The background of the entire page is a close-up, slightly blurred image of the American flag, showing the stars and stripes in shades of blue, red, and white. The flag appears to be waving or draped, creating a sense of movement and texture.

2018 Midterm Elections: Analysis and Outlook for the 116th Congress

Akin Gump
STRAUSS HAUER & FELD LLP

The 2018 Midterm Elections are over and the lame duck session of Congress has begun. Americans across the country cast their ballots for candidates for the House of Representative and the Senate in what was widely perceived to have been a referendum on President Donald Trump's first two years in office. This report explores the results of the election and the outcome in the battle for overall control of the House, Senate and state governors' mansions. The report looks ahead at what to expect in the coming weeks in the lame duck session of the 115th Congress and in the 116th Congress, where Democrats will now control the House and Republicans have maintained their control of the Senate.

Election Results

The election results are in and several important pieces of information can be gleaned from the ballots cast across the country. Note that all data is accurate as of 5:00 pm on Wednesday, November 14, 2018.

Presidential Approval and the Results

As noted in the previous Akin Gump report, presidential approval can have an impact on the performance of the president’s party at the ballot box in midterm elections, and 2018 was no exception. As seen in Table 1, when presidential approval is low, it generally results in losses for that president’s party. The bad news for President Trump is that his low popularity contributed to the losses that Republicans sustained in the House. The good news for the President is that those losses are not as large as some of his predecessors’. Moreover, President Trump was able to rally his party to victory in several key Senate races, knocking off at least four Democratic incumbents. Republican gains in the Senate bucked historic midterm norms for the party controlling the White House with low presidential approval ratings.

House of Representatives Results

As seen in Graph 1, Republicans presently hold the majority with 235 seats. The Democrats have 193 seats, and there were seven vacancies headed into the election. As many political prognosticators projected, the Democrats came out on top in the House elections. Based on CNN projections, Table 3 shows that Democrats flipped 33 seats currently held by Republicans while the GOP captured three seats from Democrats, leaving Democrats with a net gain of 30. Democrats only needed a couple of dozen seats to retake the majority. Thus, when the 116th Congress convenes in January, the Democratic Party will have well over 220 seats, returning the party to power for the first time in eight years. Both parties could see their seat totals rise, as victors in 10 contests remain undetermined. The party breakdown of the incoming House of Representatives can be found in Graph 2.

Previous Akin Gump election reports emphasized the predictive power of the generic ballot in forecasting which party will win the House majority. When the generic ballot favors the majority party by a wide margin or margins are tight, it generally portends a status quo result. However, when the generic ballot heavily tilts toward the minority party, it can lead to a change election, as it did on election night 2018. Table 2 captures this phenomenon. Given that the generic ballot was close to double digits in favor of Democrats, it should come as no surprise that the result was a Democratic takeover of the House.

Presidential Approval—Midterm Election Day

PRESIDENT	MIDTERM ELECTION	APPROVAL RATING ON ELECTION DAY	NET HOUSE	NET SENATE
Carter (D)	1978	52%	-15 Dem	-3 Dem
Reagan (R)	1982	43%	-26 GOP	-1 GOP
Bush 41 (R)	1990	58%	-8 GOP	-1 GOP
Clinton (D)	1994	46%	-52 Dem	-8 Dem
Bush 43 (R)	2002	63%	+8 GOP	+2 GOP
Obama (D)	2010	45%	-63 Dem	-6 Dem
Trump (R)	2018	40%	-20 GOP	No net gain or loss*

*Two races still uncalled
Source: Gallup

Table 1

115th Congress—House of Representatives



Graph 1

116th Congress—House of Representatives



Graph 2

Generic Ballot—Historical Comparison

ELECTION	GENERIC BALLOT, DAY OF ELECTION	OUTCOME IN THE HOUSE
2006	+11.5 Dem	Democratic Takeover
2008	+9.0 Dem	Democratic Hold
2010	+9.4 Rep	Republican Takeover
2012	+0.2 Rep	Republican Hold
2014	+2.4 Rep	Republican Hold
2016	+0.6 Dem	Republican Hold
2018	+7.3 Dem	Democratic Takeover

Source: RealClearPolitics

Table 2

The Seats That Flipped—House

DEMOCRATIC PICKUPS (33)	REPUBLICAN PICKUPS (3)
-------------------------	------------------------

AZ-02: Open	MN-01: Open
CA-25: Knight	MN-08: Open
CO-06: Coffman	PA-14: Open
FL-26: Curbelo	
FL-27: Open	
GA-06: Handel	
IA-01: Blum	
IA-03: Young	
IL-06: Roskam	
IL-14: Hultgren	
KS-03: Yoder	
MI-08: Bishop	
MI-11: Open	
MN-02: Lewis	
MN-03: Paulsen	
NJ-02: Open	
NJ-07: Lance	
NJ-11: Open	
NY-11: Donovan	
NY-19: Faso	
NY-22: Tenney	
OK-05: Russell	
PA-05: Open	
PA-06: Open	
PA-07: Open	
PA-17: Rothfus	
SC-01: Open	
TX-07: Culberson	
TX-32: Sessions	
VA-02: Taylor	
VA-07: Brat	
VA-10: Comstock	
WA-08: Open	

*Source CNN

Table 3

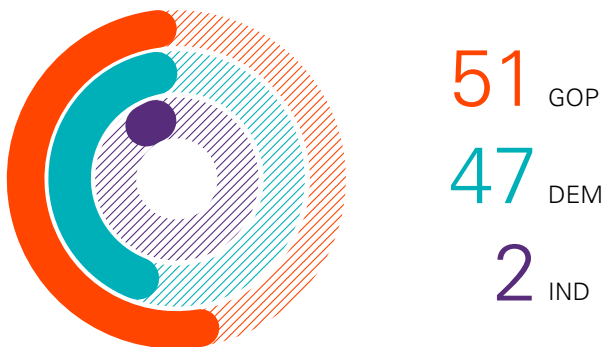
Senate Results

Unlike the House, where all 435 seats were up for reelection, only 35 seats, roughly a third, were in cycle in the Senate this year. As shown in Graph 3, going into the election, Republicans held a slim majority with 51 seats and Democrats and Democratic-caucusing Independents held 49 seats. While two seats remain to be decided, results so far indicate that the Senate GOP will have a minimum of 51 seats. As of this writing, the GOP has beaten three sitting Democratic senators in Indiana, Missouri and North Dakota. Republicans are ahead in Florida by a slim margin, which is awaiting a recount. Table 4 displays the seats that each party flipped. Republicans also held on to competitive seats in Tennessee and Texas, but lost seats in Arizona and Nevada, bringing their current total for the new Congress back to at least 51. At this

time, if Republicans hold on to the one state where it is currently undecided, Florida, and win a runoff special election in Mississippi on November 27, then the Republican total could go as high as 53 Senate seats. The Senate makeup in the forthcoming 116th Congress can be found in Graph 4.

One reason that Republicans in the Senate had better luck than their House counterparts has to do with the election map. Ten Democrats were up for re-election in states won by President Trump in 2016 compared to only one Republican running in a state that Hillary Clinton won. This map heavily favored the GOP from the start and made it more difficult for Democrats to take the majority given their exposure.

115th Congress-Senate



Graph 3

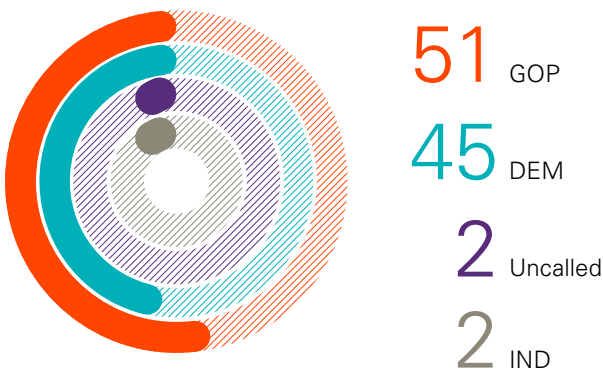
The Seats That Flipped—Senate

DEMOCRATIC PICKUPS (2)	REPUBLICAN PICKUPS (3)
NV: Heller	IN: Donnelly
AZ: Open	MO: McCaskill
	ND: Heitkamp

Source: CNN

Table 4

116th Congress-Senate



Graph 4

Gubernatorial Results

As seen in Graph 5, headed into Election Day, Republicans controlled 33 governors' mansions compared to the Democrats with 16. There is currently one Independent governor serving in Alaska. In 2018, 36 states held contests for their top state office. As predicted, Democrats won in several states that currently have Republican governors, showcased in Table 5. Democrats won six governorships away from the GOP and a Republican will replace the Independent in Alaska, resulting in a net gain of five for Democrats. As shown in Graph 6, the new overall gubernatorial split is, at a minimum, 23 for Democrats and 25 for Republicans. Either party could boost their totals depending on the outcome of the contested Georgia and Florida gubernatorial elections. Republican Brian

Kemp has declared victory in Georgia, but Democrat Stacey Abrams is contesting the result, leading most outlets to refrain from calling the race just yet. In Florida, the closeness of the race caused Democrat Andrew Gillum to challenge the results.

