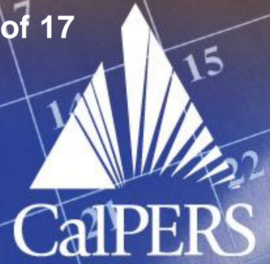

THE MONTH IN WASHINGTON

A Federal Report Provided by LGV&A

MARCH 2013

The sequester went into effect on March 1 after the President and congressional Republicans failed to reach an agreement on how to replace the package of $85 billion in automatic spending cuts this year and $1.2 trillion in cuts over the next 10 years. The measure was crafted as part of a 2011 deal to raise the debt ceiling and was intended to be an arm-twisting mechanism that would force all parties to compromise. Lawmakers did manage to avoid a federal government shutdown by passing legislation to fund the government from March 28 until the end of the fiscal year on September 30. The bill was needed because Congress did not pass a budget to cover all of fiscal 2013, and a "continuing resolution" – a short-term funding measure – expired on March 27. President Obama signed the latest continuing resolution into law on March 26.

ISSUES AND EVENTS

House Panel Examines Health Care Law's Tax Provisions

A House Ways and Means Committee subcommittee heard many criticisms of the tax–related provisions of the 2010 health care reform law during a March 5 hearing.

Ways and Means Oversight Subcommittee Chairman Charles Boustany, R–La., said before the hearing that the nearly 50 tax–related provisions in the law "make it harder for businesses to create good–paying jobs and may adversely affect the quality and accessibility of health care." The hearing included seven witnesses, only one of whom had generally positive things to say about the law.

A pair of businesspeople took aim at several parts of the law, including the employer mandate, with Shelly Sun, co–founder and CEO of Brightstar Franchising, saying the mandate "will have a devastating impact on the economy, will increase unemployment and will exacerbate underemployment." She said that companies near the point of having to comply with the rule will reduce their workforce or the hours worked by individual employees to avoid having to provide coverage, leaving those affected with reduced or no paychecks. She added that the law's tax on insurers will be passed on to customers, meaning that, "Employers that already offer coverage to employees will pay higher premiums for their existing plans as a result of these excise taxes."

Sun asked that the employer mandate threshold be revised to cover companies with 50 full–time employees, rather than 50 "full–time equivalents," and that 40 hours be used as the standard for a full–time employee, rather than 30 hours.

Two witnesses sharply criticized the 2.3 percent tax on medical devices.

"It is important to remember that this is an excise tax based on medical device company revenue, not profits," Dan Moore, chairman of the Medical Device Manufacturers Association, said. "Many companies are having their entire profits wiped away because of the medical device tax. Others aren't even profitable yet, but find themselves still having to pay a tax that is destroying their ability to grow. Regardless of a company's size, success or stage of development of medical technologies, a 2.3 percent excise tax will have a significant impact, and at the end of the day, a negative impact on providers and patients, the people we intend to help."

Douglas Holtz–Eakin, president of American Action Forum and former director of the Congressional Budget Office (CBO), referenced each of these provisions in concluding that the law's "tremendous tax liability will, in my view, most certainly have far–reaching negative impacts on employment growth, wages, and economic growth."

"Job losses and changes from full–time to part–time employment as a result of the employer mandate taxes, medical device tax, and associated taxes are felt more deeply by the not–so–wealthy," Holtz–Eakin said. "Health insurance premium cost increases, encouraged upward by the health insurance premium tax, will hit those just beyond the reach of the 400 percent federal poverty level subsidy threshold the hardest."

The panel's lone supporter of the reform law, Paul Van de Water, senior fellow at the Center on Budget and Policy Priorities, said that the law will expand coverage "in a fiscally responsible way." He noted that CBO has projected that the law will reduce premiums for employer–sponsored health plans and added that, even if there are some additional costs to employers, "economic principles strongly suggest that it would have little impact on hiring decisions. Employers would ultimately pass on any such effect to workers in the form of slower growth in their after–tax compensation."

"All in all, the short–term economic effects of health reform will be small," Van de Water said. "Moody's Analytics terms the law's economic impact 'minor' and says that any disincentives from higher taxes and fees 'will hardly make a difference.' CBO foresees a small net reduction in labor supply, because some people who now work mainly to obtain health insurance will choose to retire earlier or work somewhat less, not because employers will eliminate jobs. That effect could be partly offset by increased incentives to work for people who now face losing Medicaid coverage if they work more."

GOP Senators Seek to Repeal Health Insurance Tax

A pair of Republican senators on March 19 proposed repealing a tax on health insurers that is to go into effect next year.

The tax, which was created by the 2010 Patient Protection and Affordable Care Act, is intended to collect $8 billion in 2014 and $58.8 billion over the next five years. (Governmental entities, employers that self–insure and certain others are exempt from the tax.)

The "Jobs and Premium Protection Act" from Sens. Orrin Hatch, R–Utah, and John Barrasso, R–Wyo., would repeal what they describe as the "costly, unfair and job–crushing" tax.

"Raising taxes on health insurance can only ever lead to higher health care costs, because the price of the tax will be passed on to consumers," Hatch said. "In this economy and with families and businesses struggling to succeed, it's time we repeal this egregious tax once and for all."

