



# U.S. CHAMBER OF COMMERCE

## U.S. Chamber Policy Accomplishments January–December 2015

### ANTITRUST

- Successfully sought changes in the Senate to limit whistle-blower protection to employees who cooperate with federal authorities to prosecute criminal antitrust violations. Changes were necessary to address poor drafting that left the bill open to interpretation. The bill as originally drafted, arguably, also extended whistle-blower protection to employees who, instead of cooperating with the federal government, could go directly to the trial bar and support private litigation.
- The Federal Trade Commission (FTC), for the first time in its more than 100 years in existence, issued guidance on how it seeks to apply its “unfair methods of competition” authority, commonly known as Section 5. The Chamber has been the leading advocate for guidance arguing that the ambiguous nature of Section 5 causes uncertainty for the business community and at times has been abused by the FTC. Securing guidance is an important step, but it falls well short of the clarity business needs.

### CAPITAL MARKETS, CORPORATE GOVERNANCE, AND SECURITIES REGULATION

**Access to Capital and Regulatory Reform Legislation: Multiple Priority Bills Pass Congress:** The Chamber and its Center for Capital Markets Competitiveness (CCMC) strongly supported several key pieces of financial reform legislation that were included as provisions of the FAST Act, passed by Congress, and were signed by the president in December. Relevant provisions included legislation that does the following:

- Reduces the road show waiting period for emerging growth companies.
- Allows advisors to small business investment companies (SBICs) to maintain exempt status for venture capital funds.
- Permits private employee resale of company-issued securities.
- Makes credit unions eligible for the Federal Home Loan Bank system.
- Simplifies security offering registration for small companies.
- Ensures fair treatment of debt and equity instruments of smaller institutions.

- Helps expand lending practices in rural communities.
- Simplifies disclosures for 10-K summary pages.
- Eliminates privacy notice confusion for consumers.
- Reforms small bank exam cycles.
- Equalizes company registration thresholds.
- Repeals indemnification requirements for swap data.

#### **Arbitration: CFPB Agrees to Hold SBREFA Panel on Arbitration**

- The Consumer Financial Protection Bureau (CFPB) agreed to hold a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel last summer before deciding whether to initiate a rulemaking on arbitration agreements in consumer contracts. CCMC had sent a letter to CFPB requesting that the bureau solicit public comments, such as those provided by a SBREFA panel, on the results of its arbitration study prior to initiating a rulemaking.

#### **Auditing: PCAOB and SEC Call for Stakeholders Meeting to Address Rising Internal Control Costs**

- In August, the Public Company Accounting Oversight Board (PCAOB) and the Securities and Exchange Commission (SEC) called a meeting of stakeholders to address concerns with rising internal control costs resulting from PCAOB enforcement practices. This was the result of a yearlong effort by the CCMC's Financial Reporting Working Group, including a letter to the PCAOB and the SEC calling such a meeting, as well as meetings with PCAOB board members, the SEC chief accountant, and key House and Senate committee staff.

#### **CFPB/DoD: Two-Year Carve Out for Credit Cards in Final Military Lending Act Rule**

- In July, the Department of Defense (DoD) issued its final Military Lending Act rule that included a two-year carve out for credit cards. CCMC had previously written to DoD and CFPB urging changes that would alleviate significant concerns that the rule was unworkable for many credit card providers and would have unnecessarily broad consequences in the credit card market.

#### **Conflict Minerals: D.C. Circuit Reaffirms That Disclosure Violates First Amendment**

- In August, the D.C. Circuit Court of Appeals reaffirmed its initial holding that the SEC's conflict minerals disclosure requirement violates the First Amendment's Free Speech Clause. The Chamber had joined a broad-based business coalition, including the National Association of Manufacturers and the Business Roundtable, to challenge the SEC's rule.

#### **Corporate Governance: Successful Launch of New Joint Trades Coalition**

- In July, CCMC announced the formation of the Corporate Governance Coalition for Investor Value, a new Chamber-led coalition composed of 14 trade associations. The coalition was formed to provide a forum for its members to discuss issues of

common interest and advocate for strong corporate governance policies and federal securities laws.

### **Derivatives: Centralized Treasury Unit Legislation Signed Into Law**

- In December, Congress passed legislation as part of the omnibus spending bill that would protect derivatives end users from unintended regulatory consequences by clarifying that nonfinancial companies that hedge business risk through a centralized treasury unit (CTU) can claim exemptions from clearing and margin requirements. CCMC strongly supported the legislation.

### **Derivatives: Margin Bill Signed Into Law**

- In January, Congress passed and the president signed into law a critical clarification to the Dodd-Frank Act by creating an end-user margin exemption for derivatives transactions. The legislation, which was included in the larger Terrorism Risk Insurance Act (TRIA) reauthorization, resulted from the strong engagement of the Chamber's Coalition for Derivatives End-Users, which worked collectively for several years to achieve this important goal.

### **Dodd-Frank: Sen. Warren's Trade Bill Amendment Defeated**

- In May, after significant lobbying by CCMC and the Chamber's Congressional Affairs team, the Senate defeated an amendment introduced by Sen. Elizabeth Warren to Trade Promotion Authority legislation that would have altered it so that any trade accord that included provisions on financial services would be ineligible for consideration under fast track authority.

### **Fiduciary Duty: DOL Extends Comment Period**

- In May, the Department of Labor (DOL) announced that it would be extending its comment period for its fiduciary rule to 90 days. CCMC had written to DOL requesting this extension because of the wholesale change the proposal makes to existing regulations, the degree to which it vastly differs from DOL's prior proposal, the complexity of the proposal, and specifically, the Employee Benefits Security Administration's past practice of providing longer comment periods for other rulemakings.

### **International: Delayed European Money Market Reform**

- The European Union chose not to adopt money market mutual fund reform in 2015. CCMC had recommended and advocated against the proposed reforms in Europe through a combination of comments, stakeholder meetings, and events in Europe.

### **Pay Ratio: Important Changes Made to Final SEC Rule**

- In August, the SEC finalized its pay ratio rule that included four key changes from what CCMC had advocated: (1) emerging growth companies, nonaccelerated filers, and investment companies are exempt; (2) the ratio has to be reported every three years unless there is a significant change in pay structures, beginning with fiscal years starting in 2017; (3) up to 5% of foreign workers may be exempt, and if workers are

exempt in a jurisdiction, the company has to exempt all employees in a jurisdiction; and (4) companies will not be required to gather these data in jurisdictions in which these data would violate privacy laws.

### **Political Spending Disclosures: SEC Halts Potential Rulemaking**

- Following significant opposition from the Chamber and CCMC, the SEC took a potential political spending disclosure rulemaking off its rulemaking agenda this fall. The year-end congressional spending bill also includes a funding restriction that prohibits such a rulemaking from moving forward.

### **Real Estate: New Rules for REIT Spin-Offs**

- The Chamber and CCMC successfully added a provision to the tax extender's package that provides for a transition rule allowing businesses to have a limited period to recognize a spin-off of real estate assets into a controlled Real Estate Investment Trust (REIT).

### **SEC Enforcement: Proposed Amendments to Rules of Practice**

- In October, the SEC proposed several changes to its enforcement program, including adjusting the timing of hearings in administrative proceedings and allowing for discovery of depositions, among others. CCMC had previously called and advocated for many of these changes, including in a report published in July titled *Examining U.S. Securities and Exchange Commission Enforcement: Recommendations on Current Processes and Practices*.

### **Systemic Risk: FSB and IOSCO Withdraw NBNI Proposal for Second Year**

- In July, the Financial Stability Board (FSB) and the International Organization of Securities Commissions (IOSCO) announced that they would withdraw their proposed assessment methodologies for non-bank non-insurer (NBNI) globally systemically important financial institutions (G-SIFIs). This was a positive development for the industry and a victory for CCMC, which wrote a letter to FSB and IOSCO in May urging caution and careful consideration of the costs and benefits associated with initiating a G-SIFI process and seeking to impose additional regulation on funds and asset managers

### **Systemic Risk: Enhancements to FSOC Process and Transparency**

- In January, the Financial Stability Oversight Council (FSOC) adopted several measures designed to improve the council's process and transparency for systemic risk designations. CCMC had previously called and advocated for many of these changes, including in a report published in July titled *Examining U.S. Securities and Exchange Commission Enforcement: Recommendations on Current Processes and Practices*.

### **Systemic Risk: FSOC Delays Review of Asset Management Products and Activities**

- In September, FSOC ceded action to SEC to implement enhanced rules for the regulation of systemic risk in asset management. FSOC also delayed finalizing its review of asset management products and services until after all the SEC rules are

completed. CCMC has long advocated such action and encouraged FSOC to take the time to acquire additional information on the asset management industry before taking further action.

### **Systemic Risk: FSOC Extends Comment Period for Asset Management Products and Activities Request for Information**

- In February, FSOC granted a 30 day comment period extension for its request for information (RFI) on asset management products and activities. CCMC had advocated for this extension.

### **Terrorism Risk Insurance Act**

- Secured a six-year reauthorization of TRIA, a risk-sharing program that was established following the terrorist attacks on 9/11 and provides a government backstop to commercial property and casualty insurance losses caused by a catastrophic act of terrorism.

## **DEFICITS AND DEBT**

### **Debt Ceiling and Spending**

- Successfully helped persuade Congress to pass a Budget Resolution for fiscal year 2016 and then an overall two-year budget deal through fiscal year 2017.
- Successfully helped persuade Congress to raise the debt ceiling well into 2017.
- Successfully ensured that the pressing need for fundamental entitlement reform remains on the nation's policy agenda.

## **EDUCATION AND WORKFORCE DEVELOPMENT**

- The Chamber was successful in ensuring that the Every Student Succeeds Act (No Child Left Behind reauthorization) reflects many of the key principals we advocated for throughout the process, including high-quality standards and annual assessments, transparency of student outcomes and school performance, accountability for academic achievement of all students, consequences for low-performing schools, and more choices for students and families.
- The House passed the America COMPETES Reauthorization Act of 2015 (H.R. 1806), which provides for greater public investment in STEM (science, technology, engineering, and mathematics) education and workforce development through authorizing funding for civilian research and education programs in the National Science Foundation (NSF), the National Institute of Standards and Technology (NIST), the Department of Energy (DOE), and the Office of Science and Technology Policy. Congress passed in 2007 the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science (COMPETES) Act, and funding authorizations in the Act have expired. The Senate has yet to take action.

- The House passed the Scholarships for Opportunity and Results Reauthorization (SOAR) Act (H.R. 10), which provides school choice options to low-income parents in the District of Columbia. H.R. 10 would ensure the continuation of the nation's only school choice program supported by the federal government. This year alone, the DC Opportunity Scholarship program enabled 1,442 students to select from over 50 participating schools. Many of these students previously attended persistently underperforming public schools in our nation's capital, which despite recent improvements have a collective graduation rate below 60%.

## **ELECTIONS AND GRASSROOTS ADVOCACY**

### **Elections**

- Successfully engaged in three special elections: the NY-11 special election, the MS-01 runoff, and the IL-18 primary through independent expenditures, endorsement events, grassroots and get-out-the-vote outreach, and national and local earned media campaigns.
- Launched the first voter education program campaign of 2016 with television and digital ads in the Arizona, Illinois, Nevada, New Hampshire, Pennsylvania, and Ohio Senate races.
- Hired an in-house researcher and candidate tracker to enhance rapid response efforts in supporting and opposing federal candidates.

