

What's New in Washington

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Congress returns to D.C. this week for a short three-week sprint to a series of important deadlines on September 30. Chief among them is funding the federal government for Fiscal Year (FY) 2020 which begins on October 1, 2019. In addition, a number of programs expire at the end of the month, including:

- Ex-Im Bank
- National Flood Insurance Program
- Various health programs collectively referred to as “health extenders”
- Temporary Assistance for Needy Families.

The Senate will kick off the week with a cloture vote on the nomination of Kelly Craft as Representative of the United States of America to the Sessions of the General Assembly of the United Nations and a series of other nominations. The House will begin the work period with a suspension bill focused on energy and housing issues and several bills from the Natural Resources Committee focused on coastal issues.

Following the enactment of the Bipartisan Budget Act of 2019 last month, the Senate Appropriations Committee worked tirelessly over the recess to ready appropriations bills for markups this month after declining to move forward with markups earlier this year until a budget deal was reached. That process will begin in earnest with several subcommittee markups this week followed by a full committee markup on September 12 of the Labor, Health and Human Services and Education (Labor-HHS), Defense, State and Foreign Operations, and Energy and Water Appropriations bills. Chairman Richard Shelby (R-AL) indicated the Committee is likely to package these four bills together for an initial minibus package, with floor consideration expected as early as the week of September 16.

While some would like to send this minibus to the President’s desk before the end of the month, with limited time remaining for negotiations, it is likely that a stopgap Continuing Resolution (CR) will be required to extend government funding past September 30. This would allow more time for the Senate Appropriations Committee to make progress on its work given the late start date and then conference those bills with the versions passed in the House this summer. The House is expected to advance a CR the week of September 16 to fund the government through mid-November.

In the absence of a breakthrough on any of the deadline-driven items listed above, the CR will likely carry short-term extensions of those programs as well, kicking the can to mid-November on a host of issues.

In addition to appropriations, Congress will continue to look for bipartisan paths forward on a host of policy priorities this month.

Health: House and Senate activity on legislation to address drug pricing and surprise medical billing took a pause over the recess, but is expected to move back into the spotlight this month with a number of anticipated markups in the House and ongoing discussions about possible floor consideration in the Senate. See [here](#) for more details.

Gun Control: Following a series of mass shootings in Texas and Ohio during the recess, a push for gun control legislation is at the forefront for many members as they return to D.C. this month. The House Judiciary Committee will mark-up three bills on the topic this week. In the Senate, the relevant committees are weighing options and soliciting member feedback on legislative proposals. Areas of possible bipartisan compromise are strengthening the background check process and so-called “red flag” laws, along with funding for mental health programs. The administration is expected to release a proposal in the coming days or weeks.

Defense Authorization: While a conference committee was not convened for the National Defense Authorization Act (NDAA) prior to the August recess, staff-level conversations are underway in an attempt to finish the NDAA before members depart this month. One of the key differences between the House and Senate bills are the funding levels of \$733 billion and \$750 billion, respectively. The new budget agreement allows for \$738 billion in defense spending for FY 2020.

Data Privacy: The deadline for Congress to enact federal privacy legislation is rapidly approaching, as the California Consumer Privacy Act goes into effect on January 1, 2020. Lead negotiators from the Senate Commerce Committee and the House Energy & Commerce (E&C) Committee have not made significant progress in their privacy efforts, and their inability to release draft text prior to August has effectively shortened the window of time for passage of a federal privacy standard in the 116th Congress. Key Senate negotiators are expected to publically unveil draft legislation this month, but it is unclear whether negotiators will be able to reach consensus on controversial provisions. Negotiators within E&C have come to an impasse over federal preemption, but Rep. Schakowsky (D-IL) has indicated that E&C Democrats will unveil their own legislation with or without support from the Committee’s Republicans.

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FALL ACTION EXPECTED ON DRUG PRICING AND SURPRISE BILLING

[Fall Action Expected on Drug Pricing and Surprise Billing](#)

On July 25, the Senate Finance Committee advanced its drug pricing legislation, the Prescription Drug Pricing Reduction Act, with a majority of Republicans on the panel voting against the package. Looking ahead, additional work will be needed to shore up GOP support for the bill. Senate leaders are holding to their initial plan to combine the Senate Finance package with related legislation reported by the Senate Health, Education, Labor and Pensions (HELP) Committee and the Senate Judiciary Committee. Democrats on the House Ways & Means Committee are scheduled to meet on September 10 and 11 to discuss their next steps on drug pricing and surprise billing, both of which are expected to see committee hearings and possibly mark-ups this month. The Committee is likely to push for aggressive reforms to Medicare Part D, akin to proposals in the Senate Finance bill.

