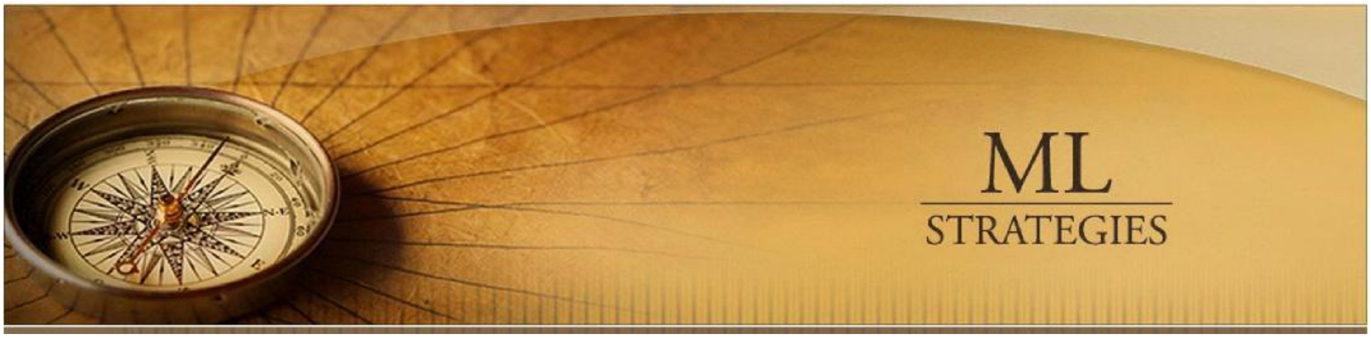

ML Strategies Legislative Update

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ML Strategies, LLC
701 Pennsylvania Avenue, N.W.
Washington, DC 20004 USA
202 296 3622
www.mlstrategies.com

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ML Strategies Outlook for 2018

With the start of a new year, Congress returns to Washington for the second session of the 115th Congress, while President Trump readies for his first State of the Union on January 30, 2018. The legislative agenda for the year is already stacking up, with a number of issues facing hard deadlines for action, not to mention the looming 2018 midterm election cycle which could impact the ability of the Republican majority to enact its policy agenda as they now have a smaller majority (51-49) in the Senate after the arrival of newly elected Democratic Senator Doug Jones (D-AL). While not exhaustive, this Outlook for 2018 provides a high-level report on a number of policy initiatives that we expect will dominate the congressional and executive branch focus and calendar for the coming months. The congressional calendar for 2018 can be found here.

Appropriations and Budget

At the very top of Congress's January agenda is funding the government beyond the January 19th deadline imposed by the latest short-term government funding bill passed December 21, 2017. Congressional leadership and the White House have been negotiating for more than a month, but have failed so far to generate agreement to keep the government funded. Lawmakers from both sides of the aisle must reconcile multiple, major points of contention. Keeping the government on current spending levels or increasing them would trigger automatic spending cuts through sequestration. While Congress lifted the sequestration caps in 2013 and 2015 by bipartisan agreement, Democrats are so far holding the line that any increase in defense spending must be met with an equivalent increase in domestic spending.

In addition, Democrats intend to tie a fix for the Deferred Action for Childhood Arrivals (DACA) program to any government funding deal. While the Democratic caucus may be willing to consider greater border protection, they have signaled they will not agree to any funding of a "border wall", a top priority of President Trump. Meanwhile, conservative congressional Republicans are siding with the President on enforcing border security with a border wall while reducing or eliminating the DACA program. The fight over DACA could potentially be kicked down the road again, until March 5th when DACA protections expire. However, activists on both sides of the issue are becoming increasingly frustrated by congressional inaction.

Additionally, there are a number of other issues that need to resolved in the next few months: the debt ceiling will need to be raised by March, as the government will at that point no longer meet financial obligations without additional funding; the Children's Health Insurance Program (CHIP) will once again run out of funding in just a few months; and disaster relief funding, particularly for the Virgin Islands and Puerto Rico.

