Major Legislation to Watch in 2017

The 115th Congress convened for the first time on January 3, 2017, for what is expected to be a busy legislative session. With Republicans in control of Congress and the White House, the legislative priorities of the 115th Congress will be significantly different than the past several sessions of Congress. Below is a brief look at major legislation to watch in 2017; the first session of the 115th Congress.

Border Security, Immigration and Homeland Security

House Homeland Security Committee Chairman Michael McCaul (R-TX) plans to introduce legislation early in 2017 that would impose “a tough array of barriers” at the U.S.-Mexico border, paid for in part by Mexico through tolls at border crossings and proceeds from seized assets of drug cartels. Senate Judiciary Committee Chairman Chuck Grassley (R-IA) is also considering legislation that would restrict federal funds to so-called “sanctuary cities,” which shield undocumented immigrants from deportation, as well as a bill requiring detention of undocumented immigrants suspected of criminal activities. Chairman Grassley may also propose changes to the EB-5 program, which provides visas to foreigners in return for investments in the U.S., and may also limit H-1B visas for foreign workers with specific professional or technical skills. He also wants to expand the E-Verify program, which is aimed at ensuring employers are hiring legal immigrants. Lastly, Speaker Paul Ryan (R-WI) has stated that the enhanced border security promised by President-elect Donald J. Trump may not be an actual physical wall across the entire U.S.-Mexico border, but rather, more focused on technology and border fencing. Congressional Republicans and Trump’s transition team are exploring whether they can build a wall using a 2006 law signed by former President George W. Bush that authorized over 700 miles of a “physical barrier” on the southern border. The 2006 law was never fully implemented and did not include a sunset provision.

Budget and Appropriations

Congress will consider two sets of budget resolutions and subsequent reconciliation bills in early 2017. Reconciliation is a process that allows for expedited consideration of certain tax, spending, and debt limit legislation and only requires 51 votes for passage in the Senate. The fiscal year (“FY”) 2017 budget resolution will be used to put the repeal of the Affordable Care Act on a fast track through reconciliation, while the FY 2018 resolution will be used to set up a tax-code overhaul. The current Continuing Resolution (“CR”) funding the federal government expires on April 28, 2017, meaning that either another CR or an omnibus appropriations bill providing full funding through the remainder of FY 2017 (i.e., Sept. 30, 2017) will need to be signed into law by that time in order to prevent a government shutdown. Each of the twelve House and Senate Appropriations Subcommittees will begin marking up their respective FY 2018 appropriations bills in early Spring 2017, with each chamber voting on these bills likely beginning in May/June 2017.
Criminal Justice Reform

Senate Judiciary Committee Chairman Chuck Grassley will focus on sentencing laws and prison reform as soon as his committee finishes with the high-profile cabinet nominees under its jurisdiction. Senate Minority Whip Dick Durbin (D-IL) approached Grassley after the election about reviving last session’s criminal justice reform legislation and aides for the two Senators, the key architects of last year’s proposal, have been discussing how to advance the measure ever since. House Speaker Paul Ryan stated on January 5, 2017 that revamping the U.S. criminal justice system will be a priority in the 115th Congress and that he has asked the committees of jurisdiction to pick up where they left off in 2016.

Cybersecurity

Long-term cybersecurity challenges that the 115th Congress and the Trump Administration are likely to confront include: preventing cyber-based disasters and espionage, reducing impacts of successful attacks, improving inter- and intra-sector collaboration, clarifying federal agency roles and responsibilities, and fighting cybercrime. Legislation related to these issues will likely be passed in the new Congress.

Debt Limit

The current debt-limit deal expires on March 16, 2017. It’s the first time Congress will have to raise the $20 trillion debt ceiling since the Bipartisan Budget Act of 2015 was enacted on November 2, 2015. The U.S. Treasury Department can use so-called “extraordinary measures” to delay the threat of default until approximately July 2017. Federal debt accumulates when the government sells debt to the public to finance budget deficits and to meet federal obligations or when it issues debt to government accounts, such as the Social Security, Medicare, and Transportation trust funds. Congress has raised the debt limit 15 times since 2001. At some point, Republicans will have to offer a plan for raising the debt ceiling or face default. Incoming White House Office of Management and Budget (“OMB”) Director Rep. Mick Mulvaney (R-SC) and his House Freedom Caucus colleagues have tried to attach bill language, the “Cut, Cap, and Balance Act,” to any measure raising the debt limit, which would cut current year spending, cap future spending and require a vote on a balanced-budget amendment that bars tax increases. However, Congressional Democrats would probably block such a bill in the Senate, setting up a potential market-rattling confrontation.

Dodd-Frank

President-elect Trump and Congressional Republicans want to make major changes to the 2010 Dodd-Frank Act, which increased regulations on Wall Street. House Financial Services Committee Chairman Jeb Hensarling (R-TX) has proposed a wholesale rollback that would undo key components of Dodd-Frank, such as limits on proprietary trading and resolution authority for failing banks. Chairman Hensarling also wants to strip much of the Financial Stability Oversight Council’s (“FSOC”) authority and the Consumer Financial Protection Bureau’s (“CFPB”) independence. Senate Republicans have not been inclined to go that far, instead targeting smaller provisions in the law,
especially those that target smaller financial institutions. It is possible that Congressional Republicans may pursue those and other changes to Dodd-Frank through reconciliation (the fast-track budget process described above).

