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## The Week Ahead: October 17-21

The Senate will take up a fiscal 2012 spending package and address judicial nominations. The Senate Surface Transportation and Merchant Marine Infrastructure, Safety, and Security subcommittee will hold a hearing on pipeline safety.

The House will be in recess this week.

## Banking & Financial Services

Several House Democrats, including **Reps. Peter Welch (D-Vt.)** and **John Conyers (D-Mich.)**, on Thursday, October 13, called on **U.S. Attorney General Eric H. Holder Jr.** to investigate whether the banking industry is violating antitrust laws by instituting new fees on debit cards. The letter is in response to Bank of America's decision to charge a \$5 monthly fee to customers who make purchases with their debit cards and announcements by J.P. Morgan Chase and Wells Fargo that they are considering similar steps.

**Reps. Jason Chaffetz (R-Utah)** and **Bill Owens (R-N.Y.)** introduced **HR 3156, the Consumer Debit Card Protection Act**, on Wednesday, October 12. The bill would repeal the Durbin Amendment, which was adopted into last year's financial overhaul legislation. The Durbin Amendment limits the fees that banks can charge retailers for processing debit card payments. The fees that banks are now placing on debit card users is said to be at least partly a result of this law.

**Rep. Michael Grimm (R-N.Y.)** told a business group on Thursday, October 6, that the **House Financial Services Committee** will consider **HR 2682, the Business Risk Mitigation and Price Stabilization Act of 2011**, at its next full committee mark-up. The measure would exempt commercial buyers of financial derivatives from requirements to post margin, or collateral, which helps cover the cost of any future losses on the derivative. Under the 2010 financial overhaul law, known as Dodd-Frank, regulators have the power to set collateral requirements. The **House Agriculture Committee** will also mark up the bill.

The **House Financial Services Subcommittee on Capital Markets and Government Sponsored Enterprises** advanced a slate of GOP-backed bills Wednesday, October 5, that would change **Securities and Exchange Commission (SEC)** rules in an effort to make it easier for small companies to raise money and create jobs. One bill would permit "crowd funding" to finance new businesses by allowing companies to accept and pool securities issuances up to \$5 million without registering with the SEC. The measures are expected to be marked-up by the full committee later this month.

## Defense

**Senate Armed Services Chairman Carl Levin (D-Mich.)** said Wednesday, October 12, that he will not allow a dispute with the Obama administration over detainee provisions in the fiscal 2012



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## Featured Profile

### Locke Lord Strategies®

Locke Lord Strategies is a government affairs team of proactive and experienced practitioners that has a strong command of how the legislative process works. Composed of a core team of nine attorneys and non-attorney professionals who work across all Locke Lord offices, the Strategies team is the Washington, D.C.-based lobbying arm of the firm that – through the course of years – has formed significant and meaningful relationships with key members and staff in the U.S. Congress as well as with decision-makers in the Executive Branch.

Locke Lord Strategies' primary goal is to protect and enhance clients' interests, while helping to shape and determine federal public policy. Strategies professionals have a reputation for solid and strategic plans, both inside and outside the Beltway, and they are knowledgeable in a wide range of issue areas, including health care, financial services, international relations, energy, agriculture, education and appropriations. Their extensive political and public policy experience combine to make them capable of providing clients a full array of legislative, regulatory and legal services.

In Washington, the Strategies' team works closely with Locke Lord attorneys who handle matters in a broad variety of real estate, finance and corporate transactions across the United States and abroad. Strategies' team members also work with attorneys across all 11 U.S. offices, as well as with attorneys in the Firm's London and Hong Kong locations.

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defense authorization bill to jeopardize the chamber's consideration this year of the annual Pentagon policy measure. **Majority Leader Harry Reid (D-Nev.)** stalled Senate consideration of the authorization bill amid White House concerns about three provisions that would set new policy governing the detention and transfer of terrorism suspects.

