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WHAT'S NEW IN WASHINGTON

10 THINGS YOU NEED TO KNOW

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The Trump presidency is halfway through its first 100 days. The legislative and executive branches are under a unified Republican government for only the second time since the Eisenhower administration, and the GOP is seeking to use this rare opportunity to advance its policy agenda. The Republicans' early priorities, including the Congressional Review Act (CRA) resolutions and Cabinet nominations, are simple majority votes. Debate continues to swirl within the GOP over the Obamacare repeal and replace reconciliation bill, with some Republicans in Congress viewing the recently released legislation as insufficiently conservative, while others worry that it is too far to the right. Similar conflicts are likely to emerge in the coming months in the debate over tax reform, in which Republicans continue to struggle to unify behind an approach to lowering rates.

As we enter the second half of the Trump administration's first 100 days, the White House and congressional Republicans are expected to continue their push for regulatory reform, and all eyes will be on the Senate Judiciary Committee later this month as the Senate begins consideration of Judge Neil Gorsuch's nomination to the Supreme Court. Funding the federal government beyond April 28, 2017, will be one of the first major tests of whether Republicans and Democrats can work together to get 60 votes in the Senate. Finally, one issue that will continue to grow in urgency in the coming months is the debt limit. The Treasury's statutory power to raise the limit expires on March 16, 2017, but the administration will deploy "extraordinary measures" to push back the actual default date to later in the year, buying Congress additional time to act.

Here are 10 important things that we believe are worth focusing on from the last two weeks:

Congressional Review Act Tracker

Congress continues to consider CRA resolutions to roll back Obama administration regulations. As of March 15, 2017, legislators have filed 61 CRA resolutions: 40 in the House and 21 in the Senate. Three have been signed into law by President Trump, while five more await presidential action. The House has passed an additional six resolutions that await action in the Senate. Looking forward, the 60-day deadline to use the CRA's fast-track procedures remains ambiguous as Senate Republicans determine how many extra legislative session days they will need to schedule to confirm President Trump's remaining Cabinet nominees. Current projections have the deadline falling on a date in early- to mid-May. Click here to view our CRA tracker, which lists the resolutions and their current status.

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Revised Executive Order Suspending Entry of Certain Nationals from Countries of Concern

On March 6, 2017, President Trump issued a revised executive order (EO), titled "Protecting the Nation From Foreign Terrorist Entry Into The United States," that suspends, on a more limited basis than the original January

27 EO, the entry into the United States of certain nationals from six countries of concern. Subject to some categorical exceptions and case-by-case waivers, the revised EO states that the overall goal of the administration is to protect U.S. citizens from threats of terrorism by foreign nationals and to enhance screening and vetting protocols associated with visa issuance. Specifically, the EO suspends entry of, and visa issuance for, certain nonimmigrants from previously designated countries of concern—i.e., Iran, Lybia, Somalia, Sudan, Syria and Yemen—for 90 days, with an effective date of March 16, 2017. On March 15, 2017, however, federal district court decisions temporarily restrained enforcement of the EO, delaying its implementation. The administration is expected to vigorously appeal these decisions in short order. The EO's entry and visa issuance suspension is based on the premise, expressed in the EO, that the executive branch agencies—including Homeland Security—require time to evaluate enhanced vetting protocols and information necessary from the countries of concern in order to adjudicate visa applications and to ensure that visa applicants are not security threats.

In a related March 6 executive memorandum, President Trump also directed the secretaries of Homeland Security and State and the Attorney General to enhance visa and other immigrant vetting protocols, up to and including the implementation of new rules and regulations. The revised EO, unlike the original, does not apply to Iraqi nationals, although visa issuance for these nationals will be subject to additional scrutiny. Categorical exceptions to the suspension include permanent residents ("green card" holders), noncitizens already in possession of valid U.S. visas and dual nationals traveling on the passport of a nondesignated country. Like the original EO, the revised EO suspends the U.S. Refugee Admissions Program for 120 days, but no longer indefinitely suspends the admission of Syrian refugees or grants preference in the refugee admission to members of religious minorities. Allowing for case-by-case waivers, the revised EO further authorizes U.S. consular officers and Customs and Border Protection officers to grant waivers of the temporary visa issuance and travel suspension if the foreign national can demonstrate that denying entry during the suspension period would cause undue hardship, and that the entry would not pose a threat to national security and would be in the national interest. The EO then provides nine examples of circumstances that would warrant such a case-by-case waiver, including having established significant contacts with the United States and seeking to enter the United States for significant business or professional obligations, where the denial of entry would impair those obligations. While the revised EO did significantly pare back the scope of the original EO, it is still controversial and is currently the subject of litigation. However, it is all but certain that the administration will fully defend the revised EO, unlike it did with the original EO, and that it will seek to implement it if and when the courts approve.

