



Tiber Creek Group SPRING OUTLOOK

APRIL 2024

Spring greetings from Washington, where recently both parties in Congress worked together to avert a government shutdown, passing all of the FY 24 appropriations bills before the latest stopgap resolution expired.

In a statement after the vote, Speaker of the House Mike Johnson (R-LA) listed the items next on the House Republican agenda: dealing with the border through a series of bills expected to be introduced in the coming weeks and finding a way to deliver aid to Ukraine and support to Israel (although Ukraine aid is a big question mark).

Senate Majority Leader Chuck Schumer (D-NY) recently circulated a dear colleague detailing an ambitious agenda that includes nominations, FAA and FISA extensions, and support for Baltimore's Key Bridge reconstruction, among other challenging issues. But several questions still loom. Will the Senate schedule a vote on the House-passed TikTok bill? Will they take up and advance the tax deal struck by Sen. Ron Wyden (D-OR) and Rep. Jason Smith (R-MO)? Will any more Members of Congress smell (permanent) jet fumes and leave office before the end of the year?

To dig into all of this and much more – read on.

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MARK YOUR CALENDARS

April 19: Section 702 of FISA expires; Rep. Mike Gallagher (R-WI) resigns, changing the House composition to 217 Republicans and 213 Democrats

April 30: NY-26 Special Election

May 10: Federal Aviation Administration Funding Deadline

May 21: CA-20 Special Election

June 11: OH-6 Special Election

June 25: CO-4 Special Election

July 15-17: Republican National Convention in Milwaukee

August 19-22: Democratic National Convention in Chicago





10 UPDATES ON 2024 ELECTIONS

Presidential Election

1. It's a historic rematch: President Joe Biden and former President Donald Trump are the presumptive nominees after one of the shortest primary seasons in modern history. The only other time a former president went head-to-head with an incumbent president was in 1892, when former Democratic President Grover Cleveland defeated incumbent Republican President Benjamin Harrison.
2. It's also a match-up very few wanted. Biden's approval rating is 38 percent, and Trump's is 34 percent, according to the Gallup Presidential Job Approval Center. Around this time in 2020, Biden's approval rating was 49 percent, and Trump's was 47 percent.
3. The Supreme Court ruled in March that former President Trump could not be barred from the ballot in Colorado, after a group of voters attempted to disqualify the former president under Section 3 of the 14th Amendment, which prevents those engaged in insurrection from running for office. Additional unsuccessful cases to disqualify Trump were brought in Maine, Florida, Michigan, Minnesota, and California.
4. Less than half of young Americans ages 18 to 29 "definitely" plan to vote in 2024, compared with 57 percent in 2020, according to the Harvard Youth Poll. When asked which candidate they trust on critical issues, President Biden has the advantage on climate change, abortion, education, protecting democracy, healthcare, gun violence, and Ukraine. Former President Trump is more trusted on the economy, national security and defense, the Israel-Hamas war, strengthening the working class, crime and public safety, and immigration.
5. Jill Stein, the Green Party candidate, has been confirmed for the ballot in 27 states and the District of Columbia. Notably, she has obtained ballot access in four swing states: North Carolina, Michigan, Arizona, and Wisconsin. The Green Party also has pending litigation in Georgia. Robert Kennedy Jr. and Cornell West remain in the race but have not gained ballot access in any swing states, though Kennedy is in the process of finalizing signatures in Nevada and North Carolina.

Congressional Elections

6. In Congressional election news, Democrat Rep. Tom Suozzi won the February 13 special election to fill the seat left by former Rep. George Santos (R-NY), narrowing Republicans' majority in the House to four seats. Suozzi campaigned heavily on countering the GOP on immigration and abortion, suggesting Democrats in tight races can benefit from robust policy debates on these issues.
7. There are four upcoming special elections that will impact the House balance of power: OH-06, CO-04, CA-20, and NY-26. Rep. Ken Buck (R-CO) had announced last fall he would not seek reelection in Colorado, but in March abruptly said he would resign by the end of the month. The special election to fill Rep. Buck's seat will coincide with Colorado's June 25 congressional primary election. Additionally, Rep. Mike Gallagher (R-WI), Chair of the Select Committee on the Chinese Communist Party, announced he will resign from office on April 19. Rep. Gallagher's resignation was timed so a special election would not be held to fill the seat until November. Rep. Gallagher's late resignation means the House GOP majority has shrunk by another vote. The remaining special elections will occur in safe seats and will not affect the House balance of power.



