



## Jam-Packed Agenda Awaits Congress This Fall

The post-summer recess schedule in Congress is shaping up to be historic. Marquee items such as a bipartisan infrastructure bill, funding the government, increasing the debt ceiling, and consideration of a partisan budget reconciliation bill will be on the docket. With the funding for the current fiscal year ending on September 30, Congress is headed for another continuing resolution to fund the government. The last day of September is also when the current surface transportation program authorization expires and when the latest extension of the national flood insurance program expires. However, the bigger job still ahead is the need to raise the country's debt ceiling.

In July 2019, Congress voted to suspend the debt limit for two years. Now that this deadline has come and gone, the Treasury Department is using emergency measures to preserve cash so the government can keep paying its commitments to bondholders, veterans, and Social Security beneficiaries. Treasury Secretary Janet Yellen called on Congress to pass legislation to lift the debt ceiling before departing for their summer recess. However, Senate Majority Leader Schumer did not add the measure to their budget resolution. While there is no official deadline of when a new bill is needed, the Congressional Budget Office has estimated that sometime in October or November is probably as far Treasury can use its emergency measures to avert a financial disaster for the country.

Beyond the debt ceiling issue, Congress faces a deluge of issues to tackle in September upon their return to DC. Even with the House scheduled to come back to Washington briefly near the end of August, the backlog of work is extensive. On September 6, the enhanced federal unemployment benefits approved under the American Rescue Plan expire, though there has not been a push for an extension. The Government Policy Team at Dykema details below some of the matters that we can expect to be deliberated once both chambers gavel back into session.



## Senate Infrastructure Bill / Budget Resolution

As promised by Senate Majority Leader Charles Schumer, prior to adjourning for the annual summer recess, the Senate passed a bipartisan \$550 billion physical infrastructure package that addresses surface transportation programs, water and wastewater infrastructure, energy infrastructure, broadband, and cybersecurity. Additionally, the Senate passed a Fiscal Year 2022 budget resolution to pave the way for a Democrat-led \$3.5 trillion social spending plan via the reconciliation process.

Progressive Democrats in the House and House Committee Chairs who felt excluded from the bipartisan infrastructure negotiations between the Senate and the White House were vocal in their displeasure that the bipartisan bill does not spend enough nor adequately address climate change. Moderate Democrats in that chamber are pressuring Speaker Pelosi to allow for House consideration of the Senate's bipartisan infrastructure bill during their short August session. Democrats only have a three-vote margin in the House at the moment, so Speaker Nancy Pelosi (D-CA) will have to work to keep her caucus together in order to pass it for President Biden to sign. Ultimately, it seems unlikely that Congress would get this close to achieving one of Biden's top priorities only to have it die in the Democratically-controlled House. However, upon passage of the bipartisan infrastructure package in the Senate, Speaker Pelosi indicated her chamber would wait to act on the Senate's infrastructure bill until the passage of reconciliation legislation that will not be ready until the Fall.

The budget reconciliation process involves two steps. The first originated with the Senate's budget resolution that sets spending and revenue levels. The House will return to session on August 23 to consider the Senate's budget resolution. The reconciliation process will conclude later in the calendar year when individual congressional committees draft legislation based on the reconciliation instructions outlined in the budget resolution. The resolution states that committees must report back their reconciliation plans to the Budget Committee by September 15; however, that date is not binding.

The reconciliation bill, which is not subject to the Senate filibuster and can pass the upper chamber by simple majority, is expected to address much of what was included in President Biden's The American Families Plan earlier this year. This so-called "social infrastructure" plan consists of an extensive range of pent up Democrat social spending priorities including: paid family and medical leave; long term care program for seniors and those with disabilities; ACA, Medicaid, and Medicare expansions; a pathway to citizenship for undocumented immigrants who came to the US as a child; green energy and climate change provisions; universal pre-kindergarten; and many more provisions impacting small businesses, veterans and seniors.



