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The Biden Administration: The First 100 Days and Winners and Losers

A United States Perspective

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With Joe Biden's inauguration as the 46th president of the United States and a Democrat-controlled Congress with a razor-thin majority in both the House and the Senate, what can we expect in the new administration's first 100 days and the next two years? What sectors face the greatest impacts from the change in leadership inside the Beltway from a Biden presidency and a Democrat-controlled Congress? Who are the likely winners and losers? What should companies do now? This Flash Report addresses these questions.

The important dynamic on Capitol Hill is that, as a result of the Georgia Senate run-offs, the Biden administration will be working with Senator Chuck Schumer in deciding what comes to the Senate floor for vote rather than be faced with having to negotiate with Senator Mitch McConnell. The president has expressed a desire for bipartisanship, meaning achieving 60 votes in the Senate to avoid a filibuster or use the budget reconciliation process if 60 votes are not attainable. The nuclear option to do away with the filibuster is off the table, at least at the outset, as Senator Joe Manchin has said he will not support it. However, passing significant legislation will not be easy and the Democrats may have to resort to budget reconciliation to get certain things done. But Democrat control of the Senate does open up opportunities to President Biden to get the nominees he wants to the floor. The margins in both the House and Senate are such that moderates may be key to governing, particularly if Speaker Nancy Pelosi is unable to hold her slim majority together.

The First 100 Days

In the aftermath of any presidential election with a change in party leadership, the question arises as to the likely focus out of the starting gate. We can expect much is on the agenda. However, there may be headwinds to progress on the Biden agenda, the most notable being how much of Congress' time will be soaked up with the focus on Trump's impeachment trial in the Senate. While the House operated with dispatch on a vote to impeach the former president, it is possible that it may wait until after the Biden administration's first 100 days to send the article of impeachment to the Senate.[1] This approach suggests that some Democrat leaders do not want to hamstring Biden's first 100 days, as every president gets only one of those.

However, Speaker Pelosi has declined to reveal when the House will send its resolution of impeachment against the former president to the Senate, leaving everyone guessing as to when the trial will take place. The nine impeachment managers appointed to lead the Democrats' case against Trump are presently working on taking the matter to trial.[2] That process may take time, but it is possible that the impeachment article may be sent immediately to the Senate once the Democrats are ready to make their case. If that happens, the Biden administration will face a historic and potentially time-consuming distraction on advancing its agenda during the first 100 days.

With the above caveat, below are likely priorities of the president's administration in its first 100 days under eight broad themes. The first 100 days will be kicked off with a "10-day blitz" of executive actions focusing on four overlapping and compounding crises – the COVID-19 crisis, the resulting economic crisis, the climate crisis and a racial equity crisis.[3] Of the priorities summarized below, we do not expect them all to be accomplished in the first 100 days. But we do expect each of the broad themes to be addressed through either taking definitive action or laying the foundation for the next two years through the 2022 midterms. The agenda follows and is supported in greater specificity in *Appendix A*:

1. **Contain the COVID-19 pandemic.** Address the COVID-19 pandemic by sparing no expense in undertaking a number of initiatives based on science to turn the pandemic around.

2. **Shore up the Affordable Care Act (ACA).** On the broader healthcare front, reverse Trump's executive orders to dismantle the ACA, build on the ACA by placing emphasis on a government-sponsored plan that competes with private insurers and reinstituting the individual mandate, and take measures to lower prescription drug prices.

[1] "Democrats Promise Quick Move to Impeachment if 25th Amendment Push Fails," Devan Cole, Jeff Zeleny, Daniella Diaz and Manu Raju, CNN, January 11, 2021, www.cnn.com/2021/01/10/politics/james-clyburn-impeachment-senate-trial-biden-cnntv/.

[22] "Pelosi Mum on When House Will Send Impeachment Article to Senate," Mike Lillus, *The Hill*, January 15, 2021, https://thehill.com/homenews/house/534452-pelosi-mum-on-when-house-will-send-impeachment-article-to-senate.

[3] "Biden Plans Immediate Executive Actions to Roll Back Trump Era After Inauguration Speech," Tucker Higgins, CNBC, January 17, 2021.

