House vote on bipartisan infrastructure package delayed as bicameral framework for reconciliation bill remains elusive

House Speaker Nancy Pelosi, D-Calif., delayed a planned September 30 vote on the Infrastructure Innovation and Jobs Act, a bipartisan bill focusing on so-called "hard" infrastructure, after progressive members of her caucus made clear that they would follow through on their promise to withhold support for the measure if Democratic leaders in both chambers do not make substantial additional progress on the Build Back Better Act, the larger "human" infrastructure measure addressing many of President Biden's social spending priorities that is moving through Congress under filibuster-proof budget reconciliation protections.

Meanwhile, ongoing divisions between Democrats and Republicans suggest that the eventual reconciliation bill may be the likely vehicle for addressing the nation's debt limit as the Treasury Department indicated that a potential default date is fast approaching.

Divisions among Democrats persist

Speaker Pelosi's decision to delay the vote is the latest development in her continuing efforts to balance the sometimes conflicting policy priorities of moderates and progressives within her caucus – a task made even more challenging by the fact that Democrats hold a narrow majority in the House and the speaker can afford to lose no more than three votes on legislation that is unlikely to gain support from Republicans. The decision also reflects Pelosi's stated position that she will only hold votes on bills that she knows have enough support to pass.

The Infrastructure Innovation and Jobs Act, which cleared the Senate on August 10, would invest roughly $550 billion in new spending over the next five years on projects such as roads, bridges, transit, and broadband, and includes limited tax-related incentives and revenue offsets. (For additional details, see *Tax News & Views*, Vol. 22, No. 37, Aug. 10, 2021.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210810_1.html

Progressive Democrats had long been concerned that getting the infrastructure legislation enacted into law ahead of the Build Back Better Act might make it easier for some moderate Democrats in both chambers to vote against a large package of tax increases and new social spending, and they had previously secured a commitment from Pelosi to move the two measures in tandem.

During the run-up to the House vote in August on the congressional budget resolution authorizing the reconciliation bill, however, several moderate Democrats expressed reservations about the potential size of the tax-and-spending legislation and sought to notch a quick policy win by passing the Infrastructure Innovation and Jobs Act and sending it on to the White House for President Biden's signature. To that end, they wanted Pelosi to commit to a date for a floor vote on the infrastructure bill in exchange for their "yes" votes on the budget resolution. Pelosi accommodated the moderates and promised to bring the legislation to the House floor by September 27; but to reassure progressives that their priorities would not get sidelined, she reiterated that she was not abandoning the dual-track strategy and that the chamber would plan to contemporaneously consider the broader reconciliation package.

In recent days, however, with neither chamber apparently in a position to bring up a completed reconciliation bill for consideration, Pelosi confirmed that she would move ahead with the infrastructure legislation as scheduled. (More on the status of reconciliation legislation in the House and Senate below.) The decision to effectively decouple the two bills drew immediate criticism from House progressive Democrats. Rep. Pramila Jayapal, D-Wash., who chairs the Congressional Progressive Caucus (CPC), has maintained throughout the past week that up to half of the 95 House members who belong to the CPC were prepared to vote against the infrastructure proposal if leaders followed through with their plans to bring it to the floor without an agreement on budget reconciliation in hand. Such a large number of Democratic defections likely would be more than enough to derail the measure since it is not expected to draw significant GOP support.

The impasse prompted continued outreach this week from the White House and congressional Democratic leaders to moderates and progressives. White House economic advisor Brian Deese and domestic policy advisor Susan Rice also spent several hours in the Capitol with House and Senate Democratic leaders and with key moderate and progressive lawmakers on the evening of September 30 in an effort to craft a bicameral framework on reconciliation that would satisfy all sides and convince House progressives to set aside their reservations and back the infrastructure bill. But those efforts ended shortly before 11:00 p.m. on September 30 with a deal apparently not in sight.

Although the deadline for voting on the infrastructure legislation was self-imposed, one immediate consequence of the delay is the expiration on September 30 of spending authority for surface transportation programs. Spending authority would be renewed under the legislation and a continued delay in passing that measure means Congress would have to approve a short-term funding patch.

White House Press Secretary Jen Psaki said in a statement released late September 30 that “a great deal of progress has been made this week, and we are closer to an agreement than ever. But we are not there yet, and so, we will need some additional time to finish the work, starting tomorrow morning first thing.”

