



Client Note: What's Left for 2023

A Long To-Do List

With the Thanksgiving recess behind us, Congress is scheduled to be in session for only three more weeks before going home for the year, and there's an enormous amount of legislating to get done in that timeframe.

Aid for National and International Security: The prospects of supplemental funding for war-torn Israel and Ukraine (and boosts for Taiwan) [are looking more stark](#) as efforts to include immigration policy changes are furthering the divide between both the parties and chambers. President Biden and Majority Leader Chuck Schumer (D-NY) prefer a catchall package, while Speaker Mike Johnson (R-LA) wants to only provide assistance to Israel offset by IRS funding cuts, an unheard of demand for military aid (and, one Democrats won't agree to). In exchange for Ukraine funding, both Minority Leader Mitch McConnell (R-KY) and Speaker Johnson want changes to immigration laws to address the situation at the southern border rather than simply increased funding as proposed by the White House [last month](#). The likelihood that there exists a security package with immigration law changes that can appease far-right House Republicans while getting enough buy-in from Senate Democrats is unlikely, though Leader Schumer [is set on](#) passing a package by the end of the year, as the odds will only get worse going into 2024.

NDAA: The National Defense Authorization Act, which authorizes defense programs, has passed every year for more than six decades, so this is at the top of Congress's must-do list; everyone is expecting this to pass. Staff has been negotiating for weeks to put together a bill that can pass both chambers, and two weeks ago the Senate voted to begin the procedural process for conferencing the bill.

Government Funding: While government funding has been extended until January 19 (with eight of the twelve appropriations bills also extended another two weeks until February 2), Congress will still need to make progress on government funding in order to secure a deal on full year appropriations early next year (Congress is only scheduled to be in session two weeks between the start of the year and January 19). Both chambers are stuck – the House has passed seven bills and the other five face tough political problems that will be difficult to overcome; the Senate has passed only three. We'll see if they make more progress before the end of the year (even incremental, behind the scenes movement will be important).

FAA: The Federal Aviation Act is typically reauthorized every five years, and is currently operating on a three-month extension that expires at the end of the year. While the House has passed its version of the legislation, the Senate has been stuck on a few issues (including pilot training) and hasn't been able to even vote the bill out of committee. There hasn't been much announced on this recently, and in conversations with staffers it's not clear whether there will be additional movement on a full reauthorization before the end of the year (or even how much focus there is on breaking the logjam, given all the other priorities). At a minimum, Congress will need to attach an FAA extension to something that

passes before the end of the year to make sure that air travel (including pay for air traffic controllers) can continue without interruption.

FISA: Title VII of the Foreign Intelligence Surveillance Act (FISA) [expires at the end of the year](#). Passed after 9/11, FISA contains several processes to make it easier to collect intelligence on non-U.S. citizens, and the U.S. intelligence agencies have supported continued reauthorization under both Republican and Democratic administrations for national security reasons. However, in recent years there have been bipartisan, bicameral concerns about privacy from Congress as abuses of FISA have come to light, including extensive surveillance on American citizens. With [increasing global instability](#), the administration is continuing to push for reauthorization, but we'll see if Congress is able to find enough time to discuss it (let alone agree to a reauthorization).

Farm Bill: With a full-year extension, there's no expectation that Congress will pass (or even release text) by the end of the year. Hopefully staff continue to make progress in the ramp up to full negotiations next year.

Santos and Tuberville: These two Republicans are also complicating Congress's work schedule. Following Rep. George Santos's (R-NY) unprecedented array of indictments and lies, the House Ethics Committee finally [released their official report](#), leading to additional Members committing to vote to remove him, likely this week. In the Senate, Sen. Tommy Tuberville (R-AL) has blocked the promotion or appointment of hundreds of military officers as a way to oppose the Pentagon's policy of reimbursing abortion-related costs. Senators have tried various solutions to no avail, prompting Leader Schumer to put forward a rules change that would temporarily allow the Senate to approve all of these promotions in a single vote, reducing the time these nominations would take to process to something more aligned with the standard unanimous consent process. This pathway is gathering momentum and may pass at the end of the day, assuming Republican Senators are unable to find another solution with Tuberville.

Outstanding Treasury Tax Credit Guidance

On the other end of Pennsylvania Avenue, the Treasury Department has a long list of outstanding guidance that needs to be released so companies can actually use the tax credits passed in the IRA. We'll touch on a few of the top items that may see progress this year, but there are many more items that remain on Treasury's to-do list – for example, we haven't heard much about timing for the 45Q carbon sequestration credit, or the 45U advanced nuclear credit.

Foreign Entities of Concern (FEOC) Rule for the Sec. 30D EV Tax Credit: We're expecting IRS to release guidance on this important rule, which affects EV tax credits under Section 30D, later this week. At a high level, this rule will determine whether any tangential relationship to China is enough to prevent EVs from taking advantage of the 30D tax credit – for example, an overly strict ruling could make nearly every battery commercially available today ineligible for the credit. This is bad enough, but the nightmare scenario is that climate opponents use this rule to add similar language to other clean energy tax credits to reduce their effectiveness. It's no surprise that this has been hotly contested by industry and environmental groups.

45V Clean Hydrogen Tax Credit: This credit has seen some of the largest political battles, as we've discussed many times in our client notes. There are a few sides arguing over different aspects of the credit, but some of the key battlelines are: 1) Additionality - whether electrolyzers need to be using new energy sources; 2) Deliverability - how close electrolyzers need to be to energy sources; 3) Time-Matching - whether electrolyzers must purchase and account for renewable energy on an annual- or hourly-basis; and, 4) how exactly to calculate emissions from hydrogen made from natural gas (and whether renewable natural gas accrues negative emissions). IRS has continually pushed back the release deadline, and we expect it to slip into next year.

