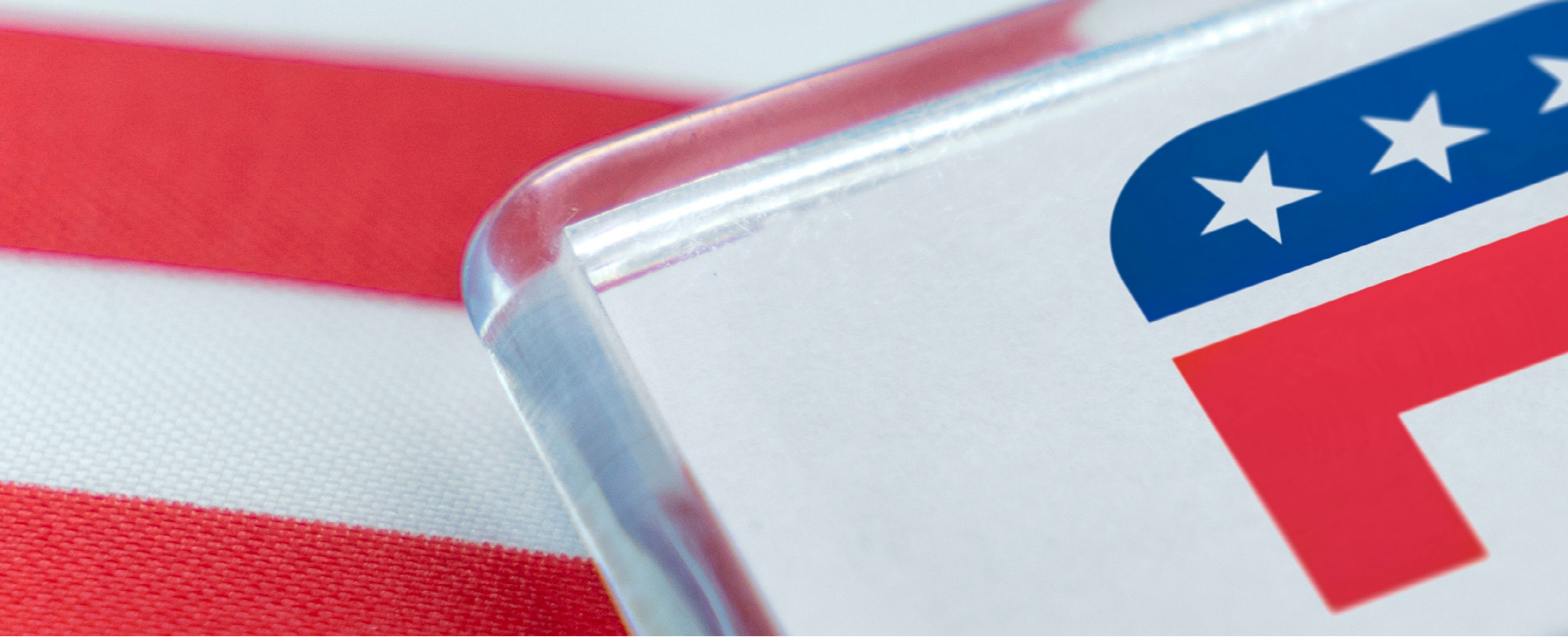
Dykema

2024 Election

Federal Election Overview



Understanding the Impact of the 2024 Federal Election

After months of consistent polling showing both presidential candidates essentially tied, Donald Trump won a convincing victory on Election Night to become the first president in 120 years to be elected to serve nonconsecutive terms as the nation's commander-in-chief. President Trump increased his support in 92 percent of counties across the country. This strong performance also helped Republicans win the majority in the U.S. Senate for the first time in four years and positioned them to maintain their narrow advantage in the House of Representatives. If current projections in the House races yet to be called are correct, Republicans will control all three branches and use this Republican trifecta to enact sweeping policy changes and reverse much of the Biden Administration's accomplishments.

