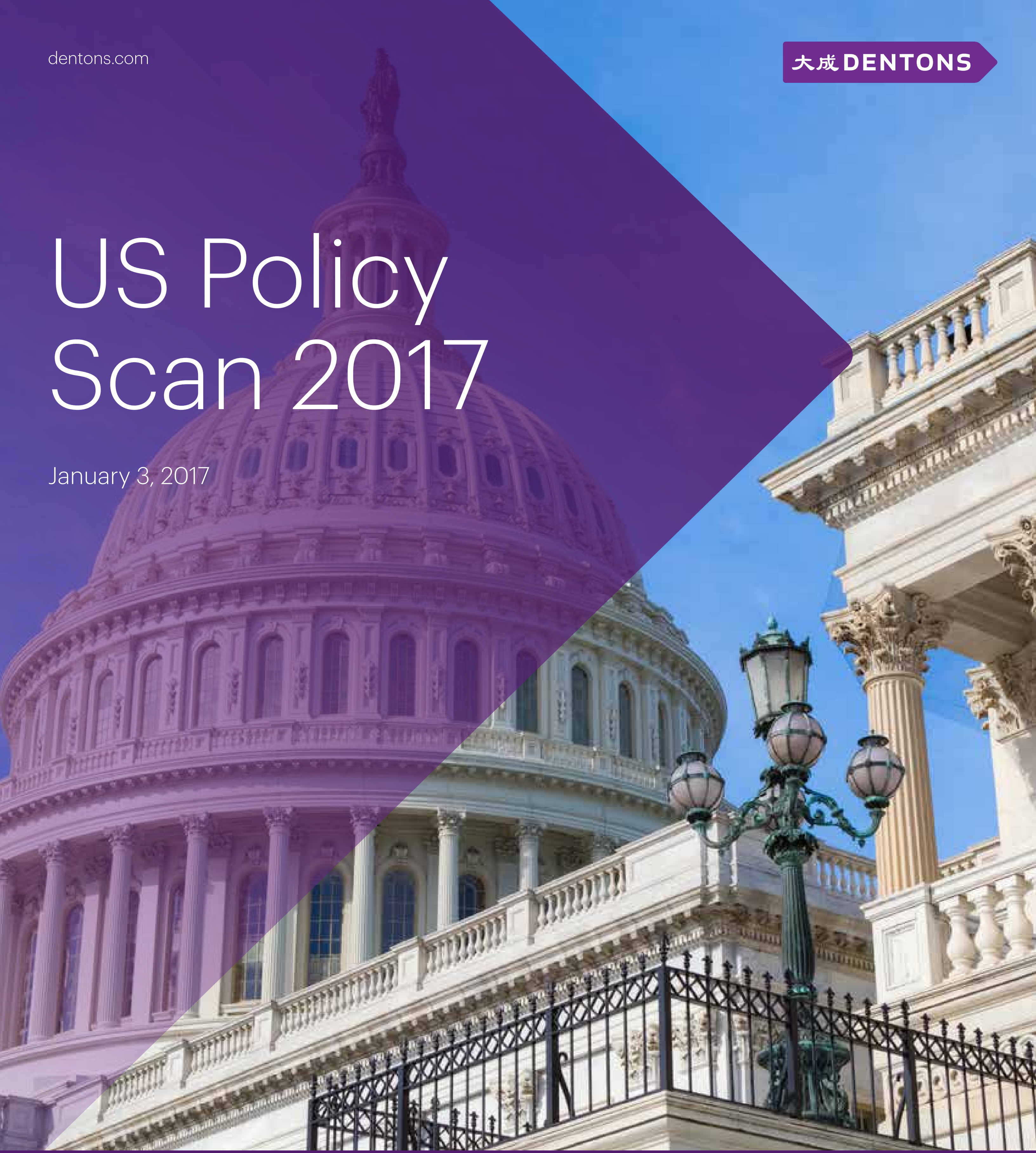
dentons.com

大成 DENTONS



# US Policy Scan 2017

January 3, 2017

Our government rests in public opinion. Whoever can change public opinion, can change the government, practically just so much.

Abraham Lincoln — December 10, 1856

# Table of contents

# Washington overview

## The 115th Congress kicks off on January 3 with Republicans in control of both the legislative and regulatory agenda in Washington -- at least as much as a party without the magical 60 votes in the Senate can be. What was unimaginable for GOP leaders on election day is now tantalizing close, but only if President-elect Trump and Congressional Republicans can get and stay on the same page.

Whether or not the new President and Congressional Republicans will be able to work together to implement most of their respective agendas, there is no doubt that they share a goal of reversing much of the work of the Obama administration. The current president's legacy is surely under siege and it will be illuminating and instructive to see how hard Senate Minority Leader Chuck Schumer (D-NY) and other Congressional Democrats will be willing to work to protect the former president's achievements.

To that end, January will be the start of a very busy first few months of the new Congress as the Congressional Republican agenda is loaded. It starts with repealing Obamacare, although it's not yet clear how long a transition period Republicans will propose. It also remains to be determined whether or when Republicans will offer a replacement alternative for those who will lose insurance coverage when Obamacare is repealed.

Once Obamacare is addressed, the candidates for legislative action are virtually endless as what for many years was simply the Congressional Republican wish list is now squarely within the realm of the possible. It involves such issues as undoing much of Dodd-Frank; reversing the Obama administration's climate change agenda; making fundamental changes in immigration policy designed to strengthen the border and curb illegal immigration; moving away from global trade deals and toward bilateral agreements; substantially increasing defense spending while getting rid of the sequester and ending the policy of parity between defense and domestic discretionary spending increases; reforming the tax code perhaps through a border adjustment tax, nominating conservative judges to serve on the Supreme Court and all across the Federal bench; and making profound changes to federal personnel practices, including withdrawing various protections from federal employees, to make it easier to fire or discipline those employees whose performance is considered unacceptable or substandard.

Republicans will use all the parliamentary and executive authority available to them to pursue their goals. Under Majority Leader Mitch McConnell (R-KY), the Senate is expected to use Budget Reconciliation, a parliamentary tactic that only requires a simple majority in the Senate to end debate, as part of the effort to force the more controversial measures through the Senate floor and to the President's desk. Beginning within minutes of his January 20 inauguration, the new tenant of the Oval Office also is expected to use his pen to undo Obama Administration Executive Orders and force the review of regulations the prior administration put into law.

The coin of the realm in Washington remains floor time in the Senate. There is no more precious commodity to an Administration's agenda. When one reviews the President-elect's agenda, pairs it with the agenda of the House and Senate leaders, and adds into the mix the left-over appropriations work from the 114th Congress that still must be addressed, one quickly realizes that the 115th Congress is setting up to be one of the busiest in recent memory. Notice we said busiest, we didn't say productive, because the Democratic Senate Minority, particularly those Democratic Senators in states that President-elect Trump carried and who are up for reelection in 2018, will have significant sway over how much of this aggressive agenda finds its way to the president's desk.

It is also critical to consider that not all Republicans, and this is especially true in the Senate, are necessarily in favor of the sweeping agenda the President-elect proposes. We are beginning to see this in the debate surrounding the repeal of ObamaCare, as GOP members in both chambers begin to question the necessity for immediately repealing with no replacement bill ready for floor consideration. Moreover, if President Trump elects early in his term to offer anything that looks like the massive infrastructure proposal he spoke of during the presidential campaign, we will see an early test of whether the conservative core of the House Republican conference view the Trump spending proposals as a bridge too far and not what they signed on for when they stood for election. We will likely see similar fissures surrounding immigration reform, trade policy and tax reform to name a few. As is true in all things, the devils are in the details.

We've added the chart below as a guidepost for what currently looks to be in the realm of the possible for the President-elect and his Republican colleagues. We would suggest that you "buckle up" as the rhetoric, pace and tweets coming out of Washington are likely to be at break neck speed in the coming months.

**Trump Campaign Promises**

| Don't need Congress | Might need Congress | Needs Congress |
|---|---|---|
| Approve Keystone XL pipeline | Stop funding for "santuctuary cities" | Repeal and replace Obamacare |
| Cancel payment on UN climate programs | Renegotiate or withdraw from NAFTA | Repeal Dodd Frank |
| Choose Supreme Court Nominee | Impose tarrifs on companies moving overseas | Build a wall |
| Act against foreign trade abuses | Deport undocumented immigrants who have commited crimes | End Common Core |
| Freeze Federal hiring | | Pass a security bill |
| Label China a currency manipulator | | Cut taxes |
| Leave Trans-Pacific partnership | | Pass an infrastructure bill |
| Limit federal regulations | | Pass an ethics bill |
| Overturn protections for certain undocumented immigrants | | Restrict lobbying by former members of Congress |
| Propose term limits for Congress | | Pass a child care bill |
| Roll back environmental regulations | | Pass a law enforcement bill |
| Suspend immigration from "terror prone regions" | | Confirm a new Justice (Senate only) |
| Tighten lobbying restrictions on Executive Branch employees | | Term limits for Congress |

# 2017 congressional calendar

House and Senate scheduled to be in session | Senate scheduled to be in session | House scheduled to be in session

## January

| Su | M | Tu | W | Th | F | Sa |
|---|---|---|---|---|---|---|
| 01 | 02 | 03 | 04 | 05 | 06 | 07 |
| 08 | 09 | 10 | 11 | 12 | 13 | 14 |
| 15 | 16 | 17 | 18 | 19 | 20 | 21 |
| 22 | 23 | 24 | 25 | 26 | 27 | 28 |
| 29 | 30 | 31 | | | | |

## February

| Su | M | Tu | W | Th | F | Sa |
|---|---|---|---|---|---|---|
| | | | 01 | 02 | 03 | 04 |
| 05 | 06 | 07 | 08 | 09 | 10 | 11 |
| 12 | 13 | 14 | 15 | 16 | 17 | 18 |
| 19 | 20 | 21 | 22 | 23 | 24 | 25 |
| 26 | 27 | 28 | | | | |

## March

| Su | M | Tu | W | Th | F | Sa |
|---|---|---|---|---|---|---|
| | | | 01 | 02 | 03 | 04 |
| 05 | 06 | 07 | 08 | 09 | 10 | 11 |
| 12 | 13 | 14 | 15 | 16 | 17 | 18 |
| 19 | 20 | 21 | 22 | 23 | 24 | 25 |
| 26 | 27 | 28 | 29 | 30 | 31 | |

## April

| Su | M | Tu | W | Th | F | Sa |
|---|---|---|---|---|---|---|
| | | | | | | 01 |
| 02 | 03 | 04 | 05 | 06 | 07 | 08 |
| 09 | 10 | 11 | 12 | 13 | 14 | 15 |
| 16 | 17 | 18 | 19 | 20 | 21 | 22 |
| 23/30 | 24 | 25 | 26 | 27 | 28 | 29 |

## May

| Su | M | Tu | W | Th | F | Sa |
|---|---|---|---|---|---|---|
| | 01 | 02 | 03 | 04 | 05 | 06 |
| 07 | 08 | 09 | 10 | 11 | 12 | 13 |
| 14 | 15 | 16 | 17 | 18 | 19 | 20 |
| 21 | 22 | 23 | 24 | 25 | 26 | 27 |
| 28 | 29 | 30 | 31 | | | |

## June

| Su | M | Tu | W | Th | F | Sa |
|---|---|---|---|---|---|---|
| | | | | 01 | 02 | 03 |
| 04 | 05 | 06 | 07 | 08 | 09 | 10 |
| 11 | 12 | 13 | 14 | 15 | 16 | 17 |
| 18 | 19 | 20 | 21 | 22 | 23 | 24 |
| 25 | 26 | 27 | 28 | 29 | 30 | |

## July

| Su | M | Tu | W | Th | F | Sa |
|---|---|---|---|---|---|---|
| | | | | | | 01 |
| 02 | 03 | 04 | 05 | 06 | 07 | 08 |
| 09 | 10 | 11 | 12 | 13 | 14 | 15 |
| 16 | 17 | 18 | 19 | 20 | 21 | 22 |
| 23/30 | 24/31 | 25 | 26 | 27 | 28 | 29 |

## August

| Su | M | Tu | W | Th | F | Sa |
|---|---|---|---|---|---|---|
| | | 01 | 02 | 03 | 04 | 05 |
| 06 | 07 | 08 | 09 | 10 | 11 | 12 |
| 13 | 14 | 15 | 16 | 17 | 18 | 19 |
| 20 | 21 | 22 | 23 | 24 | 25 | 26 |
| 27 | 28 | 29 | 30 | 31 | | |

## September

| Su | M | Tu | W | Th | F | Sa |
|---|---|---|---|---|---|---|
| | | | | | 01 | 02 |
| 03 | 04 | 05 | 06 | 07 | 08 | 09 |
| 10 | 11 | 12 | 13 | 14 | 15 | 16 |
| 17 | 18 | 19 | 20 | 21 | 22 | 23 |
| 24 | 25 | 26 | 27 | 28 | 29 | 30 |

## October

| Su | M | Tu | W | Th | F | Sa |
|---|---|---|---|---|---|---|
| 01 | 02 | 03 | 04 | 05 | 06 | 07 |
| 08 | 09 | 10 | 11 | 12 | 13 | 14 |
| 15 | 16 | 17 | 18 | 19 | 20 | 21 |
| 22 | 23 | 24 | 25 | 26 | 27 | 28 |
| 29 | 30 | 31 | | | | |

## November

| Su | M | Tu | W | Th | F | Sa |
|---|---|---|---|---|---|---|
| | | | 01 | 02 | 03 | 04 |
| 05 | 06 | 07 | 08 | 09 | 10 | 11 |
| 12 | 13 | 14 | 15 | 16 | 17 | 18 |
| 19 | 20 | 21 | 22 | 23 | 24 | 25 |
| 26 | 27 | 28 | 29 | 30 | | |

## December

| Su | M | Tu | W | Th | F | Sa |
|---|---|---|---|---|---|---|
| | | | | | 01 | 02 |
| 03 | 04 | 05 | 06 | 07 | 08 | 09 |
| 10 | 11 | 12 | 13 | 14 | 15 | 16 |
| 17 | 18 | 19 | 20 | 21 | 22 | 23 |
| 24/31 | 25 | 26 | 27 | 28 | 29 | 30 |

# 2017 Legislative and Regulatory Calendar

Legislative  Regulatory  Other

### January

| Su | M | Tu | W | Th | F | Sa |
|---|---|---|---|---|---|---|
| 01 | 02 | 03 | 04 | 05 | 06 | 07 |
| 08 | 09 | 10 | 11 | 12 | 13 | 14 |
| 15 | 16 | 17 | 18 | 19 | 20 | 21 |
| 22 | 23 | 24 | 25 | 26 | 27 | 28 |
| 29 | 30 | 31 | | | | |

### February

| Su | M | Tu | W | Th | F | Sa |
|---|---|---|---|---|---|---|
| | | | 01 | 02 | 03 | 04 |
| 05 | 06 | 07 | 08 | 09 | 10 | 11 |
| 12 | 13 | 14 | 15 | 16 | 17 | 18 |
| 19 | 20 | 21 | 22 | 23 | 24 | 25 |
| 26 | 27 | 28 | | | | |

### March

| Su | M | Tu | W | Th | F | Sa |
|---|---|---|---|---|---|---|
| | | | 01 | 02 | 03 | 04 |
| 05 | 06 | 07 | 08 | 09 | 10 | 11 |
| 12 | 13 | 14 | 15 | 16 | 17 | 18 |
| 19 | 20 | 21 | 22 | 23 | 24 | 25 |
| 26 | 27 | 28 | 29 | 30 | 31 | |

### April

| Su | M | Tu | W | Th | F | Sa |
|---|---|---|---|---|---|---|
| | | | | | | 01 |
| 02 | 03 | 04 | 05 | 06 | 07 | 08 |
| 09 | 10 | 11 | 12 | 13 | 14 | 15 |
| 16 | 17 | 18 | 19 | 20 | 21 | 22 |
| 23/30 | 24 | 25 | 26 | 27 | 28 | 29 |

### May

| Su | M | Tu | W | Th | F | Sa |
|---|---|---|---|---|---|---|
| | 01 | 02 | 03 | 04 | 05 | 06 |
| 07 | 08 | 09 | 10 | 11 | 12 | 13 |
| 14 | 15 | 16 | 17 | 18 | 19 | 20 |
| 21 | 22 | 23 | 24 | 25 | 26 | 27 |
| 28 | 29 | 30 | 31 | | | |

### June

| Su | M | Tu | W | Th | F | Sa |
|---|---|---|---|---|---|---|
| | | | | 01 | 02 | 03 |
| 04 | 05 | 06 | 07 | 08 | 09 | 10 |
| 11 | 12 | 13 | 14 | 15 | 16 | 17 |
| 18 | 19 | 20 | 21 | 22 | 23 | 24 |
| 25 | 26 | 27 | 28 | 29 | 30 | |

### July

| Su | M | Tu | W | Th | F | Sa |
|---|---|---|---|---|---|---|
| | | | | | | 01 |
| 02 | 03 | 04 | 05 | 06 | 07 | 08 |
| 09 | 10 | 11 | 12 | 13 | 14 | 15 |
| 16 | 17 | 18 | 19 | 20 | 21 | 22 |
| 23/30 | 24/31 | 25 | 26 | 27 | 28 | 29 |

### August

| Su | M | Tu | W | Th | F | Sa |
|---|---|---|---|---|---|---|
| | | 01 | 02 | 03 | 04 | 05 |
| 06 | 07 | 08 | 09 | 10 | 11 | 12 |
| 13 | 14 | 15 | 16 | 17 | 18 | 19 |
| 20 | 21 | 22 | 23 | 24 | 25 | 26 |
| 27 | 28 | 29 | 30 | 31 | | |

### September

| Su | M | Tu | W | Th | F | Sa |
|---|---|---|---|---|---|---|
| | | | | | 01 | 02 |
| 03 | 04 | 05 | 06 | 07 | 08 | 09 |
| 10 | 11 | 12 | 13 | 14 | 15 | 16 |
| 17 | 18 | 19 | 20 | 21 | 22 | 23 |
| 24 | 25 | 26 | 27 | 28 | 29 | 30 |

### October

| Su | M | Tu | W | Th | F | Sa |
|---|---|---|---|---|---|---|
| 01 | 02 | 03 | 04 | 05 | 06 | 07 |
| 08 | 09 | 10 | 11 | 12 | 13 | 14 |
| 15 | 16 | 17 | 18 | 19 | 20 | 21 |
| 22 | 23 | 24 | 25 | 26 | 27 | 28 |
| 29 | 30 | 31 | | | | |

### November

| Su | M | Tu | W | Th | F | Sa |
|---|---|---|---|---|---|---|
| | | | 01 | 02 | 03 | 04 |
| 05 | 06 | 07 | 08 | 09 | 10 | 11 |
| 12 | 13 | 14 | 15 | 16 | 17 | 18 |
| 19 | 20 | 21 | 22 | 23 | 24 | 25 |
| 26 | 27 | 28 | 29 | 30 | | |

### December

| Su | M | Tu | W | Th | F | Sa |
|---|---|---|---|---|---|---|
| | | | | | 01 | 02 |
| 03 | 04 | 05 | 06 | 07 | 08 | 09 |
| 10 | 11 | 12 | 13 | 14 | 15 | 16 |
| 17 | 18 | 19 | 20 | 21 | 22 | 23 |
| 24/31 | 25 | 26 | 27 | 28 | 29 | 30 |

- Jan. 1: SEC requires companies to provide disclosure of their pay ratios in accordance with Dodd-Frank
- Jan. 3: Congress enters 2016 session
- Jan 9: Supreme Court session begins
- Jan 20: Inauguration of President Trump
- Jan. 10: DHS deadline for Real ID Act compliance
- Jan. 31: ACA Open Enrollment Period ends
- Feb. 6: President's Budget Request (approximate date)
- April 1: Senate Budget Committee reports concurrent resolution on the budget
- April 10: Department of Labor final fiduciary rule initial compliance required
- April 15: Congress completes action on the concurrent resolution on the budget
- April 28: Fiscal Year 2017 stopgap funding expires
- April 30: Trump's 100th day in office
- March 15: Current debt limit deal expires
- May 15: Annual appropriation bills may be considered in the House
- May 17: FDA requirement for cigar package and ad warnings kicks in
- June 10: House Appropriations Committee reports last annual appropriations bill
- June 15: Congress completes action on reconciliation legislation
- June 30: House completes action on annual appropriation bills
- July 21: US banking organizations must fully comply with final interagency liquidity ratio (LCR) rule
- July 30: Proposed date for compliance to EPA's Clear Air Act plans if applied for 1 year extension (approximate date)
- July 31: August Congressional recess begins
- Sep. 5: Congress returns from August recess
- Sep. 6: EPA deadline for states to submit Clean Power Plan compliance plans
- Sep. 30: Children's Health Insurance Program funding expires
- Sep. 30: Federal Aviation Administration authorization expires
- Oct. 1: Fiscal Year 2018 begins (deadline for appropriations)
- Dec. 18: Congress ends 2016 session

# Need these dates in outlook?

Download the entire 2017 US Policy Scan congressional and key dates directly into your Microsoft Outlook calendar.

Visit **www.dentons.com/en/policyscancalendar**

# Senate outlook

By maintaining control of the Senate, Republicans start 2017 with a jam-packed agenda. First up will be Senate confirmation of presidential appointments, and with only 50 votes needed the Senate is poised to process as many nominations as quickly as possible. This will ensure the new administration has as many Senate-confirmed cabinet secretaries as possible soon after President Trump is sworn in on January 20. To accomplish this, the Senate will be in session all of January except for Martin Luther King Jr.'s birthday, a federal holiday. The current plan is to hold hearings for the national security cabinet positions the week of January 9 so that their confirmation votes can take place as soon President-elect Trump is inaugurated.

Besides processing nominees, the Senate in January is also plainning to move quickly on a process that will allow it to repeal parts of the ACA with only a simple majority of votes. This process, known as budget reconciliation, allows expedited consideration of legislation that has a direct budgetary impact. The Republican Senate Leadership has publicly committed that it will begin this process right away—as soon as the new Congress arrives in Washington—by passing a budget resolution for the current (2017) fiscal year.

Once the ACA reconciliation process is complete—most likely within the first couple of months of 2017—the Senate will then turn to completing the FY 2017 appropriations process, raising the debt ceiling and, once President-elect Trump has submitted the first budget of his administration, processing a budget resolution for FY 2018. The Republican leadership has publicly stated that it will look toward the 2018 budget process to include another set of reconciliation instructions that would again allow use of the expedited process to pass comprehensive tax reform requiring only a simple majority vote. Some proponents on Capitol Hill think there is a chance tax reform can be paired with the transportation and infrastructure package President-elect Trump discussed on the campaign trail, but will keep reconciliation in their back pocket if they cannot get Democrats to help them get over the 60 vote filibuster threshold.

## Senate confirmation of President Trump's nominees

Given the makeup of the US Senate, recent Senate rules changes, and the initial reactions of Democratic senators to President-elect Trump's cabinet picks, the confirmation process will be tumultuous, but will likely lead to confirmation of almost all, if not all, of the President-elect's cabinet and top level selections. The only likely scenario in which a nomination might fail is if three Republican senators were to oppose the nominee, assuming that Democrats, who control 48 votes, will likely oppose, en bloc, all controversial nominations.

Traditionally, US presidents have had almost all of their nominees to top posts confirmed by the Senate, with a few rare exceptions, usually when the nominee has withdrawn from the process after intense scrutiny of his or her background. Recent examples include President Obama's HHS nominee, former Senator Tom Daschle, and President Bush's selection of former New York City Police Commissioner Bernard Kerik to succeed Tom Ridge as Secretary of Homeland Security.

Throughout most of the Senate's history, nominees have typically been confirmed without much controversy or delay. However, in the past 25 years, the process has become more and more contentious, with some nominees having had to wait weeks or even months for confirmation.

Since the 1990s, Senate leaders on both sides of the aisle have had to vote to break filibusters on nominees for high ranking positions, which requires 60 votes to end the debate and allow a majority only vote. On top of this, senators have used their

customary power to "put a hold on" sub-cabinet nominees for an unlimited period of time. According to tradition, the holding senator does not have to reveal his or her identity, which has contributed to the perpetuation of this tactic.

Prior to the 1990s, these holds were only used to delay a floor vote on a nominee when a senator had further questions for the nominee and needed more time to make a decision about how to vote; the duration of such holds ranging from a few days to a few weeks. But since the 1990s, the duration of these holds has become longer and longer, with senators often using them to stop a nominee from ever being considered rather than simply to allow more time for questions, research or debate.

In an attempt to put an end to this abuse, the Senate in 2011 voted 92 to 4 to require that a senator make his or her hold public after two days on the theory that exposing senators who were continuing to hold nominees would result in their colleagues using leverage on them to allow the nominations to come to a vote on the Senate floor. However, this has not proven to be effective, as the process allowed the leaders of both parties to take responsibility for the holds on behalf of other senators, who could remain anonymous.

Finally, in November 2013, after years of frustrating holds and filibusters on cabinet and sub-cabinet nominees and judicial nominations, Majority Leader Harry Reid (D-NV) set up a process to change the Senate rules to allow these nominees (with the exception of Supreme Court nominees) to be confirmed with only 50 votes to defeat a filibuster, instead of the 60 required under the existing Senate Rules. This change was made through a parliamentary maneuver not through the regular order, which drew vociferous protests from Republican senators, who were then in the minority.

Three senators voted against this parliamentary change and warned that it could come back to haunt the Democrats when they returned to the minority.

Now, the Democrat minority does not have the ability to deny a vote to any Trump nominee. The only tool of delay the Democrats will have beginning in January is to force a seperate vote to end the filibuster on every individual nominee. The Republican majority will almost certainly be able to muster 50 votes for each nominee but the Democrats may use up to 30 hours of debate before the final vote occurs.

This can slow down the process for the controversial nominees but, as long as there is Republican unity, cannot be used to stop them from being confirmed.

### Non-controversial nominations

- Transportation Secretary: Elaine Chao
- Commerce Secretary: Wilbur Ross
- Interior Secretary: Congressman Ryan Zinke
- UN Ambassador: Governor Nikki Haley
- Defense Secretary: General (Rt.) James Mattis

### Somewhat controversial nominations

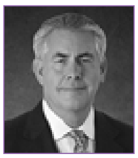
- Treasury Secretary: Steven Mnuchin
- Energy Secretary: Former Governor Rick Perry
- HUD Secretary: Dr. Ben Carson

### Contentious nominations

- EPA Administrator: Oklahoma Attorney General Scott Pruitt
- Education Secretary: Betsy DeVos
- HHS Secretary: Congressman Tom Price
- Labor Secretary: Andrew Puzder
- Attorney General: Senator Jeff Sessions
- US Ambassador to Israel: David Friedman
- Secretary of State: Rex Tillerson

# Trump Administration

## Cabinet

State

Rex Tillerson

Justice

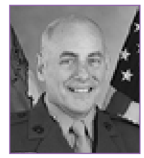
Jeff Sessions

Defense

James Mattis

Treasury

Steven Mnuchin

Homeland Security

John F. Kelly

Education

Betsy DeVos

Enery

Rick Perry

Transportation

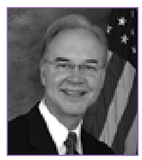
Elaine Chao

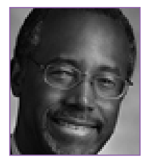
Labor

Andrew Puzder

Commerce

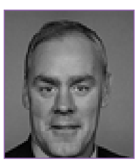
Wilbur Ross

HHS

Tom Price

HUD

Ben Carson

Agriculture
Open

Veterans
Open

Interior

Ryan Zinke

OMB Director

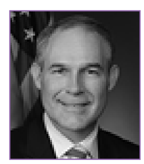
Mick Mulvaney

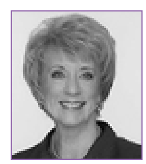
Chief of staff

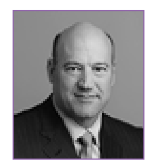
Reince Priebus

Ambassador to the U.N.

Nikki Haley

EPA Administrator

Scott Pruitt

Administrator of the SBA

Linda McMahon

National Economic Council Director

Gary Cohn

## White House

Chief Strategist

Stephen Bannon

National Security Advisor

Michael Flynn

White House Counsel

Donald McGahn

Press secretary

Sean Spicer

Deputy National Security Advisor

Kathleen Troia "KT" McFarland

Director of National Intelligence
Open

CIA Director

Mike Pompeo

Senior advisor to the president for policy

Stephen Miller

Counselor to the President

Kellyanne Conway

| Senators up for election in 2018 | | | |
|---|---|---|---|
| **State** | **Senator** | **Party** | **Electoral history** |
| Arizona | Jeff Flake | (R) | 2012 |
| California | Dianne Feinstein | (D) | 1992 (Special) ,1994, 2000, 2006, 2012 |
| Connecticut | Chris Murphy | (D) | 2012 |
| Delaware | Tom Carper | (D) | 2000, 2006, 2012 |
| Florida | Bill Nelson | (D) | 2000, 2006, 2012 |
| Hawaii | Mazie Hirono | (D) | 2012 |
| Indiana | Joe Donnelly | (D) | 2012 |
| Maine | Angus King | (I) | 2012 |
| Maryland | Ben Cardin | (D) | 2006, 2012 |
| Massachusetts | Elizabeth Warren | (D) | 2012 |
| Michigan | Debbie Stabenow | (D) | 2000, 2006, 2012 |
| Minnesota | Amy Klobuchar | (D) | 2006, 2012 |
| Mississippi | Roger Wicker | (R) | 2007 (Appointed), 2008 (Special), 2012 |
| Missouri | Claire McCaskill | (D) | 2006. 2012 |
| Montana | Jon Tester | (D) | 2006, 2012 |
| Nebraska | Deb Fischer | (R) | 2012 |
| Nevada | Dean Heller | (R) | 2011 (Appointed), 2012 |
| New Jersey | Bob Menendez | (D) | 2006 (Appointed), 2006, 2012 |
| New Mexico | Martin Heinrich | (D) | 2012 |
| New York | Kirsten Gillibrand | (D) | 2009 (Appointed), 2010 (Special), 2012 |
| North Dakota | Heidi Heitkamp | (D) | 2012 |
| Ohio | Sherrod Brown | (D) | 2006, 2012 |
| Pennsylvania | Bob Casey, Jr. | (D) | 2006, 2012 |
| Rhode Island | Sheldon Whitehouse | (D) | 2006, 2012 |
| Tennessee | Bob Corker | (R) | 2006, 2012 |
| Texas | Ted Cruz | (R) | 2012 |
| Utah | Orrin Hatch | (R) | 1976, 1982, 1988, 1994, 2000, 2006, 2012 |
| Vermont | Bernie Sanders | (I) | 2006, 2012 |
| Virginia | Tim Kaine | (D) | 2012 |
| Washington | Maria Cantwell | (D) | 2000, 2006, 2012 |
| West Virginia | Joe Manchin | (D) | 2010 (Special), 2012 |
| Wisconsin | Tammy Baldwin | (D) | 2012 |
| Wyoming | John Barrasso | (R) | 2007 (Appointed), 2008 (Special), 2012 |

# House overview

## The official start of the 115th Congress is noon on January 3, 2017. Paul Ryan is expected to easily be elected Speaker, marking his second term (although first full term) leading that chamber, and continuing his role as No. 3 in the presidential line of succession.

In the opening week of session, the House will need to consider a rules package clarifying process issues that will affect the coming year. These include the speed with which a budget resolution can be considered without an organized committee and whether there will be an automatic increase in the federal debt limit following the passage of a budget resolution (known as the "Gephardt Rule").

The month of January will be all about logistical planning for the coming year and it is therefore unlikely that very much legislative activity will occur until February.

**Obamacare relief:** Both congressional bodies will be focused on repealing the Affordable Care Act (ACA or Obamacare.). The Senate, for its part, will need to begin the budget resolution process for FY 2017 such that repeal can be accomplished through a reconciliation bill. This will include 50 hours of debate in the Senate to be followed by "vote-a-rama" voting, probably as early as the week of January 9.

Once the Senate has that completed, the House will aim to pass its FY 2017 budget by January 13. Throughout the rest of January, House committees will perform the tasks necessary to report Obamacare-repeal language to the Budget Committee, which will package the language and send it to the House floor, likely in early February. Once passed through the House, the bill will reach the Senate, which will now need only a simple majority for passage.

If all goes according to plan, the bill can be on President Trump's desk for signing before the end of February. That said, there have been ongoing discussions regarding how quickly this process really needs to be done and even whether it could be stretched out until late spring or summer. Speaker Ryan and Senator Majority Leader Mitch McConnell have not yet publicly stated whether it will go to the President later than February.

**Tax reform:** As far as tax reform is concerned, the House will follow the Ways and Means Committee's blueprint, "Better Way for Tax Reform," which it unveiled in June 2016. However, with the focus on ACA repeal taking up most of the oxygen in Congress early on, tax reform may not be attacked in earnest until later in the year (possibly summer).

The Senate will likely work on its own blueprint simultaneously with the House's efforts and the joined product could end up being passed in the Senate via reconciliation, avoiding the 60-vote threshold.

**CRA rule rollbacks:** Leadership in both bodies are certain to make floor time available in January and February for using the Congressional Review Act to rollback various Obama administration-ordered regulations. Once Donald Trump is sworn in, the Congress will engage with the relevant departments and agencies to achieve the rollbacks.

