Congress returns to deadlines

Government funding is the most controversial Sept. 30 deadline, and an eventual long-term resolution could carry tax and health provisions

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Divided government tensions come to a head in funding fight

September 30 is the deadline for government funding, FAA reauthorization and aviation excise taxes, the farm bill, the Pandemic and All-Hazards Preparedness Act (PAHPA), and a number of health care programs and there has been talk of short-term extensions for each given undecided and controversial issues before a divided government. Extensions could go until the end of the year, when an automatic mechanism that would result in reduced spending levels looms as a backstop for the government funding dispute. A long-term resolution in a year-end bill or other must-pass measure could address overdue tax items like TCJA "pre-cliffs," which have stalled due to a partisan impasse on a Child Tax Credit (CTC) expansion. Conversely, if a major deal on government funding proves elusive, there may not be a vehicle for tax provisions. Attention has also turned to international tax issues. Republicans continue to challenge the US involvement in the OECD-led global tax agreement and the tax-writing committees are developing bipartisan, bicameral US-Taiwan tax legislation, which has also been the subject of a separate bill reported out of the Senate Foreign Relations Committee. There continue to be calls from Congress to pursue a more aggressive trade agenda, beyond the relatively limited Indo-Pacific Economic Framework. Financial services issues of note include the response to bank failures, cryptocurrency and ESG bills.

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Government funding, other deadlines

Possibility of a government shutdown

The House and Senate are scheduled to be in session together for only 12 days before the expiration of government funding after September 30, which is also the deadline for an FAA reauthorization and aviation excise taxes, the farm bill, the Pandemic and All-Hazards Preparedness Act (PAHPA) and several health care programs. There has been speculation about short-term extensions for each of the measures. Government funding is the most controversial. The Fiscal Responsibility Act (FRA) debt limit bill called for holding FY2024 spending at roughly FY2023 levels. At the urging of conservatives, House appropriators are marking up FY2024 bills to FY2022 levels, which is at least $100 billion lower than FY2023 discretionary spending. Senate appropriators are pursuing a supplemental funding measure to exceed even the FY2023 levels. House conservatives have been intent to pursue policy riders, and many are included in the appropriations bills. The provisions, on social and other issues, will be opposed by Democrats in control of the Senate and will make compromise on government funding more difficult. Members of the conservative Freedom Caucus have said a government shutdown, like policy riders, could be necessary to punctuate their seriousness about priority issues and reducing spending. Speaker Kevin McCarthy (R-CA) must resolve those demands or align with Democrats to gain the necessary votes.

Discretionary Budget Authority under FRA

Source: House Budget Committee

	2020	2021	2022	2023	2024	2025
Base	$1.288t	$1.298t	$1.471t	$1.602t	$1.590t	$1.606t
Defense	$667b	$672b	$782b	$858b	$886b	$895B
Non-defense	$622b	$627b	$689b	$744b	$704b	$711b

Speaker McCarthy has told his members privately that he expects a continuing resolution ("CR") to be required past September 30 but doesn't want it to last until just before the year-end holidays, which is a traditional backstop to compel congressional action. Punchbowl News reported that McCarthy is eyeing a CR until November 1 or November 15. Some mainstream Republicans prefer a CR into calendar year 2024, while conservatives are wary of a holiday season deadline that could result in a massive catch-all bill. Senate Majority Leader Chuck Schumer (D-NY) said publicly he has spoken to the Speaker about the need for a CR, and the Administration is calling for one. There will need to be agreement on both spending levels and policy terms for even a short-term patch, however. On August 21, the Freedom Caucus warned against a "clean" CR at roughly FY2023 spending levels and demanded that any measure address:

- border enforcement
- "weaponization" of the government
- certain military policies.

Some expect that, if a shutdown can be avoided, multiple CRs could be necessary to extend government funding and Congress could lurch between those extensions between now and the end of the calendar year. Conservatives say they will support only very short CRs.

Both the House and Senate appropriations committees have approved all 12 of the annual appropriations bills, but only one has been brought to the floor (Military Construction, in the House only). The differences between them overshadow the fact that this is the first time in five years that the Senate Appropriations Committee has approved the entire slate of spending bills. Chairman Patty Murray (D-WA) is known as a bipartisan dealmaker on health care and other issues, and she has been issuing joint statements with Ranking Member Susan Collins (R-ME), including on the decision to add $13.7 billion in additional emergency appropriations to FY2024 bills above FY2023 spending levels. Murray and Collins welcomed the President's August 10 $40 billion supplemental request for funding for Ukraine, disaster relief and other priorities. The intention is for that request – which includes $24 billion in Ukraine funding, $12 billion in disaster funding to offset a roughly $4 billion FEMA shortfall, and $4 billion in southern US border enforcement – to be attached to a short-term funding bill. Disaster situations in Hawaii, California, and Florida since the request was presented will undoubtedly punctuate the need for the funding, and it will be supported robustly in the Senate.

Highlights of FY2024 Appropriations Bills		
Bill	*House*	*Senate*
Financial Services & General Government	$11.266b + $14b from clawing back funds, including from IRS -Prohibits funding for procurement of EVs	$16.95b -Rescinds $10b in IRA IRS enforcement funding per debt ceiling agreement
Commerce, Justice, Science	$58.383b -Riders related to FBI, 2nd amendment, immigration	$71.734b -$11b to implement CHIPS and Science Act
Agriculture, Rural Development, FDA	$25.313b -Riders on reproductive rights, rescinds $1b for IRA rural clean energy program	$25.993b -$20m increase in funding for FDA
Interior, Environment	$25.417b -Rescinds $9.4b in EPA funding, increases wildfire funding $1.6b	$42.695b -$5.6b for wildfire suppression and preparedness
Military Construction, Veterans Affairs (*passed by full House*)	$317.441b -Prohibits the closure or realignment of Guantanamo	$316b -Includes $121b for VA medical care
Transportation, HUD	$90.243b, with $25.035b offset through preventing IRA spending on IRS enforcement -Prohibits implementation of Greenhouse Gas emissions rule	$98.931b -$70.06b in funding HUD to maintain all existing rental assistance while increasing efforts to reduce homelessness
Labor, HHS, Education	$147b ($60.3b below FY23 level and $73b below the President's Budget Request) -Riders on reproductive rights	$224.4b -$47.4b for NIH, including an increase for biomedical investments in research -$407m in CURES funding
Defense	$826.45b -5.2% pay raise for servicemembers, riders on gender issues in the military and reproductive rights	$831.781b -5.2% pay raise for servicemembers -Funding for patient care, develop cures, health issues
State, Foreign Operations	$52.5b -Riders on reproductive rights, "counterproductive climate programs that harm energy security"	$61.608b -$10.3b to bolster global health and prevent future pandemics
Energy and Water Development	$58b -Supports domestic uranium enrichment capabilities, $200m for critical minerals	$58.095b -$8.43b in new funding for Office of Science to help implement the CHIPS and Science Act
Legislative branch	$5.302b	$4.742b
Homeland Security	$91.515b -Includes additional funds for border enforcement, riders on gender issues related to immigration	$61.364b -Funding for border security and immigration enforcement

However, supplemental funding with Ukraine funding at the forefront faces resistance from a number of House conservatives. Mainstream Republicans, however, especially in the Senate, remain supportive of Ukraine funding.

