

2024 Legislative Priorities & Outlook

Legislative Outlook for the 118th Congress, 2nd Session



In 2024, Congress is expected to face headwinds in passing substantive legislation – particularly as House Republicans continue to pursue an impeachment inquiry into President Biden in the middle of an election season.

A divided Congress in which House Republicans hold a slim majority will continue to empower a few conservatives to hold up legislation, or at least seek major concessions. At least until February 13, when a special election will be held to fill former Rep. George Santos's New York 3rd congressional district, Republicans will only have three votes to spare on any party-line vote. After January 21, their majority will be down to two votes with the resignation of Rep. Bill Johnson – until Rep. Brian Higgins's (D-NY) departure on February 2.

However, there are several “must-pass” legislation heading into the new year that will force Congress to act – and perhaps provide legislative vehicles for smaller bills. In addition to the 12 appropriations bills that must clear Congress to fund government operations, Congress will consider a \$110.5 billion emergency supplemental package to provide funding for Israel, Ukraine and Taiwan.

To win support for aid to Ukraine, however, Republicans will demand a deal on border security. Potentially, negotiations for the emergency supplemental foreign aid and

border security could be merged with discussions on topline spending to fund government operations and avoid a shutdown.

In this analysis, we preview what to expect for each industry during the second session of the 118th Congress.

In summary, some of the major highlights to expect this year:

- Congress still needs to try to pass all **12 appropriations bills**, with two separate deadlines under the current continuing resolution (CR) funding government operations.
- Negotiations continue over border security that could pave the way for Congress to provide **\$110.5 billion supplemental package** to provide aid to Ukraine and Israel.
- While the House and Senate **Defense appropriations bills** currently under debate in Congress are about as different as the chambers from which they originate, expect Congress to rally around one guiding principle. . .no cuts – and perhaps, an increase – to this year's defense spending.
- Funding for **higher education programs** remains uncertain in the midst of the Israel-Hamas war as Congress may also explore policies aimed at changing the operations and governance of higher education, while increasing federal oversight and accountability through the threat of budget cuts.
- Passage of major **energy reform** legislation is *unlikely* as Republicans are focused on permitting reform for oil and gas projects, while Democrats are focused on permitting reform for renewable energy projects and transmission projects.
- Speaker Johnson's record on **healthcare issues**, while as a rank-and-file member, was limited to issues around abortion and gender-affirming care, and as a result, he will rely on Committee chairmen to drive the House healthcare agenda.

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- The prognosis for **tax legislation** in 2024 remains uncertain at best as Republicans are interested in reinstating full deductibility for research & development (R&D) investments, which was part of the 2017 Tax Cuts and Jobs Act (TCJA) – while Democrats want to expand the child tax credit (CTC) that was only temporarily expanded as part of the 2021 American Rescue Plan Act (ARPA).
- **Cybersecurity, data privacy, and artificial intelligence** have had lawmakers and regulators abuzz throughout 2023, resulting in a patchwork of expanding regulations as well as providing additional legislative opportunities for the year ahead.
- A path forward for **Transportation-Housing and Urban Development (HUD)** Appropriations Bill remains uncertain over impasse to proposed funding cuts to Amtrak, while the Biden Administration will continue to dole out funding to rail programs available through the 2021 Bipartisan Infrastructure Law.

Status of FY 2024 Appropriations Bills

Appropriations Bill	House Action	Senate Action	CR runs through
Agriculture, Rural Development, Food and Drug Administration, and Related Agencies	Committee Approved	Passed Senate	January 19
Commerce, Justice, Science, and Related Agencies	Subcommittee Approved	Committee Approved	February 2
Defense	Passed House	Committee Approved	February 2
Energy and Water Development and Related Agencies	Passed House	Committee Approved	January 19
Financial Services and General Government	Committee Approved	Committee Approved	February 2
Homeland Security	Passed House	Committee Approved	February 2
Interior, Environment, and Related Agencies	Passed House	Committee Approved	February 2
Labor, Health and Human Services, Education, and Related Agencies	Subcommittee Approved	Committee Approved	February 2
Legislative Branch	Passed House	Committee Approved	February 2
Military Construction, Veterans Affairs, and Related Agencies	Passed House	Passed Senate	January 19
State, Foreign Operations, and Related Programs	Passed House	Committee Approved	February 2
Transportation, Housing and Urban Development, and Related Agencies	Committee Approved	Passed Senate	January 19

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APPROPRIATIONS: The weekend before the start of the second session of the 118th Congress, congressional leaders – House Speaker Mike Johnson (R-LA), Minority Leader Hakeem Jeffries (D-NY), and Senate Majority Leader Chuck Schumer (D-NY) – announced an overall “topline” spending agreement, which still leaves little time for appropriators to work out the details of the 12 annual appropriations bills by January 19, the first of two deadlines set in the last continuing resolution (CR). Funding for four of the appropriations bills expire on January 19, while the remaining eight appropriations bills expire on February 2.