## Appropriations

Before leaving town for their annual August recess, the House of Representatives approved a \$600 billion seven-bill appropriations package on a party-line vote of 219-208. The multi-bill package included funding for the Departments of Labor, Education, Health and Human Services, Agriculture, Transportation, HUD, Energy, Treasury, Interior, and EPA. Overall, the legislation provides significant funding increases to a wide range of federal programs.

After months of inaction, the Senate took its first steps in the fiscal year 2022 appropriations process by holding Committee markups of its first three spending bills during the first week of August. However, the remaining nine bills will not be considered until after the Senate returns in September. With just six weeks until the start of the new fiscal year, it is a near certainty that Congress will need to pass a continuing resolution by September 30 to keep the government operating at its current levels. The temporary spending bill will likely last until the end of the calendar year, which would give Congress a few extra weeks to complete work on the fiscal year 2022 spending bills.

During that time, Congress will finalize funding levels for all government programs. While most do not expect a government shutdown this Fall, if the debt limit is attached to the Continuing Resolution, it could undoubtedly complicate the process. Reaching an agreement between progressive and moderate Democrats and Republicans that strikes a balance between defense and non-defense spending levels may still take several weeks once Congress reconvenes in September. Ultimately, final approval of the fiscal year 2022 appropriations measures will likely be one of the last things Congress does before leaving town at the end of December.



## Tax Policy

With the Bipartisan Infrastructure bill largely avoiding new taxes on individuals and businesses, the main focus on tax policy this Fall will be centered around the Democrats' plans for their budget reconciliation bill. The Senate budget resolution called for a maximum of \$3.5 trillion in new spending or tax increases, but that doesn't necessarily mean they will get to that number. It is just the maximum authorized. With moderate Democrat Senators already pushing back against a large package, any final deal will likely be smaller. Nevertheless, Democratic Senators ranging from Senate Finance Chair Ron Wyden and moderate Joe Manchin have called for spending in the bill to be 100% paid for.

The items under consideration that will get the most attention this Fall include:

- **Raising the corporate rate:** The Republican's Tax Cut & Jobs Act of 2017 lowered the corporate rate from 35% to 21%. The Democrats see the corporate rate as the easiest way to raise the revenue needed for their spending plans. Each percentage increase in the corporate rate generates approximately \$100 billion. However, disagreement exists on exactly how much to raise the rate. While President Biden has suggested a rate of 27%, others have suggested a lower rate.
- **Increasing tax rate on multinationals foreign profits:** Democrats have felt that the Republican's 2017 tax bill was not stringent enough on taxing multinationals' foreign profits. Proposals floated include scrapping the GILTI and BEAT rules and adopting a global minimum tax on the foreign earnings of US corporations.
- **Additional Minimum Tax on Corporate Profits:** A Senate and House proposal would place a 7 percent tax on book income above \$100 million on top of the current corporate income tax. It would be a second layer of taxation running parallel to the existing corporate income tax.
- **Increasing the top marginal rate for individuals:** Republicans reduced the maximum marginal rate to 37 percent from 39.6 percent in 2017. Democrats want to go back to 39.6 percent. The debate on this item will center on how this change may impact small businesses that file as individuals.
- **Increasing the capital gains rate on investment:** President Biden has proposed raising the current capital gains tax rates for higher-income individuals and removing the stepped-up basis on inherited assets. Small businesses and farmers have already started lobbying against these proposals.
- **Limiting IRA Accounts:** Congressional Democrats have said they would like to put limits on the amount of funds that can be put away in tax-deferred retirement accounts after news reports that hundreds of Americans have IRAs worth more than \$25 million and that nearly 30,000 people have accounts balances over \$5 million.
- **Increase IRS Enforcement:** Adding a similar provision to the Bipartisan Infrastructure bill did not work, so Democrats may try it again for the reconciliation bill. The goal is to add more money to the IRS budget to increase tax enforcement and gain more revenue.
- **Healthcare Items:** Some healthcare items that increase revenue got negotiated out of the Bipartisan Infrastructure bill, like Section 306 of Senate Bill 1859, the Lower Health Care Costs Act, which would save nearly \$2 billion by requiring transparency from pharmacy benefit managers on their rebates and fees. Policymakers could add that item back into a reconciliation bill. And the Senate Finance Committee is continuing to work on ideas to lower prescription drugs costs in federal benefit programs, which could generate significant revenue savings.