Other early-docket items: Additional congressional priorities include appropriations (currently funded via a CR until 4/28), Dodd/Frank repeal consideration, targeted immigration enforcement funding (broader legislation is not likely to be implemented in as swift a fashion), nominations (both executive and judicial, including Supreme Court) and, potentially, something in the infrastructure arena, although the specifics of how the infrastructure piece will come to fruition is still being discussed.

## Mark your calendars:

- The House is expected to populate their committees during the weeks beginning January 2 and January 9.
- The House Republican Elected Leadership Retreat (for members who sit at the Leadership table) will be January 8 and 9.
- The Inauguration of Donald Trump will be January 20.
- Republican members of the House and Senate will hold their joint retreat on January 25-27 in Philadelphia.

# Agriculture

Agriculture policy in the 115th Congress will be driven by the rewrite of the Farm Bill, which has traditionally been rewritten every five years. The last Farm Bill was approved in early 2014 (almost two years late) and goes through the end of 2018. It is the goal of the House and Senate Agriculture Committees to complete the next Farm Bill rewrite by the summer of 2018, before the midterm elections take control of members' schedules. Hearings on the Farm Bill will begin early in 2017 and run through at least the summer.

Experienced hands will be at the helm of the House and Senate Committees, with Chairman Mike Conway (R-TX) returning as House chairman and Senator Pat Roberts (R-KS) returning as Senate chairman. Both have been through the complicated balancing act presented by developing a bill that can gain the support of rural agricultural legislators and urban members of Congress whose constituencies rely on the USDA nutrition programs that have been included in past Farm Bills. The 2014 Farm Bill was delayed for many months in 2012 and 2013 in part due to the efforts of many conservative members of the House to decouple reauthorization of the SNAP (food stamps) and other nutrition programs from the agricultural commodity programs, crop insurance and conservation programs.

Decades ago, farm state members of Congress and the leadership of the House Committee on Agriculture and the Senate Agriculture, Nutrition and Forestry Committee recognized the strategic importance of binding nutrition programs administered by USDA with the traditional commodity support programs in order to encourage urban/suburban members to support the Farm Bill. Initially, the House Agriculture Committee voted to strip the nutrition programs from the Farm Bill, but then later recognizing the political reality that a Farm Bill needed the votes of non-farm country members, added back the SNAP and other nutrition programs to the final bill. This Farm Bill will once again be challenged by budget hawks in the House and Senate regarding the cost of the commodity programs and the crop insurance programs. Other programs, such as the dairy program and conservation programs, will also be the target of much debate and differing opinions.

One area of mostly common agreement is the importance of providing continued strong support for USDA programs that support agricultural and natural resource research at America's major public research universities. Another topic on the minds of many agricultural groups is how to support and sustain young farmers for the next generation of American agricultural production. In addition, the challenge of increasingly scarce water supplies for agricultural production will never be far from the Farm Bill debate.

Numerous interests groups in Washington—the American Farm Bureau, National Farmers Union the Forest in the Farm Bill Coalition, research universities, specific commodity organizations, environmental and conservation organizations, and organizations supportive of expanded nutrition programs, among others—are all gearing up to offer legislative proposals and to strengthen their lobbying capabilities during the Farm Bill process.

## Trade

Debate about international trade and the Trump administration's position on trade agreements will have a major impact on American agriculture, one of America's biggest export sectors. The agricultural community has generally supported free trade because of America's big trade advantage on agricultural products. In December, the Obama administration brought action under existing trade agreements against China, alleging that China has unfairly limited access for US wheat, corn and rice. The action was applauded by both Republicans and Democrats as a important step toward a tougher US trade posture toward China. The Trump transition team has clearly signaled its intention to follow through on the President-elect's campaign rhetoric against the Chinese once he is in office.

Agricultural trade with Cuba has been one of the few areas of approved interaction between American businesses and the Cuban economy for many years. As a result, Cuba has become a major market for American agriculture products. With Obama having moved the US to a more normalized relationship with Cuba generally, the Trump administration must decide how it wants to deal with Cuba in the years ahead.

## Trump on agriculture

During his campaign, President-elect Trump had an agricultural advisory committee boasting a long list of names, but he himself had very little to say during the campaign regarding his views on agriculture in America. Little is known, for example, about the type of policies he is likely to propose for the Farm Bill. He also left the nominee for Agriculture Secretary to the very end of his Cabinet selection process. His "landing team" at the USDA consisted, for much of December, of one person; his landing teams at other agencies were much larger, including some with more than a dozen members. The members of his campaign Agriculture Advisory Committee who have spoken publicly since the election have emphasized that Mr. Trump must pay attention to the needs of rural voters in his early policy initiatives because of the large margins they delivered for him in key swing states, making possible his surprising electoral college victory.

# Budget and Appropriations

# Budget reconciliation primer: A fast-track process (50, not 60, votes required) for changing tax and spending policies.

Lawmakers, administration officials, journalists and much of official Washington will begin using the term "budget reconciliation" over and over during the first few days of the 115th Congress—and will probably continue doing so until the last days of 2017.

Congress established the "budget reconciliation" process, often shortened to simply "reconciliation," in the 1974 Congressional Budget and Impoundment Act. The new law set up a fast-track budget process designed to come at the end of the calendar year to allow Congress to better meet its budget targets. The law envisioned the following:

- The House and Senate would pass a budget resolution, not a law, that would set top-line spending and deficit targets for the fiscal year beginning on October 1. After Congress completed its appropriations process and any mandatory and tax legislation, the Congressional Budget Office (CBO) would provide updated spending and deficit data for the second time in the year, typically in September, with the first being at the beginning of the calendar year.
- If the CBO stated that the budget deficit targets were below what Congress set as a goal in the budget resolution, Congressional leaders could use a fast-track legislative process (i.e., reconciliation), to cut spending and raise taxes in order to meet the deficit targets set earlier in the year.

- The bill would (typically) include provisions from several different Congressional committees with jurisdiction over mandatory spending, fee collection and taxes. (In the House, much of the deficit reduction has taken place in the Ways and Means and Energy and Commerce Committees; in the Senate, the Finance Committee has been the lead deficit reduction committee in this process.)

President Carter signed the first reconciliation bill in 1980. Since then, Congress has tweaked the law, legislating changes designed to force Congress to make tough decisions on meeting the deficit targets, although such changes have been largely unsuccessful.

Application of the baroque parliamentary rules governing the reconciliation process has changed since the 1980s, and new parliamentary rules have been adopted, most notably the so-called "Byrd Rule," designed to ensure that the reconciliation process remains focused on budgetary by providing a point of order against material defined to be "extraneous" to budgeting, i.e., a provision that is not about spending (outlays) or taxing (revenues) or is "merely incidental" to budgeting. If a provision violates the Byrd rule, it can be removed on Senate floor unless 60 Senators vote to keep it.

Then there is the Senate parliamentary rule that reconciliation bills do not have to reduce the deficit at all. The so-called Bush tax cuts in 2001 increased the deficit but were considered under the fast-track reconciliation process. Congress, however, provided a sunset for these tax cuts after 10 years

Basically, the reconciliation process is now used to implement a budget, spending and tax deal supported by the Congressional majority leadership.

President-elect Trump and the Republican majority in Congress will now be able to use this process to repeal or change the Affordable Care Act, cut taxes, increase infrastructure spending and, potentially, increase tariffs outside the normal legislative rules of Congress.

In practical terms, this process only alters the way the Senate considers reconciliation legislation; the House can pass any legislation with a majority vote, regardless of whether it is in reconciliation form or not.

The 2017 reconciliation process allows the Senate majority to do the following:

- Pass legislation changing mandatory spending, fees and taxes with only 50 votes in the Senate, not the 60 typically required for all other legislation. This means that the Senate leadership does not need the votes of any Democrats to pass this legislation and they can even lose two GOP votes and still be successful.
- Divide up spending and tax legislation into more than one reconciliation bill, allowing Congress to consider unrelated measures separately, to avoid loading up disparate legislation (e.g., health care, taxes, infrastructure spending, etc.) into one massive omnibus
- package, something that many House Republicans have protested in the past.
- Limit Democratic amendments to strictly "germane" amendments. If amendments do not meet this standard, 60 votes will be needed to pass them. In other words, if the first reconciliation bill does not contain provisions changing Medicare, any amendment offered by a Democrat on Medicare would need 60 votes to pass.
- Prevent a filibuster of any part of the reconciliation process, including procedural votes like motion to proceed, appointing conferees, going to conference, etc.

House Democrats have no power to stop the reconciliation process—and can't even do much legislatively to protest it.

Senate Democrats have limited powers to delay the Senate and offer politically difficult amendments for the majority to be forced to vote against, but in the end, without three Republican defections during part of this process, the congressional GOP leadership should be able to enact its agenda on spending and taxes.

The Senate Democrats have the following limited power:

- They can offer dozens of amendments to the budget resolution, which creates the reconciliation process, and to the actual reconciliation bills themselves. Some of these could be substantive and bipartisan but most will likely be designed to force Republicans to vote against something popular in the ACA or in the tax code.
- They can try to knock out extraneous provisions in the reconciliation bills that do not "score" and thus are Byrd Rule violations. If they find Byrd Rule violations, and the Parliamentarian agrees, they can strike them from the bill unless the GOP can muster 60 votes to overcome the violation.
- They can also obstruct and delay other legislation, nominations, committee meetings and committee hearings. This can cause the Senate GOP leadership headaches and scheduling problems, but cannot stop the inevitable, a reconciliation bill that 50 GOP senators support.

So when it comes to budget and taxes, the majority will rule without the threat of a filibuster.

# Appropriations

Late in the evening on December 9, 2016, shortly before funding for the federal government's operations expired, the Senate, by a vote of 63-36, avoided a government shutdown for another four and one-half months, passing a continuing resolution (CR) essentially extending federal discretionary spending at current rates, with only a few noteworthy "anomaly" exceptions, through April 28, 2017. (President Obama signed this CR immediately upon receipt, early in the morning of December 10.) Simply put, to the regret, but not the surprise, of many, particularly those members of the House and Senate who serve on the Appropriations Committees, the 114th Congress punted on the FY 2017 appropriations process.

In the period immediately following the November elections, Congressional Republicans abandoned their long-stated intention to pass all of the FY 2017 appropriations bills before adjourning for the year and instead opted to honor the request of the Trump transition team that all major spending decisions be delayed until after the President-elect takes office. They took this step so that Mr. Trump and his incoming administration would have the chance to establish and implement his own spending and budgeting priorities for 2017 rather than be locked in to the priorities of President Obama and the 114th Congress.

The CR sets federal discretionary spending at an annual rate of $1.07 trillion, the maximum funding level permitted under the current budget law and a level very close to the FY 2016 spending rate. Passage of the CR followed Congress's failure to pass and send to President Obama any spending bills for FY 2017, which began on October 1, 2016, an outcome that disappointed most of the members of both the House and Senate Appropriations Committees who seek a return to regular order where the Congress would pass many, if not all, of the appropriations bills on an individual basis.

While the CR includes certain supplemental funding to support the operations of the Department of Defense, many in the DoD leadership are sharply critical of Congress's failure to pass and send the President individual appropriations bills because they believe a CR deprives it of the ability to plan and budget appropriately and make programmatic changes as necessary to respond to circumstances on the ground. As Defense Secretary Ashton Carter complained in a recent letter to the Congressional leadership, a CR means that the DoD is "locked into last year's budget with last year's priorities."

But the challenges posed by a CR are not limited to the DoD. Leaders of all federal departments and agencies will be barred from starting new programs or stopping old ones and from implementing funding increases or decreases included in the various appropriations bills that were passed by the House or

Senate Appropriations Committees, respectively, but never became law. Until the Congress passes, and the President signs, the FY 2017 appropriations bills, funding changes and program guidance included in the House and Senate versions of the various bills, even if overwhelmingly supported by the members of House and Senate, will not have the force of law and cannot be implemented.

Thus, even if the next Congress does eventually pass some FY 2017 appropriations legislation, 2017 funding outcomes will now most likely not be known until April 2017, more than half way through the current fiscal year. In addition, with Congressional Republicans and President-elect Trump pledging to use the reconciliation process immediately after Mr. Trump's inauguration to repeal the Affordable Care Act and to promptly thereafter pursue adoption of a FY 2018 budget resolution to fast track the process for pursuing tax reform, the 115th Congress and the new Trump administration will face a very full policy agenda when the new Congress convenes on January 3, 2017.

In addition to pursuing the Trump administration's policy agenda for the first 100 days, the next Congress will have to finish the FY 2017 appropriations process and develop and pass a FY 2017 budget resolution; then develop and pass a fiscal year 2018 budget resolution; and then consider, pass and send to President Trump, by October 1, 2017, when FY 2018 begins, each of the 12 FY 2018 individual appropriations bills—truly daunting tasks for a new president and for any Congress.

Senate Majority Leader Mitch McConnell and House Speaker Paul Ryan each have repeatedly spoken favorably of a return to regular order that involves passing and sending individual appropriations bills to the President. Yet with Democrats having picked up two Senate seats in the most recent election and no crisis at hand, a case can be made that the path to passing appropriation bills in the Senate has actually gotten more difficult as a result of the election.

Given this reality and the challenges of finding the necessary floor time for the Senate to consider appropriations bills, a real possibility already exists that the new Congress will be unable to devote the floor time necessary to pass and send the President individual appropriations bills before the current fiscal year concludes on September 30, 2017. As a result, while Congressional Republican leaders continue to express optimism about the prospects for the budget and appropriations process in 2017, several prominent Congressional Republican appropriators have already suggested that the enactment of individual FY 2017 appropriations bills remains highly unlikely and that passage of a long-term CR to fund the federal government's operations could be on the horizon in late April 2017 when the current CR expires.

# Canada-US cross border issues

## As the largest commercial partner of the US with about $700 billion in annual 2 way trade, Canada merits special attention. In addition to the $1.6 million in commerce every minute, 400,000 border crossings occur every day. What are the threats and opportunities for Canada/ US business in 2017 from a policy point of view?

Even though anti-trade rhetoric marked the US election campaign, 2016 was a year of landmark trade deals moving forward involving multiple countries. The World Trade Organization's Trade Facilitation Agreement brought together more than 100 countries to make trade between them easier, and more than 50 countries agreed to expand the Information Technology Agreement to eliminate duties on $1.3 billion worth of goods. And while President-elect Trump has indicated that the US will not participate in the Trans-Pacific Partnership, 11 other nations agreed to a deal that would involve 40% of the world's economy. This may present an opportunity for Canadian interests.

A more immediate question for Canadian business is what will become of the NAFTA agreement, and will it be overtaken by "Buy American" provisions that, unlike the Recovery Act of 2009, do not consider Canadian inputs to be "American" for the purposes of "Buy American." Fortunately for Canadian interests, a number of leading Congressional voices on international trade, such as House Ways and Means Committee Chairman Kevin Brady and Senate Finance Committee Chairman Orrin Hatch, have urged lawmakers to fix trade deals rather than abandoning them altogether.

In the upcoming 115th Congressional session, much of the trade policy question will be considered in the context of comprehensive tax and immigration reform. Of immediate interest to Canada are proposals related to border tax adjustments (BTAs).

Rather than continuing the United States' efforts to collect corporate taxes based on where a corporation's profits are earned, a BTA approach would not include sales abroad in determining corporate revenue for tax purposes, nor would purchases or investments made abroad be deductible. Instead, taxes would be destination-based; levied on where a company's products are used rather than where they are produced or where the company is located.

A BTA is defined as a tax to which domestically produced goods and imports are subject but from which exports are exempt. BTAs may be implemented either as taxes on imports and rebates on exports or by excluding overseas sales and purchases from the computation of taxable income.

All taxes on foreign-source income would be eliminated and all cross-border transactions would also be excluded. Sales abroad would not be included in receipts, and purchases abroad would not be deductible. All transactions would be ignored for tax purposes except those occurring exclusively within the United States. Because the United States has a large current account deficit with its imports considerably exceeding its exports, taxing spending on imports rather than taxing sales of exports is estimated by the Tax Foundation to raise about $1 trillion in additional federal revenue over a decade.

A crucial question remains whether a destination-based tax of this sort would be deemed to be compliant with the rules of the World Trade Organization, as it is uncertain whether such a law would be characterized as an indirect tax on transactions as permitted by the WTO rules or as a direct tax on businesses, which is prohibited by the WTO rules.

The political landscape in which this proposed change may be considered is somewhat challenging. There is a significant split among congressional Republicans as to the wisdom and merits of this proposed approach, especially among conservatives, who announced their opposition to BTA legislation, arguing that it would lead to higher prices for consumers and ultimately be "devastating" to the economy.

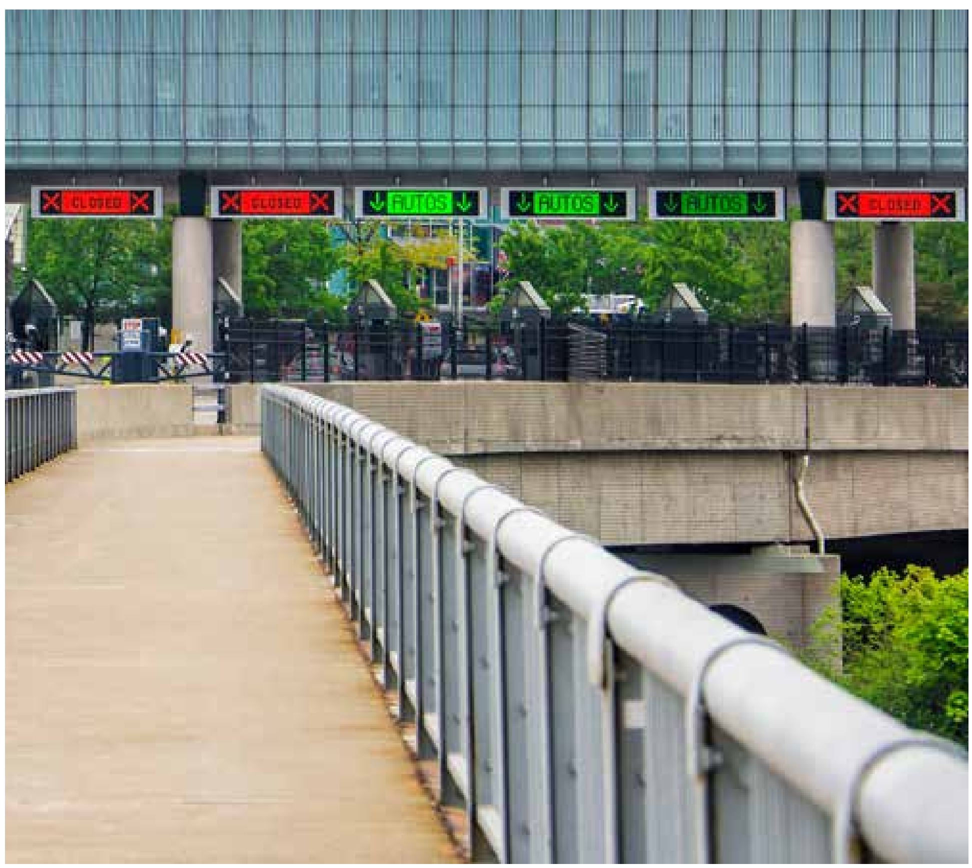
Many companies that rely on imports, such as discount retailers like Wal-Mart and Target, are concerned that the proposal will drive up their taxes and force them to increase prices.

The border adjustment tariff proposal should be viewed in the context of historical domestic preference laws. Since passage of the Buy American Act of 1933, virtually every Congress has enacted various forms of domestic-preference legislation, designed to give a preference to domestic goods in federal procurement. Such legislation, which generally requires that between 50 percent and 100 percent of materials be domestically produced, can increase the price that the federal government pays for goods, thereby reducing the impact and reach of federal expenditures and increasing the federal deficit.

That said, there are significant exemptions for trade agreements that protect many countries from having to comply with the Buy American Act's requirements for contracts above a particular threshold and that permit products from such exempt countries to be treated the same as domestic goods for federal procurement purposes. Moreover, a foreign product may be purchased if the domestic alternative is "unreasonably costly" or not available domestically in sufficient quality and quantity.

There are five Buy American Acts that are applicable only to the Department of Transportation (DOT). These acts generally apply to federal government agency grants rather than to direct spending. See, e.g., The Surface Transportation Assistance Act of 1982 (H.R. 6211, the 97th Congress). The Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), Federal Railroad Administration (FRA) High Speed Rail program, the National Railroad Passenger Corporation (AMTRAK) and the Federal Transit Administration (FTA) each have varying requirements to ensure that steel, iron and/or manufactured products used in every project are produced in the United States. These agencies also can only buy raw materials that are mined or produced domestically and manufactured goods that are made from goods that are mined or produced domestically.

Similarly, the 2009 economic stimulus bill, the American Recovery and Reinvestment Act (ARRA), provided that funds from ARRA could only be used for construction, alteration, maintenance or repair of public works in which all of the iron, steel and manufactured goods used in the project were produced in the United States. (If procurement of subcomponents or earlier processing occurred in another country, a product nonetheless can be considered to be manufactured in the United States if it is "substantially altered" during a process in the United States.) Several commentators say that this legislation had the effect of disrupting supply chains because it excluded Canadian and Mexican sources of goods, an impact that led many Canadian companies to call for retaliation by the Canadian government. (See also the Berry Amendment, which requires that food, clothing, tents, certain textile fabrics and fibers, and measuring tools purchased by the Department of Defense (DoD) be entirely grown, reprocessed, reused or produced within the United States.)



# Climate

The biggest climate change policy question ahead is what path forward President-elect Trump will take to reverse course on the Obama Climate Change Action Plan and, in particular, its key element, the EPA Clean Power Plan (CPP), developed under the Clean Air Act. Likewise, the new administration will decide whether to keep the United States in the Paris Agreement already signed by 197 countries including the US. Reversing course at the EPA while also staying within the Paris Agreement would be a challenging line for President Trump to walk.

## Reversing course on the Clean Power Plan

President-elect Trump nominated Oklahoma Attorney General Greg Pruitt to be the new administrator of the Environmental Protection Agency. Pruitt would bring to the EPA a well-known federalist perspective on the law. With respect to the CPP, he has made his views clear: "What concerns the states is the process, the procedures, the authority that the EPA is exerting, [which] we think is entirely inconsistent with its constitutional and statutory authority. Agencies such as the EPA should not be trying to 'pinch hit' for Congress." On the science of climate change he has stated that, "global warming has inspired one of the major policy debates of our time. That debate is far from settled. Scientists continue to disagree about the degree and extent of global warming and its connection to the actions of mankind."

The CPP is clearly targeted for repeal by the President-elect and the Republican-led Congress, but such efforts could face a complicated and protracted battle. The CPP was published in the *Federal Register* in 2015; therefore, the timespan for Congress to consider Congressional Review Act disapproval resolutions has passed and the new administration and Congress will have to use other means to block it. The CPP is also subject to litigation, adding another layer of complexity to efforts to roll back the regulations.

Implementation of the CPP is currently stayed due to a surprise order from the Supreme Court in February 2016. In September 2016, the US Court of Appeals for the DC Circuit heard oral arguments in litigation over the CPP, and could issue a decision on the case prior to Mr. Trump taking office. If the DC Circuit upholds the rule, the Trump Administration could appeal the decision to the Supreme Court, where conservative justices—assuming that Mr. Trump's nominee to replace the late Justice Scalia gets confirmed relatively quickly—will command a 5-4 majority. If the DC Circuit rejects the CPP, the Trump administration will likely decline to appeal the decision to the Supreme Court, but the states and non-governmental organizations (NGOs) that intervened on behalf of the EPA could very well appeal. If the DC Circuit does not issue a decision prior to Mr. Trump taking office, his administration could withdraw the government's support for the CPP, though, as noted above, states and NGOs would continue their advocacy for the rule.

Congress could also pursue legislation to block the rule. Specifically, Congress could attempt to pass stand-alone legislation repealing the EPA's authority to implement CO2 standards for power plants, though passage in the Senate could be difficult given that 60 votes will likely be necessary to defeat a filibuster. Some Democratic senators, such as Joe Manchin (WV) and Heidi Heitkamp (ND), would likely support this type of legislation, but the effort may fall short in securing enough Democratic support to clear a filibuster. Congressional Republicans may also use the appropriations process to block funding for the CPP.

The most likely path forward is for EPA to administratively withdraw the CPP, but even this effort would be time-consuming, as the agency would have to initiate formal rulemaking to undo the regulation. Notably, in *Motor Vehicles Manufacturers Association of the United States v. State Farm Mutual Automobile Insurance Company*, the Supreme Court unanimously struck down a Reagan-era rescission of a car safety standard. According to the Court, the administration "failed to present an adequate basis and explanation for rescinding" the previous requirement. Thus, a Trump-led EPA will arguably have to offer "an adequate basis and explanation" for repealing the CPP, and that "adequate basis and explanation" may be challenged by NGOs and states, potentially tying up the rule in litigation for years.

While much of the focus will be on the CPP, the incoming administration and the Republican-led Congress may also target other Obama climate initiatives, such as methane standards for new oil and gas operations, tailpipe emissions standards and the National Environmental Policy Act (NEPA) guidance. Some of these initiatives, such as methane standards for new oil-and-gas operations, could be repealed by the Congressional Review Act; other policies, like the NEPA guidance, could be rolled back by executive action. Other actions by the Obama administration, such as its decision to retain existing tailpipe standards for light-duty vehicles, are not subject to the Congressional Review Act and may be more difficult to repeal.

## Keeping an open mind on climate change

During the November 2016 United Nations climate talks in Morocco, China's President Xi Jinping noted the importance of cooperation with the United States but stated that China will continue its fight against climate change "whatever the circumstances," signaling that China intends to be a "climate leader" even if the US pulls away from the Paris Agreement and UNFCCC negotiations. After the election, President-elect Trump softened his stance on Paris, stating that he has an "open mind" on the issue of keeping the US in the Paris Agreement and acknowledging "some connection" between human activity and climate change

In early December it was reported that Mr. Trump's daughter, Ivanka, may seek to make climate change one of her signature issues. Subsequently, climate advocate and former Vice President Al Gore met with her and the President-elect at Trump Towers in what Gore described as a "sincere effort to find common ground." Meanwhile, Mr. Trump's nominee for Secretary of State, Exxon Mobil CEO Rex Tillerson, likewise has acknowledged the reality of climate change. At the 2016 Exxon Mobil shareholders meeting, he stated: "We believe that addressing the risk of climate change is a global issue." Touting his company's record on the environment, Mr. Tillerson said that ExxonMobil has invested $7 billion since 2000 to reduce the company's greenhouse gas emissions, and that the company supports a revenue-neutral carbon price. "Relative to the understanding of the science, there's no space between us and the IPCC," he said.

It is difficult to reconcile a reverse course of action at the EPA with a decision by the Trump Administration to stay engaged in the Paris Agreement. Indeed, it remains to be seen whether or not President Trump will keep the US in the Paris Agreement. However, business alone, along with states, will almost guarantee that the U.S. will meet its domestic reduction targets regardless of the policies the new President ends up adopting. It is a mistake to assume that what happens domestically and internationally cannot be reconciled if the Administration would like to keep up foreign engagement on climate change policy.

# Defense

## The 115th Congress will mark the first opportunity in a decade for a Republican-controlled House and Senate to work with a Republican president. In 2017, leading GOP defense and national security policymakers on Capitol Hill will work with the Trump administration to craft legislation and conduct hearings in support of the President-elect's key defense priorities, including:

- Developing a new approach to counter ISIS.
- Eliminating existing defense spending caps established by the Budget Control Act
- Increasing the strength, size and readiness of the US Armed Forces
- Improving federal cyber security infrastructure and capabilities
- Identifying efficiencies and other cost-cutting mechanisms within the Department of Defense (DoD) bureaucracy
- Leveraging DoD innovation initiatives to foster greater collaboration with non-traditional commercial interests

Although Senate and House Armed Services Committee Chairmen John McCain (R-AZ) and Mac Thornberry (R-TX) may not be in lockstep alignment with the Trump administration across the defense policy spectrum, enough common ground exists to provide for a productive year of legislating and oversight by their respective committees in 2017.

One of the first orders of business for the Senate Armed Services Committee (SASC) in January 2017 is the confirmation of Secretary of Defense nominee General James Mattis, the former commander of US Central Command, and a leader revered and admired for his blunt talk, intellect and devotion to the US military. By law, former military officers cannot serve as Secretary of Defense within seven years of retirement without a Congressional waiver. Congressional Republicans, in one of their last acts of the 114th Congress, inserted language into a must-pass bill to fund the federal government that will streamline Mattis' confirmation process.

The language, which is limited to "the first person appointed as Secretary of Defense" after the date of enactment of the federal government funding bill (i.e., Mattis) reduces number of years in the statutory prohibition against military officers serving as Secretary of Defense post-retirement from seven to three to accommodate Mattis' retirement date. Additionally, the language includes numerous fast-track mechanisms for Mattis' confirmation, including expedited consideration by SASC, elimination of the potential for procedural delays seeking to postpone the Senate's consideration of the confirmation, and a 10-hour limit on Senate floor debate.

To appease Democrats, Republicans included a requirement that Mattis must receive 60 votes to be confirmed, as opposed to the simple majority of 51 that applies to other nominees (Supreme Court justices excepted). That said, Mattis is expected to be easily confirmed as the 26th secretary of defense by the full Senate in January 2017.

Building on Congressional passage of defense acquisition reform measures over the past two years, McCain and Thornberry, with cooperation from Democratic members of their respective committees, will continue to champion legislation to streamline the DoD procurement process and enhance the Department's innovation programs in an effort to, in Thornberry's words, "get better technology into the hands of the warfighter faster and more efficiently." Cyber security will be another major policy focal point for defense lawmakers during the 115th Congress. McCain has indicated that he intends to use his committee's oversight function in 2017 to ensure that the DoD and the Armed Forces have "the resources, personnel, and capabilities necessary to defend, deter, and respond to our adversaries in cyberspace."

In the coming year, defense lawmakers will also continue to exercise their policymaking and oversight authority over matters relating to ongoing US military activities, including in Iraq, Afghanistan, Syria and Somalia. Additionally, the congressional Armed Services Committees will continue to focus on:

- Russia's activities along Europe's Eastern Flank and in the Middle East
- Iran's influence and participation in ongoing conflicts in the Middle East, as well as that nation's compliance with the Joint Comprehensive Plan of Action (aka the Iran Nuclear Deal)
- North Korea's continued development of its nuclear weapons program
- ISIS's expansion of its global footprint, with a particular focus on the continent of Africa

Further, the House and Senate Armed Services Committees will likely work with the House Foreign Affairs and the Senate Foreign Relations Committees on cross-jurisdictional issues, including assessments of existing and proposed US strategic defense alliances abroad.

Finally, Congress will pass its annual defense policy bill, the National Defense Authorization Act, likely with a considerably increased topline spending level and little-to-no resistance from the Trump administration, in contrast to the often-strong opposition to key measures in the bills provided by the Obama administration in recent years. In sum, defense lawmakers on Capitol Hill are expected to be busy and productive in 2017, working collaboratively with the Republican-controlled White House to effect significant policy changes.

# Education

With the signing into law of the Every Student Succeeds Act (ESSA), the 114th Congress closed at the end of 2016 having passed the first major piece of education legislation in more than 14 years. The law serves to reform the Bush-era "No Child Left Behind" law and while ESSA enjoyed bipartisan support, the 11-month implementation effort exposed fractures among education stakeholders. With Donald Trump's unexpected election to the White House, teachers unions and activist groups who were counting on a Clinton Department of Education to lead the full implementation of the law now face an agency that will have a very different agenda and a Congress bent on moving governmental power closer to the people, i.e., from the federal level to the state and local levels.

When Congress returns in January, it will resume its aggressive oversight of the implementation efforts of ESSA at the Department of Education. Senator Lamar Alexander (R-TN), a former Education Secretary under President George H. W. Bush, will return to the Senate as chairman of the Education Committee, in which role he is expected to lead efforts to turn back controversial regulations issued late in the Obama administration. Final rules relating to teacher preparation programs in post-secondary education and K-12 accountability requirements will be targeted for veto under the Congressional Review Act, which allows Congress to reject specific regulations under certain circumstances and with the President's signature. Education policy makers view these regulations, among others, as too prescriptive and not in line with the intent of ESSA. The expectation is that Mr. Trump as President will sign these disapprovals and force the agency to step back from similar rulemaking. In the House, long-time education policy leader Representative Virginia Foxx (R-NC) will take over as the chair of the House Education Committee. She has expressed her desire to consider legislation that would more broadly target segments of rules and regulations that come from federal agencies, including the Department of Education (ED), that have an outsized impact on the finances and time requirements of schools and school districts and that place limits on the authority of the ED to proscribe how states and districts must comply with federal law.