Supporters of the tax argue that it is an important funding mechanism for the law's health care reforms, and they do not concede that the costs will be entirely passed on to consumers.

The National Federation of Independent Businesses, which opposes the tax, released a report in March that concluded that, assuming a 3 percent levy, the tax will result in the loss of tens of thousands of private sector jobs every year, reaching as many as 262,000 by 2022. The report cited previous projections from former CBO Director Douglas Holtz–Eakin that the tax will cost an average family almost $5,000 over the next decade.

Lawmakers Propose Employer Mandate Repeal

Lawmakers have introduced legislation that would repeal the employer mandate that was included in the 2010 health care reform law.

The Patient Protection and Affordable Care Act will, starting in 2014, require businesses that have at least 50 employees to make health insurance available to their workers at a cost deemed by the IRS to be reasonable or face possible penalties.

The "American Job Protection Act" was introduced in both the House and Senate to eliminate the mandate that, repeal supporters say, "has already pushed many employers to keep their staffs below 50 or hire part–time workers to avoid" it.

"The employer mandate will freeze hiring for the foreseeable future for our nation's job creators," said Rep. Charles Boustany, R–La., who introduced the bill in the House with Reps. Pat Tiberi, R–Ohio, and John Barrow, D–Ga. "It paralyzes businesses from hiring workers and forces many job–seeking Americans from attaining work."

In the Senate, Finance Committee Ranking Republican Orrin Hatch of Utah and Health, Education, Labor and Pensions Committee Ranking Republican Lamar Alexander of Tennessee proposed the measure.

The legislation is supported by business groups such as the U.S. Chamber of Commerce, the National Federation of Independent Business, the National Association of Manufacturers and the National Retail Federation. While the bill may pass the GOP–controlled House, it almost certainly will not even get a vote in the Senate, where Democrats have the majority.

A similar bill was proposed in the last session of Congress. It did not make it out of committee in either the House or the Senate.

GAO Cites Importance of Cost Containment on Federal Health Care Spending

The effect of the 2010 health care reform law on the federal budget largely depends on whether the measure's cost–containment measures are implemented as planned, the Government Accountability Office (GAO) concluded in a report.

The Patient Protection and Affordable Care Act includes several provisions that are aimed at reducing federal spending, including cutting certain Medicare and Medicaid payments to hospitals in the expectation that more people will have insurance as a result of the law; reducing Medicare payments for productivity gains; and creating the Independent Payment Advisory Board to devise

plans – which would automatically go into effect unless blocked by Congress – to reduce Medicare costs if they were to exceed certain levels.

With all of the law's provisions in place, federal deficits will decrease by 1.5 percent of gross domestic product, according to the report. If cost containment is phased out, however, deficits will increase by 0.7 percent of GDP.

GAO noted that, even though cost-containment measures are in the law, there is no guarantee that they will all go into effect as written, and that, in fact, the CBO and Medicare trustees "have questioned whether the cost–containment mechanisms enacted in PPACA can be sustained over the long term, due in part to the challenges in sustaining increases in health care productivity."

GAO stressed that its projections should be interpreted cautiously, since they are "based on broad sets of assumptions about health care spending and other components of federal spending and revenue. Long–term projections ... are inherently uncertain and future health care costs in particular are difficult to estimate."

It noted that technological change is especially difficult to predict, and this factor, according to studies cited by GAO, accounts for 36 to 65 percent of the growth in per capita health care spending. Other factors driving costs include increases in income (5 to 36 percent); health insurance expansions (10 to 13 percent); health care inflation (10 to 19 percent); increases in administrative expenses (7 to 13 percent); and aging (2 to 7 percent).

Insurers Spend Less than 1 Percent of Premiums on Quality Improvements: Report

Insurers spent less than 1 percent of premium revenues on improving health care quality in 2011 and collected nearly 4 percent in profits, according to a report released by The Commonwealth Fund.

The study found that insurers spent a combined $2.3 billion on activities that were likely to improve health outcomes, prevent hospital readmissions, improve patient safety, reduce medical errors, or increase wellness and health promotion. Just over half of the total amount went toward improving health outcomes.

The 2010 Patient Protection and Affordable Care Act requires insurers in the large group market to spend at least 85 percent of premium revenues on medical claims and quality improvements and those in the individual and small group markets to spend at least 80 percent. Those who fall short are required to refund the difference to policyholders.

The report noted that publicly traded insurers were more likely to owe rebates than those that were not publicly traded, for–profit insurers were more likely than those that were non–profit, and non–provider–sponsored insurers were more likely than those that were provider–sponsored.

The Commonwealth Fund found that, overall, insurers in 2011 spent 84 percent of $305 billion in premiums on medical expenses, 11 percent on administrative expenses, 0.7 percent on quality improvement, and 0.5 percent on rebates to policyholders, leaving 3.9 percent for pre–tax profits.

The organization suggested that the low spending on quality improvements may reflect "the basic dynamic of competitive insurance markets."

“Competing insurers can be expected to focus most on those attributes that the market rewards most strongly,” the report stated. “Consumers certainly care about price and covered benefits. Surely, they also care about quality improvement, but if consumers are not presented with useful quality metrics, it is difficult for them to ‘vote with their feet’ to reward insurers that invest more in quality improvement. Alternatively, quality improvement efforts by insurers that take the form of managed care controls might be viewed negatively by consumers as intruding on the doctor–patient relationship.”

