

SUMMER OUTLOOK

SUMMER 2022 BY THE NUMBERS

155

DAYS
UNTIL
THE
GENERAL
ELECTION

13

WEEKS
OF
SESSION
(SENATE)

10

WEEKS
OF
SESSION
(HOUSE)
NOT INCLUDING
COMMITTEE WORK
WEEKS)

36

STATES'
PRIMARIES
YET
TO BE
DECIDED
INCLUDING SEVEN
THIS WEEK

Congress reconvenes this week after the Memorial Day recess with much of its agenda for the 117th Congress still unresolved. Against the backdrop of the upcoming midterm elections, Congress and the Administration will attempt to address a number of key areas ahead of the August Work Period.

UKRAINE / RUSSIA

While Ukraine is slipping from the front pages, the war is raging on. Ukrainian President Volodymyr Zelenskyy is pleading with the U.S. and European allies for more advanced weaponry, including additional long range missile capability. Because the latest Ukraine and food aid package was recently signed into law, we do not anticipate the need for further supplemental appropriations for Ukraine in the short term. If necessary, emergency funding could be allocated in a Continuing Resolution or year-end appropriations package. The Senate is expected to take up the NATO accession treaties for Sweden and Finland as soon as NATO formally votes to admit the countries. The Administration hopes this vote will occur at the NATO summit in Madrid at the end of June. If that vote happens, expect the Senate to spend a couple of weeks processing the treaties on the floor in July. However, Turkey is currently threatening to block NATO membership for Sweden and Finland, which would delay the Senate's ability to ratify the treaties. Action on sanctions will continue to center around ratcheting up financial penalties through administrative action. The Administration and the Hill are also quietly discussing how to seize and sell oligarch property (e.g., yachts) and use the proceeds to help rebuild Ukraine.

TECHNOLOGY

Though floor time is at a premium, legislation to address large technology companies remains in the mix, with the primary focus on legislation aimed at preventing self-preferencing by the largest technology companies being offered by Sens. Amy Klobuchar (D-MN) and Charles Grassley (R-IA).

Should this bill receive floor time, the Senate likely will include a related piece of legislation targeting app stores' self-preferencing, championed by Sens. Richard Blumenthal (D-CT) and Marsha Blackburn (R-TN). The Judiciary Committee has reported out both bills with broad bipartisan support, and they have similar support in the House. In addition to antitrust, there is a renewed effort to hold "Big Tech accountable" by Senate Commerce and Energy and Commerce leadership, who released a bipartisan, "three corners" comprehensive legislative proposal last Friday afternoon. As Committee staff and leadership solicit views from rank-and-file Members and industry stakeholders, Energy and Commerce reportedly is planning to schedule a hearing the week of June 13th, followed by a markup as soon as the following week.

GUN REFORM / MENTAL HEALTH

Recent tragedies in Buffalo, Uvalde and Tulsa have reignited interest in legislative and regulatory changes related to guns and mental health. While previous tragedies have prompted similar efforts – which ultimately failed – it is unclear whether policymakers can reach a bipartisan deal this time. The House already has begun to prepare a package of eight gun-related bills being referred to as the "Protecting Our Kids Act." for floor consideration as soon as this week. While the bills are expected to pass the House, they will not have the necessary 60 votes to advance in the Senate. Rather than take up the House package, Majority Leader Chuck Schumer (D-NY) is giving a small bipartisan group of Senators some room to negotiate to see if a bipartisan deal is possible. Thus far, these talks have been led by Senators Chris Murphy (D-CT) and John Cornyn (R-TX) with a handful of others participating. The negotiations have focused on red flag and mental health programs, as well as school safety initiatives. There is some optimism this group could produce a bipartisan framework, but history has shown enacting any legislation related to guns is a daunting challenge.

CHINA / USICA / BIA /COMPETES

Negotiations to reconcile the House-passed America COMPETES Act with the Senate-passed United States Innovation and Competition Act (USICA) are ongoing at both the Member and staff level. Conferees will spend the next two months negotiating the significant substantive differences between the two bills, including differences in the trade and foreign relations titles, which are two of the more complicated aspects of the negotiations.

Despite the already complex negotiations, there is ongoing debate about whether to add a tax title to the bill which would include items such as a semiconductor investment tax credit (FABS Act) and the Research and Development tax credit. However, there is concern that a tax title would open the door to Members requesting the inclusion of other tax priorities – including potentially those incorporated in Build Back Better, absent a reconciliation agreement.

If a conference agreement is not reached before the August recess, Congress is more likely to consider attaching certain items – such as CHIPS funding – to any year-end spending package that may come together.

