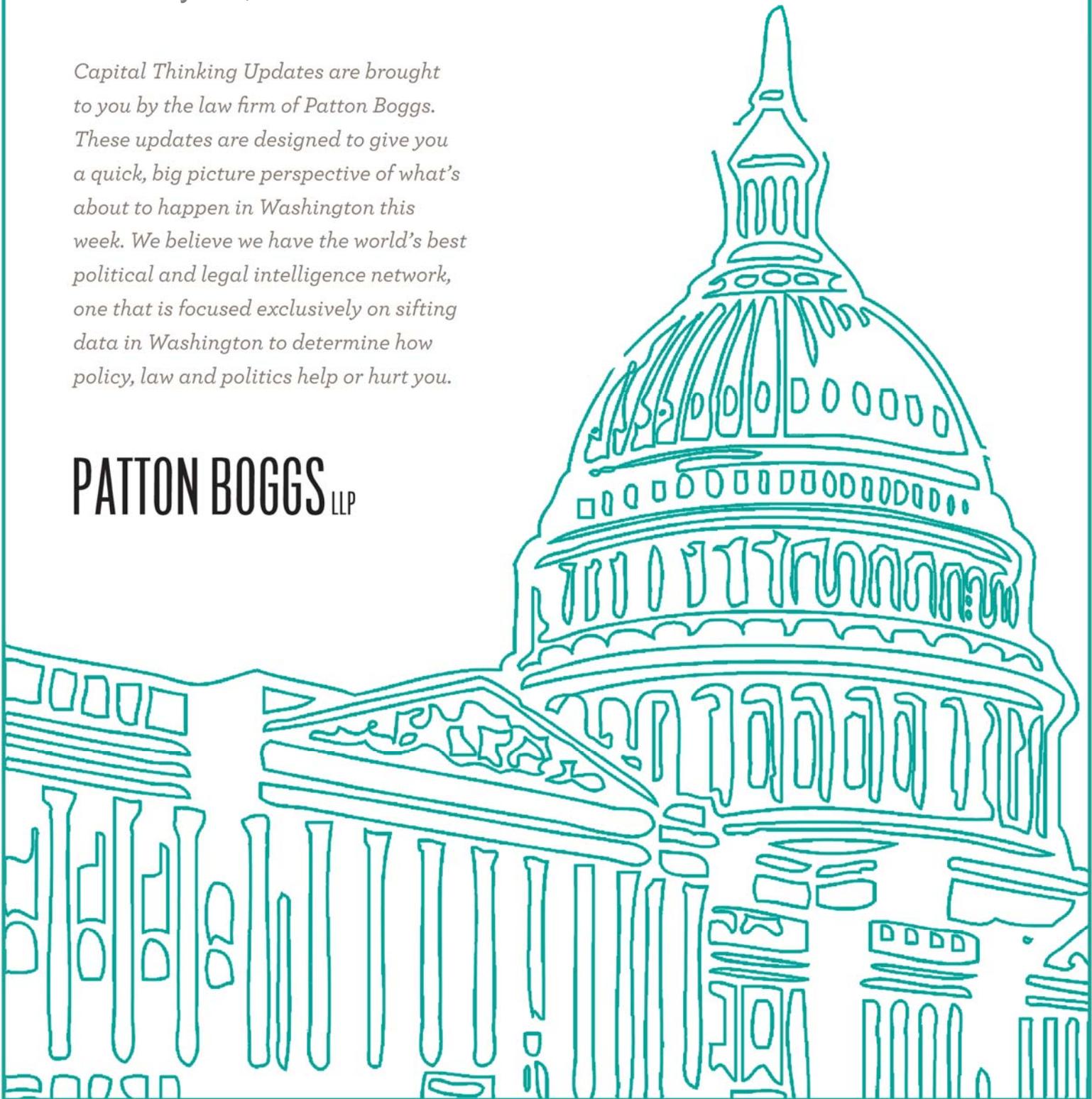


CAPITAL **thinking** UPDATES

January 30, 2012

Capital Thinking Updates are brought to you by the law firm of Patton Boggs. These updates are designed to give you a quick, big picture perspective of what's about to happen in Washington this week. We believe we have the world's best political and legal intelligence network, one that is focused exclusively on sifting data in Washington to determine how policy, law and politics help or hurt you.