Unlike the first time Donald Trump was elected President, Republicans in Congress are primarily Trump allies. House Speaker Mike Johnson views himself as a partner to President Trump, and whoever becomes the new Senate Republican Leader will certainly be closer aligned with the President than outgoing Senate leader Mitch McConnell. Not only does President Trump view his election victory as a mandate, but with a much more united Republican majority, he will be able to focus on enacting a bold agenda that reflects the priorities he frequently mentioned on the campaign trail: extending and expanding the tax cuts enacted in his first term, securing the Southern border and deporting migrants who entered the country illegally, expanding domestic energy production and reshaping the federal bureaucracy through his appointments and deep spending cuts.

The new Republican majority will also prioritize rolling back many of the policies enacted over the last four years by the Biden Administration. Just as Democrats used the budget reconciliation process to enact some of their top priorities, like the Inflation Reduction Act, by a simple majority vote, Republicans will utilize reconciliation to reverse many of those policies and enact a wide range of their priorities, such as tax reform and spending cuts. Another tool that Republicans can utilize is the Congressional Review Act (CRA), which allows Congress to reverse regulations passed in the last few months of the Biden Administration and prohibits federal agencies from reissuing the same or substantially similar regulations in the future. The last time Republicans enjoyed unified control in Washington following the Obama Administration, Congress passed a record-breaking 16 CRA resolutions of disapproval. They no doubt will try to break that record this time by reversing Biden Administration rules on student loan forgiveness, climate policy, and many other rules finalized as far back as May of this year.

Below is a look at how the 2024 election results are expected to impact a variety of important issues.

Reconciliation

2025 and the 119th Congress will be marked by a Republican Executive Branch and a Republican Senate, at the least. It is increasingly likely that Republicans will control both chambers of Congress in addition to the White House, ushering in a new era of one-party rule in Washington. Under this scenario, Republicans will have the opportunity to employ the reconciliation process to pass more controversial legislative items without support from Democrats.

Looking back over the last decade, both Republicans and Democrats have used reconciliation to pass marquis pieces of legislation like the Affordable Care Act, the Tax Cuts and Jobs Act, and the Inflation Reduction Act. With individual tax cuts from the 2017 Tax Cuts and Jobs Act expiring at the end of 2025, the Republican-controlled Congress will use reconciliation to pass a new tax reform bill to succeed the Tax Cuts and Jobs Act, as well as amend the Inflation Reduction Act to reflect Republican policy priorities.

Utilizing budget reconciliation to pass legislation is advantageous to the party with a narrow Senate majority, such as the Republicans' 53-47 lead, because it allows legislation to circumvent the Senate's 60-vote filibuster threshold and pass bills by simple majority (51 votes). Under the budget resolution process, respective Senate and House budget resolutions for a given fiscal year include high-level policy instructions related explicitly to spending and revenue for congressional committees. Those committees then draft and report legislation implementing the spending and revenue instructions of the budget resolutions. The Senate and House Budget Committees then combine individual committee bills into an omnibus "reconciliation bill." Each chamber votes on the respective bill developed by its committees and assembled by its Budget Committee. Separate reconciliation bills passed by the Senate and the House are then reconciled into one final bill that must pass both chambers and be signed by the President.

In addition to using the reconciliation process to bypass Senate filibuster rules, there are other procedural advantages in the Senate to using reconciliation to pass legislation quickly. For instance, under reconciliation, there is no debate needed on a motion to proceed to the bill; the debate is limited to 20 hours and only 10 hours on a conference/compromise bill; there is a "vote-a-rama" of quickly stacked amendments after 20 hours of debate; the Byrd Rule limits amendments only to those with revenue impacts that can be approved with a simple majority vote. Expect congressional Republicans and President Trump to utilize the reconciliation process in 2025 and perhaps again in 2026.

Budget and Government Spending

Congress faces a December 20 deadline to extend current federal spending or enact new Fiscal Year (FY) 2025 spending. With anticipated Republican control of the White House, U.S. Senate, and House of Representatives, Congress will likely enact another Continuing Resolution (CR) in December to maintain current spending into 2025. Looking back to 2016, when President Trump was first elected, Congress kept the federal government funded via a series of CRs until May 2017, when it finally passed full FY 2017 funding.

