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Fall 2019 Congressional Outlook

This **Fall 2019 Congressional Outlook** provides a brief overview of the following legislative issues that Congress will likely address during the remaining four months of 2019, including:

- FY 2020 appropriations
- Surface Transportation Reauthorization/Infrastructure Package
- FY 2020 National Defense Authorization Act
- Reauthorization of the National Flood Insurance Program
- Water Resource Legislation
- Prescription Drug Prices and Medical Bills
- Gun Control
- Tax Issues
- United States – Mexico – Canada Agreement
- White House Investigations

There is a narrow window for Congress to pass any major legislation prior to the beginning of the 2020 presidential election year with just 41 and 53 legislative days scheduled in the House and Senate, respectively, through the end of the year.

FY 2020 Appropriations

On August 2, 2019, President Trump signed the *Bipartisan Budget Act of 2019* ([P.L. 116-37](#)) into law, which secures top-line numbers for FY 2020 appropriations, \$666.5 billion for defense spending and \$621.5 billion for non-defense spending, which is \$19.5 billion and \$24.5 billion more than the enacted FY 2019 budget cap levels, respectively. The budget deal removes a major hurdle for negotiators on the House and Senate Appropriations Committees who are allocating specific agency budgets for the new fiscal year beginning October 1, 2019. However, there is still much work to be done and no shared vision between the two chambers for overall totals in each of the 12 annual spending bills.

The Senate Appropriations Committee is scheduled to markup the FY 2020 Defense and Energy-Water Development appropriations bills on September 12, and will likely markup the remaining ten spending bills during the weeks of September 16 and 23. Additionally, the Senate Appropriations Committee's top-line numbers for each of the 12 bills were decided without input from their House counterparts and will be publicly released on September 12. While the House Appropriations Committee marked up all 12 of its FY 2020 bills and the chamber passed 10 of them earlier this year, the bills propose spending beyond the agreed-upon \$1.3 trillion cap in the enacted *Bipartisan Budget Act of 2019*. This means that House Appropriations Committee leadership will need to agree on slightly lower non-defense spending levels and slightly higher defense spending levels as compared to the FY 2020 levels the House already voted on this year. In the budget caps deal, Congressional leaders also [agreed](#) to not include "poison pill" riders in any of the FY 2020 appropriations bills; however, this term was not defined in the agreement. This issue has already led the Senate Appropriations Committee to postpone its markup of the FY 2020 Labor—HHS—Education and State—

Foreign Operations spending bills over issues regarding proposed amendments related to funding for abortions.

It is possible that Congress will be able to put several FY 2020 spending bills on President Trump's desk before October 1—Senate Majority Leader Mitch McConnell (R-KY) said recently that the Senate “game plan” is to package the Defense, Energy—Water Development, Labor—HHS—Education, and State—Foreign Operations spending bills into one package on the Senate floor the week of September 16. However, a short-term continuing resolution (CR) extending current funding for some federal agencies is all but certain (a [draft CR](#) was published on September 10). House Majority Leader Steny Hoyer (D-MD) said earlier this month that the House will vote on a CR, likely lasting through November 21, 2019, during the week of September 16. Senate Majority Leader McConnell has also stated his support for a short-term CR in order to avoid a potential government shutdown.

Surface Transportation Reauthorization/Infrastructure Package

On July 30, 2019, the Senate Environment and Public Works (EPW) Committee unanimously passed the \$287 billion *America's Transportation Infrastructure Act of 2019* ([S. 2302](#)), which authorizes funding and program direction to the U.S. Department of Transportation (DOT) for Fiscal Years (FY) 2021-2025. The bill is being referred to as the “most substantial highway legislation in history” by the Committee and would build off the FAST Act, which expires on September 30, 2020. S. 2302, which is 510 pages long, includes four titles: (I) Federal-Aid Highways, (II) Transportation Infrastructure Finance and Innovation (TIFIA), (III) Research, Technology and Education, and (IV) Indian Affairs. The bill [includes](#) provisions covering resiliency; autonomous vehicles; a new bridge program; a repeal of the \$7.569 billion rescission in Federal-aid Highway Program contract authority set to go into effect July 1, 2020; and new mobility impacts, among other issues. There is currently no schedule set for the three Senate committees which have jurisdiction over other elements of the surface transportation reauthorization legislation (Banking Committee for mass transit; Commerce Committee for safety and rail; and Finance Committee for revenue provisions), however, these committees will likely move forward on their respective provisions of the package beginning in the fall.

House Transportation and Infrastructure (T&I) Committee Chairman Peter DeFazio (D-OR) and Ranking Member Sam Graves (R-MO) have held a series of hearings on a potential surface transportation reauthorization bill. Chairman DeFazio previously said that the House could release bill text by the end of 2019 or early 2020. DeFazio is working closely with House Ways and Means Committee Chairman Richard Neal (D-MA) and House Speaker Nancy Pelosi (D-CA) regarding how to pay for his future bill. DeFazio said he does not want to authorize spending at a level that leadership or Neal cannot support- “the question is, does Congress have the will and wherewithal to pay for it?”

