

**SPOTLIGHT REPORT**

December 15, 2021

## The Biden Regulatory Agenda

**What's Happening:** Last Friday, the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) released its semi-annual [Unified Agenda of Regulatory and Deregulatory Actions \(UA\)](#). This details the near- and long-term regulatory actions the Biden administration plans to issue.

**Why It Matters:** **There's an alternate universe where the release of the UA would be much bigger news coming out of DC.** It's a universe where Republican David Perdue is in his second term as the senior senator from Georgia and Republicans hold a 51-seat majority. Instead, Perdue is currently challenging Governor Brian Kemp (R-GA) in a 2022 gubernatorial primary and Democrats hold the tiebreaker in a 50-50 Senate. In that alternate universe, Build Back Better (BBB) would be a regulatory aspiration rather than a legislative one. President Biden would be empowering the executive branch to push through BBB in a whole-of-government approach to the environment, consumer protections, public health, and financial regulations. **It was the twin wins in the Georgia January Senate runoffs that changed the focus from regulations to legislation. But that focus will soon switch back.** BBB is the end of the partisan line for Democratic legislation this Congress (good luck getting Senator Joe Manchin (D-WV) to agree to an FY23 reconciliation bill next year). [All signs](#) are pointing to midterm elections that will follow historical trends where the president's party loses seats. That means Democrats losing unified control of Congress, and thus, the legislative agenda. **But President Biden isn't ready to rest on his laurels ahead of 2024. The progressives in his party won't let him. So we expect the Biden regulatory agenda will take center stage next year. That makes the UA released last Friday, which lays out what the administration plans to do over the next 12 months, a critical roadmap. All signs point to an ambitious, even activist, agenda as Biden gives ample space for his administration to push the bounds of regulatory power for progressive ends.**

**What's Next:** There's a [formal process](#) for federal rulemaking. That process can often be burdensome and get tied up in competing priorities and the rigamarole of the Administrative Procedure Act that guides rulemaking. Many proposed rules in the UA, also called notices of proposed rulemaking (NPRM), are scheduled to come out next year. This requires relevant agencies and executive branches to submit a rule of significance for review by OMB and OIRA before being published. This

review could take up to 90 days or more. Once published, a proposed rule can receive public comments for typically 30-60 days. The administration then reviews the comments and sometimes provides other avenues for public input, like a workshop or public hearing, before drafting a final rule. That final rule again undergoes a review by OMB and OIRA before being published. It's no wonder that the federal rulemaking process can take several years to complete and previous administrations see [most of their proposed rules](#) finalized in their final year in office. **But if the personnel and regulatory will is there, the Biden administration can push forward on several fronts. It may not be a final rule, but the headline risk of what's proposed will be present.** What's in the current UA will grow further in the Spring 2022 UA as the administration seeks to implement the Infrastructure Investment and Jobs Act and BBB (whenever it passes early next year).

## Overview

The Fall 2021 Unified Agenda of Regulatory and Deregulatory Actions (UA) includes 2,678 rules under active consideration. This isn't far off from the number of rules under consideration during the end of President Trump's term in office. But it's the 205 "economically significant" rules under active consideration that stands out. An economically significant rule means OIRA believes it will likely have an annual effect on the economy of \$100 million or more or adversely affect the economy or a subsector in a material way. At a comparable moment in their presidencies, President Trump had 71 economically significant rules in his Fall 2017 UA and President Obama had 123 economically significant rules in his Fall 2009 UA. In fact, the Biden administration already has over 60 finalized economically significant rules, [at least 50 percent more than any other](#) administration in its first year dating back to President Reagan.

**To realize these ambitious regulatory goals, it will take a team effort from the agencies up to the White House.** Personnel is policy and people like Environmental Protection Agency (EPA) Administrator Michael Regan, Federal Trade Commission (FTC) Chair Lina Khan, Securities and Exchange Commission (SEC) Chair Gary Gensler, Consumer Financial Protection Bureau (CFPB) Director Rohit Chopra, OMB Director-designate Shalanda Young, and OIRA Associate Administrator Sharon Block are all personnel to watch closely on the regulatory front.

