2018 Policy Outlook

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Republicans in Washington are pursuing an ambitious agenda in 2018, while facing stiff political winds as the midterm elections approach. However, there are many key take-aways from the recently enacted tax bill that may give them some comfort and guidance for handling their remaining legislative priorities.

- The Administration (White House and Treasury) worked well with Congressional Republican Leadership and the Committee Chairmen to orchestrate a roll out of the principles guiding the bill and to help get the bills through Congress relatively quickly.
- Republicans in the Senate were able to work through their differences and decide not to let the perfect be the enemy of the good.
- The business community was engaged on many levels and the committees were able to build a strong coalition supporting the bills.
- Republicans are now successfully promoting the actions’ businesses are taking in terms of raising workers’ pay, planning new investments, and providing benefits to their employees.

Republicans will be spending much of 2018 touting the success of the tax bill and will be seeking to replicate those coordinated efforts as they tackle other big issues on their agenda.

The Republican agenda initially is filled with a number of must-pass items largely held over from last year including the following.

- **Striking a compromise to lift the discretionary spending caps in the Budget Control Act** – Republicans want to increase defense spending by $54-$60 billion. In the past, Democrats would push for dollar-for-dollar increases in non-defense spending in these kinds of agreements. Thus far, Republicans have rejected that position and are casting this as a fight overall supporting our troops. We will likely see an increase in discretionary spending by a little over $100 billion with defense seeing bigger increases than non-defense.
- **Completing the Appropriations process for fiscal year 2018** – The Appropriations Committees have been frozen by a lack of agreement on the budget caps. Once the cap agreement is struck, they will work quickly to write the appropriations bills which will likely be package in an omnibus or possibly two or more “bus” vehicles.
- **Raising the debt ceiling** – With the supplemental spending required in the aftermath of 2017’s natural disasters, Treasury is facing its limit on extraordinary measures sooner than what was expected in September. We expect the debt limit will be addressed in one of the must-pass measures early in the calendar year.
- **Addressing the issue with DACA/DREAMERS** – Republicans know they need to act before the end of the DACA program in March. They are hoping to thread the needle by either authorizing the DACA program or passing the DREAMERS bill along with border security measures including some funds for the “wall.”
- **Reauthorizing the Children’s Health Insurance Program (CHIP)** – The disagreement on CHIP has been over how to pay for the bill. We understand bipartisan negotiations have recently begun and will likely produce a bill that can pass on its own and not with other must-pass items.
• **Passing the so-called Medicare Extenders package** – There has been progress on achieving a bipartisan bicameral deal on this package but they are not there yet. These will probably be included in another must-pass measure.

• **Passing the so-called Tax Extenders package** – The tax extenders generally have had more bipartisan support in the Senate than the House. But the Senate will likely be successful in including these in another must-pass vehicle.

After they spend the first month or two of the year cleaning up these remaining agenda items, Republicans will turn to other priority initiatives.

The President has often talked about turning to an infrastructure package “seconds” after finishing the tax bill, and we have already seen a number of White House meetings on the subject. This has the potential to be a bipartisan legislative effort, which may be necessary in order to get a bill through the Senate.

Speaker Ryan and the President have both talked about pursuing “welfare reform.” Specifically, the Speaker has talked about controlling spending through our health care entitlement programs (mainly Medicare and Medicaid). There is also interest in exploring reforms to the Supplemental Nutrition Assistance Program (SNAP) which is the former Food Stamp program. Leader McConnell has been skeptical of the ability of the Senate to tackle entitlement programs given their narrow majority.

The President and Congressional Leaders met over the weekend at Camp David to put together a unified agenda for 2018. It sounds as though the consensus at the retreat was that 2018’s agenda will be comprised of issues that can achieve bipartisan support.

Even though there is an intended unified agenda between Congressional Leaders and the White House, it is possible the House may have votes on (and pass) some measures that have no chance of getting through the Senate. House Leaders have talked about trying again on a bill to “repeal and replace” the Affordable Care Act, knowing that what passes the House will not come up in the Senate.

There is also talk that the Republicans will need to move another tax bill in 2018 to begin to refine the bill recently enacted. Republicans would likely try to use the budget reconciliation process to pass refinements to the bill, as it is not likely there will be bipartisan support to fix a partisan bill.

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DEMOCRATIC PARTY OUTLOOK

2018 will begin finding the Democrats licking their wounds after a bruising tax battle loss. But the election of Doug Jones (D-AL) to the Senate, has given new life to Democratic pick-ups in the midterm elections and substantially increased the Party’s leverage over many unfinished legislative items on this year’s agenda.

While the current new Senate ratio of 51 Republicans to 49 Democrats is tight, this year’s election numbers lean heavily to the Republicans, with 24 Democratic and 2 Independent seats in play (Sanders (VT) and King (ME)) vs. only 8 Republican seats. Additionally, the new Senator from Minnesota, Tina Smith (D), will have to run in 2018 to fill out the remainder of Senator Franken’s term until 2020.

The House midterm election will be interesting to say the least, with a current ratio of 239 Republicans to 193 Democrats and 3 vacancies. However, a pickup of 25 seats by the Democrats is possible. While the average loss for the President’s party over the last 21 midterm elections is 30 seats, the numbers show a wide fluctuation. While Reagan’s party lost 26 seats in 1982, George H.W. Bush only lost 8 seats in 1990, while George W. Bush lost only 8 in 2002. Clinton, however, lost 54 in 94 and Obama lost 63 in 2010.

Senator McConnell would like 2018 to be a year of bipartisan accomplishments, possibly to include an infrastructure bill, while Speaker Ryan has voiced enthusiasm for tackling entitlements as a way to address what he sees as the prime driver of deficits. This intention is an amazing piece of compartmentalization after they passed a tax bill which will add a trillion dollars to the deficit over the next 10 years. The Speaker’s desire may stem from the rumors that he intends to retire next year, so it will be interesting to see which path McConnell and Ryan’s Members choose to follow at their retreat, and whether the President hints at his preference in his State of the Union speech. The 2018 election and the memory of the recent Alabama special election results will clearly be factors in their decision.

Congressional Democrats will be a factor in this year’s Congressional activity thanks to the tightness of the Senate numbers, given that Reconciliation can’t be the solution for all of the Republican legislative priorities. On the House side, the House GOP leadership will have a difficult time corralling a working majority.

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Higher Education Act. The biggest issue on the education agenda is the reauthorization of the Higher Education Act (HEA). There is bipartisan interest in addressing the issues of the cost of higher education, student loan debt levels, the need for more financial counseling for students who are borrowing, and simplification of the income-driving repayment plans. However, there has yet to be bipartisan consensus on solutions on how to address these issues.

