Contents

Introduction 1

Legislative activity 3
  ▶ Affordable Care Act (ACA) repeal and replace 3
  ▶ Tax reform 3
  ▶ FY18 government funding and budget resolution 4
  ▶ Debt ceiling 4

Nominations 4

Other policy initiatives taking shape 5
  ▶ Financial CHOICE Act 5
  ▶ Regulatory reform 5
  ▶ Infrastructure 6
  ▶ Trade 6
  ▶ Immigration 7

Conclusion 8

Contact 9

Introduction

At the beginning of the year, Republicans were fresh off an election victory that produced a unified GOP government for the first time in 10 years, and appeared determined to enact sweeping policy changes on major initiatives such as health care and tax reform.

So far, the first seven months of 2017 have not been marked by such legislative victories for Republicans. The White House has faced its own set of strains, including controversies around White House staffing and alleged dealings with the Russian government. As a result, pressure on Republicans to deliver a legislative victory has only increased.

With the August recess upon us, lawmakers will return in September to a daunting legislative schedule. Even putting aside “big-ticket” items such as tax reform, Congress faces a heavy legislative agenda filled with both discretionary and “must-pass” items for the remainder of 2017.

Action is expected in the coming weeks and months to raise the statutory debt limit, extend funding for the Government past 30 September and enact an FY18
budget that would begin legislative consideration of tax reform, among a range of other policy matters.

Failure to demonstrate legislative success will likely have a detrimental effect on the electoral outlook for Republicans in 2018. Midterm elections are already historically unfavorable to the President's party:

- Since World War II, the President's party has averaged a 26-seat loss in the House during midterm elections. The GOP currently has a 24-seat advantage.
- Since 1938, the President's party has avoided losing seats in a midterm just twice — in 1998 (widely considered a reaction to Republican overreach during President Bill Clinton's impeachment) and in 2002 (when the GOP benefited from President George W. Bush's post-September 11 surge in popularity).
- As columnist George F. Will recently observed, "the last time a party holding the White House and both houses of Congress did not lose seats in a midterm election, Dizzy Dean and his brother Paul each won two games for the Cardinals in the 1934 World Series."1

Moreover, President Donald Trump's low approval rating may have a compounding effect.

- Now 13 percent through his term, Trump has a historically low approval rating of 37%.2

Consider:

- At the time of their first midterm elections, Presidents Ronald Reagan, Bill Clinton and Barack Obama all had approval ratings in the low to mid-40s. Their parties all suffered substantial losses:
  - Reagan was at 42% in 1982, and Republicans lost 26 seats.
  - Clinton was at 46% in 1994, and his party lost 52 seats and control of the House for the first time in four decades.
  - Obama was at 45% in 2010, and Democrats lost 63 seats and control of the House.
- In fact, as the Cook Political Report recently observed, since 1966, when the incumbent President’s job approval has fallen below 50 percent, his party has lost an average of 40 House seats and five Senate seats in the midterms.3

---


---

What to expect next in Washington, DC | 2
Legislative activity

Affordable Care Act (ACA) repeal and replace
The health care fight has been set aside for now. On 28 July, an early-morning floor vote on a “skinny repeal” bill failed as three Senate Republicans (John McCain, Lisa Murkowski and Susan Collins) joined with all 48 Democrats to defeat the bill. There is no clear path forward for Republicans on health care in the near future (for additional information, see Washington Council EY’s “This Week in Tax Reform: Health care – “Skinny repeal” of ACA fails in Senate,” 28 July 2017). Senate Majority Leader Mitch McConnell (R-KY) said, “I regret that our efforts were simply not enough this time.”

But many in Washington today are remembering Trump’s infamous line, “Nobody knew health care could be so complicated.”

Tax reform
With the health care debate concluded for the moment, tax reform is now the priority in Washington. The “Big Six” leading the tax code rewrite have been meeting regularly for two months to craft the policy principles governing a tax reform plan. On 27 July, the group issued its “Joint Statement on Tax Reform,” which affirms their core principles and goals for tax reform. This is the first time in years that the White House, Senate and House leadership, and the congressional tax writing committee chairmen, have reached a consensus on tax reform principles. Importantly, the document stated that the border adjustability concept will no longer be considered, removing an element of the House GOP plan that failed to find wide acceptance.

