THE NEW ENGLAND COUNCIL

Weekly Washington Report
Friday, July 11, 2008

Next Week in Congress

Although Election Day is still nearly four months away, Congress faces the possibility of being in session only six legislative weeks between now and Nov. 4. With presumed adjournment dates of Aug. 1 for its summer recess (through Sept. 8) and Sept. 26 for the 110th Congress to adjourn sine die (with the possibility of a lame duck, post-election session becoming less likely), Congress is facing a significantly compressed legislative schedule before January 2009. Next week the House is anticipated to address an intelligence authorization bill, as well as measures to fund bridge infrastructure and repairs and promote energy production. The House is expected to spend a significant amount of time on various conference reports throughout July, including a housing bill, a bill to stave off physician payment cuts in the Medicare program, and the reauthorization of the Higher Education Act. The Senate will take up a bill authorize $50 billion in funding for global AIDS programs.

Appropriations

As the prospects for enacting Fiscal Year 2009 appropriations bills before the end of the current fiscal year (Sept. 30) continue to dim, the possibility of an additional FY08 supplemental appropriations bill is gaining momentum. Leaders in the House have made numerous public overtures in the last few weeks that the FY09 appropriations process in the House is at a standstill until members of the House minority cease efforts to add domestic energy production-related amendments to annual spending bills. Although this appropriations freeze could be thawed, it is becoming more and more likely a continuing resolution will be needed for a vast majority of the FY09 appropriations bills until either a post-election session or 2009.

As the final batch of rebate checks are being mailed out from the first economic stimulus plan signed into law in February, Congressional leaders seem committed to a second stimulus plan, which will most likely see floor time in both chambers after the August recess. While the FY08 supplemental appropriations bill passed in late June was mostly billed as a defense-related (Iraq/Afghanistan) measure, it also included provisions extending unemployment benefits, funding for the flood-damaged Midwest, improving hurricane defense infrastructures in New Orleans, and an expansion of the original Montgomery GI bill covering veterans' education benefits. The next stimulus bill, set to be marked up by the Senate Appropriations Committee in two weeks, could include additional funding for the Low Income Home Energy Assistance Program, food stamps, and transportation infrastructure.

Energy & Environment

Hearings, rhetoric, and finger-pointing continued to surround the high cost of oil and gasoline this week, with the performance of the Commodity Futures Trading Commission center stage – specifically the CFTC's ability to assess the role of speculators in the commodities market, and possible damage excessive speculation has done to the price of oil. A number of bills, including S. 3183, the End Oil Speculation Act, have been introduced to drive speculators out of market. Yesterday the Senate Appropriations Committee passed its version of the FY09 spending bill for the CFTC, increasing CFTC funding to $157 million – close to 40% over its FY08 budget and nearly 19% over the President's FY09 budget request.

S. 3183 specifically addresses deposit (or "margin") requirements – raising them from single digits to as high as 25% in hopes of chasing away investors with no real interest in the physical ownership of the commodity. Addressing the use of margin requirements as a policy tool was the subject of a hearing on Thursday testimony before the House Agriculture Committee. During his testimony President of the New York Mercantile Exchange James Newsome disputed the notion, stating that, "In the American free market system, price is determined by the open interplay of market opinion between buyers and sellers. Margin levels should not be used as a tool by the government to artificially control prices. Moreover, any attempt to use margin levels to do so will likely fail…This will do more harm than good." In referencing past attempts in the 1970s and 1980s to, "increase margins to artificial levels that have no relation to risk levels in order to deter participation in the market," Newsome noted that, "On each occasion…Congress ultimate rejected such proposals as ineffective and bad public policy." Newsome also disputed the belief that, "speculators are the primary driver of prices in the futures market."

Earlier this week the Speaker of the House called on President Bush to release a small percentage of oil stored in the Strategic Petroleum Reserve to increase the supply of oil into the marketplace. Earlier this year Congress forced the President's hand into suspending purchases and shipments into the SPR (holding over 700 million barrels, which the Speaker noted is 97% capacity). The letter states, "Releasing oil from the Reserve is a tool to manage our national and economic security, and when judiciously used will in no way jeopardize national security…Deploying a small portion of the resources in the SPR would provide much needed assistance to American consumers facing record prices and help our economy during a serious period of instability." The SPR is designed as an energy insurance policy against significant disruptions to the nation's oil supply, and the Speaker noted that three times in the recent past (during the Bush I, Clinton, and the current President Bush's Administration) oil has been released from the reserve.

