Our Take

PwC's Financial Services Risk & Regulation Update

11.6.26 Midterm elections special edition

New hands on the gavel: What a Democratic Congress means for financial services

What happened? The November 3rd midterm elections have resulted in Democrats majorities in both chambers of Congress, setting up divided government for the remainder of President Trump's term. As of November 6th, according to calls from the Associated Press, the results are as follows:

- **House of Representatives:** Democrats have won 253 seats, including 43 previously held by Republicans. Republicans have won 161 seats, including two previously held by Democrats. 21 races remain uncalled, leaving the size of the eventual Democratic majority unsettled.
- **Senate:** Democrats have won 20 seats, including seven previously held by Republicans, who have retained 13 seats, with two races still uncalled. Including seats not up for election, Democrats and independents who caucus with them will hold at least 54 seats, compared with 44 for Republicans.
- **States:** Democrats have won 22 gubernatorial races, including five that switched from Republican control, while Republicans have retained 12 governorships and two races remain uncalled. Notable changes include Democrats gaining the governorships in Texas and Georgia and gaining control of the Pennsylvania Senate, the North Carolina House, the Michigan House, and both chambers in New Hampshire and Wisconsin. There are also newly elected Democratic attorneys general set to replace Republican predecessors in Iowa, Georgia, Ohio, and Texas. There are also newly elected Democratic attorneys general set to replace Republican predecessors in Iowa, Georgia, Ohio, and Texas.

  The results are expected to give Democrats trifecta (governorship and both legislative chambers) control of 22 states and Republicans control of 18 states, with eight states under divided government and two still unresolved.

  Several current Senators and Representatives that have been elected to state office will be replaced in Congress, including Senator Amy Klobuchar (D-MN), Senator Marsha Blackburn (R-TN), and Representative Byron Donalds (R-FL).

What's next? The new Congress convenes on January 3rd, 2027. As this date approaches, both Democrats and Republicans are determining leadership and committee memberships, selecting committee and subcommittee chairs and ranking members, and establishing legislative and oversight agendas. Before the transition, the current Congress is able to consider pending legislation and nominations.

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Democrats gain leverage over the financial services policy agenda

Democratic control of both chambers of Congress will subject much of the administration's financial services agenda to greater resistance and scrutiny. While existing agency leaders retain substantial authority to advance their priorities, including changes to supervision and digital asset policy, congressional Democrats will control the legislative calendar, lead investigations and determine whether future nominees receive

confirmation. Meanwhile, changes in state leadership could result in different approaches to consumer protection, emerging technologies and financial innovation. Specific impacts across these areas include:

1. **Regulators and firms will face a more critical Congress**

   Hearings and investigations will provide the most immediate means of challenging the administration's financial regulatory agenda. Lawmakers can take their criticism of certain agency actions a step further by introducing a joint resolution of disapproval under the Congressional Review Act to overturn eligible agency rules and guidance, including those submitted during the final 60 legislative days of the current Congress. Such resolutions can pass with simple majorities but would remain subject to a presidential veto, making them more useful for more prominently registering congressional opposition than actually reversing the administration's rules.

   Changes to bank supervision could be among the first targets, with Democratic lawmakers questioning whether revised supervisory standards and reduced agency workforces have weakened regulators' ability to identify and address emerging risks. Senator Elizabeth Warren, who may chair the Senate Banking Committee, recently questioned whether the Fed's revised standards allow examiners to address cybersecurity vulnerabilities before harm occurs. Agency leaders could face broader questions about how they are managing reduced resources while continuing to oversee increasingly complex activities.

   Consumer protection is likely to be another prominent focus of hearings, with lawmakers pressing CFPB leadership on whether reduced supervision, enforcement activity and staffing have weakened protections for consumers. Particular attention could fall on credit card and overdraft fees, fair lending, credit reporting, payment fraud and the use of AI in lending and other consumer financial decisions. The CFPB's recent semiannual report, documenting substantial changes in supervisory and enforcement activity, could provide a basis for examining the consequences of the administration's approach.

   The administration's efforts to expand access to federal bank charters could also attract greater Congressional attention. The OCC has supported new pathways for digital asset firms and other entrants to obtain national trust charters, and the current leadership is likely to continue considering applications under existing authorities. Congressional Democrats could nevertheless question individual approvals and the standards applied to applicants, particularly where novel activities raise questions about permissible banking powers, capital, liquidity, governance or potential conflicts of interest. The increased scrutiny could slow decision making at the agencies and require more applicants to provide additional information to support the OCC as well as the FDIC in making decisions.

   Congressional scrutiny could also bring consumer protection practices at individual institutions into sharper focus, including through renewed bank CEO hearings. Lawmakers could question executives about fee structures, the treatment of financially vulnerable customers, lending discrimination, complaint resolution and whether institutions have maintained adequate consumer safeguards as federal supervision has receded. Banks could also face questions about the use of AI in credit decisions, including potential discriminatory outcomes, transparency and accountability for automated processes. These inquiries could create pressure for more intensive supervisory attention even where regulators have not changed their policies, while requiring firms to defend practices that remain permissible under existing rules.

2. **Agency vacancies will be subject to Democratic approval**

   As presidential nominees for open agency leadership positions require Senate confirmation, a Democratic majority will constrain the administration's choices for vacancies still open in January and positions that become vacant thereafter. Candidates will face questions about policy priorities and agency capacity, making appointments a negotiating point in the regulatory agenda. Nominees already advanced through committee this year, such as Brian Johnson for the CFPB, have a shorter path to

confirmation, but competing year-end business and limited floor time could constrain the administration's ability to fill vacancies that have yet to receive a nominee.

