FEDERAL POLICY UPDATE

AMERICAN SENIORS HOUSING ASSOCIATION
Living Longer Better

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A NEW YEAR, A NEW CONGRESS, A NEW ADMINISTRATION, AND AN AMBITIOUS AGENDA

The 115th Congress convened on January 3rd with Republicans dedicated to an ambitious legislative agenda and most Democrats committed to slowing them down. Senate Majority Leader Mitch McConnell (R-KY) already has instructed his Senate committee chairs to move quickly to hold hearings on President-elect Trump's cabinet appointments, with the goal of confirming as many as possible by Inauguration Day. Nine hearings are scheduled the week of Jan 9 including Attorney General appointee Senator Jeff Sessions (R-AL) and HUD Secretary appointee Dr. Ben Carson. In addition, the Republican congressional leaders intend to approve a budget resolution this week that will create a path for "filibuster-proof" repeal of major elements of Obamacare.

At the same time, tax reform is still front and center, and, as we have reported, a second budget resolution later in 2017 is expected to include instructions that could pave the way for a comprehensive rewrite of the tax laws that could also clear the Senate with only Republican votes. An update on current preparations by the tax-writing committees is below. ASHA is preparing for tax reform as well, joining with 13 other national real estate organizations on December 13th to send a letter to Congress regarding key principles that should guide lawmaker's efforts to reform the tax code. (See details below) ASHA is also a sponsor of a real estate coalition study to examine the House Blueprint for tax reform to assess changes relative to real estate after tax returns and property values.

Housing finance reform is also receiving attention with President-elect Trump's selection of Steven Mnuchin as his nominee for Treasury Secretary. During an interview soon after the announcement, Mnuchin called housing finance reform a priority of the Trump administration. As described below, the key congressional leaders have commented on this issue as well.

TAX REFORM

Prospects for a major tax overhaul in 2017 improved considerably with the election of Donald Trump and with Republicans maintaining control of the House and Senate. Congressional efforts are already in high gear. House Ways and Means Committee Chairman Kevin Brady (R-TX) has said that President-elect Trump is relying on House Republicans to craft tax reform legislation, and the Chairman said he plans to push forward on tax reform early in the 115th Congress.

The House tax-writing committee Chairman Kevin Brady (R-TX) is already working with other Republicans on his committee to flesh out the details of a reform package based on the blueprint released by House Republicans last summer. On December 14th and 15th, they met in closed-door sessions to discuss the path forward. And, while the Chairman continues to request input from stakeholders and consult with the Trump transition team, he and his staff have begun drafting legislative language. Chairman Brady has pledged to have a bill ready to meet the timing and tax reform priorities of the Trump Administration, although a specific timeline for action has not been determined.

The Senate also has laid significant groundwork for tax reform, but Senate Republicans do not currently have their own tax reform blueprint. Finance Committee Chairman Orrin Hatch (R-UT) has been pursuing a corporate integration proposal addressing the double taxation of corporate profits as a means to approach tax reform. However, it now appears that he is discussing a more comprehensive plan with his committee members. In a December 9th speech on the Senate floor, Chairman Hatch said, "I believe that corporate integration can and should be part of the comprehensive tax reform discussion that appears to be on the horizon. But given the current reality, any substantive tax reform proposal will need to be considered and evaluated in the context of what has quickly become a much broader discussion."

Meanwhile, Congressional Democrats are beginning to strategize on tax reform and, more specifically, on the House Republican blueprint. Representative Richard Neal (D-MA) who, as mentioned below, will be taking over the helm as Ranking Member on the Ways and Means Committee, plans to soon convene his committee Democrats to discuss a tax reform agenda. In addition, Democratic Senate Finance Committee staff recently sent a memo that outlined concerns with the House blueprint, noting (as a key takeaway) that it is "highly regressive and fiscally irresponsible."

Although President-elect Trump has made tax reform a priority, it remains unclear how engaged he will be on the details of a tax code overhaul. During the campaign, he embraced the general thrust of the House blueprint and modified his own tax reform plan to align more closely with it. While there are many similarities in the two plans, there also are some significant differences that could be challenging to reconcile. Below is a general overview of the similarities and differences between the House GOP blueprint and the Trump campaign tax plan on provisions of interest to the seniors housing community.

