

ALCALDE & FAY

GOVERNMENT & PUBLIC AFFAIRS FIRM



THIS WEEK IN WASHINGTON

Week of September 13-17, 2021

FEDERAL UPDATE

The House was again in a “committee work period” this week, with several committees concluding work on their respective legislative proposals for the budget reconciliation bill as further detailed below. Both the House and Senate will be in session next week, with the House now expected to vote on a continuing resolution (CR) to fund the federal government (likely through early December), thereby avoiding a government shutdown if no extension is passed before the end of the Fiscal Year (FY) on September 30th. Also of note, with a looming debt limit crisis that would likely occur by mid-October without an increase to, or suspension of, the debt ceiling, Democratic leadership is also considering attaching a temporary suspension to the CR. The Senate will also be in session next week and will continue with consideration of several of President Biden’s judicial nominees. Although the Senate Appropriations Committee had planned to markup several of its pending appropriations bills next week, earlier today Committee Chairman Pat Leahy (D-VT) abruptly postponed the markups citing a lack of progress on negotiations with Republicans over topline levels for defense and nondefense discretionary spending.

BUDGET RECONCILIATION

As referenced above, eight House Committees tasked with drafting portions of the reconciliation package all completed their respective markups this week (with the other five having previously marked up their sections) and all submitted their sections to the House Budget Committee by the September 15th deadline. Earlier this week, the House Agriculture Committee completed their markup session that began last Friday, the Financial Services and Energy & Commerce Committee marked up their proposals that were unveiled last week, and the House Homeland Security, Judiciary, Veterans Affairs, and Transportation & Infrastructure Committees held markups of their respective proposals that were unveiled late last Friday evening. Of particular note, the Energy & Commerce Committee’s title that would allow Medicare to negotiate certain drug prices to lower out-of-pocket costs was stalled when three Democrats – Reps. Scott Peters (D-CA), Kurt Schrader (D-OR), and Kathleen Rice (D-NY) - joined all Republicans on the Committee in voting against the measure over concerns it could discourage private investments into the research and development of new drugs. As outlined below, the Ways & Means Committee advanced a similar drug pricing provision this week as part of its own reconciliation proposal, although as negotiations within the Democratic caucus continue on this and other components of the broader package, the drug pricing provision could be further amended by the Rules Committee before the full package reaches the floor.

The Ways & Means Committee this week unveiled and marked up several health care expansion provisions similar to those proposed by the Energy & Commerce Committee, as well as proposals related to clean energy, infrastructure and social safety net programs, which when combined with the proposals marked up by the panel last week would cost approximately \$1.3 trillion over 10 years (partially based on a projected economic growth dividend). The Committee also unveiled and marked up several tax cuts and increases this week that would raise approximately \$2.2 trillion over 10 years according to the Joint Committee on Taxation (JCT). These include a top corporate tax rate of 26.5 percent for companies making more than \$5 million, a 25-percent rate on long-term capital gains and a top individual income rate of 39.6-percent starting at \$400,000 in annual income and an extra 3 percent surcharge beginning at \$5 million. Of note, the tax proposals did not include a full or even partial repeal of the \$10,000 cap on

the state and local tax (SALT) deduction established by the 2017 Tax Cuts and Jobs Act, although there are ongoing efforts by some Democrats in Congress to include some form of SALT relief in the final budget reconciliation bill.

The House Budget Committee is expected to package the legislative proposals from each House Committee as early next week. Earlier this summer, House Speaker Nancy Pelosi (D-CA) indicated she would not bring the reconciliation bill to the floor before resolving differences with the reconciliation proposals from the Senate. While no formal proposals have come out of the Senate Committees at this point, this week Senate leadership began floating several policy changes to the proposals from the House Committees, including but not limited to a shorter extension of the child tax credit, restructured funding for child care and the Civilian Climate Corps, and replacing the clean energy tax incentives included in the Ways & Means Committee proposals with Senate Finance Committee legislation (*Clean Energy for America Act*; *fact sheet available [here](#)*) that was marked up earlier this year to consolidate 40 existing energy-related tax breaks into three separate tax clean energy tax incentives.

