



Infrastructure Investment and Jobs Act

Summary of Key Programs and Provisions

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Introduction

The Infrastructure Investment and Jobs Act (the “bill”) is historic bipartisan legislation that will make available \$1.2 trillion in funding for infrastructure programs across the transportation, energy and water sectors, through a combination of grants and loans. Of the \$1.2 trillion in spending, \$550 billion is new federal spending not previously authorized. The bill also reauthorizes the highway, public transportation and rail programs for five years.

On Friday, November 5, the U.S. House of Representatives passed the bill by a vote of 228 to 206 after weeks of negotiations. The bill, which the Senate passed in August, now heads to President Biden’s desk to be signed into law.

To that end, we are pleased to provide an analysis of the bill with an emphasis on new programs and policies.

Department of Transportation¹



Key Highway Programs

The bill makes available \$219.6 billion over five years for the Federal-Aid Highway Program and \$110 billion in supplemental funds for roads, bridges and major projects. Many of the programs are existing programs authorized in previous laws with more significant funding. Of note, a number of programs have expanded eligibility for electric vehicles and alternative

fuel charging infrastructure, resilient infrastructure and projects in low-income neighborhoods. We also note new programs and important changes to existing programs, and that many grant programs have a nonfederal match requirement.

- **Nationally Significant Freight and Highway Projects program (also known as “INFRA”).** \$8 billion is available for a program authorized in current law that funds highway and rail projects of regional and national significance. Of this funding, \$4.8 billion is made available in the base bill text and a supplemental \$3.2 billion is appropriated. The bill also makes modest changes to current law such as providing pre-award authority to incur costs after award and before the U.S. Department of Transportation (DOT) enters into a grant agreement with a project sponsor, clarifying eligibility of resiliency projects and establishing a pilot program to give priority for some of the funding to applicants that provide a higher nonfederal funding match. The bill also increases the cap on multimodal projects, such as those on port property, from \$600 million over the life of the authorization to 30 percent of funding available over the life of the authorization.
- **Bridge Investment Program.** The bill makes available \$12.5 billion for a new competitive grant program for bridge investments to assist state,

¹ The bill reauthorizes highway, transit and rail programs for five years and provides supplemental funding for a number of transportation programs. Most highway and transit program funding is contract authority, which is a mandatory form of budget authority. This essentially guarantees that the authorized funding will be available at the start of each fiscal year even if reliant on a subsequent appropriation. For purposes of this alert, we distinguish between programs authorized with contract authority and treat the funds for those programs as being made available in the bill versus programs that are not authorized with contract authority and is, therefore, more speculative if the program will receive a subsequent appropriation.

local, federal and tribal entities in rehabilitating or replacing bridges.

- **Congestion Relief Program.** The bill makes available \$250 million for a new competitive grant program. States, metropolitan planning organizations and cities with a population of more than one million may apply. Eligible projects reduce congestion, including implementing or enforcing high-occupancy vehicle (HOV) lanes, toll lanes, cordon pricing, parking pricing and congestion pricing, deploying and operating mobility services and implementing incentive programs that encourage nonhighway travel and travel during nonpeak times.
- **Rural Surface Transportation Grant Program.** The bill makes available \$2 billion for a new competitive grant program to increase connectivity, improve safety and reliability of the movement of people and freight, generate regional economic growth and improve quality of life in rural areas. States and local government entities are eligible applicants.
- **Promoting Resilient Operations for Transformative, Efficient and Cost Savings Transportation (PROTECT) Grant Program.** The bill authorizes a new formula and competitive grant program and makes \$7.3 billion available for formula grants to states and \$1.4 billion available for competitive grants to states and local governments for infrastructure projects that make resilience improvements to address vulnerabilities to current and future weather events and natural disasters and changing conditions, including sea level rise. Funds may be used for highway projects, transit facilities and port facilities.
- **Grants for Reduction of Truck Emissions at Port Facilities Program.** The bill provides \$400 million for a new program to reduce idling at port facilities.
- **Healthy Streets Program.** The bill makes available \$500 million for a new competitive grant program that funds grants to states, local governments and tribes to deploy cool pavements and porous pavements and to expand tree cover.
- **Charging and Fueling Infrastructure Competitive Grants.** The bill makes available \$2.5 billion for a new competitive grant program to deploy publicly

accessible electric vehicle charging infrastructure, hydrogen fueling infrastructure, propane fueling infrastructure and natural gas fueling infrastructure along designated alternative fuel corridors. States, local governments, transit agencies, port authorities and territories may apply for grants. DOT will prioritize grants to rural areas, low to moderate income neighborhoods and communities with low ratios of private parking or high ratios of multihousing units. Fifty percent of grants each year are available for community grants to install charging infrastructure on public roads, schools, parks and publicly accessible parking facilities.

- **National Electric Vehicle Formula Program.** The bill provides \$5 billion to carry out a new National Electric Vehicle Formula Program for states to deploy electric vehicle charging infrastructure and to establish an interconnected network to facilitate data collection, access and reliability.
- **Carbon Reduction Formula Program.** The bill makes available \$6.4 billion for a new carbon reduction formula program. States may use funds for projects that reduce transportation emissions, including traffic management, public transportation, trails and paths for bicyclists and pedestrians, advanced transportation congestion management technologies, intelligent transportation systems, projects to deploy alternative fuel vehicles, including charging infrastructure, zero emission construction equipment and vehicles and supportive facilities, diesel engine retrofits and projects that reduce transportation emissions at ports. States must develop carbon reduction plans and coordinate and consult with urbanized and rural areas.
- **Wildlife Crossings Pilot Program.** The bill creates a new competitive grant program for projects to reduce wildlife vehicle collisions. State and local governments are eligible applicants and may partner with nonprofits and foundations. The bill makes available \$350 million for the program.
- **Reconnecting Communities Pilot Program.** The bill makes \$1 billion available for a new competitive grant pilot program of which \$250 million is for planning grants and \$750 million is for construction grants. This program is a priority of the Biden-Harris

administration and funds projects that remove, retrofit or mitigate previously constructed barriers to mobility, access or economic development to restore community connectivity. State and local governments are eligible applicants.

- **Active Transportation Infrastructure Investment Program.** The bill authorizes \$1 billion for a new competitive grant program for infrastructure improvements that create safe and connected active transportation facilities, including adding sidewalks, bikeways and pedestrian trails. Eligible entities include government entities. The program's funds are subject to appropriation.
- **Safe Streets and Roads for All Competitive Grant Program.** Subject to appropriation, the bill authorizes \$1 billion for a new competitive grant program for local governments to implement "vision zero" plans and other improvements to reduce crashes and fatalities, especially for cyclists and pedestrians. The bill also provides an additional \$5 billion in supplementary appropriations.
- **Strengthening Mobility and Revolutionizing Transportation (SMART) Grant Program.** Subject to appropriation, the bill authorizes \$500 million for a new competitive grant program for demonstration projects that implement advanced smart city or community technologies and systems to improve transportation efficiency and safety. The bill also provides an additional \$500 million in supplementary appropriations. States, local governments, public transit agencies,
 - public toll authorities and tribes are eligible for funding. The bill directs the Secretary to consider the extent to which a project will use advanced data, technology and
 - applications to: (1) reduce congestion; (2) improve safety for pedestrians, bicyclists and the broader public; (3) increase access to jobs and essential services; (4) connect or expand access to underserved communities; (5) contribute to economic competitiveness; (6) improve reliability of the transportation facilities and systems; (7) promote connectivity between transportation modes; (8) incentivize private investment and partnerships; (9) improve energy efficiency, reduce pollution and increase the resiliency of the

transportation system; and (10) improve emergency response. The program encourages private sector innovation and will fund a variety of projects, including coordinated automation, connected vehicles, intelligent sensor-based infrastructure, systems integration, commerce delivery and logistics, leveraging innovative aviation technology such as unmanned aircraft systems, smart grids and smart technology traffic signals.

- **Culvert Removal, Replacement and Restoration Grant Program.** The bill appropriates \$1 billion for a new competitive grant program for states to remove, replace and restore culverts to address the flow of water through roads, bridges, railroad tracks and trails. Subject to appropriation, the bill authorizes an additional \$4 billion for the grant program.

Passenger and Freight Rail Programs

The bill appropriates \$66 billion in new spending for passenger and freight rail programs. The following summarizes new programs or current programs that the bill has expanded in scope.

- **Consolidated Rail Infrastructure and Safety Improvements Grants (CRISI).** There is \$5 billion appropriated for this program that exists in current law. The bill expands eligibility to projects that prevent trespassing, incorporate innovative rail technologies and improve hazardous material response plans.
- **Railroad Crossing Elimination Program.** The bill appropriates \$3 billion for a new competitive grant program to eliminate at-grade railroad crossings, add gates or signals, relocate tracks and install bridges. The bill also sets aside funding for planning and for grants and contracts to carry out a highway-rail grade crossing safety information and education program.
- **Federal-State Partnership for Intercity Passenger Rail Grants.** The bill appropriates \$36 billion for this competitive grant program. While it is an existing program, the bill significantly expands funding and program scope to reflect President Biden's focus on passenger rail investment. The bill expands eligibility for projects that improve performance or expand/establish new intercity passenger rail,

including privately operated passenger rail service if an eligible applicant is involved. Governmental entities, Indian tribes and Amtrak are eligible applicants. DOT is required to consider project selection criteria, including a comparison of costs to benefits, safety, economic development, private sector participation in the financing, construction and operation of a project and whether the applicant has the legal, financial and technical capacity to carry out the project. At least 45 percent of the funding must go to the Northeast Corridor. DOT can enter into multiyear phased funding agreements for projects.

