ML STRATEGIES

# ML Strategies' Outlook for 2012

Boston | Washington **www.mlstrategies.com** **January 2012**

ML
STRATEGIES

# ML Strategies' Outlook 2012

## Contents

1. Introduction
2. Agriculture
3. Budget, Taxes, and Appropriations
4. Education
5. Energy and Environment
6. Financial Services
7. Health Care
8. Immigration
9. National Security and Defense
10. Telecommunications
11. Trade
12. Transportation and Infrastructure
13. 2012 Election
14. ML Strategies Washington Office Contact Information

701 Pennsylvania Avenue, N.W. | Washington, D.C. 20004 | tel 202-434-7300 | 202-434-7400 fax
www.mlstrategies.com

# ML Strategies' Outlook for 2012

ML STRATEGIES

**Happy New Year!**

This time last year, ML Strategies distributed our *Outlook for the 112th Congress*, highlighting possible legislative and federal agency activities for the first session of the new Congress in 2011. After the successful 2010 lame duck session of Congress, which saw passage of several significant legislative measures, including an extension of the "Bush tax cuts" and unemployment insurance, a one year payroll tax cut, the New START Treaty, and a repeal of the military's "Don't Ask, Don't Tell" policy, many were hopeful that the new 112th Congress would usher in a new spirit of bipartisanship. That was, unfortunately, not to be, and it is tempting to say that the past year was, instead, hyper-partisan. However, despite the challenges of the past year, there were several legislative successes, including passage of the *National Defense Authorization Act* (P.L. 112-81), a pipeline safety bill, completion of the Fiscal Year 2012 appropriations bills, and, while it came down to the wire, a compromise on a short-term extension of the payroll tax cut, unemployment benefits, and "doc fix."

Looking ahead to the second session of the 112th Congress, we can identify several areas of potential legislative and regulatory activitiy.

Activities on Capitol Hill could include: year-long extensions of the payroll tax cut, unemployment insurance, and Medicare "doc fix;" a tax extenders package; spectrum allocation legislation; Fiscal Year 2013 appropriations; Federal Aviation Administration (FAA) reauthorization; a highway bill; a farm bill; and ratification of the Law of the Sea Treaty. There will also be a vigorous debate in Congress over another extension of the "Bush tax cuts" and mandatory spending cuts scheduled to start in 2013. Given that 2012 is an election year, however, makes it difficult to predict *when* any of these items will be finalized. We may see a year of debate and posturing, with real action taking place in the lame duck session after the November elections, or Members of Congress may look at the low approval ratings Congress is receiving from the public and opt instead to demonstrate, ahead of the election, that they are working hard and deserve to return to Washington next year.

Activities at the federal agencies could include: implementation of health care reform at the Department of Health and Human Services (HHS) and the Centers for Medicare & Medicaid Services (CMS); implementation of the Dodd-Frank financial reform legislation by various agencies, including the newly created Consumer Financial Protection Bureau (CFPB); implementation of environmental regulations by the Environmental Protection Agency (EPA); action by the Department of Commerce (DOC) and the International Trade Commission (ITC) on various filings related to international trade disputes, most notably with China; and continued rulemaking activity at various agencies, including the Federal Railroad Administration (FRA), the Consumer Product Safety Commission (CPSC), and the National Highway Traffic Safety Administration (NHTSA). Additionally, financial awards will continue to be made by various federal agencies, including, but not limited to, the US Department of Agriculture (USDA) and the Department of Energy (DOE); while the Department of Interior (DOI) will be active on off shore and public lands permitting and licensing, and the State Department will be increasingly involved on issues surrounding the proposed Keystone XL pipeline.

As we did in our Outlook last year, we have grouped opportunities for the coming year by issue:

- Agriculture
- Budget, Taxes, and Appropriations
- Education
- Energy and Environment
- Financial Services
- Health Care
- Immigration
- National Security and Defense
- Telecommunications
- Trade
- Transportation and Infrastructure

We have also included a section on the political outlook for the November elections, although we offer this with the caveat that, like everyone else, we do not have a crystal ball and can only make general observations about how the electoral process may unfold in the coming months. With the Iowa caucus and New Hampshire primary behind us, the Republican Party will move ahead with its caucus and primary schedule to select a candidate to challenge President Obama in November. Several Senators from both parties have chosen to not seek reelection and, while we have a fairly good idea of who the candidates will be in November, in some states primaries will decide who is on the ballot. In House races, many states have yet to wrap up their congressional redistricting, and some will face court challenges. Without yet knowing where the lines are going to be drawn for congressional districts, it is difficult to say with any degree of certainty at this point how those elections will unfold.

ML Strategies has brought in new personnel over the past year as we have worked to broaden our reach on Capitol Hill and in the various agencies and to deepen our expertise on the issues. Contact information for all of our team members is provided at the end of this document. We would encourage any questions you may have about specific issues covered here, or on any other legislative or agency-level opportunities or challenges you are concerned about.



## Agriculture

Congress will continue work this year on reauthorizing agriculture programs, as the current five year authorization, commonly called the "Farm Bill," expires at the end of this year. Agriculture Chairs Debbie Stabenow (D-MI) and Frank Lucas (R-OK) worked behind closed doors on a package to be included as part of the Super Committee's debt reduction bill last year. However, the Super Committee's failure to reach an agreement means that the not publicly released Farm Bill draft has been pushed aside and the normal committee process resumes.

The Agriculture committees will hold initial hearings early this year. The outline of the bill the chairs crafted for the Super Committee could serve as the foundation for the new 2012 Farm Bill. The Stabenow-Lucas draft contained $23 billion in cuts over 10 years; some Republicans want an even larger reduction.

Putting a bill together this year is complicated not only by the budget situation (many of the programs in the energy title do not have a baseline after this year) but also by the relative inexperience of the members of the House committee. Between Democrats and Republicans, there are about twenty new House Agriculture Committee members this Congress, and only about a quarter of the House committee members have worked on more than one Farm Bill.

As a result of these complexities, it is increasingly likely that the Farm Bill, normally bipartisan legislation, will not see a final vote until after the election, and perhaps not until 2013.

### Issues

***Crop Insurance Subsidies:*** In 2011, Congress focused on cost-cutting within the Stabenow-Lucas draft Farm Bill. Given the growing cost of crop insurance premium subsidies, which grew from $4.7 billion in 2010 to $7 billion in 2011, they could be a target for cuts. In an effort to avoid cuts, the American Farm Bureau Federation (AFBF) proposed a "systemic risk reduction program" that would provide farmers "area-based coverage" similar to policies offered today, but at a minimal charge. AFBF has sent this proposal to Congress; however, it is more likely a final farm bill will cut direct payments to farmers such as those found in Supplemental Revenue Assistance Payments (SURE) and Average Crop Revenue Election (ACRE) programs.

***Nutritional Programs:*** The Supplemental Nutrition Assistance Program (SNAP)—more commonly known as food stamps—will likely see some loss of allocation given the current pressure to cut spending. Nevertheless, high unemployment, low wages and continued economic malaise will keep SNAP in high demand. In 2011, SNAP was the largest portion of farm bill expenditures, totaling $72 billion. There may also be efforts underway to alter SNAP to require purchase of more nutritional foods or to further cut the program to pay for other programs—such as when Congress used food stamps to pay for the Federal Medical Assistance Percentages (FMAP) bill in 2010. Also on the table for cuts could be school lunch and breakfast programs and the Women, Infant and Children (WIC) program.

***Genetically Modified Products:*** Currently, approximately 75 percent of the US corn crop and 90 percent of the US soybean crop is grown with genetically modified seeds. It is also estimated that over half the foods on supermarket shelves contain ingredients that have been genetically engineered. The Food and Drug Administration (FDA) does not require labeling of products to disclose genetic modifications; however, with a growing view that genetically modified crops could pose health and cultivation risks there is growing support for such labeling. In 2011, Representative Dennis Kucinich (D-OH) introduced a series of bills including: H.R. 3553, the *Genetically Engineered Right to Know Act* which would require labeling of such products and H.R. 3554, the *Genetically Engineered Safety Act*, which would prohibit the open-air cultivation of genetically engineered pharmaceutical and industrial crops.

***Biomass:*** The biofuels and biomass power industries see the Farm Bill reauthorization as the vehicle to clarify and unify the existing federal definition for renewable biomass. Forestry interests seek a broader definition that includes biomass from federal lands; environmentalists oppose efforts to make the definition too broad.

***Biofuels:*** 2011 witnessed the end of the Volumetric Ethanol Excise Tax Credit (VEETC) and the tariff on imported ethanol. The ethanol industry decided to give up the fight, though they are calling for investments in infrastructure like blender pumps for ethanol and flex fuel vehicles. If the Farm Bill contains a tax title, it could serve as a vehicle to modify and extend the cellulosic production tax credit (which was created in the 2008 Farm Bill) or a proposed investment tax credit for biogas production.

***Appropriations:*** Discretionary agricultural funding in the Agriculture appropriations bill passed in mid-November and equals $19.8 billion – a reduction of $350 million below last year's level and $2.5 billion below the President's request. Select energy related programs include the following:

- The Environmental Quality Incentives Program (EQIP) is limited to $1.4 billion.
- The Bioenergy Program for Advanced Biofuels (Section 9005) is limited to $65 million.
- The Rural Energy for America Program is limited to $22 million.
- The Biomass Crop Assistance Program is capped at $17 million in new obligational authority.
- The USDA Biorefinery loan guarantee program (Section 9003) received no new appropriations.

## Committees of Jurisdiction

- ***Senate Agriculture, Nutrition and Forestry Committee:*** Chairman Debbie Stabenow (D-MI) and Ranking Member Pat Roberts (R-KS)
- ***Committee on Agriculture:*** Chairman Frank Lucas (R-OK) and Ranking Member Collin Peterson (D-MN)

ML STRATEGIES

## Budget, Taxes, and Appropriations

As the first session of the 112th Congress came to a close last December, there was a down-to-the-wire debate on an extension of the payroll tax cut, long-term unemployment insurance, and the Medicare "doc fix." Unable to agree on a year-long deal on these items, Congress approved a two-month extension that expires at the end of February. This means it will be one of the first items on the agenda at the start of the new session this month. After addressing a full-year extension of those issues, it is expected that Congress will get to work on retroactively addressing the various tax provisions which expired at the end of 2011, sorting through proposals for tax reform, debating how to deal with the so-called "Bush tax cuts" that expire at the end of the year and working through the various annual appropriations bills. Further, with the Super Committee having failed last year to make recommendations on how to achieve the spending cuts required by the Budget Control Act (BCA), there will be efforts in Congress to mitigate the sequestration – or required spending cuts – that will go into effect in 2013.

### Issues

***Payroll tax cut, unemployment insurance, and "doc fix":*** Enacted at the end of 2010 as part of President Obama's agreement with Republicans to extend the "Bush tax cuts," a one-year payroll tax cut reduced payroll taxes from 6.2% to 4.2% and was set to expire at the end of 2011. Unable to agree on a year-long extension of the payroll tax cut before adjourning in late December, Congress passed a two-month extension that is set to expire on February 29. The bill also extended federal long-term unemployment benefits and the Medicare "doc fix," which sets the rate at which doctors are reimbursed for patients using Medicare. Therefore, one of the first items on the agenda for the second session of the 112th is H.R. 3630, which would extend those provisions through the end of 2012. Democrats and Republicans from both chambers have appointed members to a special conference to address these issues. Senate conferees are Senators Baucus (D-MT), Reed (D-RI), Cardin (D-MD), Casey (D-PA), Kyl (R-AZ), Crapo (R-ID), and Barrasso (R-WY). In the House, conferees are Representatives Camp (R-MI), Brady (R-TX), Ellmers (R-NC), Hayworth (R-NY), Price (R-GA), Reed (R-NY), Upton (R-MI), Walden (R-OR), Levin (D-MI), Becerra (D-CA), Van Hollen (D-MD), Waxman (D-CA), and Schwartz (D-PA). Conferees are set to meet on January 24. While there is strong support in the Senate for a full-year extension, expect a rigorous debate in the House, where the more conservative tea party members of the Republican conference feel that the end-of-the-year two-month extension was forced upon them.

***Tax extenders:*** Congress will likely address, at some point this year, a retroactive extension of least some of the more than 50 tax provisions that expired at the end of 2011. However, there is a strong likelihood that members

ML
STRATEGIES

of both parties will be reluctant to have, what could be, a hard-fought battle over these tax provisions in advance of the elections, pushing any extension to the lame duck session after November. Items included in an extenders package could include: the research & development credit; a deduction for tuition and education fees; a deduction for mortgage insurance premiums; and biodiesel and renewable diesel credits; and the 1603 Treasury Program (Payments for Specified Energy Property in Lieu of Tax Credits).

***Tax reform:*** One of the byproducts of the Super Committee's failure support for some kind of comprehensive tax reform. Despite the efforts by Senate Finance Chairman Baucus (D-MT) and Ways and Means Chairman Camp (R-MI) to lay groundwork for fundamental reform, the ability to move reform legislation will likely be hindered by election year politics, a relatively short legislative calendar, and the President's prioritization of other initiatives. Committees are likely to hold a number of hearings on corporate tax provisions and reform, and Chairman Camp may hold a markup this year.

Draft legislation on international tax reform released by Chairman Camp in late October 2011 reveals that he envisions a significant shift in tax policy. The proposal, which would apply only to foreign earnings of U.S. companies, would move the United States to a territorial system based on a 25-percent corporate tax rate. Chairman Baucus has also said that reducing the so-called "tax gap" – or the amount of taxes owed that go unpaid each year—must be a major focus of tax reform.