Education

As discussed above, we anticipate several bigger-picture policy issues to dominate the early weeks of the new congressional session. That said, we anticipate that education matters will continue to move forward throughout the year – with significant activity likely on which stakeholders should remain engaged.

Higher education, especially, will be important to watch at the beginning of 2018 because education groups, colleges and universities continue to work to understand the repercussions of the passage of the largest tax reform package in thirty years. In addition to tax reform changing the way university endowments and student financial aid packages function, a revamp of the *Higher Education Act* is likely to be a major priority in the House and Senate. The House rewrite of the Higher Education Act, the *Promoting Real Opportunity, Success, and Prosperity through Education Reform Act* (H.R. 4508), was introduced by Rep. Virginia Foxx (R-NC) in December 2017, and marked up by the House Committee on Education and the Workforce. Sen. Lamar Alexander (R-TN), the chair of the Health, Education, Labor and Pensions (HELP) Committee, has already noted that both he and ranking member Patty Murray (D-WA) have already begun their own bipartisan rewrite of the *Higher Education Act*.

Read on here to learn more about the implications of reauthorizing the *Higher Education Act*, as well as other education issues that are likely to be brought forward in 2018, including the *Perkins Act*, the implementation of the *Every Student Succeeds Act* (ESSA), and the *Individuals with Disabilities Education Act* (IDEA).

Energy

Last year, the *Energy and Natural Resources Act* (ENRA) (S. 1460) was introduced by Senate Energy and Natural Resources Committee Chairman Lisa Murkowski (R-AK) and Ranking Member Maria Cantwell (D-WA), skipping the committee process and being placed directly onto the Senate legislative calendar, leaving many to believe that it would see swift passage. The bill includes titles on energy efficiency, infrastructure, supply, accountability, conservation, Federal land management, National Park System management, sportsmen's access, water infrastructure, natural hazards, and Indian energy. Senate ENR staff had hoped that the bill would see floor time, and passage, by the end of the year, but that did not happen, leaving it for consideration in 2018. Whether or not the bill sees floor time during this election year is unclear, particularly as Chairman Murkowski has already secured one of her top priorities in the tax reform bill – opening the Arctic National Wildlife Refuge (ANWR) to energy exploration.

In the House of Representatives, the *Strengthening the Economy with Critical Untapped Resources to Expand (SECURE) American Energy Act* (H.R. 4239), introduced by Reps. Rob Bishop (R-UT), Steve Scalise (R-LA), Henry Cuellar (D-TX), and Vicente González (D-TX), was marked up and reported favorably by the House Energy and Commerce Committee last November. The bill would overhaul Federal lands energy policy to promote expanded exploration, development, and production of oil, gas, and wind resources. Look for the full House to take up the measure in the near future. The House Energy & Commerce Committee is also working to reform the Energy Star program with the Energy Star Reform Act of 2017 and to reform the Energy Policy Conservation Act (EPCA), which is also addressed in S. 1460.

In late December, Senate Finance Committee Chairman Orrin Hatch (R-UT) introduced the *Tax Extenders Act of 2017* (S. 2256), which would extend number of energy-related tax credits, among others, many of which expired at the end of 2016. Covered in the bill are tax credits for renewable energy, alternative fuels, and nuclear energy. With efforts to include the extenders in the tax reform bill last year, there will be a push to address them separately in 2018, although this is an issue that has simmered for several years so it is not clear how successful this latest effort will be.

Finally, look for the Trump administration to continue their deregulatory efforts across the board, including in the energy sector as evidenced by the recent action to open much of the U.S. continental shelf waters to offshore energy exploration.

