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Subject: Congress Passes 1st Step To Repeal ACA

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## PUBLIC POLICY

### EXPLORE WHAT'S INSIDE LEXIS PRACTICE ADVISOR®

Check out the topics we cover; the forms we offer; and where our practical guidance will take you.

Tuesday, January 17, 2017

#### TOP NEWS

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##### Congress Passes 1st Step To Repeal ACA

Congress passed the bill that would frame the repeal of the Affordable Care Act on Friday, after the House voted through a measure that would let Republicans undo President Barack Obama's signature health care law down the road without any Democratic votes.

##### Analysis

##### Outgoing FTC Chief Leaves Tough Merger Review Legacy

During nearly four years at the helm of the Federal Trade Commission, outgoing Chairwoman Edith Ramirez built a reputation for being unafraid to go to court to tackle anti-competitive mergers, leaving a string of high-profile wins in her wake.

##### Longtime US Atty Expected To Be DOJ Second-In-Command

U.S. Attorney Rod Rosenstein of Maryland, one of a few Senate-confirmed federal prosecutors to have served under both Republican and Democratic administrations, is a frontrunner to become deputy attorney general, a source familiar with the transition said Friday.

##### Analysis

##### Russia Bombshells Leave Sanctions Bar Guessing

With President Barack Obama taking one final strike at Russia for its purported tampering in the U.S. election and President-elect Donald Trump facing a slew of explosive allegations of Moscow-related impropriety, sanctions attorneys have been left grasping at straws regarding what comes next in the two countries' fractious relationship.

##### Analysis

##### Political Differences May Be The Death Of Estate Tax Repeal

As plans for a revamp of the tax code get underway in Congress, critical differences among President-elect Donald Trump, the GOP and the Democrats on whether to repeal the estate tax and what to replace it with could end up leaving the current law unchanged.

#### LAW FIRMS

Akin Gump  
Alston & Bird  
Arnold & Porter Kaye Scholer  
Axinn Veltrop  
Baker Botts  
Bartlit Beck  
Bracewell  
Choate  
Consovoy McCarthy  
Constangy Brooks  
Covington & Burling  
Crowell & Moring  
Dechert  
Deutsch Kerrigan  
Dewey & LeBoeuf  
Earthjustice  
Epstein Becker Green  
Fish & Richardson  
Gibson Dunn  
Goodwin  
Greenberg Traurig  
Harris Finley  
Hogan Lovells  
Hopping Green  
Hunton & Williams  
Jackson Lewis  
Jenner & Block  
Jones Day  
K&L Gates

## Trump Attacks Intelligence Agencies Over Russia Reports

President-elect Donald Trump continued to spar with the U.S. intelligence community on Friday, claiming recent reports alleging that Russia holds compromising information on him were likely publicly leaked by an intelligence agency.

## Congress Paves Way For Trump Defense Secretary Pick

President-elect Donald Trump's pick for the U.S. Department of Defense has a clear path to his approval after a House vote on Friday that removes a block on retired U.S. Marine Corps Gen. James Mattis serving as the head of the Pentagon.

## Trump Picks Giuliani As Cybersecurity Adviser

President-elect Donald Trump announced Thursday that he has tapped former New York City mayor and Greenberg Traurig LLP cybersecurity practice leader Rudy Giuliani as an adviser, saying Giuliani will provide advice on cybersecurity matters and serve as a liaison with industry.

### Analysis

## High Court To Weigh Murky Crime-Of-Violence Definition

The U.S. Supreme Court will hear arguments Tuesday in an immigration dispute over whether part of the definition for a "crime of violence" is unconstitutionally vague, and experts say the case could both remove a deportation tool and open the door for future challenges to criminal provisions in immigration law.

## BANKING & SECURITIES

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## Senate Dems Want Foreclosure Victims To Challenge Mnuchin

Senate Democrats on Friday asked that outside witnesses be allowed to testify at confirmation hearings for Treasury Secretary nominee Steven T. Mnuchin, including witnesses who say they were victims of allegedly shoddy foreclosure practices at a bank where Mnuchin served as chairman.

## Cost-Benefit Bill Frees Industry By Tying SEC Down

The bill passed Thursday in the U.S. House of Representatives requiring the U.S. Securities and Exchange Commission to perform a cost-benefit analysis on regulation could help the agency "drain the swamp" of burdensome regulation, experts said, but may bog SEC staff down in regulatory review and expensive litigation at the cost of investor protection.