8. Also in March, Senator Kyrsten Sinema (I-AZ) ended the intense speculation over her future when she announced she would not seek re-election.
9. New York’s new legislative map is relatively similar to the map used in the 2022 midterm elections but still gives Democrats an opportunity to pick up one seat in Syracuse. Long Island and Westchester County – where they were hoping to pick up seats – were unchanged.
10. To date, 42 House members and 8 senators have announced they will not seek re-election or are resigning in 2024. Notably, this includes some high-profile Republicans: Rep. Cathy McMorris Rodgers (R-WA), Chair of the House Energy and Commerce Committee; Rep. Kay Granger (R-TX), Chair of the House Appropriations Committee; and Rep. Mike Gallagher (R-WI), Chair of the House Select Committee on Strategic Competition between the U.S. and the Chinese Communist Party (CCP), who is resigning. Click [here](#) for a full list of retirements and vacancies.

Twenty-five Republicans have announced they will retire or seek another office in 2024. These are not considered competitive races – all are ranked “Solid R.”

Twenty-three Democrats have announced they will retire or seek another office in 2024. There are 7 seats that are considered competitive races for retiring Democrats:

- MI-08: Rep. Dan Kildee (D-MI) - Toss-Up
- NJ-03: Rep. Andy Kim (D-NJ) - Likely Democrat
- CA-47: Rep. Katie Porter (D-CA) - Lean Democrat
- MI-07: Rep. Elissa Slotkin (D-MI) - Toss-Up
- VA-07: Rep. Abigail Spanberger (D-VA) - Lean Democrat
- MD-06: Rep. David Trone (D-MD) - Likely Democrat
- VA-10: Rep. Jennifer Wexton (D-VA) - Likely Democrat

Upcoming House Special Elections

- New York’s 26th District - April 30, 2024
- California’s 20th District - May 21, 2024
- Ohio’s 6th District - June 11, 2024
- Colorado’s Fourth District – June 25, 2024

Upcoming Swing State Primary

- April 24 - Pennsylvania Democratic and Republican primaries

Competitive Senate Seats

- Toss Up: AZ (Open), OH (Brown), MT (Tester), NV (Rosen)
- Lean D: MI (Open), PA (Casey), WI (Baldwin)
- Likely R: FL (Scott), TX (Cruz)

Source: Cook Political Report

Competitive House Seats

Source: Cook Political Report

11 D Toss-Up	11 R Toss-Up
CO-08 (Caraveo)	AZ-01 (Schweikert)
ME-02 (Golden)	AZ-06 (Ciscomani)
MI-07 (Open)	CA-13 (Durante)
MI-08 (Open)	CA-22 (Valadao)
NC-01 (Davis)	CA-27 (Garcia)
NM-02 (Vasquez)	CA-41 (Calvert)
OH-13 (Sykes)	NJ-07 (Kean Jr.)
PA-07 (Wild)	NY-04 (D’Esposito)
PA-08 (Cartwright)	NY-17 (Lawler)
WA-03 (Perez)	NY-19 (Molinaro)
	OR-05 (Chavez-DeRemer)



Q&A ON APPROPRIATIONS

with Matt Leffingwell & Nikole Burroughs of Tiber Creek Group

A quick rundown on appropriations from Matt Leffingwell, who manages the budget and appropriations practice at Tiber Creek Group, and Nikole Burroughs, who joined the firm in February from the United States Agency for International Development (USAID), where she helped spearhead Agency policy and budget priorities, after serving for more than 20 years in senior appropriations and foreign policy roles at the State Department and in both the House and Senate.

The appropriations bills were passed just in time to avoid a shutdown. Any surprises in this year's process?

Matt: For all the twists and turns that FY24 took – the bills really landed right where they started. The Senate Appropriations Committee passed all 12 appropriations bills on a bipartisan basis with minimal, non-consequential riders, and that made the House position very weak going into a conference.

Nikole: I agree – no real surprises. It took longer than expected but they got to the same place that I would have anticipated.

Kay Granger, the Chair of the House Appropriations Committee, announced she will step down early as chair. How does that change things?

Matt: I don't think there will be much that will change on the staff level of the Committee for the short term. But I do think the dynamic between Rep. Tom Cole (R-OK) and Rosa DeLauro (D-CT) will be better. They were colleagues on Labor-H [the House Labor, Health and Human Services, Education Appropriations Subcommittee] for years and worked very well together. But I have a hard time believing they will be able to bring many – if any – bills to the floor of the House. The Rules Committee is still a huge problem for moving appropriations bills because of its Freedom Caucus members.

