

What's New in Washington

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With President Trump signing funding legislation in late January to reopen the government, both Congress and the Executive Branch have turned their attention back to a litany of other agenda items. Chief among these issues will be funding for Fiscal Year (FY) 2020, which legislators will need to secure before current government funding runs out at the end of the fiscal year on September 30.

The FY 2020 appropriations process will begin in earnest on March 11 as President Trump unveiled his budget for the fiscal year. The President's budget is a starting point for lawmakers in Congress, who will begin negotiating topline levels for government spending. One complicating factor is the potential return of budget sequestration. Under The Budget Control Act of 2011 (BCA), budget caps are set to come back into force for Fiscal Years 2020 and 2021, absent congressional action and enforced by an across-the-government process of spending cuts known as sequestration. Already, conversations are underway among budget and appropriations leaders on how to lift the austere budget caps and avert sequestration.

Another issue that has reemerged for Congress is how to proceed with the statutory limit on U.S. debt, known as the debt ceiling. The debt ceiling was suspended until March 1, per legislation signed by the President in February 2018. Though the debt ceiling has been reached, the U.S. Treasury (Treasury) has "extraordinary measures" it can use to delay actual default on the federal debt. However, those measures are likely to run out sometime in late summer or early fall, and Treasury Secretary Steven Mnuchin has called on Congress to pass a debt ceiling extension as soon as possible. The debt ceiling and budget caps issues will be viewed as must-pass legislation, and thus, will be a potential vehicle to carry other items. These negotiations will likely be the most difficult and highest-stakes negotiations for this newly divided Congress.

In the House, the newly emboldened Democratic Majority will continue to pursue a host of policy initiatives on which they campaigned in 2018, including investigating the Trump administration at all levels. Expect these investigations to continue throughout the 2020 presidential election cycle. Debate over the Green New Deal and Medicare for All also continues to dominate debate in the House with the potential of creating divisions within the Democratic Caucus, which the Republican Minority will seek to exploit.

In the Senate, legislative business will continue as normal, with a heavy focus on confirming the President's executive branch and judicial nominees. The Senate will also take up a resolution disapproving of the President's use of emergency powers to free up funding to fund a wall on the southern border. A handful of Senate Republicans have announced their intent to vote with Democrats to oppose President Trump's declaration of a national emergency, likely leading to a rare upper chamber rebuke. The House already passed a disapproval resolution, and should the Senate follow suit, the President has threatened to veto the measure. Congress will most likely not be able to overturn the veto.

Other issues that Congress is set to continue to address in the coming month include debate over expired tax provisions (known as "tax extenders"), drug pricing, data privacy, the United States-Mexico-Canada (USMCA) trade agreement and a possible infrastructure package.

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CONGRESS AIMS TO ADDRESS HEALTH CARE COSTS AND TRANSPARENCY FOR PATIENTS; SURPRISE BILLING LEGISLATION IS FIRST STEP

Congress Aims to Address Health Care Costs and Transparency for Patients; Surprise Billing Legislation is First Step

Momentum continues to build for Congressional action to protect patients against “surprise billing,” where a patient unexpectedly receives a medical bill from a provider that was out-of-network after seeking care at an in-network facility.

In the Senate, a bipartisan group of Senators is working together to introduce legislation by the end of March. The group includes Sen. Bill Cassidy (R-LA) and Sen. Maggie Hassan (D-NH), who had authored separate proposals in the 115th Congress. Sens. Michael Bennet (D-CO), Tom Carper (D-DE), Todd Young (R-IN) and Chuck Grassley (R-IA), Chairman of the Senate Finance Committee, have joined the effort. The Senators solicited and received more than two dozen comments from stakeholders including hospitals, physicians, and insurers. Senators on the Health, Education, Labor, and Pensions (HELP) Committee are pressing for a hearing on the issue. HELP Committee staff have been engaging with the administration on the surprising billing issue and legislation may move as part of a larger package to address health care costs.

Rep. Lloyd Doggett (D-TX), Chairman of the Ways and Means Health Subcommittee, reintroduced his legislation, the “End Surprise Billing Act of 2019” (H.R. 861). The bill would require hospitals to provide advance written notice and seek consent for out-of-network items and services to insured individuals; prohibit hospitals from charging above in-network rates if they fail to give advance notice and obtain consent at least 24 hours prior to providing treatment; and limit out-of-network charges for emergency services provided by hospitals.

President Trump and his administration support efforts to hold patients harmless and find a solution to surprise billing. In January, the White House held a roundtable focused on the issues of health care costs and transparency, which included discussion of how surprise billing hits patients in the pocketbook. More recently, administration officials have called on stakeholders to address surprise billing before Congress intervenes. Providers are coalescing around adoption of an arbitration model; however, insurers and other stakeholders oppose arbitration, meaning Congress will likely need to act in order to hold patients harmless.

