

Government Relations Update – February 2018 State of Play

President Trump and Congressional Republicans enter 2018 on the heels of their first major legislative victory with tax reform, but the President's approval ratings remain historically low, and Democrats have gained traction in special and off-year elections, even in deeply red states. These developments signal increased headwinds for Republicans heading into the midterm elections, which will color most of the activity in Washington this year. The current political atmosphere will also impact the willingness of Democrats to engage with Republicans on key legislative issues. The outcome of the November midterm elections could also significantly hamper progress on the Trump Administration's priorities as both sides gear up for the 2020 Presidential election.

State of the Union

President Trump delivered his first State of the Union Address in January, which centered around the Administration's accomplishments during his first year in office. The President began his speech by highlighting his Administration's economic accomplishments, such as the creation of 2.4 million new jobs, the decline in unemployment, stock market increases, and his key legislative victory—comprehensive tax reform. The President also used the address to outline his 2018 policy goals, including asking Congress to produce infrastructure legislation that generates \$1.5 trillion in funding, and his Administration's immigration reform plan. The address also emphasized the Administration's commitment to fighting "the drug epidemic," strengthening the military via increased funding, re-opening Guantanamo Bay, strengthening U.S. trade agreements, and addressing the "flaws" in the Iran nuclear deal. Notably, the address concluded with President Trump condemning the North Korean regime and emphasizing America's strength.

Government Funding

On February 9, after a brief government shutdown, the President signed a bill into law that will fund the government until March 23. The two-year budget deal (Bipartisan Budget Act of 2018) and FY18 Continuing Resolution (CR) passed the Senate (71-28) and the House (240-186) with bipartisan support.

Appropriators will now develop a FY18 omnibus spending bill (funding to Sept. 30) at the higher defense and non-defense discretionary spending levels outlined in the budget deal ahead of the new March 23 funding deadline.

Monday, February 12, the Administration kicked off the FY19 Budget process with the release of the President's FY19 Budget Request. This week, key Administration officials, including Mick Mulvaney, director of the Office of Management and Budget, and Treasury Secretary Steven Mnuchin, will testify on the President's request.

Fiduciary

In November, the Department of Labor (DOL) finalized a rule to extend the applicability date of its fiduciary rule from January 1, 2018 by 18-months to June 1, 2019. Over the next 18 months, DOL will continue its economic review as directed by the February 3, 2017 Presidential memorandum and review public comments submitted in response to the July request for information.

The SEC continues to gather feedback and draft its own fiduciary rule to cover broker-dealers. Newly sworn-in SEC Commissioners – Republican Hester Peirce and Democrat Robert Jackson – brought the Commission to full strength for the first time since 2015. Peirce is a noted opponent of the fiduciary rule, and Jackson testified during his confirmation hearing that he believes the SEC has an important role to play in developing standards. The SEC listed action on a fiduciary rule for October 2018 in its latest rulemaking agenda, but that timing is likely to slip given the complexity of the rule. Critics of the DOL's rule have long argued that SEC is the appropriate agency to issue a rule, but political divisions within the SEC under the previous chair thwarted progress on that effort. However, Chair Jay Clayton and Commissioner Michael Piwowar are in agreement about moving forward on a rule, but it is unclear if that can be achieved during the next 18-months as the DOL conducts its review.

With the outcome of the federal rule uncertain, a number of states have stepped in and implemented or considered their own rules. In some cases, the state rules are looking to go beyond the federal rule and require brokers to uphold a fiduciary standard across all accounts. Nevada's rule could emerge as a test case for this reason, since it expands to all investment accounts and not solely tax-advantaged retirement assets.

Regulatory Relief

In early January, the House Financial Services Committee approved a package of 15 regulatory relief bills, which includes five bills that are also mirrored in the Senate Banking Committee's *Economic Growth, Regulatory Relief, and Consumer Protection Act*.

Recognizing that it would be virtually impossible to pass the House-approved *CHOICE Act* in the Senate, Chair Jeb Hensarling (R-TX) has been moving to pass bipartisan regulatory reform provisions as standalone measures. Those House stand-alone bills that are also included in the Senate Banking regulatory relief package stand the greatest chance of becoming law. Senate Majority Leader Mitch McConnell (R-KY) said last year that the Banking Committee's bill, which includes the Senior Safe Act, will be near the top of the Senate's agenda in 2018. This legislation has support from Senate Democrats; it cleared the Committee by a bipartisan 16-7 vote, and in its current form would garner a filibuster-proof, 60-vote super majority. The shutdown, ongoing budget and immigration negotiations, and nominees pushed the Banking bill further down the floor agenda, so we currently expect the legislation to move through the Senate in March at the earliest.

H1-B Visa Program

On January 25, Senators Orrin Hatch (R-UT) and Jeff Flake (R-AZ) introduced the Immigration Innovation Act of 2018 to pave the way for an additional 120,000 H1-B visas per year if certain requirements are met. The Immigration Innovation Act of 2018, supported by the technology industry and the U.S. Chamber of Commerce, would expand work authorization to spouses and children of H1-B holders and creates a grace period to protect holders in between jobs. The annual quota is increased from 65,000 to 85,000 and there is room for an additional 110,000 visas, with priority for applicants who hold master's degrees, foreign Ph.D.'s or U.S. STEM bachelor degrees.

The White House has previously targeted H1-B visas, but could ultimately cede ground on the issue, both due to support from congressional Republicans and/or as part of a broader immigration reform compromise to open the door for more highly skilled workers.

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