

2016 Post-election Analysis

A New Administration and a New Congress: What to Expect

November 10, 2016

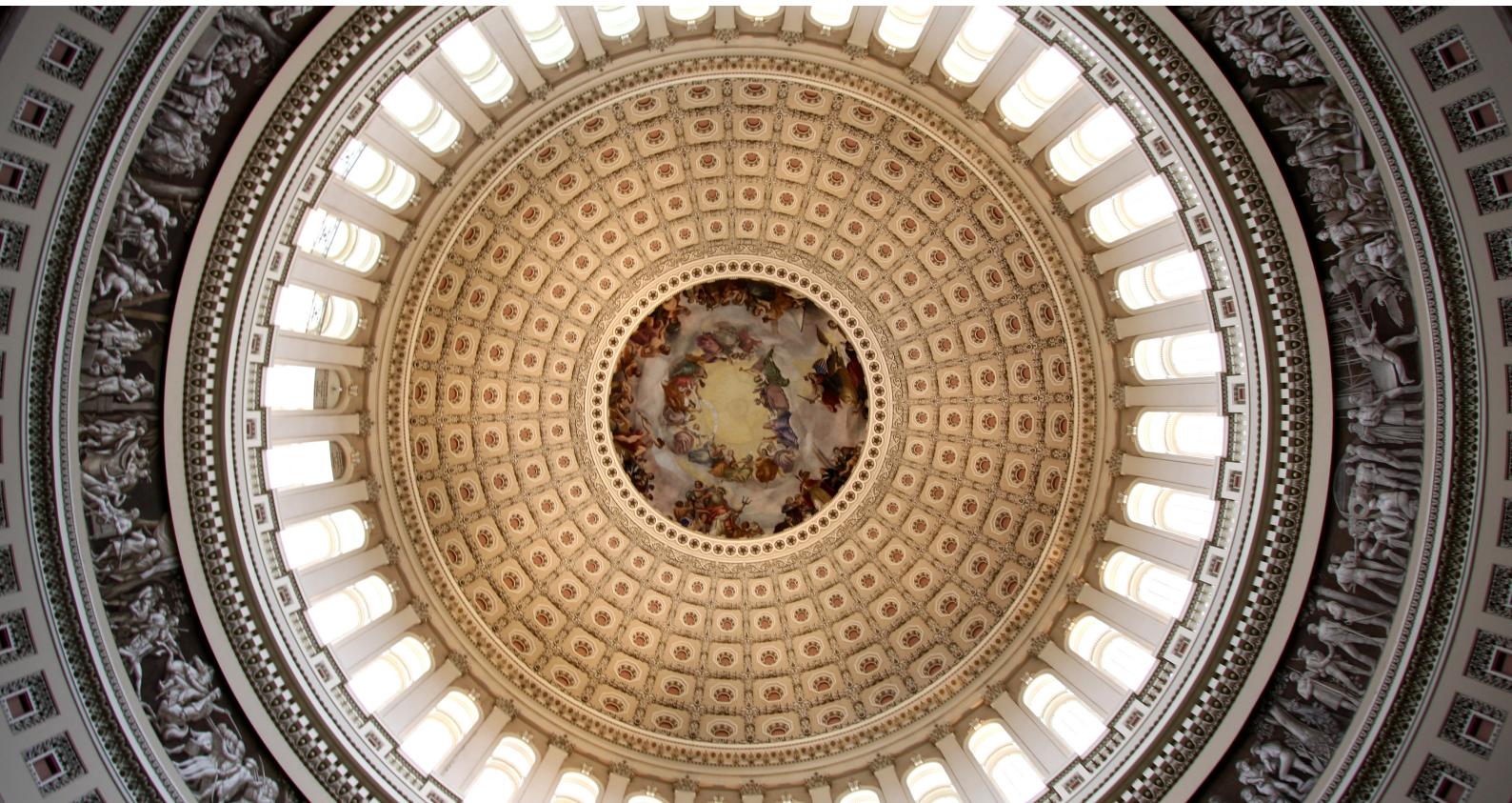


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Introduction

"[A] little rebellion now and then is a good thing, and as necessary in the political world as storms in the physical."

— Thomas Jefferson, 1787

On Tuesday, November 8, the American public elected Donald J. Trump as the 45th President of the United States and elected one-third of the 100 Senators and all of the House Members who will make up the 115th Congress. As a result of the elections, President-Elect Trump will have the opportunity to work with a Republican Senate and a Republican House to address the challenges facing the country.

In his victory speech, President-Elect Trump said:

Now it's time for America to bind the wounds of division; [we] have to get together. To all Republicans and Democrats and Independents across this nation, I say it is time for us to come together as one united people. It's time. I pledge to every citizen of our land that I will be president for all Americans, and this is so important to me.

In the aftermath of the most bruising and bizarre presidential election in modern history, will anything get done in Washington DC? Given the stark divisions between the Republican and Democratic parties and the message voters sent to policymakers inside the Capital Beltway, can policymakers overcome their differences to address the pent up demand to resolve major issues that have been multiplying for the better part of a decade?

With the Trump victory, the only certainty about what lies ahead for the policy agenda in Washington DC is that there will be considerable uncertainty. President-Elect Trump will enter the White House as a true outsider, having never before held elected office, someone who repeatedly demonstrated an eagerness to challenge the established leadership of both political parties. He will claim a mandate to tear up "Washington-made deals" and rules that have not yielded results for the American people. Many legislators will follow his lead. Many others will push back mightily.

Like Presidents Abraham Lincoln, Woodrow Wilson, Harry Truman, John F. Kennedy, Bill Clinton, and George W. Bush, President-Elect Trump comes to office without winning a majority of the popular vote. (In fact, Secretary Hillary Clinton won the popular vote by a slim margin.) But like President Lincoln, President-Elect Trump will have the opportunity to heal the wounds and address the concerns of a deeply divided electorate.

We expect President-Elect Trump to approach the presidency with the same tenacity and audacity he brought to the presidential campaign. After repeatedly seeing President-Elect Trump defy expectations and prove conventional wisdom wrong, one cannot discount the possibility that the Trump approach, when applied to actual governing, could produce results. It seems a reasonable possibility that the Trump presidency could eventually take on the now-familiar characteristics of a Trump political campaign: chaotic, messy, divisive, controversial, and often outrageous – but in the end, surprisingly effective.

Even before the polls closed Tuesday, it was evident that an unusually large percentage of the American electorate was entering the voting booth with a mighty appetite for strong new leadership. We expect President-Elect Trump to make every effort to be such a leader. But to succeed in advancing a legislative agenda through Congress, he will also need to build bipartisan coalitions, win over some of his skeptics, and find ways to connect with some of the millions of American voters who voted against him, including some who personally loathe him.

As George Washington is said to have reminded Thomas Jefferson, the framers created the Senate to "cool" House legislation just as a saucer is used to cool hot tea. When the 115th Congress convenes, the margin of Republican control in the Senate will be slightly less than it is today. In order to advance legislation, President-Elect Trump and the Republican leadership will have to be willing to compromise in a Senate in which Democrats will have the ability to block controversial legislation with a filibuster, which requires 60 votes to overcome.

Two years ago, when the 114th Congress was elected, conventional wisdom had it that nothing would get done. In our [2014 post-election analysis](#)¹, we were more optimistic, pointing to, among other things, the likelihood of progress on three big "T" issues: transportation, trade, and tax reform. In fact, a fair amount did get done in 2015 and early 2016 on these and other issues. A Republican-led Congress and a Democratic President, for example, reached agreement on a major surface transportation bill; a hard-fought Trade Promotion Authority measure paving the way for major international trade agreements; the first overhaul of the nation's chemical safety laws since 1976; a complete re-write of the No Child Left Behind education reform law; and bipartisan entitlement reform legislation to repeal Medicare's Sustainable Growth Rate formula. President Obama and the 114th Congress accomplished these things while avoiding a government shutdown and a default on the national debt. Overcoming the potential for gridlock that could have triggered a major financial crisis, they found common ground on a budget agreement that traded some of the crude spending cuts of sequestration for modest entitlement reforms that addressed some of the drivers of the nation's debt.

¹ <http://bit.ly/2fDQjHA>

All of this was achieved despite a near-toxic political atmosphere and a barrage of congressional oversight investigations on matters ranging from the State Department's management of the Benghazi tragedy to the alleged targeting of conservative organizations by the Internal Revenue Service.

With the 114th Congress having "crossed" some important "T"s, we now look to the 115th Congress to "dot" some important "I"s: infrastructure spending, international tax reform, and immigration reform. We are mildly optimistic about the potential for President-Elect Trump, a Republican Senate, and a Republican House to address some of the most pressing needs of the country, starting early next year.

The new president and leaders of both parties in Congress share in common a deeply disenchanted electorate that has lost faith in the nation's institutions of government. Recognizing this, we think both the new president and the leaders of the new Congress will seek ways to bank significant policy wins throughout the year to demonstrate their respective parties' ability to govern and establish that they have both the desire and the ability to get things done in a bipartisan fashion for the American people. In this environment, Congressional Republicans in particular need to resist the temptation to overplay their hand, which could lead to a backlash by voters at the polls in 2018, as typically occurs in the first mid-term election after a presidential election.

With an increasingly alienated working class, a rising national debt, household income still below 2008 levels, and a blurring distinction between news and entertainment all contributing to a slow decline in confidence in the country's future among the nation's electorate, the barriers to legislative consensus in Washington DC seem to be multiplying at a time when consensus is most urgently needed. Whether our elected leaders rise to the challenge in 2017 or retreat to the short-term safety of their corners will depend much on the level of engagement of the American people and stakeholders in the policy-making process.

What is Likely to Happen

We anticipate the first session of the new Congress could be marked by a year-long drive for enactment of significant infrastructure spending, international tax reform, health care reform, and, yes, even immigration reform (especially a version that begins where the Senate ended its efforts in 2007 and builds on the bipartisan work of the 113th Congress). But it will also likely bring with it renewed partisan clashes over government spending and the need to further increase the Treasury Department's borrowing authority when the current suspension of the nation's debt ceiling ends on March 15, 2017. That will be a particularly important vote. In the absence of reforms, the Congressional Budget Office recently estimated that the debt held by the public will increase by more than \$8 trillion over the next decade.

With Senator Charles ("Chuck") Schumer's rise to the top of the Democratic leadership ranks, Senate Democrats will be led by an ambitious legislator with a solid reputation for deal-making. While generally portrayed in the press as a fiery partisan, Senator Schumer has demonstrated the ability to reach across the aisle and work with Republicans on big-ticket legislative initiatives. While skilled at partisan combat, Senator Schumer may also prove more adept at building bipartisan legislative coalitions of the sort necessary to advance major legislation through the chamber than his predecessor, Senator Harry Reid (D-NV), who had a strained relationship with Senate Republican Leader Mitch McConnell (R-KY). Senator Schumer's support is likely to prove essential for the new White House as it undertakes an ambitious policy agenda during President-Elect Trump's first 100 days in office in addressing infrastructure spending and a host of other big-ticket issues.

The post mortems on the 2016 elections are still being written, but the looming 2018 elections could have a significant impact on what gets done in the Senate in the next two years. As of today, Democrats will be defending 23 Senate seats (at least nine of which will be in states won by President-Elect Trump), while Republicans will only be defending eight seats. The two Independents who caucus with the Democrats also will be up for re-election. Aware of the risks to the incumbent party in an off-year election, Majority Leader McConnell will be singularly focused on maintaining control of the Senate and will likely be able to keep his troops united, while Minority Leader Schumer will need to protect Democrats running in Red States.

Speaker Paul Ryan (R-WI) has been clear that he intends to remain in his current position in the new Congress. While the rebellious Freedom Caucus will make demands of him, we expect he will return to the post. But the road ahead will unquestionably be a challenging one for Speaker Ryan and his leadership team as they deal with a slightly smaller GOP majority in the House and an undercurrent of anti-establishment, anti-leadership hostility within the House Republican Conference fomented by supporters of President-Elect Trump. Speaker Ryan and Majority Leader McConnell could be fending off a steady stream of internal second-guessing by a small number of their own members while simultaneously seeking to hold their conferences together.

Progress will also be heavily affected by some of the looming deadlines that are already baked into the congressional calendar for 2017. Of these, none poses a bigger challenge for President-Elect Trump and the Republican leadership – or is likely to have bigger repercussions for the legislative outcomes of the first session of the 115th Congress – than the matter of the next debt limit increase.

Speaker Ryan and Majority Leader McConnell will go into 2017 with the month of March circled on their calendars, when the debt limit is set to be reached under the terms of the "barn-cleaning" agreement negotiated by our colleague, former Speaker John Boehner, as he sought to clear a path for his successor, Representative Paul Ryan. (The Treasury Department typically employs "extraordinary accounting measures" to handle cash and debt management as a means to extend the limit.

The Department can extend the time before the ultimate showdown, but it cannot be avoided.) Both leaders understand there is no choice but to raise the debt ceiling. They also understand there are certain members of their caucuses who will not vote to raise the debt ceiling under any circumstance. Consequently, they will seek to ensure spending cuts and reforms accompany the debt limit hike.

With the legislative stage set in this fashion, the first session of the 115th Congress could be a time of both serious bipartisan policy-lifting and high-level political intrigue, at times occurring simultaneously. Like the raucous presidential election year that preceded it, 2017 will be a roller-coaster ride in which the shifting, tumultuous nature of politics and policy in 21st-century America is on constant display.

Lame Duck Session

Before the 115th Congress convenes and President-Elect Trump takes the oath of office on January 20, 2017, the 114th Congress will still have important work to complete before it adjourns for the year, starting with the need to fund the government beyond December 9 in the forthcoming "lame duck" session.

Since the 20th Amendment was ratified in 1933, which moved the start date of a new Congress from March to January, legislators have met in a lame duck session 20 times, some of which have been more productive than others. In 1948, for example, after Democrats regained control of both Houses and President Truman was elected to a full term, the "do-nothing" 80th Congress met for approximately an hour and a half. By contrast, in 2012, the lame duck 112th Congress approved legislation extending most of the "Bush tax cuts," postponed budget sequestration, extended unemployment benefits, postponed a reduction in Medicare payments to physicians, reauthorized the *Foreign Intelligence Surveillance Act* Amendments, and approved the defense and intelligence reauthorization bills. In addition, the Senate confirmed 66 nominees, including 16 judges.

Two years ago, as the 113th Congress prepared for the 2014 lame duck session, *POLITICO* predicted that it would be "the lamest lame duck session in a long time." The 113th Congress did not disappoint. Notwithstanding a revolt by liberals in the House and conservatives in the Senate over fiscal issues, the two chambers and the White House eventually agreed to fund the government for another year, to extend expiring and expired tax breaks, to reauthorize the *Terrorism Risk Insurance Act*, and to authorize the Pentagon to spend money for another year. But little else of consequence was accomplished.

As we look to the lame duck session ahead, the 114th Congress is on track to match the 113th for doing little more than funding the government and adopting a defense authorization bill, while reauthorizing the *Water Resources Development Act*, extending the Iran Sanctions Act for ten years, and potentially reaching bipartisan consensus on a modest energy bill.

Beyond that, we do not see much else being done by the end of the year. We see no prospect, for example, that Congress will approve implementing legislation for the Trans-Pacific Partnership, notwithstanding the goal of President Obama and the business community to get the agreement in place by the end of his term. Nor do we expect Congress to pass a criminal justice reform bill, notwithstanding pressure from the White House and House action on 11 criminal justice reform bills.

In the pages that follow, we offer our thoughts on the major policy areas that will drive the agenda in Washington DC for the next two years, as the White House and the Congressional Republican and Democratic leadership take stock of what the public expressed through their ballot decisions and what it means for the 2018 elections. We sketch out below our sense of what is in store in the areas of appropriations and budget matters; defense and national security issues; education policy; energy, the environment, and natural resources; financial services; food and agricultural policy; foreign policy; health care policy; immigration reform; tax policy; technology and communications policy; trade policy; and transportation and infrastructure issues.

As a firm with deep public policy roots in the United States, we are proud of our ability to help clients exercise a right enshrined in the U.S. Constitution by petitioning their government. We have been at it since 1965, when Jim Patton encouraged a young White House aide named Tom Boggs to help him build a different kind of law firm, one that understood that all three branches of government could provide solutions to challenging problems. By combining political know-how, legislative experience, and substantive knowledge of the law, they had a vision for helping clients achieve success.

In our last post-election analysis, we noted that 2014 marked a historic transition for our Public Policy Practice, as Patton Boggs combined with Squire Sanders to form a global firm that dramatically increased the capabilities we offer our clients. In the two years since we combined forces, we have substantially expanded our public policy bench in Brussels and our reach across the globe. We now have 46 offices in 21 countries spanning five continents, including a presence in capitals around the world where major policy decisions made today could affect your business tomorrow. With former House Speaker John Boehner having recently joined our firm, we now have an even stronger bench, which includes former Senators John Breaux and Trent Lott, Representative Jack Kingston, and former Secretary of Transportation, Rodney Slater. We have the breadth and depth of resources to address your business objectives as public policy decisions are made around the world.

As we look ahead to the next two years, we look forward to using our broader capabilities to help our clients achieve their public policy-driven business objectives in Washington DC, and in capitals around the world.

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Appropriations/Budget

Likely Major Policy Developments

Congressional action in the lame duck session will be complicated by efforts to wrap up the \$1.07 trillion Fiscal Year (FY) 2017 appropriations process, whether it be through a year-end catch-all omnibus bill being pushed by Democrats, a series of minibus packages preferred by Republicans, a year-long Continuing Resolution (CR), or a combination thereof. Although not quite of biblical proportions, fights over hurricanes and floods, lead water poisoning, salt consumption, airborne viruses, and political giving, just to name a few, will bedevil appropriators and the leadership of both houses.

Disputes that brought the process to a halt before the summer recess remain unresolved, and recent events, such as Hurricane Matthew, only add to the challenges faced by negotiators. Issues such as Zika funding; opioid funding; emergency aid for areas hit by flooding, and areas hit by Hurricane Matthew; as well as partisan policy riders on LGBT rights, abortion, and campaign finance, among others, must be dealt with in connection with the final FY 2017 funding measure. House Speaker Paul Ryan (R-WI) will also have to contend with the Freedom Caucus, a coalition of 40 conservative Republicans who have pushed for lower, sequestration-level spending caps, a contributing factor in the House's failure to approve a budget resolution or pass individual and on-time FY 2017 spending bills.

The working relationship between President-Elect Trump and Republican congressional leaders will be tested early on as they will face a "fiscal cliff" within the first few months of 2017 as the current suspension of the nation's debt limit is set to expire on March 15. While the Department of Treasury can employ "extraordinary accounting measures" to handle cash and debt management as a means to extend the limit, this can only be done for a short time. Current estimates vary, but the consensus is that the Treasury Department should be able to extend the current debt limit for approximately three months at most. Additionally, sequestration-level spending caps are scheduled for reinstatement next year and the national debt is at a post-World War II era high.

The debt limit is the total amount of money the U.S. government is authorized to borrow to finance budget deficits and to meet its existing obligations, including Social Security and Medicare benefits; military salaries; interest on the national debt; and tax refunds. Failure to increase or suspend the debt limit would cause the government to default on its obligations, something the United States has never done. The debt limit has been modified over 80 times since 1960, 15 times since 2001, and four times since 2011. Most recently, the debt limit was suspended through March 15, in the *Bipartisan Budget Act of 2015* (P.L. 114-74). The debt limit increases were offset by deficit reductions included in the *Budget Control Act of 2011* (BCA, P.L. 112-25). The BCA also included a "poison pill" known as sequestration.

Intended as an incentive for Congress to develop a bipartisan deficit reduction plan, sequestration refers to discretionary spending caps established through 2021 that achieve \$1.2 trillion in deficit reduction. Without such a plan, sequestration was implemented in 2013, resulting in an eight percent reduction in defense discretionary funding and a five percent reduction in nondefense discretionary spending.

Since that time, two bipartisan budget agreements were enacted to alleviate sequestration in FY 2014–FY 2017. The *Bipartisan Budget Act of 2013* (P.L. 113-67) eliminated \$63 billion of the sequester impact in FY 2014 and FY 2015 and extended the BCA spending caps through 2023. The *Bipartisan Budget Act of 2015* (P.L. 114-74) provided an additional \$50 billion above BCA discretionary spending caps for FY 2016 and \$30 billion in FY 2017, divided equally between defense and nondefense spending. To partially offset the 2015 agreement and a repeal of a law that scaled back military cost-of-living benefits, the BCA budget caps were extended to 2025. Under the 2015 agreement, the FY 2017 total spending cap is \$1.07 trillion (\$551 billion for defense, \$518.5 billion for nondefense). With sequestration, FY 2018 spending is capped at \$1.06 trillion (\$549 billion for defense, \$515 billion for nondefense).

Despite bipartisan distaste for sequestration, achieving a third budget agreement will be challenging, even with Republicans holding the presidency and congressional majority. Republicans and President-Elect Trump support increasing defense spending, but Democrats will push back for equal increases in domestic spending. President-Elect Trump has also been critical of debt ceiling increases. During the campaign, he suggested refinancing the country's debt by taking advantage of current low-interest rates in order to pay off older high-interest debt, although he has not specified how this will be executed.

Beyond his \$1 trillion, ten-year infrastructure proposal, President-Elect Trump's budget priorities are unknown, which raises anticipation for his FY 2018 budget proposal. Incumbent presidents typically submit their budget requests in February; however, a newly elected president typically exceeds that timeframe. President Barack Obama released the outline for his first budget request for FY 2010 in late February of 2009 but did not release the detailed budget until May. Early next year, the Senate and House Budget Committees will also work on preparing their budget blueprints for FY 2018, known as budget resolutions. While not binding as law, concurrent budget resolutions, agreed to by both the House and Senate through a majority vote, serve as a framework for subsequent budget-related legislation. Of particularly potential impact in the 115th Congress, concurrent budget resolutions can include reconciliation instructions to direct tax committees to recommend changes to laws affecting revenue or spending. In addition to discretionary spending, reconciliation can incorporate revenue, entitlement reform, and debt limit provisions, as long as the measure does not increase the long-term deficit. Budget reconciliation requires only a simple Senate majority vote for passage, bypassing the typical 60-vote threshold.

Reconciliation was most recently used by Democrats in 2010 to pass health care reform and Republicans will make a concerted effort to use it to repeal the same law. Tax reform and the debt ceiling are other areas that Republicans may advance under the umbrella of reconciliation. Although neither the House nor the Senate were able to approve individual budget resolutions in the 114th Congress, Senate Majority Leader Mitch McConnell (R-KY) and House Speaker Paul Ryan (R-WI) will use the repeal of Obamacare as an incentive to work through the philosophical fiscal differences within the Republican Party.

Anticipated Congressional Committee Developments

Senate Committees of Jurisdiction

Senator Thad Cochran (R-MS) will maintain the Chairmanship of the Appropriations Committee in the 115th Congress, as he still has two years left of eligibility under Republican rules. Procedurally, the retirement of current Ranking Member Barbara Mikulski (D-MD) leaves Senator Patrick Leahy (D-VT) next in seniority to take over Democratic leadership and become Ranking Member of the committee; however, he is not expected to give up his position as Ranking Member of the Judiciary Committee to do so, especially with at least one, if not more, Supreme Court Justice nominations up for consideration in the next few years. Next in line, and the candidate endorsed by retiring Ranking Member Mikulski, is Senator Patty Murray (D-WA). An instrumental part of recent wide-ranging budget agreements, Senator Murray seems the likely choice.

However, in 2014 Senator Murray left her leadership position on the Budget Committee to become Ranking Member of the Health, Education, Labor, and Pensions (HELP) Committee, and thus may be reluctant to leave the committee. Other possibilities to become Ranking Member include Senator Dianne Feinstein (D-CA), current Minority Whip Richard Durbin (D-IL), and Senator Jack Reed (D-RI).

