Business Roundtable℠

Major Regulations of Concern

A nation's regulatory system is one of the most telling indicators of its business environment. On the one hand, smart regulations that clarify the "rules of the road" and are in line with broad societal values over multiple election cycles can provide an environment of stability, inspire business confidence and accelerate investment. On the other hand, regulations that create uncertainty and reflect shortsighted political interests can impose unproductive cost burdens on businesses and consumers, undermine confidence and delay investment. The key distinction, therefore, is not the quantity of regulations, but the effectiveness and efficiency of regulations as well as the balance between their costs and intended benefits.

In recent years, the overall regulatory burden to U.S. businesses has grown substantially. Some experts estimate that regulations impose hundreds of billions of dollars of costs on the U.S. economy each year. As a result, there are good reasons to believe that excessive regulation is hampering economic growth and recovery in the job market. An October 2011 Gallup poll of U.S. small business owners found that complying with government regulation is the most "important problem" facing small businesses today – more than low consumer confidence or lack of consumer demand. [i]

Business Roundtable CEOs have identified over 60 different pending or proposed regulations that may impose significant costs on the economy and unnecessary burdens on business. They are organized into the following categories and outlined below:

- Environmental
- Energy
- Financial regulatory reform
- Food
- Labor
- Transportation
- Health care
- Other

Issue	Description of Issue
Environmental	
Industrial Boiler Maximum Achievable Control Technology (MACT)	EPA has re-proposed rules that would reduce hazardous air pollutant emissions from existing and new industrial, commercial and institutional boilers and process heaters. Final rules are expected in April 2012.
Greenhouse Gas Emissions Regulations	EPA repeatedly has delayed issuances of proposed new source performance standards (NSPS) for electric utilities and refineries. Proposed rules for both types of facilities are expected in 2012.
Cooling Water Intake Structures Rule	Proposed rules have been issued and are expected to be finalized in 2012. These rules will apply to electric power plants, and to manufacturing facilities with open-loop or once-through cooling systems.
Particulate Matter (PM) National Ambient Air Quality Standards (NAAQS)	The *Clean Air Act* requires EPA to promulgate primary and secondary NAAQS for six air pollutants, including particulate matter. Primary standards have been established for PM10 and PM2.5. A required five-year review of the PM NAAQS is in progress and a proposal to retain or revise those standards is expected this year.
New Source Review	"Major modifications" to major stationary sources trigger a requirement for New Source Review. Under EPA regulations, a major modification includes any physical change to or change in the method of operation of a major stationary source that would result in a significant net emissions increase of a regulated pollutant. While "major modification" excludes routine maintenance, repair and replacement, these terms are not clearly defined and have been interpreted differently by EPA over time. Substantial litigation has surrounded this program, with companies now deterred from upgrading existing equipment, even when the upgraded plant would be more efficient or reliable.
Preliminary Remediation Goals for Dioxin	EPA's interim Preliminary Remediation Goals (PRG) for dioxin remain under review by OMB while EPA prepares to finalize its Integrated Risk Information System (IRIS) human health risk reassessment on dioxin, responding to concerns raised by the National Academy of Science in 2006. The EPA IRIS program will issue the reassessment in piecemeal fashion, with the non-cancer portion of the reassessment having been released in February 2012 and the cancer portion to be released at an unspecified time thereafter. This reassessment may be used to develop a final PRG. It is unclear whether EPA will issue its interim PRG given the possibility of issuing a final PRG this year.

