

April 9, 2021

Visit us online at www.wpma.com

WP-04-09-21

SENATOR MANCHIN PUTS THE KIBOSH ON ENDING THE FILIBUSTER***Attention on Infrastructure Dominates Washington***

In a major development this week, Senate Majority Leader Chuck Schumer announced that the Senate Parliamentarian has issued a ruling that will allow Democrats to revisit the budget reconciliation process as a legislative path forward. This would allow Democrats to pass the package without any GOP support. However, securing all 50 Senate Democratic votes will be a challenge. Senator Joe Manchin (D-WV) said he thinks the corporate tax rate increase is too high – suggesting an increase from 21 to 25 percent is more reasonable. Senator Mark Warner (D-VA) also said that he expressed his concerns with the proposal to the White House.

Attention on an infrastructure package dominated conversations in Washington this week and will continue to do so for the foreseeable future. Congressional Democrats are encouraging the White House and Democratic leaders to explore a bipartisan infrastructure approach. In an op-ed Wednesday, Senator Manchin said there's "no circumstance" in which he would "vote to eliminate or weaken the filibuster," and he expressed alarm at the budget reconciliation process and how it's "being used by both parties to stifle debate around major issues." Similarly, Senator Chris Coons (D-DE) suggested possible areas of cooperation and compromise with Republicans on the bill, such as a smaller increase to the corporate tax rate or eliminating loopholes for large, multinational corporations.

This week, the Biden Administration clarified that its \$174 billion proposal to boost electric vehicles (EV) would include \$100 billion for new consumer rebates and \$15 billion to build 500,000 new EV charging stations. In addition, \$20 billion would be allocated for electric school buses, \$25 billion for zero emission transit vehicles, and \$14 billion in tax incentives. President Biden's forthcoming budget request will outline top-line funding levels for surface transportation programs. Budget details will serve as a guide as Congress begins to prepare surface transportation reauthorization legislation, which expires September 30, 2021. Previous reports indicated the budget request would assume level funding from the 2015 surface transportation reauthorization, which the Administration corrected Wednesday to say the Administration will seek historic funding levels for these programs.

The President's proposal has not received overwhelming Congressional support and the timeline for passage remains uncertain. House Transportation and Infrastructure Chair Peter DeFazio (D-OR) announced earlier this week that he was looking to pass a surface transportation reauthorization bill out of Committee by mid-late May. As a reminder, this bill is separate from President Biden's American Jobs Plan and deals with funding for federal highway and public transportation programs. While there is a strong chance that surface transportation reauthorization and an infrastructure package will be combined as the legislation moves through Congress, as of now they are separate packages.

Separately, Senators Amy Klobuchar (D-MN) and Joni Ernst (R-Iowa) have introduced legislation to create a renewable fuel infrastructure grant program to help fuel retailers sell higher blends of ethanol. The legislation would streamline existing rules that generally prevent retail fuel stations from providing higher blends. Senator Klobuchar said this legislation would expand the market for biofuels by authorizing \$500 million over five years for infrastructure grants for fuel retailers. EMA is working closely with Senators on both sides of the aisle to advance similar efforts, specifically small business protection under the Alternative Energy Grant program.

VISA DECLINES TO EXTEND UPCOMING EMV LIABILITY SHIFT DEADLINE

This week, Visa declined to extend the upcoming mid-April EMV liability shift deadline for another six months that EMA requested. Click [here](#) to read Visa's response to EMA President Rob Underwood and click [here](#) for more information about the Visa Transaction Advisor.

Last week, the Energy Marketers of America (EMA) along with NACS, SIGMA and NATSO requested that the card networks extend the EMV liability shift deadline for one final time through October 2021 to ensure small business fuel retailers have time to fully comply. EMA recently heard from its state association member companies that major equipment and service providers are booked through this summer for EMV projects. For example, Arkansas retailers are experiencing a six-to-ten-week lead time for EMV equipment to arrive plus another two to three weeks for installation. Rural small business retailers are also experiencing delays due to lack of technicians and equipment.

Due to the COVID-19 pandemic, the card networks extended the deadline from October 1, 2020 to mid-April 2021. Specifically, the AMEX, Discover and Mastercard deadline is April 16th while VISA's deadline is April 17th. Given Visa's refusal to extend the deadline, EMA urges retailers to be fully EMV compliant as soon as possible.

