

Dykema 100 YEARS

2026 Federal Midterm Election

Overview



Congress returns today for the first time since last week's midterm election to a much different nation's capital. The midterm election produced better results for Democrats than even the most optimistic predictions. When all the results are in, Democrats are expected to hold at least 255 seats in the House and have as many as 56 Democratic senators. However, most bills in the Senate will still require 60 votes to overcome a legislative filibuster, which Democrats appear unlikely to change for now. The threshold to overcome Presidential vetoes is even higher, needing 290 votes in the House and 67 votes in the Senate. Despite these challenges, the new Democratic majority in Congress will still be able to set the agenda, conduct aggressive oversight, and serve as a check on the Trump Administration by blocking nominations.

Divided government does not mean that nothing will happen. Congress will face a number of must-pass pieces of legislation, like the debt limit, surface transportation reauthorization, annual appropriations, and the defense authorization act, that can serve as legislative vehicles for Democrats to advance priorities and give them leverage in negotiations with the White House. There may also be some areas where it is possible for Democrats and Republicans to find common ground, such as policies related to data centers and AI, permitting reform, and populist-centered policies like stock trading restrictions on elected officials and expanding Child Tax Credits or the Earned Income Tax Credit. And if President Trump shows a willingness to work with Democrats in the last two years of his Presidency to enhance his legacy, that list could grow to include policies like prescription drug price controls or caps on credit card interest rates. If Congress and the President fail to find ways to work together, Democrats will use the next two years to preview the policies they would advance should they hold their majority and reclaim the White House in the next election, while President Trump will rely on regulatory action and Executive Orders to cement his legacy.

This report breaks down what to expect in the lame duck session, along with a closer look at the several policy areas the new Congress is expected to tackle, with practical analysis about what can become law, what will be reduced to messaging, and most importantly what it means for you.

LAME DUCK

Congress returns to D.C. for a lame-duck session with 20 legislative days scheduled between now and the end of the year. There is a long list of issues facing Congress over the next six weeks, including the National Defense Authorization Act (and the war in Iran), the Surface Transportation Reauthorization, Permitting Reform, the Farm Bill, the Water Resources Development Act, college sports reform, expiring tax provisions, and judicial and executive nominations. However, the most pressing issue members of Congress must address is government funding. The current Continuing Resolution (CR) is set to expire on December 11, and without Congressional action, there will be a shutdown. Leading up to the election, lack of progress by each chamber on passing individual appropriations bills for Fiscal Year (FY) 2027 will make it difficult for Congress to enact new spending before the end of the year. This makes the most likely outcome that Congress will pass another short-term CR to fund the government into 2027. This will keep government programs operating at the current levels, but will force the reintroduction of spending bills in the new Congress. This also means any funding for Community Projects/ Congressionally Directed Spending requests will be delayed until next year. Immediately after the election, many downplayed the likelihood of a shutdown. Since then, Democrats have indicated they will not agree to any spending measures that include funding for the Iran war, and President Trump elevated Stephen Miller to Chief of Staff and has been more combative towards the Democrats in recent interviews and social media posts. These developments could further increase the risk of a government shutdown.

Beyond appropriations, it is unlikely Congress will be highly productive during the lame duck session. Democrats, with their large incoming majority, have little incentive to compromise with Republicans before January. With well over 100 House members either retiring or defeated in last week's election, it is also possible that several Republican members will be absent for votes for much of the lame duck, especially after exiting members are required to trade their offices for basement cubicles in the House office buildings. Over the coming weeks, Congress will face significant pressure to extend the 65-year streak of passing the National Defense Authorization Act. Still, the conflict in Iran and a possible vote to impeach Secretary Hegseth will complicate the process. Most expect Congress to pass one-year extensions of the Farm Bill and the Surface Transportation Reauthorization. There is optimism that the Water Resources Development Act could be one of the bills to make it over the finish line in the lame duck. Many of these measures, including provisions to adjust Medicare and physician payments, could ultimately get attached to the CR. The Senate is expected to spend most of its time during the lame duck confirming Trump Executive Branch and judicial nominations before Republicans hand over the majority to Democrats in January.