## Retirement Policy

Retirement savings legislation has been on a roll the past few years. In 2019, the bipartisan retirement package, the Setting Every Community Up for Retirement Enhancement Act of 2019, known as the SECURE Act, was signed into law. In 2020, at the start of the COVID pandemic, lawmakers passed temporary measures to help retirees, such as waiving minimum distribution requirements for the year. And earlier this year, the American Rescue Plan saw added relief to single and multi-employer pension plans. Congress has continued to work on additional measures geared toward retirement security.

In May, the House Ways and Means Committee passed unanimously the SECURE 2.0 legislation, which builds on the 2019 legislation. The full House may see action later this Fall on the bipartisan bill. In June, the Senate saw the introduction of the Retirement Security & Savings Act by Senators Cardin (D-MD) and Portman (R-OH), who have worked for years together on bipartisan retirement legislation. While floor time may be challenging in the Senate this Fall for a retirement bill, look to the Senate Finance Committee to markup a retirement-focused bill that may include many of the provisions in Cardin-Portman. In the meantime, if the Bipartisan Infrastructure bill is completed this Fall, defined benefit plans will see additional pension smoothing relief included as one of the revenue measures.



## Financial Services

The autumn schedule for the financial services sector will be busy, touching many areas, including investing regulations, real estate transactions, and insurance coverage. Before the House exited Washington for the summer, the House Financial Services Committee moved several pieces of legislation which should get floor time in the Fall. These bills including giving the SEC more authority to regulate online stock brokerage firms like Robinhood and adding more oversight to wealth family investment companies following the collapse of Archegos Capital Management.

Despite President Biden announcing a new federal eviction moratorium, real estate groups plan to challenge in the courts the new regulation that the President himself warned was on shaky legal ground. Congress failed to act on providing legislation extending the initial moratorium that expired at the end of July. If the courts strike down the moratorium, expect advocates in Congress to attempt to extend it through legislation in the Fall, possibly by adding it to the continuing resolution for government funding that needs to be passed before the end of September.

Cryptocurrency will also continue to be under the microscope in Washington after the summer break. The Bipartisan Infrastructure bill adds reporting requirements for certain crypto-transactions as a revenue measure. And SEC Chair Gary Gensler wants Congress to give it more authority to regulate the emerging sector.

Another item high on the Fall agenda is the reauthorization of the National Flood Insurance Program. The flood insurance program initially expired in September 2017 but has been extended 16 times. The current authorization expires on September 30. It is expected that Congress will tack on another short-term extension to the program as they wrangle over reforms for a longer multi-year extension.

## International Trade

Earlier this summer, the Senate approved the United States Innovation and Competition Act with a bipartisan vote of 68-32. The bill attempts to counter Chinese influence with “once in a generation” investment in reforming the National Science Foundation, establishing supply chain resiliency programs, creating regional technology hubs, quadrupling funding for the Manufacturing Extension Partnership, and investing nearly \$50 billion aimed at growing domestic semiconductor manufacturing. The legislation also included a renewal of the Miscellaneous Tariff Bill (MTB) and the Generalized System of Preferences (GSP). The Senate bill also contains strong language that is highly critical of China, accusing them of corruption, repression, and coercion to achieve competitive advantages.

Instead of taking up the Senate bill, the House appears poised to pursue its own legislation and reconcile the differences with the Senate. The House legislation will also be focused on confronting China economically and combine several research bills approved by the House Science Committee to improve US competitiveness. While there is support for reauthorizing GSP and MTB, House members have expressed a desire to address those issues separate from the broader China-related trade bill. With both MTB and GSP currently expired, there is pressure on Congress to reconcile their differences and approve a renewal of both programs. Like a number of the remaining issues on the agenda, policymakers have indicated it will be near the end of the calendar year before a final bill on MTB or GSP is passed into law.