### **Grassroots**

- Executed a multimillion-dollar campaign to reauthorize the Export-Import Bank through television, radio and digital ads, and phone patches.
- Mobilized grassroots assets to strengthen the business community's collective efforts to pass legislation including the doc fix, Trade Promotion Authority, and a long-term transportation bill.
- Expanded the size, scope, and strength of the Chamber's grassroots and individual membership through the Friends of the U.S. Chamber and the Free Enterprise Network.

## **ENERGY AND THE ENVIRONMENT**

### **Carbon Regulations for Power Plants**

- Successfully advocated for House and Senate passage of H.J. Res. 71 and 72 and S.J. Res. 23 and 24, respectively, Congressional Review Act resolutions disapproving of the Environmental Protection Agency's (EPA's) final regulations of greenhouse gas emissions from existing power plants, as well as new, modified, and reconstructed power plants.
- Successfully advocated for House passage of H.R. 2042, the Ratepayer Protection Act on June 24 by a bipartisan vote of 247-180. H.R. 2042 would preserve states' long-standing responsibility for electricity system oversight and would protect American

households and businesses from the economic and electricity reliability threats posed by power plant carbon regulations proposed by EPA.

### **Energy Exports**

- Organized locally hosted events in five states highlighting how the benefits of exporting U.S. oil extend to the broader business community beyond energy companies.
- Successfully argued that the Senate Energy & Natural Resources Committee should mark up and report legislation lifting the ban on crude exports.
- Secured House Energy and Commerce Committee markup and passage of legislation lifting the crude oil export ban.
- Made a major grassroots push resulting in bipartisan passage of H.R. 702, a bill to lift the ban on crude oil exports.
- Successfully recommended to congressional leadership that the provision to lift the crude export ban be included in the omnibus appropriations bill. Made major grassroots push resulting in broad bipartisan passage.

### **Energy**

- Successfully advocated for House passage of H.R. 8, the North American Energy Security and Infrastructure Act of 2015 on December 3 by a bipartisan vote of 249-174. H.R. 8 will help improve and modernize our energy policy, including ensuring prompt decisions from the Department of Energy for license applications to export Liquefied Natural Gas (LNG) and addressing the mandate from the Energy Independence and Security Act of 2007 that eliminated fossil-fuel derived energy in federal buildings.

### **Permit Streamlining**

- Successfully advocated for the inclusion of Title 41 in H.R. 22, the Fixing America's Surface Transportation [FAST] Act, which the president signed into law on December 4, shortly after the House and Senate passed it. Title 41 includes many of the permit streamlining provisions from S. 280, the Federal Permitting Improvement Act. Enactment of these permit streamlining provisions caps off several years of lobbying efforts on the part of the Chamber to improve the federal permitting process in order to encourage greater development, construction, and job creation.
- Successfully advocated for House passage of H.R. 348, the Responsibly And Professionally Invigorating Development Act (RAPID) on September 25 by a bipartisan vote of 233-170. The RAPID Act would improve and streamline the federal permitting process, including imposing deadlines on the permitting and environmental review, designating a lead agency, coordinating participating agencies, and shortening the statute of limitations for National Environmental Policy Act (NEPA) decisions.
- Successfully advocated for Senate passage of S. 280, the Federal Permitting Improvement Act, as part of the six-year highway bill that passed on July 30 by a bipartisan vote of 65-34. Before that, on May 6, the Federal Permitting Improvement

Act passed the Senate Homeland Security and Government Affairs Committee by a vote of 12-1, including Democratic members of the committee supporting the legislation that would streamline the federal permitting process.

- Successfully advocated for passage of the RAPID Act by the House Judiciary Committee on March 24. As the Chamber's *Project No Project* report has demonstrated, there are millions of jobs that are never created because of a dysfunctional permitting system that delays or cancels major infrastructure projects. The RAPID Act would speed up the permitting process for infrastructure projects, enabling jobs to be created and the economy to grow.

### **Endangered Species Act Reform**

- Successfully advocated on the Endangered Species Act listing decision of the Northern long-eared (NLE) bat. On April 2, the U.S. Fish and Wildlife Service (the Service) issued a decision to list the NLE bat as "threatened" with a 4(d) rule. While the decision is still being challenged and will present economic and land development problems for numerous industries across a significant part of the country, the avoidance of an "endangered" listing was important. The NLE bat, which has a habitat range spanning 39 states, has seen population declines because of "white-nose" syndrome and not human activities, as acknowledged by the Service. The Chamber challenged the NLE bat listing on multiple occasions, including filing comments and meeting with the Service.

### **Energy Savings Performance Contracts (ESPCs)**

- Successfully advocated for the inclusion of language in the 2016 Joint Budget Resolution that addresses the scoring of ESPCs and Utility Energy Service Contracts (UESCs). Specifically, the Senate changed Congressional Budget Office scoring of ESPCs and UESCs to more closely track how the Office of Management and Budget scores ESPCs and UESCs. The House Budget Committee agreed to undertake a study on the scoring of ESPCs and UESCs.
- The Chamber's ongoing efforts to support ESPCs and UESCs helped contribute to the administration's commitment to extend its ESPC and UESC initiative with a goal of \$2 billion in federal performance contracts for federal facilities through 2016.

### **Energy Efficiency**

- Successfully advocated for passage and enactment of S. 535, the Energy Efficiency Improvement Act of 2015. The president signed S. 535 into law on April 30. The law will establish voluntary standards to improve energy efficiency in leased buildings and modify U.S. Department of Energy efficiency standards for grid-enabled water heaters.

### **Chemical Management Reform**

- Successfully advocated for passage of H.R. 2576, the TSCA Modernization Act of 2015. H.R. 2576 would update some portions of the Toxic Substances Control Act (TSCA) and provide limited preemption for state regulation of toxic substances regulated by EPA. H.R. 2576 passed the House by a 398-1 vote on June 23.

- Successfully advocated for Senate passage of S. 697, the Frank R. Lautenberg Chemical Safety for the 21st Century Act. This bipartisan bill would significantly reform TSCA, which would strengthen protections for consumers while creating regulatory certainty for industry.

### **Coal Combustion Residuals**

- Successfully advocated for passage of H.R. 1734, the Improving Coal Combustion Residuals Regulation Act of 2015. H.R. 1734 amends Subtitle D of the Solid Waste Disposal Act to improve EPA’s coal ash rule finalized in December 2014.

### **Waters of the United States Definition Change**

- On April 21, 2014, EPA and the U.S. Army Corps of Engineers published a proposed revision of the definition of Waters of the United States (WOTUS) under the Clean Water Act. The revised definition would greatly expand the amount of land and land uses subject to Clean Water Act permitting and use requirements. On November 12, 2014, the Chamber, along with 374 co-signers, filed comments with EPA and the Corps of Engineers urging that the WOTUS proposal be withdrawn immediately because it is fatally flawed from a legal and procedural standpoint. The comments illustrated the numerous ways the rule threatens property uses by businesses, communities, and institutions.
- Successfully advocated for passage of H.R. 1732, the Regulatory Integrity Protection Act, which would require EPA and the Army Corps to withdraw the proposed rule and start the rulemaking process anew. H.R. 1732 passed the House on May 12, 2015.
- On May 27, 2015, EPA released the final Clean Water Rule, which would redefine WOTUS. The Chamber released a statement criticizing the regulatory overreach and has since filed a pair of lawsuits challenging the final rule in the Tenth Circuit Court of Appeals and the U.S. District Court for the Northern District of Oklahoma.
- On June 16, 2015, the Chamber submitted to the Senate a coalition letter signed by 383 businesses, organizations, and chambers representing nearly every state strongly supporting S. 1140, the Federal Water Quality Protection Act. The bill would require EPA and the Army Corps to withdraw the proposed rule and start the rulemaking process anew. The Chamber continues to push the Senate to schedule a floor vote for S. 1140.

### **Waters of the United States—House Appropriations Riders**

- The Chamber was successful in securing a policy rider in the fiscal year 2016 House Energy and Water Appropriations bill restricting the Army Corps of Engineers from using funds to implement the proposed WOTUS rule. The Chamber was also successful in securing a policy rider in the fiscal year 2016 House Interior and Environment Appropriations bill restricting EPA from using funds to implement the proposed rule on WOTUS. The riders were ultimately stripped from the omnibus spending package.

## **Ozone National Ambient Air Quality Standard**

- Organized and co-hosted events throughout the summer of 2015 with the National Black Chamber of Commerce and local and state black chambers in Chicago, Pittsburgh, Columbus, and South Florida addressing the potential employment and economic impacts on minority communities of tightening the ozone standard.
- Co-led an advocacy effort in which more than 250 organizations sent a July 30 letter to the president urging him to direct EPA to retain the current 75 ppb ozone standard until it can be fully implemented. Successfully lobbied on a letter to the EPA administrator from 136 House members, including 15 Democrats, requesting that the agency retain the current ozone standard until it can be fully implemented.
- In March, successfully lobbied for dozens of local and state chambers to weigh in with EPA on the proposal to lower the ozone National Ambient Air Quality Standard to a more stringent standard of 70 ppb to 65 ppb. The lowering of the standard almost certainly will lead to more areas being in nonattainment for ozone, which translates into restrictions on expansion, permitting delays, increased costs to industry, and an impact on transportation planning.
- Produced a study highlighting the potential withholding of federal transportation funding in metropolitan areas projected to be unable to meet the proposed 65 ppb standard. The study was championed by dozens of local grassroots leaders and elected officials in those communities.

## **FOOD AND AGRICULTURE**

### **Food Labeling/Biotechnology**

- Successfully advocated for passage of H.R. 1599, the Safe and Affordable Food Act of 2015. The bill preempts state and local governments from requiring labels for foods that contain genetically modified organisms (GMOs) and creates a national labeling program for GMO and GMO-free food and ingredients.

## **GOVERNMENT CONTRACTING**

### **Inverted U.S. Companies**

- Successfully blocked adoption of amendments in House and Senate Appropriations committees to expand government contracting limitations for inverted U.S. companies.

### **Labor Law Compliance**

- Successfully defeated House floor amendments to impose new and onerous labor law compliance rules for government contractors.

### **Buy America**

- Successfully defeated Senate floor amendment to require U.S.-produced iron, steel, and manufactured goods for construction of the Keystone pipeline project.

## HEALTH CARE

- Successfully urged Treasury and the IRS to extend two different filing deadlines associated with the employer mandate that the IRS issued in a notice on December 28, 2015. First, a two-month delay of the date by which employers and issuers must provide tax forms to employees regarding health coverage benefits offered in 2015. Second, a three-month delay of the date by which employers and issuers must file similar forms regarding 2015 health coverage with the IRS.
- Successfully advocated for a two-year delay in the effective date of the Affordable Care Act's (ACA's) 40% excise tax on employer-sponsored health plans as part of H.R. 2029, the combined tax-relief and government funding legislation. The tax provision was also amended so that when it goes into effect it can be deducted as a business expense.
- Successfully advocated for a one-year moratorium on the ACA's health insurance tax for calendar year 2017 as part of H.R. 2029, the combined tax relief and government funding legislation.
- Successfully advocated for suspending the ACA's medical device tax for calendar years 2016 and 2017 as part of H.R. 2029, the combined tax relief and government funding legislation.
- Successfully advocated for House passage of H.R. 30, the Save American Workers Act, revising the Patient Protection and Affordable Care Act's (ACA's) definition of a full-time employee from 30 hours to 40 hours per week for purposes of the employer mandate.
- Successfully advocated for IRS to delay penalties on small business employers offering stand-alone health reimbursement arrangements (HRAs). In March 2015, the IRS announced that small businesses with fewer than 50 workers have until July 2015 to stop offering stand-alone HRAs that provide employees with a tax-free account to pay for qualified medical expenses. Failing to stop offering HRAs would subject these employers to significant tax penalties.
- Successfully advocated against cuts to Medicare Advantage Rates for 2016. On April 6, 2015, the Centers for Medicare and Medicaid Services (CMS) said 2016 Medicare Advantage (MA) rates will increase by 1.25%, a reversal from the cuts proposed.
- Successfully advocated for permanent repeal of Medicare's Sustainable Growth Rate (SGR) formula. On April 16, 2015, the president signed H.R. 2, the Medicare Access and CHIP Reauthorization Act of 2015, or MACRA, that now permanently repeals the deeply flawed SGR formula for Medicare physician payments.

