

Dear Friends,

Here in Washington, D.C., the House and Senate are both in session. In the Senate, a power sharing agreement between Republicans and Democrats was finally reached, providing an organizational framework for how the Senate, split evenly between Republicans and Democrats, will function in the 117<sup>th</sup> Congress. Until now, the Senate has worked successfully to confirm Biden's nominees, even in the absence of an agreement. It voted Tuesday to confirm Alejandro Mayorkas as the Secretary of the Department of Homeland Security (DHS) and Pete Buttigieg as the Secretary of the Department of Transportation (DOT). See below for more on the status of President Biden's cabinet and other administration appointments.



**Derek N. Harley**  
Senior Vice President of Federal Affairs  
Shumaker Advisors, LLC  
419.321.1256 direct  
dharley@shumakeradvisors.com

Late Tuesday, the Senate began consideration of the FY2021 budget resolution, voting 50-49 to proceed to the measure. Assuming the budget is approved, it will kick start a "budget reconciliation" process, a streamlined legislative process under which they will consider President Biden's proposed "American Rescue Plan," step one of his Covid rescue and recovery plan. The House [passed](#) its budget resolution this week, beginning the reconciliation process in the House. See below for more information on the next Covid-relief package and how budget reconciliation works.

If you have questions on any of the issues referenced below, or need additional details or help, please don't hesitate to email or call us.

**Contents:**

- I. President Biden's "American Rescue Plan"
- II. What is "Budget Reconciliation?"
- III. Status of Biden's Cabinet Nominations
- IV. Impeachment and Senate Trial, Take Two
- V. Policy Look-Ahead – February<sup>1</sup>
  - A. Quick Fix
  - B. Tax
  - C. Health Care
  - D. Energy and Environment
  - E. Defense
  - F. Education
  - G. Technology

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<sup>1</sup> February's policy review, courtesy of *PolticoPro's* (Pro) monthly "CEO Report," provides a "high-level outlook on the policy issues driving the month ... and beyond." This month, the Pro policy teams break down President Biden's congressional agenda to assess which policy priorities may actually have a shot at making it to his desk.

- H. Transportation
- I. Agriculture
- J. Trade

## **I. President Biden's "American Rescue Plan"**

In mid-January, President Biden released the details of his \$1.9 trillion [American Rescue Plan](#), the first of a two-part rescue and recovery plan to address the Covid-19 pandemic and bolster the economy. Congress passed a separate \$900 billion Covid-19 relief bill just two months ago, before adjourning in late December. President Biden has called that legislation a "step in the right direction" but also viewed it as merely a "down payment" on responding to the crisis. He has said that more resources are urgently needed.

Of course, his plan must still be considered and passed by Congress, and the budget reconciliation measures currently moving through Congress provide the broad framework within which specific policy elements will be considered and passed. Though subject to change, here are some of the highlights of the Biden plan as proposed:

- Funding for a national vaccination program, including setting up community vaccination sites nationwide
- Additional resources to help schools safely reopen
- Direct assistance to American families, e.g., providing an additional \$1,400 direct payment on top of the \$600 already provided in the December package
- Increasing the minimum wage nationally to \$15 per hour
- Extending the unemployment insurance supplement – at \$400 per week – through September
- Reinstating the paid sick and family and medical leave requirements created in the [Families First Coronavirus Response Act](#) (FFCRA), while eliminating exemptions for employers with less than 50 and more than 500 employees
- Additional housing, child care, and nutrition assistance
- Grants for one million of the "hardest-hit" small businesses
- Hundreds of billions in funding for state and local governments

The pandemic response was an integral part of President Biden's campaign, and congressional Democrats want to move quickly. With action beginning on the budget this week, they reportedly hope to enact the plan, or a modified version of it, by the time current unemployment benefit extensions expire on March 14<sup>th</sup>, a rather aggressive schedule.

