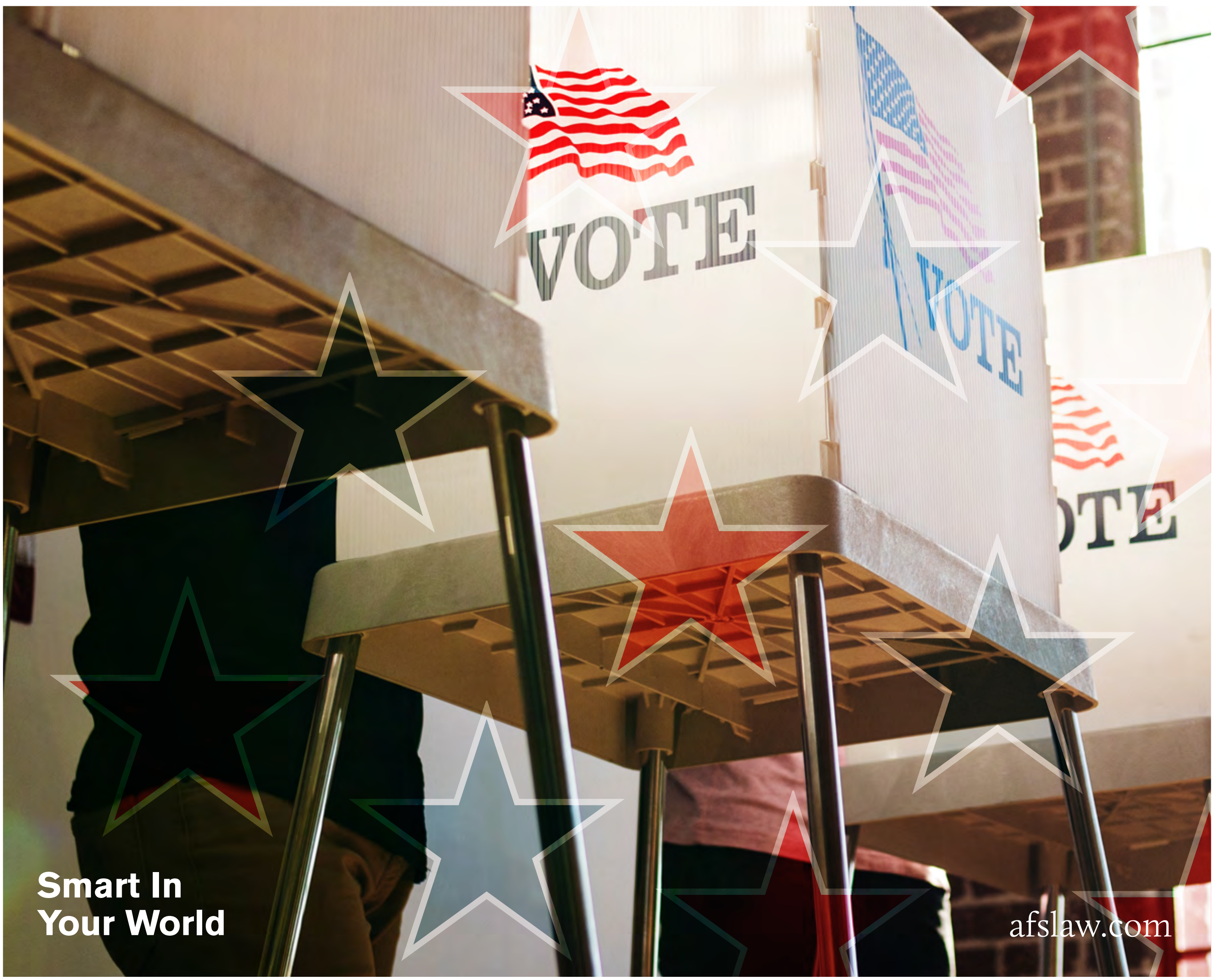
2024 Election Analysis



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Our Washington Insiders React

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Voters know that elections have consequences, and this week's presidential election will likely have major consequences for the next four years. And it is what the American people have chosen.

This thing called self-government is remarkable.

Every even numbered year the Constitution gives the American people the opportunity to grab the steering wheel and, with their votes, decide on a new direction for our country. The people who cast those votes create our government. They decide our President, who runs our school boards, and everything in between. This week we saw a massive turnout of voters making their choices about our government. And when the votes were counted, there were some big changes in the federal government with a newly elected President Trump. In addition, a Senate that has been controlled by Democrats became a Senate with Republicans in control. It is expected the Republicans will also continue their majority in the US House. That means at the federal level our government will be controlled in the House, the Senate, and the White House by one political party. And, that is likely to have major consequences for a number of significant public policies.

The major issues in this national election included immigration, economics, trade issues, tax policy, and much more. These are areas likely to see change with this new leadership in our government.

One of the first things the new President said he will want to change is the Energy and CleanTech policies put in place by the previous Administration. President-elect Trump does not believe climate change exists and says he wants to eliminate the Biden Administration's electric vehicle and renewable energy incentives that are designed to reduce greenhouse gas emissions. He also wants to maximize the drilling of oil and gas and mining of coal to make the United States the energy leader in the world.

President-elect Trump wants to impose substantial tariffs on goods coming to the United States and says he wants to use the revenue to reduce income taxes. That is not likely to happen, but the larger debate about tax reform will be a major and controversial issue.

President-elect Trump will also inherit some difficult foreign policy issues, including the Russian invasion of Ukraine as well as the war in Israel and instability in the Middle East.

Despite the aggressive and sometimes angry debates between presidential candidates, and with one party to soon control the federal government, they know that working together is the best way to solve problems.

SEN. BYRON DORGAN
Government Relations Practice Co-Chair

Our Washington Insiders React

The clear Republican win in the national election guarantees a fundamental change in policy direction. Republican control of the White House, with potential working majorities in Congress, will shift the responsibility for setting policy to the GOP. They have control, they now face the challenge of hammering out a workable program with a coalition to implement it.

The Trump Administration will be challenged to honor the commitments made on the campaign trail. The voters have approved a direction, but awarded something shy of a detailed mandate. The ambitious promises for growth, security, and rising incomes will need to be addressed with novel strategies for tax reform, aggressive tariff policy, border security, and energy independence that will rattle the status quo and invite resistance.

A successful second Trump term will require strong cabinet leadership and a willingness to convert campaign rhetoric into concrete policy. The Administration will be challenged to deal with issues that were glossed over by the presidential contest: deficit spending, health care, tax reform, entitlements, and technology policy. The White House will have to move quickly to deliver on big problems like border security and managing inflation. And this, at a time when there is no public consensus about the problems themselves, or how to finance their resolution.

This Congress will see major battles over spending, taxation, regulation, and reform without the institutional collaboration of the past or bipartisan dialogue.

Government may not be entirely divided, but clearly the country still is.

REP. PHILIP S. ENGLISH
Government Relations Practice Co-Chair

Our Washington Insiders React

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I would be less than honest if I didn't say that the election was a real gut punch for me. That said, Democrats should, and I believe will, turn their attention to influencing legislation and policy rather than simply making it. Democrats in Congress still have a lot to offer and I believe will find common ground with Republicans on a number of issues as we move forward.

There are some issues that are regional, not partisan, in nature and thus offer a good chance for collaboration. Similarly, Senate Republicans are not monolithic any more than Senate Democrats, and there may be a strong need to pull in Senate Democrats to be able to get legislation through, particularly if the filibuster rule is preserved.

SEN. DOUG JONES
Counsel

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About the Government Relations Practice

Our team offers insight into the inner workings of Capitol Hill and the Executive Branch from former Members of Congress, Administration officials, and senior staff.

The Government Relations practice at ArentFox Schiff is one of the most experienced, effective, and respected lobbying teams in the nation. One of the principal reasons for our success is that our group is bipartisan and bicameral. That comprehensive service makes ArentFox Schiff a go-to firm for clients facing their most important public policy issues.

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Learn More About Our Government Relations Group

Overview

ArentFox Schiff 2024 Election Analysis

Our Insiders Preview What Happens Next

The United States awoke on November 6 to a changed and improbable political landscape. With around 140 million votes cast and counted as of 11 AM, the nation has re-elected Donald J. Trump as President and has given him a US Senate Republican majority and potentially a US House of Representatives Republican majority as well. As fatigued and steadfast local and state election workers continue to sort through ballots, we continue to look to the finalization of tallies for some remaining Senate and House races to determine the nature and size of Congressional majorities.

Challenges abound for those who will serve in the 119th Congress and in the second Trump Administration. From the nation's economy (with a debt ceiling that requires legislative attention in early 2025) to tax and trade policy, national security and foreign conflicts, immigration, health care, and innovations like artificial intelligence (AI), policymakers will have their hands full.

The Trump transition teams have been working behind the scenes for weeks to identify suitable agency heads, political appointees, and agenda items to press in the early days of the new Administration. It is too early to tell with much certainty who will be nominated to various Cabinet positions and who will take on senior White House roles, but if his first term is a model, we can expect significant numbers of business executives to take on roles and be part of his effort to reshape the federal government. Former Trump Administration officials have established and populated several think tanks in Washington during their four years in exile, and we believe that the new Administration will not take long to effectuate its impact via Executive Orders and draft legislation. We know that for several months, Republican leaders in Congress and their staffs have been developing a game plan for tackling massive tax legislation in the new Congress, given the approaching expiration of President-elect Trump's signature Tax Cuts and Jobs Act (TCJA) provisions. If there is a House Republican majority, that could bode well for using the expedited parliamentary procedures known as "budget reconciliation" to advance tax legislation with a simple filibuster-proof majority. If we find that the Democrats have seized the House majority when all results are known, that will give them significant leverage to influence any such tax legislation as well as other key Trump initiatives.

In this 2024 cycle, as one-third of the Senate was up for re-election, the Democrats and Independents who caucus with Democrats had substantially more Senate seats to retain than Republicans (23-10). We note that in the upcoming 2026 cycle, the roles will be nearly reversed as 20 Republicans and 13 Democrats will have their terms come to a close. As of this writing, the Senate will have no fewer than 52 Republicans, thanks to victories by Gov. Jim Justice (R-WV), Tim Sheehey (R-MT), and Bernie Moreno (R-OH) for seats held currently by Democrats. Republicans may still pick up a 53rd seat in Pennsylvania, and other races with Democratic incumbents are too close to call, such as those in Arizona and Nevada. It is worth noting that due to retirements in strongly Democratic states, the new Senate will for the first time have two African American women Senators, Rep. Lisa Blunt Rochester (D-DE) and County Executive Angela Alsobrooks (D-MD). With Sen. Mitch McConnell (R-KY) having announced that he will not seek another term as Republican Leader, within the next 10 days we will see an internal Senate Republican race to succeed him, with Sens. John Thune (R-SD), John Cornyn (R-TX), and Rick Scott (R-FL) expected to seek the mantle and take responsibility for helping their new President-elect accomplish his legislative objectives. We expect Sen. John Barrasso (R-WY) to ascend to second in command as Senate Republican Whip as part of that process. We anticipate that Senate Democratic Leader Chuck Schumer (D-NY) will continue in that role in the minority.

As of this writing, the House results, per the Associated Press, show 206 Republicans, 191 Democrats, and 38 races yet to be called. Republicans have flipped a net of four seats so far, but many of the closest races are not yet final, and some of those featured at-risk Republicans in the Northeast and California. If the Republicans retain the majority, one can expect Speaker Mike Johnson (R-LA) to seek another term in that role and to leverage the close working relationship he has been developing with President-elect Trump. House Majority Leader Steve Scalise (R-LA) and current Judiciary Committee Chairman Jim Jordan (R-OH) are often mentioned as possible successors to Speaker Johnson. However, if the majority continues to grow for the Republicans in the House as elections are called, that might give new momentum to the current Speaker to keep his hard-fought position. It will be worth watching whether the House Republicans will agree to change their rules from the current Congress that permitted any Member to initiate a motion to vacate and to try to remove the Speaker from his position. There has been some discussion of creating a higher bar than simply one Member so that the institution can operate a bit more efficiently. Meanwhile, we expect Rep. Hakeem Jeffries (D-NY) to retain his role as leader of the Democrats, ably assisted by other leadership members like Reps. Katherine Clark (D-MA) and Pete Aguilar (D-CA).

Our Government Relations group has attempted in the pages that follow to provide a quick assessment of how the federal elections will impact key policy areas of greatest interest to ArentFox Schiff clients and friends. We will update the alert as needed in the coming days to reflect final developments as votes are counted. We encourage you to reach out to your ArentFox Schiff points of contact to discuss these issues further.

Budget & Appropriations

BUDGET AND APPROPRIATIONS

Republican Gains Mean More Budget Battles to Come

The presidential and congressional election results likely have set the stage for another potential showdown between Republicans and Democrats on budgetary matters. With the Republicans winning back the White House and gaining control over the Senate, they are in a position to follow through on their call for cuts and restrained growth in federal government spending, while Democrats in the minority will attempt to hold the line and follow through on campaign promises to enact more spending in key areas, such as affordable housing, education, and child care. If Republicans wind up controlling the Senate and the House, it is likely that they may pursue the option of using the budget reconciliation process, which would only require a simple majority in the Senate to pass, to force Republican spending and tax policy choices. This may be an attractive strategy for Republicans given that they are unlikely to win the Senate by a filibuster-proof majority. If the Republicans do score an election trifecta, winning the White House, the Senate, and the House, the absence of a presidential veto will allow them to pursue wholesale changes to President Joe Biden's legislative victories. Before the battles over the FY 2026 budget can begin, however, the current Congress and White House must reach a deal to finish the FY 2025 appropriations bills and prevent a partial government shutdown.

FY 2025 Appropriations

In the coming weeks, prior to the December 20 expiration of the current continuing resolution (CR), the lame-duck Congress might again tackle the FY 2025 appropriations bills, attempting to assemble either an omnibus bill that contains all 12 individual bills for the FY that started on October 1 or a set of smaller compilations of individual appropriations bills known as minibuses. Generally, lame-duck sessions are more lame than productive, but there are at least four potential outcomes of the budget negotiations. First, Republicans could refuse to go along so that they could wait for January or February when they control the White House and have majority status in at least one House of Congress and thus more leverage on spending levels. Second, Republicans could agree to have the current appropriations process concluded so they can start the next Congress with a clean slate and use their new power in Washington to exercise their will over spending priorities. Third, Congress could enact another CR that could extend for the remainder of the FY. Fourth, Congress could fail to pass some or all of the appropriations bills (or a further CR), which would cause a partial government shutdown. Although we will not be certain of the path forward until the lame-duck Congress returns to Washington, it is unlikely that Congressional leadership on both sides would support either a government shutdown or a yearlong CR, which would lock in spending at current levels, including spending for defense (which Republicans would like to increase) and domestic social programs (which Democrats support). Both Democrats and Republicans may agree to clear the decks to focus on the coming budget battles when the new President presents his first budget to Congress.