A main question in Washington has become: What can conservatives feasibly get from Democrats in exchange for a funding resolution and can a shutdown be avoided? Rep. Bob Good (R-VA), who in July suggested a shutdown could have a positive impact and vowed that Republicans would force the Senate and the White House to accept a House bill, more recently said in Punchbowl News that a CR can't move forward without spending cuts and GOP policy wins. A top focus for a concession to the GOP is border control funding – beyond the $4 billion called for under the President's supplemental request – which is supported by House and Senate Republicans, plus border-state and other Democrats.

While it is hard to predict how the government funding debate will play out over the next several months, there is a potentially action-forcing provision of the FRA that would establish temporary caps at 99% of current funding levels (FY2023) if all 12 appropriations bills are not passed by January 1 of either 2024 or 2025, respectively (with the technical sequester enforcement mechanism related to the funding reduction taking effect on April 30). As described by the Congressional Research Service (IN12183): "The FRA includes a provision that has been described as incentivizing Congress to enact regular full-year appropriations legislation instead of relying on continuing resolutions (CRs). This provision requires that in the event a CR is in effect on January 1 of 2024 or 2025 for any budget account, the discretionary spending limits for that fiscal year would be automatically revised."

Conservatives in the House remain displeased with the level of spending cuts in the FRA debt limit bill despite the backstop and seem intent on carrying on the spending debate in the context of government funding deadlines.

FRA Discretionary Limits on Budget Authority for FY2024, with Revisions
(in billions)

Source: CRS

Fiscal Year	Revised Defense Discretionary	Revised Nondefense Discretionary	Revised Total Discretionary
FY2024 +/- Original caps (% change)	$849.78 -$36.57 (-4.13%)	$736.45 $32.80 (+4.66%)	$1,586.23 -$3.77 (-0.24%)

When would a sequester occur under a CR? Source: CRS

- If a CR is in effect on Jan. 1, caps are revised but no sequester occurs yet.
- If regular appropriations bills are enacted between Jan. 2-April 29, discretionary caps revert back to original levels.
- If a CR is still in effect on April 30, a final sequestration report is ordered at the revised levels.

It is worth noting that defense spending increases in FY2024 under the FRA, while non-defense spending decreases. If the backstop mechanism takes effect, the revised levels would result in an increase in nondefense discretionary budget authority and a decrease for defense discretionary spending levels when compared with the original levels.

Democrats in control of the Senate, including Majority Leader Schumer, have said it is incumbent upon Republican leaders to keep any funding patch free of divisive issues despite the demands of conservative members. Senator Ben Cardin (D-MD), who is retiring, said August 22, “Here we go again. We saw the same type of threats on paying our bills on the debt ceiling. Here we’re talking about continuing government because we can’t get the appropriation bills done. And a [CR] is exactly that. It should be clean.” In a September 1 letter, Majority Leader Schumer put the focus on the bipartisan cooperation in the Senate Appropriations Committee. “To avoid a harmful and unnecessary government shutdown, the House should follow the Senate’s incredible lead and pass their appropriations bills in a bipartisan way... The only way to avoid a shutdown is through bipartisanship,” he said.

NDAA conference

A somewhat parallel negotiation to the government funding talks will go on with the FY2024 National Defense Authorization Act (NDAA), which was approved by the Senate July 27. The House version of the bill includes social policy amendments at the behest of conservative Republicans, setting up a potentially contentious conference committee to resolve differences between the two versions. That process could portend the difficulty the two chambers may face in reconciling their respective versions of the dozen appropriations bills with a broader swath of policy riders.

Farm bill

The farm bill includes debate on several controversial issues including federal nutrition assistance, for which conservative Republicans want stronger work requirements.

Democrats are likely to oppose requirements of the magnitude sought by some Republicans. Senators including Agriculture Committee Chair Debbie Stabenow (D-MI) have suggested a short-term patch is possible if not likely, and some have observed that debate on the issue may be extended into 2024.

FAA reauthorization and taxes

The House has passed its FAA bill, but the Senate Commerce Committee has yet to mark up its version, with a variety of issues yet to be decided, including pilot training and changes to add more flights at Reagan National Airport. Roll Call reported on August 1 that the June Commerce Committee markup was postponed due to language regarding pilot training. Politico reported Commerce Chair Maria Cantwell (D-WA) as saying, “September comes pretty fast,” meaning an extension of current policy is likely.

Flood insurance

Congress faces a September 30 deadline for reauthorizing the beleaguered National Flood Insurance Program (NFIP) – which, in the absence of an agreement on reforming the program, has been kept afloat through a series of 25 short-term extensions since 2012. A bill by House Financial Services Committee Republicans extending the NFIP through the end of 2024 hasn’t been marked up, and in both the House and Senate, members from flood-prone states who want to keep flood premiums affordable have been unable to reach agreement with reformers who seek to impose premiums that match a property’s flood risk.

A look ahead

In addition to the items discussed thus far, Senate Majority Leader Schumer said September 1 there is an opportunity to advance bipartisan legislation on: “lowering the cost of insulin and prescription drugs, safeguarding cannabis banking … advancing kids’ and teens’ online safety and privacy, holding bank executives accountable, addressing rail safety, [and] artificial intelligence.”

TCJA “pre-cliffs” and the Child Tax Credit

The Tax Cuts & Jobs Act “pre-cliffs” have long been awaiting a bipartisan agreement on some expansion of the Child Tax Credit, as Democrats demand. These provisions consist of the Section 174 five-year R&D amortization rather than expensing and the Section 163(j) business interest deduction limit calculated as 30% of EBIT vs. EBITDA that both took effect in 2022, plus 100% expensing that is phased down in 20% increments after 2022. A potential year-end 2022 tax bill stalled over this impasse.

It remains a sticking point, though there have been some recent indications of a willingness to compromise. The Bloomberg Daily Tax Report (DTR) August 2 said: “Some Democrats have softened the ask for full restoration of the pandemic aid bill’s version. The White House indicated last year it may be flexible on work requirements, and Democrats like Rep. Don Beyer (Va.) said they’d be willing to support the right compromise. ‘What seems most sensible is a bipartisan bill that reinstates some limited part of the child tax credit, it doesn’t have to be as big,’ he said.” During a July Senate Finance subcommittee hearing, Senator Ron Johnson (R-WI) expressed concern about how to design “benefit programs that don’t make people dependent on government,” but also newly, and optimistically, called for roundtables on CTC issues. Roll Call reported that some Republicans in Biden-won suburban districts are also open to a compromise on the CTC. “I think that’s a good bipartisan area where we can work together,” Rep. Mike Lawler, R-N.Y., said.

However, Rep. Dave Schweikert (R-AZ), who represents a Biden-won district that he narrowly won in the last election, said in the Roll Call article that it is up to Democrats to demonstrate trade-offs for a CTC boost. "It's a demand from Democrats, so show us how you intend to pay for it," he said.

