranking Member Chris Van Hollen (D-MD); Rep. James Clyburn (D-SC), the Assistant Democratic Leader; Rep. Nita Lowey (D-NY), the Ranking Member of the Appropriations Committee; and Representatives Tom Price (R-GA), Diane Black (R-TN), and Tom Cole (R-OK).

Senate conferees are: Budget Committee Chairwoman Patty Murray (D-WA) and Ranking Member Jeff Sessions (R-AL), and all other Budget Committee members, including Senators Ron Wyden (D-OR), Bill Nelson (D-FL), Debbie Stabenow (D-MI), Bernie Sanders (I-VT),

Sheldon Whitehouse (D-RI), Mark Warner (D-VA), Jeff Merkley (D-OR), Chris Coons (D-DE), Tammy Baldwin (D-WI), Tim Kaine (D-VA), Angus King (I-ME), Charles Grassley (R-IA), Mike Enzi (R-WY), Mike Crapo (R-ID), Lindsey Graham (R-SC), Rob Portman (R-OH), Pat Toomey (R-PA), Ron Johnson (R-WI), Kelly Ayotte (R-NH), and Roger Wicker (R-MS).

This morning, Reps. Ryan and Van Hollen, and Senators Murray and Sessions, met for breakfast to start discussions about how the conference will proceed with its work.

While yesterday's agreement ended the shutdown and prevented an immediate default, it does set hard deadlines for Congress, and sets the stage for another fiscal crisis if no agreement is reached on spending levels for the remainder of Fiscal Year 2014, which started on October 1. House Republican conferees will be looking to avoid any new taxes while making deep cuts to government spending, while Senate Democratic conferees will push for new revenues with perhaps some spending cuts, but not as deep as the House will want.

In addition to finally reaching an agreement on FY14 appropriations, there are several other items that will be moving in tandem over the coming weeks and months:

Tax and Entitlement Reform

While comprehensive tax and entitlement reform is not going to be possible before year's end, House Ways and Means Committee Chairman Dave Camp (R-MI) and Senate Finance Committee Chairman Max Baucus (D-MT) will almost certainly continue their efforts to lay the groundwork for a comprehensive measure at a later date, while looking for opportunities to make some adjustments to tax and entitlements in the budget conference report that is due by December 13th. Leading up to the government shutdown, Chairman Camp was aiming to move a draft tax reform proposal to be completed by September with an October mark-up. The House proposal was expected to reduce the top tax rate – for corporations and individuals – to 25 percent. The coming days will reveal how the two committees plan to restart their efforts.

Assuming that the budget conference required by yesterday's agreement is successful, they will produce a conference report, which would be approved by the House and Senate, but would not be signed by the president. The report could focus solely on spending issues, but could also provide instructions to the Ways and Means Committee and the Finance Committee to find specified amounts of savings in taxes or entitlements, such as Medicare and Social Security.

Defense Authorization

The National Defense Authorization Act (NDAA) remains one of few bills on a short list of "must pass" legislation, evidenced by the fact Congress has passed an authorization bill annually for the past 51 consecutive years. On June 14th, the House passed its FY14 NDAA by a vote of 315-108 and the Senate Armed Services Committee (SASC) reported its bill by a vote of 23-3. Even before the government shutdown, Senate Armed Services Committee leadership and staff forecast that floor consideration would slip to early December, abbreviating the timeframe for a conference committee to reconcile differences between the House and Senate bills. In addition, the government shutdown has limited time that may have been spent negotiating amendments, perhaps further complicating management of the bill. Final passage of the NDAA at the end of the calendar year would correlate with an emerging trend, making the FY14 legislation the fourth consecutive NDAA finalized in December.

Sustainable Growth Rate (SGR)

Since 2003, as the economy began to slow down and health care costs began to outpace GDP growth, Congress has acted to “fix” the SGR, either by increasing physician payment rates or freezing rates to prevent decreases. Stakeholders have been optimistic that this year Congress would be able to reach bipartisan agreement to reform the SGR as there has been very positive movement to date this Congress. However, the biggest sticking point for achieving SGR reform is how to “offset”, or pay for the overhaul, which would cost roughly \$175 billion. Though this is a much lower price tag than in previous years, finding savings from the health care sector to pay for the reform will be a challenge, with numerous industry sectors potentially facing significant reimbursement cuts.

The timeline included in the deal also puts the outlook for SGR reform in jeopardy. A bill to reform the SGR could move as a standalone measure in December or as part of a broader deal to fund the government; however, with Congress’ focus on budget talks, tax reform, and entitlement reform, selling a measure that would raise the deficit may become more difficult. In addition, with the government funded through January 15th, and the physician pay cut scheduled to hit on January 1st, should SGR reform, or a temporary “doc fix”, be included in broader budget talks, CMS could be forced to hold claims for up to 15 days if Congress works right up to the budget deadline.

Farm Bill

After Congress has had to extend USDA programs twice in the past two years, progress on enacting a new Farm Bill finally seems to be gaining momentum. The Senate and House have appointed members to a conference committee that will resolve differences between House- and Senate-passed bills funding nutrition, farm, and bioenergy programs. Committee leadership is talking frequently in advance of a full conference potentially as soon as the week of Oct. 28.

However, the ultimate fate of the Farm Bill is unclear. Even though President Obama stated after government reopened that passage of the Farm Bill ranked as one of his top three initiatives for the rest of the year--along with the budget and immigration reform--the usually bipartisan Farm Bill has proven politically toxic in recent years. House Republicans barely passed a nutrition bill, even after securing steep cuts to the food stamp program. The House cuts are ten times greater than the cuts passed by the Senate (in addition to other controversial dairy and subsidy changes), making agreement hard to reach. The final outcome will depend on how the House Republican leadership and tea party factions react to the shutdown battle. Conservatives in the House will have little reason to vote for a conferenced bill if it is seen as watering down the House cuts to food stamps. Stinging from the shutdown defeat, conservatives may want to take another stand on food stamp spending. If, however, House Republicans are chastened by the shutdown outcome, they may be more willing to compromise.

Water Resources Reauthorization

Congress has traditionally passed a water resources bill every two years – but the most recent WRDA bill was approved in 2007, making a new reauthorization a priority for the Senate Committee on Environment and Public Works and the House Committee on Transportation and Infrastructure. The Senate WRDA bill was approved by the EPW Committee in April and the full Senate in May. On September 19, the House Transportation and Infrastructure Committee approved the Water Resources Reform and Development Act (WRRDA). The bill is expected to be on the House floor for consideration next week. Once the House approves its

WRRDA bill, the two measures will go to conference to reconcile any differences.

Immigration Reform

Immigration reform remains an administration priority as President Obama mentioned in his statement today about the end of the government shutdown. The Senate passed the Border Security, Economic Opportunity and Immigration Modernization Act (S. 744) in June, and the House Democratic Caucus introduced a bill (H.R. 15) that largely mirrors the Senate proposal, on October 2. While the House and Senate proposals do have some differences, they both address the issues of border security, high-skilled visas, and STEM funding. Even though immigration reform remains a priority, it will be difficult for Congress to move a comprehensive package in the few legislative days remaining this year.

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