Issue	Description of Issue
Coal Combustion Residuals Regulation	In response to a spill at a TVA coal ash impoundment pond, EPA issued proposed rules in June 2010 to regulate the disposal of coal residuals under *Resource Conservation and Recovery Act* (RCRA). EPA proposed two options, one of which would categorize coal residuals as a hazardous waste, thus significantly increasing disposal costs and eliminating many current beneficial recycling options. This is a discretionary rulemaking that EPA is not obligated to issue. It is unclear when or if EPA intends to finalize the rulemaking. Bipartisan legislation has passed the House and has been introduced in the Senate that would prevent EPA from regulating coal residuals as a hazardous waste under RCRA.
Hydraulic Fracturing	Multiple federal agencies are considering regulating hydraulic fracturing. EPA has proposed a suite of four new regulations for the oil and natural gas industry, including the first federal air standard for wells that are hydraulically fractured. In addition, EPA has announced that it intends to propose a rulemaking on disposal of fracturing water and fluids from shale gas extraction operations in 2014. In a related development, EPA has announced that it intends to propose a rulemaking on the disposal of wastewater from coal bed methane operations in 2013. EPA also has begun a long-term study on the impact of hydraulic fracturing on ground water and drinking water. Initial results from the study are anticipated in 2012 and a final report is expected in 2014. The Department of the Interior has announced it intends to propose regulations for hydraulic fracturing on federal lands it administers in 2012. The Administration has proposed banning horizontal drilling and hydraulic fracturing on certain lands while it considers hydraulic fracturing implications.
EPA Chemical Action Plans	Thus far, EPA has issued chemical action plans for ten groups of chemicals. EPA also recently launched an initiative to identify priority chemicals for review, assessment and possible risk management action. Although there is support for EPA to develop a sound prioritization process to identify chemicals of concern, the proposed process is not as risk-based as it should be, nor is it as transparent as it should be to provide regulatory certainty. There is also concern with the criteria EPA is using to evaluate chemicals for listing under the *Toxic Substances Control Act* (TSCA) Section 5(b)(4).
Lead National Ambient Air Quality Standards (NAAQS)	A review of the current lead NAAQS is ongoing. It is anticipated that a draft policy assessment will be released in 2012.

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Lead, Renovation, Repair, and Painting Program for Public and Commercial Buildings	EPA intends to regulate the renovation, repair and painting of the public and commercial buildings under section 402(c)(3) of *Toxic Substances Control Act* (TSCA). Requirements will include lead-safe work practices and other requirements for renovation of the exteriors of public and commercial buildings.
Non-Point Sources of Discharge under *Clean Water Act*	The Ninth Circuit Court of Appeals overturned 35 years of precedent and ruled that forest road systems are subject to point source regulation under the *Clean Water Act* and inappropriately applied the silvicultural exemption to those roads. The industry must now reallocate funds to comply with a new permitting system. The industry will suffer when permitting delays interrupt raw material supplies. While a petition for certiorari has been filed with the Supreme Court, new legislation or regulations may be required.
EPA Assessment of Chemical Risk	The National Academy of Sciences (NAS) has criticized the science underpinning EPA's risk assessment process. The criticism is aimed at EPA's Integrated Risk Information System (IRIS) program, which develops estimates of chemical risk used both by EPA and state environmental agencies to set regulatory standards. NAS has also recommended changes to reform the IRIS process, and Congress has recently emphasized the need for EPA to follow these recommendations. Because risk assessment is central to many EPA regulatory programs, and because objective analysis is a core component of the BRT "smarter regulation" agenda, EPA should follow the advice of NAS, and of Congress, and reform its IRIS process.
EPA Definition of Solid Waste	EPA is proposing new requirements and documentation for recycling certain materials in an attempt to minimize future "damage cases" and "sham" recycling. The new regulations will only save approximately $86 million/year, but will cost more than $100 million/year in documentation/analysis costs. EPA does not have authority to impose requirements that are not solid waste; the proposed rule will not prevent damage cases; and the rule will adversely impact legitimate recycling.
Revising Underground Storage Tank Regulations – Revisions to Existing Requirements and New Requirements for Secondary Containment and Operator Training	EPA, on November 18, 2011, proposed to strengthen the underground storage tank program by adding secondary containment requirements for new and replaced tanks and piping; operator training requirements; periodic operations and maintenance requirements; new release prevention and technology standards; and updating operator training codes.

