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2020 Legislative Outlook

Prospects for policy achievements in an election year

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Contents

Key takeaways

Congress and President Trump cleared a significant number of health and tax priorities to close out 2019: repeal of major Affordable Care Act taxes; extension of many temporary tax extender provisions through 2020, and some longer; the SECURE Act retirement package that had been in limbo for much of 2019; some discrete tax policy fixes, including repeal of certain Tax Cuts and Jobs Act (TCJA) provisions; and disaster tax relief. However, many other priority items couldn't be agreed to in eleventh-hour negotiations on the year-end bill to fund the government through fiscal 2020, including TCJA technical corrections. Other items, such as addressing drug prices and surprise billing, could not be completed and have been postponed for consideration until this year.

The congressional schedule for 2020 was already uncertain given expected Senate activity regarding the House impeachment inquiry, and the US standoff with Iran and ensuing oversight and debate may add to that uncertainty. Still, policy debates have already begun and will continue, with the presidential race upon us. A post-election lame-duck session could yield a flurry of legislative activity.

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1 Political overview

Impeachment and Iran. The House in December voted out two articles of impeachment against President Trump. There has been disagreement between Democrats and Republicans over the ground rules for the next step in the impeachment process — the Senate trial — but the transmittal of the articles is merely a matter of time, and the Senate has blocked out January for the process to unfold. How the process will play out is still not exactly clear, leaving the early portion of the congressional session subject to uncertainty, which has been exacerbated by US tensions with Iran. Republicans, including Senate Majority Leader Mitch McConnell (R-KY), have criticized pursuing an impeachment process against a president when foreign policy concerns are heightened.

Democrats in Congress maintain that impeachment and the Iran situation can be handled simultaneously. This recalls their position last year that they could scrutinize the White House while at the same time partner with the president on policy victories. It is noteworthy that the two sides eventually came together to get some long-pending business done at year-end, and that could continue.

The presidential race will influence the congressional agenda as Republicans potentially put forward a middle-class tax cut plan as a contrast to Democratic candidates' tax increase proposals on the wealthy. Health care will remain a major focus for Congress, including on drug prices, and on the campaign trail as Democratic candidates embrace variations of "Medicare for All" proposals and some more modest plans.

Unfinished business and new starters. The congressional agenda is split between unfinished business and new starters. The year-end bill didn't completely clear the deck: left on the table by congressional and administration negotiators were longer or permanent extensions of expiring tax provisions, TCJA technical corrections sought by Republicans in exchange for child tax credit (CTC) and earned income tax credit (EITC) expansions backed by Democrats, and additional tax incentives for clean energy, including expansion of the tax credit for electric vehicles (EVs).

Health items carried over from last year include surprise billing legislation, which was the subject of a bicameral agreement reached in December, and drug prices. Senate Finance Committee Chair Chuck Grassley (R-IA) suggested in December that drug pricing legislation would by far be the most high-profile issue to come before the committee in 2020.

New starters could include infrastructure investment. Congress and the administration will at least need to deal with highway funding in some fashion before the current authorization expires on September 30. The Senate Environment and Public Works Committee has approved a five-year highway bill — the Finance Committee has yet to mark up the revenue piece — and Leader McConnell has suggested that would be the extent of action on the issue given that a grander plan would probably require funding from a gas tax increase, which he opposes, or other controversial revenue proposals.

However, the House plans to both address highway funding and roll out a broader infrastructure framework proposal. House Speaker Nancy Pelosi (D-CA) was quoted in the *Wall Street Journal* on December 27 as saying, "We want to send over infrastructure, again, trying to work with the White House and the Republicans on what they're willing to — how far they're willing to go on that." Identifying a palatable revenue source has always been the challenge for infrastructure legislation, and it isn't clear whether the House effort will include offsets, at least at the start. Ways and Means Committee Chair Richard Neal (D-MA) reportedly said on January 8 that members are interested in an infrastructure bill.

