



## TGA ASSOCIATION MANAGEMENT SOLUTIONS, LLC

**TO:** Railway Systems Suppliers, Inc. (“RSSI”)  
**FROM:** TGA Association Management Solutions, LLC (“TGA AMS”)  
**RE:** Monthly Legislative Report for October 2022  
**DATE:** November 1, 2022

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### KEY UPDATES

- The tentative agreement that the White House [announced](#) on September 15 between the railroads and labor unions to stave off a potential labor strike and work stoppage is in jeopardy. The BRS and BMWG both rejected the deal. A strike could occur as soon as November 19 and Congress may need to intervene.
- Federal discretionary grants:
  - FRA CRISI NOFO [released](#) on September 1, grants due Dec. 1
  - USDOT SMART infrastructure grants NOFO [released](#) on September 19, grants due Nov. 18
  - FRA rail crossing elimination grants were due October 11
  - MEGA grant award announcements expected before end of the year
  - Port infrastructure grant awards were [announced](#) on October 26
- On September 30, Congress passed a Continuing Resolution to keep the government funded through December 16, 2022
  - Congress is in recess now until after the November midterm elections
  - Work on funding government accounts beyond Dec. 16 and other year-end items will occur during the lame duck session of Congress post-November elections
- Midterm elections occur on November 8, the control of the House and Senate is up for grabs. Analysis of the election results will be included in next month’s report

### FY2023 APPROPRIATIONS

- On September 30, Congress passed a Continuing Resolution to fund government accounts through December 16, 2022
  - Work on an omnibus bill for the remainder of FY23 will continue after the November elections
- Senate Appropriations Committee released its FY23 Transportation-HUD Appropriations bill on July 28. See bill [here](#) and committee report [here](#)
- House Appropriations Committee marked up its FY23 Transportation-HUD Appropriations bill on June 30 and the full House passed the bill on July 20. See bill [here](#) and committee report [here](#)

- See updated Appropriations table below for more details:

	<b>FY22 House</b>	<b>FY22 Senate</b>	<b>Omni FY22</b>	<b>IIJA FY22</b>	<b>Total FY22</b>	<b>House FY23</b>	<b>Senate FY23</b>
TIGER/BUILD/RAISE	\$1.2b	\$1.09b	\$775m	\$1.5b	\$2.275b	\$775m	\$1.09b
FRA including Amtrak	\$2.7b	\$2.7b	\$2.33b	\$4.4b	\$6.73b	\$2.35b	\$2.6b
<i>CRISI</i>	\$500m	\$522.8m	\$625m	\$1b	\$1.625b	\$630m	\$534.5m
<i>Fed-State SOGR Partnership</i>	\$0	\$220m	\$100m	\$7.2b	\$7.3b	\$555m	\$200m
<i>PRIME grants</i>	\$625m	\$0	\$0	\$0	\$0	\$0	\$0
<i>Rail Restoration/Enhancement</i>	\$0	\$2m	\$0	\$50m	\$50m	\$0	\$0
<i>MagLev</i>	\$5m	\$0	\$0	\$0	\$0	\$0	\$0
RRIF CRP Subsidy	\$0	\$10m	\$0	\$50m	\$50m	\$0	\$0
Section 130 grade crossing set-aside	\$245m	\$245m	-	\$245m	\$245m	\$245m	\$245m
<i>Grade crossing elimination</i>			-	\$600m	\$600m	\$0	\$0
FTA New Starts	\$2.5b	\$2.25b	\$2.25b	\$1.6b	\$3.85b	\$3.012b	\$2.51b
FTA Formula funds	\$12.8b	\$10.8b	-	\$13.355b	\$13.355b	\$13.634b	\$13.634b
WMATA Special Appropriation	\$150m	\$150m	\$150m	-	\$150m	\$150m	\$150m

### **INFLATION REDUCATION ACT/BUILD BACK BETTER (BBB) ACT/BUDGET RECONCILIATION**

- Budget reconciliation is a process through which only requires 50+1 votes in the Senate that Democrats are attempting to push many social spending programs
- In a breakthrough amidst a flurry of legislative activity before the August recess, on August 7 the Senate passed the **Inflation Reduction Act of 2022** and the House followed suit on August 12. President Biden signed the bill into law on August 16. The bill will target climate change, curb healthcare costs, impose a 15 percent minimum corporate tax (raising about \$313 billion over a decade), and will increase IRS enforcement. The bill is said to raise a total \$739 billion over 10 years with \$370 billion in expenditures to be funneled to energy and climate efforts that will reduce carbon emissions by 40 percent by 2030, another \$64 billion is to extend Affordable Care Act health care subsidies for three years. See one-page summary [here](#). The bill includes \$50b in transportation related funding but nothing specifically for rail.