Senator Mike Enzi (R-WY) will remain Chairman of the Budget Committee. If Senator Murray moves to the Appropriations Committee, current Budget Committee Ranking Member Bernie Sanders (I-VT) will have the opportunity to become Ranking Member of the HELP Committee, a position he expressed as his preference. In that event, Senators Ron Wyden (D-OR) and Debbie Stabenow (D-MI) are next up in Democratic seniority, but both have leadership opportunities on other committees, which could leave Senator Sheldon Whitehouse (D-RI) as Ranking Member of the Budget Committee.

House Committees of Jurisdiction

Representative Hal Rogers (R-KY) is term-limited as Chairman of the Appropriations Committee. Representative Rodney Frelinghuysen (R-NJ) is favored to replace him, while Representative Nita Lowey (D-NY) will remain Ranking Member. Representative Frelinghuysen currently leads the Defense Subcommittee, which Chairman Rogers reportedly wishes to head as he leaves the chairmanship of the full committee; however, Representative Kay Granger (R-TX), next in line to lead the Defense Subcommittee, may challenge Chairman Rogers for the position. Representative Frelinghuysen holds a somewhat moderate record on reproductive rights, which contradicts that of other Republican members of the committee and the conference, who support defunding Planned Parenthood and anti-abortion policy riders.

Representative Tom Price (R-GA) will continue to serve as Chairman of the House Budget Committee, where Representative John Yarmuth (D-KY) is expected to replace Representative Chris Van Hollen (D-MD), who left the House to run for Maryland's open Senate seat, as Ranking Member. Representative Yarmuth, while questioning Republican tactics on budget reform, has expressed openness to considering a biennial budget process.

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Defense and National Security

Likely Major Policy Developments

During his campaign, President-Elect Trump promised to make America's military great by significantly increasing the defense budget. While few specifics were given, Mr. Trump spoke of increasing the size of the Army, buying more ships and planes, and developing new missile defense systems to respond to increasing threats from rogue states such as North Korea. He also promised that this increase (projected by some as an extra \$500 billion over ten years), would be fully offset by reducing U.S. spending on the defense of our allies and alliances, making common sense defense acquisition reforms, and eliminating waste and budgetary gimmicks (which historically have been used to hide or cover increased spending not budget cuts). This is good news for the defense contracting community. With Republican control of the Executive and Legislative Branches, some increase in defense spending is a certainty. If President-Elect Trump does fulfill his vow to fully offset the increase in spending, there will be winners and losers in the fight over the new defense spending. Waste in defense procurement is often in the eye of the beholder.

President-Elect Trump was very critical of his two predecessors' Middle East policies and vowed to destroy ISIL. There is almost universal agreement among national security experts from all camps that the new president must reset American engagement in the Middle East. It is a region even more fractured and dangerous than when Hillary Clinton served as Secretary of State. The Syrian civil war continues and has caused almost a half-million deaths, mostly of innocent civilians, including countless children, and a massive refugee crisis for Jordan, Turkey, and Europe as well. It is also the place where Russia has reemerged as a player in the Middle East, directly challenging U.S. influence and its ability to reach a diplomatic settlement in Syria. Civil wars also rage in Libya and Yemen, the latter another proxy war between Saudi Arabia and Iran. As the Iraqi-led troops and U.S.-supported Kurdish forces press the campaign to defeat ISIL, Mr. Trump must decide how he will step up the fight and how to help Iraq hold and rebuild the cities and villages it recaptures. Although U.S. dependence on Middle Eastern oil has significantly diminished, it remains a region that is vital to U.S. interests of promoting peace and stability. These goals are threatened as long as it remains a source of terrorism, produces massive numbers of refugees trying to flee their homelands, and continues as a locus for crimes against humanity. President-Elect Trump intends a more assertive and potentially aggressive U.S. approach to the crisis in the Middle East, which will translate into increased needs for more Overseas Contingency Operations (OCO) funds even beyond the \$6B the Obama Pentagon is expected to ask for in the lame duck session. (For more on the challenges facing the new administration, please see the Foreign Policy section of this document.)

It remains to be seen whether the next Pentagon remains focused on investing in innovation and leveraging U.S. information advantages to defeat asymmetric threats. It is clear that the cyber domain is becoming its own battleground, not only for terrorists but also for nation-states seeking to harm their enemies. It certainly will be interesting to see whether cyber attacks such as the hacking of the Democratic National Committee servers and John Podesta's email account will be taken as credible threats to U.S. information security. This could mean an increased investment in both offensive and defensive capabilities in cyber, which will lead to growth for companies in that sector.

The President-Elect can only stand and watch as Congress attempts to resolve the differences between the House and Senate defense authorization and appropriations bills during the lame duck session. While there are thousands of differences in the details, those have largely been resolved at this point. When Congress returns on November 14, the members of the defense committees must figure out how to settle an \$18 billion difference or simply extend the Continuing Resolution into the next year and let the Trump White House solve the problem. The House moved the extra funding into the defense base budget from the OCO budget (which is treated as pure deficit spending and is not counted for purposes of the budget caps). If this extra funding survives, in whole or in part, it will force the new administration to ask for an even larger supplemental funding bill next April to fund the president's new military operations and activities in the Middle East. President Obama has threatened to veto a defense bill that shifts any OCO funding in the base bill. If the extra \$18 billion is removed in the lame duck session, it will force House defense hawks to make very painful decisions on how to cut the money from programs they have added. If the differences cannot be resolved, the new Secretary of Defense will be forced to manage the military under a continuing resolution, which has been described by the current and every former Secretary of Defense as an impossible task and a real threat to readiness.

However the FY 2017 defense budget is addressed, the new administration will immediately confront the return of sequestration for the FY 2018 budget. The *Bipartisan Budget Act of 2015* cancelled the automatic reductions in discretionary spending for 2016 and 2017 and set new caps. Defense spending was capped at \$551.1 billion for 2017. The sequester reduction projected for 2018 will cap defense spending at \$549 billion, a \$2 billion decrease from 2017. In view of the Trump promises to increase defense spending and given the likely support of a majority of Republicans in the Senate and the House, we expect the defense budget caps to be adjusted. Since the Republicans do not have the 60 votes to roll over Senate Democrats, they will have a say in the process. But without the threat of a presidential veto, they will not be able to prevent defense budget increases of some magnitude.

Anticipated Congressional Committee Developments

With no changes in the majority party control of the House and Senate, the major players in control of defense policies and spending will largely remain the same. Senator John McCain, fresh off of reelection to his 6th term, remains as Chairman of the Senate Armed Services Committee. He will have a somewhat different role in the next congress. Instead of being a frequent and visible critic of the Democratic President's defense policies, he will be expected to carry President Trump's defense budget and program through the Congress to passage. Senator Jack Reed (D-RI) will remain as the Ranking Member and assume the role as the leading Democratic critic of the Trump military budgets and plans. On the Senate Appropriations Committee, Senator Thad Cochran is expected to remain as Chairman of the Defense Appropriations Subcommittee while Senator Dick Durbin (D-IL) is in line to be the Ranking Member. Representative Mac Thornberry (R-TX) will continue to chair the House Armed Services Committee and Representative Adam Smith (D-WA) will remain as the Ranking Member. The current Chairman of the House Appropriations Committee, Representative Hal Rogers (R-KY), is term-limited under Republican rules and will likely yield the gavel to Representative Rodney Frelinghuysen (R-NJ). Frelinghuysen will give up the Defense Subcommittee chair, which is being sought by Representative Rogers and Representative Kay Granger (R-TX). Representative Nita Lowey (D-NY) will remain the Ranking Member on the full committee and Representative Pete Visclosky (D-IN) will continue in that role on the Defense Subcommittee.

Anticipated Agency Developments

Senator Jeff Sessions (R-AL), a close advisor to President-Elect Trump throughout the campaign, has been mentioned as a possible Secretary of Defense. As a long-time member of the Senate Armed Services Committee, he would face little difficulty in being confirmed by his Senate colleagues.

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Education Policy

President-Elect Trump openly criticized the federal government's heavy hand in local education policy and the poor return on the \$620 billion in state and federal annual investments for K-12 education. Citing American Federation for Children Growth Fund and National Center for Education Statistics studies, President-Elect Trump noted that, although the U.S. spends more per student than virtually any other industrialized nation, U.S. students lag behind their peers in knowledge gained.

We expect the Trump Administration to push for greater local control in K-12 education, including less federal bureaucracy and more school choice, a path to college, a skilled trade or vocational tech education, and good faith efforts on behalf of institutions of higher education to reduce the cost of college in exchange for federal tax breaks.

Elementary and Secondary Education Act Reauthorization

The *Elementary and Secondary Education Act* (ESEA) was reauthorized in 2015 when President Obama signed the *Every Student Succeeds Act* (ESSA, P.L. 114-95) into law. The previous version of the law was the controversial *No Child Left Behind Act*, which expired in 2007. The 114th Congress was able to reach a bipartisan solution with passage of ESSA; the federal government is now focused on its implementation. Members of Congress commended ESSA for rolling back federal involvement in education policy and giving states greater control, something President-Elect Trump supports. ESSA also prohibits the Secretary of Education from incentivizing national academic standards like Common Core, which President-Elect Trump also strongly opposes. However, a handful of Republicans believe ESSA did not go far enough to restrict the Department of Education's authority. The Obama Administration has already finalized certain regulations of ESSA, such as teacher preparation, and much of the focus of the coming months and years will be on how states respond. This may become a point of contention for President-Elect Trump and Members of Congress, especially as it is unclear how much the new requirements will cost states.

Senator Lamar Alexander (R-TN) will continue his term as Chairman of the Senate Health, Education, Labor, and Pensions (HELP) Committee, and will therefore continue to closely monitor the implementation of ESSA. It is important to Chairman Alexander that the law is implemented as it was intended, which to him means increasing states' authority under the law and downplaying the Department of Education's overall role. On the other side of the Capitol, in her presumed new role as Chairman of Education and the Workforce Committee, Representative Virginia Foxx (R-NC) will likely seek to reduce the federal government's role in K-12 education, as she has said in the past that she does not think the Department of Education should exist at all.

ESSA contains many intentionally adaptable provisions, meant to provide states with increased flexibility, and it will be important to presumed incoming Chairman Foxx that the states retain this capability.

Student Loans

President-Elect Trump is interested in pursuing income-based repayment plans for student-loan borrowers. Under his proposal, the many repayment options available to borrowers would be simplified into one single program. Additionally, loan payments borrowers owe would be capped at 12.5 percent of their income, and any leftover student loans owed would be forgiven after 15 years.

Republicans in Congress already have called for ending the federal direct student loan program and restoring more "private sector participation in student financing." Led by Senators Mike Lee (R-UT) and Marco Rubio (R-FL), Republicans want to decouple accreditation from federal funding and have put forth accreditation overhaul ideas as well. These include allowing states the authority to employ a wide variety of accrediting and credentialing bodies, which would "foster innovation, bring private industry into the credentialing market, and give students the ability to customize their college experience."

Congressional Republicans are also interested in addressing simplification of the *Free Application for Federal Student Aid Act* (FAFSA). In January of 2015, Chairman Lamar Alexander (R-TN) introduced the *Financial Aid Simplification and Transparency (FAST) Act of 2015* in the Senate, which would shorten the FAFSA significantly, and would also restore year-round Pell Grants. It is also possible that Congress will reach a compromise plan to address Pell Grants more generally. In the 114th Congress, the Senate Appropriations Committee advanced a bipartisan Labor, Health and Human Services, Education, and Related Agencies (Labor-HHS-Education) appropriations bill that would restore year-round Pell Grants, authorizing full-time students who qualify for Pell Grants to receive the grants for three semesters a year instead of two. However, the House Appropriations Committee rejected this provision in its version of the Labor-HHS-Education Appropriations bill, despite Democrats' objections. Congress cut this benefit in 2011 to shore up the costs of the Pell Grant Program and to avoid having to lower the maximum award amount; however, it may be an area of compromise for college affordability in the near term.

Campus Sexual Assault

The Obama Administration made addressing sexual assault on campus a priority starting with a 2011 Dear Colleague letter from the Department of Education's Office of Civil Rights that clarified the Department's position on Title IX and advised campuses to do a better job investigating and adjudicating cases of campus sexual assault. Since then, there have been numerous congressional roundtables and hearings, updates to the *Clery Act* that include increased reporting requirements, and several pieces of legislation introduced.

The most significant legislation that has been introduced on this issue is Senator Claire McCaskill's (D-MO) *Campus Accountability and Safety Act* (CASA). This legislation has a bipartisan cosponsor list of 37 Senators. An identical House bill introduced by Representative Carolyn Maloney (D-NY) has 43 cosponsors from both sides of the aisle. Other bills, introduced in the House, specifically address the campus adjudication process by putting standards into place such as due process, access to evidence, and the right to an attorney.

We expect CASA to be reintroduced in the 115th Congress. Chairman Alexander has worked with the bill's sponsors to pass this type of legislation, preferably within the *Higher Education Act* (HEA) reauthorization, and is expected to continue this effort next year.

Career and Technology Education (CTE)

President-Elect Trump supports providing skilled trade or vocational and technical education to individuals who do not attend college. According to President-Elect Trump, such opportunities should be "easier to access, pay for, and finish." In September 2016, the House passed the *Strengthening Career and Technical Education for the 21st Century Act* (H.R. 5587). This legislation seeks to modernize federal support for career and technical training by improving accountability; providing states greater flexibility to meet evolving education and economic needs; ensuring career and technical education prepares all students to pursue high-skill, high-wage occupations (including novel fields); improving alignment with in-demand jobs; and increasing emphasis upon employability skills, work-based learning opportunities, and credential attainment. Senator Orrin Hatch (R-UT) introduced a bipartisan companion bill with Senator Michael Bennet (D-CO), the *Innovation for Tomorrow's Workforce Act* (S. 3344). These bipartisan and consensus-based CTE bills are solid candidates for enactment during the next Congress because they are consistent with President-Elect Trump's policy goals and enjoy strong support in Congress.

College Ratings System

President-Elect Trump is expected to revamp or altogether eliminate the Obama Department of Education's College Ratings System. That system focuses on three themes relevant to students, institutional leaders, and policymakers: (1) access, such as the percentage of students receiving Pell Grants; (2) affordability, such as average tuition, scholarships, and loan debt; and (3) outcomes, such as graduation and transfer rates, graduate earnings, and advanced degrees of college graduates. Although he supports access and affordability measures, we expect President-Elect Trump to jettison any effort to grade colleges and universities on the basis of individual student outcomes. He will have significant support for this overhaul from Republicans in Congress.

Many Republicans, including presumed incoming House Education and the Workforce Committee Chairman Foxx, oppose program integrity initiatives that rank schools based upon the educational and employment outcomes of their students. The resulting metrics, relying as they do upon student initiative and performance, are considered unduly critical of otherwise excellent schools. The for-profit schools have been particularly weathered by program integrity initiatives. For these reasons, we expect to see legislative efforts to overturn the outcome measures of the College Ratings System and significant support for President-Elect Trump's anticipated reforms.

HEA Reauthorization

The 114th Congress saw a renewed effort to reauthorize HEA, which expired in 2013. This legislation is not expected to pass before the end of 2016. The Federal Perkins Loan Program was the exception, having been extended for two years. Both the House and Senate have held dozens of hearings aimed at HEA reauthorization and sought stakeholder feedback. Under Senate HELP Committee Chairman Alexander, discussion briefs on institutional risk sharing, improved consumer information, and the effectiveness and role of accreditation were released to help guide the discussion. Chairman Alexander focused on scaling back federal regulations on colleges and streamlining student aid programs. On the House side, current Education and the Workforce Committee Chairman John Kline (R-MN), who is not seeking reelection, passed several smaller higher education bills that, if enacted, would reauthorize parts of HEA.

HEA reauthorization will continue to be at the forefront of the HELP Committee's agenda in the next Congress. While Chairman Alexander has stated he would prefer one large reauthorization bill, there is a possibility that issue-focused bills with bipartisan support could be passed on matters such as financial aid simplification and federal loan repayment options. On the House side, presumed incoming House Education and the Workforce Committee Chairman Foxx has said HEA would be a top priority for her and that she would also look for greater transparency from colleges on metrics such as the graduation rate of Pell Grant recipients.

Anticipated Congressional Committee Developments

Senate Committee of Jurisdiction

Current Senate HELP Committee Chairman Lamar Alexander (R-TN) will remain the chair for the 115th Congress. Senator Alexander's background in education includes Secretary of Education under President George H.W. Bush and President of the University of Tennessee. As Governor of Tennessee, he overhauled the entire state education system. He believes strongly in reducing federal mandates and returning decision-making to states and communities, and as Chairman has worked to limit the role of the Department of Education.

We anticipate that Senator Patty Murray (D-WA) will continue to serve as Ranking Member of the committee.

House Committee of Jurisdiction

The current Chairman of the House Education and Workforce Committee, Representative John Kline (R-MN), is retiring at the end of the year. We expect that Representative Virginia Foxx (R-NC) will take over as Chairman. Representative Foxx is a former community college president and school board member. She has been very vocal on education issues and cites HEA reauthorization and college data for students as priority issues for her in the 115th Congress.

We anticipate Representative Bobby Scott (D-VA) will remain as Ranking Member of the committee.

Anticipated Agency Developments

While President-Elect Trump has been clear that the Department of Education's influence will be greatly diminished in his administration, he has alluded to potential secretary picks, including Dr. Ben Carson and William Evers. Dr. Ben Carson is a retired neurosurgeon and former GOP candidate and is seen to be the most likely choice. While campaigning, Dr. Carson put forward his five-step plan on education, which included school choice, empowering local and state involvement while limiting federal influence, a streamlined and simple student loan process, a reward system for good teachers, and engagement of innovation. William Evers has assisted the Trump transition team on education and served as the U.S. Assistant Secretary of Education for policy from 2007 to 2009. Unless President-Elect Trump proposes and Congress approves large budget cuts, we expect the U.S. Department of Education to continue work on its strategic plan. This will include a focus on federal student aid transparency; ESSA implementation; an increase in STEM pathways; improving college access, affordability, and completion; increased transparency and data systems; and expanding support for teachers and school leaders.

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Energy, the Environment, and Natural Resources

Likely Major Policy Developments

Much of the Republican congressional agenda next year will be focused on blocking implementation or limiting the effects of President Obama's Clean Power Plan. In addition, to the extent Members are committed to an "all of the above" energy strategy, part of their agenda will depend on whether Congress is able to reach consensus on the energy bill now pending in conference, the *North American Energy Security and Infrastructure Act of 2016* (S. 2012), during the lame duck session. If Congress is able to reach consensus on some issues, the remaining more difficult ones will likely be the subject of further legislative efforts next year.

We anticipate that House and Senate Republicans will again seek to block the Environmental Protection Agency (EPA) from implementing the Clean Power Plan. But since they lack the 60 votes necessary to overcome an anticipated Democratic filibuster, they will face challenges in garnering enough votes to advance the kinds of bills House Republicans approved and Senate Democrats blocked throughout the 114th Congress. We can envision scenarios in which compromise is possible, but only if both sides move away from the fairly rigid positions they have maintained for the past two years.

We also anticipate a continued push by House Republicans, in particular, to block implementation of the "Waters of the U.S." (WOTUS) rule promulgated by EPA and Army Corps of Engineers should their efforts to block its implementation prove unsuccessful in the lame duck session.

In the Senate, we expect that Energy and Natural Resources Chairman Lisa Murkowski (R-AK) will devote much of her time to addressing elements of the Senate energy legislation that are not adopted in the lame duck session. In addition, she will be focused on the administration's energy and natural resources agenda, which she and other members of the committee will undoubtedly seek to influence when officials subject to Senate confirmation come before the committee as part of the nominations process.

On the House side of the Capitol, two committees share jurisdiction over energy, the environment, and natural resources: the House Energy and Commerce Committee and the House Natural Resources Committee.

Two senior members are vying for leadership of the House Energy and Commerce Committee: Representatives John Shimkus (R-IL) and Greg Walden (R-OR). On energy issues, they share much in common. Both, for example, will continue to challenge President Obama's Clean Power Plan. With the retirement of Senator Harry Reid (D-NV), a would-be Chairman Shimkus will be keenly interested in moving legislation to make Yucca Mountain the nation's permanent geologic repository for high-level nuclear waste.

In addition, given his widespread frustration with the time it takes to clean up EPA-designated Superfund sites and the concern that less than 50 cents on the dollar is reportedly spent on actual sites, a Chairman Shimkus would likely again take up the issue of Superfund reform in order to try to improve the program.

We expect that House Natural Resources Committee Chairman Rob Bishop (R-UT) will continue to focus on forestry and drought issues (contentious issues that are among those under discussion now being debated in the energy bill in conference). Chairman Bishop is expected to again push for the provisions that were included in the House-passed *Resilient Federal Forests Act* (H.R. 2647), which the White House has threatened to veto. The bill would increase the pace and scale at which the U.S. Forest Service treats high-risk acres and would also allow for expedited environmental reviews for projects up to 15,000 acres. The bill also attempts to address the agency's current "fire borrowing" practice. Solving the fire borrowing issue is also a priority for Senate Democrats, including Energy and Natural Resources Committee Ranking Member Maria Cantwell (D-WA) and Senator Ron Wyden (D-OR). With regard to drought, the House-passed *Western Water and American Food Security Act of 2015* (H.R. 2898) will also continue to remain a priority for Chairman Bishop and House Republicans. In its current form, the bill has drawn strong opposition from Senate Democrats and the White House, and thus is unlikely to be approved as part of the energy bill this year. House Republicans want to give federal agencies operational flexibility during emergency drought situations, and they would direct agencies to maximize the amount of water pumped south of the California Delta during a drought. House Republicans also support expedited permitting for water transfers and the use of temporary barriers or gates to attempt to improve the quantity and quality of water available to certain water users. Democrats argue that the bill would harm the northern California economy, damage estuaries, and put drinking water at risk. They also believe the bill would hurt both the commercial and recreational fishing industries and tribes.

In addition to addressing forestry and drought issues, Chairman Bishop is expected to continue efforts to overhaul the Land and Water Conservation Fund (LWCF). Created by Congress in 1965, the LWCF provides funding for national parks, national forests, national wildlife refuges, water resources, federal land acquisitions, and critical habitats. In theory, the LWCF should receive approximately \$900 million each year in funding derived from royalties paid by energy companies drilling for oil and gas on the Outer Continental Shelf, but in practice Congress has typically diverted this funding for other uses. As a result, there is currently a backlog of billions of dollars in deferred land acquisitions and maintenance and repair projects.

Chairman Bishop is expected to remain focused on significantly restricting funding for land acquisitions in certain areas of the country, such as the West, and reducing funding for federal land acquisitions more broadly. At the same time, Chairman Bishop would like to see more funding go directly to states and bypass the federal government. Several of Chairman Bishop's priorities for the LWCF, drawn from his proposed *Protecting America's Recreation and Conservation Act*, will continue to be opposed in the 115th Congress by conservation groups concerned about limits the bill would place on access to and funding for parks, trails, national forests, national wildlife refuges, and BLM lands, as well as state and local recreation and conservation grant programs.

Other priorities that passed the House in the 114th that will remain goals for Chairman Bishop in the 115th will include the *National Energy Security Corridors Act* (H.R. 2295), which would allow natural gas pipeline rights-of-way through all federally owned lands, including lands in the National Park System, and the *Electricity Reliability and Forest Protection Act* (H.R. 2358), which its supporters believe would improve transmission of electricity across federal lands by addressing corresponding forest maintenance, tree removal, and thinning.

In addition, Chairman Bishop is expected to push next year for a potential mining reclamation package to include at least the following three bills: the *Locatable Minerals Claim Location and Maintenance Fees Act of 2016* (H.R. 3843), the *Bureau of Land Management Foundation Establishment Act of 2016* (H.R. 3844), and the *Mining Schools Enhancement Act* (H.R. 3734). Collectively these bills would alter mining claim fees, provide permitting authority and funding to remediate abandoned mine lands, as well as oil and gas well sites, and authorize funding for research projects relating to surface coal mining. The Chairman is also likely to consider other mining bills in this package.

