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# Policy and Regulation Alert

**February 16, 2017**

## What's New in Washington: 10 Things You Need to Know

The first four weeks of the Trump administration have brought a flurry of policy and regulatory activity through Executive Orders (EO), proposed new legislation and review of existing regulation. After eight years of the Obama administration, there is a clear change in the way the business of Washington is being conducted. While some of this was anticipated based on President Trump's campaign platform, business leaders are finding the level and pace of activity to be surprising and unsettling. While not a comprehensive overview, here are 10 things we believe are worth noting among the flood of developments flowing out of Washington in the last few weeks:

1. **Congress Ready; Administration Under Construction.** Much of the initial focus for the Senate in the 115th Congress is the confirmation of top officials in President Trump's administration. Roughly a month into the new administration, President Trump's Cabinet selections are being confirmed at a slower pace than the past three president's nominees. As of February 14, 2017, of nearly 700 key executive branch positions—from the roughly 1,200 total positions—that require Senate confirmation, only 13 individuals have been confirmed, with 21 others awaiting confirmation. It remains to be seen how long it will take to confirm the entire Cabinet and fill the administration. In comparison, it took almost a year to fill all of the top 60 administration positions during President Obama's first term. Unlike a new administration, which has four years (and sometimes eight) to accomplish its agenda, a new Congress must hit the ground running because the next election is only two years away. Committee assignments are determined early in each new Congress, and a slow confirmation process impacts the Republican majority's ability to focus on its legislative agenda, since input from top executive branch officials is critical in drafting major legislation.
2. **Infrastructure Development**. Just four days into his term, on January 24, President Trump sent a clear signal that infrastructure development would be a top priority for his administration. Two Presidential Memoranda were issued to advance the Keystone XL and Dakota Access Pipeline projects, and to promote the use of materials produced in the United States in the construction, retrofitting, repair and expansion of pipelines inside the country. The President also issued an EO to expedite environmental reviews for projects that the Chairman of the Council on Environmental Quality designates as "high priority." While the EO does not eliminate or otherwise limit environmental review and permitting requirements, it seeks to expedite infrastructure development by directing agency heads to prioritize reviews and approvals and meet established deadlines "using all necessary and appropriate means." Examples of high-priority projects cited in the EO are improving, repairing or upgrading the electric grid, telecommunications systems, port facilities, airports, pipelines, bridges and highways. It remains to be seen whether projects designated as "high priority" advance quicker through project development. The potential for Congress to amend

the National Environmental Policy Act and other environmental laws likely will have the greatest impact on President Trump's objective to spur more infrastructure investment.

3. **Trade Agreements.** President Trump has stated that strengthening the U.S. position in international trade agreements is a priority of his administration. The United States Trade Representative (USTR), the Secretary of Commerce and the newly formed White House National Trade Council will all have voices in the formation of the administration's policy. This trade triumvirate will have to coordinate with the National Security Council, the Domestic Policy Council and others as the administration attempts to shift U.S. trade policy in the direction the President outlined during the campaign. Economist Peter Navarro is serving in the White House as the head of the National Trade Council. President Trump has appointed businessman Wilbur Ross to serve as Secretary of Commerce and Robert Lighthizer as USTR, both of whom are awaiting confirmation votes by the Senate. Ross is a successful businessman who restructured companies in industries such as steel, coal and textiles. Lighthizer is a partner at a Washington, D.C., law firm, where he specializes in representing U.S. steel companies in bringing antidumping and countervailing duty cases seeking special, additional tariffs against competing imports.

   President Trump campaigned against the Trans-Pacific Partnership (TPP), a regional trade agreement involving Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and the United States. On January 23, 2017, President Trump issued an order declaring that the United States would not participate in TPP. President Trump, and the people that he has nominated to lead his trade team, have generally spoken out against multilateral trade negotiations in favor of bilateral negotiations, with a particular focus on countries with which the United States has a trade deficit. With these goals in mind, President Trump and his advisors have expressed an interest in renegotiating the North American Free Trade Agreement terms with Mexico and launching new bilateral negotiations with some TPP countries (e.g., Japan, Malaysia, New Zealand and Vietnam). President Trump also has expressed interest in initiating negotiations with the United Kingdom, but those negotiations may have to wait as the country navigates its withdrawal from the European Union.

4. **Border Adjustability.** The Trump administration has both criticized and supported some form of a border adjustment. In late January 2017, White House Press Secretary Sean Spicer suggested that President Trump is considering imposing a 20 percent tax on imports from Mexico to fund the construction of a wall on the U.S.-Mexico border. House Republicans have also supported a border adjustment as part of a broader overhaul to the corporate tax code. On June 24, 2016, Speaker Ryan released the "Better Way for Tax Reform," which includes a proposed 20 percent border adjustments tax. Similar to a value-added tax, the border adjustments would come in the form of a tax on imports, regardless of origin, and a reduction in a company's tax base for exports. The President, however, initially criticized the border adjustment included in the tax plan as being too complicated. Nonetheless, President Trump is expected to make an announcement shortly concerning corporate taxes that could clarify his position on border adjustability. His decision on whether to support such a plan will help set the stage for the coming tax debates. If the border

adjustments tax does become the basis for tax reform debates, then transition rules will be a critical aspect of the package overall.