PATTON BOGGS LLP



General Legislative

The House is not in session on Monday, but meets on Tuesday, January 31, 2012, at 12:00 p.m. for morning hour and at 2:00 p.m. for legislative business. The House will consider H.Res. 522, providing for consideration of H.R. 1173, the “Fiscal Responsibility and Retirement Security Act of 2011.” Thereafter, the House will consider a motion to go to conference on H.R. 658, the “FAA Air Transportation Modernization and Safety Improvement Act.” The Senate will convene at 2:00 p.m. for a period of morning business. Thereafter, the Senate will resume consideration of the motion to proceed to S. 2038, the “Stop Trading on Congressional Knowledge (STOCK) Act.”

Budget, Appropriations

LEGISLATIVE ACTIVITY

- **Senate Rejects House-Passed Resolution of Disapproval Regarding the Debt Ceiling Increase.** On January 26, the Senate rejected the resolution of disapproval (H.J. Res. 98) to block the President from accessing the requested installment of borrowing authority by a vote of 44 – 52. The House passed the measure on Wednesday, January 18 by a largely party-line vote. With the rejection of the resolution of disapproval, the debt ceiling increased by \$1.2 trillion on Friday, January 27.
- **House Resolution on Importance of FY2013 Budget Passage Adopted.** On Tuesday, January 24, the House adopted a resolution (H. Res. 516) expressing the sense of the House that the passage of a FY 2013 Federal budget is of national importance.
- **House Committees Move on Several Budget Reform Proposals.** Several of the budget reform bills introduced by House Republicans in December were approved through committee action last week (details on the bills were provided in the [December 12, 2011 edition of the Capital Thinking Report](#)).

On Monday, January 23, the House Rules Committee approved The Legally Binding Budget Act (H.R. 3575) which would provide for a joint budget resolution and would require the President’s signature (or a two-thirds majority of both chambers to override a veto), thus making it law. A manager’s amendment clarified the resolution would still have the force of law, even if vetoed by the President; removed the requirement that the resolution set the public debt limit; and eliminated the specialized deadline for a new President’s first Budget Proposal.

On Tuesday, January 24, the House Budget Committee approved three additional reform bills: (1) The Pro-Growth Budgeting Act (H.R. 3582), as amended, would require a Congressional Budget Office (CBO) analysis of the U.S. economic impact for all major legislation, a supplemental budget baseline projection following the submission of the President’s Budget Proposal, and a 40-year budget outlook by July 1 of each fiscal year; (2) The Baseline Reform Act (H.R. 3578) would lower discretionary spending by removing annual automatic inflation increases and require the CBO to report a 40-year projection of the budget baseline assuming the extension of current tax policies by July 1 of each fiscal year; and (3) The Budget and Accounting Transparency Act (H.R. 3581) would require the use of “fair value” methodologies which take into account risk as well as borrowing costs when calculating costs of the federal credit program. This bill also mandates a CBO and Office of Management and Budget (OMB) study utilizing these methodologies in federal

insurance programs. The provision mandating that spending and debt issuances for the Postal Services be included in the calculation of the federal debt was removed during the Committee markup.

The remaining bills in the Republican budget reform package will be considered by the House Budget Committee in the coming weeks and months.

OTHER BUDGET, APPROPRIATIONS NEWS

- **President's FY 2013 Budget Release.** The release of the President's FY 2013 Budget Proposal has been re-scheduled to February 13.
- **Senate Budget Committee Plans for FY 2013 Budget Resolution.** Following Republican criticism of the Senate Majority for not adopting a budget in recent years, Senate Budget Committee Chairman Ken Conrad (D-ND) announced on Tuesday, January 24 that his committee would hold a markup of a FY 2013 budget resolution in March. Although both Chairman Conrad and Majority Leader Harry Reid (D-NV) noted that the enactment of the Budget Control Act of 2011 (P.L. 112-25) – and the discretionary spending caps designated therein – negates the need for a budget resolution, the measure may be utilized as a vehicle for deficit reduction, tax overhaul, and/or entitlement reform instructions.

