



ABC's Weekly Federal Legislative Update November 9, 2020

Introduction

The Senate returns to Washington today. The House will return next week. Both chambers face a packed lame duck session with FY 2021 Appropriations at the top of the must do list. The current continuing resolution expires on December 11. In order for the federal government to remain open beyond that date, a new funding vehicle must be passed. Additionally, negotiations could also continue on a COVID 19 relief package. The path for both Appropriations and the COVID 19 package remains murky as it is uncertainty if President Trump will cooperate with the House and Senate and sign whatever packages they are able to pass into law. Further complicating efforts to move forward post-election, President Trump has yet to concede the 2020 Presidential election to Vice President Biden

Administration

[President Trump Demotes FERC Chairman Over Diversity Training](#)

Late last week, President Trump removed Neil Chatterjee as chairman of FERC putting in conservative member James Danly as his replacement. The following story provides further details.

Jeremy Dillion and Arianna Skibell of [E&E News PM](#) wrote on November 6, "Former Federal Energy Regulatory Commission Chairman Neil Chatterjee's surprise demotion stemmed, at least in part, from his unwillingness to go along with the Trump administration's governmentwide edicts against diversity training.

"Guilty as charged," Chatterjee confirmed to E&E News by text message this afternoon. Two other sources also said diversity trainings were a reason behind the power shift.

"Observers figured the White House yanked Chatterjee from the chairman position because of his embrace of a carbon pricing proposal and willingness to work on market-based approaches for renewable energy to better compete on the grid.

"Chatterjee, an Indian American, has been vocal about joining nationwide calls for racial justice following numerous incidents of police brutality.

"The instances of brutality we've seen in places like #Minnesota & #Georgia are as devastating as they are unjust," Chatterjee wrote in a May 29 Twitter post. "These appalling actions against our neighbors & fellow #Americans are not representative of the land of the free."

"Earlier this summer, the White House moved to limit diversity training at agencies after complaints emerged that the seminars used terms like "white privilege."

"The move has prompted congressional backlash, although DOE and other environment agencies have embraced the change.

"The White House did not respond to a request for comment. FERC aides were not immediately available for comment.

Pallone defense

"Chatterjee himself said his demotion may have stemmed from actions to promote FERC's involvement with a carbon tax, including hosting a technical conference on the issue on Sept. 30 .

"House Energy and Commerce Chairman Frank Pallone (D-NJ) came to the former chairman's defense this afternoon in a statement of support.

"The statement from Pallone — who at times has been very critical of actions taken by FERC under Chatterjee's tenure as chairman — came as part of a broader defense of climate policy actions at the commission.

"His sudden removal as Chairman for merely starting a dialogue on markets and climate change, while working across the aisle to preserve state prerogatives on distributed generation, is as petty as it is wrong," Pallone said in his statement.

"FERC announced the change in leadership in a news release late yesterday evening. A former energy aide to Senate Majority Leader Mitch McConnell (R-KY), Chatterjee had served as chairman since the beginning of 2019, a nearly two-year stint that saw a rash of FERC decisions to approve fossil fuel infrastructure like liquefied natural gas exports.

"Chatterjee said he embraced FERC's role in overseeing a state-driven carbon tax as part of his market approach to regulating energy.

"That same approach resulted in changes to PJM Interconnection LLC's capacity market that would make it more difficult for renewable and nuclear energy receiving state subsidies to participate in the grid operator's markets. That earned both praise and jeers from renewable energy advocates.

"Like many in the energy sector, we were surprised to see the sudden change in leadership at the FERC last night," Gregory Wetstone, president and CEO of the American Council on Renewable Energy, said in a statement just after Pallone's.

"While we have not always agreed with all of his actions, we've appreciated Chairman Chatterjee's accessibility and willingness to engage with ACORE and our members."

"In his place, the White House named conservative member James Danly, who joined the commission in March after a contentious Senate confirmation fight.

"Danly opposed measures backed by Chatterjee and Democrat Richard Glick to open up markets to aggregated distributed energy resources as well as the carbon tax embrace.

"Pallone criticized Danly as "a commissioner with little experience in the energy industry and views far outside the mainstream of both parties on energy policy."

