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# Window On Washington - January 2, 2019, Vol. 3, Issue 1

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## Outlook for This Week in the Nation's Capital

**The 116th Congress.** The 116th Congress, with 100 new members of the US House of Representatives (63 Democrats), convenes on Thursday, January 3, with Democrats returning to power for the first time in eight years ([Business Insider](#)). But the two chambers couldn't be any more different. The new House is the most diverse demographically in history, while in the new Senate, the conservative majority expanded. Both chambers reconvene amid a [partial government shutdown](#) now in its second full week with no apparent path to ending.

**Government Shutdown.** On New Year's Eve, Democrats [proposed](#) a path to reopening agencies affected by the Federal Government Shutdown, recommending full year bipartisan appropriations measures for six of the remaining seven appropriations bills, with a short-term continuing resolution for the Department of Homeland Security. Senate Republican leaders seemingly rejected this proposal as the administration does not support it, due to lingering disagreement over border security and wall funding. As a result, the Senate is unlikely to vote on the measure in the form proposed by House Democrats. ([NY Times](#)) While Democrats released the legislative text for their appropriations proposal on New Year's Eve, the all-important explanatory statement with the details that would bind federal agencies to specific program levels will not be made public in the *Congressional Record* until January 3, after the new Congress is seated.

**North Carolina House Member Will Not Be Seated.** House Democrats have elected not to seat a member in North Carolina's 9th District after the North Carolina state Board of Elections refused to certify the results in the race. The state Board of Elections found the claims of election fraud to be credible after investigating absentee ballots in two rural counties of the District. ([The Hill](#))

## CONGRESS

### *The New House Majority*

The incoming House Rules Committee chairman, released the [House Democrats' rules package](#) Tuesday night. Some key changes in it include: a 72-hour rule to allow members of Congress time to review bills before they are voted on; a "consensus calendar" to move quickly on legislation with bipartisan support; a bipartisan Select Committee to modernize Congress; a ban on members of Congress and employees from sitting on corporate boards. Two other noteworthy changes: it allows Congress to suspend the debt limit by passing a budget – the so-called Gephardt Rule – a change with an eye to the upcoming fight on the debt limit (see below); and it also changes the process by which the House can remove the speaker – the so-called motion to vacate. The motion now needs to be at the direction of a majority of Democrats. Previously, just one lawmaker could force a vote on the speaker.

([Politico Playbook](#))

### *Budget*

**New Congress Brings Return of Multiple Budget Challenges:** Apart from resolving the shutdown that has impacted various Cabinet and independent agencies for the remainder of FY 2019, a host of budget and fiscal challenges await the new Congress. These will include: new leaders in both Houses atop many of the major budget and tax related writing panels; the daunting task of finishing a completed Budget Resolution for FY 2020; the need to renegotiate statutory spending caps for FY 2020 which, if not modified, will require a return to budget sequestration levels of funding proposed in 2011 and force all agencies to cut their budget by approximately 10%; and the need to increase the federal debt ceiling – which, though technically expiring in March, can be extended through extraordinary measures until the fall to prevent the US from defaulting on its obligations. ([Brookings](#))

### *Health/HHS/NIH*

**Federal Judge Stays Implementation of Obamacare Repeal:** The Federal judge in Texas that declared the Affordable Care Act unconstitutional stayed his decision, which will give states whose attorney generals have sided with preserving the law sufficient time to appeal the decision. Most legal analysts expect the case to reach the Supreme Court, which could issue a ruling just in time for the 2020 Presidential election. ([Politico](#))

**Federal Judge Vacates HHS Action to Reduce 340B Drug Payments to Hospitals:** In a major victory for hospitals and many academic health centers, a federal judge struck down an effort by Health and Human Services (HHS) to cut 340B drug payments by 22%, saying that the attempt was beyond the scope of the Department's authority. 340B payments are effectively discounts for the cost of certain outpatient drugs given to hospitals by pharmaceutical companies that allow hospitals to care for individuals covered by Medicare Part B. There has been an ongoing dispute as to whether the discounts provided to hospitals are sufficiently passed on to patients. The judge's decision last week asked both HHS and those fighting the proposed 22% cut for supplemental briefs on a proposed remedy going forward. ([Health Leaders Media](#))

