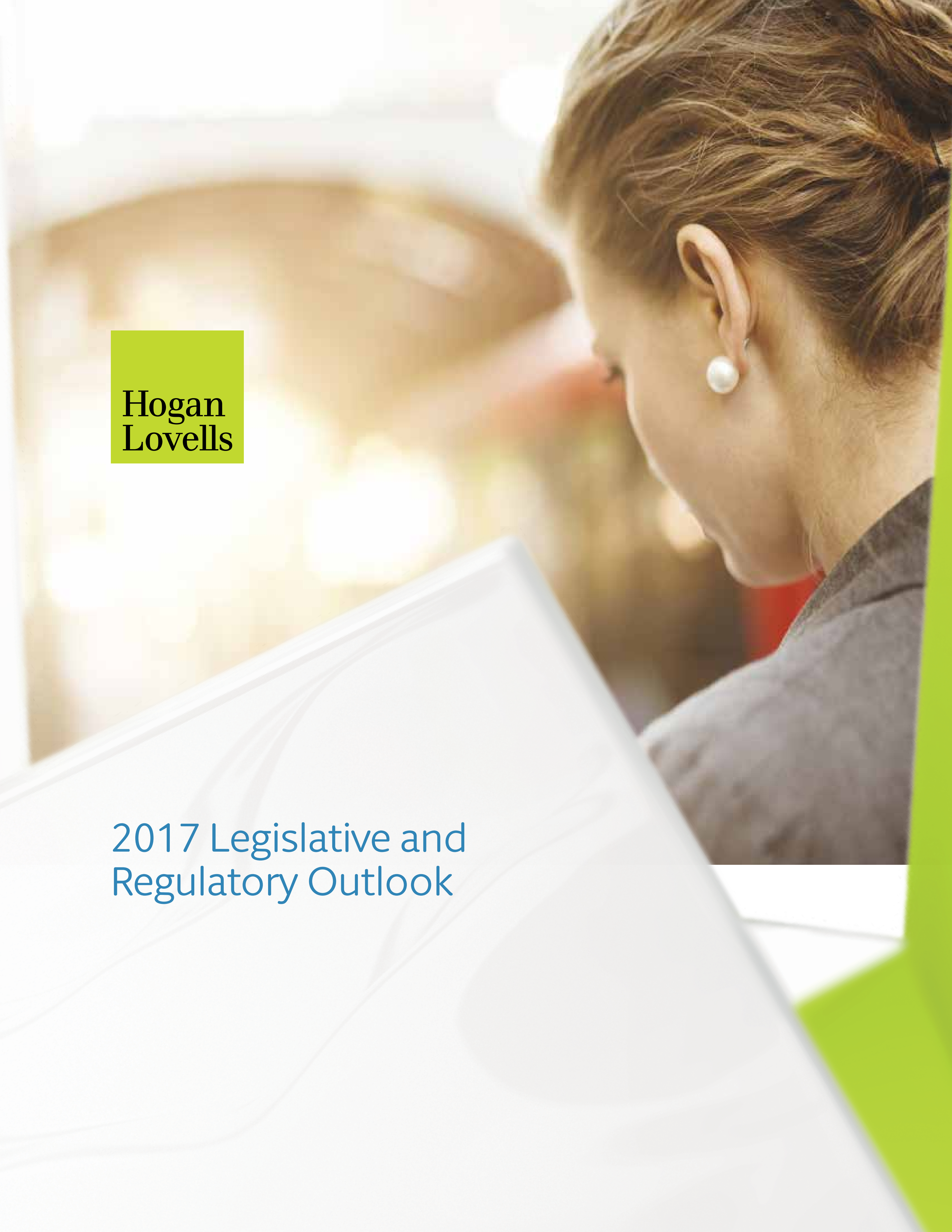
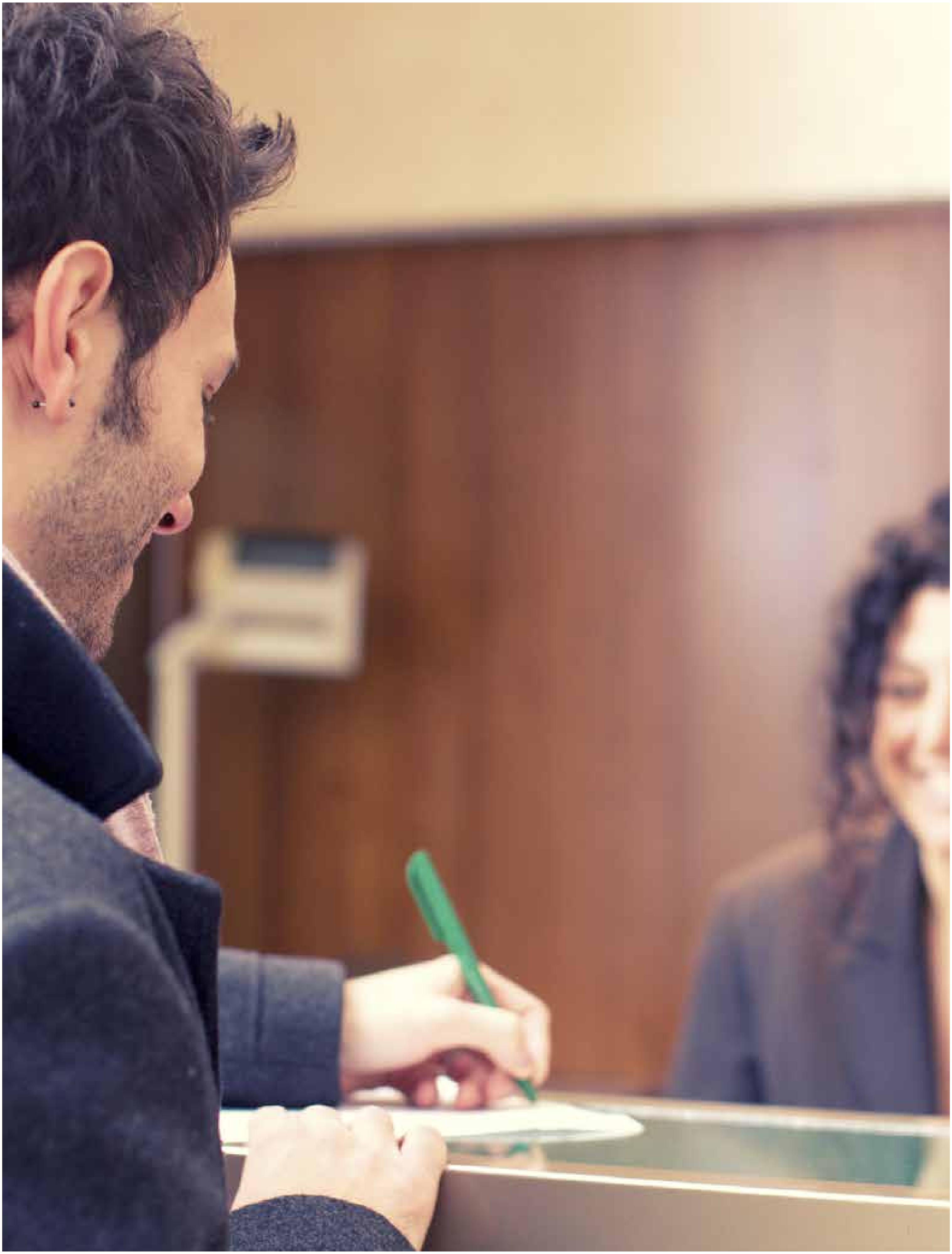


Hogan Lovells

# 2017 Legislative and Regulatory Outlook



# Contents

# Preface to 2017: Preview of the Issues

President Donald Trump's victory in the election of 2016 had long coattails, helping Republicans narrowly maintain their majority in the Senate and easily hold their advantage in the House. With one-party rule of Washington for at least the next two years, and perhaps longer, the White House and its congressional allies will seek to carry out an aggressive legislative and regulatory agenda.

At its core will be a focus on "America first," as the president articulated in his inaugural address. This means a renewed emphasis on American manufacturing jobs. Indeed, on his first full day in the Oval Office, the president issued a memorandum withdrawing the United States from the Trans Pacific Partnership trade agreement. Congress and the administration also plan to repeal regulatory rules on issues ranging from agriculture and environment, to financial services and land use. (Based on statements made by incoming administration officials at their nomination hearings, we expect the leadership in regulating and funding many health, education, and transportation initiatives, among others, to shift from federal to state and locally-driven.)

Many of Trump's agenda items, including replacing ACA, tax reform, and a large infrastructure package, will require congressional action. Although parts of the ACA, and possibly all of the tax reform bill, can potentially clear the Congress with only Republican votes, most other items requiring legislative action will require 60 supporting votes in the Senate for passage. Thus, Trump and the Republican Congress will have to work with Democrats to achieve many of Trump's goals. In addition, congressional Republicans are likely to disagree with the president on his approach to many policy matters, so we should expect anything but smooth sailing on many key issues.

America's role in the world may also change considerably. Referring to the internationalist policies of past administrations, Trump offered an alternative vision in his inaugural address: "We will seek friendship and goodwill with the nations of the world – but we do so with the understanding that it is the right of all nations to put their own interests first." The president's desire to reset relations with Russia may be a source of tension with key lawmakers in both parties.

We invite you to read this preview and analysis of the issues that the Trump administration and Congress will tackle. As the new administration charts its course, Hogan Lovells is ready to help you and your business navigate its uncertainties and complexities.

# Antitrust

Logan Breed and Janet McDavid

The U.S. outlook for antitrust enforcement over the next several years is in a state of flux. President Trump will have the ability to influence antitrust policy at both the Department of Justice (DOJ) and the Federal Trade Commission (FTC) immediately, as he will have the ability to appoint a new Assistant Attorney General to head the DOJ Antitrust Division as well as three FTC Commissioners. Trump will also appoint a new FTC Chair; the administration has tapped current Commissioner Maureen Ohlhausen as acting chair until an official appointment is finalized.

While there has been broad bipartisan convergence among the DOJ, FTC and U.S. courts over the last four decades around antitrust policy based on the consumer welfare standard, it is difficult to predict whether the Trump administration will observe this bedrock principle of antitrust enforcement over the next four years. President Trump's economic policies, as articulated on the campaign trail, have not been the usual Republican uniformly pro-business and anti-regulation. Moreover, as a candidate, Trump made several references to antitrust enforcement that indicate his administration could take a much more aggressive stance in some antitrust cases than would be expected from a Republican administration.

Nevertheless, some of the individuals Trump chose to lead his antitrust transition effort basically fit the mold of traditional Republican antitrust enforcers. One of them, Joshua Wright, was widely regarded as the most conservative Commissioner of the FTC during his tenure as a Republican appointee from 2013-2015. The other, David Higbee, served at DOJ during the George W. Bush administration. Their enforcement record is likely aligned with traditional Republican concern about the potential chilling effect of over-enforcement on procompetitive behavior. This could foreshadow a less aggressive enforcement approach in some areas, especially mergers and dominant firm issues. On the other hand, billionaire venture capitalist Peter Thiel is reportedly playing a role in vetting candidates for the next leaders of the FTC and DOJ Antitrust Division. Thiel does not have experience as an antitrust lawyer, and his preferences are much more difficult to predict. He penned an essay in *The Wall Street Journal* in 2014 titled "Competition is for Losers" in which he extolled the benefits of monopolies, claiming that they are "not a pathology or an exception. Monopoly is the condition of every successful business."

No matter who Trump selects to head the DOJ Antitrust Division, cartel enforcement will likely remain vigorous over the next few years. Both Democratic and Republican administrations have supported aggressive cartel prosecution for the past several decades, including substantial prison sentences for individuals and increasingly large fines for corporations.

