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What to Know in Washington: Lawmakers Unveil FY19 Spending Deal

By Jack Fitzpatrick and Zachary Sherwood | September 14, 2018
Bloomberg Government

Lawmakers last night took a major step toward their goal of funding the government in fiscal 2019, unveiling full-year funding bills for defense, labor, health and education programs along with a continuing resolution to fund the rest of the government through Dec. 7.

The two-bill spending package that covers nearly 70 percent of the annual discretionary government budget would boost funds over fiscal 2018 for the departments of Defense, Health and Human Services and Education, while cutting Labor Department spending.

The defense appropriations portion would provide \$674.4 billion, including \$606.5 billion in base funding and \$67.9 billion in Overseas Contingency Operations funds, which are not subject to discretionary spending caps. The combined total is \$19.8 billion higher than the fiscal 2018 total of \$654.6 billion.

The Labor-HHS-Education bill would provide nearly \$178.1 billion in discretionary funding, a \$1 billion increase over 2018. In that measure, HHS would receive \$90.5 billion, which is a \$2.3 billion increase. The Department of Education would receive \$71.5 billion, a \$581 million increase. And DOL would receive \$12.1 billion, \$94.3 million less than last year.

The three-part package combines incentives for members in both parties and the White House to support. The defense spending bill is the top priority for many Republicans. So is the Labor-HHS bill for Democrats.

Combining those with a continuing resolution means President Donald Trump can either sign them into law or shut down almost the entire government.

“There’s going to be sufficient votes to pass the legislation,” Rep. Tom Cole (R-Okla.), chairman of the Labor-HHS Subcommittee, told reporters yesterday ahead of the conference report’s release. While conservatives may balk at the big spending and lack of Republican policy riders in the domestic portion of the package, Cole expects many Republicans to support the package because of the defense bill.

“If they want to vote against defense, that’s up to them,” Cole said.

House Freedom Caucus Chairman Mark Meadows (R-N.C.) said he’ll oppose the bill, but acknowledged his caucus has little leverage in spending negotiations. He said he expects the measure to get widespread support from Democrats, in addition to more moderate Republicans.

Rep. Hal Rogers (R-Ky.), former chairman of the Appropriations Committee, said he expects the Trump administration to sign the package into law.

The Senate could vote on the bill package next week with the House following the week after. That two-week time frame would avoid any lapse in government funding on Oct. 1, the start of the new fiscal year.

Update on Hurricane Florence

Hurricane Florence is on the brink of making landfall near Wilmington, North Carolina, battering the region with water and wind, threatening to unleash widespread destruction and stranding some people.

The eyewall of the Category 1 storm is already onshore in the state, bringing maximum sustained winds of 90 miles an hour and menacing the coast with life-threatening storm surges and heavy rains. Just 10 miles east of Wilmington, the storm was set to make landfall “very soon,” the National Hurricane Center said in a bulletin at 6:00 a.m. local time.

About 150 people were awaiting rescue from rising waters, the City of New Bern, North Carolina, said on its Twitter account, advising those affected to move to an attic or second story for safety. About 162,000 Duke Energy customers in North and South Carolina have been affected by power outages, according to the company’s website. As many as 3 million may eventually be in the dark for days or even weeks.

On the forecast track, the center of Florence is expected to move inland across the extremes of southeastern North Carolina and eastern South Carolina today and tomorrow. It will then go northward across the western Carolinas and the central Appalachian Mountains early next week, according to the NHC. Once the center moves inland, the intensity of the hurricane is set to decrease, according to a forecast discussion posted on the NHC’s website. Florence should weaken to a tropical storm after 36 hours, although rainfall could still be catastrophic.

Elections and Politics

Cuomo Beats Nixon: New York Governor Andrew Cuomo won the state’s Democratic gubernatorial nomination, beating actress Cynthia Nixon in an election that tested his ability to counter a progressive challenge in one of the nation’s most liberal states. Cuomo led Nixon 65 percent to 35 percent with 81 percent of districts reporting, according to the Associated Press, which declared the winner about 30 minutes after polls closed. Nixon conceded the race last night, declaring a victory in the ousting of several Democratic state senators who had aligned themselves with Republicans to thwart the progressive agenda.

