

## ELECTION ANALYSIS

7 November 2018

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## Democrats Regain Control of House in Midterms, Republicans Retain Senate; Potential Implications for AIG

### EXECUTIVE SUMMARY

In the 2018 midterm elections, the Democratic Party regained control of the House of Representatives, while the Republican Party maintained its majority in the Senate. The new Democratic House majority will slightly shift the balance of power in Washington, DC, and could have meaningful implications for AIG's public policy priorities.

Members of Congress will return to Washington on November 13, 2018, for the "Lame Duck" session, which will include a full legislative agenda to address government funding and the reauthorization of expiring federal programs of interest to AIG, including crop and flood insurance.

In 2019, Democratic control of the House will allow House Democrats to highlight their policy priorities and carry out extensive oversight of the Trump Administration (e.g., through hearings, subpoenas). However, a divided Congress with a Republican President is unlikely to enact overly-partisan legislation.

Many of AIG's priority issues have bipartisan support in Congress; however, the politics of a divided Congress will largely dictate the prospects for enactment of these priorities. Below are some of the issues we expect to be considered in the 116th Congress, which convenes in January 2019 (more detail is included in the sections that follow).

- > **Infrastructure:** There is bipartisan agreement in Congress and the Administration that a comprehensive infrastructure bill is required to address deteriorating roads, bridges and transit systems. AIG has a significant interest in the prospects of this bill, given the impact on General Insurance and Investments.
- > **Retirement Security:** AIG supports federal policies that incentivize greater retirement savings, and make it easier for individuals to plan for their retirement, including through guaranteed lifetime income options.
- > **Terrorism Risk Insurance Program:** Following the September 11, 2001 terrorist attacks, Congress passed the Terrorism Risk Insurance Act (TRIA), which provides a federal backstop for property-casualty insurers against potential future acts of terror. Congress must reauthorize TRIA by the end of 2020 to keep the program in place.
- > **Trade:** To the extent they are not addressed in the Lame Duck, The U.S.-Mexico-Canada Agreement (USMCA) and other trade actions undertaken by the Trump Administration will be taken up by the new Congress. Since trade growth supports demand for insurance, AIG advocates policies that expand trade and create business opportunities.

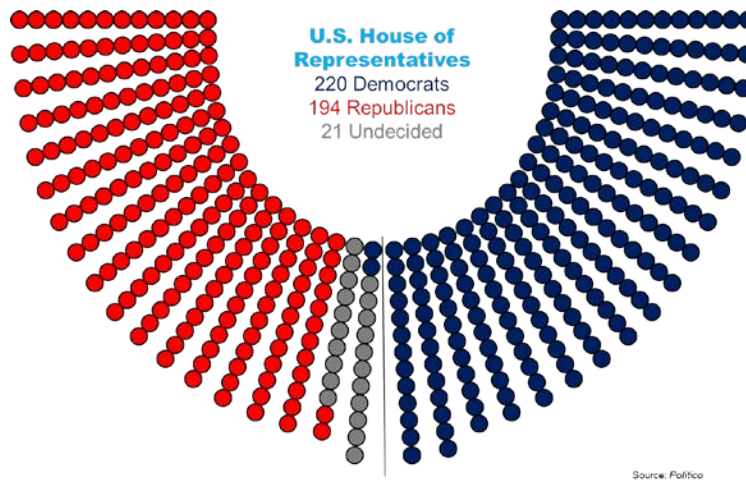
## ELECTION OUTCOME

*Democrats regain partisan control of the House; Republicans retain control of the Senate, leading to a divided Congress.*

On Tuesday, November 6, 2018, the US held its midterm elections for representation in Congress. Democrats regained majority control of the House of Representatives and Republicans maintained control of the US Senate.

