

SPOTLIGHT REPORT

May 20, 2021

The Timetable for Passing Democrats' Legislative Priorities

What's Happening: There are as many deadlines in DC as there are screaming cicadas. President Biden said he wants to see "real progress" on infrastructure by Memorial Day, Senator Shelley Moore Capito (R-WV) said the state of bipartisan infrastructure talks will come to a head by Memorial Day, and House Speaker Nancy Pelosi (D-CA) has indicated she wants to pass an infrastructure bill out of the House by July 4th.

Why It Matters: At her weekly presser today, Pelosi declared, "I'm not a timetable person." She was referring to the timing for passing legislation to create a January 6th commission. **But the prospects of Biden's American Jobs Plan (AJP) and American Families Plan (AFP), as well as other legislative priorities, all depend on the timetables and deadlines congressional leadership face and set forth.** Pelosi is no schmoo who is new to dealing with congressional dynamics. Getting legislation passed with the requisite votes requires Democratic leadership to instill a set of deadlines and a sense of crisis mentality among the rank-and-file, especially with razor thin margins. It was a health and economic crisis mentality that got Democrats to pass the American Rescue Plan (ARP) before the self-imposed deadline of March 14th when federal unemployment insurance (UI) benefits were set to expire. That same crisis mentality doesn't exist for the rest of the legislative agenda, but that only increases the importance of having a timetable to keep the legislative process moving forward. **If there is a crisis mentality, it's a political one for Democrats, knowing their tenuous hold on government control can soon come to an end. Once losing that power, the outlook for gaining it back in the near term is not promising. That means their long-held legislative ambitions do have a deadline -- the moment Democrats lose control of their majority in either the House or Senate. But with Democrats looking to have a more deliberative process for the AJP/AFP and other legislative items compared to the ARP, it requires laying out goalposts for progress on legislation well before that political deadline arrives.** Those goalposts can shift (although some can't), but Democrats will need to adhere to some sort of timetable for their legislative agenda to get enacted.

What's Next: Right now, Memorial Day and July 4th are the two nearest goalposts for action on items like infrastructure and appropriations. Leadership is giving space

for bipartisan negotiations and committee chairs to draft relevant legislation. But the time will soon come for leadership to exert some top-down pressure to coordinate actions in the relevant committees and get the rank-and-file on board with a budget reconciliation push. **Our base case remains that Democratic leadership will set out a path for a budget reconciliation bill that contains portions of the AJP and AFP to pass in Q4 of this year. But our base case will be tested against the several goalposts leading up to the end of the year.** Biden's AJP and AFP were approximately \$4.5 trillion in spending and tax credits over 10 years, partially offset by \$3.3 trillion in tax and tax enforcement offsets over 10 years. **We currently see a reconciliation bill ultimately being in the \$3-4 trillion range for spending and \$1-2 trillion range for offsets over 10 years, with the potential budget window for the offsets going beyond a decade to make it appear like the "once-in-a-generation" spending is being paid for over a generation.**

The Deadlines in Reverse Order

In how Democratic leadership is thinking about the legislative agenda and the timetable for passage, it's helpful to start from the future and work back to the present in the deadlines and goalposts that matter.

The Literal Deadline

What it represents? Near the end of his life, Ben Franklin said, "In this world, nothing is certain except death and taxes." Clearly, Franklin wasn't thinking about the step-up in basis and the [potentially](#) \$1 trillion tax gap. But as Democrats work to make taxes a certainty, death is out of their control. On average, 10 lawmakers [have died](#) in each session of Congress. Three members of the House (two sitting members and one member-elect) have died this Congress.

With the average Senate Democrat 1.5 years away from qualifying for Medicare, there are 11 Democratic senators who represent states with Republican governors who could appoint a Republican senator in the case of a vacancy. There are other [vacancy rules](#) that could cause a delay in the seat being filled.

