



In this week's Tax Credit Tuesday Podcast, Michael J. Novogradac, CPA, hosts a special mid-term election edition of Tax Credit Tuesday. Today's special edition podcast will focus on the election results and how they affect the various tax credit communities. More specifically, he looks at what the election results could mean for congressional leadership positions, as well as leadership and membership changes in key House and Senate committees. He also talks about legislative priorities we can expect to see in the lame-duck session and in the new Congress.

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MID-TERM ELECTION PODCAST

- Going into yesterday's mid-term election, most prognosticators expected to see a split Congress next year.
- And that's what we got.
- All 435 House seats were up for election.
- And going into Tuesday:
 - Republicans held 236 seats,
 - Democrats had 193,
 - And six seats—two Democrat-held and four Republican-held seats—were vacant.
- Now in order to take the majority, Democrats needed to flip 23 seats.
 - 23 seats had to go on a net basis from Republican to Democrat.
- And they did just that—and then some.
- Now according to the Associated Press, Democrats won 220 seats.
- Democrats now have a majority of 27 seats compared to 193 Republicans.
- Now 22 seats are still uncalled, according to AP.
 - Democrats are leading in eight of those 22 races, and
 - Republicans are leading in 14 of those races.
 - Or at least at the time I'm recording this podcast.
- So assuming the leading candidates in uncalled races win, then that would result in 228 Democratic House seats and 207 Republican House seats.
- Now as expected, the Senate remains under GOP control.
- In the Senate, 35 of the 100 seats were up for election in Tuesday's elections.
- And of those 35 seats up for grabs, 26 of them were occupied by Democrats or Independents who caucus with Democrats.
- Republicans have held a slim majority in the Senate.
 - The current Senate has 51 Republicans, 47 Democrats and two Independents who do caucus with Democrats.
- Now Republicans will hold onto control of the Senate next year.
- Now the new Senate will have at least 51 Republican seats, and 44 Democratic seats and two Independents.
 - Now the two Independents are Sen. Bernie Sanders of Vermont and Angus King of Maine.
 - Now they generally vote with the Democrats and they were both re-elected.
- Now I should note, I say a minimum of 44 Democratic seats because we recently saw that Montana Democratic Sen. Jon Tester leads Republican auditor Matt Rosendale, and that race has been called for Sen. Jon Tester
- So that leaves three uncalled seats, or uncalled races.
 - Florida, Mississippi and Arizona.
 - Now all three of these races Republicans lead.
 - In Florida, Republican Gov. Rick Scott is narrowly leading incumbent Democratic Sen. Bill Nelson by 0.4 percent, and Nelson has called for a recount.
- In Mississippi, incumbent Republican Sen. Cindy Hyde-Smith was elected to run in the run-off, and she will be running against Democrat Mike Espy in this Nov. 27 run-off.
 - And Sen. Hyde-Smith is favored to win.



- She's the Republican
- She's favored to win the run-off in Mississippi.
- And then turning to Arizona, Republican Rep. Martha McSally is leading Democratic Rep. Krysten Sinema by less than 1 percent with almost all precincts reporting.
- So, if Republicans do end up holding or taking over Florida, Mississippi and Arizona, then they would end up having a 54-seat majority.
 - 54-46 when you include the Democrats and the two Independents that vote together.

Key Leadership

- So, in summary, the Democrats control the House and Republicans controls the Senate.
- So where does that leave key leadership positions?

House

- Let's look at the House first.
- Minority Leader Nancy Pelosi of California has said that she's interested in the job she held from 2007 to 2011.
- Namely, Speaker of the House.
- More than 50 Democratic Congressional candidates, though, did say before the election that they would not support Pelosi as House speaker or that they believed new leadership is necessary.
 - This is according to an NBC News survey of the candidates and public statements by the candidates.
- That said, many expect Pelosi to reclaim her role as House speaker despite some party dissent.
- Now there are two elections that Pelosi must win in order to become House speaker in the 116th Congress.
- Now first, she must win a majority of House Democrats in their leadership caucus election.
 - She would need the majority from both re-elected members and incoming Representative-elects.
 - That election has tentatively been scheduled for Nov. 28 or 29, this according to Democratic sources.
- And then second, she must receive at least 218 votes by all House members in a public roll call election on the floor of the House Jan. 3.
- That second election is expected to be the more challenging election.
- Now, why?
- Well, all House Republicans would generally be expected to vote for their leader, their Republican leader.
- Which would mean that Pelosi would need to get 218 House Democrats to vote for her.
- So what would happen if Pelosi didn't drum up enough support to be House speaker?
- Well if she didn't have enough Democratic votes, you might see Donald Trump urging House Republicans to vote for Pelosi.
- I'll also note, current Democratic whip Rep. Steny Hoyer of Maryland said he would run for speaker if Pelosi didn't get enough votes.
- Assistant Democratic Leader Jim Clyburn of South Carolina is also interested in the position.
- After that, the field remains opens for a dark horse candidate.



