



January 2016

2016 Legislative Preview

As Congress prepares to host President Obama this evening for his final State of the Union, many questions remain regarding what Congress will be able to achieve in the second session of the 114th Congress. The Congressional calendar is significantly shortened this year due to the November elections, as both Republicans and Democrats are hoping to be home during October for campaign purposes. Further, the political party conventions that are required in a presidential election year will be significantly earlier this year, taking place in mid-July so as not to interfere with the upcoming Olympics. This leaves just over 100 days where both houses of Congress will be in session at the same time. Combine this shortened legislative calendar with a lame duck Administration trying to force Democratic priorities on a Republican-controlled Congress, and 2016 could become very interesting. Ahead of the President's address this evening, Greenberg Traurig's Government Law and Policy Group in Washington, D.C. has prepared a guide to the legislation and policy issues that could shape the second session of the 114th Congress.

FY 2017 Budget & Appropriations

This year, lawmakers will need to pass legislation to fund the federal government for FY 2017. The budget and appropriations process could be smoother in 2016 than last year, in part because the Bipartisan Budget Act that Congress passed in October 2015 established an overall spending level for FY 2017. This eliminates a potential source of controversy for appropriators. Progress on appropriations may stall if lawmakers seek to insert contentious provisions into spending bills, drawing attention to their favored issues ahead of the 2016 elections.

Trans-Pacific Partnership

In October 2015, negotiators concluded talks on the Trans-Pacific Partnership (TPP), a trade deal linking 12 countries in North and South America and the Asia-Pacific region that comprise 40 percent of the global economy. Last year, Congress provided President Obama with Trade Promotion Authority, or fast-track authority, under which lawmakers can only take an up-or-down vote on the TPP. In December 2015, Senate Majority Leader Mitch McConnell (R-KY) said this vote should not occur before the 2016 elections in November. As such, action on the TPP may not occur until the post-election, lame-duck session, or may be delayed until 2017. The Obama Administration will need to continue lobbying Members of

Congress to support the trade deal, and will need to maintain the support of moderate, pro-trade Democrats who made TPA's passage possible, as well as the support of a considerable majority of Republicans. For more information on the TPP, please see [GT's recent Alert](#) on the topic.

FY 2017 National Defense Authorization Act

Several contentious topics are expected to come up when Congress begins crafting the National Defense Authorization Act (NDAA) for Fiscal Year 2017. The House and Senate Armed Services Committees aim to overhaul military health care, also known as Tricare, in an effort to improve care for servicemembers and save the government money. The Committees also plan to reform the Pentagon's acquisition system. The FY 2016 NDAA included changes to this process, but Senate Armed Services Chairman John McCain (R-AZ) has indicated that the FY 2017 authorization will go even further in streamlining the way the military purchases equipment. President Obama hopes to close the Guantanamo Bay military prison in the coming year, something that he has sought to accomplish since his first year in office. Congressional Republicans oppose such a move. The FY 2016 NDAA included provisions that banned the transfer of Guantanamo detainees to the United States, and Republicans are expected to fight to keep those provisions in the year ahead.

Federal Aviation Administration (FAA) Reauthorization

Congress extended the FAA Modernization and Reform Act of 2012—originally scheduled to expire in September 2015—until March 31, 2016. Congress must either reauthorize the FAA by this date or pass another extension in order to avoid a lapse in the Agency's authority. House Transportation and Infrastructure Committee Chairman Bill Shuster (R-PA) last year called for FAA reauthorization to reform and modernize the nation's air traffic control system. Specifically, he expressed support for separating the Air Traffic Organization (ATO) from the FAA and turning it into a federally-chartered, fully independent, not-for-profit corporation. Other issues lawmakers may address as part of a reauthorization bill include the integration of drones into the national airspace and raising the cap on the Passenger Facility Charges (PFC) airports can collect. To read more about the integration of drones, please see [GT's recent Alert](#) on the subject.

