



# Presidential and Congressional Outlook: How the Trump Administration and Congress Can Impact Middle-Market Businesses

January 12, 2017

# Speakers



Charles J. Morton, Jr.  
Partner, Venable LLP  
P: 410.244.7716  
E: [CJMorton@Venable.com](mailto:CJMorton@Venable.com)



William R. Nordwind  
Partner, Venable LLP  
P: 202.344.4964  
E: [WRNordwind@Venable.com](mailto:WRNordwind@Venable.com)



Kara M. Ward  
Counsel, Venable LLP  
P: 202.344.4120  
E: [KMWard@Venable.com](mailto:KMWard@Venable.com)

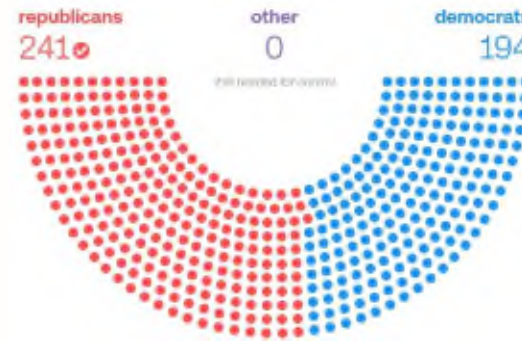


# Overview of Political and Legislative Landscape

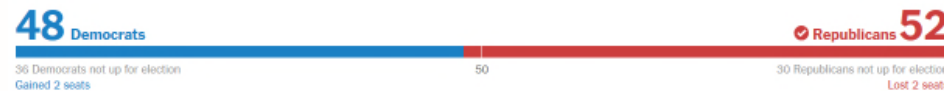
## Presidential Election



## House Elections – GOP Retains Control



## Senate Elections – GOP Retains Control



## Key House Leadership

## Key Senate Leadership

### Speaker of the House

#### Republican Majority Leaders



Left: Kevin McCarthy (House of Representatives),  
Right: Steve Scalise (Majority Whip)



Rep. Paul Ryan (R-WI)

#### DEMOCRATIC MINORITY LEADERS



Left: Nancy Pelosi (House of Representatives),  
Right: Steny Hoyer (Minority Whip)

### Republicans



Left to right: Majority Whip Rep. John Cornyn (R-TX)  
and Majority Leader Rep. Mitch McConnell (R-KY)

### Democrats



Left to right: Minority Leader Rep. Chuck Schumer (D-NY)  
and Minority Whip Rep. Dick Durbin (D-IL)



