Government Law & Policy | Alert

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Federal Legislative Year in Review 2015

With 2015 drawing to a close, Dec. 18 marked the end of the first session of the 114th Congress. The second session will commence in January 2016. As part of the Government Law and Policy Group's efforts to disseminate information that may be of interest to our colleagues and their clients, the following is an overview of major federal legislative activity and accomplishments that have taken place in 2015.

January-April

Medicare Physician Payment System

In one of its first major legislative achievements in 2015, Congress passed legislation to overhaul and improve the Medicare physician payment system. Under the previous system, lawmakers regularly needed to pass "doc fix" legislation to avert scheduled cuts in Medicare reimbursement rates for physicians. These cuts were required in order to bring Medicare spending in line with the program's sustainable growth rate (SGR). Former House Speaker John Boehner (R-OH) and House Minority Leader Nancy Pelosi (D-CA) negotiated a permanent fix to replace the SGR and do away with doc fix legislation. The Medicare Access and CHIP Reauthorization Act (MACRA; P.L. 114-10) was introduced in March 2015. The new payment systems included in the legislation—the Merit-Based Incentive Payment system and the Alternative Payment Model system—are intended to reward physicians for quality rather than quantity. The measure also extends funding for two years for the Children's Health Insurance Program (CHIP) and community health centers. On March 26, 2015, the House passed the legislation by a vote of 392-37. The Senate cleared the legislation on April 14, 2015 by a vote of 92-8, sending the measure to President Obama for his signature on April 16, 2015.

The Energy Efficiency Improvement Act of 2015

Senators Jeanne Shaheen (D-NH) and Rob Portman (R-OH) introduced the bipartisan Energy Efficiency Improvement Act of 2015 (P.L. 114-11) in February. The measure aims to improve energy efficiency in federal and commercial buildings by focusing on tenant energy efficiency and benchmarking. The law requires federally-leased spaces to monitor and disclose energy usage, and exempts grid-enabled water heaters from Department of Energy efficiency standards. It also requires the Environmental Protection Agency and the Department of Energy to develop a "Tenant Star Program," which seeks to promote tenant energy efficiency within commercial buildings. President Obama hailed the passage of this law as a model for bipartisanship, stating that the law will "have the greatest environmental impact while making sure that we're creating good jobs and saving businesses and consumers money." He signed the bill into law on April 30, 2015.

May-August

Iran Nuclear Deal

The Iran Nuclear Agreement Review Act of 2015 (P.L. 114-17) gave Congress the right to review, and possibly reject, the President's international nuclear agreement with Iran. The bill passed 98-1 in the Senate and 400-25 in the House in May 2015. President Obama signed the measure into law on May 22, 2015. The President had originally threatened to veto the bill, but he eventually yielded after the legislation received far more than the necessary votes to override his veto. International negotiators agreed on a final Iran nuclear deal in July 2015. The Review Act set a September 2015 deadline for Congress to review this accord. In September, Democrats successfully blocked the Senate from voting on a resolution of disapproval of the deal, effectively allowing the Iran nuclear agreement to go forward.

Human Trafficking

Combatting human trafficking, and particularly sex trafficking of minors, has had bipartisan support in the 114th Congress, as well as in previous Congresses. This year, lawmakers took up the Justice for Victims of Trafficking Act of 2015 (P.L. 114-22), which authorizes new programs to aid trafficking victims and bolster state and local law enforcement agencies' anti-trafficking efforts. The legislation establishes a Domestic Trafficking Victims' Fund, to be funded by penalties applied to people convicted of trafficking crimes and sexual abuse. This fund will be used to award grants to state and local governments to combat human trafficking and assist victims. The measure encourages states to adopt Safe Harbor laws, under which states treat minors who are involved in sex trafficking as victims rather than charging them with prostitution. The Act also targets demand for sex trafficking by enhancing federal criminal penalties. Passage of this legislation was delayed due to disagreement between the two parties over abortion language, but lawmakers eventually negotiated a compromise, allowing the bill to move forward. The measure received overwhelming support in both chambers. The Senate passed the measure on April 22, 2015 by a vote of 99-0. The House passed the bill on May 19 by a vote of 420-3, clearing the measure for the President's signature on May 29, 2015.