Republicans have raised concerns with some aspects of the American Rescue Plan, specifically those provisions they view as extraneous and not directly related to the pandemic response – such as the minimum wage hike – and areas where Congress already provided funding in the December package that has yet to be spent. In fact, 10 Senate Republicans joined together and proposed a smaller, alternative framework (costing roughly \$600 billion), and sent a [letter](#) to the president on Sunday, January 31<sup>st</sup>, outlining their plan and requesting the opportunity to meet with him to discuss a bipartisan path forward. There was some question whether President Biden would encourage Democratic leaders in Congress to work together with Republicans to reach a smaller compromise deal that could garner Republican support – along the lines of what the 10 senators had proposed – or instead utilize reconciliation (see below) to push the bill through with only Democratic support. President Biden met with the group of GOP senators late Monday and

though both sides characterized it as a productive discussion, no agreement was reached. It seemed clear afterwards, from Biden Press Secretary Jen Psaki's [response](#), that the Biden team is prepared to move ahead with the reconciliation process, while fairly noting that a reconciliation-produced bill doesn't necessarily have to be a partisan one. It's doubtful, however, the plan will receive meaningful Republican support absent some fundamental changes. It also doesn't necessarily mean that the current plan will be passed as-is. Some Senate Democrats have expressed concerns with aspects of it as well, including in particular West Virginia Senator Joe Manchin, who has indicated that the family support provisions must be more targeted.

## II. What is "Budget Reconciliation?"

As mentioned above, both the House and Senate are expected to pass FY2021 budget [resolutions](#) this week and begin a process called "budget reconciliation." What, exactly, is budget reconciliation? It is an arcane procedural mechanism that, if invoked, allows legislation affecting spending or revenues to be considered in the Senate under more streamlined legislative procedures, such as protection from the filibuster and some limits on amendments. In other words, it requires only 51 votes for passage in the Senate (where legislation would typically require 60). For a primer on reconciliation, see [here](#).

The unique legislative mechanism, adopted as part of the Congressional Budget Act of 1974, was originally envisioned as a tool to constrain budgets and enforce fiscal discipline, but it has been used by both parties over the years as a way of simply circumventing the legislative filibuster. For example, Democrats used reconciliation to enact the final piece of the Affordable Care Act (Obamacare) in 2010, and Republicans used it to enact the Bush tax cuts of 2001 and the Tax Cuts and Jobs Act of 2017. It is not without limits, however. First, Congress must pass a budget resolution. Second, reconciliation can only be invoked a certain number of times. Third, reconciliation measures cannot impact the deficit beyond the 10-year budget window, which is why the Bush era tax cuts, for example, expired. Perhaps most importantly, for purposes of considering the Biden rescue plan, the legislation is subject to a particular Senate constraint called the "Byrd Rule." Though there are several so-called Byrd rules (named after former West Virginia Senator Robert Byrd) the specific rule at issue here, ensures that every provision included in reconciliation legislation relates directly to either spending or revenue. It was adopted to ensure reconciliation is actually used to enact tax or spending measures, and not as a means of backdoor policy making. While it is a complicated, multi-prong test, essentially, provisions that do not affect either spending or revenue will be ruled out of order – as determined by the Senate Parliamentarian – and excluded from the bill. In funny Hill parlance, those provisions that do not make the final cut are dubbed "Byrd droppings." While most of Biden's plan clearly affects spending, and thus would almost certainly satisfy the Byrd Rule, there will be questions about others, such as the minimum wage and perhaps even the extension of the FFCRA mandatory leave (though the leave provisions are linked to tax credits so they could be close calls).

Once a budget resolution is passed, the relevant House and Senate committees are instructed to enact legislation within the programs and policies in their jurisdiction to meet the stated revenue and spending targets in the resolution. After the full Senate and House act this week, the committees will spend the next two weeks producing legislation to meet the budget targets, which will then be considered by the budget committees and wrapped together in a larger package for final consideration by the House and Senate later in February or in early March.

