

From: Squire Patton Boggs LLP
Date: January 22, 2021
Subject: Biden Administration/117th Congress Look Forward

This memorandum provides a look forward for state and local governments and their partners highlighting action on notable legislative and administrative action we anticipate that President Biden and the Democratically controlled 117th Congress will pursue in the first weeks of the new Administration and Congress. It also documents the actions taken on Inauguration Day by the recently sworn-in President.

President Biden was sworn in as the 46th President of the United States on January 20 and quickly issued a series of Executive Orders and signed memoranda. Prior to taking office, the President-elect had released legislative proposals on comprehensive immigration reform and COVID-19 relief.

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DAY ONE ACTIONS

On January 20, Inauguration Day, President Biden quickly issued a series of Executive Orders (EO) and signed memoranda and letters that primarily concern COVID-19, climate change, and racial equity. The Biden Administration also issued a memorandum stating its intentions to freeze and explore Trump Administration “midnight rules” to overturn, as it can withdraw regulations that were not published in the Federal Register by January 20.

The following executive actions were announced by President Biden:

COVID-19

- Launching a “100 Days Masking Challenge” for Americans to wear a mask for the next 100 days and asking the Department of Health and Human Services to work with state and local governments to implement masking and physical distancing measures to stop the spread of COVID-19
- Reengaging with the World Health Organization following the Trump Administration withdrawing from the organization
- Creating the position of COVID-19 Response Coordinator who will be responsible for coordinating all elements of the COVID-19 response, including managing efforts to produce, supply, and distribute personal protective equipment, vaccines, and tests

Economic Relief

- Asking the Centers for Disease Control and Prevention to consider immediately extending the federal eviction moratorium until at least March 31, 2021, while calling on Congress to provide rental assistance and extend the moratorium further
- Asking agencies to consider extending foreclosure moratoriums for federally guaranteed mortgages and continuing applications for forbearance for federally guaranteed mortgages until at least March 31, 2021
- Asking the Department of Education to consider immediately extending the pause on interest and principal payments for direct federal loans until at least September 30, 2021

Climate

- Rejoining the Paris Agreement on Climate Change
- Directing all executive departments and agencies to immediately review and take appropriate action to address environmental federal regulations taken during the last four years that it deems were harmful to public health, damaging to the environment, unsupported by the best available science, or otherwise not in the national interest
- Directing agencies to consider revising vehicle fuel economy and emissions standards, methane emissions standards, and appliance and building efficiency standards
- Directing the Department of Interior to review the boundaries and conditions of the Grand Staircase-Escalante, Bears Ears, Northeast Canyons, and Seamounts Marine National Monuments and placing a temporary moratorium on all oil and natural gas leasing activities in the Arctic National Wildlife Refuge
- Re-establishing the Interagency Working Group on the Social Cost of Greenhouse Gases (GHG) and directing the issuance of an interim social cost of GHG schedule to ensure that agencies account for the full costs of GHG emissions

- Revoking, revising, or replacing additional Executive Orders, Presidential Proclamations, Memoranda, and Permits signed over the past four years that the Administration believes do not serve the U.S. national interest, including revoking the presidential permit granted to the Keystone XL pipeline

Racial and Underserved Equity

- Directing every federal agency to undertake a baseline review of the state of equity within their agency and deliver an action plan within 200 days to address unequal barriers to opportunity in agency policies and programs
- Launching a new equitable data working group to ensure that federal data reflects the diversity of America
- Tasking the Office of Management and Budget with working to more equitably allocate federal resources to invest in communities of color and other underserved communities
- Reducing language access barriers
- Studying new methods that federal agencies can use to assess whether proposed policies advance equity
- Directing agencies to engage with communities who have been historically underrepresented, underserved, and harmed by federal policies
- Revoking the Trump Administration’s orders excluding noncitizens from the census and apportionment of Congressional representatives
- Directing the Secretary of Homeland Security to take all appropriate actions under the law to preserve the Deferred Action for Childhood Arrivals (DACA) program and call on Congress to enact legislation providing permanent status and a path to citizenship for people who came to this country as children
- Repealing proclamations that restrict entry into the United States from primarily Muslim and African countries, and instructs the State Department to restart visa processing for affected countries
- Stopping all border wall construction projects
- Extending until June 30, 2022, the long-standing Deferred Enforced Departure (DED) designation for Liberians who have been in the United States for many years
- Ensuring that the federal government interprets Title VII of the Civil Rights Act of 1964 as prohibiting workplace discrimination on the basis of sexual orientation and gender identity

Regulatory Actions

- Issuing a regulatory freeze memo that will pause any new regulations from moving forward and give the Biden Administration an opportunity to review any regulations that the Trump Administration tried to finalize in its last days

COVID-19

COVID-19 RELIEF PROPOSAL

On January 14, then-President-elect Biden unveiled the first part of an aggressive two-phase plan aimed at stimulating the U.S. economy due to the challenges of the COVID-19 pandemic.

