



After months of predictions of a possible Democratic wave, Tuesday's election delivered mixed results. Joe Biden appears poised to narrowly defeat President Trump after one of the most contentious election cycles in recent memory. Republicans are favored to retain their Senate majority despite having to defend twice as many seats as their Democratic counterparts. However, Democrats will have one last chance to wrestle back the Senate majority from Republicans if they are able to pull off upset wins in two Senate runoff elections in Georgia scheduled for January 5. In the biggest surprise of election night, House Republicans picked up seats, knocking off at least seven Democratic incumbents, with more races still too close to call. Despite Republican gains, Democrats did retain control of the House of Representatives, leaving Speaker Pelosi to preside over a razor-thin majority.

In a divided government, with a Biden Administration, a Republican Senate and a narrow Democratic majority in the House, the most important relationship in the nation's Capitol will likely be between President-elect Joe Biden and Senate Majority Leader Mitch McConnell. Whereas the last two years have seen House Speaker Nancy Pelosi leading Congressional negotiations with the White House and the Senate taking a backseat in discussions between the two branches, the power and leverage in the legislature will shift to the Senate. Divided government more often than not leads to gridlock, but it has also fostered an environment for significant legislative accomplishments in the past. While serving as Vice President, Joe Biden was able to negotiate a number of major bipartisan deals with then-Senate Leader McConnell, giving hope that Washington may be able to address major issues such as infrastructure, economic stimulus and federal spending over the next two years. However, the deeply divided, highly partisan make-up of the new Congress makes it unlikely there will be legislative action on more controversial issues such as immigration, police reform and climate change. Instead, the Biden Administration will have to rely on Executives Orders and regulatory authority to enact their policy priorities on many issues.

### **COVID Relief**

With Election Day in the rearview mirror, Congress will return to Washington looking to address several unresolved issues. At the top of that list is a COVID relief package. After months of negotiations between Treasury Secretary Steve Mnuchin and Speaker Pelosi failed to produce a deal, all sides return to the negotiating table. As a result of Democrats losing seats in the House and failing to win a majority in the Senate, expect Senate Majority Leader McConnell to play a much larger role in any potential deal. In his first post-election day news conference, the Senate Majority Leader indicated he thinks Congress should act on a relief package before the end of the year. While Senator McConnell's comments may create renewed optimism of an agreement being reached, the two parties will have to bridge significant differences on the overall price tag of a relief bill and what provisions should be included during the upcoming lame-duck session.

With House Democrats seemingly having less leverage in negotiations after election day, the chances of Congress approving a large bill in excess of \$2 trillion before the end of the year has likely vanished. Instead, any package will likely be more limited and focused on immediate needs.



Priorities for inclusion in a relief package are expected to be additional funding for COVID testing, treatment and vaccines, along with another round of the Paycheck Protection Program, providing liability protections, renewing federal unemployment benefits and addressing a number of provisions from the previously-passed CARES Act that are set to expire at the end of the year.

Democrats also will continue to call for additional assistance to states and local governments. Additional state and local aid has been one of the major obstacles to an agreement so far, yet Majority Leader McConnell opened the door for more state and local funding in his comments following the election, which could help break the logjam and help to finally enact a relief package.

## Budget and Government Spending



Federal spending issues are also one of the first things Congress will confront in the wake of the election. The federal government is currently operating under a Continuing Resolution that is set to expire on December 11, leaving Congress just over one month to reach an agreement on how to fund the government for the remainder of Fiscal Year 2021. At this point in the process, it is unclear whether Congress will simply pass another short-term spending measure allowing the incoming Administration and new Congress a chance to put their stamp on funding for 2021 or come to an agreement that will set funding levels thru September 30, 2021. The decision about how to move forward with FY 2021 funding will set

the stage for the looming spending challenges that face the Biden Administration and the divided Congress.

For the first time in many years, the new Congress will start with a fresh slate on spending without the limits of spending caps or threat of sequestration. This will force the new Congress to evaluate spending priorities, with Democrats likely to call for increases in non-defense spending and Republicans prioritizing fiscal restraint. Despite their philosophical differences, federal spending is one of the areas on which the two sides have been able to reach a compromise in the past. An impasse on federal spending levels would likely eliminate any hope of a productive Congress and could even potentially lead to a government shutdown at some point.

