



2021 Policy Outlook

As the 2020 campaign season enters its waning days, Crossroads Strategies is pleased to provide this broad overview of policy issues in the next Congress and how the outcomes of the upcoming elections might impact their consideration. CRS will provide additional in-depth analysis of more specific policy issues in the weeks following November 3rd.

In addition to a policy overview, this update also includes informed speculation on potential Cabinet and sub-Cabinet leadership in a second Trump and Biden Administration. Finally, it provides a brief overview of the potential dynamics of a potential contested presidential election.

Given the potential for a Democratic sweep, it is important to consider procedural tools available under unified government.

The first is budget reconciliation. This is a fast-track process that allows the majority party to utilize the annual congressional budget process to bypass the typical 60-vote hurdle in the Senate and advance policy and funding goals, with only a simple majority. The budget is a privileged motion in the Senate, meaning the rules dictate it cannot be filibustered, but it can only be used once in a budget cycle. The universe of policies that may be considered under reconciliation is limited to those changes that have a significant impact on federal spending, and the budget process is subject to numerous rules and points of order. Republicans successfully used reconciliation to move the Tax Cuts and Jobs Act but were unable to use it as part of a strategy to fully Repeal and Replace the Affordable Care Act.

The limitations of the reconciliation and increased use of the filibuster by the minority part in the Senate over the last several Congresses have led to serious discussion of changes to the legislative filibuster in the Senate. Should either party take control of the House, Senate and White House, expect an effort to “modernize” the Senate by eliminating the filibuster – making every vote in the Senate a simple majority rule, instead of the current threshold of 60 votes necessary to get legislation through consideration. In a divided government, the current Senate filibuster rules are likely to remain.

For example, Democrats would either need to eliminate the filibuster or use the reconciliation process to replace the ACA, if it were to be struck down by the Supreme Court. Similarly, these methods could be used to advance policies related to COVID-19 Relief, climate change, etc.

While this document is speculative, CRS hopes it provides a resource as clients consider strategic planning for 2021. Please feel free to contact any of the CRS team for questions about any of the information contained below.

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Agriculture

Trump Administration II

The Trump Administration's agricultural policy efforts, led by Sec. Sonny Perdue, will continue to support the farm economy through various farm program assistance packages. The Department of Agriculture has faced international trade challenges, low commodity prices, and natural disasters. In general, the agricultural sector has supported President Trump approach of reduced regulation, support for ethanol, and continued direct payment support.

In 2021, expect the Department of Agriculture to remain focused on farm income projections and international trade challenges. Though it remains broadly supportive of President Trump, the agricultural community remains concerned about the real impact of the Administration's stance toward China. In addition to these broad areas of focus, the Department of Agriculture, in conjunction with the Department of Health and Human Services, must finalize the 2020 Dietary Guidelines. As of July 2020, USDA and HHS have finalized the Scientific Report, the goal is to finalize the Dietary Guidelines by the end of 2020.

An area of continued focus for the Department will be deployment of rural broadband. The increasing dependence on internet access for remote learning and work will require expansion broadband access across rural America.

Likely/Possible changes in Senior Leadership

If re-elected, we expect some musical chairs across the Department of Agriculture's political appointees. For example, the Deputy Secretary announced he will leave the Department following the election and return to his previous position as CEO of the American Soybean Association.

Biden Administration

Beyond a comprehensive review of the Trump Administration's USDA actions, we expect an increased focus on school food programs to low-income students, SNAP, and the like, especially with the ongoing pandemic. Biden released his plan for rural America in September. The plan highlights improving the quality of life in rural America, and speaks directly to production of agriculture by:

- Fundamentally revitalizing rural economies, having Americans feeding America.
- Pursuing a trade policy that works for American farmers, reducing the heavy tariffs that the Trump Administration put into place.
- Supporting new farmers by expanding the Obama-Biden microloan program for new and beginning farmers.
- Fostering the development of regional food systems by partnering with small and mid-sized farmers to help create supply chains to deliver fresh produce and other products to schools, hospitals, etc.
- Reinvesting in land grant universities' agriculture research.
- Making American agriculture the first in the world to achieve net-zero emissions.
- Strengthening antitrust enforcement in agriculture.
- Promoting ethanol and the next generation of biofuels.

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- Investing in wind and solar energy.
- Investing in green infrastructure nationwide.

If Biden wins the election, Vice President Harris has a history of promoting diversity in farming. On July 30, 2020, Senators Harris (D-CA), Booker (D-NJ), and Duckworth (D-IL) introduced the Environmental Justice for All Act. The legislation aims to achieve health equity and climate justice for all, particularly underserved communities and communities of color. Throughout the summer, the Biden campaign organized roundtable discussions regarding discrimination in agriculture. John Boyd, president of the National Black Farmers Association, was an early endorser of Biden in March of this year.

An increased focus on wildfires across the western United States should also be expected. This focus could mirror bipartisan legislation sponsored by Senators Feinstein (D-CA) and Daines (R-MT), the Emergency Wildfire and Public Safety Act. The legislation would help protect communities from catastrophic wildfires by implementing wildfire mitigation projects, sustaining healthier forests that are more resilient to climate change and providing energy and retrofitting assistance to businesses and residences to mitigate risks.

Likely/Possible Senior Leadership Appointments

In the case of a Biden election, the Department of Agriculture could potentially be run by a lengthy list of well-known agricultural policy experts. While not an extensive list, former Dep. Sec. Krysta Harden, USTR negotiator Darci Vetter and former Senators Blanche Lincoln and Heidi Heitkamp will all receive consideration.

Congressional Outlook

While Congress will not need to pass another Farm Bill until 2023, the Committees of jurisdiction will look very different next year. With Sen. Pat Roberts (R-KS) retiring, it is expected that Sen. John Boozman (R-AR) will be the next Republican leader of the Senate Agriculture Committee, while Sen. Stabenow (D-MI) will maintain her role as the Democratic lead.

In the House of Representatives, pending the results of the election, expect Rep. Peterson (D-MN) to remain the Democratic lead for the House Agriculture Committee. However, Peterson faces another tough re-election; if he loses re-election, the Democratic side will fall to either Rep. David Scott (D-GA) or Marcia Fudge (D-OH).

Rep. Mike Conaway (R-TX) has announced his retirement, so either Rep. G.T. Thompson (R-PA) or Rick Crawford (R-AR) will lead the committee for Republicans.

As Congress continues to work on COVID-19 relief packages, the Committees of jurisdiction will continue to press for more funding and support for American farmers who may be struggling with the ongoing pandemic. An additional focus will be supporting dairy farmers who face multiple years of low prices. If Vice President Biden wins the White House, expect a coordinated effort by Democrats to enact climate proposals impacting production agriculture.

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Status Quo Election

- Senate – Chairman: Boozman (R-AR), Ranking Member: Stabenow (D-MI)
- House – Chairman: Peterson (D-MN) (pending reelection), Ranking Member: G.T. Thompson (R-PA) or Rick Crawford (R-AR)
- Administration: Sonny Perdue to stay, potential for substantial change in other political appointees

Committee Leadership Agenda

Senate

- High probability - supporting American farmers to recover from the COVID-19 impacts. Including funding in packages (including in emergency supplementals for impacted areas from storms and wildfires). Also, reintroduction of previous priority legislation, including the United States Grain Standards Reauthorization Act, and Boozman legislation on CFTC to respond to a foreign regulator seeking to asset authority over a US derivatives clearing organization.
- Medium probability - legislation impacting preventing wildfires

House

- High probability - reintroduction of Peterson priorities, including DAIRY Pride Act (which has been included in appropriations bills). As well as Peterson's RFC Integrity Act which is against EPA small refinery exemptions under the Trump Administration.
- Medium probability – climate change carbon proposals, organic food production

Administration

- High probability – impact on commodity prices, rural infrastructure and broadband, farm income projects, continued pressure on focusing on rebuilding the American farmer and sales post COVID-19 impact, focus on Supporting American Farmers, including sales and exportation of American agriculture to foreign countries, new dietary guidelines implementation
- Medium probability – focus on forestry issues to minimize impacts of wildfires, including biomass projects

Change in the WH but not The Hill

- Medium probability- Biden's rural plan for farmers, USDA doing a comprehensive review of the Trump Administration's actions and diversity in farming initiatives, and a focus on school food programs. A focus on carbon emissions in farming, revolving around carbon-neutral programs and the intersection of climate change. Protecting American farmers and workers through trade, and boosting strong labor and environmental protections.

Democrats Take Control of WH and The Hill

- High probability – wildfire protections, carbon related farming proposals to move towards a more green process, farming labor protections and standards, CFTC oversight
- Medium probability – trade priorities to protect farmers and increase exports

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Budget and Appropriations

Trump Administration II

Early in a second Trump term, expect a renewed push for previous budget priorities including proposed cuts to discretionary spending and proposed increases in defense spending and border spending measures. Trump budgets have proposed to cut discretionary spending programs including housing assistance, health care programs including Medicaid, and environmental programs. The Office of Management and Budget (OMB) can also be expected to begin to include an extension of the 2017 tax cuts and perhaps additional tax cuts in budget materials.

Likely Possible Changes in Senior Leadership

Russell Vought, Director of the OMB and Paul Ray, Administrator of the Office of Information and Regulatory Affairs (OIRA) were both confirmed in 2020 and are expected to remain in their positions.

Biden Administration

Shortly after the election, President-elect Biden will begin to discuss economic and budgetary priorities including pandemic response and economic recovery, tax increases for high income individuals and corporations, racial justice, climate change, health care, and other campaign priorities. Additionally, a Biden Administration OMB will be at the forefront of the effort to repeal numerous regulatory initiatives of the Trump Administration.

If Biden is elected President, expect an active final 75 days at the Trump Administration OMB. This late rush to complete regulatory work is often referred to as “Twilight” or “Midnight” regulation and has been aggressively practiced by both Democratic and Republican administrations as President’s leave office.

When a new Administration takes office there is usually some delay in presentation of a Budget and congressional action. The Democrats urgency to adopt a large pandemic response package may push the Biden Administration to advance a budget submission as soon as possible but there are likely to be some delays over normal timelines for budget consideration.

Likely/Possible Senior Leadership Appointments

Under a Biden Administration, the Director of OMB will be a key member of the President’s economic policy team. Though lacking in stature compared to other Cabinet level positions, the appointee to lead OMB is likely to come from the various names discussed for positions as the Treasury Department and the White House. There are only a few political appointees at OMB with the majority of senior positions filled by budget officials from federal departments and the Congressional Budget Office.

Beyond the Director, the position of greatest interest at OMB is the Administrator of the Office of Information and Regulatory Affairs or OIRA. The Administrator of OIRA has been an important slot for a long time, though perhaps even more so in the Obama and Trump presidencies as both featured very active regulatory programs. Biden can be expected to also have an active regulatory program even if he has a collaborative Congress in 2021.

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Congressional Outlook

The election results will bring more changes to the Congressional Appropriations Committees. In the House, the Democratic Caucus will select a new Chair of the Appropriations Committee as Rep. Nita Lowey (D-NY) is retiring. Representatives Kaptur (D-OH), DeLauro (D-CT) and Wasserman Schultz (D-FL) are all actively campaigning to be selected as the next Chair.

House Democrats will also select at least two new subcommittee chairs with the highly sought Defense subcommittee and the Commerce, Justice, Science subcommittee both open due to retirements. Democrats will also seek to fill at least three open seats on the Appropriations Committee. House Republicans will also have vacancies to fill on the Appropriations Committee as two members are leaving the Congress.

On the Senate side, the Appropriations Committee will likely continue to be led by current Chairman Shelby (R-AL) and Ranking Member Leahy (D-VT), although a change in the Majority status could see these two senior members switch roles. Sen. Alexander (R-TN) is retiring from the Senate, thus opening the Energy and Water subcommittee to a new Republican lead. At least three Republican Senators on the Appropriations Committee – Collins (ME), Graham (SC), and Daines (MT) -- are all engaged in competitive re-election campaigns. There will be at least one new Democratic member added to the Committee next year with Sen. Udall's (NM) retirement. Udall also leaves the ranking member slot at the Interior subcommittee available that is likely to draw interest from several Senators on the Democratic side.

The House Budget Committee under Chairman John Yarmuth (D-MA) will actively review the President's budget submission. However, following the adoption of the Budget Resolution with reconciliation instructions, the House Budget Committee will return to a limited schedule of hearings and investigations. In the Senate, current Budget Chair Mike Enzi (R-WY) is retiring. He will likely be replaced by either Sen. Davide Perdue (R-GA) or Sen. Mike Braun R-IN).

Status Quo Election

At the Budget Committees, both parties can be expected to prioritize party loyalty in placing any new members on the on the House or Senate Budget Committee. Speaker Nancy Pelosi will remain the gatekeeper for any agreements with a second term Trump Administration and the Republican controlled Senate. Divided government will limit the Legislative agenda by either party.

Senate Republicans are likely to use Reconciliation to advance additional tax cuts as highlighted by the President in the election. Likewise, Appropriations bills in the Senate will include President Trump's priorities including increased defense spending and funding for the Wall.

Change in the WH but not The Hill

Divided government under a Biden Administration would see Leader McConnell assume the role currently played by Speaker Pelosi, that being the voice of the opposition party. Any successful legislative initiative will be the result of talks between the Administration and the Republican Senate.

- **Budget Committee** - If the outcome of the election is divided government, the Budget Committees are likely to produce highly partisan budgets. Senate Republicans could use the Budget Committee

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process to differentiate Republican party priorities from a Biden Administration. House Democrats would produce an equally partisan Budget.

- **Appropriations Committee** – Senate Republicans will be forced into a more adversarial position to restrain spending priorities from House Democrats and the Biden Administration.

Democrats Take Control of WH and The Hill

In the House, Democrats will choose a new Chair of the Appropriations Committee as well as new Chairs of several prominent subcommittees. Sen. Leahy (D-VT) will be the new Senate Appropriations Chair. Several key Senate Republicans will need to be replaced on the Appropriations Committee.

Appropriations Committee - Just before recessing for the final campaign push, Congress approved a Continuing Resolution to fund the government through December 11th. Congress will return to Washington, for a “Lame Duck” session of the Congress in mid-November. The election results will largely determine whether the Fiscal Year 2021 appropriations process will be concluded in December or pushed into next year.

If the Democrats take control of the Senate and the Presidency, expect a very limited “Lame Duck” session with appropriations and other significant legislative initiatives pushed into the new year.

Democratic control would likely mean significant rewrites of the FY 2021 appropriations bills to remove Trump Administration priorities and elevate Democratic funding priorities. If Democrats take the Senate Majority and the White House, the FY 2021 appropriations bills will likely be rewritten in January when the Democrats take control. This outcome will have a greater impact on the Senate appropriations bills drafted by current Majority Republicans. As of now, the Senate Appropriations Committee has not released drafts of its FY 2021 bills. However, expect the draft Senate bills to reflect Trump Administration priorities not funded by the House.

In the event Democrats hold both the House and Senate majorities, expect another vigorous debate regarding congressional adds, or “earmarks” within Appropriations bills. Any return to this practice would necessarily include new requirements and transparency pledge, as well as “regular order” to include moving individual bills through each body and a conference committee before sending them to the President.

Budget Committee - If the Democrats manage to take control of the Senate and the White House, the Budget Committee’s under Democratic control will likely begin to move reconciliation instructions early in 2021. Democrats will likely seek two reconciliation opportunities similar to the process used by Republicans at the beginning of the Trump Administration.

At this point, it appears Democrats will seek to use Reconciliation for a large pandemic response package and to adopt health care legislation to strengthen the Affordable Care Act. The pandemic response package to come early in 2021 under a Biden Administration will likely include economic recovery initiatives, health care monies for the COVID-19 response, and tax increases on high-income earners as fundamental elements. Democrats can be expected to include elements of other priority issues like climate change, racial and environmental justice in an early 2021 reconciliation initiative.

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The second Reconciliation under a Democratic Senate is likely to be a health care initiative to strengthen the Affordable Care Act. Democrats see this as a necessity given President Trump's four-year effort to weaken the Affordable Care Act through regulatory initiatives and the Supreme Court case on the ACA scheduled for November consideration. Politically, Democrats also believe health care is a priority issue to a majority of voters who favor preserving and protecting access to health care.

As the top Democrat on the Budget Committee, Sen. Bernie Sanders (I-VT) is likely to raise the Committee's profile to serve his policy objectives on health care, tax policy and the economy. Sanders will likely use oversight hearings to push Democrats and a Biden Administration to adopt more progressive approaches to these issues. To that end, Sanders will feel some urgency to use reconciliation instructions to advance his "Medicare for All" philosophy. As such, Senate Democrats might find themselves in an awkward position between Sanders and a more mainstream approach to health benefits policy.

