

WEBINAR

The Biden Administration and Divided Government—What to Expect from Washington and How to Navigate Policy Agendas in Times of Change

DECEMBER 8, 2020

Speakers: Jamie Gorelick, Alyssa DaCunha, Rob Lehman, Jon Yarowsky



Webinar Guidelines

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- Submit questions via the Q&A feature
- Questions will be answered as time permits
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WEBINAR
Speakers



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A low-angle shot of the U.S. Capitol dome, showing the top of the dome with the Statue of Liberty on top. The sky is blue with scattered white clouds. A semi-transparent red rectangle is overlaid in the center of the image.





Setting the Scene



President-Elect Biden's Cabinet

 Vice President Kamala Harris	 State Antony Blinken	 Treasury Janet Yellen	 Defense Lloyd Austin
Attorney General TBD	Interior TBD	Agriculture TBD	Commerce TBD
Labor TBD	 Health & Human Services Xavier Becerra	Housing & Urban Development TBD	Transportation TBD
Energy TBD	Education TBD	Veterans Affairs TBD	 Homeland Security Alejandro Mayorkas

Cabinet-level officials*

 White House Chief of Staff Ronald Klain	 White House OMB Director Neera Tanden	CIA Director TBD	EPA Administrator TBD
 Director of Nat'l Intelligence Avril Haines	US Trade Representative TBD	Small Business Administrator TBD	 US Ambassador to the UN Linda Thomas-Greenfield



Strategic Advice and Potential Recommendations

Conduct an issues inventory

- Business issues
- COVID-19 activities
- Personnel and compensation issues (e.g., CEO compensation, layoffs)

Develop a proactive plan

- What are your legislative and regulatory priorities and what can your company live with? How will you engage with policymakers to shape policy in your favor? Limit potential business risk?
- Survey key relationships: who are your champions and detractors?
- Reassess consultants and trade organization memberships

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Political Landscape



Key Obstacles for Biden if Republicans Retain Control of the Senate



Cabinet nominations

- Republicans could block certain Biden **Cabinet selections**
- This could impact Biden's ability to appoint **progressive nominees**
- A closely divided Senate and House puts a thumb on the scale against nominees from either body



Judicial nominations

- Republicans could attempt to block a substantial number of **Biden's judicial nominations**
- Majority Leader Mitch McConnell (R-KY) thwarted many judicial picks in the final two years of Obama's presidency



Legislation

- Though Democrats and Republicans may cooperate in some policy areas such as COVID-19 relief, a GOP-controlled Senate would likely **block Biden's more progressive policy proposals**
- Biden could attempt to convince some **moderate Republicans** to support his agenda



Investigations

- Senate Republicans could launch probes into the **2020 election** or restart investigations into **Biden's family**



President Trump's Executive Actions on Coronavirus Relief

One executive order and three memoranda signed by the president on 8/8/20

DEFERRAL OF PAYROLL TAX COLLECTION

Memorandum

- **Delays the collection of payroll tax collection** from September 1 to December 31 for workers making less than \$4,000 every two weeks (\$104,000/year)
- Trump does not have the authority to make the deferral a permanent tax cut, but called on Congress to take action on a permanent cut

STUDENT LOAN PAYMENTS

Memorandum

- Extends student loan payment relief through the end of the year
- **Waives all interest on student loans held by the federal government** through 2020 and defers payments until December 31

UNEMPLOYMENT BENEFITS

Memorandum

- Extends unemployment aid at **\$400/week** through December 6 or until funding runs out
- **Calls on the states to pay for 25%** of the unemployment benefits (\$100 per person)
- Directs **\$44 billion to be taken** from the Department of Homeland Security's Disaster Relief Fund to pay for the unemployment benefits

EVICCTIONS

Executive order

- Does not extend the eviction moratorium that lapsed in July
- Calls on the HHS Secretary and the Director of the CDC to **"consider" whether additional measures to halt evictions are necessary** to stop the additional spread of coronavirus
- Calls on the HUD and Treasury secretaries to **identify federal funds that could provide assistance to renters and homeowners** struggling to pay rent or mortgages, but does not provide a clear process for this

