

December 2020

Dear Friends,

Presidential electors met across the country on Monday, December 14th, a day set forth in federal statute, to formalize Joe Biden's victory in the November election. For an interesting read on the Electoral College process, and how the votes are cast in Congress, see this [LinkedIn](#) post from, Mark Strand, at the Congressional Institute in Washington, D.C. After the Electoral College vote, many Senate Republicans, [including Majority Leader Mitch McConnell](#), publicly congratulated President-elect Biden.



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Meanwhile, a deal on a final omnibus spending package, legislation to fund federal agencies and programs for the current fiscal year, has reportedly been reached. The details of the funding bill were expected to be released Tuesday, but as of this writing have not been. In addition, after months of back and forth over another COVID relief package, it is looking like a real possibility. If a deal can be reached, it will be attached and passed as part of the omnibus. More details on the spending package and a potential COVID relief deal are below.

If you have questions on any of the issues referenced below, or need additional details or help, please don't hesitate to email or call us. If you do not wish to receive these monthly emails, please unsubscribe below.

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**I. Government Funding and COVID Relief**

With government funding set to lapse on Friday, December 11th, the House passed a second temporary measure, a continuing resolution (CR), last Wednesday to extend funding for an additional week (through December 18th) and buy time for continued negotiations on a funding package for the fiscal year and a

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<sup>1</sup> The month-ahead policy review is provided by *PolticoPro's* monthly "CEO Report," a "high-level outlook on the policy issues driving the month ... and beyond." This month *POLITICO Pro* looks at President-elect Biden's policy proposals for the new Congress and the battles that likely lie ahead *if* the GOP retains control of the Senate.

COVID relief measure. The Senate acted quickly, sending the CR to the President before the Friday deadline.

Early this week, House and Senate appropriators [reportedly](#) reached a deal on a \$1.4 trillion "omnibus" spending bill for the 2021 fiscal year, which technically began on October 1st. It's that time of year when last minute compromises are reached on a host of pending issues as Congress finishes its business for the term. (Like many of us, Congress works best under a deadline!) In addition to the annual funding package, we could also see bipartisan compromises on "surprise billing" legislation, as well as tax extenders, both of which would be attached to the must-pass spending bill. The final text is expected to be released any day. With so many issues pending, Congress may have to pass another short-term funding extension to provide additional time to wrap everything up.

Regarding COVID relief, most people are crediting the bipartisan compromise proposed by a group of Senate centrists for breaking the logjam. The bipartisan group's initial proposal had a price tag of \$908 billion. They were ultimately unable to find consensus on liability protections, one of the two issues that have been vexing negotiators for the last few months. A last minute proposal to peel off the liability and state/local funding elements from the bill and handle them later could be the key to moving the whole deal forward. An initial summary of the Senate "908" compromise, which could provide the foundational elements for the final package, is [here](#). The so-called "four corners," the party leaders in the House and Senate, have been meeting for the last few days to finalize the legislation, which seems imminent. If a compromise is found, expect the basic elements to include money for vaccine distribution, health care providers, unemployment assistance, another round of direct payments, and a continuation – and expansion – of the Paycheck Protection Program (PPP), among other COVID-related priorities.

## II. Georgia Senate Runoffs

Control of the Senate, and, really, the direction of policy making the next two years, will be determined on January 5th in the two Georgia Senate runoffs. Neither of the Georgia Republican incumbents – Senator Kelly Loeffler and Senator David Perdue – received the 50-plus-one percent required under state law to win outright in November. At this time, the Senate margin stands at 50 Republicans, 48 Democrats. Republicans need to win only one of the two Georgia runoffs to maintain control. The stakes couldn't be higher.

Polling averages have both races neck and neck and within the margin of error. The result is likely to hinge on the turnout efforts of each party. The candidates are running in tandem, so a split result would be a surprise. Traditionally a "red" state, Georgia Republicans have never lost a statewide runoff. But the state, if not quite purple, is trending in that direction. Changing demographics and Democrats' statewide outreach efforts since Stacey Abrams' 2018 gubernatorial loss resulted in a close Joe Biden victory in November. It will be a closely contested race and an expensive one – spending could reach \$500 million.

