



POLICY OUTLOOK

*FOR THE BIDEN ADMINISTRATION
AND THE 117TH CONGRESS*

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OVERVIEW:

In his first few months in office, President Biden has been and will continue pursuing an aggressive agenda to address the foundations of his [Build Back Better](#) plan focused on 1) controlling COVID-19, 2) providing economic relief, 3) addressing climate change and 4) focusing on racial equity and civil rights. He has also taken action on immigration and continued outreach to foreign leaders. Despite a slow start on executive branch confirmations, President Biden has been utilizing presidential authorities and is working with Democratic allies in Congress to try to advance his agenda. Through the use of budget reconciliation, he was able to secure passage of the \$1.9 trillion dollar [American Rescue Plan](#) (ARP), which was signed into law on March 11th.

However, the use of the reconciliation process has exacerbated an already toxic atmosphere on Capitol Hill just as Members of Congress turn their focus to more traditionally bipartisan issues such as infrastructure legislation and China/U.S. competitiveness. Infrastructure, for example, is an issue Members of both parties generally support but have vastly different approaches in terms of size, scope and policy.

In response to a request from Senate Majority Leader Chuck Schumer (D-NY), the Senate Parliamentarian recently ruled that a previously passed budget resolution may be amended, permitting more than one reconciliation bill to be considered from a single budget resolution. This ruling could pave the way for Democrats to reuse the FY21 budget resolution and set up numerous reconciliation bills before moving on to the FY22 budget resolution and reconciliation bill. While the parameters of process and how far the Parliamentarian will permit Democrats to go are unknown at this point, this process theoretically provides a pathway for Democrats to pass reconciliation bills on a regular basis. They will have flexibility to break bills into pieces instead of lumping everything into one large reconciliation bill. We should note Republicans have been unusually quiet in reacting to the Parliamentarian's determination, suggesting her ruling may not be as straightforward nor clear as presented. We expect the coming weeks and months will be dedicated to Democrats choosing a legislative strategy and developing specific infrastructure, tax, climate, healthcare and other policy proposals to fulfill President Biden's multi-trillion dollar [American Jobs Plan](#) (AJP).

Additionally, if Democrats choose to use reconciliation to pass the FY22 appropriations bills, and the Parliamentarian agrees annual appropriations bills are permissible under Senate reconciliation rules, earmarks ("Community Project Funding") are unlikely to survive. Under the Byrd Rule, every provision in a reconciliation bill must have a budgetary impact. Since earmarks set aside funding that has already been allocated, they do not have a budgetary impact. Therefore, it is likely each earmark would be stricken under the Byrd Rule or be litigated by both parties before the Parliamentarian.

Below we provide more details on some of the top priorities for the Biden Administration and Democratic Congress as they return from recess. As always, if you need more information on any of the topics discussed or have additional questions, please do not hesitate to reach out.

INFRASTRUCTURE:

As we approach the next congressional work period, the Biden Administration remains focused on two key priorities: infrastructure, which includes so-called “human infrastructure,” and climate change. On Wednesday, March 31st the President outlined the first of two pieces of infrastructure policy. The AJP would make large investments in physical infrastructure, including roads, bridges, transit and buildings, as well as expanding access to broadband, developing clean energy technologies, addressing supply chain issues and bolstering American manufacturing. The plan also includes platforms on workforce development and an increased focus on labor provisions including collective bargaining. The total cost of the package is believed to be in the range of \$2 trillion, and an increase in the corporate tax rate from 21% to 28% is included. More on this subject below.

The second part of infrastructure policy will be focused on “human infrastructure,” and will be announced by the President in the coming weeks. That package is expected to include provisions related to healthcare, education, child care, paid family leave and other items. For these policies, the White House is expected to advocate for changes to the tax code affecting individual tax rates.