### **CHINA TRADE & COMPETITIVENESS BILL**

- A revised and slimmed down version of the previously passed bills in the House (COMPETES Act) and Senate (USICA) was passed by Congress. The new bill, “CHIPS and Science Act of 2022” was sent to President Biden and signed into law. See summary [here](#)
  - The bill provides \$52 billion for U.S. companies producing computer chips, as well as billions more in tax credits to encourage investment in chip manufacturing. It also provides tens of billions of dollars to fund scientific research, and to spur the innovation and development of other U.S. technologies.

### **SURFACE TRANSPORTATION BOARD**

- Current STB members:
  - **Chairman Martin Oberman (Democrat):** Former Chairman of Metra in Chicago. Named STB Chairman at the beginning of the Biden administration

- **Robert Primus (Democrat):** Career Democratic staffer on Capitol Hill, formerly served as Chief of Staff to Rep. Nanette Barragan (D-CA), Rep. Michael Capuano (D-MA), and Rep. Tony Cardenas (D-CA)
- **Karen Hedlund (Democrat):** former Obama FRA Deputy Administrator
- **Vice Chair Patrick Fuchs (Republican):** Former Senate Commerce Committee staffer under Chairman John Thune (R-SD) who is well versed on regulatory issues affecting the railroad industry. He has been very friendly to freight railroads and we know where he stands on the issues
- **Michelle Schultz (Republican):** Previously spent 14 year in leadership roles with SEPTA and had a career in law before that
- The STB has broad regulatory oversight of railroads and is a key agency to monitor. At the beginning of January, after being confirmed easily by the Senate, STB nominees Michelle Schultz and Robert Primus started their five-year terms on the STB as board members. It represents the first time the board has had its full complement of five members since the 2015 STB Reauthorization Act expanded the board from three to five
- The most high-profile item before the STB this year has been the potential merger between Canadian Pacific and Kansas City Southern, but the board is also still considering several major rules with huge implications for the railroads: 1) forced access/reciprocal switching and 2) NPRMs on shipper/railroad rate disputes
  - On May 6, 2022, the Surface Transportation Board (STB) [announced](#) that it will require certain railroads to submit service recovery plans as well as provide additional data and regular progress reports on rail service, operations, & employment. [BNSF](#), [CSX](#), [Norfolk Southern](#) (NS) & [Union Pacific](#) (UP) have submitted service recovery plans. The plans can also be found [here](#)
  - The STB held public meetings on April 26 and 27 to discuss rail service issues
    - Class Is mostly got grilled for how they have handled cargo amid continued supply chain disruptions. STB Chair Oberman made it clear that he's frustrated with the railroad industry's excessive delays, fees and failures to ship goods at agreed upon dates and times
  - The [STB approved the CSX-Pan Am merger](#) on April 14
  - The STB held a [Public Meeting](#) on March 15-16 concerning the forced access/reciprocal switching regulations
    - [AAR statement opposing](#) this effort
    - See the US Department of Justice comments on reciprocal switching [here](#) and other comments [here](#) (type in EP 711 on Docket Number box)
    - Also, see Railway Age article, "[A Primer on Reciprocal Switching.](#)"
    - On March 23, the STB issued a decision allowing supplemental written comments and extending the ex parte communications period in the Reciprocal Switching proceeding. Following the March 15/16 hearing, the [STB decided to allow interested persons to file supplemental written comments](#) limited to issues raised at the hearing or in written materials submitted in response to the Board's December 28, 2021 notice
  - Regarding CP-KCS
    - On September 28-30, public hearings took place in DC to review the proposed merger's merits
    - On August 5, STB issued a [draft EIS](#)
      - Public meetings regarding the environmental issues were held across the country from Sept. 12-19
      - Comments on the EIS are now due on October 14 (originally Sept. 26)