Education

STATE OF THE UNION

The President's State of the Union address included proposed reforms to K-12 and higher education, including:

- **Compulsory Attendance.** The President proposed that all States should require students to attend high school until they graduate or turn 18-years-old.
- **Student Loan Interest Rates.** The President asked Congress to pass legislation that would delay the interest rate increase on subsidized Stafford student loans for one year. This summer, the interest rates are set to double from 3.4 percent to 6.8 percent.
- **Work-Study Jobs.** The President called on Congress to double the number of career-related work-study jobs.
- **Tax Credits.** The President asked Congress to implement permanent tax credits that support up to \$10,000 over four years of college. The current tax credits will expire in 2012.

LEGISLATIVE ACTIVITY

- **Roundtable on For-Profit Schools and Announcement of the "Protecting Our Students and Taxpayers Act."** On Monday, January 23, Senator Richard Durbin (D-IL) hosted a forum in Chicago, Illinois to examine the recruiting and marketing towards service members and veteran students by for-profit schools.

Senator Durbin also announced the "Protecting Our Students and Taxpayers Act" (S. 2032), which would rollback the current 90-10 calculation to 85-15. Under the modified calculation, for-profit schools would only be permitted to count 85 percent of Title IV funding as a revenue source, as opposed to 90 percent. The bill would also include all federal funds in calculation of the 85 percent, including G.I. benefits and Tuition

Assistance Program funding. Currently, such federal aid is excluded from the 90 percent calculation. Senator Tom Harkin (D-IA) is an original co-sponsor of the bill.

- **Bill to Reduce Interest Rates on Subsidized Stafford Loans.** On Wednesday, January 25, Representative Joe Courtney (D-CT) introduced legislation (H.R. 3826) to make permanent the 3.4 percent interest rate for Federal Direct Subsidized Stafford Loans by eliminating the existing sunset provision (July 1, 2012) under the Higher Education Act of 1965. In 2007, the College Cost Reduction and Access Act lowered subsidized Stafford student loan rates from 6.8 percent to 3.4 percent over a four-year period.

REGULATORY ACTIVITY

- **Blueprint for Keeping College Affordable and Within Reach for All Americans.** On Friday, January 27, President Obama unveiled a proposal to address the rising costs of college. The proposal consists of the following:
 - **Student Aid.** The proposal would create a new formula that shifts campus-based aid (i.e., Work Study and Perkins Loans) from colleges and universities with rising tuition to those institutions that offer relatively lower net tuition prices or restrain tuition growth, a good value in education, and ensure that higher numbers of low-income students complete their education. Those colleges and universities that do not meet the proposed criteria will receive less federal aid under the proposed formula. The proposal would also increase the amount of campus-based aid to \$10 billion annually.
 - **Race to the Top for College Affordability and Completion.** The proposal creates incentives for States to restructure State financing systems for their public colleges and universities, align entry and exit standards with K-12 education to facilitate on-time completion, and maintain adequate levels of funding for higher education. The proposal would fund this Race to the Top program at \$1 billion.
 - **The First in the World Competition.** The proposal would provide \$55 million to enable individual colleges and universities, including private colleges, Minority-Serving Institutions, and nonprofit organizations, to develop, validate or scale up strategies for increasing productivity and enhancing quality on campuses.
 - **Parent and Student Education.** The proposal would create a College Scorecard for all degree-granting institutions, as well as look to collect earnings and employment information for colleges and universities. Under the proposal, the Department of Education would require colleges and universities to make available their financial aid packages through a “Financial Aid Shopping Sheet.” Currently, colleges and universities can use the template voluntarily. The Department of Education unveiled the tool in October 2011.

Energy

LEGISLATIVE ACTIVITY

- **FY2013 Budget Proposal.** The Administration’s FY 2013 budget proposal — to be transmitted to Congress on February 13, one week after the statutory deadline for submission — is expected to include temporary

proposals to extend \$5 billion worth of clean energy tax credits, including the Advanced Energy Manufacturing Tax Credit and the Production Tax Credit. Consistent with a point made in his State of the Union Address, the President also is likely to call for the repeal of all tax preferences that benefit the oil and gas industry, including the section 199 deduction and the write off for intangible drilling expenses. While Members of Congress will be under significant pressure to extend expired or expiring green energy tax credits, it will be difficult in the near-term to secure the funding to “pay for” their extension given budgetary constraints and disparate regional interests in an election year.