Likely soon to be in the "finished business" category is the long-negotiated US-Mexico-Canada Agreement (USMCA), which House Democrats pushed through their chamber in December after securing stronger and more enforceable labor rules and other changes. Full Senate consideration may get held up by impeachment proceedings, but the 25—3 vote in the Finance Committee on January 7 demonstrated broad support for the pact. That will leave much of the trade agenda in the rearview mirror, at least in terms of Congress. The President is slated to sign a phase one trade deal with China on January 15, though a phase two deal may wait until after the election. In any event, it is likely that trade policy with China will remain under discussion.

Key 2020 dates. The president is expected to lay out his policy priorities on February 4 in the State of the Union address, which this year could be heavy on foreign policy. The FY 2021 budget proposal will be released on February 10. Trump budgets have typically focused on deep cuts to federal spending, with less of a focus on domestic policy proposals. It remains to be seen if the forthcoming budget will include new tax or other policy ideas.

Most deadlines that can compel action on legislation are toward the end of the year. An exception is the May 22 expiration of nontax health care "extenders," which include funding for bipartisan priorities, such as community health centers. The shorter extension in the year-end 2019 bill was intended to create pressure for surprise medical billing and drug price legislation.

Otherwise, the next major deadline is the September 30 expiration of government funding and highway programs and funding. Given the imminent November elections, it is likely that the government will be funded on a short-term basis into December under a continuing resolution (CR), and Congress likely will work on a longer-term bill in a post-election lame-duck session. Since this would be a "must-pass" bill, it can attract other items, including tax provisions.

Refundable provisions, technical corrections. In play for the 2019 year-end bill, right up until the final negotiations, were provisions making the CTC fully refundable and extending the EITC to childless adults, which Democrats presented as a necessary concession for supporting TCJA technical corrections. Republicans balked at the cost of such a package, which varied based on what was included but was at least in the tens of billions of dollars. There is urgency for many TCJA technical corrections, including a fix for depreciation of qualified improvement property (QIP) and a clarification of the effective date for the net operating loss (NOL) provisions for fiscal year taxpayers. However, the insistence by Democrats to link technical corrections to spending on refundable tax credits will make enactment difficult.

Politico reported Ways and Means Committee Chair Neal as saying on January 8 that he would like the House to vote on CTC and EITC expansions this year. Additionally, regarding the QIP technical correction, Neal said, "We certainly don't have a closed mind on the depreciation issue, but we do think that that was a blatant mistake that was made in the tax bill and we'd like some leverage for it." Finance Committee Chair Grassley, however, sees such a deal as unlikely in a divided Congress after the time spent working on an agreement last year that never materialized. "We were exploring all those things for about six weeks before we adopted our extender bill and it just didn't fly in the Senate among Republicans, particularly in the leadership," he said on January 8, according to Bloomberg.

Also omitted from the year-end bill were additional renewable energy tax incentives. Among the items under consideration were a longer extension of both the wind and solar electricity credits, new investment credits for offshore wind and energy storage, and an increase in the cap for the EV tax credit, which was advocated vigorously by representatives of states where the auto industry has a large footprint. The Growing Renewable Energy and Efficiency Now (GREEN) Act discussion draft released by Ways and Means Democrats in November addressed the EV credit, proposing to increase the 200,000 qualifying vehicles cap to 600,000 while reducing the $7,500 credit by $500. The package also proposes a longer duration for many energy tax extenders. Next steps for the package are unclear, but committee action is possible, especially as climate change is a focus in the elections.

Middle-class tax cut. Republicans have created expectations for an election-year middle-class tax cut proposal. In November, President Trump said, "We're going to be doing a very major middle-income tax cut, mostly devoted to middle income." Top House Republican tax-writer Kevin Brady (R-TX) said that such a plan would likely call for permanence of TCJA provisions for individuals that expire after 2025. The contours of the package remained fluid, but Trump advisors have floated options that include a 15% rate for the middle class, a payroll tax cut, changing capital gains taxation, exempting savings from taxes and reducing the number of tax brackets.

