

Peeking Around the Corner to 2017

The newly elected 115th Congress will be sworn in on January 3, 2017, and their focus will be on governance issues, averting a government shutdown after April 28, 2017, and two big ticket items that will directly affect employers: health care and tax reform.

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Funding: Baton Passed to Next Congress

The 114th congressional term doesn't end for a few more weeks, but the current Congress left on December 8. Once lawmakers agreed to [legislation](#) to fund government operations through April 28, 2017, and readied it for President Obama's signature, for all practical purposes the current term ended. It will be the 115th Congress' responsibility to pass government funding legislation for the final five months of the 2017 fiscal year starting on April 29, 2017 and ending on September 30, 2017. One can hope that they will achieve that mission before April 29 to avert another last-minute standoff hours before a potential government shutdown. (For background on the short-term stop-gap funding bill enacted on December 10, please see our [December 12 Legislate](#).)

Happy Holidays!

With Congress adjourned for the remainder of the 2016 and the upcoming holidays, the next issue of *Legislate* will be on January 9, 2017.

Nominations and Appointments

Preparing for the incoming, newly elected Congress and Trump administration will take center stage in January.

Congress. Although it is widely anticipated that House Speaker Paul Ryan (R-WI) will continue in this role, the full House of Representatives will cast their votes in January. Other leadership positions and committee assignments will be handled during January as well. Notably, although the Republican lawmakers will continue to hold the majority of seats in both the House and Senate, Democrats increased their total seats in both chambers and, as such, will gain additional seats on certain committees. This, in turn, will require both parties to step up efforts to find common ground and compromise for legislation to advance.

Trump Administration. Most of the current attention is on President-elect Trump's nominations for his incoming Cabinet. For employers, the primary focus is on Rep. Tom Price (R-GA) and Andy Puzder (CEO of CKE Restaurants) who have been nominated for secretary of HHS and secretary of labor, respectively. Senate Democrats are expected to challenge these two appointments during the upcoming Senate confirmation hearings, as it's anticipated that each of these nominees might upend the policies of their predecessors and the Obama administration.

Comment. With the Republicans holding 52 Senate seats and only 51 Senate votes needed to approve President-elect Trump's Cabinet nominations, in all likelihood most, if not all, of them will be confirmed.

- **Health Care:** Rep. Price is a strong proponent of repealing and replacing the Affordable Care Act (ACA). Indeed, Empowering Patients First Act of 2015 ([H.R. 2300](#)) — a bill sponsored by Rep. Price — may be the blueprint for repeal and replace efforts by Republican lawmakers in the next Congress.
- **Regulations, Generally:** According to Rep. Price, although there should be “reasonable regulations to help protect the American people,” regulatory agencies (such as the DOL and HHS) should not continue to overreach as they've done under the Obama administration. His position — consistent with those in the House GOP blueprint — is that regulations are akin to a “[hidden tax](#)” that jeopardize job creation and adversely affect economic growth.
- **Labor/Employment Policies:** Mr. Puzder has been a harsh critic of numerous labor and employment policies pursued during the Obama administration. And, with his background as a businessman, the DOL under his leadership could tilt in favor of businesses, with diminished enforcement efforts and a rollback of regulations that, in his view, are burdensome and have unnecessarily increased labor costs. Mr. Puzder's views include opposition to:
 - The new, greatly expanded [final overtime rule](#) albeit it has been temporarily blocked in accordance with a court issued nationwide injunction. (For more information, see our [December 2 FYI Alert](#).)
 - The NLRB's [Browning-Ferris Industries of California, Inc. decision](#), which changed and expanded the concept of joint employers under the National Labor Relations Act and arguably undermines, or at least jeopardizes, the franchise model that, according to Mr. Puzder, is responsible for “generating jobs and economic growth for decades.” (For more information, see our [September 25, 2015 For Your Information](#).)
 - The [February 2014 executive order](#) raising the federal minimum wage to \$10.10 an hour for workers on federal construction and service contracts, noting that, in his view, “some jobs don't produce enough economic value to bear the increase.”

Health Care and Comprehensive Tax Reform

The incoming Congress and Trump administration will have both these reforms at the top of their agenda:

Health Care Reform: Congressional Republicans want to repeal and replace the ACA. Undoubtedly they can easily advance legislation to repeal portions of the law via the budget reconciliation process (which requires only 51 Senate votes to advance). Indeed, they did so in 2015, with support from Democrats, but it was vetoed by President Obama. (See our [January 25, 2016 Legislate](#).) But, it's questionable whether Republican lawmakers will do so without a replacement bill that enjoys the support of at least 60 Senators — the minimum number of Senate votes for a bill (i.e., a non-budget reconciliation bill) to advance and reach the president's desk.

Comment. Although many Republican lawmakers support a “repeal now and replace later” strategy — some appear to be comfortable only if the “replacement” piece of the strategy, which by its very nature will include a long transition period, is clear and agreed to when the “repeal” piece is enacted (even if the effective date or applicability date is delayed).

In early 2017, it is widely anticipated that Republican lawmakers will reveal the health care reform path they choose to take. Perhaps it will be consistent with [the health care proposals in the House GOP blueprint](#). In addition to proposing a repeal of the ACA, the Republican task force on health care reform notes its support for:

- Preservation of employer-sponsored health care coverage, with a cap on the tax exclusion for such coverage, such as the one included in the Empowering Patients First Act of 2015 (sponsored by Rep. Price, President-elect Trump's nominee for secretary of HHS)
- Continuation of employer-sponsored wellness programs
- Expansion of health savings accounts

For more details on the health care task force proposals, see our [June 27 Legislate](#) and a [snapshot](#) of the health care section of the House GOP blueprint.

Tax Reform: The House Ways and Means Committee has primary jurisdiction for writing tax legislation. And, as [noted](#) by Chairman Kevin Brady (R-TX), “now is the time to move forward with bold, pro-growth tax reform” consistent with the [tax reform section of the House GOP blueprint](#).

Among other things, comprehensive tax reform consistent with the proposal would:

- Lower the corporate tax rate
- Reduce the number of individual income tax brackets from seven to three
- Provide incentives for savings and investment

In terms of employer-sponsored benefit plans, the proposed reforms do not seek to discontinue tax incentives for retirement savings programs. However, the proposal does reflect a willingness to review the current tax incentives for such plans to determine “options for an effective and efficient overall approach to retirement savings.”

For more details on the tax reform task force proposals, see our [July 5 Legislate](#) and a [snapshot](#) of the tax section of the House GOP blueprint.

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