



*Week of 1-31-22  
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### **Congressional Overview**

The House and Senate were in session this week while confronting a Feb. 18 deadline to either pass the FY 22 Appropriations Bills or adopt another short-term continuing resolution to fund the government beyond that deadline.

### **President Biden to Sign Executive Order Requiring PLAs on Federal Projects**

The president announced he will be issuing an Executive Order mandating Project Labor Agreements (PLAs) for certain federal construction projects in excess of \$35 million. Currently, PLAs are “Voluntary” on Federal Projects. President Obama issued Executive Order 13502 in 2009, which encouraged (but did not require) federal agencies to use PLAs when awarding construction contracts of at least \$25 million.

The full text of President Biden’s executive order is still forthcoming, but his announcement suggested PLAs will be required on all federal projects funded by the 2020 Bipartisan Infrastructure Law that are direct federal procurement. I.e., the Executive Order’s PLA mandate is not expected to apply to construction projects financed through grant dollars to non-federal agencies.

### **Construction Employers Association Submits Brief on Independent Contractors to NLRB**

FCA International’s construction coalition, the Construction Employers of America (CEA), submitted an *amicus curiae* brief in response to the NLRB’s *The Atlanta Opera, Inc.* case relating to the independent contractor rule. The issue presented in this case is how the Board will determine who is an employee and who an independent contractor is for purposes of the National Labor Relations Act (NLRA). Workers in the construction industry are at risk of being misclassified and losing the protections available to them under the NLRA and other laws.

Per the brief, the CEA encouraged the NLRB to return to the standard established in *FedEx Home Delivery* to determine if the makeup artists and hair stylists in *The Atlanta Opera, Inc.* are independent contractors or employees for purposes of the NLRA. “Importantly, the *FedEx Home Delivery* standard does not ignore whether entrepreneurial opportunities are afforded to workers. Rather, entrepreneurial opportunity is one of several common-law factors in the inquiry. Over-emphasizing entrepreneurial opportunity can and will lead to inequitable results, particularly when dishonest employers can fabricate entrepreneurial opportunities in an attempt to avoid their obligations under federal and other laws.”

### **FCA International Urges Congressional Leadership to Complete Infrastructure Appropriations Bill**

FCA International joined Reps. Seth Moulton (D-MA) and John Katko (R-NY) in urging House and Senate leadership to complete work on the FY 22 Transportation, Housing and Urban Development (T-HUD) appropriations bill. Under the current continuing resolution (CR), the U.S. Department of Transportation (DOT) cannot fully implement the *Infrastructure Investment and Jobs Act (IIJA)*. If a FY22 T-HUD appropriations bill is enacted, Congress will remove the statutory restrictions blocking full implementation of the IIJA by the DOT.

The current CR enforces obligation limitations established in the *Fixing America’s Surface Transportation (FAST) Act*, rather than the new levels authorized in the IIJA. Additionally, a “no New Starts” provision in the CR blocks the DOT from implementing new programs in IIJA. Together, this results in billions of dollars that cannot be invested in infrastructure projects.

### **Programs Funded in Bipartisan Infrastructure Bill**

The White House has released a guidebook to the bipartisan infrastructure law for state, local, tribal, and territorial governments. The guidebook provides a summary of the programs funded in the Bipartisan Infrastructure Bill. The book [can be found here](#).

### **Negotiations Continue on FY 22 Appropriations**

House and Senate negotiators continued working towards a deal on the FY 22 Appropriations Bills. Last week Republicans sent a proposal to Democrats with their recommendation on how to divide the defense and non-defense spending. The White House is expected to send a request for additional pandemic aid for hospitals, restaurants and other industries hit hard by COVID-19, but Republicans are stating that there is still \$800 billion in unspent funding from past pandemic bills and that additional funds are not necessary. The current continuing resolution (CR) expires on February 18th, and it is expected that another short-term CR could be necessary to give negotiators more time to reach an agreement.

### **Sen. Manchin Says \$2 Trillion “Build Back Better” Package is Dead**

On Tuesday, Sen. Joe Manchin (D-WV) said that the President’s \$2 trillion BBB agenda is “dead,” and any talks on reviving key parts of it must start from scratch. Sen. Manchin stated that new negotiations have to start with a clean slate. “Whatever we are going to come up with, anything you want to be put on the table we can talk about.”

Majority Leader Chuck Schumer (D-NY) said he is still working on resurrecting some version of the legislation, though he gave no timetable. No discussions among lawmakers or with the White House have been scheduled, but Senators are expected to have informal negotiations this week. Sen. Manchin said that there could be a deal on revising the tax code and lowering prescription drug costs, calling those two goals “extremely doable.”

### **Senators Release Bipartisan Draft of “PREVENT Pandemics Act”**

Chair Patty Murray (D-WA) and Ranking Member Richard Burr (R-NC) of the Senate HELP Committee, released a discussion draft of the Prepare for and Respond to Existing Viruses, Emerging New Threats, and Pandemics Act (PREVENT Pandemics Act), a bipartisan bill focused on strengthening the nation’s public health and medical preparedness and response systems due to the COVID-19. The HELP committee is accepting feedback on the discussion draft until Feb. 4.

### **Nancy Pelosi Announces Bid for 18<sup>th</sup> Term**

House Speaker Nancy Pelosi (D-CA) announced her bid for an 18<sup>th</sup> term in Congress, following weeks of speculation about her potential retirement. When Pelosi reclaimed the speaker’s gavel in 2018, she stated she would step down from her post in four years (2022). If Speaker Pelosi wins reelection in November, she could resign from the Speaker’s post shortly thereafter, as other speakers have done in the past.