What are you expecting will happen next with Ukraine aid?

Nikole: The Senate supplemental bill bundled foreign aid and national security assistance together with assistance for Ukraine, where we generally know the needs and threats - and with Israel-Gaza, a conflict which is shifting daily. We're seeing an unprecedented split within House Democrats on how to approach funding for the Middle East, and it's possible House Democrats may show their lack of support for policy direction by voting "no" on the bundled bill, taking down Ukraine aid with it. The House may have to split the supplemental into two different bills – an Israel-Gaza package that will seek to carefully thread the foreign policy needle and a Ukraine/other package.

Will the Senate and the White House support two different bills?

Matt: I think at the end of the day, the Senate is going to have to be deferential to what the House can pass. Splitting it up may be helpful for accommodating changing perspectives on Israel-Gaza and Ukraine.

What if nothing on foreign aid can pass?

Nikole: The FY24 foreign aid bill that just passed includes additional emergency assistance funding for humanitarian aid around the globe and for Ukraine and the region. So, if the supplemental doesn't pass, the State Department and USAID have about \$2.5 billion more to support some of the things the Administration requested. It's like the appropriators were creating a fallback. It's not enough to cover all the needs, but it would probably get you six months down the road.

What about a loan to Ukraine – is that a real option?

Matt: I think it's an interesting way to sell the idea of foreign assistance to House Republicans, though I'm not sure how many votes it could pick up. Republicans are pretty galvanized in their opposition to additional Ukraine aid without border security. I think they could still pass Ukraine aid under suspension with Democrats probably carrying it across the finish line.

Nikole: There's a lot of Ukraine aid fatigue among Americans. There was initially significant bipartisan support to counter Russia, but lacking a clear endgame to the conflict in an election year makes support more difficult. I know a lot of Democrats are also questioning when it will end, when we will stop providing so much assistance.

Do you think we will see more of these appropriations minibuses going forward?

Matt: I think that's the only way to pass appropriations bills in the House right now. A lot depends on the election – and I'm assuming all the FY25 appropriations bills will be kicked beyond the election. I was on the committee staff when [former President] Trump was elected and we were told to scrap what we were doing the day after the election.

Nikole: This is a crazy election year and a wild funding ride. You have a lot of staffers within the Administration that are trying to either spend as much money as they can, because they're afraid that [former President] Trump is going to come back and kill their programs, or to slow walk getting funds out the door because they don't agree with [President Joe] Biden's policies.



5 UPDATES ON IMMIGRATION

The most contentious, partisan issue in America

- 1 Senators James Lankford (R-OK), Chris Murphy (D-CT), and Kyrsten Sinema (I-AZ) in February reached a bipartisan border security deal to substantially reform the asylum system, put new restrictions on the use of immigration parole, and trigger border closures.
- 2 Within 48 hours of the release of the bipartisan deal, it was effectively dead.
- 3 This deal was supported by President Joe Biden and by a large number of Democrats in Congress. Democrats believed the deal would give the President the tools he needs to address the unprecedented migration surge. Some Republicans also recognized the need for enhanced enforcement laws and substantially more funding for the Department of Homeland Security (DHS).
- 4 But many Republicans, led by former President Donald Trump, argued it didn't go far enough to stop the flow of migrants into the United States. Some also maintain that President Biden can "close the border" by reinstating Trump border security executive orders. Progressive Democrats were angry the bill did nothing to provide more legal citizenship pathways for migrants, Dreamers, long-term Temporary Protected Status (TPS) recipients, and undocumented immigrants.
- 5 The partisan fighting over immigration will continue. President Biden has discussed signing a new enforcement executive order and will continue to press for passage of the bipartisan deal. Republicans will continue to press Democrats for being weak on border security and will look for every opportunity to force votes on enforcement measures. All in all, expect a lot of heat and little action on immigration until after the election.

5 NEED-TO-KNOWS ON CLIMATE, ENERGY, AND SUSTAINABILITY

Appropriations Dominates

APPROPRIATIONS: The first FY24 spending package signed into law in March included more than \$58 billion for the Department of Energy (DOE), Army Corps of Engineers, Bureau of Reclamation, and related agencies. The bill included important investments to support energy efficiency and renewable energy programs; nuclear energy research and development and fuel security; and the Office of Science for industry coordination on emissions and grid security. Congress approved an additional spending package that included \$9.2 billion for the Environmental Protection Agency (EPA), which will allow the agency to maintain current staffing levels, but is \$1 billion less than the 2023 appropriation. The U.S. Department of Agriculture (USDA) received an increase for the Agricultural Research Service, which houses the Department's Climate Hubs. The bill also provided \$951 million for the USDA's conservation programs. Appropriators will now quickly turn their attention to FY25. We anticipate deadlines for member submissions to occur over the course of early April.