## ENERGY & ENVIRONMENTAL

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### Analysis

## Energy-Related Confirmation Hearings: What To Watch For

Energy policy takes center stage on Capitol Hill starting Tuesday when the U. S. Senate begins confirmation hearings for President-elect Donald J. Trump's nominees for secretaries of Energy and the Interior and for administrator of the U.S. Environmental Protection Agency. Here's a glimpse of what to expect in each hearing.

## High Court To Review 6th Circ.'s Water Rule Jurisdiction

The U.S. Supreme Court on Friday agreed to review the Sixth Circuit's finding that it has jurisdiction to hear challenges to the U.S. Environmental Protection Agency and Army Corps of Engineers' controversial Clean Water Rule.

Kazmarek Mowrey

Kemp Smith

Kirkland & Ellis

Latham & Watkins

Levine Sullivan

Mayer Brown

McDermott Will

Mintz Levin

Morgan Lewis

Morvillo LLP

O'Connell & Aronowitz

Ogletree Deakins

Orrick Herrington

Pillsbury Winthrop

Proskauer Rose

Quinn Emanuel

Robinson Miller

Ropes & Gray

Seward & Kissel

Seyfarth Shaw

Shegerian & Associates

Skadden

Sonosky Chambers

Squire Patton Boggs

Sullivan & Cromwell

Sutherland Asbill

The Spiggle Law Firm

Thompson & Knight

Troutman Sanders

Venable LLP

Vinson & Elkins

Volkov Law Group LLC

Weil Gotshal

Williams & Connolly

WilmerHale

Zelle LLP

Zuckerman Spaeder

## COMPANIES

A&E Television Networks LLC

AT&T Inc.

Allergan PLC

Alliance of Automobile  
Manufacturers

Amazon.com Inc.

Ameren Corporation

American Bar Association

## In Quick Move, EPA Sets Fuel Standards Before Inauguration

In an action taken just days before Donald Trump is sworn in as the next president, the U.S. Environmental Protection Agency finalized rules Thursday that will maintain heightened greenhouse gas emissions standards for 2022 through 2025 model year cars and light trucks.

## EPA Denies Bids To Reconsider Or Stay Clean Power Plan

The U.S. Environmental Protection Agency on Friday denied dozens of administrative petitions to reconsider or delay its controversial Clean Power Plan, and defended the plan as a moderate, reasonable way to achieve emissions reductions that could help mitigate climate change impact.

## EPA Proposes Risk-Based Chemical Evaluation System

The U.S. Environmental Protection Agency on Friday proposed a system for identifying chemicals as either high- or low-priority risks, a move that further implements Congress' recent changes to the Toxic Substances Control Act.

## RFS Targets Impossible In 'Real World,' Fuel Groups Say

Petroleum industry groups told the D.C. Circuit on Thursday that the statutory volumes set for the U.S. Environmental Protection Agency's Renewable Fuel Standard program aren't possible in the "real world," asking the appeals court to back the agency's view of its authority to break with Congress' timetable for incrementally replacing conventional fuels with renewables.

## Feds Urge 6th Circ. To Shut Down Clean Water Rule Foes

The U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers on Friday urged the Sixth Circuit to uphold the controversial Clean Water Rule against the onslaught of industry challengers, states, environmental groups and municipalities that dragged them to court over the rule.

## 4 Ex-NJ Govs Urge Pinelands Board To Reject Pipeline

Four former New Jersey governors on Thursday voiced their opposition to a proposed natural gas pipeline that would traverse 21.6 miles of the environmentally sensitive Pinelands region, telling the agency set to vote on the project that it contravenes the preservation goal for the area.

## HEALTH & LIFE SCIENCES

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### FDA Floats New Oversight Plan On Lab Tests

The U.S. Food and Drug Administration on Friday sketched out a gentler vision for oversight of lab tests that have proliferated rapidly in recent years, two months after the agency shied away from stronger regulation.

#### Analysis

### Deal Makers Buoyed After JPMorgan Forum Despite Clouds

Deals lawyers say they emerged from JPMorgan's annual health care conference energized for an uptick in activity — in stark contrast to last year's gloomier vibe — despite the uncertainty that looms regarding the fate of Obamacare and the Trump administration's drug pricing policies.

