



2023 Congressional Outlook

The new House Republican majority brings oversight, fiscal deadlines to the forefront of activity in Washington

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2023 Congressional Outlook

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Overview

Republicans have taken control of the House with a slim majority and a conservative bloc that wielded power in the voting to choose a Speaker. The group gained additional power through rules changes and concessions, intended to address their concerns over omnibus appropriations bills like the one approved at the end of 2022 and lifting the debt limit without spending reforms. Concessions and rules agreed to in Rep. McCarthy's ascension to Speaker include:

- Permitting a single lawmaker to force a vote to “vacate the chair”
- Limiting spending, including blocking bills to increase mandatory spending without corresponding mandatory spending cuts
- Requiring a supermajority 3/5 vote of the House to raise taxes
- Allowing spending bills to defund specific programs and target officials through pay cuts and termination (reinstating the “Holman rule”)
- Requiring 72 hours to review legislation before a House vote
- Eliminating the “Gephardt rule” allowing an automatic increase in the debt limit, as members eye accompanying spending cuts

Given this environment, and divided government with Democrats controlling the Senate, congressional action will likely focus on:

- Oversight, especially regarding the Biden administration
- Fiscal deadlines: the debt limit and government funding

The Republican House has already voted to roll back the IRS funding increase in the Inflation Reduction Act (IRA); scrutiny of the IRS will continue; and there is widespread interest among Republicans in acting to extend Tax Cuts & Jobs Act (TCJA) provisions expiring in 2025. Incoming Ways and Means Chairman Jason Smith (R-MO) offers a more populist approach to legislating and may be a bridge between leadership and the Freedom Caucus. His priorities include:

- American workers
- Building on the TCJA to “reward working families with a tax code that delivers better jobs, higher wages, and more investment”
- Reconsidering “showering tax benefits on corporations that have shed their American identity”
- Trade and tax policy that would “re-shore and strengthen our supply chains”
- Encouraging domestic energy production

While a divided Congress limits the breadth of tax, health care, and financial services policies that could be enacted in 2023, there is a wide array of issues on House Republicans' and Senate Democrats' respective legislative agendas in each of these areas. There will be plenty of activity in committees that have new members and, in some cases, chairmen, and deadlines on the horizon, including on the TCJA.



Leadership, committees

Senate

51

Democrats & Independents

49

Republicans

House

222

Republicans

212

Democrats

¹ vacancy: VA special election Feb. 21

In the Senate, Democrats re-elected Senator Chuck Schumer (D-NY) as Majority Leader and Senator Dick Durbin (D-IL) as Whip and made Senator Patty Murray (D-WA) President Pro Tempore. The major change to the current leadership slate was adding Senator Brian Schatz (D-HI) as deputy conference secretary, replacing Murray on the leadership team. The Republican leadership team led by Senator Mitch McConnell (R-KY) stayed intact. Democrats have essentially 51 votes, including three independents, compared with 49 Republicans. Committee chairmen and ranking members have not been finalized, though there are expectations for who will fill those roles.

The House Republican majority is 222-212, with a special election February 21 for one vacancy in Virginia. Rep. Kevin McCarthy (R-CA) won the Speakership in dramatic fashion on January 7. Rep. Steve Scalise (R-LA) was elected Majority Leader, Rep. Tom Emmer (R-MN) was elected Whip, and Rep. Elise Stefanik (R-NY) is GOP Conference Chair. On the Democratic side, Rep. Hakeem Jeffries (D-NY) is Democratic Leader, Rep. Katherine Clark (D-MA) is Whip and Pete Aguilar (D-CA) is Caucus Chair. On the following page is a table of expected Senate committee chairs – they haven't been finalized – and House chairs and ranking members.

Senate Democrats	
Majority Leader	Chuck Schumer (D-NY)
Whip	Dick Durbin (D-IL)
Policy & Communications Committee Chair	Debbie Stabenow (D-MI)
Steering Committee Chair	Amy Klobuchar (D-MN)
President Pro Tempore	Patty Murray (D-WA)

Senate Republicans	
Minority Leader	Mitch McConnell (R-KY)
Whip	John Thune (R-SD)
Conference Chair	John Barrasso (R-WY)
Policy Committee Chair	Joni Ernst (R-IA)

House Republicans	
Speaker	Kevin McCarthy (R-CA)
Majority Leader	Steve Scalise (R-LA)
Whip	Tom Emmer (R-MN)
Conference Chair	Elise Stefanik (R-NY)

House Democrats	
Minority Leader	Hakeem Jeffries (D-NY)
Whip	Katherine Clark (D-MA)
Caucus Chair	Pete Aguilar (D-CA)
Assistant Leader	Jim Clyburn (D-SC)