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Transportation and Infrastructure

Overview

Infrastructure should continue to be a largely bipartisan effort regardless of any changes in the Congress or Administration. Democrats and Republicans will both support a robust infrastructure package. Both the House and the Senate have passed legislation that could receive bipartisan support. However, with an expected increase in Democrat/environmentalists power, bipartisan support could be lost if infrastructure bills become vehicles to push a Green New Deal agenda thus resulting in additional extensions of current infrastructure programs.

Traditional infrastructure issues such as highways, transit, aviation and water projects continue to receive bipartisan support from the rank and file regardless of party but with the growing influence of environmental issues, traditional surface transportation bills have become more partisan.

The House passed HR 2, “The INVEST in America Act”, was a leadership-driven bill that addressed the basic needs of the infrastructure community (roads, transit, rail, etc.). It also included unprecedented support for environmental issues such as:

- Carbon pollution reduction apportionment program
- Pre-disaster mitigation program
- Major Transit Investment
- Alternative fuel charging infrastructure
- Climate Discretionary grant program
- Zero emission buses
- Incentives for transit-oriented development

As HR 2 was written without committee input, Chairman DeFazio (D-OR) was forced to consider more than 300 amendments offered by his own members during the mark-up. Republicans called the bill a “my way or the highway” piece of legislation and decried their inability to participate in the drafting process. The bill passed along partisan lines and was declared dead on arrival by the Republican-controlled Senate.

A year earlier, the Senate Environment and Public Works committee passed a bipartisan, five-year bill. Unfortunately, traditional infrastructure bills in the Senate are divided amongst four different committee (EPW, Finance, Banking and Commerce) three of which took no action on their version of the bill.

Extension: The President signed a one-year extension of the FAST Act, the current highway reauthorization bill which was set to expire on September 30. Congress now has almost a year to pass a new bill or can continue to kick the can down the road with additional extensions.

Trump Administration II

Upon his election in 2016, the President pushed hard for an infrastructure bill funded through Public Private Partnerships or PPPs which are designed to leverage federal dollars with outside investments. Briefly the President pushed a \$1 trillion infrastructure plan but that soon fell apart as rural America objected saying it will be difficult to raise the capital needed to secure the necessary federal dollars. Since that time, the Administration has done little to find an alternative funding mechanism for infrastructure.

If the President is re-elected, expect his Administration to let Congress lead the way in crafting the next infrastructure bill. Congress needs to find a new mechanism to fund the Highway Trust Fund and the Administration does not appear to have an interest in participating in that debate.

The Administration has made it a priority to look at every federal regulation and ask agencies to justify their continued existence. Many say that one of the Administration's greatest accomplishments has been its effort to ease the regulatory burden on all industries. It is likely that the next Trump Administration will continue with its efforts – moving more aggressively knowing that re-election is no longer an issue.

Expect the President to support efforts to prop up transportation assets such as transit, aviation and rail all affected by COVID-19. Would also expect him to aggressively defend his Administration recent rulemaking on CAFÉ and other NEPA-related rulemakings and executive orders

Likely/Possible changes in Senior Leadership

Transportation Sec. Elaine Chao has done a solid job as Secretary, but the President will likely want to make a change to reward supporters. Unclear who that would be but internally, expect Joel Szabat, current Undersecretary and White House favorite to be nominated to serve as Secretary. Federal Highways Administrator, Nicole Nason would also play a pivotal role in the second term.

Biden Administration

Should Biden win the White House and Congress remains the same, the prospects of getting a long-term infrastructure bill done will likely depend on the influence of the environmental community in the new Administration. Biden should be able to come to agreement with a Republican-controlled Senate as long as those who back the Green New Deal do not have an overwhelming presence in negotiations. However, if Biden backs a bill similar to the recently passed DeFazio bill, expect little cooperation from Senate Republicans who have already publicly stated that they will not consider the DeFazio bill. Should that occur, the Biden Administration will rely heavily on executive orders to change many of the rulemakings pushed through during the Trump Administration.

A Biden victory would likely strengthen support for the DeFazio bill and expand upon its “Buy America” and environmental provisions. A Biden plan would emphasize DeFazio's support for transit, specifically, high-speed rail. Biden would also support discretionary mega-grants for cities to undertake such projects as electric vehicle charging infrastructure, airport renovations and other urban projects. Biden does not say how he would pay for the plan.

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As for other traditional infrastructure programs such as aviation and water projects, Biden and the Democrat-controlled House will push hard on issues dealing with labor, the environment and climate justice. Biden has proposed a new division within the Justice Department that would look at environmental and climate change issues and how they affect communities.

A Biden victory would likely start with a major infrastructure package tied to additional COVID-19 relief. Included in that package would likely be carbon pricing, emission mandates and additional subsidies and incentives for renewable energy. Expect restrictions on fossil fuels.

With the debt limit suspended until August, expect a massive spending/tax bill to emerge from the Administration. DeFazio's HR 2 would likely serve as the base text for a massive spending bill which could include increases in the PFC as well as the gas tax to help fund infrastructure investments. Major components of the Green New Deal would also be included in the package with heavy emphasis on zero emission vehicles and electric charging station infrastructure.

Would also expect heavy activity on the regulatory side with a long list of executive action signed on the first day of his presidency. Trump accomplishments such as CAFÉ, environmental issues and NEPA streamlining will be modified or cancelled.

Likely/Possible Senior Leadership Appointments

For policy assistance Biden has worked with a variety of people in the transportation world including the following:

- Former USDOT Dep. Sec. John Porcari. Porcari served four years in the Obama Administration implementing TIGER grants, strengthening Buy America Act and overseeing the Cash-for-Clunkers program.
- Radhika Fox, CEO of the nonprofit US Water Alliance. Fox previously directed the policy and government affairs agenda for the San Francisco Public Utilities Commission.
- Carlos Monje, Twitter and former Assistant Secretary for policy at DOT.
- Phil Washington, CEO of the Los Angeles County Metropolitan Transportation Authority since 2015.
- Eric Garcetti, Mayor, City of Los Angeles

Congressional Outlook

Status Quo Election

Expect Chairman DeFazio to move quickly with a more progressive version of HR 2, "The Investing in a New Vision for the Environment and Surface Transportation in America" (INVEST in America) was a five-year, \$494 billion bill which contained the following:

- \$319 billion for highways
- \$105 for transit
- Increased funding for alternative transportation
- Stronger Buy America provisions
- Increases investment in zero-emission buses
- \$5.3 billion for NHTSA

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- \$4.6 billion for FMCSA
- Rail Investments: \$60 Billion; Triples funding for Amtrak to \$29 billion over five years. Creates a new \$19 billion program, the Passenger Rail Improvement, Modernization and Expansion (PRIME) grant program, devoted entirely to passenger rail improvements and expansion, performance optimization, and intercity passenger rail transportation expansion.

In the Senate, regardless of who controls that body, expect introduction of a bill similar to Sen. Barrasso's (R-WY) bipartisan highway bill, which passed committee last year. The five-year, \$287 billion bill (a 27 percent increase over the FAST Act) included the following:

- Nationally Significant Freight and Highway Projects (INFRA)
- Bridge program
- Safety Incentives
- Environmental review
- Carbon Emissions Incentive Programs
- Grants for alternative fuel infrastructure; and
- Environmental streamlining

Democrats Take Control of WH and The Hill

- Sen. Tom Carper (D-DE) would take over as Chair of EPW
- Sen. Sherrod Brown (D-OH) would become Chair of Banking
- Sen. Cantwell (D-WA) would become Chair of Commerce (heavy influence from Senators Markey (D-MA) and Blumenthal (D-CT))

Should Democrats gain control of the Senate, expect efforts to expand traditional Democrat priorities such as the environment, labor, and social justice.

DeFazio's HR 2 would quickly move with additional pro-environmental measures targeting various industries including the auto and aviation industries.

Cantwell may look to force additional aviation regulations with Boeing's recent announcement that they would be moving assembly operations of the 737 Max. Automakers should also be concerned about the rollback of CAFÉ changes as well as additional auto safety mandates.

Treasury, Taxes and Financial Services

Trump Administration II

Should President Trump get reelected for a second term in November, more of the same types of policies and priorities seen in the past four years are anticipated. Priorities would likely continue to include finding regulatory relief opportunities for large, medium-sized, and small businesses. Deregulatory efforts for banks and the larger financial services industry can also be expected, though a formal Treasury agenda is hard to predict in the wake of the COVID-19 pandemic.

The Department will likely spend the first year of a second term focused on aftermath and recovery of the pandemic, which will involve vigilant oversight of restrictions imposed on companies that received government loans via the CARES Act. Treasury will be tasked with making sure all companies that received such loans meet all the necessary requirements, including restriction on stock buybacks and keeping ninety percent of its workforce on through September 30, 2020.

Likely/Possible changes in Senior Leadership

In terms of personnel, Sec. Mnuchin is expected to remain at Treasury for the foreseeable future. Mnuchin has largely been viewed as a successful leader of the Department over the past four years and has also served as the Administration's top negotiator on several major legislative packages, including COVID-19 relief measures and government funding bills.

Biden Administration

A Biden Treasury Department would likely attempt to undo a host of regulatory relief initiatives taken by the Trump Administration. Efforts would likely focus on undoing portions of the Economic Growth, Regulatory Relief and Consumer Protection Act, as well as general regulatory relief to the financial services industry.

SIFI Designations/Bank Threshold Requirements - In March of 2018, the Economic Growth, Regulatory Relief (EGRRCPA) and Consumer Protection Act was signed into law. Included in the legislation was a repeal of a Dodd-Frank provision that deemed financial institutions with more than \$50 billion in total consolidated assets as systemically important financial institutions (SIFIs). A SIFI designation also includes additional oversight and regulatory burdens. By rolling back this Dodd-Frank Provision, EGRRCPA increased the asset size for SIFIs to \$250 billion. The legislation also exempted financial institutions with less than \$100 billion in total consolidated assets from supervisory stress tests.

However, a Biden Administration could fill the prudential banking regulators, including the OCC, FDIC, and Fed with overzealous regulators seeking to undo these changes. This would present a significant problem for banks in this threshold area, particularly for smaller banks with total consolidated assets between \$50-\$75 billion. If regulators choose to undo portions of EGRRCPA, these banks would be subject to stress testing and increased regulatory burdens, which would likely affect banks' balance sheets as compliance costs could be expected to substantially increase.

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Likely/Possible Senior Leadership Appointments

- Sen. Elizabeth Warren (D-MA): There are numerous reports that Biden consults regularly with Warren on Treasury Department and banking/financial service matters. This includes potential Warren service in a Biden Administration as Treasury Secretary though this scenario is complicated as Senate Democrats will likely have a narrow majority margin if Democrats take control in January. Massachusetts has a Republican Governor who would get to name Warren's replacement were she to leave for an appointment in the Biden Administration. Warren may be too valuable to Senate Democrats to leave the Senate. In the interim though, numerous staffers previously affiliated with Senators Warren and Sanders (I-VT) are now part of the Biden campaign working on Treasury/Financial Services transition matters.
- Julie Siegel: Siegel worked in Senator Warren's office and with the Senator previously at the Consumer Financial Protection Bureau. Siegel joined the Biden campaign in June.
- Graham Steele: Steele is closely aligned with Sen. Warren and now serves on the Biden campaign working on Treasury/Financial Services transition. Steele previously worked for Sen. Sherrod Brown (D-OH) at the Senate Banking Committee.
- Bharat Ramamurti: Ramamurti is another former Warren Senate and campaign staffer reported to be involved with the Biden campaign's transition planning. He is Sen. Schumer's (D-NY) appointed member of the COVID-19 Congressional Oversight Commission tasked to oversee the Department of the Treasury's and the Federal Reserve Board's management of stimulus and loan programs mandated by the CARES Act. Numerous press articles have begun to speculate on candidates to serve in senior Treasury Department positions, several of whom are mentioned below.
- Rostin Behnam, CFTC Commissioner: Behnam has made climate change risks part of his portfolio at the CFTC. Behnam is thought to be under consideration for a senior position at a Biden Treasury Department or perhaps Chairman of the CFTC.
- Jared Bernstein: Bernstein served as Biden's Chief Economist and Economic Advisor during the Obama Administration.
- Sarah Bianchi: Bianchi served at Vice President Biden's Director of Economic and Domestic Policy. She is a senior member of the Biden Harris campaign team.
- Lael Brainerd: Brainerd is the last Obama appointee serving as a Governor at the Federal Reserve Board. Brainerd has been mentioned for a position at Treasury or perhaps Chair of the Fed.
- Richard Cordray: Cordray is an Obama Administration veteran from the Consumer Financial Protection Bureau.
- Jason Furman: Furman served as Chair of the National Economic Council during the Obama Administration.
- Amias Gerety: Gerety served as a counselor at the Treasury Department and as Assistant Secretary for Financial Institutions during the Obama Administration.
- Austin Goolsbee: Goolsbee served as Chair of the National Economic Council early in the Obama Administration.
- Don Graves: Graves is a long-time advisor to Vice President Biden including the current campaign. Graves is also on the Biden Institute Policy Advisory Board.
- Ben Harris: Harris served on the Vice President's staff during the Obama Administration as Biden's Chief Economic Advisor.

- **Ted Kaufman:** Ted Kaufman was appointed U.S. Senator from Delaware after Biden was sworn in as the VP. During his brief Senate service, Kaufman worked closely with former Sen. Chris Dodd on the financial services reform legislation.
- **Gina Raimondo:** Raimondo is the Governor of Rhode Island and a veteran of Wall Street and the financial services industry.
- **Steve Rattner:** Rattner previously served as an advisor to the Presidential Task Force on the Auto Industry early in the Obama Administration.
- **Sarah Bloom Raskin:** Bloom Raskin is thought to be interested in serving as the Treasury Secretary. She previously served as a Governor at the Federal Reserve Board and a Deputy Secretary at the Treasury Department during the Obama Administration.
- **Jeff Zients:** Zients served in the Obama Administration at the White House National Economic Council and at the Office of Management and Budget.

Congressional Outlook

Ways and Means - Anticipate some change in leadership on the subcommittee level. With the passing of Rep. John Lewis (D-GA), the Oversight Subcommittee gavel will be up for grabs. The four most senior members in line for the post, Representatives Lloyd Doggett (D-TX), Mike Thompson (D-CA), John Larson (D-CT), and Earl Blumenauer (D-OR), all currently chair other subcommittees. If one of them were to take Oversight, this would create a musical chairs exercise that would allow a rank and file member to take over a subcommittee. Rep. Kind (D-WI) is next in line in seniority and he would likely chair the subcommittee that has a vacant leadership opening after the four more senior members make their choices.

The Democrats have been in charge for several years at Ways and Means, so there will be less transition and change at the Committee if Democrats maintain or strengthen their House majority status. Ways and Means Chairman Richard Neal (D-MA) recently fended off a serious primary challenge in Massachusetts thus avoiding a high-profile process to select a new Chairman. There will be at least one new Democratic member appointed to the Ways and Means Committee to replace Rep. John Lewis.

The agenda at the Ways and Means Committee will be set in close cooperation with Speaker Nancy Pelosi who has largely directed high profile House legislative initiatives. Pelosi will coordinate House activity with the Biden Administration and her Senate Democratic counterparts. Though as she did in the last several years, Speaker Pelosi will seek to manage the various coalitions within the House Democratic Caucus. Pelosi has sought to restrain the more liberal Members of the Democratic Caucus in order to protect newly elected moderates and ultimately the House Majority. This tension between factions within the House Democrats is likely to grow if Democrats control both bodies of the Congress and the White House.

The \$3.5 trillion HEROES Act will continue to serve as a blueprint for House Democrats if further legislation is necessary to combat the COVID-19 pandemic.

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If the Democrats move to advance economic recovery legislation, the Ways and Means Committee will lead the way to advance legislation similar to H.R. 2, the Moving Forward Act. The Democrats \$1.5 trillion broad infrastructure initiative includes provision, funding and tax credits for:

- Highways, Bridges, Transit, Rail, Airports, Ports/Harbors,
- Schools and Child Care,
- Community Development,
- Housing,
- Broadband,
- Drinking water and wastewater,
- Clean energy,
- Health care,
- Postal Service,
- Public lands.