**Medicare for 55 May Gain Steam in the New Congress:** Energized by their gains in the House from the recent midterm elections, some progressive Democrats seek to push the Medicare for All plan popularized by Sen. Bernie Sanders (I-VT) in the 2016 Presidential election. Other more seasoned observers suggest that the real push for reform – which still faces many political and financial obstacles – is Sen. Sherrod Brown (D-OH) and Sen. Tammy Baldwin's (D-WI) plan, which permits the 40 million Americans aged 55 to 64 to "buy in" to Medicare. How Democrats thread this tension may tell how they plan to balance the competing factions within its political base. ([Forbes](#))

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## Banking/HUD

**Late December Hearing on GSE Reform Gives New Hope for Action in the 116th Congress:** In its last official hearing before winding down for the end of the 115th Congress, the House Financial Services Committee had a lengthy list of witnesses to discuss a bipartisan proposal introduced last fall that seeks to end the conservatorship of Fannie Mae and Freddie Mac. The proposal suggests to eventually wind down the two housing enterprises and replace them with a Ginnie Mae-like solution backed with an explicit federal guarantee. However, political and substantive policy differences in the new Congress, amid shifting priorities for House Democrats, still may make a legislative government sponsored enterprise (GSE) reform solution elusive. ([Scotsman Guide](#))

**House Democrats Offer New Flood Insurance Extension:** House Democrats want to renew the National Flood Insurance Program for an additional four months as part of legislation to reopen government agencies. Funding legislation that incoming House Appropriations Chairwoman Nita Lowey (D-N.Y.) filed today would reauthorize the program through the end of September. As of now the NFIP is set to expire May 31. ([Politico](#))

## Space/NASA/NOAA

**House Democrats to form Select Committee on Climate Crisis:** Last Friday, incoming House Speaker Nancy Pelosi (D-CA) announced the formation of a new Select Committee on Climate Crisis chaired by Rep. Kathy Castor (D-FL). The new panel, comparable to one formed the last time Democrats held the House, will be charged with helping to devise solutions to the growing consensus on climate change. The panel will also help navigate the tensions on the subject between the two major political parties, as well as the real divisions inside Pelosi's own caucus. ([Axios](#))

## DoD

**Democrats Vow New Scrub of Post-9/11 War Powers:** After years of being stifled by the chamber's Republican leaders, key House Democrats plan to use their newfound power to force a debate about the war-making authority that Congress approved after 9/11. Though still facing a tough fight, House Democrats plan to impose greater oversight on the U.S. military deployments that have mushroomed during the past 17 years. If they succeed, the result could be legislation restricting President Trump's ability to send combat troops to new countries, or at least setting a time limit for the executive branch to seek new authorization. ([Politico](#))

## Cybersecurity

**The Federal Tech Bills that Moved as Funding Legislation Stalled:** Despite being locked in a battle over funding this week, Congress did move forward on a handful of bills addressing technology. On Thursday, President Trump signed into law the [21st Century IDEA](#), which requires federal agencies to upgrade their public websites to meet minimum standards for accessibility, security and ease of use. The president also [ordered](#) the Homeland Security Department to consolidate its data sets into a single, consistent data ecosystem, which could give analysts a leg up in spotting potential terrorist threats. House and Senate lawmakers also agreed to a legislative package called Strengthening and Enhancing Cyber-capabilities by Utilizing Risk Exposure Technology Act, or the [SECURE Technology Act](#), that subsumed a trio of bills aimed at strengthening Homeland Security's cyber defenses and protecting the government's supply chain. Both chambers also passed the [National Quantum Initiative Act](#), which requires the White House to create an advisory board on quantum technology and lay out a 10-year plan for advancing the country's quantum research and development efforts, and the [OPEN Government Data Act](#), which aims to support evidence-based policymaking by making non-sensitive data more accessible. ([Nextgov](#))

## Education

**Congress in 2019: Democrat-led House Oversight is Likely in Store for DeVos:** In the past two years, with Secretary of Education Betsy DeVos' leadership, the department has taken a number of steps to roll back federal regulations, in lockstep with the Trump administration's broader playbook. As a result, during the midterm elections, Ms. DeVos was an easy and often-invoked target for Democrats. Although Democrats took control of the House, with the Senate and White House still under Republican control, it seems unlikely that there will be much in the way of legislation that undermines or changes policies implemented by DeVos. ([Brookings](#))

