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## WASHINGTON WIRE



### What do the Midterm Election Results Mean for the Tax Credit Community?

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**W**hen Republicans gained control of the Senate in last month's midterm elections, the balance of power shifted in a number of ways. This change raised many questions for the affordable housing, community development, historic preservation and renewable energy communities. For example, what do the results of specific races mean for the future of the low-income housing tax credit (LIHTC), new markets tax credit (NMTC), historic tax credit (HTC) and renewable energy production tax credit (PTC) and investment tax credit (ITC)? Or, will the election results change the chances of a tax extenders package being passed before Dec. 31? And, what does this all mean for the future of tax reform?

It's too early to come to firm conclusions, but based on what is known so far, there are indications of the road that lies ahead.

#### **By the Numbers**

In the Senate, 33 lawmakers were up for regularly scheduled election and three were up in special elections. Of the 36 Senate seats up for election last month, 21 were held by Democrats and 15 were held by Republicans. At the time of this writing, Republicans had gained eight

Senate seats: Alaska, Arkansas, Colorado, Iowa, Montana, North Carolina, South Dakota and West Virginia. Sen. Mary Landrieu, D-La., will face challenger Rep. Bill Cassidy, R-La. in a runoff election Dec. 6, and many political analysts are predicting Rep. Cassidy will prevail.

While Republicans will likely control the Senate with 54 seats, they are shy of the 60-seat margin that would allow them to block filibusters or the 67-seat margin that would allow them to override a presidential veto. As such, compromises will be required to move legislation.

All 435 seats in the U.S. House of Representatives were up for election. Forty-two representatives are retiring from their seats this year, 16 Democrats and 26 Republicans. At the time of this writing Republicans have a net gain of no fewer than 12 seats in the House of Representatives, giving them at least 244 seats. There are three races yet to be called, and two seats in Louisiana headed for the runoff election.

#### **Leadership Changes**

House leadership will likely remain unchanged, with House Speaker John Boehner, R-Ohio, House Majority

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Leader Kevin McCarthy, R-Calif., and House Minority Leader Nancy Pelosi, R-Calif., retaining their positions. Leadership in the Senate will change, with Sen. Mitch McConnell, R-Ky., poised to take over as Senate Majority Leader when the 114th Congress convenes in January. Sen. Harry Reid, D-Nev., will serve as Senate Minority Leader. Sens. John Cornyn, R-Texas, and Dick Durbin, D-Ill., will swap roles as Senate Majority and Minority Whips, respectively.

### LIHTC

The affordable housing community retained a key ally with Sen. Pat Roberts, R-Kan., win last month. Sen. Roberts is the lead Republican sponsor of S. 1442, the LIHTC rate floor bill, with Democratic sponsor Sen. Maria Cantwell, D-Wash. Sen. Roberts has been a strong supporter of the LIHTC, as have Senate Finance Committee Republican Sens. Mike Crapo of Idaho and Johnny Isakson of Georgia, all of whom will return in the 114th Congress.

### NMTC

For the NMTC community, extension of the program is of utmost importance. Unless extended, no additional allocation authority exists for the NMTC program. And the longer an extension is delayed, the more it will affect when the Community Development Financial Institutions (CDFI) Fund is able to schedule and administer subsequent allocation rounds. This makes the lame duck session of the 113th Congress particularly important for community development.

Beyond one- and two-year extensions as part of a tax extenders package, which Congress will negotiate during the post-election lame-duck session, community development stakeholders continue to advocate for a long-term or permanent extension. As such, the retirement this year of Rep. Jim Gerlach, R-Pa., who sponsored H.R. 4365 to make the NMTC permanent, is a loss for the NMTC community. Rep. Tom Reed, R-N.Y., may step in to be the lead House Republican NMTC champion in the next Congress. Another significant departure is the retirement of Sen. Jay Rockefeller, D-W.Va., who has been the lead NMTC champion in the Senate and a member of the Senate Finance Committee. However, Sen. Roy Blunt, R-Mo., will remain the key Senate Republican NMTC champion and lead efforts for a long-term or permanent extension in the next Congress.

### HTC

Key House HTC champions Reps. Aaron Schock, R-Ill. and Earl Blumenauer, D-Ore., were re-elected, and both will continue to fight for its preservation and enhancement. However, the retirement of Rep. Allyson Schwartz, D-Pa., will be felt by the historic preservation community. Schwartz has sponsored key HTC legislation, such as the Community Restoration and Revitalization Act of 2010, also known as the HTC modernization bill. The HTC community's key priority continues to be a package of legislative improvements known as the Creating American Prosperity through Preservation (CAPP) Act. The measure enjoys bipartisan support but is not expected to make any progress in the remaining weeks of the 113th Congress. Read more about the CAPP Act on page 6.