The TCJA doubled the CTC to $2,000. Democrats, in the American Rescue Plan Act, increased the credit to $3,600, made it fully refundable, and payable monthly by mailed check for 2021. Republicans won't support an extension of that version due to the high cost (~$100 billion), far above that of extending business tax provisions, and they demand work requirements.

While not addressing the CTC, House Ways & Means Committee Republicans in June passed three tax bills – the Tax Cuts for Working Families Act, Small Business Jobs Act, and Build It in America Act – that combined make up the American Families and Jobs Act.

Version of Child Tax Credit	Eligibility	Amount	Income phaseout	Refundability
Pre-TCJA	each qualifying child under the age of 17	$1,000	$110,000/married, $75,000 otherwise	capped at $1,000 per child
TCJA (expires for TYBA 12/31/25)	each qualifying child under the age of 17	$2,000	$400,000/married, $200,000 otherwise	capped at $1,400 per child (indexed for inflation); additional $500 nonrefundable credit for other (non-child) dependents
American Rescue Plan Act (ARPA)	$3,600 for children 0-5 years old / $3,000 for children 6-17 years old		$400,000/married, $200,000 otherwise	fully refundable (no phase-in for low incomes); 50% of credit in monthly advance payments
2022, 2023	Same as TCJA			capped at $1,600 in 2023
Sens. Brown, Bennet, Rep. DeLauro bills	Same as ARPA			
Sen. Romney Family Security Act	$4,200 per child under 6; $3,000 per child ages 6-17		$400,000/married, $200,000 otherwise	family must have earned $10,000 in the prior year to receive full benefit; below that, proportional to earnings
Sen. Rubio Providing for Life Act	$4,500 per child under 6; $3,500 per child 6-17		$400,000/married, $200,000 otherwise	would phase in at a rate of 15.3%, beginning with first dollar of income earned, to reflect combined employee and employer payroll tax liability

American Families and Jobs Act		
Bill	Summary	Revenue
Tax Cuts for Working Families Act (H.R. 3936)	rename the standard deduction the guaranteed deduction, adds a new bonus guaranteed deduction of $2,000/individual and $4,000/married filing jointly, phased out at a 5% rate for taxpayers with modified AGI of $200,000/individual and $400,000/married filing jointly	-$96.7b
Small Business Jobs Act (H.R. 3937)	- increase the independent contractor information reporting threshold under Secs. 6041 and 6041A to $5,000 in a calendar year - revert to the previous de minimis reporting exception for commercial payments to third-party settlement organizations of $20,000 - for Sec. 1202 exclusion for gain on sale of qualified small business stock: • shorten holding period • provide holding period tacking rule with respect to a qualified convertible debt instrument • extend exclusion for section 1202 gains to stock in S corporations - increase maximum Section 179 small business expensing amount to $2.5m and phase-out threshold amount to $4m - rural opportunity zones	-$81b
Build It in America Act (H.R. 3938)	- TCJA cliffs, reverts through 2025 (retroactive) to prior policy on: • R&D expensing in place of the IRC Section 174 R&D five-year amortization requirement • IRC Section 163(j) interest deduction limitation (EBITDA threshold) • 100% bonus depreciation - supply chain security: • repeal Hazardous Substance Superfund excise tax for oil • creditability of some foreign taxes without regard to current foreign tax credit (FTC) regulations • 60% excise tax on purchases of US farm/ranch land by entities from "a country of concern" • clean energy provisions repealed or modified: ▪ repeal of clean electricity production credit ▪ repeal of clean electricity investment credit ▪ modification of clean vehicle credit ▪ repeal of credit for previously owned clean vehicles ▪ repeal of credit for qualified commercial clean vehicles	TCJA cliffs: -$47.4b Supply chain: -$11.5b Clean energy: +$216.1b Total, H.R. 3938: +$156.9b
	Total	~-$21b

The bills address the TCJA "pre-cliffs" relating to Section 174 R&D expensing, Section 163(j) interest deduction limitations, and 100% expensing, and include several other GOP priorities: small business provisions; reverting to the previous de minimis reporting exception for commercial payments to third party settlement organizations of $20,000; and creditability of foreign taxes without regard to foreign tax credit regulations.

The package isn't expected to be enacted as-is, given the impasse over the CTC expansion sought by Democrats, who are also opposed to rolling back clean energy provisions. (In fact, the IRA's clean energy provisions are considered a crowning achievement of the President and congressional Democrats, who have been promoting the success of the provisions.) The House GOP bills more likely represent the House GOP's negotiating position for talks later this year aimed at constructing a year-end tax extenders package should the opportunity arise, and a government spending or other must-pass vehicle emerge.

Even House floor consideration is uncertain. Conservative Republicans have expressed concerns about additional spending, generally, following the FRA debt limit bill, which they felt was insufficient in taming the nation's debt.

Also looming over the fate of any bill addressing expired tax provisions is insistence from members of both parties from high-tax states for relief from the TCJA's $10,000 state and local tax (SALT) deduction cap. An article in the July 25 Washington Post reported on Republican House members from New York, New Jersey and California "threatening to vote against a tax package approved in June by the House Ways and Means Committee unless a provision is added to raise the SALT cap. As written, the measures would restore expired tax cuts for businesses passed under Trump and repeal climate-oriented tax credits passed under President Biden – initiatives key to the House GOP agenda this year." The article cited members such as Rep. Nick LaLota (R-NY) as saying a higher SALT deduction would stem the flight away from high-tax states toward places like Florida and the Carolinas, though Ways and Means member (and Republican Study Committee Chairman) Kevin Hern (R-OK) was cited as doubtful the votes would be there to undo the cap.

In addition to TCJA pre-cliffs, there are 2021/2022 tax extender provisions that could move in a tax package. An August 7 Bloomberg DTR report said, "US territories are warning tax-writers of the potential economic consequences they would incur if Congress fails to extend temporary tax perks that boost their coffers… More than a dozen tax extenders expired by 2022 and have yet to be revived." Absent a major deal on government funding, there may not be a vehicle for these tax provisions.

2021 extenders
Expanded Child Tax Credit, including monthly payments
Treatment of premiums for qualified mortgage insurance as qualified residence interest
Credit for health insurance costs (health coverage tax credit)
Credit for two-wheeled plug-in electric vehicles
Credit for production of Indian coal
Indian employment credit
Mine rescue team training credit
Three-year recovery period for racehorses
Accelerated depreciation for business property on an Indian reservation
Charitable contributions deductible by non-itemizers
Temporary increase in limit on cover over of rum excise tax revenues
American Samoa economic development credit
2022 extenders
Railroad track maintenance credit (expiration of 50% rate)

International tax

With the impasse on expired provisions, much of the focus in Congress in the near term is on international tax issues. House Ways and Means Committee Chairman Jason Smith (R-MO) led a group of Committee Republican members over Labor Day weekend to Europe, including Paris and Germany, to discuss the OECD global tax agreement with OECD and government officials. Chairman Smith and other Republicans have been critical of the OECD's two-pillar effort on global tax generally and have been particularly focused on the Biden administration's negotiation objectives on both the Pillar One rules (relating to profit allocation and new taxing rights under Amount A) and the administrative guidance for the Pillar Two rules (implementing a global minimum tax).

