Policy Resolution Group Reconciliation & Infrastructure Update

September 17, 2021

Please find below the latest addition of the Policy Resolution Group's FY2022 Budget Reconciliation & Infrastructure Update.

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A Note from PRG's Madam Policy Podcast

Heard of Madam Vice President, Madam Speaker, and Madam Secretary? This is Madam Policy (@madampolicy) a podcast about women shaping policy, creating history.

This week, hosts PRG Co-Chair Dee Martin (@edeemartin) and Senior Principal Yasmin Nelson (@yasminrnelson) interview White House National Climate Advisor Gina McCarthy. The top White House official for domestic climate policy, Advisor McCarthy shares her views on the cost of the infrastructure package, the role of hydrogen and its inclusion in reconciliation, the importance of infrastructure in the Black community and more! Also, she shares the advice that today's Gina McCarthy would give to her 24 year-old self. Hint: It is NOT "Sit back and relax." Don't miss it! Listen HERE!

State of Infrastructure and Reconciliation Negotiations

Congressional negotiations over the bipartisan infrastructure framework and partisan budget reconciliation package have advanced over the past weeks, but Congress must resolve several critical issues before major deadlines.

On September 15, House Democrats led by Speaker Nancy Pelosi (D-CA) completed their committee markups of the $3.5 trillion partisan reconciliation bill, known as the Build Back Better Act. It includes significant provisions related to energy and the environment, tax laws, and expanding the social safety net.

The outlook of negotiations between the House and Senate remain hazy as moderate Democrats in both the House and Senate continue to express concerns over the economic consequences of the proposed reconciliation price tag. President Biden's influence may prove determinative in helping Speaker Pelosi and Senate Majority Leader Chuck Schumer (D-NY) maintain support from the moderate and progressive wings of the Democratic Party.

Liam Donovan's Bottom Line

Bottom line: Get comfortable. The House has likely reached the end of the line in terms of what it can accomplish without further cooperation from the Senate, the upper chamber seems to be operating on its own timetable, and neither exercise has yet been calibrated toward locking down 218 and 50 votes, respectively. That leaves the House in the position of either waiting around for the Senate to get serious, or trying to pass the largest possible package they can get the votes for, in the hopes that it will help their negotiating posture. Of course, the primary challenge in securing the votes is the tension between progressive desires to go big, and moderate reluctance to vote on anything that is dead on arrival in the Senate. In the meantime all eyes are on the three most important people in this process: Senator Joe Manchin (D-WV), Senator Kyrsten Sinema (D-AZ), and Senate Parliamentarian Elizabeth MacDonough, each of whom will have a significant hand in determining the scope and scale of the eventual package in the weeks and months to come.

This week, the last of the 13 House committees receiving reconciliation instructions advanced their respective legislative recommendations, meeting the non-binding September 15 deadline for committee input, and moving the process on to the Budget Committee to consolidate the components and prepare the omnibus package for eventual floor consideration. As alluded to in last week's note, the committees marked up according to the spending figures in the budget, keeping the $3.5 trillion framework alive, but delaying the eventual decisions on what will survive in a slimmed down final package. For that matter, several of the House authorizing committees are expected to be out of compliance with the reconciliation instructions, something that will have to be addressed by the Rules Committee before anything can be sent over to the Senate. In other words, the first draft of the House reconciliation bill is complete, but don't expect this version to ever see the floor, let alone the President's desk.

The Ways and Means package contained perhaps the most surprises, as the committee's sprawling jurisdiction made up roughly half of the proposed framework's cost, and much of its financing, including more than $2 trillion in highly anticipated offsets. Beyond the headline numbers -- a 26.5 percent top corporate rate, a 25 percent rate for capital gains and dividends, a 39.6 percent top individual bracket with broader application of the 3.8 percent NIIT, a 3 percent surtax on gross income above $5 million, various changes to the international code including a 16.5 percent GILTI rate—there were a number of notable omissions, including the preservation of stepped-up basis, a proposed minimum tax on book income, and no changes to long-targeted conventional energy related tax breaks like percentage depletion and intangible drilling costs (IDCs.) With a long way to go before this package can become law, nothing at this stage is dispositive, but decisions to include and exclude various provisions put a thumb on the scale as to which individual raisers can pass the House.

Meanwhile, the Senate's activity has been more opaque and its progress less apparent. They, too, are nominally operating around the September 15 deadline, but with no committee-level markup process expected, it's not entirely clear when the public will see the committee drafts. And when we do see them, perhaps as soon as the coming days, it's likely that they will amount to progressive markers resembling the House package, representing a path to a paid-for $3.5 trillion bill rather than something that could garner enough votes to become law. Indeed, the Senate Finance committee is expected to include various large-scale offsets that were excluded from the House package, an indication that the menu of revenue raisers is set to grow before the hard choices are made.

Next week, the reconciliation timeline will begin to collide with the end of September policy cliff facing Congress, as the House is expected to take up a continuing resolution to fund the government into early December, with a suspension of the debt limit attached. Republicans, led by Senator Mitch McConnell (R-KY), have been adamant that they will not support such a vote under any circumstances, meaning we could be in for a bumpy few weeks as Washington stares down the prospect of a government shutdown and/or federal default. All of which stands to overshadow what had been the main question over the last month--whether Speaker Pelosi would keep her word to marshal House Democrats and pass the bipartisan infrastructure package, or if the progressive caucus would stick to its guns and block the bill until reconciliation is done. The impending expiration of the current surface transportation law, followed closely by projected insolvency of the Highway Trust Fund, make this a tricky vote, but at the end of the day it will be up to the White House to bring Democrats along if they want to secure this win. And with no obvious/easy resolution in sight, Speaker Pelosi could always call an audible and table the vote citing the standoff over the fiscal cliff. And while reconciliation is incidental to most of these issues, they could become entangled as Republicans push Democrats to amend their instructions and lift the debt limit unilaterally.