Chairman Neal introduced and led Ways and Means adoption of the "Growing Renewable Energy and Efficiency Now (GREEN) Act." The Green Act and its green energy tax provisions were included in H.R. 2, the Moving Forward Act. Outside interest groups and proponents of the Green New Deal are likely to ramp up pressure on the Ways and Means Committee to do more on climate change issues. However, the next steps on climate change legislation will be determined by Speaker Pelosi and a potential Biden Administration.

Ways and Means Democrats will again make a big push on health care legislation, though timing and scope of the legislation will be determined by Leadership and the Administration. The health care debate is likely to spur vigorous debate between those members favoring a Medicare for All approach vs. members preferring to strengthen and modestly enhance the Affordable Care Act.

House Democrats, through the Ways and Means Committee, are likely to advance an aggressive repeal of the Trump tax cuts seen as benefitting high income earners. With a broader majority and fewer procedural hurdles to overcome, House Democrats can be more aggressive than their Senate counterparts. Expect coordination between Leadership and the Administration to again determine timing and elements of any tax legislation.

Chairman Neal would likely run into similar hurdles he has faced this Congress in terms of enacting legislation that becomes law, even with a Democrat-led Administration. Partisan legislation will not be advanced through a Republican-led Senate, and bipartisan legislation could still prove to be difficult to clear the Chamber. Tax credits in the wake of the pandemic may be an area for Neal to garner bipartisan support.

House Financial Services - Some changes in leadership on various subcommittees should also be expected. The subcommittee on Consumer Protection, currently chaired by Rep. Meeks (D-NY), could see a leadership change if Meeks chooses to pursue a full chairmanship of the Foreign Affairs Committee. Meeks has long sought the position, and should he get it, so if the door opens for a new chair of Consumer Protection. Representatives Perlmutter (D-CO) and Cleaver (D-MO) would be front runners for the job.

Based on seniority, Cleaver would get the nod, though it is our understanding that he would prefer to chair Housing and Insurance, and that chairmanship will be open with the primary loss of Rep. Clay (D-MO). Should Cleaver take over H&I, Perlmutter would be next in line to chair Consumer Protection.

Beyond potential changes at Consumer Protection and Housing and Insurance, it is not likely that other subcommittees will be up for grabs. Rep. Sherman (D-CA) is likely to continue his Chairmanship of Capital Markets. It is our understanding that Rep. Beatty (D-OH) will continue to Chair Diversity and Inclusion, Rep. Green (R-TN) will continue to lead Oversight and Investigations. There should be no change in leadership on the committee's two task forces, with Rep. Foster (D-IL) continuing to lead Artificial Intelligence and Rep. Lynch (D-MA) continuing to Chair the Fintech Task Force.

With Chairwoman Waters (D-CA) at the helm, the House Financial Services Committee is expected to continue its aggressive consumer protection agenda, with a heightened focus on communities hit hardest by the coronavirus pandemic. The lingering effects of the pandemic will likely hit communities of low and moderate income particularly hard, prompting Waters to pay close attention and act accordingly.

From a policy perspective, agenda items could include protecting consumer credit profiles from negative marks resulting in lower credit scores, as well as expanding access to credit in communities of color. Minority owned businesses and depository institutions that suffer severe losses during the pandemic will plead for support from House Democrats as Congress considers additional relief legislation. Waters will likely hold several hearings on the aftermath of the pandemic throughout the remainder of this Congress and would continue to do so well into the next if in possession of the committee gavel.

The Chair is likely to conduct hearings on the CARES Act and any future legislative responses to coronavirus. It should be anticipated that such hearings will involve executives of companies across the country in an attempt to examine their efforts to keep employees on payroll and adhere to rules restricting stock buybacks in exchange for taking government loans. Companies that received a loan and laid off significant portions of their workforce after September 30 should expect to be publicly scrutinized by the committee for such decisions.

Waters' main priority in the 116th Congress has been affordable housing and homelessness, which will continue into the next Congress. The committee passed dozens of housing bills calling for increased appropriations for new and existing housing programs, as well as increased public housing disclosures for landlords and public housing authorities. Most of those bills were considered dead-on-arrival in the Senate; she will likely attempt to move them all through her committee very quickly next year.

Waters is also expected to continue her push for diversity in corporate spaces. Companies who have issued diversity statements and realigned their C-suites following protests and civil unrest will give the committee fresh ammunition to target those that have failed to diversify their boards and senior ranks into the new year. The House Financial Services Committee is also expected to do a general, yet thorough assessment of winners and losers from government COVID-19 interventions, continually monitor movement in the digital and crypto-banking spaces, and further evaluate the use of artificial intelligence in housing and banking decisions.

Should Democrats take the White House but fail to gain control of the Senate, Chairwoman Waters will have similar difficulties in advancing legislation beyond the House of Representatives. Even if Democrats control the White House, this is not expected to change the success rate of bills becoming law as the Senate will continue to block partisan legislation.

Waters could find success in attempting to pressure regulatory agencies to advance certain priorities in a Biden Administration, such as the CFPB, the Department of Housing and Urban Development (HUD), and the Securities and Exchange Commission (SEC).

Senate Banking Committee - Should Republicans retain control of the Senate, Sen. Pat Toomey (R-PA) would assume the chairmanship, Senate Banking Committee.

The Senate Banking Committee under Sen. Toomey would likely have a far more robust and aggressive agenda than has been recently seen from the Banking Committee. Though the Committee was able to pass a package of limited Dodd-Frank reforms, it produced comparatively less legislative activity in the last years of Sen. Crapo's chairmanship. Chairman Toomey is expected to be significantly more proactive.

An early focus of the Committee under Sen. Toomey's chairmanship would be oversight of the federal government's response to COVID-19 and efforts to return to a phase of both economic and fiscal normalcy. The Committee would seek to ensure that the Paycheck Protection and Main Street Lending programs are unwound, that other Treasury grant and lending programs receive scrutiny, and most importantly that the Federal Reserve return to a posture more appropriate for normal economic conditions. It is unlikely that the Committee would move additional COVID-19 relief legislation.

From a proactive perspective, Sen. Toomey's largest priority will be Government-Sponsored Enterprises (GSE) reform. Toomey would probably push the Trump Administration in a second term to implement a plan to terminate its conservatorship of the entities. Toomey has long championed traditional conservative principles of GSE reform such as taxpayer protection elements and leveling guarantee fees, and has engaged in debate on more complex issues, like treatment of GSE preferred shareholders.

Regardless of the White House occupant, Sen. Toomey would be hands-on in any efforts at GSE reform undertaken by the White House. He will also likely draft and attempt to move his own legislative product on a replacement for the current housing finance system.

Sen. Toomey would also continue to focus on Chinese bad actors, particularly in the steel industry, with which he has an inherent parochial interest. Given his aggressive stance toward China and his broader interest in China policy, he will likely undertake efforts to curtail Chinese influence in capital markets and global investment. Chairman Toomey would also likely build on previous efforts in the capital markets space to raise small business capital through crowdfunding, including for minority owned businesses.

Should the White House flip, Sen. Toomey will have difficulty advancing several key priorities, including GSE reform. Democrats would be expected to reject many provisions in a Toomey authored reform package, specifically related to an explicit government guarantee and the leveling of guarantee fees.

Chairman Toomey could have success with a Democrat-led White House on crowdfunding efforts aimed at raising capital for small businesses. A comprehensive effort to further enable small businesses to succeed that includes minority and women-owned businesses would likely receive significant bipartisan support. Sen. Toomey has emerged as a leader in cracking down on the Chinese Communist Party and could potentially work with a Biden Administration in building on these efforts.

If the Senate were to shift control to the Democrats, Sen. Sherrod Brown (D-OH) would become chairman of the Senate Banking Committee, likely focusing on consumer protection policies and economic policies that assist working and middle-class Americans, rather than corporations.

Sen. Brown has been quoted as saying that he will put “housing and urban affairs back into the Banking, Housing and Urban Affairs Committee.” As such, he would pursue legislating in these areas of his jurisdiction and attempt to expand affordable housing, decrease homelessness, and hold public housing authorities accountable through more stringent regulation. Sen. Brown would also be expected to continue his push for increased consumer protections in the banking arena, specifically through targeting predatory practices by financial institutions.

As with a Sen. Toomey chairmanship, Sen. Brown is likely to devote substantial time to oversight of federal responses to COVID-19. Areas of focus might include fraud and abuse in the Paycheck Protection and other programs, the strict adherence of recipients of federal aid to relevant standards and regulations, and the impact of the CARES Act and other legislation on workers. This oversight will likely lead to legislative initiatives around housing and rent, COVID-19 driven bankruptcies, and other relief for borrowers who were or continue to be out of work.

Chairman Brown would also push some form of a cannabis banking initiative, though it is unclear at this moment whether the SAFE Banking Act will serve as the template for this legislation, or if the legislation will reflect a larger universe of cannabis-related issues.

Should Democrats win the White House (and the Senate), Sen. Brown would likely pursue aggressive change in both personnel and policy at the Consumer Financial Protection Bureau (CFPB). The Banking Committee might also receive a reconciliation instruction in this scenario.

Senate Finance Committee – Under a Republican Senate Majority, Sen. Mike Crapo (R-ID) would become the chairman of the Senate Finance Committee.

Though Sen. Crapo’s last years as chairman of the Banking Committee were relatively quiet, he is likely to be a more active chairman of the Finance Committee, working across the various areas of the Committee’s jurisdiction: tax policy, trade, and health care. Crapo would likely focus on policies to reduce the tax burden on individuals and businesses while also working to reform or replace the Affordable Care Act.

An early area of focus might be a COVID-19 recovery package, in which Chairman Crapo would push legislation to expedite economic recovery through expanding existing tax credits to communities and industries severely impacted by the virus. Additionally, Crapo might play a role in the financing of a potential infrastructure package.

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The Crapo Finance Committee might also work on extending or making permanent expiring provisions of the Tax Cuts and Jobs Act as well as exiting tax extenders. Passed using budget reconciliation, pieces of the bill begin to roll off at the end of 2020, likely prompting action by the Finance Committee next year. Though the bulk of extenders were handled at the end of 2019, there remain expiring provisions that must be reauthorized annually.

Sen. Crapo is expected to push tax credits for rural broadband and other policies focused on energy production and rural economic growth. Crapo could also attempt to tackle the digital services tax, which would have lasting impacts on tech giants such as Google, Apple, and Amazon.

A fiscal conservative, Sen. Crapo will be expected to utilize both tax and entitlement policy, including reforms to Medicare, Medicaid and Social Security to achieve deficit reduction using both tax and entitlement policy. Such reform would be difficult with Democratic control of the House. He might also attempt to reform the health insurance marketplace, and continue the committee's work on drug pricing legislation, though not on the scale contemplated by Chairman Grassley this year.

If Democrats take control of the White House, Sen. Crapo would face an uphill battle advancing key priorities. Specifically, making expiring provisions of the Tax Cuts and Jobs Act permanent, many of which Biden has suggested for elimination rather than extension.

A Democrat Senate majority would install Sen. Ron Wyden (D-OR) as the Finance Committee chairman.

An active legislator, Wyden would focus on wide ranging legislative initiatives across the committee's jurisdiction to include regular, ongoing oversight. As Ranking Member, Wyden has sought to work with Chairman Grassley where possible including on the Grassley-Wyden prescription drugs legislation. It is unknown whether Wyden and Sen. Crapo – who is slated to replace Sen. Grassley as the Committee's senior Republican – will be able to work together in a similar fashion.

As the country seeks to recover economically, Wyden has pressed to put triggers in place for extensions of benefits based on specific rates of unemployment instead of arbitrary timelines and partisan differences. Wyden can also be expected to focus on disparities in outcomes for communities of color, immigrants, and others under programs like the Affordable Care Act, CHIP, and Medicare and Medicaid. If the Grassley-Wyden prescription drug legislation is not enacted this year, a Chairman Wyden committee would reintroduce more ambitious legislation to include the authority for the Medicare program to negotiate prescription drug prices.

Wyden continues to support an expansive infrastructure initiative to include transportation, broadband, affordable housing, and perhaps other types of infrastructure. Wyden and Senate Democrats would use their authority to look at the Trump tax cuts as the foundation for paying for a large-scale infrastructure package including raising individual rates, corporate rates and limiting the estate tax. In late 2019, Wyden unveiled a comprehensive tax code proposal to raise between \$1.5 and \$2 trillion dollars. Wyden would likely return to this proposal as chairman, including a focus on reforming the taxation of capital gains, equalizing tax rates for wage and capital income and minimizing the benefit of deferring taxes.

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Given the importance of international trade to Oregon, Wyden has a long history of support for free trade initiatives, though he has championed labor and environmental protections within trade agreements. The posture of the Finance Committee on international trade will be heavily impacted by the 2020 presidential election. Either way, Chairman Wyden can be expected to support multilateral trade initiatives and similar international cooperative regimes for climate change and the global economy. Climate change is expected to grow in importance to the Committee under a Democratic Senate or Biden Administration with Chairman Wyden to take the lead on climate initiatives like a carbon tax.

Democrat Control of House and Senate

Should Democrats take control of the House and Senate, they are likely to pursue policies to review and potentially undermine regulatory relief that has occurred during the Trump Administration. Banks' response to COVID-19 will be a lens through which House Financial Services Chairwoman Maxine Waters (D-CA) is expected to highlight these issues. She and Banking Chair Brown (D-OH) would likely push legislation aimed at expanding access to credit to low- and moderate-income communities, as well as communities of color.

Waters is also expected to hold several hearings on the aftermath of the pandemic. Expect the Chair to call corporate executives in front of her committee to explain and defend their efforts in keeping employees on payroll and adhering to rules around stock buybacks in exchange for taking government loans.

The disruption created by COVID-19 will have a long tail and could lead to passage of a substantial economic recovery package in the future. Though the parameters of this legislation remain elusive, it may include tax, financial services, and infrastructure titles. Each of these areas represents both a threat and opportunity for the financial services industry.

Health, Education & Labor

Department of Health & Human Services

Regardless of who controls Congress, the top priority for HHS in 2021 will be the ongoing response to the COVID-19 pandemic. The onset of colder, winter weather will likely drive more people to remain indoors where the virus can spread more easily. HHS will need to remain focused on assuring the acquisition and distribution of PPE and other pandemic supplies for health care settings, places of employment and educational institutions.

Next year will also hopefully see the results of Operation Warp Speed (OWS) in the approval, manufacture and distribution of new COVID-19 vaccines and other therapies as they become available. Addressing instances of vaccine hesitancy through public education could also become a priority along with remedial programs to address gaps in deployments of the vaccines and therapeutics (i.e. rural, inner city, minority, elder care). Catching up on lagging childhood immunizations will also be an important priority.

Department of Labor

Restarting the American economy during and after the pandemic will be a major focus of the department in 2021. New and expanded OSHA guidance on reopening retail, manufacturing and service sites would be a top priority. Given recent employment statistics, the department would need to stay engaged on unemployment insurance issues and potentially retool job retraining programs to account for the scope of the pandemic's impact on businesses and their workers.

Department of Education

Enabling continued education in a pandemic setting, whether at-home, through a mix of distance learning, or in-person will dominate the early agenda regardless of the victor in November. The difference could be in the nature of the guidance provided to school districts in K-12 and to institutes of higher learning (e.g. mandatory versus suggested). Regardless of control, the Department will seek reauthorization of the Higher Education Act.

Trump Administration II

Department of Health and Human Services - On-going efforts to loosen ACA requirements would continue (e.g. more exemptions for non-conforming health plans). The ACA being ruled unconstitutional by the Supreme Court could set off a scramble to protect beneficiaries with preexisting conditions. On pandemic response, a more laissez-faire approach to acquiring and distributing pandemic supplies (e.g. PPE, syringes, etc.) with states having to take responsibility for their populations would continue to be the norm. Another term could grant the Administration time to start, following litigation, implementing several of the recent drug pricing Executive Orders such as the "most favored nation" drug pricing in Medicare Part B and D and the expanded importation.

Department of Labor - Under a second Trump term, the focus would be on enabling Americans to return to the workplace. However, OSHA guidance, a key component, would likely remain voluntary. Another focus would be on expanding access to apprenticeships as an alternative to college in building a career path.

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Department of Education - A second Trump Administration would continue to favor in-person learning, particularly for K-12. School choice would remain a motivating issue under DeVos' stewardship. In addition, student aid reform concerning the servicing of student loans and countering Democratic demands for loan forgiveness tied to the pandemic would also be priorities.

Likely/Possible changes in Senior Leadership

In a second Trump Administration, Sec. Azar would likely return to lead the department. Likewise, DeVos and Scalia would likely remain atop their respective departments.