Over the summer the Administration will focus on enacting these two packages, with the goal of finishing work before September. The Administration will deploy what is being called “the Jobs Cabinet,” which includes the Secretaries of Energy, Labor, Transportation, Commerce and Housing and Urban Development, to the Hill and the media to advocate for the plan. Speaker Pelosi has set the marker for significant action out of the House by July 4th, 2021. At this point, Congressional Democrats have not determined whether to pursue a one bill, two bill or several bill strategy. The reaction from Congress has been somewhat mixed – some progressives think the packages do not spend enough money and are advocating for spending closer to \$10 trillion, while some moderate Democrats have raised concerns over the increase in the corporate rate. Immediately upon release of the proposal, Republicans expressed strong opposition to the scope, overall cost, and changes to the corporate tax rate, among other concerns. President Biden is hosting a bipartisan and bicameral group of Members of Congress to discuss the contours of the plan on April 12th, 2021, the first of what is expected to be a series of meetings.

In addition to the broad infrastructure effort, another issue sure to garner a lot of attention this spring is climate change. The Biden Administration is taking a whole-of-government approach to climate change and created the [National Climate Task Force](#) with over 21 members representing every facet of government. The White House is hosting a virtual international summit on April 22nd and 23rd with 40 world leaders invited. The goal of the summit is two-fold: to have countries bolster their Nationally Determined Contributions (NDCs) agreed to under the Paris Accord, and to demonstrate the Administration’s commitment to addressing the issue. In the lead-up to the summit, we expect a number of events and speeches from the Administration on various climate topics. It is likely we will see at least one additional Executive Order (EO) prior to the summit as well.

CHINA/U.S. COMPETITIVENESS:

As President Biden's American Jobs Plan is rolled out and turned into a legislative product, Majority Leader Schumer has tasked his committee chairs in the Senate to produce legislation to address U.S. competitiveness vis-à-vis China focused on 1) robust investments in the U.S., 2) forging new international partnerships and alliances and 3) measures to counteract predatory actions.

Leader Schumer has indicated his desire to move omnibus China/U.S. competitiveness policy legislation through regular order when Congress returns in mid-April, with possible floor action the week of April 19th. Several committees, including Foreign Relations, Finance and Commerce, are considering bills that would likely be included. The legislative package on China will include measures to bolster U.S. supply chains, enhance the United States' diplomatic strategy towards China, improve tracking of intellectual property violators, and potentially fund efforts to bolster domestic semiconductor and 5G equipment manufacturing capabilities.

Below is a summary of some of the bills in the mix. This is very much a work in progress, and it is unclear if a deal on a bipartisan bill(s) is possible. The time crunch is making it difficult, but conversations are ongoing. Some of the bills under consideration for the package include:

- **Endless Frontier Act (S.3832)** – *Schumer, Young, [initial release](#)*
Renames the National Science Foundation (NSF) as the National Science and Technology Foundation (NSTF) and tasks a new deputy director with executing the new funding of fundamental research related to specific recognized global technology challenges with geostrategic implications for the United States
- **America Labor, Economic competitiveness, Alliances, Democracy and Security (America LEADS) Act (S. 4629)** – *Menendez, Schumer, [initial release](#)*
Authorizes through FY2025 various federal research and development activities
- **Strengthening Trade, Regional Alliances, Technology, and Economic and Geopolitical Initiatives Concerning China Act (The STRATEGIC Act) (S.4274)** – *Risch, [initial release](#) (Reintroduced 3/10/21)*
Directs the Department of State to establish a program to facilitate dialogues between U.S. regulatory and technical agencies and their counterparts in partner countries to promote U.S. regulatory standards.

CYBERSECURITY:

Congress has updated several federal cybersecurity laws and policies to attempt to strengthen federal cybersecurity and promote private sector defenses. Despite cybersecurity funding being included in the ARP, lawmakers have not prioritized cybersecurity appropriations in a manner proportional to the growing threat.

In the coming weeks, the White House is expected to release an EO meant to improve the government's ability to detect, coordinate, respond to and investigate cybersecurity incidents,

as well as promote supply chain security and push government contractors to increase defensive capabilities. This EO is in response to the SolarWinds breach which led to the compromise of nine federal agencies and approximately 100 companies.