- Successfully advocated for House passage of H.R. 160, the Protect Medical Innovation Act of 2015, which repeals the 2.3% tax on sales of most medical devices, a provision of the ACA.
- Successfully advocated for House passage of H.R. 1190, the Protecting Seniors' Access to Medicare Act, which repeals the ACA's Independent Payment Advisory Board (IPAB).
- Successfully advocated for repeal of auto-enrollment which required employers with 200 or more full-time employees to (1) automatically enroll their full-time employees in health care coverage after any waiting period authorized by law; (2) continue the enrollment of current employees in a health benefit plan offered through the employer; and (3) provide adequate notice and the opportunity for an employee to opt out of any coverage. The auto-enrollment requirement was repealed as part of the Balanced Budget Act of 2015, which the president signed into law on November 11, 2015.
- Successfully advocated for repeal of the ACA's expansion of the small group market slated to go into effect in 2016. By enacting this law, businesses with between 51 and 99 employees will not be subject to additional benefit mandates and rating restrictions as they offer health care coverage to their employees. The president signed the bipartisan bill H.R. 1624 into law on October 8, 2015.

## **IMMIGRATION AND TRAVEL**

### **H-2B Policy Riders and Amendments**

- Attached provisions to the Senate Labor-HHS Appropriations bill that would allow employers of H-2B workers to use private wage surveys, allow for a temporary need for employment that can be up to one year in duration (as opposed to 9 months in the interim final rule (IFR) issued in April), and prevent the Department of Labor (DOL) from exercising newly claimed audit authority over H-2B employers.
- Worked with the House DHS Appropriations Subcommittee to include language that created a returning worker exemption for H-2B workers who entered the United States in 2013, 2014, and 2015 for fiscal year 2016, providing much-needed cap relief for our members.

### **Spousal Work Authorization Rule Finalized**

- A rule that allows certain spouses of H-1B nonimmigrant workers to obtain employment authorization in the United States was finalized and went into effect on May 26, 2015. The proposed rule would have only let certain spouses who had been present in the country for six years to apply for work authorization. The Chamber objected to this proposal and suggested in comments to the agency that it abandon this unnecessary requirement. The agency adopted the Chamber's position in the final rule.

### **Global Entry Expansion in Brazil**

- The Chamber continues to actively push the Obama administration to expand the Visa Waiver Program (VWP) and the Global Entry Program to include Brazil.
- During Brazilian president Rousseff's visit to the United States in June, an announcement was made wherein the Brazilian government agreed to participate in the Global Entry Program, which will allow Brazilian nationals to receive expedited clearance upon their entrance to the United States. President Rousseff expressed her country's commitment to take the necessary steps to implement Brazil's participation in Global Entry by the end of the first half of 2016.

### **Simeio Solutions**

- The Chamber's comments helped to remove the retroactive application of the new requirements that U.S. Citizenship and Immigration Services (USCIS) announced in the wake of this precedent decision. We also had a phase-in that was included in the final guidance that gave our members much-needed time to comply with the new requirements.

### **EB-5 Regional Center Extension Included in the Continuing Resolution**

- The Chamber was instrumental in getting the inclusion of a temporary extension in the Continuing Resolution that passed at the end of fiscal year 2015.

### **Visa Waiver Program Reform**

- Supported the reform package being led by the House Homeland Security Committee and prevented unworkable biometric requirements for VWP travelers from being included in the final bill. The Chamber was successful in convincing Congress to include certain waivers in the proposed ban for individuals who had been to Iraq, Syria, or other "countries of concern" in the past five years, which will limit the adverse consequences of this requirement to legitimate international business travel. This package, which includes the changes we fought for, is included in the Omni.

### **EB-5 Reform/Regional Center Program Reauthorization**

- Prevented a severely defective 90-page bill from being included in the omnibus spending package. We were successful in convincing Congress to include a clean reauthorization of the program in the Omni through the end of the fiscal year.

### **H-2B Provisions Included in the Omni**

- The above mentioned H-2B riders included in the Labor-HHS and DHS appropriations bills earlier in the year were included in the Omni without any changes. This rolls back some of the most severe provisions in the interim final rule that was issued by the Department of Homeland Security (DHS) and DOL earlier this year and provides our members with much-needed cap relief for the remainder of this fiscal year.

## Immigration White Paper Published

- The Chamber published *Restructuring the U.S. Immigration System to Increase Security and Promote Economic Growth* in June 2015. The paper analyzes in detail the problems with America's broken immigration system.

## INTELLECTUAL PROPERTY

### International Trade and Intellectual Property (IP) Rights

#### Trans-Pacific Partnership (TPP)

- **Negotiations:** The Chamber's Global Intellectual Property Center (GIPC) had a strong pro-IP presence throughout TPP negotiations—a period spanning several years—leading member meetings with country delegations, hosting educational events, and maintaining a steady stream of pro-IP media messages.
- **Congress:** GIPC's congressional engagement helped keep U.S. negotiators focused on IP outcomes consistent with U.S. law, including 12 years' data exclusivity for biologics, effective patent linkage, Internet Service Provider (ISP) liability criminalization of illegal camcording, and criminalization of trade secret theft. Efforts to optimize the outcome for data exclusivity for biologics continue even after the conclusion of negotiations.
- **Developing Allies on IP:** GIPC worked with a number of third-party organizations to make a compelling case for strong IP outcomes in the TPP, including through numerous published pieces and speaking engagements at the negotiating rounds, in country capitals, and in Washington, D.C.
- **In-Country Media:** GIPC was successful in placing earned media in the Southeast Asia TPP markets aimed at identifying the benefits of a strong IP outcome for Singapore, Malaysia, and Vietnam, in particular, and other markets where targets of opportunity arise. Notably, Malaysia and other TPP parties had large government delegations participate in this year's BIO International Convention in Philadelphia, seeking international biotech investment—a key message point for pieces and interviews that GIPC conducted with *Bloomberg TV Malaysia*, *BBC World News*, *Singapore Business Times*, and *Malaysia's New Strat Times*.

#### Transatlantic Trade and Investment Partnership (TTIP):

- GIPC, as co-chair of the Intellectual Property Working Group of the Business Council for Trans-Atlantic Trade, has been at the forefront of efforts to cement the U.S.-Europe consensus in favor of IP through TTIP.
- Through the ongoing engagement of negotiators in the United States and Europe, GIPC has helped prioritize a multipronged approach to IP in TTIP, which includes reaffirming the joint commitment to existing, shared IP principles, working collaboratively to engage third-countries, and advancing new IP standards in specific, targeted areas. GIPC continues to be a regular presence at TTIP negotiating rounds and a presenter at stakeholder fora.

### **Trade Promotion Authority (TPA):**

- GIPC contributed to the Chamber's broader efforts to promote expeditious enactment of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015—S. 995 and H.R. 1890. It was successful in securing language that reinforced the congressional mandate for strong IP objectives in U.S. trade agreements.

### **International IP Index:**

- GIPC released the 3rd edition of the International IP Index titled *UP: Unlimited Potential*, ranking 30 economies' IP systems and emphasizing the positive benefits from investment in stronger IP laws. The 4th edition will be released on February 10, 2016, in Washington, D.C., with global rollouts to follow. The Index has become the preeminent source of comparative IP law data globally.

### **Submission to USTR on Special 301:**

- Through its submission to the U.S. Trade Representative (USTR), GIPC articulated the IP-related challenges U.S. innovators face in key global markets. The report, *Building a Community of First Markets*, increased the number of countries highlighted to a total of 18 and offered specific policy changes:
  - Called for the USTR to maintain India's 2014 designation as a Priority Watch country and to generate an out-of-cycle review (OCR).
  - Outlined the challenges with Canada's patent utility policy.
  - Added "restriction of trademarks" sections to country profiles, including Australia, Chile, the European Union, and South Africa.2016 Special 301 submissions are due February 5.

### **Live Streaming of Sports Broadcasts:**

- With the support of the U.S.-China IP Cooperation Dialogue, GIPC submitted a groundbreaking amicus-style brief to a Chinese court, contributing to a key victory for copyright holders in the sports broadcast space.

### **India:**

- GIPC has led a nuanced campaign to build a case for India's national self-interest in a strengthened domestic legal framework for IP. Through a long-term earned media campaign that has activated numerous third-party voices and has targeted direct advocacy to the U.S. and Indian governments, GIPC has helped foster an environment where for the first time in many years constructive IP policy conversations are moving forward in New Delhi.

### **Enforcement of IP Rights and Appropriate IP Polices in the United States**

#### **Global Brand Council:**

- GIPC established the Global Brand Council (GBC) to serve as the leading international voice promoting the interests of trademark companies and brand

owners. The coalition has advocated for U.S. domestic agencies to combat the surge of counterfeit goods, both in the physical and online marketplace.

- Developed and implemented a U.S. House and Senate appropriations advocacy program based on board member-identified funding priorities.
- GIPC, in cooperation with the Congressional Caucus on Intellectual Property Promotion and Piracy Prevention, hosted a panel discussion on Capitol Hill to honor new Caucus Co-Chairs Reps. Smith, Pompeo, Holding, and Jeffries, as well as administration IP officials, including Intellectual Property Enforcement Coordinator (IPEC) Danny Marti and U.S. Patent and Trademark Office (USPTO) Director Michelle Lee.
- Actively working with Congressional Trademark Caucus Co-Chairs Sens. Coons and Grassley and Reps. DelBene and Forbes to promote trademarks and the importance of purchasing authentic goods to ensure consumer safety.

#### **Trade Secrets:**

- GIPC actively pursues a federal civil cause of action to provide additional tools to combat the misappropriations of trade secrets and coordinate legislative advocacy efforts with industry coalition and association partners.
- The Chamber joined a coalition of business groups in support of the Defend Trade Secrets Act (S. 1890 and H.R. 3326) to lobby members of Congress to co-sponsor the bill, resulting in more than 100 members signing on as co-sponsors as of December 10, 2015.
- On December 2, 2015, the U.S. Senate Judiciary Committee held a hearing on the trade secrets bill and cited U.S. Chamber data on the economic impact of trade secrets theft and Chamber support for the legislation.
- On December 10, 2015, the U.S. Senate Judiciary Committee included S. 1890 as part of its Executive Business Meeting agenda (markup) and announced that the bill would be held over for markup due to time constraints.

#### **ICANN and IANA Transition:**

- GIPC, in partnership with other Chamber divisions, works to ensure that the Internet Assigned Numbers Authority (IANA) transition does not adversely affect industry, especially the IP sector, or negatively impact online commerce or access to a safe, secure, and open Internet.
- GIPC and the Chamber submitted comments to the Internet Corporation for Assigned Names and Numbers (ICANN) and the U.S. Congress advocating for greater ICANN accountability and continued IP protections in the online ecosystem.
- GIPC submitted comments for the record on Rights Protection Mechanisms Review in conjunction with the House Judiciary Committee hearing focused on ICANN and how current policies and the expansion of its gTLD program impact brand owners. The GIPC comments outlined threats to brand owners and concerns with abusive practices reflected in the recent .sucks controversy.