For your reference, we have included below several highlights from the various Committee proposals unveiled and marked up this week:

House Transportation & Infrastructure Committee (bill text available [here](#); section-by-section available [here](#))

Highways & Transit

- **\$10 billion** for a joint effort through the Secretary of Housing and Urban Development (HUD) and Federal Transit Administrator to support access to affordable housing, job and community services, and improve mobility of low-income individuals and residents of persistent poverty areas through the establishment of new transit routes, expansion of service areas, improved frequency on existing routes; the provision of fare-free and reduced-fare transit service; state of good repair for transit facilities; research and workforce activities; route planning; and projects to improve accessibility.
- **\$4 billion** for Community Climate Incentive Grants to reduce surface transportation greenhouse gas emissions, of which **\$950 million** for incentive grants to states to make progress in reducing emissions and adopting strategies to achieve net-zero surface transportation emissions by 2050 and **\$3 billion** would be for grants to non-state entities for projects to reduce carbon emissions.
- **\$4 billion** for Neighborhood Access and Equity Grants to support neighborhood equity, safety, and affordable transportation access, of which **\$3.95 billion** would be for competitive grants through FHWA to reconnect communities divided by infrastructure barriers and mitigate negative impacts of transportation facilities or construction projects on disadvantaged or underserved communities, and support equitable transportation planning and community engagement activities. **\$1.58 billion** would be set aside for disadvantaged and underserved communities, and communities that have taken steps to ensure residents will not be displaced, and **\$50 million** would be for the FHWA to provide technical assistance to local governments.
- **\$6 billion** to “advance local surface transportation priorities”

Rail

- **\$10 billion** for passenger rail improvement, modernization and emission reduction grants; for high-speed rail corridor assistance, supporting the planning and development of public high-speed rail projects.
- **\$150 million** for Railroad Rehabilitation and Improvement Financing Credit Assistance to support additional railroad infrastructure development.

Federal Emergency Management Agency (FEMA)

- **\$300 million** for FEMA grants to state, local, tribal and territorial governments to update and enforce hazard resistant building codes and standards
- **\$500 million** for the Hazard Mitigation Revolving Loan Fund

- **\$25 million** to upgrade the Integrated Public Alert and Warning System (IPAWS) for the implementation of Next Generation Warning Systems for public broadcasters
- **\$425 million** for grants (limited to \$4 million) to construct, retrofit, and update planning requirements for state, local, and tribal emergency operations centers
- **\$200 million** for the construction, renovation, retrofit, technological enhancement, and updated planning requirements of federal emergency training centers and federal emergency operations centers

Economic Development

- **\$5.5 billion** for the Economic Development Administration (EDA), including:
 - **\$4 billion** to invest in the creation of regional innovation hubs;
 - **\$1 billion** for the EDA's Economic Adjustment Assistance program to fund pre-developed activities and provide assistance to energy and industrial transition communities; and,
 - **\$500 million** for Public Works projects
- **\$4 billion** to establish a formula-based grant pilot program at EDA to improve eligible area's prime age employment rate by providing long-term assistance to persistently distressed communities

Water Resources

- **\$2 billion** for sewer overflow and stormwater reuse municipal grants, with greater federal cost share for projects that serve financially distressed communities
- **\$495 million** in critical investments to support small, rural, and other economically-challenged communities in meeting the technical and financial requirements of the Clean Water Act, as well as to invest in maintaining an adequate supply of trained personnel to operate and maintain existing and future sewage treatment plants
- **\$125 million** for alternate water source project grants including groundwater and potable reuse projects
- **\$450 million** for the installation, repair, or replacement of domestic septic systems, including investment in connecting households with failing septic systems to public sewer systems. This section prioritizes this investment to low-income households that lack access to sewage treatment technologies, including households that currently use cesspools to capture sewage
- **\$5 million** for an assessment of wastewater system capital improvement needs of all treatment works in the United States that are eligible for assistance from state water pollution control revolving funds