45X Advanced Manufacturing Production Credit: In September, Treasury [said that the 45X](#) tax credit, which incentivizes domestic production of specific solar, wind, and battery components, was one of their highest priorities for guidance, hoping to get it done by the end of the year. While we still expect this to be the case, there has been little news on timing since September.

40B Sustainable Aviation Fuel (SAF) Tax Credit: Treasury has also said they hope to release guidance on the SAF tax credit by the end of the year. While this tax credit has seen its fair share of controversy (including over [ethanol](#)), Treasury has been fairly quiet recently, so it's possible that the end of the year is still a potential target.

Agencies Expected to Finalize Rulemakings Soon

In addition to tax credit guidance, the Biden Administration is expected to issue final rules on a number of proposed climate and environment regulations in the near future.

SEC's GHG Emissions Disclosure Rule: A final determination on the SEC's climate risk disclosure rule is highly anticipated, though exact timing heavily relies on how far the Commission decides to go on Scope 3 emissions requirements (which take into account supply chain emissions). [Recent news suggests](#) it may be drastically scaled back from what was originally proposed in order to avoid legal challenges that could hamper the regulations' ability to survive in court.

EPA's Emission Standards for Methane in Oil and Gas Infrastructure: [The proposed rule](#) looks to enhance methane capture requirements for newly developed facilities while also expanding requirements to existing sources. A final determination on this rule, which is expected by the end of the year, may also face litigation challenges.

FHWA Finalizes GHG Reduction Rule: On Wednesday, the Federal Highway Administration [issued](#) a final rule requiring measurement and target setting of transportation-related emissions by state DOTs and metropolitan planning organizations. Although it is receiving blowback by Republicans, the flexible regulation allows states to set their own goals and does not punish them for failing to reach them.

COP28 Begins This Week

There's been a lot of chatter – both good and bad – in the lead up to COP28, which starts on Thursday in Dubai. As we described last week, the U.S. and China have reopened [discussions](#) on climate and China has made (modest) new commitments to reduce its GHG emissions. Also, developed countries have “likely” [hit](#) their target of providing \$100 billion in climate finance to developing countries, and the U.S.

and EU have enacted laws that are moving the energy transition forward faster than ever. On the other hand, obtaining global agreement on ending use of fossil fuels seems out of reach, developing countries potentially need [ten times](#) the amount of climate finance to address its impacts, the oil and gas industry is [booming](#), negotiations on the global plastic treaty have [stalled](#), and negotiations on the loss and damage fund are [bumpy](#). It seems there are new reports published each week about how dire climate change is, including recent predictions that we'll [surpass](#) the dreaded 2 degrees Celsius ceiling and reach 3 degrees without drastic changes. Not to mention, U.S. elections in 2024 could completely change the trajectory of the country's energy transition and throw a massive wrench in the momentum coming off of the IRA and IIJA enactments. The question is whether we are due for a new landmark climate agreement or if progress will take the form of more technical-level wins. With next year's COP29 taking place right around the 2024 Presidential election, this could be the last chance for the U.S. to secure a major deal, or the delegation may want to lay low in hopes of not providing Trump with a new talking point for his campaign, as we saw with the Paris Agreement. In the meantime, we are wishing our clients and Pioneer Partners [Pierson Stoecklein](#) and [Sweta Chakraborty](#) safe travels to Dubai!

[Funding Opportunities](#)

DOE [announced](#) \$38 million in funding to support innovative, high-impact applied RD&D projects that advance cross-sector technologies to decarbonize industrial processes. Electrification of industrial heat, efficient energy use in industrial systems, and decarbonizing organic wastewater and wet waste treatment are the specific areas of focus. Concept papers are due December 18.

The Department also intends to open a [\\$83 million funding opportunity](#) for projects that tackle industrial emissions, specifically from chemicals and fuels, iron and steel, food and beverage, building and infrastructure materials (i.e. cement/concrete, asphalt pavements, glass), and forest products.

Lastly, DOE is [requesting feedback](#) from industry, academia, research laboratories, government agencies, and other stakeholders on advancing alternative propulsion technologies within the rail sector to achieve decarbonization. Responses must be submitted by January 12.

Clients in the News

[Charm Industrial](#)'s biomass carbon storage process was [discussed](#) in *The Economist*. Colorado Governor Jared Polis's visit to their facility near Denver was [featured](#) in Axios, where the company announced plans to double its workforce in the state.

Tiernan Sittenfeld, Senior VP of [LCV](#), [emphasized](#) Senator Martin Heinrich's (D-NM) leadership on climate action and renewable energy.

This Week: [Hearings to Watch](#)

Wednesday, November 29

House Energy and Commerce Subcommittee on Environment, Manufacturing, and Critical Materials

“America Leads the Way: Our History as the Global Leader at Reducing Emissions”
(10:00 AM EST), watch [here](#)

Thursday, November 30

House Science, Space, and Technology

“The Role of Federal Research in Establishing a Robust U.S. Supply Chain of Critical Minerals and Materials”

(10:00 AM EST), watch [here](#)

Senate Energy and Natural Resources

“Hearings to examine opportunities and challenges associated with advanced nuclear reactor commercialization.”

(10:00 AM EST), watch [here](#)

House Oversight and Accountability Subcommittee on Economic Growth, Energy Policy, and Regulatory Affairs

"Digging Deeper: Ensuring Safety and Security in the Critical Mineral Supply Chain”

(2:00 PM EST), watch [here](#)

www.pioneerpublicaffairs.com