- The Chamber and GIPC hosted an open discussion between the business community and ICANN President & CEO Fadi Chehadé related to ICANN, the impending IANA transition, and Internet governance.
- GIPC participated on a policy panel on the importance of industry voluntary agreements during the ICANN Dublin meeting on October 21, 2015.

**Critical IP Roles Filled:**

- Successfully advocated for the Obama administration to fill the long-vacant positions of director of the U.S. Patent and Trademark Office (USPTO) and the Intellectual Property Enforcement Coordinator (IPEC).
- Successfully advocated to support the nomination of Danny Marti as IPEC and Deputy Under Secretary Michelle Lee as director of USPTO. Both positions were confirmed by the U.S. Senate in March 2015.

**Copyright Review:**

- Participated in the ongoing copyright review hearings in the House Judiciary Committee, the U.S. Patent and Trademark Office Copyright White Paper, and the U.S. Copyright Office public roundtables advocating for appropriate polices related to the digital environment.
- GIPC submitted comments for the record reflecting the existing Chamber position on copyright and in support of increased autonomy for the U.S. Copyright Office and essential IT upgrades to modernize the office to better serve industry and consumers. The submission was made by Rep. Tom Marino during the House Judiciary Committee Copyright review hearing featuring Register of Copyrights Maria Pallante.
- GIPC staff met with House Judiciary Committee staff on December 11, 2015, to advocate for maintaining appropriate copyright policies as part of the copyright review process and support for the modernization and technical upgrades to the U.S. Copyright Office necessary to ensure that the office is better able to serve users and fulfill its mission.

**INTERNATIONAL TRADE, INVESTMENT, AND REGULATORY POLICY**

**General**

**Trade Promotion Authority (TPA)**

- Advocated successfully for congressional approval of modernized TPA legislation in a whole-of-organization effort involving extensive direct outreach to members of Congress; a nationwide grassroots strategy engaging the Chamber’s federation of state and local chambers, associations, and businesses of all sizes; and a wide-ranging strategic communications campaign that marshalled the full array of facts about trade agreements to make the case for the bill’s approval. Working with congressional leaders, the White House, and partners across the business and agriculture

communities, the Chamber played a key role in building support for TPA and in defeating killer amendments in the Senate.

### **U.S. Export-Import Bank Reauthorization**

- Spearheaded a two-year advocacy campaign to win a four-year reauthorization of the Bank (through September 30, 2019) by means of a wide-ranging program of congressional advocacy, mobilization of small business members, strategic communications, earned and paid media, and grassroots outreach across the country.

### **World Trade Organization (WTO)**

- **Information Technology Agreement (ITA) Expansion:** Advocated successfully for the completion of negotiations to expand the 1996 ITA to eliminate duties on \$1.3 trillion in information technology merchandise trade, including such products as medical equipment, GPS devices, video game consoles, software, and next-generation semiconductors. More than \$100 billion of U.S. exports will be covered, and the new trade flows unleashed by the agreement could support an estimated 60,000 new U.S. jobs. Chamber efforts included repeated direct outreach to key officials in foreign capitals and in Geneva and an international communications campaign.
- **Environmental Goods Agreement (EGA):** Advocated for an ambitious reach for this sectoral negotiation to eliminate tariffs on such products as catalytic converters, clean-running turbines, and products to control air pollution and treat wastewater, providing substantive input to U.S. negotiators on its content.

### **Africa Growth and Opportunity Act (AGOA), the Generalized System of Preferences (GSP), and Trade Preferences for Haiti**

- Advocated successfully for congressional renewal of these important trade preference bills, including a 10-year renewal of AGOA that will give industry the long-term certainty needed to maximize its benefits to the United States and Africa; a retroactive renewal of GSP, which enhances the competitiveness of U.S. manufacturers by lowering the cost of imported materials and components; and special trade preferences for Haiti.

### **International Competition Network (ICN): Due Process, Transparency in Antitrust**

- As part of an ongoing multiyear effort to enshrine due process and greater transparency in antitrust proceedings worldwide, the Chamber helped draft and successfully advocated for the issuance of guidelines on these issues by the ICN, which represents more than 100 antitrust agencies around the world.

### **International Regulatory Cooperation and U.S. Regulatory Agencies**

- As a follow-up to Chamber-supported Executive Order (EO) 13609 on International Regulatory Cooperation issued in 2012, the White House Office of International Regulatory Affairs issued guidance on how regulatory agencies should comply with this EO.

## Country- or Region-Specific

### Americas Business Dialogue (ABD)

- As the culmination of two years of collaboration with more than 20 top business organizations from across the Americas, the Chamber and its partners convened the ABD forum on the margins of the April Summit of the Americas in Panama. Featuring presentations to President Obama, President Rousseff of Brazil, President Peña Nieto of Mexico, and President Varela of Panama, the event highlighted a series of pro-growth recommendations on infrastructure, energy, human capital development, and financial services.

### Asia-Pacific: Trans-Pacific Partnership (TPP)

- **Cross-Cutting Provisions:** Advocated successfully for the inclusion in the TPP of groundbreaking new rules on cross-border data flows, good regulatory practices, state-owned enterprises (SOEs), due process and transparency in antitrust proceedings, and trade secrets. In addition, advocated successfully for inclusion in the TPP of a strong investment chapter with investor-state dispute settlement, rectifying its omission from the 2005 bilateral FTA with Australia.
- **Japan:** The Chamber-affiliated U.S.-Japan Business Council advocated successfully for including in the TPP provisions relating to commerce with Japan, including (1) measures providing meaningful market access for U.S. manufactured and agricultural products through tariff elimination, elimination of nontariff barriers, and tariff rate quotas (TRQs) for select agricultural products; (2) provisions ensuring a level playing field for U.S. express delivery companies in competition with Japan Post by providing access to the Japan Post distribution network and in the context of international express delivery services; (3) requirements for Japan to improve regulatory transparency, including longer public comment periods and ensuring access for U.S. parties to government-convened advisory councils and groups within which regulations and policies are most often developed; (4) measures by Japan to improve procedural fairness by Japan's competition policy authority; and (5) commitments that require Japan to strengthen its enforcement tools to combat counterfeit products and strengthen protections for the use of imbedded technologies to prevent copyright infringement, among other commitments.

### Brazil

- **Defense Agreements:** Owing in part to a three-year advocacy campaign by the Chamber-affiliated Brazil-U.S. Business Council (BUSBC) and its Defense & Security Task Force, the Brazilian Congress approved in June the U.S.-Brazil Defense Cooperation Agreement, which strengthens bilateral defense relations and enables greater defense cooperation between both countries, and the U.S.-Brazil General Security of Military Information Agreement (GSOMIA), which allows sharing certain types of defense information, technology, and hardware.
- **Social Security Agreement:** BUSBC helped secure the signature of a U.S.-Brazil Social Security Totalization agreement to eliminate dual contributions, which occur when a worker from one country works in another country.

- **Patent Prosecution Highway Agreement:** BUSBC advocated successfully for the signature of a U.S.-Brazil Patent Prosecution Highway agreement by the U.S. and Brazilian patent offices. The agreement will expedite the issuance of patents related to the oil and gas sector in Brazil.
- **Good Regulatory Practices:** As part of an ongoing BUSBC effort to promote due process and greater transparency in the regulatory process in Brazil, the Department of Commerce and its Brazilian counterpart committed to continued exchanges on good regulatory practices, for example, meaningful public consultation prior to rulemaking.

### Central America: Northern Triangle Development Plan

- Collaborated with the administration to launch public-private dialogues in each of the Northern Triangle countries (El Salvador, Guatemala, and Honduras) as part of the Plan of the Alliance for Prosperity of the Northern Triangle.

### China

- **Agricultural Biotechnology:** Building on a U.S. Chamber-led multiassociation effort that resulted in China's Ministry of Agriculture submitting its draft Amendment to the GMO Safety Assessment Measures to the WTO Committee on Sanitary and Phytosanitary Measures, the Chamber advocated successfully during President Xi Jinping's September 2015 State Visit and at the November 2015 U.S.-China Joint Commission on Commerce and Trade (JCCT) meetings in Guangzhou for outcomes in which China reaffirmed the importance of implementing timely, transparent, predictable, and science-based approval processes for products of agricultural biotechnology, which are based on international standards. The U.S. Chamber also hosted during President Xi's visit the inaugural meeting of the U.S.-China Strategic Agricultural Innovation Dialogue at which China agreed to strengthen policy and information exchange; share experiences and best practices on research and development, supervision, and approval; and consider domestic and international stakeholders' comments when modifying and improving regulations.
- **Anti-Monopoly Law:** Advocated successfully for commitments during President Xi Jinping's visit and at the JCCT for competition policy approaches that (1) ensure fair and nondiscriminatory treatment, (2) avoid the enforcement of competition law to pursue industrial policy goals, (3) are free from intervention by non-antitrust agencies, (4) recognize the pro-competitive effects of intellectual property and coherence in the rules related to IP, and (5) safeguard commercial secrets obtained in the process of Anti-Monopoly Law enforcement.
- **Bilateral Investment Treaty (BIT) Negotiations:** Advocated successfully for an intensification of the ongoing BIT negotiations, with a focus on strengthening China's negative list and text offers, as highlighted in understandings reached by the two governments at the June U.S.-China Strategic & Economic Dialogue, President Xi's September visit, and the November JCCT. Advocated successfully as well for a commitment by the U.S. government to negotiate additional text—beyond the 2012 Model BIT—that addresses unique “Chinese characteristics” including new SOEs,

data restrictions and localization requirements, and transparency, among other disciplines.

- **Intellectual Property and Trade Secret Protection:** Advocated successfully for outcomes during President Xi’s visit and at the JCCT in which China (1) affirmed that states should not conduct or knowingly support misappropriation of trade secrets or other confidential business information with the intent of providing competitive advantages to their companies or commercial sectors, (2) affirmed that states and companies should not by illegal methods make use of technology and commercial advantages to gain commercial benefits, and (3) agreed to strengthen protection of trade secrets in its legal system.
- **National Security Reviews of Foreign Investment:** Advocated successfully for an outcome during President Xi’s visit to limit the scope of China’s national security reviews of foreign investments solely to issues that constitute national security concerns and not to generalize the scope of such reviews to include other broader public interest or economic issues. The issue is important to U.S. Chamber members given China’s new National Security Law, draft Foreign Investment Law, and the ongoing bilateral investment treaty negotiations.
- **“Secure and Controllable” Technology Policies:** Advocated successfully for outcomes during President Xi Jinping’s State Visit and at the JCCT that have the potential to mitigate the adverse, far-reaching negative impacts of pending “secure and controllable” measures on the U.S. information and communications technology (ICT) sector and on financial institutions and their clients. In October 2015, the Chamber played a leading role in developing multiple letters and submissions to the Chinese government signed by U.S. and other industry associations around the world to advocate against implementation of the “insurance system informatization regulatory requirements (draft),” which would require the use of secure and controllable technology, domestic encryption, and data localization by insurance companies in China.

#### **Cuba: Easing Restrictions on Trade and Travel**

- Through the Chamber’s recently launched U.S.-Cuba Business Council, advocated successfully for the U.S. administration to ease regulations relating to trade with and travel to Cuba, including measures to allow U.S. companies to engage directly with Cuban entrepreneurs. Also pressed for further reforms in the Cuban economy.

#### **Egypt**

- **U.S.-Egypt Strategic Dialogue:** The Chamber-affiliated U.S.-Egypt Business Council successfully advocated for the formation of a strategic dialogue to deepen bilateral cooperation on economic issues. U.S. Secretary of State John Kerry and Egyptian Foreign Minister Sameh Shoukry led the first dialogue in Cairo in August. The annual dialogue will incorporate private sector input.
- **Enhanced Market Access for Pharmaceutical Products:** The council advocated successfully for reducing the registration time for pharmaceutical products in Egypt from three years to 15-18 months. This change allows U.S. companies to more swiftly bring products to market.

