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Venable's Legislative and Government Affairs team welcomes you to this special edition of *Capitol View*, where we will be providing thoughtful analysis of the latest developments from the lame-duck Congress. Beginning in January 2011, *Capitol View* will be published on a monthly basis and will provide news and analysis from Capitol Hill on the issues impacting your business.

Introduction

As the 111th Congress draws to a close and Congress looks to welcome a freshman class of 106 in January, the current House and Senate continues to tie-up loose ends before the lame-duck session adjourns. The most contentious issue of the lame-duck session has been how to address the President George W. Bush-era tax cuts, which are set to expire at the end of this year. Other issues on the agenda for lawmakers include the repeal of the controversial "don't ask, don't tell" policy, ways to reduce the budget deficit and how to revive the expired unemployment benefits. Senate Minority Leader Mitch McConnell (KY) threatened on behalf of Senate Republicans to block any legislation until a deal was struck on the tax provisions. If Congress is able to come to an agreement on President Obama's tax proposal, the possibility of movement and action on other issues before adjournment still remains.

Tax: A compromise on tax cuts, but many uncertainties remain

Earlier in the week, President Obama announced a framework for a bipartisan compromise that has not been well received by his fellow Democrats, especially in the Democratic-controlled House. The announcement came less than a week after House and Senate leaders met with the President and other White House officials. The framework includes a GOP-favored two-year extension of all Bush-era tax cuts in exchange for a 13 month extension of federal unemployment insurance. The proposal also includes the extension of the expired estate tax at a rate of 35 percent, with an exemption for estates valued under \$5 million. There is also a 2 percent payroll tax cut across the board included in the bill. Since the announcement, and as a result of opposition by some members of the Democratic party, President Obama has sent Vice President Biden to the Senate in an attempt to gain Democratic support. The President also held a press conference where he strongly defended his plan and urged the support of lawmakers in order to pass legislation before the lame-duck session ends.

Senate Majority Leader Harry Reid (NV) said he would "do what's best" for the good of the country, but also believes that there is a lot of work to be done in order to build support for the package. Democrats are upset with the Administration for negotiating with Republicans on the extension of the tax cuts for wealthy Americans. The President defended this move, saying that he did not want to see higher rates kick in for everyone on January 1 as well as the expiration of unemployment benefits for those who lost their jobs months ago—both of which, he argued, would happen without a compromise. In an email to congressional allies from the White House Office of Legislative Affairs, the measures in the framework agreement were described as some of the best for "jumpstarting growth and job creation."

In a non-binding vote that was viewed as largely symbolic, House Democrats voted on Thursday to oppose President Obama's package in its current form. This vote comes only a day after Vice President Joe Biden told Democrats that the deal is "take it or leave it". House Speaker Nancy Pelosi (CA) says that she plans to work with the Administration and House colleagues to "improve" the bill before it reaches the House floor. The Senate will begin debating the bill (HR 4853) today, and a cloture vote is scheduled to occur at 3:00 p.m. on Monday. Until lawmakers can come to a final agreement on the package, nothing is truly done until it is done.

Budget Deficit: Bipartisan cooperation needed

One of the biggest issues that our nation is facing is the budget deficit. President Obama's bipartisan fiscal commission released a report that called for deep spending cuts, an increase in the retirement age and an overhaul of the tax code to combat budget deficits and reduce the national debt. The plan would require 14 supporting votes of the commission to push it along for Congress' consideration. While it received only 11 votes, this was more than expected and showed that a resolution is possible if both Democrats and Republicans find a way to work together to solve the budget issue. Though the plan may be dead as of right now, members of the commission are certain that the nation has not seen the last of it.

Only a few days after the plan failed, President Obama announced his bipartisan tax framework and Congressional leaders introduced a \$1.1 trillion bill that would fund the federal government through the remainder of the 2011 fiscal year. Together, the two proposals have the possibility to add more than \$2 trillion to the federal budget deficit.

On Wednesday, the House passed the \$1.1 trillion continuing resolution (CR) that would continue funding the government at the same levels as fiscal year 2010. The Senate is now planning to amend this bill into an omnibus appropriations bill that would include Congressional earmarks, unlike the House version. The bill, which would bundle all the appropriations bills into a single funding package, is being assembled by Senate Appropriations Chairman Daniel Inouye (HI) and would provide approximately \$19 billion more in funding than the House bill. It still remains unclear as to when Senator Inouye will release his spending package. President Obama is in favor of an omnibus package, and White House officials have said that it would help for "the government to get on a prudent fiscal path sooner rather than later."

