

RICH FEUER ANDERSON

Post-Election Analysis

November 9, 2020

INTRODUCTION	<p>Election Day turned into Election Week however, President-elect Joe Biden exceeded the 270-vote Electoral College threshold and received more than 75 million votes nationwide – the most ever – and is set to be sworn in as the 46th president of the United States on January 20th. Control of the Senate is still unclear (races were called in Michigan and Maine since our last update), since both races in Georgia are headed for runoffs on January 5th. As the Electoral College process to cast and certify electoral votes will occur over the next two months, we expect the Trump campaign to continue to pursue legal challenges and seek recounts over the results in the meantime. We’ve provided our initial analysis on what to expect in the coming weeks and months with an incoming President-elect Biden and a likely divided Congress.</p>
OVERVIEW OF ELECTION RESULTS	<p>Here are our key takeaways from this week:</p> <ul style="list-style-type: none"> • Despite election night results favoring President Trump, once mail-in and absentee ballots were counted, Biden prevailed in Pennsylvania, Wisconsin, Michigan, and Nevada with all major news outlets calling the race on Saturday. Biden is also ahead in Arizona and Georgia – Arizona has been called by some news outlets but not others, and Georgia is headed to a recount. • The Senate majority will come down to the two runoff elections in Georgia on January 5th after both Republican incumbents Sens. Perdue and Loeffler did not meet the required 50% vote threshold. The Senate makeup is currently 48-48 and we expect Republicans to hold onto seats in Alaska (Sullivan) and North Carolina (Tillis). • Democrats would need to flip both Georgia seats to take the majority via Vice President-elect Harris serving as the tie-breaker in a 50-50 Senate. Even with Biden’s victory in Georgia, winning both Senate runoffs is a huge hill for Democrats to climb and is unlikely in the traditionally red state. • House Democrats will remain in control of the chamber with a smaller majority after underperforming, which resulted in Republicans gaining a net five seats so far. No House Financial Services Committee member has lost as of yet, though Rep. McAdams (D) is still in a close race with Burgess Owens (R) to retain his seat. • Of the 11 governor seats up for reelection, only Montana saw a gubernatorial party change with the election of Rep. Gianforte (R) to replace Gov. Bullock (D). • Remarkably, and also a blow to Democratic hopes, 2020 saw the fewest party control changes in state legislative chambers since 1944. The New Hampshire House and Senate flipped from Democratic to Republican majorities, while Arizona has not been decided yet. Republican strength in state legislatures may be consequential going into 2021 redistricting.

WHAT'S NEXT

Looking forward, government funding expires December 11th with just five legislative weeks left in 2020 and a few must-pass items that Congress must address. It's also important to note that despite Biden's victory and any ongoing litigation, President Trump remains in office through January 20th. Here's a preview of what to expect in the lame duck and going into 2021:

Lame Duck Session

With a Biden win and Republicans likely to hold onto a slim majority in the Senate, it's hard to imagine any substantial, or even slightly controversial, legislative measures getting across the finish line in the lame duck. We therefore expect Congress to address the following must-pass items in the lame duck session:

- An agreement on government funding and possibly a last attempt at a "skinny" COVID relief bill (more below).
- Consideration of the FY 2021 National Defense Authorization Act (NDAA), which is expected to include BSA/AML/Beneficial Ownership modernization legislation.
- A push by Leader McConnell to confirm appointees to lifetime seats on the Federal courts and to terms on the regulatory agencies. Judy Shelton and Christopher Waller's nominations, both Republican appointees, to the Federal Reserve Board are likely to be priorities.
- Consideration of other end-of-year items, such as tax extenders, depend on whether another COVID relief bill is passed.
- House Democratic leadership elections will be held November 18-19 and Steering Committee and Committee Chair races will be held the week of November 30th. Committee assignments will begin in December although ratios will be renegotiated due to Republican House victories.
- Senate Committee assignments may have to wait until after Georgia's runoff elections.
- We believe all other major legislative items will be punted into 2021.

Government Funding and Fiscal Stimulus

After Congress passed a clean Continuing Resolution (CR) to maintain current government funding levels through December 11th, the real funding battle is yet to come. We see two paths forward in the lame duck: (1) Democrats and Republicans could push for another clean CR to keep the government funded into the first quarter of 2021, or (2) they could work to complete FY21 funding before the Biden Administration is sworn in to clear the deck and start fresh in a new Congress.

Because Congress was unable to reach an agreement on fiscal stimulus before the election, the December 11th deadline presents the next best opportunity for additional COVID relief to be passed into law by being attached to a must-pass spending measure – this could be comprised of bipartisan, standalone fiscal stimulus items like renewing the Paycheck Protection Program. As both McConnell and Speaker Pelosi have signaled that they would like to pass an omnibus spending bill in the lame duck, it's also possible that this could include a compromise COVID relief bill in the \$500 billion to \$1.5 trillion range, though it's unclear if President Trump will sign either after losing reelection.

- It's unclear how both sides will reconcile the differences in size of the overall package and whether McConnell will lead these negotiations, but McConnell will also have to consider the pending runoff elections in Georgia and the impact of all legislative action on Republicans' prospects for winning these seats and those in the 2022 cycle.
- However, with the election dynamics behind us and the likelihood of an increase in COVID cases in the U.S. negatively impacting the economy, this could provide an impetus for a "skinny" deal to help the country get through the next few months before a potential broader and more expansive package is considered in 2021. We are bearish on a standalone skinny deal, though a compilation of bipartisan stimulus items could be attached to the CR and be considered a small fiscal stimulus deal.

