What to expect next in Washington, DC

January 2019

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Introduction

In 2019, Washington returns to an era of divided government. House Democrats are expected to conduct extensive oversight in an effort to exert an institutional check on the Trump administration, while Senate Republicans are likely to continue confirming agency and judicial nominees with their majority enhanced. There is some optimism about bipartisan compromise for a few policy priorities, including consumer data privacy and infrastructure, but finding legislative success will be a delicate balance as evidenced by funding disagreements leading to a government shutdown and in light of 2020 political considerations. This publication from the EY Office of Public Policy highlights key US public policy developments to watch in the new Congress and other issues policymakers and regulators may face in the months ahead.

Anticipated events and key dates

- 29 January: State of the Union address
- Mid-to late January: Tax extenders for 2018 would have to be reinstated before start of 2019 filing season
- 1 March: Debt limit suspension expires
The 116th Congress was sworn in on 3 January as a Democratic House majority took office for the first time since 2010. Shaping their agenda as a rebuke of Trump administration policies, House Democrats’ top priorities are expected to include stabilization of the Affordable Care Act, oversight of drug pricing, infrastructure revitalization, government ethics reform, gun control, climate change, and oversight of the administration and companies in certain business sectors, such as big banks and large technology firms. Meanwhile, Republicans expanded their majority in the Senate by two seats, and Senate Majority Leader Mitch McConnell (R-KY) has already expressed his determination to confirm as many judicial and administrative nominees as possible. Senate Republicans also have their own policy priorities on issues such as health care and infrastructure and will pursue legislation in these areas. The House and

**Expectations for 2019 at a glance**

- Deregulation: Expect the Trump administration to continue deregulatory efforts.
- Nominations: Senate Republicans enter 2019 with an expanded majority, which will benefit their ongoing efforts to confirm judicial and administration nominees at a historic pace.
- Oversight: House Democrats are expected to exercise vigorous oversight over Trump administration policies through 21 incoming committee chairpersons who will hold subpoena power, and may launch investigations on matters under consideration by Special Counsel Robert Mueller.

**Potential areas for bipartisan agreement**

- Trade: Trade deals such as the United States-Mexico-Canada Agreement (USMCA) present a unique opportunity for congressional Republicans and Democrats to work together. However, both Republicans and Democrats would like to see their party’s policy priorities satisfied in any such agreements.
- Consumer data privacy: There is broad agreement that a national consumer privacy standard should be enacted amid urging from industry, the European Union’s enactment of the General Data Protection Regulation (GDPR) and growing concern about the fragmentation of state laws following the adoption of the California Consumer Privacy Act (CCPA). However, many questions remain, and the Democratic House and Republican Senate will likely approach the topic differently. As such, timing, structure and the ability of the parties to agree will impact what happens.
- Infrastructure: Both parties have released +$1 trillion policy plans and have been steadfast in their commitment to revitalize the nation’s infrastructure. However, questions and disagreements remain about how to fund these efforts, and there is no timetable for legislation.

**Challenges**

- “Big ticket” legislation: Both parties want to achieve success, but finding common ground in a partisan environment will be a heavy lift. If cooperation breaks down early, expect each party to retreat to its corner, making vital tasks such as keeping the government open an even greater challenge.
- Comity: There may be near-term cordiality, but 2020 campaign dynamics will likely fuel reversion to divisive rhetoric and drive political action leading up to Election Day.
- Fiscal restraint: With the national debt over $22 trillion and the federal deficit nearing $1 trillion, fiscal restraint has been missing for some time and is likely to remain so until after the 2020 elections. Policy movements to address fiscal issues such as entitlement reform win few friends.
Senate will serve as ideological counterweights during the 116th Congress, with limited opportunity for bipartisan dealmaking.

In the House Financial Services Committee, incoming Chair Maxine Waters (D-CA) has stated her intent to investigate alleged lending and dealings between President Donald Trump and large financial institutions, which she calls the “Trump money trail.” Moreover, Waters is expected to conduct vigorous oversight of recent changes at the Consumer Financial Protection Bureau, push for affordable housing policies, explore the possibility of housing finance reform legislation, create a new Diversity and Inclusion (D+I) subcommittee, establish a FinTech task force, and examine the structure and voting practices of the US Export-Import Bank.

