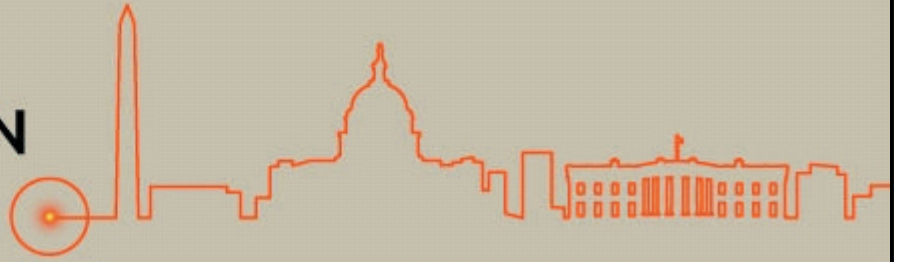


WHAT'S NEW IN WASHINGTON

10 THINGS YOU NEED TO KNOW



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May 5, 2017

Congress returned to session the week of April 24 following a two-week recess. Active discussions and debate surrounding the American Health Care Act (AHCA) and efforts to “repeal-and-replace” the Affordable Care Act resumed among Republicans in an effort to achieve the votes necessary for House passage. After negotiating additional changes to the legislation, members of the House Freedom Caucus agreed to lend their support, but many moderate Republicans remained wary of the proposal.

Consequently, President Trump and moderate House Republicans, led by Rep. Fred Upton (R-MI), reached an agreement on May 3 to add \$8 billion in funding to the AHCA to provide financial assistance in purchasing coverage to people with pre-existing conditions. The final amendment tipped the balance in House Republicans’ favor, and the House voted 217 to 213 to approve the AHCA on May 4. The bill now goes to the Senate for consideration, where its fate remains uncertain.

On May 3, the House passed a \$1 trillion omnibus spending bill by a margin of 309-118 to prevent a shutdown and fund the government through the end of September. On May 4, the Senate passed the same legislation with a vote of 79-18. It is expected to be signed into law by President Trump before the Friday deadline. Both parties have provisions in the bill that they are eager to tout. The deal included \$2 billion in new spending for the National Institutes of Health (NIH), an extra \$15 billion in defense spending and an additional \$1.5 billion in border security provisions.

With his 100th day in office rapidly approaching on April 29, President Trump signed a flurry of executive orders, including the mandate of a “Buy American and Hire American” policy, a review of designated public lands that might impede upon energy exploration, the establishment of the Office of Trade and Manufacturing Policy (OTMP) and the American Technology Council, and a review of trade agreement violations and abuses.

On April 25, Treasury Secretary Steven Mnuchin led the rollout of a one-page outline for the administration’s long-awaited tax reform plan. Proposed highlights include a cut to the top individual tax rates from 39.6 percent to 35 percent, a reduction to the number of total rates from seven to three, and a reduction to the corporate tax rate from 35 percent to 15 percent. There was no mention of a border adjustment tax in the tentative outline.

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

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2. [Trade Expansion Act](#)
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Fiscal Year 2017 Omnibus Funding Legislation

On May 1, negotiators released legislative language for an omnibus spending package to fund the government through the end of Fiscal Year 2017 (“FY17”) on September 30. The Continuing Resolution currently funding the government expires on May 5. The compromise provides \$1.163 trillion in total funding, with base discretionary funding at \$1.07 trillion.

Members from both parties claimed victory over the package. On the right, Republican lawmakers lauded the inclusion of nearly \$15 billion in supplemental defense spending through the Overseas Contingency Operations (OCO), though President Trump requested twice that amount earlier this year. Republicans also prevented the inclusion of language to fund the Affordable Care Act's cost-sharing subsidies after the administration announced that it would continue payments, avoiding a confrontation with congressional Democrats.

On the left, Democrats prevented the inclusion of funding for a wall along the United States' southern border and successfully blocked the President's requested \$18 billion cut in nondefense spending, securing a \$15 billion increase over current funding levels.

Other provisions in the omnibus package include:

- \$2 billion increase in funding to the NIH
- \$1.3 billion over 10 years to permanently fund coal miners' health insurance benefits (leaves miners' pension funding unresolved)
- \$650 million increase in funding to fight opioid abuse
- \$295.9 million in emergency funding to Puerto Rico.

