



# Fall Forecast: What to Expect From Washington Through the End of the Year

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**PATTON BOGGS**

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*“Congress and the president have a lot on their plate this fall, from the farm bill and FAA reauthorization to the national defense bill and the appropriations bills that keep the government running — not to mention a lot of unfinished business on topics such as energy permitting, tax extenders, and cannabis banking. Many of these tasks are the basic responsibility of governing — and one way or another, our elected leaders will find a way to get them done. But the process of getting there could be wild and unpredictable, especially in a time of divided government as America begins to look toward the 2024 election. If you have a stake in what happens this autumn in terms of federal policy, you might want to buckle up.”*



**John Boehner (R-OH)**  
Former Speaker of the House  
*Senior Strategic Advisor, Squire Patton Boggs*

- On Capitol Hill, each chamber has a slim majority, requiring near-complete party unity or bipartisan compromise for legislative momentum.

House of Representatives
222 Republicans
212 Democrats
1 Vacancy

Senate
48 Democrats
3 Independents
49 Republicans

- In the current polarized atmosphere, intra-party disagreements and disputes carry headlines.
- In the Senate, there have been extended absences on both sides of the aisle, complicating vote-counting and scheduling.
- The shadow of the 2024 elections is growing darker, with each vote holding the potential to become campaign fodder.

# The Congress-Administration Relationship

*“Almost any faithful observer of the legislative process would have to acknowledge the seemingly intractable policy and political discussions and debates within the Congress and between the Congress and the Administration. I, however, am of the mind that we will be surprised by a number of bipartisan results as relates to appropriations, confirmations and other matters of interest to the American people.”*

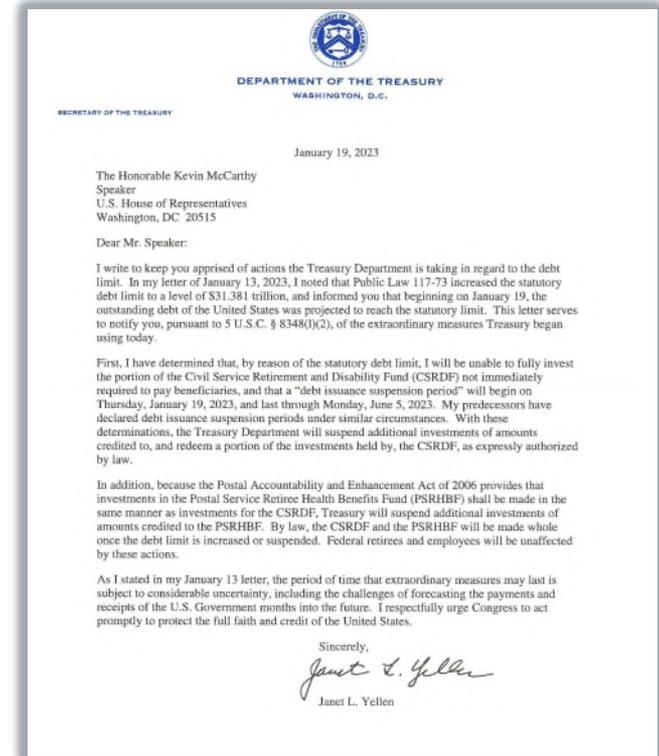


## **Rodney Slater**

Former US Secretary of Transportation  
*Partner, Squire Patton Boggs*

# Debt Ceiling Negotiations

- The debt ceiling, or debt limit, is the maximum amount of money the federal government is authorized to borrow to meet its existing obligations, including entitlements and interest on the national debt. If the government exceeds the ceiling, it will default on maturing debt obligations, undermining the full faith and credit of the United States.
- On January 19, Treasury Secretary Janet Yellen notified Congress that the federal government's outstanding debt was projected to have reached the statutory limit and that the Department had commenced using "extraordinary measures" to avoid breaching the limit.
- The US Constitution grants Congress the power of the purse, including the power to control government spending and restrict the amount of federal debt.
- While President Biden said he would "not yield" to Republican demands on fiscal policies in exchange for action on the debt ceiling, Congressional Republicans leveraged their power over the must-pass legislation to negotiate with the White House on the Fiscal Responsibility Act of 2023, enacted in June.



**The Fiscal Responsibility Act suspended the federal debt limit through January 1, 2025.**

*Among other provisions, it also:*

- Instituted enforceable discretionary spending caps for Fiscal Year (FY) 2024 and FY 2025
  - The caps for defense spending increase the total dollar amount from the FY 2023 enacted level.
  - The caps for non-defense spending decrease the total dollar amount from the FY 2023 enacted level.
- Triggers a sequester if appropriations are enacted that exceed the caps, resulting in across-the-board cuts within the applicable category
- Prompts Congress to enact annual appropriations bills; should only a continuing resolution (CR) be in effect on January 1 in 2024 or 2025 for any account, all accounts would be reset to the FY 2023-enacted levels minus 1 percent
- Statutorily ended the student loan payment pause
- Rescinded roughly \$28 billion in unobligated COVID-19 funding
- Rescinded funding provided for the Internal Revenue Service in the Inflation Reduction Act
- Modified work requirements for Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Need Families (TANF) benefit recipients
- Included energy permitting reforms and expedited completion of the Mountain Valley Pipeline

# Shutdown Showdown?

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*“The House has only passed one appropriations bill. The Senate hasn’t passed any. The chambers are divided on spending levels and the underlying philosophy, so the possibility of a shutdown is high.”*



