



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



William R. Nordwind
Partner, Venable LLP
P: 202.344.4964
E: WRNordwind@Venable.com



Kara M. Ward
Counsel, Venable LLP
P: 202.344.4120
E: KMWard@Venable.com

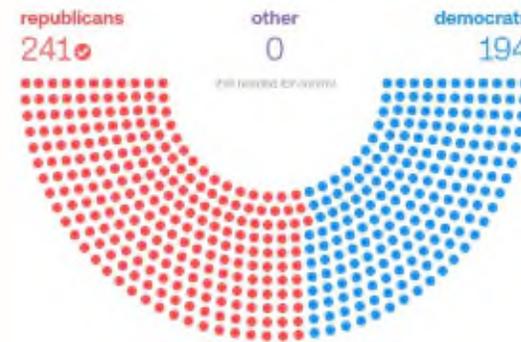


Overview of Political and Legislative Landscape

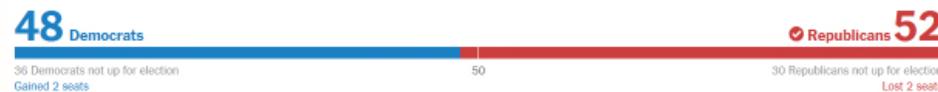
Presidential Election



House Elections – GOP Retains Control



Senate Elections – GOP Retains Control



Key House Leadership

Key Senate Leadership

Republican Majority Leaders



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

Speaker of the House



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_{LLP}

"... 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.



115th Congress – JOBS Act & Capital Formation (continued)

The Financial CHOICE Act

Emerging Growth Companies (EGCs)	Exempt all EGCs and small companies (less than \$250M in gross revenues) temporarily from xBRL rules. Extends SOX 404(b) exemption.
Small Issuers and Crowdfunding	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.
Compensatory benefit plans	Directs the SEC to revise rules to raise the threshold for compensatory benefit plans from \$5M to \$10M.
Small business	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.
Business Development Companies (BDCs)	Expands the types of investments BDCs may make to include, among others, investments in financial companies. Increases BDCs’ leverage ratio.
Exchange Traded Funds (ETF)	Safe harbor for ETF research reports issued by broker-dealers.
M&A Broker- Dealer Registration	Exempts some M&A brokers engaging in the sale of small, privately held companies from registration requirements for broker-dealers.
Reg D and general solicitation rules	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.
Accredited Investor	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.
State “Blue Sky” preemption	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

