

November 16, 2012

contact

Tim Lynch
202.739.5263
tlynch@morganlewis.com

Government Relations

ELECTION 2012 RESULTS AND IMPACTS

Results

President Obama became only the second Democratic president to win reelection since Franklin Roosevelt (Bill Clinton being the other), winning both the popular and Electoral College votes. Along with President Obama's victory, Democrats maintained control of the U.S. Senate and actually increased their majority position by two seats (going from 53 to 55, including two Independent Senators). With a handful of House elections still to be decided, Republicans nonetheless maintained control of the House of Representatives with a comfortable albeit diminished majority.

Although most political pundits are labeling this a "status quo" election, there will still be changes both in the administration and on Capitol Hill. Historically, Presidential second terms produce changes in the Cabinet and among the senior staff of federal departments and agencies. Between now and Inauguration Day in January, there will be a great deal of speculation over who's staying and who's leaving, with some departures being voluntary and some not so voluntarily.

In the Senate, Election Day did not result in any "blockbuster" defeats of incumbent Senators from either party. In fact, only one incumbent – Sen. Scott Brown (R-MA) – lost (although another Republican incumbent – Sen. Richard Lugar (R-IN) – was defeated earlier in the GOP primary). To the extent that there will be changes in Senate leadership or committee chairs and ranking members, by and large they will be due to voluntary retirements or, in the case of Republicans, term limits.

While there will be between 75 and 80 new Representatives arriving for the 113th Congress in January, none defeated any members of the Republican or Democratic leadership or committee chairs and ranking members. And like the Senate, to the extent that there will be changes in the new House, they will be the result of voluntary retirements or term limits.

Impacts

Tax Policy

Tax legislation is handled by two congressional committees: the Senate Finance Committee, and the House Ways and Means Committee and in both cases, the leadership remains intact. Each of the committees will have a full plate of issues in both the lame duck session and certainly starting the 113th Congress in January. At the top of the list will be a decision about the Bush tax cuts extension. That will be followed by a decision of whether to extend the temporary reduction in the FICA tax. Other major issues will include:

- Comprehensive Tax Reform

* Names are projected but subject to confirmation by individual caucuses.

- Alternative Minimum Tax
- International Business Taxes (Territorial System)
- Tax Extenders
- Estate Tax
- Affordable Care Act–related Taxes
- Tax Incentive Retirement Programs

Committee Leadership

House Ways and Means Committee

	112th Congress	113th Congress
Chairman	Dave Camp (R-MI)	Dave Camp (R-MI)
Ranking	Sandy Levin (D-MI)	Sandy Levin (D-MI)

Senate Finance Committee

	112th Congress	113th Congress
Chairman	Max Baucus (D-MT)	Max Baucus (D-MT)
Ranking	Orrin Hatch (R-UT)	Orrin Hatch (R-UT)

Banking and Financial Services

Oversight of, and potential technical corrections to, the Dodd-Frank Act will continue to dominate the agendas of both the House Financial Services Committee and its Senate counterpart, the Senate Banking Committee. And both committees will see substantial changes in their leadership come January 2013. The more dramatic changes will occur at the House Financial Services Committee, where a new Chairman as well as a Ranking Democrat (the former because of term limits and the latter due to retirement) will take over. In the Senate, Sen. Tim Johnson (D-SD) will continue as Chairman of the Banking Committee, while Sen. Mike Crapo (R-ID) will likely take over the Ranking Republican position from term-limited Sen. Richard Shelby (R-AL). It is perhaps of note that with the convening of the 113th Congress in January, the two principal architects of the Dodd-Frank Act – Sen. Chris Dodd and Rep. Barney Frank – will no longer be in Congress.

In addition to the issues surrounding the Dodd-Frank Act, the committees' agendas will also include:

- Future of Fannie Mae and Freddie Mac
- Federal Reserve
- Insurance Industry Reform
- Consumer Financial Protection Bureau

* Names are projected but subject to confirmation by individual caucuses.

