

## Debt Ceiling Showdown Yields Significant Permitting Reform Legislation



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### AUTHORS

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Over the Memorial Day weekend, President Biden and House Speaker Kevin McCarthy reached an agreement on a [legislative package](#) that would raise the nation's debt ceiling. As a *quid pro quo* for raising the debt ceiling, the Biden Administration agreed to a substantial package of permitting reforms. While the legislation must still pass both houses of Congress, passage is likely given that

failure to raise the debt ceiling before June 1 could provoke a [severe financial crisis](#).

### Key Takeaways

The permitting reform title of the debt ceiling legislation includes four significant provisions, including reforms of the National Environmental Policy Act (NEPA), legislative approval of the Mountain Valley Pipeline, a study of interregional electric transmission, and a provision aimed at expediting approval of major energy storage infrastructure. Notable elements of these provisions are:

- ◆ **NEPA reform.** If adopted, the legislation would:
  1. *Impose Time Limits:* Environmental Impact Statements (EISs) would be required to be completed within two years of the date the agency determines that an EIS is required. Environmental Assessments (EAs) would be required to be completed within one year.
  2. *Impose Page Limits:* In most cases, EISs would be limited to 150 pages (not including appendices), with a 300-page limit for analyses of "extraordinary complexity." EAs would be limited to 75 pages.
  3. *Lead Agency:* Where more than one agency is involved in a decision, the federal government would be required to designate a lead agency to conduct any required environmental analysis.
  4. *Revisions to Core NEPA Mandate:* The core requirements of NEPA would be amended, primarily to limit the obligation to consider environmental impacts to those that are "reasonably foreseeable."
- ◆ **Mountain Valley Pipeline:** The legislation would streamline the federal permitting process for the Mountain Valley Pipeline (MVP), requiring all permits to be issued within 21 days after the President signs it into law.
- ◆ **Electric Transmission:** Within 18 months, the North American Electric Reliability Corporation (NERC, the entity responsible for ensuring the reliability of the nation's electric grid), regional

transmission organizations (that is, Independent System Operators and Regional Transmission Organizations that administer the operation of much of the nation's electric grid), and transmission utilities would be required to conduct studies of transfer capacity between different planning regions which ultimately would lead a recommendation to Congress from the Federal Energy Regulatory Commission on legislation to encourage construction of interregional transmission links.

- ◆ **Energy Storage:** Energy storage would be added to the types of major infrastructure projects subject to FAST 41 rules that permit the [Federal Permitting Improvement Steering Council](#) to oversee the permitting process.

## Background and Analysis

The debt ceiling package is the result of a long and grinding negotiation between Speaker McCarthy and the Biden Administration taking place in the face of Treasury Secretary Janet Yellen's [warning](#) that, without an increase in the nation's debt ceiling, the federal government could default on its payment obligations as soon as June 1. In late April, the House of Representatives passed a [debt ceiling package](#) that linked an increase in the debt ceiling to various Republican priorities, including a far-reaching permitting reform package and revocation of certain provisions of the [Inflation Reduction Act](#).

The negotiated package includes a permitting reform package that is far less ambitious than the package proposed by House, but nonetheless includes important reforms to NEPA that are likely to expedite the process of obtaining federal approvals. Most notably, the legislation would mandate that EISs be completed within two years of a determination that a proposal would have major environmental impacts requiring a full EIS and imposing page limits on EISs of 150 pages (300 pages for EISs involving issues of "extraordinary complexity"). However, these page limits do not include appendices or attachments. For EAs, the limit would be one year and a page limit of 75 pages. Notably, environmental justice advocates have argued that the shortening of timeframes for completing NEPA analyses could undercut the ability of communities suffering from the environmental impacts of proposed actions to participate in the decision-making process, weakening [the administration's EJ efforts](#).

The legislation would also require a lead federal agency to be appointed in most cases, and for a single environmental analysis to be conducted even if multiple agencies are involved in approving a specific project. In addition, the legislation would authorize project applicants to hire independent consultants to conduct environmental analyses. Because NEPA documents are often delayed because of a lack of staff and resources at federal agencies, this provision may provide a useful alternative to bypass these constraints. Given the NEPA process can often take many years and produce documents that are hundreds, even thousands, of pages long, these reforms promise to significantly expedite the current environmental review process.