Anticipated Congressional Committee Developments

Senate Committee of Jurisdiction

Senator Lisa Murkowski (R-AK) will continue to serve as Chairman of the Natural Resources Committee. Senator Maria Cantwell (D-WA) will continue to serve as Ranking Member. As they have throughout the 114th Congress, we expect the two leaders to continue to work well together.

House Committees of Jurisdiction

Two senior Members are vying for leadership of the House Energy and Commerce Committee: Representative John Shimkus (R-IL) and Representative Greg Walden (R-OR). Representative Frank Pallone (D-NJ) will continue to serve as Ranking Member.

Representative Rob Bishop (R-UT) will remain as Chairman of the Natural Resources Committee, and Representative Raúl Grijalva (D-AZ) will continue to serve as Ranking Member.

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Financial Services

Likely Major Policy Developments

In the wake of the 2008 financial crisis, Congress passed, and President Obama signed, the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank) in an effort to make financial markets more secure and stabilize the U.S. economy. Since that time, financial services regulatory reform has been a source of much debate between the nation's two major parties: Republicans have called for major revisions and even the repeal of Dodd-Frank, while Democrats have opposed any efforts seen as undermining or weakening the law.

This partisan division continued in this Congress when Senate Banking Committee Chairman, Richard Shelby (R-AL), introduced S. 1484, the *Financial Regulatory Improvement Act of 2015*. Among numerous provisions, this bill:

1. Sought to raise the asset threshold for bank holding companies subject to enhanced supervision by the Federal Reserve Board from \$50 billion to \$500 billion
2. Exempts all banks with \$10 billion or less in assets from the Volcker Rule
3. Limits the Financial Stability Oversight Council's (FSOC) ability to designate nonbank firms as SIFIs

Though negotiations between Chairman Shelby and moderate Democrats fell apart, the bill was reported out of the Senate Banking Committee along a party-line vote. However, given the lack of bipartisan support, the bill stalled and Chairman Shelby has not signaled that he plans to take further action on the bill.

With efforts in the Senate stalled, earlier this year House Financial Services Committee Chairman Jeb Hensarling (R-TX) introduced legislation designed to replace Dodd-Frank – the *Creating Hope and Opportunity for Investors, Consumers and Entrepreneurs Act* (CHOICE Act). This bill was favorably reported out of committee by a vote of 30 (Republicans) to 26 (25 Democrats and 1 Republican). Among its numerous provisions, the CHOICE Act:

- Provides an "off-ramp" from the post-Dodd-Frank supervisory regime and Basel III capital and liquidity standards for banking organizations that choose to maintain high levels of capital
- Retroactively repeals the authority of the FSOC to designate nonbank firms as SIFIs
- Fundamentally reforms the Consumer Financial Protection Bureau (CFPB)
- Imposes stricter accountability requirements on other financial regulators
- Imposes enhanced penalties for financial fraud and self-dealing

Though Democrats viewed this bill as a non-starter, Chairman Hensarling has suggested the House will vote on his bill – potentially during the lame duck session.

With President-Elect Trump in the White House and Republicans in control of both the House and Senate, we believe there is a real possibility for a significant overhaul of financial services regulation in the 115th Congress – especially if future Chairman of the Senate Banking Committee Mike Crapo (R-ID) is willing to work with committee Democrats to find middle ground. Though there had been discussion of potentially seeking to pass certain targeted reforms during the lame duck session (e.g., reforms dealing with FSOC, CFPB, etc.), it now appears that Republicans will instead hold off on such efforts until 2017.

In the interim, and as the debate over Dodd-Frank continues to play out, financial regulators will work to finish implementing the 398 rulemakings required by the Act – at least until such time when (if) the Trump Administration freezes work on pending regulations, an idea that has been floated during the campaign. In fact, in his "Contract with the American Voter," President-Elect Trump has gone further: he has promised to implement "a requirement that for every new federal regulation, two existing regulations must be eliminated."

Anticipated Congressional Committee Developments

In 2017, we expect Congress to continue its focus on financial services regulatory reform – both broadly and in terms of targeted reforms – with the Republican-controlled House and Senate likely to exercise increased oversight of (or, potentially, try to eliminate) FSOC and CFPB, and to use the budget process to pressure agencies such as the Commodity Futures Trading Commission (CFTC), and the Securities and Exchange Commission (SEC). Leading these efforts again will be Representative Hensarling, who is expected to continue as Chairman of the House Financial Services Committee. His Democratic counterpart, Representative Maxine Waters (D-CA), is similarly expected to return as Ranking Member.

On the other side of the Capitol, with Senator Richard Shelby having reached his term limit as Chairman, Senator Mike Crapo will take over the Senate Banking Committee gavel and serve as Chairman of the committee. In this role, he will be tasked to work with Senator Sherrod Brown (D-OH), who will lead the fight against any efforts seen as undermining Dodd-Frank.

Additionally, given their jurisdiction over the CFTC and the regulation of the swaps and derivatives markets, both the Senate and House Agriculture Committees will continue to play a significant role in the financial services sector. This Congress, both the House and Senate Agriculture Committees voted to reauthorize the CFTC, bringing the Commission one step closer to being reauthorized almost three years after its legislative authority expired. However, the bills passed by the committees were different and still must be reconciled.

Moreover, in September 2016, the Senate Agriculture Committee agreed to advance two CFTC Commissioner nominees – Christopher James Brummer and Brian D. Quintenz – to the full Senate for confirmation. The Senate has not yet scheduled a confirmation vote on these nominees and will likely hold off until President-Elect Trump is able to appoint commissioners of his choosing. For further discussion of the Senate and House Agriculture Committees and related issues, please see the Food and Agricultural Policy portion of our analysis.

Anticipated Agency Developments

As noted above, the CFPB will continue to face scrutiny from Republican lawmakers over its authority to regulate financial products and services. Despite the pushback from some Members of Congress, we expect the CFPB to continue working towards its goal of making “consumer financial markets work for consumers, responsible providers, and the economy as a whole.” The CFPB likely will focus on four key issues:

1. The use of arbitration clauses in agreements between consumers and product or service providers
2. Payday, auto title, and similar lending products
3. Reporting of consumers’ financial data to credit bureaus and consumer reporting agencies
4. Ensuring that debt collection practices abide by all applicable laws

Despite its own intentions, however, the CFPB as we know it today may be fundamentally transformed – or potentially dismantled – in the 115th Congress. Especially in light of the PHH Corp. case, which found the agency’s single-Director structure to be unconstitutional (a summary of the decision is available [here](#)² and further discussion of its impact is below), we expect President-Elect Trump to immediately replace Director Cordray with a director that is more acceptable to congressional Republicans (i.e., is perceived as better balancing the needs of industry and consumers). In fact, if Republicans are successful with their comprehensive CFPB reforms, the Bureau would be reconstituted to a five-member commission that is subject to congressional appropriations.

Barring a freeze on agency rulemakings, the SEC and the CFTC will continue to face the challenges of coordinating their rulemakings to ensure regulatory consistency across both agencies. At the CFTC, two new Commissioners may fill out the five-member commission if the Senate moves forward with a confirmation hearing. If both are confirmed, the Commission will have three Republicans, including Chairman Timothy Massad, and two Democrats. However, as noted above, Congress may now hold off on confirming the nominees to allow President-Elect Trump to fill the positions. We anticipate the CFTC will continue to focus on automated trading, over-the-counter derivatives, and cybersecurity in 2017. Likewise, we expect the SEC next year to focus on cybersecurity and automated trading, as well as its own Fiduciary Rule proposal, which is expected in spring 2017.

The SEC’s delay in proposing its Fiduciary Rule proposal has been the source of much contention, as the Department of Labor’s (DOL) version of the proposal (as discussed further below) has been met with harsh criticism and many are looking to the SEC to propose a middle-ground approach. Notably, depending on whether Congress and President-Elect Trump decide to again take on the issue, we may see action that prevents the agencies from implementing and enforcing their respective rulemakings.

Other financial regulatory agencies, including the Federal Reserve, the Federal Deposit Insurance Corporation (FDIC), and Office of the Comptroller of the Currency (OCC) also will continue their efforts to implement the Dodd-Frank Act and otherwise address the stability of the banking system. Comptroller of the Currency Thomas J. Curry’s term will expire in April 2017 and FDIC Chairman Martin Gruenberg’s term will expire in November 2017, creating two important vacancies for the Trump Administration to fill during its first year. In selecting nominees, President-Elect Trump is likely to face opposition from Senator Elizabeth Warren (D-MA) and other Senate progressives, who would seek to block any nominees they view as too in line with Wall Street. In the end, that opposition will likely not limit a Trump Administration in filling vacant posts, other than potentially causing delays.

Too-Big-To-Fail and Banking Practices

In September, the CFPB assessed a \$100 million fine – the largest fine in the agency’s history – against Wells Fargo for illegally opening unauthorized accounts in order to boost sales figures. This prompted hearings in both the Senate and the House, in which Republicans and Democrats alike – in a rare showing of bipartisan unity – strongly criticized Wells Fargo for its incentive structure and business practices. We expect the enforcement actions involving Wells Fargo to be a catalyst for continued hearings and legislative proposals, addressing incentive compensation, cross-marketing practices, and “too big to fail” financial institutions. Given the unified front of both parties during the Wells Fargo hearings, further oversight from both lawmakers and federal regulators is likely.

With regard to the banking industry as a whole, we expect that an unlikely populist duo in Ranking Member Brown and President-Elect Trump could make reinstating the Glass-Steagall Act (Glass-Steagall) a priority. In 1999, Congress amended Glass-Steagall to permit affiliations between banks and investment banks. Reinstating the prohibition against such affiliations would represent a dramatic change to the financial industry. Thus, we do not expect any such efforts to succeed in a divided Congress. But if Senator Brown and President Elect Trump align on this issue, anything is possible. Still, while Republicans ultimately will control the Senate Banking Committee’s agenda, the combined influence of President-Elect Trump and Senator Brown, coupled with the nature of a narrowly divided Senate, will likely have a substantial influence in shaping the debate and potentially set the stage for future reforms.

² <http://www.squirepattonboggs.com/~/media/files/insights/publications/2016/10/another-loss-for-the-cfpb/cfpbalert.pdf>

Housing Finance Reform

Housing finance reform (also known as Government-Sponsored Enterprise (GSE) Reform) remains a top, yet elusive, priority for policymakers and will continue to be an issue in 2017. With eight years having passed since Fannie Mae and Freddie Mac (both GSEs) were placed under the conservatorship of the Federal Housing Financial Agency (FHFA), the time has come for reform.

Setting the stage for the most-recent round of debate on the issue, Senators Bob Corker (R-TN) and Mark Warner (D-VA) in 2013 put together a comprehensive GSE Reform bill that would:

1. Unwind the GSEs
2. Authorize the creation of privately capitalized guarantors to support conventional mortgage securities
3. Install a government backstop that would offer a common securitization platform and provide catastrophic re-insurance

Building on these efforts, in 2014, Senators Tim Johnson (D-SD) and Mike Crapo introduced similar and more expansive legislation to reform the GSEs. While that bill gained momentum and passed out of the Senate Banking Committee, it never came to a floor vote. Since that time, the divisiveness of the issue has largely prevented other comprehensive GSE Reform efforts from getting off the ground in the Senate.

Similarly in the House, GSE Reform has failed to gain much traction. In 2013, the House Financial Services Committee approved the *Protecting American Taxpayers and Homeowners Act of 2013* (PATH Act), but it also never came to a floor vote. The bill differed substantially from the aforementioned Senate bills. The PATH Act included provisions to wind-down the GSEs, but eliminated any government support for conventional mortgage securities.

Recently Congress has renewed its push to take action on GSE Reform. Senator Warner, who has been a leading proponent of GSE reform on the Senate Banking Committee, has publicly supported a housing finance reform plan that would merge the GSEs into a federal corporation. Moreover, on October 28, 2016, President Obama's administration called on Congress to rethink its approach to GSE Reform by offering a set of guiding principles. Specifically, U.S. Treasury Department officials Antonio Weiss and Karen Dynan highlighted the fact that the GSEs primarily are serving borrowers with average credit scores of 750, and offered a platform for GSE Reform that focuses on affordability and access to credit.

With Chairman Crapo – who has been a leader on GSE Reform in the past – and Ranking Member Brown leading the Banking Committee, the Senate is well-positioned to take on the issue next year. Chairman Hensarling understands the need for GSE reform, so we may also see him make another attempt to reform America's housing finance system.

Regardless, with the GSEs prohibited from rebuilding capital and their capital reserves scheduled to be drawn down in 2018, we expect Congress will feel pressure to address this issue in 2017 – an issue that may become the priority once discussions on financial services regulatory reform either are successful or (more likely) fall apart.

Terrorism Financing

With the growing rate of terror attacks and threats in the U.S. and abroad, both Congress and the Trump Administration will continue to focus on national security as one of their top priorities. In particular, there has been a growing interest in Washington on the role that terrorism financing plays in facilitating such activity, and how policymakers can adjust the nation's banking laws to curb such illicit activity.

At the beginning of the 114th Congress, the House Financial Services Committee established the Task Force to Investigate Terrorism Financing, which has held numerous hearings and already resulted in the introduction of bills addressing topics such as beneficial ownership, geographic targeting, and asset seizure. Looking ahead, the Task Force appears on track to release its full report and recommendations this fall. Moreover, given that Chairman Hensarling will remain at the Financial Services Committee's helm, it is possible, though not yet known, whether he will seek to extend the Task Force's authority into the 115th Congress. Note too, with President-Elect Trump's focus on defeating ISIL, he too will likely be supportive of further efforts to curb terrorism finance.

Additionally, earlier this year, the U.S. Treasury Department, along with the Federal Reserve Board, FDIC, OCC, and National Credit Union Administration (NCUA) (collectively, the Federal Banking Agencies) recently issued a "Joint Fact Sheet on Foreign Correspondent Banking," which, among other things, explains that, while the Treasury Department's Office of Foreign Assets Control (OFAC) generally administers U.S. sanctions, and its Financial Crimes Enforcement Network (FinCEN) generally administers AML/CTF laws, the Federal Banking Agencies have a role as well.

Relatedly, the OCC recently issued "de-risking" guidance, which sets forth its expectations for banks with respect to terminating foreign correspondent banking relationships. Per the OCC, banks should take into account the risks present in foreign financial institutions' businesses and markets, the anticipated account activity, and the supervisory regime of the geographic location in which the foreign financial institution is licensed. The guidance also indicates that banks should periodically reevaluate all foreign correspondent banking relationships and base any decisions to terminate these relationships on such reevaluations. The OCC also released "best practices" for banks with regard to these risk reevaluations, which include:

1. Establishing a governance function to review and monitor recommendations regarding the termination of foreign accounts
2. Ensuring that, to the extent permitted by law, decisions are properly communicated to both senior management and the foreign financial institution in question
3. Ensuring proper documentation of the decision-making process before taking any steps to terminate a foreign correspondent accounts

As part of that process, the OCC expects banks to consider the effects account closures might have on the foreign financial institution, particularly with respect to accessing banking services. Some bankers have expressed concern that the guidance might have the opposite effect of what was intended. Thus, further regulatory action may well be required going forward.

The Role of the Consumer Financial Protection Bureau

The 115th Congress will see continued efforts by Republican lawmakers to curb the regulatory authority of the CFPB. Though the agency was created to protect consumers, there is a growing argument by many conservatives (and even some Democrats) that the Bureau is an “unaccountable Leviathan” that often takes action that exceeds the scope of its authority. Such arguments are likely to be bolstered going forward as the result of recent litigation against the Bureau in *PHH Corp. v. CFPB*, decided last month.

Specifically, the D.C. Circuit vacated a US\$109 million enforcement order by the CFPB against mortgage lender PHH Corp., finding both the CFPB’s structure unconstitutional and its interpretation of the *Real Estate Settlement Procedures Act* (RESPA) unreasonable. We expect lawmakers to use the court’s decision to further legislation that would:

1. Replace the current single Director with a bipartisan, five-member commission
2. Subject the CFPB to congressional oversight and appropriations

Such legislation has already passed the House this year by a vote of 239-185, but has not been considered in the Senate; that is likely to change next year. Though Senate Banking Committee Ranking Member Brown will certainly oppose such efforts, the makeup of the 115th Congress, coupled with a Trump Administration, means these changes will likely make it across the finish line in 2017.

Beyond making the structural changes outlined above, House Republicans have also pushed more specific changes and reforms to the CFPB, including, among other things:

1. Establishing an independent, Senate-confirmed Inspector General for the CFPB
2. Requiring the CFPB to obtain permission before collecting personally identifiable information on consumers
3. Repealing the CFPB’s authority to ban bank products or services it deems “abusive”

4. Repealing the CFPB’s indirect auto lending guidance
5. Permitting states and tribes to request an unconditional five-year waiver from the CFPB’s regulation governing short-term, small-dollar credit
6. Repealing the CFPB’s authority to prohibit arbitration clauses in financial services contracts

As with the structural changes to the CFPB mentioned above, Democrats – especially Senators Brown and Warren – will push back against such efforts. However, we foresee an emboldened conservative base pushing forward with these reforms, which have the potential to become law next Congress.

Department of Labor’s Fiduciary Rule

After years of effort – including a previous proposal that was pursued and ultimately withdrawn – in April 2016, DOL issued the final version of its Fiduciary Rule, which requires brokers to act exclusively in their clients’ best financial interest when offering retirement advice. Opponents of the rule say that it will limit access to retirement advice for small savers and hurt small businesses. Proponents argue it is necessary to protect investors. As a result of the significant feedback and concerns provided to the agency, DOL recently issued its first set of answers to frequently asked questions (FAQs) (34 in total) about the rule. According to Phylis Borzi, Assistant Secretary for Employee-Benefits Security, the FAQs are based on input received from financial services firms and other stakeholders and are “an important part of the regulatory process as they allow the department to clarify important parts of the rule and head off misunderstandings that could lead to bad results for retirement savers, or financial services professionals.” The agency’s clarification, however, is unlikely to mollify critics of the proposal.

In fact, while the rule enters into force next April, DOL continues to face both legal challenges from industry and pushback from Republican lawmakers on Capitol Hill. In fact, this past spring, Congress approved a resolution that would effectively block the Fiduciary Rule and replace it with a congressionally-mandated fiduciary standard. That resolution was vetoed by President Obama, and neither chamber was able to garner the two-thirds vote required to override the veto. Not to be deterred, in July 2016, House lawmakers approved a spending bill including a provision that would prohibit DOL from enforcing the rule. The appropriations process is likely to be finalized when Congress returns to Washington following the election, though Democrats are sure to fight Republican attempts to include any such provision in the bill.

These efforts are not expected to end this year, however, as Chairman Hensarling is likely to push forward with the CHOICE Act, which also seeks to repeal the Fiduciary Rule and would restrict DOL from promulgating similar regulations until after the SEC implements its own version of the rule. Given that both chambers have previously passed legislation to block DOL’s rule (with such efforts being part of the GOP’s platform), coupled with President-Elect Trump’s general distaste for overregulation, policymakers have the potential to again come together next Congress and take action to stop the rule before it takes effect.

FinTech

As innovation in the FinTech sector outpaces existing regulations, federal agencies and Congress are taking important steps to better regulate new technologies impacting the financial services industry. FinTech firms offer many compelling benefits for consumers, such as lower costs, expanded access to unserved markets, and user-friendly interfaces, but also pose challenges for regulators since FinTech companies are not subject to some of the same capital and community reinvestment standards applicable to banks.

The House Financial Services Subcommittee on Financial Institutions and Consumer Credit held a hearing in July 2016 that examined the opportunities and challenges with FinTech, with a specific focus on online marketplace lending. The hearing revealed bipartisan interest in the development of new FinTech companies that provide loans to small businesses and consumers. Members discussed developing new means by which consumers can access credit, while also expressing concerns about determining the appropriate regulatory framework for FinTech companies.

In September 2016, Representative Patrick McHenry (R-NC) introduced the *Financial Services Innovation Act of 2016*, which attempts to create a regulatory “sandbox” approach for FinTech firms. The sandbox approach, which loosely mirrors a similar program in the UK, lets companies work alongside a regulator when testing a FinTech product or service. The bill intends to give these firms the ability to test a new product or service with a limited launch without going through the full regulatory process. Representative McHenry’s bill also requires 12 financial federal regulators to develop an internal “Financial Services Innovation Office” where companies can seek help in testing a product or service. We anticipate this bill will serve as a starting point in 2017 for congressional action on FinTech legislation, although it is unclear whether both sides will be able to agree on enough issues to garner widespread support. Based on conversations we have had recently with senior staff, the Senate is poised to start looking at these issues as well.

Moreover, financial services regulators are making progress on the issue. Last month, the OCC released a framework for how it would approach FinTech regulation, a necessary step before it decides whether to issue a national charter for FinTech firms. The framework, which coincided with the OCC’s plan to establish an Office of Innovation to oversee FinTech developments, lays out recommendations for outreach, training, and technical assistance. Following the announcement, Comptroller of the Currency Curry underscored that the OCC has the authority to issue a charter to companies that engage in at least one of three core banking functions: taking deposits, paying checks, or lending money. In his view, many FinTech startups perform those activities. As such, the OCC is continuing to evaluate and will soon announce whether it will begin allowing FinTech startups access to national bank charters, and under what conditions.

High-Frequency Trading

With Michael Lewis’ popular book *Flash Boys* putting high frequency trading (HFT) in the spotlight, such trading has seen extensive press coverage from detractors who argue that it disturbs the normal functioning of markets and provides traders an unfair advantage. On the other hand, HFT supporters argue that the increased liquidity and narrower spreads are beneficial to the markets.

In recent years, the SEC and the CFTC have taken steps to put HFT under closer scrutiny, both through regulatory proposals and enforcement actions. The SEC, for example, has proposed requiring certain HFT broker-dealers to register with the Financial Industry Regulatory Authority (FINRA). On the enforcement front, the SEC announced settlements in January 2016 with Barclays and Credit Suisse totaling more than \$150 million, over allegations that Barclays had misled its investors on HFT practices permitted on its private trading platforms known as dark pools and that Credit Suisse failed to operate its trading systems as advertised.

As for the CFTC, in late 2015, the agency released a proposed rule, Regulation Automated Trading (Reg AT), designed to broadly update the CFTC’s rules on trading practices and minimize the potential for market disruptions caused by algorithmic trading. Reg AT mandates risk controls for the exchanges; large financial firms called “clearing members” of the exchanges; and firms that trade heavily on the exchanges for their own accounts. The rule also proposes requiring the registration of proprietary traders engaging in algorithmic trading on regulated exchanges through what is called “direct electronic access.” CFTC Chairman Timothy Massad recently said the agency is focused on finalizing Reg AT this fall and would be making several changes to take into account stakeholder feedback; however, he emphasized that the agency will nevertheless proceed with finalizing and implementing the rule.

In response to SEC and CFTC’s recent moves to better regulate HFT, lawmakers have taken up the issue in oversight hearings. In a March hearing of the Senate Banking Subcommittee on Securities, Insurance, and Investment, for example, Senators Crapo and Warner expressed concerns about increased market speed, complexity, and potential market fragility as a result of increased automated trading. Although no legislation was introduced in the 114th Congress directly affecting the regulation or oversight of HFT, several bills have been introduced imposing a tax on the types of financial transactions involving securities and derivatives, although none have advanced beyond committee. Despite these proposals, we do not expect HFT to be an immediate priority in the 115th Congress or for President Trump. We do, however, expect that Congress will continue to insist upon effective oversight of the HFT industry and those regulators with jurisdiction over such traders.

Regulation of the Insurance Industry

For the last several years, there has been growing concern among various U.S. policymakers with regard to the influential role that international bodies (e.g., Financial Stability Board and International Association of Insurance Supervisors) have on banking and insurance regulation in the United States. For example, in February of this year, the House Financial Services Committee held a hearing to discuss how best to coordinate global and domestic insurance policy, promote a competitive marketplace that allows U.S. insurers to effectively compete with international counterparts, preserve the authority of the states to regulate insurance, and enhance cooperation between state and federal entities on both international and domestic insurance regulatory regimes.

