

# PUBLICATION

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## 2016 Washington Preview

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Having completed the first session of the 114th Congress, many in Washington are quickly turning toward the 2016 elections. In the coming year, the headlines will undoubtedly be dominated by electioneering but, after a surprisingly productive 2015, Congress heads toward 2016 with a variety of issues on the docket and the potential to achieve legislative achievements before the political world's attention firmly shifts to the election.

In 2015 we witnessed significant legislation in a variety of issue areas, including cybersecurity, transportation, trade and health care. 2015 also set the stage for future legislation on international affairs, mental health and the military health care system. However, perhaps the most important development was passage of The Bipartisan Budget Act, which set the congressional budget for both the FY2016 and FY2017 appropriations cycles and suspended the debt limit until March 2017. The budget act set the top-line numbers from which appropriators can determine how federal spending is allocated.

In the coming year, Congress is expected to focus its energy posturing for the 2016 elections and potentially moving forward with an appropriations process – though efforts will confront significant time constraints and possible policy conflicts.

President Obama has elected to focus his final year on regulatory efforts to advance his policy agenda, including gun control, environmental rules and financial regulation. During his State of the Union address he called on Congress to act on three specific issues: revisiting the presidential authority to use military force against the Islamic State, approving the Trans-Pacific Partnership trade agreement and lifting the Cuban trade embargo. Yet, given the political state of gridlock, enactment of these proposals in the next year will be an uphill battle.

### Important Dates in 2016

February 1	Iowa Caucus
February 9	New Hampshire Primary
February 9	President Obama Releases FY2017 Budget Proposal
March – April	Budget Season in Washington
March 31	Expiration of FAA Authorization
July 18 – 21	Republican Convention (Cleveland, OH)
July 25 – 28	Democratic Convention (Philadelphia, PA)
July 23 – Sept 5	Congressional Recess

September 26	Presidential Debate (Dayton, OH)
October 1	Start of New Fiscal Year
October 4	Vice Presidential Debate (Farmville, VA)
October 9	Presidential Debate (St. Louis, MO)
October 19	Presidential Debate (Las Vegas, NV)
November 8	Election Day
December	Possible Lame Duck Session of Congress

## 2016 Election

The election will play a significant role in determining the congressional agenda in 2016 as candidates and their allies will attempt to score political points, burnish campaign resumes and generally tilt the playing field one way or another.

In the Senate, 10 democratic-held seats and 24 republican-held seats are up for election. Of those, five Senators have elected to leave the Senate, two Democrats (Barbara Boxer (CA) and Harry Reid (NV)) and three Republicans (Marco Rubio (FL), Dan Coats (IN) and David Vitter (LA)). Senators to watch during the coming year include those engaged in tight reelection contests, including Senator Pat Toomey (R-PA), Senator Kelly Ayotte (R-NH), Senator Mark Kirk (R-IL), Senator Ron Johnson (R-WI) and possibly Senator Michael Bennet (D-CO). We also expect sitting Senators running for President to utilize their positions to bolster their campaigns. Senators running for President include Senator Bernie Sanders (I-TV), Senator Ted Cruz (R-TX), Senator Rand Paul (R-KY) and Senator Marco Rubio (R-FL).

In the House of Representatives, the 2016 election will most likely influence the legislative agenda, with House leadership proposing various bills in an attempt to bolster Republican candidates nationwide. An example of this is the recent passage in the House of legislation that repealed the Affordable Care Act, which, as expected, drew a presidential veto, but bolstered anti-ObamaCare Republican campaign themes.

## FY2017 Appropriations

Hoping to put last minute budgetary brinksmanship, temporary spending patches and government shutdowns in the rear view mirror, House and Senate floor leaders from both parties have pledged to return to "regular order" for the FY17 appropriations process. This means that the 12 appropriations bills that collectively fund the federal government would be considered individually rather than as an all-encompassing omnibus bill.

