



Tiber Creek Group **FALL OUTLOOK** SEPTEMBER 2023

To prepare for what one lawmaker (and pretty much everyone else!) forecasts will be a “brutal September,” here’s the quick summer recap for you:

House Members left town on July 27th – a day earlier than scheduled – for a six-week summer recess and with a hefty to-do list upon return. The House passed one spending bill on the floor – one more than the Senate – but they did it without a single Democratic vote; and they still haven’t passed all 12 bills out of committee, a feat the Senate Appropriations Committee pulled off for the first time in five years.

The two letters on everyone’s mind: CR. A “continuing resolution,” or short-term solution to major spending agreement problems, must be passed by the September 30th end of fiscal year deadline. While passage of a CR is often routine and straightforward, it is much more complicated this year because members of the House Freedom Caucus announced in August they would oppose a “clean” short-term spending bill that doesn’t include their lower funding levels, border security, and social policy priorities.

Spending isn’t the only item on the list with a September 30th deadline – Congress also needs to deal with a number of other bills, including the Farm Bill, expiring healthcare programs, expiration of the National Flood Insurance Program (NFIP), and the Federal Aviation Administration (FAA) reauthorization.

Meanwhile, the presidential race is heating up, as Republican candidates held their first debate August 23rd. Former President Donald Trump, who did not attend, surrendered the following day at the Fulton County Jail for charges that he illegally interfered with Georgia’s 2020 election results.

Let’s dig into the details!

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MARK YOUR CALENDARS

September 5: Senate returns from August recess

September 12: House returns from August recess

September 30: Government funding deadline for FY24 appropriations; Farm Bill expires; FAA reauthorization expires; National Flood Insurance Program (NFIP) authorization expires; authorization of Temporary Assistance for Needy Families (TANF) and related programs expires; health programs expire

December 15: Targeted Congressional adjournment for the year

January 1: Fiscal Responsibility Act continuing resolution penalty (goes into effect April 30)

January 3: Congress returns from holiday recess

Note: There are 12 legislative days before fiscal year 2023 appropriations run out and 426 days until the 2024 general election.



KEY DATES 2024 ELECTION

JANUARY 15:

Iowa Republican Caucus

FEBRUARY 3:

South Carolina Democratic Primary

MARCH 5:

Super Tuesday – 15 states hold primaries

JULY 15-18:

Republican National Convention

AUGUST 19-22:

Democratic National Convention

NOVEMBER 5:

Election Day

ALL YOU NEED TO KNOW ABOUT THE ELECTION

The race for the White House and more...

The presidential standings: There are 13 Republican candidates in the race for president and one massive frontrunner: former President Donald Trump maintains a 39-point lead, according to FiveThirtyEight. Governor Ron DeSantis of Florida is a distant second with less than 15 percent and Vivek Ramaswamy is polling third with 8 percent. All other Republican candidates are polling at less than 5 percent. On the Democratic side, polls show President Joe Biden dominating the field, 51 points ahead of Robert Kennedy, Jr.

According to a June poll from YouGov and The Economist, 20 percent of the respondents and 40 percent of independent voters are undecided on a 2024 presidential candidate. Key issues for voters will likely be: abortion; inflation and the economy; immigration; and foreign policy, particularly the war in Ukraine.

The financial standings: Federal Elections Commission (FEC) reports show former President Trump has the most cash on hand of all the candidates, with \$22.5 million, followed by Senator Tim Scott (R-SC) with \$21.1 million, President Biden with \$20.1 million, and Gov. DeSantis with \$12.2 million. But Gov. DeSantis raised the most money in the second quarter, followed by President Biden, former President Trump, and Governor Doug Burgum (R-ND). Note that, as the incumbent, President Biden is able to leverage funds raised by the Democratic National Committee, which took in more than \$72 million in the second quarter of this year.

Upcoming debates: The second Republican debate is scheduled for September 27th at the Ronald Reagan Presidential Foundation in California.

In Congress, 34 Senate seats and all 435 House seats are up in 2024.

COMPETITIVE SENATE RACES

AZ (Senator Kyrsten Sinema (I))
OH (Senator Sherrod Brown (D))
WV (Senator Joe Manchin (D))
MT (Senator Jon Tester (D))

COMPETITIVE HOUSE RACES

10 D Toss-Ups	13 R Toss-Ups
CO-08 (Caraveo)	AZ-01 (Schweikert)
MI-07 (Open)	AZ-06 (Ciscomani)
NC-06 (Manning)	CA-13 (Duarte)
NC-13 (Nickel)	CA-27 (Garcia)
NC-14 (Jackson)	CA-41 (Calvert)
NM-02 (Vasquez)	CO-03 (Boebert)
OH-13 (Sykes)	LA-05 (Letlow)
PA-07 (Wild)	NJ-07 (Kean Jr.)
PA-08 (Cartwright)	NY-04 (D'Esposito)
WA-03 (Perez)	NY-17 (Lawler)
	NY-19 (Molinaro)
	NY-22 (Williams)
	OR-05 (Chavez-DeRemer)

SPECIAL ELECTIONS

Utah's 2nd Congressional District:

Rep. Chris Stewart (R) announced his early retirement on May 31, 2023, setting up a special election for November 21, 2023.