- Congress has the power to allocate spending, and so Trump's executive actions would likely need congressional legislation
- Lawsuits will likely be filed regarding the legality of the orders



Four Pillars



COVID-19/Healthcare

Controlling COVID-19, treatment, testing, vaccine distribution



Economic Recovery

COVID-19 relief package, infrastructure, state payments, school and hospital funding



Racial Equality

Diversity and fairness



Environment

Climate and Environment Justice



Potential Rollback of Trump Policies via Executive Order

TOPIC

DETAILS



Environment

- **Rejoin the Paris Climate Accord**
- Reinstall or expand Obama-era **mileage standards**, reversing the Trump administration's decrease of annual fuel economy increases from 5% to 1.5% through 2026
- Reinstall **mercury and air toxics standards**, an Obama-era policy that mandated that power plants use certain mercury pollution controls



Foreign policy

- **Strengthen relationships with our allies**, calling world leaders before his inauguration to say "we're back and you can count on us again"
- Rejoin the **World Health Organization (WHO)**, which Trump withdrew from in July, and restore American leadership



Healthcare

- Restore all Trump administration limitations on the **Affordable Care Act** and instruct his administration to **drop the federal lawsuit** to strike down the ACA
- Reverse the Trump administration's rollback of Obama-era health policies



Immigration

- **End family separations** at the border and prosecution of parents for minor immigration violations
- Reverse EO 13769, known as the **Muslim ban** by opponents
- Reverse the public charge rule
- Reverse Trump administration policies that have reduced the refugee program, and would seek to raise the admissions cap



Biden's Priorities in the First 100 Days

Immigration

- Create an **immigration reform** bill, which would include a **path to citizenship** for immigrants, an increase in the number of immigration and asylum judges, and provide healthcare for immigrants detained at the border

LGBTQ policy

- Enact the **Equality Act**, which would ensure equal rights under the law for LGBTQ+ Americans
- Direct his Cabinet to ensure the Act is enforced across all federal department and agencies
- Direct federal resources to help prevent violence against transgender women, particularly transgender women of color

VAWA

- Pass the **Violence Against Women Act**

Unions

- Create a cabinet-level working group that will solely focus on **promoting union organizing** and **collective bargaining** in the public and private sectors

Gun violence

- Direct the FBI to produce a report detailing cases in which **background checks are not completed** within 10 business days
- Direct the AG to deliver recommendations for **restructuring the ATF** and related Justice agencies
- **Repeal protections** for gun manufacturers and **closing background check loopholes**

Taxes

- Eliminate the **2017 tax cuts**
- **Double the taxes** that companies who have gone overseas have to pay on foreign profits

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Industries Impacted



Key Issues by Industry

- Financial Institutions
- Technology, Media and Privacy
- Healthcare
- Trade
- Energy and the Environment



Anticipated Executive Branch Oversight Activity



Federal Reserve

- Continued oversight of financial institutions' safety and soundness
- Scrutiny of potential credit defaults and implications for banks at sunset of stimulus programs
- Efforts to address racial economic inequality



Office of the Comptroller of the Currency

- Rigorous examinations of financial institutions
- Potential CRA rule changes



Consumer Financial Protection Bureau

- Increase in enforcement, including higher penalties
- Fair lending and anti-discrimination focus
- Emphasis on those harmed by the COVID-19 recession (e.g., mortgage forbearance and foreclosure issues)
- Concentration on payday lenders, student-loan servicers, and ensuring access to credit/banking



Securities and Exchange Commission

- Increased emphasis on corporate governance mandates and more disclosure
- Potential rollback of Trump Administration regulatory exemptions and push for new investor-protective rules



Department of the Treasury

- Focus on anti-money laundering investigations and enforcement
- Continued attention to Financial Stability Oversight Council matters and related issues



Department of Justice

- Key divisions to watch include:
 - False Claims Act
 - Civil Rights
 - Antitrust



Biden's Policy Priorities for Financial Institutions

A Biden Administration can be expected to try to return to an Obama-era approach to financial regulation, with a particular focus on consumer protection and minimizing systemic risks; although a Republican-controlled Senate could pose a significant obstacle to reform.