HOUSE GOP ENERGY WEEK: Before spring recess, House Republicans marked "Energy Week" by passing a number of largely partisan proposals, such as efforts to prevent the Administration from banning fracking, to make changes to the Clean Water Act, and to repeal both the Greenhouse Gas Reduction Fund and the Methane Emissions Reduction Program, which were established by the Inflation Reduction Act (IRA).

FEDERAL ENERGY REGULATORY COMMISSION (FERC) NOMINEES BEGIN CONFIRMATION PROCESS: The Senate Energy and Natural Resources Committee held a hearing March 21 on the three FERC nominees – two Democrats, one Republican: Judy Chang (D), David Rosner (D), and Lindsay See (R). Confirmation of all three would result in a fully staffed FERC.

ADMINISTRATION: President Joe Biden used his State of the Union to tout his climate accomplishments and Budget Request, which proposes increased funding for climate and energy programs across the federal government. Congress has begun to hold hearings on the FY25 budget requests. .

On March 20, the EPA finalized its rule governing tailpipe emissions standards for light- and medium-duty vehicles on model years 2027 through 2032. Final standards are less stringent than those proposed in 2023, but have still met strong opposition on Capitol Hill. Senators Dan Sullivan (R-AK) and Pete Ricketts (R-NE) announced plans to introduce a Congressional Review Act (CRA) resolution to block the final rule. Rep. John James (R-MI) will introduce a similar resolution in the House.

The Administration continues to release funding and guidance stemming from the IRA.

ENERGY UPDATE

TAX AND PERMITTING: The House in January passed a bipartisan tax package – H.R. 7024, the “Tax Relief for American Families and Workers Act of 2024” – that does not include an energy title, but there is interest among stakeholders and members in extending expiring energy tax provisions. Members continue to develop priorities for permitting reform, and Senators Joe Manchin (D-WV) and John Barrasso (R-WY) continue discussing a potential bipartisan permitting reform package.



5 UPDATES IN CYBERSECURITY

Look out for new legislation, possible votes, hearings

1

Legislation expected after cyberattacks: We expect to see legislation resulting from the massive Change Healthcare breach impacting 90 percent of the country's hospitals, physician practices, pharmacies, and other healthcare entities. (You'll find additional information under the healthcare section of this memo.) With increased cyberattacks on water and wastewater systems, expect to see legislation for this sector as well.

2

Possible vote to overturn cyber disclosure rule: We could see the Senate and House vote on the Congressional Review Act (CRA) resolution to overturn the Securities and Exchange Commission (SEC) cyber disclosure rule. The CRA was introduced by Sen. Thom Tillis (R-NC) and Rep. Andrew Garbarino (R-NY).

3

Federal cybersecurity modernization bill still moving: Senate Homeland Security and Governmental Affairs (HSGAC) Chairman Gary Peters (D-MI) remains optimistic the Federal Information Security Modernization Act (FISMA) can cross the finish line this Congress despite Ranking Member Rand Paul (R-KY) having a hold on the Senate version of the legislation. The House Oversight Committee passed its FISMA bill in a 32-7 vote on March 7.

4

Possible workforce bill: There is a potential to still see a workforce cyber-related bill prior to the end of Congress. We will continue to keep you posted.

5

Rule and report coming: We expect the Cybersecurity and Infrastructure Security Agency (CISA) to release its rule on the Cyber Incident Reporting for Critical Infrastructure Act of 2022 (CIRCIA) and for the Cyber Safety Review Board (CSRB) to release their latest report.



6 FACTS ON FINANCIAL SERVICES

Continued focus on Climate Disclosure Rule/Basel III

Securities and Exchange Commission Pauses Climate Disclosure Rule: Late last week, the Securities and Exchange Commission (SEC) hit pause on the climate disclosure rule that the agency had just finalized due to the overwhelming number of lawsuits that have been filed against it. The SEC said a stay would “facilitate the orderly judicial resolution of those challenges and allow the court of appeals to focus on deciding the merits.” The agency added it would “continue vigorously defending the final rules’ validity in court and looks forward to expeditious resolution of the litigation.”