Individual Income Taxes

- ***Rates.*** Both plans would reduce the current seven individual income tax brackets to three: 12%, 25%, and 33%. Both plans would increase the standard deduction, and both would eliminate the alternative minimum tax.

- ***Capital gains/carried interest.*** The blueprint would tax capital gains as ordinary income, but would allow a 50% exclusion of capital gains, dividends, and interest income. The blueprint is silent on the treatment of carried interest, but the issue undoubtedly will receive attention during the tax reform debate given President-elect Trump's interest in taxing tax carried interest as ordinary income. The Trump plan would otherwise retain the current system for taxing capital gains.

- ***Tax credits***. The blueprint would retain and increase the child care tax credit and would retain the earned income tax credit. The Trump plan would create an above-the-line deduction for child and dependent care expenses, would allow a rebate for child care expenses through the earned income tax credit, and would create a dependent care savings account.

- ***Estate tax***. Both plans would repeal the estate tax. The Trump plan would tax capital gains on appreciated assets held at death, to the extent the gains exceed $10 million.

- ***Itemized deductions.*** The blueprint would eliminate most itemized deductions but retain those for mortgage interest and charitable giving, suggesting that they might be made "more effective and efficient." The blueprint would retain retirement savings incentives, suggesting that consolidation and reforms could be considered, and calls for exploration of a general savings account. In addition, the blueprint would increase the standard deduction and thus indirectly eliminate the benefit of the home mortgage interest deduction, raising the concern that home prices would be depressed. The Trump plan would cap itemized deductions (including the home mortgage interest deduction) at $200,000 for joint filers and $100,000 for single filers.

Business Taxes

- ***Real-estate specific***. Both plans are silent on like-kind exchanges, but Ways and Means Committee Chairman Kevin Brady (R-TX) has suggested a need for supporters to make a strong case for retaining section 1031 under a regime that generally would eliminate targeted tax preferences in favor of across-the board rate reductions. Both plans also are silent on the issue of low-income housing tax credits.

- ***Rates***. The blueprint would reduce the corporate income tax rate from the current top rate of 35% to 20%, and active business income of sole proprietorships and pass-through entities would be taxed at a maximum 25% rate. The Trump plan would reduce the top corporate tax rate from 35% to 15% and would allow pass-through entities to elect to be taxed as if they were corporations.

- ***Corporate AMT and credits.*** Both plans would repeal the corporate alternative minimum tax, and both plans would eliminate most credits and deductions except for the research and development tax credit.

- ***Expensing/Depreciation***. The blueprint would replace the current cost recovery system with immediate, full expensing of property (except for land). Under this regime, interest expense would be deductible against interest income, but there would be no current deduction for net interest expenses. Net interest expenses could be carried forward indefinitely to use against future net interest income. The blueprint suggests that the Ways and Means Committee would develop special rules with respect to interest expense of financial services. Under the Trump plan, businesses engaged in manufacturing in the U.S. would be allowed to elect to expense capital investments but would lose the deductibility of corporate interest expense.

- ***International***. The blueprint would move toward a cash-flow tax approach for businesses that would focus on where goods and services are consumed, not where they are produced. Border adjustments would exempt exports from the tax base, but would not allow a deduction for imported goods or services. The House blueprint would move to a territorial tax system, exempting from U.S. tax 100% of dividends from foreign subsidiaries. The latest Trump proposal does not address the taxation of active foreign-source income of U.S. multinationals. Both plans would enact a deemed repatriation for accumulated foreign earnings that would be taxed at a lower rate. The blueprint would provide for a differential tax rate between cash assets at 8.75% and noncash assets at 3.5%, while the Trump plan would provide for a 10% tax rate.