With regard to international insurance regulation, the European Union and international insurance authorities are crafting new regulatory standards for insurance companies that may significantly impact American insurers. These include capital standards and solvency standards. In response, the National Association of Insurance Commissioners is considering its own capital regime and has adopted a model law for the supervision of internationally active insurance groups.

Additionally, the Board of Governors of the Federal Reserve System issued an Advance Notice of Proposed Rulemaking seeking public comment on proposed capital standards for systemically important insurers (SIIIs) and insurers subject to the Board's supervision as a result of their ownership of a federally insured bank or thrift (Non-SIIIs). This proposal invited comment on two alternative capital regimes:

1. A so-called "building block" approach that would be based largely upon current state standards
2. A "consolidated" approach, which would be based upon Generally Accepted Accounting Principles (GAAP) accounting and be closer to current bank capital standards

The Federal Reserve is expected to release a Notice of Proposed Rulemaking (NPRM) on these standards early next year. Although insurance regulation has received less attention in the past few months, we anticipate renewed attention in the 115th Congress.

Cybersecurity

Over the past several years, increasing threats to sensitive financial data have vaulted cybersecurity to the top of financial regulators' agendas. For example, SEC Chairman Mary Jo White recently noted that cybersecurity is the biggest risk factor facing the financial system today. As such, the SEC has made compliance examinations of broker-dealers and investment advisers an important part of its regulatory oversight. Moreover, the SEC last year adopted Regulation Systems Compliance and Integrity (Reg SCI), which was designed to strengthen the technology infrastructure of the U.S. securities markets.

Likewise, in September 2016, the CFTC adopted a set of rules that will require frequent testing of information technology at U.S. commodities and derivatives firms, including exchanges and clearinghouses. Key elements of the rules include specified cybersecurity testing; minimum testing frequency; use of independent contractors; testing scope; and internal reporting, review, and remediation.

Following the lead of the SEC and CFTC, this past October, the Federal Reserve, FDIC, and OCC issued an NPRM on a set of enhanced cybersecurity risk-management and resilience standards that would apply to large and interconnected entities under their supervision. Among several proposals, the agencies are considering establishing enhanced standards to increase the operational resilience of covered entities and reduce the impact on the financial system in case of a cyber event. The agencies are also considering implementing the enhanced standards in a tiered manner, imposing more stringent standards on the systems of those entities that are critical to the functioning of the financial sector. The comment period for the proposed rulemaking closes in January 2017.

Congress has also made progress in cybersecurity during its current term, passing the *Cybersecurity Information Sharing Act of 2015* (CISA) that eventually was signed into law at the end of last year. Among its numerous provisions, the law involves two key components. First, CISA authorizes companies to monitor and implement defensive measures on their own information systems to counter cyber threats. Second, it provides certain protections to encourage companies to voluntarily share information with all levels of government and private companies, specifically any information concerning "cyber threat indicators" or "defensive measures." Given the regulatory focus and importance of protecting against cyber vulnerabilities, we anticipate that cybersecurity – especially in the context of financial services – will remain a growing area of interest in the 115th Congress that is primed for further legislative action.

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Food and Agricultural Policy

Likely Major Policy Developments

Under President Obama and Secretary of Agriculture Tom Vilsack, the Obama Administration brought a renewed focus on food and agriculture-related policy issues, calling on Members of Congress to strengthen existing programs while also developing new initiatives aimed at increasing healthy eating habits across the country, supporting local farmers, and improving consumers' access to information about the food they eat.

With the current farm bill set to expire in 2018, as well as several other key issues on the horizon, the 115th Congress is shaping up to be a busy two years. Notably, President-Elect Trump and influential Members of the Republican-controlled House and Senate have pledged to focus their efforts on reforming existing federal food and agricultural policies. Additionally, current child nutrition programs expired on September 30, 2015, and Congress has yet to pass a reauthorization bill. While proponents of child nutrition reauthorization legislation had good reason to get their hopes up earlier this year when the Senate took steps to expedite its bill, it was ultimately held up before reaching the Senate floor. The House child nutrition reauthorization legislation contains significant differences from its counterpart in the Senate, making it unlikely there will be enough time to pass respective bills and agree on a final package by the end of the year. With respect to genetically modified organisms (GMOs), in July 2016, after months of heated debate, Congress ultimately passed a bill that establishes a national labeling standard for products containing GMOs and preempts all state-level labeling laws. All eyes are now on the U.S. Department of Agriculture (USDA), which is tasked with developing regulations implementing the GMO labeling bill. Finally, we expect there to be significant, continued congressional oversight of agencies responsible for the implementation of food and agriculture programs.

Farm Bill

With Republicans in control of both the Senate and House, the 115th Congress will mark the first time in 20 years that Republican chairmen of both Agriculture Committees will work together to pass a farm bill. In the 114th Congress, Senator Pat Roberts (R-KS) and Representative Mike Conaway (R-TX) became chairmen of the Senate and House Agriculture Committees, respectively, and they are expected to retain the top committee spots during the 115th Congress.

Although the current farm bill was nearly two years overdue, omnibus farm bill legislation is typically enacted every four to six years. The latest farm bill contains 12 titles and sets the guidelines for the nation's food and farming system. The 2014 bill is expected to cost nearly \$956 billion over the ten-year window, with approximately 80 percent of the costs directed toward nutrition programs, namely the Supplemental Nutrition Assistance Program (SNAP), formerly known as the Food Stamp Program.

While congressional staff have reportedly begun initial talks on the next farm bill, more formal, Member-level discussions will likely be postponed until the start of the 115th Congress. As in past years, the next farm bill will require lawmakers to compromise, and we can expect the committees of jurisdiction to use congressional hearings to discuss key issues. President-Elect Trump has not yet offered many specifics on food or farm policies. Since lawmakers will ultimately need President-Elect Trump's stamp of approval for any farm bill legislation during the 115th Congress, we anticipate leaders of the Agriculture Committees will display a willingness to work closely with the Trump Administration on key initiatives.

Nutrition

In 2013, under intense pressure from a small faction of the Republican party, House leadership made the decision to split the farm bill into two separate floor packages – one for nutrition, and one for the remaining 11 titles. While in conference, the two House-passed bills were ultimately united into one larger package to reflect the structure of the Senate-passed bill. Some Members have suggested the next farm bill should permanently separate the nutrition title from the larger package; however, President-Elect Trump, other Members of Congress, and the majority of outside farm groups have indicated their opposition to this proposal, arguing that the next farm bill must include both sets of provisions in order to pass. Chairmen Roberts and Conaway have not specified whether or not they will pursue that effort, as it may prove to be politically unfavorable, if not impossible.

In the 114th Congress, Chairman Conaway carried out a top-to-bottom review campaign of SNAP, leading 17 nutrition-focused hearings, 11 of which were part of the committee's "Past, Present, and Future of SNAP" campaign. We expect lawmakers will use the insights gained during these hearings as they consider proposals for reforming the SNAP in the next farm bill. Although it is unclear how the Republican-led committees plan to restructure the program, it is likely they will continue to focus on proposals aimed at reducing fraud and increasing efficiencies within the program in order to lower overall spending. Just as they have in the past, congressional Democrats can be expected to oppose any attempts to cut funding for the program. President-Elect Trump has not specifically outlined a plan to alter current nutrition programs; however, in the past he has made clear his belief that SNAP should be a temporary solution to families during hard times and should have proper oversight in order to prevent fraud.

Commodities

Unlike the direct payment program under Title I of the 2008 Farm Bill, which issued certain crop payments regardless of the market's stability, the 2014 Farm Bill authorized two safety net programs – the Agriculture Risk Coverage (ARC) and Price Loss Coverage (PLC) – to provide financial assistance only when decreases in revenues or crop prices occur.

Due to low commodity prices over the last year, the USDA has spent approximately \$7 billion on farm subsidy payments, which represents a 35 percent increase from 2015 levels. The hike in spending has prompted some agriculture groups to call on lawmakers to improve the subsidy programs. Meanwhile, earlier this year, the Heritage Foundation published a report advocating the elimination of the ARC and PLC programs. As in past years, we can expect that commodity programs related to dairy and sugar will be controversial during the farm bill negotiating process.

Urban Agriculture

Senate Agriculture Committee Ranking Member Debbie Stabenow (D-MI) recently introduced a bill focused specifically on urban agriculture that she will likely push to have included as part of the next farm bill. Notably, the bill directs the USDA Secretary to establish an Office of Urban Agriculture, which would be responsible for advising the Secretary on urban agriculture policies.

Child Nutrition Reauthorization

Although the *Healthy, Hunger-Free Kids Act of 2010*, which provides funding for the school meals programs, expired on September 30, 2015, Congress has yet to advance legislation to reauthorize these programs. At this time, two separate versions of the bill are pending in the House and Senate, and it is unlikely that Congress will successfully advance a bill through both chambers before the end of the year. While the Senate Agriculture Committee unanimously approved its version of the bill in January 2016, several unrelated issues have prevented the measure from moving forward. Most recently, the Senate bill was expected to be hotlined, but was reportedly held up at the last minute by Senate Democratic leadership due to concerns expressed by the National Education Association (NEA) that the bill would make it more difficult for schools to process students' applications for free and reduced meals. The House bill has also proven to be somewhat controversial, with certain groups arguing the bill would significantly reduce schools' abilities to ensure that qualifying students receive free or reduced school meals. Meanwhile, others opposing the bill have said it would interfere with USDA's efforts to improve school nutrition standards. If a bill is not passed by both chambers before the end of 2016, the programs will remain unchanged and the legislative process will start over in the 115th Congress. With the upcoming retirement of current House Education and Workforce Committee Chairman John Kline (R-MN), we expect Representative Virginia Foxx (R-NC) will take his place on the committee. In the most recent committee markup of the House bill, Representative Foxx voted in favor of some controversial measures, suggesting she will likely advocate for a similar child nutrition reauthorization bill that contains those provisions when she takes over as Chairman in January.

GMO Labeling

In July 2016, a GMO-labeling bill was enacted, requiring all food companies to label products containing genetically engineered ingredients and directing USDA to develop regulations to implement the new mandatory disclosure requirements for bioengineered foods by July 2018. Secretary Vilsack has announced plans to issue a Notice of Proposed Rulemaking before the end of the year. While Congress provided some guidance as to which foods would qualify as bioengineered, the USDA has not stated whether it will treat products differently if the GMO ingredients are no longer detectable, or if the regulations will account for differences in the types of GMOs used. Additionally, the USDA will need to determine how companies must disclose the presence of GMO ingredients in their products. The law requires USDA to, within one year of the bill's passage, identify "potential technological challenges" that may affect whether consumers would have access to electronic or digital bioengineering disclosures. If the USDA determines that these types of disclosures are not sufficient, then the agency is required to consult with food retailers and manufacturers to identify "additional and comparable" disclosure methods. Although President-Elect Trump has not issued specific comments as to how his administration plans to oversee implementation, he previously expressed his appreciation of the benefits of biotechnology while also emphasizing his belief that consumers have a right to know what is in their food. Given President-Elect Trump's previous remarks, we can expect he will direct USDA to consider industry stakeholders' and consumers' concerns during the rulemaking process.

Anticipated Congressional Committee Developments

Senate Agriculture Committee

Both Chairman Pat Roberts (R-KS) and Ranking Member Debbie Stabenow (D-MI) are expected to retain their current positions as Chairman and Ranking Member.

House Agriculture Committee

Chairman Mike Conaway (R-TX) and Ranking Member Collin Peterson (D-MN) will continue to serve as Chairman and Ranking Member.

House Education and the Workforce Committee

With the retirement of current House Education and the Workforce Committee Chairman John Kline (R-MN), Representative Virginia Foxx (R-NC) is expected to become the Chairman of the committee, which has jurisdiction over school lunch and child nutrition programs. Representative Bobby Scott (D-VA) is expected to continue serving as Ranking Member.

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Foreign Policy

Likely Major Policy Developments

China

Managing relations with China is one of the greatest foreign policy challenges facing the United States today. Chinese power is growing, and China's assertiveness is increasing with it. Accordingly, American policy toward China under the new administration will need to maintain a careful balance between deterrence and cooperation.

The Obama Administration's Asia "pivot" was designed to strengthen America's political, economic, and military hand in the region. Under the pivot, the U.S. is directly engaging bilaterally with China, fostering relationships with China's neighbors, and pushing back against Chinese efforts in the region, including the dispute with Japan in the East China Sea. At heart is a search for a regional "balance of power" where the interests of the U.S., China, and China's neighbors are accommodated. While it remains to be seen how exactly the President-Elect decides to handle the broader strategic relationship with Asia, his views on trade with China are more defined.

Throughout the campaign, the President-Elect has been a vocal critic of Chinese trade practices. Among his statements on the campaign trail, he said he would label China a currency manipulator and promised to bring more trade cases against the country. Interestingly, he may have a sympathetic partner in new Senate Minority Leader Chuck Schumer (D-NY), a longtime critic of China's economic policies. Regardless, President-Elect Trump is expected to be more willing than President Obama to confront China on the enforcement of its trade obligations. Whether he can mount an effective challenge on trade, without significantly disrupting the broader relationship, will be closely watched.

Middle East

Another pressing task for President-Elect Trump is to define his overall strategy for the Middle East. The region cries out for stability and a balance between contending powers with interests in the area – Iran, Russia, Saudi Arabia, Turkey, and Egypt. The strategy must focus on the right mix of American policy instruments - political, diplomatic, and military. It will have to fix achievable objectives which can sustain a commitment of U.S. prestige and resources. It must be highly selective in deploying U.S. military forces.

Syria

President-Elect Trump faces two issues in Syria: ISIL and the civil war. Each requires its own strategy.

The priority must continue to be the defeat and elimination of ISIL in Syria, Iraq, and wherever ISIL shows its head in or outside the Middle East. That requires the commitment of American diplomatic resources to continue the mobilization of an anti-ISIL coalition, high-quality intelligence and intelligence cooperation with allies, and limited use of American forces in support of the campaign against ISIL.

Regarding the civil war in Syria, the new administration must continue to seek agreement among the United States, Russia, Iran, Turkey, and Saudi Arabia about Syria's future. On the basis of such an understanding, the United States will have to gain consensus to end support from the outside for proxy forces and apply pressure to establish a transitional government, new constitution, and an election. There is no place in the transition or in Syria's future for ISIL or Jabhat al-Nusra. The form of a new government for Syria is important; agreement about which among outside and internal parties is the *sine qua non* of a successful Syria policy. Without it there cannot be a sustainable consensus among the international and domestic actors. That agreement must limit sharply the powers of the presidency, thereby reducing the abuses inflicted on Syria by the Assad regime.

No fly zones, safe zones, and cease fires will have to be negotiated; they cannot be imposed. They must be part of a process and an agreement about a political future. They will have to be negotiated with outside parties.

It is important to make it clear to Russia that the United States can live with Russian influence in Syria but not a dominant position, nor one that supports the Syrian regime to the exclusion of its opponents. Russia and the United States can work together if we pursue the common goal of a stable, sovereign Syria within its present borders whose politics are based on power-sharing and checks and balances between Syria's communities.

The American public will not support the use of American forces in the Syrian civil war. America can provide military assistance to carefully-selected Syrian rebels to strengthen their position at the bargaining table and reduce the military advantages of the Assad regime.

Syria will continue to present the world's worst humanitarian crisis since the end of World War II. The new Trump Administration should ramp up humanitarian relief for those internally displaced or at risk in Syria and its refugees in Jordan, Lebanon, and Turkey.

Iraq

The battle to destroy ISIL must be the President-Elect's top administration priority in Iraq. Second, with Iraq's communities and its government, the new administration will have to support Iraqi territorial integrity and sovereignty. The emergence of an independent Kurdistan would provoke conflict among Iraqi communities and with Iran and Turkey, and might not be supported by the administration.

United States military assistance and training to Iraq's armed forces and police and properly-constituted, government-recognized militias, including the Peshmerga, should continue to enjoy American support.

Iran

President-Elect Trump will have to set the stage for future relations with Iran, preserving the gains for the Joint Comprehensive Plan of Action (JCPOA), managing congressional pressures to increase sanctions against Iran, and maintaining solidarity with our European allies, Russia, and China. Without the support of these countries, effective sanctions pressure on Iran cannot credibly be threatened or maintained.

The Trump Administration will have to make clear to the Iranian government that the United States is open to dialogue, provided that Iran and the United States can deal with each other on the basis of strict reciprocity and address each other's priority requirements. On the American list of imperatives lie the issues of Iran's role in Syria, Gulf security, missile development, Israel's security, detention of US citizens, and human rights. High on the Iranian list are sanctions and restrictions on American and international business.

Specifically, the new administration will face three scenarios regarding the JCPOA:

- Tear up the JCPOA, adopt unilateral sanctions, and hope that democracy rises.
- Engage with Iran to the fullest extent possible, considering the JCPOA one step along a long road. Where we have differences, we will oppose, but where we have common interests, we will engage. Our objective would be to build a relationship of respect, one that aims to narrow the differences between us.
- The "Washington Consensus," which acknowledges the benefits of the JCPOA, but withholds further engagement from the U.S. government until Iran has addressed other issues (e.g., Yemen, Israel, freeing dual citizens, missile testing). Under this scenario, the U.S. government would not think of lifting sanctions but may consider tightening them, even without international, including allied, support.

To succeed, American policy toward Iran will have to be based on mutual respect and a search for peaceful Iranian exercise of influence in the region. The relationship cannot exist if Iran infringes on the security of its neighbors. Indeed, United States policy must provide reassurance to Israel and our allies in the Gulf that their security is a top Administration priority.

Kingdom of Saudi Arabia

Saudi Arabia is a key player in the Middle East and a long-standing friend and ally of the United States. At present, our relations are troubled. President-Elect Trump will have to rebuild the relationship and convince Saudi Arabia that we take its issues seriously and can be counted on to be a strong, consistent ally.

To do so requires the opening of high level contact between the President-Elect and his administration and King Salman, his court, and government. The approach will have to include a strong signal that we will never allow Saudi Arabia to be attacked from abroad and that we will grant Saudi Arabia access to first-rate American military technology and intelligence. We will also have to make it clear that the United States will maintain strong naval and other military forces in the Gulf. We will stand by Saudi Arabia's side should the Kingdom be subjected to Iranian subversion, and we intend to find appropriate means to respond if that is the case. We will also be mindful of Saudi Arabia's position as the leading power in the Sunni Arab world, and we will be sensitive to Saudi interests in Iraq, Yemen, Lebanon, and Syria. It is not our intention to see Iran weaken Saudi Arabia. To the contrary, the cause of peace in the region is best served by Saudi Arabia and Iran finding a *modus vivendi*.

The Trump Administration would be wise to reach for Gulf and regional security arrangements that would permit the region's powers to manage tensions among themselves.

It will also fall to the new administration to manage the damage flowing from the *Justice Against Sponsors of Terrorism Act* enacted into law earlier this year.

Afghanistan

The new administration must "zero base" our approach toward Afghanistan to decide on the level and duration of American support to the Afghan regime as it struggles to deal with the Taliban and build a viable Afghan state.

The United States is set to maintain 8,400 troops in Afghanistan into next year, despite original plans to keep only 5,500 troops. The security situation in Afghanistan will not permit in the short term a significant additional draw down.

It is also important to maintain NATO support for Afghanistan and international assistance to the Afghan regime.

The Afghan government will pursue initiatives with the Taliban that the U.S. Government will be asked to support, should they take shape. It will fall to the United States to convince Pakistan to support Afghanistan's sovereignty and security and help reinforce the Kabul government. Keeping the factions that constitute the Afghan government together should continue to be an American priority.

While many in this country will be disappointed by an extended timeline and Administration support for and commitment of troops, precipitous American withdrawal will have huge consequences in the region and beyond, and should be avoided.

Russia

Russia is a great power. Despite its strained economic circumstances, it intends to be taken seriously and the new administration will have to do so, even if the Russian government provokes the United States with actions it takes internationally and here at home. At no time since the end of the Cold War have Russia and the United States been further apart, an issue that complicates our already troubled international situation and makes the resolution of major global problems harder to achieve. Coupled with stress in U.S.-China relations, there is genuine cause for concern about the preservation of international peace and security. The breakdown in cooperation between the world's leading powers is a strategic issue that must be addressed by President-Elect Trump and his administration.

To begin with, President-Elect Trump may seek to make clear the Kremlin that the United States will oppose overreach and it will use punitive measures when Russia upsets the existing balance. Russia's actions in the Baltic region will remain a source of concern. As Russia pursues its interests in the Middle East, the administration may seek to deny it the ability to influence the crisis in Syria and elsewhere in the region.

The President-Elect will likely reach out to the Russian president and be prepared to say that the United States and Russia have to come to a strategic understanding. On the table will be the U.S. government's willingness to respect Russia's territorial "space." Neither the United States nor Europe should intend to extend the Western security frontier into the former Soviet Union. But the U.S. will not sit idle and may look to engage NATO where NATO member states are under threat.

Where necessary, we anticipate that sanctions will be deployed, as in the case in Ukraine.

The United States will likely support Ukraine economically and with "defensive" military equipment. The administration should also work to reduce Europe's energy dependence on Russia.

Ultimately, Russia is a great power, and the new administration should expect to consult Russia on a full range of international questions and seek accommodation based on a mutuality of interests.

India and Pakistan

Ties between India and the United States have strengthened progressively over the past fifteen years. The Obama Administration will leave office with the US-India relationship in excellent shape. President-Elect Trump can carry the relationship forward, turning US-India ties into a major strategic dimension of American foreign policy.

President-Elect Trump should make early contact with India's Prime Minister and emphasize continuity in the relationship. That will include close political consultations, intelligence sharing, defense cooperation, and strong economic and commercial ties. Trade and investment dialogues should continue to be features in the new administration's approach to India, and it should find advantage in encouraging Indian membership in the Asia-Pacific Economic Cooperation Forum.

At the same time, the President-Elect will have to pay close attention to the deteriorating relationship between India and Pakistan. For the first time in decades, India's ground forces have crossed the line of control to attack Pakistani terrorists. India did so in retaliation for terrorist attacks on Indian military and civilian targets. India has made clear that it will be prepared to escalate the use of force if Pakistani-based terrorists continue to cross into India and enjoy Pakistani state and military indulgence. Both nations are nuclear-armed, and it behooves the new administration to make it clear to Pakistan that terrorism based out of Pakistan is unacceptable to the United States and constitutes a serious breach of the international order. The United States will want to work with China to push Pakistan and its military to take action against its terrorists.

Bringing pressure along these lines threatens to complicate the supply of American forces in Afghanistan and support for the war effort there. The risk must be run. It remains in America's long-term interest to promote a strong relationship with Pakistan and to encourage it to combat terrorism at home, in Afghanistan, and across India's borders.

North Korea

North Korea's nuclear capability has increased steadily over the past fifteen years. It now represents a serious threat to South Korea, Japan, and American military deployments in East Asia. Indeed, North Korea promises to develop longer-range missiles, including those capable of reaching the continental United States.

North Korea has no intention of reining in, much less dismantling, its nuclear weapons and missiles. These weapons systems have become key pillars in the structure of the Kim family regime. North Korea's nuclear capability provides the country with leverage on the international stage and with China, as well as deterrence against what it perceives as threats from the United States.

Attempts over the past several decades to force North Korea to dismantle its nuclear system have failed, notwithstanding heavy doses of internationally supported sanctions. The bucket of sanctions is almost empty, with virtually no prospect that any additional sanctions will force North Korea to give up its nukes.

The administration should not expect China to move decisively against North Korea. Beijing is committed to the survival of North Korea, and while it does not approve of North Korea's nuclear program, it will not take action that could lead to the destruction of the North Korean regime, possible reunification of the Korean nation, and the presence of a U.S. ally – backed by U.S. troops – on its border.

