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April saw the debate in Congress heat up as Justice Neil Gorsuch was confirmed for a seat on the Supreme Court, House Republicans suspended, restarted and then ultimately succeeded in their effort to repeal and replace the Affordable Care Act, and – after a few hiccups – an agreement was reached to keep the federal government open through the end of September.

With the exception of the two week-long recesses for Memorial Day and the Fourth of July, Congress will remain in session continuously through the end of July, meaning significant legislation in a variety of issue areas will be considered in the coming months, including health care, 2018 appropriations and tax reform. In this month's version of the Washington, D.C. Update, we discuss:

- House Makes Good on Promise to Repeal and Replace Affordable Care Act
- Agreement Reached over FY17 Appropriations Package
- FY18 Budget Negotiations Begin in the House and Senate
- Trump Administration Proposes Significant Tax Overhaul
- Senate Confirmations Continue Their Slow March Forward
- Trump Administration Agrees Not to Immediately Withdraw from NAFTA

Please feel free to reach out to me for additional information on these topics or other issues of importance.

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House Makes Good on Promise to Repeal and Replace Affordable Care Act

On May 4, 2017, the House of Representatives succeeded in passing legislation to repeal and replace the Affordable Care Act (ACA). The American Health Care Act (AHCA) now moves to the Senate where its passage is far from assured and will likely result in significant changes to the House-passed legislation.

The AHCA, which narrowly passed 217 to 213 with all House Democrats and 20 House Republicans in opposition, closely reflects the version that was pulled from consideration only minutes before a vote on March 24. The bill, if it becomes law, would overhaul the American health care system, dramatically altering the nation's individual health insurance marketplace, ending the Medicaid expansion and converting the program to a block grant or per capita cap system, repealing practically all taxes incorporated in the ACA, ending federal funding for Planned Parenthood, and giving states significantly more say in how and to what level health insurance is regulated in their states.

Looking forward, the AHCA now moves to the Senate, where Senate Republicans must decide how to advance a bill that most analysts agree cannot pass the Senate in its current form. Majority Leader Mitch McConnell (R-KY) has already said he will wait until the Congressional Budget Office releases its updated analysis of the bill's impact (expected in the next two weeks) before deciding on next steps. A number of moderate and more conservative Senate Republicans have expressed concerns with provisions of the legislation, including age-adjusted tax credits, funding cuts to the Medicaid program, the defunding of Planned Parenthood and the waiving of protections for individuals with pre-existing conditions. Furthermore, key Senate Republican leaders have indicated that the process will not be rushed. Senator Orrin Hatch (R-UT), Chair of the Senate Finance Committee, said Senators should "manage expectations" and "remain focused on the art of the doable." Meanwhile, Senator Lamar Alexander (R-TN), Chair of the Senate Health, Education, Labor and Pensions Committee, said "we will take the time to get it right."

A working group made up of Senators McConnell, Hatch, Alexander, Mike Enzi (R-WY), John Thune (R-SD), Mike Lee (R-UT), Ted Cruz (R-TX), Tom Cotton (R-AR), Cory Gardner (R-CO), John Barrasso (R-WY), John Cornyn (R-TX), Robert Portman (R-OH) and Pat Toomey (R-PA) has been tasked with developing a proposal.

For more information on the passage of the AHCA, please see our alert, "House Makes Good on Promise to Repeal and Replace Affordable Care Act."

Takeaway: With passage of the AHCA, House Republicans made good on their more than seven-year effort to repeal and replace the ACA. The bill, which passed by the narrowest of margins, now moves to the Senate where it will face an uphill climb and will likely incorporate significant changes if it is to be successful – which is far from sure thing. Expect the ongoing debate over the future of the ACA to continue into the summer, if not the fall or beyond.

