

# What's New in Washington

**Akin Gump**  
STRAUSS HAUER & FELD LLP

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With Election Day quickly approaching, both parties in Congress continue to focus on making critical gains in the mind of voters, as Democrats seek to protect their current majorities and Republicans fight to flip control of the House and Senate. The fall legislative session is set against the backdrop of the recent enactment of two significant pieces of legislation: the CHIPS and Science Act of 2022 and the Inflation Reduction Act, which Democrats believe have helped their standing in the polls. Republicans, on the other hand, are convinced that voters will take out their inflation frustrations on the Democrats as the party in power.

Lawmakers return to Washington for the September work period focused on a September 30 government funding deadline that must be addressed before members of Congress head home in October on the final stretch before Election Day.

This issue of *What's New in Washington* provides insight on the anticipated legislative priorities as Congress reconvenes in September and subsequently in the post-election lame-duck session. It also provides a recap of key legislation signed into law in recent months.

## Recap:

- **CHIPS and Science Act of 2022:** P.L. 117-167 consists of three bills: Division A is the “CHIPS Act of 2022”; Division B is the “Research and Development, Competition and Innovation Act”; and Division C is the “Supreme Court Security Funding Act of 2022.” Divisions A and B are considered the more critical elements of the new law. Division A appropriates \$52 billion in incentives over five years to develop semiconductor manufacturing capacity in the United States. Division B authorizes over \$100 billion in science funding at the National Science Foundation (NSF), National Institute of Standards and Technology (NIST) and the Department of Commerce (DOC). Click [here](#) and [here](#) for Akin Gump’s client alerts and [here](#) for our webinar recording discussing the CHIPS and Science Act of 2022.
- **Inflation Reduction Act:** P.L. 117-169 includes provisions to address climate change, pay down the national debt, reduce prescription drug prices, extend health insurance subsidies and increase certain taxes on corporations, high-income earners and those who commit tax fraud. Changes to the alternative minimum tax also were included. Click [here](#) for Akin Gump’s client alert and comprehensive section-by-section of the Inflation Reduction Act.

## Upcoming:

- **Appropriations:** To avoid a government shutdown, lawmakers will likely advance a continuing resolution (CR) in September to extend current funding levels until early or mid-December.
- **Antitrust:** Senate Antitrust Subcommittee Chairwoman Amy Klobuchar (D-MN) continues to seek a vote this fall on the American Innovation and Choice Online Act but with no indication of a specific date for its consideration.
- **Data Privacy:** House Energy and Commerce Committee Chairman Frank Pallone (D-NJ) and other key proponents of the American Data Privacy and Protection Act have

emphasized the need to bring the bill to the floor in September.

- **Financial Services and Cryptocurrency:** Key members of the House Financial Services, Senate Banking and Senate Agriculture Committees are focusing on issues surrounding digital assets and employee retirement legislation (the SECURE 2.0 Act) that may be up for consideration this fall.
- **Health Care:** Leaders of the House Energy and Commerce Committee and the Senate Health, Education, Labor and Pensions (HELP) Committee continue to negotiate a final package to reauthorize the Food and Drug Administration (FDA) user fee programs before the end of the current fiscal year (September 30, 2022).
- **NDAA:** The Senate may not consider its version of the National Defense Authorization Act (NDAA) until after the midterm election in the lame-duck session.
- **Trade:** Indo-Pacific Economic Framework (IPEF) and Taiwan trade negotiations will be at the forefront of trade policy as tensions between the United States and China may prompt a recalibration for policy-makers.

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## APPROPRIATIONS

### Appropriations

On July 20, the House passed its first minibus FY 2023 federal funding bills. In total, the six bills amount to an \$11.5 billion increase above 2022 funding amounts for various agencies. The Senate Appropriations Committee released all 12 Senate appropriations bills on July 28. The nearly \$1.7 trillion Senate package includes funding increases for non-defense and defense discretionary spending.