The Senate passed the measure on May 4, a day after the House approved the legislation. The first 100 days of the Trump presidency saw Congress pass a host of legislation and nominations that required only Republican votes, and the funding package was the first major test of bipartisanship for the young administration.

Click [here](#) to read an Office of Management and Budget statement on the administration's position regarding the omnibus.

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Trade Expansion Act

On April 20, the Trump administration launched an investigation under Section 232 of the Trade Expansion Act of 1962, which grants the President the ability to impose restrictions on imports that are deemed threatening to the United States' national security. Many of the President's supporters see this as the first step to fulfill the President's repeated calls to correct unfair trade practices that have plagued U.S. industries for years. Antidumping and countervailing duty orders on steel already exist; however, the national security aspect has not been cited for decades.

During the campaign, then-candidate Donald Trump promised to review U.S. trade agreements and impose tariffs on certain imports that hurt U.S. industries, specifically steel and aluminum from China. His protectionist rhetoric during the campaign has now become a reality as the Department of Commerce begins its investigations into whether imports of steel and aluminum threaten the national security of the United States.

For more information on the investigation, please read our alert [here](#).

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Trump Tax Proposal and Territoriality

On April 26, the White House released President Trump's proposal on tax reform in a document titled *2017 Tax Reform for Economic Growth and American Jobs*. The plan outlined broad principles and goals for tax reform without providing many details, but one specific area that the plan did address was the issue of international taxation.

The Trump tax plan, like the House Republicans' tax reform proposal, would shift the U.S. system of international taxation to a territorial model. Although the plan did not say how it would implement a territorial system that exempts foreign profits from tax in the United States, it is generally done by allowing a foreign subsidiary to make tax-free dividends to its U.S. parent.

In a recent article, Akin Gump's Stuart Leblang and Amy Elliott discuss challenges that would arise from a shift to a territorial system and the relative winners and losers of possible actions taken by the Trump administration to combat those challenges. A chief issue would be how the U.S. government would prevent further erosion of a tax base that the Trump proposal seeks to shrink. Mr. Leblang and Ms. Elliott identify three options that could be included in legislation to prevent base erosion:

- instituting a tax on foreign-affiliate intangible income at a higher rate
- imposing a minimum tax or a blacklist
- implementing border adjustability while moving toward a destination-based cash flow tax.

Each of these options creates relative winners and losers among the business community; however, if the administration were to achieve its goal of a flat 15 percent business tax rate, most businesses would be winners.

Click [here](#) to read Mr. Leblang and Ms. Elliott's analysis.

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DOE and FERC Examining the Impact of State and Federal Policy Interventions on the Electric Power Markets

On April 14, Secretary of Energy Rick Perry released a memorandum directing the Department of Energy (DOE) to conduct a study examining the degree to which federal policies (such as subsidies for renewable resources and emissions regulations for fossil fuel-fired power plants) have impacted wholesale electricity markets by encouraging the premature retirement of baseload power (i.e., coal and nuclear generation). In particular, the memorandum expresses concern that renewable subsidies may be distorting wholesale electricity markets, potentially creating a threat to the reliability and resilience of the electric grid. The study will examine whether the wholesale electricity markets adequately compensate traditional baseload generation for such attributes as on-site fuel storage. In an interview, Secretary Perry described the stability of the grid as a matter of national security and did not rule out interference with state policies that require utilities to get power from renewable sources. The memorandum requests that the study be ready 60 days after April 19.

Speaking of state policies, independently of the DOE, the Federal Energy Regulatory Commission (FERC) is examining the impact of state policy interventions on the wholesale markets. FERC held a long-planned technical conference on May 1 and 2, to examine the wholesale electricity market impacts of state and regional policies that may favor one generation technology or facility over another. The technical conference explored how the wholesale markets could accommodate state policy preferences with regard to renewables and existing baseload resources while preserving regional markets and economic resource selection based on the lowest-cost resource. On the first day, the conference examined both state policy perspectives and those of other stakeholders, such as utilities and independent generators, in each of the "Eastern Regional Transmission Organization/Independent System Operators"—PJM Interconnection, L.L.C.; New York Independent System Operator, Inc.; and ISO New England, Inc. On the second day, the conference explored potential methods for squaring state policy preferences with the structure of the wholesale electricity markets. Topics discussed included whether, and how, state policies can be incorporated into the electricity markets, as opposed to being implemented out of market, and whether additional attributes (such as fuel diversity or carbon emissions) need to be priced into the wholesale markets.

