Client Alert

Government Advocacy and Public Policy

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The Trifecta: What to Expect from a Second Trump Administration and a Republican Congress

Republicans have swept the 2024 elections, returning Donald Trump to the White House as the 47th President and flipping the Senate to a Republican majority. Having narrowly maintained control of the House of Representatives, the Republicans have won the “trifecta” that should make it easier for the President-elect Trump to enact a sweeping agenda.

It should be noted that the margins in both the House and the Senate will be close. In the House of Representatives, Speaker Mike Johnson (R-LA) will have a slim majority of 220-215. In the Senate, new Majority Leader John Thune (R-SD) will have a slightly more comfortable majority of 53-47.

This is important to keep in mind for two reasons. First, in the current Congress, House Republicans have had difficulty putting together majorities from within their ranks and have had to rely upon Democratic votes to pass key legislation. Second, in the upcoming Congress, Senate Democrats could leverage their numbers to slow down, and possibly block, Administration initiatives by using the filibuster.

A key benefit for the Republicans in controlling both the House and the Senate is that it unlocks a budget process known as Reconciliation, which deals with spending and revenues. The Republicans will likely try to use that process to deliver tax cuts and curb spending as passage of a Reconciliation bill in the Senate is not subject to a filibuster.

In addition, Congress is poised to pursue an active investigations agenda in both the House and the Senate. The post-election admonition of a leading Republican Chairman, Jim Jordan (R-OH), foreshadows accelerated oversight next Congress: “All Gas. No Brakes.”

This client alert will look at the implications of a unified government in the following areas:

- Antitrust and M&A
- Congressional Investigations
- Energy and Infrastructure
- Environment
- Financial Services
- Health Care
- Tariffs
- Tax Policy

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ANTITRUST ENFORCEMENT/M&A

Antitrust/Mergers and Acquisitions

It is likely that President-elect Trump will pull back on policies that have been viewed as hostile to mergers and acquisitions, with the FTC and DOJ likely scrapping the December 2023 Merger Guidelines crafted under the Biden Administration.

The FTC, under Chair Lina Khan, and the Antitrust Division of the Department of Justice, under Jonathan Kanter, have cracked down on deals viewed as having the potential to concentrate corporate power, limit consumer choice and harm social welfare, leading to some uncertainty as to how proposed mergers would be viewed. The Antitrust Division in particular also came under criticism for their reluctance to settle with merging companies facing enforcement actions. In addition, the animus both agencies have expressed toward Private Equity is expected to dissipate.

To change this approach, the second Trump Administration will nominate a 5th member to the FTC that will give the Commission a Republican majority and allow it to undo some of the work of Chair Khan, though the ability to do this will depend on how quickly the Senate will move to confirm the nomination, or whether President-elect Trump will use his recess powers. To date, no one has been nominated; until then, there will be a 2-2 split at best, or, at worst, the Democrats will still control the FTC (if Khan does not step down on or before January 20). While Khan's term has expired, she can stay in her position until replaced. It should be noted that some of Khan's initiatives that focused on societal harms caused by unchecked corporate consolidation had drawn praise from both Democrats and Republicans, including Vice President-elect JD Vance. At the Department, President-elect Trump has nominated Gail Slater to be the head of the Anti-trust Division.

The President-elect's anti-trust team will likely be more receptive to Private Equity and M&A, particularly those transactions that strengthen U.S. companies' ability to compete with foreign rivals, and analysts expect to see more deal activity in sectors like industrial, consumer retail and energy. It should be noted, however, that during Trump's first term, antitrust merger enforcement by the FTC and the Antitrust Division did not depart significantly from President Obama's administration and, as a result, we would expect transactions that historically would have been challenged by administration preceding President Biden to continue to meet resistance at the FTC and Antitrust Division. Also, State AGs in blue states will continue to be expected to file their own challenges to transactions they deem to be anticompetitive.

