



Special Report

Lame Duck
Agenda for the
Second Session of
the 115th Congress

November 5, 2018

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Introduction

The House and Senate are scheduled to return to Washington, D.C. on Tuesday, November 13, 2018 for the beginning of the lame duck session, the period between the November 6 midterm elections and the start of the new 116th Congress on January 3, 2019. The House is scheduled to be in session for a total of 16 legislative days before adjourning on Thursday, December 13. The Senate is scheduled to be in session for 19 legislative days, with a target adjournment on Friday, December 14. During this one-month period, both chambers have numerous must-pass legislative items to consider. This Special Report outlines the agenda that will likely be considered. TFG will continue to update you on these, and any other issues, that arise during the lame duck session. Please let us know if you have any questions about any of the information presented.

House and Senate Leadership for the 116th Congress

House of Representatives

There is a lot of suspense about the outcome of next week's elections. Democrats need a net gain of 23 seats to take control. Republicans are hoping to hold the majority, but most likely will lose some seats.

Regardless of the outcome of the election, House Republicans will need to reorganize their party and committee leadership roles; the internal House GOP Conference elections will take place on Wednesday, November 14. Roughly half of the House's 21 committees will have new Republican leadership next year. The Republican Steering Committee will decide the candidates that are best for each committee assignment. Furthermore, House Republicans face uncertainty with Speaker Paul Ryan (R-WI) retiring after this cycle. Majority Leader Kevin McCarthy (R-CA) and Majority Whip Steve Scalise (R-LA) are vying to replace him as the top House Republican. Rep. Jim Jordan (R-OH), founder of the House Freedom Caucus, has also announced that he is running to replace Paul Ryan as the next leader of the House Republicans.

If the House does switch majorities, House Minority Leader Nancy Pelosi is expected to launch a bid for Speaker following the midterm elections. While no formal challenger has stepped forward, the third ranking House Democrat, Rep. Jim Clyburn (D-SC), has said he would offer his name up for Speaker if Pelosi fails to secure the required 218 votes. The House Democratic Caucus will hold internal elections no sooner than Wednesday, November 28. In addition, two California Members, Barbara Lee (D-CA) and Linda Sánchez (D-CA), are in the race for Caucus Chair. The position is the No. 4 House Democrat and plays an important role, including running meetings of the entire Democratic Caucus and helping steer Democrats' legislative and party policy agenda. Reps. Pete Aguilar (D-CA) and Katherine Clark (D-MA) are in the running to be the Caucus' Vice Chair.

Senate

Senate Republicans will privately hold their leadership elections in the Old Senate Chamber on November 14. The focus will be on who replaces term-limited Sen. John Cornyn (R-TX) for the number two post of Senate Majority Whip, as the current Senate Majority Leader, Mitch McConnell (R-KY), is expected to stay in his role and does not face term limits. Senators down one rung in leadership could all move up, but it is also possible they could face challenges from younger members or others who want to shake up the top ranks. Sens. Cornyn, John Thune (R-SD), and John Barrasso (R-WY) are term-limited out of their current leadership

positions, though the latter two are expected to move up from their current roles as Senate Republican Conference Chairman (No. 3) and Senate Republican Policy Committee Chairman (No. 4). Sen. Roy Blunt (R-MO), who currently serves as Vice Chairman of the Senate Republican Conference (No. 5), is likely to run for Sen. Barrasso's current position as Policy Committee Chairman. Leader McConnell is rumored to fill the open job of Vice Chairman with one of the Senate GOP's six women currently serving, with Sens. Shelley Moore Capito (R-WV) and Deb Fischer (R-NE) as two favorites. Republicans will also choose a new Chair of the National Republican Senatorial Committee (NRSC) to lead the Senate GOP's campaign arm through the 2020 election; Sen. Cory Gardner (R-CO) has served in this role since January 2017. Sen. Todd Young (R-IN) has been rumored as a leading contender for the NRSC chairman position.