- **Congressional Hearings.** On Tuesday, January 31, the Senate Energy and Natural Resources Committee will receive testimony on the U.S. and global energy outlook for 2012. On Wednesday, February 1, a House Energy and Commerce subcommittee will consider recommendations of the Blue Ribbon Commission on America’s Nuclear Future; and a House Science, Space, and Technology subcommittee will hold a hearing to examine the Environmental Protection Agency’s (EPA) approach in its draft research report on the Pavillion, Wyoming groundwater contamination investigation that its local residents believe is linked to hydraulic fracturing activities. On Thursday, February 2, the Senate Energy and Natural Resources Committee will also receive testimony on the Blue Ribbon Commission on America’s Nuclear Future’s final report.

REGULATORY ACTIVITY

- **Electric Transmission.** Comments, data and information on the Department of Energy’s (DOE) proposed coordination rule on Federal Authorizations for Electric Transmission Facilities will be accepted through February 27.
- **PACE.** Comments on the Federal Housing Finance Agency’s Advance Notice of Proposed Rulemaking regarding mortgage assets affected by Property Assessed Clean Energy programs are due March 26; the Agency also intends to prepare an Environmental Impact Statement to address potential environmental impacts. The Agency is seeking comment to help address its concerns with state and local government-sponsored home energy improvement programs. The action complies with a California District Court-ordered preliminary injunction, pending the Agency’s appeal to the Ninth Circuit Court of Appeals. Note that, while the Ninth Circuit has stayed a portion of the original order requiring a final rule, FHFA may withdraw this notice should it prevail in its appeal.
- **OCS Lease Sale.** In his State of the Union Address, the President indicated that he would increase the acreage available offshore for oil and gas production. The Bureau of Ocean Energy Management (BOEM) plans to hold a new consolidated lease sale covering 7,250 unleased blocks over 38 million acres in the Central Gulf of Mexico Planning Area on June 20. Lease Sale 216/222 is the last remaining sale scheduled in the 2007-2012 OCS Oil and Natural Gas Leasing Program. Note that BOEM has increased the minimum deepwater bid amount to \$100/acre (up from \$37.50) in an effort to ensure a fair return for taxpayers and incentivize leaseholders to develop leased blocks.
- **OCS Scientific Committee.** BOEM will host a plenary session in Reston, Virginia on February 8-9.
- **Hydraulic Fracturing.** The comment period for EPA’s draft “Investigation of Ground Water Contamination near Pavillion, Wyoming” research report has been extended 45 days to March 12.

Environment

LEGISLATIVE ACTIVITY

- **EPA Science.** On Friday, February 3, the House Committee on Science, Space and Technology, Subcommittee on Energy and Environment will hold a hearing concerning fostering science at the U.S. Environmental Protection Agency (EPA).
- **Ground Water.** On Wednesday, February 1, the House Committee on Science, Space and Technology, Subcommittee on Energy and Environment will hold a hearing concerning EPA hydraulic fracturing research. The hearing will focus on the EPA's approach to ground water research.

