



Tiber Creek Group

SUMMER OUTLOOK

JUNE 2023

(Nearly) summer greetings from Washington

The deal is done. The debt ceiling has been suspended until January 2025 – beyond the next presidential election – and, in exchange, Congress and the Administration agreed on discretionary spending limits over the next two years and created new work requirements for some Americans who receive federal assistance.

Efforts to reach that deal dominated the policy agenda this spring – including the House vote on the Republicans’ Limit, Save, Grow Act that kicked off negotiations with the White House – though Congress did notch some other legislative achievements:

In the House: Republicans passed the [Secure the Border Act of 2023](#), aimed at substantially increasing border security and severely curtailing illegal migration and the ability of migrants to claim asylum.

In the Senate: The Senate processed a number of nominations and debated the VA Medicinal Cannabis Research Act of 2023 and the Equal Rights Amendment.

CRA Update: Both the House and Senate worked steadily to pass resolutions under the Congressional Review Act (CRA), which allows Congress to undo federal agency rules and regulations. The resolutions would block regulations on everything from solar tariffs to student loan debt cancellation, and several addressed environmental regulations from the Waters of the U.S. (WOTUS) rule to increased protections for the Lesser Prairie-Chicken.

In the end, however, President Joe Biden vetoed the CRA resolutions that reached his desk this spring. One notable joint resolution President Biden did sign was a non-CRA resolution disapproving of the District of Columbia Council’s approval of the Revised Criminal Code Act of 2022 ([H.J.Res.26](#)). The revised criminal code would have lowered the max sentence for carjacking from 21 years to 18 years or 24 if armed, and the max penalty for armed robbery would have been reduced from 45 years to 20 years. In March, President Biden [tweeted](#) he does not “support some of the changes D.C. Council put forward over the Mayor’s objections – such as lowering penalties for carjackings.”

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Outside Congress, the 2024 presidential race is gathering steam. As of this writing, there are about a dozen candidates who have announced they are running – [The New York Times is keeping track](#). So far, there are a couple of Democrats who have said they'll challenge President Biden and a number of Republicans who have officially thrown their hats in the ring. More Republicans are expected to enter the race in the coming weeks.

Looking ahead to the summer months, Congress is up against a number of reauthorization deadlines, including the expiration of the Farm Bill and Federal Aviation Administration (FAA) authorization at the end of the fiscal year.

MARK YOUR CALENDARS

August 30: Student loan repayment pause ends, as required under the debt ceiling deal

September 30:

- Government funding expires
- National Flood Insurance Program (NFIP) authorization expires
- Authorization of Temporary Assistance for Needy Families (TANF) and related programs expires
- Community Health Center funding expires; Medicaid Disproportionate Share Hospital (DSH) cuts begin, and SUPPORT Act authorizations expire
- Farm Bill authorization expires
- Federal Aviation Administration (FAA) funding and authorities expire

December 31:

- Foreign Intelligence Surveillance Act (FISA) Section 702 expires
- 2.5 percent Medicare physician payment relief reduced to 1.25 percent through 2024, and 3.5 percent Alternative Payment Model (APM) bonus expires



DEBT CEILING 101

Everything you
wanted to know
about the
agreement
to avert fiscal
calamity



DEBT CEILING DEAL 101

Lost in the last-minute dealmaking is the fact the debt limit was actually reached in February, and the Treasury Department had been taking “extraordinary measures” since then. To avoid breaching the X-date – June 5th – the Fiscal Responsibility Act was passed in the House by a vote of 314-117 and in the Senate by a vote of 63-36. The House dynamics – from the Rules Committee deliberations to the floor vote on the Rule itself – drew most attention, while the Senate efficiently considered a number of amendments and moved to final passage within about 24 hours of the House vote.

Fiscal Responsibility Act details:

- **Discretionary spending caps for FY 2024 and FY 2025:** For FY 2024, the defense limit is \$868.349 billion and nondefense limit is \$703.651 billion. Spending limits grow by 1 percent in FY 2025 to \$895.212 billion for defense and \$710.688 billion for nondefense.
- **“Massie auto-CR”:** If all 12 appropriations bills are not enacted by January 1st of the following year, discretionary spending will temporarily operate at a maximum of 99 percent of current levels, a provision drafted by Rep. Thomas Massie (R-KY).
- **COVID rescissions:** Approximately \$28 billion in unobligated COVID funds were rescinded.
- **Internal Revenue Service (IRS) agents:** The bill rescinds \$1.4 billion in funding to hire new IRS agents.
- **Administrative PAYGO:** This provision applies PAYGO requirements to executive branch actions that increase direct spending. The Administration will be able to waive these requirements.
- **Ends student loan repayment pause:** The Administration is barred from extending COVID-era student loan repayment rules.
- **Reforms elements of the Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families (TANF) programs:** The deal includes new work requirements for able-bodied adults without dependents.
- **Permitting reforms:** The deal includes the BUILDER Act, which reforms the National Environmental Policy Act (NEPA), including project threshold, interagency coordination and review deadlines to prevent project delay, limits on what qualifies as a major federal action, and limits to prevent agencies from missing statutory deadlines.
- **Debt limit:** The debt limit is suspended until January 1, 2025.