"Taking this action as he continues to fall behind in electoral college votes is wholly inappropriate," Pallone said of the Trump administration. "Clearly, FERC needs to stop work immediately on all major controversial activities until a new president is sworn in."

"With Democratic presidential nominee Joe Biden on the verge of victory, Danly's chairmanship tenure may only last until Jan. 20.

"That would include at least two commission meetings as well as the potential to finalize some lingering issues he agrees with Chatterjee on.

"Chatterjee said that it was his intention to continue on the commission for his tenure. That would go to June 30, 2021."

Congress

[House Agenda](#)

The following story outlines the House's likely agenda for the lame duck session.

On November 6, Geof Koss of [Greenwire](#) published, "Speaker Nancy Pelosi (D-CA) today all but declared victory in the race for the White House, equating former Vice President Joe Biden's growing lead in key battleground states with a "tremendous mandate."

"This morning, it is clear that the Biden-Harris ticket will win the White House," Pelosi told reporters, adding that "pretty soon the hyphen will be gone from vice president to President-elect Joe Biden."

"Pelosi downplayed the underwhelming performance of her caucus in Tuesday's elections, saying Biden "will have a strong Democratic House with him, and many Democrats in the Senate."

"This has been a life or death fight for the fate of our democracy — as he says, the soul of our country," she said. "We did not win every battle in the House, but we did win the war."

"Pelosi predicted that Democrats will emerge victorious in some of the uncalled House races.

"Still, losses continue. The Associated Press said this afternoon that Democrat-turned-Republican Jeff Van Drew of New Jersey has won reelection. Soon after that the AP, however, said Representative Matt Cartwright (D-PA) has won his race.

"With President Trump signaling that he does not intend to concede anytime soon, Pelosi noted the advice she has been telling people this week: "Be calm. Be confident. Be patient."

Agenda

"Pelosi called for negotiations on a COVID-19 relief package to quickly resume so a deal can be enacted in the upcoming lame-duck session.

"We want the Republicans to come back to the table," she said.

"She rejected calls from Republicans for a smaller stimulus because of a better-than-expected jobless report released this morning.

"It doesn't appeal to me at all because they still have not agreed to crush the virus," she said. "If you don't crush the virus, we're still going to have to be dealing with the consequences of the virus."

"Pelosi also said a major focus of the lame duck will be enacting an omnibus appropriations bill and heading off a government shutdown when the current stopgap spending measure expires in the second week of December.

"We intend to do that, not a [continuing resolution]," she said.

"Looking to next year, Pelosi reiterated that a broad infrastructure package will be an early agenda item, and predicted that widespread economic concern would help such a package navigate what is expected to be a closely divided Senate.

"The public wants a big jobs bill, and I don't care if you're in a San Francisco, Michigan, Alabama, wherever it is, people want jobs," she said, noting that infrastructure is historically nonpartisan.

"However, Pelosi also made clear that Democrats will push for an infrastructure package with one eye on boosting the nation's resilience to withstand the risks of climate change, noting the similarities between Biden's climate-conscious proposal and the \$1.5

trillion infrastructure package, H.R. 2, the House passed in July, which is sprinkled throughout with resilience provisions and investments in clean energy.

"We're going to blanket the country with ... Build Back Better as Joe Biden calls it, we called it Moving America Forward," she said. "We have a great deal in common between those two agendas."

Senate Agenda

The following story outlines the Senate's likely agenda for the lame duck session.

Greenwire reporters George Cahlink and Geof Koss submitted on November 4, "Senate Majority Leader Mitch McConnell stopped short this morning of declaring that Republicans would keep control the Senate next year, but suggested the outcome could be known by later today.

"I don't know whether I am going to be the majority leader or minority leader. I have been both, majority leader is better," said the Kentucky Republican, who won a seventh term yesterday, at a press conference.

"Shortly after he spoke, Maine Democrat Sara Gideon called Republican Susan Collins to concede.

"McConnell said the North Carolina race may be decided by later today but that tight contests in Georgia and Michigan could take longer.

"The GOP leader said Senator Thom Tillis (R-NC) was in a "good position" to win a second term. He added that Senator David Perdue was ahead in Georgia, but it was not clear whether he would get the 50% needed to avert a January runoff with Democrat Jon Ossoff.

