



# ML Strategies' Washington Outlook for 2014

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## ML Strategies' Outlook for 2014

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## INTRODUCTION

Happy New Year, and welcome to the second session of the 113th Congress!

As Congress returns this month, ML Strategies is pleased to continue our tradition of offering an Outlook for the coming year. This year, in addition to the congressional legislative agenda, we are also including some highlights of the Obama Administration's agenda, which will continue to be a focus for those with interests that either support or oppose various regulatory actions.

### **Near-Term Legislative Agenda (First Quarter)**

There are two immediate tasks to be tackled by Congress in 2014: 1) finalize the Fiscal Year 2014 appropriations process, with an Omnibus spending bill that will total approximately \$1 trillion, before the current Continuing Resolution expires on January 15; and 2) increase the debt ceiling before the current debt limit suspension ends on February 7. The Treasury Department does have some flexibility to utilize "extraordinary measures" for a short period after February 7 should the suspension end without the \$16.7 trillion limit being increased.

There are two other significant legislative measures that are in the final stages of House-Senate negotiation, and are expected to move early this year — the Farm Bill, and the Water Resources Development Act (WRDA) reauthorization.

### **Long-Term Legislative Agenda (Second, Third, and Fourth Quarters, and beyond)**

Looking further into the coming year, the legislative agenda will likely include action on the Satellite Television Extension and Localism Act (STELA), the annual National Defense Authorization Act (NDAA), a tax extenders package, extension of the Terrorism Risk Insurance Act (TRIA), repeal of the Sustainable Growth Rate (SGR), and possible Obamacare revisions. The House and Senate Appropriations Committees will also soon begin working on the Fiscal Year 2015 spending bills in advance of the start of the next fiscal year on October 1.

Other legislative efforts likely to see serious debate and consideration include postal reform, Trade Promotion Authority renewal, the Shaheen-Portman energy-efficiency bill, Iran sanctions, a Highway Reauthorization bill, cybersecurity legislation, Toxic Substances Control Act (TSCA) reform, immigration reform, data security legislation, patent reform legislation, reform of the Renewable Fuel Standard (RFS), and measures related to gun control and mental health.

Finally, while these legislative measures are not likely to see final action or enactment this year, a significant amount of time is likely to be spent laying the foundation for comprehensive tax reform, privacy legislation, and pursuing a rewrite of the Telecommunications Act in the next Congress.



## **Regulatory Agenda**

Recently, the most visible efforts on new regulations stem from implementation of the Affordable Care Act (ACA) and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). Regulatory efforts at the Environmental Protection Agency (EPA) have also been robust, and generally focused on greenhouse gas (GHG) emissions and implementation of the Renewable Fuels Standard (RFS).

The Executive Branch agencies will continue to pursue an aggressive agenda throughout the year. The regulatory agenda for 60 Cabinet, Executive, and independent agencies are included in the Unified Agenda, which is published twice a year — in the Spring and Fall — with the most recent edition released last November by the Office of Management and Budget. The entire Unified Agenda can be found [here](#) — where you can search by agency. Specific regulatory items will be discussed in the certain sections of this Outlook.

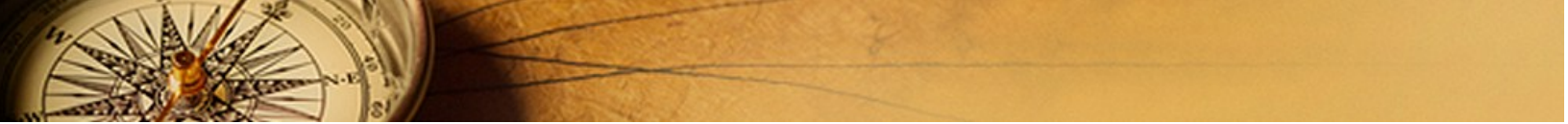
The Unified Agenda covers a wide-range of regulatory actions, such as drug pricing regulations, GHG emissions standards, energy efficiency standards, mental health, education-related initiatives, and product safety, among others.

In addition to regulatory efforts, the Administration will pursue its agenda with executive orders, while various federal agencies will move forward with approval and licensing decisions including the State Department and the Keystone pipeline, the Department of Energy and liquefied natural gas (LNG) exports, the Federal Communications Commission (FCC) and spectrum auction, and the U.S. Trade Representative and trade agreements, just to name a few.

We can identify several areas of potential legislative and regulatory activity for the coming year, and as with previous Outlooks, have grouped opportunities by issue:

- Agriculture
- Defense & National Security
- Education
- Energy & Environment
- Financial Services
- Foreign Policy
- Health Care
- Immigration, Law Enforcement & Judiciary
- Postal Reform
- Tax Reform, Debt Limit & Appropriations
- Telecommunications
- Trade
- Transportation & Infrastructure

We have also included, as an Appendix, the House and Senate calendars for 2014.



Contact information for all of our team members is provided at the end of this document. We encourage you to contact us with any questions you may have about specific issues covered here, or any other legislative or agency-level opportunities in which you are interested.

## AGRICULTURE

Congress's enactment of a new Farm Bill and the Food and Drug Administration's development of a food safety rule will comprise two major issues in agricultural policy this year. Agricultural interests are anticipating the prospect of a new Farm Bill reauthorization in January, though disagreements over controversial dairy provisions between the House and Senate versions have so far delayed the roll-out of a final agreement. Agricultural stakeholders have endured a roller coaster ride over the past two years as previous authorizations have expired without a new five-year authorization in place.

### Issues

**Farm Bill:** While most of official Washington grew quiet over the holidays, staff at the House and Senate Agriculture Committees remained at work finalizing a deal on a new five-year Farm Bill so that it could be one of the first pieces of legislation Congress finalized this year. House Agriculture Committee Chairman Frank Lucas (R-OK), Senate Agriculture Committee Chairwoman Debbie Stabenow (D-MI), House Agriculture Ranking Member Collin Peterson (D-MN), and Senate Agriculture Ranking Member Thad Cochran (R-MS) expressed confidence that their not-yet-public deal would be accepted by the House and Senate, though the committee leaders have not yet released their framework or held a final conference meeting.

Last year, opposition by Republicans associated with the Tea Party movement to food stamp spending derailed the usually bipartisan Farm Bill process. The Senate-approved bill would cut \$4.5 billion over 10 years (compared with current law) while the House-passed bill would cut the program by \$39 billion over 10 years. The food-stamp debate, combined with relatively high commodity prices that reduced the need for Farm Bill safety net programs, lessened the political pressure to pass a Farm Bill. Now, with falling commodity prices renewing interest in the safety net and Congress fearing the electoral consequences of Farm Bill expiration, the politics have realigned to support passage of a new Farm Bill. One remaining challenge is that the long-delayed bill could be held up if Members try to use the Farm Bill's savings to offset an extension of unemployment benefits.

While just a fraction of the overall Farm Bill, the bill's Energy Title provides significant funding for renewable energy, bioenergy, biofuels, renewable chemicals, and energy efficiency. We expect the conference agreement will probably also contain most of the provisions and \$900 million in spending (over five years) contained in the Senate-passed bill.

**Food Safety:** President Obama signed the Food and Drug Administration's (FDA) Food Safety Modernization Act January 4, 2011. The law aims to ensure the U.S. food supply is safe by



shifting the focus of federal regulators from responding to contamination to preventing it. As a result, the FDA proposed a rule just before the end of the year that would require domestic and foreign facilities to address vulnerable processes in their operations to prevent large-scale harm to the food supply. The proposed rule would require the largest food businesses to have a written food defense plan that addresses significant vulnerabilities in a food operation. Recognizing that small businesses may need more time to comply with the requirements, the FDA is proposing tiered compliance dates based on facility size. The FDA will hold a public meeting on February 20 to explain the proposal and provide additional opportunity for input, and comments are due by the end of March. Requirements will be effective 60 days after the final rule is published in the Federal Register.



## DEFENSE & NATIONAL SECURITY

The first session of the 113th Congress came to a close with heavy focus on issues pertaining to defense and national security, including passage of an annual defense authorization bill and agreement on a budget resolution providing the Department of Defense (DOD) some relief from sequestration in FY14 and FY15.

Throughout 2014, domestic budget politics will continue to drive policymaking and regulatory actions around defense and national security issues. Legislative activity will inevitably be impacted by the loss of traditional defense hawks in Congress, including the death of Representative Bill Young (R-FL), the approaching retirement of Senate Armed Services Committee Chairman Carl Levin (D-MI), and speculation that House Armed Services Committee Chairman Buck McKeon (R-CA) will also retire at the end of his current term. At the Pentagon, defense leaders, including new Deputy Secretary of Defense Christine Fox, will be tasked with adjusting the U.S. national security strategy to guide the U.S. military into a post-war era full of new threats, both at home and abroad.

### Issues

**Defense Spending:** The budget agreement provides \$63 billion in sequester relief, including half from defense spending cuts. While Pentagon officials, many of whom have been involved with drafting a number of different FY15 budget proposals based on various budget scenarios, welcomed the agreement for providing DOD with some fiscal certainty, the new defense spending cap of \$520.5 billion will require Congress to find \$25 billion in savings from the defense bills passed last year. Also likely to influence defense spending in the near term are the findings of the Quadrennial Defense Review (QDR), which lays out the military's strategy for the next four years, due out this year.

**New National Security Strategy:** As defense leaders continue to operate in a constrained fiscal environment, the new year is likely to see more proactive engagement from the White House on national security issues. President Obama intends to unveil a new National Security Strategy (NSS) in early 2014, which will identify the White House's national security priorities for the remainder of his second term, as well as provide an update on the whole-of-government implementation plan submitted to Congress in September 2012 to accompany the 2010 NSS. While little information has been made publicly available on the substance and the timing of forthcoming revisions to the NSS, some of the topics that may be addressed include: greater elaboration on the conflict prevention and mitigation provisions included in the 2010 NSS; the need for greater interagency cooperation between DOD, the U.S. Department of State, and the U.S. Agency for International Development (USAID); and the role of Special Operations forces in the future U.S. national security strategy.

**Veterans' Issues:** One of the first veterans' issues to be addressed in the second session of the 113th Congress is the provision of the recently enacted budget agreement that will restrain military pensions, slated to take effect in 2015. The approximately \$6.3 billion in projected



savings, used to offset a small portion of automatic defense spending cuts in FY14 and FY15, will be achieved by instituting a cap on annual cost-of-living adjustments (COLAs) for military retirees below the age of 62. In the haste to pass the budget agreement before Congress recessed for the holidays, lawmakers may have underestimated the public backlash in response to the new cap on veterans' COLAs. As a result, Senate Armed Services Committee Chairman Carl Levin has indicated that his committee will explore the issue before the policy goes into effect. Budget Committee Chairman Patty Murray, the lead Senate orchestrator of the budget deal, has expressed openness to exempting only disabled veterans from the change to pension calculations before the provision becomes effective. Meanwhile, Senate Armed Services Committee member Jeanne Shaheen (D-NH) has introduced legislation that would eliminate the cap for all military retirees, offset by closing certain corporate tax loopholes. Senator Kelly Ayotte (R-NH) has also introduced a proposal to reverse all veterans' pension cuts, which would be offset by preventing illegal immigrants in the U.S. from claiming the additional child tax credit. Senator Ayotte has threatened to file her bill as an amendment to every bill considered by the Senate. In the House, Oversight and Government Reform Committee Chairman Darrell Issa (R-CA) and Representative Mike Fitzpatrick (R-PA) have introduced separate legislative proposals to eliminate the change to pensions for all veterans. Representative Issa's proposal is paid for by eliminating the U.S. Postal Service's Saturday mail delivery. It is likely that consideration of any legislation to repeal the change to veterans' pensions will also spark a larger conversation on reforms of entitlements and benefits for military service members and retirees. Additional veterans' issues to be considered in 2014 include the continued backlog of processing disability claims at the Department of Veterans Affairs (VA), improvements in veterans' health care, new education benefits, and benefits for veterans' surviving spouses.

**National Defense Authorization Act (NDAA):** The FY14 NDAA, signed by President Obama on December 26, became the 52nd consecutive defense authorization bill to become law. If recent trends continue, conventional wisdom is that the FY15 NDAA will pass in the second session of the 113th Congress, albeit likely not until the end of the calendar year. In a statement released with the signing of the FY14 NDAA, President Obama indicated some areas addressed by the annual authorization bill that may receive further attention in the coming months, including issues surrounding the Obama Administration's efforts to close the military detention facility at Guantanamo Bay, Cuba, and additional policy modifications to address the prevalence of sexual assault in the military.

**Sexual Assault in the Military:** Military sexual assault was a key controversial issue in the debate on the FY14 NDAA. While the FY14 NDAA, which is now law, contains two dozen new or modified policies on military sexual assault, such as new legal protections and counseling services for victims, eliminating commanders' authority to overturn convictions or reduce sentences, and requiring the discharge or dismissal of military personnel convicted of sexual assault, in order to move the bill forward procedurally, Senate Majority Leader Harry Reid (D-NV) did not allow a vote on legislation offered by Senator Kirsten Gillibrand (D-NY) that would remove decisions about prosecuting sexual assault cases from the military chain of command. Senator Gillibrand has stated that Majority Leader Reid promised a vote on the bill



in 2014. While it remains unclear if there are enough votes for the legislation to move through the Senate, it is unlikely the legislation would advance in a Republican-controlled House. Additionally, Senator Claire McCaskill (D-MO) has offered competing legislation proposing more modest sexual assault policy reforms, complicating the politics around a floor vote on Senator Gillibrand's bill. Regardless of the fate of both legislative proposals, the White House has made curbing sexual assault in the military a top priority, putting Defense Secretary Chuck Hagel and Joint Chiefs of Staff Chairman Martin Dempsey on notice that they have until December 1 to make substantial improvements before the White House engages in a push for additional policy changes.

**Authorization for Use of Military Force:** Throughout 2013, the U.S. observed a rise in terrorism as extremist groups, such as Boko Haram, Al Shabaab, and Al Qaeda in the Islamic Maghreb (AQIM), launched attacks against U.S. and allies' interests in Africa and the Middle East. How the U.S. military responds to terrorism in the future will be greatly impacted by efforts to not only reauthorize, but also to revise the Authorization for Use of Military Force (AUMF), due to expire this year with the withdrawal of U.S. forces from Afghanistan. While President Obama has previously called for repeal of the AUMF, expressing his belief that it promotes perpetual warfare and allows the President too much power, and despite the introduction of repeal legislation by Representative Adam Schiff (D-CA), others on Capitol Hill see an opening this year for revising the AUMF to provide better direction regarding how the U.S. responds to evolving terrorist threats. The 2001 AUMF permitted the president to use all necessary and appropriate force against the nations, organizations, and persons involved in the 9/11 terrorist attacks, and the Congressional intent of the law has been interpreted as primarily targeting the terrorist organization that has come to be known as the Core of Al Qaeda. Should Congress take up an AUMF reauthorization, we expect to see the law broadened to more explicitly allow for military action against Al Qaeda affiliates and other disparate extremist groups. AUMF reform efforts are also likely to address the role of U.S. Special Operations forces and the intelligence community in targeting terrorist leaders, as well as the controversial tactic of using armed unmanned aerial vehicles (UAVs) in operations against terrorist cells. Because the AUMF has also been used to justify the indefinite detention and targeted killings of Americans overseas, these issues are also expected to arise in any efforts to reform the AUMF.

