

Impact of the 2018 Midterm Elections



What Does it All Mean?

With the new Democratic House majority and Republicans maintaining control of the Senate, Washington, D.C., now enters a period of divided government in the run up to the 2020 presidential election. Democrats and Republicans, including President Trump, will have to compromise on a budget and impending debt limit and sequestration, as well as spending levels for the coming fiscal years in order to avoid a government shutdown. In addition, there appears to be a willingness to work together on some big ticket items, like infrastructure investment and drug pricing. The two parties may even be able to advance smaller policy initiatives impacting areas such as energy, financial services, cybersecurity, and trade.

Expectations, however, are for a politically-charged and highly partisan environment where both parties will be turning out messaging in preparation for 2020, not only in the form of legislation, but, also through committee hearings and investigations in the House. The Democratic House's new authority to direct oversight and investigation of the Trump administration could impact the pace of legislative activity if House committees prioritize oversight in favor of turning out legislation. Increased scrutiny of the executive branch may also slow the regulatory process as departments and agencies are bogged down responding to subpoenas and document requests.

While the House can be expected to tackle Democratic priorities on issues such as immigration and health care, the Senate will likely continue its focus on confirming judges and executive branch nominees with increasing the ranks of political appointees in the Trump administration becoming increasingly important in light of anticipated House investigations. The enhanced Republican majority in the Senate will make it much easier for President Trump to get his nominees confirmed. With more than 400 nominees currently pending and several senior Administration officials likely to step down in the coming months, this could prove to be one of the most significant impacts of the midterms.

Here is a look at the impact of yesterday's election on a number of major issues confronting Congress.

Oversight and Investigations

One of the most significant impacts of a Democratic majority in the House of Representatives will be increased oversight and investigations of the Trump Administration. For the first time in the Trump era, Democrats will have the ability to issue subpoenas to the executive branch. With their newfound House majority, Democrats will almost certainly begin robust oversight of the administration and open multiple investigations on a wide range of issues, including the President's taxes, business dealings, and the Trump Organization. Democrats have expressed concern over possible conflicts of interest of several senior administration officials. The House is also expected to increase the number of oversight hearings examining actions of the Trump administration on issues ranging from hurricane responses in Puerto Rico and the Virgin Islands to rollbacks of the Affordable Care Act and environmental regulations to Republican-enacted tax cuts to consumer financial protection to immigration policies enacted by executive and administrative action.



This is one of the few areas where Democrats will be able to act unilaterally without Senate or White House interference. As a result, the increase in oversight and investigations will likely not be limited to the administration. House Democrats are expected to launch multiple investigations examining a number of different business sectors. For example, pharmaceutical, tech, financial services, and oil and gas companies all could see increased scrutiny by a Democratic House.

In addition, the report from the Office of the Special Counsel could be released in early 2019 which may result in multiple committees opening investigations into Russian collusion, obstruction of justice, and could even lead to the House considering articles of impeachment.

Budget and Government Spending



Expect to see a marked change in the budget and appropriations process for Fiscal Year (FY) 2020. The ease with which Congress approved FY 2019 funding for nearly three-quarters of the federal government before the start of this fiscal year—the first time in more than 20 years that was achieved—will likely come to a screeching halt in the new Congress. Rather than a direct result of the election outcome, this instead can be attributed to the agreement governing spending for the last two fiscal years expiring. After two years of increased budgets, FY 2020 discretionary spending will be subject to much lower caps established by the Budget Control Act (BCA) of 2011. Expiration of the increased caps means the divided Congress and the President must reach a new agreement or federal discretionary spending will automatically be reduced by more than \$100 billion from current

levels, with more than half coming from defense.

Renewed interest in the federal debt, which is expected to approach \$1 trillion in the current fiscal year, will also be a prime topic next Congress. In response to the record debt, President Trump recently ordered federal agencies to reduce their FY 2020 budgets by 5 percent. While those cuts alone are unpopular in Congress, even further reductions would be required by the caps established under the BCA. Further complicating federal budgetary matters is the federal debt limit suspension that expires on March 1, 2019. Voting to increase the debt limit is always a difficult vote for members of both parties as illustrated by a showdown over the debt ceiling that led to the passage of the BCA back in 2011. The convergence of budget issues in 2019 could once again lead to a bipartisan agreement at some point next year or lead to a stalemate resulting in a government shutdown.

