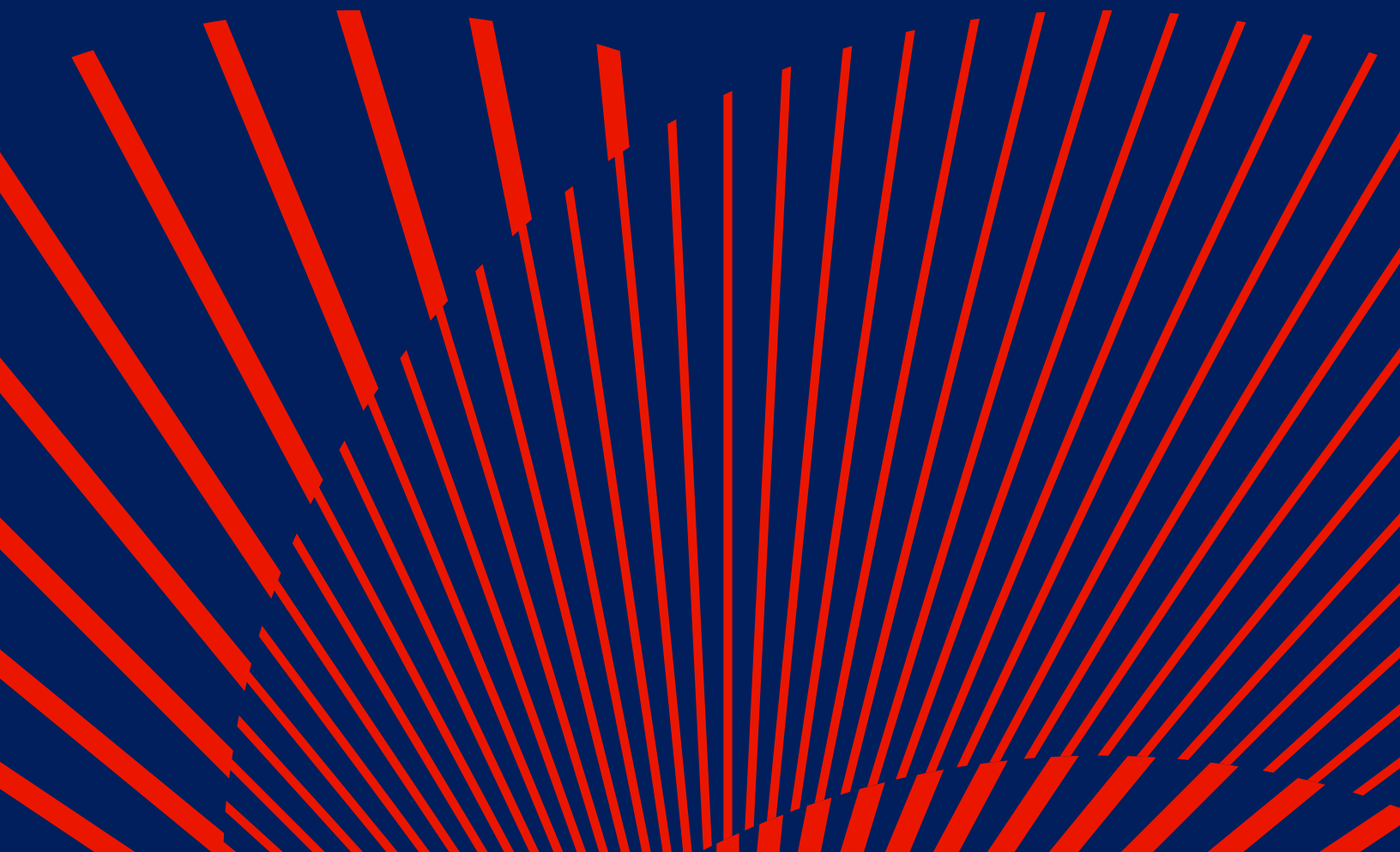# Public Policy Risks Faced by Companies Soar

A Report by the U.S. Chamber of Commerce

About The U.S. Chamber of Commerce

The U.S. Chamber of Commerce is the world's largest business organization representing companies of all sizes across every sector of the economy. Our members range from the small businesses and local chambers of commerce that line the Main Streets of America to leading industry associations and large corporations.

They all share one thing: They count on the U.S. Chamber to be their voice in Washington, across the country, and around the world. For more than 100 years, we have advocated for pro-business policies that help businesses create jobs and grow our economy.