ASHA Joins With Other Real Estate Organizations to Highlight Principles for Tax Reform in Letter to Congress

In advance of the December meetings of the House Ways and Means Committee Republicans, ASHA joined with other national real estate organizations to send key members of Congress a letter that outlines four basic principles to guide lawmakers in their efforts to reform the tax code. The letter states that tax reform should (1) encourage capital formation; (2) ensure tax rules closely reflect the economics of the underlying transaction; (3) recognize that, in limited and narrow situations, tax incentives are needed to address market failures and encourage capital to flow toward socially desirable projects; and (4) provide a well-designed transition regime. The organizations also called for a restructuring of the tax laws to spur capital formation and job creating activity, but we cautioned that care must be taken to avoid unintended harmful consequences. The group will supplement the letter with more detailed comments on specific provisions as tax reform legislation

HOUSING REFORM: OUTLOOK FOR FANNIE MAE AND FREDDIE MAC

Treasury Secretary Nominee Weighs In

Fannie Mae and Freddie Mac are back in the headlines after Steven Mnuchin, President-elect Trump's nominee for Secretary of the Treasury, announced during one of his first interviews that removing the two GSEs from government control ranks as a top ten priority for the incoming administration. Without providing details, Mr. Mnuchin said the GSEs should return to private control, adding that "we will make sure that when they are restructured, they are absolutely safe and don't get taken over again."

House Financial Services Committee Chairman Pushes PATH Act

While the Treasury Secretary will influence the Administration's housing finance policy, there remain strong views in Congress on this issue. House Financial Services Committee Chairman Jeb Hensarling (R-TX) has consistently charged that Fannie Mae, Freddie Mac, and the Federal Housing Administration (FHA) were at the center of the financial crisis and he has sponsored legislation that would liquidate the two GSEs and effectively privatize the home finance mortgage market. Chairman Hensarling confirmed in a recent speech that winding down the two GSEs continues to be a goal and he has said that the bill approved by his committee in 2013, H.R. 2767, the Protecting American Taxpayers and Homeowners Act (PATH Act), will lead to a sustainable housing finance system. ASHA continues to be concerned that, as currently drafted, the PATH Act could have a negative impact on investors and the housing market.

Johnson-Crapo Bill Could be Starting Point in the Senate

On the Senate side, Mike Crapo (R-ID) is expected to take over as the chair of the Senate Banking, Housing, and Urban Affairs Committee in the new Congress. Senator Crapo, who served as the Ranking Member on the Committee when Democrats controlled the Senate, coauthored a housing finance reform bill with then Banking Committee Chairman and now former Senator Tim Johnson (D-SD). In a recent interview, Senator Crapo said that he expects to deal with housing reforms during the 115th Congress and specifically mentioned the Johnson-Crapo bill approved by his committee. That bill would have gradually replaced

Fannie Mae and Freddie Mac with a new government housing finance entity and expanded the role of private mortgage insurers while creating a government backstop. Significantly, the Johnson/Crapo bill included language requested by ASHA that specifically directs that the government's multifamily programs take into consideration special uses of certain types of property, including property for seniors. In addition, the Banking Committee bill would have preserved a government guarantee for multifamily mortgages, maintained the current network of multifamily lenders and servicers, retain the current private-capital risk sharing mechanisms, and established a separate office of multifamily housing in the new government entity.

However, the timing of housing finance reform discussions remains a question. Although some of the key players who would be involved in any housing finance reform debate have called the issue a priority, rolling back the Dodd-Frank financial services reforms currently is a higher priority. In addition, as we have pointed out before, while there is nearly unanimous agreement among lawmakers that the future of Fannie Mae and Freddie Mac needs to be resolved, building a consensus on what the future should look like has proven difficult. Nevertheless, it is important for ASHA to continue educating key decision-makers on the importance to the seniors housing industry of maintaining a stable housing financing infrastructure.

NEW LEADERSHIP AT KEY COMMITTEES

Although most committee Chairs and Ranking Members from the 114th Congress will continue in those positions in 2017, there will be a few changes in leadership positions at committees with jurisdiction over issues important to ASHA. Those changes are noted below. New committee assignments are still under discussion in most cases. Those assignments will be finalized in early January and we will provide information about the membership of key committees in the next update.

Senate Committee Leadership Changes

As mentioned above, **Senator Mike Crapo (R-ID)** is expected to take over the Senate Banking Committee from Senator Richard Shelby (R-AL), who relinquished his position because of the term limits that Republicans impose on their committee chairs. The Banking Committee is expected to be more active under Senator Crapo's leadership, and he recently said that housing market reforms, Dodd-Frank reforms, and reducing regulations on small community banks and credit unions are some of the issues the Committee will deal with in 2017. ASHA has worked with Senator Crapo and his staff in the past, and we look forward to building on this relationship.

