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WHAT'S NEW IN WASHINGTON

September 5, 2017

With Congress gaveling back in on September 5 after an eventful August recess, the House and Senate have an ever-increasing to-do list and a narrowing timeline in which to complete it. The list of items to be addressed by the end of September includes:

- raising the debt ceiling
- funding the federal government
- reauthorizing the Children's Health Insurance Program, Federal Aviation Administration and National Flood Insurance Program
- passing a National Defense Authorization Act.

This timeline is further complicated by the urgent need to address funding and relief for the victims of Hurricane Harvey. We believe that Harvey Relief will be included with a broader package to fund the federal government and, as such, minimize the risk of a government shutdown.

If and when these legislative hurdles are addressed, Congress has plenty more to accomplish as it stares down the precipice of a 2018 election year in which action will be made more difficult by politics. The bicameral Republican majorities in Congress may pursue some form of health care market stabilization fix after efforts to repeal and replace the Affordable Care Act (ACA) failed. The White House appears to be charging ahead full speed with its efforts to pass tax reform and deliver the President a signature legislative victory. On August 30, the President went to Springfield, Missouri, to kick off his public campaign for tax reform. The speech highlighted the need to provide relief for middle-class families in the form of cuts to individual income tax rates, reduce corporate taxes from 35 to 15 percent and repatriate profits that are held overseas, simplify the tax code so that fewer Americans have to rely on tax preparation professional help, and generally make the system more conducive to job growth and higher wages. However, complications are expected to arise as the tax writing committees in Congress begin to unveil their versions of tax reform legislation that may not conform with the President's vision.

All of these developments are unfolding in the wake of the President's recent announcement to bolster American military involvement in Afghanistan, which has divided both the public and members of Congress.

Here are some things that we believe are worth focusing on since our last issue:

Debt Ceiling and FY 2018 Appropriations Funding Deadlines

Congress needs to move swiftly in the month of September to address pending funding issues of both the debt limit and Fiscal Year (FY) 2018 appropriations. There are only 12 workdays in the House (with a few more in the Senate) before the September 30 date, when annually appropriated government funding expires for FY 2017. Secretary of the Treasury Steven Mnuchin announced that September 29 was the likely date for exhaustion of "extraordinary measures" for the debt ceiling.

Office of Management and Budget Director Mick Mulvaney has backed a clean debt ceiling increase, saying, "Steve Mnuchin speaks for the administration when it comes to the debt ceiling. You've heard that out of the President's mouth. I respect that; in fact, I think it's the right way to do it." While the President has called for a clean debt ceiling, it remains questionable whether the Republicans can garner enough votes to pass a "clean" (no extraneous conditions) increase, which would require Democratic support to pass.

The House is expected to vote early in the work period on a package of the eight remaining appropriations bills with four approved spending measures already sent to the Senate. Two issues that may be addressed as part of the debate include the President's request for $1.56 billion for a southern-border wall and emergency funding for Hurricane Harvey relief. Given the short time frame and contentiousness of the wall-funding debate, the most likely outcome is for Congress to pass a Continuing Resolution to temporarily extend funding at current levels, giving lawmakers more time to reach an agreement on FY 2018 government funding. It remains to be seen whether the debt limit increase will receive a similar short-term solution or a longer-term agreement can be reached.

Congress also continues to debate the FY 2018 budget. The House currently has pending a budget resolution that includes tax reform reconciliation instructions, but an intraparty controversy over $200 billion in cuts to mandatory spending delayed consideration of the measure. Despite this division, Speaker of the House Paul Ryan has promised to hold a vote on the FY 2018 budget in early September.

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Health Care Outlook

With a revived ACA repeal-and-replace effort unlikely this year, some congressional support has emerged for legislation to stabilize insurance markets as customers face rising premiums and fewer choices in 2018. The Senate Health, Education, Labor and Pensions (HELP) Committee has scheduled two back-to-back hearings the week of September 4, 2017, on stabilizing individual insurance markets. On Wednesday, September 6, insurance commissioners from Tennessee, Washington, Pennsylvania, Alaska and Oklahoma will testify before the Committee on premiums in the individual market. On Thursday, September 7, the panel will hear from Govs. Charlie Baker (R-MA), Steve Bullock (D-MT), Bill Haslam (R-TN), Gary Herbert (R-UT) and John Hickenlooper (D-CO). HELP Committee Chairman Lamar Alexander (R-TN) and Ranking Member Patty Murray (D-WA) will hold two additional hearings the following week with the goal of drafting legislation by the end of September, when insurers must finalize their plans to be offered on the exchanges.

