

BakerHostetler

Election 2016

The revolution
is upon us.



In the most shocking election upset in the history of the nation, Donald Trump created a political coalition centered on economic populism and America-first nationalism, winning at least 279 electoral votes last night, and will become the 45th president of the United States.

Trump's victory is a stunning slap at conventional wisdom and establishment political forces. His message was a political hybrid unprecedented in modern campaigns. He broke from traditional Republican orthodoxy on trade, taxes, Wall Street and reforming entitlement programs like Social Security. On international affairs, generations of Republican foreign policy experts are apoplectic over Trump's semi-isolationism combined with a seeming nonchalance toward Russia.

His election is a political earthquake on an unprecedented scale. Trump did not just become president; he single-handedly saved the Republican majority from certain defeat in the Senate. Sen. Ron Johnson, R-Wis., left for political dead for the past year, was resurrected last night as Trump won Wisconsin. Trump's victories in Missouri, North Carolina and Pennsylvania also buoyed vulnerable GOP incumbent senators in those states.

In the House, nearly every Republican lawmaker elected last night saw Trump win their district.

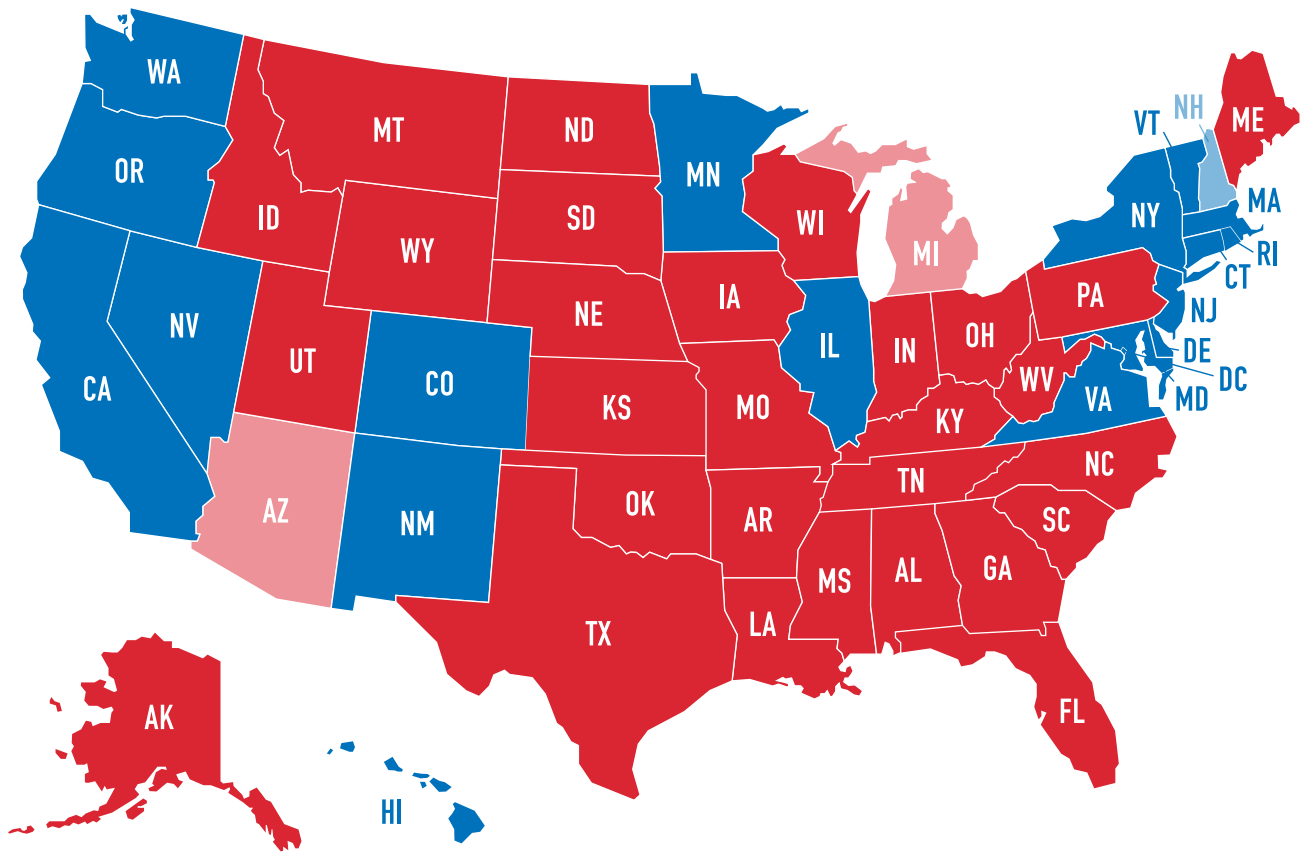
Those political coattails should aid Trump in driving his priorities through Congress, even as he fleshes out what was a thin agenda articulated during the campaign. The most important people in Washington right now are the dozens of staffers making up the official Trump transition effort, working in relative obscurity since August on the seventh floor of a nondescript office building on Pennsylvania Avenue. Their job is to screen potential presidential appointments and to turn campaign promises into actionable policies, executive orders and regulations ready for President Trump's approval on Jan. 20, 2017.

So much for Washington gridlock: The first-time candidate's victory coupled with Republican control of Congress in 2017 will put squarely in the crosshairs President Barack Obama's signature legislative achievements – the Affordable Care Act and the Dodd-Frank Act, as well as his administration's aggressive regulations on climate and labor policy.