INFRASTRUCTURE (ROADS, BRIDGES, WATER)

In the upcoming lame-duck session, lawmakers will focus heavily on finalizing the Water Resources Development Act (WRDA) while pushing long-term reauthorization of the surface transportation bill until the next congress. Because WRDA historically enjoys strong bipartisan support, legislators will use the post-election window to reconcile House- and Senate-passed versions, resolving local project authorizations, Chief's Reports, and coastal resilience provisions before passing it on its own or attaching it to an end-of-year legislative vehicle. Conversely, a full multi-year surface transportation reauthorization is unlikely to advance during the lame duck session. Given that the Infrastructure Investment and Jobs Act (IIJA) surface transportation funding framework requires complex fiscal and policy decisions, Congress will likely pass a short-term extension to prevent highway program lapses, deferring major spending and revenue debates until Democrats are seated in the majority.

Looking ahead to the next Congress, infrastructure discussions will focus on both surface transportation and water infrastructure funding. As lawmakers craft a five-year surface transportation bill, they will face contentious debates over Highway Trust Fund solvency, electric vehicle registration fees, and the balance between public transit and traditional highway spending. The incoming Congress must also address the expiration of annual authorization levels and supplemental funds for the Clean Water and Drinking Water State Revolving Funds (SRFs) established under the IIJA. Reauthorizing these EPA programs may trigger partisan disagreements over baseline federal capitalization, lead pipe replacements, PFAS remediation funding, and the allocation of low-interest loans versus grant forgiveness for economically distressed communities. Coupled with broader Republican demands to streamline environmental permitting for heavy infrastructure and Democratic efforts to safeguard community protections, these expiring water and surface transportation frameworks will dominate the congressional infrastructure agenda.

DEBT LIMIT AND FEDERAL FUNDING

The One, Big, Beautiful Bill Act extended the debt limit to $41 trillion, which is targeted to hit in May 2027, at which point Treasury must begin taking extraordinary measures to keep the federal government from defaulting on its debt. The issue had been on Republicans' radar for the lame duck as something to address in a potential third party-line reconciliation bill, but with Democrats' victories, that option is highly unlikely. During the 120th Congress, Democrats will have to negotiate with President Trump on another debt limit extension, setting the stage for contentious negotiations as the new congressional majority attempts to extract policy concessions. In the past, Republicans have tied increases to the debt ceiling with spending limits. This time around, expect Democrats to leverage their priorities, like reversing Medicaid cuts and raising the corporate tax rate, and blocking Trump initiatives, like the war with Iran and tariffs, in exchange for raising the debt limit.

Efforts to raise the debt limit or eliminate it entirely may occur simultaneously with the Fiscal Year 2028 budget and appropriations process. Democratic leaders will insist on parity between defense and non-defense spending. Expect the upcoming appropriations process to counter President Trump's efforts to use the Department of Government Efficiency and the Office of Management and Budget to cut federal employment and federal spending outlays. Democrats will use their control over the spending process to insulate federal agency staffing levels and safeguard grant allocations for clean energy, public health, and state infrastructure. Conversely, President Trump will leverage his veto authority and the threat of a shutdown to demand lower domestic spending and validate executive clawbacks.