Despite this development, the House Financial Services Committee majority is expected to continue to highlight the flaws about the rule. As a reminder, the climate disclosure rule which requires registrants to provide climate risk disclosures in their annual reports and registration statements and was approved by the SEC on March 6; the final version eliminated Scope 3 – which measured indirect emissions – from collection requirements. Nevertheless, many still question the securities regulator’s jurisdiction over climate policy. The House Financial Services Committee held hearings on the rule on January 18 and March 18 and additional hearings are expected.

Basel III Endgame: Re-proposal or ‘Broad and Material’ Changes? Federal Reserve (Fed) Chairman Jerome Powell recently told Congress that the volume of feedback the Fed has received on the Basel III Endgame proposal is “unlike anything [he has] ever seen.” Following its release last July, members of Congress on both sides of the aisle have raised concerns about the proposal’s potential impact on small business lending; mortgage lending and first-time homebuyers; and renewable energy financing. Chairman Powell has affirmed to Congress there will be “broad and material” changes to the proposal and said reproposing the rule is a “plausible option.” The timeline for the final rule is still unclear.

The race for House Financial Services Committee (FSC) Chair is heating up: Contenders for the Committee’s top spot include Rep. Andy Barr (R-KY), Chairman of the Consumer Protection and Financial Institutions Subcommittee; Rep. Bill Huizenga (R-MI), Chairman of the Oversight and Investigations Subcommittee; and Rep. French Hill (R-AR), Chairman of the Digital Assets, Financial Technology, and Inclusion Subcommittee. Rep. Frank Lucas (R-OK), another senior member of the Committee, may also enter the race. It’s too early to determine who has the advantage, particularly given the expected shake-up on the Steering Committee, which recommends decisions about committee chairs to the Conference.

Looking Ahead at the FSC this spring: In April, May, and June, expect continued focus on “reining in rogue regulators,” a theme for the Committee and during hearings this year. Hearings will highlight the significant flaws of Basel III and as mentioned, the SEC’s Climate Disclosure rule. A markup is on the schedule for April (see below) and one is also expected in May.

- **April 10th at 10:00am:** Full Committee hearing on SEC Climate rule
- **April 16th at 10:00am:** Nat Sec Subcommittee hearing on Ransomware
- **April 16th at 2:00pm:** Financial Institutions Subcommittee hearing on merger guidelines
- **April 17th at 10:00am:** Full Committee Markup - will include six CRAs - four will be climate-related, one on FSOC, and one on CFPB junk fees. The remaining bills likely will be those cut from the Feb markup.

Action and interest in combating terrorism financing: The House FSC has held 6 hearings since December on topics related to illicit finance and terrorism financing. Specific topics have included the Treasury Department’s Financial Crimes Enforcement Network (FinCEN) oversight; rogue-state revenue and sanctions on Russia, Iran, and Venezuela; the Iranian Regime’s support of terrorist groups; barriers to Chinese Communist Party (CCP) investment; and the role of crypto in illicit finance. The FSC held a markup in November, during which several illicit finance-related bills were voted out of the Committee with overwhelming bipartisan support. Senate Banking Committee Chairman Sherrod Brown (D-OH) has expressed interest in moving legislation to require digital assets to comply with anti-money laundering (AML) and economic sanctions regulations. Several bipartisan bills have been introduced, including a bill led by Senators Jack Reed (D-RI) and Mike Rounds (R-SD) to extend AML obligations to decentralized crypto exchanges and crypto kiosks. Senators Elizabeth Warren (D-MA) and Roger Marshall (R-KS) have also introduced legislation to extend AML and other requirements to “crypto participants,” including miners, validators, wallet providers, and others. Chairman Brown has invited Deputy Treasury Secretary Wally Adeyemo to testify before the Committee on illicit finance next month.

Housing in focus at Senate Banking Committee: Housing continues to be a top priority for Chairman Brown, who said he wants to work with Ranking Member Tim Scott (R-SC) to move a bipartisan housing package that could include: legislation to improve rural housing programs; a bill to improve Housing and Urban Development (HUD) housing voucher programs; the Yes in God’s Backyard Act, which would support religious organizations with unused land to use it for affordable housing; the Grandfamilies Housing Act to support intergenerational families; the Excess Urban Heat Mitigation Act to help communities eliminate urban heat islands; the Eviction Crisis Act to reduce evictions; the VA Home Loan Awareness Act to ensure veterans and service members know about Department of Veterans’ Affairs (VA) home loan options; legislation to provide assistance to first-time, first generation homebuyers; and the HELPER Act to create a new Federal Housing Authority mortgage for law enforcement personnel, firefighters, and teachers.