**Intelligence Gathering and Surveillance:** The Edward Snowden leaks of 2013 placed a tremendous amount of public scrutiny on U.S. intelligence gathering activities. In fact, the year ended with a federal judge warning that the NSA's core mission may violate the U.S. Constitution, potentially setting up a Supreme Court showdown for this year. While Congressional leaders were successful in minimizing controversial debates on NSA surveillance during consideration of the FY14 NDAA, debate on creating more distinction between NSA and CyberCom is likely to heat up this year. Despite the president's task force on surveillance reform recommending a split between the NSA and CyberCom, both currently led by General Keith Alexander, the White House dismissed the recommendation, claiming that maintaining the relationship between the agencies is important to preserving an effective defense against cyber threats. This issue is also of interest on Capitol Hill. While ultimately



scrapped from the final bill, the FY14 NDAA initially included a provision calling for a study of the impacts of splitting the NSA from CyberCom. As the debate continues, Congress may also examine tasking a civilian with leading the NSA, as well as the potential of transitioning CyberCom to its own unified command. It also remains to be seen what action Congress might take to reform not only how the NSA is structured, but also how the NSA conducts surveillance activities. While a number of reform proposals have been introduced, those attracting the most attention appear to be the United and Strengthening American by Fulfilling Rights and Ending Eavesdropping, Dragnet-collection, and Online Monitoring (USA FREEDOM) Act, introduced by Senate Judiciary Committee Chairman Patrick Leahy (D-VT) and Patriot Act co-author Representative Jim Sensenbrenner (R-WI), and the Foreign Intelligence Surveillance Act (FISA) Improvements Act, championed by Senate Intelligence Committee Chairman Dianne Feinstein (D-CA) and Ranking Member Saxby Chambliss (R-GA). The Leahy-Sensenbrenner bill would outlaw the collection of U.S. citizens' communications records without proving such activity is relevant to an international terrorism investigation and increase transparency by allowing communications companies to go public regarding the number of public surveillance orders they receive. In contrast, the Feinstein-Chambliss bill would seek to codify how the NSA does business and to create additional layers of oversight by outlining the procedures for the bulk collection of records, instating periodic reviews of intelligence agencies, requiring more routine appearances of intelligence officials before congressional oversight committees, and directing more public reporting on information gathering activities.

**Foreign Military Sales:** This year is likely to continue a trend of increased U.S. foreign military sales (FMS). As U.S. defense contractors view the current domestic fiscal environment as a catalyst for exploring opportunities for overseas partnerships, military leaders concur that FMS constitutes an important shift in the U.S. defense strategy of arming U.S. allies with the most sophisticated technologies in an effort to promote military-to-military relationships and interoperability with key international partners. The Obama Administration's commitment to arming strategic global allies was most recently evidenced by the White House issuing a presidential determination to allow the regional group of Gulf Cooperation Council (GCC) countries (including Saudi Arabia, the United Arab Emirates, Qatar, Kuwait, Oman, and Bahrain) to purchase U.S. defense articles as a group. According to the Defense Security Cooperation Agency (DSCA), which synchronizes global security cooperation programs across the Office of the Secretary of Defense, the Joint Staff, the State Department, the combatant commands, the service branches, and industry, U.S. FMS hit a record \$69.1 billion in FY12, primarily as the result of a \$29 billion arms package, including F-15s, additional weapons, training, and basing, sold to Saudi Arabia. For FY13, DSCA forecasted total FMS of \$25 billion, with sales reaching \$30 billion annually for the next several years. This represents a massive increase in FMS over the past decade, especially as prior to FY06, annual FMS leveled off between \$10 billion and \$13 billion. As U.S. security cooperation around the globe increases, it is expected U.S. officials will engage in greater commercial diplomacy in support of the sales of U.S. weapons overseas, especially as competitors in the supply of weapons, defense equipment and services from Britain, France, Russia, China, India, Brazil, and the European Union (EU) enter the global market.



**Export Control Reforms:** The new year kicked off with the Department of Commerce's Bureau of Industry and Security (BIS) publishing two additional final rules as part of the President's Export Control Reform (ECR) initiative, in a continuous effort to promote defense trade. Launched in 2009, the ECR initiative has sought to enhance U.S. national security by amending the International Traffic in Arms Regulations (ITAR) and the U.S. Munitions List (USML) to ensure that only the most sensitive U.S. technologies appear on the State Department's USML, while all other technologies are listed on the Commerce Department's Commerce Control List (CCL). The recent rules, as well as many of the reforms previously announced by the Obama Administration, will enter into effect this year. These rules will become effective in July, representing the effective revamping of 15 of 20 USML categories. Review of the remaining five USML categories will continue in 2014. The first new rules, issued in April 2013 and pertaining to aircraft and related materials and gas turbine engines, became effective in October 2013. Rules issued in July easing export controls on four additional USML categories, including those covering surface vessels of war, military ground vehicles, submersible vessels, and other miscellaneous articles, will go into effect later in January.

**Contracting Reforms:** Passage of the recent budget agreement created a vehicle for reforms intended to curb waste, fraud, and abuse that could have significant impacts on defense contractors. While the FY14 NDAA proposed a cap on contractor compensation of \$625,000, the cap was lowered to \$487,000 when President Obama signed the bipartisan budget agreement after signing the defense authorization bill. The budget bill allows agencies to establish exemptions to the compensation cap in cases where higher pay is necessary to obtain certain skill sets, but regulatory activity will be needed over the course of the next year to provide additional clarifications on such exemptions. Also of potential impact to defense contractors is the charge led by House Oversight and Government Reform Committee Chairman Darrell Issa to identify contractors as ineligible to compete for federal contracts. Representative Issa's pending legislation, the Stop Unworthy Spending Act, would establish a central body within the General Services Administration (GSA) to manage all executive agency suspension and debarment activities.



## EDUCATION

In August 2013, President Obama announced an education agenda to combat rising college costs, encourage colleges to improve their value, and empower students and families with information to make informed decisions about which colleges to attend. The President's plan includes three parts: paying for performance, promoting innovation and competition, and ensuring that student debt remains affordable. A White House Fact Sheet on the "President's Plan to Make College More Affordable: A Better Bargain for the Middle Class" can be found [here](#).

On Capitol Hill, various legislative measures may be considered to reauthorize education laws, including the Higher Education Act, the Elementary and Secondary Education Act, and the Child Care and Development Block Grant program, among other items.

### Issues

**Higher Education Act (HEA) Reauthorization:** HEA is the cornerstone of the federal government's commitment to post-secondary education. HEA governs the Department of Education's programs on accreditation, international and graduate education, teacher training and, most importantly, dozens of financial aid programs for students. Hearings by the Senate Committee on Health, Education, Labor, and Pensions (HELP) and the House Committee on Education and the Workforce began the HEA reauthorization process in 2013. Further hearings this year will provide an opportunity for the Administration and Congress to float new ideas to improve access, completion and affordability. The current HEA reauthorization expires at the end of 2014. While there is some hope that the 113th Congress can complete a new reauthorization by year's end, it is worth noting that the current reauthorization, passed in 2008, took five years to see completion. Further complicating the likelihood of swift action this year, HELP Committee Ranking Member Lamar Alexander (R-TN) — a former Secretary of Education in the administration of President George H. W. Bush — commented at the September hearing that he is open to drafting a new HEA "from scratch."

**Elementary and Secondary Education Act (ESEA) Reauthorization:** In the House of Representatives, the Student Success Act, [H.R. 5](#), is the reauthorization vehicle for ESEA. H.R. 5 was approved by the Committee on Education and the Workforce and the full House last year. As passed by the House, the Student Success Act is intended to rewrite K-12 education law and provide state and local leaders the flexibility necessary to innovate in the classroom and raise student achievement.

Last June, Senate HELP Chairman Tom Harkin (D-IA) introduced the Strengthening America's Schools Act of 2013, [S. 1094](#), a bill to reauthorize ESEA. The Strengthening America's Schools Act provides a framework to get all children to graduate from high school with the knowledge and skills needed for success in college and a career. It does this by supporting teachers and principals to help provide high-quality instruction; ensuring disadvantaged students get the



support they need to succeed; and focusing federal attention on supporting states and districts in turning around low-performing schools and closing achievement gaps. S. 1094 was approved by the HELP Committee in October 2013. Having been approved by the House, and making it through committee in the Senate, ESEA reauthorization bears watching in 2014.

**Child Care and Development Block Grant (CCDBG) Act:** Introduced in June 2013 by Senator Barbara Mikulski (D-MD), Chairwoman of the Senate Appropriations Committee and a senior member of the Senate Health, Education, Labor and Pensions (HELP) Committee, along with Senators Richard Burr (R-NC), Ranking Member of the Subcommittee on Primary Health and Aging; Tom Harkin (D-IA), Chairman of the HELP Committee; and Lamar Alexander (R-TN), Ranking Member of the HELP Committee; this bill, [S. 1086](#), reauthorizes and updates the CCDBG program. This program helps low- and moderate-income parents to access and afford child care while they work or attend school. The CCDBG Act requires states to devote more of their funding to quality initiatives, such as training, professional development, and professional advancement of the child care workforce. The bill ensures that CCDBG providers meet certain health and safety requirements related to prevention and control of infectious diseases, first aid and CPR, child abuse prevention, administration of medication, prevention of and response to emergencies due to food allergies, prevention of sudden infant death syndrome and shaken baby syndrome, building and physical premises safety, and emergency response planning. The legislation gives families more stability in the CCDBG program and works to improve early childhood care by requiring states to focus on infant and toddler quality initiatives. Finally, the bill requires mandatory background checks for child care providers in the CCDBG program. Despite having bipartisan support, this bill had been introduced in the previous 112th Congress and did not make it to final passage. The outlook for 2014 is unclear, but with continued bipartisan support a reauthorization of CCDBG would be the first in 17 years.

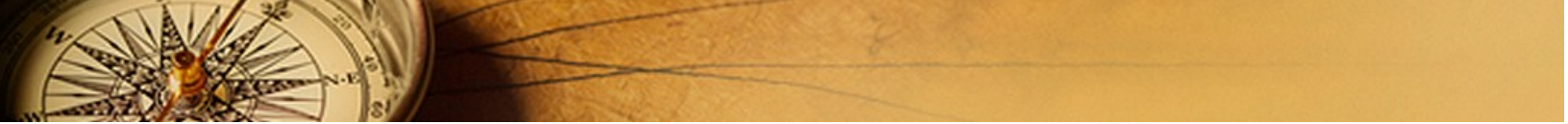
**Strong Start for America's Children Act:** This bill, [S. 1697](#), was introduced in November 2013 by HELP Committee Chairman Tom Harkin — along with Senators Patty Murray (D-WA), Bob Casey (D-PA), Bernie Sanders (I-VT), Chris Murphy (D-CT), Tammy Baldwin (D-WI), Elizabeth Warren (D-MA), Mazie Hirono (D-HI), Chris Coons (D-DE), Tim Kaine (D-VA), Kirsten Gillibrand (D-NY), and Ron Wyden (D-OR). The bill would expand access to high-quality early learning programs for children from birth to age five. Companion legislation, [H.R. 3461](#), was introduced in the U.S. House of Representatives by Ranking Member of the House Education and Workforce Committee George Miller (D-CA), and Representative Richard Hanna (R-NY). Building on the framework put forward by President Obama in his 2013 State of the Union address, the bill focuses on four key goals: boosting funding for high-quality preschool programs serving low- and moderate-income families; increasing the quality of infant and toddler care offered by providers; supporting broad-scale quality improvements to child care programs; and encouraging continued support for the Maternal, Infant, and Early Childhood Home Visiting (MIECHV) program. The Strong Start for America's Children Act enjoys widespread support from interested stakeholders and organizations. While the likelihood of final passage is uncertain, we anticipate that Chairman Harkin and his colleagues



in the Senate, and Rep. Miller and his House colleagues will continue efforts in support of this measure during the coming year.

**Education Sciences Reform Act (ESRA):** First passed in 2002, ESRA, among other things, created the Institute of Education Sciences. In September 2013, as a part of the reauthorization process for ESRA, the House Education and Workforce Committee held a hearing on “Education Research: Exploring Opportunities to Strengthen the Institute of Education Sciences.” As they work to lay the groundwork for ESRA reauthorization, committee Chairman John Kline (R-MN) and Ranking Member George Miller requested that the Government Accountability Office (GAO) produce a report on the effectiveness of the Institute’s research. That report has not been finalized. We anticipate continued efforts in support of ESRA reauthorization throughout 2014.

**Department of Education College Affordability Outreach:** As part of the Administration’s education agenda, the U.S. Department of Education will develop a ratings system to better inform students and encourage institutions to improve. These ratings will compare colleges with similar missions and identify those that do the most to help students from disadvantaged backgrounds, as well as colleges that are improving their performance. The Department is seeking feedback from students and parents, state officials, college presidents from a variety of institutions, higher education faculty and administrators, businesses and industry leaders, researchers, data experts, higher education associations, innovators, philanthropies, policy leaders, and others on how best to promote college affordability and value while ensuring access and success for disadvantaged students. The Department will use the feedback it receives to propose a rating system that will be available for public comment. Once the measures are finalized, ratings will be published on a College Scorecard before the 2015 school year. Over the coming years, the Department of Education will refine these measures in collaboration with the higher education community, students and families, and the public. More information about the college value and affordability outreach initiative will be available on the Department’s College Affordability and Completion website which can be found [here](#).



## ENERGY & ENVIRONMENT

Senate Energy and Natural Resources Committee Chair Ron Wyden (D-OR) and Ranking Member Lisa Murkowski (R-AK) plan to pack the panel's January calendar in the hope of moving forward with a substantial energy agenda early in the year. That ambitious agenda is probably driven by Senator Wyden's anticipated move to the chairmanship of the Senate Finance Committee once current chairman Max Baucus (D-MT) is confirmed as the new U.S. Ambassador to China.

Senator Baucus had already announced his plans to retire this year after six terms in the Senate, but his early departure will trigger a domino effect on Senate committees with jurisdiction over energy issues, namely the Finance Committee and the Energy and Natural Resources (ENR) Committee.

We anticipate that Senator Mary Landrieu (D-LA) — who is up for reelection in 2014 — will become the next Chairman of the ENR Committee.

The Obama Administration will move forward with a robust energy and climate regulatory agenda in 2014. Upcoming regulations from the Environmental Protection Agency (EPA) in particular are expected to catch the ire of House and Senate Republicans, many of whom may charge that the agency is overstepping its Clean Air Act authority.

### Issues

**Climate Change:** Senate Environment and Public Works (EPW) Chair Barbara Boxer (D-CA) said late last year that she and Senator Sheldon Whitehouse (D-RI) are planning to focus anew on climate change this year. Noting that they have been working on it with Majority Leader Harry Reid (D-NV) for the past few months, she said that they would offer details at a press conference in January. The Senate EPW Committee will kick off this effort by holding the first climate change hearing of 2014 on January 16, focusing primarily on regulatory actions in the absence of Congressional action — a theme we're likely to see repeated throughout the year. EPA Administrator Gina McCarthy will testify, as will other federal agency representatives who are working on President Obama's Climate Action Plan.

**Farm Bill Energy Title:** As noted in the Agriculture section of this report, Congress came close to finishing in late 2013 a rewrite of the 2008 Farm Bill ([H.R. 2642](#), [S. 954](#)). House and Senate conferees are optimistic about finalizing a compromise Farm Bill in the coming weeks, though disagreements over new dairy management provisions have delayed, as of the publication of this report, the final deal. The Senate-passed version of the Energy Title may largely survive, with major Energy Title programs standing a good chance of being reauthorized (and perhaps expanded for renewable chemicals) at almost \$900 million in mandatory funds over five years.



**Water Resources Development Act (WRDA) Reauthorization:** Senate EPW Chair Barbara Boxer and Ranking Member David Vitter (R-LA) are still working with their House counterparts on reaching a compromise on several issues impeding the WRDA reauthorization — discussed further in the Transportation & Infrastructure section of this report.

