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**Subject:** Congress Reaches Deal To Avoid Gov't Shutdown

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## PUBLIC POLICY

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Thursday, September 29, 2016

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### TOP NEWS

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#### [Congress Reaches Deal To Avoid Gov't Shutdown](#)

Congress pulled together a compromise measure Wednesday that would avoid a government shutdown at the end of the week, after a deal was struck to allow aid for Flint, Michigan's lead-contaminated water system to proceed in a different bill.

#### [Congress Overrides Obama Veto Of 9/11 Suit Bill](#)

Congress on Wednesday voted to override President Barack Obama's veto of a bill to allow civil suits against foreign officials and countries, particularly Saudi Arabia, for allegations of state and private sponsorship of terror, the first such override of his term.

#### [House OKs Bill To Put Brakes On DOL's Overtime Rule](#)

In the face of a presidential veto threat and numerous Democratic objections, the U.S. House of Representatives voted 246-to-177 Wednesday to delay by an additional six months the U.S. Department of Labor's rule raising the threshold for exemption to overtime pay.

#### [House Passes Water Infrastructure Bill, With Flint Aid](#)

The U.S. House of Representatives on Wednesday passed its version of a bill authorizing U.S. Army Corps of Engineers water infrastructure projects, adding its own measures for aid to Flint, Michigan, and altering Corps policy related to Native American tribes.

#### [House GOP To Take CFPB To Task Over Wells Fargo Scandal](#)

The House Financial Services Committee is expected to blast Wells Fargo & Co. Chairman and CEO John Stumpf on Thursday over the more than 2 million unauthorized accounts his employees created, but committee Republicans will also attempt to turn up the heat on regulators for not stepping in sooner.

#### [Yellen Says Fed, FDIC Ready To Act If Living Wills Are Weak](#)

Federal Reserve Chair Janet Yellen said Wednesday that regulators will be prepared to mete out penalties to five giant banks scheduled to file revised resolution plans later this week if there are not significant improvements to

### LAW FIRMS

Akin Gump  
Archer & Greiner  
Baker & McKenzie  
Berger Singerman  
Cogan & Power  
Cravath Swaine  
Cray Huber  
Curtin & Heefner  
Fox Rothschild  
Gallagher & Kennedy  
Gibson Dunn  
Goldberg Segalla  
Harrison Sale  
Irell & Manella  
Jackson Lewis  
Jenner & Block  
Kleinbard LLC  
Mayer Brown  
McNabola Law Group  
Munger Tolles  
Perkins Coie  
Phillips & Cohen LLP  
Pillsbury Winthrop  
Shearman & Sterling  
Sheppard Mullin  
Sills Cummis  
Skadden  
Squire Patton Boggs  
Venable LLP  
Verrill Dana

the so-called living wills.

## Munger Tolles Scores Ex-SG Verrilli To Launch DC Office

Former Solicitor General Donald B. Verrilli Jr., known for his successful U.S. Supreme Court defenses of the Affordable Care Act and marriage equality, is heading back to private practice at Munger Tolles & Olson LLP to open up its new Washington, D.C., office, the firm announced on Wednesday.

## ANALYSIS

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### Set-Top Box Plan Likely To Headline Active FCC Meeting

The Federal Communications Commission will take up a slate of key issues at its Thursday meeting, with experts predicting narrow passage of a blockbuster vote on the embattled proposal to unlock consumers' set-top boxes even as the final details remain uncertain.

### 5 Takeaways As Major Nursing Home Rule Finalized

Federal regulators on Wednesday finalized the first major overhaul of nursing home regulations in 25 years, banning mandatory arbitration in cases of patient harm, but also ditching controversial proposals on patient screening and rehabilitation. Here are five takeaways from the rule.

## BANKING & SECURITIES

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### SEC Reluctantly Adopts New Clearing Agency Standards

The U.S. Securities and Exchange Commission voted Wednesday to adopt rules to strengthen regulations of systemically important clearing agencies and propose changes to clearing settlement cycles, even though two of the agency's commissioners expressed reservations with the new standards.

### Senate Ag Committee Sends CFTC Nominees Forward

The U.S. Commodities Futures Trading Commission took another step toward a full complement of five commissioners on Wednesday, when the Senate agriculture committee voted to approve two nominees and send their nominations to the Senate floor.

