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What to expect from the second Trump presidency: 2025 and beyond

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Our client update highlights aspects of the second Trump administration's announced (or possible) regulatory, legislative and economic priorities, along with the outlook for congressional action across key policy areas in 2025 and beyond.

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Bank, fintech and cryptocurrency regulation

The federal banking agencies in the second Trump administration likely will take a different direction, focusing on growth and innovation, provision of credit to the economy and working to ensure a competitive banking sector.

Following the inauguration of President-elect Trump, we expect prompt change in leadership at the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC) and the Consumer Financial Protection Bureau. The timing for change of leadership of bank regulatory policy at the Federal Reserve is less clear. In all events, the agencies are likely to pivot to focus on growth and innovation, provision of credit to the economy and working to ensure a competitive banking sector.

The focus on growth and innovation is likely to be centered around facilitating safe and sound fintech activities, making the path to achieving a bank charter for innovative firms more readily achievable and drawing clearer rules of the road for banking organizations to participate in a variety of crypto-asset-related and tokenization activities.

The focus on the provision of credit to the economy and working to ensure a competitive banking sector is likely to manifest in a change from focusing on more stringent capital and liquidity standards, to focusing on areas to make existing rules more efficient and to facilitate the ability of the banking sector to be competitive within the overall financial services ecosystem. As a result, the bank capital reforms proposed under the Biden administration (referred to as Basel III endgame) almost certainly will not move forward in the form they were proposed. The agencies also may pursue reforms to the way in which supervisory stress tests are used to set binding capital requirements. In addition, supervisory practices that restricted leveraged lending could be revisited and the banking agencies may focus on how to respond to the rise of private credit. Lastly, given the industrial logic that supports significant consolidation in the banking sector, the new administration is likely to be more receptive to merger proposals that would result in combined firms that have materially greater scale than the current largest firms in the regional banking sector.

Corporate and individual taxes

The Trump administration is likely to prioritize tax reform, aligning with Trump's previous stance on the 2017 Tax Cuts and Jobs Act (TCJA), and taxpayers should be attentive to these changes in their year-end and 2025 planning.

Administrative priorities may include addressing the scheduled phaseout and sunset of various 2017 Tax Cuts and Jobs Act (TCJA) provisions in 2024 through 2026, the possible renewal of the TCJA effective for 2025 or 2026, and possible changes to provisions added by the 2022 Inflation Reduction Act (IRA), as previewed by proposals made during President-elect Trump's campaign.

Any changes will require legislative action, making political negotiation and legislative strategy critical to the process. In light of the potential changes, here are some considerations a taxpayer should take into account in year-end and 2025 planning:

- From a seller's perspective, whether to defer a sale due to the possibility of a lower corporate income or capital gains tax rate in 2025
- More generally, for corporate taxpayers, whether to defer income to 2025 or accelerate deductions into 2024, in anticipation of the possibility of a lower corporate income tax rate
- From the perspective of a party considering capital expenditures (including an asset buyer), whether to accelerate capex to 2024 before bonus depreciation declines from 60% to 40%, or to defer capex to 2025 based on the possibility of an increase of bonus depreciation to 100%
- Whether to defer R&D expenses to 2025, based on the possibility that the expenses will be fully deductible
- The effect of a possible restoration of the "DA" in the Section 163(j) interest limitation rules (under which, since 2022, the deductibility of interest is currently limited to 30% of an "EBIT"-like metric, as opposed to the previous limitation which was based on an "EBITDA"-like metric)
- Closely monitor proposed modifications to the IRA
- From a pass-through business perspective, to plan for income in 2025 rather than 2026, before the sunset of the qualified business deduction
- From an individual's perspective,

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- whether to defer state income tax payments to 2025, based on the possibility of a removal or increase of the $10,000 cap on the SALT deduction
- to monitor developments relating to the estate and gift tax exemption, which was doubled to $10 million per individual, with a CPI adjustment (from 2010), through the end of 2025
- to monitor other developments based on the sunset of various TCJA provisions at the end of 2025

These tax considerations should be weighed against the risk of uncertainty over general regulatory and economic policies.

Please see our recent client update for an expanded outlook that includes a table of principal TCJA and IRA provisions; scheduled TCJA sunsets and phaseouts; and the effects of a possible TCJA renewal and/or proposed changes.

DOJ and FTC antitrust enforcement

Based upon early developments and appointments, we expect that antitrust enforcement in the second Trump administration will likely resemble antitrust enforcement during the initial Trump administration. At a high level, that means the new administration will likely have a somewhat more business-friendly approach to antitrust enforcement (including merger review). But the agencies will still be active, particularly with respect to technology industries and other industries of concern to the administration, and uncertainties remain about the new administration's antitrust agenda.

