

1 November 2018

Practice Group:
Public Policy and
Law

Previewing the 116th Congress:

Are you prepared for the changes coming to Washington?

With less than one week until the November 2018 midterm election, the final countdown is on for control of the House and Senate in the 116th Congress. Most prognosticators believe Democrats will win control of the House from Republicans and that Republicans will keep control of the Senate. However, voter turnout will play a huge role in deciding who will be in control and, possibly more importantly, by what margin. The one certain thing about the November 2018 midterm election is that there will be a number of new faces in Washington, given the high number of retirements and Members of Congress running for other offices. Now is the time for businesses and other institutions to plan for the 116th Congress. This K&L Gates Policy Insight alert previews the upcoming midterm election, looks ahead to the post-election lame duck session in terms of leadership elections and the possible legislative agenda, and discusses what is ahead for some of the key issue areas Congress may focus on next year.

November Midterm Election

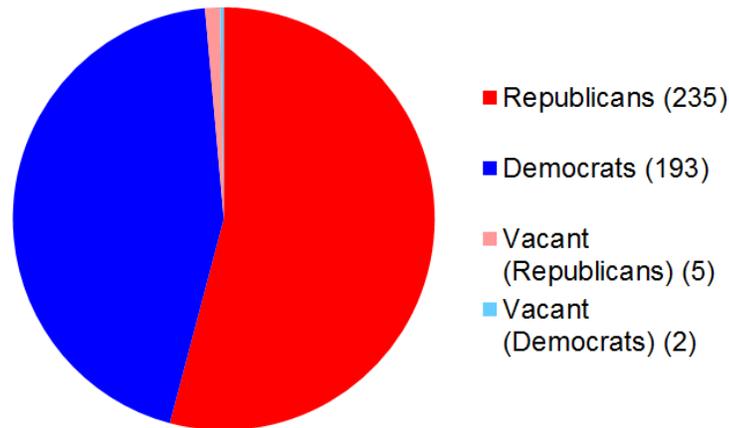
As we noted above, voter turnout will play a huge role in deciding who will control the House and Senate following Election Day (November 6, 2018) and by what margin. In fact, it may take several weeks before we know the results of races that are too close to call, leading to recount or run-off scenarios.

Historical trends show that the incumbent president's party typically ends up with a net loss in the House of Representatives during a midterm election, with the recent historical exceptions of 1998 and 2002. What is less understood is that this historical trend line *does not* so precisely track in the Senate — in 1934, 1962, 1970, 1982, and 2002, the incumbent president's party actually *gained seats* in the upper chamber; in 1954 and 1990, the president's party limited its losses to a net of one seat; and in 1998, the number of seats remained the same.

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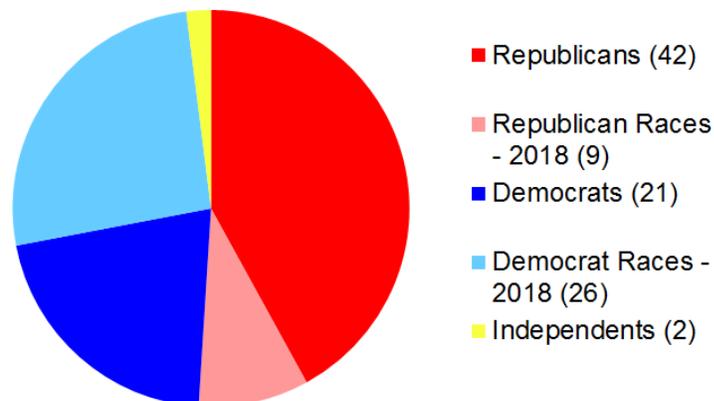
Republicans currently hold 235 seats in the House of Representatives, compared to 193 seats held by Democrats. There are seven vacant seats (five previously held by Republicans and two held by Democrats) and 58 open races due to retirements or individuals running for other offices. In order to claim the majority in the House, Democrats would need to win 23 Republican-held seats.

2018 U.S. House of Representatives



In the Senate, there are currently 51 Republicans, 47 Democrats, and two Independents who caucus with the Democrats. Thirty-five seats are up for reelection. Of those 35 seats, three are open races (Arizona, Tennessee, and Utah — all are currently Republican-held seats). The Senate map stacks up more favorably for Republicans, given that Democrats must defend 10 seats in states that voted for President Donald Trump in 2016. In order for Democrats to take control of the Senate, they would need to hold onto *all* 26 of their seats being contested and have a net gain of two Republican-held seats.

