



POLICY OUTLOOK

*FOR THE BIDEN ADMINISTRATION
AND THE 117TH CONGRESS*

Tiber Creek Group | SEPTEMBER 9, 2021

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POLICY OUTLOOK FOR THE BIDEN ADMINISTRATION AND THE 117TH CONGRESS

SEPTEMBER 10, 2021

OVERVIEW:

Throughout President Biden's first several months, the Administration and the Democratic majorities in Congress have continued pursuing a robust domestic policy agenda. Beginning with passage of the \$1.9 trillion American Recovery Plan in March (Public Law 117-2), the President's first term to date has focused on his Build Back Better response to the ongoing COVID-19 pandemic – from both economic as well as public health perspectives. The pandemic response also has woven in long-held Democratic policy objectives. Like the American Recovery Plan, Congress and the Administration are using the budget reconciliation process to achieve enactment given the 50-50 Senate.

Following an August recess delayed due to Senate consideration of the \$3.5 trillion Fiscal Year 2022 budget resolution and the Bipartisan Infrastructure Deal (then interrupted by a House "bonus" session to set forth conditions and timing of House passage of both measures), Congress will return to a political landscape defined by a number of challenging domestic and global issues. The Taliban's takeover in Afghanistan coupled with the tragic deaths of 13 U.S. servicemembers, the aftereffects of Hurricane Ida in the South and Northeast, historic wildfires in the West, and the recently enacted abortion law in Texas have shifted the attention of many Members of Congress. Thus, domestic politics informed by global events as well as a limited congressional calendar risk complicating an already delicate balance.

Furthermore, as Congress approaches the end of the fiscal year, several legislative matters require action, particularly the decision about how to address to debt ceiling and a handful of expiring laws.

KEY DATES

- **June 30** - Paycheck Protection Program
- March 11: Enactment of the American Recovery Plan.
- July 31: Suspension of U.S. statutory debt limit ends.
- August 26: The U.S. Supreme Court strikes down eviction moratorium.
- August 31: Withdrawal of American military from Afghanistan.
- Sept. 6: Enhanced federal unemployment benefits under the American Rescue Plan expire.
- September 8: Treasury Secretary Yellen informs Congress Treasury will exhaust extraordinary measures "during the month of October."
- Sept. 11: 20th anniversary of the 9/11 attacks.

KEY DATES (CONT.)

- Sept. 15: House and Senate committees must finish drafting respective sections of the budget reconciliation bill. This is not a “hard” deadline.
- Sept. 30: End of Fiscal Year 2021.
- Sept. 30: Surface Transportation Bill expires.
- Sept. 30: National Flood Insurance Program authorization expires.
- Sept. 30: COVID-related benefits, including increased SNAP, TANF, and sick pay, expire.
- Sept. 30: Expiration of Medicaid funding for U.S. Territories
- Dec. 31: “Use it or Lose it” deadline for states and localities to use **CARES Act Coronavirus Relief Funds**.
- Dec. 31: Expiration of enhanced Child Tax Credit and Dependent Care Tax Credit.
- Dec. 31: Expiration of 23 so-called individual and business tax **extenders**.
- Dec. 31: Expiration of Statutory PAYGO.
- Dec. 31: Expiration of Medicare sequester moratorium and temporary physician payment increase.

117TH CONGRESS REMAINING FIRST SESSION CALENDAR

September 2021						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

October 2021						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

November 2021						
S	M	T	W	T	F	S
31	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

December 2021						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

Senate in session

House in session

Federal holiday

UNFINISHED BUSINESS

Debt Ceiling

While the Treasury Department is currently using “extraordinary measures” to pay the government’s bills without adding new debt, Congress will need to raise or suspend the debt ceiling sometime this fall. Congress has several options to address this issue. First, Democrats could go back and revise the budget and provide a specific level to which to raise the debt limit, though it is procedurally very difficult to do so. Second, Congress could attempt to pass a standalone debt limit increase (or suspension). Third, and the path favored by Senate Majority Leader Chuck Schumer and Speaker Nancy Pelosi, is to add a debt limit suspension to the continuing resolution (CR) that must be passed at the end of the fiscal year, which would extend government funding likely into mid-December. Doing so via a CR would be challenging to accomplish given the make-up of Congress, so it is possible the initial CR will cover a three-week period followed by a second CR, likely through December 10, to allow more time for negotiations. The end of the fiscal year, September 30th, falls on a Thursday, making the prospect of a short-term government shutdown a possibility, even if only for the weekend.

