

What's New in Washington

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November 2019

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Congress returns to Washington this week after the Thanksgiving recess to find a feast of leftover legislative items still on the table. Congress has a limited number of days remaining on the 2019 legislative calendar to tackle end-of-year priorities before the looming government funding deadline on December 20. After extending funding through a short-term continuing resolution (CR) prior to the recess week, House Appropriations Chairwoman Nita Lowey (D-NY) and Senate Appropriations Chairman Richard Shelby (R-AL) announced an agreement on spending allocation levels for the 12 appropriations bills, reducing the risk of a potential government shutdown later this month. These negotiations will be the top priority this month in the House and Senate.

Aside from appropriations, the House will kick off the work period this week with votes on H.R. 2534, the Insider Trading Prohibition Act, a resolution expressing support for a two-state solution to resolve the Israeli-Palestinian conflict, and the Trafficking Reduction and Criminal Enforcement (TRACED) Act to help stop robocalls. For the remainder of the work period, the House is expected to vote on H.R. 4, the Voting Rights Advancement Act, as well as H.R. 3, the Lower Drug Costs Now Act. While sticking points remain among the Democratic Caucus on H.R. 3, it is likely to pass the House, but will not be taken up by the Senate in current form. Senate Finance Committee Chairman Chuck Grassley (R-IA) continues to push for his bill with Ranking Member Ron Wyden's (D-OR) (the Prescription Drug Pricing Reduction Act).

While a bipartisan, bicameral drug pricing approach is unlikely to be ready for inclusion in a year-end package, action on a variety of health extenders (possibly paid for by legislation to address the issue of surprise medical billing) is likely. Discussions regarding a tax package that could be included are ongoing as well, with the Setting Every Community up for Retirement Enhancement (SECURE) Act, disaster tax provisions, tax extenders and Tax Cuts and Jobs Act (TCJA) technical corrections and extensions in the mix for those negotiations.

While year-end negotiations continue, the Senate will continue to focus floor time on nominations, beginning with the nomination of Dan Brouillette to be Secretary of Energy.

While appropriators have reached the beginnings of an agreement, there is little consensus among leaders on the Armed Services Committees related to the National Defense Authorization Act (NDAA). Negotiations have stalled over funding for President Trump's border wall, Space Force and a fierce debate on a polyfluoroalkyl substances (PFAS) provision addressing "forever chemicals." Once considered an overwhelmingly bipartisan bill, this year's NDAA has been plagued by political proposals potentially jeopardizing its passage for the first time in years.

The House may take action on the United States-Mexico-Canada Agreement (USMCA) this month, after Speaker Nancy Pelosi (D-CA) announced on November 25 that a deal was "within range of a substantially improved agreement for America's workers." However, the days are limited to attempt to complete the remaining steps that must take place for a vote to happen before the holiday recess.

The ongoing impeachment inquiry in the House will serve as a backdrop this month as Congress seeks to move forward on major end-of-year legislation while balancing a politically divisive process that may conclude in the House before the year's end with a

vote on articles of impeachment. Impeachment action in the Senate is not expected until January.

As we head into the homestretch for the year, here is a list of the issues that may be addressed before the First Session of the 116th Congress comes to a close:

- Fiscal Year 2020 Appropriations (12/20/19)
- National Flood Insurance Program (12/20/19)
- Export-Import Bank (12/20/19)
- Health Extenders (mostly expire or need funding by 12/20/19)
- Tax Extenders (provisions expired in 2017, 2018 and upcoming on 12/31/19)
- Certain expiring provisions of the Tax Cuts and Jobs Act, including Craft Beverage Tax Relief (12/31/19)
- Further delay of Affordable Care Act Taxes, including the Medical Device Tax (12/31/19)
- Other Legislative Priorities, including:
 - National Defense Authorization Act
 - SECURE Act
 - Surprise Medical Billing Legislation
 - USMCA.

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OUTLOOK FOR ACTION ON SURPRISE BILLING AND DRUG PRICING

Outlook for Action on Surprise Billing and Drug Pricing

With an agreement now in place on topline Fiscal Year 2020 spending levels, the prospects are improving for a year-end appropriations bill that could carry a number of health care provisions. The Senate Health, Education, Labor and Pensions (HELP) Committee and the House Energy and Commerce Committee have been negotiating around surprise medical billing legislation, and reports suggest they are close to a bipartisan solution. The final legislation will likely include a benchmark payment methodology for determining out-of-network reimbursement, along with some element of arbitration as a backstop. Surprise billing legislation is expected to be a cost-saver, making it an attractive pay for a number of health care “extender” provisions, such as funding for community health centers, extension of the Medicare Special Diabetes Program and a delay of Medicaid Disproportionate Share Hospital (DSH) payment cuts.