Parts of the Trump agenda of economic nationalism have raised concerns in some quarters concerning their negative impact on foreign investment in the U.S. that might jeopardize cross-border deals. Indeed, during the campaign, President-elect Trump noted his opposition to several proposed acquisitions by foreign corporations. Deals that involve China will likely face increased scrutiny. Some have expressed concern that M&A activity could slow under a Trump Administration due to policy uncertainty, trade wars, protectionism, inflationary pressures, and the idiosyncratic decision-making processes of the President-elect himself.

Antitrust Enforcement

While much of President-elect Trump's campaign rhetoric might foreshadow a more hands-off approach, a look back at the first Trump presidency indicates that there may not be a retreat from aggressive antitrust enforcement towards companies alleged to have monopoly power. Many of the current court cases targeting large tech companies were initiated by the Trump Administration.

Overall, the second Trump Administration is not expected to abandon antitrust enforcement (such as occurred in his first term) but companies are likely to expect some relief from some enforcement tactics pursued by the Biden Administration that depart from historical practices

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CONGRESSIONAL INVESTIGATIONS

Unified Republican-control of government will mean increased focus on legislation and nominations, but will not provide a full reprieve from congressional investigations of private entities on hot button topics of the day, which often lead to viral social media coverage and media headlines to advance political priorities. A Republican Congress, aligned with the Trump Administration, will likely continue and start investigations into businesses and entities that are believed to have a bias against or are disfavored by conservatives, among other issues tracking Republican priorities. As such, monitoring the Trump Administration's continued and developing areas of focus during the 119th Congress can help stakeholders prepare for congressional attention shifting in their direction. Additionally, companies and entities with potential touchpoints with the outgoing Administration should anticipate and assess areas of potential oversight and take appropriate steps to prepare for and mitigate open issues.

Among other issues, we expect continued focus in the following areas:

- *Chinese Communist Party*: The geopolitical and economic growth of China will continue as a bipartisan issue in the 119th Congress and potentially receive even greater focus as the Trump Administration advances its agenda in this arena. The Select Committee on the Chinese Communist Party, which is tasked with investigating "the threat posed by the Chinese Communist Party," has support across party lines and often works in bipartisan manner. The Select Committee's work has included investigating companies and universities with ties to the CCP, the Chinese military, state-owned enterprises, and Uyghur forced labor in the country's Xinjiang region. Speaker Mike Johnson (R-LA) has committed to renewing the Select Committee, calling China the United States's "number one foreign threat." Given the general agreement between Republicans and Democrats about the risks a rising China poses and President-elect Trump's tough posture against the country, continued investigations into private entities with ties and business in China is expected.
- *Healthcare Oversight and Transparency*: The high cost of healthcare and drugs remain an evergreen area for investigation and will continue to be one of the few areas of bipartisan scrutiny next Congress. We also anticipate bipartisan efforts expanding beyond drug pricing—for instance, oversight activity addressing concerns regarding Medicare Advantage plans, hospital pricing transparency, and Covid-19 related fraud. We also anticipate renewed oversight of drug prices, with specific attention to PBM reform. During the 118th Congress, multiple committees examined PBMs. For example, both the Democratic-controlled Senate Finance Committee and the Republican-controlled House Committee on Oversight and Accountability held hearings on the impact of

PBMs on drug pricing and availability, with the Committee on Oversight and Accountability issuing an investigative report criticizing the role of PBMs in the pharmaceutical market.

Despite the change in party control, we expect the Senate HELP Committee will continue to examine patient care and the cost of prescription drugs. In the upcoming Congress, Sen. Bill Cassidy, M.D (R-LA) will lead the Committee with Sen. Bernie Sanders (I-VT) as Ranking Member. Under the leadership of Sen. Cassidy, the Committee may continue his efforts to (1) modernize the National Institutes of Health (NIH), which sends millions in research funding to institutions of higher education, (2) investigate the effectiveness of the 340B Drug Pricing Program, and (3) understand the effects of AI within the health care industry.

