Brownstein Hyatt
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# 2014 Washington Outlook

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## Overview

**The Continuing Appropriations Act of 2014.** The three-year debate over implementation of the *Affordable Care Act* (ACA) came to a climax in late September, forcing the third-longest federal government shutdown in history. However, the end result of the feuding yielded arguably the most important legislating in the first session of the 113th Congress. After a close vote in the House, the Senate passed and President Obama signed the *Continuing Appropriations Act, 2014* (H.R. 2775). The bipartisan deal reopened the federal government, raised the debt ceiling and laid the groundwork for budget negotiations that dominated the conversation in Washington through the end of the year.

**The Bipartisan Budget Act of 2013.** Less than two months later and three days ahead of deadline, budget conferees emerged with a bipartisan deal to help ease sequester cuts and establish topline funding levels for FY2014 and FY2015. Specifically, the *Bipartisan Budget Act of 2013* set overall discretionary spending for the current fiscal year at $1.012 trillion, which is about halfway between the Senate budget level of $1.058 trillion and the House budget level of $967 billion. The agreement also provided $63 billion in sequester relief over two years, split evenly between defense and non-defense programs. The sequester relief was fully offset, primarily by savings from dozens of specific user-fee provisions, with mandatory savings and non-tax revenue totaling approximately $85 billion. The agreement also reduces the deficit by about $23 billion over 10 years and includes a three-month sustainable growth rate (SGR) patch to avert a 20.1 percent cut in Medicare doctor payments.

**Appropriations.** Perhaps most importantly, the budget agreement set the stage for appropriators to craft an omnibus spending bill that funds the government through the end of the fiscal year. In the end, the $1.1 trillion package of all 12 regular appropriations bills passed both chambers with ease only 72 hours after being introduced and was signed into law by President Obama on January 17. As with every appropriations package, the *Fiscal 2014 Consolidated Appropriations Act* had its fair share of winners and losers. The law gives a boost to early-education funding, delays premium increases for flood insurance coverage, and restored a controversial cut in the cost-of-living adjustments for some veterans. However, the Pentagon rules the day, as it will now have greater flexibility to address critical near-term readiness needs and can embark on “new program starts” that had been precluded by a Continuing Resolution, including multiyear buys of ships and aircraft.

**Short-lived Bipartisanship.** While legislators finally reached a bipartisan agreement on appropriations for fiscal year 2014, that bipartisan atmosphere may quickly dissipate. Democrats and Republicans will face off on a few high-profile issues during the first half of next year, and chief among them is raising the debt ceiling. During this debate, Republican demands for accompanying spending cuts and Democrats positioning for a “clean” increase will likely result in another round of congressional brinkmanship. In addition, expect friction as the majority party of each chamber pulls the reins toward their respective election-year agendas.

**Senate Agenda.** In the Senate, Majority Leader Harry Reid (D-NV) will push a populist agenda that focuses on income inequality and the disappearing middle class. In addition to continuing to push for a one-year extension of federal unemployment benefits that lapsed on January 1 for an estimated 1.3 million American beneficiaries, he will also argue for an increase in the minimum wage and “equal pay for equal work.” Immigration reform will also continue to be a hot topic for the left.

**House Agenda.** In the House, Majority Leader Eric Cantor (R-VA) has outlined an election-year agenda that includes: (1) incentivizing job creation; (2) Obamacare repeal messaging; (3) debt spending solutions; (4) education reform, focused primarily on expanding access to charter schools; and (5) reducing home energy costs. Budget Committee Chairman Paul Ryan (R-WI), in a speech at the Brookings Institution this month, touched on many of these points. He argued that the federal government should "get out of the way" and stop discouraging job creation. As the favorite for the next Ways and Means chairman, Ryan also discussed the need to reform and reduce taxes, while making sure that government benefits for the poor are not abruptly shut off as their income rises.

**2014 Expectations.** Despite the certainty that both chambers will push election-year policies in advance of the midterm elections this November, members are still likely to come together around a few outstanding issues during the first half of 2014. For example, farm bill negotiators are expected to unveil their conference report when members return from recess on January 27. The deal, which makes monumental reforms to agriculture and nutrition programs, could pass both chambers before the end of the month. In addition, both chambers will seek to pass a permanent sustainable growth rate (SGR) fix before the end of March, though finding nearly $150 billion in offsets for the policy initiative will be difficult. Trade agreements and tax reform will also continue to be areas were members seek a compromise, though debate on the latter is far less likely to reach a conclusion this year.

## Tax Reform Outlook

**Michael B. Levy**

*"Tax reform has winners and losers. It's not so much fun as it looks. Even if there is no legislation passed, you don't want to be caught in a bad proposal."*

Michael was the assistant secretary of legislative affairs for the U.S. Department of the Treasury and senior advisor to Treasury secretaries Robert Rubin and Lloyd Bensten. In addition to his time at the Treasury and on Capitol Hill, Michael served 20 years as a Distinguished Teaching Professor at the Georgetown University's McDonough School of Business.

**Barry Jackson**

*"There's bipartisan consensus on the importance of tax reform for competitive, growth and fairness reasons and the pressure to get something done continues to build. Translating those ideas into legislation requires a good read not only of what's possible, but creative thinking on how to navigate the politics and process."*

Barry served as chief of staff for Speaker of the House John Boehner (R-OH) from 2010 to June 2012 after serving as Speaker Boehner's first chief of staff from 1991 through 2001. From 2001 to 2009, Barry served in the White House of President George W. Bush as assistant to the president directing the offices of Public Liaison, Intergovernmental Affairs, Political Affairs and Strategic Initiatives.

**Additional Members of Brownstein's Tax Reform Team**

**Carmencita N. M. Whonder**

**Manuel Ortiz**

**Makan Delrahim**

**Marc S. Lampkin**

**Elizabeth A. Maier**

**Bipartisan Budget Conference.** Despite pleas from many in the corporate community, the bipartisan budget conference did not address tax reform. Nonetheless, Senate Finance Committee Chairman Max Baucus (D-MT) and House Ways and Means Committee Chairman Dave Camp (R-MI) invested significant time in 2013 laying the groundwork for tax reform. This included working groups, options papers, draft proposals, and even a "Max and Dave" tour of the country to generate public support for their efforts. Despite these efforts, neither formally introduced tax reform legislation prior to the holiday recess. With Chairman Baucus's nomination to be ambassador to China, the window for comprehensive tax reform in this Congress is closed.

