

## 2014 Midterm Elections: Overview of Results and Potential Legislative Action

The Republican Party gained control of both chambers of Congress in yesterday's midterm elections, with the Republican Party gaining a majority in the Senate and retaining its majority in the House.

In the Senate, Republicans appear to have gained at least 8 seats, with the Louisiana race slated for a runoff on Dec. 6. Republicans will hold a 53 to 47 or 54 to 46 majority, depending on the outcome of that race. The GOP could also gain one more seat in the Senate if Sen. Angus King, an Independent from Maine, chooses to caucus with the Republicans in the 114th Congress.

In the U.S. House, Republicans will have their largest majority (and Democrats will have their smallest minority) since 1929. Republicans appear to have won 13 to 16 House seats, which will give them 247 to 250 total seats (to the Democrats' total of 183 to 186 seats).

### Incoming Senate Leadership

Sen. Mitch McConnell (R-KY), currently the Senate Minority Leader, is expected to be the Senate Majority Leader in the 114th Congress. John Cornyn (R-TX), currently the Senate Minority Whip, is expected to be Senate Majority Whip. Senate Majority Leader Harry Reid (D-NV) is expected to be the Minority Leader in the next Congress, with Sen. Dick Durbin (D-IL) expected to be Minority Whip.

Below are the expected incoming Senate Committee Chairmen and Ranking Members. It is possible there will be surprises as lawmakers jockey for leadership positions.

Committee	Expected Chair	Expected Ranking Member
Agriculture, Nutrition and Forestry	Pat Roberts (R-KS)	Debbie Stabenow (D-MI)
Appropriations	Thad Cochran (R-MS)	Barbara Mikulski (D-MD)

Armed Services	John McCain (R-AZ)	Jack Reed (D-RI)
Banking, Housing, and Urban Affairs	Richard Shelby (R-AL)	Sherrod Brown (D-OH)
Budget	Jeff Sessions (R-AL)	Bernie Sanders (I-VT)
Commerce, Science and Transportation	John Thune (R-SD)	Bill Nelson (D-FL)
Energy and Natural Resources	Lisa Murkowski (R-AK)	Mary Landrieu (D-LA)
Environment and Public Works	Jim Inhofe (R-OK)	Barbara Boxer (D-CA)
Finance	Orrin Hatch (R-UT)	Ron Wyden (D-OR)
Foreign Relations	Bob Corker (R-TN)	Robert Menendez (D-NJ)
Health, Education, Labor and Pensions	Lamar Alexander (R-TN)	Patty Murray (D-WA)
Homeland Security and Governmental Affairs	Ron Johnson (R-WI)	Tom Carper (D-DE)
Judiciary	Chuck Grassley (R-IA)	Patrick Leahy (D-VT)
Select Intelligence	Richard Burr (R-NC)	Dianne Feinstein (D-CA)
Small Business and Entrepreneurship	Jim Risch (R-ID)	Maria Cantwell (D-WA)
Veterans' Affairs	Jerry Moran (R-KS)	John Tester (D-MT)
Indian Affairs	John Barrasso (R-WY)	Tom Udall (D-NM)

If Sen. Mary Landrieu loses her December run-off election, Sen. Maria Cantwell (D-WA) would be next in line to be Ranking Member the Senate Energy and Natural Resources Committee, making Sen. Ben Cardin (D-MD) next in line to become Ranking Member of the Senate Small Business and Entrepreneurship Committee.

### Incoming House Leadership

House Republican leadership elections are scheduled for November 13. Rep. John Boehner (R-OH) is expected to remain the Speaker of the House in the 114th Congress. House Majority Leader Kevin McCarthy (R-CA) and House Majority Whip Steve Scalise (R-LA) are expected to remain in these leadership positions in the next Congress.

On the Democratic side, Rep. Nancy Pelosi (D-CA) is expected to remain Minority Leader, with Rep. Steny Hoyer (D-MD) as Minority Whip and Rep. James Clyburn (D-SC) as Assistant Minority Leader. If Minority Leader Pelosi steps down, Reps. Hoyer and Clyburn could move up in the ranks, along with Reps. Chris Van Hollen (D-MD), Xavier Becerra (D-CA), Debbie Wasserman Schultz (D-FL), and Joe Crowley (D-NY).

A Republican steering committee comprised of party leaders, committee chairs, and regional representatives aims to decide the incoming committee chairs following leadership elections, with a leadership transition at the start of the new Congress the week of Jan. 5, 2015. Below are the expected incoming House Committee Chairmen and Ranking Members. As with the Senate, it is possible there will be surprises as lawmakers jockey for leadership positions.