The efforts of FERC and the DOE reflect increasing concerns across the political spectrum that the wholesale markets, which were designed to promote the lowest-cost resources, are failing to consider externalities and generation attributes other than price. Over the last decade, the markets have generally favored natural gas-fired generation over traditional coal and nuclear baseload generation. Renewable power, bolstered by state and federal subsidies and state renewable portfolio requirements, poses an additional challenge for wholesale markets because its extremely low marginal cost complicates pricing in wholesale markets designed to compensate fossil fuel generation with higher operational costs. Meanwhile, many states seek to keep nuclear generation operational because of its low emissions, while market advocates claim that nuclear generators have become uneconomic and should be allowed to retire. The independent efforts of the DOE and FERC, despite their different focuses, reflect a growing consensus that wholesale markets designed for a 20th century electrical grid will need to evolve to accommodate 21st century challenges.

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Regulatory Reform at the EPA

In keeping with President Trump's focus on regulatory reform, on April 11, the Environmental Protection Agency (EPA) announced that it is soliciting public comments in its efforts to identify regulations that are ripe for repeal, revision or modification pursuant to Executive Order 13777, Enforcing the Regulatory Reform Agenda. On March 24, the EPA established a Regulatory Reform Task Force, led by Samantha Dravis, the Assistant Administrator for the Office of Policy at the EPA. The Task Force is charged with evaluating existing regulations and making recommendations to the Administrator regarding regulations that can be repealed, replaced or modified, and it is obliged to seek stakeholder input, including from state, local and tribal governments; small businesses; consumers; nongovernmental organizations; and trade associations. The comment period closes May 15. The EPA is also hosting a series of public meetings, some via teleconference.

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Congressional Investigations Outlook

In the first 100 days of the Trump administration, much of the focus for Congress' main oversight and investigative committees has rested on the White House and Russia, as allegations regarding interference in the 2016

elections continue to ripple. Although many congressional committees are still developing their plans with respect to investigations of the private sector, the current political dynamics in Washington offer some insight regarding the likely scope and focus of such forthcoming inquiries. The current outlook for oversight and regulation of the U.S. business community turns on somewhat of a political contradiction: the new administration and Republican leaders project that they will pursue aggressive deregulation and a “laissez-faire” approach toward the private sector, and yet—from a practical, political standpoint—they must continue appealing to a growing “populist” conservative base that welcomes scrutiny of big business.

Typically, when Republicans control the White House and both chambers of Congress, we expect to see a general decrease in congressional investigations, with the Republican White House serving as a far less persistent investigative foil than President Obama. What is more, traditional Republican rhetoric around deregulation and decreasing the size of government typically creates an environment that disfavors targeted oversight of the private sector.

Yet, if the past four months have demonstrated anything, it is that the current political environment is far from typical. In reality, current trends suggest that a few themes will drive investigations and oversight in the 115th Congress. First, “populist” conservatives will be open to scrutinizing the private sector more than “classical” Republicans—especially when consumer interests are at stake. In particular, we anticipate investigations related to the health care/pharmaceutical industry, consumer-facing financial services, government contracts and large-scale product recalls. Second, classical conservatives will be open to scrutinizing the administration more than they typically would during a period of GOP control—a reality that may have real implications for the private sector, given the President’s (and the administration’s) extensive business ties. Investigations may also focus on hot-button policy issues, including the environment and immigration.

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NTC/OTMP Update

On his 100th day in office, President Trump signed an executive order creating a new OTMP. National Trade Council (NTC) Director Peter Navarro, a Harvard Ph.D. economist and UC-Irvine professor who has voiced support for actions that will diminish the U.S. trade deficit, will serve the OTMP in the same role. The NTC had only just been created in the first days of the Trump administration, but its mission during its brief tenure was to serve as the primary forum through which to advise the President on trade, assess U.S. manufacturing, and help unemployed Americans improve their skills and find new jobs. The OTMP’s stated mission contains many of the same broad objectives as the NTC, such as serving “American workers and domestic manufacturers while advising the president on policies to increase economic growth, decrease the trade deficit, and strengthen the United States manufacturing and defense industrial bases.” However, one of the most significant implications of this initiative, which appears to have been intentionally underpublicized, is that it effectively dissolves the NTC. It remains to be seen whether this order is an effort to realign Navarro’s roles and responsibilities or if it is an attempt to gradually reduce his influence upon the administration altogether.