It is unlikely that Democrats will be open to making any TCJA provisions permanent or considering new tax cuts after two years of criticizing the law, at least without rolling back tax cuts and provisions for high-income Americans or corporations. A GOP tax plan would serve as a contrast to Democratic presidential candidates' tax increase proposals, which at the more liberal end include broad wealth taxes, an increase in the highest individual tax rate and an increase in the corporate tax rate. More centrist Democratic candidates have proposed increases in current taxes on estates and capital gains, as well as more modest increases in the corporate tax rate.

Beyond the individual provisions expiring after 2025, other TCJA deadlines loom on the horizon that will be discussed in Congress in 2020 and beyond, including:

- A 30% limitation on the deduction of interest expense that is calculated without depreciation and amortization after 2021 (i.e., EBIT vs. EBITDA)

- Bonus depreciation phased down 20% yearly after 2022
- Amortization of R&D expense beginning in 2022
- Reduction in the Section 250 deduction for purposes of the global intangible low-taxed income (GILTI) and foreign-derived intangible income (FDII) rules

Regulations. On the regulatory front, TCJA implementation projects continue to be rolled out by the Treasury and IRS. Moving through the review process and set for release in the near future are (1) hybrid dividends and payments under IRC Sections 245(e) and 267A final rules, (2) proposed guidance under IRC Section 1502 and certain other sections, and (3) final rules regarding the business interest limitation under IRC Section 163(j). Other projects likely to move forward this year include final GILTI high-tax election rules, additional final base erosion and anti-abuse tax (BEAT) regulations, finalization of foreign tax credit regulations released in December, new proposed interest expense regulations, branch foreign tax credit regulations focusing on financial services income, and final passive foreign investment company regulations. The Treasury hopes to complete all TCJA regulations by this fall, as reported by *Politico* on January 13.

Digital services taxes (DSTs) and BEPS 2.0. On the international front, the focus is on the OECD BEPS 2.0 project that seeks to discourage companies from adopting unilateral DSTs by adopting broader changes to the way multinational corporations are taxed on their worldwide income. The OECD seeks to reach consensus in 2020. The United States has proposed retaliatory tariffs in response to the 3% French DST effective in 2019, and the situation threatens to devolve into a trade dispute, unless a broader, multilateral solution is adopted.

On January 7, French Minister of the Economy and Finance Bruno Le Maire said that he spoke to Treasury Secretary Steven Mnuchin regarding the French 3% DST and they are aiming for some type of agreement soon. The pressure appears connected to avoiding an escalation of trade tensions over the DST, as Le Maire separately reiterated that proposed US tariffs in response to the DST would be met with retaliation.

The United States and France agreed to a months-long cooling-off period last summer as tensions escalated over the DST that is effective as of the beginning of 2019, with President Trump targeting French wine for tariffs and quipping that he always believed American wine was superior.

The détente expired, and, on December 2, the Office of the US Trade Representative (USTR) proposed tariffs under Section 301 of up to 100% on $2.4b in French goods.

The proposal, made in conjunction with a report concluding that the DST is unreasonable and discriminatory and burdens US commerce, targets such products as wine, cast-iron cookware and handbags. Those industries have aired objections. The USTR is also exploring whether to open Section 301 investigations into the digital services taxes of Austria, Italy and Turkey.

The G7 finance ministers have instructed the OECD to develop a new paradigm for taxing the global profits of most multinational corporations (MNCs). The goal is to head off a trade dispute between the United States and countries that believe the digitization of the global economy allows companies operating under existing international tax rules to avoid paying sufficient taxes where they have customers but little or no physical presence.