## European Union

- **Transatlantic Trade and Investment Partnership (TTIP):** Continued to lead the business community's efforts in support of a comprehensive and high-standard U.S.-EU trade and investment agreement. This included direct engagement with U.S. and European negotiators, presentations at stakeholder sessions, and engagement with European commissioners and members of the European Parliament. Also continued to provide thought leadership on members' priority concerns, including regulatory cooperation, investment, and competition, and serve as secretariat for the broad-based Business Coalition for Transatlantic Trade (BCTT).
- **Good Regulatory Practices:** As part of an ongoing effort to bring greater accountability to EU rulemaking, the European Commission issued its latest plans for "Better Regulation." Several of the critiques issued by the Chamber in recent years were partially addressed, including the need to issue advance notice and solicit stakeholder comments on draft implementing measures and delegated acts before making them final.

## India

- **Ruling on Minimum Alternative Tax (MAT):** The Chamber-affiliated U.S.-India Business Council (USIBC) successfully advocated before the Government of India to ensure that its Minimum Alternative Tax (MAT) provisions will not apply retroactively to Foreign Institutional Investors (FIIs) before April 1, 2015. This decision will provide greater tax certainty and reduce tax uncertainty for FIIs while fostering investment in India.
- **Advance Pricing Agreements:** Partly as a result of USIBC advocacy, the Central Board of Direct Taxes (CBDT) of the Indian Revenue Service signed 14 Advance Pricing Agreements (APA), including the first APA with the rollback provision. These agreements reflect a clear step toward establishing tax certainty for foreign investors doing business in India.
- **Insurance Reform:** USIBC played a leading role in passage of the Insurance Laws (Amendment) Act, which lifted the sector's foreign direct investment (FDI) cap from 26% to 49%, thus easing restrictions on insurers' ability to raise capital efficiently and providing access to new domestic and foreign pools of long-term investment capital to provide financial stability.
- **FDI Reforms in Media and Entertainment Industry:** USIBC championed reforms in the media and entertainment sector that resulted in the Government of India announcing it would lift the FDI cap in news and radio broadcast from 26% to 49% as well as 100% in broadcast distribution platforms such as cable TV networks.

## Indonesia

- **Required Use of Rupiah in Domestic Transactions:** Advocated successfully for the Indonesian government to provide flexibility to U.S. companies on a new regulation requiring that domestic commercial transactions be conducted in rupiah.

- **Mandatory Reinsurance Cessions:** Advocated successfully against the inclusion of potentially damaging provisions of Indonesia’s Reinsurance Law, which takes effect on January 1, 2016. In particular, the original obligation to obtain 100% reinsurance support from domestic reinsurers was exempted for certain product lines.
- **Local Content Requirements for Smartphones:** Advocated successfully for a delay in implementing a new regulation requiring 30% local content in smartphones. Efforts to educate the Indonesian government on the benefits of expanding the definition of local content to include services and applications are continuing.

## Korea

- **Guidelines on Cross-Border Data Flows:** The Chamber-affiliated U.S.-Korea Business Council advocated for Korea to revise guidelines related to the storage and cross-border movement of financial services sector data that appear to bring Korea into line with its commitments under the U.S.-Korea Free Trade Agreement.
- **Insurance Sector Liberalization:** Following the release of a U.S.-Korea Business Council paper calling for financial sector reforms, Korea’s Financial Services Commission in October released a road map for reforms that adopts two of the paper’s core recommendations: allowing insurers greater latitude to develop products and liberalizing price controls on premiums.

## Mexico: U.S.-Mexico CEO Dialogue Recommendations

- Consistent with recommendations by the Chamber-managed U.S.-Mexico CEO Dialogue, the governments of the United States and Mexico are taking specific steps to improve efficiency at the border. These include a pilot program to measure and reduce border wait times at 10 border crossings; expand trusted traveler programs and the Mutual Recognition Arrangement between the U.S. Customs-Trade Program Against Terrorism and Mexico’s Nuevo Esquema de Empresas Certificadas; implement a joint cargo preinspection program; and develop a single, shared customs manifest for use in both countries for all transportation modes. Similarly, both governments are finalizing details on a binational business-to-business energy council, expected to be launched in early 2016.

## Myanmar: Use of Asia World Port

- Advocated successfully for a change in Office of Foreign Assets Control (OFAC) regulations that unintentionally blocked certain legitimate Myanmar enterprises from exporting to the United States via Asia World Port’s Yangon terminal.

## North American Competitiveness

- **Regulatory Cooperation Work Plans:** Led the business community’s advocacy on regulatory cooperation with Canada and Mexico, providing particularly extensive input to U.S. agencies and resulting in 27 new cooperation plans across multiple U.S. and Canadian agencies tailored for specific industries.
- **Country-of-Origin-Labeling (COOL):** The Chamber, as co-chair of the COOL Reform Coalition, advocated successfully for legislation to repeal the COOL rule for

meat in the omnibus appropriations bill approved by Congress in December, thus averting trade retaliation by Canada and Mexico against more than \$1 billion worth of U.S. exports supporting tens of thousands of U.S. jobs.

#### **Philippines: Development of Antitrust Law**

- Engaged in a multiyear effort with the U.S. government and the business community in the Philippines to provide input for the formation of a new antitrust law, in the process bringing the legislation much closer to international norms.

#### **Poland-U.S. Innovation Program**

- Played a leadership role in the Poland-U.S. Innovation Program (PLUS-IP), a bilateral initiative under the auspices of the U.S. State Department and Poland's Ministry of Science and Higher Education, including co-chairing the energy working group.

#### **Qatar: U.S.-Qatar Economic and Investment Dialogue**

- Advocated successfully for the formation of a bilateral dialogue to annually convene key U.S. and Qatari decisionmakers to identify concrete steps to deepen financial, investment, and economic relations. The inaugural dialogue was held in Washington, D.C., in October, and the Chamber led a private sector session to provide policy recommendations to the governments.

#### **Turkey: Delayed Safeguard Tariffs for Mobile Devices**

- Following a government investigation, the Chamber-affiliated U.S.-Turkey Business Council successfully advocated for a delay of at least 10 months for proposed safeguard tariffs on imported mobile devices.

### **LABOR**

**Riders on Labor/HHS Appropriations bills:** Despite both the House and Senate appropriations bills funding the Department of Labor (DOL) as well as the National Labor Relations Board (NLRB) having beneficial riders, the final Omnibus package included very few of them. Instead, it contained report language addressing some of the issues. Also, funding levels that would have represented cuts from the previous year were restored to essentially the same level as the previous year. As a result of the Chamber's advocacy, the following outcomes were achieved:

#### **NLRB**

- **Funding:** \$274,224,000. This is the same as enacted in fiscal year 2015 and approximately \$4 million less than requested.
- **Policy Rider:** Prohibits the use of "any new administrative directive or regulation" with respect to electronic voting in representation elections conducted by the Board.

## Equal Employment Opportunity Commission (EEOC)

- Funding: \$364,500,000. This is the same as enacted in fiscal year 2015 and approximately \$8.5 million less than requested.
- Report language:
  - *Testers*: Prohibits use of federal funds for “testers” and directs EEOC to focus resources on pending backlog, not systemic cases.
  - *Backlog*: Directs EEOC to prioritize its staffing and resources toward reducing the inventory backlog and requires EEOC to “provide an annual report on the backlog, to include data on the number and pendency of charges, on any changes to EEOC’s priority charge handling procedures, and the effect of such changes on inventory reduction.”
  - *Guidance*: Requires EEOC (at the request of two or more commissioners) to “make any new guidance available for public comment in the *Federal Register* for not less than 30 days prior to taking any potential action on proposed guidance.”
  - *Conciliation*: Directs EEOC to engage in good faith conciliation.

## Department of Homeland Security (DHS)

- EB-5: EB-5 Regional Center Reauthorization through the end of fiscal year 2016.
- H-2B: Exempt H-2B returning workers from 2013, 2014, and 2015 from the 66,000 annual cap.

## DOL

### Office of Federal Contract Compliance Programs (OFCCP)

- Funding: \$105,476,000. This is \$1 million less than enacted in fiscal year 2015 and approximately \$8 million less than requested.
- Report language: Directs OFCCP to cease “strict and exclusive use of statistical significance tests . . . for evaluating hiring practices and to *report within 120 days of enactment to the Committees on Appropriations of the House of Representatives and Senate on steps it is taking to enforce non-discrimination standards on a more fair, case-by-case basis* focused on evidence of actual discrimination rather than on statistical generalizations and quota benchmarks.”(emphasis added).

## **H-2B**

- Address H-2B wages and allow the use of private wage surveys, which are not allowed under the new final H-2B wage rule.
- Clearly define seasonal as 10 months, as opposed to the 9 months in the new interim final H-2B comprehensive rule.
- Prevent DOL from implementing the provisions of the interim final rule (IFR) related to corresponding employment and the three-fourths guarantee.
- Prevent DOL from implementing the new and burdensome DOL enforcement scheme in the IFR related to audit and the Certifying Officer (CO) assisted recruitment.

## **Visa Waiver Program**

- Reforms the Visa Waiver Program to boost the security of the program without unduly hindering international travel.

## **OSHA**

- Funding: \$552.8 million—same as last year; short of the Obama administration's request that the agency's budget be hiked by 7% based on a request for an increase of nearly \$40 million, with substantial new investment in federal enforcement and whistle-blower protection programs.
- The report language accompanying the Omnibus directs OSHA not to enforce its new interpretation of the Process Safety Management standard until it issues a formal rule on the matter. The agency's letter of interpretation, which had been blasted by key GOP lawmakers and industry, scaled back the scope of an exemption for retail establishments selling small quantities of hazardous chemicals. The report language also criticizes OSHA for its use of other guidance documents and letters of interpretation beyond the Process Safety Management standard.

## **Blacklisting**

- The \$2.62 million request for funding the DOL Office of Labor Compliance was denied and accompanied by report language that made clear this request was being rejected specifically and that DOL was not to reappropriate funds to do something for which Congress has explicitly denied funding.

## **FLSA Riders on Other Various Appropriations Bills:**

- Beginning with the fiscal year 2015 appropriations process, Democrats led by Rep. Keith Ellison (D-MN) were able to add riders to four House-passed appropriations bills (Transportation-HUD, DoD, Energy and Water, and Financial Services) that would have prohibited any funds appropriated under the bills from being used to enter into a contract with any company that discloses a violation of the Fair Labor Standards Act (FLSA) within the last five years.
- The rider would have applied to any violation that resulted in a finding of fault and liability with damages as low as \$5,000 or any settlement with an acknowledgement of

fault that could have resulted in a civil, criminal, or administrative proceeding. Following an extensive effort by the Chamber, all these riders were eliminated from the final package. Democrats tried to reprise these efforts during the fiscal year 2016 process, but the Chamber's continued efforts and coordination with Hill staff ensured that similar amendments were defeated in the fiscal year 2016 bills.

### **Congressional Review Act Resolutions for the NLRB's Ambush Election Regulation:**

- A resolution of disapproval that would repeal revisions that the National Labor Relations Board made to its procedures for union representation elections was passed in both the House and Senate before being vetoed by the president. The Chamber was instrumental in getting these resolutions introduced and passed.