Negotiations resumed on October 1 but it is currently unclear if there has been sufficient progress on a reconciliation framework for Pelosi to feel comfortable holding a vote on the infrastructure package.

Note: At press time, President Biden was scheduled to go to Capitol Hill to meet with the House Democratic Caucus. We will release a special edition of *Tax News & Views* if a deal is announced on a framework for the Build Back Better Act.

House and Senate reconciliation bill developments

Against this backdrop, House Democrats this week took a procedural step to advance their reconciliation proposal and a key Senate moderate revealed his reconciliation bill must-haves, which likely will influence negotiations going forward.

House Budget Committee completes mark-up: The House Budget Committee on September 25 compiled into a single package the discrete proposals approved by the various House committees – including Ways and Means – with jurisdiction over the legislation. It's worth noting that the Budget Committee report that accompanies the legislation provides various technical clarifications that are not included in summaries of the Ways and Means tax proposals that were previously released by the Joint Committee on Taxation staff. The statutory text remains unchanged, however, since under the rules of budget reconciliation, the House Budget Committee has a ministerial function of assembling the bills approved by the relevant committees and cannot make substantive changes.
URL: https://www.congress.gov/bill/117th-congress/house-bill/5376/text?q=%7B%22search%22%3A%5B%22h.r.+5376%22%2C%22h.r.%22%2C%225376%22%5D%7D&r=5&s=4

But even with legislative language now in place, Democrats are still negotiating changes to the package. Among the possible revisions on the tax side is the addition of a provision to relax or suspend the current-law $10,000 cap on the deduction for state and local taxes – something that certain moderate House Democrats have said is key to their support for the larger reconciliation bill. Also reportedly under consideration is the addition of a revenue offset that would require financial institutions to report gross inflows and outflows from customer accounts with a breakdown for physical cash, transactions with a foreign account, and transfers to and from another account with the same owner. The provision would be similar to one proposed in President Biden's fiscal year 2022 budget blueprint, although the threshold for triggering reporting likely would be set at a higher amount than the $600 level under the White House proposal. (For details on the tax title as approved by Ways and Means, see *Tax News & Views*, Vol. 22, No. 43, Sep. 17, 2021.) Moreover, as outlined in greater detail below, the expectation remains that the entire package will need to shrink in order to address concerns of more moderate House and Senate members. Exactly how the bill will be pared back remains unclear at this time.
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210917_1.html

Any modifications to the consolidated package will be made when it is taken up by the House Rules Committee. A Rules Committee mark-up of the legislation has not yet been scheduled.

In the Senate, red lines from Manchin: Across the Rotunda, Senate Democratic leaders – who control only 50 seats and cannot afford to lose a single vote within their own ranks – are expected to bypass mark-ups in the individual committees of jurisdiction and instead bring a completed reconciliation package directly to the floor.

Details on that package have remained largely under wraps, however, as leadership negotiates with moderate Sens. Joe Manchin, D-W.Va., and Kyrsten Sinema, D-Ariz., to address their concerns over the size and scope of the package.

Manchin and Sinema have up to now been silent – in public, at least – about their specific policy demands for a reconciliation package, although both have said they think the $3.5 trillion package authorized under the congressional budget resolution is too big.

In comments to reporters on September 30, however, Manchin shed additional light on his priorities, stating that his topline number for a reconciliation package was $1.5 trillion and that Democrats who want more expansive legislation should pursue a second bill later.

“I’m willing to sit down and work through that $1.5 [trillion] to get our priorities, and they can come back and do later, and they can run on the rest of the later. I think there’s many ways to get to where they want to, just not doing everything at one time,” he said.

Manchin’s comments came shortly after the release of a report in *Politico* detailing a document that he presented to Majority Leader Charles Schumer, D-N.Y., in July in which he outlined his terms for supporting the Senate budget resolution authorizing the reconciliation legislation. On the tax side, the document indicates Manchin would support, among other things, increasing the corporate tax rate to 25 percent, imposing a 15 percent minimum tax on domestic corporations, increasing the top individual income tax rate to 39.6 percent, increasing the capital gains rate to 28 percent, eliminating capital gains treatment for carried interest income, and raising additional revenue through unspecified proposals to narrow the tax gap. (The document notes that “any revenue exceeding $1.5 t[rillion] shall be used for deficit reduction.”) Other items call for preserving fossil fuel tax credits in exchange for extending or enhancing credits for solar and wind energy and providing vehicle and fuel tax credits for hydrogen-powered vehicles as well as electric vehicles.
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/211001_1_suppA.pdf