If Congress does not come to an agreement on the omnibus package, the administration prefers a full-year CR to a short-term one. House Republicans would prefer a short-term CR, because this would provide them with the chance to cut 2011 funding early next year when they gain control of the House.

DREAM Act: Lame-duck vote might be last chance until 2012

The passage of the Development, Relief and Education of the Alien Minors (DREAM) Act would create a path to legal status for young adult children of illegal immigrants if they join the armed forces or attend college for two years. More recently, the bill has been altered slightly as a means to attract new supporters. The most recent version of the bill still includes lowering the cut-off age to 30, as well as keeping the ban on in-state tuition for illegal immigrants.

Last week, the Congressional Budget office released a report that found the bill would reduce the current deficit by \$1.4 billion and bring \$2.3 billion in extra revenue in the first decade. The report also stated the bill's costs would add at least \$5 billion to the deficit after 2021 as beneficiaries qualify for federal entitlements, such as Medicaid and food stamps. Rep. Steven King (R-IA), who is slated to become Chairman of the immigration subcommittee of the House Judiciary Committee, has labeled the bill a "nightmare" because of its costs, while others see it as a way to attract more high-quality recruits to the armed forces.

The DREAM Act passed in a House vote on Wednesday night, but Senate Democrats voted to postpone consideration of the Act in order to vote on the House version of the bill next week. If the legislation is not passed in the lame-duck session, it could possibly be the last chance for an immigration law until after 2012.

START Treaty

President Obama has made Senate approval of the New START treaty between the United States and the Russian Federation a priority before sine die adjournment next week. The treaty would reduce offensive nuclear weapons to 1550 or less for each side—a modest outcome leaving both with more than enough for deterrence. More importantly, the treaty reinstates on-site verification of Russian nuclear forces. Verification has been an important U.S. arms control priority since the START process began under President Reagan, but it expired with the original START treaty last year.

President Obama has the bipartisan support of the chairman and ranking Republican on the Senate Foreign Relations Committee, Senators John Kerry and Dick Lugar. However, because a two-thirds vote of the Senate is required to approve treaties, a determined minority wields more leverage here than with other issues. Under the leadership of Senator Jon Kyl (R-AZ), key Republicans have opposed moving the treaty during the lame-duck session. They argue that more time is needed to deliberate two legitimate concerns.

First, a smaller force makes modernization of our nuclear infrastructure more urgent. The Administration addressed this concern by making \$84 billion available for Department of Energy's nuclear weapons modernization program.

The second concern presents a larger problem. At issue is the longstanding U.S. arms control principle that there should be no linkage between offensive and defensive systems. Any agreement that inhibits the U.S. ability to develop stronger missile defense capabilities is unacceptable to the United States. A lack of clarity on the issue and some of the preamble's language concerns Senator Kyl and his allies. Administration officials maintain that there is no link and that the treaty will not limit missile defense; however, contentions from Moscow suggest otherwise.

The missile defense issue will have to be resolved before many senators will vote for the treaty, and it

would be unwise for the Democratic leadership in the Senate to bring it up unless it can count 67 firm votes in support of START. By the end of next week we will see if this issue was resolved in haste or if it will wait for the 112th Congress.

DADT

The fate of the heavily discussed "Don't Ask, Don't Tell" (DADT) policy banning gays from serving openly in the military was in the hands of Republican senators this past week. The 2011 defense authorization bill, which includes DADT, needed 60 votes in order to bring the bill to the Senate floor for debate. Yesterday, Democrats failed to acquire the necessary votes to move the bill to the floor. Several Republican Senators, including Senator Scott Brown (MA) and Senator Lisa Murkowski (AK) showed signs of support to repeal the ban, but only if they were given an open debate process on the defense bill. Following the defeat, Senator Joseph Lieberman (I-CT) announced that he and Senator Susan Collins (R-ME) would attempt to bring stand-alone legislation to repeal DADT to a vote. According to Lieberman, Senate Majority Leader Harry Reid (NV) will put the stand-alone repeal on the calendar, but only once they have acted on the tax and spending bills.

Last week, the Senate Armed Services Committee held hearings to discuss a Pentagon study about the DADT policy. The study found that allowing openly gay service members would not harm military missions, but the question of whether the law should be repealed is up to Congress. President Obama and Defense secretary Robert Gates have urged the Senate to repeal DADT based on the findings of the study. Senate Armed Services ranking Republican John McCain of Arizona and other Republicans have said that making a change such as repealing DADT in a time of war would add undue stress to combat troops. With the defense bill being blocked from the Senate floor on Thursday, and a continuing battle over President Obama's tax deal, legislative efforts to repeal the policy have likely ended until at least 2012.

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