## **LEGAL REFORM**

### **Asbestos**

- Secured enactment of asbestos trust transparency legislation in three states: Arizona, Texas, and West Virginia.
- Secured reintroduction of the Furthering Asbestos Claim Transparency Act, which would discourage fraudulent claims with Section 524(g) asbestos bankruptcy compensation trusts in both the House and Senate (H.R. 526, S. 357). The House Judiciary Committee passed H.R. 526 (and the measure was subsequently approved by the full House on January 8, 2016).
- Secured, through litigation pursued by a U.S. Chamber Institute for Legal Reform-owned newspaper, the public release of tens of thousands of pages of previously sealed documents from the Garlock asbestos bankruptcy. These documents will be instrumental in documenting "double dipping" in asbestos litigation and asbestos trust claims filings.
- Expanded a broad public awareness campaign in Madison County, Illinois, to include Internet, broadcast, and print media focused on the large number of out-of-state asbestos plaintiffs bringing lawsuits in Madison County.

### **Class Action Reform**

- Secured House introduction and House Judiciary Committee passage of the Fairness in Class Action Litigation Act (H.R. 1927), which would require that class members experience the same injury as the named class plaintiff in order to diminish frivolous class action litigation. (The bill was subsequently approved by the full House on January 8, 2016.)

### **Communications**

- Released a highly publicized, authoritative study demonstrating the scope of trial lawyer advertising and marketing on television and online.

## **Congressional Oversight**

- Successfully implemented efforts urging the House Judiciary Committee and other congressional committees to engage in oversight activities and hearings on the U.S. civil justice system. Key areas included class action and lawsuit abuse, third-party litigation funding, alternative dispute resolution and the preservation of arbitration, as well as overenforcement, such as agencies urging that settlement amounts from companies go to outside activist third-party groups.

## **International Issues**

- Launched the “Justice Not Profit” public relations campaign in the United Kingdom to oppose expansion of class actions and support limits on third-party litigation funding.

## **Lawsuit Abuse**

- Secured House passage of the Lawsuit Abuse Reduction Act, which would deter the filing of meritless legal claims and thereby help curb abusive litigation practices.

## **State Attorneys General**

- Secured passage of state attorneys general contingency fee transparency legislation in Arkansas, Nevada, Ohio, and Utah.

## **State Reforms**

- Secured passage of the most important legal reforms in West Virginia’s history, including joint and several liability reforms, limits on punitive damages, and asbestos trust transparency reforms.

## **NATIVE AMERICAN ENTERPRISE INITIATIVE**

- Labor: Successfully advocated for the passage of H.R. 511, the Tribal Labor Sovereignty Act, in the House on a recorded vote. Successfully advocated for the passage of the Senate companion bill from committee.
- Labor: Spearheaded the creation of a “coalition for tribal sovereignty” made up of more than 100 tribes and tribal organizations to message Congress on H.R. 511, among other issues. The coalition played an important part in moving the debate forward on Tribal Labor Sovereignty.
- Housing: Successfully secured House passage of H.R. 360 (the Native American Housing Assistance and Self-Determination Act [NAHASDA] reauthorization). Successfully secured the passage of the Senate companion bill from committee. In the Omnibus, the Chamber scored a partial win with the reauthorization of NAHASDA funding without the important policy riders we had lobbied for.
- Energy: Successfully advocated for the passage of S. 209, the Indian Tribal Energy Development and Self-Determination Act Amendments of 2015, in the Senate and H.R. 538, the Native American Energy Act, in the House.

- Contract Support Costs (CSCs): Ensured that CSCs due to tribes under the Indian Self-Determination and Education Assistance Act (ISDEAA) remained a lump-sum appropriation in the Omnibus to ensure that the administration continues to pay the full CSCs due to a tribe.

## **NATIONAL SECURITY AND EMERGENCY PREPAREDNESS**

### **Global Supply Chain, Customs, and Trade Facilitation Initiatives**

- The Chamber achieved some strong victories to promote trade facilitation and global customs modernization that enhances the competitiveness of our businesses. Advocacy included the successful pursuit of legislation, regulatory reform, and commercially meaningful commitments from trade partners on global customs modernization.

### **Customs Reauthorization: In the Final Weeks of the Legislative Calendar**

- In the final weeks of the 2015 congressional calendar, the House and Senate held a conference committee meeting on the differences in the Trade Facilitation and Trade Enforcement Act of 2015 (Customs Reauthorization). After the House and Senate passed similar versions of the bill earlier this year, the Chamber worked aggressively to ensure that our priorities remained and that it reached the president's desk by year-end.
- On December 11, the House voted on the conference report, which passed with a vote of 256 to 158. The bill includes all of the Chamber's priorities we brought forward related to trade facilitation, border modernization and intellectual property rights (IPR), as well as nearly 20 major priorities from de minimis to the creation of the National IPR Coordination Center. The Chamber pressed for final passage before the end of the year, but certain issues unrelated to the customs and trade provisions derailed that effort. We are now working to ensure this legislation reaches the president's desk early in 2016.

### **Advisory Committee on Commercial Operations**

- Adam W. Salerno, the Chamber's senior director for national security, was appointed to a two-year term on the 14th Advisory Committee on Commercial Operations. The Committee advises the secretaries of the U.S. Department of the Treasury and the U.S. Department of Homeland Security on the commercial operations of U.S. Customs and Border Protection and other trade issues. Salerno chairs the Global Supply Chain Committee and engaging the Trade Modernization Committee. While working on the committee, Salerno will advance Chamber trade facilitation and global customs modernization priorities.

### **Global Alliance for Trade Facilitation**

- The Chamber, working in partnership with the Center for International Private Enterprise (CIPE), the World Economic Forum, and the International Chamber of Commerce created a new public-private sector partnership to promote accountability in implementing the World Trade Organization Trade Facilitation Agreement (TFA).

The Global Alliance for Trade Facilitation will lead business efforts to promote global customs modernization and trade facilitation while bridging countries and companies to ensure changes to border management have a commercially significant impact.

- The TFA promotes streamlining the passage of goods across borders by cutting red tape and bureaucracy that could boost the world economy by as much as \$1 trillion. With a global launch at the end of 2015, the Global Alliance for Trade Facilitation will begin activities in 2016.

### **Chamber Hosts 2015 Global Supply Chain Summit**

- On May 12, the Chamber hosted its 2015 *Global Supply Chain Summit: Connecting Business to Global Markets*. The event showcased the critical link between global supply chains and business' ability to be economically competitive. Over the past 30 years, global supply chains have changed the way we do business. With rapid globalization, nearly 60% of international trade is in intermediate products, which means that operating an efficient supply chain is essential to competing on the global stage. The summit highlighted the importance of supply chains, outlined the issues that impact them, and charted a path forward to find solutions that break down barriers.

### **United States and Canada Sign Groundbreaking Border Agreement**

- On March 16, Secretary of Homeland Security Jeh Johnson and Canadian Minister of Public Safety and Emergency Preparedness Steven Blaney signed a Pre-Clearance Agreement in line with the Beyond the Border Action Plan. The U.S. Chamber and the Canadian Chamber advocated for this agreement in 2009 in our joint report *Finding the Balance: Shared Border of the Future*. The agreement allows for customs agencies to have preclearance programs in each other's territory, reducing congestion at the border and enabling the streamlining of trusted travelers and trade. The agreement requires congressional approval, and we are engaging allies now to ensure that this occurs.

### **Global Gateways Trade Capacity Act**

- The Chamber is working with the Senate Foreign Relations Committee to develop and advance the Global Gateways Trade Capacity Act of 2015 (S. 2201). The legislation provides resources to implement the World Trade Organization Trade Facilitation Agreement (TFA) and requires the development of a private sector advisory panel. Linking these resources for development with companies' priorities will help ensure that the TFA meets a commercially meaningful threshold. It is a new way to look at economic development and trade capacity that puts the private sector in the front seat. We are working to gather support for the legislation and find a path forward.

### **Executive Order on Trade Facilitation**

- The Chamber developed and supported the President's Executive Order (EO) on Trade Facilitation from 2014 that brings together the 47 U.S. regulatory agencies with a role in international trade into a single window. The EO forces these government

agencies to harmonize regulations, streamline trade processes, and completely digitize trade procedures. The Chamber has continued to engage the Border Interagency Executive Council (BIEC) and the White House to ensure that they meet the deadline set of December 2016. There have been ongoing issues and delays with the system, but we keep working with companies and agencies to keep this on track and simplify border trade for businesses of all sizes.

## **Cybersecurity**

### **Congress**

- The Chamber-led Protecting America's Cyber Networks Coalition (the coalition) successfully secured passage of the Cybersecurity Act of 2015 as part of the omnibus spending measure. The bill establishes a voluntary information-sharing program, strengthening businesses' protection and resilience against cyberattacks. The business coalition beat back several efforts that would have diluted the protections (liability, regulatory, public disclosure, and antitrust) granted to organizations under the bill. Passing cybersecurity information-sharing legislation has been a top policy priority of the coalition, a partnership of more than 50 leading business associations representing nearly every sector of the U.S. economy.

### **Defense Department (DoD)**

- In the fall, the Chamber partnered with industry groups to press DoD to reconsider its interim rule on cyber-incident reporting requirements for defense contractors. Industry reacted negatively to the department's first interim rule, which went into effect immediately in August without business input. The Chamber believes that it is highly unrealistic for DoD to assert that contractors can swiftly implement the 100-plus cybersecurity requirements referenced in the mandate. On December 30, DoD issued a revised interim rule to address industry concerns by providing more time—until December 31, 2017—to implement certain security requirements.

### **Bureau of Industry and Security (BIS)**

- In the summer, the Chamber worked with several companies and associations to persuade BIS to reconsider its proposed rule on intrusion software and surveillance items under the 2013 Wassenaar Arrangement (WA). The Chamber argued that BIS' proposal is extraordinarily broad and the export licensing requirements are unreasonably stringent. The rule, put simply, would harm businesses' ability to undertake routine penetration testing activities, which is critical to strong security. In December, the Chamber assisted Congressional Cybersecurity Caucus Co-chairs Reps. Jim Langevin and Michael McCaul in gathering signatures on a letter to National Security Advisor Susan Rice urging the administration's involvement in revising the U.S. implementation of the WA. The letter was signed by 125 bipartisan House lawmakers.

## **Department of Commerce Internet Policy Task Force (IPTF)**

- The Chamber successfully steered the Department of Commerce IPTF, which sought in May public feedback on stakeholder engagement on cybersecurity in the digital ecosystem, away from disrupting the joint industry-National Institute of Standards and Technology (NIST) cybersecurity framework. The Chamber argued that the IPTF should focus on aligning international cybersecurity regimes with the framework and helping businesses manage cyber supply chain risks, among other priorities. The task force has, instead, convened a multistakeholder process to strengthen collaboration between security researchers and software and system developers and owners to address security vulnerability disclosure.

## **Department of Justice (DOJ) and the FBI**

- The Chamber initiated a dialogue in the spring with the DOJ and the FBI on encrypted data. FBI leadership has been pressing U.S. technology companies for a solution that would allow law enforcement to access encrypted communications with a court order while protecting the privacy of consumers.
- However, technology firms and computer scientists say that data storage and communications systems designed for special access by law enforcement agencies would be unworkable in practice, raise legal questions, and could undo progress on cybersecurity. The Chamber is looking to assist both camps in identifying mutually agreed-upon policy solutions.

## **2015 Cybersecurity Campaign: *Improving Today. Protecting Tomorrow™*.**

- Building on the success of last year's education and awareness campaign, the Chamber kicked off its 2015 campaign in Atlanta, Georgia, in July. Partnering with state and local chambers, the Obama administration, law enforcement, and universities, the Chamber brought together hundreds of industry and government attendees to stress the importance of adopting fundamental cybersecurity practices.
- Cyber conferences were held in Minneapolis, Minnesota (September 16), Las Vegas, Nevada (September 30), and Durham, North Carolina (December 15). The Chamber's Fourth Annual Cybersecurity Summit was held on October 6. Leading member sponsors of the campaign included American Express, Dell, and Firehost.