The document bears the signatures of both Manchin and Schumer. A spokesperson for Schumer told reporters September 30, however, that the majority leader “never agreed to any of the conditions Sen. Manchin laid out; he merely acknowledged where Sen. Manchin was on the subject at the time.” The spokesperson also commented that “Sen. Manchin did not rule out voting for a reconciliation bill that exceeded the ideas he outlined, and Leader Schumer made clear that he would work to convince Sen. Manchin to support a final reconciliation bill – as he has doing been for weeks.” Indeed, beneath Schumer’s signature is a handwritten notation reading: “I will try to dissuade Joe on many of these.”

Yellen warns debt limit could be breached by October 18

As Democratic leaders seek party unity on their infrastructure and budget reconciliation bills, Congress also faces an imminent deadline to either increase or further suspend the nation’s statutory borrowing cap. The most recent suspension of the debt ceiling expired on July 31 and since that time Treasury has been using so-called “extraordinary measures” to keep the nation’s debt under the statutory limit.

Treasury Secretary Janet Yellen warned in a September 28 letter to Speaker Pelosi that her department may be unable to stave off a default on the government’s obligations beyond October 18. This is the most precise estimate of a default date that Secretary Yellen has proffered up until now.
URL: https://home.treasury.gov/news/press-releases/jy0377

“At that point, we expect Treasury would be left with very limited resources that would be depleted quickly,” Yellen wrote. “It is uncertain whether we could continue to meet all the nation’s commitments after that date.”

A report released September 29 by the nonpartisan Congressional Budget Office conveys a similar sense of urgency for addressing the debt ceiling, although it does not cite a specific default date. The report notes that without action by Congress, the Treasury Department "will most likely run out of cash near the end of October or the beginning of November."
URL: https://www.cbo.gov/publication/57493

Limited options: The new warnings from Yellen and the CBO came as legislative options for addressing the debt limit appeared to be narrowing.

The House on September 21 voted along party lines to approve a suspension of the debt limit through December 16, 2022, as part of a larger bill (H.R. 5305) that provided for a short-term extension of funding for the federal government ahead of the close of fiscal year 2021 on September 30. But that measure failed to advance in the Senate in the face of a promised filibuster from Republicans, who objected to the debt limit provision.

Breaking a filibuster requires a three-fifths supermajority – typically, 60 votes – and the motion to proceed to the bill was defeated by a margin 48-50 on September 27, with all GOP senators voting in opposition. (To address the government funding issue, senators voted on September 30 to strip out the debt limit language from H.R. 5305 and retain the provision to keep the government's doors open through December 3 of this year. The amended bill was then sent back to the House, where it was approved and sent to the president. See separate coverage in this issue for additional details.)

Separately, House Democrats on September 29 passed along party lines a stand-alone suspension of the debt limit through December 16, 2022. Senate Majority Leader Schumer is expected to try to bring up the measure during the week of October 4, but he is unlikely to succeed as Minority Leader Mitch McConnell, R-Ky., remains adamant that Republicans in his chamber will not support advancing legislation to increase or further suspend the debt limit as long as Democrats move forward on a reconciliation bill, since the reconciliation process gives Democrats the procedural tools to address the debt ceiling themselves.

Other procedural pathways for advancing the bill also appear to be closed. McConnell this week blocked a unanimous consent request by Schumer that would have allowed for passage of a stand-alone debt ceiling bill by a simple majority vote. And another option that has at least been rumored to be under discussion – that is, altering Senate rules in a relatively narrow way to eliminate the filibuster on debt limit-related legislation – reportedly is opposed by President Biden.

Do all roads lead to reconciliation?: McConnell has instead argued that Democrats can handle the issue on their own by including it in their reconciliation legislation, which would not be subject to the same supermajority threshold for passage.

It is important to note, however, that in order for Democrats to address the debt ceiling through reconciliation, they first would have to amend the already adopted fiscal year 2022 budget resolution to include reconciliation instructions calling for such a policy – a process that some have surmised could take as long as two weeks and which could entail at least one additional marathon “vote-a-rama” session in the Senate in which unlimited amendments may be offered and voted upon with little or no debate.

Given the timeframe laid out by Treasury Secretary Yellen this week – and the additional time likely required to amend the fiscal 2022 budget resolution – Democrats will have to make a determination in the near term as to whether they intend to address the debt limit under the budget reconciliation process.

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