Follow Liam on Twitter: @LPDonovan

The Breakdown with Yasmin Nelson

Congress has several critical issues to resolve within the next few weeks -- including funding the government, raising the debt ceiling, and passing the infrastructure and reconciliation packages. Congressional Democrats, led by House Speaker Nancy Pelosi (D-CA) and Senator Chuck Schumer (D-NY). Up first is President Biden's economic agenda with the reconciliation package and the Senate-passed- bipartisan infrastructure deal having to be voted on by September 27. Government funding will lapse if Congress does not pass an appropriations bill by September 30 and the government could default on its obligations if they fail to raise the debt limit in October.

This week, the budget reconciliation process continued in the House where we were able to get a closer look at the potential provisions of the multi-trillion dollar reconciliation package. The legislation includes investments in climate change, infrastructure, higher education, public housing, children, and families.

The House Ways and Means Committee, a key committee because of the tax and spending provisions in the legislation, concluded its markup and advanced the provisions to the floor. However, the dissent from Rep. Stephanie Murphy (D-FL), the only Democrat on the committee to vote not to advance these provisions, shows early signs of the challenges Democrats face in passing the overall package.

This was not the only time Democrats broke with party leadership to not advance committee priorities. On day three of the House Energy and Commerce Committee markup, Rep. Schrader voted against advancing every other subtitle, including major climate priorities such as a methane fee and the Clean Electricity Performance Program. Reps. Scott Peters (D-CA), Kathleen Rice (D-NY), and Kurt Schrader (D-OR) also voted not to advance a leadership backed drug pricing provision. With three Democrats joining Republicans and creating a tie, the provision did not pass, shocking to some who thought it improper to vote against the chair and against party leadership. Although another House committee supports the provision, Speaker Pelosi and Democratic leadership still may not have the votes to pass the drug pricing provision as a part of the larger reconciliation package. This drug pricing provision alone is hoped to generate nearly $700 billion over a decade, which would leave a large deficit in the overall spending of the package.

Democrats also disagree on how to tax the wealthy. On the House Agriculture Committee, Chairman David Scott (D-GA) noted that "it would devastating" to include a provision that would change the way inheritance is taxed at death, or stepped-up basis. Many Democrats want to eliminate the tax break for property passed down when the wealthy owner passes away. The White House has already compromised—offering an exemption to family farmers up to $2.5 million. Leadership will have to work to delicately to balance the dissent of moderates in the party while forging a path forward.

Nevertheless, House Democrats are in agreement over provisions like extending the Child Tax Credit, clean energy incentives, increasing the capital gains rate, reverting the top individual tax rate back to 39.6 percent, and funding for greater IRS enforcement. House Speaker Nancy Pelosi (D-CA) wants to pass both the Infrastructure Investment and Jobs Act of 2021 and the FY 2022 budget reconciliation by the end of September. While it is quite hard to imagine an agreeable reconciliation package can pass both the House and Senate by the end of the month, it is still the intention of leadership to attempt to meet that accelerated time frame.

In the background, the White House and Democratic leadership are looking for a path keep the government funded and raise the debt ceiling. It is still expected that Democratic leadership will tie federal government funding to a clean lifting of the debt ceiling. Senate Minority Leader Mitch McConnell (R-KY) has stated that Republicans will not provide the votes necessary for this to pass.

Reportedly, Democrats are looking at a mechanism that would allow President Biden to unilaterally raise the debt limit, while providing Congress the ability to pass a resolution of disapproval to reverse that action. However, that type of twist in how the debt limit should be raised would require 60 votes in the Senate, which Democrats are not likely to secure. More on how this will be resolved will need to come together sooner than later.

Follow Yasmin on Twitter: @YasminRNelson

Listen in: PRG's Yasmin Nelson and Liam Donovan joined Bloomberg's "Talking Tax" Podcast to discuss recent developments on Capitol Hill and "break down why a repeal of a capital gains tax perk known as a the "step-up in basis" failed to make it into the House legislation, why the tax world should be paying attention to a troubled prescription drug pricing proposal, and when we can expect Senate Democrats to unveil their tax plan." Available HERE.

Where We Are with Energy Tax by Timothy Urban

The dust is settling in the Ways and Means Committee hearing room in the Longworth House Office Building. One of the more significant markups in the last decade is over, and Chairman Richard Neal (D-MA) is wearing the laurel wreath - he successfully shepherded his Mark through the committee without amendment, and all but one of his fellow Democrats voted in the end (24-19) to approve the text. Republicans offered losing amendments and complained about various aspects of the bill, but did not appear to land any knockdown punches. Now it is up to the majority tax staff to compile the growing list of cleanup items and corrections that they contemplate adding to the bill before the eventual floor vote.