Committee leadership

Senate	Chairman (potential)	Ranking Member (potential)
Agriculture	Debbie Stabenow (D-MI)	John Boozman (R-AR)
Appropriations	Patty Murray (D-WA)	Susan Collins (R-ME)
Armed Services	Jack Reed (D-RI)	Roger Wicker (R-MS)
Banking	Sherrod Brown (D-OH)	Tim Scott (R-SC)
Budget	Sheldon Whitehouse (D-RI)	Chuck Grassley (R-IA)
Commerce, Science & Transportation	Maria Cantwell (D-WA)	Ted Cruz (R-TX)
Energy & Natural Resources	Joe Manchin (D-WV)	John Barrasso (R-WY)
EPW	Tom Carper (D-DE)	Shelley Moore Capito (R-WV)
Finance	Ron Wyden (D-OR)	Mike Crapo (R-ID)
Foreign Relations	Robert Menendez (D-NJ)	Jim Risch (R-ID)
HELP	Bernie Sanders (I-VT)	Bill Cassidy (R-LA)
Homeland Security & Gov't. Affairs	Gary Peters (D-MI)	Rand Paul (R-KY)
Judiciary	Richard Durbin (D-IL)	Lindsey Graham (R-SC)

House	Chairman	Ranking Member
Agriculture	Glenn Thompson (R-PA)	David Scott (D-GA)
Appropriations	Kay Granger (R-TX)	Rosa DeLauro (D-CT)
Armed Services	Mike Rogers (R-AL)	Adam Smith (D-WA)
Budget	Jodey Arrington (R-TX)	Brendan Boyle (D-PA)
Education & Labor	Virginia Foxx (R-NC)	Bobby Scott (D-VA)
Energy & Commerce	Cathy McMorris Rodgers (R-WA)	Frank Pallone (D-NJ)
Financial Services	Patrick McHenry (R-NC)	Maxine Waters (D-CA)
Foreign Affairs	Michael McCaul (R-TX)	Gregory Meeks (D-NY)
Homeland Security	Mark Green (R-TN)	Bennie Thompson (D-MS)
Judiciary	Jim Jordan (R-OH)	Jerry Nadler (D-NY)
Natural Resources	Bruce Westerman (R-AR)	Raúl Grijalva (D-AZ)
Oversight & Gov't. Reform	James Comer (R-KY)	Jamie Raskin (D-MD)
Transportation & Infrastructure	Sam Graves (R-MO)	Rick Larsen (D-WA)
Ways & Means	Jason Smith (R-MO)	Richard Neal (D-MA)



Oversight, fiscal deadlines in 2023

Oversight will be conducted in various areas mostly involving the Biden administration, given that Republicans were unable to do so with Democratic control of Congress the past two years. Topics are expected to include:

- ▶ The southern border, Administration's handling of border flow
- ▶ Origins/handling of COVID-19, Anthony Fauci
- ▶ Federal Trade Commission's approach to antitrust
- ▶ US withdrawal from Afghanistan
- ▶ "Weaponization" of federal government/Big Tech companies
- ▶ ESG investing policies, SEC climate risk disclosures
- ▶ IRS funding, enforcement activities, Treasury's role in the OECD-led global tax agreement

Debt limit

How the debt limit and government funding will be addressed is unclear. While the debt limit was reached on January 19, Treasury Secretary Janet Yellen said January 13 "it is unlikely that cash and extraordinary measures will be exhausted before early June." She said, "The two extraordinary measures Treasury anticipates implementing this month are (1) redeeming existing, and suspending new, investments of the Civil Service Retirement and Disability Fund (CSRDF) and the Postal Service Retiree Health Benefits Fund (Postal Fund), and (2) suspending reinvestment of the Government Securities Investment Fund (G Fund) of the Federal Employees Retirement System Thrift Savings Plan." A 2012 GAO report said previous extraordinary measures also involved suspending new issuances of State and Local Government Series securities and suspending investments in the Exchange Stabilization Fund.¹ A January 19 *New York Times* article said Treasury could exchange Federal Financing Bank debt for other debt that doesn't count against the limit.²

1. GAO, "DEBT LIMIT: Analysis of 2011-2012 Actions Taken and Effect of Delayed Increase on Borrowing Costs" (GAO-12-71), July 2012

2. NYT, "How 'Extraordinary Measures' Can Postpone a Debt Limit Disaster," January 19, 2023

Politico reported the Bipartisan Policy Center, which has said the “X date” for imperative action on the debt limit will be no sooner than the third quarter of 2023, as suggesting that the must-act date “will hit sooner than [was] initially thought thanks to the student loan freeze, which halted incoming government payments from millions of borrowers, and the Fed’s inflation-fighting rate increases, which raise Treasury’s cost of borrowing to fund federal operations.”

Speaker McCarthy made an agreement with House conservatives to not bring up a bill to address the debt limit without major spending cuts. He later said he wants a spending caps deal to accompany a debt limit bill, like those reached in 2018 and 2019. “I believe we can sit down with anybody who wants to work together,” the Speaker said on Fox Business January 15. “I believe this president could be that person.” He further enumerated demands President Biden should make of the budget process: “Let’s look at the places that we can change our behavior. The first thing I would say is, why don’t you make the House and Senate both produce a budget? They don’t produce a budget, so you know they’re wasting money. Why don’t you say the House and Senate both have to do appropriation bills?”

Republican concerns about the debt limit in 2011 led to the Supercommittee, Budget Control Act (BCA), and 10 years of spending caps that were lifted each year. Senator Joe Manchin (D-WV), who has emphasized the need for an approach to be bipartisan, has proposed somewhat of a redux of that process, proposing to revive a “rescue committee” proposal with Senator Mitt Romney (R-UT) to address entitlement spending. “Let’s take... the trust funds, whether it’s Medicare, Social Security or a highway trust [fund]. You can’t let those go defunct...” Manchin said January 18. “And we would put different committee, bipartisan, bicameral committees, together to look at each one of the trusts and come up with solutions of how you fix it.”