Control of states' governors' mansions can have a profound impact on state-based policy. However, there is also an important federal role that some of them play. In 2020, the Census Bureau will conduct the constitutionally required decennial Census. States will use the Census data to redistrict both state and federal legislative boundaries. The governor will play a role in the redistricting process, giving the party in power greater leverage to push forward a redistricted congressional map that favors their party.

Current Governors



Graph 5

The Seats That Flipped—Governors

DEMOCRATIC PICKUPS (6)	REPUBLICAN PICKUPS (1)
KS: Open	AK: Walker
IL: Rauner	
ME: Open	
MI: Open	
NM: Open	
WI: Walker	

Source: CNN

Table 5

New Governors



Graph 6

Exit Polling

Exit polls are a significant source of valuable information when attempting to discern which groups voted for which party.

Gender

There was a gender discrepancy between the parties in the exit polling. Women disproportionately voted for Democratic candidates by 59 percent compared to men. Men favored Republican candidates by 51 percent, a much smaller margin than the female vote. Table 6 shows the breakdown.

Exit Polling—Gender

GENDER	DEM	GOP
Female	59%	40%
Male	47%	51%

Source: National Election Pool

Table 6

Race

As seen in Table 7, another category that casts light on voting preferences is race. African Americans overwhelmingly voted for Democratic candidates, with Democrats taking 90 percent of the ballots that group cast. Republicans did best among white voters, winning 54 percent of that voting group. Hispanic Americans also voted heavily for Democrats, giving the party 69 percent of their vote. Asian Americans were more closely split between the two parties; however, Democrats prevailed with 54 percent of the vote.

Exit Polling—Race

RACE	DEM	GOP
White	44%	54%
African American	90%	9%
Hispanic	69%	29%
Asian American	54%	42%

Source: National Election Pool

Table 7

Age

Not surprisingly, younger Americans voted heavily for Democratic candidates on Election Day. Democrats earned 67 percent of votes from citizens aged 18-29. The battle for voters in the 30-44 bracket also favored the Democrats with 58 percent. The GOP had its best showing with older voters, with Republicans taking 50 percent of citizens aged 45-64 and 65 and older. Table 8 has the full results.

Exit Polling—Age

AGE	DEM	GOP
18-29	67%	32%
30-44	58%	39%
45-59	49%	50%
60 and older	48%	50%

Source: National Election Pool

Table 8

Contributor: Chase Hieneman

A Look Toward 2020

While Senate Republicans had a more desirable map in 2018, the tables will turn in 2020, a presidential election year. Whereas Republicans in 2018 only had to defend nine seats compared to Democrats 24 seats, in 2020, the GOP will be forced to defend 20 (21, if the Republicans prevail in the upcoming Mississippi runoff election). Democrats will only have 12 seats in that cycle.

The location of the Senate Republicans seats that are up is also of importance. Several GOP Senators will be running in what are considered highly competitive swing states. Republicans representing seven states—Colorado (Sen. Cory Gardner), Georgia (Sen. David Perdue), Iowa (Sen. Joni Ernst), Kansas (Sen. Pat Roberts), Maine (Sen. Susan Collins), North Carolina (Sen. Thom Tillis), as well as Arizona, which will have a new appointee after Sen. Jon Kyl leaves in January—are likely to face spirited challenges. Additionally, Democrats are likely once again to target Senate Majority Leader Mitch McConnell (R-KY), attempting to recruit a candidate that will make the race competitive in a conservative state.

Of those competitive states, all except Colorado broke for President Trump in 2016, although by slim margins. Maine gave a single electoral vote to President Trump while giving the rest to Hillary Clinton. Looking further back to 2012, President Obama carried Colorado, Maine and Iowa, while Arizona, Georgia, Kansas and North Carolina voted for Mitt Romney.

Though the map is much more generous to Democrats in 2020 compared to 2018, they will have to defend a couple of seats that are likely to draw a challenge. The Alabama Senate seat currently held by Sen. Doug Jones will be at the top of the Republicans' priority list. (Former Sen. Jeff Sessions announced his resignation as Attorney General recently and is likely to be the frontrunner if he chooses to run again in Alabama.) The GOP is expected to invest heavily in races in New Hampshire and Virginia.

Bottom line: Senate Republicans will need their gains from the 2018 midterms to have any hope of holding the Senate in 2020.

As it pertains to governorships, three southern states—Kentucky, Louisiana and Mississippi—will hold statewide elections in 2019. All three states handily voted for President Trump and Mitt Romney. Deep-red Louisiana currently has a Democratic governor and will likely field a strong GOP challenger, and the Kentucky gubernatorial race is already shaping up to be competitive.

In 2020, 11 states will hold gubernatorial elections, including the Trump-Romney states of Montana and North Carolina both of which have Democratic governors. Meanwhile, Republican incumbents will be eligible for reelection in Vermont, a deeply Democratic state, and New Hampshire, which will be a target of investment from presidential campaigns.

Contributor: Chase Hieneman

Lame Duck Preview

With the midterm elections in the rearview mirror, the 115th Congress is officially a lame duck. Notwithstanding this status, there remain plenty of agenda items that the legislature can, and must, address before the end of the Congress in December. With Democrats soon to control the House, there could be a shift in how lawmakers address these issues. With Democrats taking over the House majority in January, they are likely to be less willing to compromise on end-of-year legislation given the ability to have a greater influence by punting key issues to the 116th Congress. At the same time, Democrats may be looking to clear the decks on some legislative issues to start 2019 with a clean slate and opportunity to move forward their own policy agenda.

Leadership Elections

One of the early decisions to be made for the 116th Congress is who will lead the parties in each chamber. On November 14, three of the four party conferences chose their leadership team. In the House, Rep. Kevin McCarthy (R-CA) defeated Rep. Jim Jordan (R-CA) to become the next Republican Minority Leader, replacing retiring Speaker Paul Ryan (R-WI) as the head of the House GOP. The House Democratic Caucus will choose its leaders on November 28. Members of the current leadership team will campaign aggressively in order to maintain their seat at the table. A number of members are waiting in the wings before mounting any challenges so that they can assess the post-election landscape. Further announcements for a number of leadership races are likely. At present, House Democratic Leader Nancy Pelosi (D-CA) is likely to be elected Speaker of the House when the new Congress convenes in January.

On the Senate side, the Senate Republican Conference elected to keep Majority Leader Mitch McConnell (R-KY) as its leader on November 14. Senate Majority Whip John Cornyn (R-TX) is term-limited in his leadership post, but is expected to continue to sit at the leadership table in a counsel role appointed by Leader McConnell. The current members of the Senate GOP leadership moved up the leadership ladder, with Sen. John Thune (R-SD) becoming the new Senate Majority Whip. On the same day, Senate Democrats reelected Senate Minority Leader Chuck Schumer (D-NY) to leader them in the next congress. The rest of the Senate Democratic leadership team also largely remained the same..

Appropriations

One of the great bipartisan achievements of this Congress was the passage of the most appropriations bills on time in over two decades. Despite historic progress on appropriations before the September 30 deadline, the remaining spending fights in the lame duck session will be contentious. One of the seven remaining appropriations bills provides funding for the Department of Homeland Security (DHS), which is expected to lead to a heated debate over President Trump's insistence that Congress include funding for his proposed border wall that Democrats oppose. The current continuing resolution (CR) provides funding for the remaining federal agencies through December 7. It is likely that another short-term CR will be needed in early December to allow more time for the funding debate to reach a conclusion. If members cannot agree on the remaining spending bills before the holidays, a third CR may be needed to extend the debate into 2019. The incoming House Democratic majority may prefer this route, as Democrats will have more leverage when they take control of the lower chamber in January.

Tax Policy

A larger end-of-the-year package may also include a tax component. The size and scope of the tax package

will be determined by a political calculus on both sides regarding the urgency of various provisions and the overall mix of the package in terms of Republican and Democratic priorities. Since the Tax Cuts and Jobs Act (TCJA) was passed in December 2017, a number of technical fixes have surfaced that may be able to find a home in the lame duck. The Senate Finance and House Ways and Means committees have each worked on a package of fixes and improvements for retirement plans that may see a conclusion in the lame duck session. In addition, some of the provisions, referred to as “tax extenders,” technically expired on December 30, 2017, but Congress has a history of retroactively renewing these provisions, so they will be part of the larger negotiation on a possible tax package. However, the enactment of a long-term Federal Aviation Administration (FAA) authorization bill in early October that eliminated a “must pass” tax vehicle for the lame duck session, slightly reduces the odds of a tax package coming together in December.