In the aftermath of the markup, tax attorneys are feverishly working away at involved tax memoranda, attempting to parse the intricacies of brand new conditions that were placed upon the clean energy credits in the House Chairman's Mark. According to the House draft, taxpayers find themselves confronting greatly diminished base amounts and percentages for green energy credits. To earn their way back up to the more palatable full credit amounts, the companies will have to comply with a variety of different labor and in some cases, domestic content rules. Who is affected? What is the definition of a qualified facility? What if the plant was originally placed in service before the date of enactment? The answers appear to be lurking in the statutory drafts, but with so much investment at stake no-one can afford to move ahead without the considered thoughts of counsel on letterhead.

The public response to the markup from national environmental groups and clean energy companies was generally glowing. However, in one unanticipated turn of events, the Carbon Capture Coalition issued a press release voicing their concerns about the sec. 45Q credit rates, and arguing the bill contained "damaging provisions" requiring emitters to capture a minimum percentage of certain emissions per year that could stunt deployment of carbon capture technology. With key Senate votes being held by carbon capture advocates like Sen. Joe Manchin (D-WV), and with all of the administration's well-known support for decarbonizing via carbon capture, it will be interesting to see if/how this issue is resolved.

Looking ahead, the upcoming process of assembling the Senate's budget reconciliation tax package will tell us a lot about what the market will bear in terms of energy tax items passing the so-called "Byrd Bath" tests, and which tax incentives manage to hang in there if Senate moderates hew to their stated intention of forcing a downsizing of both the proposed tax increases, and the amount of revenue losing provisions. Depending upon the amount of revenue offsets on the table, the duration of the House-approved green energy tax credits is certainly at risk.

For now it looks like Senate Finance Committee Chairman Ron Wyden (D-OR) may drive the beginning of the process by offering up a draft package for the Democratic conference to review (Republicans are not expected to vote for the reconciliation bill - and therefore are not expected to receive much consideration of their priorities). From there, presumably there will be a frenzied period of horse-trading and summit negotiations including senior administration officials and the President himself until the Majority Leader has a package that he is confident can receive the votes of every Senate Democrat.

Energy and Environment Update with Christine Wyman

Earlier this week, the House Energy and Commerce Committee marked up its legislative recommendations for budget reconciliation as part of the Build Back Better Act, including Democrats climate provisions, which, occurring to Senate Majority Leader Schumer (D-NY) would be part of the path to reducing emission by 45% by 2030 as compared to 2005. The most significant of these provisions include a Clean Electricity Payment Program (CEPP) and Methane Fee. Although there was significant Republican and even moderate Democratic opposition, both the CEPP and the Methane Fee advanced on a partisan vote. Eyes now turn to the Senate, and in particular to Senate Energy Chair Manchin (D-WV), who, in addition to his concerns related to the overall price of the package, earlier this week said the climate provision "makes no sense at all."

Details on the Clean Energy Payment Program

Regarding the CEPP, the House Energy and Commerce Committee released:

The Build Back Better Act invests $150 billion in a CEPP at the Department of Energy (DOE). The CEPP, which complements tax incentives for clean energy, will issue grants to and collect payments from electricity suppliers from 2023 through 2030 based on how much qualified clean electricity each supplier provides to customers.

- *An electricity supplier will be eligible for a grant if it increases the amount of clean electricity it supplies to customers by 4 percent compared to its highest year of clean electricity. The grant will be $150 for each megawatt-hour of clean electricity above 1.5 percent the previous year's clean electricity.*

- *Electricity suppliers must use the grants exclusively for the benefit of their customers, including direct bill assistance, investments in qualified clean electricity and energy efficiency, and worker retention.*

- *An electricity supplier that does not increase its clean electricity percentage by at least 4 percent compared to its highest year will owe a payment to DOE based on the shortfall. If, for example, the electricity supplier only increases its clean electricity percentage by 2 percent, the supplier will owe $40 for each megawatt-hour that represents the 2 percent shortfall.*

- *The CEPP gives electricity suppliers the option to defer a grant or a payment for up to two consecutive years.*

- *Eligible clean electricity is electricity generation with a carbon intensity of not more than 0.10 metric tons of carbon dioxide equivalent per megawatt-hour.*

PRG Analysis:

Industry groups and at least one major utility have raised concerns with some of the key features of the plan, arguing that moving too rapidly could adversely affect reliability and that design features may have unintended and disproportionate impacts on some electric suppliers.

- With respect to the 4% clean-energy increase rate, supporters argue that the bill has a large carrot ($150/mwh) versus a small stick for the alternative compliance payment (ACP) ($40/mwh). The differential should buy a larger rate of incline, they reason. But given unknown factors like the rate of transmission uptake, reliability needs, and the lumpiness of renewable investment, 4% still seems to be a reach goal. However, the best of years to date do not typically reach 2% even with a range of available credits.

- The 0.10 metric tons figure for eligible clean energy was arguably designed to allow natural gas with CCS to qualify. However, there is much additional analysis and assessment to be understood to determine the net effect on gas.

- If an electric supplier does not meet the 4% increase, a $40/mwh penalty is imposed. But the penalty does not bring the electric supplier into compliance. Instead, in any subsequent year the electric supplier would need to increase its clean electricity by 4% plus its prior year shortfall, making it more and more difficult each year for an electric supplier to avoid the penalty.

- The addition of new generation, is not linear, but instead is added in chunks as new generation sources come online. This lumpiness, combined with the short duration of the program, creates challenges for a one year compliance program.

- The CEPP targets those electric suppliers that are providing electricity to customers. But in some areas of the country, these electric suppliers own little, if any, generation assets, creating a disconnect between the regulated entity and the entity generating the clean electricity.