## IP & TECHNOLOGY

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### DOJ, FTC Refresh IP Antitrust Licensing Guidelines

The U.S. Department of Justice and Federal Trade Commission released on

American Cable Association  
American Farm Bureau Federation  
American Insurance Association  
American Petroleum Institute  
American Road & Transportation Builders Association  
American Seed Trade Association  
American Soybean Association  
Apple Inc.  
British Bankers' Association  
BuzzFeed Inc.  
CTIA  
Center for Biological Diversity  
Cephalon, Inc.  
Chevron Corporation  
College Athletes Players Association  
ConAgra Foods, Inc.  
Consumer Federation of America  
Craig Tribal Association  
DraftKings Inc.  
E. I. du Pont de Nemours and Company (DuPont)  
ESPN Inc.  
Exxon Mobil Corporation  
Facebook  
FanDuel Inc.  
Financial Industry Regulatory Authority Inc.  
Fox Entertainment Group  
GNC Corporation  
Genesco Inc.  
Goldman Sachs Group Inc.  
Google Inc.  
Herbalife Ltd.  
IDT Corporation  
Illinois Tool Works Inc.  
Immigrant Legal Resource Center  
Ipsen SA  
Kirkland's, Inc.  
Lyft Inc.  
Major League Baseball Inc.  
MasterCard Incorporated  
Merrimack Pharmaceuticals Inc.  
NASDAQ OMX Group Inc.  
NFL Enterprises LLC  
National Association of Home

Friday updated antitrust guidelines for the licensing of intellectual property, taking into account recent U.S. Supreme Court decisions and changes to copyright and patent terms.

## MEDIA & ENTERTAINMENT

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### NY Says Daily Fantasy Law Was Passed Constitutionally

The New York attorney general's office has moved to toss a lawsuit that challenges legislation regulating daily fantasy sports in the state as an unconstitutional gambling expansion, saying the Legislature rationally exercised its authority in passing the law.

## TRANSPORTATION & INFRASTRUCTURE

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### DOT Approves Safety Rules For Hazardous Liquid Pipelines

The U.S. Department of Transportation signed off on new regulations governing the safety and upkeep of onshore hazardous liquid pipelines Friday, fulfilling an obligation under a law passed in June 2016 aimed at strengthening rules around the transportation of energy.

### Calif. Agency Ditches Taxi Co.'s Attack On Ride-Hail Rules

A California federal judge on Thursday tossed a San Francisco taxi company's equal protection suit alleging the California Public Utilities Commission's regulation of Uber and similar companies gives them an unfair advantage over traditional taxi companies, ruling ride-hailing services are not "de facto taxi companies."

## INSURANCE

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### US, EU Complete Agreement On Insurance Regulation

U.S. and European Union officials said Friday they have completed a bilateral agreement designed to place their insurers and reinsurers on equal footing by eliminating duplicative regulations and axing collateral requirements for EU reinsurers doing business in the U.S., among other measures.

## EMPLOYMENT

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### Analysis

### Obama's Biggest Employment Policy Hits And Misses

When President Barack Obama exits the Oval Office for the last time, he will leave behind a pro-employee legacy that includes greater workplace inclusion and notable progress in fighting wage discrimination, but his administration didn't accomplish all of its goals. Here, Law360 looks at five of the Obama administration's most notable labor and employment accomplishments and missteps, and how his initiatives may fare under the new administration.

### OSHA Releases Guidance For Anti-Retaliation Programs

The Occupational Safety and Health Administration released a list of guidelines Friday advising employers on how they can effectively implement anti-retaliation programs and help workers feel more comfortable with pointing out potential safety violations.

### DOL Taking Block Of Persuader Rule To 5th Circ.

The Department of Labor is appealing a November decision permanently blocking a controversial rule requiring businesses that ask for advice on

### Builders

National Association of Insurance Commissioners

National Association of Manufacturers

National Association of Realtors

National Cattlemen's Beef Association

National Corn Growers Association

National Federation of Independent Business

National Mining Association

National Stone, Sand and Gravel Association

National Wildlife Federation

Natural Resources Defense Council

New York City Bar Association  
Office Depot Inc.

OneWest Bank Group LLC

Pacific Legal Foundation

Paramount Pictures Corp.

Penguin Group Inc.

Pfizer Inc.

PhRMA

Philadelphia Newspapers LLC

Planned Parenthood Federation

Quiznos

SYSCO Corporation

Sierra Club

Southern Environmental Law Center

Staples Inc.

Time Inc.

Turner Broadcasting System Inc.

Twitter Inc.

U.S. Chamber of Commerce

U.S. Foods Inc.

Valero Energy Corp.

Vascular Solutions Inc.

Verizon Communications

Volkswagen

Wal-Mart Stores Inc.

Wells Fargo & Co.

Westar Energy, Inc.

eBay Inc.

responding to union campaigns to report when they do so, according to an appeal notice filed Thursday with a Texas federal court.

## COMPETITION

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### FTC Chairwoman Ramirez To Step Down

Federal Trade Commission Chairwoman Edith Ramirez said Friday she would resign from the competition and consumer protection watchdog effective Feb. 10 as President-elect Donald Trump prepares to take office next week.

