



Subject Line: Tax Bills Proceeding, H-1B Crackdown & D.C. Trouble for Big Tech

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The 411 on the 202

First Things First

The House continued to tackle tax reform throughout the week, beginning with the Ways and Means Committee release of the modified tax reform bill on Monday. Committee members sat in markup deliberation throughout the week, first debating the Republican language, then turning to a number of Democratic amendments. **The bill was voted out of committee yesterday on a party-line vote and is expected to head to the House floor next week. While the vote count isn't there yet, we do think it's likely that they get the bill through the House floor before Thanksgiving. The Senate bill was released last night, which varies from the House language on several issues.**

House Tax Reform Efforts

Following additional revisions that were released and voted on yesterday, below is a summary of the current House language as it relates to our tax reform priorities:

Carried Interest Capital Gains: Carried interest arising from assets held shorter than three years will now be taxed as ordinary income due to a provision included in the modified mark. This means that capital gains rates will still apply to assets held longer than three years. We are pleased that the House Ways and Means Committee has heard our perspective that carried interest based upon holding periods is a much more sensible way to view the issue than blunt changes to the policy that would treat a quick flip of an asset the same as real value created over a number of years. While this is an encouraging sign, please remember: this is still just the beginning of this process; there is a long way and a lot of challenges we will face from now until the end of this process.

Qualified Small Business Stock Rules/R&D Credit Offset: Both QSBS and the ability of early stage startups to offset payroll tax liabilities with R&D credits have been preserved in the modified mark.

Stock Options: We successfully fought against a provision (Section 3801) in the tax reform bill that would have required payment of taxes on non-qualified stock options as they vest, rather than when exercised. This would have been a radical and devastating change to the taxation of equity-based compensation, and hit those working at startups across the entrepreneurial ecosystem with tax bills on unrealized income. Further, because a large percentage of startups fail, Section 3801 would have forced taxes to be paid on income that will *never* be realized. Through the leadership of Majority Leader Kevin McCarthy (R-CA), Rep. Cathy McMorris Rodgers (R-WA) and Rep. Erik Paulsen (R-MN), we sustained a campaign asking the committee to drop Section 3801, which after a long and challenging week they did yesterday afternoon in one of their final changes before passing the bill out of committee. While we are relieved, that is temporary as we have picked up that the Senate is considering a similar revenue raising proposal.

Stock Options Part II: Once they dropped Section 3801, the House bill became a positive force for stock options and employee ownership because Rep. Paulsen's Empowering Employees through Stock Ownership Act (EESO) was included as an amendment. This NVCA-supported legislation will allow employees at many private companies to defer paying taxes on exercised stock options for up to 5 years after vesting or until the

company goes public.

We will continue to provide updates and analysis as the process unfolds, but feel free to reach out to Justin at any time with questions: jfield@nvca.org.

Senate Tax Reform Efforts

We received details about the Senate version of the Tax Cuts and Jobs Act last night. We are just beginning to dig through, but wanted to share a few notes on issues we're tracking closely. This bill differs from the House in a few significant ways on broader issues, including full repeal of the state and local tax deduction, no repeal of the estate tax and delay of the corporate rate reduction until 2019. We'll be in touch as we learn more about this bill and the upcoming Senate Finance Committee markup process, which is scheduled to take place next week as the House debates their bill on the floor.

Issues Directly Impacting the Ecosystem:

- **Carried interest capital gains:** No provision affecting carried interest is included. However, as with the House process we fully expect to see one before the end of markup. There are conversations about whether to put the 3-year hold period provision from the House bill in or go to the more severe Camp proposal which would tax most carried interest as ordinary income. We are also preparing for amendments on the issue during the committee process.
- **Nonqualified deferred compensation** (taxation of stock options at vesting): a version of the proposal is in there, but from the concerns we have raised it sounds likely to come out. If it does not, we are prepared to sound the alarms. This was a huge issue that we fought against in the House process once we discovered it, and were pleased to see it come out right before passage of the bill.
- **Stock option tax deferral:** Not included in the bill.
- **Capital gains rate:** Unchanged
- **Qualified Small Business Stock rules:** Preserved.
- **R&D credit offset:** Preserved.