Details on the Methane Fee

Regarding the Methane Fee, the House Energy and Commerce Committee released:

The Build Back Better Act establishes a methane fee on pollution from the oil and gas industry above specific intensity thresholds. The methane fee builds on EPA's existing Greenhouse Gas Reporting Program, recognizes the cleanest performers, holds individual companies responsible for their own leaks and excess methane pollution, drives innovation in the sector, and supports the creation of good-paying jobs.

PRG Analysis:

- The provision is no longer based on the architecture of the Whitehouse March bill or subsequent draft. The Treasury Department is NOT charged with determining a basin-by-basin structure. Rather, EPA is authorized to build off of its existing GHG reporting.

- The sources covered will be those identified in Subpart W, including upstream, midstream and downstream components.

- The methane fee WILL NOT be applied to imports of oil and gas. The only trade implication is that it will likely apply to LNG IMPORT and EXPORT facility emissions but not to imports of either oil or gas.

- Many have suggested that the provision could be criticized as double taxation (or double regulation) in light of the pending EPA upstream methane regulation. They argue that the fee kicks in TWO YEARS, allowing for implementation of the regulation before imposition of the fee. Given the potential for litigation and delay, we are dubious as to this effect.

- EPA is directed to update its GHG Reporting Program to be based on empirical data (currently much of the reporting is based on industry average emission rates), arguably so that emission reductions at facilities would be reflected in the reporting and theoretically result in a lower fee.

House Ways and Means Committee

Markup of the Build Back Better Act Subtitles F, G, H, and J

September 14-15, 2021

Day 1 Summary

On Tuesday, September 14, 2021, the House Ways and Means Committee met to markup Subtitles F, G, H, and J of the Budget Reconciliation Legislative Recommendations Relating to Infrastructure Financing, Green Energy, Social Safety Net, and Prescription Drugs. Throughout the markup, Republicans on the committee offered a number of amendments relating to electric vehicles (EVs), clean energy tax provisions, the State and Local Tax deduction (SALT), Superfund tax provisions, and prescription drug pricing. Republicans were the only members of the committee to offer amendments throughout the markup and none of them were agreed to, with each amendment failing along party lines.

During the opening statement portion of the markup, Democrats on the committee argued that the Build Back Better Act and budget reconciliation made necessary investments in clean energy to meet the United States' carbon reduction goals and strengthen the country's infrastructure, address prescription drug prices, and close the wealth gap in the United States. Chairman Richard Neal (D-MA) noted that in order to pay for the spending in the budget reconciliation legislation, the ultra-wealthy would be taxed at a greater rate in order to "pay their fair share." Under the committee's plan, the top individual rate would revert to 39.6 percent, the top corporate tax rate would be increased to 26.5 percent, and capital gains and dividends would be subject to a 25 percent rate, among other levies, while funding for greater Internal Revenue Service (IRS) enforcement would aim to close the "tax gap." Additionally, Democrats argued that no one who makes less than $400,000 per year will see their taxes raised, in keeping with the Biden administration's pledge to that effect. Democrats on the committee also argued that making the Child Tax Credit permanent would help lower income families and bring millions of children out of poverty. These main points were reiterated by Democrats throughout the opening statement portion of the markup.

Republicans argued that the budget reconciliation bill is full of wasteful and reckless spending that will drive companies and corporation overseas and that the provisions in the bill will undo all of the positive revenue growth that occurred after the Tax Cuts and Jobs Act (TCJA) was enacted in 2017. Additionally, Republicans, including Ranking Member Kevin Brady (R-TX), argued that the reconciliation bill would raise taxes on the middle and lower classes, increase the tax burden on America's small businesses, and provide subsidies for the ultra-wealthy through the EV tax credit. Ranking Member Brady went on to state that low and middle income families will bear the brunt of the proposed increase to the corporate tax rate as the cost is passed through large, medium, and small businesses to them. Additionally, Ranking Member Brady, and other Republican members of the committee, stated that they were concerned that the tax increases would directly affect small businesses and multi-generational family farms.

Republicans on the committee continually argued throughout the amendment portion of the markup that the green energy tax and investment provisions in the legislation will only impact the wealthy and large corporations. Republicans argued that the EV tax credit only benefits the wealthy due to the high income individuals being the only Americans who can afford to purchase an EV. Rep. Drew Ferguson (R-GA) offered an amendment that would adjust the maximum income threshold for EV tax credits from $800,000 per couple to $150,000 per couple or $75,000 for single filers. Rep. David Schweikert (R-AZ) offered an amendment that eliminates the EV tax credit for those who make over $400,000 a year, arguing that those who make over $400,000 could afford an EV without a subsidy. Rep. Earl Blumenauer (D-OR) spoke against each of the amendments, arguing that he is unwilling to eliminate any provision that will slow down the rate of decarbonization. Both of the amendments were not agreed to.

Rep. Jason Smith (R-MO) also offered an amendment that eliminated the EV tax credit for companies and corporations that make more than $5 million in profit per year. Rep. Blumenauer also rose against this amendment arguing that the transportation sector, including heavy duty trucking, is the sector that needs this credit most and will take the longest to transition to EVs. Rep. Tom Rice (R-SC) offered an amendment that would eliminate green investment tax breaks for companies who make over $5 million in profit. He argued that Congress would be giving tax breaks directly to companies like Amazon, who are already making green investments and would be making those green investments without the tax credits. Democrats, including Reps Blumenauer and Mike Thompson (D-CA), responded by arguing that these tax credits, utilizing direct pay, will speed along green energy goals and incentivize investment in green energy.

