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# Window On Washington - November 12, 2018, Vol. 2, Issue 45

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

**Veterans Day:** Clark Hill would like to thank all the brave men and women who have served our country in the U.S. Armed Forces.

**Congress:** The House and Senate are scheduled to return tomorrow to start addressing remaining legislative items for the 115th Congress, but will be out the following week for Thanksgiving. Among issues that may be addressed in the “lame duck” session are the Farm Bill, reauthorization of the federal Flood Insurance Program, remaining executive branch and judicial nominations, a package of “tax fixes” and of course the seven FY19 appropriations bills that remain unfinished. House Republicans and Democrats will soon elect their leaders to take them through the 2020 elections. Republicans will hold their elections on Wednesday, while the Democrats will hold theirs on November 28th. Learn more about the likely leaders [here](#).

**Midterm Elections Analysis:** Everyone has voted, the results are in and we know who will control the Senate and the House — but several races remain unresolved. News outlets have yet to project winners in 18 races: three for the U.S. Senate, 13 for the U.S. House and two for governor. These races have the potential to meaningfully change the narrative around this election. As of now, Republicans have picked up two seats in the Senate, but that net gain could be anywhere from zero to three when the races in Arizona, Florida and Mississippi get resolved. Of the 13 unresolved House races, Democrats lead or look like they're in good position in 10 of them. Many analysts estimate that the Democrats will likely gain 38 seats by the time all votes are counted. ([FiveThirtyEight](#))

Later this month Clark Hill will offer a webinar/call in to all firm clients and offices that will provide key insights on the midterm elections and what it all means. We will bring you up to speed on who won and where, how it will likely effect the next two months and remaining potential legislation in the “lame duck” session of Congress, as well as who will now be in leadership positions in the new 116th Congress and what that may mean for various major issues, bills and practice areas. Keep an eye out for more information and please join us for this event.

**White House:** The President made some sudden cabinet changes last week in the wake of the election, the most jarring being the removal of Attorney General Jeff Sessions. Insiders suggest that more moves are coming in the weeks ahead, as President Trump tries to strategize on how to potentially work with the new Democratic majority in the House and/or how much effort to spend trying to frustrate their efforts to subpoena and investigate him and his administration in the coming months.

## Last Week in the Nation's Capital

### CONGRESS

#### *Budget*

**Upcoming Congressional Fiscal Policy Deadlines:** The next two years contain several predictable fiscal policy deadlines that will force Congressional action. Many of these deadlines could bring additional costs if Congress acts irresponsibly or could represent a moment for Congress to reduce deficits. Several deadlines are fast approaching, including the Federal Emergency Management Agency's [National Flood Insurance Program](#), which is set to expire on November 30th if lawmakers don't reauthorize it. The Joint Select Committee on Budget and Appropriations Process Reform and the Joint Select Committee on Solvency of Multiemployer Pension Plans also face November 30th deadlines. For additional fiscal deadlines click [here](#).

#### *Banking & Housing*

**Rep. Maxine Waters Could Heighten Scrutiny of Banks:** Come January, the banking industry is going to be on Rep. Maxine Waters' time. With Democrats taking control of the House of Representatives, the California representative is expected to become chairwoman of the powerful House Financial Services Committee, which oversees the nation's banking system and its regulators. Waters is no friend to the nation's biggest banks and Wall Street, and she has been a vocal critic of President Donald Trump and his administration. She has called for more regulation of banks and has opposed President Trump's political appointees moving to roll back regulations on banks and other financial services companies. ([CBS News](#))

#### *Tax Reform*

**Potential for Tax “Corrections” Package During Lame Duck, and IRS Debt Collection Program:** The outlook is mixed for advancing tax legislation during the lame-duck session – there is broad support for some bill, but also not a huge need to pass one. A package could include extenders, retirement savings, IRS restructuring and even some fixes to glitches in the TCJA. The priorities of the new Democratic House majority will change the agenda of the Ways and Means Committee next year. In other tax news, the IRS is revving up its private debt collection program, assigning collection companies thousands of more accounts. ([Politico](#))