Committee Leadership

House Financial Services Committee

	112th Congress	113th Congress
Chairman	Spencer Bachus (R-AL)	Jeb Henslerling (R-TX)*
Ranking	Barney Frank (D-MA)	Maxine Waters (D-CA)*

Senate Banking Committee

	112th Congress	113th Congress
Chairman	Tim Johnson (D-SD)	Tim Johnson (D-SD)
Ranking	Richard Shelby (R-AL)	Mike Crapo (R-ID)*

Labor and Employment

Labor issues historically are among the most contentious and partisan concerns under the jurisdiction of the House Education and Workforce Committee and the Senate Health, Education, Labor and Pensions (HELP) Committee. The 113th Congress will very likely continue that history, in part because the leadership of those committees will remain mostly intact. The lone exception is the Senate HELP Committee, where Sen. Mike Enzi (R-WY) is term limited and will likely be replaced by Sen. Lamar Alexander (R-TN) as the Ranking Republican on the committee. And because Republicans control the House and Democrats control the Senate, the agendas of the two committees will be very different. The House committee will continue its very aggressive oversight of the Department of Labor and the National Labor Relations Board. For its part, the Senate HELP Committee will not focus on – but will certainly defend when needed – the Obama administration’s labor agenda, and will instead concentrate on the “Education” component of its jurisdiction. Other agenda items will include:

- Workforce Training
- Pension Protection Act Reform
- PBGC Oversight

Committee Leadership

House Education and Workforce Committee

	112th Congress	113th Congress
Chairman	John Kline (R-MN)	John Kline (R-MN)
Ranking	George Miller (D-CA)	George Miller (D-CA)

Senate HELP Committee

	112th Congress	113th Congress
Chairman	Tom Harkins (D-IA)	Tom Harkins (D-IA)

* Names are projected but subject to confirmation by individual caucuses.

Ranking

Mike Enzi (R-WY)

Lamar Alexander (R-TN)*

ERISA and Employee Benefits

Four congressional committees handle ERISA and employee benefits legislation: the two tax committees and the two labor committees. As mentioned above, there are no changes in leadership on the tax committees and only one change – Sen. Alexander replacing Sen. Enzi – on the labor committees. The Department of Labor has pursued an aggressive agenda on defined contribution plans, calling for more “transparency and accountability.” Several of these initiatives are likely to be the subject of oversight by one or all of the committees of jurisdiction. Additionally, with portions of the Pension Protection Act (PPA) sunseting in 2014, the committees will begin – and possibly conclude – reform efforts in 2013.

Healthcare and the Affordable Care Act (ACA)

The complex issue of healthcare legislation has multiple committees of jurisdiction. In the House, the Energy and Commerce Committee and Ways and Means Committee share jurisdiction, while in the Senate, the Finance Committee and HELP Committee have those responsibilities. As mentioned above, the leadership of the Finance Committee and Ways and Means Committee remains the same, while the HELP Committee only sees one change with Sen. Alexander replacing Sen. Enzi. An interesting development on the Ways and Means Committee is that both the current Chairman (Rep. Wally Herger (R-CA) and Ranking Democrat (Rep. Pete Stark (D-CA) on the Health Subcommittee will not be returning for the 113th Congress. With Republicans retaining control of the House and with the leadership of the Energy and Commerce Committee remaining the same, it is expected that the committee’s agenda will again focus on oversight of the implementation of the ACA. Recognizing the political realities of a second Obama term and a Democratic-controlled Senate, the committee’s Republican leadership will likely target specific changes to the ACA as opposed to its complete repeal. Other agenda issues:

- FDA Oversight & Budget
- ACA implementation issues, including state exchange development
- Medicare program changes
- State flexibility in Medicaid programs
- Fraud and Abuse issues in federal health care programs
- Medical device excise tax
- Possible reduction in period of exclusivity for pioneer biologics
- Possible extension of Medicaid drug rebate levels
- Oversight of activities of the Independent Payment Advisory Board (IPAB)

* Names are projected but subject to confirmation by individual caucuses.

