

White Paper

October 2017

Highlights

- Most actions or attempted actions so far have happened in the fields of immigration, health care, energy and environment, and labor and employment
- Few laws have been enacted under the Trump Administration
- Most actions have been done by Executive Order, and many regulations have been disapproved or delayed
- Agency leadership is not yet in place, and agencies may never be fully staffed

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October 2017: An Attorney’s-Eye View of Significant Executive and Congressional Actions in 15 Practice Areas

Donald J. Trump made some giant promises during his campaign for president. His “100-day action plan to Make America Great Again” included such actions as renegotiating or withdrawing from the North American Free Trade Agreement (NAFTA) and the Trans-Pacific Partnership (TPP); lifting restrictions on energy production; and repealing roadblocks to infrastructure projects. He promised to reduce the number of federal regulations and he proposed legislation like the Middle Class Tax Relief and Simplification Act, the End the Offshoring Act, the American Energy and Infrastructure Act, and the Repeal and Replace Obamacare Act. Since taking office on January 20, 2017, Trump has signed a flurry of presidential actions and federal agencies have delayed and repealed many existing regulations, but little legislation has passed related to his 100-day plan.

The attorney-editors at Wolters Kluwer have monitored the activities coming out of the Trump Administration and 115th Congress pertaining to the areas of antitrust, banking and finance, employee benefits, energy and environment, global trade, government contracts, health care, immigration, intellectual property, labor and employment, life sciences, pension, products liability, securities, and tax. This White Paper provides an overview of the major actions taken by Congress and the Administration through October 2017, and an overview of other legal trends for each practice area.

Legislative Activity

Ten months in, the 115th Congress has passed 68 laws—among these are 14 disapprovals of regulatory action and a number of procedural or symbolic acts, but few major pieces of legislation. In addition to analyzing enacted laws, Wolters Kluwer attorney-editors have tracked and evaluated significant bills in each practice area.

Significant Laws

There have been relatively few enacted laws coming out of the 115th Congress, but some of them have significant effects on federal agency actions or respond to natural disasters.

The Follow the Rules Act (P.L. 115-40) clarifies that under the Whistleblower Protection Act (5 U.S.C. §1201 et seq.), an employee who refuses to obey an order that would require the employee to violate a law, or even a rule or regulation, is protected from retaliation (see *Bill to enhance federal whistleblower protections advances*, May 2, 2017).

The FDA Reauthorization Act (P.L. 115-52) renewed the authority of the Food and Drug Administration (FDA) to collect user fees from the makers of prescription brand drugs, medical devices, generic drugs, and biosimilars. The new law ensures that the agency would be able to continue collecting the fees, which account for more than one-fourth of the FDA's funding (see *FDA user-fee reauthorization signed into law*, August 21, 2017).

In response to Hurricanes Harvey, Irma, and Maria, which plagued U.S. states and territories in August and September 2017, the Disaster Tax Relief and Airport and Airway Extension Bill of 2017 (P.L. 115-63) was enacted on September 29. In addition to extending federal aviation programs, the bill modifies requirements for purchasing flood insurance and provides tax

incentives for individuals and businesses affected by the hurricanes. Some of the provisions include eliminating the current law requirements that taxpayers itemize deductions to access tax relief and that uncompensated personal casualty losses exceed 10 percent of adjusted gross income to qualify for deduction, as well as allowing taxpayers flexibility for loans from retirement plans for qualified hurricane relief.

The Fair Access to Investment Research Act of 2017 (P.L. 115-66) requires the Securities and Exchange Commission (SEC) to establish and implement a “safe harbor” for certain investment fund research reports published by brokers and dealers. The reports will not be deemed “offers” under specified provisions of securities law, even if the broker or dealer participates in the registered offering of the investment fund's securities.

Disapproved Regulations

The 115th Congress made liberal use of the Congressional Review Act (CRA) (P.L. 104-121) by disapproving 14 regulations promulgated by the Obama Administration. Prior to 2017, the CRA had been used only once (see P.L. 107-5). Disapproval nullifies the regulation, and prevents agencies from issuing future rules that are “substantially the same” as the disapproved rule without legislative authorization.