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Nutrient Loading Criteria for FL	A consent decree required EPA to issue a Numeric Nutrient Criteria (NNC) rule for streams, springs and lakes in Florida. The rule includes severe limits on National Pollutant Discharge Elimination System (NPDES) permits for discharges of nitrogen and phosphorus. On December 22, 2011, EPA proposed to extend the effective date of this rule to June 4, 2012, to allow the state of Florida to develop its own rulemaking for NNC that are consistent with the requirements of the *Clean Water Act*. The consent decree also requires EPA to propose marine, estuary and canal criteria by March 15, 2012, and to finalize this rule on November 15, 2012. EPA's proposed NNC criteria for both phases of the rule could be used as a template for other states' management of water quality under the *Clean Water Act*.
Certification, Compliance & Enforcement Energy Star Rule	DOE final rule on certification, compliance and enforcement for ENERGY STAR® program was published in 2011. This rule imposes new requirements for testing of commercial HVAC and water heating products to establish and continuously verify the efficiency rating of DOE covered products. Not only has the number of tests been greatly increased, but the role of previously recognized Voluntary Independent Certification Programs, or VICP's, such as the AHRI Certification Directory Program, have been diminished, if not totally duplicated. There is also a duplication of testing added on top of this rulemaking, in the form of similar requirements by EPA for compliance with ENERGY STAR® listings.
CBI Protection for Chemical Identities of New Chemicals	EPA has proposed to eliminate most confidential business information (CBI) protection for the chemical identities of new chemicals. The lack of protection for trade secrets can be counterproductive by inhibiting innovations.
SO2 Regulations	EPA's recent revision of the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO2) threatens U.S. smelters. EPA reduced the NAAQS to 75ppb averaged over one hour from a standard of 140 ppb averaged over 24 hours and 30ppb averaged annually. In addition, EPA imposed stringent new monitoring and modeling requirements. The low standards and modeling requirements will unnecessarily force many areas into non-attainment. This will prevent or significantly delay expansion projects and may require a reduction in U.S. smelter production. These new standards will make U.S. smelters the most tightly regulated in the world.
Energy	
Oil & Natural Gas Offshore Leasing	The Administration has announced resumption of leasing activities in the Gulf of Mexico and has approved exploration plans for offshore Alaska after further environmental review. Many promising offshore areas remain off limits to leasing.

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Deepwater Offshore Drilling Permits (Alaska and Gulf of Mexico)	The Administration has lifted the moratorium on issuance of drilling permits in the Gulf of Mexico and Alaska. The Department of the Interior has finalized new drilling safety and emergency response measures. Steady progress in eliminating the backlog of applications is occurring, but the pace of approvals is slow.
Keystone XL Pipeline Project	The Keystone XL pipeline would carry an estimated 700,000 barrels per day of crude oil from Canada and North Dakota to U.S. refineries in the Gulf region. Because the pipeline would cross the U.S.-Canada border, a Presidential Permit, coordinated by the Department of State, is required. The Department of State issued a favorable final environmental impact study (EIS) earlier this year. Environmental groups have waged an aggressive campaign against approval of the project, primarily on the basis of increased greenhouse gas (GHG) emissions that would occur from development of Canadian oil sands that would supply the pipeline. The Administration repeatedly has delayed making a favorable decision on the Presidential Permit, thus denying the U.S. access to this important source of secure energy.
Financial Regulatory Reform	
Volker Rule	Section 619 of *Dodd-Frank* (Volcker Rule) aims to limit proprietary trading by banks. It will introduce new complexities and impose higher costs for businesses while slowing down the creation of new markets.
Over-the-counter (OTC) Derivatives	While the new regulatory structure for OTC derivatives is not yet completed, concerns are arising about the market structure and extraterritorial applications of these rules. The proposed application could create uncertainty in overseas markets, which will result in higher hedging costs. With more cash used to cover the increased costs, there will be less money for new job creation and growth. There also should be an unambiguous end-user exclusion from clearing, trade execution, margin and capital requirements in order to allow end-users to be able to prudently manage risk. Managing and hedging risk is essential for many businesses, particularly with respect to increasingly volatile commodity prices, currencies and interest rates.
Capital Requirements & Surcharges	*Dodd-Frank* requires the Federal Reserve to draw up rules to address capital requirements and surcharges for banks. These rules will likely be influenced by the global systemically important bank (G-SIB) surcharges (which are poorly constructed and will impose costs on economic growth with no evidence of corresponding benefits). Any excessive charges on banks make it more expensive for banks to lend money and costs businesses more to borrow money. Proposed rules were issued on December 20, 2011.

