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WHAT'S NEW IN WASHINGTON

October 2017

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Congress returned after Labor Day for a busy September and acted quickly to avoid a government shutdown by passing stop-gap funding for Fiscal Year (FY) 2018 and raising the debt ceiling. The already crowded congressional calendar was complicated even more with an imminent need to address natural disaster relief that continues to wreak havoc on the everyday lives of millions of American citizens—from nearly 1.5 million acres of wildfires burning in Western United States to devastation by hurricanes Harvey in Texas, Irma in Florida and Maria in Puerto Rico.

Republicans took another shot at health care reform, but failed in an attempt to pass the Graham-Cassidy bill. President Trump issued another executive order expanding his "travel ban." Global diplomacy expanded as tensions rose with North Korea and with regard to ongoing trade discussions. Adding to the turmoil, retirement plans have been announced by members of Congress at a steady pace. The fall agenda will be dominated by tax reform as Republicans seek to pass a unified budget by the end of October and mark up President Trump's tax reform package in November.

Here are some of the key issues to follow in Washington:

Health Care Update

Republicans' latest effort to pass repeal-and-replace legislation came up short last month, with leadership canceling a planned vote on the Graham-Cassidy proposal after three GOP senators—Rand Paul (R-KY), John McCain (R-AZ) and Susan Collins (R-ME)—announced their opposition to the bill. The measure would have provided block grants to states to cover health care costs, rolled back the Affordable Care Act's (ACA) Medicaid expansion, zeroed out penalties for the individual and employer mandates, and terminated cost-sharing reduction payments starting in 2020. The reconciliation instructions for an ACA repeal included in the FY 2017 budget resolution expired on September 30, and, at present, Republicans intend to use the FY 2018 budget resolution for tax reform through reconciliation. While some members would like to include FY 2018 reconciliation instructions for both tax reform and an ACA repeal-and-replace, President Trump has indicated that repeal efforts will pick up again in 2018 after tax reform. Republicans could include corresponding reconciliation instructions in an early FY 2019 budget next year. Meanwhile, Senate Committee on Health, Education, Labor and Pensions Chairman Lamar Alexander (R-TN) and Ranking Member Patty Murray (D-WA) have resumed market stabilization talks, which were put on hold amid the debate over the Graham-Cassidy bill. The timeline to release a bipartisan agreement is not clear, but options on the table include an extension of cost-sharing reduction payments, reinsurance and additional flexibility for states to adopt ACA Section 1332, "State Innovation Waivers," and regulate their insurance markets. It likely will be very difficult for even a narrow bill to pass both chambers, however.

Focus has now turned to the Children's Health Insurance Program (CHIP) and the Medicare extenders. Renewed funding for CHIP expired on September 30, though most states have sufficient carryover funds set aside to last through the end of the calendar year. Both the House Energy and Commerce Committee and the Senate Finance Committee marked up CHIP reauthorization bills on October 4. The Senate bill, which did not address offsets, was approved on a voice vote. The House version was passed on a 28-23 vote over the objections of Democrats, who opposed the offsets identified in the measure. The House bill would be paid for through increased means-testing for higher-income seniors, changes to Medicaid third-party liability policies and tightening Medicaid asset rules with regard to lottery winnings. Both versions would extend CHIP funding for five years and phase out the 23-percentage-point bump in the federal matching rate for the program that was included in the ACA.

House and Senate committees have not yet advanced most of the expiring Medicare extenders, such as the Medicare ambulance add-on payment, the therapy cap exceptions process, the Medicare Dependent Hospital program and the low-volume hospital adjustment. They are expected to do so in the coming weeks, though it is unclear whether they will be packaged with the CHIP reauthorization. Some of these Medicare extenders expired on September 30; based on prior precedent, extension of these payments may have a retroactive effect.

On October 4, the House Ways and Means Committee voted 24-13 to advance legislation to repeal the Independent Payment Advisory Board. Democrats on the Committee raised concerns over the lack of offsets in the bill, noting that the Congressional Budget Office has estimated that repealing the Board would cost roughly $17.5 billion over 10 years. The House Energy and Commerce Committee did not mark up the bill (H.R. 849) as scheduled that evening, citing the Ways and Means Committee's passage of the measure. In the Senate, meanwhile, the Budget Committee approved, by voice vote, an amendment that would allow the Chairman to eliminate the Medicare cost-cutting board.