The first step, the America Rescue Plan, is a \$1.9 trillion economic relief proposal that includes an additional \$1,400 direct payment to eligible individuals (on top of the \$600 checks approved by

Congress in December) along with \$350 billion for direct aid to local and state governments to balance budgets while maintaining essential services. The plan also proposes expanding supplemental federal unemployment benefits (set to expire in March for many workers). It also proposes: additional small business relief and an additional \$25 billion for renters; increased funding for vaccine distribution (including deploying the National Guard to assist), testing and contact tracing; and funding to reopen K-12 schools. It would also extend the eviction moratorium to September, provide funds for legal assistance for households facing eviction or foreclosure, and extend and expand Emergency Paid Leave (including reimbursing local governments for the cost).

The proposal also includes other provisions not directly tied to COVID-19 relief, such as increasing the federal minimum wage to \$15/hour. Emergency funding to upgrade federal information technology infrastructure and address recent breaches of federal government data systems alleged to have originated from Russia is also included.

President Biden argued the steep price tag associated with this first, and a yet to be unveiled, expected second (infrastructure investment proposal – see Infrastructure Section) relief plan are needed to keep America competitive. Congressional leadership indicated that they would take the first phase of this legislation up in a speedy fashion, while Republican lawmakers responded coolly to the proposal with concerns on the cost of the package and the impact of a higher minimum wage on business.

COVID-19 RESPONSE

On January 15, President Biden [outlined](#) five steps toward addressing the increasing rates of COVID-19 infections in the United States. *First*, his Administration would work immediately with states to open up vaccinations to more priority groups, acknowledging that the process of establishing the priority groups – which is driven by science – is “too rigid and confusing.” He noted tens of millions of vaccines are sitting unused in freezers and that he would encourage states to allow more people to be vaccinated beyond health care workers, those who are 65 years old, and frontline essential workers (such as educators, first responders, and grocery store workers). *Second*, to increase vaccinations, President Biden said more “community vaccination centers” are needed. This would be done by working with the Federal Emergency Management Agency (FEMA), and the sites could include school gyms, sports stadiums, and community centers. *Third*, the President is prepared to fully activate pharmacies across the country to get the vaccines into more arms as quickly as possible. *Fourth*, the Biden Administration would use the “full strength of the federal government to ramp up supply of the vaccines.” This would include use of the *Defense Production Act* “to work with private industry to accelerate the making of materials needed to supply and administer the vaccine, from tubes and syringes to protective equipment.” President Biden affirmed his intent to release the vast majority of the vaccines when they are available, rather than hold back supply for the required second shot, in order for more people to be vaccinated quickly. (A small reserve would be retained for any unforeseen shortages or delays.) *Fifth*, President Biden said his Administration would “always be honest and transparent about where we stand” on the vaccination campaign. A fact sheet on the President’s COVID-19 vaccination plan is available [here](#).

On Inauguration Day, President Biden signed an Executive Order (EO) to require masks for federal workers, on federal property, and on interstate travel (e.g., trains and planes).

CLIMATE

President Biden has stated that environmental justice and climate issues are priority regulatory and policy issues for his Administration. In an EO, President Biden directed agencies to reexamine over 100 Trump Administration environmental policies. His intentions specifically include creating a path to eliminate harmful emissions on the power grid by 2035 and economy-wide by 2050.

As for his cabinet, President Biden nominated Michael Regan to lead the Environmental Protection Agency (EPA). Previously, Regan was Secretary of North Carolina's Department of Environmental Quality and is a former air quality specialist at EPA. Biden also nominated past EPA Administrator Gina McCarthy to coordinate and oversee a newly created office, the White House Office of Domestic Climate Policy. It will be tasked with coordinating domestic climate initiatives across the federal government. President Biden has also announced the nomination of former Michigan Governor Jennifer Granholm to be Secretary of Energy. Former U.S. Secretary of State John Kerry will also be serving as an international "Climate Envoy" – Kerry has historically pushed for strong climate goals. President Biden has also nominated Representative Deb Haaland (D-NM) to serve as Secretary of the Department of the Interior; if confirmed, she will be the first Native American Secretary of the Interior.

Current Republican U.S. Securities and Exchange Commission (SEC) Chair Jay Clayton, in keeping with tradition, stepped down at the end of 2020, opening his seat to a presumably Democratic Commissioner. The SEC is considering requiring publicly listed companies to disclose their climate risks, a proposal that would likely only pass with a Democrat as Chair.

PARIS CLIMATE AGREEMENT

On Inauguration Day, President Biden began the process to rejoin the 2015 Paris Agreement, which is a legally binding international treaty on climate change. In 2017, President Trump announced the U.S. would cease participation in the agreement. It will take 30 days for the U.S. to officially rejoin the Paris Agreement, and the Biden Administration will have to submit new climate targets on what the country expects to accomplish.

KEYSTONE XL PIPELINE

On January 20, President Biden announced that he would revoke a key permit for the proposed Keystone XL pipeline, which is an oil pipeline system in Canada and the U.S. The pipeline has been a contentious project for the last decade, with the Obama Administration originally blocking its development. This move will likely not be well accepted by the Canadian government, which has argued that the pipeline is a better environmental choice for transporting oil. This action may lead to legal challenges by TC Energy, the developer of the pipeline.

OIL AND GAS DRILLING

The Biden Administration will halt oil and gas leasing activities in the Arctic National Wildlife Refuge that was opened up to developers for oil and gas drilling in 2017. As of now, the Biden Administration has not suggested a ban on fracking, but is expected to reexamine rules that may tighten policies on the drilling methods.