The OECD approach, if successful, would require most MNCs to allocate profits into market jurisdictions in exchange for repeal of the DSTs. The profit allocation would be based on a formula that measures so-called excess profits and allocates them to market jurisdictions based on where MNCs have significant sales instead of based on existing arm's-length pricing rules that are more fact-based. The new profit allocation rules would also create a new taxing right in the market jurisdiction country. The profit allocation and taxable nexus regime are referred to as Pillar One of the OECD approach and could result in many companies paying more taxes in higher tax rate jurisdictions. A separate OECD work stream under the OECD approach, referred to as Pillar Two and modeled on the US international tax changes adopted in 2017, aims to ensure that all MNCs pay a minimum level of tax somewhere by imposing a minimum tax on foreign profits, as well as developing backstops to the minimum tax that would allow countries to deny tax deductions on related-party payments flowing from high-tax to low-tax countries when those profits have not been taxed sufficiently under a minimum tax rule.

The finance ministers and the OECD see this year as critical for designing rules that ultimately would be endorsed at a higher political level and implemented through multilateral tax treaties and domestic law changes over the next two or three years.

The United States in early December further complicated the fragile political discussions.

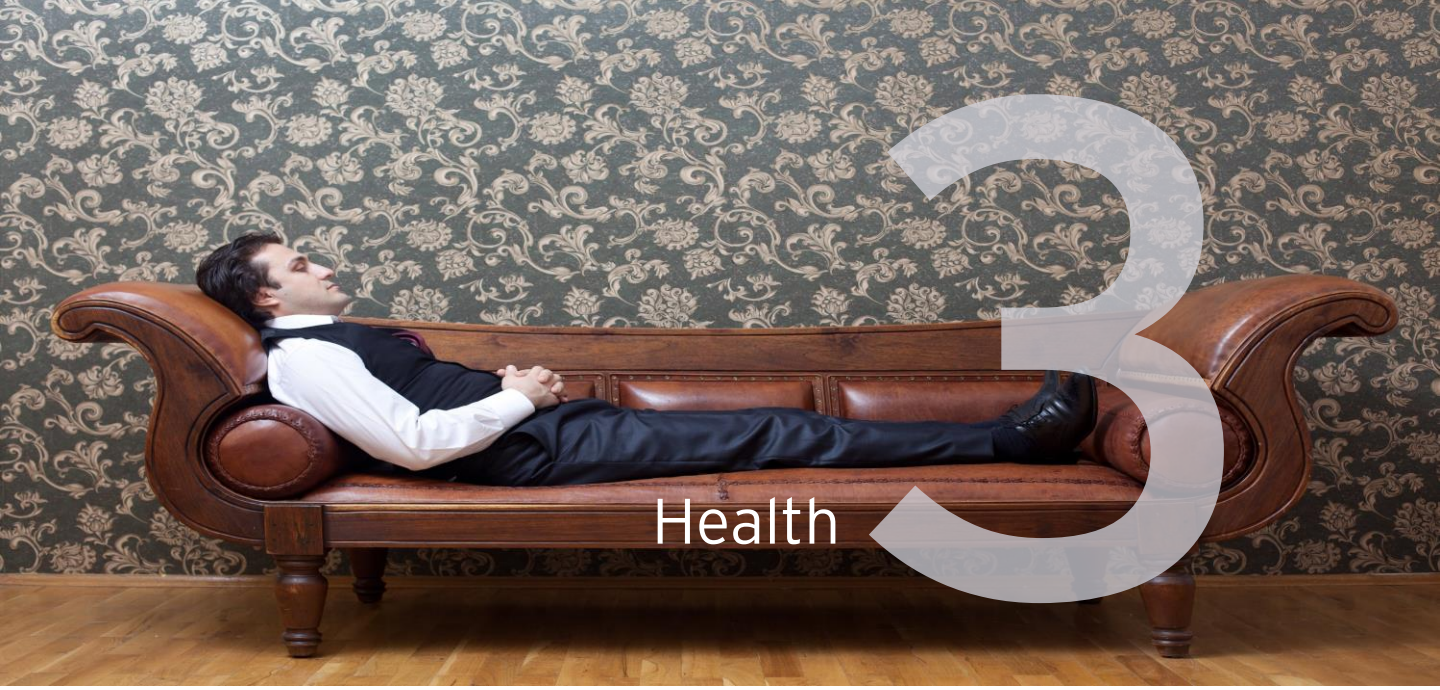
Secretary Mnuchin said that the United States no longer backs such a mandatory formula and allocation regime that won't have sufficient political support in the United States, and, thus, the only viable approach would be to make it optional for companies. Mnuchin's statement came as an increasing number of non-technology MNCs, including consumer products companies and manufacturers, began to push back against a new global tax regime that would force them to potentially pay higher taxes so that DSTs (mostly targeting high-tech companies) would be eventually repealed.

