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US Policy and Politics Fall Preview

A Labor Day Beach Read



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Introduction

This has been an historic and history-defying summer for US politics. Hillary Clinton has broken through the proverbial glass ceiling and become the first woman to receive a major party nomination for the highest office in the land. At the same time, she is a candidate who is below water in some polls by over 11% on her favorable/ unfavorable ratings (42%-53%) and believed by a majority of the electorate to be neither honest nor trustworthy. Yet, if the election were held today, she is projected to win enough electoral votes to be elected president even if she lost all of the states presently considered to be toss-ups.

If this campaign has taught us anything, it is that there are no sure things in politics. Donald Trump, the Republican presidential candidate who dispatched 16 other candidates in the Republican primaries with the greatest of ease, is now having a hard time staying above 40% in the general election polls.

We remain open to the possibility that the upcoming debates, new Trump campaign leadership, a foreign policy crisis, and continued scrutiny of Secretary Clinton about her email or the seemingly close relationship between the Clinton Foundation and executive actions could fundamentally alter the political landscape before the election. For now, however, suffice it to say that Mr. Trump has a very steep climb before him if he is to be elected president on November 8.

To help ease your transition from “endless summer” to endless emails post-Labor Day, we offer you this preview of what we expect from the world of public policy and politics this fall. Items to whet your interest, not overwhelm you. A cool ocean splash, not an ice bath, with deeper dives into all of the subjects covered available on request. Welcome to the sprint to November!

Races



All DC pundits stress the old saying that a week is a lifetime in a campaign. Election veterans also know that any poll by definition is a snapshot, not a motion picture, and they recognize the critical importance of having momentum as any election nears. (It can be an awful, almost helpless feeling for a candidate to have the lead as an election approaches but to also know he or she is struggling to get to the finish line in front.)

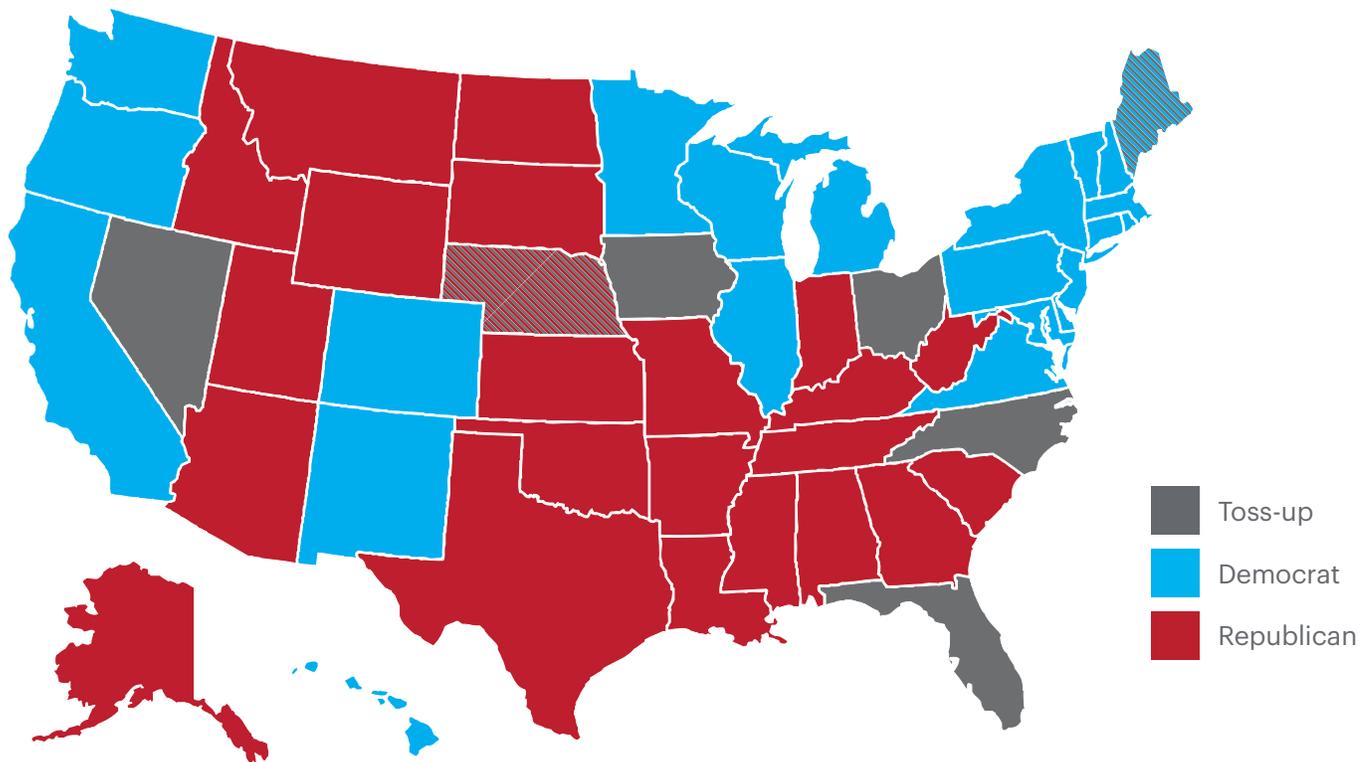
So while we're not sure yet what to term the remaining 10 weeks of this campaign season, what we do know now is that the contours of this race are beginning to gel, the issue matrix is coming into focus and, from the top of the ticket down to the state and local races, prognosticators and campaign staffers are beginning to weigh the potential effect on voter turnout of what, to date, looks to have been an ineffective Trump campaign.

Reviewing the available pre-Labor Day polling, if the elections were held today, Hillary Clinton would win,

control of the US Senate would flip to the Democratic Party, the House would see its Republican majority shrink, perhaps even substantially, and several of the 12 Governor's mansions that are up for grabs would switch to Democratic control.

Yet the reason that "old sayings" get old is because they very often turn out to be true. A week in a campaign truly can be a lifetime and, while a general election is very different from a primary, Mr. Trump's election day performance throughout the primary season exceeded expectations and shattered pundits' predictions almost every time he appeared on the ballot. Will this historic election again turn the conventional wisdom on its head? Has Secretary Clinton opened up an insurmountable lead—or can Mr. Trump still catch up to her deep in the stretch and win the presidency on November 8? Only time will tell. Below, please find a pre-Labor Day ranking of races at the national and state levels.

POTUS



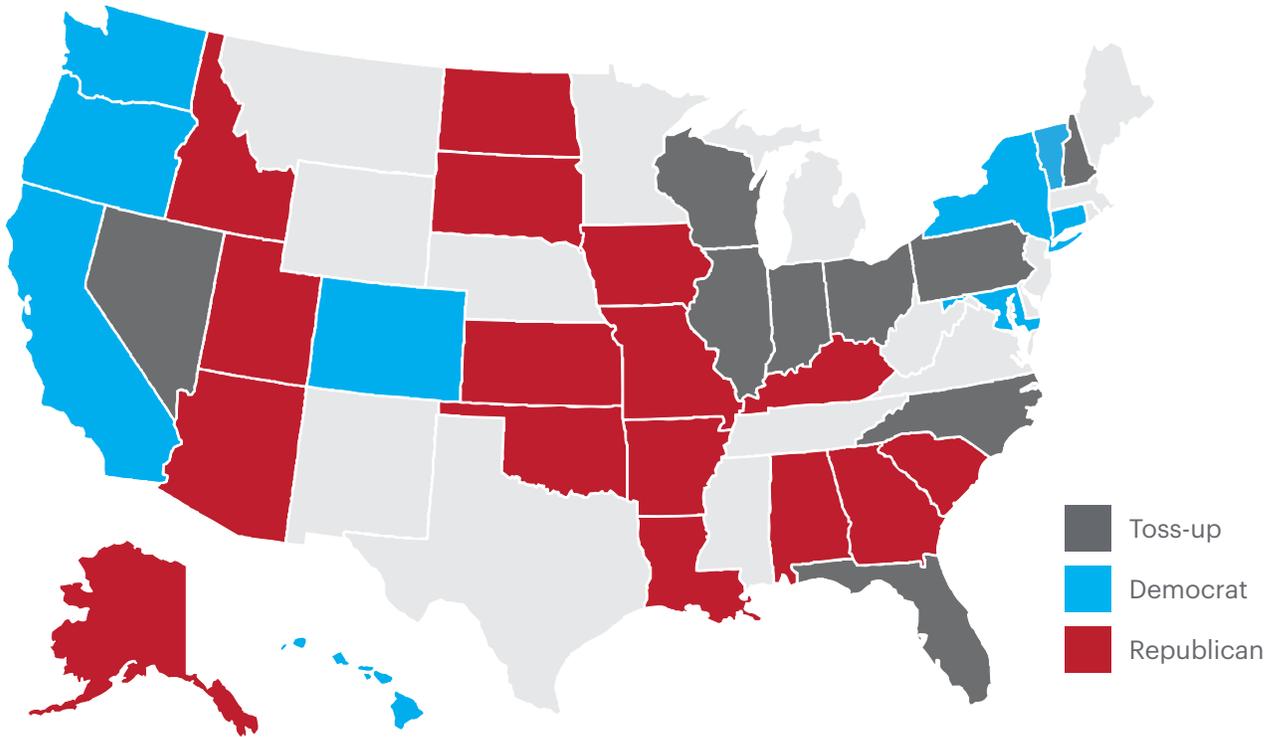
POTUS

State	Electoral Votes	Cook Report
Alabama	9	R
Alaska	3	R
Arizona	11	R
Arkansas	6	R
California	55	D
Colorado	9	D
Connecticut	7	D
Delaware	3	D
District of Columbia	3	D
Florida	29	Tossup
Georgia	16	R
Hawaii	4	D
Idaho	4	R
Illinois	20	D
Indiana	11	R
Iowa	6	Tossup
Kansas	6	R
Kentucky	8	R
Louisiana	8	R
Maine*	4	D
Maryland	10	D
Massachusetts	11	D
Michigan	16	D
Minnesota	10	D
Mississippi	6	R
Missouri	10	R