Also in the Senate...

We've kept you up to speed on bipartisan legislation – called the *Stop Enabling Sex Traffickers Act* – that would amend a key law (sec. 230 of the *Communications Decency Act*) that has facilitated Internet platforms in the U.S. The legislation [passed the Senate Commerce Committee](#) earlier this week after a compromise agreement was reached that earned the support of the Internet Association, which represents companies like Google and Facebook. Some of the changes made include a clarification that companies must “knowingly” facilitate or assist online sex trafficking if they are to be held accountable; state AGs must bring civil suits in federal court; and criminal charges must be based on violating federal human trafficking laws to prevent different standards in each state. Subsequent to the bill passing, Senator Ron Wyden (D-OR) said he would block final floor passage of the bill despite the changes. Senator Wyden was one of the original authors of Sec. 230. In announcing his opposition to the compromise language, Wyden argued that “most innovation in the digital economy comes from the startups and small firms, the same innovators who will be harmed or locked out of the market by this bill.”

Trump's H1-B Crackdown Affecting Immigrants and Companies

We have noted previously that the Trump Administration's impact on immigration policy goes beyond formal action, like its decision to end the Deferred Action for Childhood Arrivals (DACA) program or delay the International Entrepreneur Rule. The tone of the administration on immigration policy also leads to decisions by administrative officials that can be adverse to startup founders and employees. Bloomberg Technology is up with [a smart read](#) on subtle yet impactful changes to the H-1B program that are proving to be a challenge for firms. They write: “Starting this summer, employers began noticing that U.S. Citizenship and Immigration Services was challenging an unusually large number of H-1B applications. Cases that would have sailed through the approval process in earlier years ground to a halt under requests for new paperwork.” **This is noteworthy because this change doesn't require any agency action that is challengeable. Rather, it's likely a culture change at the agency that is disrupting historical practices.**

Tracking Volcker Rule Changes

Acting Comptroller of the Currency Keith Noreika said on Wednesday that agencies could put out a proposal to reform the Volcker rule in the spring of next year. “Spring is probably what I would think is achievable,” Noreika told reporters recently. “I don’t think we’ve set any firm deadline yet, but that’s sort of what I would expect.” The five financial agencies with jurisdiction over the rule, which bans banks from making risky short-term bets and from owning certain funds, have been working together in an effort to simplify it, under the direction of the Financial Stability Oversight Council. Noreika said he would like to see whether regulators could exempt small banks from the rule without changing the underlying law. **NVCA has been seeking changes to the Volcker Rule so that banks can once again invest in venture capital and put their capital to work supporting startup formation around the country.** [Learn more about NVCA’s Volcker Rule reform efforts and other capital market reform priorities.](#)

Boots on the Ground

We have been closely engaged with the taxwriting process, reaching out to lawmakers, engaging with our membership to help them make contacts, and sending out our thoughts and suggestions for draft materials. It’s been a long week but we think the House bill overall is in good shape for us. Now we have to hold it there and do this work all over again in the Senate.

On Tuesday, Justin was at our Growth Equity Reception in NYC, where he spoke about tax reform and then sat down for a fireside chat with Jeff Solomon, CEO of Cowen and Company, discussing capital markets and regulatory reform. Then yesterday we held a members-only call on tax reform, where our policy team reviewed the legislation in its current form and provided a roadmap of where we expect things to go from here.

Capital Recap

Blue Election: Democratic candidates [won two gubernatorial races](#) in Virginia and New Jersey this week, providing a possible indication of how voters in those states are reacting to Trump’s first year of presidency and a potential look ahead to next year’s congressional

midterm elections. It's still early, but these results combined with the rising number of Republicans announcing retirement in the House, is increasing the odds of Democrats retaking the House next November. Something to keep an eye on.

