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# 2020 Election: Policy Implications

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# Introduction

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## Presidential Race

After historic delays required to tabulate millions of ballots that were not sufficiently counted until four days after the election, former Vice President **Joe Biden was declared the winner** in the U.S. Presidential election on Nov. 7 and will serve as the 46th President of the United States. In a victory speech Biden said “it’s time to put away the harsh rhetoric, lower the temperature, see each other again, listen to each other again.” He said his mandate involved fighting “the battle to control the virus, the battle to build prosperity ... the battle to restore decency, defend democracy, and give everybody in this country a fair shot. That’s all they’re asking for, a fair shot. Folks, our work begins with getting COVID under control.”

The final margin was significantly closer than polls had predicted. With some states still counting ballots, Biden was leading in the popular vote, 50.5% to 47.7%. He appears to have won between 279 and 306 electoral votes (Biden leads in Arizona and Georgia, which have not yet been “called”). President Trump appears to have won between 217 and 232 electoral votes (he leads in North Carolina, also not yet called). Biden had crucial victories in Michigan, Pennsylvania, and Wisconsin, all states that President Trump won in 2016. Several legal challenges are pending in states where the vote counting was not completed on Election Day. While election law experts do not give these challenges a high likelihood of success, it is possible that they could affect the final tabulation of ballots in certain states.

## U.S. Senate

In the **United States Senate, Democrats picked up one seat, but Republicans still retain a 50 to 48 majority.** There was a special Senate election in Georgia in addition to its regularly scheduled Senate election. **Both Georgia races are heading to a runoff election on Jan. 5,** as required under state law when no candidate reaches the 50% threshold. Republican Senator David Perdue will face Democratic challenger Jon Ossoff. And Republican Senator Kelly Loeffler will face Democratic challenger Raphael Warnock. In the event that both challengers win, Senate control will switch to the Democrats, as Vice President-Elect Kamala Harris will be able to break tie votes in her capacity as President of the Senate. This uncertainty may delay normal organizational activities in the Senate, and the formal selection of new committee Chairman may not occur until after the Georgia special elections are held.

## U.S. House of Representatives

In the **U.S. House of Representatives,** several races remain undecided. However, it appears that **Democrats will retain a smaller majority as Republicans appear to have had a net gain of five to thirteen seats.** Republicans were able to “flip” House districts in Florida (two), Iowa, Minnesota, New Mexico, Oklahoma, and South Carolina. Democrats picked up two new seats in North Carolina. Roughly 20 House races have not yet been “called,” and in eight of those races the Republican candidate leads in a district currently held by Democrats.

## Lame Duck Agenda

The Senate begins its post-election “Lame Duck” session on Nov. 9 and the House returns on Nov. 16. Congress will attempt to (a) fund **fiscal year 2021 appropriations** through September 30, 2021, (b) reach an agreement on **COVID-19 relief legislation**, (c) pass the annual **National Defense Authorization Act** conference report, and (d) extend several health care, tax, and other **provisions of law that are scheduled to expire by the end of the year**.

## Will Divided Government Continue?

In 30 of the last 40 years, U.S. elections have produced at least one House of Congress with a majority of members from a different party than the President. Unless both Georgia Senate runoff elections are won by Democrats, that trend will continue in the new 117th Congress next year. Unless Senate rules are changed, this means that every major legislative initiative will need some degree of bipartisan support. The pages that follow provide brief summaries of several issues that will be debated as the Biden Administration prepares to take office and begins to deal with the new Congress.

# Lame Duck: Will There Be COVID-19 Relief Legislation?

The U.S. Senate will reconvene on Nov. 9 (with the House returning the following week) to begin a Lame Duck session that will last into December. The economic need for additional COVID-19 relief legislation remains urgent, and additional efforts will be made in the weeks ahead to reach a compromise. However, some will advocate waiting until January when a “better” deal can be made. Here is a rough snapshot of where House Democrats, the White House, and Senate Republicans stood prior to the election.

ISSUE	House Democrats	White House	Senate Republicans
Liability Protection for businesses	OSHA standard	Safe to Work Act	Safe to Work Act
State and Local Government Aid	\$436 billion	\$300 billion	---
Unemployment Insurance	\$600/wk. through 1/31/21	\$400/wk. through 1/15/21	\$300/wk. through 12/27/20
\$1,200 Stimulus Checks	Yes	Yes	---
Testing, Tracing, Hospitals	\$221 billion	\$128 billion	\$16 billion
Vaccine Development, distribution	\$28 billion	\$50 billion	\$31 billion
Paycheck Protection Program (PPP)	\$35 billion (plus \$135 B left)	\$170 billion (plus \$135 B left)	\$258 billion (rescind \$135 B left)
Aviation	\$ 28 billion	\$20 billion	---
Restaurants, Lodging, Entertainment	\$130 billion	\$120 billion	Use PPP
Education (K-12, colleges)	\$225 billion	\$150 billion	\$105 billion
Student Loan relief	\$44 billion	\$28 billion	---
Homeowners, renters	\$89 billion	\$60 billion	---
Medicaid	\$81 billion	---	---
Child Care providers	\$57 billion	\$25 billion	\$15 billion
Tax Provisions	<ul style="list-style-type: none"> <li>▪ employee retention tax credit</li> <li>▪ paid leave credits</li> <li>▪ end SALT cap</li> <li>▪ EITC, child credit</li> </ul>	<ul style="list-style-type: none"> <li>▪ employee retention tax credit</li> <li>▪ paid leave credits</li> </ul>	<ul style="list-style-type: none"> <li>▪ increase charitable contribution limit</li> <li>▪ education freedom scholarship credits</li> </ul>
Agriculture	\$20 billion	\$20 billion	\$20 billion
Postal Service	\$15 billion	\$10 billion	\$10 billion
Nutrition	\$15 billion	\$15 billion	---
Offsets	Net operating loss rules	---	Rescind unused Cares Act funds
<b>TOTAL</b>	<b>\$ 2.2 Trillion</b>	<b>\$ 1.88 Trillion</b>	<b>\$ 500 Billion</b>