## FEC

**Congress Unlikely to Stop Super PACs from Hiding Donors:** House Democrats are planning a major ethics and campaign-finance reform push in early 2019, but lawmakers appear unlikely to halt a growing trend among big-money groups of hiding their donors. ([Politico](#))

## DOJ

**House GOP Brings to an Unceremonious End its year-old probe into FBI and DOJ Handling of Clinton and Trump Investigations:** House Republicans say more investigation is needed into decisions made by the FBI and the Justice Department in 2016 as they brought an unceremonious end to their yearlong look at the department's handling of probes into Democrat Hillary Clinton's emails and Donald Trump's ties to Russia. ([Market Watch](#))

## Immigration

**House Democrats Ready Strategy to Reopen Government, Deny Trump Wall Money:** Democrats will take control of the House on Thursday with a stark challenge to President Trump, voting on legislation that would fund the federal government while denying Trump the money he has demanded to build a wall along the U.S.-Mexico border. GOP leaders in the Senate said they would support only a proposal that has the president's backing. And without

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additional wall money, the Democrats' offer is unlikely to break the stalemate that has shuttered large parts of the federal government since Dec. 22. ([Washington Post](#))

## EXECUTIVE BRANCH

### *Budget*

**Government Agencies and Workers Face Serious Adverse Impact as they Face a Protracted Shutdown Due to Political Impasse:** Because of the Christmas and New Year's holidays, and the fact that agencies had carryover funds to cover employee pay and some limited operations, the public has seen little adverse consequences to the shutdown that began at midnight on December 31. As the New Year begins, however, affected federal agencies will run out of options - impacting aid to farmers, some aspects of the FAA and the Coast Guard, regulatory work at the SEC and even the future operations of the Federal courts, as some only have enough funds to function until January 11. ([Politico](#))

**White House Invites Congressional Leaders to Meet With Trump:** President Trump invited a bipartisan group of congressional leaders to the White House on Wednesday in a bid to negotiate an end to a partial government shutdown that is now in its second week, a White House official said. The invitation went to the top eight Republican and Democratic leaders in both the House and Senate, and the meeting is expected to include a briefing on border security from the Department of Homeland Security, a congressional aide said. ([Wall Street Journal](#))

### *Health/HHS/NIH*

**While NIH is not Affected by the Partial Government Shutdown, National Cancer Institute Operating Budgets Reduced by as much as 5%:** While NIH received a significant (+5%) increase from Congress in its final FY 2019 appropriations, an increase in applications for funding, along with certain internal mandates and transfers beyond its control, has forced the NCI to cut various operating budgets, including intramural funding, by as much as 5% (detailed [here](#)). NCI's share of the overall increase was \$179 million (or 3%) for a total of \$5.74 billion. But only \$79 million went to NCI's base operating budget, and \$100 million is allocated for the cancer moonshot that's funded through the 21st Century Cures Act. ([Science](#))

### *Banking*

**Government Shutdown has Minimal Effect on Federal Financial Regulators but Impacts Remain Uncertain if Delays Continue for an Extended Period:** Most federal regulators have been only minimally impacted by the shutdown, though the SEC is down to a [very small footprint](#) as of December 27, consistent with its shutdown plans. Lingering impacts will depend upon how long the funding hiatus continues. ([National Mortgage News](#))

### *Space/NASA/NOAA*

**NASA New Horizons Spacecraft Records Successful Flyby of Kuiper Belt Object – the Most Distant Object Ever Visited:** The Johns Hopkins Applied Physics Laboratory and Southwest Research Institute, both clients of Clark Hill, celebrated the New Horizons spacecraft – which had successfully visited Pluto in 2016 – in its flyby of the Kuiper Belt object Ultimate Thule early on January 1, 2019. New Horizons' visit to Ultimate Thule, which is 4 billion miles from Earth, will help scientists better understand our solar system's formation. The distant objects in the Kuiper Belt have key characteristics that remain largely intact from when the solar system was formed more than 4.5 billion years ago. ([Space News](#))

**NASA Invitation to Russian Space Agency Head Provokes Controversy:** Russia hawks in Congress and elsewhere are objecting to a Trump Administration-sponsored visit to the US next year by Dmitry Rogozin, head of the Russian Space Agency Roscosmos. Approval of Rogozin's visit required a temporary waiver of US sanctions, since he remains on a list of individuals subject to those penalties. ([Politico](#))

