ML STRATEGIES

2026 US Midterms: What Divided Government Means for Business

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SERVICE AREAS

- Health Care
- Energy & Sustainability

While the 2026 US midterm elections produced significant majorities for Democrats in the US Congress, businesses should prepare for a divided government with congressional oversight to drive much of the agenda. Both sides will be assessing the results to position for the 2028 elections and to identify opportunities for bipartisan cooperation over the next 2 years. Expect a lame-duck session dominated by the December 11 funding deadline, a 120th Congress focused on oversight of the administration, and narrow bipartisan openings on affordability-driven issues. Businesses should anticipate a continued proliferation of executive and regulatory action.

KEY TAKEAWAYS

- Final margins are still being determined, but robust Democratic majorities in Congress will focus on oversight of the Trump Administration, and investigations will likely shape much of the policy agenda.
- The level of the projected majorities may create opportunities in key policy areas that can attract bipartisan support, breaking the traditional gridlock that comes with divided government.
- President Trump may try to achieve signature legacy wins next year with the Democratic-controlled Congress, but the window of opportunity will be limited before the political “silly” season starts ahead of the 2028 presidential election.
- The December 11 government funding deadline and the annual National Defense Authorization Act (NDAA) will dominate the post-election “lame-duck” session. A year-end package could potentially carry funding, health, energy, artificial intelligence (AI), and tax provisions, while a government shutdown remains possible.
- Affordability, focused on health care, energy, and trade, is the common thread on both sides of the aisle and will drive legislative action and messaging heading into the next Congress. Narrow bipartisan openings remain, including permitting reform, telehealth, pharmacy benefit manager (PBM) transparency, US Food and Drug Administration (FDA) user fee reauthorization, Internal Revenue Service (IRS) modernization, and AI incident reporting.
- Expect the Trump Administration to continue to be extremely active through regulations, executive orders, and other administrative actions.

WHY THE 2026 MIDTERM RESULTS MATTER RIGHT NOW

Divided government typically changes how federal policy gets made. With most legislation requiring bipartisan and White House agreement, oversight and agency action will likely matter as much as new laws. Opportunities for bipartisan cooperation, however, shouldn’t be overlooked leading to the 2028 elections. Companies in health care, energy, technology, and trade-exposed industries should assess how the lame-duck session, the 120th Congress’s oversight agenda, and continued executive action may affect their funding, regulatory, tax, and government-facing strategies.

The sections below explain what to expect by industry, followed by practical steps, open questions, and answers to frequently asked questions.

HEALTH CARE: COST, COVERAGE, AND OVERSIGHT AHEAD

Key Outcome: Health care policy will focus on affordability, transparency, and program integrity regardless of which party controls Congress. Large-scale reform remains unlikely absent unified government, but the 120th Congress is expected to focus on implementation and oversight of the **One Big Beautiful Act (OBBA)**, prolonged impact of the expired Affordable Care Act (ACA) COVID-era tax credits, AI in health care, pharmaceutical supply chain reform, and the 340B program.

Lame-Duck Outlook: The December 11th funding deadline will set the baseline of health extenders and community health center funding that the 120th Congress inherits. Another short-term Medicare physician payment "doc fix" is possible, while long-term reform will wait for the next Congress. A limited 340B package, such as the bipartisan **SUSTAIN 340B Act**, could emerge but is unlikely. Year-end funding talks will also decide whether the Centers for Medicare & Medicaid Services' (CMS) AI-assisted **WISeR prior authorization model** survives, and the Drug Enforcement Administration's (DEA) temporary telemedicine prescribing authority for controlled substances expires December 31, 2026, absent a final rule or extension.

Committees to Watch: The Senate Committees on Health, Education, Labor, and Pensions (HELP) and Finance and the House Committees on Ways & Means and Energy & Commerce will take center stage. Each faces significant turnover, including the departure of HELP Chair Bill Cassidy (R-LA), Senator Roger Marshall, Senator Susan Collins, Senator John Husted, and Senator Tommy Tuberville.

