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## Washington, D.C. Update – April 2017

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**All of Washington was watching as House Republicans failed to meet a self-imposed deadline to repeal the Affordable Care Act (ACA). The House Republican replacement proposal, the American Health Care Act (AHCA), which had been expected to pass the House before moving to a more contentious debate in the Senate, now faces an uncertain future as the congressional Republicans and the White House debate their next steps.**

However, health care isn't the only issue in Washington as fiscal concerns (both tax and spending) now move to the forefront. On the tax side of the ledger, congressional Republicans and President Trump have expressed a desire to move to tax reform and beyond the failed attempt to repeal the ACA. Yet the only prominent proposal – Speaker Paul Ryan's Better Way – remains unpopular with a significant portion of the business community and will likely be subject to significant revisions if it is to garner the support of the White House or Senate leadership. Decisions on spending also remain a priority as Congress must adopt a fiscal year 2017 (FY17) appropriations package before the current continuing resolution (CR) expires April 28. A government shutdown remains unlikely, but as soon as a FY17 package is adopted, congressional budgeters and appropriators will quickly have to shift their attention to the FY18 process, which must be completed by the start of the new fiscal year in October. Add to that the ongoing fight over the Senate confirmations of presidential appointments and the nomination of Judge Neil Gorsuch to the Supreme Court, and we are likely to have a busy summer here in Washington.

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

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### **Fiscal Year 2017 Appropriations Nearly Complete**

Six months into FY17, House and Senate appropriators continue to work to resolve their differences and finalize spending levels for 11 of the 12 annual appropriations measures, having completed work only on the Military Construction/Veterans Affairs appropriations bill last year. Currently, the U.S. government is operating under a CR that extended funding at FY16 levels until April 28.

In an effort to meet the April 28 deadline and avoid a government shutdown, House and Senate appropriations are reportedly finalizing a compromise omnibus appropriations measure that incorporates all 11 of the outstanding appropriations bills. According to House Appropriations Chairman Rodney Frelinghuysen (R-NJ), a legislative package to wrap up the FY17 spending bills will be finalized "in the very near future."

The Trump Administration requested that Congress include a \$33 billion supplemental appropriation for defense and border security, specifically to begin construction of a wall on the southern border of the United States and Mexico. However, congressional Republicans cool to the idea. According to Senator Roy Blunt (R-MO), it is unlikely that the omnibus measure will include the requested supplemental defense and border security measure, saying "My guess is that comes together without the supplemental."

Some conservatives have also called for the FY17 omnibus to defund Planned Parenthood; however, Speaker Paul Ryan has rejected the idea saying such a provision opposed by Democrats could precipitate a shutdown crisis. Ryan said that he prefers to use budget reconciliation to defund Planned Parenthood because the change would become permanent law rather than having to be renewed annually.

**Takeaway:** It seems increasingly likely that Congress will approve an omnibus appropriations measure before the April 28 expiration of the CR currently funding the federal government. This will likely happen without the inclusion of President Trump's requested border security and defense supplemental appropriations request or a policy rider aimed at eliminating federal support for Planned Parenthood.

### **Trump Administration Starts the Debate Over FY18 Budget and Appropriations**

On March 16, the Trump Administration released "America First: A Budget Blueprint to Make America Great Again." The so-called "skinny budget," which includes proposed top-line spending numbers for the federal government, sets down the President's policy priorities for the upcoming FY18 budget and appropriations negotiations. The proposal, which deals solely with the discretionary side of the federal budget, notably includes a \$54 billion increase in defense spending, \$2.6 billion for the border wall and a \$1.4 billion increase for charter schools, private schools and other school-choice initiatives. In order to pay for those increases, the proposal includes significant cuts to a number of departments, including a 31 percent cut for the Environmental Protection Agency, a 29 percent cut for the State Department, 21 percent cuts for the Agriculture and Labor Departments, and an 18 percent cut for the Department of Health and Human Services, among others.

