1717 Rhode Island Avenue, NW
Suite 800
Washington, DC 20036

June 21, 2010

The Honorable Peter R. Orszag
Director
The Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Director Orszag**:**

As a follow-up to your request to both Business Roundtable and The Business Council for examples of pending legislation and regulations that have a dampening effect on economic growth and job creation, we surveyed our membership to get their views. Attached are an Executive Summary and detailed description of what they see as government initiatives that will cause slower rather than faster growth.

Obviously the list is long, but we believe the cumulative effect of these proposals will help defeat the objectives we all share – reducing unemployment, improving the competitiveness of U.S. companies, and creating an environment that fosters long-term economic growth.

As business leaders we are increasingly concerned that the political expediencies of the short-term harm our ability to partner with government to create policies that foster growth. Now more than ever we need to work as businesses and as government to make the United States a place where we can attract the investment that is needed if we are to remain the strongest economy in the world.

We would be pleased to meet with you to discuss any and all of these issues.

Sincerely,

Ivan G. Seidenberg
Chairman & CEO
Verizon Communications
Chairman, Business Roundtable

James W. Owens
Chairman & CEO
Caterpillar Inc.
Chairman, The Business Council

Attachments

POLICY BURDENS INHIBITING ECONOMIC GROWTH

a report by

June 21, 2010

EXECUTIVE SUMMARY

Many regulations and legislation – both existing and proposed – exacerbate the uncertainty created by today's volatile economic environment.

Virtually every new regulation has an impact on recovery, competitiveness and job creation. Often that impact is negative. On an individual basis, most businesses can cope with each new regulation. But the collective impact on the economy is enormous, and often harmful.

With a massive new health care law and financial reform legislation looming, companies are more worried than ever about the impact new regulations and legislation will have on their operations and their bottom line. Not knowing what to expect from these pending regulations, businesses are acting cautiously to forestall any negative impact. These actions are squelching economic growth and job creation, as companies are forced to freeze investments and hiring until they understand how they will be affected by these new mandates.

Key Regulatory and Legislative Issues

Below is an overview of the key regulatory issues that are impeding economic growth and job recovery:

- **Taxes.** When American companies expand abroad they also help the economy at home. As an American company expands operations in its foreign affiliates, it has been estimated that for each dollar of additional wages paid in the foreign affiliate, U.S. wages increase by $1.84. Globally, American companies directly employ 22 million American workers and support an additional 41 million U.S. workers through their supply chains and spending by their employees.

  The Administration and Congress have proposed a number of policies relating to the taxation of foreign earnings that will harm the ability of global American companies to create and retain U.S. jobs. As it stands, the U.S. has the second-highest corporate income tax rate in the Organisation for Economic Co-operation and Development (OECD) and is one of the few countries that taxes U.S. companies on their foreign earnings. The international tax increases proposed by the Administration – as well as those contained in the current tax extenders bill (H.R. 4213) – would make sweeping

changes to U.S. tax law that would make U.S. companies even less competitive in foreign markets and reduce the potential for job growth at home. The Administration should instead encourage U.S. competitiveness by reducing the U.S. corporate tax rate and adopting tax rules on foreign earnings that allow global American companies to compete on a more level playing field with their foreign-headquartered competitors.

Finally, we must continue to promote innovation in the United States by making permanent the R&D tax credit; this will increase U.S. jobs and enhance the global competitiveness of U.S. corporations.

- **Financial Regulatory Reform.** Financial regulatory reform proposals will impose numerous new burdens on American businesses. For example, the proposed legislation and concurrent regulation on proxy access at the SEC (File No. S7-10-09) that creates a new federal right for shareholders to nominate directors will reduce efficiency, stifle competition and deter capital formation.

  Moreover, this proposed legislation would impose a series of new regulations on transactions executed in the over-the-counter (OTC) derivatives market. Business Roundtable recently conducted a survey to gauge the potential effects of proposed legislation -- including a margin requirement – on OTC derivatives. According to the results, on a cumulative basis, non-financial, publicly traded BRT companies would likely respond to the imposition of margin requirements on OTC derivatives by reducing capital spending by 0.9% to 1.1%, or about $2.0 to $2.5 billion, assuming no exemptions. Extending this analysis to S&P 500 companies, a 3% margin requirement on OTC derivatives could be expected to reduce capital spending by $5 billion to $6 billion per year, leading to a loss of 100,000 to 120,000 jobs.

- **Trade.** The Administration's failure to move forward on pending free trade agreements and a more expansive presidential trade negotiating authority has emboldened foreign competitors while hurting our economy, global competitiveness and job creation. The Administration should swiftly resolve any outstanding issues and move forward with the implementation of free trade agreements with Colombia, Panama and South Korea, and must also seek a new presidential trade negotiation authority.

- **Labor.** Foremost among our companies' labor concerns is the Employee Free Choice Act (Card Check bill); if enacted, this legislation would have a devastating impact on business, by eliminating secret ballots in union organizing elections and empowering the government to intervene in labor disputes through compulsory arbitration.

  In addition to EFCA, Congress is expanding damages for pay discrimination. The Paycheck Fairness Act, passed by the House last year and currently supported by the Administration as the successor to the Lilly Ledbetter Fair Pay Act, would open companies to potentially crippling employment litigation without adding significant benefit to workers, since current law already addresses the discrimination issue.

The Vice President's Middle Class Task Force is reportedly considering regulations on federal procurement policy that would call for awarding federal contracts to companies that provide living wage, health care, retirement and paid sick leave; have fewer violations in labor and employment, tax, environment and antitrust; and take a neutral position in union organizing campaigns. If adopted, these regulations would base decisions about awards on factors that could significantly increase the cost to the government and American taxpayers.

The Middle Class Task Force is also reportedly considering mandating Davis-Bacon wage requirements and union labor agreements for all federal construction projects, even those involving non-union companies. These provisions will drive up costs and undermine new initiatives for green jobs and the construction of nuclear power plants.

- **Energy and Environment.** Legislative and regulatory efforts to address climate change, if done properly, provide real opportunities to develop cleaner and more efficient technologies to reduce greenhouse gas emissions in a way that benefits the environment and U.S. industry. A collaborative approach with government and industry is necessary to develop measurable and sustainable goals.

  Mitigating greenhouse gases is a policy goal best left to Congress. However, in the absence of legislative action, the EPA has recently proposed a number of policies that regulate greenhouse gas emissions under the Clean Air Act. As the U.S. manufacturing sector continues to struggle and is shedding jobs overall, the EPA's actions will impose additional expenses, create uncertainty and place U.S. companies at a competitive disadvantage compared with foreign firms.

  Energy independence ultimately entails a combination of all viable resources, including oil and natural gas exploration. But recently, the Administration has issued sweeping restrictions on drilling in response to the Deepwater Horizon tragedy. The breadth of the Administration's response should be promptly reconsidered as the Administration obtains definitive information. If proper procedures are followed, tragic events such as the Deepwater Horizon situation should not and do not occur. Delayed exploration and production of oil and gas and reduced access will diminish domestic supplies available to help meet U.S. needs. Moreover, each aspect of the moratorium will have an immediate negative impact on economic activity and thousands of jobs, both directly in the oil and gas industry and indirectly in numerous support industries and services. Much of this impact will be felt in the Gulf of Mexico region, where the economy and employment are already gravely suffering from the spill itself.

