



Alerts

How the 2024 U.S. Election Results Will Impact Insurers: A First Attempt at Reading the Tea Leaves

November 11, 2024

The results of the November 5, 2024, election in the United States will almost certainly have profound consequences within the country and across the globe. The election will surely impact policyholder exposures, insurer claim experience, investment activities, and underwriting activities in several respects.

Some impacts will be favorable to insurers, others unfavorable, and many effects on insurers remain unknown or unquantifiable at this time. Predicting the policy of an incoming administration—much less the impact of those policies—is fraught with uncertainty. Many political, economic, national security, and other developments and externalities in this complex and ever-evolving world can influence policy appreciably, and often, there are secondary and tertiary impacts both contemplated and un contemplated.

The Nationwide Election Results

President-Elect Donald J. Trump, the 45th President of the United States, is poised to become the 47th President of the United States, marking only the second time in U.S. history that a President will serve non-consecutive terms in office. Former President Trump and Ohio Senator J.D. Vance defeated Vice President Kamala Harris and Minnesota Governor Tim Walz in the controlling electoral college 312 to 226.

It also appears that President-Elect Trump and Vice President-Elect Vance will win the popular vote, which they are leading 74,547,000 to 70,871,000 with an estimated 94 percent of the vote counted. President-Elect Trump prevailed in all seven battleground states, improved his performance with most demographic groups, and in most "blue" states.

President-Elect Trump will enjoy a Republican majority in the U.S. Senate with approximately 53 Senators, representing a pickup of four seats over the current number of seats. This majority is sufficient to facilitate the confirmation of President Trump's cabinet appointees. However, it is too small to avoid the 60-vote filibuster needed to move legislation forward in the Senate absent some bipartisan support. As President, Mr. Trump will also make 4,000 to 5,000 appointments throughout the federal government, and his transition team has been vetting individuals to serve in government.

Attorneys

Scott M. Seaman

Service Areas

Environmental

Sustainability & ESG



As of this writing, control of the U.S. House of Representatives hangs in the balance, with winners not declared in several House races. A Republican majority in the House would be slim but would allow President Trump to enact significant legislation and use reconciliation to pass tax and other legislation. This is particularly important as the Tax Cuts and Jobs Act of 2017 expires at the end of 2025. President-Elect Trump has vowed to extend the major tax cuts in that legislation, eliminate income tax on tips, overtime pay, and social security, and include tax credits for such items as child and elderly care.

A Democratic majority in the House would be similarly slim but would limit Republicans' ability to enact sweeping legislation and could produce partisan investigations and impeachments. A Democratic majority may result in more governing through executive order and action. The incoming Trump administration will revoke most of the executive orders and policies of the Biden Administration starting on January 20, 2026, and issue its own.

Equipped with the experience of previously serving as President and with his choice of cabinet appointments, President Trump can be expected to seek to enact his policy agenda promptly. Though Republicans are characterizing the election results as providing them with a mandate to govern, in today's political and media climate considerable "resistance" can be expected throughout his term. At this time, the cabinet and other appointments of the incoming administration are mainly unknown. If the Beltway adages that "personnel is policy" and "budgets reflect priorities," the policies of the incoming Trump administration will further crystallize in the days to come.

It is beyond cavil that the policies of the incoming Trump administration will differ sharply from those of the Biden Administration. A Harris administration would have resulted in a continuation of many of the Biden Administration's policies and produced a pronounced leftward shift in policy. Vice President Harris had promised to let the Trump tax cuts expire.

Macroeconomic Considerations

Before addressing specific areas of interest to insurers, a few macroeconomic points are worth noting. First, the second Trump administration is expected to usher in a friendlier business environment with overall policies more aligned with business interests than those of the current administration. Insofar as this proves correct, insurers *qua* businesses may experience some overall benefits.

Second, insurers – like consumers and other businesses – have been adversely impacted by economic inflation over the past three years. A successful Trump administration in reducing inflation could benefit insurers in several respects, including decreasing claims and general operations costs. S. Seaman "Updated Social Inflation Survival Guide: The Dangerous Triple Barrel Threat of Social Inflation, Economic Inflation, and Greenflation In A Judicial Environment Swarming With Reptiles And Raining Nuclear Verdicts," (JD Supra May 2, 2023), available at <https://www.jdsupra.com/legalnews/updated-social-inflation-survival-guide-2705745/>. Lower interest rates would influence insurers' financial and investment strategies.

Third, insurers and their employees may realize direct savings from tax cuts and would avoid any adverse consequences associated with the expiration of the prior tax relief. Additionally, tax cuts targeted at businesses could foster entrepreneurship and innovation, increasing the demand for business insurance.

Fourth, it is unclear what impact a change in administration will have on social inflation. Civil justice reform was not part of the agenda of the first Trump administration and was not a focus of either President Trump or Vice President Harris during their campaigns. In any event, most impactful tort reform measures require action at the state level.

Finally, there has been considerable discussion about the impact tariffs may have on consumers and the economy overall. The opinions vary considerably, appear to be speculative, and are often predicated on assumptions that tariffs will be broadly applied. The main point of tariff threats is to positively influence the actions of other nations without having to impose tariffs. Accordingly, we are unable to predict the impact tariffs will have on insurers in a meaningful way.



Directors and Officers Liability

President Trump's first term produced significant deregulation, which President Biden countered by imposing a record number of regulations. President Trump believes deregulation in his first term spurred greater economic growth than the tax cuts and has promised a significant reduction in regulation in his second term. The regulation rollback may reduce attendant D & O exposures as well.