2018 U.S. Senate



In addition to the races discussed above, there are 36 gubernatorial contests also being held on November 6, with Democrats defending nine, Republicans defending 26, and one Independent up for reelection.

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While midterm elections typically have lower voter turnouts than presidential elections, motivated voters on both sides of the aisle could potentially swing control of the House or Senate in either direction. A recent analysis conducted by the Pew Research Center showed that there was a 56 percent increase in registered voters participating in primary elections for the House of Representatives in 2018 versus 2014. The increase in participation by Democrats was particularly noticeable, with a 4.6 percent increase in participation in the 2018 primaries compared to 2014.¹

Lame Duck Session — Leadership Elections and Legislative Agenda

Congress will return to Washington, D.C. the week of November 13 for one week prior to the Thanksgiving recess. They are currently scheduled to return the week of November 26 for three weeks before adjourning for the holidays; the House and Senate’s target adjournment dates are December 13 and December 14, respectively. The outcome of the election will substantially impact the tone and agenda for this lame duck session, in which those who have lost reelection or are retiring complete the remainder of their terms.

NOVEMBER

| SUN | MON | TUES | WED | THUR | FRI | SAT |
|--------------------|-----|-------------------|-----|--------------------|-----|-----|
| | | | | 1 | 2 | 3 |
| 4 | 5 | 6 Election Day | 7 | 8 | 9 | 10 |
| 11 Veterans Day | 12 | 13 | 14 | 15 | 16 | 17 |
| 18 | 19 | 20 | 21 | 22 Thanksgiving | 23 | 24 |
| 25 | 26 | 27 | 28 | 29 | 30 | |

DECEMBER

| SUN | MON | TUES | WED | THUR | FRI | SAT |
|-----|----------------------------|-----------------|-----|------|--------------------------|-----|
| | | | | | | 1 |
| 2 | 3 First Day of Hanukkah | 4 | 5 | 6 | 7 | 8 |
| 9 | 10 | 11 | 12 | 13 | 14 Target Adjournment | 15 |
| 16 | 17 | 18 | 19 | 20 | 21 | 22 |
| 23 | 24 Christmas Eve | 25 Christmas | 26 | 27 | 28 | 29 |
| 30 | 31 New Year's Eve | | | | | |

HOUSE AND SENATE IN SESSION
 SENATE IN SESSION ONLY
 FEDERAL HOLIDAY

Leadership Elections

Following the election, newly elected Members of Congress will travel to Washington, D.C. to participate in orientation activities. During this time, Republicans and Democrats will also hold their leadership elections for the 116th Congress. The following outlines the leadership races we can anticipate depending on which party has control of each chamber post-election.

House Republicans

Regardless of the outcome of the election, House Republicans will have a new member in the top leadership position given Speaker Paul Ryan’s (R-WI) announcement earlier this year that he would not run for reelection. The most likely successor is current House Majority Leader Kevin McCarthy (R-CA), though he could face one or more challengers from within the ranks. For example, Rep. Jim Jordan (R-OH), co-founder of the House Freedom

¹ Drew DeSilver, *Turnout in this year's U.S. House primaries rose sharply, especially on the Democratic side*, Fact Tank (Oct. 3, 2018), <http://www.pewresearch.org/fact-tank/2018/10/03/turnout-in-this-years-u-s-house-primaries-rose-sharply-especially-on-the-democratic-side/>.

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Caucus, sent a letter to his colleagues earlier this summer indicating his desire to run for Speaker. Although it is unlikely that such a challenger could be elected Speaker outright, history suggests that a determined group of dissidents might be able to force consideration of an alternative candidate. Should Leader McCarthy become Speaker, current House Republican Whip Steve Scalise (R-LA) would be the likely candidate for House Majority Leader, and Rep. Patrick McHenry (R-NC), the current Chief Deputy Whip, is a probable contender for House Majority Whip. Notably, election as Speaker of the House requires support from 218 Members of the House, while Minority Leader would simply require the support of a majority of the House Republican Conference. Therefore, should House Republicans lose the majority, Leader McCarthy would almost certainly become House Minority Leader, with Rep. Scalise remaining as House Republican Whip. However, the outcome of the midterm election could have an unforeseen impact on the outcome of the leadership races.

House Republicans have not laid out a specific agenda for the 116th Congress. Should they remain in control of the House, we can expect to see a continuation of priorities previously outlined by President Trump and House Republican Leadership.