## **Chamber Launched Cyber Leadership Council**

- In July, the Chamber launched its Cybersecurity Leadership Council. By creating a forum for businesses to have an open dialogue about which cybersecurity policies or practices are effective, missing, or needed, the council will direct Chamber advocacy and education efforts and serve as a key voice of industry for dialogue with policymakers.

## PENSIONS

### **Extension of temporary guidance pertaining to the nondiscrimination rules for frozen defined benefit plans.**

- At the Chamber's urging, the IRS added a year to the temporary nondiscrimination relief previously provided to certain soft frozen defined benefit plans. The relief will be available through plan years beginning before 2017, instead of through plan years beginning before 2016.

### **Department of Labor Amends Timing of Annual Participant Fee Disclosure**

- At the Chamber's urging, in March 2015, DOL issued a direct final rule that gives retirement plan administrators a two-month buffer period as to when they must provide annual participant-level fee disclosures. This rule automatically took effect on June 17, 2015.

### **The House and Senate Appropriations Committees Amend Fiscal Year 2016 Appropriations Bill to Include Rider Prohibiting Funds**

- The Senate and House Appropriations committees each amended its fiscal year 2016 Labor, Health and Human Services, and Education Appropriations bill, which allows the inclusion of a rider prohibiting funds to be used to promulgate DOL's Fiduciary Rule. The Chamber had advocated for the riders, which were ultimately stripped from the omnibus spending package.

### **Report on Definition of Fiduciary Published**

- The Chamber published a paper titled *Using PTEs to Define an ERISA Fiduciary: Threading the Needle with a Piece of Rope*, to explain the difficulties of using the Prohibited Transaction Exemption (PTE) process to narrow an overly broad rule.

### **Retirement Savings Report Published**

- The Chamber published a report titled *Locked Out of Retirement: The Threat to Small Business Retirement Savings*, which addresses the unintended consequences of DOL's newly proposed regulatory package that would put the department in charge of financial advice provided to all Individual Retirement Accounts (IRAs) as well as to all private-sector employer-provided retirement plans.

## REGULATORY AFFAIRS

### **Truth In Regulating: Restoring Transparency to EPA Rulemaking**

- The Chamber released a study in April 2015 analyzing the degree to which EPA has been forthcoming about the costs and benefits of recent rulemakings. The report found that the agency has not been open about the relationship between the claimed health benefits of its most costly regulations and the pollutants the agency actually regulates. The report calls on EPA to more clearly explain which pollutants it will regulate and what the costs and benefits of regulating specific pollutants are likely to be.

## **Sue and Settle**

- Successfully advocated for the House Judiciary Committee to favorably report out H.R. 712, the Sunshine for Regulatory Decrees and Settlements Act of 2015, on March 24. The Chamber has led the effort to educate policymakers about the sue and settle problem through extensive research, release of the report *Sue and Settle: Regulating Behind Closed Doors*, and congressional testimony. The sue and settle process enables agencies to develop regulations without proper public input. This legislation would promote greater transparency and public participation before agencies enter into consent decrees with environmental activists. The Senate version of the bill, S. 378, was introduced on February 4, with Sens. Blunt, Capito, Cornyn, Cruz, Fischer, Flake, Gardner, Hatch, Inhofe, Lee, Paul, and Rubio as co-sponsors.

## **Permit Streamlining**

- Successfully advocated for the inclusion of Title 41 in H.R. 22, the Fixing America's Surface Transportation [FAST] Act, which the president signed into law on December 4, shortly after the House and Senate passed it. Title 41 includes many of the permit streamlining provisions from S. 280, the Federal Permitting Improvement Act. The enactment of these permit streamlining provisions caps off several years of lobbying efforts on the part of the Chamber to improve the federal permitting process in order to encourage greater development, construction, and job creation.
- Successfully advocated for House passage of H.R. 348, the Responsibly And Professionally Invigorating Development Act (RAPID) on September 25 by a bipartisan vote of 233-170. The RAPID Act would improve and streamline the federal permitting process, including imposing deadlines on the permitting and environmental review, designating a lead agency, coordinating participating agencies, and shortening the statute of limitations for National Environmental Policy Act (NEPA) decisions.
- Successfully advocated for Senate passage of S. 280, the Federal Permitting Improvement Act, as part of the six-year highway bill that passed on July 30 by a bipartisan vote of 65-34. Before that, on May 6, the Federal Permitting Improvement Act passed the Senate Homeland Security and Government Affairs Committee by a vote of 12-1, including Democratic members of the committee supporting the legislation that would streamline the federal permitting process.
- Successfully advocated for the House Judiciary Committee to favorably report out H.R. 348, the RAPID Act, on March 24. As the Chamber's *Project No Project* report has demonstrated, there are millions of jobs that are never created because of a dysfunctional permitting system that delays or cancels major infrastructure projects. The RAPID Act would speed up the permitting process for infrastructure projects, enabling jobs to be created and the economy to grow.

## **Regulatory Accountability Act**

- Successfully advocated for passage of H.R. 185, the Regulatory Accountability Act, by the House on January 13 by a vote of 250-175. The bill would modernize the 69-year-old Administrative Procedure Act and bring additional transparency and agency

accountability to the regulations development process. The Senate version of the bill, S. 2006, was introduced on August 6 with Sens. Portman, Collins, King, Ayotte, Johnson, Cornyn, and Perdue as original co-sponsors.

## SMALL BUSINESS

- **Small Business Counseling Programs** - Successfully lobbied for full funding in fiscal year 2016 appropriations for the Small Business Administration's (SBA's) Small Business Development Centers (SBDC) (\$117 million) and SCORE (\$12 million). State and local chambers depend on a robust SBDC and SCORE programs since many are housed in Chamber buildings and the funding assists in entrepreneurial development programs for existing and potential members.
- **Small Business Regulatory Oversight** – Successfully lobbied for full funding in fiscal year 2016 appropriations for the Office of Advocacy. Additionally, the Chamber endorsed President Obama's nomination for the chief counsel of the Office of Advocacy who was successfully marked out of committee and confirmed by the full Senate.
- **Small Business Trade/Veterans Assistance** - Successfully obtained funding of levels in fiscal year 2016 appropriations of \$18 million for State Trade and Export Promotion (STEP) grants under section 1207 of P.L. 111-240 and \$12.3 million in funding for Veterans Outreach, which includes the Veterans Boosts to Business program.
- **Access to Capital** –
  - Successfully lobbied for passage into law of the CREED Act contained in legislation H.R. 2266 and S. 966. This will open the door for long-term refinancing under the SBA 504 program of businesses real-estate loans structured as balloon payments.
  - Successfully advocated for an interim increase in lending authority in the amount of \$23 billion for the SBA 7(a) lending program that prevented the lending program from exceeding its budget authority prior to fiscal year-end.
  - Successfully advocated for lending authority for fiscal year 2016 in the amount of \$26.5 billion for the SBA 7(a) lending program.
  - Successfully lobbied for passage into law of Family of Funds legislation contained in H.R. 1023 and S. 522. This bill will provide an increase from \$225 million to \$350 million the maximum amount of outstanding leverage available to the Small Business Investment Company programs with a proven track record of success.

## TAXES

- Successfully advocated for permanent extensions of the following provisions— research and experimentation, section 179 increased small-business expensing, and the subpart extension for active financing income.

- Successfully advocated for a multiyear extension of the controlled foreign corporation look-through rule and bonus depreciation while securing extension of dozens of other tax deductions, credits, and incentives through 2016.
- Successfully advocated for a business-friendly transition rule to provisions relating to restrictions on tax-free spin-offs involving REITS.
- Successfully advocated for House passage of H.R. 1105 (repeal of the death tax).
- Successfully advocated for House passage of H.R. 160 (repeal of the medical device tax).
- Successfully advocated for passage of fiscal year 2016 budget resolutions in both the House and the Senate, including successfully advocating for adoption of amendments to the Senate budget to repeal the estate tax and improve dynamic scoring, while defeating several amendments to raise taxes on business.
- Successfully advocated for the IRS to provide regulatory relief to foreign insurance companies from the “cash box” rule announced by the 2014 Treasury inversion guidance.
- Successfully advocated for passage of long-term highway trust fund legislation that did not include unrelated tax revenue provisions, such as forced repatriation measures.
- Successfully advocated to defeat punitive inversion amendments to H.R. 3762, Restoring Americans’ Healthcare Freedom Reconciliation Act of 2015.

## **TRANSPORTATION**

### **Highways and Public Transportation**

- Achieved a three-year Positive Train Control implementation deadline extension through December 2018 in the Surface Transportation Extension Act of 2015 (P.L. 114-73).
- Successfully achieved House and Senate passage of H.R. 22, the FAST Act conference report, which includes five years of funding above inflation. The FAST Act legislation included several Chamber priorities:
  - Renewal of the Export-Import Bank
  - Permit streamlining provisions
  - JOBS Act
  - Ports Performance Act
  - New dedicated freight program
- Achieved inclusion of a transit parity provision in the 2016 tax extenders package, which will permanently put the maximum monthly limit for transit passes and van pool benefits on par with parking perks given to taxpayers.
- Successfully achieved inclusion of the hours-of-service provision in the 2016 Omnibus Appropriations bill, which addresses the required Federal Motor Carrier Safety Administration (FMCSA) hours-of-service 34-hour restart study.

## **Marine Transportation**

- Achieved inclusion of Ports Performance Act provisions in the FAST Act surface transportation legislation.

## **Aviation**

- Successfully achieved passage of H.R. 3614, the Airport and Airway Extension Act of 2015, now Public Law 114-55. This extension will maintain current FAA programs through March 31, 2016.

## **U.S. CHAMBER CENTER FOR ADVANCED TECHNOLOGY AND INNOVATION**

The Center for Advanced Technology and Innovation (CATI) brings together innovators, technologists, and policymakers to advocate for rational policy solutions that drive economic growth, spur innovation, and create jobs. The following reflects key highlights from the center's program of work.

## **Internet of Things (IoT)**

- In May, hosted a luncheon keynote on the future of IoT, innovation and the regulatory environment featuring then-Federal Trade Commission (FTC) Commissioner Josh Wright.
- In September, formed IoT Working Group composed of traditional and nontraditional technology companies as a means to explore the impending regulatory and legislative implications of commercial and industrial uses of emerging IoT technologies.
- In September, co-hosted Internet of Everything Summit featuring thought leaders from the private and public sectors, including Sen. Steve Daines, FTC Commissioner Maureen Ohlhausen, and technology executives.
- In November, commissioned a focus group to better understand the public's knowledge and perceptions of IoT by testing a series of messages about its impact on economic growth, innovation, and job creation.

## **Data-Driven Innovation**

- In April, co-hosted a panel discussion in Nashville, Tennessee, showcasing the importance of the appropriate and safe use of data for traditional economy companies. Panel featured Rep. Marsha Blackburn, as well as regional business and local chambers of commerce leaders.
- In August, co-hosted a panel discussion in Sioux Falls, South Dakota, featuring Sen. John Thune and local business leaders from the agriculture, health care, banking, and energy sectors to explore issues that are transforming lives and industries at the state and federal levels.

## Data Security

- In June, co-hosted a roundtable featuring senior Senate Commerce and Judiciary staff members on pending data security legislation.