Judicial Redress Act

Congress has until Feb. 1, 2016, to pass the Judicial Redress Act (H.R. 1428), which passed the House in October 2015 but remains pending in the Senate. This measure stems from a European Court of Justice ruling last fall that invalidated the Safe Harbor Agreement, which has been in effect since 2000 and allows for the transfer of personal data between the U.S. and the EU. The Court of Justice invalidated Safe Harbor due to the U.S. government's treatment of private information. The Judicial Redress Act would extend certain privacy rights to European citizens, and is crucial to appeasing the European Union on this issue. While the U.S. Department of Commerce is currently negotiating with the EU to try and arrive at a compromise, the clock continues to tick. Failure to pass H.R. 1428 and/or agree on a compromise could potentially have enormous negative effects on international commerce.

Biomedical Innovation

In the 114th Congress, the Senate Health, Education, Labor, and Pensions (HELP) Committee launched a bipartisan Innovation Initiative aimed at crafting biomedical innovation legislation. This legislation would seek to reform FDA and NIH processes and more quickly bring safe medical treatments, devices, and cures to patients and doctors. The House passed similar legislation in 2015, entitled the 21st Century Cures Act (H.R. 6). The Senate HELP Committee has also devoted time in the current Congress to examining challenges with health information technology, and the legislation could include provisions to improve electronic health records, such as language to promote interoperability. Senate HELP Chairman Lamar Alexander (R-TN) said the Committee will propose legislation early this year, and has committed to bringing the measure to the floor.

Legislation Targeting Administration Regulations and Executive Actions

The Obama Administration plans to move forward with regulations on a wide range of issues in the President's final year in office, and the Republican-led Congress is expected to try to block many of these regulations through legislation. Following the COP-21 International Climate Agreement, President Obama is expected to continue working to advance his

environmental agenda. Administration officials have stated that the President may use his executive powers to cut greenhouse gas emissions in order to meet the country's commitments under the agreement, potentially by expanding energy efficiency rules or by implementing new rules regarding leaks at oil and gas refineries. Congressional Republicans remain opposed to the President's climate agenda and the COP-21 Agreement and will likely seek to curb the Administration's environmental policies in the coming year.

Previously, lawmakers have targeted Administration regulations by advancing standalone bills and by attaching provisions to must-pass legislation, such as annual appropriations bills that fund the federal government. Already this year, the House is slated to take up a resolution of disapproval (S. J. Res. 22) against the EPA's Waters of the United States rule. Though the Senate passed this resolution last year, President Obama is expected to veto it. In addition to focusing on environmental regulations, Republican lawmakers may also target regulations and executive actions pertaining to gun control, teacher preparation, electronic cigarettes, nutrition labelling, and the Department of Labor's fiduciary rule for retirement advisors.

Criminal Justice Reform

Concern about the high cost of the federal prison system, incarceration rates, and recidivism rates has led a bipartisan coalition of Senators to join together on legislation that would reform the federal criminal justice system and federal sentencing laws. Last year, Senate Judiciary Chairman Chuck Grassley (R-IA) introduced the Sentencing Reform and Corrections Act of 2015 (S. 2123), which would ease mandatory minimum sentences for drug offenders and allow low-risk, non-violent inmates to earn credits toward early release by completing recidivism reduction programming. The Senate Judiciary Committee approved this legislation in October 2015, and the bill now awaits a final vote in the Senate. Rather than moving comprehensive criminal justice reform legislation, the House Judiciary Committee has chosen to take a piecemeal approach. The Obama Administration supports lawmakers' efforts to reform the criminal justice system and has been advocating for the Senate's comprehensive measure.

Higher Education Reauthorization

With last year's passage of legislation to reauthorize No Child Left Behind, the House and Senate education committees are now expected to turn to reauthorization of the Higher Education Act, the law governing the nation's colleges and universities. Congress last reauthorized the law in 2008, and it expired at the end of FY 2015. Senate Health, Education, Labor, and Pensions Chairman Lamar Alexander (R-TN) hopes to work on HEA reauthorization on a bipartisan basis. While lawmakers could find common ground on simplifying financial aid and helping students prepare to take on debt, the issue of for-profit colleges presents a potential area of disagreement between the two parties. A reauthorization bill could also reform the accreditation process and expand financial aid for competency-based education. A number of bills have been introduced in the 114th Congress that would target sexual assault on college campuses by changing how colleges investigate these incidents, and a higher education reauthorization bill could include language addressing this issue.

