

# ISSUE BRIEF

No. 4297 | NOVEMBER 12, 2014

## Lame Duck Threats Congress Should Avoid

*Romina Boccia*

A lame duck session refers to when one Congress is in session after a new one has been elected. After last week's election, Members of Congress who lost elections or are retiring are lame ducks, who are protected from the consequences of passing politically unpopular legislation. This lame duck session is particularly important because the Republicans will take control of the Senate in January and retain control of the House of Representatives, leaving Senate Democrats with a brief window of opportunity until they lose control of the Senate in January.

Lame duck sessions are often abused to enact fiscally irresponsible policies. As then-Senator Jim DeMint (R-SC) wrote in a 2012 report, "They [lame ducks] are free, for two months and at taxpayer expense, to vote for whatever they please ... without their constituents being able to do anything about it."<sup>1</sup>

Congress should not give into demands by special interest groups to rush legislation through the lame duck session—legislation that the new Congress could address with the deliberation that these issues deserve.

Specifically, Congress should postpone considering:<sup>2</sup>

- **The Medicare "doc fix."** On March 15, 2015, Medicare doctors face a 21 percent pay cut because of Medicare's Sustainable Growth Rate

payment update formula.<sup>3</sup> All agree that Medicare's flawed payment system should be repealed and replaced, but Congress should address the problem in regular order and in a fiscally responsible fashion.<sup>4</sup> Any efforts to enact a permanent fix without permanent savings to finance the fix in the lame duck session should be stopped cold.<sup>5</sup> The Congressional Budget Office estimated the 10-year cost at \$138 billion. Beyond the 10-year window, the unfunded fix would add massively to the nation's deficits.<sup>6</sup> Congress should not burden taxpayers with heavier debt because it irresponsibly wants to rush reform of Medicare physician payments.

- **The Children's Health Insurance Program (CHIP).** CHIP was created in 1997 to provide coverage for uninsured children whose families earned too much to qualify for Medicaid. However, its continued role is uncertain due to the Affordable Care Act, and some are calling for Congress to provide additional CHIP funding in the lame duck session.<sup>7</sup> Yet CHIP has sufficient funding for the rest of fiscal year 2015, so Congress does not need to act before the end of this calendar year. Congress should do due diligence to CHIP, including reviewing the program's effectiveness, enrollment, and CHIP's interaction with the Affordable Care Act.
- **The Achieving a Better Life Experience (ABLE) Act (H.R. 647).** The ABLE Act enjoys broad bipartisan support. It is portrayed as a tax-favored savings bill when its more substantive impact would be to expand the welfare state.

This paper, in its entirety, can be found at <http://report.heritage.org/ib4297>

The Heritage Foundation  
214 Massachusetts Avenue, NE  
Washington, DC 20002  
(202) 546-4400 | [heritage.org](http://heritage.org)

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

The bill effectively eliminates asset tests for all means-tested welfare programs for families with a child who is eligible for Supplemental Security Income (SSI) or Social Security Disability Insurance, as long as funds are held in ABLE savings accounts. The ABLE Act also eliminates the asset test for all welfare when eligible children become adults. The enormous growth of the welfare state over the past 50 years did not occur overnight. To a considerable degree, the welfare state has expanded due to incremental expansions of benefits and eligibility, such as those contained in H.R. 647.<sup>8</sup> Congress should not rush this policy change through the lame duck session.

- **The federal highway bill.** In May 2015, Congress is slated to reauthorize the federal highway bill, which includes transit and other non-highway activities. Congress also needs to find a way to close the gap between what the Highway Trust Fund collects in revenue and what Congress spends. Some lawmakers want to do this in the lame duck session. Retiring lawmakers or those who were not re-elected could vote to increase the federal gasoline or diesel rates or other fees without fear of facing any consequences from their constituents. Lame duck sessions are not good for taxpayers or transparency in govern-

ment.<sup>9</sup> Congress should resist considering any highway bill or highway funding measure in the lame duck session.

