

FEDERAL POLICY UPDATE



**AMERICAN
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Living Longer Better

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» **SPENDING BILLS TAKE SHAPE, TAX REFORM BLUEPRINT FORTHCOMING, REGULATORY OVERLOAD**

The appropriations process has begun in earnest on Capitol Hill with both chambers moving forward on spending bills even though neither chamber has passed a budget. To date, the House has passed one spending bill and six others have been approved by the full House Appropriations Committee. Three spending measures have been passed by the Senate and five others have been approved by the full Senate Appropriations Committee. As we have anticipated, it appears increasingly likely that compromises on “must pass” spending measures will be among the very few items that Congress and the White House agree to enact before the November elections.

However, the Congress remains active on several other fronts. The chairs of the six House Republican “agenda” task forces are on track to release their proposals before the party’s convention in mid-July. An update on their progress is provided below. In addition, both tax-writing Committees are continuing to lay the groundwork for tax reform. Senate Finance Committee Chairman Orrin Hatch (R-UT) is holding hearings on corporate tax integration in preparation for the release of his proposal which he says will occur in the next several weeks. We will be watching Chairman Hatch’s proposal (and others) to evaluate the potential consequences of any changes in the tax treatment of business debt. In the House, Kevin Brady (R-TX) has focused on tax reform proposals in his capacity as Ways and Means Committee Chairman and as Chairman of the House Republican Task Force on Tax Reform.

Congress and the White House have also been busy battling on the regulatory front. The Administration has issued a range of aggressive regulatory changes that implement significant policy changes. In some cases, House Republicans have fought back with resolutions aimed at striking down the regulation. These and other activities are discussed below.

» **HOUSE REPUBLICAN POLICY AGENDA TASK FORCES**

House Speaker Paul Ryan (R-WI) has promised that the policy agenda task forces that he formed will begin unveiling their proposals in June. As we reported previously, the proposals will be in the form of policy papers, not legislative text. The first set of proposals is expected to be released by the Task Force on Poverty, Opportunity, and Upward Mobility in early June, and the rest will be released individually throughout the month. ASHA has been monitoring the progress of the task forces and specifically the tax reform and the health care reform task forces.

Tax Reform Task Force

Details of the policy agenda task forces’ work are still under wraps, but House Ways and Means Committee Chairman Kevin Brady (R-TX) recently disclosed that the tax reform task force, which he also chairs, will release a consensus blueprint by the end of June that will specify details on pro-growth tax reform and outline how House Republicans can achieve their goal of enacting such reform. The Chairman said that the blueprint will be revenue neutral, using a dynamic scoring methodology that remains controversial. One area of possible tax reform that is of particular importance for the real estate community is depreciation rules. ASHA is working with a broad coalition of real estate groups to systematically educate key lawmakers on the importance of retaining the current depreciation schedules and rules for real estate investment.

Health Care Reform Task Force

The House Republican health care reform task force is expected to release an alternative to Obamacare within the next several weeks that is “on-the-shelf” ready for the Republican presidential nominee. The plan is expected to include standard Republican health policy ideas such as expanding health savings accounts, allowing insurers to sell across state lines, creating high-risk pools for people

with pre-existing conditions, and capping the tax exclusion for employer-provided health insurance. We understand that House Speaker Paul Ryan (R-WI) has been an active participant in recent discussions by the task force, and a version of his proposal to make Medicare more market-based may be included in the final plan. The House committees with jurisdiction over health issues are continuing to hold hearings to supplement the work of the task force. Most recently, hearings have been held on increasing patient choice and plan innovation as well as tax proposals to improve the health care system that have been introduced by Members of Congress.

» HOUSING

Report Highlights Housing and Health Care Challenges Facing Seniors

As reported in a May Alert, the Senior Health and Housing Task Force of the Bipartisan Policy Center (BPC) released a set of recommendations that are intended to provide the foundation for a comprehensive national effort to increase the supply of affordable seniors housing. [A copy of the alert is available in the Members Only section of the ASHA webpage.] The task force was created in 2015 to seek innovative and cost-effective ways to meet the housing and health needs of the nation's aging population. The report highlights the need for housing solutions that will accommodate a variety of needs and preferences as individuals age. However, the primary focus is on the needs of lower-income seniors, including a discussion of proposals to improve the Low-Income Housing Tax Credit (LIHTC).

Bipartisan Low-Income Housing Tax Credit (LIHTC) Legislation Introduced

In May, Senator Maria Cantwell (D-WA) and Senate Finance Committee Chairman Orrin Hatch (R-UT) joined to introduce legislation that would expand and strengthen the LIHTC. The Affordable Housing Credit Improvement Act of 2016 (S. 2962) would gradually increase the annual LIHTC allocation authority and the small state minimum by 50 percent. The bill would also establish a minimum 4 percent credit rate for the acquisition of affordable housing and for developments financed with Multifamily Housing Bond-generated credits and would promote broader income-mixing in developments.

