



## Strategies Key Contacts

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

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

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

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

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

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

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

[www.lockelord.com](http://www.lockelord.com)

*The D.C. Update* is prepared by members of the Locke Lord Strategies Team. It is intended for general information purposes only and does not constitute legal advice. This information is not intended to create, and it does not create an attorney-client relationship. Readers should not act upon this information without first consulting a lawyer.

*The D.C. Update* is published weekly. If you would like to be removed from our mailing list, please contact us at either [unsubscribe@lockelord.com](mailto:unsubscribe@lockelord.com) or Locke Lord Bissell & Liddell LLP, 111 South Wacker Drive, Chicago, Illinois 60606, Attention: Marketing. If we are not so advised, you will continue to receive this newsletter.

Attorney Advertising

© 2010 Locke Lord Bissell & Liddell LLP

## MAY 24 - 28: THIS WEEK

The House reconvened on Monday, May 24, and is expected to consider a number of suspension bills this week plus **HR 4213, the American Workers, State and Business Relief Act of 2010** and defense authorization legislation.

The Senate also reconvened on Monday, May 24, and plans to hold votes this week on **HR 4899, the Disaster/War Supplemental Appropriations**.

Both chambers will recess the week of May 24-28, for the Memorial Day District Work Period and they will recess next week from May 31-June 4.

## Budget/Appropriations

The House and Senate both continued to work separately on measures for supplemental war/disaster relief funding the week of May 17. The Senate plans floor action soon on **HR 4899**, an emergency supplemental appropriations bill which was passed by the House in March as funding for Haiti as well as job creation. However, the Senate

added \$33.5 billion in war funding for Iraq and Afghanistan which has complicated final consideration. The House plans to address war budget shortfalls in defense appropriations legislation, which could be marked up by the **House Appropriations Committee**.

## Banking/Financial Services

On Thursday, May 22, the Senate passed **S. 3217, the Restoring American Financial Stability Act of 2010** on a mostly party line vote of 59-39. The bill, among other provisions, creates a Consumer Financial Protection Bureau intended to protect consumers from risky investments and loans, puts in place a formal process for dismantling financial institutions that are on the verge of failure, and institutes new regulations for the derivatives market. The House and Senate will appoint conferees to begin meeting in early June. **Senate Banking Committee Chairman Chris Dodd (D-Conn.)** and **House Financial Services Committee Chairman Barney Frank (D-Mass.)** both expressed confidence that differences between the Senate and House bills can be worked out quickly, and they hope to present the President with a finished bill before the July 4 recess.

Also, on Wednesday, May 21, the House Financial Services Committee approved **HR 5297, the Small Business Lending Fund Act of 2010**, which is part of Democrats efforts to stimulate small business and job creation. The bill would provide incentives for banks to lend to small businesses by decreasing loan interest rates in correlation with increasing lending. The committee also approved several amendments including language that allows the Treasury Department to prohibit banks on their "problem bank" list from participating, as well as requiring loans under the program be repaid within 10 years. The bill, which was approved by a vote of 42-23, now moves on for possible floor action this week.

## Energy/Environment/Climate Change

The **House Energy and Commerce Subcommittee on Energy and the Environment** held a briefing on Friday, May 21, on the environmental impact of the Gulf Coast oil spill. Sylvia Earle, former chief scientist of the **National Oceanic and Atmospheric Administration ("NOAA")**, told the panel that because little research has been done on the deep ocean floor

where the oil is gushing, it is very difficult to predict the future environmental impact. Earle and other scientists expressed concerns over the chemical dispersants being used to break up the oil and the complications they create for the marine ecosystem. The scientists urged lawmakers to approve more funding for NOAA, EPA and other agencies involved

## Energy/Environment/Climate Change (cont'd.)

in ocean research. **Rep. Lois Capps (D-Calif.)**, who strongly opposes offshore drilling, is pushing for additional appropriations of \$45 million for NOAA to do the assessments and oil spill trajectory modeling.

