Introduction
At the beginning of the year, Republicans, fresh off an election victory that had produced a unified GOP government for the first time in 10 years, appeared determined to enact sweeping policy changes on major initiatives such as health care and tax reform. With the two-week April recess upon us (10–24 April) and the Trump presidency nearing the three-month mark, lawmakers have just completed their longest uninterrupted work period of the year (six weeks without recess). Expectations for rapid legislative action have been tempered by the inability to advance consideration of the American Health Care Act (AHCA) last month. However, Congress still faces a legislative agenda filled with both discretionary and “must-pass” items. Action is expected in the coming weeks and months to pass a bill to extend funding for the Government past 28 April, enact an FY18 budget that would facilitate tax reform and consider tax reform itself, among a range of other policy matters.

While legislative timing is always a moving target and impossible to predict with certainty, this document outlines the potential timing for a range of matters such as those above.
Nominations
The Senate continues its work to confirm members of President Donald Trump’s cabinet and other critical executive agencies. As of 6 April 2017, Trump has nominated 68 executive branch officials, 22 of whom are cabinet or cabinet-level officials. Of these, 19 have been confirmed, and 3 are awaiting confirmation votes. Securities and Exchange Commission Chair nominee Jay Clayton was voted out of the Senate banking committee on 4 April. He is expected to be confirmed by the full Senate, potentially by late April.

It’s important to bear in mind that the nominations process remains in its early days. In total, there are roughly 1,200 presidential appointments requiring Senate confirmation. While the Senate has confirmed 13 of Trump’s 15 cabinet nominees since his inauguration, he is still operating without a full cabinet more than 11 weeks into his presidency. By comparison, former President George W. Bush had his full cabinet confirmed within three weeks of taking office.

Supreme Court nomination
On 31 January 2017, Trump nominated Judge Neil Gorsuch of the 10th Circuit Court of Appeals to the Supreme Court seat vacated when Justice Antonin Scalia died in 2016. Under Senate rules, Gorsuch needed support from at least 60 senators to end filibuster and allow a vote to put him on the court. With the Senate divided 52-48 in the GOP’s favor, eight Democratic senators would have needed to consent to ending the filibuster and allowing Gorsuch an up or down vote. On 6 April, only four Democratic senators voted to end the filibuster, leaving Gorsuch’s nomination four votes shy of the margin needed for an up or down vote. This marked the first successful filibuster of a Supreme Court nominee since Abe Fortas for chief justice in 1968.

After Gorsuch’s nomination failed to meet the 60-vote threshold, Senate Majority Leader Mitch McConnell (R-KY) moved to institute a simple majority threshold to end filibusters for Supreme Court nominees. In doing so, he noted the “nuclear option” precedent created in 2013 by then-Majority Leader Harry Reid (D-NV), who had lowered the vote threshold to end filibusters for presidential nominees other than for the Supreme Court. On 7 April, Gorsuch’s nomination was confirmed, 54-45.

Potential legislative activity
Affordable Care Act (ACA) repeal and replace
ACA repeal and replace was teed up to be the first major piece of legislation to move forward under a unified Republican government, and Republicans invested considerable time and energy soon after Congress convened on 3 January to enable its success. The House and Senate each took steps to facilitate the ACA’s repeal, with each chamber passing a 2017 budget resolution that utilized a parliamentary procedure known as budget reconciliation, a process that allows for legislative items involving changes to spending, revenue or the debt limit to pass the Senate with a simple majority instead of the typical 60-vote threshold (more on reconciliation in the next section).

ACA repeal and replace was anticipated to be a crowning GOP achievement, building upon the scores of votes House Republicans made during the Obama years to repeal ACA. However, it became evident during the week of 20 March that the chosen legislative vehicle, the American Health Care Act (AHCA), did not have sufficient support to pass the House. Absent adequate support within his caucus (particularly from the ultraconservative House Freedom Caucus), House Speaker Paul Ryan (R-WI) was forced to cancel the highly anticipated vote.

4. The reconciliation process was established for the purpose of facilitating consideration of deficit reduction measures through the Congress, though it has since been used as a means of adding to the deficit through major tax legislation, including the Economic Growth and Tax Relief Reconciliation Act of 2001, the Jobs and Growth Tax Relief Reconciliation Act of 2003, and the Tax Increase Prevention and Reconciliation Act of 2005.
After the vote was canceled, Trump told reporters from the Oval Office, “I’ve been saying for the last year and a half that the best thing we can do politically speaking is let Obamacare explode. I want to have a great health care bill and plan. And we will.”