According to reports, some of the order's measures are aimed at strengthening the Department of Homeland Security (DHS) and the Cybersecurity and Infrastructure Security Agency (CISA). The White House directive would establish a body for reporting cybersecurity incidents within CISA modeled after the National Transportation Safety Board. Under the order, DHS and the Attorney General would also create a cybersecurity incident review board made up of federal officials and private sector companies for examining threats and vulnerabilities, as well as risk mitigation efforts around major incidents.

In Congress, there is a flurry of legislative activity with proposals focused on breach notification/cyber incident notification, Federal Information Security Management Act (FISMA) reform, funding state and local governments, election security and several privacy related bills. We expect to see movement on several of these issues over the next few months.

ENERGY:

Congressional Democrats have introduced or re-introduced a number of bills to support the Administration's climate efforts, such as legislation focused on utilizing the tax code to further incentivize the increased use of energy sources and technologies to reduce greenhouse gases. These include the **GREEN Act** introduced by Select Revenue Measures Subcommittee Chairman Mike Thompson (D-CA) and other Ways and Means Democrats, and the anticipated reintroduction of Chairman Wyden's **tech-neutral approach** first introduced in 2019 with the support of 25 Democrat Senate colleagues. The Administration's approach also includes incentives for technologies such as energy storage and hydrogen. Bipartisan legislation, the **Energy Storage Tax Incentive and Deployment Act**, was **introduced** in early March to address energy storage eligibility for the investment tax credit in both the House and Senate. The effort is led by Senators Martin Heinrich (D-NM), Susan Collins (R-ME), and Representatives Mike Doyle (D-PA) and Vern Buchanan (R-FL), along with a number of their colleagues.

FINANCIAL SERVICES:

Climate change, affordable housing, diversity and inclusion, consumer protection, and oversight of pandemic relief programs continue to be key priorities for both the House Financial Services Committee and the Senate Banking Committee, and will likely inform their respective agendas in the coming weeks. The House Financial Services Committee will hold hearings in April on infrastructure, the London Inter-bank Offered Rate (LIBOR) transition, financial institution charters, the impact of the municipal bond market on economic, racial, and social justice, and compensation equity. The Committee is also scheduled to convene its first markup of the 117th Congress on a series of bills not yet announced. Additionally, Chairwoman Maxine Waters (D-CA) remains concerned regarding market volatility involving GameStop and the Committee is expected in the coming weeks to hold its third in a series of hearings on the issue with regulators to discuss possible reforms.

The Senate Banking Committee will likely continue its focus on climate change, racial justice, pandemic response, and housing reform. The Banking Committee is also likely to hold hearings on infrastructure as negotiations over President Biden's infrastructure plan take place in the coming weeks. Additionally, Chairman Brown is expected to convene hearings to consider the nomination of Adrienne Todman to serve as Deputy Secretary of the Department of Housing and Urban Development, as well as other nominations not yet announced.

HEALTHCARE:

With the passage of the ARP, Congress's focus will shift to other healthcare priorities. These include addressing the cost of prescription drugs, expanding access coverage, and addressing public health infrastructure. While the vehicle and timing of addressing these priorities may shift, legislation introduced in the 116th Congress will serve as the foundation for the Democratic majorities in the House and Senate.