IRS ISSUES NEW GUIDANCE IMPORTANT FOR MARKETERS

Recently, the IRS issued new guidance for employers on the rules that will apply to the Employer Retention Tax Credit (ERTC) for the first two quarters of 2021.

As EMA previously reported, the ERTC provides businesses that have experienced a significant decline in revenue (as defined in the rules) or that were fully or partially closed due to a government order with a refundable tax credit based on qualifying wages paid to eligible employees.

Originally a business could not obtain both a PPP loan and the ERTC – but that rule was eliminated and now businesses can take advantage of both programs provided that wages paid with PPP funds are excluded for the purpose of calculating the ERTC. Businesses that may qualify for the ERTC are strongly encouraged to work with their advisors to ensure that they are maximizing their potential benefit under this program.

Changes to the Employee Retention Credit for the first two calendar quarters of 2021 include:

- the increase in the maximum credit amount,
- the expansion of the category of employers that may be eligible to claim the credit,
- modifications to the gross receipts test,
- revisions to the definition of qualified wages, and
- new restrictions on the ability of eligible employers to request an advance payment of the credit.

A copy of the new guidance may be found [here](#).

EMA, COALITION URGE BIDEN ADMINISTRATION TO REJECT PROPOSALS TO COMMERCIALIZE REST AREAS

This week, EMA, along with organizations representing hundreds of thousands of mostly small businesses, urged Transportation Secretary Pete Buttigieg to reject proposals to carve out any exceptions to the longstanding ban on commercial rest areas that would allow state departments of transportation to compete against the private sector by selling food and fuel, including electric vehicle charging, or other commercial services at Interstate rest areas. Click [here](#) to read the letter.

DOE SETS ASIDE \$61 MILLION FOR BIOFUELS RD&D

Yesterday, the Department of Energy (DOE) announced \$61.4 million for technologies that produce low-cost, low-carbon biofuels. Biofuels are derived from renewable resources and can power heavy-duty vehicles that are difficult to electrify with current technologies—including airplanes and ships—to help accelerate America's path to a net-zero emissions economy by 2050.

"Biofuels are one of our most promising paths to zero-carbon aviation and shipping, so it's time to double down on R&D and begin to deploy these technologies at scale," said Secretary of Energy Jennifer M. Granholm. Topic areas for the funding opportunity include high-impact biotechnology research, development, and demonstration (RD&D) to bolster the body of scientific and engineering knowledge needed to produce low-carbon biofuels at lower cost. This investment will accelerate the deployment of bioenergy technologies and mobilize public clean energy investment in the biofuels, chemical, and agricultural industries, which can lead to new good-paying jobs across the bioenergy supply chain and increased investment in rural economies.

DOE is focused on developing technologies that convert domestic biomass and other waste resources into low-carbon biofuels and bioproducts. This research has led to significant cost reduction of the process by approximately 45 percent to date. BETO is turning its attention to reducing risk of commercialization by partnering with industry to demonstrate technologies at large scale.

The application process will include two phases: a concept paper and a full application. Concept papers are due on April 30, 2021, and full applications are due on June 21, 2021.

COURT OF APPEALS REJECTS NEW YORK CITY CLIMATE CHANGE CASE AGAINST MAJOR OIL COMPANIES

The United States Court of Appeals for the Second Circuit unanimously ruled that New York City's climate change lawsuit against the major oil companies and other energy producers should be dismissed. The Court ruled that municipalities, like New York City, cannot utilize State law to hold multinational oil companies responsible for the damages caused by global greenhouse gas emissions. The Court recognized that global warming is an international concern that cannot be regulated by the law of one or more states, and that the responsibility for global warming cannot be shifted to energy producers when "every single person who uses gas and electricity contributes to global warming."

The Court's ruling could have a significant impact on the many other climate change cases brought by cities around the

country, including Baltimore, Maryland, Oakland, California, Charleston, South Carolina, and Honolulu, Hawaii, which were instituted in various State court systems. State courts are considered more hospitable to global warming claims brought by States and municipalities, and federal courts are considered much more likely to dismiss global warming cases on grounds similar to the ones invoked by the Second Circuit Court of Appeals in New York. The Court of appeals held that global warming is a matter that can only be addressed by federal common law, in a federal court. Where federal common law applies, state law is preempted, and cases brought in State courts, based on State law, must be dismissed. Thus far, most of the litigation in these cases has centered on whether the State courts have jurisdiction to hear the cases or whether exclusive jurisdiction resides in the federal courts. Petitions have been filed with the U.S. Supreme Court to resolve the federal versus State law issues, and the decision by the federal court of appeals in New York could be influential with the Supreme Court.

