



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Betsy Shotwell

SUBJECT: SEE BELOW

DATE: January 12, 2018

Approved

D. D. S. L.

Date

1/12/18

INFORMATION

SUBJECT: SQUIRE PATTON BOGGS' FEDERAL LEGISLATIVE AND REGULATORY ACTION RELEVANT TO GENERAL LOCAL GOVERNMENT INTERESTS: 2017 WRAP-UP AND 2018 FORECAST

The firm of Squire Patton Boggs, LLP, (SPB) has provided the attached comprehensive update for the City of San Jose regarding actions of notable federal legislation and regulatory issues in a wrap-up of 2017 with a forecast for the second year of the 115th Congress and the Administration in 2018 (Attachment A).

Included in the report are relevant updates on key items including updates on the budget, immigration, healthcare, transportation/infrastructure, energy and the environment, homeland security/sanctuary cities/public safety, tax and telecommunications issues. In addition to this recap, SPB provided detailed updates to the City as events unfolded and identified engagement opportunities in a timely manner. Also summarized in more detail is the outcome of the passage of The Tax Cuts and Jobs Act (H.R. 1), which was signed into law by President Trump on December 22. State and local governments, including the City's lobbyist team, advocated intensely to preserve a number of tax provisions as summarized in the attached letter to Congress from the Mayor of December 11, 2017 (Attachment B). Those provisions include financing mechanisms critical to the City of San Jose that facilitate economic development, affordable housing, and infrastructure such as: New Market Tax Credits; Private Activity Bonds (PABS), and the Low Income Housing Tax Credit which were preserved in the final bill. With the speed in which the legislation was drafted, SPB anticipates that a technical corrections bill is likely to move through Congress in the first six months of 2018. Municipalities and States will need to remain vigilant in tracking this process to protect critical financing mechanisms going forward.

As noted in the report, with the passage of the recent overhaul of the nation's tax code, attention in Congress will focus in the coming weeks on the looming fight whether to extend the Deferred Action for Childhood Arrivals (DACA) program past its current termination date of March 5 and funding for the President's border wall along the U.S.- Mexico border; the Administration's proposed infrastructure package; the House Speaker's desired changes to Medicare, Medicaid,

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Social Security and welfare programs; and perhaps another attempt to repeal and replace the Affordable Care Act (ACA). It remains to be seen however if the new Republican majority in the Senate of 51-49 will have the votes necessary to repeal ACA in 2018.

Adding to this activity will be the need for Congress to address the FY 2018 budget Continuing Resolution (CR) which is set to expire on January 19 or face a government shutdown.

This Federal legislative and regulatory update reflects many of the City's 2017 legislative policy goals and priorities and the City's efforts to work with our federal partners to advocate on issues of concern and interest to the City during the first year of the 115th Congress.

/s/

BETSY SHOTWELL
Director, Intergovernmental Relations

Attachment A:

Squire Patton Boggs' Federal Legislative and Regulatory Action Relevant to General Local Government Interests: 2017 Wrap-Up and 2018 Forecast

Attachment B:

Correspondence to Federal Tax Reform Conference Committee Leaders and various Members of Congress

For more information contact please contact Betsy Shotwell, Director of Intergovernmental Relations at: (408) 535-8270

Memorandum

From: Squire Patton Boggs LLP
Date: December 29, 2017
Subject: Federal Legislative and Regulatory Action Relevant to General Local Government Interests: 2017 Wrap-Up and 2018 Forecast

This report provides a comprehensive update for local governments and their partners highlighting actions on notable federal legislation, administration, and regulatory issues in 2017, as well as a look ahead into what we expect in the second year of the Trump Administration and Republican-led Congress. It is important to note that the memorandum provides only a high-level perspective, as detailed reports were provided as events unfolded in Congress and the administration.

In terms of legislation enacted into law, the first year of the Trump Administration and the 115th Congress proved to be the least productive in four decades, with less than 100 laws enacted in 2017. Moreover, the President failed to achieve many of the goals he set forth for his first 100 days in office, including: the ban of all federal funding to “sanctuary cities”; removal of two million criminal illegal immigrants; investment of \$1 trillion in U.S. infrastructure; and the suspension of immigration from terror-prone regions. Despite the President’s efforts to take administrative action via Executive Orders and Memoranda on a number of these issues, many were halted by federal judges or are being held up by pending lawsuits. Perhaps most dramatic was the failure of Congress’ attempt to repeal the Affordable Care Act.

However, this inaction is somewhat overshadowed by the significance of the appointment of Supreme Court Justice Neil Gorsuch and the end-of-year overhaul of the nation’s tax code. Looking to build on this momentum, the President will announce his 2018 legislative agenda in early January. Congressional leaders, having pushed most of its year-end work into January, will face a daunting number of must-pass deadlines when the Senate returns on January 3 and the House reconvenes on January 8. Most pressing will be the January 19 deadline to approve an FY 2018 budget or face a government shutdown. With only a limited number of legislative days before the deadline, resolution of the budget will most certainly be complicated by the anticipated standoff between the President and Democrats over his insistence that any agreement on continuation of the Deferred Action for Childhood Arrivals (DACA) program include funding for his proposed wall along the U.S.-Mexico border.

Among the issues we expect to see at the forefront of the 2018 federal agenda:

FY 2018 Budget and Other Fiscal Issues: Congress avoided the year-end fiscal “cliffmas” by approving a relatively straightforward Continuing Resolution (CR) that will provide funding for the federal government through January 19. However, without agreement on topline FY 2018 spending and a number of other contentious policy items, another fiscal cliff is looming in January. As detailed below, a bipartisan budget agreement is necessary to establish topline spending for FY 2018. Lacking topline numbers, appropriators cannot move forward with an omnibus package. Also playing into the fiscal standoff is another disaster supplemental and the upcoming debt ceiling lapse (currently estimated for March). The President is reportedly on schedule to submit his FY 2019 budget request to Congress in early February, creating a scenario in which the FY 2019 budget request precedes resolution of the FY 2018 appropriations process.

Infrastructure: Now that tax reform has been completed, we anticipate Congress and the administration will turn attention to an infrastructure package. President Trump included an infrastructure outline in his FY 2018 budget; additional details on his proposal are expected in January. Congress is also expected to act on the reauthorization of the Federal Aviation Administration (FAA) before the current extension of FAA programs lapses on March 18.

Immigration: The most pressing immigration issue is what Congress will do concerning the Deferred Action for Childhood Arrivals (DACA) program, which will terminate, per President Trump’s directive, on March 5. As part of tax reform negotiations, it is reported that a Senate vote on DACA and border security was promised for January. Strong divisions remain over how to address citizenship and the limitations of coverage.

Intelligence Reform: As noted below, the year-end Continuing Resolution included a short-term extension of Section 702 of the Foreign Intelligence Surveillance Act, which allows the National Security Agency to monitor communications sent by certain foreign entities without a warrant. A longer-term extension of the program will be contentious.

Healthcare: Senator Susan Collins’ (R-ME) vote on the tax reform package – which removed the individual mandate penalty of the Affordable Care Act – was dependent on an agreement with Senate Majority Leader Mitch McConnell (R-KY) and the President that two market stabilization measures would be brought up for a vote in January.

Entitlement Reform: House Speaker Paul Ryan (R-WI) has long sought to advance entitlement reform – including Medicare, Medicaid, Social Security, and welfare programs – and indicated that this would be a priority in 2018. However, Senate Majority Leader McConnell expressed reluctance to the strategy. Facing certain Democratic opposition, entitlement reform would need to be done through the reconciliation process, requiring Republican unity, and many moderate Republicans are wary of addressing entitlements in that manner.

Tax: In addition to a likely technical corrections bill on the recent tax reform package, Congress will also consider a tax extender package introduced by Senate Finance Chairman Orrin Hatch (R-UT) in late December.

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PRESIDENTIAL EXECUTIVE ORDERS

Since September, President Trump signed nine executive orders:

- Restoring State, Tribal, and Local Law Enforcement’s Access to Life-Saving Equipment and Resources (this order rescinds President Obama’s 2015 executive order banning the acquisition of certain military-style equipment by local law enforcement);
- Order Regarding the Proposed Acquisition of Lattice Semiconductor Corporation by China Venture Capital Fund Corporation Limited;
- Imposing Additional Sanctions with Respect to North Korea;
- Order on the Revocation of Executive Order Creating Labor-Management Forums;
- Order on the Continuance of Certain Federal Advisory Committees;
- Promoting Healthcare Choice and Competition Across the United States;
- Resuming the United States Refugee Admissions Program with Enhanced Vetting Capabilities;
- Order Amending Executive Order 13223 (Ordering the Ready Reserve of the Armed Forces to Active Duty and Delegating Certain Authorities to the Secretary of Defense and Secretary of Transportation); and
- Revising the Seal for the National Credit Union Administration.

BUDGET/APPROPRIATIONS

FY 2018 APPROPRIATIONS

Despite giving themselves an extra two weeks and extending the FY 2018 Continuing Resolution (CR) from December 8 through December 22, Congressional leaders and the administration were still unable to come to an agreement on topline spending for FY 2018; hence, before recessing for the year, Congress approved another CR (H.R. 1370) that will fund the government through January 19.

As has become typical in budget negotiations, a number of policy and funding items were discussed in the weeks leading up to the CR; however, in the end, the CR was relatively “clean,” with Congress leaving the most contentious items for action in early 2018. The CR maintained spending at FY 2017 levels and included:

- A waiver of the PAYGO Act of 2010, which would have forced mandatory spending cuts, including \$25 billion to Medicare, to offset the deficit increases resulting from the tax reform bill;
- \$2.85 billion for the Children’s Health Insurance Program (CHIP), funding the program from October 1, 2017 through March 31, 2018;
- An extension of the controversial Section 702 of the Foreign Intelligence Surveillance Act (FISA), which allows warrantless monitoring of communication, through the term of the CR (January 19);
- Funding to maintain the National Flood Insurance Program through January 19;
- \$2.1 billion for the Veterans Choice Program, which is expected to maintain the program through fall 2018; and
- \$4.6 billion for missile defense programs and repair of two Navy destroyers.

Among the items awaiting resolution in early 2018 that will likely wrap into spending negotiations:

- The Deferred Action for Childhood Arrivals (DACA) program;
- Funding for the border wall;
- Additional funding to address the national opioid crisis;
- Funding for pension shortfalls;
- Additional disaster aid; and
- Affordable Care Act cost-sharing subsidies.

Without a bipartisan budget agreement on topline spending, sequestration-level spending caps mandated by the Budget Control Act of 2011 (BCA/P.L. 112-25) will be implemented in 2018: \$549 billion for defense and \$516 billion for nondefense spending (for comparison, FY 2017 levels are \$551 billion for defense and \$518.5 billion for nondefense). The most recent proposal by the GOP – which Democrats rejected – would have raised defense spending by \$54 billion and nondefense spending by \$37 billion in each of FY 2018 and FY 2019. Democrats have insisted on parity in prior budget agreements, with resulted in equal above-sequestration increases to defense and nondefense spending. However, a policy “win,” such as DACA or healthcare, may sway Democrats to support an uneven increase, as they did in FY 2017 when they supported an additional \$15 billion for defense and \$3 billion for nondefense programs, but were successful in rejecting proposed offsets and border wall construction.