Issue	Description of Issue
Conflict Mineral Disclosure Rule	SEC proposed rules in December 2010 to implement Section 1502 of the *Dodd-Frank Act*, which requires that public companies disclose annually whether their products contain "conflict minerals." The SEC's proposed rules provide for a three-step disclosure process that requires companies to undertake and disclose their "reasonable country of origin inquiry" and to provide an audited Conflict Minerals Report if the conflict minerals it uses originate in the Congo or adjoining countries. Companies commented that the costs of conducting the necessary due diligence is too high and that the achieving compliance is extremely difficult, if not impossible.
SEC Public Disclosure Regulations for Resource Extraction Industries	The *Dodd-Frank Act* requires resource extraction industries to disclose payments made to the United States or foreign governments. The SEC issued proposed rules in December 2010, but has yet to issue final rules. If the final rules are not carefully tailored, foreign competitors may be able to gain access to sensitive U.S. company information that could place U.S. companies at a competitive disadvantage in contract negotiations and in bidding for resource licenses.
Food	
Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments	The *Patient Protection and Affordable Care Act of 2010* requires restaurants and similar retail food establishments with 20 or more locations to list calorie content information for standard menu items. FDA has issued proposed rules to implement this provision.
Food Labeling: Nutrition Labeling for Food Sold in Vending Machines	See above for the labeling requirements that also are applicable to vending machines.
Regulations of Marketing of Foods to Children	In 2011, the FTC, in coordination with FDA, USDA, and CDC, proposed "voluntary guidelines" to have marketing of foods to children under age 17 encourage nutritional objectives and avoid foods that encourage weight gain or obesity. The federal agencies aimed to have industry (a) refrain from promoting certain foods to children, (b) change the content of certain foods marketed to children, and (c) refrain from advertising other foods in numerous realms defined as targeting children. In December 2011, Congress included in the *Consolidated Appropriations* bill a requirement that required the FTC and other agencies to complete a cost-benefit study before proceeding further with these guidelines.

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Implementation of Food Safety Modernization Act	Two years ago, Congress enacted the *Food Safety Modernization Act*, Pub.L. 111-353, which among other things directs the FDA to: (1) develop preventative food safety standards for covered facilities, (2) conduct regular inspections of covered facilities with expanded record-keeping and records-inspection authorities, and (3) require importers to perform supplier verification activities. It also provides FDA with mandatory recall authority and requires enhanced collaboration activities with other state and federal agencies involved in food safety. The Act requires several new rulemakings, with deadlines that are now in effect.
Labor	
Occupational Exposure to Crystalline Silica	OSHA has indicated its intention to propose tighter exposure, monitoring, medical surveillance and worker training standards for workers exposed to crystalline silica.
Amendment to the *Family and Medical Leave Act of 1993*	A notice of proposed rulemaking is pending to update regulations under the *Family and Medical Leave Act* (FMLA). The FMLA protections will be extended to family members caring for servicemen and women and veterans within the last five years, and will clarify when airline flight crews qualify for family or medical leave.
Proposed Office of Federal Compliance Programs Regulations Regarding Disability	On December 9, 2011, the Office of Federal Contract Compliance Programs (OFCCP) proposed regulations under Section 503 of the *Rehabilitation Act of 1973* that would expand the affirmative action obligations of federal contractors toward individuals with disabilities. Specifically, the rules would expand contractor obligations in numerous areas, including establishing a single, national utilization goal of 7 percent in each job group for individuals with disabilities (the OFCCP is seeking comment on not only the 7 percent goal but a range of values between 4 percent and 10 percent, as well as a 2 percent sub-goal for individuals with certain severe disabilities such as total deafness or blindness, paralysis, severe intellectual disability, psychiatric disability, etc.).
Transportation	
Motor Carrier Safety Fitness Determination	The Federal Motor Carrier Safety Administration (FMCSA) is expected to propose new safety fitness determinations based on safety from crashes, inspections and violation history rather than standard compliance review. The goal is to enable FMCSA to assess the safety performance of a greater segment of the motor carrier industry. A proposed rule is expected in 2012.

