

August 13, 2021

## Washington Update

### This Week In Congress

**Senate** – The Senate passed the Infrastructure Investment & Jobs Act ([H.R. 3684](#)), a bipartisan infrastructure package, by a vote of 69-30. Following a lengthy series of amendment votes, the Senate adopted a budget resolution ([S. Con. Res. 14](#)), which begins the process of moving forward with Democrats’ \$3.5 trillion reconciliation package. The Senate confirmed Gil Cisneros to be Under Secretary of Defense, Damon Smith to be General Counsel at the Department of Housing and Urban Development, Kenneth Salazar to be Ambassador to Mexico, Jennifer Moffitt to be Under Secretary of Agriculture, Andrew Light to be Assistant Secretary of Energy, Alejandra Castillo to be Assistant Secretary of Commerce, Jennifer Homendy to be Chair of the National Transportation Safety Board, and Taryn Mackenzie Williams to be Assistant Secretary of Labor.

**House** – The House was in recess and met in pro forma session.

### Next Week In Congress

**Senate** – The Senate will be in recess and meet in pro forma session. The Senate is scheduled to reconvene on September 13.

**House** – The House is scheduled to be in recess and meet in pro forma session. Majority Leader Hoyer (D-MD) announced that the House will be in session the week of August 23 to vote on the Senate-passed budget resolution and possibly the John Lewis Voting Rights Act ([H.R. 4](#)).

## TAX

### Senate Advances Bipartisan Infrastructure Package and Budget Resolution

#### *Key Points*

- *The Senate advanced both the bipartisan infrastructure package and the budget resolution, as amended, within the past week.*
- *The House is expected to return the week of August 23 to begin to work on both packages.*

Earlier this week, the Senate advanced the bipartisan infrastructure package by a vote of 69-30 with a number of notable Republicans voting in favor of the bill. The passage of this package, as amended, sends the bill to the House. Speaker Pelosi (D-CA) has vowed not to bring up the bill until the Senate acts on the \$3.5 trillion reconciliation bill sometime in the fall, however moderate House Democratic Members are suggesting they won’t move on the budget resolution unless the House first passes the

bipartisan infrastructure bill. So, we will have to see whether the House acts on the infrastructure the legislation when the House returns the week of August 23, 2021.

The Congressional Budget Office (CBO) estimated that over the 2021-2031 period, the bipartisan infrastructure bill would decrease direct spending by \$110 billion, increase revenues by \$50 billion, and increase discretionary spending by \$415 billion. On net, the legislation would add \$256 billion to projected deficits over that period, in part because the CBO did not score several of the offsets as already in the baseline or not scoreable under budget rules.

As a reminder, the budget offsets for the bipartisan infrastructure package include:

- \$205 billion from repurposing of certain unused COVID relief dollars
- Funding from recouping fraudulently paid benefits from enhanced federal unemployment insurance (UI) supplement
- \$49 billion from delaying Medicare Part D rebate rule
- \$53 billion from certain states returning unused enhanced federal UI supplement
- \$20 billion from sales of future spectrum auctions and \$67 billion from proceeds of the February 2021 c-band auction
- \$56 billion in economic growth resulting from a 33 percent return on investment in the legislation's long-term infrastructure projects
- \$28 billion from applying information reporting requirements to cryptocurrency (which was subject to much debate and potential changes, but the opportunity to change this was cut off)
- \$21 billion from extending fees on government sponsored enterprises (GSEs)
- \$13 billion from reinstating certain Superfund fees
- \$8.7 billion from the mandatory sequester
- \$6 billion from extending customs user fees
- \$6 billion in sales from the Strategic Petroleum Reserve
- \$3 billion in savings from reducing Medicare spending on discarded medications from large, single-use drug vials
- \$2.9 billion from extending available interest rate smoothing options for defined benefit pension plans.

