



*Week of 5-22-23
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Congressional Overview

This week, the House passed legislation that would permanently ban all fentanyl-related substances. The Biden Administration supports the bill; however, some Democrats are concerned that such a broad ban would lead to over policing of people struggling with addiction. The House also voted on resolutions that would cancel the Biden Administration's student loan forgiveness plan and block the EPA's new trucking emissions standards under the Congressional Review Act. Senators were out for a week-long recess through Memorial Day.

Debt Limit Update

On Monday evening, President Biden and Speaker Kevin McCarthy (R-CA) met at the White House. Per Speaker McCarthy, "the tone tonight was better than any other time we have had discussions." President Biden said he agreed that the session had been productive. "We reiterated once again that default is off the table, and the only way to move forward is in good faith toward a bipartisan agreement."

Speaker McCarthy said he expected to speak daily with President Biden until a deal is sealed. Treasury Secretary Yellen said it's now "highly likely" that her department will run out of sufficient funding in early June, and repeated her warning that the moment could come as early as June 1st. The Bipartisan Policy Center stated "there's a heightened risk of the deadline for a debt-limit deal between June 2nd and June 13th, though its official range still falls between early June and early August."

Over the past weekend, the White House proposed freezing next year's discretionary spending at this year's levels, a plan President Biden said would save an estimated \$1 trillion over a decade compared to baseline projections. However, House Republicans, in their own debt limit bill which passed last month (HR 2811), called for rolling back discretionary spending to fiscal 2022 levels, which the Congressional Budget Office (CBO) said would save \$3.2 trillion over 10 years. Defense spending has become another partisan flashpoint and the White House wants to impose a freeze on defense and nondefense programs alike, but Republicans have called for increasing defense spending, which would force much deeper cuts to domestic programs.

Republicans want to claw back unspent COVID-19 pandemic aid that the CBO has estimated to be about \$56 billion, and the Democrats oppose this action. Republicans want a deal to include measures to streamline the federal permitting process for energy projects to boost domestic energy production. Some Republicans have talked about including elements of the House-passed border security measure (HR 2), but it is not clear whether negotiators were still discussing that option. Negotiators continued to battle over whether and how to impose additional work requirements on recipients of federal benefit programs such as Temporary Assistance to Needy Families (TANF) and the SNAP Program (food stamps).

The House Transportation and Infrastructure Committee Considers Supply Chain Bills

On Tuesday, the House Transportation and Infrastructure Committee passed a package of legislation focused on the supply chain regarding foreign ownership of U.S. marine terminals, rules for commercial driver's license exams, allowing some trucks to weigh more, and authorize spending to alleviate a

parking shortage for trucks. The committee also passed legislation to expedite environmental reviews for major projects. Supply chain dysfunction sparked increased interest from the committee last year, and the panel held hearings in recent months on the topic.

Surety Bonds on P3 Agreements: Sound Public Policy Protections

The federal government has long recognized the importance of surety bonding requirements for its direct public works procurements. The federal Miller Act (40 USC 3131-3134), enacted in 1935, and related regulations, require that payment and performance bonds be in place on any direct federal construction contract more than \$150,000 (all states have similar requirements known as Little Miller Acts.) The performance bond assures the public entity and taxpayers that the construction contract will be performed fully according to its terms and conditions.

The payment bond provides invaluable protection to parties furnishing labor or materials on federal construction projects in assuring that they will be paid. Currently, states and the federal government are considering public private partnerships (P3s) as a new procurement method to get needed public works projects completed. Under traditional methods of procurement, the public entity lets a contract to a private construction company, based on a public design and paid for with public funds. Under a P3, the public entity contracts with a private partner who, in turn, hires and pays the construction contractor for the public works project

While a P3 infrastructure project may be managed by a private entity, the completed project is for the benefit and welfare of the public and will revert to an asset of the government at some future point. Bonding requirements on projects undertaken for public benefit and welfare through P3 arrangements ensure proper prequalification of entities performing construction services; guarantees of performance from solvent, third-party corporate sureties; and payment remedies for certain unpaid subcontractors and suppliers.

Furthermore, when the federal government provides loans and/or grants through programs such as Transportation Infrastructure Finance & Innovation Act (TIFIA), and/or the Water Infrastructure Finance & Innovation Act (WIFIA) agreements for P3s, bonds should be required for the construction portion of the contract as they would be for traditional public works projects for the same policy arguments. This is why FCA International supports H.R. 1740, which would allow performance and payment bonds on P3 projects supported by WIFIA financing.