Key moments/takeaways:

- Passage of the Limit, Save, Grow Act by House Republicans forced President Biden to the negotiating table.
- One-on-one negotiations between the White House team and the Speaker’s designees proved to be critical.



Key moments/takeaways, cont.:

- Both Republicans and Democrats can claim some victories. Republicans got some spending restraint, work requirements, IRS funding changes, and COVID funding restrictions. Democrats protected the Inflation Reduction Act (IRA), extended a future X-date to beyond the 2024 general election, and pushed back on the substantial spending cuts many Republicans supported.
- Speaker Kevin McCarthy (R-CA) was able to pass a debt limit bill with more than two-thirds of the GOP conference, despite opposition from the House Freedom Caucus.
- While progressives were unhappy with the debt limit deal, President Biden, House Minority Leader Hakeem Jeffries (D-NY) and Senate Majority Leader Chuck Schumer (D-NY) were able to largely keep Democratic defections to a minimum – more than three quarters of House Democrats supported the Fiscal Responsibility Act.
- Senate Republican defense hawks – who believe the bill spent too little on defense – stood their ground but did not try to blow up the deal. Less than half of the Senate GOP conference voted for the bill.
- Jet fumes remain the most powerful force in Washington. Despite serious concerns about the debt limit deal in the Senate, Majority Leader Schumer and Senate Minority Leader Mitch McConnell (R-KY) were able to reach an agreement on amendment votes and final passage very quickly.
- The appropriations process will remain bumpy. We expect the House Appropriations Committee to resume markups quickly and prepare bills for consideration by the House. The Senate will follow suit shortly thereafter.
- While some NEPA reforms were enacted, further permitting reforms will remain on the agenda. In particular, Democrats will be looking for an opportunity to pass their transmission priorities.

WHAT THE DEAL MEANS FOR APPROPRIATIONS

New spending caps, new challenges

There is now agreement on spending caps for the next two fiscal years, paving the way for the Appropriations Committees to carve up FY 2024 subcommittee allocations. In June, expect House Appropriations Chair Kay Granger (R-TX) and Senate Appropriations Chair Patty Murray (D-WA) to distribute the new allocations to their subcommittees, complete work on subcommittee markups, and begin holding full committee markups.

However, the likelihood of appropriations bills going to the House and Senate Floors anytime soon is low. In the House, the issue is not only Floor time constraints, but whether or not House Republicans would even be able to pass a rule to allow for appropriations bills to proceed to the Floor for amendments and final passage. A large portion of the House GOP conference voted against final passage of the Fiscal Responsibility Act and a sizable group voted against the rule. It is hard to imagine Republicans will be able to rely on Democrats to again help make up the difference, given that 158 Democrats voted against the rule for the Fiscal Responsibility Act.

In the Senate, expect to see the committee mark up respective bills in subcommittees and full committee from now until the August recess. Despite insistence from Senate Appropriations Vice Chair Susan Collins (R-ME) that Leadership ought to bring their bills to the floor, it is nearly impossible that there will be time to do so before required passage of a continuing resolution by September 30th.