Issue	Description of Issue
Minimum Training Requirements for Entry Level Commercial Motor Vehicle Operations	Rulemaking would require behind-the-wheel and classroom training for persons who must hold a commercial driver's license to operate commercial motor vehicles. A final rule is expected in 2012.
Health Care	
Definition of Full Time & Part Time Employees	Starting in 2014, large employers will be assessed a penalty if they fail to provide affordable health insurance, at a minimum value, to any full-time employee who is then found eligible for a tax credit through the Exchange. In May 2011, the IRS proposed that a full-time employee be defined as one who has 130 hours of service in a calendar month, and that this is treated as the monthly equivalent of at least 30 hours of service per week. Treasury and the IRS are also considering a look-back/stability period safe harbor under which an employer would determine each employee's full-time status by looking back at their hours over a defined period of not less than three, but not more than twelve consecutive calendar months, as chosen by the employer. The employee's status determined under this look-back would then persist for a stability period of at least six, but not more than twelve months. Additional rulemaking is expected.
Definition of "Affordability"	In the August 17, 2011, IRS notice of proposed rulemaking on the "Health Insurance Premium Tax Credit," the IRS indicated that an employer-sponsored plan would be considered affordable if the employee portion of the self-only premium for the employer's lowest cost plan that provides minimum value does not exceed 9.5 percent of the employee's current W-2 wages from the employer.
Requirement to Offer Coverage to Dependents	IRS Notice 2011-36 raised some concern that the Agencies would require employers to offer coverage to employees' dependents. BRT submitted comments on this issue, which noted that the *voluntary* offering of dependent coverage is critically important to avoid disruptions in employer-sponsored coverage. In the August 17, 2011 IRS notice of proposed rulemaking on the "Health Insurance Premium Tax Credit," the IRS indicated that the affordability of an employer-sponsored plan will be measured in terms of the employee portion of the *self-only* premium, indicating that the offering of dependent coverage will not be required.

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Definition of Essential Benefits	On December 16, 2011, the Center for Consumer Information and Insurance Oversight (CCIIO) issued guidance on Essential Health Benefits (EHB). The guidance proposes to give states the flexibility to define EHB based on a benchmark plan selected by each state. The benchmark would be either: (1) the largest plan by enrollment in any of the three largest small group insurance products in the state's small group market; (2) any of the largest three state employee health benefit plans by enrollment; (3) any of the largest three national federal employees health benefits plan options by enrollment; or (4) the largest insured commercial non-Medicaid Health Maintenance Organization (HMO) operating in the state. HHS intends to assess the benchmark process for the year 2016 and beyond based on evaluation and feedback.
Data Sharing Requirements with the Exchanges	On August 17, 2011, HHS issued a proposed rule on "*Patient Protection and Affordable Care Act*; Exchange Functions in the Individual Market: Eligibility Determinations; Exchange Standards for Employers," which noted that employers possess almost all of the information on an employee that is required for an Exchange to make an eligibility determination with respect to the premium tax credit and cost-sharing reductions. HHS, Treasury and Labor are working to develop a method by which information can be reported by employers to Exchanges, and are considering the creation of a template for plan- and employee-level information, or a centralized database that employers could voluntarily populate as a resource for the verification process. The proposed rule also said that when an Exchange determines that an individual is eligible to receive advance payments of the premium tax credit or cost-sharing reductions in the Exchange, the Exchange must notify the employer and identify the employee. Additional rules are expected to provide further guidance.
Health Insurance Tax, Pharmaceutical Tax, and Medical Device Tax	The health reform law imposed an excise tax on health insurance issuers and sponsors of self-funded group health plans, with aggregate expenses that exceed $10,200 for individual coverage and $27,500 for family coverage, beginning in 2018 imposes an excise tax on insurers of employer-sponsored health plans. The amount of the excise tax is 40 percent of an amount considered to be an excess benefit. The health reform law also created an annual fee on certain manufacturers and importers of brand name pharmaceuticals, effective January 1, 2011. The IRS issued Notice 2011-9 in January 2011, which defined the covered entities and fee calculation methodology. The new law also imposed an excise tax of 2.3 percent on sale of any taxable medical device. The IRS delayed imposition of the tax until 2013. The IRS issued a request for comment regarding this tax in December 2010.