Any effort to impose substantive tax reform this year will be done under the looming shadow of the expiring "Bush tax cuts." We anticipate that Congress will spend the better part of 2012 positioning itself to enact some type of comprehensive reforms, but that any substantive legislation will not actually be enacted until either the lame duck session or in the next Congress, as both sides are eager to see the result of the presidential and congressional elections for its impacts on their respective negotiating strength.

Please see our energy section for a more detailed analysis of energy tax policy.

***Fiscal Year 2013 Appropriations:*** In what now appears to be "regular order" for the appropriations process, we can expect that the appropriations committees will work on their spending bills throughout the year, but will not be able to complete them before the beginning of the next fiscal year on October 1, requiring a Continuing Resolution and, more than likely, an Omnibus appropriations bill sometime in the lame duck session of Congress.

***2013 spending cuts:*** With the Super Committee unable to agree on recommendations for the spending cuts called for by the Budget Control Act, starting in 2013 there will be mandatory spending cuts totaling $1.2 trillion. Those mandatory cuts will be equally divided between defense and non-defense spending and, when adjusted for reduced interest payments, come to $54.6 billion annually for the next decade in each category. While the President has said he will oppose any effort to mitigate the mandatory spending cuts, some in Congress are concerned that defense is disproportionately impacted, and, even before the failure of the Super Committee, were already talking about how to get around the mandatory reductions. This issue will likely be debated all year long, with any real action, if it happens at all, occurring in the lame duck session after the elections in November.

ML STRATEGIES

**Committees of Jurisdiction**

- ***House Budget Committee:*** Chairman Paul Ryan (R-WI) and Ranking Member Chris Van Hollen (D-MD)
- ***House Ways and Means Committee:*** Chairman Dave Camp (R-MI) and Ranking Member Sander Levin (D-MI)
- ***House Appropriations Committee:*** Chairman Harold Rogers (R-KY) and Ranking Member Norm Dicks (D-WA)
- ***Senate Budget Committee:*** Chairman Kent Conrad (D-ND) and Ranking Member Jeff Sessions (R-AL)
- ***Senate Finance Committee:*** Chairman Max Baucus (D-MT) and Ranking Member Orrin Hatch (R-UT)
- ***Senate Appropriations Committee:*** Chairman Daniel Inouye (D-HI) and Ranking Member Thad Cochran (R-MS)



## Education

As 2012 is an election year, public education policy has become even more of a hot button issue than usual. As a result, a serious debate over the federal role in education will most likely not occur in 2012. Republicans are advocating for the wholesale elimination of the federal Department of Education, not debating subtleties of achievement measures or the structure of federal student aid. This leaves very little chance for dialogue around national education goals and a small probability of Congressional action on issues related to either primary or secondary education.

However, as was seen late last fall, the Obama administration has moved forward on some education policy through the use of executive power. When the President saw little or no movement on revamping the No Child Left Behind law, he directed the Education Department to move forward by allowing states to apply for waivers around certain requirements from the law. Another example of the Obama administration taking action on an issue where Congress could find no agreement is feral oversight of for-profit universities. The combination of a lack of congressional momentum and continued outcry in the public arena led the Administration to use executive power to issue new regulations that will increase federal oversight of for-profit universities.

### Issues

***Reauthorization of No Child Left Behind:*** No Child Left Behind (NCLB) is the primary statute governing the federal government's role in primary education. The law, which was first enacted during the Johnson administration (then known as the Elementary and Secondary Education Act), was rebranded during the law's last major overhaul in 2001. Then President George W. Bush joined with Congressional Democrats to make its primary focus the use of standardized test scores in schools, particularly those serving minority students.

In March of 2010, the Obama administration proposed an extensive overhaul of NCLB that would encourage states to raise academic standards, end the identification of tens of thousands of reasonably managed schools as failing, and refocus energies on turning around the few thousand schools that are in the worst shape. Additionally, the proposal calls on states to adopt new academic standards that focus on having all students ready for college or career by the time they leave high school. This would replace the current 2014 deadline for bringing every American child to academic proficiency, a goal widely dismissed as unrealistic.

ML STRATEGIES

On October 11, 2011, Senator Tom Harkin (D-IA), Chairman on the Senate Health, Education, Labor and Pensions Committee released an 845 page bill which was the first comprehensive piece of legislation overhauling the law to move in either Congressional chamber since 2002. The bill, which would dismantle the provisions of the law that used standardized test scores in reading and math to label public schools as failing, was released 18 days after President Obama announced that would use executive authority to waive the most onerous provisions of the law. Senator Mike Enzi (R-WY), Ranking Member of the committee, and now a cosponsor of the bill, has pledged to work with Senator Harkin on bipartisan legislation. However, the overall likelihood of the current Senate bill succeeding is slim. The Administration has already signaled opposition to the proposal as it does not include a provision the President favors: a requirement that local and state districts develop teacher and principal evaluation systems. At the beginning of January 2012, the House GOP released two draft measures to reauthorize NCLB, the "Student Success Act" and the "Encouraging Innovation and Effective Teachers Act." Both pieces of legislation have not as of yet been formally introduced but are being circulated for comment.

***Higher Education Funding, Oversight of For-Profit Universities:*** Institutions of higher education are continuing to feel the pinch of rising costs and diminishing state and federal support. Public universities and, in particular, community colleges who received a significant portion of their budget through state mechanisms have seen their state funding slashed. This trend has been compounded by shrinking federal funding which will likely continue to be the case in 2012.

Another issue which has received significant scrutiny over the past two years is the problem of regulation and oversight of the "for-profit college." These institutions commonly attract skills- or career-oriented students, many of them coming from low economic means. Considerable concern has been raised about for-profit education programs that saddle students with more loan debt than they can reasonably repay. This has resulted in a number of Congressional proposals and intense lobbying by the career colleges against Congressional action. Ultimately, the result was the Administration using executive power and issuing regulations related to the oversight of for-profit institutions.

The goal of the Department of Education's new regulations is to focus on reforming some of the career college programs that are not succeeding as well as those institutions that have intentionally misled students. Bad practices in the for-profit education sector mirror many of the problems in the subprime mortgage crisis. Many students borrowed beyond their means, were misled about critical terms of the loan and, ultimately, had little ability to repay the loan. The new regulations will focus on programs that receive students' federal grants and loans to ensure that they prepare students for gainful employment in a recognized occupation. These programs will now have to pass at least one of three tests: 1) a student loan repayment rate of at least 35 percent; 2) a ratio of no more than 30 percent between debt that must be repaid each year and annual discretionary income; 3) a ratio of no more than 12 percent between debt and overall income. If a program fails all these tests three times within four years, it can no longer receive federal financial aid. Programs that fail fewer tests or fail them less frequently will be required to make additional disclosures and issue warnings to students about the heavy debt loads they may take on.

ML
STRATEGIES

## Committees of Jurisdiction

- ***House Committee on Education and the Workforce:*** Chairman John Kline (R-MN) and Ranking Member George Miller (D-CA)
- ***House Appropriations Subcommittee on Labor, Health and Human Services, Education and Related Agencies:*** Chairman Dennis Rehberg (R-MT) and Ranking Member Rosa DeLauro (D-CT)
- ***Senate Health, Education, Labor and Pensions:*** Chairman Tom Harkin (D-IA) and Ranking Member Mike Enzi (R-WY)
- ***Senate Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies:*** Chairman Tom Harkin and Ranking Member Richard Shelby (R-AL)



## Energy and Environment

2012 will be a year of challenge and opportunity for the energy sector.

Having suffered the expiration of the popular 1603 Treasury Grant program and other tax provisions in December 2011, the renewable energy and energy efficiency sectors must also face the pending expiration of several key tax credits at the end of 2012. Congress usually leaves these extensions until the last minute, and there is no reason to think that this election year will be different. The year will see frenzied activity to extend expired and expiring credits as well as to add new credits to a tax package. This tax extenders package could be brought up early in the year, but it will most likely not come to the floor until a post-election lame duck session. The sheer number and scope of tax provisions expiring at the end of the 2012 will make it difficult for Congress to continue to kick the can down the proverbial road.

While the current political environment cannot sustain comprehensive energy legislation this year, more modest measures, like an energy efficiency bill from Sens. Shaheen (D-NH) and Portman (R-OH), do stand a better chance of passage. Senate Majority Leader Reid (D-NV) may push energy legislation this year, especially if gas prices are expected to rise for the summer.

The EPA will continue with an active regulatory agenda, and Congressional efforts to block or delay this regulation will not cease either. Some in Congress are already working to repeal or delay the utility MACT (mercury) rule finalized just last month, but they will not be successful. Increased regulatory scrutiny of extracting shale gas through fracking by EPA also could create uncertainty and damper the boom times of the industry.

The Department of Defense (DoD) will continue its leadership in promoting renewable, energy efficiency, and drop-in advanced biofuels. Biomass power and biofuels stakeholders will have their hands full with the reauthorization of the Farm Bill (USDA energy programs are discussed in more detail in the Agriculture section of this document).

The following sections provide a more in depth analysis of the top issues concerning tax and finance policy; clean energy and efficiency programs; environmental regulations; and federal appropriations and procurement activities.

### Tax and Financing Issues

***Taxes:*** The renewable energy and energy efficiency industries will increasingly look to the tax code for incentives as key provisions either expired last month or will expire at the end of this year. However, efforts to extend or

ML STRATEGIES

expand these tax provisions will face headwinds in the form of the deficit and comprehensive tax reform. At the same time, traditional oil and gas companies will try to preserve their existing tax incentives from being used to pay for other Congressional priorities.

Renewable energy advocates looking for certainty in the tax code were disappointed as Congress failed to extend expiring energy tax incentives like the Section 1603 Treasury Grant Program in a late December 2011 deal that provided a two-month extension of the current law payroll tax holiday, federal unemployment insurance, and a so-called "doc fix" to avoid a reduction in Medicare payments to doctors.

As part of a final agreement, conferees to a joint House-Senate Conference Committee will work to reconcile differences on a longer term – likely a one year – extension. Conferees have said they are unlikely to expand the initial scope in February and include other expired tax provisions like 1603 or expiring provisions like the Section 45 production tax credit (PTC). Finding agreeable revenue sources remains difficult enough for the payroll tax, let alone other expiring provisions. Congress probably will postpone extenders until after the election, when it also must deal with expiring Bush income tax cuts. Congress has extended expired credits retroactively in the past.

At the same time, House Ways and Means Chairman Dave Camp (R-MI) has suggested that adding special interest provisions would undermine his efforts related to comprehensive tax reform by eliminating deductions and credits and lowering overall rates.

The stakes are huge. The Section 1603 Treasury Grant Program – a major source of financing for renewable energy projects – expired at the end of 2011. The ethanol tax credit expired as well and is not expected to return, but industry is trying to extend the cellulosic production tax credit, which expires at the end of 2012. The wind industry is aggressively advocating for an extension of the wind production tax credit. Faced with longer development timelines, the offshore wind industry is calling for a new offshore wind investment tax credit that does not expire until a cap is reached. The biogas industry seeks parity for biogas production with a new investment tax credit. The microturbine industry seeks parity with fuel cells by increasing the rate of its investment tax credit from 10% to 30%, along the lines of a bill introduced by Rep. Linda Sanchez (D-CA). With the expiration of the Section 41 R&D tax credit at the end of 2011, the private sector and the Administration continue to advocate for simplifying and making the credit permanent.

### Select Energy Tax Provisions in Play

Expired in 2011

- Biodiesel, ethanol, alternative fuels, and alcohol fuels (§§ 40A, 6426, 6427)
- 100% bonus depreciation
- Certain energy conservation credits (§§25C, 30B, 30C, 45L, 45M,)
- Research and experimentation tax credit (§ 41)
- Section 1603 Treasury Grant Program

Expire in 2012

- Production tax credit (2012 for wind, 2013 for biomass, geothermal, hydropower, small irrigation, landfill gas and trash) (§45)
- Cellulosic biofuel PTC (§ 40) and depreciation deduction (§ 168(l))

New Proposals

- Offshore wind ITC
- Biogas ITC
- Renewable chemicals PTC
- Enhanced Microturbine ITC

ML
STRATEGIES

Reps. Dave Reichert (R-WA) and Earl Blumenauer (D-OR) are leading a bipartisan bill that would extend through 2016 a production tax credit for wind, biomass, geothermal, hydropower, small irrigation, landfill gas and trash. Many Republicans would be content to let the subsidies expire. Others have proposed linking extensions of renewable incentives to expanded production of domestic oil and gas. For instance, Rep. Devin Nunes (R-CA) has proposed a reverse auction for renewable energy financed from new oil and gas leases (H.R. 909).

While tax reform will gain momentum this year, it will remain exceedingly difficult to pass such a comprehensive package before the 2012 elections. A temporary extenders package in a post-election lame-duck session is probably more likely; and is in fact what happened at the end of 2010.

***DOE Loan Guarantee Program:*** In the aftermath of the Solyndra bankruptcy, Congress stripped out addition credit subsidy for the 1703 loan guarantee program. The ongoing internal review of DOE loan guarantees has put a hold on future Section 1703 deals, but several billion in (self-pay) authority and $170 million in credit subsidy do remain, if DOE determines the current hostility has receded sufficiently to continue with the program.

