PUBLICATION

Washington, D.C. Update – June 2017

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June 16, 2017

Having returned from its Memorial Day recess, Congress now enters one of the longest continuous work periods of the year and – with the exception of the week of the Fourth of July – will likely be in session until the end of July or early August. During this time, Congress will attempt to tackle a number of key issues including Republican legislative priorities, such as tax reform and the repeal and replacement of the Affordable Care Act (ACA), as well as items driven by upcoming deadlines, including the budget and appropriations process, the expiration of Food and Drug Administration (FDA) user fee agreements and the fast approaching debt ceiling. Add in the Russia election tampering investigation and other legislative priorities and you have the makings of a very busy summer in Washington. So busy, in fact, that the House Freedom Caucus has called on congressional leadership to cancel the August recess.

What happens this summer and fall will go a long way in determining the level to which congressional Republicans are able to keep pace with their ambitious agenda to roll back President Obama's policy legacy and implement their priorities (such as tax reform). For instance, in order to utilize the budget reconciliation process (an expedited legislative procedure that allows for passage of certain legislation by a simple majority in the Senate) to address tax reform, in the coming weeks Senate Republicans will need to conclude their work on healthcare reform.

Traditionally, the summer months after an election are considered among the most productive for Congress and Republicans (who control the House, Senate and White House) will be looking to advance as much legislation as possible over the next few months before we begin the slide into the 2018 election campaign.

In this month's Washington, D.C. Update we discuss:

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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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Budget and Appropriations Proceeds Slowly

Since President Trump's budget proposal was released last month, the budget and appropriations process has proceeded slowly, as Republican budget writers continue negotiations over how to approach modifying the 2011 Budget Control Act's (BCA) so called "budget caps" that limit total discretionary defense and non-defense spending. Among the challenges facing budget negotiators include defense hawks, who are demanding the BCA defense caps be raised and Democratic (and significant Republican) opposition to President Trump's proposal that includes an increase in defense spending and equivalent cuts non-defense spending. Movement on the budget is also complicated by the fact that the FY18 budget will set the rules for the upcoming debate over tax reform (see below), further slowing the process. Finally, Republicans are also slow walking the FY18 budget to allow time to move forward with repeal of the ACA, which must take place under the FY17 budget resolution before a FY18 budget resolution can be adopted.

Without an approved budget – or a deeming resolution – the Appropriations Committee cannot then divide the proposed spending amounts among the 12 spending bills. The 1974 budget law does allow the House to bring appropriations bills to the floor after May 15 without a budget resolution or deeming resolution, but functionally, appropriators cannot write bills until they have their suballocations. Given the time pressures, this week House and Senate appropriators are marking up the first appropriations bills of the cycle, the Military Construction-Veterans Affairs appropriations bill – traditionally the easiest of the 12 bills to advance. This could present challenges later on if GOP leaders attempt to craft a larger spending agreement in September, potentially forcing cuts elsewhere in order to ensure the entire budget fits within the budget caps.

Takeaway: With the delayed start to the budget and appropriations season and a very full summer and fall schedule, it is increasingly likely that Congress will either have to adopt a continuing resolution to keep the government open past September 30 and/or combine the 12 bills into an omnibus bill or a series of so-called "minibuses."

Tax Reform Delayed Until Later This Summer

Tax reform, perennially among the GOP's top priorities, has taken a back seat to other, more pressing priorities since an initial burst of interest caused by the Trump Administration's release of a one-page outline in April. The GOP plan had been to move forward with repeal and replace of the ACA under the FY17 reconciliation instructions before the end of the fiscal year and then utilize the FY18 budget reconciliation package to pass tax reform sometime thereafter. However, with Republican health care legislation proceeding slowly in the Senate, deadlines looming for Congress to address FY18 budget and appropriations and the debt limit (see below) and continued intra-Republican disagreement over the contents of a tax reform plan, the future of any legislation remains murky.

On May 17, National Economic Council Director Gary Cohn reported that the Trump Administration was drafting a tax plan and will deliver it to Congress when they return from the August recess, a significant delay from the Administration's initial promise that the plan would be approved by Congress before August. However, when asked for additional details of the plan, Treasury Secretary Steven Mnuchin told the Senate Finance Committee that there may not be a Trump Administration plan per se, but the Administration will work with Congress to "come up with a proposal that can pass the House and the Senate and be signed by the President."