At the moment, the path forward for ACA repeal and replace is highly uncertain, although discussions continue in efforts to find a suitable legislative compromise (e.g., Vice President Mike Pence met recently with House Freedom Caucus leaders). Despite the lack of legislation, the Administration has a variety of methods at its disposal to affect how the ACA is administered, such as not enforcing the requirement to pay a financial penalty if a person has not purchased insurance.

**FY17 government funding, FY18 budget resolution and reconciliation procedure**

The continuing resolution to fund the Government in FY17, passed in December 2016, is set to expire on 28 April. Congress is expected to consider legislation to provide funding through fall 2017 immediately following the April recess (week of 24 April). This will allow only four legislative days for both houses of Congress to consider, pass and have the President sign funding legislation before the Government would be required to shut down.

Separately, the White House expects to submit its full FY18 budget request to Congress in early May. This would build out the top-line budget outline – or “skinny budget” – that was released by the Office of Management and Budget (OMB) on 16 March. The “skinny budget” had a total discretionary budget request of $1.0654 trillion for fiscal year 2018 – a $14.8 billion net reduction from 2016’s enacted total – and a reduction of $2.7 billion from this year’s enacted fiscal year 2017 total. Certain agencies received increases in funding, the most significant of which were the Departments of Defense (+10%), Homeland Security (+6.8%) and Veterans Affairs (+5.9%). The largest cuts of the pre-proposal came to the Environmental Protection Agency (-31.4%), Department of State (-28%), and the Department of Health and Human Services (-16.2%). These numbers provide a solid preview of Trump’s FY18 budget request expected this May, as well as his intended policy areas of focus.

It’s important to remember that the White House budget submission is simply the Administration’s “wish list” for federal spending. Under the Constitution, Congress holds the power of the purse and will ultimately decide how to allocate spending among agencies, and among the full range of discretionary budget items. As Sen. Lindsey Graham (R-SC) recently noted, “historically, presidential budgets do not fare well with Congress.”

Congress is therefore expected to adopt its own 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. As noted above, budget reconciliation allows legislative items involving changes to spending, revenue or the debt limit to pass the Senate with a simple majority instead of the typical 60-vote threshold. Reconciliation directives provided in the budget resolution instruct committees to produce bills by a specific date that meet spending or tax targets. The House and Senate Budget Committees then package all of these bills together into one bill that goes to the House and Senate floors for consideration with restrictions on the nature of permissible amendments. Another advantage of this process is that senators are not permitted to filibuster consideration of budget resolutions or reconciliation legislation, which would otherwise require 60 votes to end.

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7. A continuing resolution provides temporary funding for federal agencies until new appropriations bills become law.
Congressional procedural rules allow for only one set of budget reconciliation instructions to be in effect at a time. Therefore, because reconciliation instructions are already currently in effect for the ACA repeal (via the FY17 budget process as noted above), Congress must take up – or abandon consideration of – the current ACA repeal and replace legislation before adopting an FY18 budget with reconciliation instructions for tax reform. If Congress moves on from considering the draft AHCA legislation, Congressional adoption of an FY18 budget resolution can be expected in May.

**Debt ceiling**
The US debt limit, suspended by the Bipartisan Budget Act since 2 November 2015, was reinstated on 15 March. In order to avoid the US breaching its debt limit and being forced to default on bond payments, the Treasury Department has begun taking certain actions (so-called “extraordinary measures”) to fund essential payments without adding to the debt. These measures include, but are not limited to, halting payments to government investment funds and redeeming government-held securities.13 During his confirmation hearing, Treasury Secretary Steven Mnuchin stated that he supports lifting the debt ceiling.14 Because of the “extraordinary measures,” the Congressional Budget Office predicts that the debt ceiling will not need to be lifted until the fall.15

**Tax reform**
While Republicans continue to huddle in the wings to craft a compromise (among themselves only) to repeal and replace the ACA, tax reform is receiving greater attention in Washington. Trump recently noted, “So now we are going to go for tax reform, which I have always liked.” OMB Director Mick Mulvaney said on ABC’s Good Morning America on 24 March that the President wants to move on to issues that include tax reform and that “he’s not willing to wait the several months that an ordinary president would” for the health care issue to be resolved before doing so. Mulvaney also suggested that the White House would take the lead on tax reform, saying, “When you see tax reform for the first time, it will be the President’s plan, and we will drive the debate on that.” For his part, House Ways and Means Committee Chairman Kevin Brady (R-TX) recently stated that tax reform is his top priority now, noting, “We have moved on to tax reform. While we’ve always run that second track and never stopped working on it, now we’re devoting nearly full time there.” In a 1 March interview with Fox Business Network, Mnuchin stated that “our objective is to pass tax reform and have it signed by the August recess.”16 Mnuchin has acknowledged that the timetable is aggressive but has insisted this is a goal the President and he are committed to meeting.17 The conventional wisdom in Washington is that such timing would be overly ambitious and is generally not realistic. Politico recently characterized the August time frame as “the most ambitious timeline envisioned by the biggest optimists on Capitol Hill.”18