Biden Administration

Department of Health and Human Services - A Biden Administration would take a more active role in securing (e.g. invoking the Defense Production Act), allocating and distributing pandemic supplies. They would also likely reverse the changes in pandemic tracking and reporting by making the CDC the lead agency again. And they may reexamine the standards employed by the Food and Drug Administration (FDA) in issuing emergency use authorizations (EUAs) for COVID-19 virus tests, antibody tests, vaccines and therapeutics. And a Biden HHS would move more aggressively on oversight of the nursing home and related elder care industries and to direct changes to ameliorate any lingering issues created by the pandemic.

Another priority under Biden would be reversing many of the actions taken by the Trump Administration to weaken the Affordable Care Act (ACA). This would encompass anything from a renewed focus on outreach and education to automatic enrollment (perhaps to a public option if one is created by a Democratic Congress) and rolling back and eliminating the proliferation of non-ACA compliant health plans. They would also likely crack down on Medicaid work requirements that were permitted by the Trump Administration. Depending on the degree of Democratic control in Congress, HHS would also be involved in efforts to lower the Medicare eligibility age to 60 and the potential addition of a "public option" to the ACA insurance marketplaces.

In the event the Supreme Court strikes down the ACA, HHS would be involved in limiting (to the extent possible) the loss of health coverage during an ongoing pandemic and developing a replacement (e.g. ACA reborn, ACA+ public option, "Medicare-for-All").

Finally, if Democrats succeeded in passing new drug pricing legislation then HHS could find itself with new responsibilities in setting ("negotiating") drug prices for parts or all of the Medicare and Medicaid programs and perhaps even commercial plans. Greater scrutiny of drug manufacturer actions in the 340B drug program would also likely occur.

Department of Labor - Under Biden, the Occupational Safety and Health Administration (OSHA) would move to provide stricter guidance/requirements for workplace safety with an emphasis on essential workers (e.g. health care, meatpackers, etc.) at high risk of COVID-19 exposure. These requirements could include everything from safe separation of employees who return to the workplace (e.g. distancing, dividers), to workplace masking mandates, to requiring employer-provided PPE, to sanitation/handwashing stations. A Biden Administration would also see a reversal of the treatment of organized labor and more support for efforts to unionize--from southern auto plants to Amazon fulfillment centers to gig workers.

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Department of Education - A Biden Administration would likely emphasize efforts to improve distance learning with a focus on ensuring equitable access across urban versus rural areas, affluent versus lower income and majority versus minority populations. A Biden Administration would also likely take more decisive action to enable school meals programs to service at-risk kids who are not in a school setting. And, under Biden, there would likely to be a push for more funding for colleges and universities to offset declines in international student tuition and potential gaps in state assistance for higher education if state budgets continue to be constricted by the pandemic.

Likely/Possible Senior Leadership Appointments

At HHS, Biden has a lengthy list of health policy advisors with experience in federal health care or running state health departments. Given the need to shore up the ACA, Biden may be tempted to pick Obama Administration alumni with experience. Those listed below are advising for a potential Biden transition.

- Zeke Emanuel: Advisor to the Biden campaign; former Special Advisor for Health Policy to the OMB Director
- Chris Jennings: Former White House Deputy Assistant for Health Policy and Coordinator of Health Reform
- Vivek Murthy: Co-Chair of Biden campaign unity task force on health care; former Surgeon General
- Tom Frieden: Former CDC Director
- Howard Zucker: Commissioner of Health for New York State; former Deputy Assistant Secretary of Health
- Mandy Cohen: Secretary of the North Carolina Department of Health and Human Services
- Robert Gordon: Director of the Michigan Department of Health and Human Services
- Rep. Kim Schrier (D-WA): Co-Chair, Healthcare Task Force of the New Democrat Coalition
- Andrea Palm: Secretary-Designee of the Wisconsin Department of Health Services; former Senior Counselor to the Secretary and Chief of Staff at HHS
- Danielle Gray: SVP, Chief Legal Officer, and Corporate Secretary for Blue Cross and Blue Shield of North Carolina; former Cabinet Secretary; former Deputy Director of the National Economic Council
- Donald Berwick: Former Administrator of CMS; member of Biden campaign unity task force on health care
- Andy Slavitt: Former Acting Administrator of CMS
- Rep. Pramila Jayapal (D-WA): Co-Chair of Biden campaign unity task force on health care; Co-Chair of the Congressional Progressive Caucus

At Labor, appointing Richard Trumka, current AFL-CIO President, would send a clear signal in the shift in influence back to organized labor but Governor Gretchen Whitmer (D-MI) is also mentioned as a candidate.

At the Education Department, Sen. Michael Bennet (D-CO), American Federation of Teachers President Randi Weingarten, or public schools activist Diane Ravitch are possible contenders. Other mentions include:

- Miguel Cardona, CT Commissioner of Education
- Noe Ortega, PA Secretary of Education
- Carolyn Stanford Taylor, WI Superintendent of Public Instruction
- Tony Thurmond, CA State Superintendent of Public Instruction

House Committee on Education and Labor

Bobby Scott (D-VA) and Virginia Foxx (R-NC) will remain atop of the Committee. Democratic control of Congress will lead to an overall theme of returning to the policies of the Obama Administration. This will include overturning a series of Trump Administration rules including:

- the fiduciary rule reinstating the 5-part test for determining whether a retirement provider qualifies as a fiduciary
- new National Labor Relation Board rules disrupting collective bargaining
- changes to elections of union officials
- the new joint employer rule which deferred to employers
- actions that diluted workers ability to issue whistleblower complaints

Another major effort will focus on issues related to the COVID-19 pandemic. Falling into this category are reinvigorating the OSHA inspection schedules, instituting more stringent health and safety guidelines for plant and factory workers, and providing protections for employees who are at risk of exposure to COVID-19. Additional efforts will target wage issues such as a reinvigorated push for a federal \$15 minimum wage, efforts to ensure that employers cannot manipulate worker overtime through the fluctuating workweek method of computing overtime and boosting the wage for tipped workers.

Republicans, although likely to remain in the minority, have identified several areas in need of attention. Many relate to the pandemic such as seeking more flexibility for K-12 to adapt schooling to the various COVID-19 infection threats. This effort would start with an assessment of the necessary resources across disparate school districts with the goal of returning children safely to in-person schooling. They would also likely examine the impact of the pandemic on school meals programs and look at ways to improve broadband access in case schools need to utilize a mix of in-person and distance learning or need to return to temporary distance learning. Workplace safety and development issues would focus on actions necessary for employers to safely reopen businesses (e.g. ensuring adequate supplies of PPE and COVID-19 testing capacity) as well as assisting individuals dislocated by COVID-19 to reenter the workforce post-pandemic.

A more bipartisan goal is the reauthorization of the Higher Education Act with an emphasis on student aid and loan repayments, financial literacy, Pell grants and providing more overall flexibility in programs. And the effort to reauthorize the Workforce Innovation and Opportunity Act could see the development of innovative educational pathways for students to gain credentials or degrees regardless of field or industry (e.g. apprenticeship programs).

House Energy & Commerce Committee

While Frank Pallone (D-NJ) will remain the top Democrat at E&C, there is a three-way contest underway for the top Republican slot between Michael Burgess (TX), Cathy McMorris Rodgers (WA) and Bob Latta (OH). Burgess or McMorris-Rodgers (who may have a slight lead) will likely ultimately prevail although the differences in their leadership may come down more to style than substance.

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The recent death of Supreme Court Justice Ruth Bader Ginsburg has refocused attention on the November 10th Supreme Court hearing on constitutionality of the ACA. If the Court rules that parts of the law cannot be “severed” then the entire law could be overturned which would end the insurance marketplaces, potentially undo Medicaid expansion and eliminate protections for preexisting conditions.

Only Justices who hear the oral arguments traditionally participate in the decisions which adds another relevant date in the Republican effort to fill the vacant seat this year. Interestingly, Justice Kavanaugh could be the “swing” vote given his past rulings favoring severability. Also of note, although the case will be heard this November a verdict is not likely until June 2021 unless the Court moves with atypical haste.

If the Supreme Court overturns the ACA, Democrats would need to either restore the ACA with modifications or pursue a different vision more in line with progressive demands for a single payer health system. This debate will happen regardless of whether the Democrats also gain the White House and Senate majority. If Democrats do “run the table” then even a Supreme Court decision upholding the current ACA could still spark a battle between progressives and moderates in the next Congress—incremental changes like the Biden policy of allowing people 60+ to access Medicare versus Medicare-for-All. If the ACA survives Democrats will also attempt to undo Trump Administration actions viewed as detrimental to the ACA including ending limited duration (non-conforming) health plans, restoring public outreach on ACA enrollment and increasing subsidies for enrollment.

Another major health care theme involves the response to the pandemic. Democrats will make oversight of the Trump Administration’s response to the pandemic, including Trump’s statements, actions by HHS and its component agencies (e.g. CDC, FDA, BARDA), and Operation Warp Speed, an early focus in order to set the stage for additional COVID-19-related legislating. These could include passage of any assistance programs that do not make it into law during the remainder of 2020 such as provider stabilization funds for hospitals and other health care practices, further assistance for elder care facilities and additional pandemic preparedness (e.g. PPE) across a variety of health care settings. Furthermore, as vaccines and other therapies for COVID-19 hopefully enter the market in 2021 the Committee will likely remain on alert for safety, efficacy and access issues involving these products.

Efforts on drug pricing will continue with H.R. 3 as a base for additional policies. These could include a more aggressive “march-in” policy (i.e. allowing the federal government to reclaim intellectual property rights to government supported research), an expansion of drug importation to encompass additional countries and an expanded list of products, and/or outright government setting of prices in the Medicare Part D drug program.

On a more bipartisan basis, 2021 will also see the start of the process to reauthorize the Prescription Drug User Fee Act (PDUFA) along with the other accompanying user fee programs for generic drugs, biosimilars and medical devices. Although FDA will spend 2021 negotiating with industry, patient groups and other stakeholders, the Committee could hold hearings to highlight calls for increased transparency around clinical trials, enforcement of post-marketing commitments and improved diversity in clinical trials. Any safety or efficacy concerns arising from the OWS COVID-19 vaccines and therapies could also get an airing in the context of PDUFA. The law must be reauthorized by September 30, 2022.

On the Republican wish list would be codifying preexisting conditions protections regardless of whether the ACA is overturned, increasing the flexibility in benefit design for ACA plans, and enabling the continuation of non-conforming plans (e.g. limited duration plans). If the ACA is voided by the Supreme Court then there could be a replay of Republican in-fighting on what a replacement would contain. Republicans would also pursue oversight of the pandemic response but with a greater focus on unmet needs and planning for future pandemics rather than a focus of Trump Administration shortcomings.

Senate Committee on Health, Education, Labor, and Pensions

Patty Murray (D-WA) will remain the top Democrat with Richard Burr (R-NC) taking over the top Republican slot. Like their counterparts in the House, the Senate HELP Committee agenda would depend in part on the perceived outcome of the Supreme Court ACA deliberations. Concerns about the future of the ACA will spark debate over what can be done to buttress the legislation and spark a discussion on improvements (e.g. public option, mandatory Medicaid expansion) particularly if the filibuster rule is overturned. If the filibuster is kept then Democrats would likely be constrained to changes that could fit within Reconciliation (i.e. those having a budgetary impact).

Like the House, an early focus on the shortcomings in the pandemic response and fulfilling unmet needs (e.g. hospital and elder care preparedness) will be an immediate priority. As vaccinations roll out across the country the Committee will likely play close attention to safety, efficacy, and access issues (e.g. lower income, minorities, seniors). A related topic would be vaccine hesitancy if segments of the population prove reluctant to vaccinate. And like their House counterparts, HELP will take up the PDUFA reauthorization process. Of note, Burr is a longtime critic of user fees and believes FDA funding should be a congressional responsibility, ensuring the independence of the agency from the industry it regulates.

The Committee will also take up the affordability of drugs although it lacks jurisdiction over Medicare and Medicaid. However, issues like importation and “march-in” are within their purview. They may also focus more closely on transparency in the R&D process (e.g. clinical trial data, R&D spend). In a non-ACA dominated year HELP could revisit surprise billing as well as oversight over the explosion in telehealth services as a result of the pandemic.

On the educational front, HELP will also examine how the pandemic has impacted both K-12 and college education with a focus on how the government can act to plug gaps and inequities between different school systems and with an eye on the impact to vulnerable communities and individuals (e.g. rural, minorities, special needs). Some issues, like access to broadband, could span health care and education. The Committee will also work to complete action on the Higher Education Act, and the resumption of college football this fall (and the potential pandemic consequences) could invigorate an examination of the rights of college athletes. Under Republicans the most likely difference would be a greater emphasis on pushing schools to reopen to in-person teaching, particularly at the younger grade levels where the risk and consequences of COVID-19 infection are perceived to be lower.

Regarding labor issues, both parties would look to conduct oversight to determine successful policies to return workers safely to their factories and offices. Democrats would push for aggressive oversight of OSHA’s actions during the course of the pandemic (e.g. COVID-19 safety guidance) and likely push for mandatory workplace guidance, especially for frontline workers as well as senior care facilities.

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Small Business

The COVID-19 outbreak caused an unprecedented disruption to small businesses, with over 100,000 estimated to have closed since the start of the pandemic. As the year progresses with no definitive timeline for a vaccine, small businesses are likely to continue struggling to turn a profit and return to a state of normalcy. This presents unique challenges for the Small Business Administration, as well as the House and Senate Small Business Committees, who are forced to adjust their legislative and administrative priorities to include an added, and possibly isolated focus on recovery regardless of which party is in control. However, the scope of recovery measures that become law indeed hinge on the outcome of the Presidential election and committee leadership in Congress.

Trump Administration II

“Fighting for You” – In August, President Trump released his second term agenda through his campaign website and considers his first term to be highly successful, touting increased economic gains and reduced unemployment. A second term for President Trump will seek to further improve the economy through job creation, reducing barriers to creating small businesses, deregulation and most importantly, eradicating COVID-19. The main priority for President Trump will be to create an environment where businesses can reopen their doors and boast higher earnings than they did under the previous Administration.

Job and Business Creation – President Trump has consistently boasted the ability of his Administration to create record numbers of jobs and business opportunities for entrepreneurs. His campaign has stated that he will create 10 million jobs within the next ten months, a task that will carry over well into the new year (and a new Trump Administration). There have been over 22 million jobs lost during the pandemic, so much of the Administration’s efforts will likely focus more on recovering jobs that were lost, as new job creation alone is unlikely to attain such goal.

The Paycheck Protection Program (PPP) is an obvious vehicle that President Trump and Republicans will seek to use in order to bolster business sustainability and job recovery by reopening applications to use up the remaining PPP funds (approx. \$140 billion), or by allocating more money for the program generally. There has been much confusion surrounding loan forgiveness eligibility and there is mounting pressure on the SBA to begin processing approvals.

President Trump also touts his Administration’s success in bringing the unemployment rate for African Americans to historic lows during his first term. Building on this success, he has expressed his intention ensure historic economic gains for this group next term through his “Black Economic Empowerment Platinum Plan” which includes: \$500 billion in access to capital, creating 3 million new jobs and favorable trade deals for black farmers and manufacturers. The \$500 billion fund will likely be used to create federal contracting opportunities for infrastructure projects in minority communities and opportunity zones.

Incentives – There will likely be new incentives announced to stimulate small businesses owners and their employees, like “Made in America” tax credits and the expansion of opportunity zones. The Trump campaign has also expressed their intention to introduce other tax incentives that boost the take-home pay of employees without reducing profits for employers.

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Likely/Possible changes in Senior Leadership

Jovita Carranza has held the SBA Administrator post since January of this year and there have not been many signals indicating a potential departure should President Trump be elected to a second term. She previously served three years each as U.S. Treasurer (2017-2020) and Deputy SBA Administrator (2006-2009). Her record suggests that she will continue to serve at the will of the President.

Biden Administration

Paycheck Protection Program - Joe Biden and congressional Democrats have criticized the PPP as being a government fund to enrich well-off companies, leaving those most in need without the relief that PPP purports to guarantee. Under a Biden Administration, recovery is likely to target small businesses and communities that were most vulnerable to COVID-19, as well as the ones who have taken the hardest hit. Among these groups are likely to be rural areas, women and minority-owned firms and businesses. It has been estimated that 7.5 million businesses face closure, while over half of black-owned businesses have already been forced to close their doors during COVID-19. These statistics give insight to why members within marginalized communities are pressing Biden to prioritize their interests in a “First 100 Days” agenda.