### RETCs

The tax credits perhaps most affected by the midterm election results may be the PTC and ITC for renewable energy. Advocacy and industry groups have been quick to call on legislators to take a position on different tax incentives.

For example, conservative groups such as the American Energy Alliance and Americans For Prosperity are urging Republican leaders to reject attempts to extend the PTC. In a letter to lawmakers last month, the American Energy Alliance letter claims that meaningful tax reform can't happen with the PTC. The group equated a vote for extending the PTC with a vote for the president and Majority Leader Harry Reid's agenda.

However, given the support of Senate Finance Committee Republican Chuck Grassley, R-Iowa, and others, the PTC may be extended. Sen. John Thune, R-S.D., has also suggested that a "good middle ground" position on the PTC could be an extension with a gradual phase-out over time. In April, during the Finance Committee consideration of tax extenders, Sen. Thune offered an amendment to phase out the PTC over five years.

Conversely, the Solar Energy Industries Association (SEIA), urged lawmakers to take a collaborative approach to considering the future of energy tax incentives. In a statement released Nov. 5, SEIA said, "With the elections now behind us, it's critically important for our leaders in Washington, as well as our state capitals, to put aside

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their differences and work together to find real solutions that will grow our economy and put more people to work. As one of the fastest-growing industries in America, solar is a shining example of how stable, consistent and reliable public policies – such as the ... ITC ... – are paying huge dividends for our economy and environment.”

### **Speculation Swirls around Lame Duck Session**

In the near term, lawmakers' two main priorities will be to extend federal appropriations beyond the current Dec. 11 expiration date, and to extend a number of expired or expiring tax provisions in a tax extenders package. Before the election, many predictions were that lawmakers would opt for a short-term funding resolution to last into February or March if the Republican claimed control of the Senate. But, after the election, House Appropriations Committee Chairman Hal Rogers, R-Ky., stated his intention to negotiate an omnibus appropriations bill to fund government operations for all of fiscal year 2015 during the lame-duck session.

This shift is in part related to income Senate Majority Leader McConnell's interest in starting off the 114th Congress with a clean slate. This clean-slate approach could potentially bode well for tax extenders, as it could motivate lawmakers to pass a larger, longer-term package in an effort to avoid revisiting the issue in the near future.

Before the election, leadership on both sides of the aisle had signaled willingness to consider tax extenders. Immediately following the Republican takeover of the Senate, calls began to emerge urging lawmakers to delay in light of their impending control and increased leverage. Nonetheless, the lame duck session is still expected to result in a package of tax extenders being passed before the 113th Congress adjourns. While it remains to be seen is which provisions will make the cut, and whether the bill will extend provisions for one year or two, it's still widely believed that lawmakers will pass some form of a tax extenders package before Dec. 31.

### **On Deck: Tax Reform**

Republicans' election wins have also led some to question whether tax reform could face an easier road toward passage in the near term than if Democrats had retained control of the Senate. While many still believe comprehensive tax reform won't be enacted until 2017 at

the earliest, after the next presidential election, the stage is set for the 114th Congress to make progress toward that goal.

With control of both chambers of Congress, Republicans may also be able to use budget reconciliation as leverage to advance tax reform efforts. Based on statements made following last month's elections, tax reform will be one of the GOP's top priorities. For example, the presumptive incoming Chairman of the House Ways and Means Committee, Rep. Paul Ryan, R-Wis. told the Wall Street if he could make just one change in Washington, "it would be to fix the tax code."

### **Committee Changes May be Key**

At the time of this writing, committee leadership and membership for the 114th Congress had not yet been finalized. But the shift in control over the Senate will result in new chairmanships for every committee. Many of these changes could have significant implications for housing, community development, preservation and energy policy.

For example, Sen. Richard Shelby, R-Ala., is expected to re-assume chairmanship of the Senate Banking Committee. This could pose challenges for the affordable housing community in light of Sen. Shelby's preference for a reduced government role in housing finance and the housing government sponsored enterprises (GSEs) Fannie Mae and Freddie Mac. While it's too soon to tell who will be named ranking member of the Senate Banking Committee, it is likely it will go to Sen. Sherrod Brown, D-Ohio, who has supported increased government support of affordable housing and community development.

Another key committee change will be Sen. Orrin Hatch's, R-Utah, rise to the chairmanship of the Senate Finance Committee. Sen. Hatch has been the committee's ranking minority member since 2011. The committee's current chairman, Sen. Ron Wyden, D-Ore., will become its ranking member. During the 113th Congress, the committee was comprised of 13 Democrats and 11 Republicans. However, this makeup will change because the committee rules require the ratio of majority to minority members is based on the ratio of majority to minority members of the senate. As such, Democrats

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will likely lose at least one Senate Finance seat and Republicans could gain as many as two seats.

winds down. Additional information will be available in next month's Washington Wire. ❖

Details about committee chairmanship and membership will continue to be worked out as the 113th Congress

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