FAA Reauthorization

The Federal Aviation Administration (FAA) is currently operating under a short-term extension passed last September that expires March 31st, but two key provisions (one in the House, one in the Senate) are controversial enough to put a longer-term FAA's reauthorization in doubt. The 21st Century AIRR Act, proposed by House Transportation and Infrastructure Committee Chairman Bill Shuster (R-PA), includes a provision to privatize air traffic control, a move favored by airlines and opposed by nearly all Democrats and a large enough portion of Republicans to have so far stalled the bill from floor action. On the Senate side, Senate Commerce, Science, and Transportation Chairman John Thune (R-SD) is shepherding the Federal Aviation Administration Reauthorization Act of 2017. Sen. Thune has indicated his willingness to forgo a controversial pilot training program reduction included in his bill to smooth passage of an FAA reauthorization. Rep. Shuster, however, has not relented on the privatization proposal despite opposition on both sides of the aisle. Neither Rep. Shuster nor Sen. Thune have guided their bills to the House or Senate floor yet. Rep. Shuster may be open to removing the privatization proposal from the *AIRR Act* in order to attach it to a larger infrastructure bill, but remains keen to see the proposal enacted in one form or another. Expect debate on the appropriate legislative vehicle for such a proposal in the coming months.

Farm Bill

Last renewed in 2014 and expiring at the end of the current fiscal year on September 30th, congressional committees and staff have been working on the 2018 Farm Bill for some time, with a working draft already submitted to the Congressional Budget Office (CBO) for review. According to the House Agriculture Committee, as part of their work to draft the next Farm Bill, they have held 113 hearings, 16 business meetings, 5 executive briefings, and 6 listening sessions.

Among the Farm Bill's various provisions, the most contentious are likely to be block granting of food stamps, crop support payouts, and subsidies for cotton growers. House Agriculture Committee Chairman Mike Conaway (R-TX) would like to see committee work on the 2018 Farm Bill completed by the end of February, with the full House voting in March, setting up a conference committee with the Senate and final votes in the June-July timeframe. This is an ambitious schedule, particularly given that House Speaker Paul Ryan (R-WI) has stated he wants to tackle entitlement reform in 2018, which has implications for the Farm Bill's provisions for government support programs. Although this will be a Republican-led effort, also keep an eye on the *Food and Farm Act* (H.R. 4425), introduced by Rep. Earl Blumenauer (D-OR) as an alternative Farm Bill, which will influence how progressive Democrats approach the Farm Bill. The legislation is intended to "create a more visionary, equitable, and cost-effective Farm Bill," and focuses on commodities and crop insurance, conservation, and nutrition, while creating new titles for animal welfare and food waste.

Although not directly related to the Farm Bill, the Trump administration's efforts to renegotiate the North American Free Trade Agreement (NAFTA) could have serious implications for the nation's agriculture sector. If the administration ultimately withdraws from NAFTA, agricultural tariffs, currently at zero percent under NAFTA, would revert to World Trade Organization (WTO) levels, with the average tariffs for exports to the United States between 3 and 5 percent, exports to Canada at 4.2 percent, and exports to Mexico at 7.1 percent. NAFTA and other trade priorities are discussed below in the section on trade.

GSA Procurement Reform – Online Marketplace/e-Commerce Implementation

Big changes are coming to the procurement system at the General Services Administration (GSA), courtesy of the freshly-passed *National Defense Authorization Act* (NDAA). Contained within the recently enacted NDAA is language which would direct the GSA to streamline government procurement of commercial off-the-shelf (COTS) products through the establishment of e-commerce portals. The goal is to eventually expand these e-commerce portals to serve the entire government. GSA is tasked with developing an implementation design and schedule within 90 days of December 12, 2017. Two years after that initial development plan is established, GSA will issue guidance to create the online marketplace. The final scope and implementation of the COTS procurement program has changed significantly since House Armed Services Chairman Mac Thornberry (R-TX) introduced the e-portal concept in May 2017, when he introduced the *Defense Acquisition Streamlining and Transparency Act* (H.R. 2511). The NDAA reduced Chairman Thornberry's proposal to a pilot program guaranteed to include at least two e-commerce portal providers, reducing concern that the federal government procurement system would become an Amazon monopoly. However, significant concerns over the scope and scale of a reformed defense acquisition model remain for industry players. Over the next few months, GSA will have to determine how to select online portal providers, and what types of COTS products will be included in the initial pilot program. On January 9th, 2018, GSA will hold a public meeting and request for comment on implementation of the new e-commerce portal system. GSA is seeking public comment on initial ideas for program design and buying practices, and comments on whether existing laws or programs would affect program implementation.