President Obama will submit his FY17 budget request to Congress on February 9. Speaker Ryan has outlined an ambitious plan under which the House would begin considering appropriations legislation by early- to mid-March, the earliest floor consideration in recent memory. Speaker Ryan's goal is facilitated by the Bipartisan Budget Agreement of 2015, which set a top line budget of \$551 billion for defense spending and \$518.5 billion for non-defense spending in FY2017.

Against the backdrop of the November elections, lawmakers are expected to use the appropriations process to advance policy goals in order to highlight differences between the two political parties. Contentious policy riders have derailed the appropriations process in the past, even when – as was the case in 2015 – the two

parties are operating under an established budget framework and have committed to the principle of "regular order." Indeed, in agreeing on the need for "regular order" in the FY17 appropriations process, Senate Majority Leader Harry Reid (D-NV) warned that such a commitment is contingent on whether Republicans adopt policy proposals opposed by the Obama Administration and Congressional Democrats. The pledge to "regular order" may also be derailed by Senate Republican efforts to modify floor rules to make it harder for the minority party to block consideration of spending measures.

**Takeaway:** While most agree on the merits of regular order and the need for a comparatively swift appropriations process, the exigencies of the election campaign and the compressed legislative calendar (111 days for the House and 149 for the Senate) may thwart that goal. Congress may again be forced to adopt interim funding measures, such as Continuing Resolutions, to ensure that the government continues to operate after the end of the fiscal year on September 30, 2016, just a little more than a month prior to the elections.

## Health Care

Health care remains at the top of Congress's agenda in 2016, but the current outlook for any major legislative achievement is uncertain, and any significant changes to the Affordable Care Act or moves to defund Planned Parenthood will be sure to draw an Obama Administration veto. Some argue that health care legislation enacted in 2015 represents the most that can be done in the current Congress before election-year politics completely overwhelm Washington's legislative agenda. On the other hand, major initiatives left over from 2015 include legislative oversight of the Department of Health and Human Services' (HHS) implementation of the new Medicare physician payment system and ongoing payment and delivery reform demonstration initiatives by Centers for Medicare & Medicaid Services. Additionally, discrete issues pushed by individual stakeholder groups could be an impetus for legislation in 2016.

*Drug Pricing:* Last year, rising drug costs became a priority issue and will continue to generate attention at the federal and state levels. In 2015, the Senate Committee on Aging held a hearing to investigate pharmaceutical drug pricing, focusing first on four companies, Valeant Pharmaceuticals, Turing Pharmaceuticals, Retrophin Inc., and Rodelis Therapeutics. HHS held a Pharmaceutical Forum aimed at figuring out how to balance affordability and drug makers' need to fund research. The forum addressed the "opportunities to improve patient access to affordable prescription drugs, develop innovative purchasing strategies and incorporate value-based and outcomes-based models into purchasing programs in both the public and private sectors." The Medicare Payment Advisory Committee (MedPAC) continues to discuss its "least costly alternative" proposal to control drug prices, including the merits of consolidating payment codes, paying a flat fee to physicians for managing medications and bundling options.

The House Oversight and Government Reform Committee announced plans for a hearing early this year. The issue remains a popular talking point for the Democratic Presidential candidates, former Secretary of State Hillary Clinton, Senator Bernie Sanders (I-VT) and former Governor Martin O'Malley (D-MD). While there continues to be bipartisan concern around this issue and a handful of proposed policy solutions, including expanded rebates, allowing the importation of drugs and giving HHS price negotiation authority, lawmakers have found it difficult to identify an approach to best address rising drug prices without risking access.

