

Post-Election Update 2018

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OVERVIEW

2018 MIDTERMS: The Power of Women, Possibility, and Partisan Rancor

By [Scott Segal](#) and [Dee Martin](#)

The 2018 midterm elections showcased the power of women, both as candidates and as a key voting demographic. The elections represented a new political moment for women candidates who ran and were nominated in record numbers, particularly in the Democratic party. In total, 272 women ran for House, Senate, or Gubernatorial seats this year. This phenomenon is closely linked to the national gender gap of 25 points in favor of Democrats, which played a particularly key role in highly educated suburbs.

Tuesday's results also illustrate the power of possibility, with voters siding against newly vulnerable incumbents and in favor of anti-establishment candidates across the country. While the ideological middle of both parties was well represented, progressive Democratic candidates like Beto O'Rourke and Andrew Gillum and anti-establishment Republicans Brian Kemp and Kris Kobach still managed to draw considerable attention and support, signaling increasingly credible challenges from the outer wings of both parties.

Additionally, the elections took place on—and in many ways helped stoke—a toxic and perilous political landscape characterized by negative and fear-inspiring advertisements, the long shadow of potential tampering by foreign states, ideologically motivated domestic terror threats, and tense developments with our allies abroad. The partisan rancor shows few signs of abating, especially as the establishment consensus of both parties continues to fray.

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U.S. House of Representatives: Democratic Agenda “For the People” ... or Anti-Trump Obstructionism?

The House has changed control and Democrats are now in the majority. Gains for Democrats came primarily from suburban districts Hillary Clinton carried in 2016 like Virginia District 10 (Rep. Barbara Comstock's district), Illinois District 6 (Rep. Peter Roskam's district), and Kansas District 3 (Rep. Kevin Yoder's district). Democrats also made gains in heavily Republican suburbs like Virginia District 7, where Abigail Spanberger defeated Tea Party member Rep. David Brat. Democrats entered with an advantage due to the historically high rate of Republican retirements that surrendered the benefits of incumbency in extremely tight races.

Minority Leader Nancy Pelosi (D-CA) looks likely to ascend to the speaker position over prospective progressive and/or younger challengers. Her speakership would occur despite broader divisions in the party between its long-term establishment leadership and a wave of new candidates and elected officials seeking to pull the party left. The position of minority

leader is expected to go to Rep. Kevin McCarthy (R-CA), who has been on the inside track since Speaker Paul Ryan (R-WI) announced his retirement. Majority Whip Steve Scalise (R-LA), who has been spirited around the country along with Rep. McCarthy, will also vie for leadership, but is unlikely to pose a major challenge.

The broader change in control also means committee gavels will change hands. It is an open question whether incoming chairs will focus primarily on articulating a new Democratic agenda or on obstructing Trump administration policy goals. Most likely, they will choose a combination of both. Already, the presumptive chairs of two House committees, Energy and Commerce and Oversight and Government Reform—Reps. Frank Pallone (D-NJ) and Elijah Cummings (D-MD), respectively—have indicated they will greatly increase the number and intensity of inquiries into the administration.

The commitments of the ascendant chairman herald an onslaught of oversight across committees, issues, and departments. Committees will likely take particular interest in issues related to the President's finances, the Mueller investigation, and the affairs of cabinet officials already subject to ethics inquiries. These inquiries will also focus on industries perceived to have aided in the development of controversial regulatory actions, such as the Department of Energy Grid Resiliency Proposal, and recent moves at the Environmental Protection Agency (EPA) and the Bureau of Land Management (BLM) to relax methane regulations.

One major policy focus for House Democrats may be [climate change](#) and countering the administration's narrative on energy and environmental regulations. Minority Leader Pelosi recently indicated she may bring back the Select Committee on Energy Independence and Global Warming that stood from 2007-2011 and assisted with major cap-and-trade legislation in 2009.

In the midst of these investigations, it is possible that both parties could find common cause on a handful of legislative issues, including [infrastructure](#). Bipartisan legislation on any such issue would require a well-crafted compromise to navigate Democrats' desire to buck the President, and internal divisions among Republicans on issues like infrastructure funding.

U.S. Senate: Statewide Voting Efforts Boost Republican Candidates

As the results stand, Republicans expanded their Senate majority to 54-46. Republicans defended seats in key states like Arizona and managed to defeat vulnerable Democratic incumbents in Missouri, North Dakota, and Indiana. Democrats did, however, make one pickup in Nevada where Jacky Rosen defeated Dean Heller.

Senate Majority Leader Mitch McConnell (R-KY) and Minority Leader Chuck Schumer (D-NY) will continue to lead their respective parties in the 116th Congress, but both parties are poised to make changes to committee leadership. Specifically, Republicans will select chairs for two key committees: Foreign Relations, currently led by retiring Sen. Bob Corker (R-TN), and Finance, chaired by retiring Sen. Orrin Hatch (R-UT). Leadership is likely to remain constant on committees with energy and environment jurisdiction: Energy and Natural Resources, and Environment and Public Works. If Sen. Bill Nelson (D-FL) goes down to defeat, Democrats will select a new ranking member for the Senate Commerce Committee. The position falls to Sen. Maria Cantwell (D-WA), but since she is the ranking member of the [Energy and Natural Resources Committee](#), the position may instead go to Sen. Amy Klobuchar (D-MN).

The Senate will likely see considerable action on the 182 executive branch nominees and 71 federal judges that have yet to be confirmed. Additionally, the Senate will likely face a number of high-profile nomination fights, with multiple members of the cabinet reported to be considering leaving in the near future, including Attorney General Jeff Sessions, Secretary of Commerce Wilbur Ross, Secretary of the Interior Ryan Zinke, and Secretary of the Treasury Steven Mnuchin. Additionally, the Senate will consider key appointments at EPA and the Federal Energy Regulatory Commission (FERC), including the possible formal nomination of Acting EPA Administrator Andrew Wheeler, as well as a new FERC commissioner.

While room for agreement will be slim, Senators will have to iron out a compromise on certain must-pass issues such as a debt ceiling increase. Additionally, Senators may work together on legislation to address the nation's opioid crisis, like Sen. Lamar Alexander's (R-TN) *Opioid Crisis Response Act (2018)*, which passed 99-1. In the energy space, committees of jurisdiction will likely focus on incentivizing energy infrastructure, protecting key assets from cyberattacks, and new technologies in areas like carbon utilization.