There is currently no timetable for House consideration of the larger China trade package. In addition to the China-related provisions approved in the Senate, several House members are also pushing for the reauthorization of Trade Adjustment Assistance (TAA), a 60-year-old program to help workers who have lost their jobs as a result of trade and import competition. The expansion of the program previously approved by Congress expired on July 1. As a result, service workers are no longer eligible for the program, and the cap on training and reemployment services has been cut in half. Historically, Democrats have been strong advocates for the TAA program, and its renewal has often been linked to the passage of new trade deals. Republicans have typically been supporters of the MTB and GSP programs. The fate of all three programs, TAA, MTB, and GSP, could be linked together this Fall if combining them provides the necessary support to get legislation through Congress and on the President’s desk.

Several members of Congress, led by members from automotive states, are also calling for emergency spending to help address the shortage of semiconductors. The Creating Helpful Incentives to Produce Semiconductors (CHIPS) for America Act authorizes programs to incentivize production and support research and development programs and workforce development programs that promote semiconductor research. The United States Innovation and Competition Act included \$52 billion in supplemental appropriations to fund these initiatives. However, because the House is working on its own legislation and not simply passing the Senate bill, there are calls for the House to separately approve the CHIPS Act to address the shortage as soon as possible. As the semiconductor shortage worsens and losses in the automotive sector continue to increase, Congress will face growing pressure to act. If members from Michigan and other automotive states get their way, the CHIPS Act also has the potential to get pulled out of the larger China trade bill and be approved on its own this Fall.

Since taking office in January, the Biden Administration has not pursued additional trade agreements with trading partners. Additionally, Trade Promotion Authority (TPA), which allows for expedited consideration of any trade agreement negotiated by the Administration, has expired. The Administration has yet to call for the renewal of TPA, and it is a politically sensitive issue that was opposed by most Democrats when it was previously reauthorized. As a result, TPA is not on the agenda for the Fall, and it appears unlikely Congress is going to consider it in the coming months. Without TPA, any new trade agreements between the United States and the European Union, the United Kingdom and/or Kenya would face an uphill battle to being ratified by Congress.

## Environment

In light of increasing instances of PFAS detection, particularly in drinking water, both Congress and EPA continue to consider the most effective way to move forward with regulation. EPA is proceeding with implementing its PFAS Action Act and is considering how to regulate the substances under the Safe Drinking Water Act. In July, EPA listed PFAS as an entire class of chemicals on a contaminant candidate list which is a major step in promulgating a standard. EPA has also issued a voluntary health advisory for PFAS of 70 parts per trillion for drinking water. However, many in Congress have criticized the federal government for failing to regulate quickly enough. In response, Congress is considering legislation

that would require EPA to act more rapidly and more definitively. In July, the House once again passed the PFAS Action Act, the hallmark of which would categorize PFAS as hazardous substances under the Superfund program (CERCLA).

While the Senate has not gone so far as to enact similar legislation, in June, the Environment and Public Works Committee held a hearing about PFAS regulation where witnesses debated whether to regulate PFAS under CERCLA or under the Resource Conservation and Recovery Act (RCRA), arguing that it would give states greater power to regulate PFAS and simplify the process to recoup costs from companies and the Defense Department. Other witnesses, particularly on behalf of water utilities who are concerned about potential liability impacts under CERCLA for PFAS passing through their systems, argued that the Clean Water Act is well suited with authority to identify industrial sources of PFAS, including where they were manufactured and in what quantities. Additionally, the water sector has pointed out that EPA is underutilizing the Toxic Substances Control Act in addressing PFAS. There was an acknowledgment from state regulators that the cost of addressing PFAS is too much to be borne solely by ratepayers.