### Lynn Tilton Justifies Latest Suit Over SEC In-House Rules

Private equity magnate Lynn Tilton told a New York federal judge in a letter on Tuesday why her new suit challenging the U.S. Securities and Exchange Commission's use of administrative proceedings passes jurisdictional muster, saying the new complaint includes due process and equal protection claims.

## ENERGY & ENVIRONMENTAL

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### Enviros Claim EPA Failing To Limit States' Airborne Pollution

Two nonprofits accused the U.S. Environmental Protection Agency in California federal court on Tuesday of failing to timely ensure that states comply with federal air quality standards on airborne particles associated with power plants and automobiles that pose threats to human health and the environment.

### Scope Of Natural Gas Law Again Limited By Pa. High Court

Pennsylvania's controversial law governing oil and gas drilling in the state was once again weakened by the state Supreme Court, which on Wednesday invalidated provisions that allow limitations on post-spill drinking water

White and Williams

Wilson Elser

## COMPANIES

AT&T Inc.

Agricultural Retailers Associati

Altera Corporation

Amazon.com Inc.

American Association for Justic

Association of Corporate Couns

BTI Consulting Group Inc.

Bank of America Corporation

CSP Inc.

Center for Biological Diversity I

Depository Trust & Clearing Co

General Electric Company

Google Inc.

Immigration Reform Law Institu

International Swaps and  
Derivatives Association

JPMorgan Chase & Co.

Lehman Brothers Holdings Inc.

Los Angeles Times

Lyft Inc.

Maine Medical Center

McGraw Hill Financial Inc.

Metro-Goldwyn-Mayer Studios

Minnesota Lawyers Mutual  
Insurance Co.

Mortgage Bankers Association

Mylan NV

NBCUniversal Inc.

National Association of  
Broadcasters

National Association of Insuran  
Commissioners

National Association of  
Manufacturers

National Federation of  
Independent Business

Oracle Corporation

Penguin Group Inc.

Planned Parenthood Federati

Recording Industry Association  
America

Southern California Edison

State Street Corp.

Teva Pharmaceutical Industries

notifications, block physicians from disclosing components in fracking chemicals and give natural gas shippers the power to use eminent domain.

## TRANSPORTATION & INFRASTRUCTURE

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### Unequal Rules On Uber, Lyft Threaten Philly Cabs, Judge Told

Cabdrivers packed a Pennsylvania federal judge's courtroom on Wednesday as a string of witnesses testified in support of an injunction to strip the Philadelphia Parking Authority of its ability to enforce regulations on taxis that exceed burdens placed on ride-sharing services like Uber and Lyft.

### Defense Attacks GWB Scandal Mastermind's Testimony

An attorney for a former public official on trial over the George Washington Bridge lane closures pounced Wednesday on a series of disparaging text messages by the mastermind behind the scandal to challenge claims that the two men were close friends and took part in a political payback scheme.

## INSURANCE

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### Lawmakers Question US-EU Insurance Talks' Transparency

A federal insurance regulator told a House subcommittee Wednesday that substantial progress has been made on a bilateral deal designed to place U. S. and European Union insurers and reinsurers on equal footing, while lawmakers continued to press for greater transparency on the talks.

### Fla. Court Says Local Insurance Regs Preempted By State Law

A Florida appeals court on Wednesday sided with a Panama City Beach motor scooter rental company in its fight with the city and Bay County, ruling that local ordinances mandating insurance coverage levels and safety vests are preempted by Florida law.

## REAL ESTATE

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### Thousands Ask Treasury To Kill Estate Transfer Proposal

More than 3,800 family-owned businesses and trade groups have called on U.S. Treasury Secretary Jacob Lew to withdraw controversial regulations that have been proposed to prevent the undervaluation of transferred interests for estate tax purposes, according to a statement Wednesday from the National Association of Manufacturers.

### New Rules Proposed For 'Zombie Properties' In New York

New York Democratic Gov. Andrew Cuomo on Tuesday said that the state's Department of Financial Services has proposed a new regulation that will require banks and mortgage servicers to inspect delinquent properties and secure any so-called zombie properties that they find are abandoned.

## PRIVACY & CONSUMER PROTECTION

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### Calif. Suspends Biz With Wells Fargo Over Accounts Scandal

California's state treasurer on Wednesday announced that the Golden State will suspend its business relationship with Wells Fargo & Co. for one year to sanction the bank for opening millions of unauthorized customer accounts, in a growing scandal that has spawned a \$185 million fine along with shareholder and employee putative class actions.

