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House Narrowly Adopts Senate Budget Resolution – Let the Tax Reform Games Begin

As expected, the House this week adopted on a 216-212 vote, the Senate-approved FY2018 budget resolution – with its \$1.5-trillion tax reform instructions – keeping to GOP leadership’s expedited schedule to ram federal tax reform through the chamber before Thanksgiving, so it might be law by the end of the year.

The House decision to take up the Senate version instead of its own was more pragmatic than political. The move eliminates any need to take valuable time to reconcile differing House and Senate resolutions, and most importantly, will allow the broader tax cut package to move through the Senate without threat of filibuster and on simple majority votes.

While the vote was tighter than House Speaker Paul Ryan (R, WI) would have liked – 20 Republicans defected, more than the 18 who voted against the original House resolution last week – it nonetheless clears the way for his unveiling of the House tax bill November 1, as promised. House Ways & Means Committee Chair Kevin Brady (R, TX) said this week his committee will begin marking up the package November 6, with the Senate Finance Committee signaling it will begin its work a week later.

“By passing this budget today, we can send a clear message to the American people, real tax reform is on the way,” Brady said in announcing the hearing.

The political need to enact tax reform is huge for the Republicans who, despite controlling Congress and the White House have yet to chalk up a major legislative victory this year. The repeated failure of “repeal and replace” efforts on the Affordable Care Act (ACA) has those eyeing the 2018 elections very nervous.

The core of the GOP plan is tax cuts. The current 35% maximum corporate rate – blamed for companies fleeing to overseas tax havens – would be cut to 20%. There is also expected to be a one-time 10% repatriation tax on \$2-4 trillion in U.S. company profits held overseas to avoid domestic taxes. That move is expected to generate as much as \$1.5 trillion, though it’s unclear how much if any of that windfall will go to offset the cost of the entire tax cut package.

The current seven personal tax brackets would be trimmed to three, with the highest rate set at 35%. Ryan signaled this week he’ll add a fourth bracket for high-income wage earners so the lion’s share of benefits is reaped by the middle class. “This means we don’t lower taxes for high income individuals,” he said.

Several votes against the package were cast out of concern the bill will add about \$1.5 trillion to an already bloated federal deficit, and some budget hawks are calling for tough cuts in other spending – “offsets” to new spending – and those are most easily achieved by going after existing tax breaks.

The Republican “no” votes were largely from middle-of-the-road lawmakers from high tax states, including New York, California and Illinois, concerned about plans to scrap the state and local tax deduction currently being discussed as part of the GOP broader proposal. These “no” votes were described by Brady as “voting to defend the status quo.”

However, it's known leadership has pledged to work on the state/local tax issue in coming days. While the deduction – particularly important to middle class taxpayers – will likely survive, it may not operate exactly as it does now, one staffer said. One idea is to allow taxpayers to choose to deduct state property taxes or mortgage interest, but not both. Another would impose a cap on the deduction based on income, with many saying incomes over \$400,000 might get a very limited deduction, or lose it all together.

Agriculture interests are concerned about tax advantages they may lose as part of the planned reduction in corporate taxation, including Sec. 199 deductions, a tax advantage on products “manufactured, produced, grown or extracted” by farmer-owned cooperatives, benefits passed along to members.

Also causing consternation was President Trump's tweet midweek saying the GOP plan will not change the way individual 401(k) retirement plans are taxed, even as lawmakers said there may be changes coming, including a much-rumored move to limit pretax contributions by lowering the current \$18,000 annual cap to around \$2,400, with an option of pushing remaining dollars into a Roth IRA. Roth products tax money deposited, but not when withdrawn. Brady allowed his committee will examine new ways to encourage retirement savings in addition to the 401(k) option.

NAFTA Nerves Are Jangled as Pessimism Grows

As President Trump yet again says the U.S. must “get tougher” in renegotiating NAFTA – alluding to a move to send a formal notice to Capitol Hill of his intent to walk away from the treaty – nearly 90 national food and agriculture groups this week sent a six-page letter to Secretary of Commerce Wilbur Ross stating such a move would “result in immediate harm to the general economy...(and) devastate the farm economy.”