**Energy and Environment**

President-elect Trump and the Republican-led Congress are expected to pursue policies that encourage the development of domestic energy resources and infrastructure, as well as push for the rollback of many of the Obama Administration’s environmental regulations and initiatives, including the Clean Power Plan, the Clean Water Rule (commonly known as Waters of the U.S. or “WOTUS”), the Climate Action Plan, and the Paris Climate Agreement. The 115th Congress has already expressed interest in using legislative tools to rollback such environmental regulations and laws, including more established environmental law, such as the Endangered Species Act.

Several dozen bills introduced so far in the 115th Congress focus on energy, environment and natural resources issues. Rep. Don Young (R-AK) was the most prolific author, filing almost 40 bills on the first day of the session. In addition to the dozens of bills introduced addressing public lands, energy development, fisheries and wildlife issues, it is possible that Senate Energy and Natural Resources Chairman Lisa Murkowski (R-AK) and Ranking Member Maria Cantwell (D-WA) may resurrect their comprehensive energy bill, which failed to cross the finish line at the end of 2016. Despite its inability to pass last year, the legislation enjoyed significant bipartisan support.

**Entitlement Programs**

Medicare, Medicaid and Social Security are all up for discussion now that Republicans control both chambers of Congress. After the November election, House Speaker Paul Ryan began talking about the need to change the Medicare program and the possibility of partially privatizing Medicare, an idea House and Senate Republicans have repeatedly supported in several non-binding budget resolutions. The question now is if Republicans can again vote for such a politically touchy change now that there is a possibility it could become law. Medicaid and Social Security could be targets for cuts this Congress as well, although, budget reconciliation procedures to bypass certain opposition from Senate Democrats cannot be used for Social Security. Therefore, it is more likely that Republicans will push for cuts to Medicaid, despite President-elect Trump’s pledge to protect Medicaid, Social Security and Medicare from budget cuts.

**Flood Insurance Reauthorization**

The current authorization for the National Flood Insurance Program (“NFIP”) expires on September 30, 2017, and discussions have already commenced among Congressional staff and stakeholders on what should be included in the next reauthorization bill. While there’s been no formal introduction of a reauthorization bill, Congress has considered legislation and held hearings on different issues involved in the reauthorization debate, including creating a more robust private flood insurance market, reducing the overall cost of natural disaster response, reducing the number of repeat flood loss properties, improving mapping and data, and increasing opportunities for mitigation and flood protection. The House Financial Services Committee’s Subcommittee on Housing and Insurance is still working on a draft bill that is expected to be released this spring. The plan is to provide
lawmakers and stakeholders with a bill that can be considered throughout 2017 with the goal of coming to a bipartisan agreement before the September 30 deadline.

Representative Blaine Luetkemeyer (R-MO), Chairman of the Subcommittee on Housing and Insurance, released draft principles in December 2016 outlining a path forward to reauthorize the NFIP in 2017. The main principles outlined in the document are:

- Provide market stability through reauthorization of the NFIP;
- Place NFIP on sound fiscal footing;
- Provide greater transparency, stronger public/private partnerships, and greater consumer choice to achieve public policy objectives;
- Provide a more open insurance rate-setting process; and
- Update and reform mitigation and mapping process.

Health Insurance

Congressional Republican leaders used the opening days of the 115th Congress to expedite a repeal of the Affordable Care Act ("ACA") using reconciliation. The Senate voted 51-48 on January 4, 2017, on the motion to proceed to S. Con. Res. 3, which is the resolution being used to advance the repeal of the ACA. The resolution instructs the four respective Congressional authorizing committees—House Ways and Means, House Energy and Commerce, Senate Finance, and Senate Health, Education, Labor, and Pensions—to achieve at least $1 billion each in deficit reduction over 10 years (FYs 2017-2026) and to report legislation to the House and Senate Budget Committees by January 27, 2017. House Republican leaders want to get an ACA repeal bill to President-elect Trump’s desk by February 20, 2017, while the Trump Administration moves forward with executive actions to start unwinding the law. Despite the rush to pass the rollback, Republicans say they plan to delay the date for its implementation by two or three years to give lawmakers time to craft and implement an alternative replacement law. Major obstacles include the lack of consensus on an alternative, the fact that popular parts of the law are hard to disentangle from unpopular parts, and opposition from major stakeholders, including health insurers and hospitals.

Higher Education Reform

During the first part of 2017, it is expected that the Senate Health, Education, Labor and Pensions Committee and House Education and the Workforce Committee will conduct hearings on the reauthorization of the Higher Education Act ("HEA"). The chairs of each committee, Senator Lamar Alexander (R-TN) and Representative Virginia Foxx (R-NC), respectively, have criticized the Obama Administration for regulations placed on higher education institutions, including those on the for-profit higher education community, and may see the HEA reauthorization as a vehicle to backtrack such regulations.