*Medical Innovation:* In 2015, the House Energy & Commerce Committee passed the 21st Century Cures Act with broad support. The effort, led by Committee Chairman Fred Upton (R-MI) and Representative Diana DeGette (D-CO), is a bipartisan initiative to accelerate the development of, and access to, new medical therapies and technologies treatments, as well as increase funding for the Food and Drug Administration and the National Institutes of Health. Based on the Senate Health, Education, Labor & Pensions Committee's report, entitled *Innovation for Healthier Americans*, the Committee is expected to release its long-awaited companion legislation this year. The bipartisan initiative in the Senate is led by Committee Chairman Lamar

Alexander (R-TN) and Ranking Member Patty Murray (D-WA). It is unclear whether both chambers will have the time or ability to ultimately agree on a single bill before the year is out.

*Hospital Payment Reform:* In 2016, we expect a push to modify the Section 603 site neutral payment provisions enacted as part of the Bipartisan Budget Act in November of last year. The Section 603 provision provides that effective January 1, 2017, Medicare payments for services provided at an off-campus department of a hospital that was not billing as a hospital prior to the effective date will be made to do so under the non-hospital payment system, which may result in lower payments. Hospitals are working with legislators to carve out an exemption for sites not yet operational as of the effective date and for specialty care groups, such as cancer centers. Hearings in the House Energy and Commerce, House Ways & Means and Senate Finance Committees are expected in the coming months.

*Substance Abuse and Mental Health:* Efforts to address gun violence continue to focus congressional attention on the need to reform the mental health care system. As such, the House Energy and Commerce and Senate Health Education Labor and Pensions (HELP) Committees are expected to continue consideration of mental health legislation. In the House, the Mental Health Crisis Act of 2015, sponsored by Rep. Tim Murphy (R-PA), was approved along party lines by the Energy and Commerce Health Subcommittee on November 4. In the Senate, the HELP Committee held hearings on the Mental Health Reform Act of 2015 sponsored by Senators Chris Murphy (D-CT) and Bill Cassidy (R-LA). Both bills seek to better coordinate the delivery of federal mental health care service programs and expand mental health grant programs based on evidence-based care. The bills differ in that Rep. Murphy's bill goes further in changing health privacy laws established under HIPAA to make it easier to share information with family members and caregivers. The House bill also uses grants to incentivize state Assisted Outpatient Treatment (AOT) programs, which are controversial because they allow judges to mandate treatment for patients with serious mental illness. Despite House subcommittee approval of Rep. Murphy's bill, disputes over HIPAA, AOT and other provisions are holding up full committee action.

The Senate HELP Committee is spearheading an effort to assemble a mental health reform package based on several proposals, including the Cassidy-Murphy bill, legislation by Senators Roy Blunt (R-MO) and Debbie Stabenow (D-MI) that would expand the Excellence in Mental Health Act state payment demonstration program and legislation pending in the Senate Judiciary Committee that would make mental health treatment a key component of criminal justice reform.

*Chronic Care:* Last year, the Senate Finance Committee announced the formation of a bipartisan chronic care working group to be led by Senators Johnny Isakson (R-GA) and Mark Warner (D-VA). In response to more than 500 stakeholder comments and multiple stakeholder meetings throughout the year, the working group recently released a policy white paper, summarizing various policies to improve the delivery of chronic care to Medicare beneficiaries. The working group plans to introduce a chronic care legislative package this year.

*Cancer Research:* As part of the State of the Union, President Obama announced that Vice President Biden will lead a cancer initiative focused on immunotherapy. Initial reports suggest the initiative will include an open access data sharing program, which would be a data sharing program to allow researchers to compare notes on how tumors respond to different therapies, and federal investments in gene sequencing. We expect additional funding for this and other related programs to be included in the President's budget proposal.

**Takeaway:** Health care will surely remain at the top of the policy agenda for Congress. The most likely candidates for action include hospital payment reform, drug abuse and mental health, and drug pricing.

## Defense Health Care

House Armed Services Committee (HASC) Chairman Mac Thornberry (R-TX) and Senate Armed Services Committee (SASC) Chairman John McCain (R-AZ) have stated they intend to push for significant changes in the health care programs for military service members and their families. Chairman Thornberry's push into health care this year is part of a longer term reexamination of the military's compensation, health care and retirement programs set in motion by the January 2015 report of the Military Compensation and Retirement Modernization Commission, as well as other contemporaneous reports from the Congressional Budget Office and the Center for a New American Security.

