Client note: Oversight begins, and CRAs continue

This week we saw developments in ESG, energy, and the Farm Bill. Hearings have kicked off, with the first House and Senate energy hearings taking place this week, as well as the first Farm Bill hearing. Last week we reported on the Congressional Review Act (CRA) threat to the 2-year pause on solar tariffs, and this week a new CRA threatens the Department of Labor rule that allows fiduciaries to consider ESG factors in their decision making. These events have offered a window of what's to come in the 118th Congress, and confirmed that much time and effort will be spent by the new House majority trying to undo what was achieved in the 117th Congress.

ESG

On Wednesday, Senator Mike Braun (R-Ind.) introduced a resolution that would prevent the Biden administration from enforcing a Department of Labor (DOL) rule that would allow plan fiduciaries to consider climate change and other environmental, social and governance (ESG) factors when they select retirement investments and exercise shareholder rights. The rule was finalized on November 22, 2022, which allows for members of the 118th Congress to introduce a Congressional Review Act (CRA) measure to nullify the rule. Senator Braun was joined by all of his Senate Republican colleagues, along with Senator Joe Manchin (D-W.Va). Congressman Andy Barr (R- Ky.) will introduce the House companion resolution.

The CRA resolutions are the latest attacks in an ongoing political fight over ESG investing. Bankrolled by Donors Trust (which has increased spending from $835K in 2020 to $8M in 2021), conservative politicians and right-wing ideological groups, such as Consumer Research, have pushed this discourse into a culture war over "woke" capitalism. In January 2023 alone, over 50 bills were introduced in 21 state legislatures to block climate and other ESG considerations, with many expected to pass. Also last month, 25 state attorneys general filed a lawsuit against the DOL's rule.

First Energy Hearings of the 118th Congress

Yesterday, the Senate Energy and Natural Resources Committee held its first oversight hearing of the 118th Congress, focusing on DOE's implementation of the bipartisan Infrastructure Investment and Jobs Act (IIJA). Chairman Joe Manchin (D-WV) expressed concerns about meeting energy independence goals and made clear he plans to conduct strong oversight of both the IIJA and Inflation Reduction Act (IRA) to ensure the administration is meeting his view of Congressional intent (he's been particularly vocal about the administration's plans to interpret certain electric vehicle tax credits to apply beyond domestic production). Members focused on getting updates on programs to improve grid/transmission, domestic production of critical minerals, and hydrogen, and members on both sides of the aisle brought up the recent Microvast controversy (a battery company with Chinese connections that received DOE funding) in demanding that IIJA funds be used to increase domestic US capacity (and specifically not China).

Earlier this week, the House Committee on Energy and Commerce held their first hearing under the new Republican majority, focusing on expanding American energy capabilities and making it more affordable and secure. Republicans said the Biden Administration's energy policy agenda creates a government-controlled economy, while Democrats championed investments in the IRA and blasted the oil industry's record profits last year and cited Republicans' aims to double down on more oil and natural gas development. Republicans also emphasized their desire to revisit permitting reform, especially around the National Environmental Policy Act (NEPA), a desire some committee Democrats echoed, proving to be the only item of bipartisan agreement in a largely partisan hearing.

Climate's Farm Bill Chances

The Senate Agriculture Committee has already begun its hearings on the Farm Bill - find the list of announced hearings below:

- Feb. 1: Trade and horticulture programs
- Feb. 9: Commodity programs, crop insurance and farm credit programs
- Feb. 16: Nutrition programs
- March 1: Conservation and forestry programs
- March 16: Agriculture Secretary Tom Vilsack testifies

The Farm Bill has a tricky tightrope to walk this year: since it expires on September 30, 2023, it will need to be reauthorized (or simply extended) or else risk major farm and nutrition programs lapsing, but at the same time it will be the center of deep partisan battles over nutrition and climate programs, putting its ultimate passage at risk. Given the partisan divide between the Senate and House, however, there will be very few real legislative opportunities outside "must-pass" pieces of legislation like the Farm Bill, and the fact that climate and conservation programs are already in the Farm Bill means that this will be an important opportunity to advance climate priorities.

The first priority will be to protect the $20 billion that the Inflation Reduction Act put towards Farm Bill conservation programs from getting shifted to other programs. Fortunately, Senate Ag Chairwoman Stabenow (D-MI) and President Biden are strong climate supporters, and there is little likelihood that they would be willing to undo this historic climate investment - a dynamic the Senate Ag Ranking Member Boozman (R-AK) acknowledged this week. There is even some hope that we might be able to move beyond playing defense and actually make some progress on climate in the Farm Bill - House Agriculture Committee Chairman Thompson (R-PA) has regularly made comments that he's supportive of the positive climate impact farmers can have.

Two other tangential positive Ag stories: first, Sen. Heinrich will take over as Chairman of the Senate Appropriations Agriculture Subcommittee, where he'll lead important USDA funding and policy decisions during the appropriations process; and second, current USDA Under Secretary for Rural Development Xochitl Torres Small was floated to become Deputy Secretary of the Department of Agriculture, second in command at USDA. Members of Pioneer have worked for both over the years and can't imagine better people for those roles.

Interim Guidance for GHG Considerations in Federal Projects

Earlier this year, the Council of Environmental Quality (CEQ) published interim guidance on how GHGs should be taken into account in deciding whether to approve federal projects. These new guidelines focus on contextualizing emissions impacts by accounting for a project's direct and indirect emissions as well as life cycle emissions (previously, projects were only required to disclose direct emissions). The interim GHG guidance sets out a common approach for agencies to analyze GHG impacts of a proposal, rather than requiring projects to meet specific emissions thresholds or use specific GHG assessment tools.

In a departure from previous guidelines, CEQ now requires projects to use the social cost of carbon to analyze the economic impact of GHG emissions. Importantly, the guidelines recognize that some actions may result in short-term emissions increases to meet long-term reduction goals, making it easier for agencies to approve large-scale clean energy projects.

Overall, this guidance should tilt the scales in favor of projects that have positive GHG impacts.

Please note that we are transitioning our Inflation Reduction Act Program Trackers to a more detailed IRA and IIJA funding tracker. If you are interested in accessing our beta test of this more detailed IRA and IIJA funding tracker (currently limited to DOE), please let us know here.