With the USEC-owned American Centrifuge Project having failed to secure a loan guarantee, House Republicans, lead by Speaker Boehner and other members of the Ohio delegation, had attempted to congressionally mandate funding for the project on the grounds that it is vital to national security, but their efforts failed. In a turn of events, Secretary Chu has announced that the DOE will provide $44 million of its funding for the project enabling it to move forward.

***Infrastructure Bank (I-Bank):*** The creation of a Federal I-Bank has bipartisan support this year, evidenced by the introduction of the bipartisan "BUILD Act" (S. 652) and the inclusion of the entity in the President's "American Jobs Act" proposal. While many clean energy investors, companies, Energy Secretary Chu, and Senate Energy and Natural Resources Chairman Bingaman (D-NM) have been advocating for the creation of a Clean Energy Deployment Administration (CEDA) since 2007, the White House has chosen to back the I-Bank over CEDA in order to appeal to a broader and more diverse set of stakeholders.

***PACE:*** The once-heralded Property Assessed Clean Energy (PACE) financing mechanism, hit a roadblock when the Federal Housing Finance Agency determined that PACE posed an unacceptable risk for secondary mortgage holders. PACE enjoyed popular support because it allows homeowners to borrow the upfront costs of efficiency and renewable energy projects and repay the costs through a long-term property assessment. A bipartisan bill (H.R. 2599) would prevent discrimination against homeowners utilizing PACE. Over twenty five states have already attempted to establish some form of PACE program, so there will be a strong push to revive the program.

### Clean Energy and Efficiency Policy Issues

***Clean Electricity Standard:*** Chairman Bingaman is expected to introduce legislation establishing a federal clean energy standard in mid-February. Though the CES's legislative prospects and pathway to enactment remain unclear, the Committee will renew a debate over the policy, holding a hearing on the legislation shortly after its introduction.

***Energy Efficiency:*** While some Republicans see energy efficiency as government overreach, legislative proposals in this area continue to garner bipartisan support. While several key energy efficiency tax credits expired at the end of 2011, the Department of Energy continues to propose and formulate a series of energy conservation standards. Energy efficiency tax credit extensions, regulations, and financing programs are likely to continue to garner Congressional attention through 2012.

Senators Shaheen (D-NH) and Portman (R-OH) introduced the most comprehensive energy efficiency bill (S. 398) in the first session. The bill would add, expand, and improve energy conservation standards for existing and new products; authorize a state-level revolving loan fund for financing manufacturing efficiency upgrades; and encourage states to adopt more stringent building code standards. Out of the many bipartisan bills to have been reported favorably from the Senate Energy and Natural Resources Committee, this remains one of the strongest candidates for passage.

Hostility to energy efficiency can be seen in the successful House Republican effort to defund enforcement of the DOE's incandescent light bulb standard, which was originally passed in 2007. While the FY12 omnibus prohibited DOE enforcement of the standard, it remains in effect as of January 2012, and it enjoys strong private sector support. Other anticipated DOE rulemakings such as efficiency standards and test procedures for set-top boxes likely will progress through the regulatory process in 2012 and attract Congressional oversight.

One of the largest policy impediments to scaling up the energy efficiency retrofit market is the absence of uniform energy data and performance metrics that can be incorporated into the residential real estate transaction process. To address this issue, the bipartisan SAVE Act (S.1737) would direct the Department of Housing and Urban Development to update its underwriting and appraisal guidelines to ensure that any home loan backed by Fannie Mae, Freddie Mac, the FHA, or other federal agencies and entities would account for a building's energy profile.

***Rare Earth Materials:*** Rare earth elements, currently extracted almost exclusively in China, are integral to a variety of clean energy technologies such as lithium-ion batteries, advanced lighting technologies, and permanent magnets used in wind turbines. Several bills are progressing through Congress to deal with supply chain concerns. The bills include criteria for weighing the criticality of different materials and seek to explore impediments to increased domestic mining. DOE received funding in the FY12 budget to establish an innovation hub focused on critical materials.

***Grid Security:*** Efforts to protect the bulk-power system and critical electric infrastructure against cyber security threats and vulnerabilities will continue in 2012. Chairman Bingaman introduced the Grid Cyber Security Act (S.1432), and he has held several hearings on the subject. The DOE and Department of Homeland Security recently announced plans to work with electric utilities to help identify potential vulnerabilities to cyberattacks. In addition, uncertainty created by EPA rules that will shutter coal power plants may encourage Congress to focus on grid security bills.

### Environmental Regulatory Issues

***Clean Air and Water Regulations:*** As Congressional efforts to delay or repeal various EPA regulations promulgated under the Clean Air Act continue, the agency will continue to develop and publish proposed and final rulemakings. The regulations, and their economic impacts, are expected to remain a central focus of the presidential campaign, raising the stakes for the agency (and its budget) throughout 2012. EPA officials completed the most controversial measures before the end of 2011, culminating with the December 21 release of its final power plant air toxics rule. Officials are likely to focus much of 2012 on hydraulic fracturing environmental and safety issues as well as rulemakings for various regulations promulgated under the Clean Air Act such as the GHG tailoring rule, the Cross-State Air Pollution Rule (CSPAR), the tailpipe rule, the boiler MACT and utility MACT rules, and other regulations that continue to encounter legal challenges. Environmentalists assert that a growing patchwork of state fracking rules highlights the need for nationwide regulation from EPA, but the gas industry believes states are better positioned to regulate the sector.

***Renewable Fuel Standard (RFS2):*** With the ethanol tax credit and tariff now expired, a fierce debate is erupting about the Renewable Fuels Standard (RFS2), which mandates annual biofuel volumes that must be blended in the nation's fuel mix. The corn ethanol industry, whose production is pushing up against the RFS2's 15 billion gallon ceiling, would like to remove the RFS2's cap on first generation corn ethanol. On the other hand, advanced biofuel companies would like to open up the regime to remove a special carve out for cellulosic biofuels. At the same time, an unusual but broad alliance of environmental groups, taxpayer advocacy groups, and the oil industry oppose the RFS2 in principal because it creates a mandated demand for ethanol. Navigating between these opposing forces is the cellulosic biofuel industry, which wants to preserve the current RFS2 regime that they assert spurs market demand and increased investment in new biorefineries.

***Keystone XL:*** As part of the short term extenders package passed in December 2011, Republicans inserted a provision setting a February 21 deadline for President Obama to decide whether the $7 billion Canada-to-Texas tar sands oil pipeline is in the national interest and thus can go forward. The Administration risks alienating labor unions backing the project on the premise of job creation or frustrated environmental groups that oppose the pipeline on principal. The White House hoped it could avoid such a politically risky choice after the State Department announced it was postponing a decision on the pipeline until after this year's presidential election.

On January 18, the president announced that the administration is rejecting the application to build the pipeline, but will allow TransCanada, the applicant, to reapply once it has devised a route that does not impact the environmentally sensitive Nebraska Sand Hills, particularly the Ogallala Aquifer.

### Appropriations and Procurement Issues

***Appropriations:*** The White House has directed agencies to propose FY2013 budget levels at least 5% below FY2011 enacted levels, and at the same time outline reductions of at least 10% below FY2011. Agencies are also likely to face mandatory funding cuts beginning in 2013 after the Congressional Joint Special Committee on Deficit Reduction failed to reach an agreement in 2011.

***Department of Energy:*** Considering the current budget environment, DOE fared fairly well in December's FY2012 omnibus spending package. The Omnibus allocated $1.825 billion to Energy Efficiency and Renewable Energy programs, about $100 million less than FY2011 levels. The FY2012 budget also provides funding to create two new DOE Energy Innovation Hubs for batteries and critical materials. ARPA-E's FY12 budget is $275 million, down from its original $300 million level appropriated in 2009. Nuclear energy saw a notable increase of $30 million over FY11 levels to $768 million. This includes almost $100 million for RD&D and licensing of small modular nuclear reactors.

*Environmental Protection Agency:* The FY12 Omnibus included a $233 million funding cut of the agency's budget, reducing it to $8.4 billion. We can expect FY2013 EPA budget debates to be similarly heated, and EPA officials and supporters will need to make a strong case for the agency's work in order to maintain current or similar levels of funding in the coming year. The EPA is already preparing a response to a White House directive for FY2013 budget proposals at least five percent below FY2011 enacted levels and additional outlined reductions at least 10 percent below FY2011 levels. A ten percent reduction could lower EPA's budget to about $7.6 billion; by comparison, the FY2010 enacted level was $10.3 billion. Sustained cuts to EPA's budget, in conjunction with reduced state level budgets for environmental production, could result in resistance from states who lack the means to implement new EPA regulations.

***Department of Defense:*** Although subject to a potential $500 billion rescission in 2013, the agency must still procure 25% of its total energy from renewables by 2025, with individual branches setting ambitious goals for reducing petroleum usage, increasing biofuel production, and implementing energy conservation measures at facilities and in the field. For example, the Army has stood up an Energy Initiative Task Force charged with financing over $7 billion in utility scale (>10MW) renewable energy systems at military installations. Such policy and statutory initiatives will undoubtedly spur the DoD to invest heavily in commercializing and deploying clean energy technologies in 2012 and beyond.

***Federal Procurement:*** In the absence of any new legislation, the Administration has called on the federal government to enter into over $2 billion in Energy Savings Performance Contracts (ESPCs) through 2014. This use of existing authorities has become part of President Obama's "We Can't Wait" approach to implementing his policy priorities, and the federal purchasing power of the U.S. government—especially the DoD—may continue to drive energy efficiency investments for the short term until a more comprehensive energy policy becomes politically feasible.

Building on the 2010 Memorandum of Understanding between the Departments of Agriculture, Defense, and Energy to support a drop-in biofuel industry for jet fuel and marine diesel, Congress appropriated an additional $150 million for the Defense Production Act (DPA). If DoD directs those funds to the tri-agency initiative, it brings the initiative closer to its three year funding goal of $510 million. While USDA's portion will not require additional appropriations, DOE's funding of the initiative remains in question as Congress declined to include the funding in the FY12 Omnibus.

## Committees of Jurisdiction

- ***Senate Energy & Natural Resources Committee:*** Chairman Jeff Bingaman (D-NM) and Ranking Member Lisa Murkowski (I-AK)
- ***House Energy & Commerce Committee:*** Chairman Fred Upton (R-MI) and Ranking Member Henry Waxman (D-CA)
- ***Senate Environment & Public Works Committee:*** Chairman Barbara Boxer (D-CA) and Ranking Member Jim Inhofe (R-OK)
- ***House Natural Resources Committee:*** Chairman Doc Hastings (R-WA) and Ranking Member Ed Markey (D-MA)
- ***Senate Finance Committee:*** Chairman Max Baucus (D-MT) and Ranking Member Orrin Hatch (R-UT)
- ***House Ways and Means Committee:*** Chairman Dave Camp (R-MI) and Ranking Member Sandy Levin (D-MI)



## Financial Services

While many in the financial services industry were pleased to see a volatile 2011 come to a close, there is a chance that 2012 will not be any less hectic. Like last year, the implementation of Dodd-Frank—with its restrictions on derivatives and trading, tightening of capital requirements and other pending regulatory changes—and the continued fallout from the European debt crisis foreshadows another bumpy ride for the industry. Adding to this view is President Obama's "recess" appointment of Richard Cordray to be the first director of Consumer Financial Protection Bureau (CFPB), which has effectively equated to pulling the proverbial pin out of a partisan hand grenade. This action ensures that when Congress returns, the CFPB and the appointment itself will be a focus of Congressional scrutiny.

Another issue Congress will have to deal with almost immediately upon its return will be the *kabuki dance* surrounding the vote on the debt ceiling. Shortly before the end of the 2011, as part of the deal struck in August, President Obama indicated he would request the debt limit to be raised by $1.2 trillion. Congress, which has 15 days from when the formal request is made, will likely vote on a motion to block the increase which the President will veto. Despite much rhetoric about how the President is driving up America's debt to unsustainable levels, an override of the Presidential veto is not expected to be successful.

The debt ceiling vote makes up part of what is expected to be increased efforts by Congress to affect the economy through fiscal policy—or at the very least attempt to claim credit for any improvement in the country's economic welfare. This rise in activity will also likely be paired with a decrease in activism by the Federal Reserve, as the effects of monetary stimulus become less impactful. However, if the economy takes a significant turn for the worse this forecast could change.

### Issues

***Regulation and Implementation of Financial Reforms:*** As implementing agencies have missed the deadlines for finalizing nearly 75 percent of the rules required by the Dodd-Frank Wall Street Reform and Consumer Protection Act thus far, the implementation of Dodd-Frank will likely continue to be the dominant issue in 2012. As agencies work to implement these rules it is expected Congress will continue to selectively intervene in the rulemaking process. The rules we anticipate to garner the most attention in 2012 include: the implementation of the Volcker Rule, Financial Stability Oversight Council (FSOC) designation of systemically important financial institutions (SIFIs) and regulation of the derivatives and swaps market.

The Volcker Rule is slated to go into effect in July 2012. This may be an overly aggressive timeline for the rule, especially in light of an announcement that the implementing agencies will extend the comment period to February 13, 2012. Nevertheless, much of the spring, continuing through to the implementation date, may be devoted to a debate over the rule to ban proprietary trading. The FSOC's re-proposal of the definition of SIFIs in October 2011 means there will likely be continued debate in 2012 about SIFI designations, which were a target of scrutiny from Congress and industry in 2011. This year the CFTC and the SEC will likely finalize many of its swaps and derivative rules, including the much anticipated product definition rules. These proposals are due in the first quarter and should generate significant attention.