Senate Minority Leader Mitch McConnell has been very clear on this issue: he will not support raising the debt ceiling while Democrats continue to spend, “trillions more borrowing and trillions more spending when inflation is already sticking American families with higher costs.” McConnell and 45 Republican senators signed a pledge saying they will oppose raising the debt ceiling regardless of attaching it to another bill or brought to the floor as a standalone bill. The Republican senators who did not sign the letter were Susan Collins (R-ME), Lisa Murkowski (R-AK), Richard Shelby (R-AL) and John Kennedy (R-LA). This means, at best, Democrats could pick up four Republican votes, leaving them six shy of increasing the debt ceiling outside of the reconciliation process, assuming the vehicle carrying the debt ceiling fix is filibustered. Democrats will cite the numerous times Republicans voted to lift or suspend the debt ceiling in prior years.

Because Schumer and McConnell are both sticking firmly to their positions, the debt limit will be one of the biggest flash points in September.

Appropriations

The House passed its versions of nine of the FY 2022 appropriations bills in early August, and the Senate process started in early August with three mark-ups prior to the recess. Real and significant progress in the overall process will not happen until there is a bipartisan agreement on funding allocations. Leader McConnell (also a member of the Appropriations Committee) spoke at the end of the third Senate mark-up and signaled those three bills were the only ones Republicans were willing to support. While it is rumored the Senate will use the week of September 13th to mark up additional appropriations bills, it is unlikely given the political hurdles. Still, with three appropriations bills having passed out of the full Senate Committee (and with allocations matching House companion bills - Agriculture, Energy and Water, and Military Construction/ VA), the correlating House and Senate appropriations subcommittees are preparing to conference their versions.

Most immediately, appropriators are drafting a CR, expected to go to the floor in the House the week of September 20th.

Infrastructure

On Tuesday, August 10th, following months of back-and-forth negotiations between the White House and Senate Republicans, the Senate overwhelmingly passed a [\\$1 trillion bipartisan infrastructure deal](#) 69-30. Representing a key component of the President's Build Back Better agenda, the legislative measure would repurpose hundreds of billions of dollars in already-approved spending plus dedicate an additional \$550 billion to pay for so-called "hard" infrastructure such as roads, bridges, broadband deployment, energy grid updates, cybersecurity resiliency, ports, airports, and drinking water, among other priorities. A key reason the measure was able to attract such strong GOP support (including McConnell's) was that the package included no tax increases on individuals or corporations. As a result, this was viewed as a safe political vote among many Senate Republicans, even though it may be viewed as having unlocked the path towards the more expansive budget reconciliation process.

Despite the strong bipartisan vote in the Senate, House passage is anything but certain. Speaker Pelosi recalled members from the August recess for what was to be a brief session to pass the budget resolution; however, after moderate Democrats objected to pursuing a budget resolution without first enacting the infrastructure deal, the Speaker agreed to language that the House "shall consider" the bipartisan infrastructure bill by September 27th regardless of how the budget reconciliation process was proceeding. This concession was critical given that, unlike in the Senate, GOP opposition to additional infrastructure spending is nearly unanimous in the House. Given the Democrats' narrow three-vote margin, the Speaker cannot assume any Republicans will vote in favor of the infrastructure package unless and until it is obvious during the vote itself the measure would pass regardless.

Afghanistan

The withdrawal of U.S. forces from Afghanistan will absorb considerable Congressional attention in the coming weeks. Hearings in both chambers likely will focus not only on the Biden Administration's decisions and actions but also on the past 20 years of U.S. involvement in Afghanistan and decisions made by prior administrations. Additionally, consideration and debate over numerous issues, including the NDAA, appropriations, and nominees, will include discussions regarding Americans still in Afghanistan, green card holders, Special Immigrant Visa holders and other vulnerable people remaining in Afghanistan and refugee resettlement, as well as the overall relationship with the Taliban, access to global markets and foreign assistance, and the strained relationship with NATO. What remains to be seen is whether this will impact the Administration's domestic agenda and/or the 2022 midterm elections.

