

# The Next 100 Days

A look back and a look ahead in Washington

## What's on tap for the next 100 days

The mantra and the agenda of the current Congress certainly continues to be primarily "investigations and nominations," with each body pursuing a different track. The Senate and the President are expected to focus on filling vacancies across key cabinet and judicial posts, while the House of Representatives will continue its investigations into the administration and other politically charged topics.

In considering what comes next, it is important to note that the demographic composition of the Democratic Caucus that now controls the House is somewhat different from the Democratic Caucus that was in the minority in the last Congress. Many, if not most, of the Democratic "pickups" that allowed Democrats to gain control of the House came from moderate swing districts and Democratic success in those districts appears to have been fueled by suburban female voters, as well as minority voters, many of whom were and continue to be repulsed by both the agenda and the rhetoric of President Trump.

Whatever their motives for supporting Democrats, what is abundantly clear is that this House Democratic Caucus is younger, more female, more minority, less respectful of hierarchy and seniority, and overall far less willing to "wait their turn" than any of their predecessors. This can make leading such a diverse and opinionated group a very challenging task, as the ongoing back-and-forth between Speaker Pelosi and some of the members of the Freshman Democratic "Twitter Caucus" certainly reveals.

As the House pursues its investigative agenda with respect to the President, presumably hearing from such key witnesses as Special Counsel Robert Mueller, former White House Counsel Don McGahn and many others, Speaker Pelosi will have to manage the increasingly sharp divisions within her diverse Caucus of moderate Democrats who believe that pursuing an impeachment of President Trump is both politically unwise and at best premature and their more liberal counterparts who believe that impeachment proceedings are essential, constitutionally mandated and should proceed forthwith. While the Speaker has skillfully managed these challenges to date, there is every reason

to think that this task will become more not less difficult with the passage of time and as witnesses testify.

Don't expect the Administration to play nice with the House Democrats' investigation focus. President Trump has said he will resist every subpoena from congressional Democrats investigating his administration, promising an all-out legal war. To this end, President Trump has ordered officials not to comply with legal requests from Democrats in the House who are conducting multiple investigations of his administration, on topics including Trump's tax returns, the White House's overturning of security clearance denials, and Russian election interference. This has sparked complaints of unprecedented obstruction of congressional oversight from Democrats who believe that the President is simply trying to run out the clock by raising frivolous legal arguments against their subpoenas and requests for testimony and documents in order to push a resolution of these issues beyond the 2020 election.

Might we have a constitutional crisis on our hands that would effectively shut the legislative process down until the 2020 election? That may just be a cynic's thinking, but this possibility certainly cannot be ruled out at this time.

On April 25, House Majority Leader Steny Hoyer (D-MD) issued a Dear Colleague announcing that, this week, the House will consider HR 9, the Climate Action Now Act, a bill affirming the principles of the Paris Climate Agreement, and consider a disaster relief supplemental appropriations bill during the week of May 6. During the May Work Period, Hoyer also expects to bring H.R. 5, the Equality Act, and H.R. 1994, the SECURE Act, to the House Floor, along with an extension of the national flood insurance program whose current short-term authorization is set to expire at the end of May. He said that the House will take up legislation to strengthen the Affordable Care Act and address rising prescription drug costs, and will possibly consider HR 1500, the Consumers First Act. Pending committee action, in May the House may also consider H.R. 6, the Dream and Promise Act, and/or a bill to increase the minimum wage.

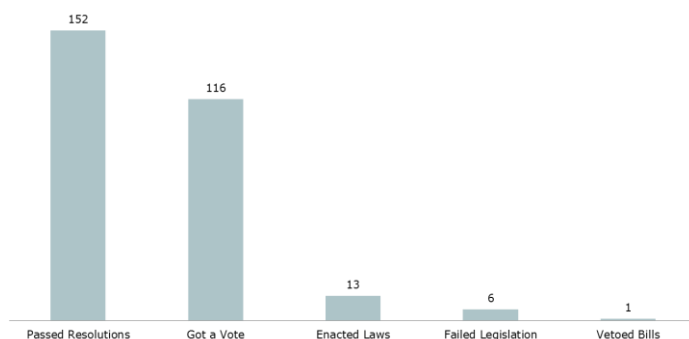
Beyond investigations and nominations, Congress does still have to address the specter of sequestration and a potential debt limit breach. The prospect of enormous statutorily mandated cuts to both defense and non-defense spending if an agreement cannot be reached certainly creates a powerful incentive for most in the Congressional leadership to reach such an agreement.

## Highlights from the first 100 days

Having started the year 2019 in the midst of a 35-day government shutdown—the longest government shutdown in history, which also had the effect of delaying the introduction of much of the parties' respective legislative agendas—a divided Congress has passed the ceremonial 100-day mark with little in the way of major legislation making it into law. Yet each chamber has "accomplishments" their bases will appreciate.

As expected, the House has largely focused on messaging and investigations into the administration while Majority Leader Mitch McConnell's Senate has focused on filling judicial and administrative vacancies.

Congress voted on 116 bills in its first 100 days, but only 13 became law.



As for the next 100 days, we expect the past to be prologue, with several significant caveats. Well, at least one significant caveat: The storm unleashed by the release of the Mueller report.

