

THE NEW ENGLAND COUNCIL

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NEXT WEEK IN CONGRESS

With two weeks left before Congress adjourns for its summer recess and nominating conventions, the long-debated housing bill (and initiatives to support Fannie Mae and Freddie Mac) will be the foremost topic in both chambers next week, although it may not see substantial floor action in the Senate. Although the intentions of the proposed assistance package for Fannie and Freddie (see below) have received bipartisan support, the details of the proposal have slowed its approval in both chambers. The Senate will begin its week debating a bill empowering the Commodity Futures Trading Commission to crack down on speculators in the commodities market (S. 3268), and possibly a measure to increase Low Income Home Energy Assistance Program (LIHEAP) funding. The House will address a measure authorize the U.S. to increase its funding for global AIDS efforts, and the housing bill (S. 3221) in conjunction with the measure to boost the financial health of Fannie and Freddie.

APPROPRIATIONS

Discussion of a second economic stimulus bill continues with the timeline for its consideration being pushed until after Labor Day. Contents of the package, to which leaders have not publicly attached a price-tag (although it would almost certainly be over \$50 billion), would likely be investments in domestic programs like LIHEAP, transportation and natural disaster infrastructure investment, food stamps and Medicaid programs. No determination has been made if additional rebate checks will be included. Opponents contend that the entirety of the first stimulus package passed earlier this year has yet to be felt, as the final round of rebate checks were not released until just last week (\$5.8 billion in rebates were released the week of July 11 for a total \$91.8 billion). The Senate Appropriations Committee has a mark-up for its version of a second economic stimulus package scheduled for July 22.

A thaw in the House's frozen FY09 appropriations process is possible, as the

Ranking Member on the House Appropriations Committee floated a compromise earlier this week. The Committee has ceased work on annual spending bills after proponents of lifting the current Congressional ban on exploring for energy in certain areas of the Outer Continental Shelf (OCS) tried to insert the contents of the spending bill for the Department of the Interior into an unrelated measure. The potential compromise would guarantee a hearing on the Interior-Environment measure before the August recess in exchange for guarantees OCS-exploration supporters would refrain from similar tactics on other spending bills. There is a strong possibility that only five legislative weeks remain before Jan. '09, and while a continuing resolution will almost certainly be necessary to keep the government operating after Sept. 30, it seems to only be a question if Congress will get through any of the FY09 spending bills before a new administration takes over. Late in the week, leaders in both chambers stated it is their intention to at least address Pentagon/defense funding for next year before Congress adjourns. Yesterday's Senate Appropriations Committee approval of several bills brings its total of approved FY09 bills to nine, while the House remains frozen at five.

FINANCIAL SERVICES

The notion of "perception is reality" was illustrated clearly this week, as despite assurances from top financial leaders, anxiety and eroding confidence continued to surround the stability and health of mortgage giants Fannie Mae and Freddie Mac. Late last week Treasury Secretary Henry Paulson, along with the head of the Office of Federal Housing Enterprise Oversight, assured investors Fannie and Freddie were well-capitalized with access to appropriate resources. However, with confidence still fading, over the weekend the Treasury Secretary, in consultation with the Chairman of the Federal Reserve Ben Bernanke, announced a plan on Sunday to support the Government Sponsored Enterprises (GSEs). Citing their "central role" in the mortgage market, Paulson stated that, "Their support for the housing market is particularly important as we work through the current housing correction." The main tenets of the plan include boosting the line of credit the Treasury extends to Fannie and Freddie (for decades that line has been \$2.25 billion each) through the end of 2009, allowing the government the ability to purchase Fannie and Freddie stock if the GSEs needed the capital, and folding the Federal Reserve (in a consultative role) into the creation of the GSE regulator moving through Congress. Details on the limits of these proposals have yet to be determined, and are certain to be one of the focal points of debate next week. As a bridge between now and the time Congress is able to consider the Treasury proposal, the Federal Reserve authorized the extension of a line of credit to Fannie and Freddie if one is needed. Secretary Paulson submitted the plan to Congress in the form of amendments to a larger housing bill (H.R. 3221) passed by the Senate last Friday, sending the bill back to the House where significant differences remain beyond the addition of the recent GSE proposal.

