Post-Election Tax Analysis for High Tech and Beyond

November 2020

Building a better working world

2020 US general elections: results and post-election/2021 outlook

White House

Congress (House/Senate)

"Lame duck" post-election legislative session

COVID relief/stimulus legislation

2021 process considerations

2021 policy outlook

Note: Ray recorded this presentation late on Nov. 5, 2020. There is an update document about the presidential election included towards the end of this powerpoint file.

Washington now, and post-election

Currently

House

Senate

White House

House	Senate	White House
232 Democrats	53 Republicans	President Trump - 304 votes in 2016
197 Republicans	47 Democrats	232 votes pledged to Clinton in 2016

1 independent

5 vacancies
- CA (Hunter),
- NC (Meadows),
- TX (Ratcliffe),
- GA (Lewis, Graves)

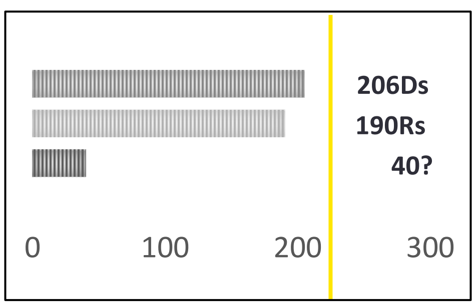
Election status

House	Senate	White House
Democrats retain control but lose seats	Democrats haven't won control; pathways to doing so are limited	No winner declared, some votes and ballots in battlegrounds uncounted

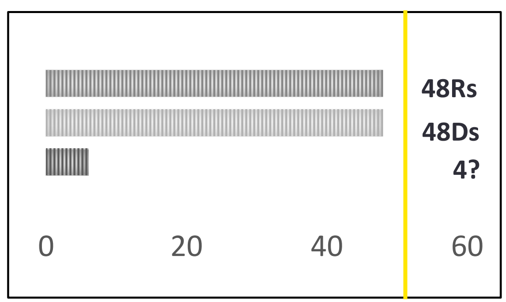
Gauges

(If same-party President and parties are 50-50, VP becomes 51st vote)

Electoral votes

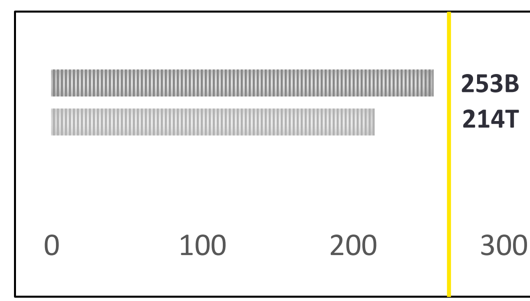


218 for control



51 for control

4 races not finalized: (1) NC, Tillis; (2) GA, Perdue; (3) GA, Loeffler (special); (4) AK, Sullivan



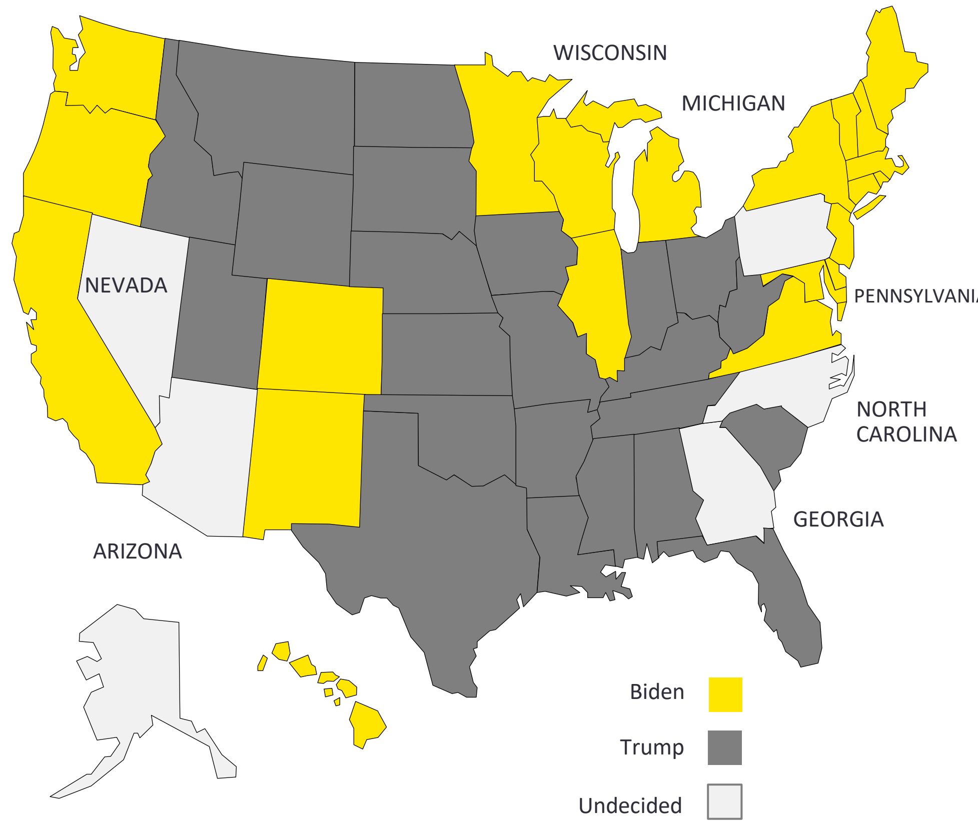
270 to win

Source: New York Times

EY

Presidential race

State - electoral votes	Results
Pennsylvania — 20	Undecided
Georgia — 16	Undecided
Arizona — 11	Undecided
North Carolina — 15	Undecided
Nevada – 6	Undecided
Michigan — 16	Biden ✓
Wisconsin — 10	Biden ✓
Minnesota — 10	Biden ✓
Florida — 29	Trump ✓
Ohio — 18	Trump ✓



Source: New York Times

It's the economy …

No recession in two years before re-election bid

Recession	President (year)	Re-election?
No	Obama (2012)	Yes
No	Bush43 (2004)	Yes
No	Clinton (1996)	Yes
No	Reagan (1984)	Yes
No	Nixon (1972)	Yes
No	LBJ (1964)	Yes
No	Ike (1956)	Yes
No	Truman (1948)	Yes
No	FDR (1944)	Yes
No	FDR (1940)	Yes
No	FDR (1936)	Yes
No	Wilson (1916)	Yes

Recession in two years before bid

Recession	President (year)	Re-election?
Yes	Bush41 (1992)	No
Yes	Carter (1980)	No
Yes	Ford (1976)	No
Yes	Hoover (1932)	No
Yes	Coolidge (1924)*	Yes
Yes	Taft (1912)	No

*Coolidge was not technically running for re-election as president, since he had come to the presidency after the death of President Harding in 1923.

