

Regulatory Alpha

The Weekly Regulatory Update For Institutional Investors
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Public Insight

Dear Clients and Friends of Public Insight,

We're pleased to send you a special Feb. 12 edition of **Regulatory Alpha***, a few days early. Please note that due to the President's Day holiday, the U.S. Congress will be in recess next week.

In this issue, we provide sector-by-sector updates of the key policy and regulatory developments that we believe may have impacts on your portfolio and be relevant to your investment decision-making processes.

Please feel free to contact us if we can be of assistance in any way.

Sincerely,

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*Important Information: Please see the bottom of this report for all disclaimer/disclosure information. We thank our colleagues at Dow Lohnes Government Strategies in Washington, D.C. for their contributions to this update.

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Public Insight's Regulatory Alpha
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ECONOMIC REGULATION AND OVERSIGHT

Blue Dogs Push for Spending Cap

Blue Dog Democrats are expected to introduce a bill that would cap discretionary spending at specific levels. Although President Obama has proposed a spending freeze on discretionary spending in next year's budget, this proposal would go beyond the President's freeze by providing for spending cuts. The Blue Dog Democrat Coalition has 54 members and enough votes to block any budget resolution.

House Dems Devise Tax Strategy

House Democrats are launching an initiative to portray a potential tax increase as a way to reduce the nation's record budget deficit. Many House Democrats support allowing President Bush's tax cuts to expire on those making more than \$250,000 per year. However, they would like to keep tax cuts in place for those making less than \$250,000, which would require the House to approve legislation that splits the third-top tax rate bracket.

However, some conservative House Democrats, such as Reps. Mike McMahon (NY) and Bobby Bright (AL), would like the Bush tax cuts to be extended for all Americans.

Boehner, Cantor Urge Obama to Take More Action on Deficit

On Tuesday, at a closed-door meeting at the White House, House Majority Leader John Boehner (R-OH) and Minority Whip Eric Cantor (R-VA) urged President Obama to submit a rescission order on already appropriated funds. Boehner and Cantor promised that the GOP would provide the 88 votes required to force a floor vote on a rescission order. The order would force votes on numerous spending cuts.

Small Business Confidence Rises

According to the International Federation of Independent Business optimism index, confidence among U.S. small businesses increased in January for the first time in three months. This was due to a more positive sales outlook.

Reid Rejects Baucus-Grassley Jobs Bill

On Thursday morning, the Senate Finance Committee's top members, Chairman Max Baucus (D-MT) and Ranking Member Charles E. Grassley (R-IA), announced a jobs bill that included small business tax breaks and other tax provisions, including an extension of the research and development tax credit.

However, according to *The Politico*, Senate Majority Leader Harry Reid "killed the bill after hearing complaints from members of his own caucus who argued that [Sen. Baucus] had gone too far beyond the core goal of job creation in order to win Republican support." He also said he did not think the Baucus-Grassley bill would do enough to show the voters that the Senate was serious about addressing unemployment. Thus, Leader Reid rewrote the bill and it now focuses on four components: (1) tax credits for employers who hire new workers; (2) a provision allowing businesses to write off the cost of capital investments; (3) Build America Bonds, which allow state and local governments to lower their borrowing costs; and (4) a one-year extension of funding for transportation programs in the Surface Transportation Act. On Thursday night, Leader Reid filed a cloture motion to limit debate on the bill, H.R. 2847.

Bernanke Plans for End of Record-Low Interest Rates

Federal Reserve Chairman Ben Bernanke was to testify before the House Financial Services Committee on Wednesday, but the hearing was canceled due to the treacherous Washington weather. However, Bernanke released the testimony he submitted to lawmakers, which was a carefully crafted explanation of how the central bank plans to withdraw fiscal stimulus. Fed officials said the tightening will begin with a modest increase to the federal-funds interest rate, but they emphasized that interest rates will remain low for quite awhile. The Fed plans to use different approaches to dry up excess liquidity and not rely entirely on interest rates. However, Bernanke said that the timing of the end of current record-low interest rates would ultimately depend on economic conditions.

