

Holland & Knight

800 17th Street, NW, Suite 1100 | Washington, DC 20006 | T 202.955.3000 | F 202.955.5564
Holland & Knight LLP | www.hklaw.com

Memorandum

Date: May 8, 2017
To: Seattle City Council
From: Holland & Knight
Re: Federal Update

I. FY 2017 Appropriations

Last week, the House and Senate passed an omnibus funding package for FY 2017. The package includes funding for 11 appropriations bills through September 30, 2017. The bill has move to the President's desk for signature. Below are key highlights from appropriations bills included in the omnibus package.

A. Transportation and Housing

The omnibus provides **\$57.7 billion** (an increase of \$350 million from FY 2016) in discretionary spending for the Departments of Transportation, Housing and Urban Development, and related agencies.

- **\$2.4 billion for Capital Investment Grants** (an increase of \$230 million from FY 2016, including \$1.5 billion for full funding grant agreement (FFGA) transit projects)
- \$408 million for Small Starts projects that begin in FY 2017 – **includes \$50 million for the Center City Streetcar**
- **TIGER Grants: \$500 million** (same as FY 2016)
 - The maximum share of total annual grants that can go to TIGER projects in any one state drops from 20 percent to 10 percent.
 - \$5 million minimum to \$25 million max for project awards
 - No planning awards
- **Community Development Block Grants: \$3 billion** (same as FY 2016)
 - **HOME Investment Partnerships Program: \$950 million** (consistent with FY 2016 levels)
 - **Grants for Homeless Assistance: \$2.4 billion** (increase of \$133 million over FY 2016)
- **LIHEAP: \$3.49 billion** (\$100 million increase from FY 2016)
- **Weatherization Assistance Program: \$225 million** (increase of \$10 million from FY 2016)

B. Opioid Prevention & Treatment Funding

- Substance Abuse and Mental Health Administration (SAMHSA): \$3.6 billion
 - **Increase of \$150 million for programs related to prevention and treatment of opioid and heroin use, combined with \$500 million in funding authorized by 21st Century Cures Act for a total of \$2.6 billion for substance abuse treatment** (total increase of \$650 million from FY 2016)

- Maintains funding for **Substance Abuse Prevention and Treatment Block Grant** at \$1.8 billion
- Increases funding for the **Mental Health Block Grant** by \$30 million, to a new total of \$563 million

II. Healthcare Reform

Six weeks after initial attempts failed, Republicans narrowly passed their Affordable Care Act (ACA) replacement bill, the American Health Care Act (AHCA), on May 4 in the House by a vote of 217-213.

- The bill would eliminate tax penalties for those without insurance, and would roll back state-by-state expansions of Medicaid. It would also offer tax credits of \$2,000-\$4,000 a year, in place of government subsidized insurance policies. The version that passed on May 4 was also revised to allow states to waive ACA protections that prevent insurance companies from charging more based on an individual's health and pre-existing conditions.
- Rep. Fred Upton (R-MI) included an amendment – credited with helping gain the votes of more moderate GOP members – that would modify the bill's Patient and State Stability Fund, to provide \$8 billion more from 2018-2023 to states with a waiver from community rating. The funds would be used to provide assistance in reducing premiums and out-of-pocket costs to individuals who may see increases in monthly premium rates because they reside in a state with an approved waiver; have a pre-existing condition; are uninsured due to lack of continued coverage; or purchase health care in the individual market.
- The fate of the bill in the Senate is unclear. Senators are reluctant to give a timeline for voting, largely because the bill has not been scored by the nonpartisan Congressional Budget Office (CBO). Sen. Susan Collins (R-ME) said the CBO analysis on cost and coverage is necessary before the Senate can produce a bill. Senate Minority Leader Chuck Schumer (D-NY) said the bill's chances for survival in the Senate are small.
- The entire WA delegation voted against the AHCA, except for Rep. Cathy McMorris Rodgers who voted in favor of the bill and Rep. Dan Newhouse who wasn't present for the vote.

III. Immigration

- On Friday April 21, 2017, the Department of Justice sent letters to nine jurisdictions—New York City, Chicago, Miami, Philadelphia, New Orleans, Las Vegas, Milwaukee, the state of California, and Cook County, Illinois—which were identified in a May 2016 report by the Department of Justice's Inspector General as having laws that potentially violate 8 U.S.C. § 1373. The letters state that as a condition for receiving certain fiscal year 2016 funding from the Department of Justice, each of these jurisdictions agreed to provide documentation and an opinion from legal counsel validating that they are in compliance with federal immigration law (Sec. 1373). The jurisdictions must submit documentation by June 30, 2017, after which the government will withhold or terminate funds under the Edward Byrne Memorial Justice Assistance Grant Program if a jurisdiction has not complied. The Obama administration issued similar letters.
- On April 25, 2017, a federal judge in California granted the County of Santa Clara and the City and County of San Francisco's motion for preliminary injunction against the sanctuary jurisdiction

provisions of the Trump Administration's Executive Order, "Enhancing Public Safety in the Interior of the United States."

- The practical impact of this preliminary injunction is that the Executive Order may not be interpreted to add new funding conditions on federal grants that were not already enacted by Congress, nor extend the Executive's current authority to enforce (under Sec. 1373).
- On April 26, Attorney General Jeff Sessions announced that the DOJ will continue to litigate the issue.

IV. Religious Executive Order

This week, President Trump issued the "Executive Order (EO) on Promoting Free Speech and Religious Liberty." While the President claimed that the EO, would take "historic steps to protect religious liberty," it largely restates existing law. The EO:

- States that the IRS should not take action against religious organizations that speak out on moral or political issues "where speech of similar character has, consistent with law, not ordinarily been treated as" campaign speech. This is consistent with current law: religious organizations can speak out on political issues as long as they don't endorse or oppose a specific candidate. Previously, the President had said he would "totally destroy" the Johnson Amendment, which prohibits tax-exempt organizations from directly participating in a political campaign to support/oppose a particular candidate. Religious organizations that violate the Johnson Amendment risk losing their tax-exempt status. The EO essentially restates current law.
- Says that the Administration will "reexamine" the contraception mandate in the Affordable Care Act, a provision that requires health plans and insurers to provide contraception to women. It says that there may be a "conscience-based exception" for some entities. It is worth noting that these exceptions already exist.

V. Tax Reform

The President's economic adviser, Gary Cohn, and Treasury Secretary Steven Mnuchin unveiled the President's list of goals for a tax overhaul on April 26. While only broad details were provided, the plan did not address House Republican priorities, such as the border adjustment taxes on imports and domestic sales, nor did it address issues affecting local governments, such as municipal bonds. The plan calls for:

- Reducing the federal income tax rate to 15 percent for corporations, small businesses, and partnerships of all sizes;
- A one-time tax on the approximately \$2.6 trillion in earnings that U.S. companies have gained from foreign profits;
- Lowering the number of income tax rates to just three, from the original seven, reducing the individual top rate to 35 percent, from the original 39.6 percent; and
- Ends a 3.8 percent investment income tax, applicable to individuals earning more than \$200,000 a year.