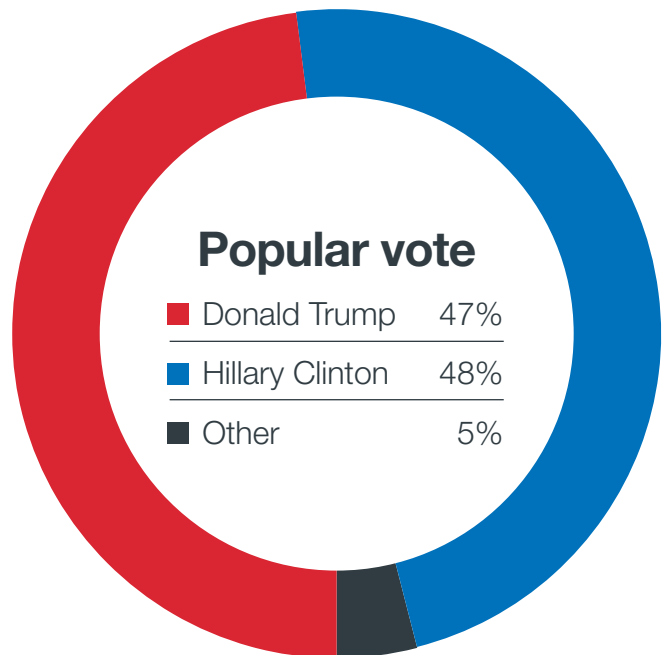
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2016 election results



Electoral votes

■ Donald Trump	279
■ Hillary Clinton	228



Updated: 11.10.16

In Congress, Republican leaders are stunned at their good fortune while also trying to understand what Trump's election means for the party and the policies that GOP lawmakers have championed for generations.

In the House, there was pre-election venom directed at Speaker Paul Ryan, R-Wis., for his criticism of Trump during the campaign and his eleventh-hour acknowledgment that he voted for Trump. Will the election results quell Ryan's rebellious rank-and-file or will it energize their efforts to replace the speaker or weaken him with changes to House rules? And will Trump insert himself into that process, creating deeper party fault lines on the eve of his own inauguration?

The country – and Republicans in Congress – will soon find out how much of Trump's campaign rhetoric was real and how much was ... campaign rhetoric. How long is that

will going to be and how exactly will Mexico be made to pay for it? When will U.S. military forces be pulling out of South Korea? To where will Americans of Muslim ancestry be deported?

Legislatively, there appears to be the potential for a quick-strike victory in Congress on tax reform that includes billions of dollars for new infrastructure spending that could stop U.S. companies from fleeing overseas and kick-start domestic job creation. For lawmakers in both parties who have chafed at Washington's gridlock, that could be a moment of relief if not bipartisanship.

In both parties' primaries and certainly last night, Americans voted broadly for change, and a first-time candidate, a product of celebrity television, with sky-high unfavorable ratings and who committed every political sin, will now become the leader of the free world.

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Senate Republicans: Trump propels GOP majority

Republicans defied overwhelming political odds last night to maintain their majority in the Senate, and the GOP has one person to thank: Donald Trump.

Long thought to be a drag on Republican incumbents, especially in swing states, Trump's presidential campaign instead propelled voter turnout and brought vulnerable senators across the finish line with him. In Wisconsin, GOP Sen. Ron Johnson's political obituary was written months ago. But Trump's improbable win in the Badger State cemented Johnson's re-election.

It followed a similar pattern in other states, like Missouri, North Carolina,

and Pennsylvania, where Trump and vulnerable incumbents won or were leading. In the end, only Sen. Mark Kirk, R-Ill., and Sen. Kelly Ayotte, R-N.H., lost re-election.

The improbable victory gives Republicans control of the federal government and new opportunities to break Washington's long-standing legislative gridlock and advance conservative policies.

Senate Majority Leader Mitch McConnell, R-Ky., will not be able to exercise complete control over the Senate. Democrats, led by Sen. Chuck Schumer, D-N.Y., can and will gum up the Senate with filibusters of legislation



Senate Majority Leader Mitch McConnell, R-Ky.

and presidential appointments.

But if Congress can approve an annual budget blueprint in early spring, Republicans can authorize special procedures called “reconciliation” that would allow them to sidestep Democratic filibusters. Not every policy qualifies to be included in a reconciliation bill, but many do.

For example, Republicans could repeal the heart of the Affordable Care Act without a single Democratic vote.

The Republican majority is not expected to be short-lived. In the 2018 midterm elections, Democrats will be defending 25 of 33 senators facing re-election – many in states that will be highly competitive for Democrats and where Trump won last night, including Indiana, North Dakota, Montana, West Virginia, Missouri and Florida.