**Army Gen. Martin E. Dempsey**, the new chairman of the Joint Chiefs of Staff, Thursday, October 13, cast doubt on the future of the Marine Corps' variant of the troubled F-35 Joint Strike Fighter program. Defense experts recently have raised the prospect that buying all the aircraft planned would be unaffordable as the **Defense Department** plans to reduce spending by as much as \$450 billion over 10 years resulting from budget caps created in the recently enacted Budget Control Act.

### Education

The **Senate Education Committee** released a re-write of the **No Child Left Behind** law on Tuesday, October 12. Included in the bill are requirements for states to adopt academic standards aligned with "college and career readiness," to implement new teacher and principal evaluation systems, and the creation of a new Race to the Top competitive grant program for states and high-need districts. **Senate Education Chairman Tom Harkin (D-Iowa)** said he hopes the bill will be on the Senate floor before the Thanksgiving break.

### Energy/Environment/Climate Change

The House on Friday, October 14, passed a bill that would establish a system of state-level regulation for coal combustion waste generated from electricity production, calling on the **Environmental Protection Agency (EPA)** to defer to state regulators on the issue. The measure, passed 267-144, would require states that choose to establish coal waste management permitting programs to notify the EPA and certify that they would meet baseline requirements. The EPA, however, would not be able to issue alternative coal ash regulations, nor would it be authorized to sanction states that do not correct deficiencies found in their programs by the federal agency.

**David Strickland**, the **National Highway Traffic Safety Administration's** administrator, told the **House Oversight and Government Reform subcommittee** that a planned doubling of fuel efficiency standards for auto manufacturers would not result in a slip of safety standards. The committee is reviewing a proposal to boost the Corporate Average Fuel Economy (CAFE) standard to 54.5 miles per gallon by 2025. **Full Committee Chairman Darrell Issa (R-Calif.)** is questioning whether the EPA and **Transportation Department** exceeded their authority in reaching an agreement with automakers and environmental groups to increase the fuel economy standards.

The **House Natural Resources Committee** advanced a bill Wednesday, October 12, which would repeal the \$3.25 billion in borrowing authority granted to the **Energy Department's Western Area Power Administration** under the 2009 stimulus law. The loans were to be used for building, planning or maintaining the operation of new or upgraded electric-power transmission lines, with any remaining balance forgiven at the end of a project's useful life. The bill is a result of the controversy surrounding solar panel manufacturer Solyndra Inc., which recently declared bankruptcy.

### Health Care

The House passed legislation Thursday, October 13, that would bar federal funding for abortion under the 2010 health care overhaul, despite Democrats' protests that the measure is a distraction from the jobs agenda. **HR 358, the Protect Life Act**, which passed 251-172, would amend the health care law to



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### Insurance

On Wednesday, October 12, **Rep. Richard E. Neal (D-Mass.)**, Ranking Member of the **House Ways and Means Select Revenue Subcommittee**, and **Sen. Robert Menendez (D-NJ)**, member of the **Senate Finance Committee (SFC)**, introduced bills in both the House and Senate to close a tax loophole that benefits property and casualty insurers based offshore. The **Joint Tax Committee** estimates that the legislation will help to reduce the deficit by nearly \$12 billion over 10 years. To close the loophole and eliminate the competitive advantage for foreign-owned insurers, the legislation would effectively defer the deduction for any reinsurance premiums paid to a foreign affiliate (if the premium is not subject to U.S. tax). Also, to make sure that foreign-based insurers cannot be disadvantaged relative to domestic insurers, the legislation allows foreign-based groups an election to avoid the deduction deferral rule and be taxed similarly to a U.S. company on the income from these affiliate reinsurance transactions. A foreign tax credit is provided for any foreign taxes paid on such income.

On Tuesday, October 11, the **Financial Stability Oversight Council (FSOC)** announced new proposed rules regarding authority to require supervision and regulation of certain nonbank financial companies. The new rules propose a three-stage test to determine which nonbank financial institutions should be subject to Federal Reserve supervision. Under the new proposed rules, certain insurance companies could be considered to pose a systemic risk and be subject to regulation as such. The proposed rules are open for a 60 day public comment period.