House Democrats

For House Democrats, House Minority Leader Nancy Pelosi (D-CA), House Minority Whip Steny Hoyer (D-MD), and Assistant Democratic Leader Jim Clyburn (D-SC) are all running for reelection in safe seats and have indicated a desire to continue in their current roles irrespective of the election outcome. Given that some of the potential incoming freshmen Democrats have indicated they would not be inclined to support current Leader Pelosi for the top Democratic leadership spot, it is possible that their leadership spots could be challenged. Earlier this year, House Democrats changed the timing of their caucus leadership election so that votes will take place after December 5. This move will give Members more time to lobby for leadership positions and allow incoming freshman Democrats to participate in the process.

House Democrats released their legislative priorities earlier this year in a collection of proposals entitled [“A Better Deal.”](#) They have indicated they want to quickly pursue an ethics and campaign finance reform package should they assume control of the House. Among the other items that may be on their legislative agenda are an infrastructure package, lowering the price of prescription drugs, protecting participants in the Deferred Action for Childhood Arrivals (DACA) program (an upcoming court ruling on DACA will likely force action on this issue, regardless of which party controls the House), working to preserve and protect the Affordable Care Act (ACA), gun control, and protecting voting rights, among other items. House Democrats will also move quickly to pursue a wide-ranging oversight agenda focused on hearings and investigations into the Trump administration. The impact of these investigations on government agencies could be paralyzing, with many agencies understaffed to reply to the requests for documentation and testimony. As a result, items on the recently updated [Fall 2018 Unified Agenda of Regulatory and Deregulatory Actions](#) could be expected to slip along with other Trump administration priorities.

Senate Republicans

In the Senate, Majority Leader Mitch McConnell (R-KY) is expected to continue in his role as top Republican, whereas other positions will change due to conference-imposed term limits.

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The Senate Republican Conference allows Members to serve a maximum of three full (two-year) terms in leadership, which is cumulative across all roles, with the exception of Leader.

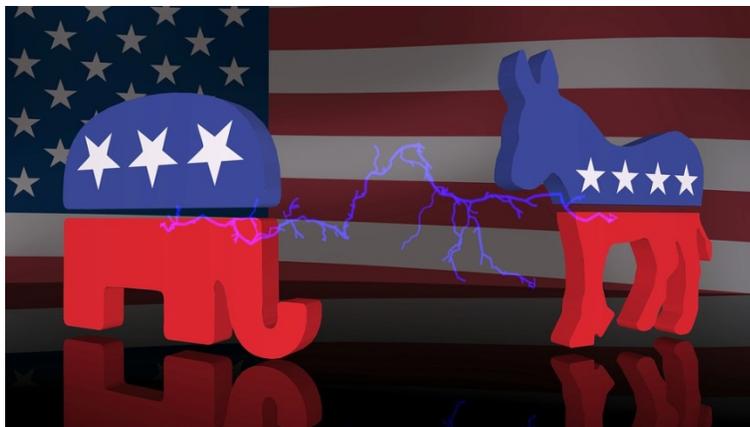
The current number two, Majority Whip John Cornyn (R-TX), is term-limited and will have to step down. It is widely expected that Sen. John Thune (R-SD), the current Conference Chairman, is the likely successor to replace him. Sens. John Barrasso (R-WY) and Roy Blunt (R-MO), the number four and five in Republican Leadership, respectively, are likely to receive promotions as well. Although Sen. Cornyn cannot remain as Whip, Leader McConnell has suggested that he may appoint Sen. Cornyn to another type of position in Leadership; he could be called, for example, Counsel or Counselor to the Majority/Republican Leader, a role our colleague, former [Sen. Slade Gorton](#) (R-WA), played. Given the shuffling mentioned above, there will be at least one new face joining Senate Republican Leadership in the next Congress, likely as Vice Chair of the Republican Conference.

Senate Republicans face a much tougher electoral map in 2020 (defending 21 seats instead of the current nine this election cycle, though a number are in states typically carried by Republicans), and many who will be up for reelection may seek roles that could bolster their reelection bids. Whether that means official positions in the leadership ranks or an increased role on key committees remains an open question. Current National Republican Senatorial Committee (NRSC) Chairman Cory Gardner (R-CO) is expected to step down from his role to focus on his reelection campaign in 2020. Sen. Todd Young (R-IN) has reportedly been talking with colleagues to take over the helm of the NRSC in the 116th Congress.

Should Republicans retain control of the Senate, judicial confirmations will continue to be one of the top priorities of Leader McConnell in the 116th Congress as he tries to confirm as many judges as possible before the 2020 presidential election.

Senate Democrats

Senate Democratic Leadership will likely remain static, even in the event Democrats are in the majority come January 2019. Democrats do not have the same self-imposed term limits to consider, so a continuation of the current roster would be the most likely scenario.