What if the deadline isn't met? Simply put, in a 50-50 Senate, one Democratic vacancy means no Democratic majority and no Democratic agenda. In the House, it further narrows the current [219-211 margin](#) Democrats have. Democratic leadership understands this precarious situation and it's just one further reason to accelerate the timeline and hold firm to self-imposed deadlines in the legislative process.

The 118th Congress -- January 3rd, 2023

What it represents? On January 3rd, the current 117th Congress will end and the new

118th Congress will begin with its own legislative agenda. That agenda may be little changed if Democrats hold the majorities in the House and Senate. But that is not [our base case](#), as Republicans are early favorites to bust the Democratic White House-House-Senate trifecta in the 2022 midterms.

The 118th Congress is also likely going to be the first time in 20 years where Pelosi, House Majority Leader Steny Hoyer (D-MD), and House Majority Whip Jim Clyburn (D-SC) are not the top three Democrats in the House, with the octogenarian troika likely retiring or stepping aside for a new generation of leadership.

What if the deadline isn't met? Needless to say, a Republican House and/or Senate will not be pushing the AJP or AFP. There will be no For The People Act, pathway to citizenship for undocumented immigrants, or calls to reform the filibuster.

Democratic leadership is well aware that the 2022 midterm elections are an uphill battle and that if they lose the majority, the [structural disadvantages](#) they face with the current electoral coalition means they could be out of power for a generation. It wouldn't be ahistorical. From 2001 to 2020, Democrats held unified control of the federal government for just two years (2009-2010). The previous generation from 1981 to 2000, Democrats held unified control of the federal government for just two years (1993-1994).

With Democratic leadership and most Democratic committee chairs in their 70s or 80s, it's now or never to pass legacy markers, with January 3rd being the likely drop dead date for action.

New Year's Eve 2021

What it represents? This is both an actual, historical, and political deadline. There are [numerous tax extenders](#) that expire on December 31st. This includes the ability for businesses to expense research and experimentation costs rather than deducting them over five years. Additionally, the end of the year will be the deadline for allowing businesses to deduct net interest expenses at 30 percent of EBITDA rather than 30 percent of EBIT.

Historically, the end of the year is the deadline for passing some major annual legislative items like the National Defense Authorization Act (NDAA). For 60 consecutive years, the NDAA has passed and been enacted into law laying out defense spending authorizations and priorities. The NDAA is one of the largest pieces of legislation that comes out of Congress, as its "must pass" nature becomes an enticing vehicle to load up on other policy riders. The legislative process for the NDAA has often led to it being passed in December. That was the case with the FY21 NDAA, passing both chambers of Congress last December, but President Trump vetoed the bill. Congress then did its first successful veto override of the Trump presidency.

While Democrats may have control of Congress up until January 3rd, 2023, the realistic

window for action is much shorter. They are not going to be able to muster through partisan legislation in the lame duck period between the midterm elections on November 8th, 2022 and the new Congress. It also is exceedingly difficult to pass major legislation in the runup to an election. Parties want to have a platform set in place to run on before the campaigning begins in earnest. Once election season does begin, members have one foot out the door on the campaign trail and are more concerned about the optics of taking difficult votes. Any (little) interest there previously was for the two parties to work together is dashed as both control of the House and Senate are in play. This political calculus was what drove Republicans to pass the Tax Cuts and Jobs Act (TCJA) by the end of the year in 2017 (it passed and was signed into law in December).

What if the deadline isn't met? The perennial nature of tax extenders and the NDAA makes it of interest for both Democrats and Republicans to see it done by year-end. But the consequences of missing a December 31st deadline could be limited. Tax extenders that aren't extended on time have often been extended retroactively, but it could still create disruptions for business decisions if the break is not in place during 2022. Getting the NDAA passed as soon as possible provides better planning for defense activities. An NDAA not passing at all would be disruptive, but NDAAs passed in December are already delayed since it applies to the fiscal year that started the previous October. If it's delayed further to the start of 2022, it probably won't be a major disruption.