It was thought Democrats would face certain Senate losses in 2018 because of that map. But if Republicans overreach on policy and Trump cannot

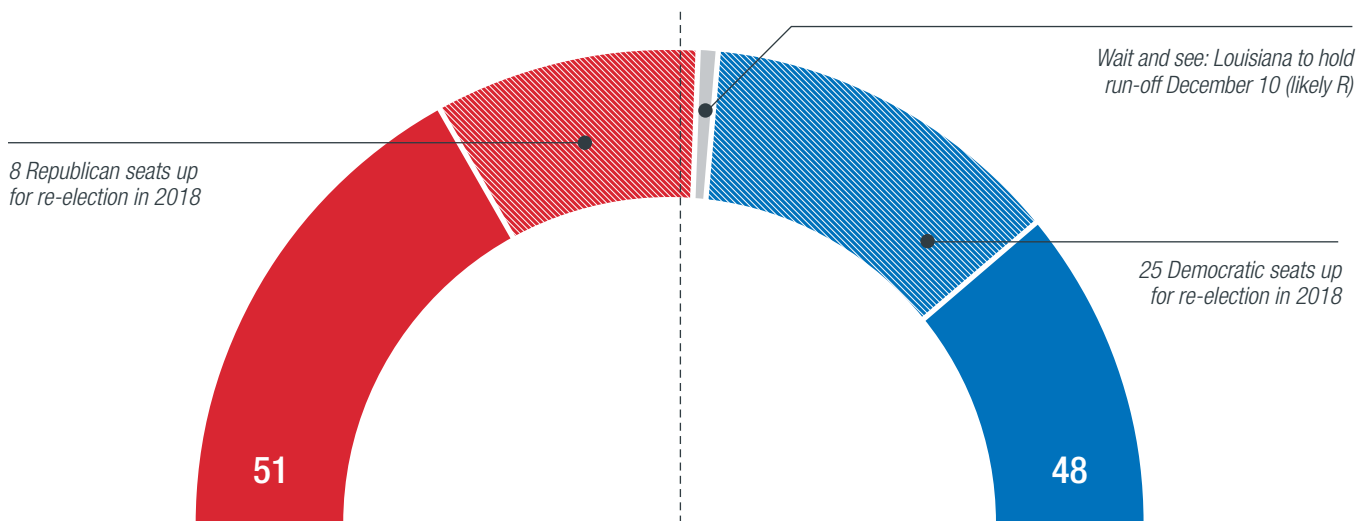
reverse his historically high unfavorable ratings, the midterm elections could be favorable for the party out of power and boost the electoral fortunes for Democrats.

Republicans expect no leadership changes in the Senate. But McConnell must still manage a restless block of conservatives, including former and possibly future presidential candidates Sens. Ted Cruz, R-Texas; Rand Paul, R-Ky.; and Marco Rubio, R-Fla.

Out of power, Senate Democrats will be incentivized to simply oppose Trump and GOP policies. But Schumer has to be mindful of his moderate incumbents who will face voters in 2018. Those senators will be looking for legislative victories to tout on the campaign trail, and they may benefit from intraparty fights with liberals like Sens. Bernie Sanders, I-Vt., and Elizabeth Warren, D-Mass.

Republicans could repeal the heart of the Affordable Care Act without a single Democratic vote.

2016 Senate



Updated: 11.10.16

House Republicans: A nuclear winter?

Buoyed by Donald Trump's presidential campaign, Republicans had lost fewer than 10 seats in the House as of Wednesday morning, despite Democrats' claims just last week of being able to capture the majority.

The Republican caucus may be slightly smaller but it will be no less conservative – and seemingly in no mood to compromise on policy, at least among the rank-and-file. Still, before Republicans can strategize about how to work with the Trump White House, they must address their own open political wounds, including who did and did not support Trump's campaign, and the party's future policy priorities.

Before last night, that process of self-reflection was shaping up to be more of a political bloodletting than a cordial family discussion. At the center is the future of Speaker Paul Ryan, R-Wis., and whether he will face a challenge to his re-election or a movement to force House rules changes that would dramatically weaken Ryan's power.

Although Ryan is well-liked personally by his colleagues, there is palpable anger directed toward him. Nearly every Republican was re-elected last night in districts Trump won, in many cases handily. Some lawmakers see Ryan advancing policies that are in violent conflict with Trump's campaign, most notably on trade and immigration.

Ryan's frequent criticism of Trump and refusal to actively support him during the campaign triggered resentment not only in Trump Tower but also from activist voters in GOP-dominated districts nationwide.

Even before the election, Trump's allies were looking to pin the blame for a Trump loss on Ryan. Many Trump

loyalists, like campaign CEO and onetime Breitbart News Chairman Steve Bannon, were looking to make Ryan a scapegoat.

Did last night's historic upset for Trump – and the GOP congressional majorities he carried with him – effectively let the air out of the balloon for Ryan's antagonists? There were some indications last night and early this morning that that may be the case, but it cannot be fully gauged until Republicans absorb the election results and return to Washington next week.

The effort to delay leadership elections from Nov. 15 to December began before the election, with lawmakers who both support and are critical of the leadership calling for more time to reflect and discuss what happened and where the party goes from here. Also in the works are proposals by conservatives to change House rules and dilute the leadership's influence. Among the ideas to weaken leaders' power would be to guarantee floor votes for any legislation that achieves a certain (low) number of GOP co-sponsors, or circumventing the Republican Steering Committee by allowing committee members to elect their own chairmen.

Whenever the leadership elections are held, Ryan's position within the party is safe; there is no other Republican who could generate enough GOP votes to topple Ryan. His risk is heightened in January, when the entire House votes for speaker. With all Democrats voting for Rep. Nancy Pelosi, D-Calif., it would take only a handful of Republican defections to deny Ryan the 218 votes he needs to be re-elected speaker.

Ryan's job of healing his party – and securing his re-election as speaker – is



House Speaker Paul Ryan, R-Wis.