REGULATORY ACTIVITY

- **Water Pollution.** The EPA announced the release of a new tool that provides the public with information about pollutants that are released into local waterways. The Discharge Monitoring Report (DMR) Pollutant Loading Tool combines records and enables searching and mapping of water pollution by local area, watershed, company, industry sector and pollutant. The tool is intended as an aid for states, local municipalities and the public in planning for the protection of the health of their communities. Searches using the DMR Pollutant Loading Tool result in "top ten" lists to help users identify facilities and industries that are discharging the most pollution impacted water bodies. When discharges are above permitted levels, users can view details about enforcement actions that EPA and states have taken to address violations. A link to the DMR Pollutant Loading Tool can be found on EPA's Enforcement and Compliance History Online (ECHO) website, which provides information about inspections, facility compliance, and state and federal enforcement actions.
- **Wind Power.** On February 15, the U.S. Department of Energy (DOE) will hold a webinar as part of the DOE's "Wind Powering America 2012" webinar series. The webinar will provide a review of some of the outcomes of DOE's recent workforce development projects which focused on creating educational opportunities to prepare students across the country for jobs in the wind energy industry. The webinar is free and no registration is required. Log-in for the webinar [here](#).
- **BLM Resource Advisory Council.** The U.S. Department of Interior's Bureau of Land Management (BLM) is requesting public nominations for BLM's Resource Advisory Councils (RAC) that have member terms expiring this year. The RACs provide advice and recommendations to the BLM on land use planning and management of the National System of Public Lands within their geographic areas. The RACs include the following three membership categories:
 - Category One — Holders of Federal grazing permits and representatives of organizations associated with energy and mineral development, timber industry, transportation or rights-of-way, developed outdoor recreation, off-highway vehicle use, and commercial recreation;

- Category Two — Representatives of nationally or regionally recognized environmental organizations, archaeological and historic organizations, dispersed recreation activities, and wild horse and burro organizations; and
- Category Three — Representatives of state, county, or local elected office, employees of a state agency responsible for management of natural resources, representatives of Indian tribes within or adjacent to the area for which the council is organized, representatives of academia who are employed in natural sciences, and the public-at-large

Nominees must be residents of the state in which the RAC has jurisdiction. RACs are currently accepting nominees for the states of Alaska, Arizona, California, Colorado, Idaho, Montana, North Dakota, South Dakota, Nevada, New Mexico, Oregon, Washington and Utah. All nominations must be received no later than March 12.

Financial Services

LEGISLATIVE ACTIVITY

- **Senator Gillibrand Questions Volcker Rule.** On Wednesday, January 25, Senator Kirsten Gillibrand (D-NY) sent a letter to prudential Federal regulators expressing concerns with the proposed Volcker Rule, which would impose prohibitions and restrictions on the ability of banks and systemically important nonbank financial companies from engaging in proprietary trading and certain interests in hedge funds or private equity funds.
- **Senate Banking Committee to Discuss Cordray Appointment.** On Tuesday, January 31, the Senate Banking Committee will hold a hearing titled “Holding the CFPB Accountable: Review of First Semi-Annual Report.” Richard Cordray, the recently-appointed Director of the Consumer Financial Protection Bureau, will testify.
- **House Subcommittee to Consider Manufactured Housing.** On Wednesday, February 1, the House Financial Services Subcommittee on Insurance, Housing and Community Opportunity will hold a hearing to review efforts by the Department of Housing and Urban Development (HUD) to implement the Manufactured Housing Improvement Act of 2000. Witnesses will include Henry Czauski, HUD Acting Deputy Administrator for Manufactured Housing Programs; John Bostick, Chairman, Manufactured Housing Association for Regulatory Reform; Ishbel Dickens, Executive Director, Manufactured Home Owners Association of America; Edward Hussey, Immediate-Past Chairman, Manufactured Housing Association for Regulatory Reform; Dana Roberts, Past Chairman, Manufactured Housing Consensus Committee; and Manuel Santana, on behalf of the Manufactured Housing Institute.
- **House Subcommittee to Discuss Bank Examination Legislation.** On Wednesday, February 1, the House Financial Services Subcommittee on Financial Institutions and Consumer Credit will hold a hearing on the Financial Institutions Examination Fairness and Reform Act (H.R. 3461) sponsored by Subcommittee Chairman Shelley Moore Capito (R-WV) and Ranking Member Carolyn Maloney (D-NY).
- **House Subcommittee to Hold MF Global Hearing.** On Thursday, February 2, the House Financial Services Subcommittee on Oversight and Investigations will continue its investigation into the collapse of MF Global with a hearing to address how MF Global managed risk, how this risk was disclosed to investors and

customers, and how credit rating agencies evaluated this risk. The Subcommittee held an earlier hearing looking into the collapse of MF Global on December 15, 2011.