**Senate Proposals.** During the first half of 2013, the Senate Finance Committee unveiled a series of tax reform options papers, which were followed by the chairman's release of four discussion drafts that addressed international tax, administration of tax laws, cost recovery and tax accounting rules, and energy policy. The drafts have been criticized by some industries concerned that their tax preferences will be ignored while Congress also fails to lower adequately the overall corporate rate. For example, Baucus's energy proposal would eliminate half of the current energy tax breaks, effectively repealing 11 fossil fuel and clean energy provisions.

The international tax reform draft proposal has been especially criticized by many multinational corporations for not making a clean transition from "worldwide" to "territorial" taxation, which many Republicans have demanded but the administration has been cool to supporting. There is also more broad concern in multiple industries over changes to valuable depreciation schedules, as Baucus proposed slowing the rate at which companies can write off the cost of investments, effectively favoring past investments over future investments. Several senators have expressed concern over this issue and are reportedly preparing "Dear Colleague" letters in an effort to protect constituent businesses. As none of the Baucus drafts offer a new corporate rate structure, support from presumptive "winners" has not offset criticism from presumptive "losers." That being said, Chairman Baucus has promised the release of additional drafts before his departure.

**Wyden Taking the Gavel.** When Baucus leaves Congress in February, Sen. Ron Wyden (D-OR) will likely become chairman of the Finance Committee. While the committee's reconfiguration will delay action on tax reform in the near-term, Wyden will likely continue the broader push for reform. Having introduced the *Bipartisan Tax Fairness and Simplification Act* last Congress with Sen. Dan Coats (R-IN), Wyden has a long record, and different perspective, on tax reform. Their proposal would reduce the number of individual income tax brackets from six to three and nearly triple the standard tax deduction. The duo also proposed reducing the statutory 35 percent corporate tax rate and allowing for a one-time repatriation of business income earned overseas. Wyden's ascension is also viewed as a positive for the renewable energy industry and bolsters the odds that the embattled Production Tax Credit (PTC), which benefits the wind industry, will be extended.

**House Proposals.** Chairman Camp continues to host closed-door, member-only meetings, in which he shares a PowerPoint presentation that outlines the parameters and options for tax reform. Camp is term-limited as chairman and, in an effort to find compromise, is considering changes to popular deductions for mortgage interest and charitable gifts. He may even consider taxing capital gains at ordinary income rates in return for a 25 percent top rate. Changes to the tax preferences for carried interest and foreign investment in the U.S. real estate market may also be included in the final proposal, which Rep. Paul Ryan indicated could be the committee's first order of business in Q1 2014. In the event some provisions are not incorporated in the proposal, they will likely be debated as amendments to the bill during any committee markup.

**2014 Expectations.** The prospects for tax reform this Congress were bogged down from the start, as the December 2012 fiscal cliff deal raised the highest individual rate and adjusted the Alternative Minimum Tax (AMT), which diminished the incentive for some senators to push for tax reform. As highlighted above, little room exists for agreement on the structure of tax reform, as was clearly displayed during the March budget debate. The House Republican budget included $4.6 trillion in spending cuts with a tax reform plan that lowered the corporate tax rate to 25 percent whereas the Senate Democratic budget included $1.85 trillion in deficit reduction with nearly $1 trillion coming from unspecified tax increases. The House leadership's reluctance to address tax reform in 2013 further dampens expectations for a comprehensive bill in 2014.

Nonetheless, with Baucus's looming exit, the House Ways and Means Committee is now better positioned to act first in 2014. As the basic framework for tax reform has yet to be determined, we do not expect a serious bicameral effort to occur until the "lame duck" session after the 2014 midterm elections, if at all. The driver for action in December will be the need to act on the package of tax deductions and incentives that lapsed at the end of 2013, commonly referred to as "tax extenders." Little pressure exists to act on these tax breaks until the end of 2014 as they can be extended retroactively, as they have in the past. That being said, tax extenders may be addressed sooner given Baucus's upcoming departure.

While the extenders package could serve as a vehicle for comprehensive tax reform, broader efforts will likely carry over to the 114th Congress, especially if the midterm elections change the majority governing party in either chamber. Additionally, Rep. Paul Ryan is vying to become the next chairman of the Ways and Means Committee, which could bolster the prospects for comprehensive tax reform as he has recently emerged as a consensus builder and maintains a working relationship with Wyden (the pair previously worked together and introduced a plan to reform Medicare).

## Immigration Outlook

**Elizabeth Maier**

*"This could be the year that several new and substantial immigration bills, not only reauthorizations of existing laws, pass the Congress and are signed into law by the president. Our team looks forward to working to ensure that common sense proposals that respond to the needs and perspectives of clients are integrated into any legislative solution."*

Elizabeth served 10 years as Sen. Jon Kyl's (R-AZ) legislative director, working with Senate Republican leadership developing strategies to advance the senator's overall legislative agenda and was also the primary staffer for immigration and border security.

**Manuel Ortiz**

*"With the advent of the new legislative session, there is renewed optimism about the prospects of achieving incremental progress on immigration reform. A growing number of House members, including those in leadership positions, are committed to solving the most pressing and vexing immigration issues to forge a workable pathway. Further, the chances to achieve success have been further enhanced by the increased willingness among the most ardent reform advocates and the Obama White House to embrace incremental reforms."*

Manny is nationally recognized for his work to advance the interests of U.S. territories and foreign governments with federal agencies, Congress and the White House. He previously served as a close aide to then-Sen. John Kerry during his presidential run in 2004. Manny maintains his unwavering relationships with the administration through his integral role as a founding member of Business Forward, the White House private sector outreach platform.

**Additional Members of Brownstein's Immigration Team**

**Barry Jackson**

**David P. Cohen**

**William E. Moschella**

**Marc S. Lampkin**

**John Sonsalla**

**Legislative Movement.** Last summer, over two-thirds of the U.S. Senate, including 14 Republicans, voted to pass the *Border Security, Economic Opportunity, and Immigration Modernization Act*. The broad-based proposal addressed all aspects of the immigration process and, among other provisions, included language to: increase security at the border, change the family and employment-based visa categories, increase the availability of nonimmigrant, temporary workers, and establish a process for granting a legal status to the estimated 10–11 million undocumented immigrants currently residing in the U.S.