Senate Democrats have not yet set a date for their leadership elections, however, it will likely take place by the end of November. The current leadership composition of the Senate Democratic Caucus is not expected to change, regardless of whether the Democrats win a majority of seats for the 116th Congress. The top Democrats currently include: Senate Minority Leader Chuck Schumer (D-NY); Senate Minority Whip Dick Durbin (D-IL); Senate Assistant Minority Leader Patty Murray (D-WA); Senate Democratic Policy Committee Chair Debbie Stabenow (D-MI); the Vice Chairs of the Senate Democratic Caucus Elizabeth Warren (D-MA) and Mark Warner (D-VA); Senate Democratic Steering Committee Chair Amy Klobuchar (D-MN); Senate Democratic Outreach Committee Chairman Bernie Sanders (I-VT); Senate Democratic Vice Chairman of Policy and Communications Committee Joe Manchin (D-WV); and Secretary of the Democratic Conference Tammy Baldwin (D-WI). Democrats will also choose a new Chair of the Democratic Senatorial Campaign Committee (DSCC) to lead the Senate Democrats' campaign arm through the 2020 election; Sen. Chris Van Hollen (D-MD) has served in this role since January 2017.

Budget and Appropriations

FY 2019 Appropriations

As of October 1, 2018, the first day of federal fiscal year (FY) 2019, five of the 12 annual appropriations bills were signed into law by President Trump in two minibus bills. Minibus #1 ([P.L. 115-244](#)) was signed on September 21 and included the Energy and Water Development, Legislative Branch, and Military Construction—Veterans Affairs bills. Minibus #2 ([P.L. 115-245](#)) was signed on September 28 and included the Defense and Labor—Health and Human Services—Education bills. These five enacted appropriations bills account for 75 percent of federal discretionary spending, marking the most spending bills passed on time since FY 1997.

The second enacted minibus also contains a continuing resolution (CR) through Friday, December 7, 2018 to temporarily fund, at enacted FY 2018 levels, federal departments and agencies covered under the jurisdiction of the following FY 2019 appropriations bills:

- Interior—Environment
- Financial Services—General Government
- Agriculture—Rural Development
- Transportation—Housing and Urban Development
- Homeland Security
- Commerce—Justice—Science
- State—Foreign Operations

The first four of these bills are part of a third minibus ([H.R. 6147](#)) and will likely move first in the lame duck session in late November or early December. The Homeland Security appropriations bill will likely be bogged down over several controversial policy provisions, including funding for a wall along the U.S.—Mexico border. If the Democrats win control of the House and/or Senate, it may alter the dynamic over this issue, since they will have partial control over the FY 2020 appropriations process in the 116th Congress and may not want to compromise on this issue. A one-week CR through December 14 may be necessary to provide Congress extra time to pass some or all of the remaining seven bills. It is also possible that a partial government shutdown may occur if an agreement on these issues is not resolved by the end of either CR. If that occurs, only the departments and agencies covered by the unfunded bills will be impacted. All departments and agencies with signed appropriations bills are funded through the end of FY 2019.

Joint Select Committee on Budget and Appropriations Process Reform

The *Bipartisan Budget Act of 2018* ([Public Law 115-123](#)), enacted on February 9, 2018, established a new Joint Select Committee on Budget and Appropriations Process Reform tasked with considering and recommending reforms to the current budgeting and appropriations processes in Congress. The bipartisan and bicameral [16-member Committee](#), co-chaired by House Budget Committee Chairman Steve Womack (R-AR) and House Appropriations Committee Ranking Member Nita Lowey (D-NY), has a deadline of Friday, November 30, 2018 to approve a report that contains a detailed statement of the findings, conclusions, and recommendations of the Committee, in addition to proposed legislative language to carry out its recommendations. Such changes under consideration include moving to a two-year schedule for adoption of budget resolutions and potentially turning the budget into legislation that would be signed into law. If a majority of members on each side of the aisle on the panel can agree on a consensus package, it would be automatically placed on the Senate calendar for consideration, though it could be blocked if backers cannot round up 60 votes to advance the measure.

