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Congress approves budget plan unlocking fast-track process to pare back PPACA

Congress this week approved, generally along party lines, a Republican-sponsored budget resolution with language setting up a special parliamentary process intended to fast-track subsequent legislation repealing major components of the Patient Protection and Affordable Care Act (PPACA).

The resolution (S.Con.Res. 3) cleared the House by a vote of 227-198 on January 13 – just one day after it was approved in the Senate by a vote of 51-48.

Budget reconciliation

The budget plan is narrowly focused on congressional Republicans' longtime goal of repealing President Obama's signature health reform legislation enacted in 2010.

To do so, the budget resolution includes so-called "reconciliation" instructions which direct relevant committees – i.e., the Finance and Health, Education, Labor and Pensions committees in the Senate and the Ways and Means and Energy and Commerce committees in the House – to each report legislation by January 27 that reduces the deficit by $1 billion over the next decade. (As a parliamentary matter, a budget resolution cannot stipulate specific policies to be reported, although as a political matter it is understood that the forthcoming bills will deal with dismantling the PPACA.)

The legislation reported by the four committees will be packaged together by the House and Senate Budget committees and, provided the bills comply with the parliamentary rules governing the budget reconciliation process, can be passed by both chambers with a simple majority vote – a potentially powerful tool for Republicans, who control 52 seats in the Senate. (A three-fifths majority – 60 votes – is typically required to advance legislation in that chamber under regular order.)

Policy and timing still taking shape

In early 2016, House and Senate Republicans utilized budget reconciliation to pass legislation (H.R. 3762) that would have repealed – or in some cases simply defanged – major components of the PPACA, including the penalties for not carrying or providing adequate health coverage (i.e., the individual and employer "mandates"), the Medicaid expansion, and the subsidies designed to assist low-income households in paying for coverage. That bill also would have repealed all the tax increases enacted as part of health reform to help finance expanded coverage, including the 3.8 percent net investment income tax, the additional 0.9 percent Medicare payroll tax, the "Cadillac" tax on high-cost employer-provided health coverage, and the medical device excise tax.

Although President Obama vetoed the bill and Congress was not able to override that veto – outcomes that were widely expected – H.R. 3762 was nonetheless viewed as a template for future action in the wake of the November elections, which saw Republicans win control of both the legislative and executive branches.

Repeal-only, or repeal and replace?: That is still likely to be the case; however, in recent days there has been increasing discussion among congressional Republicans and the incoming Trump administration of delaying repeal until the party has agreed on provisions that would replace, in full or in part, the coverage expansion under the PPACA (H.R. 3762 did not attempt to replace any aspect of the health care law.)

President-elect Donald Trump stated in a January 11 press conference that his administration will offer its own repeal-and-replace package in the coming weeks after his nominee for Secretary of Health and Human Services – Republican Rep. Tom Price of Georgia, who currently chairs the House Budget Committee and sits on the Ways and Means Committee – is confirmed by the Senate. Price's confirmation hearing has not yet been scheduled.

"We're going to be submitting as soon as our secretary is approved, almost simultaneously, shortly thereafter, a plan," Trump said. "It will be repeal and replace. It will be various segments, you understand, but will most likely be on the same day or the same week, but probably the same day…."

Trump's comments came shortly after House Majority Leader Kevin McCarthy, R-Calif., noted in a radio interview that Republicans would send the president a reconciliation bill dismantling the PPACA by the end of February.

These comments have cast uncertainty on the exact timing and contours of the future budget reconciliation effort – especially since the January 27 deadline included in the instructions is not binding from a parliamentary perspective. (In other words, the House and Senate committees tasked in the budget resolution with reporting out deficit reduction legislation could miss their deadline to report, but that would not necessarily impede Republican efforts to utilize reconciliation to bypass a Democratic filibuster.)

Multiple steps?: Procedural constraints under the budget reconciliation rules also could affect how lawmakers approach repeal and replacement legislation. For example, a reconciliation bill cannot increase the deficit in the years beyond the 10-year budget window without losing its filibuster-proof privilege, which means Republicans likely will not be able to both repeal and fully replace the PPACA within the same piece of legislation. And that in turn raises the specter of Republicans needing to curry some Democratic support on "replace" provisions moved outside of reconciliation.

House Ways and Means Committee Chairman Kevin Brady, R-Texas, alluded to the possibility of a multi-step approach in remarks to reporters on January 11.

"We're completely focused on not only repealing, but putting in place some important steps toward creating an affordable, personalized health care system. It will take more than one step to do that…and we're going to begin those pretty important steps within the reconciliation bill," Brady said.

Budgetary and procedural factors likewise have fueled discussion of whether some of the tax increases enacted as part of PPACA could be retained – or at least their repeal deferred – in order to protect the reconciliation bill's privilege. (For example, if, unlike last year's H.R. 3762, certain "replace" provisions are included in the reconciliation bill, they would presumably need to be financed.) Similar discussions have arisen in the context of paying for deficit-increasing health-related provisions moved later, outside of reconciliation.