Introduction and Executive Summary

Successful business management requires successful risk management. Entire industries have been built to help businesses quantify, mitigate, and insure against risk. In some cases, risks are relatively easy to quantify—like the risk of debt default or property loss. Even with potential impairments that are harder to assign a dollar value to—such as reputational risk—businesses have still found ways to measure, track, and actively manage risk.

Despite all the recent advances in measuring risk, one area that has defied easy quantification is risk emanating from changes in public policy, such as changes to laws, regulations, or legal enforcement.

In this report, the U.S. Chamber of Commerce seeks to measure public policy risk to determine whether the level of public policy risk is rising or falling relative to other risks companies face.

In order to assess public policy risk, the Chamber reviewed a decade (2011 to 2021) of 10-K filings (comprehensive reports filed annually by publicly traded U.S. companies) from the S&P 500. This survey calculates the number of times companies referenced terms commonly associated with public policy risk (like "regulation" or "Congress") compared with the mention of terms associated with non-public policy risk (like "reputation" or "economic conditions").

The survey finds that companies have seen a large uptick in public policy risks.

The mention of terms in 10-K filings associated with public policy risk ("regulation," etc.) has increased by 27% in the last decade. Over the same time, the mention of terms associated with non-public policy risk ("economic conditions," etc.) has remained mostly constant.

The most prominent drivers behind this significant jump in public policy risks are constant shifts in power in Washington, an increasingly partisan approach to lawmaking, and a growing willingness by both parties to pursue aggressive policy changes through regulation rather than congressional legislation.

Public Policy Risks Have Dramatically Increased Over the Last Decade as Compared With Other Risks

According to data in publicly available reports, large publicly traded companies' concerns about public policy risks—like changes in taxes, regulations, and enforcement—have increased dramatically over the past decade, compared to other risks. This sentiment was measured by tracking terms found in regulatory filings with the Securities and Exchange Commission (SEC).

The SEC requires public companies to file an annual 10-K report which includes a section on risk factors that could potentially impact the company. Risk factor disclosures often include mention of changes in economic or market conditions, exchange rates, reputational risks, and so forth. They also include risks from public policy such as changes in the tax code, regulations, or tariffs.

Given that a 10-K is a required annual disclosure and includes both public policy and non-public policy risks, it provides a unique data set to benchmark public policy risk over time.

To establish a benchmark of public policy risk, we created a basket of public policy-related terms and names of government entities whose actions impact companies and measured how frequently they appear in the 10-Ks for the S&P 500 companies over a decade. We then compared that basket with the frequency that a basket of terms commonly associated with non-public policy risks was mentioned. For our purposes, the total number of mentions of terms was less important than the change over time. In other words, has public policy become a bigger or smaller risk to corporate performance over the past decade? (See Methodology for terms used in each basket.)

Our analysis found that 10-K mentions of words commonly associated with public policy increased by 27% from 2011 to 2021. The frequency of these public policy mentions peaked in 2017 at 39% above the 2011 level. The mention of terms associated with other risks was relatively stable, increasing only 4.3% over the same period.

Public policy risk mentions increase

Public Policy Basket–Keyword Counts

380K
360K   +39%
340K   +27%
320K
300K
280K
260K
240K
        2011   2013   2015   2017   2019   2021
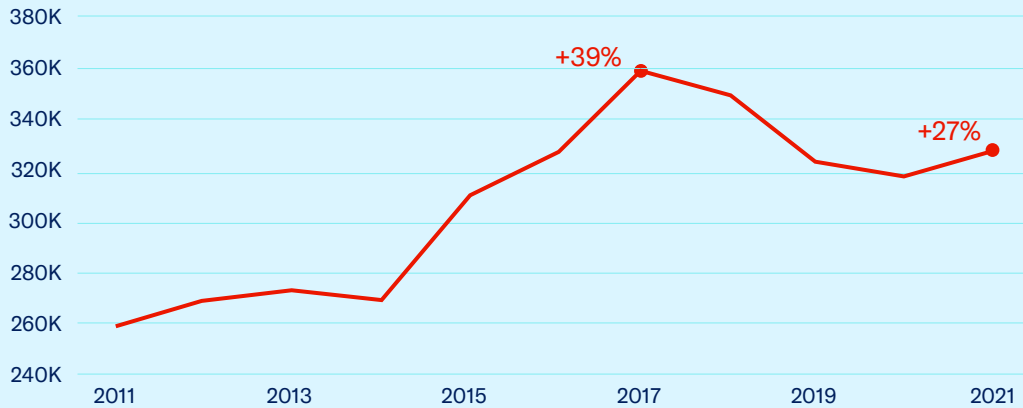
General risk mentions remained relatively stable