TOP 10 TAX TAKEAWAYS

House passes a bipartisan tax deal, GOP Senators balk

April 15 is not only the tax filing deadline – it’s an effective “expiration date” for Congress to enact the Tax Relief for American Families and Workers Act (HR 7024), which passed the House on January 31 by a bipartisan 357-70 vote. Here’s where things stand:

- 1** The bill was the result of months of negotiations between Senate Finance Committee Chairman Ron Wyden (D-OR) and House Ways & Means Committee Chairman Jason Smith (R-MO). Senate Finance Ranking Member Mike Crapo (R-ID) did not join in introducing the legislation; among other items, he is opposed to the bill’s income “lookback” provision for the Child Tax Credit.
- 2** While the legislation is being touted as an extension of provisions within the Tax Cuts & Jobs Act (TCJA) of 2017, it actually unwinds provisions of the TCJA initially designed to help pay for the law, specifically those related to interest deductibility (Section 163j), research and development (Section 174), and capital expensing (Section 179 and bonus depreciation). To pay for these proposed provisions, as well as the proposed changes to the Child Tax Credit and the Low-Income Housing Tax Credit included to attract Democratic support, the Smith-Wyden legislation would eliminate the Employee Retention Tax Credit (ERTC) Congress created in the CARES Act of 2020.
- 3** Sen. Crapo is not the only senator taking issue with policies in the bill – others oppose enacting a bill near to or at the end of a filing season in which it would take effect; using the ERTC as a pay-for (as it was not offset when first enacted); retroactivity; or share Sen. Crapo’s concerns with the Child Tax Credit lookback provision.
- 4** Some senators have political concerns with passing a tax bill during a presidential election year. Others think Republicans will likely be in the Senate majority in 2025 when many TCJA provisions expire and have objected to negotiating the bill this year.
- 5** Sen. Crapo has said that he would like to find a way forward on the bill, but it’s highly unlikely a compromise will be reached in the near-term.
- 6** Senate Majority Leader Chuck Schumer (D-NY) had signaled he would schedule floor time for the bill, but walked that back. The window is quickly closing for the Senate to move the legislation even if Republican opposition remains.
- 7** With no support from Sen. Crapo – and other Republican members of the Senate Finance Committee, including former Chairman Chuck Grassley (R-IA), Sen. John Thune (R-SD), Sen. John Cornyn (R-TX), and Sen. Thom Tillis (R-NC) who have expressed pessimism or outright opposition – we would likely see a failed Motion to Proceed if Schumer calls for a vote.
- 8** President Joe Biden recently added headwinds with the release of his FY25 budget as well as his Administration’s Green Book, which call for increased corporate taxes and a slew of new and higher taxes on high income individuals.
- 9** While many of the proposed tax hikes are not new, Republicans can see what they may be negotiating against if they seek to extend TCJA provisions in 2025. Republicans may want to preserve as many provisions as possible – such as the Child Tax Credit and Low-Income Housing Tax Credit – for future horse-trading purposes.
- 10** Former President Donald Trump – who signed the TCJA into law – has not commented on the proposed legislation. Weighing in, in either direction, could seal the bill's fate.

WHAT YOU NEED TO KNOW ABOUT HEALTHCARE

Congress punts again, but still seeks major healthcare deal

WHAT TO EXPECT THIS SPRING: Lawmakers addressed several expiring health programs and reauthorizations in the first “minibus” spending package signed into law last month. Now the spring and summer will be largely focused on what was excluded and setting the table for longer-term projects.

We anticipate additional focus on measures from the House-passed Lower Cost, More Transparency Act, legislation targeting PBMs, reauthorization of the Pandemic and All Hazards Preparedness Act (PAHPA), policies to address drug shortages and foreign influence in the pharmaceutical supply chain, the extension of certain telehealth authorities, and policies to address dually eligible beneficiaries, rare disease treatments, and physician payment reforms, among other policies.

Lawmakers will look for any opportunity between now and the post-election “lame duck” session to get their healthcare goals over the finish line. Work done before the election will be critical to setting up any lame duck legislative package.