Initial Congressional reaction to the Treasury proposal was positive with hopes of getting the package approved and inserted into H.R. 3221 quickly. However, opposition arose to the significant expansion of government influence in the housing/financial market (especially the far-more explicit government backing of Fannie and Freddie than in the past) and the circumventing of the traditional committee and amendment process on such a potentially costly initiative that has yet to be scored by the Congressional Budget Office.

On Monday the Federal Reserve released a series of rules to, “better protect consumers and facilitate responsible lending.” The majority of the initiatives aimed at eliminating abusive lending practices will take effect in October. They include requiring lenders to make reasonable assumptions as to whether loan applicants can reasonably be expected to repay them by examining the first seven years of the loan and assuring that the borrower could make the highest possibly monthly payment instead of the lower starter rates. Lenders must also verify the income of the applicant and starting in two years mandate the creation of escrow accounts for property taxes and homeowners insurance for some loans. The rules also crack down on prepayment penalties. Chairman Bernanke stated that the changes are, “intended to protect consumers from unfair or deceptive acts and practices in mortgage lending, while keeping credit available to qualified borrowers and supporting sustainable homeownership... Besides offering broader protection for consumers, a uniform set of rules will level the playing field for lenders and increase competition in the mortgage market, to the ultimate benefit of borrowers.”

Late last week the Government Accountability Office (GAO) released a Congressionally mandated report to investigate if following last year’s extension of the Terrorism Risk Insurance Act, gaps in terrorism insurance coverage persisted based on region and property value. The report found that, “While commercial property terrorism insurance coverage appears to be available nationwide at rates policyholders view as reasonable, certain policyholders may face challenges in obtaining desired amounts of coverage or obtaining coverage at prices they view as reasonable.” GAO reported policyholders with high-value properties in high-risk areas are most likely to struggle finding desirable coverage. Though members of the insurance industry and analysts that participated in the study were unable to agree on a solution, proposals include lowering TRIA deductibles in risky areas, permitting insurers to establish tax-deductible reserves for terrorist attacks, and, “changing the federal tax code to encourage the issuance of catastrophe bonds within the United States,” to cover terrorist attack related losses. The New England Council was a strong proponent of last year’s TRIA reauthorization and will work with members of the New England Congressional delegation on any necessary changes to TRIA in the future.

HEALTH CARE

On Tuesday, Congress voted by an overwhelming margin—the House 383-41 and the Senate 70-26—to override the President’s veto of the Medicare Improvements for Patients and Providers Act (H.R. 6331). H.R. 6631 will now become law and stop a 10.6% physician payment cut scheduled for July 1 and instead provide physicians with a 1.1% pay increase beginning early next year. The bill includes 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 (DME) for 18 months.

The veto override votes in both chambers came within hours of when the President returned the Medicare reform bill without approval. In his veto message to Congress, the President stated that H.R. 6331, “would harm beneficiaries by taking private health plan options way from them,” citing that more than 9.6 billion seniors that have joined a Medicare Advantage plan. According to the President, the bill would “undermine” the Medicare Part D program by narrowing seniors’ options—particularly in rural areas—to enroll in competitive private plans, and would damage the Medicare program by providing a temporary fix which creates a 20% physician pay cut in 2010 instead of overhauling the entire Medicare program.

This week the Senate voted to reauthorize and extend the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 to fight global AIDS and other diseases. The reauthorization bill (H.R. 5501/S. 2761), named after the late Chairmen of the Foreign Affairs Committee Tom Lantos (D-CA) and Henry Hyde (R-IL), authorizes a five-year, \$50 billion strategic plan to study and monitor HIV/AIDS, tuberculosis (TB) and malaria overseas and provide a global outreach program to help reduce incidence and spread of disease. House and Senate versions of the reauthorization bill are similar, however, there are slight differences. H.R. 5501 extends the reach of the global program to include countries in Caribbean, Sub-Saharan Africa, and East Asia, and includes a family planning initiative, while S. 2761 drops a provision in existing law that prohibits immigrants with HIV/AIDS to enter the United States. The House passed its version of the reauthorization earlier this year on April 2, and is set to vote on the Senate version of the reauthorization next week.