The House Education & Workforce Committee reported the PROSPER Act in December to reauthorize HEA, which was last reauthorized in 2008. The bill was reported out of committee on a party-line vote. To address the rising growth in tuition rates, the bill imposes new loan limits that particularly impact graduate programs. There are a number of other controversial provisions in the bill, including rolling back the gainful employment regulations for for-profit schools put in place by the Obama Administration and removing the so-called 90-10 requirement on those schools. The House is expected to pass this bill sometime in the first quarter of 2018.

The Senate Health, Education, Labor and Pensions (HELP) Committee is likely to take a more bipartisan approach to HEA Reauthorization. Chairman Alexander and Ranking Member Murray have a proven track record of forging bipartisan consensus and the expectation is they will try to do so again with HEA. Work on HEA is expected to begin at the committee level in the first quarter of 2018.

Career and Technical Education. The House also passed a bipartisan bill to improve the federal career and technical education (CTE) programs in September. The bill reforms the Carl D. Perkins Career and Technical Education Act, which for more than 30 years, has provided federal support for state and local career and technical education. The bill makes it easier for state and local governments to access these funds and provides more flexibility in how the funds are administered. Even though there is broad bipartisan support for the bill, as it passed in the House on a vote of 405 to 5, it is not expected that the CTE bill will jump ahead of HEA in the Senate.

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OVERVIEW. The energy sector is stronger than ever with oil and natural gas production levels that have made the U.S. the largest producer of hydrocarbons in the world. Expanded drilling opportunities and the streamlining of regulatory requirements should provide for sector growth in the near future. Coal, which sustained a major decline during the previous decade due in part to regulatory hostility and to the low price for natural gas, is now achieving some significant recovery as U.S. exports are rapidly expanding. The resurgence of nuclear power has not materialized as plans to build two new reactors in South Carolina were scrapped in July, and a hoped for resolution for long-term storage of nuclear waste has also run into problems. Renewables (including hydro, wind, solar, geothermal and biofuels) are now 12 percent of total production and have grown modestly with the largest percentage increase in solar power, which has more than doubled. Ethanol and other renewable fuels are holding steady or growing modestly. Perhaps the biggest energy issue demanding immediate attention is the reliability of the grid, with concern about security as a major factor.

There is movement on both the House and Senate Energy Committees to take a fresh look at energy policy, leading perhaps to another effort at comprehensive legislation. The approach in the two committees is at odds, however, with the Senate focused on trying to move a comprehensive bill and the House more focused on passing individual bills. Given all this, it is hard to see how a substantial energy bill is attainable this Session. Far more likely is piecemeal legislation, perhaps as part of other bills, and a focus on regulatory efforts to roll back a host of Obama Administration rules which industry sees as burdensome.

COMPREHENSIVE ENERGY LEGISLATION. Congress attempted to pass comprehensive energy legislation in 2016 with bills that passed the House and Senate, but failed to make it across the finish line as conferees could not reach agreement over some contentious, though mostly regional, natural resources issues. That dynamic, and the pressure of an election year, has made it hard to see how comprehensive energy legislation could make much progress this year. The Senate Energy and Natural Resources Committee leadership continues to push for a comprehensive approach focused mostly on improving efficiency but has made little progress. Chairwoman Lisa Murkowski (R-AK) may also find it hard to get a commitment for floor time from Majority Leader McConnell, in part due to the compressed schedule and the glut of other priority issues in the queue. In fact, Senator Murkowski achieved her primary legislative priority in the tax reform bill, which included language opening the Alaska National Wildlife Refuge (ANWR) to drilling.

INFRASTRUCTURE LEGISLATION. Energy issues could get rolled into the comprehensive infrastructure bill being considered by the White House and Congressional leaders. Infrastructure, in this context, is

Note that in addition to allowing oil and gas exploration in the Alaska National Wildlife Refuge (ANWR) as authorized in the tax reform bill passed in late December, the Trump Administration announced plans on January 4 to open up areas in the Atlantic, Pacific and Arctic to drilling leases over the next five years allowing oil and gas exploration in up to 90 percent of the U.S. outer continental shelf areas.
more than just roads and bridges. Leaders in both parties have been talking about a much broader approach that could incorporate pipelines, electricity grids, energy export facilities, and other infrastructure critical to the sector. Furthermore, since most of the energy infrastructure is privately owned, legislation to encourage or facilitate economic growth through permitting reform could stimulate job and investment growth at no cost to the taxpayers. Look for measures that accelerate and streamline the approval process and increase opportunities for production to be part of any infrastructure legislation.

**Energy Tax Extenders.** Several tax incentives that are beneficial to energy sectors have expired, and there will be an effort to extend those incentives as part of an extenders package to be taken up early in the year. Among these are tax incentives for energy efficiency, renewable energy (small wind, CHP, fuel cells and geothermal heat pumps), nuclear energy, biodiesel, and alternative fuel transportation fuels like propane and compressed natural gas. Energy tax extenders traditionally enjoy more support in the Senate than in the House, but generally receive bipartisan support.

**Other Bills.** We also anticipate a number of smaller measures will move on their own or as part of a larger package of legislation. Included among these are efforts to restore and rebuild Puerto Rico’s energy grid destroyed by Hurricane Maria, several bills to advance small hydropower projects, or efforts to develop policies to encourage more sustainable use of energy resources such as from lube oil. Legislation on restarting the process for identifying a long-term repository for nuclear waste is a possibility, but likely not until after the election as this could complicate the Senate race this fall in Nevada.

**Regulatory Activities.** Of far greater significance will be activity at the agencies to streamline or reform major energy sector business opportunities. Foremost among these is the effort to undo the Obama EPA’s Clean Power Plan (CPP), the implementation of which has been stayed following to a 2016 Supreme Court ruling. In October 2017, Administrator Pruitt issued a notice of proposed rulemaking to undo (or at least redo) the rules on the grounds that they go beyond the EPA’s authority under the Clean Air Act. That rulemaking process will take time but utilities are under no obligation now to implement the rules originally promulgated until and if the stay is lifted. This has led to long-term uncertainty and some in the power generation industry are pushing for action to replace the CPP.

Another major regulatory effort will be to fashion new regulations dealing with how EPA and the U.S. Army Corps of Engineers regulate discharges into the waters of the United States (WOTUS). In November, the agencies announced that they would further delay the effective date of the rules by two years to allow time to rewrite the rules.

The Administration is also working to rewrite federal regulations and policies relating to methane emission at crude oil and natural gas productions facilities, the designation of National Monuments and other protected areas, implementation of the Endangered Species Act, mitigation policies affecting Federally permitted projects, forest management in National Forests and other protected areas, and hydraulic fracturing on Federal and Indian Lands. We expect these efforts to continue with the goal of easing Federal use restriction and streamlining private sector development, likely with support from Congress but with a great deal of litigation brought by blue state Governors and agencies or by the environmental community seeking to block the Administration’s efforts.