**Jack Kingston (R-GA)**  
Former US Representative and  
House Committee on Appropriations Member  
*Principal, Squire Patton Boggs*

# September Spending Decisions

- With FY 2024 beginning October 1, lawmakers face a September 30 deadline to fund the government for the upcoming fiscal year.
- A Continuing Resolution (CR) — a stopgap measure that extends the previous year’s funding levels, and associated authorities and conditions — will be necessary to prevent a government shutdown and provide Congress time to negotiate and approve the 12 annual spending bills. This will be the House and Senate’s highest-priority business this month.
- The end date of a CR is itself often the subject of intense negotiation, as different end dates create different incentives and levels of pressure on stakeholders with wildly divergent policy preferences. This time, there is an emerging leadership consensus on an early December end date.
- The CR may include emergency assistance to support natural disaster victims and recovery efforts, and it may serve as a vehicle for other legislative needs, including a variety of extensions of expiring federal programs. Some of these extensions will allow lawmakers extra time to negotiate reforms prior to the end of the year.
- Members of the House Freedom Caucus have stated their opposition to any CR that does not address US-Mexico border policy, “woke” military policies, and the weaponization of the Federal Bureau of Investigation and Department of Justice. The Senate will oppose such proposals. This leaves Speaker McCarthy and the House GOP with two options: a government shutdown, or seeking the support of Democrats to approve a CR. The second option may jeopardize McCarthy’s position as Speaker of the House.
- Given the challenges in advancing a CR in the House, the Senate may be the first to initiate action, although finding an appropriate legislative vehicle may be a challenge in light of the House’s position that the Constitution requires appropriations measures to originate in that chamber.

*“The legislative branch of our federal government is responsible not just for working with the president to make law, but also for overseeing the administration and implementation of law through the oversight process. Congressional committees do the bulk of the work on both fronts — legislation and oversight. And in the current Congress, particularly in the Republican-led House, we’re seeing many committees place an increasing emphasis on the latter. That trend is likely to continue in the months ahead as the pressures of divided government come to a head and the window for bipartisan legislating begins to narrow. But there will still be a need and a place for moving legislation in key areas where consensus is possible, and the committees will continue to drive much of that work.”*



**Bill Shuster (R-PA)**  
Former US Representative and  
House Committee on  
Transportation and Infrastructure Chair  
*Senior Policy Advisor, Squire Patton Boggs*

Congress and the Biden Administration will seek to address a host of issues through December.

The following slides describe, at a high level:

- ✓ items on the legislative and regulatory agenda, and
- x obstacles in lawmakers' and regulators' paths.

## *Lawmakers hope to harvest bipartisan compromise*

- ✓ **Lawmakers will continue to debate the next Farm Bill**, an omnibus, multiyear bill that governs a broad range of agricultural and food programs. Leadership of the House Committee on Agriculture plans to release a draft proposal in early September, and staff of the Senate Committee on Agriculture have said they are optimistic the Committee will have a draft ready by October. While the current law expires on September 30, many Farm Bill programs do not expire until the end of calendar year 2023. If lawmakers cannot advance a Farm Bill by the end of this year, an extension will be required to avoid the expiration of critical agriculture programs and subsidies.
- ✓ **While the Senate Committee on Appropriations advanced its FY 2024 Agriculture, Rural Development, Food and Drug Administration (FDA) and Related Agencies bill with bipartisan support, the House Committee on Appropriations passed its measure on a party-line vote.** The Senate bill reflects spending cuts agreed to in the Fiscal Responsibility Act; the House bill would make additional cuts that largely target US Department of Agriculture (USDA) conservation and agricultural programs, and Members of the House Freedom Caucus are demanding further spending reductions. **With the recent appointment of Jim Jones as the first Deputy Commissioner for Human Foods at FDA, regulators are hoping for a funding increase in order to support the food program overhaul.**
- ✓ **According to the Spring 2023 Unified Agenda, the FDA plans to take steps to implement the Administration’s National Strategy on Hunger, Nutrition, and Health**, including proposing rules for front-of-package labeling in December 2023 and finalizing updates to the nutrition criteria for “healthy” claims in April 2024.
- ✓ **The Department of Health and Human Services (HHS) and USDA will continue to work on the Dietary Guidelines for Americans, 2025-2030**, which will be used to form the basis of federal nutrition policies. The 2025 Advisory Committee will host its third meeting this fall as it works to submit a scientific report to HHS and USDA to help develop the guidelines.
- x **Proposed reforms to the Supplemental Nutrition Assistance Program (SNAP) will likely complicate Farm Bill negotiations.** Although SNAP work requirements were already modified through this year’s Fiscal Responsibility Act, intra-party differences within the GOP have emerged on whether to pursue additional reforms in the upcoming Farm Bill. While Speaker Kevin McCarthy (R-CA) and the House Freedom Caucus have indicated they would like to revisit the topic, GOP leaders of the House and Senate Committees on Agriculture have said they would like to avoid reconsidering SNAP restrictions in an effort to keep the measure bipartisan.