Control Basket–Keyword Counts

800K
600K   +35%
                 +4.3%
400K
200K
0
        2011   2013   2015   2017   2019   2021
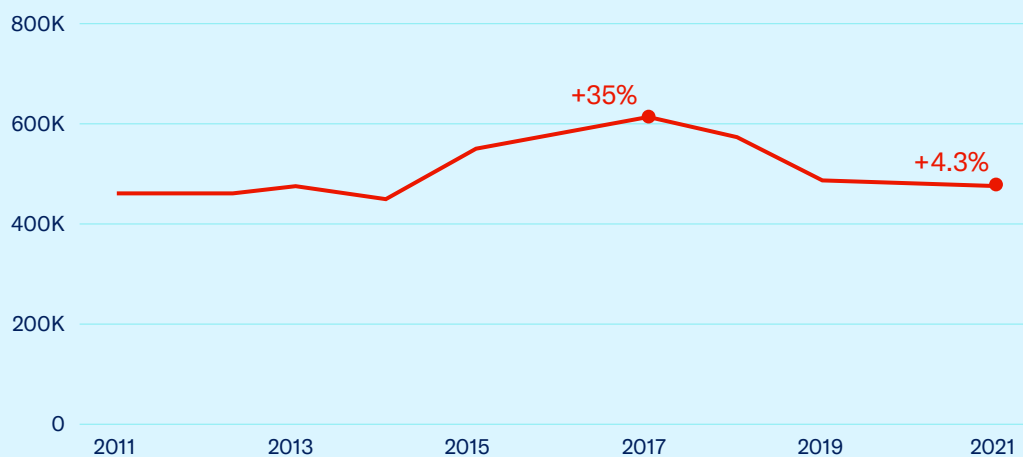
In the public policy basket, broad terms like "law," "regulation," "trade," and "environment" produced the most references over the decade. Terms that saw the greatest percent increase in mentions were: "data privacy," "immigration," "labor," and "intellectual property."

Companies more frequently mentioned well-known tax, regulatory, and environmental agencies. Top-cited government agencies mentioned (besides the SEC and IRS) include the Department of Justice, Environmental Protection Agency, and the Federal Trade Commission (mentions of the FTC increased 62% over the decade).

In the control basket of non-public policy terms, the slight increase in mentions between 2014 and 2017 was driven by "investment," "price," and "capital."
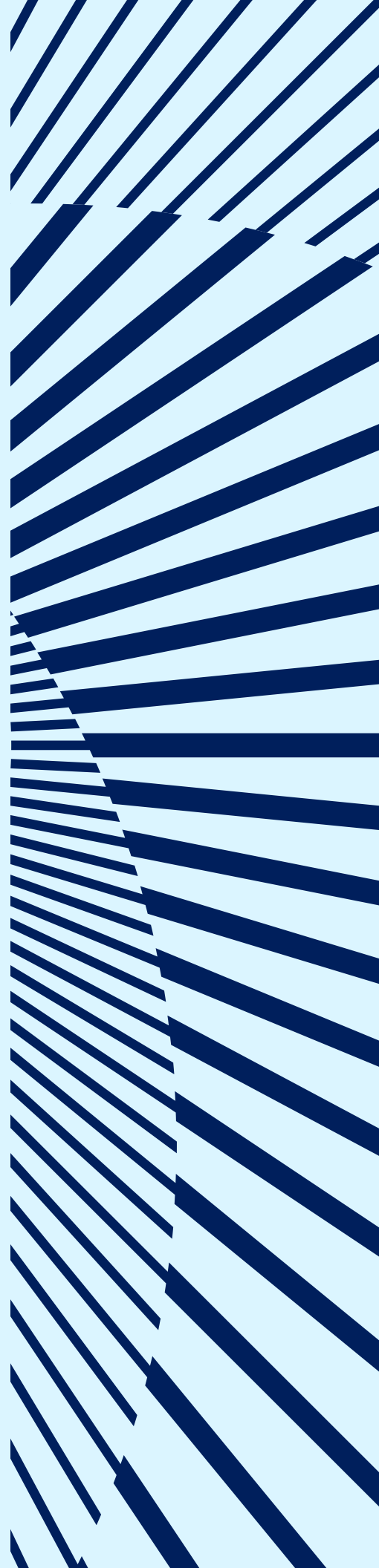
Public policy risk—keyword trends

Keyword hits for each term 2011–2021

Data privacy (576%)

Immigration (265%)

Labor (80%)

Intellectual property (67%)

Law (46%)

Regulat* (37%)

Trade (25%)

Environment* (13%)

Source: Bloomberg Terminal, U.S. Chamber of Commerce Analysis

Note: In our search, the asterisk ("*") served as the truncation operator, used to retrieve variant endings of that word. For example: "Regulat*" would return "Regulation(s)," "Regulatory," etc.