Disapproved Regulations Tracked by Practice Area

Practice Area(s)	Regulation	Disapproved By
Securities	Disclosure of Payments by Resource Extraction Issuers (81 FR 49359)	P.L. 115-4
Energy and Environmental	Stream Protection Rule (81 FR 93066)	P.L. 115-5
Government Contracts Labor and Employment	Federal Acquisition Regulation; Fair Pay and Safe Workplaces (81 FR 58562)	P.L. 115-11
Energy and Environmental	Resource Management Planning (81 FR 89580)	P.L. 115-12
Labor and Employment	Drug Testing of Unemployment Compensation Applicants (81 FR 50298)	P.L. 115-17
Energy and Environmental	Non-Subsistence Take of Wildlife, and Public Participation and Closure Procedures, on National Wildlife Refuges in Alaska (81 FR 52247)	P.L. 115-20
Labor and Employment	Clarification of Employer's Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness (81 FR 91792)	P.L. 115-21
Health Care	Compliance with Title X Requirements by Project Recipients in Selecting Subrecipients (81 FR 91852)	P.L. 115-23
Pension Labor and Employment	Savings Arrangements Established by Qualified State Political Subdivisions for Non-governmental Employees (81 FR 92639)	P.L. 115-24
Pension Labor and Employment	Savings Arrangements Established by States for Non-governmental Employees (81 FR 59464)	P.L. 115-35

Proposed Legislation

The 115th Congress has been busy, introducing 7,181 bills or resolutions as of October 19. Wolters Kluwer attorney-editors are tracking more than 200 pieces of proposed legislation, many spanning the various practice areas, as they advance through Committee Consideration and beyond. The following are a few noteworthy ones.

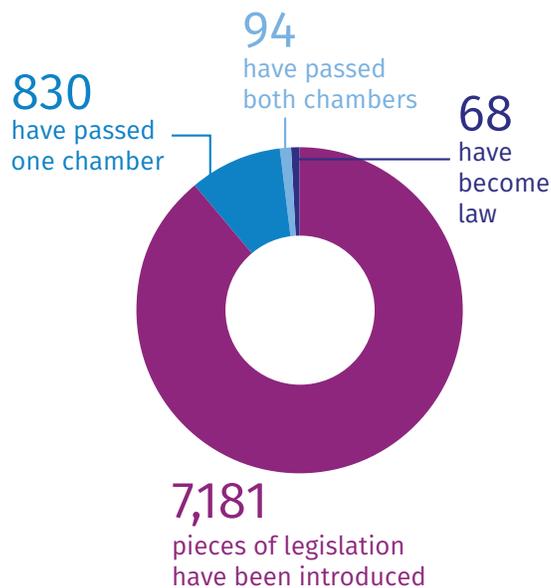
Intellectual property. There were two significant pieces of intellectual property (IP) legislation proposed. First, the Register of Copyrights Selection and Accountability Act of 2017 ([H.R. 1695](#)) would amend the Copyright Act to provide for the Register of Copyrights to be appointed by the President, with the advice and consent of the Senate, from a list recommended by a panel of legislators and the Librarian of Congress—rather than solely by the Librarian of Congress—and be limited to a 10-year term. Second, the Compensating Legacy Artists for their Songs, Service, and Important Contributions to Society (CLASSICS) Act ([H.R. 3301](#)) would provide federal protection to the digital audio transmission of a sound recording fixed before February 15, 1972.

Antitrust. Legislation was reintroduced to eliminate differences in the procedures used by the Federal Trade Commission (FTC) and the Department of Justice (DOJ) Antitrust Division in challenging unconsummated acquisitions and mergers after it was opposed by the Obama Administration. The Standard Merger and Acquisition Reviews Through Equal Rules (SMARTER) Act ([H.R. 659](#)) likely would be signed by Trump if the measure can avoid congressional gridlock.

Energy and environment. The Federal Lane Freedom Act ([H.R. 3565](#)), [introduced](#) on July 28, 2017, would allow for exclusive control of oil and gas exploration, development, and production on all available federal lands by state which have laws providing for the leasing, regulation, and permitting of oil and gas exploration, development, and production activities.