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W-2 Guidance	Starting in tax year 2011, the health reform law requires employers to report the cost of coverage under an employer-sponsored group health plan on W-2 forms. The IRS made this requirement optional for all employers in 2011 and for smaller employers in 2012. The amount reported must include both the portion paid by the employer and the portion paid by the employee. Employers will not be required to issue a Form W-2 to retirees or other former employees to whom the employer does not normally issue a Form W-2.
HIPAA Workplace Wellness	Under the health reform law, employers may continue rewarding employees for participation in a wellness program. Starting January 1, 2014, the value of these rewards may be increased up to 30 percent of the cost of coverage. The law also requires the Director of the CDC to provide employers with technical assistance, consultation and other resources to evaluate employer-based wellness programs.
Release of CMS Claims Data	CMS must have measures in place to release CMS claims data to qualified entities for the purpose of measuring provider and supplier performance, as required by the health reform law. On December 7, 2011, CMS issued a final rule (76 Fed. Reg. 76542) detailing how entities can become qualified by CMS to receive claims data under Medicare Parts A, B and D for the purpose of evaluating the performance of providers and suppliers and issuing annual reports. The rule defines the performance measures that may be used and how, and describes the kinds of data that will be released. The rule also provides the criteria qualified entities (QEs) must follow to protect the privacy of Medicare beneficiaries. Reports generated by the QEs may only include information on individual providers and suppliers in aggregate form, and may not be publicly released until providers and suppliers included have had an opportunity to review and, if necessary, ask for corrections. The rule is effective January 6, 2013.

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Definition of 60 Percent Actuarial Value	Under the health reform law, an employer-sponsored plan must provide minimum value, or the employer may be subject to a penalty if any full-time employee qualifies for a tax-credit in the Exchange. A plan provides minimum value if the employer plan's share of the total allowed costs of benefits provided under the plan is at least 60 percent of those costs. The new law also requires plans not have out-of-pocket limits that exceed the limits for Health Savings Account qualified health plans, and reduces the maximum out-of-pocket limits for enrollees in families with incomes below 400 percent of the federal poverty line. Additional regulations are anticipated later this year to provide further guidance on minimum value, and the proposed rule states that the IRS is considering whether to provide transitional relief with respect to minimum value for employers already offering health care coverage.
Uniform Summary Plan Documents	On August 22, 2011, HHS released a proposed regulation requiring all insurers and plan administrators to provide enrollees with a four-page paper summary of each plan benefit that is offered, beginning March 2012. BRT commented and criticized this proposal as unworkable in the large group marketplace where innovative ways of educating employees on benefits, such as electronic information, are more useful, and urged a delay in implementing this requirement. HHS has now delayed the effective date until the final rule is promulgated.
Physician Payment Sunshine Regulations	The health reform law requires medical device and pharmaceutical manufacturers to track and report payments and other transfers of value to U.S. physicians and teaching hospitals. The first disclosure by manufacturers is due in 2013, for payments and other transfers of value occurring in 2012. On December 14, 2011, CMS published proposed rules and requested public comment on what will be required for data capture and reporting. Manufacturers incurred significant costs to develop systems to capture data in anticipation of the final rules, but these systems will most likely need to be redesigned when the final rules are issued. The significant additional costs associated with any redesign could impact manufacturers' ability to invest in R&D and interact with health care providers on the development of innovative products and therapies.