Congressional Republicans have expressed skepticism over the likelihood that the proposal will form an outline for congressional proposals yet to come. Representative Hal Rogers (R-KY), former chair of the House Appropriations Committee, summed up the feelings of many House Republicans, saying in a statement, "While we have a responsibility to reduce our federal deficit, I am disappointed that many of the reductions and eliminations proposed in the President's skinny budget are draconian, careless and counterproductive ... We will certainly review this budget proposal, but Congress ultimately has the power of the purse."

Another wrinkle in the debate over the FY18 budget is congressional Republicans' stated preference to utilize the budgeting process known as "reconciliation" to pass a tax reform/tax cut proposal. By adopting tax reform/tax cuts through reconciliation, the measure will be able to advance through the Senate with 51 votes, eliminating the threat of a filibuster from Senate Democrats. However, the failure of the House to adopt a reconciliation measure to repeal the ACA under the FY17 budget resolution may lead to changes in the previously announced plan.

**Takeaway:** The debate over the FY18 budget is only beginning, and while President Trump's so-called "skinny budget" has already been submitted to Congress, it is likely to be significantly altered before any resolution moves forward, and of course the full Trump Administration budget will not be delivered until sometime in May. Throw into the mix the ongoing FY17 appropriations process, the continuing debate over repeal of the ACA

and the conversation on tax reform/tax cuts, and you have the makings of an unpredictable FY18 budget season.

### **After Failed Attempt at Repeal, Republicans Debate Next Steps on the ACA**

On March 24, the AHCA, the House Republican plan to repeal and replace the ACA, was pulled from consideration at the last minute after Speaker Paul Ryan (R-WI) reportedly told President Trump the measure did not have the support of a majority of the U.S. House. The abrupt reversal will be considered by some as a significant defeat for President Trump and congressional Republicans. The bill, which had been proposed by House Republican leadership only a few weeks earlier, struggled to gain support from both the moderate and conservative wings of the Republican caucus.

If the bill had passed the House, it would have faced significant challenges in the Senate where a number of moderate and conservative Senate Republicans expressed concerns with the legislation. The bill would also have faced a procedural challenge in the Senate, where the Senate Parliamentarian would have had to rule on whether the bill produced by the House was eligible for consideration under the expedited reconciliation procedures or if it would need to be amended before moving forward. In particular, the removal of the ACA's ten essential health benefits required by all insurance plans was seen as a challenging inclusion. Initially, House Republican leadership elected not to include this in the legislation for fear that it would fall victim to the "Byrd Rule" that limits the scope of legislation passed through reconciliation. However, the provision was later added after the House Freedom Caucus insisted on its inclusion in exchange for their support, and some Senate Republicans intimated that the Parliamentarian might, in fact, agree to the measure's inclusion.

In the immediate aftermath of the bill's withdrawal, Speaker Ryan said, "Obamacare is the law of the land ... We're going to be living with Obamacare for the foreseeable future," and pointedly refused to say whether or when he would move forward with another attempt at a full repeal and replacement. However, after a meeting four days later, Speaker Ryan told reporters "The way I would describe the meeting we just had with our members is we are going to work together and listen together until we get this right." Senate Republican leaders also have made statements indicating they are interested in moving forward with some sort of a bill, but the details of what that would include remain unclear. For instance, earlier this week Senator Lamar Alexander (R-TN), Chair of the Senate Health, Education, Labor and Pensions Committee, said "I don't speak for the House, but there's a sense they were pretty close when they stopped last week. The sense of urgency is the millions of Americans who will be without health insurance, stabilizing the individual market. We said we would do it."

The AHCA was to be only the first step in a three-phase plan by congressional Republicans to repeal and replace the ACA. Phase two was supposed to be a series of administrative actions by the Trump Administration designed to deregulate the non-group market, lower costs and stabilize the market. Many of these planned and already executed actions were premised on the assumption that the ACA would be repealed, and given that it now seems unlikely in the short term, it remains unclear what steps will be taken by the Administration.