In 2015, HASC and SASC had intended to examine and possibly adopt the recommendations of the Commission, which faulted TRICARE for its limited provider networks, low reimbursement rates and increasing costs to participants. The panel also recommended shifting families and working-age military retirees from the TRICARE system to private insurance. However, a busy congressional schedule and pushback from some veterans groups and other stakeholders forced Chairman Thornberry to delay all changes to the defense health establishment to 2016, stating the recommendations require "some further study."

**Takeaway:** We expect Chairman Thornberry to pursue significant changes to the TRICARE program, including changes to military health services provision, health care infrastructure management and health care information technology. Given the enormity of the task ahead, it is unlikely legislation will be adopted before the November election, but this year will be important for defining the debate over the military health care system for the future.

## FAA Reauthorization

Year-end scheduling issues and some major sticking points, such as privatization of the air traffic control system (ATC), resulted in an extension to March 31, 2016, of the authorization of the Federal Aviation Administration (FAA). The House bill authorizing the FAA has yet to be unveiled, but it is expected to call for creating a stand-alone nonprofit corporation to run and oversee modernization of FAA's air traffic control system to be funded by user fees. As is usually the case with any suggestion of new user fees, the aviation community is split on this proposal, and the FAA has thrown cold water on the user fee idea. While House Transportation and Infrastructure (T&I) Committee Chair Bill Shuster (R-PA) is pushing ATC privatization, T&I Ranking Member Peter DeFazio (D-OR) has doubts, instead preferring a separate federally-chartered corporate entity.

Senator John Thune (R-SD), Chair of the Senate Committee on Commerce, Science, & Transportation, has expressed confidence that if the House and Senate can stay on schedule then Congress should be able to meet the March 31 reauthorization deadline. Senator Thune also expressed an openness to some form of privatization of the ATC, but did not sign on to support either Chairman Schuster's or Rep. DeFazio's proposals.

**Takeaway:** Given major sticking points such as ATC privatization and the upcoming elections, it is unknown whether Congress will meet the March 31 deadline for reauthorization of FAA programs, or will enact another extension.

## Energy

Despite the House having passed a highly partisan comprehensive energy bill in December 2015 (H.R. 8, the North American Energy Security and Infrastructure Act), House Energy and Commerce Committee Chairman Fred Upton (R-MI) expressed interest in modifying the bill to alleviate concerns of congressional Democrats and the Obama Administration. As approved by Chairman Upton's committee last fall, the bill originally had strong bipartisan support. However, during House floor consideration, provisions supported by Democrats and

the Obama Administration were dropped from the bill, including language related to hydropower production and efficiency incentives, workforce training programs and energy and water efficiency measures in federal buildings, while retaining Republican-supported provisions, such as streamlining the export of liquid natural gas, expediting gas pipeline permits and directing federal agencies to better coordinate on electric grid reliability efforts and incorporate smart grid technologies. The Senate version (S. 2012, the Energy Policy Modernization Act), approved by the Senate Energy and Natural Resources Committee last summer, has bipartisan support. In addition to provisions similar to the House-passed bill, it contains energy efficiency and other provisions supported by Democrats.

**Takeaway:** 2016 may, in fact, be the year when Congress moves forward with significant energy legislation. Until December's omnibus appropriations legislation, disagreements over lifting the crude oil export ban had scuttled any chance at bipartisan legislation. If Chairman Upton delivers on his commitment to produce a final bill with the Senate that President Obama can sign and Senate Energy and Natural Resources Committee Chair Lisa Murkowski (R-AK) is able to keep her bill free of poison pill floor amendments, an opportunity for comprehensive energy legislation exists.