Below are selected regulations that we believe are worth watching in the year ahead as they work their way through the rulemaking process.

## Energy & Environment

The regulatory space offers the Biden administration broad latitude in moving on many climate and energy goals through its trademark "whole-of-government" response. In the next year, the Environmental Protection Agency (EPA), Department of the Interior (DOI), and Federal Energy Regulatory Commission (FERC) will take steps in advancing various

issues they have prioritized already across the sectors. The Department of Energy (DOE) has also issued a series of rules to advance energy efficiency standards for various products.

- [Emission Guidelines for Greenhouse Gas Emissions from Fossil Fuel-Fired Existing Electric Generating Units](#): The EPA is considering a rule to replace the Obama administration's Clean Power Plan (CPP) to govern emissions at power plants.
  - **Outlook:** This new rule from the EPA follows up on a number of public statements that the agency has been preparing to replace Obama's CPP. The inclusion of the rule within the agenda, setting an NPRM for July 2022 and a final rule for July 2023, comes as the Supreme Court took up a case in November that could derail the regulatory ability to govern carbon emissions at power plants under the Clean Air Act. This timeline seems to account for that threat because the ruling from the Supreme Court's surprise decision to consider arguments from Republican-led states and coal companies against the EPA is expected in June or July 2022.
- [Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review](#): The EPA is looking to finalize a rule on methane emissions.
  - **Outlook:** After publishing an NPRM last month, the EPA is looking to finalize the rule by October 2022. Methane rules have gained notoriety as Congress is considering adding an additional methane fee within the Build Back Better Act which Senator Joe Manchin (D-WV) and other Democrats with fossil fuel interests have said they don't want to be duplicative of this rule. The EPA rule would broaden methane requirements and who they apply to and would make them govern existing sources for the first time.
- [Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards](#): The EPA is looking to finalize a rule on auto emissions standards.
  - **Outlook:** After publishing an NPRM in August, the EPA wants to finalize its auto emissions standards this month, though time is pretty short on that timeline. The new standards will be another test of the Biden administration's commitment to its climate credentials. After environmentalists and climate advocates criticized the standards proposed over the summer that would have returned to near Obama era standards after accounting for the delay from the Trump era rollback, EPA Administrator Michael Regan [said](#) at the COP26 summit in November that "What we finalize will be much more aggressive and much more comprehensive."
- [Control of Air Pollution From New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards](#): The EPA is considering a rule to govern emissions from heavy duty vehicles.
  - **Outlook:** The EPA expects to issue an NPRM in January to be finalized by the end of 2022 to govern emissions from heavy duty vehicles. This is a next step in the greater auto emissions agenda as the regulations to be finalized

this month govern light duty vehicles.