In order to keep the cases in the state court systems, certain municipalities have resorted to suing local branded petroleum marketers who are members of EMA's constituent State associations. By joining local defendants in the cases, the municipalities are able to defeat claims of federal jurisdiction based on diversity of citizenship. Thus, EMA has an interest in the federal courts assuming exclusive jurisdiction in these cases, and it is considering filing an amicus brief with the United States Supreme Court if and when the Supreme Court decides to address the federal versus State court issue.

DEPARTMENT OF LABOR PRIORITIES

In March, former Boston Mayor Marty Walsh was sworn in as the new Secretary of Labor. Secretary Walsh's initial orders of business are expected to be largely focused on COVID and broader Administration agenda items, such as development of OSHA proposed COVID-related workplace safety rules. DOL also has other regulatory items on its plate that are important for small businesses: rules surrounding when a worker can be classified as an independent contractor rather than an employee, rules for when two companies will be considered joint employers for the purpose of liability under the FLSA, tipped employees, overtime rules, and issuing final guidance on how employers can satisfy DOL posting requirements for employees that are working remotely. For the full Small Business Legislative Council document on this, see [SBLC – DOL Priorities](#).

APRIL IS NATIONAL SUPPLY CHAIN INTEGRITY MONTH

The Department of Homeland Security's Cybersecurity and Infrastructure Security Agency (CISA) is partnering with the Office of the Director of National Intelligence (ODNI), the Department of Defense, and other government and industry partners to promote National Supply Chain Integrity Month, a call to action for a unified effort by organizations across the country to strengthen global supply chains.

With the nation's critical infrastructure dependent on information and communications technology (ICT) to operate, effective risk management depends on a unity of effort to understand the complex and interconnected nature of supply chains. As the nation's risk advisor, CISA is committed to working with government and industry partners to enhance the security and resilience of the global ICT supply chain from the evolving risks of tomorrow.

Each week, CISA will promote resources, tools, and information focused on a different theme, to include:

- Week 1: Building Collective Supply Chain Resilience, <https://www.cisa.gov/blog/2021/04/01/april-national-supply-chain-integrity-month>
- Week 2: Assessing ICT Trustworthiness,
- Week 3: Understanding Supply Chain Threats, and
- Week 4: Knowing the Essentials.

Additionally, CISA will release two new tools to help organizations assess the trustworthiness of their vendors and suppliers as well as a social media toolkit with sample messaging and videos that can be used to spread the word about the importance of supply chain resiliency..

DHS RELEASES EMPLOYER GUIDANCE REGARDING VACCINATION HESITANCY

Employers of workers within the critical infrastructure sectors are essential to reducing vaccine hesitancy within their workforce by becoming messengers of accurate, reliable, and timely information. That is why this DHS, CISA Insight [[CISA Insights: COVID-19 Vaccination Hesitancy within the Critical Infrastructure Workforce](#)] provides an overview of COVID-19 vaccination hesitancy and steps that critical infrastructure owners and operators can take to reduce the risk and encourage vaccine acceptance across their critical sectors' workforce.

To reduce the risks of low vaccination rates, it is important employers become messengers of accurate and reliable information within their workplaces and across their industries. According to the CDC, employing some or all these measures may help to increase vaccine acceptance:

- Have workplace leadership take the COVID-19 vaccine, capture their experience using video or photo, and share the experience with their staff.
- Train interested staff to become COVID-19 vaccination ambassadors who will speak confidently and honestly, relaying personal stories about the vaccine to fellow coworkers and answer any of their concerns.
- Employ all available communication tools when promoting the COVID-19 vaccine to staff including social media, internal communication channels, and posters or signs around the workplace.
- Set a virtual townhall where leadership, respected local medical experts, and staff share about their COVID-19 vaccine experience, other vaccine facts, and answer audience questions. Use experts to communicate to your staff and constituents when talking about the COVID-19 vaccine. Ensure that these experts present factual information about the vaccine, including risks.
- Some employers give employees paid time off to get the vaccine and offer paid sick leave for employees who have significant reactions to the vaccine.
- While waiting to become vaccine-eligible, continue using all non-medical intervention methods to protect against the COVID-19 virus and all variants by social distancing, frequent handwashing, and the use of masks. Encourage these practices within your staff and implement policies where needed.