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FOOD AND AGRICULTURE

FARM BILL. The current farm bill, which authorizes virtually all of the programs administered by the U.S. Department of Agriculture (USDA), expires in 2018. As a result, Congress will have to enact new farm legislation this year.

Any rewrite of the farm bill is difficult given the scope and complexity of the programs it governs. The challenge is compounded when Congress is under pressure to reduce spending. In 2013, when the farm bill was last debated, the House defeated the bill reported by the House Agriculture Committee. This marked the first time in history that either body of Congress had rejected a farm bill. While the bill was eventually resurrected and enacted into law, the stunning defeat in the House served notice that the alliance of strange bedfellows that traditionally has ushered the farm bill into law may be fraying.

Since at least the 1970s, legislators from rural districts and their urban colleagues have engaged in a protracted “you scratch my back, I’ll scratch yours” arrangement to protect and defend the complex array of agriculture and nutrition programs. Farm state members voted for the food stamp program that benefited predominantly the urban poor; members from the cities supported measures that put more money in farmers’ pockets. Everybody got what they wanted, and farm bill after farm bill was enacted with relative ease. In 2013, confronted with the prospects of trillion dollar deficits, the alliance broke down over the effort to rein in spending on food stamps which had grown in the wake of the great recession. Liberal, urban Democrats who opposed any cuts to the program joined conservative Republicans who thought the proposed cuts did not go far enough to vote down the entire farm bill. It is fair to say that the atmosphere for consideration of a farm bill has worsened. For the last four years, farmers have realized a dramatic decline in net farm income as record harvests have generated low prices for commodities. Budget deficits are growing. The Republican leadership wants to focus on reforming welfare programs, including food stamps. President Trump has fanned the partisan flames as never before. And 2018 is an election year with enormous implications for the Republican majority in Congress. One should expect a stormy ride for the new farm bill.

NAFTA. U.S. agriculture has been a huge winner under NAFTA and thus has much to lose if renegotiation efforts fail and the U.S. withdraws from the trade agreement. Should the talks collapse, the farm community is likely to pressure Congress to block a U.S. withdrawal. Under that scenario, President Trump will be confronted with a choice: living up to his anti-NAFTA rhetoric or antagonizing his base in critical states that put him in the White House. It is not clear how Congress could block U.S. withdrawal from NAFTA, but it is clear that the economic consequences for the agriculture sector are so great that nothing will be spared to avoid the demise of NAFTA.

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MEDICARE EXTENDERS AND CHIP. There are some immediate healthcare issues Congress will need to address, beginning with the expiration of the Medicare tax extenders and the Children’s Health Insurance Program (CHIP). While neither issue was able to be resolved before the end of last year, we believe some progress has been made to form bipartisan consensus on both fronts.

The deadline for action on Medicare extenders is effectively the end of January to avoid having to make payments retroactively. Most providers can hold back their bills until they know whether the additional payment from the extenders will be made. Delaying the payment is far more preferable than trying to receive retroactive payments. There will be a strong push to include Medicare extenders in the next appropriations vehicle to move through Congress.

CHIP has a little more time as the last continuing resolution (CR) provided for payments through the end of March. There seems to be bipartisan agreement on the policy behind reauthorization. However, disagreements remain on how to pay for the bill, but hope remains that there will be sufficient time to identify acceptable off-sets.

AFFORDABLE CARE ACT. A commitment was made to Senator Collins (R-ME) to pass several health care bills in exchange for repealing the individual mandate in the tax bill. Senator Collins wanted to see passed the bipartisan Alexander-Murray bill to stabilize the individual insurance market and grant states some more flexibility under the Affordable Care Act (ACA). Specifically, the bill authorizes the payments for the cost-sharing reduction (CSR) payments and grants states more flexibility and predictability for waivers allowed under the ACA. The other bill Senator Collins wanted to see pass is one she authored with Senator Nelson (D-FL) to provide grants to states to create invisible high-risk pools and reinsurance programs to help lower the cost of premiums. While the Senate Leadership made a commitment to Senator Collins that was backed up by the White House, it is not clear whether these bills will be voted on in the House. There is intense opposition in the House to any bill viewed as propping up the ACA.

The big news recently was the release of the proposed rule from the Department of Labor on association health plans (AHPs). The proposed rule redefines who an “employer” is under the Employee Retirement Income Security Act (ERISA) for the purposes of offering health insurance. The definition of employer under the rule has a two-pronged test. The first test is whether they are in the same trade, industry, line of business, or profession. The second test is whether they have a principal place of business within a region that does not exceed the boundaries of a state or metropolitan area. Since the second prong includes metropolitan areas, you can have businesses grouping together across state lines such as in the Greater New York City Area which comprises areas in New York, New Jersey and Connecticut.

With this redefinition of employer, these businesses could offer plans that do not have to satisfy the essential health benefits under the Affordable Care Act. The Trump Administration is trumpeting this proposal as offering small businesses more options and the ability to offer lower cost health plans. Opponents are concerned this will leave older sicker people in that market with higher cost plans and fewer options.
The proposed rule only has a sixty-day comment period, which is short considering how ambitious the proposal is. And if the final rule is close to the proposed rule, we expect it will be challenged in the courts.

**Drug Pricing.** The 340B Drug Program was the topic of hearings in the House Energy & Commerce Committee and CMS cuts in 2017. In November, CMS issued a rule calling for a $1.6 billion reduction in 340B hospitals’ Medicare Part B drug reimbursements. Several hospital groups filed a lawsuit to block the reductions but that lawsuit was dismissed in late December. The hospital groups have indicated that they plan to continue to pursue the lawsuit. Also, legislative efforts to block these cuts are being discussed. We anticipate an effort to be made to add to the next government funding package some 340B provisions that may help improve the program and lessen the impact on safety net providers. At this point, it is safe to assume that the 340B program will continue to be a topic of debate and consideration in 2018.

**Opioids.** There is also a lot of interest in Congress on taking measures to address the opioid crisis. There is bipartisan interest in seeking additional funding for states to use in their programs to combat the epidemic. There is also talk of the Energy and Commerce Committee writing the next version of the Comprehensive Addiction and Recovery Act (CARA). Details have yet to emerge on how much further this next CARA bill will go.