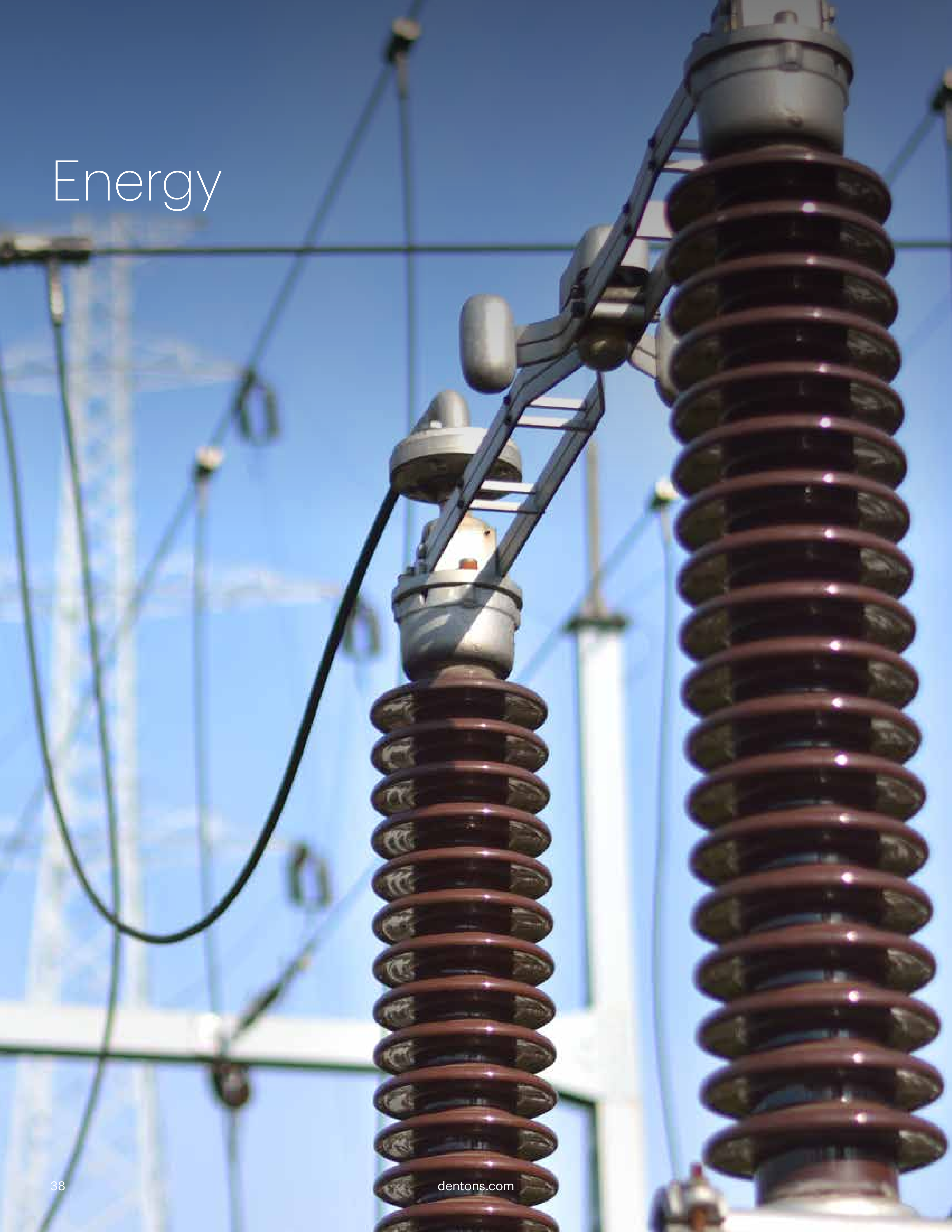
Both Senator Alexander and Representative Foxx are eager to address, in the 115th Congress, what they have strongly criticized as unnecessary or excessive regulation of higher education institutions during the Obama administration. The reauthorization of the Higher Education Act (HEA) will be the vehicle for attacking Obama regulations and pushing forward with other changes. During the first part of 2017, it is expected that both Committees will begin hearings and discussions on the framework for a revised HEA. In response to greater concerns about the cost of college tuition, federal spending on higher education programs rose dramatically during the Obama years. Pell grants rose from $17 million in 2009 to $30 million in 2016, with more students receiving such grants and Congress increasing the maximum award amount from $4,730 to $5,815. Student loan programs also have escalated significantly in cost. The cost of higher education took center stage in the presidential campaign with Bernie Sanders proposing free college tuition and Hillary Clinton, during the primary, moving toward Sanders' position on higher education funding. The difficult part for the new President and Congress will be how to respond to the continuing concerns about college affordability while at the same time controlling federal spending on higher education. There seems to be widespread support in Congress for restoring year-round Pell grants. However, the future of federally run student loan programs will likely be in for significant scrutiny, with many conservatives in Congress favoring a return to private-lender programs.

The Obama administration spent a great deal of time promulgating rules regarding the for-profit higher education community and aggressively overseeing their compliance. The Obama ED justified its actions as necessary to hold for-profits to higher standards, to weed out underperforming schools, to make schools more accountable for marketing tactics that Obama regulators saw as misleading or that enticed students to go deeply into debt for limited workplace returns. Obama initiatives, such as the new Gainful Employment regulations, which were cheered by liberal members of Congress, including Senator Elizabeth Warren (D-MA) and Senator Dick Durbin (D-IL), were heavily criticized by Chairman Alexander, Congresswoman Foxx and other Republican members of Congress as a clear example of departmental overreach and unfair targeting of the for-profit sector. This debate will continue during Committee consideration of the HEA, as it is clear that programs offered by quality for-profit schools are an important way of addressing the education needs of non-traditional and minority students as well as veterans and workers seeking job retraining. The expectation is that the new Congress and the Trump administration will work more closely with the for-profit sector to ensure that standards for institutional accountability are more evenly administered and that the public recognizes the significant role that non-traditional education programs can play in enhancing the educational capabilities of a 21st century workforce.

During the campaign, President-elect Trump called for the elimination of the Department of Education, but such a move is unlikely at the early stages of his presidency. More recently, Mr. Trump caused a stir in some policy quarters with the announcement of Betsy DeVos to be his nominee for Secretary of Education. Ms. DeVos has a long history of philanthropic work in the school choice, voucher, and charter school movements but she has never taught in a classroom or served in an administrative capacity with a public school system, so her selection was a controversial one, roundly criticized by teachers unions as an attack on public schools, who cite Devos's support for aggressive voucher programs. Editorial boards around the country have pointed to her lack of experience in this role. Countering those concerns, policy makers on the Hill, including Senator Alexander, Majority Leader McConnell and others, have praised the choice and committed to moving her swiftly through the nomination process.

DeVos's speedy confirmation is a priority for the new administration, as it will have to deliver a new budget to Congress for fiscal year 2018 and expectations are that it will include a sizeable increase in the ED's budget for the charter school program to support the funding of new schools around the country; this will be controversial and the Secretary will play a key role in selling the spending request.

# Energy



President-elect Donald Trump and the Republican-led Congress are expected to pursue pro-fossil fuel development policies and the regulatory rollback of some Obama-era environmental policies. The incoming administration is likely to quickly take some executive actions to encourage development of domestic energy resources and energy infrastructure. Since the election, Mr. Trump has pledged that one of his initial actions will be to "lift the restrictions on ... American energy reserves, including shale, oil, natural gas and clean coal." Specifically, his administration is likely to end the current moratorium on new coal leases on federal lands. In addition, the President-elect has signaled that he will request TransCanada Corp. to renew its permit application for the Keystone XL pipeline, though it remains to be seen how quickly the incoming administration will approve the project or whether the President-elect will require that the US retain a portion of the project's profits. As covered in another section, the incoming administration will also attempt to roll back key portions of President Obama's Climate Action Plan, such as the Clean Power Plan, and explore options for the United States' withdrawal from the Paris Agreement.

In early 2017, the Senate Energy and Natural Resources Committee will be focused on confirming the President-elect's nominee for head of the Department of Energy (DOE) and his choice for head of the Department of the Interior (DOI). The Senate Energy and Natural Resources Committee will consider Mr. Trump's nomination of former Texas Governor Rick Perry (R) as Secretary of Energy. During his confirmation hearings, the Governor may face sharp questioning from Committee Democrats on his skepticism concerning the science underlying climate change but also more parochial questioning from both Republican and Democratic Committee members regarding various other DOE responsibilities, such as the clean-up of legacy nuclear facilities in Ohio, Tennessee and Washington State. Mr. Trump's nominee to head DOI, Representative Ryan Zinke (R-MT), will likely face questioning from Committee Democrats on the incoming administration's desire to expand fossil fuel development on federal lands. The President-elect will also have the opportunity to nominate a new chairman of the Federal Energy Regulatory Commission (FERC) and fill two current Republican vacancies on the Commission, nominations which the Committee will also consider at some point in 2017. Neil Chatterjee, a senior energy advisor to Senate Majority Leader Mitch McConnell (R-KY), and Janet Sena, a senior vice president at the North American Energy Reliability Corporation, are considered the two top contenders for FERC chair. Senate procedural rule changes no longer require 60 votes to end debate on presidential nominees (with the exception of Supreme Court nominees), so there is little that Senate Democrats can do to block these nominees in the absence of opposition from at least several Senate Republicans.

The Senate Energy and Natural Resources Committee and the House Natural Resources Committee are also expected to consider legislation to repeal some Obama-era environmental regulations. For instance, the Office of Surface Mining Reclamation and Enforcement recently finalized, before President Obama leaves office, its stream protection rule, which would bolster restrictions on coal mining near waterways. Congress could repeal the stream protection rule and other recently finalized regulations under the Congressional Review Act, which allows lawmakers to strike down final rules. Notably, the Congressional Review Act permits passage of disapproval resolutions under simple majority votes in the Senate, rather than the 60 votes that are typically necessary to defeat a filibuster. The two Committees could also review the Bureau of Land Management's hydraulic fracturing rule and other Obama-era environmental regulations not subject to the Congressional Review Act.

In addition to focusing on the confirmation process and rolling back Obama-era environmental regulations, Senate Energy and Natural Resources Chair Lisa Murkowski (R-AK) and Ranking Member Maria Cantwell (D-WA) may resurrect their comprehensive energy bill, which failed to pass this past session. This legislation, which garnered significant bipartisan support in the Senate, included measures bolstering energy efficiency, expediting the LNG export process and encouraging hydropower development, among other key provisions. Mmes. Murkowski and Cantwell have worked well together on the Senate Energy and Natural Resources Committee, as evidenced by last year's proposed bipartisan energy legislation. However, it remains to be seen whether the bipartisan cooperation will fray if the Committee pursues legislation to expand fossil fuel development on federal lands.

Regarding the House Energy and Commerce Committee, Representative Greg Walden (R-OR) will serve as chair, replacing current term-limited chair, Fred Upton (R-MI). Additionally, there will be a new chair on the Subcommittee on Energy and Power to replace Representative Ed Whitfield (R-KY), who retired in July 2016. With Mr. Trump in the White House, the House Energy and Commerce Committee could pursue reform of federal environmental statutes, such as the Clean Air Act, though any significant effort to roll back environmental protections would likely face significant challenges in a closely-divided Senate. In addition, the House Energy and Commerce Committee could attempt to pass nuclear waste storage legislation, an important priority for Representative John Shimkus (R-IL), a senior member on the Committee. The House Natural Resources Committee, under the leadership of Chairman Rob Bishop (R-UT), could also work with the Trump administration on legislation to expand fossil fuel development on federal lands.

Another top priority for the House Energy and Commerce Committee will be the already underway long-term review of the Federal Power Act, the purpose of which is to ensure that the nation's grid is equipped for the challenges of the 21st century. This effort was kicked off in June of 2016 when Committee leaders sent a letter to FERC Chairman Norman Bay requesting information on the current and future state of electricity markets, which they followed up with a September hearing to examine the foundations of existing electricity markets. That hearing set the stage for 2017, as the Committee plans to take a deep dive into the Federal Power Act to better understand how technology has dramatically transformed the electric sector and what changes, if any, need to be made to the 80-year-old Federal Power Act. Among other things, the members will explore FERC's deregulation of electricity in the 1980s and 1990s and how those changes have shaped the wholesale electricity markets today; whether the policies and lines of jurisdiction laid out in the Federal Power Act still make sense in today's markets; and whether the Federal Power Act, as written, could ensure grid reliability in the future.

# Federal Debt Limit

The federal debt limit, also known as the debt ceiling, is the legal limit, set by Congress, on the total amount that the US Treasury can borrow. See 31 U.S.C. 3101(b). As a result of passage of the Balanced Budget Act of 2015 (Public Law 114-74), the federal debt limit has been suspended since November 2, 2015, and is set to be reinstated on March 16, 2017, at roughly $20.1 trillion, the amount required to cover all borrowing that has occurred to fund government obligations since the debt limit's last suspension. After March 15, 2017, if lawmakers fail to take action to once again increase or suspend the debt limit, the federal government will, eventually, be unable to meet its existing financial obligations in full and on time.

Because the federal government's accumulated debt will immediately equal the new debt ceiling, unless the Congress acts by passing legislation for President Trump's signature, the Treasury will once again have to employ extraordinary measures to ensure that the federal government continues to pay its obligations in full and on time. (According to current estimates, the federal government can continue to meet all of its current obligations through midsummer 2017 through the use of extraordinary measures. However, significant changes in the broader economy or in federal spending or tax policy could materially alter this estimate.)

If the level of federal debt hits the debt ceiling (and so-called extraordinary measures, usually involving a reduction in the amount of intragovernmental debt invested by the Treasury, have been exhausted by the Treasury), the federal government cannot legally borrow additional funds until Congress raises or suspends the debt ceiling, and the federal government would be unable to pay in full the bills for existing financial obligations (i.e., spending that has already been authorized and incurred). Thus, a debt ceiling increase or suspension eventually will become necessary to prevent the United States from defaulting on its debt, something the federal government has never done and that could have disastrous consequences for the federal government's borrowing costs.

Periodically, Congress considers and passes legislation to increase or suspend the debt limit. While any annual budget resolution is required to include appropriate levels of the public debt covered by the resolution, legislation is required to make changes to the statutory limit on the public debt because the budget resolution does not become a law. Moreover, at some point, Treasury's extraordinary measures will be exhausted; so if the debt limit is not increased or suspended, it will have only cash on hand plus daily revenue collections with which to make payments. (Once the debt limit is increased or suspended, the law requires the unwinding of any extraordinary measures that the Treasury has employed.)

Since the first overall debt ceiling was adopted in 1939, it has been raised more than 100 times, including more than a dozen times since 2000. Many, indeed most, of the decisions by Congress to raise the debt ceiling have not been particularly controversial. However, in recent years, Congressional partisanship and the concerns of many about the size of both the federal budget and the deficit have made the subject of increasing the debt limit a highly controversial one.

Many Congressional Republicans have used the need for a debt ceiling increase as a platform to argue for reduced domestic discretionary spending and lower taxes, while some Congressional Democrats have used the debt ceiling platform to make the case for a reduction in deficit spending and greater fiscal responsibility through higher taxes and less defense spending. Far fewer members of the House and Senate seem willing to make the case for deficit reduction and balanced budgets as a matter of fiscal responsibility and intergenerational fairness. Thus, when the debt ceiling fight finally arrives, in March 2017, it may provide an early indication of whether the public has a greater interest in maintaining the creditworthiness of the federal government than do those the public has elected to represent them.

# Financial Services and Banking

While President-elect Trump has not set forth his views on financial services regulation in a comprehensive manner and did not often speak about financial services issues during the recently concluded campaign, he has been very clear that he views the Dodd-Frank Act as a "disaster" that has increased cost of operations due to greater regulatory oversight, stunted economic growth and interfered with lending–without any corresponding benefits for consumers. For these reasons, he believes that, ideally, the law should be repealed and the Consumer Financial Protection Bureau (CFPB) it created should be "dismantled." Given the ability of an incoming President to nominate his own team to fill key positions at both the Treasury Department and the financial regulators, the expectation is that the Trump administration will pursue and implement a regulatory agenda that differs in fundamental ways from that of President Obama and most Congressional Democrats. The greatest uncertainty currently concerns not whether this shift will happen, but, like plans to repeal Obamacare and enact tax cuts, the speed with which it will occur.

While financial regulation reform is clearly a priority for the Trump White House, it appears that repeal of the Affordable Care Act and starting the process toward achieving comprehensive tax reform will receive earlier attention. How soon in 2017, if at all, President Trump will turn his attention to financial regulation reform remains to be determined, and will depend heavily on whether President Trump and Senate majority leader Mitch McConnell (R-KY) are persuaded to adopt the view of Senator Pat Toomey (R-PA) that repeal of substantial portions of Dodd-Frank should be pursued this spring through budget reconciliation and a FY 2018 budget resolution, a process that would allow Senate Republicans to pass changes to Dodd-Frank with 50 votes and avoid the need to obtain Democratic votes to meet the 60 vote cloture threshold.

In 2017, there will be several changes among the key players with respect to financial regulation. Although his confirmation process is likely to be contentious, Mr. Trump's nominee for Treasury secretary, Steven Mnuchin, a veteran Goldman Sachs alumnus, hedge fund investor and Hollywood film producer who served as the Trump campaign's national finance chairman, is expected eventually to be approved.

(Senate Finance Committee Chairman Orrin Hatch (R-UT) says that the committee will take up Mr. Mnuchin's nomination in January.) Mr. Mnuchin's nomination has been criticized by several key Democratic senators and representatives, including Senator Elizabeth Warren (D-MA) and Congresswoman Maxine Waters (D-CA), along with certain community advocacy organizations opposed to predatory lending and to home foreclosures who consider Mr. Mnuchin a "Wall Street insider" who got rich off the foreclosure crisis and who have promised to vigorously oppose his nomination. They also argue that Mr. Mnuchin's selection contrasts sharply with, and calls into question the sincerity of, President-elect Trump's attacks on the financial industry during the campaign.

Until resigning after his nomination was announced, Mr. Mnuchin served on the Board of Directors of Sears Holding Corp. with Bruce Berkowitz, one of the leaders of the groups of Fannie Mae and Freddie Mac investors (the GSE shareholders) that have sued the federal government over the so-called "net worth sweep" agreement that requires Fannie and Freddie to funnel all of their net proceeds from their operations to the federal government, thereby depriving the GSE shareholders of any return on their investment.

On November 30, after accepting his nomination to become Treasury secretary, Mr. Mnuchin said: "We've got to get Fannie and Freddie out of government ownership. It makes no sense that these are owned by the government and have been controlled by the government for as long as they have." The prospect of Mr. Mnuchin becoming Treasury secretary is fueling the hopes of GSE shareholders that a favorable settlement with the federal government that adds value to their interests while achieving housing finance reform, may be more achievable.

House Financial Services Committee Chairman Jeb Hensarling (R-TX), who interviewed with Mr. Trump for the Treasury Secretary position before Mr. Mnuchin was named, will lead the Trump administration's efforts to "dismantle" the Dodd-Frank Act. (Congresswoman Maxine Waters (D-CA) will continue as the Committee's ranking member.) With the retirement of Congressman Randy Neugebauer (R-TX) and the November election defeat of Congressman Scott Garrett (R-NJ), there will be new leadership on at least two key Financial Services subcommittees: Capital Markets and Housing and Insurance.

Shortly after the next Congress convenes on January 3, 2017, there will also be new leadership of the Senate Banking Committee. Senator Mike Crapo (R-ID) will become the new chairman as current Chairman Senator Richard Shelby (R-AL) is term-limited. Senator Sherrod Brown (R-OH), the Committee's ranking member in the 114th Congress, will continue in that role. When Senator Crapo served as the Banking Committee's ranking member in the 113th Congress, he and then Chairman Tim Johnson (D-SD) offered housing finance reform legislation that differed sharply from the approach of Jeb Hensarling (R-TX), who currently chairs the House Financial Services Committee. While Chairman Crapo has expressed interest in making housing finance reform legislation a priority, it's currently unclear whether he is interested in offering legislation similar to the Johnson-Crapo bill from the 113th Congress or whether he is prepared, now that there will be a Republican president in the White House, to move closer to Chairman Hensarling's approach.

In the last Congress, Chairman Hensarling introduced his Financial Choice Act, a comprehensive wish list of changes that Mr. Hensarling would make to the Dodd-Frank Act and various related financial services issues. These changes include the repeal of the Volcker rule, the Durbin amendment on interchange fees that caps the fees that banks may charge for debit card transactions, the Dodd-Frank Orderly Liquidation provisions and the Department of Labor's "fiduciary" rule for investment advisers; the elimination of the Office of Financial Research; the repeal of risk retention for securities backed by assets other than home loans; various changes to the CFPB, including making the bureau subject to the congressional appropriations process; constraints on the negotiation and adoption of international standards for capital or insurance; reduced prudential regulation of banks in exchange for heightened capital requirements such as maintaining an adjusted leverage ratio of at least 10%; prohibiting the CFPB from restricting the use of arbitration agreements; and making all rulemaking by independent financial regulators subject to rigorous cost-benefit analysis. Chairman Hensarling says that the bill is designed to restore market discipline instead of relying upon bureaucrats attempting to micromanage the economy.

Under the Financial Choice Act, except for the Federal Reserve's conduct of monetary policy, all financial regulatory agencies, including the CFPB, would be on budget and made subject to the federal appropriations process. Every financial regulatory agency presently headed by single directors—the CFPB, the Office of Comptroller of the Currency, and the Federal Housing Finance Agency—would be converted into bipartisan commissions. Moreover, the Act would require all major financial regulations to first be approved by Congress before they can take effect. Chairman Hensarling intends to introduce, early on in the 115th Congress, what he has termed his "Financial Choice Act 2.0"; since the election, he has convened meetings with many of the major financial services trade associations to get their input on changes they would like to see made to the updated Financial Choice Act before it is introduced.

Mr. Trump is expected to pursue the longstanding agenda of Chairman Hensarling and many Congressional Republicans that the CFPB should be eliminated or, at a minimum, substantially reformed. While seeking the complete dismantling of the CFPB, Mr. Trump can be expected, at a minimum and using the Financial Choice Act as a template, to support Chairman Hensarling's position that the CFPB's single-director structure (as well as all single-director financial regulators) should be replaced by a five-member bipartisan commission and that the CFPB, rather than being funded through the Federal Reserve, should be funded solely through the federal appropriations process, where the Bureau would have to compete for resources with other agencies and other priorities. Mr. Trump has also expressed concerns about the Financial Stability Oversight Council (FSOC) and its process for designating financial institutions as systemically important (SIFIs). The President-elect says he shares Mr. Hensarling's belief that the FSOC does not add value to the economy. (While it's not clear that Mr. Mnuchin shares Chairman Hensarling's passion for repealing Dodd-Frank, he has said that he would "strip back" Dodd-Frank because the law is "too complicated" and "cuts back on lending").

For many years, Chairman Hensarling has decried the Dodd-Frank Act's failure to do anything about ending Fannie Mae and Freddie Mac's conservatorships. Chairman Hensarling is supportive of an eventual renewed effort to move forward with legislation that would wind down Fannie Mae and Freddie Mac and take a more free market approach to housing finance. Howerver, he has called this a "very heavy lift" that looks to require a longer-term process than some of his other priorities. Moreover, Chairman Hensarling's focus to date has been much more on reforming the GSEs and achieving housing finance reform than on creating remedies for GSE shareholders. In contrast, Senator Crapo said that he is looking to advance housing finance reform after he becomes the Banking Committee chairman and that overhauling the GSEs is "not at all" too big of a lift.

Given the tremendous costs associated with recapitalizing Fannie Mae and Freddie Mac as well as the potential impact that changes to the housing finance system will have on the cost and availability of the

30-year mortgage, it seems clear that housing finance reform will take a good amount of time to achieve even if promptly and aggressively pursued. Whether and how quickly Chairman Crapo, Chairman Hensarling and the White House can get on the same page with respect to these issues will be the key factors in determining whether and how GSE reform is achieved.

Also certain to be on the agenda of the Financial Services and Banking Committees in 2017 is reauthorization of the National Flood Insurance Program, as the program's authorization expires in September. To that end, Congressman Blaine Luetkemeyer (R-MO), Chairman of the Financial Services Committee's Housing and Insurance Subcommittee for the 114th Congress, in early December 2016 circulated a set of principles that he hopes will guide the debate on reauthorizing the program and on how best to strengthen the private flood insurance market.

Throughout the campaign, Mr. Trump emphasized a desire to reduce the amount and scope of federal regulations, even indicating that he believes two regulations should be eliminated for every new one that is adopted. Thus, Mr. Trump surely can be expected to nominate financial regulators who share his view about the costs imposed by excessive regulation. These nominees, if and when confirmed, can be expected to view their regulatory and enforcement responsibilities very narrowly. Moreover, given the recent decision by a panel of the US Court of Appeals for the DC Circuit that the CFPB is unconstitutionally structured and that its director must be terminable at will and removable by the president without cause, Mr. Trump is highly likely to remove CFPB Director Richard Cordray and to nominate a replacement who shares his views on financial regulation. (Obviously, separate from Mr. Cordray's status, how soon Mr. Trump can nominate persons to assume financial regulatory positions will depend upon whether those banking regulators whose terms extend beyond President Obama's January 20, 2017, departure can be persuaded to resign their positions and leave early.)

Given the changes in the White House and in the composition of the new Congress, the prospects are strong that Mr. Trump will be willing to sign bills providing regulatory relief to credit unions and community banks and increasing the minimum dollar threshold for potential SIFI designation. However, with 60 votes still needed to break filibusters and if Senate Democrats are willing to stand their ground, it may remain difficult, unless financial regulatory reform is pursued through the reconciliation process, for the Senate to pass, and Mr. Trump to sign, anything except truly noncontroversial financial services legislation.

# Health Care

President-elect Donald Trump has repeatedly promised to repeal and replace President Obama's signature legislation, the Affordable Care Act (ACA), and with the Republican Party's continuing majorities in both chambers of Congress, the law's future is certainly in serious question. We expect the 115th Congress to grapple with the several questions below that will affect the timing and content of a legislative alternative.

### 1. Will Congress completely repeal the ACA on day one?

**Not possible.** Simply put, the entire ACA cannot be repealed on day one because it cannot be undone by unilateral action on the part of the Trump administration. A repeal of the entire ACA would require an act of Congress, which means that at least 60 votes would have to be secured in the Senate to overcome an expected Democratic filibuster of such a repeal bill. Republicans can, however, undo much of the ACA without Democratic support using an arcane "budget reconciliation" procedure that requires only 51 votes to pass in the Senate.

### 2. How much of the ACA can be repealed?

**Can vs. will.** How much of the ACA Congress can immediately repeal is vastly different from what, in all likelihood, Congress will immediately repeal. The budget reconciliation rules are insanely complicated but congressional Republicans can use them to take a giant bite out of the ACA early in 2017. The process has two key features: (i) it allows Congress to make changes that impact certain mandatory federal spending that is outside the annual appropriations process; and (ii) legislative policy must have a direct budgetary impact. The current question is how much of the ACA Congress will repeal using this maneuver. Since the 114th Congress did not pass a budget for the current fiscal year (FY 2017), when the next Congress convenes in January, it appears Republicans are poised to introduce and pass a budget for this fiscal year with reconciliation instructions that would allow for Republicans to pass legislation that would repeal parts of the ACA.

Certain parts of the ACA, such as those which provide insurance coverage for children to age 26 and prohibit denials based on preexisting conditions enjoy bipartisan support and therefore are unlikely to be included in reconciliation legislation. The million dollar question currently facing the Republican leadership in both chambers is whether they have the simple majority needed to pass a reconciliation bill that repeals parts of the ACA without putting an alternative in place.

### 3. What is the timing of the ACA repeal?

**Two possibilities.** Since election night, the healthcare community has debated how much of the ACA will be repealed and how quickly. There are two options. The current strategy among Republican leaders in Washington is to begin in early 2017 with a budget resolution that would lead to a vote on reconciliation legislation that would repeal parts of the ACA, with some provisions getting a two- or three-year transition period until actual repeal. This "repeal and delay" strategy would accomplish a political win with a quick vote on repealing the ACA, but the actual effective date of those repeal provisions would be years in the future.

Some centrist Republicans and a group of conservatives seek to include pieces of an ACA replacement in the bill that will repeal the legislation. While this "repeal now" perspective runs counter to GOP leadership, it has gained currency as some members of Congress who fear "repeal and delay" may disrupt insurance markets.

If Republicans choose to pursue the January reconciliation strategy, repealing and replacing the ACA will be a two-step process, with the possibility of a substantial amount of time transpiring between the two steps. However, if consensus builds that the two steps should be done in sync, Republicans could use the FY 2018 budget process, which would give them time to build a consensus around a proposal to replace the ACA.

## 4. What will the Republican replacement look like?

Republican proposals that have been introduced since 2010 can serve as indicators of what provisions currently enjoy bicameral consensus. The reconciliation bill vetoed by President Obama in January 2016 could be the blueprint Republicans follow in dismantling the ACA. Also, this past summer, the House Republican Conference, led by Speaker Ryan, set out the "Better Way," a series of proposals on key issues, including healthcare, and when comparing the Better Way roadmap with some of the proposals introduced in the Senate in recent years, some consistent themes emerge:

- **Tax credits and portable coverage.** Bicameral proposals all make tax credits available for the purchase of insurance. The Better Way proposal envisions a universal advanceable and refundable tax credit to all individual and families who do not have an offer of health coverage. The credit would not vary based on income level.

- **Insurance reforms.** Many reforms from ACA remain, including continuous coverage, expanded purchasing options, and state-based high-risk pools.

- **Strengthened consumer-directed health.** Current rules governing consumer-directed health plans, such as health savings accounts (HSAs) and flexible spending accounts (FSAs), would be modified.

- **Capping the employer exclusion.** Bicameral proposals cap the tax deductibility of employer-based health coverage in order to cover the cost of the tax credits they offer.

- **Medical malpractice reform.** Based on successful state laws in California and Texas, proposals include caps on non-economic damages, limitations on attorney's fees, as well as incentives for states to adopt additional solutions to settle disputes.

## 5. What is the future of Medicaid reform?

Additional permission for state flexibility in Medicaid (including additional requirements to be imposed on Medicaid beneficiaries) is a near certainty from the Trump administration. CMS distributed almost $350 billion in Medicaid payments to states in 2015. Trump's pick for CMS Administrator, Seema Verma, believes in state flexibility and was the architect of Medicaid reform initiatives in several states. Common components of those plans included small cost-sharing contributions from Medicaid recipients so they would have some "skin in the game," plus high-deductible plans and health savings accounts. The Medicaid expansion that was included in the ACA is likely tied to the fate of the ACA repeal efforts. It is possible that ACA repeal efforts or other legislative efforts could also provide more dramatic Medicaid reform. The Better Way proposal would also have offered states a choice between per capita caps and state block grants as a way to reform the program and limit future growth. However, more dramatic Medicaid reform would need to be able to pass a closely divided Senate where Medicaid limits could cause a food fight that does not break on party lines.

## 6. Its harder than it looks.

Confronting the financial, programmatic and political complexities and implications of fashioning a replacement for a repealed ACA will challenge the capabilities of the new Administration on Congressional leaders of both parties. Already, the hospital industry has expressed its alarm that it will loose more than $160 billion in revenues if the ACA if repealed. Should federal subsidies end for lower income people purchasing coverage through health insurance marketplaces, many industry experts project an overall collapse of the private insurance market for individuals. Recent improvements in care quality and efficiency could be lost if value-based reimbursement models, like accountable care organizations, are eliminated. The health care sector has integrated the ACA policies in ways that make eliminating those policies exceptionally difficult. How the Trump Administration and its allies in Congress replace the ACA without inflicting damage on the system or the people it serves and employs will be perhaps the first major domestic policy test for the new government.

# Homeland Security

President-elect Trump spent much of his campaign assuring the American electorate that US national security would be a key focus of his presidency. In particular, he expressed a steadfast commitment to eradicating domestic terrorism. Soon after his election, Trump named former Defense Intelligence Agency Director and retired US Army Lieutenant General Michael Flynn as his national security adviser, and former National Security Council staff member K.T. McFarland as Flynn's deputy. Although Flynn's selection was met with a mix of support and opposition on Capitol Hill not easily divisible along party lines, there's no arguing with his depth of knowledge and experience in counterintelligence and counterterrorism.

Trump has also tapped retired US Marine Corps General John Kelly to serve as secretary of homeland security. As the former commander of US Southern Command, which oversees US military operations and activities throughout Central and South America, Kelly interfaced regularly with Department of Homeland Security (DHS) and intelligence community leadership. The experience also afforded him a unique understanding of the people, policies and processes involved in facilitating—and countering—the trafficking of drugs and other contraband, as well as humans, across the US-Mexican border.