State	Electoral Votes	Cook Report
Montana	3	R
Nebraska*	5	R
Nevada	6	Tossup
New Hampshire	4	D
New Jersey	14	D
New Mexico	5	D
New York	29	D
North Carolina	15	Tossup
North Dakota	3	R
Ohio	18	Tossup
Oklahoma	7	R
Oregon	7	D
Pennsylvania	20	D
Rhode Island	4	D
South Carolina	9	R
South Dakota	3	R
Tennessee	11	R
Texas	38	R
Utah	6	R
Vermont	3	D
Virginia	13	D
Washington	12	D
West Virginia	5	R
Wisconsin	10	D
Wyoming	3	R

* Denotes electoral votes counted by congressional district with one district currently viewed as a toss up

Senate



Senate

State	Incumbent	Party	Cook Report
AK	Lisa Murkowski	R	Likely R
AL	Richard Shelby	R	Solid R
AR	John Boozman	R	Solid R
AZ	John McCain	R	Lean R
CA	OPEN (Boxer retiring)	D	Solid D
CO	Michael Bennet	D	Likely D
CT	Richard Blumenthal	D	Solid D
FL	Marco Rubio	R	Toss Up
GA	Johnny Isakson	R	Likely R
HI	Brian Schatz	D	Solid D
IA	Chuck Grassley	R	Likely R
ID	Mike Crapo	R	Solid R
IL	Mark Kirk	R	Toss Up
IN	OPEN (Coats retiring)	R	Toss Up
KS	Jerry Moran	R	Solid R
KY	Rand Paul	R	Solid R
LA	OPEN (Vitter retiring)	R	Solid R

State	Incumbent	Party	Cook Report
MD	OPEN (Mikulski retiring)	D	Solid D
MO	Roy Blunt	R	Lean R
NC	Richard Burr	R	Toss Up
ND	John Hoeven	R	Solid R
NH	Kelly Ayotte	R	Toss Up
NV	OPEN (Reid retiring)	D	Tossup
NY	Chuck Schumer	D	Solid D
OH	Rob Portman	R	Toss Up
OK	James Lankford	R	Solid R
OR	Ron Wyden	D	Solid D
PA	Pat Toomey	R	Toss Up
SC	Tim Scott	R	Solid R
SD	John Thune	R	Solid R
UT	Mike Lee	R	Solid R
VT	Patrick Leahy	D	Solid D
WA	Patty Murray	D	Solid D
WI	Ron Johnson	R	Toss Up

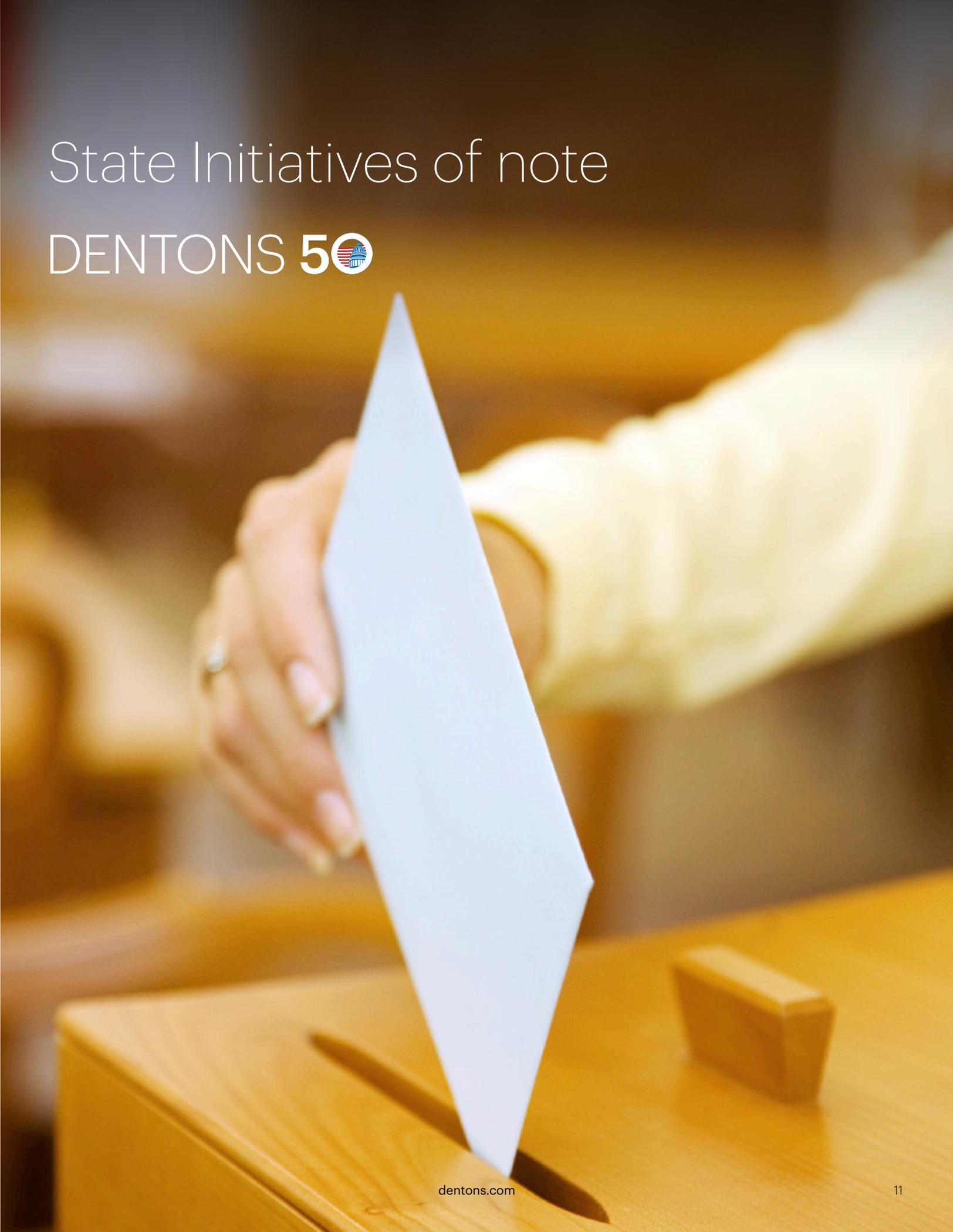
House

State	Name	District	Party	Cook Report
AK	Al Young	0	R	Likely R
AZ	Open	1	D	Tossup
AZ	Martha McSally	2	R	Lean R
AZ	Kyrsten Sinema	9	D	Likely D
CA	Ami Bera	7	D	Lean D
CA	Jeff Denham	10	R	Lean R
CA	David Valadao	21	R	Lean R
CA	OPEN	24	D	Likely D
CA	Steve Knight	25	R	Tossup
CA	Darrell Issa	49	R	Likely R
CA	Scott Peters	52	D	Likely D
CO	Scott Tipton	3	R	Lean R
CO	Mike Coffman	6	R	Tossup
FL	OPEN	2	D	Likely R
FL	John Mica	7	R	Lean R
FL	OPEN	10	R	Likely D
FL	David Jolly	13	R	Lean D
FL	OPEN	18	D	Tossup
FL	Carlos Curbelo	26	R	Tossup
FL	Ileana Ros-Lehtinen	27	R	Likely R
IA	Rod Blum	1	R	Lean D
IL	Bob Dold	10	R	Tossup
IL	Mike Bost	12	R	Likely R
IN	OPEN	9	R	Likely R
MD	John Delaney	6	D	Likely D
ME	Bruce Poliquin	2	R	Tossup
MI	OPEN	1	R	Lean R
MI	Tim Walberg	7	R	Lean R

State	Name	District	Party	Cook Report
MI	Dave Trott	11	R	Likely R
MN	Erik Paulsen	3	R	Lean R
MN	Richard Nolan	8	D	Lean D
MT	Ryan Zinke	0	R	Likely R
NE	Brad Ashford	2	D	Lean D
NH	Frank Guinta	1	R	Tossup
NV	OPEN	3	R	Tossup
NV	Crescent Hardy	4	D	Lean D
NY	Lee Zeldin	1	R	Tossup
NY	OPEN	3	D	Tossup
NY	OPEN	19	R	Tossup
NY	Elise Stefanik	21	R	Likely R
NY	OPEN	22	R	Tossup
NY	Tom Reed	23	R	Lean R
NY	John Katko	24	R	Tossup
PA	Ryan Costello	6	R	Likely R
PA	OPEN	8	R	Tossup
PA	OPEN	16	R	Likely R
TX	Will Hurd	23	R	Tossup
UT	Chris Stewart	2	R	Solid R
VA	OPEN	4	R	Likely D
VA	OPEN	5	R	Likely R
VA	Barbara Comstock	10	R	Lean R
WA	David Reichert	8	R	Likely R
WI	OPEN	8	R	Safe R

State Initiatives of note

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Alabama

On August 15 the Alabama legislature convened for a special session called by Governor Robert Bentley (R). The purpose of the special session is to raise new revenue for the beleaguered Alabama Medicaid Agency, whose \$785 million budget request in the regular session was not fully-funded by the legislature; the agency received only \$700 million. Medicaid had requested the higher amount to provide level services and also launch its managed care initiative, known as Regional Care Organizations (RCOs). To fill the \$85 million hole in the Medicaid budget, and to sustain funding going forward, the legislature is considering a bill to securitize the state's BP oil spill settlement funds for a short-term infusion of money and the creation of a state lottery to provide for Medicaid's long-term financing. The lottery bill is a constitutional amendment, which requires a supermajority (three-fifths) vote of each chamber and then a simple majority of voters statewide—which is expected to be on the November general election ballot.