### III. Status of Biden's Cabinet Nominations

With the confirmation Tuesday of Alejandro Mayorkas to lead DHS, President Biden's key national security cabinet picks have been confirmed, even without a formal power sharing agreement in the Senate. Retired General Lloyd Austin was [confirmed](#) as Secretary of Defense on January 22<sup>nd</sup>, though the House and Senate had to first pass legislation waiving the law that requires a recently-retired general to wait seven years after leaving active duty to take the defense secretary position (Secretary Austin retired in 2016). Earlier that same week, the Senate also [confirmed](#) Avril Haines for Director of National Intelligence, and later, on January 26<sup>th</sup>, Antony Blinken as Secretary of State. For the current status of Biden's appointments see [here](#).

### IV. Impeachment and Senate Trial, Take Two

The Senate is slated to begin Donald Trump's second impeachment [trial](#) next week, though the trial rules are reportedly still being finalized. The House impeachment [managers](#) submitted their trial [brief](#) on Tuesday, while Donald Trump's lawyers filed a 14-page [response](#) to the summons issued by the Senate. The Trump legal team's trial brief is due on Monday before the trial begins.

Last week, the Senate held what many viewed as a test vote on the number of Senate Republicans likely to support a conviction – a two-thirds vote is required for conviction; thus 17 Senate Republicans. Specifically, Kentucky Senator Rand Paul offered a [motion](#) to require the Senate to vote on the question of the constitutionality of the proceeding, arguing that it is plainly unconstitutional to convict a president who is no longer in office.

The Democrat-led Senate voted 50-45 to table that motion, with 45 Republicans voting against it. While some have viewed that as a proxy conviction vote, at least two senators [indicated that it was a separate procedural vote on an important constitutional question and](#), as jurors, they were not necessarily speaking to the merits of the case itself. At this point, however, it's clear that many Senate Republicans see the constitutional question as a legitimate one. It seems unlikely that the high, two-thirds bar for conviction will be reached, though the evidence still must be presented.

### V. Policy Look-Ahead – February

#### A. Quick Fix

**Economic stimulus is the top priority.** The president is pushing an ambitious \$1.9 trillion plan with a third round of direct stimulus checks, among other Covid relief, but Republicans are balking.

**But there are plenty of complications.** Senate Democrats are pushing to investigate the chaotic coronavirus vaccine rollout, while the Biden Administration looks to purchase millions more doses to curb the spread of coronavirus. But any hearings could be delayed by efforts to move the relief package — and by former President Donald Trump's impending impeachment trial in the Senate.

**Keep an eye on the committees.** Expect some of Biden's ideas to sail along, while others will face fierce debate.

#### B. Tax

**Democrats have tax-focused stimulus plans:** The big question in the tax world this month is whether Congress will pass another economic stimulus plan and what tax initiatives it will include.

In January, Biden laid down his markers in temporary expansions of the Child Tax and Earned Income Tax Credit (EITC), along with bigger tax subsidies for childcare expenses. He also called for a third round of direct stimulus payments, worth \$1,400 per person, administered by the Internal Revenue Service (IRS). Democrats are also assembling a proposal to transform the Child Tax Credit into a monthly payment, so recipients don't have to wait until the end of the year for the benefit. But that would be a complex undertaking, and sure to stir a major debate. So, including it in a short-term stimulus bill may be overly ambitious.

Beyond Capitol Hill, the IRS will officially kick off tax-filing season on February 12<sup>th</sup>. It traditionally starts in January, but the agency said it needed more time to program and test systems given changes Congress made late last year in the tax code and the second round of stimulus payments that started going out at the end of December. The IRS and taxpayers could face further difficulties because of the ongoing pandemic, but the agency — so far — is keeping to its traditional April 15<sup>th</sup> deadline for filing. Last year, the deadline was pushed to July 15<sup>th</sup> due to the pandemic. — *Toby Eckert*

### **C. Health Care**

**Vaccine rollout concerns consume Congress:** The sluggish Covid-19 vaccine rollout is providing fodder for a new round of congressional oversight hearings, while a pair of Senate committees overseeing health policy prepare to review the nomination of Biden's health secretary-designate, California Attorney General Xavier Becerra. But all that could be swamped later this month by a fight over a new Covid-relief package.