REGULATORY ACTIVITY

- **CFTC Staff to Host Roundtable on Swaps “Available to Trade.”** On Monday, January 30, the Commodity Futures Trading Commission (CFTC) will hold a public roundtable to discuss the proposed regulations to implement the “available to trade” provision of the trade execution requirement in the Dodd-Frank Act.

Health Care

LEGISLATIVE ACTIVITY

- **Doc Fix/Health Extenders.** The formal Conference Committee held its first public meeting this week to reconcile differences between the two bodies and parties on the legislation prior to the expiration of the existing two-month extension. There appears to be general consensus that the provisions should be extended for at least one year and that the parties should work together to ensure this occurs. Much of the discussion in the coming month will likely focus on the differences with regard to offsets, with many of the revenue provisions from previous deficit reduction proposals — including potential hospital and Medicaid cuts — forming the basis for negotiations. Other, more partisan measures, such as those favored by Republicans in the House-passed version of this bill and the millionaires surtax favored by Democrats, will also be considered alongside these existing proposals. The next Committee meeting will occur Wednesday, February 1, and should explore in greater depth some of the specific policies and pay-fors that will make up the legislation.
- **Senate Finance Hearing.** On Tuesday, January 31, the Senate Committee on Finance will hold a hearing on “Extenders and Tax Reform: Seeking Long-Term Solutions.”
- **Energy and Commerce Hearing.** On Wednesday, February 1, the House Energy and Commerce Health Subcommittee will hold a hearing on the reauthorization of the Prescription Drug User Fee Act, which expires on September 30. Under the user fee authority, FDA collects funds from industry to help expedite the human drug approval process. To date, Dr. Margaret Hamburg, Commission of the Food and Drug Administration (FDA) will testify, with additional witnesses to be announced.
- **House VA Hearing.** On Wednesday, February 1, the House Committee on Veterans’ Affairs will hold a hearing titled “Examining VA’s Pharmaceutical Prime Vendor Contract.”
- **Energy and Commerce Hearing.** On February 7, the House Energy and Commerce Health Subcommittee will hold a hearing on the new Generic Drug User Fee proposal and Biosimilar User Fee proposal, which will bring additional funds to FDA to help alleviate the backlog of generic drug applications. Members will also continue to discuss the ongoing issue of drug shortages. Dr. Janet Woodcock, Director of the Center for Drug Evaluation and Research, Food and Drug Administration is scheduled to testify, with additional witnesses to be announced.
- **Energy and Commerce Hearing.** On February 15, the House Energy and Commerce Health Subcommittee will hold a hearing on the reauthorization of the Medical Device User Fee Act, which expires on September

30. These user fees fund FDA's premarket device applications. Dr. Jeffrey Shuren, Director, Center for Devices and Radiological Health of the Food and Drug Administration will testify.

REGULATORY ACTIVITY

- **FDA Reopens DTC Rule Comment Period.** The Food and Drug Administration (FDA) announced that it will reopen the comment period on specific data related to a proposed rule published on March 29, 2010 to establish standards that would be considered in determining whether the major statement in direct-to-consumer (DTC) television and radio advertisements relating to the side effects and contraindications of an advertised prescription drug is presented in a clear, conspicuous and neutral manner. At issue is a study released by the FDA in June 2011 that found adding visual components to drug industry television ads helps consumers understand the potential harms without undermining information about a drug's benefits. Stakeholders have 30 days to comment on the study and its potential impact on the final rule.
- **Essential Health Benefits Update.** As a follow-up to last month's guidance on Essential Health Benefits (EHBs), the Department of Health and Human Services (HHS) released a bulletin listing the three largest small group products (by enrollment) in each state. The list is intended to help states determine a benchmark plan for EHBs. HHS also announced that it will not push back the Tuesday, January 31 deadline for comments on the EHB informational bulletin released in December 2011, however, the Department has noted that it will continue to accept comments after that date because it is not part of the official rulemaking process.