Public Policy Risk by Industry

A benefit of analyzing public policy risk using 10-Ks is the ability to compare relative changes in risk perception by industry. To do so, we mapped North American Industry Classification System (NAICS) codes to firms and took the average keyword hits in each industry over time.
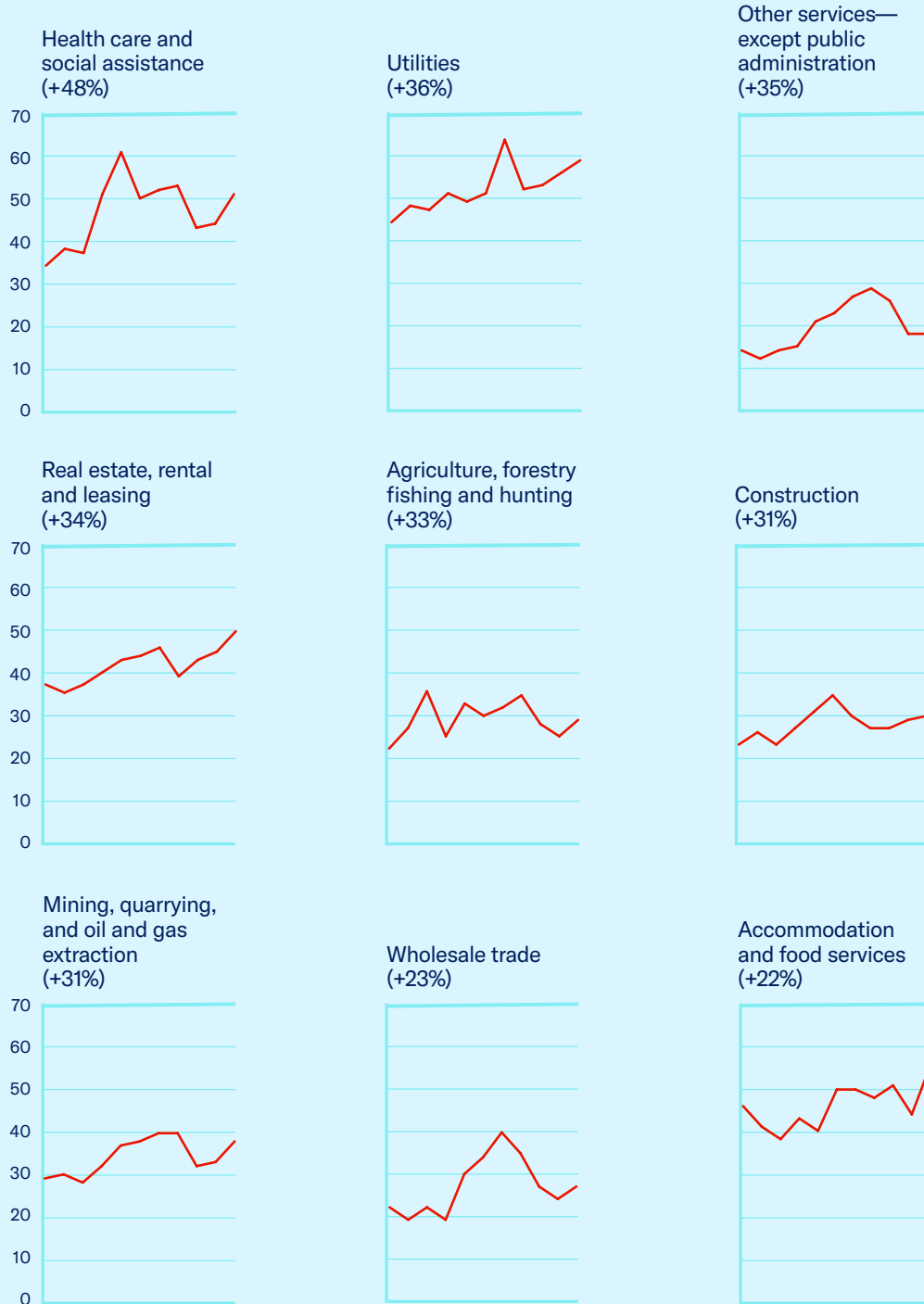
As indicated in the chart below, the "health care and social assistance" (+48%), "utilities" (+36%), and "other services" (+35%) sectors saw the largest increase in public policy risk over the decade. Given the public policy changes emanating from the enactment of the Affordable Care Act and other developments in energy policy, it is not surprising that these sectors saw such a large increase in policy risk.