### What became law

- **H.R.1839** - Medicaid Services Investment and Accountability Act of 2019
- **S.725** - A bill to change the address of the postal facility designated in honor of Captain Humayun Khan.
- **H.R.2030** - Colorado River Drought Contingency Plan Authorization Act
- **H.R.276** - Recognizing Achievement in Classified School Employees Act

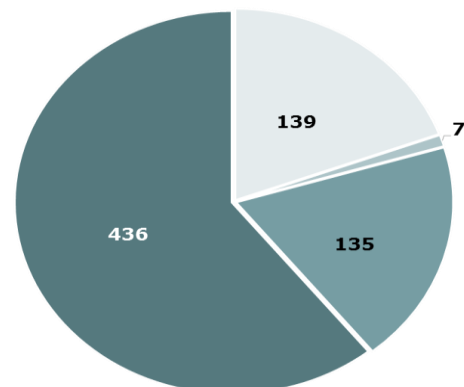
While it's far too early to predict another government shutdown, with so many freshman members who must face the voters in 2020 for their first re-election campaign, one should assume that this lift will be even harder than the end of 2018's spending package debacle.

- **S.863** - A bill to amend title 38, United States Code, to clarify the grade and pay of podiatrists of the Department of Veterans Affairs.
- **S.252** - A bill to authorize the honorary appointment of Robert J. Dole to the grade of colonel in the regular Army.
- **S.49** - A bill to designate the outstation of the Department of Veterans Affairs in North Ogden, Utah, as the Major Brent Taylor Vet Center Outstation.
- **S.47** - John D. Dingell, Jr. Conservation, Management, and Recreation Act
- **S.483** - Pesticide Registration Improvement Extension Act of 2018
- **H.R.439** - National FFA Organization's Federal Charter Amendments Act
- **H.J.Res.31** - Consolidated Appropriations Act, 2019
- **H.J.Res.28** - Further Additional Continuing Appropriations Act, 2019
- **H.R.430** - TANF Extension Act of 2019
- **H.R.259** - Medicaid Extenders Act of 2019
- **H.R.251** - Chemical Facility Anti-Terrorism Standards Program Extension Act
- **S.24** - Government Employee Fair Treatment Act of 2019

### Administration Vacancies

Nearly 40 percent of the positions remain unfilled, including 135 key positions where nominees are awaiting confirmation, and 139 positions that have no nominee.

- No nominee
- Awaiting nomination
- Awaiting confirmation
- Confirmed



### Vacant cabinet secretaries

- Department of Defense (no nominee)
- Department of Homeland Security (no nominee)

### Departments without a deputy secretary

- Veterans Affairs (James Byrne nominated)
- Homeland Security (no nominee)
- Housing and Urban Development (no nominee)
- Department of Defense (no nominee)

### Departments without an administrator

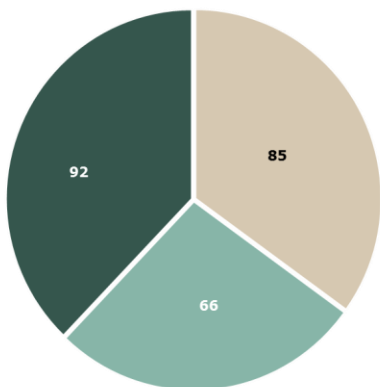
- Small Business Association (Jovita Carranza nominated)
- Federal Emergency Management Agency (Jeffrey Byard nominated)
- Drug Enforcement Administration (no nominee)
- Federal Aviation Administration (Stephen Dickson nominated)
- Federal Transit Administration (Thelma Drake nominated)
- National Highway Traffic Safety Administration (Heidi R. King nominated)
- Office of Management and Budget (Michael Wooten nominated)

### Departments without a deputy administrator

- Small Business Administration (no nominee)
- Drug Enforcement Agency (no nominee)

## Judiciary Nominations

President Trump inherited 108 federal judge vacancies. He has had 92 federal judges confirmed while 85 seats remain vacant without a nominee.



■ No nominee ■ Awaiting confirmation ■ Confirmed

## Circuit Court Vacancies

- 2nd Circuit: Connecticut, New York and Vermont: 11 judges (7D, 4R) 2 vacancies  
**Nominees:** Joseph Frank Bianco // Michael H. Park
- 3rd Circuit: Delaware, New Jersey, Pennsylvania and the US Virgin Islands: 13 judges (6D, 7R) 1 vacancy  
**Nominee:** No nominee
- 5th Circuit: Louisiana, Mississippi and Texas: 16 judges (5D, 11R) 1 vacancy  
**Nominee:** No nominee
- 9th Circuit: Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon and Washington: 25 judges (16D, 9R) 4 vacancies  
**Nominees:** Daniel Paul Collins // Kenneth Kiyul Lee // Daniel Aaron Bress // No nominee

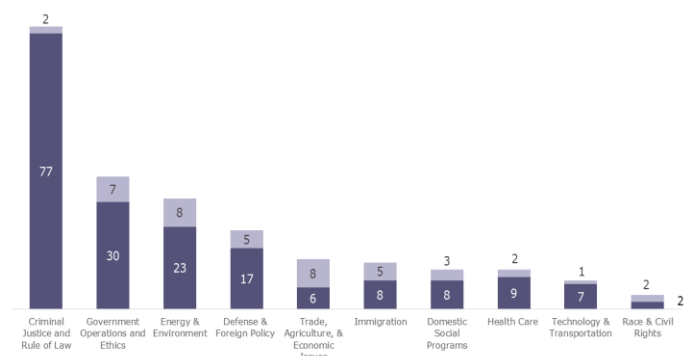
## Investigations

House Democrats have aggressively followed up on their campaign pledge to investigate the Trump administration. The release of the Mueller report will only intensify these efforts, but they won't have a cooperating party in the administration.