Negotiations to conclude the current budget process likely will extend into December before there is a final deal. Congressional staffers are already joking about canceling their holiday plans. The final spending bill could also be joined with other outstanding legislation, such as the must-pass National Defense Authorization Act (NDAA), the languishing Farm Bill, expiring health care programs extenders, and other measures, such as pending AI legislation, which could sweeten the pot for Members to support the omnibus appropriations bill. It is worth noting that earmarks, which also are sweeteners for many Members that are included in the FY 2025 appropriations bills, would be lost if Congress only enacted another CR for the balance of this FY. This much is clear, Republican leaders in the House, faced with more Members who will oppose any omnibus appropriations bill than the Republicans' narrow majority will allow, may need Democratic votes to pass a final spending bill.

Debt Ceiling Legislation, Entitlement Reform, and Spending Caps

One way the fight over fiscal policy may come to a head is when the government is projected to hit its borrowing limit in early 2025. The Fiscal Responsibility Act (FRA), enacted in June 2023, suspended the debt limit until January 2, 2025. After that date, the law mandates that the debt limit will be reinstated at an amount equal to the outstanding debt at that time. The new President and Congress will face a deadline for action after the US Department of the Treasury determines how much additional time will be available by taking "extraordinary measures" to avoid default if Congress fails to act. Without Congress acting to raise the limit, our country will face another scary moment like in 2011, when the nation came close to defaulting on its debt. The Republican leadership in the House and Senate have made it their priority to rein in government spending. Although most Republicans have been willing to raise the debt limit, more recently they have been calling for commensurate spending cuts as a prerequisite to doing so. This tension between Democrats who will call for a clean debt limit extension and Republicans who will insist on commensurate spending cuts could define the budget negotiations in 2025. As in the past, new discretionary spending caps, which have expired, would govern at least the next two appropriations cycles. In addition, entitlement programs may also be part of the conversation, with several influential Republicans continuing to support Medicare and Social Security cuts. One proposal would increase the age for collecting Social Security benefits from 67 to 70. Increases to the premiums for health coverage have also been suggested as a way to reduce overall federal spending. Sen. Ron Johnson (R-WI) suggested ending the entitlement status of Medicare and Social Security and having Congress appropriate funds annually for their beneficiaries. (Note that this idea is not widely popular within the Republican ranks.) Regardless of whether the Democrats insist on a clean debt ceiling increase or Republicans press concurrent spending cuts, the impact of this debate is being watched very closely by financial markets in the United States and abroad. Although inflation is easing and the US stock market remains strong, a prolonged debate on the debt ceiling — or worse, a partial government default — would rattle markets here at home and around the world. The debate over the debt ceiling and potential cuts to social programs will dominate the political discourse as the President and Congress take their seats in January of 2025.

Tax

TAX

Congress to Weigh New Tax Agenda With New Administration

The next Congress will weigh tax policy in a perfect storm and it is hard to conceive of a sector of the economy or any individual that won't have a stake in the debate. A presidential campaign waged around generous new tax benefits, based on competing visions of tax reform, will collide with massive projected budget deficits and *de facto* looming tax increases produced by the near-term phase-out of the 2017 TCJA. Congress will face the daunting task of honoring vague but generous presidential campaign tax commitments while navigating equity issues, mitigating a looming fiscal challenge, and avoiding economic mistakes. The gulf between the two parties in their view of tax policy will render traditional legislative compromises nearly impossible.

The new President laid out an aggressive tax program on the campaign trail. However, navigating it through Congress will require compromise, even with the budget reconciliation process available. Much of the Administration's program will have to be narrowly targeted, delayed, made temporary (extenders), or even postponed. Both parties have committed to resisting tax increases on the Middle Class; otherwise, they share limited common ground.

An Ambitious Overhaul of the Tax Code

As President-elect Trump returns to the White House, he brings with him a panoply of tax commitments that are difficult to reconcile with massive and unsustainable federal budget deficits. President-elect Trump remains committed to an extension of his signature TCJA, while having competed in an election bidding war for support from economically impacted working families. The Trump program (shaped heavily on the campaign trail) includes all of the tax law's expiring provisions, plus additional tax relief, with limited provision for offsets and missing details. While many of his proposals lack clarity, the challenge for the Trump Administration will be to craft a tax agenda that incorporates highlights of his campaign planks with undisclosed spending changes and possibly new sources of revenue. The last, most likely, will seek to include revenues from new ambitious tariff initiatives- a source unavailable under standard budget practice.

For the Trump Administration, a new tax agenda will face daunting math and withering criticism from deficit hawks, tax equity critics based on imputed distributional effects, and any business interests disappointed by inevitable tradeoffs. This policy minefield will challenge the frail Trump coalition in Congress and the Administration team at Treasury.

We anticipate that the Trump tax program will initially emphasize a general extension of the TCJA. On the business side, we expect the Treasury to seek an extension of bonus depreciation on capital investments, even though the TCJA originally included a phase-out of expensing because of costs. An early priority will be to restore the full expensing of research and development costs, a bipartisan priority reflecting the needs of innovation firms. The permanency of these changes will be contingent on budget challenges.

For the individual side of the tax code, the TCJA reauthorization will be threaded into the Trump agenda with new ideas from the campaign trail. The latter include:

- Eliminating the taxation of tip income.
- Exempting Social Security benefits from taxation.
- Exempting overtime pay from taxation.
- Creating an itemized deduction for auto loan interest.
- Restoring the deductibility of state and local taxes (SALT).
- A potential tax credit for family caregivers.
- The elimination of double taxation of Americans living abroad.

The equity, efficiency, and cost of these provisions will depend heavily on how they are ultimately shaped in legislation.

For the business side of the tax code, the Trump Administration is likely to seek a lower corporate tax rate, as well as a lower corporate tax rate (possibly 15%) on domestic production. The latter could be framed as a restoration of the Domestic Production Activities Deduction. The Treasury will prioritize retention of the Section 199A deduction for owners of pass-through businesses.

We expect that the Trump Administration will seek to defray the cost of its tax program by seeking the repeal of green energy tax incentives created in the Inflation Reduction Act (IRA). These provisions are little understood by the public and have proven significantly more expensive in practice than predicted. We expect that the tax debate will open a broader reassessment of climate policy and invite compromise on the design of remaining green energy subsidies along with the tax treatment of fossil fuel production generally.

We also expect the upcoming tax policy debate to reopen questions about how Washington policymakers evaluate the cost, economic consequences, and fairness of tax changes and how tax programs impact growth, national competitiveness, and economic mobility.

An Activist Treasury

In the second Trump Administration, the Treasury Secretary will face daunting challenges. The nominee will need to articulate a clear tax reform agenda and implement a sophisticated strategy, while reassuring financial markets. The Treasury Secretary will also need to engage the Organisation for Economic Co-operation and Development on international tax standards and defend the dollar as a reserve currency.

Potential nominees include financier John Paulson, a Trump advisor, and former United States Trade Representative (USTR) Robert Lighthizer, a proven negotiator with deep roots on Capitol Hill.

Congressional Leadership

The tax-writing committees of Congress (Senate Finance, House Ways and Means) will have familiar leadership, steeped in the process and with their own established priorities. Their legislative skills will receive an early test as Congress will be obliged to cue up revenue priorities early in the process in response to budget rules and legacy campaign commitments.

The Senate Finance Committee will be chaired by Hill veteran Sen. Mike Crapo (R-ID), a strong proponent of pro-growth tax policy and the TCJA extension, who has already floated the idea of extending current tax policy as a baseline free of offset requirements. This would simplify the GOP path forward but invite blowback from deficit hawks. His counterpart will be current Chairman Ron Wyden (D-OR), a strong exponent of progressive tax policy.

Based on current vote counts as of this writing, it appears that the House Republicans have retained majority status and thus the Chairman will continue to be Rep. Jason Smith (R-MO), a combative populist opposed to progressive tax policies but sensitive to working-class concerns, while the Ranking Member will still be longtime Democratic leader Rep. Richard Neal (D-MA), an able advocate for child tax credits and other refundable working-class tax benefits. These four enjoy wide support among their colleagues and exhibit pragmatism.

Health Care & Life Sciences

HEALTH CARE & LIFE SCIENCES

Health Care and Life Sciences Policy

The 2024 election has the potential to shape the face of health care and life sciences policy up and down the ballot. Among the policies at issue are those impacting access to care, drug costs, reproductive rights, medical innovation, and the tax credits to help Americans afford insurance coverage on the Obamacare exchanges.

As we wait to see which party will control the House in the 119th Congress, we can anticipate some potential actions impacting the health and life sciences sectors at the beginning of a second Trump presidency through executive or regulatory actions with support from a Republican Senate.

Trump Administration and Drug Pricing

When it passed several years ago, one of the most controversial pieces of the IRA authorized the federal government to negotiate prices for high-cost prescription drugs. Amid opposition from the pharmaceutical industry and several lawsuits from drug manufacturers, the government's price-setting regime will soon enter the second phase of selecting a new batch of high-cost drugs for negotiation, as well as new prices scheduled to go into effect in 2026 for the 10 drugs included in the first round of price negotiations. Despite the absence of Medicare's drug price negotiations in President-elect Trump's campaign platform, Congressional Republicans continue to have expressed support for repealing the negotiation regime and could persuade moderate Democrats who did not previously support legislative attempts to require manufacturers to negotiate prices. Rep. Buddy Carter (R-GA), who is a candidate to lead the Energy and Commerce Committee's Health Subcommittee, called Medicare's drug price negotiations "the worst legislation I've ever witnessed in ten years in Congress." Other Republicans, including likely incoming Senate Finance Committee Chairman Mike Crapo (R-ID), also said he would remove and replace the negotiation regime. Meanwhile, Rep. Frank Pallone (D-NJ), who drafted portions of the IRA, hailed the recent release of the negotiated drug price list as a "significant moment in our fight to lower prescription drug costs." He is joined by other Congressional Democrats in championing Medicare's drug price negotiations and recently released legislation to extend price negotiations to the private health care insurance market.

With President-elect Trump's populist tendencies and actions on insulin pricing in his first term, this is an item to watch. It is also worth noting that during the first Trump Administration, he and his team looked for ways to peg domestic drug prices to lower foreign drug prices, so even if that is not a preferred approach, they can be expected to look for ways to corral such prices.

Trump Administration and Entitlement Spending

Federal spending on Medicare and Medicaid continues to be a concern for fiscally-minded Republicans. Safety net programs will be front burner but it's unclear what final policies might look like. For example, it is possible that President-elect Trump would be open to being viewed by history as the

President who saved the Medicare and Social Security Trust Funds, especially as his platform states his support of no cuts for seniors and no changes to the retirement age. How the Trust Funds are funded long-term is a complicated question, and increasing taxes on paychecks that go toward Social Security and Medicare is sure to be viewed by many in Congress as a tax increase on the working class, which would also likely concern President-elect Trump given his populist approach to the 2024 campaign. We can expect his new Administration to focus on ways to constrain Medicare spending, and they will look to "fraud and abuse" as lower-hanging fruit than rejecting types of coverage. We expect new Centers for Medicare and Medicaid Services (CMS) leadership to look carefully at all aspects of the Medicare program and both how and how much the government pays for such care and associated medicines and devices.

With regard to Medicaid, during the last Trump Administration, there were efforts to block grant this program and to reduce the rate of growth in federal spending on lower-income Americans' health care. Medicaid rolls saw unprecedented expansion during the COVID-19 pandemic; however, states' efforts to ensure strict eligibility with the program have led to pared-down coverage rosters. Despite the drop in people insured by Medicaid around the country, conservative legislators in Washington continue to worry about the cost of Medicaid, which now covers more than 74 million Americans. Recent proposed Republican Medicaid reforms would limit the Federal Medicaid Assistance Percentage provided to states, which would limit states' ability to pay for care for low-income and disabled individuals.

Should the House Republicans achieve majority status, the Budget Reconciliation process could permit attempts to modify the Medicaid program and achieve such savings and it will take much effort from stakeholders to preserve the program as it stands today. In addition, the debate on work requirements for able-bodied recipients has received attention throughout the years, and we believe work requirements for Medicaid, and other anti-poverty programs, will be considered once again as a means of reducing spending.

Other Trump Administration Health Policy Initiatives

Depending on bandwidth and other pressing issues, we could see a 2nd Trump Administration effort to reorganize or maximize efficiency within federal agencies focused on health care. In addition to frustration with red tape and bureaucrats, we believe there is residual Republican frustration with inefficiencies that impacted the government's response to the COVID-19 pandemic and which some Republicans believe contributed to Trump's 2020 electoral loss. There could be efforts to modify the Centers for Disease Control, the National Institute of Health (NIH), and even the US Food and Drug Administration (FDA) but we note that some significant changes might require legislation and some bipartisan support to get through the Senate, assuming retention of the filibuster for most legislative matters. While the bipartisan "surprise billing" law was signed during the first Trump Administration, there could be more in the area of price transparency that he and his team would want to focus on.

Expectations for a Republican Majority in Congress

Republican control of Congress likely means an accelerated approach to health care policy that we have not seen during the past several years of bipartisan/bicameral dealmaking on issues related to drug pricing, Medicaid, pharmacy benefit managers, and site-neutral payments. As Republican control of Congress could become the new reality in Washington, efforts to remove subsidies for public insurance through the Affordable Care Act (ACA) and expand access to Association Health Plans will see attention. It is highly likely that some impactful health care policymaking over the next two years will come in the form of rescinding the Biden Administration's most expansive Executive Orders, rulemaking, and other federal agency guidance in conjunction with legislative efforts to tear away the IRA's system to negotiate drug prices. Despite Republicans' long-running calls for lower health care spending, repealing and replacing the ACA, and injecting transparency into the marketplace, it could take some time to achieve consensus among the incoming crop of conservative leaders about their near-term policy goals.

Key Players

Sen. Susan Collins (R- ME) will lead the Senate Appropriations Committee for Republicans and Sen. Patty Murray (D-WA) will likely serve as the Ranking Member of the Senate Appropriations Committee, and they have historically seen eye to eye on many health programs, including that National Institutes of Health. We expect current Ranking Member Bill Cassidy (R-LA) to assume the Chairmanship of the Health, Education, Labor, and Pensions (HELP) Committee, and Sen. Bernie Sanders (I-VT) to become the ranking Democrat. A similar swap of the gavel is likely at the Finance Committee, where we expect Sen. Mike Crapo (R-ID) to lead the effort on Medicare, Medicaid, and tax-related health care policies while current Chairman Sen. Ron Wyden (D-OR) will serve as Ranking Member. During his time in Congress, Sen. Crapo has highlighted efforts to reduce regulations on health care insurers, including rolling back the medical device tax. He also opposed the IRA's efforts to negotiate drug prices and will likely lead Republican efforts to repeal the IRA's drug pricing provisions.

