

US Office of Public Policy

# Special Washington Update

Top Issues to Watch From Washington in 2021

15 January 2021



With Democratic victories earlier this month in two run-off elections in Senate races in Georgia, the party breakdown of the Senate is 50-50. With the tie-breaking vote of Vice President-elect Kamala Harris, Democrats will have the slimmest of majorities in the upper chamber after President-elect Biden is sworn in on January 20. Democrats also have a narrow majority in the House. Although well short of the “blue wave” some had expected (they lost seats in the House and struck out in several pick-up opportunities in the Senate notwithstanding the recent Georgia victories), Democrats will control the policy agenda in Washington over the next two years.

The Democrats victories in Georgia are significant because the majority party determines the Senate schedule, controls the committees and decides what issues are considered for votes. However, even with majorities in both chambers of Congress, Democrats will have a hard time advancing a bold progressive policy agenda. Unless Democrats eliminate Senate filibuster rules, which at least some moderate Democrats appear reluctant to do at this time, the Senate still will have an operative 60-vote requirement to pass most legislation. To get the support of at least ten Republicans, Democrats likely will need to scale back most spending and policy priorities.

Democrats will be able to use the budget reconciliation process as an end-around to Senate filibuster rules (which create an effective 60 vote requirement) to pass certain significant legislation with only a majority vote. This still will require all 50 Senate Democrats (along with the Vice President) to be united unless they can pick up Republican support, which is no small feat. Additionally, budget reconciliation is subject to a variety of

limitations. Senate rules bar reconciliation from being used for policy measures that have no budgetary impact. Reconciliation has historically been used to pass tax reforms and changes to entitlement spending (Congress needs to raise the debt ceiling later this year and this is something that can be done through reconciliation). In the last decade, it has been used to advance key parts of the Affordable Care Act (Obamacare) and the 2017 Tax Cuts and Jobs Act (Trump tax cuts).

In a time of political polarization, the big and open question is whether the two parties are willing and able to work together to advance bipartisan policy solutions on pressing issues. On the Democratic side, tight majorities (particularly the 50-50 arrangement in the Senate) will put pressure on President-elect Biden, House Speaker Nancy Pelosi (D-CA) and Senate Majority Leader Chuck Schumer (D-NY) to scale back some initiatives to get bills passed and signed into law. This will inevitably lead to frustration from the party’s progressive wing, which wants bigger actions. On the Republican side, it remains to be seen whether House Minority Leader Kevin McCarthy (R-CA) and particularly Senate Minority Leader Mitch McConnell (R-KY) will see political incentives to work with the Biden administration and Democratic leaders in Congress. On the one hand, the party in power has a tough time in the first mid-term election after winning the presidency. On the other, Republicans will have plenty of members in blue or purple seats who will want to run for re-election on a record of accomplishment, not obstruction.

The following provides an overview of key issues in the Biden administration’s and new Congress’ first year.

**COVID-19 Efforts and Stimulus.** The overarching focus of the Biden administration over its first year in office will be the public health and economic responses to the COVID-19 pandemic, a key part of which is the distribution of vaccines to hundreds of millions of Americans. Democrats and the Biden administration will push for another large stimulus bill to follow up on the \$900 billion bill that passed last month. Additional direct payments to millions of Americans, targeted aid to help state and local governments, money for vaccine distribution and extensions of unemployment assistance and eviction moratoria are likely to be key priorities. We expect Democrats to try to advance another round of stimulus on a bipartisan basis, and the need for Republican votes in the Senate will be a constraint on the ultimate size and scope of this package. Democrats may need to push back certain COVID-19 spending priorities that

don't get sufficient Republican support—like direct support for state and local governments—to a reconciliation measure that only needs majority approval in the Senate.

**Taxes.** Democrats will use the reconciliation process to make targeted tax reforms. The cornerstone of this package is likely to be higher corporate tax rates and higher income tax rates for wealthier Americans. An increase in taxes on capital gains and carried interest are among the other items that will get serious consideration. Democrats will chip away parts of the 2017 Trump tax cuts, though these efforts will not result in a wholesale repeal since some Democratic moderates would not be on board with that. The tax increases will likely be used as a pay-for for infrastructure or other spending initiatives.