President Trump on April 23 said he is opposed to current and former White House aides providing testimony to congressional panels in the wake of the special counsel report, intensifying a power struggle between his administration and House Democrats.

In an interview with *The Washington Post*, Trump said that complying with congressional requests was unnecessary after the White House cooperated with Special Counsel Robert S. Mueller III's probe of Russian interference and the President's own conduct in office.

Trump's comments came as the White House made it clear that it plans to broadly defy requests for information from Capitol Hill, moving the two branches of government closer to a constitutional collision.



## Budget & Appropriations

While House Democrats scrapped a plan to vote on a measure that would have relaxed spending caps for the discretionary parts of the federal budget for the next two years, leaders also used a separate procedural maneuver to lay the groundwork for writing individual spending bills at the overall levels preferred by leadership. The House Appropriations Committee can now begin its work of drafting legislation.

The House set an overall spending cap of nearly \$1.3 trillion for appropriators in that chamber to write their fiscal 2020 bills. House spending leaders will be assuming a total of \$733 billion in defense spending and \$631 billion in non-defense spending as they mark up fiscal 2020 funding bills this spring, Appropriations Chairwoman Nita Lowey (D-NY) said earlier this month.

Senate Republicans, meanwhile, have drafted their own budget blueprint, which was approved by the Senate Budget Committee last month. The plan sticks with the current caps on both defense and non-defense spending, but includes procedural language that anticipates the possibility of a subsequent caps deal. Senate Majority Leader Mitch McConnell (R-KY) has made it clear that he is interested in reaching a deal to raise the budget caps and have an orderly appropriations process, and reports indicate that he and Speaker Pelosi will work to negotiate an agreement.

Eventually, the House, the Senate and the White House will have to come to an agreement on the overall spending limits. Otherwise, next year defense and non-defense programs will see cuts from 2019 levels of, on average, 13 and 11 percent, respectively, after adjusting for inflation. (The BCA provides for these automatic spending cuts, known as sequestration, to enforce the limits it places on spending.) If this year proceeds anything like the three previous times that Congress and the president tackled the challenge, final resolution won't come until at least the fall.

But this round of negotiations represents the first time that House Democrats have participated in such bargaining as the majority party, and only time will tell whether and how that shapes the ultimate outcome.

## Immigration

Hispanic Democrats are charging ahead with plans to move a comprehensive immigration reform bill this year, bolstered by recently secured support from some of the party's top brass.

Leaders of the Congressional Hispanic Caucus (CHC) are drafting a measure that some Democratic leaders say they are ready to bring to the floor after the chamber tackles legislation that would both create a path to citizenship for so-called Dreamers under the Deferred

Action for Childhood Arrivals (DACA) program and strengthen protections for temporary protected status (TPS) beneficiaries.

Democrats are encouraged by recent comments from Senate Majority Leader Mitch McConnell (R-KY.), who expressed an interest in moving on a comprehensive reform bill as an antidote to the border crisis.

Still, a consensus bill is unlikely as Democratic leaders aim for legislation that delineates the party's core position ahead of 2020.

## Visa Reform

The administration is in the final stages of producing a merit-based immigration proposal being put together by White House senior adviser Jared Kushner that could lead to an increase in US visas for highly skilled workers.

The plan does not propose ways to address young people who came to the United States illegally as children who were protected by former President Barack Obama in the 2014 program known as Deferred Action for Childhood Arrivals (DACA), or those people who have temporary protected status (TPS).

The immigration plan would either leave the number of highly skilled visas each year at the same level or raise it slightly, the sources said.

The overall goal is to reshape the visa program into a more merit-based system, a key Trump goal. Officials working on the plan have been reviewing the systems used by Canada and Australia as possible models for the Trump effort.

The group has been working on a guest-worker program as part of the proposal to address the US agriculture community's need for seasonal labor while not hurting American workers, but nothing has been finalized. Trump has sought to court farmers in key battleground states to boost his re-election chances.

## Sanctuary Cities

A panel of federal judges ruled against the Trump administration's request to prevent California from carrying out some "sanctuary city" laws that would protect certain immigrants without legal status in the state.