Meanwhile, it is unlikely that Congress will reach agreement on bipartisan drug pricing legislation before the end of the year. House Democrats will likely vote this month on H.R. 3, the Lower Drug Costs Now Act, after the Congressional Budget Office (CBO) provides a final cost estimate. Senate Majority Leader Mitch McConnell (R-KY) has stated already that he will not take up H.R. 3 if it passes the House. The White House is urging Congress to instead pass the Senate Finance Committee’s Prescription Drug Pricing Reduction Act (S. 2543). However, Finance Committee Chairman Chuck Grassley (R-IA) so far has been unwilling to drop the bill’s penalties for drug price increases that are greater than inflation, which have drawn the ire of many Republican senators. Given the significant Republican

opposition to the bill, Leader McConnell has not committed to bringing the Finance package to the floor. It is growing more likely that legislative action on drug pricing will be pushed to next year, although pending regulatory proposals (including the administration's International Price Index model) could advance the issue in the interim.

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USMCA: CAN THIS DEAL STILL BE REACHED?

USMCA: Can this deal still be reached?

After a tumultuous few weeks with ups and downs for the prospects of when the House might consider USMCA, we begin December closer to an agreement between House Democrats and the United States Trade Representative (USTR) than at any previous moment yet tough procedural obstacles still remain. Speaker Pelosi, who saw the moderate freshmen within her caucus express frustration at the slow pace of negotiations mid-November, declared prior to the Thanksgiving holiday that such a deal was “within range.” In the days following her statement, Ambassador Lighthizer met with his counterparts from Mexico and Canada to preview changes to the agreement that he negotiated with Democrats, which was met with positive public reviews from the Mexican trade minister.

The few remaining issues left to be negotiated—just two to three, according to public statements from Ways and Means Committee Chairman Neal (D-MA)—including how the U.S. can enforce the historic labor reforms embedded in USMCA and already begun in Mexico. These include inspections in Mexico and potentially blocking goods from entering the U.S. if they were made in violation of USMCA rules. Critical for concluding these negotiations and garnering wide Democratic support is the position of organized labor. American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) President Richard Trumka is in regular contact with Ambassador Lighthizer, Speaker Nancy Pelosi (D-CA) and other House Democratic leaders. The union's support—or more likely, its neutrality—is essential to moving the process forward.

If an agreement is reached, an important tension to watch closely will be the desire from supporters and leadership to move the agreement quickly while trade skeptics will want to strictly adhere to the Trade Promotion Authority's transparency requirements and the traditional mock markup process in committee. In addition, since the substance of the Democratic Working Group's negotiations have been largely secret, including from Ways & Means Committee members that are not on the Working Group, the demands for education on the deal will be especially acute.

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CHINA: PHASE ONE OR PHASE NONE?

China: Phase One or Phase None?

Negotiations to potentially reach an interim or “phase one” deal with China also remain at a stalemate. After the Asia-Pacific Economic Cooperation (APEC) Summit scheduled for November 16 and 17 was canceled due to protests in the host city of Santiago, Chile, the planned signing of the deal where the two leaders could meet on neutral territory faded from the calendar along with the pressure to reach a deal. The next important milestone in these talks is December 15 when the U.S. is set to impose a 15 percent tariff on the remaining \$160 billion of goods (known as “List 4B”) from China that do not yet face an additional tariff. Affected products include many personal electronic devices, toys, shoes and apparel that consumers buy directly.

The U.S. and China remain divided on a number of issues, including the extent of the Chinese commitment to buy U.S. agriculture exports, whether the U.S. will not just refrain from imposing new tariffs but rollback those already imposed and how to enforce whatever structural reforms that China pledges to undertake. The already fragile relationship between the world's two largest economies can also be affected by events and other

issues like unrest in Hong Kong and legislation to certify its special trade status with the U.S.

President Trump raised the stakes for these talks in recent days by threatening to hike tariffs again if a deal is not reached. Look to increased negotiating activity—like calls among the negotiators and trips to their respective capitals—as we near the December 15 deadline to avoid the next and potentially most damaging round of tariffs.

