



# Lame Duck Priorities

As Congress returns to session following the midterm elections, it will attempt to pass lots of pending legislation with only three or four weeks of session remaining. Here is a list of “must pass” measures, significant expiring programs, and other major legislation that may be considered.

## Must Pass

**Defense Authorization.** The National Defense Authorization Act (NDAA) has passed annually for 61 straight years. In the weeks leading up to the election, leaders of the House and Senate Armed Services Committees have been negotiating an NDAA compromise version that is expected to authorize more than \$840 billion in defense spending. The Senate is expected to debate the bill (H.R.7900) during the week of Nov. 14, after which it will be sent to the House for final passage. In addition to authorizing funding for the Department of Defense and the nuclear programs administered by the Department of Energy, the measure also includes several provisions outside the committees’ jurisdiction. These include the Water Resources Development Act, the Intelligence Authorization Act, the State Department Authorization Act, the Coast Guard Authorization Act, and Taiwan Foreign Military Financing.

**Discretionary Program Funding.** Congress has not finished work on the annual appropriations bills that fund the discretionary programs making up roughly one-fourth of the federal budget. Congress could only agree prior to elections to extend funding at FY22 levels through Dec.16 (the full fiscal year runs through Sept. 30). Congress will need to pass additional funding legislation – either for the entire fiscal year or through another short-term extension – to avoid a government shutdown.

## Programs that Expire Dec. 16

Several programs that were set to expire on Sept. 30 were given a short-term extension through Dec. 16 as part of the discretionary funding legislation described above. These programs are likely to be given another extension during the Lame Duck session for the length of time covered by the new discretionary funding bill. The following programs will soon expire again:

- **Medicare-related:** (Low-Volume Hospital (LVH) adjustment; Medicare Dependent Hospital (MDH) program)
- **Medicaid-related:** Federal Medical Assistance Percentage (FMAP) increase for Puerto Rico, American Samoa, the Northern Mariana Islands (CNMI), Guam, and the U.S. Virgin Islands
- **Drugs and Devices:** Orphan drug grants; Medical Device third-party review and laboratory accreditation; Best Pharmaceuticals for Children program; Pediatric Medical Device Consortia program; Critical Path public-private partnership; Generic Drug priority review application requirements
- **Low Income:** Maternal Infant and Early Childhood Home Visiting program; Temporary Assistance for Needy Families (TANF) program; Child and Family Services programs authorized under Title IV-B of the Social Security Act
- **Federal Communications Commission** general spectrum auction authority
- **National Flood Insurance Program**
- Commodity Futures Trading Commission **Customer Protection Fund**
- **Homeland Security-related:** Afghan Resettlement Evacuee Benefits; DHS joint task forces
- **Justice Department:** Domestic Trafficking Victim's Fund special assessment; U.S. Parole Commission; Unmanned Aircraft protection authority
- **USAID funds**
- **USDA Livestock Mandatory Reporting** program

## Programs That Expire Dec. 31

Several other programs expire at the end of the year and may also be extended, either as part of discretionary funding legislation or another broad legislative vehicle. The following tax and Medicare-related programs are likely to receive significant attention:

- **Research & experimental** (R&E) tax expensing
- **100% business meals** tax deduction
- **Multiemployer pension plan** delay of designations
- **Railroad track maintenance** tax credit
- **Medicare Physician bonus payments**

## Other Health Care Issues

**Public Health Emergency (PHE).** The COVID-related public health emergency will end on January 11, 2023, unless extended by Secretary of Health and Human Services Xavier Becerra. The Secretary has committed to give 60 days' notice if the PHE will be ending. If so, Congress will consider whether to extend various PHE waivers relating to telehealth, behavioral and mental health, and pandemic preparedness to provide for a longer transition.

**Medicare Sequestration 4% Cut.** Automatic across-the-board Medicare spending cuts will take place in 2023 unless Congress acts to postpone them.

**Physician Fee Schedule.** A 4.4% across-the-board payment cut in Medicare physician payment rates will occur in 2023 unless Congress acts to prevent the reductions.

## Nominations

There are **107 total nominations** pending on the Senate Calendar, of which **30 are judicial nominations**. Senate Majority Leader Chuck Schumer (D-NY) is likely to give high priority to confirm as many as possible before the end of the year.

## **Other**

### ***Respect for Marriage Act***

The legislation requires recognition of same-sex and interracial marriages while respecting religious liberty. The House passed the legislation (H.R. 8404) on July 19. The Senate held off on voting prior to elections, with the expectation that a 60-vote margin in the Senate would be easier to achieve during the Lame Duck session.

### ***Trade Issues***

The House and Senate passed several trade-related measures as part of semiconductor funding legislation earlier in the congress, but these provisions were not included in the final “Chips and Science Act” that passed in July. There will likely be a push to pass several of these trade proposals during the Lame Duck session as part of broader legislation. Possible elements of a trade package include Miscellaneous Tariff Bill extensions; Generalized System of Preferences program reauthorization; outbound investment review; Trade Adjustment Assistance funding; repeal of the “de minimis rule” for Chinese imports; reinstatement of the section 301 tariff exclusion process; antidumping/countervailing duty successive investigations authority; and enhanced Customs Intellectual Property theft enforcement authority.

### ***Drug and Device Approval Reforms***

The House passed comprehensive Food and Drug Administration reform legislation in June (H.R. 7667), followed by the Senate Health, Education, Labor and Pensions (HELP) Committee (S.4348). However, the Senate was unable to reach a bipartisan agreement on many of the drug and device approval provisions in each bill. There will be attempts to revisit these issues during the Lame Duck session.

### ***Electoral Reform Act***

In September, the House passed the Presidential Election Reform Act (H.R.8873). Later in the month, the Senate Rules Committee reported the Electoral Count Reform and Presidential Transition Improvement Act (S.4573). The bipartisan Senate bill has 15 Republican cosponsors, which may indicate sufficient support to overcome a filibuster. Attempts will be made to pass the Senate bill and resolve differences.

### ***Permitting Reform***

Sen. Joe Manchin (D-WV) unveiled comprehensive permitting reform legislation for energy and minerals projects in September. Attempts to attach it to short-term appropriations legislation were unsuccessful. Sen. Shelley Moore Capito (R-WV) introduced alternative legislation (S. 4815), which was supported by 46 other Republican senators. The two West Virginia senators will lead efforts to negotiate a bipartisan solution in the weeks ahead.

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