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Trump Administration Announces New Travel Restrictions

On September 24, President Trump signed a Presidential Proclamation that announced new travel restrictions prohibiting visa issuance and entry into the United States of nationals from certain designated countries: Chad, Iran, Libya, North Korea, Somalia, Syria, Venezuela and Yemen. These restrictions replace the previous travel suspensions, initially announced in January and modified in March 2017. The restrictions have immediate effect for certain individuals (nationals of Iran, Libya, Somalia, Syria and Yemen, except those with close family in the United States or a bona fide relationship with a U.S. entity), and a later effective date of October 18, 2017, for others (nationals of Chad, North Korea and Venezuela).

The U.S. Department of Homeland Security (DHS) has established global requirements, or a "baseline," for information-sharing with foreign countries, which serves to "protect the security and interests of the United States." Specifically, DHS has determined what information it needs from other countries for the U.S. government to confirm the identity of visa applicants and to assess whether individuals pose a "security or public safety threat." DHS conducted a global review of those information-sharing protocols, and the Proclamation states that some countries remain "deficient" and thus warrant the latest restrictions on the issuance of immigrant (i.e., permanent resident or green card) and nonimmigrant visas and entry of their nationals to the United States. The limitations on designated countries are as follows, from most restrictive to least restrictive:

No immigrant or nonimmigrant visas:

- North Korea
- Syria.

No immigrant visas and no nonimmigrant visas, except student (F and M) and exchange visitor (J) visas:

- Iran.

No immigrant visas and no visitor visas (B-1 or B-2):

- Chad
- Libya
- Yemen.

No immigrant visas and additional scrutiny for nonimmigrant visas:

- Somalia.

No restrictions on immigrant visas, but no visitor visas (B-1 or B-2) for officials from certain government agencies and their immediate family members:

- Venezuela.

Notably, even though Iraq was found to be deficient with regard to the new baseline, Iraqi nationals will not be subject to restrictions, but will undergo "additional scrutiny" when applying for visas. Also, Sudan, named in earlier travel suspension executive orders, has been removed from the list of designated countries.

Certain individuals are exempted from the new restrictions: lawful permanent residents (i.e., green card holders), anyone already in the United States on the applicable effective date; anyone with a valid U.S. visa or other permission to enter the United States; any dual nationals traveling on a passport issued by a nondesignated country, anyone traveling on diplomatic visas (except certain Venezuelan government officials), and any applicant who has been granted asylum or admitted to the United States as a refugee.

As with previous travel suspensions, individuals from the designated countries can be issued visas and admitted to the United States on a case-by-case basis if they can show that their visa issuance or admission is in the national interest, they do not pose a national security or public safety threat to the United States, and the denial of the visa would cause undue hardship.

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Tax Reform and the Budget Reconciliation

On September 27, Republican leaders in Congress and the administration released the long-awaited Unified Framework for Fixing Our Broken Tax Code. The document lays out broad principles for a comprehensive overhaul of the tax code addressing long-standing Republican priorities to cut corporate and individual taxes, simplify the tax code and reform international tax rules. The Framework calls for:

- streamlining the current seven individual tax brackets into three at rates of 35 percent, 25 percent and 12 percent
- eliminating most itemized deductions, except mortgage interest and charitable contributions (which will likely be scaled back)
- setting a maximum pass-through rate of 25 percent, but deferring to tax-writing committees on determining antiabuse measures
- setting a corporate rate of 20 percent
- allowing for "at least" five years of 100 percent expensing for new investments (other than structures) made after September 27, 2017
- setting unspecified limitations on interest deductibility for C corps
- transitioning to a territorial tax system with some type of antibase erosion measures
- deemed repatriation at unspecified, but bifurcated, rates for illiquid assets and cash/cash equivalents.