House Ways & Means Committee (Subtitles F,G,H,J bill text [here](#); Subtitles F,G,H,J section-by-section [here](#); Subtitle I bill text [here](#); Subtitle I section-by-section [here](#))

Infrastructure Financing

- Revives Obama-era "Build America Bonds" (rebranded as "qualified infrastructure bonds") that subsidize state and local governments to issue taxable municipal bonds that pay out higher yields to investors than traditional tax-exempt municipal bonds. Issuers may elect to have an otherwise tax-exempt bond treated as a qualified infrastructure bond, the interest on a qualified infrastructure bond is taxable to the bondholder and the issuer of the bond is allowed a credit equal to the applicable percentage of each interest payment (depending on calendar year).
- Restores the tax-free status of advance refunding bonds (repealed in 2017 Tax Cuts and Jobs Act) for state and local governments to refinance older debt at lower interest rates.

- Raises the \$10 million annual cap on tax-exempt bonds during the calendar year for infrastructure and other state and local projects sold directly to the local banks to \$30 million.
- Exempts water and sewer projects from the private activity bond annual issuance cap.
- Expands the definition of exempt facility bond eligible for tax-exempt private activity bond financing to include any bond issued if 95-percent or more of the net proceeds are to be used to provide zero-emission vehicle infrastructure.
- Establishes a 30% tax credit for state, local and tribal governments for the operations and maintenance costs of government-owned broadband.
- Expands and makes permanent the “New Market Tax Credit” for investments in low-income communities.
- Expands the low-income housing tax credit (LIHTC) through increasing annual LIHTC allocations, temporarily reducing the tax-exempt private activity bond (PAB) financed by threshold from 50% to 25% for buildings financed by obligations issued in 2022-28, and providing a 50% boost to units serving extremely low-income tenants as long as 20% of units in the building are reserved for households earning no more than 30% of the area median gross income or the federal poverty line.
- Establishes a new tax credit of up to 35% for the rehabilitation of deteriorated homes in distressed neighborhoods.

Green Energy

- Provides a refundable income tax credit of \$4,000 for new qualified plug-in electric vehicles placed into service during the taxable year, plus an additional \$3,500 if the qualified vehicle is placed into service prior to Jan. 1, 2027.
- Extends and increases the nonbusiness energy property tax credit, including increasing the credit for installing energy efficiency improvements from 10% to 30%.
- Extends the credit for the cost of qualified residential energy efficient property expenditures.
- Expands the energy efficient commercial buildings deduction by increasing the maximum deduction.
- Extends and increases the new energy efficient homes credit through 2031; \$2,500 credit for energy efficient single family and manufactured new homes.
- Creates a new refundable credit for the purchase of used plug-in electric cars (\$1,250 with additional incentives for battery capacity).
- Creates a new credit for qualified commercial electric vehicles (30 percent of the cost of the vehicle)
- Extends the tax credit for the purchase of qualified fuel cell vehicles.
- Extends the alternative fuel vehicle refueling property credit through 2031 and expands the credit for zero-emission charging infrastructure.
- Reinstates and expands the qualified bicycle commuting benefit and increases the benefit from \$20 per month to \$52.50 per month.

- Establishes a new 15% refundable tax credit for qualified electric bicycles placed into service before January 1, 2032.
- Creates a capped refundable competitive credit of \$1 billion for institutions of higher education for environmental justice programs.
- Reinstates the Hazardous Substance Superfund Financing Rate on crude oil and imported petroleum products at the rate of 16.4 cents/per gallon.