- **Health Care.** By significantly restructuring the country's health insurance marketplace, the new health care reform law is likely to have a substantial impact on the nation's economic recovery. Intended to build on the employer-sponsored system, health care reform must be implemented in a way that ensures the stability of this employer-

sponsored framework. During the regulatory process, clarifications to the law must be made in a manner consistent with this intent. Businesses are working to comprehend the complexities of the law. Although many of the more significant changes are not imminent, uncertainty is contributing to some overall anxiety as to increased business costs and requirements. Regulatory clarifications to many of the critical employer-related provisions will be vital in assessing the overall economic impact of the law. Exploring ramifications, consequences and nuances to these legislative clarifications may require even more vigilance than the drafting and passage of the reform law itself.

- **Education.** In general, we support the Administration's efforts to strengthen the U.S. educational system. A quality early childhood education program is critically important to an individual's lifelong success. The "Educate to Innovate" program seems promising to bolster STEM (science, technology, engineering and math) education at all levels.

- **Immigration.** Our immigration system is broken and must be fixed. Immigration reform must address the need of American businesses to access qualified, highly skilled professionals around the globe to remain competitive. Reforms must also address the current green card backlog for our Chinese and Indian employees and include an H1-B cap that is flexible based on market needs.

In addition to the above, there are a number of sector-specific regulations of which our companies have expressed strong concern because of their potential domino effect on the economy. These are highlighted in the comprehensive report.

Conclusion

We believe that a new, comprehensive assessment of federal policies and regulations is fundamental to the U.S. economy regaining its competitive strength. Regulators should assess the financial impact of individual and collective mandates, remove existing mandates that have become redundant and increase efficiency through market competition. They should also establish a system for creating new regulations that do not impede private-sector investment and job creation.

At the same time, the government must reduce spending to manage down deficit and debt. The current levels of U.S. debt, as well as those required to finance the forecast deficits, will crowd out private capital. If less capital is available for corporate borrowers, it will retard future growth and investment, erode the value of the U.S. dollar, accelerate inflation and, eventually, reduce consumer spending power.

Economic recovery must be lead by the private sector, both large and small, if we are going to create jobs and reduce the unemployment rate. In assessing all regulations, the goal should be to reduce uncertainty, fear and overall cost impact while creating a regulatory system that is business-friendly, cost-effective, and encourages efficiency.

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BROAD ECONOMIC ISSUES

Energy

Reliable sources of energy are essential to the long-term health of the American economy. While the U.S. leads in energy investment, efficiency and new energy sources, we know that America must expand access to our domestic energy supply in order to meet current and future demand for affordable energy. A comprehensive energy strategy is critical. This strategy must embrace all forms of domestic energy production while expanding the conservation and efficiency efforts already in place. Oil, natural gas and clean coal remain essential contributors to America's energy security, while alternative fuels and renewable energy sources will also gain increasing importance in the future. Developing and expanding all our domestic energy resources is key to energy independence, economic growth and job creation.

Key areas of concern include:

- **Renewable Fuels Standard/Biofuels:**
  In order to deal with the significant concerns related to RFS2 implementation, the EPA needs to use the authority it has to adjust, freeze, or waive the RFS mandated volumes if the required amount of renewable fuel exceeds the legal amount of ethanol allowed in gasoline products. Otherwise, the E10 blendwall could adversely affect fuels, prices and biofuel industry investments. EPA should not try to solve the problem by putting vehicles and engines at risk. Cellulosic or other bio-hydrocarbon fuel technology is essential to meeting the goals of the RFS; thus, government should continue to encourage the needed R&D and at the same time remove artificial regulatory barriers. No additional labels should be required for renewable diesel or renewable diesel blends with petroleum fuels because renewable diesel has the same characteristics as conventional diesel fuel. Finally, the EISA Section 201 definition of biomass-based diesel fuel needs to be revised to include fuels produced by co-processing biomass with a petroleum feedstock.

- **Ethanol:**
  The E-15 waiver, if issued this summer, would likely take place without vehicle and retailing infrastructure testing that needs to be completed and thoroughly evaluated in order to permit the delivery of these fuels in a manner that avoids potential harm to vehicles and possible environmental risks if retail infrastructure are not certified to hold and dispense the higher ethanol blends that such a waiver would allow. Additionally, the potential exists for considerable confusion in the implementation of the higher ethanol blends. Automakers may not be able to warranty their (non-Flex Fuel) vehicles for the higher ethanol blends leading to customer confusion about which fuel products they can use in their vehicles without causing damage. Similarly, suppliers and retailers may not be able to sell the higher ethanol-gasoline blends. Considerable planning and implementation issues need to be considered before a waiver is issued and made effective by EPA.

- **Nuclear Energy:**
  In March 2010, DOE withdrew the license application for a high-level nuclear waste repository at Yucca Mountain. Delay in identifying a nuclear waste repository is preventing the government from meetings its long-term storage obligations for nuclear waste. America needs a safe, long-term solution to managing used nuclear fuel. This is an important part of restarting America's

nuclear industry to help meet our energy and climate challenges and create thousands of new jobs.

- **Green Jobs:**
  Pursuing economic and environmental goals is a legitimate governmental function, but such goals should be advanced through a "level playing field" policy construct. It is critical to look at the whole economic picture, including costs to consumers and the impact on jobs in other industries. The objective should be to support policies that grow net jobs and create sustainable economic growth, not growth in one sector at the expense of others (or one fuel source at the expense of others). For example, legislative proposals to implement Renewable Electricity Standards (RES) would mandate that renewables generate an arbitrary percentage of electricity supply regardless of their cost being far higher than more economical alternatives for power generation. Diverting labor and financial resources to less economic forms of energy is counterproductive to net job creation and economic growth, and will simply lead to elements of the domestic economy being less competitive.

- **Electricity:**
  The major constraint to the development of new electricity supply is uncertainty over whether or not there will be a price placed on carbon. Utilities and independent merchants are reluctant to invest in traditional sources of generation because of the uncertainty of what carbon policies would be over the life of the project. In the interim, neither "green" projects nor "traditional" projects are being built in sufficient number to keep up with the demand for power. It's also important to avoid differing state rules, which makes for inefficient markets

- **Electric Grid:**
  The major constraint to moving power from region to region is the antiquated transmission grid – more pressure is being placed upon the existing transmission grid to move existing sources of power plus integrate new sources of "green" power. The problems with improving the grid can be summed as follows: "Who will pay for it and who will own it?" Additionally, citing issues associated with new transmission must be resolved. Congress acted to create "National Transmission Corridors" almost two years ago but nothing has been finalized or started to be built in this regard.

- **Power Market Rules:**
  The Federal Energy Regulatory Commission and Independent Service Organizations (ISO) need more transparency so the market knows what the rules are. Each region has its own rules and requirements and interprets and implements its rules differently--not an efficient or clear market environment. The power market's rules are not standardized. For example, the Midwest ISO routinely makes retroactive rule changes. Some of these changes have resulted in some companies receiving bills for millions of dollars for power they bought or sold several years ago. No company or market can operate long term with this level of ambiguity and retroactive rule changes. The electrical transmission line sighting process requires approval of several agencies, which causes utilities to delay projects that create jobs and improve grid reliability.

- **Energy Star:**
  Two recent proposals from DOE and EPA suggest that manufacturer-operated test labs that are NVLAP certified by NIST would not qualify as being independent third-party, and the EPA has recently proposed more extensive testing requirements that would add considerable – even prohibitive – costs for manufacturers and retailers to comply with the Energy Star designation.