**NOAA impacted by Government Shutdown:** A little more than half of NOAA's 11,000+ employees have been furloughed due to the government shutdown, with most of the remaining 5,500 workers still on the job performing critical weather forecasting and prediction services for the National Weather Service – though all public activities of the NWS are [cancelled](#) until further notice. ([Nature](#))

### *IRS*

**RS Seeks new ways to Integrate Cutting Edge Technologies into how it Conducts Business:** The IRS announced last week that it is starting a new acquisition program called Pilot IRS, in which the agency plans to upend the procurement process while integrating new technologies that meet specific mission needs and work functions. ([NextGov](#))

**IRS issues guidance on Tax Targeting Highest-Paid Officials at Nonprofits:** The IRS today published interim guidance on a new excise tax for highly paid officials at colleges, universities and other nonprofit organizations. The 21% tax, part of the 2017 tax overhaul, applies to compensation above \$1 million for the five highest-paid officials, as well as separation or "parachute" payments that exceed three times a person's base compensation. The guidance defines which organizations are subject to the tax, which employees are covered and what constitutes excess remuneration and parachute payments. It also includes instructions on how organizations should report and pay the tax. The tax is expected to particularly hit schools with highly paid presidents and coaches. It would be paid by the organization, not individuals. The IRS and Treasury Department intend to propose permanent regulations at a later date that will incorporate the guidance. ([IRS](#))

### *Trade*

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**Experts Remain Uncertain where the Trump Administration's Trade Policy is Headed:** After ushering in a new era of [trade wars](#) in 2018, analysts are using the start of a new year to assess what has been done to date, and to understand what may come next – with the biggest eye focused on China – where the next big steps have been put on hold until March 1. What is clear is that trade and tariffs will come into sharper focus as the early 2020 Presidential primary and caucus state battles take shape. A new [map](#) outlines the effect of US tariffs on domestic businesses and industry at the county level (see story 3). ([Axios](#))

*Energy/DOE*

**Ryan Zinke is Gone. But this House Democrat Still Wants His Testimony:** Though former Interior Secretary Ryan Zinke stepped down earlier in the month amid allegations that he violated ethics rules, House Democrats are still pushing an aggressive oversight agenda for the Interior Department, which includes plans for Zinke to testify. Rep. Raúl Grijalva (D-AZ), the ranking Democrat on the House Natural Resources Committee, is setting his sights not just on Zinke's remaining deputies but on an entire "culture" at interior of allegedly catering to the interests of miners and drillers. As Grijalva sees it, the Interior Department has strayed from its mission to administer public lands for several uses — giving Americans spots to recreate outdoors, harvest timber and graze cattle while preserving natural and historic resources — to one that focuses too narrowly on one of those services: extraction. ([Washington Post](#))

*Defense*

**2 Months Early: Mattis Leaving Before Jan. 1:** The Defense secretary's departure — the subject of much consternation among both Republicans and Democrats — has been moved up. Mattis announced his resignation two weeks ago in protest of Trump's decision to withdraw U.S. forces from Syria, a move that has rattled the defense community. In his resignation letter, Mattis said he would be departing the administration Feb. 28. But earlier this week, President Trump announced via Twitter that Deputy Secretary of Defense Patrick Shanahan will lead the Pentagon as acting secretary effective Jan. 1. President Trump's removal of Mattis two months before the defense secretary planned to depart came after nearly a week of negative media coverage and public hand-wringing by congressional lawmakers, who viewed the retired Marine general as a uniquely stabilizing force within the administration. ([Politico](#))

**Meet Trump's Acting Pentagon Chief:** Shanahan, a former aerospace executive, will take the Pentagon's top job next month as acting secretary of Defense. After a career in which he rose to oversee Boeing's supply chain operations as a senior vice president, Shanahan's new task will be to run a department whose appropriations next year are seven times larger than Boeing's annual revenue. Shanahan, who has been the Pentagon's No. 2 for 18 months, is little known outside the halls of the national security community — and even there his views are not well understood. A mechanical engineer by training with scant policy background, the public record of his positions is slim compared to Mattis, a retired four-star Marine general. Shanahan has also been the Pentagon's biggest booster for Trump's proposal for a separate Space Force, which is now in its final stages before going to Congress in early 2019. ([CNBC](#))