With respect to negotiations on the debt limit, White House Press Secretary Karine Jean-Pierre said January 17, “Congress must deal with the debt limit and must do so without conditions.”

As Speaker McCarthy alluded regarding spending limits, the Bipartisan Budget Act of 2018 lifted discretionary spending caps for FY2018 and FY2019 over BCA limits in effect at the time and suspended the debt limit through March 1, 2019. The Bipartisan Budget Act of 2019 lifted spending caps for FY2020 and FY2021 over BCA limits and suspended the public debt limit through July 31, 2021. However, those were both during the time when BCA limits constrained spending, and members of each party were compelled to deal to increase spending for their discretionary spending priorities. These priorities are typically defense for Republicans and non-defense for Democrats.

3 - *Politico*, “Biden’s student loan freeze, Fed rate hikes weigh on debt limit deadline,” January 18, 2023

Congress then increased the debt limit again in December 2021. In recognition that a debt limit deal could be difficult, members including incoming House Budget Committee Ranking Member Brendan Boyle (D-PA) said they are considering using a discharge petition to bring a debt limit bill to the House floor. It is a rarely used process that requires 218 signatures and some other procedural hurdles to compel a vote. The last successful discharge petition was a reauthorization of the charter of the Export-Import Bank in 2015.

Some House Republicans are pushing for a prioritization plan that would instruct Treasury which bills to pay in the event extraordinary measures are exhausted. When fiscal deadlines were the subject of controversy 10 years ago, the plan discussed would ensure that Social Security, Medicare, and veterans' benefits are paid. In a January 13 report, "Rep. Chip Roy (R-TX), a leading conservative who helped broker the [House rule changes that helped get McCarthy elected Speaker], told *The Washington Post* that McCarthy agreed to pass a payment prioritization plan by the end of the first quarter of the year."⁴

The White House isn't receptive. Press Secretary Jean-Pierre said January 7: "Congressional Republicans are threatening to hold the nation's full faith and credit, a mandate of the Constitution, hostage to their demands to cut Social Security, to cut Medicare, and to cut Medicaid. Brinksmanship that threatens the global economy. Their latest idea is that rather than paying its bills, the United States should make payment to wealthy bondholders, including foreign investors, and stop payments for border security, food safety, nursing homes, school lunches, the FAA, drug enforcement, and other programs Americans rely on every single day." And Secretary Yellen said January 20 payment prioritization isn't feasible, saying, "Treasury systems have all been built to pay all of our bills when they're due and on time, and not to prioritize one form of spending over another."

Government funding

Government funding expires September 30, 2023. Agreeing to topline spending numbers was difficult even when Democrats controlled both chambers because 60 Senate votes are needed. Speaker McCarthy's commitment to bring appropriations bills up individually, as opposed to an omnibus package, may not be a stretch from current House procedure, as the House typically considers the measures one by one. (There have been instances – in 2018 for example – when "minibus" packages of bills were brought up by Republicans.) Agreeing to topline spending numbers for defense and non-defense discretionary spending – prioritized by Republicans and Democrats, respectively – is the first hurdle to a spending package and a difficult one under any circumstances. An environment in which House Republicans are pushing for spending cuts will make it even more difficult.

⁴ - Washington Post, "House Republicans prepare emergency plan for breaching debt limit," January 13, 2023



Tax

Oversight

Tax-related oversight in the 118th Congress is expected to fall into three buckets: IRS funding, enforcement activities of the agency, and US/Treasury involvement in the OECD-led global tax agreement.

The first bill approved by the Republican-led House was the Family and Small Business Taxpayer Protection Act (H.R. 23), which would roll back the IRS funding increase in the IRA. The bill addresses Republican concerns over the number of new revenue agents to be hired and for what enforcement activities. Those concerns were aired during the House debate, including by new Ways and Means Chairman Jason Smith and new committee members Michelle Steel (R-CA), Claudia Tenney (R-NY), and Beth Van Duyne (R-TX), who focused on the potential for middle-class families to be affected by enforcement efforts and the growth of the IRS. Democrats rebutted these claims.

The Congressional Budget Office (CBO) estimated that the bill would add \$117 billion to the deficit over 10 years. President Biden criticized the effort to gut the IRA's increased funding, saying January 12, "I was disappointed that the very first bill the Republicans in the House of Representatives passed would help wealthy people and big corporations cheat on their taxes at the expense of ordinary, middle-class taxpayers. And it would add... to the deficit. Their very first bill. "

Prospects for the bill in the Senate are virtually nonexistent, given control by Democrats who made the funding a signature pay-for for their hard-fought IRA and have long supported narrowing the "tax gap" through enforcement.

Senate Finance Committee Chairman Ron Wyden (D-OR) said January 9, “A decade of Republican budget cuts gutted the IRS’s ability to crack down on cheating by wealthy individuals and big corporations, and it hobbled customer service for the vast majority of families and small businesses who follow the law. That’s what Democrats sought to fix with the additional funding for the IRS.”