- **Oil Exploration:**
  The Administration recently announced a series of actions in response to the Gulf of Mexico oil spill. The sweeping scope of these policies relative to the actual issues that reportedly caused the incident should be promptly reconsidered as the Administration obtains definitive information. If proper procedures are followed, tragic events such as the Deepwater Horizon should not and do not occur. Delayed exploration, production and reduced access will diminish domestic supplies available to help meet U.S. needs. Moreover, each aspect of the moratorium will have an immediate negative impact on economic activity and thousands of jobs, both directly in the oil and gas industry and indirectly in numerous support industries and services. Many of these impacts will be felt in the Gulf region, where the economy and employment are already gravely suffering from the spill itself, and an extended moratorium will likely result in deepwater rigs leaving the Gulf.

- **Mining:**
  Since avoidance of streams in surface mining is not possible, the proposed OSM stream protection rule contains certain concepts that could significantly affect surface mining, such as:

  - *Stream Sequencing:*
    Given the size and scale required to mine and reclaim effectively and economically, affecting and reclaiming only one stream segment at a time is impossible.

  - *Bonding:*
    Long-term bonding for potential future material damage issues would create no certain end to liability, making Asset Retirement Accounting difficult and tying up surety and/or self bond. It would also make Surety Companies reluctant to write reclamation bonds.

  - *Coordination of SMCRA and CWA permitting:*
    Attempts to coordinate CWA 404 permitting between EPA and the Army Corp of Engineers have not worked, as evidenced by the hundreds of permits held in limbo. Additionally, SMCRA currently has set standards and timeframes for permit requirements and approvals, while CWA has few of these.

  - *Backfilling, Grading, Excess Spoil and Approx. Original Contour restoration requirements:*
    Requiring a blueprint for final land forms and not use standards and guidelines that allow the operator to efficiently and economically restore the pre-mine capability of the land is an unworkable and overly prescriptive approach.

- **Coal Ash:**
  If coal ash is classified as a “special waste,” it would subject generators and other operators of ash storage facilities to far more stringent regulation and trigger violations of local zoning requirements, limit the willingness of communities to permit new coal-fired plants and curtail the beneficial use of coal ash. Currently, more than 50 million tons (nearly 45 percent) of CCBs are beneficially used each year in a variety of applications—many of which support sustainable construction practices. In fact, coal ash has been used for more than 80 years as a substitute for cement in concrete. Today, the beneficial use of coal ash has an annual impact of approximately $9 billion on the U.S. economy. Additionally, if the EPA sets performance standards that will require physical, chemical and biological treatment of ash waste water and low volume effluents, the estimated cost of such waste water treatment facilities could run between $120 and $150 million.

Environment

Investments in U.S. energy projects of all kinds rely on government policies that are efficient, predictable and transparent. Regulatory and permitting requirements are often in place to advance and protect the environment and these goals should be supported. The regulatory process that underpins the goals must be robust and thorough. However, all types of energy projects—from renewables to nuclear to clean coal to natural gas—are subject to an inefficient regulatory process. By its action and inaction, the government often discourages or blocks investment and limits opportunities. Endless regulatory delays and inefficiencies are a waste of effort and money for all concerned, including the government and the taxpayer. Failure to address the faults in the regulatory system will have, and arguable is having, serious consequences for the future of our country.

Key areas of concern include:

Air Quality

- ***National Ambient Air Quality Standards (NAAQS):*** EPA NAAQS rules are the basis for an array of costly requirements on the manufacturing industries. The economic impacts on areas that do not meet EPA air standards are significant, and include constraints on current economic activity, plant expansions, disincentives for locating new plants, and more stringent permitting. This affects job growth and can push new plants offshore. EPA's proposed ozone standard, for example, is very close to background levels and EPA estimates compliance costs will range from $19 billion to $90 billion.

- ***New Source Performance Standards (NSPS):*** In 2008 EPA published a final rule that revised the current New Source Performance Standards (NSPS) Subpart J for petroleum refineries. The final Subpart Ja imposes a number of potentially costly new requirements related to refinery flare systems. EPA is also considering whether GHG provisions should be added to the rule. Additional flare gas controls will be required to comply with the new NSPS as well. Industry estimates compliance costs to be in the range of $1 to $2 billion.

- ***Boiler and Process Heater Air Toxics Controls ("Maximum Achievable Control Technology") under the Clean Air Act:*** In April 2010, the EPA proposed a hazardous air pollutant rule affecting approximately 13,500 boilers and process heaters at major stationary sources in the United States. Application of EPA's stringent approach will establish limits that are technically infeasible for many. The emission limits are especially challenging for gas-fired units (common in refineries and chemical plants). Cost estimates for new required controls range from $9 billion (EPA estimate) to over $20 billion – and facilities may still not be able to achieve the standards. Facilities in other countries do not have analogous control requirements, putting U.S. plants at competitive risk, and potentially driving new facilities off shore.

- ***Clean Air Interstate Rule:*** The Clean Air Interstate Rule (CAIR) has been vacated and remanded to the US Environmental Protection Agency. Although the Agency has proposed a new rule, uncertainty remains as to the final form the rule will take as well as potential legal challenges to the new rule. In the meantime, uncertainty has affected the market for trading for emissions credits as well as the market for equipment and technology to reduce sulfur dioxide and nitrous oxide emissions.

- ***Diesel Engine Standards:*** In order to meet U.S. environmental product standards companies are required to invest billions of dollars in reducing diesel engine emissions to a level barely measurable. The vast and growing opportunity for companies' products lies outside the developed world. It lies in countries that have priorities more basic than the environmental concerns of the U.S. So, when companies compete in the Third World countries we are most often competing against companies who do not carry the billions of dollars in environmental costs that are inherent in a U.S. manufactured product. It's often a competitiveness hurdle that companies cannot surmount. And in the end U.S. jobs are risked.

- ***Tier IV Diesel Engine Emissions:*** The Administration's piecemeal development of stringent emissions regulations significantly impacts U.S. global competitiveness. In addition to setting stringent standards, regulations may be internally inconsistent (e.g. criteria pollutant reduction vs. GHG emissions reduction), inconsistent between different levels of U.S. governments (e.g. state-to-state variance of in-use restrictions), and inconsistent globally (e.g. U.S./E.U./Japan vs. ROW).

- ***New Source Review (NSR)/ Texas SIP Gap/ Texas Title V Permitting:*** On March 31, 2010, EPA formally disapproved of revisions to the Texas Qualified Facilities exemption rule that allowed facilities that used certain types of control equipment to make changes to their operations without going through permit review, as long as the changes did not result in a net increase in emissions. In addition, EPA has objected to approximately 40 TCEQ proposed Title V operating permits and indicated that it would require these facilities to apply for an EPA-approved permit as well. Continued EPA objections and/or TCEQ inaction to resolve the matter could delay startup of certain projects already under construction or extend the permitting process for new major projects. In general, a flexible permit can provide a single emissions cap for a part of or an entire facility in lieu of permitting each individual unit within the facility. Similar rules exist in other states and have not been challenged by EPA.

- ***Review of Standards for Nitrogen Dioxide (NO2):*** Preliminary evidence suggests that existing air modeling tools significantly over-predict the impacts of mining operations based on this new standard. If modeling is required – most surface operations will not be able to demonstrate compliance with this standard.