Co-chair Lowey has circulated a proposal that includes:

- Eliminating the debt limit
- Moving from an annual to a biennial budget resolution
- Disallowing the use of filibuster-proof reconciliation procedures in the Senate for deficit-increasing legislation
- Restoring pay-as-you-go rules in the House requiring offsets for both tax cuts and mandatory spending increases
- Setting up a process by which discretionary spending levels can be adopted if Congress cannot agree on a budget resolution by May 15
- Requiring the Appropriations Committees to adopt a full set of subcommittee allocations before subcommittees can advance bills

Co-chair Womack's ideas are quite different. He has proposed the panel move the annual appropriations cycle from a fiscal year that begins on October 1 to one that begins with the calendar year on January 1, add incentives and punishments for lawmakers if the government is not funded on time, and strengthen the Budget Committees to make them "a bit more meaningful." One area they both agree on, however, is moving from an annual to a biennial budget resolution. Additionally, Womack envisions that some of the proposals not adopted by the Committee or accepted by their fellow lawmakers could be attached to legislation or considered as stand-alone bills in a future Congress.

Potential Disaster Relief Package

On October 5, 2018, President Trump signed into law a five-year Federal Aviation Administration (FAA) reauthorization bill ([Public Law 115-254](#)), which included a \$1.7 billion emergency aid package to help North and South Carolina rebuild after Hurricane Florence. This is the first of several disaster-relief bills that are expected to increase recovery efforts after Florence. Rep. Ralph Abraham (R-LA), a member of the House Agriculture Committee, is rumored to introduce an emergency spending bill during the lame duck session for farmers and ranchers suffering from retaliatory tariffs and other headwinds, but it has yet to be released.

Expiring Authorities and Pending Reauthorizations

2018 Farm Bill

Congress was unable to reauthorize the 2014 Farm Bill by the September 30 deadline, leading to a lapse in authority for nearly 40 U.S. Department of Agriculture (USDA) programs. A handful of these programs are reported to be experiencing a noticeable effect including the Conservation Stewardship Program, the Conservation Reserve Program, the Regional Conservation Partnership Program, and the Agricultural Conservation Easement Program, to name a few. Big-ticket provisions such as commodity programs and the Supplemental Nutrition Assistance Program (SNAP) are funded through the end of the calendar year and are thus not impacted yet. In early October, USDA Secretary Sonny Perdue said that he will try to maintain the expired programs and that the Department is weighing how far it can go to keep the nearly 40 “orphan” programs running.

The major issues that have yet to be resolved between the House and Senate, and in some cases between Democrats and Republicans, are over proposed SNAP work requirements, commodity programs, numerous conservation programs (in particular the management of the Conservation Stewardship Program), and provisions included in the “Miscellaneous” title of the bill. Despite these issues, House and Senate Agriculture Committee leadership remain optimistic that they can get the bill finalized and voted on during the lame duck session. The committees are close to completing work on approximately six of the 12 Farm Bill titles.

National Flood Insurance Program

In late July, the *National Flood Insurance Program Extension Act of 2018* ([P.L. 115-225](#)) was signed into law, which extended the National Flood Insurance Program’s (NFIP’s) authorization through November 30, 2018. Since the NFIP’s multi-year authorization expired on September 30, 2017, Congress has passed seven short-term NFIP extensions with little bipartisan agreement over moves to reform the program. Last November, the House passed the *21st Century Flood Reform Act* ([H.R. 2874](#)), a package of seven bills approved by the House Financial Services Committee to reform and reauthorize the NFIP. However, the Senate has yet to move seriously on any bill related to NFIP reauthorization. While several bills were introduced in the Senate, none have received consideration. Since it is unlikely that Congress will reach an agreement on NFIP reform and reauthorization issues prior to November 30, another short-term extension must be approved in the lame duck to keep the program from lapsing.