Generic Drug Group Proposes Reforms

The head of the Generic Pharmaceutical Association (GPhA) has written to congressional leaders to urge them to adopt a set of measures “that could save the federal government tens of billions of dollars more in prescription drug costs and help avert the severe cuts called for in sequestration.”

GPhA President and CEO Ralph Neas wrote in letters to the speaker and minority leader of the House and the majority and minority leaders of the Senate that the use of generic prescription drugs produced savings of $193 billion in the United States in 2011, and that that number can be increased in future years “by enhancing competition and constraining – not shifting – costs.”

Neas recommended that Congress:

- Encourage generic drug use by Medicare Part D beneficiaries who receive low–income subsidies.
- Stop brand name drug manufacturers from using Risk Evaluation and Mitigation Strategies (REMS) to deny generic companies samples of their products.
- Prohibit state carve–outs that block generic access.
- Integrate incentives for generic utilization in chronic illness management reforms.
- Eliminate Medicare payment disincentives for the use of lower–cost medications.
- Reduce the exclusivity period for biologics from 12 years to seven years.
- Increase Medicaid payments to states that expand the use of lower–cost drugs.

“The policies we are proposing build on the cost, safety, and access successes that both private and public purchasers have achieved as they have moved to more aggressively utilize generic drugs,” Neas wrote. “Indeed, although generic pharmaceuticals fill 80 percent of the prescriptions dispensed in the U.S., they account for just 27 percent of the total drug spending.”

SEC Charges Illinois with Misleading Investors about Pension Funding

The Securities and Exchange Commission (SEC) on March 11 charged the State of Illinois with securities fraud for providing misleading information about its pension funding.

The SEC charged that, when the State sold more than $2.2 billion in municipal bonds between 2005 and 2009, it “misled bond investors about the adequacy of its statutory plan to fund its pension

obligations and the risks created by the State's underfunding of its pension systems." Illinois agreed to a cease and desist order to settle the charges without admitting any wrongdoing.

"Municipal investors are no less entitled to truthful risk disclosures than other investors," George Canellos, acting director of the SEC's Division of Enforcement, said. "Time after time, Illinois failed to inform its bond investors about the risk to its financial condition posed by the structural underfunding of its pension system."

Illinois's pension systems are among the worst–funded in the United States, with, according to some measures, a funding ratio of around 40 percent and a combined shortfall of nearly $100 billion. The SEC traced its funding problems to 1994 legislation that made several changes to the system, including stretching the funding horizon over 50 years, instead of the standard 30, setting a 90 percent funded target, instead of the common 100 percent, and, in general, adopting a "methodology [that] structurally underfunded the State's pension obligations and backloaded the majority of pension contributions far into the future."

While this, in itself, would not be a concern for the SEC, the State, according to the commission, indicated to investors that its pension liabilities could increase because of factors such as poor investment performance, inflation and legislative changes, but it "misleadingly omitted to disclose the primary driver of the increase – the insufficient contributions mandated by the Statutory Funding Plan."

"Although the State understood that the Structural Underfunding could risk the eventual exhaustion of the pension systems' funds and that the State likely would not be able to afford the level of contributions required by the Statutory Funding Plan, it did not disclose that the State's inability to make its contributions increased the investment risk to bondholders," the SEC asserted. "The State did not identify or discuss how this underfunding compromised the State's creditworthiness or increased its financing costs."

The commission did note, though, that since 2009, Illinois "has taken significant steps to correct these process deficiencies and enhance its pension disclosures."

This is the second time that the SEC has charged a state with misleading investors regarding its pension funding, the first being a case against New Jersey in 2010. Following the New Jersey case, according to the SEC, Illinois "began to implement a series of remedial measures," including providing "significantly enhanced disclosures in the pension section of its bond offering documents."

Congress Looks at Fiscal Challenges for Multi–Employer Pension Plans, PBGC

More than two dozen financially troubled multi–employer pension plans expect never to recover and are only trying to delay insolvency, according to the GAO.

In remarks delivered at a House Education and the Workforce Committee hearing on March 5, GAO Director for Education, Workforce, and Income Security Issues Charles Jeszeck said that, while the number of multi–employer plans considered to have a "critical" or "endangered" financial status has declined, about 40 percent still fall into one of those two categories. And of the 107 plans still in "critical" status, 28 have "determined that no realistic combination of contribution increases and benefit reductions would enable them to emerge from critical status, and their best approach is to forestall insolvency for as long as possible."

When a fund becomes insolvent, the Pension Benefit Guaranty Corporation (PBGC) pays benefits to the fund's retirees, though typically at a much lower level than a healthy pension plan would have provided. Since 2008, Jeszeck noted, the projected liability that PBGC could face from funds that are considered "probable" to become insolvent has increased from $1.8 billion to $7 billion. In 2012, though, PBGC had just $1.8 billion in its multi–employer insurance fund. That fund is expected to be exhausted by about 2023 and possibly sooner.

