Short-term funding patch averts government shutdown but triggers McCarthy's ouster as speaker

With just hours left before the start of the 2024 fiscal year, Congress on September 30 approved and President Biden signed a continuing resolution to fund the federal government at fiscal year 2023 levels through November 17. As a result, lawmakers dodged a government shutdown that otherwise would have taken place on October 1. However, the last-minute decision by then-House Speaker Kevin McCarthy, R-Calif., to move a bill that relied heavily on Democratic votes for passage alienated a small bloc of his most conservative GOP colleagues and set in motion a series of events this week that ultimately cost him his leadership post and brought further legislative action in the chamber to a standstill.
URL: https://www.congress.gov/bill/118th-congress/house-bill/5860/text

A bipartisan stopgap

Even though then-Speaker McCarthy and President Biden reached an agreement on discretionary spending caps for fiscal year 2024 when they negotiated the Fiscal Responsibility Act (P.L. 118-5), the debt limit deal that was signed into law this past June, lawmakers have not finalized any of the 12 appropriations bills required to keep federal departments and agencies operating beyond the close of fiscal year 2023 at midnight on September 30. In recent weeks, with a full-year funding agreement elusive, McCarthy had faced a series of roadblocks—particularly coming from members of the House Freedom Caucus, who wanted spending caps significantly below the fiscal year 2023 levels agreed to in the debt limit deal plus assorted other policy changes, and who were adamant that any spending legislation for the new fiscal year be approved with Republican votes alone. These challenges had prevented Congress from passing even a short-term measure to maintain government operations into the new fiscal year, despite the fact that many of the proposals McCarthy had attempted to advance included concessions designed to stave off intra-party opposition. (Republicans currently hold 221 seats in the chamber, Democrats hold 212, and 2 seats are vacant, so McCarthy could afford no more than 4 defections within his own ranks if he wished to move legislation that could be approved without relying on Democratic support.)
URL: https://www.congress.gov/118/plaws/publ5/PLAW-118publ5.pdf

The logjam ultimately was broken when McCarthy bypassed his conservative flank and brought a continuing resolution to the House floor on September 30 that had the backing of moderate Republicans plus the chamber's Democrats that keeps the government's doors open for several weeks, provides additional money for disaster relief, and extends (through December 31) authorizations for the Federal Aviation Administration (along with the excise taxes on fuel and passenger tickets that provide the agency's dedicated revenue stream) and the National Flood Insurance Program. It does not include additional aid for Ukraine—something that had been a priority for a number of lawmakers in both chambers and on both sides of the aisle but was a dealbreaker for others—nor does it include border security provisions sought by more conservative House and Senate Republicans.

That continuing resolution cleared the House by a vote of 335-91, with 90 of those "no" votes coming from the GOP. It was approved in the Senate later that day by a vote of 88-9. (Senate leaders set aside a separate bipartisan stopgap proposal they had been advancing so that the chamber could instead quickly take up the emerging House bill. Republicans cast all nine of the “no” votes when the House-approved bill reached the Senate floor.) President Biden quickly signed the measure into law after it reached the White House.

A vacant speaker’s chair

McCarthy’s decision to advance a bipartisan stopgap at fiscal year 2023 funding levels raised the ire of some Freedom Caucus members, who argued that the speaker had reneged on a handshake promise he made to conservatives when he won the gavel last January that he would hold federal spending to levels in effect for fiscal year 2022. (The Freedom Caucus has maintained that the fiscal year 2023 caps in the Fiscal Responsibility Act provide a ceiling for spending in the new fiscal year, but not a floor.)

McCarthy’s decision also prompted Rep. Matt Gaetz, R-Fla., on October 2 to file a “motion to vacate”—a procedural measure in the House that, if successful, allows lawmakers to oust a sitting speaker.

Gaetz’s action came as no surprise. Freedom Caucus members had vowed in recent weeks that they would move to boot McCarthy from his leadership post if he relied on Democrats to approve a stopgap, and under the new House operating rules McCarthy agreed to when the 118th Congress convened in January, any one member can force a vote on a motion to vacate—a threat that McCarthy’s conservative Republican opponents have used as leverage throughout the year to extract various policy concessions. The motion to remove McCarthy was approved on October 3 by a vote of 216-210, with 8 Republicans and 208 Democrats aligned in the “aye” column.