Additionally, early Wednesday morning the Senate wrapped up a “vote-a-rama” to amend the \$3.5 trillion budget resolution put forward by Senate Democratic Leadership and advance the resolution to the House. The resolution was advanced by a party-line vote of 50-49 with Senate Rounds (R-SD) not voting because of a family medical emergency. The package includes reconciliation instructions that make room for any number of notable tax increases including tax hikes for corporations along with international tax increases – however exactly what policy will be proposed is determined by the tax-writing and other authorizing committees later in the process. The package was forwarded after a lengthy “vote-a-rama,” which allows amendments that often are political in nature but typically not binding. However, while

nonbinding, the budget amendments may signal where the Senate would go on the issue in the future. The non-binding tax-related amendments offered include:

#### ***Senate Budget Resolution Tax Amendments Adopted***

[Thune #3106](#), to preserve stepped-up basis for all family-owned businesses, farms, and ranches. 99-0.

[Hassan-Young #3278](#), to promote competitiveness and innovation by supporting the research and development tax credit. Voice vote.

[Wyden #3365](#), to protect taxpayer information. 50-49.

[Braun #3114](#), removing the prohibition on states and territories against lowering their taxes. 86-13.

[Fischer #3128](#), to means-test electric vehicle tax credits. 51-48.

[Young #3444](#), to prevent tax increases on people making less than \$400,000 per year. 98-1.

[Daines #3292](#), deficit neutral reserve fund against tax increases on small businesses. Voice vote.

[Kennedy #3753](#), deficit neutral reserve fund maintaining current law tax treatment of like-kind exchanges. Voice vote.

#### ***Senate Budget Resolution Tax Amendments Rejected***

[Cortez Masto #3317](#), to protect family-owned businesses, farms, and ranches, while ensuring the wealthy pay their fair share. 49-50.

[Crapo #3099](#), to prevent new IRS reporting requirements on everyday Americans. 49-50.

[Grassley #3251](#), to prevent changes to the State and Local Tax (SALT) deduction. 48-51.

[Wyden #3569](#), reserve fund relating to increasing the progressivity of the tax code. 47-51.

[Romney #3652](#), to prevent reconciliation legislation from including job-killing tax hikes. 49-50.

The passage of this budget resolution sets up a future reconciliation process. The House is expected to return the week of August 23, 2021, to begin work on the infrastructure package and the \$3.5 trillion budget. Based on comments from key Senate Democrats and some moderate House Democrats, the final reconciliation package enabled by this resolution may be smaller than \$3.5 trillion. When in the process that compression will occur remains less clear.

*For more information about tax issues you may [email](#) or call Christopher Hatcher at 202-659-8201. Josh Hansma contributed to this section.*

## **FINANCIAL SERVICES**

### **Senate Fails to Adopt Amendment to the Bipartisan Infrastructure Package Regarding Cryptocurrency Reporting**

#### *Key Point:*

- *Senators attempted to adopt an amendment to modify the cryptocurrency reporting requirements in the bill, but were unable to obtain unanimous consent.*

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On August 10, the Senate passed the Infrastructure Investment and Jobs Act (IIJA) ([H.R. 3684](#)), a bipartisan infrastructure package, by a vote of 69-30. Among other provisions to help pay for the cost of the legislation, the bill would raise an estimated \$28 billion from applying reporting requirements to cryptocurrency. A bipartisan group of senators, led by Senate Banking Committee Ranking Member Pat Toomey (R-PA) and Senator Cynthia Lummis (R-WY), raised concerns with the drafting of this provision, arguing that it was overly broad and could ensnare participants who lack the necessary information to report. The senators argued that this amendment would stifle innovation in the U.S. and push the cryptocurrency market overseas.

After initially working on competing amendments, Senators Toomey, Lummis, Mark Warner (D-VA), Kyrsten Sinema (D-AZ), and Rob Portman (R-OH) reached an agreement on a bipartisan amendment to modify the cryptocurrency reporting requirement.

However, attempts to adopt the bipartisan amendment on the Senate floor were blocked, with Senator Richard Shelby (R-AL) demanding that the amendment be tied to his separate amendment to provide an additional \$50 billion for the Department of Defense (DOD). Senator Bernie Sanders (I-VT) objected to a unanimous consent request to adopt the combined cryptocurrency/DOD amendment. Shelby objected to a unanimous consent request to adopt the cryptocurrency amendment on its own.