WATER

On January 19, the EPA announced new decisions on regulating PFAS chemicals. The agency released its final regulatory determination stating that two PFAS chemicals, PFOA and PFOS, should be regulated in drinking water – leaving the Biden Administration to commence the process of developing a Safe Drinking Water Act limit for the two chemicals. The EPA also proposed requiring drinking water utilities to test for 29 variations of PFAS chemicals under its new Unregulated Contaminant Monitoring Rule. This testing will determine whether those PFAS substances are widespread and justify a Safe Drinking Water Act regulation for them. These actions have not been posted in the Federal Register; hence, they are likely to be frozen by the Biden Administration. The EPA also announced that it is seeking comment on whether it should list PFOS and PFOA under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA/Superfund), and also if it should track information regarding PFAS in discharges from manufacturers.

It is also expected that the Biden Administration will potentially look into revising the recent Lead and Copper Rule finalized by the Trump Administration last month. As we previously reported, the Trump Administration’s final regulatory revisions to the National Primary Drinking Water Regulation (NPDWR) for lead and copper under the authority of the Safe Drinking Water Act (SDWA) are the first revisions to the rule in nearly 30 years.

The final rule keeps the old “action level” for lead, which requires utilities to begin replacing lines when levels reach 15 parts per billion or higher at 10 percent of taps. However, it adds a new trigger level of 10 ppb, at which point a utility must undertake efforts to control corrosion through chemical treatment and begin preparing to replace lines should the system reach the action level. Once hitting the action level, utilities must begin replacing service lines at a rate of three percent a year compared to the previous rule, which required lines to be replaced at seven percent per year.

The final rule also requires utilities to notify customers more swiftly if they find high lead concentrations and to map their inventory of lead lines. It also mandates utilities test elementary schools and childcare facilities once every five years, although mandatory testing for secondary schools was dropped from the final rule.

ENERGY EFFICIENCY

Under the Biden Administration, the Department of Energy (DOE) is likely to examine several energy efficiency rules that were proposed or enacted by the Trump Administration. Some of those rules concern light bulb standards and those concerning less efficient dishwashers, furnaces, and clothes dryers. Most notably, Biden has called for reexamining emission standards for vehicles.

The Biden Administration may seek to use an unused \$40 billion Energy Department loan authority that was originally awarded under the American Recovery and Reinvestment Act (ARRA) of 2009. The Department of Energy’s loan program provides financing that, in the past, has helped accelerate and lower the costs of key renewable technologies such as solar and wind. Clean energy advocates argue that the Biden Administration could potentially modify the loan program’s language to repurpose the funds towards the Administration’s larger \$2 trillion clean energy infrastructure plan.

CONGRESSIONAL OUTLOOK

Congressional actions for the 117th Congress are likely to focus on Democratic priorities, including those concerning climate issues. While the balance of Senate committee leadership is currently being discussed, Democrats will likely take over, allowing them to pursue more liberal environmental legislation.

In the last congressional session, Senator Diane Feinstein (D-CA) introduced legislation, titled the Addressing Climate Financial Risk Act, which would create a dedicated climate risk advisory committee at the Department of Treasury on the Financial Stability Oversight Council. The bill would require federal banking agencies and the National Credit Union Administration to update guidance to include climate risk, including credit, liquidity, market, operational, and reputational risk, to ensure that supervised financial institutions appropriately identify and mitigate climate financial risk. The bill would also require the Federal Insurance Office to recommend ways to modernize and improve climate risk insurance regulation in the U.S.

EDUCATION

On the campaign trail, President Biden outlined numerous core objectives for pre-kindergarten, K-12, and higher education. Those objectives included:

- Fair wages for teachers
- Increased funding for Title I schools
- Investing in teacher mentoring
- Helping teachers pay off student loans
- Increasing mental health resources in schools
- Expanding community schools
- Improving school infrastructure
- Combatting gun violence in schools
- Promoting equal opportunity in education
- Improving teacher diversity
- Improving diversity in schools
- Supporting disabled students
- Increasing vocational and CTE training
- Allowing Pell grants for dual enrollment programs
- Universal pre-kindergarten
- Providing early childhood development support
- Expanding home visiting for health and child development specialists

COLLEGE AFFORDABILITY

During his campaign, President Biden discussed pursuing various policy changes in the name of college affordability. First, the Biden Administration would seek to make two years of community college and training programs tuition free. President Biden would also like to make public colleges, Historically Black Colleges and Universities (HBCUs), and Minority Serving Institutions (MSIs) tuition-free for families making less than \$125,000. Furthermore, Biden has pledged to forgive all undergraduate tuition-related

federal student debt for borrowers who graduate from two- and four-year public colleges and universities, as well as private HBCUs and MSIs, and make less than \$125,000. While President Biden has not said he would forgive all student loans by executive action alone, he is supportive of Congress providing \$10,000 in relief per student via a larger economic relief package. In addition, on his first day, President Biden extended the pause of student loan payments and interest accrual originally proposed under the *Coronavirus Aid, Relief, and Economic Security (CARES) Act* ([Pub. L. 116-136](#)) to September 30 of this year. As extended by former Secretary of Education Betsy DeVos, the current pause on payments will expire on January 31.