Reconciliation

At the conclusion of a brief "bonus" August session, on August 24th the House adopted a \$3.5 trillion FY 2022 budget resolution with a party-line vote of 220-212; this followed Senate passage on August 11th, also a party-line vote of 50-49 (Sen. Mike Rounds (R-SD) was absent due to his wife's illness). We would ordinarily expect several weeks' worth of mark-ups in the respective chambers' committees now that both chambers have passed the budget resolution; however, Leader Schumer repeatedly has indicated Senate committees would not mark-up reconciliation bills, presumably given the 50-50 ratios. To date, House committees – which began marking-up last week – are planning to report out their respective pieces by mid-September, setting up floor action potentially as early as late September but likely not until October or November.

Our latest intelligence suggests the committee process in the House largely will be a “Caucus aligning” exercise, a challenge in and of itself. Meanwhile, negotiations are ongoing to harmonize a final House product with that which would be presumed to be able to pass the Senate after the so-called Byrd Bath. The Senate must take up the House-passed vehicle for the Senate to bypass Senate committee consideration. At that point, should Leader Schumer need to offer a substitute to make further changes to gain enough support from all 50 Democrats as well as ensure compliance with the Byrd Rule, the measure would return to the House for additional consideration.

HOUSE COMMITTEE RECONCILIATION MARK-UP SCHEDULE | SEPT 2021

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
		1	2	3	4	5
			Natural Resources, Oversight and Reform			
6	7	8	9 -10		11	12
			Sept. 9: Small Business, Education and Labor (possibly continuing to 9/10), Veterans Affairs, Science, Space and Technology (<i>tentative</i>) Sept. 9-10: Ways and Means – initial sessions dedicated to policy and spending, with pay-fors at end Sept. 10: Agriculture, Homeland Security			
13-14		15	16	17	18	19
Sept. 13: Financial Services, Energy and Commerce Sept. 13-14: Ways and Means (possibly continuing to 9/15) Sept. 14: Transportation and Infrastructure						

MARK-UP SPENDING/SAVINGS TARGETS BY COMMITTEES

Senate Committees	Deficit Effect (in billions)
Health, Education, Labor, and Pensions (HELP)	\$726.4
Banking, Housing, and Urban Affairs	\$332
Energy and Natural Resources	\$198
Agriculture, Nutrition, and Forestry	\$135
Judiciary	\$107.5
Commerce, Science, and Transportation	\$83.1
Environment and Public Works	\$67.3
Homeland Security and Governmental Affairs	\$37
Small Business and Entrepreneurship	\$25
Indian Affairs	\$20.5
Veterans Affairs	\$18
Finance	\$-1
Total	\$1,748.8

House Committees	Deficit Effect (in billions)
Education and Labor	\$779.5
Energy and Commerce	\$486.5
Financial Services	\$339
Judiciary	\$107.5
Agriculture	\$89.1
Transportation and Infrastructure	\$60
Science, Space, and Technology	\$45.5
Natural Resources	\$25.6
Veterans' Affairs	\$18
Small Business	\$17.5
Oversight and Reform	\$7.5
Homeland Security	\$0.5
Ways and Means	\$-1
Total	\$1,975.2

KEY ISSUES

China

On June 8th, the Senate passed the U.S. Innovation and Competition Act (USICA), a bill aimed at bolstering American competitiveness with China through strategic international engagement and investments in research and development, manufacturing, and supply chain resiliency. While the Senate package includes provisions from five committees – including several trade provisions and \$52 billion in funding for U.S. semiconductor manufacturing and research – it is centered around two bills, the Endless Frontier Act and the Strategic Competition Act; this legislation passed by a vote of 68-32.

Since Senate passage, the House has taken up a separate piecemeal effort to pass its own research and development and geopolitical bills with the goal of conferencing the House-passed measures with USICA. Similar to the Senate package, the House R&D bills – the NSF For the Future Act, the DOE Science for the Future Act, and the NIST for the Future Act – would also create a new NSF Directorate, increase research and development funding at NSF and DOE, and increase funding for STEM education. The House Foreign Affairs Committee also marked up the Ensuring American Global Leadership and Engagement (EAGLE) Act, which – like the Strategic Competition Act – aims to confront China economically and through international engagement.