"The precise effect that the insolvency of the insurance fund would have on retirees receiving the guaranteed benefit depends on a number of factors – primarily the number of guaranteed benefit recipients and PBGC's annual premium income at that time," Jeszeck said. "However, the impact would likely be severe. For example, if the fund were to be drained by the insolvency of a very large and troubled plan, we estimate the benefits paid by PBGC would be reduced to less than 10 percent of the guarantee level. In this scenario, a retiree who once received [a] monthly benefit of $2,000 and whose benefit was reduced to $1,251 under the guarantee would see monthly income further reduced to less than $125, or less than $1,500 per year."

Jeszeck added that GAO plans to release another report on multi–employer pensions within a few weeks that will suggest "possible actions Congress can take to prevent a catastrophic loss of retirement income for hundreds of thousands of retirees."

PBGC Director Joshua Gotbaum also appeared at the hearing and presented several of the same fiscal projections as Jeszeck. While acknowledging that premiums and guarantee levels need to be reexamined, he said that the administration "can't yet determine what changes to PBGC premiums for multi–employer plans will be appropriate in the future and are not requesting congressional action now."

Gotbaum also suggested that broader reforms should be considered for the multi–employer insurance program, such as allowing PBGC to work more with plans before they become insolvent, as the agency is able to do with single–employer plans.

In January, PBGC released a report that found that more than half of the 10 million participants in multi–employer pension plans are in plans that are "moderately or severely distressed" and that, as of 2010, multi–employer funds had a combined $391 billion in shortfalls.

Senators Castigate JPMorgan Chase Executives in Report, at Hearing

Lawmakers on March 15 grilled several current and former JPMorgan Chase executives over a multi–billion dollar trading loss in 2012.

The hearing of the Senate Homeland Security and Governmental Affairs Committee's Permanent Subcommittee on Investigations came a day after the subcommittee released a 301–page bipartisan report that found that the firm "disregarded multiple internal indicators of increasing risk; manipulated models; dodged [Office of the Comptroller of the Currency (OCC)] oversight; and misinformed investors, regulators, and the public about the nature of its risky derivatives trading."

JPMorgan Chase is the largest financial holding company in the United States and the largest derivatives dealer in the world. In 2012, it emerged that "a massive bet on a complex set of synthetic credit derivatives" linked to a trader known as the "London Whale" had lost at least $6.2 billion. While this is a tiny percentage of the company's $2.4 trillion in assets, and JPMorgan Chase officials have repeatedly stressed that neither the company's financial condition nor its customers

were adversely affected by the loss, the incident has come to represent what critics say is the type of excessive risk–taking by financial firms and inadequate regulatory oversight that contributed to the financial crisis of the late–2000s.

The report recounts in detail the events that led to the loss, noting instances in which it asserts that JPMorgan Chase hid losses, disregarded risk limits, avoided oversight by regulators, and misinformed investors and the public.

The trades have also become part of the debate over the yet–to–be–implemented Volcker rule, a creation of the 2010 Dodd–Frank Act that would prohibit banks from engaging in proprietary trading, that is, trading for their own purposes, rather than at the direction of a customer. While the Volcker rule is intended to prevent high–risk activity by financial firms, it is unclear if it would have covered the JPMorgan Chase trades, since the company has identified the investments as a hedging strategy, which would be permissible under the rule. The subcommittee report casts doubt on these claims, however, noting that "the bank was unable to provide documentation over the next five years detailing the [synthetic credit portfolio's (SCP)] hedging objectives and strategies; the assets, portfolio, risks, or tail events it was supposed to hedge; or how the size, nature, and effectiveness of its hedges were determined." It also notes that a regulator had referred to the portfolio as a "make-believe voodoo magic 'composite hedge.'"

"The bank's initial claims that its risk managers and regulators were fully informed and engaged, and that the SCP was invested in long–term, risk–reducing hedges allowed by the Volcker Rule, were fictions irreconcilable with the bank's obligation to provide material information to its investors in an accurate manner," the report concludes.

JPMorgan Chase CEO Jamie Dimon did not appear at the March 15 hearing, but the firm's co–CEO, vice chairman and acting chief risk officer all did, as did its former chief investment officer and former head of market risk. The witnesses repeatedly placed blame for the trades on lower–level managers and traders.

"Some members of the London team failed to value positions properly and in good faith, minimized reported and projected losses, and hid from me important information regarding the true risks of the book," former CIO Ina Drew said. "I did not, and do not, believe I bore personal responsibility for the losses in the synthetic credit book."

Subcommittee Chairman Carl Levin, D–Mich., clashed several times with firm vice chairman Douglas Braunstein, who was the company's chief financial officer at the time of the trades. Levin charged that Braunstein had misrepresented the trades to investors and regulators, giving a "very glowing call" and failing to inform them that the investments "had been losing money and violating risk limits." Braunstein insisted, though, that his statements accurately reflected what he knew at the time.

In January, JPMorgan Chase released an internal report that placed much of the blame for the loss with Drew, Braunstein and former Chief Risk Officer Barry Zubrow, who did not appear at the hearing.

Drew and Braunstein's refusal to accept blame led to some frustration among lawmakers, with the subcommittee's ranking Republican, Sen. John McCain of Arizona, observing, "It seemed that the traders seemed to have more responsibility and authority than the higher–up executives."