Energy and Pipeline Safety

After lifting the export ban on crude oil and extending tax credits for renewable energy at the end of the last session, Congress may have an appetite to pass more measures to reform the country's energy policy. The Energy Policy Modernization Act (S. 2012), a bipartisan energy overhaul bill sponsored by Senate Energy and Natural Resources Chairman Lisa Murkowski (R-AK) and Ranking Member Maria Cantwell (D-WA), is currently awaiting action in the Senate. Their bill would streamline permitting for liquefied natural gas exports, enhance energy efficiency standards for government and commercial buildings, and require upgrades to the country's power grid. Many experts believe that because the measure has bipartisan support, it may have an easier time passing Congress in the post-election session. The House passed a similar bill, the North American Energy Security and Infrastructure Act (H.R. 8), in December 2015, but the White House and the majority of Congressional Democrats oppose this measure in its current form. House Energy and Commerce Chairman Fred Upton (R-MI) has expressed a willingness to modify H.R. 8 to gain more bipartisan support for the proposal. Lawmakers could include provisions regarding wildfire funding and management as part of a compromise energy bill.

The omnibus appropriations bill that Congress passed late last year extended the Investment Tax Credit (ITC) for solar power and wind energy, but did not include other renewable energy sources, such as fuel cells and geothermal energy.

House and Senate Democrats have called for legislation to address this, and House Ways and Means Chairman Kevin Brady (R-TX) has committed to taking up legislation that would do so.

Congress may also take up legislation to reauthorize the Pipeline and Hazardous Materials Safety Administration (PHMSA) in an effort to improve the safety of the nation's oil and gas pipelines. In December 2015, the Senate Commerce, Science, and Transportation Committee passed legislation to reauthorize PHMSA through FY 2019 (S. 2276), and the House Energy and Commerce Committee has already scheduled two hearings on the subject.

International Tax Reform

House Ways and Means Chairman Kevin Brady (R-TX) is expected to try to advance an overhaul of international business taxes this year. Such a measure would seek to eliminate the incentive for corporate inversions and to repatriate corporate earnings currently held offshore. Part of this overhaul could include the establishment of an innovation box, which would tax business income from intellectual property at a preferential rate. Chairman Brady's Senate counterpart, Senate Finance Chairman Orrin Hatch (R-UT), has expressed openness to such legislation, but any tax legislation may be politically difficult in an election year. Further, rather than taking an incremental approach, Chairman Hatch and Senate Majority Leader Mitch McConnell (R-KY) favor waiting until 2017 to undertake a more comprehensive rewrite of the tax code, when a Republican President may be in office.

Cybersecurity

In 2016, lawmakers may take up data breach legislation governing when and how U.S. companies should report data breaches and notify customers when their personal information has been compromised. A number of data breach bills have been introduced in both the House and Senate, so lawmakers may merge their bills into a compromise measure. Additionally, Congressional oversight of federal agencies' information technology systems is expected to continue in the wake of last year's Office of Personnel Management (OPM) hack. Rep. Will Hurd (R-TX), Chairman of the new House Oversight Subcommittee on Information Technology, pledged in September 2015 that, "Congressional oversight of federal cybersecurity is only going to get stiffer."

Encryption

In the wake of the Paris and San Bernardino terrorist attacks, there has been a push in Congress to compel technology companies to turn over encrypted data to law enforcement. Law enforcement agencies have warned that the rise of unbreakable encryption systems has made it difficult to track criminals and potential terror suspects. Senator Dianne Feinstein (D-CA), Vice Chair of the Senate Intelligence Committee, has pledged to introduce legislation targeting this issue in the coming term, working across the aisle with Senate Intelligence Chairman Richard Burr (D-NC). Senator Feinstein's legislation could require tech and telecommunications companies to decrypt any data they are compelled to turn over to authorities under a court order. Technology companies have warned that compelling companies to decrypt data could cause security breaches and leave customer data vulnerable to hackers.

