



*Week of 1-8-24
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Congressional Overview

Congress returned to Washington, D.C. this week to work on spending bills for the current fiscal year before funding expires for certain federal agencies. Congressional leaders announced on Sunday afternoon the framework of an agreement that will have to be finalized in the next ten days.

House and Senate Negotiators Reach Deal on FY 24 Funding Levels

House and Senate negotiators reached a deal on FY 24 funding levels for defense and nondefense spending limits. The deal will allow for the total level of spending laid out in last year's debt limit agreement with \$886.3 billion for defense and \$772.7 billion for nondefense programs. Speaker Mike Johnson (R-LA) secured \$16 billion in additional rescissions of previously-appropriated funds (including \$6.1 billion in new claw backs of pandemic aid), and \$20.2 billion in IRS funding rescissions, more than double the earlier agreement.

An extra \$1.4 billion would be taken out of the Commerce Department's "nonrecurring expenses fund" that had been set aside for next year's bills. The pandemic aid rescissions would come mainly from unused funding recently recovered by the Department of Health and Human Services. The cuts would not affect development of new vaccines or treatments. There are still more issues to be worked out including the controversial policy riders before a final appropriations package can be finalized.

President Biden expressed support for the deal and stated, "the bipartisan funding framework congressional leaders have reached moves us one step closer to preventing a needless government shutdown and protecting important national priorities. It reflects the funding levels that I negotiated with both parties and signed into law last spring. It rejects deep cuts to programs hardworking families count on and provides a path to passing full-year funding bills that deliver for the American people and are free of any extreme policies."

Sen. James Lankford (R-OK), the top Senate Republican negotiator, said he expects to see legislative text drafted "later on this week" to enact immigration policy changes at the U.S.-Mexico border. Republicans have insisted on new border security policies as a condition for additional aid to Ukraine.

In a memo to agencies, the Office of Management and Budget (OMB) indicated that for now it is taking 'no action' to sequester funding as addressed in provisions in the Fiscal Responsibility Act (FRA). The FRA has both discretionary spending limits that would be relevant with the passage of full-year appropriations bills (section 101) and interim discretionary spending limits that would be enforced after April 30, 2024, if full-year appropriations bills are not signed into law (section 102). Under the FRA, spending limits would not be enforced until after full year appropriations are enacted, or April 30, whichever comes first.

Finally, the Congressional Budget Office (CBO) has confirmed that deep nondefense spending cuts would be triggered if a full-year continuing resolution (CR) is enacted. In a letter to House Budget Committee leaders last week, the CBO said that based on their own estimates, the sequester provision could result

in 9 percent across-the-board reductions to domestic and foreign aid accounts. The cuts would result in a \$27 billion reduction to defense while nondefense spending would be cut by \$73 billion, or 9 percent.

CISC Comments on OSHA's Heat Injury and Illness Prevention Panel

On Dec. 20, 2023, the Construction Industry Safety Coalition (CISC) submitted comments in response to OSHA's Small Business Advocacy Review (SBAR) Panel on Heat Injury and Illness Prevention in Outdoor and Indoor Settings.

In the comments, the CISC opposed the creation of a prescriptive 'one-size-fits' all approach to heat illness. Without the flexibility to tailor heat illness programs based on an employer's unique use environments, a rigid rule carries the substantial risk of being unduly burdensome and cost prohibitive, while failing to effectively protect workers from the specific hazards which would be identified through a site specific and tailored risk assessment.

The Coalition also noted that if OSHA does go forward with a new standard, it should eliminate the expanded heat-illness-related recordkeeping requirements, as well as other rigid requirements, such as prescriptive temperate thresholds, that fail to consider the unique workforces and varying climates across the United States.

Department of Labor Announces Final Independent Contractor Rule

The DOL announced a final rule on Jan. 9 that will make it more difficult for businesses to classify workers as independent contractors. The final rule is slated to take effect on March 11. The change officially eliminates a 2021 policy by the Trump administration and is intended to ensure that millions of workers, including those in the service sector, construction and healthcare, receive labor guarantees like a minimum wage, mandatory overtime and payroll tax contributions.

Under federal law such protections apply to employees, but they are not automatically extended to those who work for themselves and contract with employers, a distinction that has taken on heightened salience with the rise of the gig economy. The Biden administration has taken to imposing an "economic realities" test similar to the one under former President Obama that relies on a multi-factor, "totality-of-the-circumstances" approach in which each component is weighted equally when determining whether a worker is properly classified.

By contrast the Trump framework emphasized an individual's "opportunity for profit" and degree of control over their work above other considerations, a position that the Biden administration believes fostered worker misclassification and business confusion while running counter to court precedent.

The First Session of the 118th Congress

The first year of the 118th Congress saw a record-low 20 bills pass both chambers and signed into law, putting this Congress on track to be one of the most unproductive in modern history. The vast majority of the bills were uncontroversial and passed by either unanimous consent or with minimal opposition. They include multiple measures to rename Veterans Affairs clinics, and one to mint a coin commemorating the 250th anniversary of the Marine Corps.

The action of this session is far below even historically unproductive first years: The 104th, 112th and 113th Congresses, in which Republicans controlled one or both chambers with Democrats Bill Clinton and Barack Obama in the White House, managed to have between 70 and 73 bills signed into law.