Democratic Policy Priorities: Given the control of the House of Representatives and the Senate, The Democratic majority in the 120th Congress will likely utilize gavel power for oversight and investigations of the Executive Branch and may seek to use the Congressional Review Act (CRA) to overturn recently finalized regulations issued by the Administration. Democrats are expected to emphasize preserving coverage gains by extending or expanding the ACA premium tax credits, oversight and potential repeal of the One Big Beautiful Act's provisions, and highlight the implementation of the Inflation Reduction Act's drug price negotiation program. Additional areas of focus may include PBM transparency, oversight of HHS policies affecting vaccine recommendations, implementation of work requirements, food and drug safety, and Medicare and Medicaid program oversight.

Bipartisan Opportunities: Telehealth, Home and Community Based Service improvements, PBM and drug supply chain transparency, FDA modernization, biotechnology, rural health, and anti-fraud efforts have historically drawn bipartisan support. The expiration of the Prescription Drug User Fee Act (PDUFA) and the Medical Device User Fee Amendments (MDUFA), expiring on September 30th, 2027, offers a historically bipartisan vehicle for broader FDA reforms next Congress.

What to Assess: Health care stakeholders should monitor year-end funding talks for health extenders, the potential expiration of the WISeR prior authorization model, telemedicine prescribing flexibilities, and should prepare for oversight of OBBA implementation, such as Medicaid work requirements, and of other Executive Rulemakings taken by the Trump Administration.

ENERGY: PERMITTING REFORM AND AFFORDABILITY TAKE CENTER STAGE

Key Outcome: Energy policy was a defining 2026 issue as voters faced rising energy costs tied to AI-driven electricity demand and the war in Iran. While the Trump Administration prioritized increased fossil fuel production, deregulation, coal generation, a nuclear "renaissance", and cuts to clean energy incentives, it was not enough to overcome the challenges for Republicans of higher overall costs. The question going into the 120th Congress will be what Democrats can do to address energy affordability going into the 2028 election and where both parties can work together, given the strong potential for Presidential veto if the Democrats try to go it alone. Permitting reform emerged as one of the few areas of bipartisan agreement and still remains a key opportunity in the lame-duck session.

Lame-Duck Outlook: Permitting reform will continue as a primary focus, with a Senate procedural vote scheduled for November 9, 2026, on the **Bipartisan American Affordability and Jobs Act (BAAJA)**. Democrats are now positioned to negotiate more forcefully. However, success may require the balance of competing constituencies including Tribal and environmental stakeholders that have already expressed concerns about the bill. The administration's continued delay of wind and solar projects is also eroding Democrats belief that an agreement can be reached and may lead to them looking for a better outcome in the 120th Congress. The current congress must also address a funding deadline for December 11 for the current continuing resolution including the Low-Income Home Energy Assistance Program (LIHEAP) and energy provisions in the NDAA. Notable NDAA provisions would formally incorporate nuclear energy into Department of Defense energy policy and restrict the military's from purchasing solar technology from foreign entities of concern. A more comprehensive energy package is unlikely before adjournment.

Committees to Watch: Leadership of the House Energy and Commerce, House Natural Resources, Senate Energy and Natural Resources, and Senate Environment and Public Works will flip as Democrats assume committee control. While final votes on committee leadership will not be known until Congress is sworn in in January, Sen. Martin Heinrich (D-NM) is expected to chair the Energy and Natural Resources Committee while Sen. Jeff Merkley (D-OR) is likely to lead the EPW Committee, as current ranking member Sheldon Whitehouse (D-RI) pursues Judiciary leadership. Sen. Mike Lee (R-UT), currently SENR Chair, will likely be elevated to Judiciary Committee Ranking Member, leaving the question of SENR Ranking Member open until other Senate Republican committee spots are filled. On the House side, Congresswoman Marcy Kaptor (D-OH), who was re-elected after being redistricted out of her previous seat, will likely be Chair of the Energy-Appropriations Subcommittee while Frank Palone will be Chair of the House Energy Subcommittee under Energy and Commerce.