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Legislative Agenda

While the tone for the lame duck session will largely be dependent on the outcome of the midterm election, there are a number of items that Congress must address before they adjourn for the holidays, along with a wish list of other items Republicans would like to work on.

Thus far, Congress has passed five of its 12 annual appropriations bills along with a continuing resolution (CR), which will keep the agencies and programs within those remaining seven bills open and operating at Fiscal Year (FY) 2018 funding levels until December 7, 2018. The CR was included as part of the Defense-Labor HHS minibus appropriations package that Congress passed before the end of September. When they return, Congress will need to complete work on the seven remaining appropriations bills or pass a CR until the start of the new Congress or the end of the fiscal year. There is increasing chatter that President Trump and conservative Republicans may insist on funding for the wall along the U.S.-Mexico border; however, it remains to be seen as to whether they would allow the government to shutdown over this issue. Congress may also consider a supplemental disaster aid spending package to assist those impacted by Hurricane Michael and Hurricane Florence. Notably, without action by Congress, the National Flood Insurance Program is currently set to expire on November 30.



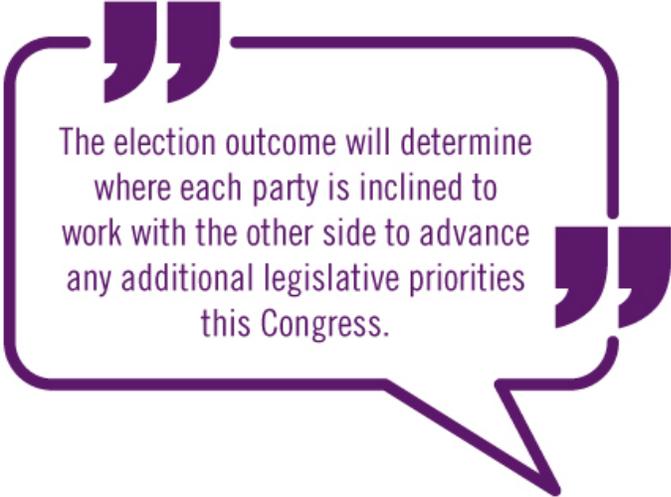
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Additionally, Congress must address the Farm Bill reauthorization. The current Farm Bill expired on September 30. Lawmakers continue to negotiate on a final package and have signaled some optimism that they may be able to pass a full reauthorization before the end of the year as opposed to an extension of programs. Congress also needs to reauthorize or extend the Violence Against Women Act, which was due to expire on September 30 but was extended until December 7 as part of the CR.

There are a number of other items on Republicans' possible wish list for the lame duck session, including the Senate continuing to confirm pending nominees, a possible tax extenders package, a possible technical corrections tax package, and a potential Senate vote on criminal justice reform legislation (if such a vote does not occur this Congress, criminal justice reform could be revisited in the 116th Congress). Congress may also vote on bipartisan retirement reform legislation. However, it remains unclear what the final vehicle may be — one or some combination of the Retirement Enhancement and Savings Act (S. 2526/H.R. 5282) or the Family Savings Act (H.R. 6757). Additionally, the Joint Select Committees on Budget and Appropriations Reform and Solvency of Multiemployer Pension Plans must submit and vote on their reports by November 30. In order for the reports to be approved, a majority of the Members on the committee from each party must vote in favor of the recommendations. Should the reports be approved, they would be considered under expedited procedures in the Senate before the end of the year. Pending the outcome of the investigation into the murder of journalist Jamal Khashoggi, Congress may take up a series of votes on the cancellation of pending arms transactions with Saudi Arabia and/or sanctions against Saudi Arabia.

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Beyond these identified issues, the election outcome will determine where each party is inclined to work with the other side to advance any additional legislative priorities this Congress. The party that emerges victorious will likely feel emboldened to push for policies more aligned with their campaign platforms and may not see a reason to compromise on issues this year. Up next, we will explore what those policy priorities may look like in 2019 and what key committees could consider.



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The 116th Congress — Outlook for Key Issues and Committees

Environment

If Democrats seize control of the House, the Environmental Protection Agency (EPA) should expect considerable oversight of its policies, regulatory reform initiatives, agency operations, staff turnover, and budget. The House Energy and Commerce Committee will likely use its oversight authority to demand documents related to controversial policies and rulemakings. Additionally, House Democrats can use the Congressional Review Act to seek to overturn newly issued controversial EPA rules (e.g., fuel economy standards, the Clean Power Plan rewrite expected to be issued in March 2019). Although the Senate would not likely support such House actions and President Trump is unlikely to sign a bill to revoke such regulations, it may provide a messaging opportunity for Democrats.