While COVID-19 vaccine hesitancy within the critical infrastructure workforce represents a risk to our National Critical Functions and critical infrastructure companies and operations, CISA recognizes that this critical infrastructure workforce can also serve as a key stakeholder in encouraging the rest of the population to get vaccinated and help the return to everyday life. If vaccine acceptance is low across these populations, others within a community may also be reluctant to accept the vaccine when it becomes available to them. Employers of frontline essential workers have an opportunity to encourage and lead their critical infrastructure workforce in COVID-19 vaccine acceptance. Building and sustaining public trust and confidence in immunization systems is essential and the critical infrastructure workforce can play a vital role.

For additional resources see the [CDC's Essential Workers COVID-19 Vaccine Toolkit](#).

EMLI (PMLI) REGISTRATION IS OPEN NOW

We are excited to announce that registration is open for the Energy Marketers Leadership Institute (EMLI)!

EMLI is new and improved and is designed to make it easier and more affordable for WPMA members to attend. The EMLI programs will be delivered online via Zoom video conference and will include breakout rooms so that the leaders who are attending can interact and learn together.

Special thanks to Lea McCullough for her leadership in working with Meridian to design and deliver the EMLI programs. For more information on how to register go to: <https://emamasters.com/energy-marketers-leadership-institute/>

WPMA COVID-19 - CRITICAL REFERENCES FOR MEMBERS

Please visit our web site for up-to-date information related to your business and the COVID-19 pandemic. You will find the link on our home page at www.wpma.com.

MEMBERS AND ASSOCIATES - YOU CAN CONTRIBUTE!

WPMA welcomes industry-related articles for publication in the WPMA News magazine. All members and associate members of WPMA are eligible to submit items for publication. Articles will be included as space allows, and no self-promoting articles or editorials will be accepted. WPMA reserves the right to edit and make adaption of such contributions to accommodate the magazine's space and style. Please submit articles or content to Jan Roothoff, WPMA Administration/IT Director at janr@wpma.com, or mail to Jan Roothoff, Western Petroleum Marketers Association, PO Box 571500, Murray, UT 84157-1500. Submissions for the Winter edition of WPMA News magazine are due before November 1st. Later submissions will be considered for the Spring issue.

MARK YOUR CALENDARS FOR UPCOMING EVENTS

April 20, 2021 – Idaho (IPM&CSA) Treasure Valley PAC Fund Golf Tournament – Ridgecrest GC - Nampa, ID
May 6-7, 2021 - Nevada (NPM&CSA) Big Dogs - Red Rock Hotel & Casino - Las Vegas, NV
June 7-9, 2021 - Montana (MPMCSA) Convention -Fairmont Hot Springs Resort - Fairmont, MT
June 21-24, 2021 - Washington (WIED) Convention - Suncadia Resort - Cle Elum, WA
June 24, 2021 - Utah (UPMRA) Summer Golf Classic - Bountiful Ridge GC - Bountiful, UT
July 25-27, 2021 - Oregon (OFA) Annual Conference - Sunriver Resort - Sunriver, OR
August 4-6, 2021 - Idaho (IPM&CSA) Convention - Sun Valley Resort - Sun Valley, ID
August 23-25, 2021 - New Mexico (NMPMA) Convention - Sandia Resort & Casino - Albuquerque, NM
September 15-17, 2021 - Utah (UPMRA) Convention - Sheraton Park City Hotel - Park City, UT
February 22-24, 2022 – WPMA Convention & Expo – Mirage Hotel– Las Vegas, NV

Be sure to subscribe to all of our social channels for great tips, industry trends, and insider information about association activities and upcoming events!



Petro Pete: *“Maybe if we start telling people their brain is an app, they’ll want to use it.”*

© 2021 Western Petroleum Marketers Association - All rights reserved. No part of this work may be reproduced or copied in any form or by any means - graphic, electronic, or mechanical, including photocopying, recording, or otherwise. The information herein is also intended for the sole purpose of members of the Western Petroleum Marketers Association (WPMA). Any other use is strictly prohibited without the express written consent of the WPMA.

If you do not wish to receive information via fax or e-mail, please contact WPMA at: (801) 263-9762, Fax: (801) 262-9413, or e-mail: janr@wpma.com. Thanks.