

Legislation Most Likely To Pass In Lame Duck Session

By **Robert Mangas, Charles Bass and Rodney Frelinghuysen** (November 11, 2024)

Congress returns to session Nov. 12 and is scheduled to be in session for a five-week post-election lame duck session. Also during this short period, Congress will provide new-member orientation sessions for next year's incoming freshmen senators and congressmen, organize for the next Congress, and conduct leadership elections.

With limited time to debate individual proposals, many will attempt to add their priorities to larger legislative packages before adjourning for the year. Every issue will be scrutinized as to whether it is a "must pass" item, or would be better left to the next Congress in 2025. Here is a rundown of what might be considered.

Must Pass

Disaster Assistance

On Sept. 26, Hurricane Helene made landfall in Florida and caused major disasters in six states. It was the second major hurricane of the season. President Joe Biden wrote to congressional leaders to request immediate federal funding assistance, not only to address hurricane damage but also to respond to fires, midwestern tornadoes, and the rebuilding of the collapsed Key Bridge in Baltimore.

A total price tag for disaster assistance has not been established, but some expect the request to be between \$50 billion and \$100 billion. Congress will face pressure to act immediately when it returns. There may also be efforts to a pass disaster relief tax deductibility bill similar to H.R. 5863, which passed 382-7 in the U.S. House of Representatives in May.

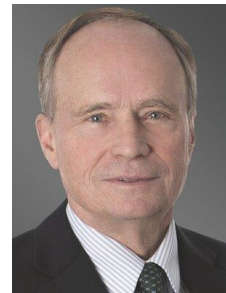
Discretionary Funding

Funding for federal discretionary programs, which make up roughly 30% of the federal budget, will expire in December. Congress divides discretionary spending into 12 appropriations bills, which must be passed annually. However, since only five of those bills have passed the House so far and none have yet passed the U.S. Senate, Congress passed a short-term funding extension to buy additional time. The most recent continuing resolution, H.R. 9747, passed in September and lasts through Dec. 20.

Last year these bills were passed in two packages, with each combining six of the bills. The first package included programs within the jurisdiction of the U.S. House Appropriations Subcommittees for Agriculture, Commerce, Energy, Interior, Military Construction, and Transportation. The second package included Defense, Financial Services, Homeland Security, Labor, Legislative Branch, and State. Passage of the bills in this format required bipartisan majorities.



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However, House and Senate leadership and the White House have not yet agreed upon topline numbers to cap spending for the 12 bills, and the two chambers are roughly \$90 billion apart. In addition, Speaker Mike Johnson, R-La., has expressed his opposition to combining all 12 bills into a single omnibus appropriations package and may seek to enact another continuing resolution that extends into next year so that the bills can be considered by new Republican majorities.

However, if President-elect Donald Trump indicates a preference for clearing the decks, the speaker may support efforts to pass one or more appropriations packages. In 2017, an omnibus appropriations bill wasn't signed until May 5, more than halfway through the fiscal year, disrupting the early months of Trump's first year.

Failure to act by Dec. 20 will result in a government shutdown.

Extenders

Several expiring programs will need to be addressed. Many of these were given short-term extensions as part of the continuing resolution but will again expire on Dec. 20. Others were previously extended and are set to expire at the end of the year. These program extenders are described below.

Healthcare

Congress previously extended authorization for community health centers, National Health Service Corps, Teaching Health Centers with Graduate Medical Education program, and special diabetes programs through the end of the year. It also delayed scheduled cuts for disproportionate share hospitals until the end of the year.

The continuing resolution extended programs related to priority review vouchers for rare pediatric disease drugs, and provisions of the No Surprises Act related to surprise medical bills. It also delayed certain clinical diagnostic laboratory reporting requirements under Medicare.

In addition, the Older Americans Act expired at the end of September. The Senate Health, Education, Labor and Pensions Committee passed a bipartisan extension through 2029 — S. 4776 — but the House has not acted. Parts of the Pandemic and All-Hazards Preparedness Act and rules allowing telehealth coverage under certain high-deductible health plans expire at the end of the year.

And last year's omnibus appropriations bill extended the President's Emergency Plan for AIDS Relief through March 25, 2025.

Veterans

The continuing resolution extended several veterans' programs, including those relating to nursing home care, the Rural Access Network for Growth Enhancement program, and several homeless veterans programs relating to housing adaptations, healthcare and special needs.

Farm Bill

As described below, House Agriculture Committee Chairman Glenn Thompson, R-Pa., is pushing for a floor vote on the Farm, Food and National Security Act. However, if final

passage cannot be achieved, farm bill programs that expired on Sept. 30 are likely to be given an additional one-year extension.