Coast Guard Reauthorization

The first vote the Senate is expected to take when it returns to Washington on November 13 is on a measure to reauthorize the Coast Guard. A bill to amend the *White Mountain Apache Tribe Water Rights Quantification*

Act of 2010 ([S. 140](#)) is being used as the legislative vehicle to pass the Coast Guard reauthorization. On April 18, 2018, a cloture motion on a substitute amendment to S. 140 that would reauthorize the Coast Guard failed by a vote of [56-42](#) (60 votes were needed to pass). That substitute amendment contained provisions from the *Vessel Incidental Discharge Act* (VIDA) which relates to the regulation of ballast water discharges and other incidental discharges from vessels. Objection to the VIDA provisions by environmental organizations was one of the main reasons the substitute amendment to S. 140 failed to advance in the Senate in April. The substitute amendment has since been revised to address these concerns, and we expect the measure to be approved by the Senate. Earlier, on June 26, 2017, the House passed a companion measure ([H.R. 1726](#)) by voice vote.

Violence Against Women Reauthorization Act

The Violence Against Women Reauthorization Act of 2018 (VAWA; [H.R. 6545](#)) was included in the CR that passed as an addition to the enacted FY 2019 Defense and Labor – Health and Human Services – Education minibus bill ([H.R. 6157](#)). However, the VAWA was only granted a short-term reauthorization until December 7, 2018 and still needs a long-term reauthorization enacted. The VAWA is sponsored by Rep. Sheila Jackson Lee (D-TX), in addition to 177 Democratic cosponsors, and expands the law to allow law enforcement officials to take weapons from domestic abusers who legally cannot own them and extends VAWA authorization through FY 2023. The bill also significantly increases funding for rape crisis centers. The legislation is likely to be taken up when Congress returns in November.

Legislation That Could See Action

Build the Wall, Enforce the Law Act/ DACA/ Immigration Reform

Disagreements over funding for a border wall and immigration negotiations are likely to be taken up again in the lame duck session. The primary target for border wall funding is within the FY 2019 Homeland Security Appropriations bill. Congress appropriated \$1.6 billion for border security in the enacted *Consolidated Appropriations Act of 2018* last year and portions of an extended border barrier have since been built. In the White House's FY 2019 budget request, President Trump requested an additional \$5 billion for border wall funding.

Republicans in leadership have confirmed that a push to secure additional border wall funding will continue in December appropriations negotiations. Senate Minority Leader Chuck Schumer (D-NY) has alluded to a deal for increased border wall funding in return for further negotiations on the Deferred Action for Childhood Arrivals (DACA) program that President Trump rescinded last year. This has been challenged by many Democrats, including House Minority Leader Nancy Pelosi (D-CA), who has stated that she will trade “nothing” for President Trump’s border wall.

On October 12, House Majority Leader Kevin McCarthy (R-CA) introduced [H.R. 7059](#), the *Build the Wall, Enforce the Law Act of 2018*, a bill that would fund a roughly \$23 billion wall along the U.S.-Mexico border. The legislation also includes provisions to cut off funds to sanctuary cities and facilitates the deportation of immigrant gang members and currently has 54 Republican cosponsors. It is expected that this legislation, along with other immigration negotiations, will be a top priority when Congress returns in November.

Year-End Natural Resources/Lands/Reclamation Water Package

The House Natural Resources Committee and the Senate Energy and Natural Resources Committee have advanced legislative provisions that—among other things—address reform of the federal Land and Water Conservation Fund (which provides funding for federal land acquisition for parks, refuges and other public lands), funding for the National Parks maintenance backlog (a high priority for the Administration), and a range of bills addressing specific public lands issues, including monument designations and federal land exchanges. In addition, both committees have advanced a variety of bills related to Bureau of Reclamation operations—including a provision that establishes a process for the transfer of ownership of Reclamation assets (canals, ditches, etc.) to their operators once debt owed by operators to the federal government is paid, as well as provisions that will make groundwater storage easier.

It is anticipated that, regardless of the outcome of the elections, there will be an effort to pass a large bipartisan legislative package that includes the provisions mentioned above through the House and Senate. A potential stumbling block is the House's concern regarding the cost associated with the Senate bill to fund the parks maintenance backlog.