As for the Senate, the Environment and Public Works Committee, which oversees EPA, may become more politically charged as at least three of its Members (Sens. Bernie Sanders (I-VT), Kirsten Gillibrand (D-NY), and Cory Booker (D-NJ)) are considering presidential runs in 2020. Even if Democrats do not take control of the chamber, senators wishing to raise their national profile may use their perch on the panel to highlight environmental policies of the Trump administration they view as damaging.

Financial Services

The House Financial Services Committee (HFSC) will have a new chairman regardless of the election outcome. Current Chairman Jeb Hensarling (R-TX) is term-limited and announced last year that he will be retiring at the end of the 115th Congress. If Republicans maintain control of the House, the most likely successor is Rep. Blaine Luetkemeyer (R-MO), who currently chairs the Financial Institutions and Consumer Credit Subcommittee. Other possibilities for chairman include Rep. McHenry, who has seniority but is expected to choose to remain in House Republican Leadership; Rep. Bill Huizenga (R-MI), who chairs the Capital Markets, Securities, and Investments Subcommittee; and Rep. Sean Duffy (R-WI), who is chairman of the Housing and Insurance Subcommittee.



Early in the 115th Congress, Chairman Hensarling introduced a revised version of the “Financial CHOICE Act” (FCA, H.R. 10), which has served as a blueprint for consideration of numerous measures that might garner sufficient bipartisan support to receive the 60 votes necessary for passage in the Senate. Dozens of these measures are included in the “JOBS and Investor Confidence Act of 2018,” (Jobs Act 3.0, S. 488). Some of these provisions could be included in legislation before year-end. Importantly, Ranking Member Maxine Waters (D-CA), who will chair the HFSC if Democrats become the majority, supported this package. That means it is a likely starting point for continued consideration of Dodd-Frank reforms in the 116th Congress regardless of which party controls the House.

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If Republicans keep their majority, the HFSC agenda will likely mirror the recommendations contained in the Treasury reports issued pursuant to President Trump's Executive Order 13772 on Core Principles for Regulating the United States Financial System. The focus will include increasing access to capital, addressing the decline in initial public offerings, and cybersecurity in the banking and investment sectors.

If Democrats gain control, the subcommittee ranking members are expected to become the chairs of their respective subcommittees. Most significantly, Rep. Carolyn Maloney (D-NY) would chair the Subcommittee on Capital Markets, Securities, and Investments. The Democratic agenda would likely include housing finance reform with an emphasis on low-income housing. Other expected agenda items include a focus on cybersecurity and FinTech, as well as a coordinated effort to stem President Trump's regulatory relief plans, particularly with respect to the rulemaking and enforcement activities of the Bureau of Consumer Financial Protection. Finally, we expect that under Democratic leadership, the HFSC will engage in aggressive oversight with respect to a broad range of federal programs within its jurisdiction.

On the Senate side, assuming Republicans maintain their majority, a key question is whether Sen. Mike Crapo (R-ID) will remain as Chairman of the Senate Banking Committee. There has been some speculation that with Senate Finance Committee Chairman Orrin Hatch (R-UT) retiring, Sen. Crapo could assume the chairmanship of the Senate Finance Committee. If that happens, Sen. Pat Toomey (R-PA) has seniority and would be expected to become the next Banking Committee Chairman. We expect the committee agenda under Sen. Toomey to mirror that of the Trump administration as laid out in the Treasury report. Of course, a certain degree of bipartisanship will be necessary to obtain the 60 votes necessary to pass legislation on the Senate Floor.

Health Care

No matter who controls Congress in 2019, health care is guaranteed to be a hot topic.

Democrats have made it a cornerstone of campaigns across the country — promising to keep protections for access to insurance for those with pre-existing conditions and generally increase access to insurance. There are particular issues where Democrats could work with President Trump to advance policy priorities — namely bringing down the cost of prescription drugs, an initiative the administration has already highlighted as a priority. Health care is another area that can expect to see significant oversight and investigations under House Democratic Leadership. Additionally, Democrats could look to build upon the momentum created by the recent enactment of H.R. 6, the Support for Patients and Communities Act, which hopes to address the ongoing opioid epidemic. In particular, they could look to increase funding for such programs.