JPMorgan Chase released a statement asserting that, “We have made regrettable errors and overhauled our risk policies to correct these mistakes, but senior JPMorgan Chase executives always provided information to regulators and the public that they believed to be accurate.”

Comptroller of the Currency Thomas Curry said at the hearing that the firm’s activities were “not transparent” and its risk management culture and practices were “unacceptable.” He also acknowledged some failings by his agency, though, noting that, “Clearly, there were red flags that we should have noticed and acted upon.” He described several things that the OCC has done in the past year to improve its oversight of financial firms.

“The fact that the [Chief Investment Office] was not transparent about the SCP and that its reports were not informative does not excuse us from asking additional questions of the bank,” Curry said. “We have learned a number of lessons from this event, and as a result, are making improvements to our supervision.”

No Company Above Law, Treasury Secretary Says

The treasury secretary in March stressed that “no company is above the law” when it comes to financial misdeeds.

Amid complaints by both Republicans and investor advocates that the Obama administration has not been aggressive enough in prosecuting officials at very large financial firms when they commit offenses because of fear of the impact it would have on the nation’s financial system, U.S. Attorney General Eric Holder told the Senate Judiciary Committee on March 6 that he is “concerned that the size of some of these institutions becomes so large that it does become difficult for us to prosecute. If you do bring a criminal charge, it will have a negative impact on the national economy, perhaps even the world economy.” The comments came in response to a question by Sen. Charles Grassley, R–Iowa, who, with Sen. Sherrod Brown, D–Ohio, wrote to Holder in January to inquire about settlements the Justice Department had reached with certain large firms and to ask if some companies were considered to be “too big to jail.” Sen. Elizabeth Warren, D–Mass., expressed similar concerns during a hearing of the Senate Banking, Housing and Urban Affairs Committee in February.

While Holder’s remarks seemed to confirm the concerns of Grassley, Warren and others, Treasury Secretary Jacob Lew, who was confirmed for the post by the Senate on February 27, insisted otherwise on March 14.

“It is very much my view, it is our view, that no one or no company is above the law,” Lew told reporters. “And we need to enforce our laws so we protect the American people. That’s what we’ve done and that’s what we’ll continue to do.”

House Financial Services Committee Chairman Jeb Hensarling, R–Texas, and Rep. Patrick McHenry, R–N.C., chairman of that committee’s Subcommittee on Oversight and Investigations, wrote to Lew and Holder on March 8 to “express our deep concern” over Holder’s comments as well as remarks by Treasury Undersecretary Jacob Cohen at a March 7 Banking Committee hearing regarding the department’s decision not to provide the Justice Department with an opinion regarding the potential impact on the financial system if money laundering charges were filed against HSBC. Hensarling and McHenry asked for all records related to the potential economic impact of criminal prosecutions or civil lawsuits filed or considered for offenses by a financial institution.

Group Sues to Try to Force Issuance of Volcker Rule

An advocacy group is suing financial regulators to try to force them to issue the overdue Volcker rule.

The Volcker rule, which was included in the 2010 Dodd–Frank Act, is aimed at prohibiting banks from engaging in proprietary trading, that is, trading done for its own benefit rather than at the direction of a client. Supporters say the rule is necessary to prevent the kinds of excessive risk–taking that contributed to the recent financial crisis, while opponents, including many Republicans and business groups, say it will hurt the economy and stifle job growth. The rule was to have been implemented in July 2012, but regulators still have not completed a final version of it.

Occupy the SEC, which is a part of the Occupy Wall Street movement, filed a lawsuit on February 26 in which it asks a federal court to order the five regulatory agencies that are working on the Volcker rule to issue the final regulations.

"The longer the agencies delay in finalizing the Rule, the longer that banks can continue to gamble with depositors' money and virtually interest–free loans from the Federal Reserve's discount window," Occupy the SEC said in a statement. "The financial crisis of 2008 has taught us that the global economy can no longer tolerate such unrestrained speculative activity."

While there had been indications late last year that the rule would be issued during the first quarter of 2013, the *Wall Street Journal* reported on February 27 that that timeline will probably be pushed back at least a quarter because of continuing disagreements between the regulators.

Bill Would Require Cost–Benefit Analyses of Proposed Financial Rules

Financial regulators would be prohibited from implementing rules unless they could show that the costs did not outweigh the benefits, if a bill proposed by a senior Republican senator becomes law.

The "Financial Regulatory Responsibility Act" (S. 450), from Sen. Richard Shelby, R–Ala., would "require enhanced economic analysis and justification" of financial regulations, including those related to the 2010 Dodd–Frank Act, and would bar agencies from putting a rule into effect if the analysis "determines that the quantified costs are greater than the quantified benefits."

"Businesses across the country are dealing with an avalanche of regulations from Dodd–Frank," Shelby said. "The bottom line principle of the Financial Regulatory Responsibility Act is unambiguous: If a regulation's costs outweigh its benefits, it should be thrown out. By providing a clear, rigorous and consistent process for regulators in making that determination, this legislation will eliminate unnecessary burdens on our economy."

Shelby also introduced a bill that would make technical corrections to Dodd–Frank. He unsuccessfully proposed both measures during the last session of Congress.

The Senate Banking Committee, on which Shelby sits and was the ranking Republican in the previous Congress, has jurisdiction over financial laws, and a spokesman for committee Chairman Tim Johnson, D–S.D., indicated that Shelby's bills are not likely to be considered by the panel.