# Other Lame Duck Priorities: Expiring Provisions

In addition to COVID-19 relief legislation, Congress will decide during the Lame Duck session whether to extend programs that are set to expire before the end of the year. Congress has funded discretionary spending through Dec. 11, along with a number of other programs listed below. A large package may be developed to attempt to extend many of these programs.

## Programs Set to Expire Dec. 11:

- **Agriculture:** [Grain Standards Act and Livestock Mandatory Price Reporting](#)
- **Health Care:** [Medicare and Medicaid extenders](#) (including Medicaid Money Follows the Person demonstration program; Medicaid spousal impoverishment protections; Community Mental Health Services demonstration; community health centers funding; National Health Service Corps; Teaching Health Center Graduate Medical Education program; Special Diabetes Program)
- **Health Care:** [Medicaid disproportionate share hospital \(DSH\) payment reduction delay](#)
- **Income Security:** [Temporary Assistance for Needy Families](#)

## Programs Set to Expire at the End of the Year:

- **Benefits:** COVID-19 [paid sick and family leave](#) benefits
- **Education:** CARES Act [student loan moratorium](#)
- **Tax:** [2017 tax bill](#), [2019 tax extenders](#) provisions (increased medical expense deduction; work opportunity tax credit; reduced beer, wine and distilled spirits taxes; health care coverage tax credit; empowerment zone tax incentives; new markets tax credit); [COVID-19 relief tax provisions](#) (retirement plan hardship withdrawals; employee retention tax credit; tax credit for sick and family leave); [renewable energy extenders](#) (includes provisions relating to fuel cells; alternative fuel vehicles; plug-in electric vehicles; biofuel producers; renewable power production tax credit; energy efficient commercial buildings; wind production tax credit).
- **Trade:** [Generalized System of Preferences and Miscellaneous Tariffs Bill](#)
- **Unemployment:** [Pandemic Unemployment Assistance](#) for self-employed workers

## Already Expired Programs:

- **Crime:** [Violence Against Women Act](#) (expired 2/15)
- **Counterterrorism:** [Foreign Intelligence Surveillance Act](#) (expired 3/15)
- **Housing:** CARES Act [eviction moratorium](#) (expired 7/25)
- **Unemployment:** enhanced [unemployment insurance benefits](#) (expired 7/31)
- **Small Business Loans:** [Paycheck Protection Program](#) (application deadline was 8/8)



## Agriculture and Food Policy

**Farm Programs.** The current Farm Bill expires in 2023. The Biden campaign did not provide great detail on farm program reforms, although it indicated strong support for existing **crop insurance “and risk management tools.”** The Biden Administration may promote **support for beginning farmers** (including an expanded microloan program), increased funds for farm operating loans, and the protection of patents developed at land grant universities.

**SNAP and Other Nutrition Programs.** Authorized through 2023, the Supplemental Nutrition Assistance Program (SNAP) is the largest domestic food assistance program. The Biden campaign proposed **raising SNAP benefits by 15%.** Recent COVID-19 relief legislation also increased child nutrition programs by \$8.8 billion and granted broad authority for the Department of Agriculture and states to waive certain requirements. For example, meals under the school lunch program can be distributed and eaten at home for remote learners. The Biden Administration may extend waiver authority as the pandemic continues.

**WOTUS.** The Biden Administration will attempt to **reverse current regulatory definitions of “waters of the U.S.,”** which defines which streams and wetlands qualify for federal Clean Water Act protection. A new Navigable Waters Protection Rule took effect in June. The Biden campaign indicated that the new rule would be reviewed, and “previous exemptions and exclusions upon which the agricultural community” relied upon will be maintained. However, attempts to expand federal jurisdiction may be challenged and end up before the Supreme Court.

**Ethanol and Biofuels.** The Renewable Fuels Standard (RFS) requires that renewable fuels like ethanol be blended into the domestic fuel supply. Ethanol production has nearly quadrupled since the RFS was enacted in 2005, and currently about 40% of the U.S. corn crop goes toward ethanol. Small oil refiners can apply for waivers from the blending requirement, but the Biden campaign suggested that **fewer waivers would be granted** under the new Administration. Biden will also propose \$400 billion in clean energy research, part of which will be used to “develop the next generation of biofuels.”

**Agriculture and Climate.** As part of comprehensive climate change legislation, Biden has proposed establishing a “**voluntary carbon farming market**” to make payments for sequestered carbon, funding research for cellulosic biofuels, and expanding the Conservation Stewardship Program.

**Agriculture Labor.** Biden has expressed support for “compromise legislation between farmworkers and the agricultural sector that will provide **legal status based on prior agricultural work history**,” with expedited green card processing.

