

What's New in Washington

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Congress returns after a two week recess to focus on the remaining eight weeks of session on the legislative calendar (although it may last longer) with a laundry list of high priority initiatives and deadline-driven items. Whether Congress can reach agreement on all of these items will depend in part on the unfolding impeachment process in the House, which officially began with an impeachment inquiry announced by Speaker Nancy Pelosi (D-CA) on September 24.

Before adjourning for the recess, Congress passed a short-term continuing resolution (CR) to provide stopgap funding for the federal government through November 21. The CR also provided Medicaid funding for the U.S. territories and Puerto Rico, continued the National Flood Insurance Program's (NFIP) funding and extended the charter of the Export-Import Bank (EXIM). We expect Congress to pass another short-term CR by November 21 that would last until mid-December. The House has passed 10 of its 12 appropriations bills while the Senate has moved the same number of bills out of the Senate Appropriations Committee.

The Senate is expected to continue its focus on nominations this month, with a goal of turning to the National Defense Authorization Act (NDAA) as soon as the conference report is finalized. In the House, possible floor items this work period include the NDAA conference report, a number of House Financial Services Committee bills on corporate disclosure and anti-money laundering, an election security bill and public lands-related legislation from the House Natural Resources Committee.

Drug pricing will continue to dominate the discussions in Washington. House Democratic leaders have indicated they hope to vote on the Lower Drug Costs Now Act (H.R. 3) later this month, but the bill must work its way through three committee markups which could take longer than expected. Senate Finance Committee Chairman Chuck Grassley (R-IA) continues to push for action on the Prescription Drug Pricing Reduction Act (S. 2543), which was approved in Committee with strong support from Democrats and opposition from most Republicans.

House Democrats remain cautiously optimistic on action to approve the U.S.-Mexico-Canada Agreement (USMCA), although it is difficult to handicap whether prospects for bipartisan cooperation on trade are more or less likely as a result of the formal impeachment inquiry.

As we look toward the end of 2019, many issues remain unresolved on a laundry list of possible items for a year-end package, including:

- Fiscal Year 2020 Appropriations (11/21/19)
- National Flood Insurance Program (11/21/19)
- Export-Import Bank (11/21/19)
- Health Extenders (11/21/19)
- Certain FISA Amendments (12/15/19)
- Tax Extenders (provisions expired in 2017, 2018 and upcoming on 12/31/19)

- Affordable Care Act Taxes, including the Medical Device Tax (12/31/19)
- Expiring Tax Reform provisions, including Craft Beverage Tax Relief (12/31/19)
- Legislative Priorities, including:
 - SECURE Act
 - Drug Pricing
 - Surprise Medical Billing
 - Data Privacy
 - USMCA.

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OUTLOOK FOR DRUG PRICING AND SURPRISE MEDICAL BILLING LEGISLATION

Outlook for Drug Pricing and Surprise Medical Billing Legislation

Committee leaders plan to resume work on the Lower Drug Costs Now Act (H.R. 3) when lawmakers return from the October recess this month. The long-awaited bill was released by Speaker Pelosi on September 19 and would require the Secretary of Health and Human Services (HHS) to negotiate prices for at least 25 drugs annually that are among the 250 most costly single-source drugs in Medicare and the U.S. health system in general. The “maximum fair price” negotiated by the Secretary must be no more than 120 percent of the average international price in six countries. Manufacturers who refuse to negotiate with HHS would face an escalating excise tax on gross sales of the product, starting at 65 percent and increasing by 10 percent each quarter of noncompliance up to 95 percent.

The House Ways and Means, Energy and Commerce, and Education and Labor Committees plan to mark up H.R. 3, with Democrats hoping for a floor vote before Thanksgiving, but possibly sooner. Meanwhile, Senate Finance Committee Chairman Grassley has been pressing his fellow Republicans to support the Prescription Drug Pricing Reduction Act (S. 2543), which has the President’s support. However, many in the GOP remain opposed to the inflationary price caps included in the Senate bill, which was passed by the Finance Committee with a majority of Republicans on the panel voting against it. In short, it will be difficult to wrap up a year-end deal on drug pricing with bipartisan and bicameral support, particularly with a presidential impeachment inquiry that has significantly heightened tensions between the White House and Speaker Pelosi.

Momentum has also slowed on surprise billing as committee leaders mull competing plans in the House and Senate. House Ways and Means Committee Chairman Richard Neal (D-MA) and Ranking Member Kevin Brady (R-TX) are discussing a “negotiated rulemaking” proposal, under which the Departments of Health and Human Services and Labor and Treasury would use the federal rulemaking process to set appropriate payment rates and determine the proper use of arbitration for out-of-network billing situations. However, this approach raises questions about the ability of the legislation to generate savings.

