

TRUMP V. BIDEN: WHAT MIGHT THE NEXT FOUR YEARS LOOK LIKE?

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Quickly approaching November 3, 2020, we are in the final days of what is expected to be a contentious and consequential presidential election in the United States. With the whirlwind news cycles at the end of the campaign season, it can be difficult to sift through and focus on the candidate policy proposals that may be most impactful to businesses. To that end, the K&L Gates Public Policy and Law practice group has assembled a chart broadly outlining where the candidates stand on issues most watched by Main Street and Wall Street.

What is clear is that the candidates are offering different visions for the United States. President Donald J. Trump is expected to continue much of his current policy agenda, such as a focus on deregulation, trade, taxes, and U.S.-China relations. Former Vice President Joe Biden’s proposed policy agenda would focus on providing additional COVID-19 relief, advancing infrastructure, and investing in sustainable energy and technology.

Should you have any questions regarding specific topics, we are here to assist.

2020 Presidential Election Public Policy Priorities

Vice President Biden

President Trump

TAXES

Individual: Potential tax increases for individuals with incomes above \$400K and possible state and local tax (SALT) relief, which would likely be means-tested. The current 37% top marginal rate may be increased to its pre-2017 level of 39.6%. Other potential priorities could include increasing capital gains and dividends rates from 20% to 39.6% for households earning >\$1M (with current additional 3.8% net investment income surtax above certain thresholds); instituting a 12.4% Social Security payroll tax on annual income >\$400K; instituting a 28% itemized deduction cap; taxing unrealized capital gains at death; and lowering the estate tax exemption from \$11.58M to roughly \$5M per person.

Corporate: May increase the corporate rate from 21% to 28% (pre-2017 rate was 35%); impose a 15% minimum tax on companies’ book income >\$100M; and double the existing minimum tax on profits earned by foreign subsidiaries of U.S. firms (10.5% to 21%—the global intangible low-taxed income (GILTI) rate).

Individual: May seek to lower the current 22% tax rate for individuals to 15% or otherwise adjust the tax brackets to put more middle-income individuals into lower brackets. Will likely seek to make permanent other provisions in the Tax Cuts and Jobs Act (TCJA) of 2017, which are set to expire after 2025, including those that increased the standard deduction, doubled the child tax credit, and established the tax credit for other dependents. May support reducing the tax rates on long-term capital gains and indexing capital gains for inflation.

Corporate: May support lowering the corporate income tax rate to 20%.

OZ: Continued focus on Opportunity Zones which were created under the TCJA and have begun revitalizing previously under-invested communities.

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FINANCIAL SERVICES

<p>Financial Advisors: May support enhanced fiduciary duty rule that includes class action liability. Potential focus on increasing barriers to roll over a 401k to an IRA and expressed concern about the Security and Exchange Commission's (SEC) expansion of registered investment advisors to include proxy advisors.</p>	<p>Financial Advisors: Continued support for finalized the Regulation Best Interest rule that maintains some fiduciary requirements on investment advisors and establishes a best interest standard for broker-dealers or insurers who sell investment instruments or provide advice.</p>
<p>Fintech: The Consumer Financial Protection Bureau's (CFPB) oversight and regulation would likely be more intense, depending on the company and its size, and may freeze industrial loan company charters, which would benefit existing charters. Vice President Biden may appoint a new Comptroller of the Currency, which could unwind the proposed "true lender" rule as well as the national payments charter.</p>	<p>Fintech: Fintech firms will likely continue to benefit from a favorable regulatory environment and less intense CFPB oversight. The Office of the Comptroller of the Currency would move forward with finalizing its true lender proposed rule, fintech charters, and other fintech initiatives.</p>
<p>Private Equity: Potential focus on making private equity firms liable for the debt incurred by the companies they take over. There may be renewed emphasis on private equity fee disclosure and governance practices.</p>	<p>Private Equity: Efforts to provide retail investor access to alternative investments, including private equity, will likely continue.</p>
<p>Fiduciary Duty: Would likely revisit rulemaking at the SEC and Department of Labor (DOL) on fiduciary duty for investment advisors. First proposed by the DOL during the Obama era but subsequently ordered to be vacated, the SEC has since finalized rules that have been heavily criticized by Democrats. The DOL's recently proposed rule has received similar criticism but has not yet been finalized.</p>	<p>Fiduciary Duty: The focus on pecuniary return will continue under President Trump.</p>
<p>Sustainability and ESG: Will likely pursue efforts to increase investor engagement on environmental, social, and corporate governance (ESG) issues. Vice President Biden has released a plan to work towards environmental justice that relies, in part, on investments to combat climate change.</p>	<p>Sustainability and ESG: Will likely continue efforts that limit investment considerations to "pecuniary" or financial-related issues. Recent rulemakings at the SEC and DOL in this area would be finalized if President Trump is reelected.</p>

