

## 112th Congress – A Look Ahead

### ◆ Overview

The debt ceiling negotiations are over, and the balance of the 112th Congress will likely remain fixated on policy prescriptions that focus on the ailing economy, spending priorities, and must-pass reauthorizations, leaving precious little oxygen for debates over foreign policy and less pressing domestic issues. Policy makers recognize that a limited window exists for legislating before presidential politics casts its sizable shadow over Capitol Hill. In our view, that timeframe is September – June, 2012.

Despite the agreement reached earlier this week to raise the debt ceiling, the issue will dominate the fall legislative agenda. First, Congress must pass Fiscal Year (FY) 2012 appropriations bills. At this point, it is very difficult to see both the House and Senate passing all 12 appropriations bills in their respective chambers and then reconciling them by September 30th. Consequently, a continuing resolution seems likely. Second, the congressional committee charged with making an additional \$1.2 trillion in spending cuts will begin deliberations on October 14th in what is shaping up to be the Hill's most eagerly watched committee in some time. In addition, indications from congressional tax writers that broad tax reform can be accomplished in the 112nd Congress belies, in our view, the enormous legislative and political mean necessary to achieve such an objective.

Watch both parties try and score political points over the next eight months, as they look to shape the narrative heading into the 2012 election cycle. There are 33 Senate seats up for grabs in 2012 with Democrats defending 23 compared to 10 for Republicans. Retirements have created eight open seats; six held by Democrats and two by Republicans. The vast majority of these races feature both incumbents and challengers facing bruising primaries in advance of what are sure to be close general elections, particularly for Democratic incumbents running in states not carried in 2008 by President Obama.

Races in the House of Representatives are not as clear, as state legislatures across the country continue to draw up district lines in response to 2010 U.S. Census figures. Once redistricting is completed in early fall, House elections will come into greater view. Republicans currently hold 242 seats to the Democrats' 193. There are 22 House members not seeking re-election, eight Republicans and 14 Democrats (nine of the 22 which are hoping to move to the Senate).

In the following pages, please find Rasky Baerlein Strategic Communications' take on the remainder of 2011 and the first half of 2012, and what we can anticipate from Washington.

## ◆ 2011

### ❖ *New Debt Ceiling Legislation*

With the debt ceiling crisis finally coming to an end, questions abound concerning the direction in which this new debt deal will lead the country and, equally important, its impact on several key issues going into 2012.

Overall, debt ceiling legislation has several provisions. It authorizes President Obama to increase the debt limit by at least \$2.1 trillion in three steps, allowing the Treasury Department to continue to borrow through 2012. The deal immediately cuts nearly \$1 trillion in spending over 10 years through discretionary spending caps. Furthermore, it allows Congress to vote on a balanced budget amendment before the end of the year, and creates a bipartisan Joint Select Committee on Deficit Reduction (JSCDR) with 12 lawmakers charged with identifying additional deficit cuts worth about \$1.2 trillion. This committee must report precise deficit-reduction proposals by November 23rd, and Congress must vote on the group's package by December 23rd, 2011. If the committee fails to reach an agreement on a deficit-reduction package, automatic across-the-board spending cuts estimated at \$1.2 trillion will kick in beginning January, 2013. These automatic cuts will be split evenly between defense and domestic programs and will allow the debt ceiling to be raised by an equivalent amount. Below please find key legislative dates for JSCDR activity:

- **August 16, 2011:** Deadline for Members of the JSCDR to be appointed.
- **September 16, 2011:** Date by which the JSCDR must hold its first meeting.
- **September 22, 2011:** Deadline for Congress to consider a resolution of disapproval for first tranche (\$900 billion) of debt limit increase.
- **October 1-December 31, 2011:** Timeframe in which both houses of Congress must vote on a Balanced Budget Amendment.
- **October 14, 2011:** Deadline for House and Senate committees to submit recommendations to the JSCDR.
- **November 23, 2011:** Deadline for the JSCDR to vote on a plan with the goal (not a requirement) of \$1.5 trillion in deficit reduction.
- **December 2, 2011:** Deadline for the JSCDR to submit report and legislative language to the President and Congress.
- **December 23, 2011:** Deadline for the House/Senate to vote on the JSCDR's bill.
- **January 15, 2012:** Date that the "trigger" leading to \$1.2 trillion of future spending cuts goes into effect, if the JSCDR's legislation has not been enacted.
- **February 2012:** Approximate time when the first \$900 billion of debt ceiling increase runs out.
- **February/March 2012:** Sometime in this period—15 days after the President uses his authority under the bill to increase the debt ceiling a second time—is the deadline for Congress to consider a resolution of disapproval for the second tranche (\$1.2-\$1.5 trillion) of debt limit increase.
- **Fall/Winter 2012:** The additional \$2.1-\$2.4 trillion of borrowing authority from this law runs out.
- **January 2, 2013:** OMB orders sequestrations for defense and non-defense categories of spending necessary to meet spending cuts required by the "trigger."