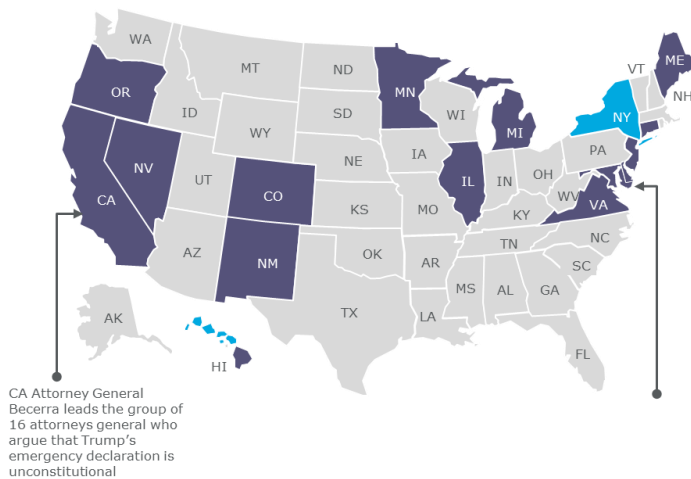
The panel of three judges from the Ninth US Circuit Court of Appeals rejected the Justice Department's argument that California bypasses federal authority through implementation of its own rules for working with immigration authorities.

The appeals court upheld a lower court decision, though its ruling is likely to be appealed.



## Wall Funding

The President's plan to reprogram DoD funds for border wall construction was quickly met by a lawsuit from Democratic states attorneys generals and by a separate suit from the House of Representatives. In *State of California et al. v. Trump*, the plaintiff states assert that because under the Constitution Congress controls all spending, the President does not have the power to redirect funds for the construction of his proposed border wall. The coalition of states contend that they are going to court to protect their residents, natural resources and economic interests. Maryland is the only plaintiff state in this lawsuit without a Democratic governor, but it has a Democratic attorney general.



## Trade

The US International Trade Commission recently released a report on the economic impacts associated with the US-Mexico-Canada Agreement (USMCA), fulfilling one of the procedural requirements for Congress to consider ratification of the new North American trade pact. Prior to a vote on the USMCA, the Trump administration must still submit to Congress:

- *The final text of the USMCA*
- *Draft Statement Of Administrative Action*
- *Implementing legislation.*

The White House is hoping to secure congressional ratification of USMCA prior to the August congressional recess, but that goal will be complicated by a variety of issues, including requests by House Democrats that the administration address the enforceability of labor and environmental provisions in the agreement.

The President, pursuant to the Trade Expansion Act of 1962, must make decisions on whether to take trade actions on the following section 232 investigations:

- *Automobiles, vans and light trucks and auto parts (deadline for presidential decision – mid-May)*
- *Uranium (deadline for presidential decision – mid-July)*

With the looming US threat of additional tariffs, US and Chinese negotiators also continue discussions on a deal to address long-standing trade issues between them.

## Tax Extenders

Senate Finance Chairman Chuck Grassley (R-IA) and Senator Ron Wyden (D-OR) introduced a bill that would extend 29 currently expired tax incentives for 2018 and 2019. Extending temporary tax provisions is not sound tax policy, and it's an especially bad idea to do so retroactively and in the middle of the tax-filing season.

The bill would extend 26 tax breaks that expired at the end of 2017. These 26 remaining provisions broadly fall into four categories: energy provisions, cost recovery provisions, business provisions and individual provisions. More than half of the remaining provisions are tax credits that subsidize certain economic activities.

The new bill would also extend three provisions that expired at the end of 2018, including the Tax Cuts and Jobs Act (TCJA) temporary reduction in the medical expense deduction floor. The TCJA expanded the medical expense deduction by lowering the expense threshold from 10 percent of adjusted gross income to 7.5 percent for tax years 2017 and 2018; previously, a temporary reduction of the threshold had been available to taxpayers over 65 years of age, or with a spouse over 65. This reduction was also applied to the alternative minimum tax rules for the deduction. This bill would extend the 7.5 percent threshold for tax year 2019, allowing more individuals to deduct their medical expenses, as well as extend excise tax rates on crude oil and coal. The bill also contains some tax relief benefits for individuals and businesses that were affected by major disasters in 2018.

## Financial Services

With the change in control of the House of Representatives, there has been a massive change in the agenda of the Financial Services Committee, particularly as it relates to the Consumer Financial Protection Bureau. However, there appears to be quite limited overlap between the Financial Services Committee's agenda and the agenda of Senate Banking Committee Chairman Mike Crapo (R-ID). Thus, while the CFPB will receive intensive oversight from the Financial Services Committee, the prospects for enactment of any legislation affecting the CFPB are slim and the Trump White House essentially has a free hand to redirect the CFPB's course including its enforcement priorities.

While both Chairwoman Maxine Waters (D-CA) and Chairman Crapo have expressed interest in housing finance reform, it will be a very heavy lift, especially with the 2020 presidential election on the horizon, to pass GSE (government-sponsored enterprise) reform legislation in this Congress.

Except for possible reauthorizations of the National Flood Insurance Program (NFIP), the Terrorism Risk Insurance Act (TRIA) and the Export-Import Bank, and potential passage of HR 1595, the SAFE Banking Act of 2019, if Leader McConnell will allow the bill to be considered by the Senate, a cannabis banking bill with 165 House sponsors and 22 Senate sponsors, the prospects for the enactment of significant financial services legislation in this Congress currently appear limited.

## Climate

Over the next several months, the House is expected to hold additional climate change hearings, and the chamber may push narrower bills relating to efficiency and grid modernization that could enjoy bipartisan support.

