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Legislative update: New Congress begins

The new U.S. Congress—the 117th Congress—began yesterday, Sunday, January 3, 2021.

The new Congress is closely divided between Republicans and Democrats. Democrats control the new House of Representatives, but by a narrow margin of 222 Democrats to 211 Republicans. The outcomes of two run-off elections in Georgia tomorrow (January 5, 2021) will determine whether Republicans or Democrats will control the Senate at the start of the Biden Administration.

The House and Senate on January 6, 2021, will meet in joint session to count the electoral college votes. The process of counting the votes, ordinarily a largely ceremonial act, may involve some controversy. Joe Biden and Kamala Harris are expected to be sworn in as the next president and vice president, respectively, on January 20, 2021.

Any bills that were introduced in the previous Congress (the 116th Congress), but that have not already become law, expired at the end of the 116th Congress and would have to be reintroduced in the 117th Congress to move forward in the legislative process—bills do not “carry over” from one Congress to another.

The new House

At the end of the previous Congress, the House consisted of 233 Democrats, 196 Republicans, one Libertarian, and five vacant seats. At the start of the 117th Congress, Democrats have 222 House seats and Republicans have 211 House seats.¹ Thus, Democrats continue to control the House, but by a smaller margin than in the prior Congress.

The Biden transition team has indicated that Rep. Cedric Richmond (D-LA) will join the incoming Biden Administration as a White House senior adviser and director of the Office of Public Engagement.

¹ There are two remaining House seats to be filled. A special election will be held for the seat of Congressmen-elect Luke Letlow (R) of Louisiana, who died December 29, 2020, before taking the oath of office. This special election is currently scheduled for March 20th. The race for New York’s 22nd congressional district has not yet been called. Fewer than 30 votes separate the two candidates, and it remains unclear how and when that election will be resolved.

In addition, Biden has indicated that he will nominate two Democratic members—Reps. Marcia Fudge (D-OH) and Deb Haaland (D-NM)—to cabinet positions.²

Assuming all three of these representatives leave the House at some point following January 20, their seats would be vacant pending special elections. As a result, Democrats would continue to control the House pending those special elections, but by an even narrower margin.

The new House has elected Nancy Pelosi (D-CA) as speaker. Kevin McCarthy (R-CA) continues to be the minority leader.

Rep. Neal (D-MA) continues to be chair of the House Committee on Ways and Means, while Rep. Brady (R-TX) continues to be the ranking member.³

The House is scheduled to vote today (January 4) on some changes to House rules. One of the proposed changes is that the chair of the House Budget Committee would have discretion to exempt certain measures relating to the coronavirus (COVID-19) pandemic or climate change from the chair's official estimate of the possible budgetary effects of legislation. The proposed rules also would generally continue procedures implemented in response to COVID-19 to allow House members to vote by proxy.

The new Senate

At the end of the 116th Congress, the Senate consisted of 52 Republicans and 48 Democrats.⁴ The new Senate ultimately will include at least 50 Republicans and at least 48 Democrats. Two Senate races in Georgia are headed to run-off elections that will be held tomorrow (January 5, 2021). The outcomes of these elections will determine which party will control the Senate at the beginning of the Biden Administration.

The two unresolved Senate races are for seats held in the 116th Congress by Sen. David Perdue and Sen. Kelly Loeffler, both Republicans. Sen. Perdue's term expired at noon yesterday (January 3); thus, his seat is vacant pending the results of the run-off elections. Sen. Loeffler's term does not expire until the winner in her run-off race is sworn into the Senate.⁵

As a result, pending results of the two run-off races, the Senate currently consists of 51 Republicans and 48 Democrats. Although it is possible that the results of the run-off elections could be clear very soon, it is also possible that there could be delays in declaring one or both of the winners.

If Republicans win at least **one** of the two Georgia seats, they would continue to control the new Senate. If Democrats win **both** Georgia seats, however, the Senate would be split 50-50 between Republicans and Democrats. Under this scenario, the party of the vice president would control the Senate; under the U.S. Constitution, the vice president serves as president of the Senate and may vote in the Senate in the case of a tie. Thus, under a 50-50 scenario, Republicans would continue to control the Senate until Kamala Harris is sworn in as vice president on January 20, and Democrats would

² Rep. Fudge would be nominated to be Secretary of Housing and Urban Development while Rep. Haaland would be nominated to be Secretary of the Department of the Interior. These nominations would need to be approved by the Senate.

³ House Democrats and House Republicans made their respective decisions regarding committee chairs and ranking members for the 117th Congress in December 2020.

⁴ Note that the party affiliation of one seat moved from Republican to Democratic on December 2, 2020, with the swearing in of Sen. Mark Kelly (D-AZ), who won a special election to fulfill the remaining two years of the term of the late Sen. John McCain (R-AZ). The number of Democrats includes two Independents who caucus with the Democrats.

⁵ Sen. Loeffler's and Sen. Purdue's terms expire at different times because Sen. Loeffler was appointed by Georgia's governor to temporarily fill the remaining two years of the term of retired Sen. Johnny Isakson (R-GA). Her term will expire when the winner of the January 5, 2021 election for that seat is determined and sworn into the Senate. By contrast, Sen. Purdue served the "regular" six-year term for a senator; that term expired at the end of the 116th Congress.

control the Senate thereafter.⁶ In other words, even if Democrats win both Georgia seats, they would not control the Senate until Kamala Harris becomes vice president.

In the Senate, Sen. McConnell (R-KY) continues as majority leader while Republicans are in control. However, Sen. Schumer (D-NY) would become majority leader if Democrats gain control.⁷

Some organizational matters with respect to the new Senate, such as determining new committee chairs and new members of committees, are delayed pending the outcome of the Georgia run-off races. As a result, some positions from the prior Congress remain in place. For example, Sen. Charles Grassley (R-IA) temporarily remains chair of the Senate Finance Committee but likely will be succeeded as chair by either Sen. Crapo (R-ID) or Sen. Wyden (D-OR)), depending on the results of the Georgia run-off elections.⁸

Listen to KPMG's [Catching Up on Capitol Hill podcast](#) for more on how the uncertainty regarding the outcome of the run-off races might affect the organization and start of the next Senate.

Implications for tax legislation

Shortly after the November 2020 elections, KPMG LLP prepared a report discussing the potential implications of the election results available at that time on tax legislation in the 117th Congress. That report was updated on December 15, 2020. The report explains how assessing what tax law changes might be enacted in 2021 is complicated by the lack of certainty as to which party will control the Senate at the start of the Biden Administration. Read [TaxNewsFlash](#) [PDF 702 KB].

KPMG plans to issue a new report on what might be expected from a tax policy perspective in the new Congress after there is more clarity regarding the results of the Georgia run-off elections.

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⁶ California Governor Gavin Newsom (D) has announced that Alex Padilla (D), California's secretary of state, will be appointed to temporarily fill Kamala Harris's Senate seat once she becomes vice president. Under California law, the seat would be on the ballot on the next regularly scheduled general statewide election.

⁷ Senate Republicans and Democrats elected Mitch McConnell and Chuck Schumer to be their respective leaders on November 10, 2020.

⁸ Sen. Wyden is currently the ranking member of Senate Finance and was its chair in 2014 and 2015. Due to Republican term limits for committee chairmen and ranking members, Sen. Crapo is expected to replace current Chairman Grassley (R-IA) as the top Republican on the committee. Sen. Crapo has been a member of the committee since 2005.

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