- Renewable Fuel Standard (RFS): The EPA is considering two rules for the RFS program: 1) [Volume Requirements for 2023 and Beyond Under the Renewable Fuel Standard Program](#) and 2) [Renewable Fuel Standard \(RFS\) Program: RFS Annual Rules](#).
  - **Outlook:** The EPA only recently released retroactive fuel standards and new standards for 2022. It is now tasked with laying out volumes for 2023 and beyond, which mark the beginning of the program after the statutorily prescribed RFS standards end in 2022. Volume standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel are expected in February 2022 and the new rulemaking to establish 2023 and beyond standards is expected in May 2022.
- PFAS: The EPA is considering the following related to PFAS: 1) [Designating PFOA and PFOS as CERCLA Hazardous Substances](#), 2) [PFAS-Related Designations as CERCLA Hazardous Substances](#), and 3) [Changes to Reporting Requirements for Per- and Polyfluoroalkyl Substances; Community Right-to-Know Toxic Chemical Release Reporting](#).
  - **Outlook:** The EPA is moving forward with one of its most significant PFAS-related actions in designating PFAS as a hazardous substance under Superfund, which triggers strict liability standards for most players involved at any time in PFAS. The NPRM to do so is set here for March 2022 with complementary measures around gathering more information on PFAS chemicals set for a pre-rule, also known as an advance NPRM, in June 2022, and a final rule to boost reporting requirements for June 2023.
- [Revision of Existing Regulations Pertaining to Fossil Fuel Leases and INSERT the Leasing Process](#): The DOI is considering a rule to increase fees, rents, royalties, and bonding requirements for oil and gas leasing, development, and production on federal land.
  - **Outlook:** DOI plans to issue a NPRM in May 2022 and will take comments through June. The rule could draw from DOI's report on the leasing program that Biden commissioned early in his presidency and could become a political flashpoint amidst the politics of oil and gas.
- [Revisions to Regulations on Electric Reliability Organization Performance Assessments](#): FERC is looking to finalize a rule to bolster energy cybersecurity.
  - **Outlook:** After releasing an NPRM in January, FERC is looking to finalize its rule in May 2022 to beef up cybersecurity by offering incentives for utilities that voluntarily invest in strengthening their cybersecurity measures. This issue within energy became a top concern this year following the hacking of the Colonial Pipeline that the Biden administration is not eager to repeat.
- [Procedures for Permitting Electricity Transmission Facilities at International Boundaries](#). The DOE is considering a rule to approve transmission line construction

across international borders.

- **Outlook:** The NPRM, which is set for April 2022, is likely a response to the recent demise of the \$950 million transmission line called the New England Clean Energy Connect that would have supplied hydropower to New England's power grid from Quebec and was voted down in a referendum this year by Maine voters.

## Financial Regulation

The Biden administration has made clear with its nominations that it is more than happy to embrace significant reform of the financial system and leave no stone unturned in the process. What the UA from last Friday underscores is that in the efforts to do so, **the SEC is not only much closer to realizing some of these goals, it is also the agency that appears set to lead the charge under Chair Gary Gensler.**

- ESG: The SEC is considering rules for disclosure on [climate change](#), [human capital management](#), and [corporate board diversity](#) as well as [a proposal for investment advisers and companies related to ESG factors](#).
  - **Outlook:** The SEC included all of these agenda items on its previous UA released in June. So far it has yet to take action on any of them despite NPRMs being expected to have been released for the climate change and human capital management rules in October. Both are now expected to be issued this month according to the agenda. Gensler has made clear that these ESG issues are near the top of his priority list and is under real political pressure to complete them.
- [Amendments to the Securities Transaction Settlement Cycle](#): The SEC is considering a rule to shorten the standard settlement cycle.
  - **Outlook:** The agency included this on its earlier agenda, though had then said it expected to issue an NPRM in October. That has now been pushed back to April 2022. While this is something that we see Gensler working to get done, we do not feel that it is at the top of his to-do list. The most likely proposal will be for a shift to T+1 from T+2.
- Fund Disclosures: The SEC is considering rules to amend [Form PF](#) and to [update rules relating to private fund advisers](#).
  - **Outlook:** The agency had included the proposal to change Form PF on its previous agenda, though action had been expected in November, but has yet to materialize. The current agenda says it is expected this month. The second private fund rule was hinted at by Gensler when [he made comments](#) voicing concerns about the fee structures and possible conflicts of interest that could be created through side letters. While the posting is vague, this is what we anticipate the rule to look at. An NPRM is not expected until April 2022.
- [Short Sale Disclosure Reforms](#): The SEC is considering a rule to increase short sale disclosure.