Republicans also offered amendments that would delay the enactment of the budget reconciliation legislation should it be passed into law. Rep. Lloyd Smucker (R-PA) offered an amendment that would delay the enactment of the legislation until the economy recovered. This would be measured by waiting until the unemployment rate drops below what it was before the start of the COVID-19 pandemic. Rep. Kevin Hern (R-OK) offered a similar amendment that would delay the start of the legislation until inflation was reduced to 2.5%. In response, Democrats stated that there is no time for delay. They argued that the country needs these investments in order to build back better and transition to a clean economy. Both of the amendments were not agreed to.

Republicans went on to offer a number of amendments dealing with the SALT deduction, a tax deduction that did not make it into the budget reconciliation bill. Rep. Rice offered an amendment that made the $10,000 SALT deduction cap permanent. He and other Republicans on the committee argued that the SALT deduction, before the cap was added in 2017 via TCJA, was a hand out to wealthy coastal elites. Rep. Schweikert added during his comments in support of the amendment that the top 5% of earners in the U.S. received 82% of the benefits of the SALT deduction. In response, Reps. Bill Pascrell (D-NJ) and Tom Suozzi (D-NY) stated that the SALT cap has directly hurt their constituents due to the higher cost of living compared to other states. They argued that it is only fair for red and blue states to be treated fairly, no matter the cost of living. Rep. Adrian Smith (R-NE) offered an amendment that would limit the SALT deduction for those whose income is over $1 million per year. The revenue gained from the amendment would then be dedicated to cancer research and Cancer Moonshot. Rep. Jodey Arrington (R-TX) also offered an amendment that called for a Sense of Congress that reconciliation would not contain a SALT cap repeal. All three amendments were not agreed to.

Reps. Carol Miller (R-WV) and Arrington each offered amendments that would suspend or strike the Superfund tax, arguing that it would adversely affect the laborers who work for the oil and petrochemical companies and would slow production of important products that use oil and petrochemicals, such as ventilators. Ranking Member Brady spoke in support of the amendments stating that the tax on the petrochemical and oil companies in the reconciliation bill does not actually go to Superfund cleanup. Instead, the money needs to be appropriated in a separate appropriation bill. He called the tax a "bait and switch." Democrats on the committee argued that Superfund hasn't received any funding since 1995 and that the burden of cleanup fell on state and local communities. Rep. Blumenauer argued that there needs to be a comprehensive plan to clean up the Superfund sites as they are located all over the country and that it has been time for petrochemical and oil companies to pay their fair share.

Day 1 of the markup of Subtitles F, G, H, and J concluded with Republicans offering a number of amendments that addressed prescription drug pricing. They argued that should the drug pricing plan proposed by the Democrats be put into law, it will stifle innovation for cures and treatments for rare diseases and cancer. Democrats on the committee argued that over the course of a decade, it is estimated that only 8 drugs will not be developed due to Medicare negotiated drug prices, and there is no evidence that those will be drugs that treat cancer or other rare diseases. Additionally, Democrats argued that high drug prices are already causing Americans to limit their care and treatment due to not being able to afford the high drug costs.

Day 2 Summary

On Wednesday, September 15, 2021, the House Ways and Means Committee met to continue considering Subtitles F, G, H, and J of the Budget Reconciliation Legislative Recommendations Relating to Infrastructure Financing, Green Energy, Social Safety Net, and Prescription Drugs. Throughout day 2 of the markup, Republicans offered a number of amendments on the capital gains tax, the estate tax, competition with China, the Global Intangible Low-Taxed Income (GILTI), global corporate minimum tax, the Child Tax Credit, unionization, and small businesses. All the GOP amendments failed along party lines. Committee Democrats did not offer any amendments to the Mark. At the conclusion of the markup, the Committee reported Subtitles F, G, H, and J favorably to the House Budget Committee in a 24-19 vote. Rep. Stephanie Murphy (D-FL) broke with Democrats and joined with Republicans voting against the measure.

Day 2 of the markup continued with consideration of a number of amendments. Ranking Member Brady, Rep. Devin Nunes (R-CA), and Rep. Darin LaHood (R-IL) all offered amendments that would limit specific provisions of the bill, including limiting the capital gains tax, reject a global corporate minimum tax agreement until China implements the agreement first, and ensuring that biomedical manufacturing would not be exported to China should the legislation be enacted. They argued that all three of these amendments were necessary to allow the U.S. to remain competitive with China's growing economy. Ranking Member Brady's amendment limited the capital gains tax so that it would not become greater than China's. He and other Republicans on the committee argued that should taxes be raised such as they are proposed in this bill, the tax burden will lead companies to consider inversion transactions, and companies will look for other opportunities overseas rather than in the United States. Additionally, they argued that undoing the 2017 Tax Cuts and Jobs Act (TCJA) would cripple the United States' economy and undo years of growth. In response, Democrats argued that Republicans had capitulated to corporate America rather than help American workers when they passed TCJA. Rep. Jimmy Gomez (D-CA) went so far as to say that "Trump and Republicans capitulated to the Taliban. Much like that, Trump and Republicans capitulated to corporate America." All three amendments were not adopted along party lines.