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complicated by the lame-duck voting session. Government funding expires Dec. 9, and scores of Republicans will vote against any budget extension that could win President Obama's signature and become law. That means Ryan will once again need Democratic votes in December just to prevent a government shutdown – only

weeks before appealing to his own party's members for their support of his re-election as speaker.

However, there is some discussion among congressional leaders of approving a short-term stopgap funding bill into early 2017.

Lame duck

Congress reconvenes for a post-election lame-duck session on Nov. 14, although significant votes are not likely until December. But Donald Trump's upset win last night puts most potential legislative activity in doubt, except for an appropriations bill to keep the government from shutting down after Dec. 9.

Government funding

The continuing resolution Congress passed in September funds the government only until Dec. 9. Excluding Thanksgiving week, Congress will have only three weeks to pass a 2017 fiscal year appropriations bill when it returns after the election. Only one of the 11 appropriations measures, for military construction and veterans affairs, has been passed.

Senate Majority Leader Mitch McConnell, R-Ky., and House Speaker Paul Ryan, R-Wis., have said they would prefer to approve a series of smaller spending bills rather than a single omnibus bill. Democrats are concerned Republicans may add on policy riders, like weakening trucking regulations, or even more controversial provisions.

It's unclear how Trump's election will impact consideration of the spending bill. Although some may view it as the last legislative train leaving the station before Trump's inauguration, President Obama likely will not sign legislation with policy provisions his party would

oppose. Indeed, Democrats may conclude it is in their party's political interest to approve only the spending bill in the lame-duck session, leaving unfinished business and hard choices to Trump and the new Congress.

Democratic lawmakers had initially pressed for disaster relief funding for Flint, Michigan, in the September continuing resolution; the impasse was resolved by a promise to address Flint's water supply crisis in a post-recess House-Senate conference seeking to reconcile the chambers' respective versions of a water infrastructure bill. Congressional staffers now expect that disaster relief funding will be folded into the funding bill that ultimately passes for fiscal year 2017.

Defense authorization

For 54 consecutive years, Congress has passed an annual National Defense Authorization Act setting priorities and authorizing funding levels for the Pentagon. That streak is in jeopardy this year.

Congressional staff and lawmakers have been racing to finish a conference report reconciling House and Senate bills to be able to vote on the measure in December. But the White House earlier this year issued a statement of administrative policy with a laundry list of objections that would cause President Obama to veto the House version of the bill.



Rep. Nancy Pelosi, D-Calif.

But Donald Trump's upset win last night puts most potential legislative activity in doubt, except for an appropriations bill to keep the government from shutting down after Dec. 9.

Flashpoints on the legislation have ranged from workplace provisions regarding LGBT employees of religiously affiliated contractors to environmental protections for the sage grouse, which is a bird native to the western United States. Negotiations are ongoing.

An even larger issue exists regarding the overall level of spending, and whether the bill will break budget caps requiring a balance between defense and nondefense federal spending. Whether or not the Pentagon legislation ultimately passes this year, the sequester and the larger federal spending debate will hang over all budget and funding decisions in the next administration, including the likely spring deadline to raise the debt ceiling.

Healthcare

The health policy agenda for the lame-duck session is headlined by the bipartisan 21st Century Cures Act, which is aimed at boosting medical innovation and speeding the development of new drugs, medical devices and diagnostics.

The Cures initiative faces its last opportunity for passage this year, and congressional leaders pledged to move on it during the lame duck. It would include additional funding for the National Institutes of Health, including for Vice President Biden's "moonshot" cancer research initiative.

But the initiative faces obstacles from some Democrats who object that the legislation does not address drug prices. That and the always-sticky issue of how to offset the increased spending could continue to block the bill.

Separately, the pharmaceutical industry is making a major push to block the Center for Medicare & Medicaid Services' controversial pilot program to reimburse for drugs delivered to doctors' offices. This provision may end up being included in the year-end omnibus spending bill.

It is possible Trump may be more sympathetic to the drug industry's concerns on the CMS proposal, but he

also has been critical of pharma on the campaign trail and advocated allowing the government to negotiate prices.

Speaker Ryan said a mental health reform measure would also be considered in the lame duck. It would expand Medicaid coverage of mental health treatment, make more psychiatric hospital beds available and change privacy rules to allow caregivers to know more health information.

Energy

The House and Senate have passed separate energy bills but have been stalled over resolving differences. Now Republicans are incentivized to wait until they can work with a Trump administration on a comprehensive energy policy.

Tax extenders

Last year, after Congress approved a large-scale package of expiring tax provisions, House Ways and Means Chairman Kevin Brady, R-Texas, said he would oppose an effort to renew provisions that expire this year. And with Trump's victory and the prospect of tax reform suddenly more likely, it is not likely that tax policy will be considered during the lame duck.

Trans-Pacific Partnership

The White House said President Obama would push for his 11-nation trade agreement during December. Even before Trump's victory, key lawmakers were signaling the votes were not there to approve the agreement.

With Trump making opposition to the TPP a central plank in this campaign, that likely is the nail in the coffin for the agreement.

Supreme Court

Judge Merrick Garland, President Obama's nominee for the Supreme Court, will not receive a post-election vote in the Senate. Instead, the Senate will wait for Trump to appoint the replacement for the late Justice Antonin Scalia.



Sen. John Cornyn, R-Texas

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TAX

It is expected that President-elect Donald Trump and congressional Republicans will move tax reform forward, packaged with new funding for infrastructure projects, early in Trump's first term, and these efforts may move quickly.