Because the Senate will not likely act on the bill, scrutiny and criticism of the increased enforcement activity is likely to continue. On the Senate side, Finance Committee members John Thune (R-SD) and Chuck Grassley (R-IA) late last year introduced legislation to give Congress input into how the funding could be spent, hold the IRS accountable and provide more transparency. Additionally, Finance Committee Ranking Member Mike Crapo (R-ID) and others sponsored legislation to prevent the IRS from using any of the \$80 billion of funding for audits on individuals and small businesses, with taxable incomes below \$400,000.

In his January 9 statement, Rep. Smith suggested IRS oversight would be a main activity of Ways and Means under his leadership, saying, “If confirmed, the new IRS Commissioner should plan to spend a lot of time before our committee answering questions about the leaking of sensitive taxpayer information and an agency with a history of targeting conservative Americans.” Daniel Werfel, who served as acting commissioner in 2013, was nominated to lead the IRS late last year, and the Senate is expected to act on his nomination soon. Chairman Smith was likely referencing the leak of confidential taxpayer information to ProPublica in 2022 and the targeting of conservative political groups that came to light in 2013.

Regarding Pillar One of the OECD-led global tax agreement, former Ways and Means Ranking Member Kevin Brady (R-TX) and Committee member Kevin Hern (R-OK), who is also chair of the Republican Study Committee, wrote to Secretary Yellen in October 2022 “to insist that you take all appropriate measures to collect and preserve all documents, communications, and other records that are relevant to the OECD Pillar One agreement.”

In September, GOP Ways & Means members pressed Treasury for revenue numbers and information regarding the associated economic impact of Pillar One on the US. Any or all of these inquiries could be brought up in hearings or otherwise. Garnering requisite support for the plan in Congress will not get easier with Republicans in control of the House and Ways and Means. Scrutiny over US involvement in the deal will likely intensify, or at least become more high-profile as GOP members of tax-writing committees have already been outspoken.

Regarding the global minimum tax agreement under the OECD Pillar Two, Chairman Smith, Finance Committee Ranking Member Crapo, and several other Republican members of the tax-writing committees wrote to Secretary Yellen on December 15, 2022, saying, “For the

past two years, the Biden Administration has routinely made commitments in the OECD negotiations it has no authority to fulfill. Despite Treasury's actions to date, it cannot dictate U.S. tax law or compel Congress to act. As we look to the beginning of the 118th Congress, the Administration must place the interests of the United States – the U.S. fisc, U.S. taxpayers, and U.S. workers – ahead of its political agenda. A critical first step is to recognize the fundamental flaws with the Pillar Two enforcement mechanism – the UTPR – and stop encouraging other countries to assert it on U.S. companies.”

The European Union adopted the Pillar Two minimum tax directive in December in a development seen as advancing the global tax agreement. Chairman Wyden said December 16, “With our foreign counterparts now moving forward on international tax reform, I hope my Republican colleagues will reconsider their opposition in this area. Congress must align our system with these new norms...” However, as his statement alluded to, implementation of the two-pillared agreement faced challenges in the previous Congress. This included opposition from Democrats, as evidenced by Senator Manchin blocking international tax changes in the IRA.

TCJA extensions

The year-end 2022 appropriations bill didn't address the IRC Section 174 R&D amortization or the 163(j) interest-deduction calculation because Democrats and Republicans couldn't agree on a Child Tax Credit enhancement. Chairman Smith doesn't sound like he is poised to give any ground on that issue.

A main issue uniting Republicans on tax policy is extending TCJA provisions that expire in 2025. These include the:

- Individual income tax rate brackets
- Increase in the standard deduction
- 199A pass-through deduction
- Increase in the Child Tax Credit
- AMT exemption
- Doubling of the estate tax exemption
- \$10,000 SALT deduction cap

The tax cut provisions cost about \$1.5 trillion for a three-year extension based on a JCT estimate from 2018. A three-year extension of the SALT deduction cap would raise \$400 billion; put another way, allowing the cap to expire would forego \$400 billion over three years.

There has been some reporting that Republicans in control of the House this year will take up the issue of extending provisions for individuals set to expire in 2025.⁵

5 - Washington Post, “GOP wants to push to extend Trump tax cuts after midterm elections,” October 17, 2022

Chairman Smith has sponsored the Main Street Tax Certainty Act to make permanent the Section 199A pass-through deduction, and his statement upon being elected chairman said a priority was building on the success of the TCJA.

However, a January 2 Law360 article said, “Any attempt by House Republican leaders to renew their 2017 tax law will falter in the Senate as long as Democrats control the upper chamber, as will efforts by Democratic leadership to win House approval from Republicans to expand, or even fine-tune, tax provisions enacted in August under the Inflation Reduction Act [IRA]... Democrats on the Finance Committee expressed little desire to work with Republicans on renewal of the 2017 tax overhaul law, which they continue to blame as a root cause of increasing the federal budget deficit. Sen. Debbie Stabenow, D-Mich., said: ‘There’s no way that that package in its entirety would have the votes. So, we’ll have to take a look at how well we can get agreement.’ ”

It isn’t clear what compromises could gain Democratic support for extension of the individual tax provisions of the TCJA, which Democrats were shut out from consideration of in 2017 during a period of Republican control in Congress and the White House. A similar “fiscal cliff” of the Bush tax cuts in 2012 resulted in some provisions being clipped for high-income taxpayers.