**Infrastructure.** Biden and Democrats also favor a large infrastructure package that could be included in a COVID-19 relief package, but it more likely will move separately. There is broad bipartisan support for the concept of greater infrastructure investment, though there is disagreement on how to implement and pay for it. While Biden would prefer to pass a large infrastructure package on a bipartisan basis, the perennial stumbling block on funding may prevent that. Given that, Democrats may opt to use the reconciliation process to advance an infrastructure spending plan. They may use the aforementioned tax reforms as a de facto form of at least partial funding for increased infrastructure spending.

**Biden Appointees.** A Democratic majority in the Senate also will help the Biden administration by giving its nominees to cabinet and subcabinet positions a clearer path to confirmation than if Republicans retained power. Democrats will control Senate committees and the Senate floor schedule and generally will be able to move Biden appointees through the process faster. Senate confirmation only requires a majority vote.

**Healthcare.** During the Democratic primary, President-elect Biden resisted calls for "Medicare for All" and instead touted more incremental solutions, notably an expansion of Medicare and a public healthcare option on Obamacare exchanges that would be heavily subsidized for those who can't afford premium payments. While these proposals will be difficult to achieve since they would require Republican support in the Senate, a Democratic Congress (through the reconciliation process) and the Biden administration (through executive action) could take steps to shore up and bolster Obamacare. Additionally, all eyes will be on the Supreme Court with a decision (likely to be decided in late spring) on a case brought by a group of Republican attorneys general and the Trump administration challenging the constitutionality of Obamacare. This decision may prompt Congress to act. Lawmakers from both sides may try to use the momentum from a bipartisan agreement late last year on surprise medical billing to forge a way forward on prescription drug pricing, but it will be tough to find 60 votes in the Senate to pass such a bill.

**Debt/Deficit Issues.** With the significant uptick in federal spending in response to the COVID-19 pandemic, there has

been a marked increase in the nation's debt and deficit (the latter was \$3.1 trillion last year). As the pandemic hopefully recedes, there will be a growing focus in Washington on the nation's fiscal health. The Biden administration will confront the nagging problem of extending the debt limit, which will need to be extended by the fall. The Biden administration and Democrats in Congress likely will be able to sidestep a tense, acrimonious and partisan showdown on the debt ceiling by raising it through the reconciliation process. Without this forcing mechanism, it remains to be seen how much President Biden will prioritize deficit reduction. While Republican lawmakers and some Democrats will raise concerns about the debt and deficit, there is unlikely to be much action this year.

**Regulatory Review.** Democrats will be able to use the Congressional Review Act (CRA) to overturn late-stage Trump regulatory measures. A CRA resolution only needs a majority vote (instead of a super-majority of 60 votes) to advance in the Senate and can cover rules finalized in the final 60 legislative days of the previous Congress (the look-back period puts regulations in scope that were finalized as far back as the late summer). In 2017, Republicans in Congress and the Trump administration used the CRA to good effect to overturn 16 Obama-era regulations. However, Democrats may be less prolific in passing CRA measures because of other competing priorities and because CRA measures place limitations on the ability of regulators to issue new requirements. Through executive action, the Biden administration will implement many more changes to reverse many of President Trump's regulatory relief measures.

**Climate/Green Energy.** There are few areas where a Biden win would represent a more dramatic policy shift than climate issues, though it remains to be seen how much Democrats' ambitions will meet reality. We expect the Biden administration to quickly rejoin the Paris Climate Agreement and reverse the Trump administration's regulatory actions on emissions and other environmental issues. Democrats will try to advance greater funding for renewable energy investment and green jobs as part of an infrastructure package and tax incentives for renewable energy as part of a broader tax package. They may try to include a tax on carbon emissions as part of a budget reconciliation tax package, although that will likely fall short as some Democrats have reservations over such a tax.

**Immigration.** Democrats will take up legislation to reform immigration laws, including a path to citizenship for individuals who were children at the time they entered the US with their parents without proper documentation. These individuals are protected from deportation by the Obama-era Deferred Action for Childhood Arrivals (DACA) program, which has been under legal threat during the Trump administration. It will be tough to find bipartisan agreement on broad immigration issues (addressing both legal and illegal immigration) in the current Congress. Instead, President-elect Biden will need to use executive actions to liberalize a variety of immigration restrictions imposed by the Trump administration.