Biden's plan for higher education touted on the campaign trail would also allocate \$50 billion for workforce training and \$8 billion for upgrades to community college infrastructure. The Biden Administration would seek to double the maximum Pell Grant and cancel a minimum of \$10,000 of every American's student debt. President Biden also wants to change the student loan repayment system. Under the Biden plan, student loan payments and interest for those who make less than \$25,000 would be paused, and people who make more than that amount would see their payments decreased to no more than 5% of their discretionary income. After 20 years, the remainder of federal student loans would be forgiven without any tax burden. Finally, participants in the public service loan forgiveness program would be eligible for additional loan forgiveness, including \$10,000 per year of forgiveness for up to five years.

AMERICAN RESCUE PLAN

President Biden's proposed economic legislative package, the American Rescue Plan, would include multiple education-related provisions, namely:

- **\$170 billion** in additional funding for K-12 schools and Institutions of Higher Education (IHEs):
 - **\$130 billion** for K-12 schools to assist in re-opening
 - Funds can be used to create smaller class sizes, provide transportation services for students, enhance nursing and medical services at schools, hire school counselors, purchase personal protective equipment (PPE), and support other reopening costs. States are expected to not only use funds to reopen schools, but also to “meet students’ academic, mental health and social, and emotional needs in response to COVID-19.”
 - An unspecified amount of the funding will be used create a COVID-19 Educational Equity Challenge Grant, which will provide grants for partnerships between states, localities, and schools to “advance equity- and evidence-based policies to respond to COVID-related educational challenges”
 - **\$35 billion** for the Higher Education Emergency Relief Fund (HEER)
 - The additional funding would be focused on public institutions, as well as public and private HBCUs and other MSIs.
 - **\$5 billion** for a Hardest Hit Education Fund
 - This funding would be distributed to governors to support K-12 schools, IHEs, and early childhood education programs hardest hit by COVID-19.

Aside from the additional funding, in his American Rescue Plan, President Biden also proposes that K-12 schools be allowed to access funding from the FEMA Disaster Relief Fund. In his plan, he also noted his goal to reopen a majority of K-8 schools in the first 100 days of his presidency through an expanded vaccination program.

REGULATORY ACTION/EXECUTIVE ORDERS

As Congressional Democrats have achieved a rather thin hold on both chambers, legislative action on education policy priorities for President Biden will be difficult to achieve. Instead, the Biden Administration will likely rely on executive action to try to achieve its priorities, including rolling back many of the education-related regulations and executive actions taken under the Trump administration. For example, Biden has promised to reverse former Secretary of Education Betsy DeVos' rule intended to strengthen protections for students accused of sexual assault on college campuses. Biden would also seek to limit for-profit K-12 institutions, and increase regulation of for-profit institutions of higher education. The Biden Administration will likely work to reinstate gainful employment and borrower defense to repayment through the regulatory process. Finally, Trump-era immigration actions that are unpopular in the education community will be rescinded and President Biden, on Inauguration Day, took action to strengthen the Deferred Action for Childhood Arrivals (DACA) program.

BIDEN ADMINISTRATION NOMINEES

President Biden will select new staff to run the Department of Education, led by a new Secretary of Education to replace Betsy DeVos. Biden has promised a Department of Education under his administration would be more "educator-oriented." On December 22, President Biden announced he would nominate Miguel Cardona, current education commissioner of Connecticut. In nominating former fourth-grade teacher Cardona for the position, President Biden fulfilled his commitment to nominate a public educator. Dr. Cardona has pledged to work with the entire Biden Administration and states to open schools as quickly and safely as possible. In addition, President Biden has nominated Superintendent of the San Diego Unified School District, Cindy Maarten, as Assistant Secretary of Education.

CONGRESSIONAL EDUCATION POLICY PRIORITIES

With the election of both Jon Ossoff and Raphael Warnock to Senate positions in Georgia, Democrats will achieve control of both chambers. On the Senate Health, Education, Labor and Pensions (HELP) Committee, current Ranking Member Patty Murray (D-WA) is primed to take over as Chair. A former preschool teacher, Senator Murray focuses much of her education policy on early education and K-12. During the COVID-19 pandemic, she sponsored legislation on childcare and supported additional funding for K-12 schools. Senator Murray has also taken an interest in for-profit colleges and borrower defense to repayment policies, asking Secretary DeVos to take more action on these universities and criticizing her for "skirting her legal responsibilities to protect students and borrowers." In higher education, a Democratic majority in both the House and Senate would make it much more likely that the Congress would pass and President Biden would sign an HEA reauthorization bill, although this may still be difficult, given the narrow Democratic majorities in both chambers. However, a Democratic Senate increases the chances that President Biden's nominee, Dr. Miguel Cardona, will be confirmed as the next Secretary of Education.

HEALTHCARE

BIDEN ADMINISTRATION PRIORITIES

As discussed above, President Biden's first priority is to use every tool at his disposal to get the COVID-19 pandemic under control. Shortly after the 2020 election, he conveyed this goal to a bipartisan group of governors convened by the National Governors Association and said, "It's going to take time. It's going to take coordination. It's going to take the federal government and state governments working hand in glove, working together." To control the raging pandemic that has claimed over 400,000 lives and infected nearly 25 million in the U.S., the President has said his Administration's actions will be guided by science. To that end, his advisors are focusing on getting more people to wear masks and better adhere to other social distancing measures, and speeding up the delivery of millions of COVID-19 vaccinations.