**Congressional Committee changes.** Sen. John Boozman (R-AR) will take over as Chairman of the Senate Agriculture Committee.





# Antitrust and Competition

Even if a Biden Administration does not convert the “break up big tech” rallying cry into public policy, it may promote a host of antitrust-related policy reforms. At a minimum, the Biden Administration, along with its allies in Congress, could push for increased funding at the DOJ and Federal Trade Commission (FTC). There is bipartisan support for such measures. Biden may also work with Congress to give the antitrust agencies the ability to seek civil fines for monopolization. And finally, we expect a Biden Administration to support some congressional Democrats’ efforts to shift the burden of proof required for a market dominant company to prove that a merger is not anticompetitive.

**Google Litigation.** Among its first antitrust order of business, the Biden Department of Justice (DOJ) will need to decide whether to continue to litigate the antitrust lawsuit against Google that the Trump administration filed last month. While Democrats questioned the October 2020 timing of this lawsuit – believing it to be, at least in part, a pre-election, political maneuver – a Biden DOJ may continue to pursue the case.

**Big Tech.** How a Biden Administration handles other big tech issues remains an open question. House Democrats have proposed structural separations for tech platforms, including a breakup of the largest firms modeled after the Depression-era Glass-Steagall law.

**Policy Reforms.** Even if a Biden Administration does not convert the “break up big tech” rallying cry into public policy, it may promote a host of antitrust-related policy reforms. At a minimum, the Biden Administration, along with its allies in Congress, could push for increased funding at the DOJ and Federal Trade Commission (FTC). Biden may also work with Congress to give the antitrust agencies the ability to seek civil fines for monopolization. And finally, we expect a Biden Administration to support congressional efforts to shift the burden of proof required for a market dominant company to prove that a merger is not anticompetitive.

**Others to Watch.** In addition to big tech, other industries could be subject to close Biden Administration review, including the pharmaceutical and food/agriculture industries, which have undergone significant consolidation in recent years, as well as the transportation and online travel industries.



# Budget & Appropriations

With Joe Biden in the White House and a likely divided Congress, both parties will need to come together to annually fund the federal government and tackle challenges facing the country. The most likely place to start will be infrastructure investment, considering the bipartisan agreement about the importance of fixing roads and bridges. Challenges will arise around Biden's interest in using infrastructure to combat climate change and Republican reticence about more federal spending.

## Leadership

- **Chairman Richard Shelby (R-AL)** will continue to lead the Senate Appropriations Committee, where he has forged a productive relationship with **Vice Chairman Patrick Leahy (D-VT)** over the past two years. The two long-time appropriators have a proven track record of striking deals, which may lead to some bipartisan action.
- On the other side of the Hill, there is a **three-way race to head the House Appropriations Committee**, with Representatives Rosa DeLauro (D-CT), Marcy Kaptur (D-OH), and Debbie Wasserman Schultz (D-FL) all competing for the gavel. The three congresswomen have been building support among their colleagues since this past summer. House Democrats will vote on committee chairs when the 117th Congress convenes in January.

## The Return of Earmarks

- Congress will seriously consider resurrecting the practice of appropriation bill earmarks in the next Congress, though buy-in from both parties will be necessary.
- Both Chairman Shelby and Senator Leahy have signaled they support reinstating earmarks to restore a sense of bipartisanship in the annual appropriations process.
- In the House, two of the three candidates running to head the Appropriations Committee have expressed support for bringing back earmarks, while a **bipartisan report issued by the Select Committee on the Modernization of Congress is recommending that earmarks be reinstated**, albeit with more transparency and restrictions.

### Issues to Keep an Eye On

- The fiscal year (FY) 2022 appropriations process will be the first since 2011 **without budget caps on defense and non-defense spending**, due to the expiration of the Budget Control Act, and appropriators will aim to take advantage of their freer hand to fund priorities important to both parties.
- President-Elect Joe Biden may be able to negotiate a scaled back version of the \$2 trillion infrastructure plan he calls “**Build Back Better**,” though it is unlikely it would include as much direct federal spending as he campaigned on.
- Appropriators may aim to find areas of agreement, including greater investments in **cyber and artificial intelligence capabilities**.



# COVID-19 Relief Priorities of a Biden Administration

If Congress and the White House are unable to reach a compromise during the lame duck session, COVID-19 relief legislation will likely be the highest immediate priority of the incoming Biden Administration. On Nov. 9, President-Elect Biden is expected to announce a group of transition advisors to develop an “action blueprint” to be ready by Jan. 20. The “Biden-Harris COVID Plan” is summarized below.