Issue	Description of Issue
Power to Subpoena Insurers	The *Federal Insurance Office Act of 2010*, part of the *Dodd-Frank* legislation created the U.S. Federal Insurance Office (FIO). Primarily responsible for studying whether additional federal regulation of the U.S. insurance industry is necessary, a little know part of the *FIO Act* provides FIO with the "power to subpoena" U.S. insurers and any "information or data" that they might hold with the ability to enforce such subpoena in a U.S. district court. With no enforcement authority over the U.S. insurance industry at this time, it is difficult to see how such subpoena power can be of possible benefit to the U.S. consumer or to an insurer's ability to comply with the regulations of 51 different state insurance authorities while dealing with a potential fishing expedition being conducted by the federal government.
HIPPA Proposed Changes to Accounting for Disclosures	HHS has previously required that covered entities and business associates account for their external disclosures of patients' protected health information upon request. Only a small number of patients have made requests for such accountings. However, in May 2011, HHS proposed a rule that, while scaling back the scope of the accounting requirement, expanded the requirement so that health plans and business associates must be capable of providing "access reports" that show who has accessed a patient's protected health information, both internally and externally, contained in their electronic health records. Implementing this requirement would be logistically and financially burdensome, especially because access reports, as currently defined, are voluminous and created in computer language that would require translation in order for patients to understand them.
Medicare Secondary Payer Regulations	Under the Medicare Secondary Payer (MSP) program, certain insurers (including liability and workers compensation) are required to be the primary payer for health care items or services related to specific claims. Implementing regulations require these insurers to take into account amounts conditionally paid or to be paid by Medicare when settling claims. This requirement is extremely difficult to implement and can result in insurers making double payments – to the claimant and as reimbursement to Medicare for improperly made primary payments.
ACA Implementation of Regulations Affecting Employer Health Plans	The Agencies will be finalizing numerous regulations that encompass thousands of pages over the next 18 months with significant short- and long-term impacts on employer health plan benefits, choice and administrative costs. These regulations will reshape the $2.5 trillion health care sector and related employee benefit and compensation costs impacting businesses and domestic investment in innovation.
Other	

Issue	Description of Issue
Export Control Reform Initiative/Reform of U.S. Munitions List	The State Department is reforming the U.S. Munitions List to reclassify and move commercial products with a dual military use to the less restrictive Commodity Control List. These reforms will facilitate legitimate U.S. exports, improve U.S. competitiveness and strengthen the U.S. manufacturing and technology bases.
FCC Regulatory Policies	Regulatory reform is needed to ensure the growth of the IT industry and to prevent current regulatory frameworks from being implemented on new technologies. Current regulations require network operators to support almost obsolete circuit switched public telephone networks instead of investing in new technology, thus impeding innovation.
Air Cargo Screening	Enhanced pre-inspection and pre-clearance cargo screening requirements are being phased-in. Further standards are anticipated.
Consumer Product Safety Improvement Act Complaint Database	The Consumer Product Safety Commission (CPSC) has adopted a final rule implementing the complaint database requirement of the *Consumer Product Safety Improvement Act* (CPSIA). While the online database is required by the CPSIA, the CPSC final rule has substantially broadened beyond the Congressional mandate the individuals authorized to submit data (beyond injured consumers, state and local officials, caregivers, etc.) to plaintiff's attorneys and others with less direct information. Thus, the database has the potential to become less useful to consumers and more harmful to the reputations of legitimate businesses.
L-1B "Specialized Knowledge" Visas	L-1B visas are important to companies who want to transfer employees with specialized knowledge important to the company to assignments in the U.S. Because the standard for what constitutes "specialized knowledge" is not always clear, businesses sometimes face uncertainty and burdens in demonstrating their eligibility for such transfers.
Cont'd Ethanol RFS Mandate	EPA is responsible for developing and implementing regulations to ensure that transportation fuel sold in the U.S. contains a minimum volume of renewable fuel. Under *EPAct 2005*, 7.5 billion gallons of renewable fuel was required to be blended into gasoline by 2012. The *Energy Independence and Security Act* (EISA) expanded the renewable fuels mandate by increasing the volume of renewable fuel required to be blended into transportation fuel from 9 billion gallons in 2008 to 36 billion gallons by 2022. As mandatory renewable fuel volumes increase, upward pressure is being put on increasingly volatile corn prices, thus increasing food price inflation.