On Pillar One, the OECD has announced that a multilateral convention (MLC) should be completed over the next few months and then will be open to signature by participating countries. House and Senate Republican tax writers have pushed the Treasury Department to provide data on the impact such an agreement will have on US companies and federal revenues and have been frustrated that Treasury has not come forward with that information. This throws into question whether Congress will ever approve the MLC.

On Pillar Two, House Republicans most recently expressed dissatisfaction with the OECD's July release of administrative guidance. The July OECD guidance delayed application of the Under Taxed Profits Rule (UTPR) on the US profits of US multinational enterprises until 2026. Even with this transitional safe harbor on the UTPR, which had been a particular target, several Ways & Means Republicans subsequently sent letters to foreign embassies warning against adopting the UTPR, which, they said, "violates international tax norms." It seems a key objective for Chairman Smith is to have more of a say over how the Pillar Two rules work, and that means reopening OECD negotiations that have been completed for several years on important aspects of the rules that were agreed to in December 2021 when the Model Rules were released. One of the GOP tactics has been to threaten retaliation against countries that adopt the UTPR. While such retaliatory measures can't move forward unless Republicans control Congress, the warning is clear that the OECD and the Inclusive Framework countries participating in Pillar Two need to back away from enacting UTPR legislation. Chairman Smith, joined by every Republican on the Committee, in May introduced the Defending American Jobs and Investment Act aimed at discouraging countries from adopting the UTPR.

The bill would increase taxes on the US businesses of companies headquartered in countries that enact the UTPR and apply in the context of other taxes imposed on US businesses, if those taxes meet a set of criteria deeming them to be either extraterritorial or discriminatory in nature. The bill wasn't marked up with the rest of the Ways & Means tax package in June and is unlikely to be enacted in this Congress, but Republicans hope the introduction of the bill will encourage nations to reconsider introducing UTPRs in their own domestic legislation.

Additionally, Ways & Means member Rep. Ron Estes (R-KS), who has been vocal on global tax issues, in July introduced a bill to amend the Base-Erosion and Anti-Abuse tax (BEAT) calculation for specified Foreign-Owned Extraterritorial Tax Regime Entities, as another reciprocal tax measure for countries that target the US under the OECD-led agreement.

All this activity is happening as policy makers and companies look to 2025, when many of the provisions of the TCJA expire or become more onerous, as the next real opportunity to draft legislation that would better integrate US international tax rules and the Pillar Two global minimum tax rules. The Biden administration believes congressional action would be necessary to bring the global intangible low-taxed income (GILTI) regime into compliance with the Pillar Two minimum tax rules, raising the rate to 15% and making the calculation country-by-country rather than measured on an aggregated basis. Republicans have been critical of these proposals, which were included in the House-passed Build Back Better Act (BBBA) in 2021. Democrats are unlikely to support the various UTPR-focused retaliatory bills put forth by House Republicans and tend to support the tightening of GILTI backed by the Administration. However, House Ways and Means Committee Democrats also included favorable changes to GILTI in the BBBA that generally have the support of the business community.

Meanwhile, work continues at the OECD and among the Inclusive Framework countries. A July Outcome Statement cited significant progress, but not final agreement, on Pillar One and the new taxing right under Amount A and said that once a "small number of specific items are resolved" they will deliver a final Multilateral Convention (MLC), with a target for countries to sign the agreement by the end of the year. The Outcome Statement noted, on Amount A, that the Inclusive Framework has delivered text of an MLC (with a few unidentified open items).

In an August interview with the Bloomberg DTR, Manal Corwin, director of the OECD's Center for Tax Policy and Administration, said concerns over withholding taxes and other technical issues were being sorted out and the expectation would be that Pillar One issues could be resolved early in the fall. "There are a small number of discrete technical points that involve a few jurisdictions, and when those are resolved, that will put us in a position to then finalize the text of the MLC," Corwin said. She said in the report that the next step in the Amount A treaty process before it's made public is a "fair amount of clean-up work," including preparing translations of the document before signature. As the report noted, ratification of the treaty by the US is necessary and, currently, doubtful given that a two-thirds majority is required in the Senate and Republicans have been consistently skeptical of the project.

During the July Ways & Means subcommittee hearing that aired many Republican concerns about the OECD-led project, Democrats emphasized that Pillar Two of the agreement implementing a global minimum tax would proceed – and US companies would be affected – with or without US approval. Subcommittee Ranking Member Mike Thompson (D-CA) asserted that the OECD is going to forge ahead, and the US cannot put its head in the sand and pretend this isn't happening. Asked by Rep. John Larson (D-CT) whether Pillar Two would go away as a result of inaction by the US, Deputy Assistant Treasury Secretary for International Tax Affairs Michael Plowgian said no: South Korea and Japan have already taken steps to implement Pillar Two; all EU states are obligated to implement Pillar Two this year under the EU directive; and the UK, Vietnam, Canada, Australia are all moving forward.

Finally, as countries enact legislation to implement Pillar Two starting next year, the OECD continues to work on administrative guidance to clarify key aspects of the Model Rules. Two separate packages of additional guidance have been released this year and, in the fall, delegates will work with OECD staff on the next priority guidance package to be released later this year, a process that likely will continue for several more years.

US-Taiwan tax legislation

A September Senate Finance Committee markup of US-Taiwan tax legislation has been announced by Chairman Ron Wyden (D-OR) and Ranking Member Mike Crapo (R-ID).

This follows the release of a July 12 discussion draft with Ways & Means leaders that would subject interest, dividends and royalties to a reduced 10% withholding rate. A release announcing the draft, in which Wyden and Crapo were joined by Ways & Means Chairman Smith and Ranking Member Richard Neal (D-MA), said, "Among other benefits, the bill would significantly reduce withholding taxes on dividends, interest, and royalties paid on these cross-border investments, mitigate barriers for smaller businesses to make those investments, reduce complexity for dual residents, and unlock opportunity for deepening our economic cooperation with Taiwan."

Meanwhile, the Senate Foreign Relations Committee approved July 13 the Taiwan Tax Agreement Act (S. 1457) that would authorize the President to negotiate and enter into a tax agreement through the American Institute in Taiwan (AIT, which functionally serves as the US embassy in Taiwan because the US takes no position on Taiwan's sovereignty and thus cannot pursue a traditional tax treaty). A press release from sponsors of the bill – Chairman Bob Menendez (D-NJ), Ranking Member Jim Risch (R-ID), and Senators Chris Van Hollen (D-MD) and Mitt Romney (R-UT) – said: "This bill facilitates investment between the United States and Taiwan in key strategic industries such as semiconductors. This will make it easier for businesses in the United States and Taiwan to avoid double taxation while also protecting against tax evasion. Given Taiwan's unique status, the United States and Taiwan cannot enter into a 'tax treaty,' but this bill comes as close as possible by laying the groundwork for an agreement with the key features of a tax treaty." The tax-writing and Foreign Relations Committees proposals aren't necessarily mutually exclusive and the outlook for the issue is unclear.