At minimum, aides suggest, a stabilization bill would provide for the continuation of cost-sharing reduction payments under the ACA. Chairman Alexander also stated that the package should include added flexibility for states to adjust insurance rules under Section 1332 of the ACA, which authorizes State Innovation Waivers. While Democrats are reportedly open to this idea, they would likely oppose any changes that threaten the law's Essential Health Benefits or coverage protections for those with preexisting conditions. As such, any package agreed to in the Committee is likely to be very narrow in scope. The prospects for action on any market stabilization legislation in the House remain uncertain, however.

CHIP Funding and Medicare Extenders

"Must-pass" legislation for Congress includes an extension of funding for the Children's Health Insurance Program (CHIP) and a number of Medicare "extenders," including the Medicare ambulance add-on payment, the therapy cap exceptions process, the Medicare Dependent Hospital program and the low-volume hospital adjustment. Several extender provisions expire on September 30, while others are set to expire on December 31. The House Ways and Means Committee plans to start marking up extender provisions in early to mid-September, with the goal of passing a package prior to the end of the current fiscal year. The extender package is being considered as part of a larger package in the House that would include a longer-term extension of CHIP. Funding for CHIP also expires on September 30, but states may continue to spend previously allocated dollars, and the Centers for Medicare and Medicaid Services may reallocate unspent funds among the states. The Senate Finance Committee plans to hold a hearing on CHIP in September.

Parliamentarian Makes Reconciliation Determination

The Senate parliamentarian has determined that the budget reconciliation instructions on ACA repeal expire at the end of FY 2017 on September 30, according to a statement released by Senate Budget Committee Ranking Member Bernie Sanders (I-VT). This is a significant setback for congressional Republicans, setting a hard and fast-approaching deadline for lawmakers who have sought to revive a repeal-and-replace effort. While Republicans could potentially pursue repeal in the next fiscal year, they had planned to move forward with tax reform by passing an FY 2018 budget resolution with tax reform reconciliation instructions. Faced with an already crowded September agenda, it is unclear how Senate Republicans will address the parliamentarian's decision.

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International Trade

North American Free Trade Agreement

President Trump held a rally in Phoenix, Arizona, in late August, returning to his campaign rhetoric on the North American Free Trade Agreement (NAFTA), claiming that the United States will “probably have to at least start the termination process” before it can ensure a fair deal. Leaders of Canada and Mexico have addressed the comment as a negotiating tactic, though the Mexico peso saw a brief dip in the market. The second round of NAFTA negotiations ended on September 5 in Mexico City. It brought discussions on energy, telecom and customs. A continuing point of contentious debate—labor—was also discussed.

The U.S. Chamber of Commerce and the National Association of Manufacturers called on the White House to ensure the inclusion of an investor-state dispute settlement, claiming that it will undermine the U.S. business community support during negotiations. Negotiators will continue to hold working meetings throughout the formal sessions. In response, Mexico is exploring a backup plan with Brazil and China in case the United States does terminate NAFTA, clearly signaling to the United States that it too can play hardball. The third round is slated to take place in Ottawa, Canada, on September 23-27, and trade officials expect the talks to begin gaining traction in many key areas. All three countries continue to be committed to a tight schedule of negotiating rounds every three weeks, though the dates and locations of the next rounds have yet to be announced.

Korea-U.S. Free Trade Agreement

The United States and South Korea trade representatives concluded their special session of the joint committee in late August, and both sides left in similar positions to when they began. United States Trade Representative (USTR) Robert Lighthizer noted in a statement that “Since KORUS entered into effect, U.S. goods exports have decreased while the trade deficit overall with Korea has nearly tripled.” South Korea’s Trade Minister Kim Hyun-chong explained a different view on the concerns laid out by Amb. Lighthizer regarding the cause of the U.S. goods trade deficit and ultimately did not say whether Korea would agree to amend the deal. Amb. Lighthizer reiterated that discussions will continue through the month of September and highlighted that “This negotiation offers us an opportunity to resolve these and other barriers.” Minister Kim told reporters that, “From my point of view, there’s no agreement regarding negotiations” to revise the deal. While Amb. Lighthizer noted that the discussion will continue, no dates have been set for future sessions. Contrary to this dialogue, while visiting Houston amid the recovery of Hurricane Harvey, President Trump hinted at a complete withdrawal from this free trade agreement. Several news sources cited an email from the U.S. Chamber of Commerce stating that credible sources indicate that the administration is prepared to notify South Korea of the withdrawal as soon as this week. On Tuesday morning, in a bipartisan joint statement from the House Ways and Means Committee and the Senate Finance Committee, the congressional leaders urged against withdrawing from the free trade agreement.

