

## **Alert** | Government Law & Policy



December 2023

### **What to Watch in Congress: 2023 Year-End and Q1 2024**

With less than three weeks left in the first Session of the 118th Congress, this GT Alert provides issue priorities that may see action this month and into the first quarter of 2024.

#### **December Agenda**

- **NDAA:** On Nov. 29 House and Senate negotiators convened a conference committee to resolve differences in their versions of the National Defense Authorization Act (H.R. 2670). Each bill authorizes \$886 billion in new spending. Most defense-related differences in the House and Senate bills have been resolved in informal discussions over the last several weeks. However, differences remain over social policy provisions included in the House bill; a Senate provision relating to the environmental review of semiconductor projects; and attempts to add new provisions related to outbound investment, cryptocurrency, and expiring authority under the Foreign Intelligence Surveillance Act. House-Senate negotiators also must resolve differences over funding to implement an agreement with Australia and the United Kingdom to develop nuclear-powered submarines. When a final conference report is issued the Senate will debate the bill first.
- **National Security Supplemental Funding:** On Oct. 20, President Biden requested \$105.9 billion in national security assistance for Ukraine (\$61.4 billion), Israel (\$14.3 billion), border security (\$13.6 billion), humanitarian assistance (\$9.2 billion), and the Indo-Pacific (\$7.4 billion). A bipartisan group of senators is attempting to negotiate a package of border and immigration law changes to add to the

bill, which is a condition of support for many Republican senators. A vote to limit debate is scheduled in the Senate for Dec. 6. If the Senate is successful in negotiating and passing such a package, it is unclear whether House Speaker Johnson (R-LA) will allow a similar House vote or will seek to break the legislation into two or more bills. (On Nov. 2 the House approved a separate Israel aid package on a party line 226-196 vote.)

- **FISA Reauthorization:** Section 702 of the Foreign Intelligence Surveillance Act permits the government to conduct targeted surveillance of foreign persons located outside the United States to acquire foreign intelligence electronic communications information. The provision, which was first enacted in 2008, has been periodically renewed and currently expires Dec. 31. As noted above, attempts have been made to add the extension to the NDAA. There have been bipartisan efforts to reform the provision (H.R. 6262; S. 3234). The Biden administration has said the existing law has been vital to recent efforts to disrupt Iran’s advanced weapons program, stifle the flow of fentanyl from Mexico, and thwart major ransomware attacks. On Dec. 6 the House Homeland Security Committee is marking up legislation that would extend FISA section 702 but require a warrant before analyzing communications involving U.S. citizens.
- **FAA Reauthorization:** The first continuing resolution (H.R. 5860) enacted Sept. 30 extended the authorization for the Federal Aviation Administration through Dec. 30. The House passed its version of the legislation (H.R. 3935) on July 20 by a 351-69 vote. The Senate Commerce Committee has not completed action on its version of the bill. At a minimum Congress is likely to pass an additional extension.
- **House Impeachment Proceedings:** The House may conduct a vote authorizing an impeachment inquiry relating to President Biden. Some House Republicans believe passage of a resolution will impact information requests being made of the Biden administration. It is unclear whether there are enough votes for passage of such a resolution. The House Homeland Security Committee is also continuing its investigation of Homeland Security Secretary Alejandro Mayorkas, although a final report is not expected before the end of the year.
- **Nominations:** The Senate will continue to prioritize pending Judicial and Executive Branch nominations. There are currently 17 federal judicial nominees pending on the Senate Calendar.

### First Quarter 2024

- **Topline Discretionary Spending Negotiations:** Congress must act to fund discretionary programs, which comprise roughly 30% of all federal spending and require the passage of annual appropriations bills. Congress faced the threat of a government shutdown from failing to pass these bills twice this year – first on Sept. 30 at the end of the fiscal year (when the prior year funding expired) and again on Nov. 17 (after a short-term extension expired). Congress again passed short-term extensions of funding into 2024 (described below), but still must reach an agreement on how to move forward with the annual appropriations bills.

House and Senate leaders of the Appropriations Committees have been attempting to reach agreement on overall spending caps that will apply in both chambers – something that would normally have been done many months ago. The table below summarizes where things stand. In June Congress enacted the Fiscal Responsibility Act (FRA), which increased the federal debt limit (through Jan. 1, 2025) and established separate spending caps for defense-related (“security”) discretionary spending and all other discretionary (“non-security”) spending.

<b>DISCRETIONARY SPENDING ALTERNATIVES (\$ billions)</b>			
	<b>Security</b>	<b>Non-Security</b>	<b>Total</b>
FY23 enacted levels	\$ 858.36	\$ 743.89	\$ 1,602.25
Debt limit agreement	\$ 886.35	\$ 703.65	\$ 1,590.00
Current House levels	\$ 886.35	\$ 586.00	\$ 1,472.35
Current Senate levels	\$ 886.35	\$ 701.00	\$ 1,587.35
Debt limit agreement, as adjusted	\$ 849.78	\$ 736.45	\$ 1,586.23
“Side Car” Adjustment to Caps	\$ ---	\$ 53.92	\$ 53.92

The FRA essentially increased the security spending level by \$28 billion and lowered the non-security spending level by \$40 billion, but also included a “side car” agreement allowing an increase in non-security spending if needed of up to \$54 billion for emergency, disaster, wildfire suppression and related spending. In considering individual appropriations bills in committee and on the floor, the Senate thus far has adhered to these cap levels while the House has reduced non-security spending by \$117 billion below the caps and not provided the full “side car” funding levels. To complicate matters further, if a partial year continuing resolution is in place Jan. 1, the debt limit agreement spending caps will be automatically adjusted further to levels equal to fiscal year 2023 spending minus one percent. To finally pass any of the individual appropriations bills the House and Senate must first agree on the topline spending levels that will apply going forward. Those negotiations will continue in December and possibly the new year.