"All told, Senate Republican incumbents are holding on to narrow leads in several key races, complicating the math for Democrats who were hoping to seize the majority in the new Congress.

"Also, McConnell said President Trump should not be criticized for "lawyering up" amid a still undecided White House race or declaring a premature victory last night.

"It's not unusual for people to claim they have won the election," he said. "Claiming you have won the election is different from finishing the count."

Lame-duck agenda

“McConnell laid out plans for a lame-duck session in which he hopes to pass both pandemic relief legislation and an omnibus fiscal 2021 spending package before the Congress adjourns by the end of the year.

"We need another rescue package. Hopefully, the partisan passions that have prevented us from having another package will subside," he said.

“Both parties have agreed more pandemic aid is needed but have for months broken over the size and scope of the package.

“McConnell suggested he's open to expanded aid for state and local governments, a priority for Democrats that some conservatives have resisted.

“He hinted at a compromise that would create a "formula" to require state and local governments receiving the money to show they truly need the dollars to respond to the pandemic rather than for other costs.

“McConnell also said he expects to confirm more judges in the lame-duck session, which is set to start next week.

Inside the Senate numbers

“Democrats have picked up two GOP-held seats, with former Colorado Gov. John Hickenlooper's win over Cory Gardner and the 5-point win of former astronaut Mark Kelly over Republican Martha McSally in Arizona.

“Should former Vice President Joe Biden win the presidency, Democrats would need to pick up three seats to win the majority with Vice President Kamala Harris breaking a 50-50 tie. If Trump prevails, Democrats need to pick up four GOP seats.

“With votes still being counted, Republicans are leading in a handful of races that were considered possible Democratic wins.

“Collins was leading her Democratic challenger, Maine House Speaker Sara Gideon, by more than 8% with 85% of the vote in. Tillis was ahead by nearly 97,000 votes over former Democratic state Senator Cal Cunningham.

“In Georgia, Perdue was hoping to avoid a second election, but the Peach State's other Senate contest is already heading to a runoff between Republican Kelly Loeffler and Democrat Raphael Warnock after neither candidate met the 50% threshold.

“In Michigan, Democrat Gary Peters was trailing GOP challenger John James by about 21,000 votes with 96% of precincts reporting.

“A Peters loss, combined with the victory of Republican Tommy Tuberville over Alabama Democrat Doug Jones, would erase Democrats' electoral gains toward the majority.

“But votes are also still being counted in Alaska, where Democratic-backed independent Al Gross is seeking to unseat GOP incumbent Dan Sullivan.

“Sullivan was leading by more than 50,000 ballots, but mail-in ballots — estimated to account for one-third of the total in the Last Frontier State — won’t be counted until Nov. 10, with the final results expected Nov. 18.

“Democrats will hold on to the open New Mexico Senate seat being vacated by retiring Tom Udall, with Representative Ben Ray Luján (D-NM) beating Republican Mark Ronchetti by 5%.

“In Louisiana, GOP incumbent and Energy Committee member Bill Cassidy last night coasted to reelection over Democrat Adrian Perkins by a 40% margin, thereby avoiding a runoff under state law.”

[Race for House Agriculture Leadership](#)

Current House Agriculture Committee Chairman Collin Peterson lost his bid for reelection on Tuesday. The following story discusses the members who are interested in becoming the next Chairman.

Marc Heller of [E&E Daily](#) wrote on November 6, “The contest for the House Agriculture Committee chairmanship next year may pit rural interests against urban priorities.

“Democratic Representatives David Scott of Georgia and Jim Costa of California said yesterday that they’ll seek the top slot after the departure of Chairman Collin Peterson (D-MN), who lost his bid for reelection Tuesday.

“Others could join the race, as well. Representative Marcia Fudge of Ohio, also a senior member of the committee, is chairwoman of the Subcommittee on Nutrition, Oversight and Department Operations and didn’t weigh in on the issue yesterday.

“But the contrast between Scott, from the suburbs south and west of Atlanta, and Costa, from the agriculture-heavy San Joaquin Valley, may best reflect competing priorities on the panel, which writes farm and food policy every five years in the farm bill. The last bill was completed in 2018.