In the House, not only is majority status still unclear but there will be highly anticipated turnover at the Energy and Commerce Committee, where Chair Cathy McMorris Rodgers (R-WA) is retiring. The Energy and Commerce Committee has broad jurisdiction over myriad health policy issues, including the ACA, Medicaid, Children's Hospital Graduate Medical Education, and conducts oversight over federal agencies including the NIH, FDA, and other programs administered by the US Department of Health and Human Services. The incoming Republican leader of the Energy and Commerce Committee, which will be determined later in November during the House Republican Conference's Leadership elections, will likely be chosen from among senior Energy and Commerce Members Brett Guthrie (R-KY), Bob Latta (R-OH), and Richard Hudson (R-NC). Rep. Guthrie currently chairs the Health Subcommittee, where he has shown a willingness to partner with retiring top Democrat Anna Eshoo (who is likely to be replaced by longtime health care policy expert Rep. Diana DeGette (D-CO), an author of the famous 21st Century Cures Act).

If Rep. Guthrie is elevated, Reps. Buddy Carter (R-GA) and Gus Bilirakis (R-FL) are likely to vie for the Health Subcommittee Chairmanship. Any GOP Chair will likely be working with Rep. Frank Pallone (D-

NJ), who is expected to retain the top spot among Democrats when House Democrats conduct their Leadership elections at a date to be determined. The House Ways and Means Committee, which has substantial health policy jurisdiction including Medicare, health care taxes, and insurance premiums, will likely continue to be led by Rep. Jason Smith (R-MO) and Rep. Richard Neal (D-MA).

If Republicans maintain control of the House, Rep. Tom Cole (R-OK), the current Chairman of the House Appropriations Committee, will serve again as Chair. Among Democrats, Rep. Rosa DeLauro will serve as the Ranking Member. These two members have a long history of working in a bipartisan fashion to limit the size of annual appropriations bills and remove controversial policy riders that could prevent passage of bills. Finally, it remains to be seen whether the House will permit earmarks for non-profit organizations in the Labor, Health and Human Services, Education appropriations bill. House Republicans continue to have deep divisions about the need to fund these entities among home-state health projects in spending bills given the large number of non-profit organizations in Democratic districts compared to Republican districts.

Affordable Care Act Tax Credits

While the ACA, which provides health insurance coverage for 21 million Americans, is the law of the land and woven into the nation's health care infrastructure, leaders in Washington remain in intense discussions about how long, or whether to, extend the Premium Tax Credits (PTCs) that offset the cost of insurance for people who are enrolled in health plans offered on the ACA exchanges — commonly referred to as Obamacare. The ACA has been the highest-profile health care issue in Washington for over a decade. Last extended in 2021, PTCs enables low-and-middle income Americans to purchase health insurance — often with additional subsidies from states and limits on cost-sharing. The PTC expansion is scheduled to expire on December 31, 2025, and Congressional Democrats are pushing for a permanent extension of the PTC in the looming omnibus or CR vote that will happen later this year. Republican policymakers in Washington, including current House Speaker Mike Johnson (R-LA), have concerns about an extension of the PTC due to the $335 billion cost over the next 10 years. Should the issue remain unresolved after January 1, it is worth noting that some top Trump health care advisers have said this year that the enhanced subsidies do not improve plans or lower premiums and that they "paper over" the plans' low value. Additionally, some Republicans have raised concerns about fraudulent enrolments by insurance brokers to move people into ACA plans.

Food and Drug Administration

During much of the first Trump Administration and the Biden Administration, Members of Congress on both sides of the aisle have expressed concern about the extended timeline for approval of new drugs and medical devices. The recent arrival of devices made with, and using, AI has only added to the agency's to-do list and developing area of expertise. Republicans are expected to build on their calls for oversight after hearings during the 118th Congress to examine the FDA's slow response to the infant formula crisis, critical drug shortages, and unlicensed electronic cigarettes and vapes.

340B Drug Discount Program

The 340B program ensures low-income health centers, Ryan White Clinics, and hospitals serving low-income patients can obtain drugs at discounted prices and reinvest the savings back into patient care. The 340B Drug Discount Program remains one of the highest priorities among health-focused legislators in Washington and has received attention from House and Senate legislators over the past session of Congress for many reasons. Democrats and Republicans continue to be concerned about the limitations imposed on covered sites by participating pharmaceutical manufacturers. Additionally, legislators are worried about the mushrooming number of contract pharmacies that have opened in recent years. These two dynamics have driven Congress' engagement into the issue over the past two years and led to the release of comprehensive bills in both chambers to impose restrictions on manufacturers and transparency on covered entities. As the 119th Congress begins, our experts expect policymakers on both sides of the aisle to continue wrestling with questions about the original intent of 340B and whether drugmakers must provide discounted drugs to patients using offsite pharmacies not located inside of covered entities.

Anti-Obesity Drugs

Over the past year, policymakers on both sides of the aisle, and the general electorate, have become well aware of the benefits of semiglutide and tirzepatide — one of several popular weight loss prescriptions commonly referred to as GLP-1 drugs. Despite the immense popularity of GLP-1s, the House Ways and Means Committee's approval of Medicare Part D coverage for GLP-1s, and bipartisan support in Washington due to the health benefits that accompany their use and the high price tags of these drugs, have caused most policymakers, and CMS, to withhold support for expanding Medicare coverage, especially in light of estimates such as one by the Congressional Budget Office that costs would increase by $35 billion if Medicare began to cover anti-obesity drugs. The issue continues to gather political momentum and broad public support and will likely garner attention from the next administration and the 119th Congress as policymakers look for ways to offset the cost of covering GLP-1s in Medicare.

Artificial Intelligence

ARTIFICIAL INTELLIGENCE

Technology and Artificial Intelligence

The election of Donald J. Trump and the transfer of power to Republicans in half of Congress provides an opportunity to shift Washington, DC's technology and innovation agenda in a conservative fashion. While the Biden Administration's emphasized growing the nation's tech infrastructure, setting a foundation for government-assisted investments in AI across industries, and limiting the size of the nation's largest tech companies (Amazon, Google, Facebook, and Apple) through Federal Trade Commission (FTC) lawsuits, the tech industry will face a different set of concerns in the Republican-led Congress about censorship, online speech, privacy, anticompetitive practices, and the future of AI. A Trump Administration is likely to echo some of the concerns laid out by the Biden Administration (i.e., online platforms are a danger to young people) and could also pursue additional efforts to rescind the industry's liability shield, known as "Section 230." The House Committee on Energy and Commerce released and debated bipartisan legislation to winddown Section 230, and our experts expect the Trump Administration to reach across party lines to open up free speech online. Finally, we expect the core of Republicans' technology agenda during the 119th Congress to emphasize repealing portions of the IRA's broadband investments — a smaller role for the FTC — which sued several tech companies during the Biden era, letting the industry deploy investments in future technologies, like AI, without interference from government regulations to spur entrepreneurship and job creation.

Broadband and Tech Equity

Congressional Republicans and the Trump Administration will likely reverse many of the equity-focused requirements imposed on the tech industry by the Biden Administration. Over the past four years, Democrats in Washington, DC, have pushed the nation's technology sector to close the skills gap for workers of all education and employment levels. This "bottom-up approach" fell in line with the Democrats' efforts to promote environmental, social, and governance (ESG) through government policy and to reduce inequity among low-income, disabled, minority, and rural populations that are not strongly reflected in the workforces of big tech companies. Congressional Republicans and the Trump Administration are expected to immediately turn back on these requirements, starting with federal investment in high-speed broadband deployment that were mandated by the IRA.

In a similar fashion, Congressional Republicans are likely to limit the access to broadband supports for consumers, like the long-delayed extension of the Affordable Connectivity Program that was administered by the Federal Communications Commission (FCC). This COVID-19-era program to bridge the "digital divide," and reduce inequality in the classroom and the economy, is viewed with suspicion by Republicans, including Sen. Ted Cruz (R-TX), the incoming Chairman of the Senate Commerce Committee. While promoting investments in broadband has always been a bipartisan issue in Congress with Democrats prioritizing low-income households in the urban core and Republicans championing rural communities, Republicans are expected to clamp down on the social mandates, like childcare requirements to reduce barriers to work, that have accompanied federal broadband funding during the Biden Administration.

Data Privacy and Civil Rights

During the 118th Congress, bipartisan policymakers in the House Committee on Energy and Commerce, led by Chairwoman Cathy McMorris Rodgers (R-WA), once again failed to advance a comprehensive data privacy bill. Due to conflicts over justice and civil rights protections, disagreements about the need for a national standard, and fights about pre-empting existing state privacy laws, the 118th Congress failed to advance the American Privacy Rights Act. Sen. Cruz was not a supporter of the privacy bill introduced and debated in the House and has made his preference know for alternative approaches to regulating tech companies. Rather than focusing on the impact of technology and algorithms on the health, safety, housing, and employment of minority and protected groups, Sen. Cruz continues to highlight the bias that exists towards conservative voices online — a stance also echoed by President-elect Trump after being banned from several social media platforms.

Artificial Intelligence

In recent years, Americans and policymakers in Washington, DC, have become increasingly fixated on AI, especially generative AI (GenAI), and the economic and social considerations associated with the technology. While the emergence of the technology has led to increasing interest among Members of Congress in both parties to set a foundation for its use in education, defense, research, and health, policymakers on the right continue to raise questions about whether, and how, the federal government should regulate AI. There is great interest in the issue in Washington, DC, however, many of the major players in Congress have introduced legislation to address very different problems regarding AI in the coming years. AI working groups have sprouted up in each chamber of Congress, within most committees, and among various caucuses like the New Dems. Additionally, economic competition with China and the pace of America's advancement in AI research continues to be a driving factor in motivating Congress to include a comprehensive AI bill in the omnibus or defense authorization that will pass later this year.

Among the stakeholders enveloped in the AI debate, Members of Congress land in two categories: (1) advocates for creating a new federal agency to regulate AI or (2) those who prefer to let the private sector innovate without stringent government oversight. While these perspectives cross party lines, Sen. Cruz stands out as one of the most prominent advocates of reducing government intervention into the development of AI. He also stands out as an opponent of several bipartisan bills that moved through the committee during the 118th Congress because they would stifle innovation and limit the development of our domestic AI industries.

The Biden Administration has requested billions of dollars from Congress to scale the National Artificial Intelligence Research Resource and proposed an AI Bill of Human Rights. Our experts expect Congressional Republicans and the Trump Administration to move away from these ideas in pursuit of free-market AI development.

Sen. Chuck Schumer (D-NY), the highest-ranking Democrat in the Senate and key architect of this summer's AI Policy Roadmap, has also pressed colleagues to finalize comprehensive legislation that will shape the future of AI in the United States over the next decade. Sen. Schumer and several bipartisan colleagues have prioritized ideas that would provide substantial funding for AI research, industry-specific rules for AI use, transparent model testing, and workforce upskilling in any future AI package. Due to the looming swap in control of the Senate and return of Trump to the White House, our experts believe the new fault lines in Washington, DC, will complicate any major financial investments in AI later this year. Outside of calling for enhanced defense applications and enhancing domestic energy production to boost AI development, President-elect Trump is likely to walk away from the Biden Administration's work to categorize high-impact uses of AI, limit the use of AI in elections and television advertisements, define privacy and liability standards for AI use, or structure the many intellectual property and copyright issues that accompany AI use.

International Trade & Investment

INTERNATIONAL TRADE & INVESTMENT

International Trade Policy

President-elect Trump is a known quantity on trade, but his advocacy of managed trade and protectionism for key manufacturing sectors was unpredictable during his first term. Trump has demonstrated a transactional approach to trade issues, typically used as leverage for diplomatic issues to obtain his preferred outcomes. Just in the last week of the campaign, President-elect Trump called for tariffs on Mexican imports ranging from 25% to 100% as a means of getting the Mexican government to “close its borders” to illegal immigration and the exportation of drugs to the United States.

As we look ahead to a second Trump term, and Republican control of the Senate and possibly also the House, we have provided below some thoughts as to what is possible in trade policy in the coming months and years. There is no question that companies subject to tariffs or that fear the impact of new tariffs will need to ensure that policymakers understand their concerns from the outset since this will be a focal point for a new Administration.

President-Elect Trump’s Expected Positions on Trade

In his Agenda 47, President-elect Trump details his Trump Reciprocal Trade Act, which would impose tariffs on imports to the United States which match the cost of tariffs placed on US exports to the same country. “Reciprocal trade” has been a fringe idea and would require Congressional approval; so far, it has enjoyed limited bipartisan support in Congress. This reciprocal trade proposal, paired with proposals for a universal baseline tariff and a Strategic National Manufacturing Initiative, are how President-elect Trump suggests the United States will reduce its trade deficit and create more domestic jobs.

The idea of withdrawal by the United States from the World Trade Organization (WTO) seemed like an improbability until recently. During the first Trump Administration there was no attempt to withdraw. Although the WTO attracted domestic political criticism, the Administration contented itself with undermining the international body's appellate process. There is a growing speculation in trade circles that the next Trump Administration might seek to formally withdraw from the organization.

Based on commentary since the conclusion of his first term and ideas generated by the advisers Trump surrounds himself with, we believe these items to be at the forefront — though there many more trade subjects, such as an impending review of the United States-Mexico-Canada Agreement — of the coming Administration. Specifically, we believe Robert Lighthizer will be an active trade adviser to the President, though perhaps in a different role than USTR. Lighthizer has publicly advocated for reciprocal tariffs as a means to reduce US trade deficits with China, Germany, Ireland, etc., and we believe shoring up the domestic auto and steel industries will be a focus.

Congressional Trade Outlook and Priorities

As of this writing, we expect Congressman Jason Smith (R-MO) to remain the Chairman of the Ways and Means Committee and Congressman Richard Neal (D-MA) to remain the Ranking Member. Chairman Smith is an ally of President-elect Trump, but as he is from a state which relies on access to foreign markets for agricultural goods and access to foreign components for manufacturing, we do not believe he would outright risk another tariff war. Congressman Neal has not historically shown a significant interest in trade but might be persuaded to negotiate an agreement on providing President-elect Trump with Trade Promotion Authority in exchange for renewing Trade Adjustment Assistance (TAA), which in the case of divided government, could present a legislative vehicle for other trade preference programs as some congressional Democrats have begun to insist on TAA in exchange for renewing the Generalized System of Preferences (GSP) in addition to TAA.

