



ML
STRATEGIES

Jason M. Rosenstock
Direct dial 202 434 7478
JMRosenstock@mlstrategies.com

Abby Matousek
Direct dial 202 434 7329
AMatousek@mlstrategies.com

ML Strategies, LLC
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 USA
202 434 7300
202 434 7400 fax
www.mlstrategies.com

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FINANCIAL SERVICES LEGISLATIVE AND REGULATORY UPDATE

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Leading the Past Week

Despite the fact that President and the Speaker apparently met yesterday, the week concluded with no apparent progress for a deal on the fiscal cliff, and each passing day only heightens the probability that the country will “go over.” The stalled debate this past week was juxtaposed against another positive jobs growth report on Friday but there seems to be a growing consensus that the uncertainty emanating out of our nation’s Capital is going to eventually harm the country’s economic confidence.

Late last week, Senate Leader Harry Reid set in motion the debate to extend full deposit insurance for banks, and the issue, which galvanized banks, credit unions and money market funds, will come to a head this afternoon. In addition to dealing with current issues, we continue to learn the make-up of the key committees for next year, as both sides made announcements. Although not formally confirmed, it appears that Senators-elect Warren and Haitkamp, along with Joe Manchin will be joining the Senate Banking Committee next year.

With only two weeks left before Christmas, it is looking like it will be a bumpy ride for the rest of the way out, and it will be a Christmas miracle if Congress is able to leave town with its work completed before the 24th.

Fiscal Cliff

Last week began with Republicans formally rejecting President Obama’s opening bid to resolve the fiscal cliff and then counteroffering with their proposal to cut \$2.2 trillion through a combination of spending cuts, entitlement overhauls and \$800 billion in new tax revenue. This proposal was almost immediately rejected by the White House and on Friday, House Speaker John Boehner (R-OH) said that the White House “wasted another week” worth of negotiations, and signaled that taxes continue to be a sticking point between the two sides. In his weekly

address, President Obama indicated that Democrats will be willing to negotiate on some aspect of the tax debate, but remained firm on his proposal to increase taxes on the wealthiest Americans.

Interestingly, as revenues continuing to be the sticking point between the two parties, it seems like the Democrats are digging in, as the Chairman of the Senate Finance Committee, Max Baucus (D-MT) signaled that any plan to avert the fiscal cliff must also include immediate and significant revenue raisers. Baucus said increasing tax revenue will be key to setting the stage for an overhaul of the tax code in the coming year and also implied that he is developing a 'plan B' deficit reduction plan.

As fiscal cliff negotiations drag on, new proposals to avert the cliff continue to be floated. For example, at a November 30th panel discussion sponsored by Senator Tom Harkin (D-IA), proponents of a financial transactions tax (FTT), signaled they would like to see it included as a revenue raiser in any must-pass December legislation. An FTT, as set in legislation authored by Harkin, would levy a 3 cent tax on every dollar in certain securities trades and has been scored by the Joint Committee on Taxation raising \$350 billion over 10 years. However, the proposal faces general Republican opposition as the party is also taking [aim at a similar tax in France](#).

With negotiations dragging on and the framework of a final deal still unclear, House Majority Leader Eric Cantor (R-VA) announced the House will stay in session through December 17th, though it is rumored that the Congress might be in until Christmas eve and then have to come back during the week before New Years to finish up some loose ends.

Legislative Branch

Senate

New Democratic Members to Senate Banking Committee Reported

Even as Senate Banking Committee Chairman Tim Johnson has not committed to running for re-election, saying last week that "it is far too soon" to say if he will run again, it appears that the Democratic membership on the Senate Banking Committee may be finalized as Huffington Post reported that Senators-elect Elizabeth Warren (D-MA) and Heidi Heitkamp (D-ND) and Senator Joe Manchin (D-WV) will be joining the Committee. Although formal announcements will be made in January, and there could still be additional movement as part of transitions on other committees, the announcement of these three Senators seems to be final.

Reid Pushes Bill to Extend Unlimited Deposit Insurance

Last week Majority Leader Reid (D-NV) moved to limit debate on a [S. 3637](#), which would extend the Transaction Account Guarantee (TAG) program for an additional two years, setting the stage for a test vote on December 10th. Although earlier prospects for adding a provision favored by the credit unions seemed to have faded, the situation continues to remain very fluid. Even if the Senate passes TAG as a stand-alone measure, it is unclear if the House will follow suit. In comments to the Wall Street Journal made last week, Majority Leader Eric Cantor said he would oppose any effort to extend the TAG program. While there is speculation that the

measure could be added to other House passed measures, such as the ATM disclosure bill or the CFPB privacy measure, the entire situation remains exceptionally fluid.

The debate on TAG comes after the FDIC said last week, during the announcement of its Third Quarter banking profile, that, as a general matter, they believe banks are well positioned to manage an expiration of the TAG program should it expire at the end of the year. How the FDIC's analysis will impact the Senate vote on Monday may only be determined after the fact.