Committee Leadership

House Energy and Commerce Committee

	112th Congress	113th Congress
Chairman	Fred Upton (R-MI)	Fred Upton (R-MI)
Ranking	Henry Waxman (D-CA)	Henry Waxman (D-CA)

Energy

The primary committees of jurisdiction over energy policy are the House Energy and Commerce Committee and the Senate Energy and Natural Resources Committee. Additionally, the House Natural Resources Committee has jurisdiction over mineral resources (federal lands and offshore leasing) as well as alternative energy sources. Similarly, the Senate Environment and Public Works Committee – as the name implies – has jurisdiction over the Environmental Protection Agency (EPA) and environmental oversight as well as nuclear safety. In the 112th Congress, Republicans supported an energy policy that was labeled “All of the Above,” with a strong defense of domestic energy supplies including fossil fuels. Democratic energy policy was more focused on the development of alternative energy sources. With most of the key congressional players on energy policy reelected, those same battles will likely continue into the 113th Congress. Perhaps the single most significant change is on the Senate Energy Committee, where Chairman Jeff Bingaman did not run for reelection and, as a result, the gavel passes to Sen. Ron Wyden (D-OR). Other issues on the agenda will include:

- Climate Change
- Keystone Pipeline
- Arctic National Wildlife Refuge
- Nuclear Power Safety
- Federal Lands and Offshore Leasing

Committee Leadership

House Natural Resources Committee

	112th Congress	113th Congress
Chairman	Doc Hastings (R-WA)	Doc Hastings (R-WA)
Ranking	Ed Markey (D-MA)	Ed Markey (D-MA)

Senate Energy and Natural Resources Committee

	112th Congress	113th Congress
Chairman	Jeff Bingaman (D-NM)	Ron Wyden (D-OR)*

* Names are projected but subject to confirmation by individual caucuses.

Ranking Lisa Murkowski (R-AK) Lisa Murkowski (R-AK)

Homeland Security and Cybersecurity

Jurisdiction over homeland security and cybersecurity issues rests largely with the House Homeland Security Committee and the Senate Homeland Security and Governmental Affairs Committee and the 113th Congress will bring numerous changes in the leadership of both committees. With respect to the House Homeland Security Committee, Rep. Peter King (R-NY) is the current Chairman but is term limited, so by Republican caucus rules, he must relinquish the chair. However, there is speculation that he will seek a waiver of the rule, and if granted, he could remain chairman. If not, there are a number of senior members of the committee who likely will seek the chairmanship. One of the most significant issues for either the lame duck session or the 113th Congress will be cybersecurity legislation. The matter received significant review by both the House and the Senate during the 112th Congress and will likely remain a priority in the 113th Congress if it is not resolved in the lame duck session. The Chairman of the Senate Commerce, Science and Transportation Committee, Sen. Jay Rockefeller (D-WV), has taken a particular interest in cybersecurity legislation, as evidenced by his recent letter to Fortune 500 companies requesting their views on cybersecurity legislation. Other issues on the agenda will include:

- TSA and Airport Security
- Border Security
- Chemical Facility Security
- Immigration

Committee Leadership

House Homeland Security Committee

	112th Congress	113th Congress
Chairman	Peter King (R-NY)	(Peter King, Candice Miller , Michael McCaul , or Mike Rogers)
Ranking	Bennie Thompson (D-MS)	Bennie Thompson (D-MS)

Senate Homeland Security and Governmental Affairs Committee

	112th Congress	113th Congress
Chairman	Joe Lieberman (D-CT)	Tom Carper (D-DE)*
Ranking	Susan Collins (R-ME)	Tom Coburn (R-OK)*

Judiciary

The 113th Congress will have seen only one – but very significant – change in the leadership of the House and Senate Judiciary Committees. Current House chairman Lamar Smith (R-TX) is term limited and will likely be replaced by Rep. Robert

* Names are projected but subject to confirmation by individual caucuses.

