This Week in Congress

On Tuesday, the House passed H.R. 8337 with a vote 359-57, the Continuing Appropriations Act of 2021, which will fund the government until December 11, 2020 and it includes a one-year extension of surface transportation programs including federal highway, transit, and road safety programs. More specifically, it would:

- Increase to $600 million, from $500 million, the cap on the amount of funding for nationally significant freight and highway projects that could go toward intermodal freight projects.
- Increase to $26.6 million, from $21.2 million, the authorization for National Highway Traffic Safety Administration research into in-vehicle technology to prevent drunk driving.
- Repeal a prohibition on federal funding to cover operating losses on Amtrak routes.
- Extend by one year, through Sept. 30, 2021, the Transportation Department’s loan and loan guarantee authority to support development near rail stations.

Overall, the bill would include:

- A provision in the CARES Act allowing federal agencies to reimburse contractors for providing paid leave to employees during the Covid-19 pandemic.
- The Temporary Assistance for Needy Families program and the Child Care Entitlement to States program.
- The Education Department’s National Advisory Committee on Institutional Quality and Integrity.
- EB-5 regional investor visas, the E-Verify program to determine employment eligibility, and other immigration authorities.
- The Interior Department’s authority to provide certain emergency drought assistance under the Reclamation States Emergency Drought Relief Act.

Finally, the legislation prohibits any payments to fossil fuel refiners and importers. This language blocks the Trump administration's proposed funding for fossil fuel companies that defied biofuel blending standards.

The Senate began negotiations on a Supreme Court nominee to succeed the late Supreme Court Justice Ruth Bader Ginsburg and Senate Majority Leader McConnell has promised a vote on the nomination, though he hasn't said whether it would come before or after the election. Four Republicans would need to defect to postpone the vote. Senators Collins and Murkowski have already said that they oppose confirmation before the election. With his 53-member majority, McConnell must avoid losing two more Republicans to ensure a successful confirmation vote. (If he loses one more, the vote would be 50-50, and Vice President Pence could break the tie.) Finally, Sen. Graham (R-SC), the Senate Judiciary Committee chairman promised to support the President to quickly fill the vacancy. Finally, both chambers considered energy legislation.
COVID-19 Statistics Update

Statistics:

- Worldwide Coronavirus Cases: 31,319,753, Deaths: 966,158, Recovered: 22,901,637
- Coronavirus Cases: 7,011,038, Deaths: 204,165, Recovered: 4,251,943
- In 31 states, the number of new Covid-19 cases has increased by at least 10% this past week compared to the previous week
- Only four states -- Delaware, Hawaii, Louisiana, and Michigan -- have had decreases of more than 10%
- Fifteen states are holding steady, including Alaska, Arkansas, California, Georgia, Illinois, Maine, Maryland, Nevada, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Virginia, and Washington state
- The percentage of new test results that are positive -- is rising in 25 states, per the Covid Tracking Project
  - This is exactly what doctors feared would happen in the weeks following Labor Day, said Dr. Ashish Jha, dean of the Brown University School of Public Health

CDC Testing Guidelines: The CDC has issued another revision to its COVID-19 testing guidelines and reversed its previous guidelines on testing. The agency now says people "need a test" if they've been exposed to an infected person.

ACIL Joins the ASAE on Including 501 (c)(6) in PPP

ACIL joins the American Society of Association Executives (ASAE) in urging Congress to pass relief legislation that includes 501(c)(6) nonprofit organizations in the Paycheck Protection Program (PPP).

House and Senate Consider Energy Legislation

Both the House and Senate are debating bills this week to enact clean energy policies addressing climate change and other concerns; however, significant obstacles remain. The House will vote on H.R. 4447, a broad energy package unveiled this month, but progressive members of the Democratic caucus are not embracing the legislation. Conversely, the Senate is considering S. 2657, sponsored by Energy Committee members Murkowski (R-AK) and Manchin (D-WV), now as an agreement has been reached on hydrofluorocarbons that stalled action on the bill in the spring.
**DOL’s Independent Contractor Rule**

On Tuesday, September 22, 2020, the U.S. Department of Labor announced a proposed rule determining whether a worker is an employee under the Fair Labor Standards Act (FLSA) or an independent contractor. In the proposed rule, the Department would:

- Adopt an “economic reality” test to determine a worker’s status as an FLSA employee or an independent contractor. The test considers whether a worker is in business for themselves (independent contractor) or is economically dependent on a putative employer for work (employee);
- Identify and explain two “core factors,” specifically: the nature and degree of the worker’s control over the work; and the worker’s opportunity for profit or loss based on initiative and/or investment. These factors help determine if a worker is economically dependent on someone else’s business or is in business for themselves;
- Identify three other factors that may serve as additional guideposts in the analysis including: the amount of skill required for the work; the degree of permanence of the working relationship between the worker and the potential employer; and whether the work is part of an integrated unit of production; and
- Advise that the actual practice is more relevant than what may be contractually or theoretically possible in determining whether a worker is an employee or an independent contractor.

Per the proposed rule, “DOL believes that there are real benefits to the use of independent contractor status, for both workers and employers. Independent contractors generally have greater autonomy and more flexibility in their hours, providing them more control over the management of their time. The use of independent contracting for employers allows for a more flexible and dynamic workforce, where workers provide labor and skills where and when they are needed. Independent contractors may more easily work for multiple companies simultaneously, have more control over their labor-leisure balance, and more explicitly define the nature of their work. Independent contractors also appear to have higher job satisfaction. An increase in the number of job openings for independent contractors can also have benefits for the economy as a whole. Increased job creation and enhanced flexibility in work arrangements are critical benefits during periods of economic uncertainty, such as the current COVID-19 pandemic.”