National Security Agency Surveillance

Last year's terrorist attacks in Paris and San Bernardino have caused the issue of National Security Agency (NSA) surveillance to become a major talking point among Members of Congress and on the presidential campaign trail. The USA Freedom Act, enacted in June 2015, requires federal authorities to request specific data from phone companies rather than bulk collecting metadata to store in government facilities. The recent attacks have caused some lawmakers to call for a rollback of this legislation, which passed with broad bipartisan support. Critics argue that the law's reforms limit the NSA's ability to track suspected terrorists and make the United States less safe. While a specific bill has not yet been introduced to reverse the USA Freedom Act's changes to the data collection program, this issue is expected to continue to play a significant role in the national discourse in the coming year.

Sanctions on North Korea and Iran

Following an announcement in early January that North Korea had conducted a hydrogen bomb test, there is new pressure on Congress and the Obama Administration to respond with sanctions. Although U.S. intelligence officials have reason to doubt that such a test actually took place, the announcement is nonetheless being seen as a provocation against South Korea and the rest of the world. House Foreign Affairs Chairman Ed Royce (R-CA) and Ranking Member Eliot Engel (D-NY) have introduced the North Korea Sanctions Enforcement Act (H.R. 757), a bipartisan measure that would impose new sanctions on North Korea. On January 12th, the House was scheduled to vote on this measure. The Senate Foreign Relations Committee is expected to conduct hearings on North Korea in the coming weeks. To read more about the U.S. imposing sanctions on North Korea, please see GT's recent [Alert](#).

In the coming year, Congress is also expected to renew efforts to roll back President Obama's nuclear deal with Iran. The deal is widely unpopular with the Republican majority in Congress, as well as some moderate Democrats. The Justice for Victims of Iranian Terrorism Act (H.R. 3457) and a measure to effectively prohibit the President from easing sanctions on Iran (H.R. 3460) passed the House last fall. The Senate has yet to vote on either measure. Though the Iran nuclear deal remains unpopular with Republicans, it is a multilateral deal and would remain in place if the United States chooses not to participate. Even if the Iran nuclear deal is implemented, comprehensive U.S. sanctions against Iran remain in place that restrict U.S. persons from dealing with Iran (except for limited categories of activities like exports of food and medicine).

Toxic Substances Control Act

Forty years after the enactment of the Toxic Substances Control Act (TSCA), the 114th Congress could pass legislation to overhaul and update the nation's chemical safety law. TSCA gave the Environmental Protection Agency (EPA) the authority to evaluate, identify, and regulate hazardous chemicals in U.S. commerce. In the current Congress, lawmakers in both chambers have advanced legislation that would modify the chemical evaluation process. The House passed the TSCA Modernization Act (H.R. 2576) in June 2015, while the Senate passed the Frank R. Lautenberg Chemical Safety for the 21st Century Act (S. 697) in December 2015, shortly before adjourning for the year. The House's legislation is narrower than the Senate's, and lawmakers will need to reconcile these two bills in order to send a bill to President Obama's desk.

Authorization for Use of Military Force

Although considered a contentious election issue, it remains possible that Congress may pass an Authorization for the Use of Military Force (AUMF) to combat ISIS (or "Daesh") in the coming year. Republican members of the House Foreign Affairs Committee, chaired by Rep. Ed Royce (R-CA), have begun informally discussing what they would like to see in an eventual AUMF. Speaker Paul Ryan (R-WI) has stated that he believes a new AUMF would be a symbol of American resolve against ISIS. Several AUMF-related bills have been introduced in the past year, but the effort has been hindered by disagreements between Republicans, Democrats, and the White House over the scope of the authorization. Republican lawmakers generally favor broader language, while Democrats generally favor a more restrictive authorization. While discussions are ongoing in the House, Senate Majority Leader Mitch McConnell (R-KY) has expressed doubts that Congress and the President will be able to agree on AUMF legislation.