Climate Change

- ***Carbon Capture and Storage:*** The Administration's focus on CCS to date has been almost exclusively on coal-fired power generation. The natural gas industry has pioneered CCS technology associated with gas processing facilities, with functioning operations that can provide great opportunities today, and at full scale. Broadening the scope of CCS projects considered in the Administration's efforts to include facilities such as natural gas processing plants can help drive forward the Administration's policy goals.

- ***Renewable Energy Standards:*** The lack of a comprehensive federal energy policy that supports renewable energy standards is resulting in an estimated 50% decrease within the wind market segment in 2010 and is creating volatility across the renewable sector. This uncertainty is delaying investment and job creation.

- ***Greenhouse Gas Regulation (GHG) under the Clean Air Act (CAA):*** Broad consensus exists that the CAA is ill-suited for GHG regulation, and that the nation's GHG policy should be

decided by Congress. The U.S. manufacturing sector continues to struggle and is shedding jobs overall, and the domestic refining industry is faring worse than the manufacturing sector as a whole. With Congress deciding not to act, EPA's moving forward on its proposed GHG approach will not only have immediate detrimental effects domestically, but also "lock in" a competitive disadvantage compared to other parts of the world.

- ***U.S. Fish and Wildlife Service Strategic Plan for Climate Change/Five-Year Action Plan:*** Secretary Salazar has signed Executive Order which incorporates "climate change" into all decision making at the Department of Interior. The USFWS immediately followed the Order with a "strategic plan for climate change and five-year action plan." USFS has followed this lead.

  Specific concerns with these plans include:
  - Lack of Congressional authority and guidance
  - Plans are built on ambiguity and scientific uncertainty
  - Regulatory uncertainty for mineral and energy development
  - Overreaches of authority that may be applied beyond public lands to broad landscape-scale land use (including water) planning

  This direction to address climate change with no legislative or regulatory backing invites endless lawsuits with subsequent delays for permitting & project development.

- ***Council on Environmental Quality Draft NEPA Guidance on the Effects of Climate Change an Greenhouse Gases:*** CEQ indicates it "does not propose to make this guidance applicable to federal land and resource management actions, but seeks public comment on the appropriate means of assessing the GHG emissions and sequestration that are affected by Federal land and resource management decisions." There is no clear explanation of this possible exemption; one interpretation is that the guidance would not apply to general planning processes undertaken for purposes of management of federal lands (i.e., would not be applicable to preparation, revision, amendment or maintenance of land use or resource management plans) but would apply on a project level for approvals of specific projects on federal lands. Several environmental groups, however, have expressed concern that the exemption could be much broader and exempt most actions relating to public lands. Specific concerns expressed by these groups are directed at the federal coal leasing process in the PRB.

- ***Permitting for Greenhouse Gas Emissions:*** On May 12, 2010, the EPA issued its final "Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas Tailoring Rule" (Tailoring Rule). The Rule modifies the statutory thresholds for when stationary sources are subject to permitting, for greenhouse gas (GHG) emissions, under the PSD and Title V programs of the Clean Air Act. Sources subject to PSD permitting must determine and implement "best available control technology" (BACT) for GHGs. BACT determinations can be time-consuming and burdensome, as BACT is determined on a case-by-case basis, during which the permitting authority evaluates the energy, environmental, economic and other costs associated with alternative technologies, and the benefits of reduced emissions from the technology. EPA has no definitive policy on what constitutes BACT for GHGs, and the final Tailoring Rule offered no relevant guidance; it seems likely, therefore, that those sources subject to BACT will undergo a particularly time-consuming and burdensome process with an unknown outcome, to the commercial detriment of those sources.

- ***GHG Best Available Control Technology (BACT):*** Arguments are being advanced that natural gas should be considered to be BACT for coal-fueled EGUs. Apart from the fact that such arguments cannot be supported legally, attempts to utilize the PSD permit process to fuel-switch coal plants to natural gas plants represent fundamentally unsound public policy. Specifically, the notion that coal plants can be fuel-switched to natural gas as a GHG reduction strategy ignores the problems associated with increasing our dependence on natural gas for power generation. With conventional natural gas production projected to decline more than 33 percent in the next decade, shale gas is the only significant viable source of new domestic gas production in the United States. These proposals put reliability of the electric supply system at risk since a shortfall of shale gas will inevitably lead to increased LNG imports in a world where 45 percent of the resource is controlled by Russia, Iran and Venezuela.

Chemicals

- ***EPA's Chemical Action Plans:*** Some of the proposed “Chemical Action Plans” (CAPs) could result in additional compliance costs for the manufacturers and the users of these materials. They could result in market disruptions due to "blacklisting", costs to manufacturers and users due to formulation changes and new equipment costs, and the potential substitution of alternatives that may not be any "safer."

- ***PCB Use Authorizations and EPA:*** Under EPA’s proposal, substantial time-intensive and prohibitively costly facility replacements would be required impacting landowners, permitting agencies, the availability of natural gas to customers, public safety, disposal facility capabilities and other unintended consequences. As natural gas is domestically abundant, the cleanest conventional fuel and widely considered a critical component of our low-carbon future, the impact of this proposed rule would seem to run counter to our nation’s broader environmental policy objectives.

- ***TSCA Modernization:*** Compliance with the proposed safety standard appears to be nearly impossible and will result in a flood of litigation. It will gridlock American industry, ultimately stifling investment and costing valuable American jobs. Under the complex regulatory framework being proposed, EPA will be unable to meet required deadlines which will effectively bar new products from the market. Under these proposals, foreign manufacturers will have a distinct competitive advantage to produce new chemical solutions.

Clean Water

- ***Cooling Water Intake Structures:*** Industry estimates that the capital and operating costs of modifying cooling structures to comply with EPA’s proposal will equal nearly $10 million each. According to EPA, over 1500 facilities could be affected by this regulation.

- ***404 Permit Process (Stream & Wetland Permits):*** There is an unpredictable and ever increasing escalation in assessment and mitigation requirements. The system lacks the regulatory certainty needed to determine the viability and economics of a project in advance. The 404 process is now so cumbersome and broken down that hundreds of permits are being held up and substantial business loss is occurring which could lead to eventual coal shortages.

- ***Jurisdictional Waters:*** Ditches and erosional features are being deemed jurisdictional. There is not time or resources to fight these determinations through the legal system. The overzealous nature of these determinations not only cause delays and wasted resources but also, in many cases, result in inferior reclamation and loss of mineable reserves.

Environmental Health and Safety

- ***Mandated "Inherently Safer" Technology:*** Proposed chemical security legislation would also attempt to address process safety management, with a focus on the mandated use of "Inherently Safer Technology" (IST). IST in this context would require substitution of chemicals in various processes. Mandated IST would allow the Department of Homeland Security to make process decisions for facilities. A subsequent change in catalyst type will require construction of a new unit at a cost of at least $100 million, and may include construction of regeneration facilities at an added cost of $20 million as well.

- ***Lithium Ion Batteries:*** The Department of Transportation's proposed rules to treat lithium ion batteries as hazardous waste, will not only needlessly drive up costs in the wireless industry, threatening needed investment in other areas, but could also have a detrimental effect on the airline industry.

Federal Land

- ***Interior Board of Land Appeals – PRB - West Antelope II Lease-By-Application (LBA):*** The Montana Settlement to suspend 61 oil and gas leases may foreshadow how DOI will handle similar claims about the impact of coal leasing on climate change. If a similar approach to what was taken on Montana Federal resources is used on Wyoming Federal leasing, many of the current time-critical LBA's would be pushed back. These delays could immediately affect up to half the producing coal mines that operate on Federal lands and eventually all companies that lease Federal property.