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UPDATES ON TRADE POLICY

Updates on Trade Policy

U.S.-China Trade

The American and Chinese governments moved closer to reaching an agreement regarding Chinese trading practices and American tariffs with President Trump tweeting on February 25 that he would delay a scheduled tariff hike on Chinese imports. The

administration formalized the suspension later that week in a Federal Register notice, stating that the tariff increase set for March 1, from 10 percent to 25 percent would be suspended “until further notice.” In a House Ways and Means Committee hearing on February 27, United States Trade Representative (USTR) Robert Lighthizer said that substantial progress had been made regarding enforcement, currency manipulation, intellectual property protection, agriculture, and trade in services. While there is no time line for the next meeting, press reports note that a summit between President Trump and Chinese President Xi Jinping is expected for late March at Mar-A-Largo. And, despite recent report language accompanying an appropriations law, USTR Lighthizer indicated at the hearing that the USTR did not intend to establish a process for granting exclusions from the tariffs for products on List 3 like the processes established for Lists 1 and 2 unless the tariff for List 3 products reaches 25 percent.

U.S.-UK FTA

On February 28, the USTR published its negotiating objectives for a U.S.-UK Trade Agreement. Negotiations may now formally begin as early as March 30, after a 30-day waiting period required under trade promotion authority. However, talks between the two countries continue to be contingent on the path Britain chooses for leaving the European Union (EU). The British Parliament is now set to vote on the latest iteration of a Brexit plan on March 12. Regardless of whether a plan is adopted, the UK is committed to leaving the EU by March 29.

Administration officials continue to push the importance of quickly passing the USMCA in Congress. On February 27, USTR Lighthizer told lawmakers that if the deal does not pass, then the U.S. trade program has no future and “it would be a catastrophe across the country”. Members of Congress are urging the administration to lift the Section 232 tariffs on steel and aluminum prior to voting on the deal. On February 27, Secretary of Agriculture Sonny Perdue told the House Agriculture Committee that he was working to persuade President Trump towards “reasonable” tariff rate quotas on steel with Canada and Mexico. Perdue also noted that he has been advocating for the removal of the tariffs since the President signed the USMCA. Earlier in the week, Canadian officials warned that they too would not ratify the agreement with the tariffs in place.

House Democratic lawmakers are still educating themselves on the agreement itself and the process for considering it. They are coalescing around seeking changes to provisions on data exclusivity for biologic drugs and strengthening enforcement of the environment and labor provisions. In the Senate, there is bipartisan concern regarding changes to the U.S. de minimis level. Despite these concerns from Congress, Commerce Secretary Wilbur Ross echoed administration messaging and suggested that the agreement would come to a vote this spring.

Additional Section 232 Actions on Autos, Titanium and Uranium

On February 17, the Department of Commerce submitted its report to the White House on whether the importation of autos and/or auto parts represents a national security threat to the United States. The report has not been and is not likely to be released to the public, but it likely includes among its recommendations using tariffs to restrict imports of autos and/or auto parts. The president now has 90-days from the submission of the report – or until May 18 – to make a decision on whether to impose such restrictions and in what form.

As he has with previous tariffs, the president will likely seek to use the threat of these tariffs as leverage in ongoing negotiations with Japan and the EU but risks Congressional response if he asserts his authority in this way. Senate Finance Committee Chairman Chuck Grassley (R-IA) has been outspoken against the investigation, calling the consideration of tariffs on autos “ludicrous” and signaling an interest in legislation to curb the president’s authority under Section 232. In fact, Members in the House and Senate have introduced a variety of bipartisan bills to rein in the president’s ability to impose tariffs on the grounds of national security. The case on autos is the third of five investigations launched by the president under the statute. A report on the effect of imports of uranium on national security is due in mid-April, and Commerce launched an investigation into titanium sponge imports on March 5.

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Tax Reform Implementation Rolls on at the Treasury Department

Treasury's regulatory implementation of the Tax Cuts and Jobs Act (TCJA) rolled on in February, as the deadline for Treasury's ability to make the regulations retroactive draws nearer. Generally, tax regulations cannot be retroactive; however, the Internal Revenue Code provides an exception to this general rule stating that if regulations are filed or issued within eighteen months of statutory enactment, they may be retroactive to the date the statute was enacted. As the TCJA was signed into law on December 22, 2017, the deadline for retroactivity is June 22, 2019.

Many of the major provisions of the TJCA were effective as of January 1, 2018. Treasury has made clear that they would like to finish the rulemaking process for these major regulations (deemed repatriation, global intangible low-taxed income (GILTI), base erosion and anti-abuse tax (BEAT), foreign derived intangible income (FDII), and interest deduction limitation (163(j))) regulations by the June 22nd deadline.

In late January, Treasury released final deemed repatriation regulations, checking off one item on their list. The comment period on GILTI's foreign tax credit regulations closed on February 5th, and a hearing on the proposed regulations is scheduled for March 14th. Comments on the proposed BEAT regulations were due on February 19, and a hearing has been scheduled for March 25th. The comment period closed on the 163(j) interest deductibility regulations on February 26th. Finally, proposed regulations were released for the FDII deduction on March 4th, and comments are due by May 6th.

With the June 22nd deadline fast approaching, both Treasury and taxpayers have the next few months trying to shape final regulations.