Headed into the Fall legislative session, it can be expected that legislators will continue negotiating the best path forward to provide federal resources for this growing public health concern. Further, EPA is expected to continue working to finalize federal PFAS standards, likely sometime in 2022.



## January 6 Investigation

After months of efforts to establish a bipartisan, independent commission to investigate the attack on the Capitol on January 6 stalled, Speaker of the House Nancy Pelosi established a Select Committee to examine what happened that day. Before the Select Committee held its first hearing, tensions between Democrats and Republicans were on full display when Speaker Pelosi rejected two of the Minority Leader's picks for the Committee. As a result, House Republicans withdrew all of their picks for the Select Committee and refused to participate in committee proceedings. Instead, Republican Representatives Lynn Cheney (WY) and Adam Kinzinger (IL), both vocal critics of former President Trump, were appointed by the Speaker to serve as the only Republicans on the panel.

To date, the Select Committee has held one hearing where members heard emotional testimony from law enforcement officers who responded that day. The next steps of the Select Committee will almost certainly be controversial and have the potential to cause further deterioration in the already rocky relationship between Democrats and Republicans in the House. Leaders of the Select Committee must decide who they will call as witnesses at future hearings. Witnesses may include participants in the attack, former members of the Trump Administration, and even sitting members of Congress. In an unprecedented move, the Committee may subpoena Republican members of Congress, such as Kevin McCarthy and Jim Jordan, to testify about their interaction with President Trump that day. Should these members refuse to testify, House leaders would have to call a vote of the whole House to compel testimony. There is already a noticeable level of distrust between Democrats and Republicans on the Hill around January 6. If this escalates into a battle of subpoenas over the role of certain members of Congress in the January 6 attacks, it has the potential to poison the relationship between Democrats and Republicans on the Hill, not just for the remainder of this Congress, but for years to come.



## Voting Rights Legislation

Frustration has continued to mount among Democrats over the lack of progress on voting rights legislation in the Senate. In March of this year, the House of Representatives passed the sweeping voting rights bill known as For the People Act. The legislation is a comprehensive election reform bill that expands voter registration, increases voting access through vote-by-mail and early voting, creates limits to removing voters from voting rolls, and requires independent redistricting commissions. Despite being a top priority of Senate Democrats, Republican opposition to the bill in the Senate has prevented it from being considered. Supporters of the voting rights legislation have called for the elimination of the filibuster in the Senate to allow for the passage of voting rights legislation. However, even if the bill were not subject to the filibuster, the legislation approved by the House likely still lacks the necessary support from all 50 Democratic Senators. Senator Joe Manchin has already expressed his opposition to the House bill, and it is believed there may be other Senators who share many of his concerns. The result is that despite setting an August deadline for action on voting rights, a path forward for the legislation remains elusive in the Senate.

In an effort to jumpstart action on voting rights, the House of Representatives is likely to vote on the John Lewis Voting Rights Act during the week they come back into session in August. That legislation would restore provisions of the Voting Rights Act that the Supreme Court struck down in 2013. However, the legislation does not mandate many of the voting practices or pre-empt state voting and election laws like the For the People Act would, and in the eyes of many progressives, does not go far enough. But as long as the Senate filibuster remains in place, Democrats and voting rights advocates may have to accept the John Lewis Voting Rights Act provides the best opportunity for any voting rights legislation to become law before the election in November 2022.



## Biden Regulatory Agenda

With only a slim Democratic majority in Congress, President Biden is relying on regulation and executive powers to enact much of its agenda. Executive Orders recently issued related to vehicles, consumer protection, promoting domestic industry and labor will be implemented in the coming months. On the regulatory front, the Biden Administration issued EPA regulations to address water contaminants, further protect waters under the Clean Water Act, and set greenhouse gas emissions limits on cars and light trucks for model years 2023-2026, as well as for heavy-duty vehicles. Separately, the Department of Transportation via the National Highway Traffic Safety Administration (NHTSA) issued updated fuel economy standards for cars and light trucks for model years 2024-2026. The agency will accept comments until mid-October. Updated standards for the years 2027-2030 are expected to follow.

