

## Expectations After The Trump Administration's First 100 Days

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*Law360, New York (April 27, 2017, 5:18 PM EDT)* -- The first 100 days of a new presidency sets the tone and is like the opening of a great chess match. The new administration makes a series of initial moves that forecast for Americans what to expect from the White House domestically, and — for the world — what to expect on the international front. It includes pronouncements on new policies, legislation, regulations, executive orders, presidential initiatives and political appointments. It can also include new statements and signals as to how the new administration is going to use U.S. diplomatic and military power. The Trump administration had mixed results and may be behind where it wants to be. This article summarizes the highlights of the first 100 days and what to expect in the months ahead.



Jim Flood

On the domestic side, the Trump administration has acted predictably, picked up a few wins and set a clear tone. It focused early on key conservative Republican priorities, like Affordable Care act repeal, regulatory reform and the appointment of a U.S. Supreme Court Justice. It started to execute the House Republican plan to repeal the ACA through budget reconciliation and move on to tax reform, but it hit a surprise blockage along the road and quickly learned that a Republican-controlled House does not mean anything if a majority of Republicans, in particular Freedom Caucus members, will not vote with the administration.



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The Trump White House signaled that it will not follow presidential norms with respect to messaging. On some occasions, it will use the domestic and foreign policy apparatus, including the Cabinet and key officials, to communicate domestic and foreign policy views. On other occasions, the president will use informal means like Twitter to convey a message. The approach works. The media covers the message and the world receives it. This pattern will likely continue. One frustration for the administration is that it cannot always control the agenda. The primacy of domestic or foreign policy on a given day is driven by world events, not by the president, the White House or Congress.

The president has articulated other 2017 domestic policy priorities that may still come to pass. He says he wants to focus on strengthening infrastructure, establishing a level playing field for business, encouraging innovation and emerging technologies, streamlining regulations and improving the health care system. While unsuccessful on health care thus far, the president has signaled that he is always in negotiation mode and is coming back to the Hill to try to redo health care. He also announced his tax

plan on April 26. If he successfully redoes and passes health care and tax reform bills, which is unlikely, he will accomplish a significant reversal like few presidents before him. It really comes down to math and politics. If he can make the math work on ACA repeal, tax reform and infrastructure, the politics will follow. The biggest threat to President Donald Trump's domestic policy agenda beyond the first 100 days is the difficulty of reconciling the Freedom Caucus Republicans, moderate Republicans and Democrats.

## **The International Track**

On the international and foreign policy front, the president's approach as a leader was cemented in March and April of 2017 when he took direct aggressive positions in North Korea and Syria. President Trump is positioning the United States to respond swiftly to U.S. national security threats as a global leader. The Obama administration "lead from behind" approach is no longer in vogue. Although the administration took action to let the Trans-Pacific Partnership die, it appears to support existing U.S. military and related bilateral agreements. Thus, the administration remains committed to multilateral agreements like the North Atlantic Treaty Organization and the Joint Comprehensive Plan of Action — but has signaled that signatories to multilateral agreements are expected to do their "fair share." The pattern we have seen arise from the first 100 days is that while President Trump will talk about "America first" as if it is a nationalist policy, he will nevertheless regularly engage and respond to threats overseas. Below is a summary of where and how we anticipate the administration will focus over the next year.

### ***Iran***

The administration has confirmed that the United States will continue to honor the Iran nuclear deal (or JCPOA), but simultaneously will pursue enforcement actions where there are violations of U.S. sanctions and export controls programs benefiting Iran. The focus will be on transgressors of sanctions targeting or providing support for (1) terrorism, (2) weapons of mass destruction, (3) Islamic Revolutionary Guards Corps, and (4) human rights abuse. This affirmation has ensured that multilateral pressure on the Iranian regime will remain in place for the near future. Despite the assurances of status quo from the administration with respect to compliance with the JCPOA, internal politics within Iran leading up to the May 2017 elections suggest that the Iranian political pressures may turn toward the hard line.

The White House and Congress also will continue to play a role on Iran policy. The White House had Secretary of State Rex Tillerson make clear the administration's displeasure with the JCPOA and the determination to hold Iran strictly accountable for compliance with its obligations under the deal. Congress will likely pass additional "non-nuclear" sanctions that add pressure to Iran but do not conflict with obligations under the JCPOA.