*Cybersecurity*

**How a Government Shutdown Affects America's Cybersecurity Workforce:** America's federal cybersecurity workforce has seen sharp reductions since Congress' failure to pass a spending bill to keep the government open, according to planning documents from federal agencies. Among the heaviest hit agencies has been the National Institute of Standards and Technology, which has seen 85% of its staff furloughed. Only 435 employees are considered "essential," according to a planning document from the Department of Commerce. The agency is in charge of writing guidelines for the federal government's cybersecurity regulations, and have a series of standards set to be released in the coming weeks. Also seeing sharp reductions are the Director of National Intelligence's analysis and operations workforce, which has seen a 60% reduction in active workforce to just 345 employees, according to documents. ([Fifth Domain](#))

*Tax Reform*

**Trump's Tax Cut One Year Later: What Happened?:** After Trump's \$1.5 trillion tax plan passed nearly one year ago, many big American companies promised to raise wages, hand out bonuses to workers and invest in big projects. Though many companies followed through on their promises, other firms have announced layoffs, despite reporting higher profits and billions of dollars in tax savings. While the long-term effects remain to be seen, the evidence so far does not suggest the sustained investment and productivity growth boosts that Republicans and supply-side economists predicted. Many economists, including those at the Federal Reserve, are cutting their growth forecasts for 2019, in part because of the waning effect of the tax cuts. ([New York Times](#))

*DOT*

**Rising Waters Are Drowning Amtrak's Northeast Corridor:** Parts of Amtrak's Northeast Corridor route, which carries 12 million people each year between Boston and Washington, face "continual inundation" due to climate change. According to a three-volume, multi-year climate study undertaken with first Booz Allen Hamilton Inc. and then Stantec Inc., a 10-mile section of the 457 miles of track faces a severe threat of flooding that can erode the track bed and knock out the signals that direct train traffic. The authors of the report, who focused on a particularly perilous section of the corridor, recommended that the same detailed calculations be performed on the rest of the Northeast Corridor, and that Amtrak begin working with state and local governments to prepare for the risks they described. However, more than a year and a half since the report's conclusion, Amtrak has yet to repeat its analysis for the network as a whole, and has actually de-emphasized the threat of climate change in its public documents. ([Bloomberg](#))

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*DOL*

**U.S. Department of Labor Issues Wage and Hour Opinion Letters:** Last week, the Department of Labor (DOL) released two new opinion letters addressing minimum wage and overtime compliance and ministerial exceptions for egalitarian religious communes, both of which fall under the Fair Labor Standards Act (FLSA). According to the DOL, the letters “demonstrate the Department’s commitment to providing meaningful compliance assistance to help employees understand their rights and ensure that employers have the tools they need to comply with federal labor law.” ([U.S. Department of Labor](#))

*Agriculture*

**Farmers Risk Loss of Federal Payments, Loans, from Shutdown:** The USDA in a statement issued last week assured farmers that checks would continue to go out during the first week of the shutdown. But direct payments for farmers who haven’t certified production, as well as farm loans and disaster assistance programs, will be put on hold beginning next week, and won’t start up again until the government reopens. ([AP](#))

*Environment*

**As Funds Run Out, EPA will Furlough 13,705 Employees:** Now in its seventh day, the partial government shutdown is tightening its grip on federal agencies. Set to run out of carryover funds tonight, EPA will soon close and send thousands of employees home without pay. ([E&E News](#))

**National Parks Getting Trashed During Government Shutdown:** Some National Parks are being overwhelmed by trash, vandalism, human feces and destructive off-roading while most personnel are gone during the government shutdown, according to reports from remaining workers and visitors. ([Huffington Post](#))

*Immigration*

**Trump Says ‘not giving up’ on Building a Wall:** President Donald Trump pledged anew to build a southern wall between the U.S. and Mexico, saying he’s ready to make a deal with the Democrats when they provide funding for border security. Trump made the comments in a Dec. 31 interview with Fox News, as he also reiterated his assertion to build the border wall in tweets sent on New Year’s Eve. ([Market Watch](#))

*DHS/Homeland Security*

**DHS Chief Blames Congress, Courts for ‘Humanitarian Crisis’ at Southern Border:** Department of Homeland Security Secretary Kirstjen Nielsen on Saturday called on federal courts to enforce existing immigration laws to stem the tide of undocumented migrant families from entering the United States and Congress to fix a broken immigration system that has created “a humanitarian crisis” at the southern border. ([USA Today](#))