Beyond specifically addressing COVID-19, expect President Biden to initially focus on increasing health care coverage. For example, his American Rescue Plan calls on Congress to (1) subsidize continuation health coverage (COBRA) through the end of September and (2) expand and increase the value of the Affordable Care Act (ACA) Advanced Premium Tax Credit (APTC) by eliminating the eligibility cut-off (currently 400 percent of the Federal Poverty Level) and increasing credits so individuals will not pay more than 8.5 percent of their income for coverage. President Biden also campaigned on expanding the ACA further to include a public-option health insurance plan to be offered alongside private qualified health plans through state and federally facilitated exchange marketplaces. The public-option plan would be available to all individuals, including those with employer-based coverage and individuals in states that have not yet expanded Medicaid. President Biden may also call on Congress to lower the age of Medicare eligibility from 65 to 60.

Administrative actions President Biden could employ to boost health insurance coverage include reinstating cost-sharing reduction payments and increasing outreach and enrollment funding. Other likely administrative actions aimed at bolstering the ACA, such as reversing the expansion of short-term and employer association health plans and unwinding Medicaid work requirements, may be slightly delayed as the Biden Administration focuses on COVID-19 and increasing coverage. Finally, President Biden has frozen and will amend a last-minute effort to set the ACA marketplace rules for Calendar Year 2022 and allow states to opt out of ACA requirements through an expansion of Section 1332 waivers.

BIDEN ADMINISTRATION NOMINEES

President Biden nominated California Attorney General Xavier Becerra (D) to lead the Department of Health and Human Services (HHS). Becerra, who served 12 terms in Congress representing Los Angeles, would be the first Latino to serve as HHS Secretary. He helped pass the ACA while in Congress, and he is the lead advocate defending the ACA in *Texas v. California*, the most recent constitutional challenge, which was argued before the Supreme Court in November (an opinion on the case is expected to be released in spring or summer 2021). Becerra's nomination hearing has not been scheduled, which means he will not likely assume the post until mid-February. Sean McCluskie was announced as Becerra's chief of staff and Sarah Despres will be counselor to the HHS Secretary.

For HHS Assistant Secretary, President Biden nominated Dr. Rachel Levine, who is the current Pennsylvania Health Secretary and president of the Association of State and Territorial Health Officials (ASTHO). Dr. Levine would become the first openly transgender federal official to be confirmed by the U.S. Senate.

Other notable health care nominations include:

- Dr. Rochelle Walensky, Director, Centers for Disease Control and Preparedness (CDC);
- Dr. Vivek Murthy, U.S. Surgeon General;
- Jeff Zients, COVID-19 Coordinator, White House;
- Dr. Marcella Nunez-Smith, Chair, COVID-19 Equity Task Force;
- Dr. Francis Collins, Director, National Institutes of Health;
- Dr. Tony Fauci, Chief Medical Adviser, White House;
- Dr. David Kessler, Chief Science Adviser, White House;
- Neera Tanden, Director, Office of Management and Budget (OMB); and
- Topher Spiro, Director of Health Programs, OMB.

CONGRESSIONAL OUTLOOK

Congress is expected to work closely with the Biden Administration to confirm his health care nominees and pass additional legislation addressing COVID-19. In announcing his American Rescue Plan, President Biden referred to the \$900 billion in COVID-19 relief as a “down payment” and is pushing Congress to quickly provide additional federal resources.

New Senate Majority Leader Chuck Schumer (D-NY) has said expanding health insurance coverage and lowering prescription drug prices are top priorities. Senate Finance Committee Chair Ron Wyden (D-OR) said his committee would focus on lowering premiums, adding more insurance choices, and reducing health disparities. He is also expected to strongly champion and protect Medicaid and focus on lowering drug prices, building on a proposal he and outgoing Finance Committee Chair Chuck Grassley (R-IA) authored in the previous Congress. Senator Patty Murray (D-WA) is expected to use her leadership of the Senate Health, Education, Labor, and Pensions (HELP) Committee to compliment those efforts.

Senator Richard Burr (R-NC) is expected to become the Ranking Member on the HELP Committee after it was recently announced that his insider trading investigation would not result in prosecution. Senator Mike Crapo (R-ID) will become the Senate Finance Committee’s next Ranking Member.

In the House, the Energy and Commerce Committee will have new Republican leadership, with Representative Cathy McMorris Rodgers (R-WA) selected to take over for retiring Representative Greg Walden (R-OR). Representative Michael Burgess (R-TX), who ran against McMorris Rodgers to become the committee’s Ranking Member, was stripped of his leadership role on the health care subcommittee; Representative Brett Guthrie (R-KY) will take over leadership of the subcommittee. On the Democratic side, Chair Frank Pallone (D-NJ) will continue his leadership and Representative Anna Eshoo (D-CA) will lead the health care subcommittee, which will include four new members: Reps. Angie Craig (D-MN), Kim Schrier (D-WA), Lori Trahan (D-MA), and Lizzie Fletcher (D-TX). The Ways and Means Committee leadership will remain essentially the same.