Despite the change in the US position, the OECD continues to push forward with building consensus for Pillar One. In late January, the Inclusive Framework (currently 137 countries involved in the OECD's efforts) will be given a document that is expected to propose an approach and timeline to continue to develop Pillars One and Two. For now, the impact of the US position and whether an optional approach to Pillar One is even viable are being left to the G7 finance ministers to decide later this year.

Work on Pillar Two will likely move forward regardless of Pillar One being scaled back or abandoned. Pillar Two envisions the adoption of a minimum tax regime, so that an MNC with an effective tax rate (ETR) below a minimum rate would pay the excess in taxes to the country in which it has its global headquarters. This regime is modeled on the GILTI regime the United States enacted in the TCJA. Unlike Pillar One, which practically can only be implemented if there is a global consensus around the formulaic approach, the Pillar Two initiatives could largely be framed as recommendations or best practices and adopted ad hoc through changes to the domestic laws of individual countries, so a binding international consensus is not necessary.

The key political question in designing the minimum tax is the level at which a company's ETR is computed in determining whether the ETR triggers the minimum tax. A consolidated worldwide average ETR is the approach backed by the United States and most MNEs globally, but some countries prefer a less-favorable subsidiary-by-subsidiary approach.

The OECD hopes to complete work on the Pillar Two details this year, seeking further input from stakeholders in at least one more consultation document in the spring, with the goal of pushing countries to adopt the minimum tax and possible backstop rules as early as 2021.



3 Health

Congress enters 2020 with hopes of resolving some top-of-mind health care issues initially intended for inclusion in last year's big appropriations package, but which were ultimately left out as leadership was unable to reach an agreement. While the year-end package included several big health care items, including repeal of three Affordable Care Act (ACA) taxes — the "Cadillac tax," medical device tax and health insurer fee — top priorities that include bills to address surprise medical billing and rising drug prices were left out, and a bundle of health care "extenders" were only funded through May 22 of this year. This spring funding deadline sets up another must-pass health care package, which leadership is eyeing for inclusion of these outstanding priorities.

Health care extenders. The extension through May 22 applies to health care extenders that include funding for priority items, such as community health centers, the National Health Service Corps, the Teaching Health Center Graduate Medical Education Program, special diabetes programs, outreach and assistance for low-income programs, quality measure endorsement and selection, funding for substance-use disorder treatments, spousal impoverishment protections, and the Money Follows the Person demo, among other items. Historically, funding for the extenders package has come from money raised by cutting other health care items, and leadership is aiming to reach agreement on the surprise medical billing and/or drug pricing packages by the May deadline to serve as a pay-for.

Surprise billing. Lawmakers aimed to include a measure on surprise medical billing in 2019 year-end legislation but ultimately could not reach agreement on the right solution for paying out-of-network providers in such situations.

In the weeks leading up to year-end discussions, House Energy and Commerce and Senate HELP Committee leaders negotiated a bipartisan deal that would set benchmark payment rates and create a baseball-style arbitration process that would allow providers to appeal claims over $750, hoping to appease both provider and hospital groups, which favor arbitration, and insurer and employer groups, which favor a benchmark. House Ways and Means Committee leadership, however, has come out in opposition to a benchmark and plans to flex its jurisdiction on the issue with its own hearing or markup on an alternative bill focusing on consumer protections and likely punting the payment decision to the agencies. Senators Bill Cassidy (R-LA) and Maggie Hassan (D-NH) are also leading a group of senators who want arbitration to play a bigger role in the final bill. While initially opposed to the idea of arbitration, the Trump Administration has since lightened its stance and said it favors Congress reaching a solution.