<b>Committee</b>	<b>Expected Chairman</b>	<b>Expected Ranking Member</b>
Agriculture	K Michael Conaway (R-TX)*	Collin Peterson (D-MN)
Appropriations	Hal Rogers (R-KY)	Nita Lowey (D-NY)
Armed Services	Mac Thornberry (R-TX)*	Adam Smith (D-WA)
Budget	Tom Price (R-GA)*	Chris Van Hollen (D-MD)
Education and Workforce	John Kline (R-MN)	Bobby Scott (D-VA)*
Energy and Commerce	Fred Upton (R-MI)	Frank Pallone (D-NJ)*
Ethics	Charlie Dent (R-PA)*	Linda Sanchez (D-CA)
Financial Services	Jeb Hensarling (R-TX)	Maxine Waters (D-CA)
Foreign Affairs	Ed Royce (R-CA)	Eliot Engel (D-NY)
Homeland Security	Michael McCaul (R-TX)	Bennie Thompson (D-MS)
Intelligence	Devin Nunes (R-CA)*	Dutch Ruppersberger (D-MD)
Judiciary	Bob Goodlatte (R-VA)	John Conyers (D-MI)
Natural Resources	Bob Bishop (R-UT)*	Eni Faleomavaega (D-AS)*
Oversight and Government Reform	Jason Chaffetz (R-UT)*	Elijah Cummings (D-MD)
Small Business	Steve Chabot (R-OH)*	Nydia Velazquez (D-NY)
Science, Space and Technology	Lamar Smith (R-TX)	Eddie Bernice Johnson (D-TX)
Transportation and Infrastructure	Bill Shuster (R-PA)	Peter DeFazio (D-OR)*
Veterans' Affairs	Jeff Miller (R-FL)	Corrine Brown (D-FL)*
Ways and Means	Paul Ryan (R-WI)*	Sander Levin (D-MI)

With last night's defeat of Rep. Nick Rahall (D-WV), Rep. DeFazio (D-OR) is next in line to be Ranking Member of the House Transportation and Infrastructure Committee, making Eni Faleomavaega (D-AS) next in line to be Ranking Member of the House Natural Resources Committee. Should DeFazio decide to remain as Ranking Member on House Natural Resources, Rep. Eleanor Holmes-Norton (D-DC) would be next in line to become Ranking Member of the House Transportation and Infrastructure Committee.

**Legislative Agenda**

Moving forward, the legislative agenda will be influenced in part by those items that have known deadlines for Congressional action. Among the most significant items with expiring authorizations are the following:

<b>Bill(s):</b>	<b>Expiration:</b>
Appropriations / Continuing Resolution	Dec. 11, 2014
Authority to train and equip Syrian rebels	Dec. 11, 2014
Internet Tax Freedom Act	Dec. 11, 2014

\* Indicates that this Member of Congress is replacing the current committee chairman or ranking member due to retirement or term-limits.

Multiple expiring tax provisions	Dec. 31, 2014
Terrorism Risk Insurance	Dec. 31, 2014
Sustainable Growth Rate (“doc fix”)	March 31, 2015
Highway funding	May 2015
Ex-Im Bank	June 2015
Debt Ceiling	June-July 2015

### Potential Lame-Duck Agenda Items

Lawmakers are scheduled to return to Washington on Nov. 12 for a post-election lame-duck session. As listed above, lawmakers will need to take up a number of must-address issues during this time, in addition to other issues lawmakers may consider if there is sufficient time and momentum.

### Agenda Items that Congress Must Address

#### *Appropriations*

In the coming weeks, House Appropriations Committee Chairman Hal Rogers (R-KY) and Senate Appropriations Committee Chairwoman Barbara Mikulski (D-MD) aim to develop an omnibus appropriations bill for fiscal year 2015 for Congress to take up before the current Continuing Resolution (CR) expires on Dec. 11, 2014. Republican lawmakers may prefer to pass a CR extending into the 114th Congress, thereby pushing off spending decisions until Republicans control both chambers of Congress. On the other hand, the GOP may prefer to start the 114th Congress with a clean slate by passing an omnibus FY 2015 appropriations package.

#### *Tax Extenders*

House Republican and Senate Democratic leaders have expired tax provisions on their post-election agendas. Five provisions are scheduled to expire at the end of 2014, while 55 tax extenders expired at the end of 2013, including the Renewable Energy Production Tax Credit and credits for construction of new energy-efficient homes. Lawmakers may pass legislation retroactively extending many of these provisions for two years, while also making permanent certain business-related extenders that have bipartisan support, such as the Research & Experimentation (R&D) Tax Credit. In recent years there have been few opportunities to advance bills as part of session-ending wrap-up legislation, leading to pent-up demand among lawmakers to attach amendments to must-pass legislative vehicles during this year’s lame duck. Depending on the willingness of Congressional leadership to allow such amendments, lawmakers could try to attach their favored bills to a must-pass tax-extendors deal.

#### *Terrorism Risk Insurance Act*

The Terrorism Risk Insurance Act (TRIA) expires on Dec. 31, 2014. Its renewal has been stalled by disagreement between the House and Senate over proper role of government in the terrorism risk insurance market. If lawmakers fail to broker a bicameral compromise during the lame-duck session, they may need to pass a short-term extension into the 114th Congress.