## Cuba

In 2015, Presidents Barack Obama and Raul Castro met, marking the first meeting between the U.S. and Cuban heads of state since the countries severed ties more than 50 years ago, initiating a process of reconciliation between the two countries. As part of this process, the Obama Administration changed a number of rules to make it easier for Americans to visit Cuba and (in certain cases) to do business there, most recently signing an agreement to resume commercial flights from the U.S. to the island and updating banking regulations to allow for additional commercial activities. There has also been talk that President Obama is hoping to visit Cuba sometime in the next year, but no official announcement has been made. Congress, on the other hand, has been loath to move forward with lifting the embargo without additional significant reforms in Cuba, particularly in the area of human rights.

The debate in Congress over the future of the embargo is set to continue. In the House, the recently formed bipartisan Cuba Working Group is pushing this issue forward. Its members have introduced a number of bills to weaken the embargo, including the Cuba Trade Act of 2015, the Cuba Digital Telecommunications Advancement Act, the Cuba Agriculture Exports Act and the Freedom to Travel to Cuba Act of 2015. In the Senate, the effort is being led by Senators Patrick Leahy (D-VT) and Jeff Flake (R-AZ), longtime supporters of rapprochement with Cuba.

**Takeaway:** Cuba-watchers expect 2016 to be a quieter year than 2015 for changes in U.S. policy toward Cuba. Strong Republican opposition in Congress combined with the Cuban government's relatively slow pace of reform lessen the likelihood that significant changes to the embargo will be made within the coming year. Notably, the positions adopted by Republican presidential candidates will be key as the vocal and influential set of Cuban exiles in Florida will continue to garner significant attention. However, with the December establishment of the Cuba Working Group and a continued focus on the issue by some members of the Senate and much of the U.S. business community, expect U.S. policy toward Cuba to remain a topic of significant discussion, if little advancement, in 2016.

## Trans-Pacific Partnership

In November, the Obama Administration released the final text of the proposed Trans-Pacific Partnership, a trade agreement covering 12 countries in the Pacific region and roughly 40 percent of global gross domestic product. The text must now be approved by Congress (in addition to the other 11 countries) before it can come

in to force. Adoption of the trade pact is a key policy goal for the Administration and may develop into one of the defining public policy issues of 2016.

Under the terms of the Trade Promotion Authority law passed in 2015, President Obama cannot formally sign the agreement before February. If he chooses to sign the agreement in February, the earliest he is able send the agreement to Congress for its consideration would be early March. At that point the House and Senate would have 90 legislative days to elect to adopt without amendment or reject the legislation. It is possible that the hearings may take place during April or May. The support of Senate Majority Leader Mitch McConnell (R-KY) and Senate Finance Committee Chairman Orrin Hatch (R-UT), both of whom have expressed concerns over the agreement's substance and timing, will be tough to secure. Additionally, a March introduction may mean scheduling hearings during the height of the contentious election campaign.

Some supporters of the agreement have proposed pushing consideration to a lame duck legislative session, should one be scheduled, sometime between November 2016 and January 2017.

**Takeaway:** Given the reticence of Senate Republican leadership, the most likely timeframe for congressional consideration of the Trans-Pacific Partnership is after the 2016 election. Winning the support of Senator Hatch, in particular, will be crucial for achieving passage of the agreement. Senator Hatch is critical of the agreement's two-tier protection of data exclusivity for biologic pharmaceuticals and has suggested the Obama Administration renegotiate the provisions – a step that is exceedingly unlikely given the size and complexity of the 12-nation pact.

## Iran Nuclear Agreement

Members of both parties will closely scrutinize Iran's compliance with the nuclear agreement it reached last year with the P5+1. In 2015, Senate Foreign Relations Committee Chairman Bob Corker (R-TN) led a broad bipartisan coalition in support of legislation requiring congressional review of the Iran nuclear agreement, but Congress ultimately failed to pass a resolution that rejected the deal. Chairman Corker and House Foreign Affairs Committee Chairman Ed Royce (R-CA) will continue to scrutinize Iranian compliance with the nuclear deal and may introduce sanctions in response to any destabilizing activities by Iran, such as a ballistic missile test and support for extremist groups.

