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The omnibus appropriations bill has been released. The bill provides roughly \$1.7 trillion in discretionary spending, including a 10 percent increase in the defense budget. Regarding policy riders, the SECURE Act 2.0 was included in the bill, but the SAFE Banking Act and a tax extenders bill failed to make the cut.

Odds favor the bill passing Congress despite some conservative opposition. Alternatives are politically unpalatable, which will probably push enough Republicans to support the bill to move it through the red zone and over the goal line. However, failure is an option, and this note looks at possible backup plans in case the bill fails.

Omnibus – What's In and Out – The Senate has released the text of the fiscal year 2023 Omnibus Appropriations Act (the omnibus). The bill provides approximately \$1.7 trillion in discretionary spending for fiscal year 2023. It appears that few policy riders have been included, but the inclusions could be significant. For example, the SECURE Act 2.0 is included in the omnibus. The bill would expand retirement saving options by allowing a deferral on mandatory withdrawals, increased catch-up contributions to 401 (k) plans, and provide new options for small businesses to offer retirement plans to employees.

While the SECURE 2.0 was a win for the financial services sector, there were also several notable losses across several sectors – although many of these were expected. The omnibus will not include a tax extenders bill, which could have delayed changes in the method for calculating the business interest deduction and the amortization of the research and development deduction. This also means that an enhanced Child Tax Credit will be excluded from the bill. Also, the SAFE Banking Act failed to make the cut.

The tax extenders bill and the SAFE Banking Act could make a comeback, but each bill essentially will return to the starting line in 2023. Work on a tax extenders bill could resume early in the year, as the bill includes numerous provisions impacting the private sector and multiple sectors will likely push to revive the bill early in the new year.

The SAFE Act faces higher hurdles. Despite having bipartisan support, its primary advocate in the House, Representative Ed Perlmutter (D-Colorado) is retiring, and a Republican House will not prioritize the SAFE Act the same way that Democrats have promoted it in the past few years. The bill is not dead, but this was SAFE's best chance of passing, and the odds of the bill passing in 2023 decline when compared to 2022.

The omnibus will also include a ban on TikTok from government phones. This ban is similar to the bans being implemented at the state level. It is questionable whether the government has the authority or the political will to ban TikTok altogether, so this might be as far as opponents of TikTok can go (at least for now), but including the ban of TikTok on government phones shows the political appeal of attacking China or social media (or a combination of both). Congressional interest in the business relationship of companies (especially firms with links to national security) and China will continue to intensify in the coming years.

Will the Omnibus Bill Pass? – The omnibus spending bill will likely pass, but its chances are not overwhelming. At least 10 Senate Republicans are needed to pass the omnibus assuming all 50 Democrats support the bill. Given the significant increase in defense spending, it appears that there will be enough Senate Republican votes to pass the bill but without much room to spare. In the House, because of vacancies, Democrats can only lose two votes. The vast majority of House Republicans are likely to vote against the bill. Their public stance is to reject the current bill, pass a Continuing Resolution (CR) into first quarter 2023, allow the incoming Republican majority to revise the bill, and then pass it. This option seems better on its face than in reality, and many Republicans who oppose the bill will vote “no” and hope “yes.” It is questionable whether the House Republican majority would be able to agree to a bill that could pass the House (which in turn raises the prospects of a government shutdown in early 2023). Next year’s House may be so close as to be unmanageable, so it is in Republicans’ interests to have the omnibus bill pass and clear the decks for 2023.

There are probably enough moderate House Republicans and retiring members who will support the omnibus bill. Also, similar to the Senate, the increase in defense spending could give additional cover to some Republicans to support the bill. However, again like the Senate, there is not much room for error.

What if it Doesn’t Pass? – Democrats and Republicans have different ideas on Plan B. Democrats have threatened to pass a year-long CR which would fund the government at fiscal year 2022 spending levels, which means no increase in defense spending – something unacceptable to Republicans. As mentioned above, Republicans opposed to the omnibus have suggested a short-term CR while Congress negotiates the spending bill(s) in early 2023. If the omnibus bill fails, Congress might have to pass another one-week CR and return to Washington next week just to figure out its next steps. The omnibus bill is expected to pass, but I believe its failure would be a negative for the markets and contribute to a risk-off sentiment.

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