Congress will continue to play a large role in the implementation of the Dodd-Frank Act. As the White House and the Senate remain controlled by Democrats, efforts by the House to blunt, modify and repeal portions of the Act will continue to be unsuccessful. However, with the 2011 House passage of numerous bills aimed at altering treatment of provisions dealing with derivatives, credit rating agencies, fund advisers and the CFPB, similar efforts are all but inevitable in the coming year.

With President Obama's appointment of a director to the CFPB, the agency is expected to increase its implementation of its Dodd-Frank responsibilities. The installation of a director at the Bureau means the CFPB will come into the full scope of its powers including regulation and enforcement such as unfair deceptive or abuse (UDAP) enforcement and oversight of nonbank financial services industries such as mortgage originators, payday lenders and check cashing firms. Since the Bureau's July 21, 2011 effective date, the agency has only had the authority to supervise and regulate deposit-taking banks. However, the full authority of the CFPB remains in question given the manner by which the appointment was made and the possibility of lawsuits challenging Cordray's validity. We anticipate the appointment and the CFPB will be the focus of a number of oversight hearings, beginning with Representative Patrick McHenry's (R-NC) Oversight Subcommittee on January 24th.

In addition to implementation of the Dodd-Frank Act, agencies and the administration continue their efforts to implement progressive rules. For example, the Securities and Exchange Commission (SEC) is expected to continue to push forward with new rules to govern money markets. Some proposals, such as moving money markets to a floating net asset value (NAV), remain controversial; however, other proposals such as a capital buffer designed to cover fund losses resulting from runs on the market may be more likely to succeed at the Commission. Similarly, we anticipate that the Department of Labor will continue its aggressive effort to regulate the retirement industry through fee disclosure rules.

***Tax Reform:*** In 2011, Congress danced around the possibility of tax reform on several occasions including as part of the Super Committee debate. The tax debate will be kicked off early in 2012 as conferees attempt to negotiate a long-term payroll tax deal. Other tax issues that could emerge include corporate tax reform, mortgage deductions, taxation of retirement savings and treatment of partnerships. The looming sequestration could spur additional tax overhauls as Congress scrambles for savings to soften the impact of automatic cuts. 2012 will also likely see movement on the transaction, or Robin Hood, tax which would tax the trading of stocks, bonds, derivatives contracts and other financial instruments. The European Commission has endorsed the tax—despite opposition from some Euro zone members such as the UK—and transaction tax legislation has been introduced in Congress.

ML
STRATEGIES

***Small Business Access to Capital:*** With a number of measures already on the table, continued efforts to increase small business access to capital will likely persist in 2012. The House has already approved a number of measures aimed at decreasing registration and reporting requirements for small firms with the SEC. These bills include crowdfunding initiatives and increasing shareholder registration thresholds. Despite initial pessimism that the Senate would support such initiatives, there have been a number bills introduced in the Senate, and the measures have the support of the White House. This broad support could make small business capital formation one of the few issues for bipartisan compromise in 2012.

***European Sovereign Debt Crisis:*** Congress has largely put the US reaction to the financial situation in Europe on the back burner. Despite the lack of Congressional attention to the issue, continued threats to US stability from the European sovereign debt crisis will likely put additional pressure on the banking and securities industries to raise capital, conduct stress tests and risk analyses, and develop living wills.

### Committees of Jurisdiction

- ***House Financial Services Committee:*** Chairman Spencer Bachus (R-AL) and Ranking member Barney Frank (D-MA)
- ***Senate Banking Committee:*** Chairman Tim Johnson (D-SD) and Ranking Member Richard Shelby (R-AL)




## Health Care

It is likely that the upcoming 2012 session of Congress will continue with an intensely partisan approach to health care. As 2012 is a Presidential election year, both political parties will continue to use legislative opportunities to push various priorities and to message their positions. Although there will be a couple of key "must-pass" items related to health care in the legislative arena, the focus is likely to remain on implementation of the Patient Protection and Affordable Care Act (ACA). GOP members will continue to launch attempts at repealing, replacing, defunding, and dismantling the new law to provide key messaging opportunities for its Members heading into November. Similarly, Democratic members will continue to make their case for the sweeping reform and its benefits as the party attempts to hold the majority in the Senate and retake the majority in the House. As with last session, the complete legislative repeal that some hoped for is unlikely to materialize. In addition, as the GOP presidential nomination is finalized, it is likely that the GOP-controlled House will begin to push their nominee's health agenda in Congress, which will likely include positions such as market-based options, expansion of consumer-directed options, cross-state pooling and medical liability reform. Regardless of the nominee, look for continued aggressive oversight by the GOP-controlled House over the Administration's implementation effort, and also efforts through the Fiscal Year 2013 Appropriations process to defund provisions of the ACA and to prevent implementation of certain regulations.

Elsewhere at the federal level, the Obama Administration will to continue aggressively implementing the reforms in the ACA at the various agencies. And, unlike previous sessions, the Supreme Court has now granted certiorari on the case brought by the National Federation of Independent Business (NFIB) and 26 states to review the constitutionality of the individual mandate and the ACA. The overlay of a potential Supreme Court ruling will likely serve as a deterrent for significant legislative action regarding the ACA – both Democratic efforts to expand and fix it and GOP efforts to weaken it - as both sides will utilize the Supreme Court's involvement as a reason for delay. The Supreme Court rendering a final opinion this year, as is currently projected, would have significant political ramifications for health care policy, no matter how the Justices rule.

### Issues

***Debt/Deficit Debate:*** Most immediate on the agenda is the continuing debate in Congress over funding the government, including significant debt and deficit challenges. As with last Congress, these negotiations provide opponents of the ACA the chance to attack portions of the law that they feel exemplify wasteful government spending as well as provide all Members with the opportunity to push their health care priorities. Moreover, in the larger debt debate, there is widespread consensus that the issue cannot be appropriately addressed without touching entitlement programs, notably Medicare, Medicaid, CHIP, and military health spending. The continuing discussion over reforming these health care programs, which consume a disproportionate share of our nation's resources (Medicare, Medicaid, and CHIP alone make up over one fifth of the national budget), presents opportunities for those on both sides of the issue. The discussion not only provides its own opportunity for further health-related legislation, but also inherently leads back to questions of how the ACA affects sustainability and provides opportunities for opponents and proponents of the law to tack on additional measures designed to get their message across. In addition, since the Super Committee failed to meet its obligations under the agreement to raise the debt ceiling, Congress will also have to face the reality that sequestration – a 2% across-the-board cut to providers in Medicare and other cuts in discretionary programs related to health care – will kick-in beginning in 2013 barring legislative action to avert the cuts. Although the prospects of a bill mitigating sequestration without corresponding deficit reduction is unlikely, the issue is certain to arise and provide opportunities to further discuss health care.

***SGR "Doc" Fix:*** There are a few "must-pass" pieces of legislation that will not only have an impact on the industry but will also provide legislative vehicles for other health-related priorities. First, Congress will have to address the issue of physician reimbursement in Medicare with the SGR formula. Despite near-universal support for replacing the SGR formula with a more sustainable long-term reimbursement methodology, Congress has repeatedly failed at reaching a consensus on how to cover the price tag, which is nearing $300 billion for a complete repeal. In December 2011 Congress narrowly averted the physician cuts by passing a 2-month extension of the current formula into 2012 tied to a 2-month payroll tax extension package. This means that Congress will immediately need to consider possible solutions, a process that will bring with it broader discussions of the health care landscape. However, the longer the "fix" is, the more expensive the bill will be, and the size of the price tag will largely determine how many other sectors of the health care industry might get pulled into the always-contentious debate over the SGR. It remains unclear whether or not lawmakers will tie this fix to a broader tax extenders package, but either way, both opportunities provide a vehicle to carry other health-related provisions.

***PDUFA/MDUFA:*** Second, and perhaps most significant of the must-passes, the program authorities of the Prescription Drug and Medical Device User Fee Acts ("PDUFA" and "MDUFA" respectively) expire at the end of 2012, and Congress must reauthorize them in order to continue funding the FDA's regulatory activities currently supported by PDUFA and MDUFA revenues. Negotiations over the reauthorization of PDUFA have so far been cordial, bipartisan, and consensus-based. However, these negotiations have also been largely conceptual. Both the GOP-controlled House and the Democratic controlled Senate have pledged to engage in serious bipartisan negotiations over the programs, and industry representatives have so far been largely supportive of these discussions. Discussions have also begun regarding the reauthorization of MDUFA, but reports suggest that these talks have not gone as well as their PDUFA counterparts, as the FDA reportedly wants to collect much higher fees from the industry while the industry continues to be skeptical over the FDA's ability to improve review times. As these discussions move forward and pressure mounts to wrap these two reauthorizations into one legislative package, it is almost certain that other health issues will be added into the discussion. These issues will be focused not only on the pharmaceutical and medical device industry, such as drug / device safety and drug shortages, but also on broader health care topics as well.

ML STRATEGIES

***"Setting the table":*** Finally, the second session of Congress will also provide an opportunity for lawmakers on both sides of the aisle to "set the table" for future legislative efforts depending on the outcome of the 2012 election. Some of these efforts, such as entitlement and tax reform, will be tied to other initiatives mentioned above, while others will stem from long-standing priorities of lawmakers. In both cases, health care, especially delivery system reform and cost containment measures, are likely to be top topics in Congress throughout the year.

***ACA Implementation:*** As can be expected, the Obama Administration is largely going to focus its regulatory efforts on continuing implementation of the ACA. In addition to refining the initial proposed rules and revisiting regulations already put in place over these past two years, additional regulations and programs are set to be implemented in 2012. For example, beginning in early 2012, new fraud and abuse provisions took effect for providers and suppliers participating in Medicare, Medicaid, and CHIP. Later in the year, new efforts are set to be implemented promoting value-based purchasing in Medicare and tying hospital payments to readmissions. All of these efforts provide valuable opportunities for stakeholders to convey their core message. In addition to the programs set to go into effect in 2012, there are numerous initiatives set to begin in later years requiring rulemaking in 2012. This rulemaking process will inherently bring a flurry of industry activity as different stakeholders seek to shape future regulations to suit their preferences. In addition to rules and regulations, there are also a number of demonstration, pilot, and grant opportunities for health care actors. The ACA-created Center for Medicare and Medicaid Innovation (CMMI) and the Medicare-Medicaid Coordination Office (MMCO) are two of the newest initiatives within HHS that are scheduled to initiate and/or implement new programs in 2012. Some of these opportunities include broader engagements such as the CMMI Innovation Challenge, while others will be more targeted, such as the MMCO demonstration to reduce preventable hospitalizations for nursing facility residents. Over the course of 2012 it will be important for health care stakeholders to continue to closely monitor the various opportunities to demonstrate value and innovation.

***Supreme Court Challenge:*** One of the most discussed topics in the health care policy arena in 2012 will be the pending Supreme Court challenge to the ACA brought by the NFIB and 26 states. In the early part of the year, stakeholders are likely to engage in the judicial process as both sides prepare for oral argument set to take place in late-March. It is unclear at this point how long the Supreme Court will take to deliberate the merits of the lawsuit, but many observers expect a ruling at some point in 2012. Although neither side can be certain of the timeline or of the outcome of the justices' ruling, both sides will be leveraging the process to message their respective policy priorities. Regardless of the ruling, health care stakeholders will have to adjust strategies to continue to cope with the changing landscape in light of the provisions that have already been implemented – some of which may prove irreversible even if the entire law is struck down – and in light of the ongoing challenges facing the industry.

## Committees of Jurisdiction

- ***House Energy & Commerce Committee:*** Chairman Fred Upton (R-MI) and Ranking Member Henry Waxman (D-CA)
- ***House Ways & Means Committee:*** Chairman Dave Camp (R-MI) and Ranking Member Sandy Levin (D-MI)
- ***House Budget Committee:*** Chairman Paul Ryan (R-WI) and Ranking Member Chris Van Hollen (D-MD)
- ***House Appropriations Committee:*** Chairman Hal Rogers (R-KY) and Ranking Member Norm Dicks (D-WA)
- ***House Committee on Oversight & Government Reform:*** Chairman Darrell Issa (R-CA) Ranking Member Elijah Cummings (D-MD)

ML
STRATEGIES

- ***Senate HELP Committee:*** Chairman Tom Harkin (D-IA) and Ranking Member Mike Enzi (R-WY)
- ***Senate Finance Committee:*** Chairman Max Baucus (D-MT) and Ranking Member Orrin Hatch (R-UT)
- ***Senate Budget Committee:*** Chairman Kent Conrad (D-ND) and Ranking Member Jeff Sessions (R-AL)
- ***Senate Appropriations Committee:*** Chairman Dan Inouye (D-HI) and Ranking Member Thad Cochran (R-MS)
- ***Senate Special Committee on Aging:*** Chairman Herb Kohl (D-WI) and Ranking Member Bob Corker (R-TN)

ML
STRATEGIES

## Immigration

Immigration may be one of the more contentious issues in the 112th Congress. While there may be bipartisan support for updates to the voluntary reporting system E-Verify and EB-5 Visa Program, issues such as the DREAM Act and birthright citizenship continue to be divisive. Because of the controversial nature of these immigration policies, where candidates stand on these issues may play a role in the upcoming elections.