Rhode Island's 1st Congressional District:

Rep. David Cicilline (D) resigned on June 1st, 2023, to lead the Rhode Island Foundation. The election to fill his seat will be held November 7th, 2023.

**Ranked by Cook Political Report as a "toss-up" as of 9/5/23*



SHUTDOWN SHOWDOWN IS ON

7 THINGS TO KNOW ABOUT GOVERNMENT SPENDING

Shutdown showdown is on

- 1. September to-dos:** The 12 legislative days in September will be all about the House Freedom Caucus battling with Speaker Kevin McCarthy (R-CA), the House GOP attempting to negotiate a continuing resolution (CR) with the Senate, and how Congress will deal with President Joe Biden's \$40.1 billion supplemental spending request for Ukraine, disaster relief, and border security.
- 2. Prepare for shutdown:** With little agreement on spending between the House GOP and their colleagues, there is a high likelihood for a shutdown this fall and/or later in the year.
- 3. Senate process:** The Senate Appropriations Committee passed all 12 appropriations bills through full committee with broad bipartisan support. It is likely the Senate will attempt to pass at least one appropriations bill on the floor in September if there is time.
- 4. House still moving along:** The House Appropriations Committee's progress trails the Senate. The House committee has not yet voted on two bills: Commerce, Justice, and Science; and Labor, Health, and Human Services and Education. House appropriators may mark those bills up in full committee, but the Commerce, Justice, Science bill may be too controversial given some Republicans' anti-Justice Department sentiment. Only the Military Construction and Veterans Affairs bill has passed the House. House leaders may attempt to bring the Defense appropriations bill to the floor in September, but it will be difficult and Leadership expects defections.
- 5. Allocations apart:** Senate appropriators used the allocations set in the debt limit bill ([H.R. 3746](#)) enacted this spring. House appropriators have written their bills to allocations well below what the bipartisan debt limit deal dictated.
- 6. CR next steps:** Speaker McCarthy is holding the Military Construction and Veterans Affairs bill in the House rather than sending it over to the Senate. This eliminates the risk that Senate Majority Leader Chuck Schumer (D-NY) would use the bill as a shell to jam the House with a CR. (All appropriations bills must originate in the House). The House Freedom Caucus has laid out a list of demands for a CR, including a House-passed border security bill be attached.
- 7. Supplemental slowdown:** It's difficult to see how the Administration's supplemental request will get through both chambers anytime soon. President Biden's request includes \$24 billion in support for Ukraine and funding to replenish the Disaster Relief Fund to respond to a deadly wildfire season and the ongoing hurricane season. Speaker McCarthy has said he will negotiate offsetting the cost of any proposed emergency spending with cuts to other programs.

4 UPDATES ON IMMIGRATION

Border security a top issue for Republicans this fall

- 1 We expect immigration – and the substantial number of migrants crossing the southern border – to be a major issue this fall. Rep. Chip Roy (R-TX) sent a letter to colleagues stating that he will use every tool at his disposal to stop a continuing resolution (CR) from passing unless it includes significant funding for border security and the President signs into law H.R. 2, the House border security bill.
- 2 The Administration's supplemental request for additional border funding is likely not sufficient for Rep. Roy and many other Congressional Republicans. Additionally, Republicans are angry over the Administration's efforts to sell off unused pieces of the border wall instead of completing construction. These factors, plus the hardline immigration views of most of the Republican presidential candidates, complicate passage of the CR.
- 3 Republicans aren't the only ones anxious over the number of migrants entering the U.S. The Democratic mayors of several large cities, most notably New York City Mayor Eric Adams, are raising alarms over the financial burden large numbers of migrants are posing to their communities. Mayor Adams has called for increased funding for large cities to house and feed arriving migrants and for providing faster work authorization – a proposal that Republicans, and some in the Administration, oppose. They believe the promise of jobs will entice more migrants to seek entry into the United States.
- 4 We await a decision from U.S. District Judge Andrew Hanen on the Deferred Action for Childhood Arrivals (DACA) case. If he rules against DACA, Congress could revive discussions around creating a permanent path forward for Dreamers. Several other important immigration issues, including challenges to the President's parole program, are pending before various courts.