The new administration will have to review its approach to North Korea and to China. With China's full cooperation in the design of a new policy, the U.S. should be willing to explore a reciprocal reduction of tensions with North Korea. It must not abandon the goal of a denuclearized Korean peninsula, but it is clear this cannot be achieved in the short run. The only hope is to contain and over time end the North Korea nuclear system. That will only occur when North Korean confidence in its security and viability have been achieved. Bringing South Korea along will be delicate but essential. South Korea and Japan will have to be persuaded of U.S. strategic support, notably the continuation of a U.S. nuclear cover. The two countries must be parties to the design and execution of our diplomacy. Persuading Congress to accept a more nuanced approach to North Korea will be especially difficult, understandably so given the brutality of the North Korean regime. Whatever road the new administration chooses to travel, it will be long, hard, and frustrating.

Other Issues

A number of other issues could demand the new administration's time and attention.

- **Africa.** Potential flashpoints in Africa include the possibility of renewed violence in the Democratic Republic of the Congo, continued efforts to defeat Boko Haram in West and Central Africa, and the critical need to regenerate trust with Egypt. The Electrify Africa initiative, endorsed by the 114th Congress, facilitates U.S. energy investments on the continent and can serve as a key component to the new administration's Africa policy.
- **Latin America.** The new administration will strongly support Colombia's efforts to salvage its peace agreement with the Revolutionary Armed Forces of Colombia and should work hard to help Argentina rebuild its credit and reintegrate into global markets. The situation in Venezuela cannot be ignored, and the United States must strengthen its relations with Brazil as the largest country in Latin America works to steady itself politically and economically.
- **Unknowns.** Unknowns, like West Africa's 2014 Ebola outbreak, can be difficult to anticipate, demand swift decisions, and draw resources and focus away from other priorities. President-Elect Trump will no doubt be tested in how he responds to such unpredictable events during his administration.

Anticipated Congressional Committee Developments

Senate Committees of Jurisdiction

Unless he joins the new administration, Senator Bob Corker (R-TN) will remain Chairman of the Senate Foreign Relations Committee, with Senator Ben Cardin (D-MD) expected to remain the top Democrat. Senator Lindsey Graham (R-SC) will stay on as Chairman of the Senate Appropriations Subcommittee on State, Foreign Operations, and Related Programs, while Senator Patrick Leahy (D-VT) will continue as Ranking Member. Senator Richard Burr (R-NC) will chair the Senate Select Committee on Intelligence, while Senator Dianne Feinstein (D-CA) will continue as the most senior Democrat on the Committee.

House Committees of Jurisdiction

Representative Ed Royce (R-CA) will continue as Chairman of the House Foreign Affairs Committee, while Representative Eliot Engel (D-NY) will remain the Democrats' top committee member. Representative Kay Granger (R-TX) is term-limited and will have to yield control of the House Appropriations Subcommittee on State, Foreign Operations, and Related Programs. As the next most senior Republican on the subcommittee, Representative Mario Diaz-Balart (R-FL) may seek the chairmanship. Representative Nita Lowey (D-NY) will continue to lead the Democrats on the subcommittee. Representative Devin Nunes (R-CA) will continue to lead the House Select Committee on Intelligence, while Representative Adam Schiff (D-CA) will retain the top Democratic position on the committee.

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Health Care Policy

Likely Major Policy Developments

Republican critiques of the *Patient Protection and Affordable Care Act* (ACA) have been significant since the major health care reform was signed into law in 2010, and the time has come for Republicans to tend to their campaign promises to take action on it. While he has not gone into great detail on his full health policy agenda, President-Elect Trump has repeatedly stated that the ACA is a “disaster,” and he vowed to hold a “special session” of Congress to repeal and replace the law. The Republican-controlled Congress will work with him on this mission, as both Speaker of the House Paul Ryan (R-WI) and Senate Majority Leader Mitch McConnell (R-KY) have stated that taking action on the ACA is high on their respective priority lists.

President-Elect Trump and Republican leaders on Capitol Hill will not repeal the full ACA. The ACA is a massive reform law with many interlocking parts, and there are numerous provisions that Republicans tolerate or support, such as those that focus on guaranteed coverage for pre-existing conditions, preventing fraud and abuse, and young adult insurance coverage. Additionally, the health care sector has spent more than six years adjusting and implementing the law, and many aspects are now ingrained in the system. The required cost offsets will also be a concern.

Democrats maintain enough seats in the Senate to muster a filibuster to stop ACA repeal efforts, yet Republicans hold the option of utilizing the budget reconciliation process to address health reforms on their own. Reconciliation limits debate in the Senate to 20 hours and does not require the 60 votes necessary to break a filibuster. However, under the Byrd Rule, reconciliation is limited to provisions with a budgetary impact.

Last year, Congress passed legislation to repeal portions of the ACA through reconciliation in the *Restoring Americans’ Healthcare Freedom Reconciliation Act* (H.R. 3762), which was vetoed by President Obama. With President Obama no longer holding the veto pen, there is expectation that President-Elect Trump’s first ACA move will mirror this battle-tested legislation. The *Restoring Americans’ Healthcare Freedom Reconciliation Act* provides for repeals of some of the most well-known ACA provisions, including the excise tax on high-premium, employer-sponsored health coverage (the “Cadillac Tax”); the tax on the sale of certain medical devices (the “Medical Device Tax”); the optional Medicaid expansion; the annual fee on health insurance providers; tax increases for higher-income individuals; the individual and employer mandates; the \$2,500 contribution limit on health flexible spending accounts; the small business tax credit; and premium tax credits.

Beyond reconciliation measures, President-Elect Trump must contemplate the content of his ACA replacement plan, which will focus on topics that are not applicable to reconciliation, such as certain reforms regarding insurance markets and plans. In June 2016, the Republican Task Force on Health Care released the *A Better Way*³ white paper. Authored by Budget Committee Chairman Tom Price (R-GA), Education and Workforce Committee Chairman Jon Kline (R-MN), Energy and Commerce Committee Chairman Fred Upton (R-MI), and Ways and Means Committee Chairman Kevin Brady (R-TX), this white paper may be used as President-Elect Trump’s guide for possible health reforms in the 115th Congress. They put forth an agenda that repeals the ACA and concentrates on providing more accessible, affordable, and quality health care for Americans. The proposed agenda focuses on five principles: providing more health care choices at lower cost; focusing on innovative cures and treatments; protecting all patients; increasing state flexibility in regard to Medicaid; and strengthening Medicare. Republican ACA replacement legislation is expected to focus on these five principles, in addition to a number of President-Elect Trump’s health care priorities, including the sale of insurance across state lines and the use of Health Savings Accounts.

One of Congress’s top priorities during the 114th Congress was the *21st Century Cures Act* (H.R. 6), bipartisan legislation that will remain a focus of the lame duck session. The *21st Century Cures Act* seeks to expedite the discovery, development, and delivery process with the hope of getting cures to patients faster. The bill provides increased funding for the National Institutes of Health (NIH) through a three-year reauthorization and a new funding stream through an Innovation Fund. Chairman Upton and Representative Diana DeGette (D-CO) worked diligently over the past few years on the initiative, receiving broad bipartisan and stakeholder support. In July 2015, the *21st Century Cures Act* was favorably reported out of the House.

Senate Committee on Health, Education, Labor, and Pensions (HELP) Chairman Lamar Alexander (R-TN) and Ranking Member Patty Murray (D-WA) also spearheaded medical innovation legislation in their committee. The HELP Committee held hearings on a number of separate bills and favorably reported them, but the majority of the legislation has yet to reach the Senate floor. Both Leader McConnell and Speaker Ryan support the *21st Century Cures Act* and signaled their commitment to passing the legislation during the lame duck session. House and Senate committee staff have negotiated final bill language and bipartisan cost offsets over the fall recess, but the offsets have yet to be announced.

³ <http://abetterway.speaker.gov/>

Chairman Upton, Representative DeGette, Chairman Alexander, and Ranking Member Murray applauded Vice President Biden's focus on the National Cancer Moonshot initiative. They agreed to work together on their intertwined objectives and non-partisan initiatives. The Obama Administration may push for the Cancer Moonshot, as well as its Precision Medicine Initiative, to be further connected to the *21st Century Cures Act*, in order to encourage passage and dramatically improve patient care before President-Elect Trump takes office.

Both the policy and offsets must be agreed upon in order for the revised package to be approved by both chambers and sent to President Obama's desk before the end of the year. If passage does not occur during the lame duck session, due to lack of agreement or pressure from liberal groups to include language to reduce drug prices, the revised package will be revisited in the 115th Congress, where additional divisive issues on both sides of the aisle could slow down momentum for the current bipartisan legislation.

The Senate Finance Committee's work on chronic care will also garner attention during the lame duck session. Last year, following several hearings focused on chronic illness and unmet needs, Chairman Orrin Hatch (R-UT) and Ranking Member Ron Wyden (D-OR) announced a bipartisan chronic care working group, chaired by Senators Johnny Isakson (R-GA) and Mark Warner (D-VA). The working group invited interested stakeholders to submit ideas on how to improve outcomes for Medicare beneficiaries with multiple chronic health problems. After receiving 530 stakeholder comments and conducting 80 meetings, the committee released a policy options document in December. Several weeks ago, the committee released a bipartisan discussion draft based on the document, the *Creating High-Quality Results and Outcomes Necessary to Improve Chronic (CHRONIC) Care Act of 2016*; however, no cost offsets have been identified for the legislation. While the committee hopes to continue discussions during the lame duck session, the bipartisan efforts that contributed to the legislation may clear the way for committee passage in the 115th Congress.

The issue of mental health received considerable attention in the 114th Congress, and there is also an appetite for a mental health bill to be signed into law next year. Representatives Tim Murphy (R-PA) and Eddie Bernice Johnson (D-TX) introduced the *Helping Families in Mental Health Crisis Act of 2016* (H.R. 2646). The bill, which passed the House of Representatives in July, focuses on reforming the Substance Abuse and Mental Health Services Administration. In the Senate, Senators Bill Cassidy (R-LA) and Chris Murphy (D-CT) led the charge on similar legislation. The Senate HELP Committee passed the *Mental Health Reform Act of 2016*, sponsored by Chairman Alexander, in April 2016. President-Elect Trump is supportive of Congress's work on mental health reform and believes the legislation should receive broad bipartisan support.

The *Prescription Drug User Fee Act* (PDUFA) and the *Medical Device User Fee Amendments* (MDUFA) both expire in 2017 and will be reauthorized in the coming year. PDUFA authorizes the Food and Drug Administration (FDA) to collect fees from pharmaceutical companies to help fund the agency's drug review work. Stakeholders are satisfied with the progress PDUFA V made, but hope that PDUFA VI will include further efforts to involve the patient perspective in the drug development process, build on FDA's Sentinel System for active surveillance of safety issues, and enhance regulatory science initiatives like patient-reported outcomes and biomarkers. If the *21st Century Cures Act* does not become law during the lame duck session, there may be an attempt to include many of the FDA policies in PDUFA VI. Incorporating drug pricing into the conversation is also a real possibility. MDUFA IV is expected to focus on the FDA's speed of reviewing medical technologies and the return industry receives from user fee investment.

Children's Health Insurance Program (CHIP) reauthorization will also be one of the major pieces of health care legislation next year. Funding for the program expires on September 30, 2017. States are already urging early action in the hopes of incorporating funding into their budgets, most of which will begin on July 1. Early action, however, could be blocked by campaign promises. Many are wary of a children's health bill becoming the vehicle for other initiatives. Notably, CHIP was established in 1997 to provide affordable health insurance to low-income children who had few insurance options besides Medicaid; discussion over the extension will likely invoke an assessment of the current state of insurance markets for children. The reauthorization debate in both chambers will center on how far into the future funding should be extended, as well as what programmatic changes should be placed into the reauthorization. While the reauthorization package is still uncertain, with Republicans at the helm in the White House, Senate, and House of Representatives, CHIP reauthorization may include a reduction in funding levels and a repeal of provisions related to state eligibility requirements.

Although the repeal of the ACA will be polarizing, Medicare physician payments and value-based care will likely continue to be an area of common ground in the next congress and administration. With the 114th Congress's passage of the *Medicare Access and CHIP Reauthorization Act of 2015* (MACRA), many lawmakers will continue making paying providers for quality through value-based payments, and moving away from the fee-for-service system, an issue of importance in 2017. The MACRA implementation process will continue, and policymakers will further discuss expanding value-based payments and bundled payment programs to other care settings. President-Elect Trump's decision on who will be Secretary of the U.S. Department of Health and Human Services will be vital to the success of MACRA implementation efforts.

E-health will continue to be a focus of lawmakers, with House Committee on Ways and Means Subcommittee on Health Chairman Pat Tiberi (R-OH) pushing to improve the use of technology in Medicare and other federal health programs. Stakeholders have continued to lobby for enhanced coverage and reimbursement of telemedicine services in Medicare and Medicaid, with a long list of telehealth bills introduced in the 114th Congress, including provisions in the *21st Century Cures Act* and the *CHRONIC Care Act*. Proposals include utilizing telehealth services and remote patient monitoring to reduce hospital admissions, support coordination and management of patients with chronic conditions, and drive additional efficiencies and savings in the health care system. Congressional Budget Office (CBO) cost scoring continues to present an issue, and lawmakers may temporarily settle on smaller reforms, such as demonstration programs, in order to collect more data for evaluation. President-Elect Trump's limited knowledge of the e-health space suggests he will depend heavily on the expertise of others – including those in the GOP Doctors Caucus, such as Senator John Barrasso (R-WY), Representative Michael Burgess (R-TX), and Representative Tom Price (R-GA).

Anticipated Congressional Committee Developments

Senate Committees of Jurisdiction

Senator Lamar Alexander (R-TN) will remain Chairman of the Senate HELP Committee, but the next Ranking Member remains uncertain. Senator Patty Murray (D-WA) left her leadership position on the Budget Committee in 2014 to become the Ranking Member of the Senate HELP Committee. She is able to keep this role. However, retiring Senator Barbara Mikulski (D-MD) has endorsed Senator Murray to serve as Ranking Member of the Appropriations Committee. If Senator Murray decides to serve as Ranking Member on the Appropriations Committee, Senator Bernie Sanders (I-VT) is next in line to assume the Ranking Member position on the HELP Committee.

Senator Orrin Hatch (R-UT) is expected to remain the Chairman of the Senate Finance Committee, with Senator Ron Wyden (D-OR) staying on as Ranking Member.

House Committees of Jurisdiction

It is uncertain who will take over the Chairman's gavel for the House Energy and Commerce Committee in January. Representative John Shimkus (R-IL) and Representative Greg Walden (R-OR) are vying to replace Representative Fred Upton (R-MI) as Chairman, who is term limited. Both members served as Subcommittee Chairmen during Representative Upton's time as Chairman and are respected by the party. The committee chairman selection process will not begin until the House Republican Conference has elected its leadership slate for the 115th Congress, a process that should take place in mid-November. Regardless of who assumes the chairmanship, health policy will continue to be a focus with CHIP, PDUFA, and MDUFA up for reauthorization in 2017.

The House Ways and Means Committee will not see a change in leadership in the 115th Congress. Representative Kevin Brady (R-TX) will continue to serve as Chairman, and Representative Sander Levin (D-MI) will serve as the committee's Ranking Member. In addition to tax reform, the committee is expected to focus on the exchanges in the ACA, value-based purchasing, e-health, and MACRA implementation.

Anticipated Agency Developments

There is wide speculation over who President-Elect Trump will select to serve as the Secretary of the U.S. Department of Health and Human Services, with some prognosticators indicating he will select someone who showed loyalty and dedication to him during his campaign, such as neurosurgeon Ben Carson, while others suggesting he would prefer someone with significant experience in government, such as a member of the House GOP Doctors Caucus.

Depending on his decisions regarding ACA repeal and replacement, President-Elect Trump could significantly impair the law through the Executive Branch: he could halt the implementation and enforcement of various regulatory requirements; change current regulations or guidance; or simply refuse to promote certain aspects of the law, such as enrollment in health insurance plans.

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Immigration Reform

Likely Major Policy Developments

The 114th Congress will conclude with no significant immigration reform legislation having been passed by either chamber. The Republican-controlled Senate tried to pass two bills that would have restricted federal funding for so-called “sanctuary cities,” typically defined as political jurisdictions considered to be in violation of 8 U.S.C. § 1373, which restricts local law enforcement from implementing policies that prohibit the sharing of an individual’s immigration status with the federal government. Both attempts were successfully filibustered by Senate Democrats. On the House side, Republicans added funding restrictions in two separate appropriations bills, but these could be dropped in the year-end negotiations with the White House for a spending bill running through the end of FY 2017.

For proponents of reform, failure to move significant immigration reform legislation during the past two years represents a step backward from the 113th Congress (2013-2014), in which the Senate approved a comprehensive bipartisan immigration bill. While the issue has been a flashpoint between President-Elect Trump and many who opposed his candidacy, it may also ironically present him with one of the significant opportunities of his first year in office. The credibility President-Elect Trump has established on the right with many voters, who did not believe President Obama would enforce any immigration reform law he signed, may give him the running room he needs in order to pursue and enact a comprehensive reform bill. If he signals a desire to make the issue a priority during his first year in office and a willingness to work with moderate Democrats, the issue could return in force early in the 115th Congress, as pro-reform legislators on both sides of the aisle seek to move on legislation while the window of opportunity for bipartisan legislating is open.

Efforts to pass bipartisan immigration reform legislation in the House during the 113th Congress were further along than many realize. While the House never took up the Senate-passed bill and also never took up any bill of its own, a bipartisan group of House negotiators that included some key House conservatives worked quietly but steadily on the issue during much of 2013 and 2014, keeping the leadership teams on both sides of the aisle apprised of their progress at all times. The negotiators involved in this effort were Representatives Xavier Becerra (D-CA), John Yarmuth (D-CA), Luis Gutierrez (D-NY), Zoe Lofgren (D-CA), Sam Johnson (R-TX), Raul Labrador (R-ID), Mario Diaz-Balart (R-FL), and John Carter (R-TX). The negotiations were supported by then-House Ways and Means Committee Chairman Paul Ryan (R-WI) and then-House Speaker John Boehner (R-OH). Speaker Boehner, in turn, discussed the House effort directly at times with President Obama, seeking assurances that the White House would not oppose a House-driven bipartisan immigration reform process even if it sought to enact reform in a step-by-step fashion, rather than as one single, massive bill.

The House effort collapsed after rank-and-file House Republicans, who had gotten an earful from their constituents about President Obama’s public vow to circumvent Congress and enact immigration reform unilaterally if needed, rejected a series of proposed immigration reform principles offered up for discussion by Speaker John Boehner during the annual House Republican Conference Member retreat in early 2014. But the vast majority of the objections from House Republican Members to the leadership’s proposed reform principles concerned the timing of the initiative, and not the underlying policies. The substance of the proposed principles, which were intended to pave the way for step-by-step legislative action on the types of measures being contemplated by the bipartisan negotiating group, received relatively little pushback from House Republican Members.

Notwithstanding the rhetoric of the campaign, we see the opportunity to pursue comparable reforms under President-Elect Trump. In fact, if the White House and Congress were to look again at where the debate ended in 2007 and how much progress the House negotiators made in the 113th Congress, they might find common ground next year. A “step-by-step” approach similar to the one discussed by House Democrats and House Republicans in the 113th Congress could provide the basis for action on immigration reform measures during the first session of the new Congress.

Senate Committees of Jurisdiction

Senate Judiciary Committee Chairman Chuck Grassley (R-IA) and Ranking Member Patrick Leahy (D-VT) will continue to hold these positions in the 115th Congress.

House Committees of Jurisdiction

House Judiciary Committee Chairman Bob Goodlatte (R-VA) and Ranking Member John Conyers (D-MI) are expected to keep their leadership roles in the 115th Congress.

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Tax Policy

Nearly three decades have passed since the last major overhaul of the U.S. tax code. Republican and Democratic policymakers agree (often for different reasons) that reform is desperately needed. Nevertheless, Congress has thus far been unable to overcome the partisan divide and come together on how to reform the nation's tax laws. *Will this Herculean task be achieved by President-Elect Trump and a Republican Congress?* Here are our views:

As predicted in our analysis of the 2014 mid-term congressional elections, tax reform remained a priority for lawmakers in both chambers. However, this most recent round of tax reform efforts did not begin – nor will it end – with the 114th Congress. Indeed, such efforts began in earnest during the 113th Congress (2013-2014) when former House Ways and Means Committee Chairman Dave Camp (R-MI) organized tax reform working groups that culminated with the introduction of his comprehensive tax reform legislation.

This Congress (2015-2016), Senate Finance Committee Chairman Orrin Hatch (R-UT) – by way of follow up to a December 2014 Republican Finance Committee staff whitepaper on comprehensive tax reform – organized five Finance Committee working groups, which each produced a bipartisan discussion draft on various areas of tax policy (individual income tax, business income tax, savings and investment, international tax, and community development and infrastructure). More recently, and as discussed in greater detail below, earlier this year House Republicans introduced a policy paper title "A Better Way," which outlines their approach to comprehensive tax reform.

Nevertheless, despite work by both tax-writing committees over the last several years, and without active and direct personal involvement of the president, lawmakers have been unable to gain sufficient buy-in to arrive at the desired end result.

Things could be different in the 115th Congress.

While tax reform will be the major tax agenda item for the new Congress, that debate will be affected by what does or does not happen in the lame duck session, by changes in the composition of the tax committees resulting from the election, and the identity of the individuals chosen for the top tax policy positions in the new administration. Consequently, we address those three issues first to place the forthcoming tax reform debate in its proper context.

Lame Duck: Tax Extenders and Other Unfinished Tax Business

Before examining what is to come next for the 115th Congress, it is important to understand the tax priorities that remain for this year. Some lawmakers had hoped that the annual tradition of addressing tax "extenders" (i.e., tax provisions that are regularly set to expire but have been extended on multiple occasions) had come to an end last December when many of these provisions were made permanent in the *Protecting Americans from Tax Hikes Act of 2015* (PATH Act). However, as the Joint Committee on Taxation (JCT) reports, 36 tax extenders remain and are set to expire at the end of this year.

Of these 36 provisions, many deal with the tax treatment of various renewable energy sources – some of which Democrats argue were intentionally left out of the PATH Act, despite an agreement to the contrary (though Republicans say that this is the result of a drafting error). Regardless of why these provisions were not included in the PATH Act, the Obama Administration and many Democratic lawmakers have been vocal about their desire to act on these tax extenders before year's end. However, with Republicans now set to control the White House and Congress next year, coupled with the fact that conservative think tanks and advocacy groups oppose extending the renewable tax credits, it appears increasingly unlikely that Congress will act on tax extenders this year. Such an approach is favored by House Ways and Means Committee Chairman Kevin Brady (R-TX), who would prefer to hold off on doing tax extenders this Congress and instead focus on getting tax reform done next year so that these provisions become unnecessary. While not the preferred resolution by Democrats or affected businesses, this approach is feasible because policymakers know that if tax reform efforts are unsuccessful, they can retroactively extend those tax provisions that are allowed to expire.

Beyond the potential for tax extenders, it is important to note that the House Ways and Means Committee has marked up and reported to the House numerous bills throughout the course of the past two years that have not yet been enacted. In addition, various pieces of legislation were discussed during the Committee's Member Day hearing earlier this year and represent tax policy priorities that lawmakers would like to see addressed. As such, it is possible, as was suggested earlier this year, that House tax-writers could seek to move a miscellaneous tax bill before year's end. However, as noted above, it is more likely that the majority of Chairman Brady's and the Committee's work for the remainder of the year will be focused on laying the groundwork for tax reform next year – especially given that Republicans will be in control of both Congress and the White House.

Moreover, though he is unlikely to release legislative text during the lame duck session, Chairman Hatch appears to be nearing completion of his long-awaited “corporate integration” plan and could release additional high-level details (i.e., a whitepaper) before the end of the year. With two more years ahead of him as chairman, we are likely to see Senator Hatch use the 115th Congress to continue pushing his proposal; in his view, it complements, not impedes, the House Republicans’ tax reform efforts. However, as was evident this Congress, there are many concerns about corporate integration (e.g., its impact on retirement plans) that remain unresolved. Further, with the Senate still narrowly divided, Senate Finance Committee Ranking Member Ron Wyden (D-OR) is unlikely to support Chairman Hatch’s corporate integration plan.