And Outside of Washington

Election Day was also important outside of Washington, DC. 36 states held gubernatorial elections this cycle. Democratic pick-ups (a half-dozen or so) are important for policy developments pushed down to the state level in light of the current administration's approach to cooperative federalism in regulation. Further, governors elected this time around will still be in office as redistricting proceeds in 2021. Thirty states also elected attorneys general (AG), increasingly important on energy, environment, healthcare and other issues affected by multistate litigation. The four flips to newly-minted Democratic AG's could have impacts on infrastructure and oil and gas issues in states like Michigan and Colorado.

We also were watching state ballot initiatives very closely this cycle, given the profound implications many had on energy issues in particular. In Washington state, the much-watched Initiative 1631 that would have imposed a \$15 carbon tax per metric ton (increasing thereafter by \$2 per year until 2035 goals were met) failed by 12 points. A ballot initiative requiring Arizona to source 50 percent of its electricity from renewables by 2030 also failed by almost 40 points. While a similar initiative passed in Nevada, it will have to pass again before becoming operative. In addition, a Colorado ballot measure imposing distance requirements on oil and gas development—an effective ban if passed—failed by about 15 points and did not enjoy the support of either nominee for governor. In each case, the regulated community took the ballot measures seriously and addressed them with sophisticated advocacy campaigns—a sign to come as more issues devolve to the state level.

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ENERGY: Energy Dominance Meets Congressional Oversight

By [Scott Segal](#), [Christine Wyman](#) and [Anna Burhop](#)

Since the outset of the Trump administration, the executive branch has issued robust statements regarding energy policy—from regulatory reform and executive orders to

recognizing the foreign policy implications of energy dominance and security. Look for a new Congress to examine the success of the administration in meeting its objectives, as well as the legality of the mechanisms it has deployed.

Grid Reliability – A Priority for Everyone

Concern over the reliability of the electrical grid has been a mainstay in the administration's agenda to stop the war on coal and the premature retirement of coal-fired and nuclear power generation. From proposing financial support for baseload power plants to an aggressive deregulatory agenda, the administration has consistently made the case that maintaining coal-fired and nuclear power generation capacity is critical to the continued reliability of the electrical grid. The argument often comes at the expense of renewables and natural gas.

With Democrats in control of the House, we expect continued attention paid to the reliability of the electrical grid, but with a focus on the ability of renewables and clean energy sources to diversify and modernize the electrical grid, coupled with the need for advanced energy storage to integrate these resources into the grid. With Rep. Bobby Rush (D-IL) likely leading the House Energy and Commerce Committee Energy Subcommittee, look for the subcommittee to delve into opportunities for the federal government to advance battery storage and hydrogen fuel cell technologies and eliminate significant economic, regulatory, and market barriers. Cyber security will continue as a matter of interest to both parties.

The discussion of Federal Energy Regulatory Commission (FERC) leadership in the lame duck session and beyond will offer yet another opportunity to discuss the issues of reliability and resilience against the backdrop of assertion of FERC independence.

Continued Permitting Reforms for Energy Infrastructure Could Fuel Congressional Oversight

Since the campaign, President Trump has made clear his intention to advance a comprehensive infrastructure program. While Congress has yet to advance a viable plan, the administration has been successful in advancing regulatory reforms intended to improve the predictability and transparency of the permitting of energy infrastructure. The Council on Environmental Quality, Department of the Interior, and the Fish and Wildlife Service have all taken significant steps in modernizing the implementation of NEPA, ESA, and other federal environmental requirements—with further reforms likely. Democrats and public interest groups have decried the reforms as little more than regulatory rollbacks for the energy industry.

With Rep. Raul Grijalva (D-NM) likely chairing the House Natural Resources Committee, administration actions to streamline permitting requirements are expected to take center stage for oversight by committee Democrats. Attention will likely fall on whether the reforms were driven by “special interests” potentially to the detriment of health and the environment, with particularly close attention to any inappropriate relationships between the administration and industry. The House oversight is likely to do little to slow the administration's permitting reform agenda, and, in the end, may encourage support for even broader reforms. Should changes occur at the top of the Interior Department, eventual confirmation discussions could afford another opportunity for oversight.

Where Are the Efficiency Standards?

Often overlooked in the assortment of climate change policies is the role of energy efficiency standards for appliances issued by the Department of Energy (DOE). Ratcheting down these standards to improve energy efficiencies was a major component of the Obama

administration's climate strategy. Not surprisingly, the Trump administration has shown less interest in advancing these standards, and House Democrats have taken notice.

In the week leading up to the election, Democratic leadership on the House Energy and Commerce Committee sent Secretary of Energy Rick Perry a letter requesting information on DOE's alleged failure to publish efficiency standards. With the Democrats in control of the House, those same members are poised to assume committee leadership positions, including unilateral subpoena power. Expect this power to be used to obtain documents and testimony on the status of the DOE efficiency program and what is preventing DOE from issuing standards.

What Does this Mean for You?

Forces greater than the administration or Congress will continue to push for greater diversity in the U.S. energy mix—greater development and trade in natural gas; greater renewables; greater investment in diverse transportation fuels. Look for congressional Democrats to pick up on campaign themes supportive of change in the energy marketplace and to scrutinize closely proposed regulatory reforms, reliability initiatives, and key energy confirmations at FERC, Interior, and elsewhere.

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ENVIRONMENT: Democrats to Articulate Environmental Priorities via Newly Robust Oversight

By [Scott Segal](#), [Jeff Holmstead](#), [Anna Burhop](#), and [Christine Wyman](#)

Numerous changes taking place at the Environmental Protection Agency (EPA)—in the regulatory sphere as well as organizationally—provide the new Democratic House majority plenty of fodder for inquiries as they work to ramp up oversight of the Trump administration's actions on the environment. In tandem with a likely pending effort to confirm Andrew Wheeler as the non-acting EPA Administrator, look for oversight hearings to draw sharp lines around the Democratic Party's leading environmental priorities.

Administration Initiatives Set for Scrutiny

Since taking office, the Trump administration has worked steadily to shake things up in the environmental arena. Administration appointees have pursued broad regulatory reforms on items such as scientific transparency and cost-benefit analysis. They have started the process of repealing key Obama administration policies and rules such as the Clean Power Plan and Waters of the United States. They have also sought to improve the efficiency of federal agencies through aggressive restructuring and downsizing.

With a change in House leadership, each of these initiatives is set to fall under the microscope. The Democratic-led House Energy and Commerce Committee may exercise its new unilateral subpoena authority (established by Republicans in 2015) if they consider the agency's responses to requests for information subpar. Expect hearings to focus on the agency's climate change rules, enforcement of clean air and clean water rules, implementation of *Toxic Substances Control Act* reforms, and the science used to support agency actions, including

efforts to restructure outside advisory panels like EPA's Science Advisory Board. Budget proposals, restructuring, and general management of EPA will be fair game as well.