WHAT TO EXPECT IN ENERGY

Permitting reform is the focus

Congress will continue its work on permitting reform in September. While the debt ceiling deal contained modest policy changes, Members on both sides of the aisle – and in both chambers – are hoping to get a more comprehensive deal.

What Republicans want: Republicans largely favor further reforms to the National Environmental Policy Act (NEPA) and streamlining the permitting process.

What Democrats want: Democrats are focused on transmission issues, including enhancing the grid to allow for more renewable transmission. Talks are moving slowly and are mostly at the Member level.

What the Administration wants: The Administration wants a comprehensive deal, and we anticipate additional calls for congressional action. In the absence of a deal, the Administration will attempt to use the regulatory process to advance their permitting agenda, including recent proposed rules from the Department of Energy and Council on Environmental Quality (CEQ). Given the legislative schedule, any potential deal would likely need to ride on a must-pass piece of legislation.

The Administration will continue Inflation Reduction Act (IRA) implementation over the fall. The Treasury Department is expected to complete its first round of tax guidance in early fall and will announce second phase implementation plans in September. For regular updates on IRA guidance and funding, please visit our trackers:

IRA guidance sheet: <https://pmj-dc.box.com/s/7zg670wn3nr5elyirn1lxbtr64nzlen>

IRA funding tracker: <https://pmj-dc.box.com/s/0ctys8jgrgunukcdtb9y8z1nrf23o3oc>

ALL THE NEWS YOU CAN USE ABOUT CYBERSECURITY

Some big cyber updates since our last memo

National Cybersecurity Strategy Implementation Plan: On July 13th, the Administration released the [National Cybersecurity Strategy Implementation Plan](#), which details more than 65 federal initiatives, from protecting American jobs by combating cybercrimes to building a skilled cyber workforce. The Administration says its [National Cybersecurity Strategy](#) “calls for two fundamental shifts in how the United States allocates roles, responsibilities, and resources in cyberspace: (1) ensuring that the biggest, most capable, and best-positioned entities – in the public and private sectors – assume a greater share of the burden for mitigating cyber risk; (2) increasing incentives to favor long-term investments into cybersecurity.” (Read more [here](#))

Workforce and Education Strategy: The Administration released the National Cyber Workforce and Education Strategy (NCWES), which is aimed at addressing both immediate and long-term cyber workforce needs. Given hundreds of thousands of cyber vacancies nationwide – a shortage with potential national security implications – the NCWES aims to attract more Americans to cyber work and supplement ongoing workforce development efforts through the Bipartisan Infrastructure Law, CHIPS and Science Act, and Inflation Reduction Act (IRA). (Read more [here](#))

National Cyber Director Nomination: President Joe Biden announced on July 25th he would nominate Harry Coker as National Cyber Director (NCD). If confirmed, Coker, a former senior official at the Central Intelligence Agency (CIA) and National Security Agency (NSA), would take over implementation of the Biden Administration’s new National Cybersecurity Strategy, filling a five-month vacancy following former Director Chris Inglis’ departure in February. (Read more [here](#))

Securities and Exchange Commission (SEC) adopts new cyber rules, proposes artificial intelligence (AI) rules: On July 26th, the SEC adopted new rules requiring registrants to disclose material cybersecurity incidents they experience and to disclose, on an annual basis, material information regarding their cybersecurity risk management, strategy, and governance. Additionally, the SEC proposed new rules that would require broker-dealers and investment advisers to take certain steps to address conflicts of interest associated with their use of predictive data analytics and similar technologies to interact with investors to prevent firms from placing their interests ahead of investors’ interests. In a statement about the proposed rules, Chair Gary Gensler highlighted the transformative power of predictive data analytics and AI, raising new questions about their applications in the financial sector. (Read more [here](#) on cyber, [here](#) on AI)

Congressional update: In the next work period, we are likely to see the committees of jurisdiction focus on the Administration’s new implementation plan, especially at the federal agencies and federal programs, and on cyber workforce issues. The Senate Homeland and Governmental Affairs Committee (HSGAC) is likely to hold a hearing on Coker’s nomination as NCD. Members of Congress and committees of jurisdiction also continue to be concerned with recent breaches and ransomware attacks on the government and critical infrastructure, including schools and hospitals.



