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# Congress Clears Major Year-End Legislative Package Including Federal Spending, COVID-19 Relief, and other Measures

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On December 21, the Congress passed legislation providing $1.4 trillion in federal funding for Fiscal Year (FY) 2021 and approximately $900 billion for COVID-19 relief. The Consolidated Appropriations Act, 2021, which has been the subject of weeks of highly scrutinized Congressional negotiations, includes sweeping provisions that span clean energy research and development, programs focused on climate policy, energy tax extenders, pipeline safety reauthorization, water infrastructure, and language limiting surprise medical billing. At a total cost of $2.3 trillion, the 5,593-page package is the second-largest bill ever passed by Congress.

Following the 2020 Presidential election, Congress returned to Washington with a substantial agenda to be addressed before wrapping up its legislative work for the 116th Congress. Federal funding had initially been extended through December 11, 2020 under a continuing resolution (CR), leaving Congress with just over a month to act on must-pass items and to reach agreement on additional COVID-19 relief. These challenges were compounded by a resurgence of the pandemic, unresolved Congressional elections, and a sustained legal challenge to the results of the Presidential election. Members of Congress also attempted to add several other pieces of legislation to the year-end spending agreement, which typically complicates its prospects for enactment.

After being passed by both the House and Senate, the Consolidated Appropriations Act is awaiting signature from President Trump. The White House has indicated that he will sign the legislation. The President signed a seven-day CR on December 21 to avoid a federal government shutdown while the omnibus bill is processed.

In addition to providing much-needed intermediate relief for individuals and businesses impacted by the pandemic, the agreement resolves many policy issues ahead of the 117th Congress and the incoming Biden Administration, clearing the decks for the new Congress to address other priorities. The remainder of this alert will summarize the provisions included and those that were left out of the year-end package and will provide a brief preview of what we expect early in the 117th Congress.

## FY 2021 Appropriations

The Consolidated Appropriations Act of 2021 includes all twelve annual appropriations bills for FY 2021, amounting to $1.4 trillion in federal spending. Of this funding, $671.5 billion is for discretionary defense funding and $656.5 billion is for discretionary nondefense funding. Budget caps for FY 2021 were set by the Bipartisan Budget Act of 2019, though the package includes funding $15 billion above those levels after accounting for rescissions and emergency spending.

With respect to energy and environment programs, the bill contains modest increases in funding for FY 2021 that are largely consistent with the aforementioned budget cap restraints but above the levels requested by the Trump administration. Within Division D (Energy-Water Appropriations), the bill appropriates the following funds:

- $7.8 billion for the Army Corps of Engineers;
- $1.69 billion for the Department of the Interior/Bureau of Reclamation, and;
- $39.6 billion for the Department of Energy, including $12.93 billion for energy R&D programs.

Division G (Interior-Environment Appropriations) appropriates the following funds:

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- Full funding of the Land and Water Conservation Fund (LWCF) at $900 million, as is now permanently available after the enactment of the Great American Outdoors Act earlier this year;
- $5.27 billion for Wildfire Management activities;
- $13.7 billion for the Department of the Interior, and;
- $9.24 billion for the Environmental Protection Agency.

Earlier this year, the House of Representatives passed FY 2021 appropriations bills that included critical infrastructure funding exceeding the statutorily mandated budget caps. This critical infrastructure funding was not included in the omnibus bill.

## COVID-19 Relief

After several months of negotiations, Congress included in the year-end agreement a COVID-19 relief package of approximately $900 billion. The bill includes $600 in direct payments to individual taxpayers ($1,200 for couples) and an additional $300 per week for workers receiving unemployment benefits through March 14, 2021. Direct payments are expected to begin the week of December 28, 2020. It also includes $325 billion for small businesses, including $284 billion in loans through the Paycheck Protection Program (PPP), and allows businesses to deduct expenses associated with forgiven PPP loans. Businesses that have already received loans through the PPP may apply for additional loans, but $35 billion is reserved for entities that have yet to receive a loan and an additional $15 billion is reserved for first loans to entities with ten or fewer employees in low- or moderate-income areas.

The bill does not contain direct assistance for state and local governments or liability protections for businesses, the two major areas of disagreement between Democrats and Republicans in recent weeks. However, the bill does extend the ability for state, local, and tribal governments to spend aid money provided under the CARES Act through December 31, 2021 (ability to spend funds was due to expire at the end of 2020).

Finally, the bill includes $25 billion in rental assistance for families impacted by the pandemic and allows those funds to be used to pay utility and energy bills. Transit agencies and other transportation sector stakeholders will receive $45 billion in assistance, and $69 billion is provided for vaccine procurement and distribution and other healthcare support.