5 NEED-TO-KNOWS ON IMMIGRATION

End of Title 42 just one of several issues Congress needs to address

- 1 Results of Title 42 expiration:** Immigration and border policy were subject to renewed attention from Congress in the weeks leading up to the expiration of Title 42. Many experts feared that migrants would surge to the border and cause a humanitarian and security crisis, but that chaotic surge in border crossings has not yet materialized.
- 2 Resources are strained:** The number of migrants seeking asylum continues to be very high, straining resources in border communities and large cities across the country. Migrant shelters in Mexico are overflowing. There's excessive demand for the Biden Administration's parole program: approximately 1.5 million people are seeking entrance into the United States via the parole program with only 30,000 slots available per month. The big question is how long migrants are willing to wait in Mexico.
- 3 The House has acted:** In preparation for the expiration of Title 42, the House passed the Secure the Border Act. This bill would continue the construction of the border wall, limit asylum eligibility to ports of entry, require migrants to wait in Mexico for their U.S. immigration court cases, provide grants for law enforcement involved in border security, and add harsher penalties for overstaying visas. It also would extend Title 42 immigration restrictions. The bill passed without any Democratic support and with one Republican opposed. Senator Roger Marshall (R-KS) offered the House bill as an amendment to the debt limit deal and the amendment failed on a largely party-line vote – Senator Rand Paul (R-KY) was the lone Republican to oppose it.
- 4 The Senate has its own proposals:** While the House bill is dead on arrival in the Senate, Senators Thom Tillis (R-NC) and Kyrsten Sinema (I-AZ) introduced a bill to effectively extend Title 42 legislatively. Senator Dick Durbin (D-IL) introduced a bill to provide supplemental funding for border and immigration activities. Neither one of these bills has any chance of passage.
- 5 There are myriad issues:** Many immigration issues await congressional action, including relief for Dreamers, agricultural workers, and high-skilled workers. Of note, Reps. Maria Salazar (R-FL) and Veronica Escobar (D-TX) introduced the Dignity Act in the House, which is comprehensive immigration reform legislation. However, without an action-forcing event, it is unlikely Congress will act in a substantive way on immigration this year.

ALL ABOUT ENERGY

Permitting reform is the focus, IRA implementation is rolling

Permitting reform update: This remains a key priority issue for both parties in both chambers, although they have different priorities on the types of energy projects.

- ✿ **In the House:** Earlier this year, the House passed the Lower Energy Costs Act, which contained several permitting reforms. The bill was also included as part of the House-passed Limit, Save, Grow Act. Members of the New Democrat Coalition in the House have also put forward their priorities here.
- ✿ **In the Senate:** There are three main bills addressing the issue – one from Senate Committee on Energy and Natural Resources (ENR) Chairman Joe Manchin (D-WV); one from ENR Ranking Member John Barrasso (R-WY) and Sen. Shelley Moore Capito (R-WV); and a draft bill from Senate Environment and Public Works (EPW) Committee Chairman Tom Carper (D-DE).
- ✿ **Debt ceiling details:** The agreement includes some reforms to the permitting process, including updates to the National Energy Policy Act (NEPA) that would limit impact studies to two years. Notably, progressive members have expressed opposition to some reforms. Also, a number of permitting issues, including transmission, were not fully addressed in the bill. We anticipate work to continue on these measures over the summer.

Inflation Reduction Act (IRA) implementation: The Treasury Department and Internal Revenue Service (IRS) have released new guidance on the domestic content and energy communities bonus credits. The next guidance released likely will be on transferability and direct pay. An additional rulemaking on wage and apprenticeship, additional guidance on the 48C credit, and guidance on the low-income bonus credit are also expected before the end of Q2.

» [You can find our guidance cheat sheet here.](#)

In addition to guidance, agencies have continued to construct and implement IRA-funded programs: The U.S. Department of Agriculture (USDA) has announced the availability of nearly \$12 billion in IRA-funded grants and loan opportunities for rural clean energy investments, and the Environmental Protection Agency (EPA) released the framework for the \$27 billion Greenhouse Gas Reduction Fund and announced the development of programs to invest \$4 billion in clean port infrastructure.

» [You can find our tracker here.](#)

WHAT TO EXPECT NEXT IN CYBERSECURITY

Lots to look out for in hearings, legislation, & nominations

One of the biggest trends in cybersecurity is the use of artificial intelligence (AI) and machine learning (ML) technologies. AI and ML algorithms are able to analyze large amounts of data and detect patterns and anomalies that may indicate a potential threat. You can read more about AI in the spotlight section of this memo.

In the next several months, be on the lookout for:

- Implementation of the [National Cybersecurity Strategy](#), released by the White House in early March.
 - » The government is increasingly looking at legislation and regulations aimed at protecting sensitive information and holding organizations accountable for data breaches. This includes laws that require organizations to implement certain security measures, such as encryption and multi-factor authentication, as well as laws that set penalties for data breaches.
- Drafting of the International Cyber Strategy from the State Department.
- Legislation – originating in the House – to codify the Joint Cyber Defense Collaborative (JCDC) and the Cyber Safety Review Board (CSRB).

Upcoming hearings

- Workforce hearing on June 22nd in the House Committee on Homeland Security's Cybersecurity and Infrastructure Protection Subcommittee.
- The Senate Homeland Security and Governmental Affairs Committee (HSGAC) to hold several AI hearings, one which will focus on cyber and AI.
- Potential hearing on a nominee to serve as National Cyber Director (NCD), with strong speculation that the president will nominate Kemba Walden, the Acting NCD, to the position.