- **Local and Regional Project Assistance (the RAISE/BUILD program).** Subject to appropriation, the bill authorizes \$7.5 billion for a new competitive grant program to fund projects that will have a significant local or regional economic impact and improve transportation infrastructure. Eligible applicants are states, local governments, transit agencies and tribes. Eligible projects are highways and bridges, public transit, passenger or freight rail, port infrastructure, surface transportation components of airport projects, infrastructure projects on tribal land, projects to replace culverts or prevent stormwater runoff and other infrastructure projects the Secretary determines are necessary to advance the program's objectives.
- **National Infrastructure Project Assistance Program.** Subject to appropriations, the bill authorizes \$10 billion for a new competitive grant program to fund large-scale projects that are likely to generate national or regional economic, mobility or safety benefits and are cost-effective. The new program is subject to appropriations. Eligible projects include highway, bridge, freight intermodal (including at public ports), railway-highway grade separation or elimination projects, intercity passenger rail projects and public transportation projects. Eligible projects must have a cost of at least \$500 million unless they are in a rural area. The Secretary is required to rate applications as highly recommended, recommended or not recommended, enter into multiyear grant agreements for funding and report on awards to Congress.

Airport Programs

The bill appropriates \$25 billion in supplemental funding for airports. This is on top of the funds authorized for airports under existing law. In addition, the bill makes airport projects eligible for low cost financing from DOT as discussed below.

- **Airport Infrastructure Grants.** The bill appropriates \$15 billion to the Airport Improvement Program (AIP). Of the \$15 billion, up to \$2.48 billion annually is for primary airports, up to \$500 million is for general aviation and commercial service airports that are not primary airports and \$20 million is for competitive grants to airports participating in the contract tower program and contract tower cost share program. The bill directs the DOT Secretary to distribute the funding under existing formulas.
- **Airport Terminal Program.** There is \$5 billion appropriated for a new competitive grant program for airport terminal development projects. The bill directs the DOT Secretary to issue a notice of funding opportunity within 60 days after the President signs the bill into law. Of the funding, up to 55 percent is available for large hub airports, up to 20 percent is available for medium hub airports and no less than 10 percent is for non-hub and nonprimary airports. Terminal development includes multimodal projects and projects for on-airport rail access. The bill requires the Secretary to give consideration to projects that increase capacity and passenger access, replace aging infrastructure, expand access for people with disabilities, improve airport access to historically disadvantaged persons and improve energy efficiency,
- **Facilities and Equipment Funding.** There is \$5 billion appropriated for airport facilities and equipment.

Public Transportation Programs

The bill appropriates \$106.9 billion for Federal Transit Administration (FTA) programs over five years. This includes \$69.9 billion in contract authority and \$15 billion in general funds for the Capital Investment Grant Program; \$750 million for the Washington Metropolitan Area Transit Authority (WMATA) and \$21.25 billion in supplemental appropriations for specified transit programs. The bill reauthorize FTA

programs but, unlike the highway and rail titles, includes very few substantive changes to existing programs. Key programs include:

- \$33.5 billion for the §5307 Urbanized Area Formula and 5336 State of Good Repair formula programs.
- \$2.1 billion for the Transit Accessibility for Seniors and Persons with Disabilities Grant program.
- \$4.58 billion for rural program grants.
- \$192.8 million for public transit innovation.
- \$62 million for technical assistance for workforce development.
- \$18.4 billion for §5337 State of Good Repair grants, which is a new competitive grant program to replace rail rolling stock that is past its useful life.
- \$5.5 billion for bus and bus facilities grants of which \$3.16 billion is for formula grants, \$2.34 billion for competitive grants for buses and bus facilities and \$374.6 million for low-no emission competitive grants.
 - The bill encourages innovative procurements of buses. The bill makes at least 25 percent of the funds available for the Lo-No program available for lower emission vehicles, including natural gas vehicles. The bill further requires applicants for zero-emission vehicle grants to submit a zero-emission fleet transition plan to the FTA that includes a workforce transition plan and provides funding for such efforts. Recipients of funds for zero emissions vehicles must use 5 percent of the funding for workforce development training.
- \$24 million for the Coordinated Access and Mobility program.
- \$3.88 billion for the growing and high-density states formula program.
- \$23 billion for Capital Investment Grants (CIG).
 - Allows bundling of projects to enable a project sponsor to move multiple projects through the CIG pipeline simultaneously.
- \$5.25 billion for the Low-No (emission) vehicle discretionary grant program.
- \$68.8 million for the Transit Oriented Development Planning Pilot Program for projects around fixed guideway programs.
- \$400 million for the passenger ferry program and for low-emission ferries.
- \$1.5 billion for a new competitive railcar replacement grant program to replace rail rolling stock.
- \$1.75 billion for Americans with Disabilities Act (ADA) accessibility improvements at rail stations.
- The bill also makes changes to the safety program (49 USC 5329), including enhanced requirements for safety plans, improved safety training, training regarding de-escalation to reduce assaults on transit workers and measures to reduce vehicle and pedestrian accidents involving buses.

Port Funding

- **Port Infrastructure Development Program.** The bill appropriates \$2.25 billion for the Port Infrastructure Development Program (PIDP), which is a competitive grant program that funds infrastructure projects at ports. Public ports and government entities are eligible applicants for these funds.
- **Army Corps of Engineers.** The bill appropriates \$9.55 billion in supplemental funding for Army Corps of Engineers projects.

Environmental Streamlining

The bill includes several provisions intended to streamline project delivery and provide for an expedited process to advance projects through the environmental review process. The following provisions are worthy of note:

- **Codification of One Federal Decision Policy.** The bill codifies the One Federal Decision policy put into effect by the Trump administration. The purpose of the policy is to facilitate more

collaboration between the Lead Agency and Participating Agencies and provide guidelines and a schedule for undertaking environmental reviews of major projects. The bill requires DOT to publish a proposed rule and seek comment within a year after the law goes into effect. The bill also makes the FAST-41 permitting process permanent, sets a two-year goal for permitting covered projects and encourage federal agencies to use one document to track permitting decisions.

- **Streamlining of Section 4(f) Reviews.** The bill streamlines Section 4(F) reviews by requiring the Secretary to give participating agencies 30 days to comment and then allows the Secretary to assume there is no objection if the participating agency does not comment within 15 days.
- **Reimbursement of Costs for Early Utility Relocation Work in Advance of Completing Environmental Review Process.** The bill would enable sponsors of surface transportation projects to relocate utilities before completion of a review of impacts under the National Environmental Policy Act (NEPA) and be able to seek reimbursement of costs following completion of NEPA provided the larger transportation project incorporates the utility relocation and the relocation does not influence the NEPA review.
 - **Eligibility for Categorical Exclusion.** The bill increases the threshold for projects with minimal federal funds to be eligible for a Categorical Exclusion so that projects that receive less than \$6 million in federal funds or that are estimated to cost no more than \$35 million provided less than 15 percent of the funds are federal funds are eligible.

Innovative Financing for Transportation Projects

The bill reauthorizes and funds the Transportation Infrastructure Finance and Innovation Act (TIFIA) and the Railroad Rehabilitation Infrastructure Finance (RRIF) programs and makes changes to those programs. Through these programs, DOT provides low interest loans and loan guarantees with attractive repayment terms to government and private sector borrowers to undertake transportation infrastructure projects.

On a general note, the bill requires sponsors of projects over \$750 million that are public private partnerships (P3) to conduct a Value for Money (VFM) analysis to evaluate the benefits of pursuing a P3 approach versus a public sector delivery model. The bill requires certain reporting for projects with an estimated cost of \$100 million that are undertaken through P3s, including reporting regarding the private partner's satisfaction of the terms of the P3 agreement not later than three years after the date of the opening of the project.

The bill also increases the cap for Private Activity Bonds for surface transportation projects from \$15 billion to \$30 billion—providing increased capacity for the private sector to secure DOT approval for pursuing tax-exempt bond financing through a conduit government issuer. Finally, as discussed below, the bill establishes a new program for DOT to provide technical assistance to government entities considering entering into concession agreements with private entities to finance and operate infrastructure projects.

The following are changes to the TIFIA and RRIF programs:

- **TIFIA Program.** Changes to the program include:
 - \$1.25 billion is available over five years to pay subsidy costs of loans.
 - Extends the deadline for financial close of contingent commitments for projects under a master credit agreement from three years to five years.
 - Expands eligibility to (1) airport projects; (2) transit-oriented development involving private sector investment, including commercial and residential development, and related infrastructure and activities that are ready to proceed and have a high probability of reducing the need for federal financial assistance; and (3) projects for the acquisition of plant and wildlife habitat pursuant to a conservation plan.
 - Increases the amount of a loan requiring an investment grade rating from one rating agency to at least two rating agencies from \$75 million to \$150 million.

- Requires the Secretary to give applicants an estimated timeline for approval or disapproval of a loan and to make efforts to provide such approval or disapproval within 150 days after the date on which the applicant submits a letter of interest.
- Extends the final maturity date for secured loans where the capital asset has an estimated useful life of more than 50 years, to the lesser of 75 years after the date of substantial completion of the project or 75 percent of the estimated useful life of the asset.
- Allows a government entity borrower to forego prepaying a secured loan or credit instrument with excess revenues remaining after it satisfies its scheduled debt service requirements and deposit requirements under the terms of a trust agreement, bond resolution or similar agreement, if the borrower agrees to use the revenues for eligible purposes under the federal highway or transit program.
- Requires the Secretary to establish a process for expediting loans to government entities where : (1) the loan terms substantially conform to conventional terms and conditions established by the National Surface Transportation Innovative Finance Bureau; (2) the loan is rated A or higher; (3) the TIFIA program share of eligible project costs is 33 percent or less; (4) the applicant demonstrates a reasonable expectation the contracting process can begin within 90 days after the date on which the TIFIA credit instrument is obligated; and (5) the NEPA review is complete.
- Requires the Secretary to notify an applicant in writing within 180 days after the date on which the National Surface Transportation Innovative Finance Bureau has commenced the creditworthiness review of the project whether the Secretary has approved or disapproved the application.
- **RRIF Program.** Changes to the program include:
 - Codifies the RRIF program in title 49 of the U.S. Code.
 - Appropriates \$250 million over five years to pay the credit subsidy of loans, up to \$20 million per loan.
 - Reserves no less than 50 percent of the amounts appropriated for short line railroads.
 - Makes projects to develop landside port infrastructure for seaports serviced by landside port infrastructure eligible for loans and loan guarantees.
 - Makes transit-oriented development permanently eligible.
 - Authorizes the Secretary to accept as collateral operating or tenant charges, facility rents, or other fees paid by transportation service providers or operators for access to, or the use of, infrastructure, including rail lines, bridges, tunnels, yards or stations.
 - Allows the Secretary to consider revenue from projected freight or passenger demand based on regionally developed economic forecasts, including projections of any modal diversion resulting from the project.
 - Authorizes the Secretary to pay the credit risk premium with interest on loans issued before the enactment of the FAST Act.
 - Establishes procedures for applicants to propose tangible and intangible assets as collateral, exclusive of goodwill. Requires the Secretary to accept a net liquidation value of collateral. Clarifies that where an applicant provides a blanket pledge or assignment of an operating asset or basket of assets as collateral, the Secretary may consider the market value of the assets, or the market value of the going concern, considering (1) inclusion in the pledge of all assets necessary for the independent operational utility of the collateral (i.e., tangible assets such as real property, track and structure, motive power, equipment and rolling stock, stations, systems and maintenance facilities and intangible assets such as long-term shipping agreements, easements, leases and access rights such as for trackage and haulage); (2) interchange commitments; and (3) the value

of an asset as determined through the cost or market approaches, or the market value of the going concern, with the latter considering discounted cash flows for a period not to exceed the term of the direct loan or loan guarantee.