An increase in the oil production excise tax—from 8 cents per barrel to 32 cents per barrel—is included in **HR 4213, the American Workers, State and Business Relief Act of 2010** (also known as the tax extenders bill). The excise tax funds the Oil Spill Liability Trust Fund which is likely to be depleted by the oil spill in the Gulf. The bill also raises from \$1 billion to \$5 billion the per incident cap on claims. These measures will raise \$10.9 billion for the fund and analysts have predicted that there would be very little impact on gasoline prices.

---

## Health Care

**Sen. Byron L. Dorgan (D-N.D.)** is considering offering an amendment to **S 510, the FDA Food Safety Modernization Act**, that would allow for the importation of U.S.-made prescription drugs from Canada and other countries. Dorgan offered a similar proposal to the health care reform bill, but it was defeated on the Senate floor. The food safety bill has been pushed aside because of the war supplemental, but **Senate Majority Whip Richard Durbin (D-Ill.)** says he hopes it will reach the floor in June.

As part of the tax extenders bill revealed on Thursday, May 20, lawmakers included a block on cuts to physician Medicare payments. The provision would allow for possible increases to Medicare fees until 2013, if the spending growth on physician services is within a reasonable amount. In 2013, the payment plan would revert back to the Sustainable Growth Rate formula.

---

## Immigration

During his speech to Congress on Thursday, May 20, President of Mexico Felipe Calderón urged lawmakers to reform federal immigration laws and to reinstate a ban on assault weapons. While Democrats generally support both goals, neither are likely to see action. **Senate Majority Leader Harry Reid (D-Nev.)** says he supports President Calderón's efforts to stem illegal immigration, but it is unlikely that he has enough votes to pass immigration reform. Senate Republicans criticized the President for lecturing Americans on our own laws.

---

## Insurance

Several provisions affecting the insurance industry are included in the financial services regulatory reform legislation passed by the Senate last week. The bill creates the **Office of National Insurance** within the **Treasury Department** and includes provisions that streamline the regulation of surplus lines insurance and reinsurance. Insurance industry trade groups voiced support that the bill retains regulation of the insurance market at the state level.

In a May 10 letter to the Treasury, the head of the European Union Delegation to the U.S. voices opposition to a proposal (included in the Administration's budget proposal) that would deny U.S. tax deductions on reinsurance cessions to affiliated reinsurance companies located outside the U.S. The letter states the proposal is at odds with the principle of a level playing field for all U.S. insurers and reinsurers, by introducing a tax regime that would penalize foreign-owned U.S. insurance companies that reinsure their risks with

## Telecommunications

On May 19, **Sen. Kay Bailey Hutchison (R-Texas)** submitted a letter to the **Federal Communications Commission ("FCC")**, criticizing the decision to reclassify its regulation of broadband services. The decision to reclassify its jurisdiction came as a result of a decision by the U.S. Court of Appeals in D.C. that invalidated the jurisdictional construct the FCC used to regulate broadband services. The decision to reclassify is almost certain to come under fire by legal challenges from broadband providers.

On Thursday, May 20, the FCC released a report that did not include a definite verdict on the state of competition in the wireless communications industry. The report did note that AT&T and Verizon together have 60 percent of the market. Wireless providers are worried that the report will be used by the FCC to impose more regulations on the industry.

On Friday, May 21, the **Federal Trade Commission ("FTC")** voted 5-0 to close the probe on Google, Inc.'s proposed acquisition of AdMob, Inc., clearing the way for the purchase. The commission decided that it lacked reason to believe the merger would result in a lessening of competition.