Other issues

Chairman Wyden said shortly after the November elections that he wants to focus on housing and energy issues. Several reports cited him as calling for improving the Low-Income Housing Tax Credit (LIHTC) and potentially creating a new middle-income housing tax credit. Chairman Wyden also said he wants to improve upon the clean energy tax provisions passed under the IRA and oversee its implementation. Upon release of Treasury/IRS wage and apprenticeship requirements for IRA clean energy provisions November 29, Wyden said, “One of our top priorities in drafting the Inflation Reduction Act was ensuring clean energy jobs are good-paying jobs and [that] we train the workers needed to fill openings in these growing industries. I appreciate Secretary Yellen and the Treasury Department working quickly to craft this initial guidance on protections for workers, and look forward to continuing to work with her on implementation of these historic policies.”

Other members are also weighing in. Senator Manchin took issue with the December 29 IRS announcement that electric vehicle (EV) credits wouldn’t be calculated based on critical mineral and battery component requirements until after IRS issues guidance, likely in March. “I call on Treasury to pause the implementation of both commercial and new consumer EV tax credits until they have issued the appropriate guidance,” he said, adding that he would introduce legislation on the issue.



Health

With control of Congress split between Republicans and Democrats, sweeping partisan health care reforms on scale with those Democrats enacted over the past two years are unlikely. Instead, Republicans and Democrats are more likely to use their respective majorities to hold hearings and highlight partisan health care topics, while converging around a narrow pool of bipartisan and bicameral opportunities. This tees up three key buckets of health care policies to watch headed into the 118th Congress: 1) holdover legislation from 2022, 2) new policy priorities, and 3) programs set to expire at the end of the year.

However, any policy will likely be viewed through a new cost lens as House Republicans' rules package includes a preference for a "cut-as-you-go" rule, which could limit the breadth of health policy changes for 2023 and increase the potential for spending cuts in the health care sector.

Holdover priorities

While lawmakers packed a lot of health care into the December 2022 Omnibus package, several items were either not addressed or not fully addressed and will remain priorities this year.

For example, lawmakers spent much of the 117th Congress laying the groundwork for bipartisan packages to address the country's mental health and substance use crises. The Senate Finance Committee between June and December 2022 released five discussion drafts focused on bipartisan policies to strengthen the behavioral health care system.

Wyden, who is expected to continue as Finance Committee chairman, has vowed to continue working toward a bipartisan package. Several House committees also have advanced mental health packages.

While committees may not pick up exactly where they left off, previous work creates a path toward potential compromise on a smaller bipartisan and bicameral package.

Examples of other holdover priorities from the 2021-2022 legislative session include:

- **Telehealth:** The December omnibus package included two-year extensions for several Medicare telehealth flexibilities, including those addressing Medicare's originating site and geographic requirements (e.g. allowing patients to receive telehealth at home); in-person visit requirements and audio-only limitations; payment for non-physician providers; and facility fees for new sites of care. In addition, the omnibus would extend through December 31, 2024, the CARES Act provision that allows commercial plans to offer people with high-deductible health plans access to telehealth coverage before their deductible, as well as the remote monitoring waiver program Hospital at Home. While initial results from a telehealth utilization study are not expected until late 2024, lawmakers are expected to continue to hold hearings and introduce bills in this area.
- **Medicare Advantage:** The House-passed Improving Seniors Timely Access to Care Act, which would streamline the prior authorization process for Medicare Advantage (MA), has broad bipartisan support and could have a pathway to full passage given recent regulatory proposals that had the secondary effect of reducing the legislation's cost. In addition, the Senate Finance Committee has examined reports of aggressive marketing tactics among MA plans, while other committees have held hearings on allegations of insurers gaming the risk-adjustment and coding processes.
- **Cost of Insulin:** Lawmakers in 2022 passed legislation to cap out-of-pocket insulin costs for Medicare beneficiaries, and there was momentum to reduce the cost of insulin in the commercial market. That momentum is likely to continue during this next legislative session.

New policy priorities

Lawmakers also are entering the new Congress with new priorities. For example, lawmakers from both sides of the aisle have voiced concerns about the business practices of pharmacy benefit managers (PBMs) and their potential impact on drug prices and pharmacies. As such, there could be activity around PBMs. In addition, both Democrats and Republicans have voiced support for fixing Medicare physician fee schedule payments and re-examining the Medicare Access and CHIP Reauthorization Act of 2015. Currently, however, there is little agreement on how to address the payment problem.

As Congress turns its attention to broader debates around the debt limit and government funding, health care and government spending on federal health care programs, like Medicare and Medicaid, will undoubtedly be part of the conversation.

Republicans historically have favored approaches to reduce Medicare spending by raising the eligibility age or transitioning Medicare to a premium-support model – two policies that are non-starters for Democrats. While compromise is possible over solutions such as site neutral payments (a solution suggested by the House Republicans’ Health Future Task Force), those savings alone are unlikely to fix Medicare’s looming insolvency problem.

