

MORNING COLOR

January 12, 2023

Today's Driving Events

- **Bipartisan Gang Examines Debt Ceiling:** A bipartisan group of lawmakers are examining options for raising the debt ceiling. House Speaker Kevin McCarthy (R-CA) can only hope they are successful.
- **Big Tech in Biden's Crosshairs:** In President Biden's op-ed published yesterday in the Wall Street Journal, he makes appeals to Republicans to work together to address "Big Tech Abuses," but clearly signals that even without further legislation, his administration will ramp up its ongoing regulatory efforts to rein in these companies.
- **CMS Skips Rulemaking for Drug Price Negotiations But Offers Roadmap:** The Inflation Reduction Act, which will allow Medicare to negotiate prices for prescription drugs for the first time, will not have a formal rulemaking process as part of its implementation, but we will know which drugs in Part D will be up first for price cuts by September 2023.

Putting the Gang Back Together for the Debt Ceiling: Paging the [908 Coalition](#). Your services may be needed once again. The bipartisan and bicameral group of lawmakers came together in divided government in 2020 to reach a deal on \$908 billion in pandemic aid that eluded the brinkmanship among leadership. A similar bipartisan gang worked together to reach a deal on infrastructure spending in 2021 after talks faltered among leadership. Similar elements of the gang are looking for ways to deal with the debt ceiling this year. According to a [Wall Street Journal report](#), "Democrats and some centrist Republicans are in early, informal conversations about dusting off a rarely used parliamentary procedure that could force a vote to raise the nation's borrowing limit." Problem Solvers Caucus Co-Chair Brian Fitzpatrick (R-PA) is leading discussions on the use of a discharge petition to bypass Republican leadership and bring legislation straight to the floor with a majority of votes. The other co-chair, Rep. Josh Gottheimer (D-NJ), is undoubtedly involved in these talks. **House Speaker Kevin McCarthy (R-CA) is between a rock and a hard place on negotiating the debt ceiling.** The Republican base wants a public fight. It's why 65 percent of Republican voters [approved](#) of the chaotic and public fight for speaker. It's why rabble rouser Rep. Matt Gaetz (R-FL)

has ["more fans"](#) than McCarthy. This dynamic is not lost on McCarthy, who will take the public lead in debt ceiling negotiations. He's [promising](#) to not raise the debt limit "without budget agreement or commensurate fiscal reforms." But negotiations only work if McCarthy can secure a majority of votes. **The entire Republican conference supports leveraging the debt limit for some "fiscal reforms."** Even **Fitzpatrick, who said any debt ceiling increase will need to include "some kind of controls on deficits."** Yet the devil is in the details and **House Republicans can only afford four defections.** Democrats [are insisting](#) on a clean increase in the debt ceiling, without any conditions added. What will be the Republican counter once Democrats introduce a clean increase in the House Ways and Means Committee? Will Republicans insist on returning discretionary spending to fiscal year 2022 levels? That could alienate a [number of Republican defense hawks](#) adamant about maintaining a strong military budget. Will Republicans insist on cuts or reforms to mandatory programs like Social Security and Medicare? That could alienate [populist Republicans](#) who oppose touching entitlement programs. Will Republicans support [just the creation](#) of bipartisan committees to look for ways to make federal trust funds solvent? That could alienate [ultraconservatives](#), like Ways and Means Committee Chair Jason Smith (R-MO), who "are sick of" committees being formed to find bipartisan solutions. If Republican leadership stakes out a position too far to the right, a handful of Northeastern and financially-minded Republicans could [seek a deal](#) with House Democrats. If leadership stakes out a position too far to the left, ultraconservatives could follow through on a [threat](#) to topple McCarthy's speakership. **But McCarthy's concessions in the speaker's race and Smith's elevation as Ways and Means Committee chair is a clear signal that the right flank of the GOP is ascendant and carries greater weight in debt ceiling negotiations. Ironically, this empowers other elements of DC to reach a deal.** President Biden could try taking executive action on the debt limit, like minting a platinum coin, absolving Congress of its responsibility (this [seems unlikely](#)). Biden could try negotiating a deal with his old friend Senate Minority Leader Mitch McConnell (R-KY), which is how the debt ceiling crisis was [resolved](#) a decade ago (if not Biden and McConnell, then maybe the 908 Coalition). In that case, McCarthy can ["vote no, hope yes"](#) that enough Republicans defect to move forward via a discharge petition. However, that legislative maneuver is [very complicated](#). Any legislation has to wait in committee for 30 legislative days before being discharged, something that could take 2.5-3 calendar months. There could be [further time and discharge votes required](#) if an amendment is needed. There's no concise time for the X-date when Treasury's extraordinary measures are exhausted. **Some are estimating the X-date will be in July or August. Needing to reach a deal as early as April won't be easy, but we still view the discharge petition as a real possibility. Another option is McCarthy employing the time-honored tradition of shifting the goalposts to declare victory in the face of defeat.** It's what House Speaker Nancy Pelosi (D-CA) [did](#) when the House Build Back Better agenda was cut down by House moderates and further dismantled in the Senate by Senators Joe Manchin (D-WV) and Kyrsten Sinema (I-AZ). Whatever the Senate or a bipartisan gang can agree to on the debt ceiling, McCarthy will try to sell it as a victory for conservatives. This could be something along the lines of the [TRUST Act](#)

