

Viewpoints

ML Strategies Legislative & Regulatory Update

115th Congress Nears End: What's Left on the Lame Duck Agenda?

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Congress returned from the Thanksgiving break this week to begin a short “lame duck” legislative session to complete the remaining work for the year and to close out the 115th Congress.

In a caucus vote today, House Democrats nominated Nancy Pelosi (D-CA) — minority leader of the House since 2011 and speaker of the House from 2007 to 2011 — to serve as speaker of the House for the 116th Congress. Over the coming weeks, she will work to secure the support needed to prevail when the full House votes to elect its speaker in January.

ML Strategies' most recent [post-election checklist](#) identified a number of items we're watching as the current Congress comes to an end, focusing on appropriations, health care, tax, telecommunications, and trade. From that list, and expanding to include some other items we're watching, the next three weeks of legislative business is most likely to see action on some combination of the following:

Appropriations – Of all the items that could be addressed in the lame duck this is the probably the single item that would be considered a “must do” with a deadline of December 7 to finalize, one way or the other, the remaining seven spending bills for Fiscal Year 2019. Of course, the most challenging issue in resolving FY19 spending is President Trump's insistence that Congress provide funding for his proposed border wall. While we believe a government shutdown is unlikely, there is the possibility that we will see a shutdown by the close of business on December 7 if negotiators are at an impasse on funding for the wall.

Tax Package – On their first day back from the Thanksgiving break House Republicans released a bipartisan tax package they intend to advance during the lame duck session covering retirement and other savings enhancements, legislation to redesign the Internal Revenue Service, and temporary tax relief for victims of the wildfires in California and for communities impacted by Hurricanes Florence and Michael and by storms and volcanoes in the Pacific. The package also addresses tax extenders, and time-sensitive technical corrections to H.R. 1, the Tax Cuts and Jobs Act. We are hearing from our contacts on Capitol Hill that there is a strong likelihood of final passage, most likely toward the end of the lame duck session.

Health Care – There continues to be activity over changes made earlier this year to the Medicare Part D “doughnut hole” – the period in which a Medicare Part D beneficiary's prescription drug costs lies in between the initial coverage limit and catastrophic coverage threshold. A doughnut hole change could be tied to the CREATES Act. The CREATES Act would make it harder for brand drug companies to use FDA-mandated safety programs to prevent cheaper generic competition from coming to market. However, the CREATES Act could pass in the beginning of next year without including changes to the doughnut hole, so the political calculus remains complicated. Additionally, the reauthorization of the Pandemic and All Hazards Preparedness Act should be completed during the lame duck, while the EMPOWER Care Act and the ACE Kids Act could also be considered.

Telecom – The House continues to move forward on tech-related legislation. This week, the House will consider Rep. Will Hurd’s (R-TX) Federal CIO Authorization Act, which would reauthorize the Office of the Federal Chief Information Officer and Rep. Bob Latta’s (R-OH) SMART IoT Act, which would direct the Department of Commerce to conduct a study on the internet-connected devices industry. It is unclear if the Senate will consider the legislation before the end of this session of Congress.

Nominations – The Senate will continue to work toward tackling a long list of outstanding nominations for posts at various federal agencies, judicial nominations, and ambassadorships. A large end-of-year package appears likely.

Criminal Justice Reform – There has been a bipartisan bicameral effort at addressing criminal justice reform this Congress, although the likelihood of any measure seeing final passage has been unclear, at least until President Trump recently endorsed the Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person (FIRST STEP) Act. Although the bill’s final passage is still a long shot, the President’s backing has given this effort at least a chance this Congress.

Farm Bill – The House and Senate have been working throughout this Congress to pass a new five year Farm Bill but have struggled to find compromise on a number of items. Absent a final deal, this is an item that will be left to the next Congress to address.

Land and Water Conservation Fund Reauthorization – This program expired at the end of September, but there has been an ongoing effort to reauthorize the program before the end of the year. This is still a long shot for final passage, but there is bipartisan support so it bears watching over the coming weeks.

National Flood Insurance Program Reauthorization – The current authorization for the program expires on November 30, but a bill to extend the program for an additional week, through December 7, was introduced this week and we expect a vote before week’s end. Reauthorization of this program would be a strong candidate for a possible end of year omnibus bill that includes appropriations and other policy priorities.

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