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## 2016 Election – Impact on Compliance Issues

Legislative Alert 31-2016 November 9, 2016

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| <b>Highlights:</b> | <ul style="list-style-type: none"><li>▪ Republican candidate Donald Trump will become the 45th president of the United States.</li><li>▪ Republicans also retained majorities in both the U.S. Senate and House of Representatives.</li><li>▪ Despite the forthcoming change in power, there will likely be no significant legislative or regulatory changes prior to 2017.</li></ul> | <b>Important Dates:</b> | <ul style="list-style-type: none"><li>▪ <b>November 8, 2016</b><br/>Republican candidate Donald Trump is elected the 45th U.S. president.</li><li>▪ <b>January 20, 2017</b><br/>The president-elect will take office</li></ul> |
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### Overview

After hard-fought campaigns by both candidates, Republican candidate Donald Trump has been elected the 45th president of the United States. Trump's victory in the election, along with Republican majorities retained in both the Senate and House of Representatives, will likely have a significant impact on a number of compliance issues over the next four years.

During his campaign, Trump called for a repeal of President Barack Obama's hallmark health care reform legislation, the Affordable Care Act (ACA). In addition, Trump's victory raises uncertainty over the future of other policies enacted under President Obama, including the new overtime requirements under the Fair Labor Standards Act (FLSA).

### Action Steps

President-elect Donald Trump will not take office until he is inaugurated on Jan. 20, 2017. This means that, despite the coming change in power, there will likely be no significant legislative or regulatory changes prior to 2017. As a result, employers should continue to prepare for upcoming requirements and deadlines to ensure full compliance.

### The Election Results

Nov. 8, 2016, Republican candidate Donald Trump won the presidential election in a surprising upset. In addition, Republicans retained control of both houses of the U.S. Congress—the Senate and the House of Representatives—losing only a handful of seats in each. This means that the vacancy left in the U.S. Supreme Court by the death of Justice Antonin Scalia will be filled by a Republican-selected nominee, giving Republicans unified control of the federal government.

### The Future of the Affordable Care Act

Throughout his presidential campaign, Trump ran on a platform of repealing and replacing the ACA. In addition, since its enactment, Republicans in both the Senate and the House of Representatives have virtually all opposed the ACA, calling for its repeal.

Due to the sweeping Republican victories seen in this election, it is likely that some changes will be made to the ACA over the next four years. While it is largely unclear, at this time, what those changes will look like, Republicans in the past have suggested the following:

- Full repeal of the ACA, with or without a potential replacement health care reform legislation;
- Partial repeal of key provisions (such as the individual and employer mandates), while retaining some less controversial provisions;
- Changes to the Medicare and Medicaid programs; and
- Implementing new policies intended to expand coverage and lower health care costs.

However, the newly elected officials will not take office until early 2017. This means that there will likely be no significant legislative or regulatory changes to the ACA before then. Due to the additional uncertainty for employers, with compliance obligations hinging on the political process, employers may want to hold off on making any large-scale changes related to their employer-provided health care.

Regardless of any future changes that may be made, employers that provide group health coverage for their employees must prepare for upcoming ACA deadlines. These may include:

- **Employer Shared Responsibility Rules.** The ACA requires applicable large employers (ALEs) to offer affordable, minimum value health coverage to their full-time employees (and dependent children). Penalties can apply for each month in which an ALE does not offer this required coverage.
- **Employer Reporting of Coverage.** Employers must also report information under Sections 6055 and 6056 to the IRS and to certain individuals about the coverage they offer or provide during the year. Returns and statements for each calendar year are due at the beginning of the following year.
- **Changes to ACA Limits for 2017.** Several dollar limits are adjusted each year, and employer-sponsored plans should be updated to reflect those adjusted limits. For example, the out-of-pocket maximum increased to \$7,150 for self-only coverage and \$14,300 for family coverage for the 2017 plan year.
- **Summary of Benefits and Coverage (SBC).** Health plans and issuers must provide an SBC to participants and beneficiaries that includes information about health plan benefits and coverage in plain language. The Departments issued a new SBC template and related materials to be used for health plans with open enrollment periods or plan years beginning on or after April 1, 2017.

### Additional Compliance Issues

The 2016 election results also raise questions over other compliance requirements that are set to take effect later in 2016.

- New overtime wage payment rules under the FLSA are set to take effect on Dec. 1, 2016. These rules increase the salary that must be paid for an employee to qualify for a “white collar exemption.”
- Clarifications to existing anti-retaliation rules issued by the Occupational Safety and Health Administration (OSHA) are also set to take effect on Dec. 1, 2016, after a number of delays. These clarifications relate to the requirement for certain employers to electronically submit data from their work-related injury records to OSHA.

Both of these rules are facing lawsuits that are unrelated to the election results. We are currently monitoring whether there will be any changes to these rules or their implementation dates due to this litigation.

Despite the forthcoming change in power in 2017, these new rules are currently set to be implemented as planned. Any changes made related to the change in administration would take place after the Dec. 1, 2016, deadline. As a result, affected employers should continue to prepare for compliance by Dec. 1, 2016.