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Pillsbury's 2018 Post-Election Outlook

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The 2018 Midterm Election played out as most poll forecasters speculated. Although several races have yet to be decided, Republicans have retained control of the Senate, but lost at least 29 seats, allowing the Democrats to wrest back control of the House for the first time since 2010.

Below is Pillsbury's assessment of some of the top issues where the incoming 116th Congress will likely be most active, including:

- Congressional Investigations
- Financial Services
- Tax Reform
- Cybersecurity and Privacy
- Foreign Policy, International Trade, and Sanctions
- Energy and the Environment
- Transportation and Aviation
- Health Care
- State and Local Government
- Compliance, Ethics, and Campaign Reform

I. Congressional Investigations

Congress enjoys broad powers for conducting Congressional investigations and hearings. Members make the rules for investigations, enforce those rules, and control the scope of information requests. The political stakes of investigations are especially high in a divided Congress where each party seeks to use Congressional oversight authority for political advantage. We expect Democratic leaders in the House will act quickly to increase and intensify their use of Congressional investigative powers.

In the current Congress, Republican committee chairs have been roundly criticized by Democrats who believe that Congress has not been exercising appropriate oversight of the Executive Branch. With the balance of power in the House shifting, Democratic committee chairs are expected to expand and energize investigatory activities with a special focus on investigating leaders in the Trump Administration, including from the White House, the Environmental Protection Agency (EPA), the Department of Interior, the Department of Justice, the Department of Homeland Security, and the Department of Education.

In the coming Congress, we expect the following industries will be the subject of expanded investigations by House Democrats who are eager to put their investigative powers to work:

- Energy (oil, gas, and coal)
- Financial services
- Health care
- Pharmaceuticals and medical devices
- Mining interests
- Technology and social media
- Conservative interest and industry groups

Congressman Frank Pallone (D-NJ) is expected to take the Chairman position at the House Energy and Commerce Committee, which enjoys wide-ranging jurisdiction over energy, the environment, health care, and telecommunications. He is expected to engage the committee in an aggressive oversight agenda, including oversight of the EPA, its budget, and its operations. Congressman Pallone also is expected to expand the Committee's investigations of pharmaceutical companies, health care companies and medical device manufacturers, broadcasting companies, and technology companies.

Congressman Raúl Grijalva (D-AZ) is the top-ranking Democrat on the House Natural Resources Committee. If Congressman Grijalva is named Chair as expected, he has promised rigorous oversight of the Department of Interior and Secretary Zinke. He may also activate the Committee's powers to oversee mining regulation and enforcement, including the environmental effects of mining.

Congressman Adam Smith (D-WA) leads the Democrats on the House Armed Services Committee (HASC) and is expected to serve as the Committee's next Chairman. He will be well positioned to focus his oversight authority on President Trump's national security policies, including policies related to Russia and China. Congressman Smith is also a vocal opponent of President Trump's Space Force proposal. He may want his Committee to shed light on the proposal and his concerns about costs and bureaucratic inefficiencies.

The House Oversight and Government Reform Committee (OGR) has broad authority to investigate any matter within its own jurisdiction and within the jurisdiction of any other standing committee. Watch this committee for the most explosive partisan battles. Congressman Elijah Cummings (D-Maryland) is the highest-ranking Democrat on the OGR. He has signaled his interest in investigating the Trump Administration's response to Hurricane Maria in Puerto Rico and other charges of ethics violations in the Executive Branch.

Each Congressional committee can pursue investigations of issues that fall within the Committee's jurisdiction. We expect Democratic leaders will intensify reviews of potential misuse of federal funds by loan and grant recipients and possible conflicts of interest related to taxpayer-funded lobbying. Expect significant pushback from the White House and ranking Republicans on Democratic oversight initiatives.

II. Financial Services

Financial services industry stakeholders had high hopes that the combination of the Trump Administration and a Republican Congress would yield wholesale changes to the financial regulatory regime, leading to a reduction of regulatory burdens and capital requirements, particularly those created under the Dodd-Frank Act. In reality, the changes put into place over the past two years have been meaningful but modest, perhaps best exemplified by the enactment into law of the Economic Growth, Regulatory Relief and Consumer Protection Act, which provided relief to small and mid-size financial institutions but few changes for larger financial institutions. At the same time, several federal financial regulatory agencies, utilizing authority already delegated to them by Congress, have embarked on their own efforts to reduce regulations and be more discerning with respect to enforcement action. It is likely that the Democratic-controlled House will scrutinize this regulatory activity more aggressively than the Republican-controlled House but will be unable to stop these actions legislatively given the split in power.