Still, Chairman Brady noted the ultimate goal is repeal when it comes to the PPACA tax increases.

"We want to have maximum relief from the tax provisions in Obamacare," he said.

Brady outlines timetable for initial Ways and Means action

Brady told reporters on January 12 that the Ways and Means Committee is likely to mark up its reconciliation bill the week after House and Senate Republicans return from their joint planning retreat (scheduled for January 25-27) and then send the measure to the House Budget Committee. Floor action by the House in February would round out "the perfect timetable," he said.

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House GOP, Trump team consider path forward for tax reform

House Republicans continued their work to advance tax reform this week, including holding a meeting with senior officials from the incoming Trump administration and informal working group sessions among GOP taxwriters to discuss outstanding questions related to their tax reform blueprint.

Meeting of minds?

House Speaker Paul Ryan, R-Wis., hosted a meeting January 9 that included, among others, incoming White House Chief of Staff Reince Priebus; President-elect Donald Trump's chief strategist, Steve Bannon; and Trump's nominee for Treasury Secretary, Steve Mnuchin. Participants indicated that the primary purpose of the meeting was for Ryan – a former chairman of the Ways and Means Committee long focused on tax policy – to explain the tax reform blueprint House Republicans released last summer and to discuss the legislative process involved in getting a major tax bill to the White House.

No details of what was discussed during the meeting have been divulged, however.

Shared priorities: The House Republican tax reform blueprint and the tax platform advanced by then-candidate Trump during the presidential campaign are broadly similar in their respective calls for lower rates and more limited credits and deductions for individuals and businesses. (For additional details on how the blueprint compares to Trump's campaign platform, see *Tax policy decisions ahead: Impact of the 2016 elections* from Deloitte Tax LLP.)
URL: https://www2.deloitte.com/us/en/pages/tax/articles/tax-policy-impact-of-the-2016-elections.html?id=us:2em:3na:tnv:awa:tax:011317

However, there are key differences in how the two plans reach those goals and details that remain to be worked out – among these are the treatment of business interest, net operating losses, and, significantly, potential changes to the taxation of imports and exports.

Cash-flow tax remains an issue: Both plans advocate imposing a deemed repatriation tax on previously untaxed foreign-source income of US multinationals at a significantly lower rate; but the House Republicans also propose moving from the current worldwide tax regime to a territorial system and implementing a new destination-based cash flow tax (DBCFT). Specifically, the DBCFT provides for “border adjustments” that would serve to eliminate US tax on products, services, and intangibles exported abroad (regardless of their production location); meanwhile, US tax *would be imposed* on products, services, and intangibles imported into the US (regardless of their production location). The mechanism for these border adjustments is not specified.

Although details on the proposal are scant, it has become a focus of increased attention within the business community, especially from retailers, oil refiners, and other industry sectors that are import-dependent, while garnering support from export-heavy sectors and businesses. For their part, Ways and Means Committee Chairman Kevin Brady, R-Texas, Ways and Means Tax Policy Subcommittee Chairman Peter Roskam, R-Ill., and House Majority Leader Kevin McCarthy, R-Calif., all doubled down on border adjustability this week, deeming it a cornerstone of the overall tax reform proposal.

Speaking to *Politico*, Roskam argued that the DBCFT would obviate the need for drafting highly complex rules deterring corporate inversions. He also noted that the proposal is estimated to raise $1.2 trillion in revenue over 10 years to help offset the cost of lower tax rates on business income – money that would otherwise have to be raised through other “really unattractive” tax changes.

“If it’s not border adjustments, then what? You’re back to pay-for after pay-for after pay-for,” he said.

Trump has not said whether he supports the concept of a border-adjusted tax. However, Trump advisor Larry Kudlow – who helped draft the campaign’s tax plan – criticized the blueprint’s DBCFT proposal during a January 12 appearance with senior Ways and Means member Devin Nunes, R-Calif., on CNBC.

“There’s a problem that exists, but this is not the right solution, in my view at least,” Kudlow said, equating it to a national sales tax that he says voters have rejected and declaring the proposal overly complicated. “I think the whole corporate tax reform, which is the most important pro-growth measure, will go down the drain over this,” he added.

Nunes explained that the proposal is intended to move the US “to a cash-flow tax system versus the archaic income tax we have,” adding that “we have to familiarize the American people with how this system works.”

Republican working groups

In other developments this week, details emerged from meetings of some of the informal working groups that Ways and Means Committee Republicans recently convened to examine and develop consensus around certain unresolved issues raised by the tax reform blueprint as the process continues to turn the plan into legislative language.

Following a January 11 working group session focused on energy tax incentives, Ways and Means member Tom Reed, R-N.Y., told reporters that renewable energy credits, including some that have expired, could be part of comprehensive tax reform.