8 NEED-TO-KNOWS IN FINANCIAL SERVICES

SEC rulemaking, House action, and more

1 Bank Capital Proposal: Following the Silicon Valley Bank and Signature Bank failures in March, prudential regulators unveiled proposals to raise capital for the country's largest banks by 16 percent, or \$200 billion. (See the proposal text [here](#).) Comments on the proposals will be accepted through November 30th, 2023. ([Fact sheet](#))

2 Securities and Exchange Commission (SEC) Private Funds Rule: On August 23rd, the SEC adopted the private funds rule on a 3-2 vote. The SEC said the rules are "designed to protect private fund investors by increasing transparency, competition, and efficiency in the private funds market." House Financial Services Committee (HFSC) Chairman Patrick McHenry (R-NC) issued a statement saying the SEC is "exceeding its statutory authority to impose onerous and costly mandates."

3 SEC Regulatory Flexibility Agenda: On July 27th, the SEC released its Regulatory Flexibility Agenda, which lists the Chair's agenda of rulemaking priorities. See the list of proposed rules and completed rules [here](#).

4 "Novel Activities" Supervision: On August 8th, the Federal Reserve Board (Fed) established the Novel Activities Supervision Program to focus on novel activities related to crypto-assets, distributed ledger technology (DLT), and complex, technology-driven partnerships with nonbanks to deliver financial services to customers. The program will be risk-focused and complement existing supervisory processes.

5 Upcoming House Hearings: The HFSC will maintain its robust hearing schedule in September (dates below). Among other highlights, SEC Chair Gary Gensler is expected to testify on the 27th. Additionally, the committee is expected to hold a hearing with prudential regulators early this fall and an oversight hearing on the SEC's agenda and rulemakings in October or November.

09/13 Full Committee hearing at TBD on CFIUS

09/14 Financial Institutions Subcommittee hearing at 10:00am (2128 Rayburn) (Basel III)

09/14 Digital Asset Subcommittee hearing at 2:00pm (2128 Rayburn) (CBDC)

09/19 Cap Markets Subcommittee hearing at 10:00am (2128 Rayburn)

09/19 Financial Institutions Subcommittee hearing at 2:00pm (2128 Rayburn)

09/20 Markup (Bills TBD)

09/27 Full Committee Hearing at 10:00am (2128 Rayburn) (SEC)

- 6** Summer progress: The HFSC made progress on a number of fronts in recent months, culminating in the passage in July of dozens of bills in priority areas, including digital assets and environmental, social, and corporate governance (ESG).

Digital Assets Regulatory Framework: By a vote of 35-15, the HFSC in July passed the Financial Innovation and Technology (FIT) for the 21st Century Act to provide a comprehensive regulatory framework for the issuance and trading of digital assets at the SEC and Commodity Futures Trading Commission (CFTC). The bill clarifies which digital assets are regulated by each agency.

Stablecoins: The HFSC also reported out H.R. 4766, the Clarity for Payment Stablecoins Act. This bill would establish a regulatory framework that allows only permitted issuers to issue a payment stablecoin. The vote was 34-16.

Blockchain: The HFSC also passed the Blockchain Regulatory Certainty Act, which provides that blockchain developers and providers of blockchain services that do not take control of consumer funds are not deemed financial institutions or money service businesses under the law.

ESG: In June, the HFSC released a report on ESG and in July the committee passed a series of bills folded into larger packages such as H.R. 4767, the Protecting Americans' Retirement Savings from Politics Act and H.R. 4655, the Businesses Over Activists Act. The committee is expected to release a follow-up ESG report potentially with a focus on the banking sector sometime this fall.

- 7** Coming Up in the Senate: The official schedule hasn't been released, but it is likely the Senate Banking Committee will continue to hold hearings on housing and one on insurance.

- 8** First Markup in Several Years: The Banking Committee in June held its first markup in several years, passing two bills by wide margins - the Fentanyl Eradication and Narcotics Deterrence (FEND) Off Fentanyl Act unanimously and Recovering Executive Compensation Obtained from Unaccountable Practices (RECOUP) Act. Both bills could move to the Senate floor sometime this fall.

FAQs ON TAX EXTENDERS

Is a tax package going to happen in 2023?

Don't hold your breath. First, you may recall Congress let 40 temporary tax provisions expire in 2021 (several energy-related provisions were restored in the Inflation Reduction Act (IRA)). Chief among those expiring provisions was the enhanced Child Tax Credit enacted in the American Rescue Plan Act. Second, this year the universe of expired or expiring tax provisions is relatively small compared with years past when we've seen tax extenders added to broader deals on a year-end package. So, absent a clear vehicle – other than a potential year-end spending package – an extenders package in 2023 is hardly a fait accompli.

What are the top tax priorities?

