



2019 FALL POLICY OUTLOOK *A Look Ahead*

Overview

The United States-Mexico-Canada Agreement (USMCA), government funding, a number of program reauthorizations, and tax extenders will dominate the fall agenda – all against a backdrop of increasing calls for an impeachment inquiry and the 2020 presidential election.

Both chambers reconvene from the August work period on September 9th and will attempt to pass as many appropriations bills as possible before government funding expires on September 30th. Congressional leaders reached a two-year deal to avert looming mandatory budget cuts in July, reducing the likelihood of a government shutdown at the end of the fiscal year; accordingly, the week of September 16th the House is expected to consider a continuing resolution (CR). Additionally, lawmakers must pass the annual National Defense Authorization Act (NDAA) upon returning.

As of this writing, 137 House Democrats publicly support either impeaching the President or launching a formal inquiry; regardless of whether a formal impeachment inquiry is launched, a number of House committees will continue oversight of and investigations into President Trump and his Administration.

Below, we have outlined a recap of August, as well as the state-of-play for the upcoming congressional work period.

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Dates to Watch

September 9th

Both chambers return from August work period.

September 27th

The last day both chambers are scheduled to be in session before the end of the fiscal year.

September 30th

Fiscal Year 2019 ends. Temporary Assistance for Needy Families (TANF), National Flood Insurance Program (NFIP), and Export-Import Bank's charter, among other items, expire.

October 1st

Fiscal Year 2020 begins;
U.S. Supreme Court term begins.

October 15th

Both chambers return from October work period.

November 5th

2019 Election Day.

December 12th

The last scheduled day of 2019 the House is in session.

December 13th

The last scheduled day of 2019 the Senate is in session.

December 31st

Numerous provisions including tax extenders, Medicare extenders, STELAR, and FISA Section 215 expire.

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August Recap

Regulatory Actions

While Congress was on its annual August break, the Trump Administration remained busy and issued several important regulations.

Healthcare

On the healthcare front, the Centers for Medicare & Medicaid Services (CMS) issued four of the annual Medicare rules affecting Fiscal Year (FY) 2020 payment and quality programs for skilled nursing facilities, inpatient rehabilitation facilities, inpatient psychiatric facilities, and hospices. CMS also finalized its decision to expand Medicare coverage of chimeric antigen receptor T-cell (CAR-T) therapy nationwide. Lastly, the Department of Health and Human Services (HHS) issued a long-awaited proposed rule affecting substance abuse privacy records.

Labor

The Department of Labor (DOL) sent its proposed overtime rule to the White House Office of Management and Budget (OMB) for final review in August. The regulation would make 1.2 million workers newly eligible for time-and-a-half pay once they work more than 40 hours in a week and increase the salary threshold below which workers automatically receive overtime wages from \$23,600 per year to \$35,308 per year.

Environment

On August 9th, the Environmental Protection Agency (EPA) issued a [proposed change](#) to Clean Water Act (CWA) regulations. The rule would limit states' rights to review Section 401 certifications and aims to streamline the permitting and licensing process for energy infrastructure projects. Moreover, the Department of the Interior (DOI) announced a final [rule](#) revising portions of the Endangered Species Act (ESA). The rule would ensure all species proposed for delisting or reclassification receive the same analysis to determine whether they meet the statutory definitions of a threatened or endangered species, as is done when determining whether to add a species to the list.

Immigration

In August, the Department of Homeland Security (DHS) also finalized a "public charge" [rule](#), which would give the government the ability to deny green cards or visas for legal immigrants who may utilize government assistance such as Medicaid, food stamps, or housing subsidies. The new rule is set to go into effect October 15th, though a number of states have filed a lawsuit seeking to block its implementation. The Trump Administration also unveiled a new rule that would allow migrant families to be held indefinitely, thus superseding the Flores agreement, which limits detention of children to 20 days.

Budget/Debt Ceiling Deal

Congressional leaders successfully negotiated a debt ceiling and budget deal shortly before the district work period. On August 2nd, President Trump signed the [Bipartisan Budget Act of 2019](#), which included a \$324 billion increase in discretionary spending above existing budget sequestration limits over the next two fiscal years in order to avoid automatic spending cuts mandated by the Budget Control Act of 2011 (BCA). The law also suspends the debt ceiling through July 31, 2021. Lawmakers will now attempt to advance appropriations bills to avert a government shutdown on October 1st. House leadership has announced they will bring a CR to the floor the week of September 16. The CR is expected to run until late November or early December in order to provide more time for the Appropriations Committees in both chambers to complete their work.