Meanwhile, House Speaker Nancy Pelosi (D-CA) may release her drug price negotiation plan as soon as this week, although specific timing is uncertain after months of delay. The Speaker's legislation makes changes to Medicare Parts B and D, including changing beneficiary cost-sharing responsibility for Part D drugs, establishing a new manufacturer discount program in the initial and catastrophic Part D coverage periods, and requiring inflationary rebates for all Parts B and D drugs. Additionally, the bill establishes a methodology for identifying 250 brand name drugs without price competition plus insulin that would be subject to negotiation. The Secretary of the Department of Health and Human Services (HHS) would negotiate with drug manufacturers for a "maximum fair price," which is defined as an upper limit of no more than 1.2 times the volume-weighted average of the price of six countries (Australia, Canada, France, Germany, Japan and the UK). Manufacturers that do not participate in negotiations would be subject to a penalty that is 75 percent of the gross sales of the drug in question from the previous year. The savings generated from the plan would be redirected to fund biomedical research and potentially new Medicare benefits or reduced cost sharing.

Following the August recess, the House Education & Labor Committee is planning a markup in the next week or two of the "No Surprises Act," which was reported by the House Energy & Commerce Committee in July. The bill utilizes a benchmark payment approach based on the median in-network rate, along with a backstop arbitration process added during markup. The Ways & Means Committee is expected to release its own surprise billing legislation before the end of the month, though details on the payment methodology and other aspects have yet to be released. In the Senate, additional changes are expected to the HELP Committee's "Lower Health Care Costs Act," which currently utilizes a benchmark payment approach, in order to secure support from a majority of Senate Republicans.

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AN ESCALATED TRADE WAR IN THE MONTH OF AUGUST

An Escalated Trade War in the Month of August

The month of August was another tumultuous period in trade policy featuring an escalation of tensions with China, an agreement in principle with Japan and behind-the-scenes progress on the United States-Mexico-Canada Agreement (USMCA). All of these developments set up continued activity on trade in the months ahead.

U.S. and China Ratchet Up Tariffs; Agree to Meet

At the beginning of August, President Trump tweeted his intention to impose a new 10 percent tariff on roughly \$300 billion of imports from China. Then, after the Chinese retaliated, he announced a five percent increase on those tariffs as well as all other previously imposed tariffs on Chinese imports. As a result, the United States imposed a 15 percent tariff on about \$112 billion in goods detailed on List 4A on September 1, planned a 5 percent increase to the tariffs already imposed under Lists 1 through 3 for October 1, and scheduled a 15 percent tariff on about \$160 billion in goods detailed on List 4B for December 15.

With the continued march of new tariffs, there remain opportunities for affected companies to submit comments and exclusion requests. Comments to the United States Trade Representative (USTR) on the proposed five percent tariff rate increase for Lists 1 through 3, which will take effect on October 1, are due on September 20, and product exclusion requests for List 3 are due by September 30.

Despite the heightened tension between the two parties, the two governments agreed to resume talks in early October. Although no date is set yet, Vice Premier Liu He is expected

to once again lead the Chinese delegation in the bilateral meeting with the United States, represented by Ambassador Robert Lighthizer and Secretary Steve Mnuchin. This would mark the first face-to-face meeting of the governments since the end of July when the ministers met prior to President Trump's tariff escalations in August.

U.S. and Japan Work to Fill in Details on Trade Deal in Principle

At the G-7 Summit in France, President Trump announced that the U.S. and Japan reached an agreement in principle on a narrow trade deal with the goal of finalizing the details for an announcement by the end of September when President Trump and Prime Minister Abe would meet again at the United Nations General Assembly (UNGA). The five pillars of the agreement are (1) market access for American farmers into Japan, (2) tariff cuts for certain Japanese products except autos or auto parts entering the United States, (3) provisions related to digital trade, (4) a commitment from the United States not to impose duties on imports of Japanese autos under the current Section 232 investigation, and (5) a pledge by both countries to continue negotiating a comprehensive trade agreement. If reached, the deal would represent an important market opening for U.S. farmers and agricultural producers who are reeling from Chinese retaliatory tariffs and who are facing increased competitive pressure from producers in Japan's other trading partners under the revised Trans-Pacific Partnership. In addition, Japan would secure an important commitment to avoid higher tariffs on their auto exports from its most important national security ally. Negotiators and lawyers for both the U.S. and Japan are expected to continue their work throughout the month in order to meet the UNGA deadline.