## *Can appropriators walk together on a path towards funding the government, or will divergent views lead to a fork in the road?*

- ✓ Following a September CR, lawmakers will focus in earnest on negotiating final FY 2024 spending bills. **The Senate is more likely than the House to pass its own versions of some of the 12 bills in advance of putting final compromise versions on the floor.**
- ✓ **Congress is incentivized to consider spending bills under something closer to regular order this year.**
  - Speaker Kevin McCarthy (R-CA) has stated emphatically that the House will not consider a 12-bill omnibus package as it has in previous years.
  - The Fiscal Responsibility Act included a provision that would automatically revise both defense and non-defense spending levels unless the 12 bills are passed by December 31. If this mechanism is triggered, it would impose overall budget caps equal to FY 2023-enacted levels minus 1 percent, applied to almost all discretionary spending accounts. (Note, however, that as a practical matter the automatic cuts triggered on January 1 would not take effect until April 30, creating a lengthy “grace period” for Congress to reverse the impending cuts.)
- x **The House and Senate Appropriations Committees have taken divergent paths in drafting their FY 2024 spending bills, making negotiations on final bills difficult.**
  - Under pressure from 20 to 30 of the most conservative Members, the House Committee drafted its bills to FY 2022 levels. The House measures also include controversial new policy provisions addressing divisive social issues.
  - The Senate Committee adhered to the spending levels established by the Fiscal Responsibility Act, approving all 12 measures. Due to their largely bipartisan process and lack of divisive policy provisions within their bills, the Senate is expected to hold significant leverage over the House in final negotiations.
- x The **House Freedom Caucus has cried foul** at the House Committee achieving a significant portion of its funding reductions through rescissions (eliminating funds appropriated in previous years that have not been spent) and is insisting on “real cuts” in government spending.

## *Cannabis policy continues to be a burning issue*

- ✓ **On August 29, the Department of Health and Human Services (HHS) sent its recommendation to the Department of Justice (DOJ) to reclassify marijuana as a Schedule III drug under the Controlled Substances Act.** DOJ will weigh in and, after a public comment period, make a final determination on where (or whether) marijuana should appear on the Controlled Substances list.
- ✓ The SAFE Banking Act, legislation that would allow federally regulated banking and financial institutions to work with state legal cannabis businesses — most of whom continue to operate wholly in cash — has passed in the US House of Representatives seven times but has not had a vote to date in the US Senate. The bill has been reintroduced in both chambers with bipartisan support and Senate Majority Leader Chuck Schumer (D-NY) has indicated passage is a priority. However, the Senate Committee on Banking, Housing, and Urban Affairs has yet to schedule a markup.
- ✓ **After the Food and Drug Administration (FDA) conclusion in January that existing regulatory frameworks for foods and supplements are not appropriate for cannabidiol (CBD),** bipartisan congressional committee leaders sent a request for information to stakeholders on the best regulatory path forward for CBD products. Responses were due on August 18.
- x **When the Biden Administration made the announcement on October 6, 2022, that it would review marijuana as a Schedule I drug on the Controlled Substances list, there was no deadline associated with the review,** only President Biden’s public ask that the HHS Secretary and Attorney General “initiate the administrative process to review expeditiously how marijuana is scheduled under federal law.”
- x Senate Committee on Banking, Housing, and Urban Affairs Chair Sherrod Brown (D-OH) has been publicly asking for more Republicans to support the SAFE Banking Act to ensure its passage when brought to the Senate floor for a vote. Sen. Jack Reed (D-RI) has raised concerns about Section 10 of the bill, strongly favored by many Republicans, which imposes requirements if a regulator discourages a bank from entering into or maintaining a banking relationship with a specific customer or group of customers.
- x While congressional leaders are interested in addressing CBD regulation, they are still at the very early stages of discussions, bipartisan consensus has not been found, and floor time in both chambers is limited.

*Democrats want to construct a plan to raze future brinksmanship, but bipartisan action could be difficult when those who hold leverage can exact results*

- ✓ **In July, President Joe Biden formed a Debt Ceiling Working Group** “to explore all legal and policy options to prevent Congress from ever again holding hostage the full faith and credit of the United States.” The Group is expected to look at negative impacts of debt limit brinksmanship, review others countries’ experiences, and provide recommendations for future solutions to reaching the limit. It is also expected to consult with experts outside of the government.
- ✓ Legislation has been introduced in the past to reform the debt ceiling, and lawmakers continue to discuss options to reform the debt limit process and prevent economic trepidation or decline.
- ✗ **The Debt Ceiling Working Group is limited to Administration officials, does not have a deadline for results, and may or may not endorse a specific proposal.** Additionally, some Democrats believe the formation of the Group is a weaker option compared to alternative actions.
- ✗ Lawmakers routinely rely on deadlines for momentum, and **the next debt ceiling deadline is not until 2025** — after the 2024 election cycle.

## *Congress will continue to struggle with sharply political issues within defense matters, including those put in play by House Freedom Caucus Members*

- ✓ With China viewed as the top "pacing threat" to the United States, **Congress will determine how US defense planning and budgeting should respond to Great Power Competition (GPC) with that country.** Congress must approve, reject, or modify the Biden Administration's defense strategy and proposed funding levels, plans, and programs for addressing GPC, with a specific focus on the Indo-Pacific region.
- ✓ **Congress will conduct its own assessment of Taiwan's self-defense requirements independently and will need to determine under which authorities these requirements should be met in the future.** The Biden Administration recently announced a substantial military aid package worth \$345 million for Taiwan. This will, for the first time, be sourced from existing US military stockpiles, rather than purchases through the foreign military sales program.
- ✓ **The House and Senate Armed Services Committees will also consider managing disruptive technologies** like hypersonic weapons, artificial intelligence, 5G, and quantum computing; expanding the size of the Navy fleet; modernizing aircraft, and ground vehicles; and enhancing the pay, benefits, and quality of life for US servicemembers and their families to address recruiting and retention shortfalls.
- ✗ The process of **reconciling the Senate's version of the National Defense Authorization Act (NDAA) for FY 2024 with the House's version** will address numerous provisions related to "cultural" issues that the far-right wing of the House Republican conference has put in play in attacking "wokeness" in military policies and programs.
- ✗ Congress **must find a way ahead on the defense budget top-line**, despite differing views.
  - Some Congressional Republicans have voiced concerns that the President's FY 2024 defense budget request does not align with strategic intent, especially given the rising defense spending and threats posed by China. They also argue the budget fails to account for record inflation levels, resulting in an effective cut in defense purchasing power compared to FY 2023.
  - Republicans to the right of the defense hawks are objecting to the levels set in the appropriations bills as too high and unaffordable.
- ✗ **President Biden's recent decision to maintain the headquarters of the US Space Command in Colorado, instead of relocating it to Alabama as recommended by the Air Force, has created a contentious issue in Congress,** requiring resolution. Strong advocates for moving the headquarters to Alabama include House Committee on Armed Services Chair Mike Rogers (R-AL) and Sen. Tommy Tuberville (R-AL).