- Requires DOT to repay the credit risk premium and interest accrued when all obligations of a loan or loan guarantee are satisfied.
- Requires a borrower to repay a loan or loan guarantee within the lesser of (1) 75 years after substantial completion of the project; (2) the estimated useful life of the project with consideration of long term risk; or (3) for projects with an estimated useful life greater than 35 years, the sum of 35 years and the product of the difference between the estimated useful life and 35 years multiplied by 75 percent.
- Requires the Secretary to develop a streamlined application process for loans or loan guarantees the value of which do not exceed \$150 million and meet other criteria.
- **Asset Concessions.** The bill makes available \$100 million for DOT to establish a program to provide technical assistance to governmental entities that own, control or maintain infrastructure assets and are interested in entering into contracts to transfer ownership, maintenance, operations, revenues or other benefits and responsibilities. DOT will provide technical assistance grants and experts services for governmental entities to evaluate opportunities for P3s and asset concessions. The full amount of any asset concession payment less any amount in transaction costs must be used to pay infrastructure costs of the eligible entity and the terms of any concession may not result in any increase in costs being shifted to taxpayers the annual household income of which is less than \$400,000 per year, including through taxes, user fees, tolls or any other measure for use of the approved asset. This requirement may limit the utility of this program depending on the user fee mechanism and type of project.

Research and Innovation

The bill makes available \$735 million for the Highway Research and Development program; \$550 million for the Technology and Innovation Deployment Program; \$127.5 million for Training and Education; \$550 million for Intelligent Transportation Systems; and \$405 million for University Transportation Centers.

The bill also authorizes the establishment of an Advanced Research Projects Agency-Infrastructure (ARPA-I) program to fund research and development on advanced transportation infrastructure technologies through grants, contracts and cooperative agreements. ARPA-I is based on similar programs at the Department of Energy (e.g., ARPA-E) and Department of Defense (DARPA). No funding is appropriated for the program requiring that it be separately authorized.

Additionally, the bill directs the Secretaries of Transportation and Energy jointly to establish and lead a 25-member electric vehicle working group, comprising of federal and nonfederal stakeholders. The working group will make recommendations regarding the development, adoption and integration of electric vehicles into the transportation and energy systems across the country. The working group will also develop a series of reports to Congress on barriers to electric vehicle adoption and possible opportunities and solutions.

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Energy Programs



The bill provides funding for grant and loan programs focused on grid reliability and security, renewable energy innovation and deployment and ensuring supply chains critical for energy innovation. We describe key programs below.

Grid Resilience

There is \$27.65 billion appropriated for grid infrastructure, resiliency and reliability programs. The bill also authorizes funding for programs that will require future appropriations. Key programs include the following:

- **Grid Infrastructure Reliability Competitive Grants.** The bill authorizes \$5 billion and directs the Secretary to establish a new competitive grant program within 180 days after the bill becomes law whereby the Secretary of Energy will make grants to eligible entities to carry out activities to make grids more resilient and reliable in the face of extreme weather or natural disasters. Grid operators, electricity storage operators, electricity generators, transmission owners and operators, distribution providers, fuel suppliers and other entities as determined by the Secretary may compete. No less than 30 percent of the funds must go to entities that sell 4 million megawatt hours or less of energy per year. Congress would need to appropriate funding for the program.
- **Energy Infrastructure Federal Financial Assistance Program.** The bill authorizes and appropriates \$5 billion for a new competitive grant program known as the “Program Upgrading Our Electric Grid and Ensuring Reliability and Resiliency.” The bill directs the Secretary to award grants through a competitive process to eligible entities to demonstrate innovative approaches to transmission, storage and distribution infrastructure to harden and enhance resilience and reliability and demonstrate new approaches to enhance regional grid resilience, implemented through states by public and rural electric cooperatives on a cost-shared basis. States, Indian tribes, units of local government and public utility commissions are eligible to apply.
- **Energy Improvement in Rural or Remote Areas.** The bill authorizes and appropriates \$1 billion for a new program to provide financial assistance to improve the resilience, safety, reliability and availability of energy in rural and remote areas and ensure the energy generation does not harm the environment. Eligible localities include a city, town or unincorporated area with a population of 10,000 people or less.
- **Transmission Facilitation Program.** The bill authorizes the Secretary to establish a Transmission Facilitation Program to facilitate construction of electric power transmission lines and related facilities. The bill authorizes and appropriates \$50 million over the course of the bill for the program to carry out the program. The Secretary may facilitate projects by entering into capacity contracts, provide loans for carrying out a project and participate with an eligible entity in designing, developing, constructing, operating, maintaining or owning a project. Capacity contracts can be for no more than 40 years and not more than 50 percent of the total proposed transmission capacity of the project. The Secretary can also enter into contracts with third parties to market transmission capacity; however, the Secretary must seek to terminate a contract as soon as practicable after

determining sufficient transmission capacity has been secured to ensure long term financial viability of the project. Entities are required to repay the cost of any facilitation activities over time; however, if at the end of the useful life of a project, or the termination of a capacity contract, there are funds owned to the Treasury, the Secretary may forgive the balance due. The Secretary will fix the interest rate for loans taking into account market yields on outstanding marketable obligations of the U.S. of comparable maturities. This program also authorizes the Secretary to participate in public-private partnerships under certain circumstances.

Supply Chains for Clean Energy Technologies

There is \$7.712 billion available to establish supply chains for clean energy technologies. Key programs are as follows:

- **Battery Processing Grants.** The bill authorizes and appropriates \$3 billion and directs the Secretary to establish a Battery Material Processing Grant program within 180 days of enactment of the bill. The Secretary may award grants to eligible entities to carry out one or more demonstration programs to process battery materials; construct new commercial-scale battery material processing facilities in the U.S. and to retool, retrofit or expand existing battery material processing facilities in the U.S. The Secretary is required to prioritize grants to entities located and operated in the U.S., are owned by U.S. entities, deploy North American owned intellectual property and content, represents consortia or industry partnerships, and will not use batteries supplied by or originating from a foreign entity of concern. The Secretary is also required to consider whether a project will provide job opportunities in low and moderate-income communities, engage with universities and laboratories, engage with Indian tribes and reduce greenhouse gas emissions.
- **Battery Manufacturing and Recycling Grants.** The bill authorizes and appropriates \$3 billion and directs the Secretary within 180 days to establish a program to award grants to carry out demonstration projects for advanced battery component manufacturing, advanced battery manufacturing

and recycling; construction of one or more new commercial-scale advanced battery component manufacturing, advanced battery manufacturing or recycling facilities in the U.S.; and to retool, retrofit or expand existing facilities located in the U.S.

- **Battery Recycling Research, Development and Demonstration Grants.** The bill authorizes \$60 million for multiyear grants for research, development and demonstration projects to create innovative and practical approaches to increase the reuse and recycling of batteries. Universities, national laboratories, federal and state research agencies, nonprofits, industrial entities, manufacturing entities, private battery collection entities, state and municipal governments, battery producers, battery retailers and consortium are eligible.
- **Electric Drive Vehicle Battery Recycling and Second-Life Applications Program.** There is \$200 million authorized and appropriated for the Secretary to award grants for research, development and demonstration of second-life applications for electric drive vehicle batteries that have been used to power electric drive vehicles and technologies and processes for final recycling and disposal of the devices.
- **Advanced Energy Manufacturing and Recycling Grant Program.** The bill authorizes and appropriates \$750 million for a new grant program to fund projects to re-equip, expand or establish manufacturing or recycling facilities for the production or recycling of advanced energy property or re-equip an industrial or manufacturing facility with equipment designed to reduce greenhouse gas emissions of that facility substantially below greenhouse gas emissions under current best practices through installation of (1) low or zero carbon process heat systems; (2) carbon capture, transport, utilization and storage systems; (3) technology related to energy efficiency and reduction in waste from industrial processes; or (4) any other industrial technology that significantly reduces greenhouse gas emissions and has a reasonable expectation of commercial viability. The bill requires the Secretary to prioritize projects in low-income census tracts and that will create jobs for persons previously employed in coal power

plants or coal mining and give preference to eligible entities that are minority owned.

- **Critical Minerals Mining and Recycling Research and Development.** There is \$500 million authorized for grants to study mining methods, efficient use and reuse, commercialization, workforce and private industry innovation and technology transfer from federally funded science and technology. Institutions of higher education, national laboratories and nonprofits are eligible recipients.

Fuels and Technology Infrastructure Investment

There is \$27.853 billion appropriated for fuels and technology infrastructure investment. Below is a summary of key programs.