Passage of the Senate bill was supported by businesses, labor, and immigration activists. House Republican leadership, however, which must deal with its own set of challenges related to immigration reform efforts, will instead likely consider several smaller immigration-related bills in 2014. The difficulty for the House in reaching consensus on anything other than several small but substantive bills was illustrated last year when the bipartisan "Group of Eight" in the House dissolved after months of attempting to formulate their own comprehensive proposal. House Republicans have currently passed five substantive immigration bills out of the Judiciary Committee that address various aspects of the U.S. immigration system, including border security and enforcement, worker verification, and high-skilled and agricultural worker visas.

**All Eyes on the House.** Despite the slower pace last year in the House, a renewed sense of energy, and cautious optimism, now exists among business leaders, congressional staff and others about the prospects for immigration reform. It appears, based on recent actions by Speaker of the House John Boehner (R-OH) and Majority Leader Eric Cantor (R-VA), the House Republican leadership is participating in immigration reform efforts and planning now to prepare for legislative action in 2014. In fact, it is anticipated that House leadership will soon unveil a set of "standards" that reflects what leadership (and, likely many other House Republicans) believe about how to help make our immigration systems and processes responsive to American labor needs and the American people.

**Room to Breathe.** It also appears that the White House is prepared to give House Republican leadership the leeway it needs to push several smaller immigration bills forward. It is also becoming clearer than it ever has been among interest groups and other immigration shareholders that in order to increase the chances for passage of immigration reform, that some preconceived positions on issues will have to be abandoned—that is, that all who care about reform will have to be flexible and willing to be realistic about what ends up in a proposed immigration package. In fact, in a recent speech in San Francisco, President Obama said that as long as immigration reform is accomplished, "he is not concerned whether it is done by one comprehensive bill or multiple piecemeal bills."

**The Tallent Effect.** Reform advocates have seized on Speaker Boehner's hiring of Becky Tallent as his lead on immigration as a sign that a serious effort will occur in 2014 to get past the current impasse. She is a former legislative director to Sen. John McCain (R-AZ) and worked on comprehensive immigration legislation in 2006 and 2007. She also spent the last year as the director of the Bipartisan Policy Center's Immigration Project. We view the addition of Tallent to the speaker's office as beneficial to future negotiations on immigration bills and also potentially significant to increase the odds that a deal can be struck at some point in the near future. While her reputation and expertise give her an ability to thread the needle on reform efforts, it must be restated that Speaker Boehner will have to reconcile the divisions within his conference that already exist as a result of past efforts on immigration, and he must develop a legislative strategy designed to be responsive to immigration needs but also limit further divisions among those with differing opinions within the conference. This will obviously be a difficult undertaking.

**DREAM Act 2.0.** Majority Leader Cantor also recently said that one of his priorities next year will be "incremental improvements" to the immigration system, beginning with his KIDS Act, which would create a path to citizenship for people who were brought to the U.S. illegally when they were children (similar to the DREAM Act). It is believed the bill has been drafted but that it will not be introduced until House leadership finalizes its plans for moving several bills to the floor. Rep. Raúl Labrador (R-ID) and others are working on ideas related to lower-skill temporary workers programs and a broader legalization measure as well.

**2014 Expectations.** In terms of timing, action could occur sometime in Q1 or Q2 2014. Although some have said that action is unlikely in the run-up to the 2014 midterms, it should be noted that the last three major immigration reform bills all passed during election years, 1986, 1990 and 1996. Furthermore, because many House Republicans foresee primary challenges that might temper support for action in the first quarter of 2014, we believe that consideration of immigration bills could continue up until the August recess. As the primary season comes to a close, incumbent Republicans will have less concern that tough votes on immigration could lead to successful post-primary, general election challenges. Even before then, though, some Republicans may take independent action (in that they are not sanctioned by leadership) seeking to move the ball forward, especially those serving a large Hispanic population.

## Health Care Outlook

**Cate McCanless**

*"The Affordable Care Act will continue to dominate all health care issues in Congress during this election year, but the opportunity still exists for some meaningful legislation including the much-needed reform of Medicare doctor payments."*

Cate was an associate in the Division of Advocacy and Health Policy for the American College of Surgeons. She has also served as the senior congressional lobbyist for the American Osteopathic Association and the grassroots and political affairs manager for the American Academy of Otolaryngology.

**Alexander R. Dahl**

*"Health care companies of all types will find themselves in the crosshairs of Congress again this year, as the deficit, debt ceiling and other fiscal concerns keep Congress searching for cuts in health care spending in order to fund other priorities."*

Alex provides strategic public policy counsel and legal advice to health care companies and a variety of other clients. Prior to joining Brownstein, he served as the deputy staff director and senior counsel to the Senate Judiciary Committee for then-Chairman Sen. Orrin G. Hatch (R-UT), practiced law as a civil litigator, and worked as a criminal prosecutor in the U.S. Attorney's Office for the District of Columbia.

**Additional Members of Brownstein's Health Care Team**

**Barry Jackson**

**Judy A. Black**

**Elizabeth A. Maier**

**Juanita D. Duggan**

**Alfred E. Mottur**

**R. James Nicholson**

**Affordable Care Act (ACA) Update.** After the rocky rollout of the Healthcare.gov online health exchanges, the ACA implementation issues we will be monitoring include: the employer mandate delay until 2015 and proposed IRS rules, Small Business Health Options Program (SHOP) implementation delays until November 2014, the ongoing battle over a possible repeal of the medical device tax, nominations to the Independent Payment Advisory Board (IPAB), and how the recently passed nuclear option will impact the confirmation process.

**Sustainable Growth Rate (SGR) Repeal.** Both the House and Senate included a document fix in their budgets that would avoid the 20.1 percent cuts in Medicare doctor payments through March 2014. Both houses are currently considering repeal and replace bills for the formula used to calculate Medicare reimbursement rates for doctors. Bills have recently come out of the Senate Finance, House Ways and Means, and House Energy and Commerce committees that all repeal SGR and promote alternative payment models. Some of the targeted pay-fors include: (1) skilled nursing facilities; (2) clinical labs; (3) post-acute rate cuts or imposition of patient criteria for long-term care hospitals; and (4) changes to current Stark Law self-referral exemptions. The next step will be to merge the bills before the patch runs out, and will likely be taken up when Congress returns in January.

**340B Drug Pricing Program.** Congress has been engaged in a deeply partisan debate following the expansion of the 340B drug program after the Affordable Care Act was signed into law in 2010. After it became evident that covered entities were benefiting from the vague regulation language, Republicans urged the Health Resources and Services Administration to readdress the current eligibility standards. While the program's original expansion passed with bipartisan support, it seems that the unintended consequences caused by unclear language and broad interpretation by the agency have fostered Republican interest in the program's intended benefits. A key challenge to the expansion of this program for orphan drugs will likely be decided in a lawsuit, brought by the Pharmaceutical Research and Manufacturers Association (PhRMA) against the Department of Health and Human Services (HHS). That decision could reenergize the 340B debate on Capitol Hill in 2014.