While the House bills complement the Senate effort, the bills are markedly different in that they do not include the Senate’s proposed regional technology hub program, a manufacturing extension partnership program, an expansion of the Commerce Department’s Manufacturing USA program or other manufacturing incentives. The House also has not passed semiconductor funding nor the trade components included in the Senate bill, suggesting USICA would be the marker for such provisions. Additionally, the EAGLE Act has been criticized by House Republicans as partisan given the bill’s focus on green energy and climate provisions. Timing for the two chambers to reconcile their differences and complete work on the measures remains unclear.

Cybersecurity

Introduction of cyber-related legislation will continue as the end of the first session of the 117th Congress nears. In addition to multiple high level cybersecurity events and President Biden issuing the May 12th Executive Order on [Improving the Nation’s Cybersecurity \(14028\)](#), numerous pieces of cybersecurity legislation have been introduced, ranging from cyber incident reporting to increasing cyber funding to cryptocurrency’s role in ransomware, among others.

The recent, and serious, ransomware attacks on industrial and critical infrastructure targets – including Colonial Pipeline, JBS meat producer, schools, hospitals and state and local governments - has led to increased pressure on both ransomware attackers and defenders. These attacks continue to be a vexing problem both in the United States and globally. There have been conversations about banning ransom payments even though no legislation has been introduced.

Defense

In July, the Senate Armed Services Committee (SASC) voted 23-3 to advance its [National Defense Authorization Act \(NDAA\)](#) for Fiscal Year 2022, while the House Armed Services Committee (HASC) marked-up its version on September 1st, voting the bill out of Committee 57-2.

Floor time for each chamber to debate the NDAA is yet to be determined. The House has tentatively scheduled the week of September 20th for debate but is likely to slip. The Senate most likely will not take up the NDAA until reconciliation is complete.

As in previous years, we expect the NDAA to be one of the last, if not the last, pieces of legislation to move this calendar year. The annual NDAA has a legacy of regular passage. Many defense policymakers and officials see the bill as a reliable legislative vehicle for a range of policy matters.

Energy and Climate

With the next UN Climate Change Conference taking place in early November, the Administration will continue to prioritize climate change and clean energy efforts this fall. The Administration directed agencies to take a “whole of government” approach to climate measures, both in terms of regulations as well as responding to situations such as severe droughts in Western States. The Administration will continue to support robust electric vehicle policies, as well as address other transportation-related climate policies, including vehicle fuel standards and sustainable aviation fuels. Additionally, the Securities and Exchange Commission is expected to issue a proposed rulemaking this fall on climate risk disclosure. Finally, the Administration will push for robust climate and energy-related provisions in the budget reconciliation bill.

Democrats in both the House and the Senate view the reconciliation bill as their best chance at enacting climate policy this fall. On August 25th, Senate Majority Leader Schumer sent a [Dear Colleague](#) outlining how the infrastructure bill and reconciliation bill will help achieve the White House goal of 80 percent clean energy and 50 percent carbon emissions reductions by 2030. We expect two main areas of focus with respect to climate on the reconciliation bill: tax policy (see more below) and a clean electricity standard (or Clean Electricity Payment Program).

The Clean Electricity Payment Program (CEPP) would incentivize electricity suppliers to produce clean energy. Of note, the Senate Energy and Natural Resources Committee has jurisdiction over drafting this provision in the Senate. While Senator Manchin, who chairs the Committee, has not stated opposition to a clean energy standard, he has been opposed to eliminating fossil fuels, preferring to support carbon capture and storage technologies. Additionally, the Senate Parliamentarian would need to review the CEPP for Byrd Rule compliance.

Financial Services

When the House Financial Services Committee reconvenes in September, the Committee will begin processing its component of budget reconciliation. The Committee’s priorities likely will mirror the comprehensive housing package Chairwoman Maxine Waters (D-CA) introduced in July – the Housing is Infrastructure Act. The proposal would make investments in public housing and the National

Housing Trust Fund, as well as provide funding for rental assistance, among other provisions. In keeping with the Biden Administration's focus on climate change, the proposal also would require ten percent of nearly all funding authorized in the bill to be used for sustainable features such as energy efficiency retrofits, including those that reduce utility costs. Of note, Chairwoman Waters also has stated her intention to move Emergency Rental Assistance reform legislation as part of reconciliation considering the Supreme Court's recent decision striking down the CDC eviction moratorium. The Committee likely will release language late the week of September 6th.