### **Senate Budget Resolution Includes \$332 Billion for the Senate Banking Committee**

*Key Point:*

- *The resolution directs the Senate Banking Committee to craft legislation focused largely on housing infrastructure.*

On August 11, the Senate approved a budget resolution ([S. Con. Res. 14](#)), which begins the process of moving forward with Democrats' \$3.5 trillion reconciliation package. The resolution provides instructions to relevant committees for the drafting of legislation. Notably, the resolution provides \$332 billion to the Senate Banking Committee, with a focus on housing. A [summary](#) released by Senate Democrats notes:

The Banking Committee receives an instruction of \$332 billion.

Creation and preservation of affordable housing by making historic investments in programs like the Housing Trust Fund, HOME, the Capital Magnet Fund, and rural housing

Improve housing affordability and equity by providing down payment assistance, rental assistance, and other homeownership initiatives

Community investment, development and revitalization through initiatives like Community Land Trusts, investments in CDBG, zoning, land use, and transit improvements and creating healthy and sustainable housing

Public Housing Capital Investments and Sustainability

## SEC Chairman Gensler Sends Letter to Senator Warren Calling for Legislation on Crypto Platforms

### Key Point:

- *Chairman Gensler urged Congress to pass legislation providing the SEC with greater authority to regulate crypto trading, lending, and DeFi platforms.*
- *House Financial Services Committee Ranking Member Patrick McHenry (R-NC) criticized Gensler's call for additional authorities as a "blatant power grab."*

On August 5, Securities and Exchange Commission (SEC) Chairman Gary Gensler sent a [letter](#) to Senator Elizabeth Warren (D-MA) in response to a question about the regulation of cryptocurrency platform. Gensler asserted, "Right now, I believe investors using these platforms are not adequately protected." The letter stated:

The world of crypto finance now has platforms where people can trade tokens and other venues where people can lend tokens. The American public is buying, selling, and lending crypto on these venues, both centralized and decentralized finance ("DeFi") platforms. I believe these various platforms not only can implicate the securities laws; some platforms can also implicate the commodities laws and the banking laws. This raises a number of issues related to protecting investors and consumers, guarding against illicit activity, and ensuring financial stability.

The letter added:

I believe we need additional authorities to prevent transactions, products, and platforms from falling between regulatory cracks. We also need more resources to protect investors in this growing and volatile sector.

In my view, the legislative priority should center on crypto trading, lending, and DeFi platforms. Regulators would benefit from additional plenary authority to write rules for and attach guardrails to crypto trading and lending.

The letter echoes an August 3 speech in which Gensler called on Congress to provide the SEC with additional authorities to regulate the cryptocurrency space.

House Financial Services Committee Ranking Member Patrick McHenry (R-NC) released a [statement](#) criticizing Gensler's letter, asserting:

Chairman Gensler's latest move to ask Congress for jurisdiction over non-securities exchanges is a blatant power grab that will hurt American innovation. Given the distinct nature of digital assets, policymakers must be thoughtful and deliberative in legislating in this space. That's why I introduced H.R. 1602, the

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Eliminate Barriers to Innovation Act, to bring regulatory certainty to market participants and regulators. We need smart policy, made through a transparent process, to ensure innovation and job creation continue in the U.S. We don't need another backroom deal between Gensler and Elizabeth Warren.

On August 4, Commodity Futures Trading Commission (CFTC) Commissioner Brian Quintenz tweeted, "Just so we're all clear here, the SEC has no authority over pure commodities or their trading venues, whether those commodities are wheat, gold, oil....or #crypto assets."

## SEC Approves Nasdaq Board Diversity Proposal

### Key Points:

- *The proposal requires issuers to disclose certain information about the diversity of their board.*
- *Commissioners Roisman and Peirce opposed the proposal.*

On August 6, the SEC approved a proposal from Nasdaq to require issuers to disclose certain information about the diversity of the company's board and to offer certain companies access to a complimentary board recruiting service. Chairman Gensler released a [statement](#) asserting that "These rules will allow investors to gain a better understanding of Nasdaq-listed companies' approach to board diversity, while ensuring that those companies have the flexibility to make decisions that best serve their shareholders." Commissioners Allison Herren Lee and Caroline Crenshaw also released a [joint statement](#) in support of the proposal.