- **Carbon Utilization Grant Program.** The bill authorizes and appropriates \$310 million for a new grant program whereby the Secretary will make grants to states, local governments or public utilities or agencies to procure and use commercial or industrial products that use or are derived from anthropogenic carbon dioxides and demonstrate significant net reductions in lifecycle greenhouse gas emissions compared with incumbent technologies, processes and products.
- **Carbon Capture Technology Program.** There is \$100 million authorized and appropriated for the front-end engineering and design program under the previously authorized the Department of Energy (DOE) Carbon Capture Technology Program.
- **Carbon Dioxide Transportation Infrastructure Finance and Innovation.** The bill establishes a new lending program within DOE. The program, known as "CIFIA," is modeled after the TIFIA program within DOT. There is \$2.1 billion appropriated for the program. Under the program, the Secretary will make secured loans, provide loan guarantees and award grants to projects for common carrier carbon dioxide transportation infrastructure or associated equipment, including pipelines, shipping, rail or other transportation infrastructure and associated equipment that will transport or handle carbon dioxide captured from anthropogenic sources or ambient air. Key elements of the program include the following:

- Applicants may be public and private sector entities.
- Projects must have a total cost of at least \$100 million.
- The maximum amount of a secured loan is 80 percent of project costs.
- The interest rate is the Treasury rate.
- The maturity date of a loan is 35 years after the date of substantial completion of the project except that if the useful life of the capital asset is less than 35 years, the term is the period of the useful life of the asset.
- In making a creditworthiness determination, the Secretary is required to consider certain factors, including the strength of the contractual terms of the eligible project; the forecast of noncontractual cash flows supported by market projections and cash sweeps or other structural enhancements; the projected financial strength of the obligor at the time of loan close and throughout the loan term, including after the project is completed; the financial strength of the investors and strategic partners; and other financial metrics relevant and relied on by the lending community and nationally recognized credit rating agencies.
- The credit instrument must be repayable in whole or part with (1) user fees; (2) payments owing to the obligor under a public-private partnership; or (3) other revenue sources that also secure or fund the project obligations.
- A secured loan may not be subordinated to the claims of any holder of project obligations in the event of a bankruptcy, insolvency or liquidation of the obligor except for a public agency borrower that has preexisting debt that is A-rated and is secured with pledged revenues not affected by project performance.
- The Secretary may enter into master credit agreements for a program of projects providing contingent commitments for future projects.

- To be eligible for assistance, the applicant must be able to demonstrate it reasonably can begin the contracting process for construction within 90 days after the credit instrument is obligated.
 - The applicant must pay all or a portion of the federal government’s costs in providing the credit instrument up to a maximum of \$3 million if sufficient funds covering such costs are not appropriated.
 - The Secretary will set repayment terms based on projected cash flow from project revenues and the useful life of the project.
 - Repayment must begin no later than five years after substantial completion of the project. The Secretary may defer payments at his or her discretion.
 - The Secretary may award Future Growth Grants to pay a portion of the cost differential with respect to any future increase in demand for carbon dioxide transportation by an infrastructure project. The maximum amount of the grant would be 80 percent of the cost of the additional capacity.
 - The Secretary is required to report to Congress on how it will calculate subsidy rates and an analysis and timeline for developing draft regulations.
- **Carbon Storage Validation and Testing.** There is \$2.5 billion authorized and appropriated for a new program to fund the development of new or expanded commercial large-scale carbon sequestration projects and associated carbon dioxide transport infrastructure.
 - **Regional Direct Air Capture Hubs.** The bill directs the Secretary to establish a program to fund projects that contribute to the development of four regional direct air capture hubs, authorizing and appropriating \$3.5 billion over five years. The bill defines a regional direct air capture hub as a network of direct air capture projects, potential carbon dioxide utilization off-takers, connective carbon dioxide transport infrastructure, subsurface resources and sequestration infrastructure located within a region. Eligible hubs must facilitate the

deployment of direct air capture projects, have the capacity to capture, sequester and utilize at least 1 million metric tons of carbon dioxide from the atmosphere annually from a single unit or multiple interconnected units.

Hydrogen Research and Development Programs

The bill authorizes funding for research, development, demonstration and deployment of hydrogen from clean energy sources, and establishes a clean hydrogen strategy and roadmap for the U.S. The following are some of the key programs authorized by the bill:

- **Regional Clean Hydrogen Hubs.** The bill authorizes and appropriates \$8 billion for the Secretary to establish a program to support the development of at least four regional clean hydrogen hubs in geographically diverse areas in the U.S. The Secretary will fund hubs that demonstrate the production, processing, delivery, storage and end-use of clean hydrogen and can be developed into a national clean hydrogen network to facilitate a clean hydrogen economy. The hubs will demonstrate the end-use of clean hydrogen in the electric power generation, industrial, residential and commercial heating, and transportation sectors.
- **Clean Hydrogen Manufacturing and Recycling Program.** The bill authorizes and appropriates \$500 million for two programs. Under the first program, the Secretary would award multiyear grants, contracts, cooperative agreements or other agreements authorized in law for research, development and demonstration projects to advance new clean hydrogen production, processing, delivery, storage and use equipment manufacturing technologies and techniques. The bill directs the Secretary to prioritize projects that increase efficiency and cost-effectiveness in the manufacturing process, use of resources, including existing energy infrastructure, and support domestic supply chains for materials and components, among other considerations. Under the second program, the Secretary would award multiyear grants, cooperative agreements or other agreements authorized in law for research,

development and demonstration projects to create innovative and practical approaches to increase the reuse and recycling of clean hydrogen technologies.

- **Clean Hydrogen Electrolysis Program.** The bill directs the Secretary to establish a new demonstration program to commercialize, improve the efficiency, increase the durability and reduce the cost of producing clean hydrogen using electrolyzers. The goal of the program is to reduce the cost of hydrogen produced using electrolyzers to less than \$2 per kilogram of hydrogen by 2026. The bill authorizes and appropriates \$1 billion to implement the program.

Nuclear Energy Infrastructure

- **Civil Nuclear Credit Program.** There is \$6 billion authorized and appropriated for the Secretary to establish a civil nuclear credit program to evaluate nuclear reactors projected to cease operation due to economic factors and select certified nuclear reactors to be allocated credits.

Hydropower

- **Hydroelectric Production Incentives.** The bill appropriates \$125 million for fiscal year 2022 for hydroelectric production incentives as authorized in the Energy Policy Act of 2005.
- **Hydroelectric Efficiency Improvement Incentives.** The bill appropriates \$75 million for fiscal year 2022 for hydroelectric production incentives as authorized in the Energy Policy Act of 2005.
- **Maintaining and Enhancing Hydroelectricity Incentives.** The bill authorizes and appropriates \$553.6 million for the Secretary to make incentive payments to owners or operators of qualified hydroelectric facilities for capital improvements directly related to improving grid resiliency, dam safety and reducing environmental impacts.
- **Pumped Storage Hydropower Wind and Solar Integration and System Reliability Initiative.** The bill directs the Secretary to establish a demonstration project for a pumped storage hydropower project to facilitate the long-duration storage of intermittent renewable electricity no

later than September 30, 2023. There is \$10 million authorized and appropriated for this program over five years.

Miscellaneous

The bill authorizes and/or appropriates funding for a number of renewable energy demonstration projects authorized in prior laws, including the following:

- **Clean Energy Demonstration Program on Current and Former Mine Land.** The bill establishes a program to demonstrate the viability of carrying out clean energy projects on current and former mine land. The bill authorizes the Secretary to award up to five demonstration projects. The Secretary is required to prioritize grants that have the greatest potential to create jobs and economic development in distressed areas and the greatest reduction in greenhouse gas emissions. The bill authorizes and appropriates \$500 million for this program over five years.
- **Energy Storage Demonstration Pilot Grant Program.** There is \$355 million appropriated for this program authorized under the Energy Act of 2020.
- **Long-Duration Demonstration Initiative.** There is \$150 million appropriated for the Long-duration Demonstration Initiative and Joint Program authorized under the Energy Act of 2020.
- **Advanced Reactor Demonstration Program.** There is \$2.48 billion appropriated for the Advanced Reactor Demonstration Program authorized under the Energy Policy Act of 2005.
- **Carbon Capture Large-Scale Pilot Projects.** There is \$937 million appropriated to carry out the Carbon Capture Large-scale Pilot Projects authorized in the Energy Policy Act of 2005.
- **Carbon Capture Demonstration Projects Program.** There is \$2.5 billion appropriated for this program authorized in the Energy Policy Act of 2005.
- **Industrial Emission Demonstration Projects.** There is \$500 million appropriated for this program as authorized in the Energy Independence and Security Act of 2007.

- **Solar Energy Research and Development.** The bill authorizes \$80 million for solar energy research and development subject to a future appropriation.

- **Orphaned Well Site Plugging, Remediation and Restoration.** The bill appropriates \$4.7 billion for the Interior Secretary to establish a program to provide funds to plug, remediate and reclaim orphaned oil and gas wells on federal, state and tribal lands.

- **Funding for Federal Lands.** There is \$250 million available for the Secretary of Interior to provide funds to plug, remediate and reclaim orphaned wells located on federal lands. Under the program, the Secretary will identify orphaned wells and associated pipelines, facilities and infrastructure and rank those orphaned wells for priority in plugging, remediation and reclamation based on public health and safety, potential environmental harm and other subsurface impacts or land-use priorities. The Secretary will also identify and address any disproportionate burden of adverse human health or environmental effects of orphaned wells in underserved communities.
- **Funding for State Programs.** There is \$4.275 billion available for the Secretary to award initial, formula and performance grants to states to plug, remediate and reclaim orphaned wells on state or privately owned land, identify and characterize undocumented orphaned wells and rank orphaned wells based on factors such as public health safety, potential environmental harm and other land use priorities.
 - **Initial Grants.** There is \$775 million available for the Secretary to provide initial grants to states. Of this funding, up to \$25 million is for states that submit an estimate of the number of jobs that will be created or saved, certify their membership or associate membership in the Interstate Oil

and Gas Compact Commission, and confirm that the state has one or more documented orphaned well. Additionally, there is up to \$5 million for states that have an existing plugging, remediation and reclamation program for orphaned wells and the capacity to initiate such a program or carry out a grant.