Criminal Justice/ Prison Reform Legislation

On October 10, Senate Majority Leader Mitch McConnell (R-KY) told reporters that he would put criminal justice reform legislation on the floor in the lame duck session if it can garner 60 votes to overcome a potential filibuster. "Criminal justice has been much discussed," he said. "What we'll do after the election is take a whip count and if there are more than 60 senators who want to go forward on that bill, we'll find time to address it." That legislation combines a House-passed prison reform bill, the *Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person (FIRST STEP) Act* ([H.R. 5682](#); summary available [here](#)), with bipartisan sentencing reform provisions crafted by the Senate, the *Sentencing Reform and Corrections Act* ([S. 1917](#); summary available [here](#)). The House passed H.R. 5682 on May 22, 2018 by a vote of [360-59](#), while the Senate Judiciary Committee passed S. 1917 on February 15, 2018 by a vote of [16-5](#). Passage of the legislation is a top priority of senior White House adviser Jared Kushner, the President's son-in-law. When President Trump met with Republican Senators in early August, he signaled support for criminal justice reform. Senate Majority Leader McConnell has never been a big fan of the legislation, which divides his caucus, but the President's support could be a major boost to the efforts of Senate Judiciary Committee Chairman Chuck Grassley (R-IA), who has said that he is determined to get a compromise bill enacted into law in the lame duck.

Tax Extenders and Technical Corrections Package

It is likely that Congress will address tax extenders during the lame duck session. These include temporary tax provisions, like the investment tax credit for geothermal power and the biodiesel tax credit that expired on December 31, 2017. A one-year retroactive extension (*e.g.*, an extension for 2018) of current policy only is expected to move forward. It is extremely unlikely that either party will consider changes to current policy, like those that have been proposed for pumped storage or biodiesel. Both parties have been disciplined in this regard in the past.

While the tax work during the lame duck is expected to be limited, it remains possible that Congress could use tax extenders to address broader tax issues. These could include fixes to last year's *Tax Cuts and Jobs Act* and the *Retirement Enhancement and Savings Act*, a bipartisan package of retirement savings improvements. While there has been discussion surrounding a further 10% tax cut for middle class families, it is unlikely that

either chamber will rush to push a campaign promise through Congress after the election. House Ways and Means Committee Chairman Kevin Brady (R-TX) stated in an interview on October 26 that a 10% tax cut for middle-income Americans would be a priority for Republicans *if* they retain their majorities in Congress and acknowledged that lawmakers have all but decided not to take action on the tax plan in the lame duck session of Congress, despite President Trump's wishes.

JOBS Act 3.0

The bipartisan *Jumpstart Our Business Startups (JOBS) Act* ([P.L. 112-106](#)) was enacted on April 5, 2012 and was intended to spur capital formation by encouraging the funding of small businesses in the U.S. by easing many of the country's securities regulations. A section of the *Fixing America's Surface Transportation (FAST) Act* ([P.L. 114-94](#)), enacted on December 4, 2015, includes several provisions intended to improve upon the original JOBS Act. On July 17, 2018, the House passed the *JOBS and Investor Confidence Act of 2018* ([S. 488](#)) by a vote of [406-4](#). This legislative package of reforms has been dubbed the JOBS Act 3.0 and [consists](#) of 32 pieces of legislation principally designed to spur entrepreneurship by reinvigorating business startups and initial public offerings (IPOs) and aims to expand upon the 2012 JOBS Act and the JOBS Act 2.0.

The reforms in the bill further streamline the regulation of IPOs, extend certain disclosure exemptions for emerging growth companies (EGCs), and expand the definition of accredited investors. Of particular note, the bill would allow all issuers, not just EGCs, to use "testing-the-waters" communications in connection with securities offerings. The legislation must now be returned to the Senate, where it may be considered as approved by the House, amended and returned to the House, reconciled with the House through a conference committee, or set aside with no further action.

Elections Security

The fate of elections security legislation in the lame duck remains uncertain, however, the bipartisan Senate sponsors of the *Secure Elections Act* ([S. 2593](#)) are making every effort to prepare their bill for consideration.