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TRADE & INTERNATIONAL RELATIONS

<p>Multilateralism: Expressed support for returning to a multilateral approach to trade, which could result in fewer trade wars and less tariff use. Vice President Biden is less likely to single out companies for criticism on social media.</p>	<p>America-First: Would likely see continuation of an America-first approach to trade. President Trump would likely view an election victory as an endorsement of his approach, including singling out domestic and foreign companies for criticism to accomplish larger objectives. Focus can be expected on efforts to complete bilateral trade agreements.</p>
<p>China: Likely to continue taking a focused approach to China, but would do so in a different way, emphasizing multilateral efforts over unilateral tariffs. It is not clear whether Vice President Biden would encourage divestment from China using the existing levers of the Trump administration. However, certain legislative measures have received bipartisan support in recent months, such as delisting companies that do not permit the Public Company Accounting Oversight Board (PCAOB) to review company audits.</p>	<p>China: Likely continue to encourage divestment from China on the basis of national security, human rights, and investor protection concerns. President Trump has used executive powers and the regulatory agencies to pressure China in lieu of legislation being passed in Congress. Specifically, the SEC is considering options for U.S.-listed companies that do not comply with Sarbanes-Oxley requirements for allowing the PCAOB to inspect their audits. Additionally, changes to the Federal Retirement Thrift Investment Board's (FRTIB) have halted the Thrift Savings Plan's (TSP) planned transition to an index with greater exposure to Chinese companies.</p>
<p>Buy American: Proposed a plan that includes \$400B/4 years in federal spending on U.S.-made products, with a focus on clean vehicles and green energy generation; construction materials for infrastructure improvements, including steel and cement; and critical medical supplies and drugs to replenish national stockpiles. In addition, Vice President Biden has proposed a \$300B investment in U.S. research on tech ranging from "electric vehicle technology to lightweight materials to 5G and artificial intelligence -- to unleash high-quality job creation in high-value manufacturing and technology."</p>	<p>Buy American: Continued support of the Great Depression-era procurement law called "Buy American," which requires federal agencies to purchase domestically made goods whenever possible. Although it is unclear what initiatives President Trump would focus on under this law, it would likely dovetail with his approach to trade and goods produced largely in China.</p>

TECHNOLOGY

<p>R&D: Proposed \$300B research and development investment in breakthrough technologies (e.g., 5G, artificial intelligence (AI), and electric vehicles). May promote rural broadband improvements through public investment, low-income subsidies, and enabling cities to build their own networks.</p>	<p>Future of Tech: Expected to pursue antitrust cases against technology companies, bolstered by bipartisan congressional support. Additionally, the technology sector would continue to be the "point of the spear" in the administration's ongoing efforts on U.S.-China relations.</p>
<p>FCC: Restore the Federal Communications Commission's (FCC) enforcement authority for net neutrality violations; may seek to end or amend Section 230 internet liability protection.</p>	<p>FCC: Continued focus on social media's perceived biased approach to content moderation and push to limit Section 230 liability immunity.</p>
<p>Encryption: May limit encryption.</p>	<p>Encryption: May try to resurrect efforts to prevent the use of encryption that cannot be accessed by law enforcement with a warrant.</p>