Despite the delay, conferees are planning to finish the legislation as soon as possible this year, building on water resources bills passed by overwhelming margins in both the House ([H.R. 3080](#)) and Senate ([S. 601](#)) last year.

**Energy Efficiency (Shaheen-Portman):** ENR leadership recently reaffirmed their commitment to moving in 2014 the energy-efficiency legislation of Senators Jeanne Shaheen (D-NH) and Rob Portman (R-OH), now several years in the making and on its third iteration.

Just before the holiday recess the cosponsors announced they are working to improve and incorporate bipartisan amendments into their package. They hope to bring the new bill to the floor the first part of 2014.

**Toxic Substances Control Act (TSCA) Reform:** As EPW Ranking Member, Senator David Vitter has listed the measure as one of his top priorities for the committee in the new year, though it will face a difficult battle, as Committee Chair Boxer believes the compromise measure to be too weak and lacking safeguarding provisions.

Last May, Senators Frank Lautenberg (D-NJ) and Vitter negotiated the first bipartisan compromise on a major TSCA overhaul since enactment of the law in 1976. The deal came after the reform's long-time champion Senator Lautenberg dropped some of his long-standing calls for strict new provisions, including a safety standard and pre-emption language.

With Senator Lautenberg's passing last summer, Senator Tom Udall (D-NM) has taken over the leadership role on the Democratic side, working with Senator Vitter and the bill's other cosponsors to negotiate further amendments. As a result, the bill is likely to face a push to amend provisions addressing its safety standard, state pre-emption regime, funding limits, lack of deadlines, and more, as it moves through the chamber.

**Renewable Fuel Standard (RFS) Reform:** EPA's recent determination to scale back the RFS biofuel blending requirements has elicited a spectrum of reactions from industry leaders, state governors, and members of Congress.

While a 20% drop in corn prices and EPA's partial waiver has relieved supply and price pressure on corn users as well as reducing the required volumes that refiners must blend, it has not halted industry efforts to reform — or repeal — the RFS. Bipartisan, bicameral signals have suggested forthcoming significant changes to the underlying law, or to repealing the corn ethanol mandate entirely.



Senate Appropriations Energy and Water Subcommittee Chair Dianne Feinstein (D-CA) and Senator Tom Coburn (R-OK) are drafting legislation that would remove the RFS mandate, which under current law requires 15 billion gallons of conventional corn ethanol and 21 billion gallons of advanced ethanol in the country's mobile fuel supply by 2022. The Feinstein-Coburn measure would retain advanced biofuel requirements. Senator Vitter (R-LA) and Senator Ben Cardin (D-MD) are also working on a measure to keep the advanced biofuel portion intact while reducing or eliminating the corn ethanol mandate.

The efforts of House Energy and Commerce Committee Chairman Fred Upton (R-MI) and Ranking Member Henry Waxman (D-CA) to reform the RFS seemingly stalled after the EPA released the volume requirements for 2014, even though the committee had solicited numerous comments.

EPW Chair Barbara Boxer stands out as the only chair or ranking member of a committee of jurisdiction who has publicly opposed major reform of the RFS. "As chairman of this committee, and I have the gavel for now, I'm not going to let us reverse course.... I'm just not," Boxer said at a hearing on the RFS last month.

**Energy Tax Extenders:** At the close of 2013, Congress allowed 57 various tax provisions to expire, including 16 sections impacting the energy sector. Notable energy tax incentives include the Production Tax Credit (PTC), as well as tax credits and depreciation allowances for second generation biofuels. Expiration of these incentives has inserted policy uncertainty into the financial markets, impacting renewable project developers' ability to secure project financing. A complete list of expired tax extenders can be found [here](#).

In the face of an increasingly uphill battle to complete comprehensive tax reform this year, policymakers are faced with extending those energy tax incentives, which were allowed to lapse at the end of 2013.

Finance Committee staff have begun developing extenders legislation in earnest, though a path forward is unclear. Though Senate Majority Leader Harry Reid (D-NV) had hoped to fast track a series of 57 temporary tax provisions just before the recess, Republicans objected to the motion, and the effort is expected to resume shortly. House Ways and Means Committee Chairman Dave Camp (R-MI) views tax extenders as a distraction from comprehensive tax reform and will only seriously consider extenders if an extenders proposal is being put together by the Senate.

If the impetus for tax extenders falls to the Senate, Senator Baucus's departure could ironically make early passage of extenders more likely. The leadership change likely makes comprehensive tax reform in 2014 effectively dead for the year as Senator Wyden will want to make his own mark and does not have the time to do so this year.

That reality could clear the deck for getting something, even if only a temporary and retroactive extension of certain tax provisions passed before June and the height of campaign



season. In fact, increasing numbers of senators are calling for tax extenders legislation early this year. Senate Finance Ranking Member Orrin Hatch (R-UT) is open to considering extending some, though not all, extenders in 2014, though he wants to proceed carefully. Some observers might argue that the time it would take for Senator Wyden to assume the chair, as well as the realities of election year politics, makes a retroactive extension possible, but not until after the election.

**Energy Tax Reform:** Shortly after suggesting that tax extenders efforts, particularly those related to energy issues, might be readdressed early in 2014, Senate Finance Chairman Max Baucus (D-MT) unveiled on December 18 his energy tax concept paper, capturing his proposal for a major overhaul of the energy sections of the tax code.

Fundamentally, the proposal would extend current law for several years, then implement a new incentive framework for electricity and clean fuels linking the value of a production or investment tax credit to the amount of carbon dioxide emission reductions achieved. When carbon dioxide emissions from the U.S. generating fleet or transportation fuel supply decreases by 25% relative to 2013 levels, the incentives phase out over four years.

In addition to the common wisdom that comprehensive tax reform could only occur in non-election years, energy tax reform efforts are further complicated by the aforementioned leadership transitions on both the Senate Finance and Energy Committees. Senator Wyden has called Senator Baucus's energy tax reform proposal a "promising approach" to addressing the issue, but Wyden will likely want to further refine the details before embracing the reform as his own, probably in the 114th Congress.

**Energy Exports:** Congressional Republicans, and some Democrats, will keep pressure on the Obama Administration to promote domestic oil and gas development. The State Department is expected to release its analysis of the Keystone XL pipeline this year; in past years Republicans have tried to force the agency to act through legislation. A new issue for the oil and gas industry will be lifting the current ban on crude oil exports, which Congress enacted in the 1970s. Senator Murkowski's white paper issued at the beginning of the year suggested change is needed in the country's energy export policy.

The Department of Energy has also been making its way through applications to export liquefied natural gas (LNG) to non-Free Trade Agreement countries, and the policy discussion surrounding LNG exports, in addition to other energy exports such as oil, will continue to garner significant attention by both policymakers and industry.

**Nuclear Waste Administration Act:** The Senate Energy and Natural Resources Committee has also listed among its top priorities for the first part of the year a markup of bipartisan nuclear waste legislation from Chairman Wyden and Ranking Member Murkowski, and Senators Dianne Feinstein (D-CA) and Lamar Alexander (R-TN). Last summer, the four senators introduced a comprehensive plan, the Nuclear Waste Administration Act of 2013 ([S. 1240](#)) for safeguarding and permanently disposing of thousands of tons of radioactive nuclear



waste that are currently accumulating at sites across the country. The measure implements the recommendations of the president's Blue Ribbon Commission on America's Nuclear Future. After receiving more than 2,500 public comments on a draft April measure, the committee held a hearing on the updated bill in late July, and hopes to return to the issue early in 2014.

### **Regulatory Agenda**

We anticipate the Environmental Protection Agency (EPA), and Departments of Energy, Interior, and State will continue to pursue an aggressive agenda throughout the year.

**EPA:** On January 8, the EPA published in the Federal Register a historically significant proposed rule aimed at reducing greenhouse gas (GHG) emissions from *new* power plants, triggering a 60-day public comment period. The rule limits CO<sub>2</sub> emissions from future fossil-fired power plants, requiring that new coal-fired power plants capture between 30-60% of CO<sub>2</sub> emissions. Once final, EPA's new source performance standards (NSPS) triggers an additional requirement under Section 111(d) of the Clean Air Act for EPA to promulgate similar emissions guidelines for *existing* power plants, the largest source of GHG emissions in the United States.

An EPA draft regulation for existing plant emissions — often referred to as Existing Source Performance Standards (ESPS) — is anticipated to be issued this summer, and the rule should prove just as politically divisive as rules for new plants. Taken together with the emissions regulations for new sources and the corporate average fuel economy standards (CAFE), an ESPS rule would go a long way towards helping the Obama Administration achieve its goal of reducing GHG emissions 17% from 2005 levels by 2020.

In February, the Supreme Court will hear a limited challenge to EPA's authority to regulate GHG emissions. Court rulings on GHG regulations, as well as arguments in a challenge to the Cross-State Air Pollution Rule (CSPAR) in December, are due by June.

Additionally, regulations on cooling water towers and coal ash are facing January deadlines. After the deadline was extended several times, the agency faces a court-ordered January 14 deadline for finalizing its new technology standards for cooling water towers at existing power plants. The agency must also tell the U.S. Court of Appeals for the D.C. Circuit by January 29 what it plans to do about its years-delayed proposed waste regulations governing coal ash. The agency, environmentalists, and recyclers reached a tentative agreement January 2 requiring the agency to complete the standards by the end of the year.

EPA will also release a draft report analyzing the potential hazards associated with hydraulic fracturing. With opponents of hydraulic fracturing saying the process contaminates water supplies and proponents arguing the process is safe, the EPA's analysis could either validate Department of Interior, as well as state and local, draft regulations, or expose efforts to prevent hydraulic fracturing as overreaching.

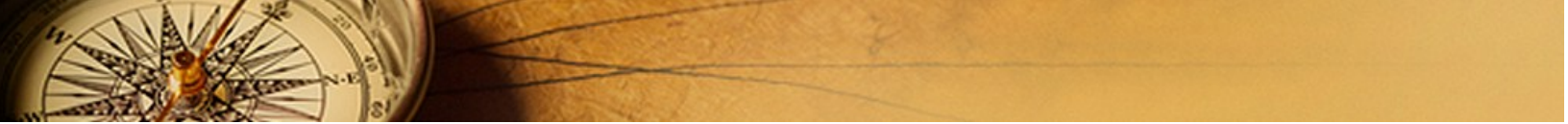


**Department of Energy:** The Department of Energy (DOE) released a draft of its strategic plan for 2014-2018 in early December, and is scheduled to finalize the plan this February. The agency continues to utilize its regulatory authorities to promulgate energy conservation standards and test procedures for residential, commercial, and industrial equipment. DOE aims to build on the success it had last year in beginning to unclog the backlog of energy efficiency standards that had accumulated over the past five years while also using existing authorities to establish energy-efficiency standards for new products. The agency has been making its way through applications to export liquefied natural gas (LNG) to non-Free Trade Agreement countries, and LNG exports will continue to garner significant debate.

**Department of State:** The State Department is poised to release its final environmental impact statement on the proposed Keystone XL pipeline by the end of March, though there is no guarantee that the agency will deliver by then.

As Secretary of State Kerry works to shift the agency's focus on climate change, the Department of State submitted its 2014 U.S. Climate Action Report to the United Nations January 1. The report includes recent legal precedent on climate regulations as well as estimated carbon mitigation broken down by federal program.

**Department of Interior:** As the nation considers the best path forward for domestic energy exports, energy production on federal lands — and a particular focus on Arctic drilling — will garner substantial attention. After facing significant difficulty two years ago, Shell pulled out of its nascent Arctic operations, but the company is renewing a smaller effort this summer, and the Interior Department will keep a close eye on its plans. The Interior Department is scheduled to release rules regulating hydraulic fracturing on public lands. As increasing numbers of states and municipalities consider moratoria or regulations on fracking, the Interior's rule could serve as a model for states. Meanwhile, as part of an effort to promote renewable energy development on federal lands and waters, the department will move ahead with plans for lease sales of two offshore wind blocks in Maryland.



## FINANCIAL SERVICES

Looking back on the past year, it appears that the only major legislative victories in the financial services space were the eventual correction of self-inflicted wounds (i.e., raising the debt ceiling) and that almost all of the other work by the Banking Committees serves to set the stage for more substantive legislation in 2014. This year, with housing finance reform, the need to reauthorize the Terrorism Risk Insurance Act (TRIA), as well as continued oversight and implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), there is much to be done.

In addition to the major items on the horizon outlined below, there are other issues that bear watching, including: administrative actions related to the cybersecurity practices and safeguards of financial and banking institutions; increased attention on virtual currencies such as Bitcoin, increased attention on high frequency traders; and a major push to “regulate” the shadow banking industry.

### Issues

**Volcker Rule:** In early December, after several years of consideration and in response to over 18,000 public comments, the five agencies responsible for promulgating the Volcker Rule voted to approve the final version of the controversial bank proprietary trading ban. However, the ink was barely dry on the Federal Register before further controversy erupted, and before the end of the year the rule faced serious legal challenges, and regulators are already contemplating a revision.

At issue, at least initially, was the rule’s impact on a bank’s ability to hold collateralized debt obligations (CDOs) backed by trust-preferred securities (TRuPS) on its books. With a court case, and administrative revisions potentially working on parallel paths, there could be considerable attention focused on “fixing” Volcker before the July 15 implementation deadline, as it has been reported that members of both the House and the Senate are already preparing to introduce legislation.

**Housing Finance Reform:** Although touched on tangentially as part of Dodd-Frank, the housing finance market continues, in the eyes of some, to require serious reforms to repair flaws highlighted by the financial crisis. During 2013, both the House and the Senate took major steps towards putting forward comprehensive legislation, and while both bodies will continue to build upon these efforts in 2014, the path towards the enactment of legislation continues to be a bumpy one.

First, while the House Financial Services Committee was able to vote the Protecting American Taxpayers and Homeowners (PATH) Act ([H.R. 2767](#)) out of Committee by a narrow margin at the end of July, House leadership has continued to refrain from scheduling the bill for floor consideration. Second, while Senate Banking Chairman Tim Johnson (D-SD) and Ranking Member Mike Crapo (R-ID) led the Committee in an exhaustive consideration of the issue —



including 12 hearings — they were unable to find the consensus necessary to bring a proposal before the Committee for a vote. Going forward in 2014, Chairman Johnson has pledged to continue to pursue legislation that builds on the Corker-Warner proposal, also known as the Housing Finance Reform and Taxpayer Protection Act of 2013 ([S. 1217](#)). Corker-Warner is very different than the PATH Act in some ways, and it could be challenging to reconcile the two. Further complicating matters is the continued housing recovery, which could dull the political impetus for reform and Congressman Mel Watt's ascension to director of the Federal Housing Finance Agency, which could alter the calculus for both Republicans and Democrats as they consider any reforms.

**Terrorism Risk Insurance (TRIA):** Without Congressional action, TRIA is set to expire on December 31, 2014. Last year both the House Financial Services Committee and the Senate Banking Committee held hearings about the program with the goal of getting the ball rolling to reauthorize the program well before this deadline.

Further action is anticipated, as the Chairman of the Housing and Insurance Subcommittee Randy Neugebauer (R-TX) pledged to begin holding legislative hearings early in the new year to proceed with legislation to extend TRIA; however, reconciling industry support for the program may be difficult in light of opposition from House Financial Services Committee Chairman Jeb Hensarling (R-TX). Similar to other issues (*see*, Housing Finance Reform) a key point of disagreement is the extent of the role the Federal Government and the private market are to play. In fact, it is worth noting that the Financial Service Committee's charter for the 113th Congress specifically states that they may "consider proposals that would phase out the Terrorism Risk Insurance Program by encouraging private industry to develop dedicated capital for underwriting terrorism risks, and significantly reducing the potential Federal exposure and participation in terrorism insurance over time."