Additionally, unified Republican government and the potential confirmation of Robert F. Kennedy, Jr., to be Secretary of Health and Human Services could embolden congressional Republicans in their continued scrutiny of the pharmaceutical industry. For example, Sen. Ron Johnson (R-WI), the likely next chair of the Permanent Subcommittee on Investigations (PSI)—which has a broad jurisdictional mandate and investigative reach—recently hosted Kennedy on a roundtable critical of the pharmaceutical industry and public health agencies. When Sen. Johnson takes the PSI gavel, the Subcommittee could become, with support from the Trump Administration, a forum for ongoing investigations into public health agencies and the private sector, on issues of drug, vaccine, and biological clinical approval and safety.

- *Technology and Social Media*: During the current Congress, the House Judiciary Committee, and its Select Subcommittee on the Weaponization of the Federal Government, led aggressive investigations into alleged coordination between the Biden Administration and "Big Tech" and their alleged efforts to censor online conservative speech. These highly publicized inquiries pulled numerous entities and individuals into public hearings and interviews behind closed doors. Foreshadowing more of the same approach, a recent, post-election letter from Chairman Jim Jordan (R-OH) to a non-profit organization announced that "[o]ur censorship investigation *isn't going anywhere*". In concert, President-elect Trump's first post-election policy statement declared that, "[t]he censorship cartel must be dismantled and destroyed, and it must happen immediately."
- *Higher Education*: A momentous hearing before the House Committee on Education & the Workforce in December 2023 led to the unprecedented issuance of Committee subpoenas to universities and a "whole" House investigation of antisemitism and other issues on American campuses. Speaker Johnson (R-LA) charged the following committees to join with additional jurisdictional inquiries: (1) Ways and Means; (2) Energy and Commerce; (3) Judiciary; (4) Oversight and Accountability; and (5) Science, Space & Technology. Republican Members have cautioned that their oversight of higher education will continue, including with specific focus on foreign funding, DEI and affirmative action practices, endowments, and the college accreditation process.

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ENERGY AND INFRASTRUCTURE

- We expect the incoming Trump Administration to support U.S. energy production of all kinds. Compared to the Biden years, fossil fuel production and use will be favored. Renewable energy resource development will not be entirely throttled but will not be prioritized in the same way that might have been expected under a Harris administration. Federal support for renewable energy is too popular with some Republican constituencies to be killed outright, so we do not expect it to be.
    - Exhortations to "drill baby, drill" will be reflected in the new Administration's energy policies. This will send important market signals for investment (or disinvestment, depending on views about price impact

as it relates to some projects) both in the U.S. and globally, and is likely to elicit responses by other global energy producers. However, as exploration and production decisions often require long-term investment and planning, and the U.S. is already drilling for and producing oil and gas at record levels, material changes on the U.S. supply side, if they occur, will not be immediate.

  - Offshore oil and gas leasing and development of oil and gas resources on federal lands will be accelerated and promoted. As noted above, impacts of a return to more aggressive federal leasing activity will take time to be felt in terms of additional energy supply.
  - Energy export projects will encounter smoother waters, at least with the federal agencies that must approve them. The Biden Administration's "pause" on authorization of liquified natural gas exports to nations with which the U.S. does not have a free trade agreement will be lifted in short order. Additional DOE LNG export authorizations may take a bit longer, given the need to address requests on a case-by-case basis. Note that we would expect opponents to challenge these new authorizations in court, and to argue, among other things, that any failure to update environmental and economic impact analyses, as may be suggested by the current DOE, makes these authorizations legally flawed.
  - Given President-elect Trump's well-known views on offshore wind development, it may be that offshore wind projects requiring federal leases and permits will encounter challenges.
  - Tax credits supporting renewable energy development may survive despite some Republican skepticism, because they generate economic activity that overwhelmingly favors Republican districts.
  - Nuclear energy development, already showing new signs of life as a result of data and AI-driven demand for additional baseload generating capacity, as well as opportunities to decarbonize commodity production for export to Europe, could receive significant support from the new Administration.
  - Clean Air Act rules proposed or promulgated during the Biden Administration may be stalled; there may be efforts to withdraw many of them.
  - Permitting reform that could substantially reduce the time required to secure permits for natural gas pipeline projects and other energy projects will be on the table, and the Administration will advocate for legal and regulatory changes that will reduce permitting burdens. Whether Congress will be able to enact substantive changes to the National Environmental Policy Act and other federal laws relevant to energy project permitting is unclear.