New Leader, New Priorities for the House Financial Services Committee

Under Democratic control of the House Financial Services Committee, there is likely to be much more oversight of federal financial regulators' activity, as well as efforts to advance legislation to bolster the rulemaking and supervision authorities of the Bureau of Consumer Financial Protection ("Bureau"), but enactment of significant new legislation remains unlikely.

Congresswoman Maxine Waters (D-CA) will likely take over as Chair of the Financial Services Committee. Rep. Waters is known as a progressive firebrand and fierce opponent of President Trump and will certainly use her gavel to scrutinize activities by the various federal financial regulatory agencies to reduce regulation and/or compliance burdens for financial institutions, as well as individual financial services providers. Expect numerous hearings focused on regulatory agencies' adoption of new rules intended to reduce regulations for financial institutions, perceived actions by regulators to reduce enforcement activity against financial services providers, and alleged malfeasance by financial services companies. In particular, we expect that Chairman Waters will seek to shed new light on activities undertaken by the Bureau under the leadership of Acting Director Mick Mulvaney and his nominated successor, Kathy Kraninger. The Bureau's initiative to revise its final rule governing short-term lending and its reduction in enforcement actions against financial institutions are likely to come under the committee's microscope.

Despite the fact that Rep. Waters has telegraphed an aggressive oversight agenda, that does not mean that her leadership of the committee will be completely partisan in nature or that she will always be at odds with the financial services industry, which views her as a known quantity. Indeed, three Republicans who are most likely to vie to serve as Ranking Member on the committee—Representatives Blaine Luetkemeyer (R-MO), Patrick McHenry (R-NC, and Frank Lucas (R-OK)—have praised Rep. Waters for her willingness to work together on bipartisan legislation. For instance, despite their significant ideological differences, Congresswoman Waters worked to forge agreement with outgoing Chairman Jeb Hensarling (R-MO) on legislation to spur capital formation that stands a chance of passage in the near future. Although the two parties have very different views with respect to several key policy issues—including reform of federal anti-money laundering laws, encouraging greater financial inclusion, developing a new framework for encouraging financial innovation, and a federal standard for data breach notification by financial institutions—it is possible that the gulf could be bridged on one or multiple of these issues.

Status Quo on the Senate Side

There is likely to be little change with respect to legislation and/or oversight activities by the Senate Committee on Banking, Housing, and Urban Affairs. Current Chairman Mike Crapo (R-ID) is likely to continue to hold the gavel, unless he is given the opportunity to take over as chair of the influential Senate Finance Committee if Senator Chuck Grassley (R-IA) chooses not to exercise his seniority on the Finance Committee and instead continues to serve as Chairman of the Senate Judiciary Committee. In the likely scenario that Senator Crapo continues to lead the committee, we expect that he will continue efforts to tout and support the Trump Administration's financial deregulation agenda via hearings and other public activities. Although Senator Crapo and Banking Committee Ranking Member Sherrod Brown (D-OH) were not able to reach consensus on the bill that ultimately became the Economic Growth, Regulatory Relief, and Consumer Protection Act—which passed the Senate with significant Democratic support (despite strong opposition from Senator

Brown and Senator Elizabeth Warren (D-MA)) and was signed into law by President Trump—it is likely that the two committee leaders will seek to find common ground on other legislative priorities over the next two years.

Regulators Likely to Continue to Implement Deregulation Initiatives

With Congress unlikely to pass many new comprehensive bills related to financial services policy, federal financial regulatory agencies will likely continue to focus their attention on implementing the provisions of the Economic Growth, Regulatory Relief, and Consumer Protection Act and to find other areas where statutory authority allows for revision of existing rules that are perceived as overly onerous by regulated entities. Several areas of interest may include:

- Financial innovation: In recent months, several financial regulatory agencies—including the Federal Deposit Insurance Corporation (FDIC), the Bureau, and the Securities and Exchange Commission—have followed the lead of the Office of the Comptroller of the Currency (OCC) in establishing offices of innovation that serve as clearinghouses for information regarding innovation in the financial sector. In particular, the Bureau's Office of Innovation is collaborating with nearly a dozen foreign jurisdictions under the auspices of the Global Financial Innovation Network to explore the establishment of a cross-border regulatory sandbox in which fintech companies can test new products or services. It is also likely that federal regulators will begin to coordinate with states on fintech issues, as more states follow the lead of Arizona in establishing fintech sandboxes. Additionally, the OCC may finally begin to issue special purpose national bank charters to fintech companies, after announcing its long-awaited policy for doing so earlier this year. The OCC's authority to issue such charters is currently being challenged by state banking regulators in court.
- Financial inclusion: Earlier this year, the OCC issued an Advanced Notice of Proposed Rulemaking that outlines several potential proposals to modernize rules implementing the Community Reinvestment Act, which seeks to ensure that banks serve a diverse clientele. Additionally, Congress has held oversight hearings related to this topic and has focused generally on ways to improve financial inclusion. It is likely that the OCC will proceed with its rulemaking related to the OCC, perhaps in concert with the other federal financial regulators charged with implementing and enforcing the law. Whether Congress will seek to reform the CRA via new legislation remains to be seen.
- Brokered Deposits: The FDIC recently initiated a rulemaking seeking public comment on a proposed rule to exempt certain reciprocal deposits from being considered as brokered deposits for certain insured institutions. Under the proposal, well-capitalized and well rated institutions are not required to treat reciprocal deposits as brokered deposits up to the lesser of 20 percent of its total liabilities or $5 billion. The rulemaking is part of a larger effort the FDIC is undertaking to reform rules governing brokered deposits. In particular, stakeholders in the prepaid industry have been clamoring for the FDIC to clarify that prepaid products—including prepaid cards, P2P payments, and mobile wallets—do not qualify as brokered deposits. This comprehensive review of the FDIC's brokered deposits policy could yield such a clarification.

Combating Money Laundering

Banking Chairman Crapo intends to address money laundering as part of his Committee's agenda during the upcoming lame duck session of Congress. He plans to hold a hearing in late November on efforts to combat money laundering and other forms of illicit finance. A focus of the hearing will be on law enforcement's views on reforms that may be needed.

III. Tax Reform

With the Democrats in control of the House of Representatives for the 116th Congress, expect the Ways & Means Committee to conduct hearings on a wide variety of subjects. Democrats are poised to begin investigating President Trump and his family's business ties. Incoming Chairman Richard ("Richie") Neal (D-MA) and likely incoming Speaker of the House, Nancy Pelosi (D-CA), already have publicly stated that they want to investigate President Trump's tax returns.

Also high on the Democrats' agenda will be to hold hearings on the Tax Cuts and Jobs Act of 2017. Incoming Chairman Neal has promised hearings aimed at an overhaul of President Trump's biggest legislative accomplishment in the

115th Congress. Although the divided Congress means widescale change is unlikely until at least 2020, these hearing could produce legislation focusing on raising taxes on the wealthy, repealing the $10,000 cap on the state and local tax deduction, and ending the tax break for carried interest. Democrats have criticized the 2017 tax law as not benefitting most Americans. Lawmakers may now propose expanding the earned income tax credit and the child tax credit and establishing new education tax credits. Democrats continue to link the tax cuts and corporate rates to the future health of popular programs such as Social Security, Medicare, and Medicaid. As such, this area is particularly likely to have significant activity as both parties try to convince 2020 voters that their tax vision is the most advantageous.

Ways & Means Committee and the Transportation & Infrastructure Committee will likely have a great deal of cooperation in the 116th Congress. Democrats on the Ways & Means Committee want to pursue a transportation and infrastructure package. Chairman Peter DeFazio (D-OR) of the Transportation & Infrastructure Committee supports increased spending on our nation's Infrastructure and has stated he wants to create a select subcommittee to hold hearings on critical infrastructure issues. There are various proposals for increasing revenues to pay for needed infrastructure improvements, including the $1 trillion infrastructure bill proposed by the President Trump. Proposals include raising taxes on the wealthy, increasing the corporate tax by 2 to 5 percentage points and increasing the 18.4 cent federal gas tax. President Trump is on record saying to a group earlier this year saying he could support a 25 cent per gallon increase in the federal gasoline and diesel taxes, an idea backed by the U.S. Chamber of Commerce and the American Trucking Association.

Ways and Means will likely adopt measures to stimulate retirement savings. Congressman Neal has previously introduced several bills aimed at growing retirement savings options for working Americans and will champion this cause if he becomes Chairman, as is widely expected. With the Senate Finance Committee also signaling interest in retirement savings reform, this is an area were bipartisan cooperation could result in new legislation. Measures may include the creation of automatic workplace retirement accounts, requirements that certain employers maintain retirement accounts for employees, or adopting measures aimed at bolstering employer matching contributions to retirement accounts.