While the President has so far retained a free hand in his negotiations with the Iranians, a number of lawmakers are pushing various initiatives to sanction Iran. Senate Foreign Relations Committee Ranking Member Senator Ben Cardin (D-MD) is seeking stronger oversight of Iranian policy and clarification of several components of the deal. Additionally, Senators Mark Kirk (R-IL) and Robert Menendez (D-NJ) are pushing renewal of the 1996 Iran Sanctions Act, which is set to expire at the end of the year. The Administration has not announced whether it will oppose the renewal.

In the wake of Iran's ballistic missile tests earlier in December 2015, the House attempted to pass legislation on January 13 prohibiting the President from removing certain sanctions allowed under the nuclear agreement unless specific certifications are provided to Congress. The bill also subjects any changes to Iranian sanctions to the Congressional Review Act, which allows Congress to review and disapprove of new agency rules. The bill was approved 191-106, but the vote was vacated after 137 members of the House missed the vote. The House is expected to vote on the legislation again sometime after they return to Washington. The Senate Foreign Relations Committee has yet to act on the measure.

**Takeaway:** The 2015 Iranian nuclear agreement faces a long road ahead and must clear many potential hurdles. While attempts to block the P5+1 agreement did not come to fruition, any potential hiccups in the agreement's implementation will draw swift congressional attention and potential legislation.

## Cybersecurity

Congress and the Obama Administration passed significant legislation in late 2015 on the cybersecurity front. With enactment of the Cybersecurity Information Sharing Act (CISA) as part of the year-end omnibus appropriations legislation in December, the government has promoted cyber related information sharing by incentivizing private sector-government sharing of cybersecurity threats. See our more detailed article regarding the specifics of the legislation [here](#). The Congressional debate continues over two separate but related issues: attempts to create a federal data breach standard under the proposed Data Security and Breach Notification Act (H.R. 1770/S. 177) and a new U.S.-EU data-sharing agreement to replace the one invalidated in October by the Court of Justice of the European Union.

*Data Security and Breach Notification:* Data breach notification legislation sponsored by Rep. Marsha Blackburn (R-TN) has been languishing in the House since last April, when the House Energy and Commerce Committee approved the bill along partisan lines (H.R. 1770). The bill aims to set a national standard for what companies must do when their networks are breached. Democrats largely oppose the bill on the grounds it does not go far enough in protecting consumer data while preempting potentially tougher state laws. Some Republicans have criticized the bill's failure to require notification of consumers if their health data is compromised and for setting too high a bar for when companies must report breaches to law enforcement agencies (H.R. 1770 only requires notification if more than 10,000 people's records are affected). Consensus has not formed in the Senate on how to approach the issue. Competing proposals are pending before the Senate Commerce Committee and the Senate Science and Transportation Committee, including a bill sponsored by Senator Bill Nelson (D-FL) (S. 177) and one co-authored by Senators Tom Carper (D-DE) and Roy Blunt (R-MO). Senator Mark Warner (D-VA) has circulated a discussion draft for input from stakeholders that has the support of the retail industry. All three measures contain some variation of data breach notification rules and nationwide data security requirements, which are running into the same problems confronting the House measure.

**Takeaway:** Another massive data breach will renew pressure on lawmakers to reach agreement, but whether there is sufficient momentum to overcome differences between consumer and industry groups is not certain.