Tax reform is complicated, however, and the process may take the entire 2017 calendar year – or longer – to complete. Even so, key tax-writing committees will be active next year preparing for tax overhaul legislation.

Key players in tax reform

The Ways and Means Committee will be front and center on tax reform, building off a blueprint Chairman Kevin Brady, R-Texas, released earlier this year, as well as the draft overhaul released by former House Ways and Means Committee Chairman Dave Camp in early 2014. No reform can be accomplished, however, without prioritization by the president. The White House's political support is critical, but so is the Treasury Department's technical expertise and bandwidth. With the Treasury and both chambers of Congress aligned politically, the window for long-awaited tax reform may now be open.

Senate Finance Committee Chairman Orrin Hatch, R-Utah, has advanced a series of tax proposals, and he and Brady are expected to shape the administration's priorities, especially because Trump may be slow in naming key Treasury Department officials.

Brady outlined a comprehensive pro-growth blueprint for tax reform this

summer. Its priorities include consolidating individual tax brackets and lowering rates, including establishment of three tax brackets of 12 percent, 25 percent and 33 percent.

Brady also proposes to lower capital gains and dividends rates to 6 percent, 12.5 percent and 16.5 percent, and to eliminate estate and gift taxes.

Brady has proposed reducing the corporate rate from 35 percent to 20 percent, including a 25 percent maximum rate for pass-through businesses. He would create a territorial system with a 100 percent exemption for dividends from future foreign subsidiary earnings, and create a system of border-adjustable taxation on domestic manufacturing in order to encourage exports. In the transition to a territorial system, Brady would impose a repatriation tax of 8.75 percent for cash and cash equivalent profits, and 3.5 percent on other profits in order to capture some revenue from the trillions of dollars of U.S. multinationals' earnings currently trapped offshore.

Trump campaigned on a promise to reduce individual taxes, including collapsing the current seven tax brackets to three brackets of 12 percent, 25 percent and 33 percent. He proposed retaining the existing



Rep. Kevin Brady, R-Texas, House Ways and Means Committee chairman

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capital gains rate structure, taxing carried interest as ordinary income and repealing the 3.8 percent tax to finance the Affordable Care Act.

For businesses, Trump proposed lowering the tax rate from 35 percent to 15 percent, and eliminating the corporate alternative minimum tax. He would provide a deemed repatriation of corporate profits held offshore at a one-time tax rate of 10 percent.

Trump's plan also would eliminate most corporate tax expenditures, except for the tax credit for research and development. Manufacturing companies could expense capital investment and lose the deductibility of corporate interest expense.

HEALTHCARE

Republicans have dreamed for years about repealing President Obama's signature legislative achievement, the Affordable Care Act. They have voted more than 70 times in Congress to eliminate the law, but those efforts have always stalled. Now they will get their chance to kill it for real.

The GOP likely will use legislative procedures to bypass a filibuster in the Senate, giving them the ability to wipe out most of the health reform law with only Republican votes.

Vice President-elect Mike Pence has said a Trump administration would back a transition period for those 20 million Americans receiving subsidies and coverage under the law, not yank it away immediately.

What Republicans would propose to take the law's place is not clear. Trump and congressional Republicans have talked about well-worn GOP policies, including new tax credits to encourage Americans to buy insurance policies, souped-up Health Savings Accounts, and allowing insurance companies to sell policies across state lines.

Drug prices and medical innovation

The bipartisan 21st Century Cures initiative aims to promote innovation in treatments for patients. Leaders in both chambers have said finally passing Cures will be a priority in December's lame-duck session, but it is unclear whether lawmakers can agree on key provisions. The cost and scope of the final package, including potential funding for Vice President Biden's

Moonshot cancer initiative, remain to be seen, as a new draft is expected in November.

Prescription drug costs have risen to the top of voters' priorities in healthcare, and the pharmaceutical industry faced sharp criticism during the campaign from Democrats and even some Republicans, who in the past have been largely united in defending the industry. In fact, President-elect Trump has criticized the industry and proposed allowing the government to negotiate prices with drug companies – a policy long championed by liberal Democrats and vigorously fought by industry.

Had Democrats won control of the Senate, they likely would have held multiple hearings on rising drug prices for generics and brand-name treatments, including firing off subpoenas to offending companies. Congressional Republicans are not expected to be as focused or as harsh as Democrats.

The pharmaceutical industry continues to keep a wary eye on CMS and its Center for Medicare & Medicaid Innovation (CMMI), as it is expected to publish its final rule on the controversial Part B drug pricing demonstration project. The pilot has been opposed



Sen. Orrin Hatch, R-Utah, Senate Finance Committee Chair

Prescription drug costs have risen to the top of voters' priorities in healthcare ...

by Republicans and many Democrats, pharmaceutical companies, and medical specialty groups on the grounds that the agency pushed forward without stakeholder consultation and exceeded its authority in creating a demonstration project so broad that it would actually capture most of the country. These opponents of the Part B pilot will seek a legislative fix during the upcoming lame-duck session.

Against this backdrop, FDA drug and device user fee agreements are set to expire at the end of September 2017. As the drug and device industries and FDA send their proposed agreements to Congress for ratification, the reauthorization bills will function as moving vehicles for various policy initiatives, potentially including the generic development measures mentioned above. If 21st Century Cures fails to pass on its own, some leftover provisions will also be discussed.