“I think there’s broad consensus on both sides of the aisle that energy and energy security, energy economic opportunity is something that is worthy of a preference from a tax perspective because we’re trying to innovate and create that new energy going forward,” he said. (As part of the year-end 2015 tax bill, solar and wind tax credits were renewed through 2019; however, other renewable credits for geothermal heat pumps, fuel cell property, combined heat and power system property, and small wind turbines were allowed to expire at the end of 2016.)

Other significant issues that Republican committee members are still discussing include the tax treatment of passthrough entities, tax deductions for mortgage interest and charitable giving, retirement savings, education tax incentives, the treatment of carried interest, and rules to prevent the manipulation of partnership income.

Republican lawmakers who are not members of the taxwriting committee are expected to hear more details from Ways and Means leaders and have the opportunity to weigh in on the blueprint during an upcoming House-Senate Republican retreat, scheduled for January 25-27.

House Democratic priorities

For his part, Rep. Richard Neal, D-Mass., who recently became ranking member on the Ways and Means Committee, outlined House Democrats’ tax priorities and discussed Republicans’ plans to repeal the Patient Protection and

Affordable Care Act (PPACA) in a January 12 speech at the National Press Club in Washington. (See additional coverage on PPACA repeal efforts in this issue.)

In particular, Neal urged Republicans to focus on the middle class in addressing both tax reform and changes to the PPACA-related tax provisions.

"If we proceed down the path of concentrated tax cuts for people at the top, it only means more concentrated wealth," he said. "[P]eople in the middle who get the tax cut…they spend it. People at the top save it."

Neal also addressed border adjustability, saying that Republicans should "be mindful of not touching off a trade war." (Some commentators have questioned whether the DBCFT proposal would be in compliance with World Trade Organization rules.)

He added that he is skeptical that Congress can simultaneously tackle two such significant legislative initiatives as tax reform and PPACA repeal.

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Roskam to head Ways and Means Tax Policy Subcommittee

House Ways and Means Committee Chairman Kevin Brady, R-Texas, announced January 6 that GOP taxwriter Peter Roskam of Illinois has been tapped to be the new chairman of the panel's Subcommittee on Tax Policy. Roskam succeeds former Tax Policy Subcommittee Chairman Charles Boustany, who has left Congress after mounting an unsuccessful bid for the Senate in his home state of Louisiana in 2016.

Roskam previously helmed the Ways and Means Oversight Subcommittee. His new appointment positions him to play a key role in moving tax reform legislation through the Ways and Means Committee this year.

"We have a once-in-a-generation opportunity to fix our broken tax code and enhance American competitiveness for generations to come. I'm honored to hold this important gavel and look forward to putting it to good use shepherding tax reform across the finish line," Roskam said in a January 9 news release. (See separate coverage in this issue for additional comments from Roskam on tax reform.)

Other GOP subcommittee changes

Roskam's former leadership post on the Oversight Subcommittee will be assumed by Rep. Vern Buchanan, R-Fla., who previously chaired the Ways and Means Human Resources Subcommittee. Republican taxwriter Adrian Smith of Nebraska will take the top spot on the Human Resources panel.

Ways and Means Republicans Pat Tiberi of Ohio, Sam Johnson of Texas, and Dave Reichert of Washington remain as leaders of the Health, Social Security, and Trade subcommittees, respectively.

Democratic leadership shuffle

Ways and Means Democrats will see several subcommittee leadership changes of their own in the 115th Congress. Newly minted Ways and Means Committee ranking member Richard Neal, D-Mass., announced January 11 that Rep. Lloyd Doggett, D-Texas, is the new ranking member of the Tax Policy Subcommittee. Doggett, who formerly was ranking member of the Human Resources Subcommittee, fills the vacancy created when Neal left the Tax Policy leadership post to become ranking member of the full committee.

Rep. Danny Davis, D-Ill., will take over Doggett's former post as ranking member of the Human Resources panel.

Other subcommittee changes include:

- Health: Rep. Sander Levin, D-Mich., is the new ranking member of the Health Subcommittee, replacing former Rep. Jim McDermott, D-Wash., who retired at the end of the 114th Congress. Levin had been the ranking Democrat on the full Ways and Means Committee but stepped down from that position at the end of the 114th Congress to focus on health care and tax reform issues.
- Social Security: Rep. John Larson, D-Conn., will be the Democratic leader on the Social Security panel, taking over for former ranking member Xavier Becerra, who has been nominated to serve as attorney general in his home state of California.
- **Trade:** Rep. Bill Pascrell, D-N.J. is the new ranking member for the Trade Subcommittee, replacing former Rep. Charles Rangel, D-N.Y., who retired at the end of the 114th Congress.

Rep. John Lewis, D-Ga., remains ranking member of the Oversight Subcommittee.

Complete subcommittee rosters available

Rosters of all the Republican and Democratic Ways and Means subcommittee assignments for the 115th Congress are available on the Ways and Means Committee website.
URL: https://waysandmeans.house.gov/committees/

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