Mental Health Reform

Last year's bipartisan, bicameral efforts to reform the nation's mental health care system are expected to continue in 2016 as lawmakers work to push their bills over the finish line. In the House, the Helping Families in Mental Health Crisis Act (H.R. 2646), currently pending in the House Energy and Commerce Committee, would create an assistant secretary for mental health and substance abuse, identify and encourage best practices to improve mental health services, and allow families to access health information in certain cases, among other provisions. Several pieces of legislation have been proposed in the Senate that would tackle different aspects of the mental health system, and Senators have begun exploring the possibility of merging their individual bills into one comprehensive measure. It remains to be seen if President Obama's recently announced executive actions on guns will impact progress on mental health legislation.

Child Nutrition Reauthorization

Lawmakers are expected to take up legislation to reauthorize child nutrition programs for five years, including the National School Lunch Program, the School Breakfast Program, and the Summer Food Service Program. Federal nutrition standards for school meals will be among the most contentious issues that lawmakers grapple with as part of any reauthorization effort. The Healthy, Hunger-Free Kids Act of 2010, the most recent child nutrition reauthorization law, altered these nutrition standards, requiring school meals to cut sodium and fat and add more whole grains, fruits, and vegetables. The School Nutrition Association and Republican lawmakers have called on Congress to make the standards more flexible, while Democrats and the Obama Administration argue the standards are working and should be maintained.

Career & Technical Education Reauthorization

Members of the Senate Health, Education, Labor, and Pensions Committee have begun developing legislation to reauthorize the Carl D. Perkins Career and Technical Education (CTE) Act, which covers vocational education programs administered by the U.S. Department of Education. This legislation was last reauthorized in 2006, so a fresh reauthorization bill will give lawmakers the chance to update the law to reflect the new economy and modern workforce development demands. As part of a reauthorization effort, lawmakers could work to ensure CTE programs remain responsive to the needs of local employers and prepare students for in-demand jobs. CTE enjoys support from lawmakers on both sides of the aisle, and could be a bright spot of bipartisan accomplishment in a presidential election year.

Welfare Reform and Republican Anti-Poverty Initiatives

The Temporary Assistance for Needy Families (TANF) program, established as part of the 1996 Personal Responsibility and Work Opportunity Reconciliation Act, has been due for reauthorization since 2010. In recent years, Congress has extended the TANF program multiple times as part of appropriations legislation. The House Ways and Means Committee's Human Resources Subcommittee has developed a draft bill that would reauthorize TANF for five years. This legislation would expand the activities that can count toward TANF's work requirements, such as education and vocational education. While efforts to develop TANF reauthorization legislation began in a bipartisan fashion, policy disagreements between the two parties have emerged and could block lawmakers from enacting needed reforms. This TANF reauthorization effort benefits from the support of House Speaker Paul Ryan (R-WI), who has made reducing poverty and reforming federal public assistance programs for low-income Americans top Republican priorities for 2016. In particular, Speaker Ryan has focused on the need to ensure that programs like the Supplemental Nutrition Assistance Program (SNAP) do not become poverty traps that provide disincentives to work. In previous budget proposals, Republican lawmakers have supported transforming SNAP and Medicaid into block grant programs.

Freedom of Information Act (FOIA) Reform

Last June, the House Oversight and Government Reform Committee held a two-day hearing to address and improve the federal government's compliance with FOIA requests. At the time of the hearing, there were over 150,000 backlogged FOIA requests that had not been processed within the statutory time limit. Reps. Darrell Issa (R-CA) and Elijah Cummings (D-MD), the House Oversight Committee's Ranking Member, have proposed bipartisan legislation to address slow response times and improve government transparency. Their bill, the FOIA Oversight and Implementation Act (H.R. 653), includes provisions that would prevent the overuse of exemptions in the FOIA, which currently allow federal agencies to withhold government documents under special circumstances.

