# Beltway Buzz, November 17, 2017: Tax Bill, DHS & DOL Nominees, DACA Push

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**Tax Bill or Health Bill? It's Two Bills in One!** Caught in a legislative black hole, the Affordable Care Act (ACA) cannot escape efforts to eradicate it—or at least large chunks of it. Late Thursday evening, the Senate Finance Committee passed by a 14 to 12 margin its current tax reform bill, which included—to much surprise—a controversial provision that would repeal the ACA's individual mandate. Although the Trump administration had been pushing to eliminate the individual mandate for over two weeks, the Senate had until now feared that the politically charged measure might jeopardize passage of the entire tax bill. Supporters of the Senate bill maintain that the more than $300 billion in estimated savings over 10 years will be used to enhance tax cuts to the middle class, while critics charge that the additional savings will instead be funneled into greater tax breaks for the wealthy. Critics also fear that repealing the individual mandate might cause health insurance premiums to rise sharply and overall coverage to drop as younger and healthier Americans decline to enroll. Interestingly, despite early contrary rumors, the bipartisan Alexander-Murray bill, which would retain federal cost-sharing reduction payments to insurers for two years, did not find its way into the current draft of the Senate bill. The full Senate is expected to vote on the bill sometime during the week after Thanksgiving.

Meanwhile, also on Thursday, the U.S. House of Representatives passed, 277–205, its latest tax reform proposal, which was unveiled last week and which differs in key respects from the Senate markup. (See last week's *Beltway Buzz*.) Notably, the House version does *not* include repeal of the ACA's individual mandate. Additionally, both the House and Senate versions have now eliminated most, but not all, of the provocative executive compensation provisions in each of these bills. Assuming the full Senate eventually passes its tax reform bill, the significant differences between the two will need to be ironed out in committee. It should be an interesting (although potentially dangerous) time to be in Washington once Congress attempts this reconciliation, which it hopes to do by Christmas. (Hat tip to Richard C. Libert, Stephanie A. Smithey, and Timothy G. Verrall.)

**Acosta Oversight.** Secretary of Labor Alex Acosta was in the hot seat on Wednesday, as he fielded oversight questions from members of the House Committee on Education and the Workforce. (Labor geeks who missed the hearing can watch it here.) One interesting question, which Congressman Francis Rooney (R-FL) raised , is what Acosta and the Office of Labor-Management Standards (OLMS) are doing with regard to so-called "worker centers" like Fight for $15. Opponents of these union spin-off groups argue that worker centers have been able to exist in legal purgatory while

skirting the transparency requirements of the Labor-Management Reporting and Disclosure Act and the restrictions on certain union activity in the National Labor Relations Act. It was the second time in two days that Acosta was asked the question (the first time was at an off-the-record event in D.C.), and both times he basically stated, "We'll get back to you." Clearly, Secretary Acosta has a lot on his plate, but the *Buzz* is wondering if two questions in two days may start the regulatory ball rolling at the OLMS.

**EEO-1 Lawsuit.** On November 15, 2017, the National Women's Law Center and the Labor Council for Latin American Advancement filed a lawsuit against the Office of Management and Budget and the Equal Employment Opportunity Commission for staying the EEO-1 compensation and hours worked collection components that were finalized in 2016. The lawsuit alleges a series of Administrative Procedure Act (APA) violations, despite the fact that the information collection proceeded through the Paperwork Reduction Act (PRA) clearance process. Plaintiffs are likely relying on the APA because PRA does not provide for a private cause of action.

**DHS Nominees.** There was some news this week about Department of Homeland Security nominees:

- On November 14, the Senate Committee on Homeland Security and Governmental Affairs advanced the nomination of Kirstjen Nielsen to become Homeland Security secretary. Next stop for Nielsen is a vote by the full Senate, which has yet to be scheduled. Among other matters, immigration policy wonks are wondering what influence Nielsen may have over United States Citizenship and Immigration Services priorities.

- That same day, President Trump nominated Thomas Homan to be director of U.S. Immigration and Customs Enforcement (ICE) within the Department of Homeland Security. Homan is currently serving in the role in an acting capacity. The *Buzz* has previously reported that a 2016 story in *The Washington Post* described the acting ICE director thusly: "Thomas Homan deports people. And he's really good at it."

**DOL Nominees.** On November 15, the Senate Health, Education, Labor and Pensions (HELP) Committee held a confirmation hearing on the nominations of Kate O'Scannlain to be Solicitor of Labor and Preston Rutledge to be assistant secretary of the Employee Benefits Security Administration. Next stop for the nominees will be a vote by the committee, which has not yet been scheduled. A brief exchange between Committee Chairman Lamar Alexander (R-TN) and O'Scannlain on the legal significance of agency guidance documents is [here](#).

**DACA Push.** With the Deferred Action for Childhood Arrivals (DACA) clock ticking away, business groups in D.C. continue to encourage Congress to come up with a legislative solution. As part of these efforts, on November 13, 2017, the National Association of Manufacturers sent a [letter](#) signed by over 30 manufacturing groups urging Congress to "[p]ass legislation well before the administration's March deadline." Not to be outdone, on November 15, the [U.S. Chamber of Commerce](#) led a group of 40 companies to Capitol Hill to lobby for a DACA fix.

**Mine Your Own Business.** On Wednesday, the House Financial Services Committee approved a bill (H.R. 4289) that [would repeal the Dodd–Frank Act's § 1503 reporting requirements](#) relating to coal and mine safety. As a result of § 1503 and its 2011 Securities and Exchange Commission (SEC) implementing regulations, covered operators are required to disclose mine safety and health violations, citations, legal actions, and mining-related fatalities in their quarterly and annual reports

filed with the SEC. By eliminating the underlying authority for the regulations, H.R. 4289 would do away with these reporting requirements, though the bill faces an uphill battle.

If this disclosure scheme sounds familiar, it should. The Dodd–Frank Act's § 1504 applies similar reporting requirements to companies in the oil, gas, and mining industries that make payments to foreign governments. The SEC regulations implementing this provision have the ignominious distinction of being the first of 15 regulations to be rescinded this year under the Congressional Review Act (CRA). (If you're wondering, the § 1503 implementing regulations are too old for CRA treatment.)

In other mine-related news, earlier this week, [David Zatezalo was confirmed by the Senate](#) to be Assistant Secretary of Labor for the Mine Safety and Health Administration.

**A Different Kind of Political Race.** House Majority Whip Steve Scalise (R-LA), who has been getting around the halls of Congress on a scooter since he was shot in June, recently challenged 87-year-old Congressman and scooter user Sam Johnson (R-TX) to a race around the Capitol. Said 91-year-old Congressman John Dingell (D-MI) upon learning about the race: "Don't make me come back there, kids."

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