- Many of the changes described above can be furthered through regulatory actions at the agency level (DOI, DOE, EPA, etc.). However, actually making and implementing these changes will require significant time and effort among agency officials and may not prove durable against anticipated legal challenges and/or changes in approach from future Administrations. Therefore, for at least some of the high-profile priority issues, there may be a push for legislative changes to help make the shift in policy endure longer. Given the slim margins favoring Republicans in both the House and the Senate, actually enacting substantive legislation will be challenging.

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ENVIRONMENT

- We may see the Trump Administration seek to roll back certain greenhouse gas (GHG) emission reduction efforts that were prominent during the Biden Administration. This could include:
    - Denying California's pending requests for waivers required under the Clean Air Act for their vehicle and engine emission standards. Should the Biden Administration grant the waivers in the next few weeks, the new Administration may seek to revoke the waiver approvals, similar to what occurred during Trump's first term.
    - Seeking to relax vehicle emission standards and fuel economy requirements that increase stringency in the coming years. These standards, driven in large part by California, are considered by many to be unrealistic given current market conditions and the shift in U.S. consumer preference away from electric vehicles (EVs).
    - Regulatory reform in the environmental area is expected to focus on at least one high-profile issue, the ubiquity of per- and polyfluoroalkyl substances – known as PFAS – in water, air, fish, and soil. Scientific studies suggest that exposure to some PFAS in the environment may be linked to harmful health effects in humans and animals. Heightened concern regarding PFAS may be seen in revisions of the regulations governing contamination from PFAS, including potentially easing the cleanup requirements and drinking water regulations applicable to public water utilities.
- Potential use of the Congressional Review Act (CRA) may come into play for regulations adopted in the last 60 legislative days of a congressional session (estimated to affect rules adopted around August 1st and later). Rules potentially at risk may include:
    - EPA's final rule reclassifying major sources as area sources under section 112 of the Clean Air Act;
    - a yet to be issued White House Council on Environmental Quality rule bolstering greenhouse gas considerations under the National Environmental Policy Act; and
    - EPA's final rule requiring replacement of all lead water service lines within ten years.
- Rep. Lee Zeldin (R-NY), President-elect Trump's pick for EPA Administrator, has taken a strong deregulatory stance. Rep. Zeldin has stated that from "day one and the first 100 days, we have the opportunity to roll back regulations that are forcing businesses to struggle, they're forced to cut costs, internally, they are moving overseas altogether."
    - This represents a marked change from the current Administration's posture at EPA. The pace and scope of any new regulations are expected to be significantly reduced with a greater emphasis on the costs and economic impact of any new regulations.
    - Consistent with this approach, the new Administration is also expected to submit a greatly reduced budget for EPA, potentially resulting in fewer employees and reducing the scope of the Agency's programs.

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FINANCIAL SERVICES

Top financial services legislative priorities for 2025 include digital assets, data privacy, capital formation and affordable housing. The House Financial Services Committee has already passed a digital assets regulatory framework bill that helps define when crypto is a security or a currency, which investor protections should apply, and which agency would regulate the industry and its offerings. In addition, the Committee passed a stablecoin bill that would create a regulatory framework for the issuance of stablecoins designed for payment use by allowing both banks and non-banks to issue stablecoins. Senator Bill Hagerty (R-TN), a member of the Senate Banking Committee, has also introduced a companion stablecoin bill in the U.S. Senate. Those bills and others will likely be reintroduced at the start of the 119th Congress.