Arizona

"America's Toughest Sheriff" Joe Arpaio is in the toughest re-election race of his infamous tenure. Plagued by ongoing legal trouble, including a potential criminal-contempt charge, the 84-year-old

lawman who calls himself the "Original Trump" is trailing his democratic challenger in polls for the first time ever. In addition, recent polls put Arizona in play for Hillary Clinton, with Clinton and Trump in a statistical tie. As reference, Arizona has backed a Democrat for president just once since 1948, when Bill Clinton carried the state as he cruised to an easy reelection victory over Bob Dole in 1996.



California

In California, the outcome of the Presidential election as well as the race to replace Barbara Boxer in the US Senate are givens. The only questions are whether (i) a surge of young and Latino voters will restore two-thirds Democratic majorities in the state

Assembly and Senate, and (ii) whether the Democrats will increase their numbers in the Congressional delegation. Democrats currently hold 39 of the state's 53

congressional seats. True to form, the California ballot will be chock-full of initiatives dealing with issues ranging from marijuana legalization and gun control to drug price relief and repeal of the death penalty.



Colorado

CO has several ballot measures certified by its Secretary of State that deserve mention. Several are still awaiting the verification

of petition signatures. Amendment 69 would create ColoradoCare, a new single-payer state healthcare system that would take over all health insurance operations in the state. Amendment 70 would set a state minimum wage of \$12 per hour, increasing the current minimum wage to \$9.30 per hour with annual increases of \$0.90 each January 1 until it reaches \$12 per hour effective January 1, 2020, and then making annual cost-of-living adjustments. Amendment 71 would tighten the requirements for citizen-initiated constitutional amendments by requiring that petitions be signed by at least 2% of the registered electors who reside in each state senate district (rather than the current 5% of those voting in the last election for secretary of state) and that the amendment pass by 55% (instead of the current simple majority). Another amendment would make assisted death legal for competent patients with a terminal illness whose prognosis is death within six months. Ballot measures pending review of petition signatures involve local control of oil and gas drilling, presidential primaries, and participation in primary elections.



Florida

Republicans are nearly certain to hold a strong majority in the Florida House in the 2017-18 term under incoming Speaker

Richard Corcoran (R-Land O' Lakes), a conservative and ally of former Governor Jeb Bush. Corcoran may run for Governor in 2018 when Republican Governor Rick Scott is term-limited out (and is expected to run against incumbent US Senator Bill Nelson, a Democrat). The Florida Senate is expected—though this is by no means certain—to retain a Republican majority but lose seats from its current 26-14. Senator Joe Negron (R-Stuart) is scheduled to be the Senate president.

The Florida Medical Marijuana Legalization Initiative, aka Amendment 2, will appear on the November 8 ballot and would amend the state constitution. Constitutional

amendments require a 60 percent majority to be adopted. A very similar medical marijuana amendment nearly passed in 2014, winning the support of nearly 59 percent of voters.

“Solar Devices or Renewable Energy Source Devices; Exemption from Certain Taxation and Assessment,” better known as Amendment 4, will appear on the Florida primary ballot August 30. The amendment would expand to businesses the availability of property tax breaks on renewable energy devices. Current state law restricts property-tax breaks on solar power and other renewable energy devices to residential property. Another solar amendment, the Florida Solar Energy Subsidies and Personal Solar Use Initiative, or Amendment 1, will appear on the November 8 ballot. It would add a section to the state constitution giving state residents the right to own or lease solar energy equipment for personal use.



Georgia

Georgia has several statewide constitutional amendments on the ballot this November.

One of the most significant would create a State-run Opportunity School District (OSD) that would give the Governor the power to take over chronically failing public schools and place them in an OSD to be managed by the State.. Other noteworthy amendments include overhauling the handling of judicial discipline, creating a Safe Harbor for Sexually Exploited Children Fund and dedicating tax revenue from the purchase of fireworks to trauma care, fire services and other local public safety purposes.



Idaho

Of interest in Idaho are a state Supreme Court race in which the run-off election has pitted seven-term Republican State Senator Curt McKenzie (southwestern Idaho) against a relative newcomer, private attorney Robyn Brody (Twin Falls area). McKenzie is a strong

civil libertarian who is known widely in Republican circles while Brody, despite being unknown to most Idahoans, commands a huge financial war chest. Of additional interest is a constitutional amendment that would enshrine in the state's constitution the power of the legislature to review all administrative rules, a power that was granted via an Idaho Supreme Court ruling. A similar constitutional amendment failed in 2014. Idaho is one of the few states in

which the legislature dedicates significant time to all of the new administrative rules promulgated by the various state agencies. However, like last time, there doesn't appear to be much of an organized effort to pass this ballot measure, thus leaving voters (who do not realize that rules review is already a matter of practice) to wonder if this is a power grab by the legislature. And finally, all eyes are on the US Senate race between Republican Sen. Mike Crapo and Democratic businessman Jerry Sturgill. If the Republican Party retains the US Senate, Sen. Crapo would become chairman of the Senate Banking, Housing and Urban Affairs Committee. Though his challenger is a long shot, Sturgill is a credible candidate—like Sen. Crapo, he's also of the LDS faith, practiced law for many years and has worked in financial services and private equity for a number of years.



Indiana

From a political perspective, the rise of Mike Pence to Republican vice-presidential nominee has set the Governor's race in motion—and it's shaping up to be a very close, and very expensive, battle. The other marquee race will be for US Senate.

Republican Representative Todd Young, once considered a shoe-in against Democrat Baron Hill, now faces an uphill battle against former Senator Evan Bayh, who entered the race after Hill withdrew from the ballot in July. Bayh has a decisive financial advantage, having brought nearly \$10 million from his former campaign committee, and also holds a slight lead in the polls (7-10 points, at press time). From a policy perspective, there are a few issues being discussed during the interim that will likely be legislative issues in 2017, including: a rewrite of the Indiana Alcohol code to create a three-tier system, transportation funding, potential tax on services, consolidated income tax (returns) and the regulation of fantasy gaming. There are no ballot issues or constitutional amendments on the ballot this November.



Illinois

Since a budget agreement was reached and passed in July, Illinois Governor Rauner and the Democratically controlled General Assembly are in full campaign mode. In order for the Governor to get his Turn Around Agenda passed he needs to capture

a significant number of seats in the House and Senate. Presently, in the Senate there are 39 Democrats and 20 Republicans and in the House there are 71 Democrats and 47 Republicans.



Kansas

Primary elections in Kansas were held on August 2. The significant post-election political news was the high number of incumbent conservative Republican state legislators who lost reelection. The net result is an increase in moderate Republican and Democratic legislators, who are expected to form a working coalition to wrestle control of policy debate away from conservatives.



Missouri

Missouri's open gubernatorial race is poised to break all previous campaign finance records in the state. Republican Eric Greitens, a former Navy SEAL, and Democrat Attorney General Chris Koster both seem destined for the national stage.

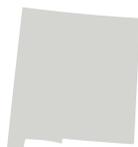
Missourians may have the chance to vote on up to six ballot initiatives in November. One that has both candidates and contributors interested is an effort to reinstate campaign contribution limits for legislative and statewide candidates. The ballot measure, which would cap individual contributions at \$2600 and contributions to state parties at \$25,000, was deemed by the Secretary of State in early August to have collected enough valid signatures to be placed on the ballot. However, the Missouri Electric Cooperative and Legends Bank have filed a lawsuit claiming the measure has some constitutional flaws. The merits of the suit, and therefore whether the measure will appear on the November 8 ballot, will likely be determined in the next couple of weeks.



Nevada

Nevada has ballot initiatives this fall related to energy de-regulation, legalizing marijuana for recreational use, and to require background checks on gun sales. On the legislative front, both houses in the Nevada Legislature (and

the Governorship) are controlled by Republicans for the first time in 80+ years. There will be a strong battle in both houses for control, with substantial possibilities that one or both houses will change.



New Mexico

While there are no hotly contested races to speak of, New Mexico has one ballot initiative this fall, the Healthy Workforce Ordinance in Albuquerque. Also of interest, the Governor is close to calling a special session to deal with the looming \$200 million shortfall for the fiscal year that just ended, and an estimated \$500 million shortfall expected for this fiscal year.



New York

New York has several state Senate races of interest this November. Currently there are 32 elected Democrats and 31 elected Republicans; however, 1 Democrat "sits" with the Republicans and a 5-member Independent Democratic Conference also currently aligns with the Republicans, which keeps the Republicans in control of the Senate. There are a few open seats in play with no clear front-runner, which could threaten Republicans's control of the Senate if Hillary Clinton wins big in NY and there is a significant down-ballot impact.



Texas

The November 8 ballot in Texas will include 16 state Senate seats and all 150 House seats, but no propositions. While high voter turnout is expected, it is not likely to turn the state blue. That said, two or more seats in the Texas House could swing to the Democrats. Meanwhile, Texas House and Senate committees have held most of their hearings on interim charges and will issue their legislative recommendations before the end of the year.

Transition teams

As the Presidential campaigns barrel towards the fall, transition planning is in full swing. Both the Clinton and Trump campaigns have named the leadership heading up their transition teams and the planning has begun in full earnest. Between now and election day, the transition team will focus on planning and policy development for the early days of an Administration as well as compiling briefing books and identifying senior career staff who will

become the heads of agencies in an “acting” role. Teams for individual Departments and Agencies are now being formed to identify personnel to parachute into government roles in the early days of the new Administration. After the election, the transition team for the president-elect will begin to meet in order to identify priorities and senior staffing decisions, including triaging the ones that will require immediate decisions.