Talks between Congressional Democrats and President Trump on a broader infrastructure package have not been productive nor advanced since the spring. However, it is possible that Congress ultimately includes additional infrastructure provisions to the surface transportation package, including, but not limited to, broadband, housing, schools, water, and environmental and energy-related provisions.

FY 2020 National Defense Authorization Act

Lawmakers will need to reach an agreement on the competing FY 2020 National Defense Authorization Acts, ([H.R. 2500](#), [S. 1790](#)), passed this summer by the House and Senate. The NDAA authorizes spending levels for national security programs in FY 2020, in addition to authorizing military pay increases and military

construction, providing direction for major weapons programs, improving the way the Pentagon buys weapons and services, and addressing the national security programs at the Department of Energy.

In addition to resolving differences in total spending—\$733 billion in the House vs. \$750 billion in the Senate—the leaders of the House and Senate Armed Services Committees have to deal with riders on environmental policy (specifically, competing provisions regarding per- and polyfluoroalkyl substances [PFAS]), Guantanamo Bay, transgender troops, and provisions preventing President Trump from using military construction funds to build a border wall. The committees have started negotiations on a conference report behind the scenes at staff levels. The chairmen of the Armed Services committees, Rep. Adam Smith (D-WA) and Sen. Jim Inhofe (R-OK), have indicated that they want to finish negotiations on a final bill by October 1. Both bills would have to meet the \$738 billion national defense target set by the budget deal, which may require concessions based on the Senate's higher total.

National Flood Insurance Program Reauthorization

The National Flood Insurance Program (NFIP) is set to expire on September 30, 2019. Congress will need to pass a 13th short-term extension in September in order to prevent a lapse (the last long-term NFIP reauthorization expired on Sept. 30, 2017). This extension will likely last for the same duration as the continuing resolution, through late November or early December 2019.

On June 11, 2019, the House Financial Services Committee unanimously passed the *National Flood Insurance Program Reauthorization Act of 2019* ([H.R. 3167](#)), which reauthorizes the NFIP for five years and also includes a number of reforms to increase affordability, improve mapping, enhance mitigation, and modernize the NFIP. In mid-July, a bipartisan group of Representatives and Senators from coastal states introduced a competing bill, the *National Flood Insurance Program Reauthorization and Reform Act of 2019* ([H.R. 3872](#), [S. 2187](#)), which differs from H.R. 3167 in several ways, including capping annual rate increases to 9 percent. The competing bills have complicated efforts for Congress to pass a long-term NFIP reauthorization, however, it is possible that the two chambers will reach a consensus this fall.

Water Resource Legislation

Several bills have been introduced in the 116th Congress dealing with water resource management issues, including water infrastructure investments for water storage, recycling and reuse, desalination, rehabilitation, stormwater and green infrastructure, drinking water, and aquifer recharge. We believe several of the committees in the House and Senate will mark up some, or all, of these bills in the coming months. Also, the House Transportation & Infrastructure and Senate Environment & Public Works Committees are working on the foundations for another Water Resources Development Act (WRDA) bill to be introduced sometime next year.

Prescription Drug Prices and Medical Bills

The issue of regulation on prescription drug prices has been a hot topic on Capitol Hill throughout 2019 and one of interest for President Trump, who has stated that the issue of drug costs will be a priority throughout his 2020 reelection campaign. Speaker Pelosi is planning to introduce [legislation](#) in early September that focuses on Medicare negotiating drug prices in an approach designed to lower costs for consumers in both government and private health care systems. House Democrats are eager to impose government regulations on the prices, while Republicans are hesitant to interfere with the market.

Senator Chuck Grassley (R-IA) introduced, and the Senate Finance Committee passed, [legislation](#) at the end of July that would put into place controls on the pharmaceutical industry and limitations on the industry's ability to raise drug prices faster than the inflation rate. The bill moved with bipartisan support but most Republicans on the committee opposed the legislation. Both the House and Senate have also approved bills that would prevent patients with health insurance from receiving expensive medical bills after they are treated by an out-of-network provider in emergency situations ([H.R. 2328](#), [S. 1895](#)).

Gun Control

After this summer's string of mass shootings, House and Senate Democrats have amped up efforts to address gun control. Immediately following the tragic events in August, President Trump called for Congress to act but has since digressed from his statements, leaving Republicans without legislative direction. This week the White House met with Republican leadership but did not present any clear indication regarding if and what gun-related legislation the president would support.

Meanwhile, the House Judiciary Committee advanced three bills on September 10 regarding gun control. The bills focus on incentives to states for red flags ([H.R. 1236](#), [H.R. 3076](#)), banning high capacity magazines for firearms ([H.R. 1186](#)), and firearm sales to individuals with misdemeanor hate crime convictions ([H.R. 2708](#)). The House is expected to pass the measures this month, which will place additional pressure on the Senate to act. The Senate has not considered any legislation on the issue, even after the House passed the *Bipartisan Background Checks Act of 2019* ([H.R. 8](#)), that would require background checks for gun sales at gun shows and from unlicensed dealers. Majority Leader McConnell has signified that he was waiting for White House direction before allowing votes on the Senate floor for gun proposals, and lawmakers are still hopeful that the White House will release a package of gun proposals this month.