HOUSING

With Democrats poised to control the Senate, House, and White House, there will likely be an easier path for President Biden to approach his housing priorities, which focus on increasing affordable housing options and pursuing a comprehensive approach to ending homelessness. Much like the rest of Biden’s

legislative agenda, his housing and homelessness priorities must be viewed through the lens of climate change, equity, and COVID-19 relief. We expect elements of all three to be woven through whatever proposals are released.

Specific housing and homelessness priorities include:

- Reinstating the federal risk-sharing program
- Facilitating the construction of 1.5 million sustainable homes and housing units
- Providing additional financial assistance to individuals at risk of homelessness
- Ending redline and other “discriminatory and unfair practices in the housing market”
- Reinstating the Affirmatively Furthering Fair Housing Rule, which the Trump Administration suspended in 2018

Critical to these plans is Secretary of Housing and Urban Development (HUD) nominee Representative Marcia Fudge (D-OH), as many of these programs will be run through HUD. Representative Fudge’s nomination hearing has not been set.

CONGRESSIONAL OUTLOOK

Also impacting the outlook for the 117th Congress is the change in leadership on the Senate Banking, Housing, and Urban Affairs Committee. Current Ranking Member Sherrod Brown (D-OH) is expected to take the gavel from current Chair Mike Crapo (R-ID). Senator Brown has served as the Committee’s Ranking Member for a number of years, during which he has introduced a variety of legislation dealing with housing and homelessness.

Senator Brown’s highlighted priorities for his tenure as Chair will likely assist President Biden’s planned housing agenda. The Senator has emphasized his commitment to fighting global warming, combatting the COVID-19 crisis, and promoting racial equity, noting that in the past the Committee has “flat out pretended that climate change doesn’t exist” and “ignored all the ways our economy still doesn’t work for Black and Brown Americans and the racism embedded in so many of our systems.”

Democrats will retain control in House, albeit at a slimmer margin. Representatives Maxine Waters (D-CA) and Patrick McHenry (R-NC) will continue serving as Chair and Ranking Member, respectively.

IMMIGRATION

Shortly after President Biden’s inauguration, the [White House](#) noted:

President Biden will reform our long-broken and chaotic immigration system. President Biden’s strategy is centered on the basic premise that our country is safer, stronger, and more prosperous with a fair and orderly immigration system that welcomes immigrants, keeps families together, and allows people across the country - both newly arrived immigrants and people who have lived here for generations - to more fully contribute to our country.

Related action began immediately, as Biden took significant steps to undo President Trump’s immigration and border security priorities within hours of taking office (see “Day One Actions” section

of memo for more information). In the coming weeks and months, the Biden Administration will review all Trump Administration regulations and will likely reverse them, though related processes are expected to take significant time in some cases.

President Biden's [nominees](#) for related Cabinet Secretaries include Alejandro Mayorkas as Secretary of Homeland Security, Merrick Garland as Attorney General, Xavier Becerra as Secretary of Health and Human Services, and Antony Blinken as Secretary of State. Of importance, Secretary-nominee Mayorkas spent considerable time in leadership positions at the Department of Homeland Security under the Obama Administration.

IMMIGRATION REFORM

In addition to the aforementioned executive actions, the Biden Administration unveiled a much-awaited comprehensive immigration reform bill entitled the U.S. Citizenship Act (USCA) of 2021. Among its major goals, the USCA would: (1) provide pathways to citizenship and strengthen labor protections; (2) prioritize smart border controls; and (3) address root causes of migration.

The bill will provide an eight-year path to allow undocumented immigrants to seek citizenship. The first step in the process is for a five-year period of temporary legal status, followed by a three-year lawful permanent residency (aka green card status). At the end of the combined eight-year period, applicants could apply for U.S. naturalization. All applicants would be required to pass stringent criminal and national security background checks and pay U.S. taxes. The legislation would shorten the process for eligible DREAMers, TPS holders, or immigrant farmworkers, allowing them to skip the five-year first step and move right to applying for green card status.

The USCA also promotes family reunification by seeking to clear green card backlogs, shortening various application wait times, and raising per-country visa limitations, which have meant long waits for applicants from countries such as Mexico, India, and China, depending on the applicant's category. The bill will also increase green card available under the Diversity Visa process from 55,000 to 80,000, and make it easier to for foreign graduates of American universities, especially STEM graduates, to remain in the U.S. The legislation also protects the families of H-1B visa recipients and provides additional rights for certain visa holders.

The USCA also includes significant enforcement provisions. It emphasizes smart border controls by supplementing of traditional barriers with technology and working with border communities to ensure their cooperation. It would require DHS to investigate its "use of force" policies and provide funding for DHS and the Department of Health and Human Services (HHS) to further develop standards for the care of immigrant individuals and families. The USCA would also expand the federal government's ability to prosecute anyone involved in smuggling, trafficking, and other illegal activities, and it would require the FBI, DEA, and DHS to work with the State Department to suppress gang activity in Central America.

The USCA seeks to shrink the undocumented population by reducing the "push factors" that cause migration by providing funds for assistance to El Salvador, Honduras, Guatemala, and Central American countries, with the expectation that countries accepting assistance will work to curb violence and poverty that cause individuals to travel to the U.S. The legislation would also remove certain restrictions on individuals seeking asylum and provide funds to reduce application backlogs. The legislation would also expand funding to reduce the immigration court backlogs and to school districts that accept unaccompanied immigrant children.