There have been conversations around pairing restoration of the enhanced Child Tax Credit for individuals with immediate expensing of research and development/experimentation costs for businesses (Section 174). But with neither party willing to budge in their demands, a standoff has become a standstill on all extenders, including bonus depreciation, which expired at the end of 2022, and the calculation of the business interest deduction limit under 163(j).

What else is set to expire?

At the end of 2024, several provisions of the IRA expire, affecting key constituent industries, including biodiesel and renewable diesel; sustainable aviation fuel; and solar and wind energy production.

At the end of 2025, 35 provisions – many key elements of the Tax Cuts and Jobs Act (TCJA) expire. To jumpstart negotiations on a potential tax agreement, House Ways and Means Committee Chairman Jason Smith (R-MO) introduced a series of bills this summer. The committee passed the Small Business Jobs Act, the Build It in America Act, and the Working Families Tax Cut Act on June 13th so they would hit the floor ahead of the August recess. But several Republicans have objected that the bills leave intact provisions affecting the deductibility of state and local taxes (SALT). Since TCJA passed in 2017, the House GOP has added a dozen or so Members from so-called SALT states with high income and property tax rates, such as New York, New Jersey, and California. Fixing SALT for some of these Members may cost GOP votes elsewhere and absent resolution the bills will continue to await floor action.

If not extenders now, then when?

Looking ahead, it seems an extenders deal is inevitable in either the lame duck session following next year's general election and/or 2025, depending on the composition of Congress and the outcome of the presidential election.

7 FAST FACTS ON THE FARM BILL

Short-term extension, long-term extension, SNAP holdup, and more

Yes, reauthorization is delayed: House Agriculture Committee Chairman Glenn “G.T.” Thompson (R-PA) confirmed in August the legislation likely would require a short-term extension.

OK for now: The Department of Agriculture has signaled it has funding for most programs through the end of the calendar year.

Bipartisan goal: Chairman Thompson is hoping to avoid partisan fights and is targeting committee action this work period on what he hopes can be a bipartisan product. But he and Senate Agriculture Committee Chairwoman Debbie Stabenow (D-MI) have their work cut out for them.

What’s in: The bill is designed to be a sweeping package capturing the totality of the farm economy: safety net programs, nutrition assistance, trade, conservation and forestry, animal diseases, and rural broadband. In more than 30 listening sessions held across the country, Members heard testimony on a range of topics, including: input cost inflation, farmland prices, climate-smart and sustainable practices, foreign ownership of U.S. farmland, right-to-repair, digital assets, biofuels, emergency and disaster assistance, research and development funding, and ongoing trade disputes with key partners such as Mexico and Brazil.

Supplemental Nutrition Assistance Program (SNAP) is the main holdup: SNAP, which makes up 80 percent of the Farm Bill’s spending, is alone projected to cost more than [\\$1.1 trillion over the next 10 years](#). This marks the first time in history the Farm Bill would exceed \$1 trillion – likely more than \$1.5 trillion overall, nearly double the price of the last reauthorization, in 2018. Chairwoman Stabenow asked the Congressional Budget Office (CBO) to revisit its projections, and she has signaled CBO’s delay is contributing to postponing consideration of new legislation. To head off some anticipated objections to SNAP, the debt ceiling deal added work requirements for most SNAP recipients aged 50-54.

But SNAP isn’t the only holdup: Concerns around the Thrifty Food Plan’s reauthorization, a notable feature of the 2018 Farm Bill, as well as climate and environmental issues are dragging negotiations. Congress is also not expected to provide new funding for the Farm Bill, so increasing funding for programs will require moving money from other parts of the bill.

Longer-term extension possible: As 260 of the 535 Members of Congress have never voted on a Farm Bill, it is possible a longer-term extension may be needed, perhaps as part of an eventual year-end funding agreement. Senator Chuck Grassley (R-IA), a longtime member of the Senate Agriculture Committee, said a year-long farm bill extension is expected if Congress cannot pass the legislation by the end of this year.

QUICK UPDATE ON FEDERAL AVIATION ADMINISTRATION (FAA) REAUTHORIZATION

The clock is ticking!

- The 2018 FAA Reauthorization Act expires September 30th.
- The House in July passed a reauthorization – the Securing Growth and Robust Leadership in American Aviation Act (H.R. 3935) – with broad bipartisan support in a 351-69 vote.
 - » The bill reauthorizes the National Transportation Safety Board through FY2028, instructs the FAA to increase hiring of air traffic controllers, sets up workforce development to increase recruitment and retention within the industry, and raises the retirement age for commercial airline pilots from 65 to 67. (A proposal from Rep. Burgess Owens (R-UT) to add seven round trip flights at Reagan Washington National Airport failed by a 229-205 vote).
- The Senate's reauthorization bill – the FAA Reauthorization Act of 2023, (S.1939) – is expected to be marked up in the Senate Commerce Committee in September.
- With little floor time available before September 30th, it is likely an extension will be swept up in the expected continuing resolution (CR).