New Year's Eve is not an explicit deadline expressed by Democratic leadership as they are pushing for passage of the AJP and AFP earlier. But it will certainly be a fall back option. There's no official start date of the campaign season. It's not necessarily January 1st, 2022. Primaries [start](#) in March and go through September. The last time Democrats held unified control of government, they passed their big legislative item -- the Affordable Care Act -- in March 2010. Of course, both the House and Senate passed respective bills in November and December the year before, but Republican Scott Brown's special election victory in the Senate in January 2010 broke the Democratic filibuster proof majority and created delays in passage. There's time in the first months of 2022 for Democrats to pass a budget reconciliation bill for the AJP and AFP but it will be contingent on significant progress being made by the end of the year.

The X-Date -- Fall 2021 (Estimate)

What it represents? The two-year suspension of the federal debt ceiling ends on July 31st. After the ceiling is reimposed, the Treasury will employ "extraordinary measures" and use its cash balance to pay off obligations. The X-date is the time when the extraordinary measures and cash balance are exhausted, forcing the US to default on its debt. The Bipartisan Policy Center is [estimating](#) the X-date will be sometime after October 1st. But that date is subject to uncertainty.

What if the deadline isn't met? This is the pinnacle of forcing mechanisms for Congress. Defaulting on the debt or even the thought that Congress may not lift or suspend the debt ceiling will lead to a downgrade in the US credit rating, a rise in interest rates, and a major

selloff of Treasuries.

Historically, action on the debt ceiling was done with little fanfare. Despite having to be done multiple times during the Trump administration, there was little ruckus over it. It was during the Obama administration that members of the House Freedom Caucus and figures like Senator Ted Cruz (R-TX) forced Republicans to take a hard line on the matter. These Republicans today see it as their best point of leverage. "Historically, the debt ceiling has proven the most effective lever point for enacting meaningful spending reforms and structural reforms," Cruz said. The Senate GOP this year agreed to a non-binding conference position to only agree to an increase in the debt ceiling with commensurate cuts to spending.

Democrats have zero interest in holding the full faith and credit of the United States hostage over Republican demands. Through the normal legislative process, a change in the debt ceiling will require 60 votes in the Senate. Democrats may be able to peel off enough GOP support if it's attached to broader legislation. The X-date is coming around the same time as other bipartisan legislation needs to be enacted, like FY22 appropriations and surface transportation reauthorization.

Democrats also have the option of bypassing Republicans completely, as raising the debt ceiling is allowed through the budget reconciliation process. This could be an incentive for Democrats to complete a major budget reconciliation bill on infrastructure before the X-date.

However, if the xX-date nears and there isn't an obvious path for action, enough Republicans will likely go along with a short-term suspension of the debt ceiling in order to avert a catastrophic fiscal event. But there may be a limit to the number of short-term extensions Republicans are willing to go along with.

New Year's Fiscal Eve 2021

What it represents? September 30th, 2021 is the end of FY21. It's the last day for FY21 appropriations and it also [marks the end](#) of several authorizations that allow for spending and appropriations. This includes the expiration of the current one-year extension of the Fixing America's Surface Transportation (FAST) Act, which authorizes federal spending on roads, highways, bridges, and public transit.

What if the deadline isn't met? While not as catastrophic as defaulting on the debt, not taking legislative action on appropriations and reauthorizations by the start of FY22 has serious consequences. That includes a government shutdown and a disruption of federal infrastructure investments. This provides a forcing mechanism to act on these appropriations and authorization items but to also include with it larger legislative priorities.

House Budget Committee Chair John Yarmuth (D-KY) back in March said it was [his goal](#) to pass a budget reconciliation package by the end of September. Yarmuth is in charge of the

budget resolution that would provide the instructions for a budget reconciliation package.