Looking at the remainder of this year, one topic that should be addressed by the 115th Congress during the lame duck session is the reauthorization of a set of narrow tax provisions, known as "tax extenders." Although some were addressed by the Tax Cuts and Jobs Act, many are still not permanent and require Congressional action. There are two possible outcomes for tax extenders. Firstly, Congress could simply extend all provisions for two more years. Alternatively, certain factions in Congress wish to review each extender and make certain provisions permanent, extend others for two years, and allow certain provisions to phase out. While outgoing Chairman Kevin Brady (R-TX) prefers this latter option, if Congress is unable to reach a deal during the lame duck session, their fate may ultimately be left to the 116th Congress to decide.

IV. Cybersecurity and Privacy

Some Common Ground + Oversight, Funding Fights, and New Agency and State rules

While there are many issue areas where Republican and Democratic priorities diverge greatly, cybersecurity has not usually been one of them. In 2015, a Republican-led Congress passed, and President Obama signed, one of the most significant pieces of federal cyber-related legislation ever enacted to support cyber information sharing among private-sector and federal agencies. As we look forward to the next Congress with a divided Senate and House, there may be some federal cyber priorities where legislators can find common ground. At the same time, other Democratic priorities—especially those involving election security—could prove to be more controversial.

Regardless of what Congress does in this arena, keep an eye on tightening federal agency cyber rules for industry. And, at the state level, expect state governments to continue moving quickly to enact cyber and privacy bills with implications that stretch beyond state lines.

Areas to watch include:

- **Federal Privacy rules to protect personal data**

Following a series of high-profile data breaches and controversies surrounding the mishandling of customer personal data, leading social media, technology, and consumer credit entities, faced bipartisan criticism. In September, senior leaders from Apple, Amazon, Twitter, and Google, among others, testified at a Senate Commerce Committee hearing, marking the beginning of Congressional efforts on consumer privacy protection that will stretch into the next Congress.

Committee Republicans and Democrats are largely in agreement on the need for a national privacy law, and the debate now turns to what form that law should take. In the coming months, expect negotiations to center on balancing customer interests with technology company interests, and the interplay between U.S. federal law and stringent privacy laws already enacted in Europe and California.

Republican members are likely to support legislation offered by large technology companies as it will tend to be more "business friendly." In contrast, Democratic members, including Democratic privacy stalwarts like Senators Markey, Warren, and Wyden, are likely to continue to push for tough privacy rules that will go further than industry would prefer.

The bipartisan push for security legislation governing "Internet of Things" devices will likely continue in the new Congress as well. Whether such legislation can pass a closely divided Senate remains to be seen, but interest in that legislation is sure to continue.

- **Investment in a Stand-Alone Cyber Agency at DHS**

Members on both side of the aisle have come together in recent months to send a sweeping cyber measure, the Cybersecurity and Infrastructure Security Agency Act, to the White House that would appoint the Department of Homeland Security to stand up a dedicated agency to be the government's main civilian cyber authority. The passage of this bill represents the conclusion of a mulit-year long debate over which federal agency should take the lead on dealing with cyber threats to critical infrastructure sectors.

President Trump is expected to sign this bill, and when he does, the new agency will become operational and begin taking over core federal responsibilities to combat cyber threats. As this happens, expect increased congressional oversight over the agency's progress and calls—from members of both parties—to fund agency activities.

- **House-Led Push for Election Security Funding and Oversight**

This is one area where we expect more tension. A Democratic House is anticipated to focus on election security by pushing for millions in funding for states to improve the security of voting machines. These funding bills may hit roadblocks—as they did in the current Congress—because of Republican concerns about spending and how much responsibility the federal government as opposed to the states should have for election administration. Also expect increased oversight activity from a Democrat-led House Homeland Security Committee investigating adversarial attacks on election systems.

- **Agency Activities for Industry to Watch**
  - In October, the FDA published draft cyber-related guidance for manufacturers seeking agency approval for new medical devices and supported the development of a Medical Device Cybersecurity Incident Preparedness and Response Playbook. Expect outreach to industry in early 2019 as the agency continues to forge a path in managing cyber vulnerabilities in medical devices.

– The Administration's push for "supply chain" security (securing software and hardware components, particularly in technology systems acquired by the U.S. government) will continue unabated. This is a priority for several Cabinet agencies, including the Departments of Defense and Homeland Security. Control of Congress will only impact agency priorities in the sense of how tough such rules are.

– Additionally, the push for increased use of cybersecurity best practices developed by the National Institute of Standards and Technology (NIST) will continue as well regardless of who controls Congress. The Administration and both political parties agree that NIST practices regarding privacy, security of mobile devices, and other technology areas are a highly beneficial effort.

