



Legislative Alert

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Lame Duck Agenda Update

With just two weeks left until the November 6 elections, there is, increasingly, a feeling amongst political observers in Washington that the post-election lame duck congress could see less action than previously predicted. However, there also appears to be a willingness to address the fiscal cliff, and that could provide an opportunity for an Omnibus legislative package that could include tax extenders and a delay in the mandatory spending cuts of the sequestration. Other measures that could see inclusion in an Omnibus bill, should they not pass on their own, include reauthorization of the Farm Bill, the annual National Defense Authorization Act (NDAA), the Alternative Minimum Tax (AMT) patch, and an extension of the Medicare Sustainable Growth Rate (SGR) – commonly known as the “Doc Fix,” among other items.

Still, much will depend on the outcome of the presidential election and determination of control of the Senate, with analysts believing there will be a shorter lame duck if Governor Romney is elected president. Barring an unexpected Democratic wave election, the House will likely remain under GOP control.

With all that said, there are a few legislative items that are likely to move post-November 6, either independently, or as a part of an Omnibus legislative package:

- The annual **National Defense Authorization Act (NDAA)** has been passed by Congress for the past 51 years and there is no reason to believe that, at a minimum, a scaled back reauthorization bill won't be passed this year.
- The **Farm Bill** expired at the end of September and there will be tremendous pressure for the lame duck congress to take some action, whether it is a full five-year reauthorization, a short-term extension, or something in between those options.
- A **Tax Extenders Package** to extend some expiring tax provisions is almost certain to be taken up

in the lame duck. In 2011 there were 60 multi-sector expiring provisions, and this year there are 41. Some, but not all, of those expired and expiring provisions will be extended. The Senate Finance Committee approved its tax extenders bill, *The Family and Business Tax Cut Certainty Act*, in August, but the House Ways & Means Committee has not reported out legislation. The Senate Finance bill includes a two-year extension of the **Alternative Minimum Tax (AMT)** relief.

- The “**Doc Fix**” – which covers physician payments under the Medicare Sustained Sustainable Growth Rate (SGR) – has been extended and not allowed to expire every year for the past 10 years, preventing dramatic cuts in the rates paid to physicians. All indications are that bipartisan support exists for another temporary extension in the lame duck.
- **Cybersecurity** may to be taken up again in November after failing to move in the Senate earlier this year. The White House is said to be weighing its options, including an Executive Order should Congress not act. An Executive Order, or threat of one, could also be a means to spur action on Capitol Hill.
- A **Miscellaneous Tariff Bill** remains a priority for the House Ways & Means Committee and the Senate Finance Committee and could see passage before the end of the year.
- Although the federal government is currently operating under a six-month Continuing Resolution, funding the government through March 27, 2013, staff at the House and Senate Appropriations Committees are believed to be working on a **FY13 Appropriations Package** that will cover some portion of the 12 annual spending bills for the remainder of the year.

Of course, the biggest post-election agenda item will be congressional action to address the **fiscal cliff**. While the election outcome – the reelection of President Obama or election of Governor Romney, not to mention control of the House and Senate – will surely influence the course of action, there look to be four possible scenarios:

1. Congress can “**do nothing**” on sequestration and the expiring tax cuts and simply leave this issue for the new 113th Congress next year, although this is really the worst case scenario and could cause deep pain to the economy.
2. A “**grand bargain**” along the line of Simpson-Bowles or the President’s \$4 trillion proposal. While this scenario is certainly possible, it is only likely if President Obama is reelected, and even then, given the magnitude of effort and compromise needed, would be difficult to pass in the limited time available in the lame duck.
3. A three or six month “**agreement to delay**” sequestration and extend tax cuts. Some believe that this is the most likely outcome, although it sets up a convergence of events that would create a tremendous challenge for the newly elected 113th Congress and a potential new Administration to tackle in a short period of time, with the FY13 Continuing Resolution ending in late March, the debt ceiling being reached sometime in late February, and the need for Congress to finalize the

appropriations bills for the remaining six months of FY13 if that isn't taken care of in the lame duck.

4. A one-year “**down payment**” that is achieved by agreeing on a patchwork of cuts, savings, and revenues totaling \$109 billion (roughly one-tenth of the decadal savings required under the *Budget Control Act* that created sequestration). This would allow Congress to regroup next year for a long-term plan or even a year-by-year solution.

A few other legislative efforts could also see action post-election, including

- An **ATM disclosure bill**, passed by the House in July, that amends the *Electronic Fund Transfer Act* to limit fee disclosure requirements for ATMs to the screen of the actual teller machine;
- A legislative fix for **extending attorney-client protections for financial information** gathered by the Consumer Financial Protection Bureau (CFPB) during the course of an examination;
- The **Enabling Energy Savings Innovations Act** that was passed by the Senate before they left for the elections;
- The **National Strategic and Critical Minerals Production Act** which was passed by the House in July and saw a bipartisan attempt at passage in the Senate before they adjourned for the election in late September; and
- The **Responsible Homeowner Refinancing Act**, which was reintroduced in September, after revisions to address concerns raised by the housing industry. President Obama has called on Congress to pass the legislation.
- Finally, the **Law of the Sea Treaty** continues to enjoy a broad range of support from various industry sectors, including telecommunications and defense, and is supported by the environmental community. However, lame duck action on the treaty is not certain.

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