Washington, D.C. Update

2015 Year-End Appropriations and Tax Measures

On Friday, December 18, the House and Senate completed work on the omnibus appropriations legislation funding the federal government for the 2016 fiscal year and a series of tax measures known as "tax extenders." The measures have now been sent to President Obama for his signature. The appropriations bill, which provides funding to keep the U.S. federal government operating through September 30, 2016, was approved in the House by a margin of 316 to 113, with 150 Republicans joining 166 Democrats in voting in favor of the legislation. The tax extenders bill was approved in the House on Thursday by a margin of 318 to 109, with 241 Republicans joining 77 Democrats in voting in favor of the legislation. The two bills were combined in the Senate and passed on a vote of 65 to 33, with 26 Republicans and 38 Democrats voting in favor.

The omnibus appropriations bill incorporates 12 separate appropriations bills and sets the federal budget at $1.15 trillion in U.S. government discretionary spending for the 2016 fiscal year. The appropriations bill passed only after Congress enacted three continuing resolutions extending budget authority and avoiding a government shutdown, first from September 30 to December 11, then to December 16, and finally to December 22.

As part of the year-end deal that allowed for passage of the omnibus appropriations legislation, Congress also passed nearly 50 tax measures. According to the Joint Committee on Taxation, the legislation is valued at $622 billion over 10 years. The tax measures are seen as a victory for Republicans and passed with primarily Republican support, while the appropriations bill relied primarily on Democratic support for passage.

With the passage of the omnibus appropriations and tax extender legislation, Congress has concluded its work for 2015 and will return after the new year. The House is expected to return to Washington on January 5 and the Senate on January 11.

Defense

The omnibus appropriations bill sets defense spending at $573 billion in fiscal year 2016. This amount includes both $514.1 billion in the base budget and $58.6 billion in the Overseas Contingency Operations (OCO) account. The legislation is a 3 percent increase over last year's overall defense spending. The OCO account, which has been a source of contention between the President and congressional Republicans, is an 8.3 percent cut in the account from last year, but is a 15.1 percent increase over the amount requested in the President's budget. Given the increases in defense spending outlined in November's two-year budget deal, we expect FY2017 defense spending to remain at a similar, if not increased, level.

The Obama Administration had lobbied to include funding to close the Guantanamo Bay detention facility. However, Congress elected not only to not include the money, but also to forbid the administration from using any appropriated funds to work toward closing the facility.

Takeaway: Defense hawks, military construction and the National Guard/Military Reserve equipment program were the big winners in the FY16 defense appropriations. In fact, there were few losers on the defense side.

Cybersecurity

The omnibus appropriations legislation includes a compromise version of the Cybersecurity Information Sharing Act of 2015 (CISA), combining two bills passed in the House this spring with one that passed the Senate in October. Congressional staffers had been working to come to a compromise on various proposals since early November and only managed to reach an agreement in recent days. Support for the measure mirrors earlier positions, with bipartisan support despite strong opposition from privacy advocates and civil liberties organizations. Consideration of CISA has dragged on for more than four years as lawmakers argued over what limits should be placed on collecting personal information, which agencies should collect the information and how widely should the information be shared across the U.S. government.

Takeaway: Following adoption of the omnibus appropriations legislation, the focus of the cybersecurity debate in Congress will shift to H.R. 1770/S. 177, the Data Security and Breach Notification Act of 2015, currently under consideration by the House Energy and Commerce Committee.

Health Care

Without a doubt, one of the main winners in the omnibus appropriations legislation is the National Institutes of Health, which will receive a $2 billion (or 6.25 percent) budget increase, raising its total appropriation to $32 billion. Of the increase, Alzheimer's research will receive an additional $350 million, brain research $85 million, antibiotic research $100 million and the Precision Medicine Initiative $200 million in new funding.

Another big winner is the Centers for Disease Control and Prevention (CDC), which received an additional $300 million above last year. Resources will be directed to disease prevention and biodefense research. The bill also included a doubling of the BioShield Special Reserve Fund, which is used to develop countermeasures in response to naturally occurring and deliberate biological threats.

The Food and Drug Administration (FDA) received an additional $133 million above FY2015. The funding includes increases for drug safety, the Combating Antibiotic Resistant Bacteria Initiative and orphan product development.

As part of the year-end package, bipartisan support was achieved to delay major provisions of the Affordable Care Act (ACA), delaying the implementation of the medical device tax for two years and pushing the start date of the tax on high-cost employer health plans, commonly known as the "Cadillac tax," from its scheduled start in 2018 until 2020. Both taxes have long been targeted for delay and/or repeal by various members of Congress. The legislation also grants a one-year freeze on the so-called "premium tax," a tax that had been strongly opposed by insurance companies and business groups. The changes are a major blow to the Obama Administration, which has repeatedly said it would oppose any congressional efforts related to the health care law that are not intended to improve it. They also raise real questions about the long-term financing of the ACA, as the combined impact of the delay results in a decrease of $35 billion in revenues.