Meanwhile, some Members on the House Education and Labor Committee are asking Committee Leadership to take up a solution floated by Reps. Raul Ruiz (D-CA) and Phil Roe (R-TN). Their bill relies on “baseball-style” arbitration to determine reimbursement

and rejects altogether the benchmark payment rate approach found in both the No Surprises Act (H.R. 3630) advanced by the House Energy and Commerce Committee, and the Lower Health Care Costs Act (S. 1895) passed by the Senate Health, Education, Labor and Pensions (HELP) Committee. The leaders of the Energy and Commerce Committee and HELP Committee are continuing to discuss areas of agreement between the committees' approaches. Given the significant potential cost savings generated from surprise billing legislation—estimated at \$21.9 billion over 10 years for the Energy and Commerce Committee proposal, and \$24.9 billion for the HELP Committee proposal— and the need to offset the extension of a variety of expiring health provisions, surprise billing legislation is likely to become a higher priority as the end of the year approaches.

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U.S. AND JAPAN STRIKE LIMITED TRADE AGREEMENT.

U.S. and Japan Strike Limited Trade Agreement

On the margins of the United Nations General Assembly meeting in late September, President Trump and Prime Minister Abe announced a very narrow trade agreement that was later signed on October 7. It features five pillars:

- **Market Access for American Agriculture** – The agreement restores some of the market access for American farmers and ranchers that was lost when the U.S. withdrew from the Trans-Pacific Partnership. For example, Japan agreed to reduce or eliminate tariffs on beef, pork, wheat, almonds, blueberries, wine, cheese, cherries and oranges, among other items.
- **Market Access for Japanese Goods and Agriculture** – The U.S. pledged to eliminate or reduce tariffs on roughly \$40 million of Japanese agriculture like certain plants, flowers, tea and soy sauce, as well as certain industrial goods like steam turbines, bicycles and musical instruments.
- **Digital Trade** – The U.S. and Japan also reached a separate agreement on digital trade, according to the White House, on “the gold standard...rules set by the USMCA.” The agreement, among other provisions, will ensure cross-border data flows for all sectors and prohibit data localization requirements including for financial service suppliers.
- **Section 232 Investigation** – The looming threat of tariffs on imports of Japanese autos and auto parts appears to be relieved as well. Although not explicitly described in any of the supporting documents released at the time, Prime Minister Abe later told reporters that “between President Trump and myself, this has been firmly confirmed that no further additional tariffs will be imposed.”
- **Stage 2 Negotiations** – Last, the official statement between President Trump and Prime Minister Abe noted that four months after the agreement enters into force, which is expected to be January 1, 2020, the U.S. and Japan “will enter into negotiations” on a host of outstanding issues.

As a limited agreement, it does not feature the chapters on enforcement, intellectual property, labor or the environment that have historically been included in U.S. free trade agreements and that have been the subject of attention in talks with Mexico and Canada.

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CAUTIOUS OPTIMISM ON USMCA.

Cautious Optimism on USMCA

Following an initial exchange of proposals and counterproposals, House Ways and Means Committee Chairman Richard Neal (D-MA) announced that the nine member working group and United States Trade Representative (USTR) Robert Lighthizer made significant progress on the key issues of enforcement, labor, access to medicines and the environment in the USMCA. During the two week recess period, staff for the Committee

and working group continued work to address Democrats' outstanding concerns, and several Democratic members traveled to Mexico City to encourage the government to dedicate more resources for the implementation of the agreement's labor reforms. Members of the working group as well as Speaker Pelosi also continue to send the message publicly that the ongoing impeachment inquiry will have no effect on the ongoing USMCA talks, which may draw to a close after returning from the recess in an attempt to set-up votes in November.

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U.S. RETALIATION AGAINST THE EUROPEAN UNION IN AIRBUS-BOEING DISPUTE

U.S. Retaliation Against the European Union in Airbus-Boeing Dispute

After approval from the World Trade Organization (WTO), the U.S. pledged to apply tariffs on \$7.5 billion worth of European Union (EU) goods effective October 18. The decision was based on WTO findings that EU aid for Airbus is causing significant lost sales of Boeing large civil aircraft as well as impeding exports of Boeing large aircraft to other foreign markets. Under WTO rules, the decision is final and not subject to appeal.

The tariff increases are to be applied to a range of imports from EU Member States, with most of the tariffs being applied to imports from the four countries responsible for the illegal subsidies (France, Germany, Spain and the United Kingdom). The tariffs will be limited to 10 percent on large civil aircraft and 25 percent on agricultural among a broad range of other products, such as clothing, small appliances, cheese, olives and olive oil, and wine and liquors.