Zephyr Teachout, a law professor and anti-corruption activist, lost a four-way race for the Democratic nomination for New York attorney general, even after receiving endorsements from the New York Times and other newspapers. Letitia James, the city's public advocate, won with 42 percent of the vote, while Teachout came in second with 31 percent, with 77 percent of precincts reporting, according to the AP.

The race for lieutenant governor was closer than the one for the top job. With 85 percent of precincts reporting, Cuomo's running mate, incumbent Kathy Hochul, led Nixon's partner, black city councilman Jumaane Williams, 53 percent to 47 percent. The race at the time was too close for the AP to call.

Obama on Stump: Former President Barack Obama called for Democrats and others concerned about the direction of the U.S. to vote in November and fix "politics that feels broken right now," as he campaigned in statehouse and congressional races attacking the politics and policies of his successor. Obama headlined a rally in Cleveland last night for Richard Cordray, the former head of the Consumer Financial Protection Bureau who's running for governor of Ohio, as well as other candidates including Senator Sherrod Brown. A Democrat hasn't won a statewide race in Ohio since 2012.

"What's at stake goes beyond partisan politics," he said. People "should be concerned with our current course, should be concerned about the basic institutions of our democracy, should want to see a restoration of honesty and decency and lawfulness to our government and should want to see some sort of checks and balances on what's happening right now." Obama didn't mention Trump by name in the 43-minute speech, before an estimated crowd of 4,250.

Bezos Philanthropy Plan: Jeff Bezos, the billionaire Amazon.com founder who for years kept mostly mum about his philanthropic vision, at long last outlined how he plans to give away a portion of the world's largest personal fortune. In a tweet yesterday and an address before 1,000-plus people in Washington, D.C., Bezos pledged \$2 billion of his fortune toward preschool programs in low-income communities and providing food and shelter for homeless families. Bezos will hire an executive team to run those preschools as a nonprofit group, while the money to fight homelessness will mostly go to existing shelters.

What Else to Know Today

Budget Deficit Grows: The U.S. budget deficit widened to \$898 billion in the 11 months through August, exceeding the Congressional Budget Office's forecast for the first full fiscal year under the Trump presidency. The budget deficit rose by a third in the October to August period from \$674 billion in the same timeframe a year earlier, the Treasury Department said in a statement yesterday. Spending rose by 7 percent to \$3.88 trillion, outpacing revenue gains of 1 percent to \$2.99 trillion. Revenue from corporations fell to \$163 billion, down by \$71 billion from a year ago.

The U.S. fiscal gap has continued to balloon under Trump, raising concerns the country's debt load, now at \$21.5 trillion, is growing out of control. A combination of Republican tax cuts enacted this year — that will add up to about \$1.5 trillion over a decade — and increased government spending are adding to budget strains.

Maryland Files Obamacare Suit: Maryland Attorney General Brian Frosh launched a counterattack yesterday to save Obamacare as a Texas federal judge contemplates killing it. Frosh sued the federal government in a Greenbelt, Md., court seeking a declaratory judgment that the Affordable Care Act is constitutional and a court order barring the U.S. from taking any action inconsistent with that conclusion.

Tax Guidance: U.S. companies anxiously awaiting guidance on how hard they'll be hit by a new foreign levy in the tax overhaul will have to stay tuned for at least another two months. The Internal Revenue Service

proposed regulations yesterday spanning 157 pages that provide some details on which assets are subject to the tax on Gilti, or global intangible low-tax income, and how to calculate it. But one of the most pressing questions — to what extent multinational companies can use foreign tax credits and business expenses to offset the levy — remained unanswered.

U.S. Climate Goal: The U.S. is on track to meet about two-thirds of its carbon-emissions goals under the Paris climate accord — even without the support of Trump. Cities, states, businesses and market forces are poised to trim carbon emissions to 17 percent below 2005 levels by 2025, according to a report presented yesterday by California Governor Jerry Brown and Michael Bloomberg. That compares with the 26 percent to 28 percent U.S. commitment under the Paris agreement. Trump said in 2017 that he intended to withdraw the U.S. from the accord. But the country can get within “striking distance” of the target by doing things like increasing renewable energy mandates and retiring coal power plants, the report said.

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Student Loan Rule Delay: A federal judge could reinstate as early as today an Obama-era rule to help students misled by colleges have their federal loans forgiven, a step that could leave the rule in place at least until July 2019. The Education Department rolled back the implementation date for the 2016 regulation, known as “borrower defense to repayment” to July 1, 2019, citing a pending lawsuit brought by the California Association of Private Postsecondary Schools. In response, students backed by advocacy groups and 19 states filled a suit against the department.

