



Happy New Year. Dykema’s Federal Government Policy Team is pleased to share with you our overview of the political and policy landscape on Capitol Hill for the new year. We have aimed to summarize some of the areas that Congress will be focused on in the coming month, as well as a special session of the United States Supreme Court to determine the fate of the Biden Administration’s vaccine mandates. As always, please reach out to anyone on our team to discuss your priorities and where Dykema can be of assistance.

2022 Legislative Schedule

The legislative calendars for the House and Senate have 100 sessions days before the midterm elections. Congress will attempt to tackle legislation focusing on competitiveness with China, resurrect pieces from Biden’s Build Back Better reconciliation plan, and complete the Fiscal Year 2022 appropriations spending bills. Along with those items, legislation to address energy conservation and COVID-19 mitigation is expected to be addressed. President Biden has not announced the date of the State of the Union, but it is expected sometime in early March.



Midterm Elections

This November, all 435 members of the House of Representatives and 34 of the 100 Senators will be up for reelection. As history and polling have demonstrated, this election year may be very challenging for Democrats. Midterm elections are historically unfavorable to a sitting President's party. Of the 21 midterm elections since 1934, only twice has the President's party gained seats in both chambers; and on only four occasions, the President's party has gained Senate seats. Only once has the party gained seats in the House alone. Additionally, we are in a year of redistricting Congressional maps. Of the 35 States that allow the State Legislatures to redraw Congressional seats, 23 have GOP control, and 11 have Democratic control, with Minnesota as only the state with a split legislative body. Legislatures tend to support their majority party, putting Democrats at a strategic disadvantage. Furthermore, current members are retiring at a more significant pace than in the 2018 and 2020 cycles. As the year started, nearly two dozen Democrats in the House have announced retirement or seeking other offices, compared to 12 Republicans. Inversely, five Republican members will be retiring in the Senate, compared to the one Democrat. Of the Senate races in 2022, both Senator Raphael Warnock (D-GA) and Senator Mark Kelly (D-AZ) are up for reelection, who both won special elections in the 2020 cycle.



Build Back Better

Since the passage of the bipartisan infrastructure plan, or the Infrastructure Investment and Jobs Act last fall, President Biden had been focused on passing the \$1.7 trillion Build Back Better social infrastructure legislation. While Democratic Majority Leader Chuck Schumer set an original goal passing the legislation in the Senate by Christmas, that plan was unable to be met when Senator Manchin expressed that he could no longer support the legislation. While it currently seems unlikely that the current version of the Build Back Better Act can garner enough votes to pass the Senate, Majority Leader Schumer plans on trying to resurrect pieces of the bill in the coming weeks. A scaled-down version of the existing bill, including the climate provisions and the expanded child tax credit, or perhaps a series of smaller bills that include additional portions of the Build Back Better agenda, will likely now be the focus in Congress.



Tax

Tax issues will continue to be front and center in 2022 as Congress looks for revenue to pay for parts of the Build Back Better plan and other priorities. Additionally, Congress will keep the focus on a path to advance tax incentives for clean energy and domestic manufacturing. While some members of Congress would like to modify the cap on the federal deduction for state and local paid taxes (aka SALT deduction), a path forward is not clear. Look for many of the revenue raisers from Build Back Better to continue to be considered. Those items include the millionaires' tax for those with modified adjusted gross income over \$10 million and a corporate minimum book tax of 15 percent for corporations with profits over \$1 billion.



Retirement Savings

Congress has found common ground in the past on legislation to address the retirement savings crisis in the country. Back in 2019, the Setting Every Community Up for Retirement Enhancement (SECURE) Act passed almost unanimously in the House and Senate. That solid bipartisan vote bodes well for the new SECURE Act 2.0, which is likely to garner broad support in both chambers during 2022.



Trade / China Legislation

Before the Senate finished up last month, the Senate unanimously passed legislation to ensure that goods made with forced labor in the Xinjiang Uyghur Autonomous Region of the People's Republic of China do not enter the United States market, in an attempt to establish accountability for China's actions. In addition to the legislation, the U.S. announced it is participating in a diplomatic boycott of the 2022 Beijing Olympics next month. Prior to Thanksgiving, Speaker Pelosi and Senate Majority Leader Schumer issued a joint statement announcing a bicameral agreement to conference the United States Innovation and Competition Act (USICA). This action followed Leader Schumer's failed attempt to include USICA in the National Defense Authorization

Act (NDAA). The USICA focuses on addressing U.S. competitiveness with China as well as \$52 billion for CHIPS Act implementation to strengthen the domestic microprocessor supply chain. The bill also includes the renewal of the General System of Preference (GSP) and Miscellaneous Tariff Bill (MTB). U.S. importers have paid an estimated \$1.6 billion in additional tariffs due to the lapse in legislation. We expect Congress to find bipartisan agreement to send a bill for the President's signature.