To address prescription drug costs, Speaker Pelosi reaffirmed her commitment to pass a yet to be reintroduced version of [*H.R. 3 \(Elijah E. Cummings Lower Drug Cost Now Act\)*](#). The Congressional Budget Office (CBO) estimates that H.R. 3's price negotiation provisions would save an **estimated \$450 billion**. These savings could help pay for the "human infrastructure" portions of President Biden's AJP, including making the recent temporary expansion of the Affordable Care Act permanent. It remains to be seen if this effort would also include a public insurance option or lowering the age for Medicare eligibility. Both are highly controversial across the healthcare industry and may be shelved for a later debate. Public health infrastructure is another priority with bicameral support. Health, Education, Labor and Pensions (HELP) Committee Chairwoman Patty Murray (D-WA) reintroduced her [*Public Health Infrastructure Saves Lives Act*](#) in the Senate, and Energy and Commerce Committee Chairman Frank Pallone (D-NJ) reintroduced his [*Leading Infrastructure for Tomorrow's America Act*](#), or LIFT Act, in the House. Both bills would make investments in state, tribal, territorial, and local core public health needs, authorize additional funding for the Centers for Disease Control and Prevention (CDC), and provide funding for both human and capital public health investments. We also expect to see more nominations and confirmations to fill out President Biden's healthcare team, with hearings for Centers for Medicare and Medicaid Services (CMS) nominee Chiquita Brooks LaSure, Deputy Health and Human Services Secretary Andrea Palm and possibly others in April.

TAX:

While it does not address a corporate tax rate, Senate Finance Committee Chairman Ron Wyden (D-OR), Sen. Sherrod Brown (D-OH) and Sen. Mark Warner (D-VA) recently introduced an international tax framework titled, "[*Overhauling International Taxation*](#)." The plan focuses on Global Intangible Low-Taxed Income (GILTI), Foreign-Derived Intangible Income (FDII), and the Base Erosion and Anti-Abuse Tax (BEAT) from the 2017 Tax Cuts and Jobs Act (TCJA) as a means to "generate critical revenue to pay for President Biden's infrastructure package." Generally, the framework Wyden et al. released aligns closely with President Biden's call to increase taxes on corporations, particularly multinational companies, most recently formalized with the release of the Administration's "[*Made in America*](#)" tax plan.

Both plans would significantly impact GILTI by increasing the tax rate; both plans would alter BEAT, with the Administration offering a new system it terms SHIELD, which would deny deductions of payments made to related parties, while Wyden proposes to increase the minimum tax rate on BEAT payments; and both plans seek to change FDII, with the Administration calling to repeal it altogether while Wyden seeks, primarily, to change it to a domestic incentive provision. The Administration's plan goes into greater detail beyond international – which is the focus of Wyden's framework – and envisions a 15% tax on book income for some corporations, an increase in the corporate tax rate from 21% to 28%, pursuit of a global minimum tax negotiated at the OECD, anti-inversion proposals, and a slew of clean energy-related tax incentives, among others. Relatedly and as noted above, we anticipate release of Chairman Wyden's clean energy proposal as soon as this week, which is expected to include several provisions aligning with the Administration's report.

As expected this early on in the process, details are short, but we are keeping a close eye on developments as both the Administration and Congressional Democrats refine their proposals.

TECHNOLOGY:

Key issues enjoying bipartisan attention – in that they continue to be the focus of the Biden Administration and a Democratic-controlled Congress just as they were in the Trump Administration – remain antitrust, broadband deployment, and Section 230. Lawmakers in both chambers continue to express concern over alleged anticompetitive conduct in the tech sector and are interested in efforts to update U.S. antitrust laws.

Since the beginning of the COVID-19 pandemic, Congress has realized there is an increasing need for broadband access, especially in the rural parts of the country. Funding for broadband has been included in COVID stimulus packages and is an issue in the President's infrastructure proposal. This is a legislative topic where we are likely to see bipartisan support.

With respect to [Section 230](#), the debate continues over the roles and responsibilities of social media platforms and other technology companies. Various committees in Congress have held hearings, and a slew of bills have been introduced in the 117th Congress amid continued calls for reform. A recent [Section 230 Legislative Tracker](#) was released as a joint project between Future Tense – the Tech, Law, & Security Program at the Washington College of Law at American University – and the Center on Science & Technology Policy at Duke University. Despite taking very hardlined positions about changing the statute on the campaign trail, the Biden Administration has yet to formulate a position. Section 230 did recently receive attention from the Supreme Court when it [vacated the ruling](#) of a lower court regarding the Knight First Amendment Institute's case related to former President Trump's Twitter account. While the case was determined to be moot, Justice Thomas elevated the issue and stated in his opinion, "legal difficulty that surrounds digital platforms – namely, that applying old doctrines to new digital platforms is rarely straightforward." We expect Congress to continue its efforts to make changes to Section 230. At the same time, it is hard to see a specific approach gaining significant traction in the nearterm.