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MANUFACTURING

<p>Supply Chains: Focus on bringing back critical supply chains to the United States.</p>	<p>Supply Chains: Re-establish and strengthen domestic supply chains for critical products, focusing on health care and defense-related products first.</p>
<p>Revitalize Small/Disadvantaged Manufacturers: Support specific incentives, additional resources, and new financing tools for small and woman/minority-owned manufacturers.</p>	<p>Deregulation: Continue to reduce the regulatory burden on U.S. manufacturers.</p>
<p>Innovation Investment: Possible \$300B investment for research and development and breakthrough technologies, such as electric vehicles, lightweight materials, 5G, and AI.</p>	
<p>Jobs Goal: 5 million new jobs in manufacturing and innovation.</p>	

TRANSPORTATION & INFRASTRUCTURE

<p>Comprehensive Approach: Proposed infrastructure program that allocates \$2T for new programs aimed at making “far-reaching investments” in the following sectors: automobile; transit; power; buildings and housing; agriculture and conservation; and environmental justice.</p>	<p>Bolstering Programs: Focus on a 10-year reauthorization of current surface transportation programs (\$810B) and an additional \$190B investment across multiple sectors, including: Building Infrastructure Great grants (\$60B); the Moving America’s Freight Safely and Efficiently program (\$50B); the Bridge Rebuilding program (\$35B); the Revitalizing Rural America program (\$25B); and the Transit State of Good Repair Sprint program (\$20B).</p>
<p>Financing: Considering streamlining the loan process at existing credit programs such as the Transportation Infrastructure Finance and Innovation Act (TIFIA) and Railroad Rehabilitation & Improvement Financing. Also considering “promote[ing] faster and easier permitting” for projects on existing rights-of-way.</p>	<p>Financing: Aviation projects may be eligible for Building Infrastructure Great grants (\$60B) and the Revitalizing Rural America program (\$25B). Considering eliminating the Transportation Alternatives program and correspondingly increasing the State Transportation Block Grant Program. Considering reauthorizing the Highway Safety Programs at \$19.8B over 10 years and providing \$1B each for certain grants annually.</p>
<p>Pay-For: Vice President Biden has not specified a funding mechanism for his infrastructure proposal.</p>	<p>Pay-For: President Trump has not specified a funding mechanism for his infrastructure proposal.</p>

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NATIONAL SECURITY

Budget: Unlikely to seek major reductions in the U.S. defense budget as the military refocuses its attention to potential threats from “near-peer” powers, but would likely face internal pressure from the Democratic Party, which is suggesting 10-20% reductions to meet pandemic-related requirements and help fund non-defense priorities. Vice President Biden may shift spending from legacy systems to innovations in unmanned capacity, cyber, AI, information technology, and better equipping the National Guard.

Budget: Likely to maintain the current, historically-high levels of funding for the Department of Defense with a focus on China as the key adversary (strategic competitor), modernizing the force with emphasis on microelectronics/5G, AI, cybersecurity, hypersonics, nuclear weapons, and space. The Trump administration will continue to build out the Space Force and seek to harden space assets.

Military Service: Likely to increase troop end-strength targeting recruiting efforts for women, minorities, and highly-skilled individuals. Vice President Biden would likely make women eligible to register for the Selective Service System.

Private Sector: Will likely continue to increase integration of national security, commercial, and civil space to promote the responsible use of space and deter aggression in an increasingly contested environment.

Diplomacy: Likely increase spending for diplomacy to reassure allies, especially in Europe, and strengthen the coalition of democracies which partner with the United States. Vice President Biden backs a smaller counterterrorism footprint in the Middle East and is unlikely to fully withdraw given the complicated conditions in Syria, Afghanistan, and Iraq. Has promised to renew New Strategic Arms Reduction Treaty (START) with Russia.