Although House members have introduced several proposals to reauthorize and/or overhaul TRIA, the Senate has yet to propose legislation, though the issue is clearly one of the Committee's agenda items for 2014, and Chairman Tim Johnson has publicly stated his interest in seeing the program reauthorized before December, though in a way that comes with zero cost to taxpayers while also ensuring economic growth and providing certainty to commercial businesses.

**Continued Dodd-Frank Implementation and Other Agency Actions:** The end of 2013 brought news that just over 50% of the rulemakings required by the Dodd-Frank Act had been finalized. Although this includes some of the more controversial rules, e.g., Volcker and the Swap Push-Out, there is still a significant amount of work left for the banking regulators to put additional financial reforms in place. As they do, Congress will continue to weigh in, either to clarify via letters and hearings, or endeavor to repeal portions of the law through legislation.

One agency that we anticipate putting forward an aggressive agenda and also receiving significant Congressional scrutiny is the Consumer Financial Protection Bureau's (CFPB). On January 10 the majority of the Bureau's mortgage rules took effect, including the ability-to-



repay and qualified mortgage standards. However, the CFPB is not resting on its laurels and appears to have an aggressive agenda planned for 2014, including continued enforcement actions, ongoing pursuit of a number of consumer protection areas (including auto loans, student loans, and credit and prepaid card issues), continued work to streamline the mortgage disclosures Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending Act (TILA), and Dodd-Frank Act amendments to the Home Mortgage Disclosure Act (HMDA). The Bureau and Congress are also working on how to modify a Gramm-Leach-Bliley Act requirement dealing with how financial institutions provide notice about their data sharing practices.

Another agency that will continue to have a full plate in 2014 is the Securities and Exchange Commission (SEC). We anticipate that the majority of the SEC's time will be consumed by two areas, (1) Money Market Funds, and (2) JOBS Act implementation, with the former to be more controversial and take up more time. Additionally, based on a non-binding [agenda](#), it appears that the Commission also endeavors to consider investment advice standards for brokers, institute compensation claw-back, and create pay for performance rules, among other things.

Another regulator expected to continue to engage in serious Dodd-Frank rulemaking is the Commodity Futures Trading Commission (CFTC); although the Commission will be hobbled by vacancies in the early part of the year, and, in fact, the normally five-member body may be reduced to just two (one Democrat Commissioner and one Republican Commissioner) whenever current Commissioner Bart Chilton follows through with his previously announced intent to resign. For these reasons, the CFTC may be slower out of the gate to take on the Dodd-Frank rules and other issues related to swaps and cross-border trades.

On January 6, the Senate voted to confirm Janet Yellen to be the next, and the first female, Chairman of the Federal Reserve. In the coming months, Chairwoman Yellen will have a busy agenda, both in terms of regulatory and monetary policy. On the regulatory side, the Fed is expected to tackle a number of final rulemakings that would enhance safety and soundness at both banks and nonbanking institutions. Some of these proposals will likely include risk-based and leverage capital requirements, liquidity standards, single counterparty exposure limits, more stringent risk management rules, and early remediation guidelines. The Fed is also expected to implement rules to apply Basel III leverage ratios on large U.S. institutions. On the monetary side, markets and policymakers will closely watch how the Fed continues to taper its so-called "quantitative easing" policy.

Additionally, it appears that the central bank is expected to take a more active role in regulating the "shadow banking" system in the coming year. Fed Governor Daniel Tarullo, the central bank's head of regulatory reform, has long stressed the need for changes to the wholesale funding market, including short-term overnight cash transfers, the tri-party repo market, and third-party counterparts. In tweaking rules governing these funding markets, Tarullo is also expected to push for limits in the shadow banking system and other changes to

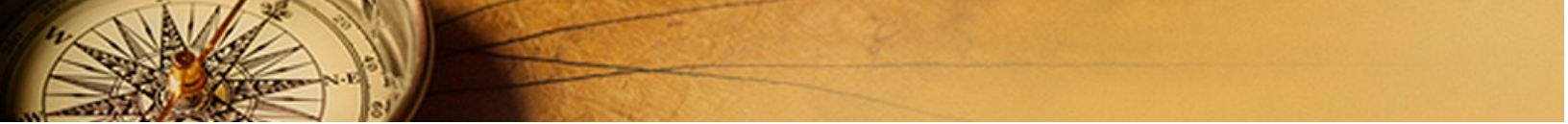


securities transactions. Among the potential proposals are additional capital requirements or larger margins for broker-dealers undertaking security backed loans.

**Retirement and Pensions:** The Senate Finance Subcommittee on Social Security, Pensions, and Family Policy concluded 2013 with a hearing on the role of Social Security, defined benefits, and private retirement accounts in “face of the retirement crisis.” While this hearing could be a signal that the Subcommittee will make retirement a priority in the second half of the 113th Congress, a change in leadership at the full Finance Committee and a precedent for these issues to be put on the backburner, could leave solutions to the retirement crisis lost in the shuffle.

On the regulatory side, the Department of Labor (DOL) is expected to repropose its definition of a fiduciary, a rule intended to raise the standards for investment advice, in August 2014. The Securities and Exchange Commission (SEC) has also put the fiduciary rule on its 2014 regulatory agenda, but appears to be holding off until DOL finalizes its version of the rule.

As part of the Bipartisan Budget Act agreed to at the end of the year, we will also see Pension Benefits Guarantee Corporation (PBGC) premiums increase this year. The budget raises the premiums that companies must pay to the PBGC and has raised concerns that employers will shrink pension plans through de-risking by selling liabilities or offering plan participants the ability to convert annuities into lump sum payments.



## FOREIGN POLICY

2014 will continue to be a busy year for U.S. military, diplomatic, and development engagement abroad, especially with many of the big foreign policy challenges of 2013 remaining unresolved. Early this year, the State Department and the Pentagon will need to determine the course forward for U.S. involvement in Afghanistan, negotiations with Iran, and the U.S. position on Syria. As congressional oversight committees continue to investigate the September 11, 2012 attack on the U.S. diplomatic compound in Benghazi, diplomatic security should be expected to remain a top priority related to the U.S. presence abroad.

Beyond the progress made on longstanding foreign policy issues, lawmakers and Administration officials will also respond to new challenges in 2014. While Administration officials have experienced a surge in support for the U.S. defense strategy shift to the Asia-Pacific, recent events in Kenya, the Central African Republic (CAR), and South Sudan may also require a parallel shift in focus on Africa.

Beyond military and diplomatic relations abroad, the U.S. is also likely to continue its commercial diplomacy and trade promotion activities to help U.S. companies succeed in achieving their business goals abroad. It is likely that 2014 will see many U.S. companies striving to become more globally oriented, especially as the private sector continues to face pressures in the current fiscal environment to increase American competitiveness in the global market.

### Issues

**Afghanistan:** This will be a critical year for both the U.S. and international organizations to determine future plans for operations in Afghanistan. While President Obama has promised to officially end the war in Afghanistan by withdrawing all U.S. troops in theater by the end of 2014, a number of factors complicate the future of U.S.-Afghanistan relations. First, while U.S. officials were optimistic that a bilateral security agreement could be finalized by the end of 2013, negotiations will carry on into the new year. While a decision on the number of U.S. troops to remain in Afghanistan will be made at President Obama's discretion, North Atlantic Treaty Organization (NATO) meetings planned for this year are likely to influence how the war in Afghanistan comes to a close.

**Iraq:** The deteriorating security situation in Iraq is poised to impact not only the U.S. military withdrawal from Afghanistan, but also broader U.S. antiterrorism efforts throughout the post-American Middle East. At the start of the year, Senators John McCain (R-AZ) and Lindsey Graham (R-SC) publicly blamed the Obama Administration's decision to withdraw all U.S. forces from Iraq in 2011 for the latest situation in which Al Qaeda affiliates have seized control of Fallujah, which U.S. troops assisted in alleviating from terrorist control before the U.S. withdrawal from the country. Additionally, extremists have also begun to assert control over the city of Ramadi. Iraqi forces are preparing now for a major strike against Al Qaeda militants in Fallujah. While it remains to be seen how changing conditions in Iraq may impact



the U.S. response, including U.S. Foreign Military Sales (FMS), Secretary of State John Kerry has said that, although the U.S. supports Iraq's fight against Al Qaeda affiliates, the Obama Administration is currently not contemplating a return to Iraq that entails U.S. troops on the ground.

**Iran Sanctions:** At the end of 2013, Senate Majority Leader Harry Reid (D-NV) was able to walk the line between the White House and Senate Democrats by not allowing a controversial floor vote on increased Iran sanctions. However, given growing concern for Iran's nuclear ambitions, the issue may come to a head in 2014. On December 19, Senate Foreign Relations Committee Chairman Robert Menendez (D-NJ), Senator Mark Kirk (R-IL), and 24 co-sponsors introduced the bipartisan Nuclear Weapon Free Iran Act. The legislation proposes prospective sanctions should the Iranian regime violate the six-month interim Joint Plan of Action agreed to in Geneva or fail to reach a final agreement to end its nuclear program with the U.S. and other countries. The bill would require further reductions in purchases of Iranian petroleum and apply additional penalties to the engineering, mining, and construction sectors of the Iranian economy. Since introduction, the bill has gained a number of co-sponsors, including a growing number of Democrats. However, Banking Committee Chairman Tim Johnson (D-SD), whose committee has jurisdiction over the bill, and nine other Democratic senators have sent a letter to Majority Leader Reid pressuring him to hold off on a vote on the legislation. Should the Senate pass a bill requiring new sanctions on Iran, the House would be likely to overwhelmingly support such legislation, especially as the House approved Iran sanctions legislation last summer by a vote of 400-20. Additionally, House Majority Leader Eric Cantor (R-VA) released a memo on the January legislative agenda expressing hope that the House would demonstrate its concerns about Iran's aggression in a bipartisan manner and state a position on a comprehensive settlement of the Iranian nuclear issue.

**Syria:** This Syrian civil war will enter its third year in March. In the second half of 2013, U.S. foreign policy towards Syria was complicated at best. Over the summer, Secretary Kerry presented evidence of the use of chemical weapons by Syrian President Bashar al-Assad against his own people. President Obama quickly sent U.S. Navy ships to the region. Before ordering military action, President Obama asked Congress to go on record approving or disapproving the use of military force against the Syrian regime. While lawmakers considered the U.S. response to the use of chemical weapons in Syria, Secretary Kerry negotiated a peace deal with President Assad, requiring the destruction of Syria's chemical weapons stockpile by the end of the calendar year. Acknowledging that the timeline for the destruction of Syria's chemical weapons may have been overly ambitious, the deadline has now been pushed to February 5, establishing a new checkpoint for U.S. officials to reassess U.S. foreign policy towards President Assad's regime. In the coming weeks, 60 U.S. Army civilians and 35 civilian mariners are expected to head to Syria on the MV Cape Ray to participate in the destruction of Syria's chemical weapons. In the longer term, it appears U.S. defense and foreign policy leaders are keeping their options open, as evidenced by the January 3 announcement that DOD is prepared to offer troops imminent danger pay for service in Syria, although the U.S. currently has no military personnel deployed in the country or plans to deploy service members to Syria in the near term. Multilateral peace talks regarding the situation in Syria are



also set to resume in the new year, beginning with a January 22 meeting in Geneva. It remains uncertain if a final resolution can be achieved this year, especially as major Syria opposition groups have threatened to boycott upcoming meetings.

**Russia:** 2013 was a tense year for U.S.-Russia relations and the approaching Winter Olympics, scheduled to begin on February 6 in Sochi, will place a spotlight on continuing tensions early in the new year. While the president has advanced the U.S. relationship with Russia in some areas, including Afghanistan, space travel, and nuclear security and terrorism, primarily by working with Russian Prime Minister Dmitry Medvedev, efforts to truly transform bilateral relations have been somewhat hindered by Russian President Vladimir Putin seeking to distance the country from Western influence on issues spanning gay rights, religious tolerance, and rule of law. President Putin's approach has been witnessed in a number of foreign policy scenarios in recent months, notably including the incident with former U.S. National Security Agency (NSA) contractor Edward Snowden, U.S. consideration of military action in Syria, and recent turmoil in the Ukraine. While many of these issues remain unresolved, it appears President Putin is making an effort to start 2014 relations between Russia and the U.S. off on the right foot, as evidenced by the New Year's message he sent to President Obama. In his note, President Putin expressed his belief that the U.S. and Russia have been able to work together in the past year on issues of significance to global stability and welcomed the opportunity for closer cooperation on economic, science and technology, and cultural issues in the coming year.

**Africa:** While not a top visibility issue of the Obama Administration's first term foreign policy agenda, recent events will necessitate greater focus on Africa. In 2013, President Obama visited the continent twice, once during a summer trip to Senegal, Tanzania, and South Africa, and again in December to participate in memorial services for former South African President Nelson Mandela. During his first trip, President Obama announced his new Power Africa initiative, seeking to add more than 10,000 megawatts of cleaner, more efficient electricity generation in six phase one partner countries, which will continue to roll out this year. Additionally, the past months have seen a rise in terrorist events on the continent, as well as political uprisings that will likely require enhanced U.S. engagement, including humanitarian and, potentially, military assistance in the near term. It is also important to note that seven of the world's ten fastest growing economies reside on the African continent. This will be an important focus as lawmakers, primarily led by Chairman Chris Coons (D-DE) at the Senate Foreign Relations Subcommittee on African Affairs, and Ranking Member Karen Bass (D-CA) at the House Foreign Affairs Subcommittee on Africa, Global Health, Global Human Rights and International Organizations, push for legislators to begin identifying priorities for the approaching African Growth and Opportunity Act (AGOA) reauthorization. The current authorization is due to expire on September 30, 2015.

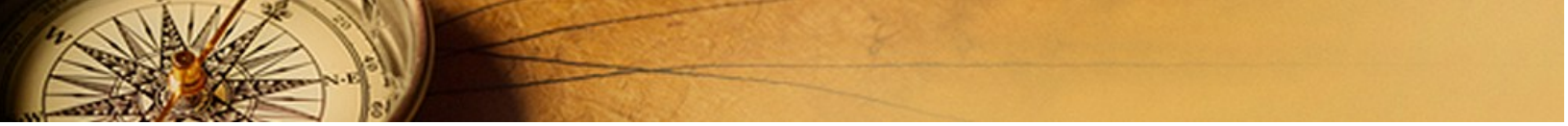
**Asia-Pacific:** The Obama Administration's pivot to the Asia-Pacific region will be highlighted by Secretary of Defense Chuck Hagel's visit to Beijing this year at the invitation of Chinese Defense Minister General Chang Wanquan. Chinese leaders are facing increasing pressure to address growing environmental and social problems and to revamp the economic system,



especially with public debt hitting a record of more than 200% of gross domestic product (GDP). While the growing emphasis of Asia, first ordered in President Obama's first term, has not seen a tremendous increase in U.S. military hardware and personnel in the region, it is expected that, similar to U.S. foreign policy strategy in other parts of the world, defense leaders will continue to prioritize strategic cooperation and furthering bilateral and multilateral relations with critical U.S. allies. Security issues also continue to plague the Asia Pacific, notably growing tensions between China and Japan over China's self-declared air defense zone. In addition to this, North Korea's nuclear ambitions continue to threaten U.S. ally South Korea, who has vowed to strike back against any future North Korean assault. U.S. relations with Taiwan, which have been bolstered by efforts both at the White House and on Capitol Hill over the past year, are expected to continue to strengthen around issues of key concern in the Asia-Pacific region, including economic and trade ties, military and security affairs, and territorial disputes in the East China Sea and the South China Sea.