- ***WildEarth Guardian's Petition for Recertification of Powder River Basin:*** Recertification of the PRB Federal properties would preclude operators from adding reserves adjacent to existing mines in a logical and progressive fashion as is done under the Lease-By-Application (LBA) process. Not using the LBA method would also affect the competitive bidding process and likely lower the overall value of the Federal resources. Coal would have to be leased on a Regional basis thus reducing the number of potential bidders.

Endangered Species

- ***Sage Grouse Listing Decision:*** Listing sage grouse on the endangered species list would significantly affect all types of development in the Powder River Basin. At present, two lawsuits have been filed (Western Watersheds Project and Center for Biological Diversity protesting the "precluded" determination).

Financial Regulatory Reform

We support the efforts of Congress to strengthen the nation's financial system. However, we believe many provisions of the House and Senate bills will do nothing to address the core problems of the financial system, but will impose additional costs and constraints.

Much of the language is vague and will need to be implemented through regulation; uncertainty surrounding the specifics of those regulations is inhibiting growth right now. How the regulations are written will have as much or more of an impact on economic recovery, global competitiveness and job creation as the legislation itself will have; and such regulations will, in the end, either mute or amplify the potentially negative legislative impacts on those entities that will be covered by this legislation.

All rulemaking should be taken carefully to avoid serious unintended consequences that would create market price dislocations and increased costs for end users. Taking a measured approach to rulemaking will help avoid almost certain unintended negative consequences.

Key areas of concern in the reform bill include (in descending order of importance):

- **Corporate Governance and Proxy Access:** Existing regulations and outstanding proposals related to corporate governance will inhibit growth while offering little compensating benefit. We are concerned that proxy access would promote a short-term focus at the expense of long-term, sustainable growth—one of the causes of the financial crisis. For example, proxy access will increase the influence of hedge funds, which may use director nominations as leverage in pressuring a company to make decisions to advance their own short-term interests and investment strategies, thereby driving decisions that damage the long-term health of the company and sacrifice American jobs.

  Proxy access also would turn every director election into a proxy contest, thereby politicizing the director election process. This would be tremendously disruptive, require expenditure of significant corporate resources and discourage board service. It will also fundamentally change the ownership of corporations in favor of certain special interest groups seeking to make a quick profit rather than promote sustainable and steady growth of the corporation.

  The question of whether proxy access should be required should be left to the shareholders to decide not through a one-size-fits-all federal mandate.

- **Derivatives:** Many non-financial companies use OTC derivatives to manage risk by locking in prices to eliminate volatility due to fluctuations in foreign currency exchange rates, interest rates, and commodity prices. The bills could limit the products available to companies for use in our hedging programs, which, in turn, could increase our financial risk and earnings / cash flow volatility. We are encouraged by efforts to include an exemption for corporate end users, but we remain concerned that the exemption may be too narrow and may be further restricted through regulations.

  Companies could also be required to post margin on derivative transactions, reducing available liquidity; this will divert capital away from investment in growth that would drive job creation.

Specific concerns around the derivative legislation include:

- If the banks are required to spin-off their derivative franchises, we could see an increase in counterparty credit risk exposure. Also, this could increase the pricing of our liquidity facilities indirectly as banks try to ensure they are still achieving an adequate return on committed capital.

- Companies could also face cost pressures due to implementation of some form of the "Volcker rule", which would restrict banks' proprietary trading activities (analysts at Morgan Stanley estimate this could collectively cut large banks' profits by up to 20%) and if increases to bank capital ratios are included in the final product.

- Section 731 would probably prevent a company's pension plan from employing swaps.

- The definition of "Swap Dealer" in the Bill, which is a trigger for heightened requirements, is overly broad and captures the commercial participant that "regularly purchases and sells swaps in the ordinary course of business."

- The Lincoln Dodd Bill language no longer contains an exclusion from the definition of Futures Commission Merchant (FCM) for any person that only does swaps with eligible contract participants (which include energy companies doing bilateral swaps).

- The definition of a Floor Trader is overly broad and could be interpreted to include swaps that are traded on platforms such as ICE.

- Mandating separate OTC trading subsidiaries will likely lead to near-term uncertainty in and reduced access to OTC markets. Long-term, possible implications would be fewer trading counter-parties and higher cost for commercial end users looking hedge commodity, FX, and interest rate risk.

- **Captive Finance:** Any regulation that increases cost of funds or places restrictions on capital deployment for U.S.-based captive finance companies will impede companies' ability to provide integrated financial services and compete globally. The Administration's policy to subject captive finance companies to myriad state regulations instead of federal uniform rules unnecessarily increases costs and decreases financial service choices.

- **FASB:** The US accounting standards board (FASB), in a convergence effort with the International accounting standards board (IASB), is scheduled to release 10+ proposed accounting exposure drafts over the next 18 months. Historically, the FASB has not had more than 3 or 4 exposure drafts out for public comment and many of these were not proposing fundamental changes to accounting as are now being proposed.

  Each one of these proposals will need careful consideration and deliberation to understand:

  - the impact to both preparers and users of financial statements, both public and private

  - the preparation needed for implementation of the standards through identification of changes needed to systems and procedures, and

  - the education and training that will be needed for employees and investors

The Administration should consider whether US multinational companies, FASB and IASB have sufficient technical resources to respond effectively to such a large quantity of complex proposals issued over a very short period of time and subsequently absorb and resolve all of the issues that would be posed by all of these proposed standards in such a compressed time period.

- **Consumer Credit:** The legislation would create a new consumer protection agency in the Federal Reserve with broad powers, including the ability to regulate entities that facilitate consumer credit. The unintended consequences of this initiative, however, might include automobile dealers and directly impact retail car sales.

- **Price Test for Short Sales:** The SEC's recently adopted price test for short sales is likely to have a negative impact on economic recovery, global competitiveness and job creation. Adopted as Rule 201 of Regulation SHO, the price test requires securities exchanges to prohibit short selling in an equity security on any day during which the price declines by 10% or more, and during the following day as well. This rule imposes burdens and costs on market participants to build systems to measure and respond to market declines, despite significant empirical evidence challenging the rule's efficacy. As Dr. Erik Sirri, the former SEC Director of Market Regulation recently observed, this rule runs counter to years of study of short sales and price tests by the SEC. It inevitably will impair the efficiency of markets, impose unjustifiable costs on investors large and small, and curb the global competitiveness of U.S. equity markets.

Taxes

We encourage the Administration to balance the need to raise revenue against the danger of discouraging growth and jobs with costly and burdensome tax provisions. The Administration has proposed a number of regulations that threaten to dramatically undermine the ability of U.S. global companies to compete in the global marketplace – and this is worrisome.

The Administration's approach to domestic and international tax policy needs to pivot and recognize that U.S.-based multinational companies must compete in a global economy to ensure domestic jobs and economic growth. Instead of increasing this burden or revising the system in a piecemeal fashion, we believe a fundamental reform of the tax system is necessary to keep U.S. companies competitive in the international economy. Working together, we can make this a "win-win" for government, taxpayers, small and large U.S. businesses across our nation.