## Civil Rights/Social Justice Issues

After months of civil unrest, social justice and civil rights issues are expected to be a top priority of the Biden Administration. One of the first pieces of legislation likely to be considered in the House is the John Lewis Voting Rights Act. If the measure once again stalls in the Senate, President-elect Biden will look to address voting rights through his executive powers.



Diversity, inclusion and social justice issues are likely to receive more attention in the new Congress. Many Democrats have long called for Congress to address these issues. This, combined with Congressional Republicans adding a record number of women to their ranks, and their stronger than expected showing among Latino voters, there may be an opportunity for Congress to examine policies in these areas. Beginning with the nation's first Black woman and Asian-American serving as Vice President, the Biden Administration is expected to be the most diverse in history, with a record number of women, people of color and LGBTQ individuals being appointed as members of the Cabinet and other senior positions. The new Administration will also be quick to reverse President Trump's Executive Order prohibiting federal agencies, contractors and grant recipients from offering certain diversity training aimed at reducing unconscious bias.

## Tax



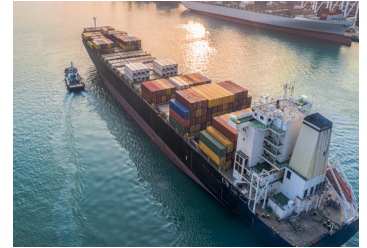
President-elect Biden campaigned on repealing many portions of the GOP's 2017 tax reform legislation, the Tax Cuts & Jobs Act. His top tax priorities include: repealing the cap on the state and local tax deduction (SALT), which has impacted many more "blue" states than "red" states; increasing the corporate tax rate from 21% to 28%; increasing the top individual rate from 37% to 39.6% for filers making more than \$400,000, as well as removing the cap on FICA taxes for these same high wage earners; eliminating the "Carried Interest" loophole by taxing capital gains and dividends as ordinary income for tax filers making more than \$1 million; revamping retirement savings plans by replacing tax benefits

for defined contribution plans with a tax credit to encourage more savings for lower-income individuals; and increasing the benefit amounts of the Earned Income Tax Credit (EITC) and Child Tax Credit (CTC). However, implementing any of this will be hamstrung by Republicans who are projected to keep control of the United States Senate. While many of these specific proposals would need modification to be feasible in a divided Congress, Senate Republicans will need to compromise with House Democrats and the incoming White House to find revenue to fund common priorities such as infrastructure and if Republicans seek to correct a host of technical provisions passed as part of the Tax Cuts & Jobs Act. Additionally, expectations

are that Congress will continue to work in a bipartisan manner on retirement savings legislation, as they have done in the current legislative session.

## Trade

The Biden Administration's approach to international trade is expected to depart significantly from the Trump Administration's. President-elect Biden has a strong background in foreign relations from his time in the Senate. He has indicated he will work more closely with our global allies on many trade issues impacting farmers and manufacturers, as well as those that affect national security. The new Administration is also expected to abandon using the threat of tariffs on industries as the current Administration has done. However, it is unclear how President-elect Biden would address or roll-back tariffs put in place by President Trump.



Trade Promotion Authority, legislation passed by Congress that allows the Executive Branch to expedite the review of trade agreements, expires in 2021 and will make President-elect Biden's ability to approve new trade agreements difficult if it is not renewed. Negotiations are currently occurring between the United States and the United Kingdom on a new comprehensive agreement. President-elect Biden is expected to continue support for such a deal as long as the UK's Brexit negotiations do not modify anything impacting the Good Friday Accords, which brought peace between Northern Ireland and the Republic of Ireland. The Biden Administration can also be expected to be more engaging with the World Trade Organization, in contrast to President Trump, who has threatened to leave the organization.

Both parties will want to continue to be tough on dealings with China. The Biden Administration is expected to continue using targeted sanctions on Chinese technology companies such as Huawei and an expansion of sanctions related to human rights issues. The Biden Administration would also likely take a multilateral approach to these issues, trying to bring in allies to increase pressure on China. However, the Biden Administration would also add important calming elements in the relationship, including more regularized negotiations and cooperation on global issues like climate change and global health issues.