Although negotiators have reportedly not yet decided on a proposed corporate tax rate, on 20 July House Speaker Paul Ryan (R-WI) called a 20% rate “very realistic.”

Additionally, the statement said they expect the legislation to move through the tax-writing committees this fall, “under regular order, followed by consideration on the House and Senate floors.” The legislative goals were high-level by design to demonstrate that all the parties involved are still moving in the same direction, though details have yet to be hammered out. The Administration is hoping to have a comprehensive tax reform bill ready for consideration by Congress shortly after Labor Day, an ambitious timeline given the likely complexities of the legislation (see ACA repeal and replace). It will be incredibly difficult for Congress to pass comprehensive...
reform in a matter of months. Despite many serious efforts, Congress has not passed real tax reform in more than 30 years. Consider the historical context: the 1986 tax reform bill was introduced in December 1985 and didn’t reach President Reagan’s desk until October 1986. As Politico has noted, “that was a much less partisan time, a simpler business climate and a world without Twitter and cable television.”

**FY18 government funding and budget resolution**

With the House and Senate in session in September for only 12 and 17 days, respectively, the jammed fall schedule must first include a fiscal 2018 spending deal in order to avoid a government shutdown on 1 October, the start of FY18. House Republican leaders recently told lawmakers that they plan to complete their work on FY18 appropriations in early September, but that leaves little time for Senate consideration and passage, increasing the prospect for continued use of temporary funding extensions.

Separately, Congress needs to pass an FY18 budget resolution that would establish an overall budget plan and set guidelines on spending and revenue. This measure also will likely include budget reconciliation instructions for the House Ways and Means and Senate Finance Committees to draft tax reform legislation. On 20 July, the House Budget Committee completed a markup of their fiscal 2018 blueprint. On 25 July, Speaker Ryan committed to allowing a floor vote on the budget, a critical first step in tax reform, the first week the House returns from the August recess.

**Debt ceiling**

The US debt ceiling is expected to be reached in early to mid-October. In order to prevent the US Government from breaching its debt limit and being forced to default on bond payments, the Treasury Department is taking actions (so-called “extraordinary measures”) to fund essential payments without adding to the debt. Treasury Secretary Steven Mnuchin urged Congress on 26 July to raise the federal debt limit before lawmakers start their August recess. However, neither chamber of Congress addressed the limit before adjourning for the August recess, leaving the matter pending. Congress returns on 5 September, perhaps one month before the Treasury runs a real risk of not being able to pay all of its obligations. Some Republicans are joining Democrats in calling for an “clean” debt-ceiling increase. However, other Republicans would like to add mandatory spending cuts, or an extension of a veteran health care program. Whatever the solution, raising the debt ceiling is considered “must-pass” legislation to be acted upon this fall, despite the fact that nearly no one wants to vote for it.

**Nominations**

The Senate continues its work to confirm presidential appointments to critical executive agencies. In fact, on the eve of the August recess, senators confirmed more than 60 pending nominees. As Majority Leader McConnell observed, the Senate confirmed more executive branch nominees in the week leading up to the recess than previously in 2017. As of 7 August, Trump nominated 279 executive branch officials, 124 of whom have been confirmed.

---

11. Ibid.
16. These measures include, but are not limited to, halting payments to Government investment funds and redeeming Government-held securities.
18. Ibid.
Despite a recent uptick in pace, Trump is nominating executive branch officials at a historically slow rate, and the Senate is taking longer than usual to confirm nominees. At the same point during their first year in office, the Senate had confirmed 310 of Obama’s and 294 of George W. Bush’s nominees. While the Senate has averaged 54 days to confirm a Trump nominee, it previously averaged 41 days to confirm one of Obama’s nominees and 35 days to confirm a George W. Bush nominee. Placing personnel in government positions is the first step toward effecting federal policy change in a new presidential administration, so the lack of progress here may further slow the pace of Trump’s agenda.