## Biden COVID-19 Relief Proposals

### Testing, Coverage, Eliminating Barriers

- No copays, deductibles, or surprise billing
- National Disaster Medical System to reimburse providers
- 10 mobile testing/drive-through sites per state
- Ability to set up 100-bed temporary hospitals in any city
- Medicaid match for “presumptive eligibility”
- Increase Medicaid FMAP percentage
- Delay Medicaid fiscal accountability regulation
- Federal employee access to workers’ comp
- Increase tele-emergency room, tele-ICU, telemedicine services
- Reverse Public Charge rule

### Vaccine Development

- Increase resources for effective distribution
- HHS to approve price for vaccines developed with federal funds

### Frontline Workers

- Increased resources for PPE
- Establish temporary OSHA standard for health care facilities
- Create a Public Health Service Reserve Corps
- State and Local Emergency Fund created will provide overtime reimbursement for health workers and first responders

### Emergency Unemployment Compensation

- Extend supplemental federal benefit
- Partial UI benefits for workers with a significant drop in hours
- Include gig workers, independent contractors

### Nutrition

- Full federal funding for expanded SNAP benefits

### Emergency Paid Leave, Caregiving Leave

- 14 days paid leave if sick, exposed, quarantined
- Employers reimbursed through a federal fund or tax deduction

### Small Business

- Fund a State Small Business Credit Initiative
- Interest-free loans to small- and medium-sized businesses

### Child Care, Education

- Expand assistance to child care facilities
- Assistance to schools (especially Title I)

### Student Loans and Rent Relief

- Relief, forbearance of student loans, federally backed mortgages

### International Activity

- Recreate Directorate for Global Health Security within NSC
- Create Global Health Emergency Board to coordinate CDC, WHO
- Deploy USAID Disaster Assistance Response Teams



## Defense

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**Global Context.** So far there are no indicators of a major shift in defense strategy goals that will be immediately forthcoming in the new administration. The threats at the top of the list remain: China, Russia, Iran, and North Korea. The enormous military growth in numbers and capability of both China and Russia will demand the Administration's primary strategic focus.

**Relations with Allies.** Biden is a strong supporter of NATO and Israel (although he did not support moving the U.S. Embassy to Jerusalem). He has pledged to stop what he calls the "Forever Wars." He has advocated using diplomatic solutions wherever possible, building allied support, and will likely try to rebuild the State Department's influence. What the Biden Administration will do if diplomacy fails remains unknown.

**Defense Budgets.** Defense will likely see cuts, which could be a major concern for defense suppliers, vendors, and contractors. As a candidate, Biden did not embrace major cuts to defense, but it is clear they are on the way. House Armed Services Chairman Smith projected a 1% to 3% cut in annual defense funding, while many progressives are demanding cuts of 10% or more. In addition to the topline reductions, it will be important to watch how the spending reallocates priorities within the Department of Defense. A pledge has been made not to cut pay or benefits. Additionally, there may be a strong push to reprogram dollars to fight climate change and clean energy and to develop 5G and AI. This would require a reduction in weapon systems and platforms. Nuclear modernization will be curtailed. Biden may use the Overseas Contingency Fund to assist with readiness and other shortfalls.

**Other Priorities.** Watch for a reduction in larger platforms and a renewed focus on cyber and technological advances, especially in AI capabilities. The Department of Defense will likely continue its procurement moves to allow more vertical acquisitions, especially of disruptive technologies, thereby allowing smaller and more agile companies increased opportunity to compete directly without the umbrella of larger prime contractors.

**Best Industry Opportunities:** Those involved in climate change, clean energy, technology, AI, 5G.

**Challenges:** Industries involved in nuclear modernization, large naval platforms, F-35, weapon systems.



# Energy and Environment

A Biden presidency will change the direction of U.S. policy energy and environmental policy. If Republicans remain in control of the Senate, most policymaking will occur via executive order and agency action. Among the most prominent proposals that the new Biden Administration will advance are the following:

- Rejoining the Paris Climate Agreement
- Setting policy to achieve net zero carbon emissions by 2050
- Restoring methane emission limits proposal
- Developing new fuel efficiency standards
- Increasing funding for advanced biofuels; decreasing waivers for small refiners from ethanol blending requirements
- Promulgating new appliance and building efficiency standards
- Accelerating development of carbon capture, utilization, and storage technology
- Locating more than 500,000 charging stations for electric vehicles

**Executive Orders.** President Biden can be expected to issue Executive Orders and take other early executive action aimed at reversing policies of the Trump Administration. These include actions addressing the **Arctic National Wildlife Refuge (ANWR)**, the **Keystone XL Pipeline**, climate change, and administration of the **National Environmental Policy Act (NEPA)**. Immediate executive action will likely also include increased regulation of the environmental impacts of fracking and revisiting the **waters of the United States (WOTUS)** rulemaking.

**PFAS Legislation.** Per- and polyfluoroalkyl substances (PFAS) are a matter of increasing bipartisan concern and could be one of the few environmental issues addressed in the 117th Congress.





## Foreign Policy

President-Elect Biden has emphasized the need to renew alliances and return to a more multilateral approach to foreign policy. He will attempt to restore many of the Obama Administration initiatives reversed by President Trump.

- **Summit for Democracy:** Biden has committed to hosting a summit of the world's democracies to develop "new country commitments" to fight corruption, defend against authoritarianism, and advance human rights.
- **Iran Nuclear Deal:** The United States will rejoin the Joint Comprehensive Plan of Action (JCPOA) agreement from 2015, and coordinate with the United Kingdom, France, Germany, China, and Russia in an attempt to get Iran to resume compliance.
- **Paris Climate Accord:** The United States will rejoin the Paris Climate Accord to limit greenhouse gas emissions. President-Elect Biden has advocated for negotiated additional reductions from signatory countries under the United Nations Framework Convention on Climate Change.
- **New Start Treaty:** The 2010 Strategic Arms Reduction Treaty (New START) with Russia is set to expire Feb. 5, 2021. It can be extended for up to five years. President Trump sought to renegotiate the treaty and include China, which declined to participate. Russia has offered to extend the treaty for one year, which the United States has rejected. Biden will make an extension of the treaty a top priority. A simple extension would not require Senate ratification, but significant substantive changes would.
- **China:** The multilateral approach may be most evident on this issue. Look for a change in tactics and approach compared to the Trump Administration, but not necessarily in strategy.
- **Afghanistan:** Biden has pledged to "bring the vast majority of our troops home" and "refocus our mission on Al-Qaeda and ISIS."
- **Central America:** The Biden Administration will reassess migration-related funding and other initiatives affecting El Salvador, Guatemala, and Honduras.
- **NATO:** Biden has discussed reinvigorating the defense alliance and expanding efforts relating to "weaponized corruption, cyber theft, and new challenges in space."
- **Immigration:** In a pivot from "building the wall," a Biden Administration will focus on improved screening procedures and "smart investments" in border technology. Biden has stated his administration will ban torture and terminate the travel ban involving Muslim majority countries.