Importantly, incoming Senate Banking Committee chairman Tim Scott (R-SC) has made access to quality, affordable housing a top priority during his time in Congress and will continue to advance comprehensive legislation to make targeted reforms across all segments of the U.S. housing market. In addition, we anticipate continued interest on AML-BSA policies and China's abuse of the international finance system – so a lot of focus on OFAC and FinCEN and how we enforce sanctions and protect against money laundering at home.

Insofar as the new Administration is concerned, President-elect Trump has vowed to "fire" the current Chairman of the Securities & Exchange Commission, Gary Gensler, and nominate more crypto-friendly regulators at the SEC, CFTC, OCC and FDIC. (Chairman Gensler has announced that he will resign on January 20, 2025.) Former SEC Commissioner Paul Atkins has been nominated to succeed Chairman Gensler. We understand that personnel is policy, and the new President will have an opportunity to nominate regulators who more broadly reflect his views on a range of financial services matters.

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HEALTH CARE

While health care policy – to repeal or not repeal the Affordable Care Act – may not have factored as prominently in this election as in previous contests, voters did view health costs as a key component of general economic concerns. Recognizing this and nominating several unconventional picks for administration leadership positions, President-elect Trump has signaled his intention to disrupt traditional government approaches to health care:

- Public Health: We expect to see President-elect Trump pursue significant overhauls of the National Institutes of Health (NIH), the Centers for Disease Control and Prevention (CDC), and the Food and Drug Administration (FDA). President-elect Trump will have support in Congress for overhauling these agencies, particularly related to some of the vaccine programs.
- Medicaid: The first Trump administration approved over a dozen Section 1115 waivers for states to emphasize work requirements, restrict eligibility, and cap financing; this regulatory flexibility will continue. With Republican control of Congress and a reconciliation package on the horizon, we expect to see legislative efforts to reform the Medicaid program, potentially to include instituting work requirements and caps in federal spending.
- ACA: President-elect Trump has pledged to make the ACA "much better, stronger, and far less expensive." We anticipate the Trump administration will pursue significant structural changes to the program, including limiting the ACA Medicaid expansion and allowing enhanced premium subsidies to expire at the end of 2025.
- Drug Pricing: President-elect Trump is expected to continue his focus on lowering drug costs for consumers. Despite calls from some to repeal the drug price negotiation provisions of the Inflation Reduction Act (IRA),

President-elect Trump may instead pursue regulatory action and work with his new cabinet officials to focus on some of his campaign proposals, including creating a presidential commission "of independent minds who are not bought and paid for by Big Pharma" to investigate the increase in chronic illnesses and banning "federal bureaucrats from taking jobs at the companies they deal with and regulate, such as Big Pharma."

- Price Transparency: We expect the second Trump administration to build on efforts from the first administration, enhancing health price transparency with the goals of enabling consumers to make informed choices and reducing costs through increased competition.
- Deregulation: Through executive orders and regulatory actions, the Trump administration will reverse or modify a number of Biden administration policies, potentially related to transgender healthcare, health equity, and drug price negotiation policies.