While the House already approved 10 of 12 spending bills, the Senate is expected to move its 12 bills in three packages with Labor, HHS, and Defense serving as an anchor for the first package. The first Senate appropriations bills are [scheduled](#) to be marked up by the full committee on September 12th.

Gun Control

Following a series of mass shootings occurring over the past month, Democrats called for the Senate to come back into session to consider House-passed legislation expanding background checks for firearms purchases. Senate Majority Leader Mitch McConnell (R-KY) resisted such calls for an early return and instead asked the chairmen of the Judiciary, HELP, and Commerce Committees to work on legislation to address gun violence for the September Senate agenda. Leader McConnell has stated he will only bring legislation to the Senate floor that has the President's support, and the White House is currently reviewing several policy proposals. The President's decision on which policies to support is expected in early September. While red flag law legislation has broad bipartisan support in the Senate, Senate Democrats are unlikely to support a legislative package that does not also include expanded background checks. If congressional leaders and the President are not able to reach a bipartisan agreement or deal, gun violence measures could be included in appropriations bills, as discussed [below](#).

Healthcare

Healthcare stakeholders spent much of the summer consumed by White House administrative actions and congressional debates over surprise medical bills and prescription drug pricing. We expect the focus on these areas to continue this fall, with the White House hinting at additional regulatory moves and Congress attempting to enact legislation.

Prior to August, the House Energy and Commerce (E&C) Committee approved the Reauthorizing and Extending America's Community Health Act (H.R. 2328), which incorporated the No Surprises Act (H.R. 3630), legislation to address surprise medical bills. Chairman Frank Pallone (D-NJ) and Ranking Member Greg Walden's (R-OR) legislation includes a benchmark payment based on median in-network rates and a provider-backed amendment that added an independent dispute resolution process to the bill. In the Senate, the Committee on Health, Education, Labor and Pensions (HELP) approved the Lower Health Care Costs Act (S. 1895), a sweeping bill that includes provisions to address surprise medical bills, as well as drug pricing, public health issues, and other healthcare topics. The HELP Committee's approach to surprise medical bills also sets rates based on the median in-network contracted rate for services in that geographic area, similar to the E&C approach, but does not include any arbitration provisions.

The Senate Finance Committee advanced the bipartisan Prescription Drug Pricing Reduction Act, which includes major reforms to Medicare Parts B and D, Medicaid, and biosimilars. Additionally, the Senate Judiciary Committee advanced four drug pricing measures aimed at addressing anticompetitive behavior such as product hopping and patent thickening to thwart competing generics and biosimilars from coming to the market.

Meanwhile, the U.S. Court of Appeals for the Fifth Circuit began hearing oral arguments in *Texas v. Azar*, in which 18 GOP-led states and the Trump Administration are challenging the constitutionality of the Affordable Care Act (ACA) due to the elimination of the individual mandate penalty. At the same time, the House continued to hold hearings and oversee the Trump Administration's role in the lawsuit. A ruling from the Fifth Circuit is expected this fall.

Lastly, in addition to the normal Medicare Fee for Service payment rules, the Trump Administration released a sweeping Executive Order to promote healthcare transparency, new value-based payment reforms, demonstration projects related to kidney disease and radiation oncology, reforms to Health Savings Accounts and Health Reimbursement Accounts, among other administrative actions.

September Look Ahead

Expiring Provisions

This month, lawmakers must take action to address several provisions and authorizations set to expire on September 30th, including: the National Flood Insurance Program (NFIP); the Export-Import (Ex-Im) bank charter; pipeline safety reauthorization; and the Temporary Assistance for Needy Families (TANF) program. Funding for the special diabetes program, agencies on aging, community health centers, and U.S. territories' Medicaid programs also will expire on September 30th, as will a delay in scheduled Medicaid disproportionate share hospital (DSH) cuts. On December 31st, the Medicare Geographic Practice Cost Indices (GPCI) floor extension expires along with delays of the health insurance tax and medical device tax. The Senate also may take up legislation to reauthorize the Violence Against Women Act (VAWA), which lapsed in February; the House passed its version of VAWA reauthorization in April.