## III. Beneficial Ownership Reporting Requirements Pass

Congress also passed the National Defense Authorization Act (NDAA) last week, an annual bill providing funding and authority for the military and our national defense posture. President Trump has [threatened](#) to veto the measure over a provision calling for the renaming of military bases named for [Confederate military leaders](#) and over the failure to include a [repeal](#) of Section 230 of the Communications Decency Act, which provides legal protections for social media companies. Both versions passed the House and Senate with veto-proof margins, 335-78 in the House, and 84-13 in the Senate. Speaker Pelosi signed the NDAA on Friday sending it to the White House and starting the 10-day veto clock. If the President carries through with his threat, the question will be whether the votes remain to override, particularly in the House.

Importantly for small business owners, the NDAA includes a version of the "Corporate Transparency Act," a long-discussed policy designed to restrict anonymous shell companies. The provision would institute new reporting requirements on corporations and limited liability companies (LLCs) with 20 or fewer full-

time employees, mandating they file reports on "beneficial ownership" to the U.S. Treasury's Financial Crimes Enforcement Network (FinCEN). Despite strong opposition from the [small business community](#) to the potentially onerous new reporting requirements, the measure prevailed based on arguments that it was needed to prevent money laundering and other financial crimes. The text of the final agreement can be found in sections 6401-6403 of the NDAA [Conference Report](#). More background on this proposal, as it stood upon House passage earlier this year, is in a Shumaker client alert [here](#).

#### IV. Policy look-ahead – December

##### A. Quick Fix

**The President-elect will have to trim his sails on taxes**, without Democratic control of the Senate.

**Biden's budget office nominee, Neera Tanden**, faces a tough confirmation road in the Senate.

**Some Biden proposals may slip into an early economic stimulus package**, including an ambitious climate plan, but others will end up on the back burner.

##### B. Tax

**Biden's ambitious tax plans in doubt:** Without Democratic control of the Senate — to be determined in the two January 5th runoff elections in Georgia — Biden's ambitious tax plans, including a range of tax increases on corporations and wealthy individuals, would be crippled. Still some elements of the new Democratic president's plans could draw bipartisan support, such as using incentives to lure overseas jobs back to the U.S. and expanding a range of tax credits for lower-income Americans. If there's more coronavirus relief, tax breaks for struggling businesses are another possible area of compromise.

Biden will also have to confront a simmering international tax dispute. Talks to reach a global agreement on digital services taxes, which would hit U.S. tech giants, are bogged down largely because of conditions demanded by the Trump Administration. So, France and some other countries are moving forward with their own taxes, at least until a consensus is reached. And that could trigger U.S. sanctions in the waning days of Trump's tenure.

European leaders have expressed hope they'll have an easier time working with the new Biden Administration. But Democrats in Congress have been united with Republicans in criticizing taxes that would largely hit U.S. companies, and it's not clear yet what approach Biden will take to the talks. — Toby Eckert

##### C. Budget and Appropriations

**Biden's "radioactive" budget nominee:** It's already clear that Biden's choice to run the White House Office of Management and Budget (OMB), Center for American Progress President Neera Tanden, will face tough sledding on the road to confirmation if Democrats don't regain control of the Senate in the two January 5th runoffs in Georgia. Republicans are dredging up Tanden's pointed criticism of the party on Twitter, saying her partisanship is disqualifying. But Democrats contest that Republicans should look inward if they're bothered about tweeting, stressing that Tanden is supremely qualified for the job.

Indeed, if Tanden is confirmed, she would bring a broad base of policy knowledge and effective communication skills to an agency that will be central to all the ambitious plans proposed by the new Biden Administration. And Democrats appreciate that Tanden relied on public assistance programs when growing up, giving her a deep understanding of OMB's mission. Sean McElwee, a progressive activist and founder of the liberal think tank Data for Progress, said Tanden has embraced progressive ideas like paid leave and hasn't "bought into the type of beltway deficit thinking that would harm" the economic recovery from the coronavirus pandemic. — *Caitlin Emma*

#### D. Financial Services

**Fannie-Freddie's-fate:** A top housing regulator is working hard to advance plans to release Fannie Mae and Freddie Mac — the two companies that stand behind half the nation's \$11 trillion mortgage market — from government control before the Biden Administration takes over. Federal Housing Finance Agency (FHFA) Director Mark Calabria and Treasury Secretary Steven Mnuchin are seeking to alter the terms of the legal agreement governing Fannie and Freddie, which determines the level of capital that the companies are allowed to keep and the government's stakes in them. The move would speed up the effort to free the mortgage giants from government conservatorship, a goal Calabria has doggedly pursued since taking office in April 2019.