Entitlements and payment reform

Based on his campaign, Trump does not appear to be interested in large-scale reforms to Medicare, Medicaid and Social Security. This is a significant difference with many leading congressional Republicans, especially Speaker Ryan and Ways and Means Chairman Brady, who have long sought such reforms. They will have other priorities to focus on in the near term, but this could cause friction in the future.

A reauthorization of the Children's Health Insurance Program (CHIP) could be an early healthcare bill that gains traction; the program expires next September.

Committees of jurisdiction plan in the new Congress to continue a broad look at reforms of payment processes for hospitals and physicians. This will include oversight of the new Merit-Based Incentive Payment System, which Congress devised to address physician payments in Medicare.

Leaders of the House Ways and Means Committee and the Senate Finance Committee each have their priorities for how they view the next steps after addressing Medicare payments for doctors. Ways and Means Chairman Kevin Brady has emphasized overhauling how Medicare pays hospitals and post-acute-care providers, especially trying to make inpatient and outpatient payments compatible.

Meanwhile, bipartisan leaders of the Finance Committee recently unveiled the product of a working group formed in 2015 to improve care of treatment for patients with chronic illnesses like diabetes, by expanding home-health services and telemedicine and improving care coordination.

The respective committees will continue to focus on these issues in the year ahead – but they are likely at the beginning of a several-year process that will require a renewed bipartisan atmosphere in Washington in order to succeed.

FINANCIAL SERVICES

President-elect Trump's position on financial services industry issues is checkered, neither traditionally Republican nor Democratic.

He's been critical of the banking industry, saying on the campaign trail in January: "I'm not going to let Wall Street get away with murder. Wall Street has caused tremendous problems for us."

But Trump also opposes breaking up big banks and wants to repeal Dodd-Frank.

Still, he supported the bank bailouts after the 2008 economic crisis and also the reinstatement of the Depression-era Glass-Steagall law prohibiting commercial banks from engaging in investments.

Trump criticized executives of major banks for settling cases with the Justice Department over issues relating to the economic crisis. He's advocated eliminating carried interest and ensuring asset managers' income is taxed as ordinary income, not as long-term capital gains.

He has been schizophrenic when it comes to Federal Reserve Chairwoman Janet Yellen. Trump said in May he would likely dump her, and then a few weeks later said he had "great respect" for Yellen. He has joined Sen. Rand Paul, R-Ky., in calling for increased congressional oversight of the Fed, including a series of "audit the Fed" proposals.

But expanding Dodd-Frank to cover insurance companies and hedge funds, taxing high-frequency trading, imposing a "risk fee" on the biggest banks, and tightening the Volcker Rule on banks' speculative investments? Boosting

budgets for the Securities and Exchange Commission and the Commodity Futures Trading Commission to crack down on investor wrongdoing? Those are on the policy wish lists for Sens. Bernie Sanders, I-Vt., and Elizabeth Warren, D-Mass., but they will not gain traction in the new Congress.

House Financial Services Committee Chairman Jeb Hensarling, R-Texas, and expected Senate Banking Committee Chairman Mike Crapo, R-Idaho, will likely continue oversight hearings on Wells Fargo & Co. Rather than advocating for new industry regulations, Sanders, Warren and Banking Committee ranking member Sen. Sherrod Brown, D-Ohio, will form a senatorial firewall against GOP efforts to scale back Dodd-Frank.

One key personnel decision in Congress will be who succeeds Rep. Scott Garrett, R-N.J., as chairman of the Financial Service Subcommittee on Capital Markets and Government Sponsored Enterprises. Garrett lost his re-election last night.

Flood insurance reauthorization

Congress is expected to address next year the reauthorization of the National Flood Insurance Program. Stakeholders suffered through 17 short-term extensions of the program before the most recent reauthorization in 2012, but this time key lawmakers are pushing for a smoother outcome, motivated by the program's \$24 billion debt.



Sen. Sherrod Brown, D-Ohio, Senate Committee on Banking, Housing & Urban Affairs ranking member

Rather than advocating for new industry regulations, Sanders, Warren and Banking Committee ranking member Sen. Sherrod Brown, D-Ohio, will form a senatorial firewall against GOP efforts to scale back Dodd-Frank.

The federal flood insurance program provides coverage for more than 5 million policyholders. Some stakeholders are pressing for more competition among private insurers, but Washington would need to scale back subsidies that have kept homeowners' premiums low but also effectively blocked new entrants to the marketplace.

Consumer Financial Protection Bureau

The recent D.C. Circuit Court ruling that the Consumer Financial Protection Bureau is "unconstitutionally structured" only adds gas to congressional Republicans' fire to eliminate the CFPB. Even before the ruling, Hensarling called the watchdog "the single most powerful and least accountable federal agency in all of Washington."

Hensarling's committee earlier this year approved legislation that would transfer CFPB funding from the Federal Reserve to Congress's annual appropriations process, which would give lawmakers greater oversight of the agency. Separate GOP legislation would replace the CFPB director with a five-person bipartisan commission and block agency rules on payday lending and mandatory arbitration in consumer contracts.

Dodd-Frank

Republicans will renew attacks on Dodd-Frank with wholesale efforts to repeal the law and file rifle-shot legislation targeting narrow provisions.

Hensarling's Financial CHOICE Act will be reintroduced in 2017 as the chairman seeks to repeal the Federal Deposit Insurance Corp.'s liquidation authority, the Financial Stability Oversight Council's power to designate clearinghouses as financial market utilities and the Volcker Rule's restrictions on types of investments.