ADMINISTRATION REGULATIONS: Given the election year uncertainty, the Biden Administration will focus on finalizing key regulations this spring to help insulate rules from the Congressional Review Act (CRA) lookback period. The Administration’s rulemaking will likely focus on healthcare costs, expanding access, and supporting behavioral health. In March, the Department of Labor (DOL) finalized a rule targeting short-term limited duration insurance (STLDI). In addition, the Food and Drug Administration (FDA) will issue guidance on reforms to laboratory-developed tests (LDTs) regulation. The Center for Medicare and Medicaid Innovation could roll out additional models to help reach its goal of having 100 percent of Medicare beneficiaries in an accountable care relationship by 2030. On drug pricing, the Centers for Medicare and Medicaid Services (CMS) will continue to implement provisions of the Inflation Reduction Act (IRA) and is slated to publish the maximum fair prices for the first 10 drugs selected for Medicare drug price negotiation by September 1, 2024. The Administration also will continue to scrutinize healthcare consolidation and the role of private equity investment. The Federal Trade Commission (FTC) is expected to conduct this oversight work in conjunction with the Department of Health and Human Services (HHS).

NECESSARY WORK: Lawmakers need to extend COVID-era telehealth flexibilities, fund community health centers (again), extend physician payment incentives, and reauthorize PAHPA, among other issues before the end of the year. Lawmakers are also beginning to discuss broader physician payment reforms as they revisit the Medicare Access and CHIP Reauthorization Act (MACRA). These deadlines and reauthorizations could set the stage for another legislative package, which could carry some of the policies discussed above. Tight margins in the House and Senate and the need to offset costs will make passage of any healthcare package difficult. It will be critical that stakeholders stay engaged with the relevant congressional committees and agencies throughout the spring and summer to best position themselves for activity later this fall.



UPDATE ON TRADE AND COMMERCE

Congress focuses on TikTok

IN THE ADMINISTRATION: The early 2024 trade agenda was dominated by U.S. engagement at the 13th World Trade Organization Ministerial Conference (MC-13), the Indo-Pacific Economic Framework for Prosperity (IPEF) Ministerial, and the Americas Partnership for Economic Prosperity (APEP) Ministerial and other global forums. The Administration released agreements in principle at the IPEF Ministerial related to the Clean Economy and the Fair Economy, and helped secure an extension of the e-commerce moratorium through March 31, 2026, at MC-13 – a move lauded by Members of Congress on both sides of the aisle.

On March 1, 2024, the Office of the United States Trade Representative (USTR) unveiled its 2024 Trade Policy Agenda, which will inform the Administration’s trade priorities in the coming months. The report outlined several key areas of focus, including robust enforcement of the United States-Mexico-Canada Agreement (USMCA) and continued negotiations of IPEF, APEP, the United States-Taiwan Initiative on 21st Century Trade, and the United States-European Union Trade and Technology Council, among others.

In the coming weeks, several key deadlines and events will inform the Administration’s trade agenda, including:

- **April 4-5:** The U.S.-EU Trade and Technology Council meeting in Leuven, Belgium
- **April 16-17:** Ambassador Katherine Tai testimony before the House Ways and Means and Senate Finance Committees on the 2024 Trade Policy Agenda
- **April 22:** Deadline for USTR’s request for public comments on promoting supply chain resilience
- **April 26:** USTR will determine whether to initiate a new Section 301 investigation into the Chinese commercial shipbuilding industry following a petition filed by a coalition of unions and supported by a number of congressional Democrats, including Ways and Means Ranking Member Richard Neal (D-MA)
- **April/May (expected):** Ambassador Tai and Commerce Secretary Gina Raimondo will testify before the House and Senate Appropriations Committees on their respective FY2025 budget requests
- **June 6:** IPEF Ministerial in Singapore
- **Summer 2024:** APEP Ministers will meet in Ecuador

IN CONGRESS: China will remain at the forefront of the congressional agenda this spring. The Senate could take up a bill to compel the sale of TikTok by Chinese-owned technology company ByteDance, after House passage of H.R. 7521 by a vote of 352-65. The bill effectively bans TikTok in the U.S. if ByteDance refuses to divest. The path forward in the Senate is unclear. The White House has indicated its support for the legislation and senior officials from the Department of Justice and intelligence community recently held closed-door briefings in the Senate to discuss the bill. Senate Majority Leader Chuck Schumer (D-NY) has suggested the Senate will evaluate the bill but has provided little detail otherwise.



