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## Government shutdown averted as 'laddered' stopgap spending measure is signed into law

Congress this week approved and President Biden signed a "laddered" continuing resolution (CR) proposed by House Speaker Mike Johnson, R-La., that extends funding for government operations at fiscal year 2023 levels on a staggered schedule into early next year, with deadlines of January 19 for some departments and agencies and February 2 for others. Enactment of the legislation averted a government shutdown that otherwise would have taken place when the previous stopgap measure keeping the government's doors open expired at midnight on November 17.

The Further Continuing Appropriations and Other Extensions Act, 2024 (H.R. 6363) cleared the House on November 14 by a margin of 336-95 under an expedited process known as "suspension of the rules," which requires a two-thirds vote for passage. As was the case with the stopgap measure approved ahead of the start of fiscal year 2024 on October 1, Democrats dominated the "aye" column, supplying 209 votes for passage compared to 127 from the GOP. Republicans cast 93 of the "nay" votes, with only 2 Democrats joining them in opposition.
**URL:** https://www.congress.gov/bill/118th-congress/house-bill/6363/text

The measure was approved in the Senate one day later by a bipartisan vote of 87-11. Democrats and the 3 Independents who receive their committee assignments from that party accounted for 50 of the "aye" votes, compared to 37 from the GOP. Republicans provided 10 of the 11 "nay" votes.

President Biden signed the measure into law on November 16.

**Reversal of fortunes**

When Speaker Johnson initially floated the concept of a laddered CR just two weeks ago, it was embraced by most conservative House Republicans, who contended that it would compel legislative action on individual spending bills ahead of the staggered deadlines and reduce the odds that Congress would punt and accept a sprawling, last-minute "omnibus" appropriations bill as it has done in recent years. Democrats in both chambers (and even a few Republicans in the Senate) considered the mechanism unwieldy, however, and feared that staggered funding deadlines would simply lead to staggered shutdown threats.

But there was a notable realignment in support among lawmakers when Johnson unveiled the actual legislative text of his proposal on November 11. Many GOP conservatives, particularly in the House, scoffed at the measure because it does not include additional spending cuts or other policy riders favored by Republicans. House Freedom Caucus member Chip Roy, R-Texas, for example, characterized it in a statement posted on X (formerly known as Twitter) November 11 as "funding Pelosi level spending [and] policies for 75 days [in exchange] for future 'promises.'"

Congressional Democrats, for their part, remained skeptical that the staggered funding deadlines would actually work, but they dropped their hardline opposition once they saw the measure keeps spending at fiscal year 2023 levels and is free of any extraneous policy provisions that they would have regarded as "poison pills." (They were, however, disappointed that the measure does not address some of the White House's supplemental spending requests, particularly emergency aid for Israel and Ukraine.)

Senate Majority Leader Charles Schumer, D-N.Y., told reporters November 14 that the plan "does two things Democrats pushed for: [first,] not making the hard-right cuts that the [conservative GOP] wing demands and second, making sure that . . . defense [spending] is in the second part of the ladder, not the first." Schumer added that he and President Biden, who also had been wary of the laddering concept, reached the conclusion that "if this can avoid a shutdown it'll be a good thing."

**New deadlines, old problems**

Enactment of this latest stopgap spending plan gives lawmakers additional time to reach a more durable funding agreement for fiscal year 2024, but it remains unclear just how—or whether—lawmakers will be able to address a host of longstanding challenges as they attempt to meet this goal.

**High volume, limited time:** First, the volume of unfinished appropriations work in both chambers remains formidable. As of press time, the House has approved 7 of the 12 the spending bills required to fully fund the government and the Senate has cleared only 3. No bills have been reconciled in bicameral conference negotiations.