establishing bipartisan rescue committees for trust funds and/or the [Responsible Budgeting Act](#) that seeks to pass a concurrent budget resolution to reduce the debt-to-GDP ratio by five percent over 10 years. Perhaps also a promised vote on a balanced budget amendment. **It's no doubt a tougher sell for McCarthy among a cohort looking to win a fight.** He risks provoking the ire of ultraconservatives who could invoke a motion to vacate the speaker's chair. In that case McCarthy can only hope enough moderate Democrats don't go along. As the saying goes, hope is not a strategy. But McCarthy doesn't have a strategy beyond hope. It's gotten him this far.

Biden Lays Markers on Big Tech Policy: In [an op-ed published yesterday](#) in the Wall Street Journal, President Biden urged Democrats and Republicans to come together to focus on "Big Tech Abuses." In the piece, the president calls out several specific areas that he sees as needing to be addressed, including how these companies use users' personal data, "allowed abusive and even criminal conduct," and the impact that social media is having on children. **To mitigate these issues, Biden proposes targeting three areas for reform: federal privacy protection, Section 230, and increasing competition in the tech sector.** The op-ed then goes on to outline the ways in which the White House is working within its existing authorities to address Big Tech, including the Federal Trade Commission's (FTC) data privacy rulemaking and the FTC and Consumer Financial Protection Bureau's rules to address "algorithmic discrimination." Biden ends the op-ed with a call for members of Congress to work together to pass legislation that will give the White House more authority to address these "Big Tech Abuses." **As genuine as Biden is in these calls and there is no love for Big Tech from either side of the aisle, there is good reason to believe that there will be little progress on legislation related to Big Tech by this Congress.** One of the reasons for this is that Democrats and Republicans' reasons for disliking these companies differ. Thus, while there is general agreement that more should be done to rein in Big Tech, when the two parties begin negotiating over the specifics, there is insufficient common ground to serve as the basis for passing legislation. Antitrust legislation provides a perfect microcosm of this where most Democrats want to pass the legislation to bring more competition to the markets, while the majority of Republicans are more focused on addressing the perceived bias against conservatives. **Where there is a chance for progress is when these concerns can both be addressed in a bill, such as the Open App Markets Act, which Democrats see as bringing competition to app stores and Republicans see as a chance to restrict one potential avenue of censorship.** This is one of the Big Tech-related bills that we view as having the best chances of passage, but even its prospects are fairly dim unless Rep. Jim Jordan (R-OH), the new chair of the House Judiciary Committee, comes out in support of the legislation. Jordan has opposed most other antitrust efforts, but he has railed against Big Tech for what he perceives as silencing of conservative voices and is why we believe he could back it, at least in theory. Without Jordan's support the bill is basically dead in the water, but if he were to come out in favor, there would potentially be a path for it to pass. Beyond

advocating on these specific issues, there are bigger political reasons for Biden to pen this op-ed. **It gives him a chance to go after a fairly unpopular target in Washington and to contrast how he is governing against House Republicans' current disarray. He also gets to bolster his bipartisan persona and highlight his administration's regulatory work.** Biden is offering and encouraging a legislative path to resolve these "Big Tech Abuses," but is also signaling that without legislation he is prepared to support his regulators in their rulemaking efforts. Biden's calls for this legislative cooperation also comes at a time when his approval rating is reaching levels not seen since July 2021, according to [a poll from The Economist and YouGov America](#). This political capital may not be able to be transformed into legislative success, but it will likely at least be used to continue providing political coverage for his regulators on Big Tech and other top political and policy priorities.

CMS Lays Out Drug Negotiation Roadmap: Centers for Medicare and Medicaid Services (CMS) Administrator Chiquita Brooks-LaSure yesterday released a [roadmap](#) for how the agency intends to implement the Inflation Reduction Act (IRA) over the coming year. [CMS also issued a memo](#) that gave additional details on the stakeholder feedback it is asking for as well as the guidance it intends to issue in lieu of a more formalized notice and comment rulemaking. There are many key takeaways from this announcement. First, CMS is painfully aware that they are not doing a full notice and comment rulemaking to set up the program and agency leaders constantly repeat in the announcement and memo how much they value public engagement, including three separate comment opportunities for the public. Brooks-LaSure was quoted saying, "We cannot do this important work alone and will engage with the public early and often. We are proactively seeking feedback and insights from a broad range of interested parties throughout implementation of this historic law." These comment periods are classified as "information collection requests" (ICRs) and they cover the small biotech exception (submission due summer 2023); negotiation data elements (due by October 2, 2023); and offer and counteroffer exchange, where manufacturers will need to submit any counteroffers for initial year price negotiations (2026) by 2024. **Other key dates that will be useful to investors include the following:**

