



Webinar #3: Trump Transition – How's it Going to Work?

December 1, 2016



Agenda

- Introduction
- What to Expect from Today to Inauguration Day
 - Inside Scoop
 - Possible Last Minute Legislation
 - Possible Last Minute Regulation
- Spotlight on the Regulators: Transitions and Potential Federal Agency Action in Government Contracts, Health Care, and Financial Services
- Conclusion
- Questions & Answers



Introduction of Crowell & Moring

- Top 100 AmLaw Firm
- Chairwoman Angela Styles
- Headquarters in Washington, D.C.
- Offices in NY, DC, LA, SF, AK, London, Brussels
- Legal Practices Include: Government Contracts, Health Care & Anti-Money Laundering Practices
- Lobbying Practice Includes: McConnell-Schumer Government Affairs team



Introduction of Presenters

- **Jim Flood:** Partner & Chair of Government Affairs Group; Former Counsel to Senate Minority Leader Charles Schumer (D-NY)
- **Scott Douglas:** Senior Policy Director, Government Affairs Group; Former Senior Staff to Senate Majority Leader Mitch McConnell (R-KY)
- **Jodi Daniel:** Partner, Health Care Group & Head of Digital Health Practice; Former Director of Policy in the Office of the National Coordinator for Health IT at HHS
- **Rob Burton:** Partner, Government Contracts Group; Former OFPP Deputy Administrator in the Executive Office of the President
- **Carlton Greene:** Partner, International Trade Group; Former Chief Counsel at FinCEN, U.S. Regulator Responsible for Bank Secrecy Act



Inside Scoop

- Trump Campaign Short on Written Policy Proposals
- Many Unanswered Questions
- Vice President Pence and Team Communicating with Federal Agency Transition Teams Daily
- Trump Team Pleased with Obama Administration Cooperation But Watching Closely
- Trump Team Rolling Out Cabinet Nominations and Other Picks
- Despite the Outsider Label Trump is Using People with Agency Experience



What to Expect: Today to Inauguration

- 12/1/16 – 1/20/17 – President Obama in Power
- 12/16/16 – Lame Duck 114th Congress Scheduled End Date
- 01/03/17 – New 115th Congress Sworn In
- 01/20/17 – President Trump Sworn-In at Noon and Can Officially Act
- Spring 2017 – Senate Confirmation Hearings Will Take Months to Confirm Full New Cabinet – Interim Officials and Senior Career Staff Will Run Show At Beginning



What to Expect: Today to Inauguration

- Final 114th Lame Duck Congress Finishes
- Daily Press on Trump Policy Plans in 2017
- New Trump Administration Cabinet/Sub Picks
- Transition Team Meetings with White House
- Transition Team Meetings at Federal Agencies
- 100-day Plan Being Developed (Executive Orders, Rulemaking, Legislative Action)



Possible Last Minute Legislation

- No New Major Obama Legislation
- BUT There is Legislation Being Voted on in the Current Lame Duck Session of Congress
- President Obama Can Sign or Veto It
- Not Enough Republican Votes in Congress to Override a Veto
- Legislation Passing with Some Democratic Support in the Current Congress



Possible Last Minute Legislation

- ***The legislation still to pass in 2016*** includes:
 - The 21st Century Cures Act
 - The National Defense Authorization Act (NDAA)
 - “Continuing Resolution” to Fund the U.S. Government From December 9 Until a Date in Spring 2017
 - Iran Sanctions Extension Act – Passed the House, Senate Likely to Pass This Session
 - Possible Flint Water Legislation
 - Possible Emergency Legislation, Although Unlikely to Occur (e.g., war in Syria?)



Possible Last Minute Regulation

- There is no time for the Obama Administration to propose and finalize **New** Regulation
- Some **pending** regulations could be finalized **BUT** if the regulation is characterized as “major” under the law it is highly unlikely it will be finalized
- **BECAUSE** the Congressional Review Act (CRA) can be used by the Republican Congress to kill any new final “major” federal regulation



The Congressional Review Act (CRA)

- Passed by Congress in 1986
- Requires federal agencies to report on and send new final regulations to Congress for review
- Gives Congress 60 legislative days from date new regulation is received by Congress to pass a “Resolution of Disapproval” killing the new regulation



The Congressional Review Act (CRA)

- The CRA “Resolution of Disapproval”
 - Only requires a majority vote to pass
 - The passed Resolution can be vetoed by the President requiring a supermajority (2/3) vote of House and Senate to overturn the veto
 - Only 1 Resolution has succeeded since 1996
 - But the time is right for the CRA to work to repeal Obama regulations because the Republicans control the House, Senate, and White House
- The Congressional Research Service (CRS) published a memo on the Congressional Review Act and current regulations*

** A copy of the CRS memo (11/17/2016) can be found in the green resources widget icon at the bottom of your screen.*



Spotlight on the Regulators: What's on the Agenda?