But Democrats — worried that the newly private companies would focus less on affordable housing — are leery of plans to free them. And Biden is expected to pump the brakes on Calabria's plan, setting up a potential clash between the new administration and the FHFA director, whose term is set to expire in April 2024. Fannie and Freddie were saved from collapse by the federal government in September 2008 amid the housing crisis.

**Fair-housing:** Biden has pledged to restore an Obama-era fair housing rule that would require local governments to actively track and address patterns of segregation or lose federal housing funds. After delaying and proposing revisions to the 2015 Housing and Urban Development rule, the Trump Administration scrapped it in July.

The incoming administration also wants to restore HUD's so-called disparate impact rule of 2013, which holds governments and businesses accountable for policies that have a discriminatory effect, even when none is intended. A federal judge in October issued a preliminary injunction to stop the agency from implementing the Trump Administration's new version of the rule, which would have required plaintiffs to meet a higher threshold to prove unintentional discrimination and given defendants more leeway to rebut the claims.

**Emergency-loans:** Mnuchin set off a political firestorm last month when he announced that he wouldn't sign off on the renewal of major Federal Reserve emergency lending programs beyond the end of the year. The move even prompted a rebuke from the central bank, though Chair Jerome Powell deferred to Mnuchin's assertion that the [CARES Act](#), the massive spending package enacted by Congress in March, required him to do it. Now, the expectation is that incoming Treasury Secretary Janet Yellen, if confirmed by the Senate, would restart those programs, which could offer lifelines to small and midsized businesses, as well as state and local governments. The programs, though, have only had meager take-up this year, so the bigger question is whether she will also work to make the terms more generous to help a wider universe of borrowers.

**Banks-climate:** Even if the Senate stays in Republican control, Biden is expected to take unprecedented steps to address climate-related risks in the financial system. It's an area of growing focus for regulators around the world who see the potential for economic upheaval triggered by rising global temperatures, devastating natural disasters and the transition to a lower-carbon society. Biden's Treasury Department and his nominees to financial regulatory agencies are expected to take new steps to analyze the potential dangers and draft new rules, such as mandatory climate-risk disclosures for corporations. — *Mark McQuillan*

#### E. Employment and Immigration

**More worker protections:** With the coronavirus crisis magnifying workplace issues, businesses can [expect greater scrutiny of their labor practices](#) and how they protect their employees from Covid-19 under the new Biden Administration. One of the first things Biden will likely do is instruct the Occupational Safety and Health Administration to step up worker safety enforcement by enacting

an emergency temporary standard, or a set of guidelines governing how employers must protect their employees from Covid-19. He's also promised to bring on more safety and health inspectors.

The new president is also widely expected to appoint more Democrats to the National Labor Relations Board, the agency responsible for settling disputes between unions and employers. Right now, the board has three Republicans, one Democrat — and an empty seat. Biden has said he would take a more business-friendly approach to immigration and has promised to reverse some of Trump's executive orders, including those restricting employment-based visas, and has called for comprehensive immigration reform. He's also expected to resurrect some Obama-era policies, such as the executive order on fair pay and safe workplaces, which required federal contractors to disclose their record of labor violations whenever they bid on large federal contracts.