Social Safety Net Programs

- **Child Tax Credit:** Provides a one-year extension of the child tax credit (CTC) and advance payment through 2022 and increases the safe harbor amount to \$3,000 (\$3,600 for a child under the age of 6) in cases where repayment may be required, and establishes a monthly CTC and advance payment through 2025 in which each qualifying child aged 6 years or younger would receive \$300 and each qualified child aged 6-17 would receive \$250, phased out for households with incomes above \$150,000 (for joint filers \$400,000).
- **Child and Dependent Care Tax Credit:** makes the modifications to the child and dependent care tax credit (CDCTC) made for 2021 in the American Rescue Plan Act permanent. These modifications included making the credit fully refundable, increasing the maximum credit rate to 50 percent, and increasing the phase-out threshold to \$125,000 instead of \$15,000.
- **Supporting Caregivers:** provides a non-refundable credit, up to \$4,000, equal to 50 percent of the qualified expenses paid or incurred by a qualified care recipient during the taxable year through 2025
- **Earned Income Tax Credit:** makes the temporary “childless Earned Income Tax Credit (EITC)” expansion included in the American Rescue Plan permanent and increases the childless EITC credit and phase-out percentage from 7.65 to 15.13 percent
- **Higher Education:** provides a 40% general business credit for qualified cash contributions to public universities in connection with a qualifying research infrastructure program; provides a reduction in private college and universities’ investment income excise tax liability determined by the amount of qualified undergraduate scholarship and grant aid are provided by the institution relative the aggregate undergraduate tuition and fees during the taxable year; excludes Federal Pell Grants from gross income for purposes of the American Opportunity Tax Credit (AOTC); and repeals the prohibition excluding students convicted of state or felony drug offenses from claiming the AOTC.

Taxes

- **Corporate Tax Rate:** Replaces the flat corporate tax rate with a graduated rate structure of 18% for the first \$400,000 of income, 21 percent on income up to \$5 million, and 26.5 percent on income thereafter; the graduated rate would phase out for corporations making more than \$10 million and personal services corporations would not be eligible for graduated rates.
- **Tax Increases for High-Income Individuals:** increases the top marginal individual income tax to 39.6% applied to unmarried individuals with taxable income over \$400,000, heads of households with taxable income over \$425,000, married couples filing jointly with taxable income over \$450,000, married couples filing separate returns with taxable income over \$225,000, and estates and trusts with taxable income over \$12,500; increases the capital gains rate to 25%; and owners of “pass-through businesses” would pay an extra 3.8 percent tax and lose access to a 20 percent deduction once they make over \$400,000 per year (\$500,000 for married couples filing jointly)
- **\$78.9 billion** for the Internal Revenue Service (IRS) to strengthen tax enforcement activities, increase voluntary compliance, and modernize information technology to support these activities

Drug Pricing

- Requires the Department of Health and Human Services (HHS) to negotiate with drug manufacturers to lower the cost of prescription drugs, including high priced and commonly used drugs like insulin, and caps out-of-pocket costs for Medicare Part D beneficiaries at \$2,000 per year

House Judiciary Committee (bill text available [here](#))

- **\$2.5 billion** for the Department of Justice (DOJ) to fund evidence-informed strategies to reduce community violence and fund community violence intervention programs that address the cycles of violence in communities (Office of Justice Programs, Community Oriented Policing Services, Office on Violence Against Women).
- Funding to provide a path to legal permanent residence (LPR) for Dreamers, Temporary Protected Status holders, and essential workers.
- Restores availability of immigrant visas lost due to the COVID-19 pandemic and bureaucratic delays, and “recaptures” green cards that went unused from 1992 and 2021 to reduce visa backlogs that stretch years.
- **\$2.8 billion** for U.S. Citizenship and Immigration Services (USCIS) to build capacity to reduce case processing backlogs.

House Veterans Affairs Committee (bill text available [here](#))

- **\$15.2 billion** for VA infrastructure improvements and general operations of VA hospitals and national cemeteries through 2031, taking into consideration the integration of climate resiliency into infrastructure as well as the needs of underserved areas and underserved veterans populations.
- **\$455 million** for enhanced-use leases, in which the VA out-leases its underutilized real estate holdings to the private sector for up to 75 years and properties are developed into housing for homeless and at-risk veterans and their families.
- **\$1.8 billion** for the VA to lease to medical facilities for the treatment of veterans.
- **\$150 million** for costs associated to records scanning and benefits claims processing to address the backlog of benefits claims.