## *Financial Services*

### House Financial Services Committee



Rep. Maxine Waters  
(D-CA)  
*Ranking*

Rep. Jeb Hensarling  
(R-TX)  
*Chair*

### Senate Banking Committee



Senator Sherrod Brown  
(D-OH)  
*Ranking*



Senator Mike Crapo  
(R-ID)  
*Chair*





## Tax

### House Ways and Means



Rep. Kevin Brady  
(R-TX)  
*Chairman of Ways and  
Means*



Rep. Richard Neal (D-MA)  
*Ranking Member*



Rep. Orrin G. Hatch  
(R-UT)  
*Chair*



Rep. Ron Wyden  
(D-OR)  
*Ranking*

### Senate Finance Committee



# Trump's Presidential Cabinet

These appointments require Senate confirmation

**SEC Chair**



Jay Clayton

**D.N.I.**



Dan Coats

**U.S. Trade Rep.**



Robert  
Lighthizer

**State**



Rex W.  
Tillerson

**Interior**



Ryan Zinke

**Energy**



Rick Perry

**Labor**



Andrew F.  
Puzder

**Small Business**



Linda  
McMahon

**Veterans Affairs**



David Shulkin

**E.P.A.**



Scott Pruitt

**Homeland  
Security**



John F. Kelly

**Defense**



James N.  
Mattis

**Treasury**



Steven  
Mnuchin

**Transportation**



Elaine L. Chao

**Health**



Tom Price

**Commerce**



Wilbur Ross

**Education**



Betsy DeVos

**U.N.**



Nikki R. Haley

**Housing**



Ben Carson

**C.I.A.**



Mike Pompeo

**Attorney  
General**



Jeff Sessions



# Trump's Advisors

Do not require Senate confirmation

**Homeland  
Security  
Adviser**



Thomas P.  
Bossert  
Appointed

**Counselor**



Kellyanne  
Conway  
Appointed

**Trade Czar**



Peter Navarro  
Appointed

**Regulatory  
Czar**



Carl Icahn  
Appointed

**Press Secretary**



Sean Spicer  
Appointed

**White House  
Counsel**



Donald F.  
McGahn II  
Appointed

**Nat. Sec.  
Adviser**



Michael T.  
Flynn  
Appointed

**Chief of Staff**



Reince Priebus  
Appointed

**Chief Strategist**



Stephen K.  
Bannon  
Appointed



# President Trump's "Strategic and Policy Forum"

VENABLE<sub>LLP</sub>

*"... will be called upon to meet with the President frequently to share their specific experience and knowledge as the President implements his plan to bring back jobs and Make America Great Again."*

**Stephen A. Schwarzman  
(Forum Chairman)**

Chairman, CEO, and Co-Founder  
Blackstone

**Adebayo "Bayo" Ogunlesi**

Chairman and Managing  
Partner  
Global Infrastructure Partners

**Mark Weinberger**

Global Chairman and CEO  
EY

**Rich Lesser**

President and CEO  
Boston Consulting Group

**Paul Atkins**

CEO, Patomak Global Partners, LLC  
Former Commissioner of the SEC

**Kevin Warsh**

Shepard Family Distinguished  
Visiting Fellow in Economics,  
Hoover Institute, Former  
Member of the Board of  
Governors of the Federal  
Reserve System

**Jim McNerney**

Former Chairman,  
President, and CEO  
Boeing

**Toby Cosgrove**

CEO  
Cleveland Clinic

**Mary Barra**

Chairman and CEO  
General Motors

**Ginni Rometty**

Chairman  
President, and CEO  
IBM

**Daniel Yergin**

Pulitzer Prize-winner  
Vice Chairman  
IHS Markit

**Jamie Dimon**

Chairman and CEO  
JPMorgan Chase & Co

**Jack Welch**

Former Chairman and CEO  
General Electric

**Bob Iger**

Chairman and CEO  
The Walt Disney  
Company

**Larry Fink**

Chairman and CEO  
BlackRock





# President Trump's Key Policies



## Immigration Reform



## Customs Enforcement

Including, building "the wall"



## Financial Services Reform



## Trade

TPP, NAFTA, T-TIP



## Infrastructure

\$137 billion in tax credits to leverage \$1 trillion private investment and infrastructure



## Healthcare

Repeal the Affordable Care Act

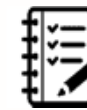


## Environmental

Climate change policy review and other EPA regulations



## Tax Reform



## Overall Regulatory Reform

"No new regulations until the economy shows significant growth".



## Government Budget Fight



- Jobs: Create new jobs, or bring them back onshore.
- Save money for working-class families
- Create opportunities for economic advancement
- Reduce government regulation and the costs of doing business



# **Key Policy Issue:**

Financial Services



## On Dodd-Frank:

*"We have to get rid of Dodd-Frank. The banks aren't loaning money to people that need it.... The regulators are running the banks."*

## On Too Big to Fail:

- Does not support "breaking up" big banks
- Glass-Steagall?

## Regulatory Reform

- No new regulations until economy shows "significant growth"

## Bottom Line

- The Administration will be looking to the House Financial Services Committee and the Senate Banking Committee





## Financial Services Policy

- Focus on pro-growth policies
- Nominations: Treasury; Fed Governors; SEC
- Dodd-Frank Reform
- JOBS Act
- GSE Reform
- “FinTech”
- DOL Fiduciary Duty Reform / Repeal
- CFPB Reform
- Federal Reserve Reform
- Cybersecurity
- Sanctions / AML – Iran

## Regulatory Reform

**SENATE: Federal Regulatory Improvement Act (S. 1484)**

**HOUSE: Financial CHOICE (H.R. 5983)**

### **Consensus Views and Commonalities:**

- “Too Big to Fail” / SIFI / FSOC Changes
- Community Bank Relief: Streamline exams, Mortgage rules
- Federal Reserve transparency
- Capital Formation for emerging businesses and other JOBS Act



## The Financial CHOICE Act

### **Repeal of investor protections in Dodd-Frank**

Eliminates authority for SEC to establish a uniform standard of care for broker-dealers and investment advisers.

Removes ability of SEC to restrict or prohibit pre-dispute arbitration.