Other possible tax-related items for the package include IRS reform, Health Savings Account modernization measures and possibly a delay of Affordable Care Act (ACA) taxes, such as the health insurance tax.

House Democrats may prefer waiting on some of these items until they take the majority in January, but that determination will be made based on the tenor and scope of the negotiations.

Other Items

There are a host of other issues that Congress may address in the lame duck session. Again, it all relies on whether Democrats are willing to participate in negotiations and deal making or prefer to wait until the 116th Congress. Other issues that Congress could address include:

- Flood insurance reauthorization
- Farm Bill conference report
- JOBS and Investor Confidence Act (“JOBS Act 3.0”)
- Medicare Part D coverage gap fix for pharmaceutical companies
- Disaster relief
- Action on recommendations from the joint select committees on Solvency of Multiemployer Pension Plans and Budget and Appropriations Process Reform.

Contributors: Hunter Bates, Lauren O’Brien, Chase Hieneman

Preview of the 116th Congress

The 116th Congress will return Democrats to power in the House for the first time in eight years. The House agenda for the next two years is expected to look very different than the last two years. House Democrats will seek to prioritize oversight and investigations of the Trump administration along with a range of legislative issues including healthcare reform (strengthening the ACA and lowering prescription drug costs), infrastructure, immigration, reversing the GOP tax cuts, campaign finance reform, criminal justice reform and increasing the minimum wage.

Senate Republicans are expected to continue their focus on what Leader McConnell calls “the personnel business,” with a good portion of the calendar being consumed with the confirmation of President Trump’s executive and judicial nominations. The Senate is likely to continue to be the best hope for policy consensus in light of the de facto requirement of a 60 supermajority to move most legislation in the Senate. Potential areas of compromise with House Democrats include appropriations, infrastructure, criminal justice reform and trade, including possible passage of the United States-Mexico-Canada Agreement (USMCA).

Below is a brief summary of key issue areas for the next Congress.

AGRICULTURE

The chairmen and ranking members of the Senate and House Agriculture Committees continue to try to find a path forward for a comprehensive Farm Bill. Senate Chairman Pat Roberts (R-KS) has indicated previously that he would like the conference report completed once Members return the week of November 12, but that seems unlikely at this point. Negotiators met on Veterans Day and have continued to work over the past couple of weeks, in an effort to resolve as many issues as possible, and have made some progress in select areas. However, the major areas of dispute—including differences over the nutrition and commodity titles—are still holding up progress. The goal is to have a final bill ready by December, and most people close to the negotiations remain optimistic a deal will be reached. However, commodity groups remain anxious, since other unrelated issues—such as the need to finish spending bills—always pose a danger of derailing progress during the lame duck session.

If conference negotiators fail to agree on a final package, Congress could simply pass a short-term extension, as they have done during previous Farm Bill debates, and the process would need to begin in January. If an extension occurs, many stakeholders

will work to ensure that includes funding for expiring or existing programs. Moreover, the bipartisan Senate Farm Bill is likely to be the starting point for the Farm Bill in the next Congress, if legislators do not reach a deal in the lame duck session this year.

Contributor: Hans Rickhoff

The 2018 election cycle saw a record number of Native Americans running for office, with at least six running for congressional seats. Two of those candidates won their elections and will be joining the House in January. Democrat Deb Haaland (Laguna Pueblo) won election in New Mexico's 1st district and Democrat Sharice Davids (Ho-Chunk Nation) won election in Kansas' 3rd district. Haaland and Davids will join the two existing Native American members in Congress, Reps. Tom Cole (R-OK, Chickasaw Nation) and Markwayne Mullin (R-OK, Cherokee Nation).

With Democrats taking control of the House, the chairmanships of the congressional committees will change. Democratic Leader Nancy Pelosi has initially indicated that the current Democratic ranking members of each committee will likely move into the chairmanship positions. For the House committees most relevant to Native American issues, this means that Reps. Raul Grijalva (D-AZ) at Natural Resources, Frank Pallone (D-NJ) at Energy and Commerce (E&C), Nita Lowey (D-NY) at Appropriations and Richard Neal (D-MA) at Ways and Means will all get the gavels of their respective committees. Subcommittees of importance will also get new chairs. This includes Reps. Ruben Gallego (D-AZ) at the Natural Resources Subcommittee on Indian, Insular and Alaska Native Affairs, Jared Huffman (D-CA) at the Natural Resource Subcommittee on Water, Power and Oceans, and Betty McCollum (D-MN) at the Appropriations Subcommittee on Interior.

With Republicans maintaining control of, and expanding, their majority in the Senate, there will also likely be changes on the committees relevant to Native American issues. At the Committee on Indian Affairs, leadership of the Committee will likely stay the same, with Sen. John Hoeven (R-ND) remaining as Chair and Sen. Tom Udall (D-NM) remaining as Vice Chair. However, there will be a vacancy on the Republican side given that Sen. Kyl is only serving as Senator through the end of this year. Sen. Kyl was temporarily filling the spot of Sen. John McCain who passed away in August. Since Sen. Heidi Heitkamp (D-ND) lost her re-election bid, her seat will be vacated but it may not be filled, as the Democrats could lose a spot on the committee if the Republican ratio for the majority increases.

The Finance Committee will select a new chair, given that Chairman Orrin Hatch (R-UT) is retiring at the end of this year. The likely contenders for the chairmanship are Sens. Chuck Grassley (R-IA) or Mike Crapo (R-ID). Sen. Ron Wyden (D-OR) is expected to remain as the Democratic Ranking Member.

Several issues are expected to arise in the 116th Congress that will be relevant to tribal nations.

Farm Bill

As noted above, the House and Senate are still negotiating a final version of a Farm Bill. If the two chambers cannot reach agreement by the end of the year, Congress will have to pass a short-term extension and start over in January. Tribal nations are interested in the following components of the Farm Bill: retention of the Office of Tribal Relations in the Office of the Secretary of the USDA; improving tribal access to rural development programs and infrastructure funding; self-determination authority for food procurement and local food inclusion in the food packages; self-determination authority for forestry management; and obtaining tribal parity in eligibility for conservation program resources, among other provisions.

Reauthorization of the Violence Against Women Act

This law was last authorized in 2013, and included expanded grants and jurisdiction for tribal nations to exercise jurisdiction over non-Indian offenders of domestic violence on Indian lands.

Infrastructure

House Democratic leadership has already indicated their interest in working with Republicans to develop an infrastructure package for the country. Tribal nations would likely support such an initiative but will want to make sure that tribal communities and projects are included.

Tax Provisions

Congress passed the TCJA in 2017 without any specific tribal provisions. There will likely be efforts to clarify and expand some provisions in that law and tribal nations will want to make sure that their tax priorities are included.

Congressional Oversight

With Democrats taking control of the House, the committees will be focused on conducting oversight of the various federal agencies. Tribal nations will likely want some oversight conducted on the agencies that handle tribal programs, such as the Interior Department, Environmental Protection Agency (EPA), Indian Health Service and Department of Housing and Urban Development. Issues that have become

of concern to tribal nations include the Interior Department's reluctance to process land-into-trust applications in a timely manner and the Secretary's overall authority to take lands into trust status, the longstanding vacancy of the Director position at the Indian Health Service, the delay in allocating federal housing dollars to tribal nations, and actions taken by EPA.

Overall, while gridlock is likely to reemerge as a constant in Washington, issues that affect tribal nations tend to be bipartisan and present good opportunities for Republicans and Democrats to work together. Therefore, the 116th Congress can present opportunities for tribal nations to accomplish some identified goals if there is adequate coordination and unity within Indian Country.

Contributors: Donald Pongrace, Allison Binney, Denise Desiderio

BUDGET AND APPROPRIATIONS

Before the Fiscal Year (FY) 2020 funding cycle can begin, Congress must finish its work on the seven remaining FY 19 appropriations bills that expire on December 7, 2018. (See "Lame Duck Preview" for more discussion on this topic.) Regardless of the outcome for FY 19, the 116th Congress will again face a difficult negotiation over a "budget caps" deal to address the Budget Control Act-imposed (BCA) caps on spending for FY 20 and FY 21. Since BCA was passed in 2011, Congress has acted multiple times to alleviate the impact of sequestration cuts mandated by the law. Typically, past deals have been bipartisan with a mix of spending increases and cuts (or other revenue raisers), while also occasionally serving as a vehicle to advance other policy measures and reforms. Another candidate for inclusion in such a package is the debt limit since the current suspension ends on March 1, 2019. However, with a newly divided Congress and a renewed concern on both sides about the growing deficit, a bipartisan budget caps package may be difficult to achieve until later in the year.