The Trump administration's likely approach to merger control and monopolization cases is much less clear. While President Trump has raised the possibility of blocking deals such as AT&T/Time Warner and Comcast/NBCU, it should be noted that Republican administrations' antitrust enforcement with respect to mergers has traditionally been somewhat less aggressive than under Democratic administrations. As an FTC Commissioner, Wright was more willing to accept merging parties' efficiencies arguments in some cases than his Democratic colleagues, and he did not support the FTC litigating merger cases where the harm to consumers was not obvious. The Trump administration may also be less likely to challenge transactions involving claims such as loss of potential competition or harm to innovation.

Finally, it is not clear how the Trump administration will approach international antitrust cooperation and competition advocacy abroad over the next four years. Trump's campaign rhetoric and his post-election comments and actions have eschewed some traditional foreign policy positions. His positions on numerous issues have implied re-thinking of international cooperation with traditional allies and organizations such as NATO while withdrawing from or renegotiating international trade agreements such as Trans Pacific Partnership (TPP) and North American Free Trade Agreement (NAFTA). These comments raise the possibility that the Trump administration may adopt an isolationist posture rather than continuing the United States' traditional role as a strong advocate for the view that the antitrust laws should only be used to protect consumers from conduct that threatens to stifle competition and innovation, with the FTC and DOJ being active participants in the global antitrust policy and enforcement dialogue.

# Budget and Appropriations

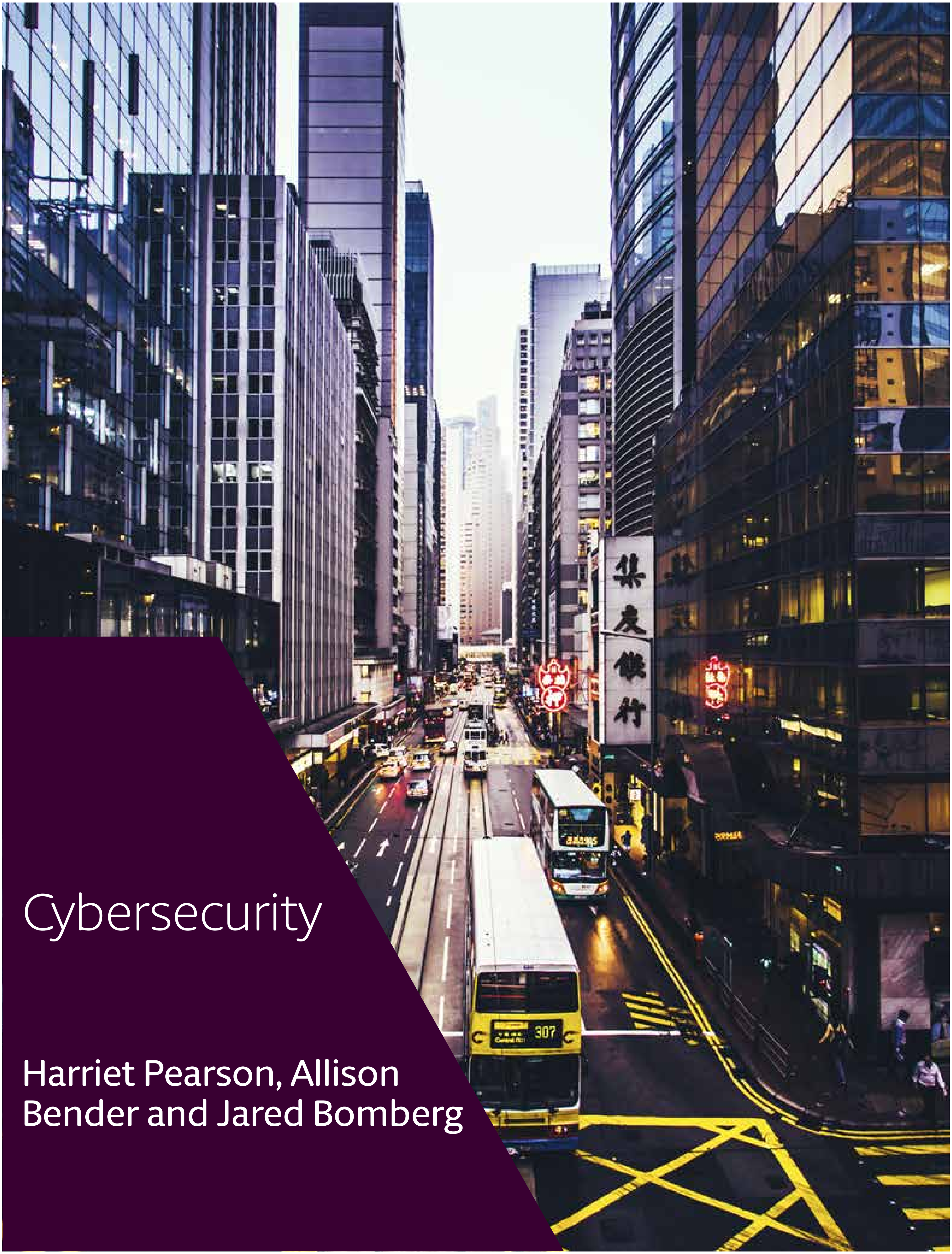
Michael Gilliand

On December 9, 2016, the Senate avoided a government shutdown for another four and one-half months, by passing a continuing resolution (CR) essentially extending federal discretionary spending at current rates through April 28, 2017. Congressional Republicans passed the CR, rather than full appropriations bills, so that the new administration would have the chance to establish and implement its own spending and budgeting priorities for 2017.

The CR sets federal discretionary spending at an annual rate of US$1.07 trillion, the maximum funding level permitted under the current budget law and a level very close to the FY 2016 spending rate. Unless Congress passes, and the president signs, the FY 2017 appropriations bills, funding priorities, program guidance and report language included in the House and Senate versions of the appropriations bills will not have the force of law and cannot be implemented. Given competing legislative priorities, it is very possible that Congress will be unable to devote the floor time necessary to pass and send to president Trump an omnibus bill containing the FY 2017 individual appropriations bills before the current fiscal year concludes on September 30, 2017. As a result, it is becoming more likely that Congress will pass a long-term CR to fund the federal government through the end of fiscal year 2017 when the current CR expires.

In addition to completing work on FY 2017 appropriations and beginning work on the FY 2018 appropriations bills, the 115th Congress must also raise the federal debt limit. The budget deal negotiated in November 2015 suspended the limit on additional federal government borrowing until March 15, 2017. However, the Department of Treasury can use accounting tools to access funds to avoid defaulting on the government's obligations until mid-summer of 2017. The need to increase the debt limit this year could also be an opportunity for Congress to reform the process for considering the debt limit and avoid the brinksmanship we have seen in the past several years.

The House and Senate have already passed S. Con. Res. 3, a budget resolution for FY 2017, solely for the purpose of being able to use the budget reconciliation process to repeal the Affordable Care Act (ACA). Reconciliation can be used to make changes to federal spending levels, revenues, or the public debt limit, and can be utilized to alter mandatory spending for programs such as Medicare and Medicaid. S. Con. Res. 3 includes reconciliation instructions to the relevant congressional committees with jurisdiction over the health care law.




# Cybersecurity

Harriet Pearson, Allison Bender and Jared Bomberg

Attacks on computer systems and networks dominated the headlines in 2016, and in many ways the issue of cybersecurity became known to the average American. As many as 18 million tweets were sent about cybersecurity during the election season, trailing only those concerning foreign affairs, terrorism, the U.S. economy, and guns. Also, 2016 saw potentially the largest cyber breach to date – the Yahoo hacks impacting more than 1 billion users – and the massive Dyn botnet weaponized Internet of Things (IoT) devices with not-seen-before capability of shutting down websites, such as Twitter, the Guardian, Netflix, Reddit, CNN and many others. It is no surprise that cybersecurity has become top of mind for corporate executives, Internet users, and policymakers.

If 2016 was the coming out party for cybersecurity on the national stage, 2017 is looking to be the year when legislators and policymakers at all levels of government place cybersecurity among their top priorities. We expect Congress to stay engaged on cybersecurity, regardless of how a Trump-cybersecurity agenda evolves. Legislators will continue to use their oversight, investigations, budget, and policymaking powers to focus attention and resources on stronger protections for both public and private-sector computer systems. And more broadly, in light of the cyber attacks reportedly directed by Russia to influence the U.S. elections, there will be keen interest on ensuring that investigations, such as the one being conducted by the Senate Select Committee on Intelligence, inform the foreign policy of the United States.

Recently proposed cybersecurity policy reforms have included:

— A major reorganization and consolidation of domestic cybersecurity efforts into a single cybersecurity agency at the Department of Homeland Security;

— Establishing a new joint Department of Homeland Security/director of national intelligence program offering cybersecurity guidance to owners of vital national infrastructure; and

— The creation of special panels to investigate Russia's election-season hacking and other cybersecurity threats.

Congress and the administration also likely will focus on the security of IoT devices, the persistent issue of phishing attacks, and the growing problem of ransomware.

Additionally, in the coming year, Congress likely will again take up data breach notification legislation to create a unifying framework for most private organizations to notify consumers and employees if their personal information has been exposed due to a security breach. Finally, the administration and Congress will remain focused on the oversight of Obama-era cybersecurity reforms, including the implementation of the Cybersecurity National Action Plan and the Cybersecurity Information Sharing Act.

The states, too, will work on amending the data breach notification laws that are in place in 47 states, with some states potentially following California's lead to require reporting when certain encryption keys are stolen. This year will also bring implementation of New York State's cybersecurity regulations for financial institutions and insurance companies – the first of their kind and possibly a model for other states and the federal government.

# Education

Stephanie Gold, Michelle Tellock and Jack Jacobson

Trump has nominated Elisabeth (Betsy) DeVos, a supporter of charter schools and school choice, to serve as education secretary. Under the Trump administration, nuts-and-bolts education policy may be shaped more heavily by experienced leaders in Congress than by the executive branch. Sen. Lamar Alexander, R-Tenn., will remain chairman of the Senate Health, Education, Labor and Pensions (HELP) Committee, and Sen. Patty Murray, D-Wash, will remain ranking member. The House Education and the Workforce Committee will be led by Rep. Virginia Foxx, R-N.C., with Rep. Robert (Bobby) Scott, D-Va., remaining the ranking member.

The Republican-controlled Congress could seek to nullify certain agency regulations that were promulgated in recent months by the Obama administration but are not yet effective, including:

— Borrower defense regulations that, among other things, establish a new federal standard and process for determining whether a student borrower has a defense to repayment of federal loans;

— State authorization regulations that address when an institution must have state approval for distance education programs in order for students in those programs to be eligible to receive federal student financial aid;

— Regulations to implement the Every Student Succeeds Act; and

— Regulations that impose new requirements for teacher preparation programs.

Through reauthorization of the Higher Education Act, appropriations legislation, or otherwise, Congress may also act to change or eliminate certain currently effective regulations that Republican leaders have identified as burdensome for higher education institutions, including program integrity regulations, which established significant compliance requirements for institutions of higher education, and gainful employment regulations, which define the circumstances under which a postsecondary education program prepares students for gainful employment in a recognized occupation, as is required for students to receive federal student financial aid.

Congress also may address the cost of higher education, including through changes to federal student financial aid programs and loan forgiveness programs. Trump has said the federal government should not profit from student lending and that there should be an increased role for private lenders. He also has indicated that colleges and universities with comparably large endowments should be required to spend more of their endowment each year. DeVos has expressed concern about the growth in the cost of higher education and has pointed to community colleges and technical skills training as more affordable options that should be promoted to students.