DOJ Social Media Probe: Attorney General Jeff Sessions’s meeting with state attorneys general to discuss complaints against social media companies has been expanded to include Democrats, the Justice Department said yesterday. Sessions had planned to meet only with Republican officials for a Sept. 25 gathering in Washington to consider a possible investigation of the giant technology companies over privacy concerns and accusations by prominent Republicans, including Trump, that they have suppressed conservative voices. Several Democratic attorneys general, expressing concerns that they were being left out of the Justice Department meeting, asked to be included.

FBI HQ Probe: A key House Democrat is calling for a congressional hearing over a report saying that the head of the General Services Administration may have misled Congress about White House meetings on the future site of the FBI’s headquarters. “We should hear from the Administrator of GSA and relevant officials of the FBI on why GSA and FBI have adopted a plan for a new FBI facility that involves spending more money to house fewer employees in a less secure location,” Rep. Peter DeFazio (D-Ore.), ranking member on the House Transportation and Infrastructure Committee, and Rep. Dina Titus (D-Nev.), wrote in a letter yesterday to Chairman Bill Shuster (R-Pa.).

Pompeo Slams Iran Over China’s Muslims: Secretary of State Mike Pompeo blasted Iran’s top leader for failing to speak out over China’s reported detention of large contingents of its Muslim minority population. Iranian Supreme Leader Ayatollah Ali Khamenei “fancies himself the leader of the Islamic world, but his regime has been totally silent as China — the top buyer of #Iran’s oil — has persecuted and detained hundreds of thousands of its Muslim citizens,” Pompeo wrote on Twitter.

The tweet is likely to cause as much or more dismay in Beijing, where authorities have faced increasing international scrutiny of their treatment of Turkic-speaking Uighurs while also engaged in a trade war with President Donald Trump’s administration. Multiple accounts have emerged of secretive “re-education camps” that have detained tens of thousands to “upwards of 1 million” Uighurs, according to a United Nations committee’s assessment.

Korea Relations: South Korea opened a liaison office at an industrial park it sponsors in the North Korean city of Gaeseong today, allowing rival officials to communicate around-the-clock for the first time since the start of the Korean War. Seoul's Unification Ministry said more than 50 South Koreans crossed the border to Gaeseong to attend the opening ceremony. It said it hoped the new communication channel would ease tensions between the two countries, aiming toward bringing about denuclearization of the North. "A new chapter in history is starting here today," the ministry's chief Cho Myoung-gyon told North and South Korean officials and other guests at the ceremony. "It is a symbol of peace made jointly by South and North Korea."

Text of Final Minibus With U.S. Stopgap Funding Released

By Jack Fitzpatrick and Greg Sullivan | September 13, 2018
Bloomberg Government

Lawmakers release the text of a measure that would fund portions of the U.S. government through Dec. 7, as lawmakers iron out longer-term bills.

- The stopgap funding bill would extend the Violence Against Women Act, which was set to expire after Sept. 30, through Dec. 7
- Measure is attached to spending package covering full FY19 appropriations for Defense, Labor and HHS, and will cover all agencies as a backup, even though several of the spending bills may be signed before the end of this fiscal year.

The two-bill spending package would boost funds for the Pentagon, HHS and Education, and would cut Labor Dept. spending.

- Defense appropriations bill would provide \$674.4b, including \$606.5b in base funding and \$67.9b in Overseas Contingency Operations funds, which are not subject to discretionary spending caps.
- Combined total is \$19.8b higher than fiscal 2018 total of \$654.6b

Labor-HHS-Education bill would provide nearly \$178.1b in discretionary funding, a \$1b increase over FY18

- HHS would receive \$90.5b, a \$2.3b increase over FY18; Department of Education would receive \$71.5b, a \$581m increase
- Labor would receive \$12.1b, \$94.3m below FY18

Centers for Disease Control would receive \$7.9b, a \$354m cut from FY18

Agriculture News

Fertilizer Retailers Want Farm Bill Shield From Safety Regulations

- Farm bill negotiations to decide fate of OSHA policy change
- Farm group says change needed to constrain agency

By Sam Pearson | September 13, 2018
Bloomberg Government

A 2013 fertilizer plant blast in West, Texas, prompted OSHA to narrow an exemption from a process safety rule. A court later blocked the action, and that type of regulation could be barred permanently under language being considered in the farm bill.