Senator Rand Paul (R-KY), a longtime critic of tax treaties over privacy concerns and the lone vote against the Taiwan bill at Foreign Relations, plans to block full Senate consideration of any Taiwan tax legislation, it was reported August 8. "While I support the goals of the tax treaties considered by the Senate in recent years, they contain a provision encouraging bulk suspicion-less searches of Americans' financial account information," Paul said in Accounting Today.

IRA implementation

The Administration's implementation of IRA green energy and other tax provisions continues.

In some of the latest guidance, IRS and Treasury August 29 issued proposed regulations on satisfying the prevailing wage and apprenticeship requirements established by the IRA to qualify for increased federal income tax credits and deductions for eligible clean energy projects. The proposed rules also address how taxpayers can cure their initial failure to comply with the new requirements.

Looking ahead, Bloomberg reported August 7 Biden climate adviser John Podesta as saying the administration could phase in some requirements for the new Section 45V hydrogen tax credit "to get the industry going" and "to create the cost reductions that we need for electrolyzers but do it in a way that puts us on a path to having the highest standards for green hydrogen going forward during the course of this decade." The regulations were expected in August, but Politico reported that the regulations may not be published until the fall.

Some regulatory projects are still awaited. An August 14 Washington Post story on the corporate alternative minimum tax (CAMT) enacted under the IRA said, "Nearly a year after its enactment, the U.S. government still has not yet fully implemented the new [CAMT], as the Biden administration races to finalize a complex and critical element of Democrats' broader economic agenda." Further, "In comments filed with the agency this spring, a wide array of corporate lobbyists … pushed for permissive rules that mirror many of the features of the current tax system. They essentially sought permission to use a wider array of business expenses as offsets to their income and called on the government not to expose some of their investments to new taxes."

Nominations

The Senate Finance Committee may hold a nomination hearing for IRS Chief Counsel nominee Marjorie Rollinson as soon as September. Rollinson was formerly at EY and has also served as Associate Chief Counsel International. A Finance Committee spokesman was quoted as saying the nomination is a priority, but the hearing date hasn't been set and vetting continues.

Cryptocurrency

September 8 is when comments are due to the Senate Finance Committee on "uncertainties surrounding the tax treatment of digital assets," including issues related to cryptocurrency.

Trade

Focus on a deal with Pacific nations

The IRA and its implementation figures into the trade outlook, as the subsidies for clean energy and domestic content requirements are seen as a US-focused shift in manufacturing and the supply chain as trade dynamics have changed with world events and the pandemic. This is a widely noted departure from previous administrations (prior to former President Trump) pursuing trade moves focused on globalization and free trade agreements.

During trade hearings in congressional tax-writing committees this year, Republicans lamented the Biden administration's seeming lack of interest in pursuing an aggressive trade agenda. In March, at the Ways and Means Committee, Rep. Hern said the Administration's "timid approach" has seen them take no steps toward renewing Trade Promotion Authority (TPA) that has expired. He said it would be a mistake for the Administration to turn a blind eye to TPA. US Trade Representative Ambassador Katherine Tai said not every Free Trade Agreement has been processed under TPA. Rep. Greg Murphy (R-NC) told Tai she may be too nice for the job and "this administration above you has just shown no interest in trade," in remarks that generated coverage in the mainstream media.

Members of both parties also have aired concerns, during both House and Senate hearings, about planned critical mineral and battery component trade agreements with the EU and Japan that the Administration says won't need congressional approval (because they don't involve tariffs).

Both Ways and Means Chairman Smith and Finance Chairman Wyden have made statements asserting the constitutional role of Congress in approving trade agreements.

Republican members suggested they wanted to replicate the US-Mexico-Canada Agreement trade deal in the Indo-Pacific region, but what is lacking is assertiveness and leadership on trade from the current Administration. The US has launched the Indo-Pacific Economic Framework for Prosperity (IPEF) with other nations and announced progress on the effort this spring, though the focus on supply chain and elements other than tariff and market access changes have been described as less ambitious than a traditional trade agreement.

A July 16 Wall Street Journal editorial said the lack of US involvement in the successor pact to the Trans-Pacific Partnership that the previous administration walked away from "leaves the U.S. on the sidelines as the rest of the world negotiates new trade deals." There have also been criticisms, including by Democratic members of Congress, about the Administration continuing some of the tariff policies that it inherited from its predecessor.

An August 27 Post story said, "Left out of the president's strategy, to the irritation of many business groups, have been traditional trade deals, which gave American companies greater access to foreign markets in return for allowing producers in those countries to sell more goods in the United States. The White House says the old approach cost many American factory workers their jobs." The story further said, "Past the midway mark of his first term, Biden on trade in some ways resembles his Republican predecessor more than the Democrats who preceded him in the White House… Biden emphasizes making supply chains more resilient against unexpected shocks such as disease, extreme weather or geopolitics, even if it adds cost.
But it is the free spending on subsidies for domestic semiconductor manufacturing, clean energy programs and public infrastructure that really distinguishes Biden from other presidents of the post-Cold War era – and that has been the most controversial."

Health Care Packages Emerge

As part of the appropriations discussions Congress must also address a slate of health care programs set to expire on October 1 and leadership is considering a few packages that have advanced out of House and Senate committees to serve as payfors for extending those programs. In addition, both Republicans and Democrats have several outstanding health care policy priorities that they will be pushing to include in a final FY24 budget package. But with House conservatives pushing for even lower spending levels than was passed in the debt limit bill, proposals that do not have bipartisan support and do not generate savings will face a steep hill for inclusion.

Expiring health care programs and potential payfors

One of the largest health care items set to expire on October 1 is the Pandemic and All-Hazards Preparedness Act (PAHPA). Both the House Energy and Commerce (E&C) Committee and the Senate HELP Committee have passed their own versions of the reauthorization, but only the Senate HELP Committee advanced a bipartisan bill. E&C Democrats voted against the committee's bill over concerns that it lacks funding increases and improvements to public health data and fails to address the medical supply chain and ongoing drug shortage crisis, which are included in the Senate HELP version. These differences will need to be reconciled as House Republicans have expressed a desire to address the drug supply chain issues separately.

Similar partisan debate emerged during E&C’s passage of a bill to reauthorize funding for Children’s Hospital Graduate Medical Education (GME), which includes a Republican-supported provision to ban certain gender-affirming care procedures from being performed at GME-supported Children’s Hospitals that will need to be addressed before final passage.

Further, the Senate HELP Committee before the August recess delayed consideration of a reauthorization bill for community health centers. At the time of the delay, Chairman Bernie Sanders (I-VT) said he planned to hold a new markup on a bipartisan bill when the Senate reconvenes in September.

Other health care policies set to expire at the end of FY23 that still need to be addressed include:

- Medicaid Disproportionate Share Hospital (DHS) reimbursement cuts
- Community Mental Health Services Demonstration Program
- Independence at Home Medical Practice Demonstration Program
- Quality Measure Endorsement, Input, and Selection funding
- Outreach and Assistance for Low-Income Programs
- Medicare Work Geographic Index Floor
- 1% Medicare add-on payment for Home Health
- Blended payment rates DMEPOS in certain non-competitive bid areas.

While Congress is expected to extend most of these policies beyond FY23, doing so is costly and leadership is eyeing a few offsets to generate the needed revenue.