It will be incredibly difficult for Congress to pass comprehensive reform in a matter of months. Consider the historical context: the 1986 tax reform bill was introduced in December 1985 and didn’t reach former President Ronald Reagan’s desk until October 1986.19 As Politico has noted, “that was a much less partisan time, a simpler business climate and a world without Twitter and cable television.”20 Many questions remain to be answered, however, about the shape and form that tax reform legislation will assume in the wake of the AHCA’s at-least-temporary defeat.

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17. Ibid.
19. Ibid.
20. Ibid.
Infrastructure
As he did 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. He also said infrastructure efforts will be guided by the principles “buy American, and hire American.” Details on the plan are not readily available. Expect a great deal of public-private partnership discussion and debate over who will pay for what projects — and then who will get the revenues from what is expected to be largely federal outlays.

The conventional wisdom earlier this year was that Republicans would put off infrastructure legislation until 2018. However, given the setback with the AHCA, the White House recently floated a trial balloon that the Administration is open to considering tax reform and infrastructure concurrently, and is willing to work with interested Democrats to make it happen. Infrastructure is widely seen as a bipartisan undertaking, and Trump may see this as an opportunity to work with Democrats and secure a durable victory. While this development bears monitoring, there is little available information as to how Trump and Congress would coalesce the two policy initiatives. Indeed, doing so may complicate efforts to move a tax bill through budget reconciliation. It’s also unclear whether Democrats, whose base has been energized with the at-least-temporary defeat of the AHCA, would be willing to cross the aisle on this issue at this time.

House Financial CHOICE Act
The House Financial CHOICE Act likely won’t be reintroduced by House Financial Services Committee Chairman Jeb Hensarling (R-TX) until later this year. Originally anticipated for early February, the reintroduction of the bill has been pushed back for various reasons, including timing on other legislative priorities and coordination with the Senate and White House. The White House issued an executive order in February requesting that the US Department of the Treasury issue a report on federal regulation of the US financial system and its adherence to a set of Trump’s “core principles” for regulation. There is no doubt that this report, when issued (expected in June 2017), will influence the direction of reform.

Likewise, the Senate has a large role to play in the debate on financial services reform. Whatever the House is able to pass will face a different hurdle in the Senate, which still requires 60 votes to pass most legislation.

Other policy initiatives taking shape
In addition to the policy considerations above, the Administration also has indicated a desire to address trade and immigration. The following outlines how these policy initiatives are developing in the shadow of budget consideration, tax reform and other pressing priorities.

Trade
Reshaping US trade policy remains a priority for Trump. During his first days in office, Trump withdrew from the Trans-Pacific Partnership, signaling an end to former President Barack Obama’s approach to trade. Further definition of the new approach came in an annual report to Congress outlining the President’s trade agenda, in which the Administration emphasized US sovereignty over trade policy as opposed to deferring to multinational bodies such as the World Trade Organization. It also prioritized increased enforcement of US trade laws and the use of “all possible sources of leverage” to open foreign markets to US goods and companies. Trump has also indicated that he plans to renegotiate certain existing US trade deals, many of which he has called unfair. All of this echoes Trump’s 2016 campaign platform.

On 31 March, the President signed executive orders aimed at combating foreign trade abuses that contribute to the US trade deficit. One order directed the Commerce Department, Office of the US Trade Representative and other agencies to report on the causes of US trade deficits with its top trading partners within 90 days. The report is expected to assess the major causes of the trade deficit, including tariffs, non-tariff barriers, dumping, government subsidization, intellectual property theft and forced technology transfer. The report also must assess whether a trading partner is, directly or indirectly, imposing unequal burdens on, or unfairly discriminating against, the commerce of the United States by law, regulation or practice. The second order seeks to bolster US agencies’ authority to combat dumping and evasion of trade laws and countervailing duties by foreign companies and countries. The orders came in advance of the President’s first meeting with Chinese President Xi Jinping on 6 April. Although Trump has stated that the timing of the executive orders is unrelated to Xi’s visit, Trump has heavily criticized China because of its large trade surplus with the US.

North American Free Trade Agreement (NAFTA)

Trump has indicated a desire to renegotiate NAFTA. Trump has said the agreement – particularly with respect to trade with Mexico – is bad for America, citing lost jobs and unfair competition. He also has made clear his intention to renegotiate – or, if that doesn’t prove satisfactory, withdraw from – the agreement with Mexico and Canada. This has led to a great deal of uncertainty regarding NAFTA’s future, particularly given the lack of details about Trump’s goals for a NAFTA renegotiation.

