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WASHINGTON POLICY STRATEGY

Potomac Perspective

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We are in a sweet spot in the political calendar much like on the sports calendar. Baseball playoffs are on the horizon, pro and college football is underway, and the NHL training camps are starting. In Washington, Congress is grappling with a spending bill to keep the government open and midterm elections are just over seven weeks away. Given the political calendar, Congress will punt many issues (including the National Defense Authorization Act (NDAA) and the Safe Banking Act) until after the midterms so, for the next few weeks, the main debate in Washington is whether an energy permitting deal can be added to the spending bill. It's possible, but there are reasons to be skeptical.

CONTINUING RESOLUTION AND ENERGY PERMITTING REFORM

For political junkies and sports fans, this is a great time of the year, and the political situation also has potential consequences for the markets and certain industry sectors. In Washington, the fiscal year ends on September 30, and lawmakers must pass a spending bill to keep the government open on October 1. There is very little chance of a government shutdown (other than a technical shutdown) if Congress passes a spending bill (aka a Continuing Resolution or CR) over the October 1-2 weekend. Congressional leaders will try to keep most extraneous matters out of a CR – they will seek the path of least resistance in order to pass the bill and keep the government open. One of the few exceptions might be energy permitting reform but even that might not make the cut.

As part of a deal to pass the Inflation Reduction Act (IRA) in August, Senate Majority Leader Chuck Schumer (D-New York) and Senator Joe Manchin (D-West Virginia) agreed to a deal that included a later vote to streamline the permitting process for energy projects. Sen. Schumer has indicated that he will include the permitting reform legislation in the CR, but there are reasons to be skeptical that this will pass.

Rightly or wrongly, Senate Republicans feel burned by Sen. Manchin. They think he tricked them into allowing a vote on the CHIPS Act by leading them to believe that he would not support a broad reconciliation bill (the IRA). The Republicans are in no mood to help Manchin now and he needs their votes. Progressives were not a party to the Schumer/Manchin deal and do not feel bound by it. Furthermore, no one has seen that actual text of the permitting process changes, and Progressives are reluctant to back anything until the text is made public. There will be significant pressure on Progressives to vote for the CR and avoid a shutdown even if they oppose the permitting text, but if enough Progressives buck their party's leadership and oppose the Schumer/Manchin deal, there are probably too few Republican votes to pass the CR.

There are three possible scenarios for how this could play out (in order of likelihood):

1. Progressives hold out and force Democratic leaders to strip the permitting language which could kill permitting reform for years to come. Republicans could vote for a CR under this scenario and the government would remain open.
2. Progressives swallow whatever is included in the CR and pass the bill. This scenario still leaves Senate Republicans unhappy, and they might vote against the bill which raises the possibility of a shutdown.

3. Water down the permitting language so it is acceptable to Progressives. Similar to #2, the GOP might oppose the CR which could lead to a shutdown. This option could have little impact on the energy sector if the permitting “reforms” are toothless.

The timing of decisions on the CR and permitting reform are unknown, but negotiations could go right up until the eleventh hour on September 30.

NDAA/SAFE UPDATE

Chances that the SAFE Banking Act could pass as part of the National Defense Authorization Act (NDAA) have increased. It is far from a slam dunk, and Congress probably will not finish the NDAA until after Thanksgiving, but the odds of including SAFE as part of NDAA have improved.

SAFE would allow financial services firms to bank cannabis companies and related industries in states where cannabis has been legalized without violating federal anti-money laundering laws (cannabis remain a Schedule I substance). There have been two main hurdles that have previously blocked passing SAFE. Some Democratic senators have opposed passing SAFE without also passing broader decriminalization and criminal justice reform (i.e. expunging criminal records). These senators thought that allowing SAFE to pass would reduce their leverage to pass the rest of their agenda. This opposition seems to be softening, which could open the door to passing SAFE. There has also been some Republican opposition and it appears that this opposition remains intact, but Republicans might not prioritize blocking SAFE as intently as had the Democrats.

The House NDAA bill includes SAFE. The Senate bill probably will not include SAFE and a compressed schedule following the midterm elections will probably limit chances to amend the Senate bill. If, by some chance, SAFE is added to the Senate bill then chances of SAFE being included in a House/Senate compromise would rise materially. Assuming that the issue has to be addressed during House/Senate negotiations over a compromise bill and, if Democrats who have previously blocked SAFE from passing without decriminalization support the House’s position on SAFE, then the bill’s chances would improve. The bill, however, could still be blocked if Senate Republicans decide to fight it.

Resolution of the issue will not be known until December but, for now, chances of passing SAFE have improved.

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