Also, the cost of college tuition will continue take center stage as the new Administration and Congress navigate how to respond to continuing concerns about college affordability while also working to control federal spending on higher education. There seems to be widespread support in Congress for restoring year-round Pell grants, which are grants the federal government provides to lower-income students to help pay for college. However, the future of student loan programs will likely come under scrutiny, since many conservatives in Congress favor a return to private-lender programs.
Infrastructure

Congress will grapple with President-elect Trump’s campaign pledge to boost major infrastructure projects around the country. Steve Mnuchin, Trump’s nominee for Treasury Secretary, has proposed an infrastructure bank. Economic advisers Peter Navarro and Wilbur Ross, Trump’s pick for Commerce Secretary, have said that infrastructure spending can be unleashed without creating a government entity. The plan they released in October 2016 proposed $140 billion in tax credits to support $1 trillion in infrastructure investment. They say the credits would be paid for through tax revenue from the projects’ labor wages and business profits. It has been reported that Trump’s transition team wants to form a task force to coordinate infrastructure programs among federal, state and local officials; however, timing of the infrastructure rollout is uncertain. It was recently reported that Trump’s promised infrastructure package will likely take shape after his first 100 days in office (i.e., April 30). House Transportation and Infrastructure Committee Chairman Bill Shuster (R-PA) has said that Congress will focus on finding ways to pay for Trump’s infrastructure proposal during the first few months of his presidency, with a broader package likely to come together later in the spring.

Regulations

During the first week of the 115th Congress, the House passed two bills to change the approval and repeal processes for major rules promulgated by executive-branch agencies. The first bill, H.R. 26, the “Regulations from the Executive in Need of Scrutiny Act of 2017” (“REINS Act”), would require Congress to approve any major rule that has an annual economic cost of $100 million or more before an agency would be able to enforce or implement the rule. The second bill, H.R. 21, the “Midnight Rules Relief Act of 2017,” would authorize Congress to pass a single joint resolution blocking multiple major rules completed during the final 60 legislative days of a president’s term. These legislative proposals are the beginning of a broader effort by Republicans to not only rollback Obama-era rules but also reform the regulatory process to limit what they see as an overreach of agency power. With a Republican White House and Congress, there is renewed hope that several regulatory reform bills that have failed in past sessions of Congress will move in the 115th Congress.

In addition, lawmakers may use the Congressional Review Act (“CRA”) to overturn some Obama Administration rules early in 2017. The CRA allows Congress to block a regulation through a joint resolution within the first 60 legislative days a rule is submitted to Congress. The review period resets at the end of a legislative session, allowing the new 115th Congress to review rules finalized by the Obama administration after mid-June of 2016. However, the CRA has been successfully used only once, in 2001 to block an ergonomics rule issued by the Clinton Administration.
Tax Reform

Congress is also proceeding with work on comprehensive tax reform. Republicans are expected to include reconciliation instructions for comprehensive tax reform in the FY 2018 budget resolution, which means that the tax reform package will only need 51 votes to pass the Senate, rather than the 60 votes needed for traditional procedural votes. Since Republicans hold 52 seats in the Senate, under reconciliation, they will be able to pass the package with Republican votes alone.

Ways and Means Chairman Kevin Brady (R-TX) and Speaker Paul Ryan last summer released a blueprint for comprehensive tax reform that outlines the House Republican vision. This blueprint proposed reducing corporate tax rates to 20%, cutting the top tax rate for individuals and families to 33%, and eliminating most if not all special-interest deductions and credits. Senate Republicans are also moving forward with their vision for comprehensive tax reform. The general consensus is that legislative language will not be released from either chamber until later in the year.

Notably absent from the House Republican Blueprint is any change to tax-exempt municipal bonds. It remains imperative, however, that local governments continue to demonstrate to Members of Congress the importance of maintaining the tax-exempt status of municipal bonds. Tax reform negotiations have only just begun, and Members of Congress will be looking for revenue raisers everywhere. Note that the 2014 tax reform discussion draft ended the tax exemption for advanced refunding bonds and limited the value of the tax exemption on municipal bonds to 25% for the wealthy. Additionally, changes to or elimination of the mortgage interest deduction and the deduction for state and local taxes remain on the table as potential revenue raisers.

Trade

Trade was a major issue during the Presidential campaign; however, President-elect Trump may need Congress to follow through on some of his campaign promises. Although Trump will likely sign an executive order withdrawing the United States from the Trans-Pacific Partnership Agreement (“TPP”), he would need Congress to withdraw from the North American Free Trade Agreement (“NAFTA”), an agreement he promised to either renegotiate or withdraw from. While it is an option for him to sign an executive order right away withdrawing from NAFTA, that would cause significant problems, possibly disrupting supply chains and disadvantaging North American manufacturers. However, both the Mexican and Canadian governments have agreed to reopen the NAFTA negotiations and have openly said that there are specific issues they would want to discuss.

NATaT staff will continue to follow these and other relevant legislative issues throughout the year and will work with you to advocate your needs and interests to Congress and the Administration.