The House passed an FY 2018 omnibus bill (H.R. 3354) in September and the Senate Appropriations Committee approved its final FY 2018 spending bill in November, both of which ignore the BCA spending caps. Once an agreement is reached on topline numbers, appropriators will need at least three weeks to reconcile the pending bills and draft an omnibus package. With the House return now pushed to January 8, the CR expiring on January 19, no budget agreement in sight, and a number of policy items that will require attention in January, resolution of the FY 2018 budget process remains very much “to be determined.”

DISASTER FUNDING

In addition to the year-end Continuing Resolution (CR), the House also approved an \$81 billion disaster supplemental ([H.R. 4667](#)). The Senate did not take up the measure, instead leaving it for consideration in January.

The \$81 million package is nearly double the \$44 billion requested by the administration. It would provide funds to Texas, Florida, Puerto Rico, the U.S. Virgin Islands, Louisiana, and California, to address continued recovery from Hurricanes Harvey, Irma, and Maria, as well as recent wildfires. If approved, it would bring the total of recent disaster aid to nearly \$133 billion.

FY 2019 TRUMP BUDGET

The administration reports it is on track to deliver the President’s FY 2019 Budget Proposal to Congress in early February.

IMMIGRATION/HOMELAND SECURITY/PUBLIC SAFETY

DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA)

Since President Trump's September announcement terminating the Deferred Action for Childhood Arrivals (DACA) program by March 5, 2018, Congress renewed its efforts and introduced additional legislative measures designed to codify DACA protections under federal statute or provide similar relief to eligible DREAMers residing in the U.S.

Reflecting the bipartisan support for a solution, House and Senate Democrats urged congressional leadership to include a legislative DACA fix in FY 2018 appropriations legislation, and at least 34 House Republicans urged Speaker Paul Ryan (R-WI) to address DACA by the end of the year. Speaker Ryan created a Republican working group in the House focused on developing a legislative fix codifying DACA protections under law, including:

- House Speaker Paul Ryan (R-WI)
- House Majority Leader Kevin McCarthy (R-CA)
- House Homeland Security Committee Chairman Mike McCaul (R-TX)
- House Judiciary Committee Chairman Bob Goodlatte (R-VA)
- Representative Raul Labrador (R-ID)
- Representative Mario Diaz-Balart (R-FL)
- Representative John Carter (R-TX)
- Representative Will Hurd (R-TX)
- Representative Martha McSally (R-AZ)
- Representative Jim Sensenbrenner (R-WI)

Senate Judiciary Committee Chairman Chuck Grassley (R-IA) introduced legislation, the *Security, Enforcement, and Compassion United in Reform Efforts (SECURE) Act* ([S. 2192](#)), designed to combine a DACA fix with broader immigration enforcement legislation in an effort to address DACA with stand-alone legislation, rather than in year-end appropriations legislation. The *SECURE Act* contains the Senate GOP's border security and immigration enforcement legislation, the *Building America's Trust Act* ([S. 1757](#)), which was introduced earlier this year by Senator John Cornyn (R-TX).

The *SECURE Act* would authorize approximately \$15 billion over four years for a long-term border security and interior enforcement strategy. Alongside authorizing and requiring the deployment of a wall system, fencing, levees, technology, and other physical barriers along the southern border wall, the bill would:

- Increase the number of Border Patrol agents, Immigration and Customs Enforcement (ICE) officers, immigration judges, and federal prosecutors;
- Authorize partnerships between the Department of Homeland Security (DHS) and state and local law enforcement to help identify and remove criminal illegal immigrants; and
- Impose tough penalties on federal funds for jurisdictions considered to be non-compliant with federal immigration enforcement requests.

The *SECURE Act* includes provisions identical to those in *Kate's Law* ([H.R. 3004](#)), which would sharply increase mandatory minimums for undocumented immigrants who repeatedly re-enter the United States following deportation.

The bill also contains the *Bar Removal of Individuals who Dream and Grow our Economy* (BRIDGE) Act ([S. 128](#)), originally introduced by Senators Dick Durbin (D-IL) and Lindsey Graham (R-SC). The provision directs DHS to grant provisional protected status and employment authorization to undocumented immigrants meeting certain eligibility criteria. Eligible individuals are undocumented immigrants who: (1) arrived in the United States before the age of 16; (2) have continuously resided in the United States since June 15, 2007; (3) have enrolled in school or have obtained a high-school diploma; (4) have not been convicted of a felony or serious misdemeanor; and (5) do not pose a threat to national security or public safety. The *SECURE Act* does not provide an eventual path to citizenship for DREAMers who qualify for provisional protected status.

The legislation would also permanently authorize the E-Verify program and provide incentives for small businesses to participate. Additionally, the bill enhances the number of diplomatic security personnel focused exclusively or primarily on preventing and detecting visa fraud.

In October, the White House sent a letter to House and Senate leadership outlining the administration's priorities for immigration policy. The President emphasizes the importance of providing funding for a U.S. southern border wall, addressing the backlog of pending asylum cases, discouraging illegal re-entry, and amending current law to ensure Unaccompanied Alien Children (UACs) can be expeditiously removed from the U.S.

The White House proposes the withholding of certain federal funds administered by DOJ and DHS to recipients considered to be sanctuary jurisdictions, and also emphasizes the need to enhance cooperation between the federal government and states and localities relating to the enforcement of immigration law. Additionally, the White House proposes establishing a merit-based immigration system that: (1) limits family-based green cards for spouses and minors; (2) implements a points-based system for awarding green cards; (3) eliminates the "Diversity Visa Lottery"; and (4) limits the number of accepted refugees.

Reportedly, Senate Majority Leader Mitch McConnell promised a vote on a DACA/border security bill in January.

BORDER WALL/IMMIGRATION

The President's FY 2018 budget request proposed a \$2.9 billion funding increase for U.S. Customs and Border Protection (CBP), which included \$1.6 billion for 32 miles of wall construction along the U.S.-Mexico border. Both House and Senate versions of pending FY 2018 Homeland Security appropriations legislation contain \$1.6 billion to begin the construction of a physical barrier along the southern border.

On December 5, CBP released a year-end report on border security efforts, providing an overview of the state of border crossings in FY 2017. CBP reports that FY 2017 marked the lowest level of illegal border crossings on record, a 23.7 percent decrease from FY 2016 levels. Following the release of the report, senior CBP officials emphasized the importance of building a southern border wall despite the FY 2017 decline in border crossings.

In late November, CBP began testing eight border wall prototypes constructed in the San Diego area over the summer. According to CBP, the prototypes will undergo a series of evaluations in the coming months to test each prototype's anti-breaching, anti-climbing, and anti-digging capabilities.

SANCTUARY CITIES

On November 15, the Department of Justice (DOJ) sent letters to 29 jurisdictions informing them that they may have laws, policies, or practices in place that potentially violate 8 U.S.C. 1373 (Section 1373), a federal statute which restricts local law enforcement agencies from prohibiting the sharing of an individual's immigration or citizenship information with the federal government.

The letters reminded each recipient that they certified Section 1373 compliance as a condition to receive FY 2016 Edward Byrne Memorial Justice Assistance Grant (Byrne JAG) funding. The letters requested that each recipient submit a response to DOJ addressing whether that jurisdiction would comply with Section 1373 throughout the entirety of an FY 2017 Byrne JAG award, should it be selected for funding (at the time of this memorandum, DOJ has yet to award FY 2017 Byrne JAG funding). The letters note that DOJ has not made a final determination regarding the selected jurisdictions' compliance with Section 1373.

The following jurisdictions received letters from DOJ:

- Albany, New York;
- Berkeley, California;
- Bernalillo County, New Mexico;
- Burlington, Vermont;
- Contra Costa County, California;
- City and County of Denver, Colorado;
- Fremont, California;
- Jackson, Mississippi;
- King County, Washington;
- Lawrence, Massachusetts;
- Los Angeles, California;
- Louisville Metro, Kentucky;
- Middlesex, New Jersey;
- Monterey County, California;
- Multnomah County, Oregon;
- Newark, New Jersey;
- Riverside County, California;
- Sacramento County, California;
- City and County of San Francisco, California;
- Santa Ana, California;
- Santa Clara County, California;
- Seattle, Washington;
- Sonoma County, California;
- Washington, District of Columbia;
- Watsonville, California;
- West Palm Beach, Florida;
- State of Illinois;
- State of Oregon; and
- State of Vermont.

On November 20, a U.S. District Judge issued a permanent order ruling President Trump's sanctuary city executive order (EO) titled "Enhancing Public Safety in the Interior of the United States" unconstitutional. Judge William Orrick of the U.S. District Court for the Northern District of California permanently nullified the EO, which directed DOJ to withhold certain federal grant funding from jurisdictions considered to be non-compliant with 8 U.S.C. 1373.

In April 2017, Judge Orrick issued a temporary injunction against the EO in favor of litigation filed by the County of Santa Clara and the City and County of San Francisco. In issuing the temporary injunction, Judge Orrick stated that the President's EO would cause municipalities to experience constitutional injury through the violation of the separation of powers doctrine and by depriving jurisdictions of their Fifth and Tenth Amendment rights.

Judge Orrick upheld his initial temporary injunction, arguing that the "Tenth Amendment requires that conditions on federal funds be unambiguous and timely made; that they bear some relation to the funds at issue; and that they not be unduly coercive. Federal funding that bears no meaningful relationship to immigration enforcement cannot be threatened merely because a jurisdiction chooses an immigration enforcement strategy of which the President disapproves."

Following Judge Orrick's original temporary injunction, Attorney General Jeff Sessions vowed to continue to litigate the case. After the November decision to uphold the ruling, DOJ stated that the District Court exceeded its authority "when it barred the President from instructing his cabinet members to enforce existing law. It is expected that the Justice Department will vindicate the President's lawful authority to direct the executive branch." Judge Orrick's permanent injunction can be found [here](#).

Following the recent acquittal of Jose Ines Garcia Zarate, an undocumented immigrant charged with involuntary manslaughter and assault with a deadly weapon relating to the death of San Francisco resident Kate Steinle, President Trump and Attorney General Sessions have repeatedly emphasized their intent to continue fighting sanctuary policies.

MARIJUANA

Department of Justice (DOJ) officials met in November to discuss potential changes to federal marijuana enforcement policy. Following the meeting, Attorney General Jeff Sessions said, "It's my view that the use of marijuana is detrimental and we should not give encouragement in any way to it. And it represents a federal violation which is in the law and is subject to being enforced." These comments by AG Sessions follow his statements just two weeks prior at a House Committee on the Judiciary hearing where he testified that the Trump Administration is continuing, at least for now, the Obama-era policy of generally respecting the right of states to set their own marijuana laws without federal interference, as outlined by the Cole Amendment. During the November hearing, AG Sessions also conceded that cannabis is not as dangerous as heroin, despite both substances currently being classified under Schedule I of the Controlled Substances Act – a category reserved for drugs with a high potential for abuse and no medical value.