With the Framework as a guiding document, Republicans are moving forward with tax reform using the budget reconciliation process, which would allow them to pass legislation in the Senate with only GOP votes. In order to do this, Congress must first pass an FY 2018 budget resolution with tax reform reconciliation instructions, a hurdle that looks likely to be cleared, but still faces some challenges centered around reconciling House and Senate budget priorities into a unified approach that can ultimately pass both bodies.

The Senate Budget Committee approved a budget resolution this week and floor action, with the requisite rapid amendment voting session known as a "vote-a-rama", is expected the week of October 16. On the House side, legislators narrowly approved the stalled FY 2018 budget resolution on Thursday, October 5. Upon agreeing to a unified budget later in the month, assuming that Republicans can come together, the tax-writing committees will release tax reform legislation with the House Ways and Means Committee planning to start the process first.

According to Republican leaders, the goal is still to have a bill on the President's desk by the end of the year. This may be ambitious, given the remaining uncertainties and controversial decisions surrounding tax reform. Intraparty disagreements among Republicans range from whether tax reform should be deficit-neutral to which current tax expenditures to eliminate in order to offset rate reductions. Strong disagreement is already emerging over elimination of the state and local tax deduction.

Under the current reconciliation strategy, Democrats in the House and Senate are outside the congressional negotiation process, and, from their perspective, the Framework falls short of their priorities on tax reform. While many details have yet to be determined, Democrats are concerned that the Republican tax reform may ultimately benefit the top 1 percent at the expense of the middle class and job creation while adding significantly to the deficit.

For now, Republicans remain mostly united behind their efforts to send a bill to the White House and deliver a major legislative victory in the President's first year in office, but many hurdles remain.

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International Trade

NAFTA

The third round of the North American Free Trade Agreement (NAFTA) renegotiations came to a conclusion in Ottawa, Canada, on September 27. While the three countries have committed to an expedited schedule, to not conflict with the Mexican presidential election and the U.S. midterm election, it has been reported that the Trump administration only sent official notice to Congress under the Trade Promotion Authority to make changes to "trade remedy" law in the negotiations on September 22. This notification set a 180-day window before a trade agreement can be approved. The earliest NAFTA can be signed is late March 2018.

In round three, text on government procurement, agriculture trade remedies and intellectual property was tabled in Ottawa; a five-year sunset provision was also among the topics discussed. In closing remarks, the Office of the U.S. Trade Representative (USTR) noted that the chapter on Small- and Medium-sized Enterprises (SME) was completed, and that progress was made on areas including competition policy, digital trade, State-Owned Enterprises, sanitary and phytosanitary measures, customs and telecommunications. The fourth round of negotiations is set to take place next week, October 11-15, in Washington, D.C.

KORUS

The second special session of the U.S.-Korea Free Trade Agreement (KORUS) Joint Committee was held on October 4 in Washington, D.C. The first session was called at the request of President Trump and Ambassador Lighthizer in order to discuss possibly amending or modifying KORUS. While South Korean Trade Minister Kim Hyun-chong did not agree to amend the free trade agreement, in the first session, the Trade Minister proposed a joint study on the cause of the U.S. bilateral trade deficit. At the conclusion of the October 4 second session, Ambassador Lighthizer announced in his closing statement that both sides agreed to reopen the deal and amend the agreement in a way that will lead to fair, reciprocal trade. No additional announcements have been made on how and when the process of amending the five-year-old agreement may proceed.

China

The White House and Secretary Ross have received a draft of the Section 232 Report, but have yet to release the reports. On Friday, September 22, Secretary Ross commented that the administration will delay releasing the report until Congress passes tax reform legislation. In July, President Trump told *The Wall Street Journal* that he was "waiting till we get everything finished up between health care and taxes and maybe even infrastructure." While the administration holds on to the report, industry groups are growing concerned and are releasing their own statements on the fear of retaliation and the fact that holding on to the reports is causing an increase of dumped steel before the countervailing duties can be applied. Chinese business groups have, in turn, warned the United States that trade restrictions stemming from the Section 301 investigation on Chinese intellectual property policies are counterproductive to the bilateral relationship. The USTR issued a Federal Register Notice on August 24, with a deadline for comments as of September 28. The USTR will hold a public hearing on the Section 301 investigation on October 10 at the U.S. International Trade Commission in Washington, D.C.