The deal provides for the total level of spending as laid out in last year's debt limit agreement: \$886.3 billion for defense and \$772.7 billion for nondefense programs. Funding for non-defense spending includes a “side deal” – of about \$69 billion in extra nondefense spending – that the President and former Speaker Kevin McCarthy agreed to through various accounting maneuvers to keep domestic and foreign aid accounts essentially flat-funded.

Despite the “topline”, overall spending agreement, the appropriations process faces an arduous road ahead as House Republicans will continue to push for inclusion of controversial policy riders. Further, conservative members of the House Freedom have already expressed opposition to the spending agreement. As such, Democratic votes will be needed again to pass any final bill.

While Speaker Johnson had warned that House Republicans will not back another short-term spending patch – and threatened to put a full-year continuing resolution on the floor that would cut nondefense spending – the spending agreement may force him to put up one more CR to give lawmakers time to write and pass all 12 bills.

So far, House Republicans have passed seven of the 12 appropriations bills – though most of the seven bills have little chance of becoming law because of the drastic funding cuts and conservative policy riders included in many of the bills. The Senate has passed three of their bills: the Agriculture, Military Construction-VA and Transportation-HUD measures. In addition to Energy-Water, the three Senate-passed bills face the January 19 deadline.

DEFENSE: While Congress closed out 2023 by passing the FY 2024 National Defense Authorization Act (NDAA), attention now turns to the legislation needed to “pay the bill”; the FY 2024 Defense Appropriations legislation.

This fiscal year's NDAA supports a total of \$883.7 billion in FY 2024 funding. The bill addresses national security priorities including strategic competition with China and Russia; disruptive technologies like hypersonic weapons and artificial intelligence; modernizing America's ships, aircraft, and combat vehicles; and provides a 5.2 percent pay raise for both military servicemembers and the DOD civilian workforce.

Since Congress punted fiscal 2024 appropriations bills into the new year, the Pentagon is bracing for the possibility for a net \$82 billion less in the next two fiscal years than the amounts set by this past June's bipartisan debt limit law. That statute requires funding for all departments and agencies — defense and nondefense — set 1 percent below fiscal 2023 levels in each of the next two fiscal years in the event that any of the 12 fiscal 2024 appropriations bills is not enacted by Jan. 1.

The FY 2024 House Defense appropriations bill provides \$826.15 billion, which is \$14.13 million below the President's Budget Request and \$28.41 billion – or 3.5% – over the FY 2023 enacted level. The Senate's companion measure FY 2024 Defense Appropriations Act provides \$831.781 billion in total funding.

Although priorities in the two defense appropriations bills currently under debate in Congress are about as different as the chambers from which they originate, expect Congress to rally around one guiding principle. . .no cuts in this year's defense spending.

EDUCATION: The amount of funding for higher education programs remains uncertain in the midst of the Israel-Hamas war. Congress may explore policies aimed at changing the operations and governance of higher education, while increasing federal oversight and accountability through the threat of budget cuts.

In addition, several bills to end federal student loans to the wealthiest private colleges, while restricting federal funding for schools with diversity, equity, and inclusion (DEI) policies.

Additionally, in the appropriations bill to fund the Department of Education, the House version includes a new prohibition on funding for any educational institutions that allow trans athletes to participate in athletic programs.

Before the holiday recess, the House Education and Workforce Committee was able to clear bipartisan legislation, in a 37-8 vote, to expand the Pell Grant program to allow all types of institutions, including online and for-profit schools, to participate in the program once all requirements have been

met. To pay for the Pell Grant expansion, the Bipartisan Workforce Pell Act would end new federal student loans for students who attend the nation's wealthiest universities.