Other Agriculture Programs

The continuing resolution extended the Livestock Mandatory Reporting Act. It also allowed the apportionment of funding for the Special Supplemental Nutrition Program for Women, Infants and Children, the Commodity Supplemental Food Program, the Agricultural Credit Insurance Fund Program, and the Rural Community Facilities Program.

Immigration

The continuing resolution extended immigration programs relating to E-Verify, rural healthcare workers, nonminister religious workers and H-2B supplemental visa exceptions.

Other Extenders

The continuing resolution extended the U.S. Department of Homeland Security counter-drone program, the National Flood Insurance Program, the Temporary Assistance for Needy Families program, the Food for Peace program, and the Hong Kong Human Rights and Democracy Act.

National Defense Authorization Act

Congress has passed an annual defense authorization bill for 63 straight years and is expected to do so again in December. On June 13, the Senate Armed Services Committee reported the National Defense Authorization Act on a 22-3 vote. On June 14, the full House passed the Servicemember Quality of Life Improvement Act and National Defense Authorization Act, or H.R. 8070, 217-199.

The inclusion of several social issue provisions assured a partisan vote in the House. Several differences between the two bills must also be negotiated. Among other things, the Senate legislation authorizes \$9 billion more than the House bill.

Senate Armed Services Committee Chairman Jack Reed, D-R.I., and ranking Republican Sen. Roger Wicker, R-Miss., have filed a manager's amendment combining 93 individual amendment proposals filed by other senators. House and Senate negotiators will attempt to resolve differences before the bill is brought to the Senate floor during the lame duck session.

May Pass

Water Resources Development Act

Both chambers passed their respective versions of the Water Resources Development Act this summer, H.R. 8812 and S. 4367, with strong bipartisan votes, and now will work to resolve differences and enact a comprehensive bill before the end of the year. The legislation authorizes civil works projects for ports and harbors, inland waterways, and flood and storm protection.

Artificial Intelligence

Senate Majority Leader Chuck Schumer, D-N.Y., has been leading bipartisan, bicameral efforts to develop an artificial intelligence legislative package that can pass during the lame duck session. Among other things, the package may include bills that have passed committee in both houses to establish by statute the National Artificial Intelligence Research Resource (S. 2714; H.R. 5077) and the AI Safety Institute within the National Institute of Standards and Technology (S. 4178; H.R. 9497).

Other candidates for the package include the Defiance Act (S. 3696), which would allow victims of deepfakes to sue and unanimously passed the Senate in July, and several bills reported by the Senate Commerce Committee or the Senate Homeland Security and Governmental Affairs Committee:

- The Promoting Responsible Evaluation and Procurement to Advance Readiness for Enterprise-wide Deployment for Artificial Intelligence Act, or S. 4495;
- The Testing and Evaluation Systems for Trusted Artificial Intelligence Act, or S. 3162;
- The AI Research, Innovation, and Accountability Act, or S. 3312;
- The Promoting U.S. Leadership in Standards Act, or S. 3849;
- The National Science Foundation Artificial Intelligence Education Act, or S. 4394;
- The Small Business AI Training and Toolkit Act, or S. 4487;
- The AI Public Education and Awareness Act, or S. 4596; and
- The Validation and Evaluation for Trustworthy AI Act, or S. 4769;

China Week Proposals

In September the House passed several China-related bills with strong bipartisan votes as part of its "China Week" focus. These bills may be considered by the Senate during the lame duck session if short time agreements for debate can be obtained. The bills include the Export Control Enforcement and Enhancement Act (H.R. 7151), the Removing Our Unsecure Technologies to Ensure Reliability and Security Act (H.R. 7589), the Remote Access Security Act (H.R. 8152), the Economic Espionage Prevention Act (H.R. 8361), the Biosecure Act (H.R. 8333), and a bill to decouple DHS from procuring certain Chinese batteries (H.R. 8631).

Outbound Investment

The Senate NDAA manager's amendment described above includes an amendment to regulate outbound investment in foreign countries of concern involving certain key sectors. The amendment was filed by Sens. Bob Casey, D-Pa., and John Cornyn, R-Texas, and is modeled after their Outbound Investment Transparency Act (S. 2678).

It covers investments in six sectors: semiconductors and microelectronics, quantum information technologies, artificial intelligence, hypersonics, satellite-based communications, and networked laser scanning systems. By contrast, a recently issued U.S. Department of the Treasury rule on outbound investment only covers the first three sectors.