**Trans-Pacific Partnership (TTP) Agreement.** Currently, the U.S. is involved in a free trade negotiation with Australia, New Zealand, Peru, Chile, Mexico, Canada, Singapore, Brunei, Malaysia, Vietnam and Japan in efforts to expand the Trans-Pacific Strategic Economic Partnership Agreement established in 2006. Although the negotiations have been shrouded in secrecy, leaked documents have given insight into a variety of issues of significant concern to the pharmaceutical industry, including a two-year market exclusivity period for brand-name biologic drugs, pharmaceuticals data protection, and the "medicine annex" proposal with respect to pharmaceutical pricing. While negotiations are still ongoing, the administration hopes they will conclude in early 2014.

Recently, Senate Finance Chairman Max Baucus (D-MT), Ranking Member Orrin Hatch (R-UT), and House Ways and Means Chairman Dave Camp (R-MI) released the much anticipated trade promotion authority (TPA) legislation, the *Bipartisan Congressional Trade Priorities Act of 2014*. The future of TPP is heavily tied to the success of this legislation, which will be at the forefront of the administration's 2014 agenda, but recent comments from Senate Majority Leader Harry Reid (D-NV) have cast a cloud over the prospects for this legislation. We expect debate over the trade agenda to continue throughout 2014 as Republicans and Democrats try to come to a consensus on many issues including, currency manipulation, labor rights and environmental protections.

**Patent Reform.** After receiving minimal relief from "patent trolls" following the passage of the *America Invests Act of 2011*, many, including technology companies, called on Congress to take further legislative action. In October, Rep. Bob Goodlatte (R-VA), the chairman of the House Judiciary Committee, introduced H.R. 3309, the *Innovation Act*. This legislation targets aggressive litigation tactics by proposing requirements for identification and legal fees and altering the rules of discovery. Of interest to the pharmaceutical industry, which relies heavily on patents, this bill offers to redefine the deadline for filing a patent extension. H.R. 3309 passed the House in early December, so now all eyes are on the Senate Judiciary Committee, where Chairman Patrick Leahy (D-VT) is expected to obtain committee support for similar legislation. Because there is broad, bipartisan support for such patent legislation, we believe the House and Senate will work out any differences between their two bills and ultimately pass a bill in 2014.

**Mental Health Provisions**. We expect continued attention on mental health bills, especially as the anniversaries of the Newtown school shootings and the Navy Yard shooting hold the nation's focus. Sen. Debbie Stabenow (D-MI) successfully added an amendment to the Senate Finance Committee's SGR repeal bill, titled the *Excellence in Mental Health Act.* The amendment would establish a pilot program in 10 states that would focus on criteria for certified community behavioral health clinics that cover a broad range of mental health services. On the House side, Rep. Tim Murphy (R-PA) has introduced a bill, the *Helping Families in Mental Health Crisis Act of 2013,* that takes a broad approach to mental health, including research on the shortage of mental-health care providers, and creating a new assistant secretary at HHS for mental health and substance-use disorders.

**Agency Activity in 2014.** The FDA is expected to issue guidance in the first portion of 2014 that will clarify some long-standing issues of marketing on social media by pharmaceutical companies as well as final guidance on the regulation of mobile applications as medical devices. The agency will also attempt to issue regulatory guidance on the implementation of the recently passed *Drug Quality and Security Act,* including pharmacy compounding regulations and pharmaceutical product tracing requirements. Additionally, the highly anticipated final guidances on the labelling, naming and similarity standards or interchangeability of biosimilars are expected from the agency in 2014.

## Telecommunications Outlook

**Alfred E. Mottur**

*"As technologies and delivery systems have rapidly advanced, our nation's telecommunications laws have stood largely still. There is a growing consensus among top lawmakers that it may be time to update those laws. We expect 2014 to be the beginning of that discussion, and that the process may take several years. But the wheels are beginning to turn and now is the time for those who might be affected to engage."*

Al serves as the managing partner of Brownstein's Washington, D.C., office and is co-chair of the firm's Government Relations Department. Prior to joining the firm, Al was the senior communications counsel for the U.S. Senate Commerce, Science and Transportation Committee. Al served in this role as the senior staffer for Sen. Ernest F. Hollings (D-SC), who was both the ranking member and the chairman of the committee during Al's time in the Senate. As committee counsel for four years, he was responsible for all telecommunications legislation, policy and hearings in the Senate Commerce Committee.

**Brooks A. Brunson**

*"With the recent announcement by Chairmen Upton and Walden to update the Communications Act, the telecom industry is looking at an important and active legislative time. This update could affect each part of this ever-converging industry, and companies of all sizes will need to continue to speak to the current realities they face under today's law. Along with other important issues (Net Neutrality, STELA, etc.), the legislative and regulatory outlook for this dynamic industry looks busier than ever."*

Brooks previously served as the senior director of congressional affairs and PAC director for Qwest Communications. On the Hill, Brooks was special assistant to the chief of staff for the House Republican Conference, and deputy director for Republicans Abroad.

**Additional Members of Brownstein's Telecommunications Team**

**William E. Moschella**

**Michael Eisenberg**

**Elizabeth M. Gore**

**Spectrum.** The new chairman of the Federal Communications Commission (FCC), Tom Wheeler, said in early December that he has "spent more time working on the Broadcast Television Spectrum Incentive Auction than any other single issue." He understands how extremely important it is to get more spectrum out into the marketplace as American consumers demand more and more bandwidth. Between now and the auction date, which was pushed back until mid-2015, Chairman Wheeler has stated that, "we must also exhaustively test the operating systems and the software necessary to conduct the world's first-of-a kind incentive auction."

In mid-December of 2013, Reps. Guthrie (R-KY) and Matsui (D-CA) introduced H.R. 3674, the *Federal Spectrum Incentive Act of 2013*, which aims to incentivize more efficient use of federal spectrum. The bill also seeks to reallocate spectrum that federal agencies are currently not using. The bill just passed, with unanimous support, in the House Energy and Commerce Committee. During the markup, Chairman Upton stated that he expects to see this bill on the House floor early next year.