The House, however, is unlikely to consider more ambitious legislation that would impose a price on CO2 emissions or establish a clean or renewable energy standard, but House Environment and Climate Change Subcommittee Chairman Paul Tonko (D-NY) is pledging to hold continued stakeholder discussions on more ambitious climate change legislation that he hopes to introduce next year. Congress could also act on the USE Act, bipartisan legislation to support carbon capture, utilization and storage technology that recently advanced unanimously through the Senate Environment and Public Works Committee.

The Trump administration is also likely to finalize later this spring new GHG tailpipe standards for light-duty vehicles that will preempt California's authority under the Clean Air Act to promulgate their own standards. Once finalized, these new rules will prompt litigation by California and other states that could stretch past the 2020 presidential election.

## Energy

With the death of Republican Commissioner Kevin McIntyre and with Democratic Commissioner Cheryl LaFleur's term ending, President Trump also has the opportunity to appoint two new commissioners to the Federal Energy Regulatory Commission. Senate Democrats are urging that he pair a Republican nominee and a Democratic nominee to expedite their consideration through the chamber, but it is unclear if the President will take this approach.

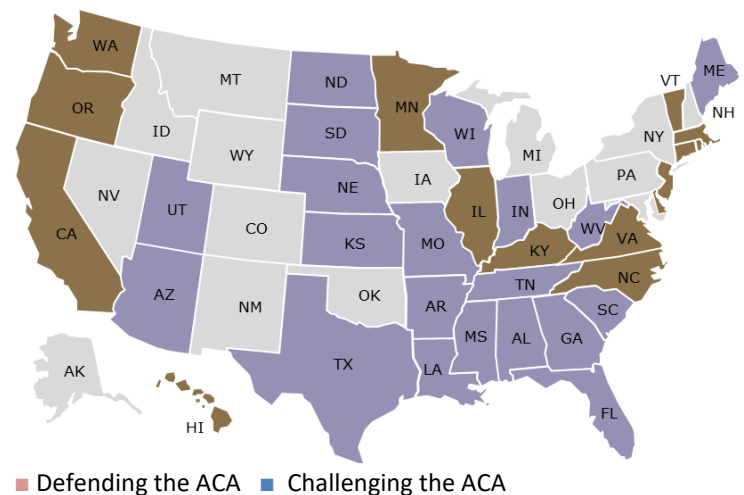
In addition, the Environmental Protection Agency must update guidance within 60 days, and regulations within

120 days on a state's delegated authority under the federal Clean Water Act (CWA) to grant water quality certificates to projects. The Trump administration is arguing that some states are abusing their authority under the CWA to block interstate natural gas and coal export projects.

**ACA**

The Trump administration's support for a lawsuit aimed at getting the nation's high court to strike down all of the ACA, instead of just the individual mandate, caught Washington, and certainly the GOP, by surprise. Reports indicate that after some in his administration, most notably Secretary of Health and Human Services Alex Azar, argued against such an action, the President quickly pivoted to pushing for congressional action to repeal and replace the law. However, GOP leaders in both chambers dismissed the idea. Senate leader McConnell went so far as to suggest he was looking forward to the "Trump Pelosi" legislation. Chastised, the President tasked policymakers in his administration with developing a health care "plan" that he could campaign on in 2020.

But the lawsuit, by 20 states with GOP governors, continues to make its way to the Supreme Court. If the courts ultimately strike down Obamacare—over the objections of a group of Democrat-led states, which have spent more than a year defending it in court—the consequences could be substantial for patients, health care organizations and other groups that have adapted to the nine-year-old law.



## Medicare for All

The House Rules Committee will hold a hearing on the Medicare for All Act on April 30.

The bill is expected also to be heard in the House Budget Committee, though that hearing hasn't yet been scheduled. Supporters of the legislation don't have commitments for consideration from the House Energy and Commerce Committee or the House Ways and Means Committee, the committees that primarily oversee healthcare.

The bill, which had the backing of Sen. Bernie Sanders (I-VT) before becoming more mainstream among Democrats in Congress and presidential candidates, would move everyone living in the United States onto a government plan and do away almost entirely with private health insurance.

More than 100 House members have co-sponsored the legislation, but that's a drop from previous years, and some Democrats are pushing to expand Obamacare rather than pursue the Medicare for All Act.

The House bill was introduced by Reps. Pramila Jayapal (D-WA) and Debbie Dingell (D-MI), and would go further than the current Medicare program by covering more services and putting no direct costs onto patients. Outside analysts have estimated that previous versions of the proposal would increase government spending by \$32 trillion over a decade.

## Drug Prices

The Trump administration has held early-stage conversations with Speaker Pelosi's staff about drug-pricing legislation that could provide each side with a domestic policy victory.

While Democrats and the Trump administration have made reducing drug costs a priority, accomplishing anything could be difficult, especially since the administration has taken an aggressive stance to overturn Obamacare in federal court.

The Democratic leadership wants the White House to agree to a delay in implementation of a sweeping rule to overhaul the drug rebate system. The proposed rule would prohibit drug manufacturer rebates in Medicare and Medicaid unless they are passed on directly to consumers at the point of purchase. Democrats have been critical of the rule because it is expected to raise seniors' Medicare premiums and cost the government billions of dollars.

At HHS, Secretary Azar and his team have been adamant that the rebate rule—aimed at eliminating "back-door rebates" to middlemen—will be finalized shortly so it can take effect in 2020. But health plans and the drug industry see that timeline as unrealistic.