House GOP leadership continues to insist that their proposed Border Adjustment Tax (BAT) be included in order to raise revenue to pay for lowering tax rates, while more conservative members of the House reject the BAT as a tax increase, calling for federal spending cuts or – in the case of the House Freedom Caucus Chairman Representative Mark Meadows (R-NC) – rejecting calls to make tax reform deficit neutral. There is also disagreement over whether the tax reform proposal will be coupled with infrastructure spending. President Trump has floated the idea of bringing the two items together to encourage Democrats to sign onto the package. However, Democrats remain united against the proposal and White House officials reportedly told conservative activists that the two proposals would not be linked. Congressional Republicans also remain divided over how long the tax changes should last, how deep rates will be cut and how business investments will be treated.

Takeaway: Tax reform remains a top priority for congressional Republicans, but its future is murky as both the timeline for its consideration and the contents of the bill remain unclear. While conversations about the proposal will continue to take place behind closed doors over the summer, do not expect to see any significant movement on the proposal until after Congress returns from its August recess.

Debt Limit Deadline May Be Reached Earlier Than Expected

On March 16, the debt limit ceiling suspension agreed to in the lead up to the 2016 elections officially expired, meaning the U.S. government can no longer take on additional debt until the ceiling is raised. Currently, the federal government is relying on so-called "extraordinary measures" to continue operation, including suspensions of payments to certain pension programs and shifting of funds in government accounts. Earlier this spring, the Trump Administration and outside financial analysts said that the U.S. government had enough cash on hand to last through September or October 2017. However, at the end of May, Treasury Secretary Steven Mnuchin and Director of the Office of Management and Budget Mick Mulvaney separately told Congress that tax receipts are being deposited in government accounts at a slower rate than expected and urged Congress raise the debt limit before the August congressional recess rather than waiting until returning to Washington after Labor Day.

The Trump Administration and congressional Republicans remain divided over how to approach the debate. During the Obama Administration, congressional Republicans attempted to utilize the debt limit deadline to force the Administration to accept passage of a variety of Republican-backed measures in exchange for their support. So far, Republican leadership has not adopted this approach, but the House Freedom Caucus announced its opposition to a "clean" increase in the debt limit, demanding that any increase in the debt limit be paired with spending cuts. The White House, meanwhile, is divided internally as Secretary Mnuchin is urging Congress to pass a clean debt ceiling bill while Director Mulvaney pointedly refrained from using similar language.

House and Senate Democrats are also divided over the issue, with some Democrats calling for a clean debt ceiling increase, and others looking to utilize the debate to extract concessions from the White House – an about face from years past. Among the issues that Senators Chris Murphy (D-CT) and Dick Durbin (D-IL) may seek to tie to their support for a debt ceiling increase, include extending the Children's Health Insurance Program (CHIP) or agreeing on a spending deal that avoids the cuts proposed in the Trump Administration's budget proposal. Republicans will likely need Democrat votes in order to reach the 60-vote threshold to end debate in the Senate and a majority of the House.

Takeaway: The debate over raising the debt ceiling, which Congress had been pushing back in order to address Republican priorities such as repealing the ACA and tax reform, is now front and center as Trump Administration officials warn Congress that it must act before the August recess in order to ensure the U.S. government does not default on its obligations. However, neither Republicans nor Democrats are unified on a path forward with elements of both parties demanding concessions in exchange for their support. Expect the debt ceiling debate to only intensify as we move toward the August congressional recess.

CBO/JCT/CMS Release Analyses of House-Passed AHCA; Senate Timeline Remains Unclear

On May 24, the Congressional Budget Office (CBO) and Joint Committee on Taxation (JCT) released much-anticipated analysis of the House-passed American Health Care Act (AHCA). Overall, CBO projected that the AHCA would reduce the federal deficit by $119 billion over the 2017 – 2026 budget window and result in 23 million additional uninsured people by 2026. See Baker Donelson's full overview of CBO's analysis and comparison to previous AHCA scores here.

Of particular note, CBO examined the AHCA provisions to allow states to waive requirements for essential health benefits (EHBs) and community-rating, two amendments considered crucial to securing needed votes for AHCA's passage in the House. Starting in 2020, CBO predicts that the non-group markets in states that elect to fully waive these provisions would become unstable for people with higher-than-average expected health care costs. This effect would arise because CBO expects that community-rated premiums would increase over time, eventually pricing people who are less healthy (including those with preexisting or newly acquired medical conditions) out of the market – despite the additional funding available under AHCA to help reduce premiums.

On June 13, the Centers for Medicare & Medicaid Services (CMS) Office of the Actuary released its analysis of AHCA, projecting that the bill would reduce the federal deficit by $328 billion over the 2017-2026 budget window and result in 13 million additional uninsured by 2026. On Medicaid, CMS estimates 8 million fewer enrollees by 2026, due to a decline of 6 million for newly eligible adults under current law and a decline of 2 million for all other Medicaid enrollees.