Securities and banking/finance. The House [passed](#) the Financial CHOICE Act of 2017 ([H.R. 10](#)) on June 8, 2017, which is the second version of congressional Republicans' attempt to repeal and replace portions of the Dodd-Frank Wall Street Reform and Consumer Protection Act ([P.L. 111-203](#)). The bill seeks in part to end “too big to fail” and the possibility of bank bailouts by repealing the

Legislative Progress* of 115th Congress



Source: <https://www.congress.gov/advanced-search/legislation>
*As of October 19, 2017

orderly liquidation authority and using bankruptcy to address financial institution failures (see [House passes Financial CHOICE Act after last push of support, opposition](#), June 8, 2017). The bill would repeal the controversial Volcker Rule while allowing strongly capitalized banks to opt out of burdensome regulations. It would also restructure the Consumer Financial Protection Bureau. The Senate is expected to craft its own regulatory reform bill, because the Financial CHOICE Act, as written, is unlikely to pass the Senate (see also [Hot Topics in SEC Filings 2017: Regulatory Roll-backs, Fintech, Cyber, and Blue Sky Offerings](#), August 2017).

Products liability. The House passed [H.R. 3388](#), the Safely Ensuring Lives Future Development and Research in Vehicle Evolution ([SELF DRIVE](#)) Act of 2017, which, if enacted, would pave the way for the National Highway Traffic Safety Administration (NHTSA) to adapt federal safety standards to self-driving vehicle technology.

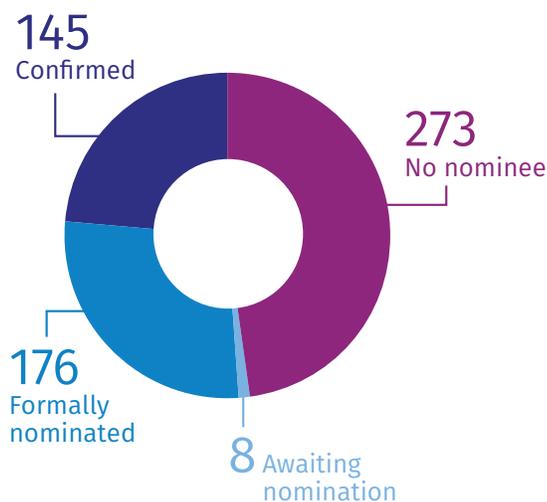
Health care. One of the top priorities of the 115th Congress and the Trump Administration is repealing and replacing President Obama's signature health-reform legislation, the Patient Protection and Affordable Care Act (ACA) ([P.L. 111-148](#)). In May, the House of Representatives passed [H.R. 1628](#), the American Health Care Act, which would make changes to the ACA's requirements that individuals carry health insurance

and that employers provide health insurance to many employees; it also included changes to the Medicaid program (see [How the AHCA directly impacts significant parts of the ACA](#), May 17, 2017).

The Senate proposed a variety of bills, including July's failed [Better Care Reconciliation Act](#) and "skinny repeal" (see [McCain's thumbs down vote defeats ACA 'skinny bill' repeal](#), July 28, 2017), and September's failed Graham-Cassidy bill (see [Graham-Cassidy would reduce coverage by millions to reduce deficit](#), September 27, 2017). The Senate Committee on Health, Employment, Labor & Pensions held hearings on potential bipartisan fixes for the ACA (see [Bipartisan ACA-fix hearings underway](#), September 13, 2017), and in mid-October, Sens. Lamar Alexander (R-Tenn) and Patty Murray (D-Wash) announced an agreement for a proposed bill to stabilize the marketplace and increase state flexibility (see [Bipartisan ACA deal announced](#), October 18, 2017).

Tax. Trump emphasized in April that repeal and replacement of the ACA would come before comprehensive tax reform. Repeal and replace efforts have stalled and other than the tax reform outline released on April 26 (see [Trump unveils broad plan for individual and business tax cuts](#), May 10, 2017) and the [framework](#) released on September 27, no specific legislation has been introduced as of October 19.

Of 602 key position requiring Senate confirmation as of October 19, 2017



Source: [The Washington Post](#) and [Partnership for Public Service, Trump Administration Appointee Tracker](#)

Executive Activity

Trump has issued a number of unilateral actions since taking office, in the form of executive orders and presidential memoranda, and federal agencies have taken significant regulatory action. Although there are a large number of executive level positions left [unfilled](#) as of October 19 (273), Trump has made 176 appointments and 146 have been confirmed by the Senate. Some political observers have [suggested](#), however, that Trump may not fill all of the positions in an effort to reduce the size of the federal government and individual federal agencies. Trump himself, in an interview with [Forbes magazine](#) on October 12, said, "I'm generally not going to make a lot of the appointments that would normally be — because you don't need them."