Source: Adrian Gray, AGC Research, and Mehlman Castagnetti.

Senate races

Election status: 48Rs, 48Ds, 4 undecided

- 3 of 4 undecideds are Republican incumbents now leading: Thom Tillis (R-NC), David Perdue (R-GA), Dan Sullivan (R-AK)
- 4th undecided: GA special, Kelly Loeffler (R-GA), headed to January 5, 2021 runoff
- Democratic pickups: John Hickenlooper (D) in Colorado, Mark Kelly (D) in Arizona
- Democratic loss: Doug Jones (D-AL) defeated by Republican Tommy Tuberville
- Winning Democratic incumbent: Gary Peters (D-MI) over Republican John James
- Winning Republican incumbents: Senators Joni Ernst (R-IA), Lindsey Graham (R-SC), Steve Daines (R-MT), Susan Collins (R-ME)

Source: New York Times

State	Incumbent, opponent	Result
Alabama	Doug Jones — D **Tommy Tuberville — R**	 ✓
Alaska	Dan Sullivan – R Al Gross – D	Sullivan leading
Arizona	Martha McSally — R **Mark Kelly — D**	 ✓
Colorado	Cory Gardner – R **John Hickenlooper — D**	 ✓
Georgia	David Perdue — R Jon Ossoff — D	Perdue leading
	Kelly Loeffler — R Raphael Warnock — D	Set for January 5 runoff
Iowa	**Joni Ernst — R** Theresa Greenfield — D	✓
Maine	**Susan Collins — R** Sara Gideon — D	✓
Montana	**Steve Daines — R** Steve Bullock — D	✓
North Carolina	Thom Tillis — R Cal Cunningham — D	Tillis leading
South Carolina	**Lindsey Graham – R** Jaime Harrison – D	✓
Michigan	**Gary Peters – D** John James – R	✓

Key upcoming dates for certifying election results

Nov. 6 — **Mail-in ballots due in Pennsylvania**

Nov. 12 — **Mail-in ballots due in North Carolina**

Dec. 8 — **'Safe Harbor' deadline.** Federal law provides that in a contested election in any state: 1) if the state has enacted procedures to settle controversies or contests over electors and electoral votes, and 2) if these procedures have been applied and results have been determined six days before the Electoral College meets (Dec. 8 this year), then 3) these results are considered conclusive and must apply in the counting of the electoral votes.

Dec. 14 — **Electoral College delegations must vote** (in their home states)

Dec. 23 — **Deadline for electors' votes to be delivered to Congress**

Jan. 3 — **The new Congress is Seated**

Jan. 5 — **Georgia Senate runoff election,** if no candidate wins a majority on November 3. Expected at least for special election.

Jan. 6 — **Joint Session of Congress counts electoral votes, declares results.** Members can challenge states' electoral vote returns. The House and Senate must vote separately to accept or reject the objection.

Jan. 20 — **Inauguration Day.** The 20th Amendment ends the president's and vice president's terms at noon on Jan 20, even if the election were to be delayed by an act of Congress. The 1947 Presidential Succession Act would be triggered on Jan. 20 if there is no declared winner. The Speaker of the House is next in line, followed by the Senate's President Pro Tempore (currently Sen. Grassley; in a Democratic-majority Senate it would be Sen. Leahy).