Savings generated from delaying the rebate rule could help the White House pay for other drug-price priorities, including a budget proposal to establish an out-of-pocket spending cap for Medicare Part D beneficiaries that is estimated to cost the government \$14 billion over 10 years.

However, this is another idea that faces an uphill battle with Republican lawmakers. Senator Chuck Grassley (R-IA) has said delaying the rule would simply be a budget gimmick he does not support.

One area of possible compromise could be on legislation to make it harder for brand-name drug companies to deny samples of their products in order to block generic drug competition. CEOs from seven major drug companies recently told the Senate Finance Committee they could support some version of the plan, known as the CREATES Act.

## Cannabis

States continue to outpace the federal government when it comes to the legalization of marijuana. Georgia became one of the first southern states to loosen its medical marijuana program by passing a new medical cannabis bill to permit for limited cultivation, buying and selling of cannabis with less than 5 percent THC.

Previously one of the most restrictive programs in the country, this move was lauded by patients and passed with little drama. Texas is also considering several bills aimed at expanding medical access, further decriminalizing cannabis and legalizing hemp.

Federally, Congress has shown interest in taking up the banking dilemma that has kept major lenders on the sidelines and forced businesses operating legally under state law to operate only in cash. The Secure and Fair Enforcement (SAFE) Banking Act passed out of committee in the House and will likely see floor action this summer. Although action in the Senate is less certain, look for the presidential race to keep this issue at the forefront, with most Democratic candidates endorsing some form of legalization.

## Infrastructure

The next round of infrastructure talks between President Trump and House Speaker Pelosi is expected later this month. Trump, Pelosi and Senate Republican leaders have indicated a willingness to advance an infrastructure package this year.

Their task is to reach a compromise on a funding approach for such a bill.

The two sides have thrown out different dollar figures for what they'd want in a potential bill. Pelosi's aim of a \$2 trillion investment has triggered skepticism in other corners of Congress, but Trump has repeatedly said he

wants to get something done and is ready to sign if lawmakers can come up with an agreement.

In previous private meetings with members of Congress, Trump has endorsed a gas tax increase. It's unclear whether that will come up next week, but how to fund infrastructure improvements is the biggest roadblock to passing a bill. It wouldn't be a surprise if Speaker Pelosi took the chance to try to get the president on board.

With 25 percent of all funding for projects coming from the federal government these days, the devil in enacting any infrastructure package is, as always, in the (funding) details. Here is a quick overview.

The Highway Trust Fund, which was established by the Highway Revenue Act of 1956, funds most federal government expenditures on highways and mass transit. Before 2008, the Highway Trust Fund's revenue could cover its outlays through excise tax revenue. Since 2008, Congress has transferred \$140 billion of general revenue dollars in order to meet its current spending obligations.

Due to its outlays continually exceeding revenue, the CBO expects the Highway Trust Fund to have a negative balance after 2021.

## Education

The Higher Education Act of 1965 authorizes a number of federal aid programs to provide assistance for students in secondary and higher education institutions. The Act has been reauthorized eight times since 1965. While it is supposed to be renewed every five years, the last reauthorization was in 2008, enacted through a bill known as the Higher Education Opportunity Act.

It is expected that Education and Labor Chairman Bobby Scott will move forward with the version of an HEA reauthorization we saw from the House Dems in the last Congress.

In the 115th Congress, Democrats introduced the AIM Higher Act. The bill was drafted as the Democratic alternative to the controversial GOP proposal for HEA reauthorization, a bill called the PROSPER Act. The bill would provide states with grant aid to leverage reforms. It would reward states that make tuition at state college colleges and universities more affordable and make an associate's degree at the state's public two-year colleges free for every student. It also authorizes additional quality checks for federally-aided programs using a competency-based education (CBE) model. The bill would also require the Secretary to appoint a Special Assistant for Equity and Inclusion.

## Sanctions

The Trump administration has demonstrated a strong propensity to deploy trade sanctions as a key component of the executive branch's foreign policy toolkit in an effort to generate unsustainable economic pressure on targeted governments, and their proxies and affiliates, around the world. As tensions continue between the US and other authoritarian regimes in Russia, Iran, North Korea and Venezuela in particular, both the administration and Congress will continue to explore the imposition of new sanctions to effectuate behavioural change and bolster ongoing diplomatic and other engagements by the US and its allies.

The recent release of the Mueller report, which contains new information and findings about the nature, scope and extent of Russian interference in the 2016 US presidential election, has generated rumblings in Washington that the new information and findings could lead to more focused interest among members of Congress on both sides of the aisle on consideration of DASKA and DETER (the two most prominent Russia sanctions bills pending on Capitol Hill), along with other pending sanctions legislation.

Evidencing the strong likelihood of continued congressional consideration of sanctions legislation in the months ahead, House Foreign Affairs Committee Chairman Eliot Engel (D-NY) and Ranking Member Mike McCaul (R-TX) are, as of this writing, leading work on a bipartisan bill that would address a variety of perceived threats to US interests posed by Russia, including through the imposition of targeted sanctions against certain oligarchs. The bill is expected to be introduced in May and to garner support from key Democrats and Republicans in both chambers.