In lame duck session, the Joint Select Committee on Budget and Appropriations Process Reform is

expected to markup and report out some modest reform measures, including a biennial budgeting process. If finalized, the new two-year outlook for a congressional budget resolution would align well with a budget cap deal for the same period. The administration's budget proposal will be released in early February and kick off the FY 20 cycle. In response to the recent attention on spending and the deficit, the Trump administration has called for agency heads to trim 5 percent from their FY 20 budget proposals.

If the topline budget numbers for FY 20 are agreed to in an early budget caps deal, the newfound bipartisanship among House and Senate appropriators that led to the completion of 75 percent of FY 19 government spending on time in September may be able to endure in the 116th Congress. However, continued disagreement over border wall funding or a push for partisan policy riders may put a quick end to the camaraderie that characterized much of the appropriations process this year.

Contributors: Hunter Bates, Lauren O'Brien

CONGRESSIONAL OVERSIGHT AND INVESTIGATIONS

From a congressional investigations perspective, it is already widely acknowledged that the Trump administration will face an aggressive investigative environment once Democrats assume control—and receive subpoena power—in the House, with an almost immediate increase in the volume and seriousness of the congressional scrutiny it receives. In parallel, it is almost a certainty that Democrats will also scrutinize business sectors and individual entities with close ties to the administration. If history is any indication, such inquiries will proceed in parallel to direct oversight of the White House, and more broadly target sectors benefiting from particular policies championed by the administration or contacts maintained with the Executive Branch. Looking beyond the already hot-button issues receiving scrutiny from the current Congress—like drug pricing, opioids and the tech industry—this new class of private sector investigations tied to the Trump administration is likely to be a key component of Congress’s investigative agenda in 2019 and beyond. This will mean active oversight, for example, of companies perceived to be benefiting substantially from the tax law and not passing the benefits along to employees; or government contractors implicated in some of the administration’s most controversial policies or undertakings—including immigration and border security, disaster response issues, energy issues and the rollback of environmental regulations, just to name a few potential targets.

Of course, looking beyond the Trump administration, House Democrats will also look to conduct oversight on a range of time-tested issues that have tended to be a hallmark of Democratic investigative interest in recent years, including investigations related to consumer protection, civil liberties and privacy, big data and technology, labor issues, and the financial, health care and energy sectors, among others.

Consequently, a wide range of companies will face unique legal and reputational jeopardy, as these businesses could very likely receive extensive information demands (by way of subpoena) from congressional Democrats seeking to undermine the administration or to further their investigative

and legislative agenda. Such companies could also easily end up caught in the middle of competing political narratives—trapped in the crossfire between a Democratic House on offense and an aggressive White House/Executive Branch on defense, or between a Republican Senate and a Democratic House. In light of these looming dangers, it is critical for business executives in key sectors to appreciate the risks posed by congressional investigations and take early steps to prepare, even before Democrats pick up their gavels in January.

Contributors: Raphael Prober, Steven Ross, Megan Greer, Thomas Moyer

DEFENSE AND FOREIGN AFFAIRS

As noted above, with the Democrats taking control of the House, there will almost certainly be a sizable increase in congressional oversight and investigations efforts, and this includes investigations focused on the Department of Defense (DOD) and its various programs. It is expected that the Democrat takeover of the House will put downward pressure on overall defense spending, which will be contested by continual pressure from the Republican Senate to fund the Pentagon and the President's defense priorities.

It remains to be seen how much common ground can be found between the Democrat House and the Republican Senate in the year ahead. However, in addition to overall defense spending negotiations, policy battles between the two chambers are likely to include President Trump's proposed creation of a U.S. Space Force, nuclear weapons modernization programs, the U.S. military's involvement in U.S. border security, DOD readiness issues and debate surrounding another Base Realignment and Closure (BRAC) round.

There are a number of foreign policy issues that both Congress and the administration will need to address in the short term. Congress will have a role to play in many of these areas, including the snapback of Iranian sanctions, possible additional Russian sanctions, the bilateral and global impact of the burgeoning trade war with China, and the United States' bilateral relationship with Saudi Arabia and the broader regional implications that could result from any response to the Khashoggi investigation. The intermediate agenda also includes North Korea, the ongoing conflict in Afghanistan and the country's overall relationship with Pakistan.

President Trump's announced withdrawal from the Joint Comprehensive Plan of Action (JCPOA) in May 2018 started a process to re-impose sanctions on Iran. On November 5, 2018, phase two of the snapback took effect. Since America's JCPOA partners have not withdrawn, the threat of secondary sanctions against non-U.S. partners in Europe and Asia will be an ongoing issue for foreign allies, some U.S. companies, foreign individuals and many multinational companies.

Even before the midterm results were tallied, there were accusations and declarations of further Russian

meddling in the 2018 election. Before leaving for the October recess, Congress was already debating the need for more sanctions on Russia. This discussion will continue and possibly intensify if there is any conclusive evidence of meddling from Moscow. Meanwhile President Trump has reportedly discussed the possibility of withdrawing from the Intermediate-Range Nuclear Forces Treaty with Russia, raising significant questions about the future of the nonproliferation agenda between the two superpowers.

Regarding China, all eyes are on an upcoming bilateral meeting, on the sidelines of the G-20 Summit scheduled for November 30 and December 1 in Argentina, between President Trump and President Xi. The global impact of the trade war with China will only increase the pressure to change the status quo. Congress has yet to really engage, other than rhetorically, on trade policy with China. Look for that pressure to build the longer it takes to come to some agreement with China on tariffs.

Finally, the aftermath of the murder of journalist Jamal Khashoggi in Turkey has put pressure on America's bilateral relationship with Saudi Arabia. America's decades-long friendship with the Kingdom is one of the pillars to regional stability and security. There have been bipartisan calls from Congress to exert some punishment on the Kingdom, following their alleged involvement in his death at the Saudi Consulate. There are a number of pressure points that Congress can use, from the war in Yemen or a developing civil nuclear discussion, to arms sales or sanctions on individuals or the government itself. The mounting bipartisan pressure to act will likely result in some form of rebuke in the weeks or months to come, but it is too early to tell how biting this rebuke could be.

Contributors: Vic Fazio, Geoff Verhoff, Ryan Thompson

ENERGY AND ENVIRONMENT

With Democrats winning the majority in the House, and the Republicans maintaining control of the Senate and the White House, the emphasis of energy and environmental policy heading into the 116th Congress is likely to shift dramatically in the House, while maintaining its current course in the Senate and Trump administration.

Legislative Action

The new Democratic majority in the House is likely to shift the focus of energy and environmental policy to examining key environmental issues such as climate change and seeking to reverse the Trump administration's environmental policies and rollbacks. While there may be some opportunity for bipartisan action on targeted energy and environmental policy matters during the 116th Congress, the scope of any such issues is likely to be limited. For instance, with infrastructure development generally remaining a top bipartisan focus in Congress, it is possible that energy grid modernization, as well as pipeline or other energy infrastructure legislation (e.g., electric vehicle recharging), will have a chance of advancing in the House. Another potential means of bipartisan action would be the Energy Policy Modernization Act that previously passed in the Senate with 85 votes. That legislation reflected the substantive input of 80 senators and included provisions related to promoting efficiency, modernizing the electric grid, streamlining permitting, facilitating energy exports and ensuring a well-trained energy workforce, as well as a range of conservation and federal lands provisions. Given the broad bipartisan support of this measure historically, it could serve as a starting point for dialogue around advancing energy legislation in 2019.

Congress also will be active in other areas as well. House Democrats are likely to focus significant attention on climate change, through oversight hearings and possible legislation. Additionally, House Minority Leader Pelosi has said she will ask the House Democratic Caucus to create a select committee on climate change, which she said would "prepare the way with evidence for energy conservation and other climate change mitigation legislation."

House Democrats will focus investigative and legislative action around specific environmental rollbacks that the Trump administration and Republican Congress pursued in 2017-2018. Among the likely targets for House Democratic action are the Trump administration's rollback of the Obama administration's Clean Power Plan, promulgation of a new Affordable Clean Energy Rule (ACER), and efforts to relax automobile fuel economy requirements and other clean vehicle standards. The House also may pursue legislation to reverse the Republican's successful Congressional Review Act enactments during the 115th Congress on the Stream Buffer Rule, SEC Disclosure Rule for Resource Extraction and Methane Cap Rule.