### **Exemption of PE Fund Advisers from reporting**

Advisers to private equity funds are exempt from registration requirements under the Investment Advisers Act.

### **Credit Rating Agencies Reforms**

SEC Office of Credit Ratings and Office of Municipal Securities would now report to the Division of Trading and Markets.

Repeal of the Franken Amendment of Dodd Frank Section 939F that would require a government appointed board to assign ratings to nationally recognized statistical rating organizations (NRSROs).

Reinstates the SEC rule that allows issuers to include security ratings from a credit rating agency in a prospectus without the consent of the credit rating agency.

SEC may exempt any person from certain registration provisions if those provisions create a barrier to entry into the market for NRSROs.

### **Proxy issues**

Repeals SEC authority to issue proxy access rules.

Repeals SEC proxy disclosure rules regarding Chairman and CEOs of issuers.

Require the registration of proxy advisory firms and management of conflicts of interest as well as methodologies for providing recommendations.

### **Conflict Minerals**

Repeal conflict mineral, resource extraction and mine safety disclosure requirements.

### **International negotiations**

Before participating in any process of settling financial standards through an international process (BCBS, FSB or IAIS), the Federal Reserve, FDIC, OCC, Treasury, SEC and CFTC would be required to first consult with Congress.



# 115<sup>th</sup> Congress – JOBS Act & Capital Formation (continued)

## The Financial CHOICE Act

<b>Emerging Growth Companies (EGCs)</b>	Exempt all EGCs and small companies (less than \$250M in gross revenues) temporarily from xBRL rules. Extends SOX 404(b) exemption.
<b>Small Issuers and Crowdfunding</b>	Creates “venture exchanges” that lists small issuers and provides exemptions from Regulations NMS, decimalization and others. Exempts “micro-offerings” (less than \$500,000/year) made to 35 or fewer purchasers. Relaxes certain provisions related to crowdfunding, which includes an exemption from registration.
<b>Compensatory benefit plans</b>	Directs the SEC to revise rules to raise the threshold for compensatory benefit plans from \$5M to \$10M.
<b>Small business</b>	SEC must review findings of the Annual Government-Business Forum on Small Business Capital Formation Establishes the Office of the Advocate for Small Business Capital formation.
<b>Business Development Companies (BDCs)</b>	Expands the types of investments BDCs may make to include, among others, investments in financial companies. Increases BDCs’ leverage ratio.
<b>Exchange Traded Funds (ETF)</b>	Safe harbor for ETF research reports issued by broker-dealers.
<b>M&amp;A Broker- Dealer Registration</b>	Exempts some M&A brokers engaging in the sale of small, privately held companies from registration requirements for broker-dealers.
<b>Reg D and general solicitation rules</b>	Instructs the SEC to revise the definition of “general solicitation” to exclude certain advertisements. Prohibits the SEC from requiring filings of general solicitation materials in a Reg D filing.
<b>Accredited Investor</b>	Amends the definition of “accredited investor” to include “knowledgeable employees” of private funds. Repeals mandate that allows the SEC to raise the dollar thresholds for accredited investors and replaces it with a new threshold calculation.
<b>State “Blue Sky” preemption</b>	Extends state “Blue Sky” preemption to any security on any national security exchange.



# Key Policy Issue:

Trade





Moving away from multilateral trade agreements...  
... and moving toward bilateral agreements.

- Creation of the National Trade Council in the White House:
  - “develop trade policies that shrink our trade deficit, expand our growth, and help stop the exodus of jobs from our shores”
  - “advise the President on innovative strategies in trade negotiations, coordinate with other agencies to assess U.S. manufacturing capabilities and the defense industrial base...”
- Considerations:
  - Off-shore production: Tweet-style headline risk, sensitive to outsourcing manufacturing jobs
  - Export strategy: country-by-country analysis



# Key Policy Issue:

Tax



- 15% corporate income tax rate
- Cap the tax rate on pass-through business income at 15% (possibly limited to small pass-throughs; large entities 15% entity tax and 20% tax on dividends)
- Allow full expensing (but limit interest deductibility)
- Possibly end tax deferral on overseas corporate income
- Enact one-time deemed repatriation tax of 10% on all currently deferred foreign profits (4% tax on illiquid assets)
- Eliminate all corporate tax expenditures (except R&D credit)
- Eliminate Corporate AMT