*Policymakers could find some common ground in efforts to address teacher retention, school safety, and academic recovery, but more contentious social topics, such as parents' rights and LGBTQ+ students' rights, will continue to divide the two parties*

- ✓ **The Supreme Court struck down affirmative action programs at institutions of higher education earlier this summer, and the Biden Administration is encouraging colleges to make sure they are not over-restricting their admission policies in light of this decision.** In comparison, Democrats on Capitol Hill will push for legislation that will continue to boost minority admissions by ending legacy admissions. Furthermore, Democrats will advocate for the Administration to file lawsuits against universities to ensure fairness in the admissions process.
- ✓ Amid a tight labor market, chronic staffing shortages continue to be a high-profile issue nationally. Lawmakers have introduced a number of **bills that seek to provide teacher incentives**, such as increasing the minimum K-12 teacher salary to \$60,000 and allowing for annual inflation adjustments through federal grants.
- ✓ House Committee on Education and the Workforce **Chair Virginia Foxx (R-NC) will continue to focus on foreign influence on educational institutions** and has already opened an investigation into the University of California – Berkeley regarding its joint institute with Tsinghua University and the Shenzhen government in China.
- x Following the lead of state legislatures controlled by Republican majorities, which have scrutinized curriculum choices including critical race theory, in March, **the Republican-majority House passed the Parents Bill of Rights Act, legislation that would provide parents a role in what is taught in public schools.** With no House Democratic votes supporting the legislation, **the legislation stands little chance of passing the Senate or being signed into law by President Biden.**
- x Due to **the Supreme Court's June decision blocking President Biden's student loan forgiveness plan**, the Department of Education is expected to issue new regulations via negotiated rulemaking. However, negotiated rulemaking will take time, and **will likely face legal challenges** before additional details are expected to be released next summer — amid the 2024 presidential and congressional election cycle. Meanwhile, on August 22, the Biden Administration announced the Saving on Valuable Education (SAVE) plan, aimed to **support low-income student loan borrowers by creating a new income-driven repayment plan.**

## *Both parties in the House want energy permitting reform, but there is still lots of ground to cover to get there*

- ✓ **House legislators say they want to address permitting and transmission reform.** Such a package would likely increase the ability to cite both clean energy and fossil fuel projects and provide for transmission lines necessary to move energy produced to areas where it is needed. As part of a potential deal, Republicans are largely seeking to scale back environmental laws, including the Clean Water, Clear Air, and the Endangered Species Acts, and include restrictions on the judicial process. Democrats want transmission and interconnection solutions that would allow more renewable energy (as well as conventional energy) on the grid. As both parties equally want (though seemingly disparate) reforms, **this is an area where bipartisan cooperation could still be possible.**
- ✓ While Reps. Garret Graves (R-LA) and Scott Peters (D-CA) have discussed **high-level parameters** of a potential agreement, no specifics have emerged as to what Republicans can agree to with regard to transmission.
- ✓ **Not putting all eggs in the legislative basket.** Senate Majority Leader Chuck Schumer (D-NY) is looking to the Federal Energy Regulator Commission (FERC) to include in its anticipated final rule, among other items: (1) clarification of the commission's backstop siting authority for when states deny permits for electric transmission projects deemed in the public's interest, and (2) a requirement for the use of a list of benefits that transmission provides to a region in order to adequately allocate costs.
- ✓ The House GOP will continue to perform **oversight** of the Biden Administration's accomplishments, including how funding is spent on projects from the Infrastructure Investment and Jobs Act (IIJA) and the Inflation Reduction Act (IRA) **with a focus on companies with ties to foreign countries of concern.** Earlier this year, Republicans raised enough questions to kill the Department of Energy's potential intent to award \$200 million to a company with alleged ties to China and its plans to build a new battery manufacturing facility in Kentucky.
- x While it is likely in the best interest of both parties to complete any permitting/transmission legislation before next year, it **remains to be seen** if there will be enough cooperation and necessary bipartisan support to get it over the finish line this fall.
- x **The timeline for reauthorization of the Farm Bill will likely slip this fall.** The legislation is expected to include an energy title, which determines policy for the development of farm and community renewable energy systems through a variety of programs, including grants and loan guarantees.