Health Care

"We're going to have to get back next year at entitlement reform, which is how you tackle the debt and the deficit." Speaker Ryan said about 2018 in an interview to close out last year. Given the narrow majority in the Senate, an entitlement reform push would seem like an uphill battle at best. However, we can't rule it out. While a legislative push on entitlement reform would certainly take center stage in the health care space, it's something we can prepare for in some respects.

What's more likely is seeing action in the regulatory space on Medicare with the development and implication of payment policies, Medicaid with the approval of 1115 waivers, FDA with the ongoing implementation of the *21st Century Cures Act*, the Marketplace with the release of the regulations around association health plans (AHP) and short-term limited duration insurance (STLDI) plans, and the repeal of the individual mandate. However, many of these policies will likely not see their full impact until 2019. *Bottom line for 2018: Actions taken in 2018 will determine what 2019 looks like.*

What is more immediate is the status of the CHIP-minibus. Congress left town without addressing the CHIP-minibus. CHIP was extended through March, a bittersweet victory for stakeholders who will continue to suffer the anxiety of the uncertainty as we await full reauthorization. While the government funding deadline of January 19th offers an opportunity for action, Congress may end up waiting until the March deadline to resolve the minibus issues.

You can read about this and more in our complete 2018 health care preview [here.]

Immigration

During his first year in office President Trump devoted a significant amount of attention to fulfilling his campaign promises on immigration, in particular ending the Deferred Action for Childhood Arrivals

(DACA) program and reform of the nation's immigration policy. President Trump joined Sens. Tom Cotton (R-OK) and David Perdue (R-GA) last year to announce a new immigration proposal, the *Reforming American Immigration for Strong Employment (RAISE) Act* (S. 1720).

The president's pledge to remove illegal immigrants has led to the administration working with local sheriffs on a plan to move illegal immigrants from local jails to federal detention facilities; and his travel ban, after several iterations, has been allowed by the Supreme Court to go into effect, banning travel from eight countries. However, his executive order to withhold funds from sanctuary cities was blocked by a federal judge.

In September 2017 the Trump administration announced that the DACA program would be phased out, but that they would continue to renew permits for the next six months, giving Congress until March 5, 2018 to act before DACA recipients lose their status. Many had hoped that Congress would act on DACA before the end of 2017, but that did not happen. Aside from stand-alone DACA legislation, which is unlikely, the next likely opportunity for legislative action on the program will be the next continuing resolution (CR) or possible omnibus legislation passed by January 19 to keep the federal government from shutting down. It is also possible that that congressional action on DACA is pushed off until a later date, with a current deadline for action is March 5th.

Also on deck for action in 2018 is reform and reauthorization of the EB-5 Immigrant Investor Program. The current CR includes an extension of the program through January 19, 2018. A long-term reauthorization is unlikely to move as a stand-alone bill, and could be included in any spending measure approved later this month. Another option for a legislative vehicle would be broad-based immigration reform legislation, which was been highlighted by Senate Majority Leader McConnell (R-KY) as an opportunity for bipartisan cooperation in 2018.

Infrastructure

Over the past year many staffers on Capitol Hill, both Republican and Democratic, expressed that a missed opportunity for the 115th Congress and for the new Trump Administration had been a bipartisan infrastructure package. It now appears that there is significant momentum for doing something on infrastructure on 2018, but it will have to happen soon before we get too far in to the 2018 election cycle. And of course, the question of how to pay for a massive infrastructure effort will take center stage, as well as the need for Senate Republicans to secure the support of Democrats so that they can meet the 60 vote threshold.