### Issues

***DREAM Act:*** *The Development, Relief, and Education for Alien Minors Act* (DREAM Act) would create a legalization process for persons who are brought to the U.S. by their parents as children and then go on to join the military or attend college. After failing to achieve the 60 votes necessary for cloture in the Senate before the 111th Congress adjourned, the DREAM Act was re-introduced in the 112th Congress by Rep. Howard Berman (D-CA) and was referred to the House Judiciary Committee. On the Senate side, Sen. Richard Durbin (D-IL) re-introduced the DREAM Act, which was referred to the Senate Committee on the Judiciary Subcommittee on Immigration, Refugees, and Border Security. A hearing was held on June 28, 2011, where U.S. Secretary of Homeland Security Janet Napolitano spoke in favor of the bill. Among those opposed to the bill, Sen. John Cornyn (R-TX) said, "This bill does nothing to fix our immigration system. It is a Band-Aid and, maybe worse, it will provide an incentive for future illegal immigration." With a Republican controlled House, the bill's passage is highly unlikely during the 112th Congress. However, Democrats will continue to bring it up on the campaign trail as a way to solidify support in the Latino community.

***E-Verify:*** E-Verify is a voluntary electronic system for checking immigration status of employees run by the Department of Homeland Security. House Judiciary Committee Chairman Lamar Smith (R-TX) introduced H.R. 2885, *The Legal Workforce Act*, which would establish an employment eligibility verification system patterned after the E-Verify system and eliminate the paper-based I-9 system. The House Judiciary Committee held a hearing on the issue in January 2011 and the bill remains in committee.

***Birthright Citizenship:*** In December, the Supreme Court announced that it will hear Arizona's appeal of the 9th Circuit Court of Appeals decision on SB 1070. The federal district court imposed a preliminary injunction on parts of the Arizona law, including provisions related to warrantless arrests of suspected undocumented immigrants. Under SB 1070, non-citizens would be required to register with the federal government and to have registration documents on them at all times. This Supreme Court case sets up a battle over state vs. federal authority in immigration policy, so the outcome of this case will be significant. During the first session of the 112th Congress, Rep. Steve King (R-IA) and Sen. David Vitter (R-LA) introduced bills that would eliminate birthright citizenship for children born to undocumented immigrants in the U.S. These bills were referred to the Judiciary Committees, and it is unlikely that either bill will move, and definitely not until after the Supreme Court has ruled on the Arizona state law.

***H-2B Guest Worker Visa:*** This non-immigrant visa program allows employers to hire workers to temporarily enter the U.S. for one-time, seasonal, or intermittent basis work in non-agricultural services or labor. A September 2010 GAO report delivered to Congress outlines instances of fraud and abuse. During the first session of the 112th Congress, Rep. Peter DeFazio (D-OR) called for increased oversight of the program. In March, 2011, the Department of Labor issued a proposed rulemaking revising the H-2B program. The new rules were set to go into effect on October 1, 2011, but are now delayed for one year thanks to an amendment proposed by Sen. Barbara Mikulski (D-MD) to the Labor HHS 2012 portion of the Omnibus Appropriations Act.

***EB-5 Visa Program:*** The EB-5 Visa provides a method for immigrant investors to obtain a green card by investing money in the U.S. To obtain this visa, foreign nationals must invest at least $500,000 in certain qualified investments or regional centers with high unemployment rates and must create at least ten jobs. The EB-5 Visa was first established through the Immigrant Investor Pilot Program, with an allocation of visas codified under the Immigration and Nationality Act (INA). The Immigrant Investor Pilot Program and the current EB-5 Visa program will expire on September 30, 2012. In the first session of the 112th Congress, both the House and Senate Judiciary Committees held hearings to discuss reauthorizing the EB-5 Visa Program. Senate Judiciary Committee Chairman Patrick Leahy (D-VT) is working on legislation to both modernize and permanently authorize the EB-5 Regional Center program. Members of the House Judiciary Committee appear to share Sen. Leahy's opinion that the program should be expanded for several years, if not permanently, so it is likely that legislation doing so will be addressed in the second session of the 112th Congress.

## Committees of Jurisdiction

- ***House Judiciary Committee:*** Chairman Lamar Smith (R-TX) and Ranking Member John Conyers (D-MI)
- ***House Subcommittee on Immigration Policy and Enforcement:*** Chairman Elton Gallegly (R-CA) and Ranking Member Zoe Lofgren (D-CA)
- ***Senate Judiciary Committee:*** Chairman Patrick Leahy (D-VT) and Ranking Member Charles Grassley (R-IA)
- ***Senate Subcommittee on Immigration, Refugees, and Border Security:*** Chairman Chuck Schumer (D-NY) and Ranking Member John Cornyn (R-TX)

ML STRATEGIES

## National Security and Defense

The first session of the 112th Congress concluded with passage of the National Defense Authorization Act (NDAA), the annual defense authorization bill. This was achieved after compromises to overcome partisan conflicts in Congress and despite a White House veto threat over language requiring mandatory military custody for suspects linked to Al Qaeda or affiliates, even if they are captured in the U.S.

Amid growing partisan tension over deficit reduction measures, national security and defense spending was frequently used as a bargaining chip for consensus. This was evidenced by inclusion of a sequestration mechanism in the Budget Control Act, which were triggered due to failure of the Super Committee to identify $1.2 trillion in deficit reduction. Defense spending issues will take precedence early in the New Year with the Pentagon's release of its FY12 budget strategy. Several members have already expressed their intentions to delay or identify alternatives to mandated defense spending cuts.

In addition, after a year marked by regime change and U.S. involvement in conflicts around the globe, we expect the Congressional agenda for national security and defense to shift as U.S. foreign policy changes to accommodate the end of the wars in Iraq and Afghanistan, the impacts of the Arab Spring, increased economic, militaristic, and territorial aggression from China, and ongoing tensions with Iran, Pakistan, and North Korea.

### Issues

***Defense Spending/Sequestration:*** Immediately after the holidays President Obama and Secretary of Defense Leon Panetta unveiled the Pentagon's strategy for achieving the required level of spending cuts in FY12. According to experts, mandated cuts for this year (ranging from $350 billion to $465 billion) compounded by an estimated $500 billion in cuts next year, will not shrink the Pentagon's budget, but instead curtail budget growth despite growing costs. With these factors returning the Pentagon budget to 2007 levels, the announced budget strategy will focus primarily on paring down U.S. force size. Prior to the holiday recess, Senators John McCain (R-AZ), Jon Kyl (R-AZ), Lindsey Graham (R-SC), and Kelly Ayotte (R-NH) announced they would introduce legislation in early 2012 identifying alternatives to defense spending cuts. House Armed Services Committee Chairman Buck McKeon (R-CA) has also proposed legislation that would avoid the first year of sequestration, allowing time for reconsideration of additional cuts to the defense budget. Senate and House Republicans have expressed a willingness to work together on this effort, despite opposition from congressional Democrats and a veto threat from the President. Regardless, we can expect cuts to force size, the nuclear arsenal, combat aircraft, salaries, and military retirement and health benefits.

***End of the Wars in Iraq and Afghanistan:*** On December 15, the military officially closed its headquarters in Iraq, signaling the end of the war and the homecoming of the remaining 3,500 U.S. troops. While President Obama previously set forth a timeline to begin troop withdrawals from Afghanistan by July 2011 with final withdrawal scheduled for 2014, it is now apparent that U.S forces could remain in theater beyond 2014, with a post-2014 force composed primarily of advisers, trainers, and intelligence specialists. The withdrawal of forces from Iraq and the restructuring of forces in Afghanistan could potentially lead to DOD savings of approximately $12 billion per month. However, with shrinking force sizes to meet deficit reduction targets, Secretary Panetta has indicated the beginning of an era when the Pentagon will no longer maintain the ability to fight two, simultaneous ground wars. With the end of the wars in Iraq and Afghanistan, expect congressional focus to shift toward oversight of logistics and contracted assistance for the repatriation of U.S. military equipment in the region.

***Contractor Oversight:*** Following the release of the final report of the Commission on Wartime Contracting in late August, minimizing waste, fraud, and abuse in the contingency contracting process became a legislative priority. Utilizing recommendations from the Commission's report, several members of Congress introduced legislation to improve oversight of contractors in contingency environments. With an increased need for contractors to support logistics in post-conflict zones, expect several of these proposals to attract attention, such as legislation sponsored by Senator Claire McCaskill (D-MO) and Rep. John Tierney (D-MA) that would establish a Special Inspector General for Overseas and Contingency Operations (SIGOCO) and a bill from Rep. Peter Welch (D-VT) that would trigger debarment proceedings for contractors convicted of violating the provisions of the Foreign Corrupt Practices Act (FCPA).

***International Arms Sales:*** In late December, Japan announced it had selected Lockheed Martin's F-35 as its next generation fighter, surpassing Boeing's F-18 and the European-made Typhoon fighter. The purchase of 60 F-35s at $8 billion bodes well for the joint strike fighter, the Pentagon's largest weapons program which has been under great scrutiny. Secretary Panetta noted the significance of Japan's selection to U.S. global security interests as the U.S. foreign policy strategy shifts towards the Pacific. In a deal struck Christmas day, the Administration agreed to sell the United Arab Emirates (UAE) $3.5 billion in missile defense systems, including two Terminal High Altitude Area Defense (THAAD) batteries, 96 missiles, and spare parts. This sale comes in the wake of an agreement to sell a $29 billion arms package (part of a $60 billion package announced last year) to Saudi Arabia, including 85 Boeing F-15s and aircraft modernization technology. Both countries are key allies, critical to tempering Iran's nuclear ambitions and threats to close a key oil passageway in the region. These sales may give Congress leverage to push approval of the sale of new Lockheed Martin F-16 C/Ds to Taiwan, in addition to the sale of F-16 A/B upgrades approved in September. While ultimately unsuccessful, Senator John Cornyn (R-TX) tried to attach an amendment compelling the sale to both the trade adjustment assistance (TAA) bill and the NDAA. Senate staff speculates that support for the sale exists but lacks an appropriate vehicle for passage. Rep. Kay Granger (R-TX) has introduced companion legislation in the House. We can expect to see an increase in international arms sales as budget cuts force the U.S. to embrace a strategy of arming strategically located allies with advanced weapons and military equipment, as opposed to deploying U.S. troops.

***Ongoing Global Conflicts and Foreign Policy:*** While Pentagon officials have dismissed Iran's threat against moving a U.S. aircraft carrier through the Strait of Hormuz, Iran's aggressive behavior and nuclear ambitions are unlikely to be taken lightly. Additional sanctions stipulated by the NDAA will soon take effect, further restricting Iran's oil industry. The NDAA also contains new sanctions on Pakistan, withholding counterterrorism aid unless Pakistan acts to stop the flow of materials used to make improvised explosive devices (IEDs) to Afghanistan. U.S.-Pakistan relations are already tense after an incident in late November resulting in the deaths of 24 Pakistani soldiers.

U.S. foreign policy interests will also focus on China, especially due to China's aggressive economic (see section on Trade below), militaristic, and territorial pursuits. A DOD report released in August found that China's military modernization strategy is focused on enhancing China's ability to conduct high-intensity, regional military operations, notably missions that seek to keep third party forces from operating within designated territories, such as Taiwan. To ensure China's ambitions work towards achieving shared national security interests and to prepare for the ascension of current Vice Premier Xi Jinping to the presidency, Vice President Biden will take the lead on developing the Administration's China policy. The U.S. is also seeking to engage China, as well as South Korea and Japan, in coordinating an approach to oversee regime change in North Korea following the death of Kim Jong Il. We anticipate all of these issues will be raised in congressional oversight hearings in the coming weeks.

***Law of the Sea Treaty:*** As a result of China's aggressive territorial claims in the North China Sea and the discovery of natural resources such as oil, natural gas, and rare earth minerals in the Arctic and the extended U.S. continental shelf, the Senate may once again take up the United Nations (UN) Convention on the Law of the Sea. By joining more than 160 other countries that have already ratified the treaty, the U.S. would inherit sovereign rights to these resources, as well as a voice in multilateral institutions governing jurisdiction of the seas. The Senate Foreign Relations Committee voted to advance the treaty in 2004 and 2007, although it was never taken up by the full Senate. Senate Foreign Relations Committee Chairman John Kerry (D-MA) has expressed interest in making the Law of the Sea Treaty the "New START Treaty of the second session of the 112th Congress." DOD and the State Department have both expressed support for the treaty. However, because ratification requires 67 votes, there is a strong need for industry support. Several coordinating meetings have been held for industry leaders in the defense, energy, and telecommunications sectors that stand to benefit from the U.S. ascending to the treaty. Noticeable action on the treaty is unlikely to begin until May at the earliest, after vulnerable Republican allies have overcome primary challenges.

***Cybersecurity:*** Over the past year, several cyber attacks targeting sensitive information stored in computer networks, including an infiltration of the Pentagon's computer system, have been traced to China. To defend against these and other attacks on U.S. energy (see section on Energy above) and telecommunications (see section on Telecommunications below) infrastructure, Congress included provisions in the NDAA to allow the Pentagon to conduct offensive operations in cyberspace to defend U.S. interests. Congress also continues work on a comprehensive cybersecurity bill. On December 1, after adding enhanced privacy protections, the House Intelligence Committee voted to advance the Cyber Intelligence Sharing and Protection Act (CISPA) introduced by Chairman Mike Rogers (R-MI) and Ranking Member Dutch Ruppersberger (D-MD). This bill authorizes the government to share classified cyber threat intelligence with private sector entities that have an appropriate security clearance in the interest of national security and protecting classified information from unauthorized disclosure. The legislation also allows the private sector to use cybersecurity systems to collect cyber threat information and share information with immunity from civil and criminal liability. Several cybersecurity bills have been introduced in the House and Senate, and Senate Majority Leader Harry Reid (D-NV) has vowed to bring comprehensive cyber security legislation to the floor for consideration during the first work period of the new year.