Legislation

In recent months, members of Congress have introduced cybersecurity proposals affecting a variety of sectors, and we expect this trend to continue. We also expect to see cyber provisions in the upcoming Federal Aviation Administration (FAA) bill as well as the Farm Bill. Legislation impacting Health and Human Services (HHS), the Department of Energy (DOE) and the Environmental Protection Agency (EPA) is expected to be introduced from the House Energy and Commerce (E&C) Committee as a follow up to the hearing they held on May 16th. You may find the staff memo [HERE](#) for additional background.

- HSGAC and the House Committee on Homeland Security (CHS) each held markups of cybersecurity legislation. The Senate moved S.1425, the Satellite Cybersecurity Act, and S.885, the Department of Homeland Security Civilian Cybersecurity Reserve Act. The House advanced HR 3286, the Securing Open Source Software Act, introduced in the House by Chairman Mark Green (R-TN), and a companion to legislation from HSGAC Chairman Gary Peters (D-MI) that passed his committee in March.
- **SECURE IT:** A voting systems bill introduced by Senators Mark Warner (D-VA) and Collins, the legislation would order the Election Assistance Commission (EAC) to require any system seeking certification for use in U.S. elections to undergo penetration testing before it is approved.
- **NOTAM Act:** Introduced in January after a catastrophic Notice to Air Missions (NOTAM) outage that caused 7,000 flight delays and more than 1,000 cancellations, the bill would require the FAA to establish a task force to update and strengthen the resiliency and cybersecurity of the NOTAM system, which alerts pilots of safety and location hazards on flight routes. The legislation is sponsored by Senators Capito (R-WV), Amy Klobuchar (D-MN), and Jerry Moran (R-KS).
 - The Senate passed the bill by unanimous consent. The House passed a similar version introduced by Rep. Pete Stauber (R-MN).

- The expectation is that this legislation will be folded into the FAA Reauthorization currently making its way through Congress. The FAA bill must be completed by October 1st.
- [9-8-8 Lifeline Cybersecurity Responsibility Act](#): Senators Markwayne Mullin (R-OK) and Sinema introduced the bill to strengthen the cybersecurity protocols at the 988 Lifeline.

7 NEED-TO-KNOWS IN FINANCIAL SERVICES

Updates on SVB, stablecoin and more

- 1 House committee tick-tock:** The House Financial Services Committee has continued its monthly cadence of markups and has convened hearings on a number of issues including the Federal Housing Finance Agency's (FHFA) mortgage policy; flood insurance; Financial Crimes Enforcement Network (FinCEN); the International Monetary Fund (IMF); China and, specifically, the Chinese Communist Party (CCP); capital formation; digital assets; and a high-profile Securities and Exchange Commission (SEC) oversight hearing featuring SEC Chair Gary Gensler.
- 2 Senate agenda:** The Senate Banking Committee has continued to pursue its robust housing agenda, examined the flood insurance program, and convened a hearing on cannabis banking.
- 3 Bank failures are No. 1:** All other issues, however, have been eclipsed by the failures of Silicon Valley Bank (SVB), Signature Bank, and First Republic Bank and the resulting turmoil. The House Financial Services Committee has held five hearings on this topic since the SVB collapse on March 10th and additional hearings are expected. During the most recent oversight hearings on the issue, it was evident that Republicans' and Democrats' positions on the failures have crystalized: Republicans focused on regulators' lack of follow-through and interest rate increases attempting to bring down inflation caused by Democratic spending, while Democrats focused on the banks' mismanagement and executive compensation. The Senate Banking Committee has likewise been consumed with five oversight hearings examining what happened around the bank failures.
- 4 Fed changes possible:** At the end of April, the Federal Reserve (Fed), Federal Deposit Insurance Corporation (FDIC), and Government Accountability Office (GAO) published their respective reports on the bank failures. While there will continue to be an examination of these bank failures, the regional banking picture seems to have stabilized for the time being and the prospects for legislative action seem diminished. However, Fed Vice Chair for Supervision Michael Barr has signaled the Fed will outline its plan for capital and liquidity requirements sometime this summer and is considering rule changes for large regional banks with more than \$100 billion in assets.