Climate Change and Chemical Safety Back in Focus

With President Trump following through on promises to “cancel the Paris Climate Agreement” and repeal the Clean Power Plan, climate policy discussions will return to the spotlight in a Democratic-controlled House. Given that EPA is on track to finalize the Affordable Clean Energy (ACE) rule in March, both the rule itself and its development will inevitably be the subject of numerous hearings and information requests. Democratic leadership has indicated its intention to reestablish the Select Committee on Climate Change, a panel with oversight authority but little legislative jurisdiction. The committee could prove an effective mechanism for framing the climate debate in the House even as other committees address legislative proposals.

With Rep. Frank Pallone (D-NJ) poised to assume the chairmanship of the Energy and Commerce Committee and Rep. Eddie Bernice Johnson (D-TX) leading the House Committee on Science, Space, and Technology, expect climate change proposals and hearings to be held early and often. As an original co-sponsor of the *Frank R. Lautenberg Chemical Safety for the 21st Century Act* (Chemical Safety Act), Rep. Pallone also will use his new post to scrutinize EPA's implementation of the Chemical Safety Act and the regulated community's involvement. Rep. Pallone is a long-time member of the committee, well-known to the regulated community, and his New Jersey seat has afforded him an understanding of manufacturing industries. Industry could do worse.

Fuels Issues

Although the Renewable Fuel Standard (RFS) will remain a topic of discussion, the President's attempts to mediate the negotiations of refiners and the ethanol lobby may have shifted some of the pressure off of Congress. While legislation has yet to be introduced—and since this is a regional issue rather than a partisan one—a change in House leadership will minimally impact any potential for RFS reform. Mandatory ratchets in volume levels will end in 2022, at which point EPA assumes full control of establishing volumetric guidelines. Accordingly, congressional reforms to the RFS program will continue to be discussed, particularly since the President has already granted the biofuels sector its long-sought volatility waiver.

Water Contaminant Initiatives on Democrats' Radars

EPA has committed to taking tough action on drinking water contaminants since the beginning of the Trump administration. From lead and copper standards to widespread contamination from nonstick chemicals used in Teflon, EPA has announced a series of initiatives intended to ensure clean drinking water for all. On the other hand, public interest groups have decried these efforts as greenwashing. With Democrats in control of the House, we expect a similar outcry. Democrats are likely to focus on the slow pace by which EPA is advancing these initiatives, as well as a perceived lack of direct federal engagement on topics such as per- and polyfluoroalkyl substances (PFAS).

What Does this Mean for You?

The appetite for regulatory reform will continue in the Trump administration, but will increasingly be met by oversight activities in the House of Representatives. The national conversation on climate change policy will also advance through hearings and proposed legislation. Companies in the energy and manufacturing space will be well-advised to analyze the effects of climate proposals, offer a supportive narrative for regulatory reform initiatives,

and prepare for potential oversight and investigations.

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INFRASTRUCTURE: A Perennial Priority in Search of Viable Funds

By [Anna Burhop](#)

Despite longstanding bipartisan interest, numerous “Infrastructure Week” celebrations, and four existing proposals (including one from the White House), comprehensive infrastructure legislation failed to get off the ground in the 115th Congress. While a lack of urgency has been partly to blame—Congress in 2015 passed a five-year authorization bill, creating more than ample time to act—a lack of viable long-term funding mechanisms remain the primary roadblock to progress.

Nevertheless, advancing an infrastructure package is a must for the next Congress for the simple reason that the current program authorization is set to expire in the next two years. House Democrats have identified infrastructure as a top priority for the 116th Congress, and their new proposal will likely build off of the \$1 trillion proposal that surfaced last year.

At the end of the day, authorization for the expenditure of funds is only helpful if the dollars are there to carry out that authorization. Discussions surrounding the need to fix the insolvency of the Highway Trust Fund—the underlying structure of which has lain unimproved for decades—are sure to reappear. Congress will need to make every dollar go further. Watch for a round of heated debate over providing money for a program that everybody agrees is needed, but few agree just how to fund.

Could Congress Deliver this Time Around?

Each category of infrastructure is authorized separately (surface transportation, water resources, etc.), with each jurisdiction distributed among a handful of House and Senate Committees. On the Senate side, traditional surface transportation (roads, bridges, and rail)—typically the primary focus of a “highway bill” or “infrastructure package”—falls to the Committee on Environment and Public Works (EPW) and the Committee on Commerce, Science, and Transportation (Commerce). Sen. John Barrasso (R-WY) and Sen. Tom Carper (D-DE) will likely remain Chair and Ranking Member, respectively, of EPW. At Commerce, Sen. Roger Wicker (R-MS) is poised to become the new Chairman, as current Chairman John Thune (R-SD) is term-limited. If Sen. Bill Nelson (D-FL), who is current Ranking Member, gives way to defeat in Florida, the ripple effect could extend all the way to the Budget Committee: Sen. Maria Cantwell (D-WA), current Ranking Member on the Energy and Natural Resources (ENR) Committee, could take Sen. Nelson’s Ranking Member slot at Commerce.

On the House side, primary jurisdiction lies with the Committee on Transportation and Infrastructure. Inevitable shakeups in this committee, such as Rep. Sam Graves’ (R-MO) replacement of retiring Chairman Bill Shuster (R-PA) as top Republican, could ultimately help push development of an infrastructure bill. Republicans and Democrats will have to find ways to work together to pass a legislative package, and Rep. Graves’ reputation as a behind-the-scenes

consensus builder bodes well for potential cooperation with Democratic counterparts led by likely new Chairman Peter DeFazio (D-OR).

Several items must be resolved between Democrats and Republicans, in the House and Senate alike, if progress is to occur. Key divisive issues include how to balance private financing (upon which the President's 2017 proposal exclusively relied upon) with traditional funding mechanisms, as well as Democrats' willingness to partake in a legislative effort that could give Trump a "win" heading into the 2020 Presidential elections even if they claim credit for the success of a legislative package.

Role of the White House

While White House support is important for building public support that could translate into legislative momentum on infrastructure, its actual ability to deliver the goods is limited. Indeed, while addressing America's infrastructure needs constituted a high-profile campaign promise of candidate Trump, the ultimate burden—and authority—to deliver on that promise rests squarely with Congress. The Administration will focus on ways to motivate Congress to pass legislation before the 2020 elections. Expect the debate over infrastructure—and the tension between environmental safeguards and project delivery—to feature on the presidential campaign trail regardless of the level of progress occurring in Congress.

What Does This Mean for You?