Trump transition

Staff Member	Transition Team Role	Previous Experience
Chris Christie	Chairman	Governor of New Jersey
Bill Palatucci	General Counsel	Attorney RNC Member
Rich Bagger	Senior Member	Chief of Staff, Governor Chris Christie
William Hagerty	Director of Appointments	Director of Appointment, Mitt Romney 2012 Presidential Campaign
Mike Rogers	National Security Advisor (role not finalized)	House Intelligence Committee Chairman

Clinton transition

Staff Member	Transition Team Role	Previous Experience
John Podesta	President (also Campaign Chairman)	Senior Advisor, President Barack Obama Founder, Center for American Progress Chief of Staff, President Bill Clinton
Ken Salazar	Chair	Secretary of the Interior Senator from Colorado
Tom Donilon	Co-Chair	National Security Advisor, President Obama
Jennifer Granholm	Co-Chair	Governor of Michigan
Neera Tanden	Co-Chair	President, Center for American Progress
Maggie Williams	Co-Chair	Director, Institute of Politics at the John F. Kennedy School of Government at Harvard University

Dates to watch



Late August/Early September | [Comprehensive Capital Analysis and Review](#)

The CCAR is an annual exercise by the Federal Reserve to assess whether the largest bank holding companies operating in the US have sufficient capital to survive economic and financial stress, and capital-planning processes that account for their unique risks.

September 2 | [August jobs report](#)

The Jobs Report (non-farm payroll) for the month of August will be released on Friday, September 2, at 8:30 a.m.

September 7 | [Congress returns](#)

The budget stopgap (CR-Continuing Resolution) will take top—maybe sole— billing. Potential emergency spending supplemental attached to CR could include: Louisiana Flooding, Zika, Afghanistan Troop Extension (latter could wait for Defense Appropriations at year end). The CR is due at the end of the month to avoid an October 1 shutdown.

September 20-21 | [Federal Open Market Committee](#)

The final scheduled FOMC Yellen press conference before the November election takes place at 2:30 p.m. on September 21.

September 26 | [First \(and maybe only\) presidential debate](#)

Per the Commission on Presidential Debates (CPD), the debate “will be divided into six time segments of approximately 15 minutes each on major topics to be selected by the moderator and announced at least one week before the debate. The moderator will open each segment with a question, after which each candidate will have two minutes to respond. Candidates will then have an opportunity to respond to each other. The moderator will use the balance of the time in the segment for a deeper discussion of the topic.” If either the Libertarian or Green Party candidates receives 15% of the popular vote, they can participate in the debate.

September 29 | [Federal Communications Committee](#)

At either the September 29 or October 27 open meetings, the FCC may tighten regulation of telecommunications’ business data service (BDS) and cable set-top boxes.

October 1 | [FY 2017 begins](#)

October 4 | [Only Vice Presidential Debate](#)

The only vice-presidential debate will take place at Longwood University in Farmville, VA. Per the CPD, “the debate will be divided into nine time segments of approximately 10 minutes each. The moderator will ask an opening question, after which each candidate will have two minutes to respond. The moderator will use the balance of the time in the segment for a deeper discussion of the topic.”

October 7 | [September jobs report](#)

The second-to-last Jobs Report before the election will be released on Friday, October 7, at 8:30 a.m.

October 9 | [Townhall presidential debate](#)

The second presidential debate will take place at Washington University in St. Louis. Per the CPD, “the second presidential debate will take the form of a town meeting, in which half of the questions will be posed directly by citizen participants

and the other half will be posed by the moderator based on topics of broad public interest as reflected in social media and other sources. The candidates will have two minutes to respond and there will be an additional minute for the moderator to facilitate further discussion. The town meeting participants will be uncommitted voters selected by the Gallup Organization.”

October 19 | [Final debate](#)

The third and final presidential debate will take place at UNLV in Las Vegas and be identical in format to the first debate. All debates will be moderated by a single individual and will run from 9:00-10:30 p.m. (EST) without commercial breaks. Moderators to be announced shortly.

Late October/Early November | [Centers for Medicare and Medicaid Services Announcements](#)

CMS issues final CY17 physician fee schedule and hospital outpatient rules.

October 27 | [FCC meeting](#)

If the September 29 meeting, supra, does not resolve the two key issues of BDS and set-top boxes, the final FCC meeting before the election could well be must-see TV.

November 1-2 | [Federal Open Market Committee meeting](#)

The FOMC has its final meeting before the election, though no press conference is scheduled.

November 4 | [Final jobs report](#)

The Friday before the election will see the release of the October Jobs Report at 8:30 a.m.

November 8 | [Election day](#)

Exercise your Franchise!



Congress



Fall outlook in Congress

The Congress returns to Washington, DC, on September 6 for 17 days of legislating before recessing at the end of the month (or sooner) for the elections. The only true “must pass” bill before members of the House and Senate return home is some form of Continuing Resolution (CR) that will keep the federal government from shutting down on October 1. This stopgap spending measure is expected to be relatively “clean,” with very few extraneous policy riders, and would fund the government to sometime in December, most likely December 15.

While a CR may be the only “must pass” bill, September also represents the last opportunity for members to demonstrate movement on their legislative priorities before voters see their names on ballots. We expect many of these priorities to be addressed, either in committee or on the floor, before members recess to campaign. Both bodies are also likely to take up and pass several bills that will never become law but are designed to make a political statement highlighting key differences between the parties on issues that will be important to the voters’ choices in November.

A Zika-virus funding package and an emergency supplemental to fund recovery efforts in Louisiana will certainly dominate the political rhetoric, but as of today it is unclear how these packages come together, or if Louisiana will even be prepared to submit a comprehensive “wish list” to Congress during September.

Currently, House Republican Leadership has planned a fall agenda that includes moving legislation on reforming the Department of Veterans Affairs, reauthorizing the Water and Resources Development Act, a package of Financial Technology bills and, potentially, Medicare Part B reform. Whether any of these bills will see time on the Senate floor is an open question.

The Senate could take up and pass mental health reform legislation—if a dispute over a guns rights amendment from Senator Cornyn can be resolved. Similarly, the Senate could, this fall, consider the 21st Century Cures Act, legislation to promote medical innovation and increased access to potentially life-saving treatments, if Republicans and Democrats can reach an agreement on how to fund it.

Two major pieces of legislation currently sit in conference committees pending resolution of differences between the House and Senate-passed versions of the bills— an Energy Bill and the FY 2017 National Defense Authorization Act. Both are discussed in further detail below.

Bills in Conference: Energy Legislation

Prior to adjourning for its August recess, the Senate approved a procedural motion to appoint conferees on the energy bill. The vote on conferees occurred after Senate Energy and Natural Resources Committee Ranking Member Maria Cantwell (D-WA) secured a promise from Republican leaders, including Senate Energy and Natural Resources Committee Chair Lisa Murkowski (R-AK), that any conference agreement would not include any provisions that President Obama has threatened to veto. The White House stayed relatively silent on S. 2012, the Energy Policy Modernization Act, but the President threatened to veto H.R. 8, the North American Energy Security and Infrastructure Act. When the House appointed conferees to the energy bill, they also added a number of other controversial public lands, drought and natural resources bills to H.R. 8. After Republicans pushed through provisions in the Zika funding conference that Democrats had opposed, Cantwell was adamant about securing promises on the energy bill committee process before agreeing to a vote to appoint conferees.

While the Committee leadership agreed to remove provisions that the White House has threatened to veto in any conference agreement, the path forward on the energy bill remains cloudy. First, there are significant differences between the House and Senate bills that must be reconciled. For instance, the Senate bill would permanently reauthorize the Land and Water Conservation Fund, but key House Republicans, including House Natural Resources Committee Chair Rob Bishop (UT), are opposed to a permanent reauthorization for the program. There are also a limited number of legislative days left before Congress recesses for the November elections, further complicating the path forward. Yet, there is optimism that a deal can be reached on a compromise energy bill, potentially in a lame duck session. A comprehensive energy bill is viewed as a legacy issue for House Energy and Commerce Committee

Chair Fred Upton (R-MI), who is term-limited from serving another term atop the Committee, and for Murkowski, who may lose her chairmanship next year if Democrats win a majority in the Senate.

The Senate conferees include: Murkowski, Cantwell, Senator John Barrasso (R-WY), Senator Jim Risch (R-ID), Senator John Cornyn (R-TX), Senator Ron Wyden (D-OR) and Senator Bernie Sanders (I-VT). S. 2012 passed on a strong bipartisan basis but Sanders, for one, opposed the measure, so it will be interesting to watch his role on the conference committee, particularly given recent debates over energy and climate policy he had with supporters of Secretary Hillary Clinton in drafting the Democratic Party platform.

The House Republican conference will be led by Upton and Bishop, while the Democratic conferees will be led by House Energy and Commerce Committee Ranking Member Frank Pallone (NJ) and House Natural Resources Committee Ranking Member Raúl Grijalva (AZ). Other House conferees include: Joe Barton (R-TX), Ed Whitfield (R-KY), John Shimkus (R-IL), Bill Johnson (R-OH), Robert Latta (R-OH), Cathy McMorris Rodgers (R-WA), Bill Flores (R-TX), Pete Olson (R-TX), David McKinley (R-WV), Mike Pompeo (R-KS), Morgan Griffith (R-VA), Markwayne Mullin (R-OK), Cynthia Lummis (R-WY), Don Young (R-AK), Jeff Denham (R-AR), Bruce Westerman (R-AR), Collin Peterson (D-MN), Eddie Bernice Johnson (D-TX), Peter DeFazio (D-OR), Bobby Rush (D-IL), Lois Capps (D-CA), Jared Huffman (D-CA), Doris Matsui (D-CA), Kathy Castor (D-FL), Dave Loebsack (D-IA), John Sarbanes (D-MD), Peter Welch (D-VT), Ben Ray Lujan (D-NM), Paul Tonko (D-NY) and Debbie Dingell (D-MI).