Commissioner Elad Roisman released a [statement](#) indicating that while he supports the goal of the proposal, it did not meet legal obligations. He asserted "Regrettably, I do not believe that the Commission has fulfilled its obligations to find that this Proposal, which has delisting implications for companies, meets the legal standards that we are required to apply in evaluating rules proposed by self-regulatory organizations ("SROs")." Commissioner Hester Peirce issued a [statement](#) opposing the board diversity proposal, arguing that it: (1) failed to meet the burden of showing it is consistent with the Exchange Act; (2) does not protect investors; (3) harms market integrity; (4) is contrary to the public interest; and (5) conflicts with core constitutional principles.

## Joshua Frost Nominated to be Treasury Assistant Secretary for Financial Markets

### Key Point:

- *Frost has served at the Federal Reserve Bank of New York for the last 23 years.*

On August 10, the White House [announced](#) that President Biden intends to nominate Joshua Frost to serve as Assistant Secretary for Financial Markets at the Treasury Department. The position is subject to Senate confirmation. The White House released the following bio of Frost:

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Josh Frost has spent nearly 23 years at the Federal Reserve Bank of New York, most recently as the co-chair of the liquidity risk program for large bank supervision. He also oversaw the two Corporate Credit Facilities launched in response to the pandemic. Josh is currently on a detail assignment from the New York Fed to the U.S. Department of the Treasury to provide temporary assistance. Prior roles at the New York Fed included Director of Money Markets and Director of Treasury Markets, where he was responsible for the teams that launched the Secured Overnight Financing Rate (SOFR), and conducted auctions of debt on behalf of the U.S. Department of the Treasury.

## **FHFA Announces Inclusion of Rental Payment History in Fannie Mae's Underwriting Process**

On August 11, the Federal Housing Finance Agency (FHFA) [announced](#) that in order to “expand access to credit in a safe and sound manner,” Fannie Mae will consider rental payment history in its risk assessment processes. A press release notes:

With the update to Fannie Mae's systems, future borrowers will have the benefit of a positive rental payment history being included in an underwriting decision. There is no additional burden – either for the borrower or for the lender – to make use of this feature.

For more information about financial services issues you may email [Joel Oswald](#), [Mabilet Makonnen](#), or [Alex Barcham](#).

## **ENERGY & ENVIRONMENT**

### **Senate Budget Resolution Tees Up Consideration of Climate and Energy Proposals**

#### *Key Points:*

- *On Wednesday, the Senate voted on party lines to approve a budget resolution, which establishes the framework for the Democrats' health care, social spending, and climate legislation.*
- *The resolution tasks Senate committees with drafting parts of the legislative package to reduce U.S. greenhouse gas emissions.*
- *The House of Representatives is scheduled to reconvene and vote on the budget resolution on August 23.*

Early on August 11, the Senate, by a [50-49 vote](#), passed the Fiscal Year 2022 budget resolution ([S.Con.Res. 14](#)). The resolution includes instructions to Senate committees to report legislative language by September 15, 2021. The work product of each committee will be compiled into the “reconciliation” package that the Senate is expected to debate in the fall. The reconciliation bill will include a sprawling array of spending programs embodying a large portion of the Biden Administration’s legislative agenda.

As described in a [summary](#), the budget resolution directs Senate committees to draft significant energy and climate-related provisions to be included in the budget reconciliation package. It states that the reconciliation bill will put the United States “on track to meet President Biden’s 80% electricity and 50% economy-wide” greenhouse gas emissions reduction goals by 2030. The Senate Democrats state that the

reconciliation instructions to the Agriculture, Banking, Energy and Natural Resources, Environment and Public Works, Homeland Security and Governmental Affairs, and Indian Affairs committees:

- Establish “a new Clean Electricity Payment Program”;
- Authorize “clean energy, manufacturing, and transportation tax incentives and grants”;
- Impose “new polluter fees (methane and carbon imports)”;
- Authorize spending “in climate smart agriculture and forest management investments for farmers and rural communities”;
- Establish “coastal and ocean resiliency programs”;
- Invest in “drought, wildfire, and Interior Department” programs;
- Provide “new consumer rebates for home electrification and weatherization”;
- Prioritize “[e]nvironmental justice and climate resilience”; and
- Direct the electrification of federal vehicles and buildings.

In a letter to his colleagues, House Majority Leader Steny Hoyer (D-MD) said that the “the House will return to session on the evening of August 23 to consider [the Senate] budget resolution”.