Pharmacy benefit manager reform

One policy priority that is bicamercal, bipartisan and generates savings that could be used to offset the cost of some of the above health care programs is pharmacy benefit manager (PBM) reform. To date, several committees of jurisdiction have advanced PBM legislation in the hopes of being able to agree on a package of provisions that will ride along with a final budget package, and Senate Majority Leader Schumer recently said he wanted to see a PBM bill passed by the end of the year.

The House and Senate committee-passed bills vary widely in scope but overall, four key themes have emerged: Transparency and reporting, prohibitions on compensation and practices, pharmacy- and consumer-focused provisions, and enforcement and penalties.

Committee-approved PBM bills					
	Market	Transparency and reporting provisions	Prohibitions on compensation and practices	Pharmacy- and consumer-focused provisions	Enforcement and penalties
Senate committee-approved bills					
Pharmacy Benefit Manager Transparency Act (S. 127)	All	Yes	Yes	No	Yes
Pharmacy Benefit Manager Reform Act (S. 1339)	Group, individual health plans	Yes	Yes	No	Yes
Modernizing and Ensuring PBM Accountability (S. _)	Medicare Part D, Medicaid	Yes	Yes	Yes	Yes
House committee-approved bills					
PATIENT Act of 2023 (H.R. 3561)	Group health plans, Part D, Medicaid	Yes	Yes	Yes	Yes
Transparency in Coverage Act of 2023 (H.R. 4507)	Group health plans	Yes	Yes	No	Yes
Health Data Access, Transparency, and Affordability Act or the ‘‘Health DATA Act’’ (H.R. 4527)	Self-funded employer plans	Yes	No	No	Yes
Hidden Fee Disclosure Act (H.R. 4508)	Self-funded employer plans	Yes	No	No	No
The Heath Care Transparency Act of 2023 (H.R. 4822)	Group health plans, Part D	Yes	No	Yes	No

The strong bipartisan and bicameral support for addressing PBMs suggests some of these provisions could make their way into a final package, but currently, it is unclear how broad the package will be as the PBM industry has been an effective force in the past and strongly opposes reforms. That said, there is significant overlap among the transparency and reporting pieces included in the committee-passed bills with several including enhanced reporting to plan sponsors and federal entities to pull back the veil on some opaque PBM business practices and get a better sense of how money flows through PBMs.

Site-neutral payment expansions

Another emerging policy that is bipartisan, bicameral and generates savings is intended to realign outpatient payments in the Medicare program. Currently, Medicare pays more when care is provided at a hospital-owned outpatient facility than when it is provided by a physician-owned facility. Congress first sought to address these payment misalignments in the Bipartisan Budget Act of 2015 (BBA), and now, a number of bills have emerged to build on the original site-neutral payment policy in two key ways:

1. Requiring hospitals to obtain and use separate identifying provider numbers on their outpatient departments and for billing purposes; and
2. Requiring Medicare to pay the same amount for certain outpatient care regardless of where the care is provided.

The SITE Act (S. 1869) is the leading bill in the Senate that includes both policies, and a number of competing bills have been introduced in the House with three advancing out of committee. The Senate bill, which has not yet been marked up, would generate more robust savings by sunsetting exceptions to the BBA's site-neutral payment requirements, while the House committee-advanced bills are limited to applying site-neutral payments to outpatient drug administration services or cancer care services.

The hospital industry strongly opposes site-neutral payments and is pushing back on the bills, warning that many hospitals continue to face financial headwinds coming out of the COVID-19 public health emergency and that these bills would jeopardize needed revenue streams.

Legislation addressing disparities in payments at HOPDs		
Bills	Site-neutral payment policies	Honest billing policies
SITE Act (S 1869) *Introduced, referred to Senate Finance Committee*	Beginning 2023, sunsets exceptions to the BBA's site-neutral requirements; In 2025, reduce by 30% payment amount for applicable dedicated EDs; Covers off-campus EDs located 6 or fewer miles from another hospital, CAH, REH.	Beginning Jan. 1, 2025, each off-campus OPD owned by a Medicare hospital must be assigned a unique health identifier (UHI) to be included in submitted claims form.
PATIENT Act of 2023 (HR 3561), as amended *Ordered to be reported, E&C Committee*	Beginning 2025, phases in over four years site-neutral payment for drug administration services in off-campus OPDs, paid under the applicable payment system.	Beginning Jan. 1, 2026, would require Medicare hospitals to include a separate identification number for off-campus outpatient departments.
Health Care Price Transparency Act of 2023 (H.R. 4822) *Ordered to be reported, W&M Committee*	Beginning 2025, phases in over four years site-neutral payment for drug administration services in off-campus OPDs. One year delay for providers in rural areas or health professional shortage areas.	Beginning Jan. 1, 2026, would require Medicare hospitals to include a separate identification number for off-campus outpatient departments.
FAIR Act (HR 3417) *Introduced, referred to E&C Health Subcommittee*		Beginning Jan. 1, 2026, would require Medicare hospitals to include a separate identification number for off-campus outpatient departments.
Preventing Hospital Overbilling of Medicare Act (HR 2863) *Introduced, referred to E&C Health Subcommittee*	Beginning in 2023, sunsets exceptions to the 2015's Bipartisan Budget Act site-neutral payment requirements; Removes site-neutral exception for off-campus EDs starting 1/1/24.	Beginning Jan. 1, 2025, each off-campus OPD owned by a Medicare hospital must be assigned a unique health identifier (UHI) to be included in submitted claims form.
The Medicare Patient Access to Cancer Treatment Act (HR 4473) *Introduced, referred to E&C and W&M*	Beginning in 2025, expands site-neutral payments to cancer care services furnished in off-campus hospital outpatient departments.	
Transparency in Billing Act (HR 4509) *Ordered to be reported, E&W*		Prohibits group health plan or health insurance issuer offering group health coverage from paying a claim for items and services furnished at an off-campus OPD submitted by a hospital unless the claim includes a separate UHI for the ODP.
To amend title XVIII of the Social Security Act (HR 3237) *Introduced, referred to E&C Health Subcommittee*		Requires off-campus OPDs to include a unique identifier on claims for items and services.