- On July 25, a [letter of opposition](#) was sent by Senators Durbin, Duckworth and Reps. Newman and Krishnamoorthi
- On July 22, the STB [announced](#) that it will hold a three-day public hearing on the proposed merger between Canadian Pacific Railway Limited (CP) and Kansas City Southern Railway Company (KCS) on September 28, 29, and 30, 2022 at the agency’s headquarters in Washington, DC. The Board is also modifying the procedural schedule so that final briefs will be due by October 14, 2022, after the public hearing
- On June 22, three Commissioners (of the five Commissioners) of the Federal Maritime Commission [filed a letter](#) with the Surface Transportation Board to “respectfully urge the Surface Transportation Board to disapprove of the consolidation of the railroad systems of the CP and the KCS.” The rationale, as explained in the letter from the Commissioners notes that, “the proposed merger will adversely impact U.S. ports and the primarily U.S.-based intermodal railway systems that serve our ports, and would disproportionately benefit Canadian ports and the primarily Canadian-based intermodal railway systems that service Canadian ports for transportation of U.S.- bound cargo.” The Commissioners logging their concerns with the merger are Carl Bentzel (Republican), Louis Sola (Republican) and Max Vekich (Democrat)
- On June 14, Metra said that new analysis shows CP-KCS merger would vastly increase commuter train delays, more info [here](#)
- On March 16, the STB noted that CP submitted 2019 baseline GT/M data for CP and KCS lines that is different from data in the Master Segment Table that was submitted. And on Feb 28, CN formally requested, via a [Responsive Application](#), to the STB to divest the parallel Springfield Line to CN’s as a condition of any approval of the proposed CP-KCS merger. CN argued that, “Allowing CP to consolidate control over two routes between Kansas City, on the one hand, and Chicago, Detroit, and Eastern Canada, on the other hand, would diminish competitive alternatives for rail customers— particularly because the CP-KCS application makes clear that CP will favor its existing Chicago-Kansas City route over potential routings involving the parallel Springfield Line.” CN has also intimated that it will invest in the creation of the Kansas City Speedway, if granted control over the line, bringing significant environmental benefits by removing 80,000 trucks a year from the road

## INFRASTRUCTURE BILL (IIJA)/BIPARTISAN INFRASTRUCTURE LAW (BIL)

See links below for some helpful summaries of programs and provisions contained in the IIJA/BIL:

<a href="#">WH technical asst guide (NEW)</a>	<a href="#">USDOT BIL NOFO Tracker</a>
<a href="#">Section 130 program BIL fact sheet</a>	<a href="#">Brookings Online Hub</a>
<a href="#">CRS Report on FHWA programs in IIJA</a>	<a href="#">CRS Report on passenger rail programs in IIJA</a>
<a href="#">White House Guidebook</a>	<a href="#">Updated WH Fact Sheet</a>
<a href="#">White House Fact Sheet</a>	<a href="#">USDOT State Fact Sheets</a>
<a href="#">AASHTO IIJA Summary 9 15 2021</a>	<a href="#">APTA IIJA Passenger Rail Investment</a>
<a href="#">ARTBA IIJA Summary 8 2 2021</a>	<a href="#">FTA Key Priorities</a>
<a href="#">IIJA Summary</a>	<a href="#">CBO Score of IIJA</a>
<a href="#">National Association of Regional Councils</a>	<a href="#">Dept. of Energy IIJA Fact Sheet</a>

<a href="#">National Association of Counties NACo</a>	<a href="#">T&amp;I Links to Excel Apportionment Charts</a>
<a href="#">APTA IJA Public Transportation Investment</a>	<a href="#">AASHTO Implementation Outline for IJA</a>