Other policy initiatives taking shape
In addition to the aforementioned policy considerations, the GOP Congress and the Administration have also indicated a desire to address financial regulatory reform, infrastructure, trade and immigration, as observed below:

Financial CHOICE Act
The Financial CHOICE Act (CHOICE) passed the House chamber on 8 June by a vote of 233-186, along party lines. The bill is now in the Senate’s hands, and its prospects are unclear. CHOICE, as currently packaged, is unlikely to receive any Democratic support and thus would not muster the 60 votes needed to pass the Senate. If the Senate acts on financial services regulatory reform, it would likely begin by breaking down the CHOICE Act into smaller pieces and only moving a few individual provisions that are more likely to gain bipartisan support. As of today, there is no timetable for Senate action.

Regulatory reform
The Trump Administration’s determination to chart a different regulatory course is evidenced by recent information released from the White House Office of Management and Budget (OMB). On 20 July, the OMB released the semiannual Unified Agenda of Federal Regulatory and Deregulatory Actions, which highlights a list of regulations the Administration intends to reform or eliminate. The agenda notes that the Trump Administration has scrapped 469 proposals formerly drafted during the Obama Administration and that an additional 391 have been slowed. Additionally, Congress has rolled back 14 Obama-era rules under the Congressional Review Act of 1996 (CRA). Neomi Rao, the newly confirmed head of the White House Office of Information and Regulatory Affairs (OIRA), stated that this list is “really the beginning of fundamental regulatory reform and where we’re going with regulation.” The window for utilizing the CRA to undo existing regulations has closed. Going forward, removing or revising regulations requires a regulatory due process that takes considerable time, often as much as two years. However, the pace of promulgating new regulations has already slowed considerably.

---

23. Ibid.
27. Ibid.
28. Ibid.
What to expect next in Washington, DC

Infrastructure

Echoing comments he made on the campaign trail, Trump promised in his 28 February address to Congress that he plans to accelerate US job and economic growth with a $1 trillion infrastructure plan, citing the building and/or repair of new roads, tunnels, bridges, airports and railways.

The Administration released a six-page fact sheet of principles laying out its vision for infrastructure legislation on 23 May. The principles laid out a vision for $200 billion in direct federal spending over the next decade. Additionally, the plan visualizes another $800 billion to be generated through private investment and economic growth.29

With few legislative days left in the calendar year, a packed legislative agenda of “must-pass” items and a desire to focus on tax reform, Congress likely does not have the time needed to consider a stand-alone infrastructure bill, despite a degree of bipartisan appeal.

Trade

Throughout his campaign and since taking office, Trump has pledged to reform US trade policy, characterizing his approach as supporting “free but fair trade,” including a preference for bilateral over multilateral trade agreements.30 The Administration has moved aggressively in the trade space:

- Withdrawing the US from the Trans-Pacific Partnership (TPP) free trade agreement.
- Initiating discussions of potential bilateral trade agreements, including with Japan, Indonesia, New Zealand and the United Kingdom.
- Evaluating existing US trade relationships to determine whether they can be improved and to assess whether trade rules are being followed and trade deficits can be reduced (see discussion below on the renegotiation of the North American Free Trade Agreement (NAFTA)).
- As part of this effort, the US Trade Representative and the Department of Commerce are conducting “performance reviews” of existing US trade agreements to examine the extent of any trade deficits with certain other countries as well as violations and abuses of trading rules.31 A report on their findings is due no later than the end of October.

29. Ibid.
Investigating possible trade violations in specific sectors that could result in unilaterally imposed trade penalties.

For example, Commerce is investigating whether imports of steel threaten US national security under the rarely used Section 232 of the Trade Expansion Act of 1962. If such a finding is made, Trump would have the authority to impose tariffs and/or quotas on steel imports from other countries, although he has indicated that he will delay making a decision because of other priorities.

The Administration has engaged with China on trade matters. A first step was the US-China 100-day action plan with certain short-term trade goals to jump-start a positive trade relationship. Results of this action plan included obtaining access to the Chinese market for US beef and an agreement on the shared objective of reducing the trade deficit between the two countries. The outlook for US-China trade relations, however, is unclear. On 2 August, the Administration announced that it is considering an investigation of Chinese violations of US intellectual property rights focused on IP theft and forced technology transfers. There are many open questions on how the Administration will proceed with this investigation due to the risks of acting unilaterally.