Dodd, Corker to Lead Financial Reform in Senate

On Thursday, Senator Chris Dodd (D-CT), Chairman of the Senate Banking Committee, announced that he would negotiate with freshman Senator Bob Corker (R-TN) to construct the Senate's financial reform legislation. This announcement follows last week's news that Chairman Dodd's negotiations with Senate Banking Ranking Member Richard Shelby (R-AL) had reached an "impasse." Chairman Dodd said that he called Senator Coker on Tuesday night to ask for his help and the two met on Wednesday night.

White House Releases Annual Economic Report

On Thursday, the White House released its annual Economic Report of the President. According to the White House, job growth will be slower than in past economic recessions. The White House predicts that the U.S. economy will add jobs at a rate of 95,000 per month in 2010 and the jobless rate will average 10 percent for the year. The jobless rate is expected to fall by almost 1 percent annually until 2015, when it is projected to fall to 6 percent.

Economy Faces \$300B Loss on Commercial Real Estate Investments

On Wednesday night, Elizabeth Warren, head of the Congressional Oversight Panel over the \$700 billion bailout package, said that the economy faces up to \$300 billion over the next four years in potential losses on commercial real estate investments. Those losses are expected to affect mostly smaller and regional banks. Her statement was in response to an oversight panel report that examined \$1.4 trillion in loans that will likely face refinancing in the next four years.

Euro Countries Pledge to Support Greece

Greece's debt burden and wide fiscal deficits have sparked fears of a sovereign default among Euro-zone countries. These countries have agreed to "take determined and coordinated action if needed to safeguard the financial stability in the euro area as a whole," said European Council President Herman Van Rompuy. However, the EU has not made an offer of firm financial aid to Greece. "All in all, the Euro-zone countries today have tried to put a safety net under the Greek debt problems without specifying what the safety net could look like," said Carsten Brzeski at ING Financial Markets. "In terms of explicit European action, nothing has been decided, nothing has been ruled out."

Divide over Consumer Protection Agency Continues

The most controversial piece in the financial reform legislation debate continues to be a proposal for a new consumer protection agency. Creation of such an agency is a key piece of the Obama administration's plan for financial reform and is included in the House's financial reform bill, which passed in December with only Democratic support. Senate Banking Chairman Chris Dodd (D-CT) also supports the establishment of an independent consumer protection regulator. It is likely that any new consumer protection regulator would reside within an existing government agency, such as the Treasury Department. The financial industry, and many Republicans, argue that the new agency would be unnecessary and expensive.

Legislation Introduced

H.R.4620: To amend the Internal Revenue Code of 1986 to encourage hiring unemployed individuals.

- **Sponsor:** [Rep McNerney, Jerry](#) [CA-11] (introduced 2/9/2010)
- **Committees:** House Ways and Means
- **Latest Major Action:** 2/9/2010 Referred to House committee. Status: Referred to the House Committee on Ways and Means.

HEALTH CARE REFORM

States Move Forward on Health Care Reform

State lawmakers in at least three dozen states are moving forward with a series of measures aimed at preempting whatever health care legislation might come out of Washington. House Energy and Commerce Committee Chairman Henry Waxman (D-CA) said that states would be preempted from blocking Congressional action.

However, there is action on both sides. The California State Senate just approved legislation that would establish a state-run, single-payer health care system. But, right-leaning states such as Virginia are moving legislation to prevent the federal government to mandate that individuals secure insurance coverage or require businesses to provide it.

Obama Suggests Health Care Summit

During a pre-Superbowl interview with Katie Couric, President Obama invited Republicans in Congress to a half-day summit on the subject to be televised later this month.