## *Congress and the Biden Administration will continue to focus on permitting, mineral/supply chain, and chemical regulatory issues*

- ✓ **The Environmental Protection Agency (EPA) and the Corps of Engineers released a direct final rule revising the definition of Waters of the United States**, consistent with the Supreme Court's decision in *Sackett v. Environmental Protection Agency*, which dramatically limited those waters covered by the Clean Water Act.
- ✓ There may be **legislative action on permitting reform** to supplement what was achieved in the Fiscal Responsibility Act. These will be difficult negotiations to bring to fruition.
  - Senate Republicans on the Committee on Environment and Public Works introduced legislation to address issues related to Waters of the United States, circumscribe EPA's ability to veto "dredge and fill" permits, and prohibit the use of "social cost of carbon" if it increases the cost of energy or causes project delays.
  - Senate Republicans on the Committee on Energy and Natural Resources introduced legislation related to onshore and offshore oil and gas leasing and permitting, minerals, and transmission and pipelines.
- ✓ The **Council on Environmental Quality has released further proposed revisions to NEPA designed to expedite permitting processes**, especially for renewable energy projects and other Administration priorities. Republicans have objected to the proposal, and the comment process will extend into the fall.
- ✓ The **Administration will continue to emphasize development of domestic supply chains for critical minerals**, especially those necessary for its clean energy agenda — electric vehicles, renewable energy, electrification, and related efforts.
- ✓ A **host of efforts related to so-called "forever chemicals" or PFAS is possible**. EPA is moving towards setting drinking water standards by two such chemicals. Congress is addressing PFAS in multiple ways, including in the FY 2024 National Defense Authorization Act (NDAA), but . . .
- x "Culture war" provisions in the House-passed NDAA bill have made the ultimate outcome of the legislation uncertain.
- x **The Waters of the United States direct final rule is certain to face litigation.**

## *National Security and Economic Competition are Driving the White House and Congress on Foreign Policy*

- ✓ Both parties are **reshaping their agendas to address “Great Power Competition” with China**. They increasingly support strengthening “soft power” institutions like the US International Development Finance Corporation (DFC) and the US Export-Import Bank (EXIM) to counter Chinese influence through global investment flows.
- ✓ The Biden Administration is increasingly using international initiatives like the International Technology Security and Innovation Fund, Partnership for Global Infrastructure and Investment (PGII), Minerals Security Partnership, and the Atlantic Cooperation Initiative **to align partners with US critical industry development goals, including in infrastructure, supply chains, semiconductors, critical minerals, and maritime security**, as a counter to China’s own global industrial development policies, including Belt & Road and Made in China 2025.
- ✓ Successful state visits to the United States by Indian Prime Minister Narendra Modi and South Korean President Yoon Suk-yeol reflect **the Biden Administration’s efforts to deepen cooperation in Asia and the Indo-Pacific** in areas like technology cooperation, defense partnership, and people-to-people exchange. Businesses on all sides are now taking advantage of these strong tailwinds as they rethink their global supply chains.
- ✓ From Hollywood and Silicon Valley to Wall Street and Detroit, both parties are **placing increased pressure on US companies to align their commercial interests with US foreign policy interests**. Whether through Congressional investigations into business deals, or anticipated executive actions to limit outbound US investment in high-tech areas, the White House and Congress are seeking to use all tools available to address perceived economic coercion by foreign adversaries and are **increasingly probing companies with ties to foreign countries of concern**.
- ✗ The House Select Committee on the Chinese Communist Party (CCP) has explored a broad range of US-China issues since its formation earlier this year, **but comprehensive China legislation remains unlikely between now and the end of the year**. The Select Committee’s activities and Senate Majority Leader Chuck Schumer’s (D-NY) China Bill 2.0 Initiative may prove increasingly academic, rather than result in concrete legislative outcomes on US-China policy.
- ✗ Recognizing debt distress in Africa and a looming food crisis, last year President Biden announced **plans to invest \$55 billion in Africa** and orchestrated **\$16.2 billion in agreements between US companies and African countries and companies**. He has also promised he would visit sub-Saharan Africa in 2023. While Vice President Kamala Harris and several other high-level US officials have visited Africa this year, continued congressional gridlock and the looming 2024 elections leave little time for President Biden to make do on that promise.
- ✗ Although the Senate approved a rare tax treaty with Chile, **the White House has failed to articulate a clear Latin America policy**, even as the Administration seeks to address corruption, transparency, and infrastructure in the region. Allies in Congress are eager to see deepened Western Hemisphere supply chains as a counter to China.

## *Can Democrats and Republicans heal partisan differences, or will shots across the aisle continue?*

- ✓ **The Pandemic and All-Hazards Preparedness Act (PAHPA), initially enacted in 2006, addresses public health and medical preparedness and response capabilities — and the current version expires at the end of September.** After efforts to address concerns regarding Chair Sanders’ “reasonable pricing” requirements, the Senate Committee on Health, Education, Labor, and Pensions (HELP) advanced its version on a bipartisan basis in July. The House Committee on Energy and Commerce, however, has faced partisan disagreements, including on drug shortage language and Center for Disease Control and Prevention funding. With less than a month to go and differences between parties and chambers still lingering, **it is becoming increasingly likely that lawmakers will need to extend their discussions past the end of the month.**
- ✓ Beyond PAHPA, lawmakers in the Senate and House of Representatives have considered other reauthorizations and new initiatives over the past several months.
  - **Senate Majority Leader Chuck Schumer (D-NY) has expressed his interest in a bipartisan health package this year**, specifically citing the need to lower the price of insulin and drug pricing reforms. Several Senate committees have focused on pharmacy benefit managers, and Committee on Finance Chair Ron Wyden (D-OR) and Committee on Health, Education, Labor, and Pensions (HELP) Chair Bernie Sanders (I-VT) issued a joint statement at the end of July “signaling a commitment ... to partner and work towards legislation” addressing primary care and other health care workforce shortages, as several reauthorizations are required at the end of the month.
  - **House committees have focused on a wide swath of health-related legislation, including transparency measures** focused on the hospitals, pharmacy benefit managers, and insurers, **and site-neutral payment reforms**. Republicans have launched a **Budget Committee Health Care Task Force**; they are currently soliciting feedback on solutions to improve outcomes and reduce federal health care spending in the budget, with responses requested by mid-October. It remains to be seen what measures, if any, could be folded into a larger package.
- ✓ From more partisan investigations on COVID-19 in the House of Representatives to bipartisan probes into the oversight of nonprofit hospitals’ tax-exempt requirements and compliance in the Senate, the economic importance of the health care industry continues to make it **a target for oversight and investigations in both chambers.**
- x In 2022, House Republicans won their majority with a slimmer margin than expected, which many attributed, in part, to the Supreme Court’s ruling in *Dobbs v. Jackson Women’s Health Organization*. **With the 2024 elections on the horizon, Democrats will drum their messaging louder; this may draw abortion rights voters to the polls, and it could also be one of the more partisan issues that stalls bipartisanship on health-related legislation — including FY 2024 appropriations — in the current congress.**