Also on Tuesday, October 11, the **National Association of Insurance Commissioners (NAIC)** Executive Committee and Plenary held a conference call as a make-up session for the joint meeting originally scheduled for the NAIC Summer National Meeting. Actions taken on the call include: adopted amendments to the NAIC bylaws; adopted amendments to the Annuity Disclosure Model Regulation; adopted insurer bulletin on Stranger-Originated Annuity; adopted a new consumer guide to earthquake insurance.

Both the **Senate Banking Committee** and the **House Financial Services Committee** held hearings on Thursday, October 6, on the annual report of the FSOC. **Treasury Secretary Timothy Geithner** provided testimony

*Continued on next page*

prohibit federal funds from being used to cover any costs of any health insurance plan that includes abortion coverage. It would provide exceptions for rape, incest or when a pregnant woman's life is in danger.

The **House Ways and Means Committee** on Thursday, October 13, approved a bill that would affect eligibility for Medicaid and new health insurance subsidies, along with a second bill affecting payments to government contractors. The committee approved, 23-12, largely along party lines, a bill that would change a provision in the 2010 health care overhaul that would allow people to exclude Social Security benefits from their income when applying for health benefits, including Medicaid and subsidies to purchase private insurance on new state-run exchanges.

### Labor, Pensions & Retirement

A group of Senate Republicans rolled out an alternative to President Obama's \$447 billion jobs package on Thursday, October 13, that effectively rejects every administration proposal to boost employment. The Republican plan calls for a constitutional amendment requiring a balanced federal budget and giving the president a line-item veto. It would reduce the corporate tax rate to no more than 25 percent, allow repatriation of overseas earnings at a lower tax rate and repeal a 3 percent withholding from payments to government contractors.

On Wednesday, October 12, the Senate failed to invoke cloture on the President's jobs bill. As a result, Senate leaders now appear likely to consider elements of the \$447 billion measure separately and to force politically difficult votes for Republicans on such issues as rebuilding schools and granting payroll tax cuts to both workers and small companies. Publicly, GOP leaders welcomed the emerging Democratic strategy, arguing that it was the approach that they had favored all along.

### Tax

SFC Republicans offered their recommendations to the joint deficit committee Friday, October 14, urging the panel to avoid any tax increases while overhauling entitlement programs — including Social Security — to assure their sustainability into the future. In addition to urging the joint committee to lower rates to no higher than 25 percent for individuals and corporations as part of a tax rewrite, the minority Republicans recommended full repeal of the Alternative Minimum Tax and adoption of a territorial tax system for firms doing business overseas as a cornerstone of corporate tax reform.

House Democrats released their deficit reduction recommendations in a flurry on Thursday, October 13, urging the powerful, special committee charged with finding at least \$1.2 trillion in savings to produce a plan that is "big, bold, and balanced." The letters represent a wide range of viewpoints and approaches to deficit reduction. **Education and the Workforce Committee** Democrats pressed for job creations measures. **Energy and Commerce** Democrats urged the committee to "not pursue policies that would undermine coverage for Medicare, Medicaid, or people who will enroll in health insurance exchanges." **Financial Services** Democrats suggested a series of proposals aimed at increasing revenue, including the reintroduction of the "big bank fee" on "financial companies" with assets greater than \$50 billion and hedge funds greater than \$10 billion.

The **Congressional Budget Office** said on Friday, October 7, that the "surtax on millionaires" proposed by Senate Democrats would raise \$453 billion over 10 years. The 5.6 percent tax on household income over \$1 million (or \$500,000 for married couples who file separate tax returns) would more than offset the cost of President Obama's jobs bill.



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### Insurance (cont'd.)

...regarding the conclusions and recommendations made by the Council in its first annual report, which was submitted to the Committees.