TAX

Democrats' tax policy is expected to focus on middle-class affordability, relief through targeted tax credits, and on addressing what they view as the need to improve tax fairness. The returning leaders on the tax writing committees, House Ways and Means Chairman Richie Neal (D-MA) and Senate Finance Chairman Ron Wyden (D-OR), have long championed expanding the Child Tax Credit (CTC) and the Earned Income Tax Credit (EITC). Democrats are also expected to make renewing the Affordable Care Act premium tax credits a top priority. Chairman Wyden has consistently pushed restructuring how the tax code treats ultra-high net worth individuals. He has introduced legislation to eliminate carried interest and bills to apply a mark-to-market tax regime to crack down on wealthy individuals who avoid taxes by borrowing against untaxed assets. Chairman Neal has long been a leader in retirement policy and supports legislation for automatic IRA enrollment and expanding access to retirement savings for gig workers and part-time employees. On corporate tax, both support increasing the current corporate rate to 21% and restructuring several international tax provisions included in the Tax Cuts and Jobs Act (TCJA). AI and Tech Research and Development Credits will almost certainly be reexamined in response to voter concerns over the proliferation of data centers in their communities. Democrats are also expected to dedicate significant time to aggressive oversight of the IRS, focusing on enforcement operations and the impact of DOGE cuts on staffing levels.

While passage of significant tax legislation will be difficult with a Democratic Congress and Republican President, there are areas where both sides have the potential to reach agreement. Bills to expand the CTC and EITC do have bipartisan cosponsors and have populist appeal by providing direct assistance to working-class families. The Trump Administration has also floated increasing the CTC in some of its tax proposals. Both sides are anxious to prove to voters they heard their concerns around data centers, and Congress could act to limit available tax credits to that sector. Retirement policy has also traditionally enjoyed strong bipartisan support. Both President Trump and members of Congress have expressed strong bipartisan support for a new federal film production tax credit. Must-pass bills, like the debt ceiling, could create an opportunity for some of these tax policies to be attached and eventually become law. However, Democrats' more ambitious tax policies, like wealth taxes and increasing the corporate rate, will not advance under the current power structure in D.C.

TRADE

On the campaign trail, Democrats were highly critical of the broad tariffs implemented by President Trump and blamed the tariffs as one of the key factors driving up prices. With their new majorities in the House and Senate, Congressional Democrats will try to reclaim some Congressional authority over tariffs and link tariff relief to their affordability agenda. Trade issues do not always break down along party lines, so Democrats may find some Republicans willing to partner with them to give Congress a bigger say on trade and tariff issues. However, as we learned in the recent Supreme Court ruling that overturned some of the tariffs, President Trump will still possess significant statutory authority to execute many of his trade prerogatives without Congressional approval.

One of the first areas Democrats are likely to address is Canadian tariffs. Democrats are expected to hold high-profile hearings early in the new Congress that highlight the impact of Canadian tariffs on driving up prices to put pressure on the Administration and, in advance of introducing legislation to amend existing statutes, to require Congressional approval of any Presidential tariffs on USMCA or NATO allies. President Trump will veto any legislation that limits his executive powers. Rather than embarrass the President by overriding his veto, Republicans in Congress are more likely to work behind the scenes to push the Administration to reach an agreement with allies, like Canada, as soon as possible in order to provide more stability and predictability to U.S. trade policy. Both the Canadian Prime Minister and the U.S. Trade Representative have recently expressed optimism that a deal can be reached in the coming weeks. While Congress will not have a seat at the table for negotiations with Canada, any statutory changes negotiated to USMCA by the Trump Administration require Congressional approval. One area of potential alignment on tariffs is regarding China. Both Democrats and Republicans remain hawkish on maintaining tariffs on China, meaning the new Congress is unlikely to challenge the Administration on Section 301 tariffs on Chinese products or additional China tariffs on forced labor and overcapacity. There is also likely to be a push in the new Congress to formalize a tariff exemption process. Democrats have been critical of the Administration for a lack of transparency around the exclusions they have granted to date, and addressing the exemptions legislatively provides a level of certainty and fairness sought by industry.