The legislation, if adopted, would also amend the core requirements of NEPA, which currently include only a generalized requirement that federal agencies consider the "environmental impacts" of a proposed action and "alternatives" to that action. These requirements would be narrowed so that the agency would be required to consider only "reasonably foreseeable" environmental impacts and a "reasonable range" of alternatives that are "technically and economically feasible." The legislation would also add a number of new requirements to NEPA aimed at, for example, codifying existing practices concerned when an EIS is required, clarifying when Programmatic EISs must be updated, and eliminating any requirement for environmental analysis of government actions that produce only extra-territorial environmental impacts.

Notably, the legislation does not include a number of changes included in the debt ceiling package passed by the House. For example, the House would have imposed a 120-day limit on seeking judicial review of

federal actions under NEPA and added a long list of specific actions that would not be subject to NEPA. Nor does the compromise debt ceiling package contain specific provisions in the House bill aimed at repealing certain parts of the IRA, easing regulatory burdens on hard-rock mining and oil and gas leasing on public lands, and requiring the Department of Interior to periodically open bids for oil and gas leasing on the Outer Continental Shelf.

The compromise legislation, if enacted, would require the Corps of Engineers to issue all required permits for the construction of MVP within 21 days of enactment of the legislation and would prohibit other federal agencies from revoking their approvals of the pipeline. It would also prohibit judicial review of any of these decisions. The legislation thus would put an end to the years-long litigation battle arising from the MVP. To date, the litigation has produced, for example, a challenge to the pipeline's passage under the Appalachian Trail that was [resolved](#) in the U.S. Supreme Court, and a [number of setbacks](#) in the lower federal courts on environmental grounds. Approval of MVP is a major goal of Sen. Joe Manchin (D-WV), and inclusion of this provision in the debt ceiling package is likely to secure his support, which otherwise might be in question, and will likely create significant pressure for several Republican Senators to approve the bill, most notably Sen. Shelley Moore-Capito (R-WV), for whom MVP is also a major priority.

The provision requiring a study of inter-regional electric transmission and recommended legislative language appears to be a compromise to preserve transmission permitting reform issues for future consideration. Many Democrats concerned about climate change view expedited approval of large electric transmission projects as a necessary prerequisite for the transition of the nation's electric grid to renewable and non-emitting resources. On the other side, many Republicans insist that permitting reform should include fossil fuel production and argue that transmission upgrades needed to meet state policies favoring renewables should not be paid for by consumers in states that have not adopted such policies.

Further, the energy storage provision in the compromise legislation would add energy storage projects to the list of major infrastructure projects subject to oversight by the Federal Permitting Improvement Steering Council. The Council acts as a federal coordinator for permitting of major infrastructure projects. It is authorized to, for example, set specific deadlines for actions by federal agencies and coordinate their actions. The Council's involvement is often instrumental in achieving federal approval for major projects. This provision, therefore, promises to help expedite the approval of major energy storage projects.

The passage of this legislation is not assured. Members of the House Freedom Caucus (the most conservative Republicans) have already announced [opposition](#) to the bill. Similarly, at least some Senate Democrats previously insisted that they would oppose permitting reform if it does not include reform of electric transmission siting. The study-only provision of the bill may not be enough to satisfy them, especially when considered in light of the MVP approval provisions. The remaining question is whether the President and Congressional leadership can cobble together enough votes from the centrist elements of both parties to adopt the legislation. Approval of the legislation is likely because many members will feel compelled to vote for the bill despite any misgivings because failing to pass the bill is likely to have dire economic consequences.

Finally, because the debt ceiling legislation does not resolve major areas of Congressional concern related to permitting reform, continuing Congressional attention to the issue is likely. If some measure of consensus can be achieved, additional permitting reform legislation may become law.

## Conclusion

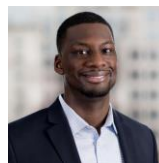
If adopted, the permitting reform provisions of the debt ceiling package would mark the first major changes to NEPA since the 1970s. These changes will likely substantially expedite the consideration of environmental issues in federal permitting processes. Hence, the legislation bears scrutiny from anyone with an interest in the federal environmental review requirements and federal permitting.

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