Merger enforcement

- As a general matter, we expect that the antitrust agencies will be more receptive to mergers than under the Biden administration.
- One of the most significant developments in the last year was the FTC's announcement of new HSR Rules and a new HSR Form, which require substantially more information and will likely require more lead time for HSR filings. We believe that these new Rules will likely remain in effect during the next administration. It is possible, however, that their effective date (currently set for February 10, 2025) may be delayed.
- Another important recent development during the Biden administration was the issuance of 2023 Merger Guidelines, which reflected a more skeptical posture toward mergers. We expect that the agencies may reconsider, modify or withdraw these guidelines. The agencies may revive the 2020 Vertical Merger Guidelines and the 2010 Horizontal Merger Guidelines or they may initiate a process to issue new guidelines. It is also possible that the agencies may revoke only certain portions of the 2023 Merger Guidelines.
- Under the Biden administration, the agencies have been less willing to resolve competition concerns with structural or behavioral remedies, reflecting a policy preference for blocking mergers. We expect that the Trump administration will adopt a more traditional approach to merger remedies.

Non-merger enforcement

- We expect that the DOJ and FTC will generally continue ongoing non-merger antitrust enforcement and will initiate new non-merger enforcement actions, including with respect to technology industries and criminal prosecutions.
- In recent years, the DOJ has committed substantial resources to enforcing Section 8 of the Clayton Act (regarding interlocking directorates). We expect that the DOJ may emphasize this less but will still look to enforce the Clayton Act.
- We expect that the FTC will probably put less emphasis on the enforcement of the Robinson-Patman Act (which prohibits certain types of price discrimination).

Other considerations

- The FTC's noncompete ban was enjoined by a district court in Texas on a nationwide basis in August 2024. The FTC has appealed that ruling to the Fifth Circuit. We think it is likely that the next administration will either drop that appeal or revoke the underlying noncompete rule. (See also Employment, labor and compensation laws)
- To the extent that the federal antitrust agencies shift priorities or pursue less enforcement due to resource constraints, state attorneys general may fill that gap to some extent. The federal antitrust authorities may also look to partner with

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state enforcers on areas of common interest, like certain ESG initiatives.

DOJ corporate criminal enforcement

With the new Trump administration comes new DOJ leadership and shifting areas of emphasis for criminal enforcement, including a renewed focus on violent crime and immigration offenses – two issues that featured prominently during Trump's campaign and first term. Although there may be changes to certain white collar areas where the Biden administration has focused, such as crypto, in more traditional areas of corporate enforcement, we expect changes to be on the margin.

Indications from the first Trump administration

DOJ's policies and enforcement actions under the first Trump administration indicate what may come in the second. The first administration pursued significant corporate enforcement in traditional areas such as the FCPA, healthcare fraud, and securities and commodities fraud, and exceeded the enforcement efforts of the Biden administration in certain of these areas. During the first Trump administration we saw significant corporate resolutions related to spoofing, bribery, marketing of opioids and sanctions evasion.

The first Trump administration also implemented several significant DOJ corporate enforcement policies that still exist today. For example, during the first administration, DOJ:

- Formalized a pilot program giving companies credit for voluntary disclosure of FCPA violations (see our client update), and then made several updates, including to expand its application beyond the FCPA
- Adopted a policy to avoid "piling on" of corporate penalties (see our client update)
- Issued guidance on the standards used when evaluating whether to impose a monitor
- Reversed previous guidance on cooperation credit – which had conditioned credit on disclosing all individuals involved in the crime – and replaced it with a new policy giving companies credit for identifying all individuals "substantially involved in or responsible for" the crime
- Formalized and expounded on guidance about DOJ's process for evaluating corporate compliance programs (see our client update)
- Articulated a framework for deciding whether companies could pay penalties while remaining viable

Shifting priorities: Immigration, crime and crypto

President-elect Trump's choice for Attorney General is Pam Bondi, a former Florida AG who was elected to that position on a tough-on-crime platform and who, while in office, devoted resources to combating drug abuse and human trafficking. Other planned nominees for top DOJ positions include Todd Blanche to be Deputy Attorney General and Emil Bove to be Principal Associate Deputy Attorney General – both of whom also have experience prosecuting violent crimes and drug trafficking.