5. **Immigration Policy.** The 9th Circuit Court of Appeals has refused to lift the stay on the Trump administration's EO suspending the U.S. refugee program and travel to the U.S. by certain nonimmigrants from seven "countries of concern." This means that U.S. visas held by these nonimmigrants are valid and are subject to the regular rules on admission to the United States. The administration still has the option to appeal the stay to the full 9th Circuit Court of Appeals and/or the Supreme Court. Additionally, a leaked executive order from the Trump administration reportedly indicates that President Trump plans to direct the departments of Homeland Security, State and Labor to investigate the extent of any injury to U.S. workers caused by employment of foreign workers, examine the current use of employment-based visa categories (including the H-1B visa), and propose regulations to overhaul them. Such an overhaul could include changes in the allocation of H-1B visas, increased enforcement of H-1B and L-1 regulations, and an expansion of the E-Verify system. The proposed order would also direct publication of reports on the numbers and visa categories of foreign persons authorized to work in the United States, as well as inclusion of questions on U.S. citizenship and immigration status in the U.S. census going forward. The proposed EO would represent a significant change in U.S. immigration policy and would likely have major implications for U.S. companies that sponsor foreign employees for positions in the United States.

6. **ACA Repeal.** The real question is how much and how quickly lawmakers will repeal the Affordable Care Act (ACA) and what will be replaced. Disagreement among Republicans on how to proceed with an ACA repeal could stall the legislative process, forcing Republicans to rely on newly confirmed Secretary of Health and Human Services Tom Price to begin chipping away at the health law through administrative action. If, however, Republicans can reach a consensus, reconciliation instructions included in the recent Budget Resolution will allow Congress to repeal the health law through fast-track procedures. House Republicans intend to include major portions of their replace/repair proposal in a reconciliation bill as well. While deliberations over the final details of the replacement plan are ongoing, the package is likely to shift policy toward promoting consumer-directed care through expanded use of health savings accounts, individual tax credits to make insurance premiums more affordable and other reforms. This shift is rooted in the Republican objective of making health care free-market-based, a departure from the ACA's original intent of ensuring universal coverage.

7. **Regulatory Reform.** The January 24 Presidential Memorandum calls for "Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing" and instructs the Secretary of Commerce to coordinate with the other agency heads to develop a streamlining action plan for federal permitting and reducing regulatory burdens affecting domestic manufacturers. Once the action plan is complete, the Secretary of Commerce will solicit comments from the public for a 60-day period. The public comment period for stakeholders provides domestic manufacturers with an opportunity to identify permitting and regulatory burdens for consideration in the streamlining

process.

On February 2, the Office of Management and Budget provided interim guidance on the January 30 Executive Order (“Reducing Regulation and Controlling Regulatory Costs”), which calls for agencies to eliminate two existing regulations for each new one that is issued—and to ensure that any incremental costs for new regulations be offset by the elimination of existing costs associated with a minimum of two prior regulations. The interim guidance provides detailed information about the coverage of the EO and explains that, for the remainder of fiscal year 2017, it applies to “significant regulatory actions,” as that term is defined in a prior 1993 Executive Order. Generally, a “significant regulatory action” is a broad term that includes rulemakings that have an annual effect on the economy of $100 million or more, adversely affect a sector of the economy (e.g., jobs), create inconsistencies with actions planned by another agency, or raise novel legal or policy issues.

8. **Congressional Review Act (CRA) as a Tool to Overturn Oil, Gas and Mining Rules.** President Trump signed his first CRA resolution, H.J. Res. 41, rendering without effect the SEC rule requiring the “disclosure of payments by resource extraction issuers” (only the second regulation ever “overruled” in such fashion). Click here to read more on the Senate resolution, and the CRA, generally. Next up, potentially, is H.J. Res. 71, to eliminate the Interior Department’s Office of Natural Resources Revenue’s ‘‘Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform” rule, which revised the mechanism by which the value of oil, gas and coal on public lands is established. These decisions will benefit the oil and gas sector both directly, in altering the fees paid, and indirectly, in the reporting obligations associated with the operations.

9. **Tax Reform: Dates Matter.** President Trump and Republicans have made tax reform a priority for 2017. While significant challenges remain, Republicans will likely use reconciliation to advance a tax code rewrite with the goal of sending a bill to the President by August. Based on historical precedent, Congress would likely set a prospective effective date of January 1, 2018, for most changes in the bill. However, lawmakers could make the enactment date retroactive if Congress decides to pursue a slimmed-down package that focuses on reducing rates and broadening the tax base. Congress would likely align the effective date for any antiabuse measures with the date that legislation is announced or when it is first voted on in committee. Finally, with lawmakers currently working on repeal of the ACA, the effective dates for repeal of ACA-related taxes will be important for the impact on the baseline and may make it easier for Congress to achieve revenue-neutral tax reform. Read more about our projections for tax reform enactment dates here.

10. **Conflict Minerals.** A leaked memo from the Trump administration reportedly indicates that President Trump plans to issue an executive action rolling back the Securities and Exchange Commission’s (SEC) enforcement of the conflict minerals reporting requirements of the Dodd-Frank Act. Under the Dodd-Frank Act, President Trump is authorized to temporarily waive the reporting requirements if it is in the national security interest of the United States. Furthermore, on January 31, 2017, Acting SEC Chairman Michael S. Piwowar issued two statements calling for comments related to the rule, which he considers to be “misguided.” For more information on the SEC’s call for

comments, please click here. Companies that have experienced difficulties in performing supply chain queries may want to consider submitting comments to the SEC, which are due by March 17, 2017.

## Contact Information

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