Senate Banking Hears from HUD on State of FHA

On December 6th, at a Senate Banking hearing on the FHA's response to fiscal challenges, Housing and Urban Development (HUD) Secretary Shaun Donovan defended the FHA and updated the Committee on recent steps taken to boost capital reserves. Donovan said it remains unclear if the FHA will need a bailout—which has been widely speculated since HUD report projecting a \$16.3 billion shortfall in the main fund. Though the agency is not on firm financial footing, Donovan told lawmakers that the FHA was successful in meeting needs and stabilizing the mortgage market during a time of financial distress.

In response to Donovan's remarks, Chairman Johnson (D-SD) said "much more needs to be done" to ensure the stability of the FHA. While Johnson seemed ready to act to shore up the FHA, Republicans on the panel, including Ranking Member Richard Shelby (R-AL) called for Congress to mandate an additional "layer" of risk management at the FHA, including beefed up underwriting practices. Earlier in the week, the American Action Forum, a conservative group, released a [white paper](#) on housing finance overhaul, advocating for a "risk-sharing" scheme involving a limited federal safety net and private options. AAF wrote that "having a limited government backstop during times of crisis may be the only feasible way of putting GSE reform on the legislative agenda." With Jeb Hensarling (R-TX), a long time proponent of GSE reform assuming the Chairmanship of the House Financial Services Committee next year, we fully anticipate this to be an issue the Committee tackles.

Republican Senators Continue to Block Treasury Nominee

On December 3rd, Senators Chuck Grassley (R-IA) and Mark Kirk (R-IL) said they would continue their hold on the nomination of Richard Berner to head Treasury's Office of Financial Research until Treasury Secretary Geithner sufficiently answers questions on his role in the LIBOR scandal. While the Treasury Department sent a [letter](#) on November 30th addressing Geithner's role in LIBOR, Grassley said he felt the response "incomplete."

DeMint Drops Opposition to Legislation to Increase CFPB Privacy Bill

On December 3rd, Senator Jim DeMint (R-SC) removed his hold on legislation that would provide privacy and attorney-client privilege protections to information submitted to the CFPB. DeMint, who also shocked many by announcing last week that he will be leaving the Senate to head the Heritage Foundation, had been withholding support in hopes of forcing a vote on the repeal of the Dodd-Frank Act. DeMint noted that the request made less sense after Democrats gained seats in the election and said he thinks they can "work it out." The CFPB privacy legislation is currently tied to another important piece of legislation for banks, a bill to remove

penalties for improper ATM signage, and may ultimately be paired with legislation to extend the TAG program.

House of Representatives

Makeup of the 113th Congress Financial Services Committee Emerging

While it has been known for some time that Representatives Jeb Hensarling (R-TX) and Maxine Waters (D-CA) will be taking the reins of the House Financial Services Committee, the makeup of the rest of the rest of the Committee began to emerge this week. Republican leadership announced that they were removing Representative David Schweikert (R-AZ) from the Committee for deviating from the party line too often and adding Representatives Mick Mulvaney (R-SC), Dennis Ross (R-FL), Randy Hultgren (R-IL), Marlin Stutzman (R-IN) and Representative-elect Ann Wagner (R-MO). Democrats have not yet announced who will be joining the committee in 2013, but it is rumored that Terri Sewell (D-AL) and John Delaney (D-MD) are among those expected to be added.

Bill to amend Gramm-Leach-Bliley Act Privacy Notices Pulled from Suspension Calendar

Last week the House was expected to approve H.R. 5817, the Eliminate Privacy Notice Confusion Act, which would eliminate annual privacy policy notifications requirements for financial institutions if there had not been any changes to the policy during the year. The bill was debated on the suspension calendar, which is reserved for non-controversial issues. The measure was strongly supported by the Credit Union National Association, who had argued that the measure was necessary to eliminate a costly, unnecessary compliance burden for credit unions, as well as other financial institutions. Despite CUNA's support, the bill was pulled from consideration and not voted on, though it may come up for a vote this week. Interestingly, during debate, Rep. Joe Barton (R-TX), a leading voice on privacy issues, offered his opposition to the measure, stating that Congress should not be overturning measures designed to enhance privacy protections.

Executive Branch

Federal Reserve

Fed to Consider Rules to Regulate Domestic Operations of Foreign Banks

On December 14th, the Federal Reserve will convene in an [open meeting](#) to vote on proposed rules to regulate the U.S. operations of foreign banks. In late November, Fed Governor Tarullo [signaled](#) that large foreign banks operating in the U.S. should be required to comply with same or similar rules to those that govern domestic banks.