DeVos has been a staunch advocate of school choice in her home state of Michigan. Trump has proposed providing US$20 billion in reallocated federal funding to support state and local follow-the-child school choice initiatives to include magnet schools, charter schools, and private school vouchers. He has also repeatedly criticized Common Core standards, which have been adopted by a number of states.

# Energy, Environment and Natural Resources

Kyle Simpson, Adam Kushner and Jack Jacobson

The Trump administration and the Republican-controlled Congress have almost unanimously promised to remove impediments to increase America's production of fossil fuels, create jobs, increase energy exports, and enhance our energy independence.

On Trump's first day as president, the White House website added An America First Energy Plan pledging to eliminate the Climate Action Plan and the Waters of the U.S. rule. The website also included the president's plan to use revenues from energy production to rebuild the nation's roads, schools, bridges and public infrastructure. Presidential directives ordering the federal agencies to begin work to do these things are expected soon. Gone from the White House website are sites dedicated to climate change and the Council on Environmental Quality.

On his second business day in office, Trump signed executive actions to advance approval of the Keystone XL and Dakota Access pipelines, two major projects that had been held up by the Obama administration.

Congressional Republicans have been focused on rolling back so-called midnight regulations of the Obama administration. The Senate Republican Policy Committee Chairman John Barrasso has listed for elimination a June 30 interior department rule regarding the valuation of coal, oil, and natural gas produced from federal land and a rule limiting venting of methane from oil and gas production activities on federal lands. The Environmental Protection Agency rule regarding methane emissions from oil and gas sources has also been targeted for elimination. Chairman of the Senate Committee on Environment and Public Works Sen. John Barrasso has proposed to prevent the implementation of the Clean Power Plan. Sen. Lisa Murkowski, R-Ak., plans to reintroduce a version of comprehensive energy legislation that ended last year mired in a Senate-House conference committee.

In the House, the Republican leaders of the Committee on Energy and Commerce that has jurisdiction over energy and environmental law and regulation has proposed to roll back the Environmental Protection Agency and Department of Energy (DOE) regulations on methane and efficiency and eliminate the Clean Power Plan. The Natural Resources Committee intends to change the methane rules and coal, oil and natural gas leasing and production rules. The Republican leaders consider these regulations to be impediments to U.S. energy production and job creation.

In the Trump administration, the Obama bias toward reducing greenhouse gas emissions will be replaced by a policy directed toward using American resources to lower energy costs, increase jobs and free the country from dependence on foreign oil. It remains to be seen how budgets for EPA, DOE and the Department of the Interior will affect programmatic direction for energy, environment and resource development science, and research and development programs.

# Financial Services

Aaron Cutler and
Loyal Horsley

Trump and the Republican Congress are expected to substantially revise and revamp federal financial services regulation. Steven Mnuchin is expected to be confirmed as the next treasury secretary. Trump will also have to fill several agency positions: three commissioners at the Securities and Exchange Commission (SEC); three commissioners at the Commodity Futures Trading Commission (CFTC) once commissioner Massad steps down, which he said he will do in several weeks so as to ensure the CFTC is not hobbled by having only two commissioners; and Comptroller of the Currency Thomas Curry, when his term at the Office of the Comptroller (OCC) expires in April 2017.

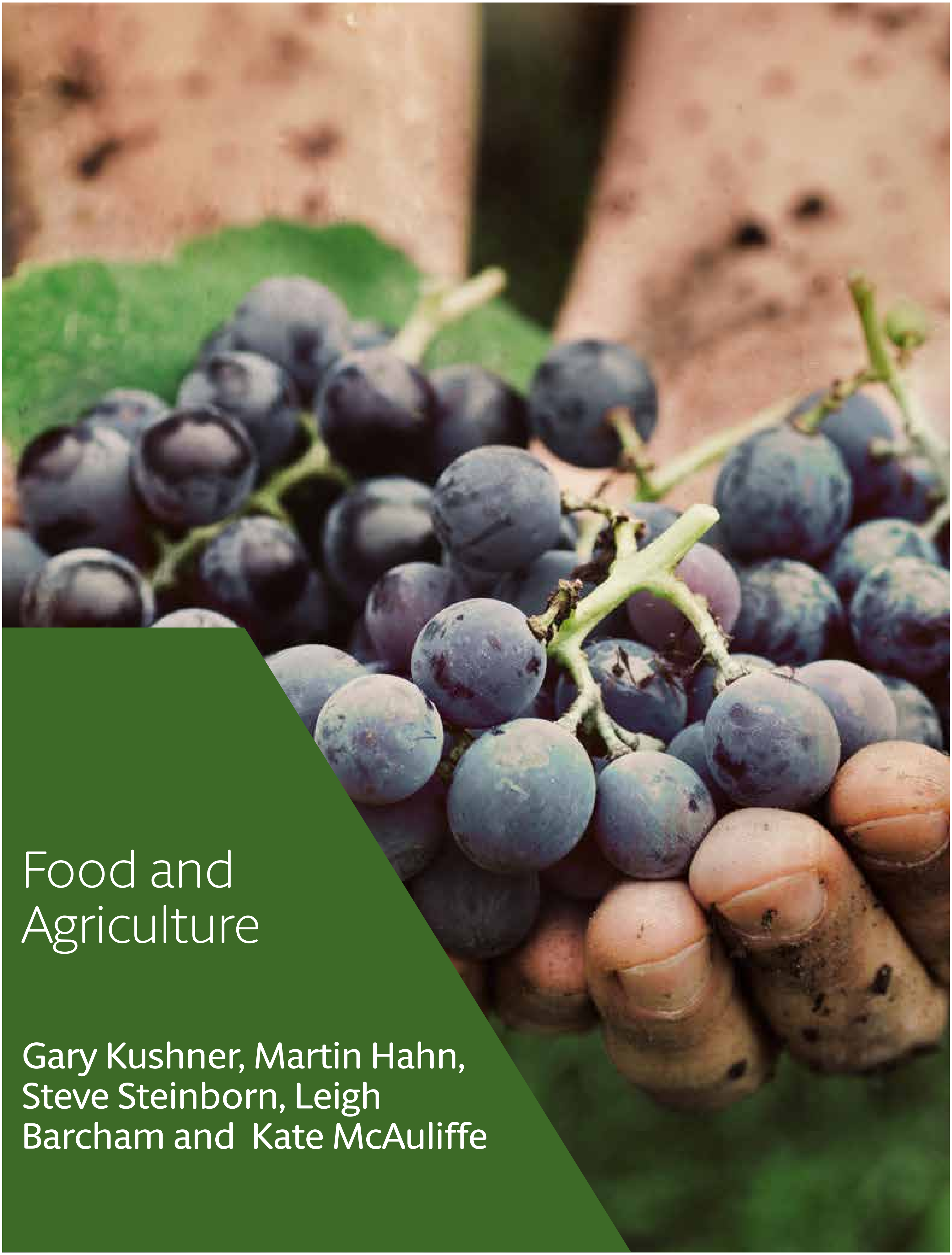
While these agencies are likely to see shifts in their regulatory agendas and potentially their enforcement focus, no agency is likely to be more affected by the new administration and Congress than the Consumer Financial Protection Bureau (CFPB). Director Richard Cordray is likely to be fired by Trump early in the term and replaced by an appointee with a much less expansive view of the CFPB's authority. Congressional Republicans have long advocated for changing the CFPB into a bi-partisan commission and that revision will likely be included in any sweeping legislation proposed by Congress. The CFPB was recently dealt a blow by the court in PHH v. CFPB, in which the D.C. Circuit Court of Appeals found its structure, as is, to be unconstitutional. The court provided a fix by making the Director removable at will rather than solely for cause. The CFPB has petitioned for an en banc rehearing and the holding will be stayed until the entire court reaches a decision. Even without the court's decision, president Trump is likely able to remove Cordray "for cause" because that is a relatively subjective standard and Cordray's actions certainly place him at odds with the new president's view of the regulator's role. Should he be fired, Cordray is expected to file suit, which is likely to present a question of first impression.

Congressional Republicans, led by Rep. Jeb Hensarling of Texas, are expected to quickly introduce legislation to roll back and revise many portions of the Dodd-Frank Act. During the last Congress, Hensarling introduced the Financial Creating Hope and Opportunity for Individuals and Communities through Education (CHOICE) Act. He is expected to introduce a revised version of the same bill either late in the first quarter or early in the second this year. The bill is expected to address the CFPB, the FDIC's Orderly Liquidation Authority (Title II), an alternative structure for capital and liquidity requirements, and an overhaul of the federal financial regulators, in general. There will likely be a lot of pushback in the Senate, but the Financial CHOICE Act provides a roadmap of the direction congressional Republicans would like to take financial regulation.

While the president and congressional Republicans have consistently called for less regulation, most changes are unlikely to affect the largest financial institutions. One proposal changes the threshold for automatic designation as a systemically important financial institution (SIFI) from US$50 billion to US$250 billion (and another essentially raises the threshold to US$500 billion). Further, while the Volcker Rule is generally derided by Republican lawmakers, it is unlikely to be rolled back for those designated as SIFIs or global systemically important banks. This administration and Congress are more likely to redefine what it means to be a "big bank" so that fewer institutions are captured under that umbrella. This change will allow for more mergers and acquisitions activity in mid-sized banks, especially those between US$30 and US$100 billion.

During his campaign, Trump stated he would institute a requirement that for every new regulation passed, two must be eliminated. He has not yet signed such an order, but his statement is indicative of his attitude toward regulation. As such, the rules mandated by the Dodd-Frank Act but not yet finalized (and in some cases, not yet proposed) are unlikely to gain much headway.

The growth of the financial technologies (fintech) industry and its position within the larger financial services regulatory landscape continues to be a point of contention. While the states have been actively legislating and regulating fintech, movement has been slow at the federal level. The OCC's recent proposal for special purpose national bank charters for fintech companies has met with both Congressional and industry resistance. Last Congress, Rep. Patrick McHenry, R-N.C., introduced the Financial Services Innovation Act, which would install a special fintech office in each federal financial regulator. Some version of this bill may be reintroduced in the new term, but federal fintech legislation and regulation is likely to take a backseat to the more general financial regulatory overhaul.



# Food and Agriculture

Gary Kushner, Martin Hahn, Steve Steinborn, Leigh Barcham and Kate McAuliffe

A Trump presidency has many questioning what lies ahead for food and agriculture policy throughout the next four years. The simple answer is that we don't know for certain. In fact, the only safe prediction is that the future is very much unpredictable.

The Food and Drug Administration (FDA) has already issued all of its major rulemakings and policies. Examples include the seven major Food Safety Modernization Act (FSMA) rules, revoking the generally recognized as safe status of partially hydrogenated oils, updating the Nutrition and Supplement Facts Panel regulations, and issuing final regulations on menu labeling and vending.

At USDA, the Food Safety and Inspection Service recently released its proposed rule for revisions to the Nutrition Facts Panel for meat and poultry products. The Grain Inspection, Packers and Stockyards Administration also recently released the Farmer Fair Practices Rules — consisting of an interim final rule and two proposed rules — concerning unfair practices under the Packers and Stockyards Act and the use of poultry grower ranking systems. The Animal and Plant Health Inspection Service also issued a proposed rule to revise its regulations regarding the importation, interstate movement, and environmental release of certain genetically engineered organisms.

Trump has named Rep. Tom Price, R-Ga., as his nominee for secretary of Health and Human Services. Price has been a vocal opponent of the ACA, voted against FSMA and the Healthy, Hunger-Free Kids Act, and was one of many co-sponsors of legislation in the 113th Congress that would have revised FDA's menu labeling regulation (H.R. 1249). Nevertheless, if confirmed, secretary-designate Price would be expected to give his primary attention to healthcare reform and defer to the FDA Commissioner to lead policy development in the area of food regulation. Note that the FDA Commissioner position requires Senate confirmation and could take months to complete, as it must compete for Senate floor time with hundreds of other similar positions.