Government Funding

Lawmakers can return to the appropriations process under somewhat less pressure this fall, as the successful negotiation of a budget caps deal prior to the district work period reduced the likelihood of a government shutdown. Subcommittee allocations based on the new spending agreement will be made public no later than September 12th, which could complicate the process, provided a lack of agreement on the specific levels.

The House left for the August work period having passed 10 appropriations bills – Agriculture, Commerce-Justice-Science (CJS), Defense, Energy and Water, Financial Services, Interior-Environment, Labor-HHS, MilCon-VA, State-Foreign Operations, and Transportation-Housing and Urban Development (THUD). The two remaining appropriations bills, Legislative Branch and Homeland Security, both present challenges due to internal divisions within the Democratic Caucus. The Senate, which delayed action on individual appropriations bills until the passage of a budget deal, must now approve all 12 spending bills. The chamber is expected to advance two to three minibus packages: the first containing Defense, Labor-HHS, Energy and Water, and State and Foreign Operations; while the second and third packages will include all remaining bills (the most notable being CJS). The minibus containing CJS appropriations likely will feature a prolonged debate, as the Senate may consider including gun control measures in the bill.

Congressional leaders have agreed to avoid including “poison pills” in FY 2020 spending bills in an attempt to move the process forward. This agreement will be tested as both chambers consider the often-contentious Homeland Security appropriations bill. Democrats may seek to include provisions blocking the Trump Administration’s immigration proposals, including the recently-announced “public charge” rule and funding for a barrier along the U.S. southern border, while Republicans may be under pressure from the White House to allocate funding for a border wall.

Healthcare

Congressional Outlook

We expect bipartisan congressional efforts on healthcare to center around three key priorities in the coming months. This fall, the House and Senate will attempt to reconcile differences and pass legislation on surprise billing, prescription drug pricing, and the so-called healthcare “extenders.” In addition to the legislation from the HELP and Energy & Commerce Committees discussed earlier, we expect to see more activity in the surprise billing space with House Ways and Means Committee Chairman Richard Neal (D-MA) and Ranking Member Kevin Brady (R-TX) also possibly considering their own surprise billing legislation in September. The House Education and Labor Committee may also mark up its own surprise billing legislation. At the center of the debate between the numerous competing proposals is how to address payment disputes (benchmark approach, arbitration/independent dispute resolution (IDR), or a hybrid process). While we could see additional proposals and some progress in September, there is a growing sentiment that this highly controversial and complex issue could be months away from a solution.

Seeing little opportunity for a Senate vote on drug pricing legislation in September, Senate Finance Committee Chairman Chuck Grassley (R-IA) began discussions with the House in an attempt to produce a bipartisan, bicameral legislative package. Additionally, House Speaker Nancy Pelosi (D-CA) plans to unveil her much-anticipated drug pricing proposal after the August district work period. It is expected to require HHS to negotiate prices for certain high-cost drugs in Medicare, among other things. It remains to be seen whether the House, Senate, and White House can agree on a package of meaningful drug pricing reforms. However, like the surprise billing debate, this is another highly controversial and complex issue that could take months to resolve. Further complicating the healthcare landscape, there

are numerous Medicare and Medicaid extenders, including delaying cuts to Medicaid hospital payments, Puerto Rico’s Medicaid program, funding for Community Health Centers, and other issues, which will need to be dealt with before they expire on September 30th or December 31st. Extending these provisions will require significant offsets, which puts additional pressure on Congress to come to an agreement on drug pricing and surprise medical billing legislation.

Administration Outlook

In addition to the congressional activity detailed above, the Trump Administration may unveil a healthcare plan this September as an alternative to the various plans being proposed by 2020 Democratic presidential candidates. Among other things, the President’s plan could include protections for individuals with pre-existing conditions, the sale of health insurance across state lines, expansion of health savings accounts (HSAs), an overhaul of Medicaid, and policies to address surprise medical billing. White House officials are currently weighing the possibility of having President Trump announce the proposal during a speech this fall. In addition, this fall, the Trump Administration is expected to issue a Notice of Proposed Rule Making (NPRM) on their highly controversial prescription drug International Pricing Index. We could also see further action on implementation of President Trump’s executive order to bolster price transparency across the healthcare industry, more details on value-based direct contracting demos, and Medicare payment rules impacting hospital outpatient departments, physician payments, home health, and end stage renal disease providers.