**Latin America:** Despite 2013 visits to Latin America by President Obama, Vice President Joe Biden, and Secretary of State Kerry as part of an effort to strengthen U.S. relations with the region, Latin America is likely to remain a relatively low priority on the Administration's foreign policy agenda in the new year. In 2014, it is possible that U.S. diplomats will continue a shift away from a one-size-fits-all approach to engagement with the region and instead embrace more country-specific strategies. U.S.-Brazil relations will remain a focal point for U.S. relations with Latin America, especially following revelations regarding U.S. spying on Latin American heads of state that lead Brazilian President Dilma Rousseff to cancel an October trip to the U.S., as well as Brazil's recent selection of Swedish aircraft over Boeing technology for its next generation fighter jets. Other Latin America issues to watch in 2014 include bilateral engagement with Mexico, especially in light of Mexico's recent adoption of many new, pro-business policies, regional collaboration targeted towards addressing the trafficking of illicit drugs, and the impact of May presidential elections in Columbia.

**Embassy Security:** The House overwhelmingly passed new embassy security reform measures as part of the FY14 Department of State Operations bill in September. Further action on the Chris Stevens, Sean Smith, Tyrone Woods, and Glen Doherty Embassy Security, Threat Mitigation, and Personnel Protection Act, introduced by Senate Foreign Relations Committee Chairman Robert Menendez (D-NJ) and Ranking Member Bob Corker (R-TN) and reported by the Foreign Relations Committee, is pending full Senate consideration. Diplomatic security will also remain a top priority at the Department of State. Just before the holidays, the full Senate voted to confirm Heather Higginbottom as Deputy Secretary of State for Management and Resources. During her confirmation hearing, Deputy Secretary Higginbottom testified that embassy security will be the top agenda item in her new role. At the agency, these diplomatic security issues will also continue to be especially pertinent with the Worldwide Protective Services (WPS) contract, the primary vehicle used by the State Department to contract for security services to protect State Department facilities and personnel overseas, which is set to expire in 2015.



**Global Climate Change:** While perhaps not the most publicly visible priority for the Department of State, it is well known that Secretary of State Kerry is an avid supporter of driving U.S. leadership in global climate change negotiations, with his eyes set on a robust 2015 global climate treaty. Shortly after his swearing in in February, Secretary Kerry issued a directive requiring a discussion of climate change issues in any meeting between American diplomats and foreign officials as part of a top-down departmental approach to prioritizing solutions to global warming. While Senate ratification of a comprehensive climate change treaty is highly unlikely, especially given Congress's rejection of past climate bills, including many championed by then Senator Kerry, State Department personnel have also been directed to focus on promoting bilateral and regional activities to combat the effects of climate change. For example, Secretary Kerry has decisively shifted the dynamic in the U.S. relationship with China, seeking incremental steps to enhance U.S.-China partnership on climate issues, such as the announcement last September of an agreement with China to decrease production of hydrofluorocarbons. Additionally, U.S. negotiators on climate change have begun to prioritize smaller climate agreements, especially with countries that constitute some of the world's largest economies. As the second Obama term draws to a close, it is likely that the State Department will increase the visibility of its work on climate change around the globe, another issue Secretary Kerry would like to define his legacy as the head of the Department of State.

**Bilateral Nuclear Cooperation Agreements:** During his December trip to Vietnam, Secretary of State Kerry participated in the official signing of the 123 bilateral nuclear cooperation agreement between the U.S. and Vietnam. While the completion of the Vietnam agreement and the White House's recent delivery to Congress of a bilateral agreement with Taiwan mark significant progress, several other bilateral agreements, including those with Saudi Arabia, Jordan, and Malaysia, as well as a long term agreement with South Korea, remain stalled. The signing of the agreement with Vietnam also comes on the heels of the State Department and the Department of Energy announcing the results of an internal policy review seeking to strike the balance between promoting U.S. nuclear trade and achieving global nonproliferation goals. According to the announcement, both agencies will continue to pursue a flexible negotiating approach on a per country basis, especially regarding controversial requirements pertaining to uranium enrichment and reprocessing. Shortly thereafter, Representative Ileana Ros-Lehtinen (R-CA), Chairman of the House Foreign Affairs Subcommittee on the Middle East and North Africa, and Representative Brad Sherman (D-CA), Ranking Member of the House Foreign Affairs Subcommittee on Terrorism, Nonproliferation, and Trade, introduced legislation that would only allow fast track consideration of 123 agreements that include the gold standard of nonproliferation requirements, while bilateral nuclear cooperation agreements may currently be implemented once submitted to Congress without any legislative action within 90 days of continuous legislative session. Senator Ed Markey (D-MA) has expressed his intent to introduce companion legislation soon. The proposals, similar to failed legislation from the 112th Congress, have already seen fierce opposition from the U.S. nuclear industry, which believes the legislation will divert customers to other suppliers of nuclear technology, such as Russia, France, South Korea, and Japan, counter to the U.S. goals of promoting nuclear safety, security, and nonproliferation.

## HEALTH CARE

As in the first half of the 113th Congress, health care policy will continue to be a significant topic of debate among lawmakers, especially in context of the implementation of the Patient Protection and Affordable Care Act (ACA) and the overhaul of the sustainable growth rate (SGR) formula, also known as the “Doc Fix,” for how physicians are reimbursed under the Medicare program. Most of the key portions of the health care law are now in effect, including the exchanges and coverage subsidies, but others, such as the employer mandate and the small business “SHOP” exchange, have been delayed by the Administration. As such, 2014 will be a crucial year for the ACA as the law continues to come into full force and the Administration continues to work to implement delayed provisions and fix glitches within the law and website. In addition to the ACA, lawmakers in both parties and in both chambers of Congress have set the stage at the end of 2013 for an overhaul of the SGR in the first half of 2014. Augmenting these two primary discussion drivers, there are also a number of other health care issues that must be addressed in 2013 that allow stakeholders from across the spectrum to weigh in and shape critical policy with key policymakers.

**ACA Implementation:** Though the initial rollout was marred by glitches and delays of portions of the law, the ACA came into full effect at the end of the year. The law may be in place and the exchanges operational, but the Department of Health and Human Services (HHS) continues to work to expand health insurance. HHS outlined in its regulatory plan for the fiscal year that, as Health Insurance Marketplaces begin open enrollment, the agency will “continue to provide guidance to states, providers, and insurers to enhance the experience of individuals and families accessing the Marketplaces.”

In addition to continuing to work with states and providers, HHS will publish other rules that “enhance the protections” of the ACA. For example, the Centers for Medicare and Medicaid Services (CMS) plans to propose a rule to monitor and update policies related to the Health Insurance Marketplaces based on experience with initial open enrollment to address emerging needs of states, health care providers, and insurers.

In 2014, the following portions of the health law have, or will become, operational:

- Consumer Operated and Oriented Plans (Co-Ops),
- Health insurance exchanges,
- Individual mandate,
- Multi-state health plans,
- Medicaid expansion to 133% of the federal poverty level (FPL) for eligible states,
- Streamlined enrollment for Medicaid, CHIP, and exchanges, and
- Wellness program incentives.

**Continued Congressional Pressure:** As the political dynamics in Congress remain largely unchanged, it is likely we will continue to see more of the same from Congress in 2014. The


Republican-controlled House will continue to push for proposals to repeal and overhaul of the ACA that will continue to be non-starters in the Democratic-held Senate. In his January 2014 legislative agenda to House Republicans, Majority Leader Eric Cantor (R-VA) stressed that the House will continue its efforts to “demand accountability” and exercise its “duty of oversight” of the health care law. While it remains unlikely that there will be bipartisan support in both chambers for substantive technical corrections, the fight over the future of the health care law will likely remain a hotly debated topic.

In coming months, in addition to focusing on usual suspects such as a repeal of the 2.3% medical device tax and health coverage for lawmakers and staff, Congress will turn to security concerns associated with Healthcare.gov. Several members, including Representatives Diane Black (R-WV), Kerry Bentivolio (R-MI), and Gus Bilirakis (R-FL), have introduced legislation to require notification should a breach of personal information occur on the health care website. The House has already passed, in a 291-122 vote, House Energy and Commerce Health Subcommittee Chairman Joe Pitts’s (R-PA) legislation, the Health Exchange Security and Transparency Act of 2014 ([H.R. 3811](#)), to require security breach disclosures and is soon expected to vote on the Exchange Information Disclosure Act ([H.R. 3362](#)) to require the Administration to submit detailed weekly data on state-by-state enrollment in the exchanges.

**Delayed Provisions:** Although much of the health care law has now gone into effect, delayed portions will continue to be fine-tuned over the course of the year. The employer mandate, which was scheduled to become effective January 1, 2014, was delayed until the beginning of 2015 in order to ensure employers have enough time to come into compliance with the new requirement. Over the next year we will see businesses covered by the mandate, those with 50 employees or more, begin to prepare to offer health insurance or to pay a fine. Some analysts fear that, as the ACA defines full-time employees as those working more than 30 hours a week, the provision will result in employers cutting employee hours to avoid fines under the mandate.

Another delayed portion of the health care law is the Small Business Health Options Program (SHOP), the online insurance marketplace for small businesses. HHS delayed implementation of SHOP until at least 2015. This gives small businesses an additional year over which to make operational decisions on their future provision of health insurance as a workplace benefit.

**Medicaid Activity:** 2014 will focus more heavily on individual states, as they work to implement the ACA and also reign in health care spending. This year looks to see an acceleration of activity around the transition to managed care for various Medicaid programs. A number of states, including Florida, have already moved their entire Medicaid programs into managed care, and that trend will likely continue via HHS waivers and various pilot programs such as the Medicare-Medicaid Duals demonstrations.



Medicaid expansion will continue to be a dynamic issue in 2014 as more Republican-controlled states consider joining the 26 states that have already approved the coverage expansion. Stakeholders are preparing for more “Arkansas-like” proposals that ask for additional flexibility from HHS while making Medicaid expansion more palatable for Republican state legislators and/or governors. Mid-year Medicaid expansions will also present serious policy issues for policymakers, including, for example, whether such coverage changes for consumers from Qualified Health Plans to Medicaid should be phased in gradually, at the option of the consumer, or automatically. Continuity of care could be at risk and HHS will closely monitor state activity with mid-year Medicaid expansions in order to avoid potential gaps in care due to consumer confusion that could result in negative experiences and perceptions of the ACA on a broader scale.

Finally, physician groups in particular will be exerting pressure on legislators to extend provisions in the ACA that increased payment for primary care in Medicaid. The ACA gave select Medicare primary care services a 10% bonus between 2011 and 2015 and set Medicaid primary care payments on par with those of Medicare in 2013 and 2014.

**Sustainable Growth Rate:** As part of the Bipartisan Budget Act enacted at the end of the year, Congress included a three-month SGR payment patch to delay the 20% cut in physician payments through March 2014. This brief patch sets Congress up for an early push to continue its work to reform the SGR. In December the Senate Finance Committee and the House Ways and Means Committee each reported bills to replace the SGR. The bills, the Medicare Patient Access and Quality Improvement Act ([H.R. 2810](#)) and the [SGR Repeal and Medicare Beneficiary Access Improvement Act of 2013](#), still need to be reconciled but remain largely similar. Both bills would repeal the SGR while providing funding for shifting away from the fee-for-service (FFS) payment model.

Congress will likely act on the SGR replacement before the three month patch expires, meaning the repeal bills could become wrapped up in a larger debt ceiling package. Still, the future of SGR reform became increasingly hazy with the announcement that current Senate Finance Chairman Max Baucus (D-MT) would be leaving the Senate to serve as U.S. Ambassador to China. In addition to the departure of Chairman Baucus, Congress will face perhaps the most daunting hurdle in reaching successful SGR reform: finding appropriate offsets to pay for the proposal. Both the Senate and House proposals do not yet include offsets and, although the CBO lowered the cost of replacing the SGR in December to slightly over \$20 billion, finding ways to pay for it remains crucial to the success of the effort.

**Health Care Delivery Reform:** The rising cost of health care is not a new trend. However, with the implementation of the ACA, the scrutiny on the health care cost curve has elevated far beyond health policy circles and into the main stream media’s daily narrative on the success or failures of the ACA. The Centers for Medicare and Medicaid Services (CMS), the federal agency that administers the Medicare and Medicaid Programs, will continue a strategy to achieve greater value and sustainability via reimbursement reductions, increasing fraud and abuse audit activity, and also implementing a swath of programs

designed to incentivize and/or penalize providers based on the quality of care delivered to beneficiaries.

The number and variety of pilot and demonstration programs will also increase over the next 12-18 months as CMS attempts to “round out” its existing portfolio and obligate the remainder of the \$10 billion in funding allocated to CMS via ACA Section 3021, which also established the CMS Innovation Center. Late last month, the Innovation Center at CMS released a Request for Information (with a comment due date of March 1) on how to reopen applications for a potentially much more comprehensive and aggressive Pioneer ACO program, a form of ACOs designed for more experienced health care systems and providers. The new Pioneer ACO program, which could be finalized and open for applications as early as late summer, could have significant implications for health care stakeholders ranging from Part D plans to DME suppliers and Medicaid programs.

Other initiatives that are being contemplated by the agency could include outpatient specialty models such as oncology and cardiology; practice transformation in ambulatory care; health plan innovation; consumer incentives; and post-acute care.

**Telehealth:** Another topic that could see movement in the second half of the 113th Congress is telehealth policy, which has seen an explosion in the past year with at least 40 states having considered legislation addressing telehealth policy with wide variations in how telehealth is defined. While the increased prevalence of telehealth will most certainly bolster the health care system by removing barriers such as provider shortage, distance, mobility, and time constraints, a patchwork of state legislation poses challenges to the deployment of regional and national telehealth technologies. In addition, the proliferation of telehealth is faced with challenges in reimbursement and provider licensure. For one, under Medicare reimbursement policies, in order to be paid for a telehealth service, the service must take place at a specifically designated rural area and at what is known as an originating site. This severely limits Medicare’s telehealth reimbursement and the expanded use of telehealth.

In the 113th Congress, there have been several pieces of legislation already introduced aiming to increase the adoption and innovation of telehealth. Representatives Doris Matsui (D-CA) and Bill Johnson (R-OH) introduced the Telehealth Modernization Act of 2013 ([H.R. 3750](#)), which provides principles for states to utilize when modernizing their legislative and regulatory frameworks so as provide more clarify and uniformity across the states as to how telehealth is defined. The Telemedicine for Medicare (TELE-MED) Act ([H.R. 3077](#)), introduced by Representatives Devin Nunes (R-CA) and Frank Pallone (D-NJ), would take steps to resolve telehealth licensure issues by allowing Medicare providers to treat patients across state lines without having to obtain multiple state medical licenses. Finally, the Telehealth Enhancement Act of 2013 ([H.R. 3306](#)), introduced by Representative Mike Thompson (D-CA), would, among a host of provisions, expand telehealth coverage through Medicare and Medicaid by ensuring that no covered medical benefit would be excluded because it is furnished through telehealth.

In addition, two amendments were added to the Senate Finance Chairman's mark of the SGR overhaul dealing with telehealth. These amendments were sponsored by Senator Thune (R-SD) and numerous bipartisan cosponsors and would clarify that telehealth can be used under Alternative Payment Models in Medicare (i.e., Accountable Care Organizations, Bundled Payments, and Patient-Centered Medical Homes) and would establish a demonstration project on remote patient monitoring through telehealth in the Medicare program to ensure seniors can remain in their homes longer and to prevent hospital readmissions.