At the same time, however, the Senate Byrd Rule for budget reconciliation does not allow for appropriations or certain authorization measures to be included. That means a reconciliation bill and a regular order bill would be two separate legislative vehicles. The rule named after the late Senator Robert Byrd (D-WV) has caused immense frustration with some Democrats, with House Transportation and Infrastructure Committee Chair Peter DeFazio (D-OR) frequently calling it "the dead guy rule" and "abysmally stupid." This doesn't preclude Democrats from doing a big spending infrastructure bill via reconciliation, but September 30th may not be a hard deadline as it will likely be separate from the surface transportation reauthorization process.

Still, appropriations and authorization need to be addressed. But as is often the case, bipartisan negotiations can be punted. That means a potential continuing resolution (CR) for FY22 appropriations and another temporary extension of the FAST Act. When asked about the FAST Act, which was already temporarily extended for a year, being extended another time, DeFazio this week said "you can't fully reject that" possibility. The prospects for FY22 appropriations and a new surface transportation bill will depend on self-imposed deadlines earlier in the year.

August Recess

What it represents? While the youngest member of Congress is 25, the 435 adults of Congress need frequent recesses. The longest recess is the August recess. As [currently scheduled](#), the House will be out of session from July 31st through September 19th (although House committee work will start back up on August 31st). The Senate will be out of session from August 7th through September 12th.

Democrats are looking to celebrate the time away from DC with legislative milestones to varying degrees. The White House has publicly put a deadline of passing infrastructure legislation by then. White House Press Secretary Jen Psaki said they want to see "a package through by the summer." Yarmuth in March said the goal is to pass a budget resolution providing instructions for a budget reconciliation bill by the August recess. However, earlier this week, Yarmuth said the House may be looking to pass a budget resolution that includes reconciliation instructions sooner.

House Majority Leader Hoyer has also said he wants the House to pass their FY22 appropriations bills before they go on summer recess.

What if the deadline isn't met? Before members bolt out of a muggy DC, there's a push to make real progress on legislative items. It's not that there are any hard, must-pass deadlines with the August recess. But action by the recess is an indicator of how the second half of the calendar year will play out.

When there are only nine scheduled days where both chambers are in session in

September, it's virtually impossible to meet an end-of-fiscal-year deadline for both full-year appropriations or a budget reconciliation bill if the House hasn't passed its appropriations bills and Democrats haven't agreed to a budget resolution before the recess.

The White House goal of passing Biden's infrastructure agenda by the recess is likely based on the assumption it can pass via regular order. While there's a possibility a smaller, bipartisan infrastructure bill can pass, probably a plus-up of a surface transportation authorization bill, the larger AJP and AFP agenda will still likely need to go through the budget reconciliation process. As Yarmuth has hinted, the goal is to get a budget resolution done by the August recess, although maybe there's a chance it can be done sooner.

Passing a budget resolution requires all but three House Democrats and all Senate Democrats to support it. If Democratic leadership could, they'd pass a budget resolution tomorrow. But they don't have the votes for that as of yet since moderate Democrats are insisting on a more deliberative process. Getting moderate Democrats on board with a budget resolution by the August recess depends on how the regular order process and timeline proceeds earlier in the year.

July 4th Recess

What it represents? Who doesn't want to celebrate more than America's independence on July 4th? The US Chamber of Commerce [launched](#) a "Build By the Fourth of July" campaign calling on Congress to enact a "fiscally and environmentally responsible infrastructure package" by July 4th. Pelosi has made July 4th an internal goal for Democrats to pass an infrastructure bill in the House. Neither the House nor the Senate are in session on July 4th. As currently scheduled, the House is out of session from July 2nd through July 18th. The Senate is out of session from June 26th through July 11th.

Additionally, House Appropriations Committee Chair Rosa DeLauro (D-CT) this week said she wants to mark up all of the FY22 appropriations bills before the July 4th recess, teeing them up for a floor vote in July.

What if the deadline isn't met? Similar to the August recess, there's no must-pass action that's required before July 4th. But how things progress will determine the likelihood of action later on in the year. The July 4th deadline for Pelosi is not something she is dead set on. She also may not be referring to passing a budget reconciliation bill. Since House Democrats can pass legislation with a simple majority vote, Pelosi could be referring to a regular order infrastructure bill. That could be either a smaller bipartisan agreement or a larger AJP (and possibly AFP) bill that is drafted in the relevant Democratic committees.

