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

DATE: December 11, 2017
TO: City of Seattle
FROM: Holland & Knight LLP
RE: Federal Update

This memo provides an overview of federal issues that impact the City of Seattle, including tax reform, appropriations, immigration, net neutrality, and infrastructure funding.

I. Tax Reform

Tax reform legislation has advanced quickly and both the House and Senate have passed their respective versions of *The Tax Cuts and Jobs Act*. The Senate passed its version on a strictly party-line 51-49 vote on December 2nd, and the House passed its bill in a 227-205 vote on November 16th (all Democrats voted against, along with 13 Republicans).

The House and Senate have now gone to conference to resolve the many differences between the two bills. Republican leadership intends to move through the conference as quickly as possible and have given themselves a December 22nd deadline. Among the priority issues for the City that must be negotiated in the House and Senate bills:

- **Private Activity Bonds**, which are eliminated in the House bill (essentially eliminating the 4% Low Income Housing Tax Credit) and retained in the Senate;
- **Historic Building Rehabilitation Credit**, which is eliminated in the House bill and modified in the Senate bill (preserves the credit but they must be claimed over 5 years instead of when the property is placed in service, as is current law);
- **Repeal of the Affordable Care Act (ACA) Individual Mandate**, included in the Senate bill, not included in the House;
- **Mortgage Interest Deduction**, which is capped at $1 million in the Senate and $500,000 in the House;
- **Advance Refunding Bonds,** which are repealed in both the House and Senate bills, but are now receiving renewed focus from Republican members;
- **Electric Vehicle Tax Credit,** eliminated in House bill and retained in the Senate; and
- **New Markets Tax Credits**, which are rescinded after 2017 in the House and retained in the Senate.

Furthermore, there are several issues that may not be addressed in the final bill, but will need to be dealt with in future legislation. While both the House and Senate bills lower the corporate tax rate to 20% (although there is now some discussion about raising it to 22%), there is widespread concern among cities and housing advocates that the lower tax rate will devalue the 9% Low Income Housing Tax Credit. A recent analysis estimates that a 20% tax rate would reduce LIHTC equity by about 15%, translating to a loss of $1.2 billion or more annually for affordable housing development. Future legislation may be needed to strengthen the LIHTC program.

Of particular concern, the tax reform package is also expected to add more than $1 trillion to the deficit. This week, Speaker Ryan said the deficit will be dealt with by reforming entitlement programs, including Medicare, Medicaid, and welfare programs.

II. FY 2018 Appropriations

With government funding expiring on December 8, both the House and Senate have passed another Continuing Resolution (CR) through December 22. The measure includes funding to provide temporary aid to states to ensure that they can continue to fund the Children's Health Insurance Program (CHIP). (CHIP expired on September 30 and has not been reauthorized due to disagreements over how to offset the costs of funding the program.)

The CR passed in the House on December 7, in a 235-193 vote, with only 14 Democrats voting for the measure and 18 Republicans voting against. The Senate passed the measure on the same day in a 81-14 vote. Both Senator Murray and Senator Cantwell supported the CR. It now goes to the President's desk for signature.

With a very short time remaining before the next CR expires, House and Senate leadership must deal with two major issues:

- **Spending Levels**: Unless a budget cap deal is reached this year, sequestration will take effect in FY 18. President Trump and Republicans want to increase military spending to more than $600 billion, some $50 billion more than where it stands now. Democrats want parity for any defense and non-defense spending boost.

- **DACA:** With DACA set to end in March, Democrats remain adamant that a clean DACA fix, the DREAM Act, must be included as part of the end of year spending package. Leader Pelosi has said that she will not shut the government down, but she also said, "we will not leave here without a DACA fix." President Trump and Republican leadership want to separate DACA from the funding package. In addition, they maintain that border security measures—including funding for the US-Mexico border wall—must be included.

Democrats have leverage in the spending negotiations as some of their votes will be needed to pass the final FY 18 spending package. However, both Democrats and Republicans are treading very carefully as neither side wants to shoulder the blame if a shutdown occurs shortly before Christmas.

III. Immigration

President Trump's travel restrictions will take effect following a Supreme Court decision on December 5, allowing the travel ban on six Muslim-majority countries to go into full effect, pending legal challenges in lower courts. The Supreme Court ruling covers the third iteration of the directive issued by the President. Seven of the nine Justices lifted injunctions imposed by lower courts; federal appeals courts in San Francisco, CA and Richmond, VA are still due to hear arguments on the legality of the latest version of the ban. The third order was introduced in late September, adding non-Muslim majority nations North Korea and Venezuela.