Shakeups in the key committees of jurisdiction, paired with the need to address a drained trust fund, make some form of action on an infrastructure package inevitable in the next Congress. The scope and scale of that action is the key question. Stakeholders invested in the possibility of a big-ticket infrastructure initiative should stay engaged with both parties, in both chambers, as the Democratic-ruled House and the Republican-ruled Senate grapple with their balance of power—and priorities.

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TAXES: Trump Tax Returns, TCJA Oversight, and Repeal & Replace 2.0

By [Liam Donovan](#)

The *Tax Cuts and Jobs Act (2017)* is here to stay, but that won't stop ascendant House Democrats from seeking to repeal and replace the legislation. Meanwhile, oversight of the President's tax returns could lead to partisan fireworks that color the rest of the agenda.

Attempted Tax Cuts Rollback

House Democrats are likely to seek at least a partial rollback of the Trump tax cuts that most candidates ran against on the campaign trail. The effort would function much like House Republicans' attempts to repeal the *Affordable Care Act (2010)* under President Obama—a messaging exercise that satisfies a political promise even if it yields little in the way of substantive change.

Among the leading priorities likely to emerge from Democratic proposals is a higher corporate tax rate, targeted between 25 and 27 percent. Such a rate hike would yield hundreds of billions of dollars of notional revenue that could be put toward progressive policy priorities such as expanding the earned income tax credit or furthering tax cuts to low- and middle-income individuals. Other elements of the law potentially on the chopping block of significance to the business community: the deduction for income from pass-through entities such as S-corps, REITs, and MLPs, especially for individuals earning more than \$1 million per year.

Overall, expect a great deal of oversight on the law, its passage, and how companies are perceived to have responded (i.e. favoring stock buybacks over wage growth), as well as a harsh spotlight on specific provisions that may benefit the Trump empire.

Trump Tax Returns

Perhaps the most visible—and politically explosive—item on the House Ways and Means Committee agenda will be examining President Trump’s tax returns. Under a seldom-used 1924 law, the chairs of the respective congressional tax committees are authorized to request the return of any taxpayer. This sets the committee on a collision course with Treasury Secretary Steven Mnuchin, who would ultimately oversee the response to any such requests. Whether this information is readily furnished, and how it is used, could determine whether any bipartisan work on other tax issues (outlined below) is possible.

Potential Legislative Initiatives

Some areas of potential bipartisan overlap do exist. Top items include a potential deal on the expired tax provisions known as extenders, needed technical tweaks to the *Tax Cuts and Jobs Act*, a potential savings and retirement package, and Multiemployer Pensions (MEPs). A tax title of some magnitude is almost assured in Q1, if not earlier, to address one or more of these items.

The President himself made news in the weeks before the election promising a “middle-class tax cut” of 10 percent, a rejoinder to a similar proposal offered by 2020 presidential hopeful Sen. Kamala Harris (D-CA). While details have yet to materialize, President Trump expressed an openness to working with Democrats on such a plan, suggesting at a post-election press conference that he would even be willing to consider “a little bit of an adjustment” to current rates.

The rest of the committee’s agenda is likely to focus on more meat-and-potatoes issues such as preserving Medicare and Social Security—areas that reinforce traditional Democratic priorities while forcing Republicans to grapple with entitlement reform, an area where the party’s position is out of step with the President’s campaign promises.

While not a tax issue *per se*, if an infrastructure package has any hope of passage, it will require a bipartisan breakthrough to settle on an acceptable funding mechanism. To this end, keep an eye out for the possible launch of a Ways and Means Committee Transportation Subcommittee, an idea championed by Rep. Earl Blumenauer (D-OR) to focus on infrastructure-specific revenue.

Finally, as Democrats continue to prioritize climate change and emissions concerns in their national agenda, the Ways and Means Committee will function as a clearinghouse for any carbon-related tax proposals.

Key Figures on the Tax Scene

The tax-writing committees feature new leadership on both sides of Capitol Hill. Rep. Richard Neal (D-MA) takes over as chairman of the Ways and Means Committee. Rep. Neal is seen as one of the more business-friendly Democrats on the panel, and one with the ability to work across the aisle, though he will face pressure from his party to hold the line. For their part, House Republicans lose six committee members to retirements and another four to defeat, but the number and identities of new members won't be clear until the parties determine how to deal with the shifting ratios.

On the Senate side, the retirement of Finance Committee Chairman Orrin Hatch (R-UT) after seven terms opens the door for the likely return of Sen. Chuck Grassley (R-IA) as chairman. Sen. Grassley would have two years remaining should he choose to exercise his seniority. A farmer by trade, Sen. Grassley is a champion of his state's agriculture industry and would prioritize tax incentives for ethanol and other biofuels.

Tax Cuts and Jobs Act Status

On the regulatory front, implementation of the *Tax Cuts and Jobs Act* will continue to play out in the background. Most of the major provisions will have regulation proposed by the close of the year, with final rules expected in fairly short order. The rules must be finalized by June 2019 in order to ensure that the guidance can be applied retroactively. Proposed rules to date have been fairly well received, but smaller scale and niche concerns abound. Now is the time for businesses to talk to Treasury and the Internal Revenue Service.

What Does This Mean For You?

Companies, industries, and the business community as a whole must be prepared to defend the considerable gains achieved in the *Tax Cuts and Jobs Act*—both before Congress and the American people. The prospect of immediate policy changes is mitigated for the time being by the GOP Senate majority and (at least) two more years of a Trump White House. Yet if the law is not broadly seen as popular or effective, retrenchment is just a matter of time. A 21 percent corporate tax rate is only as permanent as the political will to preserve it.

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TRADE POLICY: Complicated Power Dynamics, Blurred Party Lines

By [Paul Nathanson](#) and [Josh Zive](#)*

Trade policy has been a centerpiece of the Trump administration's economic strategy, and in coming months the issues surrounding trade will only intensify. Both parties have deep internal divisions over the issue of free trade versus the protection of domestic industries, and the administration will try to use these divisions to advance its own trade agenda. Simultaneously, the new House Democratic leadership will try to build consensus within the caucus on trade issues and messaging strategies that rebuff the President and counter his policy goals.

The outcome of these debates will reverberate throughout the economy, and every company will have a reason to keep a close watch. For example, the NAFTA debate will shape the future

of the North American free market, which has supported a robust energy industry in Canada, the U.S. and Mexico. The ability to reach an acceptable final agreement to modernize NAFTA will determine what sorts of protections investors in the energy sector receive from expropriation or mistreatment, which will in turn influence the value of past investments in the North American energy sector, and its prospects for continued growth and investment in the future. Similarly, the ongoing trade disputes regarding China and tariffs on products such as steel, aluminum, and automobiles will have direct implications for the cost of material inputs for manufacturers, as well on the prices and supply options for retailers in the U.S.