### DOJ, FTC Update Int'l Antitrust Enforcement Guidelines

The U.S. Department of Justice and the Federal Trade Commission on Friday announced updates to a 22-year-old set of guidelines for international enforcement of U.S. antitrust laws, which shed new light on how federal agencies cooperate with their foreign counterparts during investigations.

## INTERNATIONAL TRADE

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### Ag Groups Press Trump On Cuba As Lawmakers Push Trade

More than 100 agriculture and other commerce groups on Friday urged President-elect Donald Trump to forge ahead with President Barack Obama's efforts to normalize trade with Cuba as a group of bipartisan Congress members co-sponsored a bill earlier this week to lift a decades-old embargo on the island nation.

### Obama Relaxes Sudan Sanctions After Positive Reforms

President Barack Obama on Friday signed an executive order that recognizes a marked reduction in offensive military activity by the government of Sudan against its own people and lifts some sanctions against the African nation, after 20 years of hostile relations between Sudan and the United States.

## TAX

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### Manufacturer Group OK'd To Fight IRS Anti-Inversion Rule

Despite objections from the IRS, the National Association of Manufacturers got the green light from a Texas federal judge Thursday to fight a recent anti-inversion rule and argue that the agency violated its legal obligations to solicit public comments.

## IMMIGRATION

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### DHS Issues Final Rule To Help Int'l Entrepreneurs Stay In US

The Department of Homeland Security has released a final rule that enables entrepreneurs to seek temporary permission to be in the country, known as parole, if they can prove their proposed business would promote the public interest.

### House Chairs Agree On Path To DHS Reform

The chairs of committees in the U.S. House of Representatives that oversee the Department of Homeland Security have reached an agreement to begin work overhauling the agency, which has not been reauthorized since its formation in 2002, according to a statement Thursday from the House Homeland Security Committee.

## GOVERNMENT AGENCIES

Army Corps of Engineers  
Bureau of Citizenship and Immigration Services  
Bureau of Indian Affairs  
California Environmental Protection Agency  
California Public Utilities Commission  
Central Command  
Congressional Budget Office  
Department of Commerce  
Equal Employment Opportunity Commission  
European Commission  
Executive Office of the President  
Federal Communications Commission  
Federal Trade Commission  
Financial Conduct Authority  
Financial Crimes Enforcement Network  
Financial Stability Oversight Council  
Food and Drug Administration  
Government Accountability Office  
Internal Revenue Service  
National Highway Traffic Safety Administration  
National Institute of Standards & Technology  
New York State Gaming Commission  
Occupational Safety and Health Administration  
Office of Federal Contract Compliance Programs  
Pipeline and Hazardous Materials Safety Administration  
Privacy & Civil Liberties Oversight Board  
Securities and Exchange Commission  
Texas Attorney General's Office  
U.S. Agency for International Development  
U.S. Army  
U.S. Department of Defense



## Immigration Bill Roundup: Extending Work Protection, Fence

Members of the 115th Congress introduced immigration-related bills in the past week that included measures to temporarily allow young unauthorized immigrants to work in the U.S. and authorize federal officials to continue building a physical barrier on the nation's southern border.

## NATIVE AMERICAN

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### DOI OKs First New Alaska Tribal Trust Land In Decades

The U.S. Department of the Interior said on Friday that it will take a parcel of land into trust for the federally recognized Craig Tribal Association in Alaska, marking the first land-into-trust action for a tribe in the state since the agency changed a rule that had blocked such acquisitions.

## TELECOMMUNICATIONS

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### Wheeler Asks 'Where's The Fire?' On Nixing Net Neutrality

Federal Communications Commission Chairman Tom Wheeler lodged a final defense of his FCC's Open Internet Order that set net neutrality rules in his last speech Friday, calling for new leaders not to rush to overturn an order that also provides the basis for privacy rules for internet service providers.

### AT&T Lobbies FCC Republican On Privacy Rules, Other Plans

Representatives for AT&T have renewed their arguments at the Federal Communications Commission on business data services, privacy rules for broadband providers and other key issues, checking in on the status of key proceedings with the office of the agency's senior Republican commissioner, Ajit Pai.

### Cable Group Pushes FCC's Pai On Broadband Deployment

The American Cable Association has registered its views on the bidding process for funds to expand broadband in rural areas with the office of senior Republican Federal Communications Commissioner Ajit Pai, recommending a method that maximizes provider participation.