Prescription drugs. One small prescription drug bill — the bipartisan CREATES Act — was included in the 2019 year-end appropriations package. However, a larger package of bills addressing the hot-button issue still eludes compromise. Republicans vehemently oppose the House-passed Democratic bill (H.R. 3) that would allow Medicare to negotiate drug prices, and, instead, House Republicans proposed a package of smaller initiatives that focus on increased market transparency and access to generic drugs (H.R. 19). In the Senate, Finance Committee leaders Grassley and Ron Wyden (D-OR) are pushing their bipartisan package (S. 2543) as the only package with the ability to secure 60 votes. However, more Republican support is likely needed before Majority Leader McConnell agrees to put it on the floor, as six Republicans opposed the bill in committee. Competing Republican-backed legislation in the Finance Committee is being led by Senator Mike Crapo (R-ID) and is similar to the House Republican proposal, both of which lack the controversial provision in the Grassley-Wyden bill to make drug companies pay back the government when they raise prices higher than inflation. Many centrist lawmakers are also pushing for narrower bipartisan measures, such as deals that cap out-of-pocket costs, which may be more likely to move than a more sweeping package until after the election.

The administration has thrown its support behind the Grassley-Wyden bill and is also planning the rollout of more of its own drug pricing proposals in the months to come.

This includes the expected release of a proposal that would create an International Pricing Index demonstration for Part B drugs, basing the reimbursement for these physician-administered drugs on a group of peer countries. The administration is also planning to move forward with finalizing a proposed rule that would allow states to import certain drugs from Canada and draft guidance letting drugmakers import their own drugs intended for distribution abroad. It is currently working with states, such as Florida, to review importation plans that have already been passed out of their state legislatures.

Rural and underserved areas. The House Ways and Means Committee plans an increased focus on health care issues plaguing rural and underserved areas following the launch of a task force on the issue late last year. In November, the task force issued a request for information asking where it should focus its legislation and how these communities can address gaps in care delivery and achieve better outcomes.

Interoperability and health IT. Late last year, Representatives Diana DeGette (D-CO) and Fred Upton (R-MI) sent a letter to stakeholders asking for input on what to include in a so-called Cures 2.0 package. In response, providers and health IT groups are urging Congress to look into privacy and security implications of third-party health apps, largely focused on what they view as shortcomings in the administration's proposed interoperability and information blocking rules and calling for a slowdown on implementation. The administration's rule is expected to be finalized in the coming months along with a rule to increase the information insurers must provide beneficiaries about their out-of-pocket costs through an online portal. Congress will also explore how health care entities use and share information amid controversial news of increased third-party access to patient data.

Value-based payment models. The CMS Innovation Center (CMMI) is also poised to have a big year under newly appointed Director Brad Smith, as application periods for kidney and primary care first models are underway and the Emergency Triage, Treat, and Transport Model is expected to be launched in 2020. The Next Generation ACO Model also sunsets at the end of 2020, and CMMI will likely consider whether to make it permanent or develop the next iteration ACO model. The administration is also working on finalizing Stark and anti-kickback changes that are aimed at encouraging participation and removing barriers to value-based payment models.

The courts. Several blockbuster health care cases are currently in the courts and may have a greater hand at shaping health care policy than Congress or the administration in 2020. The most consequential case is the latest constitutional challenge to the ACA, *Texas vs. the United States*. Last month, the 5th Circuit Court of Appeals issued its long-awaited ruling, siding with a lower court that the individual mandate was unconstitutional and sending the case back for it to determine which parts of the law can remain absent the mandate. Democratic attorneys general and the House are asking for an expedited review by the Supreme Court of the case, aiming for a ruling that does not stretch out past the 2020 elections.