“The Committee on Agriculture should reflect the changing landscape of agriculture in the United States,” Costa said in a tweet yesterday. “As a third-generation farmer, I have the firsthand experience, expertise & passion to connect with rural Americans & lead this committee through the difficult challenges ahead.”

“Scott, in line to be the most senior member of the committee, said in a news release that the committee will handle many of the biggest challenges facing the country.

"Today our nation faces perhaps the most significant struggles any of us have seen in our lifetime," Scott said.

"Across rural and urban communities and from young to old, the threats posed by global illness, hunger, financial insecurity, climate change, and natural disasters are significant. As our nation's legislative body, it is the duty of Congress to address, through this Committee, the insecurities plaguing our citizens and provide the means for a more fruitful existence."

"While the committee grapples with farm programs ranging from price supports to conservation, the biggest part of the farm bill in dollars is the Supplemental Nutrition Assistance Program, formerly called food stamps.

"The panel deals with forestry, too, and oversees rural development programs that cover issues from housing to public water and sewer systems.

"Scott, who is also a member of the Congressional Black Caucus, would bring a high-profile voice to urban areas' food policy concerns. The 13th District is majority Black and 60.4% urban, compared to 39.6% rural, according to the Census Bureau.

"Scott has agricultural roots, having been born on a farm in rural South Carolina during segregation, he said in his statement. He lived and worked on his grandparents' farm as a child.

"He's been on the Agriculture Committee since he arrived in Congress in 2002, and is chairman of the Subcommittee on Commodity Exchanges, Energy and Credit.

"Costa's district is 93.8% rural and 6.2% urban, and all three counties in the district are among the top agriculture-producing counties in the nation, according to his office.

"The district, which includes the area around Fresno, features crops such as grapes and almonds, and Costa has been outspoken on issues affecting dairy farmers.

"Costa is chairman of the Livestock and Foreign Agriculture Subcommittee. He also leans more toward the political center than either Scott or Fudge, siding with President Trump's positions about a quarter of the time, according to ratings from FiveThirtyEight, and he voted to table articles of impeachment against the president.

"Scott, by contrast, followed the Democratic leadership on impeachment and sided with Trump's position on about 16% of votes.

Other

[Election 2020: President Trump Digs In as Counting Nears End](#)

On November 6, Timothy Cama of E&E Daily published, "President Trump remained defiant last night in the face of his shrinking chances at winning reelection, while Democrat Joe Biden continued to express optimism.

"Biden pulled ahead of Trump in Georgia's unofficial vote tally by about 1,000 votes early this morning, as local and state officials there and around the country continued to count mail-in ballots that were used in record numbers because of the COVID-19 pandemic.

"Biden narrowed Trump's lead in Pennsylvania, which would give him enough electoral votes to declare victory. He's also ahead in Nevada and Arizona.

"The president appeared at the White House yesterday evening to make numerous accusations without evidence, including that Democrats were working to "steal" the election and that he had won legitimately by a large margin.

"Our goal is to defend the integrity of the election. We'll not allow the corruption to steal such an important election, or any election, for that matter. And we can't allow silence, anybody to silence our voters and manufacture results," Trump said, without providing evidence of his major claims.

"They're trying to rig an election, and we can't let that happen," he said, again without evidence. "If you count the legal votes, I easily win. If you count the illegal votes, they can try to steal the election from us."

"Since even before the election, Trump has sought to call into question mail-in ballots, particularly ones that are counted after Election Day.

"The speech, which many major news outlets declined to show live in its entirety because of its unproven claims and after which Trump didn't take any questions, earned vocal rebukes from many leaders in Trump's own party.

"We want every vote counted, yes every legal vote (of course)," Representative Adam Kinzinger (R-IL) tweeted afterward. "But, if you have legit concerns about fraud present EVIDENCE and take it to court. STOP Spreading debunked misinformation. ... This is getting insane."

"Senator Mitt Romney (R-UT) said, "Counting every vote is at the heart of our democracy. That process is often long and, for those running, frustrating. The votes will be counted. If there are irregularities alleged, they will be investigated and ultimately resolved in the courts. Have faith in democracy, in our Constitution and in the American people."