Senator Bob Casey (D-PA) has been appointed Ranking Member on the Senate Special Committee on Aging. A member of that Committee since 2007, Senator Casey stated that he wants to focus on Medicare and Medicaid oversight as well as protecting seniors from abuse and fraud.

House Committee Leadership Changes

Representative Virginia Foxx (R-NC) will chair the House Education and the Workforce Committee during the 115th Congress. The incoming Chairwoman has been extremely critical of the Department of Labor (DOL) and the National Labor Relations Board (NLRB). During a recent interview, she stated she wants to undo the DOL's overtime rule and new conflict of interest standards as well as roll back the NLRB's expanded joint employer liability standard and the regulation to streamline the union representation election process.

Representative Richard Neal (D-MA) will take over as Ranking Member on the House Ways and Means Committee from Sander Levin (D-MI) who stepped aside so that he could focus on trade issues and the Affordable Care Act. Representative Neal is known for his ability to work across the aisle.

REGULATORY UPDATES

Another Nail in the DOL Overtime Rule Coffin

It is looking like the DOL overtime rule which was scheduled to go into effect December 1, 2016, but was blocked by a federal district court judge in Texas and continues to face an uphill battle for survival. As expected, the DOL filed a motion for an expedited appeal to the 5th Circuit as well as a motion to halt further proceedings in Texas until a decision is issued in the appeal. However, in early January Judge Mazzant of the district court in Texas, ruled the DOL's motion was without merit. This means if he chooses he can rule before the appeal is decided, to strike down the rule altogether. In addition to court activity, there is also much interest in the Republican controlled Congress to repeal the rule. Additionally, Labor Secretary nominee Andrew Puzder has also expressed his opposition to the rule.

Until further action determines the fate of this rule, employers are free to maintain current classifications and pay practices. For those who have prepared to increase salaries to meet the exempt threshold or reclassify exempt employees to nonexempt, will have to determine whether to pursue this course of action or to take a "wait and see" approach. If an employer has already made changes, they will have to weigh the pros and cons of reversing these actions. ASHA will continue to monitor and report activity on this issue.

CMS RELEASES NEW GUIDANCE FOR MEDICAID BENEFICIARIES IN HCBS

Last month the Centers for Medicare and Medicaid Services (CMS) released some welcomed guidance for those operators who participate in the Medicaid Waiver program. The Frequently Asked Questions (FAQ's) addresses concerns that came out of the final rule of 2014. This rule set criteria for eligible settings, however given the broad characteristics of the criteria, it presumes certain settings such as assisted living with memory care units or residents, are institutional and must prove otherwise under a "heightened scrutiny" review from CMS to be considered eligible under the waiver program. ASHA, working in coalition with the Center for Excellence in Assisted Living (CEAL) advocated for CMS guidance in this area and supported advocacy efforts with a White Paper offering suggested clarifications and language to define person centered dementia care in assisted living. CMS accepted many of the recommendations in this FAQ which is intended to assists states, providers, beneficiaries and other stakeholders to determine a strategy for how regulatory requirements can be met. Guidance can be found here.

ASHA Members Discount on Motion Picture Licensing Corporation (MPLC) Umbrella license extended until March 15,2017

As reported last year, ASHA negotiated an agreement with the MPLC that gives our members the opportunity to obtain a reduced-rate license to exhibit movies and other audiovisual programs in senior living communities in a copyright compliant manner. Along with our senior living trade association partners, we have collectively negotiated a special introductory discount of almost 40% for qualifying members who secured an Umbrella License before December 31, 2016. The MPLC has offered to extend the discount period to March 15, 2017 for those companies who purchase the license subject to a retroactive start date of January 1, 2017. ASHA strongly encourages you to take advantage of this opportunity before this offer expires to ensure the lowest possible license fee as well as to ensure compliance. **Contact MPLC directly at (800) 462-8855 or online at mplc.org** for assistance with pricing and any questions about the 2016 Agreement and the Umbrella License. Click for copy of full article, brochure and Umbrella License terms of agreement.

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