Anticipated Congressional Committee Developments

As a result of the election, Senator Hatch will continue serving as Chairman of the Senate Finance Committee. Similarly, Senator Wyden will return as the Committee’s Ranking Member. Importantly, both Senators understand the need for and are committed to reforming the outdated U.S. tax code and will no doubt continue their efforts in the new Congress.

During the 114th Congress, Republicans enjoyed a 14-12 advantage in membership on the committee. By maintaining control of the Senate next year, the ratio will likely stay largely the same, pending an agreement governing committee ratios by Senate leaders. Apart from the potential ratio changes, Senator Dan Coats (R-IN) is retiring and will need to be replaced. It is also uncertain at this point whether Senator Chuck Schumer (D-NY) will give up his seat on the committee when he takes over as Senate Minority Leader in January, though various staffers have suggested that he is likely to continue his service as a tax-writer.

The House Ways and Means Committee will see minimal changes, as Representative Kevin Brady (R-TX) will stay on as Chairman and Representative Sandy Levin (D-MI) will continue to serve as the Ranking Member. Of note, however, the Tax Policy Subcommittee will need a new chairman, as Representative Charles Boustany (R-LA) did not run for reelection, instead deciding to run for the seat soon-to-be vacated by Senator David Vitter (R-LA). It is possible that Representative Tom Reed (R-NY), who is the senior-most member of the subcommittee without a subcommittee chairmanship, could take over the Chairman’s gavel; Representative Devin Nunes (R-CA) has also been a leading voice on tax policy and could be strong contender as well. As for the subcommittee’s Ranking Member, Representative Richard Neal (D-MA) easily won reelection and will likely stay on as the top Democrat. The rest of the Ways and Means Committee roster will largely remain the same, with just a few new members to replace those who retired, lost reelection, or lost their seat due to ratio changes.

Anticipated Agency Developments

President-Elect Trump will have to make a number of appointments to his cabinet, none perhaps more important than Secretary of the Treasury. With the Trump transition team having been at work behind the scenes for months and now poised to move forward rapidly, there has been one name in particular that has floated to the top as a potential Treasury Secretary nominee: Steve Mnuchin, who currently serves as the campaign’s finance manager. However, Mr. Mnuchin, who is a former Goldman Sachs executive, could face a tough road to confirmation, as Senator Elizabeth Warren (D-MA) and others have vowed to eradicate connections between Wall Street and regulatory agencies. One other appointment that President-Elect Trump may need to make at a later date: Commissioner of the Internal Revenue Service (IRS). Though the term of embattled Commissioner John Koskinen is not set to expire until November 9, 2017, we expect continued efforts by House Republicans to impeach the commissioner, which will no doubt keep this appointment at top of mind for President-Elect Trump. (Should Republicans be successful in their comprehensive tax reform efforts, the position of IRS Commissioner could be replaced with an appointed administrator who has a more limited scope of responsibilities.)

Comprehensive Tax Reform Efforts

With Republicans in control of Congress and the White House starting in 2017, the GOP is poised to move forward with comprehensive tax reform (i.e., legislation that restructures both the individual and business income tax provisions of the tax code). These efforts, which could take shape as legislation in the first half of next year, will build on the principles set forth in the House Republicans’ “A Better Way” proposal, which serves as a blueprint for a “21st Century tax code that [the Republican Party says] is built for growth and that puts America first.” This comprehensive proposal would significantly reform the current tax code and addresses issues from individual and corporate tax rates to the U.S. international taxation system to the IRS. (See our previous summary [here](#)⁴). Such an ambitious proposal, however, faces many hurdles, as Republicans and Democrats remain sharply divided on a myriad of issues addressed in the Blueprint. Moreover, though the proposal is comprehensive to the average reader, tax policymakers have already indicated that many details need to be filled in before they can move forward with the tax reform debate in earnest. They will face hundreds and hundreds of choices, such as extending the New Markets Tax Credit that expires in 2019 to potentially putting a cap on the tax exemption for municipal bonds to helping workers keep more of their earnings. As such, the question remains: can policymakers come together on tax reform? We believe it is more likely now with a unified government than if Secretary Clinton had won the election and confronted a Republican Congress.

⁴ <http://bit.ly/2ePQWdc>

For starters, as a sign of their willingness to negotiate, House Republicans made clear in 2016 that their proposal is only “the beginning of [the] conversation about how to fix [the U.S.’s] broken tax code.” This mindset is important if tax reform efforts are to be successful, as whatever tax reform legislation the Republican-controlled House passes in 2017 it will have to be negotiated with the Senate, including with expected Minority Leader Schumer and his fellow Democrats, whose priorities differ significantly in focus from the Republican proposals and whose strong minority will, under Senate rules, make Democrats key players in developing any tax reform legislation that can pass the Senate. Moreover, the Blueprint itself also differs in a variety of ways from President-Elect Trump’s tax policy proposals – which to some extent exudes his sometimes populist sentiments (e.g., elimination of the carried interest “loophole”) – and could impede progress. Given the similarities between the Blueprint and the Trump proposals on a number of key issues, such as support for across-the-board tax rate reductions, we do not view those differences as ultimate impediments to enactment of tax reform legislation in 2017-2018.

International Tax Reform

Given the past divergence between Democratic and Republican tax policy priorities (e.g., Democrats have wanted to raise taxes on upper income taxpayers and Republicans have wanted across the board tax cuts for taxpayers at **all** income levels), it is clear that compromise will be necessary if tax-writers hope to accomplish anything on a bipartisan basis in the new Congress. While comprehensive reform is certainly a difficult proposition in the current political climate, it will be difficult to separate individual and business tax reform. For example, moving forward only with “business” tax reform (which includes as part of it international tax reform) fails to address the taxation of pass-through entities, which are tax under the individual portion of the tax code. However, addressing individual tax reform is difficult given that both parties are particularly far apart on tax rates. Still, international tax reform is a prime example of an area where compromise seems probable next Congress. Thus, any efforts to reform the U.S. international system taxation will, at a minimum, involve a discussion and debate of more comprehensive reforms, but for several reasons may not be susceptible to being held hostage by those other reforms.

For example, as noted above, House Republicans included international tax reform as part of their comprehensive tax reform Blueprint. Moreover, in the Senate, soon-to-be Minority Leader Schumer has worked closely with Senator Rob Portman (R-OH) in leading the Finance Committee’s work on international tax reform. His understanding of and commitment to reforming the U.S. system of international taxation will be helpful in working to construct a deal between a Trump White House and congressional Democrats. Moreover, President-Elect Trump has proposed leveraging tax credits to spur private infrastructure spending.

To pay for these tax credits, he will need a source of revenue; from where he sits (and soon-to-be Minority Leader Schumer agrees), there is no easier way to fund infrastructure than by imposing a minimum tax on prior deferrals, a tax that many congressional Democrats and Republicans have agreed to previously, at least in principle (e.g., 14 percent in President Obama’s Budget Proposal, 8.75 percent in the Blueprint, and 10 percent in President-Elect Trump’s Plan).

Still, while all policymakers acknowledge that there is a clear need to reform our international tax system, successful enactment of such reforms next Congress is by no means a foregone conclusion. For example, the House Republican Blueprint would tax old deferrals at a rate of 8.75 percent to the extent held in cash or cash equivalents (other such accumulated earnings would be taxed at a rate of 3.5 percent), while President-Elect Trump has opted for a rate of 10 percent in his most-recent tax proposal released in September. Democrats, however, are likely to be more in line with President Obama, who has proposed taxing old deferrals a rate of 14 percent and new deferrals at a rate of 19 percent. However, while each of these proposals differs somewhat, we have reason to believe – especially in light of the international developments noted above and a need to fund an overhaul of the nation’s infrastructure – that lawmakers will find middle ground on the rate at which deferrals are taxed. Moreover, those policymakers seeking to move from a worldwide to a territorial system of taxation will also need to determine whether to tax future deferrals, though given that neither the Blueprint nor President-Elect Trump’s tax plan calls for such a tax, it seems unlikely they will do so.

While the push for international tax reform was originally driven mostly by Republicans as one of the solutions to address the increasing number of corporate tax inversions (the other being lower corporate rates), there are also a number of international developments driving policymakers to move forward with international tax reform next year.

Importantly, as Janice Mays, former Democratic staff director of the House Ways and Means Committee recently noted, these international developments have now also garnered the attention of Democrats, who now in principle also favor action on international tax reform. First, as numerous countries around the world move forward with implementation of the Organisation for Economic Co-operation and Development’s (OECD) Base Erosion and Profit Shifting (BEPS) Project, there will continue to be increased pressure on Congress to take action to protect the U.S. tax base and prevent the U.S. tax code from becoming even less competitive as other countries update their own tax laws to be in line with global tax policy norms.

Moreover, the European Commission's most-recent decision in its State aid case against Apple (resulting in a U.S.\$14.5 billion judgment against the company) will serve as yet another reminder to U.S. policymakers that tax reform is needed and the desire to make the U.S. Tax Code more competitive remains paramount. Until recently, tax-writers have assumed that offshore profits would eventually be taxed in the US. This State aid ruling significantly undermines that assumption, as U.S. multinationals may choose to repatriate their offshore U.S. cash, but would now be able to use a foreign tax credit to offset a significant portion (if not all) of their tax liabilities.

Moreover, the extent to which lawmakers are able to get a deal through could be hindered by the likes of Senator Warren, who recently urged Democrats to avoid any sort of compromise in tax reform negotiations, noting that "[i]nstead of bailing out the tax dodgers under the guise of tax reform, Congress should seize this moment to repair our broken tax code." Such opposition will make it particularly difficult for Minority Leader Schumer to craft his party's tax reform position. It is also uncertain at this point whether Republicans, and in particular House Republicans, will in the end be willing to make the compromises on individual income tax "fairness" issues, such as carried interest that may be necessary in the end to create the bipartisan support necessary to get the bill across the finish line. This could potentially be resolved, however, through conferencing a House-passed tax reform bill with one passed by the Senate that contains as many substantive policies from the House version as acceptable.

To get to tax reform, however – even international-focused tax reform – will likely require at least a discussion on broader, more comprehensive reforms. In particular, it seems unlikely that congressional Republicans will allow Democrats to spend on infrastructure the hundreds of billions of dollars in revenue that would be raised by taxing offshore U.S. cash without some concessions. This will likely continue to be the case under a Trump Administration, despite the fact that President-Elect Trump would raise revenue in a similar fashion and use that funding to pay for tax credits that would be used to encourage infrastructure development. However, Republicans may be willing to negotiate on infrastructure funding in an effort to use part of the revenue raised through repatriation to advance their own policy priorities: namely, corporate tax reform – including lower corporate tax rates.

Both parties agree U.S. corporate income tax rate is among the very highest in the world and has contributed to the recent wave of inversions and a wide range of allegedly aggressive tax planning structures. That said, corporate tax reform itself comes with its own challenges, including that an increasing percentage of business income is now earned through pass-through and reported on individual tax returns, with the result that the corporate tax rate affects a decreasing percentage of aggregate business income.

Indeed, it is probably politically ill-advised for a Senate Finance Committee, with ten of its members up for reelection in 2018 (eight of whom are Democrats), to champion efforts that would cut corporate America's tax rate and not the rate paid by workers as well. With so many Finance Committee members up for reelection in 2018, we expect that lawmakers will be inclined to move forward with tax reform efforts sooner than later, as the closer it gets to the 2018 mid-term elections, the more difficult it will be for those members up for reelection to negotiate and compromise.

Still, despite what will likely be pushback from the far edges of both parties, there are two key players that will need to work together to negotiate a deal on tax reform: President-Elect Trump and soon-to-be Senate Minority Leader Chuck Schumer. In particular, and much as was required in the last major tax reform efforts, Democratic Leader Schumer will be a key player in brokering a Senate deal, and President-Elect Trump must personally play an active role in the negotiations and seek areas of compromise with Senate Democrats on tax fairness proposals for both individuals and corporations. After all, much like all other major legislation, tax reform will require both policy and political compromises.

These efforts, coupled with support from other tax policy leaders (including Chairman Brady, Chairman Hatch, and Ranking Member Wyden), set the stage for yet another chapter in the ongoing saga of on-again, off-again, tax reform. This time, however, we have reason to believe that the conclusion of this chapter might be different.

Beyond comprehensive tax reform efforts, there are a number of other key tax policy issues that will require, or at least get, legislative and regulatory attention in the 115th Congress, including: (1) corporate tax inversions and Section 385; (2) estate tax; (3) low-income housing; and (4) pension and retirement savings. Each of these is discussed below in greater detail.

Corporate Tax Inversions and Section 385

Largely as a result of congressional inaction on tax reform, the Obama Administration has for the last several years focused on doing what it can from a regulatory standpoint to address what some have called a corporate tax inversion "epidemic."

In 2014 and 2015, the U.S. Treasury Department issued Notices 2014-52 and 2015-79, respectively, which are anti-inversion regulations that intended to reduce the benefits of corporate tax inversions and make it harder for companies to invert. In its most recent action, in April of this year, Treasury proposed regulations under Section 385 of the tax code to target so-called "earnings stripping" practices by allowing the government to re-characterize corporate debt as equity under certain circumstances. As originally proposed, these regulations received bipartisan criticism in both chambers and from a wide range of industries for being overly broad in nature and for their potential to negatively impact regular business practices, such as cash pooling.

Despite such pushback, and with the Obama Administration quickly coming to an end, Treasury last month issued final regulations, which it claims address stakeholder concerns by “narrowly focusing the regulations on aggressive tax avoidance tactics and providing certain limited exceptions.” Whether the changes Treasury made to the final regulations will make a meaningful difference and sufficiently address those concerns raised during the comment period, however, remains to be seen. With the regulations coming in at over 500 pages, lawmakers and stakeholders alike are still digesting the impact on their bottom line, thus making congressional action this year unlikely.

Depending on whether lawmakers ultimately feel the Treasury Department has sufficiently addressed any issues in the final regulations, it is possible that Congress might seek to move forward with legislation aimed at addressing any remaining concerns. It is uncertain how President-Elect Trump would receive such legislation, however, as he has been highly critical of companies that invert. Moreover, as part of his plan to stem the practice of corporate inversions, President-Elect Trump has suggested that he will seek to penalize such companies through the imposition of tariffs on goods they seek to bring into the United States. Thus, despite the regulations’ potential consequences on non-inverted companies, it seems unlikely that President-Elect Trump would sign into law any legislation that could be perceived as making it easier for U.S. companies to invert, even if it was designed to lessen the Section 385 regulations’ burden on non-inverted companies.

In sum – especially given that the rate of corporate tax inversions has slowed – it seems more likely that policymakers will focus their time and attention on reforming the tax code, rather than seeking to address any remaining issues with the Section 385 regulations. This reality is somewhat surprising, however, as the regulations will ultimately result in money being taken off the table that could otherwise have been used by Democrats as a bargaining chip in tax reform negotiations.

Estate Tax

For years, many in Congress (mostly Republicans) have called for the repeal of the estate tax; this summer, the Obama Administration went in the opposite direction. On August 4, the Treasury Department proposed regulations that would change how valuation discounts apply to the transfer of interests in closely-held businesses. Thus, the politically charged issue has again risen to the top of the tax policy agenda for lawmakers.

In response to concerns from thousands of family-owned businesses about the potentially negative impact the proposed regulations could have – including making it more difficult to pass down a business from generation-to-generation – Representative Warren Davidson (R-OH) and Senator Marco Rubio (R-FL) have introduced legislation that would block the proposed regulations from taking effect.

However, given that the regulations are not likely to be finalized until next year, it is uncertain whether Congress will press forward with efforts to enact such legislation before adjourning later this year or instead wait to address the issue once they know what the final regulations look like. If they act before year-end, however, President Obama is likely to veto any such legislation.

With the White House and Congress both in Republican control next year, however, the increased threat that policymakers will be able to successfully block the regulations could very well result in the Treasury Department making certain targeted changes to its proposal so that the regulations are focused solely on abusive tax planning practices, thus potentially preempting Republican action. Though the comment period closed earlier this month, the Treasury Department has scheduled a public hearing on December 1 to receive additional feedback on the proposed regulations. Moreover, given that President-Elect Trump’s Treasury Department is expected to support repeal of the Estate Tax – and thus, would oppose this rulemaking – the current Treasury Department will be under severe time constraints if it hopes to finalize this rule before the end of the Obama Administration. Further, even if the Treasury Department is able to finalize the regulations in time, lawmakers and the Trump Administration next year will be well-positioned to peel back the regulation – or, potentially, the Estate Tax in its entirety.

Low-Income Housing Tax Credits

Another tax policy issue that is likely to continue receiving attention in the next Congress: Low-Income Housing Tax Credits (LIHTC). Earlier this year, Senators Maria Cantwell (D-WA) and Chairman Hatch introduced S.3237, *Affordable Housing Credit Improvement Act of 2016*, which builds on a similar earlier proposal (S. 2962) to expand the LIHTC program by 50 percent to help create or preserve approximately 1.3 million affordable homes over a 10-year period – an increase of 400,000 more units than is possible under the current program. Ranking Member Wyden, who is a co-sponsor to both bills, has also recently introduced a separate proposal, which builds on the LIHTC for middle-income renters. With both Chairman Hatch and Ranking Member Wyden supportive of LIHTC, there is a real opportunity to expand the program – at least for its more traditional low-income recipients (there are presently no co-sponsors to Ranking Member Wyden’s bill targeting middle-income families). That said, there remains concern by some Republicans about the increased allocation of the credit, which could impede progress.

Pension and Retirement Savings

In September 2016, after months of debate and delay, the Senate Finance Committee marked up and favorably reported to the full Senate the Miners Protection Act of 2016. The bill seeks to protect the health benefits and pensions for tens of thousands of miners. The committee also unanimously reported out the *Retirement Enhancements and Savings Act of 2016* (RESA), which makes a series of statutory changes aimed at increasing participation in retirement savings plans – including language that would encourage open multiple employer plans (Open MEPS).

The chance for enactment of either bill this Congress, however, appears slim, as many see passage of the mineworkers bill as a condition precedent to broader action on retirement savings policy. Senate Majority Leader McConnell blocked the mineworkers measure last year and again appears unlikely to move forward with a plan that some Republicans suggest is a “bailout.”

Despite the dim prospect that either issue will be addressed this year, we believe that lawmakers next Congress will be poised for progress. However, with Senator McConnell continuing as Majority Leader, we may see further delays in Senate action on the mineworkers bill. This, in turn, is likely to result in a halt to broader reforms of retirement savings policy, as various Senate Democrats have refused to negotiate on such policies until the mineworkers issue is resolved. Given his support of the coal industry, President-Elect Trump may pressure Majority Leader McConnell to move forward with the bill.

Though action on retirement savings policy may face delays in the 115th Congress, it will nevertheless be important to consider what such reforms might look like. In addition to RESA, Ranking Member Wyden's *Retirement Improvements and Savings Enhancements (RISE) Act* provides insight as to additional reforms that might be included in a future piece of legislation. Specifically, the RISE Act seeks to “help more working families and recent college graduates save for retirement, while cracking down on unfair strategies used by the privileged to rake in subsidies and dodge tax bills.” Though he will continue as Ranking Member, Senator Wyden and Chairman Hatch have worked closely together on this issue, thus his perspective is likely informative of the Finance Committee's efforts in this space in the 115th Congress.

With the leading voice on retirement savings policy, Chairman of the House Education and the Workforce John Kline (R-MN), retiring at the end of this year, there will be an opening for a new leader to play a role in reforming the current framework governing retirement savings. Chairman Kline has focused much of his committee's work on modernizing multiemployer pension plans, which is a somewhat different approach than his Senate counterparts have taken thus far. As such, next year will present a fresh opportunity for policymakers in both chambers to come together in an effort to develop a shared approach.

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Technology and Communications

Likely Major Policy Developments

The election of Donald Trump is likely to result in significant changes in technology and communications policy.

There is reason for some in the technology sector to be apprehensive. During the campaign, President-Elect Trump had some harsh words for tech giants like Amazon, Apple, and Facebook. He also opposed key tech industry goals, such as adoption of strong network neutrality rules, an increase in high-skilled H-1B visas, adoption of the Trans-Pacific Partnership trade deal, and protection from government requests to decrypt customer data for surveillance and investigation purposes.

At the same time, there are elements of the Trump agenda that may garner significant support from sector participants, especially communications infrastructure providers. During the campaign, Mr. Trump committed to "refocus government spending . . . away from the Obama-Clinton globalization agenda" and instead pursue an "America's Infrastructure First" policy, which will include significant government support for telecommunications infrastructure deployment. The Administration is likely to seek to do so by using both "targeted government spending" and tax credits. We also expect that the new administration will seek to reduce or eliminate government regulations, especially those that impede infrastructure deployment, such as "permitting and approvals." In lieu of regulation, the Trump Administration will likely seek to rely, to the maximum extent possible, on "market forces" and "public-private partnerships," to spur sector development. Finally, under President Trump, we expect the federal government to try to replace some federal mandates with arrangements that give "maximum flexibility to the States" to adopt sectoral policies. President-Elect Trump's infrastructure policies can be viewed [here](#)⁵.

Further insight into areas that the administration and Congress may focus on during the next two years is contained in the Republican Platform, adopted by a committee co-chaired by Senator John Barrasso (R-WY) and Representative Virginia Foxx (R-NC). The Platform commits the party to: "facilitate access to spectrum by paving the way for high-speed, next generation broadband deployment and competition on the internet and for internet services; provide predictable support for connecting rural areas so that every American can fully participate in the global economy; protect data privacy while fostering innovation and growth and ensuring the free flow of data across borders; provide balanced protections for intellectual property; and modernize the federal government's legacy systems and...recruit the skilled technical personnel who can advance the adoption of innovation in the public sector." (See the full GOP platform document [here](#)⁶.)

Despite these ambitious goals, congressional oversight related to AT&T's proposed \$85 billion acquisition of Time Warner is likely to consume much of the relevant congressional committees' time, making it difficult to move other technology and communications matters forward. President-Elect Trump has said that his administration will block the proposed transaction. He is likely to find support for this position on both sides of the aisle. Opposition has been expressed by some congressional Republicans, who have a particular concern about the power of the "mainstream" media. (Time Warner owns CNN.) The Senate Judiciary Committee's Antitrust Subcommittee, chaired by Senator Mike Lee (R-UT), has scheduled hearings for December 7. This is certain to be the first of many trips to Capitol Hill for representatives of the two companies. At the same time, liberal Democrats like Bernie Sanders (I-VT) and Elizabeth Warren (D-MA) (perhaps looking ahead to the 2020 election), are also likely to support blocking this merger – or, at a minimum imposing conditions that are more stringent than those imposed on the most comparable deal, the 2011 merger of Comcast and NBC/Universal.

As discussed further below, the Republicans' recapture of the White House, coupled with their continued control of Congress, will fundamentally alter the operation of the Federal Communications Commission (FCC). For many years, the FCC sought to operate by consensus. However, under its current Chairman, Tom Wheeler, the agency adopted a series of major decisions by party-line 3-2 votes, in some cases with the strong support of President Obama. The prospect of a presidential veto limited the ability of the Republican-controlled Congress to reverse these actions. Going forward, however, the FCC will have a Republican majority that can expect the full support of the administration and Congress if it tries to reverse recent decisions regarding issues like network neutrality and online privacy.

Anticipated Congressional Committee Developments

Senate Commerce Committee

With Republicans retaining control of the Senate, we expect that the Commerce Committee, under the continued leadership of Senator John Thune (R-SD), will continue to conduct active oversight of the FCC. However, with the agency in Republican hands, the focus may shift to efforts made by the Commission to undoe the major regulatory initiatives undertaken during the Obama Administration. In addition, like his House Republican counterparts, Senator Thune has indicated interest in moving legislation to reform the FCC's procedures. He has been especially critical of the level of transparency in the Commission's decision making in areas such as the agency's effort to foster competitive alternatives to the cable set-top box.