America-First Foreign Policy Strategy: Continue to push U.S. NATO allies to fulfill their pledge of contributing 2% of their GDP for national security. President Trump has expressed a desire to bring troops home from abroad. Unlikely to extend international arms control agreements like New START.

Veterans: Expanded care and benefits for illnesses related to burn pit exposure, and prioritize veteran suicide and homelessness.

Veterans: Continue to increase spending to support veterans and promote the Mission Act, which enables veterans to receive care through private providers and plans to unify the Defense Department and Department of Veterans Affairs (VA) electronic medical records systems. President Trump will likely continue to enforce the Accountability Act to allow the firing of VA employees who mistreat veterans.

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ENERGY & ENVIRONMENT

Hydrocarbons: Believes that over time, the United States' reliance on fossil fuels, especially coal, should be phased out and related subsidies should be discontinued. New oil and gas development, including fracking, should not be pursued on federal lands. Permitting any new hydrocarbon projects, such as pipelines and liquefied natural gas (LNG) terminals, should include an analysis of the project's impact on meeting the United States' CO2 emission reduction commitments. Electrification should be a priority, such as increasing the number of electric vehicles and reducing the need for using natural gas to heat homes.

Hydrocarbons: Likely to continue efforts to promote America's energy abundance of fossil fuels, especially natural gas. This includes expanding fracking, expediting the permitting of new infrastructure projects like refineries, pipelines, and LNG terminals, various incentives for the revival of the coal industry, and encouraging efforts to export surplus hydrocarbons (e.g., LNG).

Renewables: May increase federal research funding for renewables and clean energy technologies. Incentives, such as investment and production tax credits for wind and solar, would likely be extended. There would likely be a focus on development and deployment of energy storage technologies and advanced biofuels.

Renewables: Believes renewable energy development is part of an "all of the above" energy portfolio. As long as they remain competitive in the marketplace, renewables should continue to contribute to the United States' energy options.

Climate: Strive to place the United States on a path to having net-zero carbon emissions by 2050, starting with a carbon-free electric power sector by 2035. May pursue a price on carbon to discourage its use. Energy efficiency may play an important role by upgrading buildings and weatherizing homes.

Climate: Would likely continue with basic research and marketplace-based options to reducing carbon. Focus would likely be on technologies such as carbon capture storage and utilization to reduce CO2, rather than prescriptive federal mandates.

Nuclear: May discourage subsidizing non-competitive nuclear power plants. Likely keep rigorous regulatory safeguards. May support investments in small modular reactors.

Nuclear: Views restoring American dominance in nuclear energy as an important national security and geopolitical priority and would likely continue with an aggressive program of working with the private sector to promote advanced nuclear technologies, such as small modular reactors, and to promote the private fusion industry.

Paris Climate Accord: Likely to rejoin the Paris Climate Agreement and set new standards towards reducing carbon emissions.

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HEALTH CARE

<p>Public Option, Increases Access to Care: Strengthen the Affordable Care Act (ACA) while giving individuals the option to enroll in private health insurance or opt into a public program.</p>	<p>Lower Cost: Released a health care agenda that vows to cut prescription drug prices, lower health care insurance premiums, protect Social Security and Medicare, and provide world-class health care and services.</p>
<p>Increase ACA Tax Credits: Help individuals pay for coverage and provide individuals in states that have not expanded Medicaid access to the public option.</p>	<p>Protect Pre-existing Conditions: As reflected in Executive Order on An America-First Healthcare Plan, President Trump would also look to provide protections for Americans with pre-existing conditions.</p>
<p>Increase Medicare Eligibility: Lower the Medicare eligibility age to 60.</p>	<p>Surprise Billing: Seek to address surprise billing legislatively or have the Department of Health and Human Services take administrative action.</p>
<p>Reduce Rx Drug Costs: Allow Medicare to negotiate prices with pharmaceutical companies.</p>	