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With a business sector as diverse and far-reaching as this one, many policy priorities are highly parochial ones for the Second Session of the 115th Congress. Despite that fact, many broad policy threads bind this community of interests’ priorities together. Amongst them are:

- Ongoing calls for airline and surface transportation system improvements, with broad support for an infrastructure bill;

- Concerns regarding the future of NAFTA and other trade agreements pending renewal. This sector is strongly in the free trade category and seeks to eliminate barriers that increase costs, affect sourcing of materials, and hinder the pursuit of new markets;

- Broad workforce and workplace policies, such as completing Senate action on legislation which complements a House-passed bill clarifying the meaning of a “joint-employer” workplace, is a top priority. The pending Department of Labor update of Federal overtime regulations and further refinements to employer obligations under the ACA, also matter greatly;

- Federal inaction on a number of issue fronts such as an increase in the minimum wage, or separate action on overtime, sick leave, and predictive scheduling actions by state and local governments, will be high on the industry’s watch list;

- The NLRB will be at full strength by March or April. What is unknown but certain to draw interest will be how the Board reverses the many cases expanded the rights of unions and their members during the Obama years;

- Technology plays a role as well, as patent troll reform and the impact of AI, robotics, and automation, increasingly come to the fore in industry discussions. Particularly with respect to the latter subject, employers and employees are devoting more and more time to technology’s potential disruptive impact on the workplace (in addition to its’ obvious positive, salutatory affects. Prime Policy Group and the Littler Mendelson law firm submitted comments to the Secretary of Labor in December in response to his request for comments about his Department’s draft strategic plan. We’ll be watching with interest to see how he responds to our policy recommendations;

- Employee recruitment and retention remain at the top of the list for these labor intensive businesses. More and more industry sectors are placing a premium on updated job training and certification programs that provide employees with portable benefits that they may carry into future employment.

- Lastly, a Republican-controlled Congress and White House may afford this and other business sectors either relief or assistance through the use of Executive Orders and new policy priorities from Cabinet Departments.

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IMMIGRATION

**Deferred Action for Childhood Arrivals (DACA).** President Trump last year rescinded President Obama’s Executive Order creating the DACA program. He simultaneously called upon Congress to take action to protect the persons with DACA status. The Administration will not seek removal of DACA recipients until March 5, 2018, giving Congress an opportunity to address the issue with legislation. DACA recipients, often referred to as Dreamers, arrived in the United States as children without documents.

Dreamers have overwhelming popular support. While they have greater support among Congressional Democrats, a significant number of Republican Members have publicly expressed their support or have sponsored legislation protecting the Dreamers. For most Republicans, however, protection for Dreamers must be paired with provisions that strengthen border security, address interior enforcement, and some wish to restrict legal family immigration. President Trump has also spoken of eliminating the diversity lottery visa. Democrats are seeking to limit the extent of these changes.

Some Democrats have called for opposition to any spending deal which does not afford protection for the Dreamers. Whether a deal can be reached between the President and his Republican allies and Congressional Democrats by January 19 remains to be seen. Negotiations have intensified following a meeting between the President and a bipartisan group of legislators this week, which have improved the prospects for a deal.

**Temporary Protected Status.** Congress created Temporary Protected Status (TPS) in 1990. Under the TPS program, aliens living in the United States at a time when conditions in their home countries render their return too difficult or unsafe are authorized temporarily both to remain in the U.S. and to work. Their status is renewable for as long as 18 months at a time.

The decision to grant or renew TPS for any particular group rests with the Secretary of the Department of Homeland Security (DHS). On November 6, 2017, the Acting Secretary of DHS deferred a decision on the renewal of approximately 57,000 Honduran TPS holders. This deferral automatically extended their stay under TPS for six months, until July 5, 2018. On November 20, 2017 the Acting Secretary, however, declined to renew the TPS of approximately 50,000 Haitians, giving them 18 months, until July 2019, to leave the U.S.. This week, the Secretary of DHS announced that the TPS for around 200,000 Salvadorans will be allowed to expire in September 2019.

Several bills have been introduced in Congress to extend protection for TPS holders and the Democratic leadership, as well as a number of Congressional Republicans, can be expected to press the issue in this Session.

**H1 B Visas.** The H1 B visa is utilized for skilled foreign workers. The “Protect and Grow America Act,” sponsored by Congressman Darrell Issa (R-Cal) is aimed at “tightening” requirements for use of the visa. Critics of the H1 B program claim it permits companies to obtain cheaper foreign labor and displace American workers. It is believed this bill will deal a significant blow to outsourcing companies that use the visa. The bill had strong bipartisan support when it passed the House Judiciary Committee by voice vote.
in November. It awaits full House action but the ultimate disposition of legislation addressing H1 B visas is uncertain. The Trump Administration is considering regulatory changes to the program as well.

**EB 5 Visas.** The EB 5 program provides 10,000 visas a year, ultimately leading to citizenship, for foreigners whose investments in economic projects create at least 10 jobs for Americans. A portion of the visas are intended under the statute for use in rural and high unemployment areas. Critics claim that developers and others have abused the program to the detriment of these areas. The program needs to be reauthorized by January 19, 2018. While there is no doubt that the program will be reauthorized, it remains to be seen what changes, if any, are made to the program. A final DHS regulation which would undertake some reform of the program is pending approval in the Trump Administration.

**Other Pending Issues.** In October, The House Judiciary Committee passed the Legal Workforce Act, providing for an e-verify system in the workplace. At the same time, it also passed, by a single vote, the Agricultural Guestworker Act. The fate of these measures remains uncertain.

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OVERVIEW. 2018 will no doubt prove to be a complicated year when it comes to the foreign policy agenda of the United States. President Trump’s approach to decision-making in the foreign policy arena since taking office has already proven to be significantly different than the approach of many Presidents before him, as well as different from the approach of many Members of Congress with responsibility over the foreign policy arena.

The President’s “tough talking, take no prisoners, America-first” approach is unlikely to change in the near-term. Therefore, we can expect Congress, in the year ahead, to continue looking for strategic ways to mesh the policy goals and priorities of its diverse membership, while being careful to take the President’s agenda and priorities into consideration as well. Protecting the national security interests and goals of the U.S., and preserving its relationships with partners around the globe, will continue to be of paramount concern to policymakers on both sides of the aisle.

A number of issues that can be expected to dominate the Congressional foreign policy agenda in 2018 include the crisis in Yemen, the ongoing dangers posed by North Korea, the delicate status of the Iran Nuclear deal, the ongoing war in Syria, the move of the U.S. Embassy in Israel to Jerusalem, Hezbollah’s destabilizing influence throughout the Middle East and beyond, counter-terrorism in Africa, the human rights situation in Myanmar, State Department re-organization efforts and, of course, Russia and China’s difficult relationships with the United States.

YEMEN. Attention on the crisis in Yemen will continue to be a huge concern for Congress, particularly as the scale of the humanitarian disaster there continues to grow. Expect Senate Foreign Relations leadership to continue calling upon Saudi Arabia to end the blockade of Yemen’s ports and to allow critical food, fuel, and medical supplies to reach Yemeni civilians. This may be accompanied by additional calls and legislative initiatives to curtail U.S. weapons sales to Saudi Arabia, although these are unlikely to succeed. Also expect the House and Senate to continue their calls for all parties to come together to bring about a negotiated end to this crisis, as well as their calls for greater attention and leadership from the Administration on these issues.