To kick off the 119th Congress, legislators must pass final FY 2025 funding and simultaneously address an impending debt limit. In June 2023, Congress passed the Fiscal Responsibility Act (FRA). The FRA suspended the debt ceiling through January 1, 2025; established limits on discretionary spending for defense and nondefense programs; and included sequestration to automatically cut funding to comply with the statutory budget caps if Congress appropriates beyond them. Come January 2, 2025, the Treasury Department will be forced to take extraordinary measures to manage expenditures. According to estimates, the Treasury likely has enough cash to extend any potential default into the second quarter of 2025. Congress will need to address the debt or raise the debt ceiling by that point to avoid default. Negotiations around the debt may factor into final FY 2025 spending levels.

Per the FRA, caps on discretionary budget authority in 2025 total $1,605.9 billion—$895.2 billion for defense and $710.7 billion for nondefense. Generally, spending levels in the FY 2025 appropriations bills pending in the Senate match or exceed FRA budget levels. However, the House's pending FY 2025 appropriations bills set funding below or at the FRA caps. If FY 2025 funding is pushed into 2025, new Republican majorities of the 119th Congress will likely seek to advance the House's more austere versions of FY 2025 spending.

Regardless of FY 2025, it is all but certain that FY 2026 and 2027 spending levels will see significant reductions over current levels. President Trump has indicated he will tap Elon Musk to slash the size of federal agencies. While this could partially be accomplished through executive action, it will also require Congress' participation via the annual appropriations process.

Tax

In 2025, Congress faces the significant challenge of addressing the expiration of approximately $4 trillion in tax cuts enacted under the Tax Cuts and Jobs Act (TCJA) of 2017. Further complicating the matter are additional tax cuts proposed during the 2024 presidential campaign, including provisions for auto loan interest deductions, exempting overtime pay and tips from taxation, tax breaks for power generator purchases, and revisions to the state and local tax (SALT) deduction limitations.

Responsibility for navigating this complex legislative landscape falls largely upon Senator Mike Crapo, Chairman of the Senate Finance Committee, and Representative Jason Smith, Chairman of the House Ways and Means Committee. They aim to craft legislation that can secure passage in both chambers of Congress and ultimately be signed into law. Senator Crapo has outlined his priorities, emphasizing the prevention of tax increases on working families and promoting investment in American families and job creation. However, given the anticipated lack of sufficient Republican votes to overcome a filibuster in the Senate, passage of any tax legislation will likely necessitate budget reconciliation. This procedural maneuver allows for passage with a simple majority vote.

This approach mirrors the strategy employed in 2017 for the passage of the TCJA. Notably, Senator Crapo demonstrated his influence earlier this year by leading opposition to a bipartisan tax agreement passed by the House, which would have expanded the Child Tax Credit and various business tax breaks. This opposition stemmed from the desire among many Senate Republicans to revisit the issue after the November elections, anticipating a shift in Senate control that would enhance their negotiating position.

A key point of contention revolves around the funding mechanism for any extension of the TCJA provisions. Senator Crapo has consistently maintained that “pro-growth” tax cuts do not require offsetting spending reductions, citing a historical precedent of extending expiring tax policies without corresponding pay-fors. This stance contrasts with the growing concern among House Republicans regarding the national debt, currently exceeding $2 trillion. Therefore, one of the initial crucial decisions confronting lawmakers is determining the overall spending level for any tax legislation. This decision will significantly impact the scope and feasibility of any tax reform measures undertaken in 2025.