**Broadband Adoption Act of 2013**. H.R. 1685, *the Broadband Adoption Act of 2013,* was introduced in April by Rep. Doris Matsui (D-CA). The legislation amends the *Communications Act of 1934* to direct the Federal Communications Commission to adopt a final rule establishing support for broadband under the Universal Service Fund Lifeline Assistance Program to enable qualifying low-income customers residing in urban and rural areas to purchase broadband service at reduced charges by reimbursing providers who elect to participate in the program for each such customer served. This legislation will have a difficult time passing a Republican-controlled committee or House.

**Federal Communications Commission (FCC) Process Reform Act of 2013.** This past December, Rep. Greg Walden (R-OR), chairman of the Communications Subcommittee, proposed H.R. 3675, the *Federal Communications Commission Process Reform Act of 2013*. The bill passed both the full House Energy and Commerce Committee and Subcommittee on Communications with bipartisan support and is expected to be on the House floor in early 2014. Currently, there is no companion bill in the Senate. H.R. 3675 will streamline FCC process and remove outdated regulations that no longer apply to the technology of today.

**Communications Act Re-Write.** Rep. Fred Upton (R-MI), chairman of the House Energy and Commerce Committee, and Rep. Greg Walden (R-OR), chairman of the Subcommittee on Communications, recently proposed that the Communications Act needs to be revised. Chairman Walden said, "When the Communications Act was updated almost 18 years ago, no one could have dreamed of the many innovations and advancements that make the Internet what it is today … the Communications Act is now painfully out of date." There are still few details about specific changes that would be made to the Act, but the overall process is expected to take years. We anticipate that the chairmen will release white papers and hold hearings in 2014 and propose legislation in 2015. In a joint statement, Walden and Upton said, "This is the first step in a multiyear open and transparent effort, and we look forward to broad input from the many interested parties."

## Energy Outlook

**Lawrence J. Jenson**

*"Drought conditions in the West will continue to focus legislative attention on water quantity and water quality issues, and continued determined opposition to mining operations will generate legislative attempts to rein in the power of the permitting agencies."*

Larry is the former general counsel and assistant administrator for water at the Environmental Protection Agency (EPA), as well as the former chief legal counsel to the Bureaus of Land Management, Reclamation, and Indian Affairs, and to the Minerals Management Service (now the Bureaus of Ocean Energy Management and Safety and Environmental Enforcement) at the Department of the Interior. He also served as the deputy solicitor at Interior and was honored in 2008 as a Distinguished Executive in the Senior Executive Service by President George W. Bush for his outstanding work during his time at Interior.

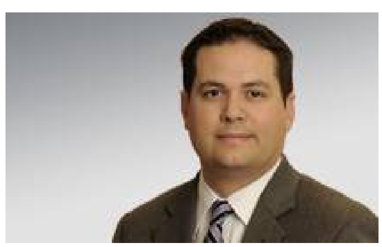
**Elizabeth M. Gore**

*"Hydraulic fracturing and other new technologies have spurred an energy revolution in this country. This shift from a mindset of energy scarcity to energy abundance, especially against the backdrop of climate change, raises a whole range of public policy questions—issues that will be front and center in Congress and in the regulatory agencies for 2014."*

Elizabeth served 10 years as chief of staff and legislative director to Sen. Byron Dorgan (D-ND). As Dorgan's chief of staff, Elizabeth was a senior advisor to the senator on policy, legislative and political issues, and provided strategic advice and guidance on Democratic Policy Committee initiatives and hearings. She served as a senior point of contact for Energy Committee staff, Commerce Committee staff, Indian Affairs Committee staff and leadership offices.

**Additional members of Brownstein's Energy, Environment & Resources Strategies Team**

**Ryan A. Smith**



**Luke D. Johnson**

**Jon Hrobsky**

**Jacob A. Johnson**

**David L. Bernhardt**

**Environmental Protection Agency (EPA) Greenhouse Gas (GHG) Rule for New and Existing Power Plants.** In September 2013, the EPA finally released its long-awaited proposed rule to regulate greenhouse gas emissions for new power plants. The plan is controversial because $CO_2$ emissions would be limited to a standard that cannot be met by coal plants unless a comprehensive system of carbon capture and sequestration is integrated into the facility. Going forward, EPA will continue to work toward finalizing this rule for new plants, and will also release its proposal for $CO_2$ standards for existing power plants. The proposal for existing plants is scheduled to be released in June 2014 and has the potential to have an even greater impact than the rule for new plants. This will spark an especially bitter fight, with Republicans and coal-state Democrats arguing that it will kill thousands of jobs in their states, as well as result in plant closures. There have been multiple congressional hearings already on the rules, and House Republicans are planning to introduce legislation to preempt EPA from having the authority to regulate $CO_2$. Nevertheless, there is little chance that the rules can be stopped by congressional action. There is also expected to be substantial litigation over the coming years for the regulations on both new and existing power plants.

**Hydraulic Fracturing.** In May 2013, the Bureau of Land Management (BLM) issued a proposed rule to regulate hydraulic fracturing (“fracking”) on federal lands. This is the first time the federal government has attempted to regulate the practice, by which oil and gas companies inject water, sand and chemicals at very high pressure into shale rock formations to fracture them in order to extract oil and natural gas within those formations. The proposed rule requires companies to disclose the chemicals they use in the process, sets up standards for storage and disposal of waste water, but includes a variance procedure to defer to states if their regulations meet federal minimum standards. Oil and gas industry and congressional Republicans oppose the rule, calling it duplicative and unnecessary in light of 60 years of successful state regulation of fracking. Environmentalists and many Democrats support the rule—though many want the rule to go even further—in the name of protecting the environment and public health. There have been a multitude of congressional hearings on the rule, and House Republicans have responded by passing H.R. 2728, the *Protecting States’ Rights to Promote American Energy Security Act*, which would prevent BLM from regulating fracking, and require it to defer to the states. However, the Senate is unlikely to consider the bill. There will continue to be legislative fights over this going forward next year, as well as litigation from the oil and gas industry once the BLM rule is finalized.

**Renewable Fuel Standard.** In November 2013, EPA issued its proposed rule for the 2014 Renewable Fuels Standard (RFS) ethanol blend levels. For the first time since RFS was established in 2007, EPA actually reduced the blend amounts below statutory levels prescribed in the 2007 *Energy Independence and Security Act*. This is seen as a major win for the oil industry and food production industry, who had argued that if EPA had increased the levels further, it would have required high ethanol blending that would have become dangerous to engine performance and a major expense for industry. It is also a serious setback for ethanol and other renewable fuels, particularly the advanced biofuels companies, who have been using the RFS to attract investment. The EPA’s proposal introduces significant uncertainty into the industry. There has been quite a bit of congressional attention to this issue recently, and there will be more hearings held in the coming year to discuss both reforming and repealing the RFS. There will also likely be litigation by the renewable industries against EPA’s decision.