The trade agenda is certain to be active moving forward. Various US business sectors also have expressed concern about potential US penalties on imports due to expected harm either from retaliatory measures by countries to which they export goods or higher costs of imports that they use to make their products.

NAFTA renegotiation

The first major trade discussion to be undertaken by the Trump Administration was the renegotiation of NAFTA. On 17 July, US Trade Representative Robert Lighthizer (USTR) formally notified Congress of the Administration’s objectives for the renegotiation. This was the final required step before the United States could formally initiate NAFTA renegotiations with Canada and Mexico in accordance with the provisions of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA). The first round of negotiations with Canada and Mexico will be from 16 to 20 August 2017 in Washington. The high-level objectives outlined by USTR include reducing the US deficit in trade in goods and strengthening the agreement’s rules of origin, which govern how much North American content goods must have to qualify for preferential treatment when moving across borders. Some of the objectives appear to be taken from the TPP trade agreement, which could be used as a starting point for negotiations, as Canada and Mexico are parties to the TPP.

Next steps: The US and Mexico have indicated their desire to reach a general agreement regarding the NAFTA renegotiation by early 2018 to avoid its politicization during the Mexican presidential campaign, as Mexico’s presidential election will take place in July 2018. The timeline is quite tight, however, given the complexity of some of the issues that are expected to be negotiated.

Immigration

During his campaign, Trump indicated that he would “suspend immigration from terror-prone regions where vetting cannot safely occur,” target business visa programs that undercut the American worker and crack down on illegal immigration.

Enforcement of Trump’s revised 6 March executive order (often referred to as the “travel ban”) began after a 26 June Supreme Court ruling that exempted persons with a “bona fide relationship”...
with a person or entity in the US. A federal district court subsequently ruled that the Administration had been “unduly restrictive” in defining the ban’s exemption for “close familial relationships” and broadened the scope of family members exempt from the ban. Guidance to clarify which persons are exempt from the ban is expected, pending the outcome of the court challenge (the Administration has appealed the district court’s decision).

On 2 August, Trump endorsed Sens. Tom Cotton (R-AR) and David Perdue’s (R-GA) newly introduced Reforming American Immigration for a Strong Economy (RAISE) Act, which seeks to boost American employment wages and rates by giving priority to the best-skilled immigrants from around the world and reducing overall US immigration by half. While the legislation received significant press attention, the prospect for this legislation to advance in the current political environment is dim.

Administration officials continue to affirm that they are still considering many possible changes to regulations, policy guidance and directives that would impact business visas. As the reform process continues to unfold, building consensus within the Administration itself remains a challenge. As noted earlier, many of the agencies are also not fully staffed, and not all political appointees have been confirmed. These staffing shortages are slowing the pace of progress. For example, the move from a paper-based filing system to an electronic system and the full restatement of “premium processing,” U.S. Citizenship and Immigration Services’ expedited application process, have stalled.

Much of the Administration’s activities continues to focus on visa enforcement. Indeed, the Department of Labor (DOL) announced in June that it was stepping up enforcement activities, including increased audits and investigations of employers so that they are complying with H-1B, H-1B1, E-3, H-2A and H-2B program rules. The DOL is also considering changes to the Labor Condition Application and WH-4 form (which is used to allege violations of H-1B visas) in what appears to be an effort to obtain more information from employers that place H-1B workers with third-party clients. Such activity has been subject to increased scrutiny from the media and the Administration in recent months.

Conclusion
As noted earlier, Congress will return in September facing a daunting legislative agenda dominated by must-pass items, including funding the federal Government past 30 September and raising the US debt limit. Republicans, lacking a signature legislative achievement to this point, will likely face increasing pressure ahead of 2018 to both keep the Government operating and deliver on their stated legislative priorities, such as tax reform.
About EY
EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

Ernst & Young LLP is a client-serving member firm of Ernst & Young Global Limited operating in the US.

© 2017 Ernst & Young LLP.
All Rights Reserved.
SCORE no. 04673-171US
1704-2261797
ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax or other professional advice. Please refer to your advisors for specific advice.

ey.com