AUTOMOTIVE

Automotive policy in the new Congress is expected to focus on protecting domestic manufacturing, national security concerns, and Democratic efforts to revive clean energy investments. The Connected Vehicle Security Act is being championed by a group of bipartisan Michigan lawmakers, Senator Elissa Slotkin (D), Representatives John Moolenaar (R) and Debbie Dingell (D), and Ohio Senator Bernie Moreno (R). The legislation would prohibit the import, sale, and operation of vehicles manufactured in China—or any other country of concern—and ban the use of Chinese-developed connected vehicle technologies. Supporters of the bill will push to include the measure as part of the National Defense Authorization Act (NDAA) during the lame duck. If those efforts fail, the legislation will be a top priority of these members in the new Congress who view it as essential to preserve U.S. manufacturing jobs, secure the supply chain, and protect Americans from Chinese surveillance.

Congress could revisit long-stalled autonomous vehicle legislation, such as the SELF DRIVE Act to establish federal safety standards for AVs, clarify state preemption, and increase caps for the number of AVs allowed on the road. Disagreements over liability and labor impact still exist, but NHTSA's recent push to update its AV regulatory framework and deployment exemptions could push Congress to act or risk having Congress weigh in on federal AV policy. The Surface Transportation Reauthorization bill could serve as a possible legislative vehicle next year. Democrats will also look to the federal appropriations process to renew investments in clean energy vehicles. After Republicans eliminated funding for most vehicle technology programs, appropriations bills authored by Democrats may seek to provide funds for electric vehicles and battery technology, hydrogen, and other clean fuel vehicles. However, Democrats will not be able to reverse the invalidation of EPA's tailpipe standards or the relaxation of NHTSA's CAFE standards. While Democrats may wish to revive EV consumer tax credits and other clean vehicle incentives, the Trump Administration remains strongly opposed.

HEALTHCARE

Addressing healthcare costs is one of the key pillars of the Democrats' affordability agenda. Democrats are expected to demand reversal of the Medicaid cuts included in the One, Big, Beautiful Bill and reinstate the enhanced Affordable Care Act subsidies as a way to provide relief to middle-class families. The impact of Medicaid cuts on rural hospitals takes on even greater significance with a large number of the newly elected Democratic members hailing from rural districts. Progressive Democrats will call for policies to expand healthcare access through Medicare for All or lowering the current Medicare age of 65 to 55 or even 50, but this should be viewed more as a messaging exercise. Democrats will also push for policies to lower the cost of prescription drugs, which could include additional pharmacy benefit manager (PBM) reforms, improved access to lower-cost drugs like biosimilars, and pushing for expanded drug price negotiation under the structure created by the Inflation Reduction Act. This is in contrast to the Trump Administration's Most Favored Nation (MFN) drug pricing framework that Democrats have criticized. Democrats will look to strengthen federal protections for reproductive healthcare services. Health insurance companies are likely to become the target of Democrats' investigations over decisions to deny patient care.

With the realities of divided government, major healthcare overhauls are not expected over the next two years. Instead, Democrats will focus on reversing the Medicaid cuts and shoring up the Affordable Care Act early in the new Congress. Additionally, PBM reform enjoys bipartisan support and could become a part of any potential legislative package. The most viable path for healthcare legislation would be a must-pass healthcare "extenders" package that would address scheduled physician payment cuts and other expiring provisions. While Democrats will push for a healthcare package in the lame duck to address Medicaid cuts and other ACA subsidies, it seems more likely that Congress will pass a short-term measure during the lame duck and shift consideration of a health extenders package to the early stages of the new Congress. Lawmakers will likely look to attach additional health measures with bipartisan support, such as PBM reforms and the Biosimilar Red Tape Elimination Act.