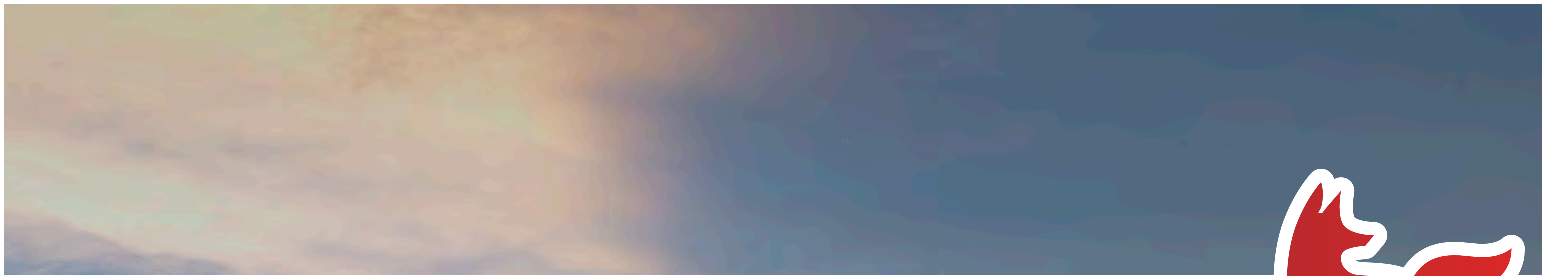
We expect Senator Mike Crapo (R-ID) to assume the Chairmanship of the Senate Finance Committee and Senator Ron Wyden (D-OR) to remain the Ranking Member. Under a Crapo chairmanship, we expect moderate trade policies will likely prevail and there will be strong Congressional oversight of USTR and the President's trade agenda, as we experienced when Republicans controlled Congress during the first two years of Trump's presidency. Keep in mind that in the first half of 2025, the Senate Finance Committee and the full Senate will use considerable time to review and consider individuals nominated by the next President for Cabinet positions and senior agency officials, such as USTR and Secretary of the Treasury. The committee's agenda will also be focused on major tax laws expiring in 2025, and perhaps attempts to shore up the Medicare and Social Security Trust Funds.

However, the House Foreign Affairs Committee does have some jurisdiction over trade policy including the Export Control Act and the African Growth and Opportunity Act (AGOA). Current Chairman Michael McCaul (R-TX) is limited by House Republican Conference rules on how many terms he can serve as leader of the committee. The open race to replace him in the House Republican Conference is led by Rep. Ann Wagner (R-MO) and Rep. Darrell Issa (R-CA).

We expect Congressional trade priorities to be driven by the need to counter foreign entities of concern, such as China and Russia. In the Trump Administration, this could come in the form of maintained or new tariffs on imports from China, though we expect Congress to advocate for a tariff exclusion process as they previously have. The Biden Administration has proposed changes to US Customs and Border Protection's (CBP) *de minimis* threshold, or shipments valued at less than $800, but bipartisan legislative changes could be possible in what remains of the current Congress. We expect the Trump Administration to maintain these regulatory changes to *de minimis*. US demand for sustainably and ethically sourced critical minerals to meet clean energy needs will likely drive the Trump Administration to pursue agreements with allies, such as was done with the US-Japan Critical Minerals Agreement, and perhaps revisit how critical minerals can be sourced domestically. Finally, we do not expect President-elect Trump to significantly alter the Biden Administration's proposed rules on outbound investment and we could see continued bipartisan efforts in Congress to codify stricter outbound investment standards via the FY 25 NDAA.

There are assorted trade preference programs in need of reauthorization which may find a path forward. Long a bipartisan point of agreement, AGOA expires in September 2025 and has already generated bipartisan legislation in the Senate from Sens. Christopher Coons (D-DE) and James Risch (R-ID); there is currently no companion legislation in the House. As of 2024, there are currently 32 African nations eligible for the AGOA benefit of duty-free access to the US market for certain goods. The most notable trade preference programs — GSP and the Miscellaneous Tariff Bill — had historically enjoyed bipartisan support and uneventful paths to reauthorization until they expired at the end of 2020 and were unable to hitch a ride on the CHIPS Act. As previously noted, renewing GSP became a policy congressional Democrats have demanded in exchange for TAA, complicating renewal for this program which helps ease the import costs of specific goods.

We believe additional bipartisan focus will remain on digital trade and digital services taxes. The Biden Administration's change to long-standing US policy regarding digital trade at the WTO is a bipartisan Congressional concern likely to receive scrutiny from the Trump Administration. In 2019, France implemented a digital services tax which became the subject of a Section 301 investigation by USTR and the imposition of retaliatory tariffs on French products, such as wines, was debated by USTR. These digital services taxes largely harm American technology companies' access to foreign markets and becomes a possible opportunity for retaliatory tariffs by Trump if other nations implement these taxes.



Energy & Cleantech

ENERGY & CLEANTECH

Significant Shift in Policies on Energy and Clean Technology Anticipated

With his first term as a guide, it is fairly likely that a Trump Administration will move quickly to undue the previous administration's policies on energy and clean technology as he reaffirms his stance that climate change is not a priority issue. For example, President-elect Trump has promised to eliminate the Biden Administration's electric vehicle mandate through Executive Order on day one of his term. Additionally, a shift in direction on greenhouse gas emissions, fossil fuels, and the Paris Agreement.

The Next Trump Administration

Long a skeptic of the impact of climate change, President-elect Trump prepares for his second term with an energy and clean technology plan similar to his policies in his first term. Namely, deregulation of the sector and incentivizing the development of additional fossil energy with a focus on oil and natural gas production. Trump's ultimate goal is positioning the nation as the dominant global energy producer by eliminating regulatory barriers for oil and gas production.

Energy Production

On the campaign trail, President-elect Trump has laid out his plan to increase domestic production of oil, gas, and coal while largely dismissing other cleaner, federal incentives like wind and solar energy. He has long been supportive of opening more public lands to energy production while arguing that this step is necessary to increase jobs and economic opportunity in those regions. Trump is also supportive of increased drilling for oil and gas in the Arctic Wilderness.

A More Robust Electric Grid

A Trump Administration must confront the stability of the nation's current electric grid. Electricity is essential to households, businesses, and all sectors. The immediate rising demand for much more power for data centers and AI is already restricting the opportunity to build new or expanded data centers. Experts predict that without massive new grid investments and new transmission capability, the AI companies that are competing with the rest of the world will not have what they need to succeed. New policies that modernize and rebuild part of the national grid system to carry the electricity to where it is needed is essential. Much of the power on the existing electric grid now comes from coal and natural gas fired power plants. Expanding the opportunities on the grid by a Trump Administration will expand the use of coal and natural gas.

Trade and Potential Carbon Border Tariffs

An issue that will likely face the United States is the development of carbon border tariffs in international trade. The European Union has tariffs on products including cement, steel, and aluminum where purchasers need to acquire carbon certificates corresponding to emissions in their imported products. These carbon pricing approaches in international trade can be difficult to enforce and could be seen as protectionist leading to major trade disputes. However, they may become a future for international trade that demands progress toward climate change goals. They could also be imposed by the United States against trade from countries that are not stringent in their environmental regulations. Although a Trump Administration will principally be skeptical of climate orthodoxy, it could entertain the inclusion of carbon border tariffs as part of a discretionary trade policy toolbox.

LNG Shipments to Europe

The future of an energy trade agenda with Europe and some others will remain uncertain. There are now seven operating US export terminals and an additional five are being constructed. In Europe, 45% of their liquefied natural gas (LNG) imports have come from the United States. President-elect Trump has indicated support for new LNG export permits. The expectation is that the US supply of LNG will continue to be available to the European demand until 2030 and likely well beyond.

Nuclear Energy

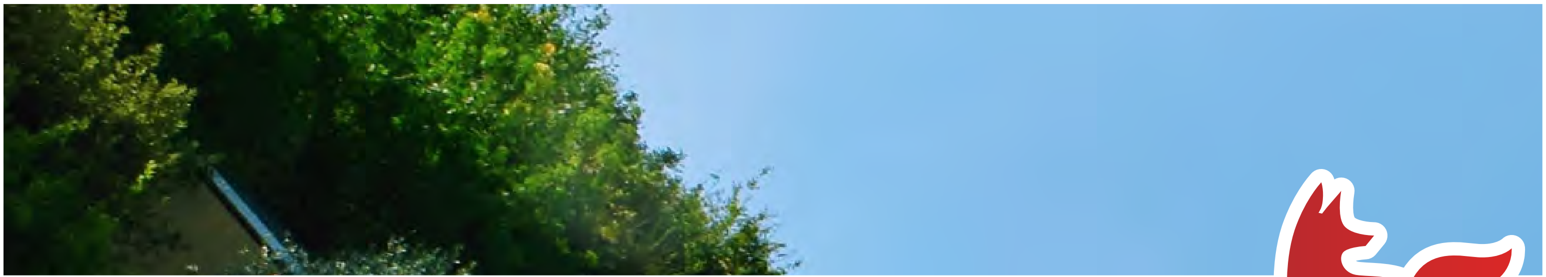
Much like Vice President Kamala Harris, President-elect Trump has indicated that he views nuclear energy as a potential opportunity for expansion and supports approaches to building next-generation nuclear reactors that will produce zero greenhouse gas emissions. A Trump Administration would be receptive to nuclear power options to provide increased reliability and capacity for the power grid in the face of rising demand and the energy needs of the technology sector.

Critical Minerals in China

The trade relationship with China for critical minerals with which to produce batteries and vehicles will become a significant problem. China controls a large amount of lithium, graphite, cobalt, nickel, and manganese. To produce major new battery capability will require a trade relationship with China to acquire these minerals, or a decision to engage in new mining domestically with other areas also seeking these minerals. Despite some opposition to additional mining in the United States, this may be a viable option for the Trump Administration. The Trump Administration’s commitment to reshoring supply chains will provide additional impetus to new domestic exploration and mining and prioritize permitting reform.

Inflation Reduction Act and Infrastructure Investment Plan

The Biden Administration’s IRA that was enacted by Congress contains a large number of energy related tax provisions. Those tax provisions are sure to be targeted by a Trump Administration and House and Senate Republicans set on repeal. However, because those provisions were legislated, it may be difficult to achieve a successful vote to repeal or modify the tax credits even if Republicans are poised to control both Houses of Congress. The same situation holds true for the Infrastructure Investment and Jobs Act (IIJA).



Environmental, Social & Governance

ESG

Environmental, Social & Governance

As President-elect Trump prepares to enter the White House and Republicans gain control of the Senate, ESG mandates in corporate America, colleges and universities, and investment funds will remain a target for reform. Over the past four years, Congressional Republicans have warned that ESG policies place the financial security of Americans at risk, and declared they have no place being discussed in corporate board rooms or public institutions. In response to the expansion of ESG policies, House and Senate Republicans have demanded that the nation's largest companies and institutions boost transparency and accountability in how ESG policies are instituted alongside companies' efforts to earn a profit, safeguard shareholders from risk, and navigate international regulations. Readers should expect the Trump Administration and Congressional Republicans to continue their efforts to strip ESG mandates out of the private sector.

Corporate America and Financial Services

At the outset of the 118th Congress, House Republicans created an ESG Working Group in response to the expansion of ESG policies in the nation's largest corporations and financial firms. While the working group initially met to determine factors that led to the increase in ESG policies, it has since identified activist-led investors, proxy voting (policies promoted by the US Securities and Exchange Commission (SEC)), and ESG rating agencies as the primary culprits that force large companies to pursue ESG targets. The most prominent targets highlighted by the ESG Working Group is the role of politicized proxy voting systems and activist investors who promote environmental and social proposals in proxy solicitations. The Working Group found that efforts to advance politically motivated shareholder proposals in proxy statements have led to an increase in time and costs for the nation's largest companies, allowing a small, vocal, and organized minority of shareholders to overwhelm the views of other shareholders. The two issues were featured in the House Committee on Financial Services hearing on September 10, and will continue to draw oversight and reform going forward into the 119th Congress.

Congressional Republicans have also charged that SEC Chair, Gary Gensler, has overstepped the bounds of the SECs' authority by pursing rulemaking or mandating company disclosures without authorization from Congress. The SEC has also been criticized by Congressional Republicans for making new interpretations of laws to justify policy changes (like ESG disclosure mandates) that Congress never intended. House Republicans in appropriations bills, hearings, and public statements have repeatedly chastised the agency for the number and complexity of disclosures that companies are required to complete due to ESG mandates from the SEC, including the climate disclosure rule. As such, Congressional Republicans have repeatedly stated that the SEC should be limited to imposing disclosure requirements that relate to material risk information, and that other risks, including climate-related risks, aren't material to public companies and the financial services industry. House Republicans on a party-line have passed anti-ESG legislation to curb the SEC's ability to require new disclosure requirements. Although the bill is not expected to advance in the Senate before the end of the year, our experts expect Congressional Republicans to roll back the SEC's disclosure requirements in the 119th Congress.

Environmental and Climate Risk

With the most recent change in control of at least the Senate and likely the House on Capitol Hill, Congressional Republicans and President-elect Trump are also likely to continue their efforts to crackdown on ESG investments to combat climate change. Republicans sitting on the House Judiciary Committee have asserted that ESG investments meant to limit climate risk run afoul of antitrust law, are an "illegal restraint of trade," and harm the oil and gas industry's ability to keep food and fuel prices low. During a June House Judiciary Committee hearing, Chairman Jim Jordan and colleagues noted that companies' investments to delay climate change and shift away from carbon emissions would lead to an increase in food and fuel prices due to lower investments in oil and gas production. The environmental and climate-focused investigations from Congressional Republicans come on the heels of a rule issued by President Biden, which overturn President-elect Trump's efforts regarding socially conscious investments by retirement plans.

Due to collective decision-making by hundreds of environmentally focused asset managers who have previously committed to combat climate change using their investment portfolios, the possibility of looming investigations and being deemed "anti-fossil fuel" will increase as Congressional Republicans continue to make the case against considering climate risks in investment portfolios. As Republicans take control of the White House, Senate, and possibly the House next year, readers can expect them to continue their efforts to send a steady stream of document requests and subpoenas to money managers who want to use their investment funds to drive down greenhouse gas emissions. Republicans in Washington, DC, have implored the Biden Administration to bring enforcement actions against green-focused investments funds, and have promised to "protect competition in the American economy."

Agriculture

AGRICULTURE

What the 2024 Election Means for Agriculture Policy

Although the outcome of the presidential election is unquestionably significant for agriculture policy in 2025 and beyond, the outcomes of the Congressional elections have more bearing on the likelihood of passing a Farm Bill before the end of the 118th Congress.