USA Freedom Act

Lawmakers took up the USA Freedom Act (P.L. 114-23) to alter the U.S. government's domestic surveillance and data collection practices. In particular, the law reformed the National Security Agency's bulk collection of data, a practice that came to light as a result of the Edward Snowden revelations. Under the new legislation, the government will still have access to telephone metadata, but it now must query databases kept by phone companies rather than storing the data on-site. The House passed this legislation on May 13, 2015 by a vote of 338-88. The Senate passed the legislation by a vote of 67-32 on June 2—two days after the controversial provisions of the Patriot Act expired. President Obama said of the law: "Enactment of this legislation will strengthen civil liberty safeguards and provide greater public confidence in these programs. I am gratified that Congress has finally moved forward with this sensible reform legislation." The President signed the USA Freedom Act into law on June 2, 2015.

Trade Promotion Authority

Congress voted in June 2015 to provide President Obama with Trade Promotion Authority (TPA; P.L. 114-26), commonly known as fast track authority. Negotiations concluded on the Trans-Pacific Partnership (TPP) in October 2015, a milestone for an agreement that 12 countries, including the United States, had been negotiating for five years. The TPP seeks to lower trade barriers between countries in the Asia-Pacific region and North and South America. The Obama Administration is also currently negotiating the Transatlantic Trade and Investment Partnership (TTIP), an agreement aimed at enhancing trade between the United States and the European Union. President Obama has made these trade agreements a key part of his legacy, and lobbied Congress to approve TPA legislation to pave the way for negotiators to finalize these deals.

TPA allows for expedited Congressional consideration of trade agreements by requiring an up-or-down vote and limiting amendments. TPA thus allows trade negotiators to finalize trade deals by assuring negotiating partners that the U.S. Congress will not be able to amend an agreement. President Obama's strong support for Trade Promotion Authority placed him squarely in opposition to many lawmakers in his party. House and Senate Democrats opposed TPA legislation due to concerns that it will lead to trade agreements that weaken environmental and labor standards and harm U.S. workers. President Obama therefore relied on Republican lawmakers and a minority of pro-trade Democrats to provide the majority of votes for TPA. The House passed TPA on June 18 by a narrow vote of 218-208, while Senate cleared the measure on June 24 by a vote of 60-38. As a concession to Democrats, Congress also voted to renew Trade Adjustment Assistance (P.L. 114-27), a program that provides assistance to U.S. workers who have been displaced by international trade. The Senate renewed TAA June 24, and the House cleared the measure the following day by a vote of 286-138. President Obama signed the TPA and TAA measures into law on June 29, 2015.

September-December

Leadership Shuffle

On Sept. 25, 2015, Speaker John Boehner (R-OH) stunned his fellow lawmakers when he announced that he would resign from the Speakership by the end of October and retire from Congress after 24 years in office. This announcement occurred as the end of the 2015 fiscal year approached, requiring Congress to either pass legislation to fund the federal government for FY 2016 or risk a government shutdown. The House Freedom Caucus, a group of about 40 ultraconservative Republicans, had threatened to block any funding bill from passing unless it defunded Planned Parenthood. The Freedom Caucus threatened to initiate a vote to force Speaker Boehner from his post unless he conceded to their demands. By announcing his retirement, Speaker Boehner was able to defuse the situation and temporarily resolve the government funding situation with a short-term funding measure.