China – IP/Section 301

The Office of the USTR officially began its Section 301 investigation into China’s intellectual property practices. Under the Trade Act of 1974, Section 301 allows for the USTR to investigate and take unilateral action against harmful trade practices. The USTR will examine whether China’s practice of demanding that U.S. companies submit their technology, which is required to conduct business in the country, is, in fact, discriminatory and places restrictions on U.S. commerce. Even if the practices are deemed reasonable under the WTO, agreements implementing recourse under Section 301 can still be pursued. President Trump has called for stronger actions to be taken against China. The investigations by the USTR may be just the beginning, since President Trump expressed to his staff at a recent meeting his desire to level tariffs against China and implored them to provide options to him in the near future. Earlier in the summer, the President suggested backing down from a potential trade war with China if Beijing does more to help with the growing tension in North Korea.

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Republicans Eye Tax Reform for the Fall

The timeline for advancing tax reform legislation remains fluid. The pace and timing of the efforts rely heavily on Congress’ ability to pass an FY 2018 budget resolution with reconciliation instructions for tax reform. Maybe more importantly, the Senate Parliamentarian’s ruling on the issues surrounding the expiration date of FY 2017 reconciliation instructions will also impact the pace and trajectory of tax reform efforts. (See “Health Care Outlook” section.)

Throughout the August recess, the Republicans on the congressional tax-writing committees—House Ways and Means and Senate Finance—have worked with the Trump administration in developing draft tax reform legislation based on the group’s agreed-upon priorities, with recent reports suggesting that these negotiations are slowly building consensus. Over the coming weeks, the Senate Finance Committee will also hold several hearings focusing on individual and corporate rates, international taxation and possibly other topics, though Ways and Means has not indicated plans to hold additional tax reform hearings.

Republican leaders have indicated that, shortly after legislators’ return to Washington from their August recess, GOP tax writers will release additional details on their tax reform proposal. In order to achieve legislative buy-in, rank-and-file Republican members will have access to, and time to comment on, the tax proposal before its public release. If there is a general consensus among Republicans over the proposal, then tax writers will aim for an

October markup of a tax reform package, with the Ways and Means Committee going first. If there are major concerns among Republicans, tax leaders will need to reevaluate their timeline. While a unified budget resolution is necessary to move tax reform to a floor vote, Ways and Means could mark up its tax reform proposal prior to the budget reaching its final step to advance the process.

This ambitious timeline will compete for legislators' attention with a raft of impending deadlines in September, including the need to fund the government past September 30 and raise the debt ceiling. While the Trump administration is hoping to score its first major legislative victory, these deadlines could delay active consideration and ultimate passage of tax reform legislation. Recognizing this fact, President Trump launched a tax reform advocacy tour on August 30 with a speech that focused heavily on populist themes of lower rates for working Americans and simplification of the tax code.

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Financial Services Outlook

Following his inauguration, President Trump quickly took action on his campaign pledge to roll back the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). On February 3, 2017, President Trump signed an Executive Order (EO) setting out a series of core principles for financial sector regulation and directing the Treasury to review existing laws to determine how closely they promote the stated principles.

Closely related to the February 3 EO, the White House subsequently released two presidential memoranda further directing Treasury staff to review both the Financial Stability Oversight Council's (FSOC) authority to designate banks and nonbank financial firms as systemically important financial institutions (SIFI) and the Federal Deposit Insurance Company's (FDIC) orderly liquidation authority (OLA) by which the agency is able to liquidate and winddown financial institutions.

The Treasury delivered its first mandated report on June 12. In the document, the Treasury focuses its review on the depository system, and it promised future reports on other aspects of the financial system, including capital markets, asset management and nonbank financial institutions. The Treasury could release these additional reports in the fall, as well as the analyses of FSOC SIFI designations and OLA practices, which the White House requested to be delivered by October.

