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DECEMBER 21 - 25: THIS WEEK

Budget/Appropriations

On Wednesday, the House passed a \$154 billion jobs package that would be funded partly from unspent money from last year's Troubled Assets Relief Fund. The bill, HR 2847, which narrowly passed by a vote of 217-212, would split funding between efforts to create jobs and programs to assist unemployed workers.

Also on Wednesday, the House passed a bill to raise the debt limit by \$290 billion. The increase would allow the Treasury to continue borrowing for a few more months,

but Congress would have to revisit the issue early next year. The Senate could consider the measure following the vote on the health care reform package.

On Saturday, the Senate passed the Defense Appropriations bill by a vote of 88-10. The bill appropriates \$636 billion for the Pentagon budget, along with unrelated amendments, such as extension of unemployment benefits.

Banking/Financial Services

On Wednesday, the Federal Deposit Insurance Corporation Board ("FDIC") approved an Advanced Notice of Proposed Rulemaking ("ANPR") regarding safe harbor protection for securitizations. Since 2000, the FDIC has provided safe harbor protections to securitizations by confirming that in the event of a bank failure, the FDIC would not try to reclaim loans transferred into a securitization so long as an accounting sale had occurred. However, with the changes in FAS 166 and 167, most securitizations will no longer meet the off balance sheet standards for sale treatment when they take effect on January 1, 2010. Previously the FDIC Board had approved a transitional safe harbor that permanently grandfathered securitizations or participations in process through March 31, 2010. The ANPR is seeking public comments on what standards should be applied to safe harbor treatment for transactions after March 31, 2010.

The FDIC Board had originally planned to place new restrictions on securitizations. Under the FDIC Board's plan, the FDIC would have required banks to retain a minimum portion of securitized loans, wait 12 months after making a loan to include it in a mortgage-backed security and prohibit external support such as credit enhancements. However, this plan has been delayed because the OCC and OTS representatives on the FDIC Board disagreed about the impact that these new restrictions would have.

On Wednesday, the Securities and Exchange Commission ("SEC") approved rule changes to certain compensation and corporate governance disclosures. In particular, the changes require disclosures in proxy and information statements about (a) the relationship of a company's compensation policies and practices to risk management; (b) the background and qualifications of directors and nominees; (c) legal actions involving a company's executive officers, directors and nominees; (d) the consideration of diversity in the process by which candidates for director are considered for nomination; (e) board leadership structure and the board's role in risk oversight; (f) stock and option awards to company executives and directors; and (g) potential conflicts of interests of compensation consultants. The new changes will be in effect for the 2010 proxy season. For more information on these rule changes, please see the Client Alert, "SEC Approves Amendments to Rules Governing Compensation and Corporate Governance Disclosure," distributed on December 17, 2009.

On Monday, the SEC re-opened the public comment period for its shareholder director nomination proposal. The SEC's proposed rules would allow shareholders in certain limited circumstances "proxy access," i.e. the right to place director candidates they nominate on the company's proxy card. To be allowed to place candidates on the corporate ballot, a shareholder (or a group of shareholders) will need to hold 1-5 percent of the shares (depending on the company's size) for more than one year.

Defense

House Armed Services Committee Chairman Ike Skelton (D-Mo.) announced on Wednesday that his committee would delay hearings in the November 5, 2009, shooting at Fort Hood until at least January. The

decision came after a request from the Department of Defense that hearings not be held until after the Department finished their review.

Education

The jobs package passed by the House last week included several funding items for education related jobs. The bill provides \$23 billion to help states pay for

education-related jobs over two years as well as \$300 million for college work-study programs.

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Energy/Environment/Climate Change

In Copenhagen on Thursday, **Secretary of State Hillary Clinton** said that the U.S. would help to raise \$100 billion annually through 2020 to assist developing countries in cutting their carbon emissions. On Friday, President Obama announced a limited pact reached with China, India, Brazil and South Africa that includes pledges to curb greenhouse gas emissions and verification of countries' actions. It is unclear how many other countries will embrace the accord. Senate

Democrats believe the accord will ease the way for a climate bill next year. The deal includes specific short-term climate financing pledges to aid developing nations, including \$3.6 billion from the U.S. in the 2010-12 period. It lays out a more general goal of developing nations jointly mobilizing \$100 billion in aid by 2020 from a variety of sources. The deal includes the goal of keeping global temperature increases below 2 degrees Celsius above pre-industrial levels.

Health Care

On Tuesday, December 15, **Sen. Byron Dorgan's (D-N.D.)** amendment to allow consumers to import prescription drugs failed by a vote of 51-48. **Sen. Frank Lautenberg's (D-N.J.)** side-by-side amendment to make it more difficult to lift limits on drug importation and require U.S. health officials to certify that such imports are safe also failed by a vote of 56-43.

Monday, at 1:00 a.m., the Senate invoked cloture on the health care bill by a vote of 60-40. **Majority Leader Harry Reid (D-Nev.)** got the vital 60th vote on Friday by reaching a compromise with **Sen. Ben Nelson (D-Neb.)**

on language regarding federal funding of abortion. Tuesday, December 22, 2009, Democrats passed another hurdle by voting to kill a Republican filibuster on an important amendment to the bill. The 60-40 vote ended debate on the substitute amendment to the bill.

Senate Democrats also won the endorsement of the American Medical Association ("AMA") this week. On Monday, the president-elect of the AMA announced their support for Reid's manager's amendment, which does not include a public option, but provides a temporary fix for physician's Medicare reimbursement rates.

Insurance

The manager's amendment to the Wall Street Reform and Consumer Protection Act (HR 4173), which passed the House, includes the following provisions relating to the Federal Insurance Office ("FIO"): (a) provides that one of the functions of the FIO is to monitor the extent to which traditionally underserved communities and consumers have access to affordable insurance products regarding all lines of insurance, except health insurance; (b) provides that the Director shall serve in an advisory capacity on the Financial Services Oversight Council; (c) provides that the study on modernization and improvement of insurance regulation in the United States shall include consideration of improved regulation of insurance companies (the original wording provided for the improved and broadened regulation of insurance

companies); and (d) provides that such study shall include consideration of geographic disparities in access to and cost of insurance products. The bill also requires certain federal financial services agencies to coordinate their activities with the FIO when they are dealing with insurance companies.

There is no language in the Senate health reform bill, the Patient Protection and Affordable Care Act, HR 3590, that would repeal the antitrust exemption for health and medical malpractice insurers. The antitrust provision is included in the House health reform bill, the Affordable Health Care for America Act HR 3962. It has been reported that **Sen. Patrick Leahy (D-Vt.)** will continue to work for inclusion of the antitrust provision in the final health care reform legislation.

Trade

On Monday, the House passed HR 4284 which extends trade preference programs for one year to Colombia, Ecuador, and Peru. The legislation would extend the Andean trade preference program to December 31, 2010,

as well as the generalized system of preferences to many other developing countries. Despite heavy lobbying, lawmakers did not include Cambodia or Bangladesh in the package.

Transportation and Infrastructure

A 60-day extension of funding for highway and transit programs was attached to the Defense Appropriations bill last week, which is the third extension for the law that originally expired in October. The American Association of State Highway and Transportation Officials are urging authorizers to agree to a long-term

extension before February in order to restore about \$1 billion of funding per month that has been lost since the law expired. The House and Senate have been in a stalemate over how long to extend the program and were unable to come to an agreement before the end of the session.