- **Outlook:** The SEC had included this on its previous agenda, but did not take any action. The revised agenda suggests that we could see an NPRM by the end of this month.
- [Equity Market Structure Modernization](#): The SEC is considering a rule to address any concerns about payment for order flow, best execution, order routing, and market concentration.
  - **Outlook:** The agency is still on its same timeline as when this was included previously, which is to issue an NPRM in April 2022. The expectation is that the initial rule may be a more transformative proposal than what the final result is, which will likely focus primarily on increased disclosure.
- [Trading Prohibitions Under the Holding Foreign Companies Accountable Act \(HFCAA\) and Enhanced Listing Standards](#): The SEC is considering a rule implementing HFCAA that focuses on variable-interest entities (VIEs).
  - **Outlook:** The agency [voted to finalize](#) rules earlier this month that will set the submission and disclosure standards mandated in the law by HFCAA. This also means that companies are in the potential delisting window unless they comply. A NPRM focusing on VIEs is not expected before October 2022.
- [Special Purpose Acquisition Companies \(SPACs\)](#): The SEC is considering a rule relating to SPACs.
  - **Outlook:** The agency has included this in their previous agenda and remains on the same timeline of an NPRM expected in April. The expectation is that rule changes will focus on increased disclosure.
- [Disclosure Regarding Beneficial Ownership and Swaps](#): The SEC is considering a rule to increase disclosure regarding beneficial ownership and swaps.
  - **Outlook:** The agency has included this in their previous agenda and remains on the same timeline of an NPRM expected in April. The issue gained attention following the Archegos collapse, but is not near the top of Gensler's priority list.
- Cryptocurrencies: Financial Crimes Enforcement Network (FinCEN) is considering two rules: 1) [Requirement to Collect, Retain, and Transmit Information on Transactions Involving Convertible Virtual Currencies and Digital Assets With Legal Tender Status](#) and 2) [Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets](#).
  - **Outlook:** FinCEN had first issued NPRMs on these issues under the Trump administration, though unsurprisingly, the Biden administration is reviewing what was put forth. On the first one, FinCEN intends to release a second version of the rule in March 2022. The rule, at the time, was not viewed as being too controversial and is an important step for further incorporation of cryptocurrencies into the financial system, as well as an implicit acknowledgment of the industry's size. The second rule pertaining to unhosted wallets issued late last year led to significant pushback from the

cryptocurrency industry. Common criticisms centered around the reduction in privacy that this would mean and the danger that it could push American cryptocurrency users to overseas firms. This has been included previously in the agenda, though the administration has yet to take action. Final action is expected in September 2022, and we expect that if that is to be the timeline, there will be more clarity on what, if any tweaks, the new administration may be making to the rule as it was initially proposed.

## Consumer Finance

The CFPB only has [five rules on its docket](#) for the UA. But this is more a function of the CFPB still getting up to speed with the confirmation of its new permanent director, Rohit Chopra, this past fall. **The Spring 2022 UA is expected to better reflect the regulatory priorities of Chopra. Therefore, we expect that Chopra will be looking at investigations and enforcement actions in the short term, as his regulatory division works through what new rules to prioritize and publish this coming spring.**

- [Small Business Lending Data Under The Equal Credit Opportunity Act](#): The CFPB is considering a rule to create a new mandate for lenders to collect racial and other data on borrowers and potential borrowers
  - **Outlook:** It is what we expect the CFPB will do with the data that is most important. Once the CFPB has access to data about how lenders interact with those seeking loans, then it will be able to use it to determine whether any discrimination (intentional or not) has occurred. It will most likely use the disparate impact standard whereby a company is guilty of race or sex discrimination if it does not have sufficiently equal lending outcomes for various protected classes, even if it is not intentionally discriminating or it is solely using quantitative measurements to arrive at its underwriting results. The CFPB does not even shy away from this characterization, writing in the UA preamble, "Congress enacted section 1071 for the purpose of (1) facilitating enforcement of fair lending laws and (2) enabling communities, governmental entities, and creditors to identify business and community development needs and opportunities for women-owned, minority-owned, and small businesses." We expect that next spring's UA will only be more robust in setting the bureau up to use its enforcement powers in this regard.