"Chairman Johnson has said that he is only interested in bills with broad bipartisan consensus that seek to improve Wall Street Reform to better protect consumers and strengthen our financial

system," the spokesman told *The Hill*. "It is not clear that these two bills from last Congress accomplish that goal."

Congressional Panel Examines Financial Stability Oversight Council, Office of Financial Research

Two entities created by the Dodd–Frank Act to help control major risks to the U.S. economy "have not developed a comprehensive, systemic approach to identifying and addressing threats to the financial system," according to the GAO.

GAO examined the Financial Stability Oversight Council (FSOC) and the Office of Financial Research (OFR), and A. Nicole Clowers, the agency's director of financial markets and community investment, presented the findings at a hearing held on March 14 by the House Financial Services Committee's Oversight and Investigations Subcommittee. Both the FSOC and the OFR were established by Dodd–Frank in 2010 in the wake of the United States' financial crisis and recession, the former to identify "systemic risks" in the financial world and the latter to provide research support.

Clowers noted that both the FSOC – which includes the heads of nine federal regulatory agencies and one independent member as voting members – have "inherently challenging" missions, in large part because "effectively monitoring and mitigating systemic risk is both vast and procedurally complex." While they have made some progress toward achieving their goals, she added, implementing more formal processes would help them to be more effective.

"Without a more systematic approach and comprehensive information, FSOC member agencies on their own may not be well positioned to judge which potential threats will benefit from interagency discussions," Clowers said. "FSOC and OFR could improve their efforts to identify risks and threats by collecting and sharing a common set of financial indicators. Systematic collection, analysis and sharing of financial indicators of key risk factors such as leverage, liquidity, concentrations, underwriting standards, collateral quality and delinquencies should provide insight into vulnerabilities affecting particular types of financial intermediaries or reveal patterns occurring across the financial system."

Clowers also noted some transparency and accountability shortcomings at FSOC.

The hearing also included testimony from the two agencies. Amias Gerety, deputy assistant secretary of the treasury for the FSOC, reviewed the council's activities – such as convening 28 times, producing two annual reports and six additional studies and designating eight "financial market utilities" as being systemically important – and said that, "the council has moved quickly to achieve its statutory mission while also promoting collaboration and coordination among its members."

Gerety defended the FSOC's transparency and accountability and said that the agency is continuing to implement recommendations that the GAO made regarding these matters in a September 2012 report.

OFR Director Richard Berner, meanwhile, said that his office "has made significant progress in fulfilling its primary data and research responsibilities." He added that, like the FSOC, it has worked to adopt the GAO's recommendations of ways "to improve communication with the public, to develop the OFR's strategic planning and performance management system, and to

clarify responsibilities between the council and the OFR." For example, he said, it has redesigned its website, established performance measures for each of its strategic goals, and worked with the FSOC "to coordinate ongoing activities and to prevent duplication of effort."

Senate Panel Backs Nominee for SEC Chairman

A Senate panel on March 19 sent the nomination of Mary Jo White to lead the SEC to the Senate floor by a nearly unanimous vote.

The Senate Banking, Housing and Urban Affairs Committee approved White's nomination to be SEC chairman by a 21–1 vote. The only dissenting vote came from Sen. Sherrod Brown, D–Ohio, who, during White's confirmation hearing a week earlier, had expressed concerns about how her past representation of clients such as JPMorgan Chase and former Bank of America CEO Ken Lewis while working as a partner at the law firm of Debevoise & Plimpton would affect her aggressiveness in pursuing violators of securities laws. After the vote, Brown said that, "we need regulators who will fight every day for taxpayers, Main Street investors and retirees."

"I don't question Mary Jo White's integrity or skill as an attorney," Brown said. "But I do question Washington's long–held bias towards Wall Street and its inability to find watchdogs outside of the very industry that they are meant to police. Mary Jo White will have plenty of opportunities to prove me wrong. I hope she will."

White has pledged to recuse herself for one year from SEC actions that involve former clients. This could be most notable in the commission's investigation of JPMorgan Chase's "London Whale" trades that lost more than $6 billion in 2012.

During her confirmation hearing, White said that her top three priorities as chairman would be completing implementation of the 2010 Dodd–Frank Act and the 2012 Jumpstart Our Business Startups (JOBS) Act; strengthening the SEC's enforcement efforts; and ensuring that the SEC has the expertise to oversee the high–technology aspects of securities markets, such as trading algorithms and high–frequency trading.

White also said that the long–delayed Volcker rule – which would prohibit banks from engaging in proprietary trading – "is one thing I'm going to turn my personal attention to."

White's nomination now goes to the full Senate for a vote. If confirmed by the Senate, as is expected, she will replace Elisse Walter, a commissioner who was put in the chairman's spot when Mary Schapiro resigned in December.

CFPB Director Nominee Clears Committee on Party–Line Vote

Richard Cordray's nomination to be the director of the Consumer Financial Protection Bureau (CFPB) advanced to the full Senate following a party–line vote in the Senate Banking, Housing and Urban Affairs Committee.