*U.S.-EU Safe Harbor Agreement:* The October 6, 2015, decision by the Court of Justice of the European Union (CJEU) invalidating the U.S.-EU Safe Harbor Framework concerning the use of personal data has spurred urgent calls for a new data-sharing arrangement. The 15-year-old safe harbor accord, which allowed personal data to be legally transferred between EU member countries and the United States, was invalidated by the CJEU on the grounds that current U.S. data protection standards do not meet EU standards for protecting European citizens' personal data. The impact of the ruling on digital trans-Atlantic trade flows has led trade and industry groups to push for negotiations. Negotiations between the EU and U.S. (Department of Commerce) are said to be close to completion, but divisions still exist over the EU demand to ensure only limited access to "Safe Harbor data" for national security purposes. Industry groups support U.S. legislation called the Judicial Redress Act of 2015 (H.R. 1428/ S. 1600) to help alleviate concerns about U.S. data protection standards and facilitate negotiations for a new safe harbor accord. The legislation would provide citizens of EU countries with judicial redress for data protection breaches. The bill passed the House in October 2015, but the Senate has taken no action on the legislation. The time frame for an agreement may quicken as European data protection authorities have warned they would take actions, including issuing financial penalties to companies, if the U.S. does not act to better protect Europeans' data by the end of January.

**Takeaway:** Companies with any personal information flowing between the EU and the U.S. (whether it be customer or employee) must continue to plan for handling cross-border information flow as a legislative fix remains unlikely, and there are likely to be nuances to any new Safe Harbor-like framework that could cause swift reaction by companies.

## Tax Reform

As part of its year-end agreement on FY2016 appropriations, Congress passed a \$622 billion package of tax extenders impacting and extending a variety of tax incentives, including the Research and Development Tax Credit, the American Opportunity Tax Credit and the Earned Income Tax Credit. The bipartisan agreement kick-started the conversation over a broader tax reform package. While it is unlikely any major tax reform will be implemented in 2016, both parties view tax reform as a priority agenda item for 2017, or potentially a lame duck session.

Beyond an agreement to hold off on major reform in 2016, the two parties agree on little else when it comes to tax reform. First and foremost, Republicans insist that the goal of any tax reform should be to make America more competitive and that any tax reform package be revenue neutral (some Democrats agree to this as well). Democrats, for the most part, are pushing for a tax reform package that would boost revenue and ease the burden on families. The two camps also disagree over whether the U.S. should move to a territorial tax system that would exempt a business' offshore profits from U.S. taxes.

One element of tax reform where there is bipartisan agreement is allowing companies to repatriate revenues held overseas at a rate that is lower than the 35 percent corporate tax rate. This and other proposals may in fact come before Congress as part of a forthcoming tax package from Senate Finance Committee Chair Orrin Hatch (R-UT) that will reportedly be released in the coming weeks. Last summer, the international subgroup of the Senate Finance Committee's Tax Working Group proposed a number of policy changes that have formed the basis for a potential international tax reform package. The proposals included moving to a territorial tax framework, enacting a Patent Box, addressing some sort of a "minimum tax" and limiting interest expense deductions.

**Takeaway:** While broad-based tax reform is unlikely in 2016, both parties are expected to use this year to set the stage for possible tax reform in 2017. If there is some sort of movement toward tax reform this year, it most likely will take place in the international area and will be a relatively modest package built around the proposals released last summer by the Senate Finance Committee's Tax Working Group.

## Gun Control

Gun control is at the very top of the President's agenda, and on January 5 – in the wake of numerous high profile shootings – President Obama unveiled a number of executive orders aimed at advancing his gun control agenda. The proposals include requiring a license to sell guns at gun shows or over the internet and requiring background checks for people trying to buy some types of weapons through a trust, corporation or other legal entity.

As part of the Administration's push to reform America's gun laws, the forthcoming presidential budget proposal will include funding for 200 new ATF agents and \$500 million to increase access to mental health care, among other initiatives. Congressional Republicans are challenging the President's proposals and are unlikely to support initiatives requiring legislative changes.

**Takeaway:** President Obama is a passionate supporter of gun control. Both parties see upside in a vociferous debate, viewing it as an electoral winner. We expect gun control to be an important issue in 2016.