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AHCA Health Provisions

The chief topic in Washington during the past few weeks has been health care reform, with the debate over how to repeal and replace the Affordable Care Act (ACA) consuming time and political capital. On March 6, 2017, House Republicans released the text of the American Health Care Act (AHCA), the legislative vehicle for repealing the ACA. Among its provisions, the legislation would widen the margin for age rating. The ACA set an age rating ratio of three to one, prohibiting insurance providers from charging senior citizens more than three times the average of what the providers charge younger Americans. The AHCA would allow states to raise the ratio to five to one, which would likely lead to increases in insurance coverage costs for older Americans.

The AHCA also repeals current actuarial value requirements that establish the percentage of total benefit costs that plans must cover in the nongroup and small-group markets. The ACA requires plans to have an actuarial value in one of four tiers, ranging from 60 to 90 percent. Because the AHCA would repeal these requirements, beginning in 2020, plans with an actuarial value below 60 percent could potentially be offered after that date. However, the AHCA maintains existing limits on out-of-pocket expenses ($7,350 for individuals and $14,700 for family coverage in 2018), as well as the requirement that insurers cover 10 "essential" categories of health benefits. The Congressional Budget Office (CBO) concludes that satisfying these two requirements would "significantly limit" insurers' ability to design plans with actuarial values below sixty percent.

CBO released its detailed estimate of the AHCA on March 13, 2017, which includes a prediction that 24 million people would lose coverage over the next decade as a result of the AHCA. Republican leaders have tried to put a more positive spin on the outlook by focusing on the anticipated 10 percent decrease in premiums and touting the bill's $337 billion in savings and $883 billion in tax cuts.

Looking forward, the timeline for action on the AHCA will likely run into April. The House Budget Committee met on March 16, 2017, to package together reconciliation recommendations that the House Committees on Ways and Means and Energy and Commerce recently approved. Action by the House Rules Committee and a vote by the full House is expected as early as next week, allowing the Senate to take up the measure as soon as the week of March 27, 2017. Additional changes are expected to help bring enough Republicans on board to pass the AHCA.

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AHCA and Tax Reform

The release of the AHCA gave subtle indications as to how lawmakers may proceed on tax reform later in the year. The AHCA prospectively repeals many of the ACA-related taxes beginning in taxable year 2018. Among other provisions, the AHCA repeals the 3.8 percent Net Investment Income tax, the 2.3 percent Medical Device tax and the 0.9 percent Additional Medicare surtax.

The prospective repeal of these taxes makes revenue-neutral tax reform retroactive to January 1, 2017 slightly more difficult than it would have been had the ACA-related taxes been repealed for 2017. Revenue neutrality is determined in relation to a baseline. While the AHCA would lower the baseline for 2018, it kept it high for 2017, meaning that tax reform that goes into effect in 2017 will cost more. In addition, the prospective repeal of ACA-related taxes makes retroactive tax reform politically difficult. If tax reform legislation is successful, it will likely be enacted much later in 2017, possibly in the fall. At that point, with the 2017 return filing season just around the corner, it will be hard to make the case for retroactivity, given that lawmakers were not as generous with the repeal of ACA-related taxes.

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FERC and Congress Undertaking a Review of Electric Power Markets and the Role of State Policies

On March 3, 2017, the staff of the Federal Energy Regulatory Commission (FERC) scheduled a two-day technical conference for May 1-2, 2017, to discuss the interaction of state energy policies and the design and operation of FERC-regulated, regional wholesale electricity markets in the eastern United States. These state policies (e.g., subsidies to support nuclear and other power plants, credits or incentives) have generated significant controversy in recent years, including several federal lawsuits alleging that they usurp FERC's exclusive authority under the Federal Power Act to regulate wholesale markets. While FERC staff seeks to explore at the technical conference the "potential for sustainable wholesale market designs that both preserve the benefits of regional markets and respect state policies," a clear-cut solution is unlikely, especially in the short term.