There are also a number of other health care measures in the offing that are expected to proceed through regular order in the coming months, including reauthorizations of the Children's Health Insurance Program (CHIP) and the Prescription Drug User Fee Act (PDUFA). However, these proposals, which have had bipartisan support in the past, may become vehicles for Republicans to seek changes to the ACA.

**Takeaway:** While initial Republican attempts to repeal the ACA through budget reconciliation have come to a (temporary) halt, the health care policy agenda remains full. Expect to see movement on a number of issues related to the ACA from both Congress and the Administration, as well as discussions over the reauthorization of CHIP, PDUFA and possibly chronic care and drug pricing.

## President Trump Signs 11 CRA Resolutions Overturning Obama-Era Regulations

Under the Congressional Review Act (CRA), Congress has a short 60 legislative day window to overturn regulations after they are finalized by the Administration. That window began to close on March 30, the final day to introduce resolutions intended to overturn regulations promulgated by the Obama Administration. Congress now has until May 9 to vote to overturn rules finalized between June 13, 2016 and January 3, 2017.

Prior to this year, Congress had successfully utilized the CRA to overturn a regulation once, in 2001, when it overturned a Department of Labor rule relating to ergonomics. In the first three months of the 115th Congress, President Trump has signed 11 CRA resolutions into law, and another two have been submitted to the President for his signature. Those signed into law include:

- Resolution of disapproval for a rule relating to "Disclosure of Payments by Resource Extraction Issuers"
- Resolution of disapproval for the "Stream Protection Rule"
- Resolution of disapproval for a rule submitted by the Social Security Administration relating to implementation of the NICS Improvement Amendments Act of 2007
- Resolution of disapproval for the "Fair Pay and Safe Workplaces" rule
- Resolution of disapproval for a rule that would have implemented new procedures to prepare, revise and amend land use plans for Bureau of Land Management-managed lands or resources
- Resolution of disapproval for a Department of Education rule related to teacher preparation programs
- Resolution of disapproval for a Department of Education rule related to accountability and State plans
- Resolution of disapproval for a Department of Labor rule that would have limited states' ability to implement drug testing as a prerequisite for receiving unemployment insurance
- Resolution of disapproval for a regulation that would have prohibited certain hunting tactics that target "predator" animals like bears and wolves while they are inside Alaska's national preserves
- Resolution of disapproval for Federal Communications Commission Internet privacy rule
- Resolution of disapproval for a Department of Labor rule that would have required companies to report injuries and illnesses that occur on the job

**Takeaway:** The 115th Congress is, by far, the most active utilizer of the CRA since its adoption in 1996, having approved 13 resolutions of disapproval for Obama Administration rules, two of which still await President Trump's signature. The deadline to introduce new CRA resolutions has already passed, but Congress has until May 9 to act on a number of resolutions already in progress, including disapproval resolutions relating to methane emissions from oil and gas operations on public and Indian lands, and the creation of state-sponsored IRA plans for small business employees who do not have access to a retirement plan at work.

## Senate Continues to Slowly Confirm Trump Nominations, Gorsuch Vote Expected April 7

As of April 5, the Senate has confirmed 22 of President Trump's 67 nominees to Senate confirmable positions. Of the 23 cabinet level positions, the Senate has confirmed 20 of the 23 positions, having not yet held votes for Secretary of Labor nominee Alexander Acosta, Secretary of Agriculture nominee Sonny Perdue and U.S. Trade Representative nominee Robert Lighthizer. The pace of confirmations is proceeding slower than was the case under President Obama. President Trump and Senate Republicans have blamed this slowdown on Senate Democrats who they say have made numerous attempts to slow the process. Conversely, Democrats blame the Trump Administration for the slowdown, attributing it to the White House's failure to properly vet nominees before submitting them to the Senate for confirmation. While the debate over confirmations continues, the Trump Administration has been noticeably slower than past administrations in the pace of nominations, especially for the key deputy secretary and undersecretary positions, and has yet to announce nominations for 488 of the 553 key positions requiring Senate confirmation.