International, Defense, Homeland Security

- **State of the Union Analysis.** President Obama essentially opened his State of the Union address on Tuesday by going on the offensive on foreign policy issues, citing the successful mission to kill Osama bin Laden and the full withdrawal of U.S. combat troops from Iraq. Later in the speech, the President circled back to highlight progress against the Taliban in Afghanistan and al Qaeda in Pakistan; bipartisan Congressional passage of the free trade agreements with Panama, Colombia and South Korea; strong U.S. alliances in Europe and Asia; and NATO's role in toppling Moammar Gadhafi in Libya. Although President Obama did not dwell on how the Administration and Congress should address a number of other lingering national security and trade issues, from ongoing violence in Syria and Mexico to Permanent Normal Trade Relations for Russia to the Euro crisis and beyond, the White House and Chicago nevertheless clearly view foreign affairs as a significant (and, in a candid moment, maybe even unanticipated) source of strength as the President begins his re-election campaign. The Iraq withdrawal message serves as a key case in point. Although the Republican Congressional Leadership and conservative GOP primary voters may lament what they view as leaving a mission unfinished, as Iraq struggles with ongoing inter-ethnic strife, polling suggests that political independents, crucial to the President's re-election calculus, strongly support the withdrawal, following almost nine years of a U.S. troop presence in Iraq.
- **Defense Budget Developments.** Not surprisingly, President Obama also used the State of the Union speech to frame the Administration's proposed cuts to the defense budget in the most favorable light possible. The President said, "...working with our military leaders, I've proposed a new defense strategy that ensures we maintain the finest military in the world, while saving nearly half a trillion dollars in our budget." Leading

Republicans, including House Armed Services Committee (HASC) Chairman Buck McKeon (R-CA), have sharply criticized the Administration's proposed one percent reduction in the defense budget for FY 2013, as well as the almost \$500 billion in automatic cuts under the sequestration process. Some key Democrats, including Defense Secretary Panetta and Senate Armed Services Committee (SASC) Chairman Carl Levin (D-MI), appear open to a deal to avoid or mitigate sequestration, but they have balked at Republicans' refusal to partially or fully pay for it with revenue increases. Expect intermittent negotiations on the issue throughout 2012, with a compromise reached only closer to the sequestration deadline of January 2, 2013. In parallel, the SASC, HASC, Budget and Appropriations Committees will debate the proposed FY 13 cuts, with budget hearings starting in February. The Administration has proposed reductions to almost all parts of the defense budget, other than cybersecurity and the Special Operations Command, so it is not surprising that lobbying for and against the individual components is well underway.

Tax

LEGISLATIVE ACTIVITY

- **House and Senate Begin Conference on Payroll Tax/Unemployment Insurance/Doc Fix Legislation.** On January 24, the House and Senate began conferencing on the payroll tax, unemployment insurance and Medicare physicians payment fix – or the so-called “doc fix” – legislation. In December, Congress passed a fully-offset, two-month extension of the bill. As part of the two-month deal, the House and Senate agreed to conference on House-passed legislation that would extend all three provisions through the end of 2012 at an approximate cost of \$150 billion (for a 10-month extension). The measure was offset by an increase in fees charged by Fannie Mae and Freddie Mac to lenders. The bill also included a provision forcing the Administration to make a decision on the Keystone XL Pipeline within 60 days. (For the time being, the President has rejected the pipeline proposal, arguing that the 60 day deadline leaves too little time for State Department review of the project.)

While there has been strong partisan divide on this issue, most Congressional Republicans acknowledge the need to come to agreement on a final bill prior to the end of February, when the current two-month extension expires. The major issues in controversy involve how (and if) to pay for the cost of the legislation. House and Senate Republicans have insisted the legislation be fully offset with spending cuts, while Senate Democrats, and the President, do not necessarily agree that the legislation needs to be offset – arguing that it ought to be financed by a combination of tax and fee increases. In his State of the Union Address, the President noted that “[t]here are plenty of ways to get this done” and urged Congress to act without raising side issues, without drama, and without delay.

While the conference committee could decide to address additional issues, there will be pressure not to exceed the scope of the House and Senate bills being conferenced. Although not likely, additional tax provisions (such as the just-expired 2011 tax “extenders”) could be included in a final conference report. However, should the conferees determine to pay for the bill, which seems likely, the addition of items, such as “extenders” (costing approximately \$30 billion), will make it considerably more difficult to offset the legislation.