What’s next for House leadership?

Moments after the speaker’s chair was declared vacant, Rep. Patrick McHenry, R-N.C., was named speaker pro tempore, allowing him to lead the House until the election of a new speaker. (McHenry was first on a “continuity of government” successor list that McCarthy was required to supply when he was elected speaker in January.) The chamber then went into recess and is not expected to resume legislative business until at least October 11, when Republicans hope to elect a new speaker. (The disruption in the legislative calendar led to the postponement of a Ways and Means Committee mark-up of disaster relief tax legislation that had been scheduled for October 4. The mark-up had not been rescheduled as of press time.)

Candidates for speaker are expected to make their respective pitches to the House Republican Conference on October 10, after which conference members will select a nominee by majority vote. Republicans hope that their nominee will be put up for a vote on the House floor the following day. The speaker is elected by a vote of the entire House, so to win the gavel the nominee has to secure an absolute majority of all members present and voting. Although in the past this has been a fairly straightforward process, McCarthy’s election as speaker at the start of the 118th Congress in January stretched out over four days and 15 ballots as he struggled to gain majority support. If it becomes clear that the Republicans’ nominee cannot clinch an outright majority of all members (meaning no more than four GOP members can support other candidates, as all

Democrats are expected to vote for their leader, Rep. Hakeem Jeffries of New York) it is possible floor proceedings will be delayed until there is greater certainty that a speaker can be elected.

As of press time, the list of declared candidates for the top spot includes House Majority Leader Steve Scalise, R-La., and House Judiciary Committee Chairman Jim Jordan, R-Ohio. That list could grow in the coming days if additional GOP lawmakers decide to seek the gavel. One name that definitely won't appear on the candidate roster is Kevin McCarthy, who announced October 3 that he will not make a bid to reclaim his former job even though he is allowed to do so under House rules.

Implications for spending policy: New speaker, old problems

Under a best-case scenario in which the leadership election is wrapped up quickly, once the next House speaker takes office, Congress will have just over five weeks to either reach a full-year funding pact for fiscal year 2024 or adopt another stopgap spending bill to buy time for the House and Senate to reach a more durable agreement before the current stopgap spending measure expires on November 17; otherwise, lawmakers will once again face the possibility of a federal government shutdown. And as the spending debate unfolds, House Republicans will still be operating with an extremely tight majority, which means the next speaker will run the distinct risk of being constrained by the same forces that hamstrung former Speaker McCarthy during his nine months leading the chamber:

- First, the next House speaker, like McCarthy, will have limited options for advancing spending legislation. Even if a majority of all House members support spending at or near the fiscal year 2023 caps spelled out in the debt limit bill, he or she would likely face procedural roadblocks from more conservative GOP lawmakers by putting spending bills on the floor at that level. Indeed, even trying to do so would run the risk of antagonizing members of the House Freedom Caucus and could trigger another "motion to vacate" the speakership.
- Second, the next speaker, like McCarthy, also will have to contend with the fact that a House-approved spending bill that hews to the significantly lower caps demanded by Freedom Caucus members would be rejected by the Senate and the White House. Senate Democrats and President Biden will continue to insist on the fiscal year 2023 spending levels outlined in the Fiscal Responsibility Act, and even though Senate Democrats have so far been unable to bring any of their 12 spending bills to the floor (for procedural reasons that now appear to have been resolved) there seems to be substantial support among Senate Republicans for adhering to the caps set in the debt limit agreement. It's worth noting that all 12 of the Senate's spending measures cleared the Appropriations Committee by unanimous or near-unanimous margins; moreover, there do not appear to be 60 votes in the Senate to reduce spending to fiscal year 2022 levels. (Recall that 60 votes is the threshold for overcoming procedural hurdles in the Senate and allowing most legislation to advance.)
- Third, as November 17 closes in and the current stopgap spending measure is set to lapse, the specter of a government shutdown will loom once again. But because no one has yet identified a "unicorn" long-term spending plan that can get 60 votes in the Senate *and* can pass muster with all but a small handful of House Republicans, the next speaker will soon face McCarthy's dilemma of how to balance the conflicting demands of rival constituencies within the GOP against the more unified stance of

lawmakers on the other side of the Rotunda and reach an agreement that puts the government on a stable funding path for the new fiscal year.