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TAX UPDATE

Tax Update

All eyes remain on whether an end-of-year appropriations deal will come together in hopes that it can serve as a legislative vehicle for a tax package. The list of provisions for possible inclusion is length, including the SECURE Act, disaster tax relief, extension of several dozen tax extenders that have either already expired or are set to expire at the end of 2019, and TCJA technical corrections and expiring provisions. Discussions between the Senate Finance and House Ways & Means Committees are ongoing.

The bipartisan Senate Finance tax extenders taskforces also concluded their reports in the last working period with the Disaster Taskforce releasing their [final report](#).

Chairman Grassley and HELP Committee Chairman Lamar Alexander released their [“Multiemployer Pension Recapitalization and Reform Plan”](#) on November 20. The proposal aims to create new authority for the Pension Benefit Guaranty Corporation (PBGC) to aid financially troubled multiemployer pension plans and comprehensive reform for of the funding and liability rules of the system in an attempt to ensure long-term sustainability of the system.

Over in the House, the Ways and Means Committee released a clean energy tax package sponsored by Select Revenues Measures Subcommittee Chairman Mike Thompson (D-CA). The Growing Renewable Energy and Efficiency Now ([GREEN](#)) Act discussion draft extends or revises several renewable and clean energy incentives. Notably, the investment tax credit for solar would continue at 30 percent through 2024 and then continue to phase out and the production tax credit for wind would be extended at 60 percent through 2024. Several other provisions are included such as a one year credit for carbon capture and sequestration facilities and expanding the International Trade Commission (ITC) to allow energy storage to qualify for the credit. Chairman Neal has indicated a hearing would take place in the December work period to examine the proposal. It is also possible a selection of the provisions outlined in the GREEN Act could appear in a year-end tax package.

In early December, Treasury also released final regulations for the base erosion and anti-abuse tax (BEAT) that provide exceptions for certain noncash transactions and also finalized proposed regulations which allow companies to claim increased foreign tax credits against their Global Intangible Low-Taxed Income (GILTI) liability.

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FINANCIAL SERVICES UPDATE

Financial Services Update

The House recently passed several critical bills in the financial services space, including a seven-year reauthorization of the Terrorism Risk Insurance Act (TRIA) and a 10-year reauthorization of the Export-Import (Ex-Im) Bank. The TRIA reauthorization came with an overwhelming bipartisan vote. Despite initially promising bipartisan efforts in the House Financial Services Committee (HFSC), the Ex-Im bill that passed the House had substantial opposition from Republicans, including from the White House. The dispute was largely over the failure to place greater restrictions on bank loans that would benefit Chinese firms. Neither bill is likely to receive stand-alone floor time in the Senate. Instead, they would need to hitch a ride on a larger must-pass piece of legislation. TRIA does not expire

until the end of 2020, and, until a longer-term reauthorization comes together, Ex-Im will continue to travel as a short-term reauthorization for the duration of spending bills. There is almost no appetite to see it lapse as it did in the previous Administration.

HFSC held several hearings of note in November, including an examination of private equity's role in the economy. This hearing was essentially an opportunity to showcase Senator Elizabeth Warren's (D-MA) Stop Wall Street Looting Act (S. 2155), which would impose heavy restrictions on the industry. Chairwoman Maxine Waters (D-CA) has announced several hearings for the December work period, including oversight of prudential regulators and the role of artificial intelligence operating on Wall Street.

Over in the Senate, members of the Senate Banking Committee continued to hold hearings on housing reform and advanced their own bill extending TRIA for seven years. The committee will hold two critical oversight hearings this month. The first will include testimony from Randy Quarles (Vice Chairman for Supervision, Federal Reserve), Jelena McWilliams (Chairman, Federal Deposit Insurance Corporation (FDIC)), and Rodney Hood (Chairman, National Credit Union Administration (NCUA)). SEC Chairman Clayton will also be testifying before the committee. Chairman Crapo continues to show strong interest in moving cannabis banking legislation, and a strong bipartisan group of committee members is working to advance the Improving Laundering Laws and Increasing Comprehensive Information Tracking of Criminal Activity in Shell Holdings (ILLICIT CASH) Act (S. 2563), which was introduced earlier in the year to address money laundering.

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PRIVACY AND TELECOM UPDATE

Privacy and Telecom Update

New Push for Federal Privacy Legislation

As the end of first session of the 116th Congress rapidly approaches, optimism for passage of a federal privacy standard has dwindled.