The Senate could not pass these and other Dodd-Frank rollbacks when Republicans controlled the chamber, and they could meet a similar fate next

year though the politics will be different as many Democrats will be seeking re-election in states Trump won.

Commodity Futures Trading Commission

The Commodities Futures Trading Commission, which regulates the futures and options markets, has been operating with only three of its five commissioners since 2015. The vacancies will have to be filled by one Republican and one Democrat.

Congressional Republicans will continue legislative efforts – and committee oversight hearings in the House – on the CFTC.

Fiduciary Rule

House Speaker Paul Ryan condemned the Labor Department's Fiduciary Rule as "Obamacare for financial planning," and the Senate voted this summer to repeal it.

The rule, which goes into effect in April, is being challenged in courts nationwide as a regulatory overreach.

Puerto Rico

The bipartisan Congressional Task Force on Economic Growth in Puerto Rico next month will release recommendations on policies to promote long-term growth and help the island recover from its debt crisis.

Puerto Rico is not likely to merely accept the task force's recommendations. Both leading gubernatorial candidates in Puerto Rico opposed Congress's imposition of a fiscal control board over Puerto Rico.

Senate Finance Committee Chairman Orrin Hatch, R-Utah, leads the task force, and other members include Sens. Marco Rubio, R-Fla.; Bill Nelson, D-Fla.; and Robert Menendez, D-N.J.; and Reps. Sean Duffy, R-Wis.; Tom MacArthur, R-N.J.; Nydia Velázquez, D-N.Y.; and Pedro Pierluisi, D-Puerto Rico.



Rep. Jeb Hensarling, R-Texas, House of Representatives Financial Services Committee chairman

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ENERGY

The country's energy policies were upended by last night's election. Out is Hillary Clinton's plan for installing a half billion new solar panels, and in are fossil fuels.

The Obama administration's eight-year commitment to international climate change agreements is likely out the window. President-elect Trump frequently criticized Obama's and Clinton's policies as too tilted toward environmentalists' positions and detrimental to U.S. economic growth and job creation.

Trump has talked about preserving the environment, natural habitats and endangered species. But for the oil and gas industry, and particularly fracking for natural gas, Trump will be a strong advocate. On the campaign trail, Trump said he would repeal the global greenhouse emissions targets.

In Congress, the House and Senate took divergent paths this year to comprehensive energy legislation, preventing agreement on final legislation. Some stakeholders had hoped an agreement could be struck and a vote scheduled for the lame-duck voting session in December.

That was a long shot before the election, and it is an even longer shot now. Republicans, particularly in the House, have no incentive to compromise on policies that were included in that chamber's energy bill, which were the GOP's greatest hits on energy policy, like expanding oil and gas drilling offshore, and reviving the Keystone pipeline.

While energy legislation is likely dead for this year, a version is expected to be revived in the new Congress in 2017. How much it hews to the House's version this year is unclear, as it would still need to pass a likely Democratic filibuster in the Senate. Still, it could include Senate-approved provisions on efficiency language, cybersecurity for power plants, strengthening the grid, and speeding approval of pipelines and liquefied natural gas exports.

The Clean Power Plan has been one of the more singularly controversial environmental regulations ever promulgated by the EPA, sparking massive multiparty litigation. The outcome of this case will have major implications for national energy policy.

Congress will not wait for the issue to be resolved in court; they will press for legislative relief, potentially including giving states more credit for early measures taken to reduce emissions.

Politically problematic for Democrats is that many of the 25 senators facing re-election in 2018 are from states where coal is important and coal-fired plants still largely operate, including West Virginia, Ohio, Indiana, North Dakota, Montana and Missouri.

While energy legislation is likely dead for this year, a version is expected to be revived in the new Congress in 2017.

TECHNOLOGY

The top policy priorities for the technology industry address issues that impact all American industries broadly and were the most contentious during the campaign: trade, taxes and immigration.

Other issues more specific to tech, such as cybersecurity and STEM education, also are likely to receive attention in the next Congress and administration.

Trump's victory now offers some hope for broad corporate tax reform. But on trade and immigration, the campaign's heated rhetoric portends continuing difficulty in making progress on significant changes.

On the other hand, smaller-scale progress might be possible with other, more technology-specific issues that have seen bipartisan interest in recent years, including cybersecurity, intellectual property and broadband deployment.

Trade

Technology companies recognize that in order to thrive in the decades ahead, they must be able to access fast-growing markets around the world. This is true of companies that provide consumer electronics and other goods and services, as well as online commercial platforms.

To that end, agreement on and ratification of various trade deals have risen to the top of the list of priorities for many in the tech industry – beginning with congressional approval of the Trans-Pacific Partnership (TPP), which is now impossible in the near term.

Within these trade discussions, tech sector stakeholders have several priorities, largely concerning the

data that flows through the digital economy and ensuring that it remains open to innovation and access.

For example, U.S. stakeholders have pushed for agreements to prevent requirements for local management of data, and to overcome the European Union's historically more stringent data privacy policies. These issues have been flashpoints as negotiators race to conclude three years of negotiations on a 23-country Trade in Services Agreement.

Even as free trade proponents continue to push for congressional approval of TPP and for ongoing negotiations on a trans-Atlantic trade deal, they remain deeply pessimistic, as anti-trade and anti-globalization rhetoric has gripped the global political environment and was central to Donald Trump's campaign message. Indeed, according to one tech trade association head in Washington, the current rhetoric represents a "low point" in the debate about trade and globalization.