- **State Legislative Focus on Cyber and Privacy**

This year, California enacted the Consumer Privacy Act, a sweeping measure that goes into effect in 2020 and establishes basic privacy rights for Californians and obligations for certain companies that do business in the state and collect and control personal information of California residents. Many other states—including Arizona, Colorado, and Virginia—passed new legislation aimed at data security and security practice requirements for businesses that handle the personal information of residents. In the coming legislative cycles, expect this trend to continue.

V. Foreign Policy, International Trade and Sanctions

With the 116th Congress composed of a Democratic-controlled House and a Republican-controlled Senate, the current high level of drama over foreign policy and international trade policies may increase further. Without either party having unified control of Congress to significantly curtail or advance the Trump Administration's goals, the White House will continue to exercise its unrestrained executive powers where possible; focus on confronting China, North Korea, and Iran; and will remain determined in its plan to rework international trade frameworks and agreements. Accordingly, there will be heightened criticism and scrutiny from Congress, leading to more intense domestic political debate.

Uncertainty over the long-term direction of U.S. foreign and trade policy will rest for the remainder of President's Trump's term. While the Trump Administration will attempt to follow through on the President's stated policy goals, as well as those established at lower levels, competing interests and objectives among multiple stakeholders across the political spectrum will lead to inconsistent and often unpredictable outcomes. However, regular and broad-based engagement will be important to maximize opportunities to shape outcomes and stay ahead of developments.

As a result of the change in control of the House, expect the now Democrat-controlled House of Representatives to attempt to exert more influence over the White House's foreign policy goals through the defense authorization and appropriations process. It will also likely strive for more oversight, including of U.S. activities in North Korea, Afghanistan, Latin America, and Iraq and the Middle East more broadly; as well as of the absence of a coherent Africa policy. Given the thin majority possessed by the Democrats in the House, their ability to be effective will be directly correlated by their ability to work as a united front.

Some foreign policy issues will likely retain bipartisan support, though. For example, Russia's international action that confront U.S. interests remains a looming presence in both chambers. Despite split party control, a push for renewed sanctions against Russia over U.S. and foreign election interferences, its use of chemical weapons, and its other activities designed to undermine U.S. and European interests is likely to have bipartisan support; though the Trump Administration may attempt to water town some sanctions initiatives.

Similarly, the new Congress will also likely show bipartisan support for curtailing U.S. support of Middle East proxy wars and preventing human rights violations, especially in Yemen. Such measures may include Congressional imposed limits on U.S. military sales and other military support.

On Iran, the Administration's Iran policy will continue unchanged—Democrats will likely use their new platform to criticize the Trump Administration for the way in which it exited the Iran nuclear agreement and ensure that the public sees any negative consequences as belonging solely to President Trump, but it will have little power to alter the policy.

On China, there may be common cause between Democrats and the Trump Administration on security issues. Traditionally, there has been a large well of support in the Democratic party for confronting China on trade and countering Beijing's steadily increasing influence over areas of traditional American dominance. Democrats will likely hold hearings and push legislation critical of Chinese actions.

With regard to U.S.-China trade disputes, Democrats will be under pressure from industry groups to protect them from economic harm, but Democrats will likely have little ability to alter Trump Administration policy, including passing legislation putting limits on the President's ability to impose tariffs. They also have little interest, as Democrats have traditionally been the party most supportive of labor and critical of Chinese trade practices. Moreover, with America's industrial heartland essential for Democrats' chance of winning the presidency in 2020, it is unlikely Democrats will take any actions that may hurt them with voters. Instead, they will work less to reduce the impact of Trump's trade policy and more to make sure any negative economic consequences from trade disputes with China are blamed solely on President Trump, so that they can obtain maximum political benefit.

Broadly speaking, the Trump Administration's trade reform goals will likely continue, unchanged by the election. While the Administration continues in its attempt to renegotiate existing trade deals and impose tariffs through existing legislations, drastic changes that hurt U.S. businesses remain unpopular in Congress and may cause the administration to limit some of its actions. Although labor-backed Democrats in the House may be more ideologically inclined to support some of President Trump's reform goals, intense political acrimony will likely prevent widescale cooperation. Congressional approval of the USMCA (the new NAFTA) cannot be assumed, which in turn may lead to renewed threats from the Trump Administration to withdraw from the current NAFTA. Trade policy will likely stay the course through 2020, with dynamics for industry changing little despite the change in party control of the House.