USMCA: Will They or Won't They?

After a month of negotiations at the staff level between House Democrats and USTR, all eyes remain focused on whether these two parties can reach an agreement on changes to the USMCA that would allow it to move forward in Congress. House Democrats, led by Speaker Nancy Pelosi and a nine member working group, shared text of proposals on each of their four main issues—enforcement, labor, access to medicines and the environment—at the beginning of the month, but have not received a formal counterproposal from the USTR in return. Democrats are united in their public comments that the onus is on the USTR to take the next step and that the substance of the talks will determine the pace of negotiations rather than any political timeline to try to pass the agreement.

Despite those statements, the public pressure mounted over the August recess. Vice President Pence visited Des Moines, Iowa and Detroit, Michigan, among other parts of the country, to tout the agreement, and Senate Finance Committee Chairman Chuck Grassley (R-IA) published an op-ed calling for the passage of the agreement now. Meanwhile, a group of 14 House Democrats [sent](#) a letter to House Speaker Nancy Pelosi urging her to allow for a vote on the USMCA.

House Democrats are expected to take stock of the current negotiations this week. However, with only three weeks of session before members return to their districts the weeks of September 30 and October 7 for the Jewish holidays, October and November appear more likely for legislative progress on USMCA.

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TAX UPDATE

Tax Update

Potential tax action is still on deck for the fall in a number of areas, including legislation dealing with tax extenders, retirement tax provisions and tax-related relief for areas

impacted by Hurricane Dorian, and the Treasury Department continues to produce regulations implementing the Tax Cuts and Jobs Act.

Extenders & Disaster Relief: In May, Senate Finance Committee Chairman Grassley and Ranking Member Ron Wyden (D-OR) announced six bipartisan taskforces set to examine 42 total temporary tax provisions that expired or will expire between December 31, 2017, and December 31, 2019. So far, four of these reports have been released: The Energy Task Force led by Sens. John Thune (R-SD) and Debbie Stabenow (D-MI); Cost Recovery led by Sens. Mike Crapo (R-ID) and Ben Cardin (D-MD); Individual, Excise & Other Expiring Policies led by Sens. Pat Roberts (R-KS) and Robert Menendez (D-NJ); and Employment & Community Development led by Sens. Rob Portman (R-SC) and Maria Cantwell (D-WA). As far as recommendations, the Individual and Excise Tax task force recommended that the Craft Beverage Modernization and Tax Reform Act be made permanent, and the Chairs of the Cost Recovery task force recommended that the short-line railroad and energy-efficient commercial buildings credits be made permanent. Task force reports covering health care and disaster-related tax provisions have yet to be released.

The House Ways and Means Committee processed their version of a tax extenders bill in June, voting to extend through 2020 tax provisions that expired at the end of 2017 and 2018, and that will expire at the end of 2019, plus disaster relief tax provisions. The Committee also approved separate bills to expand the Earned Income Tax Credit and Child Tax Credit, to increase entitlement funding for child care, and to clarify that all tax provisions apply to legally married same-sex couples the same as other married couples.

Retirement: On retirement, the House passed the Setting Every Community Up for Retirement Enhancement (SECURE) Act by a vote of 417-3 earlier this year. Just prior to floor consideration, the House also added a provision to fix an unintended consequence of the 2017 tax reform law for children from Gold Star families (and others) with unearned income. Given the overwhelmingly bipartisan House vote for this significant retirement reform bill, there was some hope that the Senate would be able to quickly pass the bill by unanimous consent before the Memorial Day recess. However, a number of holds from senators prevented the bill from moving forward. Senate Finance Committee Chairman Grassley has stated that he continues to work with his colleagues to resolve any outstanding concerns and move the bill forward in the Senate.

Tax Cuts and Jobs Act Regulations: At the Treasury Department, the process of promulgating tax reform regulations continues. Final regulations implementing the Base Erosion and Anti-Abuse Tax are expected to go to Office of Information and Regulatory Affairs in the near future. Meanwhile, Treasury continues to review comments on proposed regulations implementing new rules around foreign tax credits, the Foreign-Derived Intangible Income deduction, and the 163(j) interest deduction limitation, with final regulations expected later this fall.

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