National Defense Authorization Act for Fiscal Year 2017

The ceremonial first meeting of the National Defense Authorization Act (NDAA) conference committee took place on July 13, two days before the 114th Congress adjourned for an extended summer recess. House and Senate Armed Services Committee staff members have been working during recess to resolve many of the differences between the House and Senate versions of the annual defense policy bill. The most critical differences between the two bills, such as an \$18 billion disparity in funding for the DoD's base budget, will be addressed in conference when Congress returns to Washington on September 6.

Armed Services Committee Chairmen John McCain (R-AZ) and Mac Thornberry (R-TX 13th) hope to send the compromise version of the bill back to each chamber for final passage before Congress breaks again for over a month at the end of September in preparation for the November elections. This is an optimistic timeline, and the conference committee is unlikely to complete its work on the bill before the October recess begins.

With White House veto threats hanging over both versions of the NDAA, and the President very much focused on legacy-building during his final months in office, there's a very real possibility that the President will once again veto the version of the NDAA that comes out of conference this fall. (The President vetoed the NDAA in Fall 2015 before eventually signing it later that year). If McCain and Thornberry are somehow able to stick to their desired timeline, the President would be

forced to consider the potential political impact of a pre-election veto of the NDAA on the Clinton-Kaine ticket and on key down-ballot races in the Senate. From a purely political standpoint, a post-election veto would be an easier decision for the President.

The Senate passed its version of the NDAA this year by a significant veto-proof majority, but the House passed its version 13 votes shy of a veto-proof majority. Further complicating negotiation on the NDAA between the Administration and Congress is the President's recent decision to maintain a troop level of 8,400 personnel in Afghanistan in 2017, rather than the 5,500 personnel accounted for in the Administration's defense budget request. Several billion dollars in additional funding is required for the additional troops. Angering McCain and Thornberry, the Administration in early August announced that any additional funding for the increased troop level in Afghanistan must be paired with a corresponding increase in domestic spending. McCain described the Administration's position as "extortion," while Thornberry declared that the White House is holding the required additional "troop funding hostage to a political agenda."

So regardless of when the NDAA conference committee completes its work on the bill relative to the November elections, the Administration and Congress are very likely to engage in posturing and horse-trading with respect to the final version of the bill before the President signs it into law later this year.



Puerto Rico

On June 30, 2016, President Obama signed PROMESA (the Puerto Rico Oversight, Management, and Economic Stability Act), which mandates the establishment of a seven-member “control board” (Board) to help the Commonwealth restructure its debt and reduce government spending.

The legislation allows the House and Senate majority and minority leaders to send the President lists of candidates, selected from among their colleagues, from which the President must pick six (two each from Ryan’s and McConnell’s lists and one each from Pelosi’s and Reid’s). The President, for his part, can make one appointment, bringing the total to seven. If the President does not pick members from the Congressional lists, he must submit additional names to the Senate for confirmation.

Once the Board is established, it could begin taking action on debt and spending as early as the end of this calendar year.

In addition to the legislation, Congressional leaders appointed a task force to make policy recommendations on ways to improve the Puerto Rico economy beyond what is included in the PROMESA.

The task force is headed up by Senate Finance Committee Chairman Orrin Hatch (R-UT) and includes Sens. Marco Rubio (R-FL), Bill Nelson (D-FL) and Robert Menendez (D-NJ), as well as Reps. Sean Duffy (R-WI), Tom MacArthur (R-NJ), Nydia Velázquez (D-NY) and Pedro Pierluisi (D-PR).



Status of Appropriations bills

Cleared for the President: 0 of 12 | Signed into Law: 0 of 12

Bill	House			Senate			Conference			President
	Subcom.	Comm.	Passage	Subcom.	Comm.	Passage	Report	House Approval	Senate Approval	
Agriculture	13-Apr	19-Apr		17-May	19-May					
HR 5054 // S 2956	voice vote	voice vote		voice vote	roll call 30-0					
Commerce-Justice-Science	18-May	24-May		19-Apr	21-Apr					
HR 5393 // S 2837	voice vote	voice vote		voice vote	roll call 30-0					
Defense	11-May	17-May	16-Jun	24-May	26-May					
HR 5293 // S 3000	voice vote	voice vote	roll call 282-138	voice vote	roll call 30-0					
Energy-Water	13-Apr	19-Apr	26-May	13-Apr	14-Apr	12-May				
HR 5055 // S 2804	voice vote	voice vote	roll call 112-305	voice vote	roll call 30-0	roll call 90-8				
Financial Services	25-May	9-Jun	7-Jul	15-Jun	16-Jun					
HR 5485 // S 3067	voice vote	roll call 30-17	roll call 239-185	voice vote	roll call 30-0					
Homeland Security	9-Jun	22-Jun		24-May	26-May					
HR 5634 // S 3001	voice vote	voice vote		voice vote	roll call 30-0					
Interior-Environment	25-May	15-Jun	14-Jul	14-Jun	16-Jun					
HR 5538 // S 3068	voice vote	roll call 31-18	roll call 231-196	voice vote	roll call 16-14					
Labor-HHS-Education	7-Jul	14-Jul		7-Jun	9-Jun					
HR 5926 // S 3040	voice vote	roll call 31-19		voice vote	roll call 29-1					
Legislative Branch	20-Apr	17-May	10-Jun		19-May					
HR 5325 // S 2955	voice vote	voice vote	roll call 233-175		roll call 30-0					
Military Construction-VA	23-Mar	13-Apr	19-May	13-Apr	14-Apr	19-May	22-Jun	23-Jun		
HR 4974 // S 2806	voice vote	voice vote	roll call 295-129	voice vote	roll call 30-0	roll call 89-8	H Rept 114-640	roll call 239-171		
State-Foreign Operations	6-Jul	12-Jul		28-Jun	29-Jun					
HR 5912 // S 3117	voice vote	voice vote		voice vote	roll call 30-0					
Transportation-HUD	18-May	24-May		19-Apr	21-Apr	19-May				
HR 5394 // S 2844	voice vote	voice vote		voice vote	roll call 30-0	roll call 89-8				
Budget Resolutions		16-Mar								
H Con Res 125		roll call 20-16								
Senate draft										

Congressional Retirements and Committee Chair Term Limits

Seventeen House Democrats are retiring from their seats in 2016

1	Arizona 1	Ann Kirkpatrick: To run for the U.S. Senate
2	California 20	Sam Farr: Retiring
3	California 24	Lois Capps: Retiring
4	California 44	Janice Hahn: To run for the Los Angeles County Board of Supervisors
5	California 46	Loretta Sanchez: To run for the U.S. Senate
6	Delaware at-large	John Carney: To run for Governor of Delaware
7	Florida 2	Gwen Graham: Retiring
8	Florida 5	Corrine Brown (Lost primary)
9	Florida 9	Alan Grayson: To run for the U.S. Senate
10	Florida 18	Patrick Murphy: To run for the U.S. Senate
11	Hawaii 1	Mark Takai: Retiring[(died on July 20, 2016)
12	Illinois 8	Tammy Duckworth: To run for the U.S. Senate
13	Maryland 4	Donna Edwards: To run for the U.S. Senate (Lost primary)
14	Maryland 8	Chris Van Hollen: To run for the U.S. Senate
15	New York 3	Steve Israel: Retiring
16	New York 13	Charles Rangel: Retiring
17	Puerto Rico at-large	Pedro Pierluisi: To run for Governor of Puerto Rico (Lost primary)
18	Texas 15	Rubén Hinojosa: Retiring
19	Washington 7	Jim McDermott: Retiring

25 House Republicans are retiring from their seats in 2016

1	Arizona 5	Matt Salmon: Retiring
2	Florida 1	Jeff Miller: Retiring
3	Florida 4	Ander Crenshaw: Retiring
4	Florida 11	Rich Nugent: Retiring
5	Florida 19	Curt Clawson: Retiring
6	Georgia 3	Lynn Westmoreland: Retiring
7	Indiana 3	Marlin Stutzman: To run for the U.S. Senate (Lost primary)
8	Indiana 9	Todd Young: To run for the U.S. Senate
9	Kentucky 1	Ed Whitfield: Retiring
10	Louisiana 3	Charles Boustany: To run for the U.S. Senate
11	Louisiana 4	John Fleming: To run for the U.S. Senate
12	Michigan 1	Dan Benishek: Retiring
13	Michigan 10	Candice Miller: Retiring
14	Minnesota 2	John Kline: Retiring
15	Nevada 3	Joe Heck: To run for the U.S. Senate
16	New York 19	Chris Gibson: Retiring
17	New York 22	Richard Hanna: Retiring
18	Pennsylvania 8	Mike Fitzpatrick: Retiring
19	Pennsylvania 16	Joe Pitts: Retiring
20	Tennessee 8	Stephen Fincher: Retiring
21	Texas 19	Randy Neugebauer: Retiring
22	Virginia 2	Scott Rigell: Retiring
23	Virginia 4	Randy Forbes: Lost Primary
24	Virginia 5	Robert Hurt: Retiring
25	Wisconsin 8	Reid Ribble: Retiring

2 Senate Democrats are retiring

1	California	Barbara Boxer: Retiring
2	Nevada	Harry Reid: Retiring

2 Senate Republicans are retiring

1	Indiana	Dan Coats
2	Louisiana	David Vitter: To run for Governor - lost primary

Term Limited Full and Subcommittee Chairs

Term Limited full committee chairs (Likely 6)

House Education and Workforce - John Kline (R-MN) - term limited and retiring

House Energy & Commerce - Fred Upton (R-MI)

House Appropriations - Hal Rogers (R-KY)

House Veterans Affairs - Jeff Miller (R-FL)

Senate EPW - James Inhofe (R-OK)*

*based on the fact that Inhofe chaired EPW in the 108th, 109th, and 114th Congress = total of six years as chairman.