Key areas of concern include (in descending order of importance):

- **Corporate Tax Rate:** The United States has the second highest corporate rate of all 30 OECD countries, placing our nation at a significant competitive disadvantage. We are also losing ground to foreign nations, which have been modernizing their tax systems to attract investment. As it currently stands, U.S.-based multinational corporations pay the difference between the U.S. corporate tax rate and the tax rate paid in foreign countries when we bring revenues from overseas back home. This liability on foreign earnings is substantial and can hamper our ability to reinvest those earnings in domestic R&D efforts, which leads to growth and U.S. job creation.

- **International Taxation System:** The U.S. is one of the few developed economies in the world which taxes businesses on their worldwide income. U.S. multinational companies are taxed in the United States on their U.S. profits, taxed abroad on their foreign profits, and then taxed again when those foreign profits are brought back home. By contrast, our competitor's foreign operations typically don't incur incremental home country taxes, giving them a built-in advantage when competing with U.S.-based businesses.

- **Deferral/Repatriation:** When the elimination of deferral was proposed in 2009 companies were deluged with calls and saw a swift decline in stock value, impacting our employees, shareholders and the U.S. economy. Far from tax avoidance, deferral simply allows American multinational companies to at least delay paying tax on foreign earnings until that income is repatriated. Limiting deferral would jeopardize U.S. competitiveness in an increasingly challenging global economy.

- **R&D Credit/Tax Extenders:** The R&D tax credit is vital to increasing U.S. job creation and enhancing the global competitiveness of American corporations, and should be made permanent. While the tax extenders bill contains this much-needed credit, it also includes harmful international revenue raisers. Some of these proposals would apply retroactively, introducing uncertainty that makes it difficult for businesses to plan. Additionally, continuous expiration and extension of provisions is disruptive and creates uncertainty for business operations and planning.

- **Foreign Tax Credit/Dual Capacity:** The Administration's proposal to reduce the U.S. Foreign Tax Credit for repatriated foreign profits could cause the total foreign and U.S. tax on repatriated profits to be even higher than the already high U.S. tax rates. This could lead to the

same double taxation that the Foreign Tax Credit system was meant to avoid, and may actually encourage companies to keep foreign earnings overseas instead of remitting the funds back to the U.S.

- **LIFO:** Repeal of LIFO would constitute a massive tax increase on hundreds of thousands of American businesses, and could force smaller ones to close. Even larger companies might need to borrow large amounts in order to meet the tax liability. Problems caused by repealing LIFO would include higher taxes, decreases in working capital, inaccurate inventory valuation, cash flow problems and reduced global competitiveness.

- **Dividend Taxes:** Any dividend tax increase could have negative economy-wide implications. Long term, it may discourage dividends as a means to return capital to shareholders. Also, international tax disparity would incent capital (in times of relative stability) to migrate to stocks in lower tax jurisdictions. Now is not the time to discourage long-term investment in essential sectors.

- **Taxes on Oil and Natural Gas Industry:** The multi-billion dollar tax increase on the oil and natural gas industry could mean less U.S. energy production, fewer American jobs and less revenue at a time when all three are desperately needed. Additionally, the change in the long-standing deduction for Intangible Drilling Costs will result in the reduction of development in the U.S. costing our economy much needed jobs and increase our dependence on foreign oil. Finally, repeal of the Section 199 deduction would threaten high-skilled, high-paying jobs held by refinery workers, chemical engineers, environmental technicians, accountants and many others.

- **Worldwide Interest Allocation:** The policy to disallow until 2018 the American Jobs Creation Act of 2004 provision which would have allowed companies to make an irrevocable election to allocate interest on a worldwide basis keeps U.S. companies at a competitive disadvantage with foreign competitors.

- **3-percent Withholding:** Businesses – the vast majority of which do not have tax delinquencies –are expending significant resources in preparation for implementation of this provision due to major system and process changes needed for withholding, reporting, and reconciling the millions of affected payments annually. The economic burden of this provision is far more than any expected revenue gains from increased tax compliance.

- Other areas of concern include possible expiration of the “Bush” tax cuts, re-imposition of the Superfund tax, expanded 1099 reporting rules included in health care reform, an overly aggressive timetable for convergence of U.S. and international accounting standards, elimination of IRS Section 911 and expiration of accelerated depreciation on agriculture equipment.

Trade

The United States represents five percent of the world population and produces 20 percent of the goods and services. We must be able to trade globally to grow or even survive. The lack of a free and fair trade policy is essentially allowing our foreign competitors to take full advantage of growing markets at the expense of American businesses. A real-time example is China's investment in Africa. While the U.S. is taking its time-out on trade, China is building, growing and establishing a commanding presence in Africa. This will undeniably put American companies at a disadvantage in Africa for many years to come.

Additionally, U.S. companies with foreign investments export more, and pay their workers almost 19% more, than purely domestic firms. It's critical that we help companies grow and thrive in the international economy in order to expand jobs and growth back here at home.

Key areas of concern include (in descending order of importance):

- **Free Trade Agreements:** It's vital that Congress approve the pending free trade agreements with Colombia, Panama and South Korea as soon as possible – a critical step towards the goal of doubling U.S. exports over the next five years. While we wait, other countries are moving ahead with their own agreements, causing the U.S. to slides backward from potential "first mover" in these markets to a lagging copycat. For instance, the EU has closed with South Korea, and will shortly conclude negotiations with Colombia. Additionally, the Administration should look to negotiate new agreements, extend fast track authority and make a priority of completing a comprehensive WTO Doha Round.

- **Buy American:** Regulations implementing the Buy America provisions of the stimulus bill are overly restrictive and extend procurement discrimination to unprecedented levels. This prevents states and municipalities from choosing the most cost-effective products for projects receiving stimulus funds. It also runs counter to U.S. international obligations and, importantly, is demonstrably impeding efforts to open foreign procurement markets to U.S. goods and services. China, for example, now cites these provisions to justify its own discriminatory procurement restrictions.

- **Mexican Trucking:** The Mexican trucking dispute and resulting tariffs on products sold to Mexico are placing U.S. businesses at a competitive disadvantage, directly impacting jobs, competitiveness and economic recovery. As an example, shipments of frozen potato products to Mexico are experiencing increased tariffs, placing the U.S. industry at a competitive disadvantage to Canadian firms who are taking sales from American businesses.

- **Chinese Currency Issues:** By holding down the value of its currency, China effectively subsidizes its exports by 25 to 40 percent and taxes its imports by the same amount. The result is large global trade imbalances which won't be corrected unless exchange rates are realigned. The U.S. needs to formulate a comprehensive program to reverse the situation.

Other areas of concern include inefficient customs processing, Country of Origin Labeling, the absence of industrial user standing in US anti-dumping and countervailing duty laws, Iran sanctions legislation that limits presidential discretion, difficult and costly implementation of the Conflict Minerals Trade Act, the Administration's failure to comply with WTO rules on cotton, "deemed export" restrictions, the recently proposed export control reform initiative , the Commerce Department's proposal to adopt an Intra-Company Transfer License Exemption and the need for harmonized environmental and safety standards for products distributed worldwide.

Health Care and Benefits

The recently enacted health care reform legislation includes many positive policy changes such as increased transparency and strengthened focus on wellness and prevention. However, the law does little to change the underlying problems of our delivery system, which are the primary drivers of the unsustainable cost trends of employer provided care. Therefore, the ongoing cost increases in the system will continue to shift to the private market, putting additional cost burden on employers and other healthcare consumers.

There were several key cost-curve –bending changes that would help reduce this burden, including:

- Incentivizing the elimination of waste,
- Focusing on choices for care during the last year of life,
- Wiring healthcare,
- Payment reform and
- Tort reform.