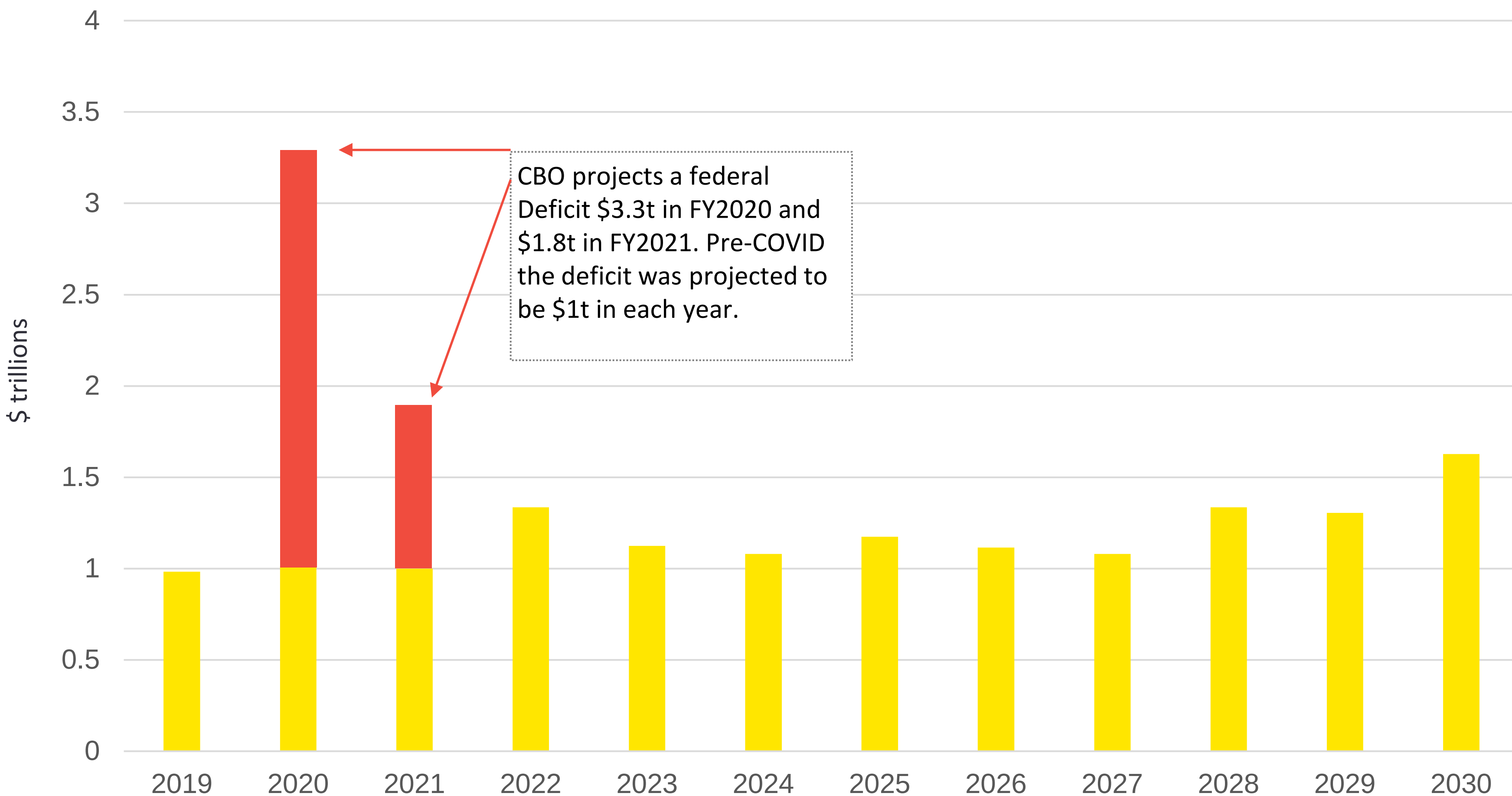
What’s at stake on tax? Biden v. Trump

Business tax proposals	Joe Biden	President Trump
Corporate rate	28% (“day one”)	20%
Other business tax	End subsidies for fossil fuels	• Full meals & entertainment deduction • “Tax credits … to bring jobs from China back” Repeal of: • Qualified plug-in electric motor vehicle credit • Exclusion of utility conservation subsidies to non-business customers who invest in energy • 5-year depreciation for renewable property • Energy investment credit • Credit for residential energy efficient property Expected to call for undoing TCJA limitations: • 30% limitation on the deduction of interest expense calculated without depreciation and amortization after 2021 (EBIT vs. EBITDA) • Bonus depreciation phased down 20% yearly after 2022 • Amortization of R&D expense starting in 2022 • Reduction in the Section 250 deduction for purposes of GILTI and FDII rules
	Repeal CARES Act excess business losses provision	
	No advertising deduction for Rx companies	
	Fee on financial firms w/assets >$50b	
International tax	21% GILTI rate, per-country basis, no relief for foreign profits related to qualified tangible property	
	Tighter anti-inversion rules	
	10% Offshoring Penalty (30.8% tax rate)	
Minimum tax	15% minimum tax on book income >$100m	
Real estate	End use of like-kind exchanges, use of real estate losses to reduce tax liability	
Individual tax proposals		
Income tax	39.6% top rate; phase out 199A deduction	• Extend TCJA individual provisions past 2025 • “Income tax cut for middle income families”
Capital gains, dividends	Repeal lower tax rate for households earning >$1m	15%
Itemized deductions	Pease limitation reinstated over $400,000; 28% cap for “wealthiest“	
Estate tax	$3.5m exemption, 45% rate (2009 regime); end estate tax stepped-up basis	Extend TCJA relief past 2025
Social Security	Payroll tax for incomes >$400k	Forgive 4-month 2020 payroll tax deferral

First major piece of legislation recent presidents enacted after taking office

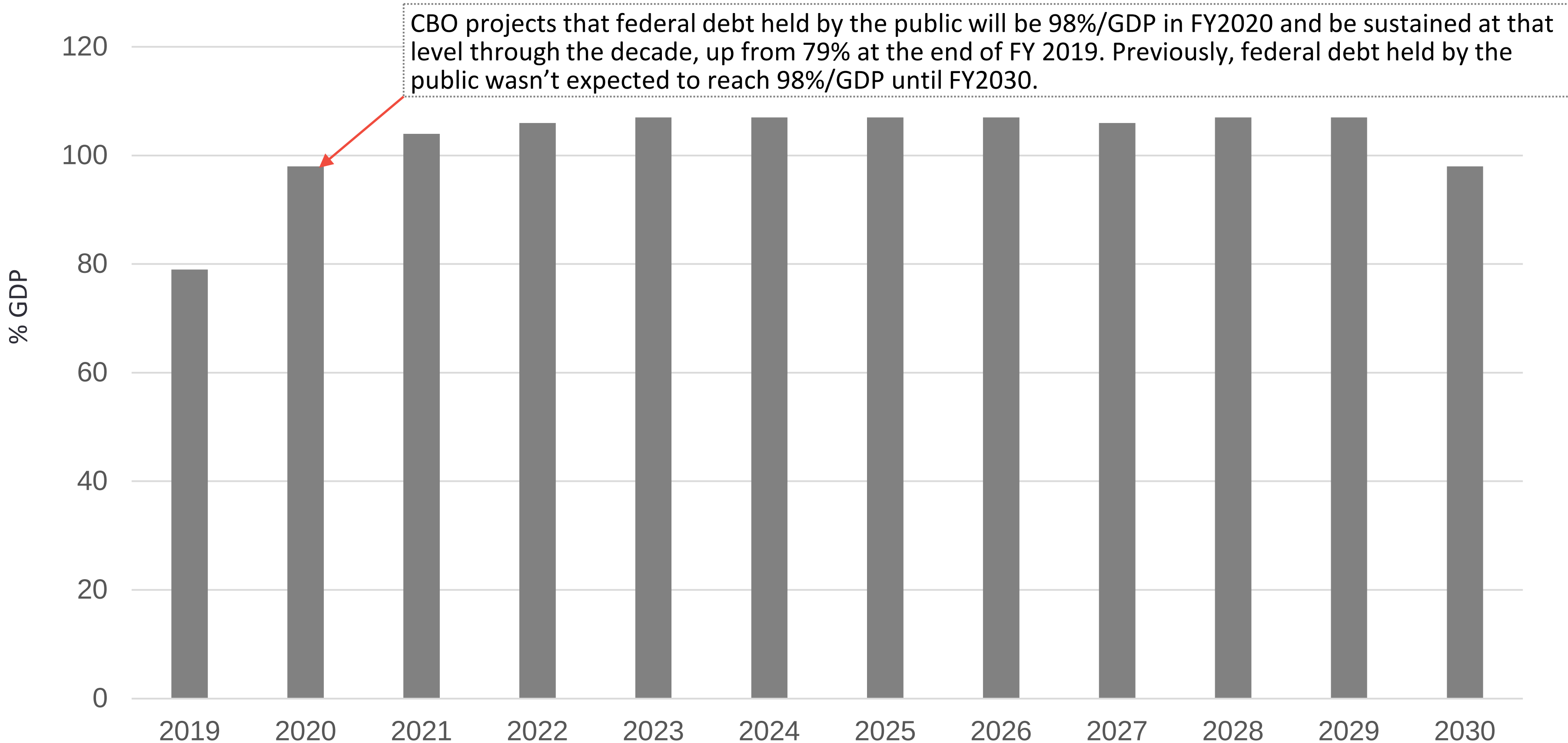
Donald Trump Took office January 20, 2017	**Tax Cuts & Jobs Act** (followed unsuccessful effort to repeal ACA) Enacted December 22, 2017 (though ACA repeal effort spent time) ► Tax reform: reduction in corporate rate, individual taxes, int'l
Barack Obama Took office January 20, 2009	**American Recovery and Reinvestment Act of 2009** Enacted February 17, 2009 ► Stimulus legislation, included bonus depreciation
George W. Bush Took office January 20, 2001	**Economic Growth and Tax Relief Reconciliation Act of 2001** Enacted June 7, 2001 ► The "Bush tax cuts" reduced individual rates, estate tax
Bill Clinton Took office January 20, 1993	**Omnibus Budget Reconciliation Act of 1993** Enacted August 10, 1993 ► Increased individual, corporate taxes
George H. W. Bush Took office January 20, 1989	**Omnibus Budget Reconciliation Act of 1990** Enacted November 5, 1990 ► Increased individual taxes despite "no new tax" pledge
Ronald Reagan Took office January 20, 1981	**Economic Recovery Tax Act of 1981** Enacted August 13, 1981 ► Sharply reduced individual, corporate taxes

