Prioritizing Tax and Regulatory Improvement in 2017

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ACCF

AMERICAN COUNCIL FOR CAPITAL FORMATION

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Issue

As the attention of the nation and world leaders turn to Washington, D.C. to see what issues the new 115th Congress and administration of President Donald Trump will champion early in 2017, the American Council for Capital Formation and its affiliated Center for Policy Research have developed a broad set of policy recommendations on tax reform and improvements to the federal regulatory process, particularly in the energy, environment, and financial services space to guide and focus discussions both on Capitol Hill and downtown. As the transition takes shape, we at the ACCF see opportunities to take a responsible and pro-growth approach to setting good public policy. We believe there are opportunities for bipartisan action on many of the economic issues of greatest concern to the American people.

I. Tax Reform

The Problem:

The U.S. tax code is significantly out-of-date and a drag on investment and American businesses.

- At nearly 39 percent—federal and state combined—the U.S. corporate tax rate is one of the highest in the world.
- U.S. companies struggle to compete with foreign companies and are hindered when it comes to investing and creating jobs.
- We are essentially punishing our biggest investors. Major multinational corporations based in the United States, and which employ tens of thousands of Americans, are forced to pay higher taxes than their competitors.
- The result is that Americans lose out on job opportunities and companies are left with less to spend on innovation and developing new products and markets.

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The Solution:

Tax reform that is simple, pro-growth, and fair.

- The U.S. tax code was last updated in 1986. A new tax system is needed to match our current economic needs, increase our global competitiveness, and reinvigorate the U.S. economy by decreasing the overall tax burden imposed on both individuals and businesses.
- The Blueprint introduced by Speaker Paul Ryan (R–WI) and House Ways and Means Committee Chairman Kevin Brady (R–TX) does the following:
  - Cuts U.S. corporate tax rate to a flat 20 percent, which would relax tax burdens on the business community and provide an incentive for investing in the U.S. economy.
  - The plan would also reduce both the tax and pass-through rate for small businesses to 25 percent. The lowest rate for U.S. jobs creators since World War II.
- Analysis of the Blueprint by various independent groups have found it to have a positive impact on the U.S. economy. For example, an analysis by the Tax Foundation found that the proposal would increase GDP by 9.1 percent over the long term, create up to 1.7 million jobs, and increase wages 7.7 percent. Economic modeling of similar tax reform plans have also shown positive impacts on U.S. investment, jobs, and the overall economy.

- Border adjustment, which became a contentious issue between export and import heavy industries, is an important feature of the Blueprint in terms of raising revenues to fund the lower rates and full expensing for new investment. It is important to have a cost benefit analysis and weigh the options in conjunction with what other policies that are being proposed by the Administration in order to better understand the likely impacts of border adjustment.

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  - Moreover, the argument has been by Chairman Kevin Brady that many of the U.S.'s foreign competitors—from European countries, Mexico, China, and Canada—all employ border adjustment systems. The U.S. does not supplement income tax with a national sales or consumption tax. As a result, America does not adjust its taxes at the border. So, while our foreign competitors add consumption tax to American-made products, the same tax is not applied to their own exported goods.
- "Comprehensive" is the key word. A real overhaul of the tax code, not a patchwork of solutions that don't get to the heart of the problem, is what is called for here.
  - For example, in 2016 there were partisan calls in Congress to eliminate domestic production deductions for oil and gas companies. Such an approach is wrongheaded: Singling out specific industries for political reasons—picking winners and losers—fails to take into consideration the potential for distortionary economic effects that result.
  - Calls for reforming just the corporate tax code are also misguided and could lead to a lopsided tax system that could potentially favor one type of business over another.

Reasons for hope:

Momentum is on the side of reformers. The consensus and leadership exists in Congress and the White House to achieve meaningful tax reform.

- "There's only one missing ingredient for tax reform and that's going to change in 2017," Chairman Brady said on Tax Day 2016.
- In addition to both chambers coming under control of Republicans in the 115th Congress, the Trump administration has been outspoken on its commitment to pursue comprehensive tax reform.
- The House GOP's Blueprint for tax reform overlaps with 80 percent of President Trump's stated ideas.
- Tax reform is a bipartisan issue with supporters on both sides of the political aisle in Congress.

A bipartisan approach is needed to ensure all interests are represented in crafting a comprehensive tax reform package:

- Senate Majority Leader Mitch McConnell (R–KY) said on Dec. 12 that the Senate would pass tax reform using the budget reconciliation process—a privileged motion that needs only a simple majority to pass.
- An open-door, bipartisan discussion is ideal in the lead up to a vote on tax reform to ensure all sides have been heard and to avoid "process" complaints. However, under current circumstances—including, widespread targeting of congressional members on social media—the reconciliation process could be the key for achieving final approval on tax reform.
- Such a closed-door approach could, though, hide ramifications, in terms of surprise outcomes, for consumers and certain sectors of the economy. Stakeholders, including the general public, should be allowed to fully consider the costs and benefits of each approach.

II. Regulatory Improvement

The Problem:

The U.S. federal regulatory system is obsolete, cumbersome, and leads to the accumulation of redundant rules that hamper economic growth and investment.