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If Republicans retain control, Leader McConnell told reporters they would begin to take a hard look at entitlement reforms, possibly including changes to control the costs of Social Security, Medicare, and maybe even Medicaid. Leader McConnell said the conversation is necessary to address the growing national debt and deficit. Democrats are unlikely to be on

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board with such an agenda, as they see the recently passed tax cuts as the key driver increasing the national deficit. With the current budget caps expiring, Republicans may use their leverage in the next budget battle to demand some type of entitlement reforms in exchange for nondefense discretionary spending parity.

Leader McConnell has also recently suggested that he may restart the discussion on repealing and replacing the ACA should Republicans have enough votes to support such an effort. One example of ongoing efforts this year to revisit certain aspects of the ACA includes a House Republican-led package of employer relief health care legislation. The package includes H.R. 4616, which would suspend the employer mandate until January 1, 2019 and delay implementation of the Cadillac tax through 2022, among other bills. The House had been scheduled to vote on the legislation in September; however, they ran out of time and postponed consideration of the package. It could receive a vote on the House floor during the lame duck session.

Sequestration

After two fiscal years of funding increases, sequester-level budget caps return next year compelling cuts of \$90 billion in defense and nondefense programs. While it is tempting to believe the caps will be lifted, that requires enactment of a law with bipartisan support from the House and Senate, as well as President Trump's signature. In today's bitterly divisive political climate, that is sure to be an uphill climb.

By way of background, the Budget Control Act (BCA) of 2011 (P.L. 112-25) established budget caps on the amount of discretionary funding that Congress could annually appropriate through FY-21. Congress has raised the caps three times, most recently in the Bipartisan Budget Act of 2018, which was signed into law last February. This budget

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agreement increased the defense and nondefense caps by a combined amount of \$143 billion for FY-18 and \$152 billion for FY-19. The raising of these spending limits was the catalyst for Congress completing the FY-18 appropriations with a massive bipartisan omnibus bill and the relatively smooth sailing of the FY-19 process.

The new Congress that convenes in January may very well attempt to change the BCA again by raising the discretionary spending caps. However, the political dynamics following the midterm elections may

be even more polarized. There is also renewed focus on the increasing deficit, which is expected to approach \$1 trillion in FY-19, and the overall national debt, which is nearing \$22 trillion. Notably, the current suspension of the debt limit ends on March 1, 2019, which may also require congressional action. Raising the caps will therefore require concerted bipartisan efforts. Unless the BCA is changed, Congress will be forced to reduce federal spending to comply with the FY-20 budget caps or across-the-board sequestration cuts will automatically kick in. Adherence to the budget caps will obviously mean less funding for numerous federal programs and tough decisions for Congress and the executive agencies as well as the White House Office of Management and Budget (OMB).

The cuts required to stay below the FY-20 spending level will be painful. A recent [Congressional Budget Office \(CBO\) report](#) calculates that the FY-20 topline budget will

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necessitate cuts of about \$90 billion (or 7.4 percent) compared to the cap set in the BCA for FY-19. CBO concludes that the cut will fall disproportionately on defense: \$54 billion of the \$90 billion reduction will be allocated to defense discretionary spending (or 8.5 percent) and the remaining \$36 billion cut allocated to nondefense discretionary spending (or 6 percent).

The net effect of these estimated cuts are actually more severe considering that the budget cap for FY-19 was raised above the original BCA limit. So the actual appropriations of \$1.244 trillion Congress will likely approve for FY-19 will require a net reduction of \$126 billion (or 10 percent) to stay within the budget cap that will be in effect for FY-20, assuming no change in law.

Members of the House and Senate Appropriations Committees in the new Congress will determine where to find the savings in defense and nondefense programs required to comply with the lower FY-20 spending cap. The Trump administration will also be looking for cuts as part of its FY-20 budget request, expected to be sent to Congress in February 2019. Pretty much every discretionary federal program will be vulnerable to cuts as budget examiners at OMB and the appropriators in Congress struggle to stay within the FY-20 cap to avoid the draconian effects of sequestration.



Tax

House Ways and Means Committee Chairman Kevin Brady (R-TX) and Ranking Member Richard Neal (D-MA) are expected to remain as leadership of the Committee, with the open question of who will serve as chairman next Congress based on which party controls the House. The leadership of the Senate Finance Committee is less clear. Current Chairman Hatch is retiring, leaving the top Republican leadership slot on the Committee vacant. Current Senate Judiciary Committee Chairman Chuck Grassley (R-IA) will need to decide if he wants to remain as the head of the Judiciary Committee or move to the Finance Committee to serve as chairman for the remaining two years of his eligibility. However, should Chairman Grassley decide to remain as head of the Judiciary Committee, current Senate Banking Committee Chairman Crapo may become Senate Finance Committee chairman in the next Congress. On the Democratic side, current Ranking Member Ron Wyden (D-OR) is expected to continue to serve in his leadership position, regardless of which party controls the Senate.