For the private sector, sanctions on Iran will continue to mean no business opportunities for U.S. entities and limited opportunities for non-U.S. businesses given the reluctance of financial institutions to enter the high risk market.

### ***Syria***

The administration's April 6 response to the Assad regime's April 4 use of Sarin gas against civilians marks a change in policy toward the civil war in Syria. The governments of Canada, Australia, the United Kingdom, Germany, France, Italy, Poland, Japan, Israel, Turkey and Saudi Arabia have shown initial support for the American response. While it is not clear how a change in Syrian leadership will occur,

there no longer is a Western coalition willing to tolerate Assad's role as the leader of Syria. A lesson from this incident is that President Trump can be moved by the visual and the emotional. White House aides repeat often, and it appears to be true that, despite a preference for not engaging in Syria clearly articulated in prior Trump press statements, and a desire not to make statements or take actions against the interests of Russia, the sheer barbarity of the sarin gas attacks lead President Trump to completely reverse a prior foreign policy decision. This could happen again.

### ***Russia***

The relationship between the administration and Russia is complicated, to say the least. While it appeared initially as though the two governments may work together to address the civil war in Syria, it now appears that cooperation is not in the cards. With respect to multilateral and U.S. sanctions targeting Russia, we expect them to remain in current form without relaxation for four reasons. First, since taking office, the administration has made no public calls for relaxing or repealing existing sanctions. Second, Secretary of the Treasury Steven Mnuchin, in his confirmation hearing, indicated he was "100 percent" committed to enforcing existing sanctions on Russia. Third, the U.S. State Department issued a press release on the third anniversary of the annexation of Crimea affirming that U.S. "Crimea-related sanctions will remain in place until Russia returns control of the peninsula to Ukraine," confirming Obama-era policy that the Crimean embargo is tied to Russia's annexation of Crimea. Fourth, any attempt on the administration's part to rollback sanctions would be met with substantial opposition in Congress, including from within the Republican Party (e.g., Sens. John McCain, R-Ariz., and Lindsey Graham, R-S.C.). In short, we expect the Trump administration to not overtly criticize Russia, while continuing U.S. government policies that impose a price on Russian political, economic and cybercrime misbehavior around the world.

### ***Leading Multilateralism***

The historical pattern of American military and moral leadership backed by the occasional use of military force will continue in the Trump administration. The more pacifistic approach of the Obama administration in certain regions will not be followed. Consistent with the strength behind a multilateral approach, the administration confirmed, on April 12, 2017, its commitment to the North Atlantic Treaty Organization. In a further sign of the administration's assertive role in foreign policy, on April 13, the U.S. military dropped a GBU-43 weapon (or "MOAB") on an ISIS stronghold in Eastern Afghanistan. The move was a message to ISIS but perhaps more importantly was a show of strength to governments including North Korea (that has been flexing its military muscles since before the November 2016 elections), Russia and China. The selective use of U.S. military power to attack a threat to international security, even if done by the U.S. alone, suggests that America will retain the mantle of "policeman to the world."

### ***North Korea and China***

U.S. policy toward North Korea also has shifted — with the assistance of China. The result is that there now exists multilateral support for pressure on North Korea to cease its military aggression aimed at Japan and South Korea, as well as a thawing of tensions between the United States and China over Chinese trade practices. Leading up to the U.S. elections, North Korea has had an increased level of test launches. Starting in August 2016, North Korea launched a ballistic missile from a submarine. By April 16, 2017, it has launched (or attempted) 10 more and had conducted its fifth nuclear test. The Trump administration has warned North Korea against such provocations and has sent the U.S. aircraft carrier the USS Carl Vinson to the region to show support for U.S. allies South Korea and Japan. In a further

show of determination, the president has called for a briefing, hosted at the White House, on North Korea for all 100 Senators. The topic of North Korea also has become a focus for coordination with China. After the president of China's visit with President Trump, China returned train loads of coal to North Korea and held back shipments of fuel oil to North Korea. In response, the U.S. Treasury Department issued its report to Congress on April 14, 2017, declining to identify China as a currency manipulator. President Trump tweeted on April 16 that the U.S. decision not to identify China as a currency manipulator was tied to China's cooperation on the North Korea problem.