Georgia Governor Sonny Perdue, Trump's choice for secretary of the Department of Agriculture, has deep ties to agriculture. Perdue, a onetime veterinarian, was elected in 2003 as Georgia's first Republican governor since Reconstruction. It is expected that Perdue will be a strong voice on trade for the agriculture industry.

As is customary, the new administration has issued a temporary freeze on new rulemaking. As previously mentioned, the FDA has already issued all of its major rulemakings and policies, and the freeze is not expected to significantly impact FDA's regulatory activities. Several recently issued USDA rules that have not yet taken effect, however, will fall under the 60-day delay instituted by White House Chief of Staff Reince Priebus' memo announcing the freeze. For instance, the effective dates will be delayed for the Agricultural Marketing Service's recent rule on livestock and poultry practices under the National Organic Program as well as the Grain Inspection, Packers and Stockyards Administration's interim final rule on the scope of Section 202(a) and (b) of the Packers and Stockyards Act.

It is impossible to predict with any certainty the issues that will become priorities for the agencies under the Trump administration. A heavy theme throughout Trump's candidacy that we expect to continue, however, is the need to reduce the regulatory burden on companies throughout all industries in order to stimulate job growth. These statements and others related to FDA, specifically, could signal a reduced regulatory role for FDA and USDA. A reduced regulatory role for federal agencies could, in turn, lead to an increase in state regulations and enforcement efforts.

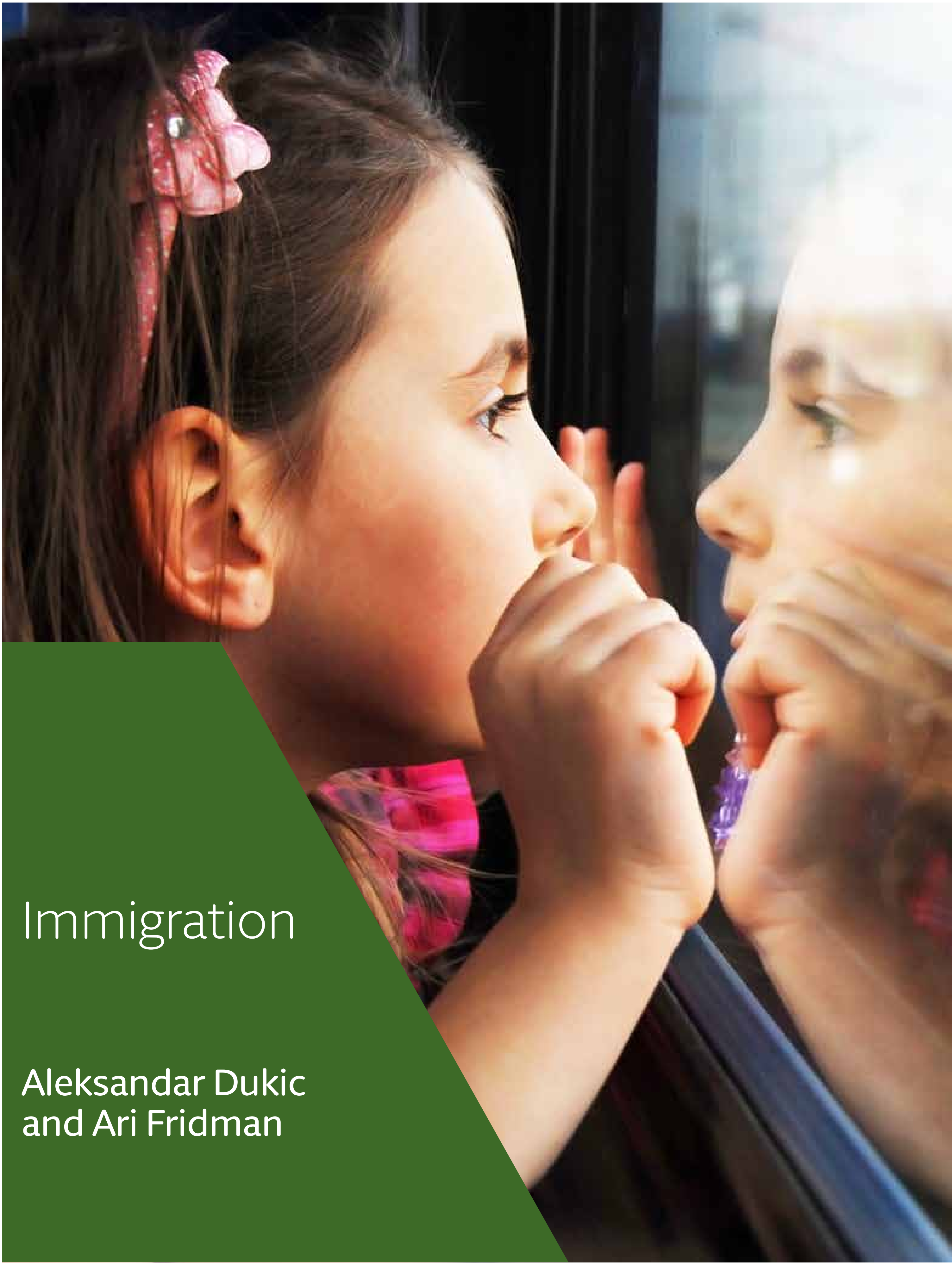
# Healthcare

Beth Halpern, Beth Roberts
and Kate McAuliffe

The healthcare agenda of the new Administration and Congress is dominated by the drive to repeal and replace the ACA. Congress took an initial step toward this goal in the first weeks of the new session by passing a budget resolution that sets a deadline of January 27, 2017, for the relevant committees to propose legislation to repeal the ACA. Several Members of Congress, however, have said this deadline is not realistic. Congressional leaders and the president want Congress to consider legislation to replace the ACA at the same time as the repeal measure, and there is no clear plan yet for either piece of legislation. A complete repeal and replace package could take weeks or months to develop. Congressional leadership intends to use the budget reconciliation process, which requires only 51 votes in the Senate, to repeal certain sections of the ACA that involve taxation or spending. However, they have not yet identified which sections would be repealed. Repeal could be limited to the tax subsidies and penalties that apply to coverage purchased through exchanges or it could include other tax provisions, such as taxes on health plans, medical devices, and pharmaceuticals that help to support coverage expansions. Congress also could repeal the Medicaid expansion and some of the Medicare changes in the ACA. Reconciliation cannot be used to repeal the entire ACA, and indeed, Congress likely does not intend to repeal the entire law. The ACA included popular provisions unrelated to the controversial health insurance market rules, such as the biosimilars approval pathway and measures to close the Part D “donut hole,” which probably will not be changed.

Replacement legislation beyond tax and spending provisions requires at least 60 votes in the Senate, and despite growing consensus about the need to pass a replacement package at the same time as the repeal legislation, there is no agreement yet on what will replace the ACA. There have been conflicting statements by Trump and Congressional leaders about which provisions of the ACA to keep, such as protections for individuals with preexisting conditions, how many Americans they intend to cover, what level of out-of-pocket cost would be acceptable, and whether reforms to Medicare and Medicaid should be part of the same legislation. Several Members of Congress have offered proposals, and Trump has said that he will release a replacement plan as soon as his nominee for Secretary of Health and Human Services, Rep. Tom Price, is confirmed.

While Congress works on repeal and replaces legislation, the Trump administration has begun implementing changes to ACA regulations. On his first day in office, Trump signed an executive order, “Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal,” that instructs agencies to use their existing authority and discretion to reduce regulatory burdens associated with the ACA. The executive order appears to be deliberately vague as to its practical implications to provide the Administration maximum flexibility in rescinding and interpreting ACA regulations. These actions may require further rulemaking, with public notice and comment periods, before any changes take effect.



# Immigration

Aleksandar Dukic
and Ari Fridman

Building a wall on the southern border with Mexico and preventing illegal immigration were hallmarks of the president's campaign. Trump insisted that Mexico would pay for a border wall.

Within days of taking office, president Trump signed an executive order to advance the construction of a physical barrier on the southern border. The White House has now asked Congress to appropriate funds to build the wall, pursuant to the 2006 bipartisan Secure Fencing Act, which gives Congress the authority to construct partial fencing along the southern border. The administration's position is the United States will construct the wall, and Mexico will pay for it afterward. Trump also signed an executive order to ensure that immigration laws are enforced throughout the United States, including halting federal funding for sanctuary cities.

During the campaign, Trump also pledged to reform the pathways for legal immigration to the United States by setting certain conditions for eligibility. First, the United States would admit "immigrants based on their likelihood of success in the U.S. and their ability to be financially self-sufficient." Second, prospective immigrants would be vetted to "ensure they support America's values, institutions and people." Third, the United States would "temporarily suspend immigration from regions that export terrorism and where safe vetting cannot presently be ensured." At other times, Trump spoke of implementing a ban on all Muslims seeking admission to the United States.

Days after signing the executive orders on Enhancing Public Safety in the Interior of the United States and Border Security and Immigration Enforcement Improvements, Trump signed another executive order with respect to certain individuals seeking visas and refugee status in order to enter the United States. Citing the importance of "detecting individuals with terrorist ties and stopping them from entering the United States," the executive order prohibits people from seven countries—Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen—from entering the United States for 90 days. And in order "to ensure that those approved for refugee admission do not pose a threat to the security and welfare of the United States," the executive order pauses the admission into the Unted States. of people granted refugee status for 120 days while the Trump administration revises immigration screening procedures. The White House has clarified that the executive order does not pertain to green-card holders, who are foreign nationals permitted to live permanently in the U.S.

Trump also pledged during the campaign to immediately terminate Obama administration executive orders deferring deportation of certain categories of illegal aliens, including so-called DREAMers who were granted amnesty under his administration's Deferred Action for Childhood Arrivals policy. However, Speaker of the House of Representatives Paul Ryan has stated that revocation of protections for the DREAMers brought to the United States as children will not be carried out.

Gen. John Kelly, a retired Marine Corps general, who was confirmed by the Senate as the Secretary of Homeland Security, will be the administration's point person for border enforcement. Gen. Kelly, who gained valuable regional expertise as the combatant commander of U.S. forces in Latin America, said his highest priority would be to "close the border to the illegal movement of people and things. Achieving this priority starts with physical obstacles like a border wall and supporting surveillance technologies, and then requires constant patrol by the dedicated men and women of the department and local law enforcement in enforcing the law."

On Capitol Hill, the key committees of jurisdiction are the Homeland Security and Judiciary Committees in the House and Senate. In the House, Mike McCaul, R-Texas, and Bennie Thompson, D-Miss., will continue as the chairman and ranking member, respectively, of the Committee on Homeland Security. Bob Goodlatte, R-Va., and John Conyers, D-Mich., will continue as the chairman and ranking member, respectively, of the Committee on the Judiciary.

In the Senate, Ron Johnson, R-Wis., will continue as the chairman of the Committee on Homeland Security and Governmental Affairs; Claire McCaskill, D-Mo., will become the ranking member. Chuck Grassley, R-Iowa, will remain chairman of the Committee on the Judiciary, while Dianne Feinstein, D- Calif., will serve as the committee's new ranking member.

Aside from the construction of a border wall, the major legislative question facing policymakers on these committees is whether they can achieve elusive comprehensive immigration reform. Past bipartisan proposals have centered on elements pertaining to securing the border, creating a guest worker program for temporary foreign workers, and admitting greater numbers of high-skilled workers who have obtained advanced degrees in science and other applied research fields. However, the political incentives for achieving comprehensive immigration reform are not favorable.