During the November hearing, AG Sessions acknowledged that DOJ is bound by a federal budget rider that bars the federal government from spending money to interfere with state medical cannabis laws and asked that similar language not be included in FY 2018 spending legislation.

The Senate Committee on Appropriations included two marijuana-related amendments in its FY 2018 Commerce-Justice-Science (CJS) Appropriations legislation. The first is Senator Pat Leahy's (D-VT)

[amendment](#), which would prohibit the federal government from intervening in state operations of medical marijuana, and the second is Senator Jeff Merkley’s (D-OR) [amendment](#), which would prohibit the federal government from interfering with any activity under a state law that authorizes the use, distribution, possession, or cultivation of industrial hemp. The House CJS Appropriations bill does not include any language offering states medical marijuana protections. The decision of whether to include this language in a final FY 2018 spending package will likely cause a contentious debate between the two chambers as they conference the bills next year.

HEALTHCARE

AFFORDABLE CARE ACT (OBAMACARE) REPEAL AND REPLACE

Over the course of the year, Republicans were unsuccessful in their efforts to repeal and replace the *Patient Protection and Affordable Care Act* (ACA/[H.R. 3590](#)), also known as Obamacare. Following House passage of the *American Health Care Act* (AHCA/[H.R. 1628](#)) in May, the Senate considered – and failed to pass – a variety of repeal measures. Most notably, the *Better Care Reconciliation Act of 2017* (BCRA/Amendment to H.R. 1628) met its fate in late July following somewhat unexpected dissension from Republican Senators Susan Collins (R-ME), Lisa Murkowski (R-AK), and John McCain (R-AZ).

After the collapse of BCRA, Senate Republicans attempted to use the healthcare reconciliation instructions included in the FY 2017 budget resolution, which were set to expire on September 30, as a vehicle to pass a last-ditch repeal proposal. The measure, simply referred to as the “Graham-Cassidy” bill, would have morphed Obamacare funding into block grants for the states, permit deep cuts to Medicaid, and encourage states to substantially loosen ACA-based insurance regulations and patient protections. A number of Senate Republicans ultimately expressed concern with the rushed process surrounding the legislation’s development, prompting leadership to decline to bring the bill to the floor for a vote.

In October, questions surrounding continuation of federal Cost-Sharing Reduction (CSR) payments to insurers shifted to the forefront of healthcare reform debate in Washington. Citing the lack of past congressional appropriations for CSR payments, which insurers relied on to lessen out-of-pocket costs for their poorest Obamacare customers, the Trump Administration declared that it would immediately cease the federal expenditures. Insurers have hiked rates for 2018 to compensate for the funding shortfall, and several Senators turned to crafting market stabilization packages that would reverse cessation of the Obamacare subsidies.

Current stabilization bills include a draft by Senators Lamar Alexander (R-TN) and Patty Murray (D-WA), known as the [Bipartisan Health Care Stabilization Act of 2017](#), which generally would:

- Appropriate CSR payments for 2017, 2018, and 2019;
- Allow states to utilize existing Obamacare waivers to approve insurance plans with “comparable affordability” to ACA plans and streamline Section 1332 waiver application processes;
- Require states to still meet the ACA’s minimum requirements for what a health insurance plan must cover;
- Allow plans to be sold across state lines in the individual or small group market;
- Permit consumers over age 30 to purchase lower-premium, catastrophic health insurance plans; and
- Provide \$106 million in funding to support Obamacare enrollment.

Additionally, Senators Susan Collins (R-ME) and Bill Nelson (D-FL) introduced the *Lower Premiums Through Reinsurance Act of 2017* ([S. 1835](#)), which would provide a total of \$4.5 billion (\$2.25 billion in 2018 and \$2.25 billion in 2019) to states that establish reinsurance programs to compensate insurers for the cost of extraordinarily costly claims.

Senator Collins voted for the Senate tax bill in early December, but noted that her vote on a final conference bill was dependent on passage of the two stabilization measures. Additionally, Senator Collins announced that she had secured support from Senate Majority Leader Mitch McConnell (R-KY) and President Trump to provide \$5 billion annually to states over two years, up from the \$2.25 billion per year as articulated in the current version of S. 1835.

Neither package was included in the Continuing Resolution (CR) set to expire on December 22, but Senators Collins and Alexander have expressed optimism that both pieces of legislation will be considered in January. In the House, Freedom Caucus Chairman Mark Meadows (R-NC) suggested that the two policies would likely reach the floor in January as part of an FY 2018 omnibus spending measure. Additionally, Representative Meadows noted that most members in the House Freedom Caucus would vote against both stabilization measures.

A lack of Freedom Caucus support would likely not prove perilous to either market stabilization proposal, as some Democratic support is anticipated. Moreover, some House Republicans have stated that they would oppose the Alexander-Murray legislation unless the abortion restriction, known as the Hyde Amendment, is included in bill language.

On December 18, Majority Leader McConnell expressed his support for the bills on the Senate floor, stating, “Faced with the continued failure of Obamacare to keep health insurance affordable for working Americans, we must take this opportunity to pass bipartisan solutions that will help stabilize collapsing health insurance markets and lower premiums for individuals and families across the country.”

The tax reform package, the *Tax Cuts and Jobs Act* ([H.R. 1](#)), permanently reduces Obamacare’s individual mandate penalty to \$0 in 2019, effectively repealing it. The nonpartisan Congressional Budget Office (CBO) estimated that eliminating the requirement would raise the number of uninsured Americans by four million in 2019, and by 13 million a decade from now. The CBO also predicted that while the federal government may save around \$338 billion over the course of a decade due to the repeal, individual premiums would rise by nearly 10 percent.

Meanwhile, the Trump Administration continues to reduce the ACA’s scope through administrative and regulatory actions. In August, the administration slashed Obamacare’s advertising, outreach, and education budgets by \$90 million, or 90 percent. Additionally, President Trump signed an executive order (EO) in October that directs:

- The Secretary of Labor to consider expanding access to Association Health Plans (AHPs), which could potentially allow American employers to form insurance-purchasing groups across state lines by broadening the interpretation of the Employee Retirement Income Security Act (ERISA).
- The Departments of the Treasury, Labor, and Health and Human Services (HHS) to consider expanding coverage through low-cost, short-term limited duration insurance (STLDI), which is largely exempt from ACA mandates and rules.

- The Departments of the Treasury, Labor, and HHS to consider changes to and expand the use of employer-funded Health Reimbursement Arrangements (HRAs) accounts, which reimburse employees for healthcare expenses, including deductibles and copayments. The tenants of the EO, especially in regard to providing more flexibility, align with past GOP healthcare reform efforts.

It should be noted that on December 14, House Speaker Paul Ryan (R-WI) suggested that Republicans will revisit problems with the ACA in 2018, but did not provide details on what this process would entail. Furthermore, Speaker Ryan committed to passing entitlement reform through next year's reconciliation process, specifically highlighting welfare while not mentioning Medicare, Medicaid, or Social Security.

CHILDREN'S HEALTH INSURANCE PROGRAM (CHIP)

Federal funding for the Children's Health Insurance Program (CHIP), which insures nearly nine million lower and middle-income children nationwide, lapsed on September 30. Reauthorization for the largely bipartisan program was overlooked due to lawmakers' focus on the Graham-Cassidy proposal and other legislative priorities. Although current authorization for spending has expired, some states have been able to utilize unspent federal funding to continue their programs. However, many are expected to run out of money in early 2018. Some states (including Colorado, Utah, Connecticut, and Virginia) have notified enrollees that their coverage may be terminated at the end of January or February. Alabama stated that it will freeze enrollment on January 1 – followed by a complete shutdown of their program in February if federal lawmakers fail to act.

Passed on November 3, the *Championing Healthy Kids Act* ([H.R. 3922](#)) provided for a five- year extension of federal funding for CHIP. While Republicans and Democrats agree on financially backing CHIP, negotiations over offsets continue. The year-end FY 2018 Continuing Resolution provided \$2.85 billion for CHIP, funding the program from October 1, 2017 through March 31, 2018.

OPIOID CRISIS

Since President Trump's declaration of the opioid crisis as a Public Health Emergency (PHE) under the *Public Health Service Act* ([H.R. 4624](#)) in October, bipartisan interest to provide necessary federal funding to combat the epidemic has emerged in the House and Senate.

On December 12, 44 Senate Democrats voiced opposition to the House Continuing Resolution's (CR) failure to provide full sequestration relief for various domestic programs, including those related to opioid addiction treatment. The Senate Labor, Health and Human Services, and Related Agencies (LHHS) Appropriations bill developed earlier in the year would have committed \$816 million for combating the epidemic, including \$500 million as authorized by the *21st Century Cures Act* ([H.R. 34](#)). The related House LHHS Appropriations bill would have offered a slightly less \$747 million for crisis response.

Alongside President Trump's October PHE declaration, the President's Commission on Combating Drug Addiction and the Opioid Crisis recommended that the administration adopt 56 policy initiatives to effectively curb the epidemic. However, the lack of funding for either action lessened their potential impacts. In another move, Senior White House Advisor Kellyanne Conway was recently asked to lead the White House opioid cabinet, which is a group of federal officials that meets weekly to oversee the implementation of White House opioid commission recommendations.

Despite the lack of a specific plan, lawmakers from both parties in the House and Senate, particularly those representing the hardest-hit states, have expressed interest in increasing funding to fight the opioid crisis. Specifically, Senator Angus King (I-ME) suggested that he and Senators Joe Manchin (D-WV), Shelley Moore Capito (R-WV), Rob Portman (R-OH), Lisa Murkowski (R-AK), Susan Collins (R-ME), Jeanne Shaheen (D-NH), and Maggie Hassan (D-NH) requested increased opioid spending in FY 2018. Additionally, during a December 13 Senate Health, Education, Labor, and Pensions (HELP) Committee hearing on implementation of the *21st Century Cures Act* ([H.R. 34](#)), which authorized \$1 billion for states to combat the crisis, Chairman Lamar Alexander (R-TN) said that Congress will eventually appropriate more money but did not specify a timeframe.

ZIKA

As debate over the opioid crisis intensified in Washington, lawmakers signaled less urgency in their efforts to address the Zika virus. Zika infection rates have fallen substantially in the United States since reporting of incidents became mandatory, however the Centers for Disease Control and Prevention (CDC) suggested that the virus still poses a significant threat to the nation.

In response to heightened concern regarding Zika's devastating impact on pregnant women and infants, CDC mobilized its Emergency Operations Center (EOC) in January 2016. In September, CDC announced that it had formally deactivated its emergency response for Zika and transitioned virus combatting efforts to normal program procedures. Additionally, the agency committed to deploying the Zika Coordination and Operations Transition Team (ZCOTT), which consists of experts from across the agency that will lead the transition from EOC deactivation to routine, long-term prevention activities.