As President Obama warned, North Korea will be the most significant global foreign policy problem. It is so serious in scope that it cannot truly be defined as a domestic or foreign policy problem. It is a global one.

### ***International Trade***

The Trump administration's early actions on the trade front suggest that it remains skeptical about the utility of multilateral agreements and committed to the application of U.S. trade remedies laws for the protection of domestic industries. After immediately withdrawing the U.S. from the Trans-Pacific Partnership, the administration has repeatedly reiterated its intent to undertake a renegotiation of NAFTA to secure more favorable terms. In particular, the administration has singled out the U.S. dairy and softwood lumber industries as needing a "better deal" under a renegotiated NAFTA. In addition, the administration has commissioned two investigations — of steel and aluminum — under the so-called "Section 232" statute, which requires the U.S. Commerce Department to work with the U.S. Defense Department to evaluate whether imports of those products represent a threat to national security. If the agencies conclude that there is such a threat, the president has broad discretion to levy import duties and/or negotiate export restraints/quotas with U.S. trading partners. The scope of these cases remains unclear as of this writing, but given the volume of trade in this space the consequences for importers and consumers of affected products could be enormous.

### **U.S. Domestic Policy**

The first 100 days of the Trump administration were defined by more domestic than foreign policy. The Trump domestic agenda proceeded on two parallel tracks. The president used executive power through executive orders to roll back as many Obama regulations as possible. At the same time, President Trump, rather than leading, followed the agenda of House Speaker Paul Ryan, R-Wis., for the Congress to take advantage of the opportunity to pass two budget reconciliation bills in 2017 requiring only 51 Senate votes, using the first to repeal ACA and the second to do tax reform. When the ACA repeal-and-replace bill failed to pass the House, thanks to the Freedom Caucus, President Trump implemented two lower profile strategies to try to pass an ACA repeal-and-replace bill and get the full economic benefit of eliminating ACA taxes prior to doing tax reform. First, President Trump assigned Vice President Mike Pence to work with his former conservative Republican colleagues to develop a new ACA repeal-and-replace bill that would pass the House. Second, he made overtures to the Senate Democrats to try to work together. As we approach the end of April, it is likely that President Trump will not be able to pass a new health care bill.

### ***Regulatory Reform: Reducing the Size of the Government***

As one of his first acts, President Trump issued a presidential memorandum on Jan. 23, 2017, that temporarily halted, with some exceptions, all nonmilitary hiring. The hiring freeze, according to the order and the April 12 memorandum, was designed to "halt the growth of the Federal workforce until a

'long-term plan to reduce the size of the Federal Government's workforce' is put into place." The April 12 memorandum emphasizes that the objective of the evolved approach is to (1) create a lean and more efficient government; (2) focus the federal government on effectively and efficiently delivering programs that are the highest needs to citizens and where there is a unique federal role; (3) align the federal workforce to meet the needs prospectively; and (4) strengthen agencies by removing barriers that hinder the delivery of results. The April 2017 memorandum requires all agencies to "begin taking immediate actions" to reduce the size of their workforces over the long term and achieve the savings called for in Trump's fiscal year 2018 budget. Specifically, agency heads are required to develop a plan to maximize employee performance by June 30 and to submit a final version of their plans by September. The administration has made some recent statements indicating it may back off workforce reductions; nonetheless the Trump administration has made clear that it is going to squeeze the federal government to do more with less.

### ***Return to the Full Energy Menu and Rejection of Climate Change***

Energy independence, infrastructure improvements and national security remain objectives that coalesce in a number of forms. One such example is the March 28, 2017, executive order, "Promoting Energy Independence and Economic Growth." This order comes after the administration granted approval for the Keystone XL project to proceed and is a continuation of the administration's focus on removing barriers to energy efficiency and encouraging infrastructure projects. The March 28 order is meant to increase American use of domestically produced energy, thereby "ensuring the Nation's geopolitical security." It is also intended to promote economic growth and job creation as well as "to ensure that the Nation's electricity is affordable, reliable, safe, secure and clean."

