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## CONGRESS RETURNS FROM AUGUST RECESS

Congress returns this week from a five week district work period for approximately ten legislative days before departing Washington again in late September to campaign for the November midterm elections.

Although the 113<sup>th</sup> Congress has proven to be lackluster in its legislative accomplishments, the last work period between the July 4<sup>th</sup> recess and the recent August recess did see passage of several significant legislative measures, including the:

- Highway and Transportation Funding Act (extending funding for the Highway Trust Fund)
- Veterans Access, Choice, and Accountability Act
- Unlocking Consumer Choice and Wireless Competition Act
- Workforce Innovation and Opportunity Act
- Fiscal Year 2014 Intelligence Authorization Act.

Despite the difficulties of the calendar, continued partisanship on Capitol Hill, and the uncertain outcome of the upcoming November elections, Congress will pass various measures over the remaining months of 2014, roughly divided into bills that will – and in some cases must – pass in September, and bills that will pass in the post-election lame duck session.

## WHAT'S AT STAKE IN THE NOVEMBER ELECTIONS?

All 435 House seats are up in November along with 36 Senate seats – with 21 held by Democrats and 15 held by Republicans. While almost no one expects the Democrats to take control of the House, the Senate's balance of power is more tenuous. In order to retake the Senate majority, the GOP needs a net gain of 6 seats to get to 51, thus avoiding a 50/50 split with Vice President Biden breaking any tie votes and Democrats retaining control.

## What to Expect Pre-Election?

**Fiscal Year 2015 Continuing Resolution:** Congress has yet to achieve final passage of a single Fiscal Year 2015 appropriations bill. Therefore, with the current fiscal year ending on September 30<sup>th</sup> and limited time to move any spending bills on their own before then, the legislative agenda for September will be dominated by a short-term Continuing Resolution (CR) funding the government's activities in the early days of the new fiscal year. Speculation is that there will be an initial CR that funds the government through mid-December, likely December 11, with a second CR to follow that extends through early 2015 or even the rest of the fiscal year, depending on the outcome of the Senate elections. The House is likely to vote on a CR this Thursday, with Senate debate to follow shortly thereafter. The first CR may potentially be used as a vehicle for various other measures, which could include:

- **Export-Import Bank Reauthorization:** With the Bank's charter set to expire on September 30<sup>th</sup>, the House and Senate must move quickly to reauthorize the bank or allow the authorization to lapse. Some Republicans, most notably the new House Majority Leader Kevin McCarthy (R-CA), have argued in favor of doing away with the Bank, a New Deal creation of the FDR Administration. Expect the campaign from the business community to convince skeptical Republicans of the importance of the Bank and to result in some sort of short-term extension.
- **Permanent Internet Tax Freedom Act:** In July, the House approved legislation to make permanent the ban on state and local taxation of internet access and on multiple or discriminatory taxes on electronic commerce. Senate Finance Committee Chairman Ron Wyden (D-OR) has introduced a companion measure, although that measure has not yet been approved by the committee. With the current ban set to expire on November 1<sup>st</sup>, the FY15 CR will likely include language similar to Senator Mark Pryor's (D-AR) [S. 2735](#), temporarily extending the ban, with a five to ten year ban extension to follow during the post-election lame duck session.
- **Funding for Ebola Response:** The White House has requested \$88 million to respond to the Ebola epidemic in West Africa. The funds are in addition to \$175 million that is already committed, or will be reprogrammed from other accounts.

**Terrorism Risk Insurance Act (TRIA) Reauthorization:** In July, the Senate passed [S. 2244](#), the Terrorism Risk Insurance Program Reauthorization Act. The measure was approved with overwhelming bipartisan support in a 93-4 vote. The House Financial Services Committee approved its version of the bill, [H.R. 4871](#), the TRIA Reform Act, in July and it has been placed on the House calendar. Timing of House floor consideration of the legislation is less predictable at this point due to bipartisan concerns with the program, but it is possible that the bill will see a vote before midterm elections. Still, even if both versions of the reauthorization have been approved before the midterms, some significant differences in the proposals could push final reauthorization into the lame duck.

**Response to Terrorist Groups:** Many in Congress have called for debate on the Islamic State of Iraq and Levant (ISIL) and Representative Frank Wolf (R-VA) will introduce legislation to authorize the use of military force against ISIL, as well as multiple other terror groups, while Senator Ben Nelson (D-FL) will introduce an authorization measure in the Senate. President Obama will deliver a speech to the nation on Wednesday evening outlining the Administration's planned response to ISIL.