At the Group of Eight summit in Japan this week, the United States joined other G8 nations in expressing its commitment to avoiding the, "serious consequences of climate change," by targeting a goal, "of achieving at least 50% reduction of global [greenhouse gas] emissions by 2050." In a joint statement the G8 partners recognized the need for leadership from developed nations and the importance of including developing nations (China, India, etc.) in any international agreement by stating that, "this global challenge can only be met by a global response, in particular, by the contributions from all major economies, consistent with the principle of common but differentiated responsibilities and respective capabilities." No baseline year was attached to the 50% goal, leaving the details of the scope, as well as enforcement, of the reductions unknown. After the Senate defeat of the Warner/Lieberman cap-and-trade climate change bill earlier this year, and with the House Energy and Commerce Committee still in the process of drafting its version of a climate change bill, Congressional action on climate change in 2008 seem very unlikely.

Health Care

Under growing pressure from physicians and seniors, the Senate invoked cloture on a controversial Medicare reform bill (H.R. 6331) by a 69-30 vote, far exceeding the margin needed to override a veto. After the overwhelming cloture vote, he bill passed on Wednesday by unanimous consent. Before last week's recess the Senate failed by one vote to end a filibuster on H.R 6331, the Medicare Improvements for Patients and Providers Act, and stave off a sizable cut in Medicare payments to physicians scheduled to take effect on July 1. The House passed the bill two weeks earlier on June 24 by a veto-proof vote of 355-59.

H.R. 6631 will stop a scheduled 10.6% physician payment cut and provide physicians with a 1.1% pay increase beginning on January 1. The bill also provides provisions to increase payments to rural providers, support Medicare mental health parity and programs for low income Medicare beneficiaries, extend preventative services under Medicare, promote e-prescribing and delay competitive bidding for Durable Medical Equipment for 18 months.

In an effort to stall the July 1 physician payment cuts, the Centers for Medicare and Medicaid Services sent notification to Congress that it will hold payment for services for "the first10 business days of July." Health and Human Services Secretary Michael Leavitt released a statement ensuring that the Administration "will move promptly to re-process claims and take other steps necessary to ensure that providers and beneficiaries are not negatively affected." In addition, there is a provision in current law that requires contractors to hold Medicare claims submitted by physicians for 13 days under normal circumstances, giving physician short grace period before the effects of the payment cuts set in.

In a Statement of Administrative Policy issued on June 26, the Administration reiterated its strong opposition to H.R. 6331 on the grounds that it fails to address the Administration's concerns with reference to, "inappropriate reductions to Medicare Advantage plans." If H.R. 6331 "were presented to the President in its current form, his senior advisors would recommend that he veto the bill," according to the statement.

On Wednesday the House Education and Labor Committee held a hearing on the rising cost of food and transportation and the challenges faced by federally-funded nutrition programs such as the National School Lunch Program (serving around 30 million children annually). "We are struggling to make ends meet…even the increase for the new school year—$2.57—which was announced this week, fails to meet the true cost of providing school lunches," said Katie Wilson, President of the School Nutrition Association. Ms. Wilson testified schools are compensating by purchasing lower quality food, raising prices for paying students, cutting employees, and dipping into financial reserves that could be saved for education. Suggested solutions ranged from meeting biofuel standards by replacing corn with sugar (lowering demand and therefore price of corn), easing certain ethanol requirements, reducing transportation costs by making food on location, and reevaluating nutrition standards. Congressman George Miller (D-CA), Chairman of the Education and Labor Committee, stated, "Providing children with access to healthier, nutritious foods while at childcare, school or summer camp is vital to our efforts to help children learn, succeed and thrive...Helping young children develop healthy nutritious eating habits must be a top national priority."

Financial Services

Late this afternoon the Senate appears ready to approve a wide-ranging measure to provide much-needed support to the housing market and American homeowners. If the Senate successfully passes the much-debated bill (H.R. 3221) before it adjourns this evening, the measure will head back to the House. The Senate was successful in mustering the support to limit debate on the bill earlier this week by a wide margin (84-12). The bill includes reforms to and a $300 billion loan authority expansion of the Federal Housing Administration, the creation of a regulator to oversee Government Sponsored Enterprises Fannie Mae and Freddie Mac, and billions in tax initiatives to encourage financially-responsible homeownership. The bill is far from the finish line, as it is expected to be (yet again) modified in the House and still contains provisions that have drawn ire from the White House. The House will have to address differences over the size of Fannie and Freddie's conforming loan limit, the timing of a start date for the regulator, and a number of differences in the tax portions of the bills.