And even though the new schedule does indeed provide some extra breathing room for Congress to wrap up the appropriations process, the actual legislative calendar for the next two months is still fairly compressed. Between now and the end of this year, the House is scheduled to be in session for only 12 days and the Senate is in for 15. The recently released House calendar for 2024 indicates that the second session of the 118th Congress will begin on January 9, with lawmakers in session for 8 days leading up to the first funding deadline on January 19. House members are then scheduled to recess the week of January 22 for the Martin Luther King holiday and return on January 29—just 4 working days ahead of the second funding deadline on February 2. (The Senate calendar for 2024 has not yet been released but lawmakers in that chamber are not expected to be in session for an appreciably larger number of days than the House in the first five weeks of next year.)

**Intractable divide over spending levels:** Second, the House and Senate remain fundamentally at odds over topline spending numbers for federal departments and agencies for fiscal year 2024.

The Democratic-led Senate seems intent on funding government operations at fiscal year 2023 levels as agreed to in the Fiscal Responsibility Act (P.L. 118-5), the debt limit deal hammered out between President Biden and then-House Speaker Kevin McCarthy, R-Calif., that was signed into law this past June.
**URL:** https://www.congress.gov/118/plaws/publ5/PLAW-118publ5.pdf

Senate Appropriations Committee Chair Patty Murray, D-Wash., doubled down on her party's position in floor remarks November 15 ahead of that chamber's vote on the new CR.

"So let me be clear: the negotiating [on topline numbers] has already happened," Murray said. "House Republicans just need to stick to their word and what they helped pass into law."

In the Republican-controlled House, meanwhile, members of the Freedom Caucus remain adamant that Congress must cut spending to the levels in effect for fiscal year 2022, consistent with what they say was a "handshake" agreement they made with Kevin McCarthy this past January when he was campaigning to win the speaker's gavel. Their contention is that the topline numbers in the Fiscal Responsibility Act set a ceiling for spending, but not a floor. (McCarthy's decision in September to rely on Democratic votes to advance the six-week stopgap that funded the government at fiscal year 2023 levels through midnight on November 17 sparked a rebellion among some Freedom Caucus members and assorted other Republicans that led to him being booted from the speakership on October 3.)

**A high-wire act for the House speaker:** Third, the hard partisan divide on spending potentially leaves Speaker Johnson with limited options for advancing appropriations legislation through his chamber, where the GOP holds an extremely narrow majority and just a handful of defections from within the party can sink any measure that has strong opposition from Democrats.

Even if a majority of all House members (that is, Democrats plus centrist Republicans) support spending at or near the fiscal year 2023 caps spelled out in the debt limit legislation, Johnson could face procedural roadblocks from more his more conservative GOP flank if he puts spending bills on the floor at that level.

Indeed, the far-right wing of the party already fired a warning shot on that front just this week. The day after the Johnson's proposed laddered CR cleared the House, Freedom Caucus members joined with Democrats to defeat the rule teeing up debate on a pending full-year appropriations measure—the Commerce-Science-Justice bill—to voice their displeasure with a stopgap that includes no spending cuts or GOP policy "wins" and required Democratic support for passage. (The GOP defectors also cited other policy objections unrelated to spending in the Commerce-Science-Justice measure.) That setback, along with concerns from moderate Republicans about provisions in the Labor-HHS-Education package being debated this week that left its prospects in doubt, prompted GOP leaders to cancel floor votes for the remainder of the week and adjourn early for the Thanksgiving recess. (These hiccups came just one week after Johnson was forced to pull two other GOP spending bills—the Transportation-HUD package and the Financial Services and General Government measure—because of dueling policy concerns among conservative and moderate Republicans.)

Texas Rep. Chip Roy told reporters November 15 that the decision by Freedom Caucus members to block the Commerce-Science-Justice bill this week was their way of challenging Speaker Johnson to lay out a clear plan for advancing spending cuts and other conservative policies as the appropriations process moves forward.