**Political dynamics of Democratic-led House**

The 2018 election brought in a flurry of new faces within the Democratic Party. The number of moderates within the party grew significantly, yet the progressive wing gained increasing national attention thanks to the rise of far-left candidates.

Increasing divisions and frustrations with the way the caucus has been governed led Speaker Pelosi (D-CA) to make some key concessions, including agreeing to serve no more than four years as Speaker.

The Senate Banking Committee will experience less change than its House counterpart, but there may be room for bipartisan, bicameral agreement in limited areas. In his second term as Chairman, Sen. Mike Crapo (R-ID) would like to see the committee move on capital markets regulatory relief, among other priorities.

**Trade**

**US-Mexico-Canada Agreement**

The United States, Canada and Mexico concluded negotiations on a new trade agreement, the US-Mexico-Canada Agreement (USMCA), on 30 September. The trilateral trade deal was signed by President Trump, then-Mexican President Enrique Peña Nieto and Canadian Prime Minister Justin Trudeau on 30 November on the margins of the G20 Summit in Argentina. The agreement updates and revises certain provisions of the North American Free Trade Agreement (NAFTA), which has been in place since 1994. The USMCA must be approved by the legislatures of all three countries before it takes effect.

One area of significant difference between the USMCA and NAFTA is its treatment of the cross-border auto industry, including a substantial increase in the percentage of autos that must be made in the three countries to qualify for duty-free treatment. The USMCA also addresses new issues such as digital commerce that did not exist when NAFTA was negotiated. Following the USMCA signing, Canada, Mexico and the US announced the establishment of a financial regulatory forum to provide a venue for the three countries to meet annually to discuss cross-border and emerging financial sector developments, financial stability risks and regulatory practices. The new forum replaces one that was created by NAFTA.

The process for obtaining legislative approval of the USMCA is expected to be most challenging in the United States. Several members of Congress, particularly those in the House of Representatives, already have announced that they will seek certain changes to the agreement. Democrats have indicated that they will push for stronger environmental protections and stronger enforcement mechanisms for the labor provisions in the agreement, among other changes. Mexico’s top trade negotiator has indicated that Mexico will work with the US to address the Democrats’ concerns on
Republicans have raised concerns that the USMCA makes it more difficult for businesses in most sectors to access a dispute settlement process to resolve trade disputes.

Procedurally, the next step in the US is for the Trump administration to submit legislation to Congress to implement the agreement, after which Congress will have 90 days to act on it under Trade Promotion Authority rules. One concern in the US business and legislative communities is that President Trump will withdraw from NAFTA, which currently remains in force, as a way of pressuring legislators to vote for the USMCA. To withdraw, the President would have to provide six months’ advance notification to Canada and Mexico of his intent to do so. Withdrawal from NAFTA without the USMCA in effect could significantly disrupt supply chains and other business transactions among the three countries.

Approval of the USMCA is expected to go more smoothly in Mexico and Canada. The Canadian Government already has submitted an implementing bill to Parliament, the first step in the approval process. The Mexican Senate also is expected to move quickly to ratify the USMCA so that Mexico’s new president, Andrés Manuel López Obrador, can focus on his own agenda.

The USMCA does not address lifting US tariffs on steel and aluminum imports from Canada and Mexico, which were imposed earlier in 2018. The resolution of these tariffs remains under discussion.

China
A much-anticipated dinner meeting between President Trump and Chinese President Xi Jinping at the margins of the G20 Summit headed off a planned increase in US tariffs on $200 billion worth of Chinese products from 10% to 25% starting 1 January 2019. Following the dinner, the leaders each announced a modest “cease-fire” agreement, although the two announcements differed in detail. President Trump agreed to put on hold further tariff actions, and Xi committed in exchange to take action in several areas. For example, Trump announced that Xi committed to purchase “a not yet agreed upon, but very substantial, amount of agricultural, energy, industrial, and other product” from the US. The leaders also agreed to begin immediate negotiations on many contentious issues. The US announcement indicated that structural reforms are on the negotiating table, including China’s practices relating to forced technology transfers, intellectual property theft and other areas of concern. The White House has indicated that the 25% tariff hike will go into effect if negotiations are not successfully completed within 90 days.