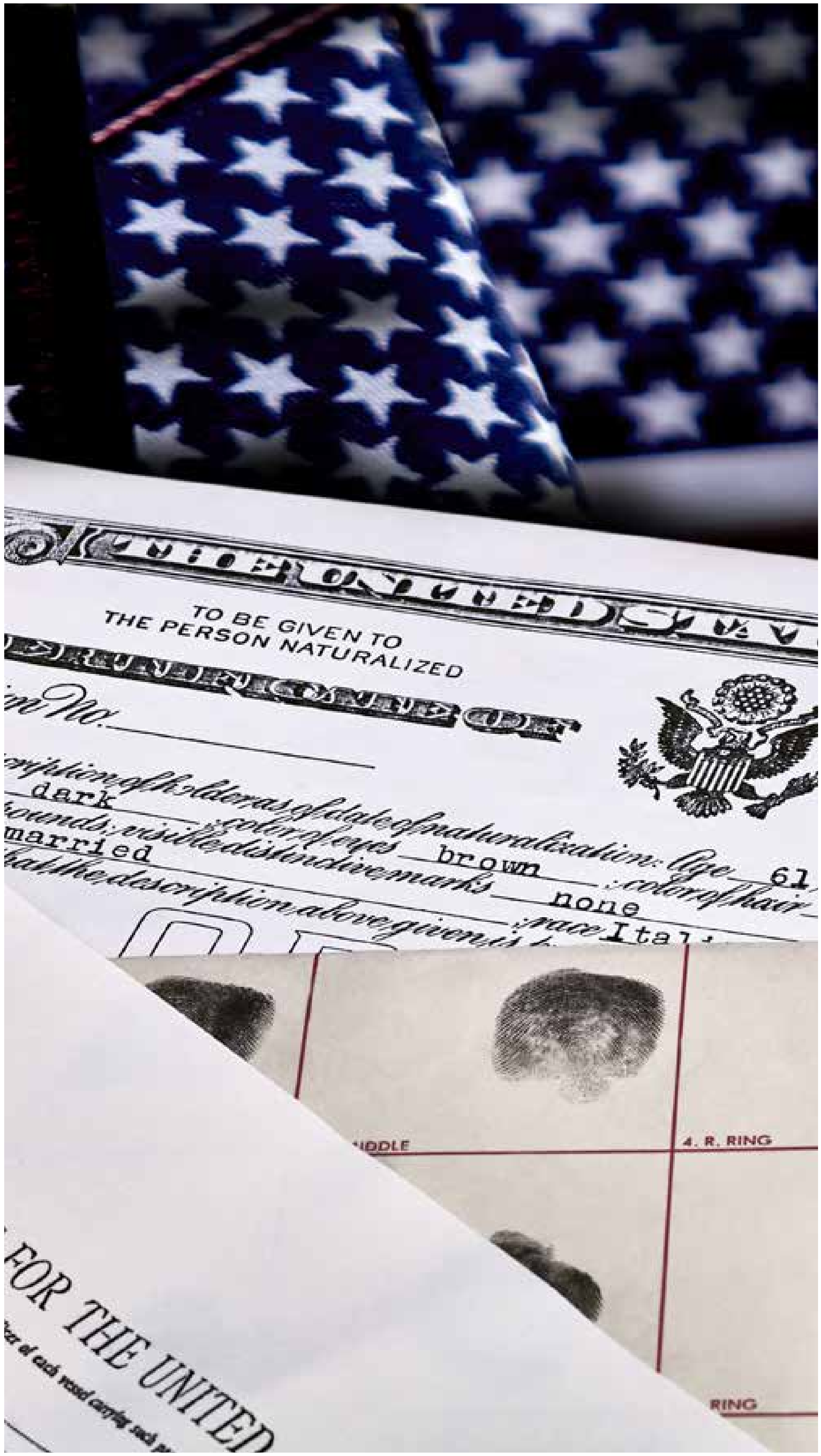
Like Trump, Kelly is an outspoken proponent of securing America's southern border, referring to the flow of drugs, weapons and undocumented immigrants as posing an existential threat to our nation. In appearing before Congress in 2014, he emphasized that US border security operations are underfunded and warned of a burgeoning "crime-terror convergence." Despite the strong rhetoric, Kelly is considered to hold positions on many homeland security issues that are more moderate and pragmatic than those held by others who will serve in key posts in the Trump administration.

Kelly has also commanded Marines in Iraq as part of the War on Terror and is the highest-ranking member of the US armed services to have lost a child in combat in the region. One of his sons, a Marine lieutenant, was killed in action in Afghanistan. Yet those who have served with him insist that his moderate and open-minded views on Islam vis-à-vis the West have remained unchanged. Many Republicans and Democrats on Capitol Hill have privately said that they hope and expect that Kelly, who has frequently expressed informed and nuanced views on some of the more contentious policy issues that have bedeviled the DHS, will serve as a check on the more ideologically-driven members of the Trump administration.

Kelly's confirmation will be a top priority for the Senate Homeland Security and Governmental Affairs Committee in early 2017. Chairman Ron Johnson (R-WI) has expressed strong support for Kelly, as has his House counterpart, Chairman Mike McCaul (R-TX 10th). Both have indicated an eagerness to work with Kelly and new DHS leadership to implement policies to better secure America's borders, enforce immigration laws and protect the US from the now persistent threat of terrorist attacks.

In the wake of well-founded allegations of Russian hacking of the US presidential election and a host of other crippling cyber attacks in 2016, the DHS committees will use their oversight and policymaking functions to make cyber security policy another major priority in 2017. With progressively more sophisticated cyber attack capabilities enabling even small nations and non-state actors to hack individual, corporate and government information systems, Congress is expected to focus in particular on protecting critical federal infrastructure from potentially devastating cyber attacks.

Guided by general agreement on a core set of policy objectives, it is likely that key Congressional lawmakers will work effectively with Kelly and his staff to shape, perhaps temper and, ultimately, implement many of Trump's homeland security policy priorities in 2017.




# Immigration

While the debate over our nation's immigration policy played a large role in the in the 2016 presidential campaign, Congress took no significant steps during the past session to consider comprehensive reform. Executive action from President Obama provided some protections to children of undocumented immigrants, but only after differences between Republican members and their constituencies regarding how to address—if at all—a pathway to citizenship for the undocumented put the issue on hold. But the end of the Obama presidency and, more important, the surprise victory of Donald Trump, whose aggressive rhetoric concerning border security, mass deportations and visa restrictions became a centerpiece of his campaign, virtually ensure its place at the forefront in the upcoming 115th Congress.

Under the Obama administration, despite an historic number of deportations, there was an understanding by members of the undocumented community as to what groups within the community would be subject to action by the federal government. With the election of Mr. Trump, the undocumented community awaits more clarity from the President-elect as to how he intends to implement his campaign promises, such as a border wall paid for by Mexico and a freeze on the emigration of refugees from countries where there is widespread terrorist activity. While there is currently little in the way of specific policy proposals, Mr. Trump's nomination of Senator Jeff Sessions (R-AL) as US Attorney General provides some insight into his thinking. Senator Sessions was a leading opponent of the last two major immigration battles in the Congress, viewing both measures as amnesty proposals that limited enforcement measures and softened temporary worker procedures, adversely impacting lower wage earners domestically.

While the Senator hope to be moving to the Justice Department—several Republican members of the House and Senate who were key to the attempts to move immigration reform in years past will now be in position to craft new measures. House Judiciary Committee Chairman Bob Goodlatte (R-VA), a former immigration attorney, will have jurisdiction over any legislation that is considered by the House. Rep. Goodlatte has favored prioritizing border security measures but is also seen as open to providing undocumented immigrants already in the country with some form of protected status. Hardliners in the House will want to move quickly on the security front, but they will have to contend with Republican reformers who will be pressing for a more comprehensive approach. The latter have vowed to make the development of a pathway for undocumented aliens already here key to any bill that seeks to deal with border security.

In the Senate, Marco Rubio (R-FL), who returns following his failed presidential campaign, will be integral to the Trump administration's efforts to pass legislation. Senator Jeff Flake (R-AZ), a member of the Senate Judiciary Committee and from a state that has endured major controversies over border security laws, will also be key to immigration reform. Senator Flake has joined with Senator Lindsey Graham (R-SC) to support legislation that would provide an extension of the protections currently in place to the children of undocumented workers until Congress can move to consider comprehensive reform.

The refugee crisis in Europe and the terrorist attacks that have plagued France, Belgium and, most recently, Germany, will also weigh heavily on the policy debate. While efforts aimed at securing our nation's southern border will involve different policy proposals, there will be an effort by the White House to persuade Congress to consider limiting or suspending visas with respect to individuals coming from countries with heavy terrorist activity or without adequate vetting protocols in place. As Europeans increasingly are questioning the wisdom of open-border policies which, while allowing individuals with legitimate refugee status to escape Syria and other war-torn states have also provided ISIS and other terrorist organizations with a means of infiltrating the west, the United States is confronting similar concerns.

# International Relations

With the potential for significant shifts in US foreign policy under the Trump administration, politically charged debates over US involvement in conflicts, humanitarian crises, trade deals, and strategic alliances are expected to take place on Capitol Hill in the coming year. The President-elect's foreign policy platform is continuing to be defined, and he has lauded the "element of surprise" and being "unpredictable" in the international relations arena. Once he is in office however, it is likely that his foreign policy objectives will begin to take shape, with guidance from both his inner circle within the Administration and from key Republican lawmakers on Capitol Hill, including Senate Foreign Relations Committee and House Foreign Affairs Committee Chairmen Bob Corker (R-TN) and Ed Royce (R-CA 39th). Congressional Republicans will have more leverage in 2017 as they not only will continue to control both the House and Senate, but will also now have a Republican president to collaborate with on policymaking priorities.

Trump has nominated ExxonMobil Chairman and CEO Rex Tillerson to serve as secretary of state. His confirmation hearing will be a top priority in January for the Senate Foreign Relations Committee. Although he has no public sector experience, Tillerson has, for a decade, helmed a company with virtually unrivaled global dealings, interests and influence. If ExxonMobil were a country, its annual revenue would make it the 41st largest economy in the world. According to Robert McNally, the former senior director for international energy on the National Security Council under President George W. Bush, "the closest thing [the United States has] to a secretary of state outside government is the CEO of Exxon."

Tillerson's confirmation proceedings have the potential to be tense. Of most concern to Senate GOP defense and foreign policy hawks, and many Democrats as well, are his reportedly close relationships with Russian President Vladimir Putin and members of Mr. Putin's inner circle. ExxonMobil has extensive interests in Russia and the Caspian Sea region, which Tillerson oversaw directly at one point during his decades-long career at the oil and gas giant.

Nevertheless, his Congressional supporters include Senate Majority Leader Mitch McConnell (R-KY), Majority Whip John Cornyn (R-TX), and Corker, the last of whom will lead Tillerson's confirmation hearing and was himself on the President-elect's short list for secretary of state. Corker has described the ExxonMobil leader as "a very impressive individual" who has "an extraordinary working knowledge of the world." In addition, outspoken Putin opponents, including Senators Lindsey Graham (R-SC) and John McCain (R-AZ), have indicated an openness to supporting Tillerson's confirmation as they continue to learn more about his background, relationships abroad and positions on global policy matters. Although there is little margin for Republican opposition, Tillerson is expected to emerge from the confirmation proceedings as the next secretary of state.

Trump has stated that he plans to be more assertive with US military power in the fight against the Islamic State of Iraq and Syria (ISIS) than Obama was, and also more proactive in engaging American allies throughout the Middle East. The President-elect will likely garner strong, and perhaps bipartisan, support on Capitol Hill for more aggressive action against ISIS. Additionally, as the US likely begins to redefine some existing alliances with foreign governments, Congressional foreign affairs lawmakers will likely exercise oversight and policymaking authority over new defense and trade deals, while debating the validity of, or at least certain terms within, existing trade deals, such as the Trans-Atlantic Trade and Investment Partnership (T-TIP), theTrans-Pacific Partnership (TPP) and the North America Free Trade Agreement (NAFTA).

Further, Congress will again debate and review sanctions against Iran, Cuba and Russia in 2017, with a particular focus on the Joint Comprehensive Plan of Action (aka the Iran Nuclear Deal). Debate on US relations with Cuba is likely to pit the pro-commerce wing of the Republican party against the anti-Cuban Government wing of the party, with most Democrats continuing to support the easing of sanctions against Cuba to help secure this legacy item for President Obama.

Trump's selections of Tillerson for secretary of state and retired Lieutenant General Michael Flynn to serve as national security advisor could be indicative of his interest in a reset of US-Russia relations. The President-elect has expressed a willingness to work with Russia in the fight against ISIS, and Flynn is believed to support an improvement in US-Russia relations as well. Leading Congressional Republican foreign policy hawks, and many Congressional Democrats, are loathe to embrace Putin as an ally and have indicated that they would resist attempts to accommodate Russia, including by easing sanctions imposed on the country as a result of its incursion into Ukraine. As a result, the future of US relations with Russia is a key foreign policy position over which Congressional Republicans and the President-elect may be very much at odds in 2017.

The President-elect has made strong statements against China, often referring to the nation during his campaign as one of the US' leading economic enemies. He has said he plans to toughen rules against the theft of intellectual property, combat subsidies China provides to boost exports and oppose the proposed TPP, the trade agreement that includes the US, Japan and 10 other countries. Key Congressional Republicans are likely to support a tougher diplomatic and policy posture toward China and will have an opportunity to assist in the shaping of the Trump Administration's China policy in 2017.

Also in the coming year, the House Foreign Affairs and Senate Foreign Relations Committees will continue to exercise oversight and policymaking authority over a host of other vital foreign policy matters, including:

- The ever-expanding fight against ISIS and other extremist groups in Syria, Iraq, Libya and elsewhere
- Ongoing US military activities in Afghanistan
- The US alliance with Israel, and the stalled Palestinian-Israeli peace process
- US involvement in NATO

In 2017, the Trump administration is likely to undertake a wholesale country-by-country reassessment of US foreign aid and existing trade agreements. The Republican-controlled Congress is likely to play a major role in this process—shaping and, at times, moderating, an anticipated shift in the geopolitical worldview from 1600 Pennsylvania Avenue.

# Supreme Court

## After Justice Scalia passed away in mid-February 2016, President Obama nominated, on March 16, DC Appeals Court Judge Merrick Garland. The Republican Senate decided not to give Judge Garland a hearing or a floor vote and instead to wait until after the election when there was a chance that a new Republican President would be able to nominate Scalia's replacement.

President Obama and Congressional Democrats vigorously protested what they considered an unprecedented act of political obstructionism and dereliction of the Senate's constitutional duty. A handful of Senate Republicans also favored hearings on Judge Garland. But they never happened and the Senate GOP gambit paid off when Donald Trump was elected President on November 8.

In 2013, then Majority Leader Harry Reid (D-NV) used a rare parliamentary tactic to lower the filibuster threshold for all nominees from 60 votes to 50, thus clearing the way for confirmation of many of President Obama's nominees who were awaiting full Senate consideration. Exhibiting an uncanny prescience, Reid decided to exempt Supreme Court nominations from the new 50-vote threshold. This means that Democrats may have the ability to block any new Trump nominee if 41 Senate Democrats oppose ending a filibuster to consider Scalia's replacement.

In short, the Senate process for confirming all judges, but especially SCOTUS nominees, has descended into partisan dysfunction that has left the chamber bitterly divided. Democrats blame Republicans for this mess and Republicans blame Democrats. But whoever's responsible, the Senate will likely head into uncharted waters during its consideration of the next SCOTUS nominee.

Democrats seeking revenge for the GOP's blocking of Judge Garland may consider filibustering any new SCOTUS nominee, no matter his or her qualifications and background. If this happens, Senate Majority Leader Mitch McConnell (R-KY) may use the same procedure Reid used in 2013 to lower the filibuster threshold from 60 to 50. If he does not do this, it is possible that President Trump's new nominee could be delayed indefinitely.

In September, candidate Trump released a list of names that he would consider for Supreme Court appointments should he be elected. The Trump campaign did not share how it settled on the names, but Mr. Trump had previously said that he was seeking guidance from conservative groups such as the Federalist Society and the Heritage Foundation. It is also not clear whether the list was definitive or merely indicative of the types of candidates he would select. It included the following names:

| Name | Bio |
| --- | --- |
| Keith Blackwell<br>**Position:** State Supreme Court, Georgia | Prior to the Georgia Supreme Court, Blackwell served on the state's Court of Appeals. He spent much of his career at private law firms as an associate and partner. |
| Charles Canady<br>**Position:** State Supreme Court, Florida | Canady was general counsel to Florida Gov. Jeb Bush before Bush appointed him to the state's Court of Appeals. |
| Steven Colloton<br>**Position:** 8th Circuit Court of Appeals | Colloton's name has been floated for the SCOTUS bench before. Colloton is a reliable conservative who has upheld a law banning unauthorized immigrants from renting apartments and expressed support for single-sex college student organizations. |
| Allison Eid<br>**Position:** State Supreme Court, Colorado | Eid is a conservative, having clerked for Clarence Thomas, with respect from her peers. More than 90% of Colorado attorneys and judges said that Eid should stay on the Colorado bench when she was up for reelection. |
| Neil Gorsuch<br>**Position:** 10th Circuit Court of Appeal | Gorsuch was appointed by President George W. Bush in 2006. He previously served as a deputy associate attorney general. |
| Raymond Gruender<br>**Position:** 8th Circuit Court of Appeal | Gruender has consistently ruled on the pro-life side of abortion cases, once upholding a law that requires abortion seekers to be told that they are terminating a human being. He also wrote an opinion arguing that employers shouldn't be required to include contraceptives in health care coverage. |
| Thomas Hardiman<br>**Position:** 3rd Circuit Court of Appeals | Hardiman has consistently sided with law enforcement officials against defendants and inmates. He wrote a dissenting opinion that the First Amendment does not give citizens the right to tape police. |
| Raymond Kethldge<br>**Position:** 6th Court of Appeals | Raymond ordered the IRS to turn over information in a case involving its alleged persecution of conservative groups. In his confirmation hearings in 2003, Kethledge talked of his pro bono work with criminal defendants and low-income residents trying to keep their homes. |
| Joan Larsen<br>**Position:** State Supreme Court, Michigan | Larsen worked in the Office of Legal Counsel during the second Bush administration, and wrote one of the legal memos on which Bush based his administration activities in the early days of the war on terror. |
| Mike Lee<br>**Position:** Senator from Utah | The senator previously clerked for the US District Court in Utah and the Third Circuit Court of Appeals. |
| Thomas Lee<br>**Position:** State Supreme Court, Utah | Lee filed a concurrence agreeing that fetuses should count as "minor children" for the purposes of wrongful death suits. A strict originalist, he also argued that the constitution has no basis for the principle that evidence from unlawful searches cannot be used in trial. |

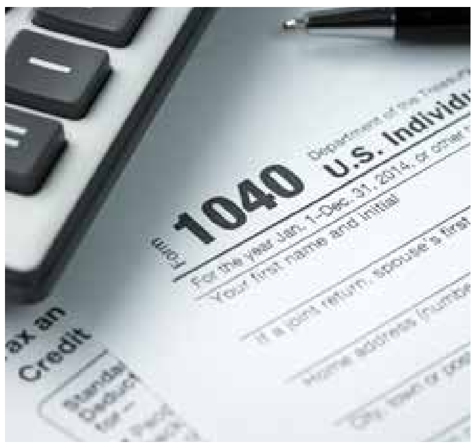
| Name | Bio |
|---|---|
| Edward Mansfield<br>**Position:** State Supreme Court, Iowa | Mansfield is an adjunct law professor at Drake University. |
| Frederico Moreno<br>**Position:** State District Court, Southern District of Florida | Prior to serving as a judge, Moreno worked in the private sector and was a federal public defender. Moreno was nominated to his position by President George H.W. Bush and was unanimously confirmed by the Senate in 1990. |
| William Pryor<br>**Position:** 11th Circuit Court of Appeals | Pryor called Roe v. Wade "the worst abomination in the history of constitutional law," which he said has led to "the slaughter of millions of innocent unborn children." He also wrote an amicus brief supporting laws banning sodomy, and equated homosexuality to necrophilia, bestiality, incest and pedophilia. |
| Margaret Ryan<br>**Position:** Armed Forces Court of Appeals | Appointed by President George W. Bush, Ryan is the only military judge on Trump's list. She clerked for Justice Clarence Thomas and served on active duty in the Marines for 11 years. |
| David Stras<br>**Position:** State Supreme Court, Minnesota | Stras's campaign site emphasized his view that judges should not include their own political leanings in decisions. He hasn't openly expressed many controversial opinions as a judge. |
| Diane Sykes<br>**Position:** 7th Court of Appeals | Sykes ruled against Chicago's ban on firing ranges on Second Amendment grounds, gave a decision barring enforcement of the Obamacare birth control mandate, ruled in favor of Wisconsin's restrictive voter ID law, and decided that student organizations that ban gay members have a constitutional right to funding from public universities. |
| Amul Thapar<br>**Position:** State District Court, Eastern District of Kentucky | Thapar put an 84-year-old anti-nuclear activist nun in prison for bursting into a Tennessee nuclear facility. He was nominated by President George W. Bush and was the first Indian American judge named to the federal judiciary. |
| Timothy Tymkovich<br>**Position:** 10th Circuit Court of Appeals | Tymkovich, appointed by President George W. Bush, wrote the majority in a Ninth Circuit decision in Burrell v. Hobby Lobby. He found for-profit corporations like Hobby Lobby to be exempt from a law if the corporation's owners religiously object to it and there is a less restrictive way to promote the law's interest. As solicitor general in Colorado, Tymkovich unsuccessfully supported a state constitutional amendment preventing protected status based on sexuality. |
| Don Willett<br>**Position:** State Supreme Court, Texas | Willet worked for George W. Bush's presidential campaign and administration. He supports striking down economic regulations like minimum wage and child labor laws using the 14th Amendment, saying the measures violated "freedom of contract." Willet is also an outspoken critic of Trump. |
| Robert Young<br>**Position:** State Supreme Court, Michigan | Young wrote an advisory opinion that a photo identification requirement for voting was a "reasonable nondiscriminatory" requirement. |

# Tax

## Tax legislation will be a major focus of Congress and the Trump Administration in 2017. They must, for example, deal with tax-related provisions in their planned changes to the Affordable Care Act. In addition, an infrastructure package and other high-priority legislation will likely have tax components as well. But tax issues will really move to the front and center when Congress takes up tax reform.

The scope and timing of tax reform depend on the ambitions of President Trump and Congress. Comprehensive tax reform that would rewrite the individual income tax, corporate income tax and estate-and-gift tax rules would likely consume the entire legislative year and much of 2018 as well. On the other hand, reform limited to certain areas of the Internal Revenue Code (e.g., international or corporate tax reform) could be enacted more quickly. However, reforming the tax rules for some types of taxpayers but not others—even if part of a staged approach—could raise significant problems.

How the Trump administration decides to proceed with tax reform will drive the effort's scope, content and speed. President Trump could identify specific requirements that tax reform must meet and major components that it must include, and then leave it to Congress to develop the details of such a tax reform plan. On the other hand, he could present or endorse a specific tax reform plan and demand that Congress pass it by a certain deadline. In any case, for President Trump to be directly involved in the development of a tax reform plan, he will need to quickly




staff his tax and economic policy team so that they can develop or react to a detailed tax reform proposal.

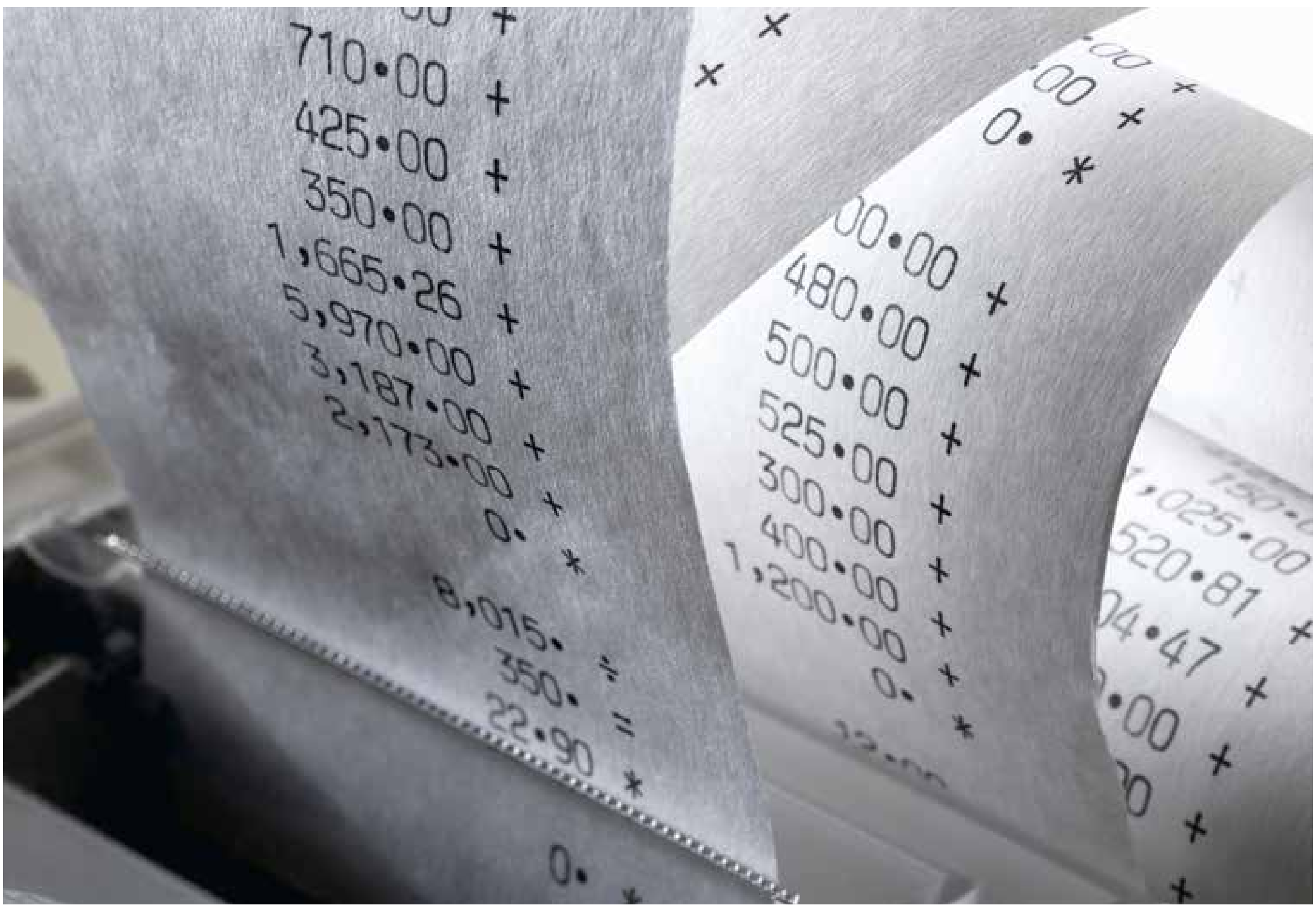
In the absence of either a detailed plan from President Trump or his endorsement of a specific congressional plan, the House is expected to proceed with fleshing out and drafting the tax reform provisions set forth in the so-called House Republican Blueprint released on June 24, 2016. Ways and Means Committee Chairman Kevin Brady (R-TX) and the rest of the committee members met in December to discuss the path forward, and they expect to move quickly in the new Congress. Due to the complexity and, in some cases, novelty of the ideas in the House Republican Blueprint, legislative

language, whether in draft form or as introduced bills, is expected early in 2017 to elicit comment and feedback. Of particular interest will be the "border adjustable" feature of the House Republican Blueprint that effectively imposes a tax on imports and an exemption on exports. The jury is still out on whether this feature would be the solution to tax reform (e.g., because it would permit a greater corporate tax rate reduction than would otherwise be possible due to the revenue it raises) or its demise (e.g., if it caused the retail industry and other large importers to oppose tax reform).

The Senate Finance Committee will be focusing on tax reform as well. Unlike Ways and Means, the Finance

Committee has no blueprint before it, although it has a lot of previously prepared material on tax reform. Chairman Hatch is expected to follow the traditional Finance Committee approach of seeking a bipartisan and broadly supported proposal. The feasibility of this inclusive process is tied, however, to political and procedural decisions that will be made by House and Senate leadership, such as whether to proceed under Budget Reconciliation and whether tax reform will be revenue neutral (and, if so, how revenue neutrality will be measured).

Still, developing a tax reform package that will pass both the House and the Senate will be difficult, even with Republicans in control of both the House and Senate. President Trump and congressional Republicans must agree not just on a tax reform proposal but also how best to enact it. Some will argue that the process will be easier if tax reform is done in stages (e.g., international tax reform first, or corporate tax reform before individual tax reform). Others will argue that such a piecemeal approach is politically infeasible or presents technical and revenue-estimating problems due to the interaction of tax provisions. In any case, both President Trump's campaign proposal and the House Republican Blueprint have created expectations of comprehensive tax reform, making it difficult for Republicans to be seen as delivering on that promise if they enact more limited tax reform. In the end, though, political support for a tax reform package will not be enough—the public must support it as well. Chairman Brady, Speaker Ryan, Chairman Hatch and Republican Leader McConnell not only have to sell the tax reform proposal they create to their colleagues, they have to sell its broad-based benefits to the public as well. Tax reform will be a mixed bag for everyone, and it will inevitably stall if companies and members of the public focus too much on particular components that they dislike and not enough on the legislation's overall effect and benefits.



# Telecommunications

When the 115th Congress and President-elect Trump are sworn in come January 20, the Federal Communications Commission (FCC) will look remarkably different. Current FCC Chairman Tom Wheeler has announced that he will be stepping down on that day and, while no interim chairman has been announced, it is likely that current FCC Commissioner Ajit Pai will take the helm, at least on an interim basis. Democratic Commissioner Jessica Rosenworcel, who was not reconfirmed prior to the end of the 114th Congress, will be forced to leave, as her term expired at the end of the year. Thus, in the early days of the 115th Congress, the FCC will be a 2-1 Republican majority, with Republican Mike O'Rielly and Democrat Mignon Clyburn rounding out the agency's leadership. It remains to be seen who Trump may tap to chair the FCC and who he will nominate to replace Commissioner Rosenworcel, but Jeffrey Eisenach, a visiting scholar at AEI and the FCC transition team leader, will play a key role in determining who the new faces are at the Commission. The FCC transition team also includes Mark Jamison and Roslyn Layton, both of whom are also visiting fellows at AEI as well and outspoken conservative advocates.

Despite not having a full complement of Commissioners, it is expected that the agency's Republicans will move quickly undo several Obama legacy regulations, with the FCC's Open Internet Order 2010, a set of regulations that move towards the establishment of the "net neutrality" concept, a prime target. In the Order, the FCC reclassified broadband under Title II of the Communications Act and regulated the internet under its common carrier provisions as a public utility. The Republican commissioners have already stated they would not enforce certain provisions of the net neutrality order and that they plan to "revisit" the Title II proceeding "as soon as possible." The Republican-controlled Congress may also, early on, seek to dismantle net neutrality by advancing new legislation to overturn the reclassification of broadband internet service as a common carrier service under Title II. Finally, President-elect Trump could also issue an executive order to reverse net neutrality, which he has referred to as a "top-down power grab." In short, net neutrality could be targeted through any one or a combination of these avenues and will no doubt be a top priority for the FCC's Republicans and the Republican-led Congress in 2017.

Also in the 115th Congress, expect a continued and heightened focus on spectrum policy, which, at the macro level, enjoys bipartisan support for increasing the amount of spectrum available for commercial use. The ongoing incentive auction is well underway, with Stage 4 recommencing on January 3. After completion of Stage 4, there will be another stage of the forward auction at a date to be determined. Generally, the Republican-controlled White House and Congress will target such spectrum auctions to raise funds, as well as seek ways to pry more government spectrum away for commercial use. In fact, FCC transition team member Roslyn Layton is on the record as advocating that federally held spectrum should be sourced to meet the ever-growing demand, especially in the new Internet of Things world. Commissioner Pai has also been an outspoken advocate for facilitating the rollout of 5G, and has set forth a 5G regulatory framework that calls for freeing up more spectrum, removing barriers to infrastructure deployment and encouraging innovation and investment in the network and mobile technologies. We can expect a continued push to accelerate 5G deployment on Capitol Hill as well, as Senate Commerce Committee Chairman John Thune (R-SD) will likely renew his push to get his MOBILE NOW Act (S. 2555), which would free up more spectrum for both commercial licensed and unlicensed use and also improve broadband infrastructure deployment, over the finish line.

Infrastructure spending will also be a key focus in the 115th Congress as President-elect Trump has proposed to spend a trillion dollars on infrastructure over the next 10 years. The heads of 17 tech and telecom trade groups have already written the President-elect urging him to make tech infrastructure upgrades a key element of his planned infrastructure investments.

The Trump administration will also be forced to address a number of pending industry transactions right out of the inauguration gate, the largest one being the AT&T-Time Warner deal. As a candidate, President-elect Trump weighed in on the proposed transaction, explicitly stating that his administration would not approve the merger. After the deal was announced, he called the deal "an example of the power structure I'm fighting" and said it was "a deal we will not approve in my administration because it's too much concentration of power in the hands of too few." That said, and while it remains to be seen whether the FCC will even have a role in the formal merger review process, it's worth noting that all of Mr. Trump's Department of Justice (DOJ) and FCC transition team advisors have a history of being very pro-industry and anti-regulation, particularly when it comes to mergers.

Finally, both the House and the Senate Commerce Committees will likely explore various paths to rewrite the Communications Act. Current House Commerce Committee Chairman Greg Walden (R-OR) is likely to build upon a series of white papers that he requested from industry beginning in 2014 as chairman of the Telecommunications Subcommittee. Senate Commerce Committee Chairman John Thune (R-SD) is also on the record as saying that an update is needed.

# Trade

International trade was a significant issue during the presidential campaign and one which President-elect Trump returned to often on the trail. First, he promised that trade agreements would come under much greater scrutiny in his administration and that trade enforcement efforts would increase. In addition, he stated, repeatedly, that his administration would pull out of the Trans-Pacific Partnership (TPP) agreement and would renegotiate the North America Free Trade Agreement (NAFTA).

## TPP

It can be expected that soon after Mr. Trump's swearing in on January 20, he will sign an executive order withdrawing the United States from the TPP. While the US has signed an agreement signifying its intention to implement the TPP agreement, the agreement has not been sent to Congress and it has not been ratified by the required number of countries for it to go into effect. With significant Democratic and Republican congressional opposition, passage of the TPP, while supported by many in the business community, was never a foregone conclusion so withdrawing from it will have little or no immediate impact on the US economy. The bigger issue with TPP is what happens next. The remaining eleven countries may ratify the agreement without the United States. Alternatively, smaller subgroups—some involving China—may form. There will be future Pacific Rim trade agreements and the issue will be whether the US is part of those negotiations.

