

In the Policy Arena ...

With the political power balance in Washington being decided in November and Congress scheduled to conclude its final legislative sessions by October 12, the stakes are high and the time is short for a number of critical legislative priorities. From Congress to the courts to executive action by the administration, here are five top issues to watch:

1. ***Advocating for Phase 4 Action***

The Chamber has continued to make the case for swift congressional action on the next phase of COVID-19 legislative relief. We are at the 11th hour, and if lawmakers are going to get a deal done, it needs to come together soon.

Where things stand: Negotiations remain stalled, and House Democrats and Senate Republicans have so far been unable to reach consensus on a bill that could help put our nation on the path toward long-term economic recovery. However, we remain optimistic that will change as lawmakers return to Washington this month.

Looking ahead: House Speaker Nancy Pelosi signaled that Democrats may be willing to come down from the \$3 trillion bill they passed in May to reach a smaller, shorter-term deal on spending that would go until the first of the year. This would potentially allow both sides to claim victory and move the larger legislative relief debate to early next year after the election.

Skinny bill? Senate Republicans released a draft proposal for a skinny COVID-19 relief bill. Largely a boiled down version of the Phase 4 proposal they released in July, this also signals that lawmakers may take up a smaller package for the time being.

What about liability? Liability protections to prevent warrantless lawsuits against businesses that follow appropriate public health guidance remain a top priority for Senate Republicans, and Majority Leader Mitch McConnell has not budged on this issue. The Chamber has been leading the way on this issue on Capitol Hill, and we expect these crucial protections to be included in any final agreement.

Get involved: Only a few legislative days remain on the calendar this fall. Some of the COVID-19-related support measures have expired already, and payroll support for airline employees is set to expire on September 30. Congress must act. The Chamber is doing everything we can to ensure business priorities are addressed, but we need your help getting them across the finish line. Call or email your members of Congress and let them know we need Phase 4 now—and that any legislation must include liability protections.

President of the U.S. Chamber Institute for Legal Reform Harold Kim provides an update on the temporary, timely, and targeted support the Chamber has advocated for on Phase 4.

The Three “T’s”: Temporary

- Establish protections during:
 - Five year window from December 2019 – 2024
 - Declaration of emergency
- Not establishing permanent federal law



2. *Finalizing Must-Pass Legislation*

Passing legislation to extend critical infrastructure programs and keep our government funded is also at the top of the congressional to-do list.

Infrastructure: Our current surface transportation program is set to expire at the end of September. This is what funds road construction, bridges, mass transit, and more. Keeping this program authorized and funded is a basic responsibility of Congress.

Discussions on Capitol Hill have moved away from trying to complete a comprehensive infrastructure bill and are instead likely to land at a straight extension for the current program. We need to ensure we don't inadvertently shut down infrastructure projects by letting this program lapse. We expect lawmakers to push for a one-year extension to ensure projects can continue at their current funding levels.

Federal appropriations: Democrats and Republicans in Congress agree that they will not be able to finalize the government appropriations bills—12 annual measures that provide funds across the federal government—before the fiscal year ends on September 30. That means they will have to pass a short-term funding measure known as a Continuing Resolution (CR). Passage of a CR will push the longer-term budget fight to after the election or perhaps after the first of the year.

3. *Driving the Debate Around Antitrust Law*

With a blockbuster hearing earlier this summer featuring CEOs of Amazon, Apple, Facebook, and Google and a forthcoming report by the House Subcommittee on Antitrust, this issue is commanding more attention on Capitol Hill.

The stakes: These developments are fueling legislative proposals that would radically rewrite a century's worth of bipartisan policy that has protected competition and championed innovation.

Bigger than tech: If enacted, the impacts of this shift will be felt far beyond the tech sector. Any potential legislative changes are unlikely to become law this year, but the indication that some are willing to undermine the useful marriage of law and economics that is antitrust law in the U.S. should give us

pause.

What it means: Many of the legislative proposals have one thing in common: They divorce economic analysis from our nation's long-standing, tried-and-true antitrust laws. If they were to go into effect, the current process, which is driven by data and analysis, would be replaced by one focused on achieving political outcomes.

Chamber action: The Chamber launched an education [campaign](#) highlighting how our nation's antitrust laws protect competition and benefit consumers. The campaign, targeted at a Washington audience, generated nearly 3.5 million ad impressions, driving significant traffic (more than 27,000 clicks) to the website to learn more.

Next steps: As this debate unfolds in the coming months and years, the Chamber will continue to ensure that Congress does not make unnecessary and harmful changes to existing antitrust laws that would undermine consumers' ability to determine winners and losers in the marketplace.

4. *Monitoring Payroll Tax Deferral*

Last month, the administration issued an executive order directing the Treasury secretary to defer the collection of employee payroll taxes from September 1 through the end of the year for employees making less than \$104,000 a year. The tax deferral is optional, and many employers are choosing not to implement it to avoid a higher tax burden next year.

The executive order: The official IRS guidance makes it clear that employers will be required to double the amount of payroll taxes (from 6.2% to 12.4%) withheld from each paycheck beginning in January 2021 to recoup the unpaid taxes. The guidance leaves unanswered questions like what to do with seasonal employees or employees who no longer work for the same employer in the new year. In addition, there are numerous practical challenges associated with updating payroll systems.

Chamber action: We heard from a diverse coalition of members on this issue and [warned the administration](#) that many businesses would simply choose not to implement the deferral, deciding instead to withhold payroll taxes as usual to avoid the big tax bill next year.

Next steps: If Congress and the administration want to implement a temporary tax reduction, they need to work together and create a workable policy that can be enacted into law.

5. *Defending NEPA Modernization*

Earlier this summer, the administration announced a much-needed update to the National Environmental Policy Act's (NEPA's) permitting process for critical infrastructure, ranging from bridges and renewable energy to transit projects. The Chamber has been pushing for NEPA modernization for more than a decade.

The updates: The NEPA reforms will make the federal permitting process more predictable and transparent, establishing timelines for decisions and making the requirements more straightforward in order to reduce delays and permitting costs. In crafting the rule, the government followed an extensive, three-year rulemaking process in which almost 500,000 supportive comments were received.

Legal challenges: Unfortunately—but not surprisingly—almost immediately after the updates were announced, opponents moved to block implementation of these reforms in the courts. Many of the groups fighting implementation have abused the outdated NEPA process in order to block or hold up construction projects they oppose. In fact, the original 1970s NEPA process has become increasingly out of touch with modern development practices, making it the most litigated environmental law. These lawsuits have increased the cost of the permitting process and created high investor uncertainty.

Chamber action: The Chamber was joined by eight other associations in filing a lawsuit in the Western District of Virginia seeking to intervene as a defendant in a case to support these NEPA updates. If granted by the court, it will allow us to respond to all motions, seek oral arguments, and, if necessary, appeal any judgment.

What's next: There are other similar cases emerging in federal courts in California and New York, and the Chamber and our partners are also planning to request intervention in those challenges.

Learn more:

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