## President Trump's Individual Tax Provisions

- Individual Tax Provisions
  - 3 tax brackets:
    - 12% (37.5K and 75K)
    - 25% (\$112.5K and 225K)
    - 33% (in excess of \$112.5K and 225K)
- Capital gains brackets of 0%, 15%, and 20% coinciding with income tax brackets
- Standard deduction of \$15,000 for individuals and \$30,000 for married individuals
- Repeal AMT and 3.8% Net Investment Tax
- Repeal estate tax (but disallow basis step-up for estates over \$10M – likely taxed upon sale)
- Tax carried interest as ordinary income
- Deduct child care expenses equal to the average child care cost (income cap at \$250K/\$500K)
- Cap deductions for high-income individuals at \$100,000, or \$200,000 for married filers





## House GOP Task Force on Tax Reform Blueprint *Business Provisions*

- Reduces the corporate tax rate from 35% to 20%
- 25% rate for all pass-throughs
- Repeals corporate AMT
- Immediate and full expensing for business investments
- Eliminate current deduction for interest expense
- Net operating losses allowed to carry forward indefinitely
- Retains R&D but eliminates other “special interest deductions”
- Replaces worldwide income tax system with a destination basis cash-flow tax approach that imposes tax by location of consumption (as opposed to location of production). Sales of exported products, services and intangibles would not be subject to U.S. tax. Imported products, services and intangibles will not be deductible.



## House GOP Task Force on Tax Reform Blueprint *Individual Provisions*

- Reduce the number of tax brackets to three (12%, 25%, 33%)
- Combines the standard deduction, additional standard deduction, and the Personal Exemption into a "Larger Standard Deduction"
- Combines the Child Tax Credit (CTC) and the personal exemption for children and dependents into one "Larger Child and Dependent Tax Credit." Increases the CTC to \$1,500 per child.
- 50% deduction allowance for individuals' net capital gains, dividends, and interest income
- Repeals the estate tax
- Repeals unspecified "special-interest provisions"
- Retains the EITC, higher education deductions, mortgage interest, and charitable contribution deductions

INDIVIDUAL INCOME TAX BRACKETS UNDER THE BLUEPRINT

Current Law	Blueprint
10%	0%/12%*
15%	
25%	25%
28%	
33%	33%
35%	
39.6%	



## President Trump's Tax Policy vs. GOP Blueprint

Trump	vs.	GOP
12%, 25%, and 33% brackets		12%, 25%, and 33% brackets
Capital gains brackets of 0%, 15%, and 20%		Capital gains brackets of 6%, 12.5%, and 16.5%
Phases out all deductions except for charitable deduction and mortgage interest deduction (cap itemized deductions at \$100,000 for single filers, 200,000 for married filers)		Eliminates all deductions except charitable deduction and mortgage interest deduction
Eliminates estate tax and AMT		Eliminates estate tax and AMT
15% flat rate for corporations and pass-throughs		20% flat rate for corporations, 25% for pass-throughs
Full expensing for new business investments		Full expensing for business investments
Phase in for "reasonable caps" on deductibility of business interest expenses		No current deduction for net interest expenses
One-time deemed repatriation of overseas held cash at 10%, ends deferral of taxes on corporate income held abroad		8-year period to repay accumulated earnings at 8.75% of liquid earnings and 3.5% of illiquid earnings

