



November 4, 2020

MEMORANDUM

TO: NCSHA Members
FR: NCSHA Policy and Government Affairs Team
RE: 2020 Election Analysis

Uncertainty Reigns

As of this writing, who will win the presidential election and which party will control the Senate in the next Congress remain uncertain, though the mist appears to be clearing slightly. Final outcomes could be determined in the next few days, or could take substantially longer, especially if Senate control depends on one, or possibly two, Georgia Senate runoff elections to be held in January.

The only major outcome we know now is that the Democrats will retain control of the House, although it appears their majority will decrease slightly from current levels. The exact margin won't be decided for several days.

In an election year with only 11 gubernatorial elections, all nine incumbents running won reelection—in Delaware, Indiana, Missouri, New Hampshire, North Carolina, North Dakota, Vermont, Washington, and West Virginia. The incumbent's party candidate was elected in an open seat election in Utah. One state changed party control, with the Republican winning an open seat election in Montana.

Whether the Democrats control the presidency and both chambers of Congress is key to their ability to enact their agenda. With the House in Democratic hands, either a Trump victory or a Republican Senate majority would mean it would be much more difficult to overcome gridlock and partisan differences, though divided government might also raise the possibility of (and require some degree of) compromise and inter-party deal-making.

Regardless of the different potential election outcomes, Congress will hold a post-election session, during which it needs to address fiscal year 2021 appropriations because the current continuing resolution keeping the government open expires December 11. Congress will probably also consider additional COVID relief and limited tax priorities, but faces significant headwinds in its efforts to pass legislation in these areas.

The uncertainties around the election and questions about what Congress will do on spending, tax, COVID, and other legislation during the remainder of this year and in the next Congress mean we need to stay engaged with legislators and Administration officials. The number of new Representatives and Senators means we must work hard to inform them of the role of HFAs and our priorities. Because all legislation currently under consideration expires at the end of this Congress and must be re-started in the next Congress, we must continue to pursue our agenda diligently, intelligently, and aggressively.

Whatever the outcome of the outstanding electoral races, we look forward to working with you on these and other priorities. We will update this analysis as events warrant. Please let us know if you have questions or comments.

Republicans Appear Likely to Remain in Control of Senate

As things currently stand, Democrats will have at least 47 Senate seats (including the two independent Senators who caucus with the Democrats) and Republicans will have at least 48 Senate seats, with five seats yet to be called. Democrats picked up two seats, with former Governor John Hickenlooper beating Senator Cory Gardner (R) in Colorado and Mark Kelly beating incumbent Senator Martha McSally (R) in Arizona. However, Republicans picked up a Senate seat previously held by Democrats in Alabama, with Tommy Tuberville winning his race against Senator Doug Jones (D).

The five seats that have yet to be called are Alaska, both Georgia senatorial races, Michigan, and North Carolina. All but Michigan are currently held by Republicans. We will not know the outcome of the Georgia seat currently held by Senator Kelly Loeffler (R) until a run-off election on January 5, as no candidate captured more than 50 percent of the vote. Votes are still being counted in the other Georgia Senate race—the seat currently held by Senator David Perdue (R)—but if no candidate breaks the 50 percent threshold, that race too will be decided by a January 5 run-off election.

Democrats Maintain Majority in House

Democrats are expected to hold on to the majority in the House of Representatives. As of this writing, they hold 203 of the 391 seats (out of 435) that have been called. However, their majority is likely to shrink from its current level.

House Leadership Mostly Stable

House Speaker Nancy Pelosi (D-CA) has announced her intention to run for another term as Speaker of the House in House leadership elections scheduled for November 18 and 19. Majority Leader Steny Hoyer (D-MD) and Majority Whip James Clyburn (D-SC) have both declared their intentions to seek reelection to their leadership positions and run unopposed. Katherine Clark (D-MA), David Cicilline (D-RI), and Tony Cárdenas (D-CA) are running for the

highest-ranking contested position of Assistant Speaker. Hakeem Jeffries (D-NY) is running uncontested for his second term as Democratic Caucus Chairman. Pete Aguilar (D-CA), Robin Kelly (D-IL), and Deb Haaland (D-NM) are all running for Democratic Caucus Vice Chair, which is being vacated by Clark who is seeking the number four leadership position.