According to *The Politico*, Democrats and Republicans have no expectation the half-day meeting can “break a bitter yearlong standoff.” House Minority Leader John A. Boehner (OH) and Minority Whip Eric Cantor sent a letter to White House Chief of Staff Rahm Emanuel that signaled that the GOP might refuse to participate in the health care summit. According to the letter, “If the starting point for this meeting is the job-killing bills the American people have already soundly rejected, Republicans would rightly be reluctant to participate.” Democrats indicated that they are not willing to re-start the health care legislative process from scratch.

FLOTUS Introduces Child Obesity Platform

On Tuesday, First Lady Michelle Obama formally announced her childhood obesity initiative. Her plan includes improving the nutritional quality of school meals, encouraging children to exercise more, and providing healthy, affordable food to rural areas and the inner-city. The initiative will bring together Cabinet members, media personalities, sports figures, the medical community, and non-profit organizations.

Sen. Gregg Welcomes Health Care Talks

Senator Judd Gregg (R-NH) sent a letter to President Obama that welcomed the proposed bipartisan health care summit, saying it will be a chance for “constructive dialogue.” Gregg is promoting his health care approach, which is focused on preventative care and guaranteed catastrophic coverage for all families. According to *The Politico*, Gregg said on Wednesday “...I’m ready to sit down and be helpful.”

BANKRUPTCY, CORPORATE TAXATION AND EXECUTIVE COMPENSATION

Senate Passes Bill to Relax Some Tax Shelter Penalties

On Tuesday night, by voice vote, the Senate passed legislation that would relieve small businesses of penalties incurred for participating in certain tax shelters. The bill would set the penalty at 75 percent of the tax benefit received, with a minimum for corporations of \$10,000 and a maximum of \$200,000. The amounts are half that for individuals. Bill supporters included Finance Chairman Max Baucus (D-MT), Charles E. Grassley (R-IA), Pat Roberts (R-KS), Michael Crapo (R-ID), and Ben Nelson (D-NE).

House Ways and Means Oversight Subcommittee Chairman John Lewis (D-GA) has introduced companion legislation in the house, H.R. 4068, but neither the committee nor the full House have considered it.

Obama Defends Bank Chiefs Bonuses

When asked by *Bloomberg BusinessWeek* whether large bonus payouts were acceptable, President Barack Obama said he does not begrudge the \$19.4 million bonus paid to the chief executive of JPMorgan Chase, Jamie Dimon, or the \$9 million paid to the head of Goldman Sachs, Lloyd Blankfein. President Obama said that although it is “an extraordinary amount of money” for Main Street, “there are some baseball players who are making more than that and don't get to the World Series either, so I'm shocked by that as well.” He sought to combat perceptions that his administration is anti-business, and trumpeted the influence corporate leaders have had on his economic policies.

However, President Obama's left-leaning supporters are upset by these remarks. In response, the White House press team posted an entry to the White House blog to clarify the remarks, saying that President Obama does not agree with the big bonuses and has been saying the same thing dating back to the 2008 campaign.

Brown Introduces Bonus Bill

On Thursday, Sen. Sherrod Brown (D-OH) announced the details of a new bill to tax bonuses “given to executives at firms that received financial help from U.S. taxpayers and use the revenues to help small businesses create jobs.” Under Brown's proposed legislation, recipients of bonuses would pay a 50 percent excise tax on anything they receive over \$25,000 if their firm received money from the Troubled Asset Receipt Fund (TARP).

Firms like Goldman Sachs, which have repaid the government what they received, would still see their employees hit by Brown's proposed tax.

CLIMATE CHANGE/ ENVIRONMENT

Alternatives to Cap-and-Trade Gain Steam

According to the Editorial Pages of *The Washington Post*, an alternative climate change proposal, the CLEAR Act, is gaining support. The CLEAR Act is sponsored by Sens. Maria Cantwell (D-WA) and Susan Collins (R-ME). It would cap the amount of carbon the United State produces and sell pollution permits to those who produce or import dirty fuels. Suppliers would pass these costs to customers, but the government would rebate 75 percent of the revenue from the permit auctions back to the American public.