Automotive

President Trump regularly attacked electric vehicles on the campaign trail even though one of his most prominent backers was Tesla founder Elon Musk. He promised to roll back many policies that were included in one of President Biden's signature achievements, the Inflation Reduction Act (IRA). Incentives for new and used electric vehicles included in the IRA will likely be targeted to pay for other tax priorities. Unspent grant funds for EV charging infrastructure and tax credits to incentivize EV charging infrastructure could be paused and reprogrammed by the incoming Trump Administration and Republican Congress. The Biden regulatory agenda will likely be a significant target of the new Republican majority. The EPA finalized its ambitious rule to reduce greenhouse gas emissions by cars and light trucks in March of this year, protecting it from being subject to the Congressional Review Act, which means the new Trump Administration will likely enter into a new round of rulemaking to weaken or reverse the GHG rule even though it was supported by the Alliance for Automotive Innovation, a trade association representing the entire auto industry of OEMs and suppliers.

The new Trump Administration also threatens a series of strict California environmental rules, including the Advanced Clean Cars II rule that would ban the sale of new internal combustion engine (ICE) vehicles by 2035. In addition, California's Heavy Duty Omnibus rule, which establishes cleaner engine standards, and the Advanced Clean Fleets rule, which requires all cargo trucks serving California ports to be zero emission by 2035, are both still waiting for approval by EPA. It remains unclear if these rules will get approved before the end of the Biden administration; however, even if they are approved, a Republican Congress could use the Congressional Review Act to overturn the rules. President Trump revoked California's unique status in his first term to set its vehicle emission standards under Section 177 of the Clean Air Act. Currently, 17 states follow all or part of California's vehicle regulations, so the impact of a reversal would be felt far beyond the Golden State.

Healthcare

In his victory speech, President Trump committed to "making America healthy again," signaling the Republican Party's renewed focus on healthcare reform.

Trump has pledged to address the rising rates of chronic illness by targeting the factors that drive these conditions. This may involve reshaping federal health agencies responsible for research, outreach, and drug development. Robert F. Kennedy Jr., a prominent figure in Trump's healthcare team, has called for exposing what he views as a corrupt alignment between the food and pharmaceutical industries and the regulatory bodies that oversee them. Both Trump and Kennedy have advocated for robust and independent oversight to prevent unhealthy products from being pushed onto the market for profit.

Kennedy stated that Trump has tasked him with rooting out corruption and conflicts of interest within federal agencies, revising how they assess scientific evidence, and focusing on finding cures for chronic diseases.

A critical issue facing Congress will be the expiration of enhanced funding for the Affordable Care Act (ACA) at the end of 2025. Originally expanded by Democrats in 2021 and extended the following year, this funding ensures Americans can purchase a silver "benchmark" plan on ACA exchanges for no more than 8.5 percent of their income. If not renewed, millions could face higher insurance premiums, likely putting pressure on Congress to act. According to the Congressional Budget Office, continuing this funding would cost approximately $25 billion annually.

Republican lawmakers may be hesitant to support the extension. Trump has stated he does not plan to pursue previous Republican efforts to repeal the ACA but is considering modifications to reduce costs. His running mate, Ohio Senator JD Vance, has provided some insight, suggesting that a Trump administration could allow insurers to segment enrollees into different risk pools, offering plans tailored to individuals' specific health risks and associated costs.

Additionally, the Administration may seek to reinstate expanded short-term health plans, which Trump promoted during his first term. These plans, less comprehensive than ACA-compliant options, were scaled back under President Biden but could return as an alternative for those seeking lower-cost coverage options.

Immigration

Of all the changes we will likely see in federal policy due to President Trump's resounding victory, perhaps the most significant shift will be in our nation's immigration policy. President Trump made securing the borders a cornerstone of his presidential campaign, and Election Day exit polls indicated that immigration was one of voters' top concerns. He regularly called for mass deportations on the campaign trail and for completing the border wall. We should expect to see a series of Executive Orders early in the Trump Administration that restrict asylum and parole policies, end several Biden Administration programs, reform Temporary Protected Status to limit eligibility, and penalize "sanctuary" cities that do not cooperate with his Administration's efforts to track and deport individuals who do not have legal status. President Trump will likely rely on the threat of tariffs against Mexican imports to revive the Remain in Mexico border policy for asylum seekers.