Bipartisan Support Needed on Trade

Many of the Trump administration's most controversial trade policies, such as the Section 232 tariffs on steel and aluminum imports and the Section 301 tariffs on China, are a function of powers that Congress previously delegated to the executive branch. With new leadership in the House, look for more attempts to roll back some of these delegations in order to limit the policymaking powers of the President.

Nevertheless, President Trump still needs Congress to enact broad new trade agreements, such as the successor to NAFTA, the U.S.-Mexico-Canada Agreement (USMCA). To implement the USMCA and fend off attempts to curtail its powers over trade, the White House must cobble together a coalition of Republicans who share the President's policy objectives with sufficient numbers of Democrats skeptical of free trade. The administration recently announced plans to commence trade negotiations with the United Kingdom, the European Union, and Japan. As with the USMCA, any agreement reached with one of these trading partners would need congressional approval. The changing of control of the House raises questions about whether the President's future diplomatic initiatives will enjoy the procedural benefits of "fast track" treatment in Congress.

Even if Congress lacks the votes to pass new laws, its oversight powers do not require bipartisan cooperation. Administration officials can expect tariff and trade policies to be subject to more frequent inquiries and oversight hearings, as members look for ways to criticize the policies. For example, last year saw congressional hearings on the steel and aluminum tariffs, as well as growing interest in the issue of new tariffs on imported automobiles. Expect new leadership in the House to provide a more visible platform for company and trade association concerns over the impact of these tariffs on their members, employees, and customers. As we have seen in the past, the ability to humanize these impacts through specific data and stories is often the most potent tool for driving changes to trade policy.

Fate of USMCA

Congress will likely consider the USMCA early in 2019. Pursuant to "fast track" authority, Congress must consider the agreement within 45 days of the completion of a mandatory report by the U.S. International Trade Commission (ITC) and the submission of implementing legislation by the administration. The ITC report is required to be completed within 105 days from the agreement being signed, which is expected to occur on November 30th. If implementing legislation is submitted to Congress before the ITC report is complete, as expected, Congress will be required to confront this difficult issue early in the next session. If the President is able to move the agreement through both the House and Senate, it will send a strong signal that President Trump still enjoys wide discretion over trade policy.

Republicans and Democrats have introduced several bills this year to curtail the President's use of Section 232 tariffs applied to steel and aluminum imports for "national security" purposes, and growing numbers of legislators have expressed concern about the Trump administration's threat of new tariffs on imported automobiles and auto parts. However, while we expect tariffs to be subjected to greater public and political scrutiny, bills intended to reign in the President's delegated power to enact future 232 tariffs are unlikely to garner enough votes to override an expected veto. Additionally, many Democrats are criticizing *how* the 232 tariffs are being implemented rather than the tariffs themselves, making oversight a more desirable course of action than legislation for party members.

Administration Initiatives

With Democrats taking control of the House, we expect the Trump administration to increase its commitment to using executive powers to accomplish its trade policy objectives. Even if current disputes with countries such as China are addressed, look for U.S. Trade Representative Robert Lighthizer to pursue more tariff actions against trading partners that the administration views as unfair to the country. Continued use of tools such as anti-dumping and countervailing duty investigations to try to secure concessions also appears likely.

Furthermore, while changes are expected in the Trump administration—including the possibility that advocates for tariffs such as Secretary of Commerce Wilbur Ross will be replaced—we do not foresee the Trump administration wavering in its commitment to using tariffs and threats of tariffs to accomplish diplomatic objectives. Industries that are highly dependent on cross-border trade for access to markets and materials, such as energy and manufacturing, will need to carefully monitor new White House actions. Expect the threat of new tariffs on products such as imported automobiles and auto parts to be renewed in the coming months regardless of increased grumbling in Congress.

Can President Trump and a Democratic Chairman Find Common Ground?

Current House Ways and Means Committee Chairman Kevin Brady (R-TX) has played an instrumental role in working with industry and the White House on trade policy for the past two years. It remains to be seen how the President will work with the likely new chair, Rep. Richard Neal (D-MA). Rep. Neal has been a skeptic of trade deals such as NAFTA in the past, but has also expressed reservations about the USMCA. The posture that a Chairman Neal decides to take toward the Trump administration trade agenda will ultimately shape much of its success in the new Congress.

What Does This Mean For You?

If you are in an industry sector that depends on efficient cross-border transactions to access raw materials or markets, such as the energy sector, expect more uncertainty.

If you are a manufacturer concerned about steel, aluminum, and other tariffs increasing expect the House to be more active in oversight, which may give you an opportunity to have your concerns heard, but do not expect much in the way of actual legislation.

If you are an industry sector with strong ties to European or Asian sources, such as autos and auto parts, look for President Trump to turn his attention to you in the coming months as he again seeks to use his delegated trade powers as a tool to apply pressure on U.S. trading partners to achieve his trade objectives.

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CONSUMER PRODUCT SAFETY: Majority Republican Commission Forges Ahead with FY 2019 Agenda

By [Ed Krenik*](#), [Paul Nathanson](#) and [John Lee](#)

Despite the change in control of the House, the newly cemented Republican majority at the Consumer Product Safety Commission (CPSC) will drive the agenda for Fiscal Year (FY) 2019 forward.

Republican Majority at Last

Notwithstanding the presence of a Republican President in the White House since early 2017, the Commission only recently changed from majority Democratic to majority Republican with the swearing in of Peter Feldman, former Senior Counsel on the Senate Commerce Committee, on September 28, 2018. This brought the Commission to full capacity with a 3-2 Republican majority, the first Republican majority at CPSC since May 2009.

Meanwhile, Acting Chair Ann Marie Buerkle still awaits a Senate confirmation vote to serve officially as chair of the Commission. She has served as Acting Chair since February 2017. Acting Chair Buerkle was also nominated by President Trump to serve a new seven-year term following the expiration of her previous term just last month. While CPSC rules would allow her to serve an additional holdover year following the expiration of her term as commissioner, we expect the Senate to act during the lame duck session to confirm her as Chair and authorize her new term.

FY 2019 CPSC Regulatory Agenda

Setting out FY 2019 priorities and based on the FY 2018 budget, the Commission approved and amended a \$126 million Operating Plan (the FY 2019 budget remains under congressional consideration).