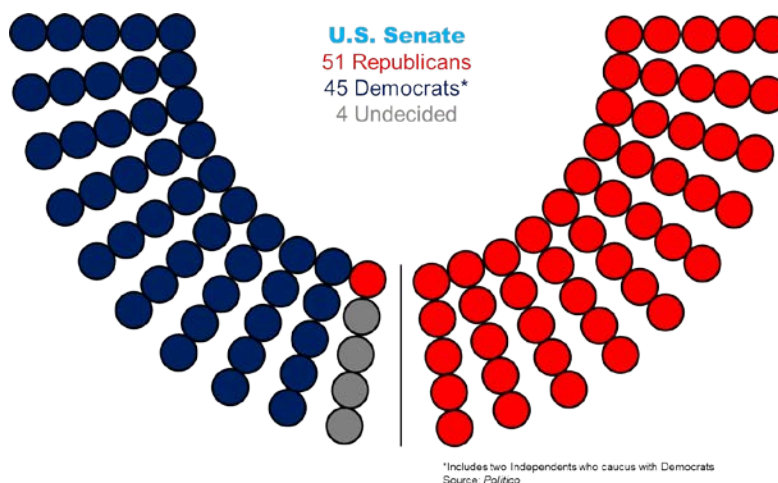
Each of the 435 seats in the House of Representatives was up for election. Democrats gained net 27 seats and now control 220 seats in the House—218 seats are required to have a majority. Although 21 seats remain undecided at the time of publication, those outcomes are likely to add to the Democratic House majority.

*Exhibit 1: New Composition of the House of Representatives*



35 of the 100 seats in the US Senate were up for election. 26 of the 35 seats up for election are held by Democratic Senators. Republican candidates defeated three Democratic incumbents, while one Democratic candidate defeated a Republican incumbent. Republicans gained two net seats in the Senate, and maintain a majority of 51-45; the outcomes of the four races undecided at the time of publication are likely to slightly add to the Republican Senate majority.

*Exhibit 2: New Composition of the US Senate*



## LAME DUCK AGENDA

*Members of Congress will return to Washington after the election with a full legislative calendar, including some priority issues for AIG.*

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The House and Senate are scheduled to return to Washington on November 13, 2018, where they will have a packed legislative calendar prior to adjourning in December. Upon returning to Washington, Congress will need to pass a spending bill by December 7<sup>th</sup> to continue to fund the government. In that debate, there will likely be controversy over President Trump's request for funding of a wall at the US border with Mexico. Trump has requested that Congress appropriate funding for the wall, and threatened to veto any spending measure that does not include it. Failing to pass a spending bill by December 7<sup>th</sup> could result in a partial government shutdown. The chances of that depend on how negotiations progress between Republican and Democratic leaders.

Additionally, Congress may address issues of specific relevance to AIG in the Lame Duck:

- › **Crop Insurance:** The Federal Crop Insurance Program is administered by the US Department of Agriculture (USDA) and authorized by Congress. It provides coverage to farmers to address crop yield and/or revenue losses. Insurance policies are sold and serviced through approved private insurance carriers. With the 2018 acquisition of Validus, AIG reentered the crop insurance market after shedding its crop business several years ago. The House and Senate each passed versions of the Farm Bill earlier in 2018 and the two chambers are now reconciling differences between the bills in a conference committee. There was bipartisan support of the crop insurance program among committee leadership in both chambers. We expect Congress to pass the final version of the bill with favorable crop insurance provisions.
- › **Flood Insurance:** The authorization of the National Flood Insurance Program (NFIP) expires on November 30, 2018. Congress must pass—and the President must sign—legislation extending the program's authorization to prevent a program lapse. Many in Congress would like to see the program reauthorization paired with NFIP reforms, such as ones that would expand market access for private carriers. Some Democrats and coastal Republicans are opposed to measures that may adversely affect affordability or availability of flood insurance. There is a bipartisan recognition that many citizens and businesses are underinsured, and that communities should invest in pre-disaster mitigation and resilience initiatives. Given the tight timeframe in the Lame Duck, we expect Congress to pass a short term reauthorization, and revisit a longer-term bill with reforms in the new Congress.
- › **Retirement Security:** Bipartisan legislation pending in the Senate, the Retirement Enhancement and Savings Act (RESA), contains several provisions supported by AIG. These provisions would: ensure the portability of annuities in the event of plan sponsor changes; clarify plan sponsor fiduciary responsibilities when selecting annuity providers; require Employee Retirement Income Security Act (ERISA) plans to provide participants with an annual statement showing how savings translate into a guaranteed lifetime stream from an annuity; and remove the cap that requires automatic escalation of employee deferrals go no higher than 10% of employee pay. The legislation would also allow two or more unrelated organizations to participate in a single retirement plan, presenting potential opportunities for AIG Group Retirement.
  - The House passed a bill with many of these provisions in September, but notably the bill does not include the annual lifetime income statement provision and the removal of the cap on auto-escalation. Industry is pushing the two chambers to reconcile the differences in their bills and enact legislation before the end of the year.
- › **Trade:** The Trump Administration may attempt to push through approval of the USMCA before Republicans lose the majority in the House out of concern that the new Congress may delay implementation indefinitely. Although Senator McConnell and other Republican leaders have stated that implementing legislation would only be taken up in 2019, that calculation could change now that control of the House has shifted to the Democrats.