ML STRATEGIES

***European Debt Crisis:*** Despite a recent lack of congressional focus on the European debt crisis (see section above on Financial Services), economic troubles in Europe could have international relations implications that are raised this year in the context of either trade or foreign policy. Due to economic instability, we have witnessed a weakening of the European Union (EU). In the coming months, some experts anticipate we could see increasingly skittish behavior from the UK on EU commitments with impacts to European camaraderie. In addition, some believe Greece may leave the EU altogether. Despite commitment to the Euro, Europe has also witnessed currency fluctuation issues, notably in Italy, that may only worsen under a weaker EU. Despite high visibility for trade issues concerning non-European countries (see section on Trade below) Europe remains a critical U.S. trading partner. Expect this trade relationship, as well as the level of U.S. investment in Europe and European investment in the U.S., to receive greater Congressional attention this year in the wake of the ongoing economic crisis.

### Committees of Jurisdiction

- ***House Appropriations:*** Chairman Harold Rogers (R-KY) and Ranking Member Norm Dicks (D-WA)
- ***Defense Appropriations Subcommittee:*** Chairman Bill Young (R-FL) and Ranking Member Norm Dicks (D-WA)
- ***Homeland Security Appropriations Subcommittee:*** Chairman Robert Aderholt (R-AL) and Ranking Member David Price (D-NC)
- ***Military Construction, Veterans Affairs, and Related Agencies Appropriations Subcommittee:*** Chairman John Culberson (R-TX) and Ranking Member Sanford Bishop (D-GA)
- ***State and Foreign Operations Appropriations Subcommittee:*** Chairman Kay Granger (R-TX) and Ranking Member Nita Lowey (D-NY)
- ***House Armed Services:*** Chairman Buck McKeon (R-CA) and Ranking Member Adam Smith (D-WA)
- ***House Foreign Affairs:*** Chairman Ileana Ros-Lehtinen (R-FL) and Ranking Member Howard Berman (D-CA)
- ***House Homeland Security:*** Chairman Peter King (R-NY) and Ranking Member Bennie Thompson (D-MS)
- ***House Intelligence:*** Chairman Mike Rogers (R-MI) and Ranking Member Dutch Ruppersberger (D-MD)
- ***House Oversight and Government Reform:*** Chairman Darrell Issa (R-CA) and Ranking Member Elijah Cummings (D-MD)
- ***Senate Appropriations:*** Chairman Daniel Inouye (D-HI) and Ranking Member Thad Cochran (R-MS)
- ***Defense Appropriations Subcommittee:*** Chairman Daniel Inouye (D-HI) and Ranking Member Thad Cochran (R-MS)
- ***Homeland Security Appropriations Subcommittee:*** Chairman Mary Landrieu (D-LA) and Ranking Member Dan Coats (R-IN)
- ***Military Construction, Veterans Affairs, and Related Agencies Appropriations Subcommittee:*** Chairman Tim Johnson (D-SD) and Ranking Member Mark Kirk (R-IL)
- ***State and Foreign Operations Appropriations Subcommittee:*** Chairman Patrick Leahy (D-VT) and Ranking Member Lindsey Graham (R-SC)
- ***Senate Armed Services:*** Chairman Carl Levin (D-MI) and Ranking Member John McCain (R-AZ)
- ***Senate Foreign Relations:*** Chairman John Kerry (D-MA) and Ranking Member Richard Lugar (R-IN)
- ***Senate Homeland Security and Government Affairs:*** Chairman Joseph Lieberman (I-CT) and Ranking Member Susan Collins (R-ME)
- ***Senate Intelligence:*** Chairman Dianne Feinstein (D-CA) and Ranking Member Saxby Chambliss (R-GA)



## Telecommunications

Telecommunications is an area where both Congress and the administrative agencies have been active so far in the 112th Congress. The Supercommittee explored the idea of tackling spectrum reform as part of its deficit reduction package, and the House and Senate have held countless hearings to examine privacy and cybersecurity. In addition, the Federal Communications Commission (FCC) is intent on revamping the Universal Service Fund, and the Federal Trade Commission (FTC) and Commerce Department are keeping an eye on the Internet Corporation for Assigned Names and Numbers (ICANN) expansion of generic top level domains. Looking ahead at 2012, spectrum, cybersecurity, and privacy will most likely remain at the top of the telecommunications agenda. With the upcoming election, intellectual property has become an area of public interest that may impact some congressional campaigns. Furthermore, rulings from the DC Court of Appeals and the U.S. Supreme Court could impact key FCC actions regarding net neutrality and broadcasting indecency standards.

### Issues

***Spectrum:*** After receiving a great deal of attention in the first session of the 112th Congress, spectrum issues are poised for consideration again in 2012. The Supercommittee explored the idea of including spectrum auctions in the deficit reduction package. Proposals were also debated in the context of the year-long payroll tax cut bill. However, when the Supercommittee failed to come up with a package and the year-long payroll tax cut bill collapsed, the House and Senate resumed their discussions on spectrum reform. In the House, the Subcommittee on Communications and Technology marked up and passed the Jumpstarting Opportunity with Broadband Spectrum (JOBS) Act in December, 2011. Subcommittee Chairman Greg Walden (R-OR) and key Democrats, including Reps. Henry Waxman (D-CA) and Anna Eshoo (D-CA), have consistently been at odds over key points of spectrum reform, particularly the use of unlicensed spectrum, network governance, and the implementation of incentive auctions. However, both sides did agree on the reallocation of the D-block to create a nationwide interoperable public safety network. The Senate bill, the Public Safety Spectrum and Wireless Innovation Act, sponsored by Commerce Committee Chairman Jay Rockefeller (D-WV), also passed committee in the first session of the 112th Congress. The sticking point in the Senate appears to be the public safety issue, as Rockefeller's bill would devote twice as much funding for the public safety network, though he agrees with House Democrats on the governance issue. Despite the differences, the combination of the nation's need for more wireless connectivity, support for public safety, and the pressures of deficit reduction point to progress for spectrum legislation in 2012.

701 Pennsylvania Avenue, N.W. | Washington, D.C. 20004 | tel 202-434-7300 | 202-434-7400 fax
www.mlstrategies.com

ML
STRATEGIES

***Cybersecurity:*** There is rare bipartisan consensus in the Obama Administration, House and Senate that cybersecurity legislation should be enacted in 2012. Significant bills have been introduced in both houses and comprehensive reports have been issued. There are ample disagreements in approach, so some argue it might take a large scale cyber attack to bridge these differences and get a bill passed. However, this could be a policy area that sees positive results this year. Senate Majority Leader Harry Reid (D-NV) announced late last year he intends to bring a bill to the floor in the coming months. Such a measure could be based on S. 413, introduced by Homeland Security Committee Chairman Joe Lieberman (I-CT) with the support of his ranking member, Sen. Susan Collins (R-ME). Like a White House proposal issued last year, the Lieberman bill relies on a new regulatory and enforcement regime under the Department of Homeland Security. Not surprisingly, this approach has met with resistance from senior GOP lawmakers who favor a more voluntary and incentive-based approach. In the House, a bill introduced by Homeland Security Subcommittee on Cybersecurity chairman Dan Lungren (R-CA) and full committee chairman Peter King (R-NY) has drawn support from key Democrats. The Promoting and Enhancing Cybersecurity Act represents a blend of incentives and new regulation and this approach may signal what a consensus might look like if it emerges in this session of Congress.

***Privacy:*** The privacy space is one that will attract continued attention in Washington but it is unlikely that comprehensive legislation will be enacted in this election year. As they did in 2011, the Senate Commerce Committee and House Energy and Commerce Committees will continue to hold hearings on a series of privacy topics, with a particular focus on Facebook and other social media. At the center of the privacy debate is what constitutes personally identifiable information, and if/how that information can be collected and stored. As with Cybersecurity, there is tension between the Democratic tilt toward new rules (for example, the bill introduced by Sen. John Kerry (D-MA) and John McCain (R-AZ)) and the GOP fears of overregulation. One fairly new piece to this puzzle is geolocation, which comes into play with home Internet connections as well as mobile devices. Congress and the FTC are working together to updated the Children's Online Privacy Protection Act to account for technological changes since it was first enacted in 1998. The bipartisan duo of Reps. Joe Barton (R-TX) and Ed Markey (D-MA), co-chairs of the House Privacy Caucus, have introduced a targeted children's privacy bill. Other privacy laws that will likely be updated in the near future are the Electronic Communications Privacy Act (ECPA). In a statement supporting Sen. Wyden's (D-OR) and Sen. Kirk's (R-IL) proposed update to ECPA, an ACLU representative noted that Americans deserve privacy protections that match their 21st century lives. That same sentiment is shared by Sen. Rockefeller (D-WV) in the Do Not Track Online Act, which would require the FTC to establish standards by which an individual can determine whether he prefers to have personal information collected by providers of online services. In addition, the FTC and Commerce Department are expected to release their highly anticipated Privacy reports early in the second session. With many competing concerns, it appears that privacy legislation narrowly focused on a particular set of issues – as opposed to a sweeping bill – may pass in 2012.

***Data Security:*** Intertwined with the issues of cybersecurity and privacy concerns, Congress is also dealing with matters of data security. Sen. Mark Pryor (AR) and Chairman Rockefeller introduced the Data Security and Breach Notification Act of 2011, which contains provisions for how information brokers must report security breaches to the FTC as well as their customers. On the House side, the SAFE Data Act, sponsored by Rep. Mary Bono Mack (R-CA), would require entities that own or possess data containing personal information to establish procedure for minimizing the amount of personal information maintained as well as how to treat and protect such information.

These bills illustrate that Congress can see the connection between protecting personally identifiable information and keeping hardware and software secure. Similar to privacy legislation, narrowly tailored data security bills may see some action in 2012.

***Intellectual Property:*** Intellectual property has been a divisive issue so far in the 112th Congress. The Stop Online Piracy Act (SOPA) is pending in the House, and the PROTECT IP Act is pending in the Senate. Both bills address the issue of foreign rogue websites designed to distribute pirated material and counterfeit goods. The content industry strongly supports the legislation and argues that the bills would help protect the jobs of people who work in production of copyrighted materials. The U.S. Chamber of Commerce also supports the legislation. On the other side, public interest groups, technology associations, and some major companies such as Public Knowledge, TechAmerica, and Google oppose the legislation because they think it impedes on First Amendment rights and also presents DNS security concerns. Many members of the House Judiciary Committee, including Rep. Zoe Lofgren (D-CA) and Rep. Dan Lungren (R-CA), have also raised concerns about the DNS security concerns presented in the bill leading the bill's authors to drop the language. As opponents of the legislation, Rep. Darrell Issa (R-CA) and Sen. Ron Wyden have released draft language of intellectual property legislation called the OPEN Act. The Senate is scheduled to have a procedural vote on PROTECT IP on January 24, and the House will continue a markup of SOPA early in this upcoming session. Due in part to numerous webpage blackouts as a protest on January 18, the issue has garnered significant public interest, and it is beginning to play a role in congressional campaigns, so it will likely continue to be a high priority issue in the second session.

***ICANN:*** The Internet Corporation for Assigned Names and Numbers (ICANN) will begin allowing interested organizations and companies to apply for additional top level domain names this month. Top level domains serve as a way to move beyond the traditional .com and .org domains in favor of specialized domains such as .bank or .apple. In December, 2011, both the House and Senate conducted hearings to examine the merits and implication of this new program and determine whether ICANN should continue with the scheduled program. FTC Chairman Jon Liebowitz and Assistant Secretary of Commerce Larry Strickling, chief administrator at NTIA, have both encouraged ICANN to delay the program in order to address concerns from businesses and consumers. ICANN began accepting applications for an unlimited number of domain names on January 12. This issue remains a priority for NTIA, FTC, and Congress.

***National Broadband Plan:*** The National Broadband Plan celebrated its one-year anniversary during the first session of the 112th Congress. Both the FCC and NTIA play a role in achieving the goals on the program. According to the National Broadband Plan Year 1 Progress Report, 83% of the first year action plan was completed. As of the third quarter of 2011, only two projects from NTIA's Broadband Technology Opportunities Program had been completed. In a speech on December 8, 2011, Assistant Secretary of Commerce Larry Strickling said that NTIA will focus on accelerating the schedules of grant recipients in 2012. Rep. Cliff Stearns (R-FL) stated that conducting oversight of broadband stimulus grants is one of many tech priorities for the House Energy and Commerce Committee in 2012.

ML
STRATEGIES

***Universal Service Reform:*** The FCC is taking action to update programs such as the Universal Service Fund (USF) and Lifeline and LinkUp in order to support broadband adoption. In October 2011, the FCC adopted a Reform Order to comprehensively reform and modernize the universal service and intercarrier compensation systems to ensure that all Americans have access to robust affordable broadband and mobile services. As part of this reform, the USF has been renamed the Connect America Fund (CAF). Before the reform order was released, the Senate Commerce Committee held a hearing to discuss the different options available in the reform effort. The key differences among the available options centered on fair competition and whether an incumbent provider would be granted a right of first refusal to receive USF support in high-cost areas. This point of contention resulted in a flurry of letters from members of the House and the Senate to FCC Chairman Julius Genachowski stating which reform option they favored, and these letters included support for both sides of the issue. The FCC did not release the full Order until late November, and some organizations and companies are in the process of challenging the order. On January 31, the FCC is scheduled to vote on the Lifeline and LinkUp Reform and Modernization Order, as well as consider a Further Notice of Proposed Rulemaking to increase oversight of the program. As this process unfolds and the reforms begin to take effect, Congress will likely continue to monitor the development of the Connect America Fund and the modernization of the Lifeline and LinkUp programs.

