

What's New in Washington

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Congress has adjourned for the two-week spring recess after several weeks of major political and policy developments.

On March 11, President Trump delivered his administration's budget proposal to Congress with the largest price tag in government history, calling for \$4.75 trillion in spending, which includes a 5 percent increase in military spending as well as cost savings through cuts to mandatory spending programs. Presidential budgets are primarily viewed as markers for the administration's priorities, with many proposals considered dead on arrival. With the budget delivered, the congressional budget process has begun and appropriations season is now in full swing with oversight hearings. House Democrats are positioning their demands for a larger bargain between the two branches, with some division between House Budget Committee Chairman John Yarmuth (D-KY) and the Progressive Caucus about how aggressive the opening position should be. At the same time, the White House has signaled their desire for a "clean" debt ceiling increase to avoid including other policy priorities that could give political capital to House Democrats ahead of the 2020 election cycle. Senate Majority Leader Mitch McConnell (R-KY) has announced his intention to begin talks with Speaker Nancy Pelosi (D-CA) to seek a compromise position to raise the discretionary spending caps for the next two fiscal years.

A chapter in the most talked about story in Washington came to somewhat of an end on March 22 after Special Counsel Robert Mueller delivered his report on his two-year investigation into Russian interference in the 2016 presidential election to Attorney General William Barr. Although no further indictments were recommended by Mueller, Democrats in Congress have not been deterred from pushing forward with their own investigations. Members from both parties have called for the full report to be released to the public and the topic will continue to dominate the political conversation as the 2020 presidential race ramps up. Attorney General Barr is facing headwinds after he delivered his summary of the report to members of Congress and House Democrats signaled their interest to call Mueller or Attorney General Barr to testify before Congress, ensuring the issue will remain front and center in Washington. Attorney General Barr plans to release a redacted version of the full report as soon as this week. Congressional Democrats are not alone, as other federal and state authorities continue to pursue investigations into the 2016 Trump campaign and Trump's businesses.

During the first week of April, Senate Majority Leader Mitch McConnell moved forward with a vote to change Senate rules that would reduce the amount of floor debate for lower-level agency and judiciary nominations. The decision by McConnell to invoke the "nuclear option" will allow for a larger number of President Trump's nominations to be confirmed by the Republican-controlled Senate over the next 18 months. There are currently a number of executive branch nominations that have been in queue for an extended period of time, as well as nearly 130 district court vacancies. Future Presidents of either party will benefit from the rule change.

Trade talks between the U.S. and China took a significant step forward after China's Vice Premier Liu He announced a "new consensus." President Trump signaled that a deal could be reached within the month. Economic Counsel Larry Kudlow told reporters that trade negotiators will continue to work through remaining agenda items in the coming weeks and significant progress has been made. While a U.S.-China trade deal is making progress,

the path for the United States-Mexico-Canada Agreement (USMCA) hit a major hurdle after President Trump announced he may impose new auto tariffs, a decision that would undermine a side agreement in place with Canada and Mexico and would likely sideline the USMCA before it is enacted. The announcement came after the President threatened to shut down the entire U.S.-Mexico border, a move that was met with immediate bipartisan disapproval in Congress.

In addition to trade, the next work period in Congress will be highlighted by ongoing bipartisan activity on drug pricing, privacy, appropriations and budget negotiations.

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CONGRESS TAKES STEPS ON TAX POLICY ISSUES

Congress Takes Steps on Tax Policy Issues

With the December 2018 shutdown bringing legislative activity to a halt at the end of last year, a number of tax priorities that had built up during the 115th Congress were never completed. Included in that category are 26 temporary tax provisions (referred to as “tax extenders”) that expired at the end of 2017 and three that expired at the end of 2018, a bipartisan retirement package, and administrative reforms for the Internal Revenue Service (IRS).

With retirement savings being a priority for both new House Ways & Means Committee Chairman Richie Neal (D-MA) and Senate Finance Committee Chairman Chuck Grassley (R-IA), this was a natural starting point for each committee to kick off its 2019 legislative efforts on tax. On April 2, 2019, Ways & Means marked up H.R. 1994, the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019, a revised version of two previous retirement bills known as the Retirement Enhancement and Savings Act of 2018 (RESA) and the Family Savings Act of 2018, which were part of the House GOP's Tax Reform 2.0 efforts last year.

The bill includes a variety of provisions to improve retirement plan options and ease cost and administrative burdens on employers who set up 401(k) plans for their employees. H.R. 1994 was favorably reported by voice vote. The Committee also approved H.R. 1957, the Taxpayer First Act of 2019, a bill to reform the IRS to improve taxpayer services and protections, among other changes. The Taxpayer First Act was passed by the full House on April 9. The SECURE Act is likely to receive floor consideration after the April District Work Period.