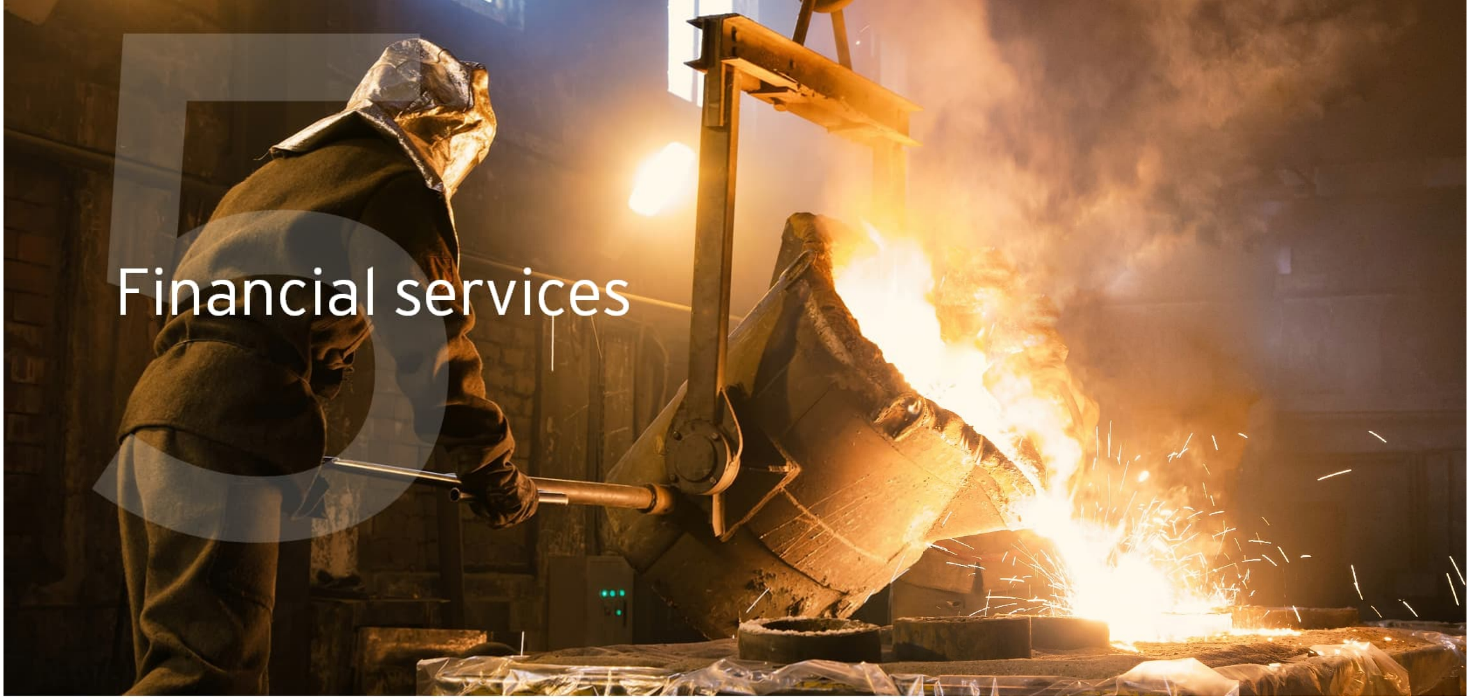
Other health care policy priorities

Both Republicans and Democrats have a list of health care priorities that they will be advocating for inclusion in a final budget package, but as with everything else, it will come down to the cost and available revenue.

In the final weeks, committees with health care jurisdiction will continue to markup priority health care legislation in hopes of creating momentum for year-end legislation. For example, the House Ways and Means Committee is expected to markup legislation that would expand coverage options, including additional flexibilities for tax-preferred savings accounts and association health plans, and House committees also have advanced bipartisan legislation to codify and strengthen provider and insurer price transparency rules. Further, there is bipartisan support in the Senate to do more to address rising drug prices by addressing drugmaker patent abuses or extending the Inflation Reduction Act’s insulin out-of-pocket cost cap to the commercial market and to address the FY24 Medicare Physician Fee Schedule payment cut, which comes with a larger price tag.

Next steps

The need to extend expiring health care programs could give momentum to some of the larger payfors like PBM reform and site-neutral payment reform and there appears to be some appetite to at least ameliorate the FY24 Medicare Physician Fee Schedule payment cut. But with budget a key issue for House conservatives there may be limited funding to tackle other health care priorities by the end of the year, such as prior authorization, telehealth, and hospital at home. Instead, we could see Congress push those issues, which have longer runways before expiring, into 2024 when they will continue conversations around AI, physician payment, and coverage of innovative drugs such as a new class of drugs approved to treat Alzheimer’s disease.



Response to bank failures

In a divided Congress, one of the few areas in the financial services arena where Democrats and Republicans could agree on something is a legislative response to the March crisis in which California's Silicon Valley Bank (SVB) and First Republic Bank and New York's Signature Bank rapidly collapsed after depositors raced to withdraw their assets. The abrupt failures and rescue of three regional-sized banks raised questions about the quality of capital that U.S. mid-size banks hold and their exposure to crypto market risks, as well as the Federal Reserve's supervision of SVB leading up to its collapse. The crisis has played into debates over increasing deposit insurance, as well as recent proposals by the Fed and the FDIC to strengthen capital and resolution rules for larger banks -- starting with banks with at least $100 billion in assets (see below).

The best chance for a legislative compromise may be the Senate Banking Committee's bipartisan bill penalizing executives of failed banks. The RECOUP Act (S. 2190), sponsored by Chairman Sherrod Brown (D-OH) and Ranking Member Tim Scott (R-SC), would empower the FDIC to recoup bonuses and proceeds from stock sales that senior executives got in the two years before a bank's failure. Regulators would also have authority to remove senior executives who show misconduct in oversight and ban them from the industry. Executives who "recklessly" violated the law or engaged in "unsafe and unsound practices" could face penalties up to $3 million. In the first legislative markup it had held since 2019, the Banking Committee approved the bill by a vote of 21-2 on June 21, with nine Republicans in support.

An amendment with language from Ranking Member Scott required the FDIC to determine that no other acquisition offers exist before invoking its emergency powers to broker an interstate sale of a failing bank. The strong bipartisan vote means Senate Majority Leader Schumer likely will make time on the floor for the bill.

A big Senate vote would create pressure for the House to act. But some Republicans, such as Senators Thom Tillis (NC) and Tommy Tuberville (AL), have criticized the Senate clawbacks bill for giving regulators too much new authority. In August, a spokeswoman for the House Financial Services Committee's majority told reporters that in terms of responding to the bank failures, the committee was focused more on "addressing… the lack of transparency and accountability surrounding regulators' decision-making in crisis situations," pointing to the committee's May 24 party-line approval of Rep. Andy Barr's (R-KY) "Increasing Financial Regulatory Accountability and Transparency Act" (HR 3556). That bill would expand reporting requirements and "enhance transparency" for agencies like the FDIC, the Financial Stability Oversight Council (FSOC) and the Fed's emergency lending authorities. The bill also requires the heads of the FDIC, the Office of the Comptroller of the Currency (OCC) and the National Credit Union Administration to testify before both banking committees semiannually.

Post-SVB Rules on Bank Capital, Resolution

House and Senate Republicans have pushed back on a sweeping proposal unveiled in July by Michael Barr, the Fed's vice chair of supervision, to increase capital requirements for most larger banks, including the previously shielded group of regional banks with $100 billion to $250 billion in assets that included SVB, Signature and First Republic. The Fed already has statutory authority to change capital rules, and its move comes not just in the wake of the bank failures but as part of the long-awaited "endgame" for implementing bank capital standards under the international Basel III framework. The Barr proposal also includes modest changes to the stress testing regime. Barr has said the changes would bring about an average 2% increase in capital at affected banks, while the Wall Street Journal estimated that capital levels at the largest banks would increase by 20%. The Fed will now guide its proposal through a public comment process that could take a year or longer.