Republicans and Democrats are also expected to use their committee chairmanships and oversight authority to spotlight areas of interest, even if those topics will not garner bipartisan support. In the House, Republicans are expected to use their oversight authority to investigate the Biden administration’s approach to health care consolidation, regulatory expansion of Affordable Care Act marketplace eligibility for families, COVID-19 origin and response efforts, and the Inflation Reduction Act’s drug pricing provisions. In addition, House Republicans have signaled their intent to investigate nursing homes and policies that may have contributed to high mortality rates and explore new ways for employers and individuals to pool health risk. In the Senate, Democrats are likely to use their narrow majority to continue pursuing legislation to advance mental health, climate and health equity, as well as protecting, building on and overseeing implementation of the drug pricing policies in the IRA.

Program reauthorizations and expirations

Lawmakers will also have opportunities to advance bipartisan policies through the reauthorization of programs set to expire in 2023, including the Pandemic and All-Hazards Preparedness Act, the FDA User Fee Programs for animal drugs and animal generic drugs, the Community Mental Health Services Demonstration Program, and the Independence at Home Medical Practice Demonstration Program.

In addition, there are several funding streams and payment policies that are set to expire in 2023. These include funding for Quality Measure Endorsement, Input, and Selection; Outreach and Assistance for Low-Income Programs; the Medicare Work Geographic Index Floor; 1% Medicare add-on payment for Home Health; and Blended Medicare Payment Rates for Durable Medical Equipment, Prosthetics/Orthotics & Supplies in Certain Non-Competitive Bidding Areas. Lawmakers also will be called upon to consider delaying Medicaid Disproportionate Share Hospital (DSH) reimbursement cuts.



Financial Services

After the Republican takeover of the House, the ideological difference between the leadership of the House and Senate banking committees will be stark, reflecting the broader gulf between the parties in this divided Congress. At the House Financial Services Committee, the change of majority will bring an abrupt shift in focus, with incoming Chairman Patrick McHenry (R-NC) promising sharp scrutiny of Biden-appointed financial regulators at agencies like the Securities and Exchange Commission (SEC) and the Consumer Financial Protection Bureau (CFPB), as well as the Federal Reserve and its regional banks.

The SEC's proposed rule requiring climate risk disclosures from public companies will be a prime target for the committee, as Republicans take broad aim at "ESG" (environmental, social and governance) policies and "woke capitalism" among large asset managers. Broadly, McHenry and other committee Republicans will also seek to lighten SEC regulations to help smaller companies raise capital in the equity markets; promote innovation in financial technology; and pass a bipartisan stablecoins regulatory bill, while treading carefully in any larger regulation of digital assets such as bitcoin.

At the Senate Banking Committee under returning Chairman Sherrod Brown (D-OH), a continued focus is expected on increasing the supply of affordable housing; climate risk disclosures for public companies; regulation of digital assets; rewriting bank merger rules; and stressing diversity among executives at banks, asset managers, insurers and corporate boards.

Brown is also keenly interested in regulators' pending overhaul of the Community Reinvestment Act, which bans redlining and requires that banks help meet the credit needs of their communities. The Fed is in the process of rewriting the CRA together with the FDIC and the Office of the Comptroller of the Currency.

The Banking Committee's new Ranking Member, Tim Scott (R-SC), who took over for the retiring Pat Toomey (R-PA), shares much of McHenry's focus on vigorous oversight of regulators and boosting capital formation, with other priorities including restructuring the board of the FDIC and calling out "woke" banks that don't do business with gun firms or fossil fuel companies.

House Financial Services Committee

Oversight of Regulators. At a conference in March 2022, McHenry said Republicans would be "the check and balance on the few of these regulators trying to run roughshod over a whole industry unchecked," saying a GOP majority will "lead the charge to expose these agencies and what they're trying to do." The SEC will attract much of their fire, with many expecting repeated hearings in which SEC Chairman Gary will defend his agency's proposed climate risk disclosure rules for corporations, as well as an SEC proposal requiring hedge funds and private equity funds to disclose more about their fees. The SEC's fast pace of rulemaking – the subject of an Inspector General report in which agency staffers complained about the schedule's tight deadlines -- is likely to come up, with Republicans and industry participants arguing the comment periods for proposed rules over the last two years have been too compressed.

On Bloomberg TV on November 4, McHenry said Biden's regulators are "pursuing, through regulatory fiat, climate obligations on public and private companies through securities regulation... We're going to highlight the cost of those regulations to the average American and the average small-business person, and the impact that has on our economy." The SEC's proposed climate rules have provoked GOP opposition beyond the banking committees as well, with Rep. Chris Stewart (R-UT), a House appropriator, telling S&P Global Intelligence last year that a Republican House majority would "very likely" pass a government funding bill with a rider blocking the agency from enforcing climate disclosures: "Is the president or our Democratic leaders willing to... have the country endure a potential government shutdown over this language? I can't imagine that they would," Stewart said. The rules package passed by House Republicans on Jan. 9 makes it easier for members to add controversial policy riders to spending bills.

CFPB. The CFPB, long a popular target for Republicans, is expected to feature prominently in House oversight. McHenry has accused CFPB Director Rohit Chopra of pursuing a "really scorched-earth approach" with "his adoption of regulation by enforcement or intimidation."