In order for this legislation to be included in the NDAA, there will need to be an agreement on competing approaches put forth by House Republicans. One approach — H.R. 6349, reported by the Foreign Affairs Committee — takes a sector-based approach similar to the Senate bill. A second approach — H.R. 760, reported by the Financial Services Committee —

limits government review to investments in sanctioned companies.

Senate Nominations

The Senate has four votes scheduled on judicial nominations during the week of Nov. 12. Twenty-five judicial nominations and multiple Executive Branch nominees on the Senate executive calendar are awaiting floor consideration, and Schumer can be expected to get as many of these confirmed as possible.

Possible, But Not Likely

Farm Bill

Last November, Congress extended several farm programs through Sept. 30 after failing to pass a new five-year farm bill. Although the House Agriculture Committee passed a multiyear extension of agriculture and nutrition programs (H.R. 8467) in May on a 33-21 vote, no further action has been taken.

Thompson, the House Agriculture Committee chair, and ranking Democrat Rep. David Scott, D-Ga., will push for a House floor vote when Congress returns. In late September, 140 House Republicans wrote to their leadership requesting that this bill be considered "must pass" legislation during the lame duck session. However, the Senate Agriculture Committee does not appear to have any consensus on moving forward.

Online Safety

In July the Senate passed the Kids Online Safety and Privacy Act (S. 2073) on a 91-3 vote. The legislation combines elements of two bills that have been debated for years — the Kids Online Safety Act and the Children's Online Privacy Protection Act. However, Johnson, as House speaker, has indicated that while he supports the concept of the bill, he believes the current bill language would have negative unintended consequences.

Data Privacy

In May, the House Energy and Commerce Subcommittee on Innovation, Data and Commerce reported comprehensive data privacy legislation, known as the American Privacy Rights Act, by voice vote. It is unclear if the legislation will advance any further. The Senate Commerce Committee has failed to reach consensus on similar legislation.

Permitting Reform

On July 31, the Senate Energy & Natural Resources Committee passed the bipartisan Energy Permitting Reform Act (S. 4753) on a 15-4 vote. The legislation represents a compromise negotiated by Sens. Joe Manchin, I-W.Va., and John Barrasso, R-Wyo., and would expedite permitting for all types of projects, including oil and gas, coal, renewable energy and electric transmission.

Railway Safety

In May 2023, the Senate Commerce Committee passed the Railway Safety Act (S. 576) in response to the East Palestine train derailment on a 16-11 vote. Schumer has indicated an interest in moving to this legislation, and a procedural vote is possible in September.

Trade

There are advocates in both chambers for moving several trade-related proposals that have received committee consideration. Competing proposals to end the \$800 de minimis exemption from customs duties as it applies to certain imported goods from China have received much attention.

In April the House Ways and Means Committee reported H.R. 7979 on a party-line vote. Rep. Earl Blumenauer, D-Ore., has introduced a competing bill (H.R. 4148), and a bipartisan group of senators — Sens. Ron Wyden, D-Ore., Cynthia Lummis, R-Wyo., Sherrod Brown, D-Ohio, Susan Collins, R-Maine, and Bob Casey, D-Pa. — announced Aug. 8 that they had reached consensus on a compromise approach to the de minimis issue.

The House Ways and Means Committee has also reported the Generalized System of Preferences Reform Act (H.R. 7986). And there are advocates for passing a miscellaneous tariffs bill and reauthorizing trade adjustment assistance programs.

Stablecoins

In May the House passed the Financial Innovation and Technology for the 21st Century Act (H.R. 4763) by a 279-136 vote. The legislation would establish a comprehensive framework for regulating cryptocurrency, including clarifying the jurisdiction of the U.S. Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission. The Senate Agriculture Committee may attempt to mark up its version of the CFTC portion of the legislation during the lame duck session.

In the meantime, the House may also consider narrower legislation to regulate stablecoins known as the Clarity for Payment Stablecoins Act (H.R. 4766). This bill was reported by the House Financial Services Committee last summer. Lummis and Sen. Kirsten Gillibrand, D-N.Y., have introduced similar legislation in the Senate (S. 4155).

Debt Limit

The Fiscal Responsibility Act enacted in June 2023 suspended the debt limit until Jan. 2, 2025, at which point it will be reinstated at an amount equal to the outstanding debt at that time. Congress will need to determine if additional action to address the debt limit is possible in December. The Treasury will need to determine how much additional time might be made available by taking "extraordinary measures" to avoid default if Congress fails to act.

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Disclosure: The authors' firm has advocated on behalf of clients regarding the discretionary funding and Farm Bill policies discussed in this article.

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