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TARIFFS

- President-elect Trump has previewed a set of trade policy measures focused on two main issues: (1) promoting U.S. manufacturing and agricultural production to balance the large U.S. trade deficit in goods with the rest of the world, and (2) continuing a strategic decoupling from China. These goals are not new; the first Trump Administration implemented an ambitious trade policy with the same objectives, which resulted in an additional 25 percent import duties on most goods from China and a renegotiation of the North American Free Trade Agreement to incentivize increased auto and auto part production in the United States and North America. President-elect Trump's new proposals build and expand upon his first term trade programs:
    - President-elect Trump has proposed imposing a 60 to 100 percent tariff on goods from China. A variety of legal authorities are available to the Administration to increase these tariffs, including Section 301 of the Trade Act of 1974, but the President-elect has not indicated which legal authorities he might rely upon or the timing of any action. Tariff actions on China in President-elect Trump's first term were accompanied by a limited exclusion program for imported goods, and it is likely that industry will advocate for a similar program with any substantial tariff expansion.
    - President-elect Trump has also stated that he would impose tariffs of 10 to 20 percent on all other imports from other nations in an effort to reduce the large and persistent U.S. trade in goods deficit and to promote domestic manufacturing. Again, there are many legal authorities available to the Administration that could permit this action. As with the proposed tariffs on China, we expect that industry and foreign countries will strongly oppose these tariffs or advocate for exclusion or exemption processes.
    - President Trump also announced that he would impose tariffs of 25 percent on imports from Canada and Mexico on day one of his Administration to crack down on illegal immigration and drug smuggling and tariffs of 10 percent (in addition to other applicable tariffs) on imports from China to address fentanyl smuggling. The imposition of such tariffs on Canada and Mexico would face significant legal and political opposition and may be the first salvo in the review and renegotiation of the trilateral United States-Mexico-Canada Agreement (USMCA).
    - We also anticipate that the second Trump Administration will continue a robust approach on trade remedies for dumping and foreign subsidies, export controls, sanctions, forced labor, foreign investment screening, and other import/export regulatory regimes. This suggests expanded

designations of persons that undermine U.S. national and economic security and strong investigation and enforcement activity.

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TAX POLICY

Tax policy will take center stage in the second Trump Administration. The tax cuts that were implemented in 2017 are set to expire, and extension, and possible expansion, of those cuts are a top priority for both the incoming Administration and the Republican Congress.

In addition, President-elect Trump promised during the campaign to expand those tax cuts and to seek new breaks, such as eliminating taxes on tips and Social Security benefits, making car loan interest deductible, and restoring state and local property tax deductions(SALT).

Extending and expanding the existing tax cuts will be costly. The Center for a Responsible Federal Budget estimates that President-elect Trump's agenda would increase the national debt by $7.75 trillion through 2035.

Specific tax proposals and their associated costs are:

- Extending all the 2017 tax cuts for individuals would reduce revenue by an estimated $3.9 trillion over 10 years. Eliminating a cap on state and local income tax deductions enacted in President-elect Trump's first term would increase that estimate to $5.1 trillion.
- Exempting tips from taxation would cost an estimated $107 billion over a decade.
- Ending taxation of overtime pay would cost an estimated $866 billion over 10 years.
- Creating a deduction for interest on car loans would cost an estimated $173 billion over 10 years.
- Extending or reviving several temporary tax breaks from the 2017 law. These include a deduction for research and development expenses, and additional cuts to the corporate tax rate, reducing it from 21 percent to 15 percent for companies that make their products in the United States. These proposals would reduce revenue by an estimated $200 billion over 10 years.
- Eliminating tax credits in the IRA:
    - President-elect Trump has proposed repealing the IRA, a step that would result in eliminating many of the tax credits that subsidize climate-friendly spending, including the installation of solar panels and other climate-conscious home improvements. The IRA also provides more generous subsidies to businesses for moving to green technologies. Repealing the Biden Administration's climate credits would save the government an estimated $921 billion over a decade. However, as noted above, the majority of these benefits flow to Republican states, which enhances their political robustness, and they are popular with homeowners.

Recent reports indicate that Republicans may be exploring whether codifying tariffs could be used to offset some of the revenue loss that will occur in any Reconciliation bill. While they would not cover the entire cost, they could make the price tag of a 2025 tax bill more palatable. The Tax Foundation has estimated that an across-the-board 10 percent tariff would raise $2 trillion over a decade, while 20 percent would bump that up to $3.3 trillion. In another study, the Urban-Brookings Tax Policy Center's projects that a 10 percent universal tariff, along with a 60 percent levy on Chinese imports, would raise around $3.7 trillion.

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