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NEW ARTIFICIAL INTELLIGENCE INITIATIVES

New Artificial Intelligence Initiatives

In February, the Trump administration and federal agencies announced several initiatives related to artificial intelligence (AI). The Trump administration announced the American AI Initiative in order to unleash responsible approaches to the American innovation of AI, prepare America's workforce for the jobs of the future, and accelerate our national leadership in the field. The Centers for Medicare and Medicaid Services Innovation Center announced a forthcoming initiative related to leveraging AI to redefine health care delivery and to improve patient outcomes. In addition, the Department of Defense Joint Artificial Intelligence Center announced an AI strategy that will adopt artificial intelligence to modernize our military forces and national security.

The Trump administration announced that their decision to apply controls on U.S. exports of artificial intelligence and other advanced technologies would be far narrower than initially feared by the tech industry. The list of technologies that the administration plans to apply export controls to will consider narrow areas of AI, not the entirety of the field.

In addition to these cross-cutting initiatives, we anticipate forthcoming actions related to artificial intelligence in both the administration and Congress.

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DATA SECURITY AND PRIVACY REMAINS A PRIORITY AS THE 116TH CONGRESS ADVANCES

Data Security and Privacy Remains a Priority as the 116th Congress Advances

Members of the Senate Commerce, Science and Transportation Committee and members of the Energy and Commerce (E&C) Committee have honed in on consumer data privacy in recent weeks, with both committees holding hearings on principles for federal legislation.

On February 13, the U.S. Government Accountability Office (GAO) issued a report to E&C Chairman Frank Pallone (D-NJ) recommending that Congress develop comprehensive data privacy legislation. Shortly thereafter, the Energy and Commerce Committee convened for a hearing on February 26, where federal preemption and breach notification remained points of focus for the committee. Full Committee Ranking Member Greg Walden (R-OR) and Rep. Cathy McMorris Rodgers (R-WA), Ranking Member of the Subcommittee on Consumer Protection and Commerce, were vocal on the need for a federal preemptive standard. However, Subcommittee Chairwoman Schakowsky (D-IL) discussed the need to address preemption towards the end of discussions on federal legislation, while California Democrats have been firm in their opposition to a preemptive standard.

The Senate Commerce Committee held its hearing on February 27, with preemption remaining a point of contention. Members were critical of industry representatives, and there was broad bipartisan support for expanded Federal Trade Commission (FTC) authority. Chairman Roger Wicker (R-MS) and Sen. Jerry Moran (R-KS) emphasized the need for federal preemption, while Ranking Member Maria Cantwell (D-WA) voiced her concern for measures preempting state laws. While Cantwell had previously backed bundling breach notification and privacy together, she expressed willingness to consider the issues separately. Chairman Wicker plans to hold additional hearings on data privacy with consumer groups.

February was also characterized by movement on data security in the financial sector, with the Senate Committee on Banking, Housing, and Urban Affairs inviting feedback on the collection of sensitive information by financial regulators and private companies. The collection of personally identifiable information will remain a focus of the Committee in the 116th Congress, and Chairman Mike Crapo (R-ID) and Ranking Member Sherrod Brown (D-OH) will receive responses until March 15. The request follows a call from the National Association of Federally-Insured Credit Unions (NAFCU) for Congress and the administration to find bipartisan legislative solutions to a national data security standard.

On February 28, Senator Catherine Cortez Masto (D-NV) unveiled S. 583, the Digital Accountability and Transparency to Advance (DATA) Privacy Act, which would grant enforcement authority to the FTC and state attorneys general and require companies to obtain consent from individuals before collecting or disclosing sensitive information.

On the industry side, advocacy groups have been vocal in advocating for civil rights protections for minorities in federal privacy legislation, including the American Civil Liberties Union (ACLU), The National Association for the Advancement of Colored People (NAACP) and Human Rights Campaign. Energy and Commerce's privacy hearing included testimony from Color of Change regarding the need to put civil and human rights at the center of privacy discussions.

Consumer groups have also been critical of the witness lineups of both privacy hearings, which predominantly included industry representatives. Members of the Privacy and Digital Rights for All coalition joined Sen. Ed Markey (D-MA) and Sen. Tom Udall (D-NM) on March 4, calling for consumer-minded federal privacy standards. The coalition unveiled its own privacy framework in January, which spoke out against federal preemption and called for the creation of a separate federal agency to oversee privacy issues, as well as enhanced limits for data collection from children.

Industry members have steadily increased their engagement on data privacy, with draft legislation released from the U.S. Chamber of Commerce. The draft would establish opt-out consent provisions, preempt state measures, and task the FTC with enforcement. Privacy principles were also recently released from Cisco, BSA | The Software Alliance, and TechNet.

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IMMIGRATION POLICY UPDATES

Immigration Policy Updates

Immigration continues to be a topic of discussion in Washington, and the landscape of immigration law may change, if members of Congress and the administration can agree on

bipartisan solutions. Click [here](#) to find a summary of recent immigration policy developments and what to expect in the near future.

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