The future for tax extenders is still uncertain. The House Ways & Means Committee majority has engaged in a series of Member-level discussions on next steps in the House. A number of open items emerged — including the scope of the package, whether revenue offsets should be included prior to floor consideration, and the addition of provisions to benefit working families via the earned income tax credit or an alternative mechanism. As follow-up to those deliberations, Chairman Neal has directed his staff to explore whether a bipartisan Ways & Means markup of tax extenders is possible in the near future.

On the Senate side, Chairman Grassley and Ranking Member Ron Wyden (D-OR) reintroduced RESA on April 1 with slight updates. Earlier this year, the duo also filed a companion bill for the Taxpayer First Act and a bill to continue the expired tax extenders retroactively for 2018 and through 2019. The House has yet to send the Senate a tax

legislative vehicle in the 116th Congress, so all eyes remain on committee and floor action in the House on tax issues.

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POLICYMAKERS CONTINUE TO FOCUS ON REDUCING OPIOID ADDICTION AND OVERDOSES

Policymakers Continue to Focus on Reducing Opioid Addiction and Overdoses

Several high-profile lawsuits, a report from the White House on the progress made to address the problem of opioid addiction, and recent actions by the Food and Drug Administration (FDA) are bringing the opioid epidemic back into focus six months after Congress passed the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities (SUPPORT) Act.

On March 26, Purdue Pharma announced that it will pay \$270 million to settle a lawsuit brought by the state of Oklahoma, which had sued the OxyContin maker and several other drug manufacturers in connection with the opioid crisis. Attorneys General in 45 states have filed independent lawsuits. States assert that deceptive marketing by pharmaceutical companies contributed to the opioid crises, and Oklahoma reports these companies created an “immense financial burden” on the state, its businesses, consumers, communities and citizens. The House Oversight and Reform Committee has requested documents from Purdue Pharma relating to reports that members of the Sackler family, which owns the drug company, sought to downplay OxyContin’s abuse potential in order to boost sales. Meanwhile, U.S. District Judge Dan Polster of the Northern District of Ohio is pushing to settle more than 1,600 lawsuits brought by cities, counties and state governments against major opioid manufacturers and distributors. The first trials in the multidistrict litigation are set to begin in October.

The House Oversight and Reform Committee held a hearing in February focused on shortcomings of the White House Office of National Drug Control Policy’s (ONDCP) response to the opioid crisis based on the findings of a Government Accountability Office (GAO) report. However, the White House highlighted the reduction in overdose deaths in 2018 compared to the President’s first year in office. More recently, China’s President Xi Jinping followed through on his promise to President Trump to treat all variations of fentanyl as a controlled substance effective May 1. U.S. officials have pointed to China as the main source of illicit fentanyl in the United States.

Outgoing FDA Commissioner Scott Gottlieb testified before a Senate Appropriations subcommittee on March 28, asking Congress for new authorities to require that new opioid products provide a significant advantage over an already-approved opioid. His remarks follow a February interview in which Commissioner Gottlieb announced that the agency plans to conduct rigorous studies of new and existing opioid products to determine whether they are effective for chronic pain.

Looking ahead, congressional committees may seek to hold additional hearings this year on the opioid crisis, including issues related to implementation of the SUPPORT Act.

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TRADE DEVELOPMENTS

Trade Developments

U.S.-China

Trade talks between the United States and China has not yet concluded despite previous hopes to reach an agreement by the end of March. A summit between President Trump and President Xi Jinping is still expected to officially mark the conclusion of the negotiations, but with the missed opportunity for a meeting during President Xi’s return from Europe, the two leaders may not be able to meet for several weeks or more. In fact, National Economic Council Director Larry Kudlow said in a speech on March 28 that the discussions are “not time-dependent” and suggested that it could take “months” to reach a

deal.

The talks continued, however, with U.S. Trade Representative Robert Lighthizer and Treasury Secretary Steve Mnuchin traveling to Beijing on March 28 to resolve the lingering issues. Then, during the first week of April, a Chinese delegation led by Chinese Vice Premier Liu He traveled to Washington, where after negotiations he also met with President Trump.

The remaining sticking points between the two countries include how to enforce the rules changes and purchase commitments made by the Chinese government. President Trump remarked earlier in the month that tariffs will remain “for a substantial period of time” after a deal is reached to ensure that China honors its commitments. On March 25, the Office of the United States Trade Representative (USTR) issued a Federal Register Notice announcing a one-year extension for product exclusions from List 1 of the Section 301 tariffs.