The Supreme Court is also reviewing a slew of other ACA- and regulatory-related health care cases. This includes a challenge brought by health insurance companies seeking to obtain $12b in risk corridor payments that were blocked by Congress, and the judgment of that case will have implications for other cases also under review, such as the ACA's cost-sharing reduction program, which was canceled in 2017. Also pending are lawsuits challenging the administration's expansion of association health plans and short-term limited duration health plans, expansion of site-neutral payment cuts and cuts to the 340B drug discount program, Medicaid work requirements, nondiscrimination and contraceptive provisions, and a transparency rule that attempts to force hospitals to disclose insurer-negotiated rates, among other challenges.

4 Retirement

After years of work, Congress passed legislation making a number of significant changes to retirement and pension policy designed to expand coverage and promote retirement security. The Setting Every Community Up for Retirement Enhancement (SECURE) Act was included as part of the year-end bill and signed into law. Major provisions of the bill would promote retirement plans for employees of small businesses through the creation of open multiple employer plans, as well as new and expanded tax credits. The bill is intended to help individuals manage their savings in retirement by delaying the start of required minimum distributions, making it easier for plan sponsors to provide lifetime income options, and providing new benefit statement information. The cost of the bill was offset by new restrictions on inherited IRAs and defined contribution plans. Important issues need regulatory clarification, especially with respect to inherited IRAs and the increase in the age at which required minimum distributions begin.

Congress did not reach agreement on comprehensive multiemployer plan solvency, though it did provide relief to assure that coal miners will continue to receive pension and retiree health benefits. Work on competing proposals to prevent the insolvency of several major multiemployer plans and the Pension Benefit Guaranty Corporation (PBGC) will continue in 2020, but sharp differences between the parties make it unlikely that any agreement will be achieved before the November election.

Leading legislators in both houses hope to build on the success of SECURE by advancing more ambitious proposals in this second session of the 116th Congress.

Ways and Means Committee Chair Neal has long advocated broad coverage expansion through enactment of his auto-IRA/auto-401(k) proposals to require all employers with more than 10 employees to provide a retirement plan.

Across the dome, Senators Rob Portman (R-OH) and Ben Cardin (D-MD) have introduced comprehensive legislation that does share many provisions, though not the employer mandate, with other legislation Neal has sponsored. Portman and Cardin include a significant expansion of the Saver's Credit in their bill. One particularly contentious issue that could emerge in Congress's deliberations involves easing the rules governing the electronic delivery of benefit statements and plan documents.

5 Financial services

For the banking committees in the House and Senate, the giant appropriations bills that passed at the end of the year included what had been considered low-hanging fruit, such as a seven-year reauthorization of the Terrorism Risk Insurance Program and another seven-year extension of the Export-Import Bank. The omnibus language on the National Flood Insurance Program (NFIP) only extended the NFIP through September 30, however, so Congress will have to revisit that issue later this year, and the conflict between coastal members seeking to keep premiums affordable vs. others looking to ensure the NFIP's solvency in future years seems no closer to being resolved.

House Financial Services Committee. Chair Maxine Waters (D-CA) released the committee's schedule of hearings for January, which will address accounting issues early on. Newly installed Investor Protection, Entrepreneurship, and Capital Markets Subcommittee Chair Brad Sherman (D-CA), a CPA who took over when Carolyn Maloney (D-NY) won the chairmanship of the House Oversight Committee, has promised greater scrutiny of the Public Company Accounting Oversight Board (PCAOB) and the Financial Accounting Standards Board (FASB), and Sherman wasted little time in scheduling an oversight hearing for January 15, focused on those two agencies.