## Healthcare

As always, the Department of Health and Human Services has an enormous number of rulemakings in various stages on its docket. While most investors with an interest in healthcare tend to focus on the annual payment rate notices for subsectors like Medicare Advantage, home health, skilled nursing facilities, etc., we have chosen two rules that we expect to have an impact outside of those annual exercises: hearing aids and the interchangeability of biologics and biosimilars. Notably, because BBB has not yet passed, there are not a lot of new policies on implementing prescription drug price negotiations or

new funds for home health or Medicare covering hearing aids – those will also likely be considered in 2022, so will be in the next UA.

- [Over-the-Counter Hearing Aids Rule](#): The Food and Drug Administration (FDA) is finalizing a rule to allow products that help patient hearing be sold over the counter in stores or online without a fitting or medical exam from an audiologist.
  - **Outlook:** While on the surface this rule could benefit manufacturers by creating a new market that is more affordable and allow first-movers in this new sector to amass market share, the yet-to-be passed BBB hearing aid section would complicate this issue. The reason is that the new hearing benefit for Medicare would require an audiologist and thus it would potentially dampen the interest in producing OTC hearing aids for the American market when instead the companies can push for greater awareness and uptake of the new Medicare benefit and charge closer to full price for the products. However, the fate of the Medicare provision in BBB is up to Senator Joe Manchin and the rest of the Democratic caucus. Manchin is reportedly against any expansion of Medicare until the broader program is on better fiscal footing. The rule is expected to be finalized in the first half of 2022 and it is now being lumped in with other Biden administration efforts to "promote competition in the American Economy."
- [Biologics Regulation Modernization](#): The FDA is considering a rule that would create new interchangeability standards that clearly account for the existence of certain biosimilars and biologics in order to "support competition and enhance consumer choice by preventing efforts to delay or block competition from biosimilars and interchangeable products."
  - **Outlook:** While interchangeability has been controversial, it is not new to investors in drug and biologic manufacturers. The NPRM is expected next August. We expect that the rule will be finalized with the idea of being able to bring down prices without harming health firmly in mind, particularly as the original Democratic version of drug reforms has been so watered down in the process of getting BBB passed. Going into the 2024 election, the Biden team is going to be looking for anything it can point to in terms of saving both Medicare and senior citizens money on their prescription drugs and further utilizing interchangeability is one very real area where savings can be felt.

## Tobacco

Amid rising rates of youth vaping over the past few years, the FDA under appointees of both parties has increasingly targeted tobacco products, including both combustible cigarettes and electronic nicotine delivery systems (ENDS). Nearly a year into the Biden presidency, the lack of a permanent FDA commissioner has held the agency back, but Biden's nominee, Robert Califf, is on track to be confirmed with bipartisan support after his Senate hearing on Tuesday. A former FDA commissioner and deputy commissioner of the FDA's Office of Medical Products and Tobacco, Califf is likely to renew the agency's crackdown on tobacco. **The FDA is also weighing a more stringent nicotine standard**

**for combustible tobacco, which could be as low as near-zero, though this rule wasn't included in the Unified Agenda this fall. It will be one to watch out for in the next edition.** The [UA preamble](#) places the FDA's tobacco controls in the context of the Biden administration's focus on equity for marginalized groups: "The Department [of Health and Human Services] recognizes that people of color, LGBTQ+ people, people with disabilities, people with low incomes, and other underserved populations experience longstanding disparities in leading public health indicators—including obesity and the use of certain tobacco products." This progressive lens shapes the FDA's rulemaking on tobacco. For example, menthol cigarettes, which the agency plans to ban, are disproportionately used by Black smokers.