Congressional Agenda

The 2018 Farm Bill was set to expire at the end of FY 2023, with a few programs expiring in December at the end of the 2023 crop year. However, Congress has extended these programs into December 2024. Congress was unable to pass a new Farm Bill by September 30, largely because of difficulties reconciling the costs of Democrats' and Republicans' competing policy priorities. Although the House Agriculture Committee reported a Farm Bill (HR 8467) on May 24, that legislation has not been considered by the full chamber. The House Committee's bill has been described as dead on arrival by Democrats in the Senate, but as of Election Day, the Senate Committee on Agriculture had not prepared its own version. Observers who speculated that retiring Senate Agriculture Committee Chair Debbie Stabenow (D-MI) might make major compromises to avoid leaving without passing a new Farm Bill may have underestimated her commitment to protecting both the federal nutrition programs and the climate change funding provided by the IRA, as well as the palatability for Democrats of simply continuing to extend the authorizations provided in the 2018 bill.

With Republicans having won the Senate majority for the 119th Congress, we believe Farm Bill negotiations in that chamber will be delayed until Ranking Member John Boozman (R-AR) takes the gavel in January 2025. We expect Chair Boozman to use the outline he released in June as the foundation for a Republican-led Senate bill. Similarly, the Democratic framework announced by Sen. Stabenow in May is likely to be a starting point for Senator Amy Klobuchar (D-MN), who is expected to become Ranking Member in the 119th Congress, but she will undoubtedly bring her own dynamic to the negotiations.

As of this writing, it is too close to call, but if they win a majority of the seats in the House, Democrats are likely to scrap much if not all of the Republican-driven text approved in a largely partisan vote by the House Agriculture Committee in May. There is some uncertainty about whether the Democratic Caucus will select 79-year-old current Ranking Member David Scott (D-GA) as Agriculture Committee Chair in the next Congress, and Bennie Thompson (D-MS) and Jahana Hayes (D-CT) have been named as possible alternatives. Whoever takes the leadership role for Democrats will likely continue to prioritize the policies set forth in the Democrats' agenda, released in February of this year.

If Republicans retain the House majority, having the Senate majority and the White House will also give Republicans much more control over the agenda for a new Farm Bill. With the margins in each Chamber remaining small, passing a new Farm Bill would still require Members to reach across the aisle to find the common ground that has been elusive in recent months. In light of the *Loper Bright Enterprises v. Raimondo* US Supreme Court decision earlier this year, Congress may feel compelled to write legislation that is much more like regulation than it is accustomed to doing. Under these circumstances, it is difficult to imagine seeing new drafts of a Farm Bill before the Spring of 2025.

Presidential Agenda

If faced with a divided Congress, President-elect Trump will not be able to run the table legislatively, but will largely have to implement his agenda via agency action. In the wake of the *Loper Bright* Supreme Court decision, almost all agency rulemaking, new and old, should be seen as fair game for legal challenges. How the new Administration's agency heads choose to navigate this less deferential landscape in implementing policy remains to be seen.

President-elect Trump has promised to continue or revive policies from his previous administration and to roll back regulations implemented by the Biden Administration. Without providing details, in the agriculture space he has said he wants to make "improvements" to reference prices, crop insurance, dairy margin coverage, and specialty crop insurance and "to stay ahead of China with our science investments."

Agency Priorities

The conservative Project 2025 agenda, with which Trump's public statements generally align, recommends the US Environmental Protection Agency (EPA) and US Department of Agriculture prioritize agricultural production and eliminate or loosen regulations on farmers, including rules that apply to pesticides, agricultural biotechnology, and genetically modified food. The second Trump Administration is also expected to promptly end these agencies' prioritization of environmental issues.

PFAS

President-elect Trump's EPA is likely to consider downgrading the designation of perfluoroalkyl and polyfluoroalkyl substances (PFAS) as "hazardous" under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). PFAS substances are not generated by farming, but they have been found in soil and water on farms. The "hazardous" designation does not require action in all circumstances, but allows the use of CERCLA's enforcement and cost recovery tools to put the burden of investigation and cleanup on the party responsible for a release if the agency decides a release poses an unacceptable risk to human health or the environment. Removing the designation and the accompanying statutory tools for making the polluters pay could add uncertainty to the determination of responsibility for cleanup when PFAS is found on farms.

Labor

In response to a Farm Bureau questionnaire, President-elect Trump said he would prioritize "merit-based immigration." He also has announced plans to deport millions of immigrants, including some who have arrived legally during the Biden Administration, potentially exacerbating farmers' labor shortage problems.

Inputs, Energy, and Biofuels

President-elect Trump says he will lower energy prices by removing regulations and increasing domestic production of oil, natural gas, and coal. He has pledged to terminate the Green New Deal and to dismantle the Biden-Harris Administration's "net zero" policy. Regarding biofuel production, he said he "will make it our mission to export ethanol all over the world."

Trade

President-elect Trump promises to be even tougher on China in his next term, proposing tariffs of more than 60% on imports from the country which serves as the United States' largest agricultural products market. President-elect Trump also has proposed a 10% across-the-board tariff, which could ignite a broader trade war and further loss of market share for US farmers. To address the potential loss in exports, he said during a campaign stop at a Pennsylvania farm that he would enforce a trade agreement that rolled back some tariffs in exchange for China's agreement to buy $50 million in farm goods.

President-elect Trump also says he wants to renegotiate the United States-Mexico-Canada Agreement to bring jobs and business back to the United States and will push for passage of his Reciprocal Trade Act, which is intended to prioritize American producers over foreign competitors.

Tax

The President-elect has pledged to extend the 2017 TCJA, which is expiring at the end of 2025. If the Act does expire, the end of the Act's individual tax cuts would result in a heftier tax bill for most US households, including farmers and ranchers.

Anti-Poverty & Entitlements

ANTI-POVERTY & ENTITLEMENT

A Soft Hammock or a Trampoline for Enrollees

Who benefits, and for how long, are the major questions that Washington, DC, policymakers are wrestling with as they determine the future of our nation's safety net programs — especially the long-term solvency of Medicare and Social Security programs. On the campaign trail, and in the halls of Congress, Republicans and Democrats continue to discuss changes to programs that help Americans pay for childcare, afford housing, access health care, and make ends meet.

The Three-Legged Stool (Medicare, Social Security, and Medicaid)

As the nation's budget deficit continues to swell, legislators are also turning their eyes towards the major retirement safety and health care programs for seniors, disabled, and low-income people in search of savings. Of the three entitlement programs, both parties in Washington, DC, continue to pledge their allegiance to the protection of social security and Medicare despite proposing ideas to slow the growth of spending in the programs over the next decade. The existence of the "Third Rail of Politics" and voters' historical rebuke of politicians who propose reductions in benefits for seniors has not shielded Medicare from criticism. This is especially true for Medicare Part C, which allows seniors to choose privately-run Medicare Advantage plans that have ballooned in costs, provided skimpier benefits, and introduced a wave of prior authorizations and care denials in recent years. Changes to Medicare Advantage remain on the wish list of policymakers and will continue to see bipartisan interest during the next session of Congress.

As Republicans take control of the Senate and likely the House, Medicaid will also see strong interest from reform-minded legislators. Despite states' purge of people insured by Medicaid, which covers more than 70 million people across the country, the political hangover from the ACA expansion and enhanced COVID-19 flexibilities will continue to cause headaches for Republicans. In line with some state efforts to unenroll participants and implement work requirements to limit new additions to the Medicaid roster, Congressional Republicans may also pursue efforts to impose rigorous standards for who can access Medicaid. Additionally, in the instance of a Republican control of Congress and the White House, conservative lawmakers in Washington, DC, will likely pursue another attempt to block grant Medicaid, which they attempted during the 2017 reconciliation process to reduce the amount of federal money provided to states.

What's in the Labor, Health and Human Services, and Education Appropriations Bill?

The most prominent issue in Washington, DC, for nonprofit organizations working to hold together the safety net, and for the people they serve, is the size and scope of the Labor, Health and Human Services, and Education Appropriations (LHHS) bill. As the most expensive and expansive of the 12 appropriations bills, which often includes highly political provisions about abortion, charter schools, and needle exchanges, the political fortunes and budgets of safety net providers and nonprofit organizations from various industries including health care, nutrition and food services, education, and heating assistance are often caught in the fray. The House and Senate, and the two parties vying for control of Washington, DC, have vastly different approaches to funding this bill and safety net programs in general. Their diverging views are expected to remain in the 118th Congress regardless of which party controls the agenda in each chamber.

In the most recent appropriation cycle, the LHHS appropriations bill advanced by House Republicans reduced funding for safety net programs like the Supplemental Nutrition Assistance Program (SNAP), Special Supplemental Nutrition Program for Women, Infants, and Children, the Low Income Heating and Energy Assistance Program, food assistance programs for hungry seniors, and afterschool and summer learning programs for children. This approach, led by Rep. Robert Aderholt (R-AL), the Chair of the House Labor, Health, and Human Services Subcommittee, who said Republicans were “laying a foundation for transparency and fiscal responsibility in the appropriations process,” is in line with much of the rhetoric put forth by President-elect Trump on the campaign trail. Readers of this document should expect that, if elected, President-elect Trump and Congressional Republicans will continue their commitment to slashing federal spending and lowering taxes by cutting safety net programs.

House Democrats, led by Rosa DeLauro (D-CT), the Ranking Member of the House Appropriations Committee, have said the proposed bill “abandons and endangers Americans from the classroom, to the examination room, to the workplace,” and would have dire consequences for people who depend upon America's Safety net programs. In the Senate, appropriators from both parties joined together in bipartisan fashion to advance the LHHS appropriations bill out of committee. The Senate LHHS appropriations bill has higher levels of spending and larger investments in the previously mentioned safety net programs, however, the bill has not received a floor vote. Considering the political dynamics between the two parties and different levels of funding for safety net programs in the House and Senate LHHS appropriations bill, Republicans likely will support spending less money, limiting support for safety net programs after winning control of at least the Senate and likely the House and the White House. On the other hand, Democrats will likely pursue additional funding for health care, nutrition and food services, education, and heating assistance programs in the final LHHS appropriations bill.

Slowing the Growth of the Supplemental Nutrition Assistance Program

The SNAP program also remains a target for Republican legislators in Washington, who will likely continue their previous efforts to restrain the program’s growth by imposing work requirements on able bodied adults. This proposal has been floated by Republicans several times in recent congressional sessions, and also included in budget proposals released by the House Budget Committee, Republican Study Committee, and Freedom Caucus.

During the 118th Congress, Congressional Republicans, led by G.T. Thompson (R-PA), the Chair of the House Appropriations Committee, have attempted to institute inflation caps during bipartisan negotiations on the Farm Bill. Currently, the Democrats and Republicans are at loggerheads over a

Farm Bill proposal floated by Rep. Thompson to limit the cost of the SNAP program by $30 billion over the next decade. In response, Congressional Democrats have raised concerns that the inflation cap offered by Rep. Thompson will hurt the ability of SNAP participants to keep up with higher food costs over the next decade, The SNAP inflation cap remains the biggest obstacle to advancing a bipartisan Farm Bill, which has already seen a short-term extension during the 118th Congress. It remains unclear whether Democrats and Republicans can find agreement on the SNAP inflation cap, and the Farm Bill, before the end of the year.

Lowering the Cost of Raising Children

In the halls of Congress and on the campaign trail, the issue that unites Republicans and Democrats is the increasing cost of raising children. In response, several proposals to extend the Child Tax Credit (CTC), which provides a tax benefit to families raising children, have been put forward by Members of Congress from both parties and presidential candidates. In this way, the CTC stands out as a rare initiative that receives bipartisan and bicameral support in Washington, DC. Despite failing to pass earlier this year, the major tax deal negotiated by Senate Democrats and House Republicans included the child tax credit as lynchpin to bring family-focused conservatives and liberals together. Due to the support of both presidential candidates and the bipartisan backing of the idea in Congress, the child tax credit is ripe for inclusion in next year's comprehensive overhaul tax overhaul with Republican control of Congress and the White House.

Along the lines of providing supports for families with young children, the idea of boosting access to pre-k for all children has gained steam in states around the country, and Members of Congress on both sides of the aisle have embraced the concept in different ways. The cost of educating young workers remains a key concern as Americans continue to struggle to afford childcare and education for young children. Building a steady pipeline of teachers and caregivers for kids under age three has also posed challenges for legislators in Washington, and lawmakers tend to fall on different sides of the government funding versus private sector incentive spectrum based upon the structure of their home state pre-k offerings.

After President Biden’s failed attempt to push through universal pre-k in the early days of his administration, he urged Congress to come together to support our nation’s youngest learners. While Democrats in Washington have released proposals to appropriate millions of dollars to fund universal pre-k, Congressional Republicans, including Sen. Tim Scott (R-SC), have taken a different approach. Sen. Scott has offered an extension of the Child Care and Development Block Grant (CCDBG) that provides financial assistance to help educators pursue degrees and credentialing so they can advance in the education profession. As Republicans take control of the White House, and potentially Congress, in 2025, our experts expect conservative lawmakers in Washington to champion private sector approaches that incentivize new professionals to enter the field, rather than relying on the appropriations process to fund universal pre-k programs.

District of Columbia

DISTRICT OF COLUMBIA

Republican Control of White House and Senate Could Put District of Columbia Democracy and Home Rule in Jeopardy

The District of Columbia is in a unique situation regarding the impact of this year's elections because of the outsized role the federal government plays in the District. Perhaps more than any other local jurisdiction in the country, every time there is a national election, it is hard to anticipate fully what actions the new ruling party in Congress and the White House will take and what impact those actions will have on the operations of the city. As the District's non-voting Member of Congress, Eleanor Holmes Norton (D-DC) often has said, "The District has more to gain, and more to lose" than any other city. One consistency, since the city first gained Home Rule in the 1970s, has been the unwillingness of either ruling party to grant the residents of the District of Columbia the unimpeded full voting rights in Congress that are guaranteed to the residents of every other state under the US Constitution. District residents are US citizens and have voted for the President in every election since 1961; however, the US citizens who live in DC do not have a voting Member of Congress in the Senate or the House, and this has placed the city in an unenviable political situation for over 50 years.

Every law and budget passed by the Mayor and DC Council is scrutinized by Congress and, in certain situations, those laws have even been overturned by Congress. Additionally, unlike any other jurisdiction in the United States, the city must endure a litany of anti-democratic riders placed on its annual local budget. Almost every year, regardless of whether Democrats or Republicans control Congress, there have been budget riders that have forbidden spending federal or local funds on abortions, regulating guns, and creating an adult-use cannabis market. Ultimately, to avoid these federal impositions on the city, the residents of the District of Columbia must be granted the same democratic rights as the residents of every other state.