A July letter from the committee's Republicans accused Chopra of "colluding" and "conspiring" with states to expand their authority to pursue and enforce violations of federal consumer protection law. Republicans also wrote to Chopra in September, saying the Supreme Court's recent *West Virginia v. EPA* decision highlighted that the CFPB does not have the "clear congressional authorization" to undertake a number of its recent actions, rules and advisory opinions. If the Supreme Court upholds a recent lower court ruling calling the agency's structure unconstitutional, the committee will have to move a bill with a new funding mechanism for the Bureau. Republicans also want to investigate the CFPB's application of the UDAAP regulation (allowing it to police "unfair, deceptive or abusive acts and practices") to bank account fees and other non-credit products, as well as Chopra's role in a FDIC dispute over bank merger rules, which led to the resignation of former Chairman Jelena McWilliams, a Trump appointee, in February 2022.

McHenry has also accused the Biden administration's Federal Reserve nominees of seeking to "manipulate the financial services industry" into fighting climate change. Republicans have questioned the Fed's effort launch a pilot program of "climate scenario analysis" by the nation's six largest banks early this year. The OCC and the FDIC are also expected to finalize climate risk management guidance for large banks soon, which could prompt new complaints from Republicans and the industry.

ESG and 'woke capitalism.' House Republicans' fervor against ESG- and climate-related rules is not limited to targeting regulators. Corporations and large asset managers have also sparked criticism by adopting policies that Republicans see as kowtowing to progressives. On Election Night, McHenry told a crowd, "We can hold this administration accountable through... oversight of woke corporations that are trying to do the Democrats' bidding on the social agenda." Rep. Andy Barr (R-KY), who will chair the Financial Services Committee's Financial Institutions and Monetary Policy Subcommittee, has said the committee will be "exercising rigorous oversight of both regulators and private-sector asset managers who have politicized capital allocation that damages American workers, retirees, and discriminates against U.S. energy producers." Barr is likely to reintroduce his bill from March 2022, the Ensuring Sound Guidance (ESG) Act, which would separate investors' retirement and investment accounts from asset managers who put environmental and social goals ahead of returns.

Barr told the New York Times in November, "BlackRock and State Street and Vanguard and Invesco and Fidelity – these are great companies. All we want for them is to live up to their history of being great American companies and achieving retirement security for Americans, and stop this nonsense of politicizing capital allocation through ESG."

Another senior Republican on the committee, Blaine Luetkemeyer (R-MO), has said he hopes to hold a hearing with the CEOs of BlackRock, Vanguard and State Street on their ESG policies. Finally, a November letter from five Senate Republicans warned corporate law firms that Congress would scrutinize the “institutionalized antitrust violations being committed in the name of ESG,” as some asset management firms have made joint efforts. The letter warned that firms should disclose risks posed “by participating in climate cartels and other ill-advised ESG schemes.”

Stablecoins and digital assets. McHenry told Bloomberg last year that one of his top priorities legislatively will be “giving clarity to the digital asset ecosystem.” He told American Banker in November that the FTX collapse “shows that we have a dramatic need for us to legislate. Agencies... are not prioritizing consumer protections for those that are digital asset-holders, and they’re not putting forward a regulatory regime where digital assets can be appropriately held, so we have to legislate that.” While McHenry and former Financial Services chairman Maxine Waters (D-CA) were not able to get their bipartisan stablecoins regulatory bill ready for markup as 2022 wound down, optimism is high on both sides that a stablecoins bill will likely get done early this year. “We have to define this space,” McHenry said last year. “I would say that Chairwoman Waters and I have about 80% agreement about the nature of a stablecoin and in the sphere of how you regulate that.”

McHenry said he and Waters have agreed that regardless of who issues them, stablecoins “should be backed by 100%, high-quality liquid assets.” Speaking at the Fintech Week conference in October, however, McHenry said he and Waters are still debating issues like how such coins can be held, regulations around wallets, and which regulator should oversee the space. McHenry called the draft compromise that he and Waters have negotiated so far “an ugly baby... It is a baby nonetheless, and we’re grateful and hopeful it can grow and prosper into something that is a lot more attractive.”

But despite the sobering collapse of the FTX trading platform, that bipartisan spirit has not yet materialized on central questions surrounding the broader regulation of digital assets like bitcoin, as Republicans have watched regulators release some critical reports on risks posed by this space under President Biden’s September 2022 executive order on digital assets. McHenry did create a new Digital Assets Subcommittee to manage crypto issues, to be chaired by French Hill (R-AR).

McHenry has also been wary of the idea of the Federal Reserve issuing a central bank digital currency (CBDC), something many Democrats believe could make payment systems cheaper for consumers. Republicans are concerned that a CBDC could crowd out digital offerings by private firms and insist that Congress must give the Fed legislative authority to issue such a product.

SEC Chairman Gensler has requested additional funding and legislative authority to do more rulemaking and enforcement around cryptocurrency, but House Republicans appear unlikely to give it to him.

Capital formation and deregulation. At the American Bankers Association conference in March, McHenry said that if Republicans won the House majority, “We’re going to continue to look for policy initiatives that unleash the free market and enable you to use new technology and new tools to reduce the cost of accessing credit and make it more available. Artificial intelligence, bank and third-party partnerships, easier reporting requirements and more innovation will help everyone in this [banking] ecosystem.”