5 Digital/stablecoin update: The House Financial Services Committee will hold another hearing on digital assets this month and plans to mark up a stablecoin bill and possibly the digital assets market structure bill in July even if Chairman Patrick McHenry (R-NC) can't reach an agreement with Ranking Member Maxine Waters (D-CA) on either one. In May, the chairman released his [stablecoin discussion draft](#), while Waters countered with her [stablecoin discussion draft](#). Arguably the most important difference between the two drafts is which entity has the power to regulate and register stablecoin issuers. In McHenry's version, it gives more power to states to regulate stablecoin payment instruments, as well as ensuring state-qualified issuers are registered within 60 days. However, Waters' version specifies the Fed can decline state-qualified payment stablecoins from registering on a federal level. On June 2nd, Chairman McHenry and House Agriculture Committee Chairman GT Thompson (R-PA) released a [discussion draft](#) of legislation providing a statutory framework for digital asset regulation.

6 June committee schedule: The House Financial Services Committee recently [announced](#) its slate of hearings for the month of June. It promises to be another busy month that includes hearings featuring Treasury Secretary Janet Yellen, Fed Chair Jerome Powell, and CFPB Director Rohit Chopra among others. The Senate Banking Committee is also expected to conduct hearings with Chopra and Powell, as well as advance some nominees, including for the Federal Reserve.

8 1071: The rule for Sec. 1071 of the Dodd-Frank law pertaining to small business data collection was recently published in the Federal Register and there are efforts underway by Republicans to use the CRA process to attempt to overturn the rule. Although it is possible a handful of moderate Democrats in the House or Senate may vote for such a CRA, it will face a certain veto by President Biden.

6 INSIGHTS INTO THE FARM BILL

Bill remains a top priority, current authorization expires September 30th

- 1. Issues raised at hearings:** Since the release of our Spring Outlook, the House and Senate Agriculture Committees have started holding subcommittee hearings featuring the Administration, industry, producers, and other stakeholder perspectives on issues such as farm safety net, nutrition assistance, trade, conservation and forestry, animal diseases, and rural broadband.
- 2. Topics for Debate:** In these hearings, members on both sides of the aisle discussed high-profile issues like input cost inflation, climate-smart and sustainable practices, foreign ownership of U.S. farmland, right-to-repair, digital assets, biofuels, emergency and disaster assistance, and research and development funding. Debate on these topics will continue as the chambers prepare their respective versions of the legislation.
- 3. Other negotiations affecting the Farm Bill:** Farm Bill topics have been central to the ongoing debates on rolling back Inflation Reduction Act (IRA) provisions and negotiations on raising the debt ceiling. Some Senate Republicans, including Agriculture Committee Ranking Member John Boozman (R-AR), have floated the idea of reallocating the \$19.5 billion provided through the IRA to the U.S. Department of Agriculture (USDA) for conservation programs to other areas of the Farm Bill, allowing for increased spending without impacting the deficit. This has been met with staunch opposition from

Chair Debbie Stabenow (D-MI). The debt ceiling deal included stricter work requirements for federal assistance programs, including the Supplemental Nutrition Assistance Program (SNAP).

4. **White House talks:** On May 11th, the four corners of the Agriculture Committees met with President Biden and USDA Secretary Thomas Vilsack on the importance of passing a bipartisan Farm Bill this year.
5. **Stabenow legacy:** Additionally, Chair Stabenow announced she will be retiring at the conclusion of this Congress, making this reauthorization perhaps her legacy legislation; she has continually emphasized her commitment to a bipartisan Farm Bill. House Agriculture Chair Glenn Thompson (R-PA) has indicated he would like to pass legislation before the August recess, and committee staff are expected to continue soliciting input from Members on their priorities into the June work period.
6. **Possible vehicle:** Notably, given the must-pass nature of any Farm Bill, some in Congress are looking to it as a potential vehicle for a tax title, particularly given House Republicans' expected release of an economic package in June. While the likelihood of that seems low, it is worth watching.



Q&A ON HEALTH CARE

with Corey Malmgren of Tiber Creek Group

Corey Malmgren joined Tiber Creek Group after serving as Executive Director of U.S. Policy and Government Relations at Merck. Prior to joining Merck, she was Health Counsel and Deputy Legislative Director to Sen. Bill Nelson (D-FL).

The end of the Fiscal Year, September 30th, is fast approaching – how does this affect the health care agenda in Congress?

A number of critical programs will expire or face steep cuts on September 30th, including the Pandemic and All-Hazards Preparedness Act (PAHPA), the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act, funding for the Community Health Center Program, the Animal Drug User Fee Act (ADUFA), and Medicaid Disproportionate Share Hospital (DSH) payment cuts.