QUICK UPDATE ON THE NATIONAL DEFENSE AUTHORIZATION ACT (NDAA)

The clock is ticking!

- NDAA annually sets the policy agenda and authorizes funding for the Department of Defense.
- The Senate passed its version of the NDAA in late July by a vote of 86-11.
- The House passed its version earlier in July, by a vote of 219-210, after adopting several controversial amendments pushed by the House Freedom Caucus. Moderate Republicans, as well as Democrats, were dismayed that what started as a bipartisan bill became a vehicle for highly partisan conservative social policies.
- Lawmakers now need to reconcile the Senate and House bills and reach a compromise version that can pass both chambers. This will be a heavy lift given the vast differences between the two bills.
- If lawmakers fail to reach a compromise, it will mark the first time in six decades the NDAA has not been signed into law.
- Conferees have not yet been named but staff has already been busy working to reconcile the less partisan issues. We expect Leadership from both chambers to announce conferees upon their return from August recess.

HEALTHCARE ROUNDUP

All that's happening on reauthorizations, drug shortages, PBMs, and more

Senate healthcare package: Senate Majority Leader Chuck Schumer (D-NY) originally planned to bring to the Senate floor this summer a drug pricing legislative package – possibly including bills passed favorably out of Health, Education, Labor, and Pensions (HELP) Committee related to generic drug access and pharmacy benefit managers (PBMs); insulin caps in the commercial market; Federal Trade Commission (FTC) regulation of PBMs; and product hopping, among others. Leader Schumer lacked Republican votes to advance the package this summer, but conversations continue. We could see this effort merge with health care provisions expiring September 30th.

PBM: House and Senate committees of jurisdiction have advanced numerous PBM bills this Congress to address transparency, oversight, banning spread pricing in Medicaid, and delinking PBM income from prescription drug prices under Medicare Part D. The scope of potential PBM reform or whether it will ultimately be included in a fall healthcare package is to be determined. PBM policies could also be lumped into a year-end package to help pay for other priorities or deferred to 2024.

Lots of reauthorizations: Several programs are scheduled to expire when the fiscal year ends on September 30th. Congress will either need to negotiate short-term extensions for these programs or include them in a comprehensive legislative package.

The Pandemic and All Hazards Preparedness Act (PAHPA): House and Senate committees passed versions of pandemic preparedness reauthorization bills in July. The House Energy and Commerce (E&C) Committee has split PAHPA reauthorization into two bills, the Preparedness and Response Reauthorization Act ([H.R. 4420](#)) and the Preparing for All Hazards and Pathogens Reauthorization Act ([H.R. 4421](#)), while the Senate HELP Committee passed a single bill, the Pandemic and All-Hazards Preparedness and Response Act ([S. 2333](#)). The two chambers need to resolve differences before PAHPA expires.

Community Health Centers (CHC): The House may take up a package of healthcare bills advanced out of E&C in May that includes reauthorization for CHC funding. In July, Senate HELP Chairman Bernie Sanders (I-VT) cancelled a markup of a partisan CHC reauthorization bill in favor of finishing a bipartisan reauthorization before the Senate reconvenes in September. HELP Ranking Member Bill Cassidy (R-LA) said he favors taking up bills from the House package.

Workforce: E&C also passed bills reauthorizing the Teaching Health Centers Graduate Medical Education (THCGME) program, the National Health Service Corps (NHSC), and the Children's Hospitals Graduate Medical Education (CHGME) program. The CHGME reauthorization is controversial because it bars federal funds from hospitals that provide gender-affirming care to transgender youth. Democrats say the provision could jeopardize the reauthorization and exacerbate workforce shortages; Rep. Kim Schrier (D-WA) has introduced a clean reauthorization that Democrats are supporting. In the Senate, Chairman Sanders planned – and then cancelled – markup of a major workforce bill because Republicans, and some Democrats, raised concerns about its scope and cost. It remains to be seen if Chairman Sanders and Ranking Member Cassidy will produce a bipartisan bill to negotiate with the House.

Substance Use Disorders: E&C in July passed [H.R. 4531](#), a bipartisan reauthorization of the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act. Senate HELP Ranking Member Cassidy introduced [S. 2433](#), his version of SUPPORT Act reauthorization, and the Committee will need to act in September to avert a lapse in the program's authorization. The Office of National Drug Control Policy is also up for reauthorization this fall.