Energy

With the Biden Administration's push for electric vehicles (E.V.s) and clean energy, significant focus will be the Administration's recently released regulatory agenda. On December 10, the Administration released its regulatory agenda for energy and conservationism into 2022, including carbon rules on power plants, greenhouse gas limits on vehicles, ozone standards, Waters of the U.S. (WOTUS) definitions, efficiency rules, and land fees for oil and leasing. This plan helps focus the Administration's commitment to increased environmental protection and clean energy. We also anticipate that the Build Back Better bill's climate provisions will be introduced as standalone legislation or through a future clean energy legislative package. The international community has criticized the Administration over a proposed E.V. credit for unionized U.S. companies, which was included in the Build Back Better plan. The provision contains a tax credit for consumers for up to \$12,500 off an electric vehicle, including \$4,500 for cars made in the U.S. for companies with collective bargaining agreements. While receiving support from unions and some U.S. companies, backlash from U.S. trading partners, international automotive companies, and some Senators (most notably Senator Manchin) will make it difficult for the provision to survive in a potential legislative package.

Election Reform/Voting Rights

Democrats have been seeking an opportunity to expand voting rights but have been met in a deadlock with Republicans in the Senate. With full party support, Democrats in the Senate have attempted to pass the Freedom to Vote Act and the John R. Lewis Voting Rights Advancement Act to no avail, as they need a 60 vote threshold to advance the legislation. Progressive members have been calling for an end of the voting filibuster or, at minimum, a carve-out for this issue. To date, Senators Sinema and Manchin have been against any chamber rule changes, which keeps the legislation stalled.

Continuing Resolution/Appropriations

On December 3, President Biden signed a second continuing resolution for government funding until February 18, 2022, avoiding a government shutdown. This continuation of current funding levels was extended because Congress failed to reach a consensus on the Fiscal Year 2022 spending levels. Of the programs extended, one notable program was the National Flood Insurance Program Authorization. As agreement on the federal spending levels for FY22 has been pushed into the new year, members are on another short time frame to finalize this required spending agreement. Members are hopeful that negotiations will allow for a deal so that the focus can shift to the upcoming Fiscal Year 2023 budget.

Expiring Programs

Several programs from the CARES Act, the American Rescue Plan Act, and the Infrastructure Investment and Jobs Act expired on December 31, 2021. These program includes the Enhanced Child Tax Credit and Dependent Care Tax Credit, the Coronavirus Relief Fund for States & Localities, the Payroll Tax Deferral on Social Security taxes, and the Emergency Injury Disaster Loans Advance Grants. Additionally, President Biden announced an extension of the deferral on student loans until May 1, 2022, which was previously scheduled to end on January 31, 2022.

Debt Ceiling

The nation's debt ceiling issue has been taken off the table through the election after President Biden signed legislation on December 16, 2021, allowing for a \$2.5 trillion debt limit increase, avoiding a potential U.S. default. In raising the limit to nearly \$31 trillion, Democrats have stated that this extension of the debt limit will allow the government to cover its obligations into 2023. Unless there is a change in spending, there should not be an increase in this limit again until after the 2022 midterm elections.

COVID-19

With the rise of the Omicron variant, the Biden Administration is increasing focus on mitigating the pandemic. Nearly 75% of Americans have received at least one COVID-19 vaccine, while just over 62% are fully vaccinated. The President has recently announced a plan to mass-distribute 500 million at-home rapid tests to Americans. As the COVID-19 pandemic continues, we expect Congress and the Administration to take additional measures to increase vaccinations and mitigate the spread.

Supreme Court of the United States

The U.S. Supreme Court will kick off 2022 with a special session on January 7 to hear arguments related to President Biden's vaccine (or test) mandate for large employers. The expedited session is in response to a December 20 decision by the United States Court of Appeals for the Sixth Circuit to lift the stay that previously had been entered by the United States Court of Appeals for the Fifth Circuit, which had prevented the Occupational Safety and Health Administration's COVID-19 emergency technical standard that applied to employers with 100 or more employees from going into effect. The Supreme Court will also consider the vaccine requirement for healthcare workers. The Court's decision will determine whether the federal government can enforce the policies.

Dykema's Federal Government Policy Team

For more information or assistance on the issues outlined above or other matters in Washington impacting your organization, please reach out to Dykema's federal government policy team of experts. Our bipartisan group has decades of experience bringing our clients' interests to bear upon executive, legislative and regulatory decision making. We represent automotive suppliers, technology suppliers, Fortune 500 corporations, local governments, nonprofit organizations, educational institutions, and trade associations on critical government policy and related matters.



James Brandell, Ph.D.
Government Policy Advisor
Washington, D.C.
202-906-8633
jbrandell@dykema.com



Andrew J. Buczek
Government Policy Advisor
Washington, D.C.
202-906-8655
abuczek@dykema.com



Mary Beth L. McGowan
Government Policy Advisor
Washington, D.C.
202-906-8631
mmcgowan@dykema.com



www.dykema.com

California | Illinois | Michigan | Minnesota | Texas | Washington, D.C.