Now let's take a deeper look at the transition process in three agencies:

- Department of Health and Human Services (HHS) – Health Care
- Office of Federal Procurement Policy (OFPP) – Government Contracts
- Treasury – Financial Services/International Financial Regulations



HHS Transition Generally

- **People**
 - **Tom Price** – Nominee for HHS Secretary
 - **Seema Verma** – Selected for CMS Administrator
 - **Health Transition Team** – Former Bush Appointees
 - Andrew Bremberg
 - Paula Stannard
 - Political team is replaced but *career staff stays*
- **Processes**
 - Formal processes limit wholesale changes in policy (E.g., Rulemaking process, BUT... Congressional Review Act)



Health Policy Transition: Congressional Action

- **Statutes**
 - Affordable Care Act (ACA)
 - Medicare and CHIP Reauthorization Act of 2015 (MACRA)
- **Legislation**
 - 21st Century Cures Bill



Health Policy Transition: Regulatory Action

- **Major HHS Rules**
 - MACRA Rule
 - ONC Health IT Certification Oversight Rule
 - Medicare Payment Rules
- **Other Rules That May Be Finalized**
 - Many rules are pending review; may be released before 1/20/17
 - E.g., Confidentiality of Substance Use Disorder Patient Records
 - Others still may be sent to the White House for review
 - E.g., Federal Policy for the Protection of Human Subjects (Common Rule)



Office of Federal Procurement Policy (OFPP) – Government Contracts

- OFPP Mission
- Headed by Senate-confirmed Administrator
- Transition Process at OFPP



New Administration's Potential Acquisition Agenda

- Less Regulatory Burdens
- More Streamlined Commercial Item Procurements
- Improved Program Management
- Hiring Freeze/Increased Outsourcing
- At-Risk Obama Executive Orders
 - Fair Pay and Safe Workplaces
 - Sick Leave
 - Minimum Wage
- More Emphasis on Infrastructure



Treasury – Financial Services/ International Financial Regulations

- Legislation
 - Iran Sanctions Extension Act – passed House, likely to pass Senate this session
- Final Rules
 - OFAC Cuba regulations published October 17, 2016
 - FinCEN Customer Due Diligence Rule – published May 11, 2016
- Pending Rules
 - IRS Anti-Inversion Rules – temporary rules published April 2016
 - FinCEN Investment Advisor NPRM – likely below CRA threshold



Treasury – Financial Services/ International Financial Regulations

- Key Sanctions Programs
 - Iran – will Trump blow up the JCPOA?
 - Cuba – Trump/Priebus comments, Claver-Carone appointment
 - Russia
 - Syria and terrorism
- Treasury Resource Issues
 - Retaining key talent
 - Small size

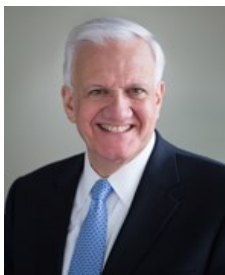


Conclusion

- The Presidential Transition process has begun but will take time to play out
- The Obama Administration will not be able to pass new legislation
- The Obama Administration will not be able to introduce and finalize new regulation
- The Obama Administration will not be able to successfully publish any final “major” regulation
- Let Us Know How We Can Help You ... Thank You!



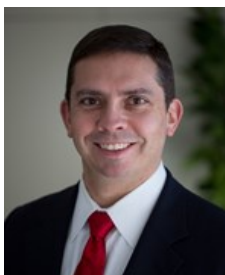
Questions & Answers



Robert A. Burton, Partner
Government Contracts
rburton@crowell.com
Phone: +1 202.624.2982



Jodi G. Daniel, Partner
Health Care
jdaniel@crowell.com
Phone: +1 202.624.2908



W. Scott Douglas, Sr. Policy Advisor
Government Affairs
sdouglas@crowell.com
Phone: +1 202.508.8944



James G. Flood, Partner
Government Affairs
jflood@crowell.com
Phone: +1 202.624.2716



Carlton Greene, Partner
International Trade
cgreene@crowell.com
Phone: +1 202.624.2818