IRAN. The future of the Iran Nuclear deal can also be expected to be a hot topic for Congress in the new Congressional session. By mid-January, President Trump has some tough decisions to make regarding Tehran’s compliance under the deal. The President did not certify Iran’s compliance with the deal in mid-October 2017 and threatened to terminate it unless actions were taken to address the deals perceived weaknesses. Congress took no action by the end of the year, given its then, laser focus on the tax debate. Early this year, expect dialogue on this issue to continue, as the Senate ponders legislation that would aim to ameliorate the President’s concerns and strive to keep the overall deal intact. In coordination with National Security Advisor H.R. McMaster, Senators Corker and Cardin are currently working to draft legislation, and while some progress has been made, they have yet to reach an agreement on a draft text. Cardin continues to maintain that he will not support any bill that would undermine the Iran nuclear deal, which effectively means that the new legislation would focus on non-nuclear issues, remove the need for
President Trump to certify or decertify Iran’s compliance with the nuclear deal every 90 days, and attempt to generate a forcing mechanism to bring Iran back to the negotiating table.

**NORTH KOREA.** The dangers posed by the increasingly irrational moves of North Korean dictator Kim Jong Un will continue to weigh heavily on the minds of both the Administration and Congress. Many in Congress fear that the President may be too eager to flex his muscles and take the U.S. into war with North Korea. The Senate held several hearings late last year to re-examine (and potentially limit) the President’s authority to use military force in North Korea and elsewhere. Lawmakers have tried for years to pass a new AUMF, but concerns about how long any authorization should last and how to deal with ground troops remain. Expect dialogue on this topic to continue and grow even more heated in the days ahead. Congress may pursue additional sanctions aimed at Chinese banks and other institutions if North Korea continues its ballistic missile and nuclear tests, which is likely.

**SYRIA.** The recent decision of the U.N. Security Council to renew UNSC Resolution 2165 to authorize cross border humanitarian assistance in Syria has already been met with applause by Senate Foreign Relations Ranking Member Ben Cardin (D-MD). As the Congressional session opens in January, expect Congress to continue criticizing the ongoing, negative roles that Iran and Russia have played (and continue to play) in propping up the Assad regime and prolonging the crisis in the country. We can expect Congress to continue their focus on this issue and to increase their calls for Ambassador Haley and the Trump Administration to play stronger roles in supporting UN efforts to bring about an end to this crisis. Congress will be watching closely to see how the Trump administration implements new sanctions against Russia related to its actions in Syria. These sanctions were passed by Congress and signed into law by President Trump in August and the January 29 implementation deadline is quickly approaching.

**STATE DEPARTMENT REORGANIZATION.** The House and Senate can also be expected to continue their focus on how the Trump Administration is going about the process of re-organizing the State Department. In early November, Democrats on the House Foreign Affairs Committee wrote to Secretary Tillerson to say they were deeply concerned about the large numbers of people leaving the Department’s ranks since January 2016 and about efforts to drastically reduce State’s budget. Republican lawmakers, including Senator Bob Corker (R-TN), the Chairman of the Foreign Relations Committee, and John McCain (R-AZ), Chairman of the Armed Services Committee, have echoed the same concerns. This topic can be expected to garner additional, heated debate in the weeks and months ahead, although for some this will depend on Secretary Tillerson’s future. The consensus thinking is that Tillerson will leave the State Department this spring or early summer. State Department reorganization has been a focus for Tillerson but it is unknown whether the next Secretary will devote as much attention to the issue or advocate for radical change.

**AFRICA.** Fighting terrorism in Africa will continue to be a subject of focus and concern for Congress in the year ahead as well, especially for the House Foreign Affairs Committee and its Chairman Royce, R-CA, who recently announced his retirement. At the end of the year, Chairman Royce held hearings to focus policymaker’s attention on the brutal war that radical Islamist terrorists continue waging across the continent, and to focus on the deaths earlier this year of American soldiers in Niger. His emphasis has been on drawing more attention to al-Shabaab in Somalia, Boko Haram in Northern Nigeria, al-Qaeda and ISIS in Libya and their affiliates across the Sahel. In 2018, expect continued Congressional focus on these issues, and calls for the Administration, the State Department and the Department of Defense (especially AFRICOM) to increase their efforts to work together with Congress to ensure progress in this area.
MYANMAR. In early December 2017, the House condemned the ethnic cleansing of the Rohingya Muslim minority in Myanmar by passing a resolution by a two-thirds voice vote calling for an end to the attacks against this minority. Many see this resolution as a first step in further Congressional action that could eventually include movement on a stand-alone sanctions bill (one has already been introduced by Eliot Engel (D-NY) and Steve Chabot (R-OH) that would seek to end U.S. military ties with Myanmar and potentially impose sanctions on industries that fund the Burmese military. If passed, the bill also would re-impose sanctions on the Burmese gem trade, previously lifted by President Obama. A bipartisan companion bill has also been sponsored in the Senate. The prospects of the Senate bill, however, are less positive. Senate Majority Leader Mitch McConnell has a strong personal relationship with Myanmar’s Prime Minister Aung San Suu Kyi and has previously downplayed the need for sanctions. Expect renewed action and focus on this topic in the year ahead.

RUSSIA. Russia’s actions (and the actions of Russian President Vladimir Putin) will also continue to weigh heavily on the minds of Congress and the Administration. While President Trump has emphatically stated that his campaign hid not collude with the Putin regime, there are a number of ongoing Congressional investigations into such action. While Senators McCain and Cardin have applauded Administration actions in recent days to approve the sale of lethal weapons to Ukraine and sanction additional Russian individuals under the Global Magnitsky Act, this in no way means that the “gloves are off” when it comes to Congress continuing to keep a watchful eye on the actions that Russia is taking around the globe in the year ahead, particularly its role in the Syrian conflict. The Administration is facing a January 29 deadline to implement sanctions that were passed by Congress and signed into law by President Trump in August.

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**TAX**

**TAX REFORM.** The Tax Cuts and Jobs Act is now Public Law 115-97. Completed in 48 days of legislative work, a record for such a major bill, the new law will need some refinement in 2018.

Lower rates were achieved for companies and individuals. As for simplification, that is a mixed bag. There will be millions of individual taxpayers who choose the enhanced standard deduction on the 1040EZ form and save themselves the trouble of filing a 1040 with Schedule A deductions. On the corporate side, however, simplification is not a word we would use to describe the legislation that moves the U.S. to a territorial system. In the massive bill, there are already numerous questions about how the new tax system will be implemented and regulated. These questions will manifest themselves into requests for necessary technical corrections. We understand that those technical corrections will be considered this spring by the tax writing committees.