The Biden Administration has stated publicly that it does not expect this proposal to be enacted in its current form - instead indicating it should be viewed as a positioning document to demonstrate its immigration goals. The Administration does hope, however, that particular provisions will be enacted separately, and will likely seek to undertake some of the USCA's provisions through regulation.

POLICING REFORM

EXECUTIVE ACTIVITY

President Biden has nominated Merrick Garland to lead the Department of Justice (DOJ). Garland is known for his prolonged nomination process to the Supreme Court through the final months of the Obama Administration, where, ultimately, Senate Majority Leader Mitch McConnell (R-KY) refused to hold a confirmation vote. Garland is the former chief judge of the U.S. Court of Appeals for the District of Columbia Circuit, and began his career at the Department of Justice decades ago as a Deputy Assistant Attorney General in the Criminal Division of the Department of Justice. He is widely respected by other members of the judicial and legal communities for his collegiality and transparency. An [analysis](#) by *SCOTUSblog* revealed that Garland has established a moderate record on most issues.

Under a Biden Administration, the Department of Justice will resume the usage of pattern-or-practice investigations and consent decrees in order “to address circumstances of systemic police misconduct and to restore trust between police and communities,” according to the Biden campaign platform. The President’s platform also indicates that pattern-or-practice investigations will now be used to investigate systemic misconduct in prosecutorial offices. Similarly, the Biden Administration plans to establish an independent task force on prosecutorial discretion to make recommendations for tackling discrimination and other problems in [the] justice system that result from arrest and charging decisions. This Administration’s Department of Justice will also encourage and support the efforts of states to collect more comprehensive data on those who come into contact with the criminal justice system in order to understand biases.

President Biden has shown resistance to activist calls for “defunding the police,” and has historically been an ally of law enforcement. However, he is open to some reforms. One reform proposal that his campaign platform embraced involves fully funding the Community Oriented Policing Services (COPS) program, which he supported while serving in the Senate. President Biden has committed at least \$300 million to the program. A second relevant proposal is President Biden’s commitment to establishing a panel to scrutinize what equipment is used by law enforcement in communities. President Biden has also expressed support for other reforms, such as establishing national use-of-force standards and recruiting more diverse police officers.

CONGRESSIONAL OUTLOOK

Congressional leaders will likely pay close attention to police reform in the 117th Congress, especially with Democratic control of both the Senate and the House, and the failure of the 116th Congress to pass legislation through both chambers. [H.R. 7120](#), *The George Floyd Justice in Policing Act of 2020*, which passed the House in July 2020, could be reintroduced now that the Democrats hold the Senate as well. House Judiciary Chair Jerrold Nadler (D-NY) remains in control of the committee of jurisdiction in the House. Given his support for these efforts in the 116th Congress, it is probable that he would move

similar legislation through his committee. It is possible that the legislation might face some edits and amendments before moving to the Senate.

Already, over a dozen bills relating to policing reform have been introduced in the House, with many more sure to follow. Both sides of the aisle have outlined critical priorities, many of which are at odds with each other. Republicans generally continue to support qualified immunity as a defense for law enforcement officers, while Democrats oppose this proposition. However, some areas of agreement do exist between the parties, and these are the most probable areas of Congressional action on the issue:

- Collecting of use-of-force data;
- Ending the use of chokeholds;
- Requiring the use of body-worn cameras;
- Requiring increased training for law enforcement officers; and
- Reimagining public safety (i.e., innovative approaches, such as ensuring officers are similar to the communities they serve).

TAX

Though Democrats will control each lever of federal policymaking, that control will rest on the slimmest-possible advantage in the Senate, where party-line votes will result in 50-50 splits and Vice President Kamala Harris will break ties. The even Senate split gives the incoming Biden Administration little margin for error to advance its tax policy priorities.

BIDEN ADMINISTRATION PRIORITIES

The Biden Administration has previously outlined its tax policy priorities as part of the campaign process. The priorities range from increasing the tax rates on corporations and high-income individual to raising the tax rate on capital gains to providing tax incentives for low- and middle-income Americans, as well as certain segments of the economy such as green energy, domestic manufacturing, etc. That said, the Biden-Harris Transition Team recently released an outline of its COVID-19 relief proposal – the American Rescue Plan – which suggests the Administration’s top priority is providing additional economic relief in response to the ongoing pandemic. Notably, Treasury Secretary nominee Janet Yellen reiterated during her testimony before the Senate Finance Committee the importance of pursuing further economic relief, noting: “Without further action, we risk a longer, more painful recession now – and long-term scarring of the economy later.”

CONGRESSIONAL OUTLOOK

While Democratic Leader Schumer will control what comes to the Senate floor and when, legislation will still largely require 60 votes to pass, meaning that Republican buy-in will be necessary to advance major tax legislation. That said, while a supermajority of 60 Senators is generally required to advance legislation in the Senate, a simple majority is enough to advance certain annual budget and tax-related measures via a process known as budget reconciliation. When enacting legislation using the budget reconciliation process, only matters that are “reasonably related” to taxing and spending are permitted to be included pursuant to Senate rules. Among the Biden Administration’s tax policy priorities, it is possible that policymakers could seek to leverage the budget reconciliation process to raise tax rates on

corporations and high-income individuals or potentially impose a minimum tax; however, given that the more immediate focus will be on providing ongoing economic relief to address the fallout from the COVID-19 pandemic, it seems likely that these tax policy priorities will be addressed at a later time. Note, too, all Democrats in the Senate – including extremes of the party like progressive Senator Bernie Sanders (I-VT) and moderate Senator Joe Manchin (D-WV) – would need to approve a reconciliation bill. This will be no easy task and limits the prospects for advancing a progressive tax agenda this year.