The Operating Plan calls for CPSC to participate in 74 voluntary standards activities, ranging from ATVs-ROVs, flammable refrigerants, and table saws to upholstered furniture and corded window coverings—you can see the full list [here](#). Of the 74 highlighted products, the Commission also forecasts the potential for undertaking rulemakings for 12 of these products—including furniture (tip-over), furnaces, and orghanohalogens—either in the advanced Notice of Proposed Rulemaking, Notice of Proposed Rulemaking, Final Rule, or Direct Final Rule stage.

Acting Chair Buerkle has emphasized the need to base CPSC's rulemakings on hard data rather than anecdotal information, urging consumer advocates and industry groups to actively participate in rulemaking and collectively determine the safest and most practical way to proceed with safety standards.

Expect the Commission to move away from creating mandatory standards, which take years to finalize due to administrative process, in favor of developing standards using the voluntary process, as called for by the *Consumer Product Safety Act (1972)* and the *Consumer Product Safety Improvement Act (2008)*. A voluntary standard does not mean that compliance is voluntary. Rather, it describes the way in which the standard is developed—a consensus effort involving industry, consumer groups, and government regulators.

Coming Changes in Committees of Jurisdiction

With Republicans retaining a majority in the Senate, current Senate Commerce Committee Chairman John Thune (R-SD) will likely be elevated to majority whip, the number two role in Republican leadership, taking the place of Sen. John Cornyn (R-TX), who is term limited in his current post. Sen. Roger Wicker (R-MS), current chair of the Communications, Technology, and the Internet Subcommittee, is expected to serve as Commerce Committee chairman. Sen. Wicker previously chaired the Subcommittee on Consumer Protection, making him particularly knowledgeable on consumer product safety issues and thus likely to exert additional oversight of the Commission.

Sen. Jerry Moran (R-KS) will likely retain his position as chairman of the Senate Consumer Protection, Product Safety, Insurance and Data Security Subcommittee, which has jurisdiction over CPSC. However, if Sen. Moran elects to move to Sen. Wicker's former Subcommittee, competition for subcommittee chair would ensue. Senators Roy Blunt (R-MO), Dan Sullivan (R-AK), Ted Cruz (R-TX), and Deb Fischer (R-NB) could then seek the chair of a subcommittee with a larger jurisdiction.

Meanwhile, look for a shakeup on the Minority side if Ranking Member Bill Nelson (D-FL) falls in Florida. Sen. Maria Cantwell (D-WA) is next in line but would have to give up her role as Ranking Member at Senate Energy and Natural Resources. If she decides to stay, possible candidates include Sen. Amy Klobuchar (D-MN) and Sen. Richard Blumenthal (D-CT). Sen. Klobuchar currently serves as ranking member on the Rules Committee. The elevation of Sen. Blumenthal, the current Consumer Protection Subcommittee chair on the Commerce Committee, would be particularly notable for product safety issues as he has been a historically strong supporter of consumer advocates and strong oversight on manufacturers.

On the House side, the new majority Democrats are expected to tap Rep. Frank Pallone (D-NJ) as chair of the House Energy and Commerce Committee. Rep. Pallone served as ranking member during the 115th Congress and served from 2006-14 as chairman of the Subcommittee on Health. Rep. Jan Schakowsky (D-IL) is likely to move from ranking member to chair of the Digital Commerce and Consumer Protection Subcommittee; she chaired the Commerce, Manufacturing, and Trade Subcommittee, which has jurisdiction over CPSC, from 2006-2014. Like Sen. Blumenthal, Rep. Schakowsky has a long track record of strong support for consumer advocates.

A Democratic-controlled House Energy and Commerce Committee will exercise tighter oversight, with additional hearings and requests for information on all pending matters before the Commission. However, given the laundry list of items pending before the committee, CPSC oversight has historically taken a back seat to the many other issues under the jurisdiction of the committee including health care, energy, environment, and telecommunications.

What Does This Mean For You?

Manufacturers and retailers should anticipate robust oversight of all ongoing CPSC actions. It is highly likely that the relevant House subcommittee will target pending rulemakings during its first round of oversight initiatives. Manufacturers of products subject to these rulemakings may find themselves called on to testify at these oversight hearings.

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CONGRESSIONAL OVERSIGHT: Investigations, Inquiries, and Hearings

By [Dee Martin](#) and [Josh Zive](#)

Democrats won control of the U.S. House of Representatives for the 116th Congress. Through the congressional oversight function, industry, the White House, and executive agencies can expect additional investigations, inquiries, and hearings. Without control of the Senate and thus little chance of enacting legislation, this oversight authority offers a primary avenue for Democrats eager to shape policy.

Prospect of Increased Corporate Risk

The congressional authority to conduct oversight, backed by subpoenas, is one of the body's most powerful tools. As new Democratic leaders for House committees emerge, expect them to exercise this oversight power without need for legislation or Republican support.

We see three broad areas ripe for congressional oversight: 1) the Trump administration and election meddling by foreign states; 2) alleged wrongdoing by cabinet officials (e.g., taxpayer-backed travel or conflicts of interest), which could implicate industry through email releases and meeting disclosures, for example; and 3) broad industry inquiries or specific company information requests, which represent significant corporate risk.

Likely, the third category of oversight activity—corporate risk—will be of most interest to those concerned about becoming ensnared in congressional investigations. While House Democrats were not empowered to act in the 115th Congress, many have actively criticized companies through public statements and letters of inquiry, and have targets at the ready. For instance, House Oversight Committee Ranking Member Elijah Cummings (D-MD) and Democrats on the committee have attempted to issue over 60 subpoenas, which were blocked by Republicans in the majority. Additionally, breaking news will spur action from committee chairs and form the basis for compelling documents and/or public testimony from companies connected to larger controversies.

Whether or not congressional inquiries result in criminal referrals or formal punishment, the nature of subpoena power and heightened public attention could yield costly and risky inquiries for companies.

Agencies also in the Crosshairs

The new House leadership will use congressional oversight to draw attention to regulatory issues that promise to generate controversy and possibly help Democratic candidates in upcoming elections. For example, industry should expect a Democratic House to subject agencies like the Environmental Protection Agency (EPA) and the Department of the Interior (DOI) to frequent inquiries and hearings on matters such as climate change, oil and gas development, and public land use—with individual companies and trade associations rolled out as examples to prove a point.

Predicate to Eventual Legislation?

Congressional inquiries and investigations sometimes develop the predicate for introducing legislation. For example, the *Dodd-Frank Wall Street Reform and Consumer Protection Act (2010)* grew directly out of the inquiries into the 2008 economic crisis, and the significant changes made to lobbying and ethics laws in 2007 were a direct response to criminal and congressional investigations of a handful of Washington, DC lobbyists.