**TAX EXTENDERS.** There are other tax issues that will receive attention as well. There is a desire to block some of the Affordable Care Act taxes and at least two sets of tax extenders that may receive consideration.

The first set of provisions incorporate the traditional tax extenders, including energy and non-energy provisions, which expired in 2016. Senator Hatch introduced in December legislation to extend these provisions through 2018. The second set of provisions addresses the Medicare extenders. In addition, medical device manufacturers are seeking at least a delay in the implementation of the ACA’s medical device excise tax, which went into effect on January 1.

There is also the need to provide clear tax guidance for businesses in Puerto Rico under the new law. We believe legislation will be considered to address the many great needs in Puerto Rico early this year.

It is not clear whether these bills will have to be paid for or whether Democrats will support these efforts. As for timing, some lawmakers want many of these items to be attached to the spending bills for FY 2018. Whether this is the CR/Omnibus bill due January 19 or some other funding bill later, we will be closely monitoring these measures for opportunities for our clients.

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TECHNOLOGY AND TELECOMMUNICATIONS

Last year’s tax bill was a big win for the tech industry which has long pushed for a lower corporate tax rate, lower repatriation rate, and a move to a territorial tax system. The tax bill also offered the ancillary benefit of smoothing relations between the White House and tech community by focusing both on a shared goal. But tax reform is now in the rearview mirror, and the divisions between tech and Trump are likely to resurface as issues like immigration, trade, and net neutrality take center stage this year.

Looming over any tech policy discussion is an awareness that the industry is under greater scrutiny than ever before. Allegations of foreign interference in the 2016 elections have only spurred concerns among some policymakers that the industry’s influence over America’s political, social and economic fabric has grown too fast with too few checks on its power. The industry has been caught flat-footed by the shift in mood and is adapting by working more closely with lawmakers to develop compromise solutions.

With this as context, Executive Branch officials and lawmakers will seek to tackle a host of issues in such a manner that safeguards U.S. technological leadership in the global economy.

Cybersecurity. Despite the massive data breach events at Equifax, Yahoo, and Uber, among others, Congress has yet to act decisively on comprehensive data breach legislation. This means that the issue is covered by roughly 48 different state laws and regulations, making it confusing and difficult for both companies and their customers to comply with existing cybersecurity protections. Disagreements remain on how far to pre-empt state laws (particularly strong ones) and how to reconcile past differences among the financial services and retail industries. Specific details concerning how and when breach notifications must be made and liability issues also remain.

There is speculation that Congress may try to “work it out” this year, with signs of growing cooperation among industries affected and a perceived need to act in the face of growing threats. As part of this effort, Members are seeking input from affected industries to help them shape legislation. Senator Thune (R-SD), for instance, recently held a hearing on data breaches in the Senate Commerce Committee, which he chairs. He is also part of a working group led by Senator Tom Carper (D-DE) which is attempting to work out the comprehensive bill this year. Many bills have been introduced that address some of the data protection shortfalls, but given the thorny nature of these issues, action this election year may depend on revelations of new, high-profile breaches.

The federal government is also focused internally on making more robust its own IT systems as well as the IT systems of local and state governments. Last year, President Trump signed an executive order to revamp federal government IT systems and charged the newly-created American Technology Council (ATC) to oversee the effort. The ATC, largely working under the radar, has made tremendous progress. A White House report issued last month identifies moving to shared, cloud-based services and bolstering IT security as key goals for 2018. Also this year, with or without Congressional direction, the federal government will increase its support to states and localities ahead of the November 2018 elections to ensure their integrity.
TELECOMMUNICATIONS. FCC Chairman Ajit Pai assumed the leadership of the FCC in January 2017 with an ambitious agenda, most notably the reversal of Obama-era net neutrality rules. The reversal effort reignited fierce advocacy campaigns on both sides, and in December, the FCC voted to overturn the existing net neutrality rules. The issue is far from over, however. Opponents have already begun to file lawsuits against the FCC in what is expected to be a multiyear legal battle.

Senator Markey (D-MA) has signaled his intent to challenge the FCC order through a Congressional Review Act resolution of disapproval, and Senate Democratic leader Schumer (D-NY) has vowed to force a vote on the matter. Senator Markey has the support of more than two dozen Democratic colleagues, but passage of the resolution in the House and Senate is highly unlikely. More promising is the growing recognition among lawmakers that legislation will be required to resolve the matter and provide regulatory certainty around net neutrality. In the wake of the FCC’s December order, Rep. Marsha Blackburn (R-TN) introduced legislation that would preserve some aspects Obama-era net neutrality rules.

Broadband deployment is also set to be a top priority for the Administration and Congress this year. Policymakers are focused both on deployment to unserved and underserved areas as well as the nationwide deployment of 5G technology. In early 2017, Chairman Pai, who has long prioritized bridging the digital divide, created the Broadband Deployment Advisory Committee, tasked with reducing barriers to improving broadband infrastructure. The Committee is expected to issue its report in January, and the Committee’s recommendations could figure into a larger infrastructure bill the Administration wants to pass this year. Chairman Pai has introduced the concept of Gigabit Opportunity Zones, which would provide tax incentives to the private sector to deploy broadband to low-income areas.

Chairman Pai has said that, in addition to broadband, his agenda for 2018 includes spectrum issues, 5G deployment and continued review of media ownership issues.

IOT/ARTIFICIAL INTELLIGENCE. As each year brings a flood of new and enhanced products and systems, Congress is facing the need to get ahead of the curve to understand what these technological developments mean for the United States.

Issues related to the Internet of Things (IOT) and artificial intelligence (AI) are generating increasing attention as policymakers determine how to spur U.S. innovation while safeguarding the public. Privacy and cybersecurity issues have helped drive the discussion thus far. Senator Wicker (R-MS), for example, wants the FCC to set up an online source to inform users about the use and safety of these products.

The broad utility of these technologies, however, means that they will come under the purview of almost every Congressional committee and every federal agency. The Transportation Committees, the FAA and the FCC are already immersed in drone-related issues, and this year, Congress is poised to send the President legislation to create a national regulatory framework for self-driving vehicles. This legislation passed out of the House early in the fall of 2017. The Senate legislation, which has not been brought to the Senate floor for a vote, is similar and restricts oversight to vehicles under 10,000 lbs. Senator John Thune (R-SD), the Chair of the Senate Committee on Commerce, Science, and Transportation, has proposed including larger vehicles in the scope. The national conversation about the future of work, artificial intelligence and self-driving technologies are driving a fear that jobs will be usurped by technological change. The Bureau of Labor Statistics recently released a report with its projections for U.S. employment in 2026. BLS foresees an economy increasingly dominated by the service sector; fewer manufacturing jobs; and greater earnings disparity with geography playing a major role. This news comes...
at a time when economic productivity is increasingly confined to the urban centers of the U.S. leaving rural, and economically distressed communities worse off.