Retirement security and family-friendly tax policies are a priority of Rep. Neal. Under his leadership, the House Ways and Means Committee would likely consider a retirement reform package long championed by Rep. Neal, as well as a potential tax package aimed at helping families. Rep. Neal is a long-time and well-respected member of the House who can be expected to try to work collaboratively with Republicans to advance certain legislative priorities. Among the other areas that could receive attention by a Democratic-led Ways and Means Committee are an infrastructure package as well as oversight hearings. The Committee would likely take the helm on an oversight investigation into President Trump's tax returns. Democratic-led oversight would also likely include reviewing and revisiting the Tax Cuts and Jobs Act (TCJA), with possible legislation to roll back certain provisions —

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though it is unlikely they would be signed into law with President Trump holding veto power.

Should Republicans remain in control of the House, Chairman Brady may continue to pursue additional tweaks to the Tax Code in the form of Tax Reform 3.0, 4.0, etc. Chairman Brady said during consideration of the Tax Reform 2.0 package that Republicans were “taking the first step to change the culture of Washington, D.C. where tax reform only happens once a generation. We plan to work off this framework to build on the growing successes of the [TCJA] and ensure this energized economy continues to move forward.” Republicans may also continue their push for improvements in areas like education, which was included in the Tax Reform 2.0 proposal. Additionally, the current momentum around retirement reform could lead to continued retirement reform efforts in the 116th Congress. In recent weeks, President Trump has proposed an additional 10 percent tax cut for middle-class families; Chairman Brady has said he is working with the White House and Treasury on such a proposal should Republicans keep the House and Senate. While the likelihood of such a proposal becoming law is low given concerns about the potential score (even if Republicans keep the House and Senate), the Trump administration would likely continue the conversation into and through the next Congress. Finally, another area that could receive attention is entitlement reform.

Trade

We expect trade issues to continue to dominate the news as 2019 gets underway. Among the top issues likely to receive attention are tariffs, trade agreement negotiations and possible congressional consideration, increased U.S. government oversight of foreign investment, and efforts to finalize and implement the United States-Mexico-Canada Agreement (USMCA).

Throughout 2018, President Trump has used tariffs to spur further trade negotiations, as well as attempt to force the hands of other nations to improve U.S. access to their markets. In March 2018, the Section 232 steel and aluminum tariffs went into effect at a rate of 25 percent on steel imports and 10 percent on aluminum imports. Companies can file exclusion requests for products from countries subject to tariffs and quotas or objections to exclusion requests; however, such requests have been infrequently granted. In response to Chinese intellectual property abuses, the Office of the U.S. Trade Representative has released three lists of Section 301 proposed products on which to impose tariffs. Products on the first two lists are subject to a 25 percent tariff valued at \$50 million total. Tariffs have also gone into effect on the third list of products and are valued at \$200 million. The tariff level on product list three is currently 10 percent; however, it is expected to increase to 25 percent by January 1. President Trump has also threatened to impose additional tariffs on what would be a fourth list of products. The product exclusion process due date has passed for the first list, is ongoing for the second list, and has not yet been announced for the third list (a growing group in Congress is calling for such a process for the third list of products).



Expect trade issues to continue to dominate the news. Top issues include tariffs, trade agreement negotiations, oversight of foreign investment, and efforts to finalize and implement the USMCA.

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Additionally, the U.S. Department of Commerce is working to complete their Section 232 investigation into the national security impacts of automotive imports. The largest U.S. exporters are Canada, Mexico, Germany, Japan, and Korea; certain countries may ultimately be exempt from U.S. tariffs on autos and parts as a result of negotiations with the Trump administration. Finally, the United States may continue to face retaliatory tariffs from countries impacted by the tariffs mentioned above. Canada, the European Union (EU), Mexico, China, India, Russia, Turkey, and Japan have either imposed or proposed retaliatory tariffs in response to the Section 232 tariffs; China has additionally imposed 25 percent retaliatory tariffs in response to the Section 301 tariffs. These tariffs cover a broad range of U.S. exports and have been targeted to have a maximum political impact.

As we head into 2019, we expect the Trump administration to continue trade agreement negotiations. The United States and EU are holding discussions aimed at arriving on sectoral specific agreements to reduce tariffs. Additionally, President Trump recently notified Congress regarding U.S. intent to negotiate trade agreements with the EU and the United Kingdom. Finally, the United States and Japan recently announced the start of negotiations on a bilateral agreement, with talks expected to continue into 2019.