Immigration Reform

While prospects for comprehensive immigration reform remain dim for the foreseeable future, there are several smaller immigration bills that could make it to the President's desk in the coming year. Last year, Rep. Jason Chaffetz (R-UT) and Senator Orrin Hatch (R-UT) both introduced bills to reform the visa process for high-skilled immigrants (H.R. 213 and S. 153, respectively), and the measures have gained bipartisan support. House Republicans have also introduced a series of bills that would increase border security and impose mandatory electronic employment eligibility verification (e-verify). These ideas have broad support among Republican lawmakers. Now that Congress passed a ten-month extension of the EB-5 Regional Center Program as part of the Consolidated Appropriations Act, 2016 could also see legislative

developments aimed at reforming this visa program for immigrant investors. In the 114th Congress thus far, six EB-5-related measures have been introduced taking a variety of approaches to reform. Although immigration policy remains a contentious topic due to the upcoming elections, there may be enough support to pass some of these smaller-scale measures.

Affordable Care Act Repeal and Republican Alternative

Republican lawmakers have long made a repeal of the Affordable Care Act (ACA) a top legislative priority, and this is not expected to change in the coming year. As one of its first orders of business in 2016, the House passed a budget reconciliation measure (H.R. 3762) on Jan. 6 that would repeal key parts of President Obama's signature domestic achievement. President Obama vetoed the measure on Jan. 8. Though the House will try to override the President's veto on Jan. 26, this effort is not expected to succeed due to a lack of sufficient votes. Still, the measure allows Republicans to draw a contrast with Democrats ahead of this year's elections. House Speaker Paul Ryan (R-WI) announced in December 2015 that House Republicans plan to unveil an alternative to the ACA in 2016, something they have pledged to do since the law passed in 2010.

Planned Parenthood Funding

Republican lawmakers have made repeated attempts to revoke federal funding for Planned Parenthood following the release of controversial videos of Planned Parenthood employees discussing fetal tissue donation. As one of its first actions in 2016, the House sent a budget reconciliation measure to President Obama's desk that includes defunding provisions. President Obama vetoed this measure, but lawmakers are expected to continue these efforts in the coming year. This issue may also play a role in the FY 2017 appropriations process, as lawmakers have previously attempted to place defunding language in spending bills that are necessary to fund the federal government. House Republicans have created a select panel to investigate the claims made in the controversial videos and address whether Planned Parenthood broke any federal laws. President Obama and most Congressional Democrats continue to oppose the defunding effort and have criticized the select panel's investigation.

Syrian Refugees

Following the ISIS attacks in Paris on Nov. 13, 2015, the House of Representatives passed a bill that would slow the process of Syrian and Iraqi refugees entering the United States by requiring the Secretary of Homeland Security, the FBI Director, and the Director of National Intelligence to sign off on each refugee admitted. Although the Senate did not take up this measure last year and the provision was not included in the year-end omnibus spending bill, House Homeland Security Chairman Michael McCaul (R-TX) and House Intelligence Chairman Devin Nunes (R-CA) have urged the Senate to take action on the House bill in the coming session, saying that potential terrorists may slip through the cracks in the current system. The issue has become a prominent topic of discussion in the 2016 presidential race.

Puerto Rico Debt Relief

After failing to include debt relief for Puerto Rico in the 2015 year-end spending bill, Congress is expected to take up legislation to address the Island's debt crisis early this year. House Speaker Paul Ryan (R-WI) has stated that he plans to address the crisis by the end of March, with committee hearings beginning as early as January. Democratic Leader Nancy Pelosi (D-CA) has also introduced legislation that would shield Puerto Rico from lawsuits over its debt until March 31, the deadline Speaker Ryan has set. Puerto Rico, a U.S. commonwealth, has indicated that its debt obligations and those of some of its public corporations are unsustainable, and is seeking authority for Puerto Rico public corporations to be able to file for Chapter 9 bankruptcy and restructure their debt.

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