Cordray has served as CFPB director since President Obama put him in that job via a recess appointment in late–2011 after Senate Republicans vowed to block a confirmation vote. Obama has nominated Cordray again, and the Democrat–controlled Banking Committee approved his nomination by a 12–10 vote on March 19, but the GOP is expected to once again block a vote by the full Senate.

Republicans have opposed the CFPB since it was created by the 2010 Dodd–Frank Act to oversee mortgages, credit cards, student loans, and other consumer financial products, complaining that it is not sufficiently accountable to Congress. While Cordray has been praised by some Republicans, Senate Minority Leader Mitch McConnell, R–Ky., and 42 Senate GOP colleagues wrote to Obama on February 1 to say that they will "continue to oppose consideration of any nominee, regardless of party affiliation, to be the CFPB director until key structural changes are made to ensure accountability and transparency at the Consumer Financial Protection Bureau." Specifically, Republicans want to replace the director with a five–member commission and give Congress direct control over the bureau's funding.

"The issue with [Cordray's] nomination is the broader debate over the structural creation of a new federal department," Sen. Mike Crapo of Idaho, the committee's ranking Republican, said the day of the vote. "The CFPB structure needs to be revised to fit the model of traditional departments and agencies."

Cordray tried to address the accountability concerns at his confirmation hearing on March 12 by saying that he would be open to having outside audits conducted and pledging to lawmakers that, "I always am accountable to you. I have found congressional oversight to be both vigorous and meaningful, and it keeps us in shape and it keeps us on our toes."

Legal issues are further complicating Cordray's situation. On January 25, a federal court ruled that President Obama's recess appointments of three people to the National Labor Relations Board (NLRB) in late–2011 were unconstitutional. The recess appointments provision of the Constitution, the court decided, applies only during the recess between sessions of Congress, not during breaks within a given session, and only regarding vacancies that *occur* during a recess, not that merely exist during one. Obama appointed Cordray to be the director of the CFPB on the same day that he made the NLRB appointments. As a result, Republicans are arguing that Cordray's appointment, which was already being challenged in a separate lawsuit that also takes aim at other parts of the Dodd–Frank Act, is not legitimate.

If he is not confirmed, Cordray could continue to serve as director through the end of the year, pending court rulings on his appointment.

Related National and Industry News

Public, Private Groups Back Tax Advantages for Retirement Savings

Nearly 30 public and private sector groups have signed on to a letter to members of Congress that supports the continuation of federal tax incentives to encourage retirement savings.

The letter asks lawmakers to co–sponsor a non–binding resolution from Sens. Johnny Isakson, R–Ga., and Christopher Murphy, D–Conn., that expresses the sense of the Congress that "tax incentives for retirement savings play an important role in encouraging employers to sponsor and maintain retirement plans and encouraging participants to contribute to such plans" and that " a reformed and simplified Federal tax code should include properly structured tax incentives to maintain and contribute to such plans and to strengthen retirement security for all Americans. "

Talk of tax reform in Congress has raised the possibility that lawmakers could revise "tax expenditures," including those that allow deductions for retirement savings.

"Eliminating or diminishing the current tax treatment of employer–provided retirement plans will jeopardize the retirement security of tens of millions of American workers, impact the role of retirement assets in the capital markets, and create challenges in maintaining the quality of life for future generations of retirees," the letter stated. "While we work to enhance the current system and reduce the deficit, we must not eliminate or diminish one of the central foundations – the tax treatment of retirement savings – upon which today's successful system is built. The effects of such a change for individuals, employers and the system as a whole are simply too harmful and must be avoided."

The letter was signed by 29 groups, including the American Society of Pension Professionals & Actuaries, the ERISA Industry Committee, the National Association of Government Defined Contribution Administrators, the National Council on Teacher Retirement, the National Association of State Retirement Administrators, the Securities Industry and Financial Markets Association, and the U.S. Chamber of Commerce.

Survey Finds Broad Support for Pensions

A vast majority of people are concerned about their retirement prospects, believe that all Americans should have access to pensions, think that policymakers should make retirement security a higher priority, and support providing pensions to public employees, according to the results of a survey released on February 25 by the National Institute on Retirement Security (NIRS).

The telephone survey of 800 Americans age 25 and older gauged attitudes toward pensions at a time when traditional defined benefit plans are disappearing in the private sector and the average 401(k) balance is well below what will be needed to fund retirement.

The survey found that:

- 85 percent of Americans are concerned about retirement, with more than half "very concerned."

- 83 percent have favorable views of pensions, and 84 percent think that all Americans should have access to one.

- 87 percent think that policymakers do not understand the difficulties of saving for retirement, and 86 percent say that political leaders should make retirement security a higher priority.

Nearly three–fourths of Americans, according to the survey, back pension benefits for state and local workers "because public employees contribute from every paycheck to their pension," and 86 percent support pensions for police officers and fire fighters, in particular. A majority of people think that the average monthly benefit of $2,150 is fair, while 31 percent say it is too low, and 9 percent say it is too high.

The study suggested that "Americans 'envy' public pensions because they too want the retirement security afforded by these retirement plans, not that they want public employees to lose their benefits."