ENERGY/ENVIRONMENT: This year is unlikely to see the passage of any major energy legislation. Not only is 2024 a Presidential election year, but the first session of the 118th Congress did not result in a lot of big-ticket legislative accomplishments – that does not portend well for the second session. Permitting reform continues to slowly percolate under the surface with informal talks occurring, but differing priorities between Republicans and Democrats, make movement unlikely. Republicans are focused on permitting reform for oil and gas projects, while Democrats are focused on permitting reform for renewable energy projects and transmission projects.

Pipeline Safety reauthorization has seen some movement in the House with the Transportation & Infrastructure Committee passing the bipartisan PIPES Act of 2023 (H.R. 6494) in early December. The bill reauthorizes the Pipeline and Hazardous Materials Safety Administration's (PHMSA) pipeline safety programs for an additional four years.

The Federal Energy Regulatory Commission (FERC) will have another busy year in 2024, particularly with the composition of the Commission moving from 2-2 even partisan split to two Democrats and one Republican. FERC Chair Willie Phillips has sought consensus out of necessity with a 2-2 make-up, but with a clear Democratic majority in 2024, it will be interesting to see how the Commission approaches issues relating to: the grid-build-out rule, natural gas pipeline approvals, LNG approvals, and the application of environmental justice to projects.

On the regulatory front, the Biden Administration will continue to implement the energy and environmental provisions from the Bipartisan Infrastructure Law (BIL) and Inflation Reduction Act (IRA). Finally of note on the regulatory front, the Environmental Protection Agency (EPA) will continue work on the methane reporting rule.

HEALTHCARE: Speaker Johnson's record on healthcare issues, while as a rank-and-file member, was limited to issues around abortion and gender-affirming care. As Speaker, he will rely on Committee chairmen to drive the House healthcare agenda. Buchanan anticipates both the Senate and House to continue debating reforms of pharmacy benefit managers (PBMs), examine the uses of artificial intelligence (AI) in the healthcare delivery system, improve transparency in multiple healthcare sectors, and improve efforts to provide support services for substance abuse and mental health. Following recent criticisms of Medicare Advantage plans, reforms that examine prior authorization, shadow networks, and the use of AI in claim determinations will also be a focus of both chambers.

Initiatives that fall under the "culture war" label will increase as Congress approaches the November 2024 elections and potentially impact federal allocations.

TAXES: The prognosis for tax legislation in 2024 remains uncertain at best. Not only is 2024 a Presidential election year, but the first session of the 118th Congress did not result in a lot of big-ticket legislative accomplishments. While the outline of a tax package is fairly straight forward, the path to enactment is certainly not as easy. Both Republicans and Democrats each have a tax priority, which sets up the possibility of a deal.

Republicans are interested in reinstating full deductibility for research & development (R&D) investments, which was part of the 2017 Tax Cuts and Jobs Act (TCJA). However, the provision expired at the end of 2022 in an effort to reduce the overall cost of the package. Democrats, on the other hand, want to expand the child tax credit (CTC) that was only temporarily expanded as part of the 2021 American Rescue Plan Act (ARPA), but not extended as part of the Inflation Reduction Act (IRA).

Besides the question of whether Congress can come together and actually pass a bipartisan tax package, a further complicating factor is the price tag of about \$100 billion and the issue of whether to offset the cost of the legislation.

Finally, the Biden Administration will continue the regulatory work to implement all of the tax provisions from the IRA.

TECHNOLOGY/CYBERSECURITY/PRIVACY: Cybersecurity, data privacy, and artificial intelligence (AI) have had legislators and regulators abuzz throughout 2023, resulting in a patchwork of expanding regulations as well as additional opportunities.

The new Security and Exchange Commission (SEC) cyber rules came into effect in 2023, prescribing new reporting requirements for publicly traded companies. These requirements include a four-day timeline for reporting material cybersecurity incidents under the new Item 1.05 of Form 8-K, annual disclosure of cybersecurity risk management and strategy in Item 106 of Regulation S-K, and annual reporting of cybersecurity governance and oversight on Form 10-K. Though these rules are currently in effect, legislators in both the House and Senate have voiced opposition.