- As a reminder, \$1.2 trillion five-year bill was signed into law on November 15
  - Bill includes \$550 billion in new spending
  - \$66 billion for passenger and freight rail
    - \$36B Fed-State Partnership for Intercity Passenger Rail grants
    - \$16B Amtrak National Network
    - \$6B Amtrak NEC
    - \$5B FRA CRISI grants
    - \$3B new FRA rail crossing elimination program
  - \$39 billion for transit
    - \$19.15B increased contract authority for formula funding
    - \$4.75B State of Good Repair
    - \$8B FTA CIG/New Starts
- Other key grant programs in the bill
  - New Megaprojects grant program (freight and passenger rail eligible) funded at \$10B
  - USDOT RAISE (formerly BUILD or TIGER grants) funded at \$7.5B
  - USDOT INFRA grants funded at \$3.2B
  - \$50M/year to subsidize credit risk premium for RRIF loans
- **\*Key programs of importance to RSSI**
  - New rail crossing elimination grant program funded at \$3B
  - Section 130 funded at \$245M/year from FY 2022-2026 with several key policy changes:
    - The bill removes the requirement that at least half of the funds set aside for the Section 130 program must be for the installation of protective devices at railway-highway crossings
    - The bill increases the Federal share for projects funded under the Section 130 program from 90 to 100 percent, as well as clarifies that the replacement of functionally obsolete warning devices is an eligible expense
    - The bill also increases the amount of state incentive payment at-grade crossing closures from \$7,500 to \$100,000 and increases the set-aside for compilation and analysis of data from 2 percent up to 8 percent
    - Regarding eligibility, the bill emphasizes eligibility for projects to reduce pedestrian fatalities and injuries from trespassing at grade crossings, and states that it is the sense of Congress that the DOT should, where feasible, coordinate efforts to prevent or reduce trespasser deaths along railroad rights-of-way and at or near railway highway crossings
      - This section also requires the Comptroller General of the United States to submit a report that includes an analysis of the effectiveness of the Section 130 program as a set-aside within HSIP
  - FRA CRISI grants funded at \$5B
    - Expands eligibility to include rehabilitating, remanufacturing, procuring, or overhauling locomotives that result in a significant reduction in emissions; researching, developing, and testing innovative rail technology; and developing and implementing measures to prevent trespassing and reduce injuries and fatalities
- Other key provisions:
  - Codifies the One Federal Decision executive order which streamlines the permitting process by consolidating decision-making processes and expediting deadlines.

- FRA Railroad Research and Development program funded an average of \$45 million per Fiscal Year
  - Including up to \$4.5 million per FY for grants to establish and maintain a Center of Excellence to advance the safety, efficiency, and reliability of rail
- Includes a Highway Cost Allocation Study, the first since 1997. This study will help Congress better ensure different highway users, including commercial motor vehicles, cover their fair share of costs to maintain our nation's roads and bridges
- Includes National Motor Vehicle Per-Mile User Fee (VMT) Pilot program to demonstrate a national VMT, including for commercial motor vehicles, to restore and maintain long-term solvency of the Highway Trust Fund
- Establishes an FRA blocked crossings portal pilot program
- What is notably NOT in the bill
  - No changes were made to the federal truck size or weights
  - Minimum crew size mandates
  - LNG by rail prohibition
  - Restrictive labor provisions
  - Yardmaster HOS

## CONGRESSIONAL HEARINGS

- September 29, 2022. The House Committee on Transportation and Infrastructure held a full committee hearing on, "Investing in our Nation's Transportation Infrastructure and Workers: Why it Matters." The purpose of the hearing was for Members to hear from stakeholders on how the American Rescue Plan Act of 2021, the Infrastructure Investment and Jobs Act, and the Inflation Reduction Act of 2022 have impacted American families, workers, and communities. [Committee Link and Testimony](#). **Covered by TGA AMS – summary available upon request**

## U.S. DEPARTMENT OF TRANSPORTATION/FRA/FTA

- October 18, 2022. The Transportation Security Administration (TSA) **announced** a new cybersecurity security directive regulating designated passenger and freight railroad carriers. The [Enhancing Rail Cybersecurity Directive](#) strengthens cybersecurity requirements and focuses on performance-based measures to achieve critical cybersecurity outcomes. The Directive requires actions necessary to protect the national security, economy, and public health and safety of the US and its citizens from the impact of malicious cyber-intrusions affecting the nation's railroads. See the aforementioned Directive for Owner/Operator required measures. See Association of American Railroads (AAR) "Railroads & Cybersecurity" fact sheet [here](#).
- October 13, 2022. The Surface Transportation Board (STB) **announced** that it has established the Office of Passenger Rail (OPR), effective October 1, 2022. OPR will be responsible for investigating and analyzing issues regarding Amtrak on-time performance (OTP). Complaints may be brought by Amtrak, by an entity for which Amtrak operates intercity passenger rail service, by an intercity passenger rail operator, or by a host freight railroad over which Amtrak operates. To prepare for these new enforcement obligations, in April 2021, the Board formed a passenger rail working group consisting of STB staff. The working group was charged with developing plans to enhance the agency's capacity to fulfill its passenger rail oversight efforts and to ensure it will fully meet its obligations to enforce OTP requirements. The STB will be hiring a director for the new office, and the agency is also in the process of creating a passenger rail advisory committee under the Federal Advisory Committee Act to advise the Board on passenger rail transportation issues. Amtrak officials said they welcome the STB's action. Article [here](#)
- October 13, 2022. The **US DOT released** its "[Promising Practices for Meaningful Public Involvement in Transportation Decision-Making document](#)." The purpose of the document is