**Keystone XL.** The debate over the Keystone XL pipeline raised in 2013 will continue in 2014. Republicans, pro-oil Democrats, energy advocates and some labor unions continued to urge President Obama to approve the project to create jobs and reduce our dependence on oil from the Middle East, while environmentalists continued to push back, urging Obama to deny the project in efforts to fight climate change. The State Department is currently conducting an environmental review of the application and is expected to make a decision sometime this year. However, the absence of a decision by the Obama administration led House Republicans to pass several bills this year to expedite the approval process for oil and gas pipelines, including H.R. 1900, the *Natural Gas Pipeline Permitting Reform Act* and H.R. 3, the *Northern Route Approval Act.* The Senate is not expected to consider any of these bills.

**Supreme Court.** Energy-related cases coming before the Supreme Court are likely to focus on air issues this year, a shift from last year's water-related focus. Cases that could take center stage include one dealing with EPA's Cross-State Air Pollution Rule (CSAPR), which an appellate court threw out last year, and another testing one aspect of the agency's greenhouse gas regulations. On December 10, 2013, the Supreme Court heard arguments on the CSAPR, which centered on whether EPA's implementation of the rule was consistent with the Clean Air Act's "good neighbor" provision. The greenhouse gas case is expected to be argued this year, with oral arguments scheduled for February.

**Shaheen-Portman Energy Efficiency Bill.** The legislation has been bogged down for several months in a logjam in the Senate due to an inability of senators to agree on the disposal of non-germane amendments—most notably Sen. David Vitter's (R-LA) amendment relating to subsidies for congressional staffers to enroll in the Affordable Care Act—and there has been no forward progress on the bill since. The bill has now been put on the back burner and the prospects of further consideration of the bill are unclear.

**Liquefied Natural Gas (LNG) Exports.** The recent shale gas boom has triggered a debate about whether the U.S. should export LNG, and if so in what quantity. This was the subject of several congressional hearings in 2013, particularly in the Senate Energy and Natural Resources Committee. Natural gas industry advocates have argued that exports will be good for the economy, create jobs and enhance our trade relationship with our overseas allies who are in need of LNG in both Europe and Asia. Those in the petrochemical, agricultural and manufacturing sectors have argued that excessive exports could raise the domestic price of natural gas—which is at historic lows—thus hurting consumers and industries that rely on LNG as a fuel source and raw material. The central question in the debate has not been whether or not to export, but rather how much to export and whether the free market or the federal government should decide that quantity. The Department of Energy has been working through a backlog of applications to build LNG export terminals, and has approved several since last spring.

## Financial Services Outlook

**Carmencita N. M. Whonder**

*"While Congress considers options for housing finance reform this year, regulators will continue down the checklist of remaining Dodd-Frank rulemakings. Despite tight budgets and staff turnover, expect final rules on several major issues, including derivatives trading and prudential standards. Financial regulators will also be closely watched by Congress as they tread into money market fund reforms, fiduciary duty standards, and nonbank SIFI regulation. Congress will likely be sidelined by gridlock and left with only oversight authority on these issues. However, the courts will take center stage in several high-profile legal battles this year, including challenges to debit interchange fees and the recently finalized Volcker Rule."*

Prior to joining Brownstein, Carmencita served as the staff director for the Senate Subcommittee on Housing, Transportation, and Community Development and as the principal advisor on the Senate Banking, Housing and Urban Affairs Committee to Sen. Charles E. Schumer (D-NY).

**Marc S. Lampkin**

*"The real battle in Washington will primarily be regulatory, rather than legislative. With the recent publication of the Volcker rule and the avalanche of additional rules related to Dodd-Frank, we can expect congressional oversight to ramp up considerably. Both the Senate and the House will closely monitor the Obama Administration."*

On the Hill, Marc is well-respected for his role as a member of House Speaker John A. Boehner's (R-OH) "Team Boehner," a team of high-level strategic advisors who work closely with Speaker Boehner and other Republican members. His relationship with Speaker Boehner goes back to 1995 when Marc served as general counsel for the House Republican Conference under then-Chairman Boehner for three years. Marc is a close confidante to a number of key Republican members of both the House and Senate and also served as policy director for the late Sen. Paul D. Coverdell (R-GA)(1999).

**Additional Members of Brownstein's Financial Services Team**

**David P. Cohen**

**Michael B. Levy**

**Manuel Ortiz**

**John Sonsalla**

**William E. Moschella**

**Housing Finance Reform.** The Government Sponsored Enterprise (GSE) reform issue remains the top agenda item for the Senate Banking and House Financial Services committees as members continue to grapple over how to address Fannie Mae and Freddie Mac five years after the government placed them in conservatorship. While progress on the issue has been made in both chambers, several factors may make it difficult to pass legislation this Congress, including: (1) deep fundamental differences between Democrats and Republicans in the House and Senate regarding GSE reform, (2) the upcoming midterm elections, (3) significant, competing legislative priorities in Congress and (4) Congress's oversight of Fannie Mae and Freddie Mac.

Despite the long odds, there will likely be at least one significant development in the near-term: the introduction of a new bill by Senate Banking Committee Chairman Tim Johnson (D-SD) and Ranking Member Mike Crapo (R-ID). Senior committee leadership hope to release the bill in January. It will likely share similarities with the *Corker-Warner Housing Finance Reform and Taxpayer Protection Act* and include a framework for creating a new government agency that sells an explicit backstop guarantee on eligible mortgage-backed securities. Additionally, it will likely formally wind down both Fannie Mae and Freddie Mac, which could split Senate Democratic support given concerns regarding the impact of eliminating GSEs while the housing market remains vulnerable.

While these efforts are ongoing, two major regulations on housing finance will take effect next year: (1) the Qualified Mortgage Rule and (2) the Qualified Mortgage Retention rule. The regulations were created by Dodd-Frank and intend to standardize underwriting practices.

**The Watt Effect.** Rep. Mel Watt's (D-NC) confirmation as director of the Federal Housing Finance Administration (FHFA) is likely to impact the status of housing finance reform. Despite serious differences in policy views from the outgoing Acting Director Ed DeMarco, it is unlikely Watt will implement material changes to existing loan modification, pricing, limit, or risk transfer policies in the near-term. In fact, FHFA recently announced a delay in increasing base guarantee fees and loan level price adjustments (LLPAs). Further, Watt said he intends to conduct a thorough evaluation of the proposed changes and plans to give no less than 120 days' notice after completing the evaluation before implementing any changes.