## Upcoming Hearings and Events

### August 25

***Tribal Solar Development Webinar:*** The Department of Energy will host a [webinar](#) to “address regulatory challenges to tribal solar deployment”. The webinar is intended “to articulate key barriers to tribal solar and solar-plus-storage adoption at all scales and to ready stakeholders to implement options to address these challenges”.

### August 26

***Unconventional Engine-Fuel Efficiency:*** The Department of Energy will hold a [webinar](#) on “unconventional engine-fuel combinations [that] show the greatest promise for efficiency improvements beyond current light-duty, medium-duty, and heavy-duty technologies.” The webinar will examine “how changes to the composition and properties of future fuels could enable approaches such as multi-mode operation of light-duty spark-ignition gasoline engines and advanced compression ignition operation of medium-duty and heavy-duty engines.”

### September 7-9

***Hydrogen:*** Gulf Publishing will host the “First Element Conference: Shaping the Future of Hydrogen”. The [conference](#) “[a]ddresses the growing need for information on hydrogen markets, policy and regulation, innovative technologies and, trends.” The [agenda](#) of the virtual conference includes sessions on: “Blue Hydrogen Production”; “Natural Gas Pipelines as Hydrogen Networks”; “Global Hydrogen Demand”; and “Fuel Cell Technologies”.



**September 10**

***FERC Electric Transmission Incentives Workshop:*** The Federal Energy Regulatory Commission (FERC) will convene a [workshop](#) to “discuss certain performance-based ratemaking approaches, particularly shared savings, that may foster deployment of transmission technologies.”

**September 14**

***Energy and Ancillary Services:*** FERC will hold a [technical conference](#) on “energy and ancillary services markets administered by Regional Transmission Organizations and Independent System Operators”.

**September 20-25**

***National Clean Energy Week:*** National Clean Energy Week will hold its annual [Public Policy Symposium](#). The event will focus on “the world’s most pressing challenges in nuclear, solar, wind, wave, hydropower, geothermal, natural gas, biomass, carbon capture, storage, and waste-to-energy technologies.”

**September 23**

***FERC Open Meeting:*** FERC will hold its monthly [open meeting](#).

**September 30**

***Bulk Power System Reliability:*** FERC will hold a [technical conference](#) “to discuss policy issues related to the reliability of the Bulk-Power System.”

*For more information about energy and environment issues you may [email](#) or call Frank Vlossak at 202-659-8201. Jackson Notes contributed to this report. Updates on energy and environment issues are also available on [twitter](#).*

**HEALTH****Biden Calls on Congress to Lower Prescription Drug Prices***Key Points:*

- *On Thursday, President Biden delivered remarks about the Administration’s vision for reducing the cost of prescription drugs.*
- *Biden’s Build Back Better initiative includes a call on Congress to allow Medicare to negotiate drug prices, establish out-of-pocket caps for beneficiaries, accelerate research, and import prescription drugs from Canada.*

On August 12, President Joe Biden spoke on his Build Back Better agenda and its emphasis on reducing the cost of prescription drugs. Biden’s call to action for Congress includes allowing Medicare to negotiate prices for drugs under the program, establishing an out-of-pocket spending cap for prescription drugs for Medicare beneficiaries, allowing the importation of prescription drugs from Canada, and accelerating the development and uptake of generic and biosimilar drugs.

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In his speech, Biden identified widespread agreement among Americans that prescription drug prices are too high. He acknowledged groundbreaking research conducted by pharmaceutical companies but reported that Americans continue to pay more for prescription drugs than citizens of any other developed country, especially for drugs that treat cancer, multiple sclerosis, and rheumatoid arthritis.

To improve consumer access to generic drugs, Biden announced an instruction for the Food and Drug Administration (FDA) to accelerate the development and uptake of generics and biosimilar drugs that provide the same clinical benefit at substantially lower costs. He cited projections that this could save consumers \$54 billion over 10 years. He also ordered the FDA to work with states and Tribal governments on initiatives including drug importation from Canada.