- Winter 2023 -- ICR for small biotech companies published;
- **June 1, 2022 to May 31, 2023 -- period for total expenditure calculations which will be used to determine which drugs are selected for 2026;**
- Summer 2023 -- other two ICRs on negotiation and counter offer and data elements are released;
- **September 1, 2023 -- CMS will publish its list of 10 Part D drugs for 2026 price negotiation;**
- **February 1, 2024 -- CMS will send initial price offers; and**
- **September 1, 2024 -- CMS will publish the maximum fair prices they will pay starting on January 1, 2026.**

In the future, CMS will keep the original 10 drugs at the lower negotiated prices and then add 15 more Part D drugs in 2027. In 2028, CMS can add Part B drugs to the mix, with 15 new products, and 20 more Part B or D drugs in each year thereafter. Also of note is the fact that insulin for seniors on Medicare is now capped at \$35 per month with no deductible and if drug prices for all payers increase faster than inflation, then the manufacturers must pay a rebate to CMS. The period of time for calculating this rebate commenced on October 1, 2022 for Part D and January 1, 2023 for Part B. **We will publish a Spotlight Report later today with a more in-depth analysis of the healthcare policy outlook for 2023.**

House

The House will reconvene at 9:00 a.m. and will consider a bill that would prohibit sending petroleum products from the Strategic Petroleum Reserve to China.

Senate

The Senate is not in session this week.

White House

President Biden will receive his daily intelligence briefing at 8:30 a.m. At 10:00 a.m., the president will deliver remarks on the economy and his administration's efforts to tackle inflation. At 11:00 a.m., he will speak at the memorial service for former Defense Secretary Ash Carter.

Macroeconomic

At 7:30 a.m., Philadelphia Federal Reserve Bank President Patrick Harker will speak on the economic outlook before the Main Line Chamber of Commerce Economic Forecast 2023 and Annual Meeting.

At 11:00 a.m., the US Chamber of Commerce will hold a virtual discussion titled "State of American Business 2023." [More information here](#). Expected participants include:

- Suzanne Clark, president and CEO, US Chamber of Commerce

At 11:30 a.m., St. Louis Federal Reserve Bank President James Bullard will participate in a moderated conversation on the US economy and monetary policy before a virtual Wisconsin Bankers Association Midwest Economic Forecast Forum.

At 12:40 p.m., Richmond Federal Reserve Bank President Thomas Barkin will speak

before the Virginia Bankers Association/Virginia Chamber of Commerce Financial Forecast event.

Education

At 3:00 p.m., the Brookings Institution's Center for Universal Education will hold a virtual event titled "Essential resources for driving community schools forward." [More information here.](#) Expected participants include:

- Cindy Marten, deputy secretary, Department of Education

At 3:00 p.m., The Bipartisan Policy Center will hold a virtual discussion titled "Early Care and Education Systems: Revisiting a State-by-State Analysis." [More information here.](#)

Financial Services

At 2:00 p.m., the Securities and Exchange Commission will hold a closed meeting.

At 11:00 a.m., CQ Roll Call and FiscalNote will hold a virtual discussion titled "2023 Global Environmental, Social, and Governance (ESG) Outlook: What You Haven't Even Thought of Yet." [More information here.](#)

Geopolitical

At 8:00 a.m., the Center for Strategic and International Studies will hold its 2023 Indo-Pacific Forecast. [More information here.](#) Expected participants include:

- Kurt Campbell, coordinator for Indo-Pacific affairs, National Security Council

At 10:00 a.m., Georgetown University's School of Foreign Service will hold a discussion with Japanese Digital Minister Taro Kono titled "Japan-U.S. Digital Policy." [More information here.](#)

At 6:00 p.m., the Economic Club of Washington, DC will hold a virtual discussion with UK Ambassador to the United States Karen Pierce. [More information here.](#)

Healthcare

At 10:00 a.m., the Medicare Payment Advisory Commission will hold a virtual meeting. [More information here.](#)

Housing

At 1:00 p.m., the Brookings Institution and the National Fair Housing Alliance will hold an event titled "Examining racial bias in home appraisals: Screening of 'Our America: Lowballed.'" [More information here.](#) Expected participants include:

- Rep. Maxine Waters (D-CA)

Tax Policy

At 8:00 a.m., Georgetown University's Institute of International Economic Law and the International Tax Policy Forum will hold a conference titled "International Taxation in Flux." [More information here.](#)

Trade

At 10:00 a.m., the Hudson Institute will hold a virtual discussion titled "Fighting China with Chips: U.S. Microelectronics Supplies during a Trade War." [More information here.](#)



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