Is Congress going to be ready to reauthorize these programs or prevent these cuts in time?

The committees of jurisdiction are working diligently to review stakeholder feedback and craft legislation on these issues. Both the Senate Health, Education, Labor, and Pensions (HELP) Committee and House Energy and Commerce (E&C) Committee have already approved legislation to address some of these issues, but we are still waiting on input and action from other committees of jurisdiction, such as the House Ways and Means Committee and Senate Finance Committee. We expect these committees will be busy in June and we could start to see some House floor votes on one of these issues closer to July. In addition, the E&C and HELP committees are working through stakeholder responses to their bipartisan request for information related to PAHPA reauthorization in an effort to release draft legislation this summer.

Any potential hiccups along the way?

Offsets will be key here. Reauthorizing these programs along with preventing the cuts discussed above will cost billions of dollars. As usual, we will not only be keeping an eye on the policy outcomes, but also the potential payfors used to offset these policies.

What's happening in drug pricing?

The Biden Administration is turning its attention to Medicaid and implementing the IRA. The Centers for Medicare and Medicaid Services (CMS) recently flexed its regulatory authority by releasing a [proposed rule](#) aimed at making pricing and distribution of Medicaid's more costly drugs more transparent. Also, we continue to wait for details on [three drug pricing models](#) being developed by the Center for Medicare and Medicaid Innovation (CMMI) related to promoting generics in Medicare, outcomes-based contracts for cell and gene therapies, and adjusting payments for drugs approved under the Accelerated Approval Program (AAP).

Will Congress do more on drug pricing?

Majority Leader Schumer has repeatedly expressed his intent to move a drug pricing bill that caps the cost of insulin in the commercial market. Ultimately, the bill may also include some or all of the five bills reported favorably by the Senate Judiciary Committee in February, which address pharmacy benefit managers (PBMs), patent thickets and product hopping, as well as a PBM transparency measure that was favorably reported by the Senate Commerce Committee. In addition, the Senate HELP Committee favorably reported four bills from the Committee in May, which attempt to increase access to generics and issues related to PBMs. It is rare for the Senate to consider a bipartisan standalone healthcare bill these days since most healthcare issues are either highly partisan or rolled into a larger legislative package. But all these bills have some level of bipartisan support and could be in the mix if Leader Schumer moves forward.

At the same time, Senate Finance Committee Chairman Ron Wyden (D-OR) and Ranking Member Mike Crapo (R-ID) released a [framework](#) designed to address PBM business practices, which includes de-linking PBM compensation from a drug's list price, enhancing PBM accountability, and passing along savings to seniors, among other policies. The committee is currently working with the Congressional Budget Office (CBO) to score provisions and expects to release a work product later this summer. Ultimately, any policies that are included in a larger drug pricing bill will need for to garner the requisite 60 bipartisan votes to advance through the Senate and will likely need to be fully paid for. This could limit the scope of what Congress is able to achieve in the drug pricing and broader healthcare space this year.

The House Oversight and Accountability Committee Chairman James Comer (R-KY) is continuing his investigation into PBMs' tactics. At the same time, a bipartisan working group led by Rep. Buddy Carter (R-GA) is considering PBM policies related to transparency and spread pricing, among others. In May, the House E&C Committee favorably reported several bills related to PBMs.

What other health care issues are percolating in Congress?

Congress is also taking a close look at hospital consolidation, stricter enforcement of price transparency requirements for hospitals and insurers, and site-neutral payments policies. In May, the House Ways & Means Health Subcommittee held a hearing on anticompetitive and consolidated markets and the E&C Committee has already [approved](#) several bills in this area. The Senate Finance Committee is also planning a [hearing](#) on a similar issue in June, while the Senate HELP Committee is expected in the coming months to turn its attention to workforce issues and programs expiring in September.

Anything to look out for now that the COVID-19 Public Health Emergency (PHE) has ended?

The U.S. Department of Health and Human Services (HHS) is working to unwind many of the flexibilities that were in place during the pandemic. One of the biggest impacts resulting from the end of the PHE is the unwinding of the Medicaid continuous enrollment program, which began on April 1st. According to some estimates, this could result in up to 17 million people losing Medicaid coverage, which may require Congress to seek some remedial action.

What else should we expect from the administration in health care?

The CMS Innovation Center is expected to roll out primary care and total cost of care demonstrations in 2023. HHS also will continue to defend the Affordable Care Act (ACA) in the wake of the recent ruling that struck down certain preventive services requirements under the law, and amid calls to limit products like short term plans. The Administration will also continue to be even more focused on reproductive health care issues following the Texas and Washington state district court rulings regarding the Food and Drug Administration (FDA) approval of mifepristone.