Biden's ability to implement some of the labor-friendly legislation he campaigned on depends in large part on the outcome of the Senate run-offs in Georgia. These plans include a measure to hike the federal minimum wage to \$15 and to enact the Protecting the Right to Organize Act, or [PRO Act](#), which would strengthen workers' ability to unionize. These changes will likely come later because they must be approved by Congress. They also hinge on the balance of power in the Senate, as many of the provisions are opposed by Republicans. — *Rebecca Rainey*

## F. [Trade](#)

**Biden faces pressure to drop tariffs:** American businesses stung by Trump's trade wars are already pressing the incoming Biden Administration to ease tensions with allies and adversaries alike. This month, IBM called for Biden to remove some of the \$350 billion in tariffs Trump imposed on China aimed at goods used in advanced manufacturing. The Business Roundtable also said Biden should unwind "some of the very damaging tariffs" that Trump put in place on China, provided that Beijing gave similar relief. Still, those talks will take a lower priority to domestic stimulus. Once that's done, Biden said his goal would be to "pursue trade policies that actually produce progress on China's abusive practices — that's stealing intellectual property, dumping products, and illegal subsidies to corporations," the president-elect [said in a recent interview with \*The New York Times\*](#).

**Confronting China:** Those aims are similar to what Trump wanted to achieve in the next set of negotiations with China, which have been stalled. Biden's camp is betting that bringing the European Union and other allies to the table will help challenge the world's No. 2 economy. EU leaders say they are eager to gang up on Beijing, with some calling for a new "Transatlantic Trade and Technology Council" to combat China's development of 5G, artificial intelligence and other technologies. But [cooperation could be complicated by deep differences](#) among the allies on digital tax proposals from European nations and tariffs Trump imposed on European consumer goods — duties Biden will likely only lift with reciprocal action. For now, the transition team is mum on how it will approach those issues, or if it will continue ongoing trade talks with other nations, including the U.K. and Kenya. — *Gavin Bade*

## G. [Agriculture](#)

**What to do about taxpayer-funded aid:** A major question facing farmers and ranchers is whether the new administration will continue the extensive subsidies Trump has steered to the industry since 2018. Government farm payments surged to a record high this year and now account for more than a third of the industry's net earnings, which farm economists say is unsustainable. But Biden is sure to face pressure from commodity groups and farm-state lawmakers to extend the support programs. And those policies could influence key business plans, such as which crops to plant and whether to invest in new farm machinery.

**Food assistance:** Biden says he wants to expand benefits under the Supplemental Nutrition Assistance Program (SNAP) by 15 percent during the crisis, a policy that congressional Democrats have tried unsuccessfully to include in multiple economic rescue measures. The new president can also backtrack on Trump's regulatory efforts to trim participation in SNAP, including Agriculture



Department proposals that haven't been finalized. Boosting the safety net programs could help take pressure off hungry families, as well as the food banks and nonprofits facing heavy demand for food.

**Regulatory tightening:** There's bipartisan momentum for cracking down on consolidation in agriculture, especially in the meatpacking sector, and Biden advisors have said antitrust efforts will be part of his economic agenda. His EPA could also take a stricter tack on pesticides and other environmental issues that affect farmers and agribusinesses. — *Ryan McCrimmon*

#### H. Transportation

**Eyes on Biden's green transportation plans:** Biden has said he wants to make infrastructure one of his top priorities — a key element of his "Build Back Better" strategy — even going so far as to promise some kind of action within the first few months of his presidency. Exactly what that might be remains to be seen, though the campaign and some of Biden's surrogates have given some hints. First, look for Biden to carve up his ambitious \$2 trillion climate plan into manageable pieces — the first of which could come in the form of coronavirus relief. Congress is now eyeing a slimmed down aid package. But even if it is enacted, what the package contains for transportation industries slammed by flagging demand isn't likely to approach what they say they need to stay afloat. Then, look for Biden to juice the next surface transportation bill, which is due to be reauthorized in September 2021. It's likely to be the major vehicle for significant policy changes that the new administration wants to make for everything from rail to highways to transit, though how ambitious the ultimate product is will be tempered if the Senate stays in Republican control. — *Kathryn A. Wolfe*

#### I. Defense

**Tighter defense spending:** Biden has pledged not to seek deep cuts in the defense budget. And though large spending increases are likely a thing of the past, the defense industry can expect some predictability in largely flat budgets that Trump officials were already anticipating. Still, Biden's Pentagon can be expected to scrutinize certain military programs that could affect major defense contracts, most notably efforts to overhaul each leg of the nuclear weapons enterprise. The incoming administration, however, will need to contend with the progressive faction of the Democratic caucus that wants to slash the defense budget by upwards of 10 percent. — *Connor O'Brien*