LABOR & THE WORKFORCE

<p>Minimum Wage: May consider increasing the federal minimum wage to \$15/hr and indexing the minimum wage to the median hourly wage.</p>	<p>Minimum Wage: Has previously indicated support for increase in the federal minimum wage but has not committed to an amount.</p>
<p>Paid Family and Medical Leave: Has proposed passing legislation that would allow all workers to have access to 12 weeks of paid leave to assist with their own or a family member's health care needs.</p>	<p>Paid Leave: The Trump administration, under the leadership of Ivanka Trump, has expressed interest in passing legislation to help provide paid leave for individuals. The administration would likely continue to pursue these efforts.</p>
<p>Labor Policies: The direction of potential labor policies under a Biden administration would be heavily dependent upon the majorities in both chambers of Congress. Under Democratic control, expect sweeping labor reforms targeted at protecting workers and strengthening the workforce. This could include legislation aimed at promoting equal pay, improving worker scheduling policies, and providing benefits to gig workers, to name a few. Mixed control of Congress would limit the types of labor reforms that can be signed into law.</p>	<p>Labor Policies: Less prescriptive approach with respect to labor policies and encourage decisions with respect to the workforce to be guided by employers.</p>
<p>Income Inequality: Vice President Biden has released a plan for racial economic equity that, among other things, would require the Federal Reserve to explicitly take race into account when it sets policy. This is similar to recent legislation proposed by Senator Elizabeth Warren (D-MA) and other Democratic Senators.</p>	

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LABOR & THE WORKFORCE

Federal Projects: Infrastructure proposal includes “a series of policies to build worker power to raise wages and secure stronger benefits,” including: expansions in union representation and collective bargaining; maintaining the Davis-Bacon Act, Project Labor Agreements, and the Buy America Act.

RETIREMENT & SOCIAL SECURITY

Social Security: Vice President Biden would pursue reforms to improve the solvency of Social Security by making income over \$400K subject to a 12.4% Social Security payroll tax. Eventually, his plan would close the “donut hole,” narrowing the gap between the income under current law subject to Social Security tax and \$400K. Reforms would also seek to increase benefits for certain individuals.

Social Security: The Trump campaign has stated that President Trump “will absolutely protect Social Security.”

Retirement: Expressed interest in “equalizing” the tax treatment of retirement contributions, providing larger tax breaks for retirement savings to low- and middle-income workers. Allow caregivers to make “catch-up” contributions into retirement accounts for years when they may not have had earned income. May also advocate for expanding access to retirement plans for workers at small businesses and push to resolve the multiemployer pension crisis. Vice President Biden is also likely to be supportive of a bipartisan, bicameral retirement savings package, often referred to as retirement reform 2.0, along the lines of packages introduced by Senators Rob Portman (R-OH) and Ben Cardin (D-MD) and House Ways and Means Chairman Richard Neal (D-MA).

Retirement: Continue to work to implement the SECURE Act. The administration is also likely to be supportive of a bipartisan, bicameral retirement savings package, often referred to as retirement reform 2.0, along the lines of packages introduced by Senators Portman (R-OH) and Cardin (D-MD) and House Ways and Means Chairman Neal (D-MA).

RESPONSE TO COVID-19

Relief Negotiations: Likely to support a version of House Democrats’ \$2.2T proposed relief package that includes state and local government relief; healthcare-provider relief; testing, tracing, and treatment assistance; a heroes fund for essential workers; additional Economic Impact Payments; enhancements to the employee retention tax credit; support for the Paycheck Protection Program and Economic Injury Disaster Loan Program; continuation of health care coverage; expanded unemployment benefits; housing assistance; food security support; and support for elections, the Census, and the U.S. Postal Service, among others.

Relief Negotiations: President Trump has signaled a willingness to consider a relief package in the \$1.7-1.8B range, and may consider “go[ing] bigger” than the \$2.2T plan proposed by House Speaker Nancy Pelosi (D-CA). Such spending levels exceed the Senate Republicans more targeted package that includes \$400 per week enhanced unemployment benefits; \$200B for state and local governments; cash for education; and further funding of the Paycheck Protection Program, with the ability for companies with fewer than 300 employees to get a second round of forgivable funds.

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