Introduction
Congress has adjourned after reaching a bipartisan compromise on a critical budget agreement that will raise the debt ceiling for two years and avoid automatic discretionary spending cuts. With the August congressional recess here, this agreement helps mitigate several legislative challenges that would have confronted Congress in the fall. Despite this compromise on “must-pass” items, optimism for bipartisanship on “big-ticket” legislative considerations such as infrastructure and consumer privacy has waned considerably amid 2020 political considerations.

This publication from the EY Office of Public Policy highlights key US public policy developments to watch for during the remainder of 2019.
FY20 government funding

The House and Senate will be in session for only 15 legislative days in September, which means the early fall agenda will be dominated by congressional efforts to pass FY20 federal agency funding measures before the fiscal year begins on 1 October.

What to watch for: The recent budget agreement should reduce the near-term likelihood of a government shutdown since the deal covers overall discretionary spending levels for the next two years. However, disagreements over funding specific policy priorities (e.g., regarding immigration and border security) and spending bills for individual agencies could lead to an impasse and funding lapse.

Trade

The Trump administration’s trade agenda continues to be a flashpoint for tensions with trading partners as well as certain industries domestically. The window for gaining congressional approval of any trade agreements is generally viewed as closing at the end of 2019 as presidential election politics take over in 2020, so expect pressure on trade issues such as those outlined below to build in the months ahead.

US-China trade relationship: A meeting between Chinese President Xi Jinping and President Donald Trump during the G20 summit in late June temporarily halted further escalation of trade tensions but did not resolve the two countries’ underlying differences. Following additional negotiations between the two sides that did not yield an agreement, President Trump announced that while negotiations are ongoing, the US will impose on 1 September a new 10% tariff on the roughly US $300 billion worth of Chinese imports not already subject to tariffs. This tranche of tariffs is expected to have a more direct effect on US consumers than existing tariffs because the targeted goods include consumer products such as clothes, toys, cell phones, electronics and other retail items. The trade negotiations are intended to address issues including US concerns about intellectual property theft and other trade practices by China.

What to watch for: China’s reaction to the additional tariffs on its goods could signal whether the two sides will be able to reach an agreement in the short term or result in further escalation of trade tensions.

US-Mexico-Canada Agreement (USMCA):

- Democrats in the US House of Representatives are in discussions with US Trade Representative (USTR) Robert Lighthizer regarding desired changes to certain USMCA provisions, including on labor, the environment and enforcement mechanisms. The White House is unlikely to submit legislation implementing the USMCA to Congress until the Trump administration and Democrats reach a deal on these key issues.
While the Canadian Parliament is expected to have a smoother path toward approving the agreement, the timing of doing so is uncertain considering the October federal elections in Canada.

In June, Mexico became the first country to ratify the USMCA.

**What to watch for:** If the agreement is not ratified by Congress by the end of 2019, many observers believe it is unlikely to be considered until after the 2020 election because of presidential political considerations, fueling continued uncertainty for the business community.

**Free trade negotiations with Japan:** The US and Japan have begun negotiating a trade agreement now that Japan’s July elections have occurred.

**What to watch for:** According to some reports, the Trump administration is seeking to negotiate a limited agreement covering only agriculture and autos as a first step, followed by a more comprehensive agreement. The purpose of doing so is to quickly address harm to US farmers resulting from the entry into force this year of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) – of which Japan is a party and the US is not – which lowered agriculture tariffs among its members.

**US trade negotiations with the European Union (EU) and the United Kingdom (UK):** The USTR’s office notified Congress last year of its intent to enter into negotiations with the EU and the UK, but progress this year is expected to be slow. The EU’s leadership has been transitioning since the European Parliament elections in May, and the UK cannot formally begin negotiations until it leaves the EU.

**What to watch for:** Progress regarding the trade discussions is unlikely to be made until after the new governments are in place this fall.
Section 301 investigation of France’s digital services tax and potential development of global approach: The USTR announced in July that it will investigate whether the effects of a new French digital services tax (DST) are “discriminatory or unreasonable” or burden or restrict US commerce under Section 301 of the Trade Act of 1974. At the same time, the US will continue to work with other countries to develop a global DST framework.

- The French law places a 3% tax on the revenues some companies – including large US technology firms – earn from providing digital advertising and e-commerce to French users.
- In July, finance ministers from the G7 countries – Canada, France, Germany, Italy, Japan, the UK and the US – agreed in principle to establish a global DST framework by January 2020 that will address “highly digitalized business models” and other new business models.

What to watch for: This agreement at the G7 adds momentum to efforts by the G20 and the Organisation for Economic Co-operation and Development to develop global rules. France has indicated it will withdraw its DST if a global approach is agreed to through these mechanisms.

“Techlash”
Growing distrust and concern over market concentration, as well as high-profile cyber and data breaches, have led US lawmakers and regulators to focus on the implications of big tech’s presence in society and the US economy and on whether the industry should face additional regulation or even be broken up.