Later this month, the Committee will hold hearings on consumer financial data; the risks posed by China to U.S. investors; the Federal Reserve's COVID-19 emergency lending authority; the future of banking; diversity and inclusion; and a hearing on "Oversight of the Treasury Department's and Federal Reserve's Pandemic Response" with Treasury Secretary Janet Yellen and Federal Reserve Chair Jay Powell. The fall agenda also will include a continued focus on climate and environmental, social, and governance (ESG) principles, consumer protection, financial technology ("fintech") and cryptocurrencies, and diversity and inclusion. We expect the Committee to continue its cadence of one mark-up per month throughout the fall.

Similar to the House Financial Services Committee (though with a \$7 billion difference), the Senate Banking Committee received a reconciliation instruction of \$332 billion. As part of the reconciliation instruction, the committee will focus on affordable housing, including investments in the Housing Trust Fund, rural housing, payment assistance and rental assistance. Additionally, the committee has been instructed to include provisions on community investments in Community Development Block Grant (CDBG), land use, transit improvements and public housing.

Beyond reconciliation, the committee will prioritize confirmation hearings for Administration appointees. There are currently eleven pending nominees before the committee, and at least three nomination hearings are expected in September. A likely early action on nominees will be a discharge petition for the Rohit Chopra nomination to the Consumer Financial Protection Bureau. The committee also will hold numerous oversight hearings, including a Securities and Exchange Commission hearing with Chairman Gensler and a CARES Act oversight hearing featuring Federal Reserve Chairman Powell. Chairman Brown is also considering a hearing on international issues with Treasury Department witnesses. Finally, Chairman Brown will continue his focus on housing affordability issues.

Healthcare

The coming weeks and months have the potential to be the most transformational period in healthcare policy since the enactment of the Affordable Care Act in 2010. President Biden and congressional Democrats are seeking to pass sweeping healthcare changes impacting private insurance, Medicare, Medicaid, prescription drugs, and other areas as part of the broader \$3.5 trillion reconciliation bill. Specifically, the recently-enacted budget resolution, which unlocked reconciliation protections, called for committees with jurisdiction over healthcare to develop legislation to extend more generous subsidies for Affordable Care Act plans; provide new dental, vision and hearing benefits in Medicare; provide coverage to low-income people living in states that have chosen not to expand Medicaid; lower the eligibility age for Medicare to 60; expand access to home and community based care; address provider shortages through Graduate Medical Education (GME); improve

pandemic preparedness; and include expansive drug pricing reforms and possibly other healthcare changes to help offset the costs of all these investments. These budget resolution recommendations are non-binding and key congressional members and staff are already confronting the challenge that the cost of all these priorities could easily exceed \$1 trillion, which is far greater than the current level of savings expected from prescription drug reforms. Thus, much of the current work is focused on paring back the list of priorities, lowering the overall cost for those that remain, and identifying new areas to help pay for the healthcare portion of the reconciliation package. Ultimately, we expect the list of healthcare reforms to be less sweeping than originally envisioned. However, even a scaled back healthcare list has the potential to transform healthcare delivery for decades to come.

In addition to the reconciliation bill, Congress still has a few healthcare deadlines to be addressed with bipartisan support before the end of the year. While Congress is not confronting the typical list of so-called “healthcare extenders,” it needs to enact legislation to extend Medicaid funding in Puerto Rico and other U.S. territories before September 30th and will face significant pressure from providers at the end of the year when a moratorium on Medicare sequestration and a 3.75 percent physician payment increase both expire, along with a handful of other policies. Other areas where there could be bipartisan legislative action in the coming months include pandemic preparedness (on which the Senate HELP Committee has been working); efforts to expand access to telehealth services; further development of CURES 2.0; and Senate Finance Committee work on expanding access to mental health services.

On the regulatory front, watch for continued implementation of the No Surprises Act to address surprise medical bills, as well as ongoing efforts to undo Trump Administration regulatory changes impacting the Affordable Care Act and other areas of healthcare. We also expect increased activity out of the Center for Medicare and Medicaid Innovation as it seeks to scale back the number of demonstration projects and refocus on health equity, Medicaid, and other underserved areas.