The House Energy and Commerce Committee will take up the pace of vaccinations and broader questions surrounding the medical supply chain in a pair of hearings this week. Lawmakers are concerned about how vaccines are being allocated to states — and gaps in testing, data collection, and supplies of protective gear that have been flagged in [Government Accountability Office watchdog reports](#).

With some states reporting they're out of Covid-19 shots, the Biden Administration is scrambling to figure out why. Democrats plan to give the floor to local health officials, while giving the White House time to get a handle on logistical problems and address potential supply shortages. The new administration plans to purchase an additional 200 million doses of the Covid-19 vaccine in a bid to try to vaccinate the vast majority of Americans this year. Absent from the response so far is Becerra, who still awaits what could be fiery confirmation hearings before the Senate Finance and HELP committees, which share jurisdiction over the nomination. Republicans are expected to hone in on Becerra's support for abortion rights and universal health care. Though he's almost assured confirmation in the Democratic-controlled Senate, any delay could leave the sprawling federal health department leaderless during a critical stretch of the pandemic — and potentially slow the planned rollback of Trump Administration policies on family planning and reproductive health.

### **D. Energy and Environment**

Democrats will use the coming weeks to confirm Biden nominees to lead agencies furthering his executive actions on climate change, including the Environmental Protection Agency (EPA), the Energy Department, the Interior Department and the White House Council on Environmental Quality. Lawmakers may also employ the Congressional Review Act to nullify late-breaking

Trump-era rules, though there has been no consensus on which regulations may be the most tempting targets. Major action on climate change provisions appears likely to wait until Congress turns its attention toward a major infrastructure package. But sooner action on Covid-19 relief legislation could include funds to stave off utility and water shut offs. Biden also has proposed \$5 billion in funds to cover home energy and water costs for hard-hit renters. — *Anthony Andragna*

## **E. Defense**

With Defense Secretary Lloyd Austin on the job, the Senate Armed Services Committee is beginning to churn through Biden's picks for other senior Pentagon posts. The panel held a [confirmation hearing](#) on Tuesday for Kathleen Hicks to be deputy secretary and could soon hear from Biden's pick for Pentagon policy chief, Colin Kahl. The President is expected to nominate more top Pentagon officials soon, including the three service secretaries.

Democratic control of the House, Senate, and White House will likely embolden progressives in their push to significantly cut the defense budget. The left flank of the Democratic caucus has called for defense spending to be cut by at least 10 percent and redirected to other priorities. And progressive lawmakers will likely push for reductions when an annual budget resolution and defense legislation comes up for votes. Democrats, however, aren't united on that front. Centrists have opposed steep cuts to defense spending, and Biden has already telegraphed that he won't seek major reductions in the overall Pentagon budget. — *Connor O'Brien*

## **F. Education**

Biden's Education Department is beginning to take shape as a stream of new political appointees join the agency ahead of Miguel Cardona's expected confirmation as secretary. Sheila Nix, a longtime adviser to the Bidens, is the Education Department's Chief of Staff. Claudia Chavez, a member of the Biden-Harris transition team who also served in former Chicago Mayor Rahm Emanuel's Administration, is the department's White House liaison. The administration has also turned to officials from the National Education Association, the Education Trust and the Center for American Progress to fill other roles. Still, Biden's Administration has yet to publicize its picks for a number of critical department posts. The president can appoint 16 Education Department officials that require Senate confirmation.

A trio of Center for Disease Control and Prevention (CDC) officials recently charted a path forward to reopening schools, but said resuming in-person instruction may require tough calls from local officials — including limits on indoor school sports and restrictions on indoor dining. Meanwhile, two CDC reports offered fresh evidence supporting a cautious return to in-person classes, but also highlighted safety risks for certain school sporting events. Biden's strategy for beating back the coronavirus includes commitments to expand school-based virus testing. And he's ordered officials to develop new guidance for schools to track campus reopenings and expand federal disaster funding to cover the cost of personal protective equipment in classrooms. Still, refilling classrooms and recovering from months of lost learning won't come easy — or cheap. — *Juan Perez Jr.*

## **G. Technology**

With Trump's impeachment trial poised to swallow a chunk of the Senate calendar in February, tech policy action on Capitol Hill will largely take place in deliberations over Biden's nominees and

another Covid-relief bill. Biden has already nominated several key appointees with a purview of tech issues, including for the White House Office of Science and Technology Policy and at the Commerce Department, but they still need to go through confirmation. D.C. tech watchers are still anxiously awaiting to find out who will serve as permanent chairs of the Federal Trade Commission (FTC) and the Federal Communications Commission (FCC), how Biden will fill out those commissions, and who he'll pick as his top antitrust enforcer at the Justice Department.