Rep. Watt's confirmation may also trigger a softening of the agency's stance regarding eminent domain. Newark, New Jersey, became the latest municipality to move forward with formally considering the use of eminent domain authority to seize underwater mortgages, which DeMarco strongly opposed. Watt's arrival could embolden the handful of local governments looking to move ahead with eminent domain seizures by removing the threat of FHFA cutting off access to the GSEs or increasing pricing for those local areas.

**Bank Capital Standards.** Over the past year, bank regulators continued their push for higher prudential standards for the biggest banks and financial institutions. While rules to implement Basel III capital standards are now in place, the Federal Reserve will likely proceed with its own supplementary leverage ratio after the Basel committee finishes its leverage ratio standard. The tougher funding requirements are slated to impact the eight biggest U.S. banks. The final rule will likely mirror the proposed rule to impose a 6 percent leverage ratio for holding companies, which is double the ratio under Basel III, while imposing a 5 percent leverage ratio for the commercial banks. Financial institutions will be watching closely for how the Fed treats high-quality liquid assets in their denominator asset calculation.

**Volcker Rule.** In mid-December 2013, all five financial regulators approved the Volcker Rule to ban proprietary trading by bank holding companies. The final rule was largely consistent with expectations that derivatives trading by such holding companies will need to be more closely tied to hedging specific risks, but considerable flexibility is preserved for banks to continue serving in a market-making capacity. With respect to market making, the rule also says anticipation of future customer demand must be based in part on observed historical trends, which should be viewed as being extremely subjective on the part of regulators who will eventually enforce standards. It is likely that the teeth of this rule will not be felt until regulators begin enforcing it—a process that will not begin in earnest until July 2015. Banks will have until 2015 to comply with new standards, and regulators intend to implement the rule on a desk-by-desk basis, an enormous undertaking that will be very difficult for regulators to effectively carry out due to the size and complexity of trading operations.

**Consumer Financial Protection Bureau (CFPB).** The CFPB dominated headlines last year as it charged forward with reforms to the housing finance industry, including finalizing the highly anticipated ability to repay rule and qualified mortgage standards. The CFPB will now turn to monitoring implementation and compliance in this area, freeing up resources to finalize several high-profile rulemakings concerning card and lending products. Chief among these are issues related to low-income consumers, including rules governing payday loans, prepaid cards and bank overdraft programs. While the CFPB cannot set interest rates or fees, it does have authority under Dodd-Frank to ban or curtail products that it finds are unfair, deceptive or abusive. Expect the CFPB to at the very least force companies in this space to comply with new transparency and disclosure requirements. The agency will also continue its aggressive enforcement strategy, specifically targeting the education and auto finance sectors.

**Financial Stability Oversight Council (FSOC) Designations.** The FSOC announced this year the first round of designations for nonbank systemically important financial institutions (SIFIs). The list included American International Group, GE Capital and Prudential Financial. MetLife is in the final "Stage 3" of the designation process and is expected to be formally named early next year. How these nonbank SIFIs will be regulated, however, remains to be seen, as the Fed has yet to finalize its proposed SIFI standards under Section 165 of Dodd-Frank. The Fed has full discretion to tailor rules on an individual company basis or by industry. Aside from the biggest life insurers being at risk, asset managers could also be designated as SIFIs in the future.

In late September, the Office of Financial Research (OFR) within the Treasury Department published a report highlighting the systemic risks and vulnerabilities associated with asset management firms, opening the door for future designation. It has been widely reported that during the Financial Stability Oversight Council's (FSOC) October 31, 2013, meeting, members agreed to begin examining asset managers. However, there has already been pushback against labeling asset managers as SIFIs in the halls of Congress. Opposition will likely increase in 2014, especially as members become more concerned that the process is opaque with a lack of clarity regarding FSOC's methodologies and processes, as well as the lack of certainty for those labeled as nonbank SIFIs.

**Reauthorization of the Terrorism Risk Insurance Act (TRIA).** TRIA was originally enacted in 2002 in the wake of the attacks of September 11, 2001, and has twice been extended. Congress is now debating another reauthorization of TRIA, which is scheduled to sunset at the end of 2014. In the House, 77 members have signed onto a bill sponsored by Rep. Michael Grimm (R-NY) that would extend the program for five years until December 31, 2019. While Grimm would prefer to make the program permanent, House Financial Services Committee Chairman Jeb Hensarling (R-TX) will not support a reauthorization longer than five years.

In the Senate, Democrats have by and large pushed for a 5- or 10-year extension of the current law. While an extension bill has yet to be introduced, interest among Senate Democrats was made clear during a Banking Committee hearing on the issue in late September 2013. During that hearing, Chairman Tim Johnson (D-SD) and Sens. Bob Menendez (D-NJ), Jack Reed (D-RI), Joe Manchin (D-WV) and Chuck Schumer (D-NY) all advocated for a clean extension of the current law. Republican Sens. Mark Kirk (R-IL) and Dean Heller (R-NV) have also publicly argued for a reauthorization of the program.

Generally speaking, the Senate Banking Committee is in a good position to take up a bill as Sen. Richard Shelby (R-AL) no longer serves as the minority ranking member (Shelby has long been ideologically opposed to TRIA). The current ranking member, Sen. Michael Crapo (R-ID), is more amenable to passing a reauthorization, though he may push to scale back the program in order to appease members of the Senate Republican conference seeking a greater private sector role in terrorism insurance.

Congressional inaction thus far can largely be attributed to the macroeconomic debates around the budget, tax reform, entitlement spending and the debt ceiling. Several House Republicans expect, however, the House Financial Services Committee to consider reauthorization during Q1 2014, possibly as soon as February. This will likely be in the form of legislation offered by Chairman Hensarling, as opposed to the Grimm bill. We have heard that the Senate Banking Committee is likely to wait until the House Financial Services Committee acts to take up a bill. The issue will continue to generate momentum as the expiration deadline approaches next year.