## NAFTA

Trump spent much of his time on the campaign trail, especially in the Midwestern "rust belt" states, expressing his dissatisfaction with NAFTA. He promised that his administration would renegotiate the agreement to make it a better deal for US businesses and employees. While it is certainly an option for him to sign an executive order right away withdrawing from NAFTA, that would cause significant problems because many business models—including the location of manufacturing facilities—have been designed with the understanding that NAFTA was here to stay. Withdrawing suddenly from NAFTA would disrupt supply chains and could put manufacturers located in North America at a disadvantage compared to foreign producers, particularly from China.

In addition, withdrawal from NAFTA would require Congress to pass legislation to address the implementing statutes it put in place after NAFTA was signed and ratified. Congress is poised to repeal and replace the

Affordable Care Act (ACA) as well to pass comprehensive tax reform in 2017, both of which will demand the attention of the same congressional committees that have jurisdiction over trade, limiting their ability to deal with an immediate withdrawal from NAFTA.

However, both the Mexican and Canadian governments have agreed to reopen the NAFTA negotiations and have indicated the priority issues that they would want to discuss. Therefore, since it does appear that the parties are willing to renegotiate, President-elect Trump may decide to spend time early in his administration beginning conversations with Mexico and Canada regarding his priorities for renegotiation.

## Other trade priorities

As to other positions taken by President Trump, such as a 45 percent tariff on goods from China, there is a good chance that the new administration will ultimately back off of these policies. Imposing an across-the-board tariff increase—questionable legality aside—would be like using an axe where only a scalpel is needed, as many products imported from China are not produced in the United States and the additional tariff would simply be a large tax increase on the American people.

That said, the focus on China will not go away. The more likely policy approach would be the use of existing trade laws to protect sensitive industries such as steel. There is already discussion of a Section 201 petition for import relief involving steel, and a similar action, to address issues of overcapacity in aluminum, could also be taken. Overall, the Trump administration could turn out to be more focused on managed trade as opposed to the traditional Republican free trade position.

The other issue of focus of the new administration will be enforcement. While not as sexy as trade agreements (negotiating/withdrawing from), enforcement gets to the primary issue raised during the campaign: that existing trade agreements are not always working for America. The perception is that this is so because they are not being enforced properly, and many in the business community, including those that support free trade, argue that the immediate focus, before negotiating more agreements, should be on enforcement of the agreements and laws already on the books. Greater enforcement, however, means more resources dedicated to enforcement by the Department of Commerce, Customs and Border Protection and the Office of the United States Trade Representative. Each of these agencies currently has limited resources available to address issues of transshipment, origination, undervaluation, and market access, among others. The issue for the new administration will be whether—given competing demands on the public purse—they can target sufficient resources to the issue of enforcement. The best trade agreement with the strongest enforcement mechanisms is useless without the manpower and resources to carry out their mission.

# Transportation and Infrastructure

On November 29, President-elect Trump nominated for secretary of transportation Elaine Chao, former secretary of labor under President George W. Bush. The wife of Senate Majority Leader Mitch McConnell, Ms. Chao is well versed in transportation policy, having also served as the deputy secretary of transportation under President George H.W. Bush, and her nomination should move swiftly through the Senate. In the nomination questionnaire she submitted to the Senate Committee on Commerce, Science and Transportation, Ms. Chao listed her top priorities and biggest challenges if she were to be confirmed for the position. Her top priorities included the effective enforcement of safety measures, improvements in the DOT's planning and acquisition practices and preparing for the future by considering new infrastructure technologies. Echoing the President-elect's calls for investments in infrastructure and regulatory relief, she stated,"[G]iven the nation's need to improve critical infrastructure. It is important to find ways to expedite the process of making repairs and building new constructions and decreasing the regulatory burdens where appropriate."

When confirmed, transportation stakeholders will be watching what aspects of the previous Administration's priorities remain intact and which are reversed or modified. On December 14, the House Freedom Caucus released a report entitled "First 100 Days: Rules, Regulations, and Executive Orders to Examine, Revoke and Issue." The report provides a roadmap for some of the initial actions that may come out of the DOT under the Trump administration. The most high-profile proposals include changes to and/or repeal of the FAA's Small Unmanned Aircraft System (sUAS) Registration Service and to trucking industry rules governing electronic logging devices and hours of service, but the report also includes a proposal to "Make Sonic Boom Again" by reconsidering the ban on overland supersonic flight.

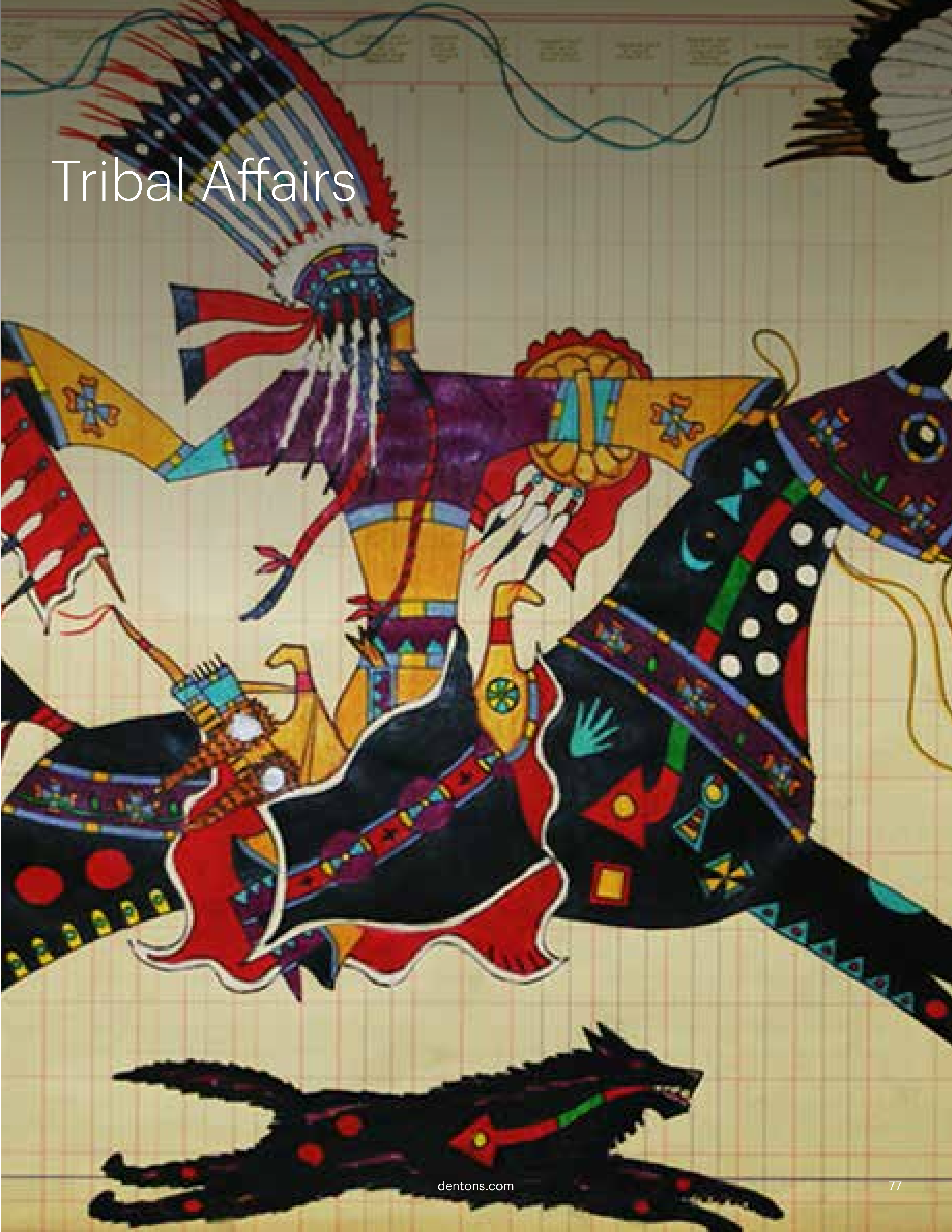
Immediately following the election, the primary focus in transportation and infrastructure policy was on President-elect Trump's infrastructure plan. However, it appears that repeal of the Affordable Care Act and tax reform have pushed a broad infrastructure package to later in the legislative calendar. Initially Trump planned to unveil within his first 100 days legislation intended to spur $1 trillion in infrastructure spending over the next decade. Details on this plan are sparse but early reports indicate that it will not contain direct government spending but instead will rely upon tax incentives to spur private investment in infrastructure. This type of proposal could be beneficial for revenue-generating projects, such as toll roads, bridges, seaports and airports, that may be attractive for public-private partnerships, but it may not be as helpful for proposed projects in rural areas that may not be capable of producing a revenue stream. The key for movement on this proposal will be to provide a fiscally responsible plan to satisfy conservatives and avoid the criticism of many Republicans that followed President Obama's American Recovery and Reinvestment Act of 2009. While Democrats on Capitol Hill have welcomed increased infrastructure spending, they have voiced concerns that this proposal would merely be a tax break for large corporations.

In Congress, one of the early transportation priorities will be the reauthorization of the Federal Aviation Administration (FAA), which is currently operating under a temporary extension that expires on September 30, 2017. While the Senate passed a bipartisan, comprehensive FAA reauthorization bill in April 2016, efforts to pass a bill in the House stalled, resulting in a temporary extension of FAA funding through September 2017.

House efforts to pass a bill came to a halt in large part due to a proposal in Chairman Bill Shuster's bill that would have privatized air traffic control operations in a non-profit corporation. It has been reported that the chairman has been lobbying the incoming Trump administration, as well as Ms. Chao, to support this proposal in order to secure passage of his bill next Congress.

The temporary FAA extension did contain limited policy provisions, including provisions to prohibit the unauthorized flights of unmanned aircraft systems (UAS) over critical infrastructure and pilot projects for counter -UAS technology and UAS traffic management. The need to reauthorize funding for the FAA, as well as proposals to regulate drone use and to streamline certification of new general aviation aircraft mean that Congress will seek to move this legislation early in the session.

# Tribal Affairs



The 115th Congress will bring new leadership throughout the federal government on Indian Country issues, including key positions at the Department of the Interior (DOI), the Department of Health and Human Services (HHS), the Senate Committee on Indian Affairs and the White House. Congress recently created a new Under Secretary for Indian Affairs at DOI through the Indian Trust Asset Reform Act, and it is not yet clear precisely how this leadership position will overlap with the duties of the existing Assistant Secretary of Indian Affairs in guiding the direction of Indian policy for the Trump administration. Additional executive branch appointments will include the Director of the Indian Health Service (IHS) and, potentially, a Special Assistant to the President for Native American Affairs in the White House Domestic Policy Council. At this point, the President-elect has not indicated who he will ask to serve in these positions.

While Mr. Trump has not discussed his priorities for Indian Country, members of his Native American Coalition indicated that easing the regulatory burden for tribes to develop their natural resources will be a priority. "In working with the incoming administration, I am confident that we can improve the land trusts and allow the tribes to be independent in determining their own use of resources and land. It is time to end the overreaching paternalism that has held American Indians back from being the drivers of their own destiny," said Representative Markwayne Mullin (Cherokee), the chair of President-elect Trump's Native American Coalition. These sentiments were reiterated by New Mexico State Representative Sharon Clahchischilliage (Navajo), another member of the President-elect's Native American Coalition, who stated that "the Trump Administration will ease restrictions on American energy reserves worth trillions of dollars. Together we will block the bureaucrats holding Native American businesses back and bring new jobs into our communities."

## Interior Department

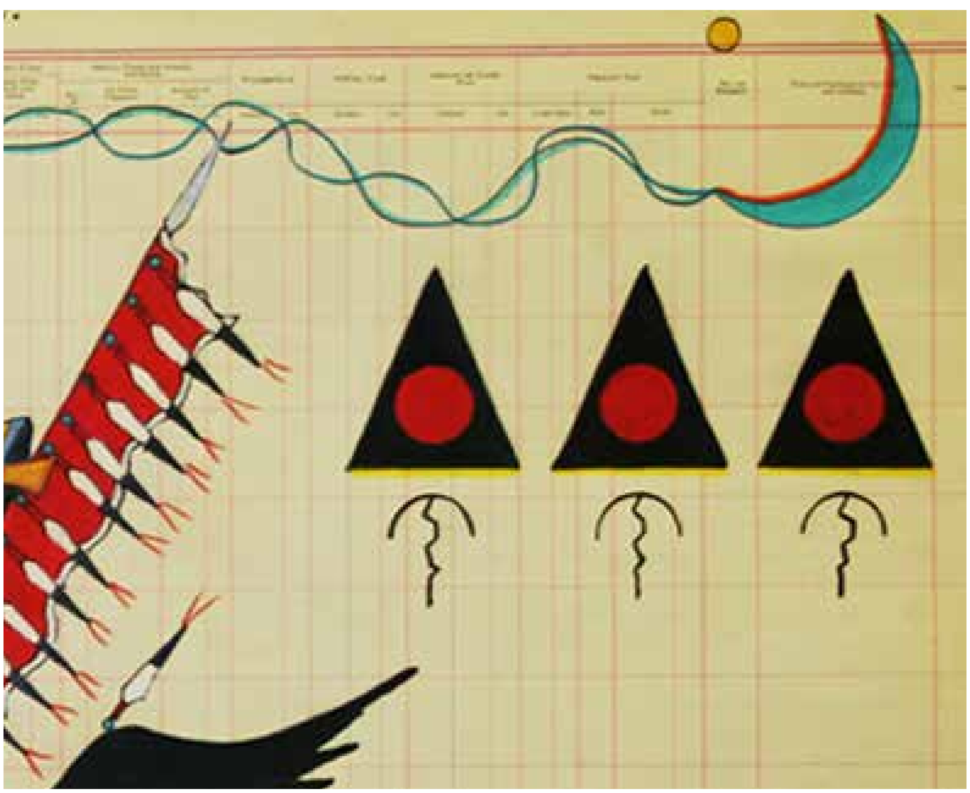
President-elect Trump's nominee for Interior Secretary, Representative Ryan Zinke (R-MT), appears to share similar priorities regarding the development of natural resources on tribal lands. Accepting the nomination, he stated, "I will work tirelessly to ensure our public lands are managed and preserved in a way that benefits everyone for generations to come. Most important, our sovereign Indian Nations and territories must have the respect and freedom they deserve." While in Congress, Representative Zinke introduced the Certainty for States and Tribes Act, which sought to roll back the Obama Administration's final regulations related to the valuation and revenue collection process for coal, oil and gas production on federal and tribal lands. Congressman Zinke also introduced a bill that would make the Indian Coal Production Tax Credit permanent, stating a desire to "create as few economic burdens as possible, especially since tribal lands are subject to greater regulatory hurdles compared to private, state, or federal projects."

## Health and Human Services Department

Representative Tom Price (R-GA), a leading proponent of repealing the Affordable Care Act (ACA), is President-elect Trump's nominee to lead HHS. President-elect Trump has repeatedly stated that repealing ACA is one of his top priorities, a position that has raised questions in Indian Country given that a key component of the ACA is to provide funding for the Indian Health Service through the Indian Health Care Improvement Act (IHCIA). In the 115th Congress, Indian Country will work to ensure that the IHCIA survives the repeal of the ACA's more controversial sections.

## Senate Committee on Indian Affairs

In the 115th Congress, the Senate Committee on Indian Affairs is expected to be led by existing members Chairman John Hoeven (R-ND) and Vice Chair Tom Udall (D-NM). While Senator Hoeven is not yet officially the chairman (Senate Republicans are scheduled to officially name committee chairmanship positions in January), Senator Udall was officially named vice chair in November 2016, at which time he indicated that he would "fight to improve our government-to-government relationship and for progress on responsible energy development, environmental protection, health care, education and many other important issues." Chairman Hoeven is expected to advance a tribal agenda focused on tribal energy development and infrastructure, similar to that of former Chairman Barrasso (R-WY).

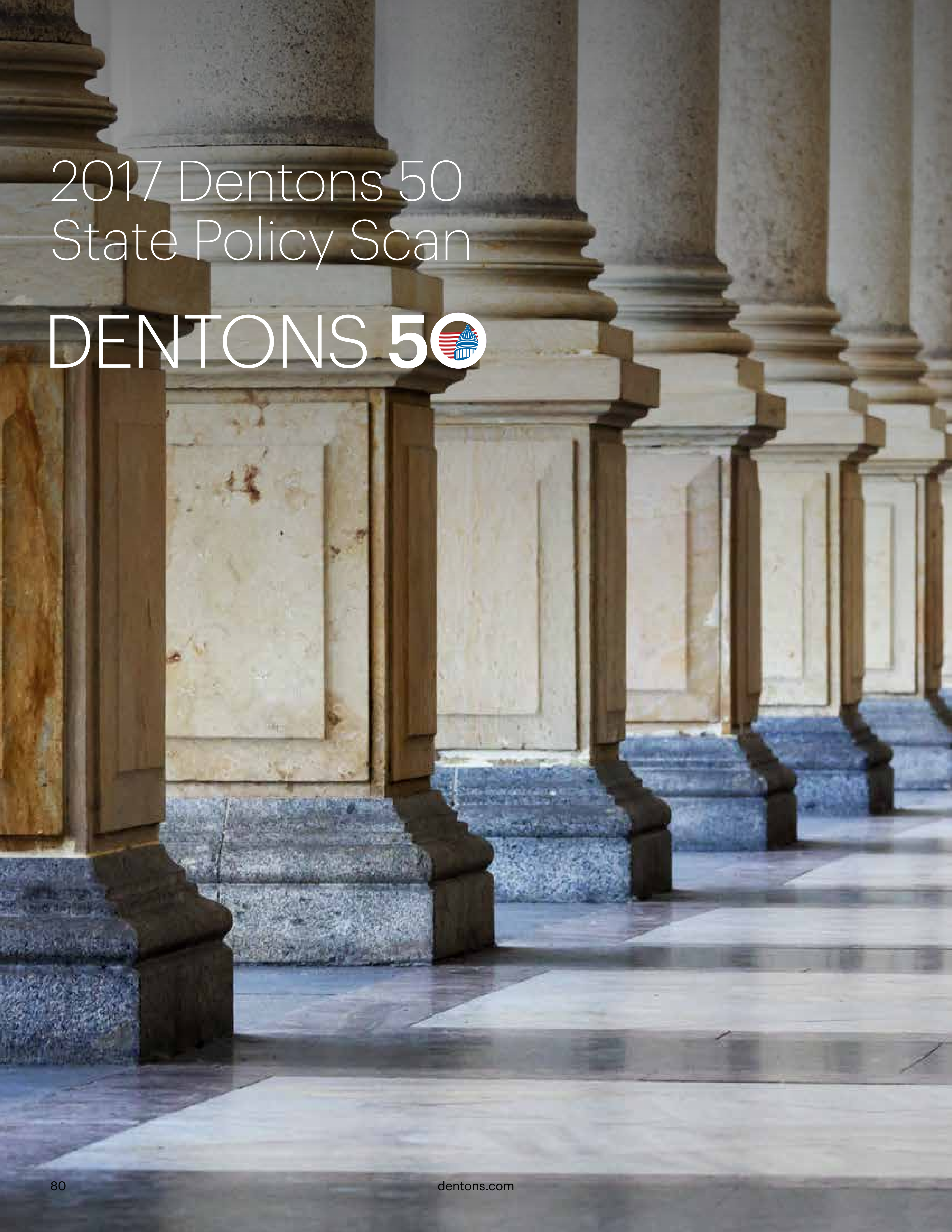


## House Committee on Natural Resources

The leadership of the House Committee on Natural Resources will remain the same in the 115th Congress, with Representative Rob Bishop (R-UT) serving as chairman and Representative Raul Grijalava (D-AZ) serving as ranking member. Before being considered by the full Committee, tribal bills are first reviewed by the Subcommittee on Indian, Insular and Alaska Native Affairs. The leadership of this subcommittee has not yet been determined. Chairman Bishop is expected to reintroduce his lone tribal bill from the 114th Congress, the Tribal Recognition Act, which would repeal revisions to the 1990s-era regulations governing the formal federal acknowledgment of Indian tribes, and which would require petitioning tribes to instead obtain congressional approval. Ranking Member Grijalva is likely to continue advocating for his RESPECT Act, which would establish legal guidelines for executive departments and agencies to follow when consulting with tribes. A comprehensive tribal energy bill is also likely to work its way through the Committee to the full House for consideration.

# 2017 Dentons 50 State Policy Scan

DENTONS 50



## State Attorneys general

During the eight years of the Obama administration, Republican state attorneys general (AGs) actively opposed what they described as the president's "federal overreach" in a variety of areas, including environmental regulation, immigration policy and health insurance law. Certain lawsuits filed by Republican AGs during this time were successful and, looking back, the political fortunes of a number of the AGs likely benefited from the litigation. Now, with the Trump administration taking the reins and Congress firmly in Republican control, we expect the AG litigation landscape to shift in the opposite direction, with Democratic AGs using the power of their offices as well as the same tactics employed by their Republican counterparts in opposing President Obama, to counter President Trump.

In addition to challenging the Trump administration with lawsuits, Democratic AGs are expected to seek to fill any regulatory voids created by the administration in areas such as antitrust, environmental and financial services oversight. State AGs have a well-established record of conducting multistate antitrust investigations, including in connection with proposed corporate mergers. With regard to financial services regulation, Democratic AGs have a strong working relationship with their former colleague and current Director of the Consumer Financial Protection Bureau, Rich Cordray.

On the electoral front, Republicans will have an immediate opportunity to challenge Virginia Democratic AG Mark Herring, who is on the ballot in 2017. However, the 2018 political cycle appears to be more favorable to the Democrats, with open seats in battleground states such as Florida, Ohio and Michigan. And Colorado AG Cynthia Coffman and Nevada AG Adam Laxalt are two Republicans who must defend their seats in states that went for Hillary Clinton. We will also see new AGs in a number of states where existing AGs are expected to run for higher office.

## Alabama

**Budget challenges/taxes:** Alabama is unique as one of the few—if not only—states with two budgets. An Education Trust Fund (ETF) provides funding from pre-K through higher education while a General Fund (GF) provides funding for all other functions of state government. The ETF is in relatively good shape, with reliable, earmarked funding from the state's sales and income taxes. However, the GF has limped along for decades, as it is funded by a patchwork of fees, licenses, interest from state accounts and other, less dynamic revenue sources. At the same time, key GF-funded agencies have seen explosive growth to the point that the Alabama Medicaid Agency and the Department of Corrections alone account for more than 60 percent of the GF budget—and their share is growing. In addition to reform efforts (discussed below), we expect to see, once again, additional revenue measures proposed this session. Some of the more prominent proposals of the past that will likely re-emerge include a state lottery, a gaming compact with the Poarch Band of Creek Indians, codification of Mandatory Unitary Combined Reporting for corporate taxpayers, and a digital goods tax for online streaming content.

**Medicaid:** In addition to the funding issues noted above, Alabama Medicaid is in the midst of implementing a managed care reform initiative known as Regional Care Organizations (RCOs). In an effort to control costs and growth trends and improve health outcomes for the Medicaid population, the RCO program, as statutorily designed, is intended to authorize provider-led manage care entities to form in five regions of the state . The program is supposed to go live in July 2017 and many expect that the provider groups leading the various RCOs (primarily hospitals) will introduce legislation in the upcoming session to tweak, and perhaps make substantial changes to, the reform effort as the launch date approaches. The provider community has also advocated for Medicaid expansion, but for the time being that does not appear to have political support of any magnitude.

**Highway Funding:** The Alabama Road Builders Association, along with several allies, are once again expected to introduce a gas tax increase of $0.06 per gallon, with the funds designated for road construction and maintenance. Last session's proposal called for the tax to be adjusted in 2019, 2023 and 2027, according to the average taxes in Florida, Georgia, Mississippi and Tennessee. The Legislature last raised Alabama's gasoline tax in 1992. Drivers pay $0.18 per gallon in state tax, including a $0.02 inspection. The Alabama Department of Transportation supports the legislation.

**Prison construction:** Governor Robert Bentley and the Alabama Department of Corrections will once again introduce a bond issue to build new prisons in the state. The bond issue proposed in the 2016 session was priced at $800 million to cover the cost of four new facilities. Alabama's prison system is at nearly 180% of design capacity and facing several lawsuits for inadequacy of conditions. The innovative proposal of the Governor and the Alabama Department of Corrections would shutter several outdated facilities and pay the debt service on the bonds with the funds that would have been spent on their repair and maintenance. A key component of the proposal is to use design-build for the new prison implementation. In 2016, the prison bond issue proposal was opposed by independent contracting firms and by the communities where the facilities that are likely candidates for closure are located.

**Impeachment:** An overarching political issue that could substantially disrupt the course of the 2017 legislative session is the ongoing impeachment process facing Gov. Robert Bentley (R). Currently in his second term after being overwhelmingly re-elected in 2014, Gov. Bentley's administration was faced with scandal soon after his second inauguration when, in August 2015, his wife of 50 years filed for divorce amid widespread rumors that he was having an affair with a staff member. The rumors exploded into newspaper headlines in early 2016 when a dismissed law enforcement cabinet member confirmed the affair and added that the Governor went to great—even illegal lengths—to facilitate and conceal it. These allegations prompted the Alabama House of Representatives to initiate an impeachment process, and that process has now begun with an investigation by the House Judiciary Committee. Even though his impeachment is far from certain, the view in political circles is that less than two years after his resounding reelection the Governor's political clout has been significantly diminished.

## Alaska

**Legislative elections:** The 2016 general election resulted in a historic change in the Alaska Legislature—a new Democrat-led House of Representatives majority has taken control from the Republican-led majority that had ruled the House continuously for 23 years. The new majority will be led by a speaker with Alaska Native ancestry—Representative Bryce Edgmon (D-Dillingham)—for the first time in history. The broad ramifications of this significant shift in power are yet unknown, but it is expected that the change will result in a different mix of issues and bills being debated in Juneau than we have seen in recent years.

**State fiscal crisis:** An oil producing state, Alaska is experiencing a profound and protracted budget crisis, as this is a time of low oil prices and diminished production volumes from the famed Alaska North Slope oil fields. How bad is it? Ninety percent of all state spending in Alaska has historically been funded by oil revenues, and due to the plummeting of international oil prices, revenues to the state treasury have declined by 80 percent over the past three years and the state is currently facing a yearly deficit over $3 billion. As a result, the legislature and governor are engaged in a contentious, high-stakes political battle royale over how to fund state government.

Last year, the Legislature failed to take any significant action on the budget crisis. The Senate passed a bill restructuring how the state utilizes the earnings of the Permanent Fund (Alaska's large oil revenue savings account), but the bill was rejected in the House. The Legislature ultimately passed an $8.75 billion dollar budget for FY 2017 that includes $2.2 billion in federal receipts and $4.26 billion in unrestricted funds, and a $1.4 billion capital budget for the fiscal year beginning July 1. In response, Governor Walker made a number of budget vetoes, the most significant being a line-item reduction of the Permanent Fund dividend checks sent to Alaskans in 2016 from a projected $2,000 down to $1,000.

The budget crisis dominated the legislative session last year and it is expected to be even more of a focus this year given the government's failure to adopt any long-term solutions in 2016.

**Budget:** There is significant pressure from the public and Republican lawmakers to address the fiscal crisis in part by continuing to explore options for reducing state spending. In early December, Governor Walker released his budget proposal for the upcoming session and it included a three percent reduction in unrestricted general fund spending. He is proposing to fill the gap primarily through proposals that would generate more revenue for the state, including taxes and a restructuring of the Permanent Fund that has traditionally paid Alaskans' dividend checks.

**Taxes:** In addition to restructuring the Permanent Fund, the Governor and individual members of the Legislature continue to advocate for more and higher taxes. There are a number of new taxes under consideration, including a statewide income tax and a statewide sales tax (Alaska is the only state to have neither), along with proposed increases to existing taxes on the fishing industry, the mining industry, the oil and gas industry, motor fuel tax, sin taxes (alcohol, tobacco, marijuana) and hospital tax. All tax proposals have been met with resistance from both sides of the aisle, with Democrats opposing tax schemes that are viewed as regressive (e.g., sales tax) and Republicans opposing those that they believe would negatively impact the Alaska economy (e.g., income tax, industry taxes). There is, however, an unspoken recognition among the majority of lawmakers that some new taxes will eventually be needed to help close the historic deficit the state is facing.

**Natural gas pipeline:** Low oil prices are also creating havoc around Alaska's seemingly endless dream for a natural gas pipeline. Although, it is the goal of Governor Walker's administration, the three major oil-and-gas producers who work in Alaska (BP, Exxon and ConocoPhillips) have all backed away from a partnership to build the $60 billion pipeline. In hopes of moving the project forward, the Governor is shifting gears and the state is now taking the lead. His administration is in the process of looking for investors to build the pipeline and buyers to purchase the gas. The shift has elicited a negative legislative reaction including a request from the state Legislature for an audit (which has started) of what the state has spent on the project and the value it has received. The Governor has said that if their project is unfeasible or uneconomical, he will drop any efforts by his administration to move it forward, which is what BP, Exxon and ConocoPhillips have already done.

## Arizona

**Tax reform:** As part of his campaign platform in 2014, Governor Doug Ducey (R) promised that he would cut taxes every year in office. One of his priorities around this promise has been to greatly reduce, flatten or entirely eliminate the income tax. It is widely thought that he may take a stab at this in 2017, since a failed effort would be less impactful in a non-election year, whereas a successful effort would carry over into an election year, building momentum for him (and his legislative allies) among their base. Given that both chambers of the Arizona legislature are controlled by Republicans (in 2017, the Republican majorities will be 17-13 in the Senate and 35-25 in the House), it would appear as though the Governor may have a clear path to pursue this tax reform measure. However, any significant change to the tax reform would most likely result in a significant loss of revenue to the state's general fund (Arizona relies on the sales and income tax; it does not have a statewide property tax), which would impact funding for education and infrastructure, two issues that have become ever-larger priorities for Arizona voters across the political spectrum. So, it appears that Governor Ducey will be looking to pursue a larger tax reform package that will reduce or eliminate the income tax, while offsetting the revenue loss by passing other revenue generating legislative measures. What those are, however, remains to be seen.

**Energy:** Like many other states, there has been an ongoing battle between the rooftop solar industry and traditional utility companies. In Arizona, the energy sector is largely regulated by the Arizona Corporation Commission (ACC). In 2016, the Arizona Public Service Company (APS), the state's largest utility, and SolarCity engaged in a heated electoral battle over the election of three new commissioners to the ACC. APS supported the three Republican candidates while SolarCity supported the Democratic candidates. The Democratic candidates narrowly lost, and it now appears the ACC will be supporting numerous policy changes which will be opposed by the rooftop solar industry. This past December, the ACC voted to significantly change net metering policies despite the vast opposition to the change from the solar industry and many consumer advocates. In 2017, the battles will only intensify. It remains to be seen exactly what will happen, but a pending rate request hike submitted from APS to the ACC is sure to generate an intense and very public debate on state energy policy. Other changes being discussed are adding nuclear power to the definition of renewable energy and encouraging the development of viable electricity storage options for residential and business customers.

**Education Funding and Reform:** There will be ongoing efforts—from both moderate Republicans and Democrats— to increase funding for education in 2017 and leading into 2018 (possibly via a ballot measure). Many conservative Republicans will be opposed to these efforts, though they probably won't go as far as proposing any cuts to public education (at least any with political traction). The key question is: Where does Governor Ducey stand on this issue? In 2016, he supported a very controversial education funding formula ballot measure—Proposition 123—that barely passed, and part of his commitment to education advocates and voters during that campaign was that

Prop. 123 "was just the beginning" of overhauling how schools were funded in order to get more dollars into the classrooms. However, since the passage of that ballot measure, the Governor has been relatively quiet on the issue. It is expected that he will unveil his plans sometime in January 2017, possibly during his "State of the State" speech. Suffice it to say that any plans for reforming or increasing funding for schools will be highly polarized. Additionally, there are ongoing education reform and accountability efforts, including but not limited to more portable funding attached to students, more consistent accountability across traditional and charter schools, increased access to quality schools and overall school choice for parents and students, and an ongoing fight around Common Core/uniform testing standards. All of these issues will be front and center in the education space throughout 2017.

**Medicaid:** Arizona was one of the GOP-controlled states that passed Medicaid expansion. Though many GOP legislators would like to see the repeal, or at least a significant overhaul, of Obamacare, the reality is that any loss of the Medicaid expansion dollars would have a significant negative impact on the state's economy and communities. While it may be ideologically appealing to support the elimination or overhaul of Obamacare, once the details and impacts begin to take shape the actual political discourse around the issue may change substantially. Furthermore, the business community came out in full support of Medicaid expansion, so it will be interesting to see if it would oppose a massive overhaul that would cut into the Medicaid expansion dollars and, if so, how that position would be received by the Governor's Office and GOP-controlled Legislature.

**Marijuana:** A ballot measure to legalize marijuana lost in 2016 by approximately 3 percent, but supporters are already gearing up for another effort in 2017 and 2018. The GOP majority-led legislature is decidedly anti-marijuana, which means that pro-legalization advocates will once again have to focus on a citizens' initiative. Efforts to come together on specific language and overall approach will begin in 2017, and ballot qualification activities (signature gathering, fundraising, etc.) will begin in late 2017 or early 2018.

## Arkansas

The Arkansas 2017 session starts Monday, January 9, and continues for approximately 60 days. Arkansas is one of the "Republican trifecta states," with the governorship and both bodies of the General Assembly, the State Senate and the House of Representatives, under Republican control. Governor Asa Hutchinson has laid out an ambitious legislative agenda with 18 main policy ideas that he placed into three main buckets—economic development, education and state government efficiency.