As the Senate continued its work on the housing bill, the Chairman of the Federal Reserve Bank, Ben Bernanke, this week previewed the issuance of new regulations (expected to be released on Monday) for the mortgage lending industry, "which will apply to all lenders and not just banks." The new rules, "will address some of the problems that have surfaced in recent years in mortgage lending, especially high-cost mortgage lending." In addition, the Chairman expressed his support for broadening authority for the Federal Reserve to oversee the nation's financial structure, saying, "regulators must consider what can be done to make the U.S. financial system itself more stable, without compromising the dynamism and innovation that has been its hallmark." Many observers point to the collapse of the venerable Bear Stearns, and the unusual action taken by the Federal Reserve to facilitate its acquisition by JP Morgan Chase, as a reason for greater oversight of the nation's financial system. During his remarks, the Chairman discussed the possibility that Fed could taken similar action in the future, noting it is, "strongly committed to supporting the stability and improved functioning of the financial system…including extending the duration of our facilities for primary dealers beyond year-end, should the current unusual and exigent circumstances continue to prevail." In closing, the Chairman noted that, "Financial crises have occurred periodically around the world for literally hundreds of years, and it is unrealistic to hope that they can be entirely eliminated, especially while maintaining a dynamic and innovative financial system." Chairman Bernanke and Treasury Secretary Henry Paulson underscored the need for additional regulatory authority oversight and of U.S. financial markets in a joint appearance before the House Financial Services Committee on Thursday.

Shares of Fannie Mae and Freddie Mac had a particularly difficult week (closing yesterday at $13.20 and $8.00 respectively) on fears of inadequate capitalization and that a still-slumping housing market will worsen loses. On Thursday, Office of Federal Housing Enterprise Oversight Director James B. Lockhart, charged with overseeing Fannie and Freddie, sought to mitigate those fears in a statement noting that Fannie and Freddie, "are adequately capitalized, holding capital well in excess of the OFHEO-directed requirement, which exceeds the statutory minimums. They have large liquidity portfolios, access to the debt market and over $1.5 trillion in unpledged assets…At a very difficult time in the market, the [Government-

Sponsored] Enterprises have the flexibility and sound operations needed to support their mission." Secretary Paulson reiterated Director Lockhart's comments during the Secretary's Financial Services testimony on Thursday. Last summer shares of Fannie and Freddie were each well over $60.

Higher Education

Last week college students around the nation experienced a reduction in interest rates on their federal student loans. Under the College Cost Reduction and Access Act (H.R. 2669) signed by the President last September, interest rates on certain federal loans dropped from 6.8 percent to 6.0 percent on July 1. The lowered interest rate (which will continue to drop over time to 3.4 percent) will help millions of students—most of whom are low and mid-income students—who rely heavily on federal aid for access to higher education. According to a report released by U.S. PIRG, New England will benefit greatly from the reductions, saving students starting school this year in the six New England states $2,450 - $2,660 over the life of their loan.

Technology

By a wide margin (69-28) the Senate passed an overhaul of the Foreign Intelligence Surveillance Act this week after beating back several amendments, including an effort to strike an immunity provision that will likely shield telecommunications firms that participated in post-9/11 warrentless wiretapping programs from lawsuits. The House passed the same bill (H.R. 6304) in late June, and President Bush signed the bill yesterday. After Senate passage on Wednesday, the President praised the bill as allowing, "our national security professionals to quickly and effectively monitor the plans of terrorists outside the United States, while respecting the liberties of the American people." The immunity provision had long been the sticking point holding up the FISA bill, with more than 40 lawsuits pending against telecommunications companies. The bill protects these companies from lawsuits if a U.S. district court finds that telecommunications firms had evidence outlining the legality of the activities – evidence companies appear to have. The bill also grants responsibility for overseeing most new wiretapping activities (conducted on foreign parties) to a FISA court, and clarifies that the FISA bill is the exclusive authority overseeing wiretapping activities, preventing future Administrations from using other means to justify similar surveillance activities.

No discernable progress has been made toward the Senate approval of a bill to extend and resuscitate a number of expired (or set to expire) tax provisions, including the research and development tax credit. Although the R&D credit expired at the end of 2008 and providing a seamless extension remains seemingly uncontroversial, differences remain (mainly among party lines) in the Senate about whether or not to find revenue-raising offsets to "pay for" the cost of the bill (making it budget-neutral) or simply extend the tax provisions without offsets, worsening future budget deficits. The House passed a paid-for tax extender bill (including the R&D provision) in early June.

Transportation

On June 30 a three month extension of Federal Aviation Administration (FAA) became law after efforts were dropped to attach $8 billion from the treasury to cover shortages in the federal Highway Trust Fund for the 2009 fiscal year. Senate appropriators on the Transportation, Housing and Urban Development subcommittee have decided to address the shortfall in the transportation spending bill.

The current FAA extension (H.R. 6327) provides $3 billion for Airport Trust Fund operations and $918 million for the Airport Improvement Program and Airway Trust Fund, allowing the FAA to continue normal budgetary operations while the reauthorization bill is in flux. According to the Congressional Budget Office, the sums will not affect current budgets because the amounts are consistent with current levels of funding designated for the programs. Congress has until Sept. 30 to reach an agreement over reauthorization bill H.R. 2882, which will cover the FAA's budget for the next four years. In a recent statement addressing the importance of the pending FAA reauthorization the agency wrote, "By embracing this transformational change we can ensure the aviation system of the future can enhance U.S. competitiveness in a dynamic and rapidly evolving global trading system."

# # #