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CFIUS Update

On September 13, President Trump issued an order prohibiting the proposed $1.3 billion acquisition of Lattice Semiconductor Corporation by Canyon Bridge Capital Partners, Inc., consistent with the recommendation of the Committee on Foreign Investment in the United States (CFIUS). This decision follows CFIUS's 10-month review of the deal in which it identified national security concerns associated with the proposed transaction that it could not resolve through mitigation with the parties. The order stated that the President found credible evidence that Canyon Bridge "might take action that threatens to impair the national security of the United States." This is the first time that President Trump has formally blocked a transaction under the CFIUS statute and only the fourth time that any president has done so. The President's decision in this case may discourage parties in future transactions from allowing a transaction to proceed to presidential review in the face of an adverse CFIUS recommendation and encourage them to abandon a transaction in similar circumstances, rather than force a formal decision by the president. President Trump's decision to block Canyon Bridge's acquisition of Lattice continues the trend over the last decade of significant CFIUS scrutiny of Chinese investments in U.S. technology companies, particularly in the semiconductor industry.

On September 19, CFIUS released its annual report to Congress. One day later, CFIUS also released more limited data on foreign investment activity in 2016. The report summarizes CFIUS activities in 2015, the most recent year for which complete data on foreign investment activity is available. Notably, CFIUS has historically published its statutorily mandated annual report in the first quarter of the year for the relevant prior calendar year. Its failure to issue the report for 2015 until now is likely due to a combination of a significant increase in CFIUS filings in 2017 and career staff and political appointee vacancies at its member agencies. The report most notably highlighted that the number of transactions abandoned as a result of CFIUS scrutiny has steadily increased; the number of notices filed in 2016 (172) was a 20 percent increase over the 2015 number (143); CFIUS conducted an investigation (or second-level review) of approximately 46 percent of covered transactions in both 2015 and 2016; there was a slight increase in mitigation measures; and China (29), Canada (22) and the United Kingdom (19) accounted for the most covered transactions.

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Congressional Retirement Update

As of October 5, 27 members of the House of Representatives have announced plans to retire or seek other office, including now-former Rep. Jason Chaffetz (R-UT), who resigned at the end of June, and Rep. Tim Murphy (R-PA), who announced his resignation effective October 21. On the other side of the Capitol, Sen. Bob Corker (R-TN) is thus far the only member to announce retirement from the Senate, and by the end of the year, three individuals will have occupied a single Senate seat in Alabama that, since 1979, had been held by only two individuals.

Including former Rep. Chaffetz, only 10 of the 27 House members are retiring from public service, and the majority plan to seek higher office. According to *Roll Call*, this number is historically low: "Since 1976, 22 House members, on average, have retired each cycle without seeking another office." In a report prepared by the Congressional Research Service (CRS) earlier this year, it was found that the average tenure for members of Congress has increased in recent years, and, at the start of the 115th Congress, the average tenure for a member of the House and the Senate was 9.4 years (~ five terms) and 10.1 years (~ two terms), respectively. Even with the increase in average tenure, the CRS noted that "more than half of Representatives and Senators in recent Congresses have served eight years or less." While it is likely that additional members will announce their retirements from Congress or their intent to seek other office, the current list includes possible trends in the members who are choosing to leave the House.

Six-term Rep. Niki Tsongas (D-MA) is the sole Democrat among the 10 members who are retiring with no plans to seek other offices. In fact, of the 27 members leaving the House, 18 are members of the Republican Party—quite a few of whom are viewed as more moderate members of the House GOP Caucus. Several represent "swing districts" that voted for Hillary Clinton or that President Trump narrowly carried in the 2016 election and that will certainly be Democratic targets for the 2018 midterm election. For example, retiring Rep. Charlie Dent (R-PA), who co-chairs the Tuesday Group (a caucus of moderate House Republicans), represents a district that has voted for both Democratic and Republican presidents.

