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Potomac Perspective

A compromise on the National Defense Authorization Act (NDAA) could be released today. Any agreement would be seen as critical to the prospects for unrelated legislation that envision the NDAA as the vehicle for them passing – in particular the SAFE Banking Act and a bill from Senator Dick Durbin (D-Illinois) on credit card payments. On the budget, there appears to be little progress on negotiations. The note looks at the three likely scenarios – punting an omnibus bill to 2023, passing an omnibus bill before year end, or passing a year-long Continuing Resolution (CR).

NDAA BIPARTISAN BILL

On Monday, Congress is expected to release a bipartisan compromise for the NDAA. The NDAA could be a vehicle for passage of two unrelated issues – the SAFE Banking Act and a credit card payments bill (aka the Durbin bill).

Supporters of the SAFE Banking Act have attached the bill to the House's version of the NDAA which was passed earlier in the year. The bill was not included in a version of the legislation that was considered by the Senate Armed Services Committee, but supporters of SAFE have worked to include it in the NDAA compromise. If they fail and SAFE is not included in the compromise NDAA, supporters would pivot and try to include it in a year-end spending bill (see below). Cannabis stocks might react negatively if SAFE is not included in the NDAA. There is a Plan B (the spending bill), but Plan B is not a great option.

As a reminder, the SAFE Banking Act would allow financial services firms to do business with cannabis firms in states where it has been legalized without violating federal anti-money laundering laws. The bill does not decriminalize cannabis at the federal level.

Senator Durbin has proposed legislation mandating retailers be allowed to use multiple networks for credit card transactions. The financial services industry has opposed the bill and, despite Democratic support for the Durbin bill, odds are against the bill being included in the NDAA. If this view is wrong and the Durbin bill is included, bank and credit card sectors could react negatively.

SPENDING BILL

There has been little, if any, progress on a year-end spending bill which raises the chances of a year-long CR. This is not surprising, since Republicans were seen as extra cautious in negotiating ahead of the December 6 runoff election in Georgia. Still, it appears that the two parties have yet to agree on top-line spending numbers for the remainder of fiscal year 2023, which is a prerequisite for negotiations on the rest of the bill. Republicans want increases in defense spending, while Democrats support additional defense spending in return for additional non-defense spending. Republicans oppose additional domestic spending on the grounds that Democrats already got what they wanted in the American Rescue Plan and the Inflation Reduction Act.

The current CR expires on December 16. It appears likely that Congress will pass a one-week extension to buy more time to negotiate a year-long bill. However, given the gap between the two parties and the approaching holidays, it will be difficult to reach an agreement. The three scenarios for a spending bill (in order of probability) seem to be:

1. Pass a short-term CR that lasts into early 2023 (possibly February) that would allow the next Congress to finish an omnibus bill. Democrats oppose this option since Republicans would gain some leverage as they will control the House next year. Also, this option might not ultimately result in an omnibus, as House Republicans might oppose an omnibus in

2023 and the government might be forced to operate under a series of CRs. The odds of a government shutdown at some point in 2023 rises under this scenario.

2. Pass an omnibus spending bill before the end of 2022. For reasons explained above, this is becoming more remote, but the pressure of reaching a deal before year end might be enough to force a compromise. Also, Chairman of the Senate Appropriations Committee, Senator Patrick Leahy (D-Vermont) and the ranking Republican on the committee, Senator Richard Shelby (R-Alabama) are both retiring, and neither wants to retire without completing an omnibus bill.

3. Pass a year-long CR. This option is unprecedented, a flawed policy option, and a long shot, but the chances of Congress choosing this option cannot be overlooked. A year-long CR would leave spending levels at fiscal year 2022 levels which might seem like a positive to those concerned about debt and deficits. However, there are negative implications for sectors impacted by federal outlays, such as defense and highway expenditures, that might not see anticipated increases in spending. This alternative could be used as a threat to force Republicans to support of a broader bill since the GOP supports increased defense spending. However, pursuing this option could become more of a threat and become reality.

Because of the precarious state of negotiations on a spending bill (regardless of which of the above scenarios prevails), odds of adding policy riders to a spending bill are low. Congress might agree to waive sequestration rules that would affect federal payments to states under the Build America Bond program and payments under Medicare to health care providers, but adding non-budget items like the SAFE Act could derail any budget agreement and are unlikely to be added – not impossible, but unlikely.

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