

RICH FEUER ANDERSON

# President-elect Biden Transition: Financial Regulators

November 13, 2020

<p><b>TRANSITION UPDATE</b></p>	<p>President-elect Biden will inherit a country during a health and economic crisis on January 20<sup>th</sup>, and his team is now tasked with preparing to fill over 4,000 political appointees including Cabinet slots and heads of financial regulators. We expect this effort to ramp up in the coming weeks with a special focus on health and economic-related positions as the incoming administration has prioritized pandemic response – this was further emphasized with his <a href="#">COVID-19 Advisory Board</a> announcement. Below we have provided an overview on the incoming Biden Administration including what transitions at the financial regulatory agencies and Cabinet could look like from a timing and procedural standpoint.</p> <ul style="list-style-type: none"> <li>• Depending on the outcome of the two Georgia Senate runoffs, President-elect Biden may need Republican approval for his nominees, which may have a moderating effect for certain positions.</li> <li>• Biden’s first major transition announcements following the election were the COVID-19 Task Force, which will create a national plan for addressing the pandemic and will begin to be implemented on January 20<sup>th</sup>, his selection of Ron Klain as Chief of Staff, and members of the agency review teams, which help guide the transition at the agencies (Gary Gensler as team lead for the Federal Reserve and Don Graves as team lead for Treasury). We expect Biden to name other White House staff in the coming days and his National Security Advisor, as well as some Cabinet positions, including Treasury Secretary around Thanksgiving.</li> <li>• The Biden transition has also assembled its legislative affairs team, which is conducting outreach to Capitol Hill. Members of Congress are making personnel recommendations to the transition and we expect they will look to make policy recommendations in the coming weeks.</li> </ul>
<p><b>TIMING OF KEY APPOINTMENTS</b></p>	<p>While there are no deadlines for filling these roles, past administrations may serve as a guide for expected timing. See below a chart of past transition announcement and confirmation dates for key Cabinet positions for the 2008 Obama (blue) and 2016 Trump (red) Administrations.</p> <ul style="list-style-type: none"> <li>• In terms of swiftness of confirmation, in 2016 President Trump fell behind the quick pace set by Obama in 2008-09 and Bush in 2000-01 for many key appointments.</li> <li>• We expect President-elect Biden’s transition to be more on par with Obama and Bush than with Trump as the Biden team has already begun the vetting process on many key appointees, though this could be delayed by GSA’s reluctance to officially ascertain the winner of the 2020 presidential election and legal challenges from the Trump campaign.</li> <li>• With a focus on COVID-19 response, we expect nomination announcements for public health and economic positions early in the transition (e.g., HHS, Treasury).</li> </ul>

Position	Nominee	Announcement Date	Confirmation Date
Treasury Secretary	Tim Geithner	11/24/2008	1/26/2009
	Steven Mnuchin	11/30/2016	2/14/2017
Attorney General	Eric Holder	12/1/2008	2/2/2009
	Jeff Sessions	11/18/2016	2/8/2017
Commerce Secretary	Gary Locke	12/1/2008	2/2/2009
	Wilbur Ross	11/30/2016	2/27/2017
HUD Secretary	Shaun Donovan	12/14/2008	1/22/2009
	Ben Carson	12/5/2016	3/2/2017
USTR	Ron Kirk	12/19/2008	3/18/2009
	Robert Lighthizer	1/3/2017	5/15/2017
NEC Chair	Lawrence Summers	11/24/2008	Non-confirmable
	Gary Cohn	12/10/2016	Non-confirmable
CEA Chair	Christina Romer	11/24/2008	1/28/2009
	Kevin Hassett	4/7/2017	9/13/2017

Here is an overview of the anticipated changes and potential makeup of financial services regulators under the Biden Administration. “We believe the Biden Administration initially will focus on regulatory action and a key area of focus will be those agencies where nominees can be replaced immediately (either through direct removal or some other vacancy). While we will stop short of speculating potential picks, we expect to see appointment announcements for these positions over the coming weeks.

- **FSOC** – Democratic-appointed members will likely have a majority on the Board by 2022, not earlier.
  - Five of the ten current voting members will be immediately replaced (Treasury Secretary, SEC Chair, CFTC Chair, OCC Comptroller, CFPB Director) creating a 5-5 split among Republicans and Democrats (plus five non-voting members). NCUA Chair Hood (2023) may also be replaced.
  - Fed Chair Powell (2022), FDIC Chair McWilliams (2023), Thomas Workman (2024) and FHFA Director Calabria (2024) will remain on the Board until their respective term expirations.
  - The early removal of FHFA Director Calabria and/or the replacement of NCUA Chair Hood would provide a Democratic majority in 2021.
- **Federal Reserve** – Chair Powell will likely complete his term (February 2022), along with Vice Chair Clarida (January 2022).
  - Quarles’ term as Vice Chair for Supervision expires October 2021. Quarles is expected to step down from the Fed when his appointment as Chair of the Financial Stability Board (FSB) ends December 2021.
  - We expect Senate Republicans will confirm Judy Shelton next week and Christopher Waller during the lame duck to fill the remaining two vacancies on the Board. If not confirmed, Biden will have an early opportunity to begin remaking the Board.
  - Gov. Brainard, another member of the Federal Reserve Board whose term expires January 2026, is being considered for a position in the Biden Administration. Her confirmation could open up her seat in 2021.
- **FDIC** – Chair McWilliams (R) will likely complete her term as Chairman (June 2023).
  - The FDIC will see Democratic majority control following expected immediate leadership changes at OCC and CFPB, as these positions comprise two of the five board seats. This control change could occur as early as February 2021.
  - The significant implication of a Biden Administration will likely be a temporary stalemate in financial sector regulations due to Chair and majority of Board being from different parties following changes at the OCC and CFPB.
  - Biden will likely fill the vacant Vice Chairman seat, while Director Gruenberg (D) is expected to remain on the Board despite his term being expired.
- **SEC** – Chair Clayton (R) is expected to step down before Jan 20<sup>th</sup>, although his term is technically set to end in 2021.
  - Commissioners Lee (D) and Roisman (R) terms will expire during the upcoming presidential term (in June 2022 and June 2023), so Biden will have the opportunity