While meeting the 1 March 2019 timeline will be highly challenging because of the nature of the issues on the table, signs of progress have emerged since the dinner meeting, including large purchases of soybeans from US farmers by China. Reports indicate that the Chinese Government is considering changes to its controversial Made in China 2025 program, the goal of which is to make China a world leader in certain high-tech fields, and instead increase its openness to foreign companies. In addition, the Chinese Government has signaled that it will temporarily reduce tariffs on US autos from the current 40% to 15% between 1 January and 31 March 2019. An advisor to the Chinese Supreme People’s Court also stated that China is speeding up the approval process for a revised patent law to address US concerns about Chinese intellectual property protections.

Still, continued progress in the negotiations is expected to be challenging. The United States Trade Representative issued an official notice that tariffs on certain Chinese products would increase to 25% on 2 March, setting a firm deadline for satisfying US concerns. In addition, the Trump administration continues to engage in aggressive
rhetoric about China. This includes condemnation by the administration of Chinese hacking and economic espionage, in response to which multiple US Government agencies carried out a series of retaliatory actions against China.

**Export Control Reform Act**

On 19 November, the U.S. Department of Commerce issued an advance notice of proposed rulemaking (ANPRM) seeking comment on criteria for identifying and defining “emerging technologies that are essential to U.S. national security.” Through this effort, the department also suggests it will seek to determine whether effective controls can be implemented to secure these technologies while avoiding a negative impact on US leadership in the science, technology, engineering and manufacturing sectors. The ANPRM includes 14 representative categories of technology, including AI and machine learning; genomics; computer vision and audio manipulation technology; microprocessor technology; quantum computing; mind-machine interfaces; and flight control algorithms. The potential application of export controls on a sweeping range of technologies would be highly disruptive to many companies beyond Silicon Valley firms.

**Infrastructure**

Infrastructure continues to be a policy area that both political parties suggest is a potential opportunity for bipartisan compromise. In February 2018, House Democrats and the Trump administration released separate plans outlining a more than $1 trillion legislative effort to revitalize the country’s infrastructure.

Following the November election, Senate Majority Leader McConnell stated, “The one issue that Leader Pelosi and I discussed this morning, where there could be a possible bipartisan agreement, is something on infrastructure.” President Trump and Speaker Nancy Pelosi (D-CA) have proffered similar sentiments.

Other prominent policymakers in the 116th Congress agree. Incoming House Transportation and Infrastructure Committee Chairman Peter DeFazio (D-OR) has stated that he plans to hold immediate hearings to gather ideas and recommendations to “solve the country’s greatest infrastructure needs.” On 12 December, DeFazio announced that the House has an “ambitious late May timeline for a $500 billion infrastructure package.” The proposal includes less than half of previously proposed spending by the White House and House Democratic leadership, and pay-fors have not yet been considered. According to the Congressional Budget Office, public spending on infrastructure as a share of GDP sits at an all-time low (2.3%), another fact that may spur Congress into action.

Republicans and Democrats so far have been unable to agree on potential pay-for mechanisms. The plans debated most often right now include raising the federal gas tax, instituting a national vehicle miles-traveled tax, and sale and lease buybacks. Each comes with benefits and pitfalls. Fiscal conservatives among House and Senate Republicans are reluctant to commit to spending $1 trillion before addressing the national debt more broadly, complicating this dynamic.

In 2019, the most likely scenario for policy movement will be in the form of smaller legislative vehicles and targeted deregulatory efforts (e.g., construction and building permitting reform).

**Immigration**

Congressional action on immigration is expected to be limited in the near term. The Deferred Action for Childhood Arrivals (DACA) litigation is moving through the courts. The future of DACA individuals was previously used as
a bargaining chip for President Trump’s request for $5 billion in border wall funding, and continues to be a point of discussion. With the GOP retaining control of the Senate and the House flipping to the Democrats, Congress will face serious uphill challenges in any legislative effort around immigration issues.

**Expected immigration actions by the administration**

- Rescission of the work authorization eligibility of certain spouses of H-1B visa holders (known as H-4 EAD) is still expected in the coming year.
- Comprehensive overhaul or elimination of the Optional Practical Training (OPT) program (on-the-job training for international students who attend US universities) is unlikely at this point, though there may be changes intended to reduce fraud and abuse.