However, given that Republicans control the Senate, adopting legislation in the near term is unlikely. The more likely action for the time being is that Democrats will attempt to shape policy through congressional oversight authority by calling agency leaders to testify, effectively interjecting their policy goals into the rulemaking process.

Oversight Actions on the Front Burner

Early in the 116th Congress, we anticipate action by several committees of jurisdiction in the House.

For example, committees jurisdictional to energy and environment will likely extensively probe the administration's deregulatory efforts, and they are likely to look specifically at the development and potential industry influence over the following actions:

- Changes to Corporate Average Fuel Economy Standards (CAFE)
- Agency reorganization plans including EPA and DOI
- Recent actions to scale back EPA and Bureau of Land Management methane regulations
- EPA regulations allowing the use of glider kits
- Department of Energy's "grid resiliency" proposal and other efforts to change the operation of electricity markets

From the House Oversight Committee subpoena requests, we expect inquiry into, for example:

- State Department "loyalty tests"
- EPA withholding of FOIA documents
- Documents related to temporary White House security clearances

- Federal hurricane response
- Communications regarding the AT&T Time-Warner merger
- Foreign payments made by the Trump Organization

Timing

Targets of oversight are likely to vary based on current events. A few items which we expect to have an impact on the nature and timing of congressional investigations include:

- Resolution of the Special Counsel investigation;
- Departure of key cabinet officials who might otherwise be an investigatory target;
- Natural disasters, industrial accidents, or other unforeseen emergencies.
-

Potential Committee Leaders and Target Issues

House Financial Services Committee: Rep. Maxine Waters (D-CA)

Issues to watch: Dodd-Frank, Consumer Financial Protection Board (CFPB), student loan programs, Russia

House Homeland Security Committee: Rep. Bennie Thompson (D-MS)

Issues to watch: Border wall, family separation policies, U.S. Immigration and Customs Enforcement, Federal Emergency Management Agency

House Intelligence Committee: Rep. Adam Schiff (D-CA)

Issues to watch: Russia, campaign finance, cybersecurity, NATO

House Judiciary Committee: Rep. Jerry Nadler (D-NY)

Issues to watch: Re-opening of Kavanaugh issue, impeachment, Department of Justice independence and priorities, ethics issues related to executive branch, campaign finance

House Oversight and Government Reform Committee: Rep. Elijah Cummings (D-MD)

Issues to watch: Executive branch ethics issues, predatory lending, drug prices, postal reform

House Science, Space, and Technology Committee: Rep. Eddie Bernice Johnson (D-TX)

Issues to watch: Climate change, energy technology and R&D, natural disaster preparedness and response

House Energy and Commerce Committee: Rep. Frank Pallone (D-NJ)

Issues to Watch: Climate change, healthcare, chemical safety, opioid abuse

House Ways and Means Committee: Rep. Richard Neal (D-MA)

Issues to Watch: Recent tax cuts, inversions, tax incentives for health care and child education

Being Prepared for Congressional Investigations

To minimize exposure, companies should proactively evaluate risks and prepare to effectively respond to new investigations or inquiries if needed. We recommend:

- **Conducting Risk Assessment:** Apply the same rigor to identifying and evaluating the risks associated with Congressional investigations that is applied to legal or regulatory compliance. Include in the review:
 - Potentially controversial policy issues that the company has been connected to as a stakeholder or advocate;
 - The individuals, strategies, and tactics involved with the company's advocacy on behalf of candidates or lobbying on policy issues; and
 - The media coverage of the company, particularly in outlets that have significant followings among supporters of the new Democratic majority in the House.
- **Developing Congressional Champions:** It is essential to work proactively to build strong relationships with:
 - Members of Congress representing the company and its employees; and
 - Members of Congress on key committees of jurisdictions.
- **Building an Early Warning System:** Companies that could end up in the crosshairs of an investigation should develop open lines of communication with legislators and relevant media. These relationships can help provide early notice of a looming investigation and can result in opportunities to shape the narrative of the investigation at an early stage.
- **Responding in a Timely Manner:** If a company gets ensnared in investigation, it is important to be ready to respond in a timely manner to requests from Congress. Also important is negotiating the scope of the investigation and ensuring that the company has ample time to respond.

What Does This Mean For You?

If you are in the energy sector, watch for inquiries on climate change, public land use, and oil and gas development, as well as collateral inquiries on ethics issues related to key agency officials.

If you are in the financial services sector, watch for inquiries related to CFPB and payday lending.

If you are in the pharmaceutical sector, watch for additional inquiries related to drug pricing.

If you are a social media company, watch for inquiries related to election meddling and disinformation campaigns.

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APPROPRIATIONS: Bipartisanship Overshadowed by Budget Cap Showdown

By [Ed Krenik](#) and [John Lee](#)

2018 was a banner year for bipartisanship among appropriators. Despite the political gridlock occurring in other areas of government, Congress managed to get five out of twelve appropriations bills for Fiscal Year (FY) 2019 to the President's desk for signature, as well as a continuing resolution (CR) funding the government. Yet conflicting priorities between President and parties alike—made starker by an unexpectedly large budget deficit—suggest an end to cross-aisle cooperation on spending in the next Congress.

Tough Start Out of the Gate for Spending in the Next Congress

The appropriations outlook for FY 2020 looks darker than the uncharacteristic accomplishments of the 115th congressional appropriators. Unlike their predecessors, the new class of congressional appropriators do not head into the next spending season with a budget deal in hand. Congress will have until March 2, 2019, to lift the debt ceiling—the likely vehicle for an overarching budget deal that would avoid triggering automatic cuts called for by the *Budget Control Act of 2011*. Adding to the challenge, Congress must simultaneously negotiate topline spending numbers while trying to move each of the twelve spending bills through regular order.

Negotiations are already proving difficult on the heels of news of a \$779 billion deficit for FY 2018, the largest deficit in six years and a \$113 billion increase from the prior fiscal year. The Trump administration is under pressure to rein in spending, yet Republican war hawks and Democrats favoring domestic discretionary spending remain wary of large-scale cuts. A default next March would nevertheless be catastrophic for global markets, meaning both parties have a vested interest in reaching agreement.

All these dynamics will play into the Trump administration's budget request for FY 2020, coming in February. The newly Democratic-controlled House Appropriations Committee makes it unlikely that bills reaching the President's desk will include widespread cuts. If the President proves steadfast in his commitment to cut spending and vetoes these bills, the door to future government shutdowns will be open.

December Shutdown Over Border Wall Funding?

In the near term, Congress faces a December 7th deadline to fund the remaining seven spending bills and keep the government open in its entirety. Quick action will be required during the lame duck session to avoid a shutdown.