These include three open commissioner seats at the SEC and four of the CFTC's five commissioner seats which remain vacant. Both agencies are subject to statutory party-balance requirements, but neither is required to maintain a full complement of commissioners. Filling the vacant seats could therefore become a subject of negotiations as lawmakers debate regulatory changes that cover the breadth of market structure and digital asset oversight. Nomination and confirmation proceedings could become a forum for seeking commitments on independence, oversight responsibilities, consumer protection, and enforcement.

Future vacancies at the Fed could also affect the balance of votes on regulatory and supervisory matters. The current seven-member Board includes three governors originally nominated by President Biden, three by President Trump, and Jerome Powell, who was first nominated to the Board by President Obama and subsequently appointed Chair by both Trump and Biden. Should Powell leave the Board once investigations into Fed headquarters renovations conclude, a six-person Board could make it difficult for certain policy initiatives to achieve a majority vote.

3. Legislative hurdles leave room for targeted deals on digital assets and affordability

Democratic majorities will control which bills advance, but Senate procedures[1] and presidential veto authority will limit what legislation ultimately becomes law. Any bill would still require presidential approval or a two-thirds vote in each chamber to override a veto, meaning that negotiated bipartisan agreement and coordination with the White House will be essential for most legislation.

Some of the earliest questions center on whether the CLARITY Act, which is intended to establish a broader regulatory framework for digital assets and stalled in the Senate earlier this year, can advance in some form. Based on negotiations over the current bill and statements made this week by Maxine Waters, Democrats will continue to push for stronger investor and consumer protections, tighter conflict-of-interest restrictions and narrower preemption of state law, alongside greater SEC oversight and a more limited CFTC role. Bipartisan interest in establishing a federal framework leaves room for agreement, but the question is whether revisions needed to secure Democratic support can also attract enough Republican votes and White House backing.

Beyond digital assets, affordability could provide a broader basis for agreement between congressional Democrats, Republicans and the administration. The focus on household costs during the campaign could encourage lawmakers to pursue targeted agreements that demonstrate progress despite the constraints of divided government. Proposals to reduce consumer costs, including credit card interest-rate caps, have been suggested by President and previously introduced as a bipartisan bill in the current Congress.

Measures addressing fraud and risks associated with AI could provide additional grounds for agreement, potentially alongside selected provisions from pending banking legislation. The House-passed Main Street Capital Access Act, a package addressing community banking and broader regulatory tailoring, received support from 56 House Democrats, demonstrating existing cross-party interest. Its proposed increases in regulatory thresholds may be less likely to receive support from Democratic Senate leadership, while community bank formation, examination reforms and targeted relief could offer a basis for negotiations. Indexing existing thresholds to GDP could also become a concession in a broader package strengthening consumer protections.

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[1] Under existing rules, most legislation subject to a filibuster requires 60 votes to end debate. Budget reconciliation provides a simple-majority route for qualifying tax and spending measures, but generally excludes provisions with no federal budgetary effect or whose budgetary effect is merely incidental to their broader policy purpose, which limits its use for changes to regulatory authority or supervisory standards.

4. Shifts in state leadership could intensify federal-state regulatory tensions

While congressional control will shape federal policymaking, the results of state elections could have more immediate consequences for certain financial services activities. New governors, attorneys general and state legislative majorities may pursue different approaches to consumer protection, digital assets, AI and cybersecurity, particularly where federal regulators are reducing requirements or Congress cannot reach agreement. California and New York already influence national compliance practices through their consumer protection, cybersecurity and digital asset requirements, while other states may take different approaches to encouraging financial innovation and investment.

The relationship between federal and state authority will be an important source of uncertainty. National banks benefit from federal preemption in certain circumstances, but its application depends on the particular state requirement, the institution involved and the governing statute. State-chartered institutions, nonbank affiliates and fintech partners may face different obligations. For those firms operating nationally, differing requirements could increase the costs of licensing, product development, disclosures and compliance, even as federal regulatory relief creates opportunities to expand certain activities.

What should financial services firms do now?

Financial firms, and firms that plan to engage in financial services, will need to assess how the new congressional environment could affect business strategies that depend on regulatory relief, pending legislation or agency approvals. Actions to consider include:

- **Prepare for congressional scrutiny.** Firms should identify where activities intersect with congressional priorities and then establish resources, ownership, and response procedures for inquiries, including document preservation, coordination across legal, risk and government affairs teams, and preparation of executives for potential testimony. Consistent, well-supported explanations of business decisions and risk management practices will be particularly valuable.
- **Assess the durability of regulatory relief.** Institutions should distinguish changes established by statute or final rules from policies relying on agency guidance, interpretations or discretionary relief. This assessment can identify where business plans are vulnerable to litigation, changes in agency leadership or future policy reversals.
- **Test legislative and appointment dependencies.** Scenario analysis should identify which planned products, acquisitions and investments depend on pending legislation, regulatory approvals or future agency appointments. Firms can then establish decision points for adjusting timelines, capital commitments or product strategies if expected developments are delayed or revised.
- **Evaluate federal and state requirements.** Mapping applicable obligations by legal entity, product and jurisdiction helps firms identify where common compliance standards are appropriate and where separate arrangements may be necessary. Particular attention should be paid to unresolved preemption questions and their implications for national operating models.
- **Strengthen charter and transaction applications.** Firms pursuing mergers, acquisitions, charter conversions or de novo formations would benefit from early and ongoing dialogue with the relevant regulatory authorities. Comprehensive applications supported by clear information on business strategy, financial resources, governance and risk management can help agencies evaluate proposals and establish a defensible basis for approval, particularly as congressional scrutiny of these decisions increases.

Additional information

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