Despite several hearings, multiple pieces of legislation and exhaustive debate, Congress has been unable to move forward with a comprehensive piece of legislation on data privacy. Although Members of Congress recognize the need for federal privacy legislation, philosophical differences in approach have led to failed efforts to enact a comprehensive bill. Key points of contention around potential federal legislation have included whether and to what extent that legislation should preempt state laws and whether the legislation should include a private right of action.

TRADE:

With the confirmation of Katherine Tai to be United States Trade Representative (USTR) in mid-March, the trade agenda will ramp up in the coming weeks and months as the Biden Administration looks to carry out its priorities.

We expect USTR will soon engage in negotiations with the European Union to resolve the long-standing Boeing-Airbus dispute after the two parties reached a four-month tariff suspension agreement in early March. By late May/early June USTR will also determine whether to impose tariffs as a result of Section 301 investigations into digital services taxes (DSTs) imposed by Austria, India, Italy, Spain, Turkey, and the United Kingdom. Ambassador Tai will also consider whether to take enforcement actions under the United States-Mexico-Canada Agreement (USMCA) and will determine next steps with respect to U.S.-China relations. Additionally, the Administration has proposed using trade as a tool to advance goals related to diversity and inclusion and climate change, though what that looks like remains to be seen.

On the congressional front, Ambassador Tai is expected to testify before the Senate Finance and House Ways and Means Committees in late April/early May on the 2021 Trade Policy Agenda. Her testimony will likely take place as the Senate looks to pass a comprehensive package discussed earlier aimed at economic competitiveness and countering China, which will likely include bills – such as the [Endless Frontier Act](#) and the [America LEADS Act](#) – to strengthen U.S. leadership in critical technologies, enhance supply chain resiliency, and engage with allies. Of note, in the coming months, Congress will look to reauthorize Trade Promotion Authority (TPA), which provides a fast-track process for a simple majority, up/down vote on free trade agreements and expires July 1, 2021.

CONCLUSION:

The Biden Administration and Congressional Democrats have laid out an aggressive timeline for progress and passage of their top priorities in 1) the infrastructure-focused, American Jobs Plan and 2) an omnibus package of legislation focused on China/U.S. competitiveness. As of now, they expect significant action by the Memorial Day recess. While the ruling by the Senate Parliamentarian may be a positive one for their efforts, there are many issues that still need to be sorted out in order to determine how they will proceed. We expect the next few weeks will be critical for choosing the legislative path forward, the timeline, and the role Republicans will play, among other things. As all this develops, we will be in close contact with our clients helping you sort through the noise and focus on the issues that really matter.

KEY EXPIRATION DEADLINES

- **June 30** - Paycheck Protection Program
- **July 1** - Trade Promotion Authority
- **July 31** (*absent extraordinary measures*) - Debt Ceiling
- **September 6** - Increased Unemployment Compensation Benefits and Pandemic Unemployment Assistance
- **September 30** - Government Funding
- **September 30** - Surface Transportation Authorization
- **September 30** - National Flood Insurance Authorization
- **September 30** - Increased SNAP Benefits
- **September 30** - Puerto Rico Medicaid
- **December 31** - COVID Relief Fund for States/Localities
- **December 31** - 3.75% increase in Medicare physician fees
- **December 31** - Payroll Tax Deferral
- **December 31** - Employee Retention Credit
- **December 31** - Enhanced Child and Dependent Tax Credit
- **December 31** - Tax Extenders
- **December 31** - Emergency Injury Disaster Loans Advance Grants

A more detailed list can be found [here](#) from the Committee for a Responsible Federal Budget.

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