Fertilizer retailers and certain chemical storage facilities could sidestep safety rules guarding against catastrophic releases of hazardous substances under farm bill language lawmakers are considering.

The changes, included in a version of the farm bill (H.R. 2), which passed the House on June 21, would prevent the Occupational Safety and Health Administration from changing the way it treats these retailers and chemical facilities that sell directly to the public.

The agency had exempted the companies from a safety program for employers that use large quantities of chemicals such as chlorine, anhydrous ammonia, and hydrogen fluoride.

“It would help out the retailers and the agricultural industry in my district and across America,” Rep. Bradley Byrne (R-Ala.), the chairman of the House Education and the Workforce Committee Subcommittee on Workforce Protections, told Bloomberg Environment on Sept. 12.

Lawmakers are trying to merge House and Senate versions of the bill, and the four leaders of the agriculture committees in both chambers met Sept. 12 to negotiate.

A spokeswoman for Senate Agriculture Committee Chairman Pat Roberts (R-Kan.) didn’t respond to Bloomberg Environment’s request for comment on the provision that would codify the exemption for these facilities from the process safety rules.

What lawmakers decide could have long-term implications for the storage facilities and communities near them. If the exemption were to become law in the farm bill, OSHA would need Congress’s approval to ever change the exemption in the future.

‘Regulatory Certainty’

For more than 25 years, OSHA has exempted from process safety management regulations facilities such as fertilizer sales depots that keep chemicals on site to sell to the public. An example is an agricultural retail facility that stores in a single large tank of anhydrous ammonia, an important nitrogen fertilizer for many crops in the U.S., and sells it to farmers in smaller nurse tanks.

A 1992 OSHA regulation setting process safety management standards exempted retailers and these types of facilities if they generated more than half of their income from direct sales to “end users,” such as farmers and ranchers. The quantity of chemicals kept on-site is not a factor.

After a Texas fertilizer plant, exempted from the program, exploded in 2013 killing 15 people, the Obama administration tried to limit the exemption to fewer facilities handling smaller amounts of chemicals.

The effort failed when the U.S. Court of Appeals for the District of Columbia Circuit blocked the action in 2016. The court ruled the agency had to conduct a rulemaking—a longer process allowing for public input—to make the change.

‘Regulatory Certainty’

Industry organizations such as the Agricultural Retailers Association, which represents businesses that sell farm chemicals like anhydrous ammonia fertilizers, want to make sure the agency never does.

“It’s regulatory certainty, more than anything,” Kyle Liske, director of public policy at the retailers’ group, which has pushed for the farm bill provision, told Bloomberg Environment. With the prospect that future administrations could take a tougher stance, “that’s not a good business environment.”

Estimates of the cost to companies that would no longer be exempt from the safety rules absent the farm bill provision have varied. Regulators have said it would cost retailers about \$10.4 million, or \$2,160 per facility, while companies peg the true cost as 10 times higher.

If successful, the retailers’ strategy would tie OSHA’s hands, Micah Smith, a partner with the workplace safety practice group at the law firm Conn Maciel Carey LLP in Washington, told Bloomberg Environment.

Under the House farm bill provision, OSHA would have to issue a regulation within 180 days restoring an old definition of a retail facility, and a future administration would have no legal authority to reverse it.

“If Congress speaks and makes its intent very clear, the agency doesn’t have the opportunity to do anything differently,” Smith said.

Groups such as the United Steelworkers Union and the National Safety Council, and former Obama administration officials oppose the change, calling it harmful and dangerous.

“Imposing this definition without any notice and comment is really kind of outrageous,” Jordan Barab, OSHA’s deputy director from 2009 to 2017, told Bloomberg Environment.

Federal Employee News

Unions: Compliance with Court Ruling on Executive Orders Mixed, Slow

FedWeek
September 12, 2018

Democrats active in oversight of HHS have asked it to reverse policies imposed on the FDA after cutting off negotiations with the NTEU.

In the several weeks since a federal court ruled invalid a number of key provisions of President Trump’s set of three executive orders on union – and disciplinary-related matters, agency compliance remains mixed and slow, federal unions say.