# Health Care Policy

The new Biden Administration will seek to defend and expand on the Affordable Care Act, reversing some of the regulatory actions taken by the Trump Administration and broadening coverage options. Absent a change in Senate procedural rules, legislative changes will require compromise with Senate Republicans in order to pass the Senate.

## Reversing Trump Administration Actions

Based on Biden campaign statements, his Administration is likely to:

- Expand funding for marketing and promotion programs to **increase ACA enrollment**
- **Limit short-term health care plans** to three months and make them ineligible for renewal
- Reimpose **limits on premium** increases for exchange plans
- Reverse the prohibition on **Title X funds** for Planned Parenthood and other clinics

## Public Option

Legislation will be proposed to create a **“public option” in the marketplace that relies on Medicare, with no copayments.** The option will be available to individuals instead of employer-provided plans, or to individuals who are below 100% of the federal poverty level and not eligible for Medicaid coverage under the ACA. Senate Republicans will strongly resist efforts to establish the public option as proposed.

## Expanding Coverage

The Biden Administration will propose:

- Increasing **premium tax credit eligibility** for exchange plans by (a) removing the current 400% of poverty income cap and (b) lowering the cap on the cost of coverage to 8.5% of total income

- Supporting Congressional efforts to **ban surprise billing**
- Doubling of funding for **community health centers**
- Enforcing **anti-discrimination policies** that protect underserved communities
- Promoting California's plan nationally to decrease the **maternal mortality rate**

## Drug Pricing

Biden will try to break the Congressional impasse by:

- Requiring pharmaceutical companies to **negotiate directly with Medicare for Part D plans**
- Establishing an **independent review board** to recommend prices for **specialty drugs**
- Limiting brand, biotech, and generic drugs **price increases to the rate of inflation** in the Medicare program or under the public option
- Allowing **imports of prescription drugs** manufactured outside the United States
- Repealing the tax deduction for **prescription drug advertising**



# Lobbying and FARA Reform

For years, certain lawmakers within both parties have sought changes to the Lobbying Disclosure Act (LDA) and the Foreign Agents Registration Act (FARA) to shine light on the lobbying of special interests in Washington, D.C. Under a new Biden Administration and with a divided Congress, we can expect continued attempts to reform how organizations, individuals, and foreign entities influence U.S. lawmakers. It is unlikely that we will see significant changes during the 117th Congress, since ethics reform has not been prioritized by the GOP-held Senate in recent years. However, there does remain bipartisan support for certain reforms. Lawmakers in both parties who introduced legislation during the 116th Congress are expected to reintroduce similar legislation in the 117th Congress, and additional ethics reforms could gain traction in the right political environment and with certain key lawmakers prioritizing the effort.

The Biden campaign has said it will release an ethics pledge on the first day of the new administration, and it is unclear if the campaign will allow for registered lobbyists and/or foreign agents to be a part of the transition team, or what limitations a Biden Administration will place on lobbyists and foreign agents looking to serve in the new administration. President-Elect Biden is also expected to support legislation to establish a new independent agency, the Commission on Federal Ethics, to launch additional disclosure and enforcement requirements, however it is unlikely such comprehensive ethics reform, even if passed in the House, will clear the Republican-controlled Senate. Additionally, while the Trump Administration has not highlighted comprehensive ethics reform as a priority, the Department of Justice, over the last four years, has increased its enforcement of FARA, as part of an overarching focus to address foreign influence within the United States. Such enforcement is expected to continue under a Biden Administration.

## Lobbying Disclosure Act and Foreign Agents Registration Act – Possible Reforms

- Updates to the LDA and FARA public disclosure databases to provide more user-friendly data for average citizens to access, including more details regarding lobbying contacts and materials shared.
- Legislation to lower monetary and lower lobbying activity percentage thresholds for LDA registration.
- Limits to former Members of Congress to provide strategic advice to clients without formally registering as lobbyists under the LDA.
- Pressure for DOJ to release comprehensive FARA Guidance.
- Legislation to remove the LDA exception to FARA registration, which permits foreign agents, under certain circumstances, to register under the LDA instead of FARA.
- Amendments to FARA to: 1) better define activities covered under FARA; 2) Establish civil money penalties for non-filers.
- Establishing a FARA investigation unit within DOJ.
- Requiring elected officials to disclose monthly their communications with any lobbyists trying to advocate for or against a specific bill, including the disclosure of legislative/regulatory text offered by any lobbying interest.
- The Biden Administration may seek to ban lobbying by foreign governments and require foreign businesses that lobby to certify that there is no foreign government ownership in the entity.