Federal deficit increase resulting from coronavirus



Source: Congressional Budget Office, An Update to the Budget and Economic Outlook : 2020-2030, September 2020.

Federal debt as % of GDP to top 100% much sooner than previously projected



Source: Congressional Budget Office, An Update to the Budget and Economic Outlook : 2020-2030, September 2020.

Expiration/change dates of various tax provisions

Provision	2020	2021	2022	2023	2024	2025	2026
Many extenders (CFC look-thru, WOTC), alcohol tax cuts							
Medical deduction 7.5%/AGI floor		10% thereafter					
Five-year NOL carryback, no 80% NOL limitation							
Employee retention tax credit							
Interest deduction based on EBITDA	50%	30% →	EBIT thereafter				
R&D expensing			5-year amortization starting in 2022				
100% expensing				Phased down in 20% increments thereafter			
GILTI deduction at 50%							37.%5 thereafter
FDII deduction at 37.5%							21.875% thereafter
BEAT rate: 10%/11% for banks/dealers							12.5%/13.5% thereafter
TCJA individual rate cuts, other provisions							
20% pass-through deduction							
TCJA corporate rate cut							

In effect   Not in effect

OECD BEPS 2.0 project – Overview

- OECD project on addressing the tax challenges of digitalization of the economy; **proposals to make fundamental changes to global tax rules have implications for all multinational businesses**
  - **Not limited to digital** businesses or business models
- Built on earlier OECD project on Base Erosion and Profit Shifting (BEPS) which was completed in 2015
- Two parallel elements:
  - Pillar 1 — **revisions to profit allocation and nexus rules** to allocate more taxing rights to market countries
  - Pillar 2 — establishing **new global minimum tax rules** to ensure that all business income is subject to at least an agreed minimum level of tax
- **Significant political momentum** driving project forward, with unilateral action by countries on digital services taxes increasing the pressure
- **Broad reach**: 137 jurisdictions actively participating through the Inclusive Framework

BEPS 2.0: Looking forward

The path forward:

- October 12 – blueprints released, announcement that successful conclusion now sought by mid-2021
- October 15-16 – Report to G20 Finance Ministers on blueprints
- November 21-22 – G20 Leaders' summit
- December 14 – Public comments due for expected public consultation
- 2021 and beyond:
  - Agreement on consensus-based solution
  - Development of model legislation and treaty provisions
  - Extended period for country implementation

The pressure points and hurdles:

- Major political disagreements to be resolved
- Significant technical issues to be addressed
- Interest in simplification
- Need for expansive new dispute prevention and resolution processes
- Ongoing country activity on digital services taxes and related activity on retaliatory tariffs
- Other unilateral country activity
- Revenue needs of countries post-crisis
- Effect of economic downturn on revenue projections
- Increased digitalization of the economy
- European Union action

Biden projected to be next president: policy possibilities

The ambition of his agenda hinges on control of the Senate, unknown until January

9 November 2020

Former Vice President Joe Biden has been declared the winner of the presidential race and Senator Kamala Harris (D-CA) will be the Vice President, but control of the Senate is unknown and is likely to be determined by a pair of Georgia runoff elections on January 5.

With the Senate ratio prior to then expected to be 50 Republicans, 48 Democrats, the runoffs will attract an enormous amount of money and attention, and likely take on the importance of a national campaign. Business before Congress during the lame-duck session will be viewed through the lens of how the imminent runoffs will be affected, and the echoes of the November 3 elections may cause recalibrations in strategy, in addition to changes in parties' positions going forward generally.

Democrats are widely seen as underperforming in the polls: the presidential race was closer than polls anticipated; Democrats have only an even-at-best chance of taking control of the Senate; and House Democrats lost seats. Some members in that chamber expressed alarm at how progressive ideas either espoused by Democrats or cast upon them by Republicans hurt the party in the elections. House Democratic leaders, cognizant of how all actions of the party will affect the fortunes of Democrats in the runoffs, have urged members to focus their messaging on the pocketbook issues of health care, jobs, and infrastructure over more ambitious goals. Those sentiments are likely to be shared by the party generally. Further, bringing the nation together seems the goal over further sowing divisions, and that may apply to policy choices.