The bipartisan legislation will take more time to get together because it involves working with not just Republicans in the House, but coordinating with the Senate as well. Senator Shelley Moore Capito (R-WV), who is the lead Republican in infrastructure negotiations with the White House, this week said, "It's hard for me to see July 4th as an end date." The state of a bipartisan infrastructure/surface transportation authorization bill will be

determined by how current negotiations are going.

If Democrats decide to go it alone and they have the votes to do so, then House Democrats could try to pass their own far-reaching infrastructure bill by the July 4th recess that would pave the way for moving towards the budget reconciliation process if they haven't done so already. Success on this end will depend on how fast the relevant committees can draft legislation in the coming weeks and get the requisite political support. If Democrats can't pass an infrastructure bill before the July 4th recess, it would put enormous pressure on the nine days both chambers are in session in the month of July to draft both legislation and a budget resolution before the August recess.

Memorial Day

What it represents? As bipartisan negotiations between the White House and a group of Senate Republicans are in full swing, the outlook of such negotiations should be known in short order. "It's going to have to come together quickly," Capito said. She noted they hope to "have much more clarity by Memorial Day." Biden has said he wants to see "real progress" on infrastructure by Memorial Day. The Senate is in session next week before going on a week-long Memorial Day recess. Senate Environment and Public Works (EPW) Committee Chair Tom Carper (D-DE) said he is going to tentatively mark up a highway bill out of his committee next week, although he said it is still "a work in progress."

Meanwhile, the House is out of session until June 14th. But Hoyer said Democratic committee chairs will be working on infrastructure legislation for their respective committees. DeFazio said he hopes to have legislation ready to be marked up after the House returns from recess.

Biden is also expected to finally release his complete FY22 budget request next Friday. This formally kicks off the FY22 appropriations process. Yarmuth said he'd likely draft a budget resolution but that, "it'll be an exercise in futility" given the differences in support for defense and non-defense spending. Yarmuth said they will most likely adopt a deeming resolution (which doesn't need to be approved by the Senate) to set a topline appropriations cap, with DeLauro and appropriations members filling in the rest of the details. He also said they could potentially draft a bare-bones budget resolution that includes budget reconciliation instructions. But that would have to be agreed to by Senate Democrats.

What if the deadline isn't met? While months away from must-pass deadlines, it's the negotiations, actions, and goalposts today that will lay the groundwork for the rest of the 117th Congress. Democrats are entertaining bipartisan negotiations, but are keenly aware of the timetable for the next 1.5 years. There's limited time to negotiate if a deal isn't in the offing. If a deal is reached, then there's a path to getting a bipartisan infrastructure/surface transportation bill done by summer or the September 30th expiration of the FAST Act. But even if a bipartisan deal is reached, Democrats would be looking to budget reconciliation to pass other AJP/AFP priorities. The bet for leadership is that giving it the old college try with

Republicans will satisfy moderate Democrats who are intent on trying to reach out to the other side before going their own way.

If a bipartisan deal isn't reached, then it will be very hard for a surface transportation authorization bill to get passed by September 30th, leading to another temporary extension of the FAST Act.

By Memorial Day, Democratic leadership will be shifting focus to building Democratic support for the infrastructure legislation that is being drafted in committee and sizing up what the topline spending and taxing figures that can get passed in a budget resolution. Delays on this front today creates a domino effect for meeting all the other deadlines laid out moving forward.

On the appropriations side, Democrats are content on going it alone for now, given the differences on defense and non-defense spending between the two sides. At least in the House, the two sides weren't expected to reach an agreement until after the August recess. But that agreement doesn't happen until the Senate comes to an appropriations agreement, as anything passing the upper chamber requires 60 votes. Right now, there's little movement on the Senate side for bipartisan negotiations. If there isn't some action soon, FY22 could easily begin with a series of CRs.



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