Recognizing the challenges presented by CBO's latest report, Senate Republicans have sought to manage expectations regarding the health care reform legislation. Republicans only need 50 votes under the budget reconciliation process to pass a bill (with Vice President Mike Pence breaking the tie). However, reaching this threshold is complicated by the fact that some moderate and conservative Republican Senators remain deeply divided over various provisions of the House-passed legislation, including the age-adjusted tax credits, funding cuts to the Medicaid program and state waivers of protections for individuals with pre-existing conditions. In addition, many major stakeholders have announced opposition to the House-passed AHCA—including AARP, the American Cancer Society Cancer Action Network, American Diabetes Association, American Heart Association, American Hospital Association, American Medical Association, and the Federation of American Hospitals—raising the stakes for Senate considerations to modify AHCA's approach. Illustrating the complexity and pressure of negotiations to bridge these divides, Senate Majority Leader Mitch McConnell (R-KY) stated on May 24, "I don't know how we get to 50 [votes] at the moment. But that's the goal. And exactly what the composition of that [bill] is I'm not going to speculate about because it serves no purpose."

Senate Majority Leader McConnell has pledged to bring a bill to a vote by the July Fourth recess and initiated the so-called "Rule 14" process that allows the Senate to fast track the legislation, bypassing the Senate Committees and placing it directly on the floor for consideration. After a June 7 closed door meeting to review the latest proposals under development, Senator Bill Cassidy (R-LA), a key moderate in the ACA repeal and replace debates, reported feeling "increasingly comfortable and very encouraged" by Republicans' plans. After meeting with Republican congressional leaders on June 8, President Trump signaled his support and urged Republicans to move on an aggressive timetable for repealing the ACA in order to quickly turn to tax reform. In addition to timeline pressures from the legislative agenda, outside calls for clarity on Senate Republicans' health reform bill will likely come even sooner—as insurers in the ACA's exchanges face a June 21 federal filing deadline to determine whether they will participate for 2018. However, even as news reports indicate that Senate Republicans are potentially reviewing policies with the CBO for analysis this week, Senate Republicans have not indicated when they plan to publicly release legislative text under consideration.

Some Republican Senators, such as Senator Richard Burr (R-NC) and Senate Health, Education, Labor and Pensions (HELP) Committee Chairman Lamar Alexander (R-TN), have emphasized the need for short-term market stabilization policies if broader health care reform efforts stall. Senator Burr stated on June 1, “I think it's unlikely we will get a health care deal, which means that most of my time has been spent trying to figure out solutions… and things that we can bring to the table that both aid the exchange market or transition it to something that's life after the Affordable Care Act."

Takeaway: The overall timeline, process and policy components of Senate legislation on health care reform remain largely in flux. Any Senate legislation needs to be provided to CBO approximately two weeks prior to a final vote to allow CBO analysis to ensure that the provisions conform to the Senate's rules of budget reconciliation. If Senate Republicans do not coalesce around a plan soon enough for a July 4 vote, it is likely that the process of negotiations would continue throughout the summer.

Congressional Committees Advance Bipartisan FDA User Fee Agreements

On May 11 and June 7, the Senate HELP Committee and House Energy and Commerce Committee, respectively, both advanced bipartisan legislation to reauthorize four different user fee agreements that account for over a quarter of the FDA's overall funding. The legislation, titled "The Food and Drug Reauthorization Act of 2017," would update and reauthorize the 2012 Prescription Drug User Fee Amendments (PDUFA), Medical Device User Fee Amendments (MDUFA), Generic Drug User Fee Amendments (GDUFA) and Biosimilar User Fee Act (BsUFA), which all expire at the end of the fiscal year (September 30, 2017). The user fee agreements govern the FDA's authority to collect fees from drug and device manufacturers to fund the agency's drug approval process.

The bipartisan user fee reauthorization package reflects over a year of work in Congress and closely follows agreements reached last year between the Obama Administration FDA and the drug and device industries. Notably, the Trump Administration weighed in last month urging Congress to restructure those agreements. Department of Health and Human Services Secretary Tom Price wrote a letter on May 15 to HELP Committee Chairman Alexander and Ranking Member Senator Patty Murray (D-WA), and Energy and Commerce Committee Chairman Greg Walden (R-OR) and Ranking Member Representative Frank Pallone (D-NJ) requesting that Congress increase industry fees to fund 100 percent of costs for premarket review and approval activities for the FDA user fee programs. The President's FY18 Budget proposal, released on May 22, included this same proposal. This policy would represent a significant shift from the Obama Administration user fee agreements with industry.