Meanwhile, in late August the FDIC, the Fed and the OCC proposed other changes aimed at making banks more resilient and simpler to resolve when they fail, including requiring banks with over $100 billion in assets to issue a certain amount of long-term debt as a cushion against losses. The FDIC proposal would also require banks with at least $50 billion in assets to regularly submit detailed “living wills” to regulators outlining how they could be safely dissolved or operated by the government if they collapse. That obligation has previously been limited to much larger banks.

Cryptocurrency legislation

House Financial Services Committee Republicans worked to get two major crypto regulation bills out of the committee before the August recess, and those bills await a floor vote. But the question of whether and how to create a new regulatory framework for digital assets appears to have divided Republicans from Democrats, as well as the House and Senate, with the Senate Banking Committee stuck somewhere near Square One on the issue as the House GOP charges forward. On the House side, this year the chairmen of the Financial Services and Agriculture committees worked in rare coordination to draft and approve a bill laying out a regulatory “market structure” for crypto assets, the “Financial Innovation and Technology for the 21st Century Act” (HR 4763). Among many other provisions, the bill would give the Commodity Futures Trading Commission (CFTC) power to regulate crypto spot markets and most digital assets; limit the SEC’s oversight to certain digital assets that don’t operate on a decentralized network; and require crypto exchanges to comply with numerous rules on disclosure, recordkeeping, customer funds and risk management. The bill attracted support from six Democrats at the July 26 markup, but Ranking Member Maxine Waters (D-CA) and other senior Democrats – with the notable exception of Jim Himes (D-CT) – have stood behind SEC Chairman Gary Gensler’s assertion that his agency should retain the authority over many crypto assets that the bill gives to the CFTC.

At the same markup, a separate GOP bill devoted to regulation of stablecoins, the “Clarity for Payment Stablecoins Act” (HR 4766), caused an uproar among Democrats who accused the majority of abandoning bipartisan work on stablecoins from the previous Congress and leaving them little time to prepare amendments. Democrats first walked out of the markup session, then used parliamentary tactics to delay it. But the bill eventually was adopted 34-16, with support from five Democrats.

Under the bill, payment stablecoins, whose value is pegged to a fiat currency like the dollar, would not be treated as either securities or commodities, and could be approved by either federal or state regulators. A stablecoin would have to be backed by liquid reserves and comply with new capital and liquidity rules issued by federal agencies. But Democrats objected to language allowing state regulators to license coin issuers, predicting a rush to states with the most lax rules. They said the Fed and Treasury opposed this provision, and Waters warned that the bill would allow Amazon, Walmart and Facebook to issue their own stablecoins and essentially become banks. Chairman Patrick McHenry (R-NC) blamed the White House's "unwillingness to compromise" for the breakdown in bipartisan talks.

Sen. Brown remains a skeptic

Meanwhile, on the Senate side, Banking Committee Chairman Brown has expressed skepticism about whether a new regulatory scheme for crypto assets is even necessary, and often points to crypto's use by Russians, black marketeers, drug traffickers and other bad actors. While Banking Committee member Sen. Cynthia Lummis (R-WY) has paired with Sen. Kirsten Gillibrand (D-NY) to revise their comprehensive crypto regulation bill, Brown has shown little interest in moving that bill or one of his own. Instead, the only bill to gain some traction at the committee is a bipartisan effort (S. 2669) focused on bringing crypto trading into compliance with anti-money-laundering (AML) rules, sponsored by Sens. Elizabeth Warren (D-MA), Roger Marshall (R-KS), Joe Manchin (D-WV) and Lindsey Graham (R-SC). Among other features, that bill would require crypto market players like "digital asset wallet providers, miners, validators, and other network participants" to comply with the same Bank Secrecy Act know-your-customer rules that apply to banks. The bill is broadly opposed by the crypto industry. The Senate's focus on crypto's AML risks was evident in July as the Senate debated the must-pass defense authorization bill (NDAA, S. 2226), when Sens. Warren, Lummis and Marshall succeeded in attaching an amendment requiring regulators to adopt examination standards to combat crypto-based money laundering and sanctions evasion. The Senate's NDAA bill must now be reconciled with the House-passed version.

Cannabis banking

The SAFE Banking Act (S. 1323), a bill creating a safe harbor from federal prosecution for banks that provide financial services to cannabis businesses, once again made it onto Senate Majority Leader Schumer's short list of priorities for the Senate floor in the "Dear Colleague" letter Schumer sent Sept. 1. Chairman Brown has said he wants to mark up the bill in the Banking Committee, but Schumer and Brown reportedly want lead Republican sponsor Sen. Steve Daines (R-MT) to recruit more Republican cosponsors for the bill before moving it to the floor. (Currently eight Republican senators are cosponsoring.) That task became more difficult after Democrats said they want to expand the bill to address expungements for nonviolent cannabis-related crimes. Little progress on the bill was reported this summer, but momentum might have shifted at the end of August when the Department of Health and Human Services said it was formally recommending that marijuana no longer be listed as a Schedule 1 narcotic, a decision that will be left to the Drug Enforcement Administration (DEA).

ESG Bills

House Financial Services Committee Republicans have made attacks on "ESG" investing – funds that focus on environmental, social and governance concerns – a priority as they press the argument that "financial firms and institutional investors should be solely focused on delivering maximum financial returns to investors," as Rep. Barr, who chairs the Financial Institutions Subcommittee, wrote in an op-ed last year. After a cycle of hearings on the issue, the committee approved four bills at its July markup targeting ESG practices, which generally would invalidate certain SEC guidance, ensure companies only have to disclose material information, and reduce the SEC's regulatory ambit. It remains an open question whether Republicans, with a narrow majority, will count enough votes on their side to bring those bills to the House floor this fall.

Gensler Hearings

SEC Chairman Gary Gensler is scheduled to appear before Congress twice in September: on Sept. 12 at the Senate Banking Committee and Sept. 27 at the House Financial Services Committee. The hearings will provide Republicans another opportunity to vent about the SEC's aggressive rulemaking pace since 2021, including a proposal (expected to be finalized in October) requiring public companies to disclose information about material risks posed by greenhouse gases and climate change to their business; a proposal requiring funds with "ESG" in their name to have certain attributes; rules on equity market structure and money market funds; and a rule finalized on August 23 requiring private funds like hedge funds, large private endowments and private equity funds to notify investors every quarter about their fees, expenses and performance. Republicans are also certain to castigate Gensler for what they call the SEC's policy of "regulation by enforcement" in crypto markets, especially after the SEC recently lost court cases in which judges questioned the agency's authority to regulate crypto products.

In what is shaping up to be a busy month, Financial Services Committee staff told reporters that the committee will also hold:

- a hearing Sept. 13 on the Committee on Foreign Investment in the U.S. (CFIUS), with a markup later that day of a bill repealing the CFPB's data collection rule for small businesses;
- a subcommittee hearing Sept. 14 on the Fed's bank capital proposal and the Basel III "endgame," with another hearing that day on central bank digital currencies;
- a Republican member retreat on Sept. 18;
- a Capital Markets Subcommittee hearing Sept. 19 on the SEC's Division of Investment Management, with another hearing that day on bank stress tests;
- a rescheduled markup on Sept. 20 of national security legislation.

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