The annual appropriations process is also likely to be a source of contention as appropriators use the "power of the purse" to fund or curtail funding to certain programs aligned with various policy initiatives.

Administration Action

The Trump administration is likely to continue to define its energy and environmental agenda based on the dual goals of "energy dominance" and deregulation. It will maintain an "all of the above" approach of exploiting U.S. fossil resources, including coal, while continuing efforts to dismantle Obama-era energy and environmental policies. Looking forward, the Trump administration is expected to utilize its regulatory powers on a range of domestic and international policy objectives.

The Trump administration will look to make a major change on emissions policy by replacing the Clean Power Plan with the alternative ACER, which would eliminate any numerical targets for greenhouse gas (GHG) emission reductions for existing coal plants, provide states greater flexibility for developing their GHG reductions plans and revise substantially New Source Review regulations. The EPA is expected to finalize ACER in 2019, with the likelihood that certain state attorneys general and other environmental stakeholders will file legal challenges to the new rule.

The administration is also expected to further protect coal and nuclear power sources by utilizing the Federal Power Act or the Defense Production Act to provide

assistance to coal and nuclear power plants. In June 2018, President Trump directed Energy Secretary Rick Perry to “take immediate steps” to prevent the premature closure of coal and nuclear power plants in the interest of grid reliability and national security, and thereafter directed a multiagency review of available tools to institute the directive.

On vehicle standards, the administration will finalize the fuel economy and GHG emission standards for light duty vehicles. In August, the administration issued a new proposed rule in August called the Safe Affordable Fuel Efficient Vehicle Rule (“SAFE Vehicle Rule”), which would freeze fuel economy and CO2 emissions standards at Model Year 2020 levels through Model Year 2026.

The administration will attempt to incentivize biofuels by expanding the Renewable Fuel Standard for biofuel sales. In an October announcement, President Trump directed the EPA to undertake a rulemaking

to allow year-round sales of E15 biofuels, which the agency appears likely to initiate in 2019. Lawmakers from agricultural states lauded the proposal, while petroleum producers and marketers, as well as consumers groups, criticized it. As with the ACER rulemaking, any proposed E15 rule likely would be subject to eventual court challenges.

Finally, the administration will look to promote and protect energy exports and investments by promoting exports of U.S.-produced energy resources and seeking to protect U.S. investment in energy resources abroad. The Trump administration continues to pursue an aggressive trade agenda relevant to the energy sector in a number of ways, including tariffs on key aspects of the industry’s supply chain, potential retaliatory action from other trading partners and favorable treatment for U.S. interests in proposed or prospective trade agreements.

Contributors: James Tucker Jr., Charles Johnson, Hank Terhune

FINANCIAL SERVICES

Under unified control of Congress and the White House, Republicans in the 115th Congress were able to pass the most significant modifications to the Dodd-Frank Wall Street Reform and Financial Protection Act since it became law in 2010. With the retirement of House Financial Services Committee Chairman Jeb Hensarling (R-TX) and the ascension of incoming Chairwoman Maxine Waters (D-CA), the policy landscape looks quite different for 2019. Still, there will be opportunities for bipartisan cooperation on a number of fronts.

Three significant programs need to be reauthorized before the 2020 presidential election. The National Flood Insurance Program—which in recent years has suffered through lapses and repeated short-term reauthorizations—expires at the end of November 2018, and remains a top agenda item for Republicans and Democrats. Also in need of reauthorization will be the Export-Import Bank (expires September 2019), which has been operating without a quorum since 2015, and the Terrorism Risk Insurance Program, which lapses at the end of 2020.

A divided Congress means that more controversial partisan pursuits will have to be sidelined. For example, Rep. Waters has criticized large banks, particularly when they have failed to protect consumers, but the likelihood of more aggressive anti-bank legislation making it through the House and Senate to the President’s desk remains small. Similarly, Republican efforts to reform the Consumer Financial Protection Bureau, either by subjecting it to appropriations, or giving it a board structure, will likely fail. However, key legislators have pointed to meaningful reforms that could gain bipartisan support. Policies that provide greater “financial inclusion” and facilitate capital formation could attract bipartisan support, as happened in the JOBS 3.0 legislation reported by Chairman Hensarling and Ranking Member Waters several months ago. All of the relevant players on both sides of the Capitol have an interest in housing finance reform and data breach legislation for the financial services sector.

Contributors: Brendan Dunn, Sean D’Arcy

HEALTH

With Democrats in control of the House, the 116th Congress is expected to sharpen its focus on health care access and consumer costs in 2019. In particular, a Democratic House is likely to advance legislation to address drug costs, though it remains unclear whether Democrats will agree to band together with President Trump to advance a unified bipartisan drug pricing agenda.

The administration's latest drug pricing proposal, the "International Pricing Index Model," would move payment levels for physician-administered drugs to payment levels based on international prices over a five-year period, would apply to 50 percent of the country and would cover most drugs in Medicare Part B. Pharmaceutical manufacturers, physician groups and other stakeholders already have weighed in with their concerns about the initiative, raising questions about whether it will be implemented in its current form.

Even if President Trump and House Democrats agree on a drug pricing plan, Senate Republicans are likely to have a different view and approach. One area of recent bipartisan focus has been the 340B Drug Pricing Program, with calls for reform from both sides of the aisle. Targeted legislation to reform the 340B Program could be considered in the next Congress; however, proposals to scale back eligibility or impose a moratorium on enrollment are unlikely to gain traction in a Democratic House. Another possible area of bipartisan support on health care costs is legislation to address billing for unexpected charges to consumers through balance billing of medical expenses for which they lack coverage.

Republican efforts to repeal the ACA featured prominently in Democrats' campaign messaging this cycle. The new Democratic majority in the House may consider legislation to shore up the health law and stabilize insurance markets, as well as legislation to protect individuals with pre-existing conditions, while courts consider a challenge to the ACA filed by 20 Republican attorneys general.

In addition, Democrats have made a substantial political bet on an expansion of Medicare. While we do not anticipate seeing "Medicare for All" legislation move through the next Congress, it will be an issue of

focus in committee hearings and certainly debate in the House.

Democrats' success in securing a majority in the House was accompanied by similar electoral victories in many states. As a result of successful ballot initiatives (in Idaho, Nebraska and Utah) and gubernatorial elections (in Kansas, Wisconsin and Maine), a number of additional states now are expected to expand coverage under Medicaid. By contrast, in other states where Democratic candidates for governor made it a platform issue (e.g., Florida, Georgia and Tennessee), Medicaid expansion may remain off the table in the near term.

The next Congress will also need to address a number of health-related expiring legislative authorities in 2019, including the delay of Medicaid cuts to Disproportionate Share Hospitals until September 30, 2019, and suspension of the ACA's medical device and health insurance taxes until December 31, 2019.

Finally, during anticipated negotiations over a budget caps deal [See "The Budgets and Appropriations" for more information] and expiration of the debt ceiling suspension on March 1, 2019, health care provider payments may be at risk as members look for "pay-fors" to offset the cost of the package.

Contributors: John Jonas, Todd Tuten, Martha Kendrick, Louis Agnello, Sean Feely

JUDICIAL AND EXECUTIVE BRANCH NOMINATIONS

Though not legislative in nature, one of the more significant long-term policy achievements of the Trump administration has been the nomination and confirmation of federal judges. The pace of confirmations has been historic, far exceeding that of his predecessor due to changes to the Senate rules that now allow for a simple majority vote in the Senate to end debate on a nomination and for confirmation. With continued Republican control of the Senate, the historic pace of judicial confirmations will continue.

In addition to two Supreme Court Justices, the Senate has already confirmed 53 district court judges and 29 circuit court judges. As of today, there are an additional seven circuit court nominees pending before the Senate Judiciary Committee, and the President has announced an intent to nominate an additional five. Thirty-one additional district court nominees have been reported by the Senate Judiciary Committee and are awaiting confirmation.

Contributor: Brendan Dunn

PRIVACY AND TECHNOLOGY

In the technology and telecommunications space, the House E&C is the primary policy driver. The Committee will have a number of issues to address, but key among them will be a greater emphasis on oversight of the Federal Communications Commission (FCC). Incoming Chairman Pallone and likely Subcommittee Chairman Mike Doyle (D-PA), often asserted in the 115th Congress that the Committee had all but abdicated its oversight role and that, given the policy changes the FCC was undertaking, more oversight was needed. Expect that to change under the Democratic-controlled E&C Committee. As for policy matters, privacy, net neutrality, broadband access and affordability, and spectrum access will drive the early agenda.