Reps. Schweikert and Arrington both offered amendments having to do with GILTI. Rep. Schweikert's amendment aimed to strike the GILTI provision in the underlying Mark. Rep. Thompson rose in opposition, arguing that the Congress needs to enact this provision in order to demonstrate leadership on global corporate minimum tax negotiations. Rep. Arrington offered an amendment to exempt oil and gas entities from the GILTI regime, arguing that the U.S. needs to have an all-of-the-above-approach when it comes to decarbonizing the economy, that America relies on oil and gas for its national security, and that petroleum products are necessary for the provision of safe and reliable energy to American citizens. Rep. Miller also voiced her support for the amendment, stating that the U.S. should be energy independent and should export its oil and natural gas to the rest of the world. Rep. Blumenauer responded by stating that the Build Back Better Act will allow the U.S. to be energy independent using renewables. Additionally, he argued that the renewable energy industry is where the jobs are going to be moving forward. Both amendments were not adopted along party lines.

Reps. Jason Smith and Drew Ferguson both offered similar amendments on the sec. 199A deduction provision in the Mark. They both argued, along with other Republicans on the committee, that limiting the eligibility for the deduction will hurt small businesses. Rep. Don Beyer (D-VA) argued that limiting the deduction will still allow small businesses to benefit. Both amendments were not adopted along party lines.

Reps. Jackie Walorski (R-IN) and Tom Rice both offered amendments to limit eligibility for the Child Tax Credit. Rep. Walorski's amendment would have reinstated the $2,500 income requirement in order to be eligible for the credit. She argued that eligibility for the credit should be contingent on a person's willingness to work and those who choose not to work should not be given a free handout. Democrats on the committee argued in response to the amendment that reinstating the work requirement would unfairly limit who is eligible and would prevent millions of children from rising out of poverty. They argued that eliminating the work requirement temporarily in the American Rescue Plan has already lifted 50% of children out of poverty. Rep. Rice's amendment would have tied eligibility for the credit to including a social security number on a person's tax return with proof of child. He argued that there is widespread fraud in claiming the Child Tax Credit and that the U.S. government should not be giving a handout to fraudsters and non-citizens. Democrats on the committee argued in response that immigrants are some of the main beneficiaries of the Child Tax Credit and requiring a social security number on a tax return would make many ineligible for the credit and thus keep children in poverty. Both amendments were not adopted along party lines.

Rep. Lloyd Smucker (R-PA) offered an amendment to strike the provision allowing unionized workers to deduct their union dues. He argued that the provision is unfair to workers who choose not to join a union. He also argued that it should be a personal choice for a worker to join a union and the U.S. government should not subsidize a personal choice. Democrats on the committee argued that not all union members are Democrats and that it is a personal choice to give to a political action committee. The amendment was not agreed to along party lines.

At the conclusion of the markup, the Committee reported Subtitles F, G, H, and J favorably to the House Budget Committee.

House Committee on Energy & Commerce

Markup of the Build Back Better Act

September 13-15, 2021

Summary

On Monday, September 13 through Wednesday, September 15, 2021 the U.S. House Committee on Energy & Commerce held a markup on their legislative recommendations for budget reconciliation as part of the Build Back Better Act. Democrats pitched their climate policies by pointing to a series of extreme weather events including Western wildfires and hurricanes flooding the East and Gulf coasts. Republicans objected to these concerns in strong terms, with ranking member Cathy McMorris Rodgers (R-WA) referring to the proposal as part of "Speaker Pelosi's grand socialist agenda to destroy freedom and embolden our enemies" and other Members derisively referring to the bill as the "Build Back Inflation Act" and the "Build Back China Act." Republicans also expressed frustration with the markup process, arguing that the extended debates on amendments were useless as Democrats continued to strike down all Republican proposals. Republicans also raised doubts that the bill would have a chance of passage in the Senate.

The committee voted to advance considered subtitles of the bill on a consistently party-line basis, with Rep. Kurt Schrader (D-OR) as the lone Democrat to vote against every subtitle. The Drug Pricing subtitle was the only one to not advance out of committee, with three Democrats voting against it. No amendments were accepted on any subtitle.

The Air Pollution subtitle and methane fee passed on a partisan vote. Republicans repeatedly referred to the provision as a "natural gas tax" and argued that it would violate President Biden's campaign pledge to not raise taxes on families making less than $400,000 per year. Ranking member Cathy McMorris Rodgers (R-WA) introduced a proposal to nix the methane fee; other Republicans introduced amendments to exempt various industries. All of these amendments failed along strict party lines. Rep. Lizzie Fletcher (D-TX) expressed concerns about the design of the provision, but she ultimately voted for its passage.

The Hazardous Materials subtitle advanced on party-lines. Democrats expressed support for Superfund cleanup grants.

The Next Generation 9-1-1 subtitle, that would allow callers to send texts, images, and videos to 9-1-1, also passed on a partisan basis.

The Wireless Connectivity subtitle that primarily focused on FCC spectrum auctions advanced on a party-line vote.

The Distance Learning subtitle, that would provide an additional $4 billion to the Emergency Connectivity Fund, also advanced on a party-line vote.

The Drinking Water subtitle, which included $30 billion for lead service line replacements, also passed along party lines. Rep. John Curtis (R-UT) introduced an amendment to prevent people making more than $1 million a year from getting federal funds for service line upgrades, but the amendment failed to pass.