Tax Issues

Congressional tax-writers will likely continue to come to an agreement on several expired tax provisions, including the production and investment tax credits for renewable energy. Thus far, they have not been able to do so. The Senate Finance Committee has backed a straight two-year extension, while the House Ways and Means Committee has reported a broader package of tax incentives that is a non-starter with Senate Republicans, as it includes expansions to refundable tax credits and increases to the estate tax.

The Senate Finance Committee created specialized working groups to make recommendations on paths forward for tax extenders, including whether to make them permanent or let them remain expired. These working groups recently published their findings without any significant recommendations other than making permanent the tax credit for short-line railroads and the importance of certainty in the tax code.

Additionally, the House Ways and Means Committee will consider a package of green tax incentives, which reportedly include an extension of both the tax credit for electric vehicles and the investment tax credit for solar power, which is scheduled to decrease at the end of the year. The Committee has also announced that it will consider rolling back the *Tax Cuts and Jobs Act's* \$10,000 limit on the deduction for state and local taxes. This has little chance of making it through the Senate, as the provision costs just short of \$1 trillion and primarily benefits specific states (e.g. NY, NJ, CT, and CA), none of which have a single Republican senator.

Wrapped up with all of that are more bipartisan provisions like the so-called "Gold Star Fix", which would correct an inadvertent tax increase on military survivors' benefits, and legislation that would use gender-neutral terms for marriage in the tax code. Additionally, both chambers support the retirement savings

enhancements that would allow small businesses to band together to offer 401(k) plans and eliminate the maximum contribution age on traditional IRAs. This spring, the House passed its retirement savings bill, the *SECURE Act* ([H.R. 1994](#)) by a vote of 417-3. The Senate Finance Committee has not been able to report its bill, the *Retirement Enhancement and Savings Act* ([S. 972](#)), or consider the House-passed bill. However, **both versions of the retirement savings bill include a top NATaT priority, the Volunteer Responder Incentive Protection Act** ([H.R. 1241/S. 1210](#)). At issue are objections from conservative senators about a provision that would prevent tax-advantaged 529 savings accounts from being used for homeschooling expenses. Tax-writers are working to get passed these objections and hope to move forward on either of these bills this fall.

The tax incentives for opportunity zones continue to receive attention, as investors must invest capital gains in Qualified Opportunity Funds by the end of the year in order to receive the full 15 percent tax exemption. The IRS, however, has still not finalized its regulations on the program, and, while it indicated that investors could act on the proposed regulations as written—a position confirmed by The Ferguson Group through the White House Department of Intergovernmental Affairs—many investors are still waiting for Treasury to address lingering questions before making investments. There is Congressional interest in extending the window for the full 15 percent exemption, and several tax-writers, led by Senator Tim Scott (R-SC) are working on a proposal to do that.

U.S. – Mexico – Canada Agreement

President Trump is urging Congress to replace the North American Free Trade Agreement (NAFTA) with the U.S.-Mexico-Canada Agreement (USMCA) this fall. President Trump has warned that if Congress is unable to come to an agreement, he will likely pull the U.S. out of NAFTA. Trump is pushing to have a vote on the proposal as soon as possible, but House Democrats have delayed action waiting for Speaker Pelosi's input before moving. Both House Democrats and Speaker Pelosi have called for stronger enforcement provisions regarding labor standards, prescription drug prices, and environmental protections. U.S. Trade Representative, Robert Lighthizer, has been in negotiations with Speaker Pelosi and a group of tapped House Democrats hoping to come to an agreement on the USMCA as soon as possible. Like their House counterparts, Senate Democrats are seeking changes with the agreement's labor standards while the proposal receives strong support from Senate Republicans who are eager to move the legislation.

White House Investigations

Congressional Democrats and multiple House committees continue to investigate President Trump's business ventures, financial records, and administrative policies. The House Judiciary Committee has sent multiple subpoenas to top White House officials and former campaign aides, but the effort has largely stalled with few witnesses agreeing to appear. Specifically, the Committee has issued three subpoenas for a September 17 hearing to former White House Staff Secretary Rob Porter, former campaign manager Corey Lewandowski, and former White House Deputy Chief of Staff Rick Dearborn. The House Judiciary and Oversight Committees have also added additional examinations onto their investigation docket, including the vice president's decision to stay at a Trump-owned resort during a visit to Ireland. A majority of House Democrats have now publicly called for an impeachment inquiry; however, further impeachment requests will likely be stalled as Speaker Pelosi – who holds the power to determine whether the House proceeds – is against any formal impeachment effort and is waiting to see the results of the multiple House committees' investigations.