Executive Orders and Memorandums

As of October 19, 2017, President Trump has signed 49 executive orders (EOs), [far more](#) than his five immediate predecessors by that date. He has used EOs to fulfill campaign promises and to direct executive agencies to take—or refrain from taking—certain actions.

Health reform. The first EO Trump signed was related to the ACA and sought to minimize the economic burden of the law (EO 13765, [82 FR 8351](#), January 20, 2017). In additional EOs (EO 13798, [82 FR 21675](#), May 4, 2017; EO 13813, [82 FR 48385](#), October 12, 2017), the president ordered regulatory and policy changes altering the ACA by changing the Obama Administration's interpretation of the law with regard to religious employers, cost-sharing reductions, and state flexibility (see [Trump suggests regulatory changes, possibly undermining ACA protections & market stability](#), October 17, 2017).

Immigration. Many of Trump's EOs have also focused on immigration. These have included orders prioritizing the removal of undocumented immigrants and hiring additional immigration officers (EO 13768, [82 FR 8799](#), January 25, 2017), increasing monitoring and enforcement of Buy American Laws (EO 13788, [82 FR 18837](#), April 18, 2017), and banning citizens of certain countries from entering the United States (EO 13769, [82 FR 8977](#), January 27, 2017, replaced by EO 13780, [82 FR 13209](#), March 6, 2017, extended by Proclamation No. 9645, [82 FR 45161](#), September 24, 2017). The

travel-related EOs in particular have faced legal challenges, with multiple courts issuing injunctions against enforcement of the bans.

Similarly, an Obama Administration policy on Deferred Action for Childhood Arrivals (DACA) provided lawful presence status to individuals brought to the U.S. as children and who were vetted for any criminal history or national security threat. On September 5, Attorney General Jeff Sessions announced that DACA was being rescinded as of March 5, 2018, while DACA recipients had to renew their status by October 5, 2017 (see *DACA ‘unconstitutional,’ Sessions declares; Trump tweets it over to Congress*, September 5, 2017; *DACA ends but lawsuits challenging rescission remain*, October 5, 2017).

Intellectual property. On August 14, 2017, Trump issued a [Presidential memorandum](#) titled “Addressing China’s Laws, Policies, Practices, and Actions Related to Intellectual Property, Innovation, and Technology” (82 FR 39007) calling for the U.S. Trade Representative to investigate any of China’s laws, policies, practices, or actions that may be unreasonable or discriminatory and that may be harming American intellectual property rights, innovation, or technology development to counter actions by China that have effects on U.S. trade, jobs, manufacturing, and innovation.

Global trade. On September 21, 2017, Trump signed EO 13810 (82 FR 44705), imposing additional economic and trade sanctions on North Korea, authorizing the Secretary of the Treasury, in consultation with the Secretary of State, to impose sanctions on persons who are involved in certain industries in North Korea; who own, control, or operate any North Korean port; or who engage in trade with North Korea. Under the EO, sanctions may be imposed on any foreign financial institution conducting or facilitating transactions involving North Korea and gives the Treasury Secretary authority to block funds from, to, or passing through North Korean accounts.

Securities and banking/finance. Trump signed two Presidential Memoranda that affect the ability of the Financial Stability Oversight Council (FSOC) to designate nonbanks as systemically important financial institutions (SIFIs) and the bank regulators to exercise the orderly liquidation authority found in Title II of the Dodd-Frank. The Memorandum on orderly liquidation authority provides that the Treasury Department conduct an analysis to ensure that the OLA does not encourage excess risk-taking, moral hazard, and exposure to

taxpayers. The FSOC Memorandum affecting the designation of non-bank SIFIs calls for a 180-day review to ensure that the SIFI designation is “a fair and transparent process.”