## *DOL's regulatory faucet is running wide open with an indefinite Acting Secretary, and Republican challenges mount*

- ✓ **Republican lawmakers — and the business community — will continue to challenge the “Acting Secretary” position that Deputy Secretary Julie Su is occupying.** Her nomination stalled in the Senate, and the White House argued she could serve indefinitely as Acting Secretary. **There will be legal challenges over Su's authority to serve indefinitely and on whether any final rules released during her acting tenure are legit.**
- ✓ With an eye towards the 2024 Presidential election, the US Department of Labor (DOL), along with the White House, released its final expanded Davis-Bacon Act rule in August and is pushing to release its final independent contractor rule this year, despite objections from Republican lawmakers and the business community. **Employers are reviewing the new DOL proposed rule expanding overtime pay requirements for millions of workers.**
- ✓ As new labor regulations flow out, Republican lawmakers will continue to use multiple tools to increase pressure on the DOL, the National Labor Review Board (NLRB), and the Equal Employment Opportunity Commission (EEOC) — including investigations and oversight hearings and the Congressional Review Act (CRA) processes — to register their dissatisfaction, especially in the Republican-controlled House.
- ✓ Delighting the business community, **Rep. Virginia Foxx (R-NC), Chair of the House Committee on Education and the Workforce, has been leading the Republican charge confronting the Biden Administration's DOL regulatory agenda.** Expect increased oversight going into 2024.
- ✓ Likewise, **Sen. Bill Cassidy (R-LA), Ranking Member of the Senate Committee on Health, Education, Labor, and Pensions (HELP), is increasingly challenging the way his Democratic counterpart, Chair Bernie Sanders (I-VT), is running the committee.**
- ✓ House Republicans and Senate Democrats will need to address their differing Labor-HHS-Ed appropriations bills. With House Republicans cratering funding to DOL, EEOC, and the NLRB, and having prevented earmarks in their bill, the Senate will likely seek to moderate the cuts, particularly since senators have stuffed their bills with earmarks.
- ✓ **Also expect legislative efforts to curb the use of artificial intelligence (AI) in the workplace** to possibly advance, likely with bipartisan support.
- ✗ While Republican CRA measures will advance in the House and possibly garner some support in the Senate, it remains a challenge to secure two-thirds support in either chamber to override a presidential veto.
- ✗ A packed Senate and House floor agenda this fall, along with the upcoming 2024 election, could distract Republican lawmakers away from asserting pressure on labor regulatory matters.
- ✗ In the interim, the Administration and Congressional Democrats will continue to push for workplace rules and legislation that can increase business costs in a tight economy, including limitations on non-competes, proposed minimum wage hikes, and union-friendly actions by the NLRB.

## *Biden family, “woke” ideology, and China remain top targets for Congressional investigations*

- ✓ House Republicans began the 118th Congress with a robust oversight and investigations agenda that will continue into the fall and certainly into next year ahead of the 2024 presidential election. According to a House Republican leadership document prepared ahead of the August 2023 district work period, **House Republicans have issued 45 subpoenas, called on Biden officials to testify 619 times, and fired off 917 oversight letters so far.**
- ✓ **Investigations will continue around the Biden family**, with House Committee on Oversight Chair James Comer (R-KY) signaling his intentions to subpoena Biden family members regarding alleged foreign business deals, including President Joe Biden himself. Despite the Department of Justice appointing Special Counsel David Weiss to oversee the ongoing criminal investigation into Hunter Biden after a plea deal regarding tax evasion and a gun charge collapsed, House Republican leadership has made it clear they will continue their own investigation.
- ✓ **Corporate America remains a likely target for House Republican oversight**, particularly as GOP Members focus their fire against “woke” ideology and attack corporate executives who they see on the wrong side of social issues like abortion, affirmative action, and ESG initiatives. Additionally, **Senate Democrats are intent on conducting investigations into the tax strategies of large multinational corporations and wealthy individuals.**
- ✓ **House investigations also will likely heat up around one of the few bipartisan issues in Congress these days: anti-China policy.** Focal points include US investments in blacklisted Chinese companies, cybersecurity, drug manufacturing, and the origins of COVID-19.
- ✓ Additional oversight areas will likely include aid to **Ukraine, immigration, and President Biden’s executive actions** broadly, but especially implementation of his hallmark accomplishments: the Infrastructure Investment and Jobs Act (IIJA) and the Inflation Reduction Act (IRA).
- x **House Republicans may be held back by public opinion, time constraints, and effective advocacy.**
  - Public opinion could shift in response to overreach (e.g., impeaching President Biden as “pay back” for indictments of Former President Donald Trump).
  - There is no effective legal remedy to enforce their subpoenas, and Republicans have a clear example of how long the legal process takes to play out, as evidenced by the Democratic effort to seek Former President Trump’s tax returns.
  - Targets with much greater experience in dealing with investigations may develop effective, sophisticated responses that blunt the impact of any inquiries.