Although OPM has ordered agencies to comply with the ruling, unions say that agencies have been only partly responsive on matters such as restoring prior policies on matters of top importance to them—but that some agencies revoked under terms of the executive orders. Those include free use of agency space and equipment they traditionally were provided as well as availability of official time to conduct certain union-related business.

The ranking Democrat on the House Oversight and Government Reform Committee, Rep. Elijah Cummings of Maryland, has pressed both OPM and OMB for details on what is being done “to bring agencies into compliance with the judge’s decision and remedy past violations.” Also, two Democrats active in oversight of HHS, Reps. Rosa DeLauro of Connecticut and Jan Schakowsky of Illinois, have urged that department to

reverse policies it imposed on its FDA component after cutting off negotiations with the NTEU union under terms of the orders.

The AFGE union meanwhile has won an arbitration case in which it contended that the VA violated an agreement between the two in the way it carried out a 2017 law giving the agency greater leeway in imposing discipline against employees. That agreement included a guarantee that employees would be given a formal period to improve before being disciplined on performance grounds. The union argued that by shortening the notice and response time to proposed discipline as the law allows, the VA effectively eliminated that period. The ruling, unless overturned, could require the reinstatement with back pay of numerous employees disciplined in the year since that law passed.

For Preventing Shutdown, It's Getting Late Early

Fedweek
September 12, 2018

Although not yet even mid-month, time is already short for Congress and the White House to agree on keeping federal agencies open beyond the end of the current fiscal year September 30.

While some entire agencies, and parts of others, would not be directly impacted by a funding lapse, some 800,000 executive branch employees of about 2.1 million outside the Postal Service are in positions that would be subject to unpaid furloughs in the case of a deadlock of the sort that occurred in 2013. That time, a partial shutdown triggered by a standoff over the then-pending start of the Affordable Care Act program lasted nearly two weeks. Two brief partial shutdowns occurred earlier this year due to disagreements about border security, the same issue underlying the current threat.

As has been the pattern for many years, Congress has passed none of the 12 regular appropriations bills needed for the start of the new fiscal year, although both the House and Senate have passed some of them individually or as part of packages. One, funding energy and water programs, military construction, veterans programs, and Congress, could emerge from a conference for final floor voting at any time.

Other potential candidates for action before the end of the current fiscal year include a second combined measure, covering financial services agencies and general government matters and Interior/environmental agencies, and a separate bill covering just DoD operations. If all of those were to be passed by Congress—and signed by President Trump—before the deadline, more than half of the government would have regular funding and employees in affected agencies would be safe from a furlough threat.

However, the fate of employees subject to furloughs in other agencies would depend on whether leaders would agree to extend funding for them for a time, most likely until after the elections. That in turn would depend on political assessments that have little to do with the actual operations of the affected agencies.

After a shortened work week this week, Congress plans to be in recess next week, returning for only four days of scheduled work before the end of the month.

Bipartisan Support for 2019 Raise Building

FedWeek
September 12, 2018

Some House Republicans have joined the call for payment of a federal employee raise in January, potentially improving chances that House-Senate negotiators on the general government spending bill will agree to one.

While the White House and Congress have until year's end to make that decision, it could come sooner, potentially before the end of this month.

The views of even a minority of House Republicans could be a key consideration as political leaders decide on what is shaping up as a choice between a freeze and a 1.9 percent average raise. The House earlier effectively endorsed President Trump's call for a freeze by remaining silent on the raise in that bill, which it passed on largely a party-line vote.

In contrast, the Senate version—passed on a bipartisan 92-6 vote—contains a raise, which it would split as 1.4 percent across the board and 0.5 percentage points to be divided as locality pay. The Senate structured its language to not result in an increase in spending; it requires agencies to absorb the additional cost out of existing funding in accounts that fund salaries as well as expenses such as training and travel.

A House-Senate conference on that bill has not yet started, but Trump's recent repeat of his call for a freeze – setting it by default should no figure be enacted into law by year's end —spurred opposition from some House Republicans in districts with large populations of federal employees. Trump himself soon afterward signaled that he was open to reconsidering the issue, although the White House has said nothing more since.

In the latest development 16 House Republicans joined seven Democrats in a letter to Trump urging him to accept a raise if one is included in a spending bill presented to him. Several Republicans running for empty or Democratic seats in Congress also have backed a raise.

In two other letters, nearly all House Democrats urged appropriators to “stand with our federal workers by supporting the modest 1.9 percent pay raise passed in bipartisan fashion by the Senate.”