Beyond Congress, one of the most interesting development in international trade to watch is the creation of the U.S. International Development Finance Corp. Signed into law on October 5th, the U.S. International Development Finance Corp. will replace the Overseas Private Investment Corp. (OPIC) as the United States' primary development finance institution. The U.S. International Development Finance Corp. will act as the venture capital arm of the U.S. and will be able to offer capital investments in addition to the loans previously offered by OPIC. This initiative will allow the United States to compete to some degree with China's Belt and Road Initiative that is funneling massive investments into Africa, India, and Eastern Europe. Expect the International Development Finance Corp. to become a major tool in the deal-driven foreign policy of the Trump Administration and, in an era of shrinking foreign assistance budgets, one of the few areas where the U.S. can offer true material benefit to countries as part of foreign engagement. Related to this, those seeking funding projects will increasingly turn to Congress to endorse their initiatives and influence agency decisions.

VI. Energy and the Environment

Renewed Focus on the Environment and Clean Energy

With control of the House, Democrats are expected to make the environment and clean energy central issues, and over the next two years there may be room for bipartisan initiatives surrounding carbon reduction and renewables.

Current House Minority Leader Nancy Pelosi has said that she will urge her caucus to revive a committee focused on climate change in order to assess energy conservation and climate mitigation legislation, while also directing her caucus to seek policy wins that are practical to achieve in the short-term.

Democrats are also eager to move forward with their proposed $1 trillion infrastructure investment plan, which targets improving and modernizing aging energy infrastructure, shoring up grid reliability, expanding renewable energy, and promoting energy efficiency programs—policies where both parties can find common ground.

Democratic control of the House also bodes well for energy storage and its role in promoting a reliable and efficient electric system. Bipartisan support continues to grow for making energy storage projects eligible for ITC tax credits in future tax legislation, including a potential lame duck package of tax extenders.

Congressman Frank Pallone (D-NJ) is anticipated to take the Chairman position at the House Energy and Commerce Committee, and he is expected to continue his strong support for solar, wind, and other renewables, and for energy efficiency programs. He is further expected to use his authority to set the committee's agenda, design the format of oversight hearings, subpoena documents and call in witnesses—including officials at the Department of Energy, Federal Energy Regulatory Commission, and EPA, and representatives from the coal, oil, and gas industries.

Congressman Pallone has recently forecasted his intent to specifically "conduct oversight of President Trump's efforts to upend competitive electricity markets by providing preferential rates and other subsidies to coal and nuclear generation." He may also be interested in reassessing the exclusions provided for oil and gas from the definition of a hazardous substance under the Superfund statute.

With regards to nuclear energy, there has been increasing support for the licensing of advanced reactors in the Senate, which we expect to see continue in the new makeup of the House. Additionally, with the change in representation from Nevada, Senate leadership may see a clearer path to a functioning federal nuclear waste program—particularly as representatives are being forced to grapple with short-term nuclear waste solutions in their home states.

Despite the change in control of the House, we see continued active engagement by the U.S. Bureau of Land Management (BLM), the lead federal agency at the Department of Interior which is tasked with completing environmental reviews under the National Environmental Policy Act. BLM leaders are expected to continue efforts to speed up the environmental review and approval process for transmission lines.

VII. Transportation and Aviation

In the 116th Congress, Congressman Peter DeFazio (D-OR) will be the new chairman of the House Transportation and Infrastructure Committee. He has been a member of the Committee since 1987, Congressman DeFazio previously served as Chairman or Ranking Member of four of the six subcommittees: Aviation, Coast Guard and Maritime Transportation, Highways and Transit, and Water Resources and Environment.

Congressman DeFazio is expected to subject DOT/FAA to significant congressional oversight, as oversight has always been an important issue to him, with a focus on safety and grant management. DeFazio's focus on aviation has included advocating support of maintaining and improving air service to small and medium sized communities. He is also a known advocate for airline passenger rights.

Current Republican Chairman of the House Transportation Committee, Bill Shuster (R-PA) is retiring. Then new Republican ranking member of the Committee will either be Congressman Jeff Denham (R-CA) or Congressman Sam Graves (R-MO); however, Graves has more seniority over Denham. The two are viewed as mostly aligned on policy.

With Republicans retaining control of the Senate, Senator John Thune (R-SD), Chairman of the Senate Commerce Committee, will most likely become the Senate Majority Whip. Senator Roger Wicker (R-MS) is the projected new Chairman of the Senate Commerce Committee. This will keep a senator with a significant rural constituency as the Chairman. Wicker is currently chairman of the Commerce's telecommunications subcommittee and has yet to outline a specific agenda for transportation and aviation-related matters.