**Potential House Messaging Issues:** House Majority Leader McCarthy plans to bring up two packages of jobs and energy legislation and a healthcare bill in September. The jobs legislation draws from a list of 40 previously passed House bills. The energy package would primarily approve a series of already-passed House measures, including legislation approving the Keystone XL pipeline ([H.R. 3](#)), limiting environmental regulations ([H.R. 1582](#)), and opening federal lands to energy extraction ([H.R. 4899](#)). The healthcare legislation ([H.R. 3522](#)) permits a health insurance issuer that has in effect health insurance coverage in the group market on any date during 2013 to continue offering such coverage for sale during 2014 outside of a health care exchange established under the Patient Protection and Affordable Care Act.

**Potential Senate Messaging Issues:** Senate Majority Leader Harry Reid (D-NV) has identified several bills for debate, including legislation to raise the minimum wage ([S. 2223](#)), address pay equity issues ([S. 2199](#)) and student loan rates ([S. 2432](#)), and guarantee access to contraception ([S. 2578](#)), as well as a constitutional amendment to limit campaign contributions and spending ([S.J. Res. 19](#)).

## What to Expect in the Lame Duck?

**Tax Inversion:** The lame duck could see language intended to rein in the practice of corporations moving their headquarters outside the U.S. in order to reduce their tax burden. Several appropriations bills in the House have already included amendments intended to address the issue, and House Minority Leader Nancy Pelosi (D-CA) has said that, in light of the fact that few, if any, spending bills are expected to pass as stand-alone measures, she wants to see the issue addressed in the CR. There was initial speculation that tax inversion language would be included in September CR negotiations, but we now anticipate the debate to wait at least until the lame duck session. Republicans and Democrats both support the House amendments, and President Obama has also weighed in against the practice. Senate Finance Committee Chairman Wyden and Ranking Member Orrin Hatch (R-UT) are said to be working on legislation to address the issue, most likely by limiting the tax deductions available to companies that shift their headquarters outside the U.S. while still primarily operating here. Senator Chuck Schumer (D-NY) recently unveiled a proposal to diminish the appeal of tax inversion by reducing the amount of deductible interest for inverted companies from 50 percent to 25 percent. His proposal would capture all inversions dating back to 1994.

**Satellite Television Extension and Localism Act (STELA) Reauthorization:** This law expires on December 31, 2014, so reauthorization is a top priority, and could serve as a vehicle for other video related provisions. The House approved a reauthorization bill, [H.R. 4572](#), in July, while the [Senate Judiciary Committee](#) approved a reauthorization bill in June. Still to act is the Senate Commerce Committee, which may mark up a bill on September 17<sup>th</sup>, called the Satellite Television Access and Viewers Rights Act (STAVRA) that will soon be introduced by Chairman Jay Rockefeller (D-WV) and Ranking Member John Thune (R-SD).

**National Defense Authorization Act (NDAA):** Considered “must-pass” legislation, Congress has not failed to approve an annual defense bill for more than half a century, so there is every expectation that they will do so again this year. The [Senate Armed Services Committee](#) has approved its bill and it awaits approval by the full Senate, while the [House approved its bill](#) in May. Like the FY15 CR, the NDAA is also sure to serve as a vehicle for various other issues, including a review of the 1033 program by which the Pentagon transfers surplus military equipment to local law enforcement agencies. The review, proposed by Senate Armed Services Committee Chairman Carl Levin (D-MI), comes in light of the recent events in Ferguson, MO.

**Expiring Provisions Improvement Reform and Efficiency (EXPIRE) Act:** The Senate Finance Committee approved this [“tax extenders” package](#) on April 3<sup>rd</sup>. The bill would extend certain expired and expiring tax provisions through December 31, 2015. After failing to move earlier this year because of a disagreement over amendments, Senate Majority Leader Harry Reid (D-NV) has said that if the EXPIRE Act is taken up this year it will be during the post-election lame duck session. The House has taken a different approach, voting to permanently extend a handful of credits as part of “tax reform lite” and preferring to let the rest expire. The differences in approach between the chambers will complicate final passage. If tax extender battles from recent years are any indication, the Senate version usually enjoys the upper hand, though the results of the midterms may make this an atypical year.

