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
  - 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

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