Biden is expected to deliver on a promise for small business recovery includes reserving half of future PPP funds for businesses with 50 people or less. This would include a sophisticated tracking mechanism to provide oversight of where funds are being distributed. A \$60 billion small business fund is also expected to supplement PPP efforts by supplying small lenders and community-based financial institutions with funds to lend to small businesses in their community. House Financial Services Committee (HFSC) Chairwoman Maxine Waters will likely weave these efforts into her continued oversight of the Community Reinvestment Act, as well as promoting an increased utilization of Minority Depository Institutions.

Fintech - Beyond expanding the Community Reinvestment Act to ensure that fintechs provide responsible access to credit for all, the Biden campaign has released little to no information about how they will govern the industry. This leaves many to believe that Chairwoman Maxine Waters could remain the driver of the fintech issue. In May 2019, she announced the establishment of the HFSC Committee Taskforces on Technology and Artificial Intelligence, both of which place a focus on the emerging role that technology plays in financial decisions.

Online lenders are positioning themselves to play a major role in the recovery of small businesses by marketing themselves as a cheaper, more streamlined alternative to big banks, especially if Biden wins. However, Chairwoman Waters has only embraced the industry with hesitation. The committee will likely look to drive the development of standards for making online credit decisions through an equity lens, especially for small businesses.

Any action that a Biden Administration takes in the fintech space is expected to have the blessing of Waters and be rooted in 1) transparency on algorithmic decision making and 2) equal and expanded access to credit for disadvantaged communities. A Biden Administration running afoul of Waters’ committee priorities is unlikely, while a second term for the current Administration guarantees differences in opinion on how to govern the financial services industry.

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Health and Safety - The Biden campaign has signaled that an early action it would take that affects small businesses would be to direct OSHA to define and enforce national standards for keeping workers and consumers safe from COVID-19. These efforts would likely have input from the House and Senate Small Business committees as they conduct hearings on small business needs during recovery. This is likely to include policies like a national mask mandate and temperature checks before employees begin shifts. This could also include communication guidelines for how businesses inform consumers of the precautions taken at their establishments to keep them safe. Directional signage for crowd control and revised occupancy standards could also be included in whatever guidance is issued.

- Senior Biden campaign officials have stated numerous times that a Biden Administration would be laser-focused on recovery as it pertains to business and the economy within the First 100 days. A “public comeback package” for small businesses and entrepreneurs to recovery from COVID-19 losses will likely come in the form of a multi-billion-dollar small business fund. Many of the small business investments promised by the campaign come with a promise to reverse tax cuts made under the Trump Administration as a pay-for.
- As a part of a Biden Administrations effort to bring more jobs back to rural (and metro) America, his campaign lauds plans to bolster small business-led supply chains to create union jobs manufacturing and technology. This will also include strong statements and policies that promote racial and gender equity to ensure that women and minority-owned businesses are not left out of recovery efforts.

Likely/Possible Senior Leadership Appointments

As the Biden campaign continues to fill out its transition team, the list of preferred candidates to assume the post of SBA Administrator remains unclear. Biden has leaned heavily on the Obama alumni network to staff both his campaign and transition team, thus it is likely that his SBA pick could emerge from that network as well. Jeff Zients, a former National Economic Policy Advisor to President Obama has recently joined the transition team as a Co-Chair. While Zients’ background is more corporate than small business, he could easily emerge as a candidate for the role, or at least have some influence in who is chosen.

With the mounting pressures of promoting diversity and inclusion from the Democratic progressive base, it can only be expected to have a robust list of women and minority candidates for the post as well. While a short-list is hard to predict, one could only expect that business leaders like Don Peebles, CEO of the Peebles Corporation and former Chairman of the Congressional Black Caucus Foundation, or Robert Johnson, the Co-Founder of Black Entertainment Television (BET) could be some of the first mentioned. Their success in business and ties to political entities like the Congressional Black Caucus could make them good fits for this post should they be interested in joining a Biden Administration.

Other potential candidates include:

- Todd McCracken – Serves as President of the National Small Business Administration
- Marie Johns – Serves as CEO of minority-owned firm PPC-Leftwich and is the former SBA Deputy Administrator under the Obama Administration
- Brian Deese- Serves as Global Head of Sustainable Investing and is the former OMB Deputy Director and Senior Advisor under the Obama Administration
- Don Graves – Serves as Head of Corporate Responsibility and Community Relations at Key Bank and is a former Deputy Assistant to President Obama

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- Steve Case – Co-Founder of America Online (AOL) and serves as the Chairman and CEO of Revolution, LLC. Case is also a former member of President Obama’s Council on Jobs and Competitiveness
- Carroll Thomas – Serves as Director of Hollings Manufacturing Extension Partnership and is the former Associate Administrator of SBA’s Small Business Development Centers
- Jere Glover – Serves as an attorney at Seidman and Associates and formerly worked in the SBA Office of Advocacy under President Clinton

Congressional Outlook

Diversity and Inclusion

Ensuring diversity and inclusion in business has become wholly ingrained into the fabric of Democratic politics at all levels. Chairwoman Waters and the Congressional Black Caucus have played an integral role in spurring conversations about the need for corporate diversity and inclusion policies on boards and C-Suites, especially within lending institutions. HFSC also has full-time dedicated staffers with an isolated focus on promoting diversity and inclusion policies for businesses of all sizes, as well as contractors. For as long as Chairwoman Waters has a gavel, this is unlikely to change. However, should Sen. Cardin (D-MD) become Small Business Committee Chairman, there will likely be more emphasis placed on establishing programs to support minority and women owned businesses. Minority Depository Institutions will also become a more relevant player in the disbursement of PPP loans to such small businesses.

Status Quo Election

Expect no changes in Full Committee leadership or Small Business Subcommittee leadership should the current political dynamics in the House remain the same. House Financial Services Committee Chair Maxine Waters (D-CA) will retain her gavel and Rep. Nydia Velasquez (D-NY) will continue her post as Chair of the Small Business Subcommittee. The same is true for the Senate, where Sen. Rubio (R-FL) is expected to retain his gavel and Sen. Cardin will remain the Ranking Member.

While negotiations on relief bills will still get hung up on partisan differences a Rubio-led committee will remain focused on small business recovery and revival. Expanding the PPP will remain a priority – bipartisan support for this will likely be proportional to the rise in business closures.

The Department of Treasury has reported that 4.9 million PPP loans were made during the first round of disbursements. As the new year approaches, many business owners are now grappling with the uncertainty surrounding whether their loans will be forgiven. There is pressure mounting on SBA to balance the interests of approving forgiveness applications while also preventing fraud. In September, the Department of Justice announced the 57 people were charged with attempting to steal over \$175 million from the PPP. Chairman Rubio expressed his desire to see any allegations against bank employees who may have exploited PPP or EIDL to be fully investigated. The Committee will be expected to be as active in pushing for loan forgiveness and fraud prevention as they have been in expanding PPP.

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Change in the WH but not The Hill

A Biden Presidency is unlikely to alter the priorities in the House. In fact, it will only embolden HFSC members to be more aggressive in their approaches to legislating by increasing topline numbers for relief and recovery bills and providing more oversight for how recovery programs are executed. New House priorities could include expanded relief for cannabis companies, third party delivery platforms and restaurants. Having the support of the White House will be viewed as a bargaining chip for House Dems to move Senate Republicans closer to the left in negotiations on small business priorities, but how far they will go remains to be seen.

Much of the House Small Business Subcommittee activity will be not legislating as long COVID-19 keeps the Capitol on lockdown. Subcommittee Chair Velazquez is expected to follow the playbook of Chairwoman Waters by leveraging her gavel to conduct as many hearings as possible on fraud, waste and abuse of PPP and EIDL. She will also continue building a case for Democratic policy positions on recovery by continuing to conduct hearings on the disparate impact of recovery programs generally, transparency in lending, as well as targeted recovery for minority and women owned firms.

In the Senate, Small Business and Entrepreneurship Chairman Rubio is the last line of defense in managing Democratic expectations. There are some areas where Rubio and Democrats like Ranking Member Cardin agree moving into the new year, like opening PPP up to more businesses, ensuring more accountability, and bolstering minority small business. However, complications will still arise around the issue of attaching liability reform to any measure. For this reason, a Biden Presidency may not be enough to move Democratic policies from paper to passage.

Democrats Take Control of WH and The Hill

Leadership in the House would remain the same should Democrats take control of the Senate and the White House. Waters will retain her gavel as Chairwoman of the full HFSC and Velazquez will remain Chairwoman of the Small Business Subcommittee.

Sen. Rubio will relinquish his control over the Senate Small Business and Entrepreneurship Committee to Sen. Cardin, who has already begun constructing a committee agenda should the Senate flip. Under this scenario, Rubio is expected to become the Ranking Member without much resistance.

A unified Democratic government would welcome sweeping changes. The House would lead the charge with revising fundamental aspects of the PPP, such as making them grants instead of loans. Consequently, applications would be met with higher scrutiny due to there being no payback requirement. There would likely be new carveouts under PPP, such as reserving 10% of funds for employers that have 10 employees or less. There would also be additional set asides for low to moderate income areas and up to 30 percent of funds could be reserved for nonprofits. Subcommittee Chairwoman Velazquez has also expressed the rural hospitals and broadcasters could become eligible for the program.

Small businesses that were left out of the first round of PPP disbursements would also become eligible as HFSC would make a push for community-based lenders to support minority and women owned businesses.

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Should the Senate welcome a Democratic majority, Sen. Cardin has hinted that his focus as Chairman of the Small Business and Entrepreneurship Committee will be on promoting diversity policies, ensuring resources for minority business development agencies and ensuring that small businesses are not pinned against larger corporations to compete for federal funds. The House COVID-19 relief efforts would be in alignment with this as HFSC Chairwoman Waters has been consistent in prioritizing the needs of minorities and disadvantaged communities in her committee agendas.

Democrats have taken a strong stance on labor policies like a \$15 minimum wage, ensuring paid overtime, banning mandatory arbitration clauses and liability reform, all of which could have a tremendous impact on small businesses. House Education and Labor Chairman Scott has already coordinated the passage of a \$15 minimum wage bill in July 2019 which Senate Republicans have yet to act on. Should the Republicans lose their majority in the Senate, the grassroots activism that precipitated passage of this bill in the House is likely to ensure that this bill is one of the first to receive Senate floor consideration. A potential Biden Administration would assumedly sign the bill into law.

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Homeland Security and Judiciary

Trump Administration II

Homeland Security – If President Trump is re-elected, the Department of Homeland Security (DHS) is unlikely to change course in any meaningful way. Trump priorities dating back to his first run for president in 2016 remain unfinished, including completion of a barrier on the southern border. As of this writing, the Senate is preparing to advance the president's nomination of Chad Wolf to head the agency. Wolf, who has served for 10 months as acting Homeland Security Secretary is likely to hold the position at least into the first year of the president's second term.

According to a senior DHS official, President Trump's second term would prioritize completing construction of the southern border wall system, aiming to finish 450 miles by the end of 2020 alone. The Trump Administration would continue to focus on reforming the U.S. asylum system, expanding Migrant Protection Protocols (MPP), and combating South American drug cartels. Part of this strategy could include increased removal of criminal illegal aliens, while full-scale immigration reform would obviously require support from Congress that has been absent for the past several years. Without bipartisan Congressional action on immigration from both bodies, President Trump will continue to rely on Executive orders and agency action to limit immigration into the United States including for non-immigrant visa programs.

DHS would play a prominent role in the Trump Administration's second term to counter China both in terms of cyber security and economic security. On COVID-19, the agency would be tasked to help airports re-open fully while ensuring passengers stay safe from the virus. Given that 2020 has already featured an active hurricane season and sweeping fires across the West, DHS would continue its work to ensure FEMA is ready for future challenges while carrying out immigration-related functions prioritized by President Trump.

Department of Justice – Attorney General Barr has significantly curtailed wide-ranging federal investigations of police departments, known as pattern and practice probes, believing it was unfair for the DOJ to force expensive reforms on local taxpayers. The Trump Administration has focused instead on providing police departments with money and resources for curbing violent crime and could ramp up those efforts even further in its second term. The Biden campaign, in contrast, has indicated those broader investigations would be a top civil-rights priority.

Likely/Possible Changes in Senior Leadership

Chad Wolf was formally nominated by President Trump to be Homeland Security Secretary in September 2020, but he has been serving as the Acting Secretary since November 2019. If confirmed by the Senate, President Trump is expected to retain Wolf in his second term.

At the Department of Justice, some have speculated that Attorney General William Barr does not wish to remain in his post through President Trump's second term. Though he would not resign early on some have speculated Barr would leave the Administration sometime in late 2021 or 2022 to return to private life.

President Trump has indicated to senior officials and associates that he intends to replace FBI Director Christopher Wray near the start of his second term. This should come as no surprise, as the President has

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repeatedly expressed dissatisfaction with the director's performance and apparent unwillingness to remove President Trump's perceived adversaries within the bureau. This dissatisfaction reached a watershed moment after Wray recently testified before Congress and broke with the Trump Administration in response to questions about Antifa, white supremacy, Russian election meddling, and concerns about coordinated voter fraud in the 2020 elections.

President Trump has reportedly gone so far as to seek suggestions for a replacement atop the FBI next year. It is worth noting that Trump has placed loyal allies in charge of security agencies when previous agency heads have departed the Administration. This includes Chad Wolf and former Rep. John Ratcliffe, who is now Director of National Intelligence. However, Wray was confirmed overwhelmingly by the Senate, and it would be a challenge for a more political nominee to be confirmed in an increasingly divided Washington.

Biden Administration

Homeland Security - Without question, Joe Biden and Kamala Harris would run the DHS in a starkly different manner. They view the role of the agency in a fundamentally different way than the Trump Administration does, and differences in policy would abound. In many ways, their approach to the agency would represent the total opposite of Trump's. Both Biden and Harris have been vocal critics of the Trump Administration's handling of women, children and families at the border, construction of the southern border wall, extension of the DACA program, and a pathway to citizenship for undocumented immigrants. In short, materials produced by their 2020 campaign, as well as Biden's and Harris' public statements paint a picture of a DHS with totally different priorities.

FEMA will be part of a Biden Administration focus on climate change as the nation responds to stronger storms, unprecedented fires, floods and other climate driven natural disasters. Biden has indicated he would launch a government wide effort to promote climate mitigation, adaptation, and resilience.

Department of Justice - The day-to-day work of the Department of Justice (DOJ) — including counterterrorism, violent crime, drug enforcement, etc. — typically changes little from one president to the next. But, as with most agencies, a Biden Administration would likely bring a wholesale shift in policy priorities at the DOJ. For starters, while Biden's campaign has made systemic racism in law enforcement a focus, Attorney General William Barr and other Trump officials have said they do not believe systemic racism exists. Not surprisingly, the Trump Administration's philosophy has demonstrated a much more limited view of the federal government's role in civil-rights enforcement. As is the case on other major policy and issues, Trump and Biden are offering voters sharply divergent views on racial bias in law enforcement and how the government should respond to ongoing protests across the country.

Vice President Biden, while rejecting calls to defund the police, has indicated under his Administration, the DOJ would return to conducting active oversight over the nation's police departments. Biden suggested his oversight plan would be more aggressive than the efforts of the Obama Administration that resulted in numerous consent decrees to address police misconduct with multiple jurisdictions.

Likely/Possible Senior Leadership Appointments

Many Biden campaign advisors are veterans of the Obama DOJ, including former Attorney General Eric Holder; Leslie Caldwell, who led the Obama Justice Department's criminal division; and former Deputy Attorney General and one-time Acting Attorney General Sally Yates, who is a likely choice to head the DOJ under a Biden Administration.