---

## Defense

Late Thursday, May 20, the **House Armed Services Committee** approved **HR 2136, the Defense Authorization Bill**, by a vote of 59-0. The bill would authorize \$159.3 billion in FY2011 for fighting the wars in Iraq and Afghanistan as well as \$33 billion for the rest of FY2010. The committee defeated an attempt by **Rep. Randy Forbes (R-Va.)** to prevent the use of funds to transfer military detainees from Guantanamo Bay to the U.S. The bill would continue funding an alternative engine for the F-35 aircraft. The committee approved a 1.9 percent pay raise for military personnel. The bill also would increase funding for special forces.

## Offices

Atlanta  
 Austin  
 Chicago  
 Dallas  
 Houston  
 London  
 Los Angeles  
 New Orleans  
 New York  
 Sacramento  
 San Francisco  
 Washington, DC

## Insurance (cont'd.)

affiliated foreign companies and could result in higher premiums for U.S. policyholders.

**The National Association of Insurance and Financial Advisors**, the **Council of Insurance Agents & Brokers**, the **Independent Insurance Agents & Brokers of America** and the **National Association of Health Underwriters ("HHS")** on May 14, to provide comments regarding Medical Loss Ratios under the health reform laws. The Associations urge the HHS to consider and account for the significant positive impact on quality and health outcomes that disease and case-management programs provide. The Associations also assert that in the small business and individual market, health plans include commissions in their premiums, but pass 100 percent of these funds along to independent agents and

brokers. This practice reduces the health insurance system's overall operational costs and it would be counterproductive for the MLR provisions to eliminate this cost-saving administrative convenience according to the Associations.

In recent testimony before the **House Agriculture Committee** hearing to review agriculture policy in advance of the 2012 farm bill, an Iowa State University professor stated that the crop insurance program supports the crop insurance industry as much as, or more than, it supports production agriculture. The professor asserts that new programs passed in the 2008 farm bill show that Congress recognizes the need for a new approach and the next farm bill represents an opportunity to push reform further and more completely.

## Pensions/Retirement

A provision to allow some military medical retirees with less than 20 years of service to collect retirement and **Department of Veterans Affairs** disability pay concurrently for 2 years was added to the tax extenders bill. The provision would cost \$686 million over 10 years. The bill provides that in FY2011 military medical

retirees that are deemed to be 90 to 100 percent disabled would receive both retiree pay and disability pay. In FY2012, those deemed to be 70 to 80 percent disabled would receive both, and any military person 30 percent disabled or more would be eligible to retire.

## Tax

On Thursday, May 20, the House and Senate released their compromise on **HR 4213, the American Workers, State and Business Relief Act of 2010**, the package of tax cuts and social spending. The \$200 billion bill would increase the deficit by \$133.7 billion over the next 10 years. Only 30 percent of the tax cuts and spending are offset. The rest have been deemed emergencies or exempt from the pay-go rules. In order to hopefully pass the bill before Memorial Day recess, the House is expected to vote on the bill on Wednesday. The Senate had previously planned to hold cloture on the bill as early as Thursday, May 27, but negotiations are continuing, and it is unclear

whether Democrats will be able to meet their self-imposed deadline.

Included in the tax extenders bill is a proposed change in the treatment of "carried interest" earned by real estate investors, venture capitalists, and private equity fund managers. In the provision, 75 percent of carried interest would be treated as income and be subject to higher taxes. The remaining 25 percent would be treated as capital gains. The bill does include transition relief through 2013. The provision is estimated to raise \$18.7 billion in revenue.

## Transportation and Infrastructure

On Thursday, May 20, the **House Energy and Commerce Subcommittee on Commerce, Trade, and Consumer Protection** approved a bill by voice vote that would impose a host of new safety requirements on automobile manufacturers. One provision of the bill would create \$3 user fees – raised to \$9 in FY2013 – that would help fund the **National Highway Transit**

**Safety Administration's ("NHTSA")** auto safety programs. The bill does not include two contentious provisions; one provision would increase the maximum civil penalties NHTSA could levy against automakers and the other would have provided the agency with "imminent hazard" authority to quickly recall vehicles.