"We're standing up and we said 'no' today, and the speaker now has 10 days to work it out and get Republicans to actually stand up and fight . . . ," Johnson said. "He's promising a fight so we're sending a message right now. We expect that fight when we get back from Thanksgiving. We need a plan to reduce spending overall for [fiscal year 2024], pay for any supplemental spending, stop sending blank check money to Ukraine, stand with Israel, hold the Senate in check, and do what we need to do to secure the [US] southern border."

Freedom Caucus members adopted a similar strategy in June—in the wake of what they saw as the unfavorable deal on spending in the Fiscal Responsibility Act—when they staged a protest that essentially stymied action on the House floor for several days. (For prior coverage, see *Tax News & Views*, Vol. 24, No. 25, June 23, 2023.)
**URL:** https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/230623_4.html

But Johnson also will have to contend with the fact that any House-approved spending bills that hew to the significantly lower caps demanded by his more conservative members or that contain policy changes various House Republicans are seeking would be rejected by the Senate and the White House. It's worth noting that all 12 of the Senate's spending measures cleared that chamber's Appropriations Committee by unanimous or near-unanimous margins; moreover, there does not appear to be 60 votes in the Senate to reduce spending to fiscal year 2022 levels. (Sixty votes is the threshold for overcoming procedural hurdles in the Senate and allowing most legislation to advance.)

Johnson's dilemma likely will intensify as the January 19 and February 2 deadlines draw nearer. But because no one has yet identified a "unicorn" approach to spending that can get 60 votes in the Senate *and* can pass muster with all but a small handful of House Republicans, Johnson is stuck in the awkward and possibly untenable position of having 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 on must-pass legislation.

**Implications for tax legislation**

It is still unclear exactly what the ongoing dispute over appropriations for fiscal year 2024 may mean for action on significant tax legislation in the near term. Although specific details are scarce, recent reports have indicated that taxwriting committee leaders in the House and Senate may be closing in on an agreement that would provide some $35-40 billion in business-focused tax relief—presumably including provisions to reverse certain changes that have taken effect pursuant to 2017's Tax Cuts and Jobs Act (P.L. 115-97) that curtailed deductions for research expenditures and business interest expense, and dialed back immediate write-offs for capital investments—along with a similarly-sized package of enhancements to the child tax credit. (For prior coverage, see *Tax News & Views*, Vol. 24, No. 38, Nov. 10, 2023.)
**URL:** https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf
**URL:** https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/231110_1.html

The prospect of Republicans and Democrats targeting tax packages of roughly similar size would seem to be a good sign for those striving to see enactment of a modest tax measure. Just what legislative vehicle could carry a tax package remains an open question, however. In recent years, tax legislation of a similar scope has often been attached to omnibus appropriations measures, but if Johnson's laddered CR approach works as intended and yields a series of single spending bills rather than an omnibus, lawmakers may be hard pressed to find another suitable measure to which they could attach a tax title.

Alternatively, if negotiations on single spending bills falter and Congress either punts to an omnibus measure or adopts a long-term continuing resolution—Johnson has said he will not accept another short-term stopgap—then tensions arising from that process could sap the energy and political goodwill required for any further dealmaking and leave the prospects for a tax package in doubt.

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## Deloitte Tax looks at expanded guidance on wash sale relief for redemptions of shares in money market funds

The Treasury Department and the Internal Revenue Service released new guidance, Rev. Proc. 2023-35, on September 29 which provides that the IRS will not treat a redemption of shares in a money market fund (MMF) as part of a wash sale for purposes of section 1091(a).
**URL:** https://www.taxnotes.com/research/federal/irs-guidance/revenue-procedures/irs-expands-guidance-on-wash-sale-rules-for-money-market/7hdn3
**URL:** https://www.taxnotes.com/research/federal/usc26/1091/cqq5-0000002