**Economic development:** A tax cut proposal by the Governor, estimated at $50.5 million, focuses on lower-income residents and would make military retirement pay tax-exempt. One of his recommendations to pay for the $50.5 million tax cut would eliminate the sales tax exemption on manufactured homes.

**Education:** On the Governor's education agenda are proposals for teacher training, higher education funding tied to student performance, a heightened emphasis on reading, and a grant for the full cost of tuition at two-year institutions for students in high-need areas of study.

**Government efficiency:** The efficiency-within-state-government focus includes state government agency consolidation and reorganization, elimination of 19 boards and commissions, and state employee incentive programs.

**Prison reform:** Arkansas has the fastest-growing inmate population in the nation and Gov. Hutchison has asked that the general assembly look at reducing incarceration and has also proposed establishing a $5 million pilot for mental health crisis stabilization centers.

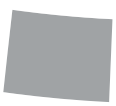
**Miscellaneous:** It is anticipated that the general assembly will tweak state laws in response to a recently passed medical marijuana amendment. In addition, prefiled bills give a nod to a range of social issues, from abortion to gay rights. Highway funding will continue to be on the radar.

## California

**Recreational marijuana:** Now that California voters have passed Proposition 64, legalizing marijuana use for adults for recreational purposes, the Legislature will be fully engaged in wrestling with the repercussions. One difficult issue is how to safely and securely bank the proceeds from this cash-only business for a variety of purposes, state and local tax collection among them. The taxes themselves will have to be dealt with, and other matters to be addressed will impact the motor vehicle, labor and insurance codes.

**Transportation:** California's transportation infrastructure is aging, in need of repair and underfunded by as much as $5.7 billion per year, according to some estimates. A recent legislative report identified the need for an additional $7.8 billion annually to restore the state's roads to best-practice level. The Governor and the Legislature will focus on ways of closing this funding gap.

**Cap and trade:** California has been ambitiously implementing AB 32, the Global Warming Solutions Act of 2006. Implementation of this far-reaching measure relies on a cap-and-trade system that is coming under increasing criticism from the environmental justice community. The legislative agenda next year will likely go beyond the usual debate over appropriate targets and timing to also include scrutiny of the state's cap-and-trade program itself.



## Colorado

The 2016 elections saw a number of statewide measures pass, including an aid-in-dying measure that will allow terminally ill patients to take their own lives with medication prescribed by physicians, replacement of political party caucuses in favor of a state-run presidential primary, the ability of unaffiliated voters to vote in the state's primary, an increase in the state minimum wage, and a measure that makes it harder to get constitutional amendments on the ballot. A statewide tobacco tax was rejected as was a statewide healthcare system. The City of Boulder passed a sugar tax and about two-thirds of the 44 school districts that had funding requests on the ballot were successful.

**Governor's budget, hospital provider fee and transportation:** The Governor's budget outlined $500 million in cuts between needs and projected revenue. The key message of his budget—turn the hospital provider fee into an enterprise fund and thereby free up monies for transportation and other budget issues. However, with the state Senate controlled by Republicans and the House controlled by Democrats this scenario is likely not to happen. What we are likely to see is more of what we saw in 2016—far-right and far-left bills introduced and killed in their respective committees, and middle-ground bills going to the Governor's desk.

What the Governor's budget proposes and what the Legislature and Joint Budget Committee recommend usually has to be hammered out during legislative budget considerations, which will occur in April 2017. The Governor's current budget cuts $109 million out of expected transportation projects—which some think is the signal that the Legislature must address the hospital provider fee in order to move monies back to transportation needs. New Senate President Kevin Grantham (R) and House Speaker Crisanta Duran (D) have pledged to come together on Colorado's transportation issues—but the bonding issues to "get there" could prove overwhelming.

**Medicaid expansion vs. K-12 education:** The Governor proposes a total budget of $28.5 billion with $926 million in new needs that have to be balanced against $426 million in available revenue. Two outstanding items that must be covered by the budget include $243.5 million in K-12 new students and inflation, and $142 million in new Medicaid costs. Medicaid expansion has outpaced K-12 education for the first time in funding needs, a development which budget analysts say will only continue. With a new Trump administration, the discussion turns to the future of the state health exchange, the changes that will be made to states with Medicaid expansion given that the proposed director of CMS is Governor Pence's former Medicaid director, and how the potential of block grants being given to the states will affect the planning of health insurance offers and Medicaid.

**Energy and renewables:** Though environmental activist Tom Steyer and billionaire George Soros contributed heavily to Democratic candidates in Colorado, Republican Heidi Ganahll won the coveted CU Regent seat and the state Legislature stayed in split control. This means that activist environmental issues will not be in full play in the Legislature or at CU in 2017. With the passage of Amendment 71 "Raise the Bar" in Colorado, a greater number of signatures across the state must be obtained to change the Colorado Constitution—making it harder for anti-oil-and-gas activists to put multiple measures on the ballot.

**Sugar tax:** The City of Boulder passed the state's first sugar tax and interest groups are looking to introduce similar statewide legislation in 2017. Legislation is expected to be similar to Philadelphia's wide-sweeping legislation, with the tax revenue being used to fund a number of health and non-health-related programs.

**Pharmaceutical drug cost transparency:** A bill was introduced in 2016 that will likely return in 2017 requiring pharmaceutical drug cost transparency. Given the Mylan scandal this past year, consumer groups and healthcare agencies are likely to make the discussion of drug price increases and transparency a high-priority item.

**Autonomous vehicles:** Uber, Lyft, Google, car dealers and other stakeholders all have their eyes on advancing driverless vehicles in a variety of shapes and forms. Legislation outlining rules and regulations will set the stage for testing and use in Colorado.

**Procurement modernization:** Interested parties doing business in Colorado will want to pay attention to the Department of Personnel and Administration's move to address the procurement code in Colorado—something that will have businesses, non-profits and attorneys following this legislation.

## Connecticut

**Budget issues:** The state is facing a significant budget crunch as the Legislature prepares to kick off the 2017 legislative session and craft a biennial budget for fiscal years 2018-19. Anticipating a budget deficit of more than $1 billion in the next fiscal year, Governor Malloy has asked state agencies to propose budgets that include ten percent cuts in discretionary spending. Meanwhile, the Governor's budget staff, as well as leaders on both sides of the aisle, are struggling to find ways to make up the shortfall without increasing taxes or fees—a feat few believe will be possible without significant cuts in social services programs and municipal aid.

While the immediate future looks bleak, there is some positive news coming out of Hartford with regard to the long-term health of the state budget. Governor Malloy and union leaders from across the state recently inked a deal that would prevent pension payments for state employees—the primary driver of the state's budget woes—from increasing dramatically over the next 16 years. Under the deal, pension payments would be stabilized by spreading them out over a longer period of time. While the deal will not have an effect on the upcoming biennial budget, it does provide long-term relief from potentially crippling required contributions, which are estimated to rise to $4-6 billion annually over the next ten years.

**Education funding:** A recent ruling by a Connecticut superior court judge regarding the state's method of funding its education system is forcing legislators to rethink the way they do business. In his unprecedented ruling, which received national attention, the judge called the state's method of funding its schools "irrational," and ordered legislators to come up with a plan, within 180 days of the ruling, for reapportioning state education aid.

Both the state and the plaintiffs in the case—an unusual coalition of labor and management and small towns and big cities—have appealed the case to the Connecticut Supreme Court. Despite the pending appeal, the Legislature may nevertheless adopt a new means of apportioning education funding in anticipation of a ruling from the state's highest court requiring it to do so by some future date.

**Marijuana:** With the emergence of state budget issues, as well as the recent passage in Massachusetts of a referendum legalizing marijuana, some Connecticut lawmakers are considering legalizing the possession of marijuana. Unlike Massachusetts, however, the Connecticut Constitution does not allow for direct referendum questions. As a result, any legislation legalizing and taxing the possession and sale of marijuana must be approved by a majority of the members of both houses of the General Assembly, as well as the Governor, who has historically been against the legalization of recreational marijuana. Given the incredibly challenging budget circumstances, there is a chance that legislators, as well as the Governor, could hold their noses and support a plan to legalize possession of the drug if forecasted revenues are significant enough to provide a long-term solution to the state's budget issues. A plan to legalize and tax the sale of marijuana was one of Senate President Martin Looney's first ten pieces of legislation filed for the upcoming session.

**City of Hartford:** Hartford Mayor Luke Bronin has recently embarked on a tour of the city's suburbs attempting to drum up support for regionalization initiatives and increases in state funding for the city, which capitol watchers anticipate he will propose in the upcoming legislative session. The Mayor claims that the city is on the verge of bankruptcy due to sharply increasing pension costs and inadequate revenue, which comes almost exclusively from the city's property tax (currently the highest in the state) and state aid in the form of "payment in lieu of taxes" (PILOT) for tax exempt property. Roughly 52 percent of Hartford's property is classified as tax exempt. If Hartford were to declare bankruptcy, it would be the second largest municipal bankruptcy in US history behind Detroit, MI, and the first bankruptcy of a state capitol.

**Transportation:** Transportation has been a major focus for Governor Malloy in recent legislative sessions, and the trend is likely to continue. With many roads and bridges across the state in need of repair or replacement, the Governor will likely renew his efforts to create a "transportation lockbox" that would ensure that transportation funding is not appropriated for other purposes (such as budget shortfalls) in the future. Instituting tolls on Connecticut roads and highways is also likely to be a topic of discussion this session, as state legislators grapple with balancing the budget.

**Minimum wage:** Unions and progressive groups are expected to make a strong push for increasing the minimum wage to $15 in the upcoming session. Legislation that would raise the minimum wage to $15 by 2023, and allow it to rise with inflation in the years thereafter has been filed by Senate President Martin Looney.

**Minimum alcohol pricing:** Under current Connecticut law, alcohol retailers across the state must adhere to strict minimum pricing laws. Large alcohol retailers are expected to push legislation to either lower or repeal the pricing minimums, arguing that the law hurts consumers and limits competition. Supporters of minimum pricing, on the other hand, say it protects the state's small liquor retailers and help keep them in business. Governor Malloy has sided with the large retailers in the past and, if the issue arises in the coming session, is expected to do so again.

**Family medical leave:** This year, the top priority of the Senate Democrats will be passage of legislation creating a paid family leave system in Connecticut. The legislation would establish an insurance program funded by employees through payroll deductions that they could draw benefits from in case of the birth of a child or if a medical emergency arises. Labor groups strongly supported the legislation last year, citing the passage of similar laws in states such as California, Rhode Island and New Jersey. However, members of the Malloy administration, as well as business groups, oppose it, citing fears of high administrative costs.

**Consumer packaging:** In the last legislative session, Sen. Ted Kennedy Jr. led the charge to pass legislation that would drive decreases in the amount of consumer packaging waste entering the solid waste stream. His push ended with the creation of a task force charged with studying the issue. Although the committee never met, there may still be renewed action within the legislature to take action on the issue. If legislation is proposed, it may be similar to what Kennedy introduced last year, which would have required the state Department of Energy and Environmental Protection to amend its solid waste plan and set a goal of eliminating half of all packaging from the trash stream by the mid-2020s.

## Delaware

**General Assembly/special election:** Although there was no significant change in the House of Representatives in terms of composition and leadership, the Democrat-controlled Senate suffered a major upset in November when Democrat Patricia Blevins, Senator and President Pro Tempore of the Senate, lost to an unknown Republican challenger. As Democratic Senator Bethany A. Hall-Long is vacating her seat after winning the race for lieutenant governor, a special election will occur in late February or early March which will give Republicans a legitimate chance of gaining control of the Senate after 40 years of Democratic rule. If the Republicans win this race, there will be some significant issues brought forth such as passage of a right-to-work law, rewrite of the workers' compensation law, paycheck protection legislation and tort reform legislation.

**Transportation/Infrastructure Improvements:** In 2017 the General Assembly must address road construction and consider ways to raise millions of dollars for road, infrastructure and bridge projects. DELDOT is currently reviewing and considering the feasibility of a "road use fee." Drivers would be charged based upon the number of miles they drive on Delaware roads.

**Escheat:** A lawsuit by 21 states against Delaware filed in June is seeking $150 million remitted to Delaware when money orders throughout the country go unclaimed. Delaware claims federal law permits it to collect unclaimed property from financial service companies incorporated in the state. Abandoned property, which includes money orders, account for about 15% of the Delaware state government's annual income.

**Education:** The fight in Delaware during the 2016 legislation session was related to the ability of a child to opt out of the annual assessment. The General Assembly attempted to override the Governor's veto. The legislation creates the right for the parent or guardian of a child to opt out of the annual assessment, currently the Smarter Balanced Assessment System.

**Budget:** In September, the Delaware Economic and Financial Advisory Council projected the state will have $3.9 billion to spend in the 2017-2018 year. That's about 4 percent less than the current budget. DEFAC meets several times a year to adjust projections using the latest data. Meetings are planned for March, April, May and June, when legislators will be given the final number for how much they can spend in the next fiscal year. The state's fiscal year is

July 1 through June 30. The projected decrease is primarily because of lower projections from both the corporate income tax and the personal income tax. Even as revenues are expected to grow, spending is expected to automatically increase. For example, DEFAC went over numbers that show the price tag of Medicaid and health care costs for state employees continuing to increase dramatically faster than inflation.

**Coastal Zone Act:** This session one of the biggest issues will be the revision of the Delaware Costal Zone Act. Many in the business community are looking to revise the 45-year-old legislation, which has severely limited heavy industry on the coastline and is considered the biggest impediment to the development of DuPont's Edgemoor site and the former General Motors plant on Boxwood Road. Amending the Coastal Zone Act would also have a direct impact on the sale and expansion of the Port of Wilmington. A fight from environmental groups and interests is expected.

**Sugar tax:** We understand that legislation is currently being drafted and considered that would be based upon the Philadelphia model.

**Rideshare/transportation networks:** Uber passed legislation in 2016 here in Delaware. We understand that legislation is currently being drafted and considered that would amend the law to include the ability of county, local and municipal governments to tax drivers or assess fees (which is currently not allowed).

**Gas tax:** The General Assembly will revisit the 2016 debate related to an increase in the gas tax. The proposal that has received the most attention is a $0.10 increase that would raise approximately $50 million in additional revenue.

## Florida

**Education:** State Senate President-Designate Joe Negron (R-Stuart) has, for over a year, indicated the need for a large increase in funding for universities and student financial aid. Negron wants to boost the prestige of at least some universities to the level of, say, University of North Carolina at Chapel Hill and University of Virginia. By contrast, incoming Speaker of the Florida House of Representatives Richard Corcoran (R-Land O' Lakes) wants to improve K-12 education by enhancing the quality and effectiveness of teachers and significantly growing the number of high-impact charter schools in the state's most impoverished communities.

**Water/Everglades/Lake Okeechobee:** Florida experienced unprecedented algae bloom earlier this year. Senator Negron—whose Senate district was most adversely impacted—has pledged to make solving this problem and improving the health of the Everglades his other major priority (beyond enhancing universities). He has floated the outlines of a federal-state partnership that would invest $2.4 billion to buy land owned by the sugar industry for the purpose of storing water south of Lake Okeechobee and storing/cleaning water with high phosphorus levels before releasing it into Everglades National Park. The House leadership has expressed skepticism.

**Economic development:** Governor Scott is pushing for $85 million for Enterprise Florida to help lure new business to Florida. Speaker-Designate Corcoran has publicly stated that the House budget will include zero funding because it is wrong and inefficient for the state to pick winners and losers. This could be a big bargaining chip. Last year the House prevailed in blocking Gov. Scott's request for $250 million. The Senate is expected to offer some support for the Governor.

**Workers' compensation:** The Florida Supreme Court struck down part of the workers' compensation law that capped attorneys' fees. Businesses fear large increases in workers' comp costs and the legislature and Governor want to find a way to deal with the court ruling and keep workers' comp costs in check. Watch for a huge effort by the Florida Chamber of Commerce to try to reverse the nearly $1.5 billion in costs to Florida businesses.

**Healthcare deregulation:** A push to eliminate certificates of need for hospitals and a debate on 24-hour ambulatory surgery centers is expected.

**Transportation:** With Florida's population expected to grow by more than 6 million by 2030, the state's need for reliable, affordable mass transit has been brought to the forefront. New Senate Appropriations Chairman Jack Latvala (R-Clearwater) says that recent budgets have bounced back after years of cuts, but there is a tremendous backlog of projects. He went on to say that fellow Republicans have to "get their head out of the sand" when it comes to funding transportation and "one way to solve the problem is to get people out of their cars and onto trains and buses." Passenger rail from Miami to Orlando is currently financed, but there are recent legal snags. Senate Jeff Brandes (R), Chair of the Appropriations Subcommittee on

Transportation, Tourism and Economic Development, is also leading efforts in support of autonomous and electric vehicles in Florida.

## Georgia

**Education funding reform:** Georgia last overhauled its state education funding formula in the 1980s and many believe it is due for an update. Almost half of the state budget is devoted to K-12 education and the handful of attempts over the years to get a consensus on how to reform the present formula have come up short. Last year, Governor Nathan Deal convened his Education Reform Commission to design a new education funding formula based on input from policy experts and the broader community. The 35-person commission recently published a comprehensive report that promotes a student-based funding approach and the Governor has promised to bring legislation to the General Assembly in 2017 to enact the funding reform.

**Healthcare access:** With the rising cost of healthcare and the growing number of uninsured patients becoming matters of increasing concern in the state, policy leaders are in the process of considering a few options to expand access to high quality healthcare through a combination of Medicaid and other coverage techniques. In designing a system that alleviates the core problem, Georgia hopes to learn from the experience of other states while mindful of the unique challenges and character of its own state. The Georgia Chamber of Commerce is taking the lead, with support from hospital associations and other groups concerned, in particular, with the cost of uninsured care and the impact on rural healthcare.

**Religious freedom:** Governor Deal vetoed a "religious liberty" bill last year that would have done the following: (i) protected religious practitioners and organizations from being forced to officiate or participate in same sex marriages; (ii) exempted faith based organizations from state anti-discrimination laws; and (iii) applied a strict scrutiny standard to any government-imposed limitations on individuals' and organizations' exercise of their religious liberties. Despite business groups' concerns that such legislation may be discriminatory and injure Georgia's pro-business reputation, some members of the General Assembly vow to bring the legislation back again in 2017.

## Hawaii

**Homelessness:** Hawaii has the highest per capita rate of homelessness in the United States and Democratic Governor David Ige has declared a state of emergency. A recent poll by the Honolulu Star-Advertiser indicated that homelessness is the top issue for state residents. The city's "sit-lie" prohibition in the beachfront neighborhood of Waikiki appears to have pushed some of its homeless population into shelters or other areas of the island. Meanwhile state and city leaders continue to address the problem with new shelters, transition housing and hygiene centers. But critics say homelessness continues to be a problem and that the government has not responded quickly enough.

**Housing:** Hawaii is a notoriously expensive place to live, and with the average price of a single-family home now above $700,000, there appears to be an increasing number of multi-generational households across the state, thus making affordable housing a front-burner issue. On Oahu, the most populated island, the city estimates that 26,000 units are needed, and that three-fourths of those will need to be affordable to those making 80 percent or less of median income. The housing crunch is also believed to be contributing to the increased number of homeless.

**Transportation:** Horror stories abound from commuters traveling into Honolulu from suburban neighborhoods in central and west Oahu concerning the traffic jams they must endure. City officials are banking on Oahu's upcoming, 20-mile rail line from East Kapolei to Ala Moana to help ease the situation, but the project has so far only produced a lot of angry residents as its price tag rises and its timetable is repeatedly pushed back. The project is now anticipated to cost $6.57 billion, up more than $1 billion from just a year ago, and the completion date is now 2022.

**Debate continues over the future of Kakaako:** Long known as a sleepy industrial district between downtown Honolulu and Waikiki, Kakaako has taken center stage in the development game. As construction cranes dot the region, many question whether a sufficient number of the high-rise units will be within reach of local home buyers, or if most will be luxury investment properties accessible only to high-end, out-of-state buyers.

**Statehood:** Native Hawaiians continue to disagree on the future of the sovereignty movement, or even whether there should be one. A constitutional convention in February was fraught with conflict, disagreement and protests. Some want a "nation within a nation" model, while others seek an international tribunal.

## Idaho

**Education:** Much of Republican Governor Butch Otto's Education Task Force agenda has been checked off in the last three sessions, but a few additional proposals will likely make their way into the his State of the State. The Governor and lawmakers will likely turn a bit more attention to higher education (e.g., completion scholarships to adults who left college without a degree will likely be revisited) and workforce training, which have suffered steeper cuts, proportionately, than K-12, since 2009. Expect to see the education budget rise by approximately 7% this year.

**Election laws:** The Idaho Secretary of State has previewed a series of legislative proposals designed to give more teeth to campaign finance reporting laws. A voter initiative that failed to get on the ballot in 2016 may be the source of inspiration for some of the draft legislation.

**Transportation:** Joe Palmer (R), Chair of the Idaho House of Representatives Transportation and Defense Committee, has indicated that he intends to seek more General Fund monies for transportation (roads and bridges) funding.

**Medicaid expansion:** Given the uncertain future of the Affordable Care Act in the wake of the recent presidential election, the large coalition that has been working for several years to expand Medicaid will likely assume a less prominent role this session as state lawmakers take a "wait-and-see" approach to the issue.

**Loser pays**: In September, the state Supreme Court ruled 3-2 that losers in civil trials could be assessed all expenses associated with the case "when justice so requires." This issue has come to the fore as a result of the proliferation of frivolous patent lawsuits that have been plaguing R&D firms, such as Idaho's Micron Technology. While much of the rest of the world follows the UK's "loser pays" principle, it is largely unknown in America, and Idaho could be a test case for the profession, which has fought it for a century or more.

**Gun rights:** A staple of nearly every legislative session in recent years, the gun rights discussion this year may center on enactment of a "stand your ground" law, which would remove the duty to retreat before using force in self-defense.

## Illinois

**Budget:** For the 2017 spring session the Governor and General Assembly's priority is to pass an agreed-upon budget that funds state government operations and agencies. Both sides failed to pass a FY 2016 budget for the fiscal year ending on June 30, 2017. While no budget was in place during the fiscal year, more than 85 percent of funds were automatically spent, largely because of court orders and consent decrees. During the upcoming 2017 spring session there will be a continued effort to pass legislation that will make structural reforms to the cost drivers impacting Illinois businesses.

**Pension reform:** The number one financial reform is the pension system. Nearly $.025 cents of every tax dollar taken from taxpayers goes into the public employee pension system. The Governor's legislative proposal calls for preserving and protecting all currently earned benefits to date; moving all future employees into a tier 2 pension plan; providing an optional buyout to reform cost of living adjustments in return for a 401K plan; and a constitutional amendment to remove ambiguity in future reforms.

**Workers' compensation:** Since Illinois has the seventh-highest workers' compensation costs in the country, legislation will be introduced changing the causation standard from "any cause" to "major contributing cause," whereby the accident at work must be more than 50% responsible for the injury when viewed alongside all other causes.

**Tort reform:** Legislation will be introduced to decrease the number of tort lawsuits filed against businesses by mandating that corporations, associations and partnerships can only be sued where the entity has an office or does business. Additionally, a lawsuit must be dismissed for lack of venue if there is not at least one defendant who is an Illinois resident and if the transaction or cause of action did not occur in Illinois. Currently, Illinois ranks 46th worst lawsuit climate for business among the 50 states.

### Special Session:

**Energy:** A significant energy bill benefitting two nuclear plants operated by Exelon was approved by both chambers and Governor Bruce Rauner (R) signed the bill into law. SB 2814 (Sen. Chapin Rose, R-Champaign/Rep. Robert Rita, D-Blue Island) The bill would also increase investments in renewable power and energy efficiency.

**House fails to override amendatory veto on prevailing wage bill:**
Following a successful override vote in the Senate, the House failed to secure enough votes to override the Governor's amendatory veto of SB 2964 (Sen. Don Harmon, D-Oak Park/ Rep. Jay Hoffman, D-Belleville). The override motion received 70 votes in

the House, one shy of the required threshold needed for the bill to become law. SB 2964 would tether the determination of the prevailing wage to collective bargaining agreements when the agreements cover as few as 30 percent of the workers performing similar work in a locality. If enacted, the bill would have the effect of inflating prevailing wage rates above what is actually being paid to all workers, union and non-union, performing similar work. In addition, local governments would no longer have the authority to determine a local prevailing wage rate.

## Indiana

From a policy perspective, issues that are being discussed during the interim that will most likely be legislative issues in 2017 are the rewrite (i.e., loosening) of the state's alcohol laws, a three-tier scheme that heavily regulates distribution and sale; transportation funding; a potential tax on services; consolidation of income tax returns; and regulation of fantasy gaming.

## Iowa

**Changing political landscape:** After capturing majority control of the state Senate in November, Iowa Republicans will, for the first time in 20 years, control both chambers of the Legislature as well as the governorship. Terry Branstad, the nation's longest-serving governor, has been tapped by President-elect Donald Trump to become the new US ambassador to China and Lt. Gov. Kim Reynolds, whom the Governor has been grooming to take over the office for a number of years, will step into the role sometime in early to mid-2017.

**Income tax reform:** With a new Republican majority in the Iowa Senate, leaders have signaled that they will be looking at personal income tax reforms to lower the tax burden on residents. However, state revenues are coming in below projections, forcing budget cuts that will complicate the picture for tax relief.

**Water quality funding:** Pressure has been mounting in recent years for state leaders to do more to clean up Iowa's polluted waterways and ensure safe drinking water. Proposals that would divert future tax dollars from school infrastructure projects to water quality efforts have been touted, but lawmakers have so far failed to settle on a funding mechanism. Now that Iowa is a Republican trifecta state, the impasse could be ending.

**Minimum wage:** After several years of the Legislature declining to raise the state minimum wage, currently at $7.25, a number of Iowa's urban counties have stepped up to enact their own minimum wage hikes. Many in the business community are calling for more uniformity, particularly in cities with boundaries that span more than one county with differing minimum wage levels. Legislators appear ready to preempt the local mandates with either a ban on local minimum wage mandates or a statewide minimum wage hike, but not until the issue has garnered more study.

**Collective bargaining:** AFSCME, the state's largest employee union, is negotiating its contract this year, and Gov. Branstad has expressed a desire to look at changes to the state's collective bargaining laws for public employees. Legislative efforts in recent years to make changes to collective bargaining have been predictably contentious. This time, however, there is little that minority Democrats can do to stop or slow any changes Republican lawmakers might try to push through.

## Kansas

General: The 2017 Legislature will return to work on January 9. All 165 legislative seats were up for reelection in 2016 and, between retirements and primary and general election losses, there was a 35 percent turnover of elected legislators.

**Budget:** Kansas is looking at its' third year in a row of considerable budget shortfalls. The hole is expected to be $350 million in 2017. Possible fixes include: (i) securitizing state tobacco settlement payments; (ii) transferring balances from the state's unclaimed property fund to the general fund; and (iii) closing a four-year old LLC tax-relief loophole that will put 330,000 Kansas business back on the tax rolls.

**School finance lawsuit:** A state Supreme Court ruling is imminent in a lawsuit related to the Legislature's underfunding of Kansas schools. It is widely believed that the Court will rule against the state and an additional $300 million to $500 million in K-12 funding will be required, putting further strain on the 2017 budget.

**Medicaid cuts:** Legislation will be introduced to restore a recent 4 percent cut to Medicaid providers. The funding source is likely to be an increase in an MCO (managed care organization) provider tax.

**Education superhighway project:** Republican Governor Sam Brownback recently announced an effort to work with consultants to determine the technology needs of school districts across the state and secure funding to increase broadband speeds to schools in underserved areas.

**Concealed carry in schools:** We anticipate legislation to repeal recent legislation that allows students and faculty to carry concealed firearms on college campuses.

## Kentucky

Kentucky's General Assembly has undergone a major shift. This session represents the first time Republicans have controlled both legislative chambers, as well as the Governor's office. Moreover, both Senate and House have veto-proof Republican majorities. Of the 38 members of the Senate, 27 are Republican, and of the 100 members of the House, 64 are Republican. Couple that with a Republican Governor, Matt Bevin, and the state is poised for major policy shifts.

The focus of the new Republican majority in the upcoming legislative session will be making Kentucky more business-friendly. High-priority legislation will seek to promote job creation and to achieve ongoing red tape reduction. Top priorities being discussed by both chambers and the Governor are:

**Right-to-work law:** Twenty-six states have enacted right-to-work laws in an effort to give employees the right to maintain employment without having to pay for any part of the cost of union representation. Kentucky wants to do the same.

**Prevailing wage law:** The state seeks to repeal its prevailing wage law, which applies to state-funded construction projects with the goal of increasing efficiency of public investments and reducing the cost of government.

**Tort reform:** A constitutional amendment for tort reform won't be taken up until 2018 session. However, statutory items such as creating medical review panels and reducing judgment interest will likely be taken up.

**Charter school legislation:** What this legislation consists of remains to be seen, but Kentucky is one of only seven states with no form of charter school legislation on the books and this session is looking to change that.

**Education accountability:** State implementation of the federal Every Student Succeeds Act, and fleshing out assessment and accountability standards for the state's students.

**Right-to-life law:** To satisfy the conservative base, there will be some form of tightening of the state's right-to-life law.

**Reorganization bills:** Legislation may be passed that is in line with the Governor's vision of state government.

## Louisiana

**Tax reform:** The major issue in Louisiana in 2017 is expected to be tax reform. The 2017 legislative session doesn't begin until April 10, and while much can change between now and then, restructuring the state's tax code is the top priority for both Democratic Governor John Bel Edwards and many legislators. It's worth pointing out that recurring budget deficits have become the norm over the past five years in the state. It's also worth noting that the 2017 legislative session is fiscal-only in nature, meaning bills must deal with tax credits, exemptions, exclusions, etc. (although each member may introduce up to five non-fiscal bills apiece).

There are three different task forces actively meeting with an expressed intent to offer up recommendations on how to "improve" the state's tax code. Many in business and industry have anticipated that these recommendations (most of which came in mid-November 2016 with a few more expected to arrive in early 2017) would include reducing or eliminating many hard-fought tax credits/exemptions that were enacted over the past few years.

Examples of tax policies that are expected to receive attention include the state's Industrial Tax Exemption Program (ITEP), which has been a major issue for manufacturers; inventory taxes and tax credits; sales tax rates; corporate and individual income tax rates; enactment of a professional services tax (unlikely but possible); and elimination of the federal income tax deduction for individual filers (could also impact small business owners), which was on the November 8, 2016, ballot as a legislatively referred constitutional amendment, but was defeated and could reappear next spring; and many more.

**Gas tax:** The state's Department of Transportation and Development and associated general contractors are promoting an increase in the gas tax by anywhere from $0.20 to $0.30 ($0.384 to $0.484when factoring in federal rate) or even higher depending on the proponent. This will be a very complicated issue considering Louisiana's legislature, with urging of the governor, increased the state sales tax on all purchases by a penny this spring in addition to suspending a litany of tax exemptions, credits and exclusions. In other words, Louisiana's tax burden continues to increase and many wonder whether the tipping point has already been reached.

**Coastal lawsuits:** Gov. Edwards plans to step up the fight to win damages from oil and gas companies for their role in damaging Louisiana's wetlands over many decades. Dubbed by many as a trial lawyers bonanza, it is likely that a handful of bills will be filed to curtail these suits against oil-and-gas companies operating in the state and along its coast—or to at least tighten up language on whether contingency fee contracts are lawful.

## Maine

**Governor Paul LePage:** As the Republican Governor begins the final two years of his second term, speculation continues that he is contemplating running for the US Senate against Angus King, the state's first independent senator. Although he has been a controversial figure, the Governor's poll numbers continue to show strong support among his base and moderate voters. He also maintains strong support among the House Republican caucus, but his relations with the Senate Republican leadership are less solid.

**Legislature:** The November elections saw the majority Republicans in the Maine Senate lose two seats but maintain their majority. Incumbent Senate President Mike Thibodeau and his leadership team continue as the leaders with their 18 member caucus. Minority Democrats (17 seats) elected Troy Jackson, a labor Democrat, as leader and Nate Libby, a more moderate official, as the assistant. At the House end, Democrats retained control but lost several seats; they now hold 77 seats, with Republicans elected to 72 seats, and 2 unenrolled members. Rep. Sara Gideon was elected Speaker of the House and Republicans re-elected their leadership team, Rep. Ken Fredette as leader and Rep. Elsie Espling as assistant.

**Budget/taxes:** The past four years have seen very contentious battles between the executive branch and the four caucuses, with the House Republicans historically siding with the Governor initially. Though the budget is in its preliminary stages, the Governor is likely to propose significant cuts to the state workforce, possibly attempt to reduce Medicaid spending, and seek to reduce the income tax on the states' top earners. Voters passed a referendum that places an education surcharge tax on incomes over $200,000 and it is likely that the Governor and Republicans will seek to alter the implementation of this referendum and/or focus on reducing the tax burden on those that earn more than $200,000. Maine has a biennial budget and typically has the two-thirds majority of both bodies needed for enactment in time for the start of the new fiscal year. Majority budgets passed 90 days in advance of the conclusion of the fiscal year are almost unheard of so cooperation among the Legislature's partisan caucuses at the end of session typically sidelines the Governor when the final budget is negotiated.