#### *Defense*

**Space Expertise isn't Necessary to Run the Space Development Agency, Says Pentagon Deputy:** The Space Development Agency, which would be a joint procurement arm in charge of setting standards and avoiding the duplication on space technology, appears to be the hub of Shanahan's plans for

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rebuilding the Pentagon's space architecture. The Pentagon's No. 2 official has someone in mind to run the new Space Development Agency, and it may not be someone from the space community. Instead, the deputy wants someone who has experience merging multiple systems and who has "real technical chops" when it comes to integrating systems. "It's less about the space mission ... this is a once in a lifetime opportunity to drive standards and integration," Shanahan said. ([Defense News](#))

#### *Justice*

**House Democratic Plan: Challenge Whitaker, Protect Mueller, Investigate Sessions Firing:** House Democrats have voted to use their new House majority to protect special counsel Robert Mueller and get to the bottom of why Attorney General Jeff Sessions was fired. House Minority Leader Nancy Pelosi held a Thursday call with Judiciary Committee Ranking Member Jerry Nadler, (D-NY), Intelligence Committee Ranking Member Adam Schiff, (D-Calif.), Oversight and Government Reform Ranking Member Elijah Cummings (D-Md.), to talk about next steps after Sessions' sudden firing. Democrats, who were already preparing to launch a series of investigations against Trump, later indicated they would pursue this new line of inquiry. ([Washington Examiner](#))

#### *Education*

**A Divided Congress Is Unlikely to Compromise on Higher Ed. but What if It Did?:** In the wake of Tuesday's election results, there will inevitably be talk of reauthorizing the Higher Education Act, the main federal law governing student aid and other key higher-education policies, during the next two years. Democrats, who come January will hold a majority in the U.S. House of Representatives, could put forward a bill based on the Aim Higher Act, a blueprint for higher education that they drafted earlier this year. Sen. Lamar Alexander, chairman of the Committee on Health, Education, Labor, and Pensions, can serve just two more years as head of that committee and would like to cement his legacy by pushing through a reauthorization bill, a piece of legislation that he has been considering since at least 2015 and that is already five years overdue. ([The Chronicle of Higher Education](#))

#### *Space, NASA & NOAA*

**Space Force, Europa Missions Face Scrutiny as Democrats Take Over House:** The Trump administration's desire to establish a Space Force could be in jeopardy next year after Democrats assume control of the House, while the departure of a key House appropriator could spell trouble for NASA missions to the potentially habitable moon of Europa. While some races from the Nov. 6 midterms elections have yet to be finalized, including the bid by Sen. Bill Nelson (D-FL), ranking member of the Senate Commerce Committee, to win another term, Democrats won a majority of seats in the House, giving it control of committees that will set the legislative agenda for the next two years. In addition, Rep. John Culberson (R-Texas), chairman of the Commerce, Justice and Science Appropriations Subcommittee, lost reelection, depriving NASA and space scientists of one of their most powerful patrons. ([Space News](#))

#### *Transportation*

**Democrats to Push for Big Infrastructure Bill with 'Real Money' in 2019:** The incoming head of the U.S. House Transportation and Infrastructure Committee wants the White House to back significant additional federal funds to rebuild crumbling U.S. roads, bridges and airports, as President Donald Trump suggested on Wednesday a deal could be had. Representative Peter DeFazio (D-OR), who is set to become head of the House of Representatives committee overseeing transportation after the Democrats take control of the chamber in January, previously proposed \$500 billion in funding by issuing 30-year bonds and using revenue from indexing fuel taxes to rise with inflation. He told reporters he would be seeking significant funding. Congress has not raised the gas tax since 1993 and has added \$137 billion since 2008 to make up highway repair shortfalls. Congress must find an additional \$107 billion through 2026 alone to keep spending at current levels. ([Reuters](#))

#### *Agriculture*

**Lame-Duck Farm Bill within Reach:** Even with the midterm elections shifting the power in the House to Democrats next session, the House Agriculture Committee's top-ranking Democrat Collin Peterson (D-Minn.), said his No. 1 priority is getting a farm bill approved in the coming weeks. Peterson has mostly been in line with Senate Agriculture Committee chairman Pat Roberts, (R-Kan.), and ranking member Debbie Stabenow, D-Mich., regarding the main provisions of the farm bill, including opposition to nutrition assistance work requirements and changes to crop base acres that would funnel more money to cotton producers. Peterson said at the end of the day, none of the outstanding issues warrant holding up the entire farm bill. He explained that most of the current proposals in play have been scored by the Congressional Budget Office, which should also help get a compromise bill determined quickly. ([Farm Futures](#))