Energy/Environment

Democrats in the House can be expected to use their oversight powers to slow the deregulatory agenda of President Trump, particularly as it relates to energy and environmental policy, by forcing agencies to provide documents and summoning administration officials from the Environmental Protection Agency (EPA), the Department of Energy, and the Department of Interior to testify. In this area, the Trump administration has moved to cut budgets for renewable energy programs and lessen or repeal rules on fuel economy standards, coal-fired power plants, methane gas emissions, and offshore oil and gas drilling. These are the high-profile areas where House Democrats will likely investigate the administration's policy development and regulatory processes, agency operations, and related budgets.



A Democratic House majority could also reinstate a select committee on climate change similar to the one that existed under their leadership from 2007 – 2011. The committee would be tasked with presenting evidence to support eventual legislative opportunities such as those to boost energy efficiency and renewable energy, as well as strategies to mitigate climate change, such as limiting oil drilling and increasing the cost of coal mining on federal land.

While it will likely be too difficult for House Democrats to push through a comprehensive climate bill, as they did in 2009, they may attempt to pass smaller bills with more bipartisan support first. Examples of more moderate policies the House could approve and work with the Senate to enact include: energy efficiency measures, modernization of the electric grid to accommodate more energy sources, increased incentives for renewable energy, and more electric vehicle infrastructure.

Financial Services



As a result of the new Democratic majority in the House, a great deal of attention will be on the Consumer Financial Protection Bureau (CFPB). Democrats have long accused the Trump administration of taking steps to weaken the Bureau and will now be in a position to defend it. While many of the measures a Democratic House will approve related to the Bureau are unlikely to pass in the Republican-led Senate, House Democrats can protect the agency by denying Republicans the opportunity to pass legislation replacing the CFPB director with a bipartisan commission and continuing to fund the agency through appropriations. Without the chance for significant legislative changes, expect rigorous oversight from House Democrats, who are likely to hold a broad range of hearings examining the Bureau's past actions on issues such as payday lending, its handling of student loan issues, and the reorganization of its fair lending office.

While seen as a fierce critic of the President and many of the administration's policies, the incoming Chair of the House Financial Services Committee, Congresswoman Maxine Waters (D-CA), has also played the role of dealmaker with Republicans and has worked well with industry groups. While it won't be easy to reach agreements, Dodd-Frank reforms and housing finance reform, along with cybersecurity and FinTech issues will be a major focus of the new Congress.

In addition, there are several matters that must be addressed by Congress next year. The Export-Import Bank reauthorization is up for renewal in September 2019; the National Flood Insurance Program expires at the end of this November and reforms will likely be punted to the new Congress; and the Terrorism Risk Insurance Act (TRIA) needs to be reauthorized by the end of next Congress. Even in a divided Congress, these programs should eventually get addressed in a bipartisan manner and be renewed.

Health Care

With health care being a central theme in many of the newly elected House Democrats' campaigns, expect a vigorous review of the legislative and regulatory changes to the Affordable Care Act (ACA) that the Republican-controlled Congress and Trump Administration enacted over the last two years. The new House Democratic majority will be limited in its ability to enact health care legislation with Republicans still in control of the Senate and the White House. Therefore, proposals such as Medicare for All and additional subsidies for the state insurance exchanges will be next to impossible to achieve. Nevertheless, having a new House controlled by Democrats will put an end to any additional legislative encroachments by the Republicans to the ACA.



Lowering prescription drug costs could be one area where House Democrats may be more inclined to work with the Republican administration and the Senate. However, with the 2020 presidential election at stake, the House may avoid handing President Trump any significant legislative victories in this area.

Immigration/Justice



Immigration is another policy area where the new House Democratic majority is expected to use its oversight power to challenge President Trump's agenda, much of which has been implemented through executive order or administrative rule-making. While they could not overturn his administrative and executive actions, issues likely to be investigated include: the administration's family separation policy, the travel ban on citizens from certain countries, the decision to add a citizenship question to the 2020 census, as well as others.

Border wall funding will continue to be an issue if President Trump is unable to secure the funding he has requested for the southern border in the lame duck session of this Congress. If he is unsuccessful, it is doubtful either the Democratic House or the Senate with a slim Republican majority would approve it next Congress. The President could then try to cut a deal for some border wall funding in exchange for protection for individuals covered by the Deferred Action for Childhood Arrivals (DACA) program. However, a similar compromise failed in the past, and the effort would likely be a longshot. Regardless, House Democrats have prioritized action on DACA and will likely move legislation that gives permanent legal status and a path to citizenship to young, undocumented immigrants who came to the country as children. Depending on Senate committee chairmanship changes, it is possible that at least the Senate Judiciary Committee could also consider a DACA fix and other immigration measures such as green card quotas per country, H-1B visa program reforms, and agricultural worker shortages. Republican leaders, however, could block the measures from advancing to the full Senate.

