

# What's New in Washington

**Akin Gump**  
STRAUSS HAUER & FELD LLP

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On February 13, the Congressional conference committee, charged with finalizing the remaining Fiscal Year (FY) 2019 appropriations bills, released details of the agreement and legislative text, including \$1.375 billion for border funding. While there is still some uncertainty as to whether the agreement will garner enough votes to pass, the Senate is expected to vote on the measure today, followed by the House. The President has not yet indicated his official position on the bill, but he is expected to sign it to avoid another shutdown.

Earlier this month, the President delivered his State of the Union address, calling for unity between Democrats and Republicans, while continuing to call for border wall funding among other politically-divisive initiatives. The President has continued to float the possibility that he may invoke his presidential powers and declare a “national emergency” at the southern border - though many Republicans have warned that such a move could set a dangerous precedent. President Trump has expressed his displeasure for the deal, but also noted his reluctance to go through another partial government shutdown. Negotiations are ongoing between the White House and House and Senate leaders to determine whether the President will support the deal.

Leaders of the new Democrat majority in the House continue to push their legislative agenda, balancing the political desire of new members wishing to pursue multiple investigations into the President and his administration and the need to demonstrate their ability to govern. A number of high profile hearings have been placed on the calendar and cover areas from financial services to foreign affairs.

The Republican controlled Senate continues to push forward with their agenda, which will focus heavily on confirming judicial and executive branch appointees nominated by President Trump. Foreign policy has jumped into the spotlight in the chamber after President Trump called for the withdrawal of U.S. troops from Syria and Afghanistan. Senators responded by passing legislation that included language disapproving of the decision, as party leaders lobby the President to reevaluate his decision to remove U.S. military presence from the major Middle East conflicts. In addition, the Senate passed a wide-ranging, bipartisan public lands legislation – S.47, the Natural Resources Management Act – and approved the high profile nomination of William Barr as Attorney General.

Looking forward, we expect a number of items to be high on the agenda, including: budget spending caps and the debt limit, prescription drug pricing legislation, privacy legislation, infrastructure, and a number of trade-related matters such as a potential deal with China and the United States-Mexico-Canada Agreement (USCMA).

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## [DRUG PRICING A PRIORITY AS COMMITTEE WORK GETS UNDER WAY](#)

### [Drug Pricing a Priority as Committee Work Gets Under Way](#)

Lawmakers have kicked off the year with a robust focus on prescription drug pricing, reflecting the priorities of the Trump administration, the Democrat-controlled House and the new Senate Finance Committee Chairman. House Oversight and Reform Committee Chairman Elijah Cummings (D-MD) announced the launch of a new investigation on January 14, sending letters to a dozen drugmakers to request detailed information and documents about their pricing practices. The Committee held the first of several hearings on drug pricing on January 29, with experts calling on Congress to improve price transparency. Members from both sides of the aisle emphasized the need to reevaluate the rules around drug patents and exclusivities, while several Democratic lawmakers made more pointed observations about rising insulin prices.

Insulin prices were also highlighted at a Senate Finance Committee hearing on January 29, with Chairman Chuck Grassley (R-IA) pledging to “get to the bottom” of why prices continue to increase. Chairman Grassley also noted that a number of manufacturers had declined his invitation to testify before the Committee. Indicating that he would be “more insistent” going forward, he invited seven brand-drug manufacturers to testify at a February 26 hearing and the CEOs all accepted the invitation. The House Ways & Means Committee also held a drug pricing hearing on February 12, with a focus on the impact of rising drug costs on patients and retirees.

Future House and Senate hearings are likely to focus more on legislative proposals. Notably, Chairman Grassley has introduced legislation with Sen. Amy Klobuchar (D-MN) that would permit individuals to import prescription drugs from Canada. Other bipartisan efforts include the Right Rebate Act, which aims to prevent the misclassification of drugs under the Medicaid drug rebate program; and proposals to bolster generic competition by targeting “pay-for-delay” tactics and abuse of the Risk Evaluation and Mitigation Strategy program. Democrats have offered several bills to allow Medicare to negotiate directly with manufacturers.