## IMMIGRATION, LAW ENFORCEMENT & JUDICIARY

Three high-profile issues will top the immigration, law enforcement, and judiciary agenda for the coming year. While comprehensive reform of the nation's immigration laws does not seem likely given recent setbacks, there appears to be a movement toward addressing immigration incrementally with smaller measures that stand a better chance of passage. Patent reform continues to be a priority across many industries and with various stakeholders. Although patent reform gained momentum in the House last year, it remains to be seen if there is the same enthusiasm for such a reform measure in the Senate. Finally, President Obama has continued to make his case for gun control — offering a proposal to prevent the mentally ill from purchasing weapons — ensuring that this hot button issue will remain as a topic of debate for 2014.

### Issues

**Immigration:** The Senate passed the Border Security, Economic Opportunity and Immigration Modernization Act ([S. 744](#)) in June, and the House Democratic Caucus introduced a bill in October, [H.R. 15](#), that largely mirrors the Senate proposal. While the House and Senate proposals differ somewhat, they both address the issues of border security; high-skilled visas; and funding for Science, Technology, Engineering, and Math (STEM) education. Even though immigration reform remains a priority, it will be difficult for Congress to move a comprehensive package in 2014 in light of this being an election year.

However, supporters of immigration reform recognize the difficulty of passing a comprehensive package and are shifting to a more piecemeal approach. For example, the tech industry is concentrating on high-skilled visas, which may have a chance to move if separated from more controversial immigration issues such as border security. President Obama supports this incremental approach as long as the results satisfy the goals of last year's comprehensive proposal. Some observers have taken heart in the news that Speaker John Boehner (R-OH) has added an immigration expert to his staff and Majority Leader Eric Cantor (R-VA) has indicated that immigration reform could make it to the floor as one of several outstanding issues in the first quarter of this year.

**Patent Reform:** Patent reform seemed to gain momentum at the end of last year when the House passed [H.R. 3309](#), authored by House Judiciary Committee Chairman Bob Goodlatte (R-VA), and the Senate Judiciary Committee held a hearing on the subject in December. However, momentum seems to be slowing in the Senate as some are calling for more hearings on the subject. Senate Judiciary Committee Chairman Patrick Leahy (D-VT) is planning to markup a reform bill in February, but such a hearing and potential markup could be pushed to later in the year because of the Committee's crowded agenda, including data security legislation and nominations hearings that will likely take precedence over patent reform. Meanwhile, patent reform stakeholders are beginning to discuss specific

language with committee staff and members, and both majority and minority committee staff are meeting weekly to discuss various aspects of the legislation.

**Gun Control:** Gun control continues to be a high-profile priority issue for President Obama as the Administration announced a new initiative aimed at preventing the mentally ill from purchasing weapons by clarifying whom may possess guns, and improving the national background check system. This proposal raises significant privacy issues that Congress may need to examine if they decide to try to advance gun control legislation this year. When he announced this proposal on January 3, President Obama noted that he plans to move forward with this and the other gun control initiatives he presented last year and use his executive authority to tighten federal gun control regulations in the absence of Congressional action. Even though the Justice Department and the Department of Health and Human Services are moving forward with developing regulations according to the President's proposal, the White House is still urging Congress to act on legislation that would further accomplish the gun control goals. Senator Ed Markey (D-MA), among others, has praised President Obama's actions and voiced his support for legislation establishing universal background checks and banning assault weapons. Even though gun control remains an Administration and Congressional priority, it is unlikely that legislation will pass this year because of strong opposition from gun rights groups.

## POSTAL REFORM

Reforming the U.S. Postal Service (USPS) remains a priority for lawmakers, and committees of jurisdiction in the House and Senate have drafted bills to achieve this goal. Last year, the House Oversight and Government Reform Committee reported out, by a party line vote of 22-17, the Postal Reform Act of 2013 ([H.R. 2748](#)), sponsored by committee chairman Darrell Issa (R-CA) and co-sponsored by Representatives Blake Farenthold (R-TX) and Dennis Ross (R-FL). On the Senate side, Homeland Security and Governmental Affairs Chairman Tom Carper (D-DE) and Ranking Member Tom Coburn (R-OK) introduced the bipartisan Postal Reform Act (PRA) of 2013 ([S. 1486](#)). The Homeland Security and Government Affairs Committee plans to markup the bill in January after attempts to do so at the end of 2013 were delayed. Both Chairman Carper and Ranking Member Coburn have stated that this is a priority for the committee.

The purpose of this legislation is to address the Postal Service's financial challenges while preserving essential services. In order to achieve this goal, both bills contain provisions that would reform the current USPS pension system and also eliminate the Postal Service's statutory retiree health pre-funding requirement. In addition, both bills provide for an increase in revenue generating services and cost-effective means of delivery.

The House and Senate bills differ in their approach to six-day delivery and post office closings. While the Senate bill would codify the Postal Service's current plan to find savings without closing post offices, the House bill leaves the door open for rural locations to close. However, the House bill also includes language to require the USPS to consider factors such as broadband penetration and distance to closest replacement service in determining whether to close a location. As for six-day delivery, the Senate bill preserves Saturday delivery for at least a year, while the House bill allows the USPS to shift to a modified Saturday delivery schedule that would maintain delivery of packages and medicine while phasing out delivery of paper mail and advertisements.

## TAX REFORM, DEBT LIMIT & APPROPRIATIONS

After a 16-day government shutdown last October, Congress adopted a compromise negotiated by Senate leaders to reopen the government with a short-term Continuing Resolution and to temporarily suspend the federal government's debt limit. Finalizing appropriations for the current fiscal year and averting a default once the debt limit suspension ends will be among the top priorities for Congress early this year.

Comprehensive tax reform was once considered to be a possible legislative accomplishment for the 113th Congress; however, leadership changes at the Senate Finance Committee — as well as 2014 being an election year — mean that this is an issue that will almost certainly wait until the next Congress.

### Issues

**Fiscal Year 2014 (FY14) Appropriations:** The agreement ending the government shutdown last year funded the government at \$986 billion with a Continuing Resolution (CR) through January 15, and suspended the debt ceiling through February 7. The agreement required a budget conference with a report due on December 13, which would provide a framework for spending through 2015. Budget conferees, led by Senate Budget Committee Chairwoman Patty Murray (D-WA) and House Budget Committee Chairman Paul Ryan (R-WI), produced a conference report establishing a two-year budget framework setting top-line spending levels at \$1.012 trillion and \$1.014 trillion for each of the two years. The agreement also did away with \$63 billion in sequestration budget cuts. This was the first budget conference since 2009, and the conference report was approved in late December, leaving the House and Senate Appropriations committees approximately one month to develop a FY14 Omnibus Appropriations bill to fund the government after January 15. Although appropriators have made significant progress on the Omnibus, they will not meet the January 15 deadline. House Appropriations Committee Chairman Hal Rogers (R-KY) has said that the House will vote on a three-day Continuing Resolution in order to allow additional time to finalize the Omnibus bill.

**Fiscal Year 2015 (FY15) Appropriations:** With the House and Senate having approved top-line spending levels for two years, the stage appears to be set for at least a partial return to “regular order” for handling the annual spending bills. Once the FY14 Omnibus is passed, appropriators will quickly move to FY15 appropriations, which need to be completed by September 30. The President's budget submission, setting his spending priorities for the next fiscal year, is required by the first Monday in February (this year that falls on February 3), but this is likely to be delayed. We can expect that the appropriations committees will work on their spending bills throughout the year, with the goal of finalizing all, or at least some, before the beginning of the new fiscal year on October 1. Any unfinished bills would likely be folded into an Omnibus, a “minibus,” or the all too familiar Continuing Resolution.

**Debt Limit:** While the nation's debt limit is, at least officially, set at \$16.7 trillion, the agreement last October to reopen the government suspended that limit until February 7. In the interim, the Treasury Department was granted the ability to borrow as needed to meet the nation's obligations, without regard to the official limit of \$16.7 trillion. On February 8, with the suspension having ended, the debt limit will automatically increase to account for whatever amounts were borrowed through February 7. This unusual way of increasing the debt limit was not without criticism, but did allow for members of Congress to avoid having to take a vote on increasing the limit. After February 7, the Treasury Department can use "extraordinary measures" to enable the government to continue meeting its financial obligations, but Treasury Secretary Lew has stated that those measures will likely run their course sometime in March, setting the stage for another increase in the debt limit. Whether opponents to an increase in the debt limit are willing to risk default in the next debate over this matter is difficult to predict. President Obama, in a year-end press conference, stated that he will not negotiate with Republicans seeking concessions in exchange for an increase in the debt limit.

**Comprehensive Tax Reform:** Given the complexity of comprehensive tax reform, it is important to note that this was always going to be a multi-year effort. Despite the fact that tax reform is all but certain to wait until the next session of Congress, the groundwork has been laid over the past year, and even in the previous Congress, for this undertaking and the committees of jurisdiction will continue developing their proposals this year. In broad terms, the debate over tax reform, both corporate and personal, will be dictated by two competing views: the Democratic priority of creating new revenue and the Republican goal of lowering corporate rates while keeping tax reform revenue neutral.

Over the past several months, the Senate Finance Committee has released a series of "tax reform option papers" covering a spectrum of topics, including the tax system for families and businesses; business investment and innovation; family, education and opportunities; infrastructure, energy, and natural resources; international competitiveness; economic and community development; economic security; types of income and business entities; tax-exempt organizations and charitable giving; and non-income tax issues and related reforms.

Senate Finance Committee Chairman Max Baucus (D-MT), who had already announced he would not seek reelection this year, has been nominated by President Obama to serve as U.S. Ambassador to China. Before the surprise announcement of his pick for the diplomatic post, the senator's looming retirement had provided optimism for some that a comprehensive reform of the nation's tax code would be his parting legislative victory. Assuming that he is confirmed by the Senate, his early departure from the Senate may effectively end whatever hope that might have existed for comprehensive tax reform this year.

Senator Ron Wyden (D-OR), currently the Chairman of the Senate Energy and Natural Resources Committee, is expected to assume leadership of the Senate Finance Committee

upon the departure of Chairman Baucus and will, obviously, want to play a leading role in any comprehensive reform of the nation's tax code. However, the limited number of legislative days in the calendar will likely not allow him enough time to assume leadership of the committee and produce a tax reform measure this year, especially with the election season getting underway.

In the House of Representatives, Ways and Means Committee Chairman Dave Camp (R-MI) is term-limited from returning to that role in 2015. Representative Paul Ryan (R-WI), currently Chairman of the House Budget Committee, has indicated his desire to take over the chairmanship of the House Ways and Means Committee next year.

As discussions on tax reform continue this year, leading to more serious consideration in the next Congress, big ticket items that are likely to be addressed are the corporate tax rate, territorial tax, special deductions (like the mortgage interest deduction), the R&D tax credit, bonus depreciation, LIFO (last-in, first-out accounting), capital gains, private equity, and municipal bonds.

## TELECOMMUNICATIONS


Telecommunications will see a significant level of activity in 2014, with Congress tackling a wide variety of issues including reauthorizing the Satellite Television Extension & Localism Act (STELA), the Internet Protocol (IP) transition, cybersecurity, data security, and the beginning of an effort to update the Telecommunications Act. The agencies will also be busy with high-profile issues like the use of mobile devices on airplanes and various spectrum auctions.

### Issues

**Video Issues:** STELA is set to expire on December 31, 2014, making reauthorization a top Congressional priority for this year. This is one of the few “must pass” pieces of upcoming legislation, and it is unclear whether lawmakers will pass a clean reauthorization. Some lawmakers and stakeholders see STELA as a potential vehicle to address other video-related issues such as retransmission consent and program carriage. However, Subcommittee Chairman Greg Walden (R-OR) has stated that he does not think attaching these issues to STELA is appropriate and he plans on introducing a clean reauthorization bill in the first quarter of 2014. Retransmission consent and program carriage are addressed in Congresswoman Eshoo’s (D-CA) Video CHOICE Act ([H.R. 3719](#)) and Congressman Scalise’s (R-LA) Next Generation Television Marketplace Act ([H.R. 3720](#)). These bills will continue to be examined and discussed throughout the year.

On the Senate side, Chairman Rockefeller (D-WV) will likely work to advance his ideas for video reform through the Consumer Choice in Online Video Act ([S. 1680](#)). This bill — designed to provoke a discussion and debate on the future of video — would promote consumer access to over the top video content by directing the FCC to require Internet service providers (ISPs) provide information to consumers about network management practices, usage-based billing terms, and information about different tiers of service. Last year the Communications Subcommittee held a hearing on the state of the video marketplace, and the full Committee will likely hold a similar hearing focusing on the Chairman’s bill sometime in the coming months. Senators McCain (R-AZ) and Blumenthal (D-CT) also address consumer choice in the video marketplace in the Television Consumer Freedom Act of 2013 ([S. 912](#)), which would encourage multichannel video programming distributors (MVPDs) to provide channels a la carte to their subscribers. The a la carte issue will likely be included in upcoming examinations of the video marketplace. If there is in fact a clean reauthorization of STELA, then these other video bills will likely be discussed in the context of the rewrite of the Telecommunications Act of 1996.

Senators Blumenthal and McCain also teamed up on the Furthering Access and Networks for Sports (FANS) Act of 2013 ([S.1721](#)), which would amend the Sports Broadcasting Act (SBA) to place conditions on the broad antitrust exemptions provided to professional sports leagues for the purpose of pooling rights to telecast games and also eliminate the Federal Communications Commission’s (FCC) sports blackout rules. Specifically, the bill



would remove the SBA language that allows leagues to blackout home games when local stadiums fail to sell the required number of tickets. The bill also contains provisions that would ensure games are not blacked out during programming disputes between broadcasters and cable or satellite companies. Furthermore, the bill would require that a league make games available over the Internet when they are not available on television in order to take advantage of the antitrust exemptions of the SBA. The FCC released a Notice of Proposed Rulemaking ([NPRM](#)) on December 18, 2013 proposing to eliminate the Commission's sports blackout rules, which allow local broadcasters to block MVPDs from showing a game if they are not allowed to broadcast it because it is not sold out at the local venue.

**Telecommunications Act Rewrite:** House Energy and Commerce (E&C) Chairman Fred Upton (R-MI) and subcommittee Chairman Walden are kicking off their efforts to update the Communications Act with a hearing featuring former FCC chairmen on January 15. House E&C also released the first in what will be a series of [white papers](#) on this subject the first week of January. This first white paper provides a history of communications laws and suggests that the siloed, sector-based, and technology-based nature of the Act is not appropriate for the convergence of technologies in the digital era. The white paper will also serve as the general basis for discussion at the Jan. 15 hearing. The Committee asked for industry feedback on questions presented in the white paper by January 31. These efforts are the first in what will be a series of hearings and white papers that will set the stage for updating the Communications Act in 2015.

**IP Transition:** The FCC is expected to address the IP Transition at the Commission Open Meeting on January 30. The Technology Transitions Policy Task Force is planning to present an order that will set out the parameters for trials to examine the impact of IP deployment on consumers and competition. Industry and consumer stakeholders voiced their support for this type of experimentation at a House E&C hearing late last year. In order to be successful, commenters have argued that these trials should be conducted in a number of geographically diverse areas. The order will also include a timeline to address the legal and policy questions resulting from the trials. After the trials are completed, the Commission will turn its attention to how legacy regulations will fit in to the IP connected landscape.

**Spectrum:** In 2014 the FCC will concentrate on developing rules for the 600 MHz "incentive auction" mandated by the Middle Class Tax Relief and Job Creation Act of 2012. FCC Chairman Wheeler has stated that this auction will take place in 2015. It will consist of a "reverse auction" in which TV broadcasters relinquish their spectrum in return for a share of the proceeds of the "forward auction" of the broadcast frequencies to mobile broadband providers. Maximizing broadcaster participation and revenue generation are the two top auction priorities, and will likely be the focus of legislative oversight hearings on the subject. The revenue generated by the forward auction will fund the First Responder Network Authority (FirstNet). In order to encourage wireless carriers to participate in the forward auction, the FCC must develop an appropriate band plan. The Commission also

must determine whether to implement spectrum screens or caps in the forward auction, another topic of great Congressional interest.