#### *Trade*

**Midterms Offer Little Clarity on Fate of USMCA, Tariff Dispute:** If the midterm elections were supposed to wipe clear the uncertainty of tariffs, trade and other smudges on the window into Canada-U.S. affairs, well, have a look at the bizarre world of politics in the United States of America. A Democratic majority in the House of Representatives was "very close to complete victory" for President Donald Trump. The election is both over and not over, thanks to vote-counting disputes in Florida, Georgia and Arizona. There's a new trade deal, but the White House and Canada are still staring each other down over steel and aluminum. So good luck getting odds on when, or if, the new Congress will ratify the new U.S.-Mexico-Canada Agreement. ([Financial Post](#))

### **EXECUTIVE BRANCH**

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## Health

**CMS Submits Part D and Medicare Advantage Drug Pricing Proposal to Office of Management and Budget:** The initial proposed rule released by the United States Centers for Medicare and Medicaid Services (CMS) for Contract Year 2020, regarding general Medicare Advantage and Part D services, it did not make much mention of President Trump's plan for lower drug prices. Recently CMS finally did submit a proposed rule to the White House's Office of Management and Budget that would address prescription drug pricing policies in Medicare Advantage and Part D plans. The proposed rule, "Modernizing Part D and Medicare Advantage to Lower Drug Prices and Reduce Out of Pocket Costs," is likely to implement at least some of policies that we have seen in the Trump Administration's drug pricing Blueprint. ([Policy Med](#))

**A Third NIH Geroscience Summit on the Horizon:** While the concept of geroscience—seeking to understand the genetic, molecular, and cellular mechanisms that make aging a major risk factor and driver of common chronic conditions and diseases of older people—has been well accepted within the aging biology research community, the goal of the upcoming Summit is to extend our reach into new areas of scientific endeavor and to involve new participants, including disease advocates and policymakers. The Summit will take place on the NIH campus in Bethesda, Maryland on November 4–5, 2019. ([National Institute of Aging](#))

**BRAIN Initiative Receives Additional Funding by NIH – Opioid Alternatives Area of Priority Study:** The NIH announced that it will increase funding of the Brain Research through Advancing Innovative Neurotechnologies (BRAIN) Initiative by \$220 million. This additional funding represents a 50 percent increase in spending over the year prior, for a total of \$400 million in 2018, when factoring in the support of the 21st Century Cures Act and the congressional appropriations process. Over 200 new awards will be granted to support a wide range of innovative brain research in an effort to address neurological and psychiatric disorders including depression, autism, epilepsy, Alzheimer's, schizophrenia, Parkinson's, and traumatic brain injuries. The NIH also will fund efforts to find new treatments for pain that are non-addictive to address the growing opioid crisis. ([Psychology Today](#))

## Labor & Workforce

**Displaced Workers Could Benefit From Apprenticeships, but for One Labor Regulation in the Way:** During the Obama administration, a 2015 NLRB decision may be used to force franchisors and companies that contract out work or rely on suppliers to reconsider extending training and apprenticeship opportunities to employees of franchisees or suppliers. In a ruling against waste management company Browning-Ferris, the NLRB decided to expand the instances when one employer is held liable for another employer's labor violations and responsible for bargaining with another employer's union. That ruling poses a big and uncertain liability when it comes to offering help to franchisees and employees. In the Browning-Ferris decision, the NLRB overturned 30 years of precedent that determined when two companies are considered joint employers, which has caused considerable confusion and ambiguity, and is stalling the creation of new apprenticeship opportunities. ([Inside Sources](#))

## Energy

**Judge Halts Keystone Pipeline, in Setback for Trump:** A federal judge in Montana halted the progress of the controversial Keystone XL pipeline Thursday over concerns the Trump administration did not properly consider its impact on climate change and on vulnerable animal species on the brink of extinction. The action marks a setback for what had become a signature energy achievement for Trump, who has touted his speedy approval of the pipeline almost immediately upon taking office in January 2017. That speedy approval of a cross-border permit by the State Department, however, did not meet the standards of the National Environmental Policy Act and the Endangered Species Act, according to U.S. District Court Judge Brian Morris. ([Roll Call](#))