Roy Moore's recent victory over moderate Sen. Luther Strange (R-AL) may lead to an increase in primary challengers that could result in some Republican incumbents choosing to retire or seek other office instead, as moderate Sen. Susan Collins (R-ME), who is rumored to be considering a run for governor. The Democratic Party likely hopes to avoid as many retirements as possible; it has 25 Senate seats to defend in the 2018 midterm election (of the 33 Senate seats in cycle), and the party would need to pickup almost the same number of seats to take the majority in the House. Since a significantly smaller amount of members than average have announced plans to retire, and filing deadlines for 2018 primaries are approaching—Illinois and Texas have December filing deadlines—additional retirement announcements may be imminent.

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States and Cities Make Up for the Paris Withdrawal

Following President Trump's June announcement that the United States will withdraw from, or attempt to substantially renegotiate, the Paris Agreement on climate change, the U.S. Climate Alliance, a group of 14 states and Puerto Rico, and the Climate Mayors, 381 mayors, representing 67.9 million Americans, committed to uphold the Agreement's goals. We are now beginning to see how. More than 370 climate-related bills are pending in more than 40 states, with more than 50 new pieces of legislation already adopted. Among the most ambitious of these is one announced recently by New York City Mayor Bill de Blasio, which will require building owners to make sharp reductions in greenhouse gas emissions. This program will target the "mother lode" of greenhouse gas emissions, specifically, the worst-performing 14,500 buildings more than 25,000 square feet, which together produce nearly one-fourth of the city's such emissions. The program will mandate that building owners reduce their fossil fuel consumption by making improvements to, or replacing, boilers, heat distribution, hot water heaters, roofs and windows. Those that fail to meet their targets will face substantial penalties that increase with building size and extent of noncompliance. According to the city's own press release, a one-million-square-foot building operating over its energy target could face as much as $2 million for every year it is over target, as well as be denied permits for major renovations. The legislation, which is set to be sponsored by City Council Member Costa Constantinides, will also provide for a Property Assessed Clean Energy program that will make low-interest financing available to make the necessary energy efficiency and clean energy investments. According to the mayor's office, the city has the potential to finance up to $100 million annually through such a program. Given the significant role that buildings play in emitting greenhouse gases, we can expect similar bills to start showing up across the country.

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National Defense Authorization Act and the U.N. General Assembly

On September 18, the Senate passed the $700 billion National Defense Authorization Act (NDAA) for FY 2018 by a margin of 89-8. It is now headed to a conference committee with the House to settle differences and debate over a final version of the bill.

The Senate bill includes $640 billion in base funding for the Defense Department and nuclear activities within the Department of Energy, as well as $60 billion for overseas combat operations in Iraq, Syria, Afghanistan and elsewhere. The military would get more Navy ships, F-35 and F/A-18 Super Hornet fighter jets, P-8A Poseidon maritime surveillance aircraft and troops than requested in President Trump's $639 billion Defense Department budget request for 2018. The $696 billion House version of the NDAA also includes a significant hike in military capability over what Trump has proposed, including more ships, aircraft and troops. The Senate NDAA also pumps $8.5 billion into missile defense to defend against North Korea, including adding up to 28 new interceptors in Alaska.

Moreover, the timing of this defense legislation coincided with President Trump's remarks to the United Nations General Assembly on September 19. The President's speech focused largely on North Korea and Iran and included some of his most incendiary rhetoric to date. The President referred to Kim Jung Un as "rocket man" and described him as being on "a suicide mission for himself and for his regime." Most notably, the President threatened that he would be forced to "totally destroy" North Korea if the United States finds itself "forced to defend itself or its allies." On Iran, President Trump demanded that "Iran's government must stop supporting terrorists, begin serving its own people, and respect the sovereign rights of its neighbors." He also criticized the Iran nuclear deal, calling it, as he had throughout his campaign, "one of the worst and most one-sided transactions." These comments are especially significant due to the impending October 15 deadline for recertification of the Joint Comprehensive Plan of Action. The administration must certify Iranian compliance with the terms of the accord every 90 days. However, if the administration denies certification, it can then decide to reinstitute sanctions that were suspended under the deal.

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