## EXPERT ANALYSIS

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### EPA's New Risk Management Rule Is Here ... For Now

After the 2013 explosion at a fertilizer facility in Texas, President Obama signed an executive order requiring federal agencies to identify improvements to risk management practices. In response, the U.S. Environmental Protection Agency has just published a final rule amending its Risk Management Program regulations. But changes to the Congressional Review Act could affect the rule's future, says Michael Reer of Harris Finley & Bogle PC.

### What Trump High Court Candidates Say About 1st Amendment

As media advocates, we wondered how President-elect Donald Trump's soon-to-be-announced U.S. Supreme Court nominee might react to Trump's vow to shred the hard-won protections now embedded in the law of libel. We found that none of the opinions from judges on his shortlist hint at any inclination to depart from these established rules, say Gayle Sproul and Max Mishkin of Levine Sullivan Koch & Schulz LLP.

### Health Care Enforcement Review And 2017 Outlook: Part 1

U.S. Department of Education  
U.S. Department of Energy  
U.S. Department of Homeland Security  
U.S. Department of Justice  
U.S. Department of Labor  
U.S. Department of Transportation  
U.S. Department of the Interior  
U.S. Environmental Protection Agency  
U.S. House of Representatives  
U.S. Marine Corps  
U.S. Senate  
U.S. Supreme Court  
United Nations  
Wage and Hour Division

Over the past year, clear trends have emerged in the U.S. Food and Drug Administration's enforcement activities. In part one of this four-part series, attorneys at Mintz Levin Cohn Ferris Glovsky and Popeo PC examine key 2016 government policies, regulations and enforcement actions in this area, and the likely impact of these trends on enforcement in 2017.

### [In Congress: More Confirmation Hearings](#)

Democrats will have a difficult time actually defeating any of President-elect Trump's cabinet nominations because of a change they made to the Senate rules to end the filibuster for executive branch nominations. Their goal is not really to defeat the nominees but to draw stark differences early on in the new administration, say Richard Hertling and Kaitlyn McClure of Covington & Burling LLP.

### [Dabbing Into The Financial Side Of Marijuana](#)

Both the U.S. Department of Justice and the Financial Crimes Enforcement Network have provided guidance for brokers and firms doing business with the cannabis industry, concerning how to avoid prosecution for violating the law. However, even 100 percent compliance does not guarantee total safety from investigation, says Neda Ghomeshi of Hunter Taubman Fischer & Li LLC.

## [LEGAL INDUSTRY](#)

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### [How Jed Rakoff, One-Man Circuit Split, Saved Bharara's Bacon](#)

BigLaw and the federal bench turned out in force Friday to witness history's first attempt to transform U.S. District Judge Jed Rakoff's West Coast end-run around the Second Circuit's Newman insider trading decision into the stuff of legend.

### [Dewey's Zach Warren Freed Of Charges Over Firm's Collapse](#)

Zachary Warren, the sole low-level Dewey & LeBoeuf LLP staffer to fight criminal charges over alleged accounting fraud at the now-defunct law firm, on Friday was released early from the terms of a deferred prosecution agreement, and the indictment against him was dismissed.

### [Dewey Execs Trying To Mislead Jury, Prosecutors Say](#)

The Manhattan district attorney's office pushed back Friday at requests by attorneys for two former Dewey & LeBoeuf LLP executives for wide latitude in their cross-examination of the star cooperating witness in the upcoming retrial over alleged accounting fraud at the defunct law firm, saying the defense aims to mislead the upcoming jury.

### [GC Cheat Sheet: The Hottest Corporate News Of The Week](#)

A popular cybersecurity framework heads for an update, the Chamber of Commerce fights a new workplace injury record-keeping rule, and the House of Representatives takes aim at judicial deference to regulators' legal interpretations. These stories top the corporate legal news you may have missed this past week.

### [McDermott Wins Army Concession For Sikhs' Religious Garb](#)

An eight-year "hearts and minds" pro bono campaign led by McDermott Will & Emery LLP recently swayed the U.S. Army to allow Sikhs to serve in the military with beards, long hair and turbans.

### 3rd Circ. To Make Oral Argument Videos Public

The Third Circuit announced Friday that it will begin posting video recordings of certain oral arguments to its website this month, becoming the second federal appeals court to make videos of oral arguments publicly available.

### In Case You Missed It: Hottest Firms and Stories On Law360

For those who missed out, here's a look back at the law firms, stories and expert analyses that generated the most buzz on Law360 last week.

### My Strangest Day In Court: When The Witness Died

Just before walking into court to begin jury selection, I learned from the case agent that a key witness had been found dead over the weekend. During the trial, it was not easy to keep the murdered witness out of my mind, especially with the defendant icily staring at me every time I got up to speak, recalls Tom Melsheimer of Fish & Richardson PC.

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