- But most likely, you'll expect to see Pelosi as Speaker.
 - Hoyer would become majority leader and Clyburn will be the majority whip.
- Now with Republicans moving to the minority in the House, the House Republican minority leader would likely be current Majority Leader Kevin McCarthy or potentially current Majority Whip Steve Scalise of Louisiana.
 - House Freedom Caucus Founder Jim Jordan of Ohio is likely to challenge McCarthy in the House Republican Conference leadership election, but Rep. Jordan is not expected to win.
 - Now Scalise would likely only compete for the position if McCarthy wasn't likely to receive a majority of votes.
 - Which all this means, if Pelosi becomes speaker and McCarthy becomes minority leader, the top Democrat and Republican in the House will both be representatives from California.
- House and Senate Republican leadership elections will be held next Wednesday, Nov. 14.
- That date was scheduled regardless as to whether Republicans held onto the House or the Senate.

Senate

- So speaking of Senate elections, Senate Majority Leader Mitch McConnell isn't facing a term-limit on his role.
 - So barring anything unexpected, McConnell will lead the Republican conference for the fifth consecutive congress.
- Senate Minority Leader Chuck Schumer of New York will likely remain in his position.
- Sen. John Cornyn of Texas is term-limited as Republican whip.
- And many expect Sen. John Thune of South Dakota to take over the whip role.
- Sen. Dick Durbin of Illinois is expected to stay the Democratic minority whip.

House Ways and Means Committee

- So those are the likely leaders of the House and Senate.
- Now let's look at leadership and membership changes in specific committees, and let's start with Ways and Means in the House.
 - The tax writing committee in the House.
- Ways and Means Ranking Member Richard Neal will take over as chairman, while current chairman Kevin Brady likely moves over to become the ranking member.
- Rep. Neal is the lead House Democratic cosponsor of the Affordable Housing Credit Improvement Act and the New Markets Tax Credit Extension Act.
- Now I expect that Rep. Neal will move low-income housing tax credit (LIHTC) and new markets tax credit (NMTC) legislation to the front burner in the next Congress.
- All of the Affordable Housing Credit Improvement Act provisions and NMTC permanence legislation are probably not on the table for a lame-duck session.
- However, what's more likely is some of the provisions in those bills could be included in such legislation.
- And we expect in a lame-duck session serious consideration being given to enacting:
 - A minimum 4 percent LIHTC percentage,
 - And a one-year, or perhaps multiyear, extension of the NMTC.
- Now one thing we knew going into the election, was that regardless of the outcome:



- The House Ways and Means Committee itself would look very different in the next Congress.
- We knew this due to retirement, lost primaries or campaigns to run for other offices.
- That said, the following members of the committee will not return next year:
 - Sam Johnson of Texas,
 - Dave Reichert of Washington,
 - Lynn Jenkins of Kansas,
 - Diane Black of Tennessee,
 - Jim Renacci of Ohio,
 - Kristi Noem of South Dakota,
- All because they lost primaries, retired or campaigned for other offices.
- Now on the Democrat side, we knew:
 - Sandy Levin of Michigan, and
 - Joe Crowley of New York, were not returning.
- But those aren't the only members of the Committee that aren't returning.
- Four Republicans seeking re-election lost their races.
- They were:
 - Peter Roskam of Illinois,
 - Erik Paulsen of Minnesota,
 - Carlos Curbelo of Florida and
 - Mike Bishop of Michigan.
- Now Curbelo, you may know, is the lead House Republican sponsor of the Affordable Housing Credit Improvement Act.
- Therefore, a new lead House Republican sponsor will need to be identified.
- Now one candidate is Rep. Kenny Marchant of Texas.
- The size of the Ways and Means Committee and the party ratio are subject to renegotiation by House leadership.
- But assuming they'll continue the current relationship, then you'd expect there to be 24 seats for the majority and 16 seats for the minority.
- That means there will need to be 10 Democrats and two Republicans added to the committee.
- Now the following House Democrats are among the initial early candidates for the available committee seats:
 - Marcia Fudge of Ohio,
 - Dan Kildee of Michigan,
 - Cedric Richmond of Louisiana, and
 - Hakeem Jeffries of New York.
- And on the Republicans under consideration:
 - Andy Barr of Kentucky,
 - Drew Ferguson of Georgia,
 - Mike Johnson of Louisiana, and
 - David Kustoff of Tennessee.