President Trump touched on drug pricing in his State of the Union address on February 5, highlighting high prices in the United States and asking Congress to address “global freeloading.” He also called for requiring that drugmakers, insurers and hospitals disclose “real prices” to patients.

Meanwhile, the Department of Health and Human Services (HHS) released a long-awaited proposed rule that would effectively ban drug manufacturers from providing rebates under Medicare Part D managed care plans, unless they are offered directly to patients at the pharmacy counter. HHS Secretary Alex Azar has said that the proposal, which is a key part of the President’s drug-pricing blueprint, would correct a system that favors high list prices in negotiations between pharmacy benefit managers (PBM) and manufacturers. Secretary Azar has called on Congress to advance legislation that would enact similar proposals in the commercial insurance market. House Speaker Pelosi (D-CA) criticized the proposal, echoing insurers and PBMs, who argue that the rule would raise premiums and out-of-pocket costs for patients.

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## [ENDING THE FANNIE MAE AND FREDDIE MAC CONSERVATORSHIPS](#)

### [Ending the Fannie Mae and Freddie Mac Conservatorships](#)

On January 17, acting director of the Federal Housing Finance Agency, Joseph Otting, made comments about the Trump administration’s plans to free Freddie Mac and Fannie

Mae from their conservatorships. Over-the-counter shares of the two companies have tripled this year on hopes for the White House plan, since Otting expects the White House and Treasury Department to release their plan in the next “two to four weeks.” On January 30, Otting wrote to House Financial Services Committee Chairwoman Maxine Waters (D-CA) and Senate Banking Committee Ranking Member Sherrod Brown (D-OH) that he “would welcome [their] insight and perspective” as overhaul efforts begin.

Although Otting expressed confidence that the plan could be completed in “six to 18 months,” he did not provide specific information for how the White House plans to acquire the projected \$150 billion to \$200 billion worth of capital for Fannie Mae’s and Freddie Mac’s privatization. Following Otting’s comments, Chairwoman Waters and Sen. Brown requested a “copy or detailed description of the mission that Treasury and the White House have outlined” by February 1. The White House has since sought to walk-back Otting’s comments about the administration’s plans for imminent government-sponsored enterprise and housing reform.

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## HOUSE FINANCIAL SERVICES COMMITTEE HEARING WITH MAJOR BANK CEOS

### House Financial Services Committee Hearing with Major Bank CEOs

House Financial Services Committee Chairwoman Maxine Waters (D-CA) has said she will call the chief executives of the six largest U.S. banks (JPMorgan Chase & Co., Citigroup Inc., Bank of America Corp., Goldman Sachs Group Inc., Morgan Stanley and Wells Fargo & Co.) to testify before the Committee in March or April. In a speech last week, Rep. Waters pledged the Committee would keep a close eye on the large banks and on whether regulators have tried to weaken safeguards enacted after the 2008 financial crisis.

The bank executives are likely to face rigorous questioning on a variety of topics from the panel’s 60 members, that include freshmen Reps. Alexandria Ocasio-Cortez (D-NY) and Katie Porter (D-CA), who have spoken critically of the industry. In a preview of the tone bank executives may face at the hearing, Rep. Emanuel Cleaver (D-MO) told *POLITICO* that he wanted to hear from the executives “why we bail them out and can’t experience any meaningful support from them in times of trouble.”

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## BATTLE FOR JURISDICTION OVER PRIVACY ISSUES

### Battle for Jurisdiction Over Privacy Issues

The 116th Congress features several leadership changes and a battle for jurisdiction over privacy issues among several key committees. On the House side, Rep. Frank Pallone (D-NJ), new Chairman of the Energy and Commerce Committee, is expected to focus on responsible data collection and use of consumer data alongside Ranking Member Greg Walden (R-OR). Rep. Jan Schakowsky (D-IL) will chair the Subcommittee on Digital Commerce and Consumer Protection and has discussed the need to reduce barriers to Federal Trade Commission (FTC) consumer protection rulemaking. On the Financial Services Committee, Chairwoman Waters will hold a hearing on February 26 with representatives from consumer credit reporting bureaus.