## Health Care



The most immediate health care challenge the new Biden Administration will face will be managing the continued pandemic response. The new Administration will likely focus on increased testing and vaccine distribution once President-elect Biden takes office. Also, President-elect Biden has been vocal about expanding and building upon the foundation of the Affordable Care Act. His Administration is expected to use regulatory authority to implement his agenda to the fullest possible extent, as legislatively, it will be difficult to make progress in a divided Congress. President-elect Biden has indicated he supports enacting an expansion of Medicare that gives people ages 60-64 the option of enrolling in Medicare.

However, that change would require legislation to accomplish, which seems unlikely with a

Senate Republican majority. On the Medicaid front, Biden has supported increased eligibility by expanding coverage for the low-income population, instituting auto-enrollment, and rolling back the work eligibility requirements created under President Trump. How much of this plan can be implemented remains to be seen with a divided government.

President-elect Biden, like President Trump, campaigned on reigning in prescription drug prices. We expect this new Administration to work with Republicans in Congress on finding new solutions to this problem. Lastly, the Administration will likely push for reforms in the health care delivery system to increase patient quality.

## Energy/Environment

The Trump Administration has issued nearly 75 Executive Orders, rules and regulations deemed to impact air, water, ecosystems, public lands, human health, climate and waste that are in various stages of being finalized or challenged in the courts. President-elect Biden will focus on reversing the Trump deregulation agenda with a focus on implementing policies to address climate change. The Biden Administration is expected to repeal and/or replace these policies, such as the Affordable Clean Energy Rule, which replaced the Obama Clean Power Plan and governs emissions resulting from electricity generation, as well as could move to regulate methane from oil and gas. Regarding vehicle emissions, a Biden Administration will likely move quickly to restore Obama-era vehicle fuel efficiency and emissions standards rolled back under President Trump, including the ability of California to set its own, more stringent standards. A goal of President-elect Biden is for the United States to become a leader in producing electric vehicles and his policy and spending priorities will likely reflect this. President-elect Biden could appoint a climate and energy "czar" to help coordinate policies across the federal government and is expected to advance policies, such as rejoining the Paris



Climate Agreement, to help fulfill his campaign pledge to transition the country to renewable energy. He will likely support congressional efforts to zero out greenhouse gas emissions on a national level by 2050.

Although bipartisan energy bills that address energy efficiency, renewable energy, energy storage and alternative fuel vehicles appear ready for bicameral negotiations, there may not be enough time in the lame-duck session to address the issue. If Congress does not pass an energy bill before the end of the year, it is likely to be a priority issue for the next Congress, along with increased efforts by House Democrats to address climate change and commit the United States to a timeline of achieving net-zero emissions. The Democratic House can be expected to reintroduce and pass legislative measures envisioned in the Green New Deal. However, with a Congress that remains divided, but with a narrower Democratic majority in the House and a Republican Senate, President-elect Biden and House leaders may need to moderate their climate goals to achieve consensus and show progress.

## Infrastructure



Infrastructure legislation will feature prominently in the 117<sup>th</sup> Congress both to improve the nation's aging roadways, transit systems and water and sewer systems, as well as a way to stimulate the economy and create jobs. For Democrats, infrastructure is also largely viewed as a way to combat climate change.

President-elect Biden has indicated infrastructure is one of the first items he wants to partner with Congress to address. The nearly \$500 billion surface transportation bill passed by the House this July, along with the larger infrastructure bill, the Moving America Forward Act, which combines surface transportation along with investment in water infrastructure, schools, hospitals, housing, electric grid modernization and broadband should serve as a blueprint for what congressional Democrats, along with a Biden Administration, plan to put forward. Look for Democratic efforts to ensure federal spending supports infrastructure that can withstand the impacts of climate change and that rewards Buy America policies. Additionally, those policies could be included in competitive grant solicitations, such as from the Department of Transportation. As a sign there could be room for compromise on climate-resilient infrastructure, Senate Republicans included provisions that acknowledge climate impacts in surface transportation legislation proposed in that chamber earlier this year.

The perennial issue complicating infrastructure legislation—how to finance the high cost—will certainly be present in the upcoming debate on potential legislation. Given the continued Republican Senate majority, it will not be possible to pay for infrastructure investment in large part by reversing tax cuts for corporations and individuals enacted under President Trump, as Candidate Biden had proposed. Additionally, Senate Republicans are expected to temper House Democrats' preferred spending levels and progressive policies as they relate to infrastructure.