A large package of four bills—including Interior and Environment, Financial Services and General Government, Agriculture, and Transportation/Housing and Urban Development—has

already been passed in both chambers and is undergoing negotiation in conference. A collection of policy riders related to the Interior and Environment bill prevented the package from reaching the President's desk prior to the expiration of FY 2018. Yet leadership has signaled confidence that an agreement can be reached after the midterms.

Three remaining appropriations bills have yet to make it to the House or Senate floors: Commerce/Justice/Science, Homeland Security, and State/Foreign Operations. Typically, these bills would be grouped together in a minibus before the CR expires on December 7th. However, controversy over funding for the border wall has tied up the Homeland Security bill, with no clear resolution in sight. With Republicans signaling no interest in a shutdown, the pivotal question may come down to how much border wall funding is enough for the President.

Appropriations Leadership in the 116th Congress

On the Senate side, Chairman Richard Shelby (R-AL) will retain his gavel. Chairman Shelby was largely responsible for the productive FY 2018 season, and prides himself on strong relationships with Democrats and a commitment to regular order. This dynamic will be tested with new House leadership and a Trump administration determined to curtail spending. Look for Chairman Shelby to serve as mediator between these entities.

In the House, Rep. Nita Lowey (D-NY), the top ranking Democrat on the Appropriations Committee, is poised to secure the chairmanship after thirty years in Congress. The New Yorker had previously served as ranking member of the State, Foreign Operations, and Related Programs Subcommittee. Lowey has previously said in public appearances that her efforts will be focused on funding safety-net and infrastructure programs to pre-sequestration levels, with a particular focus on education and health care.

The Ranking Member race on the House side is still up for grabs. Although Rep. Robert Aderholt (R-AL) is the most senior member, leadership is unlikely to allow Alabama to take prominent slots in both chambers. Look for a race between Rep. Tom Cole (R-OK), current Chairman of the Appropriations Subcommittee on Labor, Health and Human Services, Education and Related Agencies; Rep. Kay Granger (R-TX), Chairwoman of the Defense Appropriations Subcommittee; and Rep. Tom Graves (R-GA), current Chairman of the Financial Services and General Government Appropriations Subcommittee. Rep. Cole and Rep. Granger both have seniority and are considered part of the "old guard." Rep. Graves points to his role as architect of the strategy to get all twelve bills through the House last Congress in making his claim to the position.

What Does This Mean For You?

If your business is impacted by federal funding still tied up in the CR, the chances of an agreement by December 7th remain lukewarm, meaning current uncertainty will continue.

For the lucky ones with appropriations priorities that made it across the finish line for FY 2019, FY 2020 will bring new challenges as House Democrats interested in more domestic spending battle the President's desire for cuts. Look for FY 2020 appropriations work to flow significantly slower than FY 2019.

Lastly, there have been rumbles on Capitol Hill about the return of earmarks, or congressionally directed spending. While a deal would have to be reached between both parties to make that

happen, a return of earmarks would allow members to advocate for individual projects in their district, reshaping the way industry interacts with the Appropriations Committee.

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FINANCIAL SERVICES: A New Day for Democrats Spurs a Return to *Dodd-Frank* Priorities

By [Liam Donovan](#) and [Paul Maco](#)

House Democrats shift the financial services agenda to aggressive oversight, pumping the brakes on the Trump administration's deregulatory agenda.

A Rising Waters Looks to Flood Big Banks

Incoming chairwoman Rep. Maxine Waters (D-CA), a favorite target (and enthusiastic antagonist) of President Trump, is poised to make history as both the first African-American and the first woman to lead the House Financial Services Committee. In addition to increased scrutiny of major financial regulatory agencies (CFPB, SEC, OCC, FDIC), Rep. Waters has expressed an interest in President Trump's finances. A likely push to subpoena related documents is sure to set off political fireworks that could impact the ability of the committee to work in a bipartisan manner. Increased oversight of large financial institutions can also be expected, with particular focus on their consumer and data practices, as well as what big banks (and others) did with the proceeds of the corporate tax cut, including stock buybacks.

With the fundamental structure of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (2010) preserved—albeit streamlined—by the bipartisan reform bill enacted earlier in the year, the committee's attention will move toward other vestiges of the financial crisis. Rep. Waters has long railed against “too big to fail,” called for the reimposition of the *Banking Act of 1933* (*Glass-Steagall Act*) to separate commercial and investment banking, and voiced support for breaking up the big banks. While these efforts ultimately have no legislative path under a GOP Senate majority, they may nevertheless serve as politically potent messaging points set against the backdrop of the 2020 presidential campaign.

Boost to the ESG Movement

Expect corporate governance and transparency issues to return to the forefront of the committee's radar as well. In particular, a boost to the growing Environment, Social, and Governance (ESG) movement is likely on deck. ESG actions, in which shareholders attempt to press specific requests through proxy initiatives, have increased in frequency and impact as more industries—including energy companies in particular—find themselves in the crosshairs of shareholder activists. Supportive hearings in the Financial Services Committee over the coming two years are sure to give the nascent movement increased visibility and momentum.

GOP Leadership Changes

The retirement of term-limited Chairman Jeb Hensarling (R-TX) opens the GOP's top slot on the panel. While Reps. Peter King (R-NY) and Frank Lucas (R-OK) enjoy seniority, the ranking member post is likely to go to current committee Vice Chairman and House Chief Deputy Whip

Patrick McHenry (R-NC). With seven retirements and another two defeated, Republicans are likely to have a number of new faces, depending on the ratios, while Democrats will replace at least four outgoing members of their own.

Barring a surprise decision by Sen. Chuck Grassley (R-IA) to forego the Finance Committee gavel, Sen. Mike Crapo (R-ID) will continue as Banking Committee chairman, while Sen. Sherrod Brown (D-OH) remains the ranking member. Areas of potential cooperation with their House counterparts include the start-up and capital formation package known as the *JOBS and Investor Confidence Act of 2018*, anti-money laundering efforts under the *Bank Secrecy Act (1970)*, housing finance reform, and reauthorizations of the Export-Import Bank, the *Terrorism Risk Insurance Act (2002)*, and flood insurance, respectively.

What Does this Mean for You?

Large banks will find themselves the primary focus of increased scrutiny under a Financial Services Committee helmed by Rep. Waters. Nevertheless, the committee is also likely to focus on a suite of issues applicable to a far broader slice of corporate America than the financial services industry itself. Businesses should prepare for incoming scrutiny of corporate governance issues, including executive compensation; ESG practices; and composition of board membership. The two banking committees will also play an active role in any legislative push involving privacy, data security, and protection of consumer information, potentially affecting companies well outside the financial arena.

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