Goodlatte (R-VA). While the agendas for the two committees are very similar, the Senate has one important responsibility not shared by its House counterpart: to advise and consent on judicial and other executive branch nominations. That responsibility alone could potentially fill the agenda for the Senate Judiciary Committee in the 113th Congress, particularly if a vacancy should occur at the Supreme Court. Other issues will include:

- Intellectual Property
- Immigration Reform

Committee Leadership

House Judiciary Committee

	112th Congress	113th Congress
Chairman	Lamar Smith (R-TX)	Bob Goodlatte (R-VA)*
Ranking	John Conyers (D-MI)	John Conyers (D-MI)

Senate Judiciary

	112th Congress	113th Congress
Chairman	Patrick Leahy (D-VT)	Patrick Leahy (D-VT)
Ranking	Charles Grassley (R-IA)	Charles Grassley (R-IA)

Transportation and Infrastructure

In the House, transportation policy and transportation infrastructure are housed within one committee: the appropriately named House Transportation and Infrastructure Committee. In the Senate, transportation infrastructure is primarily within the purview of the Environment and Public Works Committee, while transportation policy is under the jurisdiction of the Commerce, Science and Transportation Committee (the Senate Banking Committee has a limited role overseeing mass transit programs). All three committees will see significant changes in their leadership lineups come January. Issues on the agenda will include:

- Reauthorization of Highway and Transit Programs
- Water Resources Development Act
- Port Development
- Amtrak
- Rail Safety
- FAA Oversight

Committee Leadership

House Transportation and Infrastructure Committee

112th Congress	113th Congress
----------------	----------------

* Names are projected but subject to confirmation by individual caucuses.

Chairman	John Mica (R-FL)	Bill Shuster (R-PA)*
Ranking	Nick Rahall (D-WV)	Nick Rahall (D-WV)

Senate Commerce, Science and Transportation Committee

	112th Congress	113th Congress
Chairman	Jay Rockefeller (D-WV)	Jay Rockefeller (D-WV)
Ranking	Kay B. Hutchison (R-TX)	Jim DeMint (R-SC)*

Senate Environment and Public Works Committee

	112th Congress	113th Congress
Chairman	Barbara Boxer (D-CA)	Barbara Boxer (D-CA)
Ranking	Jim Inhofe (R-OK)	David Vitter (R-LA)*

The Road Ahead

When Congress adjourned in September for the November election campaign, it was universally acknowledged that it would need to return in a postelection – or “lame duck” – session to complete any unfinished business. Included in that unfinished business are all of the issues surrounding the so-called “fiscal cliff.” Prior to its September adjournment, Congress did take care of one component of the “fiscal cliff” by passing a Continuing Resolution that funds the government until the end of March 2013. The remainder of the “fiscal cliff” agenda – taxes, spending cuts, defense spending, entitlement reform, and the debt ceiling – will either be addressed in the lame duck session or passed on to the incoming 113th Congress by some form of an extension. Of course, a third option would be to do nothing, thus triggering the “fiscal cliff” on January 1, 2013.

The congressional calendar for the remainder of the year is as follows:

Week of November 12: Congress convenes for the postelection lame duck session with House and Senate leadership elections.

Week of November 19: House and Senate are in recess for Thanksgiving

Week of November 26: House and Senate return for the remainder of the lame duck session. Date for adjournment for the year TBD.

January 1, 2013: Unless changed by Congress, federal income tax rates are scheduled to increase to pre-2001 levels and the temporary 2% payroll tax reduction will expire.

January 2, 2013: Unless changed by Congress, sequestration – automatic across-the-board spending cuts – will take effect.

January 3, 2013: The 113th Congress convenes.

* Names are projected but subject to confirmation by individual caucuses.