Separately, the House Energy and Commerce Committee has commenced a systematic review of the Federal Power Act in light of technological, economic and regulatory changes in the sector. The committee commenced this process with a June 2016 letter to FERC seeking its input on the performance of the organized competitive wholesale electricity markets and the blurring of federal and state jurisdictional lines resulting from state subsidies for certain types of power plants, as well as the emergence of advanced energy technologies capable of participating in both FERC-regulated (wholesale) and state-regulated (retail) power markets. The Committee has since begun a series of hearings to gather input from stakeholders. Those hearings began in the fall of 2016 and will continue throughout 2017. The House review and FERC's technical conference should be viewed as interrelated, since Congress could use the oversight process to shape action by FERC. At the same time, whether and how Congress decides to amend the Federal Power Act to clarify or modify FERC's jurisdiction will likely depend upon FERC's next steps following the technical conference. In any case, such action by FERC will have to wait until President Trump and the Senate restore FERC's quorum of at least three commissioners.

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Trump's Trade Agenda

The contours of President Trump's trade agenda continue to solidify even as specifics remain scarce. On March 10, 2017, newly confirmed Secretary of Commerce Wilbur Ross held meetings and a joint press conference with Mexican Economy Secretary Ildefonso Guajardo Villareal. Topics discussed included the Trump administration's proposed renegotiation of the North American Free Trade Agreement (NAFTA). Secretary Ross announced that, in the coming weeks, the White House hopes to notify Congress of the administration's intent to open trade talks on NAFTA and initiate the 90-day congressional consultation period before negotiations can legally begin, a process the Mexican government has already started. The administration has been noncommittal on the notification date, but, based on Secretary Ross's timeline, the earliest that the United States could join NAFTA renegotiation talks would be mid- to late-June.

Secretary Ross is expected to play a role in shaping the Trump administration's trade policy. He will be aided by U.S. Trade Representative (USTR) Robert Lighthizer, whose confirmation hearing was held on March 14, 2017. Lighthizer previously served as Deputy USTR during the Reagan administration and was Staff Director for the Senate Finance Committee under Chairman Bob Dole (R-KS). The hearing covered a number of issues related to U.S. trade policy, including the administration's focus on trade deficits, whether future trade deals will be limited to bilateral engagement, and the overall organization of U.S. officials implementing trade policy decisions. The administration's turn away from multilateral trade agreements was made clear when President Trump withdrew the United States from the Trans-Pacific Partnership (TPP). Lighthizer said that he will pursue bilateral deals with countries that were participants in the TPP.

The organizational structure for trade policy was on senators' minds during the hearing as they tried to understand the role of the new National Trade Council within the Trump White House. In particular, they wanted to understand how Lighthizer would rank in relation to Commerce Secretary Ross and National Trade Council Director Peter Navarro. Lighthizer informed members that he will be the main point of contact for the committees of jurisdiction. Some members of the Committee signaled that the administration should move quickly to nominate new members of the board of the Export-Import Bank, which currently lacks a quorum and thus cannot process loan guarantees larger than $10 million in support of U.S. exports.

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Trump's 1-for-2 Executive Order Affects Tax Regulations

Shortly after being sworn into office, President Trump issued an EO mandating that, for every new regulation issued by a federal agency, the agency must eliminate two regulations. The purpose of this EO is to help ensure that future regulations do not impose a net monetary burden on the public. The EO requires that any monetary costs imposed by the new rule must be counter balanced by cost savings from the elimination of two other rules. As applied to the issuance of tax guidance, if the Internal Revenue Service (IRS) has to eliminate two existing rules for every new one issued, the taxpaying public and their tax advisors might be adversely affected because there would be less overall guidance for the public on how to apply the tax law.

Currently, there is a freeze on publishing new regulations, including tax regulations, based on a memorandum issued by the President's Chief of Staff. The President has also issued another related EO directing each federal agency to form an agency task force to evaluate the status of the 1-for-2 regulation policy.