Despite termination of these emergency protocols, the CDC restructured its guidance on the surveillance and management of Zika in December. Utilizing new data collected over the past year, the agency rescinded some prior recommendations and updated pediatric provider guidelines related to the diagnosis, evaluation, and management of possibly infected infants.

TAX

The first sweeping overhaul of the nation's tax code since 1986 was signed by President Trump on December 22. The legislation, *The Tax Cuts and Jobs Act* ([H.R. 1](#)), moved at rare lightning speed since its introduction in early November. Republicans argue that cuts contained in the bill will spark business investment, hiring, and wage growth. Democrats have called the plan a giveaway to corporations and the rich, and are concerned about the over \$1.5 trillion that it is projected to add to the deficit over the next decade.

The state and local government community fought hard to preserve a number of tax provisions over the course of the past several months, many of which had been eliminated or severely curtailed in the original House version of the bill. These included: the deductibility of state and local taxes; advanced refunding of bonds; the Historic Preservation Tax Credit; New Market Tax Credits; Private Activity Bonds (PABs); and the Low Income Housing Tax Credit (LIHTC).

Overall, major provisions in the final bill include:

- Maintaining seven individual income tax brackets, and lowering the top rate from 39.6 percent to 37 percent. The personal exemption is scrapped, but the standard deduction is increased to \$12,000 for an individual and \$24,000 for a couple;
- Dropping the corporate tax rate from 35 percent to 21 percent;
- Setting a 20 percent business income deduction for the first \$315,000 in income earned by pass-through businesses;
- Eliminating the Affordable Care Act provision that requires most Americans to buy health insurance or pay a penalty, beginning in 2019;
- Keeping the mortgage interest deduction for existing homeowners, but for new homes, taxpayers can deduct only interest up to \$750,000, down from the current \$1 million; and
- Maintaining tax breaks for charitable deductions.

Among the provisions that most affect local governments, the following were included in the final conference report:

- **Deductibility of State and Local Taxes (SALT):** The deduction is capped at \$10,000, applied to property and income or sales taxes. The provision is effective beginning December 31, 2017 and expires December 31, 2025. An individual may not claim an itemized deduction in 2017 on a pre-payment of tax for a future taxable year in order to avoid the dollar limitation applicable for taxable years beginning after 2017. Businesses can continue to take the full deduction.
- **New Market Tax Credit:** Preserved.
- **Historic Tax Credit:** The 10 percent tax credit is repealed, but it maintains the 20 percent credit in five annual installments rather in full on the date of placement of service. The transition rule is the same as the Senate version of the bill.
- **Advanced Refunding Bonds:** These were eliminated (after December 31, 2017) in both the House and Senate versions of the bill, and thus in the final conference version. No transition rule.
- **Sports Stadium Bonds:** Preserved.
- **Tax Credit Bonds:** Eliminated after December 31, 2017.
- **Private Activity Bonds (PABs):** Preserved.
- **Low Income Housing Tax Credit:** The nine percent credit is preserved, and, because the bill maintains PABs, which are used to finance the construction and rehabilitation of multifamily housing for low-income renters under the four percent Housing Credit, maintains the four percent credit. The bill does not include reforms to improve the Housing Credit and does not adjust the credit to address the (likely) reduced ability to generate equity investments due to the lowering of the corporate rate. Additionally, the general public use exception for artist housing is preserved; the statutory exception from general public use for veterans housing is not included.
- **Commuter Tax Benefit:** The bill preserves current law, which treats both transit commuter benefits and parking benefits of up to \$255 a month as a non-taxable fringe benefit for employees, but eliminates the ability of employers to deduct the cost of providing the benefit as a business expense.
- **Pension Plans:** Strikes language that would have subjected certain investments by state and local government pension plans to the unrelated business income tax (UBIT).
- **Electric Vehicle Tax Credit:** Preserved.
- **Bike Commuter Benefit:** Eliminated.

Due to the speed in which the legislation was drafted, a technical corrections bill is likely to move through Congress in the first six months of 2018. Additionally, in the last days of the session, Senate Finance Committee Chairman Orrin Hatch (R-UT) released a “tax extender” bill, The Tax Extender Act of 2017 ([S. 2256](#)), that would continue a long list of tax breaks, many of which expired at the end of 2016, but which were not addressed in the larger tax package. Items in the Hatch bill include the non-taxability of forgiven mortgage debt, faster depreciation for motorsports tracks, and a variety of renewable energy provisions. Republicans do not agree on what to do about these provisions and House members have been willing to let them expire. Congress last addressed “extenders” at the end of 2015. It is likely that the beginning of 2018 will be spent continuing to handle a number of tax issues.

TRANSPORTATION/INFRASTRUCTURE

INFRASTRUCTURE PROPOSAL

Earlier this year, the administration released a six-page fact sheet on its \$1 trillion infrastructure package, which is expected to include \$200 billion in direct federal funding intended to leverage \$1 trillion in total infrastructure investment. The administration has repeatedly said that an infrastructure package will be addressed after tax reform efforts have been completed, and additional details about its proposed infrastructure package are expected in January.

The proposal will likely focus on incentivizing greater state and local investment in infrastructure and leveraging federal funding through the use of public-private partnerships (P3s) and finance tools, such as the Transportation Infrastructure Finance and Innovation Act (TIFIA) program. However, the administration has recognized that P3s are not a solution for all projects, particularly those located in rural areas. Additionally, we expect the infrastructure package will include environmental streamlining provisions that build off of the President’s August executive order (EO) titled “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects” (EO 13807) and recent actions by the Council on Environmental Quality (CEQ) to implement the EO.

Broadly speaking, the infrastructure proposal is expected to divide the \$200 billion in direct federal funding into four categories: (1) funding to reward or incentivize increased local investment in infrastructure; (2) grants for rural infrastructure projects; (3) increased investment in established Department of Transportation (DOT) loan programs such as the TIFIA and Railroad Rehabilitation and Improvement Financing (RRIF) programs; and (4) federal funding to support large transformational infrastructure projects.

Congress is expected to use the administration’s infrastructure principles when drafting infrastructure legislation. Recently, House Transportation and Infrastructure Committee Chairman Bill Shuster (R-PA) called on the administration to release its infrastructure principles so Congress could begin drafting legislation. Additionally, Chairman Shuster met with the President to discuss the administration’s priorities for an infrastructure package. Reportedly, the Senate Environment and Public Works Committee is also working on its own infrastructure legislation.

It is still unclear how the administration or Congress intends to pay for a large infrastructure package. President Trump’s chief economic advisor, Gary Cohn, recently told a group of House lawmakers that they would have an opportunity to vote on an increase to the federal fuel tax to pay for infrastructure, and it has been widely reported that the administration is considering proposing a seven cent/gallon increase as a way to pay for infrastructure. However, Chairman Shuster has said that there are currently not

enough votes in the House to support a fuel tax increase. Recently, the administration suggested that an infrastructure package could be paid for through spending cuts to other areas of the federal budget. It is unclear what programs the administration could be considering for these potential spending cuts.

FY 2018 TRANSPORTATION APPROPRIATIONS

The President's FY 2018 budget proposed the same obligation levels for highway and transit formula programs financed from the Highway Trust Fund (HTF) as in the Fixing America's Surface Transportation (FAST) Act. Most of the highway and transit programs in the FAST Act, which authorized \$305 billion over fiscal years 2016 to 2020, are contract authority funded from the HTF and therefore not subject to appropriations. However, the administration proposed significantly reducing the Capital Investment Grant (New Starts/Small Starts) program and eliminating the Transportation Investment Generating Economic Recovery (TIGER) grant program.

The House and Senate Appropriations Committees Transportation, Housing and Urban Development (THUD) Subcommittees, passed their respective FY 2018 THUD appropriations bills in July. The House included its THUD bill in a package of eight appropriations bills it passed in September, while the full Senate has not considered its THUD appropriations bill.

The House THUD bill would provide \$1.75 billion for the New Starts program, \$521 million more than the President's request but \$650 million less than the FY 2017 funding level. The Senate THUD bill would provide \$2.133 billion for New Starts. Both the House and Senate bills include sufficient funding for all current transit projects with full funding grant agreements (FFGAs) and include additional funding for new projects.

The House bill, like the President's budget, would eliminate funding for the TIGER grant program. However, the Senate bill would provide \$550 million for the program, an increase of \$50 million over the FY 2017 level.

FEDERAL AVIATION ADMINISTRATION (FAA) REAUTHORIZATION

The current extension of Federal Aviation Administration (FAA) programs expires on March 18, 2018, after Congress passed a short-term extension on September 28 to provide additional time to consider long-term FAA reauthorization legislation. Both the House Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science, and Transportation marked up their FAA reauthorization bills, the *21st Century Aviation Innovation, Reform, and Reauthorization Act* ([H.R. 2997](#)) and the *Federal Aviation Administration Reauthorization Act of 2017* ([S. 1405](#)), respectively.

There have not been significant developments on FAA reauthorization since our last report. It is still unclear if House Transportation and Infrastructure Committee Chairman Bill Shuster has enough support to pass the air traffic control (ATC) reform proposal included in the *21st Century AIRR Act*.

The Senate *FAA Reauthorization Act* is less controversial, but includes a provision to relax co-pilot training hour requirements that Senate Commerce Committee Ranking Member Bill Nelson (D-FL) has said Democrats will not support. Recently, Senate Commerce Committee Chairman John Thune (R-SD) indicated he is open to removing the provision so the bill can be considered on the floor early in 2018.

FAA reauthorization is considered a must-pass bill, and Congress is likely to address FAA reauthorization through either a short-term extension or a long-term reauthorization early in 2018.

AUTOMATED VEHICLES (AVs)

As we reported in our October update, the House passed automated vehicle (AV) legislation, the *Safely Ensuring Lives Future Deployment and Research in Vehicle Evolution (SELF DRIVE) Act* ([H.R. 3388](#)), in September by voice vote.

The Senate Committee on Commerce, Science, and Transportation advanced its own legislation, the *American Vision for Safer Transportation through Advance of Revolutionary Technologies (AV START) Act* ([S. 1885](#)), which has not been brought to the floor for a vote by the full Senate.

In early December, Senate Commerce Committee Chairman John Thune (R-SD) began to “hotline” the *AV START Act*, a process by which Senators are notified that a bill is likely to be brought up for consideration on the Senate floor under unanimous consent and provide them a final opportunity to object to the legislation or provide further input. If Senators do not voice significant opposition to a bill during the hotline process, it will likely be brought to the floor swiftly and unanimously approved by the Senate.

Senate Committee on Commerce, Science, and Transportation leadership is currently working to address concerns expressed during the hotline process. Most notably, Senator Dianne Feinstein (D-CA) reportedly stated that she is “strongly opposed” to the *AV START Act*, citing safety concerns, which may make the legislation difficult to pass by unanimous consent. Chairman Thune originally intended for the full Senate to consider the legislation in December 2017.