Democratic Policy Priorities: Lacking control of the White House, Democrats are expected to focus on their oversight role, increasing scrutiny of the policy changes and transactions executed during the first half of Trump's term. Administrator Lee Zeldin will also receive significant attention for revocation of solar grants and transfer of the Energy Star program back to DOE. Democrats will also use their majority to highlight their energy policy agenda priorities for 2028. The SEEC Institute's **Thriving Economy Project** outlines more than 800 policy recommendations for the 120th Congress developed with House Democrats and will likely serve as an initial playbook for House Democrats. Adoption of previous policy positions, such as tax incentives for EV's and wind and solar projects, is likely to be strongly debated by Democrats before specific proposals are brought forward. House Democrats' efforts to enlist Republican support will be challenged by the fact that many members of the Conservative Climate Caucus, such as Caucus Chair, Mariannette Miller-Meeks (R-IA), lost their bid for reelection.

What to Assess: Energy developers, utilities, and large energy users, including data center operators, should consider tracking the November 9 BAAJA vote and any year-end energy provisions, assessing exposure to proposed ratepayer protections and changes to clean energy incentives, and preparing for oversight of permit revocations and terminated grants.

TECHNOLOGY AND AI: EXECUTIVE ACTION OUTPACES CONGRESS

Key Outcome: AI policy has moved faster in 2026 than nearly any other area, driven largely by the White House rather than Congress. The administration stood up a Super Intelligence Force (SIF) led by Director of National Intelligence Jay Clayton, issued **Executive Order 14434**, secured a voluntary **Accord on Super Intelligence** with leading developers, and finalized a pre-release security review for frontier models under **Executive Order 14409**, each favoring industry partnership over enforceable rules. July incidents in which AI agents escaped their test environment reframed the debate around security, incident reporting, and emergency shutdown authority. Republicans favor a single national standard that preempts state laws, while Democrats emphasize developer accountability and state authority.

Lame-Duck Outlook: With government funding and defense authorization consuming floor time, AI provisions will most likely ride on must-pass vehicles. Health care is the clearest test: the House fiscal year (FY) 2027 Labor-HHS bill would defund CMS's WISeR Model. Prospects for a comprehensive framework are modest; neither the House Republican **Great American AI Act discussion draft** nor the bipartisan **FRONTIER Act (H.R. 9925)** from Reps. Jay Obernolte (R-CA) and Lori Trahan (D-MA) is likely to resolve preemption this year.

Committees to Watch: House Energy and Commerce and House Science, Space, and Technology will lead in the House, with Senate Commerce, Science, and Transportation as the Senate's lead panel. AI issues will also surface in the Homeland Security, Intelligence, Armed Services, and tax-writing committees.

Democratic Policy Priorities: Democrats are expected to pursue developer liability, building on Rep. Trahan's **CLAIM Act discussion draft**, and to replace voluntary pledges with binding incident reporting, independent investigative boards, and shutdown authority. They generally favor a federal floor that preserves state laws, consistent with the **States' Right to Regulate AI Act (S. 3557)**, and will focus on workers, patients, and consumers, including algorithmic coverage denials. Oversight of the SIF, Executive Order 14434, the voluntary accord, and the frontier model review is likely.

Bipartisan Opportunities: Size-based transparency and incident reporting, human shutdown capability, National Institute of Standards and Technology (NIST) standards for AI agents, a defined role for the Center for AI Standards and Innovation (CAISI), clinician review of AI-assisted coverage denials, and Medicare reimbursement pathways for AI-enabled devices could move if a vehicle materializes.

What to Assess: AI developers, deployers, and health care organizations using AI-assisted tools should consider reviewing incident reporting and security practices, monitoring must-pass vehicles for AI provisions, and preparing for oversight of the SIF, the voluntary accord, and the frontier model review.

TAX AND TRADE: TARIFF AUTHORITY AND NARROW TAX OPPORTUNITIES

Key Outcome: Tax and trade policy in the Trump Administration's second term centers on economic competitiveness, supply-chain resilience, and executive authority. After the Supreme Court ruled that the International Emergency Economic Powers Act (IEEPA) does not authorize presidential tariffs, the administration shifted to Section 301 investigations and Section 232 national security authorities, prolonging litigation and uncertainty for importers and manufacturers. The US declined a 16-year extension of the United States-Mexico-Canada Agreement (USMCA) in July 2026, triggering annual reviews, though the agreement remains in force through 2036 unless extended.

