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Washington, D.C. Update

House Leadership Elections: Republican House leadership changes remain in flux in the wake of Speaker John Boehner's (R-OH) decision to retire and the unexpected delay of the vote to select his successor. House Majority Leader Kevin McCarthy (R-CA) stunned Washington, D.C. when he withdrew from the race on October 8. Reps. Jason Chaffetz (R-UT), Daniel Webster (R-FL) and Lynn Westmoreland (R-GA) are running for the speakership while Ways and Means Chairman and former vice presidential nominee Paul Ryan (R-WI) mulls over requests to do so as well. However, it is impossible at this point to project the outcome. Speaker Boehner says he will remain in Congress until a replacement is elected – raising the possibility he could stay on beyond his self-imposed October 30 retirement date.

Takeaway:

The House Republican leadership contest will significantly impact the Congressional agenda moving forward and we expect a vigorous debate over the future direction of the party in coming weeks.

Appropriations/Budget: On September 30, Congress passed a last-minute continuing resolution, avoiding a government shutdown and continuing the government's operations at FY2015 levels until December 11. Staff-level conference negotiations on the FY2016 budget are underway. However, Appropriations Committee leaders are awaiting details of an anticipated budget deal before increasing spending caps established by the Budget Control Act of 2011 (BCA). Led by Senate Armed Services Chairman John McCain (R-AZ), a group of defense hawks are seeking to raise defense spending by $38 billion over the current BCA caps. President Obama and Congressional Democrats say any increase in defense caps must be matched dollar-for-dollar with increases to nondefense spending. Meeting that demand could mean a budget deal that increases discretionary spending $76 billion over the BCA caps for FY2016. To avoid a similar impasse next year, some believe the budget deal should address spending for the next two years, which could mean up to $152 billion is needed. Separately, in a procedural move to pressure Democrats on the budget, Senate Majority Leader Mitch McConnell (R-KY) repackaged individual FY2016 legislation into four separate bills that he may try to bring to the floor individually. The purpose is to put Democrats on record for opposing otherwise popular spending legislation, such as defense and homeland security.

Takeaway:

The outlook for FY2016 appropriations legislation remains murky and a government shutdown in mid-December remains a strong possibility.

Debt Limit: On October 1, Treasury Secretary Jack Lew informed Congressional leaders that the statutory debt limit must be raised by November 5 or risk a government default on its obligations. Though the statutory debt limit expired in March, until now, Treasury was believed to have sufficient contingency measures in place through late November or early December. The new deadline for the debt limit will further complicate Congress's effort to address other fiscal and statutory deadlines. President Obama insists that Congress send him a "clean" version of debt limit legislation, while some Republicans have previously expressed interest in using the debt limit as leverage to extract budgetary concessions from Democrats.

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Takeaway:
As with appropriations/budget issues, the fallout from Speaker Boehner's resignation and the looming presidential primaries will affect the ability of the political parties to overcome differences in negotiating an increase in the statutory debt limit. We expect agreement to be reached with a mix of Republicans and Democrats supporting the increase.

Reconciliation: On October 9, the House Budget Committee approved "reconciliation" legislation along a party-line vote implementing Republican efforts to generate budgetary savings over a ten-year period under the so-called "reconciliation" process. Reconciliation provides procedural protections, including a simple majority in the Senate, which allow legislation to go to the President without the customary super majority requirements. The House reconciliation bill repeals several provisions in the Affordable Care Act (ACA), including the individual mandate; the employer mandate; the Independent Payment Advisory Board; the medical device tax; the tax on "Cadillac" health plans; the Prevention and Public Health Fund; and the auto-enrollment mandate for employers with 200 or more full-time employees. It also prohibits states from reimbursing health care providers and entities (for example, Planned Parenthood) that offer abortion services under the Medicaid program. The full House is expected to consider the legislation the week of October 19. The outlook in the Senate is less certain. Although Senate Majority Leader Mitch McConnell (R-KY) is committed to bringing reconciliation legislation to the Senate floor with selected ACA repeal language, unanimous support among Republicans is not assured. The Senate Finance and Health, Education, Labor and Pensions (HELP) committees may need to modify the package depending on the level of Republican support and whether it complies with the so-called "Byrd Rule," which precludes adding "extraneous" provisions to reconciliation legislation. Any such changes would need to be adopted by the Senate Budget Committee, which is ultimately responsible for reporting reconciliation legislation to the floor.

Takeaway:
We expect a reconciliation package to pass the House. However, the path forward in the Senate is unclear and the President is expected to veto the package should it reach his desk.

Medical Innovation: The Senate Health, Education, Labor and Pensions Committee is continuing to develop a package of measures promoting innovation. In some respects, this package is expected to respond to the House-passed 21st Century Cures Act. Many parts of the measure will look different as a result of the Committees' disparate jurisdictions and Members' interests. While Committee staff hoped to release a draft bill shortly after the August recess, continued negotiations have pushed the likely release until the end of October, at the earliest, with consideration by the full Senate in early 2016. It is possible that one or more health IT bills will move through the Senate HELP Committee separately from the innovation package, but the measures will likely be packaged together before consideration on the Senate floor.

Takeaway:
Full Congressional consideration of medical innovation legislation is unlikely until 2016.