## Police Reform and Gun Control

Criminal Justice Reform could be a first-term priority in a Biden Administration. President-Elect Biden's overwhelming political support from the African American community, his stated support for the Black Lives Matter movement, and the galvanized support for social justice across much of America would put this issue in the top tier of his legislative agenda. The overarching philosophy will focus on prevention, redemption, and rehabilitation – less on punishment.

A possible model for Biden's efforts is the bi-partisan "Safe Justice Act," which covers front-end sentencing policy through backend release policies and posits that lengthy sentences are a high-cost, low-return approach to public safety. In addition to possible legislative initiatives outlined below, federal funds will be made available to incentivize state and local law enforcement programs to improve policing at the street level, including a ban on chokeholds and restrictions on "no knock" warrants. Senate Republicans will resist enacting such broad proposals, and will likely promote alternatives such as the "Justice Act" introduced in June by Senator Tim Scott (R-SC).

Methods for structurally reducing mass incarceration include sentencing reform, decriminalizing marijuana (with automatic expungement of records) and emphasizing diversion/treatment for drug users, thereby reducing spending on prisons, while making significant funds available for prevention programs.

- A Biden Administration may be hostile to the private prison industry (prisons, phones, commercial bail, private diversion programs, immigration detention facilities).
- Biden could incorporate education initiatives such as universal Pre-K, increased Title I funding for low-income school districts, and free community college under the umbrella of a major crime prevention and social justice package.
- Appropriations for substantially increased mental health services, social service workers, substance abuse disorder treatment, public defenders, community policing, and law enforcement data collection will be strongly supported in the new administration.
- A return to the Obama-era Justice Department approach of using consent decrees with state and local authorities to address systemic misconduct by law enforcement and to restore public trust.
- On guns, Biden may be aggressive on background checks, banning assault/high capacity weapons, relinquishment of firearms by prohibited individuals, and supporting extreme risk "red flag" laws.



## Tax Reform

Tax reform in the near-term will be influenced by two major factors: (1) whether to extend or modify the provisions of the **Tax Cuts and Jobs Act of 2017** (many of which expire at the end of 2025), and (2) the need to raise substantial additional revenues to **offset the cost of new proposals** relating to health care, climate, infrastructure, and other areas. The Biden Administration has made a number of proposals that in the aggregate **would raise an estimated \$4 trillion** over the next 10 years. Senate Republicans will oppose most elements of the Biden plan, and will block legislation that results in an aggregate tax increase.

**Major Biden Tax Proposals.** Following is a checklist of some of the new proposals that would have the largest budget impact:

- Increase **corporate rate** to 28%
- Apply 12.4% **Social Security taxes to incomes above \$400,000**
- Tax **capital gains**, dividends at ordinary rates for individuals with incomes above \$1 million; tax unrealized capital gains at death
- Reduce **global intangible low-tax income** deductions from 50% to 25%
- **Limit itemized deductions** to 28% of value
- Eliminate **real estate tax preferences**, including like-kind exchange deferrals
- Phase out **qualified business income deduction** above \$400,000 of income
- 15% minimum tax on **global book income**
- **Restore pre-TJCA rates** on individuals and families with incomes **over \$400,000**
- Tax credit for **family caregivers** of individuals with physical and cognitive needs
- **No tax increases** for individuals and families with incomes **under \$400,000**
- Lower **estate tax** exemption to \$3.5 million and increase rate to 45 percent (\$7,000,000 per married couple)

**Senate Finance Committee Agenda.** Senator Mike Crapo (R-ID) is expected to take over as Chairman of the Senate Finance Committee if Republicans retain their majority. He can be expected to be an advocate for extending many of the expiring provisions of the 2017 TCJA. Top committee Democrat Ron Wyden (D-OR) is expected to be strongly supportive of the Biden tax proposals. He has advocated for significant changes affecting upper income taxpayers, such as **taxing capital gains** for those making above \$1 million on a “mark-to-market” basis.





## Technology and Telecom Policy

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The new Congress will be confronted with a long and growing list of technology issues affecting communications, financial services, broadband, consumer protections, and more. President-Elect Biden has not provided detailed proposals relating to technology and telecommunications but can be expected to support House Democrats in the areas described below.

- **Data Privacy:** Congress has been at an impasse on moving major data privacy legislation, despite actions taken by California and other states to enact major data privacy laws that move toward the European “General Data Protection Regulation.” The California Privacy Rights Act (“Proposition 24”) approved on Tuesday will put more pressure on Congress. Issues such as preemption and private rights of action have made the debate more partisan. During his Senate career, President-Elect Biden backed proposals that were “anti-encryption” as part of counterterrorism legislation, but it is unclear how much this will affect his views on new proposals that protect individual privacy. In addition to broad data privacy legislation, Congress will also consider placing new restrictions on Chinese-affiliated companies subject to data disclosure laws in China.
- **Social Media Liability:** President-Elect Biden has called for changes to section 230 of the Communications Decency Act, treating social media platforms and other content providers as publishers. There is growing bipartisan consensus in Congress to amend the current liability shield, although no agreement yet on details.
- **Fintech Regulation:** As third-party technology providers increasingly interact with regulated financial institutions to improve the efficiency of the financial system, expand access to credit, and improve consumer convenience and choice, Congress faces difficult decisions about how to modernize the current federal-state regulatory structure. The House Financial Services Committee has begun this analysis, and efforts of the House Financial Technology Task Force can be expected to accelerate.
- **Cybersecurity:** Biden has called for cybersecurity investments to protect the electric grid and greater protection of critical infrastructure.
- **Artificial Intelligence:** The Biden Administration is likely to support strong anti-bias regulation of AI and for the digital economy generally. This is especially likely as it relates to law enforcement, housing, and employment.
- **Telecommunications:** Most observers expect the Biden Administration to restore net neutrality rules. The Federal Communications Commission, with a new Democratic majority, can be expected to reassert jurisdiction over broadband and impose net neutrality rules. Biden has proposed a \$20 billion investment in rural broadband.