### *National Defense Authorization Act (NDAA)*

The leaders of the House and Senate Armed Services Committees will look to continue Congress' 53-year streak of passing annual defense authorization legislation. The House passed its FY 2015 NDAA (H.R. 4435) in May 2014. Senate Armed Services Committee Chairman Carl Levin (D-MI) and Ranking Member Jim Inhofe (R-OK) aim to pass the Senate's NDAA (S. 2410) before December in order to allow sufficient time for lawmakers to resolve differences between the House and Senate legislation.

### **Other Potential Lame-Duck Agenda Items**

#### *Online Sales Tax*

Senate Democratic leaders have placed online sales tax legislation on the chamber's lame-duck agenda, but this has proven to be a contentious issue in the 113th Congress, and the path forward remains unclear. The Marketplace Fairness Act (MFA) would allow state and local governments to require retailers to collect and remit taxes on online sales. Senators could consider the Marketplace and Internet Tax Fairness Act (MITFA, S.2609) during the lame-duck session. It is possible that online sales tax legislation could be attached as an amendment to a tax extenders deal.

#### *Cybersecurity*

Sens. Dianne Feinstein (D-CA) and Saxby Chambliss (R-GA) have pressed Senate Majority Leader Harry Reid to hold a floor vote during the lame-duck session on their cybersecurity legislation, the Cybersecurity Information Sharing Act of 2014 (S. 2588). This legislation would provide legal protections for companies that share information about cyber threats with the government and other companies. The Senate bill is similar to the Cyber Intelligence Sharing and Protection Act of 2014 (H.R. 624), which passed the House in April 2013.

### **Outlook for Legislation in the 114th Congress**

Though the government will remain divided during the 114th Congress, it is possible that a Republican Congress and a Democratic President could find common ground on legislation. Republicans may wish to demonstrate their ability to govern effectively ahead of the 2016 Presidential Election, while President Obama may wish to maximize the remaining years of his term and strengthen his legacy. These influences may drive both sides to the table in an effort to find consensus on modest yet substantive legislation. Should compromise be unattainable, action in the 114th Congress may be limited to legislation that simply allows existing programs and authorities to continue, with little room for reform as part of reauthorization legislation.

There may be a window of opportunity for lawmakers to compromise on such measures before presidential politics begins impacting lawmakers' willingness to strike deals. In order to pass, legislation will likely need to satisfy both the moderate and conservative wings of the Republican Party in both the House and Senate. As of this writing, the Republican Party has picked up 12 seats in the House this cycle and is on track to see further gains. With a stronger majority, Boehner may have more ability to move legislation through the House even against opposition from the Conference's most conservative members.

On the other side of the Capitol, the Republican Party's Senate majority will not be filibuster-proof. Without a supermajority, many bills will need to have the support of moderate Democrats in order to advance. Incoming senators such as Joni Ernst of Iowa and Tom Cotton of Arkansas hold conservative

viewpoints and may be unwilling to support compromise legislation on ideological grounds. These competing forces could test the Senate Republican leadership's ability to successfully shepherd legislation through the upper chamber.

Republicans may be able to pass legislation with a simple majority vote through a process known as budget reconciliation. For reconciliation legislation to pass and be signed into law, lawmakers will need to negotiate and strike compromises with the President. Reconciliation can only be used for legislation related to taxes, spending, and the debt limit. Potential targets for budget reconciliation include corporate tax reform, entitlement reform, or a debt limit package.

There are a number of must-address issues that the 114th Congress will need to take up, as well as legislation scheduled to expire in 2015. These include:

- > Budget and appropriations;
- > Debt ceiling;
- > Extension or reform of Medicare Sustainable Growth Rate (SGR), known as the "doc fix";
- > Reauthorization of surface transportation programs in MAP-21;
- > Reauthorization of Terrorism Risk Insurance Act;
- > Reauthorization of Federal Aviation Administration;
- > Reauthorization of child nutrition programs;
- > Reauthorization of the Export-Import Bank; and
- > Syrian rebel armament and funding.

In addition, there are several legislative agenda items that Congress could take up advance if there is sufficient momentum and willingness to compromise, such as:

- > Comprehensive or corporate tax reform;
- > Limited immigration reform on border security, guest worker programs, or EB-5;
- > Incremental reforms to the Affordable Care Act;
- > Incremental reforms to the Dodd-Frank Act;
- > Trade Promotion Authority;
- > Legislation supporting approval of Keystone XL pipeline;
- > Deregulation of exploration, drilling, and export of natural gas;
- > Blocking EPA regulations limiting carbon emissions from power plants; and
- > Rewrite of the Telecommunications Act of 1996.

*Greenberg Traurig will provide additional updates as final election results emerge in pending races and as the legislative agenda for the lame-duck session and the 114th Congress become clearer.*

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