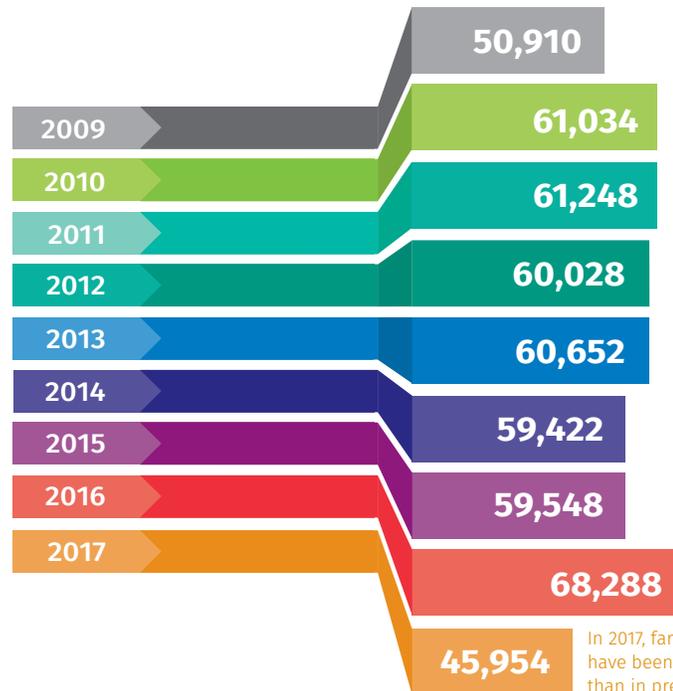
Making good on his promise to “do a big number” on the Dodd-Frank Act, Trump signed EO 13772 (82 FR 9965, February 8, 2017), the “Core Principles for Regulating the United States Financial System,” that directed the Secretary of the Treasury to report back on what rules promote or inhibit the administration’s priorities.

Energy and environment. Another EO (EO 13778, 82 FR 12497, February 28, 2017) dealt with an Obama-era regulation defining navigable waters, known as the Waters of the United States (WOTUS) Rule (80 FR 37054, June 29, 2015). The EO directed the Environmental Protection Agency (EPA) to rescind or modify the definition of “navigable waters” and “waters of the United States” to a more narrow interpretation.

Agency Action

One of Trump’s campaign promises was reducing the number of federal regulations; he has used EOs (EO 13771, 82 FR 9339, January 30, 2017; EO 13777,

Total Federal Register Pages
(First day of publication in October, 2009-2017)



In 2017, far fewer pages have been published than in previous years.

Source: www.federalregister.gov

[82 FR 12285](#), February 24, 2017) to direct executive agencies to reform the regulatory scheme (see [Trump pushes government-wide regulatory reform initiative](#), February 24, 2017). In general, Trump has requested that, for each new regulation issued, two prior regulations be identified for elimination. Overall, fewer regulations have been issued in 2017 than in previous years, and many Obama-era regulations have been postponed, in some cases indefinitely.

Energy and environment. On October 10, 2017, EPA Administrator Scott Pruitt issued a notice of proposed rulemaking (NPRM) proposing, and is requesting public comments on, repealing an Obama-era carbon-emissions rule, the so-called “Clean Power Plan (CPP).” According to the [press release](#), repealing the rule would facilitate the development of U.S. energy resources and reduce regulatory burdens, and follows an EO on Promoting Energy Independence and Economic Growth (EO 13783, [82 FR 16093](#), March 28, 2017).

Banking and finance. The Treasury Department has published the first of the series of regulatory review reports ordered by Trump. The report, “[A Financial System That Creates Economic Opportunities: Banks and Credit Unions](#),” addresses topics that include community bank health, financial stability rules, global competitiveness, and Consumer Financial Protection Bureau restructuring.

The Office of the Comptroller of the Currency (OCC) is seeking comments on how to revise its regulations implementing the Volcker Rule. However, the OCC stressed that its [notice](#) was not seeking changes to the underlying Volcker Rule statute. The OCC stated there is “broad recognition that the final rule [implementing the Volcker Rule] should be improved both in design and in application,” and cited the Treasury Department’s [June 2017 report](#) that identified problems with the design of the final rule as the impetus for its notice.

Also, recent activity by the FSOC discussed potential improvements to the Volcker Rule and called upon the OCC and the other rule writing agencies—Federal Reserve Board, Federal Deposit Insurance Corporation, SEC, and Commodity Futures Trading Commission—to clarify the final rule’s definition of “proprietary trading.”

Securities. New guidance was released by the Corporate Finance Division which provides that staff will not recommend enforcement if companies do not comply with the due diligence part of the conflict minerals rule. The rule, mandated by

Dodd-Frank, requires companies to improve the handling of supply chains for conflict minerals (tin, tantalum, tungsten, and gold) but was criticized as being a legislative and regulatory overreach (see [The Trump Administration’s First 100 Days: Impact on Securities and Banking Regulations](#), April 2017).