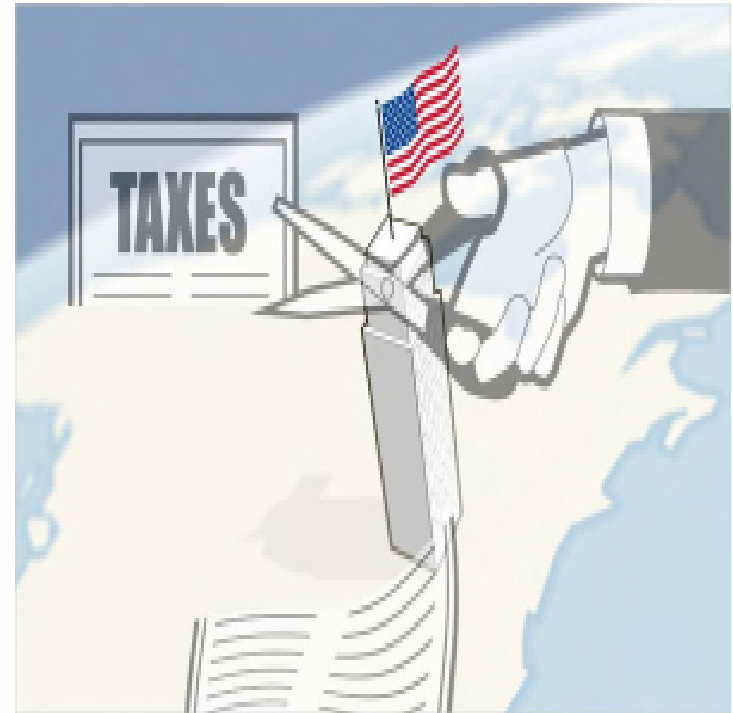


**Question:** What is Trump's repatriation plan?

**Answer:** A one-off tax break that allows U.S. firms to bring funds back into the U.S. that were held overseas with only a 10% payment, versus the current 35%.

**What this means for Mid-Market investors:**

- Increased cash available in the U.S. for acquisitions by some of the largest U.S. companies in the world
- Other possibilities:
  - Financial investment: share buybacks, special dividends, other capital structure changes
  - Physical investment in operating companies



## **Key Policy Issue:**

The Affordable Care Act





## ■ **Budget Reconciliation Process:**

- President Trump and the Republicans in Congress have the ability to quickly eliminate key portions of the ACA using the budget reconciliation process (which was used to enact the ACA legislation).
- This approach allows for the passage of federal tax and revenue measures with a procedure that is not subject to a filibuster in the Senate. The Republicans' majority in the House and Senate would be sufficient to repeal major ACA provisions including:
  - The individual and employer mandates
  - The federal subsidies that reduce the costs of mandated coverage for lower income individuals in the ACA exchanges
  - The taxes built in to the ACA including the medical device tax, the tax on so called Cadillac health plans, and the high-income earner Medicare surtax
- The process would leave in place non-revenue-related aspects of the ACA, including the requirement that health insurers issue coverage without regard to pre-existing conditions and the mandate that they allow children up to age 26 to be covered under their parents' health plans.
- Repeal could take effect immediately or be delayed to minimize disruption for the approximately 20 million people who have already obtained health coverage because of the ACA.



## Speaker Ryan's "Better Way" Plan

The House Republicans under the direction of Speaker Paul Ryan have developed a substantial health reform proposal which repeals the ACA and replaces it with an extensive policy framework: titled *A Better Way: Our Vision for a Confident America*. Key provisions include:

- Pre-existing conditions and the individual mandate
- Essential health benefits and age-rating ratios (3 to 1)
- Subsidies and tax credits
- Medicaid block grants
- Capping the employer-based-insurance tax exclusion

## Tom Price's "Empowering Patients First Act"

Tom Price, Trump's nominee for U.S. Secretary of Health and Human Services, has put forward his own plan to repeal and replace the ACA which is similar in many ways to Ryan's Better Way Plan. Price's plan proposes:

- Providing preexisting condition protection only if the beneficiary has maintained continuous health insurance coverage.
- Replace the ACA's subsidies with tax credits based on age rather than income and cap the tax exclusion for employer based coverage at \$8,000 for individuals and \$20,000 for families
- Eliminate the essential health benefits requirements and do away with age rating ratios
- Encourage the use of health savings accounts and imposing limits on medical malpractice litigation.

## The Patient Choice, Affordability, Responsibility, and Empowerment ("CARE") Act from Senator Hatch, Senator Burr, and Rep. Upton

The CARE Act's key provisions include:

- Preexisting conditions and the individual mandate
- Subsidies and tax credits
- Essential health benefits and age-rating ratios. (5 to 1)
- Capping the employer-based-insurance tax exclusion.
- Medicaid block grants



## **Key Policy Issue:**

Government Contracting



## Budgets

- DoD, DHS, NASA, and DoT expected to increase
- CFPB, EPA, HHS expected to decrease

## Changes in enforcement

- Audit and fraud investigation and enforcement are unlikely to change
- Preventing fraud is a bipartisan issue
- Qui tam provision of the FCA will still entice third parties
- May be more business friendly with regulatory interpretations

## Freeze on hiring of federal employees

- Could further slow administrative processes



# Timing and Key Dates





# Budget resolutions may serve as vehicles for primary agenda items in 2017

## Timeline of key policy events in 2017