Advisors

- Tony West – Chief Legal Officer of Uber and brother in-law to Sen. Kamala Harris, former Associate Attorney General and General Counsel of PepsiCo
- Jamie Gorelick –former Deputy Attorney General
- Anne Harkavy – former Deputy General Counsel for Litigation, Regulation and Enforcement and Acting General Counsel for the U.S. Department of Energy

Potential Appointees

- Sally Yates – former Acting AG (for 10 days), famously dismissed for refusing to defend President Trump's executive order banning travel from seven Muslim majority countries
- Ron Machen – former AUSA for DC under Eric Holder, then USA for DC for more than 5 years (longest tenured USA for DC), Stanford football walk-on – teammate of Sen. Cory Booker
- Kwaku Akowuah – former law clerk to Justice Stephen Breyer and Attorney-Adviser in the Office of Legal Counsel at the U.S. Department of Justice, current partner in Supreme Court and Appellate practice
- John Kravis – former Roger Stone prosecutor who resigned after AG Barr overruled sentencing recommendations
- Travis LeBlanc – former senior advisor to then-CA Attorney General, Kamala Harris; formerly Senate confirmed to the Privacy and Civil Liberties Oversight Board
- Lisa Monoco – succeeded John Brennan as Homeland Security Adviser to President Obama, former Assistant Attorney General for National Security and Principal Deputy Assistant Attorney General; mentioned for both FBI and DHS Secretary
- Brian Nelson – former General Counsel of the California Department of Justice under then-Attorney General, Kamala Harris, and Special Counsel to the Assistant Attorney General of the U.S. for National Security and Deputy Chief of Staff of the National Security Division.
- Jeannie Rhee - previous Deputy Assistant Attorney General and member of special counsel Robert Mueller's team to investigate Russia's intervention into the 2016 election
- Jessica Leinwand – Associate General Counsel at Facebook, former White House Deputy Associate Counsel, married to Sam Stein of the Huffington Post
- Ben Mizer – former Acting Assistant Attorney General for the U.S. Justice Department's Civil Division, previously Solicitor General of Ohio
- Karl Thompson - former Principal Deputy Assistant Attorney General for the Office of Legal Counsel

Congressional Outlook

The Senate Homeland Security and Government Affairs Committee (HSGAC) is due for a new chairman regardless of the outcome of the 2020 senate elections. Current Chairman Ron Johnson (R-WI) will have termed out of his committee chairmanship at the start of the 117th Congress. Johnson will likely assume the chairmanship of the Permanent Subcommittee on Investigations (PSI) if the Republicans hold onto the chamber, allowing Sen. Rob Portman (R-OH) to assume the full committee gavel. However, if Sen. Gary Peters (D-MI) wins reelection, he will assume the chair or Ranking Member slot for Democrats.

Status Quo Election

House Homeland Security Committee - In the House of Representatives, under Democratic control, Chairman Bennie Thompson is expected to retain his chairmanship. House Democrats do not operate under a system of term limits, like their GOP colleagues. And as such, the committee's agenda and makeup will likely remain relatively consistent regardless of the White House and Senate elections. However, there could be some disruption on the Republican side of the committee.

Current Ranking Member Mike Rogers (R-AL) has long sought the top spot for his party on the House Armed Services Committee. With House Armed Services Committee Ranking Member Mac Thornberry (R-TX) retiring, conventional wisdom dictates that Rogers will assume the Ranking Member position, giving up the same position on the Homeland Security Committee. If he does not have a chance to become HASC Ranking Member, he will likely remain Ranking Member of the Homeland Security Committee. If Rogers does move to HASC, Rep. John Katko (R-NY) is the odds-on favorite to become Ranking Member of the Homeland Security Committee. Rep. Debbie Lesko (R-AZ) is under consideration, though Katko is more senior and is generally well-liked by House GOP leadership.

In a second Trump term, you can expect more oversight of DHS, contentious hearings, and partisan immigration legislation. The minority Republicans are seeking a full DHS reauthorization, however, it is unclear to what end as House Democrats would likely craft a bill Republicans would not support. Regardless, counterterrorism and cyber security work will remain a priority topic for the committee.

House Judiciary Committee – Under a second Trump term and the House under Democrat control, the House Judiciary Committee will remain focused on aggressive oversight of DOJ and immigration policy as it relates to acts that they deem corrupt and illegal by the Trump Administration. Chairman Bennie Thompson's (D-MS) committee would conduct additional oversight hearings and investigations over the coast guard, border patrol, and other related entities.

House Oversight Committee - The House Oversight Committee has long been home to young, vocal, combative members of each party. This committee is particularly political in nature, especially when the House is under control of the party opposite the White House (as it is right now). If Trump wins reelection, Chairman Carolyn Maloney (D-NY) will stay on as chair. Most of the subcommittee chairs will remain the same, especially those representing districts with a high concentration of federal employees. One issue Democrats on this committee will prioritize is the implementation of the decennial census and improving government data collection and utilization.

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Senate Judiciary Committee - In the Senate, Judiciary Committee Chairman Lindsey Graham (R-SC) would reportedly relinquish his gavel to former chairman Sen. Chuck Grassley (R-IA) if Republicans hold onto the Senate in 2020. This would allow Graham to return to the Senate Armed Services Committee if reelected. Grassley has two years left under Senate GOP rules and is expected to retire rather than seek reelection. If Grassley retires in 2022, Graham would likely return to resume his chairmanship or pass it on to Sen. John Cornyn (R-TX) in the 118th Congress, so long as Cornyn wins reelection in 2020. Looking at the Republican members of the Senate Judiciary Committee, only Joni Ernst (R-IA) and Thom Tillis (R-NC) have difficult reelection races and may not return. Either losing would likely mean a new female member of the committee. Otherwise, Senators Marsha Blackburn (R-TN), John Kennedy (R-LA), Mike Crapo (R-ID), Josh Hawley (R-MO), Ted Cruz (R-TX), Mike Lee (R-UT), and Ben Sasse (R-NE) will want to stay.

Change in the WH but not The Hill

House Homeland Security - With Thompson as chairman, the committee would likely work with a Biden-Harris Administration to unravel Trump Administration policies through Executive actions or legislation where appropriate.

House Judiciary - On top of working to address civil rights, racial equity, policing issues and criminal justice reform, the House Judiciary Committee will play an outsized role in several other key policy areas as Biden takes over the presidency. Committee Democrats will highlight and encourage repeal of Trump era Executive actions. With divided government, Biden will rely on his own series of Executive orders and Administrative actions to address racial equity and justice issues. President Biden will seek to work cooperatively with House Democrats to address immigration, criminal justice as other Committee jurisdiction issues including renewed antitrust investigations of Facebook, Apple and other large tech companies.

House Oversight Committee – Democrats will seek to cooperate with the Biden Administration though the Committee will still conduct hearings and oversight of the Executive Branch. Nonetheless, with Biden in the White House, Democrats will be less interested in serving on Oversight (and vice versa for the GOP), meaning the slots down-dais would be filled mostly by freshman and junior members. On the Republican side, current Ranking Member James Comer (R-KY) may seek another committee post, which would likely elevate Rep. Jody Hice (R-GA).

Democrats Take Control of WH and The Hill

Senate Judiciary Committee - The contentious Supreme Court nominations and confirmation processes would provide the backdrop for Democratic control of the Judiciary Committee in the 117th Congress. It is unknown if Sen. Diane Feinstein (D-CA), the current top-ranking Democrat and eldest Member of the Senate, would take on the role of committee chair. Senators Durbin (D-IL) and Whitehouse (D-RI) have been mentioned as potential successors, however, in order for Durbin to become chairman he would need to step down from his long-time role as Democrat Whip.

Democrats will not be expected to set an agenda for the Committee until after the election and determination of the chairmanship. Senate Democrats will consult closely with the Biden Administration on an agenda. Sen. Harris will leave the Committee to serve as Vice President and a key role as President of the Senate if

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Democrats hold a slim majority. Democrats on the Senate Judiciary Committee tend to be more progressive than the broader Democratic Caucus. With Democrats in the majority, the views of moderate Democrats will impact the agenda at the Judiciary Committee and elsewhere.

Given the Republican focus on confirming judges over the last four years, Democrats would aggressively seek to confirm judicial nominees. Senate Democrats could be expected to conduct oversight of the federal courts to highlight perceived partisan behavior at the courts as well as seek to legislate to counter court rulings.

Aside from reforms to the Judiciary, the committee would highlight overturning Trump Administration's immigration policies and adopting legislation on immigration and to address racial inequities, police reform and criminal justice matters that were all highlighted in the Presidential campaign. One area for potential bipartisanship could be around antitrust policy as it relates to big tech. Though Biden and Harris are not considered tech hawks, there is a general consensus among members of the committee that something must be done to establish clearer parameters for tech companies' behavior as it relates to competition and monopolization of different sectors of the industry.

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National Security: Defense, Foreign Policy, Intel, Veterans Affairs

Trump Administration II

Defense Budget - Expect funding under a second Trump Administration to remain consistent with current Program Objective Memorandum (POM), the Pentagon's stated budgeting priorities, for the first two years. However, it is anticipated that a growing amount of topline funding pressure from fiscal conservatives in Congress would result in flat funding for the remaining two years of the Administration. That pressure could be seen earlier in a second term should Democrats take control of both the House and Senate, forcing a showdown with the White House over defense vs. domestic budget priorities.

Procurement Priorities - Clearly USN shipbuilding investment will continue to receive focus and attention, along with USCG National Security Cutters and Arctic Icebreakers. Tactical aircraft, strategic bomber and nuclear modernization programs can expect continued funding support. Army investment will continue to follow the six strategic areas of focus: long range precision fire; next generation combat vehicles; future vertical lift; network improvements; air & missile defense, as well as enhancements to soldier lethality.

Regional Emphasis and Alliances - During a second Trump Administration, expect the trajectory of security policy to ramp up and accelerate. Not much nuance to POTUS decisions in a second Administration. Troop withdrawals from Iraq, Afghanistan and Syria will intensify, both in number of troops returning and in an accelerated fashion. Pacific theater will become more focused as trade tensions with China continue, prompting China to intensify challenges to US influence within ASEAN countries and region. China will increasingly become the face of the "near-peer competitor" policy and investment focus, with a diminished sense of focus on Russia. Expect the extension of troop reductions across western European countries, further pushing redefinition of US engagement in NATO, as well as NATO's security role. Investments will continue and increase in the shift of security forces to Poland as a hedge to Russian efforts to re-establish influence/dominance in former eastern bloc countries.

Foreign Policy - President Trump will seek to further change the US policy paradigm that has governed US thinking over the past 75 years with regard to the Middle East. He will continue pushing to extend the recent, peace agreement between Israel, the United Arab Emirates and Bahrain. In addition, there are strong indications that the President believes he can further isolate Iran and motivate substantial behavioral change by the rogue fundamentalist regime. A second Trump Administration will continue to enable a more energized Saudi Arabia as a military and security proxy as a means to increase leverage and counter Iran.

Intelligence – With stability in the senior leadership of the IC, the most significant changes possible will be related to findings from the Durham Investigation, which is an assessment of the intelligence community's actions in support of the FBI's counterintelligence activities, resulting in the appointment of a Special Prosecutor to investigate the President, his campaign and the efforts by Russia to influence the 2016 election. Potential legislative changes would potentially include:

- Changes to the Foreign Intelligence Surveillance Court (FISA)
- Rules governing court review, potentially standards of evidence
- Addition of new imitations on unmasking authority,
- Transparency protections to ensure no future abuse by FBI

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Veterans Affairs – Given the Administration’s belief that veteran care has improved substantially under existing policy changes, expect further incremental steps on privatization, beyond expanded private primary care access.

Likely/Possible changes in Senior Leadership

- Secretary of Defense - Esper likely departing. Robert O’Brien, Robert Wilkie - Ryan McCarthy
- Deputy Secretary of Defense- David Norquist – no change expected
- Service Secretaries- Ryan McCarthy, Kenneth Braithwaite, Barbara Barrett
- USD Policy- James Anderson (currently acting)
- USD Acquisition & Sustainment- Ellen Lord (likely staying)
- ASD Acquisition- Kevin Fahey expected to leave
- Associate Dir. Nat’l Sec. OMB- Michael Duffy – expected to move to DOD
- Intelligence Community
- Director Central Intelligence - Gina Haspel – expected to remain
- Director of National Intelligence - John Ratcliff – expected to remain

Biden Administration

Defense Budget - In a potential Biden Administration, the Defense budget will likely be flat or hover below inflation. However, Biden’s Defense team will face pressure from the liberal wing of the Democratic party to reduce defense spending by a minimum of 10% from enacted Fiscal Year 2021 levels in their first budget submission to Congress. The makeup of the next Congress will largely dictate whether liberals will be successful cutting the defense budget by any significant amount. Liberal’s desire for cuts will also be tempered by Senate Democrats and Biden defense officials who will advocate the need for rational defense levels. A Biden Administration would also likely advocate for supplemental defense industrial base funding.

Military Personnel Policy - One of the first policy reversals in a Biden Administration would be to allow Transgender individuals to openly serve in the military. The Trump Administration changed a previous Obama Administration directive, preventing new recruits who identify as Transgender from serving in the military. The Biden Administration will also kick the tires on Civilian Personnel Reform at DoD, seeking to work with federal employee unions to moderately promote initiatives first presented during Sec. Carter’s “Force of the Future” initiative. Biden’s defense team will continue with reform efforts to centralize the Military Health System away from the Military Services and into the Office of Secretary of Defense (Defense Health Agency).

Procurement Priorities - While it is expected that the defense budget under President Biden will not significantly decrease, spending priorities on weapons systems and capabilities will likely change. A Biden Administration would almost immediately initiate a “portfolio review” as a precursor to elimination of legacy weapons systems in favor of next-generation capabilities. It is widely expected that investments in modernizing the nuclear triad will be deferred and extended, freeing up additional funds for expected priorities such as autonomous systems, AI, 5G, hypersonics, and other priorities laid out in the Obama Administration’s Third Offset Strategy.

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Regional Emphasis and Alliances - At the macro level, DoD's global threat perspective will not drastically change in a Biden Administration. Biden's defense team will continue the trajectory of the Obama Administration's "Pacific Pivot," and Trump's National Defense Strategy focus on Great Power Competition. However, there would be less combative rhetoric towards China and Russia, and a shift away from a head-to-head competition with them in favor of a coalition approach. Changes to force structure in the Pacific and Europe would be reevaluated under Biden's defense team, with any changes occurring much more slowly and in coordination with regional allies. Biden's defense team would seek to strengthen relationships with NATO countries after four years of combative relations. A Biden Administration would also maintain President Trump's withdrawal of troops from Afghanistan and Iraq.

Department of State Budget - The Biden Administration is expected to seek an increase in funding for the Department of State and USAID. This request will reflect Biden's foreign policy team's desire to deemphasize the military component of national security in favor of rebuilding U.S. diplomatic and development capabilities. Significant budget priorities will be given to recruiting and training within the diplomatic corps, continuation of bolstering foreign embassies and consulates, and significant increases in development and foreign aid accounts. State Department budgets could increase roughly \$10 billion in President Biden's first budget submission to Congress.

Foreign Policy - Biden's advisors have called for a "revitalization" of foreign affairs, with the U.S. working more closely with other countries and strengthening or building international mechanisms that make foreign aid work more effectively. Not surprisingly, President Biden would seek to dismantle President Trump's "America First" foreign policy and seek to "reset" relations with the world.

The two largest efforts to repair America's image globally will center around a more coordinated international response to the COVID-19 pandemic and reengage and lead the Paris Climate Accord. Biden would also act early in his presidency to reverse the ban on immigration from Muslim countries, restore U.S. funding and membership to the WHO, and convene a summit of major heads of state in his first year. A Biden Administration would restore U.S. membership in U.N. agencies such as the U.N. Educational, Scientific and Cultural Organization and possibly the U.N. Human Rights Council.

- Middle East: Biden would restore relations with the Palestinian authority, reopening the US Consulate. He is also on record saying he would leave the US Embassy to Israel in Jerusalem. Biden's foreign policy team would also seek to reestablish the "Iran Nuclear Deal", or a similar agreement.
- In Africa, Biden will try to bolster U.S. presence as a counterweight to the growing Chinese presence.
- In Latin America Biden's foreign policy team would cancel the Trump Administration's agreement that sent asylum-seeking immigrants to Mexico and other countries while they await court dates. Biden has also promised to cut off funding for the southern border wall and to reestablish President Obama's diplomatic engagement with Cuba.
- In Asia, Biden would revert to a more traditional U.S. stance with South Korea and Japan, downplaying the Trump Administration's efforts to increase funding relationships.

Intelligence - Biden will focus on rebuilding trust between the Intelligence Community and the White House. He is likely to accept the 2+3 framework and accomplish its use through the National Intelligence Priorities Framework (NIPF) as well as other well-established processes. At this point, it is hard to tell if what Biden's regional intelligence priorities will be but expect a continued focus on cybersecurity from state and non-state actors.

Veterans Affairs - The Biden Administration would reevaluate and likely slow down the outsourcing of medical care to community care centers or private hospitals. Biden has publicly stated that under his Administration, the VA would not move to a total privatized system. The Biden VA team would refine and update Community Care Guidelines to ensure that Veterans are protected in their medical care decisions. Specifically, Biden has spoken about the need hire more medical specialists and increase resources to pay for a highly skilled workforce.

The Biden Administration will continue efforts to link the Department of Defense and VA systems to seamlessly pass medical records from the military health system to VA care. This will also include creating standards of health record interoperability that ensures a health record is compatible with community care systems. Biden's team would implement an IT system that would help more veterans gain access to their health data and medical records and increase resources to the benefits claims process by hiring and training more claims raters.