Representatives Kevin McCarthy (R-CA) and Steve Scalise (R-LA) are expected to continue on as Minority Leader and Whip, respectively. Representatives Liz Cheney (R-WY), Gary Palmer (R-AL), and Jason Smith (R-MO) will also likely retain their Republican party leadership positions. Representative Mark Johnson (R-LA) is running unopposed to replace Representative Mark Walker (R-NC) for Republican Conference Vice-Chair, as Walker is retiring from Congress.

Senate Leadership Expected to Remain the Same

With control of the Senate still unknown, we do not know whether Senator Mitch McConnell (R-KY) or Senator Chuck Schumer (D-NY) will lead that chamber in the next Congress. Both are likely to remain in the top leadership position for their caucuses regardless of the outcome.

The incumbents for the other party leadership positions in both caucuses currently are running unopposed and expected to maintain their roles, with Senator John Thune (R-SD) and Senator Dick Durbin (D-IL) expected to continue on as Republican and Democratic whips, respectively; Senators Patty Murray (D-WA), Debbie Stabenow (D-MI), Elizabeth Warren (D-MA), Amy Klobuchar (D-MN), Bernie Sanders (I-VT), Joe Manchin (D-WV), and Tammy Baldwin (D-WI) expected to maintain in their Democratic party leadership roles; and Senators John Barrasso (R-WY), Roy Blunt (R-MO), and Joni Ernst (R-IA) expected to stay in their Republican party leadership roles.

Senate Committee Changes

Senate Committee on Finance. If Republicans maintain control of the Senate, Senator Mike Crapo (R-ID) is expected to become chairman of the Finance Committee, which has jurisdiction over tax matters, including the Low Income Housing Tax Credit (Housing Credit) and Private Activity Bonds. Crapo will need to step down from his position as chairman of the Senate Banking Committee to take up the gavel in the Finance Committee. Current Finance Committee Chairman Chuck Grassley (R-IA) is term-limited under Republican rules for committee chairmanships and is expected to resume his role as Chairman of the Judiciary Committee.

If Democrats win control of the Senate, Senator Wyden (D-OR), currently the ranking member, will become Finance Committee chairman.

Both Crapo and Wyden support the Housing Credit and Housing Bond programs. Wyden in particular has been a leader on Housing Credit legislation, as an original cosponsor and lead

for the Affordable Housing Credit Improvement Act, [S. 1703](#), and the lead sponsor of the Save Affordable Housing Act, [S. 1956](#), and the Emergency Affordable Housing Act, [S. 4078](#). While not a cosponsor of these major Housing Credit bills, Crapo has been a strong behind-the-scenes supporter of the Housing Credit and Housing Bonds, playing a critical role in maintaining the tax exemption for Private Activity Bonds during negotiations over tax reform legislation in 2017.

Finance Committee members Mike Enzi (R-WY) and Pat Roberts (R-KS) are retiring from the Senate at the end of this Congress, and thus did not run for reelection. (Republicans were elected to replace them in both states.) Finance Committee members Mark Warner (D-VA), Bill Cassidy (R-LA), Steve Daines (R-MT), Ben Sasse (R-NE), and John Cornyn (R-TX) won reelection and are expected to return to the Committee next year.

Senate Appropriations Committee. Neither Senate Appropriations Committee Chair Richard Shelby (R-AL) nor Vice Chairman Patrick Leahy (R-VT) were up for re-election, and they appear likely to remain in their positions next year. Both Senate THUD Appropriations Subcommittee Chairman Susan Collins (R-ME) and Ranking Member Jack Reed were up for reelection. Reed handedly won reelection and will likely return as Ranking Member. Collins appears to have emerged as the winner in a competitive race for her reelection and is expected to return as the top Republican on the Subcommittee. The retirement of Lamar Alexander (R-TN) opens up a committee spot for Republicans. Subcommittee members Steve Daines (R-MT), Richard Durbin (D-IL), Lindsey Graham (R-SC) Christopher Coons (D-DE), and Shelley Moore Capito (R-WV) all were reelected.