Washington, D.C. Update, *continued*

Affordable Care Act (ACA): On October 7, the President signed into law H.R.1624, the Protecting Affordable Coverage for Employees Act. The act amends a provision of the ACA to allow states to opt-out of the scheduled expansion of the small group market from 51 to 100 individuals. The measure is one of only a handful of examples of bipartisan agreement on adjustments to the law. Separately, the House also passed H.R. 2061, the Restoring Access to Medication Act of 2015, which would expand the religious conscience exemption to the individual mandate. However, the fate of this bill in the Senate is uncertain.

Takeaway:

Congress may continue to make small-scale tweaks in the Affordable Care Act. However, the likelihood of significant changes to the law remains remote.

National Defense Authorization Act (NDAA): On October 7, the Senate passed the NDAA conference report, clearing the measure for presidential action. The President has said he will veto the $612 billion bill over its authorization of $38 billion in Overseas Contingency Operations (OCO) funds to be used to increase the defense "base" budget. OCO funds are typically reserved for emergency costs associated with fighting wars. Congressional Democrats and the President argue the use of additional OCO funds for defense spending serves as a workaround to the Budget Control Act caps and that there is no match of such funds on the non-defense side. With Congress's inability to override a likely presidential veto, the authorization is expected to require further negotiation this Fall.

Takeaway:

We anticipate the NDAA will be vetoed by the President. We expect the final outcome of the authorization to be addressed as part of broader bipartisan budget negotiations sometime toward the end of the year.

Transportation: Congress has temporarily renewed authorization for the aviation programs while lawmakers ponder whether to spin off air traffic control from the government to a nonprofit corporation. The six-month extension was enacted on September 30 and gives Congress until the end of March 2016 to act on a long-term bill. Authorization for highway and transit programs expires October 29. The Senate has passed a six-year bill which contains only three years of funding. The House had hoped to act on a long-term bill funded by changes in the international tax code, such as repatriation of corporate income earned abroad. However, revenue negotiations between the House and Senate have faltered, and the House Transportation & Infrastructure Committee has begun to proceed with a bill that identifies other pay-fors. A House Committee markup of the legislation may occur the last week of October.

Takeaway:

Due to a limited number of legislative days available until the October 29 deadline, and given the Department of Transportation's recent announcement that the Highway Trust Fund would be solvent until the summer of 2016, we anticipate that Congress will pass another extension for the surface transportation programs while the House and Senate continue to seek common ground on a long-term bill.

Washington, D.C. Update, *continued*

Trans-Pacific Partnership (TPP): On Monday, October 5, the United States, Canada, Japan and nine other Pacific Rim nations announced a final agreement on the TPP. The agreement, reached after years of negotiation, includes 12 nations which account for 36 percent of the world's gross domestic product. In the U.S., the agreement faces months of scrutiny. Under U.S. law, after President Obama submits legal documents to Congress (which is expected in the coming days), lawmakers will have 30 days to review the documents before they are released to the public. At that point, the documents must be reviewable for at least 60 days before the President can formally sign the agreement. Under Trade Promotion Authority "fast track" legislation approved by Congress this summer, once the President formally submits the signed agreement and implementing legislation, lawmakers can't amend or filibuster the pact, which must be approved by simple majorities in the House and Senate in order to be formally ratified. Capitol Hill staffers said votes are not likely to take place until early 2016.

Takeaway:

Now that the Obama Administration has completed international negotiations over the TPP, it will turn its attention to selling the agreement to Congress. Initial indications point to a complicated and dynamic approval process taking place in the context of the 2016 elections.

Export-Import Bank of the United States: On September 30, Rep. Stephen Fincher (R-TN) filed a discharge petition intended to bring directly to the House floor legislation reauthorizing the Export-Import Bank through FY2019. The discharge process allows legislation to by-pass the committee process and go straight to the floor if signed by at least 218 members, the number needed to pass legislation in the House. On October 9, House Minority Whip Steny Hoyer (D-MD) said the Fincher petition will meet the 218 vote threshold and the reauthorization bill will be brought to the House floor on Monday, October 26. Republican floor leaders have not confirmed Rep. Hoyer's assessment of the situation. Because Senate Majority Leader Mitch McConnell (R-KY) opposes Export-Import Bank's reauthorization and is reluctant to bring a free-standing reauthorization bill to the Senate floor, Senate supporters are pushing for reauthorization as part of the surface transportation reauthorization bill. The Senate-passed version of that bill would also reauthorize the Export-Import Bank through FY 2019. The fate of that bill is uncertain. The House has not passed its version of the surface transportation bill and it is by no means certain that House conferees will agree to the Senate amendment in conference negotiations.

Takeaway:

Despite Rep. Fincher's move, the outlook for Export-Import Bank's renewal remains uncertain.

Path Forward: With a new debt limit deadline (November 5), expiration of the Continuing Resolution (December 11), ongoing negotiations over the Highway Trust Fund, the Export-Import Bank renewal and the need to renew tax extenders in time for next year's tax filing season, there may be enough momentum and critical mass for a year-end "grand bargain." However, given the uncertain impact of changes in the House Republican leadership and continuing partisan divisions on key issues, the chances of a government shutdown before the Christmas holiday remain significant.

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