House Democrats launched a sweeping antitrust investigation on 3 June of the largest tech companies, opening a new front against an industry that’s increasingly under siege. The Department of Justice (DOJ) announced on 23 July that it is opening a wide-ranging antitrust review of “market-leading online platforms.” The DOJ said the review will explore “widespread concerns that consumers, businesses, and entrepreneurs have expressed about search, social media, and some retail services online.” Antitrust lawyers say any probe could take years to complete.

The House Judiciary subcommittee on antitrust held a hearing on 16 July to examine the market power and influence of online platforms and whether and how tech platforms can intentionally raise barriers for new entrants in the market. The hearing, which featured testimony from several large tech companies, marked the first face-off between big tech and Congress over antitrust.
What to expect next in Washington, DC

What to watch for: Scrutiny over big tech, or “techlash,” is one area on which Democrats and Republicans can agree, which means the issue likely will be front and center for the foreseeable future. Heading into the fall, expect the congressional agenda to be dominated by hearings on breaking up big tech, data ethics and consumer privacy. However, legislation is not expected to be signed into law in 2019 given the complexity of the issues and increasing focus on 2020 elections.

Consumer data privacy

On the heels of the EU’s General Data Protection Regulation (GDPR) — in effect since last summer — and the forthcoming California Consumer Privacy Act (CCPA), Washington is grappling over a federal legislative approach to help businesses and consumers as they navigate the growing and complex regulatory landscape.

What to watch for: The business community continues to encourage policymakers to act, especially because the CCPA is slated to go into effect on 1 January 2020, with enforcement actions beginning six months later. Additionally, other states are contemplating similar legislation, adding to the pressure on Congress to act. There is little chance that progress can be made before the end of the year, and the politics of the 2020 election and a divided Congress complicate chances of a bipartisan deal. With efforts in Congress recently stalled, chances of a deal in 2019 are dim.

Trump administration’s continued focus on executive actions

President Trump continues to seek to drive policy changes, including deregulatory efforts, through executive action, calling it a vital opportunity to “increase competition, productivity, and wages for American workers.”

For instance, he recently signed a health care executive order (EO) regarding price and quality transparency for providers and insurers. This order instructed the US Department of Health and Human Services to propose regulations to require hospitals to post standard charges and negotiated rates, and to require providers and insurers to provide access to information about expected out-of-pocket costs before patients receive care. The administration is contemplating another EO in the coming weeks that would tie drug prices in the US to the lowest prices charged anywhere else in the world (a “favored nations” proposal).

Since President Trump took office, economically significant rulemaking (final rules that have an annual effect on the economy of US$100 million or more) has declined significantly. Between 2001 and 2016, the federal government added an average of 53 economically significant regulations each year. During the final year of President Barack Obama’s term (2016), 99 such rules were published, while only 59 were published in President Trump’s first two years in office (see chart below).
At the same time, the administration’s deregulatory efforts have prompted a raft of legal challenges, largely on the grounds that agencies have not followed the proper procedures required to change regulations. While administrations historically win about 70% of these types of cases in court, the Trump administration has prevailed less than 10% of the time. These legal losses have slowed some of the administration’s deregulatory momentum; however, the push continues.

**What to watch for:** With a divided Congress and the 2020 presidential race increasingly taking center stage in Washington, expect the President to continue to use his executive authority to propel his economic and political agenda and display progress to voters. In addition to health care, regulation of technology is another area where the President could leverage EO authority in the coming months to advance his administration’s priorities.
2020 presidential election

The 2020 presidential race is officially underway, and after the first two rounds of debates, four Democrats have broken away from the pack of 24 candidates. However, with more than 450 days until the election, the landscape is fluid and could change dramatically before the presidential primary season begins in earnest next February.

Former Vice President Joe Biden has had some campaign missteps but remains a powerful candidate in the Democratic race, with the resources and voter support to fight a long battle for the nomination. Two candidates have now emerged as clear challengers: Senator Kamala Harris (CA), who has risen in the polls since her performance in the first debate, and Senator Elizabeth Warren (MA), who has steadily been making gains since late spring, potentially at the cost of fellow populist Senator Bernie Sanders (VT). Senator Cory Booker (NJ) performed well in the July debate and is someone worth keeping an eye on as he tries to break into the top tier of candidates.

President Trump remains a formidable political opponent after officially launching his re-election earlier this summer. With record-breaking fundraising numbers, a strong economy and the organization of the Republican Party and allied members of Congress behind him, the President, like most incumbents, has solid re-election chances.

What to watch for: September will bring two important events that will likely result in a winnowing of the Democratic field: the third set of debates on 12-13 September and the all-important fundraising reporting deadline on 30 September. Candidates will need to meet a higher threshold to qualify for the September debates, which will reduce the number of candidates who earn a spot on stage.

As we move into the fall, expect the President to continue his strategy of motivating his conservative base by focusing on red-meat political issues such as the economy, immigration and citizenship while increasing his political appearances ahead of the Iowa caucuses on 3 February, the first major contest of the presidential primary season.
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