"Others in the GOP backed Trump, however.

"Well, I'm echoing the President's claims. Indications of grossly improper conduct from election officials right here in my district," tweeted Representative Dan Bishop (R-N.C.). "And Trump's points are persuasive: concerted use of fraudulent polls; stunning and implausible ballot dumps overnight; observers barred. Fight!"

'Feel very good'

"Biden, during brief remarks from Delaware yesterday, continued to project optimism and urge supporters to be patient.

"It is the will of the voters — no one, and not anything, else — that chooses the president of the United States of America. So each ballot must be counted, and that's what we're going through now," he said.

"We continue to feel very good about where things stand. And we have no doubt that when the count is finished, [vice presidential nominee Kamala Harris] and I will be declared the winners."

"The total electoral vote counts as of this morning, according to calls by the Associated Press, stood unchanged at 264 for Biden and 214 for Trump.

"Those figures include Arizona, with 11 electoral votes, despite the fact that only AP and Fox News are calling that state for Biden.

"The Trump campaign and GOP continued various court battles aimed at halting counting or invalidating votes in Pennsylvania and Nevada.

"It suffered setbacks with cases thrown out in Michigan and Georgia yesterday, and has not indicated whether it will continue to pursue those claims."

This story also appears in Energywire.

[Election 2020: Executive Orders- Biden's Best Bet on Climate](#)

Greenwire reporter Nick Sobczyk submitted on November 6, "If Democrat Joe Biden moves into the White House next year, the path to action on climate and the environment will likely run through the executive branch.

"Senate control remains in limbo, but if Democrats lose just one of the two special elections in Georgia in January, Republicans will keep the upper chamber, leaving a difficult path for environmental legislation.

"Biden's allies said they'll be pushing him to flex the powers of the presidency immediately in hopes that a quick move to regulate can avoid rollbacks by a future Republican president.

"There's lots of opportunity for him to use executive authority to look for setting standards, to look for federal investments in technologies and advanced battery storage, to get the grid constructed in an infrastructure investment," said Gina McCarthy, president of the Natural Resources Defense Council and a former EPA administrator.

"There is ample opportunity for significant benefits moving forward, and you can do that without the consent and authority of the legislature," McCarthy said during a postelection event with reporters yesterday.

"That, of course, was the strategy the Obama administration, led in part by McCarthy, pursued after Democratic attempts to legislate on climate change fell short in 2010.

"EPA finalized the Clean Power Plan in 2015, shortly after the world adopted the Paris climate agreement, but the Supreme Court almost immediately issued a stay, and the Trump administration eventually rolled it back for a more modest power plant greenhouse gas regulation.

"President Trump has also scaled back Obama-era auto fuel efficiency standards and the 2015 methane rule, not to mention some of President Obama's national monument designations.

"Observers said the experience highlights the dangers of an executive approach, particularly for climate policy, because the next administration could easily erase any new regulations made in the next four or eight years.

"I have long argued that we need to get back to legislating for precisely that reason," said Paul Bledsoe, a former Clinton climate adviser who sits on the executive committee of Clean Energy for Biden. "However, assuming a Republican Senate is recalcitrant, I think Biden will initiate key regulatory actions as soon as humanly possible so that they have a better chance of enduring."

"Bledsoe added, "The longer the rules are in place, the harder they are to overturn, so that's one of the lessons from the Obama era."

"Regardless of Senate control, "time is your enemy if you're trying to do executive action," said Brett Hartl, government affairs director at the Center for Biological Diversity.

"Businesses direct long-term investments based on what they believe the regulatory environment will be. Bledsoe pointed to investment shifts by utilities in the wake of the Clean Power Plan, even though it never went into effect.

"And standards promulgated at the end of a presidential term are always in danger of repeal via the Congressional Review Act, which allows Congress to overturn regulations

with a simple majority vote. Republicans used the CRA to repeal 14 Obama-era regulations at the beginning of Trump's term in 2017.

"Hartl added that using more established authority under the Clean Air Act, even if it's not to directly regulate greenhouse gases, could ultimately have more durability.

"Revising National Ambient Air Quality Standards curtailing particulate matter and nitrogen oxides could all have a "huge impact on the oil and gas sector," Hartl said.