## Daily Fantasy Sports

The controversy over Daily Fantasy Sports (DFS) is expected to face congressional scrutiny this year. Since allegations of insider information and deceptive advertising practices came to light in September and October,

Congress, numerous state governments and federal and state law enforcement agencies have begun to take a closer look at the industry. In Washington, a number of House and Senate committee chairmen and ranking members are calling for hearings. Rep. Fred Upton (R-MI), Chairman of the House Energy & Commerce Committee, has said hearings will happen in early 2016. His counterpart on the Committee, Rep. Frank Pallone (D-NJ) has long called for a review of the legal landscape surrounding DFS. It is important to note that Rep. Pallone's interests coincide with his stated desire to repeal the Professional and Amateur Sports Protection Act of 1992 (the Bradley Act) that, with few exceptions, outlawed sports gambling nationwide. Other members calling for additional congressional oversight include Sen. Robert Menendez (D-NJ), Sen. Harry Reid (D-NV), Rep. Hakeem Jeffries (D-NY), Rep. Diana Titus (D-NV) and Sen. Richard Blumenthal (D-CT), who has asked the Federal Trade Commission to examine the DFS industry.

**Takeaway:** We expect Congress to look into the legality of Daily Fantasy Sports. However, legislation is uncertain.

### **Guantanamo Bay Detention Center**

President Obama has long been committed to closing the detention facility at the U.S. naval base in Guantanamo Bay, Cuba. When the FY2017 budget is released, it is likely that the Administration will once again propose closing the prison and moving the inmates to three potential U.S. locations (Fort Leavenworth, Kansas; the Naval Consolidated Brig in South Carolina; or the ADX Prison in Colorado).

Congress has passed legislation for the past several years to block the closure of or movement of prisoners from Guantanamo to the U.S. The Fiscal Year 2016 National Defense Authorization Act included several provisions prohibiting the closure of the base, the transfer of prisoners to the U.S., and spending on planning for closure or movement of prisoners.

The President has publicly left open the option for an executive order transferring the Guantanamo detainees to the U.S. If he were to make such a decision, it would likely draw the ire of the Congress and the states that would house the detainees.

**Takeaway:** We do not believe that the President will be successful in closing Guantanamo in 2016, but an executive action would likely force Congress to act.

### **Obama Administration Regulations**

As is normal during the final year of a presidential administration, the Obama Administration is pushing forward with a variety of new regulations it hopes to implement before leaving office in January 2017. New regulations will be wide-ranging, affecting everything from worker safety, to gun control, to nutritional labeling, to home appliance efficiency.

However, the Administration must finalize all proposed regulations by roughly May 17, or risk having them blocked by Congress. The mid-May deadline arises from the Congressional Review Act of 1996, which gives Congress 60 legislative days to override any regulation it opposes before the rule takes effect. The President may veto Congress' resolution of disapproval, but depending on the timing of when the rule takes effect, the 60-day period may extend past the inauguration of a new president; meaning Congress could wait to override a final regulation until a new president takes office who may be more likely to allow the congressional override to stand.

**Takeaway:** Expect a significant number of regulations to be proposed by the Obama Administration in the coming months. Possible new regulations include:

- additional gun control regulations;
- changes to the nutritional labeling laws mandating the disclosure of added sugar and updating serving sizes;
- expanding Food and Drug Administration (FDA) jurisdiction over e-cigarettes, which, according to the FDA, may cost the e-cigarette industry anywhere from \$20 to \$810 million;
- a new requirement placed on stock brokers requiring them to offer advice about retirement investments;
- a number of new energy efficiency proposals on everything from computers to air conditioners, vending machines, furnaces (which, according to the Department of Energy, may cost the industry up to \$741 million annually) and ceiling fans; and
- new reductions in the permissible exposure limit to crystalline silica, which the Occupational Safety and Health Administration (OSHA) estimates will save more than 600 lives per year, but cost industry between \$637 and \$658 million per year (an amount industry has accused OSHA of vastly underestimating).

For more information, please contact Sheila Burke, chair of the Government Relations and Public Policy Group.