- **Formula Grants.** There is \$2 billion in formula grants available for states. The formula will account for job losses in the oil and gas industry in the state beginning on March 1, 2020, and ending on the date of the bill's enactment. Additionally, the formula will account for the number of documented orphaned wells located in the state and the projected cost to plug or reclaim those orphaned wells, reclaim adjacent land and decommission associated pipelines, facilities and infrastructure. To be eligible, states must describe its program for orphaned well cleanup, including legal authorities, processes used to identify and prioritize orphaned wells, and other program elements demonstrating the readiness of the state to carry out proposed activities using the grant.
- **Performance Grants.** There is \$1.5 billion in performance grants for states, including regulatory improvement grants and matching grants. To be eligible, states must submit an application describing the activities carried out by the state to address orphaned wells, including its efforts to increase state spending on well plugging, remediation and reclamation, or improve regulation of oil and gas wells. Additionally, the state must describe the means by which it will use funds to lower unemployment in the state and improve economic conditions in economically distressed areas. States

may receive up to two \$20 million regulatory improvement grants for states that have strengthened their plugging standards and procedures in a manner that protects groundwater and other natural resources and made improvements to its programs designed to reduce future orphaned well burdens. Lastly, states that increase spending on orphan well cleanup may receive up to \$30 million in matching grants.

- **Funding for Tribal Programs.** There is \$150 million to establish a program for the Secretary of Interior to provide Indian tribes grants to plug, remediate or reclaim an orphaned well on tribal land.
- **Abandoned Mine Reclamation Fund.** The bill appropriates \$11.29 billion for the Abandoned Mine Reclamation Fund established by the Surface Mining Control and Reclamation Act of 1977. The Secretary of Interior would provide formula grants to states and Indian tribes for the reclamation and restoration of land and water resources adversely affected by past coal mining practices and to protect public health, safety and property from these adverse effects. The total amount of funding is not be less than \$20 million, and the Secretary may prioritize reclamation projects that employ current and former employees of the coal industry.
- **Abandoned Hardrock Mine Reclamation.** The bill authorizes \$3 billion for the Secretary of Interior to establish a new program to provide formula grants to states and Indian tribes to inventory, assess, decommission, reclaim, respond to hazardous substance releases on and remediate abandoned hardrock mine land. The bill reserves 50 percent of funding for grants to states and Indian tribes and 50 percent for use on federal land.

DOE Loan Program

The bill makes changes to the DOE Loan Programs. The bill clarifies what DOE can consider in evaluating an applicant’s creditworthiness—similar to the CIFIA

program. The bill also expands the eligibility of the Advanced Technology Vehicle Manufacturing Loan Program to include medium and heavy-duty vehicles, trains, locomotives, maritime vessels, aircraft and Hyperloop technology. The bill makes projects that increase the domestically produced supply of critical minerals, including through production, processing, manufacturing, recycling or fabrication of mineral alternatives, eligible for DOE loans. Finally, the bill makes certain Alaska natural gas transportation programs and systems eligible for loan guarantees.

Energy Efficiency and Building Infrastructure

The bill makes funding available for a variety of grant and loan programs to encourage investment in and deployment of energy-efficient improvements:

- **Energy Efficiency Revolving Loan Fund Capitalization Grant Program.** The bill directs the DOE Secretary to establish a revolving loan fund capitalization grant program under the State Energy Program within one year of the bill’s enactment and authorizes and appropriates \$250 million for fiscal year 2022 for the program. The Secretary will provide funding to states to capitalize revolving loan programs. States can use the funding to make low interest loans to recipients to conduct commercial energy audits and residential energy audits and make energy upgrades or retrofits.
- **Grants for Energy Efficiency Improvements and Renewable Energy Improvements at Public Schools.** The bill authorizes and appropriates \$500 million for the Secretary to award competitive grant to public schools to make energy efficiency, renewable energy upgrades and purchase alternative fuel vehicles and infrastructure.
- **Weatherization Assistance Program.** The bill authorizes and appropriates \$3.5 billion for fiscal year 2022 for the weatherization assistance program.
- **Energy Efficiency and Conservation Block Grant Program.** The bill authorizes and appropriates \$550 million for fiscal year 2022 for the program. It also expands eligibility to programs that finance energy efficiency and other clean energy

capital investments, projects, loan programs and performance contracting programs.

- **Assisting Federal Facilities with Energy Conservation Technologies Grant Program.** The bill authorizes and appropriates \$250 million for fiscal year to provide funding to federal agencies that they can leverage with private capital to make energy and water efficiency upgrades to federal buildings.

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Environmental Protection Agency



The bill appropriates \$55 billion for various new water infrastructure programs. The following are some of the key programs authorized and in some cases appropriated by the bill:

- **Capitalization of State Drinking Water and Clean Water Revolving Loan programs.** The bill provides distinct appropriations to capitalize the Drinking Water and Clean Water Revolving Loan programs for different purposes.

- *Drinking Water Revolving Loan Program*

- \$11.713 billion to capitalize loan program for eligible purposes. Forty-nine percent of funds are for grants or forgivable loans to disadvantaged communities.

- \$15 billion to capitalize loan program and be used to subsidize lead service pipe replacement. Forty-nine percent of funds are for grants or forgivable loans to disadvantaged communities.
- \$4 billion to capitalize the loan program and be used to address emerging contaminants, including perfluoralkyl and polyfluoroalkyl (PFAS). Funds shall be provided to eligible applicants as forgivable loans or grants with no matching requirement.

- *Clean Water Revolving Loan Program*

- \$11.713 billion to capitalize loan program for eligible purposes. Forty-nine percent of funds can go to grants or forgivable loans to disadvantaged communities.
- \$1 billion to capitalize loan program and be used to address emerging contaminants, including PFAS. Funds shall be for forgivable loans or grants with no matching requirement.

- **Emerging Contaminants.** The bill makes \$5 billion available for a grants to states to address emerging contaminants in disadvantaged communities. There is no matching requirement for the funds.

- **Underground Injection Control Grant.** There is \$50 million available for Underground Injection Control grants for activities.
- **Assistance to Small Disadvantaged Communities.** The bill includes \$250 million for competitive grants to states to distribute to small disadvantaged communities for drinking water infrastructure improvements.
- **Reducing Lead in Drinking Water.** The bill appropriates \$500 million to replace lead drinking water service lines with priority going to disadvantaged communities. The bill includes \$10 million for a Lead Inventory Utilization Grant Program for municipalities served by a community water system or a nontransient noncommunity water system in which not less than 30 percent of the pipes are or are suspected to contain lead to inventory and carry out lead reduction projects. Priority is to be given to projects in disadvantaged communities.
- **Operational Sustainability of Small Public Water Systems.** The bill establishes a grant program to improve the operational sustainability of small water systems through the identification and prevention of potable water loss due to leaks, breaks and other metering or infrastructure failures. The term small system means a system that serves fewer than 10,000 people and is owned by a governmental entity, public corporation, nonprofit corporation, public trust, cooperative association or Indian tribe. The federal share for grants will be 90 percent. The bill authorizes \$50 million (over five years) and is subject to appropriation.
- **Midsized and Large Drinking Water System Infrastructure Resilience and Sustainability Program.** The bill authorizes \$250 million for a grant program to plan, design, construct, implement, operate and maintain programs or projects that increase resilience to natural hazards and extreme weather events or reduce cybersecurity vulnerabilities. Eligible entities are public water systems that serve communities with populations of 10,000 or more. The bill requires the Secretary to award 50 percent of the funding to entities that serve populations greater than 10,000 and fewer than 100,000 and 50 percent to entities that serve populations greater than 100,000. The program's funds are subject to appropriation.
- **Rural and Low-Income Water Assistance Pilot Program.** Subject to the availability of funding, the Environmental Protection Agency (EPA) Administrator is directed to establish a pilot program within two years after the bill becomes law to award grants to entities to develop and implement programs that assist qualifying households with need in maintaining access to drinking water and wastewater treatment.
- **Wastewater Efficiency Grant Pilot Program.** The bill authorizes \$100 million for a new pilot program to award grants to owners or operators of publicly owned treatment works to carry out projects that create or improve waste-to-energy systems. The maximum grant is \$4 million, with all funds subject to appropriation.
- **Pilot Program for Alternative Water Source Projects.** The bill reauthorizes \$125 million for the pilot program, which exists in current law. The bill expands eligibility to treatment of stormwater in addition to water and wastewater. Funds are subject to appropriation.
- **Sewer Overflow and Stormwater Reuse Municipal Grants.** The bill reauthorizes \$1.4 billion for this program that exists in current law whereby funds go to the states, with all funds subject to appropriation. The bill requires states to report to Congress on how they distributed grant funding.
- **Clean Water Infrastructure Resiliency and Sustainability Program.** The bill establishes a new grant program whereby the Administrator will award grants to increase resiliency of publicly owned treatment works against natural hazards and cybersecurity vulnerabilities. Funds can be used for planning, design or construction. The federal portion of the grant may not exceed 75 percent except grants to projects in small or disadvantaged communities can be for up to 90 percent of the costs (or 100 percent at the Administrator's discretion). The bill authorizes \$125 million to support this new program and is subject to appropriation.