"They can accomplish a lot, and the big question is, do they basically repeat the same mistakes Obama made?" Hartl added.

Paris

"While uncertainty still reigns about Senate control, one thing is clear: Biden will rejoin the Paris Agreement.

"The former vice president has pledged to do so throughout his campaign, and even though the U.S. formally withdrew earlier this week, rejoining is a relatively simple administrative process.

"It's the "first real thing that we know he will do" and a move industry will likely support, with major trade groups like the U.S. Chamber of Commerce already on board with the agreement, said Frank Maisano, a senior principal at Bracewell LLP.

"The next steps, however, get more complicated. For one thing, the United States is not currently on track to meet its original targets under the agreement.

"It's unclear whether or not the executive orders that the Biden administration could implement would put us fully back on track or merely close part of the gap," said Jonathan Pershing, program director of environment at the William and Flora Hewlett Foundation and a former special envoy for climate change at the State Department.

"The United States would also need to make new, more ambitious Paris targets for 2030, which it could struggle to meet without the prospects for major legislation.

"But even outside of Paris, "his greatest latitude lies in international policy," Bledsoe said. "There is a whole series of major international issues that have been utterly neglected under Trump."

"Bledsoe cited "things like Arctic protection, global deforestation, innovative ways to engage poorer developing countries in climate action."

'Within reach'

“On the domestic front, observers said there are a few obvious early moves. Biden could move to restore Bears Ears National Monument to its original size; halt Trump's proposal to open up logging in the Tongass National Forest; and restore Obama-era methane standards, which were largely supported by the oil and gas industry.

“There are also several other policies "within reach," including more stringent vehicle fuel efficiency standards, said Sierra Club Executive Director Michael Brune.

"We would expect the Biden administration to move forward with an end to fossil fuel leases on public lands," Brune said.

“The federal government could also use its huge purchasing power to boost clean energy, said Josh Freed, senior vice president for the climate and energy program at Third Way.

"That would also include restoration of the Department of Defense's leadership on climate and incorporation of them into innovation and purchase and deployment," Freed said.

“But the regulatory agenda won't "be as easy as everybody thinks it is," Maisano said.

“With Trump leaving more conservative courts in his wake, the judiciary is likely to be less flexible with EPA authority.

“And if the Biden administration wants its regulatory agenda to hold up, it will have to be much more methodical about process than Trump was over the last four years, Maisano said.

"The Trump administration came in, procedure be damned, and tried to do all kinds of things that ended up getting rejected overwhelmingly by courts, so they'll be smarter than the Trump administration was in terms of how they proceed," Maisano said.

"And that means that it's going to take a little more time than just walking in the door and changing all the rules that they face."

“Meanwhile, Congress won't be entirely inactive, even if a Republican Senate is unlikely to pass a carbon tax or a major regulatory overhaul.

“Energy innovation programs — like the Department of Energy's Advanced Research Projects Agency-Energy — have seen bipartisan support in the appropriations process in recent years.

“Environmental and industry groups are also watching for any climate- or clean energy-related provisions that could be tacked on to larger infrastructure or COVID-19 relief bills, which will likely be the top focus early next year (*E&E Daily*, Nov. 5).

"There is a road map for some things to get done if the country is put first, and that includes appropriations," Freed said. "Funding for clean energy innovation has continued to go up because Republicans and Democrats have been supportive of that over the last 40 years in Congress."

'Personnel is policy'

"Biden is a creature of the Senate, with institutional knowledge and good relationships with members on both sides of the aisle, which could help in a time when the margins in both chambers are likely to be razor-thin, Maisano said.

"Senate partisanship will determine whom Biden can get confirmed to lead the agencies. "Personnel is policy," League of Conservation Voters President Gene Karpinski told reporters this week.

"So obviously the choices they make in terms of personnel in these next couple months are also critically important."

"Once names start trickling out, it will be easier to tell just how aggressive the Biden administration will be in the executive branch, Maisano said.

"Once we see who their EPA administrator is, who DOE's head is, who's going to run the Interior Department — those type of selections and the people that they pick are going to give us a better read on what early actions we'll see in the first six months of the administration," Maisano said."