One opportunity to discern the future direction on trade will be the Administration’s 90-day letter to Congress announcing its intention to renegotiate NAFTA, which will lay out the policy goals of the negotiation. A draft of this letter circulated recently on Capitol Hill.

Under Trade Promotion Authority (TPA) rules, the Administration may not launch negotiations until at least 90 days after the date of the Congressional notification letter. On 8 March, Commerce Secretary Wilbur L. Ross indicated that the Administration is “in the early stages of the [TPA] process,” meaning that “real negotiations” will take place in the second half of 2017. He also said he hopes to wrap up talks before the end of 2018. During his confirmation hearing, Ross noted that NAFTA is an Administration priority, stating that “NAFTA is logically the first thing for us to deal with. We ought to solidify relationships in the best way we can, in our own territory before we go off to other jurisdictions.”

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. Since taking office, Trump has issued three executive orders on the basis of seeking to secure and protect the US from terrorism and curb the entrance of illegal immigrants into the country.

Administration officials have confirmed in public and private conversations that they are also evaluating changes to regulations and policy guidance subject to the discretion of agencies involved in the immigration process, possible increases in fees paid by companies and increased enforcement actions. Sources close to the Administration advise that staff at several agencies are openly considering use of enforcement actions to achieve desired policy actions, especially if they cannot effect change through the regulatory or legislative process. A recent 60 Minutes story highlighting American companies that bring in foreign workers (generally technology workers from India) to replace existing American workers at significantly lower wages has only increased the pressure on the Administration to shame companies engaging in such behavior and make it more difficult for them to access business visas.

While it is still early and the extent of possible changes to come is not certain, a handful of concrete actions have been taken. On 4 March, the Administration announced that it would suspend “premium processing” services for all H-1B visa applicants, as of 3 April. H-1B visas are provided to non-US persons who enter the country for temporary work in specialty occupations, and premium processing guarantees processing of these visas within 15 calendar days (the usual wait time is 6-8 months). The Administration’s stated rationale for the procedural change is to allow US Citizenship and Immigration Services (USCIS) an opportunity to bring down non-premium processing times.
In early April, the Administration announced additional measures to further deter and detect H-1B fraud and abuse. USCIS has announced, beginning on 3 April, targeted site visits and focus on cases in which the agency cannot validate the employer’s basic business information through commercially available data; focus on H-1B dependent firms (those with more than 15% of its US workforce on H-1Bs); and focus on employers that petition for H-1B workers who work off-site at another company or organization’s location. The site visits are expected to continue to be unannounced and random. USCIS also announced a whistle-blower program for reports of H-1B fraud and abuse. In addition, USCIS targeted the use of H-1Bs for computer programmer positions and is now requiring petitioners to hold a bachelor’s degree at a minimum (many foreign nationals working as computer programmers on H-1Bs have associate’s degrees). Finally, the Administration has announced its intention to re-evaluate the H4 program, which authorizes spouses of H-1B recipients to work in the US.

Going forward, the Administration will also have to weigh in on a court proceeding in mid-April about the legality of the three-year Optional Practical Training (OPT) authorization, a work authorization for foreign nationals studying at US colleges and universities, in science, technology, engineering and math (STEM) fields. The OPT program provides a one-year visa for non-STEM graduates and a three-year visa for graduates in STEM fields (which in turn allows these visa holders three chances to participate in the H-1B lottery. The three-year OPT-STEM program is being challenged in court. A status conference is expected on 26 April, and the Administration will have to take a position on the program.

The Administration also is considering ways to expand the E-Verify program, which is an internet-based system that compares employment eligibility verifications with other Department of Homeland Security (DHS) programs, the Social Security Administration and State Department records to confirm work authorizations. Additional changes, increased fees or filing requirements could impact the business community, but it is difficult to estimate the impact, as policy details in this space have not be articulated.

During his address to Congress on 28 February, Trump also called for the US to adopt a “merit-based” immigration system. A merit-based system, as utilized in Canada, is a preference system based upon the skills and/or education of an individual visa applicant. This system was lauded by Attorney General Jeff Sessions during his nomination hearing in January. However, such a program would require Congress to revise existing statues. Considering the current political environment, a focus on other big-ticket policy reforms and lack of consensus in Congress about immigration reform, it seems unlikely that such a system could be adopted in the near term. As a result, the Administration is expected to continue to pursue change through regulatory, administrative, policy guidance and enforcement activity.
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SCORE no. 01764-171US  
1704-2261797  
ED None

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