Given the incredible changes AI could mean for our economy and the future of work, the use of AI will take on increasing import in Washington. Senator Brian Schatz (D-HI), the Ranking Democrat on the Senate Commerce Committee Subcommittee on Communications, Technology, Innovation, and the Internet, has recently proposed the creation of an independent federal commission to oversee the agencies of the Federal Government which regulate AI. Senators Cantwell (D-WA) and Young (R-IN) have proposed similar legislation.

**OTHER ISSUES.** The tech community will be watching a host of other issues, some of which have been discussed elsewhere in Prime’s 2018 preview. Many tech leaders, for example, are urging Congress to provide a pathway to citizenship for the Dreamers and are registering concerns about increased scrutiny of H-1B applicants. On the trade front, the tech community is alarmed by a potential pull-out of NAFTA and imposition of new tariffs on Chinese electronics. They are also looking for the Administration to make a renewed commitment U.S. advanced manufacturing and for investments in STEM education.

Internet companies will remain engaged in Congressional discussions around liability for third-party content on their sites. The industry recently modified its position, vowing to work with lawmakers on legislation to crackdown on online sex trafficking by placing greater obligations and penalties on online companies.

The merger between AT&T and Time-Warner, although now in the courts, will generate interest and increased conversation on Capitol Hill about the need for antitrust to reflect the changing economy and technological landscape.

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TRADE

2018 promises to be a significant year in trade as the Trump Administration attempts to balance the campaign promises they made with the realities that many of these promises could result in far-reaching negative consequences. Many of these actions are likely to take place before the Trump Administration’s March 1 deadline for submitting its 2018 trade policy agenda to Congress.

NAFTA. The United States, Mexico, and Canada continue the process of renegotiating and modernizing the North American Free Trade Agreement. Although originally scheduled to conclude by the end of 2017, the negotiations have hit a roadblock in the form of several proposals tabled by the United States that cross stated redlines for both Mexico and Canada. The sixth formal round of negotiations is scheduled to begin in Montreal on January 23 and will run through January 28.

This round, the last one that is currently on the schedule, is likely a make-or-break session to resolve a number of the most controversial provisions put forward by the U.S., including Investor-State Dispute Settlements, government procurement, seasonal agriculture, rules of origin, and a sunset clause that would require each country recertify the agreement every five years. The U.S. has threatened to walk away from NAFTA if these provisions are not agreed to, even though they are generally not supported by the American industries they purport to help.

In recent weeks, trade-friendly Senators and Governors, especially those that represent agricultural states who depend on the export opportunities that NAFTA provides, have pressed the Trump Administration on the importance of remaining within NAFTA. They have argued that withdrawing from the agreement would violate the “do no harm” principle and could jeopardize the growth that the U.S. economy has seen, both through the successful completion of tax reform and gains in the U.S. stock market.

Whether progress is made in the upcoming round or not, the negotiations have a ticking clock. There is a self-imposed deadline of March 31 to complete discussions, partially due to political considerations for all three countries: the Mexican presidential election is scheduled for July 1; Canada will hold provincial elections; and the U.S. has midterm primaries and elections. Additionally, as the sixth round concludes mere days before the State of the Union Address, scheduled for January 30, a lack of substantial progress could give the president a reason and opportunity to announce withdrawal.

If President Trump does announce that the U.S. is withdrawing from NAFTA, there are substantial legal and procedural questions that would need to be resolved. As the U.S. has never withdrawn from a trade agreement, legal scholars have offered differing opinions on whether a president has the unilateral authority to do so or if Congressional approval would be required. Additionally, as the language implementing the treaty was passed through and codified into law, it would have to be addressed legislatively. Therefore, the withdrawal process, slated to last only six months per the terms contained within NAFTA, could drag on for much longer, leaving businesses with massive uncertainty.

KORUS. In addition to NAFTA, the U.S. is attempting to modify parts of the Korean Free Trade Agreement, a process initiated in July 2017 at the behest of Trump Administration. Negotiators from the
Office of the United States Trade Representative and their Korean counterparts met last week to discuss priorities and timetables for potential amendments to the agreement, though nothing concrete was agreed to. President Trump has previously called the agreement a “bad deal” and pointed to agriculture and automobiles as two sectors that should be considered in any change. It is notable that these negotiations are not taking place under the Congressionally-designated Trade Promotion Authority (TPA), freeing it from specific timelines or mandatory consultations with Congress or stakeholders.

**China.** There is little question that in addition to renegotiating NAFTA, China is one of the top trade priorities for the Trump Administration, and January is lining up to be a packed month on this front. The Commerce Department in 2017 initiated several actions aimed at rectifying perceived Chinese bad acts. Next week, the International Trade Commission (ITC) is expected to issue a “preliminary injury determination” on a Commerce Department-initiated anti-dumping and countervailing duty investigation into aluminum alloy. Additionally, the Commerce Department will also release two reports on January 15 and 22 detailing how imports of steel and aluminum, respectively are a threat to national security under Section 232 of the Trade Expansion Act of 1962.

Trade actions relating to China will not be limited to steel and aluminum. USTR has initiated a Section 301 investigation into Chinese intellectual property and technology-transfer policies. There is a mid-August deadline for the Administration to act on this investigation, which may include levying tariffs or instituting quotas, and some actions are likely to occur before the deadline.

**More Bilateral Trade Deals on the Horizon?** President Trump, long a critic of multilateral trade agreements, has repeatedly on numerous occasions that the U.S. comes out ahead in bilateral trade deals (his ongoing attempt at modifying KORUS notwithstanding). Therefore, it is reasonable to assume that the Trump Administration will prioritize opportunities to reach such agreements. There is groundwork currently being laid for a potential free trade agreement with the United Kingdom, though formal negotiations and progress is not likely to occur until after the UK has reached an agreement with the European Union on how it will exit from that body. It is possible, however, that the U.S. could attempt to negotiate bilateral agreements with countries who were party to TPP, though that probability may have decreased after those remaining 11 countries agreed to go forward with TPP without the U.S.

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TRANSPORTATION AND INFRASTRUCTURE

FEDERAL AVIATION ADMINISTRATION REAUTHORIZATION. The Federal Aviation Administration and its programs have been operating on a short-term authorization which expires on March 31, 2018. The House FAA reauthorization bill pushed through the Transportation and Infrastructure Committee by its Chairman, Congressman Bill Shuster (R-PA) last year, contains a controversial proposal to privatize the nation’s air traffic control system. The bill has been stalled for months and has not been able to garner enough support to bring to the House floor, with opposition from both Democrats and Republicans. The Senate’s proposal, reported out of the Senate Commerce, Science and Transportation Committee this past summer, also has not seen floor action. While it does not include the privatization plan for air traffic, it includes a provision to make pilot training hours more flexible, which has garnered controversy and threatened its passage. Both provisions threaten the ability of both chambers to arrive at a multi-year reauthorization of the FAA by the end of March. Chairman Thune has indicated a willingness to consider dropping the pilot training proposal to move the bill forward. Chairman Shuster just announced he will not run for re-election to focus on shepherding an infrastructure proposal through the House this year. This may be a sign he is willing to be more flexible on the privatization proposal. Unless both Chairmen would decide to drop the two provisions, another extension will be necessary. The FAA bill could also be included in consideration of a broader infrastructure package.