Congress will be busy in late 2018 through early 2019 working to approve and implement the USMCA. The agreement, which was announced on September 30, will continue to work its way through the Trade Promotion Authority process. President Trump has indicated that he hopes to sign the USMCA on November 30. There are a number of deadlines that need to be met along the way, with Congress needing to introduce and pass legislation implementing the agreement before the agreement goes into effect.

Transportation, Infrastructure, and Logistics

Looking at the committees of jurisdiction, current Senate Committee on Commerce, Science and Transportation Chairman Thune is term-limited and, as we noted before, likely assuming a leadership role. Senator Roger Wicker (R-MS) is likely to take over as the top Republican. On the other side of the aisle, current Committee Ranking Member Bill Nelson (D-FL) is likely to remain the top Democrat on the Commerce Committee, provided he is reelected in what is currently rated as a “toss-up” race. If Senator Nelson loses, Senator Maria Cantwell (D-WA) would likely become the top Democrat assuming she decides to give up her top spot on the Energy and Natural Resources Committee.

The House Transportation and Infrastructure (T&I) Committee will see significant changes regardless of whether control of the House flips. Full Committee Chairman Bill Shuster (R-PA) is retiring, with Reps. Sam Graves (R-MO) and Jeff Denham (R-CA) most likely to seek the role of top Republican on the Committee. For Democrats, current Committee Ranking Member Peter DeFazio (D-OR) would retain his position as top Democrat.

One issue that could garner significant attention next year is infrastructure, regardless of which parties control the House and Senate. There were several infrastructure proposals made this year, including:

- President Trump’s plan to leverage \$200 billion in federal spending into \$1.5 trillion in new investment through leveraging state, local, and private sector funding;
- Outgoing T&I Committee Chairman Shuster’s proposal to bolster the Highway Trust Fund by raising fuel and other transportation taxes, create a new National Infrastructure

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Investment Program to make investments in transportation infrastructure, and improve water resources;

- A proposal from House Democrats for \$1 trillion in federal investment focused on stabilizing the Highway Trust Fund, upgrading bridges, improving roads, increasing transit options, improving access to high-speed Internet, improving physical and digital infrastructure in schools, improving airports, increasing accountability in the Harbor Maintenance Trust Fund, improving drinking and wastewater infrastructure, and expanding renewable energy infrastructure, among other items; and,
- A proposal from Senate Democrats that relies on repealing a variety of tax cuts enacted by Republicans in 2017 to pay for a variety of infrastructure investments, with a focus on traditional Democratic priorities like energy, environment, and social infrastructure.

Rep. Graves has said that if he becomes chairman of the T&I Committee, he will focus on improving infrastructure, including through work on the next highway bill. House Democrats have also pledged to focus on infrastructure should they take control of the House. Given differences in approach and how to pay for the various proposals, it is unclear what a potential consensus infrastructure package could look like that would receive enough support in the House and Senate and be appealing to President Trump. However, this is one of the key areas where observers believe there could be room for bipartisan compromise in the next Congress.

Among other transportation-related legislative priorities for the 116th Congress are another Water Resources Development Act and the next highway bill due in 2020, with work likely beginning as early as next year. Should an infrastructure package not pass early in the 116th Congress, the highway bill is a must-pass agenda item this Congress. Without action on this measure, federal highway funding programs will shut down and additional funding is required to prevent the Highway Trust Fund from defaulting. Additionally, in October, President Trump signed into law a five-year Federal Aviation Administration reauthorization, and there could be opportunities to weigh-in on any related regulatory activity.

Conclusion

The coming months will be an exciting time in Washington, D.C. The upcoming lame duck session, a significant group of new Members of Congress, new faces in congressional leadership, and potentially vastly different agendas will dominate. These developments will not only influence outcomes in the next Congress but also in the upcoming lame duck session of this Congress. Engagement will be key to affecting those outcomes, and now is the time to develop policy strategies for the 116th Congress, taking into account the new landscape leading into the 2020 presidential election.

On November 7, the day after the election, we will publish our 2018 Election Guide. This comprehensive guide will list all new Members elected to Congress, update the congressional delegations for each state, and provide a starting point for assessing the coming changes to the House and Senate committees in the 116th Congress. The guide will be updated on an ongoing basis as close races are called and committees are finalized. Please visit www.klgates.com on November 7 to view the guide.

Previewing the 116th Congress: Are you prepared for the changes coming to Washington?

Questions?

[Please contact any member of our Public Policy and Law team.](#)

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