	<ul style="list-style-type: none"> • Outgoing President Trump remains the wild card, as he will ultimately have to sign a spending and/or stimulus bill into law in the lame duck. We would be remiss to not mention the possibility of another government shutdown, especially in a tumultuous political environment after the elections. Much of this will be driven by President Trump’s mood following his defeat (if and when he actually acknowledges defeat), which has already proven to be anything but predictable. <p>National Defense Reauthorization Act (NDAA) The FY21 NDAA is another “must-pass” legislative item for 2020, and despite Trump’s defeat, we still believe Congress will follow the longstanding precedent of reaching an agreement by year’s end like we have seen in the past 59 consecutive years.</p> <ul style="list-style-type: none"> • As previously mentioned, we expect the package to include Bank Secrecy Act/Anti-money Laundering (BSA/AML) and beneficial ownership (BO) reform language based largely off of H.R. 2513, the <i>Corporate Transparency Act</i>, as modified by Senate Banking Committee Chair Crapo (R-ID) and Ranking Member Brown (D-OH). • We also believe that the <i> Holding Foreign Companies Accountable Act </i>, the delisting legislation introduced by Sen. Kennedy (R-LA) and Rep. Sherman (D-CA), is still a live item to potentially be considered in the NDAA, but its prospects are less clear. This is because influential lawmakers in the financial services space are opposed to this legislation and it could be easier to remove it from the final bill text in a conference setting than it was to do so during debate on the Senate floor.
<p>2021 OUTLOOK</p>	<p>President-elect Biden’s transition into the presidency will now ramp up as he will be tasked to fill approximately 4,000 positions, including key Cabinet positions (i.e. Treasury, Commerce, and Attorney General), agency heads (i.e. SEC, CFTC, CFPB, and OCC), and other key positions (i.e. NEC, CEA, and USTR). His administration also will need to deploy agency review teams, reach out to Congress, and put together a 100-day agenda. We’ve talked a lot over the past several months that “personnel is policy,” and this will be an area we watch closely with Gary Gensler and Don Graves taking a lead in the transition related to financial services and Wall Street oversight.</p> <p>While there are no deadlines for filling these roles, historically the transition begins almost immediately (Presidents Trump, Obama, and Bush announced most key cabinet positions within 6 weeks). There are reports that President-elect Biden will focus on filling key White House roles first and is expected to announce key cabinet positions closer to Thanksgiving or early December. It is unclear whether President-elect Biden will hold off on announcing nominations for some positions until after the final Senate makeup is determined by the Georgia runoffs.</p> <p>Over the next several weeks, we will do deeper dives on the impact the election will have on the agenda and on specific policies of interest.</p> <ul style="list-style-type: none"> • Biden’s 100-day agenda will come into focus almost immediately as key personnel are named over the next two months (or possibly even weeks) and work with congressional leaders on an initial agenda comes to fruition. We expect the initial focus will be on working to get the coronavirus under control, health care, and the state of the economy. Biden announced this morning his Transition COVID-19 Advisory Board, and we believe he will prioritize filling key health and economic roles as well. • Assuming Republicans hold the Senate, Democrats will have fewer legislative tools to assist the Biden Administration as the chamber will serve as a firewall against many progressive-leaning campaign priorities. For example, filibuster reform, budget reconciliation, and use of the Congressional Review Act are off the table. • With the filibuster intact, any legislation that President-elect Biden would like to pass will require broad support from Senate Democrats and potentially twelve Republicans. This means moderates from both parties will be important swing votes

and likely makes the sweeping legislative proposals from the Biden campaign as part of its Build Back Better agenda more challenging.

- President-elect Biden’s economic appointees will also need Republican support to be confirmed if they control the Senate. This is likely to have a natural moderating effect on the selections. With that said, we expect Biden to push the envelope with certain positions to respond to pressure from progressives.
- While regular order will begin to play out through the Senate confirmation process, we expect to see the Biden team remove CFPB Director Kraninger and OCC Acting Comptroller Brooks as soon as February. Both can be removed at will, and the Vacancies Reform Act will enable the Biden team to slot in acting leaders until a permanent selection is confirmed. By removing both the OCC and the CFPB heads early on, Biden will also take majority control of the FDIC as the Comptroller and CFPB Director sit as Board members. Finally, we anticipate removal of FHFA Director Calabria will largely be dependent on how aggressive his actions are in the near term, and thus he may be on a slightly longer trajectory to be removed.
- The transition team will evaluate what policy changes can be accomplished through executive actions in the coming days. Likewise, there will be more focus by Biden on getting things done through the regulatory agencies and will no doubt lead to continued emphasis on regulatory enforcement. If Republicans retain control of the Senate, Biden will need to find ways to advance climate and environmental issues, address racial and wealth inequality, and make large infrastructure investments.
- The Biden economic team will have to grapple early on with similar issues as the Trump economic team – agency holdovers. For example, Republican appointees will still hold major regulatory slots well into 2021 including the Vice Chairman of Supervision at the Federal Reserve, Chairman of the FDIC, and other FSOC voting slots. For those agencies where the Biden team can assume control quickly (e.g. CFPB, SEC, CFTC) we expect a quickly changing regulatory posture towards enforcement and a prioritization of overturning Trump rulemakings.