Senate Commerce, Science and Transportation Committee Chairman Roger Wicker (R-MS) has been engaged in ongoing negotiations on bipartisan legislation with the Committee's Ranking Member, Maria Cantwell (D-WA), over the past several months. However, on November 26, Ranking Member Cantwell unveiled the Consumer Online Privacy Rights Act. The bill notably contains a private right of action, which has emerged as a controversial provision in privacy negotiations.

The measure would not preempt state laws and would be enforceable by the Federal Trade Commission (FTC) and state attorneys general. The bill establishes several user rights, including rights to access, deletion and correction, and contains language barring data from being used to discriminate against certain users.

On November 28, the text of a discussion draft of privacy legislation from Chairman Wicker was released to the public. The bill deviates from Ranking Member Cantwell's proposal by preempting state privacy laws, while also declining to provide for a private right of action, which the Chairman has previously dubbed as a "nonstarter."

Similar to Ranking Member Cantwell's proposal, the measure would establish several user rights, including rights to access, correction, deletion and portability of covered data. Both bills would require affirmative express consent of users in order to process sensitive covered data or transfer the data to a third party.

Chairman Wicker's draft text would grant enforcement authority to the FTC, directing the Commission to use its existing authority to combat fraud and deception, and also granting authority to state attorneys general. However, the bill would not direct the Commission to establish a separate bureau dedicated to privacy and data security, as required in Ranking Member Cantwell's proposal.

Both proposals would exempt small businesses who receive under \$25 million in annual revenue, less than half of which may be derived from transferring individuals' covered data, and process the covered data of under 100,000 individuals, houses or devices.

The Committee will convene a hearing on December 4 to consider pending privacy proposals. However, the introduction of the Consumer Online Privacy Rights Act, in conjunction with the release of Chairman Wicker's draft text, signals that bipartisan consensus on a number of key provisions has not yet been reached. Federal preemption and a private right of action are likely to be contentious topics that will be debated at length during the hearing.

Telecom Legislation

Progress is being made on legislation addressing illegal robocalls and broadband mapping. On robocalls, the Senate passed S. 151, the TRACED Act by a vote of 97-1 in May, and the House passed H.R. 3375, the Stopping Bad Robocalls Act by a vote of 429-3 in July. The bills did differ, but House and Senate Commerce leaders have been negotiating a compromise package over the last several months and reached an [agreement](#) last week. The House is expected to vote on a modified version of the Senate bill on Wednesday and send it back to the Senate for a vote on final passage. We expect the measure to easily pass both Houses.

On broadband mapping, there is wide consensus that the current Federal Communications Commission (FCC) maps of where broadband service is and is not are inaccurate and in need of improvement. The House and Senate Commerce committees each recently reported bills aimed at improving the accuracy of the maps with broad bipartisan support: H.R. 4229 and S. 1822, both named the Broadband Deployment Accuracy and Technological Availability (DATA) Act. The bills differ in several ways, but are in the process of being reconciled and are expected to pass before the end of the year.

The Satellite Television Extension and Localism Act is also set to expire at the end of 2019. This law allows satellite providers to offer out of market broadcast stations to customers not served by a local broadcaster. Historically, the law has been reauthorized every five years with little controversy; however, this time there is debate over whether or not it is still needed. Additionally, there are members who would like to use the satellite reauthorization as a vehicle for larger video marketplace reforms. While we expect some form of the law to be reauthorized before it expires on December 31, it is unclear exactly what it will look like. It is possible the reauthorization could be for less than five years, it may contain some changes to how pay TV providers bill for their services, and may limit who is eligible to receive a distant out of market signal.

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IMMIGRATION UPDATE

Immigration Update

Immigration continues to be an area of active rulemaking and frequent executive actions by the current administration. Congress and the Supreme Court are also expected to weigh in on the topic. Recent immigration policy developments and expectation for this area in the near future include:

1. DACA. On November 12, 2019, the U.S. Supreme Court heard oral arguments in the Deferred Action for Childhood Arrivals (DACA) case. The specific issue before the Court is the legality of the Trump administration's 2017 decision to rescind the Obama administration's Executive Order giving temporary work permits and temporary relief from deportation to more than 700,000 undocumented immigrants who entered the United States as children. The Justices seemed to be divided during the oral arguments, and the Supreme Court is expected to issue its final decision in the DACA case by June 2020, in the midst of next year's presidential election campaign.