The letter was a reaction to Ross's statement earlier in the week that a U.S. withdrawal from NAFTA and “substantial damage” to U.S. agriculture is “an empty threat.” The assumption is the president is threatening the formal withdrawal notice – which carries a six-month time clock – to put additional pressure on Canada and Mexico to cut a deal. However, the groups told Ross such a strategy and the Commerce secretary's statement “gravely underestimates the business complexity and contracting periods involved.”

“Contracts would be cancelled, sales would be lost, able competitors would rush to seize our export markets and litigation would abound even before withdrawal would take effect” if the White House notified Congress of an intent to withdraw from NAFTA, the letter said. The overall economic impact would be a loss of “at least 50,000 jobs in the U.S. food and agriculture industry, and a drop in GDP of \$13 billion in the farm sector alone,” the group told Ross.

Mexico has also said publicly if the White House sends a withdrawal notice to Congress, Mexico will walk away from the negotiating table, putting pressure on Canada to do the same.

The letter included several sobering impacts on agriculture of a NAFTA withdrawal. Corn growers would likely see a production drop of 150million bushels a year, cutting \$800 million in value, and jacking federal farm program payments by \$1.2 billion. U.S. poultry producers export about 16% of total production to Canada, and nearly 70% of turkey exports move north of the border. U.S. exports of high fructose corn syrup to Mexico would drop by \$500 million per year, the groups alleged, reporting also that since 1993, exports of U.S.-grown fruits and vegetables have more than tripled to \$7.2 billion,

accounting for 18% of fruit exports, and 60% of fresh vegetable exports. Beef exports to Canada and Mexico total \$1.7 billion, or 27% of total U.S. exports, and dairy shipments to Mexico alone are over \$1 billion.

In a television interview Trump gave this week, he said, “I think the chances, ultimately, are good, but right I think my people are going to have to get tougher. And I told them that. I tell my people right now it’s going to be very hard, and in my opinion, in order to make a fair deal with NAFTA, you have to terminate the deal and then you have to see where you’re going to come, and we will come out.”

Meanwhile, Agriculture Secretary Sonny Perdue told an Indianapolis FFA audience this week that he remains optimistic about the NAFTA talks. It was Perdue, in tandem with White House economic advisor Gary Cohn, who sat Trump down and showed him a map of his voter base when the president was thinking of killing off NAFTA early on. Perdue said it’s early in the process, but that a meeting he had this week with the U.S. Special Trade Representative Robert Lighthizer and Ross revealed “all three countries really want a deal at the end of the day. These NAFTA negotiations are almost like Congress or state legislatures. They can stay there 90 days, but most of the stuff gets done in the last five days,” Perdue told Agri-Pulse

For the Canadians and Mexicans, Trump’s ongoing negative rhetoric surrounding the future of NAFTA forces them to wonder if the administration even wants a modernized trade treaty. One Canadian treaty negotiating veteran said it’s unclear “what the game plan is here on the U.S. side.” U.S. proposals that are non-starters, including a five-year sunset provision, restrictions on Canadian and Mexican access to U.S. contracts, dispute resolution, auto parts demands, not mention U.S. demands to undo the Canadian dairy pricing system, are “pretty obnoxious,” said John Weekes, part of the Canadian team which negotiated the original treaty.

Congress Advances Disaster Package, White House Looks for Offsets in Third Aid Bill

The Senate this week voted 82-17 to approve a \$36.5-billion disaster assistance package, clearing the aid package for President Trump’s signature. At the same time, the White House signaled it intends to ask Congress for more disaster assistance money, but hopes to offset that third aid package by cutting spending in other areas.

So far, Congress has approved \$52 billion in total emergency disaster assistance, with agreement much more is expected.