- **Small Publicly Owned Treatment Works Efficiency Grant Program.** The bill requires the head of the Administrator to establish a program within 180 days of the bill's enactment to make grants to owners of small publicly owned treatment works (that serve a population of not more than 10,000 or is in a disadvantaged community) or nonprofits for the replacement or repair of equipment that improves water or energy efficiency of small publicly owned treatment works as identified in an efficiency audit. The program is an authorization and subject to appropriation.
- **Connection to Publicly Owned Treatment Works Grant Program.** The bill authorizes \$200 million and requires the Administrator to establish a competitive grant program to award grants to assist individuals in covering costs incurred by the individual in connecting the household to a publicly owned treatment works.
- **Water Infrastructure Finance and Innovation Act (WIFIA).** The bill authorizes \$250 million and appropriates \$75 million for the WIFIA program through which EPA makes loans and loan guarantees to water infrastructure projects. The bill eliminates the requirement for an applicant to obtain final rating opinion letters from two rating agencies and instead requires only one opinion letter. Of the \$75 million appropriated, \$64 million is for loans and loan guarantees for safety projects to maintain, upgrade and repair dams identified in the Inventory of Dams with a primary owner type of state, local government, public utility or private.
- **Stormwater Control Infrastructure Project Grants.** The bill establishes a new competitive grant program for state and local government, local, regional or other public entities that manage stormwater or wastewater resources or other water infrastructure carry out stormwater control infrastructure projects that incorporate new and emerging but proven stormwater control technologies. The Administrator is required to prioritize applications submitted on behalf of a community that has municipal combined storm and sanitary sewers in the collection system of the community or is a small, rural or disadvantaged community or will use not less than 15 percent of the grant to provide service to a small, rural

or disadvantaged community. The bill authorizes \$50 million (over five years) and is subject to appropriation.

- **Brownfields.** \$1.5 billion is appropriated for brownfields activities of which \$1.2 billion is available for competitive grants for the remediation of contaminated properties.

Bureau of Reclamation

The bill authorizes \$8.3 billion for the Bureau of Reclamation to fund western water infrastructure projects. The Bureau of Reclamation has the authority to fund projects in Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington and Wyoming. Funding authorizations and appropriations include:

- **Water Storage, Groundwater Storage and Conveyance Projects.** \$1.15 billion is authorized and appropriated for grants of which \$100 million is for small surface water and groundwater storage projects. This program funds feasibility studies and construction projects for large-scale projects that Congress authorized in prior law or this bill. The bill also requires the Bureau of Reclamation to establish a competitive grant program for small water storage and groundwater storage projects. Projects in the water reclamation states and Alaska and Hawaii are eligible. Eligible projects must have water storage capacity of not less than 2,000 acre-feet and not more than 30,000 acre-feet and increase surface water or groundwater storage or convey water directly or indirectly to or from surface water or groundwater storage. The bill directs the Secretary of Interior to issue guidelines for feasibility studies within 60 days of enactment of the bill into law. The Secretary is required to send feasibility studies to Congress. Once a project sponsor completes a feasibility study, it can submit an application for construction funding to the Secretary. The maximum federal share is 25 percent of the total project cost or \$30 million, whichever is less.
- **Water Recycling and Reuse Projects.** The bill appropriates \$450 million for a competitive grant program for large-scale water recycling and reuse projects. Eligible applicants are state and

local governments, Indian tribes, water districts, wastewater districts and other organizations with water or power delivery authority. Eligible projects are those that (1) reclaim and reuse municipal, industrial, domestic or agricultural wastewater; or (2) impaired groundwater or surface water; and have a total cost of \$500 million or more. The Secretary is required to consider a number of factors in making awards, including, among other criteria, water supply benefits to drought-stricken states. The bill directs the Bureau to prioritize projects that are more likely to provide a more reliable water supply; are likely to increase water management flexibility; are regional; have multiple stakeholders; or provide multiple benefits. The federal share for projects is 25 percent. The Secretary is required to issue guidance on implementing the program within one year of enactment of the bill into law.

- **Dam Safety Program.** The bill authorizes \$500 million for the dam safety program authorized in accordance with the Reclamation Safety of Dams Act of 1978.
- **WaterSMART Grants.** The bill appropriates an additional \$400 million for WaterSmart grants of which \$100 million is for projects that improve the condition of a natural feature or nature-based feature.
- **Multi-Benefit Projects to Improve Watershed Health.** The bill appropriates \$100 million for a new competitive grant program to design, implement and monitor conservation outcomes of habitat restoration projects that improve watershed health in a river basin adversely affected by a Bureau of Reclamation water project. Funding is capped at 50 percent of project costs. Eligible applicants include a state, tribal or local government, an organization with power or water delivery authority, a regional authority or nonprofit conservation organization.

- **Federal Assistance for Groundwater Recharge, Aquifer Storage and Water Substitution Projects.**

The bill authorizes the Bureau of Reclamation to provide technical and financial assistance for groundwater recharge projects, aquifer storage and recovery projects, or water source substitution for aquifer protection projects. Projects that have a total estimated cost of \$500 million or more must be authorized for construction by an act of Congress.

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Broadband



The Senate-approved version of the bipartisan infrastructure bill includes approximately \$65 billion to improve and expand the nation's broadband infrastructure and make broadband more affordable for low-income Americans. Most of the money will be made available through grants to states for qualifying infrastructure, mapping and adoption projects. Funds will be available until expended. Funding allocations include:

- \$42.45 billion for the formula-based "Broadband Equity, Access, and Deployment" grant program to all states, the District of Columbia, Puerto Rico, American Samoa, Guam, the U.S. Virgin Islands and the Northern Mariana Islands for broadband deployment. This program is to be administered by the National Telecommunications and Information Administration (NTIA). The program is technology-neutral.
 - Directs NTIA to issue a Notice of Funding Opportunity (NOFO) within 180 days after the bill is enacted, establishing a process for states to submit a letter of intent, a single initial proposal and a single final proposal for funding.
 - Each state would receive a minimum initial allocation of \$100 million. Another \$100 million would be separately allocated to and divided equally among the U.S. Virgin Islands, Guam, America Samoa and the Northern Mariana Islands. The remainder of the \$42.45 billion would

be allocated in accordance with a formula that considers both the number of total unserved and the number of high-cost unserved locations in the state, as compared to other states.

- Projects receiving funds must build out service to meet a minimum download/upload speed of 100/20 megabits per second.
- All funding recipients have an obligation to offer a low-cost plan as a condition of receiving funding.
- The bill requires local coordination on the part of the state. Specifically, the bill requires the state to submit a "5-year action plan" as part of its proposal, which "shall be informed by collaboration with local and regional entities."
- States may use funds to competitively award sub-grants for:
 - Unserved service projects (defined as an area where at least 80 percent of locations have no access to broadband or lack access to 25/3 speed and latency sufficient to support real-time, interactive applications) and underserved service projects (defined as an area where at least 80 percent of locations lack access to 100/20 speed and latency sufficient to support real-time, interactive applications).
 - Connecting eligible community anchor institutions, which is defined as an entity such as a school, library, health clinic, health center, hospital or other medical provider, public safety entity, institution of higher education, public housing organization or community support organization that facilitates greater use of broadband service by vulnerable populations, including low-income individuals, unemployed individuals and aged individuals.
 - Data collection, broadband mapping and planning.

- Installing broadband infrastructure or providing reduced-cost services within a multifamily residential building, with priority given to a building that has a “substantial share” of unserved households or in a designated poverty area.
 - Broadband adoption, including programs to provide affordable internet-capable devices.
- In awarding sub-grants for the deployment of broadband networks, states must prioritize unserved service projects. Only after a state has certified that it will ensure coverage of all its unserved locations can it prioritize underserved service projects, and then provide funding to connect eligible community anchor institutions.
- \$14.2 billion in additional funding for the Federal Communications Commission’s (FCC) renamed Affordable Connectivity Fund (formerly known as the Emergency Broadband Benefit (EBB) Program), which subsidizes broadband service for eligible households.
 - Builds on the EBB, extending the benefit indefinitely and expanding eligibility to help more low-income households.
 - Reduces monthly subsidy (voucher) to \$30 from the original \$50 on the earlier of December 31 or the date on which the FCC certifies to Congress that the initial \$3.2 billion appropriated for the EBB Program has been fully expended. A voucher can be used for any internet service plan offered by a participating broadband provider.
 - Directs the FCC to adopt consumer protection rules barring, among other things, inappropriate upselling or downselling by participating providers and inappropriate requirements that a consumer opt in to extended service as a condition of participation, and imposing restrictions on a consumer’s ability to switch providers.
 - \$2.75 billion to fund the Digital Equity Act, for competitively awarded grants to be administered by NTIA to promote digital equity nationwide.
 - Creates two grant programs for promoting digital equity, supporting digital inclusion activities and building capacity at the state level for increased broadband adoption.
 - The State Digital Equity State Capacity Program, a five-year, \$300 million per year program for grants to states to fund the creation and implementation of comprehensive digital equity plans in each state. Funds are allocated among states by a formula.
 - The Digital Equity Competitive Grant Program, a five-year, \$250 million per year competitive grant program to support digital equity projects. Those eligible to apply for grants include state agencies; local governments; tribes; Alaska Native entities; Native Hawaiian organizations; nonprofit foundations, corporations, organizations and associations (that are not schools); community anchor institutions; local educational agencies; and entities carrying out workforce development program.
 - Focuses on key needs outside of broadband deployment—funding could be used for such things as laptops and devices for students and digital literacy classes for adults.
 - Tasks NTIA with evaluating digital equity projects and providing policy-makers at local, state and federal levels with detailed information about which projects are most effective.
 - \$1.926 billion in additional funding for the Rural Utility Service’s ReConnect program (along with \$74 million for the cost of broadband loans administered by the Department of Agriculture).
 - Provides loans and grants to fund the construction, acquisition or improvement of facilities and equipment that provide broadband service in rural areas.
 - These ReConnect loans and grants are for projects covering rural areas where at least 50 percent of the households lack sufficient access to broadband, which is defined as having not less than 25/3 Mbps download/upload speeds.