According to National Journal, over the past 35 years, federal infrastructure investment has decreased by half, with state and local governments left to pick up the slack. As a result, states have had to rely heavily on borrowing and user fees to fund infrastructure projects. This has also included traditional bonds; taxes, fees, and tolls; and grants. The Trump administration, following up on campaign promises, last year released a $1 trillion infrastructure plan. The proposal was described as revenue neutral based on public-private partnerships (3P), and also included proposals to promote private sector energy infrastructure projects, reform of the Federal Aviation Administration (FAA) and the Transportation Safety Administration (TSA), rolling back of regulations, and prioritizing clean water. The President's proposal suggests many avenues for infrastructure funding such as liberalizing tolling policy, lifting the cap on Private Activity Bonds, funding the Water Infrastructure Finance and Innovation Act (WIFIA) program, expanding the Transportation Infrastructure Finance and Innovation Act (TIFIA) program, and establishing a federal capital revolving fund. With regard to Private Activity Bonds, during the final days of debate over the tax reform bill in December, House Ways and Means Committee Chairman Brady (R-TX) signaled potential interest in limiting the use of these bonds to transportation-related projects as part of a larger infrastructure package. The tax reform bill will require a technical corrections measure at some point in 2018 that could also serve as a point of risk for provisions included or excluded from the tax reform measure.

The Trump proposal would require $167 billion in equity investment from the private sector, in exchange for which private investors would receive a tax credit equal to 82 percent of their equity amount to be repaid to the government from incremental tax revenues from project construction. Democrats have not generally been receptive to the 3P model, arguing that it ignores repairs and incremental expansion projects in rural communities and towns that are too small to generate sufficient toll or other user fee revenues.

NDAA

The President signed the *2018 National Defense Authorization Act* (NDAA) into law on December 12, 2017. However, the bill authorizes nearly $700 billion in defense spending, which is well above the annual *Budget Control Act* (BCA) cap. While Congress debates lifting or changing the BCA caps in order to accommodate the higher budget which is now law, Democrats will not accept spending cap increases for the military which are not also raised for domestic programs. With such a large increase needed, and bipartisan support required to lift the BCA caps, Republicans might turn to the "release valve" of the Overseas Contingency Fund (OCO), which is currently authorized at $60 billion despite President Trump and OMB Director Mick Mulvaney's desired reduction of the OCO. OCO spending is a convenient way to bypass *Budget Control Act* requirements, but its use is increasingly unpopular within Congress. Opponents argue that OCO was never intended to serve as a budget fix, and because OCO funding is not part of the normal appropriations process, it cannot be relied upon by DOD planners for future projects and spending needs. In any case, Congress finds itself up against the continuing resolution deadline of January 19th to either lift the BCA caps or expand the OCO account to pay for the NDAA already signed into law.

Telecommunications

Looking back at 2017, lawmakers considered, and in a few cases, passed, a number of telecom-related bills aimed to speed up broadband deployment, extend surveillance activities, and ensure cybersecurity standards on government devices. Last year, the Senate passed the *MOBILE Now Act* and *DIGIT Act*. *MOBILE Now* encouraged the FCC, in coordination with the NTIA, to free up federal spectrum for commercial wireless broadband services. Meanwhile, the DIGIT Act would require the FCC to seek public comment on Internet of Things (IoT), spectrum needs, and regulatory barriers and establish a working group at the Department of Commerce to provide recommendations to Congress on IoT. Both of these bills are still awaiting consideration by the House Energy and Commerce Committee. We have heard that the Committee could consider these bills in the first half of 2018.

First on Congress' legislative agenda in 2018 will be a debate on the Foreign Intelligence Surveillance Act (FISA). Congress recently extended the legislation until January 19, but a longer reauthorization will be needed and lawmakers are still trying to reconcile the differences between the House and Senate versions of the FISA legislation. We are hearing that a vote will be held in mid-January on reauthorization.