Senate Banking, Housing & Urban Affairs - Richard Shelby (R-AL)

Based on the fact that Shelby Chaired Banking in the 108th, 109th and 114th

House Armed Services Committee

Subcommittee on Seapower & Projection Forces J. Randy Forbes (R-VA) - Lost primary

House Agriculture

Subcommittee on Conservation and Forestry Chairman Glenn Thompson (R-PA)

House Education and Workforce

Full Committee Chairman John Kline (R-MN) - term-limited and retiring

Workforce Protection Subcommittee Tim Walberg (R-MI)

Higher Education and Workforce Training Chairwoman Virginia Foxx (R-NC)

Health, Employment, Labor, and Pensions Chairman Phil Roe (R-TN)

House Energy and Commerce Committee

Full Committee Chairman Fred Upton (R-MI)

Communications and Technology Chairman Greg Walden (R-OR)

Energy and Power Subcommittee Chairman Ed Whitfield (R-KY) - term limited and retiring

Environment and the Economy Subcommittee Chairman John Shimkus (R-IL)

Health Subcommittee Chairman Joe Pitts (R-PA) - term limited and retiring

House Financial Services Committee

Subcommittee on Capital Markets and Government Sponsored Enterprises Chairman Scott Garrett (R-NJ)

*Subcommittee on Financial Institutions and Consumer Credit - Randy Neugebauer (R-TX) *not term-limited, retiring

*Subcommittee on Investigating Terrorism Financing - Michael Fitzpatrick (R-PA), *not term-limited, retiring

House Foreign Affairs

Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations Chairman Christopher Smith (R-NJ)

House Homeland Security

*Subcommittee on Border and Maritime Security Chairwoman Candice Miller (R-MI) - *not term-limited, retiring

House Intelligence

*NSA and Cybersecurity Subcommittee - Lynn Westmoreland *not term-limited, retiring

House Judiciary

Constitution and Civil Justice - Trent Franks (R-AZ)*

* formerly Subcommittee on the Constitution - likely still term-limited despite change in jurisdiction of subcommittee

Crime, Terrorism, Homeland Security, and Investigations - Jim Sensenbrenner (R-WI) *

*Formerly Crime, Terrorism, and Homeland Security, see above

House Transportation and Infrastructure

Water Resources and Environment - Bob Gibbs (R-OH)

House Veteran's Affairs

Full Committee - Jeff Miller (R-FL)

*Subcommittee on Health - Dan Benishek (R-MI), *not term-limited, retiring

Ways & Means

Social Security Subcommittee - Sam Johnson (R-TX)

Appropriations

Full Committee Chairman Hal Rogers (R-KY)

State, Foreign Operations, and Related Programs Chairwoman Kay Granger (R-TX)

*Financial Services and General Government - Ander Crenshaw (R-FL) *not term-limited, retiring

Oversight and Government Reform

*Subcommittee on Interior - Cynthia Lummis * not term-limited, retiring

House Administration

*Full Committee Chairwoman Candice Miller (R-MI) *not term-limited, retiring



Pending Regulations and Anticipated Agency Action

While, over the years, many critics have decried the finalization of important new federal regulations by a lame-duck President during the transition period between Labor Day and the inauguration of the next president, the elections do not suspend the federal administrative process and federal agencies will continue to move forward with new final regulations when such rules are ready. Here is a sampling of key federal regulations, currently in the final rule stage and affecting a wide variety of sectors, that could be finalized before this year ends.

Title: Enhancing Retailer Eligibility Standards in SNAP

Agency: United States Department of Agriculture

Proposed Rule: USDA has proposed to make changes to the Supplemental Nutrition Assistance Program (SNAP) regulations pertaining to the eligibility of SNAP retail food stores. Under the most recent Farm Bill and the Food Nutrition Act of 2008, the government has sought to increase the requirement that certain SNAP authorized retail food stores have available “at least three varieties of items in each of four staple food categories” which will be clarified in the rule as belonging to one of the following four categories; meat, poultry, or fish; bread or cereals; vegetables or fruits; and dairy products. SNAP provides low income individuals with assistant to purchase healthy food options for home preparation. This proposed rule has generated criticism from convenience store groups in particular who express concern that stores would be unable to withstand the financial costs needed to continuously stock the required number of perishable food items. The rule is expected to become final later in 2016.

Title: Rules Governing Marine Mammals in Captivity

Proposed Rule: This action would affect sections in the regulations for the protection of all marine mammals in the United States relating to interactive programs (e.g., swim-with-the-dolphin), space requirements, water quality, indoor facilities, outdoor facilities, implementation dates, and variances. The U.S. Department of Agriculture’s (USDA) Animal and Plant Health Inspection Service (APHIS) established regulations for these mammals in 1998, based on the outcome of meetings of the Marine Mammal Negotiated Rulemaking Advisory Committee. USDA views the current regulations as potentially too general and that current scientific studies and data may inform the existing regulatory structure. The proposed rule has garnered the interest of stakeholders in the zoo and aquarium industry who are closely monitoring the potential impact to current operations at assets around the country. In addition, animal welfare groups have engaged the agency in order to try to impact the final rule to address concerns expressed over the public interaction with marine mammals. The agency is reviewing comments.



Energy and Environment

Title: Revisions to the Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas (GHG) Permitting Regulations and Establishment of a GHG Significant Emissions Rate (SER) (RIN: 2060-AS62)

Agency: US Environmental Protection Agency (EPA)

Overview: Submitted to the Office of Management and Budget (OMB) and Budget for review and signature in April 2016, the EPA is proposing a GHG SER under the PSD air permitting program and also requesting revisions to the provisions of the PSD and Title V GHG Tailoring Rule. The proposed GHG SER would establish an appropriate threshold level below which Best Available Control Technology (BACT) is not required for a source's GHG emissions.

The Tailoring Rule revisions will allow the EPA to revise certain GHG permitting regulatory provisions, which include the PSD GHG Plantwide Applicability Limits (PALs). The revisions will also implement a court decision that ordered the Tailoring Rule regulations under review be vacated to the extent they require a stationary source to obtain a Title V permit exclusively because the source emits or has the potential to emit GHG above the applicable thresholds.

Title: Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area Classifications and State Implementation Plan Requirements (RIN: 2060-AS82)

Agency: EPA

Overview: In 2015, the EPA, based on its review of the air quality criteria for ozone and related photochemical oxidants, updated the levels of both standards through a rulemaking process. The agency revised the primary and secondary ozone standard levels to 0.070 parts per million and retained their indicators, forms and averaging times for compliance purposes.

This proposed rule will outline a number of implementation requirements for the 2015 National Ambient Air Quality Standards (NAAQS) for ozone, including an overview of nonattainment area classification systems, and a timeline for State Implementation Plan (SIP) submissions to the EPA. It will also provide guidance on meeting the Clean Air Act's requirements on attainment "demonstrations, reasonable further progress, reasonably available control measures, nonattainment new source review, and emission inventories."

Title: Clean Power Plan Model Trading Rules

Agency: EPA

Overview: In August 2015, the EPA finalized the Clean Power Plan (CPP), which established Clean Air Act section 111(d) CO₂ standards for existing electric generating units (EGUs). The CPP encourages emissions trading as a compliance option for the section 111(d) standards and permits states to either pursue a rate-based standard (pounds of CO₂ per megawatt hour) or a mass-based standard (a total limit of CO₂ emissions from existing EGUs). With the release of the final CPP rule last August, EPA also issued [draft model trading rules](#), which were intended to help states as they develop SIPs for the CPP.

In February, the Supreme Court issued a stay on the CPP until it resolves the statutory, constitutional and procedural challenges to it. In response to the stay, some states have stopped their work on developing SIPs, while others have soldiered on. Meanwhile, the EPA, arguing that its guidance is necessary to help states who are continuing to work on developing their SIPs, is forging ahead with finalizing the model trading rules, despite criticism that its actions are inconsistent with the stay.

If the CPP is ultimately upheld, the model trading rules may also serve as the basis for a federal implementation plan that EPA could impose upon a state that either declines to submit a SIP or fails to win approval from the agency for its SIP. As with the draft rule, the final rule is expected to outline model trading rules for both rate- and mass-based compliance plans.

Timeline: The EPA's website indicates that a final rule will be published in the Federal Register this December.

Title: Coordination of Federal Authorizations for Electric Transmission Facilities

Agency: US Department of Energy (DOE)

Overview: Pursuant to the Energy Policy Act of 2005, the DOE maintains the authority for coordinating all federal authorizations and related environmental reviews relating to the siting of interstate electric transmission lines. In February 2016, the DOE released a [draft rule](#) that would establish a process for coordinating federal authorizations for proposed electric transmission lines, including creating a pre-application process. This process is also intended to facilitate states, tribes and/or local governments coordinating non-federal permitting and environmental reviews with that of the federal permitting agencies. The idea behind the draft rule is that the early exchange of environmental information prior to an applicant filing for a federal authorization can help facilitate a more efficient permitting process.

Timeline: The DOE is projected to issue a final rule this coming November.