**Referendum questions:** During the swearing-in ceremonies on December 7, 2016, the Governor took the opportunity to recommend that the Legislature change the implementation of three of the enacted referenda. The Governor claimed that Question 2, a surcharge tax for educational funding, will damage the economy by driving away high earners, such as doctors and lawyers. Similarly, he wants to change implementation of Question 4, a minimum wage increase, his concerns being both the amount of increase and the tipped wage credit portion. Democrats have publicly stated that the will of the voters should be respected and that there should not be alterations to the rollout of the referenda. The Governor has also expressed reservations about issuing a proclamation legalizing recreational marijuana, as required of him by Question 1, indicating that he believes his oath to uphold the US Constitution precludes him from enacting a law that the citizens approved but that may be against federal law. This matter remains unclear at this stage, though most observers believe the law will be implemented, subject to some changes this session.

**Medicaid expansion:** For the past two sessions Democrats and a small group of moderate Republicans have attempted to expand Medicaid in the state, but the Governor has consistently vetoed these bills and is likely to do so again should such a measure reach his desk in the upcoming session. A progressive advocacy group collected enough signatures this past election day to put Medicaid expansion on the ballot in 2017 or in 2018. However, the advocacy group stated that before having the signatures certified by the Secretary of State, it was waiting to see what, if any, expansion attempts will be made by the Legislature this session.

## Maryland

**Gov. Hogan's popularity continues :** As he enters the third year of his term, Republican Governor Larry Hogan's approval ratings continue to soar in this majority-Democratic state. An OpinionWorks poll in September found a staggering 71 percent of registered voters approve of his job performance, the highest number achieved by a Maryland chief executive since 1998. The

Governor has remained focused on the economy-driven agenda (e.g., improving the state's business climate, reducing taxes and reducing government spending) that propelled his upset election in 2014. The Governor did not endorse nor vote for President-elect Trump.

**Legislative leaders poised to pursue progressive agenda:** Senate President Miller and House Speaker Busch are expected to be pressed by their respective caucuses to pursue an "aggressively progressive" agenda. The House Democratic Caucus, in particular, is considering a progressive, albeit still largely undefined, agenda to serve as a contrast to Governor Hogan and the incoming Trump administration. Leadership changes are anticipated in the House, and certain Senate committees could have several new members due to members either retiring from the Legislature or being elected to other offices.

## Massachusetts

**Opioid addiction:** In 2004, fewer than 500 people died of unintentional opioid overdoses in Massachusetts. By 2014, the number had more than doubled. Victims of drug overdoses are black, white and Latino; old and young; from the cities and suburbs. The state Legislature and two successive Governors have been taking steps to curb the growing problem of prescription painkiller addiction, which is also a gateway drug to heroin use. Among other efforts, the state has added treatment beds, launched public awareness campaigns, implemented new mandates for insurance coverage and created education requirements for medical and dental students.

**Transportation:** The harsh winter of 2015 crippled the Massachusetts Bay Transportation Authority (MBTA), the Boston area's aging public transit system, calling attention to its massive backlog of maintenance needs. Audits of the system over the past year have revealed a host of management, labor and financial problems. Meanwhile, the state's snowy climate means its roads and bridges also need regular upkeep, and money is always in short supply. Attempts to generate new tax revenue for transportation have failed multiple times, either in the Legislature or at the ballot box. For now, state officials are working to reform the public transit system, and fare increases are likely.

**Healthcare:** Massachusetts, which has some of the nation's leading hospitals. was the first state to offer near-universal healthcare coverage, implementing an individual mandate in 2006. But the state has not been able to curb the growth of healthcare costs, which for years have been among the nation's highest. The continuing high cost of Medicaid alone, is hitting the pocketbooks of state residents and punching a growing hole in the state budget. While Massachusetts has passed laws aimed at curbing costs through increasing transparency, improving technology and moving toward new payment methods, it's still too soon to tell whether these efforts will be effective.

**Energy/environment:** Energy prices in Massachusetts are among the highest in the nation – hurting residents and businesses—and the problem is only expected to get worse with the closure of coal-fired and nuclear power plants limiting supply. Massachusetts has been trying to cultivate new sources of clean energy. But potential projects have gotten hung up by political debates over the merits and pitfalls of building solar energy projects, developing offshore wind farms, importing hydroelectric power from Canada and building new natural gas pipelines. Questions include: How much should the state be subsidizing solar energy development? How does the state balance the need for low-cost energy with the environmental impacts of fossil fuel energy generation? What is the right location for new energy infrastructure?

**Education:** Massachusetts has some of the best schools in the nation. But there remains a persistent performance gap between rich and poor students, and between white and minority students. A handful of urban schools are consistently deemed underperforming. As a result, Massachusetts is embroiled in a debate: Does the state need more charter schools or not? Should more money be invested in the traditional public schools? How does the state help the lowest performing schools? Are there more effective ways to use existing resources? With a limited amount of state money available to spend on education, these issues are pitting teachers' unions against charter school advocates, both of whom want a bigger share of the pie.

**Legalization of marijuana:** Massachusetts has historically been one of the more progressive states on marijuana policy—in 2008, decriminalizing the possession of small amounts and in 2012, legalizing medical marijuana. The state's first medical marijuana dispensaries opened in 2015. This past November, voters approved a ballot measure to legalize recreational marijuana—over the opposition of the state's most powerful politicians.

## Michigan

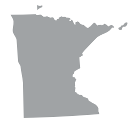
**Medicaid reform:** As the Trump administration and congressional Republicans potentially move forward with "repealing and replacing" Obamacare, the now-more-conservative Michigan House of Representatives is contemplating how it will change the state's Medicaid program. Last session, the Legislature approved changes that added over half a million people to the program, providing them with health insurance they didn't have prior. The new House leadership has talked about how to make that program more accountable. We anticipate attempts at making changes.

**Budget:** Michigan is facing a budget shortfall next session of about $300 million. Coupled with a very conservative House, this could make for some interesting budget cuts. Schools will likely be left alone but the two biggest budget areas—Medicaid and Corrections—will likely be areas to target. Even if the revenue-estimating conference slated for next month shows better than currently predicted, they are likely to look for places to trim state government. Two other areas often spoken about are Pure Michigan, the state's tourism promotion program, and the state's Economic Development Council. There is a philosophical rub between conservatives and the appropriate role of government and this is never more evident than state promotion to tourists and developers. However, Republican Governor Rick Snyder does not share these hardline conservative values, thereby setting up an interesting budget showdown.

**Auto no-fault:** Michigan has the most generous auto accident benefits in the country. If you are catastrophically injured in an auto accident you are taken care of for life without having to sue or go bankrupt. For this benefit, Michiganders pay about $150 per car per year added to their insurance bill. For the past six years, the insurers and the Republican House have, to no avail, been attempting to change this law to the benefit of insurance companies by implementing caps and fee schedules, among other things. The new Speaker of the House has stated that he will continue to pursue changing the state's no-fault law.

**Presumptive parole:** Attempts will once again be made by conservatives and liberals alike to change the parole system in Michigan for prisoners that meet certain benchmarks when their minimum sentences are served. Michigan Attorney General Bill Schuette and other justice hawks continue to attack this effort as soft on crime. Large political donors from both parties are beginning to take this issue on from a compassionate and state budget savings point of view. Expect a push on this issue hard next year.

**Tax credits:** The overall state issue of whether a government should pick winners and losers will be debated next year. Governor Rick Snyder started his administration opposing tax credits but over the past six years been less strident on the issue as big developments make overtures to come to Michigan with the right incentives. The conservative House Republicans have been talking like they will take a hard look at these incentives and what the role of government should be. In particular, developers in Detroit are working to put that city back together and make it proud again, but are insisting incentives are an important part. This debate will get started early next year.



## Minnesota

Minnesota's 90th legislative session will begin on Tuesday January 3 with the swearing in of all 201 members of the Legislature. The primary goal for the odd-year session will be the establishment of the budget for the FY 2018 to FY 2019 biennium. In early December, the Commissioner of Minnesota's Office of Management and Budget announced the state will have a projected budget surplus in the next biennium of $1.4 billion. The Legislature and Governor have been unable to reach an agreement over the past two years on the Omnibus Tax and Transportation finance bills, so the state will have an additional $678 million available in one-time money during the upcoming session. The state also deposited $334 million into its budget reserve, leaving nearly $2 billion in additional state savings.

While establishing the budget will be the primary goal this session, state legislative leaders have also announced a number of additional priorities. Many of these are issues the Legislature and Governor were unable to reach an agreement on during the 2015 and 2016 sessions.

**Healthcare reform:** Minnesota's state-run healthcare exchange is experiencing some of the highest rate increases in the nation for 2017. The Governor and members of the Legislature attempted to find a solution in hopes of holding a special session in December. Negotiators were unable to reach an agreement, thus any reforms are likely to be dealt with early in the upcoming session. The Governor has proposed a plan to take more than $300 million from either the budget reserves or the state's Health Care Access Fund to provide a 25 percent rebate to all customers in the exchange who fail to qualify for federal tax credits. Republicans have been skeptical of the one-time fix. They have also raised concerns about how the exchange is being managed and the caps on the number of insureds which the Department of Commerce has allowed health insurers in the exchange. These caps have created pockets throughout the state where exchange users are unable to find a plan with providers in their area. Republicans, who will control both bodies in the upcoming session, are unwilling to accept any proposals that fail to address continuity of care issues.

**Transportation:** When the Legislature began its work in 2015, all four legislative leaders and the Governor claimed the two years would be a failure without a comprehensive agreement on transportation funding. Disagreements on funding light-rail, specifically whether to use existing tax revenues or to increase gas and sales taxes, derailed any chance of reaching a global agreement. With the state Senate now under GOP control in 2017, the Governor's negotiating position and support for an increase in the gas tax have both diminished. Republican legislative leaders have indicated an interest in passing a funding bill similar to one proposed by the House in 2015, which would capture revenues from the sales tax generated through the purchase of auto repairs, parts and services. The Governor and DFL (Democratic-Farmer-Labor) Party leaders are concerned about the plan's lack of a constitutional dedication of these funds.

**Omnibus tax and bonding bills:** For two years, the state Legislature and Governor Mark Dayton have been unable to reach an agreement on a comprehensive tax bill. In 2016, a bipartisan group of legislators passed a broad tax bill, only to have the Governor veto the measure as part of his effort to force a special session where a bonding bill and other gubernatorial priorities could be renegotiated. House Republicans tried to move a nearly $1 billion bonding bill in the final minutes of the 2016 session, only to have the bill die in the state Senate. While bonding would typically wait until the even-year session, it is possible a bill could be part of a session ending compromise, linked to the Republicans hopes of having a tax bill become law.

### Other issues to watch:

**State-wide labor standards (preemption):** A business community priority to prevent cities from adopting minimum wage, scheduling or paid-leave ordinances.

**VOIP:** Telecommunications industry priority to address regulatory uncertainly of VOIP services and products.

**Liquor off sale:** This is likely the year the Legislature repeals the decades-long prohibition Sunday sales at liquor stores.

**June primary:** With the leaders of both major political parties behind moving the state's primary to the month of May from its current August, the effort will gain momentum this session.

**Uber/Lyft regulations:** Minnesota adopted some minimal regulations of alternative transportation providers in 2015; however, recent investigations have raised local concerns about how these companies are operating in Minnesota.

**Deadline:** The legislature must complete its work by the constitutional deadline of May 22, 2017.

## Mississippi

Mississippi's 2017 legislative session starts January 3 and runs for approximately 90 days. This is the second year of a four-year term for Republican Governor Phil Bryant, Republican Lt. Governor and President of the Senate Tate Reeves, and Republican Speaker of the House Philip Gunn.

**Taxes/budget:** Legislative leaders in Mississippi spent the summer and fall examining major agencies' budgets as well as the tax code. The state's tax collections are struggling to keep up with even-tempered expectations, and the governor has already instituted some budget cutting for the fiscal year that began July 1. Lawmakers are scouring agencies, asking questions about mission and process; and "working groups" have twice heard from the conservative Tax Foundation, which has recommended more reliance on sales and uses taxes and the elimination of some tax exemptions. Legislators will also make decisions on the apportionment across the state of BP Oil Spill settlement funds, including whether a trust fund should be set up for the Mississippi Gulf Coast counties.

**Education funding:** Lawmakers have brought in EdBuild to examine the state's 20-year-old education funding formula. Known as the Mississippi Adequate Education Program, the formula has been fully funded only twice since its inception. Leaders say they want to ensure a focus on classroom dollars and rewarding performance. The issue is likely to be politically polarizing, with Democratic minorities defending the existing formula and Republican majorities pushing for change.

**Highway funding:** The Mississippi Economic Council—the state's chamber of commerce—is calling for additional dollars focused on highway and bridge maintenance. The MEC says an additional $300 million-plus a year is needed. Lawmakers are searching for solutions amid concerns over raising new taxes and a slowdown in existing tax collections.

## Missouri

Despite a very contentious and expensive election year in Missouri, the General Assembly remains controlled by Republican supermajorities in both chambers. As such, it is expected the leadership in both chambers will continue to push an agenda that appeals to their base and caucus members, including right to work, tort reform, creating statewide ride-sharing regulations and striking a compromise between utilities and rate payers.

## Montana

**Natural resource downturn:** The number one issue in the state is the downturn in the natural resource extraction industry—coal, oil and natural gas—and the economic impact on the Montana economy, jobs and tax base. Coal companies are declaring bankruptcy, coal production is slowing and coal workers are being laid off. Montana communities that experienced a surge in population and are struggling to accommodate the rapid influx are feeling the impact. Politicians are blaming the US Environmental Protection Agency, the Washington and Oregon legislatures, environmentalists and others concerned about climate change for the slowdown.

**Electricity drain:** Montana exports much of the electricity generated in Colstrip, a series of coal-fired power generating units, the state relies on Colstrip for employment and taxes. One of the state's largest refineries depends on electricity generated at Colstrip and the refinery manager is concerned how he will get affordable, reliable energy if the federal Clean Power Plan, in combination with the actions of the Oregon and Washington legislatures to begin moving away from coal-fired generation, results in Colstrip's closure.

**Endangered species:** From the sage grouse to the grizzly bear, endangered species are almost always a top issue in Montana. The state avoided a listing of the sage grouse on the endangered species list when the federal government agreed to allow lawmakers to pull together stakeholders to protect its habitat. But the issue is being litigated. On the flipside, the federal government is moving toward delisting the grizzly bear, though bear advocates say it's too soon. Regardless, this issue impacts agriculture, natural resource extraction, hunters and shooting sports enthusiasts, and others who come to states like Montana for its wild spaces and wildlife.

**Veterans issues:** For a state with just over a million people, Montana has a high number of veterans per capita. It also has a high suicide rate, generally, and there's concern among political leaders on how to provide healthcare, including mental health services, to veterans. The state's large land mass and sparse population make it difficult for veterans to access services.

## Nebraska

**Budget/taxes:** An almost $900 million budget shortfall for the 2017-18 and 2018-19 biennial budget is the Legislature's highest priority this session. Nebraska has a constitutional requirement for a balanced budget. The Governor has stated a desire to lower corporate and individual income taxes and most Nebraskans, particularly those in the agriculture sector, want lower property taxes. To offset those losses in revenue, state senators are discussing broadening the sales tax base by eliminating some exemptions. Education funding is always part of this discussion.

**Corrections:** Investment needed to stabilize safety and capacity concerns, ensure proper sentence calculation, and provide programming and mental health care to ensure safe reentry. The state's death penalty was repealed by the Legislature last session, but was reinstated by the voters in November 2016.

**Professions:** Push to ease regulatory and licensure burdens on professionals. Legislation to ease regulations on health care professionals, insurance agents and other licensed professions is likely.

**Technology:** Efforts to update statutes, where needed, to make e-commerce a part of how the state does business and to make the state better able to adapt to new technologies.

## New Hampshire

Budget challenges/taxes: New Hampshire operates on a two-year budget and the budget will be the main focus of the 2017 legislative session. For the first time in 14 years, the state will have a Republican

Governor, Chris Sununu, and he will have a Republican controlled House and Senate to work with. It is likely that no new taxes will be passed and that certain existing business taxes may very well be reduced.

**Medicaid expansion:** In addition to the budget, New Hampshire's Medicaid expansion program is set to sunset in 2018 and the Governor-elect as well as House and Senate Leadership have suggested that a pathway for reauthorization will be worked on over the next biennium. It is unclear at this point if this will happen during the budget debate or if the leadership will choose to work on it outside of the budget.

**Right-to-work legislation:** The Governor-elect and the House and Senate Leadership have identified passing a right-to-work law as one of their top priorities this session and bills have already been introduced. While the Senate bill is likely to pass, the 400-member House could prove to be a challenge.

**Gun legislation:** Senate majority leader Jeb Bradley has introduced legislation to repeal the concealed carry license process that currently exists in New Hampshire in favor of "constitutional carry" that has been adopted in other states. This legislation passed the House and Senate during the last legislation session, but was vetoed by Governor Maggie Hassan, who is now heading to the US Senate. Governor-elect Sununu has indicated he will sign the bill but, again, it must pass the 400-member House, where the Republicans hold a 26-vote majority.

## New Jersey

Just as the nation is settling down from the tense presidential election, New Jersey is gearing up for its 2017 gubernatorial and legislative elections. All three chambers are up for grabs as the Democratic Party battles to hold on to its majority. Two-term Republican Governor and former presidential candidate Chris Christie enters his final year with record-low approval ratings and a failed backroom deal to change an existing law that is preventing him from cashing in on an undisclosed book deal.

The 2017 Democratic gubernatorial primary has started, with retired Goldman Sachs executive and former US Ambassador to Germany Phil Murphy the party's frontrunner. Other declared Democratic gubernatorial hopefuls include Assemblyman John Wisniewski; former Under Secretary of the Treasury in the Clinton administration Jim Johnson; and political newcomers Monica Brinson and Titus Pierce, according to New Jersey's Election Law Enforcement Commission. The 2017 declared Republican gubernatorial candidates include Assemblyman Jack Ciattarelli and businessman Joseph Rudy Rullo. Other potential Republican candidates include Lieutenant Governor Kim Guadagno, who is serving as the state's first lieutenant governor and also as its secretary of state.

The Legislature is expected to take up major healthcare-related bills in 2017. Among the most contentious is a measure to rein in skyrocketing out-of-network costs that is being advocated by the state's insurance industry. The administration and legislative leaders will have a challenging budget process this year as they seek ways to offset revenues lost from tax breaks that were approved as part of the plan to raise the gas tax to replenish the State's Transportation Trust Fund last year. An approved spending plan for the next fiscal year is constitutionally required to be in place by June 30. With all 120 seats up for election, the full-time Legislature is expected to take an extended hiatus from July until after Election Day in November.

## New Mexico

**Budget:** The state anticipates a $69 million budget deficit at the end of this fiscal year. For the fiscal year starting July 1, 2017, state budget experts project $300 million in new budget cuts. This follows an across-the-board 5 percent cut to all agencies as part of a legislative plan to shore up a $600 million deficit from last year's budget. The plan, which was hammered out during a special legislative session in September 2016, including a combination of budget cuts and tapping into state reserves.

**Education:** Following the state Legislature's conversion back to a Democrat majority, and the already Democratic-controlled Senate picking up a few additional seats, the yearly fight over tapping the Land Grant Permanent Fund (LGPF) to fully fund early childhood education is gearing up for the long (60-day) session that starts in January. While Governor Martinez has indicated that the LGPF, one of the largest funds of its kind in the country, is off limits to resolve any deficits, let alone for other purposes, Democratic lawmakers are hopeful that, through constitutional amendment, they'll be able to move closer to their long-standing plan to distribute more money from the fund to pay for early childhood education initiatives.

**Medicaid cuts:** Due to previous legislation that underfunded the state's Medicaid program by $85 million, there was a significant decrease in federal matching dollars. This finds the state having to cut Medicaid spending by an estimated $400 million. Nearly one third of New Mexicans are currently enrolled in Medicaid.

Crime: Following the Governor's lead of getting tougher on crime, there have been a number of bills pre-filed that make for harsher penalties for a variety of crimes, including DWI and reckless driving, illegal possession of firearms and child abuse. One particular crime-related black eye for the state is the 5,440 untested sexual assault evidence kits that are sitting in backlog, the worst in the nation. There has been a bill pre-filed that would allocate additional funding to address the backlog.

**Business:** The various associations that represent corporate interests in the state will seek to protect and grow incentives, especially for businesses that choose to locate an office within the state. One oft-touted success story is a Facebook data center that opened in Los Lunas that employs more than 50 locals and utilizes the services of half a dozen vendors. One particularly important area of tax incentives applies film, TV and video games that are created and filmed in New Mexico. A healthy number of facilities and professionals have developed around the film industry.

## New York

The late fall, generally a very quiet time of year for state politics was slightly more interesting with the prospect of a special legislative session looming on December's horizon. Governor Cuomo, along with Assembly Speaker Carl Heastie and Senate Majority Leader John Flanagan had been negotiating, with limited success, a deal whereby the Legislature would pass a number of the Governor's legislative priorities in exchange for the first legislative pay raise since 1999. Included in the Governor's wish list were changes to oversight of the state procurement process, an anti-hate crimes task force, funding to address the homeless crisis in New York City and legislation that would expand ridesharing services like Uber to Long Island and Upstate New York.

Beyond the special session discussions, the Governor announced in November a $650 million life sciences initiative aimed at creating an industry and research "cluster" in New York state. The initiative will provide $250 million in tax incentives for new and existing life sciences companies to expand research and development in the state; provide $200 million in state capital grants over a 10-year period; and allocate more than 3.2 million square feet of space and 1,100 acres of developable land, tax free, to accelerate life sciences innovation. The effort will also provide $100 million in investment capital for early-stage life sciences initiatives, which will be matched by at least US$100 million from the private sector. More on the governor's initiative can be found in our client alert (hyperlink).

## North Carolina

Legislative long session convenes on January 11, with formulation of the biennial budget the major task for the Republican supermajorities in both chambers. Other issues that will be considered are:

**Redrawing of legislative maps and an election do-over:** A US federal court ruled in November that North Carolina must hold special elections in 2017 to rectify unconstitutional racial gerrymandering of the state's legislative districts; legislators elected in November 2016 from the affected districts will have their terms shortened from two years to one. The state has until March 15 to submit a new redistricting plan or it will lose the right to draw its own maps. Primaries for the special election will take place in August or September and the general election in November. State legislators elected in the 2017 special election will also serve one-year terms. It is currently unclear whether all 120 House and all 50 Senate seats will be on the ballot in the fall, or just those whose district is changed as a result of the realignment.

**Tax reform continuation:** In 2013 the state's Tax Simplification and Reduction Act became law. Personal and corporate tax rates were reduced and the base expanded by adding to the list of taxable services. Meanwhile, refinement of tax credit programs, corporate tax policy, sales tax distribution, etc., will continue in the coming session.

**Pension reform:** Newly elected State Treasurer Dale Folwell has made it his life's mission to tackle the unfunded liability of the state employees' health plan and pension fund. Both are underfunded, but the promise of lifetime health care coverage to retired state employees in particular threatens to overcome the state's ability to pay for education, healthcare, infrastructure and other needed services. Reform legislation will be debated this year.

**Relationship between a GOP Legislature and a Democratic Governor:** During a "surprise" special session in December, two bills were passed that diminished the authority of incoming Democratic Governor Roy Cooper by enabling the Republican-controlled legislature to further assert its constitutional power as the dominant branch of government. Beginning immediately, the Governor's cabinet appointments must be approved by the Senate and the number of employees who serve at the Governor's pleasure will be cut from 1,500 to 425, reversing an expansion that legislators approved for the Governor's predecessor, Pat McCrory, at the start of his term.

## North Dakota

The North Dakota Legislature meets in full once every two years. Interim committee hearings from the 2015-2016 session continue, but the next full session, the 65th Legislative Assembly, will convene on Jan. 3, 2017.

**Budget:** North Dakota was forced to plug a more than $1 billion budget gap in February 2016, a reversal from several years of increased spending and record budgets. Republican Governor Jack Dalrymple ordered all state agencies that receive general fund dollars to cut their expenditures by 4.05 percent. The cuts, which totaled about $245 million, were the largest ever ordered by a North Dakota governor. The rest of the budget gap will be filled by state rainy day fund dollars, and carryover cash from the state general fund's ending balance. Nearly 70 percent of the shortfall comes from declining sales tax collections, a large portion of which is tied to energy production in the western part of the state. Lawmakers are expecting a fairly flat state budget in 2017.

**Oil prices and production:** A more than one-year decline in oil prices has resulted in a slowdown in oil activity in North Dakota but no significant decline in production. The state's recently revised budget revenue forecast has the state maintaining one million barrels of oil per day for fiscal year 2016, before dropping below that mark early next year and averaging 900,000 barrels per day for fiscal year 2017. Over the past year operators have gone through multiple rounds of layoffs, cut costs and improved efficiencies. In February, the state's active drilling rig fell below 40 barrels for the first time since mid-2009.

**Clean Power Plan impacts:** Promulgated in August 2015, EPA's Clean Power Plan, the nation's first-ever national carbon pollution standards for power plants, could have major impacts on North Dakota, but state officials are waiting to see how court challenges play out before continuing work on a compliance plan. A US Supreme Court decision halted implementation of the rules pending judicial review, which has given the state a reprieve, officials say, from its unfair and harsh requirements. The original requirement gave North Dakota until 2030 to reduce carbon dioxide emissions by 11 percent from its 2012 levels and the final rule increased the emissions reduction target to 45 percent, which could result in the closure of multiple North Dakota coal-fired plants.

## Ohio

**Budget:** A two-year budget will be introduced in early February. Governor Kasich is already warning that diversionary spending will be nonexistent as tax revenue is far below anticipated levels heading into 2017. That said, the Governor is still considering cuts to Ohio's income tax in an attempt, as best he can, to fulfill a campaign promise to repeal or greatly reduce that tax. In addition, education funding and school choice will be high on the budget priority list.

**Medicaid:** Ohio must replace $1 billion dollars in revenue for the Medicaid system due to a decision from CMS throwing out the tax charged to HMO plans doing work in the Medicaid space. This revenue might take the form of a more generalized tax, other tax options and/or franchise fees for hospitals. In addition, as a Medicaid expansion state, Ohio will be looking for guidance from the Trump administration and Congress on changes to the ACA.

**Transportation:** There has been some discussion of "revenue enhancements" to fund some long overdue transportation projects. Whether the conservative General Assembly will go along with such plans is unclear.

## Oklahoma

Governor Mary Fallin, who is in her second term, begins her last two years in office with her approval ratings standing at under 50% for the first time since taking office. She continues to be mentioned for a position in the Trump administration and the nomination of current Oklahoma Attorney General Scott Pruitt to head the EPA could be a help. If Fallin leaves, Lt. Governor Lamb would move up and appoint his successor and any other offices that may open after that.

**Legislative makeup:** The Oklahoma Legislature is beginning its third generation of term limits, which began in 1992 with 12 years allowed in both chambers. The second generation started in 2004 and the

2016 election marked the begin of the third. There are 101 members of the House of Representatives and 48 members of the Senate with 24 senators up on each general election. A total of 125 seats are up for reelection and 92 of them are contested, including 73 in the House and 19 in the Senate.

The makeup of the new House is 75 Republicans and 26 Democrats. The new speaker is incoming Rep. Charles McCall from Atoka, a banker by profession and a very sharp person to serve as speaker.

The Senate will be made up of 42 Republicans and 6 Democrats with former majority floor leader Mike Schulz replacing President Pro Tem Brian Bingman, who is leaving because of term limits. Schulz is a rancher/farmer from Altus who was first elected in 2006 (and term limited in 2018) and will be a good leader of this chamber.

**Energy and environmental issues:** Oil and natural gas prices are the state's biggest issues as they affect its budget in a major way and when they are down, as they are now given the current market, tax credits and other tax incentives to the energy and environmental products and services industries come under high scrutiny for return on investment, with wind tax credits likely to get the most intensive going-over. The oil and natural gas industry trade associations are very active in protecting their own incentives and will be trying hard to promote greater use of their products over cleaner-burning alternative fuels, a strategy that actually plays well in Oklahoma. The wind industry seems to have found a solution that it can support in the next session as it relates to the construction of wind farms but details have not been released. Projects already permitted and under construction would be grandfathered at a minimum is our understanding.

Seismicity is also a big issue in the energy arena right now, with calls for the regulation of waste water injection wells, which are getting the blame for a magnitude 5.8 earthquake—the largest in state history—over Labor Day weekend in 2016.

**Budget:** Looking into 2017, the budget will again be the main topic—from how to fill a $900-million hole from one-time money being used this year, to the always-fraught issue of teacher pay and public school funding. Transportation and infrastructure money will continue to be funded by dedicated revenue and not subject to possible budget cuts. Revenues are seeming to stabilize as oil prices recover.

## Oregon

**Funding of roads and bridges:** Lawmakers agree that more money needs to be raised for transportation projects. The most recent major funding package was approved seven years ago. Congressional approval last year of a five-year federal spending plan will generate only modest improvements for Oregon. Roads and bridges are aging, particularly in the Portland metropolitan area, where traffic congestion has worsened in recent years.

**Pensions:** The state Supreme Court largely nullified lawmakers' 2013 effort to pare future cost-of-living increases for public retirees when it ruled, similar to courts in other states, that such reductions could not be retroactive. With the stroke of a pen, the 2015 decision doubled the projected liability of Oregon's system to at least $18 billion spread over the next few decades, most of it to pay benefits to public workers hired before the system was overhauled in 2003. Pension contribution rates for state and local agencies are forecast to jump from 18 to 30 percent of payroll costs in the next few years, starting in 2017, which could result in higher taxes or reduced spending for other purposes.

## Pennsylvania

**Budget:** The Pennsylvania Legislature returns to session in the third week of January for the start of a two-year legislative session. Governor Tom Wolf (D) unveils his 2017-18 fiscal budget in early February; his third proposed budget since taking office. As in years past, he faces a significant structural budget deficit. In his prior two budget proposals, Wolf proposed increases in personal income tax rates and in sales taxes with respect to both rate and base. These tax increase proposals were largely rejected by the Republican-controlled legislature. Wolf is expected to again propose some form of increased taxes to address the budget deficit. In addition to the budget, which has a June 30 deadline for enactment, the following issues will likely be on the legislative agenda in 2017.

**Pensions:** Pensions remains one of the largest cost drivers in the fiscal budget. Last year the legislature considered several proposed reform bills before ultimately failing to enact any reform proposal. Opposition from public sector unions has been a major roadblock.

**Medicaid:** The state has implemented Medicaid expansion as part of the ACA and is in the process of implementing Medicaid managed care across Pennsylvania. Like most states, Pennsylvania is waiting to see what happens to the ACA in the 115th Congress.

**Education:** Public education funding remains a priority for Governor Wolf. His administration is not considered a friend of the charter school community.

**Pharma drug pricing transparency:** Legislation and hearings are expected to be pushed by the health insurance industry in 2017.

**Autonomous vehicles:** Auto manufacturers are expected to push proposals for adoption of rules and regulations to allow for expansion of autonomous vehicles in the state.

**Liquor sales reform:** The Legislature made great strides in 2016 to begin moving Pennsylvania away from its state run liquor system. More changes are expected.

**Severance tax on natural gas extraction:** Governor Wolf has sought this in each of his first two years in office. This could be the year.

**Telemedicine:** Rules governing provision of telemedicine services will be considered in 2017. Expect a fight between insurers and doctors on payment issues.

**Opioid abuse:** Efforts to address the opioid abuse epidemic will continue in 2017 with more treatment dollars and prescription guidelines debated.

## Rhode Island

**Legalization of marijuana:** Although Rhode Island lawmakers declined to legalize recreational marijuana last year, now that Massachusetts voters have gone down that path, Rhode Island legislative leadership are eager to follow. Last year's proposal to legalize marijuana, and regulate and tax it like alcohol, attracted more support in the state Senate than in the House, where lawmakers were reluctant to back it in an election year. But House Speaker Nicholas Mattiello signaled at the time that the chamber might take action early in 2017 if Massachusetts's voters voted for it.

**Jobs:** Rhode Island's economy has continued its slow recovery from the Great Recession of 2007-09, but it has yet to regain its pre-Recession level of employment. While it's no longer one of the top five states with the highest unemployment rates, many residents feel they remain left out of the progress that has been made. Democratic Governor Gina Raimondo, who took office in 2014, has responded with a multi-pronged approach to economic development that includes incentives and skill-training, and the state was a surprising finalist for General Electric's new corporate headquarters (it's going to Boston). That said, the state's efforts to overcome years of economic underperformance will be an ongoing process for many years to come.

## South Carolina

**State budget:** The South Carolina general fund has had a surplus of more than $1 billion in each of the last two fiscal years. However, current revenue forecasts show a dramatic slowing, with little to no new funds available for the 2017-18 budget.

**Highway funding:** South Carolina has not raised the gas tax since 1987 and the business community will lead a renewed effort for a gas tax increase for road funding in 2017.The General Assembly has transferred general fund dollars and issued bonds for road repairs and expansion in two of the last four legislative years to generate nearly $2 billion in funding. Governor Nikki Haley has vowed to veto any gas tax increase that does not have a corresponding income tax reduction.

**Pension reform:** A special joint subcommittee of the state House and Senate has been established during the offseason to study and make recommendations on the more than $21 billion unfunded liability of the state retirement system. The General Assembly will devote a significant portion of the legislative year to working on forestalling this looming crisis.

**Workforce development:** With record high employment (2.1 million South Carolinians are working) and very low unemployment, employers are facing challenges to find skilled workers. The General Assembly will likely consider proposals from Governor Haley and others to begin addressing the skills gap, the primary focus being on advanced manufacturing, healthcare and information technology needs.