Health care. In the final days of the Obama Administration, the Department of Health and Human Services (HHS) promulgated regulations on the 340B drug-pricing program ([82 FR 1210](#), January 5, 2017). The Trump Administration, however, has repeatedly delayed the implementation date of the regulations, originally scheduled for March 2016, to July 1, 2018 ([82 FR 45511](#), September 29, 2017; see [HHS proposes fifth delay to 340B drug-pricing program changes](#), August 21, 2017).

Pension. The Trump Administration has similarly delayed implementation of fiduciary advice regulations and related prohibited transaction exemptions promulgated in April 2016 and geared to ensuring that investment advice provided by retirement plan advisers is made in the best interests of retirement plan investors. Although the regulatory scheme remains in place, the Department of Labor (DOL) has extended the applicability date for full compliance and issued guidance in the form of FAQs that will effectively soften the impact of the new requirements. In August, the DOL proposed additional delays, to July 2019 (see [DOL proposal again delays application of fiduciary rule, solicits more comments](#), August 30, 2017).

Life sciences. Also delayed were regulations from the FDA requiring the disclosure of nutrition information for standard menu items in restaurants and retail food establishments. These regulations, issued in 2014 ([79 FR 71156](#), December 1, 2014; see [Finally final: FDA releases ACA mandated menu labeling requirements](#), December 1, 2014) were scheduled to go into effect in May 2017 ([81 FR 27067](#), May 5, 2016; see [Final menu labeling guide for restaurants issued, enforcement date set](#), May 5, 2016); the day before the effective date, an interim Final rule ([82 FR 20825](#), May 4, 2017) extended the deadline for an additional year (see [FDA turns page on restaurant menu labeling back another year](#), May 3, 2017).

The FDA also has proposed delaying the compliance dates for manufacturers to include updated information on nutrition, supplement, and serving size labels. The delays would extend from July 26, 2018, to January 1, 2020, for manufacturers with \$10

million or more in annual food sales, and from July 26, 2019, to January 1, 2021, for smaller manufacturers (Proposed rule, [82 FR 45753](#), October 2, 2017; see [FDA proposes 1.5-year compliance deadline extension for updated nutrition labels](#), October 2, 2017).

Employee benefits. Two new HHS Interim Final rules sliced through the ACA's contraception mandate by providing additional exemptions for objecting employers and insurers. In addition to religious organizations objecting on grounds of religious beliefs, non-religious groups may now decline to cover contraceptives based on "sincerely held moral convictions." The Health Resources & Services Administration (HRSA) retains discretion to continue to require coverage where no regulatory objections apply ([82 FR 47792](#) and [82 FR 47838](#), October 13, 2017). A number of states immediately responded by filing lawsuits challenging the rule.

Labor and employment. Employee safety is another topic where regulations are being delayed or rolled back under the Trump Administration: (1) Occupational Safety and Health Administration (OSHA) proposed a delay in the reporting of workplace injuries and illnesses

([82 FR 29624](#)); (2) OSHA withdrew the so-called "Volks rule" cementing the practice of treating recordkeeping violations as continuing ones ([82 FR 20548](#)); (3) the Mine Safety and Health Administration (MSHA) proposed giving mine operators additional flexibility in managing their safety and health programs and reducing regulatory burdens ([82 FR 42757](#)); and (4) OSHA requested comments about revoking rules related to exposure to beryllium in construction and the shipyard sectors ([82 FR 29182](#)).

Other Legal Trends

Aside from legislative and executive activities, Wolters Kluwer attorney-editors also are tracking a number of significant actions in several practice areas that have occurred in 2017.