President Trump's victory, along with the new Republican majority in the Senate and probable House Republican majority, kills any hope of Congress passing the bipartisan immigration bill negotiated in the Senate in 2024. Instead, Congress will likely turn its focus to the Secure the Border Act passed by the Republican-controlled House in 2023 that pursues policies to provide substantial funding increases to border agencies, a border wall and detection technologies, along with legislation restricting migrants' access to government safety net programs, limiting asylum eligibility and require employers to verify all of their workers are documented. Republican legislators could pursue ending birthright citizenship (although that would take a Constitutional amendment), tightening H-1B restrictions, instituting a more merit-based immigration system, and giving more authority to states to handle immigration issues in their state. Democrats will have little opportunity to block the Trump immigration agenda, forcing opponents to rely on legal challenges to prevent the implementation of these policies.

Labor and the Workforce

House Republicans, in recent spending bills and committee hearings, targeted government Diversity, Equity, and Inclusion (DEI) initiatives. The incoming Trump Administration will likely eliminate these programs. The Department of Labor Overtime Rule, the Noncompete Rule, the Fiduciary Rule, and the Independent Contractor Rule face litigation and risk being pulled back or amended by the new Administration. There is also a strong possibility that the Trump Administration will not defend these rules in court, handing opponents of the Department of Labor rules a legal victory. As Republicans look to reduce federal spending, the Department of Labor will likely face significant cuts to its annual budget that will limit new regulations and reduce the agency's ability to conduct workplace oversight.

In the House, Tim Walberg (R-MI) is one of the front runners, along with Burgess Owens (R-UT), to become the next chair of the House Education and Workforce Committee. Regardless of who chairs the committee, there is likely to be a focus on expanding apprenticeship programs, reforming the NLRB, and, once again, reauthorizing the Workforce Innovation and Opportunity Act to better align workforce training programs with employers.

Financial Services

With former President Donald Trump's return to the White House, Washington's stance toward the financial industry is expected to undergo substantial changes, driven by a focus on deregulation and potential tax cuts. The financial sector faces significant changes ahead, with Trump's Administration expected to reverse much of the recent regulatory framework and promote a more market-friendly agenda.

Wall Street has broadly welcomed Trump's return as a harbinger of a new era of deregulation. Financial stocks and cryptocurrency prices spiked following his election, signaling investor optimism. Key beneficiaries of this shift will likely include significant banks, cryptocurrency firms, and hedge funds, many of which had clashed with Biden-era regulators. The potential replacement of SEC Chair Gary Gensler is particularly anticipated, as Trump is expected to roll back numerous regulatory measures introduced during Gensler's tenure.

Expect heightened scrutiny on Environmental, Social, and Governance (ESG)-focused investing under the new administration. Financial firms may face tighter constraints as some Republican lawmakers advocate for a closer examination of these practices. At the same time, there may be pressures for revenue generation, potentially leading to tax increases on the financial sector to fund other cuts.

Banking lobbyists anticipate a rollback of several Biden administration policies that affected financial institutions. One immediate target may be the Consumer Financial Protection Bureau (CFPB), where Trump will likely replace Director Rohit Chopra, who has pursued a robust enforcement agenda. Following reports of workplace issues during his tenure, Trump may also move to replace the Comptroller of the Currency and potentially FDIC Chair Martin Gruenberg. These actions would mark significant shifts in regulatory oversight, with implications for banking operations nationwide.

The cryptocurrency industry is poised to gain from Trump's return, as he has pledged to establish the U.S. as the "crypto capital of the planet." With Gensler seen as an adversary by the crypto industry, his departure would likely open the door for a more crypto-friendly SEC chair, which could reshape regulatory oversight of digital assets.

On the housing front, Trump allies are urging him to renew efforts to privatize Fannie Mae and Freddie Mac, which have been under government control since the 2008 financial crisis. The outcome will largely depend on his appointments to the Treasury and the Federal Housing Finance Agency, potentially leading to significant restructuring in the mortgage market.

International Trade

The new Administration has proposed a significant shift in U.S. trade policy, including introducing a flat tariff of up to 20 percent on all imports and a 60 percent tariff specifically on Chinese goods. Also, Congress is expected to advocate for the resumption of free trade agreements suspended during President Biden's term, with a potential U.S.-UK Free Trade Agreement to be a top priority.