On the Senate side, the Commerce, Science, and Transportation Committee has been active on issues surrounding privacy. The Subcommittee on Communications, Technology, and Innovation will be led by Chairman John Thune (R-SD) and Ranking Member Brian Schatz (D-HI). Chairman Thune will also serve as the Senate Republican Majority Whip and has previously articulated the need for consumer privacy legislation, holding a series of privacy hearings in the 115th Congress. Ranking Member Schatz also introduced a bill at the close of the 115th Congress – the Data Care Act of 2018 – designed to protect users’ information online and penalize companies that do not properly safeguard such data. Other committee members, including Sen. Ed Markey (D-MA) and Sen. Richard Blumenthal (D-CT), have expressed optimism about drafting bipartisan privacy legislation

and have pointed to the need to address consumer safeguards, transparency and user controls. The Committee has also established a new Subcommittee on Security with jurisdiction over cybersecurity issues, chaired by Sen. Dan Sullivan (R-AK). The Judiciary Committee and the Banking, Housing, and Urban Affairs Committee are also likely address privacy this Congress.

On January 17, Sen. Amy Klobuchar (D-MN) and Sen. John Kennedy (R-LA) reintroduced the Social Media Privacy and Consumer Rights Act, which would allow consumers to opt out of some forms of data tracking and collection and would require companies to notify consumers of privacy violations within 72 hours. The bill also would require online platforms to have a privacy program in place. Sen. Marco Rubio (R-FL) unveiled the American Data Dissemination Act on January 16, which would direct the FTC to write privacy rule recommendations for Congress and create its own rules for companies if Congress does not pass a federal privacy law within two years.

While stakeholder proposals for federal privacy legislation have slowed since the fall, industry members will likely remain engaged on the issue in the coming months. January featured the release of a privacy report from the Information Technology & Innovation Foundation calling for Congress to repeal and replace existing federal data laws with a single federal law that preempts state laws. A proposal from a coalition of media and privacy groups also called for federal legislation without federal preemption, the creation of a separate data protection agency and robust enforcement, and independent action by state attorneys general.

Finally, the FTC will hold hearings on February 12-13 on “Competition and Consumer Protection in the 21st Century.” However, the U.S. Department of Commerce’s National Institute of Standards and Technology cancelled, due to the government shutdown, a February 27-28 workshop for the collaborative privacy framework initiative it announced in September.

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## BUDGET CAPS NEXT UP ON CONGRESSIONAL AGENDA

### Budget Caps Next Up on Congressional Agenda

Despite some of the FY19 appropriations bills remaining in limbo over the border wall talks, some in Congress are beginning to consider how to address the coming budget caps for FY20 and FY21 spending levels. The Budget Control Act of 2011 (BCA) mandated these caps, which will be enforced by across-the-board sequester cuts if Congress fails to act.

In the most recent budget cap deal (the Bipartisan Budget Act (BBA) of 2018), Congress agreed to raise spending levels for FY18 (\$629 billion for defense and \$570 billion for nondefense, a total \$143 billion increase over the BCA cap) and FY19 (\$647 billion for defense and \$597 billion for nondefense, a total \$153 billion increase over the BCA cap). For FY20 alone, a new cap deal would need to cover a \$126 billion gap simply to maintain FY19 spending levels. The new House Democratic Majority is also likely to push for higher nondefense spending levels during the upcoming debate.

Given the impact of the budget caps for FY20 and FY21, there should be sufficient pressure to force another deal this year to alleviate the cap levels for both fiscal years and avoid the need to deal with the issue again in 2020 during a presidential election year. Past budget cap deals have been bipartisan, with a mix of spending increases paired with spending cuts or other revenue raisers as offsets. Budget cap deals also sometimes serve as a must-pass legislative vehicle that can carry other policy measures and reforms. This may be a potential vehicle to address the debt ceiling, the suspension of which was included in BBA 2018 and expires on March 1, 2019 (the use of “extraordinary measures” by the Treasury Department will extend the deadline for Congress to act).