Senate Commerce ranking member Bill Nelson (D-FL) appears to be heading for a recount against Florida Governor Rick Scott for the Florida Senate seat. If Senator Nelson does not prevail, Senator Maria Cantwell (D-WA) is next in line in seniority after Nelson, but she is also ranking member of the Energy Committee. Senator Amy Klobuchar (D-MN) would be next in line for the ranking member position.

With the President signing the FAA Reauthorization Act of 2018 on October 5, 2018, the most significant piece of pending aviation legislation cleared through Congress and was signed into law. The five-year reauthorization will authorize funding for FAA programs and services from FY 2019 through FY 2023. With a Democratic controlled House and Republican controlled Senate, we may not see many more aviation-related pieces of legislation signed into law over the next two years, such as the privatization of the FAA's Air Traffic Control, of which President Trump has been a proponent.

VIII. Health Care

Health care appears to have come out as the most-talked about issue of the 2018 elections, despite attempts to make central themes of the asylum caravan, Justice Kavanaugh's confirmation and trade wars. Ironically, although health care was the chief focus for the electorate, the outcome of the election promises little progress in addressing the principal concern, which is the escalating personal costs for health care experienced by millions of Americans and the accompanying reduction in accessible care.

While Democrats campaigned on promises of universal health care, that isn't going to happen as long as Republicans control the Senate and the White House. Instead, the portions of the Affordable Care Act (ACA) that survived the last Congress are probably safe with a Democrat-controlled House so long as the Red States' pending lawsuits against the ACA, backed by the Justice Department, lose steam as Republicans recognize the ACA is pretty popular after all. However, more doubtful are the prospects for addressing escalating premiums for individual health care benefit plans. One area to watch will be potential bi-partisan efforts to address drug costs, particularly since the President now seems to favor some form of price bench-marking, but the drug lobby is not going to keep still during that debate.

Really the only success for health care advocates in the 2018 elections occurred at the state level, with Medicaid expansion initiatives passing in Red States Idaho, Nebraska and Utah and Democratic victories for state houses in Kansas, Wisconsin and Maine. Progress was tempered a bit by the state house loss in Florida and the defeat of the effort to extend Medicaid expansion in Montana into 2020, which became controversial because the expansion would have been be funded by a new tobacco tax. The Montana defeat should be credited to the $17 million campaign waged by the tobacco industry. All told, it is estimated that nearly 150,000 people will get coverage if the Idaho, Nebraska and Utah administrations carry out the will of the people, while 90,000 will lose coverage in Montana--not very encouraging for Medicaid expansion advocates when you do the math.

IX. Local Government

After nearly a decade of Republican dominance at the state and local level, Democrats made significant gains on Election Day by picking up 7 previously Republican held governorships, taking over control of more than 300 state legislative seats, securing a "trifecta" of control over the governor's office and both state legislative chambers in at least 6 states, and breaking Republican legislative supermajorities in the key swing states of North Carolina, Michigan, and Pennsylvania (all of which will have Democratic governors).

In many cases, these Democratic controlled administrations will attempt to serve as a bulwark against the Trump Administration and its policies. At the same time, Republicans still control a majority of state legislatures and governorships; these Republican officeholders, and the influential and effective interest groups that support them, will continue to act as incubators for conservative policies that can be replicated at the local, state, and federal level.

Deregulation Efforts Will Continue Largely Unabated in GOP-Controlled States

Despite Democratic enthusiasm over Medicaid expansion and the party's ability to adopt progressive policies in many of the country's largest states, Republicans will still flex their muscles in the many states that they continue to control. In particular, Republican efforts to reduce regulation of business at the state level in these jurisdictions will likely be uninterrupted. It is also likely that Republicans, with some Democratic support, will continue to pursue enactment of legislation that reduces administrative burdens for businesses and "right size" regulations governing occupational licenses. On this latter issue, Republican may be able to find bipartisan support, as Democrats—including the Obama Administration—have long believed that overly burdensome occupational licensing requirements may create unnecessary barriers to entry to work in certain fields or professions.

As legislators work on these initiatives, they will likely be mindful to ensure that efforts to reform occupational licensing requirements do not infringe upon the ability of individuals to hold themselves out as certified after obtaining a private, voluntary certification. Pillsbury currently serves as counsel to the Professional Certification Coalition, a newly formed and growing association of over 100 certification organizations, professional societies, and others whose mission is to ensure that protection of private certification as occupational licensing reform legislation is considered. Further information about the PCC can be found at www.profcertcoalition.org.