Senate Banking Committee. Senator Pat Toomey (R-PA) is expected to be the incoming Banking Committee Chair (or Ranking Member if Republicans lose control of the Senate) and will likely hold that position for two years until he retires from public service when his current term expires in two years. With his community banking and Wall Street background, he is expected to focus on housing finance reform, expanding investment opportunities for middle-income Americans, fintech issues, payment systems reform, digital currency, and Consumer Financial Protection Bureau reform. Senator Sherrod Brown (D-OH) is expected to remain as the Ranking Member and would become Chairman if the Democrats are in the majority. He will likely continue to focus on affordable housing and consumer-related banking issues.

Committee members Martha McSally (R-AZ) and Doug Jones (D-AL) lost their re-election campaigns, while Thom Tillis's (R-NC) and David Perdue's (R-GA) races have not been called yet. All other Committee members will be returning in the next Congress, though current Chairman Mike Crapo (R-ID) will give up his chairmanship to become the chair of the Senate Finance Committee.

House Committee Changes

House Ways and Means Committee. Leadership of the Ways and Means Committee is expected to remain unchanged in the 117th Congress, with Representatives Richard Neal (D-MA) and Kevin Brady (R-TX) staying on as chairman and ranking member, respectively.

Neal has long been a supporter of both the Housing Credit and Housing Bonds. In the 115th Congress, before he became chairman, he was the lead sponsor of the Affordable Housing Credit Improvement Act, but passed the torch to Representative Suzan DelBene (D-WA) upon become chairman in the 116th Congress. He was also a lead sponsor of the successful 2015 effort to enact the minimum 9 percent rate for Housing Credit properties.

Makeup of the Committee will change next year with the death of Representative John Lewis (D-GA) and the retirements of Representatives Kenny Marchant (R-TX) and George Holding (R-NC). Committee members whose races have not yet been called include Thomas Suozzi (D-NY), Daniel Kildee (D-MI), Steven Horsford (D-NV), and David Schweikert (R-AZ). All other Committee members are expected to resume their positions on the Committee in the next Congress, unless Republican gains in the chamber overall force Democrats to either cut a Democratic seat from or add another Republican seat to the Committee.

House Appropriations Committee. Rosa DeLauro (D-CT), Marcy Kaptur (D-OH), and Debbie Wasserman Schultz (D-FL) are seeking to replace retiring Appropriations Committee Chairwoman Nita Lowey (D-NY). As one of the most coveted committee leadership positions, this race has been heated since Lowey's retirement announcement. Both Kaptur and Wasserman Schultz have committed to bring back earmarks if elected while DeLauro has been noncommittal. Kay Granger (R-TX) is expected to remain the Ranking Member. Transportation, Housing and Urban Development (THUD) Appropriations Subcommittee Chairman David Price (D-NC) and Ranking Member Mario Diaz-Balart (R-FL) both won reelection and are expected to remain in their respective positions. The retirement of Will Hurd (R-TX) opens up at least one spot on the committee if party ratios remain the same. The remaining subcommittee members all won reelection and are expected to return to their positions on the subcommittee.

House Financial Services Committee: Representative Maxine Waters (D-CA) and Representative Patrick McHenry (R-NC) are expected to remain Chair and Ranking Member of the Committee, respectively. Fifty-six of the sixty-one Financial Services Committee members were up for reelection: 31 Democrats and 25 Republicans. (Four members either lost their primary election or did not seek re-election.) Most incumbents won re-election, and as of this writing, only four races have not yet been called. Congresswoman Waters (D-CA) is expected to continue her support for affordable housing and ensuring the financial industry is accountable to consumer concerns through oversight of HUD, the Federal Housing Finance Agency, the Consumer Financial Protection Bureau, and the Office of the Comptroller of the Currency.

Governors

Of the 11 state gubernatorial elections held yesterday, only Montana's governorship will change party control, as Representative Greg Gianforte (R) beat Montana's current Lieutenant Governor Mike Cooney (D). Incumbent Steve Bullock (D) was unable to run for re-election due to term limits. There will be 27 Republican and 23 Democratic governors in 2021; a net gain of one seat for Republicans.

All six Republican incumbents won their re-election campaigns comfortably—in Indiana (Eric Holcomb), New Hampshire (Chris Sununu), North Dakota (Doug Burgum), Missouri (Mike Parson), Vermont (Phil Scott), and West Virginia (Jim Justice). Likewise, the three Democrats up for re-election in Delaware (John Carney), North Carolina (Roy Cooper), and Washington (Jay Inslee) all won their bids by large margins to retain their positions.