Specifically, Rev. Proc. 2023-35 extends wash sale relief to redemptions of shares in MMFs that maintain fixed share prices but impose liquidity fees on shareholder redemptions. The new guidance amplifies and supersedes Rev. Proc. 2014-45, which exempted losses on floating-net asset value MMF shares from the wash sale rule. The IRS issued Rev. Proc. 2023-35 in response to final rules adopted by the Securities and Exchange Commission on July 12 of this year, which amended Rule 2a-7 under the Investment Company Act of 1940 to expand the circumstances in which an MMF may (or may be required to) impose a liquidity fee on redeeming shareholders.
**URL:** https://www.taxnotes.com/research/federal/irs-guidance/revenue-procedures/irs-issues-guidance-on-wash-sale-rules-for-money-market/dpnk

The new guidance is effective for redemptions of shares in MMFs after October 2, 2023.

**Find out more**

A new alert from Deloitte Tax LLP provides an overview of Rev. Proc. 2023-35.
**URL:** https://dhub.deloitte.com/Newsletters/Tax/2023/TNV/231117_2_suppA.pdf

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## Two more House taxwriters announce exit plans

The list of House Ways and Means Committee members eyeing the exit door got a bit longer this week as Democrat Brian Higgins of New York announced that he will give up his House seat and leave Congress in February of 2024, and Democrat Dan Kildee of Michigan revealed he will not run for elected office next year.

**Higgins's resignation**

Higgins was first elected to the House in 2004 and joined the Ways and Means Committee in 2009. He currently sits on the Health Subcommittee and the Trade Subcommittee. In announcing his imminent exit, he did not reveal specific post-congressional career plans, commenting in a written statement on November 13 that he intends to "explore other ways [to] build up and serve Buffalo and Western New York."

Rep. Richard Neal, D-Mass., the House's top Democratic taxwriter, lauded Higgins's tenure on Ways and Means.

"From expanding economic security to strengthening Western New York through redevelopment and greater health care access, Brian has been an accomplished member of the Ways and Means Committee. His service has been defined by his focus, ingenuity, and ability to infuse the latest data into every comment," Neal said in a news release.

Voters in Higgins's Buffalo-area district will choose someone to serve out the remainder of his term in a special election that is expected to be held early next year.

The House Democratic Steering and Policy Committee is expected to nominate Higgins's replacement on the Ways and Means Committee early next year, subject to approval by the full Democratic Caucus. That process could result in the return of one of the three former Democratic taxwriters—Jimmy Gomez of California, Steven Horsford of Nevada, or Stacey Plaskett of the Virgin Islands—who lost their seats on Ways and Means this past January after party ratios on all House committees were readjusted to reflect the GOP's majority status in the chamber in the 118th Congress. Of those three former Ways and Means members, Gomez has the most seniority in Congress and likely would be the first to be offered the committee slot when it becomes available.

**Kildee's retirement**

Kildee was first elected to the House in 2012. He joined Ways and Means in 2019 and currently holds seats on the Social Security Subcommittee and the Trade Subcommittee. In a November 16 news release, Kildee said he would continue "to serve Flint and mid-Michigan" after he leaves Capitol Hill at the end of his current term, but would do so "outside of elected office."

Ways and Means ranking member Neal praised Kildee in a written statement as "a legislator's legislator," noting that "[f]or the last decade, he has led on trade issues, focusing on keeping jobs in his district, and ardently defended labor."

**And then there were four**

This week's announcements by Higgins and Kildee bring to four the number of Ways and Means Committee members who have recently signaled their intention to wrap up their Capitol Hill careers. Democratic taxwriter

Earl Blumenauer of Oregon and Republican Brad Wenstrup of Ohio both have indicated that they will not seek re-election next year and will retire from government after the 118th Congress formally adjourns in early January of 2025.

Across the Capitol, three Senate Finance Committee Democrats whose seats are up in the 2024 election cycle—Tom Carper of Delaware, Ben Cardin of Maryland, and Debbie Stabenow of Michigan—announced over the last few months that they have ruled out another run for office.

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