It was also reported by *The Washington Post* that Senator Lisa Murkowski (R-AK) may propose a simple tax on carbon, with all proceeds returned to taxpayers via a cut in payroll taxes.

Climate Change Opponents Say Winter Weather May Stop Bill's Progress

Has the D.C. snowstorm put a “freeze” on the progress of climate change legislation? Senate Energy and Natural Resources Committee Chairman Jeff Bingaman (D-NM) said that the blizzards that

shut down Washington, D.C. this week make it more difficult to argue that global warming is an immanent danger. "People see the world around them and they extrapolate," he said. "I think that it's hard to see [how] an economy-wise cap-and-trade [proposal] of the type that passed the House could prevail." Chairman Bingaman said a more limited alternative could have a chance. Prior to the snowstorm, Senators Mary Landrieu and Kent Conrad acknowledged that the cap-and-trade bill is dead. Even Senate Environment and Public Works Chairwoman Barbara Boxer, whose committee approved a cap-and-trade proposal last year, said that there are not 60 Senate votes in support of cap-and-trade.

However, the Associated Press released an article on Wednesday arguing that global warming may make violent snowstorms more common.

Graham Pushes Cap-and-Trade

South Carolina Republican Sen. Lindsey Graham (R-SC) criticized suggestions of dropping cap-and-trade in favor of a scaled-down energy bill, saying "the idea of not pricing carbon, in my view, means you're not serious about energy independence." This comes as Sen. Judd Gregg (D-NH) said, "I think cap and trade has a long road here obviously, and there's a lot of good initiatives on energy policy that are on a shorter track and will hopefully be pursued aggressively."

NOAA to Create New Climate Service

On Monday, the Obama administration announced that the National Oceanic and Atmospheric Administration (NOAA) will become the focal point for climate change information and services. Commerce Secretary Gary Locke said that NOAA is launching a separate unit, NOAA Climate Service, to address climate change. The NOAA Climate Service will have a web portal (www.climate.gov) that will be the single entry point for the agency's data on climate information, products, and services. The Climate Service will also provide "user-friendly" information to help government and businesses adapt to climate change.

House Republicans File Suit Against EPA

Several organizations have initiated legal action against the Environmental Protection Agency (EPA) since it issued a finding in December that greenhouse gases qualify as dangerous pollutants under the Clean Air Act ([PL 101-549](#)). That finding triggered a requirement that the agency begin moving to regulate the emissions as soon as next month.

Congressional Republicans have been working to advance legislation that would block the EPA's ability to regulate greenhouse gases. However, President Obama would likely veto any such legislation. On February 10, a group of 13 House Republicans joined with 17 companies to file a lawsuit challenging the endangerment finding, alleging that it was based on faulty science. Experts say the Republicans' lawsuit is unlikely to gain legal traction because it would ask courts to reverse a 2007 Supreme Court decision finding that greenhouse gases are a pollutant and directing the EPA to determine whether they threaten the public.

BROADBAND, BROADCAST AND INTELLECTUAL PROPERTY

FCC Argues for More Spectrum

The Federal Communications Commission (FCC) is again suggesting that more spectrum will be needed to cope with increased wireless broadband demand. The FCC voiced its concern over the potential impact that Apple's new iPad and other devices like it will have on wireless networks.

Qwest Reconsiders Broadband Stimulus

Because of a change in rules in how the Rural Utilities Service (RUS) and National Telecommunications and Information Administration (NTIA) will dole out the second round of broadband stimulus funding, RBOC Qwest may apply for broadband funding during the second round. If it does so, it would be the first regional Bell operating company to apply for funding. Qwest, along with AT&T, Verizon, and cable MSO Comcast, declined to go after the first round of stimulus funding because they thought the rules were too complex.