National Defense Authorization Act

Leaders of the House and Senate Armed Services Committees will begin conference proceedings on the FY 2020 National Defense Authorization Act (NDAA) this month. The House bill, [H.R. 2500](#), would include approximately \$633 billion in base funding for the Department of Defense (DOD) and \$69 billion in Overseas Contingency Operations (OCO) funding, while the Senate version, [S. 1790](#), would authorize \$642.5 billion for DOD and \$75.9 billion for OCO. Though staff continued negotiations during August, a number of differences between the House and Senate versions remain, including funding levels, issues related to Iran, military assistance along the U.S-Mexico border, and efforts to address contamination from per- and polyfluoroalkyl substances (PFAS) – also known as “forever chemicals” – around military sites. Of note, President Trump has threatened to veto the House version of the NDAA.

Nominations

Processing nominations remains a top priority for Leader McConnell, with the Senate having already confirmed 60 federal judges this year. Before leaving for August, the Senate processed 66 nominations by voice vote, including 13 district court judges. Upon returning in September, the chamber is slated to continue consideration of a number of nominees. There are 89 nominations pending on the Executive Calendar, including 39 judicial nominees, while 112 judgeships remain vacant.

Court	Authorized Judgeships	Vacancies	Nominees Pending	Nominees Pending for Future Vacancies
US Court of Appeals	179	4	1	0
US District Courts	677	97	34	1
US Court of International Trade	9	2	0	0
US Court of Federal Claims	16	9	4	0
US Supreme Court	9	0	0	0
Total	890	112	39	1

To date, the Senate has confirmed 480 key executive branch nominations. Currently, four Cabinet-level positions have acting status: the Department of Homeland Security, the Department of Labor, the Office of the Director of National Intelligence, and the Small Business Administration.

Additional Agenda Items

Cybersecurity

Calls for enhanced election security are expected to gain steam ahead of the 2020 presidential election, as Democrats continue to pressure Leader McConnell to bring an election security measure to the floor. Senate Democrats may again attempt to force votes on a [bill](#) sponsored by Senator Mark Warner (D-VA) requiring campaigns to report to federal authorities any foreign interference attempts. [Legislation](#) from Senator Amy Klobuchar (D-MN) – which would require the use of paper ballots in federal elections – may have more bipartisan support, as it largely mirrors a [bill](#) cosponsored with Senator James Lankford (R-OK) in the 115th Congress. House Democrats are likely to move an election security bill, which is expected to be a combination of the Honest Ads Act ([H.R. 2592](#)) and the Duty to Report Act ([S. 1247](#)).

Lawmakers could choose to take up bills aimed at bolstering supply chain security, particularly with respect to Chinese products. A [bill](#) introduced by Senators Mike Crapo (R-ID) and Warner would establish a national supply chain security center within the Office of National Intelligence to collect and disseminate to government agencies information on supply chain threats. Additionally, the Trump Administration may begin issuing licenses for U.S. firms seeking to sell products to Huawei – a process which has been delayed amid rising trade tensions. Notably, there have been calls to allow law enforcement officials to access information on encrypted devices. Attorney General William Barr reiterated the Trump Administration’s interest in the issue during a [speech](#) before stakeholders in July.

Over the August recess, Director of National Intelligence (DNI) Dan Coats left his position, as did his deputy, Sue Gordon. President Trump has tapped National Counterterrorism Center Director Joseph Maguire to be Acting DNI Director. There is a sense of urgency from the intelligence community that the Administration move quickly to fill the position permanently.

In recent months, U.S. cities have become targets of ransomware. Congress and the Department of Homeland Security, specifically CISA, have taken notice. We can expect to see the issue become even more prevalent in the coming months with legislation and hearings as Congress grapples with how to help prevent such attacks from happening.

Energy and Environment

Combating climate change remains a top priority for Democrats as well as a growing number of Republicans. Before leaving for August, House E&C Committee Democrats introduced a plan to reach 100 percent clean energy by 2050. In the coming months, the E&C Environment and Climate Change Subcommittee and Energy Subcommittee are expected to continue a series of hearings to examine ways to reduce emissions, modernize the electric grid, and develop a decarbonization strategy to achieve a 100 percent clean energy economy. Moreover, House Democrats are expected to maintain a robust agenda for energy and environmental policy by holding congressional hearings in all committees of jurisdiction.