On Thursday, October 6, **Del. Eleanor Norton (D-D.C.)** introduced legislation to provide for the creation of disaster protection funds in the District of Columbia by property and casualty insurance companies for the payment of policyholders' claims arising from natural catastrophic events. **HR 3139, the District of Columbia National Disaster Insurance Protection Act**, would amend federal tax law to make the District a special tax jurisdiction where catastrophic insurance reserves and the investment income from these reserves are exempt from federal taxes.

Also on Thursday, October 6, **Rep. John Campbell (R-Calif.)** introduced **HR 3125, the Earthquake Insurance Affordability Act**. The bill is the House companion bill to S 637, legislation of the same name introduced by **Sen. Dianne Feinstein (D-Calif.)** earlier this year. The legislation would allow well-capitalized state catastrophe insurance programs to lower costs by allowing the federal government to guarantee bonds issued by these institutions, in lieu of purchasing reinsurance.

On Wednesday, October 5, **Rep. Randy Neugebauer (R-Texas)** introduced legislation to amend the **Federal Crop Insurance Act** to provide producers with the opportunity to purchase crop insurance coverage based on both an individual yield and loss basis and an area yield and loss basis in order to allow producers to cover all or a portion of their deductible under the individual yield and loss policy, to improve the accuracy of actual production history determinations.

On Tuesday, October 4, the House approved legislation that includes a provision extending the **National Flood Insurance Program (NFIP)** through November 18, 2011.

### Telecommunications

The push to implement the recommendations of the **House Cybersecurity Task Force** is expected to begin soon with the introduction of several bills that address parts of the panel's recently released report. The panel's recommendations, released on Wednesday, October 5, include urging Congress to consider expanding tax credits and providing protections against lawsuits for companies that shore up their computer network defenses, and establishing a non-governmental organization that could serve as a clearinghouse for information exchanges between the private sector and government regarding cyber threats.

### Trade

On Wednesday, October 12, Congress cleared three long-stalled trade deals with Colombia, Panama and South Korea, as well as legislation that would provide aid to workers displaced by foreign trade. President Obama is expected to quickly sign the bills into law. Implementation of the Colombia agreement would make nearly three-quarters of the country's tariff lines duty-free for U.S. exports. Once implemented, more than 87 percent of U.S. exports of consumer and industrial products to Panama will become duty-free immediately, with remaining tariffs phased out over the next 10 years. The South Korea agreement would eliminate tariffs on more than 95 percent of U.S. exports of industrial and consumer goods to the country within the first five years. It is expected to help lift barriers to U.S. automobile trade with South Korea.

The Senate easily passed a bill Tuesday, October 11, targeting currency manipulation by the Chinese government, but prospects for further action remained remote. A diverse coalition of senators voted, 63-35, for passage of the bill. House Republican leaders, however, have indicated that they have no plans to consider the measure. The bill would threaten economic sanctions if the **Treasury Department** finds that a trading partner's currency is "misaligned" based on a set of economic indicators.

### Transportation & Infrastructure

The Obama administration announced on Tuesday, October 11, 14 infrastructure projects that will be expedited through permitting and environmental reviews, including six related to transportation. The announcement fulfills a promise the administration made in August to identify job-creating projects delayed by red tape that could otherwise be completed within 18 months. The announcement came at a meeting of Obama's jobs council, which also released recommendations that the surface transportation bill be reauthorized, instead of stringing together more short-term extensions, and creating a national infrastructure bank.

**Sens. Ron Wyden (D-Ore.)** and **John Hoeven (R-N.D.)** say they have found a bipartisan way to finance roads, bridges, schools and other infrastructure projects by expanding the use of a fairly new debt instrument. Their bill, **S 1436, the Transportation and Regional Infrastructure Project (TRIP) Bonds Act of 2011**, would allow states — or state infrastructure banks — to issue tax-credit bonds that effectively subsidize projects. State and local governments would finance projects by selling bonds to investors who would get, instead of interest payments from the issuer, a federal tax credit equal to the average yield on an outstanding corporate bond.