Lame-Duck Outlook: With appropriations, expiring authorities, and defense authorization competing for floor time, any tax package would likely be narrow, limited to extenders, tax administration reforms, and proven bipartisan provisions. The bipartisan **Taxpayer Assistance and Service (TAS) Act**, which passed the Senate by unanimous consent on September 30, is among the strongest candidates, while the **Digital Asset Tax Certainty Act** faces uncertain prospects. Members may also push the Work Opportunity Tax Credit, enhanced ACA premium tax credits, housing incentives, and revisions to 2025 clean energy credit phaseouts. Trade legislation faces a more difficult path, setting up 2027 debates on USMCA, China restrictions, de minimis reform, and forced labor enforcement.

Committees to Watch: House Ways and Means and Senate Finance will lead. Under Democratic control, Rep. Richard Neal (D-MA) and Sen. Ron Wyden (D-OR) are expected to chair, with Rep. Jason Smith (R-MO) and Sen. Mike Crapo (R-ID) as ranking members. Rep. Neal has signaled that oversight of IRS leadership, workforce reductions, and taxpayer information will be a major part of his agenda.

Democratic Policy Priorities: Democrats are expected to scrutinize the distribution of benefits under the 2025 tax law, reassert congressional trade authority through tariff approval proposals and resolutions of disapproval, and protect IRS service, enforcement capacity, and taxpayer privacy. Proposals from Sens. Mark Warner (D-VA) and Wyden to curb AI data center tax benefits face steep hurdles but could shape debate over AI's energy and infrastructure impacts.

Bipartisan Opportunities: IRS modernization, targeted extenders and technical corrections, digital asset taxation, forced labor enforcement and customs compliance, critical supply chains, and domestic and North American manufacturing remain potential areas of agreement.

What to Assess: Importers, manufacturers, and taxpayers should consider assessing exposure to Section 301 and Section 232 actions and the USMCA annual reviews, monitoring any narrow year-end tax package, and preparing for oversight of IRS operations and the 2025 tax law.

PRACTICAL STEPS TO CONSIDER AFTER THE 2026 MIDTERMS

Government affairs, legal, and compliance teams should consider the following steps as the lame-duck session begins and the 120th Congress takes shape:

- **Monitor must-pass vehicles.** Track the year-end funding package and the NDAA for health, energy, AI, and tax provisions, since standalone bills face limited floor time.
- **Prepare for congressional oversight.** Evaluate whether your organization's involvement with the administration's health, energy, AI, or tax actions could draw investigations, hearings, or document requests, and review document retention and response protocols.
- **Identify bipartisan openings.** Evaluate engagement opportunities on permitting reform, telehealth, PBM transparency, PDUFA and MDUFA reauthorization, IRS modernization, and AI incident reporting.
- **Track executive and regulatory action.** Expect the administration to rely heavily on regulations, executive orders, and other administrative actions, and consider participating in comment processes where your interests are affected.
- **Assess shutdown exposure.** Review how a lapse in appropriations after December 11 or in the next Congress could affect agency approvals, grants, contracts, and program funding your organization relies on.

WHAT'S NEXT

The final weeks of the 119th Congress are unlikely to produce sweeping legislation, but they will set the table for the 120th. With legislation often requiring bipartisan and White House agreement, oversight and agency action will matter as much as new laws. ML Strategies and Mintz will continue to monitor the impact and share deeper dives into health care, energy, and government investigations and oversight.

For questions about how the 2026 US midterm results may affect your organization, contact the authors of this article or your regular Mintz attorney.

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Alex Hecht is a trusted attorney and policy strategist with over 20 years of experience advising clients across a broad range of industries on how to navigate complex policy environments. His strategic insight and hands-on experience in both legislative and regulatory arenas empower clients to advance their priorities with clarity and confidence in an evolving policy landscape.



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