- **The treaty on sharing financial information.** The Senate should not ratify the Standard for Automatic Exchange of Financial Account Information, which amends the Organisation for Economic Co-operation and Development's Multilateral Convention on Mutual Administrative Assistance in Tax Matters. This treaty would require the U.S. government to provide entire financial dossiers on U.S. individuals and businesses to many foreign governments, including antagonistic and corrupt governments such as Russia and China.<sup>10</sup> Information that must be shared includes names; accounts; tax and passport numbers; and brokerage, banking, and insurance account balances and income. This information would facilitate identity theft, kidnappers and scam artists in finding targets, foreign governments engaging in industrial espionage, and governments oppressing political opponents with accounts in the United States.
- **Internet sales taxation.** In May 2013, the Senate passed the Marketplace Fairness Act (MFA), which would allow states to impose their sales

---

1. Emily Goff, "'Lame Duck' Is Not the Time for a Highway Bill," *The Daily Signal*, July 28, 2014, <http://dailysignal.com/2014/07/28/lame-duck-time-highway-bill/>.

2. This list is by no means exhaustive. For example, it does not include discussion of issues pertaining to legislation that would extend funding beyond the December 11 expiration of the current continuing resolution.

3. News release, "Medicare Trustees Report Delivers Good News but Need for Reform Remains," Committee for Responsible Federal Budget, July 30, 2014, <http://crfb.org/blogs/medicare-trustees-report-delivers-good-news-need-reform-remains> (accessed November 5, 2014).

4. Chris Jacobs, "Medicare's Sustainable Growth Rate: Principles for Reform," Heritage Foundation *Backgrounder* No. 2827, July 18, 2013, <http://www.heritage.org/research/reports/2013/07/medicares-sustainable-growth-rate-principles-for-reform>.

5. Robert E. Moffit, "Medicare SGR Replacement Is Not Worth More Deficit Spending," Heritage Foundation *Backgrounder* No. 4172, March 14, 2014, <http://www.heritage.org/research/reports/2014/03/medicare-sgr-replacement-is-not-worth-more-deficit-spending>.

6. Robert Moffit, "A Temporary Medicare SGR 'Patch' Is Better Than Permanent Deficits," *The Daily Signal*, March 26, 2014, <http://dailysignal.com/2014/03/26/temporary-medicare-sgr-patch-better-permanent-deficits/>.

7. Shannon Donahue Attanasio, "Growing Support for Congress to Extend CHIP in the Lame Duck Session," *Families USA*, October 28, 2014, <http://familiesusa.org/blog/2014/10/growing-support-congress-extend-chip-lame-duck-session> (accessed November 5, 2014).

8. Robert Rector and Romina Boccia, "How the ABLE Act Would Expand the Welfare State," Heritage Foundation *Backgrounder* No. 2972, November 10, 2014, <http://report.heritage.org/bg2972>.

9. Emily Goff, "HTF: Lame Duck Would Deprive Congress of Real Debate," *The Daily Signal*, July 20, 2014, <http://dailysignal.com/2014/07/30/htf-lame-duck-deprive-congress-real-debate/>.

10. David Burton, "Do You Want Your Private Financial Information Automatically Shared with Russia or China?" *The Daily Signal*, July 23, 2014, <http://dailysignal.com/2014/07/23/want-private-financial-information-automatically-shared-russian-chinese-governments/>.

taxes on sales by out-of-state retailers to consumers in their state.<sup>11</sup> This would mean new taxes on millions of Internet-based sales, and it would be a dangerous extension of the power of state tax collectors. The House refused to approve the bill. Now, the lame duck Senate may hold up the extension of a separate, long-standing moratorium on direct taxation of Internet access by local governments—which expires on December 11—unless the House acts on the MFA. In effect, the Senate may hold Internet consumers hostage, threatening them with one form of taxation if the House does not impose another.<sup>12</sup>