Immigration

The House and Senate Judiciary Committees have received reconciliation instructions to provide legal permanent resident status to Dreamers, Temporary Protected Status recipients, agriculture workers and other essential immigrant workers. Democrats have discussed including funding for enhanced technology along the southern border as well as improvements at land ports of entry. However, it is uncertain whether the legalization provisions will pass the Byrd Rule tests as determined by the Senate Parliamentarian. Democrats argue there is 2005 precedent for inclusion of these provisions and maintain there is clearly a significant budgetary impact. Republicans argue there is no precedent and, much like the minimum wage issue, the budgetary impacts are “merely incidental” to the overall policy goal. There are several other immigration issues that could find their way into a reconciliation package including visa recaptures, per-country caps on green cards, and H-2A reforms.

Should the permanent legal status efforts fail in reconciliation, there will be a renewed effort to find 10 Republicans to join with Democrats on a bipartisan solution that addresses Dreamers, TPS recipients and farm workers as well as border security and asylum reforms.

The Administration has several major decisions to make as well. The Supreme Court has ruled the Biden Administration’s attempt to rescind the Migrant Protection Protocols (MPP or “remain

in Mexico” policy) was unlawful. The Administration can attempt to rescind the program again in compliance with the Administrative Procedures Act. In addition, the Administration has been working on an Executive Order to protect Dreamers. That EO could be released at any time. Finally, the Administration continues to face significant pressure to address the large numbers of migrants crossing the southern border.

The Administration also will have to tackle the monumental task of processing and resettling tens of thousands of Afghan refugees, while the refugee and asylum systems are already under significant strain. Until the State Department is fully transparent with the number of Afghan evacuees and how many were admitted with SIV, refugee P1 and P2 or humanitarian parole status, it is difficult to assess the long-term costs of resettlement and how long it will take. The system is near its breaking point, and Congress will have to devote attention to fixing it and providing a humane and welcoming process for tens of thousands of Afghan refugees.

Judiciary/Competition/Antitrust

Antitrust and competition issues continue to attract greater attention in both chambers and within the Administration. This fall, we expect both the House and Senate Judiciary Committees to continue holding hearings on a variety of competition-related topics. In the near term, the Senate will hold a hearing on the nomination of Jonathan Kanter to be the Assistant Attorney General for Antitrust. Both Committees will likely try to advance the [Open App Markets Act](#) related to app stores and the [Journalism Competition and Preservation Act](#).

After a marathon mark-up ending on the morning of June 24th, the House Judiciary Committee, led by Chairman David Cicilline (D-RI), [passed a package](#) of six bipartisan antitrust bills aimed at [“Big Tech.”](#) But not all Judiciary Committee Members agreed with the committee process, [stating in a joint release](#), “...that the bill text as debated is not close to ready for Floor consideration.” In the Senate, a flurry of bills have been introduced – such as the [Competition and Antitrust Law Enforcement Reform Act](#), and the [Trust-Busing for the Twenty-First Century Act](#). These measures, coupled with the [President Biden’s Executive Order Promoting Competition in the American Economy](#) and the FCC’s recent [Report and Notice of Proposed Rulemaking](#), signal issues associated with “Big Tech” have bipartisan interests and are certain to remain high on the agenda.

On the heels of the expansive Executive Order on Competition released in July, the Administration will continue moving forward with the various rulemakings and reports called for by the Order. The two main regulatory bodies overseeing antitrust will also continue their scrutiny. Given that the Department of Justice is still waiting for a head of antitrust to be confirmed, most of the action in the past few months has been happening at the Federal Trade Commission. FTC Chairwoman Kahn has been very active in shifting the Commission towards a more pro-enforcement environment. Because of this, companies with transactions in front of the Commission have been seeing significant delays in the process of their deals. We expect this to continue in the short-term. At the same time, we anticipate that the Senate will confirm current FTC Commissioner Rohit Chopra to be Director of the Consumer Financial Protection Bureau in the next month or so. This means that Chair Kahn’s influence

will likely be somewhat diminished given there will not be a Democratic majority at the Commission until a new Democratic Commissioner is confirmed.

With the likely passage of both the bipartisan infrastructure bill and USICA, we expect broadband to be a significant focus for the Administration and Congress. The two bills include more than \$45 billion for broadband deployment and research and development.

Tax

The multi-day mark-up in the House Ways and Means Committee this week and next marks a key procedural step in the reconciliation process. It also will signal the specific tax changes that may be enacted. The balance Chairman Richard Neal (D-MA) and Finance Chairman Ron Wyden (D-OR) must strike with the Administration is particularly delicate given the narrow margins in both chambers. The two threshold questions to be answered remain: how large of a package can Congress pass, and how much of that measure must be paid for?