Thus far, the Committees have not embraced the Trump Administration's proposal. Chairman Alexander stated that the Trump Administration's request "can be considered the next time the FDA negotiates the user fee agreements with the manufacturers of drugs and devices, but it is way too late to have an impact on this year's agreements."

Takeaway: Given bipartisan agreements have already been advanced by both Committees of primary jurisdiction, Congress is unlikely to renegotiate the five-year user fee agreements this year. Congress faces a narrow window to pass the user fee reauthorization package. If the agreements are not reauthorized before August, the FDA would be forced to send 60-day layoff notices to more than 5,000 employees indicating that they may lose their job after October 1, 2017. Congress is expected to vote on the final FDA user fee agreements in July.

Senate Finance Committee Advances Bipartisan CHRONIC Care Act

On May 18, the Senate Finance Committee unanimously approved the Creating High-Quality Results and Outcomes Necessary to Improve Chronic (CHRONIC) Care Act of 2017 (S. 870). The bipartisan bill aims to modernize care management, coordination and quality outcomes for Medicare beneficiaries with chronic conditions. The bill would expand Medicare's Independence at Home program to provide additional home care options; create more flexibility for Medicare Advantage value-based insurance designs, special needs plans and supplemental benefits; increase provider-patient coordination within Accountable Care Organizations (ACOs); and provide additional Medicare and Medicare Advantage coverage for telehealth services.

First introduced in the 114th Congress in December 2016 and then reintroduced in the 115th Congress on April 6, 2017, the CHRONIC Care Act was developed by the bipartisan Senate Finance Committee Chronic Care Working Group following two years of collaborative effort – including congressional hearings, public requests for stakeholder input and public review of policy options. Several previous policy recommendations issued by the Working Group have already been adopted by CMS or enacted by Congress through the 21st Century Cures Act.

Takeaway: It remains unclear when the CHRONIC Care Act will reach the Senate floor or how the House will proceed on this issue. Senate Finance Committee Chairman Orrin Hatch (R-UT) and Ranking Member Senator Ron Wyden (D-OR) have both emphasized the need for a bipartisan process behind the chronic care bill, including keeping it free of ACA-related provisions to increase the likelihood of passage.

Dodd-Frank Repeal Approved by the House Along Party-Line Vote

On June 8, the House voted along party lines to repeal many of the stricter regulations of the Dodd-Frank Act enacted after the 2008 financial crisis, taking the first step in a long-held Republican desire to roll back the landmark rules they complain are hurting banks, restricting consumer credit and slowing economic growth. The Financial Choice Act, which passed the House on a vote of 233 to 186 with all but one Republican voting in favor, is expected to face major opposition in the Senate.

Its major changes include repealing the trading restrictions, known as the Volcker Rule and scrapping the liquidation authority in favor of enhanced bankruptcy provisions designed to eliminate any chance taxpayers would be on the hook if a major financial firm collapsed. The bill also would repeal the so-called Fiduciary Rule, a pending Obama Administration Labor Department regulation that requires investment brokers who handle retirement funds to put their clients' interests ahead of their own compensation, company profits or other factors.

The Financial Choice Act would also stop the Consumer Financial Protection Bureau (CFPB) from undertaking certain activities focused on monitoring financial firms for compliance with consumer protection laws. The legislation specifically prohibits the bureau from writing any regulations on payday and car-title loans. The Bureau's director would be subject to removal by the President for any reason and the agency's independent funding stream would be eliminated, making it subject to congressional appropriations.

In addition to House's changes in to the Dodd-Frank legislation, on June 12, the Treasury Department unveiled more than 100 changes to the nation's financial regulatory framework primarily (though not exclusively) focused on regulation. Changes proposed by the Department include easing up on restrictions big banks now face in their trading operations, lightening the annual stress tests they must undergo, and reducing the powers of the CFPB. The plan would also expand the authority of the Financial Stability Oversight Council and change the way global capital standards are implemented. Smaller banks would get some relief as well: Lenders with $50 billion or less in assets would have to jump through fewer regulatory hoops than those with multitrillion-dollar balance sheets.

Takeaway: With House approval of the Financial Choice Act, the bill now moves to the Senate where it faces an uphill climb unless there are significant modifications to attract Democratic support. Senate Banking Committee Chairman Mike Crapo (R-ID), who has been working closely with Committee Ranking Member Senator Sherrod Brown (D-OH) to craft bipartisan legislation, said he would work with all stakeholders to "strike a balance" when it comes to financial reform. Senator Crapo has set his own target of early 2018 for passage of any financial reform legislation.