Additionally, on November 6, the National Highway Traffic Safety Administration (NHTSA) held a public listening session on the recently released revision of the agency’s federal AV policy, titled “[Automated Driving Systems 2.0: A Vision for Safety](#)” (ADS 2.0). As we reported in our last update, ADS 2.0 is the result of NHTSA’s consideration of public input following the release of the original AV policy in September 2016, which was intended to serve as a flexible, voluntary regulatory framework outlining best practices for manufacturers and other AV stakeholders as they design, test, and deploy AVs. ADS 2.0 replaces the original iteration of NHTSA’s guidance.

During a November listening session, NHTSA received oral public comment from a variety of stakeholders including AV manufacturers, motorcyclists, disability and consumer advocates, and the insurance industry. Department of Transportation (DOT) Secretary Elaine Chao stated that DOT will be considering and incorporating public comment before issuing a third iteration of the agency’s AV guidance in 2018.

UNMANNED AIRCRAFT SYSTEMS (UAS)

The *National Defense Authorization Act for Fiscal Year 2018* (NDAA/[H.R. 2810](#)), which was signed into law on December 12, 2017, authorized the Federal Aviation Administration (FAA) to restore regulations requiring small unmanned aircraft system (UAS) pilots to register their aircraft. In 2015, the Obama Administration issued a rule requiring recreational UAS operators to register UAS with FAA and display a unique registration number issued by FAA on the side of small UAS. In May of 2015, the U.S. Court of Appeals for the District of Columbia struck down the rule, arguing that the FAA did not have adequate statutory authority to issue a rule requiring the registration of UAS for recreational operators.

The FY 2018 NDAA established FAA authority over small UAS registration for recreational users, and the FAA has restored its requirement that UAS weighing between 0.55 and 55 pounds register with the agency. FAA’s UAS registry can be found [here](#).

As previously reported, on October 25, President Trump directed the Department of Transportation to implement an Unmanned Aircraft Systems Integration Pilot, designed to test UAS in partnership with certain state and local governments and accelerate the integration of UAS into the U.S. national airspace system (NAS). Potential applicants were required to submit letters of intent to the FAA by November 28, and final applications must be submitted by January 4, 2018.

Reportedly, FAA received letters of intent from hundreds of interested state and local governments, along with over 1,500 non-governmental entities. FAA will finalize agreements with at least five selected applicants by May 7, 2018.

ENERGY AND ENVIRONMENT

CLEAN POWER PLAN

Environmental Protection Agency (EPA) Administrator Scott Pruitt recently announced that EPA will write a [replacement](#) for the Obama Administration's Clean Power Plan (CPP) (under Section 111 of the Clean Air Act), which was published in the Federal Register on December 28. EPA will take comments until February 26 [here](#).

The goal of the previous administration's CPP was to reduce nationwide carbon emissions by 32 percent, as compared to 2005 levels, by 2030. Administrator Pruitt's rewrite is expected to be a limited regulation that would target only power plants themselves, as opposed to regulating state emissions. It is also expected that Administrator Pruitt will recommend a rule would allow states to set their own emissions standards for coal plants.

Recently, EPA announced it will hold additional hearings on the proposal to withdraw CPP. The three additional hearings will be located in San Francisco, CA, Gillette, WY, and Kansas City, MO. These hearings were added after EPA received pressure for originally holding hearings "only in coal country." While no dates have been set yet for these additional hearings, EPA is accepting public comments on the proposal to withdraw CPP until January 16, 2018, and those can be submitted [here](#).

OZONE

In December, several lawsuits were filed by members of Congress, as well as environmental and public health organizations, over Environmental Protection Agency (EPA) Administrator Scott Pruitt's failure to provide decisions concerning 2015 ground-level ozone non-attainment designations for counties. While Administrator Pruitt has issued decisions for most of the U.S., approximately 15 percent of U.S. counties remain without a decision. Areas that are deemed "nonattainment" are required to compose a plan to address ozone-related emissions. Without a determination from the agency, there is no requirement for those areas to act. States that filed suit include California, Connecticut, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, and the District of Columbia.

We expect the courts to set deadlines for which EPA must provide designations. Click [here](#) for the list of counties that EPA has already pronounced having achieved "attainment/unclassifiable" status.

ENERGY MEASURES IN THE TAX REFORM BILL

The recently passed tax reform legislation, the *Tax Cuts and Jobs Act* ([H.R. 1](#)), also contains important energy and environment-related measures, including:

- **Arctic National Wildlife Refuge (ANWR):** The title will:
 - Open federal acres within the 1002 Area of ANWR for oil and gas development;
 - Allow 2,000 acres of federal land on the Coastal Plain “to be covered by production and support facilities” (including airstrips and piers);
 - Require at least two lease sales within four and seven years respectively;
 - Require leases sales to be at least 400,000 acres each;
 - Require the royalty rate for leases issued to be 16.67 percent; and
 - Direct 50 percent of the proceeds (from adjusted bonus, rental, and royalty receipts derived from the oil and gas program on federal land) to the State of Alaska, and deposit the balance to the U.S. Treasury.
- **Offshore Revenue Sharing:** This will temporarily increase the annual limitation on offshore revenue sharing under section 105(f)(1) of the Gulf of Mexico Energy Security Act of 2006 (Public Law 109-432) from \$500 million annually for FY 2020 and FY 2021, to \$650 million annually for those two fiscal years. The proceeds would be provided to the states of Alabama, Louisiana, Mississippi, and Texas for restoration and rehabilitation activities.
- **Energy Tax Credits:** This section allows tax credits for electric vehicles and wind production to be preserved. Similarly, the solar Investment Tax Credit (ITC) would also remain intact as in current law (both the commercial and homeowner ITC rate at 30 percent for 2017-2019, 26 percent for 2020, and 22 percent for 2021, with the commercial ITC maintained at 10 percent for 2022 and beyond).
- **Base Erosion Anti-Abuse Tax (BEAT):** This addresses the piece of the Base Erosion Anti-Abuse Tax that was previously projected to harm renewable energy investments (including solar, wind developers and low-income housing developers). The deal cut will allow bankers and financial institutions that support renewable projects to take 80 percent of the credits of the solar Investment Tax Credit (ITC) and wind production tax credit (PTC).

ENERGY & ENVIRONMENT LEGISLATION

Several relevant energy and environment-related bills have begun moving recently in Congress. The bills detailed below have passed the House since our last update and currently await Senate consideration:

- *Promoting Closed-Loop Pumped Storage Hydropower Act* ([H.R. 2880](#))
 - H.R. 2880 would promote closed-loop pumped storage development by establishing an expedited licensing process of two years or less. The legislation also would require the Federal Energy Regulatory Commission (FERC) to hold a workshop to explore potential opportunities for development of closed-loop pumped storage projects at abandoned mine sites.
- *Promoting Hydropower Development at Existing Nonpowered Dams Act* ([H.R. 2872](#))
 - H.R. 2872 would promote hydropower development at existing non-powered dams by an expedited licensing process of two years or less. The bill also would require FERC, U.S. Army Corps of Engineers, and Department of the Interior to develop a list of existing non-powered federal dams that have the greatest potential for non-federal hydropower development.

- *The Hydropower Policy Modernization Act* ([H.R. 3043](#))
 - H.R. 3403 would address current licensing and permitting process delays for hydropower facilities by:
 - Adding administrative efficiency, accountability, and transparency;
 - Requiring timely decision making; and
 - Reducing duplicative oversight from multiple federal agencies that review hydro applications by designating FERC as the lead agency.
- *Promoting Cross-Border Energy Infrastructure Act* ([H.R. 2883](#))
 - H.R. 2883 would replace the Presidential permitting approval needed before constructing an oil and gas pipeline or electric transmission line that crosses a border with Canada or Mexico with a new review process.
- *Brownfields Enhancement, Economic Redevelopment, and Reauthorization Act of 2017* ([H.R. 3017](#))
 - H.R. 3017 would reauthorize the Environmental Protection Agency's (EPA) Brownfields Program and make changes to existing law. Specifically, the legislation would:
 - Clarify the liability of states and local units of government that take title to property voluntarily;
 - Clarify when a site contaminated by petroleum may be considered a brownfield site and when a leaseholder qualifies for liability protection;
 - Expand eligibility for nonprofit organizations and for eligible entities that took title to a brownfield site before January 11, 2001;
 - Increase the limit for remediation grants under the Brownfields Program, establish multipurpose grants, and allow recovery of limited administrative costs;
 - Add facilitation of the production of renewable energy to the list of criteria for the grant program;
 - Allow the EPA to provide additional funds for small, rural, and disadvantaged communities; and
 - Authorize \$250 million annually over the 2018-2022 period.

WATER

WATER INFRASTRUCTURE FINANCE AND INNOVATION ACT (WIFIA)

The Environmental Protection Agency (EPA) is preparing for the future solicitation of letters of interest from prospective borrowers for its FY 2018 Water Infrastructure and Innovation Act (WIFIA) financing program by holding a series of webinars and information sessions through January 2018. The next information session will take place at EPA headquarters in Washington, D.C. on January 17.

As Congress has yet to pass a final FY 2018 spending package, it is unclear how much funding the program will be allocated in the upcoming fiscal year. The WIFIA program received support from the Trump Administration in its FY 2018 budget request, which requested the program be funded at \$20 million. In their FY 2018 Interior-Environment Appropriations legislation, both the Senate and the House propose WIFIA be funded at \$30 million for the upcoming fiscal year.

As previously reported, in July EPA announced it received [43 letters of interest](#) from both public and private entities in response to its FY 2017 WIFIA [Notice of Funding Availability](#) (NOFA). After a robust, statutorily-required review process, the WIFIA Selection Committee chose [12 prospective borrowers' projects](#) to submit applications for loans for FY 2017.

WATERS OF THE U.S. (WOTUS) RULE

The Trump Administration recently announced that the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (USACE) are expected to complete the repeal of the Obama Administration's 2015 "Waters of the United States" (WOTUS) rule in April 2018. Subsequently, the agencies intend to propose a replacement rule in May 2018, which is expected to be finalized in June 2019.

In November, the agencies proposed moving the effective date of the Obama Administration's 2015 WOTUS rule to 2020 to prevent the rule from taking effect in the event that the current court stay is lifted before they finalize a new rule. This does not change current interpretation of WOTUS under the Clean Water Act. The rule was originally scheduled to take effect in August 2015, but was stayed by the 6th Circuit Court of Appeals. That stay, however, could be dissolved soon by the Supreme Court, which is expected to rule in the coming months on whether WOTUS-related legal challenges must first go through district courts or should jump straight to the appellate level.

This follows EPA and USACE's [proposed rule](#) from July which initiated the first step in a comprehensive, two-step process intended to repeal and revise the definition of WOTUS consistent with President Trump's February 28 executive order (EO) directing the agencies to revise the rule. As directed in President Trump's EO, the agencies plan to propose a new definition by taking into consideration the principles that Justice Scalia outlined in the [Rapanos plurality opinion](#).

EPA and USACE have actively sought input from states and local governments on this issue. In May, the agencies sent a letter to state governors soliciting comments as to how the agencies should rewrite the rule. National organizations, such as the U.S. Conference of Mayors, also had informal discussions with EPA on WOTUS earlier this year.