Key Senate Democrats like Joe Manchin of West Virginia, Jon Tester of Montana, Heidi Heitkamp of North Dakota, and Joe Donnelly of Indiana, are up for reelection in 2018 in states that the president won. They voted for the bipartisan 2013 Senate Gang of Eight comprehensive immigration bill creating a path to citizenship for undocumented immigrants. However, in the face of tough Republican challengers in 2018, they may vote with the GOP on border security measures. Further, Republican lawmakers who have expressed support for a path to citizenship in the past now agree that border security is the first step to comprehensive reform.

# Labor and Employment

Stan Brown, Barbara Roth and Dave Baron

The Trump administration's nominee for secretary of labor is Andrew Puzder, currently the CEO of CKE Restaurants. Though it is not clear at this time how the Department of Labor (DOL) would change under the new administration, Puzder is openly critical of government regulation in employment. As a result, it is likely that pending changes to overtime regulations — which were recently enjoined and include increasing the salary threshold for classifying employees as exempt — will not come into effect. Also likely to stall are efforts to increase the federal minimum wage, as well as the present DOL's efforts to adopt the so-called persuader rule — another enjoined rule that would require employers to identify labor relations consultants, including lawyers.

Also at the federal level, the pace of employment-related enforcement activities at the DOL and other agencies— such as the Equal Employment Opportunity Commission (EEOC) and SEC — is likely to slow given the Trump administration's federal hiring freeze and stated intention to reduce the number of federal government employees. In addition, the Trump administration is expected to rescind the prior administration's executive order requiring government contractors and subcontractors to report workplace violations found by administrative agencies or courts.

The Trump administration is also expected to reverse the EEOC's pay data disclosure regulation, scheduled to go into effect March 2018, which would require employers to disclose additional employee compensation information to the EEOC as an enforcement mechanism. The administration may also, by executive order, remove the requirement for paid sick leave for federal contractors and/or loosen the fiduciary regulation that tightened the conflict-of-interest restrictions for financial advisers on retirement funds.

Another expected change at the federal level will be the composition of the five-member National Labor Relations Board (NLRB), to which the Trump administration will have the opportunity to appoint a Republican majority. We expect that if and when its makeup changes, the NLRB will begin to issue decisions that reduce the scope of its jurisdiction, rather than expand it as it had done under the prior administration. Specific examples are likely to include, but are not limited to, enforcing a more rigorous joint employer standard (thus reducing the reach of the joint employer doctrine), declining to assert jurisdiction over certain religious-affiliated entities, and potentially reversing the current NLRB position that class and collective action waivers violate the National Labor Relations Act.

The newly-comprised NLRB could also increase scrutiny on labor union practices and reverse trends designed to promote union representation, such as the so-called quickie election rule. To date, the Trump administration has not publicly disclosed an agenda with respect to the NLRB or identified potential appointees, and reports are that it is not considered a top priority.

Although the shifting federal landscape is likely to decrease employment regulation, we expect the state landscape to grow in complexity, with traditionally liberal states such as New York and California adding to their already robust regulatory structure, at least in part as a reaction to decreased federal regulation. In addition, we expect the trend of diversified local (town and city) regulation to continue, for example with respect to local sick leave laws.

# Privacy

Trey Hanbury,
Mark Brennan and
Jared Bomberg

Privacy legislation in 2017 will again touch on a range of issues. Although the outlook for privacy legislation in Congress has changed, likely legislative efforts at the state level as well as pressures stemming from advances in technology will undoubtedly keep privacy at the forefront of the national policy debate.

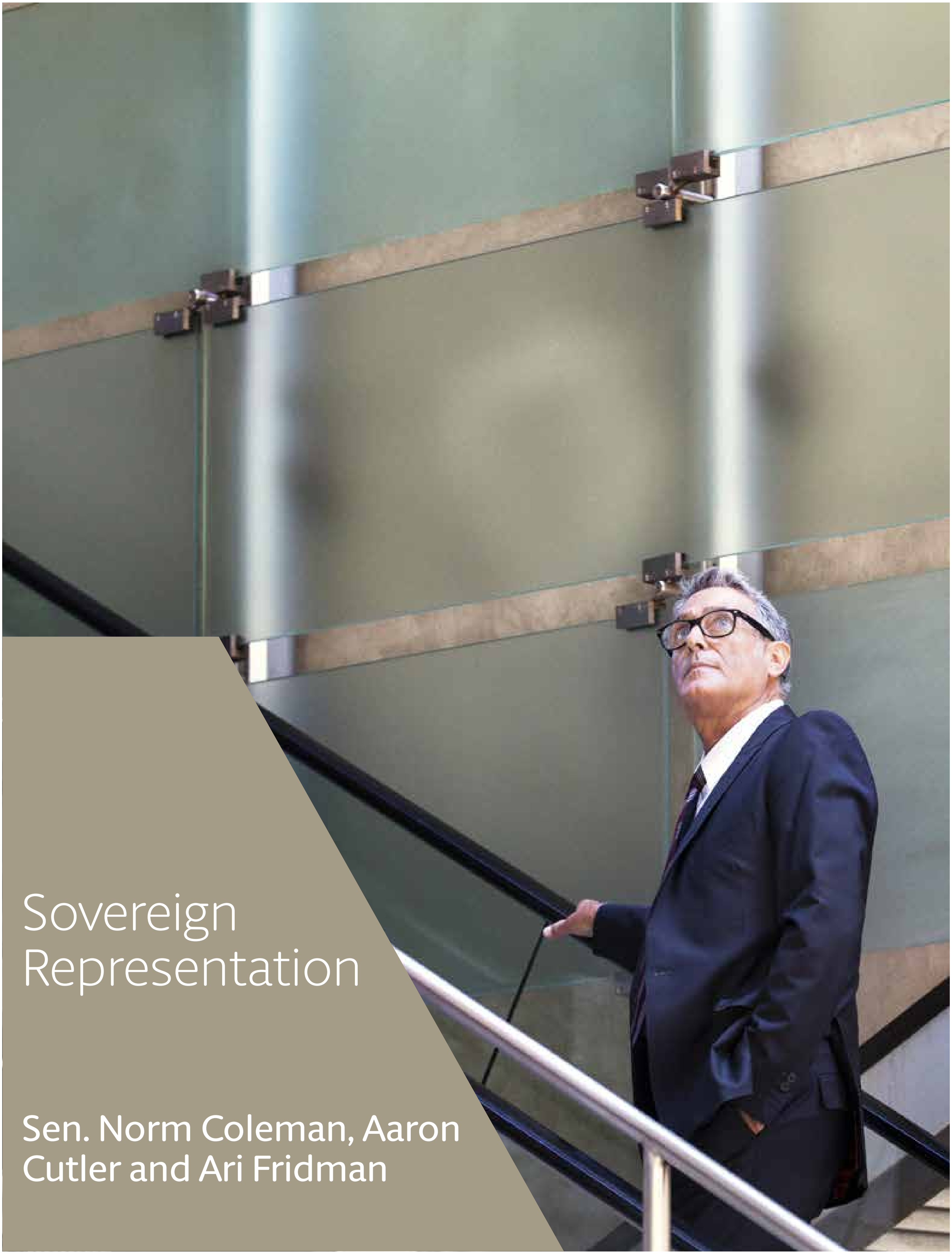
At the federal level, we expect to see a renewed push for updates to the Electronic Communications Privacy Act (ECPA), which would require a higher bar for the government to obtain emails that are more than 180 days old. ECPA reform nearly became law last year, passing the House unanimously but failing to pass out of the Senate. Should the bill be enacted, it potentially faces opposition from the president who ran for office on a “law-and-order” platform.

Another area under review will be the Federal Communication Commission’s (FCC) privacy rule for Internet service providers, which creates new rules for how Internet service providers collect, use, and share user information. We expect leading members of Congress and the FCC to attempt to scale back these regulations or eliminate them entirely — whether through legislation, the appropriations process, rulemaking or otherwise.

Other matters at the federal level include drone privacy, connected cars, and wearable health devices. But, privacy concerns related to these technologies are unlikely to result in new federal regulations given Republican control of both houses of Congress and the president’s anti-regulation posture.

The states, however, may see an uptick in privacy legislation, in part to fill an expected or perceived void at the federal level. The states already have been active passing legislation on student data privacy and drones; dozens of states have passed privacy laws in the last few years on both issues. Laws restricting an employer’s ability to ask for information on employees’ and job applicants’ criminal history is another area of activity at the state level; many states and local jurisdictions have passed such laws in the last few years. We are likely to see continued legislative activity on all of these fronts in 2017.

Additionally, we could see states’ resistance to changes in immigration enforcement spill over to privacy debates, including greater scrutiny of new law enforcement surveillance technologies, like automated license plate readers, facial recognition technology and social media monitoring software. States could take measures to restrict information collection by these technologies or resist sharing such information with the federal government for immigration purposes.



# Sovereign Representation

Sen. Norm Coleman, Aaron Cutler and Ari Fridman

Even allowing for the excesses of campaign rhetoric and negotiating leverage, Trump's handling of the nation's foreign policy will be a dramatic departure from the agenda followed by the Obama administration over the last eight years.

On the campaign trail, Trump expressed views starkly in contrast to his predecessor with respect to the size of the U.S. military, relations with Russia, the military approach to dealing with ISIS, relationships with major trade partners like China and Mexico, the viability of the nuclear deal with Iran, the future of the NATO alliance, and United States' support for Taiwan and Israel.

On Russia, in particular, the president appears determined to reset relations with Moscow. His secretary of state-designate, Rex Tillerson, who did major business deals in Russia as the CEO of Exxon Mobil, has a close relationship with Russian President Vladimir Putin. The underlying question is whether the two Cold War foes can reach a formula that will allow for greater U.S.-Russian cooperation on shared interests, such as the defeat of ISIS, while accepting that the two nations will agree to disagree over the state of Russian democracy.

During the campaign, Trump decried the U.S. trade imbalance and threatened to impose punitive tariffs on imports from nations like China and Mexico. Given that a full-blown trade war between the United States and these trading partners would not be in either side's interests, it is hard to imagine that he would ultimately take such extreme measures. Confrontation over trade is particularly tricky as it relates to China, especially because deteriorating relations can have national security implications on hotspots like the South China Sea, where Beijing and its neighbors have competing territorial claims.