The court's decision indicates that the Administration is able to fully enforce the restrictions, which vary by country. For example, while Iran can send exchange students, Somalians are no longer allowed to emigrate permanently to the U.S. The decision also overturns a compromise in place since June 2017, that allowed travelers with connections to the U.S. to continue to travel into the country. The American Civil Liberties Union (ACLU) and immigrants' rights groups have said they will continue to represent groups and individuals challenging the ban, and will also continue arguments in lower appeals courts.

IV. Response to DOJ regarding Compliance with 8 U.S.C. 1373

On November 15, the Department of Justice (DOJ) sent a letter to 29 jurisdictions, including the City of Seattle, and King County, asking for proof of compliance with 8 U.S.C 1373 (1373). This statute states that a local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service, information regarding the citizenship or immigration status, lawful or unlawful, of any individual – notwithstanding any other provision of Federal, State, or local law.

The letters reminded recipient jurisdictions that, as a condition for receiving certain FY 16 funding from the DOJ, each of these jurisdictions agreed to comply with 1373. In addition to raising concerns about these jurisdictions' 1373 compliance during FY 16, the letter asked jurisdictions to determine that they will comply with 1373 should they receive a FY 17 Byrne JAG award.

Jurisdictions that were found to have possible violations of 1373 were given a deadline of December 8, 2017 to demonstrate that the interpretation and application of their laws, policies, or practices comply with the statute.

Mayor Durkan sent a written response to the DOJ on December 8, stating that the City was in full compliance with 8 U.S.C. 1373.

V. Net Neutrality

On November 22, the Federal Communications Commission (FCC) posted its draft order repealing the Obama Administration's net neutrality regulations. The proposal would roll back rules prohibiting internet service providers (ISPs) from blocking, throttling, and prioritizing traffic; however, the existing transparency rules would also be altered to require that ISPs disclose practices on blocking, throttling, and prioritizing web traffic. The Federal Trade Commission (FTC) will be allowed to take action on those practices, if they are deemed anticompetitive or anti-consumer. FCC Chairman Ajit Pai has said he does not want to repeal rules on the federal level, as it may raise preemption issues if state level rules would undermine the deregulation. The FCC order concludes that there should be an overarching federal policy, not varying state and local requirements. Technology and telecommunications companies have argued against Pai's order, and Sen. Susan Collins (R-ME) was the first congressional Republican to oppose the FCC's decision on November 27.

New debate has also emerged over the discovery of hundreds of thousands of fake public comments posted in the FCC's net neutrality proceedings. A record 22 million public comments were made, and New York Attorney General Eric Schneiderman investigated the alleged scheme to skew public comment by posting fake comments through bots and stolen online identities. Democratic FCC Commissioners have called for further investigation by the Government Accountability Office (GAO).

The FCC is set to vote on the repeal of net neutrality rules at its December 14 meeting, despite protests from several consumers and members of Congress calling for a delay in voting. Sen. Maggie Hassan (D-NH) sent a letter, in conjunction with 27 other senators, to postpone the vote until the issue with comments in the docket is resolved. Consumer groups, including the Center for Digital Democracy, have also called for delaying the FCC vote, until a pending review in *Federal Trade Commission (FTC) v. AT&T Mobility* has been resolved. The case is examining the agency's jurisdiction over common carriers, such as AT&T.

The City has filed comments along with 58 mayors from around the country opposing the Chairman's proposal.

VI. Infrastructure

In January, before his State of the Union address, President Donald Trump intends to send Congress "a detailed infrastructure principles document" outlining his much-anticipated $1 trillion plan. The guiding principle of the plan is to dramatically transform the traditional federal/state/local partnership for infrastructure by shifting responsibility for funding from the federal government to states and localities. The plan intends to incentivize states and localities to generate their own sustainable funding sources and work with the private sector.

The $200 billion federal share of the package would be split into four buckets: funding for states and localities that promise to take on more of the financial burden of infrastructure building and upkeep; block grants for rural areas; existing federal loan programs; and money for "transformational" projects.

It is uncertain how the proposal will be received in Congress. House Transportation Chairman Bill Shuster (R-Pa.), who has traditionally supported the President, has been cautious about embracing all aspects of the details that have emerged thus far. When asked about the White House's focus on incentivizing spending at the state and local levels, the Pennsylvania Republican said he needs to "see exactly what they mean by it." "Some of it sounds a little bit like devolution, and I've not talked to a single governor that wants the federal government not to have a role," he added.