## POTENTIAL LEADERSHIP CHANGES AND PARTY PRIORITIES

*Expanded authority with the majority will propel Democrats' agenda, and new leaders will ascend in House leadership and in the committees.*

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Current Minority Leader Nancy Pelosi (D-CA) has indicated that the top priorities for the Democratic-led House will include economic fairness for working Americans, gun control, legislation to curb rising drug prices, campaign finance reform, and immigration legislation. Transitioning from the Minority to the Majority in the House will greatly expand the Democrats' oversight power at the committee level. By controlling the chamber, Democratic Members will lead each of the House's committees and, with those chairmanships, be able to call hearings and issue subpoenas. We expect to see a number of hearings on President Trump's policies, a focus on the investigation into possible collusion with Russia, Trump's tax returns, and other areas that could be politically damaging in the 2020 presidential election, as well as conversations from certain Democrats about impeachment.

With a Republican Senate, a Democratic House and a Republican President, the likelihood is low for enactment of significantly partisan legislation. Major changes in policy without bipartisan support (e.g., on immigration) may require action through executive order or through rulemaking at the federal agencies, as the Trump Administration has already sought to pursue.

### **Election's Potential Impact on Leadership**

#### House

Rep. Nancy Pelosi will most likely be the first Speaker to regain that position in more than six decades—no serious challengers to Pelosi have emerged so far. Much will depend, however, on the size of the Democratic victory. If the Democratic majority remains slim, it is conceivable that there could be enough Democrats who will abide by their campaign pledges not to support Pelosi to prevent her re-election as Speaker; however, many of her colleagues may support her in the event that a significant amount of the remaining 21 undecided seats break for Democrats and they gain a larger majority. House Democrats have yet to set a specific date for their leadership elections, though they will likely take place after November 28, 2018. Pelosi would need to receive a majority of the votes in the Democratic Caucus and in the full House on January 3, 2019, to become Speaker again.

The House Minority Leader will likely be current Majority Leader Kevin McCarthy (R-CA). Current Minority Whip Steve Scalise (R-LA) or the leader of the Freedom Caucus, Jim Jordan (R-OH), are also potential candidates. House Republican leadership elections are scheduled to take place the week after the midterm elections. The Minority Leader must secure a majority vote in the Republican Conference.

Rep. Maxine Waters (D-CA), the current Ranking Member of the House Financial Services Committee (HFSC), will likely take the chairmanship of that committee. The Ranking Member position may go to one of several current subcommittee chairmen, including Rep. Blaine Luetkemeyer (R-MO) or Rep. Bill Huizenga (R-MI), or current HFSC Vice Chairman and House Chief Deputy Whip Patrick McHenry (R-NC).

Rep. Richard Neal (D-MA) will likely ascend to the chairmanship of the House Ways and Means Committee, which has significant jurisdiction over retirement policy. Current Ways and Means Chairman Kevin Brady (R-TX) is expected to take the Ranking Member role.

#### Senate

Current Senate Majority Leader Mitch McConnell (R-KY) is likely to retain his seat atop Republican leadership. His number-two, however, will be replaced. Current Majority Whip John Cornyn (R-TX) is term-limited in his service in that position. A likely successor is Sen. John Thune (R-SD).