## *Challenges continue for a congressional tax compromise; IRA implementation ongoing as Supreme Court set to scrutinize Treasury's taxing authority*

- ✓ **House Republicans will continue efforts to secure the votes needed to pass tax legislation** approved by the Committee on Ways and Means earlier this year. Specifically, that legislation would seek to, among other things: (1) extend certain business tax breaks, including research and development expensing, interest deductibility, and 100-percent expensing (i.e., “bonus depreciation”); (2) reduce the regulatory burden and increase tax incentives for small businesses; and (3) enhance the standard deduction and rename it the “guaranteed deduction.”
- ✓ The legislation has not yet received a vote on the House Floor given that some Republicans from states like California, New York, and New Jersey appear to be withholding support in an effort to **address concerns over the current cap on the state and local tax (SALT) deduction**.
- ✓ Even if House Republicans ultimately secure the necessary support, they will still **need to negotiate with Senate Democrats for there to be a path forward for any tax legislation this year**. To that end, congressional tax-writers are **continuing to seek agreement on how to approach changes to the Child Tax Credit** — something that appears to be a **condition precedent to Democrats agreeing to consider any business tax relief, including extending a myriad of expired temporary tax policies (i.e., “tax extenders”)**.
- ✗ Despite the potential for enactment of such legislation, **major tax policy changes are unlikely with the divided government**. Nevertheless, it will be important to keep apprised of developments at the Treasury Department, which can be expected to **continue implementation of the Inflation Reduction Act's corporate and energy tax provisions, and may seek to target wealthy Americans** through changes to regulations on estate planning and valuation discounts.
- ✗ Additionally, **the US Supreme Court recently agreed to hear a case challenging the Tax Cuts and Jobs Act's “deemed repatriation” provision**, which effectively imposes a tax on wealth accumulated by US corporations' foreign subsidiaries. A broad ruling in favor of the plaintiffs challenging the tax **could potentially result in significant limitations on Congress' taxing authority and pose hurdles for a numbers of Democrats' current tax policy proposals**, including Sen. Elizabeth Warren's (D-MA) so-called wealth tax and Senate Committee on Finance Chair Ron Wyden's (D-OR) “mark-to-market” legislation, which would require high-income taxpayers to pay a yearly tax on unrealized gains from certain assets.

## *A Senate Majority Leader with a flip phone endeavors to generate consensus on cutting-edge tech policy*

- ✓ With the 2024 election bright on the horizon, **Republicans and Democrats are unlikely to agree on sweeping antitrust or other legislation aimed at “Big Tech” or emerging technologies; instead, they will continue to focus on information gathering via forums and oversight hearings.**
- ✓ In collaboration with Senate Republicans, Senate Majority Leader Chuck Schumer (D-NY) has inaugurated “AI Insight Forums” to potentially develop legislation to govern artificial intelligence (AI) or recommendations to agencies to use existing authority to address identified problems. This approach will push out the timeline for any legislation governing AI, including ChatGPT and other emerging technologies.
- ✓ **Lawmakers are beginning to show their impatience as they seek to pass clarifying cryptocurrency legislation that promotes innovation and American competitiveness in financial services**, following the European Union’s and other jurisdictions’ advancement of cryptocurrency frameworks (e.g., MiCA). Leading bills would delegate some rulemaking authority to the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC) (e.g., Financial Innovation and Technology (FIT) for the 21st Century Act). This year’s proposals will likely build on the Senate’s adoption in the FY 2023 National Defense Authorization Act provisions that address some lawmakers’ concerns about the potential illicit use of cryptocurrencies.
- ✗ **After a decade of effort, the House was poised to adopt federal privacy legislation last congress, but did not do so principally as a result of differences over preemption.** Efforts are underway to move a similar bill this year in the House, but little has happened in the Senate. At least the chairs of the relevant House and Senate committees are talking in an effort to find common ground, which was not in the cards last year.
- ✗ **Differences over preemption and a private right of action to enforce the law will continue to stymie movement on any data privacy legislation, leaving the Federal Trade Commission to rely on its existing authority to address data privacy breaches.**
- ✗ **Some Members may insist on adopting an all-or-nothing approach to crypto bills**, if discussions surrounding potential central bank digital currencies or whether to preempt states’ ability to regulate stablecoins emerge on the campaign trail.