Speaker Boehner's announcement set off a weeks-long House Republican leadership shuffle. Though House Majority Leader Kevin McCarthy (R-CA) was widely considered the favorite to replace Boehner as Speaker, he ultimately dropped out of the race, citing opposition from within the Republican Party, including the House Freedom Caucus. Following McCarthy's surprising announcement, Republican leadership renewed their efforts to recruit Congressman Paul Ryan (R-WI) for the position, despite previous statements that he was not interested in the job. After intense pressure, Ryan agreed to pursue the Speakership if he received assurances that the House Republican Conference's diverse factions would support him. On Oct. 29, Ryan assumed the Speakership after a House roll call vote in which he received 236 votes out of 432 votes cast (Democrats almost unanimously voted for House Minority Leader Nancy Pelosi).

Budget Agreement and Debt Ceiling

The Budget Control Act (BCA) of 2011 caps federal discretionary spending for both defense and non-defense programs through fiscal year 2021, and enforces those caps through sequestration. This year, Democrats in Congress blocked fiscal 2016 appropriations bills from advancing in an effort to force Republican lawmakers to negotiate higher spending levels for both defense and non-defense programs. Congressional Republican leaders and the White House negotiated a budget agreement that resolved this dispute, allowing the FY 2016 appropriations process to proceed. The Bipartisan Budget Act (P.L. 114-74) passed Oct. 30, 2015, increasing the BCA's discretionary spending caps for FY 2016 and FY 2017 to $1.067 trillion and $1.07 trillion, respectively.

Congress offset this increased funding by extending sequestration for certain mandatory spending (including extending a 2 percent cut to Medicare providers); enhancing tax compliance provisions for hedge funds, private equity firms, and other partnerships; requiring the auction of government-owned broadband spectrum; increasing Pension Benefit Guaranty Corporation premiums; and selling oil in the Strategic Petroleum Reserve. The measure ensures the solvency of the Social Security Disability Insurance Trust Fund until 2022, and blocks a 52 percent spike in Medicare Part B premiums from taking effect in 2016. The budget agreement also suspends the debt limit until March 15, 2017, taking a default off the table for the remainder of Barack Obama's presidency. The House passed this budget deal Oct. 28, 2015, by a vote of 266-167, and the Senate followed suit Oct. 30 by a vote of 64-35. President Obama signed this bill into law Nov. 2, 2015.

National Defense Authorization Act for FY 2016

Each year, the House and Senate Armed Services Committees craft a National Defense Authorization Act (NDAA), a federal law that establishes funding levels for the Department of Defense as well as the policies governing how the Department should spend this money. Despite the NDAA's long-standing record of being enacted each year—this year's is the 54th consecutive NDAA—the President initially vetoed a previous version of the bill over a dispute about the way defense programs would be funded. In November 2015, the revised defense legislation passed 91-3 in the Senate and 370-58 in the House. President Obama signed the FY 2016 NDAA (P.L. 114-92) on Nov. 25, 2015, despite his opposition to restrictions in the legislation that ban him from moving Guantanamo Bay detainees to the United States. In addition to the detainee ban, the $607 billion defense policy bill includes a 1.3 percent pay increase for service members, authorizes lethal assistance to forces fighting Russian-backed rebels in Ukraine, and includes funding to help Iraqi forces fight Islamic State.

Surface Transportation Reauthorization

A key item on the legislative agenda in 2015 was the need to reauthorize the nation's federal highway and transit programs. The previous authorization law, Moving Ahead for Progress in the 21st Century Act (MAP-21), was scheduled to expire Oct. 1, 2014. Congress passed several short-term extensions of the law in order to give lawmakers more time to develop a long-term surface transportation reauthorization bill to replace MAP-21. Identifying a funding source presented a key hurdle in this effort, since the federal gas tax, which has historically replenished the Highway Trust Fund, has not been able to keep up with the nation's infrastructure needs.

The Senate passed its surface transportation reauthorization bill in July 2015, while the House passed its proposal in November 2015. House and Senate negotiators reconciled these two proposals into the Fixing America's Surface Transportation (FAST) Act (P.L. 114-94), a five-year reauthorization bill. The House and Senate passed this measure Dec. 3, a day before the most recent short-term MAP-21 extension was due to expire. The FAST Act authorizes increased funding for transportation programs, reauthorizes Amtrak, and renews the Export-Import Bank's charter, which lapsed at the end of June 2015. Lawmakers chose not to raise the federal gas tax, and instead relied on a variety of offsets to pay for the measure. While this legislation will renew highway and transit programs and provide multiple years of funding certainty, in the long term, the United States will still need a long-term, sustainable source of revenue to fund transportation infrastructure projects.