to provide promising practices which can promote a shared understanding of meaningful public involvement. The goal is to promote promising practices for transportation professionals to incorporate meaningful public involvement into each stage of the transportation decision-making process and project lifecycle, including operations and service provision. The guide is intended to support practitioners in all modes of transportation in various roles, including those working in policy, planning, engineering, operations, civil rights, environmental justice, and public involvement. Over the coming months, the US DOT will be offering additional training and technical assistance around the guide.

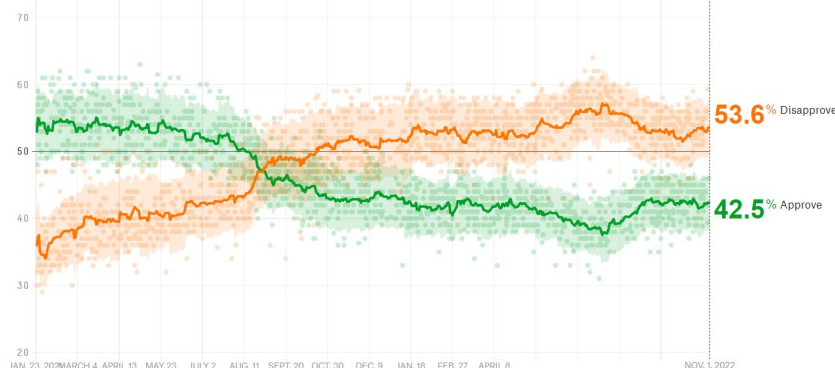
- October 13, 2022. Congressman Mike Gallagher (R-WI) and John Garamendi (D-CA) sent a [letter](#) to Treasury Secretary Janet Yellen requesting that Chinese state-owned China Railway Rolling Stock Corporation Limited (CRRC) be listed as a state-owned and directed enterprise with clear links to the People's Liberation Army (PLA). The letter states that, "We are deeply concerned that CRRC will continue to undercut good-faith actors in the rail sector, further compromising the global rail market." And furthermore the letter concludes that, "Due to CRRC's established ties to the PLA and its status on the DoD list, we request the rationale and criteria considered for excluding CRRC from the Department of Treasury's NSCMIC list, and that a revised list including CRRC be released."
- October 12, 2022. The US DOT Office of Inspector General (OIG) issued a [memorandum](#) concerning, "FRA's Oversight of Railroad Hours of Service and Fatigue Management." FRA data shows that human factors, including fatigue, remain the leading cause of reportable non-grade crossing train accidents. The OIG is initiating an audit to evaluate FRA's oversight of railroad hours of service and fatigue management.
- October 11, 2022. The Federal Highway Administration (FHWA) [announced](#) that it has released \$59.9 billion in FY 2023 apportionments for 12 formula programs. Click [here](#) to view the allocation of funding by state and program (scroll near the bottom of the page "FY 2023 Apportionment and Obligation Limitation Notices).
- October 11, 2022. The American Public Transportation Association (APTA) issued a report entitled, "[Transit Workforce Shortage Root Causes, Potential Solutions, and the Road Ahead.](#)" The report notes that, "Public transit providers across North America face a shortage of operators and mechanics during a period of economic instability and reshuffling exacerbated by the COVID-19 pandemic." Furthermore, agencies' ability to respond to the worker shortage has been hampered by inadequate information about its causes and effects. The report highlights what agencies and the industry can do to deal with these workforce issues by combining background research and the results from surveys of public transit agencies
- October 11, 2022. The Federal Transit Administration (FTA) issued a [Notice of Funding Opportunity](#) (NOFO – and [here](#)) making available \$300 million for each of FY 2022 and FY 2023 for competitive grants under the **[FYs 2022/2023 Competitive Grants for Rail Vehicle Replacement Program](#)**. The NOFO announces two FYs of funding; as such, FTA may select up to six awards. Eligible applicants for the Competitive Grants for Rail Vehicle Replacement Program are States and local governmental authorities. The Competitive Grants for Rail Vehicle Replacement funding may be up to 50 percent of the total eligible project cost. Other Federal funding, including FTA funding, such as State of Good Repair Program formula funding, may be applied for the project up to a maximum 80 percent Federal share of eligible project costs. **Applications are due by 11:59 P.M. ET, January 5, 2023.**
- October 6, 2022. The US DOT [issued](#) a [Notice of Funding Opportunity](#) (NOFO) making \$25 million available under the **[FY 2022 Thriving Communities Program](#)**. The Department released both a call for [Letters of Interest](#) (LOI and [here](#)) from community leaders seeking support from the program as well as a NOFO for capacity builders. **LOIs must be submitted no later than December 6, 2022.** The NOFO will provide funding for organizations to provide technical assistance, planning and capacity building support to recipients under the Thriving Communities