Some industries, such as "finance and insurance," have been highly regulated for decades and the mention of terms associated with public policy risk was largely stable over the last 10 years.

Analyzing public policy changes by industry also highlights how public policy risk can rise and fall over time. This is a reflection of changes in actual policy risks (e.g., proposed regulations being abandoned or changed by a new administration) as well as new risks being incorporated into baseline operations. For instance, when the Trump administration imposed tariffs on a broad range of goods, mentions of tariffs jumped nearly 50% in 10-K disclosures. As those tariff policies have largely remained in place, companies have had to adjust operations to reflect the increased costs. As a result, tariffs became more of an operational issue and less of a future risk resulting in a decline in mentions of tariffs in 10-Ks.

Public policy risk—industry trends

Average keyword counts for each industry 2011–2021

Health care and social assistance (+48%)

Utilities (+36%)

Other services—except public administration (+35%)

Real estate, rental and leasing (+34%)

Agriculture, forestry fishing and hunting (+33%)

Construction (+31%)

Mining, quarrying, and oil and gas extraction (+31%)

Wholesale trade (+23%)

Accommodation and food services (+22%)

Source: Bloomberg Terminal, U.S. Chamber of Commerce Analysis

Average keyword counts for each industry 2011–2021 (continued)

Professional,
scientific, technical
services
(+14%)

Admin, support,
waste management,
remediation services
(+9%)

Manufacturing
(+8%)

Retail trade
(+8%)

Tranportation and
warehousing
(+8%)

Information
(+5%)

Management of
companies and
entreprises
(+5%)

Finance and
insurance
(-3%)
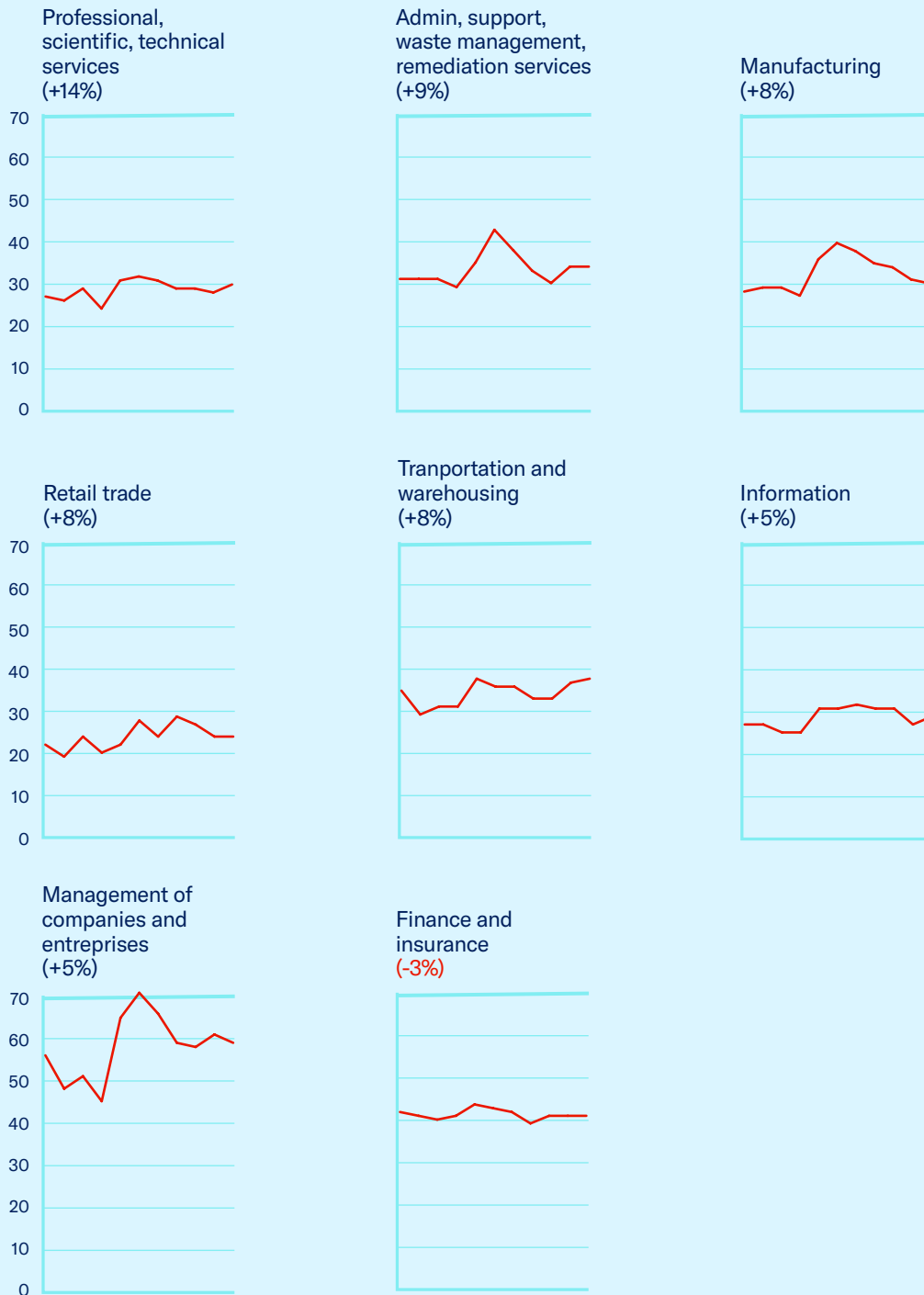
Source: Bloomberg Terminal, U.S. Chamber of Commerce Analysis