Biden stated Medicare should be allowed to negotiate with drug companies for a fair price that balances affordable access for patients with profits for developers. The White House explained this price negotiation would apply only to a subset of expensive drugs that do not currently face any competition in the market, and Medicare negotiators would be provided a framework that outlines fair pricing for each drug. According to a White House fact sheet, the negotiation process would also include powerful incentives for drug companies to agree to a “reasonable price.”

The White House anticipates that these reforms would lower premiums and copays for millions of Americans, reduce the cost of insulin and arthritis drugs, cancer drugs, and other expensive medicines, and influence tens of billions of dollars in savings on employer-sponsored health insurance should Medicare-negotiated prices be made available to commercial payers. In addition to these reforms, Biden has called on the National Institutes of Health (NIH) to launch the Advanced Research Project Agency (ARPA-H), an agency that will be tasked with conducting research to identify treatments and cures for diseases like cancer and Alzheimer’s disease.

*For more information about health care issues you may [email](#) or call Nicole Ruzinski Bertsch or George Olsen at 202-659-8201. Elisabeth Danahare contributed to this section.*

## **TRADE**

### **Senate Finance Committee to Draft Rival Proposal to Carbon Import Fee**

#### *Key Point:*

- *The Finance Committee is working on a different carbon border adjustment measure for the reconciliation package than what Senator Chris Coons (D-DE) has proposed.*

The Senate Finance Committee disclosed it is developing a new carbon border adjustment measure for the reconciliation package, in contrast to Senator Chris Coons (D-DE)’s proposal. Senator Coons, Co-Chair of the Bipartisan Senate Climate Solutions Caucus, and Representative Scott Peters (D-CA) introduced a Carbon Border Tax Proposal last month to create a border adjustment measure on carbon-

intensive imports. The Coons-Peters levy would be labeled a “fee” and would adjust for regulatory costs faced by U.S. businesses, the emissions used in the production of a good, and other countries’ environmental regulations. Typically, a tariff would only be allowed under WTO rules if there was an internal (to the country) price for carbon as well. Whether the Coons-Peters or Senate Finance proposal can be sufficiently differentiated from a tariff to otherwise meet WTO rules will be a key potential challenge.

Either proposal could serve as legislative text to be added to the reconciliation bill. The [Democratic memo discussing the FY 2022 budget resolution](#) provided by the Senate Democratic Leadership explicitly referenced a “Carbon Polluter Import Fee” as an expected offset that the Finance Committee will produce, but the budget resolution itself never contains such policy – it only authorizes a budget number. The resolution gives respective committees until September 15 to submit proposals for the reconciliation legislation.

### **Non-Importers Seek Tariff Compensation in Section 301 Court Challenge**

#### *Key Point:*

- *An amicus brief has been filed as part of a larger case challenging the legality of Section 301 tariffs claiming non-importer companies were also damaged by the tariffs.*

An amicus brief filed by nearly 40 plaintiffs has been added to the case filed by more than 6,000 companies to challenge the tariffs on \$320 billion worth of Chinese goods imposed under Section 301 of the Trade Act of 1974. The new amicus brief argues that non-importer companies were also damaged by the tariffs, either by having to pay inflated prices for goods or having to cover the duty cost for importers of record.

The lead plaintiffs, mostly importers of record, are asking for a full refund of all duties paid as a result of the 301 tariffs. The amicus brief adds that non-importers are eligible for compensation and their position should be treated equally to the importer of record. The Court of International Trade (CIT) has yet to indicate when they will hear arguments or issue a decision. Stakeholders estimate oral arguments will happen in September or October, followed by a resolution possibly by next spring.

In the meantime, the administration and plaintiffs filed a joint status report on Monday, as ordered by CIT, last week to clarify how plaintiffs can apply for a temporary hold on liquidations from Customs and Border Protection (CBP). Sources estimate that the CBP is setting up administrative hurdles to liquidate more duties and issue fewer refunds if the plaintiffs are successful.

Along similar policy lines, a group of Republicans have urged the Biden Administration to work with the EU to prevent the EU carbon border adjustment measure from being implemented. They urge President Biden to ask the EU to instead work with the U.S. and other allies on a proposal.

*For more information about trade issues you may [email](#) or call Christopher Hatcher at 202-659-8201. Abbey Schroeder contributed to this section.*

*This Week in Congress was written by Alex Barcham.*