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Budget Battle Ahead as Appropriators Shift Focus to FY 18

Lawmakers breathing a sigh of relief over the FY17 spending deal will enjoy only a brief respite before jumping into FY18 budget negotiations. President Trump released a “skinny budget” outline on March 16, and he is expected to release a full budget proposal in mid-May. The delay in the President’s budget and the drawn-out wrangling over FY17 appropriations means that Congress will have a shortened window to negotiate an FY18 spending deal. Additionally, the agreement on top-line spending levels reached in the Bipartisan Budget Act of 2015 expires at the end of FY17, complicating discussions as the White House pushes for major cuts in domestic spending paired with increases in defense spending. These proposed cuts include a \$5.8 billion reduction in medical research funding at the NIH. The President’s budget proposal will also include details on mandatory spending for Medicare and Medicaid. President Trump has indicated that he will target “waste, fraud and abuse” in the programs.

Key deadlines for must-pass legislation, such as the Children’s Health Insurance Program reauthorization and the Medicare extenders, will put more pressure on lawmakers as they work on FY18 appropriations, setting the stage for a major budget battle this fall; President Trump alluded to a possible showdown in a tweet this week. Reacting to media reports casting Democrats as the victors in FY17 negotiations, the President criticized the Senate’s 60-vote majority requirement and suggested that a government shutdown in September could spur a change in Senate rules.

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Ivanka Trump Spearheads Worker Training Program, and Congress Joins In

President Trump is expected to issue an executive order in the coming weeks to enhance U.S. worker training

programs—a position championed by his daughter Ivanka, and Congress is showing signs of support.

The topic came up during German Chancellor Angela Merkel's visit to the White House in March. In his opening remarks, President Trump said that "training our workforce for the 21st century" was a top priority, adding that "we want to make sure we have the workforce development programs we need to ensure these jobs are being filled by American workers."

Ivanka Trump, who recruited the American executives in attendance, guided the discussion. She praised her father's "commitment to creating millions of jobs" and stressed the need for private investment, noting that "ingenuity and creativity often comes from the determination of the private sector."

Chancellor Merkel, who is hosting the G20 summit with President Trump and other world leaders in July, invited Ivanka Trump to Berlin in late April to participate in a G20 discussion on women's economic empowerment.

U.S. and German companies have launched a German-originated training program in concert with the U.S. Department of Labor (DOL) called [ApprenticeshipUSA](#). The program offers employers in every industry the tools to develop a highly skilled workforce to help grow their business. For workers, ApprenticeshipUSA offers opportunities to earn a salary while learning the skills necessary to succeed in high-demand careers. According to the DOL website, "ApprenticeshipUSA exemplifies high standards, instructional rigor and quality training. Whether you are an employer looking to hire, train or retain a skilled workforce, or a worker looking for a new career in a well-paying occupation, ApprenticeshipUSA will help you achieve your goals."

A bipartisan group of lawmakers is expected to introduce a House bill to update career and technical education nationwide, one of the most significant education initiatives that could move this year.

The legislation would update education and training programs and try to better pair them with skills that employers are looking for. In 2016, the House of Representatives passed a similar bill, but it did not succeed in the Senate. The new bill would make clear that the Secretary of Education plays an important role in providing technical assistance and monitoring to the program. The new version would also give states more flexibility in funding programs.

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Executive Orders on Trade

On April 29, President Trump signed two trade-related Executive Orders. The first is the [Presidential Executive Order Addressing Trade Agreement Violations and Abuses](#), which orders a review of existing trade and investment agreements to which the United States is a party. The second is the [Presidential Executive Order on Establishment of Office of Trade and Manufacturing Policy](#), which replaces the NTC with the Office of Trade and Manufacturing Policy. The former continues a trend by the White House on studies focused on trade deficits and on creating a fact pattern as it relates to this deficit to set the stage for greater enforcement actions.

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