The President’s Emergency Plan for AIDS Relief (PEPFAR), which was instituted under the 2003 global HIV/AIDS bill, has aided 1.7 million people around the world. In a Statement of Administration Policy released on July 11, the Administration expressed its strong commitment to fighting the global HIV/AIDS epidemic. According to the statement, the Administration, “strongly supports this legislation and looks forward to working with the Congress to ensure reauthorization of PEPFAR.”

ENERGY & ENVIRONMENT

Lawmakers continue to hammer away at the connection between excessive investing/speculating in the commodities market and the ever-rising cost of oil, with the Senate dedicating significant floor time to efforts late in the week. Late last week Senators Joe Lieberman (ID-CT) and Susan Collins (R-ME), the Chairman and Ranking Member of the Senate Homeland Security and Governmental Affairs Committee, introduced a bill to limit possible damage being done by excessive speculation. The Commodity Speculation Reform Act (S. 3248) directs the Commodity Futures Trading Commission to shrink “position” (or individual investing) limits to drive out excessive speculation, remove loopholes that allow investors to circumvent position limits through alternative markets, and provide the CFTC with 100 additional employees. Chairman Lieberman stated, “Our bill will end [excessive speculation] and help create a more orderly market for the industries and producers who must deal in commodities as a matter of business.” During his testimony before the Senate Banking Committee on Tuesday, Federal Reserve Chairman Ben Bernanke disputed the connection between rising prices and speculation, saying if this were the case, “we would expect inventories of crude oil and petroleum products to increase as supply rose and demand fell. But in fact, available data on oil inventories show notable declines over the past year.”

In yet another attempt to draw attention to the need for increased domestic energy production, this week President Bush rescinded an executive prohibition, first created by President George H.W. Bush 18 years ago, on energy exploration in currently protected areas of the Outer Continental Shelf. The move will have no immediate effect, as Congress has a similar ban which must be lifted for any increased exploration to take place. An effort to remove that ban, passed annually by Congress for well over 20 years in the annual spending bill funding the Interior Department, has currently frozen all FY09 appropriations bills in the House. While the vast majority of the OCS (about 90%) is off-limits to energy production, specified waters off Alaska, Texas, Louisiana, Mississippi, and Alabama are used for oil and gas production. Opponents of additional OCS activities would like to see energy companies use more of the already-leased land for exploration, a release of oil from the Strategic Petroleum Reserve, and cite environmental concerns and the lag-time it would take for the energy to come to market as reasons for opposing opening greater areas of the OCS.

At a Tuesday Subcommittee hearing before the House Energy and Commerce Committee, Edward Sproat, the Director of the Office of Civilian Radioactive Waste Management, stated that following the U.S. Department of Energy’s recent license application submission to the Nuclear Regulatory Commission (NRC) for the Yucca Mountain nuclear waste repository, construction could begin 3-4 years after NRC authorization and remain on schedule to meet its current

estimate of receiving spent nuclear fuel by 2020. However, while ratepayer contributions to the \$21 billion Nuclear Waste Fund are approximately \$750 million annually, the discretionary nature of pay-outs from the NWF allows Congress to allocate substantially less than what ratepayers contribute. In FY08, Congress appropriated less than \$400 million to the Yucca project, and the President's FY09 budget requests just less than \$500 million. In the Senate Appropriations Committee's FY09 request (passed by the full committee on July 10) the Yucca initiative is funded at \$386.4 million. In his testimony, Director Sproat stated clearly, "The projected budget authority needed through repository construction is well above current and historic levels, and the current funding level is insufficient to build the repository and the transportation system." While saying, "substantial progress," has been made over the last two years on the project, Director Sproat mentioned appropriate annual funding levels to keep the project on its current schedule could be in the \$1.2 - \$1.9 billion annual range. The NRC has 3 years to review and make a determination on the Yucca license application.