***Retransmission Consent:*** Retransmission consent (RTC) is an important issue because negotiation disputes occur frequently and garner a significant amount of press around big sporting and entertainment events. In the wake of a highly publicized RTC dispute that resulted in Fox pulling its signal from Cablevision subscribers, Sen. Kerry circulated a draft bill that contained an alternative process for resolving this type of dispute. The process would limit the broadcaster's ability to pull a signal to the last resort after the FCC had executed some oversight over negotiations to ensure that the parties acted in good faith. Also in response to high profile RTC disputes, in March 2011, the FCC's Media Bureau adopted and released a Notice of Proposed Rulemaking in the Matter of Amendment of the Commission's Rules Related to Retransmission Consent. This proceeding is ongoing, and may see more attention in 2012. The Next Generation Television Marketplace Act was introduced by Rep. Steve Scalise (R-LA) in December 2011, and Sen. Jim DeMint (R-SC) introduced the bill on the Senate side. This bill would overhaul the current laws governing retransmission consent negotiations between television networks and pay TV providers. Although these two major overhauls of the RTC regime are unlikely to advance, constituent concerns about broadcasting blackouts will keep this issue on Congress's agenda.

***Federal Indecency Regulations:*** Broadcasters and public interest groups will be keeping an eye on the Supreme Court, to see how it rules after hearing oral arguments in a case where the issue is whether federal indecency regulations are unconstitutionally vague. The case arises out of numerous events where celebrities on live TV uttered fleeting expletives, as well as one incident where a network drama showed a nearly nude actress. While the FCC uses contemporary community standards and the broadcasters' public interest obligations in support of the indecency regulations, the broadcasters argue that the FCC's rules are antiquated because of the pervasiveness of Internet and cable TV. Because indecency is a First Amendment issue at its core, it is nearly impossible for Congress to legislate it. However, key players such as Chairman Rockefeller have an interest in this issue, so there may be some hearings after the Supreme Court rules.

ML STRATEGIES

## Committees of Jurisdiction

- ***House Committee on Energy and Commerce:*** Chairman Fred Upton (R-MI)and Ranking Member Henry Waxman (D-CA)
- ***House Committee on the Judiciary:*** Chairman Lamar Smith (R-TX) and Ranking Member John Conyers (D-MI)
- ***House Committee on Homeland Security:*** Chairman Peter King (R-NY) and Ranking Member Bennie Thompson (D-MS)
- ***Senate Committee on Commerce, Science, and Technology:*** Chairman Jay Rockefeller (D-WV) and Ranking Member Kay Bailey Hutchison (R-TX)
- ***Senate Committee on the Judiciary:*** Chairman Patrick Leahy (D-VT) and Ranking Member Charles Grassley (R-UT)
- ***Senate Committee on Homeland Security and Government Affairs:*** Chairman Joe Lieberman (I-CT) and Ranking Member Susan Collins (R-ME)



## Trade

The first session of the 112th Congress saw a major trade victory for President Obama with final approval of free trade agreements (FTAs) with South Korea (KORUS), Panama, and Colombia. These FTAs had been initiated in the Administration of George W. Bush and, in the case of the KORUS and Colombia agreements, had been stalled for several years over various issues, including workers' rights in Colombia, and, in the case of South Korea, concerns specific to the beef and automobile industries. The Panama FTA was generally without controversy. As the second session of the 112th Congress begins, the Administration is working to finalize a new trade agreement with other Pacific nations, the Department of Commerce (DOC) and other agencies are in the midst of various filings regarding Chinese trade practices, and many in Congress will continue to push for legislation intended to address currency manipulation by the Chinese government.

### Issues

***Trans Pacific Partnership:*** At the November 2011 Asia-Pacific Economic Cooperation (APEC) Ministers' and Economic Leaders Meeting, the US made what the Administration described as "significant" progress on the Trans Pacific Partnership (TPP) trade agreement. The US was joined by Brunei, Chile, New Zealand, Singapore, Australia, Malaysia, Peru, and Vietnam in announcing the broad outlines of the agreement with the goal of a finalized agreement in 2012. According to the United States Trade Representative (USTR), the TPP will "feature new cross-cutting issues not previously included in trade agreements, such as making the regulatory systems of TPP countries more compatible" and helping small- and medium-enterprises more fully participate in international trade.

***US-China Trade Issues:*** As China continues its economic rise, besting Japan in 2010 to become the world's second largest economy after the US, there is growing concern about a brewing trade war between Chinese and American economic interests. This tension is most vividly evidenced by a high-profile trade dispute over Chinese government support for its domestic solar industry and a newly filed trade complaint from American wind tower manufacturers.

In November 2011, in response to a petition filed by a coalition of American solar companies led by Oregon-based SolarWorld, the International Trade Commission (ITC) determined that it would initiate anti-dumping (AD) and countervailing (CV) duty investigations of crystalline silicon photovoltaic cells from China. In December 2011, the six ITC commissioners unanimously determined that there is a "reasonable indication" the US solar industry is being injured by the importation of the Chinese cells and modules, freeing the DOC to continue the AD/CV duty investigations on imports of these products from China. The preliminary CV duty determination was initially due on or about January 12, 2012, with the preliminary AD determination due on or about March 22, 2012. However, DOC has since extended the deadline for the CV duty determination to February 14, 2012.

In late December 2011, a coalition of four US wind tower manufacturers filed an AD/CV duty complaint with DOC and ITC that is focused on China, as well as Vietnam. The companies, together forming the Wind Tower Trade Coalition (WTTC), filed five trade complaints related to utility-scale wind towers. The ITC is expected to make its preliminary determination by February 12, 2012 with DOC making its preliminary determination within 6 months.

While we cannot predict how DOC and ITC will come down on either of these trade complaints, we do know that last year the ITC determined that the US multi-layered wood floor industry had suffered as a result of dumped and subsidized Chinese product, the USTR asked the World Trade Organization (WTO) to establish a dispute settlement panel regarding Chinese AD/CV duties on imported US chicken "broiler products," and the International Trade Administration (ITA) issued a preliminary finding that that high-pressure steel cylinders are being dumped in the US by China. In response, the Chinese government has announced new AD/CV duties on the importation of American-made SUVs and mid-size and large cars that were effective as of December 15, 2011. This escalation of trade disputes is already being labeled a trade war by some, and is only likely to gain steam over the coming year.

***Chinese Currency Manipulation:*** Last year, in a bipartisan 63-35 vote, the Senate approved legislation, S. 1619, the *Currency Exchange Rate Oversight Reform Act*, which is intended to address currency manipulation by any country, but was primarily motivated by concern about China's practices. In the House, which passed similar legislation in the previous congress with strong bipartisan support, Ways and Means Committee Ranking Member Sander Levin (D-MI) has introduced H.R. 639, the *Currency Reform for Fair Trade Act*. However, House leadership has shown a reluctance to bring this bill, or the Senate-passed legislation, up for a vote.

Treasury Secretary Geithner was in China recently for meetings with Chinese Premier Wen Jiabao and Vice Premier Wang Qishan that were focused on Iran sanctions and the global economy. However, Secretary Geithner raised the issue of currency manipulation in the talks. The visit came just two weeks after Treasury issued its semi-annual *Report to Congress on International Economic Exchange Rates and Policies* which, as it has in the past, failed to identify China as a currency manipulator, while saying that Chinese efforts to address the undervaluation of the Renminbi (RMB) have been insufficient and that more progress is needed.

***Committees of Jurisdiction***

- ***House Ways and Means Committee:*** Chairman Dave Camp (R-MI) and Ranking Member Sander Levin (D-MI)
- ***House Trade Subcommittee:*** Chairman Kevin Brady (R-TX) and Ranking Member Jim McDermott (D-WA)
- ***Senate Finance Committee:*** Chairman Max Baucus (D-MT) and Ranking Member Orrin Hatch (R-UT)
- ***Senate International Trade Subcommittee:*** Chairman Ron Wyden (D-OR) and Ranking Member John Thune (R-SD)



## Transportation and infrastructure

Transportation and infrastructure issues will be at the forefront of the Congressional agenda in 2012, especially since Congress must immediately address the expiring extension of the Federal Aviation Administration (FAA) authorization upon its return. Soon after returning from recess, either by passing a full reauthorization or yet another extension (the 23rd for those keeping track), Congress must develop a strategy around the surface transportation authorization bill (another measure operating under temporary extensions – the latest of which is set to expire on March 31), which provides funds for highway and other road work. Regardless of whether Congress passes either a long term FAA reauthorization or a highway bill, it is expected that at least the highway bill will likely pass this year. Nevertheless, the fact remains that both bills will be scaled back significantly from previous versions and both Congress and the states will be forced to grapple with the challenge of identifying funding for the maintenance and repair of crumbling infrastructure. In light of this challenge, there will be increased pressure on Congress and the Administration to support new financing mechanisms and innovative technology solutions in an effort to bridge the gap.

### Issues

***Federal Aviation Administration Reauthorization:*** To date there have been 22 extensions since passage of the last FAA bill. The current extension of the FAA legislation is set to expire on January 31. Given the short legislative window in January, it seems we will almost certainly see a 23rd extension. It remains unclear whether Congress can enact a full reauthorization in 2012. The "big four" on the FAA bill— Senate Commerce, Science, and Transportation Committee Chairman Jay Rockefeller (D-WV) and Ranking Member Kay Bailey Hutchison (R-TX) and House Transportation and Infrastructure Committee Chairman John Mica (R-FL) and Ranking Member Nick Rahall (D-WV)— have met regularly since a two week shutdown of the agency last summer with the goal of producing a multi-year reauthorization bill that could pass both chambers. However, it appears that complicated partisan issues remain that cannot be resolved without involvement of House and Senate leadership and the White House.

***Surface Transportation Reauthorization:*** At the end of the 2011 legislative year, there was a flurry of action indicating Congress will probably pass a full reauthorization of the surface transportation bill this year. However, that confidence depends on what is meant by "full." Senators appear to have reached a tacit agreement on a proposal known as *Moving Ahead for Progress in the 21st Century* or MAP-21, which reauthorizes the Federal aid highway program for two years at current levels, plus inflation. This measure unanimously passed the Senate Environment and Public Works Committee on November 9, but there remains a $12 billion shortfall in funding. Senate Finance Committee Chairman Max Baucus (D-MT), Environment and Public Works Committee Chairman Barbara Boxer (D-CA), and their respective Ranking Members are currently inching closer to an agreement on how to fill that shortfall. Two other committees of jurisdiction must still approve portions of the reauthorization. The Senate Commerce, Science, and Transportation Committee is marking up transportation safety provisions of the bill and the Banking, Housing, and Urban Affairs Committee will follow suit on transit measures. If a deal on funding is reached we anticipate smooth sailing in these markups, which will likely be scheduled for late January or early February. If that timeframe holds, the comprehensive bill could be on the floor prior to the expiration of the extension at the end of March.

On the House side, the parties seem further apart and the framework for the bill, based on a proposal released in early June, is very different from the Senate measure. It appears the House would like to move a six-year proposal that would slash current funding levels by approximately one-third. It also seems the GOP may try to use the transportation bill as a message piece by pairing the need for higher spending levels and new funding sources with revenues from an expansion of domestic energy production as a pay-for. Although it might require another short-term extension, we expect that Congress will likely enact either a two-year or a six-year transportation authorization bill this year.

***Infrastructure Finance:*** The current stasis in Congress, which shows no signs of abating, has prevented States from obtaining certainty for their transportation budgets and only serves to augment how important innovative financing tools will be for project development going forward. From bonding mechanisms such as Private Activity Bonds (PABs), Build American Bonds (BABs) and proposals to expand the Transportation Infrastructure Finance Innovation Act (TIFIA) program or establish a national infrastructure bank, Congress has and will continue to examine various innovative financing proposals. While we anticipate Senator John Kerry (D-MA) and Senator Hutchinson will remain active in championing their model for a national infrastructure bank (the BUILD Act), other proposals, such as the national infrastructure bank bill authored by Commerce Committee Chairman Rockefeller and Senator Frank Lautenberg (D-NJ), are likely to receive additional attention. However, with most Republicans opposed to the creation of a national infrastructure bank, other, more bipartisan proposals, such as the legislation authored by Senators Ron Wyden (D-OR), Mark Begich (D-AK), and Mark Hoeven (R-ND) to create Transportation and Regional Infrastructure Project bonds, also known as TRIP bonds, or an expansion of the existing TIFIA program, may ultimately fill the need for a federally backed financing tool to fund infrastructure projects.

