



Strategies Key Contacts

Shane Doucet
T: 202-220-6929
sdoucet@lockelord.com

Douglas P. Faucette
T: 202-220-6961
dfaucette@lockelord.com

Denise Hanna
T: 202-220-6992
dhanna@lockelord.com

Brian Heindl
T: 202-220-6994
bheindl@lockelord.com

Harriet Miers
T: 202-220-6925
hmiers@lockelord.com

Jim Moriarty
T: 202-220-6915
jmoriarty@lockelord.com

Phil Rivers
T: 202-220-6927
privers@lockelord.com

Mark Siegel
T: 202-220-6926
msiegel@lockelord.com

Walter B. Smith, Jr.
T: 202-220-6936
wsmith@lockelord.com

The Week Ahead: October 31 - November 4

The Senate will resume consideration of the fiscal 2012 "minibus" spending bill.

The House Financial Services Subcommittee on Financial Institutions and Consumer Credit will hold a hearing on "Regulatory Reform: Examining How New Regulations are Impacting Financial Institutions, Small Businesses and Consumers."

Banking & Financial Services

Rep. Scott Garrett (R-N.J.) released plans Thursday, October 27, for a future housing finance system that would operate without any government backstop such as that currently provided by the two mortgage giants Fannie Mae and Freddie Mac. Garrett's proposal would require the **Federal Housing Finance Administration** to serve as a referee of sorts for the market in privately issued mortgage-backed securities. He would direct the agency, which acts as the conservator for Fannie and Freddie, to set standards and underwriting criteria for several categories of mortgages, and to develop standards and uniform practices for issuing mortgage-backed securities.

The **House Financial Services Committee** on Wednesday, October 26, advanced four bills that would change **Securities and Exchange Commission (SEC)** rules to make it easier for small companies to raise money. The committee gave voice-vote approval to an amended version **HR 2930**, introduced by **Rep. Patrick T. McHenry (R-N.C.)** that would permit "crowdfunding" to finance new businesses by allowing companies to accept and pool securities issuances up to \$1 million without registering with the SEC. A second bill, also approved by voice vote, would raise the threshold for mandatory registration with the SEC from 500 shareholders to 1,000. The committee also gave voice-vote approval to two other bills: One would remove the regulatory ban that prevents small, privately held companies from using advertisements to solicit investors for private offerings; the other would increase from \$1 million to \$10 million the threshold for total assets of an issuer required to register with the SEC.

Cuba

As Cuba gears up to begin offshore oil development just 90 miles from Florida, lawmakers are at odds over what steps the U.S. government should take to safeguard American coastal areas from drilling accidents. At a **Senate Energy and Natural Resources Committee** hearing Tuesday, October 18, **Chairman Jeff Bingaman (D-N.M.)** said the government should consider easing trade restrictions with Cuba that could make it harder for U.S. companies to respond to spills off the island nation. Under the terms of the U.S. trade embargo, businesses need special licenses to trade with Cuba. But the **House Foreign Affairs Chairwoman Ileana Ros-Lehtinen (R-Fla.)** rejected the idea of easing sanctions on Cuba. "Any cooperation with the Cuban regime's oil drilling ploy will be seen as the U.S. giving a green light to a scheme which will help the regime become the oil tycoons of the Caribbean, and potentially cause devastating pollution of our shores and waters in Florida," she said.



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Featured Profile

Bank Regulatory & Transactional Practice Group

Locke Lord's Bank Regulatory & Transactional Practice Group works closely with Locke Lord Strategies® and has a strong and skilled team of attorneys who collaborate across offices to represent domestic and international financial institutions in transactional, legislative, regulatory and litigation-related matters.

Clients range from community banks to money-center financial institutions and include finance companies, credit unions, credit card issuers, leasing companies, specialty finance lenders, trust companies, commercial banks and savings institutions, industrial loan companies, mortgage originators and insurance companies. From acquisitions and mergers of commercial banks and savings institutions to workouts and bankruptcies, the Firm's Bank Regulatory and Transactional group is known for its problem solving abilities and its extensive industry experience, both in Washington, D.C., and around the nation.