Implications for tax legislation: Could a sour mood kill a year-end deal?

While the appropriations process does not directly affect tax legislation or the work done in the congressional taxwriting committees, some staff members have expressed concern that the animosity on Capitol Hill in this year's spending debate will make it challenging for Republicans and Democrats to successfully negotiate a tax bill before year-end. The internal fissures among House Republicans arising from the negotiations over the latest stopgap measure, as well as Democratic anger over former Speaker McCarthy's decision to open an impeachment inquiry into President Biden and the speaker pro tempore's decision this week to evict former Speaker Nancy Pelosi, D-Calif., and former Majority Leader Steny Hoyer, D-Md., from prime office locations just off the House floor are unlikely to make those challenges any easier.

Areas of (possible) consensus: There is a strong push from the business community, and from many members in both chambers, for Congress to repeal or delay several revenue-raising provisions that were enacted in the Tax Cuts and Jobs Act of 2017 (TCJA, P.L. 115-97) and have recently taken effect—notably, a move from expensing to amortization for research and development investments (section 174), stricter limitations on business interest deductibility (section 163(j)), and a phasedown of bonus depreciation. These provisions were most recently included in the American Families and Jobs Act—the formal title for a trio of largely business-focused tax measures that were approved in the House Ways and Means Committee in June. (For prior coverage, see *Tax News & Views*, Vol. 24, No. 24, June 16, 2023.)
URL: https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf
URL: https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/230616_1.html

Areas of contention: Although Ways and Means Committee Chairman Jason Smith, R-Mo., has suggested that the legislation could provide the foundation for a potential deal on taxes this year, it was facing obstacles even before the spending debate came to dominate the agenda on Capitol Hill.

For example, Chairman Smith had hoped to bring that package to the House floor before the chamber adjourned for its August recess, but that plan was stymied as Republicans argued behind closed doors about whether or not to add provisions to repeal or relax the current-law cap on the federal deduction for state and local taxes (SALT).

The House's SALT Caucus includes lawmakers in both parties who represent jurisdictions with high state and local income and property taxes, and there are enough GOP members in that group to prevent the measure from passing if it comes to the floor without some kind of SALT relief; however, there also is a contingent of lawmakers representing lower-tax jurisdictions who are just as adamant about keeping SALT relief out of a tax bill. A similar dynamic is at work in the Senate.

Another potential stumbling block to an eventual deal could involve partisan differences over possible enhancements to the child tax credit. Senate Finance Committee Chairman Ron Wyden, D-Ore., and many Democrats in both chambers have called for expanding the current-law credit—for example, by increasing

credit amounts, adjusting refundability thresholds, and making the benefit available in advanceable monthly installments, similar to what Congress did on a temporary basis in the American Rescue Plan Act of 2021 (P.L. 117-2). In the wake of US Census Bureau data released last month showing that child poverty rates increased dramatically after the expiration of the American Rescue Plan provisions, Wyden stated in a news release that "[a]ny end-of-year tax package must include expansions to the child tax credit."
URL: https://www.congress.gov/117/plaws/publ2/PLAW-117publ2.pdf
URL: https://www.census.gov/newsroom/press-releases/2023/income-poverty-health-insurance-coverage.html
URL: https://www.finance.senate.gov/chairmans-news/wyden-calls-for-expansion-of-child-tax-credit

Ways and Means Chairman Smith, for his part, has in the past suggested that he could accept enhancements to the child tax credit as long as they were coupled with work requirements. In a recent interview with *Punchbowl News*, however, he appeared to favor narrower changes, stating that he wants to ensure that the credit amount doesn't fall to $1,000 (from its current level of $2,000) after 2025 as currently scheduled under the TCJA.

Uncertain path forward: Even though congressional and taxwriting leaders have sought to address issues around research expenditures, business interest deductibility, and bonus depreciation for much of the past two years, they have had—and continue to have—difficulty agreeing on the contours of a larger legislative package that would provide the vehicle to advance those priorities. Any divisive issues—such as the current standoff over spending—that heighten tensions in Congress or otherwise sap the energy and political goodwill required for dealmaking in other areas run the risk of jeopardizing the already precarious prospects for an agreement on taxes before the end of 2023.

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