Lawmakers have separately indicated that expanding broadband access will be a major focus in the next round of coronavirus relief talks.

Democrats are out for payback against the tech industry over the role social media played in the insurrection at the Capitol. Therefore, expect more details to trickle out about their oversight plans as the newly formed congressional committees kick into gear, including potential hearings. — *Cristiano Lima*

## **H. Transportation**

Most of the transportation action this month will be in Congress, as lawmakers continue to figure out the new battle lines and political realities. Whether by regular order or through reconciliation, any new round of Covid stimulus is sure to have some pot of money for transportation interests, virtually all of which, from transit to airports, are calling urgently for more investment as the economy continues its nosedive. — *Kathryn A. Wolfe*

## **I. Agriculture**

Biden's pick to lead the Agriculture Department, [former Iowa Governor Tom Vilsack](#), will face the Senate Agriculture Committee for a confirmation hearing Tuesday — and is expected to be easily confirmed. Vilsack, who served as former President Barack Obama's United States Department of Agriculture (USDA) Secretary for eight years, is expected to answer questions from lawmakers on how he plans to roll out the department's resources. Another line of questioning will likely be on Vilsack's controversial civil rights record during his prior stint at USDA. The department's strategy for addressing climate change will be yet another focus.

Senator Debbie Stabenow (D-Mich.) has taken the helm of the Agriculture Committee — power she's expected to wield to give special attention to issues she's championed for years, such as expanding food stamp benefits for hungry Americans, investing in conservation programs, and expanding local and organic food markets. In the House, the Agriculture Committee also has a new leader: Representative David Scott, a Blue Dog Democrat from Georgia. Scott is the first black member and first Georgian to take the committee's gavel, an achievement that arose after former Chair Collin Peterson of Minnesota lost his reelection battle in 2020. Scott has indicated his priorities are tackling climate change and pursuing pandemic relief, especially related to rising rates of food insecurity. He has also declared he'll hold a hearing on the USDA's treatment and neglect of black farmers, the first in several decades. — *Liz Crampton*

## **J. Trade**

Representative Earl Blumenauer (D-Ore.), the head of the House Ways and Means subcommittee on trade, told *POLITICO* in January that he's confident about the passage of a bill he authored, [H.R. 8884 \(116\)](#). It would write new labor and environmental protections into the Generalized System of

Preferences program, which exempts certain developing countries from tariffs, but expired at the end of 2020. Congress also failed to renew the Miscellaneous Tariff Bill, which provides exemptions from certain import duties, but it's still unclear when leaders in either chamber will take up that renewal.

Lawmakers have to deal with the coming expiration of the Trade Promotion Authority in July, which authorizes the President to negotiate trade deals that can pass Congress with an up-or-down vote, bypassing amendments. Democrats want to remove a provision inserted by Republicans in the last authorization that prevents deals from mandating carbon cuts from U.S. companies, something sure to garner GOP opposition. Blumenauer, though, has said he would likely not pursue further changes to curtail executive authority under the law, as he contemplated during the campaign, because Biden is now in the White House. Biden could use any eventual fast-track authority to negotiate a new trade deal in Asia to replace the Trans-Pacific Partnership that Trump abandoned.

Already, some pro-trade Democrats, like Representative Stephanie Murphy of Florida, are pushing the President to consider restarting talks, pointing to China's recent signing of a rival trade deal as a sign Beijing is tightening its grip on the region. So far, the White House has steered clear of the topic. — *Gavin Bade*