In addition, uncertainties associated with the law's implications have already likely delayed business decisions regarding expansions and dampened new hiring. The Administration and Congress must remain cognizant of the need for clarity and certainty; without a highly disciplined focus on economic impacts when crafting implementing regulations, the potential for detrimental unintended consequences on the nation's economy and workers is very high.

As implementation proceeds it will also be critical to restore investor confidence via a transparent process. Among the issues that should be addressed:

- **Cost shifting:** There are numerous instances of cost shifting to the employer community resulting from:
    - Auto enrollment of new hires
    - Medicare tax increase for high earners
    - Comparative effectiveness fee
    - Dependent coverage up to age 26 - there is an inequitable treatment between employers as employees can be covered by a the more generous parent's plan thereby changing the competitive position of the employers
    - The cost of compliance of ERISA employers subject to State and Municipal health coverage mandates
    - The mandated payment of 5 sick days under the Emergency Influenza Containment Act (H.R. 3991)
    - 1099 Reporting for all expenses greater than $600
    - Prohibition on lifetime benefit limits
    - No pre-existing condition exclusions for dependents
    - Employer play or pay mandate
    - First dollar wellness coverage
    - Mandates to offer coverage to employees working 30 plus hours for 90 days or more
    - Cost increases for employees who are over 65 where company coverage takes effect before Medicare
    - Payments for certain employees not covered under the group medical plan

- **ERISA:**
  - *Preemption*: It is critically important that ERISA preemption be preserved in health care reform regulations. One of the key features of ERISA is the ability of an employer to design a plan to fit the profile/needs of its workforce. The imposition of employer mandates inhibits our ability to specifically structure our plans to our workforce and will likely result in cost increases for large, self-funded plans.
  - *Modification of the Definition of "Welfare Benefit Plan"*: The proposed redefinition of a "welfare benefit plan" could obligate employers, whose plans are currently governed by nationally uniform rules under ERISA, to comply with myriad state or local rules. If adopted, this change would undermine the clear intent of Congress and the President that the health care act maintain the uniform framework provided by ERISA.

- **"Cadillac Plan" Tax:** This new tax will divert resources away from investment in new technology, processes and jobs, and will significantly raise costs, harming global competitiveness. The tax may have unintended consequences as a result of efforts to avoid the tax – one of the revenue sources that supports health reform will be significantly reduced.

- **Mental Health Parity:** Compliance with the rules as written will require diversion of resources away from core business to administrative activity and will drive up costs and hinder global competitiveness. The rules, as drafted, will require employers to go beyond parity, and provide mental health benefits that are more generous than medical benefits, contrary to the spirit of the law.

- **Health IT:** There is widespread concern that the CMS Notice of Proposed Rulemaking (NPRM) and the Interim Final Rule (IFR) are creating uncertainty and confusion, jeopardizes the goal of the rapid adoption of electronic health records. Without policy changes, innovation will be marginalized and job creation threatened.

- **RDS:** Due to the elimination of tax-free aspect of Retiree Drug Subsidy (RDS), employers may be more likely to drop retirees into the open market, where costs to the Federal government (i.e., under Part D), could exceed those to the Federal government under RDS.

- **Limited Plans:** PPACA provides the Secretary transitional authority to allow benefit limits up until 2014. We encourage the Secretary to allow employers to continue to offer limited benefit plans – to current categories of employees – until 2014 to ensure continued affordable coverage of part-time, seasonal, temporary and full-time employees in a waiting period; and vital services such as maternity coverage – a benefit that is generally not available in the individual market.

- **Medical Loss Ratio (MLR) Requirements:** Careful consideration should be given to these requirements. The potential negative consequences include:
  - Hurt quality and patient safety,
  - Increased premiums,
  - Reduced competition in the marketplace, and
  - Narrowed provider choice for consumers.

- **Premium Increase Reporting:** A new federal rate review regime would:
  - Threaten carrier solvency leaving consumers and providers with unpaid claims,
  - Decrease competition,
  - Decrease choice of providers, and
  - Add unnecessary administrative burden.

- **Dependant Coverage to Age 26:** Without clarifications regarding grandchildren variable costs based on dependent age, family premiums would increase and employers could drop dependent coverage.

- **Family and Medical Leave Act:** FMLA is subject to abuse because there is no limit on the number of times an employee can take leave. The loss in productivity is very costly to businesses and significantly limits new hiring.

- **Prescription Drug Coverage:**
  - Current brand discounts in the Part D coverage gap program may encourage members to remain on high-cost brands, leading to increased costs for members, plan sponsors, and the government. It runs counter to the entire strategy of promoting generics.
  - As MA-PD reimbursement rates decline, smaller players will exit the market, and the remainder will consolidate under a few, large companies, reducing competition, driving up costs and limiting innovation.
  - The tax treatment of Medicare Part D employer subsidy for prescription benefits is more valuable than standard Medicare Part D Rx benefits. As a result, employers will either incur higher tax costs or reduce or eliminate prescription benefits to Medicare eligible retirees. The resulting higher private sector costs, and greater public expenditure on Medicare retirees, will tend to dampen economic recovery as resources are diverted away from productive investment.

- **FSAs:** Reduction in tax-advantage products (FSA) impacts employees, hampering economic recovery.

- **Administration and Reporting:**
  - Administrative cost increases on items, such as the Cadillac tax, and additional filings to confirm appropriate coverage make it even more costly to offer healthcare benefits – both a global competition and job creation issue.
  - The bill included a provision that requires more companies to file 1099 tax forms; the cost to modify systems to collect the data and send the additional 1099s will not be insignificant.
  - Recent legislation unwound the reporting improvements contained in 2006 legislation for defined benefit plans with unfunded value in excess of $75 million.
  - HIPAA compliance, which requires a number of new requirements for health plans and may actually prohibit plans from continuing programs to drive down costs, will serve to increase premiums and drive up the cost of coverage for employers.
  - The time in which plans are required to comply with new ICD10 and 5010 coding requirements is an incredible administrative burden that increases administrative costs significantly.
  - The Administrations' policy to support legislation that requires "swap" dealers to accept fiduciary duty to a pension plan when entering into an arrangement with that plan creates conflicting fiduciary duties in which the dealer would have one fiduciary duty to its own shareholders and a second fiduciary duty to act in favor of the plan and against its own shareholders in negotiating the price and terms of a swap. This policy impacts stable value funds which are common investment vehicles for 401(k) plans.
  - The Administration's policies to support "The Defined Contribution Plan Fee Disclosure Act of 2010" provisions which impose new defined contribution plan fee disclosure requirements are costly and unnecessary.
  - Significant technology enhancements will be required to manage the health mandates and employee communications.

Labor/OSHA

From the outset, the Administration has sent clear signals that it has fully embraced organized labor's agenda. The Lilly Ledbetter Fair Pay Act was the first bill signed into law by the president, and the Administration is currently promoting the Paycheck Fairness Act as its successor.

More troublingly, the Administration has endorsed organized labor's top priority, the Employee Free Choice Act (Card Check), which would significantly and negatively impact global competitiveness, job creation and economic recovery.

On the regulatory front, the Administration's enforcement of OSHA policies is increasing costs without enhancing workplace safety.

The Department of Labor has proposed regulations requiring companies to provide their employees with written explanations regarding their exempt or nonexempt status under the Fair Labor Standards Act. The effectiveness of these proposals is unproven, while the potential harm to business is great.