The conference committee is tentatively scheduled to hold its next meeting on Wednesday, February 1.

- **Senate Permanent Subcommittee on Investigations Hearing on Compliance with Tax Limits on Mutual Fund Commodity Speculation.** On Thursday, January 26, the Subcommittee held a hearing to discuss

private letter rulings (PLRs) issued by the Internal Revenue Service (IRS) that have permitted mutual funds to use offshore shell corporations and complex financial instruments to increase commodity speculation beyond limits in the Tax Code. Subcommittee Chairman Carl Levin (D-MI) called the PLRs a “blatant end-run around the legal restrictions,” and argued the IRS should revoke existing PLRs and make permanent its current temporary moratorium halting additional PLRs. IRS Commissioner Douglas Shulman defended IRS practices, but added that the IRS has an “open mind” on the issue and plans to take a “fresh look” at reviewing the question. Treasury Acting Assistant Secretary for Tax Policy Emily McMahon also noted that the Treasury Department and IRS are considering the possibility of issuing published guidance on the subject of commodity-related investments by registered investment companies.

- **Tax Hearings Next Week.** The following hearings are scheduled next week in the House Ways & Means and Senate Finance Committees:

Tuesday, January 31: Senate Finance Committee hearing on “Extenders and Tax Reform: Seeking Long-Term Solutions”

Wednesday, February 1: House Ways and Means Subcommittee on “Oversight hearing on Harbor Maintenance Funding and Maritime Tax Issues”

Thursday, February 2: House Ways and Means Subcommittee on Social Security hearing on “Social Security’s Death Records”

REGULATORY ACTIVITY

- **IRS Signals End of Month Release of FATCA Proposed Rules.** Earlier this month, an IRS official indicated that proposed regulations under the Foreign Account Tax Compliance Act (FATCA) should be issued by the end of the month. However, as the month draws to a close, the predicted release of the proposed regulations appears less likely. Enacted in 2010 as part of the Hiring Incentives to Restore Employment (HIRE) Act, FATCA imposes broad requirements on foreign financial institutions to report U.S.-owned accounts to the IRS. The IRS already has issued three major pieces of guidance under the statute: Notice 2010-60, Notice 2011-34 and Notice 2011-53.

Transportation

LEGISLATIVE ACTIVITY

- **FAA Reauthorization.** Almost five years to the day after President George W. Bush transmitted his FAA reauthorization proposal to Congress and 22 short-term extensions later, a breakthrough deal was struck in the week leading up to the State of the Union Address, paving the way for Congress to take up and finally enact a multi-year FAA reauthorization bill. With the current extension set to expire on Tuesday, January 31, the House and Senate passed another final short-term extension through February 17, providing Congress with time to bring up and send the compromise bill to the President.
- **SAFETEA-LU Reauthorization.** More details about the House transportation bill became available this week with the unofficial release of documents summarizing the “American Energy & Infrastructure Jobs Act.” According to the summary, the bill reauthorizes highway and transit programs for five years at around \$52

billion per year, for a total of \$260 billion – with revenues coming from new oil and gas production. House Transportation and Infrastructure Committee Chairman John Mica (R-FL) told reporters this week that he is still pushing for a six-year bill. The full draft of the legislation may come out as early as Friday, January 27 with the Committee intending to hold a markup on Thursday, February 2.

AGENCY ACTIVITY

- **New Starts/Small Starts.** During his State of the Union Address on Tuesday night, President Obama called on federal agencies to cut red tape in construction projects. One way the U.S. Department of Transportation is responding to this request is through the Federal Transit Administration's (FTA) Notice of Proposed Rulemaking (NPRM) to streamline the evaluation and rating of New Starts and Small Starts projects. The streamlined proposal plans to reduce or eliminate certain time-consuming technical requirements that are considered duplicative or unnecessary and give greater emphasis to evaluation criteria concerning environmental benefits and local economic impact. A 60-day public comment period on the proposed rule is now open. Comments may be formally submitted to the federal government's docket website at Regulations.gov. FTA also plans to hold a number public listening sessions and an online informational webinar; details will be announced in a future Federal Register notice.