In the Senate, Energy and Natural Resources Committee Chairman Lisa Murkowski (R-AK) plans to continue efforts to build on her recently launched Strategic Energy Initiative (SEI). Over recess, Chairman

Murkowski released a [discussion draft](#) of the Strategic Energy for America (SEA) Act, which aims to modernize federal agencies for “an era of strategic energy competition.”

Republicans and Democrats in both chambers have introduced carbon tax bills directed at curbing carbon emissions. We expect conversations to continue between legislators from both parties over how to best utilize the revenues from a carbon tax. [Legislation](#) to improve energy efficiency in federal buildings may also be taken up, spearheaded by Senators Rob Portman (R-OH) and Jeanne Shaheen (D-NH). A House companion [measure](#) has been introduced by Reps. Peter Welch (D-VT) and David McKinley (R-WV).

Lawmakers also must advance a pipeline safety reauthorization measure, which expires at the end of September. While both the Senate and House currently have legislation in varying stages of review, there are notable differences between the bills, and neither has been taken up by the entire chamber. Given their status and differences, it is unlikely Congress will approve a reauthorization measure before the September 30th deadline.

Financial Services

When Congress returns, House Financial Services Committee Democrats are expected to continue investigations into President Trump’s finances. President Trump’s lawyers and House Democrats appeared before the U.S. Court of Appeals for the Second Circuit in New York on August 23rd, as the President continues to attempt to block congressional subpoenas for his financial records.

The Committee also has scheduled [several hearings](#) on protecting student loan borrowers, oversight of the Securities and Exchange Commission (SEC), and threats to the U.S. financial system. Moreover, the Task Force on Financial Technology will hold a hearing at the end of September on “The Future of Real-Time Payments.” On August 5th, the Federal Reserve [announced](#) its plan to build its own infrastructure – the FedNow Service – to facilitate payments in the U.S., a highly controversial decision. While many have questioned this move, House Financial Services Committee Chairwoman Maxine Waters (D-CA) [applauded](#) the Fed’s announcement.

Diversity and inclusion will remain high on Chairwoman Waters’ priority list through the end of the year. Following [March](#) and [April](#) full Committee hearings, the Chairwoman and House Financial Services Subcommittee on Diversity and Inclusion Chairwoman Joyce Beatty (D-OH) sent requests to eight of the country’s largest financial institutions to obtain their diversity and inclusion data and policies from 2015 to the present. Over the recess, the Committee released its findings, which [concluded](#) more work is needed to improve diversity at large banks.

Also, during August, House Financial Services Committee Ranking Member Patrick McHenry (R-NC) pressed Chairwoman Waters to hold hearings on cybersecurity, in light of the Capital One data breach in July. Ranking Member McHenry first requested a cybersecurity hearing in a [January letter](#) to Chairwoman Waters.

In the Senate, the Banking Committee has scheduled a hearing on September 12th to examine insurance capital standards (ICS) and also likely will hold hearings with regulators on agency initiatives, as well as implementation of [S. 2155](#), the Economic Growth, Regulatory Relief, and Consumer Protection Act, which was enacted in May 2018. Committee Republicans [sent a letter](#) on July 30th to regulators, which called on Federal Reserve Chairman Jerome Powell, Comptroller of the Currency Joseph Otting, and

Federal Deposit Insurance Corporation (FDIC) Chairman Jelena McWilliams to ease rules and regulations for large and small banks over the next year.

The Senate also could take up the Setting Every Community up for Retirement Enhancement (SECURE) Act of 2019 ([H.R. 1994](#)). The bill overwhelmingly passed in the House on May 23rd by a vote of 417-3, but since has since stalled in the Senate. There is hope the SECURE Act will be attached to a piece of must-pass legislation, but to date, Leader McConnell has not indicated interest in bringing the bill up for debate.

Immigration

Immigration remains a contentious issue in Washington, particularly following the August announcements of the Trump Administration's finalized "public charge" rule and proposed regulation aimed at terminating the Flores agreement, as well as the workplace raids conducted by Immigration and Customs Enforcement (ICE) to round up undocumented immigrants in Mississippi.