Antitrust

The appointments of new leaders to head the federal antitrust enforcement agencies have been delayed in the Trump Administration relative

Number of Actions Tracked by Wolters Kluwer Attorney-Editors

Practice Area	Enacted Laws*	Executive Orders*	Presidential Memoranda*	Proposed Rules*	Final Rules*	Proposed Legislation*
Antitrust	0	2	0	0	1	9
Banking/Finance	0	4	2	7	13	13
Employee Benefits	0	2	0	1	3	8
Energy/ Environmental	0	7	0	12	13	24
Global Trade	1	4	2	2	10	1
Government Contracts	1	6	2	16	23	18
Health Care	0	4	0	9	13	23
Immigration	0	3	1	4	3	6
Intellectual Property	0	2	1	8	12	9
Labor/ Employment	6	12	5	8	11	53
Life Sciences	1	2	1	2	3	7
Pension	2	1	1	2	4	8
Products Liability	0	4	2	5	5	9
Securities	2	4	0	3	4	9
Tax	1	6	0	9	11	21
Total	14	63	17	88	129	218

Last updated 10/19/17

*duplicates across practice areas not removed

to past administrations. The president named an antitrust attorney as his pick to head the Federal Trade Commission (FTC) in late October. At the same time, he announced his intention to nominate a consumer protection advocate recommended by Democratic leadership to fill one of the three vacancies on the five-member Commission. For most of the year, only two commissioners have been overseeing the agency, with the lone Republican holdover serving as acting chair. Meanwhile, the president's seemingly noncontroversial pick to head the Department of Justice Antitrust Division was not approved by the Senate until late September, despite being named in March. Once Trump's picks are in place and making decisions on enforcement efforts, the antitrust community will be able to get a better sense of the administration's antitrust policy. The current acting heads, in the meantime, have been stressing the importance of promoting "economic liberty" in competition law enforcement. In fact, the FTC has created an economic liberty task force focused on occupational licensing reform. Efforts to combat unnecessary or overreaching occupational licensing will be seen at federal, state, and local levels in the coming years.

Democratic lawmakers have identified stronger antitrust enforcement as key part of their "Better Deal" [plan](#) for empowering American families and workers. The plan includes an effort to "crack down on monopolies and the concentration of economic power that has led to higher prices for consumers, workers, and small business."

Banking

The Financial Stability Oversight Committee (FSOC) [decided](#) that American International Group, Inc., LLC (AIG), is no longer in financial distress and therefore not a threat to U.S. financial stability. As a result, it rescinded AIG's designation as a systemically important financial institution, and the company will not be subject to supervision by the Federal Reserve Board or enhanced prudential standards.

The Treasury Department also released a document detailing the views of seven FSOC members regarding the decision to rescind the designation of AIG as a systemically important financial institution. The [latest document](#) reveals that Richard Cordray, Director of the Consumer Financial Protection Bureau, Martin J. Gruenberg, Chairman

of the Federal Deposit Insurance Corporation, and Melvin L. Watt, Director of the Federal Housing Finance Agency, voted against the rescission.

Global Trade

New U.S. Trade Representative Robert Lighthizer [notified](#) Congress in May that Trump intended to renegotiate NAFTA. As of October 18, the fourth round of negotiations were [underway](#), however [media reports](#) indicated that a fifth round of talks would run November 17-21, 2017 and would spill into the first quarter of 2018.

Health Care

In March, the Trump Administration established the [Commission on Combating Drug Addiction and the Opioid Crisis](#). In August, the president received the Commission's [first report](#) and announced that he would declare the opioid crisis a "national emergency," though no official declaration has yet been made. Approximately 142 Americans die each day from opioid overdoses, and in 2015, 27 million people reported prescription drug abuse or illegal drug use.

Federal funding for the Children's Health Insurance Program (CHIP), which insures almost 9 million children in families that earn too much to qualify for Medicaid but do not have private insurance due to cost or access, expired on September 30, 2017. Without congressional action to fund the program, which is administered by states and financed jointly by states and the federal government, states will face budget shortfalls as early as December; until then, states will continue to use remaining funds already received from the federal government. Legislation to extend federal funding for CHIP has been introduced in both the House ([H.R. 3921](#)) and Senate ([S. 1827](#)).

Labor and Employment

Actions are in the works against controversial rules from the Obama era. The DOL released a request for information on its controversial overtime rule, which would have nearly doubled the salary threshold for the executive, administrative, and professional (EAP) exemption at which Fair Labor Standards Act (FLSA) overtime requirements would not apply (July 26, 2017, [82 FR 34616](#)).

On August 29, 2017, the Office of Management and Budget issued an immediate [stay](#) of the pay data collection aspects of the controversial EEO-1 form added near the end of the Obama Administration, with a Notice by the Equal Employment Opportunity Commission (EEOC) further detailing the requirements on September 15 ([82 FR 43362](#)) (see [The Trump Administration at six months: Labor and employment](#), July 27, 2017).