Privacy

From massive breaches of consumers' credit data to instances of misuse of consumer data, including the misappropriation of millions of consumers' personal data for political purposes, the last two years have sharpened consumers' focus on data privacy. In addition, California's new privacy law set to take effect in January 2020 and the threat of further legislation by other states, which would create a mosaic of privacy laws, has brought federal privacy legislation to the fore in the 115th Congress and it will remain there in the 116th. With Democrats in control of the House, the gavel at the full committee and subcommittee level on the House E&C Committee is

in the hands of members that will more forcefully lean on developing a federal framework. That framework will seek to expand the scope of protections afforded to consumers well beyond notice and consent and will likely provide consumers' greater control over their information, opportunities to access and correct information, and the ability to port their information.

One issue that may continue to delay House action is whether broadband Internet access providers should be regulated by the Federal Trade Commission (FTC), as they now are, or whether the House Democratic members will seek to re-establish a privacy framework overseen by the FCC. To the extent oversight remains with the FTC, a Democratic-led House is likely to provide the agency rulemaking authority and additional resources for enforcement. In the Senate, oversight authority is more settled, with a bipartisan group of senators supporting the FTC as the primary agency charged with enforcing any new requirements. The issue of rulemaking authority and its scope remains a sticking point. The Senate Commerce Committee has been working on a bipartisan basis to develop a framework, with Sens. Jerry Moran (R-KS), Roger Wicker (R-MS), Richard Blumenthal (D-CT) and Brian Schatz (D-HI) taking the lead.

Net Neutrality

Earlier this year, the Senate voted, under the Congressional Review Act, to overturn the FCC's Restoring Internet Freedom Order that replaced rules

adopted in 2015. The House, however, did not pass a companion resolution. Under a Democratic-controlled House, legislation to restore net neutrality rules will feature prominently on the E&C Committee agenda. Incoming Chairman Pallone and Subcommittee Chairman Doyle have a long history in leading the Democrats' efforts from the minority and have publicly stated that they intend to take up legislation in the 116th Congress. Sens. Thune and Schatz worked on bipartisan legislation during the 115th Congress, and their work may help pave the way for compromise legislation in the new Congress.

Broadband Access and Affordability

Rural and tribal lands have been the recipients of bipartisan support for funding to promote broadband deployment to these areas and those efforts will continue in the 116th Congress. Mapping was a key issue in every congressional hearing on the subject of broadband access and it was the subject of Government Accountability Office reports looking at broadband access on rural and tribal lands. Expect the 116th Congress to look at the broadband map used by

policy-makers to direct federal funding to their districts and push for solutions to ensure the map correctly shows where broadband access is lacking.

Regarding affordability of broadband, a Democratic-controlled House will likely use its oversight role to ensure that the FCC is not altering the Lifeline Fund, which provides reduced-cost telephone and broadband service to low-income families.

Spectrum

Spectrum access and the coming 5G wave have driven the spectrum agenda in the 115th Congress. In late October, President Trump announced the creation of a National Spectrum Strategy to look at ways to improve spectrum management and facilitate the next generation of networks. As the 116th Congress convenes with a Democratic-controlled House, spectrum access and sharing will likely remain a focus for the E&C Committee, but the Democrats may lean more towards alternative approaches to licensing, such as exploring broader sharing and unlicensed uses.

Contributors: Ed Pagano, Greg Guice, Jennifer Richter, Douglas Brandon

TAX

The tax-writing Senate Finance and House Ways and Means Committees will have a different look to them in the 116th Congress as both will have new chairmen. Rep. Neal will take the gavel of the Ways and Means Committee. Rep. Neal will approach the Committee with an eye towards building a legacy of legislative wins along with a more robust approach to oversight. The Ways and Means Committee will likely begin the year by focusing on three key areas with potential tax implications: infrastructure, pensions and retirement security, strengthening the ACA. These efforts will be supplemented by oversight designed to set the stage for future legislation, including hearings on the TCJA.

On the Finance Committee, Sen. Grassley is expected to take the gavel after the retirement of current Chairman Hatch. This will be Sen. Grassley's second tour of duty as Chairman, having previously served as either Ranking Member or Chairman of the Committee from 2001 through 2010. In his prior stint

as Chairman, Sen. Grassley focused on the prevention of tax avoidance and job creation. Thus, aside from potentially working with the House on retirement, transportation and TCJA corrections, it would not be surprising to see Finance's oversight arm become more active once again.

From an administration perspective, the first half of next year will be focused on finalizing regulations implementing the TCJA. While the Treasury Department hopes to finalize the deemed repatriation, full expensing and 199A pass-through deduction regulations by the end of 2018, regulations implementing the global intangible low-tax income (GILTI), base erosion and anti-abuse tax (BEAT) and foreign derived intangible income (FDII) provisions won't be finalized until 2019. President Trump has also made a 10 percent "middle class" tax cut a priority for the start of the 116th Congress, but specifics on that policy proposal have yet to be determined.

Contributors: Zachary Rudisill, Lauren O'Brien, Arshi Siddiqui, Jeffrey McMillen

President Trump will continue to drive a robust trade agenda in the 116th Congress, including threatened tariffs and new trade agreement negotiations. However, with Democrats taking control of the House, he faces a more complicated picture for passage of the recently agreed to USMCA as well as increased oversight demands from a more active Ways and Means Committee.

Tariffs

President Trump has already imposed additional tariffs on more than half of all imports from China. Tariffs on most of those products are set to increase from their current 10 percent duty to 25 percent on January 1, 2019. The President has also threatened to impose additional duties on all remaining Chinese imports, which, according to public reports, may be proposed as early as this December. To date, members of Congress from both parties have been reluctant to challenge tariffs on Chinese imports. However, with Democrats in control of the gavel on the Ways and Means Committee, expect greater oversight into the administration's overall China strategy. By contrast, members have demonstrated a greater willingness to confront the President on the use of tariffs on products he deems a national security threat, such as steel and aluminum, under Section 232. Expect Democrats to hold hearings on why certain companies were awarded exclusions while others were not. In addition, the Commerce Department's investigation into the national security threat posed by foreign autos must be completed by February 17, 2019. After the report is delivered to the President, he has 90 days to decide how to remedy the threat, if one is found. The President will likely seek to use the threat of auto tariffs as leverage in negotiations just launched with the European Union and Japan, two of the biggest sources of car imports to the United States.

Agreements

Conventional wisdom is that the Democrats taking control of the House in the next Congress will make passage of the USMCA more difficult. In particular, Democrats may be highly reluctant to

give the President a "win" on such a high profile campaign promise, especially as we head into this presidential election cycle. U.S. Trade Representative Robert Lighthizer has made a point of trying to negotiate provisions in the USMCA that would appeal to traditional Democratic constituencies, such as strengthened language on labor protections, provisions increasing the use of American inputs in automobile manufacturing, and limits on the availability of the investor-state dispute settlement mechanism. Labor groups and traditionally trade skeptical House Democrats have yet to declare their position on USMCA, but Ambassador Lighthizer is hoping that some labor groups will end up supporting it and that will encourage a significant number of Democrats ultimately to support the deal. The last time a Republican president tried to get a Democratic House to pass free trade agreements the President had negotiated was in 2007. That was when then-Speaker Nancy Pelosi forced the administration of President George W. Bush to make a variety of changes to the agreements with Peru, Panama, Colombia and Korea before the Congress would agree to consider bills to implement them. In the so-called "May 10th Agreement" – announced on May 10, 2007 – the administration agreed to reopen those deals to make changes on issues such as labor, intellectual property and the environment. There is some speculation that Democrats may also seek changes to the USMCA, although whether they will in fact do so, on what issues, and whether those changes would require reopening the text of the USMCA or could be accomplished through side letters are all open questions. Complicating the calculus is that unlike in 2007, which involved four new agreements, here the USMCA is intended to replace a trade agreement that has already been in force for twenty-five years. President Trump may seek to withdraw from the North American Free Trade Agreement to pressure the Congress to consider USMCA as written rather than seek major changes. Under Trade Promotion Authority (TPA), the President kicks off congressional consideration of the USMCA by submitting an implementing bill, which senior administration officials have said could come as soon as late February or early March next year.

Personnel

The 116th Congress will bring familiar faces to new roles in the trade world. With the retirement of Sen. Hatch, the Senate Finance Committee will have a new chairman, likely Sen. Grassley, whose agricultural background will be a marked shift from Sen. Hatch's emphasis on intellectual property. With six Republican Ways and Means members retiring or seeking higher office and at least four losing their re-election campaigns, there may be several new Republican members of the Committee even as their share of the Committee's seats shrinks. The retirement of Rep. Dave Reichert (R-WA) guarantees that there will

be a new Republican leader of the Ways and Means Subcommittee on Trade. The current Democratic leader of the Trade Subcommittee is Rep. Bill Pascrell (R-NJ), who has close ties to the labor movement and a history of opposing trade agreements. He may face a challenge for the chairmanship of the subcommittee from one of the Committee's Democrats more favorable to trade liberalization, such as Rep. Earl Blumenauer (D-OR) or Rep. Ron Kind (D-WI). In all cases, expect the incoming Chairman, Rep. Neal, and the Trade Subcommittee chair to conduct aggressive oversight of the administration's trade agencies and request more regular trade briefings as required under TPA.