In addition to targeting China, the proposed tariffs could create trade tensions with Germany and other EU nations. Throughout the campaign, the president-elect emphasized reducing the U.S. trade deficit by applying tariffs across a broad range of trade partners. He hinted at possibly higher tariffs on specific sectors, such as automotive—a key industry in Germany, employing nearly one in seven workers.

EU leaders are also concerned about the prospect of renewed tariffs on steel and aluminum, similar to those imposed in 2018 under national security pretexts. Legal experts believe the president has substantial authority to enact many of these measures unilaterally, potentially using the International Economic Emergency Powers Act (IEEPA). This 1977 statute grants the president broad powers to control economic transactions in a declared emergency.

The new Administration has also warned of increased tariffs on countries with undervalued currencies that may create trade imbalances or offset the effect of U.S. duties. Regarding China specifically, the president-elect has suggested an aggressive approach, proposing a 60 percent duty on all Chinese imports—valued at roughly $427 billion last year, or about 15 percent of total U.S. imports. He has indicated plans to revoke normal trade relations with China and gradually phase out imports of "essential" goods from the country over four years.

There is also uncertainty about how the Administration will treat current U.S. trade partners like Canada, Mexico, Australia, and South Korea, which have existing free trade agreements. While the president-elect has not clarified whether these allies would be exempt from the new tariffs, he has threatened to withdraw from trade deals he considers "unfair."

Energy/Environment

As in many areas, the energy and environmental policies of the Trump 2.0 Administration will be reminiscent of his first term. Whereas President Biden came into office with an agenda of reversing President Trump's energy and environmental regulations, President Trump can be expected to begin dismantling President Biden's accomplishments immediately. A Trump White House, along with a Republican Senate and expected Republican House, will advance a combination of executive orders, regulations, and legislation to promote their energy and environmental policies.

Among his immediate priorities, President Trump is likely to sign an Executive Order, as he did in 2017, removing the United States from the Paris Climate Agreement. He is also expected to sign orders repealing Biden Executive Orders on net-zero emissions by 2050 and federal emissions goals. The Environmental Protection Agency under President Trump will also get to work right away reversing several Biden regulations to reduce greenhouse gas emissions in the transportation and power plant sectors and those benefitting offshore wind projects. Trump has promised to support what remains of the nation's coal-fired power plants, continue increasing oil and natural gas production, and support nuclear expansion. Additionally, regulations such as those governing navigable waters of the United States under the Clean Water Act, removal timelines for lead and copper pipes, and PFAS designations/contaminant levels will likely continue their flip-flop between Democratic and Republican executive branches. The Department of Energy (DOE) is expected to halt, if not reverse, promulgating efficiency standards for residential appliances like gas stoves, refrigerators, freezers, showerheads, and lightbulbs.

President Trump and congressional Republican majorities will seek to eliminate clean energy investments in the Inflation Reduction Act (IRA), such as electric vehicle credits and subsidies. They can also be expected to slash funding for federal agencies tasked with implementing the IRA, such as DOE's Loan Program Office, the Advanced Research Projects Agency-Energy, and DOE's Renewable Energy Office. However, there could be support to maintain some IRA programs, given that ample funding has been awarded to projects in Republican districts. Areas that could benefit from bipartisan legislative support include federal permitting reform, climate resiliency to combat increasing natural disasters, reinforcing the country's electrical grid in the face rising of weather extremes, electrification, and artificial intelligence, and investments in domestic supply chains for critical materials, which efforts began during President Trump's first term.