With that context for *how* legislation may come together, Senate Finance Committee Chair Ron Wyden (D-OR) has shed light on *what* tax writers may focus on in the Upper Chamber. In particular, Wyden indicated that he plans to move forward with his “mark-to-market” plan to raise capital gains taxes on high-income individuals. From our understanding, the proposal – which is intended to raise revenue to help shore up Social Security – would tax capital gains at the same rate as regular income and impose an annual tax on gains from stocks and other tradable assets. Further, Wyden has indicated that he will pursue raising the current 21% corporate income tax rate, though it remains to be seen how much the rate could be increased. For context, President Biden has proposed increasing the corporate rate to 28%, though doing so would certainly face resistance from Republicans and perhaps moderate Democrats. Finally, Wyden is expected to pursue making the CTC fully refundable and expanding the EITC (policies, as noted above, that are also priorities for the Biden Administration), as well as tying government aid (including federal supplements to state unemployment benefits) to unemployment levels and other economic health metrics (i.e., “automatic stabilizers”).

As for the House, Ways and Means Committee Chair Richard Neal (D-MA) has made clear that his top priority is providing additional relief – including by, similar to his counterpart on the Senate Finance Committee, making the CTC refundable and expanding the EITC – to support the nation’s ongoing economic recovery. Neal has also indicated that he is open to raising taxes on taxpayers earning more than \$400,000 per year; however, it is unclear how quickly he plans to pursue such a policy change. Beyond additional COVID-19 relief, Neal has expressed an interest in pursuing a large infrastructure package, which is likely to include significant investment in green energy, among other progressive policy priorities. Finally, Neal and Ranking Member Kevin Brady (R-TX) late last year released the Securing a Strong Retirement Act, a broad, bipartisan retirement savings bill that builds upon the Setting Every Community Up for Retirement Enhancement (SECURE) Act, which was enacted at the end of 2019. According to Neal, the legislation – which is similar in many ways to a bipartisan proposal introduced in the Senate by Senators Ben Cardin (D-MD) and Rob Portman (R-OH) – “addresses a lot of issues that will make retirement more predictable, reliable, and easier for companies to set up plans for their employees.”

INFRASTRUCTURE

Transportation and infrastructure will likely play a large role in both the first 100 days of the Biden Administration, as well as the 117th Congress. We anticipate that the Department of Transportation (DOT) and the Biden Administration will look through the prism of four areas – COVID-19, the economy, climate change, and equity – as it relates to all aspects of policy, including transportation. President Biden has tapped Pete Buttigieg, former Democratic nominee for president and Mayor of South Bend, Indiana, to lead DOT and help implement these policies.

LARGE-SCALE INFRASTRUCTURE PACKAGE

Both President Biden and Congress have expressed interest in passing a large-scale infrastructure package early in the 117th Congress that will include both “traditional” infrastructure – i.e., roads, bridges, transit, etc. – as well as language relating to ports, airports, schools, broadband access, water infrastructure, and clean energy projects. While an infrastructure bill could be combined with another COVID-19 relief package, its aim will be stimulating the economy.

With the change in party control in the Senate, we expect an increased focus on climate change and resiliency. In July, on a strictly partisan vote, House Democrats passed a \$1.5 trillion infrastructure package (the *Moving Forward Act*), which House Transportation and Infrastructure Chair Peter DeFazio (D-OR) has discussed with the Biden Transition Team and will likely serve as a starting point for discussions among Democrats. House Republicans adamantly oppose such efforts, but also included infrastructure legislation – which would look very different from the Democrats’ proposal – on their list of 2021 priorities.

SURFACE TRANSPORTATION REAUTHORIZATION

In addition to a possible infrastructure bill, Congress will also need to tackle surface transportation reauthorization – legislation authorizing highway, transit, rail, and vehicle safety programs – prior to the *Fixing America’s Surface Transportation (FAST) Act’s* expiration on September 30, 2021. House Democrats included a surface transportation title in the *Moving Forward Act*, and House Republicans released their own proposal (the STARTER Act), which will serve as a starting point for their interests in any conference negotiations.

Meanwhile, in the Senate, the switch in party control will have a large impact on the starting point for surface transportation reauthorization. Last Congress, the Senate Environment and Public Works passed the bipartisan *America’s Transportation Infrastructure Act (ATIA)* out of committee by unanimous consent. However, Senator Tom Carper (D-DE), soon to be Chair of the Senate Environment and Public Works Committee, stated that his Committee – which has jurisdiction over the highway title – will start drafting a new surface transportation bill with a heavier emphasis on climate, rather than use ATIA as a starting point. Meanwhile, Senator Sherrod Brown (D-OH), soon to be Chair of the Senate Banking, Housing, and Urban Affairs Committee, which has jurisdiction over the transit title, noted that he anticipates replacing approximately 60,000 city buses around the nation with zero-emission buses.