USMCA

The USMCA remains a top priority for the administration as they hope to pass the deal before Congress departs for the August District Work Period. President Trump met with GOP lawmakers last week to urge a swift vote on the deal. After meeting with the President, House Ways & Means Trade Subcommittee Ranking Member Vern Buchanan (R-FL) told the press that he believes the deal only needs 30 Democratic votes in the House to pass. Despite the optimism from House Republicans, House Speaker Nancy Pelosi (D-CA) holds the power to advance a vote on the agreement. Speaker Pelosi is unlikely to request the legislation before the International Trade Commission (ITC) releases its report on the economic impact of the deal. The report is now due by April 19 after facing a delay due to the government shutdown earlier this year. The Ways & Means Trade Subcommittee held its first hearing of the year chaired by the new Democratic majority, which focused on labor enforcement, a key priority of House Democrats. The panel of witnesses from six labor unions insisted on stronger enforcement provisions in the text of the agreement rather than the implementing bill.

U.S.-U.K.

Plans to negotiate a U.S.-U.K. bilateral trade agreement are now on hold as the British Parliament rejected a third plan to leave the EU by the March 29 deadline. After receiving an initial April 12 extension from the EU bloc, British Prime Minister Theresa May negotiated a new October 31 deadline.

Without an approved plan, the U.K. risks “crashing out” of the EU and reverting to trade relations governed by the WTO. Prior to the third rejection of the Prime Minister’s plan, the USTR published its negotiating objectives for talks with the U.K., completing its pre-negotiations obligations under trade promotion authority and clearing the way for a formal launch of talks between the two countries as early as March 30.

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SENATE DRIVES BIPARTISAN PRIVACY EFFORT

Senate Drives Bipartisan Privacy Effort

Congressional Hearings

Momentum continues to build for legislation to address data privacy on the Senate side, with the Senate Commerce Subcommittee on Manufacturing, Trade, and Consumer Protection holding a hearing on March 26 to assess small business perspectives of a federal privacy framework. Following the hearing, Chairman Moran stated that he hopes to release a draft bill soon alongside Full Committee Chairman Roger Wicker (R-MS) and Sens. Richard Blumenthal (D-CT), and Brian Schatz (D-HI).

In addition, the Senate Judiciary Committee held a hearing on March 12 to discuss components of the General Data Protection Regulation (GDPR) and the California Consumer Privacy Act (CCPA). During the hearing, Chairman Lindsey Graham (R-SC) expressed his willingness to cooperate with the Senate Commerce Committee on privacy,

and Sen. Blumenthal (D-CT) also discussed the need to accept input from the Judiciary Committee when discussing federal legislation in the Commerce Committee.

The focus on data security in the financial sector continued in April, with the House Oversight and Reform's Economic and Consumer Policy Subcommittee holding a hearing to discuss data security at consumer reporting agencies (CRAs). Ahead of the hearing, Sen. Elizabeth Warren (D-MA) and Rep. Elijah Cummings (D-MD) released a GAO report on recommended actions to strengthen oversight of CRAs, including stronger civil penalty authority for the Federal Trade Commission (FTC) and a reassessment of Consumer Financial Protection Bureau prioritization of examinations to address CRA data security.

Legislation

On March 12, Sens. Ed Markey (D-MA) and Josh Hawley (R-MO) introduced legislation to increase online safety protections for children. The bill would prohibit companies from collecting personal and location data from children under the age of 13 without parental consent, as well as children ages 13-15 without user consent.

Sens. Mark Warner (D-VA) and Deb Fischer (R-NE) recently introduced the Deceptive Experiences To Online Users Reduction Act, which would prohibit large online platforms from using deceptive user interfaces, or "dark patterns," in order to facilitate consumer data collection. Sen. Warner has previously raised concern for tactics used by tech companies in a white paper titled, "Potential Policy Proposals for Regulation of Social Media and Technology Firms."

Sen. Marsha Blackburn (R-TN) also confirmed that she is planning to introduce a Senate version of the BROWSER Act before the April recess. The bill would require companies to obtain opt-in consent for data collection. She previously introduced the bill in the 115th Congress on the House side as H.R. 2520.

Rep. Suzan DelBene (D-WA) has also introduced the Information Transparency and Personal Data Control Act, which would require user opt-in consent, require companies to disclose who they share private data with and grant the FTC rulemaking authority to enforce privacy standards.

Industry

On March 26, the FTC issued orders for a 6(b) study to broadband companies seeking information on the companies' data collection practices. In previous Senate testimony, Commissioner Slaughter has expressed support for using a 6(b) study to address tech issues. However, Commissioner Phillips has warned against casting too broad of a net with the Commission's inquiries.