5 THINGS TO EXPECT IN FOREIGN POLICY

All eyes on China

- 1. Addressing China and the U.S. relationship with China remain priority issues in Congress.** Multiple committees have held hearings on a wide range of policy matters. For example, the House Select Committee on the Chinese Communist Party recently held a hearing on countering China's economic aggression. During the hearing, members and witnesses discussed capital markets; trade and manufacturing – especially related to the de minimis exception; onshoring/reshoring; digital trade; semiconductor chips; intellectual property and data; agriculture; and the United States-Mexico-Canada Agreement (USMCA). Other topics also came up, including research and development (R&D) – generally and in critical technologies and platforms; workforce development; foreign investment and the Department of the Treasury's Committee on Foreign Investment in the United States (CFIUS); the role of artificial intelligence (AI) in warfare; and fentanyl.
- 2. In the Senate, Leader Schumer has tasked committee chairs and ranking members with developing bipartisan bills addressing the U.S. relationship with China.** Leader Schumer's goal is to introduce a China package later in the year. At this point, it is unclear whether these efforts will prove fruitful.
- 3. Over the summer, we expect additional committee hearings to be held, and China-related legislation to be introduced.**
- 4. Countering China remains a focus for the Biden Administration.** Recent efforts with Pacific Island states – including official visits, new facilities, and new security agreements – demonstrate a sustained effort at developing new strategic partners in the region. Additionally, the recent G7 Summit in Japan included discussions regarding economic security, the importance of stability across the Taiwan Strait, and human rights in China.
- 5. The Administration is still expected to issue an executive order focused mainly on outbound investments in foreign semiconductor technology.**





ALL THE ITEMS ON THE SUMMER TRADE AGENDA

China, trade enforcement, Administration “frameworks” and more

In the Administration

The Biden Administration’s summer trade agenda will be characterized by a continued focus on trade enforcement, U.S.-China relations, and ongoing negotiations of various trade “frameworks.”

This summer, the Administration will continue to focus on United States-Mexico-Canada Agreement (USMCA) enforcement, including utilization of the agreement’s Rapid Response Mechanism (RRM) to address labor violations in Mexico, and ongoing disputes related to Mexico’s ban on genetically modified corn and Canada’s implementation of dairy tariff rate quotas (TRQs).


The Administration will also determine next steps in the U.S.-China relationship following meetings with U.S. Trade Representative Katherine Tai, Secretary Gina Raimondo, and Chinese Commerce Minister Wang Wentao the week of May 22nd. The meetings – aimed at restarting a dialogue between the U.S. and China amid fraught diplomatic relations – were characterized as “candid and substantive.” According to readouts from both the Office of the United States Trade Representative (USTR) and Commerce, Ambassador Tai and Secretary Raimondo expressed concerns about the recent actions taken against U.S. companies operating in China and underscored the importance of “building on the engagement between President Biden and President Xi” in November 2022.

The meeting followed a May 18th announcement by USTR that it concluded negotiations with Taiwan on the U.S.-Taiwan Trade Initiative, a move sharply criticized by China’s Ministry of Foreign Affairs. It was also set against the backdrop of a pending decision by USTR on whether to adjust Section 301 tariffs on Chinese goods as part of its four-year statutory review. It remains to be seen whether the meetings will reopen communication channels between the U.S. and China and set the stage for additional high-level discussions, including a potential conversation between President Biden and President Xi Jinping for the first time in more than six months.

In the coming months, the Administration will also continue to negotiate various trade “frameworks,” including the Indo-Pacific Economic Framework for Prosperity (IPEF), the U.S.-EU Trade and Technology Council (TTC), and the Americas Partnership for Economic Prosperity (APEP), a framework for regional cooperation with Latin America, among others.

In Congress

As previously mentioned, last month, Leader Schumer directed committee chairs to begin negotiating a bipartisan bill aimed at enhancing U.S. competitiveness with China. The effort is intended to build on the CHIPS and Science Act enacted last year and is expected to focus on five key priorities: 1) limiting the flow of advanced technology to the Chinese government; 2) curtailing the flow of investment to the Chinese government; 3) securing domestic economic investment; 4) underscoring our commitment to economic allies and maintaining partner alignment; and 5) safeguarding our allies’



and partners security and maintaining our strategic alliances. It is unclear whether a China package would include a trade title, though a bipartisan trade agreement could prove challenging after negotiations between Finance Committee Chairman Wyden and Ranking Member Crapo on a CHIPS and Science Act trade title fell apart last summer.