After hearing a description of a possible nationwide pension plan that would "be available to all Americans; portable from job to job; [and] allow for a regular check that lasts through retirement," three–fourths of respondents said it would be a good or very good idea. The described plan is similar to the Universal, Secure and Affordable (USA) Retirement Funds that have been proposed by Senate Health, Education, Labor and Pensions Committee Chairman Tom Harkin, D–Iowa.

"Despite stabilization of the financial markets, declining unemployment, and increased consumer confidence, Americans are deeply worried about retirement," NIRS Executive Director and report co–author Diane Oakley said. "Perhaps the high level of anxiety can be tied to Americans' sentiment about the risks embedded in today's crumbling retirement infrastructure – one where fewer Americans have a reliable monthly pension check in exchange for a system where Americans are investing on their own in a volatile stock market."

CalPERS Official Named to Accounting Board Advisory Group

The Public Company Accounting Oversight Board (PCAOB) announced on March 1 that it has appointed CalPERS senior portfolio manager to its Investor Advisory Group (IAG).

Anne Simpson, who also serves as CalPERS director of corporate governance, was one of 20 new and incumbent members appointed to the group by the PCAOB. The panel was created in 2009 to give the investor community the opportunity to provide input on the PCAOB's work.

"The board has an important mandate to protect the investing public's interest through high-quality auditing," PCAOB Chairman James Doty said. "IAG members provide critical insight and advice on how the board can and should meet that charge."

Also on March 1, the SEC announced that it has reappointed two members to the PCAOB.

Steven Harris was first appointed to the board in 2008, while Jay Hanson has served since 2011. Harris previously was senior vice president and special counsel for APCO Worldwide following 15 years as a staffer on the Senate Banking, Housing and Urban Affairs Committee. He chairs the board's IAG.

Hanson had worked for more than three decades at McGladrey & Pullen LLP, and he served on panels of the Financial Accounting Standards Board and the American Institute of Certified Public Accountants.

Harris's term is scheduled to end in 2017 and Hanson's in 2018.

The PCAOB was created by the 2002 Sarbanes–Oxley Act following accounting scandals and bankruptcies at WorldCom, Enron, and other companies to oversee audits of public company financial statements.

CALIFORNIA CONGRESSIONAL DELEGATION NEWS

Calif. Rep. Calls Out SEC for Slow JOBS Act Implementation

A California congressman in March criticized the SEC for not doing enough to implement the JOBS Act.

The 2012 Jumpstart Our Business Startups (JOBS) Act eased regulations for "emerging growth" companies in an attempt to spur the economy. Though it had bipartisan support, some investor advocates worry that it loosened the rules too much.

In a March 5 letter to SEC Chairman Elisse Walter, House Oversight Committee Chairman Darrell Issa, R–Calif., and three GOP colleagues wrote that they are especially "surprised and troubled" by the SEC's missed deadlines on the JOBS Act given that the agency has been working on a rule that would require public companies to disclose political contributions. That measure is supported by many investor advocates but is generally opposed by Republicans, including the two GOP members of the SEC.

"The Commission appears to be allocating its limited resources on a discretionary project wholly unrelated to its mandate to 'protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation,'" the lawmakers wrote. "In light of the SEC's extraordinary delays in meetings the JOBS Act's mandatory statutory deadline, an allocation of resources devoted to non–essential rule making raises serious questions."

In addition to Issa, the letter was signed by House Financial Services Committee Chairman Jeb Hensarling, R–Texas, and GOP Reps. Patrick McHenry of North Carolina and Jim Jordan of Ohio.

An SEC spokesman declined to comment on the letter, according to published reports.

Climate Change Hearing Sought by Calif. Rep.

A California lawmaker is again pushing for a congressional hearing on climate change.

The Government Accountability Office (GAO) on February 14 released a report that, for the first time, identified climate change as a "high–risk" area for the federal government, observing that "Climate change poses risks to many environmental and economic systems – including agriculture, infrastructure, ecosystems, and human health – and presents a significant financial risk to the federal government," and that "the federal government is not well positioned to address this fiscal exposure, partly because of the complex, cross–cutting nature of the issue."

House Energy and Commerce Committee Ranking Democrat Henry Waxman of California and Rep. Bobby Rush, D–Ill., the ranking Democrat on the panel's Energy and Power Subcommittee, wrote to committee Chairman Fred Upton, R–Mich., on February 26 to request that he schedule a hearing on the issue. They noted that House rules require that each committee, or one of its subcommittees, "shall hold at least one hearing on issues raised by reports issues [sic] by the Comptroller General of the US indicating that Federal programs or operations that the committee may authorize are at high risk for waste, fraud, and mismanagement, known as the 'high–risk list' or the 'high–risk series.'"

"As GAO has found, the impacts of climate change on federal taxpayers are potentially enormous," they wrote. "We need to understand what these impacts are and how they can be addressed."

Waxman and Rush have asked that the committee hold a hearing on climate change more than 20 times in the past two years, but they have been unsuccessful each time.

On February 25, Waxman and three co–chairs of the new Bicameral Task Force on Climate Change, wrote to nearly 70 inspectors general within the federal government to ask what their respective entities are doing and can do to respond to threats posed by climate change.

Waxman was joined on the letter by Sen. Sheldon Whitehouse, D–R.I. – who founded the task force with Waxman in January – Rep. Edward Markey, D–Mass., and Sen. Benjamin Cardin, D–Md.