RECONCILIATION

Democrats are increasingly hopeful about momentum around reconciliation, as talks between Senator Joe Manchin (D-WV) and Senate Majority Leader Schumer continue. Sen. Manchin has stated his priorities remain energy and climate issues with the inclusion of some to-be-named fossil fuel priorities, addressing prescription drug prices, and tackling the deficit. Conversations appear to focus on a \$1 trillion to \$1.3 trillion deal incorporating all three of his priorities. Reportedly, half of the

spending would go to deficit reduction, \$300- to \$400 billion would be devoted to energy and climate tax credits, and the remainder to addressing ACA premium tax credits. To pay for the package, talks have centered around including the President's global minimum tax proposal, TJCA tax reforms, as well as Medicare drug savings. Sen. Manchin also has been talking with Biden Administration officials, though to date he has not spoken to the President, on the current negotiations. Democrats are eager to pass a reconciliation bill as soon as possible. However, any deal would need to go through a lengthy scoring process and "Byrd bath" parliamentary process. Republicans are expected to use all available tools to delay passage for as long as possible – including a lengthy vote-a-rama. Given the September 30th deadline for using the current reconciliation rules – notwithstanding what is expected to be a busy summer Senate floor schedule – democrats would need to reach a deal prior to the deadline in order for a reconciliation bill to reach the President's desk this year.

SECURE 2.0

After House passage of SECURE 2.0 (Securing a Strong Retirement Act – H.R. 2954) in late March by a vote of 414-5, the Senate Finance Committee is considering a markup of the legislation during this work period, though that timing could continue to slip into July. There is strong bipartisan support for the bills in both chambers, and it is expected Senate Finance will report out legislation with a bipartisan vote. The committee is particularly focused on maintaining revenue neutrality. Assuming a successful markup in the Finance Committee, we expect informal talks over several months between the House and Senate to agree on final text of a bill. If all goes as planned, a final, negotiated SECURE 2.0 bill stands a decent chance of being enacted during the lame duck session and could be attached to a year-end bill.

HEALTHCARE / FDA USER FEES

Congress will continue to advance the FDA User Fees legislation to reauthorize the Prescription Drug User Fee Act (PDUFA), the Generic Drug User Fee Act (GDUFA), the Biosimilar User Fee Act (BsUFA), and Medical Device User Fee Act (MDUFA) before their expiration on September 30, 2022. Last work period, the House Energy and Commerce Committee voted their FDA user fee legislation out of Committee by a vote of 55 to 0. The House is expected to bring this legislation to the floor for a vote upon return from recess. During the recess, the Senate HELP Committee released its version of legislation intended to reauthorize the FDA User Fees agreements (the FDA Safety and Landmark Advancements (FDASLA) Act), which includes additional measures related to the oversight of cosmetics and dietary supplements, regulation of diagnostic tests, data modernization, and FDA hiring authorities. The Committee is expected to mark-up the FDASLA on June 8th.

Ultimately, the House and Senate must resolve any differences between the two bill versions and determine which additional policy measures to include. The goal is to complete this work prior to the August recess, but recent comments from HELP Ranking Member Richard Burr (R-NC) about the need for increased oversight over the baby formula shortage could slow down the user fee process.

APPROPRIATIONS

Despite there not being a topline budget number, the House Appropriations Committee will push forward with an aggressive markup schedule in June in the hopes of moving twelve bills on the floor in July. In lieu of a budget agreement, the House is expected to use the President's budget request as a roadmap for allocations. It is further expected the House will repeat last year's exercise and construct minibuss packages for the floor given the small window set aside for appropriations.

As was the case last year, The Senate, will likely only move a couple of the less controversial bills, such as the Agriculture/FDA and Military Construction/VA bills, out of Committee.

As a result, Congress will need to pass a Continuing Resolution on or before September 30th that will run past the midterm elections. Congressional leaders on both sides of the aisle have expressed interest in 'clearing the deck' – at least when it comes to funding the government – prior to the new Congress being sworn in, increasing the chances of an Omnibus appropriations package passing prior to Members returning home for the holidays.

KEY DATES

- **June 30** – 2% Medicare Sequester ends
- **July 1** – West Coast Ports labor negotiation deadline
- **August 31** – Student Loan repayment suspension ends
- **September 30** – Government funding deadline
- **September 30** – TANF, NFIP, FDA User Fees, and the Maternal, Infant, and Early Childhood Home Visiting Program expire
- **September 30** – FY 2022 Budget Reconciliation Instructions expire
- **November 8** – Election Day
- **November 14** – New Member Orientation (week of)
- **December 6** – Georgia Runoff (if necessary)
- **December 10** – Louisiana Runoff (if necessary)
- **December 13** – Medicaid Assistance for Territories expires
- **December 31** – NDAA deadline
- **December 31** – Expiration of key tax provisions under TCJA
- **December 31** – Radiation Oncology Rules delay, Medicare Physician Bonus Payments, and ARP premium tax cuts expire
- **January 3rd** – 118th Congress convenes
- **Early 2023** – Debt Ceiling Limit reached

CONCLUSION

With primary season underway and the midterms quickly approaching, Congress is wrestling with advancing a robust legislative agenda amidst a dynamic political backdrop. The next several weeks may prove critical in ensuring Congress and the President leave themselves some breathing room post-election, or whether the inevitable Lame Duck session will be a round-the-clock exercise to 'clean out the barn.'

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