It is not yet clear how the resignation of Select Committee Chairman Mike Gallagher (R-WI) (effective April 19) will impact the House Select Committee on the Chinese Communist Party's (CCP) priorities. Nevertheless, the Committee – under incoming Chairman John Moolenaar (R-MI) – is likely to continue its oversight of TikTok; Chinese threats to the bioeconomy and “foreign adversary biotech companies of concern;” threats posed by Chinese and Russian satellites; and U.S. investment in China.

House Republicans could try to move all or part of a [China package](#) introduced by the Republican Study Committee. The broad package would end Permanent Normal Trade Relations (PNTR) with China; restrict outbound investments into Chinese technology companies and military entities; stop CCP entities from purchasing American real estate and farmland; prohibit USTR from supporting, allowing, or facilitating Trade-Related Aspects of Intellectual Property Rights (TRIPS) at the World Trade Organization; and ban Chinese EV batteries from being used on U.S. military bases and phase out Chinese EV batteries currently being used. While the prospects for floor consideration are unclear, parts of the bill could be attached to the upcoming FY25 National Defense Authorization Act (NDAA).

The congressional agenda also may include consideration of a bill to reauthorize certain trade preference programs. The House Ways and Means Trade Subcommittee has been negotiating a bipartisan bill to reauthorize the Generalized System of Preferences and the Miscellaneous Tariff Bill, which expired in 2020. Committee staff have indicated the Committee could take up an agreement soon. That legislation could attract amendments on changes to the de minimis threshold, reforms to the anti-dumping/countervailing duty (AD/CVD) process, and China-related amendments, among others.

WHAT TO KNOW ABOUT TECHNOLOGY, ARTIFICIAL INTELLIGENCE (AI), AND ANTITRUST



KIDS SAFETY BILL

GATHERS STEAM: The Kids Online Safety Act (KOSA) gained over 60 Senate cosponsors – a big moment, but there’s still a long way to go. There is not yet a Senate strategy for floor votes that avoids poison pill amendments, and there is still no House version of the bill. While House Energy and Commerce Chair Cathy McMorris Rodgers (R-WA) recently has shown more interest in children’s privacy, she continues to insist on comprehensive privacy legislation.



MOVEMENT ON THE AMERICAN PRIVACY RIGHTS ACT:

HOUSE ENERGY AND COMMERCE CHAIR KATHY MCMORRIS RODGERS (R-WA) AND SENATE COMMERCE COMMITTEE CHAIR MARIA CANTWELL (D-WA) REACHED A BIPARTISAN, BICAMERAL AGREEMENT ON THE AMERICAN PRIVACY RIGHTS ACT TO ESTABLISH A NATIONAL DATA PRIVACY STANDARD. ACCORDING TO PRESS REPORTS, THE DRAFT BILL REACHED A COMPROMISE ON TWO ISSUES: THE TIMELINE TO ALLOW INDIVIDUALS TO SUE FOR PRIVACY VIOLATIONS, WHICH WAS LARGELY OPPOSED BY REPUBLICANS, AND THE EXTENT IT WOULD PREEMPT EXISTING STATE PRIVACY LAWS, WHICH FACED PUSHBACK FROM DEMOCRATS. STAFF HAS SAID THE COMMITTEES WILL MOVE SOON TO INTRODUCE THE BILL AND HOLD HEARINGS.



AI CONTINUES TO GRAB HEADLINES AND HEARINGS:

THE PROSPECT OF CONGRESS PASSING LEGISLATION AFFECTING AI IS STILL UNLIKELY. THE AI WORKING GROUP LED BY SENATE MAJORITY LEADER CHUCK SCHUMER (D-NY) AND SENS. MIKE ROUNDS (R-SD), MARTIN HEINRICH (D-NM), AND TODD YOUNG (R-IN) CONTINUES WORK ON A FRAMEWORK WITH PLANS TO RELEASE IT THIS WORK PERIOD.



ANTITRUST ACTION BY DEPARTMENT OF JUSTICE AND FEDERAL TRADE COMMISSION:

OVER THE PAST FEW MONTHS, ANTITRUST REGULATORS HAVE BEEN BUSY, PARTICULARLY WITH THE LAWSUIT FILED TO PREVENT KROGER FROM MERGING WITH ALBERTSONS. WE ALSO CAN EXPECT CONSEQUENTIAL RULINGS SOON IN THE CASE AGAINST GOOGLE.

BEFORE YOU GO...

Spring is always a busy season in Washington, even in an election year. Your team at Tiber Creek Group will be on top of all of it – policy and politics alike. If you have questions on any of these issues, please don’t hesitate to contact any one of us.

<https://www.tibercreekgroup.com/>