## *President Biden wields executive authority for trade wins, but Congress wants its seat at the table*

- ✓ **The White House and Congress are at odds over major next steps in trade policy.** The Biden Administration remains adamant that the future lies not with traditional trade deals built around tariff reductions, but high-standards setting agreements that they argue put workers first. Officials are negotiating two of these agreements — **the Indo-Pacific Economic Framework (IPEF) and the Americas Partnership for Economic Prosperity (APEP)** — with key regional allies, but business stakeholders question the impact of these agreements and how durable they will be since they will not require changes to US law — or, the administration argues, Congressional approval.
- ✓ Lawmakers of both parties point to Article 1, Section 8 of the Constitution, which **gives Congress the power “To regulate Commerce with foreign Nations....”** To prove the point, Congress passed *The United States-Taiwan Initiative on 21<sup>st</sup>-Century Trade First Agreement Implementation Act*, which asserted Congressional authority by codifying the Biden administration’s initial trade pact with Taiwan and creating new procedures for further negotiations. It remains to be seen whether this bill will serve as a template for the IPEF and APEP initiatives.
- ✓ President Biden is **negotiating critical minerals agreements with allies to smooth over irritants caused by the implementation of the Inflation Reduction Act’s (IRA) clean vehicle tax credit**, but lawmakers of both parties argue that these deals are not “free trade agreements” as required under the law. The White House will use these agreements to shape global critical minerals supply chains and counter China’s global dominance thereof — including by providing opportunities for critical mineral agreement allies to benefit from IRA subsidies.
- ✓ Both the President and Congress are focused on what tools can best counter China. Lawmakers — led by the House Select Committee on the Chinese Communist Party — are considering **how, and to what degree, they might revoke normal trade relations with China and increase tariffs on imports in an effort to further “de-risk” portions of the US economy** from over-reliance on Chinese goods. This is a complex debate, and one that could have deep repercussions for impacted supply chains.
- ✓ But the White House and Congress agree on at least one thing: the **need to regulate outbound US investment flows**. On August 9, President Biden signed an executive order aimed at restricting US investments in select high-tech sectors, but leaving most of the details for a rule-making that could take upwards of a year. Lawmakers will continue to debate more comprehensive notification and prohibition mechanisms in parallel. Regardless of the outcome, one message is clear: Washington is watching how US dollars support China’s investments in key technologies of the future.
- x **Congressional leaders are eager to lock in a “win” and pass trade legislation, but the outlook is uncertain at best.** Reauthorization of the Generalized System of Preferences — a trade preference program benefitting developing countries—and passage of a Miscellaneous Tariff Bill—temporarily removing or reducing duties on goods not made in the United States — are unlikely to advance in 2023, but may face better odds after the 2024 elections.
- x Over five years later, **Section 232 steel/aluminum and Section 301 China tariffs remain in effect, and what comes out next also remains unclear.** Biden officials are working with their counterparts in the European Union to negotiate a successor to Section 232 tariffs through a broader arrangement to address carbon intensity and global overcapacity in steel and aluminum production, but talks are reportedly slow-going as they near their self-imposed October deadline. Separately, the Office of the US Trade Representative is reportedly finalizing its required review of the Section 301 China tariffs, which will result in a realignment, but not removal, of these duties. Regardless, US businesses will almost certainly continue to grapple with these costly tariffs in the near term, unless they can take advantage of realigning supply chains and shift their imports to other markets.

## *FAA Reauthorization is in a Holding Pattern*

- ✓ While the House passed its version of the **FAA reauthorization**, H.R. 3935, by a 351-69 vote, the Senate Committee on Commerce, Science, and Transportation delayed markup of S. 1939 to resolve differences over pilot training requirements. **Sen. Cantwell, the Committee Chair, has indicated that an extension of current law, which expires September 30, 2023, will be necessary.** In addition to pilot training, pilot retirement age — the House increased it from 65 to 67 — and the addition of flights to and from Ronald Reagan Washington National Airport beyond the 1,250 mile perimeter limit are contentious. There also are differences among the House, Senate, and Administration on passenger rights and consumer protection provisions. **Debate on these issues is likely to last well into the Session.**
- ✓ There are major differences between the House and Senate FY 2024 THUD appropriations bills. The Senate bill funds transportation programs at \$28.4 billion compared with the House bill's \$21.6 billion. **Both bills fully fund IJA contract authority and advance appropriations**, but the House version makes significant reductions in annual appropriations for public transit and passenger rail programs, compared to last year. Given this wide funding gap between the two bills and some partisan policy riders in the House bill, **THUD may not be passed by September 30 and would join other spending bills in a CR.**
  - Compared to last year's spending bill, the House cuts annual appropriations to the Capital Investment Grants (CIG), RAISE, and Mega competitive grant programs, and reduces appropriations for the Amtrak Northeast Corridor and Consolidated Rail Infrastructure and Safety Improvements (CRISI) Grants. Also gone this year from the House bill are "plus-up" appropriations for Buses and Bus Facilities Competitive grants, Low-No Emission Bus Competitive grants, and Ferry grants.
  - Meanwhile, the Senate THUD bill generally preserves FY 2023 overall funding for the majority of public transit and passenger rail funding.
- ✓ OMB issued final Build America Buy America Guidance, **setting strict standards for construction materials and clarifying the distinction between construction materials and manufactured products. It will now be up to each agency to interpret and implement the standards.** The comment period has closed on FHWA's review of its long-standing general applicability waiver for manufactured goods and **industry awaits FHWA's determination.** Meanwhile, FHWA has issued a temporary **public interest waiver for steel, iron, manufactured products, and construction materials in electric vehicle (EV) chargers** to enable acquisition and installation to proceed.
- ✗ The development of a comprehensive federal framework for autonomous vehicles (AVs) has been stalled since 2019. Now, Reps. Debbie Dingell (D-MI) and Robert Latta (R-OH) are leading a bipartisan push for legislation to create updated and new motor vehicle safety standards and regulations for AVs. The two are betting that **the threat of competition from China on AVs may finally be the factor to unite conflicting constituencies** — including automakers, labor unions, safety advocates, and trial lawyers — on a path forward.

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