With the price of a barrel of oil north of \$125, many lawmakers (especially from the northeast) are turning their attention to the impact the high cost of oil will have on energy bills during the cold winter months, and the effectiveness of the Low Income Home Energy Assistance Program. Recently all members of the NH, ME, MA, and VT Senate delegations cosponsored a bi-partisan bill (S. 3186) to provide an additional \$2.5 billion in Fiscal Year 2008 funds for the LIHEAP program. LIHEAP was funded at \$2.61 billion in FY08. Although prospects for many FY09 appropriations bills to be signed into law before next year are slim, the Senate Appropriations Committee has recommended approximately \$2.57 billion for FY09, similar funding to this year. The SAC recommendation (approved on June 26) includes roughly \$1.98 billion in state grant funding and \$590 million for emergency funds. President Bush, who still has the ability to release \$120 million in current-year LIHEAP emergency funding, requested only \$2 billion for LIHEAP in his budget for next year. It is possible a second stimulus package may include additional FY08 funding for LIHEAP.

Recently the governors from all six New England states called on leaders in both the House and Senate for \$1 billion to fund LIHEAP in New England. "Never before in modern history has New England faced the prospect of so many residents being unable to heat their homes as there will be this coming winter," the governors wrote. The joint statement noted that \$1 billion in LIHEAP funding for New England would cover the 87% rise in home heating oil since the 2005-2006 season and enable the program to support the same percentage of eligible applicants it did in '05-'06. "[We] are deeply concerned that many low-income families, especially those with young families and seniors, will risk serious illness or even death this winter without a significant increase in funding." The governors noted that even with increased funding qualified residents will be turned away due to lack of funds. The New England Council will remain a strong advocate for LIHEAP and support robust funding in FY09.

TRANSPORTATION

On July 15, the Senate Committee on Commerce, Science, and Transportation Subcommittee on Aviation Operations, Safety and Security held a hearing entitled, “The Outlook for Summer Air Travel: Addressing Congestion and Delay”, which discussed ways in which Congress can combat high-levels of summer congestion and infrastructure problems inherent within the aviation industry. “It can’t happen soon enough,” Executive Vice President and Chief Operating Officer of the Air Transport Association, John Meenan said of passing a FAA reauthorization bill. “We’re literally seeing this industry melt before our eyes...our fuel bill is going to be about \$20 billion more than it was last year, no business can sustain that.”

Currently, the Federal Aviation Administration is operating under a reauthorization extension lasting until September 30. A revised act could mean new budgets, priorities and guidelines for FAA. According to the Department of Transportation, 1 in 4 flights was delayed in 2007 with 38 percent of the delays occurring because aircraft carriers were behind schedule. Approximately one-third of all national flights and one-sixth of international flights either start or traverse through New York, New Jersey, or Philadelphia airspace. The Northeast is particularly affected by inefficiencies which might begin in one region and cause delays across the country according to testimony from Henry Krakowski, Chief Operating Officer of the Air Traffic Organization.

Although a number of suggestions ranging from adapting new slot allocation systems to auctioning off slots were presented, none were met with broad approval. However, there was strong bipartisan agreement that a FAA reauthorization bill is necessary and timely.

TECHNOLOGY

In the last several weeks, two Congressional committees have held hearings on the privacy implications and possibility for regulations and oversight on the tracking of Internet users behavior patterns and preferences. Analyzing the data from this tracking (known as “Deep Packet Inspection”), and working with outside ad companies, allows Internet advertisers to send ads to Internet users that are more closely geared towards their interests. The Senate Commerce Committee recently held a hearing on the “Privacy Implications of Online Advertising,” and a House Energy and Commerce Subcommittee followed suit on Thursday with a hearing titled, “What Your Broadband Provider Knows About Your Web Use.” According to a statement by the Chairman of the Commerce Committee, “There is concern...that tracking individuals’ Internet activity and gathering information from online users violates their expectations of privacy. Individuals often are

unaware what information is being collected about them, how it is being used and to whom it is disseminated,” Witnesses before Senate Commerce included members of the Federal Trade Commission, as well as Google and Microsoft. Most members in attendance agreed the issue needs further study and to be better understood before legislation (if necessary) is brought forward. At the House hearing, Rep. Edward Markey (D-MA), chairman of the House Subcommittee on Telecommunications and the Internet, stated, “these technologies raise not only significant privacy concerns but also highlight broader policy questions, including how they impact the evolution of the Internet itself and its future prospects for driving innovation and fostering competition and job creation.”

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