As Congress Control Grows More Unpredictable, Executive Actions Add to Public Policy Risk

Public policy risks are increasing for various reasons. Perhaps the most prominent drivers are constant shifts in power in Washington, a more partisan approach to lawmaking and a growing willingness by both parties to pursue aggressive policy changes through regulation rather than congressional legislation.
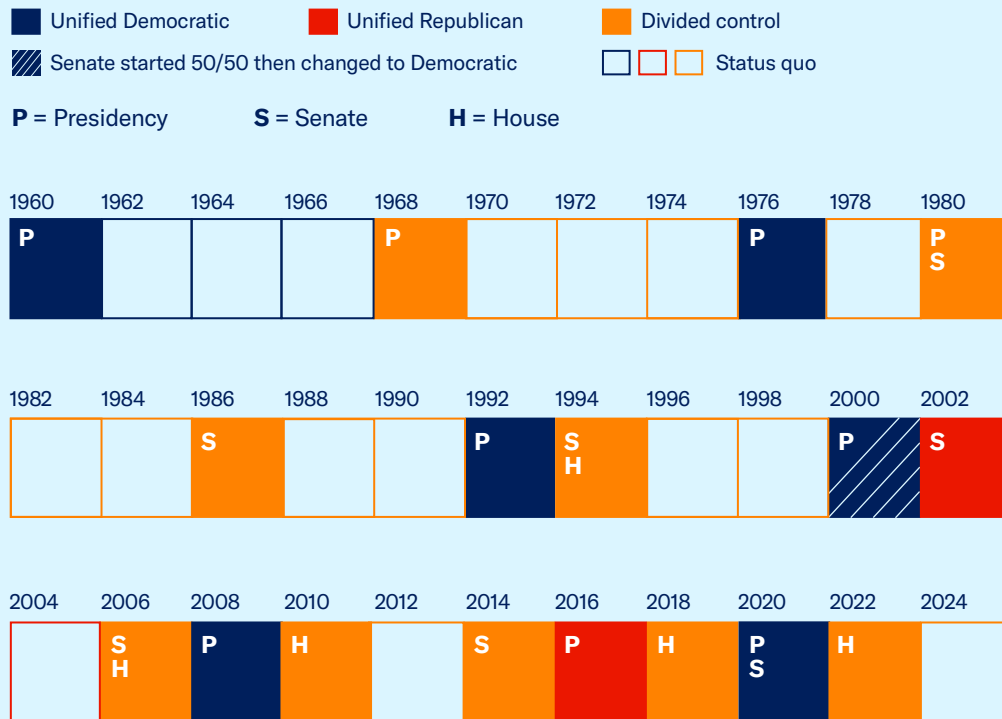
Our country conducts federal elections every two years. Elections that produce a change in party control in the White House or Congress typically indicate a shift in public policy. The period from 1960 to 2000 was one of relative stability. From 1960 to 1998, only 7 of 20 elections resulted in a change in control of the House, Senate, or White House.

In comparison, the period since 2000 has been one of increasing electoral instability. From 2000 to 2022, 10 of 12 elections have resulted in a change in control in one of the three elected entities in the federal government. As a result, policy direction and the likelihood that specific policies might be adopted change more frequently, increasing public policy risk and creating more uncertainty for businesses.