The most controversial issue that is extending into 2018 is the net neutrality debate. In December, the FCC voted to repeal the 2015 Open Internet Order, which had classified Broadband Internet access service ("BIAS") as a Title II service and set a vague general conduct standard, as well as rules against blocking, throttling, and paid prioritization. The FCC's new Order restores BIAS's classification as an information service; FCC oversight over Internet service providers will generally be limited to a requirement that providers be transparent about their practices, and the FCC and FTC will share jurisdiction over transparency violations. Looking ahead to 2018, lawmakers remain hopeful that they can settle this ongoing debate through a legislative fix that contains basis open Internet protections. Chairman of the Senate Commerce Committee, John Thune (R-SD), has indicated he will propose a version of net neutrality legislation and already Rep. Marsha Blackburn (R-TN) has proposed the Open Internet Preservation Act (H.R. 4682). Her bill proposes reinstating rules that ban internet service providers from blocking and throttling web traffic, but it does not prevent paid prioritization deals nor classify BIAS as a Title II service. The House Energy and Commerce Committee has also said it will hold a hearing on paid prioritization in the New Year.

Looking ahead, telecom issues will continue to be a priority in the House and Senate. Movement is expected on the Thune/Schatz and Heller/Manchin discussion drafts. These bills generally target hurdles telecom companies have to deal with in order to get the required state, local, and Federal government approvals for new infrastructure. At the agency level, FCC Chairman Ajit Pai said his top priority at the FCC would be closing the digital divide between those what have access to broadband and those who do not. Republican Commissioner Michael Carr is also taking the lead on actions the FCC can take to spur wireless development. The FCC is also expected to continue working on spectrum allocation and usage questions. We have heard that the FCC may release a Notice of Proposed Rulemaking (NPRM) to follow their request for comments on how licensed and unlicensed users could share mid-band spectrum. It is expected that the FCC will release the NPRM in Q1 or Q2 of 2018.

A deeper dive into telecommunications developments for 2018 can be found here.

Trade

Congress and the Trump administration will continue to focus on trade in the coming year, with the White House seeking to conclude renegotiation of the North American Free Trade Agreement (NAFTA), while the focus on Capitol Hill will be on a new Miscellaneous Tariff Bill (MTB) and renewal of Trade Promotion Authority (TPA).

The U.S. Trade Representative (USTR) has now concluded five rounds of renegotiation talks with Canada and Mexico but fell short of the Administration's goal of concluding renegotiation talks by the end of 2017 due to a number of contentious issues, including automobile content requirements, government procurement, elimination of provisions that allow private companies to challenge trade rulings made by NAFTA countries, and a sunset clause to end NAFTA in five years unless each country agrees to its renewal. Renegotiation talks are set to resume on January 23-28 in Montreal.

The U.S. International Trade Commission (ITC) has concluded its work on the *Miscellaneous Tariff Bill* (MTB), which temporarily reduces or suspends import tariffs paid on particular products imported into the United States, sending its final report to the House Ways and Means Committee and Senate Finance Committee in August 2017. The two committees will move their MTBs in the coming year. USITC, along with the Department of Commerce and Customs and Border Protection (CBP), worked on their report over the past year reviewing petitions from companies across the nation seeking tariff relief. The agencies were tasked with determining whether the products are manufactured domestically in the U.S. and assessing the loss of revenue to the federal government, among other criteria. This is the first MTB process since passage of the *American Manufacturing Competitiveness Act of 2016*. Prior to passage of the Act, Congress had played the predominant role in the MTB process, but under the new process ITC takes the led in vetting the petitions for tariff relief.

TPA, also sometimes referred to as "fast track authority", grants the president the authority to negotiate free trade agreements and send the deal to Congress for an up or down vote, without amendment. The current TPA was signed into law in June 2015 and is set to expire on July 1, 2018; however, if the President requests an extension and Congress does not object, the current TPA will remain in effect until July 1, 2021. Any extension request from the president must be submitted to Congress by April 1, 2018.

The Administration is also engaged in talks with the Government of South Korea regarding proposed modifications to the U.S.-Korea free trade agreement (KORUS). And finally, by March 1, 2018, the Administration is to submit to Congress the president's trade policy for 2018.

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