The Trump administration continues to pursue immigration policy changes through agency actions. Of significance to the business community, on 3 December 2018, U.S. Citizenship and Immigration Services (USCIS) issued a notice of proposed rulemaking that would make changes to the administration of the H-1B filing and selection. As proposed, USCIS would require employers to electronically pre-register with USCIS on behalf of H-1B beneficiaries under a new process and reverse the order in which the agency selects registrations (intended to favor advanced degrees over bachelor’s degrees). Depending on the timing of the final rulemaking, it is possible that the changes will go into effect for the next filing season (April 2019). This proposal, specifically the implementation timeline, has received significant pushback from affected stakeholders through the public comment process, which closed on 2 January. However, it is not clear how the administration will respond to comments.

**Consumer data privacy**

In response to the recent implementation of the European Union’s General Data Protection Regulation (GDPR) and passage of the California Consumer Privacy Act (CCPA), US policymakers at the federal and state levels are expected to push for policy changes in 2019.

The administration is driving a multipronged, coordinated interagency response to address expressed concerns about the need for consumer data protection balanced against an emerging patchwork of incongruous state and international laws:

- The renegotiation of the EU-US Privacy Shield agreement in October, which provides companies on both sides of the Atlantic with a legal means “to comply with data protection requirements when transferring personal data.”
- An ongoing public-private effort through the National Institute of Standards and Technology (NIST) to develop a voluntary privacy framework intended to help organizations manage privacy risk
- Actions taken by the Federal Trade Commission (FTC), including testimony before Congress asking for expanded authority to meet consumer expectations; the FTC also has scheduled a series of conferences and listening sessions for 2019 to examine issues related to consumer data privacy in more detail
- A request for comment on ways the administration could advance consumer privacy without stifling innovation through the Department of Commerce; the administration is expected to incorporate public feedback into a proposal for establishing a unified national privacy framework, but only Congress has the authority to establish new laws
Even though the 116th Congress is divided, privacy legislation may be one area for agreement, but like all legislative reforms, it will be an uphill challenge. Sticking points are likely to include:

- The scope of federal preemption of state laws
- How such a law would be enacted and enforced
- The establishment of a new private right of action
- The extent to which employee data is covered
- Other more technical details around the implementation of consumer privacy rights given the complexity of interconnected and legacy networks in the ecosystem

Both the House and Senate are likely to convene hearings in the coming months to examine the topic and consider legislative proposals.

**Consumer data privacy activities in the states**
The California State Legislature adopted a few changes to the CCPA before it gavelled out of session in 2018. One of the key changes is that enforcement of the new law is currently not set to go into effect until 1 July 2020. California is also expected to consider other additional changes to the law in the 2019 legislative session. However, the nature and extent of those changes is unclear.

A number of states are likely to consider measures similar to California’s as they convene in 2019. The potential patchwork effect of other states seeking to adopt their own consumer privacy laws is one of the major forces driving federal efforts.

**2020 presidential election**
As we move into 2019, many are already looking toward the 2020 presidential election and the potential score of Democratic contenders seeking to challenge President Trump, the presumed Republican nominee. Although the election is nearly two years away, political undercurrents are likely to dominate the news cycle moving forward.

Sen. Elizabeth Warren (D-MA) recently announced the formation of an exploratory committee for a presidential run. Two additional Democratic candidates have formally declared they are running: Maryland Congressman John Delaney and West Virginia state Sen. Richard Ojeda. Several other prominent figures have announced that they are looking at the election and will make formal announcements by early 2019. That list of more than two dozen aspirants includes former Vice President Joe Biden, former New York City Mayor Michael Bloomberg, Sen. Cory Booker (D-NJ), Sen. Kamala Harris (D-CA) and Sen. Bernie Sanders (I-VT).

The kickoff debate for Democrats is expected as early as spring 2019 – accelerating the timetable for Democrats to raise money, hire staff and raise national profiles. The Iowa caucuses, the first major contest of the presidential primary season, will take place 3 February 2020. The winner of the Democratic primary will formally accept the nomination during the 2020 Democratic National Convention scheduled from 13 to 16 July 2020.
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