It may be premature to speculate on whether the JSCDR will be successful in reaching an agreement on a deficit-reduction measure, but we do know that debate over tax provisions will be contentious. While the Obama Administration has assured Democratic leaders that tax increases are something the JSCDR can consider, it is unlikely that the six Republicans on the committee will agree to any measure that raises taxes. Perhaps more likely, the committee may consider closing certain loopholes in anticipation of an attempt at broad tax reform in 2013.

Below is a glimpse at how the recently passed debt deal impacts the following issues:

- ***Education***

The agreement includes \$17 billion for Pell Grants for FY12 and FY13; several billion dollars less than what is necessary to provide grants to all eligible students. We believe additional cuts are on the horizon. House Budget Committee Chairman Paul Ryan (R-WI) remains a champion of reducing Pell Grants to pre-stimulus levels, which would trim current funding by 50 percent.

- ***Homeland Security***

The framework of the debt deal would increase discretionary funding for the Department of Homeland Security, with dollars targeted toward helping states and cities cope with natural disasters.

- ***Energy and the Environment***

Spending in energy research, environmental regulatory programs, and land and water conservation funds will inevitably be cut over the next decade as a result of the debt deal. We also expect the JSCDR to examine the cost savings that could be found by repealing other energy incentives, such as tax credits for ethanol, wind, gas and the \$4 billion in tax breaks that are geared toward the oil industry. In the House, we expect to see Republicans continue to target all programs associated with climate change. Conversely, Senate Democrats will remain steadfast in their support of these programs.

- ***Health Care***

The debt ceiling bill's automatic spending cuts will go into effect if the JSCDR fails to meet its goal of \$1.2 trillion or if Congress fails to send a balanced-budget amendment to the states. Medicare would then see cuts to health care providers. These cuts could lead to a possible \$11 billion reduction in FY13 and could reach \$200 billion over 10 years. While the debt deal does not address reimbursements for Medicare doctors, Medicaid is protected from cuts under this deal, even if the JSCDR fails to meet its goal.

- ***Defense***

The agreement cuts about \$350 billion in defense spending over the next 10 years. As a point of reference, President Obama had initially called for \$400 billion in defense spending cuts. We anticipate that additional cuts are possible from the JSCDR as it works to meet its spending reduction target. Again, should the committee fail to reach

agreement in future deficit reduction measures, the debt bill would trigger defense spending cuts in the range of \$500 billion between 2013 and 2021.

### ❖ *2012 Budget*

The fate of 12 appropriations bills still hang in the balance as Congress departs for its August recess. Upon return to Capitol Hill, both chambers will have less than a month to address the spending bills for FY12 before current funding expires on September 30th. Work on the appropriations bills has stalled continuously this year as a result of the federal debt ceiling crisis. To date, the House has passed six bills, as compared to the Senate which has only passed the Military Construction/Veteran's Affairs bill.

Post debt ceiling negotiations, new issues have arisen. With \$900 billion in deficit reductions already accounted for and another \$1.2 trillion expected from the joint committee, appropriators are left questioning exactly what funding they still have available. The joint committee has been granted the authority to consider all facets of the federal government as it formulates its recommendations. This leaves the appropriations committees in both chambers with an uncertain sense of available funding for 2012. After September 30th, it is likely that the federal government will resort to another continuing resolution with the odds of an omnibus spending bill passing before year-end.