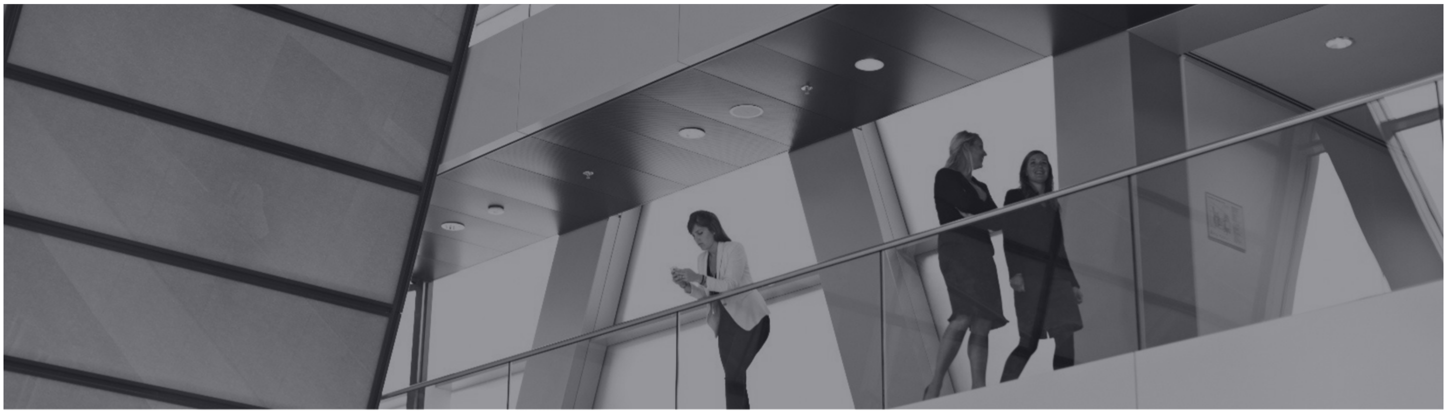
Having two runoff elections in one state is unusual, and with the Senate hanging in the balance, perhaps unprecedented. Senator David Perdue (R-GA), a strong Trump backer, edged out Democrat Jon Ossoff in the November 3 election, but came just short of the 50% support required to avoid a runoff. The Senate special election will be between Senator Kelly Loeffler (R-GA) and Democrat Raphael Warnock. Other candidates were in the race pre-November 3, muddling the picture of how Loeffler and Warnock match up head-to-head.

Democratic Senate. If Democrats win control of the Senate – if the parties are 50-50, VP Harris would break the tie – major priorities like stimulus, climate change, health care, education and housing, some or all of which might be financed with tax increases, could be brought up and passed in the House and Senate. (President-elect Biden's proposed tax increases were not intended, at least during the campaign, to be enacted as a standalone package; rather they are to be combined as revenue sources for these major priorities.)

With such a narrow margin, Democrats would face the choices of: 1) negotiate with some Senate Republicans in order to achieve the 60-vote margin necessary to move most legislation through the Senate; 2) use the budget reconciliation process that allows certain legislation to pass with 51 votes, rather than the 60-vote filibuster threshold; or 3) seek to change rules regarding the filibuster. Prior to the election, when Democrats taking control of the Senate in a "blue wave" seemed more likely, House Speaker Nancy Pelosi (D-CA) said, "We'll almost certainly be passing a reconciliation bill, not only for the Affordable Care Act, but for what we may want to do further on the pandemic and some other issues that relate to the well-being of the American people." With control of the Senate, Democrats would have potentially two opportunities to employ budget reconciliation next year if instructions can be approved in the FY2021 and FY2022 budget resolutions – only one reconciliation bill is allowed for each resolution. What priorities or combinations would be the target of a second reconciliation bill is unclear, however each bill is limited in that it must not increase the deficit outside the budget window – currently 10 years.

> "
> Let's give each other a chance. It's time to put away the harsh rhetoric, lower the temperature, see each other again, listen to each other again.– President-elect Biden, November 7

How much of any first reconciliation bill would be paid for is unknown now, as is how Biden will proceed with his intention to raise the statutory corporate income tax rate to pay for changes that can benefit middle-income Americans on "day one" of his presidency.



Some Biden advisors and congressional Democrats have indicated the types of tax increases supported by Biden during the campaign would not be included as part of initial stimulus legislation, but instead would be used to offset the cost of changes in permanent policies. That could mean such tax increases might not take effect on January 1, 2021, but could be delayed, maybe until 2022. Biden has also said tax increases won't affect families earning less than $400,000 annually; any hikes not explicitly targeting corporations and high-income individuals will be scrutinized.

With a razor-thin Senate margin – a likely maximum Democratic votes of 51 and Republican votes of 50 – the prerogatives of moderate senators like Joe Manchin (D-WV) and Kyrsten Sinema (D-AZ) will be crucial and their leverage at a maximum. This could be reminiscent of how centrist Republican senators were at times the focus of some of former President George W. Bush's (R) legislative efforts. The progressive wing will still wield considerable influence – particularly in the House – and tensions with more mainstream Democrats will continue as the future of the party is considered.

For health care, this means bigger reform – such as creating a "public option" similar to Medicare on the Affordable Care Act (ACA) exchanges – may be delayed; however, that calculus would change if the Supreme Court rules next spring in favor of Republican states aiming to strike down the ACA.

Republican Senate. If Republicans control the Senate, Biden and Democrats won't be able to run the table with major Democratic priorities like climate change, health care, education or housing. Those proposals are either going to be shut down by the Senate or significant GOP interests would need to be reflected to win their support. Majority Leader Mitch McConnell (R-KY) would decide which bills are brought up and can block Democratic priority bills financed with tax increases.

Some areas of potential bipartisan cooperation are:

- infrastructure;
- retirement savings;
- changes scheduled under the Tax Cuts & Jobs Act (interest deduction, R&D amortization); and
- health care priorities: lowering drug prices, surprise billing and aiding rural hospitals.

Economic proposals outlined by Biden thus far include a $700 billion plan to aid US businesses through procurement and R&D investment, and a $2 trillion plan to "create millions of high-quality, union jobs by building a modern infrastructure and a clean energy future." He also has proposals addressing offshoring. Regarding stimulus, it is possible that proposals seen as revitalizing the economy and creating jobs, but not raising taxes, could attract support among Republicans in the Senate. It is unclear what Biden will consider "stimulus," and whether infrastructure or "green" energy/jobs legislation would apply. Anything resembling the trillions-of-dollars Green New Deal on energy is likely to be dismissed by Republicans.