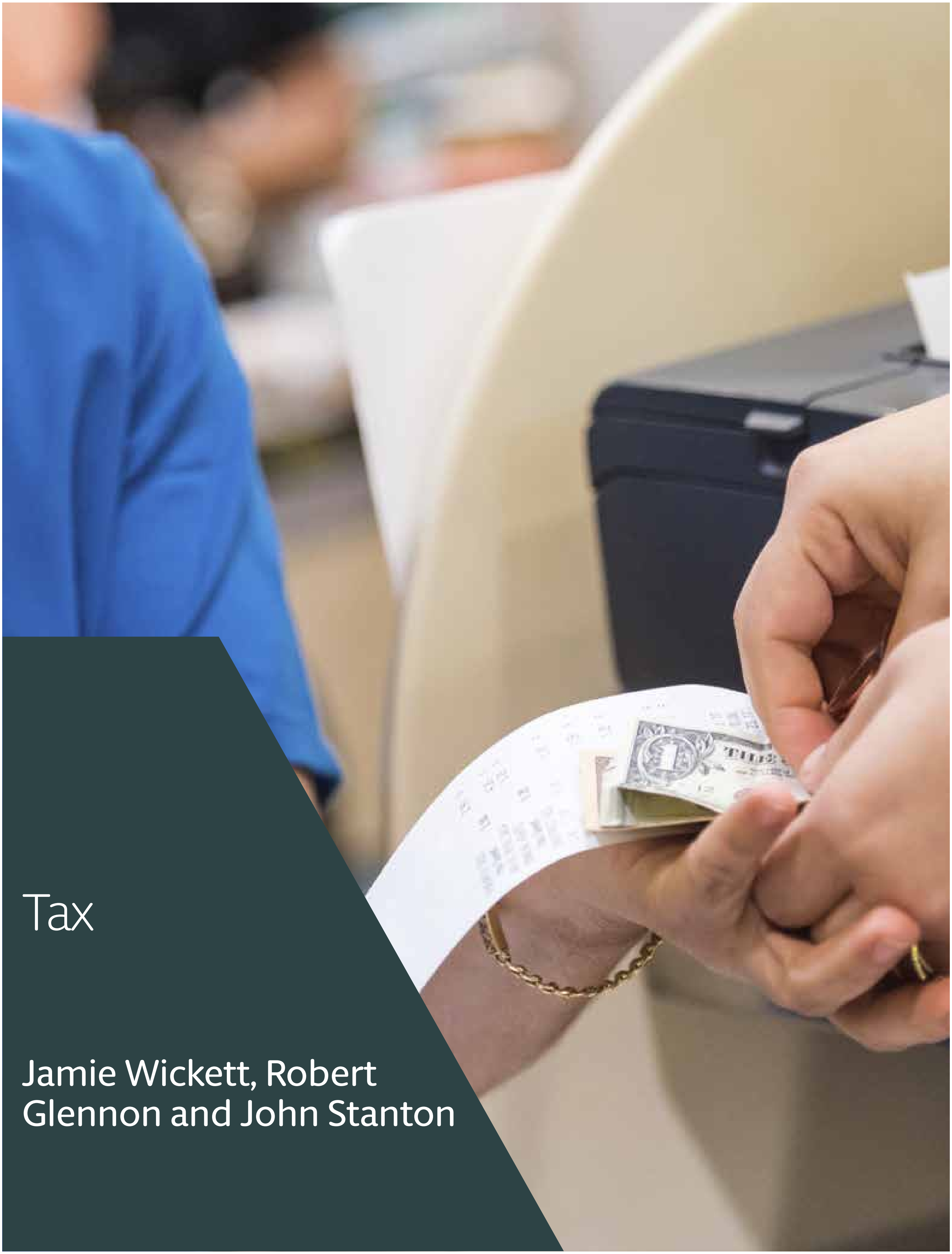
China could take further provocative moves that necessitate a U.S. response, which may feel compelled to protect U.S. allies like Taiwan. Mexico could agree to reopen NAFTA, allowing Trump to achieve terms that are more favorable to the American manufacturing base. This could be complicated by his pledge to build a border wall for which Mexico would pay.

The handling of traditional U.S. alliances could also prove sensitive, as Trump complained during the campaign that allies like Japan and South Korea were not doing their fair share at paying for the cost of hosting U.S. forces that defend them against domestic threats. Trump also railed against NATO member countries for failing to spend larger amounts of their national budgets on defense spending, asserting that NATO risked becoming obsolete in the age of terrorism.

With other U.S. allies like Israel and Taiwan, the Trump administration may adopt dramatic policy changes, such as moving the U.S. embassy from Tel Aviv to Jerusalem and discarding the longstanding One China policy. Elsewhere, the Trump administration may seek to roll back elements of the Obama administration's most far-reaching openings with foes like Cuba and Iran. It is conceivable, for example, that the United States will seek to extract human rights concessions from the Castro regime in Havana while insisting on more stringent enforcement of the nuclear agreement with Iran and imposing new sanctions.

Surrounding the president will be a group of former generals. In the White House, Gen. Mike Flynn will be the national security advisor. Flynn became a trusted advisor to Trump during the campaign and will have the most consistent daily interaction with the president. He is a polarizing figure, whose background is as an intelligence officer — he was formerly the director of the Defense Intelligence Agency — and is believed to reinforce the Trump's skepticism of the intelligence community's supposed apolitical nature.

At the Pentagon, retired Marine Corps Gen. Jim Mattis, the secretary of defense, will be tasked with overseeing the destruction of ISIS, growing the size of the U.S. Navy, and reforming the military's procurement of expensive weapons systems like the F-35 aircraft. Gen. John Kelly, a former commander of U.S. forces in Latin America, is in charge of the Department of Homeland Security, where he will have responsibility for securing the southern border with Mexico and implementing the extreme vetting of refugees seeking admission to the United States from Muslim nations.



# Tax

Jamie Wickett, Robert Glennon and John Stanton

The president and Republican congressional leaders in the House and Senate have all declared tax reform to be among their highest priorities in the 115th Congress. Although there are many roadblocks that will have to be overcome, we believe there is a very good chance that Congress will pass, in 2017 or early 2018, the most significant U.S. tax reform in a generation. This bill will likely affect any individual or company – U.S. or foreign-based – with income in the Unite States, and will likely completely revamp the nation's current tax code as it applies to multinational corporations. There will be turf battles and disagreements, not only between the parties, but between industries and different interests – and it will take time.

Notwithstanding the pledges of Trump and House Ways and Means Committee Chairman Kevin Brady to get tax reform done in 100 days, getting a bill to the president's desk will almost certainly take most of 2017 if not longer. Much of this reform legislation will be positive for business and individuals alike, but there will be trade-offs as well that may divide industries or even different companies in the same industries.

The starting point for tax reform will be the Tax Reform Blueprint, issued by Ryan and Brady in mid-2016. The blueprint was the product of extensive work by a Republican congressional task force, and represents a major re-write of the tax code that is far beyond changes in rates. The Trump tax reform plan is similar in many respects to the Ryan and Brady blueprint, and Trump and his team thus far have indicated support for Ryan's plan to start with his own bill in the House.

Although House and Senate Republican leaders have all indicated their hopes that Congress will be able to move a tax reform bill with bipartisan support, we believe it is more likely in the end that Republicans will end up moving a bill with little to no support from the Democrats. The reconciliation process allows Republicans to do this without the risk of a Democrat filibuster in the Senate, which would otherwise require 60 votes to overcome. Moving a bill through reconciliation, though, makes the process much more complicated. This requires the House and Senate to pass a budget resolution, and that the Senate comply with the Byrd rule, requiring 60 votes to overcome a point of order if the bill results in any revenue loss after the years included in the budget resolution. The current plan of congressional Republicans is to move tax reform in a second reconciliation bill, after they move ACA amendments in a first reconciliation bill.

Although Speaker of the House Paul Ryan has set forth an ambitious agenda to complete tax reform by Congress' August recess, we believe it will likely take longer to get a bill to the president's desk. Beyond the near certainty that ACA negotiations will likely delay progress on tax reform, we expect further delays as Republicans attempt to achieve consensus within their own party, and between Congress and the White House. Tensions have already arisen over the controversial BAT proposal included in the blueprint, and other significant proposals such as limiting the corporate deduction for interest expense. In addition, it is not yet clear whether Trump will insist on including an infrastructure spending package as part of tax reform, a pairing that congressional Republican leaders have opposed.

And last but not least, although Trump during his campaign did not express much concern about the growing national debt, the issue remains a concern among many Republican deficit hawks. Recent analysis has estimated the U.S. revenue loss associated with the Trump plan at US$4-$6 trillion on a static basis, and the static loss associated with the Brady-Ryan blueprint at US$2-$3 trillion. Using dynamic scoring, as the Republicans plan, could improve these numbers considerably, but it will make the process more difficult yet again if Congress is going to try to achieve revenue neutrality.

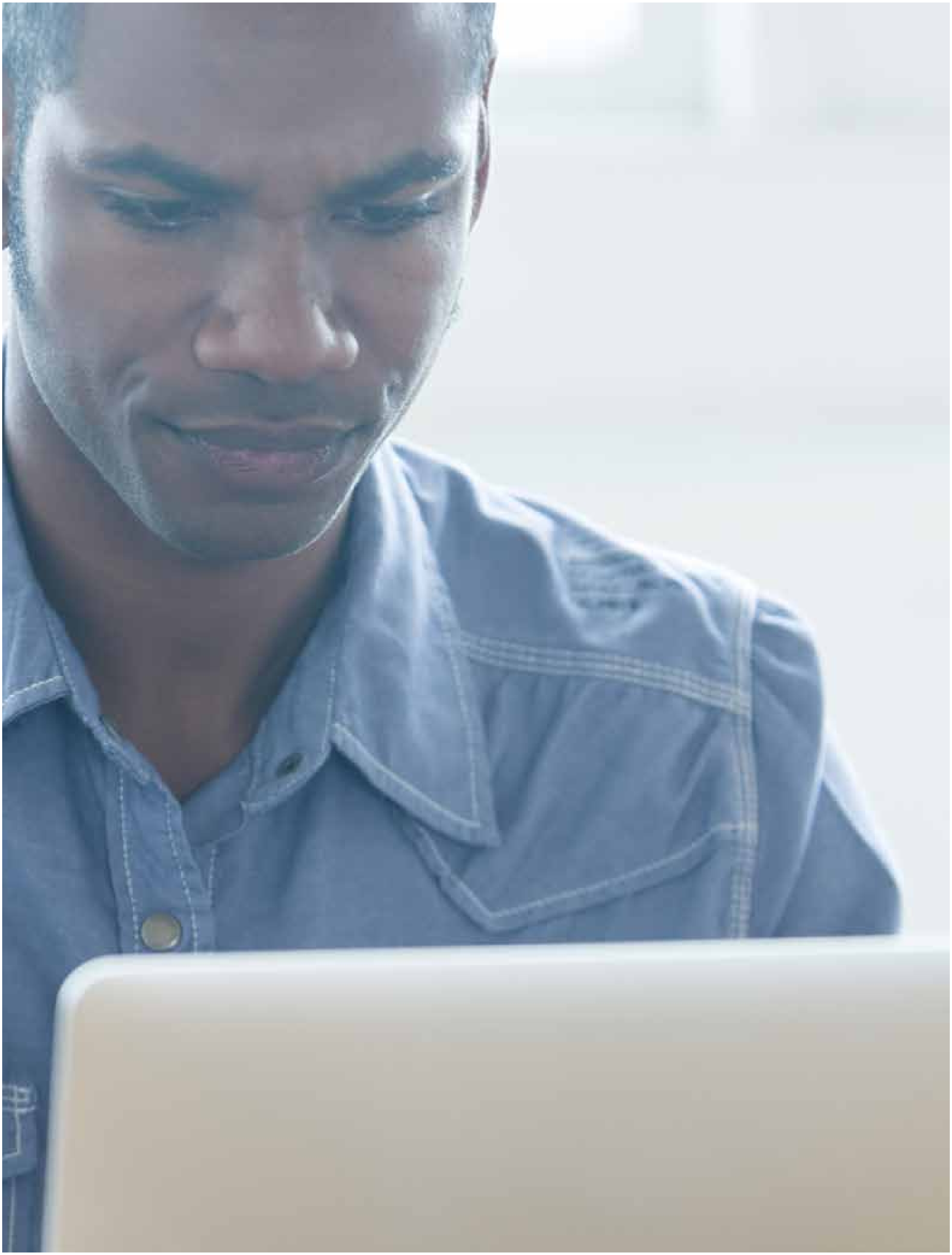
The following are some of the primary elements of the Trump and Ryan-Brady blueprint tax reform proposals. Neither Trump nor Ryan-Brady released legislative language for their proposals, though the Ryan-Brady blueprint is far more detailed than the current Trump proposal. We expect legislative language for the blueprint proposal to be released as early as February, and for the Trump tax plan as early as March.