Education Reauthorization

One of Congress' most significant achievements in 2015 was the reauthorization of the Elementary and Secondary Education Act (ESEA), the law governing the nation's public schools. Congress had previously reauthorized ESEA in 2002 with passage of the No Child Left Behind Act (NCLB), which expired in 2007 and became widely viewed as unworkable. The House and Senate passed their respective ESEA reauthorization proposals in July 2015, and leaders of the House and Senate Education Committees agreed on a framework for reauthorization in late November. After a conference committee approved the Every Student Succeeds Act (P.L. 114-95) on Nov. 19, 2015, the House voted Dec. 2 to pass the legislation by a vote of 359-64. The Senate approved the measure Dec. 9 by a vote of 85-12, clearing it for the President's signature Dec. 10, 2015.

The new law reauthorizes ESEA for four years, through FY 2020, and authorizes increased spending levels for education programs. The legislation maintains NCLB's testing requirements in math, reading, and science, but departs from NCLB by shifting authority over academic standards and accountability systems back to states and school districts. The law requires states and school districts to devise action plans to improve the lowest-performing 5 percent of schools, high schools with graduation rates of less than 67 percent, and schools where any subgroup of students consistently underperforms on tests.

Tax Extenders

More than 50 tax provisions expired at the end of 2014, requiring Congress to retroactively renew them in order for taxpayers to benefit from these provisions on their 2015 tax returns. In previous years, Congress has routinely extended these tax provisions on a temporary basis. However, many lawmakers have expressed a desire to eliminate some of these provisions and make others permanent, thereby removing uncertainty for taxpayers about whether these provisions will be extended. Leaders of the Congressional tax-writing committees unveiled a tax extenders bill, the Protecting Americans from Tax Hikes (PATH) Act, Dec. 15, 2015. While the PATH Act retroactively extends many of the expired provisions, it also makes several provisions permanent, including the research and development tax credit, equipment expensing provisions for small businesses, and certain tax credits for charitable donations.

In negotiating this measure, Democrats pushed for tax credits that benefit lower-income, working families to be included alongside provisions for businesses. The final measure makes permanent the Additional Child Tax Credit, the expanded Earned Income Tax Credit, and the American Opportunity Tax Credit for college expenses. The House voted to pass the PATH Act Dec. 17, 2015, by a vote of 318-109. The PATH Act was combined with a year-end federal spending measure, and the Senate voted 65-33 to approve this package (P.L. 114-113) on Dec. 18, 2015, sending the legislation to President Obama for his signature.

Appropriations

One of the last items on the 2015 legislative agenda before lawmakers departed for the year was the passage of an appropriations measure to fund the federal government for the remainder of the 2016 fiscal year, thereby avoiding a government shutdown. After high-stakes negotiations, the House passed a $1.1 trillion year-end spending bill (P.L. 114-113) on Dec. 18, 2015 by a vote of 316-113. The Senate passed the measure shortly thereafter by a vote of 65-33, sending the measure to the President. Senators had combined this spending measure with the Protecting Americans from Tax Hikes (PATH) Act, a bill to renew expired tax provisions.

Republican lawmakers had demanded that this must-pass spending legislation include policy provisions known as "riders," including language to require enhanced vetting of Syrian and Iraqi refugees and roll back major Obama Administration environmental and financial regulations. Democratic lawmakers and the White House strongly opposed these controversial policy riders, and in the end the bill's negotiators had largely stripped them from the package. Despite this, the spending measure contains some key wins for Republicans. The legislation lifts the four-decade-old ban on U.S. crude oil exports, another provision the White House opposed. In exchange, Republican lawmakers agreed to extend certain tax breaks for renewable energy producers.

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