- Sets aside 10 percent of ReConnect funding for projects that will serve rural areas where at least 90 percent of households lack such broadband access.
- Allows pole attachment fees and replacement poles charged by electric utility cooperatives to be an eligible use of ReConnect funds.
- \$2 billion in additional funding for grants from the Tribal Broadband Connectivity Program administered by NTIA. Grants will be made available to eligible Native American, Alaska Native and Native Hawaiian entities for broadband deployment, digital inclusion, workforce development, telehealth and distance learning.
- \$1 billion for a Middle Mile grant program to be administered by NTIA for the construction, improvement or acquisition of middle-mile infrastructure, which is defined as “any infrastructure that does not connect directly to an end-user location, including an anchor institution.” Entities eligible to receive grants include telecommunications companies, technology companies, electric utilities and utility cooperatives. The program is authorized for five years, from FY 2022 through FY 2026. Grants would be subject to interconnection and nondiscrimination requirements.
- Creates an interagency online mapping tool for federally funded broadband projects, with cooperation among the FCC, NTIA, the Treasury and others that provide funding for broadband deployment.
- Requires display of broadband consumer labels disclosing information about broadband internet service plans, including, among other things price, data allowances, speeds, management practices and whether the offered price is an introductory rate and, if so, the price the consumer will be required to pay following the introductory period.
- Requires the FCC not later than two years after enactment to adopt rules to facilitate equal access to broadband internet access service, including ending “digital discrimination” of access based on income level, race, ethnicity, color, religion or national origin. In formulating these rules, the Commission must take into account issues of technical and economic feasibility.
- Requires the federal government to establish a single website where consumers can determine whether they are eligible for low-cost broadband.
- Requires the FCC not later than 30 days after enactment to commence a proceeding to evaluate the impact of this legislation on how the Commission should achieve universal service goals for broadband. Not later than 270 days after enactment, the Commission must submit a report to Congress addressing this topic.

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Buy America and Buy American Domestic Content Requirements



Buy America Requirements

The bill requires that all iron, steel, manufactured products and construction materials used in infrastructure projects that receive financial assistance (through grants or loans) are produced in the United States. While the bill states that Buy America requirements must be interpreted consistent with the U.S. government's obligations under international treaties, such obligations do not typically affect the applicability of domestic content requirements to grants and loans.

While certain federal financial assistance programs, including for transportation and water infrastructure, are already subject to Buy America laws and regulations, the Infrastructure Investment and Jobs Act (IIJA) would make Buy America requirements applicable to all infrastructure programs funded under the Act. This includes structures, facilities and equipment for (1) roads, highways and bridges; (2) public transportation; (3) dams, ports, harbors and other maritime facilities; (4) intercity passenger and freight railroads; (5) freight and intermodal facilities; (6) airports; (7) water systems, including drinking water and wastewater systems; (8) electrical transmission facilities and systems; (9) utilities; (10) broadband infrastructure; and (11) buildings and real property.

Within 180 days of enactment of the bill, federal agencies must ensure that no federal funds are obligated for a project unless all of the iron, steel, manufactured products and construction materials used in the project are produced in the United States.

The Director of the Office of Management and Budget (OMB) is required to provide guidance to federal agencies on implementing the Buy America requirements and to amend the common grant rules in 2 CFR Part 200, if necessary, to ensure that domestic content procurement preference requirements are imposed through the terms and conditions of awards of federal financial assistance.

The bill defines "produced in the United States" to mean:

- (1) for iron or steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- (2) for manufactured products, that (i) the manufactured product was manufactured in the United States; and (ii) the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- (3) for construction materials, that all manufacturing processes for the construction material occurred in the United States. The bill exempts aggregates from the definition of construction materials.

As construction materials have not previously been identified as subject to Buy America requirements, the bill directs OMB to issue standards that define "all manufacturing processes" in the case of construction materials within 180 days after the date of enactment of the Act.

Federal agencies that already implement Buy America laws, must submit a report to OMB and Congress within 60 days of enactment of the IIJA that describes existing requirements, exceptions and waivers and provides a list of any programs that are deficient based on the Act's requirements or that are subject to a waiver of general applicability not limited to the use of specific products for use in a specific project. OMB is required to provide guidance to federal agencies

regarding the identification of deficient programs.

Federal agency's may waive Buy America requirements if the head of the agency finds that (1) applying the preference is inconsistent with the public interest; (2) the types of iron, steel, manufactured products or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or (3) inclusion of iron, steel, manufactured products or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent. Before issuing a waiver, the head of the federal agency must provide (1) a written justification; and (2) a period of not less than 15 days for public comment. The bill also requires federal agencies to review existing general applicability waivers every five years, including publishing a notice in the Federal Register and an opportunity for public comment. This requirement applies to product-specific general applicability waiver issued more than 180 days before the date of enactment of this Act for a period of five years.

The bill requires the Secretary of Transportation to enter into an agreement with the Secretary of Commerce and consult with the Director of the Hollings Manufacturing Extension Partnership within the Department of Commerce to determine whether there is a domestic entity that could provide the iron, steel, manufactured product before granting a Buy America waiver. The Secretary of Transportation must also report to Congress annually regarding the extent of consultation, waivers granted, challenges and gaps in the domestic supply base and a list of actions and policy changes the Secretary recommends be taken to address those challenges and gaps.

Buy American Act Amendments

The bill makes certain changes to the Buy American Act, which is applicable to federal government procurements. We will report on these changes in a separate client alert.

Make PPE in America Act

The bill incorporates the Make PPE in America Act, which requires that within 90 days of the enactment of the Act, that any contract for the procurement of personal protective equipment (PPE) entered into by the Secretary of Homeland Security, the Secretary of

Health and Human Services (HHS) or the Secretary of Veterans Affairs must (1) have a term of at least two years; and (2) be for equipment and its components that are grown, reprocessed, reused or produced in the United States.

The requirement that PPE or its components be made or produced in the United States may be excused only when (1) the PPE is assembled outside the United States, but consists only of domestic materials and components; or (2) the appropriate agency secretary (Homeland Security, HHS or Veterans Affairs) certifies every 120 days that alternative methods of acquiring PPE are necessary to respond to a public health emergency.

Contracts are not subject to the PPE production requirements or domestic alternatives provisions when the PPE includes a material that is "non-available" pursuant to the Federal Acquisition Regulation (FAR). Per the FAR, the Buy American Act does not apply to those materials or components that are not domestically mined, produced or manufactured in sufficient and reasonably available commercial quantities and of a satisfactory quality. An exception applies when an applicable agency Secretary determines that there is not sufficient quantity or satisfactory quality for a domestic material when needed and at market price. The appropriate agency secretary must also certify every 120 days that this exception is necessary to respond to a public health emergency.

Within 180 days of the Act's enactment, the OMB director must issue a report on the procurement of PPE in the United States. The report must cover long-term strategies for PPE procurement, demand estimates for PPE and include recommendations for congressional action and amendments to align international trade deals with this provision.

The bill also authorizes the Secretary of HHS, in coordination with the Secretary of Homeland Security, to sell drugs, vaccines and other products and supplies in the national stockpile to another federal agency or to a private, nonprofit, state, local, tribal or territorial entity if such item is (1) within one year of its expiration date; or (2) determined by the Secretary to be no longer be needed in the stockpile due to advances in medical or technical capabilities.

Authors: [Susan H. Lent](#), [Scott M. Heimberg](#)

Cybersecurity



The bill provides approximately \$1.9 billion in funding for protecting critical infrastructure from cyberattacks. The funds are intended to help federal, state and local governments secure their information systems and systems operated on their behalf against cyber threats; secure critical infrastructure and utilities; and support private and public entities in the aftermath of cyberattacks. The bill also establishes a federal cyber office, the Office of the National Cyber Director, and empowers the U.S. Department of Homeland Security (DHS) Secretary to declare a significant cyber incident. We describe key programs below.

Local-level Security

The largest portion of cybersecurity funding in the bill is the \$1 billion appropriated for protecting state, local, tribal and territorial entities from cyberattacks. This funding is focused on entities, which typically lack the technical resources of the federal government and large corporations and are more likely to be vulnerable to cyber intrusions. This includes the following program:

- **State and Local Cybersecurity Improvement Grant Program.** One billion dollars has been allocated over four years for state, local, tribal and territorial entities to strengthen the cybersecurity programs protecting energy grids, schools, hospitals and other vital services. To be eligible, such entities must submit an application to the DHS Secretary that includes a detailed

Cybersecurity Plan describing how they will manage their information systems and enhance cybersecurity preparedness. The funds are available until expended, and will be dispersed by DHS as follows: \$200 million for 2022, \$400 million for 2023, \$300 million for 2024 and \$100 million for 2025. This program will be administered by Federal Emergency Management Agency (FEMA) in consultation with the Cybersecurity and Infrastructure Security Agency (CISA), and will be used to implement cybersecurity plans and address imminent cybersecurity threats.

Public-Private Coordination and Research

Another significant portion of the bill targeting cybersecurity is the establishment of a \$100 million fund to support coordination between public and private entities during cyber incidents. DHS and CISA will have a leading role and have been granted greater authority, such as the ability of the DHS Secretary to declare a “significant incident” (pursuant to Section 2233 of the Homeland Security Act of 2002) and disburse emergency funds, along with more resources for cross-sector risk management. The bill also appropriates an additional \$157.5 million to DHS for research and testing involving cybersecurity risk and vulnerabilities. Programs under this initiative include:

- **Cybersecurity Response and Recovery Act (Fund).** The bill incorporates provisions of this act, enabling the DHS Secretary to declare a significant incident-defined as an attack on a critical U.S. organization, public or private, which would impact national security, economic security, public health or government operations. This act also appropriates \$100 million to be disbursed at a \$20 million annual rate for five years for a fund to be used by DHS to support entities impacted by such cyber incidents. CISA will provide direct support to the affected public or private entities during response and recovery. Remaining unused funds will be available until expended, with the program ending on September 30, 2028.