We regularly counsel clients on financial institution regulatory compliance, chartering, capital raising, demutualization, reorganization and shareholder relations. Our attorneys are knowledgeable on SEC registration and reporting, as well as financial services convergence, real estate and commercial lending, bank litigation and creditors' rights.

Bank Regulatory and Transactional
Douglas Faucette, Practice Group Chair
T: 202-220-6961
dfaucette@lockelord.com

Defense

A dozen members of the **Senate Armed Services Committee**, 11 Republicans and **Sen. Joseph Lieberman (I-Conn.)**, are seeking a hearing to explore the administration's decision to withdraw all U.S. forces from Iraq by the end of the year, a move the senators strongly oppose. The senators want the hearing to include an "independent assessment" of Iraqi security forces' capability to handle internal and external security.

Douglas W. Elmendorf, director of the **Congressional Budget Office**, told the **Joint Select Committee on Deficit Reduction** the precise implications to defense budgets of the debt ceiling law, as well as the effects of a potential set of automatic cuts, known as sequestration. His upper estimate of the potential cutback to defense budgets — \$882 billion over 10 years — is, while undeniably large, still lower than the \$1 trillion normally cited by defense-cuts opponents in Congress and the Pentagon. At the same time, Elmendorf said, the Pentagon's current projected budget levels understate by several hundred billion dollars the amount that its plans actually require over the next decade.

Defense Department leaders agree "in principle" with recommendations made this summer by the **Wartime Contracting Commission**, but oppose specific suggestions that would give greater authority to civilian and military officials who oversee contingency contracting, the Pentagon's acquisition chief said Wednesday, October 19. During his first congressional hearing since being confirmed for his new post, Frank Kendall expressed concerns that those recommendations would add extra and unnecessary layers to the Pentagon's sprawling bureaucracy.

Education

The **Senate Health, Education, Labor and Pensions Committee** passed an overhaul of the **No Child Left Behind Act** on Thursday, October 20, with just three Republican votes. At the beginning of the hearing, **Ranking Member Michael B. Enzi (R-Wyo.)** implored Republican members to consider the ramifications of not moving forward with legislation he spent more than a year working on with **Chairman Tom Harkin (D-Iowa)**. One of the main issues, which also affects some Democrats, is the President's proposal of waivers from the law's most burdensome requirements. However, these waivers would be given only to states that agree to change their education systems in specific ways that the administration favors.

Energy/Environment/Climate Change

Republican lawmakers are raising red flags over the **Interior Department's** plan to merge its surface mining office into the Bureau of Land Management, arguing that the mining division was created by legislation and can only be changed with congressional approval. House Republicans have criticized the merger as an effort to restrict the mining industry, but **Interior Secretary Ken Salazar** says it will strengthen the department's abandoned mines reclamation program and bolster mining regulation.

Thirteen lawmakers asked the **State Department's** Inspector General on Wednesday, October 26, to investigate the department's handling of the TransCanada Keystone XL pipeline, a \$7 billion, 1,700-mile project that has become a major target of the environmental community. The lawmakers also sent a separate letter to President Obama, asking him to postpone further action on the project until the inspector general's study is completed. The letters, spearheaded by **Rep. Steve Cohen (D-Tenn.)**, **Sen. Bernard Sanders (I-Vt.)**, and **Rep. Peter Welch (D-Vt.)**, argued that an internal investigation is needed to study allegations that State Department officials working on the pipeline project have "significant conflicts of interest" with pipeline company TransCanada.

A study by the **Energy Department's Energy Information Administration** projected that a "clean-energy standard" like the one President Obama proposed earlier this



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Insurance

The **National Association of Insurance Commissioners (NAIC)** will hold its Fall National Meeting from November 3–6, in Washington DC.

On Tuesday, October 25, **Michael McRaith, Director of the Federal Insurance Office (FIO)**, testified before the **House Financial Services Subcommittee on Insurance, Housing and Community Opportunity**. Responding to questions from Committee members, Director McRaith stated the FIO is not a regulator - the FIO will have a collaborative relationship with state insurance regulators. McRaith said the FIO will gather data from publicly available records and will not request information that an insurance company has already provided to a regulator. McRaith stated he expects to meet the January deadline for completing the report mandated by the Dodd-Frank reform bill, on how to modernize and improve the country's insurance regulatory system.