Education



Title: Every Student Succeeds Act (P.L. 114-95) Implementation

Agency: United States Department of Education

Overview: In December of 2015, President Obama signed the Every Student Succeeds Act, which provided for a full overhaul of No Child Left Behind. The bill is one of the largest devolutions of power from the federal government to states and the implementation process is underway. USDOE is responsible for promulgating new rules to provide guidance to states on new authorities included in the new law.

Proposed Rule: USDOE has released proposed guidance states on the development of accountability standards for schools and a proposed process to use “comprehensive, summative” ratings for schools. The guidance would not dictate that states use a particular range of data for accountability measures but maintain school quality and student success as key provisions of accountability.

Proposed Rule: USDOE is completing work on proposed language to address the management of Title I funds to school districts and ensure that federal funds are used to “supplement not supplant” state and local education funds. How the rule will be crafted is key to understanding the potential impact of changes to funding structures for low income school districts and the potential for changes to the methodology districts use to assign dollars and staff.

Proposed Rule: On the higher education front, USDOE has proposed to issue regulations under Title II of the Higher Education Act of 1965 (HEA), to have states provide more meaningful data on the performance of each teacher preparation program in the State, and (2) amend the regulations governing the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program under title IV of the HEA to consider teacher preparation program quality when determining a program’s eligibility to participate in the TEACH Grant Program. Some higher education groups are concerned that the proposed rules do not provide the same consideration for online learning programs as opposed to in-class teaching.



Financial services

Title: Anti-Money Laundering Program and Suspicious Activity Report Filing Requirements for Investment Advisers (RIN: 1506-AB10)

Agency: US Department of the Treasury/Financial Crimes Enforcement Network (FinCEN)

Overview: Following up on a proposed rule published on September 1, 2015, FinCEN is expected to issue a final rule soon prescribing minimum standards for anti-money laundering programs to be established by certain investment advisers, and to require such advisers to report suspicious activity to FinCEN pursuant to the Bank Secrecy Act (BSA). Covered advisers would also be subject to the information-sharing provisions of section 314 of the USA PATRIOT Act.

The proposed rule would include certain investment advisers in the BSA's definition of a "financial institution" and require such advisers who are registered or required to be registered with the SEC to establish and maintain an effective anti-money laundering program and to file reports of suspicious activity. While it would retain civil enforcement authority, FinCEN would delegate to the SEC's Office of Compliance Inspections and Examinations its authority to examine advisers covered by this rule. Unless the final rule changes the compliance period specified in the proposed rule, covered advisers would have only six months from the date on which this rule becomes final to implement an anti-money laundering program and comply with the rule's requirements.

Title: Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z) (RIN: 3170-AA22)

Agency: Consumer Financial Protection Bureau (CFPB)

Overview: After starting the rulemaking process in May 2012, the CFPB issued a proposed 870-page rule in November 2014 (published in the Federal Register on December 23, 2014), which would make massive changes in existing law on prepaid financial products and create comprehensive consumer protections for such financial products under Regulation E (which implements the Electronic Fund Transfer Act) and Regulation Z (which implements the Truth in Lending Act).

The CFPB originally announced that it would issue a final rule in January 2016 but it has since pushed back the projected issuance date to Spring, and then Summer, 2016, the delays likely caused by its having to plow through more than 35,000 comments. So a final rule could come soon. Nonetheless, the proposed rule requires compliance by covered parties within nine months of publication of a final rule in the Federal Register, a time frame that most prepaid card providers believe to be unrealistically short.

Title: Enterprise Duty to Serve Underserved Markets (RIN: 2590-AA27)

Agency: Federal Housing Finance Agency (FHFA)

Overview: Section 1129 of the Housing and Economic Recovery Act of 2008 requires the FHFA's director to facilitate a secondary market to improve the distribution of mortgage financing for very low-, low- and moderate-income families, and to establish a method for evaluating whether and to what extent the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) have complied with a new duty to serve three specified underserved markets: manufactured housing, affordable housing preservation and rural housing.

In December 2015, the FHFA issued a proposed rule to implement this duty to serve. Before the comment period ended in March 2016, the agency had received over 1,500 comments on the proposed rule. Since then, FHFA has held a series of roundtable meetings with various stakeholders who had submitted comments and now projects that it will issue a final rule in November 2016.

Title: Revisions to Field of Membership Rules for Credit Unions (RIN: 3133-AE50)

Agency: National Credit Union Administration (NCUA)

Overview: On December 10, 2015, the NCUA issued a Notice of Proposed Rulemaking (NPRM) to revise its Field of Membership rules for credit unions with an eye toward providing certain regulatory relief for all credit union charter types. Over 11,000 comments were submitted before the comment period expired on February 8, 2016 and the NCUA currently projects final action on its field of membership proposal in September 2016.



Taxation

Title: Finalization of Tax Regulations

Agency: US Department of the Treasury/Internal Revenue Service (IRS)

Overview: Treasury will be rushing to finalize tax regulations before the change in presidential administrations. The IRS included a lengthy list of possible regulatory guidance in its [2015-16 Priority Guidance Plan](#) (supplemented August 15, 2016) and its goal will be to finish as much as possible before year-end.

Most attention will be focused on whether Treasury issues final or temporary regulations implementing the “debt-equity” regulations it proposed in April. The proposed regulations ([REG-108060-15](#)), which permit the IRS to recharacterize as equity debt issued to a related party, have been roundly criticized by the business community on both substantive and procedural grounds.

Members of Congress have written to the Treasury Department expressing both reservations concerning, and support for, the rules. The volume of comments and complexity of the area will make it very hard for Treasury to both respond to comments and publish final regulations before the Federal Register’s year-end deadline. However, IRS and Treasury officials have consistently stated their intent to issue binding rules as soon as possible. For that to be the case, Treasury will either have to issue final or temporary regulations with little change from the proposed regulations or else finalize only portions of the proposed regulations.

Because of all the public and congressional interest in the debt-equity regulations, a lot of other regulations that would otherwise be controversial may now be flying under the radar. So expect the IRS to move to finalize regulations taxing transfers of intangible assets to foreign corporations ([REG-139483-13](#)) and similar measures that are viewed as protecting the US tax base. There is a wildcard, however, regarding the Administrative Procedure Act. If a pending challenge to the anti-inversion regulations is granted by a Texas federal district court, the flood of tax regulations will be forced to move through a much narrower channel.

Labor



Title: Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act of 2014

Agency: US Department of Labor (DOL)

Overview: The DOL is proposing to issue nondiscrimination and equal opportunity regulations replacing its part 38 final rule, issued on July 23, 2015 ([80 FR 43871](#)), which implemented section 188 of the Workforce Innovation and Opportunity Act of 2014 (WIOA). Signed by President Obama on July 22, 2014, WIOA supersedes the Workforce Investment Act of 1998 (WIA) as the DOL's primary mechanism for providing financial assistance for a comprehensive system of job training and placement services for adults and eligible youth. Section 188 of WIOA prohibits the exclusion of an individual from participation in, denial of the benefits of, discrimination in, or denial of employment in the administration of or in connection with, any programs and activities funded or otherwise financially assisted in whole or in part under Title I of WIOA because of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship status or participation in a program or activity that receives financial assistance under title I of WIOA. These proposed regulations would update part 38 consistent with current law and address its application to current workforce development and workplace practices and issues.

Title: Walking Working Surfaces and Personal Fall Protection Systems (Slip, Trip and Fall Prevention)

Agency: DOL/Occupational Safety and Health Administration (OSHA)

Overview: Slips, trips and falls are among the leading causes of work-related injuries and fatalities. In 1990, OSHA published a proposed rule ([55 FR 13360](#)) addressing these hazards and establishing requirements for personal fall protection systems, and since that time, new technologies and procedures have become available to better protect employees from these hazards. OSHA has been working to update these rules to reflect current technology. As a result of issues raised in comments to the 1990 NPRM, the agency published a notice to reopen the rulemaking for comment on May 2, 2003. Based on comments on the 2003 notice, OSHA determined that the rule proposed in 1990 was out of date and did not reflect current industry practice or technology. On May 24, 2010, the agency published a second proposed rule that reflected current information and increased consistency with other OSHA standards. Hearings were held on January 18 through 21, 2011.

Title: Executive Order 13706, Establishing Paid Sick Leave for Federal Contractors ([80 FR 54697](#))

Agency: Obama Administration

Overview: Executive Order 13706 establishes paid sick leave for federal contractors and subcontractors. The Order indicates that Executive departments and agencies shall, to the extent permitted by law, ensure that new contracts, contract-like instruments and solicitations as described in section 6 of the Order, include a clause, which the contractor and any subcontractors shall incorporate into lower-tier subcontracts, specifying that all employees, in the performance of the contract or any subcontract thereunder, shall earn not less than one hour of paid sick leave for every 30 hours worked. Consistent with the Order, the DOL will issue implementing regulations.

Communications



Title: FCC Chair Moving Forward With Controversial Items

Agency: Federal Communications Commission (FCC)

Overview: In the days leading up to the presidential election, attention will remain focused on the FCC as Chairman Tom Wheeler shows no signs of easing up on his attempts to move several high-profile items, including regulation of the business data services market, new privacy rules for Internet service providers (ISPs) and regulation of the set-top box marketplace, all of which have inspired much controversy, on the Hill and among industry stakeholders.

The FCC's May 2 Business Data Services Order and Further Notice of Proposed Rulemaking (FNPRM), which Chairman Wheeler has said he hopes to conclude by the end of the year, attempts to address a perceived lack of competition in the business data market. However, critics argue that the market is already competitive and that unnecessary rate regulation will stop investment and innovation in its tracks. It is anticipated that Chairman Wheeler will nevertheless continue to try to move this proceeding forward over the next few months, with the details of the proposed legal framework subject to ongoing discussions and negotiations with the industry.