In litigation, the Department of Justice (DOJ) has flip-flopped in its representation of the National Labor Relations Board (NLRB) on class arbitration waivers in the Supreme Court, first supporting the NLRB's petition for certiorari in *NLRB v. Murphy Oil* ([No. 16-307](#)), and then withdrawing representation and filing an amicus brief on the merits arguing against the NLRB's policy. The DOJ similarly undercut the EEOC's position that Title VII protects against sexual orientation discrimination by filing an amicus brief in a Second Circuit case.

Products Liability

The Consumer Product Safety Commission (CPSC) issued a Final rule ([82 FR 41163](#), August 30, 2017)

establishing that certain plastics with specified additives would not contain the specified phthalates prohibited in children's toys and child care articles, [reducing](#) the burden of third-party testing. CPSC also issued a Final rule ([82 FR 43470](#), September 18, 2017) to improve the safety of infant bouncer seats by placing more stringent requirements to further [reduce](#) the risk of serious head injuries associated with bouncer seats falling from elevated surfaces.

Securities

On May 3, 2017, Jay Clayton was confirmed as Securities and Exchange Commission (SEC) Chairman. As recently as October 4, the House Financial Services Committee questioned Clayton, in part, on his plans for the Commission going forward. He cited four main areas on which the SEC will focus more resources in the new future: (1) cybersecurity; (2) retail investor protection; (3) market integrity; and (4) capital formation. During his confirmation hearing, he [noted](#) he had "no specific plans for attack" on Dodd-Frank, but there have been actions taken since then to affect the act.

Additional Expert Analysis on Related Topics

December 2016	Trump's Win Expected to bring significant legal and regulatory challenges
February 2017	When will insurers receive risk corridor payments
February 2017	Simply unpredictable: Health care under the Trump Administration and 115th Congress
March 2017	SEC Reform: The Doughnut and the Hole
March 2017	2016-2017 Hot topics: Supreme Court and immigration
April 2017	The doctor is in, and health reform awaits Secretary Price's treatment
May 2017	What will become of Medicaid?
May 2017	Government rekindles concerns about CMS' MAO overpayments
May 2017	Tax ACA Repeal and Replacement Approved by House: Special Tax Briefing Now Available
June 2017	Understanding Medicaid through the cost sharing looking glass
July 2017	Will food safety take a backseat under Trump administration?
July 2017	Delay, Deregulate, Derail – Health Care Roiled by Actions of Trump and Congress
August 2017	At midpoint, 2017 IPO market has doubled last year's first-half deal totals
August 2017	Trump Administration's Impact on Government Contracts
August 2017	What was the aim of the BCRA? Medicaid or the ACA?

Tax

The current rules governing partnership audits were repealed by Sec. 1101 of the Bipartisan Budget Act (BBA) of 2015 (P.L. 114-74) and replaced with a new centralized partnership audit regime that generally assesses and collects tax at the partnership level beginning for taxable years starting after December 31, 2017. An Internal Revenue Service (IRS) Proposed rule (82 FR 27334, June 14, 2017) would implement Sec. 1101 and provide procedures for electing out of the centralized partnership audit regime, filing administrative adjustment requests, and the determining amounts owed by the partnership or its partners attributable to adjustments arising out of an examination of the partnership.

What Happens Next?

The Administration has yet to fulfill its promises to overhaul the tax code, repeal and replace

the ACA, and repeal the Dodd-Frank Act. These topics will likely continue to dominate headlines well into 2018. Raising the debt ceiling, or increasing the borrowing ability of the U.S. government, will be another contentious topic for Congress to address and will affect government spending in myriad ways. NAFTA renegotiations will continue and the effects of Trump's [decision](#) in June 2017 to withdraw the U.S. from the Paris Climate Agreement are yet to be realized. Similarly, litigation related to Trump's executive orders on immigration will continue for the foreseeable future, possibly culminating in a visit to the Supreme Court. As of [October 1](#), there were 148 vacancies in the federal judiciary, with 47 nominees pending and two nominees pending for future vacancies, giving Trump the opportunity to shape the judicial branch for decades to come. Whatever the next steps are for this Administration and the 115th Congress, stay tuned to Wolters Kluwer for reliable sources and analysis as they happen.



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