**Domestic Prosperity and Global Freedom Act: Passed by the House in June**, this bill, H.R. 6, was introduced by Rep. Cory Gardner (R-CO) and would expedite exports of liquefied natural gas. It has now been referred to the Senate Energy and Natural Resources Committee, where its fate is in the hands of Chairwoman Mary Landrieu (D-LA), who is a cosponsor of a [similar bill](#) introduced by Senator Mark Udall (D-CO). There remains some question of whether there are 60 votes in the Senate to move the legislation.

**Cyber legislation:** In June, the [Senate Homeland Security and Governmental Affairs Committee](#) [approved two cybersecurity measures](#), the National Cybersecurity Communications Integration Center Act and the Federal Information Security Modernization Act. Introduced by HSGAC Chairman Tom Carper (D-DE) and Ranking Member Tom Coburn (R-OK), final passage is uncertain and could wait until next year. In July, the Senate Intelligence Committee approved [S. 2588](#), the Cybersecurity Information Sharing Act, a bipartisan bill proposed by committee Chairwoman Dianne Feinstein (D-CA) and Ranking Member Saxby Chambliss (R-GA). Introduced by Rep. Jim Sensenbrenner (R-WI), the USA Freedom Act ([H.R. 3361](#)) amending the Foreign Intelligence Service Act of 1978, was approved in the House in May. A companion bill, [S. 2685](#), was introduced by Senator Patrick Leahy (D-VT) and placed on the Senate calendar in July.

**Internet Tax Legislation:** The lame duck session may include a push to pass Senator Mike Enzi's (R-WV) Marketplace and Internet Tax Fairness Act ([S. 2609](#)). This measure combines the Internet Tax Freedom Act, including a 10-year extension of the access tax ban, with the Marketplace Fairness Act, which deals with collecting and remitting sales taxes for remote online purchases. However, Congress would still need to negotiate an agreement between those who support the Marketplace Fairness Act and those who oppose it.

**Potential Issues Depending on Election Outcome:** Though increasingly unlikely, Congress may consider legislative action on immigration, which would most likely take the form of a reaction to executive action by the Administration. A trade bill, particularly along the lines of the noncontroversial Generalized System of Preferences, which could potentially be packaged with the miscellaneous tariff bills, could pass during the lame duck session, though what the bill would look like depends largely on who controls the Senate following the midterm elections. If Democrats retain control of the Senate, it is possible that Senator Wyden could unveil his trade promotion bill during the lame duck session, though timing would be tight for passage. If Republicans take control of the upper chamber, they are more likely to defer this issue until next congress.

## What about regulations?

Although the outlook for legislative accomplishments in the remainder of the current Congress is fairly limited, the Obama Administration is expected to continue moving ahead on the regulatory front, though most activity will come post-election. Regulatory activity across the federal agencies and will focus on continued implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Patient Protection and Affordable Care Act (ACA), greenhouse gas regulations, privacy, and consumer protection, among others. Some highlights include:

**Biofuels:** After months of delay, the Environmental Protection Agency (EPA) finally submitted its final rule on required volume obligations (RVOs) to the Office of Management and Budget (OMB) for review late August. We expect biofuel volumes under the Renewable Fuel Standard (RFS) for 2014 to be slightly higher than in EPA's proposed rule, but still below statutory levels. Review at OMB will take probably two months. OMB has never quickly approved any RFS-related rule, so they may hold the rule until after the election. While Representative Bruce Braley (D-IA) would like to see a boost in the RFS during his Senate race, a modest increase may cut both ways.

**Additional EPA regulations:** Even if the November elections cull Democratic numbers from Congress, we expect the Administration to move forward on a range of environmental regulatory initiatives, from finalizing existing source pollution standards to tightening air toxics standards at refineries. President Obama has doubled down on climate as one of the key legacies of his second term. Since he is playing for the long game, we foresee a constant momentum regardless of congressional control. Implementation may prove more difficult if GOP critics succeed in trimming money from agency budgets, but we do not expect the Administration to delay implementation on its own, for fear of provoking controversy. Given the complicated nature of these rules, EPA has lengthened comment periods (such as the refinery emissions rule, where public comment was extended until Oct. 28), and implementation will stretch well beyond 2014—and well into the first term of the next president. As market forces and EPA rules encourage fuel switching to natural gas, we also expect additional federal focus next year on reducing methane leakage along various points in the production, transmission, and distribution infrastructure.

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