**Gun restrictions:** A special state Senate subcommittee is holding public hearings on whether new gun restrictions are necessary in the wake of a number of law enforcement, school and church shootings in the state. The subcommittee will make proposals that could include more extensive background checks and longer waiting periods before purchasing guns.

**Medicaid expansion:** Healthcare groups will again make an effort to expand Medicaid under the ACA, but with little-to-no new money in the state budget and widespread opposition to expansion, ranging from Governor Haley to numerous legislative leaders, any proposals face an uphill climb.

**Campaign finance reform:** During the current election cycle, numerous members of the General Assembly faced political attacks from "dark money" sources. The Legislature will likely consider options on how to reign in unlimited political spending, balancing any legislation with the Citizens United opinion.

## South Dakota

The 92nd South Dakota Legislature sits down for business on January 10, 2017. The following are some of the issues vital for small-business survival that NFIB will be monitoring and lobbying on.

**Workers' compensation:** Legislators will likely address the high costs of workers' compensation premiums in order for South Dakota to remain competitive with surrounding states.

**Independent business:** A primary objective will be to ensure that the tax and regulatory environment is fair to independent businesses and contractors

**Medicaid expansion:** Republican Governor Dennis Daugaard has expressed a willingness to consider expanding Medicaid. A is the case in many other states, much will depend on the landscape at the federal level.

## Tennessee

**Medicaid expansion:** Governor Bill Haslam's alternative plan to Medicaid expansion was unsuccessful during a 2015 special session. In 2016, Speaker of the House Beth Harwell created a legislative task force that is working on a revised plan to be taken up for a vote during the upcoming session.

**Highway funding:** Tennessee has not raised its gas tax since 1989 and currently has a $6 billion backlog in road construction projects. A gas tax increase and fees on electric/hybrid vehicles are likely to be proposed.

**De-annexation:** Lawmakers will likely consider a bill to allow certain communities that were previously annexed to implement a referendum by which they can de-annex from large cities such as Memphis. Similar legislation failed this past session.

**Liquor and wine sales:** A vote to determine whether or not liquor and wine sales should be allowed on Sundays is likely to be considered. Beer sales on Sundays are currently allowed and, as of July 1, 2016, a law allowing grocery stores to sell wine became effective.

**Broadband expansion:** An ongoing debate about whether or not municipal broadband providers should be allowed to provide service beyond its service area will likely return. The state recently won an appeal that struck down the FCC's decision to allow Chattanooga Electric Power Board to expand its coverage area.

## Texas

Texas meets in biennial legislative sessions and writes two-year budgets. The 2017 session begins January 13 and ends June 1.

**Budget:** State revenues are tight due to steep declines in oil prices and oil and gas tax revenues since the Legislature adjourned in June 2015. In June 2016, Governor Greg Abbott, Lieutenant Governor Dan Patrick and Speaker of the House Joe Straus asked agencies to pare their upcoming budget requests by 4 percent. The current 2016-17 state budget totaled $209.4 billion. Lawmakers left $4 billion unspent when they wrote the current budget. Much of that will be soaked up by transportation, Medicaid and teachers and other public employees' retirement costs. Additionally, the state's rainy day fund contains about $7 billion unspent, but in recent years lawmakers have been reluctant to tap those funds for ongoing expenses.

**Social issues:** A number of social-conservative issues will be prioritized by Texas leaders, threatening to drive wedges between the GOP majority and the Texas business community. Lt. Governor Dan Patrick is prioritizing legislation that would block transgender people from using the bathroom that corresponds with their gender identity, a fight that has landed other states in national headlines and angered their business leaders. The technology sector and business community are organizing to fight the GOP leadership on issues like this.

**School choice/school funding:** Last summer, the Texas Supreme Court shocked the public education establishment and political class when it refused to declare the state's public school funding system unconstitutional. Texas has approximately 1,100 school districts and a system of "recapture" (aka "Robin Hood") which reallocates in-district tax revenue among districts. In 2015, lawmakers increased public education funding by $1.5 billion, to $41.2 billion. The Texas House considered, but did not pass, a proposal that would have added another $800 million while removing several outdated mechanisms within the finance formulas.

**Tax relief:** Lt. Governor Patrick, the presiding officer of the Texas Senate, created a Select Committee on Property Tax Reform & Relief, which spent much of 2016 conducting a series of high profile field hearings. The Committee notes that, "Comptroller's office data shows that between 2005 and 2015, as a statewide average, county tax levies increased 82 percent and city tax levies increased 71 percent, while median income increased only 29 percent." The Senate could consider measures including modifying rollback rates, making it easier to protest property tax assessments, or revenue or spending caps for local units of government. Governor Abbott recently said, "We still want to work on cutting the (business franchise) margins tax even more. We need to find ways that we can reduce property taxes, about which we've heard plenty of complaints."

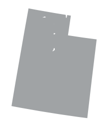
**Hailstorm/tort reform:** Texas for Lawsuit Reform (TLR) will again push reforms to the state's hailstorm insurance laws to prevent plaintiffs' lawyers from gaming the system by persuading home and business owners to sue insurance companies for hail claims, even after those claims have been settled. The battle will again pit insurers and the business community against wealthy and influential trial lawyers.

**Child protective services overhaul:** In the wake of news reports of foster-care children sleeping in hotels and Child Protective Services (CPS) offices, Gov. Abbott, Lt. Gov. Patrick and House Speaker Straus directed new Department of Family and Protective Services (DFPS) Commissioner Hank Whitman to immediately develop a plan to hire and train more special investigators to take up the backlog of at-risk kids who have not had a face-to-face interaction with CPS. DFPS has since publicly released numbers showing nearly a thousand at-risk children under CPS care were not checked on once over the course of six months.

**Convention of the states:** Governor Abbott will prioritize efforts to get the Legislature to approve an Article V Convention of States aimed at reducing the power and authority of the federal government. Abbott's 70-page plan lays out nine specific proposed amendments that would:

- Prohibit Congress from regulating activity that occurs wholly within one state
- Require Congress to balance its budget
- Prohibit administrative agencies from creating federal law
- Prohibit administrative agencies from preempting state law
- Two-thirds majority of the states to override a US Supreme Court decision
- Seven-justice supermajority vote for Supreme Court to invalidate democratically enacted law
- Two-thirds majority of the states to override a federal law or regulation

**Ethics:** Ethics reform championed by Governor Abbott and others died in the waning days of the 2015 legislative session largely over disagreements on the issue of "dark money." Abbott had wanted any ethics reform package to prohibit legislators and other elected state officials who practice law from earning referral fees, as well as other disclosure and conflicts of interest measures. Dark money prohibitions were pressed by members of the Texas House and opposed by leading members of the Senate. Ethics promises to be a gubernatorial priority again in 2017.



## Utah

In November, Utahn's overwhelmingly supported GOP Governor Gary Herbert to serve another 4 year term (3rd term). The Utah legislature will convene the 2017 general session on 1/23. The session is 45 days start to sine die on 3/9. Both houses will be led by strong GOP majorities (Senate: 24 R/5 D House: 62 R/13 D0 and returning leaders (Senate President and Speaker of the House). Majority leadership controls much of the agenda and timing during the session. The Governor presents a budget – as does the joint legislature. The initial budget presented by the Governor is 14. 8 Billion with no new taxes or tax cuts.

Utah is a great shape fiscally and is primed for continued economic growth. The state population is also growing at one of the fastest rates in the country (much of the growth is from within).

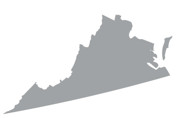
Therefore, the upcoming session will focus on education funding (public/higher ed), water issues, land use, air quality, public safety to continue to prepare for the growth to come.

Other potential issues include: medicinal pot, net metering/solar tax incentives, infrastructure bonding needs, Medicaid expansion, health care.

## Vermont

**A check on Democratic control:** In November, Vermonters voted resoundingly for Phil Scott, a Republican, for governor. As a result, for the first time in six years, Democrats in the State House will not have complete control. Although they still control both chambers, the Governor-elect is expected to be a check on many of the most anti-business initiatives coming out of the Legislature.

**Budget:** State budget challenges, particularly in Medicaid and education, will be front and center during the upcoming session. The Governor has promised to push hard on economic development issues, such as permit reform; expanded programs to address the opiate crisis in Vermont; and increased efficiency in state government agencies. In addition, expect advocates to push for paid family leave, marijuana legalization, a sugar-sweetened beverage tax and cuts in executive branch compensation, among other issues.



## Virginia

Issues addressed by the 2017 regular session of the Virginia General Assembly will be informed by three relevant factors: (i) the coming session is a "short session" of 45 calendar days; (ii) all 100 House of Delegates members and all three statewide offices are up for election in the fall; and (iii) the Commonwealth faces a $1.2 billion budget deficit. In short, there is not a lot of revenue to spread around and not a lot of time to sit in Richmond arguing about issues.

Governor Terry McAuliffe, who is ineligible to run for reelection, has proposed to close the state's budget gap in part by (i) making Amazon and other out-of-state Internet commerce retailers collect state sales tax on items shipped to its residents, (ii) making significant cuts in higher education and (iii) assuming additional revenue from the implementation of a tax amnesty program, among other initiatives. The Governor also proposed language to allow him to expand Medicaid if the Trump administration and Congress leave federal funds for expansion in place. How the tax-averse House of Delegates will handle the Internet sales tax proposal remains to be seen. Both House of Delegates and Senate majority leadership have signaled that the Medicaid expansion authority language is dead on arrival.

Tackling complex issues during a short session in Virginia is always a significant challenge for advocates of change in the absence of significant work among stakeholders in the interim. Some of the issues expected to be debated in January and February include:

**Certificate of public need reform:** The House of Delegates promotes full repeal of Virginia's certificate of public need regime supported by the for-profit hospitals, health insurance plans and some physician groups. It has been met with strong opposition from the not-for-profit hospitals. The Senate has not yet bought into the repeal and will likely prolong the debate into the 2018 session.

**Tesla vs. Virginia Automobile Dealers Association:** Tesla requested a second dealer showroom from the Virginia Department of Motor Vehicles Commissioner who granted that request in December 2016. The Virginia Automobile Dealers Association considers Tesla's direct-to-consumer sales model a transcendental threat to the traditional motor vehicle franchise model. Accordingly, the Association will pursue litigation against the Commissioner to reverse his decision, seek legislation during the 2017 session to prohibit what Tesla is seeking to do, or both.

**Airbnb vs. local governments:** In 2016 Airbnb sought legislation to avoid a hodge-podge of local government regulations, including zoning that could threaten its business model in some parts of the state. Airbnb also did not want to deal with the multitude of local tax collectors. Favorable legislation was derailed at the last minute by the clever action of a powerful Senate ally of hotel and motel owners. The issue is expected to rear its head again in 2017.

**Medicaid expansion:** For three years, Governor McAuliffe has tried to expand Medicaid within the context of the Affordable Care Act. Both the House of Delegates and Senate, controlled by conservative Republican majorities, have steadfastly refuse to expand Medicaid, citing distrust of federal government funding in the out years. Agreement between the Administration and the Legislature is again unlikely.

## West Virginia

**Energy (coal and natural gas):** Considering the immense importance of the energy sector to West Virginia's economy, issues that relate to regulation, employment and taxation of the sector will be paramount in the upcoming legislative session. There are slight indications that, with prices of metallurgical coal increasing, a small comeback in the coal market for the met-coal sector could be on the horizon. West Virginia's coal severance tax is the highest in the region and portions of the coal sector having been pushing for it to be lowered. But with the state's budget crisis, that has yet to materialize. The coal industry will continue to look for help from lawmakers in West Virginia, to the extent that assistance can be provided at the state level. For natural gas, we continue to anticipate battles regarding the rights of land/royalty owners versus those of the gas companies themselves. Recent battles have included "forced pooling" legislation.

**Substance abuse:** West Virginia has the highest opiod overdose rate in the nation and lawmakers are continually looking for ways to combat the situation. Recent legislation has included regulation of substance abuse treatment centers, medication assisted treatment and various additional criminal penalties, and, two weeks after the gubernatorial election in November, Governor Terry McAuliffe announced that State Health Commissioner Marissa J. Levine has declared the Virginia opioid addiction crisis a public health emergency.

**Broadband expansion:** West Virginia has the lowest percentage of citizens with access to broadband in the nation. Over the last year the Legislature has commissioned a study on the impact of building the "middle mile" infrastructure necessary to provide access across the state. There are competing interests between those interested in building the "middle mile" and those interested in only building the "last mile" of networking infrastructure. While the citizenry overwhelmingly supports increased broadband access, the state's budget crises, coupled with the debate over government's role in providing such infrastructure, has hampered expansion.

**Budget crisis:** Largely due to a major downturn in the coal industry, West Virginia is currently facing a budget crisis like none other in its history. The budget crisis itself has led to a variety of potential new taxes, from excise taxes on specific goods and services to general sales taxes. Regardless of efforts to increase revenue for the state, major cuts to government spending will also be on the table. While there are indications that the coal industry may see a slight increase in production over the coming year, the industry is currently still too unstable to determine accurate severance tax revenues.

## Wisconsin

Wisconsin begins its two-year legislative session on January 3, 2017, and will immediately begin the budget process with the release of Governor Scott Walker's biennial budget proposal, which is due out by January 31. Wisconsin begins its fourth consecutive legislative session under full GOP control. Along with a Republican Governor, both the Assembly and Senate increased their GOP majorities in the November elections. Governor Walker is touting additional funding for public schools and technical colleges, and performance-based funding for the public university system. Additional initiatives include rural broadband expansion, fighting the opioid epidemic, workforce development and government accountability measures. In the last six years, the Governor has led tax relief efforts totaling $4.7 billion.

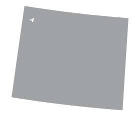
**Budget:** While Wisconsin approaches its 2017-19 budget cycle after ending 2015-16 with a positive general fund balance of $331 million, the expected revenue projection over the upcoming cycle is nearly $700 million short of agency requests leading up to the Governor's budget proposal in January 2017. The projected shortfall based on agency requests largely stems from a $500 million increase requested by the Department of Public Instruction and a $450 million increase for Medicaid spending requested by the Department of Health Services. Legislative leaders have echoed the Governor's support for increased education funding in the upcoming budget.

**Transportation funding:** The transportation funding debate was a focal point leading up to the November elections and expectations are that it will be the key budget issue for GOP leaders. A contingent of legislative leaders has actively engaged in support of a long-term transportation funding solution to meet economic needs in the state. Legislative reports have stated the state is nearly a billion dollars short on transportation revenue over the next biennium. Governor Walker has firmly stated his position that he will veto any increase in the gas tax or registration fee without a corresponding cut in taxes. As legislators target transportation efficiencies, full prevailing wage repeal has become a likely early session effort.

**Tax efforts:** Efforts to improve Wisconsin's business climate, which shot up to 11th best in 2016 from 41st in 2010 (according to Chief Executive magazine), will continue. To further the goal, legislative leaders have made "fairer, flatter, lower taxes" a key initiative in the upcoming session. A planned Speaker's Task Force on Tax Reform will team legislators and industry leaders to examine simplifying the state tax code for Wisconsin families and businesses.

**Continued fight against opioid abuse:** Previous bipartisan legislative initiatives to advance the state's Heroin and Opiate Prevention and Education (HOPE) agenda have created a strong foundation for continued efforts, prompting Governor Walker to create a Governor's Task Force on Opioid Abuse to further awareness and action.

**Workforce development:** The state reached an all-time high in employment participation in 2016 andunemployment claims are at or near historic lows. With a high demand for skilled labor in the state, legislators look at ways to prepare students for career readiness. Occupational license reform has also been proposed both by the Governor and Assembly leaders for the upcoming session. One proposal may include a significant decrease in requirements for many licenses and possibly licensure elimination in some areas. Other proposals include an expansion of programming for low income adults to gain work experience, employment certification for prospective employees with criminal histories, and creating business startup incentives.



## Wyoming

**Balanced budget amendment:** There will be a third attempt at passing a resolution demanding that the US Congress call a convention of the states under Article V of the Constitution for the purpose of proposing a balanced budget amendment to the Constitution.

**State revenues:** Wyoming continues to struggle with a downturn in revenue from the state's mineral resources, necessitating either additional cuts to spending on programs and services or increasing state revenue.

# Freshman Members of the 115th Congress

# Senate

## California

### Kamala Harris (D)

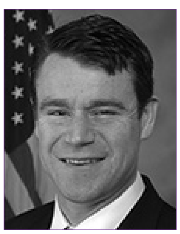
**Incoming class seniority:** Open seat - Replaced Barbara Boxer (D) - 98th overall
**Born:** 1964
**Party change:** No
**Prior political experience:** Attorney General of California, San Francisco District Attorney

## Illinois

### Tammy Duckworth (D)

**Incoming class seniority:** Defeated Mark Kirk (R) - 96th overall
**Born:** 1964
**Party change:** Yes
**Prior political experience:** Member of the U.S. House, Assistant Secretary of Veterans' Affairs, Lieutenant Colonel, U.S. Army

## Indiana



### Todd Young (R)

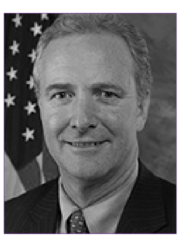
**Incoming class seniority:** Open seat - Replaced Dan Coats (R) - 95th overall
**Born:** 1972
**Party change:** No
**Prior political experience:** Member of the U.S. House, Captain, U.S. Marine Corps

## Louisiana

### John Neely Kennedy (R)

**Incoming class seniority:** Open seat - Replacing David Vitter (R) - 99th overall
**Born:** 1951
**Party change:** No
**Prior political experience:** Louisiana State Treasurer, Attorney

## Maryland



### Chris Van Hollen (D)

**Incoming class seniority:** Open seat - Replaced Barbara Mikulski (D) - 94th overall
**Born:** 1959
**Party change:** No
**Prior political experience:** Member of the U.S. House, State Senator, State Delegate

## New Hampshire

### Maggie Hassan (D)

**Incoming class seniority:** Defeated Kelly Ayotte (R) - 97th overall
**Born:** 1958
**Party change:** Yes
**Prior political experience:** Governor of New Hampshire, State Senate Majority Leader

## Nevada

### Catherine Cortez Masto (D)

**Incoming class seniority:** Open seat - Replaced Harry Reid (D) - 100th overall
**Born:** 1964
**Party change:** No
**Prior political experience:** Nevada Attorney General, Attorney

# House

## Arizona (1)

### Tom O'Halleran (D)
**Born:** 1964
**Party change:** No
**Prior political experience:** State Senator

## Arizona (5)

### Andy Biggs (R)
**Born:** 1958
**Party change:** No
**Prior political experience:** President of the State Senate

## California (17)

### Ro Khanna (D)
**Born:** 1976
**Party change:** No
**Prior political experience:** Deputy Assistant Secretary of Commerce

## California (20)

### Jimmy Panetta (D)
**Born:** 1969
**Party change:** No
**Prior political experience:** Deputy District Attorney, Monterey County; Lieutenant, U.S. Navy

## California (24)

### Salud Carbajal (D)
**Born:** 1964
**Party change:** No
**Prior political experience:** Santa Barbara County Supervisor

## California (44)

### Nanette Barragán (D)
**Born:** 1976
**Party change:** No
**Prior political experience:** Hermosa Beach City Councilwoman

## California (46)

### Lou Correa (D)
**Born:** 1958
**Party change:** No
**Prior political experience:** State Senator; Orange County Supervisor; State Assemblyman

## Delaware (at-large)

### Lisa Blunt Rochester (D)
**Born:** 1961/62
**Party change:** No
**Prior political experience:** State Labor Secretary; CEO Metropolitan Wilmington Urban League

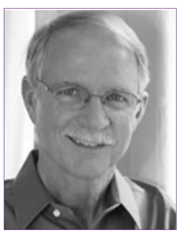
### Florida (1)

**Matt Gaetz (R)**
**Born:** 1982
**Party change:** No
**Prior political experience:** State Representative

### Florida (2)

**Neal Dunn (R)**
**Born:** 1953
**Party change:** Yes
**Prior political experience:** Surgeon; Major, U.S. Army

### Florida (4)



**John Rutherford (R)**
**Born:** 1952
**Party change:** No
**Prior political experience:** Sheriff of Duval County

### Florida (5)

**Al Lawson (D)**
**Born:** 1948
**Party change:** No
**Prior political experience:** State Senator; State Representative

### Florida (7)

**Stephanie Murphy (D)**
**Born:** 1978
**Party change:** Yes
**Prior political experience:** Professor, Rollins College; National Security Specialist

### Florida (9)

**Darren Soto (D)**
**Born:** 1978
**Party change:** No
**Prior political experience:** State Senator; State Representative

### Florida (10)

**Val Demings (D)**
**Born:** 1957
**Party change:** Yes
**Prior political experience:** Chief of Orlando Police Department

### Florida (13)

**Charlie Crist (D)**
**Born:** 1956
**Party change:** Yes
**Prior political experience:** Governor; Attorney General; Commissioner of Education; State Senator

## Florida (18)

### Brian Mast (R)
**Born:** 1980
**Party change:** Yes
**Prior political experience:** Staff Sergeant, U.S. Army

## Florida (19)

### Francis Rooney (R)
**Born:** 1953
**Party change:** No
**Prior political experience:** Businessman; United States Ambassador to the Holy See

## Georgia (3)

### Drew Ferguson (R)
**Born:** 1966/67
**Party change:** No
**Prior political experience:** Mayor of West Point; Dentist

## Illinois (8)

### Raja Krishnamoorthi (D)
**Born:** 1973
**Party change:** No
**Prior political experience:** Businessman; Deputy State Treasurer

## Illinois (10)

### Brad Schneider (D)
**Born:** 1961
**Party change:** Yes
**Prior political experience:** U.S. Representative for IL-10 (2013-2015)

## Indiana (3)

### Jim Banks (R)
**Born:** 1979
**Party change:** No
**Prior political experience:** State Senator; Lieutenant, U.S. Navy

## Indiana (9)

### Trey Hollingsworth (R)
**Born:** 1983
**Party change:** No
**Prior political experience:** Businessman

## Kansas (1)

### Roger Marshall (R)
**Born:** 1960
**Party change:** No
**Prior political experience:** Obstetrician; Captain, U.S. Army

## Louisiana (3)

### Clay Higgins (R)
**Born:** 1961/62
**Party change:** No
**Prior political experience:** Reserve Deputy Marshal of Lafayette; St. Landry Parish Sheriff's Deputy

## Louisiana (4)

### Mike Johnson (R)
**Born:** 1972
**Party change:** No
**Prior political experience:** State Representative

## Maryland (4)

### Anthony Brown (D)
**Born:** 1961
**Party change:** No
**Prior political experience:** Lieutenant Governor; State Delegate; Colonel, U.S. Army

## Maryland (8)

### Jamie Raskin (D)
**Born:** 1962
**Party change:** No
**Prior political experience:** State Senator

## Michigan (1)

### Jack Bergman (R)
**Born:** 1946/47
**Party change:** No
**Prior political experience:** Lieutenant General, U.S. Marine Corps

## Michigan (10)

### Paul Mitchell (R)
**Born:** 1956/57
**Party change:** No
**Prior political experience:** Businessman

## Minnesota (2)

### Jason Lewis (R)
**Born:** 1955
**Party change:** No
**Prior political experience:** Radio talk show host

## Nebraska (2)

### Don Bacon (R)
**Born:** 1963
**Party change:** Yes
**Prior political experience:** Brigadier General, U.S. Air Force

## Nevada (3)

### Jacky Rosen (D)

**Born:** 1957
**Party change:** Yes
**Prior political experience:** Computer Programmer; President, Congregation Ner Tamid

## Nevada (4)

### Ruben Kihuen (D)

**Born:** 1980
**Party change:** Yes
**Prior political experience:** State Senator; State Assemblyman

## New Hampshire (1)

### Carol Shea-Porter (D)

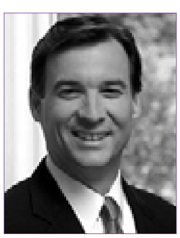
**Born:** 1952
**Party change:** Yes
**Prior political experience:** U.S. Representative for NH-1 (2007-2011; 2013-2015)

## New Jersey (5)

### Josh Gottheimer (D)

**Born:** 1975
**Party change:** Yes
**Prior political experience:** Government staffer and speechwriter

## New York (3)



### Thomas Suozzi (D)

**Born:** 1962
**Party change:** No
**Prior political experience:** Nassau County Executive; Mayor of Glen Cove

## New York (13)

### Adriano Espaillat (D)

**Born:** 1954
**Party change:** No
**Prior political experience:** State Senator; State Assemblyman

## New York (19)

### John Faso (R)

**Born:** 1952
**Party change:** No
**Prior political experience:** State Assemblyman

## New York (22)

### Claudia Tenney (R)

**Born:** 1961
**Party change:** No
**Prior political experience:** State Assemblywoman

## North Carolina (13)

### Ted Budd (R)
**Born:** 1971/72
**Party change:** No
**Prior political experience:** Businessman

## Pennsylvania (8)

### Brian Fitzpatrick (R)
**Born:** 1973
**Party change:** No
**Prior political experience:** Special Agent, FBI

## Pennsylvania (16)

### Lloyd Smucker (R)
**Born:** 1961
**Party change:** No
**Prior political experience:** State Senator, West Lampeter Township Supervisor

## Tennessee (8)

### David Kustoff (R)
**Born:** 1966
**Party change:** No
**Prior political experience:** U.S. Attorney, W.D. Tenn.

## Texas (15)

### Vincente González (D)
**Born:** 1967/68
**Party change:** No
**Prior political experience:** Attorney

## Texas (19)

### Jodey Arrington (R)
**Born:** 1972
**Party change:** No
**Prior political experience:** Businessman; Texas Tech Vice Chancellor; Government staffer

## Virginia (2)

### Scott Taylor (R)
**Born:** 1979
**Party change:** No
**Prior political experience:** State Delegate, Captain, Navy SEAL

## Virginia (4)

### Donald McEachin (D)
**Born:** 1961
**Party change:** Yes
**Prior political experience:** State Senator, State Delegate

## Virginia (5)

Tom Garrett (R)
**Born:** 1972
**Party change:** No
**Prior political experience:** State Senator; Commonwealth's Attorney of Louisa County; Captain, U.S. Army

## Washington (7)

Pramila Jayapal (D)
**Born:** 1965
**Party change:** No
**Prior political experience:** State Senator

## Wisconsin (8)

Mike Gallagher (R)
**Born:** 1984
**Party change:** No
**Prior political experience:** Captain, U.S. Marine Corps, Former staff on Senate Foreign Relations Commitee

## Wyoming (at-large)

Liz Cheney (R)
**Born:** 1966
**Party change:** No
**Prior political experience:** Deputy Assistant Secretary of State for Near Eastern Affairs

# Non-voting members

## Puerto Rico (at-large)

Jenniffer González (PNP/R)
**Born:** 1976
**Party change:** Yes/No
**Prior political experience:** Speaker of the House of Representatives


EQUAL JUSTICE UNDER LAW

# Dentons' Public Policy and Regulation Practice

**Eric Tanenblatt**
Chair, Public Policy Practice

**Michael Zolandz**
Chair, Federal Regulatory and Compliance Practice

**Hon. Gordon Giffin**
Global Public Policy Leader

**Hon. Newt Gingrich**
Washington, DC

**Hon. Ron Kaufman**
Washington, DC

**Hon. Howard Dean**
Washington, DC

**Sander Lurie**
Washington, DC

**Scotty (Maryscott) Greenwood**
Washington, DC

**Hon. Bill McCollum**
Washington, DC

**John Russell IV**
Washington, DC

**Robin Adams**
Washington, DC

**Nicholas Allard**
Washington, DC

**Joseph (Joe) Andrew**
Global Chairman

**Timothy Ashby**
London

**Yohai Baisburd**
Washington, DC

**Hon. Thurbert Baker**
Atlanta, Washington, DC

**Dan Baskerville**
Atlanta

**Virginia Beckett**
Washington, DC

**Jeremy Berry**
Atlanta

**Todd Bertoson**
Washington, DC

**John Bezdek**
Washington, DC

**Vedia Biton Eidelman**
Tysons Corner

**Hon. Jeff Bleich**
Oakland

**Rodney Boyd**
St. Louis

**Randy Bregman**
Washington, DC

**George Broder**
San Francisco

**Marc Burgat**
Sacramento

**Hon. Mark Burkhalter**
Atlanta

**Kate Casas**
St. Louis

**Giovanna Cinelli**
Tysons

**Victor Cruz**
New York

**Hon. George (Buddy) Darden**
Atlanta

**Todd Daubert**
Washington, DC

**Samuel Daughety**
Washington, DC

**Megan Delany**
Washington, DC

**John Duffy**
Washington, DC

**Fred DuVal**
Phoenix

**Hon. Rodney Ellis**
Houston

**Randy Evans**
Atlanta, Washington, DC

**Alan Fedman**
Washington, DC

**Chris Fetzer**
Washington, DC

**Hon. Virgil Fludd**
Atlanta

**Sharon Gay**
Atlanta

**Daniel Gibb**
Washington, DC

**Hon. Terry Goddard**
Phoenix

**Gary Goldberg**
Washington, DC

**Brian Grace**
St. Louis

**Gen. Timothy Haake**
Washington, DC

**Jeff Hamling**
Atlanta, Washington, DC

**Seth Harris**
Washington, DC

**Paul Hatch**
Washington, DC

**Jenifer Healy**
Washington, DC

**Hon. William Hilleary**
Washington, DC

**Thomas Howell**
Washington, DC

**Juan Carlos Iturregui**
Washington, DC

**Anthony Jannotta**
Washington, DC

**Hon. Craig Johnson**
New York

**Mark Johnson**
Kansas City

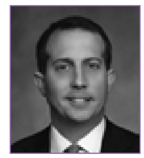
**Zachary Jones**
Washington, DC

**Benjamin Keane**
Washington, DC

**Benjamin Kern**
Washington, DC

**Mike Klein**
New York

**Samuel Kohn**
San Francisco/Oakland

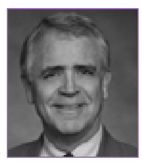


**Jeff Krilla**
Washington, DC

**Steven Labovitz**
Atlanta

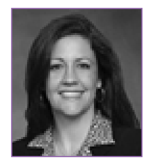
**Stanley Landfair**
San Francisco/Sacramento

**Gary LaPaille**
Washington, DC



**Dennis Lee**
Washington, DC

**Hon. Edward Lindsey, Jr.**
Atlanta



**Kelly Lugar**
Washington, DC

**Mark Lunn**
Washington, DC

**Joseph Mantilla**
Washington, DC

**Keith Mason**
Atlanta

**Frederick McClure**
Washington, DC

**Alex McGee**
Washington, DC

**Brian McGowan**
Atlanta

**Mike McNamara**
US CEO

**Hon. Jeff Modisett**
Los Angeles

**Valerie Nelson**
Washington, DC

**C. Randall Nuckolls**
Washington, DC

**Kenneth Nunnenkamp**
Tysons Corner

**Gilberto Ocañas**
Washington, DC

**Thomas Ochs**
New York

**Kathleen O'Connor**
New York

**Robert Odawi Porter**
Washington, DC

**Amy Odom**
Atlanta

**Javier Ortiz**
Washington, DC

**Hon. Willam Owens**
Washington, DC

**Stefan Passantino**
Washington, DC, Atlanta

**Rose Petoskey**
Washington, DC

**Josh Pitre**
Washington, DC

**Margeaux Plaisted**
Washington, DC

**Tim Plunkett**
New York

**William Plunkett, Jr.**
New York

**David Pollak**
New York

**Elliott Portnoy**
Global CEO

**James Richardson**
Atlanta

**Kevin Riggs**
St. Louis

**Colin Robertson**
Washington, DC

**Suzanne (Susi) Schaeffer**
Washington, DC

**Sara Dutschke Setshwaelo**
San Francisco/Oakland

**Andrew Shaw**
Washington, DC

**V. Heather Sibbison**
Washington, DC

**Kelvin Simmons**
Kansas City

**Hon. David Skaggs**
Denver

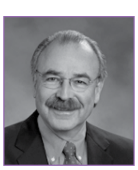
**George Skibine**
Washington, DC

**Christopher (Kit) Smith**
Washington, DC

**Mary Smyth**
Washington, DC

**Jon Sohn**
Washington, DC

**Amy Solomon**
Albany



**Darry Sragow**
Los Angeles

**Richard Stanton**
Washington, DC

**Hon. Amy Stephens**
Denver

**David Tafuri**
Washington, DC

**Benjamin Vinson**
Atlanta

**Malcolm Weems**
Chicago

**Mark Weller**
Washington, DC

**Jim Williams**
Tysons Corner

**Hon. Alan Wolff**
Washington, DC

**Jasmine Zaki**
Washington, DC

# About Dentons

Dentons is the world's largest law firm, delivering quality and value to clients around the globe. Dentons is a leader on the Acritas Global Elite Brand Index, a BTI Client Service 30 Award winner and recognized by prominent business and legal publications for its innovations in client service, including founding Nextlaw Labs and the Nextlaw Global Referral Network. Dentons' polycentric approach and world-class talent challenge the status quo to advance client interests in the communities in which we live and work.
**www.dentons.com**

**dentons.com**

© 2017 Dentons. Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. This publication is not designed to provide legal or other advice and you should not take, or refrain from taking, action based on its content. Please see dentons.com for Legal Notices.

CSPolicy Scan US 2017-v21 — 04/01/2017