Of course the top candidate for stimulus will be provisions related to the coronavirus. Senator McConnell had, shortly after the election, discussed the need for a bill this year, but he and Speaker Pelosi then quickly retreated into their corners over the size of the bill – Senate Republicans favor just north of $500b, and Democrats $2t. If further relief cannot be agreed to this year, it will be a focus early in 2021. It is also unclear how President Trump will view additional coronavirus relief during a lame-duck session.

To what extent Republicans hold together against Democratic-proposed tax increases or other ideas is also unclear. Again, moderate senators will play a huge role in any prospective deal-making, and moderate Republicans like Susan Collins (R-ME), who beat expectations that she would lose re-election, will have maximum leverage.

One factor to consider in the GOP Senate scenario is that Biden is a creature of the Senate and enjoys relationships there better than any other recent president. For example, he and leader McConnell negotiated a resolution to the 2012 "fiscal cliff" slate of tax increases.

Tax committees. Biden and congressional Democrats are ideologically aligned, having argued for years against offshoring and for making the wealthy and corporations pay their "fair share." In an all-Democratic Congress, the presumed leaders of congressional tax-writing committees, Rep. Richard Neal (D-MA) and Senator Ron Wyden (D-OR), have long aspired to act on legislation to increase infrastructure investment. Whether in coronavirus relief or another context, Democrats are also likely to act on their long-held goal of expanding low-income tax credits like the Earned Income Tax Credit and Child Tax Credit. Retirement security is a bipartisan issue in both tax writing committees and could be a focus no matter who controls the Senate: Neal has a recent bill with Ranking Member Kevin Brady (R-TX) that has many provisions in common with legislation introduced earlier in this Congress by Senators Rob Portman (R-OH) and Ben Cardin (D-MD).

If Republicans control the Senate, Mike Crapo (R-ID) is the likely incoming Senate Finance Committee

chairman. Most of the bills he has proposed to the Committee in the current Congress have addressed health care issues. On tax, he is among the primary advocates of the short-line railroad credit that is part of the tax extenders package and has in the past been seen as helping pull the other slate of provisions along. He and Senator Wyden propose to make the credit permanent.

Expiring tax provisions are a key agenda item, supporters hope to see them addressed this year or early next, and the excise tax nature of beverage and aviation taxes makes swift action more crucial. Other main provisions include the CFC look-through rule.

Bipartisan deals could be possible in a divided Congress, including potential compromise tax legislation in which Republicans presumably negotiate to keep or fix some of their priorities from the TCJA in exchange for priorities that Democrats have, such as expansion of low-income credits and multiemployer pension relief.

Challenging the agenda generally is that Republicans have signaled they will focus more on the budget deficit going forward. Another factor: many members of the Finance Committee are up for reelection in 2022, although, similar to numbers in the full Senate, the number of GOP to Democratic members is about 2-1.

Health committees. In an all-Democratic Congress, Sen. Wyden and Sen. Patty Murray (D-WA) would likely take the reins of the two health care committees in the Senate – Finance and Health, Education, Labor and Pensions (HELP), respectively.

Sen. Wyden has said he wants to focus on pandemic relief and addressing systemic racism, including developing bipartisan maternal mortality legislation. Wyden is also likely to continuing pushing bipartisan drug pricing legislation, which he cosponsored with current committee Chairman Chuck Grassley (R-IA). The bill, however, features mandated manufacturer rebates for prices rising faster than inflation, which is opposed by many Republicans including Grassley's likely replacement, Sen. Crapo. It also does not include progressive priorities such as Medicare negotiation, which is part of the Biden-Harris platform. The ability to get a bill over the finish line will hinge on getting both moderate and progressive Democrats on board.

If Republicans retain control of the Senate, Sen. Crapo could work with Democrats on drug pricing if it looked more like his less aggressive version of drug pricing reform, featuring transparency and patent reform measures, in addition to pursuing legislation focused on telehealth and other issues facing rural communities, also a priority of the House Ways & Means Committee and bipartisan in nature.

In the HELP Committee, Sen. Murray would likely also be focused on pandemic relief in addition to protecting and expanding on the ACA. With Republican control, either Sen. Richard Burr (NC) or Sen. Rand Paul (R-KY) are next in line to helm the committee. Regardless of leadership, the committee will be tasked with picking back up bipartisan, bicameral efforts to address surprise medical billing and other traditionally bipartisan health care packages such as those addressing opioids, mental health and medical device and prescription drug user fees (MDUFA and PDUFA).

Senate HELP Committee leaders negotiated a bipartisan deal with the House Energy & Commerce Committee late last year on surprise billing that features benchmark payment rates and baseball-style arbitration for high dollar claims; however, a bipartisan House Ways & Means bill relies on independent dispute resolution, which is favored by providers including Sen. Paul. Finding a solution that works for all will continue to be an uphill climb.

In addition to bipartisan focus areas such as drug pricing, surprise billing and rural health, a robust package featuring various Medicare and Medicaid issues beyond "extenders" – which are set to expire with government funding on December 11 – is also overdue, but could prove costly and could be limited by pandemic budget concerns.

Banking committees. If Sen. Sherrod Brown (D-OH) becomes Banking Committee chairman in a Democratic majority, the White House could be expected to pursue an ambitious series of consumer-friendly changes such as a public credit reporting bureau, postal banking and Brown's idea for personal "FedAccounts" with no fees. Those proposals seem likely targets for a filibuster, however, and a Banking Committee chaired by Sen. Pat Toomey (R-PA) would probably ignore them, leaving Biden and Democrats to pursue smaller-scale priorities like student lending bills, "shadow banking" risks, affordable housing and racial diversity.

Biden will likely seek a slate of less industry-friendly financial regulators. It was reported on November 6 that Biden's team named former CFTC chairman Gary Gensler, a veteran of the Dodd-Frank post-crisis financial reforms, and KeyBank NA executive (and longtime Biden advisor) Don Graves to advise the transition on Wall Street regulatory issues. Gensler is close to both Biden advisor Ted Kaufman and Sen. Elizabeth Warren (D-MA). But if Republicans control the Senate, Biden may be limited to nominating regulators who could attract support from the GOP, disappointing progressives.

What’s at stake in control of the Senate?