Reinforce Dodd-Frank

- Strengthen provisions to protect against systemic risks and prevent banks from becoming “too big to fail”



Increase CFPB enforcement, higher penalties

- Reassert CFPB's power to regulate consumer lending
- Focus on credit reporting



Review corporate tax rates and loopholes

- Propose increasing corporate tax rate and incentives to bring business back to U.S.
- Financial transactions tax
- Book profits tax on firms making over \$100 million in net income



Expand access to financial services for the unbanked and underbanked

- Encourage the Federal Reserve to set up a real-time payment system for faster check cashing
- Provide accessible service locations through postal banking



Bankruptcy reform

- Streamline filing process
- End rules that make it difficult to discharge student debt



COVID-19

- Review implementation of programs like PPP
- Real estate-related issues (e.g., mortgage servicing forbearance, eviction moratoria, commercial leveraged loans)



Scrutiny of profit-related issues

- Executive compensation and accountability
- Stock buybacks/dividends



Environmental, social, and corporate governance issues

- Climate change and sustainability
- Diversity and inclusion; pay equity
- Lending to hot-button industries (e.g., firearms, fossil fuels)



Focus on underserved communities

- Fair lending and anti-discrimination push
- Investment in low/middle-income and minority areas



Provide relief for small businesses

- COVID relief
- Focus on minority- and women-owned businesses



Technology, Media, and Privacy

Reigning in the power of “Big Tech”

- Stringent enforcement of antitrust laws / updating the laws to respond to new concerns
- Enhancing consumer privacy protections

Section 230 of the Communications Decency Act

- Addressing illegal and harmful content online, including hate speech and misinformation, by amending Section 230



Healthcare Regulations Biden Could Reinstate



Short-term limited duration health plans

Use of pre-tax accounts for health insurance

Essential health benefits criteria



Redefining nondiscrimination provisions in the ACA

Title X funding revisions

Religious and moral exemption criteria for contraceptive coverage



State “Empowerment Waivers” section 1332 waiver standards

Streamlining Medicare appeals

VA’s use of telehealth



Trade: Global Collaboration and National Security

Biden has stated he will continue to be “tough” on China

- Biden Administration would likely implement a similar crackdown to the Trump Administration on Chinese tech being used for infrastructure
- Biden Administration may continue to ban Chinese companies and products based on national security concerns

The key difference between the two is their approach:

- Biden would likely use a multilateral approach (e.g., work with European allies) and would likely develop a more standardized process to deal with the national security concerns



Labor Regulations Biden Could Change



Wage protection

Trump admin. action

Reversed progress towards Obama-Biden rule to extend overtime pay



Proposed action

Ensure workers, including domestic and farm workers, are paid fairly for working overtime; increase minimum wage to \$15/hour



Labor rights and unions

Trump admin. action

Issued executive orders that limited federal unions' powers; supported "right to work" laws



Proposed action

Repeal "right to work" laws, pass the PRO Act, and increase union recognition

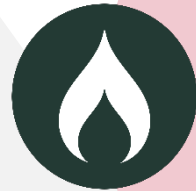




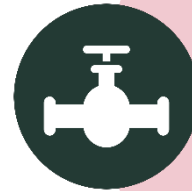
Environmental Regulations Biden Could Reinstate



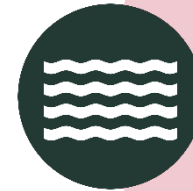
Corporate
Average Fuel
Economy
(CAFE)
standards



Methane
standards



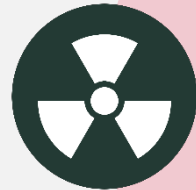
Section 401
Clean Water
Act rules



Waterways of
the United
States
(WOTUS) rule



Clean Power
Plan (CPP)



Mercury and
Air Toxics
Standards
(MATS) rule



Arctic drilling
ban



Endangered
Species Act
(ESA)
protections



Carbon
capture and
storage (CCS)
requirements



Coal ash rule



Offshore
drilling safety
rules



Sage grouse
habitat
protections

*Some regulatory changes listed have not yet been finalized by the Trump administration or are facing legal challenges.



Questions

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