Issue	Description of Issue
Pension Funding re: Pension Protection Act	The *Pension Protection Act of 2006*, Publ.L. 109-280, made significant changes to the funding requirements for defined benefit pension plans, as well as changes that affected most other types of pensions. The law also placed certain restrictions on changes to pension plans that would increase their benefits without funding changes. The Department of Labor and the PBGC have been issuing regulations and guidance with regard to these requirements, including some that remain underway.
Mandatory Audit Firm Rotation	The PCAOB, under the SEC, has announced plans to consider a requirement that companies be required to rotate among firms conducting audits of the company. This may raise concerns about whether mandatory audit firm rotation would increase the costs of audits and the costs for management and audit committees to change audit firms and bring successor auditors up to speed.
Proposed Def. of Fiduciary by Dept. of Labor	The Department of Labor has proposed to amend the definition of "fiduciary" under ERISA by more broadly defining the circumstances under which a person is considered to be a "fiduciary" by reason of giving investment advice to an employee benefit plan or a plan's participants. This substantial expansion of the definition of "fiduciary" would create new hurdles and potential liability for the provision of investment advice to individuals and employee benefit plans, without a clear showing that this expansion is needed. The rule, if finalized in its current form, is likely to lead to higher costs without corresponding benefits.
Bank Services to Merchants	Credit card issuers charge fees to merchants for credit card transactions. These fees were capped in the Dodd-Frank financial services act. Some regulators have raised the concept of further restricting banks from charging consumers or others transaction fees related to merchant transactions. In addition, several states have proposed legislation that would limit fees for merchant transactions.

Issue	Description of Issue
Regulation of Internet	In December 2011, the FCC initiated a proceeding to regulate the rates, terms and conditions for the interconnection and exchange of traffic between Internet Protocol (IP) networks. Interconnection of today's circuit-switched voice networks is highly regulated by the FCC and state commissions based on an outdated monopoly era regulatory framework, but the interconnection to IP networks has always been left to commercial negotiations in a dynamic and vigorously competitive market. The interconnection of independent IP networks forms the foundation of the Internet and the flexibility and adaptability of the commercial arrangements between these networks has been critical to its unparalleled growth and success. The FCC has not identified a market failure or a need justifying regulation of IP network interconnection.
OSHA Proposed Musculo-skeletal Rule	OSHA has proposed adding to its record-keeping requirements concerning occupational injuries for employers an additional category of "musculo-skeletal disorders." Because the definition and diagnosis of such injuries or illnesses is so vague and indeterminate, this requirement could impose considerable cost and burden on employers, particularly small businesses, and create unwarranted exposure for non-compliance based on subjective assessments.
Stream Buffer Rule	The Office of Surface Mining (OSM) has proposed to modify the 2008 stream buffer rule that regulates mining activities adjacent to, beneath or the filling of streams. Although the OSM justifies the revision of the 2008 rule as the result of lawsuit negotiation, science and enforcement data do not support the proposed changes. Severe restrictions on long wall and surface mining will threaten jobs and tax revenues.

[i] Jacobe, D. (2011). *Government regulations at top of small-business owners' problem list*. Washington, DC: Gallup. Retrieved from: http://www.gallup.com/poll/150287/gov-regulations-top-small-business-owners-problem-list.aspx