On June 8, in Congress, the House advanced the Financial Creating Hope and Opportunity for Investors, Consumers, and Entrepreneurs (CHOICE) Act, a measure that seeks to roll back much of Dodd-Frank. Among other provisions, the measure would rescind both the FSOC's SIFI designation authority and the FDIC's OLA powers, repeal the Volcker Rule prohibiting banks from engaging in certain proprietary trading practices and provide financial institutions with an exemption from enhanced prudential standards if they maintain a minimum 10 percent leverage ratio. Democrats continue to oppose the CHOICE Act, and the legislation is expected to be a nonstarter in the Senate. Instead, Senate Banking Committee leaders are pursuing bipartisan consensus on fixes to Dodd-Frank, primarily as it relates to regulatory relief for small, less complex financial institutions.

Another pressing issue that legislators will face upon their return from their August recess is the National Flood Insurance Program, which is set to lapse on September 30. Lawmakers continue to negotiate reauthorization legislation, but disagreements among Republicans, including whether homeowners should pay higher rates for coverage, has prevented either chamber from passing a reauthorization bill. Reports indicate that bipartisan negotiations are making headway, but, with Congress facing a host of other impending deadlines, lawmakers may advance a short-term reauthorization with significant reforms, allowing additional time for members to develop longer-term compromise legislation.

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Afghanistan

In a speech to the nation on August 21, President Trump laid out his rationale for an increased commitment of troops and resources toward the war in Afghanistan. Although specific numbers regarding troop levels and withdrawal timetables were not disclosed, this announcement presented a stark contrast with the President's "America First" rhetoric on the campaign trail that criticized the more interventionist polices of Presidents George W. Bush and Barack Obama. President Trump spoke largely in broad terms, but did specify that American allies, such as India, should contribute to Afghanistan's economic development and that greater pressure should be placed upon Pakistan to stop providing safe haven to terrorists. Ultimately, the President clarified that "our commitment is not unlimited, and our support is not a blank check."

Overall, the announcement was met with support from most congressional Republicans; opposition from most progressive Democrats; and wariness from more establishment Democrats, such as Sen. Tim Kaine (D-VA), who said that "the American public deserves more details" and "Congress should ask for specifics." The President's announcement appears to highlight the increasing influence of Chief of Staff John Kelly, Secretary of Defense James Mattis and National Security Adviser H.R. McMaster. Additionally, chief strategist Steve Bannon, the leading isolationist voice in the Oval Office, was fired on the Friday before the President's announcement.

Just prior to this announcement, White House officials stated that the United States will deploy 4,000 additional soldiers to Afghanistan, many of them in a training role to help support Afghan security forces. Moreover, on August 30, the Pentagon announced that the United States currently has about 11,000 troops in Afghanistan, far higher than the previous disclosed number of 8,400. The Pentagon characterized this announcement as an effort to "simplify our accounting methodology" and improve "the public's understanding of America's military commitment."

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Transportation/Infrastructure

With the Federal Aviation Administration (FAA) authority expiring September 30, and only 12 work days scheduled in September in the House, the likelihood that Congress will have to pass a short-term reauthorization extension is ever-increasing. There is little time remaining to reconcile the differences between the House and Senate versions of the legislation. Perhaps most notably, the Senate version does not include a measure to create a user-funded independent air traffic control organization that is supported by both House Transportation and Infrastructure Committee Chairman Bill Shuster (R-PA) and President Trump. When Congress returns from its August recess on September 5, members must pass legislation to fund the federal government, lift the debt ceiling and address various other program deadlines, which appears to have pushed consideration of FAA reauthorization lower on the priority list.

In addition to a number of impending legislative deadlines, Congress must determine how much aid to provide to those affected by Hurricane Harvey. The timing of supplemental appropriations is not clear; nor is it clear whether Congress will pass one bill or multiple funding bills, since it has taken different approaches with disaster relief aid in the past. Federal agencies, including the Federal Emergency Management Agency and the Department of Transportation, are already providing aid, but agencies will require additional funding in light of the magnitude of damage.

On August 15, the President also signed an EO "Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure." Although this order does not change federal law, it highlights the administration's intent to expedite environmental reviews and approvals for major infrastructure projects to the extent allowed under federal law. The EO defines "infrastructure" as all types of transportation projects, water resources projects, energy production and generation, electricity transmission, broadband, pipelines, stormwater and sewer infrastructure, and drinking water infrastructure, with other sectors open to consideration.

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