The general expectation is that D&O exposures related to compliance and enforcement risks spurred by government agency action will decrease. The more difficult question is whether and to what extent there will be additional scrutiny and action from states and private actors that could form the basis of D&O claims. Some posit, for example, that there could be an increase in books and records demands from shareholders. Such demands often are not covered by all D&O policies but can be a precursor to shareholder derivative actions. Since many regulations tend to impose requirements and increase exposures rather than limit practices that increase company liabilities, the net impact of reduced regulation is expected by many to reduce exposures.

Although a substantial decrease in the overall regulatory burden is expected, additional regulations are likely to be promulgated in areas such as cyber and artificial intelligence.

Environmental, Social, and Governance (ESG) and sustainability policies are expected to be targeted for a substantial regulatory rollback. This is an area Elon Musk may target as a significant source of the two trillion dollar cut in the federal budget he and President Trump have suggested during the campaign.

Although President Trump believes in clean air and clean water, he does not view climate change as an existential threat to humanity in the same way as the current administration. The Trump administration is expected to move sharply away from the Biden Administration's "all-of-government" approach to ESG, refocus the government's role on more fundamental functions, and withdraw the United States from the Paris Climate Agreement.

A variety of ESG-focused rules promulgated by the U.S. Department of Labor, the U.S. Securities Exchange Commission (SEC), the U.S. Environmental Protection Agency, and other agencies will likely be revised or eliminated. Green investment strategies may also be impacted. The Trump administration will likely reverse the Biden Administration's 2022 final rule that allows (but does not require) employee retirement plan advisers to consider ESG factors in their investment choices.

The SEC's final rule on climate disclosure, titled "The Enhancement and Standardization of Climate-Related Disclosures for Investors," was issued in March and requires publicly traded companies to provide comprehensive information about their climate-related risks and impacts in narrative form and in notes to financial statements. The final rule is subject to multiple legal challenges and will likely be repealed or substantially scaled back by the incoming Trump administration.

Companies will still have to contend with international and state regulations. For example, the European Union has its own corporate ESG disclosure requirements that mandate U.S.-based company compliance beginning in 2026. California also has a climate risk disclosure rule, and other states have ESG laws as well. Importantly, regulatory rollback does not prevent companies from being responsible actors with respect to ESG considerations for business reasons or reasons of responsible corporate citizenship. Demands from various stakeholders, such as employees, supply chain partners, customers, and communities, will factor into the ESG strategies and activities of companies.

Financial, Energy, and Infrastructure

President-Elect Trump is likely to pick up where he left off in his first term by deregulating banks and other financial institutions and easing restrictions on lenders. These efforts included passing the Economic Growth, Regulatory Relief, and Consumer Protection Act, which loosened restrictions and requirements on banks and lenders. The Biden Administration reinstated many of these rules, and the second Trump term will again scale back regulation.

The incoming Trump administration is expected to be more supportive of Bitcoin and cyber currencies than the Biden Administration. President Trump pledged to maintain the current level of bitcoin holdings the United States has amassed from seizing assets from financial criminals. He has stopped short of proposing a formal federal reserve of digital currency



but has indicated that regulations would be more friendly to the industry.

The oil and gas industry should have greater fracking freedom to "drill baby drill" in an environmentally responsible manner. President Trump may seek to claw back many of the clean energy tax credits in the Inflation Reduction Act but insofar as Congressional approval is required and businesses are relying on such credits, sunseting is a more likely approach.

There may be a redirection of some of the unspent funds from the 2021 Infrastructure Investment and Jobs Act toward more traditional highway, road, and bridge reconstruction projects, as well as away from green projects, connected community, and pedestrian and bike projects. The 2022 so-called Inflation Reduction Act may see a repurposing of funding and the elimination of the \$7,500 credit for buying new electric vehicles and \$4,000 credit for buying used electric vehicles. The Biden Administration vehicle emissions regulations are not likely to stand.

Under the Trump administration, the Consumer Financial Protection Bureau is expected to undergo a dramatic shift. The current head will be replaced, and some of the policy and enforcement activities will be discontinued.

Other Potential Risks and Exposure

The National Labor Relations Board's composition and actions are considerably influenced by the party in control of the Presidency. A Republican administration generally results in a reduction of employer prosecutions for alleged labor violations and a shift towards policies favoring employers over workers and unions. There likely will be some retraction of the Biden Administration's pro-union policies. President Trump is viewed as pro-business, but he is also pro-worker and received considerable support from unionized workers, raising the potential that the impact may be less pronounced than under other Republican administrations.

New emerging risk types and related exposures are not expected to change appreciably in the short term. Administrative agencies remain very powerful, but the same limitations imposed by the U.S. Supreme Court on agency authority (e.g., the major issues doctrine and elimination of *Chevron* deference) will apply with equal force to the Trump administration. See S.M. Seaman's "A Trilogy of U.S. Supreme Court Decisions Empower Regulated Entities to Challenge Agency Regulations and Actions" (July 2024), available at <https://www.jdsupra.com/legalnews/commentary-a-trilogy-of-u-s-supreme-2933599/>.

Political risks and trade credit risks in the United States have increased in recent years. The specifics of the planned mass deportation activities are not yet known, but this could both present and limit exposures faced by companies.

It is not known what role Robert F. Kennedy Jr. will play in the incoming Trump administration. He will have some role in connection with health. If he can influence health-related policy and food regulation in a favorable manner, the United States could experience a more favorable health blueprint and an increase in life expectancy over time. The health agencies require and are expected to achieve some redirection. There are concerns about Mr. Kennedy's anti-vaccine views.

It remains to be seen whether and what type of changes to health care insurance may be proposed, but it is unlikely that President-Elect Trump will begin his second term the way he began his first term by attempting to repeal the Affordable Health Care Act.

We do not consider the impact of state and local elections in this commentary.