SEC

Aguilar Floats Re-Proposal of JOBS Act Investor Ruling

On December 3rd, speaking at an AICPA conference, Commissioner Luis Aguilar said the SEC should re-propose the JOBS Act rule on private offerings, noting that the re-proposal is "the subject of a lot of discussions." In November, Representative Patrick McHenry (R-NC) sent a [letter](#) to Chairman Schapiro expressing concerns on the delay of the rulemaking and changing the rulemaking process from an interim final ruling to a formal comment process. Some published reports indicate that Schapiro reportedly decided to move away from the interim final

rulemaking and redraft the rule due to concerns she would be labeled “anti-investor” as her legacy. Whether true or not, it is clear that some Republican Members of Congress, like McHenry, are urging for the rule to be finalized before the end of the year, while Democrats are pushing for a re-proposal.

Staff Preparing Recommendations on Money Market Fund Regulations

In an interview on December 6th, Commissioner Luis Aguilar said that SEC staff are near completion on recommendations on how to treat money market funds. The SEC has thus far been divided over the issue of how to regulate the funds and a proposal by outgoing Chairman Schapiro was unable to move forward due to lack of consensus on the Commission. The report, which was requested in September may provide some cover for how the SEC eventually responds to the FSOC’s instructions about this issue.

FDIC

Quarterly Banking Profile Shows Gains

The FDIC’s quarterly banking profile, which was released on December 4th, found that banks’ earnings were higher in the third quarter of this fiscal year than in any other quarter over the past six years. Third quarter earnings were \$37.6 billion, which amounts to 6.6 percent, or \$2.3 billion, more than in the second quarter. In addition, the FDIC’s “problem list” of banks fell below 700 for the first time in three years with a total of 694 institutions remaining on the list. Of these “problem banks”, fewer failed this quarter than in previous quarters as well.

FDIC Systemic Risk Advisory Committee to Meet

On December 10th, the FDIC’s Systemic Risk Advisory Committee will [meet](#) for a panel discussion on issues related to the resolution of systemically important financial companies. In one panel, Paul Tucker, a deputy governor of the Bank of England, will discuss cross border cooperation between the U.S. and the United Kingdom. The discussion will come after a joint op-ed between Gruenberg and Tucker in Monday’s Financial Times, where they unveiled cross border regulations designed to tackle “too big to fail” banks. Other topics for discussion include international coordination, resolution plans and orderly liquidation.

Treasury

Closed FSOC Meeting Focuses on Sandy, LIBOR

On December 3rd, the Financial Stability Oversight Council met in a closed meeting which included discussion on ways in which to reform LIBOR and “preliminary lessons learned” from the response to Superstorm Sandy. The Treasury Department said the members of the FSOC received an update on the “broad, global effort to analyze and seek reform of LIBOR and other similar benchmark rates, as well as possible alternatives. The FSOC [will meet again](#) on December 13th in a closed session. Details on the agenda have not been released.

CFPB

CFPB/DOJ Sign MOU to Fight Lending Discrimination

On December 6th, the CFPB [signed a memorandum of understanding](#) with the Department of Justice intended to improve cooperation in the two agencies’ efforts to fight lending

discrimination. The agreement outlines that the two agencies will endeavor to share information, conduct joint investigations and share referrals of information.

DOL

Planning Guidance on Abandoned Plans and Lifetime Income Options – Fiduciary Standard Months Away

On December 6th, the Assistant labor Secretary for the Employee Benefits Security Administration Phyllis Borzi announced that DOL expects to release guidance on abandoned plans and lifetime income options “in the next couple of weeks.” Currently, the abandoned plans program “facilitates the termination of, and the distribution of benefits from, individual account pension plans that have been abandoned by their sponsoring employers.” Borzi also spoke on plans to re-propose the fiduciary rule, saying DOL still has “a lot more work to do” and the re-proposal is still “months and months away.” Still, Borzi said the revision of the fiduciary rule will include a “robust” economic analysis and amendments to prohibited transaction exemptions, among other things.

UPCOMING HEARINGS

On Tuesday, December 11th at 10:30am, in 538 Dirksen, the Senate Banking, Housing and Urban Affairs Subcommittee on Housing, Transportation, and Community Development will hold a hearing titled “Streamlining and Strengthening HUD’s Rental Housing Assistance Programs.”

On Wednesday, December 12th at 10am, in 2128 Rayburn, the House Financial Services Subcommittee on Capital Markets and Government Sponsored Enterprises will hold a hearing titled “Challenges Facing the U.S. Capital Markets to Effectively Implement Title VII of the Dodd-Frank Act.”

On Thursday, December 13th at 9am, in 1300 Longworth, the House Agriculture Subcommittee on General Farm Commodities and Risk Management will hold a hearing titled “Dodd-Frank Derivatives Reform: Challenges Facing U.S. and International Markets.”

On Thursday, December 13th at 10am, in 2128 Rayburn, the House Financial Services Committee will hold a hearing on section 619 of the Dodd-Frank Street Reform and Consumer Protection Act (PL 111-203), known as the Volker rule.