FHFA Adjusts Multifamily Lending Caps

On May 4th, the Federal Housing Finance Agency (FHFA) announced it was increasing the 2016 multifamily lending caps for Fannie Mae and Freddie Mac from \$31 billion to \$35 billion, effective immediately. In its 2016 Scorecard released in December 2015, FHFA committed to review the estimates of the overall size of the multifamily finance market each quarter and to increase the caps if warranted. FHFA determined that such an increase was warranted in order to maintain the presence of the Enterprises as a backstop for the multifamily finance market. The Agency also announced that loans in certain affordable and underserved market segments will continue to be excluded

from the multifamily lending purchase caps.

FHA Proposes New Consumer Protections on Reverse Mortgages

The Federal Housing Administration (FHA) recently proposed a rule that would codify recent changes to its Home Equity Conversion Mortgage Program (HECM) that it has implemented in the past several years and also provide additional protections for seniors. Among other things, the proposal would require lenders to fully disclose all HECM loan features, cap lifetime interest rate increases on HECM adjustable-rate mortgages to 5%, and reduce the cap on annual interest rate increases on HECM ARMs from 2% to 1%. In addition, reverse lenders would be required to include utility payments in the property charge assessment and would have to create their own "cash for keys" programs to encourage borrowers to complete a deed-in-lieu of foreclosure and gracefully exit the property versus enduring a lengthy foreclosure process. The comment period will remain open through July 18th. At this point, ASHA does not intend to comment on the proposed regulation, but we will continue to monitor these issues closely since the availability, cost and terms of reverse mortgages will have implications for when an individual may decide to move out of their home into a seniors living residence.

Bill to Ease the Risk Retention Rules Discussed at Banking Subcommittee Hearing

A bill that would provide relief from the Dodd-Frank commercial risk retention rules scheduled to go into effect this December was discussed during a hearing held by the Securities Subcommittee of the Senate Banking, Housing, and Urban Affairs Committee on May 19th. The bill, H.R. 4620, the Preserving Access to CRE Capital Act, would (1) exempt single asset single borrower securitizations transactions from the credit risk retention rules and (2) expand the definition of a qualified commercial mortgage-backed securities (CMBS) real estate loan that would be exempt from the risk retention requirements. H.R. 4620 was approved by the House Financial Services Committee in March and is awaiting action by the full House. Proponents of the measure believe that the CMBS market is losing institutional capacity due to burdensome regulation and that lifting the requirement that the securitizer retain some credit risk in these circumstances is warranted.

» CONGRESS RESPONDS TO ACCELERATION OF ADMINISTRATION'S REGULATORY ACTIVITY

The Obama Administration is continuing to churn out regulations and Congressional Republicans are fighting back by holding hearings to highlight flaws in the proposals, launching investigations, and introducing legislation aimed at stopping implementation. Most recently, the House and Senate approved a joint resolution (H.J. Res. 88) that would prevent the Department of Labor's fiduciary definition rule from taking effect by a 234-183 vote in the House and a 56-41 vote in the Senate. However, both votes are short of the two-thirds majority required to override the threatened Presidential veto so the rule will take

effect. H.J. Res. 88 is the first legislative proposal considered this year that would strike down an Administration regulation, but as discussed below, more votes may be on the way.

Congressional Republicans Oppose DOL's Overtime Rule

As we reported in a May Alert, the DOL finalized its controversial overtime rule that increases to \$47,476 the salary threshold under which workers qualify for overtime pay, effective December 1st. The regulatory proposal created uproar among congressional Republicans even before its release in final form. Hearings were held in both chambers and bills were introduced that would overturn the final rule if it was the same as proposed. Senator Tim Scott (R-SC) introduced S. 2707 with 42 cosponsors and Representative Tim Walberg (R-MI) introduced H.R. 4773 with 167 cosponsors.

More recently, Senate Health, Education, Labor, and Pensions Committee Chairman Lamar Alexander (R-TN) and Senate Homeland Security and Governmental Affairs Committee Chairman Ron Johnson (R-WI) announced they will introduce a Congressional Review Act (CRA) of disapproval on the overtime rule. As we have noted previously, CRA challenges are almost never successful because they require the President's signature (or a veto override) in order to take effect. Meanwhile, Republican appropriators have said the overtime rule is a prime target for a policy rider in the appropriations process, but here again the President does not appear to be willing to sign any legislation that would overturn his Administration's regulatory agenda.