Standardization of State Money Services Business Licensing and Encouragement of Financial Innovation Likely to Continue

State officials are also likely to continue their efforts to reduce administrative burdens for businesses in the financial services arena. Earlier this year, under the auspices of the Conference of State Bank Supervisors' (CSBS) fintech working group, more than a half-dozen states formed a compact to harmonize requirements governing money services businesses (MSBs). Under the compact, if any one of the states approves key requirements pertaining to a MSB's license—including the firm's IT, cybersecurity, business plan, background check, and compliance with the federal Bank Secrecy Act—the other participating states will provide reciprocity with respect to those licensing requirements for the licensed entity. The compact should significantly streamline the MSB licensing process for non-bank financial services providers within the participating states. More generally, under its Vision 2020 initiative, CSBS has signaled that state regulators understand that regulatory regimes must modernize alongside the financial services industry and will look to implement additional multistate licensing and supervisory regimes to reflect these developments.

Of course, the move by state regulators is also a defensive one, of sorts: regulators are concerned that fintech companies will increasingly explore the possibility of pursuing a special purpose national bank charter from the Office of the Comptroller of the Currency (OCC), now that the OCC has established its policies governing such charters. Fintechs obtaining a national bank charter would no longer be required to obtain state money transmitter or lending licenses. Against this backdrop, CSBS and the New York Department of Financial Services are challenging the OCC's fintech charter authority in court.

Moreover, apart from the OCC's fintech charter, there has been increasing speculation that certain MSBs are supportive of adoption of a federal law governing MSBs that would preempt state MSB licensing laws and create a single standard for MSB regulation. To date, no such federal legislation has been proposed. However, as the possibility of such a federal law is discussed more seriously in financial services policy circles, state regulators are pursuing greater multistate regulatory harmonization for MSBs to forestall such an effort. The compact described above and the Vision 2020 initiative appear to be an outgrowth of that response.

State- and Local-Level Response to National Agenda Items

With Washington poised to enter the gridlock that often accompanies a divided Congress, expect the states to continue working to make progress in areas that are in the national conversation. A few examples include:

- Opioid Crisis. In late 2018, President Trump signed a sweeping, bipartisan bill that addresses many aspects of the opioid crisis, supporting state efforts that have been in the works for years. Expect continued pushes in state legislatures for limits on opioid prescriptions, registration and licensing of pain clinics, and support for treatment and training programs.
- Education. With teacher strikes grabbing the attention of state lawmakers in states stretching Arizona to West Virginia in 2018, expect continued local pressure in these states—and others—to fund public schools and improve school performance. Juxtapose these efforts with Department of Education proposals to shift funding to private school vouchers and "school choice" plans.
- Marijuana. On Election Day, voters in three more states voted to legalize marijuana for recreational or medical use, bringing the total number of states to legal marijuana to some degree up to 33. Marijuana, however, remains illegal under federal law. Watch the interplay between the states and the Department of Justice which has taken a hard line against legalization.
- Immigration. Immigration is at the top of the national discourse. Federal immigration policy proposals abound, but consensus is scare. In this environment, keep an eye on state action in this politically charged arena. For example, on Election Day, Oregon voters rejected a measure that would have rolled back the state's long-standing policies restricting local law enforcement cooperation with federal deportation practices. Expect state legislatures to continue to debate sanctuary policies, refugees, and in-state tuition issues.

X. Compliance, Ethics, and Campaign Reform

With the Democrats taking over the House we can expect to see Ethics and Campaign Reform at the top of their legislative agenda. Proposals will be forthcoming for campaign finance reform, voting rights, ethics and accountability. The Democrats have made it clear that they want to do something about the Supreme Court's decision in Citizens United and how they believe the decision has impacted the electoral process and fueled Super PACs. Since it is apparent that the Supreme Court will not be overturning that decision, we can expect the Democrats to push for increased disclosure requirements for non-profit groups to address the concept of "dark money" and to make every attempt to reverse the results of Citizens United.

With a Democratic-controlled House, we will likely see more investigations into the potential abuses of public office in their attempt to hold public officials accountable. Some Democrats, such as Congressman Hoyer, have expressed a desire to ban House Members from serving on corporate boards, which is already prohibited by U.S. Senators. Congressman Hoyer has also been vocal about wanting to restore the full power of the Voting Rights Act of 1965, so we will likely see legislation attempting to modernize the voting process, which the Democrats believe will make it easier for all Americans to vote.

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