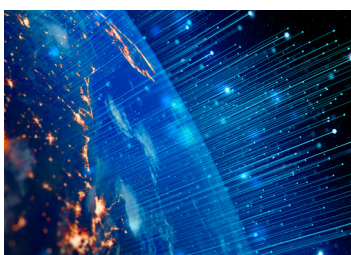
## Labor

President-elect Biden has long been an ally of organized labor and ran on a platform to reverse many of President Trump's policies with an agenda to improve workers' rights and wages. Under the Trump Administration, the Department of Labor finalized less stringent rules on overtime pay than had been put forward under the Obama Administration and the National Labor Relations Board took a number of steps to roll back worker protections. Policies relating to workers' ability to organize and for corporations to be considered joint-employers are expected to be reversed under President-elect Biden.

As for congressional action in this area, infrastructure legislation is also viewed by Democrats as a way to support workers, not only via jobs but specifically union jobs and Buy America provisions. However, as with other policy areas, the Republican Senate majority may force House Democrats to pare back more controversial policies in an effort to produce legislative accomplishments. While House Democrats are expected to reintroduce and pass landmark labor legislation, known as the Protecting the Right to Organize or PRO Act and also to pass legislation raising the federal minimum wage, the Senate is not expected to consider these bills.



## Technology



As with other areas, technology policy is also likely to be impacted by the divided government. The Biden Justice Department is likely to continue the lawsuit recently filed against Google by the Trump Administration. Similarly, House Democrats are currently drafting comprehensive antitrust legislation to specifically address violations by tech companies. However, Senate Republicans are anticipated to take a different approach to regulating the technology sector, focusing less on antitrust and more on free speech bias and consumer protections. With sentiments in both parties that tech companies should not escape new regulations, this could be an area where compromise is achievable, even if only to agree on increasing federal

funding for the Justice Department and the Federal Trade Commission to carry out antitrust enforcement responsibilities.

Signaling that data privacy legislation could be a Senate priority in the new Congress, the Senate Commerce Committee held a hearing in September about the need for such legislation and a package of Republican-backed data privacy bills was introduced. Democrats have their own data privacy bills, and while issues such as individual privacy rights, transparency, data minimization, and discriminatory uses of personal data are common themes across the proposals, the issues of federal preemption of state privacy laws and individual rights to sue are nonstarters for Democrats and Republicans, respectively. For any data privacy legislation to move forward, Congress will need to find agreement in those areas.

## Immigration



Expectations for Congress to pass comprehensive immigration reform were likely dashed by the results of this week's election. Reaching any kind of agreement on immigration reform has proved elusive in a divided Congress. As a result, immigration policy will likely continue to be set by Executive Orders. President-elect Biden will almost certainly reverse Trump Administration actions that severely reduced legal immigration, restricted asylum seekers and sought to build new a border wall.

One aspect of immigration policy that could still get the attention of the new Congress is the Deferred Action for Childhood Arrivals program, known as DACA. Many in Congress, on both sides of the aisle, recognize they must act to address the more than 600,000 teens and young adults who were brought to the U.S. as undocumented children and lack legal status. Candidate Biden's platform called for the reinstatement of the DACA program stopped by President Trump. Leading business groups and immigration advocates also support a legislative fix that would provide a permanent solution and protect these individuals from the threat of deportation.

## Financial Services

The Biden Administration is expected to focus on rulemaking and regulatory reform in the financial services area with a divided Congress, rather than seeking legislative means for most changes. Candidate Biden campaigned on solutions to student loan debt, payday lending rules, and mortgage and rent protections needed during the pandemic. His Administration will likely use its regulatory authority to make changes in these areas. A major reversal of Trump policy could be to keep Fannie Mae and Freddie Mac in conservatorship in order to advance affordable housing policies. It is anticipated the Consumer Financial Protection Bureau under President-elect Biden will increase its focus on consumer protection issues under a Biden-appointed Director. Additionally, President-elect Biden could replace Federal Reserve Chair Jerome Powell in 2022 and nominate at least three more Fed governors. Nevertheless, the expectation is that interest rates will remain historically low.



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