- [Tobacco Product Standard for Menthol in Cigarettes](#): The FDA is considering a rule to ban menthol as a flavor in cigarettes. It was included in the Spring 2021 UA and remains in the proposed rule stage.
  - **Outlook:** According to the UA, a proposed rule is estimated to come in April 2022, but the FDA is facing a [lawsuit](#) from anti-tobacco groups alleging that it's moving too slowly. The agency hasn't yet completed its premarket review of ENDS, and this will factor into the menthol ban's timeline as well. Decisions on e-cigarettes made by vaping market leaders **Juul (JUUL)** and R.J. Reynolds Vaping Company, a **British American Tobacco (BAT)** subsidiary, are still pending months after the September 9th deadline. Both Juul and Reynolds offer menthol flavors, and the FDA may be reluctant to block these before the menthol ban on cigarettes is enacted, as this could drive users of ENDS to shift to traditional combustible cigarettes. The impact of a menthol ban would be substantial, and tobacco companies are expected to seek to delay or defeat the rule through lobbying and litigation. In 2019, the FTC [reported](#) that menthol cigarettes accounted for about a third of the US market. A scientific study cited by the FDA in announcing the menthol ban [suggests](#) that "banning menthol cigarettes in the U.S. would lead an additional 923,000 smokers to quit, including 230,000 African Americans in the first 13 to 17 months after a ban goes into effect."
- [Tobacco Product Standard for Characterizing Flavors in Cigars](#): The FDA is considering a rule to ban all flavors other than tobacco in cigars, including menthol. The rule was included in the Spring 2021 UA and remains in the proposed rule stage.
  - **Outlook:** The timeline has slipped for this rule. In the spring, the NPRM for the flavored cigar ban was estimated to be released in August 2021. This didn't happen, and the most recent UA puts it at April 2022. Like the menthol cigarette ban, this rule is likely to be subject to lobbying efforts and litigation from tobacco companies whose business model is threatened.

## Antitrust

Looking at the FTC and Department of Justice (DOJ), there are not many significant rule changes that are under consideration with implications for those focused on antitrust

issues. **This speaks to what we expect to continue to be the mantra, particularly of FTC Chair Lina Khan, which is aggressive enforcement and a focus on making tweaks to current policy statements and existing guidance.** Additional rules from the FTC are possible, as the agency alluded to in its [statement of regulatory priorities](#), but these rules were not included in the regulatory agenda. One of particular note is an effort to examine "unfair methods of competition," which could include rules related to "non-compete clauses, surveillance, the right to repair, pay-for-delay pharmaceutical agreements, unfair competition in online marketplaces, occupational licensing, real-estate listing and brokerage, and industry-specific practices that substantially inhibit competition."

- [Business Opportunity Rule](#): The FTC is looking to initiate a review, or pre-rule, of the existing rule on disclosures for business opportunity sellers.
  - **Outlook:** Based on [the statement](#) issued by then-FTC Commissioner Rohit Chopra, we expect that the result of this review will be, at minimum, some sort of reform to how it is currently applied. In his statement, Chopra particularly called out gig economy companies and multilevel marketers as firms who the agency would be looking at when revising the rule. Chopra said that these changes would allow for "the Commission to seek restitution and penalties" against those businesses found to be in violation of the rule. He also highlighted how this is an important step for the agency to take with its loss of authority under Section 13(b) earlier this year. The agency anticipates issuing a request for comments this month.

## Privacy

Democrats are increasingly looking to the FTC for solutions to data privacy issues as the movement for comprehensive federal privacy legislation has stalled in Congress. BBB includes \$500 million for the agency to set up a new bureau focused on privacy, and President Biden's nominee for an open seat on the FTC, Alvaro Bedoya, is a noted privacy advocate. The deadlocked committee vote on Bedoya and a hold on the nomination placed by Senator Ted Cruz (R-TX) will delay a floor vote, but our base case is that Bedoya will be confirmed relatively early in 2022. Once in office, Bedoya is likely to be a strong voice leading the FTC's rulemaking on privacy. One of the top issues in this area is thought to be children's privacy.

