Schumer sticks to Christmas deadline for Build Back Better action

With the Senate largely focused this week on a looming deadline to raise the debt ceiling, completing the annual national defense policy bill, and honoring the passing of former Senate Republican Leader and Finance Committee Chairman Bob Dole of Kansas, lawmakers made little public progress towards finalizing the Build Back Better Act's spending and tax increases. Senate Majority Leader Charles Schumer, D-N.Y., continued to insist his chamber will vote on the roughly $1.75 trillion legislative package before Christmas, but there is growing skepticism about whether the calendar—or every Democratic senator—will allow for that.

"We're down to just a small number of issues," Sen. Elizabeth Warren, D-Mass., told reporters December 7. "We're all here. The people who are intensely involved in those are negotiating almost around the clock. Another month, another three months is not going to make this any easier. It's time for us to cut our final deals."

Tax package on the way?

One key piece of the Senate's reconciliation proposal will be in place when Finance Committee Chairman Ron Wyden, D-Ore., releases the text of that panel's proposed tax title for the Build Back Better legislation.

Published reports, citing comments from Wyden, have indicated that the tax provisions would be made public as early as December 10; however, text had not been released as of press time.

Manchin remains a factor

Looming large over the prospects for moving a bill in the Senate is West Virginia Democratic Sen. Joe Manchin, who is viewed as the most conservative member of his party's caucus and has been a key figure all year in determining the size and content of the Build Back Better legislation.

Inflation and other concerns: Manchin still has not committed to supporting a bill this year and has raised concerns about its potential impact on the already-rising rate of inflation. (In a related development, the Labor Department reported December 10 that consumer prices rose 6.8 percent in November of this year compared to the same period in 2020. As of press time, Manchin had not commented publicly on how this news might influence his position on the Senate measure.)

As he talked to reporters on December 8, Manchin handed out notecards highlighting the numerous spending and economic assistance bills Congress has already passed this year—a move that many interpreted as an indication he does not support more spending and believes Democrats have enough accomplishments to run on in the 2022 midterm elections. In early September, Manchin called for a "strategic pause" in considering the Build Back Better bill, citing economic unknowns such as the impact of the COVID-19 pandemic, inflation, and geopolitical challenges, and he reiterated that position this week.

"We have to make sure we get this right," Manchin said December 7 at a *Wall Street Journal* event. "We can't just continue to flood the market as we're doing."

Manchin said he has differing views from many of his colleagues on proposed changes to the tax code, social spending programs, and climate policy, warning, "We get any one of those wrong and we're in trouble."

The West Virginian has previously noted his objections to including paid family and medical leave in the Build Back Better bill that was approved in the House last month, as well as to provisions that penalize continued use of fossil fuels (which were ultimately dropped in the House).

Short-term extensions, long-term costs: Manchin also has warned against the use of what he describes as budget gimmicks, such as short-term extensions of popular programs that are almost certain to be renewed for longer periods and therefore will be more expensive in the long run.

"Do they not intend for those programs to last the full 10 years?" he asked, referring to the House's use of short-term extensions of certain spending provisions and tax incentives to pare back the total cost of the bill. "Well, if you intend for that to happen, what's the real cost? Because we're either going to debt-finance it if we're not going to pay for it or come back and change the tax code again to try to get the revenue. Something's got to happen."

CBO weighs in: Republicans in Congress have raised similar questions about the potential long-term cost of the package. The nonpartisan Congressional Budget Office (CBO) provided some answers in a report released December 10 in which it estimated that certain selected temporary provisions in the House-passed reconciliation bill—including, among other things, enhancements to the child tax credit and the earned income tax credit and relief from the current-law cap on the deduction for state and local taxes (SALT)—would increase the deficit by $3 trillion over the 10 year budget window if they were made permanent.
URL: https://www.cbo.gov/publication/57673

The CBO prepared the report in response to a request from Senate Budget Committee ranking member Lindsey Graham of South Carolina and House Budget Committee ranking member Jason Smith of Missouri. Sen. Manchin, for his part, had not commented publicly on the CBO's estimate as of press time.

Behind the scenes

Senate Democratic leaders reportedly completed much of the necessary work this week to begin the formal process of ensuring all of the bill's provisions comply with the rules of budget reconciliation. (The budget reconciliation process allows the majority party to pass legislation with only a simple 51-vote majority but comes with extensive restrictions under what is known as the Byrd Rule.) The formal "Byrd Bath" is expected to take place the week of December 13, and any provision deemed out of compliance by the Senate parliamentarian will likely have to dropped from the legislation.

Beyond this procedure, though, Democrats are still grappling with disagreements over several provisions that must be resolved in a way that keeps all 50 Democrats in the Senate and nearly all of those in the House on board with the final bill. (In the closely divided House, Speaker Nancy Pelosi, D-Calif., can lose no more than three Democrats on any measure that lacks Republican support.) Key among these unresolved issues is how to address the $10,000 cap on the SALT deduction that was enacted in 2017's Tax Cuts and Jobs Act (P.L. 115-97).

The House version of the Build Back Better Act would temporarily increase the SALT cap from $10,000 to $80,000 for individuals—a provision included at the insistence of a coalition of members from high-tax states such as New Jersey, New York, and California. But a number of Democrats have balked at relaxing the cap, arguing that the resulting tax cut will accrue largely to households earning more than $1 million. Sens. Bernie Sanders, I-Vt., and Robert Menendez, D-N.J., have been working for several weeks to develop an alternative that reins in the benefit for the wealthiest households but have reached an impasse on income limits. (Sanders wants to eliminate the cap permanently for individuals earning less than $400,000, while Menendez said he wants a revenue neutral threshold, which, according to estimates, would be $550,000 for individuals and about double that for married couples. In both cases, the cap on the deduction would be extended—albeit at a higher level—beyond its currently scheduled 2025 expiration date.)

Finance Committee Chairman Wyden told *Bloomberg Tax* this week that he is working to broker a deal on SALT and is confident one can be reached. The negotiating parties are also reportedly working with key members in the House to ensure that any agreement also has the support needed to pass the House if the Build Back Better Act returns to that chamber for a final vote.

Do it for the children

Democrats have begun to focus on the pending expiration of enhanced child tax credit benefits at the end of 2021 as an argument for completing the Build Back Better legislation in the very near term. Economic relief bills targeting families during the pandemic increased the maximum amount of the child tax credit, made it fully refundable (ensuring households with low or no earnings receive the full benefit), and provided for it to be paid out in advanceable monthly installments. Unless Congress extends current law, the last enhanced monthly payment will be distributed December 15.

"We've got to pass [the Build Back Better Act] sufficiently in advance of January 15 to make sure that families continue to get this child tax credit." Sen. Tim Kaine, D-Va., told reporters December 7. "If you get too close to January 15 without an answer then there's a delay or a risk of missing a month."

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