Senators James Lankford (R-OK) and Amy Klobuchar (D-MN), along with 12 of their colleagues, introduced S. 2593 earlier this year. The bill:

- authorizes block grants for states to upgrade outdated voting technology;
- creates a program for an independent panel of experts to develop cybersecurity guidelines for election systems that states can implement if they choose and offer states resources to implement the recommendations;
- expedites the process by which state officials receive security clearances necessary to review sensitive threat information; and
- instructs the Department of Homeland Security and other federal entities to more quickly share this information with relevant state officials.

Supporters of S. 2593 are working closely with secretaries of state in all 50 states and other stakeholders to make several adjustments to S. 2593 after the bill garnered criticism from state and local election organizations, some Members of Congress, and even the White House, which said that "inappropriate mandates" were included in the bill, as well as actions that would move "power" and "funding" from the states to Washington "for the planning and operation of elections." Senators Lankford and Klobuchar said that a revised piece of legislation will be released in the near future for congressional consideration.

A similar bill, the Secure Elections Act ([H.R. 6663](#)) was introduced in the House on August 10, 2018 by Reps. Tom Rooney (R-FL) and Jim Himes (D-CT). There has been more limited discussion in the House regarding elections security legislation than in the Senate.

Sexual Harassment Legislation

Earlier this year, the House and Senate passed their respective versions of the *Congressional Accountability Act of 1995 Reform Act* ([H.R. 4924/S. 2952](#)), legislation that aims to amend Capitol Hill's own sexual misconduct policies. The similarities between the House and Senate on this issue seem to stop there. Rep. Bradley Byrne (R-AL), who helped draft the House version of the bill, said that the two chambers have "almost a completely different philosophy" on the issue. He continued to say that Senators "feel very strongly that we went too far in our bill, and they want a much weaker process."

The House's bipartisan legislation requires lawmakers to personally pay for harassment and discrimination settlements, creates a legal adviser to assist employees pursuing misconduct claims, and establishes an independent inquiry before formal hearings begin on specific claims. The Senate's bipartisan bill, however, takes what many consider a softer approach. Lawmakers would be personally liable for only compensatory damages from harassment settlements, employees' confidential adviser would be barred from offering legal advice, and the investigation process would add steps that some say would disincentive victims from coming forward. Although it is possible for House and Senate lawmakers to come to an agreement by the end of the year, there may be too much work left to do with such little time left in the session.

AV START Act

The *American Vision for Safer Transportation through Advancement of Revolutionary Technologies (AV START) Act* ([S. 1885](#)) is currently under consideration in the Senate and is expected to be taken up in the lame duck session. The bill establishes a framework for the safe testing, development, and deployment of automated vehicle technology while also supporting research and investment in the U.S. *AV START* will also increase oversight by the National Highway Traffic Safety Administration (NHTSA). The co-authors of the bill, Senators John Thune (R-SD) and Gary Peters (D-MI), said that the legislation will give regulators the tools they need to create self-driving safety standards and provide clarity about the safety responsibilities of local, state, and federal officials.

The bill faces controversy with nearly two dozen groups representing pedestrians, bicyclists, and people with disabilities writing in opposition to the bill. In their letters to Congress, the groups said that the legislation does not provide safety protections and threatens local policies for self-driving cars.

Other Business

Executive and Judicial Nominations

High on the to-do list in the lame duck is a batch of executive and judicial branch nominees, including 36 federal District Court and three Circuit Court judges. Asked about the agenda for December, Senate Republican Whip John Cornyn (R-TX) said, "[n]ominations, more nominations." Indeed, the Senate Judiciary Committee held two nomination hearings on October 17 and 24 for a total of seven District Court nominees and three Circuit Court nominees, even though the Senate is in recess (only two Republican Senators were present for each hearing). As of October 29, there are [182 individuals](#) who have been formally nominated by

President Trump to serve in the executive branch but have not yet been confirmed by the Senate. Any nominees who are not confirmed by the Senate by the end of the 115th Congress on January 3, 2019 will need to be re-nominated by President Trump when the new Congress convenes.