## Trade Policy

Even though the U.S. Constitution gives Congress the power to impose and collect taxes, tariffs, and duties, and to regulate international commerce, it is the President who wields most of the power over trade policy and enforcement. (Injury determinations in trade remedy cases are made by the U.S. International Trade Commission, an independent agency.) This is because Congress has enacted numerous laws delegating ever more authority over trade to the President. Thus, during the next four years, President-Elect Biden has the power to exercise enormous control over trade policy and enforcement issues that are critical to the U.S. economy, U.S. companies and their workers, and U.S. trading partners.

### As President, Biden's trade agenda may:

- **Be more focused on multilateral** action to resolve trade conflicts, particularly with China;
- Aggressively enforce U.S. trade remedy laws to protect American businesses and workers from unfair import competition;
- Prioritize **reshoring of medical and other critical supply chains** to protect U.S. economic and national security;
- Delay negotiating new trade deals, because Biden has said he would not enter into new trade agreements “until we’ve made major investments here at home, in our workers and our communities;”
- **Use the USMCA as a template** for negotiating new trade agreements, focusing in particular on the priorities of labor and environmental enforcement;
- Take a leadership role in developing a consensus on **reforms to the WTO**. It would be unlikely to continue the Trump Administration's strategy of blocking the appointment of replacement judges to the WTO Appellate Body;
- **Work more closely with U.S. allies to put pressure on China** to stop its unfair trade practices and reform its state-run economy, though the substance of Biden's China trade policy could be similar to that of President Trump; Biden has vowed to stand up to Beijing, and he has close ties to organized labor, which has condemned “China's denial of basic labor rights,” and China's “massive subsidies to its domestic companies and the predatory practices of its state-owned enterprises, which have cost millions of U.S. jobs and gutted [the U.S.] manufacturing base;” and
- Use trade policies to **combat global warming**.

### Thus, a Biden Administration:

- Might not prioritize a major rollback of the Section 301 tariffs that President Trump imposed on Chinese products;
- Could **use the Section 301 tariffs on Chinese products as leverage to negotiate deeper Chinese concessions** on key structural economic issues including, among others: Chinese theft of U.S. companies' intellectual property; China's forced technology transfer of U.S. businesses in China; and Chinese subsidies to state-owned enterprises (SOEs); and
- Could **enforce strong export controls against China** and continue the Trump Administration's intense scrutiny of Chinese investments in the United States.

### Joe Biden's desire to rebuild relationships with U.S. allies to help confront China on trade and other issues:

- Could deter Biden from utilizing Section 232 of the Trade Expansion Act of 1962 to impose national security tariffs and/or quotas on autos and parts; and
- Could incentivize Biden to **lift the Section 232 steel and aluminum tariffs** the Trump Administration imposed on U.S. allies in 2018 – though that would not be an easy step for Biden, because of U.S. steel industry and the Steelworkers Union pushback, which could delay removal of the tariffs.

### Trade Promotion Authority:

- Congress and the President must enact legislation renewing Trade Promotion Authority (TPA), which expires on July 1. But that could be difficult because of differences between House Democrats and Senate Republicans over possible changes to the law, which allows for an up or down vote to approve a trade agreement in each chamber, without amendments, in exchange for Congressional involvement in the negotiation of trade agreements.



# Transportation and Infrastructure

President-Elect Biden will pursue transportation and infrastructure policies that not only support transportation efficiency and job growth, but also clean energy, and mitigating climate change. Biden has committed to rejoin the Paris Climate Agreement and put in place policies that would bring the U.S. to net-zero emissions by 2050. He has proposed a \$2 trillion infrastructure plan to promote clean energy and modernize current U.S. systems. House and Senate Republicans also support significant infrastructure investments, but there is no bipartisan consensus on how to fund comprehensive legislation.