The agenda also includes two hearings (January 14 and January 29) devoted to the Office of the Comptroller of the Currency's (OCC) proposed overhaul of the 1977 Community Reinvestment Act (CRA), which requires financial institutions to

operate in underserved areas that previously were subject to "redlining" by banks. Waters has called the OCC proposal, which the FDIC also adopted on December 12, a "brazen attempt to weaken" how the CRA is implemented "under the guise of modernization." The Federal Reserve has not signed on to the OCC proposal, and Fed Governor Lael Brainard laid out a critique of the proposal in a speech on January 8, suggesting an alternative approach. Comptroller Joseph Otting declined to attend the committee's December 8 hearing with other banking regulators, and Waters has said she wants Otting to testify at one of the CRA hearings in January.

Thirty-six percent "usury" rate cap. The committee also plans a hearing related to H.R. 5050, Representative Chuy Garcia's (D-IL) bill that would extend to all consumers the existing 36% rate cap on loans to military service members. That bill was dropped from the committee's last markup in December at the request of some moderate Democrats, but Chair Waters appears intent on revisiting it, with a hearing focusing on how some payday lenders have partnered with banks in an effort to evade state interest rate caps. The hearing was originally set for January 30 but has now been postponed.

Senate Banking Committee. While the committee held a number of hearings in 2019, it held only one legislative markup last year — a brief session on November 20 to report out an extension of the Terrorism Risk Insurance Program. Chair Crapo has said that he doesn't want to approve bills on party-line votes because they won't be given floor time, and bipartisan agreements have proved elusive for the committee so far.

In November, the House passed Representative Maloney's bill (H.R. 2513) requiring smaller companies to identify their beneficial owners to the Treasury's FinCEN, an effort to combat money laundering by shell companies, but many Republicans don't like the bill's new compliance burdens for small businesses and have concerns about data privacy. The Senate version of the bill, the ILLICIT CASH Act (S. 2563), has four Democratic and four Republican sponsors. Whereas the Maloney bill requires annual disclosures, the Senate version requires disclosure of beneficial owners only after a change of ownership.

In September, the House also passed the SAFE Banking Act (H.R. 1595), which would allow banks to serve cannabis businesses without fear of federal penalties in states that have legal marijuana programs. But in a wide-ranging December 18 statement, Chair Crapo appeared to end speculation about whether he would be willing to move some version of the House bill this year, saying he does not support H.R. 1595 as passed by the House and outlining concerns that the bill doesn't address issues, such as "the high potency of marijuana, marketing tactics to children, lack of research on marijuana's effects, and the need to prevent bad actors and cartels from using the banks to disguise ill-gotten cash to launder money into the financial system." Crapo's statement solicited feedback on a range of questions related to health and safety issues, legacy cash and money laundering, interstate commerce and industrial hemp, and led many to conclude that a cannabis banking bill is not achievable in this Congress.

Government-sponsored entity (GSE) reform. The Senate Banking Committee appears to have given up on the idea that it could draft a bipartisan housing finance reform bill and instead will monitor the Trump Administration's efforts to prepare Fannie Mae and Freddie Mac to exit conservatorship, which are largely being driven by Federal Housing Finance Agency (FHFA) Director Mark Calabria. All the committee's Democrats signed a letter to Calabria in December seeking more details about the agency's plans for the GSEs, with a bullet list of questions about 20 separate issues. On January 8, Calabria said FHFA plans to propose "sometime early in the first quarter," a long-awaited rule setting "countercyclical" capital requirements for Fannie Mae and Freddie Mac, which would make it easier for the GSEs to raise money in an economic slowdown. Calabria has said that the rule will be the most important of his tenure at FHFA.

The committee is also expected to continue its inquiry into big data issues, such as consumers' privacy rights over their financial data, although it remains uncertain if Crapo can reach an agreement on a bill with Ranking Member Sherrod Brown (D-OH). In other agency activity this year, CFPB Director Kathy Kraninger has said that she expects the bureau to finalize a new payday lending rule in April, after receiving 190,000 comments on its February 2019 proposal to rewrite the original 2017 rule. The proposal would scrap a provision requiring lenders to verify borrowers' ability to repay loans, a controversial approach for Democrats.

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