In terms of timing, it would be helpful to appropriators for Congress to agree to topline spending numbers for defense and nondefense earlier rather than later in the FY20 appropriations cycle. However, with a newly-divided Congress and a renewed concern on both sides about the growing deficit, it may be difficult to reach an agreement until later in



2019, when the alternative of sequester cuts becomes nearer and members feel more political pressure to act.

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## TRADE DEVELOPMENTS ROLL ON DESPITE SHUTDOWN

### Trade Developments Roll On Despite Shutdown

#### *The USMCA*

The Trump administration continued to meet its reporting requirements under trade promotion authority in its effort to enact the USMCA into law. The President submitted to Congress on January 29—the day it was due—a summary of changes to existing U.S. law that will be required by the agreement. The document previews policy changes in several sensitive areas, such as de minimis thresholds, rules of origin and dispute settlement.

The shutdown did have a significant effect, however, on a different reporting requirement: the economic impact assessment conducted by the International Trade Commission (ITC). Under trade promotion authority, the report is due no later than 105 days after the signing of the agreement, or March 15, 2019, in the case of the USMCA. Press reports cite ITC officials estimating that the report may not be completed until 35 days—the length of the shutdown—after the original deadline, on or about April 20, 2019.

Congress typically waits until the ITC assessment is published before considering legislation to implement trade agreements, but the USMCA may challenge that precedent with the timeline rapidly expanding into an increasingly difficult political environment. Republican committee leaders also recently added a key demand: lifting the Section 232 tariffs on imports of aluminum and steel from Canada and Mexico. In separate statements and comments over the last two weeks, Senate Finance Chairman Grassley and House Ways and Means Ranking Member Kevin Brady (R-TX) made clear their preference for those duties to be eliminated before taking up the new USMCA.

#### *U.S.-China Talks*

The countdown to the end of President Trump's 90-day truce with President Xi continued with a mid-level U.S. delegation visiting China two weeks ago and a senior-level Chinese delegation visiting the United States last week. At the conclusion of these talks, President Trump praised Chinese Vice Minister Liu He at an appearance in the Oval Office and claimed that the two sides were making great progress after the Chinese pledged to buy more American soybeans. However, President Trump noted in his State of the Union address that any deal with China "must include real, structural change to end unfair trade practices...." Uncertainty remains with the March 1 deadline for increased tariffs looming over the talks.

#### *National Security Tariffs and Executive Tariff Authority*

With congressional attention finally returning to regular business following the end of the shutdown, several members of Congress have sought to address the question of whether the President has too much or too little authority to levy tariffs. At the request of the President, Congressman Sean Duffy (R-WI) introduced the United States Reciprocal Trade Act, which would give the President additional authority to raise tariffs in instances where another country maintains a higher tariff on a product from the U.S. than the U.S. maintains on the same product from that country. The President highlighted the bill, which has 18 Republican co-sponsors, at the State of the Union address.

On the other hand, Senate and House members also have introduced bipartisan legislation to limit the President's tariff authority. Sens. Mark Warner (D-VA) and Pat Toomey (R-PA) introduced the Bicameral Congressional Trade Authority Act, which requires the President to secure approval from Congress before he pursues trade actions like tariffs or quotas under Section 232. In a similar effort launched on February 6, Sens. Rob Portman (R-OH) and Doug Jones (D-AL) reintroduced the Trade Security Act to require the Defense Department, rather than the Commerce Department, to justify new tariffs on national security grounds. Companion bills for both the Warner-Toomey and Portman-Jones bills were introduced in the House simultaneously. This debate will only

grow more intense, with the mid-February deadline for the Commerce Department to submit to the White House its Section 232 report on whether imports of autos and auto parts represent a national security threat and should face additional tariffs.

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## NEW FEDERAL POLITICAL CONTRIBUTION LIMITS

### New Federal Political Contribution Limits

The Federal Election Commission (FEC) has released updated contribution limits for individuals, political action committees (PACs), and state and national party committees for the 2019-2020 election cycle. Click [here](#) to download an Akin Gump chart with the new limits. The revised limits affect contributions made by individuals and non-multicandidate PACs.

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