Brief periods of single-party control of Congress and the White House at the beginning of each administration have allowed both parties to pursue a maximalist and partisan legislative agenda (e.g., Obamacare, the 2017 tax reforms, and the Inflation Reduction Act). These periods were quickly followed by periods of divided government where much time is spent relitigating partisan legislation that was previously enacted. Maximalist and partisan legislative changes can at the same time produce the most dramatic public policy changes and be the least durable, again, increasing uncertainty and risk (e.g., changes to Obamacare and the risks associated with the expiration of some of the 2017 tax changes).

Changes in control of the House, Senate and the White House

1960–2022

Legend:
- ■ Unified Democratic (dark blue)
- ■ Unified Republican (red)
- ■ Divided control (orange)
- ▨ Senate started 50/50 then changed to Democratic
- □ Status quo

P = Presidency   **S** = Senate   **H** = House

1960	1962	1964	1966	1968	1970	1972	1974	1976	1978	1980
P				P				P		P S

1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002
		S			P	S H			P	S

| 2004	2006	2008	2010	2012	2014	2016	2018	2020	2022	2024
	S H	P	H		S	P	H	P S	H	

Source: U.S. Chamber of Commerce

Administrations of both parties have shown not only an increasing willingness to pursue policy changes through regulation but also a desire to reverse regulatory policies imposed by the opposite party. After his party lost control of Congress, former President Obama said, "I've got a pen, and I've got a phone," as he announced that he intended to pursue his major policy objectives through executive actions rather than through legislation that would require finding compromise in divided government.

When former President Trump took office, he reversed course and overturned nearly 200 regulatory actions from the Obama administration in areas like environmental policy, labor, and immigration. Former President Trump also pursued his own regulatory agenda, especially in immigration, environmental, and energy policy, which, in turn, were quickly reversed once President Biden took office.

One way to measure the growing regulatory risk attached to executive action is by looking at the number of economically significant rules issued each year. Economically significant rules are those estimated to have an annual impact on the economy of $100 million or more or that adversely affect the economy or a sector of the economy

materially. While administrations from both parties follow a similar trajectory of fewer regulations in their first year and more regulations in their last, the overall trend is more economically significant regulations with each successive administration. The increasing frequency of major regulatory changes increases public policy risk for companies.

Economically significant rules published by presidential year
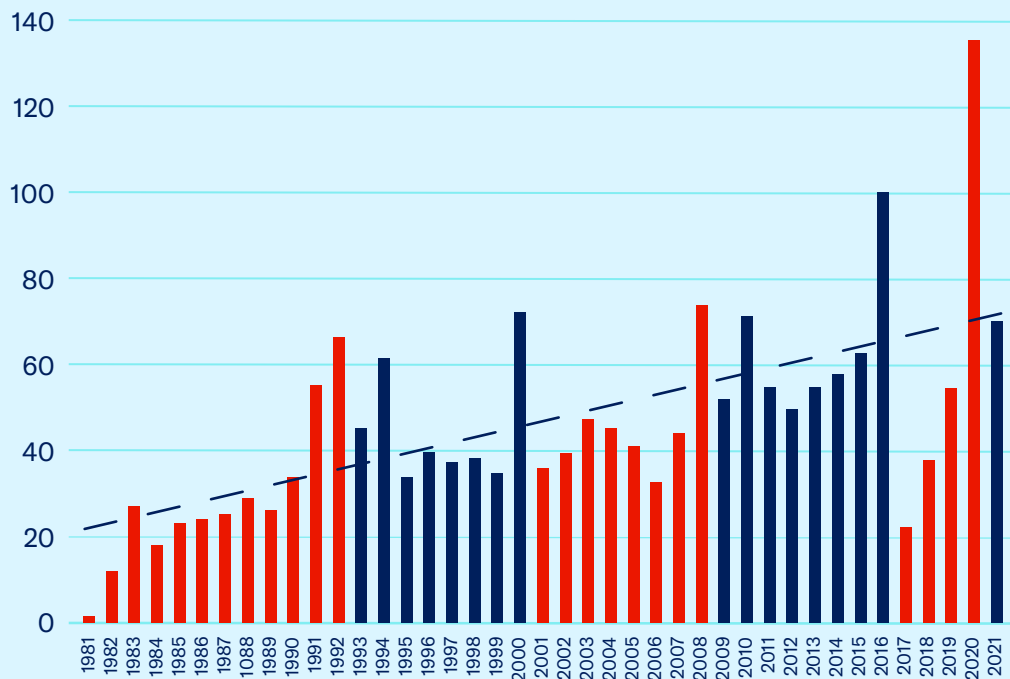
Management of Public Policy Risks

Like other risks, companies must anticipate, monitor, manage, and, when necessary, mitigate risks posed from changes in public policy. This includes closely monitoring public policy developments, engaging with policymakers, and—as we saw for example in response to trade restrictions—adjusting their business operations.