PRESIDENT’S INFRASTRUCTURE PLAN. The administration’s infrastructure initiative is the third plank of his top three priorities, after health care reform and tax reform. It is expected to be a central theme of his State of the Union message on January 30th. The administration will be releasing a document of “principles” rather than specific legislation. Parameters of the plan have been coming out over the last year.

The plan will be composed of a combination of significant permitting and environmental streamlining reforms and $200 billion in federal dollars over ten years, which the administration will tout as leveraging an additional $800 billion for a total of $1 trillion in infrastructure investment over ten years. The plan envisions broad eligibility for funding not only for traditional transportation initiatives such as roads, bridges, transit, aviation, rail, ports, harbors, but also pipelines, wastewater treatment systems, drinking water, electric transmission grids, rural broadband and veterans’ hospitals. The proposal would largely leave the type of infrastructure to be funded up to the recipients of funds rather than be divided at the federal level. No additional revenue raisers will be proposed, but the $200 billion would be proposed to be offset with federal program cuts which would be proposed in the FY 19 budget submitted in February. The plan will reportedly not address a long-term funding rescue for the largest federal infrastructure program, the Highway Trust Fund, which funds roads, bridges and transit systems. The Highway Trust Fund has been bailed out of multiple bankruptcy cliffs with a patchwork of deposits from the General Treasury over the last ten years and is facing another major cliff in two years.

The plan envisions the $200 billion being distributed via three major buckets:

1. General Incentive Program: 50% of the funds would be distributed under a formula for incentive grants on a 20% Federal/80% State, local and private investment cost share basis. This approach would primarily
benefit urban/suburban communities where alternative funding streams would be more likely to be available. This program relies heavily on public private partnerships to utilize federal dollars as primarily incentive money to complete majority investments by state, locals and the private sector. Projects would be prioritized based on levels of non-federal investment in the project. The idea is to reward projects with more skin in the game. Asset recycling would be a major feature of the plan. This model was used in Australia for a limited time to attract private money toward public works and involved leasing or selling existing public infrastructure to private partners and using the lease or sale proceeds to fund new projects. The concept is to turn an asset into cash and have a bonus payment from the government to do so. The administration has denied that there are “lists” of projects it wants funded.

2. Rural Formula Grant Program: 25% of the funding would be utilized for grants for rural infrastructure projects, perhaps with more traditional majority Federal cost share basis or even 100%. This is to satisfy rural State concerns that these areas do not have the same capabilities to raise non-Federal or private funds as urban areas do. The proposal would specify the thresholds for “rural” and “infrastructure project” to prevent misuse at the state level, but the concept is that states are more capable of identifying rural communities’ infrastructure needs than the federal government. There is some thought that the proposal will “defederalize” the federal dollars once they are handed over to the states to offer more flexibility from a plethora of laws and regulations applying to Federal funds, which is raising concerns amongst labor about whether prevailing wage laws would apply to these projects. The White House believes labor may support this in exchange for a funding influx and job opportunities. The rural funding may be administered by the Department of Agriculture.

3. Transformative Projects Program: 25% of the funding would fund big vision “moonshot type” projects that would not be able to get off the ground without a federal push. It would fund projects that require a higher federal government buy-in, including use of the federal lending and credit programs like TIFIA, WIFIA, and RRIF and expanding eligibility requirements for those programs to accommodate these projects. Elon Musk’s tunneling projects are often cited as an example of what is envisioned being funded under this umbrella. The transformative projects program would be administered by the Department of Commerce.

In addition to funding, the administration is relying heavily on proposed changes to permitting and regulatory streamlining to get projects through federal approval faster. This is referred to as the “10 years to 2 years/One Federal Decision” part of the proposal. The White House has indicated in briefings that they believe the permitting proposals will achieve a whopping $3.6 trillion in cost savings from reducing significant delays. Some of these have already been rolled out in Executive Orders; some will require additional legislation. The proposal will also include some workforce development provisions such as opening Pell Grant eligibility for other trades that would impact infrastructure-related fields.

Reaction from Capitol Hill infrastructure leaders on broad strokes of the plan thus far has been mixed. Most Democrats have already knocked the plan for the federal funding as being too little, budget cuts as offsets, lack of a proposal for addressing the Highway Trust Fund financial crisis and over-reliance on private sector funding. Some Republican leaders have been less vocal but still relatively tepid about the plan, concerned about the lack of revenue raisers, lack of an honest proposal to address the Highway Trust Fund issue and concern that the plan is a devolutionary approach putting more burden on states, localities and the private sector. Conservatives on the Republican side are also wary of another large spending initiative following a tax reform bill not fully paid for, disaster bills larger than expected and impending spending negotiations on FY 18 government funding. One thing the President and Congressional leaders are agreeing on is that, unlike the health care reform and tax reform efforts, the infrastructure initiative
will be pursued as a bipartisan one from the start, an acknowledgement that Democrats will be needed to get it across the finish line.

**Autonomous Vehicle Legislation.** The next big thing in transportation, autonomous vehicles, is also on track for consideration by Congress in 2018. The House passed a bill, the SELF DRIVE Act, on personal autonomous vehicles on a bipartisan basis in September. The bill gives the Federal government, through the National Highway Traffic Safety Administration (NHTSA), exclusive authority to regulate vehicle design, construction, performance and safety the way it currently does regular cars, without dictating too many specifics as the technology is still in development. The bill is designed to create preemption from the 20-or-so State laws that have cropped up attempting to regulate AVs. The bill requires NHTSA to issue rules within two years on what car companies must submit to be certified as safe and their privacy plans with consumer information collected from autonomous vehicles. NHTSA will also have to issue a plethora of exemptions from current federal motor vehicle safety standards to accommodate the changes that autonomous vehicles create. The Senate also has a similar AV bill, the AV START Act, that cleared the Senate Commerce, Science and Transportation Committee in October, but is still facing challenges to floor consideration. However, given the private sector is way ahead of the Congress on these issues, we expect the bills to be reconciled soon and signed into law. After that, we expect the Congress to consider legislation addressing issues surrounding autonomous commercial motor vehicles. Teamsters opposition kept trucks out of the first round of legislation out of concern for driver jobs, but the rapid technology development will drive this debate as well.

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