- **Grant to CISA.** A \$35 million one-time investment is appropriated for DHS's CISA organization to establish a capability to oversee and support cross-sector government critical infrastructure and manage risk in coordination with public and private stakeholders.
- **Grant to DHS Science and Technology Directorate.** This bill appropriates \$157.5 million to the DHS Science and Technology Directorate for Research and Development. Allocated in \$31.5 million increments over five years, these funds will support research on cybersecurity risk assessments and vulnerability testing, along with capabilities such as electromagnetic pulse and geo-magnetic disturbance resilience.
- **Rural and Municipal Cybersecurity Grant.** \$250 million is authorized to the Department of Energy (DOE) to establish a grant for rural and municipal communities that lack resources to maintain their cybersecurity systems and to better address cybersecurity threats. DOE will also be required to report to Congress on ways to improve and update electricity distribution systems.
- **Grid Testing, Research and Enhancement.** This bill appropriates \$350 million for improving the cybersecurity posture of the energy grid. \$50 million of allocation will be set aside for testing emergency response preparedness. Another \$50 million will be applied to cybersecurity assessments to identify the critical components that pose the most risk to electric, gas and oil operations and measures to protect such components during a cyberattack. The remaining \$250 million is appropriated to research, develop and demonstrate cybersecurity applications that can improve energy grid security.

New Federal Cyber Office Created

A first-of-its-kind, National Cyber Office has been established by the bill to address the federal government response to cybersecurity issues and resiliency matters. The program provisions are as follows:

- **Funding for White House National Cyber Office.** \$21 million is appropriated for the Office of the National Cyber Director, available until September 30, 2022. National Cyber Director Chris Inglis was sworn in as the nation's first National Cyber Director on July 14, 2021. The office has a temporary budget of \$250,000 provided by the White House.

Authors: [Natasha G. Kohne](#), [Michelle A. Reed](#), [Molly E. Whitman](#)

Grid Security

The bill also includes various measures to examine and improve the resiliency of the energy grid in the event of cyberattacks. A \$250 million grant is included for rural and municipal utilities in order to address the preparedness of more vulnerable communities. It also appropriates \$350 million for grid security to test responses and develop better cybersecurity programs. Principal programs include:

Moratorium on HHS Implementation of the “Rebate Rule”



Sec. 60501. Moratorium on Implementation of Rule Relating to Eliminating the Anti-Kickback Statute Safe Harbor Protection for Prescription Drug Rebates.

A delay of the so-called “rebate rule” until January 1, 2026, provides for a \$50.8 billion offset to the new spending.² The rule, finalized by the Department of Health and Human Services on November 30, 2020, would revise the discount safe harbor to the Anti-Kickback Statute to eliminate any protections that arguably existed for the rebate paid by pharmaceutical manufacturers to pharmacy benefit managers (PBMs) and health plans.³ It also created a new safe harbor to protect drug manufacturer discounts that were passed on to the patient at the point of sale. The goals of the regulation are three-fold: (1) to increase transparency around the role of rebates in the drug supply chain; (2) to lower beneficiary cost-sharing at the pharmacy counter; and (3) to remove the perverse incentives in the current rebate system that reward manufacturers for increasing the list prices of their drugs, and encourage PBMs and plans to promote drugs based on clinical value (as opposed to rebate value). The new safe harbors protecting point of sale discounts and

fair market value PBM fees took effect on January 29, 2021. The removal of protections for rebates was initially due to take effect January 1, 2022, but a lawsuit filed by the PBM industry prompted a delay until January 1, 2023.

The CBO determined back in May 2019 that the rebate rule would **increase** direct spending by about \$177 billion over 10 years.⁴ Underlying this determination were a number of assumptions. First, CBO assumed that pharmaceutical manufacturers would withhold some of the savings they previously offered plans in the form of rebates. Second, CBO assumed that without this rebate revenue that plans will have to increase federally-subsidized premiums, thereby increasing government spending. Third, CBO assumed that drug manufacturers would not lower their list prices as a result of the rule (i.e., assumed that the rebate rule **would not** achieve one of its primary purposes). CBO appears to have maintained these assumptions in its scoring of the infrastructure package, notwithstanding the HHS Secretary’s statement at the final rule stage that he did not expect the rebate rule to increase federal spending, patient out-of-pocket costs or Part D premiums.

The moratorium extends through January 1, 2026, meaning that HHS could implement the rule at that time. However, there would remain roughly \$120 billion in untapped savings that could be achieved by a permanent moratorium, meaning it could very well be used as an offset to a future spending package.

Authors: [Kelly M. Cleary](#), [Kendall B. Hussey](#), [Caroline D. Kessler](#)

² Congressional Budget Office, Cost Estimate: Senate Amendment 2137 to H.R. 3684, the Infrastructure Investment and Jobs Act, as Proposed on August 1, 2021 (Aug. 9, 2021), available at https://www.cbo.gov/system/files/2021-08/hr3684_infrastructure.pdf.

³ Fraud and Abuse; Removal of Safe Harbor Protection for Rebates Involving Prescription Pharmaceuticals and Creation of New Safe Harbor Protection for Certain Point-of-Sale Reductions in Price on Prescription Pharmaceuticals and Certain Pharmacy Benefit Manager Service Fees, 85 Fed. Reg. 76666 (Nov. 30, 2020).

⁴ Congressional Budget Office, Incorporating the Effects of the Proposed Rule on Safe Harbors for Pharmaceutical Rebates in CBO’s Budget Projections—Supplemental Material for Updated Budget Projections: 2019 to 2029 (May 2019), available at <https://www.cbo.gov/system/files/2019-05/55151-SupplementalMaterial.pdf>.

The Recovering Excessive Funds for Unused and Needless Drugs (REFUND) Act



Bipartisan legislation introduced by Senators Rob Portman (R-OH) and Dick Durbin (D-IL), The Recovering Excessive Funds for Unused and Needless Drugs (REFUND) Act, was included as a pay-for in the bipartisan infrastructure package. The provision is estimated to save \$3 billion from reducing Medicare

spending on unused medication from overly large, single-use vials. Specifically, the provision requires the HHS Secretary to aggregate the totally discarded amount of Part B medications each quarter. The Average Sales Price (ASP) will be used to calculate the total cost of the discarded medications, and drug manufacturers will be required to provide a rebate to HHS for 100 percent of the amount of excess medication, recorded by health providers, above a 10 percent low-volume threshold. A civil monetary penalty will incur if a timely rebate is not submitted. This policy will impact pharmaceutical companies with commonly prescribed injectable drugs.

Authors: [Kelly M. Cleary](#), [Kendall B. Hussey](#), [Caroline D. Kessler](#)

Revenue Measures



Included in the legislation are revenue provisions which the Joint Committee on Taxation (JCT) estimated would raise just over \$51 billion over ten years ([JCX-33-21](#)), while the Congressional Budget Office estimated the legislation would add \$256 billion

to projected deficits over that period (CBO Revenue Estimate [here](#)). Below is a summary of the provisions in Division H of the legislation and their revenue effects.

Title I – Highway Trust Fund

- Extension of Highway Trust Fund Expenditure Authority (all below sunset 9/30/26).
 - Includes the extension of Highway Trust Fund, extension of the Sport Fish Restoration and Boating Trust Fund, and the extension of the Leaking Underground Storage Tank Trust.
- Extension of Highway-Related Taxes (sunset 9/30/28).

- Further Additional Transfers to Trust Fund.
 - Transfers from the General Fund \$90 billion to the Highway account in the Highway Trust Fund and \$28 billion to the Mass Transit Account in the Highway Trust Fund.

JCT scored the provisions in Title I as having no revenue effect.

Title II – Chemical Superfund

- Extension and Modification of Certain Superfund Taxes – extends certain Superfund excise taxes through December 31, 2031, and modifies the amount of tax applicable to certain chemicals.

JCT estimates Title II will raise \$14.45 billion over 10-years.

Title III – Customs User Fees

- Extension of Customs User Fees.

CBO estimated Title III would cost \$6.2 billion over 10-years.

Title IV – Bond Provisions

- Private Activity Bonds for Qualified Broadband Projects. JCT estimates this provision will cost \$566 million over 10-years.
- Carbon Dioxide Capture Facilities. JCT estimates this provision will cost \$116 million over 10-years.
- Increase in National Limitation Amount for Qualified Highway or Surface Freight Transportation Facilities. JCT estimates this provision will cost \$516 million over 10-years.

JCT estimates Title IV will raise \$1.198 billion over 10-years.

Title V – Relief for Taxpayers Affected by Disasters or Others Critical Events

- Modification of Automatic Extension of Certain Deadlines in the Case of Taxpayers Affected by Federally Declared Disasters.

- Modifications of Rules for Postponing Certain Acts by Reasons of Service in Combat Zone or Contingency Operation.
- Tolling of Time for Filing a Petition with the Tax Court.
- Authority to Postpone Certain Tax Deadlines by Reason of Significant Fires.

JCT estimates this provision will have a negligible revenue effect.

Title VI – Other Provisions

- Modification of Tax Treatment of Contributions to the Capital of a Corporation – modifies the contribution-to-capital rules to apply to regulated public utilities (water and sewer services). JCT estimates this provision will cost \$1.3 billion over 10-years.
- Extension of Interest Rate Stabilization or “pension smoothing” – amends section 430(h)(2)(C)(iv) of the IRC with respect to certain pension plans. JCT estimates this provision will raise \$2.9 billion over 10-years.
- Enhancement of Information Reporting for Brokers and Digital Asset – will require additional reporting of digital assets. JCT estimates this provision will raise \$28 billion over 10-years.
- Termination of Employee Retention Credit for Employers Subject to Closure Due to COVID-19 – will terminate the credit early by moving the end date from January 1, 2022, to October 1, 2021. JCT estimates this provision will raise \$8.2 billion over 10-years.

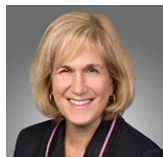
JCT estimates Title VI will raise \$37.8 billion over 10-years.

Authors: [Zachary M. Rudisill](#)

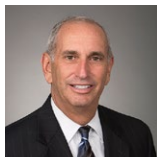
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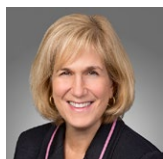


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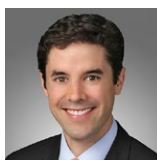
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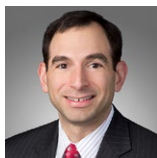


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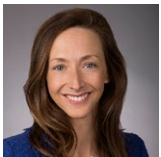


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