Other health care items of note include:
Addressing Mental Illness: The Substance Abuse and Mental Health Services Administration (SAMHSA) received a $160 million increase, including a $50 million increase in the Mental Health Block Grant to states. Additionally, the bill includes funding for the Assistant Outpatient Treatment (AOT) grant program, which treats individuals with serious mental illnesses. AOT programs currently exist in 45 states as an alternative to long-term inpatient care. Court-ordered AOT allows a court to direct treatment in the community for patients with the greatest need for help. This provision is similar to what is included in H.R. 2646, the Helping Families in Mental Health Crisis Act of 2015, authored by Rep. Tim Murphy (R-PA).

Prescription Drug Pricing: The bill directs the Administration to submit a report to Congress regarding prescription drug pricing in Medicare, Medicaid and VA programs. The report is to address price changes of prescription drugs (net of rebates) since 2003; access to prescription drugs by patients in Medicare, Medicaid and VA programs; health outcomes and patient satisfaction with care in those programs; and an analysis of the current cost and length of time necessary to bring new drugs to market.

Critical Access Hospitals (CAH): Due to concerns about proposals to eliminate CAH status for facilities located less than 10 miles from another hospital, the legislation directs the Center for Medicare and Medicaid Services (CMS) to engage CAH facilities to assess the impact of the proposed reimbursement reduction and provide a report "on the impact of the proposed rate reduction from the perspective of the CAH ability to fully operate if the reduction is implemented."

340B Drug Program: The legislation requires the Health Resources and Services Administration (HRSA) to brief the House and Senate Appropriations committees on the status of 340B program guidance, the 340B secure website and "covered entities" in the 340B drug program.

Improving Patient Safety: Section 502 includes a policy that was originally part of H.R. 6, the 21st Century Cures Act, that encourages the adoption of innovative medical technologies. The provision will incentivize newer technology over older systems. This provision is also included in H.R. 2550, the Medical Imaging Modernization Act of 2015, authored by Rep. Cathy McMorris Rodgers (R-WA).

Helping Children with Rare Diseases: Section 765 extends the Rare Pediatric Disease Priority Review Voucher (PRV) Program from March 16, 2016, to September 30, 2016. The provision extends current policy, and is similar to H.R. 1537, the Advancing Hope Act of 2015, authored by Rep. G.K. Butterfield (D-NC) and Rep. Michael McCaul (R-TX).

Caring for Our Seniors: Seniors who receive their care in a home setting are not able to access certain services because of the structure of the Durable Medical Equipment (DME) payment system. Section 504 includes a provision that would ensure seniors receiving care in a home setting are not denied access to certain disposable wound care treatments. This provision is similar to one contained in H.R. 6, the 21st Century Cures Act and in H.R. 1018, the Patient Access to Disposable Medical Technology Act of 2015, authored by Rep. Renee Ellmers (R-NC).

Delaying Onerous Menu Labeling Requirements: Section 747 grants restaurants and similar retail food establishments a delay from having to comply with menu labeling requirements until December 2, 2016, or until one year after FDA releases guidance. This provision is included in H.R. 2017, the Common Sense Nutrition Disclosure Act, authored by Rep. Cathy McMorris Rodgers (R-WA).

9/11 Victims Fund: As part of the appropriations legislation, Congress agreed to an $8.1 billion reauthorization of the James Zadroga 9/11 Health and Compensation Act. Of that, $3.5 billion is designated for the World Trade Center Health Program and $4.6 billion for the 9/11 Victims Compensation Program. The programs for first responders and victims of the 9/11 attacks will be partly paid for by reducing federal payments for x-ray imaging services that use film instead of digital imaging and allowing reimbursements to home health agencies for cost-effective durable medical equipment such as wound care treatments.

Hospital Outpatient Department Rules: Of particular note, the final legislation does not include changes to Section 603 of the Bipartisan Budget Act of 2015 regarding new site neutral payment rules applicable to "off-campus" hospital outpatient departments. The American Hospital Association is seeking language that would exempt off-campus outpatient facilities currently under development from the new payment rules that take effect January 1, 2017. Some in Congress continue to push for changes to Section 603, which will remain a big issue for hospitals in the new year.

Takeaway: The changes implemented in the year-end agreement represent significant advances along a variety of policy fronts. In the new year, we expect a push to modify the Section 603 site neutral payment rules and possibly renewed efforts to permanently end the "Cadillac" and medical device taxes.