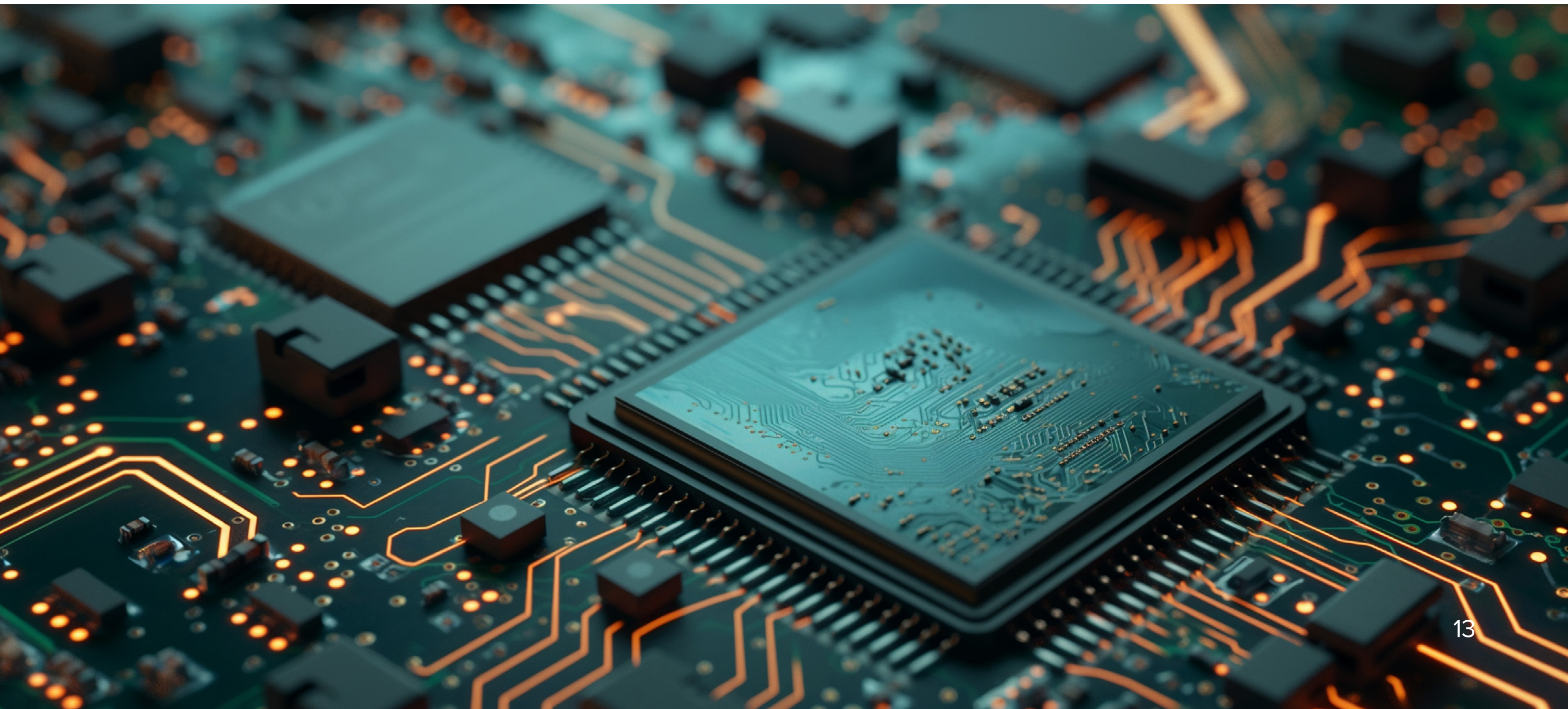
Technology

Policy governing artificial intelligence (AI) is one area where the incoming Trump Administration may diverge from similar policies enacted during his first term. This is due to the rapidly evolving technology landscape involving AI and the advent of generative AI just about two years ago. In 2020, President Trump signed an Executive Order on AI to initiate federal AI research investment, designate federal computing and data resources, set technical standards, and also establish an ethics framework for federal agencies developing and using AI. President Trump's 2020 action was not dissimilar to President Biden's Executive Order on the use of AI, which he vowed to repeal as one of his immediate priorities.