Administration Continues to Focus on Use of Mandatory Pre-Dispute Arbitration Contract Agreements

In early May, the Consumer Financial Protection Bureau (CFPB) issued a proposal that would restrict the use of pre-dispute arbitration clauses in consumer financial contracts. Although the rule will not directly affect seniors housing, we want to bring it to your attention as one more example of the Administration's trend toward tightening the regulation of arbitration agreements. In March, the Department of Education unveiled proposals to end forced arbitration clauses in for-profit student enrollment agreements, and last year the Centers for Medicare and Medicaid Services (CMS) proposed regulations restricting arbitration clauses in contracts of certain long-term care facilities that participate in Medicare and Medicaid programs. ASHA submitted a comment letter to the CMS strongly opposing the proposal.

Congressional Republicans continue to fight the Administration's efforts. Prior to the proposal's release, House Financial Services Committee Subcommittee on Oversight and Investigations Chairman Sean Duffy (R-WI) sent a letter to CFPB Director Richard Cordray informing him of a Committee investigation into the Bureau's crafting of the rule and asking that all communications between various organizations and the Bureau as well as internal memos and records be submitted to the Subcommittee. This request was followed by a hearing in the Financial Services Subcommittee on Financial Institutions Consumer Credit where

witnesses testified that limiting arbitration clauses would result in more class actions and higher costs for consumers. These are the arguments we have made in our discussions with policymakers and we will continue to oppose any unnecessary restrictions on pre-dispute arbitration clauses.

Department of Labor (DOL) Persuader Rule Effective for Agreements Made on or After July 1st

As we reported in April, the DOL released a final regulation that requires employers to disclose agreements with the consultants they hire to develop and implement their message in union organizing campaigns. Previously, disclosures were required only when consultants communicated directly with workers. Under the new rule, employers and consultants will have to disclose indirect activities such as (1) training supervisors or employer representatives to conduct meetings, (2) coordinating or directing activities of supervisors or employer representatives, (3) drafting, revising, or providing speeches, (4) developing employer personnel policies designed to persuade employees, and (5) identifying employees for reward or other targeting. All parties will also have to disclose the amount of fees involved. Any such contacts must be reported by employers to the DOL on Form LM-10 within 90 days after the end of the fiscal year in which the employer engaged in persuader services. Failure to file, or the filing of false or incomplete information, exposes the consultant and employer to civil and criminal penalties. The final rule applies to "arrangements and agreements as well as payments (including reimbursed expenses) made on or after July 1, 2016."

Resolution to Overturn Department of Labor (DOL) Persuader Rule Clears House Committee

A resolution (H.J. Res. 87) that would disapprove the DOL persuader regulation was approved by the House Education and the Workforce Committee on May 18th by a straight party-line vote. ASHA supported the resolution as a member of the Coalition for a Democratic Workplace (CDW) and we will continue monitoring its progress.

DOL Announces Grants to State and Local Governments to Research Expansion of Paid-Leave Laws

Increasing access to paid-leave programs has been a priority of the Obama Administration, and the Department of Labor (DOL) is now looking to the states to advance paid-leave laws. On May 5th, DOL Secretary Thomas Perez announced the availability of \$1 million in grant funds to support research and analysis needed to develop and implement paid family and medical leave programs in jurisdictions across the country. In announcing the grants, Secretary Perez criticized the lack of congressional action on the issue and said the DOL will continue to aid state and local governments to advance their own laws. He noted the number of state and local governments which have adopted or are considering paid-leave legislation and said the grant program will enable similar actions in other jurisdictions. Congressional Republicans have consistently opposed mandating paid leave, with many members saying they would prefer to offer tax and



other incentives to employers who choose to offer paid leave to their employees.

The HOPE for Alzheimer's Act

The Health Outcomes, Planning and Education (HOPE) for Alzheimer's Act (S. 857/H.R. 1559) continues to gain bi-partisan support in both chambers of Congress. S. 857 introduced by Sen. Stabenow (MI), Sen. Collins (ME), Sen. Capito (WV), and Sen. Markey (MA) currently has 55 co-sponsors and HR 1559, introduced by Rep. Smith, (NJ) and Rep. Waters (CA) has 284 co-sponsors. The legislation will provide Alzheimer's patients and their families with much-needed information about the disease and possible treatment options, as well as how to care for their loved one and plan for the future. The bill does this by creating a new care management, planning session for newly diagnosed Alzheimer's patients under Medicare. It also ensures that documentation of a dementia diagnosis and any care planning provided is included in an individual's medical record

The legislation ensures transparency and accountability by requiring the Department of Health and Human Services (HHS) to report to Congress on the steps they are taking to satisfy the outreach requirement, as well as requiring annual reports on the HOPE for Alzheimer's Act benefit utilization, including recommendations on eliminating barriers to access.

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