3. **Reverse the prior administration's other executive orders.** Reverse many other Trump executive orders, particularly those weakening environmental standards and opening federal lands to oil and gas extraction. Sign executive orders to take measures that are within the full authority of the office to initiate progress on significantly reducing GHG emissions. Propose legislation to end fossil fuel breaks and begin transitioning away from the oil industry to renewables, electric vehicles and energy efficiency.

4. **Pass stimulus, tax and infrastructure legislation.** Request Congress to pass more stimulus legislation to help suffering Americans by giving them the balance of their coveted $2,000 coronavirus payments. Push for a tax and infrastructure plan, which is part of Biden's "Build Back Better" program, later in the spring.[4]

5. **Undertake focused initiatives to create jobs.** Initiate targeted business initiatives to create millions of manufacturing jobs through tax incentives.

6. **Address systemic racism and growing economic inequality.** Deliver on Biden campaign promises around addressing systemic racism and growing economic inequality.

7. **Reverse the prior administration's decisions on immigration.** Take a number of steps to roll back the Trump era decisions on immigration.

8. **Empower workers and unions.** Focus on strengthening worker organizing, collective bargaining and unions.

The above themes do not cover other matters the Biden campaign promised to address related to foreign policy. There are many questions to be answered as the new administration gets underway. But the above agenda illustrates potential focus of the first 100 days and the agenda through the 2022 midterms.

[4] "Biden's One-Two Stimulus Punch," Hans Nichols, Axios, January 8, 2021, www.axios.com/joe-biden-coronavirus-stimulus-congress-142d97d0-8830-4fcc-92a9-7a6f7f103378.html.

Impact on Select Industry Sectors

There are winners and losers in any change in the White House. Below we comment on the potential implications of a Biden administration on various industry sectors and the 117th Congress. While the House and Senate are both controlled by the Democrats, the majority advantage is razor thin. Not only may this reality of divided government pose limitations on the extent to which progressive legislation can be passed, but it also could pose limitations on the extent to which *any* legislation can be passed.

Below is a summary of possible winners and possible losers from the Biden presidency and Democrat-controlled Congress:

Possible Winners	Possible Losers	Mixed	
• Consumer Products • Construction • Renewables • Telecommunications	• Banking and Capital Markets • Defense • Oil and Gas • Shipping • Technology	• Airlines • Automotive • Healthcare • Industrials	• Insurance • Pharmaceuticals • Utilities

Appendix B provides analysis and supporting commentary discussing each of the above sectors, largely based on reviewing the Biden campaign's policy statements.

What Do Companies Do Now?

With a Biden presidency and a Democrat-controlled Congress, companies need to address the impact of changing political realities. Following are suggestions companies can consider now:

Evaluate strategic assumptions. Every organization's strategy has underlying assumptions, explicit or implicit, about the future. If they haven't already, companies should assess their underlying strategic assumptions in light of likely actions over the next two years, including actions that can be undertaken unilaterally without congressional support. If it's possible that one or more assumptions might be rendered invalid in the foreseeable future, then senior management should assess the ramifications to the strategy and business model and evaluate the organization's options. As suggested in the next point below, scenario analysis may be useful in this regard.

Consider the implications of plausible scenarios germane to your sector and begin preparing for the possible. Formulate appropriate scenarios, considering the impact of the new administration's various policy initiatives with respect to regulatory matters, taxation, immigration, trade, infrastructure investments, and other matters on the company's markets, channels, customers, employees, supply chains, cost structure, business model and cash flow. Use the scenarios to understand the potential impact on the business and formulate strategic alternatives to capitalize on market opportunities and address emerging risks. Update the analysis as the president's team is identified and policies are clarified through the first 100 days.

Watch for influence opportunities. A lot of spending will be proposed over the next several months as well as legislation that can affect multiple industries. Companies should stay in touch with developments using their appointed insiders and advocates and, when the industry's interests are at stake, look for opportunities to educate policy makers and legislators on the implications of specific proposals. When addressing the particulars of specific legislation, it is important to tie arguments for or against to what's best for the country and for the particular state or district in question.