Hospitals: Congress is reviewing several proposals affecting hospital reimbursement, some of which could be used as payfors for other priorities. Among these potential payfors, Congress is considering legislation to expand site-neutral payment policies to differentiate the reimbursement rates between hospitals and hospital outpatient departments. The scope – and whether these policies will be used – likely depends on the breadth of end-of-the-year legislation. In addition, hospitals are facing approximately \$8 billion in Disproportionate Share Hospital (DSH) cuts scheduled to go into effect after September 30th. Congress previously delayed these cuts in 2021.

Drug shortages: In July, E&C Chair Cathy McMorris Rodgers (R-WA) released a discussion draft on domestic drug shortages. Democrats hoped to include drug shortage provisions in the bipartisan PAHPA reauthorization, but Republicans were unwilling to merge the issues. The Rodgers discussion draft addresses market flexibility,

transparency for group purchasing organizations, Food and Drug Administration (FDA) accountability, pricing policies in the 340B program, Medicaid's generic drug inflationary rebate, and analysis by the Department of Health and Human Services (HHS) on Medicare reimbursement for certain drugs and recommendations on how to avoid drug shortages. A section-by-section summary can be found [here](#). The Senate HELP Committee included drug shortage provisions in its bipartisan PAHPA reauthorization and the Senate Finance Committee released a request for information (RFI) on the topic earlier in the summer. House and Senate negotiators will likely need to reconcile the different policies and reach consensus on a legislative vehicle if they hope to address this issue this year.

SPOTLIGHT ON BIDEN ADMINISTRATION'S HEALTH PRIORITIES

Update on Medicare price negotiations and Cancer Moonshot

Inflation Reduction Act (IRA) Implementation: With the recent release of the first 10 Medicare Part D negotiated drugs under the IRA, we expect the Administration to continue implementing and promoting the law's drug pricing provisions. Pending the disposition of a growing number of lawsuits, the 10 drugs will be subject to negotiated prices that will take effect in 2026.

The Center for Medicare and Medicaid Innovation (CMMI): CMMI has maintained its focus this year on primary care and total cost of care, announcing numerous new models such as Making Care Primary (MCP); modifications to the ACO Realizing Equity, Access, and Community Health (REACH); and Guiding an Improved Dementia Experience (GUIDE).

Cancer Moonshot: This year, the Administration's budget request included \$1.7 billion for Cancer Moonshot activities in addition to \$7.8 billion for the National Cancer Institute (NCI) and \$50 million for the Oncology Center of Excellence at the Food and Drug Administration (FDA). The Administration launched the CancerX public-private partnership to boost cancer innovation; awarded funding to improve access to cancer screenings and early detection through the Health Resources and Services Administration (HRSA); and launched a new public-private partnership through NCI to support families facing childhood cancer. President Joe Biden also recently announced a new Advanced Research Projects Agency for Health (ARPA-H) program to explore using mRNA technology to train the immune system to fight cancer, autoimmune disorders, and infectious diseases.





6 THINGS TO KNOW IN FOREIGN POLICY AND TRADE

Ukraine, China, and trade frameworks

- 1 Ukraine funding is the top issue this fall:** The Administration's request for \$24 billion in supplemental funding for the war in Ukraine is at the top of the foreign policy agenda. There is bipartisan support for America's efforts in Ukraine, but also Members in both chambers opposing what they consider to be a "blank check." Poll numbers show waning support for additional Ukraine funding. This will be one of the top continuing resolution (CR) debates.
- 2 Congress will continue its focus on China:** While President Joe Biden's Executive Order (EO) on outbound investments was welcomed by many Members, others feel that it did not go far enough. Efforts to broaden its scope likely will continue. Senate Majority Leader Chuck Schumer (D-NY) still hopes to move a bipartisan legislative package addressing China policy, but prospects are dim given a lack of bipartisan interest. Congress may look to move a number of bills – either as standalones or attached to must-pass legislation – to address cybersecurity, fentanyl trafficking, supply chain, and other China-related issues. The House Select Committee on the Chinese Communist Party will hold hearings on supply chain issues and may travel to New York City to examine the economic risks posed by China.
- 3 Congress to continue oversight of Administration's trade frameworks:** Lawmakers believe the "frameworks" circumvent its constitutional trade authority. In early August, President Biden signed [H.R. 4004](#), the United States-Taiwan Initiative on 21st Century Trade First Agreement Implementation Act, which overwhelmingly passed both chambers this summer. While the bill aimed to codify the Administration's "early harvest" agreement with Taiwan under the US-Taiwan Initiative on 21st Century Trade, it also included several provisions to require more transparency and consultation from the Administration throughout negotiations and subjects any future agreements with Taiwan to congressional approval. However, in signing the bill, President Biden indicated the Administration would treat the reporting and transparency requirements as "non-binding" in instances where the requirements would "impermissibly infringe upon my constitutional authority to negotiate with a foreign partner." It remains to be seen whether Congress will attempt to replicate the Taiwan bill for other trade frameworks – particularly in the absence of the Administration requesting Trade Promotion Authority.
- 4 Discussions continue on the President's Emergency Plan For AIDS Relief (PEPFAR):** PEPFAR has been reauthorized every 5 years for 20 years and enjoys broad bipartisan support. However, pro-life groups and some Republicans have raised concerns about how the Administration is administering the program. Their opposition has set back efforts to pass a clean 5-year reauthorization. We believe this issue will likely be resolved in the context of an end-of-the-year deal. It is unlikely to see floor time in either chamber.