In the Senate, despite some complaints by activist groups that Minority Leader Chuck Schumer (D-NY) hasn't been aggressive enough, there have been no serious indications that Schumer's position as Minority leader in the Senate is in jeopardy.

The chairmanships and ranking memberships of the Senate Banking and Senate Finance Committees will likely be determined in the coming weeks, and are a result of a high stakes game of "musical chairs," based on seniority, limits on the number of years a Member may serve as committee chair and retirements of current chairmen.

## ELECTION IMPACT ON AIG'S PUBLIC POLICY PRIORITIES

*Many of the public policy issues affecting AIG that Congress will address in the new session have bipartisan support, though the election results will govern the political landscape in which those policies advance.*

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### **Cybersecurity/Privacy**

AIG Government Affairs expects a continued focus on cybersecurity and privacy issues in the new Congress in both the House and Senate, as well as among the Federal Agencies. In previous years, Congress considered bills to establish a uniform data security and data breach notification standard. While efforts on those bills stalled, we expect Congress to introduce similar legislation and for there to be broader debate on how to protect citizens and businesses from cyber threats. Debates on such bills present the opportunity to showcase for policymakers the value of mitigating risk with cyberinsurance.

In the wake of high profile privacy incidents (e.g., the Facebook-Cambridge Analytica revelation) and the development of privacy measures in other jurisdictions (e.g., Global Data Protection Regulation in the European Union), Members of the House and Senate indicated they plan to introduce federal privacy legislation in the next Congress. The specifics of the legislation are yet to be determined, and would require significant feedback from affected industries and companies (including AIG). Any privacy bill would likely require bipartisan support. Similarly, there is an effort in the Administration through the Department of Commerce to develop privacy principles beyond current policy in order to keep pace with the privacy concerns associated with increasing amounts of personal information online.

### **Fiduciary Rule/Standard of Care**

On April 18, 2018, the Securities and Exchange Commission (SEC) released its proposed rule regarding standard of care for retail investors. The SEC expects publication of its final rule by September 2019.

Overall, AIG views the SEC proposal as more workable than the Department of Labor (DOL) Fiduciary Rule, which the Fifth Circuit Court of Appeals vacated in June, since it is generally neutral as to investment product type and distribution model. The DOL recently indicated that it would take additional action on standard of care by September 2019. It is possible that the DOL will try to harmonize its standard of care framework with the SEC rule.

Many Democrats, including likely House Financial Services Committee Chair Maxine Waters (D-CA), are unlikely to support SEC/DOL rules that, in their opinion, are not as strong as the 2016 DOL Rule. There may be hearings on this issue and attempts by Democrats to urge the SEC and DOL to strengthen their regulations in a way that would be unfavorable to industry.

### **Financial Regulation**

In May 2018, Congress passed and the President signed the Economic Growth, Regulatory Relief and Consumer Protection Act (S. 2155). The legislation largely provides regulatory relief for small-to-mid size financial institutions and raises the threshold for applying enhanced prudential standards to bank holding companies. It also includes provisions that seek to increase transparency in the development of international insurance capital standards. Passage of this bill required Democratic support to advance. Given the passage of this bill, it is unlikely that additional Dodd-Frank rollback legislation will advance through Congress, though House Democrats may move legislation that strengthens Dodd-Frank's financial reforms. It is unlikely that either a bill to significantly roll back Dodd-Frank, or to greatly expand financial regulatory authority, would be enacted in a divided government.

In 2017, the Financial Stability Oversight Council (FSOC) rescinded its designation of AIG as a nonbank systemically important financial institution (SIFI). In 2018, the Treasury Department released a report that suggested FSOC should assess systemic risk on the basis of *activities* rather than assessing risk on an *entity* basis, as has been FSOC's past practice. Members of the FSOC, including the Treasury Secretary and Chairman of the Federal Reserve Board, must regularly testify before Congress. Congressional leaders in the committees of jurisdiction may question Administration officials on the shift to an activities based approach.

**Infrastructure**

Congressional Republicans, Democrats and President Trump agree that a wide-ranging infrastructure package is necessary to improve America's roads, bridges and transit systems. However, despite bipartisan agreement on the necessity of an infrastructure bill, thus far Congress and the Administration have made little progress. We expect infrastructure to be a prime legislative target for House Democrats and Senate Republicans, as well as the President—the specifics of the legislation will require compromise.