We expect resources and attention at DOJ to shift to immigration offenses and violent crime, including gang violence and drugs. Resources for these priorities are likely to be reallocated at the expense of those devoted to white collar and corporate enforcement, consistent with what appears to be an overarching inclination to reduce the size of the federal government. Accordingly, it seems likely that there will be some decrease in white collar and corporate enforcement. Given the first Trump administration's focus on core criminal offenses, more lenient approach to providing cooperation credit, guidance that monitorships be tailored and imposed only where necessary, and greater willingness to consider the impact of resolutions on shareholders, DOJ may be less inclined to pursue aggressive theories of corporate criminal liability, and may be more receptive to arguments for more attractive forms and terms of corporate resolutions.

Other potential changes include a recalibration of cryptocurrency-related investigation and prosecution. President-elect Trump has been a vocal supporter of the crypto industry and critic of the Biden administration's crackdown on crypto. And the president-elect's selection of Paul Atkins as SEC Chair, who currently serves as co-chair of the Token Alliance of the Digital Chamber of Commerce, confirms that the new administration likely will take a lighter touch. For example, the DOJ National Cryptocurrency Enforcement Team, which was established in 2022 as a cross-component initiative, may be disbanded.

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It is also possible, and even likely, that the new Trump administration will revise or eliminate some of the newer policies implemented by the Biden DOJ, like the DOJ Corporate Whistleblower Awards Pilot Program (see our client update) and the DOJ Clawback Pilot Program (see our client update).

We will know more as additional nominations for senior positions in the Department are announced. For the time being, we are not assuming a sea change in corporate enforcement around more traditional areas.

Employment, labor and compensation laws

The new administration is expected to implement employer-friendly policies across key areas, including noncompete agreements, severance agreements, and labor relations rules and enforcement. A shift toward pro-employer policies could invigorate state efforts to regulate these areas, resulting in a patchwork of rules. Employers should stay proactive in compliance, adapt hiring strategies and manage risks effectively.

Noncompete agreements

The FTC is expected to halt efforts to ban noncompete agreements, starting with a withdrawal of its appeal of a Texas court ruling that blocked nationwide enforcement of the ban adopted by the agency in April 2024.

State-level (and possibly municipality-level) legislation restricting noncompetes will likely continue to emerge – such as limits on industry, salary threshold, or choice-of-law provisions. Federal and state courts are also expected to be increasingly unwilling to enforce noncompetes that are perceived as overly broad.

Companies should review existing agreements for compliance with state laws to avoid potential litigation or enforcement actions and exercise caution when using noncompete agreements. Clear, narrowly tailored agreements are crucial for balancing the need to protect trade secrets with the risk of lawsuits.

Severance agreements

The Trump administration is expected to reinstate prior NLRB standards that favor employers, including the reversal of Biden-era rulings that deemed confidentiality and non-disparagement clauses in severance agreements unlawful.

As a result, employers may regain more leeway in using such provisions in severance packages without fear of violating employees' rights under the NLRA.

Labor relations

The Trump administration is expected to take a more pro-employer approach, emphasizing employer compliance assistance over enforcement. Key priorities will likely include revising the NLRB joint-employer standard, relaxing rules governing independent contractors and scaling back Biden-era policies that increased penalties for unfair labor practices.

President-elect Trump's intent to veto union-friendly legislation, such as the Protecting the Right to Organize (PRO) Act, may weaken union influence. However, the announced appointment of a pro-union Labor Secretary, Rep. Lori Chavez-DeRemer, introduces unpredictability, raising questions about whether the administration will maintain a hardline stance against unions or adopt a more moderate approach. If union influence wanes, employers may find greater flexibility in negotiating more bespoke employment arrangements with workers, but they should prepare for potential shifts in policy, foster positive employee relations and minimize disruptions.

Diversity, equity and inclusion (DEI) initiatives

Corporate DEI initiatives may face increased scrutiny through lawsuits, legislation and executive orders, such as reinstatement of Trump's 2020 executive order banning federal contractors from conducting certain "divisive" DEI training programs. Although outright bans may face constitutional challenges, such actions could, together with the Supreme Court's case *Students for Fair Admissions v. President and Fellows of Harvard College* in 2023, have a chilling effect on corporate DEI efforts.

The EEOC is expected to scrutinize race- and gender-exclusive initiatives and diversity-linked compensation, which may be deemed discriminatory if found to favor legally protected groups over others. Employers should anticipate heightened

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enforcement activity and potential litigation risks. Nevertheless, many forms of DEI should remain lawful and effective. Human capital management practices, such as broadening candidate pools, implementing structured interview processes and auditing for bias in promotions and evaluations are legally sound and can advance diversity goals. Companies should review their DEI strategies to ensure compliance with evolving regulations by focusing on initiatives that do not confer preferences based on protected characteristics.