Similarly, back in February, Chairman Wheeler, despite many concerns from the pay TV industry, released the original framework of an NPRM to establish open standards for set-top boxes. Since then, the details of the proposal have continued to generate bipartisan concerns. Most recently, the US Copyright Office weighed in to express its belief that the FCC's proposed plan conflicts with existing copyright law. Despite such criticism of the proposal, the FCC still seems likely to move forward with it, albeit perhaps in a revised form that would reflect the ongoing discussions between the industry and the FCC.

An NPRM to establish guidelines for broadband ISPs to ensure privacy protections for their customers is expected to be released by the FCC at some point this fall. This proposal has also been the subject of much congressional debate, and should remain over the next few months.

All three of these proposals could come up for a vote before the election, with FCC open meetings currently scheduled for September 29 and October 27, although squeaky wheels in industry and Congress will continue to complicate Chairman's Wheelers plans. Nevertheless, expect continued activity on the telecommunications regulatory front as we march to the November election.

Tribal



New Rules on Tribal Transportation, Leasing, Child Welfare, and Trust Asset Management

Agency: Department of Interior (DOI)/Bureau of Indian Affairs (BIA)

Overview: The DOI hopes to finalize regulations and guidelines in the areas of tribal transportation, leasing and Indian child welfare, and to issue a new rule on trust asset management. On the transportation front, the DOI plans to update the Tribal Transportation Program (TTP) regulations to be make them consistent with provisions in last year's Fixing America's Surface Transportation (FAST) Act, which authorized over \$300 billion in funding for surface transportation infrastructure over FY 2016-20. The rule will reflect changes in program-related responsibilities, clarify requirements for inclusion in the Tribal Transportation Facility Inventory (TTFI), remove outdated provisions and incorporate the FAST Act's data collection provisions.

The DOI is also expected to focus on finalizing a rule authorizing the Director of the Bureau of Indian Education (BIE) to enter into agreements with third parties to lease land or facilities owned or operated by the BIE in exchange for funding that benefits the school and to otherwise engage in fundraising activities; and a new rule implementing the recently enacted Indian Trust Asset Reform Act (ITARA), which provides tribes with the authority to address, without further approval of the Secretary of the Interior, leasing, management, appraisals and valuations of Indian trust property.

Finally, the Bureau of Indian Affairs is slated to release revised guidelines for states to complement the comprehensive regulations published earlier this year under the Indian Child Welfare Act of 1978 (ICWA). The new ICWA Guidelines for State Courts and Agencies in Indian Child Custody Proceedings, which will key off of earlier revisions published in 2015, are designed to assist states in the uniform application of federal child welfare standards aimed at the protection of Indian children, families and tribes.

Health Care



The Affordable Care Act could only go so far to regulate costs; US annual health care expenditures topped \$3.2 trillion in 2015. Much of the debate about health care has shifted to the US Department of Health and Human Services (HHS), where over new 26 regulations are pending. Highlights include:

Title: Home Health Agency Conditions of Participation (CMS-3819-F) Final Rule

Agency: CMS

Overview: The final rule was submitted to the Office of Management and Budget (OMB) for review and signature in May 2016. The regulation is intended to ensure safe delivery of quality care to home health patients. It revises the existing conditions of participation that home health agencies (HHAs) must meet to participate in the Medicare program, focusing on the actual care delivered to patients by HHAs, reflecting an interdisciplinary view of patient care, allowing HHAs greater flexibility in meeting quality standards, and eliminating unnecessary procedural requirements.

Title: Reform of Requirements for Long-Term Care Facilities (CMS-3260-P) Final Rule

Agency: CMS

Overview: The final rule was submitted to the OMB for review and signature in August 2016. The regulation will revise the requirements that nursing homes must meet to participate in the Medicare and Medicaid programs. The revisions are part of HHS' effort to improve the quality of life, care and services in facilities; optimize resident safety; reflect current professional standards; and improve the logical flow of the regulations.

Title: Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers (CMS-3178-P) Final Rule

Agency: CMS

Overview: The final rule was submitted to the OMB for review and signature in November 2015. The regulation will revise emergency preparedness requirements for Medicare and Medicaid participating providers and suppliers to ensure that they adequately plan for both natural and man-made disasters, and coordinate with federal, state, tribal, regional and local emergency preparedness systems. The changes are intended to ensure providers and suppliers are adequately prepared to meet the needs of patients, residents, clients and participants during disasters and emergency situations.

Trade



Top regs pending at OMB effecting trade.

Title: Magnuson-Stevens Fisheries Conservation and Management Act

Agency: Seafood Import Monitoring Program

Overview: In March of 2015, the Presidential Task Force on Combating Illegal, Unreported, and Unregulated Fishing and Seafood Fraud, co-chaired by the Departments of Commerce and State, released its plan to implement its Task Force plan to combat illegal, unreported, and unregulated fishing and seafood fraud.

The plan strengthens enforcement, creates and expands alliances with state and local governments, industry, and NGO's, and creates a traceability program to track seafood from harvest to entry into U.S. commerce. As part of that plan, NMFS recommends regulatory changes to improve the administration of the MSA prohibition on the entry into interstate or foreign commerce of any fish taken in violation of any foreign law or regulation. The rule includes adjustments to permitting and reporting requirements to provide for traceability of seafood products offered for entry into the U.S. supply chain, and to ensure that products were not illegally acquired and are labeled correctly. Requirements for an international trade permit and reporting on the origin of certain imported or exported fishery products were previously established by regulations applicable to a number of specified fishery products.

This rulemaking would extend those existing permitting and reporting requirements to additional fish species and seafood products. The rule is currently in the final stage and was published in Spring of 2016

Title: Electronic Visa Information Update System

Overview: This rule amends DHS regulations to establish the Electronic Visa Update System program. The program allows for the periodic gathering of current biographic and other information from nonimmigrant aliens who hold a passport issued by an identified country containing a U.S. nonimmigrant visa of a designated category. People subject to the regulations must comply with program requirements in order to maintain the validity of their visa and to travel to the United States. The final rule is expected in September of 2016

Title: Direct Food Substances Affirmed as Generally Recognized as Safe; Partially Hydrogenated Menhaden Oil and Rapeseed Oil

Overview: This rule amends two regulations regarding partially hydrogenated oils. This action comes in response to a recent discovery that partially hydrogenated oils are no longer considered to be generally recognized as safe (GRAS). The rule is currently in the proposed rule stage.

Title: Direct Food Substances Affirmed as Generally Recognized as Safe; Partially Hydrogenated Menhaden Oil and Rapeseed Oil (RIN: 0910-AH28)

Agency: US Department of Health and Human Services/Food and Drug Administration (FDA)

Overview: This rule, which amends two regulations regarding partially hydrogenated oils, is the FDA's response to a recent discovery that partially hydrogenated oils are no longer considered to be "generally recognized as safe" (GRAS). The rule is currently in the proposed rule stage.



Supreme Court

Since the death of Associate Justice Antonin Scalia on February 13, 2016, the Supreme Court has operated with only eight justices, as the Republican leadership of the Senate has refused to act on the President's nomination of US DC Circuit Court of Appeals Judge Merrick Garland to serve on the Court. (Judge Garland's nomination has been pending without action by the Senate for longer than anyone in the history of the Court.)

Having only eight justices resulted in several 4-4 ties in the most recent term. A 4-4 tie vote by the justices in any case means that the lower court's decision is affirmed, but the high court's decision in such a case has no precedential value. Given the concerns about devoting the Court's time and attention to deciding cases that will have no precedential value, some Court observers suggest that the desire of the justices to avoid 4-4 tie votes has had the effect of pushing them to achieve compromises in some closely contested cases.

Thus far, the Court has accepted 31 cases for consideration during the October 2016 term that begins on October 3 and it will likely hear oral argument in roughly 75-80 cases before the term concludes at the end of June 2017. Most of the cases that will be heard are designed to resolve splits among the US courts

of appeal for the various circuits. The Court already has agreed to hear several cases raising intellectual property issues; at least two cases dealing with capital punishment issues, including an ineffective assistance of counsel question; and a case to determine when and whether bond hearings are required for aliens seeking admission to the US and the criteria for determining when and for how long such aliens must be detained and under what circumstances they can or must be released. The Court also has requested briefing, and will hear argument on, two major redistricting cases, from Virginia and North Carolina, respectively, addressing the role of race and establishing the proper criteria for states to consider when drawing Congressional and state legislative districts.

Oral arguments for the October 2016 term are scheduled to begin on October 4 and, if recent history is a guide, the Court could begin issuing opinions on the merits of cases argued early in October by the beginning of December 2016. Thus, the question of when and how the Scalia vacancy on the Court will ultimately be filled remains extremely consequential to the country and the Court's operations.

Contacts



Maryscott "Scotty" Greenwood
Principal
Washington, DC
D+1 202 496 7157
maryscott.greenwood@dentons.com



John Russell, IV
Principal
Washington, DC
D+1 202 408 6392
john.russell@dentons.com



Gordon Giffin
Partner
Washington, DC
D+1 404 527 4020
gordon.giffin@dentons.com



Eric Tanenblatt
Principal
Atlanta, GA
D+1 404 527 8114
eric.tanenblatt@dentons.com



Sander Lurie
Principal
Washington, DC
D+1 202 408 7003
sander.lurie@dentons.com



Michael Zolandz
Partner
Washington, DC
D+1 202 408 9204
michael.zolandz@dentons.com



Amy Odom
Principal
Atlanta, GA
D+1 404 527 4108
amy.odom@dentons.com

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