- Regulatory improvement is central to reviving the U.S. economy.
- Proposals for improving the U.S. regulatory process must strike the proper balance between protecting the health and well-being of our communities, and facilitating job growth and economic prosperity.
- Protecting the environment and human health and safety are crucial government responsibilities. But the federal regulatory state has dramatically increased in both size and scope, and now touches every corner of the U.S. economy—a reality that businesses both large and small must contend with on a daily basis in the form of unavoidable costs from environmental litigation, permitting delays, and compliance costs.
- According to The Economist, the Competitive Enterprise Institute (CEI) reported that in 2013, the cost of complying with federal regulations was $1.86 trillion, or $15,000 per American household.
- According to the World Economic Forum's Global Competitiveness Report, the United States ranked 51 out of 140 countries based on the burden of government regulation.

The Solution:

In 2015, ACCF helped establish the Senate Regulations Caucus to **support a bipartisan legislative approach to improving the federal regulatory system**.

- The ACCF Center for Policy Research has hosted two events that brought together a diverse coalition of industry and federal and state organizations to discuss comprehensive regulatory improvement.
- These events were based on three components: transparency, accountability and scientific integrity.

Reasons for Hope:

The following legislative proposals give Congress multiple options to address the various issues surrounding the exponential growth of the federal regulatory system. While some of the following proposed bills do not yet have bipartisan support, we believe that many of the concepts within these bills are sound and should be a good starting point for a compromise on improving the regulatory system:

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- **Regulatory Accountability Act**, was introduced by the Chairman of the House Judiciary Committee, Bob Goodlatte (R–VA), in a multi-pronged plan to roll back regulations.
  - The bill pulls from a mix of provisions from legislation introduced in the 114th Congress.
  - The bill seeks to change how the Executive Branch creates rules, including, but not limited to, doing the following:
    - Require agencies to choose the lowest-cost option when considering new regulations;
    - Prohibit rules with a potential impact on the economy of $1 billion or more from taking effect until the courts have completed a review;

        - Require agencies to publish information on rules-in-progress, and mandate that agencies issue explanatory summaries of all new rules in clear and concise language.

- **Regulations from the Executive in Need of Scrutiny (REINS)** Act would hold the Executive Branch accountable for the promulgation of new regulations.
    - The REINS Act's main purpose would be to require congressional approval of federal regulations with an estimated economic impact of $100 million or more.
    - House Speaker Paul Ryan (R–WI) has applauded the bill in the past: "REINS is an important first step toward increasing accountability, oversight, and transparency in Washington, and it's one of the best ways President-elect Trump and the new Republican Congress can show we're responding to the American people's demand for change."
- **Midnight Rules Relief Act** would authorize Congress to overturn multiple regulations with a single vote through amending the Congressional Review Act.
    - A companion bill was introduced in the Senate by Senator Ron Johnson (R–WI).
    - According to a Politico story, the Obama administration had some 4,000 regulations in the works for the final months of 2016.
    - As Rep. Bob Goodlatte (R–VA) stated last year, "This bill guarantees that Congress can prevent any and all last minute defiance of the people's will by midnight regulations that stubbornly seem to entrench the last pieces of the administration's bipartisan agenda."
- **The Separation of Powers Restoration Act** would begin to restore three "co-equal" branches of government in the regulatory system.
    - The legislation, which passed the House last year, would limit federal agencies' ability to interpret legislation and promulgate regulations.
- **The All Economic Regulations Are Transparent (ALERT) Act** would increase public notice of regulations.
    - The measure, which passed the House last year 244-173 and has been reintroduced in this Congress, is meant to prevent an administration from implementing new rules without first alerting the public and providing at least six months for comment.

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- **SEC Regulatory Accountability Act** would require additional analysis in the finance sector.
    - The bill would amend the Securities Exchange Act of 1934 to increase the use of cost-benefit analysis in the rulemaking process.
    - It would also aim to combine six reform measures that passed the House in the last few sessions of Congress to ease the regulatory burden on financial institutions.
- **Regulatory Flexibility Act** of 2017
    - This bill would amend the Regulatory Flexibility Act of 1980 to require agencies to:
        - Consider both the direct and indirect effects of proposed regulations on small business;

    - Produce more justification for the regulations and choose the lowest cost alternative;
    - Allow certain parties an option of an evidentiary hearing.
  - The bill also eliminates judicial deference to the agencies.
  - The measure, according to the House Small Business Committee Chairman Steve Chabot (R–OH), would be a "better way to grow our economy by ensuring that small businesses are no longer an afterthought in federal rulemaking."

Next Steps:

- On January 30, 2017, President Trump signed an Executive Order requiring agencies to repeal two regulations for every one that is issued. This has been used successfully in the U.K. and Canada, but the real question is how it will be implemented. The effort will be headed by the Director of the Office of Management and Budget. Congressman Mick Mulvaney (R–SC) has been nominated to fill that position.
- The Congressional Review Act, allows Congress, with the President's signature, to rescind certain regulations as a way to hold the agencies accountable. Both the Senate and the House have already begun the process of rescinding several of the more controversial rules President Barack Obama promulgated since last June.
- The Regulatory Accountability Act, Midnight Relief Act, and the REINS Act all face an uphill climb in the Senate, where resistance from Democrats is already being felt.
- Bipartisan support is critical to improving the regulatory system, whether the approach is a comprehensive package of bills or done via smaller, individual legislative proposals.
- Moving forward, we must be politically practical and pragmatic, realizing that building a bipartisan consensus on our nation's regulatory structure will require establishing trust on both sides of the aisle and that the end goal must be to make the process more efficacious.

Conclusion

We at the ACCF support a bipartisan approach to tax reform and regulatory improvement to get Washington moving again and address important issues plaguing our country's ability to generate capital, create jobs, and grow the economy.

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1001 Connecticut Avenue, NW, Suite 620, Washington, DC 20036

www.ACCF.org • info@accf.org • (202) 293-5811