## Defense

As of this writing, approximately 25 percent of the Department of Defense's (DoD's) top posts are filled by individuals serving in an acting or "performing the duties of" capacity. This includes both the Secretary of Defense and Deputy Secretary of Defense positions. As a result, Acting Secretary of Defense Patrick Shanahan and his key advisors have had diminished influence during critical defense policy debates within the Trump administration, ceding ground and final decision-making outcomes to National Security Advisor John Bolton and his more robustly staffed National Security Council.

However, this dynamic may soon change. The President appears poised to nominate Shanahan for the permanent role now that an ethics investigation into Shanahan's alleged favoritism toward Boeing (his former employer) has concluded with a finding of no misconduct.

Shifting to Capitol Hill, the focus among defense policymakers from May through the break for August recess will be on the National Defense Authorization Act,



Congress' annual defense policy bill, and corresponding defense appropriations legislation. How soon congressional leaders are able to reach an agreement on a topline defense spending level for fiscal 2020 and whether the White House will sign off on such a deal remain open questions. Senate Armed Services Committee Chairman Jim Inhofe (R-OK) supports \$750 billion in funding for the Pentagon (in line with the President's FY 2020 budget request), while House Armed Services Committee Chairman Adam Smith (D-WA) has endorsed a \$733 billion topline.

## Gun Control

Passed in the House but with a bleak future in the Senate, H.R.8, the Bipartisan Background Checks Act of 2019, was sponsored by Rep. Mike Thompson (D-CA). It provides for universal background checks preceding commercial gun sales. It also seeks to close loopholes left open by current law, which do not cover sales made by unlicensed gun sellers.

## LGBTQ Issues

In March, Representative David Cicilline (D-RI) and Senator Jeff Merkley (D-OR) reintroduced the Equality Act, a bill that would amend the Civil Rights Act of 1964 and the Fair Housing Act to ban anti-LGBT discrimination in employment, housing, public accommodations, jury service, education, federal programs and credit. The bill also would include sex in the list of protected classes in public accommodation in addition to expanding the definition of public accommodations to include retail stores, banks, transportation services and health care services.

With the new Democratic majority in the House and almost 240 House cosponsors, the bill is likely to pass that chamber this year. But even after House passage, and despite the fact that the legislation currently has 47 Senate cosponsors, it remains unlikely that the Senate will take up this bill and pass it.

On April 12, the Trump administration's policy banning some transgender individuals from joining the military became effective and, on April 22, the Supreme Court agreed to hear argument, likely next fall, on three cases that are expected to finally settle the circuit-splitting issue of whether sexual orientation, including gay and transgender status, falls under the protection of Title VII.

## Ethics Reform

The outlook for any further legislative movement on campaign finance and lobbying reform in the next 100 days is bleak. The House passed H.R. 1 along party lines in early March, but the legislation hit a brick wall in the Senate. Despite recent efforts by Senate Democrats to revive the issue, any meaningful reform is almost certainly DOA in the upper chamber.

## FARA Reform

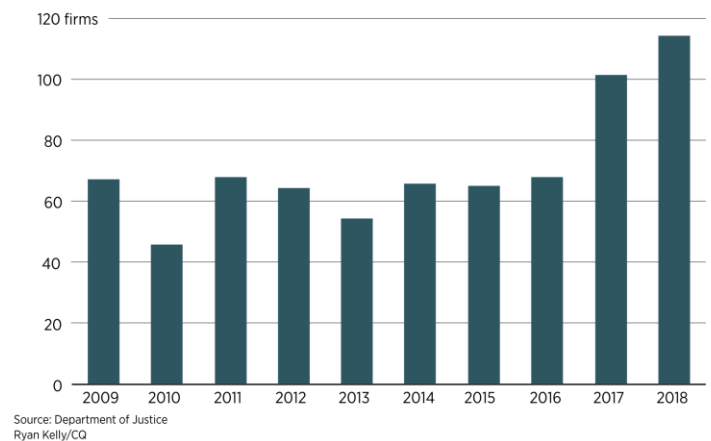
The issue of FARA (Foreign Agents Registration Act) reform has resurfaced in recent weeks due to the release of the Mueller report and the arrest of Greg Craig, a former White House attorney for President Obama.

Senator Grassley has made it clear that he wants to reform the antiquated law, but his efforts stalled in the late part of 2018 and H.R. 1, surprisingly, contained no provisions relating to FARA reform.

However, Grassley and Senator Diane Feinstein (D-CA), along with Representative Mike Johnson (R-LA) have renewed calls for such reform. We can expect legislative silence when it comes to campaign finance and voting reform (although 2020 Democratic hopefuls will be sounding the alarm on these issues), and possibly an effort to change the outdated FARA law in the months to come.

### Foreign Efforts to Influence Policy Jump to 25-Year High

Nearly twice as many firms registered to represent foreign governments and political parties last year, compared to 2016. The total of 114 new FARA registrants was the most since 1993, Bill Clinton's first year in office.