5 <https://www.donaldjtrump.com/policies/an-americas-infrastructure-first-plan/>

6 <http://bit.ly/2apjUP7>

That said, the committee's focus during the next year is likely to be driven by the proposed AT&T-Time Warner merger. As discussed above, both Democrats and Republicans have already expressed skepticism about the proposed transaction.

House Energy and Commerce Committee

While Republicans will also continue to run the House, significant uncertainty exists over who will be wielding the Chairman's gavel in the Energy and Commerce Committee next year. Two well-liked, well-qualified candidates, Representative John Shimkus (R-IL) and Representative Greg Walden (R-OR), are vying to replace Representative Fred Upton (R-MI) as Chairman. The selection process cannot begin until the House Republican Conference has elected its leadership slate for the next Congress, a process that should take place in mid-November.

Regardless of who claims the Chairman's gavel, the committee is likely to consider FCC process reform legislation. The starting point would be the *Communications Act Update of 2016*, which passed the House by a bipartisan vote this year. The bills in the Communications Act Update included the *Federal Communications Commission Process Reform Act* (H.R. 2583), sponsored by Representative Walden, which would require the FCC to make changes to its procedural rules in order to make the agency more transparent, efficient, and accountable, and the *Federal Communications Commission Consolidated Reporting Act* (H.R. 734), sponsored by House Majority Whip and committee member Steve Scalise (R-LA), which would eliminate a number of congressionally-mandated studies and consolidate others into a biennial release. Other bills passed by the House as part of the update would permanently exempt small business from the FCC's enhanced transparency requirements for broadband Internet access service providers (the *Small Business Broadband Deployment Act*, H.R. 4596); improve communications systems to service disruptions during a storm or natural disaster (the *Securing Access to Networks in Disasters Act*, H.R. 3998); extend the provisions of the *Truth in Caller ID Act* which prohibits spoofing of voice caller identification information to include text messaging and text messaging services (the *Anti-Spoofing Act of 2016*, H.R. 2669); and require all Multi-Line Telephone Systems to allow users to dial 9-1-1 (the *Kari's Law Act of 2015*, H.R. 4167).

The committee also is likely to begin laying the foundation for the reauthorization of the *Satellite Television Extension and Localism Act* (STELA), which is currently authorized through December 31, 2019. The law requires broadcast television stations to provide satellite television system operators an opportunity to negotiate agreements to retransmit their broadcast programs, and bars television broadcasters from receiving compensation from satellite carriers for retransmitting broadcast programs to subscribers who live in areas that do not receive those broadcast signals. Failure to reauthorize STELA could leave more than 1.5 million households that subscribe to satellite-based program distribution services unable to access broadcast programming that originates outside their local viewing area.

Anticipated Agency Developments

FCC Leadership

The FCC's ability to function during the first half of 2017 could be adversely affected by the transition in its membership. The term of the current Chairman, Tom Wheeler (D) does not end until November 3, 2018. By custom, if the FCC Chairman's term continues beyond the end of the term of the president who appointed him, the chairman steps down (and leaves the Commission) following the inauguration of the new president. Pending confirmation of a new chairman, one of the remaining commissioners from the new president's party serves as Acting Chairman, presiding over a body split 2-2 between Democrats and Republicans.

However, earlier this year, Chairman Wheeler informed the Senate Commerce Committee that he might exercise his right to serve beyond January 20, 2017. The Chairman's statement created concern among Republicans that, if Donald Trump was elected, the new president would be unable to replace any of the three Democrats on the Commission with a Republican until 2018, thereby prolonging Democratic control of the agency. In response, Senate Republicans put a "hold" on the re-appointment of another Democratic commissioner, Jessica Rosenworcel, whose term expired in June 2015 and who, by law, must leave the Commission if she is not re-confirmed at the end of the current session of Congress.

Chairman Wheeler has not yet said what he plans to do. Prior to the election, the Commerce Committee Chairman, John Thune (R-SD), stated that if Chairman Wheeler commits to leave the Commission at the end of President Obama's term, the Senate would likely move the Rosenworcel nomination during the upcoming lame duck session. Chairman Thune has not indicated whether that offer is still on the table.

If Chairman Wheeler commits to leave the Commission at the end of the Obama Administration, and the Senate confirms Commissioner Rosenworcel during the lame duck session, President-Elect Trump will name one of the two current Republican Commissioners, Ajit Pai or Michael O'Rielly, to serve as Acting Chairman. (Commissioner Pai, who has served on the FCC for a longer period of time, would be the more likely choice.) The new president would likely move quickly to fill the vacancy left by Chairman Wheeler's departure with a Republican, thereby shifting the balance of power at the agency.

However, things could get complicated if Senate Republicans decline to reconfirm Commissioner Rosenworcel during the lame duck session, and Chairman Wheeler declines to leave the Commission by Inauguration Day. Because the FCC is an independent agency, President Trump would not be able to say "you're fired" to Wheeler. However, the new president could exercise his statutory authority to strip Wheeler of the chairmanship, and name Pai or O'Rielly as Acting Chairman, leaving Wheeler to serve as a mere commissioner, at least until a deal was worked out to confirm a Democrat to replace him. This would likely make the current acrimonious atmosphere on the commission even worse.

One way or the other, President-Elect Trump will need to decide who he wants to appoint as the next FCC Chairman. Because the President-Elect does not have close ties to the technology and communications sector, it is hard to predict who that might be.

The least disruptive route would be for President-Elect Trump to make Pai or O'Rielly permanent chairman. Trump, however, may want to shake things up. One intriguing possibility is that the President-Elect might ask PayPal founder and venture capitalist Peter Theil, who is one of his few supporters in Silicon Valley, to lead the agency. Theil, who is openly gay, also would add a bit of diversity to the new administration. However, it is far from certain that Theil would want the job. Another possibility is the American Enterprise Institute's Jeffrey Eisenach – a long-time critic of government regulation in general, and of Chairman Wheeler in particular – who has been named to the Trump Transition Team. Regardless of who is ultimately appointed, one of the next chairman's top priorities will almost certainly be to restore at least a modicum of the bipartisanship that long characterized the agency. Doing so will not be easy.

Net Neutrality

The change in control at the FCC will almost certainly re-open the contentious network neutrality debate. Prodded by President Obama, in 2015 the FCC – by a 3-2 party-line vote – adopted the *Open Internet Order*. The order reclassified retail broadband Internet access services as a telecommunications service, subject to "common carrier" regulation under Title II of the *Communications Act*. Applying its Title II authority, the FCC banned a variety of practices, including blocking consumer access to lawful websites, slowing down traffic from specific websites, allowing "edge providers" (such as Google or Facebook) to pay to have their traffic delivered more quickly to end users, or otherwise unreasonably interfering in the relationship between edge providers and end users. The order also asserted authority to resolve disputes between broadband Internet Service Providers (ISPs) and other entities (such as Netflix) that seek to directly connect with them in order to accelerate the delivery of their content to consumers.

In June, the D.C. Circuit handed the FCC a major victory when it upheld the agency's *Open Internet Order*. On July 29, a number of parties filed petitions asking all nine judges on the court to rehear the case. The FCC submitted its opposition on September 12. While courts rarely grant rehearing *en banc*, the long delay in issuing an order suggests that some members of the court may be inclined to do so. If, as we think more likely, the Democratic-leaning court ultimately denies the request, the petitioners will have 90 days to seek Supreme Court review. The Supreme Court would then take several months to decide whether to hear the case. With President-Elect Trump likely to move quickly to appoint a conservative successor to Justice Antonin Scalia, the chances that the High Court would grant review have increased. The more likely scenario, however, is that the FCC will seek to avoid judicial review by promptly initiating a new proceeding to modify, if not eliminate, the *Open Internet* rules.

The change in leadership at the Commission is also likely to affect the agency's ongoing review of the legality of so-called "zero-rated" data plans, in which providers of mobile broadband service exempt the capacity a customer uses to access specific websites or applications from generally applicable data caps. Mobile carriers contend that this practice benefits consumers by reducing data charges. By contrast, some advocates contend that it violates basic net neutrality principles by allowing the mobile provider to favor some traffic over other traffic. The FCC had been expected to restrict, if not ban, this practice. However, with the Republicans in control, the agency is likely to give mobile operators significantly greater latitude to experiment with different pricing arrangements.

The agency also is likely to avoid enmeshing itself in disputes regarding the prices, terms, and conditions on which broadband ISPs interconnect with other entities, preferring to leave these issues to the market.

Privacy

The FCC's new ISP privacy rules, adopted by a party-line vote on October 27, are likely to continue to be a source of considerable controversy. The new rules require ISPs, such as Comcast and Verizon, to obtain consent before using "sensitive" customer information – including information about the customer's physical location, web browsing history, and app usage – for marketing or other purposes.

The new rules mark a major change in the regulation of online privacy issues. Previously, the Federal Trade Commission (FTC) regulated all online privacy issues, using a "case-by-case" approach. However, the FCC's reclassification of broadband ISPs as telecommunications carriers in the *Open Internet Order*, effectively divested the FTC (which cannot regulate common carrier activities) of jurisdiction, while making ISPs subject to Title II of the *Communications Act*, which includes provisions regarding customer privacy. The FTC will continue to oversee the privacy practices of Internet "edge providers," such as Facebook and Google.

In the run-up to the vote, Chairman Wheeler made a number of modifications – incorporated, in part, at the suggestion of the FTC – to limit the types of customer information for which ISPs must obtain affirmative consent to use. However, these changes did not satisfy critics, who contend that the FCC does not have the expertise to address privacy issues, and who object to having different regulatory regimes, administered by different agencies, applicable to ISPs and edge providers. Some state attorneys general also have expressed concern that the FCC's actions could undermine state consumer protection laws.

The FCC's new privacy rules are certain to be challenged in the courts. The Trump Administration may well refuse to defend the rules in court, while the FCC is likely to initiate a new proceeding to modify or eliminate them.

Broadband Deployment/Regulation

Given President-Elect Trump's strong support for infrastructure deployment, the FCC is likely to make broadband deployment a top priority. However, rather than adopting new regulations, the FCC is likely to focus on removing "regulatory barriers" that delay, and increase the cost, of rolling out new advanced telecommunications facilities.

Special Access/Business Data Services (BDS)

Chairman Wheeler is likely to push for FCC adoption of an order reforming the regulatory framework applicable to BDS before the end of the year. BDS, historically referred to as "special access" services, are dedicated telecommunications lines that enable retailers, financial institutions, mobile network operators, and other customers to rapidly move large amounts of data between specified locations. The FCC's original proposal, issued in May 2016, would have strengthened price regulation of legacy providers of special access services, such as AT&T, while for the first time applying regulation to new market entrants, such as the cable companies, that offer broadband services based on the Internet Protocol.

The proposal, issued over the objection of the Commission's two Republican members, encountered significant opposition from many providers. In response, on October 7, Chairman Wheeler circulated a modified proposal that would not impose price regulation on higher-speed legacy BDS (those above 45 Mbps) or newer IP-based offerings, on the grounds that competition is emerging in those markets.

The vote on the proposed BDS reforms is currently scheduled for November 17. However, given the impending change in control of the agency, Republican members are likely to press for delay. Even if Chairman Wheeler is able to push through the rules on yet another party-line vote, any victory could be short-lived. The new commission could initiate a proceeding to rescind the rules, or refuse to defend them against the inevitable court challenging.

Municipal Broadband

The Commission suffered a significant setback in August 2016, when the Sixth Circuit found that Congress had not "expressly" granted the agency the power to preempt state laws preventing or restricting the ability of municipalities to provide broadband services. Even before the election, the FCC indicated that it would not seek Supreme Court review of the decision. Given the new administration's commitment to provide "maximum flexibility" to the states, the FCC is unlikely to make further efforts to preempt such state restrictions on municipal broadband. Rather, agency efforts are more likely to seek to promote voluntary public-private partnerships.

Copper Migration

President-Elect Trump's emphasis on broadband deployment, and his commitment to remove regulatory requirements that could slow such deployment, could cause the FCC to reassess its August 2015 order, which set out the rules of the road for the retirement of legacy copper networks. While operators continue to make substantial investments in replacing their copper infrastructure with high-speed fiber, some within the industry have argued that the FCC's rules are deterring broadband deployment by forcing carriers to divert money to existing copper networks.

Universal Service

The appointment of a new FCC Chairman could facilitate efforts to reform the Universal Service Fund (USF), the multi-billion dollar fund established by the *Telecommunications Act of 1996* to ensure the availability of telecommunications services in high-cost, low income, and otherwise under-served areas. The Federal-State Joint Board on Universal Service, which must submit proposals to the Commission, will likely receive bipartisan support in its attempt to aggressively overhaul USF funding mechanisms. However, this process may face delays if the Senate does not reconfirm Commissioner Rosenworcel, who also chairs the Joint Board. The Commission's decision reforming the rules governing rate-of-return regulation for the High Cost USF program, which won the support of Republican Commissioner Michael O'Rielly, provides a basis for cautious optimism.

600 MHz Transition

The change in administration is not likely to slow the FCC's first-ever spectrum "incentive auction." The auction process seeks to encourage broadcast TV licensees to voluntarily relinquish spectrum usage rights in exchange for a portion of the proceeds from an auction of new licenses to use the "repurposed" spectrum for mobile broadband. The auction should close in 2017. At that point, the Commission expects to issue a plan to relocate broadcasters to a consolidated portion of the spectrum that they will continue to use, a process known as "repacking."

Some broadcasters have suggested that they will need additional time and money to complete the process of migrating to new spectrum. Both Republicans and Democrats in Congress have expressed concern that broadcasters might be pushed off the air as a result of this repacking process. If these concerns increase in the coming months, Congress will be under increased pressure to authorize more time and/or money for them to complete their relocations.

Telephone Consumer Protection Act (TCPA)

Consumer complaints about auto-dialed and pre-recorded calls, particularly those made to cellphones, continue at high levels. At the same time, businesses – including those seeking to convey information requested by their customers – are facing a growing torrent of lawsuits alleging violations of the often ambiguous TCPA requirements. In 2015, the FCC sought to provide certainty by adopting an order addressing numerous requests for clarification of the rules. The order, adopted over the strong objection of the agency's two Republican commissioners, was challenged by a broad coalition of industry participants, and is now pending before the D.C. Circuit.

The court's questions during the two-and-one-half hour oral argument suggest there is a possibility that at least part of the order may be sent back to the agency for further proceedings, thereby prolonging the uncertainty. With the Republicans in control, the Commission could well pare back the current regulatory requirements, which are viewed as unduly burdensome by many businesses.

Congress may seek to move forward with recent discussions to "modernize" the TCPA. Earlier this year, the Senate Commerce, Science, and Transportation Committee and the House Energy and Commerce Committee's Communications and Technology Subcommittee held hearings on this issue. One prospect that could muster bipartisan support is the creation of a database that would allow callers to wireless numbers to know whether (as happens as many as 37 million times a year) the number has been reassigned to a new caller. This could significantly reduce calls to consumers who have not consented to receive them. However, with the threat of a presidential veto removed, Congress might try to take more aggressive action to restrict the wave of litigation created by the FCC's expansive interpretation of the TCPA.

AT&T/Time Warner

The FCC's role in reviewing AT&T's proposed acquisition of Time Warner remains uncertain. The agency's participation in communications-sector merger reviews is based on its authority to approve any "change in control" of an entity that holds a license that the agency granted previously. Time Warner holds only a single local broadcast license, which it could easily divest. However, Time Warner would need to obtain agency approval for the transfer of control of the satellite earth station licenses that subsidiaries like HBO use to distribute content. Normally, requests for transfers of control of these operational licenses are routinely granted. AT&T is likely to strongly contest any effort by the FCC to use its authority to approve the transfer of control of these licenses as a basis to significantly impact – or try to prevent – the proposed transaction.

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Trade Policy

Likely Major Policy Developments

President-Elect Trump will enter the White House facing a dramatic decline in global trade growth. A recent World Trade Organization (WTO) report notes that 2016 marks the slowest pace of trade and output growth since the 2008 financial crisis. WTO Director-General Roberto Azevêdo called slowing trade growth “a wake-up call,” especially given increasing anti-globalization efforts around the world. He further cautioned against translating the results of the study into “misguided policies that could make the situation much worse, not only from the perspective of trade but also for job creation and economic growth and development which are so closely linked to an open trading system.” President-Elect Trump will have to work with lawmakers – especially pro-trade Republicans – to craft U.S. trade policies that ultimately promote U.S. economic growth in the interconnected world of global trade.

Few issues have proven as contentious in the 2016 elections as trade policy. President-Elect Trump’s campaign messages criticizing existing U.S. trade policies clearly resonated with many Americans, especially within the “Rust Belt” states whose economies have been historically dependent on manufacturing. He emphasized the importance of maintaining U.S. manufacturing capacity, stating that he is not averse to renegotiating existing trade agreements like the North American Free Trade Agreement (NAFTA) and pending trade agreements like the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP).

President-Elect Trump’s views of the TPP deal have thrown its long-term prospects into doubt. Meanwhile, Senator Jeff Sessions (R-AL), a close advisor to President-Elect Trump, warned soon after the election that “there will be blood all over the floor if somebody tries to move [the deal] through the Congress any time soon.” Senate Majority Leader Mitch McConnell (R-KY) reiterated after the election that he will not bring TPP to the Senate floor in the lame duck session that begins next week. Despite the slim odds, the Obama Administration nevertheless has continued to press for congressional approval of the deal and will likely seek to intensify its efforts during the lame duck session.

The Big Three Trade Priorities: TPP, TTIP, and Brexit

President-Elect Trump will likely take the time to do some “stock taking” with respect to existing and negotiated free trade agreements early in his administration. Assuming the 114th Congress fails to act on the TPP agreement during the lame duck session, the Asia-Pacific trade deal will either be reopened for new negotiations in 2017 – a prospect other TPP member states have said they would reject – or it simply will not move forward.

President-Elect Trump will likely also re-evaluate TTIP, particularly since the Obama Administration and the European Union (EU) effectively “paused” negotiations after reaching a virtual stalemate just before the November elections. Despite President-Elect Trump’s previous statements on alliances and partnerships, his willingness to ensure trade with the United Kingdom (UK) after the country formally withdraws from the EU is one possible bright spot for trade policy. President-Elect Trump has already expressed a willingness to move forward with U.S.-UK trade discussions, as have some Members of Congress, including House Speaker Paul Ryan (R-WI), possibly setting the stage for a new bilateral trade relationship.

Trans-Pacific Partnership

Despite winning the fight to renew Trade Promotion Authority (TPA) – legislation critical to implementing trade agreements by limiting lawmakers to a simple up or down vote, without potential procedural road blocks like filibusters or amendments – in 2015, President Obama failed to secure sufficient congressional support for the TPP deal before the 2016 lame duck session. President-Elect Trump remains opposed to the deal in its current form and lawmakers on both sides of the aisle have expressed serious reservations with terms in the final deal that have not yet been addressed by the Obama Administration.

Ongoing concerns with the TPP deal include longer intellectual property protections for biologic drugs and concerns with the tobacco industry’s carve-out from the deal’s investor-state dispute resolution mechanism. If the agreement is not approved by Congress during the lame duck session – a long-shot, given TPA’s requirements and recent statements by congressional leaders – the Trump Administration will have to decide whether to engage TPP member states for formal assurances or to walk away from the agreement altogether.

Transatlantic Trade and Investment Partnership

The United States is not alone in facing a growing trend of trade skepticism. President-Elect Trump will also need to consider resuming negotiations with the EU on the TTIP deal. Negotiators acknowledged in October that the two sides have reached a “natural pause,” after both were unwilling to compromise on several politically contentious items. Regardless, the Obama Administration and EU remain committed to pushing forward with political agreement in as many areas as possible before the end of 2016 – especially on matters related to regulatory cooperation – to set the stage for ongoing talks, should President-Elect Trump decide to resume discussions in 2017. In a [letter](#)⁷ congratulating President-Elect Trump the day after the election, EU Council President Donald Tusk and Commission President Jean-Claude Juncker requested a meeting in the near-term to “chart the course” for U.S.-European relations over the next four years.

⁷ <http://bit.ly/2fTRbci>

However, finalizing the TTIP deal could be severely complicated by its opponents in the EU, who, for example, take issue with the agreement's investor-state dispute settlement mechanism and argue the deal risks lowering EU health and safety standards. In a potential harbinger of things to come for TTIP, EU leaders struggled to finalize a trade agreement with Canada, believed by many to be less controversial than the U.S.-EU deal. Further complicating any possible TTIP negotiation process in 2017 is the fact that France and Germany – two countries whose leaders have been especially skeptical of finalizing the TTIP – are scheduled to have their own elections.

Brexit

As the results of the UK referendum on EU membership became clear in June 2016, President-Elect Trump was promoting the reopening of one of the Trump Organization's properties in Scotland, where he welcomed the news of the UK's "Brexit." With the results of the November 8 election, the U.S. electorate has now arguably joined the "populist" movement recently seen around the world reacting to perceived negative impacts of globalization. UK Prime Minister Theresa May [reached⁸](#) out early on November 9 to congratulate President-Elect Trump. She said she looks forward to working with him on economic, trade, security, defense, and democracy matters to ensure the prosperity and security of both countries.

Some Republican lawmakers, including Speaker Ryan, have urged the Obama Administration to promptly begin laying the groundwork for a U.S.-UK trade agreement. Any such developments, however, are not expected until after the UK begins the formal withdrawal process from the EU next year and assesses its WTO obligations. At a minimum, and similar to the Australian government's strategy, the Trump Administration could establish a formal working group to explore how to sustain and grow bilateral trade with one of its most trusted allies, even as Brexit negotiations move forward. For example, President-Elect Trump could consider the UK's participation in NAFTA as part of any reexamination of the North American trade deal. The UK government could also use its bilateral discussions with the U.S. to increase its leverage in trade talks with the EU.

Other Trade Priority Issues: Trade Enforcement and Sanctions Policy

Two additional issues received scrutiny during the election cycle: (1) the importance of trade enforcement, particularly in the context of U.S. trade with China, and (2) the future of U.S. sanctions policy.

Trade Enforcement

Both candidates emphasized the importance of strong trade enforcement and support for U.S. manufacturing interests, especially in the context of U.S. trade with the People's Republic of China. This theme resonated with the electorate, which has negative views of liberalized trade that trace back to NAFTA. President-Elect Trump is expected to focus on strong trade enforcement, including through new tools to counter anti-dumping/countervailing duty evasion established by the *Trade Facilitation and Trade Enforcement Act* (TFTEA) passed by Congress earlier this year. Like other countries around the world, the U.S. will also have to consider whether to grant China market-economy status in future anti-dumping/countervailing duty investigations.

Sanctions Policy

President-Elect Trump is expected to review the U.S.-Russia bilateral relationship, including an examination of the effectiveness of the existing Russia/Ukraine sanctions regime.

President-Elect Trump has criticized the Iran nuclear deal negotiated by the Obama Administration. In the coming weeks, the 114th Congress is expected to renew the Iran Sanctions Act for ten years before it expires on December 31, 2016, clearing the way for President Trump to focus on other aspects of U.S.-Iran relations when he takes office.

Other Trade Considerations:

- **India.** The U.S. business community has raised market access concerns with the Obama Administration regarding India. Given President-Elect Trump's business background, U.S. industry stakeholders will likely renew outreach on this issue and other trade-related concerns.
- **Africa.** A Trump Administration will likely continue to advocate for business opportunities and investments related to the African continent. This will include possibly promoting the *Electrify Africa Act* (S. 2152) signed into law earlier this year that facilitates U.S. investments on the continent.
- **Western Hemisphere.** The next administration will have to deal with the crisis in Venezuela and the broader regional impact of dependence on Venezuelan sources of energy. As a liquefied natural gas (LNG) exporter, the U.S. will likely continue contributing to the diversification of energy sources in the region. President-Elect Trump's policy toward the U.S.'s southern neighbor remains uncertain. Mexico is understandably concerned about the future bilateral relationship after strong campaign rhetoric by President-Elect Trump that focused on trade and border-related concerns, including NAFTA and migration.