Agreement Reached on FY17 Appropriations Package

Over the past few weeks, it looked increasingly possible that Congress might fail to meet an April 28 deadline for adopting a fiscal year 2017 (FY17) appropriations package, potentially leading to a shutdown of the federal government. In March, negotiations seemed to be on track, but in early April, President Trump insisted that the package include additional funding for the military and, controversially, funding to begin the design and construction of a wall on the U.S.-Mexico border. There was also briefly a time when the President seemed to imply that he would suspend federal payments for the ACA's Cost Sharing Reductions (CSR), leading Democrats to insist on funding for CSRs be included in the appropriations measure.

However, after a one-week extension, Democrats and Republicans agreed on an omnibus appropriations package to keep the federal government running through the end of the fiscal year. The mammoth legislation contained the 11 unfinished FY17 appropriations bills, providing spending for nearly every corner of the federal government. In the House, the legislation passed 308 to 118 with 103 Republicans and 15 Democrats bucking their leadership to vote against the measure. In the Senate, it passed 79 to 18 with 18 Republicans voting against the measure. Democrats are claiming victory, saying they eliminated more than 160 Republican "poison pill riders" (including all funding for a border wall), and Republicans are hailing the $15 billion increase in supplemental defense spending and $1.5 billion for non-wall border security efforts. The bill also contains $295.9 million to help shore up Puerto Rico's Medicaid fund and $1 billion for a health care and pension benefits fund for retired coal miners, boosts spending at the National Institutes of Health by $2 billion, and cuts the Environmental Protection Agency by just one percent (roughly $80 million).

Takeaway: Republicans, eager to avoid a government shutdown, were pleased with increased supplemental funding for the military and generally agreed to push major disputes (such as funding for Planned Parenthood) off until this summer and the fall's negotiations over the FY18 budget. In what was expected to be the first tough appropriations negotiation of the Trump Administration, Democrats were largely successful in protecting domestic spending and rejecting funding for President Trump's border wall.

FY18 Budget Negotiations Begin in the House and Senate

While the FY17 appropriations package dominated the headlines, the debate surrounding the FY18 budget has begun in the House and Senate Budget Committees. House Budget Chair Diane Black (R-TN) said the House Budget Committee is working toward having a markup the week of May 15 and going to the floor the following week, just ahead of the week-long Memorial Day recess. The budget resolution sets forth Congress' policy preference as well as spending and revenue targets for the coming fiscal year. It will also likely serve as a vehicle for moving forward with tax reform under the budget reconciliation procedures. Chairwoman Black committed to balancing the budget in ten years, much like past Republican budgets have done, transforming Medicare into a premium support model, and said that the package may include some sort of Medicaid reform. In the Senate, Budget Committee Chair Michael Enzi's (R-WY) staff have been working on a budget resolution, but few discussions have taken place among Republican members of the Committee. The White House said it would release the President's full FY18 budget proposal on May 22.

Takeaway: With the FY17 appropriations package largely mirroring past Obama-era packages, Republicans and the Trump Administration are gearing up to have a much more significant reshaping of the federal government with the FY18 budget and appropriations cycle. If the ACA repeal effort currently in the Senate is not ultimately successful, expect to see Republican calls for significant changes to health care as part of the coming budget and appropriations fight, including converting Medicare into a premium support program and transforming Medicaid to a block grant or per capita cap.

Trump Administration Proposes Significant Tax Overhaul

On April 26, Treasury Secretary Steven Mnuchin and Gary Cohn, director of the National Economic Council, presented the Trump Administration's tax reform proposal to the media. The proposal consisted of a one-page outline that hewed closely to President Trump's tax proposal offered during the campaign. The outline calls for lower taxes across the board for both individuals and businesses. On the individual side, President Trump's proposal seeks to eliminate most itemized deductions except for the mortgage interest deduction, charitable donation deduction and retirement savings deduction. It would also reduce the current seven income brackets to three – 10, 25 and 35 percent – although officials did not offer income ranges for each bracket. It also eliminates the estate tax and the alternative minimum tax, doubles the standard deduction and calls for some sort of a dependent care benefit.