Impact of Republican Control in Washington

Republican control of the White House and at least the Senate will almost certainly prevent the long-awaited enactment of the Washington, DC, Admission Act, granting the city statehood. President-elect Trump and Republicans in Congress have consistently opposed making the District of Columbia the 51st state. Unless the Republicans are willing to change this long-held opposition to statehood, it is highly unlikely that the statehood bill, which has passed in the House twice before, will make it to the finish line during a second Trump Administration. However, District officials and statehood advocates must find new and creative ways to highlight and promote the District's lack of democratic rights, to keep DC statehood and DC democracy alive as issues during President-elect Trump's second term.

Having won the White House and at least a majority in the Senate, the Republican party is likely to continue to attempt to impose restrictive policy measures on the District of Columbia. For example, it is likely that the anti-democratic riders attached by Congress annually to the District's local budget will increase to include various social issues pursued by Republicans, such as anti-reproductive freedom, anti-trans rights, book bans, anti-gun control, and anti-drug provisions. There also is potentially an existential threat to the District of Columbia with a likely push in Congress to roll back the Home Rule powers on which the city has relied for more than 50 years. Already, in the current Congress, there are bills pending in the House and Senate that would repeal Home Rule entirely. Another way Republicans could exert authority over the District could be through the legislative reinstatement of the Financial Control Board, an authority appointed by the President that took control of local DC matters from 1995 to 2001. In 1996, the financial control board fired the leadership of DC public schools and instated a retired Army General and a new board of trustees. The Control Board lies dormant right now, but a new Republican Congress with the support of a new Republican President could amend the law to reinstate a five-member authority to manage the day-to-day operations of the DC government, undermining the Mayor and DC Council at every opportunity.

President-elect Trump also could seek to use executive authority to control the District of Columbia. During the campaign, President-elect Trump asserted that, if elected, he would "take over" DC and "clean it up." Specifically, he said, "We will take over the horribly run capital of our nation in Washington, DC, and clean it up, renovate it, rebuild our capital city, so there's no longer a nightmare of murder and crime." One way President-elect Trump could do this would be to declare an emergency in response to "civil unrest" and impose martial law on DC under his general executive authority. Also, the Home Rule Act itself allows the President to declare an emergency and take control of the Metropolitan Police Department.

With control of both branches of government it would be easier for Republicans to pursue limits on or an outright repeal of the Home Rule Act, as well as budget riders to institute a full abortion ban, book bans, and unfettered access to guns. The residents, businesses, and nonprofits operating in the District of Columbia must now be vigilant to protect themselves and those that they serve. Given the focus on immigration by Republicans during the campaign, DC resident immigrants, in particular, should ensure that all of their legal documentation is updated, prepare for any challenges ahead by staying fully informed, and be ready to make necessary adjustments. Schools and libraries must be vigilant in protecting access to a well-rounded education and attorneys must be prepared to help by defending DC democracy and Home Rule — the constitutional rights of DC residents, particularly the guarantees of the First Amendment.

Higher Education

HIGHER EDUCATION

Higher Education Facing New Challenges Ahead

Colleges and universities have been on a wild ride in a post-COVID-19 world, as they continue to struggle with declining enrollment numbers (5% decline in enrollment for fall of 2024), persistent issues with student preparedness for post-secondary education, and mounting pressure by Congress to reduce costs while improving outcomes for their student populations. Coupled with a year of often-contentious hearings addressing antisemitism on college campuses and the fumbled rollout of the simplified Free Application for Student Aid (FAFSA), many in higher education have been anxious to turn the page on 2024. With a newly elected Trump Administration, however, the pressure on bringing down the cost of four-year post-secondary education and the growing diploma divide may intensify as legislators move, after the election, to advance a "swan song" legislative accomplishment for outgoing Chairwoman Virginia Foxx (R-NC) in the lame duck session of the 118th Congress. Efforts to pass the party-line-committee-passed College Cost Reduction Act may not be successful; however, these efforts set the stage for what to expect in higher education next year.

Over the last year, President-elect Trump has been focused on hot-button higher ed issues on the campaign trail such as transgender athletes in women's sports, campus protests, diversity, equity, and inclusion (DEI) initiatives, and accreditation requirements. He has notably vowed to reclaim American colleges and universities from what he refers to as "Marxist Maniacs" and create an environment less hostile to conservative viewpoints. What does this mean in terms of regulation and policy? Quite a bit, and none of it translates into a better year for colleges and universities still reeling from 2024.

A second Trump Administration likely will begin with an Executive Order that halts the Biden Administration's efforts to forgive or pause student loan debt for millions of borrowers, although the courts have repeatedly struck down the Biden Administration's plans. Additionally, an Executive Order precluding transgender athletes from participating in women's sports is all but certain, as well as a regulatory rollback of Title IX changes put forth by the Biden Administration.

Elimination of the Department of Education will be top on President-elect Trump's agenda. This idea is far from new, as Republicans have long argued that the agency is too large and oversteps authority which rightfully belongs in the hands of states and localities. With a discretionary budget of $80 billion and over 4,000 employees, it is hard to see a scenario where ED could be completely eliminated; however, dispersing responsibilities to other agencies or diverting funding from other offices within the agency are certainly likely scenarios. For example, moving the entire Office of Federal Student Aid, responsible for the student loan portfolio, to Treasury may be viewed as an appropriate jurisdictional change. However, with the impact of the delayed rollout of the simplified Free Application for Student Aid (FAFSA) not fully realized, this dismantling could create dire consequences for student aid programs, colleges, and universities who rely on Title IV for completion of their financial aid packages.

Change in Republican leadership for the House Committee on Education & the Workforce is guaranteed, with Chairwoman Foxx giving up the gavel after serving an extra term pursuant to an unprecedented waiver. The likely contenders for her replacement are Rep. Tim Walberg (R-MI), the dean of the Michigan delegation, who lost his bid to lead the Committee two years ago to Rep. Foxx, Rep. Burgess Owen (R-TX), the current chair of the Higher Education & Workforce Development Subcommittee, and Rep. Joe Wilson (R-SC). Rep. Walberg is favored to become the Chairman this time around. Thoughtful and measured in the series of Congressional hearings on antisemitism on campus, his focus will remain on post-secondary education, outcomes, and strengthening the American workforce pipeline. If short-term Pell grants (Pell for training programs and apprenticeships) do not get included in the end-of-year package, expect them and the Workforce Innovation and Opportunity Act to be priorities in the next two years as President-elect Trump's Agenda 47 platform calls for affordable post-secondary alternatives to a traditional four-year degree.

Ranking Member Bobby Scott (D-VA) likely will remain in the top spot for Democrats in the 119th Congress. Rep. Scott advanced significant portions of the Biden Administration's higher education agenda through the committee previously and can be expected to work across the aisle to advance some of those priorities as well as increased funding for the Department's Office of Civil Rights and improved post-secondary education outcomes.

The Senate HELP Committee leadership changes will likely include a switch in the top spot with a newly minted Chairman Bill Cassidy (R-LA) and Ranking Member Bernie Sanders (I-VT). Sen. Cassidy, a critic of DEI programs (he introduced legislation to eliminate DEI programs altogether), has pressed the Department's Office of Inspector General to investigate how federal money is being used to support DEI programs and policies at 5,700 colleges and universities nationwide. It is likely to be an issue that the HELP Committee pursues early next year.

Although how much bipartisan movement on higher education issues will happen remains to be seen as Sens. Cassidy and Sanders do not seem to share much common ground, the impact of a delayed FAFSA release on students and institutions is a problem everyone shares and will be addressed if ED misses the December 2024 deadline for the 2025-2026 school year. Also, alternative post-secondary education options may provide a place to begin discussion for the divided Senate HELP Committee on higher education.

Free Speech or Title VI Civil Rights Violations on College Campuses?

2024 was marked by a series of contentious hearings in the House Ways and Means and Education & the Workforce Committees as Congress reacted to nationwide college campus protests and sometimes violent and destructive clashes. The heightened scrutiny and scathing report released by Chairwoman Foxx last week on Education & the Workforce's findings leave the sector facing additional repercussions beyond the removal of a handful of college presidents who testified before the Committees.

Expanded Endowment Excise Tax

The 2017 TCJA imposed a 1.4% excise tax on net investment income of 58 private nonprofit colleges and universities with endowment assets exceeding $500,000 per student (other than assets used to directly carry out the institution's exempt purpose). The number of schools on the taxable list has grown since enactment. Although this is not a large revenue-raiser currently, changes to the formula (increase from 1.4% to 10% or to a 1% tax on the fair market value of the largest endowments) have been supported by Republican members to encourage schools to spend down their endowments to lower tuition costs, and as a punitive tool in response to Title VI violations on campuses. Proposals to increase the excise tax will certainly show up in both House and Senate discussions on the larger tax bill. In fact, Vice President-elect J.D. Vance has referenced his bill to increase the endowment excise tax to 35% while on the campaign trail. President-elect Trump has referenced upping the endowment excise tax for those institutions who "persist in explicit unlawful discrimination" through budget reconciliation. The events of the past year have put these private institutions, and their Congressional allies, in the precarious position of having to defend themselves not only on the tax policy but also on the larger issue of antisemitism on campus.

Funding and Research Dollars

Whether successful or not, the current provision before the Senate to strip Section 220 of the US Department of Defense funding from research institutions violating Title VI gives pause to many in higher education. In the House, higher education and student groups have fought back against significant cuts or outright elimination of Title IV student aid programs (elimination of the Federal Work Study program, for example) for the past two years in the Labor, Health and Human Services appropriations bill. This fight is likely to continue in earnest next year; however, the bigger challenge likely will be diverting funding for these programs to other proposed initiatives by the Trump Administration and the new Republican-led Senate, which will be looking to cut spending in the sector. Coupled with press coverage of Republican proposals to tie Title IV funding to investment portfolios and Title VI violations, the issue is far from over as far as Congress is concerned.

Overall, the higher education sector is poised to see significant movement on a variety of fronts — both regulatory and legislative. Some issues are longstanding while other, new challenges will push colleges and universities to prove to both potential students and the federal government that a four-year degree is a worthwhile investment in today's post-COVID-19 world.

Financial Services

FINANCIAL SERVICES

From Traditional to Crypto

Financial Services Policy

Policymakers in the banking and financial services industries are facing an environment where opinions are bifurcated regarding where to apply regulatory focus — between traditional financial institutions or relatively novel and innovative upstarts offering digital assets and services (also known as “fintech”). Regulatory focus in the next session, given a likely Republican sweep, is poised to pivot from traditional finance to fintech. The difficulties of formulating and implementing a novel regulatory regime will underscore challenges facing incoming Republican majorities.

At the Executive level, the Biden Administration has pursued an aggressive regulatory agenda, albeit not without substantial opposition from policymakers. This was especially evident in the digital asset space. These disputes can be observed most clearly in the conflict over Staff Accounting Bulletin No. 121 regarding cryptocurrency assets. We expect continued activity on the regulatory agenda under the Trump Administration, but with a renewed focus on digital assets. These efforts will run parallel to a Republican Congress which will seek to craft a regulatory framework for digital assets.

House Republicans will soon settle the ongoing leadership race on the Financial Services Committee. Currently, four Members are competing to chair Financial Services — all of whom are current subcommittee Chairmen: Rep. Andy Barr (R-KY), Rep. French Hill (R-AK), Rep. Bill Huizenga (R-MI), and Rep. Frank Lucas (R-OK). Rep. Hill is expected to focus on digital assets policy, data privacy, and fintech policy. Rep. Barr’s priorities are likely also to include an early interest in digital asset regulation but might draw a keener focus on support for community banks and shoring up smaller institutions. This would include prioritizing policy to insulate regional banking systems from risk, especially in real estate.

Democratic leadership in the minority will remain with Rep. Maxine Waters (D-CA), who is expected to focus her cohort on housing issues. Rep. Waters’ leadership on the Financial Services Committee has already demonstrated clear-eyed priorities which, beyond housing, include efforts to regulate the banking industry. We posit she will attempt to use her seat to promote increased access to credit for borrowers, especially among traditionally disadvantaged communities, and to prioritize affordable housing programs, which we discuss in more depth in our Housing Policy section.

Outgoing Sen. Sherrod Brown (D-OH) would have been poised to seize the Chairmanship on the influential Senate Banking, Housing, and Urban Affairs Committee, but, given his defeat in Ohio to candidate Bernie Moreno (R-OH), coupled with an incoming Republican majority, the Chair position is likely to land with Sen. Tim Scott (R-SC) barring a potential appointment of Sen. Scott in the Trump Administration. In a scenario where Sen. Scott joins the Trump Administration, the panel’s Chair will be Sen. Mike Rounds (R-SD). On the other side of the aisle, Sen. Jack Reed (D-RI) and Sen. Mark

Warner (D-VA) are likely to keep their seats as Ranking Members on the Senate Armed Services and Intelligence Committees, respectively. Under those assumptions, Sen. Warren, a notable critic of the banking industry, would be positioned for the ranking seat on Senate Banking. While Sen. Warren and Sen. Brown are regulatory birds of a feather, Sen. Brown's absence bodes poorly for advocates of increasing regulation for the banking industry. Conversely, the Committee is now poised for early consideration of a market structure bill on digital assets.

Traditional Finance

President-elect Trump is expected to continue championing pro-business policies supporting the financial services sector, such as a deregulatory environment. In a similar vein, the President-elect is likely to raise some questions about the continued viability of the status quo with the Federal Reserve. President-elect Trump has previously posited reshaping the relationship between the Federal Reserve and the Executive Branch and appears particularly keen to review the lender-of-last-resort mandate of the Fed. Ostensibly, the President-elect seeks to influence the Federal Reserve decision-making process relating to monetary policy, specifically around interest rate decisions which traditionally emerge from the cloistered Federal Open Market Committee.

From an agency action perspective, a second Trump Administration is likely to pursue a slate of Consumer Financial Protection Bureau (CFPB) actions, much of which was previously attempted during the first Trump Administration, ranging from a scaling-back of CFPB authority to a potential abolishment of the CFPB altogether. If this were to occur, consumer protection responsibilities likely would be returned to the Federal Trade Commission. The President-elect is expected to, at a minimum, table loosening CFPB data collection rules, review ESG rules at the CFPB and SEC both, and oppose further restrictions for payday loans. He is also expected to oppose efforts to reinstate Dodd-Frank regulatory requirements.