The bill provides help to states affected by hurricanes, floods, and wildfires, refunding the federal flood insurance program and the U.S. Forestry Service’s fire abatement efforts. FEMA gets \$18.7 billion, flood insurance gets \$16 billion, and the wildfire recovery effort gets \$576.5 million. Another \$1.27 bill in disaster food assistance is targeted to Puerto Rico.

The full Senate defeated an amendment by Sen. Rand Paul (R, KY) to the most recent aid package that would have offset \$36 billion of the bill’s cost by program cuts in other federal programs. Senate Majority Leader Mitch McConnell (R, KY) successfully blocked Sen. Bill Nelson (D, FL) when he tried to add more money to the bill for Floridians hit by Hurricane Maria.

The next round of funding for disaster assistance will be requested in mid-November Office of Management & Budget (OMB) Director Mick Mulvaney told McConnell this week. Mulvaney said the

money should not be “emergency” funding, but rather should be offset by savings in other programs. He said the package request would be developed in cooperation with lawmakers from affected states. Texas and Florida Senators have complained they were locked out of the White House’s latest request, and Sen. John Cornyn (R, TX), Senate majority whip, has blocked confirmation of Mulvaney’s deputy director until he gets assurances his state will be taken care of in the next package of assistance.

Biofuels Battles Continue as Oil State Senators Seek Trump Meeting

With the oil and gas industry still stinging from the sudden reversal by EPA Administrator Scott Pruitt on a move to potentially cut the Renewable Fuel Standard (RFS), at least for biodiesel, nine GOP Senators this week asked President Trump for a meeting to talk RFS and the program’s future.

In a related development, Pennsylvania Gov. Tom Wolfe this week formally requested Trump waive the RFS/Renewable Volume Obligations (RVO) for northeastern U.S. refiners so that the price of Renewable Identification Numbers (RINS) – certificates which are purchased by refiners to offset their legal blending responsibility – drop significantly. Wolfe said he’s concerned that if RIN prices don’t drop and stabilize, “the volatile market may lead to the closure of one or more of these merchant refiners, which would be devastating to the regional economy.”

Pruitt previously formally asked for public information on a plan to potentially cut the RFS for “biomass-based fuels” dramatically from current and proposed levels. Sen. Charles Grassley (R, IA) immediately rallied seven of his farm state colleagues and sought a meeting with Pruitt, first criticizing the president on the Senate floor for a “bait-and-switch” move after statements of RFS support during Trump’s campaign. Ultimately, the president ordered Pruitt to meet with the seven Senators, Trump called the governors of Iowa and Kansas to reassure them of his full RFS support, and ultimately Pruitt sent the Senators a letter – demanded by Sen. Joni Ernst (R, IA) – walking away from the reduction idea, assuring them the new RFS requirements to be announced by November 30, would be equal to or higher than proposed in July, and also saying he wouldn’t move the point of obligation on RFS blending and would look favorably on allowing E15 to be sold year-around if agency lawyers say he’s got the authority to authorize the sales.

Oil and gas industry giants, including Valero Energy Corp., CVR Energy and PBF Energy, were not pleased with the outcome.

The refinery state Senators told the president in their letter of request for the meeting that without “adjusting” the RFS – lowering blending mandates – “it will result in a loss of jobs around the country, particularly in our states.” Signing the letter were Senators from Texas, Oklahoma, Arizona, Utah, Pennsylvania and Wyoming.

“We request that within the next three weeks, you convene a meeting regarding the RFS and pro-jobs policies with us, our Senate colleagues who previously lobbied you on behalf of the ethanol industry and relevant members of your administration to discuss a pathway forward toward a mutually agreeable solution that will also save refining jobs and help unleash an American energy renaissance,” the lawmakers wrote.

Ibach Clears the Senate; Cruz Puts Hold on Northe Action After Ernst, Grassley RFS Win

The full Senate this week approved the nomination of Greg Ibach, former Nebraska agriculture commissioner, to be USDA under secretary for marketing and regulatory programs. However, Sen. Ted Cruz (R, TX) put a hold on the nomination of Iowa Secretary of Agriculture Bill Northeby to be undersecretary for farm production and conservation.