The following discusses scenarios for how certain policy issues could play out under a Democratic or Republican Senate.

Tax	Biden proposals that could advance with a Democratic Senate	Outlook for a Republican Senate
Corporate rate	28% on “day one;” Biden has suggested this is a “fair” rate, and no one expected the TCJA to go to 21%	Republicans will likely oppose an increase in the corporate tax rate; whether a compromise is in the cards to have the rate climb by a few percentage points as part of broader legislation that Republicans might support is unclear, but it is unlikely a rate increase will occur of the size Biden has proposed, or that any increase will happen in 2021. There is also the matter of dealing with scheduled changes under the TCJA, with changes related to interest deductibility, R&D amortization and bonus depreciation. Democrats may be reluctant to support changes to the law they unanimously voted against unless doing so aligns with their own tax and economic principles, and could insist on including their own priorities along with these changes.
Other business tax	End subsidies for fossil fuels	
	Repeal CARES Act excess business losses provision	
	No advertising deduction for Rx companies	
	Fee on financial firms w/assets >$50b	
International tax	21% GILTI rate, per-country basis, no relief for foreign profits related to qualified tangible property	Republicans will likely oppose such changes to GILTI. Enhanced penalties for moving jobs offshore, like prior Democratic proposals, would also likely be opposed.
	10% Made in America Tax Credit for investment in revitalizing factories and reshoring jobs 10% Offshoring Penalty (30.8% tax rate)	
Add-ons	15% minimum tax on book income >$100m	Republicans probably aren’t going to back a minimum tax based on book income, and the bulk of the Democratic loophole-closing playbook probably isn’t going anywhere in a split Congress.
Real estate	End use of like-kind exchanges, use of real estate losses to reduce tax liability	
Income tax	39.6% top rate; phase out Section 199A deduction	Republicans are likely to argue that the current top rate, 37%, is high enough. They won’t support new taxes on individuals.
Itemized deductions	Pease limitation reinstated over $400,000; 28% cap for “wealthiest“	
Capital gains, dividends	Repeal lower tax rate for households earning >$1m	Republicans won’t support increasing investment taxes, traditionally a top issue for them.
Estate tax	End stepped-up basis	Republicans won’t support increasing estate taxes, a top issue for them spanning decades.
	$3.5m exemption, 45% rate (2009 regime)	
Social Security	Payroll tax for incomes >$400k	Republicans won’t support increasing payroll taxes. The battle over the future of the Social Security program could continue to be fought between tax increases backed by Democrats and benefit cuts advocated by Republicans.

Health	Biden proposals that could advance with a Democratic Senate	Outlook for a Republican Senate
Coronavirus response	Biden has said he would give the federal government primary responsibility for the coronavirus response and supports increased investment across the board. The House-passed HEROES Act is a likely starting point for Democrats, which included $100 billion for the Provider Relief Fund, $75 billion for a COVID-19 National Testing and Contact Tracing Initiative, increased Medicaid and Medicare payments, an ACA special enrollment period, along with other health care items.	Republican coronavirus proposals are more modest, with the Senate HEALS Act featuring $25 billion for Provider Relief Fund, $26 billion for vaccines, and $16 billion for testing. House Democrats and Senate Republicans could likely reach an agreement somewhere in the middle. President Biden could also use executive authority to ramp up production of personal protective equipment (PPE) under the Defense Production Act, restore the White House pandemic office, re-embrace the World Health Organization (WHO) and provide federal guidance on mask wearing and reopening.
Public option	A key tenet of Biden's platform is the creation of a new public health insurance option, similar to Medicare, in which the federal government would set provider reimbursements and premium rates. Costs would vary on a sliding scale based on income and automatically enroll at zero cost those in the Medicaid expansion population in states that have not expanded. With a slim margin in the Senate, big reform like this may be delayed as it would require a lot of political capital and getting both moderate and progressive Democrats on board may prove difficult.	A public option is a nonstarter for a Republican Senate.
Strengthen the ACA	Proposals supported by Biden and Congressional Democrats include expanding eligibility for financial assistance and making premium tax credits more generous by eliminating the 400% cap on tax credit eligibility, lowering the limit on the cost of coverage from 9.86% of income to 8.5%, and reducing out-of-pocket cost sharing for enrollees by setting the benchmark plan at the gold level.	While it is unlikely Republicans would support any of these proposals, Biden could use executive action to restore consumer outreach and assistance programs, which were cut by the Trump administration, and unwind various Trump-era regulations and guidance that undermine the ACA, such as those expanding access to short term limited duration plans and supporting Medicaid work requirements and block grants.
Expanding Medicare	Biden favors expanding Medicare eligibility to age 60 and adding vision, hearing and dental benefits. Not all Democrats are aligned on the details and advancing these may be a heavy lift.	A nonstarter with a Republican Senate.
Drug prices	Biden supports legislation approved by the Democratic-led House last year giving Medicare the power to negotiate "abusively priced" prescription drugs with manufacturers, capped at a level associated with OECD prices, which would also available to private payers. Biden also supports proposals to limit price increases for all brand, biotech, and highly priced generics to the general inflation rate, in addition to limiting the prices of new specialty drugs with little to no competition by establishing an independent review board to recommend a price through external reference pricing. Items such as limiting price increase may be difficult to pass with slim margins in the Senate.	While Republicans view Medicare negotiation as "price fixing," there is room for bipartisan agreement on other drug pricing measures. Biden also supports bipartisan congressional proposals such as those aimed at improving the supply of quality generics by cracking down on anti-competitive efforts that delay entry along with Medicare Part D redesign.