Digital Assets and Cryptocurrency

Cryptocurrency, largely unregulated by financial services industry standards, has been steadily transitioning from an asset for unsophisticated retail investors to one warmly embraced by institutions. While crypto is an increasing aspect of the financial zeitgeist, policymakers have been slow to develop an appropriate regulatory framework. Critics of the Biden Administration in the crypto industry have pointed the finger at SEC Chair Gary Gensler.

With the Biden Administration viewed as slow-walking crypto policy, political campaigns took note. The dust has yet to settle on final donor tallies, but it appears that the crypto industry was the largest corporate donor to presidential campaigns among industry groups. NPR reported in September that almost half of all corporation donations were originating from the crypto industry. Accordingly, President-elect Trump has indicated a desire to make the US the "crypto capital of the planet," and to formulate a "strategic cryptocurrency reserve." Step one of building the "crypto capital" will be replacing SEC Chair Gensler.

For the cryptocurrency industry, despite ambitions, there is only so much they can expect out of the President-elect. Executive action and rulemaking over the unregulated industry is currently limited in terms of its potential impact due to the lack of a mandate from Congress. Therefore, crafting a regulatory framework for cryptocurrency and digital assets ultimately will require Congressional action as a precursor.

One bill that is positioned favorably for lame duck passage or early consideration next Congress is H.R. 4762, the Financial Innovation and Technology for the 21st Century Act. The bill, if enacted, would see definitions codified around "cryptocurrency" and "digital assets." It would additionally direct the SEC to regulate digital assets as a security, set standards for digital asset registration and transactions, and direct rulemakings around mixed digital asset transactions and capital requirements, as well as issue select guidance. The bill's scope and depth is indicative of the pressing demand for regulation and portends continued attention to digital assets and cryptocurrency in the next Congress.

Immigration

IMMIGRATION

Immigration and Border Security

Despite myriad legislative proposals introduced in previous Congresses and calls from President-elect Trump to "secure the border," leaders in Washington, DC, have yet to make substantive inroads on efforts to overhaul our immigration system. Comprehensive immigration reform continues to remain elusive despite the best intentions of Members of Congress in both chambers and parties. It seems that in each session of Congress, Republicans and Democrats flirt with the possibility of passing a bipartisan immigration law, but this year's bipartisan proposal to temporarily limit asylum for most people seeking safety and shelter, speed access to work permits and limit processing delays for asylum seekers, and increase the capacity of immigration detention facilities quickly collapsed due to election-year political pressure. Outside of the general agreement on issues like reform of our nation's visa system for high-skilled immigrants who possess unique technical expertise, the two parties continue to have different opinions about the best way to ensure our immigration system quickly processes applications for asylum, residency, and employment. Given the other high-profile political issues requiring political capital, like tax reform, which will also require lots of attention from the next Congress and President-elect Trump in 2025, it remains to be seen how policymakers will find common ground to address the challenges that continue to plague our immigration system.

President-Elect Trump on Immigration

Recalling President-elect Trump's first term, considering the campaign rhetoric employed and reading his candidate platform, we have a strong idea of what is in store for our nation's border security and enforcement of our immigration system in the coming years. Terrorists entering through a porous southern border, released asylees overwhelming social services in border communities, and growing crime are all images present in the minds of Americans who voted for President-elect Trump. One could even infer that President-elect Trump outperforming President Biden's 2020 numbers and 2016 Democratic Nominee Hillary Clinton's numbers in New York City is a rebuke on New York City's sanctuary city policy, which has crowded the city's homeless shelters and some perceive contributed to an uptick in violent crime committed by undocumented migrants.

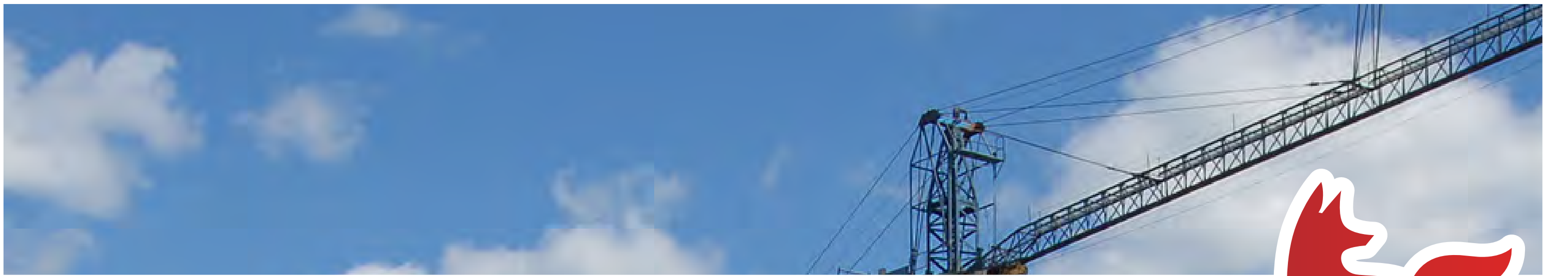
In the first year of President-elect Trump's second term, we expect to see him work within the Executive Branch and with Congress to reduce federal funding going to municipalities with sanctuary city policies — broadly defined as a community which prohibits state or local law enforcement from collaborating with federal immigration officers. This was attempted during President-elect Trump's first term via Executive Order which blocked federal grants from going to sanctuary cities but was ultimately deemed unconstitutional by the courts. Stronger enforcement of existing laws regarding visa overstays and deportations is also expected, as is increased authority and funding for CBP to continue construction of a physical border wall and state-of-the-art technology to monitor the border. Our attorneys and professionals will also be monitoring interactions with the Administration and non-governmental organizations (NGOs) who have supported border communities with their response to asylees and migrants.

Congressional Outlook and Priorities

As of now, the House Judiciary Committee is likely to be led again by Chairman Jim Jordan (R-OH) and Rep. Jerry Nadler (D-NY). With his prior experience helming the Judiciary and Oversight Committees, we expect Chairman Jordan to prioritize immigration enforcement and support President-elect Trump's executive actions.

In the upper chamber, we expect Sen. Dick Durbin (D-IL) to become the Ranking Minority Member of the Judiciary Committee and Sen. Chuck Grassley (R-IA) to once again become the Chairman. While the Judiciary Committees have jurisdiction of the US Department of Justice (DOJ), the court system, and parts of the US Department of Homeland Security, the Homeland Security Committees have jurisdiction over CBP, Immigration and Customs Enforcement, and US Citizenship and Immigration Services operations at ports of entry and along our borders. Accordingly, we note that Sen. Rand Paul (R-KY) would have the seniority to take the gavel at Homeland Security and Governmental Affairs. It should be noted that Congressional Republicans are not a monolith on immigration policy. Some support protecting Deferred Action for Childhood Arrivals (DACA) recipients but may simply have concerns about whether there was presidential authority for former President Barack Obama to enact the policy in the first place (which is still a pending matter for the courts), and some Republicans also support broadening the pathway to citizenship for longtime, compliant recipients of Temporary Protected Status. We've also seen Republicans who engage with Latin American diasporas in their districts to better understand the cause of the migration and introduce their own legislation, such as Rep. Maria Elvira Salazar's (R-FL) bipartisan Dignity Act, which attempts to produce a bipartisan, widely supported solution to immigration reform.

However, most Congressional Republicans insist on pairing stronger legislation for increased border security and enforcement with any immigration legislation. This same reason has been cited when previous bipartisan attempts have fallen short, specifically Sens. Chris Murphy (D-CT) and James Lankford's (R-OK) bill earlier in 2024 and Sens. Thomas Tillis (R-NC) and Krysten Sinema's (I-AZ) 2022 bill to legislatively protect DACA recipients. Perhaps now that President-elect Trump will be returning to the White House and Republicans to the Senate Majority, Congressional Republicans will attempt piecemeal codification of bipartisan immigration policies such as employment visas for high-skilled workers and agricultural workers.



Housing Policy

HOUSING POLICY

Re-Zoning Federal Priorities

The need for a more affordable and stable housing market is a unique area of agreement for policymakers and Americans alike. In Congress, constituent interest around housing fuels a bipartisan desire to champion tenable policy solutions to structural issues that plague the housing market — namely, supply shortages. Housing policy is in crisis, and as an issue deeply ingrained in "dinner table" politics, it's head-scratching to many that Congress has done very little on the issue over the last couple of sessions.

Amid an inactive federal reform environment, housing markets, injected with unprecedented capital inflows during COVID-19, have seen many Americans priced out of the market. For some of those unable to afford homeownership, federally subsidized housing programs are a welcome and necessary alternative — and we anticipate these programs will continue to receive a critical mass of support, albeit with growing scrutiny on both sides of the aisle to reduce instances of abuse by developers, housing authorities, and even tenants.

Realigning Political Positions

Notable are the traditional policy positions in Congress around housing — Republicans tend to favor policy incentivizing home buyers through a streamlined and functioning housing market and therefore are apt to favor policies shoring up housing supply. Alternatively, Democrats have tended to coalesce around support for federal housing programs, such as the Community Development Block Grants (CDBG), Section 8 housing, and housing choice vouchers. At state and local levels of government, we've seen political reconsideration of zoning regulations of affordable housing or multi-family units, as well as more scrutiny of states playing the middleman for CDBG.

Members of Congress have traditionally fallen along these lines — delineated by support for increasing housing supply versus federal monies for housing authorities or lower-income individuals. Those lines are beginning to blur as housing policy takes precedence under the current housing crisis. We've observed senior Members in the Democratic party who contend housing orthodoxy is ebbing in favor of shoring up bipartisan agreement around addressing the housing supply, whereas many Republicans also have developed an interest in collaboration around large federal programs, which have largely been left unattended from a reform perspective for multiple sessions. Congress's appetite for housing reform is evolving and Congress is posturing to act on housing in this session or the next.

Federal Housing Programs Under Focus

Earlier this year, Sen. Tim Scott (R-SC), likely Chair of the Senate Committee on Banking, Housing, and Urban Affairs, introduced the ROAD to Housing Act which is supported by nearly all of the Committee's Republicans. With this comprehensive bill, Sen. Scott intends to inject innovation into the housing market, increase oversight of federal housing programs while reducing overregulation, and reduce homelessness. The bill includes changes to existing programs at HUD for low-income and/or homeless individuals, increases Federal Housing Administration oversight, and makes changes at the Consumer Financial Protection Bureau (CFPB) intended to increase access to housing. Though the bill is not currently bipartisan, Sen. Scott is likely to make this a committee priority and seek to gain support of the committee's Democratic members.

At the Committee level, from an affordable housing perspective, Democratic Ranking Member of the House Financial services Committee Rep. Maxine Waters (D-CA) has long championed the proposition that housing is infrastructure. Rep. Waters believes codifying affordable housing as infrastructure would serve as a bulwark against reforms seeking to water down support for federal housing programs. Her prior efforts at seeing the bill through paints a clear picture of her priorities as Democratic lead on the committee — she will seek a massive investment, to the tune of $600 billion or greater, in housing as a long-term asset to address evictions, homelessness, access to homeownership, and supply, with a focus on disadvantaged communities.

Housing: In Short Supply

According to the National Association of Realtors, the supply of homes for sale in the United States reached a record low of just 1.6 months in January of 2022. Despite a recent, slight improvement in supply — e.g. a figure of 4.2 months as of August 2024, the issue remains salient. Additionally, growth in prices, affected by low supply, has rapidly outpaced growth in median income since 2020 per the Joint Economic Committee. Another contributing factor to the headwinds prospective homebuyers face is that supply issues are both myriad and uniquely sourced. Persistent inflation, high cost of materials, elevated mortgage rates, increased competition for buyers with institutional investors, and a lower influx of new build inventory in the market all present their own set of federal challenges. At the local level, zoning and land use restrictions intertwine with federal obstacles to ensure unfavorable market conditions, dissuading potential new buyers.

Many of the issues contributing to restricted supply — such as high interest rates and local statutes — are a heavy lift for Congress alone. Despite these barriers, Congress's posturing indicates an appetite for acting on what's tenable to help ameliorate supply shortages. In January 2024, the House passed a tax package with a sweeping bipartisan majority, yet the bill then landed in the Senate with a thud. Much attention has been given to other tax provisions in this bill, but housing advocates are focused on the inclusion of language to expand the Low-Income Housing Tax Credit (LIHTC). Included in the Tax Relief for American Workers and Families Act of 2024 is language which expands access to LIHTC, and ideally increases housing supply by decreasing the financing threshold for private activity bonds. The bill also increases the amount of credits a state can issue for low-income housing projects in a calendar year.

Another reform proposal that has garnered significant interest and stakeholder support is the Yes In My Backyard Act. Aptly acronymized, the bill seeks to encourage localities, by way of tracking discriminatory policy through reporting requirements, to build more affordable housing, such as multifamily housing and encourages re-zoning for more high-density construction projects. This particular effort is unique in that it plays to a bipartisan tune with a dual focus on supply and accentuating federal programs. The bill is sponsored by Sen. Todd Young (R-IN) and Rep. Derek Kilmer (D-WA), who is retiring.

A Lukewarm Administration

President-elect Trump has been crystal clear that he wants to lower interest rates. How he achieves lower interest rates without disrupting the Federal Reserve's authority is not clear. The most likely path would be to encourage Congress to pass legislation aimed at reducing inflation through the budget reconciliation process. Beyond interest rates, President-elect Trump is likely to defer to Congress on housing, and he's also likely to consider drawing talent from Congress for his Housing and Urban Development Secretary, where Sen. Tim Scott (R-SC), is often floated for the role. But given Sen. Scott's likely chairmanship of the Banking committee, Ben Carson and former HUD deputy secretary Brian Montgomery are more probable choices for Secretary.

Transportation & Mobility

TRANSPORTATION & MOBILITY

Determining the Future of the 2021 Infrastructure Law and Other Issues

Infrastructure Investment and Jobs Act

A focal point of the 119th Congress and a new Administration will not necessarily be the expiration in late 2026 of the funding authorizations contained in the historic IIJA, which was enacted in November 2021 and contained breathtaking increases in funding for all modes of transportation. It is too early to tell where this issue will fit on the priority list of the incoming Trump Administration, especially since it is a late 2026 issue and there are so many other immediately pressing issues. (We note that the Federal Aviation Administration (FAA) reauthorization became law in 2024 and thus need not be a front-burner issue until 2028.)

The IIJA law, which established funding levels for FY 2021 - FY 2026, may either be viewed as a high-water mark for transportation funding that will be difficult to attain in a subsequent reauthorization due to broad fiscal constraints (including insufficiency of the federal gas tax), or as a starting point for discussions on what historically has been a bipartisan national set of priorities. Clearly, the Trump campaign did not embrace the substantial spending reflected in the IIJA and the IRA, so it will be incumbent upon stakeholders to start very early in 2025 in terms of building support for preserving their hard-fought IIJA funding levels.