### Committees of Jurisdiction

- ***House Transportation and Infrastructure Committee:*** Chairman John Mica (R-FL) and Ranking Member Nick Rahall (D-WV)
- ***House Ways and Means Committee:*** Chairman Dave Camp (R-MI) and Ranking Member Sander Levin (D-MI)
- ***House Appropriations Committee:*** Chairman Harold Rogers (R-KY) and Ranking Member Norm Dicks (D-WA)
- ***Transportation, Housing, and Urban Development Appropriations Subcommittee:*** Chairman Tom Latham (R-IA) and Ranking Member John Olver (D-MA)
- ***Senate Environment and Public Works Committee:*** Chairman Barbara Boxer (D-CA) and Ranking Member James Inhofe (R-OK)

- ***Senate Commerce, Science and Transportation Committee:*** Chairman Jay Rockefeller (D-WV) and Ranking Member Kay Bailey Hutchison (R-TX)
- ***Senate Banking, Housing, and Urban Affairs Committee:*** Chairman Tim Johnson (D-ND) and Ranking Member Richard Shelby (R-AL)
- ***Senate Finance Committee:*** Chairman Max Baucus (D-MT) and Ranking Member Orrin Hatch (R-UT)
- ***Senate Appropriations Committee:*** Chairman Daniel Inouye (D-HI) and Ranking Member Thad Cochran (R-MS) Chairman
- ***Transportation, Housing, and Urban Development Appropriations Subcommittee:*** Chairman Patty Murray (D-WA) and Ranking Member Richard Shelby (R-AL)

ML
STRATEGIES

## 2012 Election

With the first session of the 112th Congress taking a toll on both parties in Congress – resulting in historically low poll numbers for the body as a whole – some are predicting a year of anti-incumbent fervor. Many voters have traditionally been willing to give Congress low marks but then say that they are happy with their own representatives. There is some evidence that the latter will not be the case this year. Coupled with a Republican presidential field that has seen numerous front-runners over the past months and a President who has fairly low ratings for job performance but who is personally popular with many voters, we are likely looking at a hard-fought and difficult to predict election in November.

***Presidential:*** While elections are uncertain, as we learned when then-Senator Barack Obama came from behind to secure the Democratic nomination that many had thought was Hillary Clinton's for the taking, most political observers, both Republican and Democratic, appear to be gearing up for a race between President Obama and former Governor Mitt Romney in November.

Even without knowing who the Republican nominee will be, there is already a great deal of speculation of who the GOP presidential candidate will choose as a running mate. The most talked about potential GOP vice presidential candidates are Senator Marco Rubio (R-FL), Senator Rob Portman (R-OH), and New Jersey Governor Chris Christie (R).

Despite persistent rumors about Hillary Clinton replacing Vice President Biden on the Democratic ticket, this seems highly unlikely.

Looking ahead, with the Iowa caucus and New Hampshire primary behind us, the GOP nominating schedule is as follows:

| | |
|---|---|
| January 21 | South Carolina primary |
| January 31 | Florida primary |
| February 4 | Nevada caucus |
| February 4-11 | Maine caucus |
| February 7 | Colorado caucus<br>Minnesota caucus<br>Missouri caucus |
| February 28 | Arizona primary<br>Michigan primary |
| March 3 | Washington caucus |

| | |
|---|---|
| March 6 | Alaska caucus<br>Georgia primary<br>Idaho caucus<br>Massachusetts primary<br>North Dakota caucus<br>Ohio primary<br>Oklahoma primary<br>Tennessee primary<br>Vermont primary<br>Virginia primary |
| March 6-10 | Wyoming caucus |
| March 10 | Kansas caucus<br>US Virgin Islands caucus |

701 Pennsylvania Avenue, N.W. | Washington, D.C. 20004 | tel 202-434-7300 | 202-434-7400 fax
www.mlstrategies.com

| | |
|---|---|
| March 13 | Alabama primary<br>Hawaii caucus<br>Mississippi primary |
| March 20 | Illinois primary |
| March 24 | Louisiana primary |
| April 3 | District of Columbia primary<br>Maryland primary<br>Wisconsin primary<br>Texas primary |
| April 24 | Connecticut primary<br>Delaware primary<br>New York primary<br>Pennsylvania primary<br>Rhode Island primary |
| May 8 | Indiana primary<br>North Carolina primary<br>West Virginia primary |
| May 15 | Nebraska primary<br>Oregon primary |
| May 22 | Arkansas primary<br>Kentucky primary |
| June 5 | California primary<br>Montana primary<br>New Jersey primary<br>New Mexico primary<br>South Dakota primary |
| June 26 | Utah primary |

***Senate:*** While the outcomes of these races are unknowable, it is safe to say that the current Democratic majority in the Senate is in jeopardy. However, regardless of which party wins the majority in November, it is likely to be by a very narrow margin.

Thirty three Senate seats will be on the ballot in November, with both parties defending seats vacated by retirement, or at risk due to the retirement of the incumbent.

Six Democrats are retiring, including Senators Daniel Akaka (HI), Ben Nelson (NE), Jeff Bingaman (NM), Kent Conrad (ND), Jim Webb (VA), and Herb Kohl (WI), with 15 incumbent Democrats facing reelection, including Senators Dianne Feinstein (CA), Tom Carper (DE), Bill Nelson (FL), Ben Cardin (MD), Debbie Stabenow (MI), Amy Klobuchar (MN), Claire McCaskill (MO), Jon Tester (MT), Robert Menendez (NJ), Kirsten Gillibrand (NY), Sherrod Brown (OH), Robert Casey (PA), Sheldon Whitehouse (RI), Maria Cantwell (WA), and Joe Manchin (WV).

Two Independent Senate seats are in play, with Senator Joseph Lieberman (CT) retiring, and Senator Bernie Sanders (VT) up for reelection. Both of these Senators caucus with the Democrats.

Two Republicans are retiring – Senator Jon Kyl (NV) and Senator Kay Bailey Hutchison (TX) – while 8 incumbent Republicans are seeking reelection: Senators Dick Lugar (IN), Olympia Snowe (ME), Scott Brown (MA), Roger Wicker (MS), Dean Heller (NV), Bob Corker (TN), Orrin Hatch (UT), and John Barrasso (WY).

Democrats, partially due to the fact that nearly half of their Senate seats are in play, have the most to lose in November, with several key races being watched as indicators of whether the party can retain its majority.

With the retirement of Senator Daniel Akaka (D-HI), after serving in the Senate since 1990, many Republicans see an opening to win the seat with former governor Linda Lingle, who will first have to win a primary against John Carroll, a previous candidate for governor of Hawaii. The GOP primary winner will go up against either Congresswoman Mazie Horono (D-HI) or former Congressman Ed Case (D-HI), both of whom have announced their candidacy and will face each other in a primary.

In Virginia, Senator Jim Webb is retiring after only one term. Although both will have to make it through primaries, the likely candidates are former governor Tim Kaine and former Senator George Allen, who lost the Senate seat to Webb in 2006.

Florida Senator Bill Nelson is seeking his third term and, although he was spared a primary challenge in the Democratic primary, faces a GOP field that includes, among others: Representative Connie Mack; former Senator George LeMieux; Adam Hasner, the former leader of the state House of Representatives; and Craig Miller, the former CEO of Ruth's Chris Steak House. Two other Republican candidates have withdrawn, and several others are said to be considering entering the race.

Montana's Senator Jon Tester has served one term and is facing a challenge by Republican Congressman Denny Rehberg. Tester's election to the Senate in 2006 was an upset, as he won a seat held by former Republican Senator Conrad Burns for 18 years, and he is polling even with Rehberg.

Senator Claire McCaskill unseated then-Senator Jim Talent in 2006. Republican Congressman Todd Akin and former Missouri state treasurer Sarah Steelman will face off in a primary to determine who will challenge McCaskill in November.

Senator Debbie Stabenow, first elected to the Senate in 2000, is seeking a third term and is unopposed in the Democratic primary. Although polling well, she will face a strong challenge for the seat, with numerous GOP candidates having declared their candidacy, including, among others: Clark Durant, founder of Cornerstone Schools, a Detroit-based Christian school system; and former Representative Peter Hoekstra, who left the House of Representatives to unsuccessfully run for the Michigan governorship in 2010.

In Nebraska, with Senator Ben Nelson retiring, it is generally assumed that this seat is lost to the Democrats and will be filled by one of the five announced Republican candidates. However, there has been a push to have former Democratic Senator Bob Kerrey run for the seat. Kerrey has said that he would consider a run, but at this point has not indicated a willingness to enter the race.

North Dakota Senator Kent Conrad is retiring after nearly twenty years in the Senate. Former North Dakota Attorney General Heidi Heitkamp (D) is mounting a strong campaign for the seat against Republican candidates Congressman Rick Berg and Mr. Duane Sand, a former candidate for both the Senate and the House of Representatives.

With the retirement of New Mexico Senator Jeff Bingaman, Republicans see an opportunity and will choose between four candidates, the most prominent being former Representative Heather Wilson, while Democratic candidates include Congressman Martin Heinrich (D-NM) and State Auditor Hector Balderas.

Finally, in Wisconsin, with the retirement of Senator Herb Kohl, the likely candidates are the popular former governor Tommy Thompson (R) and Congresswoman Tammy Baldwin (D). Both face primary fights, but are the most likely candidates. The outcome of the general election is hard to call at this point.

Among Republicans, Senator Scott Brown (MA) and Senator Dean Heller (NV) face strong challenges by their Democratic opponents, while Senator Dick Lugar is facing a surprisingly strong primary challenge by Indiana State Treasurer Richard Mourdock. In Utah, Dan Liljenquist, a state senator, has announced that he will mount a primary challenge to Senator Orrin Hatch, a veteran of the Senate since 1977. This race is of particular interest following the defeat of Hatch's former colleague Senator Robert Bennett by fellow Republican, and now United States Senator, Mike Lee in 2010.

Senator Scott Brown, who won a special election after the death of long-time Senator Edward Kennedy, is facing a strong challenge by Elizabeth Warren, the consumer advocate and Harvard Law professor credited with the concept of the new Consumer Financial Protection Bureau (CFPB). Warren was the presumptive nominee to head the CFPB until strong Republican opposition to her nomination caused President Obama to nominate Richard Cordray, a former Ohio Attorney General.

In Nevada, Senator Dean Heller, appointed to the Senate in 2011 following the resignation of Senator Ensign, is facing a strong challenge from Congresswoman Shelley Berkley.

With the retirement of Senator Joe Lieberman (I-CT), who left the Democratic Party in 2006 after losing a primary election but still caucused with Democrats in the Senate, there will be a rigorous campaign by Democrats to hold this seat. Democratic Congressman Chris Murphy is not seeking reelection to the House of Representatives in order to run for the Senate and will face several other Democratic candidates in a primary. GOP candidates include, among others: Linda McMahon, the Republican candidate for Senate in 2010; and former Congressman Chris Shays, who was defeated for reelection to the House of Representatives in 2008.

***House of Representatives:*** The House, with all 435 seats on the ballot, is harder to predict, mostly due to the sheer size of the body, but also because the lines of many Congressional districts will not be known until redistricting is completed based on the 2010 census results.

Democrats have at least 18 members retiring, with Republicans losing at least 12 members to retirement. These numbers are almost certainly not final, as more members will announce their plans in the coming weeks.

Six retiring Democrats are seeking Senate seats, including Representatives Chris Murphy (CT), Mazie Hirono (HI), Joe Donnelly (IN), Shelley Berkley (NV), Martin Heinrich (NM), and Tammy Baldwin (WI). Representative Jay Inslee (WA) is running for governor and not seeking an additional term in Congress.

Five retiring Republicans are seeking Senate seats, including Representatives Jeff Flake (AZ), Connie Mack (FL), Todd Akin (MO), Denny Rehberg (MT), and Rick Berg (ND). Representative Mike Pence (IN) is running for governor and not seeking an additional term in Congress, while Representative Ron Paul (TX) has chosen to forego a Congressional campaign as he runs for President.

In a year of great uncertainty, and with Tea Party Republicans holding many marginal districts, most observers believe Democrats will pick up seats in the House. Some go as far as to predict Democrats recapturing control of the House, but this is probably still a minority opinion.

ML STRATEGIES

## ML Strategies
## Washington Office Contact Information

**David Leiter**
President
202.434.7346
djleiter@mlstrategies.com

**Jeremy Rabinovitz**
Senior Executive Vice President
202.434.7443
JRabinovitz@mlstrategies.com

**Tom Koutsoumpas**
Senior Vice President
202.434.7477
tkoutsoumpas@mlstrategies.com

**Gary Bacher**
Senior Vice President
202.434.7454
GEBacher@mlstrategies.com

**Alex Hecht**
Vice President
202.434.7333
ahecht@mlstrategies.com

**Maureen Walsh**
Director of Government Relations
202.434.7388
mjwalsh@mlstrategies.com

**Jason Rosenstock**
Director of Government Relations
202.434.7478
JMRosenstock@mlstrategies.com

**Bryan Stockton**
Director of Government Relations
202.434.7480
Bstockton@mlstrategies.com

**Jordan Collins**
Director of Government Relations
202.434.7462
JMCollins@mlstrategies.com

**Neal Martin**
Senior Manager of Government Relations
202.434.7458
rnmartin@mlstrategies.com

**Sarah Litke**
Manager of Government Relations
202.434.7336
slitke@mlstrategies.com

**Kevin Kappel**
Manager of Government Relations
202.434.7467
kmkappel@mlstrategies.com

**Georgette Spanjich**
Manager of Government Relations
202.434.7455
Gmspanjich@mlstrategies.com

**Rachel Sanford**
Manager of Government Relations
202.434.7485
RMSanford@mlstrategies.com

**Abby Matousek**
Legislative Assistant
202.434.7329
amatousek@mlstrategies.com

**Daniel Phillips**
Project Analyst
202.434.7471
hdphillips@mlstrategis.com