Immigration

The fierce debate over broad immigration policy during the campaign left little room for discussion of the technology sector's more specific immigration priority: the ability to draw educated and highly skilled workers from abroad, primarily through the H-1B visa program.

Tech stakeholders had difficulty gaining clarity from both presidential



Sen. John Thune, R-S.D., Senate Committee on Commerce, Science, and Transportation chairman

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candidates on their stance on the H-1B program. What they did hear discouraged them, especially Donald Trump's criticism that the program allows companies to pass over American workers.

Indeed, much like trade, current rhetoric and the Trump victory point in the wrong direction for the industry's priorities on immigration.

Cybersecurity

Enhancing security and trust in networks and data remains a top priority for the sector. It will necessarily remain a key area of focus for the next commander in chief to keep pace with evolving threats, as hackers and terror networks grow more sophisticated, and foreign government actors threaten cyber espionage.

The tech sector views cybersecurity as a shared responsibility between industry and government, and its policy views are shaped through this lens. Thus, industry emphasizes working in partnership with the public sector through voluntarily sharing information about cyberthreats while protecting privacy and innovation, as well as ensuring coordination among various government agencies and international groups.

With the number of cyberattacks growing in recent years, policymakers have taken steps to update and clarify federal policy. Congress in 2015 approved legislation to encourage companies to voluntarily share threat information with each other and with the government – companies doing so would receive liability protection. That measure passed despite the objections of privacy advocates and some major tech company executives, who argued it did not protect privacy. Congressional leaders on the issue viewed this as only a first step in addressing the growth of cyberthreats.

President Obama in February 2016 unveiled the Cybersecurity National Action Plan, aimed at upgrading federal

IT, working with the private sector to protect its critical infrastructure, and promoting public awareness and education in cybersecurity. The initiative included the appointment of a Commission on Enhancing National Security within the Commerce Department, comprising experts from business, academia and government – but stakeholders question the effectiveness and reach of the commission.

The Trump administration will have no choice but to make cybersecurity a top priority. Facing the issue within the international community will be a pressing task – both defending against attacks from other nations and lone hackers, and working with foreign leaders to establish international norms.

Patent reform

The technology sector is continuing its push for a comprehensive overhaul of intellectual property law. The America Invents Act of 2011 was the first major change of the patent system since 1952 – but industry stakeholders are seeking additional changes to prevent frivolous litigation.

The push is primarily based on the prevalence of firms that do not produce any goods or services themselves, but obtain broad patents solely for the purpose of bringing lawsuits to extract settlements from legitimate technology firms. Tech companies believe several more changes are needed to IP law in order to shield them from such litigation.

However, the technology industry finds opposition to its advocacy in this area from the pharmaceutical and biotech industries, which remain among the most powerful in Washington.

Essentially, the tech industry works in a more rapid development cycle that makes patent protection less beneficial and makes companies more frequent targets for litigation. On the other hand, research and development in pharma and biotech take much longer, and intellectual property in the life sciences is subject to a different and carefully

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balanced system to protect innovation while allowing for the development of generic medicines.

Given that two of Washington's most influential groups are at odds over the issue, it is unsurprising that progress stalled on patent reform legislation in the 114th Congress. Inaction was the natural outcome, with lawmakers avoiding a vote that would mean choosing sides between several key industries.

Reform legislation supported by the tech sector did pass the House and Senate Judiciary committees in the 114th Congress, but the congressional leadership was unsure of the votes for passage and wary of a messy floor battle. The bills at issue contained several measures supported by tech stakeholders, including requiring more details in patent lawsuits, restricting jurisdictions in which patent holders can bring suit (in order to prevent "forum shopping"), and requiring that plaintiffs in frivolous lawsuits pay the attorneys' fees of defendants.

There is currently no clear indication of how lawmakers might resolve the industry impasse. It is worth noting that the pharmaceutical sector has faced hostility from the public and from both presidential campaigns due to rising drug prices – but it is doubtful that hostility bleeds over into an entirely separate issue.

Stakeholders point out that major legislation is often years in the making. For example, the earliest version of the 2011 America Invents Act was first introduced in 2005.

Broadband deployment and the Federal Communications Commission

There is widespread support in Congress and at the FCC for removing hurdles to companies deploying high-speed internet to meet the growth in consumer demand for data and to reach less-populous areas. However, the issue has been caught in partisan crossfire over the FCC.

Republicans in the Senate are holding the reconfirmation of Democratic FCC Commissioner Jessica Rosenworcel, apparently over frustration with FCC policy broadly and Chairman Tom Wheeler in particular, including the 2015 approval of net neutrality rules. As a result of Rosenworcel being stalled, Democrats have stalled legislation dealing with broadband, despite bipartisan support.

Lawmakers do not expect to move legislation in the current Congress. The FCC dispute may foreshadow legislative and oversight action, including a broad overhaul of the law that authorizes the agency. Key Republican lawmakers began a comprehensive legislative initiative in the current Congress but blame the net neutrality rules for the death of that effort.

Leaders of the Senate Commerce Committee and House Energy and Commerce Committee recently signaled a renewed interest in a Communications Act update, as it has not been overhauled since 1996. However, any such legislation would almost certainly be years in the making and is still in its early stages at this point.

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