Biden's VA would likely increase resources to the post 9/11 GI Bill Comparison Tool and School Feedback Tool, limiting the ability of post-secondary institutions to engage in predatory behavior towards veterans. They would also take a much more aggressive positions against the ability of for-profit schools to work with veterans.

Biden's team have also posted a number of initiatives to provide veterans with mental health services, increase resources to study traumatic brain injuries, continue to decrease the number of veterans who are homeless, as well as publish within 200 days in office a comprehensive public health and cross-sector approach to addressing suicides in veterans, service members, and their families.

Likely/Possible Senior Leadership Appointments

Department of Defense:

- Secretary of Defense- Michelle Flournoy, Deborah James, Tammy Duckworth
- Deputy Secretary of Defense- Frank Kendall, Peter Levine, Eric Fanning
- Service Secretaries- Adam Smith, Christine Wormuth, Rosa Brooks, Janine Davidson
- USD Policy- Brian McKeon, Julie Smith, Kathleen Hicks
- USD Acquisition & Sustainment- Andrew Hunter, Brett Lambert
- USD Research & Engineering- Arun Seraphin
- USD Comptroller- Jamie Moran, Peter Levine

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Department of State:

- Secretary of State - Susan Rice, Nicholas Burns, Sen. Chris Coons (D-DE)
- Deputy Secretary of State - Jake Sullivan
- Political Affairs - Colin Kahl
- Economic Growth - Elizabeth Rosenberg
- African Affairs - Nicole Wilett, Allison Lombardo, Michael Battle
- Middle East - Mara Rudman, Daniel Benaïm, and Dafna Rand
- East Asia - Ely Ratner and Jung Pak
- South Asia - Sumona Guha and Tom West
- Western Hemisphere - Dan Erikson, Juan Gonzales, and Julissa Reynosa

Department of Veterans Affairs Key Personnel:

- Secretary of VA - Tammy Duckworth, Pete Buttigieg, W. Scott Gould
- Deputy Secretary of VA - Chet Edwards
- Other Senior Officials - Maura Sullivan, Lindsey Davis Stover, Kayla Williams, Tanya Bradsher, Koby Langley, Phil Carter, Jon Soltz, Rosemary Williams

Intelligence Community Key Personnel:

- Director of National Intelligence - Tom Donilon
- CIA Director - Avril Haines, Michael Morrell

Congressional Outlook

Regardless of how the November election unfolds, Congressional leadership in the defense committees will remain largely unchanged other than Rep. Mike Rogers (R-AL) or Rep. Mike Turner (R-OH), replacing retiring Ranking Member Mac Thornberry (R-TX). Nonetheless, November's election offers three main scenarios that will affect National Security personnel and policy priorities on Capitol Hill.

In a status quo election, expect a similar dynamic seen the past two years. The House of Representatives will push back on the Administration's various policy initiatives, and the Senate will follow the Administration's lead on major policy priorities.

If the Democrats take back the White House, keep the House, and the Republicans keep the Senate, it will likely be a repeat of President Obama's second term, with periods of both cooperation and disagreement. For example, Biden Administration efforts to maintain a shift in geographic focus to the Asia-Pacific would likely see bipartisan support with disagreements largely centered around the degree of aggressiveness shown pushing back on China and Russia. A Republican Senate would push back on Biden Administration efforts on environmental issues, some personnel policy changes, and an expected change in how military sexual assault cases are adjudicated.

In the event the Democrats keep the House majority, and take back the Senate and White House, expect many of the policy priorities mentioned above to be carried out. As mentioned above, liberal Democrats in the House will try and shrink the size of the defense budget, enact strong environmental regulations on military installations, and continue to insert non-defense policy riders into the National Defense Authorization Act that target the energy, financial services, and pharmaceutical industries.

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Energy, Environment, Natural Resources

Trump Administration II

Climate - While President Trump has derided most climate discussion as Green New Deal fantasy, the President's approach in a second term could be even more unpredictable. Do not rule out the potential for an agreement on energy innovation in either an infrastructure bill or economic recovery package.

it is possible that members of the Trump family and inner circle could convince him to pivot.

DOE - A second Donald Trump term is not expected to lead to significant change at the Department of Energy in the first year.

Likely/Possible changes in Senior Leadership

DOE - Neither Sec. Dan Brouillette nor Dep. Sec. Mark Menezes are expected to leave their positions at the start of a new term. With Menezes having recently been confirmed as Deputy Secretary, there will likely be movement to fill his former positions as Under Secretary.

Commerce – It is widely expected that Sec. Wilbur Ross will be replaced. When rumors swirled about a Ross departure in 2018 it was widely expected that Linda McMahon, then head of the Small Business Administration, was in a prime position to replace him. Since that time, McMahon has been Chairing America First Action, a Trump super PAC, which should put her in serious contention for any opening.

Biden Administration

Priorities

If Vice President Joe Biden should win the Presidency, the trajectory of agencies like the Department of Energy, the Department of Interior and the Environmental Protection Agency would undergo a dramatic reversal – focusing on clean energy and climate policies, aggressive oversight of energy production and extractive industries and reinvigorating the enforcement of environmental statutes.

Tech and Telecom Policy - Little has been accomplished in the 116th Congress as it pertains to the major policy questions in this space. It is likely that discussions will continue related to privacy, online content regulation and liability, anti-trust, broadband access and net neutrality (if Biden wins). Nascent efforts in the House and Senate on data privacy have gained little traction with either industry or the advocacy community. Online content remains a partisan debate over the actual problem – balancing perceived political bias with Republicans vs regulating misleading, illicit or violent content with Democrats. Members of Congress on both side of the aisle believe amending or repealing the Section 230 liability shield is the means to solve those problems. There is little understanding or agreement of how to do that. The House Judiciary Committee has begun a comprehensive set of hearings and investigations around anti-trust issues in the tech industry. But again, there is no clear legislative path forward.

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While the commerce committees have primary jurisdiction over many of these issues, Judiciary is also involved in online content issues and squarely responsible for anti-trust. Partisan differences, jurisdictional disputes and the complexity of these issues make it incredibly difficult for Congress to wade through them. If Biden wins the Presidency, you may see Democrats in the House put forward more partisan proposals since a bipartisan product has been elusive. One exception could be broadband deployment. Given the increased need for internet access for individuals to work and attend school from home, there is likely to be bipartisan support for expanding broadband access. Significant resources could be committed early next year in a COVID-19 relief/infrastructure/economic recovery package. It is difficult to see an impetus for legislative agreement on the remaining issues discussed above. Policy changes may instead come from Administrative action if there is a new Administration.

Commerce Department - A Biden Administration would place a heavy focus on the data functions of the Commerce Department and, in particular, thorough completion of the 2020 Census. Other economic and workforce data is important to make the case for progressive economic policies and these functions would be reinvigorated under Democratic control. Depending on the choice for Secretary of Commerce, they may also take a central role in Biden's economic and trade policy decisions. Enforcement of labor and environmental provisions of current trade deals will receive additional attention. NOAA's climate science and monitoring functions will also be featured.

FCC - A Biden Administration is sure to revisit net neutrality rules and seek to expand access to broadband, especially given the increased focus on access to the Internet in the context of the COVID-19 pandemic.

Energy - Although there are not many days remaining on the legislative calendar for the year, policies relating to energy innovation remain a possibility for consideration. The House of Representatives passed legislation in September that included a myriad of bills from both the Energy and Commerce and Science, Space and Technology Committees. The Senate attempted to consider a similar package earlier this year until the effort was stymied by disagreements over HFC regulation. A recent agreement between Senators Barrasso (R-WY), Carper (D-DE) and Kennedy (R-LA) on HFC regulation could put the Senate package back in play for end-of-year negotiations on must-pass vehicles.

Regardless of whether such a package becomes law this year, energy policy will be included as part of any infrastructure or economic recovery package in a new Biden Administration. Because House Democrats have already developed an extremely detailed economic recovery and infrastructure package – H.R. 2, the Moving Forward Act – it is clear that will be the starting point for any conversations in the next Congress. On the energy front, H.R. 2 includes investments in the electrical grid, R&D and clean energy in the Energy and Commerce section. Ways and Means contributed the Green Act which contains a host of tax breaks for clean energy, EVs and energy efficiency.

Expect an early spring climate policy push under a Biden Administration. The Biden campaign released a document entitled: “THE BIDEN PLAN TO BUILD A MODERN, SUSTAINABLE INFRASTRUCTURE AND AN EQUITABLE CLEAN ENERGY FUTURE.” The document outlines policies that achieve a net-zero carbon emissions economy by no later than 2050. This document represents a Democratic unity position more than a final statement on how a Biden Administration would negotiate with Congress to address the climate crisis.

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While the Biden campaign document is more aggressive in its targets and timelines in certain respects, it is important to note that it is conceptually similar to House Energy and Commerce Chairman Frank Pallone's (D-NJ) CLEAN Future Act proposal in that it does not propose an economy-wide mechanism for cutting carbon emissions. Instead, it proposes sector-specific policies for various components of the economy. The House Select Committee on the Climate Crisis and the Senate Democratic Special Committee on the Climate Crisis took similar approaches in their recommendations. Look for Democrats to pass a strong climate package in the House and leverage the Biden Administration and the bully pulpit to extract whatever they can in negotiations with what should be an evenly split Senate (regardless of who wins the majority).

Likely/Possible Senior Leadership Appointments

DOE, EPA, Interior, FERC, White House - With Biden's long time service in the Senate and as Vice President under President Obama, there is a long list of experienced policy and political personnel that could be called on to serve in these agencies and in the White House within this policy portfolio.

- Dr. Noel Bakhtian – Director, Center for Advanced Energy Studies, Idaho National Laboratory, former senior policy advisor at White House OSTP
- Sarah Bittleman – Policy Director at US Sen. Ron Wyden/US Senate Finance Committee. Bittleman served at USDA and EPA during the Obama Administration in addition to lengthy Capitol Hill service.
- Alison Cassady – Deputy Staff Director at Committee on the Climate Crisis, House of Representatives. Previously, she worked for former Rep. Henry Waxman (D-CA) on the House Energy and Commerce Committee. Cassady also worked on energy policy at the Center for American Progress.
- Allison Clements -- Democratic identified nominee for FERC Commissioner. An attorney formerly with the Natural Resources Defense Council (NRDC)
- Dr. Ana Unruh Cohen – Staff Director, House Select Committee on the Climate Crisis. She previously served on the House's earlier select climate committee – the Select Committee on Energy Independence and Global Warming. Ana was a policy advisor for Sen. Markey and the Managing Director of Government Affairs at NRDC.
- Megan Decker – Commissioner at Oregon Public Utility Commission. Decker is among the group of state public utility commissioners vetted by Senate Democrats for potential service at the FERC.
- Brian Deese – Managing Director, Global Head of Sustainable Investing, Blackrock. Deese was involved in Clinton campaign in 2008, transitioned to the Obama team and immediately became a key player in the auto bailout and stimulus efforts within the White House. Worked closely with the VP throughout his tenure including on climate matters.
- Ankit Desai – Senior Advisor to the CEO, Tellurian. Former political advisor to Senators Biden, Warner and Kerry with deep current energy experience.
- Kerry Duggan – Partner, Sustainability, Ridge-Lane LP. Duggan served as Deputy Director for Policy in the Office of VP Joe Biden, providing direct advice on energy, the environment, climate, national security, infrastructure, clean technology, water, resilient cities, and urban revitalization, finance and R&D.

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- Stef Feldman – Policy Director, Biden campaign. Feldman is the Policy Director for the Biden Campaign. She served in the Vice President’s policy shop during the Obama Administration. Prior to the campaign, she was the Policy Director at the Biden Institute at the University of Delaware.
- Shawn Garvin – Secretary, Delaware Department of Natural Resources and Environmental Control. Garvin was appointed by President Barack Obama to serve as Administrator of Region 3 for the U.S. Environmental Protection Agency (EPA). Prior to his service with the EPA, he served as an aide to then-U.S. Sen. Joe Biden.
- Rich Glick – FERC Commissioner. Commissioner Glick previously served as a director of government affairs for PPM Energy and before that was director of government affairs for PacifiCorp. He served as a senior policy advisor to former Energy Sec. Bill Richardson, and before that was legislative director and chief counsel to former Sen. Dale Bumpers of Arkansas.
- Jennifer Granholm – Former Governor, Michigan. Governor Jennifer M. Granholm served two terms as Governor of Michigan, leading a state with a \$40 billion annual budget and over 55,000 employees. As governor, Granholm pioneered clean energy innovation, economic development, and led the state through the national crisis in the turn-around of the American automotive and manufacturing sectors.
- Chris Hanson – NRC Commissioner. Hanson was recently appointed to serve at the Nuclear Regulatory Commission after lengthy stints at the Senate Appropriations Committee and the Department of Energy working on nuclear issues.
- Joe Hezir – Managing Principal, Energy Futures Initiative. Hezir served as Chief Financial Officer and Senior Advisor to the Secretary of Energy from 2013 through 2017. He also served for many years at the Office of Management and Budget, rising to the level of senior career official responsible for federal energy, science, technology, and space exploration policies and budgets.
- Amos Hochstein – Senior Vice President, Tellurian. Former Deputy Assistant Secretary of State for International Energy Affairs. Worked closely with VP Biden.
- Jay Inslee – Governor, State of Washington. Inslee ran for President in 2020 entirely on a climate change platform. Former Inslee aides have turned his climate change initiatives into an effort to influence the Biden campaign. Speculation is Inslee wants a cabinet level position focusing in climate change, environment or energy.
- Melanie Kenderdine – Managing Principal, Energy Futures Initiative. Kenderdine worked in the Administration of President Barack Obama at the Department of Energy from May 2013–January 2017 as the Energy Counselor to the Secretary and concurrently was the Director of DOE’s Office of Energy Policy and Systems Analysis.
- John Kotek – Nuclear Energy Institute, Vice President, Policy Development and Public Affairs. In January 2015, Kotek was appointed Principal Deputy Assistant Secretary for the Department of Energy Office of Nuclear Energy and was nominated by President Obama in October 2015 to serve as Assistant Secretary for nuclear energy.
- Alexander McDonough – Vice President for Public Policy, Sunrun. McDonough worked for former Sen. Harry Reid on energy and environmental issues including Yucca Mountain for the Democratic Leader for more than a decade.

- Jeanette Pablo – General Counsel and Senior Associate, Energy Futures Initiative. Pablo served as Acting Deputy Director for Energy Systems and Senior Advisor in the Office of Energy Policy and Systems Analysis at the U.S. Department of Energy from 2015 to 2017.
- Dan Poneman – President, Centrus Energy. From 2009 to 2014, Poneman was the Deputy Secretary of Energy, also serving as the chief operating officer of the U.S. Department of Energy. His responsibilities spanned the range of U.S. energy policies and programs – hydrocarbons, renewables, nuclear, and efficiency – including cybersecurity, project management, national security, and international cooperation.
- Dan Reicher – Dan Reicher is a senior research scholar at the Stanford Woods Institute for Environment. He is also a distinguished associate at Energy Futures Initiative, which was founded by former Sec. of Energy Ernest Moniz, and a venture partner at Ridge-Lane Limited Partners. Reicher worked on energy policy matters in the last three Democratic Administrations.
- Elizabeth Sherwood-Randall – Senior Fellow, Harvard Kennedy School of Government. Randall previously worked for then-Sen. Biden in a foreign policy and defense capacity. She was also a policy staffer in the Vice President’s office before going to the Department of Energy.
- Jaime Shimek – Democratic Clerk, House Energy and Water Appropriations Subcommittee. Shimek previously served as the Deputy Assistant Secretary for Senate Affairs at the DoE. She was also Director of Federal Affairs for Pacific Northwest National Laboratory and a staffer to Sen. Patty Murray.
- Kelly Speakes-Backman – CEO of the Energy Storage Association. Speakes-Backman was previously a senior vice president at the Alliance to Save Energy and a Commissioner in the Maryland Public Service Commission.
- Janie Wise Thompson – Subcommittee Staff Director, Investigations & Oversight, House Committee on Science, Space & Technology. During the Obama Administration, Thompson served as Legislative Affairs Specialist at the DoE.
- Frank Verrastro – Verrastro was a senior adviser with the Energy Security and Climate Change Program at the Center for Strategic and International Studies (CSIS). He does not have appeared to have served in the Obama Administration. Numerous press articles have indicated he is advising the Biden campaign.
- Mary Louise Wagner – Wagner was Director at the Senate Energy Committee for Sen. Maria Cantwell. Wagner also served at the Department of Energy for more than a decade during the Clinton and Obama Administrations.
- Jason Walsh – Executive Director, Blue Green Alliance. Walsh previously served in the Obama Administration, as the Director of the Office of Strategic Programs in the U.S. Department of Energy’s Office of Energy Efficiency and Renewable Energy and as a Senior Policy Advisor in the White House Domestic Policy Council.
- Karen Wayland – Dr. Wayland served as the Deputy Director for State and Local Cooperation in the Office of Energy Policy and Systems Analysis at DOE until January 2017. Wayland served as a Senior Advisor to Speaker of the House Nancy Pelosi.
- Heather Zichal – Executive Director, Blue Prosperity Coalition. Zichal is the former Deputy Assistant to the President Obama for Energy and Climate Change.