The hold is reportedly a “reaction” by Cruz to actions by Sen. Charles Grassley (R, IA) and Sen. Joni Ernst (R, IA), among other Midwestern lawmakers, to get President Trump to reaffirm his support the Renewable Fuels Standard (RFS) by killing off an EPA move to potentially reduce the RFS on some biofuels. Ernst had blocked Senate votes on some EPA nominees to increase pressure on the White House. Cruz is part of a group of nine Senators from oil and gas states seeking a meeting with Trump to talk RFS issues.

“This has nothing to do with Bill Northeby, they need to get that right. I don’t see the connection,” Ernst told one publication. “He’ll be in charge of conservation programs; it will have nothing to do with the RFS. So why are they blocking him because of the RFS? Just because big oil doesn’t like it.”

Meanwhile, Northeby’s prospective job title confusion remains in limbo, and may not be resolved until the Farm Bill is voted on, said Senate Agriculture Committee Chair Pat Roberts (R, KS). When Agriculture Secretary Sonny Perdue reorganized the department in July, he shifted the Natural Resources Conservation Service (NCRS) into the same program area as the Risk Management Agency (RMA) and the Farm Service Agency (FSA). However, by legal job description, NCRS is under the watchful eye of a different under secretary. Roberts and ranking panel member Sen. Debbie Stabenow (D, MI) pledged to bring a bill that would clarify the new job responsibilities. Meanwhile, if and when Northeby is confirmed by the Senate, his job description will be somewhat limited until the job title issue is worked out.

Senate Committee Advances Four EPA Office Nominees

With the dust settled on the EPA/RFS tug-of-war this week over Administrator Scott Pruitt’s ill-advised proposal to potentially cutting the Renewable Fuel Standard (RFS), Sen. Joni Ernst (R, IA) and Sen. Chuck Grassley (R, IA) removed their roadblocks to the Senate Environment & Public Works Committee approving four nominees to be EPA assistant administrators. No date has been set for Senate floor votes.

Approved by the committee this week were the nominations of Michael Dourson to be assistant administrator for chemical safety and pollution prevention; William Wehrum for the same job overseeing air and radiation, David Ross to be assistant administrator for water programs, and Matthew Leopold to be EPA general counsel.

Ernst had delayed committee consideration of the nominations for a week when she told Pruitt in a meeting that she didn’t feel Wehrum was supportive of the RFS. When Pruitt – at the order of President Trump – dropped his notion of reducing the RFS for biomass-based fuels, Ernst dropped her holds on the nominations.

Dourson and Wehrum were approved on party-line votes, with Ross and Leopold getting voice vote approvals. Dourson, formerly with EPA for 14 years, has his own consulting firm and is opposed by environmental groups because he’s done work as a toxicologist for chemical companies. Wehrum, whose office will implement the RFS, represented petroleum companies and related firms in challenges to the broad alternative fuels programs at EPA and in various states.

Commerce Sets Anti-Dumping Duties on Argentine, Indonesian Biodiesel Imports

The administration this week doubled down when the Department of Commerce (DOC) hit Argentina and Indonesia with preliminary antidumping duties on imported biodiesel, penalties that are on top of similar action taken by International Trade Commission (ITC) last month.

The DOC action is based on a formal complaint from the biodiesel industry that biodiesel from the two countries was coming into the U.S. below market value. The National Biodiesel Board (NBB) said it joined the petition to DOC because it was necessary to “address a flood of subsidized and dumped imports” from the two countries that resulted in market share losses and depressed domestic prices.

The duties contemplated by DOC range from 54.36% to 70.05% on soy-based biodiesel from Argentina and 50.71% on palm oil biodiesel from Indonesia. Argentina has formally requested government-to-government negotiations in hopes of possible suspension agreements. Indonesian officials say they will contest the antidumping duties.