Other areas Democrats have prioritized and that they could attempt to reach a compromise on with Senate Republicans include: prison/sentencing reform, gun control, and anti-human trafficking legislation.

Infrastructure

Infrastructure is the most commonly cited policy area where substantive legislative action and compromise are expected. President Trump has a plan which would leverage \$200 billion in federal spending to spur roughly \$1.5 trillion in state, local, and private sector funding on infrastructure. Separately, Republicans and Democrats in the House and Senate have put forth various plans that outline \$1 trillion-plus in infrastructure investment. Along with funding for highways, bridges, and transit systems, the proposals would also benefit (to varying degrees) water resources such as drinking and wastewater infrastructure, IT infrastructure such as increased access to high-speed internet, schools and airports, renewable energy infrastructure, and other items.



As is commonly the case with costly legislative initiatives, the challenge will be agreeing on how to pay for the investment. President Trump and retiring House Transportation & Infrastructure Committee Chairman Bill Shuster (R-PA) have suggested raising the gas tax to help pay for some of the program. Beyond that, there is little support in Congress for such an approach. Senate Democrats have proposed using savings from repealing tax cuts enacted in 2017 to pay for their own \$1 trillion infrastructure package. While there is agreement that our aging infrastructure is a priority, there is not consensus on how to finance new spending.

If Congress is unable to find common ground on a comprehensive infrastructure package, it can still be expected to take up separate measures related to water infrastructure and surface transportation. The Water Resources Development Act and the highway bill will need to be reauthorized in 2020, and Congress has been successful in meeting deadlines for those bills in recent years. Additionally, there could be issues that arise related to the implementation of the Federal Aviation Administration (FAA) reauthorization enacted in October.

Tax



Taxes are yet another area ripe for investigation in the new Democratic House. Expect extensive oversight of the Republican's Tax Cuts and Jobs Act of 2017, which Democrats criticize for cutting business taxes permanently while cutting individual taxes rates only temporarily through 2025. House Republicans voted to make the individual cuts permanent prior to the election, but the Senate did not act on their proposal. President Trump recently proposed a new 10 percent tax cut on middle-income earners and pledged to enact such relief which could also be a priority next Congress in the Republican-controlled Senate. However, it may be another issue where House Democrats want to withhold a legislative victory for President Trump in advance of the 2020 presidential election.

The new House majority will likely work to highlight other perceived inequities with the 2017 tax law, especially on the removal of the State and Local Tax deduction (SALT), and other benefits to high-income earners. Additionally, House Democratic leaders are also expected to utilize a little-known section of the tax code to review and possibly vote to make public President Trump's personal tax returns. Section 6103 allows the tax-writing committees to review confidential taxpayer information, including tax returns.

With the Senate remaining in Republican control, several areas of potential cooperation between the two chambers of Congress include retirement savings and pension legislation. If Congress fails to address either issue during the end of year lame duck session, look for action in both areas by the House and the Senate next year.

Trade

Trade is expected to be a major focus early in the 116th Congress. With Senate Majority Leader Mitch McConnell (R-KY) ruling out consideration of the United States – Mexico – Canada Agreement (USMCA) before the end of the year, consideration of the new trade agreement will likely be one of the first significant votes of the new Congress. Congressional Democrats have been critical of the Administration for not reaching out for their input and not regularly briefing them during the negotiations. With their new majority status in the House, Democrats will be key to the agreement's ultimate approval. There are likely to be many Democratic members who have concerns with the USMCA, so if the agreement is to be approved by a Democratic House next year, Democratic leaders must strike a delicate balance between the moderate, pro-free trade Democrats (who mostly won their seats in districts previously held by Republicans) and the more progressive members of the Democratic caucus who are skeptical of trade agreements, in general, and lack of specific mechanisms for enforceability in the USMCA.



The escalating trade war with China, ongoing tariffs on steel and aluminum, and looming tariffs on imported automobiles and auto parts could force the new Congress to play a more active role in trade policy. So far, Congress has allowed President Trump to use tariffs as leverage in trade negotiations. However, as negative effects of the tariffs begin to impact their constituents, especially farmers and potentially the automotive sector, the next Congress, with Democrats controlling the House, is likely to exercise more authority over trade policy than the current Congress.

For further information about any of these topics or questions about how the election results are affecting other areas, please contact Jim Brandell, Andy Buczek or Mary Beth McGowan.



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