Against the backdrop of this unprecedented increase in public policy risks impacting businesses of all sizes, the U.S. Chamber has also stepped up its efforts to help companies navigate legislative and regulatory risks and fight back against government overreach.

We engage policymakers and participate in the legislative and regulatory processes. Through our Litigation Center, we challenge in court governmental actions that exceed what is permitted by the Constitution or law.

In addition, the U.S. Chamber works proactively to establish a public policy environment that is more predictable, more certain, and more conducive to economic growth and job creation. For instance, policy reforms to our tax code, permitting process, and tort system can reduce risks for companies.

Methodology

10-K Data Pulls

In order to measure public policy risk, two baskets of terms over time (2011–2021) were analyzed—
1. Public policy keywords.
2. A list of commonly used terms as a control group.

The Bloomberg Terminal was used to—
3. Identify the S&P 500 list for each year (2011–2021) as of the last calendar date of each year.

For example, for 2018, we selected the S&P 500 list as of Friday, December 28, 2018.
4. Run a search for 10-Ks for each year's S&P 500 list.
5. Download each 10-K individually by year based on the "Period Date" in the Bloomberg Terminal, not the upload date.
6. Audit the data to ensure that every S&P 500 company had at least one 10-K accounted for in a given year.
7. Go back and pull 10-Ks for missing companies on an annual basis.

The search resulted in a universe of approximately 6,000 10-Ks and approximately 60,000 unique documents.

An internally developed scripting method was used to—
1. Run a search on both baskets of keywords for each year's 10-Ks.
a. The results gave us word counts on the annual, keyword, and company level.
2. Analyze trends in the data.

Industry classifications are based on 2022 NAICS Codes. See here.

Public Policy Group

Terms used to determine perception of public policy risk.

"Ballot initiatives" OR "Congress" OR "Elections" OR "Executive order*" OR "Government " OR "Legislat*" OR "Regulat*" OR "State actions" OR "State government" OR "Law" OR "Alternative Minimum Tax" OR "Antitrust" OR "Brexit" OR "Data Privacy" OR "False Claims" OR "Foreign Corrupt Practices" OR "GDPR" OR "Immigration" OR "Tariff" OR "Tax /p increases" OR "Trade" OR "Office of the President" OR "Department of Agriculture" OR "Bureau of Alcohol and Tobacco Tax and Trade" OR "Commodity Futures Trading Commission" OR "Comptroller of the Currency" OR "Consumer Financial Protection Bureau" OR "Consumer Product Safety Commission" OR "Department of Commerce" OR "Department of Defense" OR "Department of Justice" OR "Drug Enforcement Administration" OR "Department of Energy" OR "Environmental Protection Agency" OR "Equal Employment Opportunity Commission" OR "Federal Aviation Administration" OR "Federal Bureau of Investigation" OR "Federal Communications Commission" OR "Federal Deposit Insurance Corporation" OR "Federal Energy Regulatory Commission" OR "Federal Housing Finance Agency" OR "Federal Trade Commission" OR "Financial Crimes Enforcement Network" OR "Health and Human Services Department" OR "Department Housing and Urban Development" OR "Department of the Interior" OR "Internal Revenue Service" OR "International Trade Administration" OR "Bureau of Land Management" OR "Office of Management and Budget" OR "Mine Safety and Health Administration" OR "National Aeronautics and Space Administration" OR "National Labor Relations Board" OR "National

Transportation Safety Board" OR "Nuclear Regulatory Commission" OR "Occupational Safety and Health Administration" OR "Patent and Trademark Office" OR "Securities and Exchange Commission" OR "Small Business Administration" OR "Office of Surface Mining Reclamation and Enforcement" OR "White House" OR "Trade and Development Agency" OR "Department of Transportation" OR "Department of Treasury" OR "Department of State" OR "Postal Service" OR "Intellectual property" OR "Disclosure*" OR "Investment*" OR "Labor" OR "Supply chain*" OR "International" OR "Environment*."

Control Group

As a control group, the following terms associated with non-public policy were used. Note: In our search, the asterisk ("*") served as the truncation operator, used to retrieve variant endings of that word. For example: "Regulat*" would return "Regulation(s)," "Regulatory," etc.

"Cost" OR "Compet*" OR "Reputation" OR "economic*" OR "Marketing" OR "risk" OR "performance" OR "Strateg*" OR "Sales" OR "Capital" OR "Liabilit*" OR "Uncertain*" OR "Legal" OR "Asset*" OR "Consumer*" OR "Price*."