Immigration

Stringent immigration policies are anticipated, including tighter visa requirements, longer processing times and increased denial rates. Employers should prepare for heightened worksite enforcement, including I-9 audits and raids targeting industries like construction, hospitality and agriculture.

These measures could result in delays in onboarding foreign talent and create challenges in recruiting high-skilled workers. International travel for foreign employees may also become riskier, as reentry to the United States could face new obstacles. Updating hiring procedures, training staff and ensuring accurate employment authorization processes are critical to avoiding penalties and ensuring operational continuity.

Dodd-Frank Act incentive compensation rules

Progress on Section 956 of the Dodd-Frank Act, which aims to regulate incentive-based compensation practices of financial institutions, is unlikely under the new administration's deregulatory agenda. The proposed rule, stalled since 2011, is expected to remain stalled.

Environmental and climate change policy

Armed with Republican control of Congress, President-elect Trump hopes to implement his environmental policy priorities, consisting of support for domestic fossil fuels production and manufacturing and opposition to the Biden administration's climate agenda. These goals will likely face challenges, including the difficulty of effectively employing executive authority, maintaining Republican unity with respect to legislation, and resolving policy differences between the White House and congressional Republicans.

Trump and congressional Republicans' environmental agenda

While President-elect Trump did not articulate many specific environmental priorities during his campaign, the general contours of his environmental agenda are clear from several core themes of his candidacy, the policy initiatives of the first Trump administration and the legislative agenda of Republicans in Congress. These include:

- Increasing domestic production of fossil fuels
- Low-cost electricity to support increasing demand from AI technologies and cryptocurrency operations
- Promoting domestic automobile manufacturing
- Opposition to the Biden administration's climate agenda
- Opposition to environmental, social and governance priorities

Specifically, it is expected that President-elect Trump will focus on the following policy priorities:

- Withdrawing the United States from the Paris Agreement
- Undoing the SEC's climate disclosure rules (See SEC rulemaking and enforcement)
- Repealing, replacing or revising key Biden EPA rules, including:
  - 2024 power plant greenhouse gas emissions rule
  - 2023 oil and gas methane emissions rule
  - Recent vehicle emissions and fuel economy standards
- Modifying certain provisions of the Inflation Reduction Act (IRA)

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- Revoking California's waivers relating to low- and zero-emissions vehicles
- Supporting domestic oil and gas exploration, production and related infrastructure by opening up more federal lands and waters to leasing, holding sales more frequently and easing the permitting process
- Terminating the Biden administration's pause on the approval process for liquified natural gas export terminals

Key challenges

- **Revising regulations is complex and time-consuming.** President-elect Trump announced ambitious plans to drastically reduce the size of the federal government by, among other things, rescinding federal regulations through an initiative dubbed the Department of Government Efficiency led by Elon Musk and Vivek Ramaswamy. However, unless a regulation is subject to repeal under the Congressional Review Act, revising or repealing an existing regulation will require the same public notice and comment process under the Administrative Procedure Act applicable to any rulemaking. This is a bureaucratically fraught process that typically involves lengthy stakeholder engagement, information gathering and technical analysis that can take years to complete and is subject to litigation challenges.
- **Maintaining Republican unity for certain priorities may be a challenge.** In certain respects, President-elect Trump's priorities may be at odds with those of congressional Republicans. For example, while President-elect Trump has been consistently critical towards solar and wind energy at his rallies, Republicans have traditionally adopted an "all of the above" approach to energy and many congressional Republicans have expressed support for federal incentives for renewable energy and clean technologies that have resulted in economic development in their districts. Republicans are expected to have a razor-thin majority in the House, leaving little room for defections to pass legislation.

For a more detailed discussion of how a second Trump term can impact environmental and climate change policy, see our client update.

Project and infrastructure transactions

The second Trump presidency is likely to see a continuing of recent positive conditions for project and infrastructure projects, with a focus on reducing regulation, limiting market oversight and supporting economic growth and investment. Other positive factors include the president-elect's support for AI, which generates significant energy demand, and also for promoting U.S. energy security. Expected higher tariffs would provide near-term challenges but could spur more development of U.S. energy and infrastructure supply chains.

Continuing momentum of robust private capital deployment

The Biden administration set the stage for capital infusions into renewable energy projects, gigafactories and megaprojects. The Inflation Reduction Act (IRA) of 2022 and guidance from the IRS have allowed investors to deploy capital at scale and unlock significant value in the energy and infrastructure space. This aligns with the Trump administration's goals of building a leading position in the global energy, infrastructure and manufacturing industries and solidifying energy security for the United States and our allies. The second Trump presidency is likely to augment the current platform and unlock capital and opportunities by reducing regulation and managing economy-wide levers to enhance access to capital by investors and private capital.