- [Children's Online Privacy Protection Rule](#): The FTC is continuing to review public comments submitted in 2019 regarding the agency's rule that implements the Children's Online Privacy Protection (COPPA) Act. There are no updates since the release of the Spring 2021 UA. The FTC [stated](#) when it reopened consideration of the COPPA rule in 2019, several years ahead of schedule, that the speed of technological changes compelled an earlier re-evaluation.
  - **Outlook:** The FCC's re-evaluation of the COPPA rule comes at a time when bipartisan interest in children's online safety and privacy is growing in Washington, particularly in the wake of **Facebook (FB)** whistleblower Frances Haugen's revelations about Instagram's internal research on the harms its platform poses to teenage girls. In September, the FTC included children as

one of eight "[key enforcement areas](#)" to focus on over the next ten years. It's possible the agency hasn't released a finalized COPPA rule in the past two years because it may be crafting new rules on children's privacy. This fall, the agency under Chair Lina Khan [reportedly began considering](#) a new rulemaking on privacy. It's not yet clear how that effort might affect the FTC's COPPA rule.

- [Security, Privacy, and Algorithms Rule](#): The FTC is considering a new rule to “curb lax security practices, limit privacy abuses, and ensure that algorithmic decision-making does not result in unlawful discrimination.” This rulemaking has not previously appeared in the UA.
  - **Outlook:** This measure is still in the pre-rule stage, with an advanced notice of proposed rulemaking estimated to be released in February 2022. It's unclear whether this is the FTC rulemaking on privacy that was [previously reported on](#) this fall, or whether additional rulemaking might follow once Bedoya takes his seat on the commission. In addition to children, algorithmic bias was another key enforcement area identified under Khan's leadership in September. Algorithms have come under greater scrutiny in Washington in recent weeks and months. In her congressional testimony, Haugen urged the federal government to concentrate on algorithmic abuses in efforts to hold tech companies accountable.

## Airlines

While airline unions and employees are an important Democratic constituency, airlines have long been a poster child of corporate malfeasance in the eyes of progressive members of Congress. After a pandemic that saw a special bailout for the airline industry, Democrats may have a short fuse when it comes to actions by airlines that are perceived to hurt travelers or be anti-competitive. This makes them a ripe target for regulatory action.

- [Enhancing Transparency of Airline Ancillary Service Fees](#): The Department of Transportation (DOT) is considering a rule that would require clear disclosure of ancillary fees when tickets are purchased.
  - **Outlook:** This fight for greater price transparency began first under the Obama administration in 2011 and was ultimately dropped by the Trump administration in 2017, so this is not a new fight. The rule would not require lower fees, simply greater transparency in an effort to promote competition between airlines. Though the administration believes that such transparency and competition will result in lower prices for the consumer. An NPRM is expected in June 2022.

## Autonomous Vehicles

Given the surging popularity and technological push for increasing autonomy in motor

vehicles, regulators are looking to work quickly to stay ahead of any potential safety issues. The regulatory environment is presently receptive to these vehicles, but this is more due to a lack of saying no than an explicit regulatory yes in many instances.

- [Expansion of Temporary Exemption Program to Domestic Manufacturers for Research](#): The DOT's National Highway Traffic Safety Administration is considering a rule to request exemptions to test what would otherwise be nonconfirming vehicles on public roads.
  - **Outlook:** This new rulemaking process is set to supersede [a prior one](#) which would have created a pilot program for research on motor vehicles with higher levels of automation. This new rule would allow for further testing of autonomous vehicles, both trucks and passenger vehicles, which regulators view as important to understand the safety limitations and what design requirements should be in place. An NPRM is expected in April 2022.
- [Safe Integration of Automated Driving Systems-Equipped Commercial Motor Vehicles](#): The DOT's Federal Motor Carrier Safety Administration is considering a rule to seek safe integration of autonomous trucks.
  - **Outlook:** This is the continuation of a rulemaking started under the Trump administration and then-Secretary of Transportation Elaine Chao. Although it is under the same heading, we expect that there will be some changes reflecting the partisan differences between the advanced notice of proposed rulemaking released in 2019 and the NPRM which is not expected before June 2022. Such differences likely will put a greater emphasis on safety and take a more cautious approach to the environments into which they are first integrated.