## Energy and Climate Legislation

The package includes two energy and climate-related agreements that were announced last week by House and Senate members negotiating the differences between their bills (for more information on the House-passed energy bill, click here).

Division S of the bill, titled "Innovation for the Environment", contains three pieces of legislation including a reauthorization of the Diesel Emissions Reduction Act through FY 2024, legislation to promote direct air capture (DAC) research and development and to improve permitting processes for carbon dioxide pipelines, and an agreement directing EPA to phase down the production and consumption of hydrofluorocarbons (HFCs), a coolant that plays a significant role in accelerating climate change. The HFC agreement is consistent with the objectives of the Kigali Amendment to the Montreal Protocol, which has the goal of achieving an 80% reduction in global HFC consumption by 2047 and, if achieved, could avoid up to a 0.5°C increase in global temperature by 2100.

Also included as Division Z of package is the "Energy Act of 2020", the comprehensive clean energy research, development, and demonstration bill that had been the subject of negotiations between the Senate Energy and Natural Resources Committee, House Energy and Commerce Committee, and House Science, Space, and Technology Committee over the past several weeks. The bill authorizes $35.4 billion across an array of clean energy technologies and strategies including wind, solar, energy storage, energy efficiency, carbon capture, utilization, and storage (CCUS), carbon removal, and nuclear energy. It also makes revisions to the Title XVII Loan Guarantee Program that aim to unlock $23.9 billion in existing loan guarantee authority for emissions-reducing projects.

Once enacted, Energy Act will represent the first comprehensive update to U.S. national energy policy since 2007, addressing emissions from the power, industrial, and buildings sectors.

Finally, House and Senate negotiators included an array of extensions for existing clean energy tax incentives, including the following:

- §45 Renewable Production Tax Credit
  - Extended for one year for projects commencing construction through 2021
- §48 Renewable Investment Tax Credit
  - Extended for two years through 2023
  - 26% rate for projects commencing construction in 2021 and 2022, 22% rate for projects commencing construction in 2023
  - 10% rate continues for solar projects commencing construction after December 31, 2023
  - Waste heat-to-power added to ITC at same rate and schedule as other renewable energy provisions
- Offshore wind added as a separate category to §48 retroactive to January 1, 2017. Projects that commence construction before January 1, 2026 may elect:
  - ITC at 30% rate, or;
  - PTC at full rate
- §45Q Carbon Oxide Sequestration Credit
  - Commence construction deadline for credit eligibility extended for two years to January 1, 2026
- §25D Residential Energy Efficiency Credit
  - Extended by two years for property placed in service before January 1, 2024
- §179D Commercial Building Energy Efficiency Deduction
  - Made permanent

Notably, a bipartisan and bicameral push for energy storage projects to be added to the §48 Renewable ITC was not added to the legislation. The ITC continues to apply only to batteries that are part of a solar energy project.

Legislation pushed for by stakeholders and lawmakers to institute a direct payment mechanism for many of these tax credits was also not included.

## Pipeline Safety Reauthorization

The agreement includes the text of S. 2299, the "Protecting our Infrastructure of Pipelines and Enhancing Safety (PIPES) Act of 2020." This bill reauthorizes the Pipeline and Hazardous Materials Safety Administration (PHMSA) pipeline safety program through FY 2023. Among other provisions, the bill will require new regulations within a year of setting minimum performance standards for new pipeline infrastructure on methane leak detection and repair. It also directs PHMSA to update current regulations for large-scale liquefied natural gas facilities and allows PHMSA to conduct pilot programs to evaluate innovative pipeline safety technologies.

## Water Infrastructure Legislation

The bill includes the Water Resources Development Act of 2020 (WRDA), a bipartisan, $9.9 billion measure that will provide essential project and program authorizations to address the nation's ports, harbors, and inland waterways, as well as ecosystem restoration and flood mitigation efforts throughout the country.

WRDA authorizes funding for construction of 46 projects proposed by the U.S. Army Corps of Engineers and six projects proposed by nonfederal interests, as well as authorizing feasibility studies or modifications for 27 potential projects. It also includes provisions for a 10-year pilot program to build 10 water infrastructure projects in economically disadvantaged communities, with a 100% federal cost share for each project.