2. Agriculture Immigration Reform. On November 15, 2019, the House Judiciary Committee reported out favorably [H.R. 4916, Farm Workforce Modernization Act](#), a bipartisan bill sponsored by Reps. Zoe Lofgren (D-CA) and Dan Newhouse (R-WA). The bill reforms the H-2A agricultural guest worker program to provide more flexibility for employers, while ensuring protections for workers. The bill focuses on modifications to make the program more responsive and user friendly for employers. In addition, the legislation establishes a

program for agricultural workers in the United States (and their spouses and minor children) to earn legal status through continued agricultural employment and contribution to the U.S. agricultural economy, and provides them with the option to eventually earn Legal Permanent Resident (LPR) status. Finally, the bill establishes a nationwide E-Verify system that would be mandatory for all agricultural employment, serving as the last necessary piece to ensure a legal workforce for the sector. The bill is expected to go to a vote of the whole House in the near future.

3. High-Skilled Immigration Reform. On October 16, 2019, Sens. Dick Durbin (D-IL), Patrick Leahy (D-VT), and Mazie Hirono (D-HI) introduced [S. 2603, Resolving Extended Limbo for Immigrant Employees and Families \(RELIEF\) Act](#), which contains reforms to achieve a solution to an immigrant visa backlog that has grown to be almost five million cases. The RELIEF Act addresses the legal immigration backlog by making additional visas available to those individuals who have been found eligible for permanent residence but cannot receive their green cards because there are no green cards immediately available in their family-based or employment-based category. The RELIEF Act also eliminates per-country caps on green cards for employment-based categories and raises the caps from 7 percent per country to 15 percent per country for family-based categories. Finally, it protects children from “aging out” of green card eligibility while they wait for green cards to become available to their parents by “freezing” their age at the time the green card petition was originally filed for them. The bill has been referred to the Senate Judiciary Committee, but has not been reported out of the committee yet.

4. EB-5 Program. A new regulation making significant changes to the EB-5 Immigrant Investor Program went into effect on November 21, 2019. Under the new rules, the minimum required investment amount for EB-5 immigrant investors almost doubled from \$1 million to \$1.8 million. Certain qualified high-unemployment areas can qualify for \$900,000 minimum investment amounts, up from \$500,000. The definition of the high-unemployment areas (known as the “Targeted Employment Areas”) has also changed, and their designation has been moved from local jurisdictions and states to the federal government. In all cases, the investor must still show that their investment created ten full-time equivalent jobs for U.S. workers.

5. Public Charge Rule. On August 14, 2019, the Department of Homeland Security published a regulation that significantly raised the bar for intending immigrants to prove that they will not become a “public charge,” i.e., potentially dependent on public benefits in the future. The so-called “[Public Charge Rule](#)” was enjoined by the courts before it went into effect in October 2019, and the litigation over its validity is ongoing. On October 4, 2019, President Trump signed a [Presidential Proclamation](#) that requires intending immigrants to prove that they would obtain health insurance within 30 days of entering the U.S. or show that they have the financial resources to pay for reasonably foreseeable medical costs. The Proclamation was also enjoined by the court before it went into effect, with a preliminary injunction entered on November 26, 2019, and that litigation is ongoing as well.

6. DHS Regulations. The Department of Homeland Security has proposed several other immigration-related regulations in the recent months, including a [proposal](#) to conduct an electronic H-1B lottery and [collect](#) a \$10 fee for each lottery entry; a [proposal](#) to raise the fees for immigration applications by a weighted average of 21 percent and eliminate almost all grounds to waive fees for such applications; and a [proposal](#) to charge asylum seekers an application fee for affirmative asylum applications and to require one full year before asylum seekers can be granted work authorization.

7. Regulatory Agenda. As part of its [Fall 2019 regulatory agenda](#), the administration published a list of immigration-related regulations that it plans to propose in the coming months. Among them, a regulation aimed at revising who qualifies for the H-1B visa (the most common work visa in the U.S.) “to increase focus on obtaining the best and the brightest foreign nationals” and revising the definition of employment and employer-employee relationship “to better protect U.S. workers and wages.” Another proposal promises to make similar changes to the L-1 visa program for intracompany transferees—employees of multinational corporations transferred from a foreign parent, subsidiary, branch or affiliate of a U.S. entity. A third proposal indicates that the government plans to make changes to the practical training options available to foreign students after graduation—currently, a common way for U.S. employers to hire recent university

graduates.

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