President Biden's AI executive action directed the federal government to establish standards and best practices for using AI systems and established the United States AI Safety Institute (AISI) within the National Institute of Standards and Technology. President Trump has argued that the policy stifles innovation, a position that has industry support from NetChoice, a trade association representing Amazon, Alphabet, Meta, and X. However, another coalition of tech companies, non-government organizations and research entities supports AISI and has called for Congress to authorize its mission before the end of the 118th Congress to ensure it continues. Such legislation has been passed by both chambers and is pending before the lame-duck Congress.

During President Trump's second term, expect AI policies to be considered an opportunity for American ingenuity and to reflect his view favoring deregulation, but to also pull from past AI executive orders. He has called for a ban on the use of AI to censor speech and could put in place standards on speech-related algorithms to protect free speech, protect privacy, and civil liberties. Other early indicators of his approach to technology will be his Administration's presence at the February 2025 AI Action Summit in France and whether he pulls back recent Federal Trade Commission rules relating to online advertising and "click-to-cancel" subscriptions.

Privacy legislation will also factor in the 119th Congress, specifically related to data privacy. The Kids Online Safety Act (KOSA), Children and Teens' Online Privacy Protection Act (COPPA 2.0), and the American Privacy Rights Act (APRA) have seen some advancement in this Congress and will likely be center stage for the Trump administration. KOSA and COPPA 2.0 passed out of the Senate but faced opposition from House Speaker Mike Johnson, who was concerned the bills give too much regulatory power to the government on speech. This is similarly true about APRA, which passed the relevant House committee but faced the same opposition from Speaker Johnson and other free speech advocates. President Trump is likely to take a hands-off approach to data privacy, preferring to allow the internet and tech industry to self-regulate as it innovates.



Infrastructure

Republican election victories will likely narrow the focus of infrastructure priorities to more traditional projects like roads and bridges, clawing back unspent funds from the Bipartisan Infrastructure Law, streamlining environmental reviews, and speeding up the permitting process. Federal grant criteria that reward reducing fossil fuels, promoting equity, and expanding public transportation could be restructured to direct more money to fossil fuel development, rural communities, and to expand existing highways.

The current transportation authorization bill will expire in September 2026, which means the new Congress will begin working to draft legislation next year to fund the nation's highway and transit systems. They must address the challenge of financing a new transportation bill since the current Highway Trust Fund will become insolvent by 2028 because gas taxes do not provide the necessary resources. President Trump pushed for less direct federal funding in his first term and emphasized the need for increased state and local cost-share and more private investment. One potential new revenue source could be instituting a new fee for electric vehicle owners who do not pay federal gas taxes to fund transportation infrastructure projects. With the new majority's emphasis on reducing overall federal spending, the spending in the next transportation authorization is unlikely to provide a large infusion of new dollars to the system. With funding levels remaining flat or only slightly increased, the growing cost of projects due to inflation and higher labor costs could create challenges in meeting the transportation needs in communities with aging infrastructure or regions of the country experiencing significant growth.

Enhanced funding from the Infrastructure Investment and Jobs Act that benefitted water and wastewater infrastructure is also set to end in 2026. The Trump Administration will likely reverse many of the Biden Administration policies that placed unfunded mandates on water and wastewater utilities, for example, monitoring and responding to emerging contaminants and swiftly replacing lead service lines, providing some fiscal relief for

these utilities. However, the water sector will still have large funding needs to maintain aging infrastructure, ensure the safety and quality of drinking water, and manage increasingly common storm surges and associated flooding.

Given the projected funding cuts expected from the incoming Congress and the Trump Administration, bipartisan advocates will be needed to secure funding to keep pace with infrastructure needs. This could be an area where President Trump diverges from fiscal hawks based on his desire to get a political win by sending dollars back to states and districts for large infrastructure projects.

For more information, contact:

James Brandell, Ph.D.
Government Policy Advisor
Washington, D.C.
202-906-8633
jbrandell@dykema.com

Andrew J. Buczek
Government Policy Advisor
Washington, D.C.
202-906-8655
abuczek@dykema.com

Mary Beth L. McGowan
Government Policy Advisor
Washington, D.C.
202-906-8631
mmcgowan@dykema.com