⁸ <https://www.gov.uk/government/news/pm-congratulates-donald-trump-on-his-election-as-the-next-us-president>

- **Cuba.** President-Elect Trump rejected the Obama Administration's rapprochement with Cuba while campaigning, particularly seeking to appeal to Cuban-American voters. Congress remains divided on U.S. policy toward Cuba. On the one hand, Speaker Ryan, Representative Ileana Ros-Lehtinen (R-FL), and Senator Marco Rubio (R-FL) remain vocal opponents to normalizing relations with the Castro government. On the other hand, there is congressional support for removing the trade embargo, including among Senators Jeff Flake (R-AZ) and Rand Paul (R-KY). It remains to be seen whether the 115th Congress will consider lifting the embargo.

Senate Committees of Jurisdiction

Senate Finance Committee Chairman Orrin Hatch (R-UT) is expected to continue as leader of the panel. While Senator Hatch is generally pro-trade, his opposition to TPP's biologics provision remains a key hurdle to Congress's consideration of the deal. Senator Ron Wyden (D-OR) will continue as Ranking Member. Senator Bob Corker (R-TN) will remain Chairman of the Senate Foreign Relations Committee (unless he is selected to be the next Secretary of State in a Trump Administration), with Senator Ben Cardin (D-MD) staying on as Ranking Member.

House Committees of Jurisdiction

Representative Kevin Brady (R-TX) is expected to remain Chairman of the House Ways and Means Committee, with Representative Sander Levin (D-MI) to similarly continue as Ranking Member. Trade Subcommittee Chairman Dave Reichert (R-WA) is expected to keep his gavel, but the retirement of Trade Subcommittee Ranking Member Charles Rangel (D-NY) will open up the top Democratic seat on the panel. Leadership of the House Foreign Affairs Committee will not change; Representative Ed Royce (R-CA) will continue as Chairman and Representative Eliot Engel (D-NY) as Ranking Member.

Anticipated Agency Developments

President-Elect Trump recently promised to consolidate the trade policy functions of various agencies, including the Office of the U.S. Trade Representative, the Commerce Department, and the Department of Agriculture, into one office, the "American Desk." According to President-Elect Trump, the "American Desk" would help streamline U.S. trade policymaking and eliminate unnecessary bureaucracy. Meanwhile, those agencies responsible for trade enforcement – including U.S. Customs and Border Protection, the U.S. International Trade Commission, and the Commerce Department – will likely seek increased funding to implement new requirements established by Congress under TFEA.

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Transportation and Infrastructure

Likely Major Policy Developments

The challenge of revitalizing and updating the nation's transportation and infrastructure will be a focus for the 115th Congress and the Trump Administration. President-Elect Trump has promised to work with Congress during his first 100 days on a \$1 trillion, ten-year, revenue-neutral proposal that would encourage private sector investment in the nation's transportation and infrastructure. President-Elect Trump's proposal, if enacted into law, could provide significant and long-awaited opportunities for Public-Private Partnerships (P3s) to invest in major, high-cost, revenue-supported projects. However, the question of how to fund the routine capital improvements needed to maintain and upgrade our transportation and infrastructure systems remains, as does finding sustainable, long-term sources of funding to augment or replace declining Highway Trust Fund (HTF) revenues. Even though surface transportation authorizations are in place through FY 2020, the 115th Congress may undertake the challenge of a permanent solution.

With the current extension of Federal Aviation Administration (FAA) programs expiring in September 2017, Congress will either have to enact an FAA reauthorization or pass another extension. The key question will continue to be whether it is possible to achieve the needed improvements to modernize the nation's air traffic control (ATC) system without fundamental reform to the FAA structure and freedom from budgetary constraints.

Even though the 114th Congress is expected to pass a *Water Resources Development Act* (WRDA) in the lame duck session, with Congress intending to return to a two-year WRDA cycle, the 115th Congress will likely also take up WRDA. We expect that funds will begin to flow for the Water Infrastructure Finance and Innovation Act (WIFIA) loan program in 2017. Focused on major water infrastructure projects over \$20 million and providing long-term, low interest loans, WIFIA could start to make significant inroads to address the deficiencies in the nation's water infrastructure, while providing new, major opportunities for P3s.

Finally, the transportation technological revolution is here and will continue to accelerate. The challenge for the administration, Congress, and the industry will be to develop appropriate federal requirements to protect the public while not stifling innovation. Meanwhile, the emergence of shared mobility options, different patterns of car utilization and ownership, urban revitalization, and regionalism continue to provide new opportunities for the public and private sectors to work together to invest in infrastructure improvements and to advance new technologies.

The 115th Congress will face a new and changing transportation and infrastructure landscape. We believe the coming years will present opportunities for new public and private investment in the nation's infrastructure, as well as new challenges as the public and private sectors work to strike a balance between investment and innovation and federal oversight and requirements.

Aviation

The current short-term extension of FAA programs expires September 30, 2017. The extension continued previous funding levels and included some policy changes related to safety, security, consumer protection, and unmanned aircraft systems (UAS). Congress will again consider long-term FAA reauthorization proposals in the 115th Congress and will have to pass either a long-term reauthorization or another extension. The Senate and House proposals were vastly different in 2016, with the Senate's *FAA Reauthorization Act* (S. 2658) generally maintaining the status quo with various policy changes and the House's *Aviation Innovation, Reform, and Reauthorization (AIRR) Act* (H.R. 4441) providing comprehensive reform to the ATC system.

The AIRR Act would have substantially reformed FAA, removing the ATC system from FAA and creating an independent, not-for-profit corporation. It would have established a board comprised of stakeholders and system users to govern the ATC Corporation and instituted a user-fee structure for commercial passenger and cargo airlines, while FAA would have retained responsibility for safety regulation. The ATC reform proposal faced significant opposition from Democrats, House and Senate appropriators, and some Republican members of the House Ways and Means Committee. Ultimately, Congress passed a short-term extension with few policy changes.

There are several FAA programs and policies that Members of Congress will likely address in a reauthorization proposal, including modernization of the ATC system, aviation funding and spending programs, safety, and integration of UAS into the National Airspace (NAS). Transportation security has also been an ongoing issue, particularly concerning staffing levels for the Transportation Security Administration (TSA).

Forecast for the 115th Congress

We anticipate few changes in the aviation reauthorization debate in the 115th Congress.

There is widespread agreement that the ATC system needs significant improvement and modernization. For decades, FAA has been working to modernize the ATC system, which continues to operate with technologies dating back to the 1950s. Current modernization efforts are focused on the Next Generation Air Transportation System (NextGen), which includes moving from a land-based to a satellite-based ATC system. These new technologies will deliver significant benefits, including providing fuel and time efficiencies, while reducing flight delays. However, while FAA has been implementing NextGen for over a decade, the agency has faced significant delays and cost overruns. Much of the blame for this has been placed on the federal budget and appropriations process and federal procurement requirements. One potential solution that has been advocated by some stakeholders and Members of Congress is to reform the ATC system and remove it from FAA, which is the basis for the AIRR Act's reform proposal.

House Transportation and Infrastructure Committee Chairman Bill Shuster (R-PA) is expected to continue working to build a coalition of support for the ATC reform proposal included in the AIRR Act. In the 114th Congress, Chairman Shuster worked with a variety of stakeholder groups and Members of Congress to find solutions to their concerns regarding his proposal. These efforts led to support from the National Air Traffic Controllers Association (NATCA), the union representing air traffic controllers, among other stakeholders. However, building enough support to pass ATC reform will remain a challenge, particularly as the Republicans have a narrower majority in both the House and Senate.

Senator John Thune (R-SD) will remain Chairman of the Senate Commerce, Science, and Transportation Committee, and while he was open to considering the ATC reform proposal in the 114th Congress, he did not want to push a proposal that had little chance of success. Senate Commerce Committee Ranking Member Bill Nelson (D-FL) was opposed to the AIRR Act's ATC reform proposal and said that it was "not going to happen," arguing the proposal would unnecessarily disrupt FAA progress on ATC modernization and could lead to increased costs for the traveling public and other users of the aviation system.

Bipartisan leadership of the House and Senate Appropriations Committees also voiced opposition to the ATC reform proposal because it would remove the appropriators' oversight authority. The Senate Appropriations Committee included a restriction on using any funding to implement ATC reform proposals that would remove ATC from FAA in its FY 2017 *Transportation, Housing and Urban Development (THUD) Appropriations Act*. It is unclear how the ATC reform proposal could be modified to gain its support.

One perennial issue Congress faces during reauthorization is aviation system funding. The aviation system collects revenue through aviation fuel taxes, ticket taxes, segment fees, and international aviation taxes. Funding is provided to airports through the Airport Improvement Program (AIP) and Passenger Facility Charges (PFCs). PFCs, which are collected by airports, are currently capped at \$4.50 per ticket. While Congress has not increased the PFC cap since 2000, despite airports advocating for an increase during each recent reauthorization, the issue is likely to be debated again in the 115th Congress. The Senate's recent bipartisan FAA reauthorization bill would have increased AIP funding by \$400 million per year, while the House bill included a smaller increase. An effort to increase AIP funding will likely occur again in the 115th Congress. President-Elect Trump has said that American airports are similar to those of "a third-world country," and specifically mentioned fixing airports as a part of his \$1 trillion infrastructure proposal.

Other issues that may arise during consideration of FAA reauthorization include provisions affecting safety, the Contract Tower Program, and UAS integration. Additionally, while some safety provisions were included in the current short-term extension, such as strengthening mental health screening for pilots and requiring pilots to be trained on manual flying skills, new safety provisions will likely be considered as Congress seeks to deal with aviation incidents around the world.

The Contract Tower Program has been shown to reduce the costs to FAA of maintaining ATC towers in many instances, particularly at smaller or rural airports. Due to broad support from many Members of Congress, the Contract Tower Program is likely to continue. Congress may also increase the cap on the federal share of contract tower construction costs in the next reauthorization.

FAA has been working to integrate UAS into the NAS for several years and has recently made significant strides, publishing a final rule in June 2016 on the Operation and Certification of Small Unmanned Aircraft Systems. The final rule significantly relaxes the requirements for commercial UAS operation and was met with broad support from stakeholders. While FAA has recently made considerable progress in integrating UAS into the NAS, Members of Congress are likely to continue advocating for a number of UAS provisions in the upcoming reauthorization. Some provisions that could be addressed in the reauthorization include expanded allowable operations, federal preemption of state and local laws, and provisions addressing privacy issues.

Additionally, the aviation system continues to experience inadequate TSA staffing levels that have led to long security lines at large airports around the country. In the summer of 2016, Congress allowed the Department of Homeland Security to shift funding from other areas of its budget to increase TSA staffing levels at the busiest airports. While the length of security lines will diminish during the winter, they are likely to increase again next summer, increasing pressure on Congress to provide additional resources for TSA.

Surface Transportation

Infrastructure projects – and the businesses that build them – may be among the biggest early beneficiaries of Trump's White House victory. In his speech in the early morning hours after Election Day, President-Elect Trump declared, "We are going to fix our inner cities and rebuild our highways, bridges, tunnels, airports, schools, [and] hospitals." Trump added, "We will rebuild our infrastructure. Which will become second to none, and we will put millions of our people to work as we rebuild it." His challenge now is to turn this statement into federal policy and legislation, with the help of the Republican-controlled Congress.

While the 115th Congress need not tackle surface transportation programs – *Fixing America's Surface Transportation (FAST) Act* authorizations are in place through FY 2020 – President-Elect Trump has offered his \$1 trillion, ten-year infrastructure plan and has pledged to advance it during his first 100 days in office. The FAST Act reaffirmed Congress's commitment to a strong federal role in surface transportation, but lawmakers did not solve the HTF's chronic revenue shortfall, instead relying on a General Fund transfer to the HTF that was offset by a patchwork of spending cuts and revenue increases, mainly unrelated to transportation.

Any infrastructure bill advanced by President-Elect Trump will face this same challenge: how do you pay for it? His proposal to rely on business tax reform does not constitute a long-term revenue solution, but rather a means to pay for the bill. Transportation stakeholders – along with a few key policymakers – could use this infrastructure debate to advocate once again for a long-term revenue solution. All viable HTF revenue solutions are well known, their advantages and disadvantages long debated. So this is a question of political will. Is the political equation finally right for a genuine, long-term revenue solution, or, with an authorization bill in place for another three years, does the next Congress lack the impetus to make the politically difficult decision to increase transportation revenues? Even if President-Elect Trump's infrastructure bill is enacted, it will likely not include a long-term revenue fix.

States and municipalities across the country have not waited for the federal government to act. They have increasingly relied on local ballot initiatives and state-wide tax measures to raise their own revenues for transportation projects. The number of transportation ballot measures – and the revenues derived therefrom – grows each year, and this trend shows no sign of ending.

In the FAST Act, both political parties rejected the notion of refocusing federal interests to align with limited HTF revenues. Instead, the bill sought to ensure federal transportation spending is more efficient, via increased focus on project finance, tolling, and P3s; innovation; and continued project delivery reforms. The FAST Act's new formula and discretionary funding for freight projects reflect Congress's commitment, after decades of diffuse decision-making at the state and local level, to craft a nation-wide solution for critical freight and trade corridors.

The Obama Administration has made the most of its grant-making authority under the FAST Act's discretionary programs, including using Federal Highway Administration Intelligent Transportation Systems deployment grant funds for a "Smart Cities Challenge" that drew great nationwide interest and significant private sector support to help cities fully integrate innovative technologies into their transportation networks. As required under the FAST Act, the U.S. Department of Transportation (DOT) this summer stood up its integrated project finance office – the Build America Bureau – to streamline federal approval of Transportation Infrastructure Finance and Innovation Act (TIFIA), Railroad Rehabilitation and Improvement Financing (RRIF) loans, and private activity bond allocations while providing technical assistance and sharing best practices in project delivery and finance. But the FAST Act recognized that finance tools are only part of the solution; even though HTF revenues are insufficient, grant funding remains essential. Viewing states as the incubators for real-world methods to restore HTF solvency, Congress established a program to fund state efforts to test the design, implementation, and acceptance of user-based alternative revenue mechanisms. In August 2016, DOT awarded more than \$14 million under this program to eight projects testing new ways to fund highway projects.

Innovation has also been the focus of DOT's efforts to address recent steep increases in highway fatalities. Because autonomous vehicles (AVs) can help mitigate the impacts of driver error, the Department has sought to maximize the safety benefits of AVs through release of federal AV guidelines that established a framework for state and federal oversight of AV development, testing, and deployment. Congress shares the Department's interest in AVs. House Transportation and Infrastructure Committee Chairman Shuster has been a strong supporter of the autonomous driving lab at Carnegie Mellon University. In the lame duck session, the House Energy and Commerce Committee will hold a hearing on autonomous vehicles, exploring the appropriate roles of the federal government, states, and manufacturers, and examining how AV technologies could promote greater vehicle safety, accessibility, and efficiency.

The proliferation of transportation-related technologies has done more than create a new culture of shared mobility. Such innovations have made transportation – vehicles, infrastructure, and logistics – more efficient and affordable, with the promise to significantly alter transportation planning and design choices and even land use decision-making in future years.

Beyond debate on sustainable funding sources for transportation, the transportation committees of the next Congress will likely focus on issues surrounding FAST Act implementation, the safe deployment of automated vehicles, and transportation safety.

Forecast for the 115th Congress

President-Elect Trump's Infrastructure Proposal

To incentivize greater private sector investment in infrastructure, President-Elect Trump's plan offers an 82 percent tax credit designed to attract greater private equity investment in infrastructure projects and reduce project finance costs. The proposal relies on increased tax revenues from two revenue streams generated from the new infrastructure projects to offset the tax expenditure: additional wage income from construction workers and contractor profits. President-Elect Trump's plan also seeks to lower project costs by cutting regulatory red tape and the burdens of federal project delivery requirements.

The proposal dismisses the possibility of establishing a national infrastructure bank, which has long been a Democratic priority. However, in one respect, the proposal reflects bipartisan priorities. President-Elect Trump's plan includes support for Build America Bonds, which are tax credit bonds that both the Obama Administration and Democrats in Congress have long supported, and which, as taxable debt, would open infrastructure projects to a broader pool of investors. In today's low-rate market, President-Elect Trump's proposal views as problematic the continued reliance on the traditional public finance tool of tax-exempt debt.

With reauthorization of the FAST Act still a few years away, President-Elect Trump's proposal is likely to be seen by many transportation stakeholders as a key opportunity to advance their particular interests. While both Congress and the Trump White House may have little appetite to take on difficult issues in what President-Elect Trump has billed as a much-needed investment in America's infrastructure and economy, some straightforward provisions are likely to travel on this bill, such as an effort to make permanent DOT's local hire pilot program. Cities may also view the bill as another chance to pursue greater local control of federal transportation dollars.

President-Elect Trump's reliance on tax credits to equity investors in infrastructure projects may present a challenge. House and Senate tax-writers have been unable to reach agreement on a repatriation approach and, as recently as during last year's consideration of the FAST Act, have not embraced the notion of using revenue gained from repatriation to pay for infrastructure spending.

Autonomous Vehicles

Recently confronted by a dramatic increase in roadway fatalities after a years-long downward trend, DOT announced its commitment to pursuing new solutions to make the nation's roads safer. Chief among those solutions are AVs, which the Department's new AV guidelines characterize as "a technological transformation that holds promise to catalyze an unprecedented advance in safety on U.S. roads and highways."

Included in the new AV guidelines is an outline of best practices for the safe design, testing, and deployment of automated vehicles and a model policy distinguishing federal and state responsibilities for regulating AVs, with the goal of producing a consistent nationwide framework for AV testing and deployment. The guidelines also identify several new tools and authorities DOT believes could aid in its regulation of AVs, including pre-market approval authority for new technologies. This would represent a significant departure from the Department's longstanding self-certification system. The Department views this new AV guidance as a living document, to be updated and adapted to rapidly evolving AV technologies.

Given the potential for AVs to mitigate the great majority of crashes tied to human choices and behavior, we expect the Trump Administration to continue current AV policy initiatives. Outgoing U.S. DOT Secretary Anthony Foxx has said that, before leaving office in January, he will issue a rule governing vehicle-to-vehicle communications, which could affirm the Department's view that spectrum designated for use by connected vehicles cannot yet be safely shared with telecommunications users.

Other Transportation Priorities

The enormously popular Transportation Investment Generating Economic Recovery (TIGER) discretionary grant program – where projects are annually selected by DOT – will likely continue. Competition is expected to grow for awards under this program, along with other discretionary programs established in the FAST Act, like buses and bus facilities and the FASTLANE freight program.

In the 114th Congress, Democratic members of the Senate Commerce, Science, and Transportation Committee dedicated considerable attention to motor vehicle safety and were critical of both automakers and DOT's oversight of the automotive industry. The transportation committees of the House and Senate take seriously their oversight responsibilities for the safety and security of the nation's transportation systems, and we expect recent congressional scrutiny of automakers and the operations of public transportation and passenger rail agencies to continue.

Water Infrastructure

In September 2016, the Senate and the House each passed respective water resources development bills by large majorities. Since the beginning of October, the two chambers have been informally reconciling the bills, with the aim of passing a final conference report during the lame duck session.

The Senate's WRDA bill would provide \$16.2 billion for the Army Corps of Engineers to carry out designated navigation, flood protection, and ecosystem improvement projects across the country. The scope of the Senate bill is broader than traditional WRDA legislation, as it also provides assistance for drinking water and waste water systems primarily funded through the Environmental Protection Agency (EPA), including \$100 million in direct spending for lead-contaminated water projects in communities like Flint, Michigan. The Senate bill also includes \$70 million in direct spending to support loans under WIFIA.

The House-passed WRDA bill provides \$17.4 billion for Army Corps of Engineers projects and, in a last-minute deal to secure Democratic support, authorizes \$170 million for the Corps – not EPA – to assist any community declared a disaster as a result of the presence of lead or other contaminants. The House bill would also mandate the return to the former two-year cycle of passing WRDA bills.

Congressional action on an omnibus appropriations bill for the remainder of FY 2017 will likely include the first appropriations to support WIFIA loans by EPA. House appropriators included \$50 million and Senate appropriators provided \$30 million in their spending bills earlier this year. At an average ratio estimate of 60 to 1, \$50 million in loan subsidy funding could support \$3 billion in drinking water and waste water infrastructure investment.

EPA has been working for more than a year to implement WIFIA and will likely begin accepting loan applications shortly after appropriations are in place. The agency intends to issue an interim final rule on program requirements and procedures before the end of November 2016. Because its original proposal generated widespread concerns from stakeholders, EPA intends to issue a separate rulemaking on loan application and servicing fees.

The FAST Act repealed the statutory ban on co-financing WIFIA projects with tax-exempt debt and neither WIFIA appropriation includes such a restriction. A portion of the Senate WRDA bill's WIFIA funding would be encumbered by a tax-exempt bond ban as a budget scoring tactic, but water infrastructure stakeholders are again pushing to exclude this restriction from the final WRDA conference report.

Forecast for the 115th Congress

EPA has been conducting WIFIA outreach sessions across the country to educate potential borrowers on how the program will accelerate investment in water infrastructure by providing attractive low-interest loans for regionally and nationally significant projects, and we expect the agency to make its initial solicitation to interested borrowers early in 2017. Given the robust support for WIFIA's enactment from utilities and local governments seeking cost-effective approaches to advancing large water infrastructure projects, interest in WIFIA assistance is likely to be strong.

With the WRDA bill likely enacted in the lame duck session, both chambers have signaled their intent to return to a cadence of passing water resources development legislation every two years. Accordingly, work may start on the 2018 WRDA bill by the end of 2017.

Beyond funding for Flint, Michigan, in the WRDA bill this year, it is possible we will see action early in the new Congress to further address lead-contaminated drinking water systems.

Anticipated Congressional Committee Developments

Senate Environment and Public Works (EPW) Committee

Senator John Barrasso (R-WY) is expected to succeed Senator James M. Inhofe (R-OK) as Chairman of the Senate EPW Committee, which has jurisdiction over both highways and water infrastructure. With the retirement of Senator Barbara Boxer (D-CA), Senator Thomas Carper (D-DE) will likely assume the position of Ranking Member; however, if Senator Carper were to retain his position as Ranking Member of the Senate Homeland Security and Governmental Affairs Committee, that would pave the way for either Senator Ben Cardin (D-MD) or Senator Bernie Sanders (I-VT) to assume EPW's Ranking Member position.

Senate Banking, Housing, and Urban Affairs Committee

As Chairman Richard Shelby (R-AL) faces GOP term limits, Senator Michael Crapo (R-ID) is likely to become Chairman of the committee, which has jurisdiction over transit issues. Senator Sherrod Brown (D-OH) is expected to retain his current position as Ranking Member.

House Transportation and Infrastructure Committee

Representative Bill Shuster (R-PA) will continue to serve as Chairman, and Representative Peter DeFazio (D-OR) will continue to serve as Ranking Member. Representative Frank LoBiondo (R-NJ) is expected to continue his role as Chairman of the Aviation Subcommittee, and Representative Rick Larsen (D-WA) is likely to continue his role as Ranking Member. Representative Sam Graves (R-MO) is likely to retain his position as Chairman of the Highways and Transit Subcommittee, and Representative Eleanor Holmes Norton (D-DC) is expected to remain in her position as Ranking Member. Representative Bob Gibbs (R-OH) is facing term limits as the Chairman of the Water Resources and Environment Subcommittee. Although it remains unclear who may assume his role, Representative Grace Napolitano (D-CA) is expected to retain her position as the subcommittee's Ranking Member.

Senate Commerce, Science, and Technology Committee

Senator John Thune (R-SD) is expected to continue to serve as Chairman of the Senate Commerce Committee, which has jurisdiction over aviation, rail, motor carrier and automotive safety, hazardous materials, and maritime issues. Senator Bill Nelson (D-FL) is also expected to retain his current position as Ranking Member. As Senator Kelly Ayotte (R-NH), current Aviation Subcommittee Chairman, was narrowly defeated in the recent election, it is unclear who will assume the subcommittee's top spot. Senator Maria Cantwell (D-WA) is expected to continue to serve as the subcommittee's Ranking Member.

Contact

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