Health	Biden proposals that could advance with a Democratic Senate	Outlook for a Republican Senate
Mental health and opioids	Biden plans to redouble his efforts to implement the federal mental health parity law in addition to improving access to mental health care and eliminating stigma around mental health, which he championed as vice president. This includes suicide prevention strategies for veterans and the LGBTQ community, doubling the number of mental health professionals in schools and encouraging youth to pursue health care jobs. He also has a five-point plan to address the opioid crisis that includes increased access to services, reducing unnecessary opioid prescriptions and holding pharma accountable for their role in the crisis. Congressional Democrats are aligned with these priorities.	An enhanced focus on mental health care and opioids, including incentivizing a more robust workforce and increased access to care, is an area of bipartisan agreement. The main roadblock to advancing bipartisan legislation will be the significant cost likely associated with these proposals.
Disparities in care	Biden and congressional Democrats both plan to focus on reducing disparities in care and increasing access to all regardless of gender, race, income, sexual orientation or Zip code. This includes expanding access to contraception and protecting the right to an abortion through restored federal funding for Planned Parenthood and a reversal of the Mexico City Policy (also referred to as the "global gag rule").	Congressional Republicans agree on the need to reduce disparities in care, in particular in areas such as maternal mortality. Bipartisan agreement is possible barring a hang-up around family planning. Biden plans to reverse the Mexico City Policy once he enters office.
Surprise billing	Biden supports prohibiting health care providers from charging out-of-network rates in situations when patients have no control over who they can see, like in the case of emergency hospitalizations. While congressional Democrats agree in theory, there is disagreement on the correct solution to the problem of "surprise billing," which is not divided along party lines.	Both Democrats and Republicans agree on the need to address "surprise billing," however the preferred solution differs by committee and is not party-specific. The fundamental disagreement is around whether rates should be set based on a benchmark – favored by insurer and employer groups – or be resolved through arbitration – favored by provider and hospital groups.
Market concentration	Biden says his administration will aggressively use its existing antitrust authority to address market concentration across the health care system that has resulted in driving up prices for consumers.	Congressional Republicans are less aggressive in their desire to interfere with the market.

Financial services	Biden proposals that could advance with a Democratic Senate	Outlook for a Republican Senate
Coronavirus response	If a pandemic stimulus package doesn't pass in the lame-duck session, Biden and the Democratic leaders of the banking committees will seek a number of financial provisions, including rental and homeowner assistance; extending eviction & foreclosure moratoriums; liquidity for loan servicers and landlords; and suspending negative credit reporting & debt collection for federal student loan borrowers and small-business owners.	Sen. Pat Toomey (R-PA), who would chair the Banking Committee, has opposed spending more than the $500 billion in the Senate GOP's "targeted" package. Toomey supports extending the Paycheck Protection Program, and investigating fraudulent loans in the PPP. Toomey has also said the Fed should end its emergency lending programs at year's end, concerned that they will become a substitute for fiscal policy.
Credit reporting	Biden and Sen. Brown have endorsed a proposal to eventually replace the 3 credit reporting bureaus with one federal credit reporting registry, housed in the CFPB. Biden could support the more incremental approach of offering the new agency as an alternative to the existing bureaus, while requiring federally backed mortgages and student loans to use it.	Toomey is unlikely to support a federal credit reporting agency, preferring smaller changes to the existing bureaus, though the Banking Committee under GOP leadership has largely ignored several House-passed credit reporting reform bills aimed at students and others.
Postal banking/ Fed accounts	Biden and Sen. Brown have supported allowing the Postal Service to offer checking & savings accounts, remittance services and small loans in an effort to reach the unbanked. The administration could take the more modest approach of allowing banks to offer some consumer-friendly products at post offices. Biden has also endorsed Brown's idea for no-fee "FedAccounts" arranged by the Fed.	Sen. Toomey appears unlikely to support what most conservatives and industry advocates view as a substantial intrusion of government into banking.
Student debt	The Biden-Sanders task force proposed to allow student debt to be discharged in bankruptcy; to immediately forgive $10,000 of student debt per person per year for up to five years (a plan authored by Sen. Warren); and cracking down on "predatory" for-profit colleges	In a 2017 radio interview, Sen. Toomey said, "We really should be moving in the direction of not favoring... preferred industries. We ought to have the lowest possible rate... and then let people do what they like with their money. And some will choose to incur debt for education, and for many people, that is a very rational choice."
Consumer lending & credit cards	Biden's campaign endorsed targeting "usurious" credit card rates, and Democrats would seek to strengthen oversight of credit cards and consumer lending generally. The CFPB with a Biden-appointed director will likely reinvigorate its enforcement and rulemaking.	Sen. Toomey did not list bank regulation of any kind among the priorities he plans if he becomes chairman, and he shares most conservatives' disdain for the CFPB and its autonomy from the congressional budgeting process.
Capital markets	Sen. Brown would likely focus on "shadow banking" risks posed by overnight repo markets and money market funds, both of which were unstable in the market turmoil of the early pandemic. He also would likely support adding financial stability to the SEC's mission.	Toomey has said that as chairman he would seek to "expand opportunities for middle-income Americans to be investors at lower costs." He is also likely to focus on relations with China, including de-listing Chinese firms with audit problems from U.S. exchanges.
Housing issues & GSE reform	Sen. Brown and Chairman Maxine Waters (D-CA) both want to focus on affordable housing bills. Biden, Brown and Waters are also opposed to recapitalizing and releasing Fannie and Freddie from conservatorship in the absence of a legislative solution to housing finance. Biden seems likely to seek FHFA Director Marc Calabria's resignation, though his term doesn't expire until April 2024.	Sen. Toomey has said he wants to focus on GSE reform, "and I would like to bring an end to the status of these two giants," Fannie Mae and Freddie Mac. Since the crisis, however, neither party has been able to agree even among themselves about how to move on from the GSEs without destabilizing a housing market where they back trillions of dollars in mortgages.

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Prior to joining EY, Ray was Tax Counsel and Special Advisor for Tax Reform with the US House Committee on Ways and Means, where he helped guide the development of the Tax Reform Act of 2014, a comprehensive tax reform plan proposed by Chairman Dave Camp (R-MI). Ray also has served Congress as Legislation Counsel for the Joint Committee on Taxation, where he was involved in several tax legislative proposals that were passed by Congress and signed into law by the President, including the American Jobs Creation Act of 2004. In addition, Ray played a significant role at JCT in the ratification of income tax treaties by the US Senate and the development of tax policy reports to Congress relating to tax simplification and the investigation of the Enron Corporation. These reports included several tax legislative recommendations that later were enacted into law.

Ray began his Washington career with the National Tax Department of Ernst & Young, where he was a member of the Financial Services Industry practice group. Ray also has taught the taxation of debt instruments as an adjunct member of the faculty at the Georgetown University Law Center.

Ray is a graduate of the University of California at Berkeley and received a J.D. from the Pepperdine University School of Law, as well as an LL.M. in taxation from the Boston University School of Law. Ray is a member of the State Bar of California and the DC Bar.

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