In addition to EPA moving forward with a drinking water standard for PFAS, the Biden EPA is also revamping standards to keep lead and copper out of drinking water. In June, EPA announced a delay in the effective date for implementation of the Trump Administration's federal drinking water regulation, the Lead and Copper Rule Revisions, until December 2021. The agency is seeking public input over the next six months on whether to amend the rule. Court cases challenging the past Administration's rule are currently on hold while EPA reviews it.

Also, in June, the US Army Corps of Engineers and the Environmental Protection Agency announced plans to scrap the Trump Administration Clean Water Act changes to navigable waters and initiate a new rulemaking related to the scope of water protections under the law. The Biden Administration intends to restore the pre-2015 standard implemented under President Obama that was criticized for being overly restrictive and to create an entirely new rule. It will be a two-step rulemaking process to restore the pre-2015 standard and then develop a new standard. Additional details on timing are expected from the agencies over the coming months.

In July, the Administration proposed new rules that would increase Buy American standards for federal procurement. The proposed plan would increase the content requirements to be considered American-made for federal contracting purposes where goods must contain 75% of US-made content, up from the current 55%. The public comment period also closes at the end of September, at which point the Administration will move to finalize the policy.

Also, in July, Biden issued an order to promote competition in the American Economy. The order promotes boosting competition; lowering prices to consumers; and, increasing pay for consumers and will primarily be implemented by the Federal Trade Commission. In August, President Biden issued an order to make half of all new vehicles sold in 2030 zero-emissions vehicles, including battery-electric, plug-in hybrid electric, or fuel cell electric vehicles. The Executive Order also initiates the development of long-term fuel efficiency and emissions standards and complements EPA's and the Department of Transportation's related rulemakings. From an Executive Order issued earlier this year that would increase federal "green" procurement, the General Services Administration is anticipated to release details of the plan shortly, which will include direction for federal purchases of zero-emission vehicles.



## Political Update

- **Census Numbers & Redistricting:** In April, the Census Bureau released the population data that determines how many seats in Congress each state will have for the next decade. However, the granular data needed by the states to draw their new Congressional maps was just released. This Fall, we still start seeing maps that can impact the behavior of House members who may have new swaths of constituents or who are drawn into a seat with another Member. With just a razor-thin majority, this wrinkle adds to Speaker Pelosi's challenging task of keeping her caucus unified for votes in the Fall.
- **Gubernatorial Elections:** The Fall will see three states have gubernatorial contests, in which each political party will look for signs of what the 2022 midterms may bring. California will have a recall election on current Governor Gavin Newsom. That election will feature two questions on the ballot. The first question will be whether to recall Newsom, and the second will be who will replace him if the recall is successful. Governor Newsome is ineligible to run as a candidate for the second question. A recent Los Angeles Times poll had the first question as a tossup.
- Virginia's constitution prevents a Governor from running for reelection, but it doesn't preclude a former Governor from running again. Former Virginia Governor Terry McAuliffe will be attempting to get elected for the second time, after first being elected in 2013 to one term. McAuliffe will face former Carlyle Group CEO Glenn Youngkin, who will attempt to be the first Republican elected Governor in Virginia since 2009. Polls show a slight lead for McAuliffe within the margin of error.
- This November, New Jersey will also have a gubernatorial election when first-term Governor Phil Murphy runs for reelection against Jack Ciattarelli, former New Jersey General Assembly member. Polls earlier this summer showed a sizable lead for Murphy.

- **Congressional Special Elections:** Ohio will hold two special elections on November 2 for vacant Congressional seats. When President Biden chose Democrat Marcia Fudge as the Secretary of the Department of Housing and Urban Development, it left Ohio's 11th Congressional district vacant. And when Republican Steve Stivers resigned in May to run the Ohio Chamber of Commerce, it left the 15th Congressional district open. Both seats are expected to stay in their respective party's column.

## 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](http://www.dykema.com)

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