Limited

The Bank of New York Mellon Corporation

The Fertilizer Institute

U.S. Chamber of Commerce

Uber Technologies Inc.

United States Council for International Business

Wells Fargo & Co.

Yelp Inc.

Zeughauser Group LLC

## GOVERNMENT AGENCIES

Army Corps of Engineers

California Public Employees' Retirement System

California State Treasurer's Office  
Centers for Medicare & Medicaid Services

Commodity Futures Trading Commission

Consumer Financial Protection Bureau

Defense Logistics Agency

Department of Commerce

Equal Employment Opportunity Commission

European Commission

Executive Office of the President

Export-Import Bank of the United States

Federal Acquisition Regulatory Council

Federal Communications Commission

Federal Deposit Insurance Corporation  
Federal Reserve System

Financial Stability Oversight Council

Food and Drug Administration  
Internal Revenue Service

National Labor Relations Board  
Occupational Safety and Health Administration

Office of the Comptroller of the Currency

Oneida Indian Nation

Port Authority of New York & New Jersey

## EU Floats Update To Tighten Cybersecurity Export Rules

The European Commission on Wednesday moved to update rules governing the export of cybersurveillance tools in order to make it more difficult for the dual-use technologies to be used to carry out human rights violations or terrorism, while clarifying obligations for exporters and national authorities.

## GOVERNMENT CONTRACTS

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### Sens. Ask DOJ If Mylan's EpiPen Rebates Violate FCA

Three U.S. senators on Wednesday asked Attorney General Loretta Lynch whether the U.S. Department of Justice is investigating possible False Claims Act violations by Mylan NV after questions arose on whether the company may be underpaying Medicaid rebates for its epinephrine injector EpiPen.

### No Issues With Army's \$439M Energy Leases, Watchdog Says

The Pentagon's internal watchdog gave a clean bill of health Wednesday to the U.S. Army's leasing of land for use in solar energy projects, totaling more than \$439 million, turning up nothing after an anonymous tipster alleged the property was leased to utility companies without employing competitive procedures.

### HHS Wins Medicare Payment Fight Against Maine Hospital

The U.S. Department of Health and Human Services was right to bar Central Maine Medical Center from amending its appeal of how much it should have been reimbursed by Medicare in 2007 because the wrong organization submitted the request, a Maine federal judge ruled Wednesday.

## INTERNATIONAL TRADE

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### US, EU Slam Russia For Spurning WTO Commitments

U.S. and European Union officials on Wednesday battered Russia for disregarding a litany of World Trade Organization rules since becoming a full member four years ago, taking Moscow to task on issues ranging from intellectual property rights to food safety rules disguised as trade barriers.

## TAX

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### Multistate Tax Commission Slams Goodlatte's Sales Tax Plan

The Multistate Tax Commission blasted Rep. Bob Goodlatte's proposal to help states levy taxes on out-of-state sales, regardless of a vendor's physical presence there, as one that will create unproductive competition and administrative and constitutional headaches.

### Amazon Says IRS Did Not Justify Now-Axed Cost-Sharing Rule

Amazon.com Inc. has sided with a chipmaker and urged the Ninth Circuit to uphold the U.S. Tax Court's revocation of an IRS rule on stock-based compensation in cost-sharing agreements, saying the agency did not adequately justify its rationale for adopting the rule.

## IMMIGRATION

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### IT Workers Appeal After Judge Upholds Spousal Visa Rule

A group of information technology workers who claim they were replaced by H-1B visa holders is appealing a decision upholding a new U.S. Department of Homeland Security rule that would allow spouses of certain H-1B workers

Securities and Exchange  
Commission

U.S. Army

U.S. Department of Defense

U.S. Department of Health and  
Human Services

U.S. Department of Homeland  
Security

U.S. Department of Justice

U.S. Department of Labor

U.S. Department of Veterans  
Affairs

U.S. Department of the Treasur

U.S. Environmental Protection  
Agency

U.S. General Services  
Administration

U.S. House of Representatives

U.S. Navy

U.S. Secret Service

U.S. Senate

U.S. Supreme Court

United Nations

to apply for employment authorization.

## TELECOMMUNICATIONS

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### Gov't Asked To Fight UN Efforts To Regulate Net

An international business trade association, which includes as its members law firms and major multinational companies, released a statement on Tuesday pressing the U.S. government to keep a lid on a foray into internet governance from a United Nations agency that develops global telecommunications standards.