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- Pete Buttigieg – Former Mayor of South Bend, IN and Presidential candidate.
- Gretchen Whitmer – Governor of Michigan. VP short list.
- Mike Bloomberg – Former Mayor of NYC. Founder of Bloomberg L.P. Philanthropic donor to multiple Democratic causes.
- Tom Steyer – Hedge fund manager, philanthropist, environmentalist, liberal activist and fundraiser.
- Ursula Burns – American business executive. First African American woman to serve as CEO of a Fortune 500 company. Obama STEM education efforts.
- Ken Chenault – Former CEO of American Express. Among the first African American CEOs of Fortune 500 companies.
- Tom Nides – Managing Director and Vice Chairman of Morgan Stanley. Nides was previously the Deputy Secretary of State for Management and Resources in the Obama Administration.
- Amy Klobuchar – Sen. representing Minnesota. Former Presidential candidate. VP short list.
- Meg Whitman – American business executive. Former GOP candidate for CA Governor.

FCC/FTC:

- Mignon Clyburn – Former FCC Commissioner and acting chair.
- Jessica Rosenworcel – Current Dem FCC Commissioner.
- Geoffrey Starks – Current Dem FCC Commissioner.
- David Cohen – Attorney, Comcast executive.
- Gigi Sohn – Distinguished Fellow, Georgetown Law Institute for Technology Law & Policy. Former Counselor to FCC Chair Tom Wheeler.
- Larry Strickling – Advisor to Biden campaign on tech issues. Former Assistant Secretary at Commerce for Communications and Information.
- Anna Gomez – Partner, Wiley Rein. Former Deputy Assistant Secretary for Communications and Information at NTIA.
- Edward "Smitty" Smith – Deputy Managing Partner, DLA Piper. Formerly served at FCC and NTIA.
- Travis LeBlanc – Partner, Cooley, LLP. Formerly served at U.S. Commerce, FCC and under CA Attorney General's office.
- Clint Odom – Senior Vice President, National Urban League. Former staff to Sen. Kamala Harris and FCC.
- Catherine Sandoval – Professor, Santa Clara Law School. Former Commissioner of CA Public Utilities Commission. Special Assistant at FCC.
- Susan Crawford – Professor, Harvard Law School. Former Special Assistant to the President for Science, Technology and Innovation Policy.
- Blair Levin – Senior Fellow, Brookings Institute. Former service at FCC.
- John Branscome – Senior Counsel, Senate Commerce Committee. Former FCC staff and to Sen. Amy Klobuchar.
- Jessica González – CEO Free Press. EVP National Hispanic Media Coalition.
- Nicol Turner Lee – Senior Fellow, Brookings Institute. Vice President, Multicultural Media, Telecom and Internet Council (MMTC)

Congressional Outlook

House Energy and Commerce Committee Composition

On the Democratic side, the committee leadership is expected to remain relatively stable. Rep. Frank Pallone (D-NJ) is expected to remain full committee Chairman. The Subcommittee Chairs are also likely to be unchanged: Rep. Anna Eshoo (D-CA) – health; Rep. Bobby Rush (D-IL) – energy; Rep. Paul Tonko (D-NY) – environment and climate change; Rep. Mike Doyle (D-PA) – telecom; Rep. Jan Schakowsky (D-IL) – consumer protection; and Rep. Diana DeGette (D-CO) – oversight.

Rep. Elliot Engel (D-NY), who lost his primary election, is a senior member of the committee but does not hold a subcommittee chairmanship due to his full committee Chairman role on the Foreign Affairs Committee. Rep. Dave Loebsack (D-IA) is retiring at the end of this Congress, Rep. Ben Ray Lujan (D-NM) is running for the Senate New Mexico seat being vacated by Sen. Tom Udall and Rep. Joe Kennedy (D-MA) unsuccessfully challenged Sen. Markey in the MA primary. Therefore, Democrats will likely fill at least four vacant slots, possibly more if another member of the committee loses reelection or if the Democrats expand their majority and the committee ratio is adjusted.

There is considerably more leadership turnover on the Republican side of the committee. Ranking Member Greg Walden (R-OR) is retiring. Three committee members are vying for his position as the lead Republican on the committee. They include: Reps. Cathy McMorris Rodgers (R-WA); Michael Burgess (R-TX); and Bob Latta (R-OH). Despite being the least senior of the three, at this point it appears Rep. Cathy McMorris Rodgers has the advantage and, according to news reports, at least the implicit support of Minority Leader Kevin McCarthy (R-CA). Among the Subcommittee Rankers, Rep. John Shimkus, who is the ranking member on the Environment and Climate Change Subcommittee is retiring. All three contenders to be full committee GOP Ranking Member are currently subcommittee ranking members so it is likely that at least a couple GOP members of the committee will move into leadership positions.

House Natural Resources Committee Composition

The Democratic leadership of the Natural Resources Committee should remain relatively the same. Full committee chairman Raul Grijalva (D-AZ) will remain in place. Most, in not all, of the subcommittee chairs should also continue. There could be significant churn down dais as many of the members are either freshmen and could move to exclusive committees or are more senior members serving on an exclusive committee but granted a waiver to also serve on Natural Resources.

On the Republican side, Ranking Member Rob Bishop (R-UT) is retiring. Reps. Bruce Westerman (R-AR), Doug Lamborn (R-CO), Tom McClintock (R-CA) and Paul Gosar (R-AZ) have expressed an interest in succeeding Bishop. Westerman appears to have the inside track to secure the Republican leadership slot on the committee.

House Science, Space and Technology Committee

Chairwoman Eddie Bernice Johnson (D-TX) will continue to serve in her current position. However, like Natural Resources, much of the rest of the committee membership could turnover and often does with the Science Committee from Congress to Congress. Many are freshman or more senior members serving with a waiver. All but one of the subcommittees are currently chaired by freshman members so those roles could

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change significantly. There may be additional interest in the committee due to the likelihood that the House will take up climate change policy next Congress and the Science Committee has jurisdiction over Department of Energy R&D programs. Rep. Frank Lucas (R-OK) will remain the lead Republican on the committee.

Senate Energy and Natural Resources Committee Composition

Chairwoman Lisa Murkowski (R-AK) is term limited and it is expected that Sen. John Barrasso (R-WY) will take over as the GOP Chairman/Ranking Member. Further down the dais, Sen. Lamar Alexander (R-TN) is retiring. Senators Corey Gardner (R-CO) and Martha McSally (R-AZ) are locked in tight reelection campaigns. Many believe Sen. Steve Daines' (R-MT) race could also prove difficult if the political scales tip toward the Democrats nationally. So, it is possible there will be significant turnover on the GOP side.

The Democratic membership of the committee should remain relatively stable. If Democrats take the Senate majority, the ratios of the committee would flip and more members would be added. In addition, if the Democrats do take the majority, expect another effort by the environmental community to oust Sen. Joe Manchin (D-WV) from his leadership role on the committee. If the Senate is closely split, he could possess considerable leverage to stave on this challenge. There are a handful of Democrats that are technically more senior on the committee including Senators Ron Wyden (D-OR), Maria Cantwell (D-WA), Debbie Stabenow (D-MI) and Bernie Sanders (D-VT). All chose to lead different committees in the 116th Congress.

Senate Commerce, Science and Transportation Committee

Both Sen. Roger Wicker (R-MS) and Sen. Maria Cantwell (D-WA) should return to their leadership roles on the Commerce Committee. In fact, there should be very little turnover within the entire committee membership on either side of the aisle. Sen. Tom Udall (D-NM) is retiring and Sen. Corey Gardner (R-CO) faces a stiff election challenge. The remainder of the committee members should remain.

During a status quo election, very little will change on the committee. On aviation, Chairman Wicker will continue to focus on oversight of Boeing and the 737 Max and push a handful of smaller bills the committee has been working on. On tech and telecom, Republicans will still be at an impasse on multiple issues dealing with privacy, including preemption and enforcement. There will be an effort to move legislation impacting the maritime industry, though that can get slowed down over union concerns.

Should the Senate switch hands and if Vice President Joe Biden is elected, there would be numerous changes in direction on the committee. While aviation issues in general should not reach partisan rancor, a Chairwoman Cantwell will shift focus, including exploring emissions in the aviation sector and noise pollution. The future of Boeing and the company's recent decision to shift production out of Washington State will gain significant focus. The most significant change coming from a Democratic sweep in November is on privacy legislation. While the House of Representatives will move legislation first on privacy, the Senate Commerce Committee would want to have their fingerprints on it as well. Republicans will still have concerns over preemption, though their negotiating position will be substantially weakened. Privacy will most likely not be a first 100 days exercise, but there is likely passage of bills in both chambers and then a conference.

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Contested Presidential Election: Process Review and Analysis

Under the U.S. Constitution, Article II, Section 1, Clause 3 (as modified by the 12th and 20th Amendments), election of the president is made by state “electors,” not on the basis of the popular vote. While the term “Electoral College” is not found in the Constitution, the process of indirect elections via the reference to selection of “electors”, as well as the process by which they vote, is outlined in detail.

The Electoral College consists of 538 electors, one for each member of the U.S. Senate and each member of the U.S. House, plus 3 electors for the District of Columbia. Each state determines the process by which their state’s electors are chosen.

In 48 states and the District of Columbia, all Electoral College electors vote their ballots on a winner-take-all basis. Maine and Nebraska, however, follow a District-based system of Electoral College balloting. In those two states, 2 votes are granted to the candidate winning the statewide ballot, and one vote is awarded to the candidate receiving the plurality vote in each Congressional District.

2020 Election

On December 14, 2020, the Electoral College will meet in each of the individual states to cast ballots for President and Vice President. In 27 states, electors are required by state law to vote their state’s electoral votes, consistent with the majority winner of the popular vote in their state. In the remaining states, there is an expectation and convention that dictates electors will cast their state’s votes consistent with the winner of the popular vote.

Electors from each state will cast votes equal to the number of their state’s federal congressional delegation on this date. Each elector must also certify their Electoral College ballot cast and send their ballot to the sitting Vice President of the United States, in advance of January 6.

On January 6, 2021, all Electoral College ballots will be counted in a Joint Session of the U.S. Congress, with the sitting Vice President of the United States presiding. The candidate that receives a majority of certified votes shall be the winner.

If No Majority of Electoral College

The 12th Amendment to the U.S. Constitution specifically addresses the process to be followed in the event of no majority of Electoral votes is received by any candidate for President or Vice President. In the event that no candidate receives a majority of certified Electoral College ballots, the election is then referred to the U.S. House of Representatives for resolution. Resolution of the election must be immediate and by ballot. In that instance, however, each state delegation would vote only for President, with each delegation casting only one vote.

Under the current make-up of the House, 26 state delegations are majority Republican, 23 are majority Democrat. Pennsylvania is the only state with an equal number of Democrats and Republicans serving in its

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congressional delegation. No matter the unlikeliness of this scenario, and the fact gerrymandering of congressional districts typically prevents wide swings in party makeup, congressional races in FL, PA and WI could flip this advantage to Democrats, while the races in MI, MN, PA, IA, CO and AZ could solidify it for Republicans.

With respect to Vice President, the process is a bit different. If no candidate received a majority of certified votes, the United States Senate will decide the outcome, with a requirement of 2/3 majority required.

Possibility of Contested 2020 Election

For a number of reasons, there is building speculation by news media and policy analysts that the 2020 election will be contested. Many reasons are cited to justify this outcome: changes due to the pandemic; hyper-partisanship; and, others. Adding fuel to the supercharged environment, President Trump has further stated that he expects the U.S. Supreme Court will be required to resolve the election outcome.

The presidential election is really a series of concurrently held, 50 statewide elections, plus the District of Columbia. It is not a national election, and each state has the authority and responsibility to determine how elections are conducted in their jurisdiction.

Due to the pandemic, 27 states and Washington, D.C., have in some way expanded voter access to mail-in ballots for the 2020 general election. However, it is not clear that each of these states' election laws fully accommodates this substantial expansion of mail-in voting.

During the 2020 election, ballots will be automatically mailed to all voters in 9 states (CA, CO, HI, NJ, NV, OR, UT, VT, WA) and the District of Columbia. Voters can request a mail-in ballot without question in 34 states, and 7 states (IN, LA, MS, SC, TN, TX, NY) require voters to submit an application stating an approved reason for requesting a mail-in ballot.

During the presidential primaries, many states that made it easier for people to vote by mail saw higher turnout than states that made fewer changes. Of the states that have held presidential primaries and caucuses this year, 31 saw an increase in turnout compared with 2016. Of those, 18 had sent either ballots or ballot applications to all voters ahead of the primaries.

Election officials are preparing for a record volume of mail-in ballots. To help lessen their load, elections officials in several key swing states have already asked that lawmakers give them more leeway to prepare absentee ballots for counting as they arrive rather than after the polls close.

Well-prepared states that are accustomed to counting a high number of mail ballots — and where the presidential race is not close — could get called on election night. But experts say that in other states, the counting could delay race calls for at least a day or two. And in states where the presidential contest is tight and laws are inflexible, a clear picture of who has won could take weeks to develop.

The Trump campaign has stated its belief that:

- Mail-in ballots are susceptible to fraud and vote harvesting without all of the same verification controls provided by the absentee ballot process.
- States are mass-mailing blank ballots to all registered voters, circulating large numbers of empty ballots, without identified voters tied to those ballots.
- Many of states have not managed to update/maintain their voter rolls, therefore the opportunity for misuse and fraud increases substantially.

The Republican party has questioned:

- If changes being implemented by some state election processes are clearly authorized in their state election laws, and if states should be able to make up new election rules on the fly.
- A substantial increase in mail-in ballots will delay the vote count to an alarming degree and increase the opportunity for fraud.

At the same time, Democrats argue that no widespread election fraud occurs in the five states where mail-in voting has been established as the norm. However, they are concerned:

- The President will refuse to honor the voice of the people and choose to litigate the election results state by state if Biden wins.
- The President will attempt to use the Supreme Court to resolve the election in his favor. This concern becomes much more pronounced in light of the pending nomination of a replacement Justice for Ginsberg immediately before the election.

Bush V. Gore (2000 Election)

To further understand both sides on the issue, it is worthwhile to precisely understand the Supreme Court's role in the 2000 election. On election day in 2000, Gore had 255 Electoral College votes to Bush at 246, with one state remaining: Florida. Twenty-five electoral votes were still in play, and the candidate who won Florida would win the presidency. At the end of the election-day count in Florida, Bush led by 900 votes, out of approximately 6 million votes cast.

Under state law, close-margin election results automatically triggered a machine recount requirement to occur within a time certain. After the recount, the Bush lead dropped by almost half, down to 327 votes. The Gore campaign petitioned the Florida Supreme Court to extend the time allowed for the recount in order to allow manual inspection and counting of 70,000 challenged ballots from four counties. After several days of arduous joint inspections of ballots from the four Counties, the Bush campaign challenged the recount time extension, and the selective recount from only four counties in the Florida Supreme Court and the state

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Supreme Court rejected the petition. Bush then petitioned the U.S. Supreme Court on the matter. The U.S. Supreme Court accepted the case following a 7-2 vote, issued a writ of certiorari, and immediately held a hearing.

Bush attorneys challenged the constitutionality of the extended recount, arguing that by conducting the limited four-county recount effort, Florida was violating the equal protection clause under the 14th amendment. In effect, counting only the challenged ballots from the four counties, disenfranchised all the other voters in the state. Ultimately, the U.S Supreme Court ruled 5-4 that the Florida Supreme Court's actions violated the equal protection clause, and effectively, created new election law, a power reserved for the state legislature. The US Supreme Court ordered the recount to be stopped and referred the matter back to the Florida Supreme Court, who had no choice but to certify George Bush the winner of the election by 500 votes.

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