In November, Rep. Andrew Garbarino (R-NY) and Sen. Thom Tillis (R-NC) introduced companion Congressional Review Act (CRA) resolutions to overturn the new SEC rule, citing direct conflict with the congressionally-mandated Cyber Incident Reporting for Critical Infrastructure Act of 2022

(CIRCA). Through CIRCA, Congress directed the Cybersecurity and Infrastructure Security Agency (CISA) to develop and issue regulations for cyber incident reporting, which could create duplicative reporting paths for publicly traded critical infrastructure companies. CIRCA required CISA to develop and publish a Notice of Proposed Rulemaking (NPRM) before the end of March 2024.

Congress also addressed cybersecurity through the FY 2024 National Defense Authorization Act (NDAA), with the aim of expanding funding authority for multiple Executive Branch agencies and increasing opportunities for public-private partnerships. These opportunities include bolstering State Department's cybersecurity assistance program, improving whole-of-government cybersecurity cooperation with Taiwan, and improving the Department of Defense's nuclear command, control, and communications (NC3) mission. The NDAA also established the Office of Strategic Capital to accelerate and scale private investment in national security technologies.

Meanwhile, the patchwork of data privacy legislation continued to abound in 2023. While 12 states have enacted individual data privacy statutes, there has been no movement on the American Data Privacy and Protection Act, introduced in 2022. This trend likely will continue in 2024, with states and federal agencies seeking to fill the void by enacting individual state, sector, and industry-specific regulations.

While cybersecurity and data privacy received regular attention, there was a significant shift in focus last year by both the Executive and Legislative Branches, as well as state legislatures to all things AI.

In October, the Biden Administration published Executive Order (EO) 14110 on Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence. The EO focused on eight overarching policy areas: safety and security, innovation and competition, worker support, consideration of AI bias and civil rights, consumer protection, privacy, federal use of AI, and international leadership. The EO seeks to balance the innovative promise of AI while protecting against the unintended consequences of machine-decision making and automation. For example, the EO calls upon the Department of Health and Human Services (HHS) to issue grants and awards for AI innovation through the National Institutes of Health (NIH) while also directing HHS to issue a strategy for how AI is used in drug development and health care. HHS has until October 30, 2024, to prepare its AI strategy.

TRANSPORTATION: In November, House Republican leaders had to pull the FY 2024 Transportation, Housing and Urban Development (HUD) Appropriations bill from floor consideration after opposition from within their own party because of steep cuts to Amtrak and other rail services. Republicans from Amtrak's Northeast Corridor criticized the proposed \$1.6 billion, or 64 percent, cut the spending bill would make to the railroad's FY 2023 funding level. While the Senate has passed its version of the Transportation-HUD bill, the path forward for the spending bill is uncertain because of the impasse in the House.

Meanwhile, the Biden Administration will continue to dole out \$66 billion for passenger rail provided in the 2021 Bipartisan Infrastructure Law. Biden kicked off 2023 with a funding announcement for two major rail bottleneck areas in the Northeast Corridor, on top of \$4.3 billion announced in 2022 to modernize Amtrak's intercity passenger rail network. Most recently, the Administration announced \$8.2 billion in new funding for 10 major passenger rail projects across the country.

Before heading out for the holiday recess, the Senate cleared an extension of the Federal Aviation Administration's (FAA) funding authority until March, averting a lapse in the FAA's authority as Congress continues to negotiate a long-term FAA reauthorization bill that's been held up since June.

While the House passed its FAA reauthorization bill in July, the Senate's five-year reauthorization has stalled since June, when Senate Majority Leader Chuck Schumer (D-NY) opposed language from Sen. John Thune (R-SD) that would allow would-be pilots to count "enhanced training" on flight simulators to be included toward their required 1,500 hours of in-flight experience to become certified.

Senate Commerce, Science and Transportation Chair Maria Cantwell (D-WA) and Ranking Member Ted Cruz (R-TX) have indicated that they're hoping to get the bill done soon — especially as safety concerns with the nation's air traffic control system have forced Congress to pass key aviation policies. In addition to pilot training requirements, lawmakers are working through other contentious issues such as adding more flight slots to Ronald Reagan Washington National Airport and raising the pilot retirement age.

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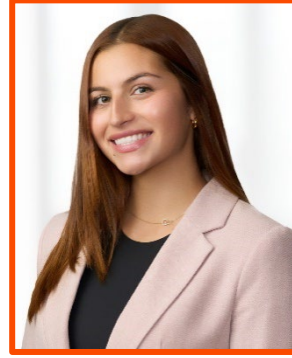
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