	<p>to appoint two members plus the Chairman, along with an Acting Chair in the interim.</p> <ul style="list-style-type: none"> <li>○ A current Democratic Commissioner will serve as Acting Chair until an appointee is confirmed – likely Commissioner Lee based on Seniority.</li> <li>● <b>CFTC</b> – Chair Tarbert (R) will likely step down before Jan 20<sup>th</sup>.       <ul style="list-style-type: none"> <li>○ Commissioner Quintenz (R) has shifted his positioning on stepping down and will remain in office until the Senate confirms his replacement (likely to be selected by Biden).</li> <li>○ Commissioners Behnam (D), Stump (R) and Berkovitz (D) terms will expire during the upcoming presidential term (in June 2021, April 2022 and April 2023), so Biden will have the opportunity to appoint four members plus the Chairman, along with an Acting Chair in the interim.</li> <li>○ A current Democratic Commissioner will serve as Acting Chair until an appointee is confirmed – likely Commissioner Behnam based on Seniority.</li> </ul> </li> <li>● <b>CFPB</b> – Director Kraninger can be removed and replaced immediately after Biden is sworn into office January 20<sup>th</sup>.       <ul style="list-style-type: none"> <li>○ The Biden team can look to the Federal Vacancies Reform Act (FVRA) or Title X of Dodd-Frank as a mechanism for choosing an acting director.</li> <li>○ The FVRA allows Biden to appoint an Acting Director until a permanent selection is confirmed.</li> <li>○ As noted above, we expect the Biden team to remove Director Kraninger quickly.</li> </ul> </li> <li>● <b>OCC</b> – Acting Comptroller Brooks can be removed and replaced immediately after Biden is sworn into office January 20<sup>th</sup>.       <ul style="list-style-type: none"> <li>○ Like the CFPB, the FVRA allows Biden to appoint an Acting Comptroller until a permanent selection is confirmed. If the FVRA isn’t used, the Biden team could name an acting Comptroller from among OCC’s current staff.</li> </ul> </li> <li>● <b>FHFA</b> – Biden’s ability to remove Director Calabria at will is legally uncertain, pending a December 9<sup>th</sup> Supreme Court case (<i>Collins v. Mnuchin</i>). It is assumed the Court will rule in a similar manner to its finding in <i>Selia</i> which makes the CFPB Director position “at will.”       <ul style="list-style-type: none"> <li>○ The court’s decision is not expected until late Q1 or Q2.</li> <li>○ Calabria’s removal will largely depend on how aggressive his actions are in moving the GSEs towards exiting conservatorship, and thus may be on a slightly longer trajectory to be removed compared to the OCC or CFPB.</li> </ul> </li> <li>● <b>PCAOB</b> – William Duhnke will likely complete his term as Chairman (October 2022), and the Board will have one vacancy in 2021 following James Kaiser’s retirement.       <ul style="list-style-type: none"> <li>○ Board Members Brown (October 2021), DesParte (October 2023) and Goshhorn (October 2023) terms will expire during the next presidential term, meaning the SEC under the Biden Administration will be able to appoint four members plus a Chairman.</li> <li>○ The five PCAOB Board Members are appointed by the SEC, after consultation with the Fed Chair and Treasury Secretary.</li> </ul> </li> </ul>
<p><b>LOOKING AHEAD: KEY DATES</b></p>	<p>Below are the key transition dates to watch:</p> <ul style="list-style-type: none"> <li>● <b>November 30</b> – Earliest date that Arizona’s Mark Kelly could be sworn in to the U.S. Senate</li> <li>● <b>December 8</b> – Electoral College “safe harbor” deadline to resolve any disputes over electors and certify the winner of the presidential election in each state</li> <li>● <b>December 14</b> – Electors meet in each state to cast their votes for President and Vice President to the U.S. Senate (due December 23)</li> <li>● <b>January 3</b> – 117<sup>th</sup> Congress convenes (<i>Note that since the 3<sup>rd</sup> is a Sunday, the current Congress is likely to designate a different day that week as the convening date.</i>)</li> <li>● <b>January 5</b> – Runoff elections for both Georgia Senate seats</li> <li>● <b>January 6</b> – 117<sup>th</sup> Congress meets in joint session to officially count electoral ballots and declare election results</li> <li>● <b>January 20</b> – Inauguration Day</li> </ul>