This fall, EPA held [ten teleconferences](#) to hear from stakeholders on their recommendations to revise the definition of WOTUS. Nine of the teleconferences were tailored to a specific sector: agriculture; conservation; small entities; construction and transportation; environment and public advocacy; mining; industry (energy, chemical, oil/gas); scientific organizations and academia; and stormwater, wastewater management, and drinking water agencies.

WATER RESOURCES DEVELOPMENT ACT (WRDA)

The House Transportation and Infrastructure Committee, Subcommittee on Water Resources and Environment, held its first field hearing in Miami, Florida in October for the next Water Resources Development Act (WRDA). During the hearing, Full Committee Chairman Bill Shuster (R-PA) and Subcommittee Chairman Garret Graves (R-LA) both emphasized their intent to continue the two-year cycle of passing WRDA and thus pass it before the end of 2018. The Senate has yet to hold hearings on WRDA so far in the 115th Congress.

It is unclear whether a WRDA bill would move alone or be tied to a larger infrastructure package; however, both Chairmen Shuster and Graves appear committed to passing a new WRDA in 2018 with or without a broader legislative vehicle, such as a comprehensive infrastructure package.

LEAD AND COPPER RULE

In December, the Environmental Protection Agency (EPA) sent a [letter](#) to groups representing states and municipalities inviting them to meet in January to discuss potential revisions to the Lead and Copper Rule. The rule requires water utilities to implement a treatment technique that is designed to reduce lead and copper in tap water and sets a goal of zero lead in drinking water. Revisions to the Lead and Copper Rule would impact owners and operators of public water systems that must comply with the rule and primacy agencies that enforce drinking water regulations in their jurisdiction. According to the letter, EPA is evaluating potential regulatory changes to the existing rule in the areas of tap sampling, corrosion control treatment, transparency and public education, and full lead service line replacement.

The Lead and Copper Rule was last revised in 1991. In October 2016, EPA, under the Obama Administration, released a [white paper](#) laying out options for revising the rule.

NUTRITION

FARM BILL

The House and Senate Agriculture Committees are working to reauthorize current Farm Bill programs, which expire on September 30, 2018. The Farm Bill authorizes a broad assortment of federal programs, including nutrition, commodity support, conservation, trade, research, and crop insurance, intended to support the agriculture sector. The Farm Bill provides nutrition assistance for low-income households through the Supplemental Nutrition Assistance Program (SNAP), which provides food-purchasing assistance to eligible, low-income individuals, and the Emergency Food Assistance Program (TEFAP), which provides food products and federal support to emergency feeding organizations, such as food banks and food pantries. The Farm Bill also supports the distribution of foods in schools.

SNAP accounts for approximately 80 percent of total Farm Bill costs. As it is the main component of the bill, and, as we have seen in previous discussions, there will likely be attempts during the reauthorization of the Farm Bill to reform the program in order to seek greater efficiencies, reduce costs, promote work among able-bodied adults without dependents, and eliminate potential fraud. Additionally, there have been recent reports that the United States Department of Agriculture is considering ways to drastically reform SNAP, including allowing states “greater flexibility” in administering the program; however, it is unclear what SNAP reform proposals the Trump Administration may pursue.

HOUSING AND COMMUNITY DEVELOPMENT

HUD’S 2017 ANNUAL HOMELESS ASSESSMENT REPORT TO CONGRESS

In December, the U.S. Department of Housing and Urban Development (HUD) released its 2017 Annual Homeless Assessment Report to Congress. Findings indicate that homelessness crept up across the country, especially among individuals with long-term disabilities and those living in high-cost areas. According to HUD, key findings of the report include:

- 553,742 people were homeless this year, representing an overall .7 percent increase from 2016 and a 13.1 percent decrease since 2010;

- Most homeless individuals (360,867) were located in emergency shelters or transitional housing programs, while 192,875 persons were unsheltered;
- The number of families with children experiencing homelessness declined 5.4 percent since 2016 and 27 percent since 2010;
- Veteran homelessness increased 1.5 percent (or by 585 persons) since January 2016, primarily in California cities;
- Since 2010, veteran homelessness declined nationally by 46 percent;
- Chronic or long-term homelessness among individuals increased 12.2 percent over 2016 levels though declined by 18 percent (or by 19,100 persons) since 2010; and
- 40,799 unaccompanied youth and children were homeless in 2017, a number which will serve as a baseline for purposes of future youth homelessness tracking.

HUD DISASTER ASSISTANCE

Over the course of the past several months, Department of Housing and Urban Development (HUD) announced federal assistance for those affected by storms and disasters in the U.S. Virgin Islands, Puerto Rico, Florida, Texas, Georgia, and California. In addition to various grants awarded through the Community Development Block Grant – Disaster Recovery (CDBG-DR) Program, HUD generally offered the following forms of relief:

- Granting a 90-day moratorium on foreclosures and forbearance of foreclosures of Federal Housing Administration (FHA)-insured mortgages;
- Making mortgage insurance available to borrowers from FHA-approved lenders for the purposes of rebuilding or rebuying another home, as well as rehabilitating damaged houses;
- Assisting states and local governments with the re-allocation of existing federal resources toward disaster relief; and
- Offering Section 108 loan guarantee assistance, which provides loans for housing rehabilitation, economic development, and repair of public infrastructure.

REVERSAL OF HUD-VASH FUNDING RE-ALLOCATION PROPOSAL

During a joint event in November, U.S. Department of Veterans Affairs (VA) Secretary David Shulkin and Housing and Urban Development (HUD) Secretary Ben Carson suggested that the VA would re-allocate funding from the HUD-Veterans Affairs Supportive Housing (HUD-VASH) program. The initiative, which combines Housing Choice Voucher rental assistance with VA services for homeless veterans, provides roughly \$460 million in federal funding to combat veteran homelessness.

Under the proposal, HUD-VASH funding would have been transferred to the VA's General Purpose Fund and distributed to local VA hospitals for a variety of services, as long as these receiving entities could demonstrate adequate efforts to address veteran homelessness.

The announcement prompted several Senate appropriators to send a letter to Secretary Shulkin expressing their concern with the potential consequences for localities. Additionally, it was met with swift backlash from a number of stakeholders, including the National League of Cities (NLC) and Secretary Shulkin's Advisory Committee on Homeless Veterans.

In early December, Secretary Shulkin reversed his decision, stating, "There will be absolutely no change in the funding to support our homeless programs ... The President has increased VA homeless program

funding by \$66 million in his FY 2018 budget. Over the next six months, I will solicit input from our local VA leaders and external stakeholders on how best to target our funding to the geographical areas that need it most.”

Additionally, Secretary Shulkin committed to furthering homeless veteran funding initiatives in FY 2019.

WORKFORCE AND JOB TRAINING

DEPARTMENT OF LABOR OVERTIME RULE

On May 23, 2016, the Department of Labor (DOL) published a final rule updating the overtime exemption rule, which raises the minimum salary threshold required to qualify for the Fair Labor Standards Act's (FLSA) “white collar” exemption to \$47,476 per year. The final rule would also raise the overtime eligibility threshold for highly compensated workers from \$100,000 to about \$134,000. It was originally set to take effect on December 1, 2016, but a preliminary injunction was granted on November 22, 2016 by U.S. District Court Judge Amos Mazzant in the Eastern District of Texas.

On August 31, 2017, Judge Mazzant granted summary judgment against DOL in consolidated cases challenging the final rule. The court held that the final rule’s salary level exceeded the Department’s authority, and concluded that the Final Rule is invalid. On October 30, the Department of Justice (DOJ), on behalf of DOL, filed a notice to appeal this decision to the U.S. Court of Appeals for the Fifth Circuit. Once this appeal is docketed, DOJ will file a motion with the Fifth Circuit to hold the appeal in abeyance while DOL undertakes further rulemaking to determine what the salary level should be. Secretary of Labor Alexander Acosta is in the process of crafting a new regulation that updates the salary level below which workers qualify for overtime pay, and has indicated that the new overtime regulations will set the new salary level somewhere between the existing threshold and the threshold set by the 2016 proposed rule.

Additionally, on July 26, DOL published a Request for Information, titled *Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees*. The comment period ended on September 25.

TELECOMMUNICATIONS

NET NEUTRALITY

The Federal Communications Commission (FCC) voted to repeal the Obama era net neutrality rules on December 14. The rules, implemented in 2015, restricted the power of Internet service providers to influence loading speeds for specific websites or apps. Despite the vote to repeal the net neutrality rules, the FCC asserted Internet providers must still disclose to their users what exactly they do to web traffic, essentially shifting all enforcement to FCC. The FCC order also seeks to restrict states from imposing their own net neutrality requirements.

Apart from legal challenges, Senate Minority Leader Charles Schumer (D-NY) said he would seek to force a congressional vote on repealing the FCC decision under the *Congressional Review Act*. A reversal of the FCC order would need the approval of both chambers of Congress and President Trump. Senate Majority Leader Mitch McConnell (R-KY) and President Trump support the FCC decision.

5G BROADBAND DEPLOYMENT – SMALL CELL SITING AND LOCAL AUTHORITY

In our last update, we reported that Federal Communications Commission (FCC) had issued two Notices of Proposed Rulemaking/Notices of Inquiry (NPRM/NOI) titled “Accelerating Wireline/Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment” (17-79/17-83). The NPRM/NOI is intended to streamline regulatory barriers and enhance broadband deployment, but, if finalized, could preempt local authority, offer deemed granted rights to city infrastructure, and limit time periods for municipalities to consider deployment applications. The NPRM/NOI has implications for municipal permitting processes, use agreements, rights of way fees, and local governments’ ability to prevent redlining.

Additionally, we noted the FCC’s Broadband Deployment Advisory Committee (BDAC), which is charged with issuing recommendations to accelerate broadband deployment and reducing regulatory barriers to infrastructure investment, was largely composed of telecommunications providers and lacked adequate municipal representation.

Following a letter from the U.S. Conference of Mayors (USCM), National League of Cities (NLC), and National Association of Counties (NACo) to FCC Chairman Ajit Pai urging him to “fully consider” local perspectives in finalizing the pending broadband proceedings, Chairman Pai delayed the deadline by which the BDAC must issue final recommendations. The BDAC will now vote on its final recommendations in January 2018, and FCC has provided an opportunity for outside stakeholders to comment on initial BDAC working documents, which are posted [here](#). Public comment on the BDAC’s working documents can be submitted to FCC GN Docket No. 17-83.

Additionally, Senate Commerce, Science, and Transportation Committee Chairman John Thune (R-SD) is drafting legislation with Senator Brian Schatz (D-HI) designed to accelerate broadband deployment by reducing regulatory barriers and reforming small cell siting and permitting processes. According to media reports, Chairman Thune began developing the legislation following the release of a Government Accountability Office (GAO) report (GAO-17-742), which identified provider costs for deploying antennas, installing wires or cables, and obtaining permits to access infrastructure as impediments to broadband infrastructure deployment.