The order establishes a number of the administration's goals but will take time to play out. Consistent with the January executive order and the April 12 memorandum, the U.S. Environmental Protection Administration administrator is tasked with reviewing the Clean Power Plan and determining whether the implementing rules should be suspended, revised or rescinded. Also consistent with the administration's focus on reducing the number of regulations, the energy independence order prescribes a process for identifying and revising or rescinding other rules, not specifically addressed in the order, that could impose burdens on the production and use of domestic energy resources. The order — like other domestic policy objectives — will take time to implement as the review process includes three milestones that will be met over the next few months and will require the relevant agencies to identify regulations, orders, guidance, policies or other rules that potentially burden the development of domestically produced energy resources. Final reports establishing steps to be taken to address these identified burdens are due on or about Sept. 24, 2017.

Worthy of notice, President Trump's energy independence order marks a striking turn in policy regarding climate change from the direction taken over the past eight years. While certain elements of it may be implemented almost immediately, most will require notice-and-comment rulemaking. That in itself is a complex and time-consuming process, and the follow-on litigation will consume an additional one to two years for each significant rule that is revised or rescinded. The regulated sectors and other stakeholders should be prepared for this period of uncertainty. They should also be gearing up to make sure their voices are heard, and their information considered, in the coming rulemakings and litigation.

### ***DOJ and the New Strong Anti-Crime Agenda***

The Trump administration is making clear, in particular through Attorney General Jeff Sessions, that it is returning to the hard "law and order" policies of times past and will be proposing a return to mandatory

minimum penalties, a stronger position on marijuana, rejection of efforts to lower prison sentences and a renewed focus on pursuing and prosecuting major international drug dealers. Attorney General Sessions, in just the first two months in office, has made clear that the DOJ will work with the U.S. Department of Homeland Security to identify and report as many unauthorized immigrants located in the U.S. as possible. In yet another blow to the Obama agenda, Attorney General Sessions has made clear that he will not abide by prior settlements with city and municipal police departments over civil rights violations, but rather, will relax the oversight of police departments across the United States. Finally, Attorney General Sessions recently made a statement indicating that the U.S. Department of Justice will not ignore, but rather to continue to focus significant resources, on white collar and fraud investigations.

### ***Tax Reform***

On April 26, the White House released its highly anticipated tax plan, which took many cues from Speaker Paul Ryan's A Better Way. The proposal includes many elements that will appeal to traditional Republican members of Congress, as well as some Democrats. On the corporate side, the president and his staff propose a flat 15 percent tax rate that would also apply to pass-through entities. Taxes on foreign earnings would be minimal and a repatriation tax would only be applied one time. Although the exact rate was not disclosed, we believe it will likely be at least 10 percent.

Finally, the proposal does not include the controversial border adjustment tax, which would have taxed imported goods at a higher rate than those produced domestically. As for individual taxes, the Trump administration proposes three tax brackets, rather than the current seven brackets — 35 percent, 25 percent and 10 percent. The proposal would repeal the estate tax, the alternative minimum tax and the net investment income tax included in the ACA. The plan would also double standard deductions and eliminate itemized deductions, and would eliminate certain deductions, but would preserve the personal deductions for charitable contributions and mortgage interest. Finally, state and local taxes would not be eligible for a deduction.

Although the proposal will likely be met with support from many members of Congress, the Trump administration will likely have to rely on dynamic scoring, which accounts for savings due to economic reactions to policy changes, and does not "pay for" tax cuts in the traditional sense in order to garner support from fiscal hawks in the Freedom Caucus.

### **Conclusion**

The first 100 days of the Trump administration have opened a window into President Trump's domestic and foreign policy priorities.

Domestically, the Trump administration stuck to the Republican policy script on deregulation, health care and tax reform, but revealed a San Andreas Fault within the Republican party. The failure of the ACA repeal-and-replace bill revealed that it is and will continue to be very difficult for President Trump to pass legislation in the House. The most bread and butter economic issues, like lowering individual tax rates, can likely pass the Congress. But the comprehensive tax reform envisioned for years by House Speaker Ryan, especially if not fully paid for, may lead to a second major legislative disaster in the House.

On the foreign policy front, the Trump administration will continually look for ways to project American strength through military and diplomatic power, favoring the use and threat of military power. The

administration will find that it cannot solve all problems militarily and will have to mix the use of soft and hard power.

Finally, and most significantly for American business, the Trump administration will continue to look for ways to deregulate and create a more favorable environment for the business community and U.S. economy to grow.

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