Despite circulating of a [leaked document](#) providing a menu of options for potential revenue raisers (as well as Sen. Wyden's recently released discussion draft [on international tax](#)), few specifics remain in terms of what the committees will produce to gain the revenue needed to pay for longstanding priorities.

For instance, negotiations are underway between Wyden and Neal over how to promote clean energy sources. Wyden has proposed a new [Clean Energy for America Act](#), which would create new technology-neutral tax incentives for producing clean electricity, fuels, and energy efficiency. Neal has stated his starting point will be the [Growing Renewable Energy and Efficiency Now Act \(GREEN\) Act](#), which would expand and extend current tax incentives for clean energy. Add to this, expensive priorities like extending the recently expanded child tax credit, various other individual tax credits like childcare and paid leave, and reinstating state and local tax deductibility (SALT), and the revenue demands may be significant even before considering non-tax priorities.

The breadth of potential revenue raisers is also significant. The list includes increasing IRS funding, reporting requirements and enforcement; generational tax issues such as step-up and estate tax matters; the pass-through deduction (Section 199A); and numerous international tax provisions such as foreign derived intangible income (FDII), global intangible low-taxed income (GILTI), the Administration's proposed SHIELD versus the Base Erosion and Anti-Abuse Tax (BEAT). In short, there will be intense negotiations and a tremendous amount of deal-making to complete the reconciliation process. Tax-writers also will have to consider the interaction of any international tax changes with the high-level agreement recently reached at the Organisation for Economic Co-operation and Development (OECD).

Generally, there is recognition the corporate tax rate (which the Tax Cuts and Jobs Act reduced from 35 percent to 21 percent) likely will increase to 25 percent. Additionally, increasing the top marginal rates for individuals from 37 percent back to the previous rate of 39.6 percent appears likely, perhaps paired with an increase in the capital gains rate to the "high 20s" for wealthy individuals (which the President has pegged at those earning \$452,700 in taxable income, \$509,300 for couples).

Trade

Prior to taking office, President Biden indicated domestic issues (i.e., investments in infrastructure and manufacturing) would take priority in the first two years of his presidency, and that pledge has directly informed the trade agenda over the last few months. With no new trade negotiations on the horizon, the preservation of tariffs imposed under the Trump Administration, and the expiration of Trade Promotion Authority on July 1 (with no immediate plans to reauthorize the program), trade has not been among the Administration's top priorities.

However, the Biden Administration has acted in some respects to pursue a "worker centric" trade agenda driven by labor and environmental interests, such as robust enforcement of the United States-Mexico-Canada Agreement (USMCA), including labor disputes with Mexico and a dairy dispute with Canada. President Biden also has pursued more stringent Buy America requirements, aimed at increasing domestic content requirements for federal government procurements – a move the Administration claims will help "support American manufacturing."

The Biden Administration's trade agenda has focused on resolving longstanding issues with the European Union. In June, the Administration announced a "cooperative framework" with the EU for large civil aircraft, which resulted in a five-year détente in the Boeing-Airbus dispute to allow negotiators time to reach an agreement. The Administration is also working to reach a deal with the EU on steel and aluminum tariffs before December 1, 2021, when an increase in EU retaliatory tariffs is set to go into effect after being postponed from June 1, 2021.

As the Administration stakes out its trade priorities, it has not yet determined how to address China, including more than \$370 billion in tariffs levied on Chinese goods. The Administration is conducting a wholesale China policy review to determine next steps on issues such as Section 301 tariffs and the Phase One trade deal. USTR recently solicited public comment on whether to extend certain Section 301 exclusions for COVID-19 related goods beyond their Sept 30th expiration, though USTR has given no indication they intend to otherwise reopen the exclusions process.

CONCLUSION

In summary, Congress faces an intense fall agenda. Narrow margins in both chambers, combined with an increasingly divided electorate, present political challenges for the Administration and Democratic leadership as they seek to advance their agenda. Meanwhile, Republicans will work to maximize opportunities to take back control of one or both chambers in the 2022 midterm elections. Additionally, with the rise of the Delta variant and increased observance of mu, the country is still struggling with the COVID-19 pandemic. All these factors point to a tumultuous and somewhat unpredictable fall.

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