**Department of Energy to Provide \$100 Million for Particle Physics Research:** The Department of Energy announced \$100 million for new and renewal university grants for the study of high energy physics. The grants are expected to cover the full range of particle physics research, including work based on proton-proton collisions at the Large Hadron Collider at CERN, the study of neutrinos, the search for dark matter and dark energy, the advance of particle accelerator and detector technologies, and particle physics theory. ([DoE Press Releases](#))

## Space, NASA & NOAA

**Weather Model For Predicting Severe Storms Is Helping Fight California Wildfires:** Using a combination of infrared (heat) and visible sensors from the NASA's Landsat-8 and Terra satellites, the active fires and the associated smoke plumes causing particularly bad air quality in Northern California can be clearly seen. The "High-Resolution Rapid Refresh" (HRRR) Smoke new experimental model has been developed at the NOAA Earth Systems Research Laboratory and the Cooperative Institute for Research in Environmental Sciences. It builds on the capabilities of the HRRR weather model that many in the weather community rely on for short-term forecasting information. ([Forbes](#))

**NASA Certifies Falcon 9 for Highest Priority Science Missions:** NASA has certified SpaceX's Falcon 9 to launch the agency's most important science missions, giving the agency new options. SpaceX said that the NASA Launch Services Program awarded its Category 3 certification for the company's Falcon 9 rocket. That certification allows NASA to use the Falcon 9 for full range of needs, now including its highest-value science missions. ([Space News](#))

## Cybersecurity

**Here's One Way DISA Wants to Improve Cybersecurity:** The Defense Information Systems Agency (DISA) is looking to improve the cybersecurity posture of the Department of Defense by reducing attack vectors to the network. Adversaries are becoming more sophisticated, with threats becoming more complex and the number of cyberattacks increasing, Vice Adm. Nancy Norton, director of DISA, said Nov. 5 during DISA's annual Forecast to

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Industry day in Linthicum, Maryland. One way DISA is seeking to reduce these attack vectors to the network is implementing a cloud-based internet isolation solution to protect from browser-born threats. ([C4ISR](#))

*Trade*

**Inside Trump's Car Obsession:** President Trump is as jazzed as ever about hitting foreign-made cars with steep tariffs. Just about every member of his senior economic team besides Peter Navarro believes this is a terrible idea. But they haven't swayed him. With each passing month, his zest for car tariffs only swells. Trump now views the threat of car tariffs as his best leverage over negotiating partners. He has privately told aides that he got a better trade deal with Canada because he threatened Prime Minister Justin Trudeau with car tariffs. And he says the same about the Europeans, according to sources briefed on his thinking. ([Axios](#))

*DHS*

**Biometric Companies Encouraged to Submit for DHS Biometric Technology Rally:** The Department of Homeland Security's Science and Technology Directorate will host its second Biometric Technology Rally in spring 2019. Companies wishing to participate must submit a white paper and video demo of their product for consideration by November 30th. ([Secure ID News](#))

*Elections*

**Democrats Have Two Paths for 2020: Daring or Defensive. Can They Settle on Either?:** For Democrats, the victories, near wins and stinging losses on Tuesday have intensified a debate in the party about how to retake the White House, with moderates arguing they must find a candidate who can appeal to President Trump's supporters and historically Republican suburbanites, and progressives claiming they need someone with the raw authenticity to electrify the grass roots. Rather than clarifying which strategy to adopt for 2020, the patchwork of outcomes has only deepened the disagreements. Both wings of the party are now wielding fresh evidence from the midterm results to make their case about the best path to assemble 270 electoral votes and oust President Trump from office. ([The New York Times](#))

**Scientists Elected to Congress in U.S. Mid-terms:** A record number of candidates with backgrounds in science, technology, engineering and mathematics (Stem) fields ran for US congressional seats in the November mid-term election, and seven of them – the majority of whom are Democrats – won their races, and all but one are political newcomers. ([Chemistry World](#))