## PEOPLE

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### Norberg Named As New SEC Whistleblower Chief

The U.S. Securities and Exchange Commission on Wednesday announced the appointment of the second head of its whistleblower program.

### Obama Taps New Ambassador To Cuba In Late-Term Gambit

President Barack Obama announced his intent to nominate the first ambassador to Cuba in more than five decades late Tuesday, teeing up a fierce battle with lawmakers opposing his ongoing attempt to open U.S. trade, immigration and sanctions policy toward Havana.

## EXPERT ANALYSIS

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### 4 Considerations For Challenging Agency Actions

The U.S. Supreme Court's 2015 decision in *Perez v. Mortgage Bankers Association* seemed to foreclose many challenges to so-called "interpretive rules" issued by federal agencies. However, the D.C. Circuit's recent decision in *Agricultural Retailers Association and The Fertilizer Institute v. U.S. Department of Labor* presents a road map for developing successful litigation against ostensibly "interpretive" agency guidance, say attorneys with Gallagher & Kennedy PA.

### What To Know About EEOC's New Retaliation Guidance

The U.S. Equal Employment Opportunity Commission's recent guidance on retaliation attempts to help employers reduce the likelihood of retaliation by, among other things, outlining its analyses of recent case law and providing concrete examples. However, this does not always mean the agency agrees with the court rulings or that all court interpretations are incorporated into the guidance, says Matthew Cooper of Squire Patton Boggs LLP.

### Problems In New General Services Administration OIG Memo

The U.S. General Services Administration Office of the Inspector General recently issued a memorandum — the fourth in a series over the past several years — detailing major issues identified during the OIG's fiscal year 2014 pre-award audits. The findings are based on two faulty premises, say Dismas Locaria and Melanie Totman of Venable LLP.

### Daubert V. Frye: A Battle Of The Branches

The Florida Supreme Court is currently debating whether the court will follow the Daubert standard for admissibility of expert testimony, or if it will revert to the more lenient Frye standard. This issue, reflective of a power struggle between the Florida Legislature and Florida Supreme Court, clouds the validity of trial results and forces lawyers to gamble on the outcome of the

debate when evaluating case strategy, say Jordan Isrow and James Gassenheimer of Berger Singerman LLP.

### [The Courtroom Where It Happened: Hamilton As A Lawyer](#)

Often lost in discussions about Alexander Hamilton is that he was an extremely important New York lawyer. He had an extensive law practice until his death in 1804 and he wrote what is considered to be the first treatise in the field of private law. Ultimately, Hamilton certainly did get "a lot farther by working a lot harder, by being a lot smarter, by being a self-starter," says Randy Maniloff of White and Williams LLP.

## LEGAL INDUSTRY

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### [3 Cases That Clarify When To Call Your Malpractice Insurer](#)

Every legal malpractice policy outlines the duty to alert a carrier of an expected claim, and while most triggers aren't hard to identify, there are situations in which a lawyer might miscalculate and fail to give the carrier a heads-up, putting coverage at risk. Here are three cases that shed light on the lawyer's duty to notify.

### [Why A Yelp For Lawyers Remains A Tough Sell](#)

Word of mouth may still be the dominant force in law firm hiring decisions, but the general counsel community has yet to buy into the idea of a publicly accessible online database of lawyer assessments, even at a time when reviews on everything from pizza parlors to babysitters are plentiful. Here's why experts say a Yelp for lawyers has yet to catch on and what it would take for that to change.

### [Pro Bono Firm Of 2016: Irell & Manella](#)

Thanks to the work of Irell & Manella LLP, a Los Angeles-area school district will recognize the impact of trauma on students' learning experiences and a former U.S. Department of Veterans Affairs worker is getting nearly 10 times what the agency had previously offered to end his discrimination suit, putting the firm squarely among Law360's Pro Bono Firms of 2016.

### [Rainmaker Q&A: Jackson Lewis' John Bennett](#)

Not all calls to a client have to be about a particular matter. Rather, some calls are just to stay in touch and find out what is going on with them in their business and family lives, says John Bennet, a principal at Jackson Lewis PC.

### [Rainmaker Q&A: Sills Cummis' Andrew Sherman](#)

Find a mentor and do your best to hitch your wagon to that person. I learned to develop business by modeling other successful lawyers, but having a mentor to teach you the ropes is a much cleaner and easier path, says Andrew Sherman, co-chairman of the creditors' rights/bankruptcy reorganization practice group at Sills Cummis & Gross PC.

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