## U.S. CHAMBER LITIGATION CENTER

As of December 14, 2015, the Chamber's Litigation Center filed a record 170 *amicus curiae* briefs on behalf of the Chamber in 2015. Here is a brief summary of the highlights from the Litigation Center's cases decided in 2015 by the U.S. Supreme Court and federal and state courts.

### Positive Results for the Business Community at the U.S. Supreme Court

- On behalf of the Chamber, the Litigation Center participated in 21 merits cases during the U.S. Supreme Court's October Term 2014, which ended in June 2015. The side that the Chamber supported prevailed in 13 of those cases.
- The Litigation Center continues to shape the Supreme Court's docket. For the October Term 2014, the Court granted petitions for writs of certiorari in 6 cases where the Chamber supported review. For the upcoming October Term 2015, the Court has already granted certiorari in 4 cases that the Chamber supported. The Chamber also supported review of 34 other certiorari petitions (21 are still pending) and filed amicus briefs in 8 merits cases so far.

### 2015 Litigation Highlights

#### Arbitration

- The California Supreme Court ruled that an arbitration agreement is not "unconscionable" because it includes a class waiver, allows appeals for outlier awards, requires the appealing party to pay for appellate costs, and allows the parties to invoke self-help remedies, such as repossession. The Court also affirmed that California's "Discover Bank" Rule, which holds class action waivers to be unconscionable, is preempted by the Federal Arbitration Act. The case is *Sanchez v. Valencia Holding Co., LLC* (California Supreme Court).

#### Attorney-Client Privilege in Workplace Investigations

- The D.C. Circuit issued an important decision strengthening companies' ability to rely on the attorney-client privilege to protect the confidentiality of employee communications during an internal investigation. This is the second time the Chamber supported this case before the D.C. Circuit. The court's first decision in the case quoted the Litigation Center's brief and stated that the amicus brief demonstrated the importance of the company's case. The case is *In re KBR, Inc. II* (U.S. Court of Appeals for the D.C. Circuit).

## Class Actions

- The U.S. Supreme Court granted review of a trio of cases that could help rein in serious class action abuses. The cases are *Campbell-Ewald v. Gomez*, *Spokeo Inc. v. Robins*, and *Tyson Foods v. Bouaphakeo*.
  - In *Campbell-Ewald*, the Court will decide whether Article III of the U.S. Constitution permits federal courts to hear “headless” class or collective actions—cases where the defendant made a full settlement offer to the named plaintiff, whose claim is therefore moot.
  - In *Spokeo*, the Court will consider whether Article III of the U.S. Constitution allows federal courts to hear “no injury” class or collective actions—cases where plaintiffs allege a mere statutory violation but do not claim that the defendant’s conduct caused any actual economic injury.
  - In *Tyson Foods*, the Court will address whether a class or collective action may be certified where liability and damages will be based on statistical sampling that ignores material variations among class members and whether a class or collective action may be certified when the class contains members who suffered no injury.

## Employment Law

- The Third Circuit rejected an attempt by the Equal Employment Opportunity Commission (EEOC) to hold a company liable for “retaliation” when it restructured its workforce and offered employees enhanced severance benefits and/or contracting opportunities in exchange for a waiver of past employment claims. The case is *EEOC v. Allstate Ins. Co.* (U.S. Court of Appeals for the Third Circuit).
- The en banc Sixth Circuit ruled that the Americans with Disabilities Act does not require employers to eliminate regular and predictable workplace attendance requirements to accommodate a disability. The Chamber’s brief had argued that an employer should be entitled to significant deference in its determination that regular and predictable attendance at the workplace is an essential function of a job. The case is *EEOC v. Ford Motor Co.* (U.S. Court of Appeals for the Sixth Circuit).
- The U.S. Supreme Court unanimously ruled that security screenings for employees following their work shifts are “postliminary” activities that do not require compensation under the Fair Labor Standards Act (FLSA). The Chamber’s brief had argued that expanding FLSA to include post-work security screenings would create substantial and unforeseen potential liability for thousands of employers throughout the United States. The case is *Integrity Staffing Solutions, Inc. v. Busk* (U.S. Supreme Court).
- The Second Circuit vacated a decision that certified a class of unpaid interns who claimed compensation as employees under the FLSA and the New York Labor Law (NYLL). The case is *Glatt v. Fox Searchlight Pictures* (U.S. Court of Appeals for the Second Circuit).

## Environmental Regulations

- The U.S. Supreme Court ruled that the Environmental Protection Agency (EPA) unlawfully refused to consider the costs imposed by its Utility MACT regulation, promulgated under Section 112 of the Clean Air Act. Since 2012, the regulation has forced the retirement of hundreds of power plant units. The case is *Michigan, et al. v. EPA*.
- The Sixth Circuit issued a nationwide stay of a rule known as the Waters of the United States (or WOTUS) rule issued by EPA and the U.S. Army Corps of Engineers. The stay is in place while the Sixth Circuit determines whether it has jurisdiction under the Clean Water Act to entertain petitions for review to challenge the rule, or whether initial jurisdiction to review the legality of the WOTUS rule lies in the federal district courts. The case is *Chamber of Commerce et al. v. EPA*.
- In light of a 2014 decision by the U.S. Supreme Court, the D.C. Circuit ordered EPA to vacate part of its first attempt to use the Clean Air Act to regulate greenhouse gases emitted by facilities. The regulation would have swept millions of businesses—from dry cleaners to industrial manufacturers—into onerous and costly Clean Air Act permitting programs for the first time. The Chamber was one of the parties that successfully challenged these EPA rules. The case is *Coalition for Responsible Regulation, et al. v. EPA* (D.C. Circuit). At the Supreme Court, the case was known as *UARG, et al. v. EPA* (U.S. Supreme Court).
- The U.S. Department of Energy (DOE) agreed to settle a lawsuit challenging new regulations for walk-in coolers and freezers. The Chamber filed a brief to explain why DOE's so-called Social Cost of Carbon Estimates are fundamentally flawed and unsuitable for use in the regulatory context. The case is *Lennox, et al. v. DOE* (U.S. Court of Appeals for the Fifth Circuit).

## False Claims Act (FCA)

- The U.S. Supreme Court ruled that the Wartime Suspension of Limitations Act (WSLA), which significantly expands the period when FCA claims may be brought, applies only to criminal offenses, not to civil claims. The case is *KBR v. U.S. ex rel Carter* (U.S. Supreme Court).

## Financial Regulation and Securities Litigation

- The U.S. Supreme Court unanimously held that a statement of opinion is not an untrue statement of fact under Section 11 of the Securities Act of 1933 simply because it ultimately proves incorrect. The case is *Omnicare, Inc. v. Laborers District Council Construction Industry Pension Fund* (U.S. Supreme Court).
- New York's highest court held that the six-year statute of limitations under New York law has run on breach of contract claims brought by certain certificate holders of residential mortgage-backed security (RMBS). Enforcement of statutes of limitations for securities-related claims is important to maintain the predictability needed by our capital markets. The case is *ACE Securities Corp. v. DB Structured Products, Inc.* (New York Court of Appeals).

- The Third Circuit ruled that the defendant public company need not have included a shareholder proposal regarding the company’s sale of high-capacity gun magazines in its proxy solicitation materials for its annual shareholder meeting. The case is *Wal-Mart Stores, Inc. v. Trinity Wall Street* (U.S. Court of Appeals for the Third Circuit).

### **Free Speech**

- A D.C. Circuit panel reaffirmed its April 2014 decision holding that the SEC’s Conflict Minerals Rule and the Dodd-Frank Act violate the Free Speech Clause of the First Amendment to the extent they require companies to state that their products have not been found to be “DRC conflict free” (i.e., not found to be free of certain metals coming from mines controlled by rebels in the Congo and surrounding countries). The Chamber was one of the petitioners challenging the regulation. The case is *NAM, Chamber, & BRT v. SEC* (U.S. Court of Appeals for the D.C. Circuit).

### **Foreign Corrupt Practices Act (FCPA)**

- The Texas Supreme Court held that communications between a company and a federal enforcement authority regarding a Foreign Corrupt Practices Act investigation were “absolutely privileged” because the statements by the company were made preliminary to a proposed judicial proceeding. The Chamber’s amicus briefs had warned that the lower court’s holding penalizes businesses for cooperating with state and federal agencies. The case is *Shell Oil Co. v. Writt* (Texas Supreme Court).

### **Global Forum Shopping**

- The Second Circuit affirmed the dismissal of Alien Tort Statute claims that sought to hold companies directly liable for atrocities committed by foreign governments. The court also affirmed a prior Second Circuit decision holding that the Alien Tort Statute does not impose liability on corporations. The case is *Balintulo v. Ford Motor Co., et al.* (U.S. Court of Appeals for the Second Circuit).
- A New York court granted a defendant’s motion for leave to appeal a decision holding that, even in the absence of any basis to pierce the corporate veil, a parent company can be held liable for torts allegedly committed by its foreign subsidiary on the theory that the parent is “in the best position to exert pressure for the improved safety products” and is the global “guardian” of the company’s brand. The case is *Finerty v. Abex Corporation, et al.* (Appellate Division of the New York Supreme Court, First Judicial Department).

### **Independent Contracting**

- A California appeals court held that California Labor Code Section 226.8, which imposes penalties for the willful misclassification of employees, does not create a private cause of action. Further, the court held that a company does not engage in willful misclassification under Section 226.8 simply by contracting with another company that is alleged to have improperly classified employees as independent contractors. The case is *Noe v. Superior Court* (California Court of Appeal, Second Appellate District).

## Labor Relations

- The U.S. Supreme Court unanimously and decisively rejected the Sixth Circuit's decision that collective bargaining agreements provide permanently vested health care benefits for retirees. The Chamber's amicus brief had argued that the Sixth Circuit's rule would unfairly impose substantial, retroactive, and unbargained for costs on employers. The case is *Me<sup>&</sup>G Polymers USA, LLC v. Tackett* (U.S. Supreme Court).

## Overcriminalization

- In one of the most high-profile overcriminalization cases of the year, the U.S. Supreme Court held that the Sarbanes-Oxley anti-shredding provision could not be used to prosecute a fishing captain for throwing three undersize grouper back into the Gulf of Mexico. The Court ruled that the SOX anti-shredding provisions are intended to criminalize the intentional destruction of objects that are used to record or preserve information—not fish. The case is *Yates v. United States* (U.S. Supreme Court).

## Property Rights

- The U.S. Supreme Court ruled 8-1 that it was unconstitutional for the Department of Agriculture to require raisin farmers to give the federal government title to up to 47% of their crops for little to no compensation. The Court's three holdings each strengthen property rights: the full protections of the Takings Clause apply to "personal property," not just "real property"; the Takings Clause applies to situations where the government requires an individual or business to pass legal title of property to the government, even if the property itself has not yet been transferred to the government; and the ability to participate in interstate commerce is not a "benefit" that the government may withhold unless an individual or business agrees to give up other constitutional rights. The case is *Horne v. USDA II* (U.S. Supreme Court).

## Tax

- The Second Circuit held that tax advice regarding a corporate restructuring is protected by the work product doctrine if it is prepared in anticipation of litigation with the IRS even if the company would have obtained some level of tax advice anyway for the purpose of tax compliance associated with the transaction. The case is *Schaeffler v. United States*.
- The U.S. Supreme Court agreed that Maryland's double taxation of out-of-state income violates the Court's Dormant Commerce Clause jurisprudence. The case is *Maryland Comptroller v. Wynne* (U.S. Supreme Court).
- The U.S. Supreme Court held that the State Tax Injunction Act bars federal court jurisdiction only where a party directly challenges a state tax. The decision could make it easier for corporations to challenge state tax regulations in federal court. The case is *Direct Marketing Association v. Brohl* (U.S. Supreme Court).

January 2016