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U.S.-CHINA UPDATE

U.S.-China Update

On October 10 and 11, U.S. and Chinese principal-level trade officials will meet in Washington for their thirteenth round of trade talks. Vice Premier Liu He is expected to lead the Chinese delegation in the bilateral meeting with the United States, represented by Amb. Robert Lighthizer and Treasury Secretary Steve Mnuchin. In recent weeks, both sides have made a number of "goodwill gestures" to lower the trade tensions. For example, China announced that it would exempt 16 products, or less than \$2 billion worth of U.S. exports, from its retaliatory tariffs imposed in 2018. These products include lubricants, fishmeal for animal feed and some chemicals. President Trump announced that the U.S. would delay a planned five percentage point increase in its 25 percent tariff on \$250 billion goods from October 1 to October 15. However, expectations for any announcements of potential outcomes immediately following this round remain low with both sides contending with difficult domestic political situations.

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FINANCIAL SERVICES UPDATE

Financial Services Update

The stop-gap spending bill signed by President Trump at the end of September granted a temporary reprieve for the NFIP and the EXIM, both of which were extended until the November 21, 2019 expiration of the current CR. Congress will continue to litigate the fate of these programs, but longer-term reauthorization seems likely by the time Congress goes home for the holidays.

The Senate Banking Committee focused on the administration's long-awaited Housing Reform Plan. Treasury Secretary Mnuchin and Housing Secretary Ben Carson, along with Federal Housing Finance Agency Director Mark Calabria, testified on the Treasury Report, highlighting the goals of protecting the taxpayer, ending the conservatorships of Fannie

and Freddie, and preserving the 30-year mortgage. Resolution of this issue remains a priority of committee Chairman Mike Crapo (R-ID), and several members voiced support for a process that would yield some legislative resolution. The committee also held hearings addressing international insurance standards and the Federal Reserve's foray into real-time payments. Looking ahead, Consumer Financial Protection Bureau Director Kathleen Kraninger, will be before the committee to provide the Bureau's semi-annual report to Congress on October 17, 2019.

The House passed over a dozen financial services bills in September with several more coming out of the committee and awaiting a floor vote. Several housing bills including the Homebuyer Assistance Act (H.R. 2852), the Safe Housing for Families Act (H.R. 1690), and Strategy and Investment in Rural Housing Preservation Act (H.R. 3620) were all passed on the floor early in the month. While the bipartisan bill to approve a five year reauthorization of NFIP has not received a vote on the floor yet, the legislation still looms large as the November 21 funding deadline approaches.

Though bipartisan lawmaking in the financial services space has been rare in this Congress, opportunities abound between now and the end of the year. In September, the House passed – with a substantial bipartisan vote – legislation that would facilitate access to banking for the cannabis industry, and Chairman Crapo has expressed some willingness to address the issue in his committee. In addition, a bipartisan group of Senators has introduced anti-money laundering legislation that would complement ongoing efforts in the House.

Out on the campaign trail, a variety of proposals would have unique impacts on the financial services industry. Among those that demand serious attention are a financial transactions tax, restrictions on stock buybacks, mark-to-market efforts with respect to capital gains and the treatment of gains as ordinary income, and broad federal intervention in areas of corporate governance.

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PROGRESS LAGGING FOR FEDERAL PRIVACY LEGISLATION

Progress Lagging for Federal Privacy Legislation

Progress in the Senate has slowly inched closer to the release of draft privacy legislation, and in mid-September, Senate Commerce Committee Chairman Roger Wicker (R-MS) publicly expressed optimism for progress made in negotiations. Ranking Member Maria Cantwell (D-WA) also indicated she has been engaging with other members on the issue. Other members of the Commerce Committee have maintained a role in negotiations, and Sens. Jerry Moran (R-KS) and Richard Blumenthal (D-CT) have continued their efforts to craft their own legislative text. We understand the pair's proposal does not currently provide for a private right of action, and consensus on the issue of preemption has not yet been reached.

Negotiations in the House Energy and Commerce Committee continue to be bipartisan but remain away from controversial issues or exchanging legislative text. Rep. Jan Schakowsky (D-IL), Chair of the Energy and Commerce Subcommittee on Consumer Protection and Commerce, has expressed optimism about drafting legislative text, but she has not publicly indicated her timeline for doing so. Action in the House will likely remain at a standstill until the Senate reaches consensus on a number of contentious issues.

Other Members have continued to express frustration about the timeline of negotiations, including House Energy and Commerce Committee Ranking Member Greg Walden (R-OR). In the Senate, Sen. Marco Rubio (R-FL) has urged the Senate Commerce Committee to consider the American Data Dissemination (ADD) Act. The ADD Act, introduced in January, would require the Federal Trade Commission (FTC) to submit detailed recommendations for privacy requirements that Congress can impose on covered providers, which would be similar to requirements applicable to agencies under the Privacy Act of 1974.

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