However, partisan tensions may complicate further negotiations on a federal funding package. Senate Republicans have balked at Democrats' proposed spending increases, and the Inflation Reduction Act exacerbated these tensions while diverting time and energy from appropriations. Lawmakers have limited time to pass an omnibus FY 2023 appropriations bill before the new fiscal year begins on October 1. To avoid a government shutdown, lawmakers are expected to advance a continuing resolution (CR) in September to extend current funding levels. The CR will likely extend government funding to early or mid-December to allow for bipartisan negotiations for an omnibus appropriations bill after the November elections. Congress may use the CR as the vehicle to reauthorize the expiring FDA user fee programs, which are considered "must pass." Democrats are also considering attaching to the CR House-passed legislation that would codify same-sex marriage protections. President Biden also has requested supplemental appropriations to support efforts related to the war in Ukraine, COVID-19, monkeypox and disaster relief. Senate Majority Leader Chuck Schumer (D-NY) and Sen. Joe Manchin (D-WV) also are eyeing the CR as a possible vehicle to carry their deal on permitting reforms.

A list of federal programs expiring on September 30 can be found [here](#).

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## Antitrust

Antitrust discussions remain at a standstill after Senate Majority Leader Schumer indicated that he hopes to hold a vote on the American Innovation and Choice Online Act ([S. 2992](#)). The statement followed reports that he did not believe there are 60 votes to break a filibuster in the Senate. Senate Antitrust Subcommittee Chairwoman Amy Klobuchar (D-MN) continues to seek a vote on the bill in the fall, although she has not provided an exact date. In addition, Chair Klobuchar is expected to convene an oversight hearing toward the end of September with both Federal Trade Commission (FTC) Chair Lina Khan and Jonathan Kanter, head of the Department of Justice (DOJ) Antitrust Division, which will serve as a marker for where both parties stand on these issues.

Antitrust regulators will be subject to at least one key departure this fall—FTC Commissioner Noah Phillips has announced his intent to resign, although he has not announced a specific timeline for his departure. While he said his primary reason for leaving was to prioritize family, he also voiced concern that other commissioners were not open to discussion and compromise. At the White House, antitrust advisor Tim Wu has continued to push back on reports from the press that he plans to leave his post in the coming months.

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## DATA PRIVACY

### Data Privacy

While the “three corners” privacy bill—the American Data Privacy and Protection Act (ADPPA; [H.R. 8152](#))—appeared to have some traction on Capitol Hill following the announcement that the FTC is exploring a privacy rulemaking, House Speaker Nancy Pelosi (D-CA) issued a [statement](#) reiterating concerns about the bill’s preemption language and impact on California’s law, signaling that she is unlikely to bring the measure to the floor in the 117th Congress.

Significantly, California regulators oppose the bill’s preemption language. These concerns were most recently evidenced in a [letter](#) from the California Privacy Protection Agency (CPPA) urging the Speaker and Minority Leader Kevin McCarthy (R-CA) to oppose the bill.

The bill also lacks critical support from Senate Commerce Committee Chairwoman Maria Cantwell (D-WA), and it is thus unlikely that calls from the bill’s champions will be enough to move it in the near-term, given this opposition, concerns among key California constituencies and limited voting days.

In the absence of this legislative effort, the FTC will proceed with its [Advance Notice of Proposed Rulemaking \(ANPR\)](#) to explore whether a privacy rulemaking is needed. The agency will hold a virtual public forum on September 8 to allow stakeholders to provide feedback, also accepting written comments by October 21.

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## FINANCIAL SERVICES AND CRYPTOCURRENCY

### Financial Services and Cryptocurrency

Members of Congress—including key members of the House Financial Services, Senate Banking and Senate Agriculture Committees—have increased their focus on cryptocurrency, elevating issues surrounding digital assets on the legislative agenda. In addition to the Responsible Financial Innovation Act introduced by Sens. Kirsten Gillibrand (D-NY) and Cynthia Lummis (R-WY), bipartisan work at the Senate Agriculture Committee has yielded the Digital Commodities Consumer Protection Act, through which Sens. Debbie Stabenow (D-MI) and John Boozman (R-AR) propose that the CFTC become the principal regulator of digital assets.

Prior to the August recess, all eyes were focused on the House Financial Services Committee and the development of a bipartisan regulatory framework for stablecoins. While

the House left for the August recess without a deal emerging, Chairwoman Maxine Waters (D-CA) and Ranking Member Patrick McHenry (R-NC) were closing in on a deal and the pressure for some legislative resolution remains heightened given ongoing concerns about the stability of algorithmic stablecoins.