Senate Finance Committee

- Now let's look at the House Ways and Means Committee's counterpart in the Senate: the Senate Finance Committee.
- Committee Chairman Orrin Hatch of Utah will retire at the end of this current congress.



- Now Chairman Hatch is a great advocate for the LIHTC, and affordable housing more broadly.
 - As you know, he is the lead Senate Republican sponsor of the bill with Senate Finance Committee member Maria Cantwell of Washington to expand and enhance the LIHTC.
 - That bipartisan bill is the Affordable Housing Credit Improvement Act.
 - This bill has 40 cosponsors, many of whom are Senate Finance Committee members.
- So, who will take Hatch's place on the committee after he retires?
- Well Sen. Todd Young of Indiana is a leading candidate to be added to the committee.
 - Sen. Young was an original cosponsor of the Affordable Housing Credit Improvement Act.
 - Now also under consideration for a seat on the Senate Finance Committee are Sens. Cory Gardner of Colorado, Steve Daines of Montana and Deb Fischer of Nebraska, who was, by the way, just re-elected.
- Now there's also the crucial question as to who will take Hatch's place as committee chairman.
- Chuck Grassley of Iowa and Mike Crapo of Idaho are two possible candidates for chairmanship of the Senate Finance Committee.
- Now Grassley has the most seniority on the committee and he does have two years left in his term limit as Finance Committee chairman.
- Now if he does decide to relinquish the Judiciary Committee gavel, then he will reclaim the top seat in the Finance Committee.
- But if Grassley remains atop the Judiciary Committee, then I do expect to see Sen. Crapo give up his Banking Committee chairmanship gavel to become the Finance Committee chairman.
- Sen. Ron Wyden of Oregon, a Democrat, will remain as the committee's ranking member.
 - Sen. Wyden by the way is an original cosponsor of the Affordable Housing Credit Improvement Act.
- Now the actual membership of the Senate Finance Committee won't change much after the mid-term elections.
- Of the 27 committee members, there were 11 up for re-election this year, including 10 Democrats.
- Now two committee members lost their race:
 - Democrat Sen. Claire McCaskill, and
 - Republican Sen. Dean Heller of Nevada.
- And as I mentioned previously, Sen. Nelson is trailing Scott, and if that race is called, then a third committee member may not return for the 116th Congress.
- The rest of the Senate Finance Committee membership that was up for re-election, I should note, did win their re-election races.

House Financial Services and Appropriations Committees

- Now let's look away from the Tax Writing Committees and look at the House Financial Services and Appropriations Committees.
- The House Financial Services Committee has jurisdiction over issues that relate to the economy, the banking system, housing and more.



- The committee oversees HUD, Department of Housing and Urban Development, the Federal Reserve, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, parts of the Treasury Department and more.
- The House Financial Services Committee will play a critical role in any efforts to overhaul the banking regulatory system and oversight of HUD.
- With the Democrats taking control of the House in January, current Financial Services Committee Ranking Member Maxine Waters of California is expected to become the chairwoman.
- Current committee chairman Jeb Hensarling of Texas is retiring, so there will be a race for the Financial Services ranking member seat.
- Now Rep. Pat McHenry of North Carolina is the leading candidate for that ranking member seat, but he could be challenged by Reps. Blaine Luetkemeyer of Missouri, Frank Lucas of Oklahoma and Bill Huizenga of Michigan.
 - Also Sean Duffy of Wisconsin may throw his hat in the ring.
- Now current Housing and Insurance Subcommittee Ranking Member Emanuel Cleaver of Missouri will likely become subcommittee chairman.
- With that, let's now look at the House Appropriations Committee.
- In the Appropriations Committee, Ranking Member Nita Lowey of New York is expected to be the chairwoman.
- Meanwhile, Appropriations Committee Chairman Rodney Frelinghuysen of New Jersey is retiring.
- There will likewise be a race for the Appropriations Committee ranking member position.
- The leading candidate there is Kay Granger of Texas.
- That said, she could be challenged by Tom Cole of Oklahoma or Tom Graves of Georgia.