Program. Eligible applicants are non-profit organizations, state or local governments and their agencies (such as transit agencies or metropolitan planning organizations), Tribes, philanthropic entities. **The NOFO will be open until November 22, 2022.** No cost sharing or matching is required as a condition of eligibility under this competition. US DOT will fund up to 100 percent of eligible project costs. DOT will determine the amount of funds to be awarded but anticipates a range between \$3.5 - \$6.0 million for each cooperative agreement. The Department will host a series of webinars to provide more information both to interested communities and capacity builders. More information on the series can be found [here](#). A Thriving Communities Program fact sheet can be found [here](#). **Update:** A [NOFO](#) was issued on 18 October 2022 regarding US DOT’s application submission requirements and application review procedures to select capacity builders to provide technical assistance, planning and capacity building through cooperative agreements for FY 2022 Thriving Communities Program.

- **October 4, 2022.** The US DOT [announced](#) that the Department’s Build America Bureau will offer low-cost and flexible financing for transit and Transit-oriented Development (TOD) projects at the maximum level authorized under law. This new initiative, “TIFIA 49,” authorizes borrowing up to 49 percent of eligible project costs for projects that meet certain eligibility requirements, helping more projects get off the ground. With few exceptions, TIFIA loans have historically been capped at 33 percent of eligible project costs. Learn more about TIFIA 49 [here](#).
- **October 3, 2022.** The Congressional Research Service released a report entitled, “[Intercity Passenger Rail: Federal Policy and Programs](#).” The Infrastructure Investment and Jobs Act (IIJA) expanded existing programs and established new ones intended to improve existing passenger rail service or serve new areas. The report examines several issues that may pose obstacles to passenger rail expansion for Amtrak as well as for private-sector and state-led projects.
- **October 3, 2022.** The Federal Railroad Administration (FRA) issued a [Notice of Proposed Rulemaking](#) (NPRM) proposes amending its regulation on Training, Qualification, and Oversight for Safety-Related Railroad Employees (Training Rule) to codify agency guidance and clarify existing requirements. **Written comments on the proposed rule must be received by December 2, 2022.**
- **September 30, 2022.** The ENO Center for Transportation released a report entitled, “[On the Right Track: Rail Transit Project Delivery Around the World](#).” The report examines project delivery in 10 peer nations across the globe and builds on Eno’s 2021 report [Saving Time and Making Cents](#), and the ongoing initiative to improve transit rail project delivery in the United States. The research includes new [case studies](#) of how countries govern, plan, regulate, fund, and construct projects. The report found that urban rail transit projects in the United States suffer from disproportionately high costs and long timelines compared to international peers.

## POLITICAL ENVIRONMENT

- President Biden’s approval had fallen continuously the past 12 months until a recent surge upward in the past two months followed by a slight uptick





- Current split in the 117<sup>th</sup> Congress  
Senate: **50 Democrats** – **50 Republicans** (VP Harris the tiebreaker)  
House: **220 Democrats** – **212 Republicans**
- As we near 2022 elections, Republicans have felt good about their odds to retake Congressional majorities next year. The polls have consistently reflected that until now, however there has been a recent Democratic uptick and the win in the NY-19 and AK-AL special elections has buoyed some hopes for the Democrats to hold the Senate. The House is still very likely to flip to Republican control. The Democrats are still slightly favored to retain the Senate but the margins are razor thin.
- Wave of Democratic retirements (31 House Dems [have announced](#) their retirement)