The Senate is moving toward confirmation of Judge Neil Gorsuch and is scheduled to vote on his nomination on April 7. Initially, it seemed as if Senate Republicans were going to be able to attract the eight Democratic votes needed to override an expected Democratic filibuster and have received the support of Senators Heidi Heitkamp (D-ND), Joe Donnelly (D-IN) and Joe Manchin (D-WV). The vast majority of Democrats, however, have closed ranks and reportedly have gotten more than 40 Senators to commit to blocking Judge Gorsuch's nomination. Senate Majority Leader Mitch McConnell has committed to moving forward with the nomination, saying "He'll be on the floor of the Senate next week and confirmed on Friday [April 7] ... We are optimistic that [Democrats] will not be successful in keeping this good man from joining the Supreme Court real soon." In order to do this, Leader McConnell will most likely implement what is commonly known as the "nuclear option" – a change in the Senate rules to end the Senate's 60-vote threshold on Supreme Court nominees. It would be the second time in three and a half years that the Senate majority has breached the long-held standard. The first time, Democrats, then led by Senator Harry Reid (D-NV), ended 60-vote filibusters for all nominees except those for the Supreme Court.

**Takeaway:** Presidential appointee confirmations in the Senate have been hampered by partisan bickering and a comparatively slow approach to appointments by the Trump Administration. Meanwhile, the fight over the nomination of Judge Neil Gorsuch to the Supreme Court is heating up as Senate Democrats reportedly have enough votes to stop the nomination in its tracks – increasing the likelihood that Senate Republicans will invoke the "nuclear option" and change Senate rules to require only a simple majority for confirmation.

### **Tax Reform Moves to the Top of the Agenda**

In his first comments after the decision to withdraw the AHCA from House consideration, President Trump told the assembled media, "I would say that we will probably start going very, very strongly for the big tax cuts and tax reform. That will be next." Treasury Secretary Steve Mnuchin later echoed the President's comments, saying "Health care is a very complicated issue. In a way, tax reform is a lot simpler." While members of Congress would likely disagree with the Secretary's assessment, they have already begun debate over next steps on this Republican priority.

To date, the debate has centered on the Border Adjustable Tax (BAT), a tax proposed by Speaker Ryan that would produce roughly \$1 trillion in revenue over ten years by no longer allowing companies to deduct the cost of imports from their profits. The business community is split over the proposal, with importers opposed and exporters in favor. In addition to the BAT, Speaker Ryan's Better Way plan would lower the top individual income tax rate from 39.6 percent to 33 percent, reduce the number of tax brackets from seven to three, repeal the federal deduction for state and local taxes, lower the corporate income tax from 35 percent to 20 percent and end the practice of global taxation.

Before the failure of the AHCA, congressional Republicans had planned on utilizing the FY18 budget reconciliation process to move forward with tax reform. According to Speaker Ryan, "[failure of the AHCA] does make tax reform more difficult ... But it does not in any way make it impossible." Much remains uncertain as neither the Senate Republican leadership nor the President have signed on to Speaker Ryan's proposal.

Congressional Democrats remain divided over the issue, with progressive members of the caucus expected to oppose the measure while some moderates have been more receptive, especially if the proposal is paired with an infrastructure investment bill. Representative Jim Himes (D-CT), chair of the moderate New Democrats, recently told the press "We'll get on board with either, and both, provided that the discussion is one that is consistent with our values as Democrats, and that it's constructive."

**Takeaway:** With the failure of the initial effort at repeal of the ACA, tax reform – a perennial republican priority – is now at the top of the congressional agenda. What exact form it will take remains fluid as neither Senate

Republicans nor President Trump have agreed upon a direction forward. Expect some action on tax reform (or at least tax cuts) to move forward before the August recess.