Republicans offered numerous amendments to the Energy subtitle that were all rejected on a party-line basis. Several amendments sought to prohibit the procurement of any resources, such as critical minerals, or products, such as solar panels, that involved the use of forced labor. These amendments were defeated by Democrats who argued they were duplicative or drafted with imprecise language that would undercut the legislation. Republican Members continued to express concerns that a rapid transition to renewable power sources would undercut US national security by cultivating dependence on Chinese critical mineral resources and damage the American economy. Other Republican amendments to block provisions in the legislation that would raise oil prices or impact fossil fuel related jobs were also rejected. Rep. David McKinley (R-WV) introduced a measure to express the sense of Congress that nuclear power is the largest and most reliable carbon-free source of energy in the US; Democrats expressed support for nuclear power but disagreed with the strong wording of Rep. McKinley's amendment and voted to reject it. The energy subtitle, including the Clean Electricity Performance Program, advanced on a party-line vote with Rep. Kurt Schrader (D-OR) as the sole dissenting Democratic vote. He called the proposal "fiscally irresponsible" and argued that Democrats should avoid endorsing policies that are primarily designed to circumnavigate Senate parliamentary procedures.

In debate over the Manufacturing Supply Chain subtitle, Democratic members expressed their support to boost funding for the American manufacturing sector in order to decrease reliance on foreign suppliers. However, Rep. Kurt Schrader (D-OR) raised concerns that the subtitle is an ineffective legislative solution that would fail to take concrete steps to bring manufacturing back to the US. These sentiments were reaffirmed by Republicans. Republicans proposed amendments to require the Secretary of Commerce to certify that the bill would not raise the consumer price index in various sectors, including medical supplies and transportation. These amendments were rejected on a party-line basis. The subtitle advanced, with Rep. Kurt Schrader (D-OR) as the lone Democratic holdout.

The committee also voted along party lines to advance the subtitle on FTC Privacy Enforcement. Members from both sides of the aisle agreed that the FTC should take additional efforts to address consumer privacy and that it needs to hire additional technologists, but Republicans led by Rep. Gus Bilirakis (R-FL) and ranking member Cathy McMorris Rodgers (R-WA) argued that the lack of specificity in the proposed legislation would lead to the FTC having an unaccountable "socialist slush fund." While Reps. Anna Eshoo (D-CA) and Jan Schakowsky (D-IL) acknowledged they would have preferred to advance more comprehensive legislation, they said that it was necessary to pass a pared-down title focused on FTC resources in order to comply with the Byrd rule. Rep. Bilirakis (D-FL) and Ranking Member Rodgers (R-WA) expressed outrage at the impact social media has had on youth mental health and offered an amendment, but Democrats argued that it did not belong in the funding oriented legislation.

The committee voted to advance the Department of Commerce Inspector General subtitle along party lines. The provision grants the Inspector General $10 million for oversight of Department of Commerce activities.

The committee voted to advance the Affordable Care Act subtitle along party-lines. Democrats expressed support for a reinsurance program to assist in lowering individual market premiums.

The committee voted to advance the Medicaid subtitle along party lines. Democrats expressed support for provisions that would expand Medicaid access to individuals living in states that did not opt to expand Medicaid as part of the Affordable Care Act. Republicans expressed fear that Medicaid expansion would be a step towards establishing Medicare for All and would lead to further out of control government spending.

The committee voted to advance the Children's Health Insurance Program (CHIP) subtitle that would permanently extend CHIP along party-lines.

In debate over the Public Health subtitle, Democrats voiced support for increased funding for biomedical research and pandemic preparedness efforts. Members on both sides of the aisle were generally supportive of a provision to establish a research program modeled after DARPA that would be called ARPA-H, but Republicans expressed unease that the program was being established in a partisan manner. The subtitle passed with all Democrats supporting it except for Rep. Kurt Schrader (D-OR).

In debate over the Drug Pricing subtitle, Democrats argued that the proposed legislation would take important steps to reduce the price of pharmaceuticals in the United States to levels comparable with other countries by allowing the government to negotiate drug prices. Rep. Scott Peters (D-CA), however, disagreed with the proposed legislation and put forward a narrower set of pricing policies that would only allow negotiation for a small subset of drugs in Medicare Part B that have no competition. Republicans expressed concerns that the legislation would undercut medical innovation and proposed amendments that were all rejected. Chair Pallone (D-NJ) reiterated that even a scaled back reconciliation package will contain some version of drug pricing reform. The subtitle did not advance after tying 29-29 with Reps. Scott Peters (D-CA), Kathleen Rice (D-NY), and Kurt Schrader (D-OR) voting against the measure.

In debate over the Medicare subtitle, Democrats advocated for expanding Medicare to include dental, vision, and hearing coverage. Rep. Kurt Schrader (D-OR) expressed concerns that Medicare is already heading towards insolvency and that the proposed legislation would lead to Medicare beneficiaries paying significantly higher out-of-pocket costs. The subtitle advanced on a party-line vote.

Document Library

Background Material

For the Congressional Research Service report on "The Senate's 'Byrd Rule'" click HERE.

Provisional Text

For the summary of the Senate budget resolution click HERE.

- For the text of the Senate budget resolution click HERE.
- For the committee print to accompany the FY22 budget resolution click HERE.
- For Senate Majority Leader Chuck Schumer's (D-NY) dear colleague letter regarding the climate impacts of the budget resolution click HERE.

For the summary of the House budget resolution click HERE.

- For the text of House Resolution advancing the bipartisan infrastructure agreement, the Senate budget resolution, and H.R. 4 the John R. Lewis Voting Rights Advancement Act of 2021 click HERE.

For a summary of Sen. Ron Wyden's (D-OR) proposals for tighter tax rules on partnerships and an excise tax on stock buybacks click HERE.