Looking ahead, the appropriations process should begin to normalize after debt negotiations are finalized later this year. The recently-passed debt bill essentially sets up a budget resolution for FY12 and FY13, which marks the top-line spending measures for each year. The appropriations subcommittees will be tasked with reigning in spending to meet those levels, which should significantly help advance the process. It is worth noting that the lack of a budget resolution in the Senate this year is what prevented the appropriations subcommittees from drafting their requisite spending bills.

### ❖ *Patent Reform*

The Senate is paving the way for patent reform to be taken up as soon as Members return from the August recess. The issue is at the top of the President's agenda and the first item Senate Majority Leader Harry Reid plans to address upon his return from the recess. Both chambers have passed similar versions of a patent reform bill; however, in the interest of time it is likely that the Senate will take up the House-passed bill in order to avoid having to send the legislation back to the House for a second vote. Sen. Reid filed cloture on the House-passed bill Tuesday, which sets the bill up for a test vote on the Senate floor when the Chamber returns on September 6th. Both parties are hopeful that the first patent reform bill to be passed in 60 years will stimulate job growth in a very stagnant economy. The bill would spur and protect innovation by establishing a "first to file" patent system that would award the patent to the first inventor to file an application. The house bill would leave funding for the U.S. patent and Trademark Office in appropriators' hands, while the Senate version would allow the office to spend all of the fees it collects. The president has signaled that he is willing to go

along with the House approach and the recent developments in the Senate set up Patent Reform for major action in September.

### ❖ *Free Trade*

With debt negotiations over, the Obama Administration and the Capitol turn to trade, with both sides viewing Free Trade as a significant jobs measure. There are currently three major Free Trade Agreements (FTAs) on the table in Washington. These agreements with South Korea, Panama, and Columbia have been languishing, awaiting approval from Congress for several years. President Obama has made it clear in several press conferences that he was willing to move forward with these FTAs and tie a Trade Adjustment Assistance (TAA) provision to the agreements. TAA provides a variety of reemployment services and benefits to workers who have lost their jobs or suffered a reduction of hours and wages as a result of increased imports or shifts in production outside the United States. The TAA program aims to help program participants secure new jobs, ensuring they retain employment and earn wages comparable to their prior employment. This TAA provision is considered the main culprit in the delay of approval for the three FTAs.

Recently, Republicans and Democrats in the Senate came together on a path leading to the passage of these FTAs. A compromise TAA program, drafted by House Ways and Means Chairman Dave Camp (R-MI) and Senate Finance Chairman Max Baucus (D-MT), will pass the Senate. The three trade deals will be sent to Congress, and we expect the House to approve those agreements along with the separate TAA measure. The Senate will then clear the FTAs, paving the way for signature from the president. We see this happening fairly soon after Congress returns in September.

### ❖ *Transportation Reauthorization*

Another issue that seems to be coming closer to a bipartisan compromise is transportation reauthorization. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) expired at the end of September, 2009. Congress has since failed to pass a multi-year reauthorization bill that secures funding for our nation's highways, bridges, intercity rail and transit systems, bike and pedestrian facilities, and other transportation infrastructure. Since SAFETEA-LU expired, Congress has passed short term extensions on eight separate occasions.

Further complicating matters, if Congress does not act soon, the Highway Trust Fund (HTF) will go bankrupt, possibly as early as next year.

There are two plans currently gaining traction, one in the House and one in the Senate.

- The House plan put forward by Representative John Mica (R-FL), Chairman of the House Transportation and Infrastructure Committee, is a six-year, \$230 billion proposal that cuts federal spending on all forms of transportation by 35%. The bill also stabilizes

the HTF and reduces Amtrak's funding by 25%.

- The Senate plan, authored by Senator Barbara Boxer (D-CA), keeps funding at current levels, but does not provide a measure to prevent HTF's bankruptcy. She claims the funds necessary to prevent an HTF bankruptcy can be found through cuts in defense spending. Sen. Boxer's plan has garnered some bipartisan support in the Senate. Although she had hoped for a mark-up of the bill before the August recess, debt ceiling negotiations delayed that timeline. Moreover, much of the available cuts in defense spending went toward the debt ceiling negotiations, and are likely to upset the spending offsets outlined in Boxer's bill.

Another possible financing mechanism is Senator John Kerry's (D-MA) legislation that would create the American Infrastructure Financing Authority (AIFA). AIFA, a proposed government corporation, would be responsible for providing direct loans and loan guarantees to eligible transportation projects.