Before leaving for August, the Senate Judiciary Committee advanced the [Secure and Protect Act of 2019](#) along party lines. The legislation, which would amend both the Trafficking Victims Protection Reauthorization Act (TVPRA) and the Immigration and Nationality Act (INA), aims to "end abuse of the asylum system" and would establish refugee application and processing centers outside of the United States. While Leader McConnell has not indicated whether he intends to consider this bill on the floor, any such legislation would be considered dead-on-arrival in the House. Instead, House committees will continue to hold oversight hearings to examine the Trump Administration's immigration policies, including issues related to family separations at the border, detention center conditions, asylum restrictions, and staffing at DHS agencies.

Lawmakers also may take up another resolution to end the President's declaration of a national emergency at the southern border. In March, President Trump vetoed the first [resolution](#), which had passed the Senate by a vote of 59-41 and the House by a vote of 248-181, but the subsequent vote failed to garner the two-thirds majority required to override a presidential veto.

As noted above, we also expect the perennial funding fight over the border wall to once again complicate Congress' efforts to advance spending measures.

Infrastructure

Republican and Democratic leaders in both chambers continue to point to infrastructure as an issue on which the two sides can work together. Though Democrats and President Trump appeared to reach an [agreement](#) in the spring to pursue a \$2 trillion infrastructure package, talks later broke down as the President refused to engage in additional meetings due to ongoing congressional investigations into his Administration. As such, Congress has turned its attention toward the reauthorization of a narrower surface transportation bill.

In late July, the Senate took the first step toward advancing the multi-year surface transportation reauthorization, as the Environment and Public Works Committee unanimously approved a \$287 billion [measure](#). While the current five-year legislation, the Fixing America's Surface Transportation (FAST) Act, does not expire until September 30, 2020, both chambers will continue to work through the reauthorization process this fall. The Senate Banking, Commerce, and Finance Committees are responsible for the transit, highway safety, and revenue components of the reauthorization, respectively. In the House, the Transportation and Infrastructure Committee holds jurisdiction over the

majority of the reauthorization, with the exception of revenue, which falls to the Ways and Means Committee. Senate Finance Committee Chairman Grassley has indicated a gas tax increase would not be a revenue option for the new surface transportation bill.

Tax

This fall, Congress is expected to continue work to address expired and expiring tax extenders in addition to technical corrections to the Tax Cuts and Jobs Act (TCJA).

During August, Senate Finance Committee Chairman Grassley and Ranking Member Ron Wyden (D-OR) released several task force reports summarizing the work conducted by bipartisan task forces on temporary tax policy. The task forces examined more than 40 temporary tax provisions that expired or are set to expire between December 31, 2017 and December 31, 2019, including: workforce and community development, [energy, business cost recovery](#), and health tax policies, as well as a combined group consisting of [individual, excise, and other temporary policies](#). The energy report included provisions pertaining to biodiesel – a top priority for Chairman Grassley – and other renewable resources. Chairman Grassley has indicated he intends to focus on putting together a legislative package to address temporary tax policy and to schedule a markup of such a measure upon Congress' return in September. The Chairman also confirmed the next potential vehicle for expired and expiring tax provisions is the funding deal to continue government operations beyond the end of the fiscal year, which ends on September 30th.

In June, the House Ways and Means Committee approved a separate extenders [package](#) by a 25-17 vote, which included provisions to address biodiesel and other renewables. However, Republican leadership in both the Ways and Means and Finance Committees remain opposed to the legislation due to the pay-fors, which would accelerate the expiration of several provisions of the TCJA.

Lawmakers also may address technical corrections to the TCJA, most notably the qualified improvement property (QIP) tax, which prevents QIP investments from qualifying for immediate expensing. Such technical corrections – as well as a bipartisan retirement reform [package](#) already approved by the House this year – likely will factor into extender talks.

Technology

With the implementation date of the California Consumer Privacy Act (CCPA) fast approaching, there is renewed momentum for Congress to develop a national privacy standard. At this point, key Members in both chambers are working in a bipartisan manner.

In the Senate, Commerce Committee Chairman Roger Wicker (R-MS) and Ranking Member Maria Cantwell (D-WA) have met regularly throughout August. Senators Jerry Moran (R-KS) and Richard Blumenthal (D-CT) drafted their own measure, which they intend to introduce in September. The Senate Judiciary Committee also has convened a technology task force that could offer privacy legislation, while the Senate Banking Committee is considering legislation focused on privacy in the financial services sector.

