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WASHINGTON POLICY STRATEGY

Potomac Perspective

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Key negotiators have agreed to a framework for an omnibus appropriations bill. The text won't be ready for several days, but this note looks at what might be in the bill (and what might not be included). Odds of the omnibus passing are good but not guaranteed. Despite opposition to the bill from conservatives, alternatives to the omnibus are unappealing to enough Republicans to make passage likely.

Also, the note looks at possible replacements at Treasury if Secretary Janet Yellen leaves and what Senator Krysten Sinema's decision to become an independent means to the 2023 agenda.

Omnibus Update – On Tuesday night, key lawmakers announced that they have reached an agreement on the top-line numbers and a framework for an omnibus appropriations bill to fund the government through the remainder of fiscal year 2023 (ending September 30, 2023). The actual number was not disclosed, and the bill needs to be written, so it will be several days before the text is released and we find out what is actually in the bill. It is believed that the total proposed appropriations amount to roughly \$1.7 trillion. Passing the omnibus is not a forgone conclusion, but because alternatives are so politically unpalatable and because of the late hour, odds of reaching an omnibus are better than 50/50.

Congress will likely pass a short-term (probably one week) Continuing Resolution (CR) by tomorrow in order to keep the government open when the current CR expires on December 16 and to give lawmakers and staff time to actually write the bill. This raises a few questions including what could be included in the omnibus bill and what happens if the Congress fails to pass it.

What might the omnibus include?

Odds are good that an omnibus spending bill will waive sequestration requirements emanating from the Budget Control Act of 2011 (BCA). The BCA set budget targets that require the sequestration of funds if Congress fails to meet the targets, but Congress typically waives the BCA in order to avoid sequestration. It appears likely that Congress will do so again, which would prevent sequestration cuts in payments to states under the Build American Bond program and in Medicare payments to health care providers.

An omnibus could also include the SECURE Act 2.0, which is a retirement savings bill. SECURE 2.0 enjoys broad bipartisan support and is noncontroversial, so odds are good (although not 100%) that if Congress passes an omnibus it will include SECURE 2.0.

Politico reported that the SAFE Banking Act is not in the omnibus bill. We had previously been skeptical that SAFE would be included in the bill because of key political opposition from Senate Minority Leader Mitch McConnell (R-Kentucky). It is also difficult to add controversial legislation to a bill that must pass but has only a narrow window through which it can pass. If *Politico's* reporting is accurate, it probably reflects the view that including the SAFE Act in the omnibus threatened the broader bill's chances. The SAFE Act is not dead but given that Republicans will take over the House in 2023, the bill's prospects will dim as it will not be the same priority for Republicans as it was for Democrats.

Lawmakers are also considering attaching tax extenders legislation to an omnibus. The tax extenders bill literally extends tax provisions that are scheduled to expire but could be the framework for other tax changes including a suspension in changes in the Research and Development deduction and the Business Interest Expense. However, Democrats had wanted to extend an

enhanced Child Tax Credit (CTC), but disagreements over the size and scope of the CTC seem to have knocked out the CTC. *Politico* reported that the CTC is probably not in the bill. That could mean that the business-related tax items were also excluded.

What happens if Congress fails to pass an omnibus?

Congress has two options to fund the government should it fail to pass the omnibus bill. Neither option is politically appealing.

1. Pass a year-long CR which would fund the government at fiscal year 2022 levels. This would mean little if any increase in defense spending which is unappealing to Republicans. 2. Pass a short-term CR that punts an omnibus to the next Congress and a Republican House. Lawmakers recognize the potential difficulty that the new Republican majority could have in reaching an agreement with the Biden Administration and the Senate over an omnibus, so a short-term CR (lasting into February?) could turn into a series of CRs in 2023 if Congress fails to finish an omnibus. Furthermore, many congressional Republicans would like to clear the decks so the party can immediately address its agenda in 2023 rather than cleaning up unfinished business from 2022. Under the “punt” scenario, odds of a government shutdown at some point in 2023 increase.

The most likely scenario is that Congress will approve the omnibus next week, but the bill’s passage is not a foregone conclusion. In the House, Democrats have only a 218-213 majority due to several vacancies, so they can only afford to lose two votes. It is likely that all Democrats will vote for the bill and a handful of moderate Republicans might support the bill, but the narrow majority means there is some risk the bill will not pass the House. In the Senate, the support of at least 10 Republicans is needed to pass the bill. A quick scan of retiring Republicans and Republicans who typically vote for an omnibus suggests that there are enough votes to pass the bill in the Senate but, given opposition to the bill among conservatives, there is some risk that not enough Senate Republicans will support the bill. As of now, the chances of the omnibus bill passing are around 65 percent – good but not guaranteed.

Treasury Switch? – Recently, Charlie Gasparino of the Fox Business Network reported that Bank of America CEO Brian Moynihan is on the White House’s short list to be Treasury Secretary if current Secretary Janet Yellen leaves. Mr. Moynihan might be on a short list, but there is reason to be skeptical that he will be Treasury Secretary in the near future.

First, some in the White House might want to replace Secretary Yellen, but the President would probably need to fire her as it appears unlikely that she is inclined to resign. If Secretary Yellen leaves, the two top contenders appear to be Federal Reserve (Fed) Vice Chairman Lael Brainard and Commerce Secretary Gina Raimondo. Moving Governor Brainard from the Fed to Treasury could undercut the appearance of Fed independence and could also slow the Biden administration’s regulatory agenda which is currently moving through the bank regulatory agencies. Secretary Raimondo has received good grades on both sides of the aisle for her work on the CHIPS Act. She also has political skills honed during her time as Governor of Rhode Island that the administration might view as helpful as it heads into the 2024 presidential campaign. Raimondo’s chances therefore seem quite good. She also lacks ties to Wall Street, which could be a problem for Mr. Moynihan. Although practical experience could be seen as an attribute by many, it would be viewed suspiciously by Senate progressives and could make his Senate confirmation difficult. Although some Republicans might support the nomination of Mr. Moynihan, the White House could lose some Democratic votes and might be inclined not to pick a fight with some key Senate Democrats.

Sinema Switch – Looking to 2023, the decision by Senator Kyrsten Sinema (I-Arizona) to leave the Democratic Party and register as an independent should have little impact on Congress. Her decision appears to be more about Arizona than Washington.

Senator Sinema is up for reelection in 2024 and was likely to face a tough primary challenge – she may have been the underdog in the Democratic primary. By registering as an independent, Sinema is signaling that she could run as an independent if Democrats nominate someone else (she will still seek the Democratic nomination despite her decision). If Democrats nominate someone other than Sinema and she runs as an independent, it would give Republicans a major boost in the race. It remains to be seen how Arizona Democrats and the Democratic Senatorial Campaign Committee will react to the challenge.

In Washington, Sinema will assume a status similar to Senators Bernie Sanders (Vermont) and Angus King (Maine) who are independents but vote with the Democrats and get their committee assignments from the party. Expect Sinema to continue to vote as she has over the past two years – for the vast majority of Biden administration nominees and with the White House on most legislative votes.

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