ENERGY/PERMITTING

Congress has been trying to overhaul permitting since Democrats of the 117th Congress passed the Inflation Reduction Act (IRA) of 2022 to expedite clean energy projects the legislation incentivized. Permitting reform is an area that could see bipartisan compromise next Congress because President Trump and Republicans equally want to speed the process for permitting oil and gas pipelines, extraction of domestic resources and mining projects, as well as next-generation nuclear facilities. Senate action on permitting legislation is scheduled as the first order of business when members return to Washington this week. However, this could be yet another issue that gets punted to the 120th Congress when Democrats will be able to put their stamp on permitting reform. Environmentalists argue the proposal currently before the Senate is detrimental to pollution reduction, public health, and wildlife, while overly benefiting the fossil fuel industry. Permitting reform is also associated with data centers, which saw huge blowback in last week's election, only strengthening the position that Congress will wait until next year for permitting reform. When they take committee gavels in January, Democrats will develop permitting reform focused on renewable energy and storage. Yet, they will need 60 votes in the Senate to pass anything, so expect earnest negotiations with President Trump and Republicans to craft a balanced bill that can pass and be signed into law.

In addition to permitting reform, reinstating clean energy tax credits from the 2022 IRA will be a Democratic priority, along with protecting ratepayers and reducing gas prices, reinforcing the electric grid, and creating guardrails to protect land and other natural resources from data center development. Expect Republicans to play ball on grid reinforcements, energy prices, and data center oversight to address voter sentiment on these issues. Policies that could get traction include measures mandating that data centers pay for grid upgrades, bring their own power sources, and incorporate energy efficiency metrics.

AI/DATA PRIVACY

Regulations around Artificial Intelligence and data privacy will factor prominently in Democrats' agenda for the 120th Congress. This is also an area where there could be bipartisan compromise. Realistic legislative progress will occur primarily through targeted, narrow-scope bills rather than broad comprehensive regulatory efforts. Democrats will also use their oversight authority to investigate financial companies' AI-related exposure and how AI expansion is being financed. Look for forthcoming AI legislation that addresses financial security, consumer protection, algorithmic accountability, child safety, and job protection. Democrats will champion third-party testing and audit frameworks for burgeoning AI models, mandatory disclosure of AI-generated content—referred to as watermarking—and liability rules for AI developer-related harm.

On data privacy, expect efforts of this year's House Energy and Commerce Committee to advance data security legislation to be renewed, but under a Democratic framework. Democratic legislation will use a baseline data minimization standard as opposed to a regulatory ceiling preferred by Republicans that uses federal preemption to strip states of their authority to enact stricter protections. Democratic data privacy legislation can also be expected to prohibit predatory data-broker practices, include a Private Right of Action, and mandate more rigorous cybersecurity standards for critical infrastructure. However, data privacy efforts could stall due to perennial disagreements between Democrats and Republicans over the preemption of state privacy laws and the inclusion of a private right of action allowing consumers to bring their own lawsuits.

CONGRESSIONAL OVERSIGHT AGENDA

In the next Congress, Democratic leaders plan to use their subpoena power and investigative authority to launch a dual-front oversight agenda targeting executive branch actions and corporate practices. Democrats will focus on governmental ethics, agency decision-making, and federal procurement transparency. This oversight will touch on potential conflicts of interest involving administration officials and members of the Trump family. A particularly rigorous investigation is expected of Defense Secretary Pete Hegseth's management of the war in Iran, bombings of alleged drug boats, and potential corruption in defense contracts. Additionally, Congress is expected to investigate immigration enforcement operations and federal funding and workforce cuts. The Trump administration could assert executive privilege or delay compliance with document requests. In that case, Democratic committee chairs are poised to leverage subpoena power against private companies, trade associations, and federal contractors to ascertain related communications, contract terms, and internal records.

Corporate accountability and impact on consumer protection and affordability is the second prong of Democrats' oversight agenda. In addition to defense and national security targets, investigations will likely focus on companies involved with technology, data centers, AI, financial services, healthcare, and groceries. Democrats are planning probes into data centers' massive electricity and water demands, environmental impact, and effects on consumer utility costs. Additionally, they are expected to examine AI algorithmic transparency, financial services and consumer lending practices, corporate rollbacks of environmental and diversity commitments under political pressure, and pricing practices in the healthcare and grocery sectors.

Congressional oversight efforts will set the stage for legislative action and could act as a harbinger for parallel civil litigation and state attorney general investigations.

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