In the House, E&C Subcommittee on Consumer Protection Chairwoman Jan Schakowsky (D-IL) and Ranking Member Cathy McMorris Rodgers (R-WA) continue to work towards crafting bipartisan privacy legislation. However, in order to move the issue forward, Democrats will advance their own legislation if they are unable to reach a bipartisan agreement in the early fall. Meanwhile, Reps. Anna Eshoo (D-CA)

and Lofgren (D-CA) circulated their own draft bill before the break and encouraged stakeholder feedback.

Content moderation practices are again under scrutiny from Democrats who claim platforms have not taken sufficient action to prevent the spread of misinformation or hate speech on their sites. Platforms also have drawn criticism from Republicans who accuse them of political bias. Both parties have suggested changes to Section 230 of the Communications Decency Act (CDA), which grants broad protections for online platforms whose users may engage in illegal actions. Over the break, Reps. Pallone and Walden, leaders of the House E&C Committee, sent a [letter](#) to U.S. Trade Representative Robert Lighthizer expressing apprehension with the inclusion of language similar to Sec. 230 in trade agreements, given the ongoing debate in Congress as to the appropriate scope of protections that should be afforded online services. In the Senate, Senator Josh Hawley (R-MO) introduced a [bill](#) that would grant Section 230 protections to large companies only after they prove neutrality. The legislation currently does not have any Democratic cosponsors. The Trump Administration [reportedly](#) is also drafting an executive order that would address Section 230 protections.

While data privacy and content moderation will continue to receive significant attention ahead of the 2020 election, several other issues are on lawmakers' radar: ongoing antitrust investigations (see [Trending Issues](#)); artificial intelligence (AI), including algorithmic bias; the passage of the American Vision for Safer Transportation through Advancement of Revolutionary Technologies Act (AV START Act) – a new [draft](#) of which is being crafted with stakeholder feedback; and the development of 5G technologies (including spectrum reallocation, rural access, and supply chain regulations).

Trade

The last few months have been consumed by the Administration's efforts to ratify the United States-Mexico-Canada Agreement (USMCA); an intensifying trade dispute with China; negotiations with the European Union (EU), Japan, and a potential post-Brexit trade agreement with the UK; and proposed retaliation against the EU as part of the 15-year dispute over aircraft subsidies. We expect trade will continue to be a key focus through the end of the year.

USMCA is the Administration's top legislative priority. The Office of the United States Trade Representative (USTR) and House Democrats worked through August to address Democrats' requested changes to the agreement. The House Democratic working group – appointed by Speaker Pelosi to negotiate changes to USMCA – sent the Administration detailed proposals to address the deal's provisions on labor, environment, pharmaceuticals and enforcement in early August, and discussions are ongoing. Under Trade Promotion Authority (TPA), USTR may send up an implementing bill any time after both chambers reconvene on September 9th.

While USMCA advocates are hoping for a vote in late September or early October, Speaker Pelosi continues to insist "substance must drive timing," and Democratic concerns must be resolved before the deal is brought to the floor.

At the same time, the Administration's trade dispute with China likely will be ongoing through the fall. On September 1st, USTR imposed a 15 percent duty on approximately \$300 billion worth of Chinese goods, which further escalated the ongoing dispute. The initial 15 percent tariff went into effect on September 1 for products ([List 4A](#)) where less than 75 percent of the 2018 U.S. imports of that product were from China. On December 15, USTR is expected to impose an additional 15 percent tariff on products ([List 4B](#)) where 75 percent or more of the 2018 U.S. imports of that product were from China.

USTR is expected to increase its 25 percent tariff on \$250 billion in Section 301 tariffs to 30 percent, effective October 1st. Despite heightened tensions between U.S. and Chinese officials, a September meeting – as initially planned – remains possible.

Additional items on the fall trade agenda include the following: ongoing negotiations with Japan and the EU; potential negotiations with the United Kingdom post-Brexit; potential auto tariffs; and other possible trade remedies related to the EU's subsidization of Airbus or the French digital services tax, among others. Senate Finance Committee Chairman Grassley also is expected to introduce bipartisan legislation to curb the President's unilateral tariff authority, though it remains to be seen whether Congress will take up such legislation.