### Specifics of the Ryan-Brady blueprint:

- 20 percent corporate tax rate
- 25 percent rate for pass-through business income
- A cash-flow consumption tax structure for business –
  - Full expensing for capital investments
  - No deductibility of interest expense beyond interest income
  - Territorial tax system with one-time tax on accumulated foreign E&P (8.75 percent cash/3.75 percent non-cash rates)
  - Border adjustment mechanism: tax imports and deduct exports, resulting in a cash-flow consumption tax
- Industry specific tax preferences and other unspecified tax preferences would be repealed
- Transition rules – Blueprint: "The Committee on Ways and Means will craft clear rules to serve as an appropriate bridge from the current tax system to the new system, with particular attention given to comments received from stakeholders on this important matter."
- Individual income tax rates lowered to 12 percent 25 percent 33 percent
- Individual investment income (taxed at ½ of earned income rates)

### Trump Tax Reform Plan:

- 15 percent corporate tax rate
- 15 percent rate for pass-through business income
  - Manufacturers have option to fully expense capital investments If they opt to waive deduction of interest expense
  - Campaign expressed support for a one-time tax on accumulated foreign E&P, but the plan appears to retain the U.S. extraterritorial system
  - Repeal most corporate tax expenditures, except R&D credit
- Individual tax rates lowered to 12 percent 25 percent 33 percent
  - Caps itemized deductions at US$100k, US$200k



# Telecommunications

Michele Farquhar
and Ari Fitzgerald

The change in administration will result in new leadership at the Federal Communications Commission (FCC) and other federal agencies responsible for telecommunications policy. Trump will soon nominate a permanent FCC chair, a National Telecommunications and Information Administration (NTIA) administrator, re-nominate for a new FCC term outgoing democrat FCC Commissioner Jessica Rosenworcel or select her replacement, and nominate a state department communications and information policy ambassador. Until then, we expect current Republican FCC Commissioner Ajit Pai to serve as acting chair, and believe there is a good chance he will get the nod for the permanent chair position.

The new leadership is likely to make major reforms to the agency's structure and operations. The new administration is reportedly looking to restructure the FCC's bureaus and offices, streamline it's responsibilities, and scale back or eliminate altogether certain functions, such as consumer protection or antitrust review, that are the responsibility of other agencies, such as the FTC or the DOJ.

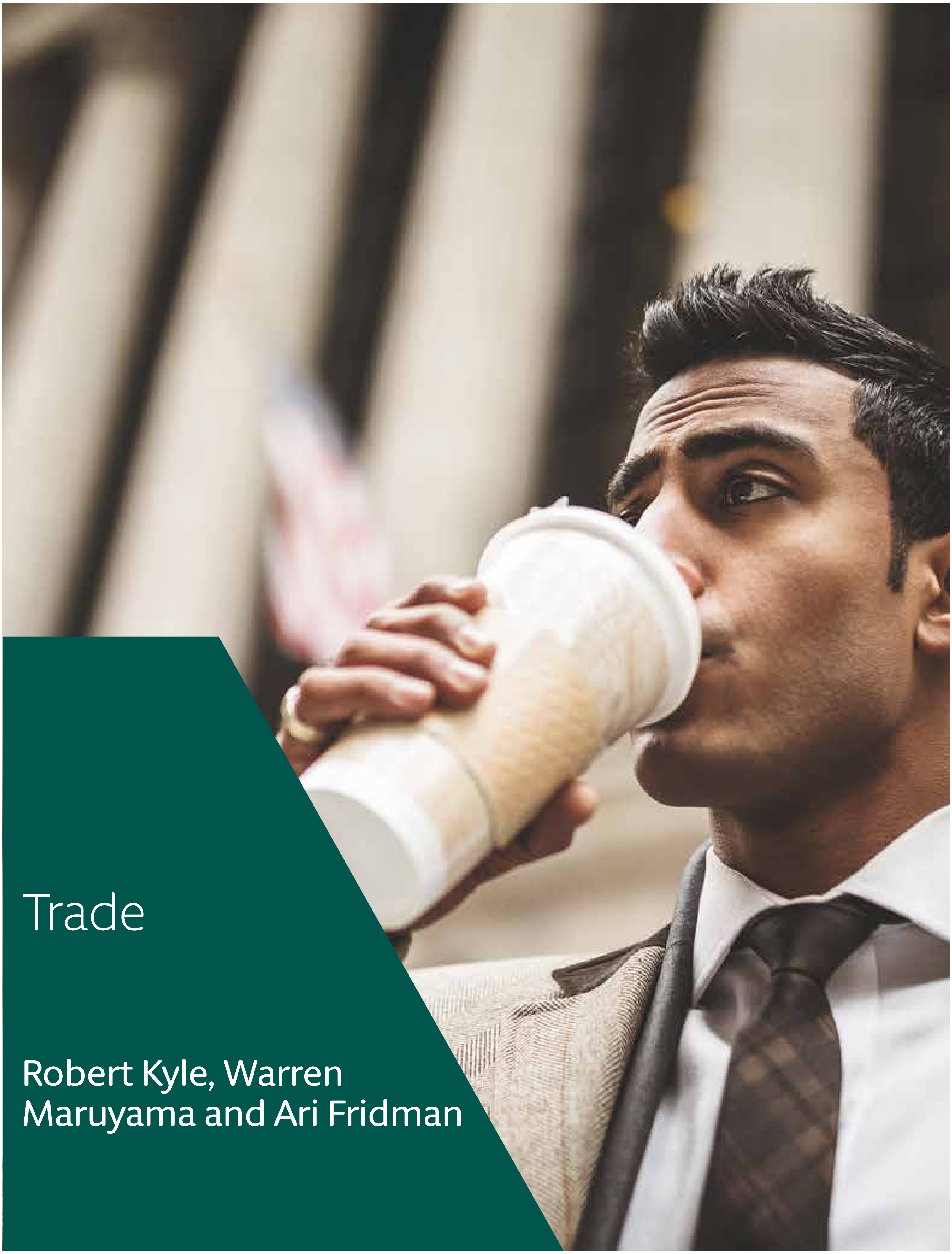
The Trump FCC will undoubtedly take a more deregulatory and less activist approach to policy than the Obama FCC. In particular, it will likely start soon the process of scaling back the net neutrality rules enshrined in the FCC's 2015 Open Internet Order by issuing a notice of proposed rulemaking. In addition, the agency's current Republican commissioners have indicated that, notwithstanding a formal rulemaking proceeding, they will informally relax the current net neutrality rules by extending the exemption for small businesses and forbearing from enforcing the rules in the context of zero-rated services and other traffic-management practices. We also expect Congress to rescind the 2016 broadband privacy rules through a congressional review authority process that requires only simple majority approval.

We expect the FCC will also press forward on its ongoing efforts to accelerate broadband deployment and establish the United States as the leader in 5G deployment. The most immediate initiative is the pending incentive auction to reallocate very high-quality 600 MHz spectrum from television broadcasters to commercial mobile wireless operators. The incentive auction is currently in its fourth stage with a clearing target of 84 MHz and a clearing cost of US$10 billion; the forward auction, which began on January 18, 2017, has already resulted in bids exceeding US$17 billion and will therefore allow the incentive auction to close at the end of the fourth stage.

Beyond the incentive auction, we expect the FCC to resolve a pending further notice of proposed rulemaking in the Spectrum Frontiers proceeding and allocate additional high-band (above 24 GHz) spectrum for 5G. Finally, we expect the FCC to move quickly to eliminate barriers to broadband (particularly 5G) infrastructure deployment.

FCC Commissioner Ajit Pai has expressed a willingness to be aggressive in this area, proposing that the FCC consider using its authority under section 253 of the Communications Act and other statutes to preempt local regulations that are unnecessarily impeding such deployment. This approach should fit well with president Trump's campaign promise to modernize critical U.S. infrastructure.

Within the first 100-200 days of the Trump administration, the FCC will likely drive many of the most important changes to telecommunications policy, as Congress (and the House of Representatives committee of jurisdiction over telecommunications) is expected to prioritize enacting revisions to the ACA. In the longer term, Republican congressional leaders have expressed a desire to enact legislation to modernize the Communications Act, which, through its focus on service-specific regulation no longer reflects the ways in which telecommunications services are offered and used.



# Trade

Robert Kyle, Warren Maruyama and Ari Fridman

In one of his first executive actions, arguably the most significant to date, president Trump on January 23 formally withdrew the United States from the TPP negotiations. The TPP agreement had been reached, in February 2016 after eight years of negotiations, between the Obama administration and 11 Pacific Rim nations. This was a major trade agreement encompassing 40 percent of the world's economy. Though Congress had in 2016 passed so-called fast-track authority to allow for swift consideration of TPP, substantive reservations about key provisions and election-year politics on both sides of the aisle ultimately shelved an up or down vote on the agreement. Trump made the possible imposition of punitive tariffs on countries like China and Mexico, and opposition to TPP and free-trade agreements, centerpieces of his campaign. Insisting that trade agreements favor America's manufacturing base, he issued the TPP withdrawal on his first full business day in office. He has also promised that he would renegotiate the NAFTA, and, failing that, indicated a willingness to withdraw the United States from NAFTA.

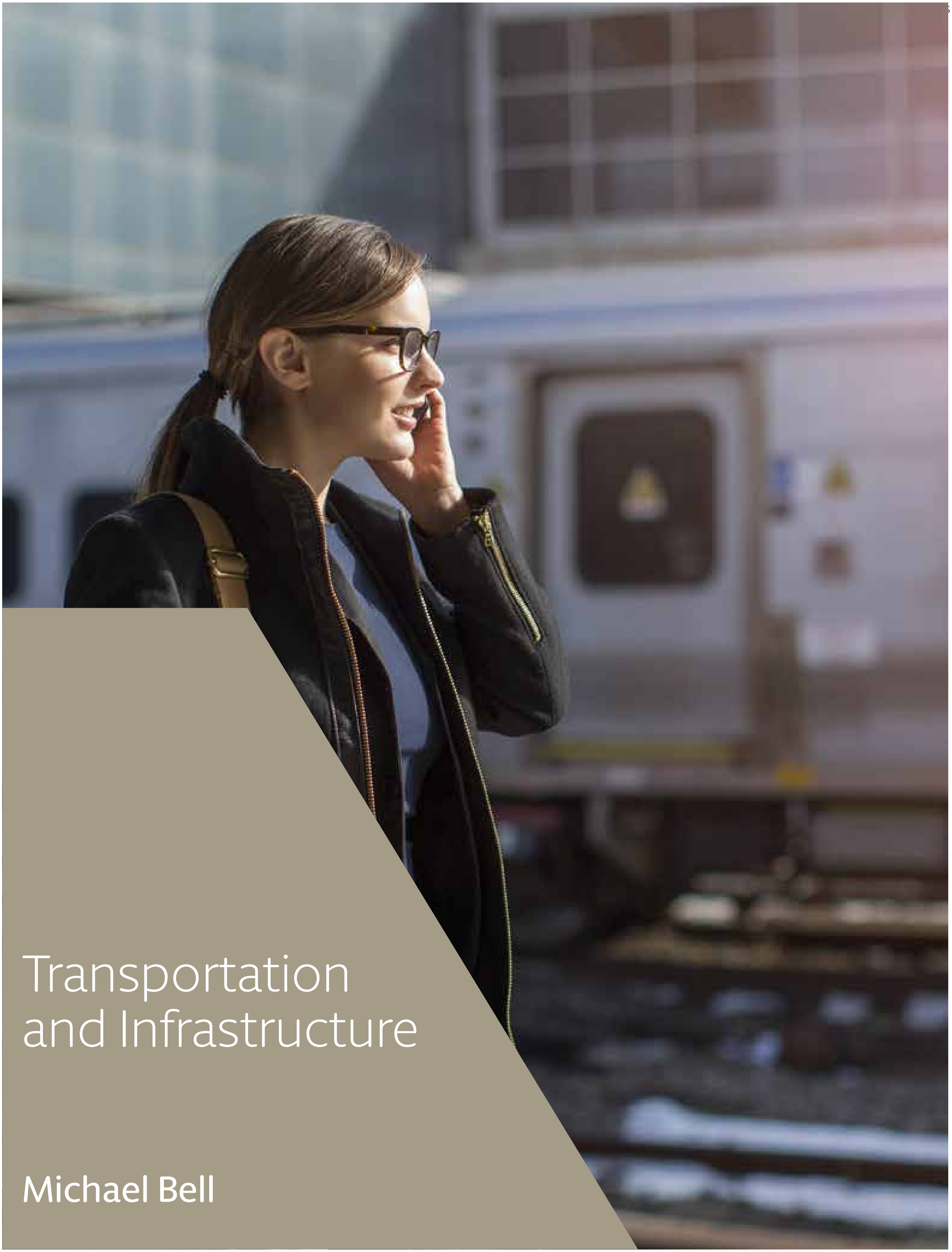
The shift away from free trade agreements has marked a remarkable shift in American politics. At least since President Dwight Eisenhower was in the White House, Republicans and Democrats have largely embraced the net positives for both America and the global economy generated by the removal of tariffs and higher standards on issues like labor rights and environmental protections. However, the depletion of the U.S. manufacturing sector — whether directly tied to past agreements or not — has become a major consideration for both political parties. Now that Trump has formally withdrawn the United States from TPP, the focal point of the Obama administration's pivot to Asia has no realistic prospect of being approved in the foreseeable future. A similar outcome is likely for the Transatlantic Trade and Investment Partnership, a proposed trade agreement between the European Union and the United States that is still being negotiated. Instead, the expectation is that the United States will attempt to enter into trade and investment agreements with individual nations as opposed to the complex multilateral agreements of recent years.

