



Legislative Alert

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Lame Duck Agenda: 112th Congress Nears Finish Line

In our previous ML Strategies Legislative Alert on the Lame Duck Agenda, we were looking ahead to the November elections and the return of Congress for the lame duck session of the 112th Congress. Since then, votes have been cast and ballots counted, returning President Obama to the White House for another four years and leaving Republicans in control of the House of Representatives and Democrats in control of the Senate.

Congress returned briefly for a few days of post-election lame duck legislative work before breaking for the Thanksgiving recess and held votes on several important legislative measures.

- In the House of Representatives, a bill to extend **Permanent Normal Trade Relations (PNTR) with Russia** was overwhelmingly approved and is expected to also see approval in the Senate in the near future.
- The House of Representatives passed S. 1956, the **European Union Emissions Trading Scheme Prohibition Act of 2011**, which blocks U.S. airlines from penalties called for by the European Union in an effort to reduce carbon emissions. The bill had already been approved by the Senate, and was signed by President Obama today.
- Another closely-watched measure met its demise for the 112th Congress. After failing to move in the Senate earlier this year, a **cybersecurity** bill was once again brought up but failed, leading Majority Leader Reid to say that the matter is finished for this congress. Failure to pass the cyber security bill was not unexpected, and, as a result, many believe the White House will issue an Executive Order by year's end or early in 2013 that covers many of the major provisions of the failed legislation.

Anyone following Congress knows by now that the top priority for congressional Republicans and Democrats, along with the White House, is finding a means to address the so-called **fiscal cliff**.

With President Obama's strong showing in the election, and increased Democratic numbers in both the House and Senate, some feel that the Republicans have been placed at somewhat of a disadvantage in negotiations. Regardless, we should look for both sides of the debate to offer a rigorous defense of their priorities and principles for tackling the nation's fiscal situation via spending reductions and tax reform.

As we have long argued, there are four likely scenarios: 1) Congress can do nothing and drive off the cliff, a view espoused by some progressive Democrats and opinion leaders – although this is highly unlikely and would be the worst case scenario according to many economists; 2) Congress can work with the President to achieve a “grand bargain” that achieves the \$4 trillion in savings needed – although this would be a tremendously heavy lift in the very short amount of time before the end of the lame duck; 3) Congress can somehow agree to delay the upcoming, across-the-board spending cuts of sequestration and expiration of tax cuts for three to six months. This scenario would create a tremendous challenge for the newly elected 113th Congress 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 (*for more on appropriations see below*); or 4) Congress could choose to make a one-year down payment made up of 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) – and allowing Congress to regroup next year for a long-term plan or even a year-by-year solution.

A recent development on addressing the fiscal cliff is a newfound willingness of some Republicans in Congress to say that they would violate the “Taxpayer Protection Pledge” of the advocacy group Americans for Tax Reform. The very small number (for now) of Republicans saying that revenue increases are on the table have, however, offered the caveat that increased revenues should be found by capping tax deductions – not new taxes – and that they would likewise expect compromise from Democrats on entitlement reform.

While the fiscal cliff will dominate the lame duck, there are still numerous other legislative measures which may be taken up in the next four weeks.

The federal government is currently operating on a Continuing Resolution (CR) that funds federal activities for the first six months of Fiscal Year 2014 (October 2012 through March 2013). The six month CR spending levels are based on an annual budget of \$1.047 trillion – the spending limit set by the *Budget Control Act of 2011* which created the mandatory spending cuts of sequestration. House and Senate Appropriations Committee staff have been working to finalize an **Omnibus spending bill** for the remaining six months of FY13 that would likewise adhere to the \$1.047 trillion spending cap.

There are other measures that could be taken up during the lame duck:

- This week, the New York and New Jersey congressional delegations will begin a push for an **emergency supplemental spending** bill providing billions of dollars of disaster relief to those states affected by Hurricane Sandy.
- 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, although Senator Joe Lieberman (I-CT), a senior member of the Senate Armed Services Committee, has said that, due to time constraints and negotiations over the amendment process for the NDAA could mean that the bill doesn't make the final cut 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. Its fate is tied to using the bill as an offset as part of a larger package. The Farm Bill will not pass as a stand-alone measure in lame duck.
- A **Tax Extenders Package** to extend some expiring tax provisions may be taken up in the lame duck, although some believe it may be folded into tax reform next year. 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.
- 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 working on a **FY13 Appropriations Package** that will cover some portion of the 12 annual spending bills for the remainder of the year.
- The **Treaty on the Convention on the Rights of Persons with Disabilities** was signed by the United States in 2009 but still needs to be ratified by the Senate. Ratification is a priority of Foreign Relations Committee Chairman John Kerry (D-MA) who will work to bring the treaty up for a vote during the lame duck, although Senator Mike Lee (R-UT) is trying to build opposition to the treaty.

- 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.
- 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.
- 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.
- H.R. 6429, the **STEM Jobs Act of 2012**, would amend the *Immigration and Nationality Act* by expanding visas for foreign doctoral and masters graduates in the fields of science and technology. Introduced by Rep. Lamar Smith (R-TX), the bill would offer congressional Republicans, reeling from their routing by Democrats in the elections, to push an immigration reform measure at a time when they are seeking to rebrand the party. However, even if passed by the House, as with other measures, there is very little time available for the bill to move through the Senate before the end of the lame duck.
- **Postal Reform** had appeared to be stalled earlier this year, but there is renewed hope that this is something Congress will tackle during the lame duck. Ongoing discussions about the reform measure include limiting the Postal Service to a five-day delivery schedule.
- A reauthorization bill, the **Foreign Intelligence Surveillance Act (FISA) Amendments Act**, was approved by the House in September. The House-passed bill addresses Title VII of FISA, as added by the 2008 reauthorization and adding new separate procedures for targeting non-U.S. persons and U.S. persons believed to be outside the United States. FISA otherwise does not apply outside the U.S. The reauthorization is fairly controversial, but Senate Majority Leader Reid has indicated that it is on his list of measures to try to move in the lame duck.
- Reauthorization of the **Violence Against Women Act** has been slowed by disagreements over provisions in the House- and Senate-passed versions of the bill. Some Republicans had opposed provisions in the Senate version of the bill which includes language protecting undocumented immigrants and LGBT persons. As with immigration, the election results, and the poor showing of Republican candidates among female, immigrant, and gay and lesbian voters have given the conferencing of the VAWA reauthorization new life as the GOP seeks to broaden its appeal.
- The **Water Resources Development Act (WRDA)** would authorize many Army Corps of Engineers projects and is a priority for Senate Democrats, especially Senate Environment and

Public Works Committee Chair Barbara Boxer (D-CA) who held a hearing on the bill just after the election.

- There are also several financial services-related measures that could see action in the lame duck: 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 **Responsible Homeowner Refinancing Act**, which was reintroduced in September, after revisions to address concerns raised by the housing industry, would expand refinancing opportunities for homeowners whose mortgages are owned by Fannie and Freddie; the **Credit Union Small Business Lending Enhancement Act** would advance the ability of credit unions to promote small business growth and economic opportunities by raising the credit union member business cap to 27.5% of assets; and an **extension of the Transaction Account Guarantee (TAG) program**, which provides insurance for non-interest bearing accounts at all FDIC insured banks and is set to sunset on December 31, 2012.

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