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## Surprise Medical Billing

House and Senate negotiators included a bipartisan agreement to protect patients from surprise medical bills and to establish a framework to resolve payment disputes between healthcare providers and health insurance companies. The surprise billing provisions would ensure that patients are only responsible for in-network cost-sharing amounts, including deductibles, in both emergency situations and certain non-emergency situations; prohibit certain out-of-network providers from billing patients without providing notice of network status and an estimate of charges 72 hours prior to receiving out-of-network services along with the patient's consent to receive out-of-network care; provide additional consumer protections when insurance companies change networks, including a transition of care for people with complex care needs and appeal rights for consumers; and provide consumers with accurate cost estimates that describes which providers will deliver their treatment, the cost of services, and provider network status.

Most notably, the surprise billing section would create a framework for healthcare providers and insurers to resolve payment disputes through a 30-day open negotiation period, and if the parties are unable to reach a negotiated agreement, they may access a binding arbitration process, known as an Independent Dispute Resolution (IDR), which would be led by independent entities with no affiliation to providers or payers. The IDR process would consider the market-based median in-network rate, alongside other relevant information, such as the provider's training and experience, complexity of furnishing the item or service, demonstrations of good faith efforts to enter into a network agreement, prior contracted rates during the previous four plan years, and other items. Billed charges and Medicare and Medicaid rates are excluded from IDR consideration.

## A Look Ahead to 2021

The 117th Congress will convene on Sunday, January 3, 2021 with slim majorities in both chambers. Democrats retained the majority in the House of Representatives, albeit with significantly smaller margins. Republicans will hold a 50-48 majority in the Senate on January 3, pending the results of the Georgia Senate runoff elections on January 5. If Democrats prevail in both runoff races, they will gain the majority with a 50-50 split and Vice President-elect Kamala Harris serving as the tiebreaking vote.

While the Consolidated Appropriations Act of 2021 resolves a significant number of potential immediate legislative action items, particularly the need to finalize FY 2021 appropriations, the 117th Congress will still be confronted with several early tests. President-elect Biden indicated this week that he will pursue additional COVID-19 recovery and stimulus legislation, which is likely to include a significant push to modernize U.S. infrastructure to create jobs and combat climate change.

The Biden administration's push for additional COVID-19 stimulus and more robust energy and climate policy will be met by new Committee leaders on both sides of Capitol Hill that are replacing retiring or term-limited colleagues. On the House side, Rep. Rosa DeLauro (D-CT) will take over as Chairwoman of the House Appropriations Committee, while Rep. Cathy McMorris Rodgers (R-WA) will become the new Ranking Member of the House Energy and Commerce Committee on the Republican side.

In the Senate, Senator John Barrasso (R-WY) will take over Republican leadership of the Senate Energy and Natural Resources Committee and Shelley Moore Capito (R-WV) is expected to replace him as the Republican leader of the Environment and Public Works Committee. There will also be a new Republican leader of the Senate Energy-Water Appropriations Committee to replace retiring Chairman Lamar Alexander (R-TN).

A Republican Senate, or even a Senate with a slim Democratic majority, is also likely to lead to difficult confirmation fights for cabinet nominees and may limit President-elect Biden's ability to achieve his energy and climate goals through administrative actions in the early days of his administration.

Congress may also reinstate the use of "earmarks," which would provide direct funding for local and regional projects in legislation. Congress ended the practice of earmarking federal funds to member-driven projects over 10 years ago, and since that time there has been a resurgence of support within Congress to return to an open vetting process that would benefit public interests. Members of Congress argue that they know better than federal agencies about how and where to spend federal dollars in their

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states and districts. Historically, earmarks have been a key component to securing cooperation from members across the political spectrum and reinstituting the practice may lead to increased bipartisanship. As House Democrats begin to shape their rules platform for the 117th Congress, we expect earmarks to be of major focus in those discussions.

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President-elect Biden won the Presidency after campaigning on an ambitious domestic policy agenda, particularly as it relates to energy and climate and revitalizing the economy after the COVID-19 pandemic. Much of that agenda will be tempered if Republicans maintain their Senate majority. If Democrats are able to capture victories in both Georgia races, the ability to organize the Senate, control Committees, schedule votes, and confirm agency nominees without Republican support will prove enormously valuable to advance their agenda under a Biden Administration and with Democrats in control of the House.

Still, in what will continue to be a highly partisan Congress, the President-elect will likely need to lean on his 36 years of experience in the Senate and the administrative capabilities of the federal government to achieve the objectives he laid out on the campaign trail. However, by passing the Consolidated Appropriations Act, Congress took several issues off the table that might have required an early expenditure of political capital from the Biden administration to accomplish.

## For More Information

Please reach out to any member of our Government Advocacy Team if you have any questions.

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