The Middle Class Tax Relief and Job Creation Act of 2012 also directed the FCC and the National Telecommunications and Information Administration (NTIA) to determine whether additional frequencies in the 5 GHz band is suitable for advanced Wi-Fi and other unlicensed services. Both House E&C and the Senate Commerce Committee held hearings in 2013 to discuss the possible technical challenges in this band, with representatives from the telecommunications and transportation industries as the band is currently designated for intelligent transportation communications services. As the FCC and NTIA tackle the technical issues, Congress will likely continue to discuss the policy implications of shared uses in the 5 GHz band.

Federal spectrum use is on both the FCC and congressional agenda for 2014. After the Department of Defense (DOD) agreed to move key operations off the 1755-1780 MHz band and share spectrum in the 2025-2110 MHz band with broadcasters, the Commission began working on pairing the 1755 band with the 2155-2180 MHz band for auction. The FCC hopes to auction these valuable paired spectrum bands by the end of the year. At the end of 2013, the House E&C Committee approved the Federal Spectrum Incentive Act ([H.R. 3674](#)), which would offer financial compensation to federal spectrum users to encourage them to relinquish or share their spectrum with other agencies in order to make more spectrum available for future auctions. DOD has raised concerns about this legislation, but it will likely advance in 2014.

**Net Neutrality:** The D.C. Circuit heard oral arguments in *Verizon Communications, Inc. v. FCC* in September, and a decision in the case is expected any day now. A decision to strike down the net neutrality rules in whole or in part could increase pressure on Chairman Wheeler to reclassify broadband Internet service under Title II of the Communications Act and would likely spark Congressional action by net neutrality supporters.

**FCC Process Reform:** House E&C approved the FCC Consolidated Reporting Act ([H.R. 2844](#)) and the FCC Process Reform Act ([H.R. 3675](#)) in 2013 and the full House is expected to vote on these bills in January. However, even if the bills pass the House, Senate Commerce Committee Chairman Rockefeller has stated that he does not plan on taking up the legislation in his committee. No matter what happens on Capitol Hill, revamping the Commission's regulatory processes is a priority for Chairman Wheeler. The Commission is expected to review a staff report on the agency's procedures in January, and may adopt an order to make procedural changes later in 2014.

**Internet Tax Moratorium:** The Internet tax moratorium first established by the Internet Freedom Act of 1998 is set to expire in November 2014. There have been many bipartisan efforts to extend this Internet tax moratorium as it applies to Internet access, including the Internet Tax Freedom Forever Act ([S. 1431](#)), which would make permanent the moratorium on taxing Internet access. Senators Ron Wyden (D-OR) and John Thune (R-SD)




are leading the issue on the Senate side, and the House effort is helmed by a bipartisan group including Representatives Bob Goodlatte (R-VA), Spencer Bachus (R-AL), Steve Cohen (D-TN), Anna Eshoo (D-CA), and Steve Chabot (R-OH). The proposal enjoys broad support from the tech community, including cable, wireless, Internet, and e-commerce companies, and the legislation will be considered this year.

**Online Sales Tax:** The Marketplace Fairness Act passed the Senate in May of 2013 and is now under consideration in the House Judiciary Committee. House Judiciary Committee Chairman Goodlatte released a set of principles to guide legislation relating to online sales tax in October. It is unlikely that the House will take up the Marketplace Fairness Act as passed in the Senate. However, supporters of the legislation may continue to try to attach the bill to other legislative vehicles. More likely, Chairman Goodlatte may release a new version of the legislation based on the [Principles on Internet Sales Tax](#) and schedule a hearing on the subject sometime in February.

**Mobile Devices:** Chairman Wheeler's statements about re-evaluating the ban on the use of mobile phones on airplanes garnered a lot of attention at the end of last year. The Commission has opened a rulemaking to consider whether the technical rules banning such use should be modified or repealed. However, regardless of the Commission's decision on the matter, the Department of Transportation will have the final say in whether passengers are allowed to make such calls. Another important issue concerning mobile devices is cell phone unlocking. Wireless carriers have agreed to adopt voluntary rules that would allow consumers to legally unlock their devices to be used on other networks. A number of bills have been introduced in both the House and Senate seeking to codify these voluntary rules, and the White House and the FCC are looking into the possibility of codifying these rules under the Digital Millennium Copyright Act.

**Privacy:** In the wake of last year's National Security Agency (NSA) controversy, Congress will continue examining government surveillance programs in 2014. The Senate Judiciary Committee has scheduled a hearing for January 14 to examine the report of the President's Review Group on Intelligence and Communications Technologies. In addition, President Obama met with a number of lawmakers and industry stakeholders the first week of January to discuss general privacy issues and issues relating to the NSA. Lawmakers are also concerned about the privacy and safety issues associated with integrating drones in the national airspace and the Senate Commerce Committee plans to examine the issue at a hearing on January 15. Senator Markey's (D-MA) Drone Aircraft Privacy and Transparency Act ([S.1639](#)) will likely be discussed at that hearing. In addition, NTIA will examine privacy issues associated with facial recognition technology in a series of multi-stakeholder workshops this year.

Because of the increased use of mobile devices, geolocation privacy continues to be an important privacy concern. Senator Wyden introduced the Geolocational Privacy and Surveillance (GPS) Act ([S.639](#)), which would prohibit intentionally intercepting geolocation information about another person and disclosing the information to any other person.



Congressman Chaffetz (R-UT) introduced the companion House bill ([H.R. 1312](#)) and Congresswoman Lofgren (D-CA) introduced a related bill, the Online Communications and Geolocation Protection Act ([H.R. 983](#)). Congresswoman Lofgren's proposal also addresses some components of the Electronic Communications Privacy Act (ECPA) by requiring a warrant in order to obtain geolocation information from any electronic communication service. Senate Judiciary Committee Chairman Leahy (D-VT) introduced the Electronic Communications Privacy Act Amendments Act of 2013 ([S.607](#)), and attempts to markup the bill have repeatedly been delayed. In spite of broad stakeholder support for updating ECPA and addressing geolocation, it is unlikely the Judiciary Committees will be able to address these issues until later in the year because of other high-profile issues including immigration and patent reform.

Senator Markey continues to champion children's privacy and introduced the Do Not Track Kids Act of 2013 ([S. 1700](#)) in November along with Senators Kirk (R-IL) and Blumenthal. The bill would amend the Children's Online Privacy Protection Act (COPPA) to establish additional privacy protections against the collection of personal or geolocation information from children and minors. It also expands COPPA to apply to children and minors up to the age of 16. Congressman Barton (R-TX), who is a champion of children's privacy along with Senator Markey, introduced a companion bill in the House ([H.R. 3481](#)). Congressman Barton is also a member of the House Manufacturing and Trade Subcommittee bipartisan Privacy Working Group, which is co-chaired by Congresswoman Blackburn (R-TN) and Congressman Welch (D-VT). The working group was formed last August and will likely continue to examine privacy issues this year.

**Cybersecurity:** The National Institute of Standards and Technology issued a Preliminary Cybersecurity Framework of voluntary best practices for critical infrastructure in October based on stakeholder input. The final framework is expected to be released in February under President Obama's Cybersecurity Executive Order that was issued a year ago. NIST is required to complete work on February 12 and has said it expects to publish on that date. Once the final framework is released, it will be up to the Department of Homeland Security to promote the voluntary best practices. Ideally the framework will be complemented by Congressional legislation that establishes liability protection for cyber threat countermeasures and information sharing, but a number of factors have prevented proposed bills from moving forward. In addition to the privacy concerns that arise from information sharing proposals, cybersecurity legislation has been slowed by the debate over controversial NSA activities. Another wrinkle in the process is the fact that several committees have jurisdiction over cyber issues so it is unlikely a comprehensive bill will be developed.

However, the House Homeland Security Subcommittee on Cybersecurity is planning to markup the National Cybersecurity and Critical Infrastructure Protection Act of 2013 ([H.R. 3696](#)) early this year. On the Senate side, Chairman Carper of the Homeland Security and Government Affairs Committee (HSGAC) is planning to hold a hearing on the NIST framework after it is finalized. In addition, enacting cybersecurity legislation remains a

priority for Chairman Rockefeller so we may see a push for the Senate to act on the bipartisan Cybersecurity Act of 2013 ([S. 1353](#)), which was co-sponsored by Ranking Member Thune (R-SD) and approved by the Commerce Committee, before he retires at the end of the year. Senators Feinstein (D-CA) and Chambliss (R-GA) also are reportedly working on cyber legislation in the Intelligence Committee.

**Data Security:** The recent large scale data breach at Target that put the debit and credit card data of over 70 million customers at risk has motivated Congress to address data security. Chairman Leahy introduced the Personal Data Privacy and Security Act ([S. 1897](#)) on January 8. Because it is costly for businesses to comply with the patchwork of 47 different state data breach notification requirements, there is support for enacting a federal standard. It is likely that the Judiciary Committee will hold hearings this year to examine data security breach notification requirements, but the future of specific legislation is unclear.


## TRADE

In late February or early March, the Office of the United States Trade Representative (USTR) will release the annual President's Trade Policy Agenda for 2014. In the meantime, we can already see that the coming year will continue to be busy with ongoing negotiation of various Free Trade Agreements, and legislative measures related to trade policies designed to support the growth of the U.S. economy via international trade, such as renewal of the President's Trade Promotion Authority, renewal of the Generalized System of Preferences, and a Miscellaneous Tariff Bill providing duty suspension for various products.

### Issues

**Trade Promotion Authority (TPA) Renewal:** TPA gives the President the authority to negotiate trade agreements that cannot be amended and would be sent to Congress for an up-or-down vote. TPA expired in 2007, and has not been renewed. The Obama Administration has on many occasions stated that renewal of TPA is essential to final negotiation of the Trans-Pacific Partnership and Transatlantic Trade and Investment Partnership (TTIP), both of which are discussed below. USTR has been negotiating TPP and TTIP as if TPA were in effect with the expectation that Congress will renew TPA before either of these free trade agreements are finalized and sent to Capitol Hill. Senate Finance Chairman Max Baucus (D-MT), Ranking Member Orrin Hatch (R-UT), and House Ways and Means Chairman Dave Camp (R-MI) introduced the Bipartisan Trade Priorities Act of 2014 (TPA-2014) on January 9, a bill which they say addresses many of the trade challenges facing the U.S. in the global marketplace, including competition from state-owned enterprises; localization barriers to trade; and restrictions on cross-border data flows. TPA-2014 updates labor and environment provisions to reflect recent trade agreements, as well as market access priorities for goods and services. It strengthens oversight by Congress and the public by adding consultation and reporting requirements. TPA-2014 also provides for tougher, enforceable rules against barriers to U.S. agriculture. And for the first time, TPA-2014 sets out a clear directive on currency manipulation. House Ways and Means Ranking Member Sander Levin (D-MI) is not supportive of renewing TPA and did not join his colleagues in introducing TPA-2014. Before the introduction of TPA-2014, many had expected that the bill would move quickly through Congress in light of the expected departure of Chairman Baucus to serve as U.S. Ambassador to China. However, later comments have indicated that expeditious approval of the bill is not expected, with Senator Ron Wyden (D-OR), the likely new chairman of the Finance Committee, wanting to ensure that the bill addresses his concerns and priorities.

**Trans-Pacific Partnership (TPP):** The TPP is a proposed free trade agreement between the U.S., Australia, Brunei Darussalam, Chile, Canada, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam. Japan is the latest country to join TPP talks, entering negotiations in mid-2013 and significantly increasing the percentage of the world's Gross Domestic Product (GDP) covered by the agreement. The TPP builds on the existing Trans-




Pacific Strategic Economic Partnership Agreement which includes Brunei, Chile, New Zealand, and Singapore. The TPP is the first international trade agreement negotiated fully by the Obama Administration, with those passed during the President's first term in office having begun during the previous Administration of George W. Bush. To date, there have been 20 rounds of negotiations since 2010, and in December 2013, a statement from the Ministers and Heads of Delegations for TPP countries announced from Singapore that they had made "substantial progress" toward completing the TPP agreement. The Obama Administration had hoped to conclude the TPP by the end of 2013. The next meeting of negotiators could come this month or in February. The Obama Administration says that renewal of TPA must be granted before TPP negotiations can be concluded.

**Transatlantic Trade and Investment Partnership (TTIP):** In 2011, the Obama Administration worked with European leaders to establish a *High-Level Working Group on Jobs and Growth* tasked with identifying policies and measures to increase trade and investments between the U.S. and the European Union (E.U.). Following on this, the U.S. and the E.U., already each other's biggest trading partners, launched negotiations for a free trade agreement (FTA) in July 2013. The proposed TTIP is strongly supported by the business community on both sides of the Atlantic, as well as by European governments, especially those of Germany and the United Kingdom. By December 2013 there had been three rounds of negotiations, with United States Trade Representative Michael Froman and European Trade Commissioner Karel De Gucht expected to talk in late January to assess progress before the next round of negotiations in March. This year could see as many as five rounds of talks on the TTIP with the goal of concluding negotiations by year's end, although that timeline has been questioned by many given the intricacies of U.S.-E.U. trade. As with the TPP, the Obama Administration says that renewal of TPA is essential to concluding negotiations on the TTIP.

**Trade in Services Agreement (TISA):** On January 15, 2013, USTR notified Congress of the Administration's intention to enter into negotiations for an International Services Agreement (ISA) with a group of 22 trading partners, including Australia, Canada, Chile, Colombia, Costa Rica, the European Union, Hong Kong, Iceland, Israel, Japan, Mexico, New Zealand, Norway, Pakistan, Panama, Paraguay, Peru, South Korea, Switzerland, Taiwan, Turkey, and the United States. These nations, dubbing themselves the "Really Good Friends of Services," represent a broad range of economic development and diversity, and more than 70% of global output. The proposed agreement was known as the "International Services Agreement." In order to achieve increased competition in global trade and investment in services, TISA would, among other things, eliminate foreign equity caps, restrictions on licenses, and requirements for joint ventures or local partners. The fourth round of TISA negotiations concluded in November 2013 and were labeled as "positive and productive" by the USTR, which says that if business services were to achieve the same export potential as manufactured goods globally, U.S. exports could increase by as much as \$800 billion.

**Trade Facilitation Agreement:** Last December at the World Trade Organization's (WTO) 9th Ministerial Conference meeting in Bali, the WTO achieved its first agreement that was approved by all organization members. The trade facilitation agreement, sometimes referred to as the "Bali Package," is aimed at building commitments across the 159 member countries of the WTO in order to expedite movement, release and clearance of goods; improve cooperation among WTO members on customs matters; and help developing countries fully implement the obligations. The agreement will increase customs efficiency and effective collection of revenue, and help small businesses access new export opportunities through measures like transparency in customs practices, reduction of documentary requirements, and processing of documents before goods arrive. The Trade Facilitation Agreement is a part of the WTO's Doha Round Agreement, which began in 2001 with the goal of lowering trade barriers. With negotiations on the Trade Facilitation Agreement concluded, the WTO, with the participation of the USTR, will move forward on next-steps on implementation.