We have recently seen increasing demand on digital infrastructure and a complementary shift to reliance on conventional power. Policies of the Trump administration will likely continue to emphasize the relationship between digital infrastructure and traditional power sources to meet the growth of AI and AI-enabled products, which all are a major focus of the Trump administration.

While some concern exists that certain consumer-facing EV tax credits may be targeted for repeal by the new administration, hope remains that advanced manufacturing tax credits, investment tax credits and production tax credits, including those related to renewable energy projects, survive given such credits promote energy security, investment, economic growth and employment.

Tariffs and incentives to redesign supply chain networks

As in the first Trump presidency, broad duties on products imported from China are expected. This will inevitably increase the overall costs of project components such as solar modules, even if the modules are manufactured in the United

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States, since the solar cells and other components of U.S.-manufactured modules are sourced overseas, mainly from China.

The increased costs in the near future can be seen as an opportunity to redesign the energy and infrastructure supply chains, beginning with raw materials and small components such as solar cells. We have certainly seen projects in the pipeline looking to source components from U.S. manufacturing plants sponsored by international players, even if these plants are still under construction. While similar approaches have been seen as risky in the past, the focus on the domestic economy by the Trump administration should allow for market participants to plan ambitiously, yet cautiously.

SEC rulemaking and enforcement

While it is too soon to tell what the SEC's agenda will look like over the next four years, we are hopeful that the agency will renew its focus on facilitating capital formation alongside investor protection.

SEC leadership

The SEC's announcement that Chair Gary Gensler will step down from the SEC on January 20 was soon followed by SEC Commissioner Jaime Lizárraga's statement on his planned departure on January 17. Given the Senate Banking Committee's decision to cancel the vote that was scheduled for December 18 to advance the renomination of SEC Commissioner Caroline Crenshaw for a second term, the incoming administration will have three seats to fill at the SEC, including the chair. On December 4, 2024, President-elect Trump announced that he will nominate former SEC commissioner Paul Atkins to serve as the new SEC chair. When the new administration is sworn in, the position of SEC chair will likely pass either to Commissioner Hester Peirce or Commissioner Mark Uyeda on an acting basis until a permanent chair is confirmed by the Senate.

As highlighted in the SEC's announcement, Chair Gensler's tenure was marked by a "robust rulemaking agenda" and "high-impact enforcement cases" – evidenced by the significant disclosure mandates and aggressive enforcement theories pursued by the SEC. Chair Gensler's own recent remarks on the SEC's achievements laud many initiatives focused on investor protection but say little about efforts to facilitate capital formation. And we have seen this manifested in practice, with generally longer response times for comment letters and fewer waivers granted.

We are hopeful that a new SEC chair will renew the agency's focus on facilitating capital formation alongside investor protection and encourage SEC staff to become more responsive to, and willing to work with, market participants.

Climate disclosure rules

In March 2024, the SEC adopted final rules in a 3-2 vote along party lines that mandate significant new disclosures for public companies relating to climate-related risks, greenhouse gas emissions and climate-related financial metrics. Legal challenges were filed soon after the rules were adopted, and the SEC issued an order in April 2024 staying the rules pending resolution of litigation.

President-elect Trump strongly opposes the Biden administration's climate agenda and we expect his administration will take steps to undo these rules. Once Trump nominees are confirmed by the Senate (resulting in a Republican-controlled SEC), we expect the SEC will commence the process of repealing the climate disclosure rules by initiating notice and comment rulemaking. We also expect the SEC to seek to maintain the current administrative stay in place – or otherwise delay implementation or enforcement of the rules – until a repeal rule is finalized.

SEC enforcement actions

The outcome of the presidential election is likely to impact the SEC's enforcement posture over the next four years. Although enforcement may be less aggressive, such as in the form of lower corporate penalties and less aggressive controls theories, enforcement cases against public companies are a mainstay of the SEC's enforcement program. We expect that the SEC will continue to bring enforcement actions involving disclosure, accounting and control violations.

Disclosure mandates on the horizon

In its spring 2024 regulatory agenda, among other rulemaking priorities, the SEC had indicated October 2024 as the expected timing to propose new human capital management disclosure rules (which has not happened), and proposed rules relating to corporate board diversity were slated for April 2025. However, the outcome of the presidential election is

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expected to significantly impact the SEC's rulemaking agenda. We will be watching for signs of the Republican-controlled SEC's priorities relating to public companies' disclosures.

Resources
Crypto Regulation Hub

Visit our Crypto Regulation Hub for links to congressional proposals related to the regulation of crypto assets and other helpful materials.

Explore our crypto resources

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