In line with other reauthorization bills, transportation reauthorization runs the risk of expiring as both sides argue over timelines and the funding mechanisms necessary for approvals.

## ◆ 2012

### ❖ *Tax Policy*

Despite indications from congressional tax writers that broad tax reform can be accomplished in the 112th Congress, we believe the enormous legislative and political means necessary to achieve such an objective pushes broad reform to 2013. For example, the last significant tax reform occurred in 1986 and took 18 months. In our view there is simply not enough time to reach broad tax reform before the 2012 election. While tax policy will be discussed, both parties will stoke the flames by framing their parties respective positions as having greater benefits to the electorate.

Tax reform will emerge in the fall as the joint committee meets and Democrats argue for increased revenues as any part of the committee's report. Despite what is expected to be a partisan stale mate on taxes, the issue will live on in 2012. Debates over the fate of the Bush tax cuts, slated to expire in 2012, will begin to take center stage against an election backdrop. In addition to the Bush tax cuts, a slew of popular tax provisions, such as the research and development subsidy, the alternative minimum tax, and several renewable energy provisions will be expiring. We see these issues being addressed after the November elections and during a "lame duck" session.

### ❖ *PDUFA and MDUFMA Reauthorization*

The current Prescription Drug User Fee Act (PDUFA) and Medical Device User Fee and Modernization Act (MDUFMA) authorizations expire on September 30th, 2012. These two

authorizations will likely be rolled into one omnibus bill. Legislators have openly expressed interest in having the new reauthorization signed into law by June 30th, 2012. There are hopes that the legislation can be acted upon even earlier than that with possible floor action in the House and Senate in March or April. Both chambers recognize the need for PDUFA and MDUFMA to be reauthorized, and it seems the only disputes will be over minor details. Given the nature of partisan politics that is gripping Washington, these reauthorization bills could face potential expiration. But lawmakers appear determined not to allow this issue to drag into May and the looming presidential election.

### ❖ *Farm Bill*

The current Farm Bill expires September 30th, 2012, but includes some provisions that will expire at the end of September, 2011. Early expiration programs include the SURE (Supplemental Revenue Assistance Payment) permanent disaster program and the Wetlands Reserve Program; however, key Senate staffers expect these provisions to be extended. Over the next several months, we expect several hearings to be held to discuss the replacement Farm Bill for 2012. Senators Kent Conrad (D-ND) and Debbie Stabenow (D-MI) have emerged as leaders on the creation of a new Farm Bill. The House budget for FY12 cuts commodity programs and crop insurance by \$30 billion, conservation by \$18 billion, and nutrition programs by \$127 billion. These cuts reflect the new composition of the House and Senate Agriculture Committees. The new farm bill might be a crop-specific approach rather than a one-size-fits-all policy.

### ❖ *Data Breach and Online Consumer Privacy Legislation*

On May 12th, the White House unveiled their “Cybersecurity Legislative Proposal”, demonstrating the Administration’s firm stance and concern about the data security needs of this country. In addition to the proposal, with an abundance of high-profile data breaches occurring over the past year and a surge in online consumer activity, Congress has turned its attention to simplifying the numerous state-level data breach and online consumer privacy laws into one national federal standard. Currently, there are a number of pending data breach and online consumer privacy bills all vying for a spot in the national standard.

In the House, several proposed bills are gaining significant momentum on data breach language. However, Congresswoman Mary Bono Mack’s (R-CA) recently marked up “Secure and Fortify Electronic Data Act” (SAFE DATA ACT) is the only bill to be voted out of a subcommittee. We expect the full House Energy and Commerce Committee to address the bill when Congress returns. In the Senate, focus has shifted to drafting several bills emphasizing online consumer privacy. Numerous hearings have taken place over the course of this year, but not a single committee has advanced a bill to markup and/or votes. Congress and the White House hope to incorporate language from both the data breach and online consumer privacy bills into broader data privacy security legislation. However, the wave of media reports about sensitive data being stolen has magnified the focus on passing data breach legislation and put online privacy on the backburner. We believe that in the interest of time, Congress is more apt to take an easier path and pursue data breach legislation independent of broader package.