To date, Chairman Wyden and Ranking Member Crapo have been at odds over the scope and contours of a potential trade package. However, discussions as part of the Senate's renewed China effort would likely include reauthorizations of Trade Adjustment Assistance (TAA), the Miscellaneous Tariff Bill (MTB), Generalized System of Preferences (GSP), and could encompass other priorities such as a Section 301 exclusions process, antidumping and countervailing duty (AD/CVD) legislation, and changes to the de minimis threshold.

Both the Senate Finance Committee and the House Ways and Means Committee have held hearings on customs modernization, setting the stage for potential legislation aimed at bolstering Customs and Border Protection's (CBP) data collection authorities and enforcement. Moreover, late June will mark the one-year anniversary of Uyghur Forced Labor Prevention Act (UFLPA) implementation and we expect Congress will conduct oversight via hearings and letters to evaluate CBP's implementation of the law. The House Ways and Means Committee will likely continue its oversight of the Administration's trade agenda through hearings focused on China, supply chain, and trade enforcement.

UPDATE ON TECHNOLOGY & ANTITRUST

The latest on Sec. 230 privacy

- **The Supreme Court's recent dismissal of a major Sec. 230** case without reaching the merits of the issues slowed any momentum for lawmakers to make serious attempts to reform the law. Privacy, including kids' privacy, is an issue often raised by policymakers, but there does not seem to be any additional consensus in moving legislation today than last Congress. Thus, it is possible the Energy and Commerce (E&C) Committee may try to move the same, or essentially the same, privacy bill that the Committee reported out last Congress. However, there have yet to be any signals from House leadership that the issue is a priority and there appears to be little-to-no movement in the Senate on a comprehensive bill.
- **While policymakers are still scrutinizing antitrust issues in the technology sector**, the Federal Trade Commission's (FTC) recent suit to block Amgen from acquiring Horizon Therapeutics has **shifted the conversation to competition in the pharmaceutical sector**. We also expect that the FTC and Department of Justice (DOJ) will likely initiate some additional high-profile cases in the coming months that will catch a good amount of attention. At the same time, we do not expect Congress to make a lot of news on antitrust in the next work period.

FAQs ON OVERSIGHT

House Republicans continue to investigate Biden family business and the Federal Bureau of Investigation (FBI)

What does the 2024 election season mean for congressional oversight?

We can expect the Oversight and Accountability Committee Chairman Comer will increase scrutiny on Biden family business dealings. Similarly, the Chairman of the Judiciary Committee, Jim Jordan (R-OH), will continue to investigate perceived retaliatory conduct towards conservatives at the FBI.

What other investigations are House Republicans undertaking?

Beyond Biden family business dealings and perceived politicization at the FBI, House Republicans are investigating proposed emissions standards from the Environmental Protection Agency (EPA), implementation of the IRA, U.S.-Mexico border security, China competitiveness, AI, the U.S. withdrawal from Afghanistan, and broader consolidation in the health system.

What's the end result of these investigations?

The investigations are beginning to impact GOP policy development. The House Judiciary, Foreign Affairs, and Homeland Security Committees utilized their respective investigations into DHS and issues at the U.S.-Mexico border to inform policies in H.R. 2, the Secure the Border Act of 2023. Other partisan investigations such as those targeting implementation of the IRA and proposed emissions standards from the EPA may also serve as a foundation for legislation.

Are there any areas of bipartisan cooperation on Oversight?

The Committee on Oversight and Accountability and the Energy and Commerce (E&C) Committee have both held oversight hearings on the role of pharmacy benefit managers, or PBMs, in the prescription drug supply chain. This is part of a broader effort in the House and Senate to increase transparency and competition in the health system. Other areas in which Republicans and Democrats may work together include investigations into AI, data privacy, and China competitiveness.



SPOTLIGHT ON AI

Artificial Intelligence (AI) has exploded onto the scene in Congress, Administration

In Congress: Because it has the potential to affect virtually every part of our economy, it seems like almost every committee is starting to examine the issue. Leader Schumer and a bipartisan group of colleagues began a process for examining whether there is a role for Congress to play in both potentially regulating and implementing policies that will foster the positive uses of AI.

At the White House: The administration recently announced new efforts to advance research, development and deployment of responsible AI.

Enforcement: Both the Department of Justice (DOJ) and Federal Trade Commission (FTC) have said they intend to enforce existing laws against bad actors using AI.

Thanks for reading our quarterly update. For more information on any of these issues, please don't hesitate to contact any one of us.

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