Cracking Down on Foreign Investment

A bipartisan group of House and Senate members [recently introduced legislation](#) that will put new regulatory hurdles in front of foreign investment into U.S. companies with critical technology. The Foreign Investment Risk Review Modernization Act (FIRRMA) gives new authority to the Committee on Foreign Investment in the U.S. to review joint ventures and minority position investments into U.S. companies, including startups. FIRRMA follows [a 2017 report](#) called "China's Technology Transfer Strategy" by the Defense Innovation Unit Experimental (DIUx) and Michael Brown, the former Symantec CEO. The report found the "U.S. government does not have a comprehensive policy or the tools to address massive technology transfer to China." FIRRMA has the potential to impact the VC world as U.S. startups look to foreign investors for capital in some instances. NVCA's policy team has been at the table as the legislation was drafted to share our perspective. Talks continue. If you have thoughts on this legislation shoot Jeff a line at jfarrah@nvca.org.

More D.C. Trouble for Big Tech

Senator Al Franken (D-MN) called for big tech companies to [be held to the same style of net neutrality rules](#) as major telecommunications companies. "No one company should have the power to pick and choose which content reaches consumers and which doesn't," said Franken. "And Facebook, Google and Amazon, like ISPs, should be neutral in their treatment of the flow of lawful information and commerce on their platform." In general, big tech companies are finding a more adversarial climate in Washington, as more and more politicians [question tech companies](#) on how responsible they are for the content posted on their platforms, especially surrounding fake news and Russian influence during the 2016 election.

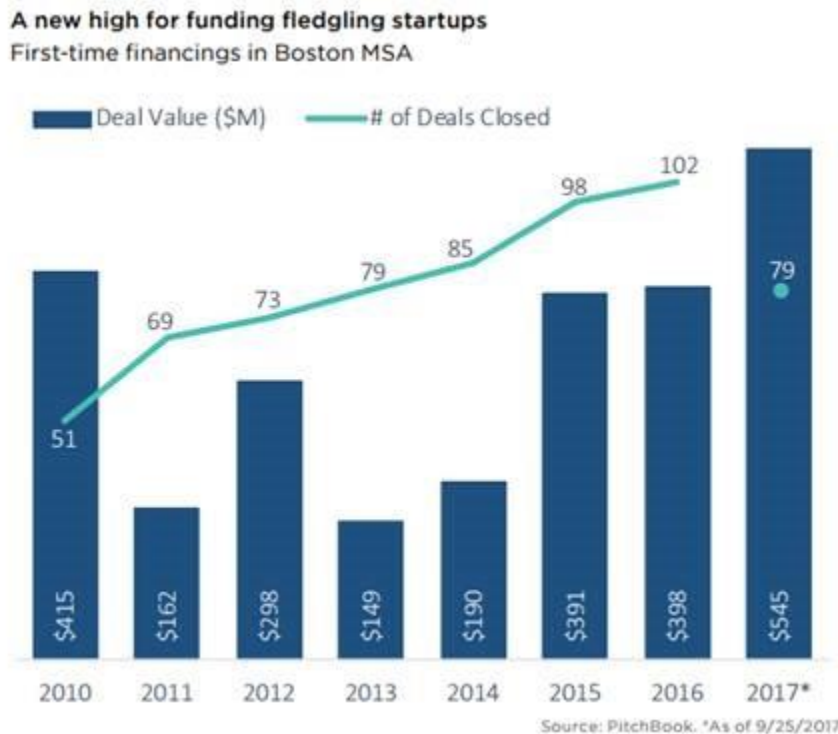
If You Watch One Thing: House Majority Whip Steve Scalise (R-LA) challenges Rep. Sam Johnson (R-TX) to a [scooter race](#) through the Capitol rotunda.

NTIA Head Confirmed: David Redl, President Trump’s nominee to head the National Telecommunications and Information Administration (NTIA), was [approved by the full Senate](#) on Tuesday. As the leader of NTIA, Redl will be the administration’s key advisor on telecom policy, including oversight of federally-held wireless spectrum licenses.

Local Loyalty: [Where Venture Capitalists Invest and Why.](#)

Factoid of the Week

While the annual number of first-time VC financings nationally hit an 8-year peak in 2014 and has steadily declined, the number of first-time VC financings for Boston metro area startups has steadily increased since 2011. Capital invested into startups raising their first financing reached \$545 million through the first three quarters of 2017, already an 8-year annual high. (Source: [PitchBook Venture Ecosystem FactBook: Boston](#))



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