On Wednesday, October 19, 10 industry trade associations sent a letter to representatives of states that are part of the **Nonadmitted Insurance Multi-State Agreement (NIMA States)** to urge the adoption of the allocation methodology proposed by the Kentucky Department of Insurance (Kentucky compromise). The industry letter noted the Kentucky proposal would continue to require the allocation of casualty premiums on a state-specific or location-specific basis when a multistate policy's premiums are determined on a state-specific or location-specific basis, but it permits the allocation of premiums to the home state if a single premium charge is applied and no location-specific rating occurs in connection with the placement.

On Monday, October 17, the FIO released a notice seeking public comment for its report, mandated by the Dodd-Frank reform bill, on how to modernize and improve the country's insurance regulatory system. The notice seeks comments from policyholders, experts, consumer groups, state insurance regulators, insurance industry representatives and all other interested parties. Commenters are invited to submit views on 12 major issues, including solvency, consumer protection, international competitiveness and regulation.

It has been reported that in separate letters to the **Joint Select Committee on Deficit Reduction, House Financial Services Committee Chairman, Spencer Bachus (R-Ala.)** and **Ranking Member Barney Frank (D-Mass.)**, urge the "supercommittee" to integrate into budget-cutting recommendations reforms to the **National Flood Insurance Program (NFIP)**. The NFIP is currently scheduled to expire November 18.

year would drive up electricity costs nationwide by almost 30 percent and average household electric bills by \$211 in 2035. The clean-energy standard was designed as an alternative to a renewable-energy standard — which would not count such energy sources as nuclear, clean coal or natural gas — in a bid to win GOP support.

Sens. Michael Bennet (D-Colo.) and Johnny Isakson (R-Ga.) on Wednesday, October 19, proposed bipartisan legislation designed to boost home efficiency by factoring energy costs into the mortgage underwriting process. The bill would require federal mortgage lenders to weigh expected energy costs when considering a mortgage applicant's ability to make monthly payments. Because such costs are not considered during appraisal, homeowners and builders often are not able to recover cost-saving efficiency improvements when properties are sold.

Health Care

More than 100 House Republicans asked the **Supreme Court** to consider the constitutionality of last year's health care law, one of a slew of briefs expected to be filed before the justices meet November 10, to consider how they will handle challenges to the law. **Rep. Paul Broun (R-Ga.)** and the conservative American Center for Law and Justice, filed an amicus brief with the court Thursday, October 27. The justices will hold a closed-door conference November 10, to determine how they will handle the three lawsuits filed against the law. That means word could come as soon as Nov. 14 on whether, and how many, cases will be heard.

The House on Thursday, October 27, passed a bill that would rewrite an income formula used to calculate subsidies for the purchase of health insurance on state-run exchanges and to determine eligibility for Medicaid. The bill would repeal the law that requires the federal government, as well as state and local governments, to withhold 3 percent of most payments made to government contractors. That rule is scheduled to take effect January 1, 2013.

Immigration

The **House Judiciary Committee** approved a bill on Thursday, October 27, which would eliminate country-based caps on the number of employment visas issued annually and raise similar limits for immigrants sponsored by a spouse or relative in the United States. Proponents say the bill will foster economic growth by helping U.S. businesses hire highly skilled legal immigrants.

The Senate on Monday, October 17, passed legislation that would reinstate federal assistance for certain elderly and disabled refugees. **S 1721, the SSI Extension for Elderly and Disabled Refugees Act of 2011**, would revive a program for one year that provides Supplemental Security Income for certain refugees who are not eligible to become citizens. The program expired September 30.

Labor, Pensions & Retirement

The **House Education and the Workforce Committee** approved **HR 3094, the Workforce Democracy and Fairness Act**, on Wednesday, October 26, by a vote of 23-16 after meeting for nearly four hours. The bill would block a proposed **National Labor Relations Board** rule change designed to speed up union representation elections, continuing House GOP efforts to curb the board's authority. The bill is part of the GOP's fall jobs agenda and the House leadership hopes to schedule it for floor consideration before the end of the year.