## Homeland Security/Cybersecurity

Following former Secretary of Homeland Security Kirsten Nielsen's resignation in April, Kevin McAleenan assumed the role of Acting Secretary, while continuing to serve as the head of US Customs and Border Protection. Also in the wake of Nielsen's departure, Chris Krebs became the first head of the Department of Homeland Security's (DHS's) newly designated and empowered Cybersecurity and Infrastructure Security Agency (CISA). He is one of the few remaining true cybersecurity experts serving in a top leadership role within the Trump administration, and arguably, is now the top cybersecurity official in the US.

While DHS will be compelled to remain at the forefront of the ongoing border security debate, Krebs and his team share key policy priorities with a bipartisan group of cybersecurity-focused lawmakers on Capitol Hill. In the run-up to August recess, CISA and Congress will

continue to collaborate to advance shared interests in addressing election security and US supply chain security vulnerabilities, and in pursuing other critical infrastructure protection objectives.

## Privacy

One bill we're excited about is H.R. 946, the Stopping Bad Robocalls Act. Sponsored by Representative Frank Pallone, Jr. (D-NJ), the text would allow consumers to revoke prior consent to receive automated calls. It would require the FCC to submit an annual report to Congress on the number of robocall complaints and citations, and proposals to reduce the number of illegal robocalls.

While the prospects for the enactment of any broader data privacy legislation in this Congress remain uncertain at best, it is clear that various significant data breaches and hacks have prompted tremendous interest from many committees in Congress about how best to address the collection, use and protection of sensitive information by financial regulators and private companies and ensure privacy.

As an example, stating that the collection and use of personally identifiable information would be a major focus of the Senate Banking Committee, Chairman Crapo and Ranking Member Sherrod Brown (D-OH) jointly put out a series of questions and invited public comment about what types of potential legislation would give consumers more control over and enhance the protection of consumer financial data that is collected about them and ensure that consumers are notified of breaches in a timely and consistent manner.

## Election Hacking

DHS is rolling out the Protect 2020 initiative, which will promote cybersecurity audits, patching and standards. The goal is to prepare state and local election officials for the 2020 presidential election.

Cybersecurity and Infrastructure Security Agency (CISA) Director Christopher Krebs identified several challenges, including that some election systems are based on older technology that could be more prone to cybersecurity risks. Krebs said that DHS is committed to industry partnerships to protect critical infrastructure security. This commitment is reflected in the White House's September 2018 National Cyber Strategy DHS's May 2018 Cybersecurity Strategy.

Krebs testified that DHS prioritizes federal cybersecurity efforts for high-value assets (HVAs) and other high-impact systems. The agency also prioritizes higher-risk systems, and looks for opportunities to cut costs and scale approaches.

Krebs identified supply chain and election cybersecurity as additional areas of focus. A newly established ICT Supply Chain Risk Management Task Force, a public-

private partnership, will assess security risks and establish guidelines for qualified ICT bidder and manufacturer lists.

## Middle East and Iran

Within the past two months, the Senate and House passed a bipartisan bill to end US support for the Saudi-led coalition war in Yemen, which President Trump promptly vetoed. The veto was only the second time the President has used his power to block legislation. Expect the House and Senate to keep pushing back against the administration's unwavering support of the Saudi-led conflict in Yemen.

The Senate and the executive branch will collectively continue to impose and enforce stringent sanctions on Iran and its many Shi'ite counterparts throughout the region, including in Lebanon and Syria. The administration announced it will not renew waivers that allowed eight foreign governments to buy Iranian oil without getting sanctioned, a move that was applauded by the Senate. In the House, Representative McCall introduced H.R. 2118, the Iran Ballistic Missiles and International Sanctions Enforcement Act, which is expected to have bipartisan support.

A scaled-back US military presence in the Middle East, including in Iraq and Syria, will continue to impact the region, particularly with regard to US relations with Russia and Turkey, both of which have demonstrated a willingness to fill power vacuums created by US withdrawal.

## Central and South America

The President's policy focus in Latin America has centered on immigration and trade and will continue to do so. In addition to the preliminary injunction House lawyers requested a US district court to issue against construction of more US-Mexico border wall, the House will keep taking measures to block the President plan to use \$6 billion of military construction and counter-drug accounts to build a wall. On the right, the House has introduced the Border Wall Trust Fund Act to "allow the Secretary of the Treasury to accept public donations to fund the construction of a barrier on the border between the United States and Mexico, and for other purposes."

A recent bipartisan letter from CMS Health Care Fraud and Abuse Control (HCFAC) urging the administration to reconsider its plan to cut US assistance to El Salvador, Guatemala, and Honduras is just one example of continual House opposition to Trump's policies in Central and South America. Other than those issues, the main focus of the administration in Latin America will be trade and improving trade deals.

## North Korea

Negotiations to get North Korea to give up its nuclear arms have hit a roadblock. In fact, it appears that there has been no actual follow-through on Kim Jong Un's undertaking to denuclearize. This crisis could heat up again in the next few months as Kim Jong Un seeks alternative alliances with Russia and other countries.

## Dentons' Advocacy and Public Policy Practice

Dentons' national team includes lawyers and professionals with experience in federal, state and local government and specialties in public policy, law, business and public affairs. We help clients anticipate and leverage or mitigate legislative, regulatory and public policy developments through innovative and holistic issue strategies. Our team blends core regulatory, legislative and political experience across key industry sectors with practical guidance and a global perspective on policy and regulatory initiatives important to you and your business.