Senate Banking and Appropriations Committees

- Now another key Senate committee that's worth examining is the Senate Banking, Housing and Urban Affairs Committee.
- Now there aren't many major leadership changes there.
- Now assuming Grassley becomes the Finance Committee chairman, then Sen. Crapo will likely stay on as Banking Committee chairman.
 - Now if Grassley does stay at Judiciary, then Crapo would become Finance Committee chairman in all likelihood, and Sen. Pat Toomey would become Banking Committee chairman.
- Sen. Sherrod Brown of Ohio did win re-election and he'll remain ranking member.
- Now turning to the Senate Appropriations Committee: Republican Sen. Richard Shelby will remain chairman.
 - Susan Collins of Maine is also expected to remain the Transportation-HUD, or T-HUD, Appropriations Subcommittee chairwoman.
- Sens. Patrick Leahy and Jack Reed will remain as the top Democrats on the full committee and T-HUD subcommittee, respectively.

Lame-Duck

- So, in a nutshell, I just gave you the main committee changes for next Congress.
- Now, let's talk a moment about what these coming changes mean for the future, starting with the lame-duck session, the current Congress.
- Priority number one would be avoiding a government shutdown in four weeks.



- Lawmakers will need to address the seven remaining appropriations bills to make sure the government is funded past the Dec. 7 extended funding date.
 - Dec. 7 is when the continuing resolution passed this fall expires.
 - That's for 7/12 of the spending bills.
 - 5/12 of the government wouldn't shut down.
- Now the biggest obstacle to the consideration of those remaining seven spending bills, including the one funding the Homeland Security Department, is President Trump's priority to fund a border wall on the U.S.-Mexico border.
 - Democrats are opposed.
- Now Congress could punt the issue until January or February with another continuing resolution.
- Now the other option would be to address fiscal year 2019 omnibus appropriations legislation during the lame-duck session.
- Now the appropriations bill, if it was a considered and they didn't merely punt to early next year, an appropriations bill could be a vehicle for tax legislation.
- So if it was, what are the major bills that the tax credit community would like to see prioritized?
- Well they would certainly include:
 - The Affordable Housing Credit Improvement Act,
 - The New Markets Tax Credit Extension Act,
 - The Rural Jobs Act,
 - The Historic Tax Credit Enhancement Act and
 - The Historic Tax Credit Improvement Act.
- Provisions of these bills would expand and/or significantly improve critical tax incentives.
- Now it's unlikely any of these bills will pass individually during a lame-duck session, but we could see them added to other bills.
- Now I noted that most likely, or the best vehicle, is likely appropriations legislation, but there are three other obvious vehicles for tax legislation, should these vehicles move.
- One is a technical tax corrections bill to address drafting errors in the 2017 tax bill.
- The second legislative vehicle for tax legislation would be tax extenders.
- The third would be Tax Reform 2.0, especially the portion on retirement and savings reforms.
- So what's the most logical for some tax credit legislation?
 - I would say it's the technical corrections bill.
- With the Republicans being highly motivated to get a technical corrections bill enacted before they relinquish control of the House, there could theoretically be opportunity for negotiations.
- One item of particular concern deals with what's called the retail glitch – something that limits the ability of retail companies to expense tenant improvements in particular.
- Now there's a chance that Democrats will push for a 4 percent LIHTC minimum floor or a multi-year extension of the NMTC, or both in consideration for this broader tax bill that did make some tax technical corrections.

116th Congress

- Now, let's talk about what lies ahead for the new Congress when it convenes in January.
- We can expect Democrats to use their control of the House to create a messaging platform for the 2020 presidential campaign.



- With the Senate and White House still controlled by Republicans, House Democrats next year will be fighting an uphill battle to get legislation enacted.
- However, House Democratic leaders can put a spotlight on their legislative priorities.
- They can also hold many oversight hearings, floor votes on key bills and put pressure on Republicans to go on the record as voting for or against certain issues.
- So what are the Democrats' priorities?
- Well we'll likely see legislation to roll back provisions of the Republican's 2017 tax reform package.
- There could be a Democratic proposal to raise the corporate tax rate and perhaps place additional taxes on wealthy taxpayers.
- Now as I said, the Republican Senate and White House will almost certainly block any legislation to undo GOP tax reform.
- But the fact remains that Democrats can introduce legislation that will appeal to their voter base in the year 2020.
- Other Democratic priorities could include:
 - Expanding tax cuts for the middle-class and
 - Pushing a carbon tax.
- That said, one bipartisan issue could be a vehicle for tax incentive legislation.
- It's an issue that's shared by Republicans and Democrats.
- It's support for transportation and infrastructure improvements.
- With Rep. Neal as Ways and Means Chairman, there's a good chance that he'll push to include LIHTC and NMTC provisions in such a large infrastructure package, as well as potentially renewable energy, historic preservation and other similar infrastructure-related incentives.
- Now as always, elections are good reminders as to how important it is to continue advocating for affordable housing, community development and historic preservation.
- And I'd certainly include on that list support for renewable energy as well.