President Trump Throws His Support Behind FAA Privatization Effort

President Trump's entry into efforts to privatize the nation's air traffic control (ATC) system has breathed new life into an idea championed by House Transportation & Infrastructure Committee Chairman Bill Shuster (R-PA). Spinning off the Federal Aviation Administration ATC functions to a private, non-profit corporation stalled last year due to bipartisan opposition in Congress and failure to achieve consensus in the aviation community. Although exact details of the Administration's plan have yet to crystalize, major stumbling blocks to this proposal remain, such as the makeup of the nonprofit entity's board of directors which many feel would be dominated by the air carriers. Also at issue is a new user fee structure, which worries general aviation (GA) pilots. Other issues are safety concerns and spinning off federal assets without compensation to the federal treasury.

On the Senate side, Commerce, Science & Transportation Chairman John Thune (R-SD), reiterated his cautionary approach to ATC privatization, reminding folks that "as we move forward in discussing potential reforms, getting a bill to President Trump's desk will require bipartisan support as well as a consensus among the aviation community."

Takeway: Given his interest in bringing the private sector to the table as a major player in restoring the nation's infrastructure, President Trump's entry into the ATC reform debate was not unexpected and it brings new energy to the dialogue. This is particularly true given the lagging efforts to implement NextGen, a program to modernize the nation's current ground based air space system, with a satellite network which would improve safety and reduce delays for the traveling public. Many continue to be staunchly opposed to privatization and others are reserving judgment to examine potential "devils in the details." However, this issue is back to center stage for this Congress, as the President adds his support to privatization and Chairman Shuster tries to garner the support necessary to implement one of his legislative "crown jewels" prior to the expiration of his term at the helm of the Transportation and Infrastructure Committee due to Republican term limits.

Future of Federal Student Loans Takes Center Stage at the Education Department

Federal student loans have taken on a newfound importance as the Trump Administration seeks to re-envision the role of the federal government in providing funding for higher education. Proposed changes and items under consideration include transitioning responsibility for the government's estimated $1 trillion in student debt from the Education Department to the Treasury Department, lessening the number of federal student loan servicers from the existing nine companies to one, eliminating the Public Service Loan Forgiveness and Stafford loan programs, modifying the income-based loan repayment plan and allowing Pell Grants to be utilized year-round, long a request of many left-leaning education advocates.

The elimination of the Public Service Loan Forgiveness and Stafford loan programs, modification of the income-based loan repayment plan and expanded Pell Grants were included in the President's proposed budget and are likely part of an opening salvo in what are expected to be significant negotiations about the future of the federal student loan system. Elimination of the Public Service Loan Forgiveness program, which allows borrowers to have the balance of their loans forgiven after spending ten years working for the government or a non-profit and the Stafford loan program, which provides federally subsidized loans for low-income students at lower interest rates, would require congressional approval. Modifications to the income-based repayment program however could be implemented through executive order. Under the President's Budget proposal, graduate students would have to pay 12.5 percent of their salaries for 30 years — an increase from the current Obama Administration plan, under which they pay ten percent of their income for 25 years. Like graduate students, undergraduates will have to pay a higher percentage of their income every month than under the Obama Administration's plan — 12.5 percent instead of ten percent. But their loans would be forgiven after just 15 years of payments, instead of 20.

In addition to the changes included in the President's Budget proposal, the Trump Administration is reportedly considering moving responsibility for overseeing more than $1 trillion in student debt from the Education

Department to the Treasury Department. The federal student aid office has been subject to criticism over the effectiveness and expense of its debt collection programs. Several government audits took issue with the Department of Education's handling of its student aid programs. Moving the federal student aid unit probably would require congressional action where it could receive bipartisan support, but critics worry that the move could hurt students, asserting the Treasury Department is not properly equipped to work with students. In mid-2015, the Treasury Department conducted a pilot project in which its employees tried to collect on defaulted loans, a job the Education Department contracts out to private companies, hoping to increase collection rates and help borrowers better understand their repayment options. It failed on both accounts as a control group of private collectors recovered more money and got more borrowers out of default.

Takeaway: With the appointment of Betsy DeVos as Secretary of Education, observers had expected the Department to focus on promoting school choice initiatives. School choice, however, seems to be taking a back seat to a variety of proposals to fundamentally reimagine the federal government's role in federal student aid.