While it might have to wait until the lame-duck session, there is reason to believe that this fall might result in adoption of SECURE 2.0 – employee retirement legislation building on the SECURE Act of 2019. A House version of the bill passed in late March with overwhelming bipartisan support (414-5), and, in the Senate, both the HELP and Finance Committees have produced their own retirement bills. Stakeholders have reason for confidence that the House and Senate will be able to iron out their differences. The larger question—one over which proponents of these retirement bills have little control—is whether there will be an omnibus appropriations bill to which SECURE 2.0 can be attached.

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## HEALTH CARE

### Health Care

The current five-year reauthorization of certain FDA user fee programs is set to expire on September 30, and Congress is aiming to pass legislation before that deadline in order to avoid disruptions to these key user-funded activities. Leaders of the House Energy and Commerce Committee and HELP Committee continue to negotiate a final package; however, it remains unclear whether the reauthorization legislation will include the HELP Committee’s “super riders” related to cosmetics, dietary supplements and in vitro tests.

Key committees—including the HELP Committee and the Senate Finance Committee—also are expected to continue their work on mental health and substance use disorder legislation, though the exact timing for action is uncertain. The House passed in June its own mental health package, the Restoring Hope for Mental Health and Well-Being Act of 2022 (H.R. 7666), but the Senate has yet to take it up.

Meanwhile, in late August, the FDA authorized BA.4/BA.5-specific COVID-19 vaccine boosters. The Biden-Harris administration is expected to extend the COVID-19 Public Health Emergency (PHE) for another 90-day period in October.

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## NDAA

### NDAA

The House and Senate have both made progress on their respective versions of the NDAA for FY 2023. The House NDAA (HR. 7900) was passed out of the House Armed Services Committee in July and was later approved by the full House on July 14. The Senate NDAA (S. 4543) was passed out of the Senate Armed Services Committee (SASC) in July, but is awaiting consideration by the full Senate. The Senate’s timing for floor consideration of the NDAA was originally targeted for this September work period, though due to other scheduling demands and Senate Democratic leadership consideration(s), it appears the Senate may not consider its version of the NDAA until after the midterm election in the lame-duck session.

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## TRADE

### Trade

Heading into the fall, one of the administration’s key trade priorities will be to further develop the economic frameworks that it has begun negotiating with allies and partners around the world. The most prominent of these is the [Indo-Pacific Economic Framework for Prosperity](#).

(IPEF), which is central to the Biden-Harris administration's overarching strategy to strengthen the U.S. position in the Indo-Pacific and promote a [regional rules-based order](#). IPEF includes 14 countries, such as Japan, Australia, India, New Zealand, the Republic of Korea, Singapore, Indonesia, the Philippines, Thailand, Vietnam, Brunei and Malaysia, many of which belong to the Association of Southeast Asian Nations (ASEAN).

United States Trade Representative (USTR) Katherine Tai and United States Secretary of Commerce Gina Raimondo are [set](#) to hold the first in-person Ministerial in Los Angeles on September 8-9 to build on the progress made during the virtual Ministerial in July, including efforts to scope out participation in and the content of the [IPEF's four pillars](#): trade; supply chains; clean energy and infrastructure; and tax and anti-corruption. At the same time, the administration is also expected to elaborate further on its [Americas Partnership for Economic Prosperity](#), a similar effort in this hemisphere.

Efforts to strengthen U.S. ties with Taiwan are expected to feature prominently this fall. The administration's U.S.-Taiwan Initiative on 21st Century Trade is a negotiation similar to IPEF, which is intended to advance shared trade [policy objectives](#), such as supply chains, digital, good regulatory practices, labor, environment and non-market issues. Although there is strong support for this negotiation in Congress, lawmakers could press the administration to further enhance the initiative with the type of market access initiatives included in U.S. free trade agreements, as well as considering the Taiwan Policy Act and other efforts to enhance military and security spending.

The next few months could also see movement on China tariffs. Earlier this summer, the Office of the USTR also issued a [mandatory notice](#) of its "four-year review" of the tariffs imposed by the Trump administration in 2018 and 2019 on approximately \$370 billion of Chinese goods under Section 307 of the Trade Act of 1974. In the coming weeks, the agency is expected to announce the next steps in its statutory review process, which could allow companies to petition for changes to the current tariff mix.

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[G. Hunter Bates](#)  
[Brian A. Pomper](#)  
[Hal S. Shapiro](#)  
[Charlie Johnson](#)  
[Jamie Tucker](#)  
[Casey Higgins](#)  
[Chris Treanor](#)

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