- **First Appropriations Deadline (Jan. 19):** The most recent short-term extension of government funding lasts through Jan. 19 for four of the 12 appropriations bills (Agriculture, Energy & Water, Military Construction-VA, and Transportation-HUD). If no further action is taken by this date, there will be a partial government shutdown for agencies and programs funded by those bills.

Speaker Johnson has indicated that if individual appropriations bills cannot be enacted by this date it is his preference to pass a full-year continuing resolution through Sept. 30. In other words, if there is no agreement, he believes Congress should continue to fund the FY24 discretionary spending as an extension of FY23 funding, subject to adjustments to the caps. It is not clear if there is sufficient support in the House or Senate for this approach.

- **Second Appropriations Deadline (Feb. 2):** Agencies and programs under the remaining eight appropriations bills face an expiration of funding on Feb. 2 (Commerce-Justice-Science, Defense, Financial Services-General Government, Homeland Security, Interior, Labor-HHS, Legislative Branch, and State-Foreign Operations). The same government shutdown threat as described above will occur at this time absent further action by Congress.
- **Domestic Supplemental Funding:** In addition to the national security spending being debated for Ukraine, Israel, the Indo-Pacific, and border security, on Oct. 25 the Biden administration also requested \$55.9 billion in additional domestic resources for disaster response, childcare, and other

domestic priorities. While it is unlikely that Congress will fully fund this request it is possible that modest portions of it may be included in a broader funding agreement.

- **Health Care Package:** Although unlikely in December, there is Congressional interest in finding consensus on a broader health care package early in 2024, with three major components. First, four House and Senate committees have advanced legislation providing for greater price transparency and greater regulation of pharmacy benefit managers (PBMs).

During the week of Dec. 11, the House is expected to consider H.R. 5378, the Lower Costs, More Transparency Act. The legislation creates new disclosure requirements for hospitals, clinical diagnostic laboratories, certain imaging service providers, ASCs, group health plans, and PBMs. The bill also delays the Medicaid Disproportionate Share Hospital (DSH) payment reductions for two years and extends several expiring programs, including Community Health Centers, the National Health Service Corps, Teaching Health Center GME programs, and the Special Diabetes Program. The Senate is considering alternative price transparency legislation.

Second, in addition to the expiring programs mentioned above, there are several significant health programs that have recently expired or are about to expire. The Pandemic and All Hazards Preparedness Act (PAHPA) was given a partial extension in the most recent continuing resolution. That legislation also gave temporary extensions to the health programs extended in H.R. 5378 and delayed implementation of the DSH cuts until Jan. 19, 2024. Other major programs such as the Opioid Recovery and Treatment (SUPPORT Act) and international AIDS relief funding (PEPFAR) also expired Sept. 30.

Third, Congressional committees have considered multiple “innovation” bills relating to the coverage of drugs, telehealth, and patient access to care and support providers that may have the best chance for passage as part of a larger legislative package.

- **Tax package:** There have been indications of interest by leaders of the House Ways and Means Committee and the Senate Finance Committee in combining an extension of certain expiring business tax provisions supported by many Republicans with an extension of the expanded child tax credit (CTC) favored by many Democrats. The expanded CTC (which is set at \$2,000 per child but was given a one-time expansion to \$3,600) expired in 2021. One business provision enjoys widespread bipartisan support: an extension of the section 174 research and experimental (R&E) expensing provision that expired at the end of 2021 (H.R. 2673; S. 866).
- **NDAA “leftovers”:**
  - **Outbound investment:** On Nov. 29 the House Foreign Affairs Committee reported the Preventing Adversaries from Developing Critical Capabilities Act (H.R. 6349), a bipartisan bill supported by Chairman McCaul (R-TX) and ranking Democrat Meeks (D-NY) to restrict certain “outbound investments” in technologies and products that may threaten national security. Similar legislation has been introduced in the Senate by Sens. Casey (D-PA) and Cornyn (R-TX), and a modified “disclosure only” version was included in the Senate-passed NDAA. Reps. McCaul and Meeks were attempting to include their bill in the final NDAA. However, objections from House Financial Services Committee Chairman McHenry (R-NC) and Financial Institutions Subcommittee Chairman Barr (R-KY) prevented a final agreement. Reps. McHenry and Barr prefer a narrower approach that restricts investment in certain sanctioned companies. The interested Members will attempt to develop a compromise approach in 2024.

- **Cryptocurrency:** Rep. McHenry also attempted unsuccessfully to include in the NDAA comprehensive legislation to regulate cryptocurrency and clarify the jurisdiction of the Securities and Exchange Commission and the Commodity Futures Trading Commission. There was no support for this legislation from Senate Banking Committee Chairman Sherrod Brown (D-OH). Rep. McHenry will attempt to develop a compromise in 2024 with his Democratic counterpart on the committee, Rep. Waters (D-CA).
- **Environmental review of semiconductor projects:** Sens. Brown (D-OH), Kelly (D-AZ), Young (R-IN), and Hagerty (R-TN) were successful in including legislation in the Senate-passed NDAA to streamline environmental reviews of certain semiconductor projects. However, if the provision is not included in the final NDAA bill, attempts will be made to pass the Building Chips in America Act (S. 2228) early in 2024.

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