



November 6, 2020

**MEMORANDUM**

TO: NCSHA Members  
FR: NCSHA Policy and Government Affairs Team  
RE: 2020 Election Analysis: November 6 Revision

**Is It Over Yet?**

Media reports suggest it is increasingly likely that Joe Biden has been or will be elected President. While ballots are still being counted and legal disputes remain, this result seems likely to stand. A separate memorandum looks at what a Biden presidency means for housing policy; this revision to our November 4 election analysis discusses how this and other election results affect the legislative outlook.

Continuing election returns have not yet established which party will control the Senate in the next Congress; each party now controls 48 seats, with four races undecided—two of them in Georgia going to run-off elections in January. More House election results seem to confirm that the House Democrats' current 19-seat majority will decrease by 5-10 seats, with 29 House elections not yet decided.

Whether the Democrats control the Senate will have a huge impact on the Biden Administration's and Democrats' ability to push through their priorities. If the Republicans maintain control, Democrats will temper their legislative ambitions and strive to reach agreement on coronavirus relief, infrastructure, Fiscal Year (FY) 2021 and 2022 appropriations, and other issues. Biden's housing agenda would be less expansive than what his campaign has pledged to pursue. With a Democratic Senate, the Democrats would still have to prioritize and would be unlikely to be able to do everything the Biden campaign has promised, but it would be able to do much more than without it.

Both parties' efforts to support their candidates in the Georgia Senate run-off elections and Democrats' desire to complete action on several key issue before a new Administration takes over raises the possibility of leaders moderating their positions and potentially reaching agreement by the end of the year on coronavirus relief, economic stimulus, and an end-of-the-year omnibus bill including FY 2021 appropriations and a limited number of tax code changes.

However, strong enough disagreements exist that reaching agreement on these issues in the limited time available may prove too difficult to overcome. Furthermore, the uncertainty about the Trump Administration's position on these issues makes it hard to tell what will happen.

Looking out a bit longer, even without a Democratic Senate, a new Administration will be able to make significant changes in housing policy. The authority to appoint new leaders at HUD, Treasury, the Department of Agriculture's rural housing offices, and numerous other key federal departments and regulatory agencies will allow a new Administration to make a host of regulatory and administrative changes. Their negotiating leverage, supported and amplified by a Democratic House, will enable them to effectuate many funding and legislative priorities.

In an election year with only 11 gubernatorial elections, all nine incumbents running won re-election—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.

### **Republicans Appear Likely to Remain in Control of Senate**

As things currently stand, Democrats and Republicans will have at least 48 Senate seats each (including the two independent Senators who caucus with the Democrats), with four 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 four Senate elections that have yet to be called are Alaska, both Georgia races, and North Carolina. All are currently held by Republicans. One Georgia race has already been slotted for a run-off election January 5; it appears very likely the other race will also require a run-off.

### **Democrats Maintain House Majority**

Democrats are expected to hold on to the majority in the House of Representatives, though the size of their majority may shrink by 5-10 seats. As of this writing, they hold 209 of the 402 seats (out of 435) that have been called.

### **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 re-election to their leadership positions and run unopposed. Representatives Katherine Clark (D-MA), David Cicilline (D-RI), and Tony Cárdenas (D-CA) are

running for the highest-ranking contested position of Assistant Speaker (though some members have asked Cárdenas to take over the Democratic Congressional Campaign Committee instead). Representative Hakeem Jeffries (D-NY) is running uncontested for his second term as Democratic Caucus Chair. Representatives 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 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 re-election. (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 re-election and are expected to return to the committee next year.

Senate Appropriations Committee. Neither Senate Appropriations Committee Chair Richard Shelby (R-AL) nor Vice Chair 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 Chair Susan Collins (R-ME) and Ranking Member Jack Reed were up for re-election. Reed handedly won re-election and will likely return as ranking member. Collins appears to have emerged as the winner in a competitive race for her re-election 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 re-elected.

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 117<sup>th</sup> 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 115<sup>th</sup> Congress, before he became chairman, he was the lead sponsor of the Affordable Housing Credit Improvement Act, but he passed the torch to Representative Suzan DelBene (D-WA) upon become chairman in the 116<sup>th</sup> Congress. He was also a lead sponsor of the successful 2015 effort to enact the minimum nine 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 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 re-election 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 re-election and are expected to return to their subcommittee positions.

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 re-election: 31 Democrats and 25 Republicans. (Four members either lost their primary elections 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 Hebert (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 FY 2021 appropriations, COVID-19 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 2021 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 2021 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-19-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-19 relief bill with urgent aid and develop

another, likely larger, bill next year. Another option is to include additional COVID-19-related spending in a CR or FY 2021 appropriations legislation instead of enacting a separate bill.

McConnell recently said he hopes Congress can complete action on a COVID-19 relief bill and FY 2021 appropriations before the end of the year.

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 2021 appropriations, COVID-19 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-19 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-19 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 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 four percent Credit rate for bond-financed Housing Credit deals. However, Senate Republicans and Trump have rejected the House bill as being too expensive and including too many extraneous provisions.

Recently, Speaker Pelosi has said the Democrats will use budget reconciliation legislation to enact COVID-19 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 2022 funding bills, but they would have to enact some kind of appropriations bill (which could take the form of another CR) by October 1 to avoid a government shutdown.