**Business Development Companies (BDCs) and Capital Formation Legislation**. In November 2013, the House Financial Services Committee approved H.R. 1800, the *Small Business Credit Availability Act*, introduced by Reps. Michael Grimm (R-NY) and Nydia Velazquez (D-NY). Committee staff continue to negotiate pending issues as they address a few remaining concerns raised by Rep. Carolyn Maloney (D-NY) and Ranking Member Maxine Waters (D-CA). Key committee aides anticipate that the full committee will review a series of capital market bills in March with a subsequent markup in April. Assuming consensus has been reached, the committee will then return to the *Small Business Credit Availability Act* and package it with five–six related bills, which will likely address tick-size change, streamline and simplify regulations, and encourage investment in small companies, as the JOBS Act 2.0.

## Election Outlook

**Republican**

**R. James Nicholson**

*"2014 should be a good year for Republicans: Americans are uneasy with the Democrats due to the Obamacare debacle, the historically slow economic recovery, and a general sense of ineptitude in the Obama White House. Republicans, though, must project a positive, can-do, discernible message about helping people, and securing their future."*

**Barry Jackson**

*"The 2014 election turns on two points. First, who wins the message battle between the GOP's Obamacare failure narrative and the Democrat's populist economic argument. And more important, which team is better able to marshal resources, data and coalitions to target and drive up favorable turnout in a country growing increasingly frustrated with their government and political process."*

**Judy A. Black**

*"Democrats are facing a tough election map and more enthusiastic Republican base in their fight to hold onto the Senate. Add in negative sentiment around Obamacare and this could be a wave election for Republicans, especially considering that two-thirds of the undecided voting block disapproves of the president's health care reform. If the Senate races in Virginia and Michigan look tight in November, that will be an indicator that Democrats could see incumbents lose in Arkansas and Louisiana, as well as problems in open races across the Midwest."*

**Democratic**

**Michael B. Levy**

*"The sixth year of any presidency usually goes badly for his party. But the economy should help the Democrats a bit, and there will be two competing narratives on the Affordable Care Act."*

**Manuel Ortiz**

*"The 2014 midterm election turns on two factors: (1) Democrats' ability to stop and control the political free fall of Obamacare and (2) GOP ability to nominate candidates with statewide appeal through their primaries. Turnout is always key during midterms, but the current climate of apathy toward Washington may make turnout more challenging for red-state Democrats."*

**Election Agenda.** As Congress moves toward the midterm elections on November 4, members will only need to contend with a few major deadlines, the most controversial of which will be the necessary debt limit increase during the first half of the year. Unlike in previous years, there will be no major federal government funding issues, with the budget debate largely resolved for the next two years. This leaves the leadership of each chamber with more latitude in crafting an election-year agenda that can help propel incumbents to another term while picking up open and contested seats.

**For Democrats – Income Inequality.** Democrats are already positioning themselves to wage a populist war against Republicans. Senate Majority Leader Harry Reid (D-NV) has said extending expired unemployment benefits for an estimated 1.3 million American beneficiaries and raising the federal minimum wage will be at the top of the business agenda for the chamber this year. These policies have long been cornerstones of the Democratic platform, playing well with the base and minorities, and will be part of a broader effort to focus the American electorate on the growing income inequality in the country. Polls support this approach both broadly and on the specific issues. A recent Washington Post/ABC News Poll found that 57 percent of Americans want Congress to act on income inequality. Furthermore, the same poll found that a majority of Democrats and Independents, and even a plurality of Republicans support a higher minimum wage.

**For Republicans – Pro-Growth.** In the House, Majority Leader Eric Cantor (R-VA) and House Budget Chairman Paul Ryan (R-WI) are crafting a strategy to delicately maneuver past the debt ceiling fight so that Republicans can focus on championing a pro-growth agenda. The basic tenants of the conservative argument are that as the president has pivoted to addressing income inequality, he has ignored growing the economy. The result has been more inequality with less growth and opportunity. Republicans plan to paint a picture far better than the anemic economic growth seen under the president.

**Party Politics.** The current election map clearly favors Republicans, as incumbents are seeing less of a challenge from the right, safer districts and greater voter enthusiasm, at the same time the president's approval ratings are at the lowest point in his two terms. Recent polls show that Republicans lead Democrats on the question of which party's candidate for Congress voters would choose in their district. That shift is alarming for Democrats who held an eight-point lead on the same question during the height of the government shutdown in October.

Republicans look to be in a very strong position to retain control of the House and actually stand to gain a few seats. Democrats would need to win 17 seats to take over the majority. This would require the party to win every likely Democrat, lean Democrat, tossup, and 13 of the 16 leaning Republican districts. This is virtually impossible, especially considering that the most recent election models are predicting that the Democrats will only send 196 representatives to Washington in 2015, which amounts to a loss of five seats.

**Senate in Play.** There are a total of 33 Senate races this year and Republicans will only have to defend 13 of those seats. In addition, the Republican races are almost all incumbents located in dominant red states with only two open contests. Republicans are largely expected to defend the seats they currently hold and races are leaning in their direction in three battlegrounds, which is only three short of the six-seat pickup needed in order to take the Senate majority. Even the popular Sen. Mark Warner (D-VA), who was largely expected to sail to another term in office, may face a tough race now that longtime Republican operative Ed Gillespie has entered the race.

Democrats will have a much more difficult time defending their seats, with Gov. Mitt Romney having won seven of the 20 states where Democrats will be defending their territory. Current incumbent Democrats will face tossup reelection prospects in at least five states, where voters hold a worsening view of President Obama and the troubled health care reform that bears his name. Furthermore, the party is struggling with the retirement of several longtime senators that has forced problematic open-seat contests in Montana, South Dakota, West Virginia and Iowa. Despite this grim forecast for Democrats, recent developments and state-specific polling have bolstered the party. Sen. Max Baucus's (D-MT) nomination to be ambassador to China means that Montana Lt. Gov. John Walsh will now likely be able to run for the seat as the appointed incumbent. In addition, Sen. Ron Wyden's (D-OR) move to chair the Senate Finance Committee means that Sen. Mary Landrieu (D-LA) is likely to take the gavel of the Energy Committee, giving her a powerful hand in the oil-producing state.

**Outside Forces.** Aside from the known factors, there are others that are more difficult to predict, like what the national landscape will look like at the time of the election. The economic environment will dictate whether President Obama will help or hurt Democratic candidates. In addition, any new retirements will play a large role, as well as possible personal scandals. Traditionally, a second-term president's final midterm has negative outcomes for the president's party. The only president to see a large pickup in seats during a second-term, midterm election was Bill Clinton. The economy and Republican overreach on impeachment may have been contributing factors to the small gains the Democratic Party made in 1998. There is potential for a Republican takeover; however, this is all contingent on candidate selection and Republicans' ability to attract new voters in line with changing demographics in America.