**China.** Both parties support taking a tough line on China, but their policy approaches differ. In its final few months in office, the Trump administration has taken a number of aggressive actions (e.g. investment and technology restrictions) with respect to China that will not be easy for the Biden administration to reverse. Given the political climate, the Biden administration is unlikely to do much if any backtracking on the Trump administration's trade tariffs, investment restrictions or other penalties on China. While the incoming administration will gradually seek to ease tensions with China and will likely pursue broader negotiations that seek concessions from China on intellectual property protections and state support/control of business enterprises, the Biden administration will go to great lengths to demonstrate strength with respect to China. Unlike the Trump administration, it will rely in part on US allies to join them in this effort.

**International Relations.** The Biden administration's emphasis on international institutions and improving relations with traditional US allies will represent a major shift from the Trump administration's unapologetic America-first approach. A key and abiding focus will be working on international solutions on climate change. The Biden administration will include several of the architects of a 2016 nuclear deal with Iran that was nixed by the Trump administration, and reviving such a deal will be a priority, although these efforts will receive considerable pushback from Republicans and some Democrats on Capitol Hill. It also will seek to extend a nuclear arms control treaty with Russia at a time when the relationship between the two countries is as bad as it was in the depths of the Cold War. The Biden administration will need to address potential flash points in the Middle East and with North Korea, while also winding down the longstanding US troop presence in Iraq and Afghanistan. Biden's interest in projecting US leadership and values abroad will be tempered by a skepticism of US intervention.

**Tech Industry.** The Democratic Congress and Biden administration will subject large technology companies to greater scrutiny. Democrats will try to push legislation to reform anti-trust laws to make it easier for federal authorities to break

these companies up, but such a measure will have a hard time passing the House, never mind the Senate where 60 votes will be necessary. While there is broad interest in removing liability protections for big tech firms with respect to content posted by users on their platforms, there is no bipartisan consensus yet on how this should be done. Congress also may take another shot at developing federal privacy standards, though jurisdiction on this issue is split between multiple committees and there continues to be serious disagreement on major considerations like whether a federal standard should preempt state requirements.

**Financial Services.** With the legislative filibuster still in place in the Senate, Democrats will have a hard time passing major legislation on financial policy matters. Instead, the more impactful changes will come out of the executive branch, where the financial industry will face a tougher regulatory and enforcement environment as Biden appointees take the reins.

**Other Issues.** An increase in the federal *minimum wage* has a good chance of being enacted in the Senate, though most states have higher minimum wage levels, which will make federal action less impactful. Democrats will hold many hearings and try to advance *campaign finance legislation* that will have a difficult time passing the 60-vote threshold in the Senate. Legislation easing *federal laws on marijuana* use and the provision of financial services for marijuana businesses will again pass the House but may have a more difficult time passing the 60-vote threshold in the Senate. The Biden administration will extend forbearance on federal *student loans*, though his proposal on \$10,000 in debt relief is unlikely to get sufficient support in the Senate and Biden himself has acknowledged that it would be legally questionable to do debt forgiveness by executive order. Democrats have a fair chance at passing a package of *police reforms* and other measures addressing *racial injustice and inequality*. Legislation advancing *statehood for both Washington, DC and Puerto Rico* will be a priority for Democrats, but it won't have sufficient support in the Senate (and there are legal questions about the constitutionality of DC statehood).

This report is a summary of certain recent legislative and regulatory developments that may be of interest to clients of UBS AG and its affiliates or subsidiaries ("UBS"). This report is intended for general information purposes only, is not a complete summary of the matters referred to, and does not represent investment, legal, regulatory or tax advice. Recipients of this report are cautioned to seek appropriate professional advice regarding any of the matters discussed in this report in light of the recipients' own particular situation. UBS does not undertake to keep the recipients of this report advised of future developments or of changes in any of the matters discussed in this report.

Issued in the US by UBS Americas Inc.