McHenry released committee Republicans’ “capital formation agenda” in September, a series of bills modeled on the 10-year-old JOBS Act, which changed SEC regulations to allow smaller companies to raise capital more easily. The package also includes S. 4992, a bill championed by incoming Senate Banking Committee Ranking Member Scott, which would double the length of time a public company could retain its status as an emerging growth company (EGC) under the JOBS Act, as well as bills that would, among other changes: allow stock issuers to “test the waters” with potential investors; reduce the minimum time between the first public filing and IPO pricing; and create a “micro-offering” exemption allowing equity offerings of up to \$250,000 without regulatory requirements. Republicans on both the House and Senate banking committees also continue to pressure the SEC to broaden its “accredited investor” definition, which restricts individuals from investing in private stock offerings unless they earn more than \$200,000 a year or have a net worth of at least \$1 million.

Market structure. Regarding equity market structure issues, McHenry has resisted reform bills Democrats pushed through the committee after the “meme stock” market turmoil of 2021, including a bill that would allow the SEC to ban “payment for order flow” from market makers to brokers, which Democrats argue creates conflicts of interest and limits best execution of customers’ orders. McHenry has accused Democrats of exploiting the GameStop episode to further their regulatory agenda.

Data privacy, shell companies. McHenry also appears ready to dive into the thorny issue of data privacy, also a focus of the Energy and Commerce Committee. In an interview with Politico in December, he listed data privacy alongside capital formation and crypto policy as the top three areas where he believed the committee could make bipartisan progress in 2023.

McHenry introduced a bill in June that would modernize the 1999 Gramm-Leach-Bliley Act to cover data aggregators in addition to financial institutions, and require more transparency with customers.

Regarding anti-money-laundering (AML) regulations, McHenry has expressed concern over the Financial Crimes Enforcement Network's (FinCEN) recent rule implementing a new law requiring smaller companies to disclose their beneficial owners to a federal database. Republicans have argued that the law and FinCEN's 300-page rule, aimed at imposing more transparency on abusive shell companies, imposes unnecessary burdens and complexity on small businesses.

Senate Banking Committee

In an interview with Politico in December, Chairman Brown described housing and cryptocurrency issues as being at the top of his agenda for the committee. Brown said he wanted to find ways to expand the supply of housing, partly by removing barriers to affordable homes. Brown has said the Fed's rapid increases of interest rates have made mortgages even more expensive for new homeowners.

Cryptocurrency. In previous years Brown has been skeptical about the need for federal legislation regulating digital assets, dismissing the cryptocurrency sector as rife with scams and criminal actors, and describing crypto oversight in terms of working with regulators like the SEC and CFTC to hold offenders in these markets accountable. But the FTX collapse has thrown the lack of a legislative/regulatory schema for digital assets into sharp relief. Late in 2022, Banking Committee Democrats released a memo describing plans to work with regulators and lawmakers to design "a comprehensive regulatory framework for crypto that protects our national security and puts consumers – not the crypto industry – first." In an interview with Bloomberg TV on January 10, Brown said the committee will "get serious about crypto legislation" in 2023, saying crypto advocates "have to come to the Hill and show a purpose in the financial system. I don't think they have proven that to most of us in the Senate and in the House."

Brown is also expected to closely monitor bank regulators' overhaul of the Community Reinvestment Act, press for greater diversity among financial industry executives and corporate boards, and urge the SEC to push through rigorous rules for corporate ESG disclosures despite industry opposition.

Big bank oversight. Brown will also argue for maintaining stringent capital and leverage standards for the biggest banks, along with tough stress tests and "living will" requirements, and will support the FDIC's effort to rewrite bank merger rules, as regional banks get larger due to consolidation.

Brown has said he will continue to hold CEOs of big banks accountable for how they serve their customers and how they treat their employees, and will continue bringing them in for public hearings.

Legislative priorities. Chairman Brown also has legislative goals, though the Banking Committee did not hold a single legislative markup while Brown was chairman in the previous Congress, as floor time was largely reserved for bills that had a bipartisan chance of getting 60 votes in the closely divided Senate.

Brown wants to pass a longer-term reauthorization of the National Flood Insurance Program (NFIP), which has been renewed on a short-term basis 20 times since 2017. In December, Brown and Sen. Chris Van Hollen (D-MD) introduced a bill targeting fintech-backed industrial loan companies (ILCs) that offer bank services without Federal Reserve supervision. The bill would require state-chartered ILCs to be subject to the same level of oversight as other banking institutions. “Letting Big Tech and commercial companies operate banks without proper oversight will only open doors for predatory lending,” Brown said. A coalition of a dozen major banking and consumer groups came out in support of the bill. Brown could also look to target bank overdraft fees.

Brown led a group of several Democrats in July in offering a bill, the Fair Access to Financial Services Act, which would prohibit financial institutions from discriminating in providing goods or services on the basis of race, religion, national origin, sex, gender identity or sexual orientation. Brown cited accusations of racial profiling at some of the largest US banks. Brown also wrote to financial regulators in March 2022 about gender and racial disparities in small-business lending.

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