The Argentine government said the new duties are superfluous and “have no practical effect” given the ITC hit the South American nation with a countervailing duty of 64.17% in August, making the U.S. market “impossible,” according to one report.

Goodlatte H-2A Visa Program Rewrite Advances on Tight Vote

A bill by Rep. Bob Goodlatte (R, VA), chair of the House Judiciary Committee, to rewrite the federal H-2A visa program for agricultural guest workers was approved this week on a narrow 17-16 vote, with two GOP lawmakers voting with Democrats against the program rewrite.

Rep. Steve King (R, IA) and Rep. Louis Gohmert (R, TX) say they don’t believe employers can’t find sufficient domestic labor, and that the program is just an excuse to higher cheaper immigrant labor. Democrats said the bill as approved has too few protections for immigrant labor, and that visa holders would be de facto “indentured servants” or worse.

Goodlatte changed his bill from the version introduced last month, with an effective date now of six months, not two years as in the original version, and no worker in the country illegally could participate in the visa program. Workers in specialized jobs could stay up to 36 months under the new bill, as opposed to leaving the country after their season term expires. The bill also dropped a provision that would have provided up to 10,000 green cards to existing workers. Both sets of workers would have to return to their home countries to qualify for the new program.

Goodlatte’s reinvention of the agricultural guest worker program is a long-time priority for the former chair of the House Agriculture Committee. In addition to shifting the program to providing year-around labor as opposed to seasonal workers – a priority for dairy producers – and if signed into law, the bill would provide 450,000 annual visas for guest workers and would be rechristened the H 2-C program. Visa holders would not be restricted to working only for the farm that requested the additional labor.

The bill is strongly supported by agriculture, including the American Farm Bureau Federation (AFBF), the North American Meat Institute (NAMI), the National Chicken Council (NCC), the National Turkey Federation (NTF) and the National Cattlemen’s Beef Assn. (NCBA). Labor groups strongly oppose the bill led by the United Farm Workers (UFW). The labor groups are calling for Congress to tackle comprehensive tax reform.

Opponents of the bill focused on the level of wages required under the legislation for guest workers, as well as requirements that employers provide certain services and housing. When the dust settled, the housing and transportation requirements disappeared. The bill calls for an H 2-C visa holder to be paid at least \$8.34 an hour, 15% above the federal minimum wage. The wage floor for processing jobs would be 50% higher than the federal minimum wage.

Getting the bill through a floor vote may tough. Goodlatte introduced similar legislation in the last Congress, moving it through committee on a 20-16 vote, only to have the bill languish without a floor vote. In the Senate, Sen. Dianne Feinstein (D, CA) has introduced her own version of H 2-A reinvention, but says no word of action has been heard.

CFTC Swap Dealer De Minimis Threshold Extended

The swap dealer de Minimis threshold will be set at \$8 billion through December, 2019, the Commodity Futures Trading Commission (CFTC) announced this week. This amounts to a one-year extension and gives the commission more time to complete a data analysis that will inform future action, the CFTC said.

The order released this week sets the new de Minimis threshold phase-in termination date of December 31, 2019. The threshold was to have dropped to \$3 billion on December 31, 2018, under a previous rulemaking.

EC Glyphosate Decision Delayed

The European fate of glyphosate, the active ingredient in Monsanto's Roundup pesticides, remains in limbo this week as the European Commission (EC) failed to successfully move a proposed renewal of the chemical for 10 years, and could not get a membership consensus on five-, seven or even three-year approval extensions.

In Europe, straight extensions of legal use as opposed to renewals of approval are legally tough to achieve as they create doubts about the safety of the product and could conflict with European Food Safety Authority (EFSA) and the European Chemicals Agency (ECA) which have both determined glyphosate is safe.

The next action date is November 9, when a consensus on extending legal use of the chemical will be again discussed. Glyphosate's European license expires December 15, 2017.