Although this topic may seem mundane, the 1-for-2 rule may result in significant delays in the issuance of new IRS guidance. This can result in potential harm to taxpayers' business decisions, which are often predicated on applicable tax regulations and other IRS guidance.

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EPA Administrator Signals Potential Change in Federal Policy on Carbon Dioxide

In an interview on CNBC's Squawk Box program on March 9, 2017, recently confirmed Environmental Protection Agency (EPA) Administrator Scott Pruitt stated that he "would not agree that [CO2] is a primary contributor to the global warming that we see." The statement runs contrary to more than a decade of regulatory determinations—for example EPA's 2009 "endangerment finding" concluded that emissions of CO2 contribute to climate change. If adopted by the administration as policy, this change would have significant implications for EPA's regulation of a wide range of sources, from energy production and manufacturing to vehicles and consumer products. If the newly released 2018 budget blueprint is any indication, the administration will not shy away from such a shift. In addition to reducing EPA's budget by 31 percent and EPA staff by 3,300, the blueprint would discontinue funding for the Clean Power Plan, international climate change programs, climate change research and partnership programs, and related efforts. President Trump is also expected to sign an EO shortly to decrease or eliminate the EPA's consideration of costs associated with CO2-induced climate change when conducting cost-benefit analysis for federal regulations (the so-called "Social Cost of Carbon" policy). Building on the cuts in the 2018 budget blueprint, the EO could also include a long-anticipated directive to review and/or revoke all, or portions of, the Obama administration's Clean Power Plan and related climate regulations addressing power plant emissions and new coal leases. How and if he retains any aspect of the prior Social Cost of Carbon guidance will be an indication of how far President Trump intends to go in following Pruitt's lead on climate policy generally.

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Reinstatement of the UHF Discount

It is anticipated that Federal Communications Commission (FCC) Chairman Ajit Pai will act to reinstate the UHF discount, which was eliminated under former FCC Chairman Tom Wheeler. The UHF enables television station groups to count only 50 percent of the population served by television stations using UHF channels when calculating their national ownership reach for purposes of determining a television group owner's compliance with the FCC's 39 percent of the population national ownership cap. The ruling was highly controversial and is subject to appeals at the FCC and in the courts. At the time the UHF discount was eliminated, Chairman Pai dissented, stating that it was arbitrary and capricious for the FCC to eliminate the UHF discount without considering an adjustment to the national ownership cap to reflect today's media marketplace. The comment/reply comment cycle on the FCC appeal of this decision has closed, such that the item is ripe for action. When Chairman Pai acts to reinstate the UHF discount, large UHF group owners can once again continue to rely on the long-standing rule to calculate their national reach. Many believe that the elimination of the UHF discount will provide a catalyst for consolidation opportunities in the television sector.

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White House National Economic Council's Senior Staff Appointments

Just over one month into the presidency, the Trump administration is starting to fill much-needed advisory roles.

The White House issued a press release announcing several senior staff appointments to the National Economic Council (NEC) who all have deep public and private sector backgrounds.

The appointees are **Kenneth I. Juster**, Deputy Assistant to the President for International Economic Affairs and Deputy Director of the NEC; **Jeremy Katz**, Deputy Assistant to the President and Deputy Director of the NEC; **George David Banks**, Special Assistant to the President for International Energy and Environment; **Brian Blase**, Special Assistant to the President for Healthcare Policy; **Michael Catanzaro**, Special Assistant to the President for Domestic Energy and Environmental Policy; **DJ Gribbin**, Special Assistant to the President for Infrastructure Policy; **Mathew Haarsager**, Special Assistant to the President for Global Economics and Finance; **Shahira Knight**, Special Assistant to the President for Tax and Retirement Policy; **Grace Koh**, Special Assistant to the President for Technology, Telecom, and Cyber-Security Policy; **Ashley Hickey Marquis**, Special Assistant to the President for Economic Policy and Chief of Staff; **Andrew Olmem**, Special Assistant to the President for Financial Policy; **Andrew Quinn**, Special Assistant to the President for International Trade, Investment and Development; and **Ray Starling**, Special Assistant to the President for Agriculture, Trade and Food Assistance.

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