Under the proposal, business taxes would be cut from 35 percent to 15 percent across the board and the new rate would apply to both corporate income as well as pass-through income. The proposal also includes a transition from a global tax system to a territorial tax system and creates an as-of-yet-unspecified, one-time opportunity to repatriate existing profits held overseas. Notably, the proposal does not include the Border Adjustment Tax supported by Speaker Paul Ryan (R-WI).

Congressional Republicans and Democrats greeted the proposal as expected, with Republicans hailing the proposal as "critical guideposts" and Ranking Democrat of the Senate Finance Committee Senator Ron Wyden (D-OR) calling the proposal "an unprincipled tax plan that will result in cuts for the one percent." Expect the proposal – which will likely serve as a starting point for debate – to be modified significantly in the coming months. Congressional Republicans are reportedly considering moving forward with the tax reform package under the Reconciliation rules, limiting debate and blunting the threat of a Democratic filibuster in the Senate. If Congressional Republicans elect to follow this path, the so-called "reconciliation instructions" from the Budget Committees to the Senate Finance and House Ways and Means Committees will significantly determine the outline of the debate. However, moving forward under these procedures means any tax reform bill, which as proposed during the presidential campaign was estimated to add about $7 trillion to the deficit, would have to be deficit neutral over ten years. So far, the Administration has not yet identified sufficient pay-fors or spending cuts to fully offset the proposal.

Takeaway: With release of the White House's tax reform plan, the debate now shifts to Congress, where Republicans in the House and Senate will debate the proposal most likely as part of the FY18 budget process, providing additional substance to the outline presented by the Trump Administration. With its numerous stakeholders and trillions of dollars at stake, tax reform is an incredibly difficult and complex undertaking. Expect the negotiation process to be drawn out and contentious.

Senate Confirmations Continue Their Slow March Forward

Confirmations for key Trump Administration positions continue apace as 21 of the 22 cabinet-level nominees have now been confirmed by the Senate. This is in addition to the April 7 confirmation of Justice Neil Gorsuch to serve as Associate Justice of the Supreme Court. The only outstanding cabinet-level nomination is that of Robert Lighthizer to serve as U.S. Trade Representative. Mr. Lighthizer was reported favorably out of the Senate Finance Committee on April 25, but his nomination has not yet been taken up by the full Senate.

President Trump continues to be behind his predecessors in terms of the rate of both confirmations and nominations. Of the 556 key positions identified by the Partnership for Public Service as requiring Senate confirmation, 27 have been confirmed, 41 have been formally nominated, 23 have been announced but not formally nominated, and 465 have no nominee. 100 days into his presidency, President Obama had 69 appointees confirmed and 118 appointees nominated but not yet confirmed. By day 100, President Bush had 35 positions confirmed and 50 others nominated but not yet confirmed.

Takeaway: The Trump Administration has been comparatively slow selecting nominees for the more than 1,200 Senate confirmable positions. Likewise, the Republican-controlled Senate has taken longer than previous administrations to confirm appointees, averaging 30 days versus President Obama's average of 24 days and President George W. Bush's average of 8 days.

Trump Administration Agrees Not to Immediately Withdraw from NAFTA

In a series of tweets on April 27, President Trump said "I received calls from the President of Mexico and the Prime Minister of Canada asking to renegotiate NAFTA rather than terminate. I agreed subject to the fact that if we do not reach a fair deal for all, we will then terminate NAFTA. Relationships are good – deal very possible!" The posts represented an abrupt about-face from the day before when presidential advisors put out word that the President was likely to sign an executive order in the coming days to begin the six month clock to withdraw from the North American Free Trade Agreement (NAFTA). Reportedly, President Trump changed course after phone calls with Mexican President Enrique Peña Nieto and Canadian Prime Minister Justin Trudeau. Initial news reports of a potential U.S. withdrawal caused a tumble in the value of the Mexican Peso, but later sent both it and the Canadian Dollar upwards after news of the renegotiation broke.

Takeaway: In response to President Trump's continued threats to withdraw from NAFTA, the Governments of Mexico and Canada both agreed to begin renegotiation of the landmark trade agreement. Expect the on-again off-again renegotiation of NAFTA to continue for the foreseeable future.