We expect the new Administration and Congress to focus elsewhere initially given that the IIJA is good for another 23 months. However, oversight of IIJA implementation will continue in Congress and new leaders of the several authorizing committees will undoubtedly begin to seek stakeholder proposals for the next multiyear reauthorization bill in 2025 as a means of kickstarting the process.

In the Senate, transportation policy comes within the jurisdiction of three authorizing committees: Environment and Public Works; Commerce, Science and Transportation; and Banking, Housing, and Urban Affairs. On the Environment and Public Works Committee, we assume that Sen. Shelley Moore Capito (R-WV) will take the gavel, and the top Democrat will likely be Sen. Sheldon Whitehouse (D-RI) if he gives up the ranking slot on the Budget Committee. The Commerce Committee chairmanship would ordinarily look like it would go to Sen. Ted Cruz (R-TX) as the current ranking Republican but Sen. John Thune (R-SD) has seniority and, if he is not elected to Senate Republican leadership, could conceivably seek the chairmanship of Commerce, having been the party's top Republican on that panel before.

On the Senate Banking Committee, which has jurisdiction over transit issues and funding, Sen. Tim Scott (R-SC) is widely expected to be the chairman but if he is offered a senior role in the Trump Administration, that title could go to one of his colleagues, such as Sen. Mike Rounds (R-SD). The role of the top Democrat on the Banking Committee is now very much up in the air because Sen. Sherrod

Brown (D-OH) lost and if Sens. Jack Reed (D-RI) and Mark Warner (D-VA) want to keep their roles as top Democrats on the Armed Services and Intelligence Committees, Sen. Elizabeth Warren (D-MA) could conceivably serve as Ranking Member on Banking. Since the IIJA garnered some Republican support in 2021, it is far more likely that a bipartisan process could occur again in the 119th Congress, as in past reauthorizations.

In the House, we expect Rep. Rick Larsen (D-WA) to remain the top Democrat on the Transportation and Infrastructure (T&I) Committee. The top Republican position on the T&I Committee has been held in the 118th Congress by Rep. Sam Graves (R-MO), but he would need a waiver to continue serving in that capacity due to internal House GOP caucus rules. Among those mentioned by observers as possible Trump nominees for Secretary of Transportation are Reps. Sam Graves (R-MO), Garrett Graves (R-LA), and Troy Nehls (R-TX). A very possible replacement as top Republican on T&I is Rep. Rick Crawford (R-AR), who announced publicly in March that he intended to seek the chairmanship (or top minority position) for the T&I Committee.

Interestingly, Rep. Crawford earlier this year unveiled his own "America MOVES" reauthorization plan that sought to put a Republican spin on the process. Of significance, he called for developing "a new financing model incorporating user fees, a pay-as-you-go structure so that Americans aren't saddled with enormous bills all at one time, and a safeguard against the government double- or triple-taxing Americans for using the same road mile." In committing to a bipartisan process, Rep. Crawford added in an op-ed regarding his plan that Congress needs to "strike the right balance between fuel and excise taxes, vehicle miles-traveled fees, inflation adjustments, new sources of revenue, and more."

Autonomous and Electric Vehicle Policy Issues

Autonomous Vehicles

We expect renewed attention to policy issues related to autonomous vehicles (AVs), which remain a developing part of the automotive sector. In recent years, the federal government has issued guidance and some policies but has not yet issued binding regulations. Meanwhile, a number of states have taken initial steps to legislate and regulate this nascent industry. As has been the case with other novel technologies, initial state regulatory efforts can lead to a patchwork that industry deems inefficient and it could lead stakeholders to press harder for a national framework.

President-elect Trump has not spoken widely about AVs during this campaign, but in a recent speech at the Detroit Economic Club campaign event, he said, "I will continue my first-term efforts to protect America from the threat of Chinese automobiles. I will stop Chinese and other countries producing automobiles and autonomous vehicles." Although he did not take a direct stance on AVs, he took a stance to prohibit the importation of any "Chinese" AVs.

Electric Vehicles

It has been difficult to pin down where President-elect Trump comes down on electric vehicle (EV) issues. While in December 2023 he wrote on Truth Social that EV supporters, among others, should "rot in Hell," he more recently wrote that he is "for electric cars" and transparently attributed his change in view to his support from Elon Musk. During the Republican National Convention in July, President-elect Trump said that he would "[end] the electric vehicle mandate on day one, thereby saving the US auto industry from complete obliteration." Those remarks are not far off from the proposal laid out in Project 2025, which includes plans to end subsidies for EVs and prevent federal regulators from considering the economic impact of carbon emissions and abolish the US Department of Energy's Office of Energy Efficiency and Renewable Energy and Loan Programs Office. At this point, it is unclear what a second Trump Administration will mean for EVs, but if his most recent comments are given the most weight, EVs may fare better than they would have prior to the development of a mutually beneficial Trump-Musk relationship, a relationship on view early on the morning of November 6 as President-elect Trump spoke to his supporters to claim victory and made complimentary comments about Musk.

Congressional Investigations

CONGRESSIONAL INVESTIGATIONS

Congressional Investigations in the Next Congress

In 1927 the Supreme Court held that under the Constitution, Congress has the power to compel witnesses to appear before it and provide evidence and testimony — so long as the proceedings are part of Congress exercising its legislative function. Since that time, the House and Senate have established numerous oversight committees and published rules for how its committees can send investigation letters, take depositions, issue subpoenas, and if necessary, have those subpoenas enforced. Until recently, most Congressional investigations were done on a bipartisan basis with a Committee Chairman choosing topics and witnesses in consultation with the ranking member. Now, some Congressional investigations are more partisan-themed, with members of the Majority party using their subpoena power for more political than legislative exercises.

Regardless of a Committee Chairman's motive for conducting an oversight hearing, a Congressional subpoena to testify is the beginning of what could be a lengthy, expensive, and public process for businesses and individuals. Here are some predictions on potential Congressional investigations in the next Congress.

Investigations in the Senate

Steward Health Care, Drug Pricing

Bucking the trend of partisanship, earlier in 2024 the Senate unanimously adopted a resolution to hold the CEO of Steward Heath Care in contempt of Congress for defying a subpoena and refusing to appear at a Senate HELP Committee hearing. Both Sens. Bernie Sanders (I-VT) and Bill Cassidy (R-LA) of the Committee agreed that the company's CEO was dodging accountability by not testifying about receiving a high salary while his company was failing financially. In July, the HELP Committee issued a subpoena to the Steward CEO to compel him to testify, the first such subpoena to be issued by the Committee in decades. Later, the HELP Committee passed, on a bipartisan basis, two contempt resolutions against the CEO — one for criminal contempt and the other for civil enforcement.

Procedurally, the US Attorney for the District of Columbia must now decide whether to criminally prosecute the CEO for failing to comply with the subpoena. This is the first time since 1971 that the Senate has voted to hold someone in Contempt of Congress — which is a misdemeanor and can be penalized with fines or imprisonment.

Prediction: The Senate HELP Committee and the Senate's Permanent Subcommittee on Investigations will continue to investigate health care financing practices. A 2024 staff report by the Democratic Members of the Permanent Subcommittee, titled "How Medicare Advantage Insurers Have Denied Patients Access to Post-Acute Care," criticized heath care giants United Health Care, Humana, and CVS, paving the way for possible hearings next year.

Other Senate Investigations

The Senate Homeland Security Permanent Subcommittee on Investigations has a broad mandate to "investigate inefficiency, mismanagement, and corruption in government." Depending on who will be the Committee's Chairman in the next Congress, this committee may continue its investigation into Boeing's business practices, the Secret Service's protection practices for the President, and issues related to federal contracting, instant payment processing, and foreign affairs.

Investigations in the House

In the last 10 years, we have seen control over the legislative agenda in the House drift away from Committee Chairmen and toward the Majority Party's Leadership. Partisan dynamics are usually more readily apparent in the House, especially when a Committee Chairman receives clearance to conduct an investigation. These oversight hearings can quickly consume a Committee's time and resources — making it difficult to conduct multiple investigations during a year. Also, there has been a rise in confrontational hearings in the House which often include moments made for the media. These hearings can sometimes help frame policy issues in Congress and in the minds of the American people.

Select Committee on China

House Republicans established a Select Committee on China to assess the growing power that country has on geo-political, military affairs and commerce. This Committee has bipartisan support and has conducted investigations into the Chinese government's ties into US commerce and possible attempts to compromise our intelligence and technology infrastructure. If the Republicans maintain the majority and want to extend the Select Committee's life, we expect this Committee will continue to issue bipartisan letters — and if necessary, subpoenas — during the next Congress and send legislation to the House floor recommending enforcement priorities for the DOJ.

Other House Investigations

Defense and foreign policy have been two of the largest subjects of House oversight hearings in the last several Congresses. The well-publicized special investigation of the January 6 events at the US Capitol also consumed a large amount of the time and budget of the House and even compelled the Majority Leadership to hire former assistant US attorneys from across the country to help with the Committee's investigation. On the other hand, the issues that have received the least attention from oversight committees over the last two Congresses have been immigration, race, and civil rights.

The House Committee on Oversight and Accountability has been — and undoubtedly will continue to be after the election — investigating the efforts of the FCC to police social media. In an interesting move, it is also investigating whether the FCC has followed its procedures in allowing a George Soros company to become a major shareholder in over 200 radio stations.

Lastly, research suggests there is less oversight of the executive branch when the House and the White House are held by the same political party. And for the upcoming Congress, some of the work of theoversight investigations will be determined by the personal preferences of the new Chairmen of the Committees of Jurisdiction.

Practical Tips

Although Congressional investigations may appear to be *legal* processes — such as having witnesses provide testimony and Committee staff reviewing evidence and exhibits — it is actually a very *political* process. Targets of Congressional investigations enjoy few Constitutional due process rights. For example, a witness's legal counsel cannot file a motion to dismiss or a protective order over a sensitive document. And the House and Senate, and each Committee within the House and Senate, have their own rules for how they conduct investigations. The bottom line is to take an interest in government before government takes an interest in you. It is best to work *with* Congress because working against them can yield expensive and unproductive results.

National Security & Foreign Policy

NATIONAL SECURITY & FOREIGN POLICY

What the 2024 Election Means for National Security and Foreign Policy

President-elect Trump did not discuss foreign policy as frequently on the campaign trail as he did other issues, but when he did, he was very consistent about what he wants to do. Expect his approach to be similar to when he was President, but he confronts a very different world, with new crises that he did not have to face during his first Administration.

Alliances

President-elect Trump's engagement with alliances, like the North Atlantic Treaty Organization (NATO), is one area most likely to contrast with the Biden Administration. President-elect Trump is skeptical of alliances and prefers to negotiate bilateral deals that will result in tangible benefits for the United States. He enjoys engaging in personality driven diplomacy and seeks to rely on relationships he has built with other world leaders as a foundation for cooperation. President Biden galvanized NATO to work together to support Ukraine after the Russian invasion. President-elect Trump will likely take a step back from the coordinating role the Biden Administration played with NATO and return to pressing NATO countries to spend more on their own militaries. He will similarly place less emphasis on alliances in the Asia Pacific region.

Russia and Ukraine

When President-elect Trump takes the oath of office, it will be dead of winter in Ukraine and the war will likely be in a stalemate. President-elect Trump has repeated many times he wants to end the war on day one. Expect him to engage in one-on-one discussions with both President Volodymyr Zelenskyy and President Vladimir Putin. It seems unlikely he will be able to bridge the gap between what each side is demanding for a peace deal, but President-elect Trump will attempt to do so. If President-elect Trump is not able to secure a deal, look for him to wind down US military aid to Ukraine. His Vice President-elect, J.D. Vance, has been a very vocal opponent of Ukraine aid. On other matters involving Russia, relations might improve marginally based on the relationship President-elect Trump has built with Putin. One point of disagreement, though, will be the recent appearance of North Korean troops on the battlefield in Ukraine and the military cooperation between the two countries. Look for him to urge President Putin to help him contain North Korea.

China

President-elect Trump has made it clear that he wants the United States to be tougher on China. Part of that approach will involve tariffs (as discussed in our International Trade section). The previous Trump Administration was more aggressive in using the US Department of State and the DOJ to crack down on China's influence than the Biden Administration — especially as it relates to industrial espionage and infiltration of campus research facilities. Look for a return to that approach.

The incoming Congress will be as important as the new administration in setting the US policy toward China over the next two years. There is a common perception that "China" is a bipartisan issue in Congress — that members of both parties are united on addressing the economic and the ideological or military threats the Chinese government poses to the Western world. Examples of this are the bipartisan legislation that passed in the last Congress including the CHIPS and Science Act. But the Republican-led Limit, Save, and Grow Act passed on a strict party-line basis. With Congress's help, the new Administration will likely continue the existing industrial policy on trade, tariff, and domestic investment as in the CHIPS and Science Act and the IRA — provided that 2024 economic data proves that it was a good investment.

Middle East

The Biden Administration failed in its effort to broker a ceasefire in Gaza. Look for President-elect Trump to try a different approach, relying on his friendship with Prime Minister Benjamin Netanyahu. Even if a ceasefire is accomplished, there are many hard choices for how to rebuild Gaza and ensure that Hamas does not return as the primary governing authority, while also tamping down on attacks by Iranian proxy forces in the region, such as Hezbollah. Expect President-elect Trump to give Israel a good amount of leeway to determine how to go about those objectives. In other parts of the Middle East, President-elect Trump will seek to restore friendly relations, especially with the gulf countries. Tensions with Iran could increase, though he will seek to avoid escalation to a full scale war since he has prided himself on not starting any new wars when he was President last time.

Defense Spending / National Defense Authorization Act

Passing the 2025 NDAA heads Congress' year-end to-do list given the authorization's impending year-end sunset, and we expect Congress will maintain its 60-year trend of successfully passing the NDAA. Thus far, the House has authorized $883.7 billion to the Senate's $852.2 billion. Yet, the Senate the bill is approximately $21 billion over the discretionary allocation for Defense and exceeds the statutory defense cap mandated by the FRA.

This dynamic could signal a trend toward increased discretionary defense funding, which President-elect Trump and the newly Republican-controlled Senate will likely support. The Republican perspective on this point may be that achieving credible deterrence requires ratcheting up military spending.

Sen. Wicker (R-MS), the incoming Chair of the Senate Armed Services Committee, aims for a "generational investment" in the US military. This entails Congress meeting a defense spending target of 5% of GDP on a "temporary basis" — a level not seen since the Cold War. The Chair's ambitions will not come easy — he and his allies will face opposition from fiscally conservative Republicans and some Democrats. Congress either will need to modify or eliminate the FRA, or, alternatively, authorize defense appropriations in excess of FRA caps by way of emergency supplemental legislation.

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