**Generalized System of Preferences (GSP) Renewal:** The GSP provides non-reciprocal, duty-free tariff treatment to certain products from designated developing and least-developed beneficiary countries. The GSP was first authorized in the *Trade Act of 1974* and last renewed in October 2011, expiring in July 2013. There are 126 designated beneficiary countries and territories, 43 of which are considered to be least developed countries. In 2012, the top twenty beneficiary countries were, in order of benefit: India, Thailand, Brazil, Indonesia, South Africa, Philippines, Turkey, Angola, Russia, Argentina, Pakistan, Sri Lanka, Tunisia, Bolivia, Georgia, Kazakhstan, Ecuador, Venezuela, Cote d' Ivoire, and Congo. According to the Office of the U.S. Trade Representative, the United States imported \$19.9 billion worth of products under the GSP program in 2012. Eligible products under the GSP program include most manufactured items; many types of chemicals, minerals, and building stone; jewelry; many types of carpets; and certain agricultural and fishery products. Products not eligible for duty-free treatment under the GSP program include most textiles and apparel; watches; and most footwear, handbags, and luggage products. While extension of the GSP program was for many years non-controversial, in more recent years there has been concern by some that more advanced countries – such as Brazil and India — receive GSP benefits to the exclusion of countries that are lesser-developed. Those concerns have led to the call in some quarters for the GSP program to be modified so that benefits are only available to least developed beneficiary nations. In 2012 the top ten GSP products were, in order of value: ferroalloys; motor vehicle parts; rubber radial tires; silver and gold jewelry; crude petroleum oil; aluminum plate and related products; iron and steel tube and pipe fittings; insulated and fiber optic wire and cable; transmission parts; and machine fittings for pipes and vats and related products. Legislation was introduced last July in the House by Ways and Means Committee Chairman Dave Camp and in the Senate by Finance Committee Chairman Max Baucus, but neither measure has advanced out of committee. The Senate bill has been held up by opposition from Senator Tom Coburn (R-OK) who has objections to how the GSP extension would be paid for. However, there is strong industry support for renewing GSP before the end of 2014.



**Miscellaneous Tariff Bill (MTB):** The primary purpose of the MTB process is to help American manufacturers compete at home and abroad by temporarily suspending or reducing duties on products or materials that are not made domestically, or where there is no domestic opposition. Such reductions or suspensions reduce costs for U.S. businesses and ultimately increase the competitiveness of their products. The most recent MTB — which is really a package of duty suspension measures supported by various Members of Congress — expired at the end of 2012, although the House Ways and Means Committee and Senate Finance Committee had worked throughout the year to draft a new MTB. Last year, that new MTB was introduced in early January, just before the end of the 112th Congress and, while it did not see final passage, it served as a framework for the current MTB, introduced in July 2013 by House Ways and Means Chairman Dave Camp (R-MI), Ranking Member Sander Levin (D-MI), Trade Subcommittee Chairman Devin Nunes (R-CA), and Trade Subcommittee Ranking Member Charles Rangel (D-NY). That bill, the U.S. Job Creation and Manufacturing Competitiveness Act of 2013, includes a few modifications and technical corrections from the previous version. Passage of a new MTB has been a high priority for the House Ways and Means Committee and the Senate Finance Committee and we expect that there will be a push for final legislation before the end of the 113th Congress.

**Bilateral Investment Treaty (BIT) with China:** In July 2013, the United States hosted the fifth U.S.-China Strategic & Economic Dialogue (S&ED) in Washington, DC. It was co-chaired by Secretary of State Kerry and Secretary of the Treasury Lew for the United States, and by Vice Premier Wang Yang and State Councilor Yang Jiechi for China. One result of the S&ED was an agreement by China to negotiate a BIT with the United States. The U.S. currently is party to nearly 40 BITs, which are designed to protect U.S. investment abroad in countries where investors' rights are not already protected through existing agreements; encourage the adoption of market-oriented domestic policies that treat private investment in an open, transparent, and non-discriminatory way; and support the development of international law standards. American investors are protected against performance requirements, restrictions on transfers and arbitrary expropriations. BIT negotiations are jointly led by the Department of State and the Office of the U.S. Trade Representative, with assistance from the Departments of Commerce and Treasury.

## TRANSPORTATION & INFRASTRUCTURE

While 2013 may have been a relatively quiet year for transportation issues, 2014 is poised to be a year filled with much more activity on transportation policy, especially as Congress returns to complete unfinished business on the Water Resources Development Act (WRDA).


In addition, with the most recent surface transportation authorization due to expire at the end of FY14, Congress is expected to quickly get to work on priorities for the new authorization bill. Some have speculated that greater appetite than in past years for an omnibus transportation bill that addresses not only highways, but also rail and transit policies, will give momentum to a number of smaller transportation and infrastructure proposals that could be attached to the reauthorization bill. However, identifying pay-fors to fill the transportation spending shortfalls will continue to be a challenge, and one that will ultimately determine the fate of a comprehensive transportation bill in the second session of the 113th Congress.

Beyond legislative action on transportation, 2014 will also witness a number of executive branch rulemakings focused on transportation and infrastructure issues.

### Issues

**Water Resources Development Act (WRDA):** At the close of 2013, Congress came close to passing the first Water Resources Development Act (WRDA) reauthorization in six years. Despite the Senate and House each passing respective WRDA bills, and a conference committee convening in late November, final passage of WRDA ultimately fell victim to the legislative time crunch at the end of the calendar year. While Senate Environment and Public Works Committee Ranking Member David Vitter (R-LA) has admitted the reconciliation of differences between the Senate and House bills is taking longer than anticipated, he predicted a good, bipartisan conference report would be produced in early 2014, allowing the congressional committees with jurisdiction over transportation issues to quickly shift focus to a larger transportation reauthorization bill.


**Transit Benefits:** Among the tax provisions expiring at the end of 2013 was the pre-tax transit benefit used by transit riders to subsidize their commutes. While a number of pro-commuter advocacy groups have unveiled plans to push for legislation that would extend the tax break through 2014 and make it retroactive, it is likely that such a fix will need to be added to a larger, moving legislative vehicle, possibly the omnibus appropriations bill anticipated in mid-January or the debt limit agreement expected in February. With several smaller bills likely competing for a ride on these larger legislative vehicles, the prospects for the restoration of pre-tax transit benefits in early 2014 are uncertain. Should this effort continue later into the year, the benefit extension could be included as part of the larger surface transportation reauthorization bill or a tax extenders package.



**Railroad Reauthorization:** The most recent railroad authorization bill, the Passenger Rail Investment and Improvement Act (PRIIA) of 2008 expired on September 30. With the expiration of the current authorization bill and the growing perception that the U.S. passenger rail transportation system is falling behind railroad networks overseas, there is increasing urgency for Congress to tackle a new authorization bill this year. Congress may address the expired railroad authorization in one of two ways; either as a standalone bill or as part of a larger transportation package. By way of background, the routine surface transportation bill has traditionally included a rail title. However, the rail title was ultimately eliminated from the MAP-21 conference report due to the conference committee's inability to resolve policy differences between the Senate and House versions of the rail title included in the respective bills. The path forward on a railroad reauthorization bill is likely to be determined based on timing, the congressional calendar, and the politics surrounding the 2014 midterm elections. Regardless of how the strategy for moving railroad legislation unfolds, rail safety can be expected to be central to the debate, especially in light of recent commuter and freight rail accidents. The next railroad authorization bill will likely finalize the deadline for installation of automated positive train control (PTC) technology on locomotives — a sticking point in the MAP-21 conference committee negotiations — and help facilitate the interoperability of passenger and freight rail PTC systems.

**Surface Transportation Reauthorization:** As evidenced by the fact that the House Transportation and Infrastructure Committee's first hearing of 2014 will be used to identify priorities for this year's surface transportation reauthorization bill, it is nearly certain the reauthorization effort will be the most visible transportation policymaking effort this year. The surface transportation bill provides revenue to the Highway Trust Fund in support of road and surface transportation projects across the country. Over the past year, the Congressional Budget Office (CBO) has called significant attention to the looming insolvency of the Highway Trust Fund, predicting the fund will be unable to meet its funding obligations by 2015. As a result, funding is likely to be the most controversial component of the forthcoming surface transportation bill, and proposals to address this challenge have already been introduced. Beyond the finance component of the transportation reauthorization, the bill is also likely to address several smaller transportation policy issues, possibly including hours of service rules for the trucking industry, regulations on weight limits for heavy trucks, and tolling on existing interstate roadways.

**National Infrastructure Bank:** Should Congress take up a comprehensive transportation bill, it could become a vehicle for legislation establishing a national infrastructure bank. While various proposals for an infrastructure bank have been floated over the past several years, the bill with the greatest potential for action this year is the Building and Renewing Infrastructure for Development and Growth in Employment (BRIDGE) Act, introduced by Senators Mark Warner (D-VA) and Roy Blunt (R-MO) in November. The bipartisan bill, which would create a \$10 billion national infrastructure bank funded by the sale of unused federal buildings and seeks to address Republicans' concerns with earlier proposals



regarding set asides for rural projects and political interference, has attracted ten, bipartisan co-sponsors. In the House, Representative John Delaney (D-MD) has introduced a similar bill that would use repatriated tax money to establish a \$50 billion infrastructure bank. While Representative Delaney has said his infrastructure bank bill is complementary to the BRIDGE Act, he indicated an identical Senate companion bill could be introduced in 2014.

**Hours of Service:** In July 2013, the Federal Motor Carrier Safety Administration (FMCSA) began enforcing new regulations regarding hours of service for drivers of commercial motor vehicles. The new rules, which require truckers to rest for 34 hours after working a 60-hour work week, including two, 1AM to 5AM periods, in addition to a 30-minute break for every eight hours of driving in a single day, have been met with fierce opposition from the trucking and shipping industries. Last October, in response to the rule going into effect, Representatives Richard Hanna (R-NY), Tom Rice (R-SC), and Mike Michaud (D-ME) introduced the True Understanding of the Economy (TRUE) Safety Act, which would halt enforcement of the new “restart” regulations until the Government Accountability Office (GAO) and the DOT Inspector General (IG) complete independent studies to assess the quality of the data and methodology used by FMCSA to justify the changes. Prior to the December recess, Senators Kelly Ayotte (R-NH) and Mike Johanns (R-NE) introduced a Senate companion bill. As noted above, this legislation may be considered as part of a larger transportation bill later in 2014. Meanwhile, FMCSA continues the rulemaking process for developing an electronic logging device (ELD) mandate to collect data on hours of service.

**Airline Taxes:** While the most recent Federal Aviation Administration (FAA) authorization does not expire until September 2015, the budget agreement passed last December includes an increase in the Transportation Security Administration’s (TSA) fee on airline tickets and has put a spotlight on airline taxes. House Transportation and Infrastructure Committee Chairman Bill Shuster (R-PA) and Aviation Subcommittee Ranking Member Rick Larsen (D-WA) have said revenues raised through the taxation of ancillary passenger tickets fees, such as baggage and reservation fees, will be examined as the Committee begins identifying issues for the next FAA reauthorization process this year. While these revenues are increasingly being considered as measures to further deficit reduction, airline taxes are also likely to be looked at more broadly in the context of supporting the Airport and Airway Trust Fund, TSA, and local airport infrastructure projects.

**In-Flight Mobile Services:** The end of 2013 saw what is only likely to be the start of a debate on allowing airline passengers to use mobile devices during flights. In December, the Federal Communications Commission (FCC) approved a notice of proposed rulemaking (NPRM) seeking public comment regarding a policy change that would allow the use of mobile phones on planes. In response to the FCC vote, Secretary of Transportation Anthony Foxx noted while the FCC is tasked with determining whether or not new technologies will mitigate concerns that mobile phone utilization on flights will interfere with existing mobile networks, DOT will investigate the fairness of permitting in-flight calls to

consumers in the coming year. The FCC proposal would not automatically allow for phone conversations. Instead, the FCC envisions allowing airlines to decide which mobile services, such as calling, emailing, texting, and web surfing, would be allowed on board. Regulatory action on proposed in-flight mobile services has been accompanied by legislative activity seeking to ban in-flight cell phone calls, including the Prohibiting In-Flight Voice Communications on Mobile Wireless Devices Act, introduced by House Transportation and Infrastructure Committee Chairman Bill Shuster last month.

**Unmanned Aircraft Systems:** Over the past several months, the FAA has engaged in regulatory activities to integrate commercial unmanned aircraft systems (UAS) into U.S. airspace. On December 30, the FAA announced the selection of six public entities to conduct research that will help in integrating UAS into national airspace to continue to assist with border and port surveillance, scientific research and environmental monitoring, public safety initiatives, and academic research. With the announcement of the UAS research facilities, FAA Administrator Michael Huerta indicated that FAA envisions a staged integration, meaning that some UAS could be operational as research continues over the next several years. In addition, Administrator Huerta alluded to the release of a proposed rule on usage of unmanned aircraft systems, which he suggested could be published early in 2014.

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# HOUSE CALENDAR

## ERIC CANTOR MAJORITY LEADER

**JANUARY**

S	M	T	W	Th	F	Sa
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**JUNE**

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**JULY**

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**AUGUST**

S	M	T	W	Th	F	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

**SEPTEMBER**

S	M	T	W	Th	F	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

**OCTOBER**

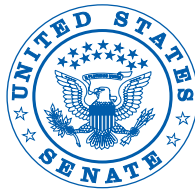
S	M	T	W	Th	F	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

**NOVEMBER**

S	M	T	W	Th	F	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

**DECEMBER**

S	M	T	W	Th	F	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			



**UNITED STATES SENATE**  
*113th Congress, 2d Session*

**2014**

**TENTATIVE SCHEDULE**

JANUARY	FEBRUARY	MARCH
S M T W T F S	S M T W T F S	S M T W T F S
1 2 3 4	1	1
5 6 7 8 9 10 11	2 3 4 5 6 7 8	2 3 4 5 6 7 8
12 13 14 15 16 17 18	9 10 11 12 13 14 15	9 10 11 12 13 14 15
19 20 21 22 23 24 25	16 17 18 19 20 21 22	16 17 18 19 20 21 22
26 27 28 29 30 31	23 24 25 26 27 28	23 24 25 26 27 28 29
(6th—113TH CONGRESS 2D SESSION CONVENES)		30 31
APRIL	MAY	JUNE
1 2 3 4 5	1 2 3	1 2 3 4 5 6 7
6 7 8 9 10 11 12	4 5 6 7 8 9 10	8 9 10 11 12 13 14
13 14 15 16 17 18 19	11 12 13 14 15 16 17	15 16 17 18 19 20 21
20 21 22 23 24 25 26	18 19 20 21 22 23 24	22 23 24 25 26 27 28
27 28 29 30	25 26 27 28 29 30 31	29 30
JULY	AUGUST	SEPTEMBER
1 2 3 4 5	1 2	1 2 3 4 5 6
6 7 8 9 10 11 12	3 4 5 6 7 8 9	7 8 9 10 11 12 13
13 14 15 16 17 18 19	10 11 12 13 14 15 16	14 15 16 17 18 19 20
20 21 22 23 24 25 26	17 18 19 20 21 22 23	21 22 23 24 25 26 27
27 28 29 30 31	24 25 26 27 28 29 30	28 29 30
	31	
OCTOBER	NOVEMBER	DECEMBER
1 2 3 4	1	1 2 3 4 5 6
5 6 7 8 9 10 11	2 3 4 5 6 7 8	7 8 9 10 11 12 13
12 13 14 15 16 17 18	9 10 11 12 13 14 15	14 15 16 17 18 19 20
19 20 21 22 23 24 25	16 17 18 19 20 21 22	21 22 23 24 25 26 27
26 27 28 29 30 31	23 24 25 26 27 28 29	28 29 30 31
	30	

**(Red days = Senate not in session)**

2D SESSION CONVENES—JANUARY 6TH, 2014

TARGET ADJOURNMENT—TO BE DETERMINED