As noted above, the Trump Administration has also announced its intent to publish details on a potential infrastructure package in 2018. Reportedly, the proposal is likely to include provisions emphasizing the importance of preempting state and local authority to accelerate the deployment of 5G broadband infrastructure.

CYBERSECURITY

This year, President Trump faced continuous challenges presented by the Russian election meddling probes, including investigations lead by Special Counsel Robert Mueller and Congress. Congress continued to press ahead with its investigations into Russian meddling in the 2016 elections, as well as pursue new cyber-related legislation and hold hearings on data breaches in the last few months of 2017.

Congressional momentum increased in December on legislation that would help to safeguard the upcoming 2018 elections against foreign intrusions, with a new bipartisan bill introduced in the last week of the first session of the 115th Congress that, if passed, would facilitate information sharing ahead of the

2018 election cycle. The Department of Homeland Security also announced an agreement had been reached with election infrastructure manufacturers ahead of next year's elections.

In one of the last cyber-related legislative acts before the holiday recess, Congress temporarily extended the expiring warrantless surveillance programs of the *Foreign Intelligence Surveillance Act (FISA)* on December 21. Outstanding cyber legislation may lose some momentum in 2018, particularly as it competes for space on a legislative agenda in an election year.

SAFEGUARDING U.S. ELECTIONS

An agreement reached on December 13 between election infrastructure manufacturers and federal, state, and local officials will establish a framework for sharing cyber threat information ahead of the 2018 elections. "The integrity of our electoral process is a vital national interest, and we are facing an environment in which threats to this process are continuously evolving," said David Wulf, Acting Deputy Assistant Secretary of Homeland Security for the Office of Infrastructure Protection. He added, "No one entity — whether private or public — can manage the risk to our critical election infrastructure on its own."

A bipartisan group of Senators introduced a bill to help safeguard elections, titled [Secure Elections Act](#), on December 21. The proposed bill — backed by Republican Senators Lindsey Graham (SC) and James Lankford (OK) and Democratic Senators Kamala Harris (CA) and Amy Klobuchar (MN) — would help facilitate information-sharing channels between the Department of Homeland Security, the intelligence community, and state election offices. Election officials have said that an inability to effectively share data on hacker threats during the 2016 election left many in the dark about those probing the country's election networks. Among other things, the measure would also dedicate additional resources for states to bolster their digital defenses, as well as reaffirm individual state leadership in administering federal elections. There is momentum to get the bill passed before the 2018 midterm primaries.

Senators Lankford and Klobuchar also wrote a letter to Secretary of Homeland Security Kirstjen Nielsen saying: "We must improve information sharing between the federal government and states regarding threats and ensure that security clearances for appropriate state election officials are expedited so that they can receive relevant information." In urging her to support states with resources to counter intrusions, the Senators also encouraged her to back the Obama Administration's decision to classify election systems as "critical infrastructure," a Department of Homeland Security designation that provides states priority access to federal resources.

NATIONAL SECURITY STRATEGY RELEASED

On Monday, December 19, President Trump released his [National Security Strategy \(NSS\)](#), reiterating "American First" under four national security pillars. The strategy confirms a priority of protecting "critical infrastructure" from "malicious cyber actors," as well as strengthening American capabilities in the cyberspace domain. To improve the resilience of critical infrastructure, the risk assessment will be conducted across six key areas: (1) national security; (2) energy and power; (3) banking and finance; (4) health and safety; (5) communications; and (6) transportation. The federal government will work to "ensure that those charged with securing critical infrastructure have the necessary authorities, information, and capabilities to prevent attacks before they affect or hold at risk U.S. critical infrastructure." Improving information-sharing is also a priority of the Trump Administration.

The NSS also warns the administration “will impose swift and costly consequences on foreign governments, criminals, and other actors who undertake significant malicious cyber activities.” Later on Monday, the administration identified North Korea as orchestrating the WannaCry malware attack that impacted the globe in May. The digital assault locked up computer systems at hospitals, universities and businesses, demanding ransom payments to return the data.

NDAA SIGNED INTO LAW

On December 12, President Trump signed into law the [National Defense Authorization Act for Fiscal Year 2018](#) (NDAA/P.L. 115-91). The annual defense policy bill contained a number of cyber provisions, including one that will create a government-wide Technology Modernization Fund to help agencies shore up their aging computer systems and bolster their digital defenses. The NDAA also codifies a government-wide ban on the use of products made by the Russian cybersecurity firm Kaspersky Lab, which the intelligence community believe may have helped Russian spies steal classified material. Section 1633 directs the President to “develop a national policy for the United States relating to cyberspace, cybersecurity, and cyber warfare,” which would then be submitted to Congress.

WARRANTLESS SURVEILLANCE PROGRAMS – REAUTHORIZATION DEBATED

House Intelligence Committee held a rare public markup of its bill the [FISA Amendments Reauthorization Act of 2017](#) (H.R. 4478) on December 1 to reauthorize the overseas-focused spying tools for another four years. The chamber decided against attaching the measure to the Continuing Resolution (CR) that advanced ahead of the expiring federal government authority on December 8 to avoid a government shutdown. The warrantless surveillance programs expire on December 31, 2017.

A bipartisan group of 10 Senators urged Senate Majority Leader McConnell not to attach its renewal measure (S. 2010) to the year-end CR. The Senators instead suggested that a reauthorization of the programs be limited to a few months to allow further congressional debate on the issue in early 2018. Senate Majority Whip John Cornyn (R-TX) said on December 19, “My suspicion is, probably what we’re going to be looking at is a short-term extension.” On December 21, Congress provided a short-term extension of the surveillance programs, attaching the temporary reauthorization to the CR that funds the federal government until January 19. Congress will resume debate of the programs in January.

INTERNET OF THINGS – ANOTHER BILL INTRODUCED

Congress also remains focused on addressing a deficit of regulations related to the Internet of Things (IOT). On December 15, Senators Roger Wicker (R-MS) and Maggie Hassan (D-NH) introduced legislation that would address helping consumers to better secure Internet-connected devices. The bipartisan bill – the [IOT Consumer TIPS Act](#) (S. 2234) — would order the Federal Trade Commission to establish an online repository of information on the security of IOT products, such as thermostats, Wi-Fi routers, and digital cameras.

ADMINISTRATION CHANGES

Kirstjen Nielsen was sworn in as the new Secretary of Homeland Security in early December. In remarks at the ceremony, President Trump did not mention cybersecurity but instead focused on border security. In a Senate Homeland Security Committee questionnaire submitted ahead of her November confirmation

hearing, Ms. Nielsen pledged that cyberattacks and cybercrime would be prioritized at the Department of Homeland Security.

Former telecom lawyer David Redl was sworn in on November 21 as the new Administrator of the National Telecommunications and Information Administration (NTIA), a Commerce Department agency that has a key role in public-private cybersecurity research partnerships. NTIA is also playing a lead role in an Executive Order-mandated report to President Trump that will focus on botnets and other threats to Internet resilience.

There is also wide speculation that Rex Tillerson, Secretary of State, may soon be replaced. The State Department has the primary role in addressing overseas cyber intrusions with their foreign counterparts. Former Representative Michael Pompeo – who currently serves as Director of the Central Intelligence Agency – is the leading contender for replacing Secretary Tillerson. In his January confirmation hearing for his current position, Representative Pompeo acknowledged, “We have an awful lot of work to do [in terms of cybersecurity].” He added, “There is no reason to expect this threat is going to diminish. And that will take a whole of government effort to do that, shared by the executive branch and legislative branch.”

TRADE

This has been an active year for trade policy in the United States. As one of President Trump’s first official actions after taking office in January 2017, he withdrew the United States from the Trans-Pacific Partnership (TPP), a regional trading bloc that included 11 other countries and opened five new markets to U.S. goods under a Free Trade Agreement (FTA). By the end of the year, the remaining 11 TPP countries had announced they would proceed with the agreement without the United States.

The Trump Administration continues to advocate in favor of bilateral FTAs, eschewing multilateral agreements more generally. U.S. officials continue discussions to renegotiate the North American Free Trade Agreement (NAFTA) and discussions with South Korea on the Korea-U.S. Free Trade Agreement (KORUS). Throughout the talks, the administration has continued its focus on ways these and other trade relationships can be amended to lower the United States’ trade deficit in goods with major trading partners.

The year also brought increased use of long-overlooked trade enforcement tools aimed at addressing allegedly unfair trade practices. Specifically, the Trump Administration: (1) launched two separate Section 201 investigations, also known as safeguard investigations, into imports of solar panels and large residential washers; (2) initiated two parallel Section 232 investigations into the national security impacts of steel and aluminum imports; and (3) through the Office of the U.S. Trade Representative, began a Section 301 investigation examining whether certain Chinese policies related to technology transfer, intellectual property, and innovation are unreasonable or discriminatory and burden or restrict U.S. commerce. While all of these investigations have been brought in defense of U.S. domestic manufacturers and other stakeholders, experts caution that the final decisions could have wider-spread – and potentially unintended – consequences for the U.S. economy. Decisions on all four matters are expected in 2018.

Congress is expected to act on two trade measures early in 2018:

- Miscellaneous Tariff Bill (MTB) legislation, implementing duty suspensions and reductions approved by the International Trade Commission over the last year and finalized in recommendations provided to Congress in early August; and
- Reauthorization of the Generalized System of Preferences (GSP) trade preference program, which allows for the duty-free importation of select goods from eligible developing countries.

Both measures enjoy strong bipartisan support among lawmakers, but have been delayed by Congress' continued focus on tax reform and on NAFTA.

NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA)

On August 16, the United States, Mexico, and Canada formally launched the first round of North American Free Trade Agreement (NAFTA) renegotiation talks in Washington, DC. Since then, the parties have met for five formal rounds of talks. Despite progress modernizing the agreement in several key areas – including to address the digital economy and to reflect the advent of the internet and e-commerce – negotiations have faltered over several more controversial proposals advanced by the United States. Among them, the United States has reportedly called for: (1) stricter rules of origin applying to autos and auto parts (and for the first time ever requiring a percentage of the auto/auto part content originate in the United States); (2) making participation in NAFTA's Investor State Dispute Settlement (ISDS) mechanism voluntary, a prospect major international businesses have warned could impact investment in large projects in North America; and (3) a new sunset provision requiring examination of the deal, potentially linked to trade balances, every five years.

The threat of U.S. withdrawal from the deal continues to loom large, especially as U.S. officials express concern that their Canadian and Mexican counterparts have not accepted some of these new proposals. Notably, the NAFTA agreement itself requires parties provide six months' notice to the others before withdrawing from the deal. Thus, President Trump could provide withdrawal notice as a point of leverage in talks, but decline to act further on actually withdrawing the United States from the trilateral FTA. However, many stakeholders – including senior members of Congress – continue to express concerns that the threat of withdrawal would undermine and create uncertainty in trade relations with Canada and Mexico. Withdrawal from a trade agreement is unprecedented in U.S. legal history, and many experts question whether the President could even act unilaterally, without Congress, to withdraw the United States from an FTA.