Contributors: Brian Pomper, Scott Parven, Justin McCarthy, Joshua Teitelbaum

TRANSPORTATION AND INFRASTRUCTURE

With Democrats in control of the House, President Trump's campaign pledge to approve more infrastructure spending may come to fruition.

Surface Transportation

Democrats have expressed a willingness to work with Republicans and the White House on infrastructure legislation. While infrastructure spending historically has had bipartisan support, the question remains how to pay for it and what types of infrastructure to include in the legislation. There likely will be debate around user fees and taxes to pay for transportation investment since the current gas tax does not cover current spending and Congress may be reluctant to direct general fund revenues to transportation without offsets. This debate will involve not only the authorizing committees, but the tax writing, budget and appropriations committees. The House Transportation and Infrastructure Committee and the Senate Environment and Public Works, Commerce, Science and Transportation, and Banking, Housing and Urban Affairs committees will hold hearings on the reauthorization of the Fixing America's Surface Transportation ("FAST Act"), which expires on September 30, 2020, with the potential of fast-tracking legislation and making it more robust and multimodal. With Democrats in control of the House, there should

be greater support for transit programs, including capital investment grants and projects that focus on livability and resiliency as a result of climate change. We expect continued discussions around public private partnerships and innovative financing as tools for leveraging resources, but with a focus on providing greater options to project sponsors. Another factor that could build support for a transportation bill is if Congress were to restore earmarks. Some members in each party support earmarks, but Democratic members have been more vocal regarding their reinstatement to gain control over funding decisions now being made by the Trump administration.

Congress' attempt to pass autonomous vehicle legislation in the 115th Congress stalled over disagreements regarding how to address cybersecurity and privacy protections; access to automated driving system data by third parties; preemption and arbitration clauses; and standard-setting and exemption authority. In the meantime, the Department of Transportation (DOT) issued a third version of its autonomous vehicle guidance wherein it urged cooperation between the public and private sectors and stated its intent to issue rules governing motor vehicle safety standards and autonomous commercial vehicles. A Democratic House E&C Committee likely will introduce legislation that seeks to balance advancing autonomous vehicle

technology with ensuring safety through more robust oversight by DOT. It is telling that incoming E&C Committee Chairman Pallone criticized DOT's most recent guidance by saying that DOT was continuing to abdicate its mission of preventing injuries and saving lives.

Aviation

Since Congress passed a five-year FAA bill that the President signed into law on October 5, the 116th Congress will oversee the implementation of the legislation by the DOT and FAA. Among other things, the legislation authorizes funding for five years, provides greater flexibility for airports to participate in the airport privatization program, directs DOT and FAA to undertake rulemakings and requires studies on a number of issues, including how to pay for airport infrastructure in the future, travel by persons with disabilities, and a range of issues affecting airlines, airports and passengers.

The legislation also includes a robust subtitle focused on unmanned aircraft systems (UAS) or "drones" that addresses FAA advances in low-altitude UAS traffic management (UTM) systems and services, provides the DHS and the Department of Justice with counter-UAS authorities, and studies financing options related to UAS regulation and safety oversight, among other issues. While most of these UAS provisions will take some time for DOT and FAA to interpret and implement, expect for the UAS industry and stakeholders to keep Congress well informed about how they perceive that pace of progress. As is usually the case with this innovative technology, the perception of inaction by the regulator or a desire for a status report could easily stimulate the appropriate committees to take some sort of action, perhaps in the form of hearings or briefings.

Appropriations

Transportation programs have enjoyed spending increases over the past two fiscal years in light of the bipartisan budget agreement. It is not clear whether Congress will continue spending increases or revert to pre-FY 18 spending levels although the incoming chair of the House Appropriations Committee, Rep. Lowey, has already said publicly that she will restore transportation spending to pre-sequestration levels.

If Congress were to bring back earmarks, it would change the dynamic of the appropriations process, likely making it easier to pass bills by ensuring members of Congress can fund local projects.

Contributors: Susan Lent, Mark Aitken, Ryan Thompson, Greg Guice

Committee Leadership

The following chart lays out who will potentially and/or likely be the chair and ranking member of each standing committee in both Chambers.

As the dust settles on the outcome of the midterm election, it remains to be seen how committee ratios, or how many seats each party gets on a given committee, will change given the results. One thing is certain, with Democrats coming into the House majority, the ratios will allow for Democrats to add a significant number of new members to the

committees. Conversely, Republicans are set to lose seats on committees now that they are in the minority. The ratios will likely be the same as the current majority/minority split on most committees.

In the Senate, Republicans are waiting for the yet to be called race in Florida and the runoff in Mississippi, to see if their ratios will increase. It is likely that if Republicans can reach 53 seats that their ratios will increase by two, allowing them to add additional senators to each committee.

Contributor: Samuel Olswanger

Senate

AGRICULTURE, NUTRITION & FORESTRY COMMITTEE

115th - Chair & Ranking:	Pat Roberts (R-KS)	Debbie Stabenow (D-MI)
116th - Likely Chair & Ranking:	Pat Roberts (R-KS)	Debbie Stabenow (D-MI)

APPROPRIATIONS COMMITTEE

115th - Chair & Ranking:	Richard Shelby (R-AL)	Patrick Leahy (D-VT)
116th - Likely Chair & Ranking:	Richard Shelby (R-AL)	Patrick Leahy (D-VT)

ARMED SERVICES COMMITTEE

115th - Chair & Ranking:	Jim Inhofe (R-OK)	Jack Reed (D-RI)
116th - Likely Chair & Ranking:	Jim Inhofe (R-OK)	Jack Reed (D-RI)

BANKING, HOUSING & URBAN AFFAIRS COMMITTEE

115th - Chair & Ranking:	Mike Crapo (R-ID)	Sherrod Brown (D-OH)
116th - Likely Chair & Ranking:	Mike Crapo (R-ID) Pat Tommey (R-PA)	Sherrod Brown (D-OH)

BUDGET COMMITTEE

115th - Chair & Ranking:	Mike Enzi (R-WY)	Bernie Sanders (I-VT)
116th - Likely Chair & Ranking:	Mike Enzi (R-WY)	Bernie Sanders (I-VT)

COMMERCE, SCIENCE & TRANSPORTATION COMMITTEE

115th - Chair & Ranking:	John Thune (R-SD)	Bill Nelson (D-FL)
116th - Likely Chair & Ranking:	Roger Wicker (R-MS)	Bill Nelson (D-FL)* Maria Cantwell (D-WA)

ENERGY & NATURAL RESOURCES COMMITTEE

115th - Chair & Ranking:	Lisa Murkowski (R-AK)	Maria Cantwell (D-WA)
116th - Likely Chair & Ranking:	Lisa Murkowski (R-AK)	Maria Cantwell (D-WA) Joe Manchin (D-WV)

ENVIRONMENT & PUBLIC WORKS COMMITTEE

115th - Chair & Ranking:	John Barrasso (R-WY)	Tom Carper (D-DE)
116th - Likely Chair & Ranking:	John Barrasso (R-WY)	Tom Carper (D-DE)

FINANCE COMMITTEE

115th - Chair & Ranking:	Orrin Hatch (R-UT)	Ron Wyden (D-OR)
116th - Likely Chair & Ranking:	Chuck Grassley (R-IA) Mike Crapo (R-ID)	Ron Wyden (D-OR)

FOREIGN RELATIONS COMMITTEE

115th - Chair & Ranking:	Bob Corker (R-TN)	Bob Menendez (D-NJ)
116th - Likely Chair & Ranking:	Jim Risch (R-ID)	Bob Menendez (D-NJ)

HEALTH, EDUCATION, LABOR & PENSIONS COMMITTEE

115th - Chair & Ranking:	Lamar Alexander (R-TN)	Patty Murray (D-WA)
116th - Likely Chair & Ranking:	Lamar Alexander (R-TN)	Patty Murray (D-WA)

HOMELAND SECURITY & GOVERNMENTAL AFFAIRS COMMITTEE

115th - Chair & Ranking:	Ron Johnson (R-WI)	Claire McCaskill (D-MO)
116th - Likely Chair & Ranking:	Ron Johnson (R-WI)	Gary Peters (D-MI)