Consider strengthening the company's commitment to and reporting of ESG performance. Under a Biden administration, it is a fair bet that increased importance will be placed on sustainability performance and reporting. For example, in the first 100 days, public companies may be required to disclose climate risks and GHG emissions in their operations and supply chains. Viewing this as an opportunity, companies should focus on whether their ESG storyline is resonating in the marketplace and impacting the company's valuation. They should understand how the company's message compares to peers, leaders and key competitors. They should assess their processes for engaging and understanding the expectations of ESG stakeholders. For example, institutional investors and asset managers having a stake in the company continue to articulate their expectations for reporting ESG performance as well as the ESG criteria they are using in following the industry. It may also be useful to monitor the company's ESG ratings and understand what makes them change.

Monitor developments on trade, but don't expect quick changes. Expect theBiden administration to engage multilaterally with the global economy and with trade issues. With respect to China, expect an effort to formulate a coordinated approach with America's traditional allies. The Biden campaign committed to reduce dependency on China and other countries for critical goods (e.g., PPE, drugs) in times of crisis by bringing back related supply chains to America. In their business planning, companies should not expect a significant change in the current tariff structure until after the administration completes a thorough review of its trade policy options in consultation with its allies. That review will take time to complete and there are higher priorities on President Biden's agenda.

Make adjustments for increased costs. The Biden administration will likely reverse Trump's executive orders on deregulation as well as appoint agency heads who may revise rules within the context of existing laws. The significance of these changes and their impact on costs bear monitoring closely. Changes made to the ACA could impact companies. Given the massive deficits and the damage wrought on the economy by the pandemic, a corporate tax increase is inevitable.

Follow the money. The Biden presidency will push an infrastructure bill that would invest in restoring highways, roads and bridges as well as in renovating schools and replacing water pipes. It will focus on electric vehicles and trains. It will seek to build out rural broadband access. And this would largely be done with American-made materials and American labor, a big opportunity for construction and manufacturing companies. The narrative on America's infrastructure needs is well known, so expect the buzz on infrastructure investments to get louder. The only questions are where, when and how much.

Update M&A strategy. Expect Congress to increase the capital gains tax. The new administration's expected focus on new regulation, increased antitrust oversight, trade and de-emphasizing fossil fuels may also impact the M&A landscape. So may its approach to managing the COVID-19 pandemic. Companies should take these changing dynamics under consideration and assess their acquisition and divestiture strategy in view of their overall corporate strategy and the economic and regulatory climate.

Play the game of resilience and be good at it. Unfortunately, companies cannot rule out the possibility of another protracted lockdown as governments – national, state and local – deal with the COVID-19 pandemic. Companies with mature digital capabilities were more successful in navigating the pandemic with a business built to be run and reach more customers from anywhere. Companies should be thinking about the parts of their business that are or should be hyperscalable and opportunities for opening digital channels, repositioning within the end consumer's value chain, evolving product and service delivery in a contactless world, improving customer engagement continuously, increasing workplace flexibility, reskilling and upskilling employees, and de-risking the supply chain.

Look for opportunities to diversify. Diversification strategies can enhance resilience. For example, power companies can integrate additional renewable generation, low-carbon fuels and natural gas as a "bridge" fuel. They can also:

- Invest in and deploy utility-scale battery storage assets to supplement and support the more intermittent solar and wind generation.
- Transition some infrastructure and assets to support low-carbon fuels such as hydrogen and bio-methane.
- Expand capabilities to plan and manage a future grid that is more "plug and play" than the current one through increased presence of distributed energy resources, a source of decentralized, community-generated energy.
- Make investments supporting the electrification path (smart metering, electric vehicle smart charging and smart cities infrastructures), including feasible, attainable steps.

This is just one sector, but it illustrates ways companies can adapt to the new political headwinds for fossil fuels blowing in Washington.

Summary

As priorities and policy direction clarify over time, companies can firm up their responses to the resulting changes in the business environment. With a new administration and the 117th Congress in place, it is never too early to start considering alternatives to current strategies.

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