In early 2018, President Trump released his Administration's plan for an infrastructure package. Democrats opposed the proposal because it devoted insufficient federal resources to the plan. Additionally, congressional Republicans and Democrats proposed their own ideas for an infrastructure package, but they gained no traction.

AIG Government Affairs will actively engage on debate surrounding any infrastructure legislation, given the impacts on our General Insurance business lines (e.g., Construction) and potential opportunities for Investments (e.g., through private sector investment in projects). Likely points of contention between the parties will include funding mechanisms (e.g., raising the gas tax to pay for new projects), public-private partnerships (e.g., incentivizing investment by institutional investors), and the percentage of total cost that Congress will appropriate via federal funding.

**Retirement Security**

AIG will continue to work with Congress to advocate legislation that promotes retirement security. In the event that the retirement security legislation detailed above (see Lame Duck Agenda) does not pass in 2018, AIG will work with the new Congress to advocate its passage.

Rep. Richard Neal (D-MA), who will likely lead the House Ways and Means Committee, which has significant jurisdiction over retirement policy, considers retirement a top priority. The House may take action on several proposals from Neal, including bills that would: mandate employers (with some exceptions) offer a retirement plan; provide limited tax incentives for annuities; and make qualified longevity annuity contracts easier to purchase. Rep. Bobby Scott (D-VA) is expected to become Chairman of the House Education and the Workforce Committee, which also has jurisdiction over retirement policy. Rep. Scott's office has indicated that retirement issues are a priority for him.

**Tax**

In 2017, Congress passed and the President signed tax reform legislation that overhauled the tax code for individuals and businesses. Among other things, the bill decreased the statutory corporate tax rate to 21% and provided a number of temporary individual income tax cuts. Republican leaders indicated a wish to pass a "Tax 2.0" bill that would, among other things, make some of the individual tax cuts permanent.

Enactment of a "Tax 2.0" in a Democratic-led House is unlikely. Instead, Democrats may attempt to reverse some of the changes made by the Republican legislation, including raising the corporate tax rate. Raising the corporate rate would disproportionately affect life insurers over other industries. As part of tax reform in 2017, Republicans limited deductions unique to the industry in exchange for a lower corporate tax rate. It is unlikely that the Senate would approve and that President Trump would sign a Democratic-led bill to reverse elements in the 2017 tax reform legislation.

**Terrorism Risk Insurance Act**

The Terrorism Risk Insurance Program—often referred to in shorthand as "TRIA" for the Act that established the program in 2002—provides a government backstop for property-casualty insurers in the event of a certified terrorism event. TRIA serves to provide market stability and accessibility, given the uncertainty of underwriting terrorism risk. Congress most recently reauthorized the program in 2015, after a brief lapse in its authorization, and must reauthorize the program prior to December 31, 2020. While a permanent reauthorization is unlikely, we will support a long-term reauthorization well ahead of the expiration date to avoid another lapse.

Democrats in House Financial Services Committee leadership, including likely Chair Maxine Waters and likely subcommittee Chair Carolyn Maloney (D-NY), are proponents of the program. We also expect support from leaders in the Senate. There is bipartisan recognition of the value of the program, and we expect Congress to reauthorize TRIA prior to the 2020 expiration.

**Trade**

The USMCA is expected to be signed on November 30, 2018, after which Congress will need to consider implementing legislation. The change in control over the House injects considerable uncertainty into the legislative process. Possible scenarios range from a rushed vote during the lame duck session while Republicans retain control, to a prolonged deliberative process that could extend indefinitely. Additional uncertainty could result if President Trump decides to announce withdrawal from the existing agreement to increase pressure on Congress.

During the legislative process, Congress may seek to address perceived shortcomings to the agreement, such as weaknesses in the dispute settlement mechanism that diminish enforceability. Congress may also try to use the legislative process to assert greater authority over future negotiations. Since trade and investment growth increases demand for insurance, AIG will continue to advocate US trade policies that offer the greatest potential to generate business opportunities.