- 5 China at the forefront of the Administration's trade agenda:** The Administration will be watching closely how China responds to the EO on outbound investment. The order aims to provide additional transparency on certain outbound investments – and prohibit transactions, where applicable – in several critical technology sectors, including semiconductors and microelectronics; quantum information technologies; and artificial intelligence (AI) capabilities. Treasury released an Advanced Notice of Proposed Rulemaking to accompany the executive order, soliciting public comments – due September 28th, 2023 – on a wide range of questions related to the scope of the order, practical implications, and potential unintended consequences. China's Ministry of Commerce has stated it is “conducting a comprehensive assessment of the impact of the executive order and will take necessary countermeasures based on the assessment results,” though it remains to be seen what those countermeasures could encompass.
- 6 Trade enforcement is a priority:** The Administration will continue to prioritize enforcement in the coming months, particularly with respect to United States-Mexico-Canada Agreement (USMCA) disputes on Canada's implementation of dairy tariff rate quotas, Mexico's ban on genetically modified corn, and labor violations in Mexico. Customs and Border Patrol (CBP) will also continue to implement and enforce the Uyghur Forced Labor Prevention Act (UFLPA), detaining cargo in several “high priority” sectors (tomatoes, cotton, polysilicon) believed to have been produced using forced labor in the Xinjiang region.

Upcoming events with Administration officials:

- **September 9-10:** G20 Leaders' Summit in New Delhi, India
- **September 10-16:** USTR and Commerce officials will participate in the fifth negotiating round of the Indo-Pacific Economic Framework for Prosperity (IPEF) in Bangkok, Thailand
- **Week of November 12:** The US will host the Asia-Pacific Economic Cooperation (APEC) Leaders' Meeting in San Francisco

QUICK UPDATE ON ARTIFICIAL INTELLIGENCE (AI) & TECH

Schumer and New Democrats lead education efforts

The biggest topic in tech this Congress continues to be AI. Senate Majority Leader Chuck Schumer (D-NY) along with his colleagues, Senators Mike Rounds (R-SD), Martin Heinrich (D-NM) and Todd Young (R-IN) has led the effort to educate senators on the potential benefits and risks associated with AI. Leader Schumer has already hosted two “all senators” private briefings from AI stakeholders and is hosting the next one in September with CEOs from some of the largest technology companies. While Schumer's effort has probably been the most organized, other senators and committees are holding hearings and briefings at a good clip. The House has held one-off hearings, with the most organized effort from the New Democratic Coalition, which recently announced the creation of an AI working group. The House has also produced plenty of AI-related legislation. (Click [here](#) to view Tiber Creek Group's updated AI tracker)

The Administration is also working in bits and pieces. There are rumors of a new Executive Order for agencies to endeavor to take advantage of the promise of AI.

The other notable Congressional action on technology policy was in July when the Senate Commerce Committee reported out two bills related to children's online privacy and safety. While this is significant, there is currently no path for either bill to reach the Senate floor and these bills have no momentum in the House. The House Energy and Commerce (E&C) Committee continues to be in discussions regarding a path forward for the national privacy standard bill that the Committee reported out last Congress. At the same time, there has not been a breakthrough that will garner broad bipartisan support.

While antitrust is less of a priority in the Senate or Republican-led House this Congress, the Department of Justice and the Federal Trade Commission (FTC) have continued their enforcement efforts. They recently released revised – and still controversial – merger guidelines, and they continue to aggressively bring cases to block mergers and prosecute conduct they deem anticompetitive.

Before you go...

That's a lot to take in, we know, and there will be plenty of news from Washington in the coming weeks as Congress returns and races against the clock to resolve spending differences and pass reauthorizations. Rest assured, your team at Tiber Creek Group is staying up to date. If you have questions on any of these issues, please don't hesitate to contact any one of us.

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