INDIAN AFFAIRS COMMITTEE

115th - Chair & Ranking:	John Hoeven (R-ND)	Tom Udall (D-NM)
116th - Likely Chair & Ranking:	John Hoeven (R-ND)	Tom Udall (D-NM)

JUDICIARY COMMITTEE

115th - Chair & Ranking:	Chuck Grassley (R-IA)	Dianne Feinstein (D-CA)
116th - Likely Chair & Ranking:	Lindsey Graham (R-SC) Chuck Grassley (R-IA)	Dianne Feinstein (D-CA)

RULES & ADMINISTRATION COMMITTEE

115th - Chair & Ranking:	Roy Blunt (R-MO)	Amy Klobuchar (D-MN)
116th - Likely Chair & Ranking:	Roy Blunt (R-MO)	Amy Klobuchar (D-MN)

SELECT COMMITTEE ON ETHICS

115th - Chair & Ranking:	Johnny Isakson (R-GA)	Chris Coons (D-DE)
116th - Likely Chair & Ranking:	Johnny Isakson (R-GA)	Chris Coons (D-DE)

SELECT COMMITTEE ON INTELLIGENCE

115th - Chair & Ranking:	Richard Burr (R-NC)	Mark Warner (D-VA)
116th - Likely Chair & Ranking:	Richard Burr (R-NC)	Mark Warner (D-VA)

SMALL BUSINESS & ENTREPRENEURSHIP COMMITTEE

115th - Chair & Ranking:	Jim Risch (R-ID)	Ben Cardin (D-MD)
116th - Likely Chair & Ranking:	Marco Rubio (R-FL)	Ben Cardin (D-MD)

SPECIAL COMMITTEE ON AGING

115th - Chair & Ranking:	Susan Collins (R-ME)	Bob Casey (D-PA)
116th - Likely Chair & Ranking:	Susan Collins (R-ME)	Bob Casey (D-PA)

VETERANS' AFFAIRS COMMITTEE

115th - Chair & Ranking:	Johnny Isakson (R-GA)	Jon Tester (D-MT)
116th - Likely Chair & Ranking:	Johnny Isakson (R-GA)	Jon Tester (D-MT)

*Results pending in the Florida Senate race.

House

AGRICULTURE COMMITTEE		
115th - Chair & Ranking:	Mike Conaway (R-TX)	Collin Peterson (D-MN)
116th - Likely Chair & Ranking:	Collin Peterson (D-MN)	Mike Conaway (R-TX)

APPROPRIATIONS COMMITTEE		
115th - Chair & Ranking:	Rodney Frelinghuysen (R-NJ)	Nita Lowey (D-NY)
116th - Likely Chair & Ranking:	Nita Lowey (D-NY)	Kay Granger (R-TX) Robert Aderholt (R-AL) Tom Cole (R-OK) Mike Simpson (R-ID)

ARMED SERVICES COMMITTEE		
115th - Chair & Ranking:	Mac Thornberry (R-TX)	Adam Smith (D-WA)
116th - Likely Chair & Ranking:	Adam Smith (D-WA)	Mac Thornberry (R-TX)

BUDGET COMMITTEE		
115th - Chair & Ranking:	Steve Womack (R-AR)	John Yarmuth (D-KY)
116th - Likely Chair & Ranking:	John Yarmuth (D-KY)	Steve Womack (R-AR)

EDUCATION & THE WORKFORCE COMMITTEE		
115th - Chair & Ranking:	Virginia Foxx (R-NC)	Bobby Scott (D-VA)
116th - Likely Chair & Ranking:	Bobby Scott (D-VA)	Virginia Foxx (R-NC)

ENERGY & COMMERCE COMMITTEE		
115th - Chair & Ranking:	Greg Walden (R-OR)	Frank Pallone (D-NJ)
116th - Likely Chair & Ranking:	Frank Pallone (D-NJ)	Greg Walden (R-OR)

ETHICS COMMITTEE		
115th - Chair & Ranking:	Susan Brooks (R-IN)	Ted Deutch (D-FL)
116th - Likely Chair & Ranking:	Ted Deutch (D-FL)	Susan Brooks (R-IN)

FINANCIAL SERVICES COMMITTEE

115th - Chair & Ranking:	Jeb Hensarling (R-TX)	Maxine Waters (D-CA)
116th - Likely Chair & Ranking:	Maxine Waters (D-CA)	Patrick McHenry (R-NC) Frank Lucas (R-OK) Blaine Luetkemeyer (R-MO) Bill Huizenga (R-MI) Sean Duffy (R-WI)

FOREIGN AFFAIRS COMMITTEE

115th - Chair & Ranking:	Ed Royce (R-CA)	Eliot Engel (D-NY)
116th - Likely Chair & Ranking:	Eliot Engel (D-NY)	Mike McCaul (R-TX)

HOMELAND SECURITY COMMITTEE

115th - Chair & Ranking:	Mike McCaul (R-TX)	Bennie Thompson (D-MS)
116th - Likely Chair & Ranking:	Bennie Thompson (D-MS)	Mike Rogers (R-AL)

HOUSE ADMINISTRATION COMMITTEE

115th - Chair & Ranking:	Gregg Harper (R-MS)	Robert Brady (D-PA)
116th - Likely Chair & Ranking:	Zoe Lofgren (D-CA)	Rodney Davis (R-IL)

JUDICIARY COMMITTEE

115th - Chair & Ranking:	Bob Goodlatte (R-VA)	Jerry Nadler (D-NY)
116th - Likely Chair & Ranking:	Jerry Nadler (D-NY)	Steve Chabot (R-OH) Doug Collins (R-GA)

NATURAL RESOURCES COMMITTEE

115th - Chair & Ranking:	Rob Bishop (R-UT)	Raúl Grijalva (D-AZ)
116th - Likely Chair & Ranking:	Raúl Grijalva (D-AZ)	Rob Bishop (R-UT)

OVERSIGHT & GOVERNMENT REFORM COMMITTEE

115th - Chair & Ranking:	Trey Gowdy (R-SC)	Elijah Cummings (D-MD)
116th - Likely Chair & Ranking:	Elijah Cummings (D-MD)	Jim Jordan (R-OH) Justin Amash (R-MI) Paul Gosar (R-AZ)

RULES COMMITTEE

115th - Chair & Ranking:	Pete Sessions (R-TX)	Jim McGovern (D-MA)
116th - Likely Chair & Ranking:	Jim McGovern (D-MA)	Tom Cole (R-OK) Rob Woodall (R-GA)

SCIENCE, SPACE & TECHNOLOGY COMMITTEE

115th - Chair & Ranking:	Lamar Smith (R-TX)	Eddie Bernice Johnson (D-TX)
116th - Likely Chair & Ranking:	Eddie Bernice Johnson (D-TX)	Frank Lucas (R-OK)

SMALL BUSINESS COMMITTEE

115th - Chair & Ranking:	Steve Chabot (R-OH)	Nydia Velázquez (D-NY)
116th - Likely Chair & Ranking:	Nydia Velázquez (D-NY)	Steve King (R-IA) Blaine Luetkemeyer (R-MO)

TRANSPORTATION & INFRASTRUCTURE COMMITTEE

115th - Chair & Ranking:	Bill Shuster (R-PA)	Peter DeFazio (D-OR)
116th - Likely Chair & Ranking:	Peter DeFazio (D-OR)	Sam Graves (R-MO) Jeff Denham (R-CA)

VETERANS' AFFAIRS COMMITTEE

115th - Chair & Ranking:	Phil Roe (R-TN)	Tim Walz (D-MN)
116th - Likely Chair & Ranking:	Mark Takano (D-CA)	Phil Roe (R-TN)

WAYS & MEANS COMMITTEE

115th - Chair & Ranking:	Kevin Brady (R-TX)	Richard Neal (D-MA)
116th - Likely Chair & Ranking:	Richard Neal (D-MA)	Kevin Brady (R-TX)

PERMANENT SELECT COMMITTEE ON INTELLIGENCE

115th - Chair & Ranking:	Devin Nunes (R-CA)	Adam Schiff (D-CA)
116th - Likely Chair & Ranking:	Adam Schiff (D-CA)	Devin Nunes (R-CA)

Conclusion

The first two years of the Trump presidency were marked by full Republican control of the federal government. That will change come January when Democrats in the House assume control of the chamber. As this report has shown, such a change is likely to have broad implications on oversight and policymaking moving forward. Akin Gump will continue to monitor developments and report on the latest activity coming out of Washington.

Key Contacts

For more information, please contact your regular Akin Gump lawyer or advisor, or:



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More information on Akin Gump's congressional investigations practice can be found [here](#).

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