Genachowski: “We’re not going to regulate the Internet”

In an interview with the Wall Street Journal, Federal Communications Commission (FCC) Chairman Julius Genachowski defended the agency’s plans to mandate net neutrality by regulating wireline and wireless Internet access lines but not Internet content. Genachowski justified this distinction by referencing the Commission’s historical responsibility for regulating communications lines. “I don’t see any circumstances where we’d take steps to regulate the Internet itself,” Genachowski said Tuesday, during a meeting with Wall Street Journal reporters and editors. “I’ve been clear repeatedly that we’re not going to regulate the Internet.”

Google Pushes into Super-Fast Broadband Access

Google is planning to build an ultra-high-speed 1-gigabit per second fiber-to-the-home Internet access network that will reach 50,000 to 500,000 people as a test bed for fiber network buildout and advanced Internet-based technologies. Google will adhere to net neutrality rules on this network and will allow consumers to choose between multiple service providers for access. Federal Communications Commission (FCC) Chairman Genachowski issued a statement in strong support of Google’s announcement.

Legislation Introduced

H.R.4619: To amend the Communications Act of 1934 to create a pilot program to bridge the digital divide by providing vouchers for broadband service to eligible students, to increase access to advanced telecommunications and information services for community colleges and head start programs, to establish a pilot program for discounted electronic books, and for other purposes.

- **Sponsor:** [Rep Markey, Edward J.](#) [MA-7] (introduced 2/9/2010)
- **Committees:** House Energy and Commerce
- **Latest Major Action:** 2/9/2010 Referred to House committee. Status: Referred to the House Committee on Energy and Commerce.

AUTO INDUSTRY

Opel Unveils Turnaround Plan

GM’s European unit Opel has announced its turnaround plan. Opel plans to become profitable in 2012 by cutting capacity 20%, eliminating 8,300 jobs, and receiving \$3.7 billion in loans or loan guarantees from European governments. GM is also looking to an eventual recovery of the European auto market to help increase sales and profits.

Additionally, GM plans to refresh 80% of Opel’s lineup, spend EUR1 billion on clean, fuel-efficient powertrains, and introduce a new small car. The plan, GM says, will cost EUR11 billion, EUR2.7 billion of which GM has requested from Germany and other European governments.

ESTATE TAX

States Race To Clean Up Congress’ Estate Tax Mess

Instead of waiting on Congress to act, the states are racing to come to the aid of families whose estate plans have been thrown into disarray by the January 1 lapse of the federal estate tax. States are enacting "emergency" bills to deal with the situation.

Most of the new emergency laws would set a default rule for interpreting wills and trusts while the federal estate tax is repealed, if the document itself doesn't spell one out. The rule: any tax terms or formulas should be read as if the estate tax law of 2009 were still in effect. The proposed emergency laws also typically include a backstop provision allowing any potential beneficiary or executor to go to court, within a year from the date of death, if he or she believes that this default is not what the deceased really wanted.

LABOR & PENSIONS

Senate Stops Craig Becker Nomination

On Tuesday afternoon, labor lawyer Craig Becker's nomination for a seat on the National Labor Relations Board failed, as a few Senate Democrats joined a unified Republican front to block a key Obama White House nomination.

The vote was 52-33 — 60 votes were required to proceed on the nomination. Fifteen senators missed the vote when it became clear that Becker would fall well short of the 60 needed to break a filibuster. Becker has strong union backing, but Republicans and a few conservative Democrats complained he was "too cozy with Big Labor."

President Obama was urged to consider recess appointment for Becker while Congress is on its President's Day recess next week. However, after a statement made by President Obama on Thursday, it appears that he will not make a recess appointment.

Legislation Introduced

S.3006: A bill to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to allow multiemployer plans to amortize losses from certain fraudulent investment schemes over a 40-year period.

- **Sponsor:** [Sen. Schumer, Charles E.](#) [NY] (introduced 2/9/2010)
- **Committees:** Senate Finance
- **Latest Major Action:** 2/9/2010 Referred to Senate committee. Status: Read twice and referred to the Committee on Finance.

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