In recently surfaced Senate testimony, FTC Chairman Simons has also expressed support for empowering state attorneys general to enforce federal privacy protections and has pointed to existing resource constraints.

The FTC held hearings on consumer privacy April 9-10, with remarks from Chairman Simons, Commissioner Phillips and Commissioner Slaughter. During his remarks, Chairman Simons highlighted several troubling privacy practices, including allegations of surreptitious recording by Internet of things devices, inadvertent exposure of health information, or the sharing of person data beyond a consumer's authorization. Commissioner Phillips asserted that talks in Washington have focused too heavily on whether or not the FTC should receive penalty or rulemaking authority or increased funding, and he expressed concern that a set of far-reaching rules may have a negative impact on the market.

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ARTIFICIAL INTELLIGENCE UPDATES

Artificial Intelligence Updates

There have been several recent announcements from the administration and Congress on artificial intelligence. Some of those highlights include:

- Following President Trump's executive order titled "American AI Initiative" to prioritize

research and development of America's artificial intelligence capabilities, [the Centers for Medicare & Medicaid Services \(CMS\)](#) announced a new competition that aims to accelerate innovative solutions to better predict health outcomes and improve the quality of care for patients. The CMS Artificial Intelligence Health Outcomes Challenge is an opportunity for innovators from every sector to demonstrate how artificial intelligence tools, such as deep learning and neural networks, can be used to predict unplanned hospital and skilled facility admissions and adverse events for potential use in testing innovative payment and service delivery models. The three-stage competition will prioritize explainable artificial intelligence solutions to help front-line clinicians understand and trust artificial intelligence-driven data feedback to target scarce resources to sharpen health care delivery.

- Reps. Pete Olson (R-TX) and Jerry McNerney (D-CA) have indicated they plan to reintroduce bipartisan legislation to bolster artificial intelligence in healthcare, which would promote quicker recovery times and more accurate medical diagnoses. Rep. Olson recognized that AI technology has the capabilities to generate innovative lifesaving treatments.
- Additionally, Sens. Brian Schatz (D-HI) and Roy Blunt (R-MO) introduced the Commercial Facial Recognition Privacy Act of 2019. The bipartisan legislation seeks to strengthen consumer protections by prohibiting commercial users of facial recognition (FR) technology from collecting and re-sharing data for identifying or tracking consumers without their consent. The legislation recognizes that FR technology is a powerful and invasive new technology and is currently being developed at increasing rates for commercial applications. The bill puts in place guardrails to ensure that as FR technology continues to develop and create many new benefits for society, it is implemented responsibly and reinforcing of consumer transparency, privacy and choice.
- Sens. Martin Heinrich (D-NM) and Rob Portman (R-OH) announced the formation of the bipartisan Senate Artificial Intelligence Caucus, which will also include Sens. Brian Schatz (D-HI), Cory Gardner (R-CO), Gary Peters (D-MI) and Joni Ernst (R-IA). Caucus leaders plan to collaborate with AI experts in private industry, academia, national labs, and the executive branch to harness the enormous potential of AI to the benefit of society and the American people. The Senate AI Caucus is complementary of the American AI Initiative, which calls upon all federal agencies to prioritize research and development of AI to build a workforce that is prepared to take on the enormous challenges AI will bring about. The AI Caucus plans to work to develop smart policy that balances AI's risks and rewards to ensure the competitiveness of the U.S. economy, while maintaining important ethical standards.
- On April 2, the U.S. Food and Drug Administration (FDA) published a long-awaited exploratory white paper proposing a framework for regulating artificial intelligence/machine learning (AI/ML)-based software as a medical device (SaMD). To read the full alert click [here](#).

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COMMUNICATIONS AND INFORMATION TECHNOLOGY ALERT: DRONES AND URBAN AIR MOBILITY IN THE PRESIDENT'S BUDGET

[Communications and Information Technology Alert: Drones and Urban Air Mobility in the President's Budget](#)

President Trump recently released his federal budget proposal for Fiscal Year (FY) 2020. The President's budget is always a helpful tool to identify what the administration's policy priorities are and what we might expect to see finalized through the congressional appropriations process.

Digging into some of those documents, we have highlighted some of the proposed financial resources that the Department of Transportation (DOT), the Federal Aviation Administration (FAA), and the National Aeronautics and Space Administration (NASA) are asking for to help them move along integration of unmanned aircraft systems (UAS) into the National Airspace System (NAS) and help make urban air mobility (UAM) a reality.

Specific programs and initiatives include development of a UAS Traffic Management system, research on UAS threats to aviation safety and UAM demonstrations.

For a deeper dive into some UAS and UAM specifics, click [here](#).

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