- For the text of Sen. Wyden's proposals click HERE.

Markups

Agriculture: For the text of the House Agriculture Committee print containing legislative proposals click HERE.

- For a summary of the proposals click HERE.

Education and Labor: For the text of the House Committee on Education & Labor print containing legislative proposals click HERE.

- For an amendment in the nature of a substitute offered by Chairman Bobby Scott (D-VA) click HERE.

Energy and Commerce: For a fact sheet of the House Committee on Energy and Commerce markup of the Build Back Better Act click HERE.

- For a memorandum on the markup click HERE.
- For Subtitle A on Air Pollution click HERE.
- For Subtitle B on Hazardous Materials click HERE.
- For Subtitle C on Drinking Water click HERE.
- For Subtitle D on Energy click HERE.
- For Subtitle E on Drug Pricing click HERE.
- For Subtitle F on Affordable Care Coverage click HERE.
- For Subtitle G on Medicaid click HERE.
- For subtitle H on CHIP click HERE.
- For subtitle I on Medicare click HERE.
- For subtitle J on Public Health click HERE.
- For subtitle K on Next Generation 9-1-1 click HERE.
- For subtitle L on Wireless Connectivity click HERE.
- For subtitle M on Distance Learning click HERE.
- For subtitle N on the Manufacturing Supply Chain click HERE.
- For subtitle O on FTC Privacy Enforcement click HERE.
- For subtitle P on the Department of Commerce Inspector General click HERE.
- For a full committee action summary click HERE.

Financial Services: For the text of the House Committee on Financial Services click HERE.

- For an amendment in the nature of substitute offered by Chairwoman Maxine Waters (D-CA) click HERE.
- For the committee Memorandum click HERE.
- For the text of H.R. 5195, the "Native American Housing Assistance and Self-Determination Reauthorization Act of 2021" click HERE.
- For the text of H.R. 5196, the "Expediting Assistance to Renters and Landlords Act of 2021" click HERE.

Homeland Security: For the committee print of the reconciliation of the House Homeland Security Committee print containing legislative proposals click HERE.

- For the amendments adopted click HERE.

Judiciary: For the text of the House Committee on the Judiciary print containing legislative proposals click HERE.

- For an amendment in the nature of a substitute offered by Chairman Jerrold Nadler (D-NY) click HERE.

Natural Resources: For the text of the House Natural Resources Committee print containing legislative proposals click HERE.

Science, Space, and Technology: For the committee print of the House Science, Space, and Technology Committee print containing legislative proposals click HERE.

- For an amendment in the nature of a substitute offered by Chairwoman Eddie Bernice Johnson (D-TX) click HERE.

Small Business: For the text of the House Committee on Small Business print containing legislative proposals click HERE.

- For an amendment in the nature of a substitute offered by Chairwoman Nydia Velázquez (D-NY) click HERE.

Transportation and Infrastructure: For the text of the House Transportation and Infrastructure Committee print containing legislative proposals click HERE.

- For the amendment in nature of a substitute click HERE.

Ways and Means: For a summary of the House Ways and Means Committee markup of the Build Back Better Act click HERE.

- For a memorandum on the markup click HERE.
- For a section-by-section summary of subtitles A-E click HERE.
    - For Subtitle A on Universal Paid Family and Medical Leave click HERE.
    - For Subtitle B on Retirement click HERE.
    - For Subtitle C on Child Care Access and Equity click HERE.
    - For Subtitle D on Trade Adjustment Assistance click HERE.
    - For Subtitle E, Part 1 on Health Careers click HERE. For Part 2 on Elder Justice click HERE. For Part 3 on Skilled Nursing Facilities click HERE. For Part 4 on Medicare Dental, Hearing, and Vision Coverage click HERE.
- For a section-by-section summary of Subtitle F-J click HERE.
    - For legislative recommendations relating to infrastructure financing, green energy, social safety net, and prescription drugs click HERE.
- For a section-by-section summary of Subtitle I click HERE.
    - For legislative recommendations relating to Funding Our Priorities click HERE.
- For the Joint Committee on Taxation's estimated budgetary effects of legislative recommendations relating to infrastructure financing and community development, green energy, social safety net, responsibly funding our priorities, and drug pricing click HERE.
- For the final vote results click HERE.

Letters

For a letter for Senate Majority Leader Chuck Schumer on the environmental benefits of the infrastructure bill and reconciliation bill see HERE.

For Senator Joe Manchin's Opinion piece calling for a strategic pause on spending click HERE.

For a letter from Rep. Stephanie Murphy (D-FL) and Rep. Henry Cuellar (D-TX) rejecting deficit spending except on climate policy click HERE.

For a letter from Democrats calling for increased support for biofuels click HERE.

For a letter from House Democrats supporting the Polluter Pays Climate Fund Act click HERE.

For a letter from House Democrats supporting an array of international tax provisions see HERE.

For a letter from Democratic governors supporting the budget reconciliation bill click HERE.

For an endorsement of the environmental provisions from a coalition of environmental groups see HERE.

For a letter from the United Mine Workers of America opposing the initial proposal for a Clean Electricity Standard click HERE.

For a letter from America's Power opposing the Clean Electricity Performance Program click HERE.

For a letter from the National Rural Electric Cooperative Association opposing the Clean Electricity Performance Program click HERE.

For a letter from the American Public Power Association opposing the Clean Electricity Performance Program click HERE.

For a letter from America Electric Power opposing the Clean Electricity Performance Program click HERE.