## Key Elements of the Biden Infrastructure Proposal

- **Roads and Bridges:** \$50 billion in the first year to repair existing roads, highways, and bridges; expedited permitting; boost long-term surface transportation funding to states that adopt smart climate design and pollution reduction options
- **Electric Vehicles:** Build a national system with 500,000 charging stations; restore full electric vehicle tax credit; \$5 billion over five years at DOE for battery and storage technology
- **High Speed Rail:** Expand Northeast Corridor to southern states; develop California High Speed Rail; connect coasts through the Midwest and great west; further electrify Amtrak and freight rail lines, reducing diesel fuel emissions
- **Light Rail, Urban Transit:** Install systems in metro areas of 100,000 or greater by 2030; invest in pedestrian, cyclist, and micromobility vehicles
- **Airports:** Double funding for FAA Airport Improvement Program
- **Freight Infrastructure:** \$3.5 billion for competitive BUILD grants and INFRA funding; invest in inland waterways, freight corridors, freight rail, transfer facilities, and ports; Increase Army Corps of Engineers funding by \$2.5 billion for lock modernization
- **Climate Resiliency Job Training:** Invest and train in coastal restoration; resilient infrastructure design, construction, and evaluation; natural solutions
- **Electric Grid:** Build a “21st century power grid” to distribute clean energy; expand regional electric markets to promote renewables and demand-response
- **Energy Efficiency:** Restore residential, business efficiency tax credits; funding for low-income weatherization, expansion of Property Assesses Clean Energy (PACE) Program; restore solar investment tax credit; construct net zero carbon federal buildings
- **Drinking Water:** Double funding for clean drinking water and water infrastructure programs; focus on low-income areas, with decreased local match requirement to repair existing systems
- **Broadband:** \$20 billion for rural broadband; support for build out of municipally-owned broadband networks
- **Public Schools:** \$100 billion to address health risks and improve energy efficiency



# Committee Chairs: House

Committee	Chairman	Ranking	Committee	Chairman	Ranking
Agriculture	D. Scott (GA), J. Costa (CA), or M. Fudge (OH) (replacing C. Peterson)	G. Thompson (PA) (replacing M. Conaway)	Natural Resources	R. Grijalva (AZ)	B. Westerman (AR), D. Lamborn (CO), or R. Wittman (VA) (replacing R. Bishop)
Appropriations	R. DeLauro (CT), M. Kaptur (OH), or D. Wasserman Schulz (FL) (replacing N. Lowey)	K. Granger (TX)	Oversight	C. Maloney (NY)J.	J. Jordan (OH) (replacing J. Comer)
Armed Services	A. Smith (WA)	Wilson (SC), M. Rogers (AL), or M. Turner (OH) (replacing M. Thornberry)	Rules	J. McGovern (MA)	T. Cole (OK)
Budget	J. Yarmuth (KY)	B. Johnson (OH) (replacing S. Womack)	Science	E.B. Johnson (TX)	F. Lucas (OK)
Education & Labor	B. Scott (VA)	V. Foxx (NC)	Small Business	N. Velazquez (NY)	T. Balderson (OH) (replacing S. Chabot)
Energy & Commerce	F. Pallone (NJ)	M. Burgess (TX), B. Latta (OH), or C. McMorris-Rodgers (WA) (replacing G. Walden)	Transportation & Infrastructure	P. DeFazio (OR)	S. Graves (MO)
Financial Services	M. Waters (CA)	P. McHenry (NC)	Veterans Affairs	M. Takano (CA)	G. Bilirakis (FL), M. Bost (IL), or J. Bergman (MI) (replacing P. Roe)
Foreign Affairs	B. Sherman (CA), or G. Meeks (NY) (replacing E. Engel)	M. McCaul (TX)	Ways and Means	R. Neal (MA)	K. Brady (TX)
Homeland Security	B. Thompson (MS)	M. Rogers (AL)	Ethics	T. Deutch (FL)	J. Walorski (IN) (replacing K. Marchant)
House Administration	Z. Lofgren (CA)	R. Davis (IL)	Intelligence	A. Schiff (CA)	D. Nunes (CA)
Judiciary	J. Nadler (NY)	S. Chabot (OH) (replacing J. Jordan)			



# Committee Chairs: Senate

Committee	Lead Democrat	Lead Republican	Committee	Lead Democrat	Lead Republican
Agriculture	D. Stabenow (MI)	J. Boozman (AR) (replacing P. Roberts)	HELP	P. Murray (WA)	R. Burr (NC) (replacing L. Alexander)
Appropriations	P. Leahy (VT)	R. Shelby (AL)	Homeland Security	G. Peters (MI)	R. Portman (OH) (replacing R. Johnson)
Armed Services	J. Reed (RI)	J. Inhofe (OK)	Judiciary	D. Feinstein (CA)	C. Grassley (IA) (replacing L. Graham)
Banking	S. Brown (OH)	P. Toomey (replacing M. Crapo)	Rules	A. Klobuchar (MN)	R. Blunt (MO)
Budget	B. Sanders (VT)	L. Graham (SC) (replacing M. Enzi)	Small Business	B. Cardin (MD)	R. Paul (KY) or T. Scott (SC) (replacing M. Rubio)
Commerce	M. Cantwell (WA)	R. Wicker (MI)	Veterans Affairs	J. Tester (MT)	J. Moran (KS)
Energy	J. Manchin (WV)	J. Barrasso (WY) (replacing L. Murkowski)	Indian Affairs	B. Schatz (HI) (replacing T. Udall)	J. Hoeven (ND)
Environment	T. Carper (DE)	S. Capito (WV) (replacing J. Barrasso)	Ethics	C. Coons (DE)	J. Lankford (OK)
Finance	R. Wyden (OR)	M. Crapo (ID) (replacing C. Grassley)	Intelligence	M. Warner (VA)	M. Rubio (FL) (replacing R. Burr)
Foreign Relations	R. Menendez (NJ)	J. Risch (ID)	Aging	R. Casey (PA)	S. Collins (ME)

*NOTE: Due to the Georgia runoff elections and the potential impact on the Senate majority, it is not clear if final selections for Senate Committee Chairmen will be made until after those elections are held on January 5, 2021.*





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