- **Presidential nominations.** Forcing through nominations to positions in the executive branch or the federal judiciary during a lame duck session negates the will of the people as expressed in the election. Having Senators whom the voters voted out of office make decisions on presidential nominees thwarts the American system of representative democracy. High-level positions, such as U.S. Attorney General, deserve deliberate, careful review by the Senate and thorough hearings delving into each nominee’s background, record, professional abilities, and opinions. The Senate cannot complete such a substantive review in the short lame duck session, and any such attempt would prevent newly elected Senators from participating in the process.
- **The Terrorism Risk Insurance Act (TRIA).**<sup>13</sup> Currently, the U.S. provides reinsurance for catastrophic terrorist attacks. After 9/11, Con-

gress intervened to stabilize the terrorism insurance market and ensure that relevant builders and property owners could purchase insurance against terrorism. Indeed, the program was designed to be a backstop only during a national crisis until the insurance market could adapt to the risk of terrorism. Twelve years later, this “temporary” program has outlived its intended lifespan. The insurance market has matured to the point that insurers can price the risk of terrorism, and TRIA acts only as a form of corporate welfare. While different reauthorization bills in the House and Senate attempt to place more of the costs on the private sector, these bills fall far short of letting TRIA expire by the end of the year as The Heritage Foundation has recommended.<sup>14</sup>

- **Brand USA’s charter.** Brand USA, a public-private partnership created by Congress in 2010 to promote tourism, is set to expire at the end of 2015. The House has already passed legislation that would extend Brand USA’s charter to the year 2020.<sup>15</sup> However, according to the Department of Commerce, the travel industry is one of America’s largest export services and garnered \$1.5 trillion in total sales in 2013<sup>16</sup> and is forecasting only more of the same.<sup>17</sup> In addition to giving welfare to private industry, Brand USA duplicates what states, regions, and cities already spend significantly on tourism. It is not Congress’s constitutional responsibility to help an industry with marketing and communication strategies. Reauthorizing Brand USA would amount to nothing short of corporate welfare.

---

11. James L. Gattuso, “Taxing Online Sales: Should the Taxman’s Grasp Exceed His Reach?” Heritage Foundation *Backgrounder* No. 2817, June 19, 2013, <http://www.heritage.org/research/reports/2013/06/taxing-online-sales-should-the-taxmans-grasp-exceed-his-reach>.

12. James L. Gattuso, “Read My Bits: No New Taxes (Permanently),” Heritage Foundation *Backgrounder* No. 4242, June 30, 2014, <http://www.heritage.org/research/reports/2014/06/read-my-bits-no-new-taxes-permanently>.

13. David Inserra, “Terrorism Risk Insurance Act: Time to End an Unnecessary Program,” Heritage Foundation *Backgrounder* No. 4167, <http://www.heritage.org/research/reports/2014/03/terrorism-risk-insurance-act-time-to-end-an-unnecessary-program>.

14. David C. John, “TRIA: Time to End the Program,” testimony before the Subcommittee on Insurance, Housing, and Community Opportunity, Committee on Financial Services, U.S. House of Representatives, September 11, 2012, <http://www.heritage.org/research/testimony/2012/09/terrorism-risk-insurance-act-time-to-end-the-program>.

15. Travel Promotion, Enhancement, and Modernization Act of 2014, H.R. 4450, 113th Cong.

16. U.S. Department of Commerce, International Trade Administration, National Travel and Tourism Office, “Fast Facts: United States Travel and Tourism Industry, 2013,” May 2014, [http://travel.trade.gov/outreachpages/download\\_data\\_table/Fast\\_Facts\\_2013.pdf](http://travel.trade.gov/outreachpages/download_data_table/Fast_Facts_2013.pdf) (accessed November 5, 2014).

17. U.S. Department of Commerce, International Trade Administration, National Travel and Tourism Office, “U.S. Department of Commerce Forecasts Continued Strong Growth for International Travel to the United States 2014-2019,” October 22, 2014, [http://travel.trade.gov/view/f-2000-99-001/forecast/Forecast\\_Summary.pdf](http://travel.trade.gov/view/f-2000-99-001/forecast/Forecast_Summary.pdf) (accessed November 5, 2014).

—**Romina Boccia** is the Grover M. Hermann Fellow in Federal Budgetary Affairs in the Thomas A. Roe Institute for Economic Policy Studies, of the Institute for Economic Freedom and Opportunity, at The Heritage Foundation. Heritage experts David R. Burton, Curtis S. Dubay, James L. Gattuso, Emily J. Goff, David Inserra, Robert E. Moffit, Nina Owcharenko, and Hans A. von Spakovsky contributed to this report.