Trending Issues

Antitrust

Policymakers will continue to investigate antitrust issues this fall, with a focus on the tech sector. Before recess, the Department of Justice (DOJ) [announced](#) an antitrust review of how big tech companies accumulate and sustain market power, while the Federal Trade Commission (FTC) initiated an antitrust inquiry into Facebook. Additionally, a group of state attorneys general [reportedly](#) will move forward with their own probe of big tech companies. On Capitol Hill, the House Judiciary Subcommittee on Antitrust will resume its ongoing bipartisan [investigation](#) into digital marketplaces. On September 17th, the Senate Judiciary Subcommittee on Antitrust will hold an oversight hearing with FTC Chairman Joseph Simons and Assistant Attorney General for Antitrust Makan Delrahim to discuss the enforcement of antitrust laws. Subcommittee Chairman Mike Lee (R-UT) is expected to press officials on simultaneous antitrust investigations, as he has previously [argued](#) for enforcement to be carried out by one agency to ensure it is “more coherent, efficient, and effective.” The Committee will also hold a September 24th hearing entitled, “Competition in Digital Technology Markets: Examining Acquisitions of Nascent or Potential Competitors by Digital Platforms.”

Arbitration

This week, the House Judiciary Committee is planning to mark up the [Forced Arbitration Injustice Repeal \(FAIR\) Act](#). The bill eliminates mandatory arbitration clauses in employment, consumer, and civil rights cases. The full House is expected to take up the measure this work period, though there is no expectation the Senate will move the bill.

Cannabis

Attention to cannabis policy continues to rise as 2020 presidential candidates discuss the topic on the campaign trail and state marijuana legislation is considered nationwide. Congress may seek to prevent federal marijuana enforcement in states that have legalized medical or recreational forms of cannabis with the [STATES Act](#), which was introduced earlier this year. A bipartisan amendment attached to the House-passed CJS Appropriations bill contains similar provisions, but appears unlikely to pass in this manner in the Senate given Appropriations Committee Chairman Richard Shelby's (R-AL) opposition to non-appropriations riders. Congress could advance the bipartisan [SAFE Banking Act](#), which would create protections for banks providing financial services to cannabis-related businesses in states that have legalized forms of the drug. In addition, following pressure from lawmakers, the Food and Drug Administration (FDA) has [reaffirmed](#) it is evaluating the regulatory framework on cannabidiol (CBD) derived products.

Congressional Modernization

Before the House left for recess, the House Select Committee on the Modernization of Congress issued its second set of congressional [recommendations](#) addressing opportunities for technology. Recommendations include requiring House Information Resources (HIR) to reform the approval process for outside technology vendors and allow Member offices to test new technologies. The Committee's recommendations have been forwarded to the full House in the form of a resolution, and could receive support from additional Members in the fall.

Digital Currencies

On June 18th, Facebook [introduced](#) Libra, a global digital currency that intends to serve the unbanked and facilitate a lower-cost, more connected global financial system. Members on both sides of the aisle expressed concerns with the cryptocurrency and its governing entity – the Libra Association – and have suggested the current cryptocurrency market lacks a clear regulatory framework. In August, House Financial Services Committee Chairwoman Waters, led a congressional delegation to Switzerland, where Members discussed Libra with representatives from the State Secretariat for International Financial Matters (SIF), the Swiss Federal Data Protection and Information Commissioner (FDPIC), the Financial Market Supervisory Authority (FINMA) and Swiss regulators. Chairwoman Waters [stated](#) the discussions were “helpful in understanding the status, complexity, and magnitude of Facebook’s plans.” We expect congressional interest in this digital currency to continue through the fall.

Conclusion

After reconvening on September 9th, Congress enters a three-week work period before recessing until mid-October. We expect lawmakers in both chambers to continue to make progress on their legislative priorities in the coming weeks, including must-pass appropriations bills, measures to reauthorize expiring programs, and a number of additional agenda items.

The fall work period also will be influenced by the expanding focus on the 2020 presidential election, as Labor Day marked the unofficial start of a more intense phase of the presidential race. The crowded Democratic primary field inevitably will continue to narrow as candidates work to distinguish their policy positions and solidify support from various blocs of voters within their party.

As always, we stand ready to assist you; please feel free to contact us if you have any questions.