The Senate on Thursday, October 20, rejected efforts to advance a portion of President Obama's jobs bill, as well as a competing GOP tax proposal that would have repealed a contentious law requiring the withholding of 3 percent of payments to government contractors. Democrats argued that their jobs bill would prevent layoffs of teachers and emergency response personnel, while Republicans touted their legislation as relief for small businesses.



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Telecommunications

The **Senate Judiciary Committee** will take up legislation before the end of the year to amend an electronic privacy statute. **Sen. Patrick Leahy (D-Vt.)** introduced **S 1011, the Electronic Communications Privacy Act Amendments Act of 2011**, which would make changes to the Electronic Communications Privacy Act, a 1986 statute that he authored. Leahy's measure would eliminate a provision in the law that classified email left on an Internet service provider's server for more than 180 days as material that the government can demand without a warrant. The measure also contains new restrictions on government access to geolocational data. But the bill would make exceptions for law enforcement officials seeking the data because of an emergency or an immediate threat to national security.

After a meeting with top Senate leaders at the White House on Thursday, October 20, lawmakers said Thursday that although the meeting was fruitful, the sticky question of the role of businesses in defending computer networks is still unresolved. One of the key unresolved issues is how much action the private sector — which owns an estimated 90 percent of the digital infrastructure — will be required to take. There is less debate about the notion that the **Department of Homeland Security** should be the liaison to the private sector, with consultation from the National Security Agency.

Patent Reform

Sen. Jeff Sessions (R-Ala.) filed an amendment to a fiscal 2012 appropriations measure that would combine the Agriculture, Commerce-Justice-Science and Transportation-HUD spending bills. His amendment would remove a provision of the recently enacted patent overhaul. Specifically, the provision deals with the period in which patent term extension applications can be filed for drug products and other patents covered under a 1984 law.

Tax

House Ways and Means Chairman Dave Camp (R-Mich.) on Wednesday, October 26, released a plan to change how the United States taxes the foreign earnings of multinational corporations. The plan, which Camp presented as a "discussion draft," would reduce the tax rate on most foreign business earnings to 1.25 percent from 35 percent, effective when those earnings are brought into the United States in the form of dividends. Camp's proposal would essentially treat such earnings more like other countries do, establishing the principle that companies should generally be taxed only by the country in which they do business, regardless of where their headquarters are located. At the same time, Camp would attempt to tighten rules aimed at preventing corporations from hiding taxable earnings in low-tax jurisdictions.

Trade

House Speaker John A. Boehner (R-Ohio) said Tuesday, October 25, that the House would not move legislation required to elevate bilateral trade relations with Russia until the Obama administration helps resolve the territorial dispute between Russia and neighboring Georgia. The Obama administration has made the trade relations move a priority as part of its support for Russian membership in the **World Trade Organization**.

Transportation & Infrastructure

Rep. John Mica (R-Fla.), chairman of the **House Transportation and Infrastructure Committee**, said that he hopes to wrap up by the end of the year a long-term **Federal Aviation Administration (FAA)** reauthorization, which he said would clear the way for action on a six-year surface transportation measure that would be the House Republicans' "primary jobs bill." He acknowledged Monday, October 24, that resolving the major obstacles to an FAA bill — including differences with the Senate over funding levels, an overhaul of rural airport subsidies and a labor ruling that makes it easier for airline employees to unionize — is in the hands of leadership. Mica said that if an FAA reauthorization could be completed, he would try to move immediately to a six-year surface transportation bill with a price tag of about \$285 billion.

The Senate is slated to take up the infrastructure piece of the president's jobs-creation package when it returns from recess this week. Democrats aim to force Republicans to take a vote that would pit their earlier expressed support for rebuilding roads and bridges against their opposition to new taxes. The \$60 billion package of transportation infrastructure projects would be offset by a 0.7 percent surcharge on income exceeding \$1 million.

Speaker John A. Boehner (R-Ohio) has begun working with a Republican ally on an unorthodox proposal to use money raised through the sale of bonds linked to expanded offshore oil and gas drilling to replenish the **Highway Trust Fund**. **Rep. Steve Stivers (R-Ohio)** has talked with the Speaker about his plan to refill the highway fund with proceeds from the sale of bonds that would be repaid with lease payments on expanded offshore drilling on the outer continental shelf. The proposal is estimated to raise \$10 billion to \$15 billion annually for five years.