Meanwhile, Republicans in the House of Representatives are pursuing a so-called border-adjustment tax (BAT) in the context of corporate tax reform, in which the goal is to decrease the tax burden on U.S. corporations and encourage more corporations to locate business activity, and jobs, within the United States. As discussed in the tax outlook above, under the BAT, taxes are based on the location of consumption rather than the location of production. Border adjustments mean that it does not matter where a company is incorporated; sales to U.S. customers are taxed and sales to foreign customers are exempt, regardless of whether the taxpayer selling the good is foreign or domestic. Products, services and intangibles that are imported into the United States will be subject to U.S. tax regardless of where they are produced. In practice, the cost of goods purchased from nonresidents (imports) would not be deductible from taxable income.

A major motivation for the border adjustment proposal, which was rolled out as part of speaker Ryan's "A Better Way" roadmap of policy alternatives to the Obama administration's agenda last year, is that it removes incentives for U.S. companies to locate production in foreign countries with lower tax rates.

A major complication is that the World Trade Organization (WTO), of which the United Sates is a member, allows border adjustments on indirect taxes, such as a value-added consumption tax, but does not allow them on direct income taxes. Border adjustability raises serious WTO concerns, which could lead to foreign nations retaliating with punitive steps against the United States. The border adjustment tax could raise significant revenues, accounting for lost revenue resulting from the lowering of the corporate rate. According to one estimate, the border adjustment proposal would raise US$1.2 trillion in tax revenue over 10 years. However, a tax on imports decreases demand for U.S. imports, which strengthens the dollar; appreciation partially offsets the drop in import demand and reduces U.S. exports. As a result, both retailers and manufacturers are opposed to the proposal, as companies relying on imports could potentially see lower net incomes.

The Trump Administration will have multiple power centers related to trade. At the White House, economist Peter Navarro will head the newly-established White House National Trade Council. According to the Transition, the NTC will "advise the President on innovative strategies in trade negotiations, coordinate with other agencies to assess U.S. manufacturing capabilities and the defense industrial base, and help match unemployed American workers with new opportunities in the skilled manufacturing sector." Robert Lighthizer, a seasoned Washington insider, having practiced trade law for decades, often on behalf of U.S. steel companies, will be the U.S. trade representative. Wilbur Ross, a turnaround expert throughout his business career, focusing on the telecommunications, textiles, steel, and coal industries, will be the secretary of commerce. It remains to be seen how effectively these individuals are able to operate in unison.



# Transportation and Infrastructure

Michael Bell

With the election of Trump, transportation and infrastructure issues are likely to play a prominent role in 2017. Trump has long talked about the need for major infrastructure investment and has vowed to make it a key element of his presidency. The new administration and the new Congress face a number of key transportation issues in 2017. As such, we expect this to be a very active policy area. Some of the significant issues include:

— FAA Reauthorization – Congress must act to reauthorize the Federal Aviation Administration (FAA) before the agency's current legal authority expires on September 30. Despite significant efforts in the 114th Congress to enact a long-term authorization for the FAA, Congress was ultimately only able to pass a short-term extension that provided very little new policy direction.

  The main challenge to a long-term bill has been a proposal by House Transportation and Infrastructure Committee Chairman Bill Shuster to privatize the FAA's air traffic control operations by transferring them to a not-for-profit corporation. This proposal faced considerable opposition from both Republicans and Democrats, including appropriators who made it clear they would not fund this proposal. It is anticipated that chairman Shuster will continue to pursue this proposal. While it is unclear whether Trump will support this concept, he has indicated that he plans to modernize the nation's air traffic control system and reduce long wait times at airports.

  A number of additional issues are likely to be addressed by an FAA reauthorization package, including the continued development of NextGen air traffic control systems, reforms to the aircraft certification regulations, additional provisions to continue the safe integration of Unmanned Aircraft Systems (drones) into the nation's air space, reforms to enable the use of supersonic aircraft in the United States and policies to enable airports to continue to develop and modernize.

— Infrastructure Development Plan –Trump expressed his intention to work with Congress to pass a US$1 trillion infrastructure investment package. Although he has said this will be part of his 100-day plan, given the number of other priorities (e.g., ACA repeal and tax reform), the infrastructure package may be delayed. According to early proposals, this package is likely to include both direct spending and significant tax credits to leverage private sector investment in infrastructure, and might also include an expansion of the existing Transportation Infrastructure Finance and Innovation Act program.

  This package would include investment in roads, bridges and highways. It would also likely include investment in airport infrastructure, waterways and other critical infrastructure improvements, including electric power transmission lines and other energy infrastructure. In addition, many are urging Congress to include non-traditional infrastructure development as well, such as infrastructure for smart-transportation options, vehicle-to-infrastructure communications and a low-altitude air traffic control system for unmanned aircraft systems.

  It remains unclear how Congress would pay for this package of improvements. One idea that has been considered is to tie infrastructure development with tax reform and use the revenue derived from a one-time tax on the repatriation of overseas money. Members of the tax writing committees, however, have expressed opposition to this idea as they prefer to use that revenue to reduce the corporate tax rate as part of broad tax reform. Still others prefer to find a sustainable revenue stream, rather than just a single infusion of money from tax reform. Thus, it remains to be seen where the funds come from to pay for this package.

  As part of infrastructure development, Trump has also made clear that he intends to reduce the regulatory burden that often slows development. Trump has been critical of existing laws and regulations that delay infrastructure projects, including environmental review and permitting requirements. While there is much he can do unilaterally on this front, we anticipate that he will also work with Congress to seek statutory reforms to speed the project approval process.

— Autonomous Drive Vehicles – Automobile manufacturers are working hard on technology to enable autonomous drive vehicles. While many of these technologies will be introduced incrementally, in the form of driver-assist technologies, true driverless cars are coming. The Trump administration will be tasked with developing rules and guidance to enable these technologies and eventually integrate such vehicles on America's roads. The Department of Transportation released voluntary guidelines this past summer, but the bulk of the work remains to finalize rules and develop certification and operating guidelines. Many additional issues will need to be addressed over time, including those of federal pre-emption, communications and spectrum, cybersecurity protections, liability and many others.

# Unmanned Aircraft Systems (UAS) / Drones

Lisa Ellman and
Gretchen West

FAA administrator Michael Huerta is expected to lead the FAA's efforts through 2017 under secretary of transportation nominee Elaine Chao. While the FAA will continue to implement its Part 107 rule enabling commercial operations of drones, the pending rule being drafted by the FAA to provide guidance on operating drones over people is expected to be delayed. Administrator Huerta recently stated that after discussion with both industry and the government about the rule, they were left with more questions about the content of the rule and some concerns over security and safety. Huerta gave no updates on timelines, but the commercial drone industry, in particular newsgatherers and filmmakers, is eager to see a proposed rule and offer comment.

Also in mid-2017, the FAA is expected to begin rulemaking on expanded operations of commercial drones with a goal of rule enactment by the summer of 2018. This rule would be a first step in enabling commercial drone operations beyond visual line of sight of the operator, at night, and otherwise outside the bounds of Part 107. The FAA will continue to work with industry to shape guidance on drone operations through the recently-formed Drone Advisory Committee, UAS Safety Team, and through the work of various FAA subcommittees. NASA and the FAA will continue to jointly develop the Unmanned Aircraft Traffic Management Program through stronger federal government collaboration and involvement from industry partners.

Under a new administration, it remains to be seen how the drone industry will grow. The Commercial Drone Alliance, an industry trade group managed by Hogan Lovells, has published several policy goals and initiatives for the Trump Administration to consider implementing over the next year.

Congress is expected to readdress several general provisions for UAS that were included in the original draft of the bill the FAA's Reauthorization Bill, which was extended until September of 2017.

These include:

— Establishing a working group to develop consensus standards to identify UAS operators and owners;

— Streamlining the interagency process for approvals to deploy UAS during emergencies; prohibiting UAS interference in emergency response activities;

— Piloting a counter drone program to detect, identify and mitigate unauthorized operations of UAS near airports or critical infrastructure; and

— Allowing applicants to petition the FAA to prohibit or restrict operation of UAS in close proximity to critical infrastructure, amusement parks and other warranted locations.

The commercial drone industry will advocate for provisions designed to speed UAS integration to be included in the legislation. Infrastructure and appropriations bills are candidates to include additional drone legislation.

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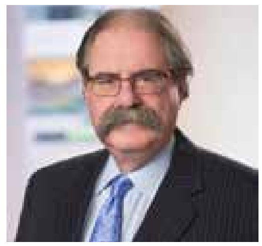

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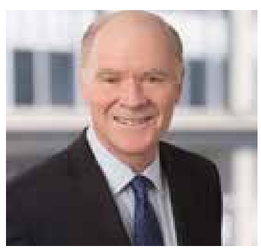

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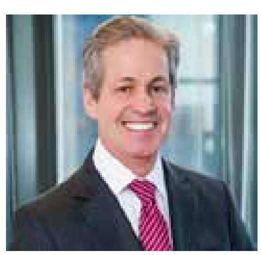

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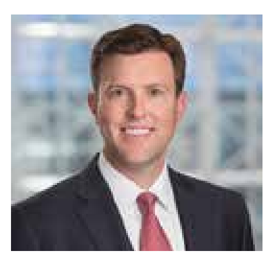

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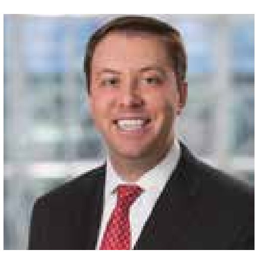

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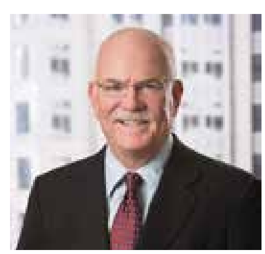

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