The sixth round of NAFTA renegotiation talks is scheduled for late January 2018 in Montreal, Canada.

KOREA-U.S. FREE TRADE AGREEMENT (KORUS)

On July 12, the Trump Administration [requested](#) the first ever special session of the Korea-U.S. Free Trade Agreement's (KORUS) Joint Committee under Article 22.2.4 of the deal. In a [letter](#) to his Korean counterpart, U.S. Trade Representative Robert Lighthizer stated the session “and the follow-on negotiations will provide an opportunity to review progress on the implementation of [KORUS], resolve several problems regarding market access in Korea for U.S. exports, and, most importantly, address our significant trade imbalance.”

The decision to call for a Joint Committee meeting followed calls from the President and senior White House officials to reexamine the trade deal. Unlike NAFTA, which entered into force in the mid-1990s, KORUS came into effect in 2012, barely five years ago, suggesting there may be little room for modernizing the KORUS deal, apart from increased enforcement of existing terms.

The U.S. and South Korea have held two special meetings of the Joint Committee since the summer. After the second meeting, the two sides agreed to examine KORUS implementation issues and potential amendments, though they have not yet formally launched any talks to renegotiate the deal. However, according to Korean officials, the U.S. has not clearly narrowed its list of proposed amendments or suggested ways to improve implementation of the KORUS deal, which has limited Korea's ability to prepare a response.

While South Korea has engaged outside stakeholders in a public process to examine potential changes to the deal and implementation thereof, the Trump Administration has not launched any similar proceedings under the United States' own engagement procedures set out under Trade Promotion Authority (TPA). In remarks on December 12, U.S. Commerce Secretary Wilbur Ross reiterated the need to address the United States' trade deficit with South Korea, calling for "permanent solutions, not temporary forbearance," as part of the Trump Administration's continued focus on trade deficits. Like NAFTA, President Trump has threatened to withdraw the United States from the KORUS deal.

BASE REALIGNMENT AND CLOSURES (BRAC)

Congressional debate over a new Base and Realignment and Closures (BRAC) round has been building in recent years. Lawmakers from both parties increasingly acknowledge that, in the words of House Appropriations Mil Con-VA Subcommittee Chairman Charlie Dent (R-PA), "at some point, there will need to be a BRAC."

During the Senate's debate of the *National Defense Authorization Act for Fiscal Year 2018* ([H.R. 2810](#)), Senate Armed Services Committee Chairman John McCain (R-AZ) and Ranking Member Jack Reed (D-RI) filed an amendment containing the text of their joint BRAC proposal, titled the *Defense Force and Infrastructure Review Act of 2017*. Developed over several months, the McCain-Reed proposal would have eliminated the BRAC commission, directing the Pentagon to prepare a list of potential closures and realignment for review by the Government Accountability Office. The President would certify the list, with or without revisions, before submission to Congress, or could opt to end the process. Lawmakers would then vote to approve the full list – thus, rather than acting to disapprove a list, Congress would have to proactively vote to approve the list, or the realignments and closures would not be enacted.

The Pentagon voiced support for the McCain-Reed proposal during the Senate's debate of H.R. 2810. Lucian Niemeyer, Assistant Secretary of Defense for Energy, Installations, and Environment, stated, "[I]t's not just a matter of finding efficiencies, it's a matter of improving the military value and the effectiveness and lethality of our military forces." A coalition of defense-related think tanks and interest groups also urged support for the proposal in a letter organized by Defense Priorities and signed by groups like Heritage Action for America, FreedomWorks, and the Atlantic Council.

In the end, the Senate failed to advance any but the most noncontroversial amendments to H.R. 2810, preventing debate on the McCain-Reed proposal, and Congress ultimately adopted language confirming that the bill does not authorize a new BRAC round. Chairman McCain and Ranking Member Reed have

yet to file their proposal as a stand-alone measure; however, pressure continues to mount, suggesting a BRAC round may be on the horizon.

EXPORT-IMPORT BANK

In December 2015, President Obama signed a long-term reauthorization of the U.S. Export-Import (Ex-Im) Bank through September 30, 2019. However, the Bank requires a quorum of three out of a five-member Senate-confirmed Board of Directors to approve deals of more than \$10 million. Currently, the Board of Directors has four vacancies, restricting the Bank's ability to approve such deals.

So far this year, President Trump has nominated four individuals to serve on the Ex-Im Bank's board:

- Former Representative Scott Garrett (R-NJ), to serve as President;
- Former Representative Spencer Bachus (R-AL), to serve as a Member of the Board;
- Claudia Slacik, to serve as a Member of the Board; and
- Judith Pryor, to serve as a Member of the Board.

All four nominations require Senate confirmation. However, only two are necessary to satisfy the quorum requirement for the approval of deals over \$10 million.

As a member of Congress, Representative Garrett supported efforts to eliminate the Ex-Im Bank. He stated in 2015 that the agency "embodies the corruption of the free enterprise system." His nomination in particular has therefore been met with significant opposition from Ex-Im Bank supporters on Capitol Hill and in the U.S. business community.

On December 19, 2017, the Senate Banking Committee considered the four Ex-Im Board nominations. Representative Garrett's nomination failed to advance because two Republicans – Senators Mike Rounds (R-SD) and Tim Scot (R-SC) – joined all Democrats in voting against it (10-13). The remaining three board nominees advanced out of committee.

The future of the Ex-Im Bank remains uncertain. Representative Garrett's supporters have pledged to fight the remaining nominations on the Senate floor, preventing a board quorum, unless he is confirmed. Banks supporters on and off Capitol Hill argue that billions in financing is being held up by a lack of board quorum and are urging the three remaining nominees be confirmed by the full Senate as soon as possible.



Sam T. Liccardo

MAYOR

December 11, 2017

The Honorable Mitch McConnell
Majority Leader, United States Senate

The Honorable Charles Schumer
Minority Leader, United States Senate

The Honorable Orrin Hatch
Chair, Senate Finance Committee

The Honorable Ron Wyden
Ranking Member, Senate Finance Committee

The Honorable Paul Ryan
Speaker, United States House of Representatives

The Honorable Nancy Pelosi
Minority Leader, United States House of Representatives

The Honorable Kevin Brady
Chair, House Ways and Means Committee

The Honorable Richard Neal
Ranking Member, House Ways and Means Committee

Dear Majority Leader McConnell, Minority Leader Schumer, Speaker Ryan, Minority Leader Pelosi, and Tax Reform Conference Committee Leaders:

On behalf of the City of San José, I write to request your consideration regarding several provisions of concern within the *Tax Cuts and Jobs Act*. As you negotiate the final legislative package, I hope you will give full consideration to preserving these financing mechanisms that facilitate critical economic development, affordable housing, and infrastructure within our nation's communities.

Preserve the tax-exempt status of Private Activity Bonds (PABs): Private Activity Bonds enable local governments to stimulate private investment in critical infrastructure and economic development initiatives. In San José, this financing mechanism is essential to the City's Department of Housing and the San José International Airport. The City of San José ranks in the top 10 U.S. cities for homelessness, in large part due to the affordable housing crisis we are experiencing. Since 2010, nearly 2,000 affordable housing units have been created or preserved through the utilization of PABs. Eleven additional PAB projects are currently planned that will create an additional 1,400 affordable housing units. The elimination of the tax-exempt status of PABs puts these projects in jeopardy, eliminating critical housing opportunities for our most vulnerable population.

The San José International Airport is one of the fastest-growing airports in the country. Expanding the airport terminal will enable the airport to attract and retain airlines and additional flight operations. When Terminal B was constructed, approximately 76 percent of the bonds issued to facilitate construction were PABs. The elimination of this financing tool will affect the airport's ability to grow and accommodate the increasing needs of our region.

Preserve, in full, the State and Local Tax (SALT) Deduction: The SALT deduction is important to our middle-class citizens as it makes the cost of living more affordable and encourages home ownership. In 2015, the average SALT deduction, claimed by 6.1 million California households, was approximately \$18,000. Over 40 percent of San José residents utilize the SALT deduction, averaging \$12,000 annually. Local governments use tax revenues to fund infrastructure projects, law enforcement, and other essential activities. Eliminating or reducing this deduction could lead to a reduction in those services.



Preserve New Markets Tax Credits (NMTC): New Markets Tax Credits facilitate community and economic development in distressed communities by incentivizing private investment. In San José, NMTCs contributed approximately \$7.7 million to the development of the San José Environmental Innovation Center (EIC), a first-of-its-kind “green enterprise” facility that houses services for residents and clean tech entrepreneurs. NMTCs allowed a marginal property with toxic contaminants to be transformed into a showcase of energy and water-efficient practices that support the City’s clean tech sector. It also houses a Habitat for Humanity salvage ReStore, and a state-of-the-art County Hazardous Household Waste facility.

Preserve or Delay the Repeal of Advanced Refunding of Municipal Bonds: Advanced refundings provide local governments the flexibility to monitor and take advantage of interest rate reductions in order to achieve significant debt service cost savings. Repealing this authority, especially with such a short amount of time to prepare, will have a detrimental impact on our local budgets. We support the full preservation of advanced refunding authority. Alternatively, a delay in the effective date or limiting the repeal to only future-issued bonds will allow us time to make the necessary budget adjustments to address those advanced refundings already planned. This month, the use of advanced refundings were part of a consolidated refunding action that resulted in \$185 million savings to our taxpayers.

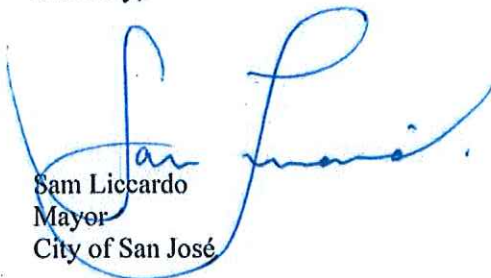
Preserve the Employer Deduction of Commuter Benefits: Many of San José’s employers provide or help subsidize transit passes, or bicycle commuting reimbursements as a benefit to our employees. Altering the employer deduction would eliminate the incentive to provide these benefits, thereby increasing the cost for our employees. Increased commuter costs could negatively affect our transit ridership and the number of bike commuters, which would have a subsequent impact on our local economy, traffic congestion, and public safety concerns.

Remove the Unrelated Business Income Tax (UBIT) Provision: Subjecting 501(a) entities to the UBIT rules, notwithstanding their existing exemption under the Internal Revenue Code, could incorporate state and local government pension plan investments to the UBIT. The application of the UBIT would have a deterrent effect on public pension investment, specifically reducing investment earnings used to pay members benefits and potentially increasing costs to taxpayers by requiring greater contributions.

As you work to finalize a tax reform package, I urge you to retain these critical financing methods, which are used to secure private investment in key infrastructure projects that alleviate the need for federal investment and provide significant benefit to our communities that are most in need. Improving our nation’s infrastructure is a priority of President Trump and a bipartisan congressional priority. Removing these tools will set us back in our efforts to achieve that goal.

Thank you for your time and consideration.

Sincerely,



Sam Liccardo
Mayor
City of San José