Energy

For the first time in 40 years, American oil producers will be allowed to export crude oil to international markets. The ban, which was implemented during the OPEC oil embargo of the early 1970s, has long been a legislative priority of the energy industry. The Republican-controlled House voted to lift the ban earlier in the fall, but Democratic opposition halted the measure's advance in the Senate.

In exchange for Democratic votes in favor of lifting the oil export ban, the end-of-year agreement includes tax incentives to boost wind and solar development. The incentives extend a series of expired or expiring renewable energy tax breaks and include five-year extensions for the wind production tax credit and the solar investment tax credit. Democrats also were able to defeat Republican attempts to strike down or delay the Clean Power Plan rules proposed by the Environmental Protection Agency. The Clean Power Plan is the first federal effort to limit carbon emissions from existing U.S. power plants.

Takeaway: Lifting of the crude oil export ban is a major victory for the oil industry and its congressional allies who are facing significant market pressures in the form of low prices. On the other side of the energy industry, the five-year extensions of the wind production tax credit and the solar investment tax credits provide welcome stability for an industry that has long been burdened by short-term incentive programs.

Tax Package

Leaders from both parties reached agreement on a $622 billion tax package that will revise and permanently extend a host of business and individual tax breaks. The agreement brings to a close some elements of the annual congressional ritual of having to extend expired tax provisions from year-to-year, creating an unstable investment climate for business planners and investors. The tax package, officially called the Protecting Americans from Tax Hikes Act of 2015 (PATH Act), is estimated by the Joint Committee on Taxation (JCT) to cost $622 billion over 10 years.

Highlights of the PATH Act include:
Permanent Extensions: Nearly two dozen tax breaks are extended indefinitely, including six that provide relief for individuals and families.

- Earned Income Tax Credit
- Child Tax Credit
- American Opportunity Tax Credit
- Deduction for classroom expenses by teachers
- Deduction for state and local general sales taxes
- Transit tax parity benefit
- Various charitable tax incentives
- Research and development tax credit
- Section 179 expensing
- The "active financing exception" for certain income earned overseas
- Miscellaneous real estate-related provisions

Extensions Through 2019: The following provisions are extended for four years, through December 31, 2019.

- New markets tax credit
- Work opportunity tax credit
- Bonus depreciation
- Controlled foreign corporations look-through rule

Extensions Through 2016: The remaining already-expired tax provisions are temporarily extended through 2016. They include tax credits relating to alternative fuels, including compressed natural gas and liquefied natural gas, NASCAR, horse racing, and film and television productions, as well as two tax breaks concerning Puerto Rico for domestic energy production and rum imports.

REIT: Various provisions pertain to real estate investment trusts (REITs), some of which are aimed at limiting the ability of companies to spin off their holdings into new entities that are effectively tax exempt.

Tax Administration: The PATH Act includes reforms to the IRS, some of which are a response to the allegations of targeting certain tax-exempt political groups. The IRS reform provisions would also establish a streamlined recognition process for political organizations seeking 501(c)(4) tax-exempt status. Additional provisions make reforms to the administration of the U.S. Tax Court.

Miscellaneous: The PATH Act includes language making improvements to Section 529 college savings plans and allowing persons to exclude from income for tax purposes monetary awards they received for wrongful incarceration.

A full list of provisions in the PATH Act can be found here.

Takeaway: The tax measures agreed to as part of the year-end legislative package, particularly the tax breaks that were extended indefinitely, provide increased stability to a number of industries and millions of Americans.

Visa Waiver Program

As part of the response to the attacks in Paris and San Bernardino, lawmakers have included changes to the nearly 30-year-old Visa Waiver Program that allows for visa-free travel to the U.S. for citizens of 38 mostly Asian and European countries. Under the legislation foreigners who have traveled to Iran, Iraq, Sudan and Syria in the past five years or hold citizenship of one of those countries must obtain a visa prior to visiting the U.S. The measure also gives the Department of Homeland Security the power to suspend from the program any country that does not meet standards for screening passengers or sharing information.

Takeaway: The new restrictions on the Visa Waiver Program are some of the first restrictions placed on the program since its creation in 1986 and may portend additional visa restrictions for travel to the United States in the future.

Reconciliation

Many observers had expected "reconciliation" legislation to move forward in the closing weeks of the legislative year. The reconciliation legislative package, which would have been brought forward under special parliamentary rules that limit amendments and require only 51 votes in the Senate, would have repealed certain provisions of the Affordable Care Act, including the individual mandate, the employer mandate, and the Prevention and Public Health Fund. While the bill passed the Senate on December 4, House Republican leadership elected not to bring the bill to the floor and instead focused on coming to an agreement over appropriations and tax extenders.

Takeaway: We expect the reconciliation package will be brought to the floor of the House after the holiday recess. It is expected to pass and go to the President's desk for a promised veto.

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