Utah's election was the only other open seat race apart from Montana's. Current Governor Gary Herbert (R) was eligible to run for another term, but decided to retire and endorse his Lieutenant Governor Spencer Cox (R), who was elected.

Lame Duck Session

One of the most immediate questions Congress must answer in the aftermath of the election is what to do during the post-election period, or "lame duck" session, between now and when the new Congress takes over in January. Among the most pressing legislative priorities are fiscal year (FY) 2021 appropriations, COVID relief and economic stimulus legislation, and potential tax code changes. However, it may be difficult for Congress and the Administration to work on any of these issues until the uncertainties about the presidential and Senate elections are resolved.

The current continuing resolution (CR) allowing federal programs to continue operating expires December 11. By then, Congress needs to pass another CR or enact appropriations legislation funding all or some government programs until FY 21 ends September 30. The most likely outcome is a short-term CR extending the funding deadline to a new date early next year. That would give appropriators time to complete action on at least some FY 21 funding bills, which they have been working on to get them ready for congressional action. But what date Congress would pick for the CR to expire probably depends on the outcome of the presidential and Senate elections.

Another major question is whether Congress and the Administration will finally achieve agreement on legislation to provide additional funding for Coronavirus relief and COVID-related economic stimulus. Past negotiations, especially those between House Speaker Pelosi and Treasury Secretary Mnuchin over the last several weeks, provide a foundation for reaching an agreement, but Pelosi and Mnuchin both say strong disagreements remain. One possibility is to enact before the end of the year a smaller COVID relief bill with urgent aid and develop another,

likely larger, bill next year. Another option is to include additional COVID-related spending in a CR or FY 21 appropriations legislation instead of enacting a separate bill.

One more major area Congress may act on is tax legislation. Several tax-writers want to extend some tax provisions that expire at the end of this year and address disaster-related tax relief, which could include disaster Housing Credits for states that have seen natural disasters in 2020. The most likely scenario for enacting tax changes this year would be to include a limited number of changes in a large end-of-the-year bill combining FY 21 appropriations, COVID relief, and some tax provisions. We will continue to strive for inclusion of our major Housing Credit and Bond changes in such a bill.

Likely Legislation in 2021

Two of Speaker Pelosi's and Joe Biden's highest priorities for action in early 2021 are COVID relief (if significant relief is not already provided by then) and a major infrastructure bill. Republicans have also indicated they would like to enact COVID relief legislation soon. Many Republicans also support infrastructure legislation, but significant differences remain in regards to the size and scope of such legislation, so reaching agreement on a major infrastructure bill would be challenging. Both Biden and Trump have said they also support infrastructure legislation, so it is possible that a concerted Administration push could make enacting a bill more likely.

Infrastructure legislation could include transportation, internet access, schools, water, energy, and affordable housing. The House passed an infrastructure bill earlier this year, the [Moving Forward Act](#), that included several NCSHA priorities, including expansion of the Housing Credit and Private Activity Bonds and fixing the 4 percent Credit rate for bond-financed Housing Credit deals. However, Senate Republicans and Trump have rejected the House bill being too expensive and including too many extraneous provisions.

Recently, Speaker Pelosi has said the Democrats will use budget reconciliation legislation to enact COVID aid, health care, and possibly other priorities. This would be likely only if both the House and Senate are controlled by the Democrats. Reconciliation allows a majority party to enact budget-related legislation with a simple majority in the Senate—instead of needing 60 votes to overcome a potential filibuster but requires both chambers to first jointly pass a budget resolution allowing for reconciliation. Some Senate Democrats are also discussing eliminating the filibuster if they control the Senate, which would allow them to pass any legislation by a simple majority without using reconciliation.

The new Congress will have the opportunity to chart new budget and appropriations waters next year because discretionary spending caps that have been in existence for the last decade expired last year. But it will still be difficult for the House and Senate to agree on a budget plan if they are controlled by different parties. Without a budget resolution, appropriators would have a more difficult time developing their FY 22 funding bills, but they would have to enact

some kind of appropriations bills (which could take the form of another CR) by October 1 to avoid a government shutdown.