Finally, the Vice President's Middle Class Task Force is reportedly considering regulations on federal procurement policy that would base decisions about awards on factors that could significantly increase the cost to the government and American taxpayers.

Key areas of concern include:

- **Employee Free Choice Act:** The key provisions in the Employee Free Choice Act (EFCA), the Card Check bill, represent egregious attempts to limit the rights of employees and employers and will severely diminish the ability of companies to succeed in our globally competitive market. They include the effective elimination of secret ballot voting replaced by a mandate that a union be recognized by a simple majority of signed authorization cards, exposing employees to intimidation and coercion. Along with that, EFCA could impose on the employer and the bargaining unit a two-year, binding contract wherein economic terms such as wages, benefits and work rules are unilaterally determined by a federal arbitrator for first contracts. Neither of the above provisions, alone, or in combination, will bring about positive change for American workers or employers.

  A so-called EFCA "compromise" would involve the issues of workplace access and "quickie" elections. Both access and quickie elections deceptively purport to expedite the organizing process when in reality they sacrifice the rights of employees for the wants of professional union organizers; much like EFCA does. Union access provisions would give non-employee, professional union organizers the right to enter a workplace during work hours to solicit support during a union organizing campaign. Union access provisions will significantly disrupt the working environment of a business, severely hampering day-to-day operations as employees could be approached regularly by professional union organizers while they are performing their job. And a legislative mandate for "quickie elections" would impose a limited timeframe to complete a secret ballot union recognition election.

  A short time table, as little as seven days in some proposals, can virtually eliminate an employers' ability to provide employees with adequate information about the union, respond to the union's comments or unionization generally. Such a scheme allows professional union

organizers to "campaign" for months, while providing employees with limited - if any - time to hear from their employer about potential downsides to unionization.

Current Law provides protection and adequate remedies ensuring the process remains fair and equitable for both the employer and the union. For example, the NLRB has the authority to order the employer to recognize and bargain with the union even where there has been no secret ballot election, and even if the union lost the election. This level of protection oversees the entire process.

- **Paycheck Fairness Act:** Existing protection against pay discrimination is already in place and strong (Title VII of Civil Rights Act and the Equal Pay Act). Unfortunately, the Paycheck Fairness Act (PFA) will increase costly employment litigation, which is already out of control.

  PFA creates a three step process for plaintiff's lawyers that will significantly increase the prospects for successful lawsuits against employers. First, the Act invites more discrimination suits by authorizing EEOC to make the pay data of every private sector employee in America a matter of public record. Second, the Act makes it easier for plaintiffs' lawyers to prevail because it eliminates key employer defenses, such as the experience level of the person in the job or occupation. Third, the Act makes victory far more lucrative by authorizing unlimited compensatory and punitive damages.

  Employers already find it more cost effective to settle a claim, even a frivolous one, rather than spend years in litigation with no chance of recovering legal expenses—providing uncapped compensatory and punitive damages strengthens the hand of plaintiffs' lawyers to use the potential for huge damage awards to extort those settlements.

- **Protecting America's Workers Act:** The Administration's policy to increase penalties for OSHA citations, expand criminal liability for certain violations and require immediate abatement for serious hazards is increasing costs without enhancing workplace safety.

  Instead, promoting a collaborative engagement between employers and the agency enhances economic competitiveness. Granting compliance officers the ability to require employers to immediately abate certain hazards may result in expensive redesigns of workplaces and production systems. If an employer is successful in overturning a citation through the review process they still may be found to bear the costs of the abatement which was immediately required.

- **Recordkeeping of Musculoskeletal Disorders (MSDs):** The Administration's policy regarding OSHA's proposed regulation to add a column to OSHA form 300s to record MSDs includes a very broad definition of such disorders. OSHA has inaccurately assessed the impact and cost of compliance. This proposal will require extensive compliance efforts because the overly broad definition of MSD will demand a new and subjective recordkeeping of highly complicated physical conditions. If implemented in the form proposed, this new requirement will put employers in the position of making medical determinations regarding the "work relatedness" of potential MSDs.

- **Per Employee Citations of Personal Protective Equipment Violations:** The Administration's policy with OSHA's December 2008 rule to allow a multiplication of the penalty charged by the number of employees affected represents yet another burdensome regulation with potentially high compliance costs.

- **Fair Labor Standards:** The Department of Labor proposes to issue regulations requiring companies to provide their employees with written explanations regarding their exempt or nonexempt status under the Fair Labor Standards Act. The proposal could also require companies to provide written determinations to independent contractors regarding their status. The effectiveness of this measure is unproven, while the impact on business from both a financial and productivity perspective is potentially very large.

  Our employees are currently notified of their status, but this additional explanation requirement would be costly, burdensome, of limited value, and distracting. For example, this proposal covers exempt status and employee status under federal law. Many states, however, including California, have their own laws, regulations and enforcement schemes with respect to entitlement to overtime and independent contractor status. In the case of California, the state laws are stricter than their federal counterparts, making compliance with the proposed federal regulations irrelevant. The government's attempt at transparency would result in confusion for employees and employers alike.

- **Federal Procurement / Vice President's Middle Class Task Force:** Finally, the Vice President's Middle Class Task Force is reportedly considering regulations on federal procurement policy that would call for awarding federal contracts to companies that: provide living wage, health care, retirement and paid sick leave; have fewer violations in labor and employment, tax, environment and antitrust; and take a neutral position in union organizing campaigns. The Middle Class Task Force is also reportedly considering mandating Davis Bacon wage requirements and union labor agreements for all federal construction projects, even those involving non-union companies. If adopted, these regulations would base decisions about awards on factors that could significantly increase the cost to the government and American taxpayers.

Immigration

The current immigration system is broken and in dire need of reform. Immigration reform can and should have a profound and direct impact on the U.S. economy.

Reform must provide companies with access to the best professional talent available – both American and foreign – in order to innovate, fuel the economic recovery, and create American jobs. Reforms must also address the current green card backlog for our Chinese and Indian employees and include a H1-B cap that is flexible based on market needs.

The negative impact of existing law is particularly apparent in restrictions barring employment for spouses of several categories of foreign professional workers, and in the narrowing of eligibility standards when deciding petitions for professional workers.

We fully endorse the need for the agencies to make decisions according to law, and in a way that both fosters economic growth and protects the American worker. But where the agencies are carrying out broad policy shifts in this process – especially where those shifts have a negative impact on economic recovery, global competitiveness and job creation – they should be required to work through the critical process of gathering stakeholder input, performing economic assessments, and obtaining policy inputs from the agencies responsible for promoting innovation and economic growth.

Key areas of concern include:

- **Spousal Employment:** The ability of the spouse of a foreign professional to work in this country is often a key factor in whether that foreign professional will join the American workforce, or remain in it. Our immigration system has recognized this key point in some professional visa categories. Thus, for example, U.S. immigration law allows the spouses of L visa holders – executives, managers, and specialists who transfer into the U.S. operations of multinational corporations – to work. Yet this opportunity is denied to spouses of other key professional visa holders, such as H-1B "specialty occupation" professionals.

  A number of negative consequences flow from this anomaly, with challenges to recruitment and retention being foremost among them. Spouses of H-1B visa holders are often highly educated professionals. If they must surrender or compromise their professional objectives, often the primary recruit either will not accept the position with the U.S. employer in the first place, or faces strong incentives to seek longer-term employment in an economic competitor country with friendlier spousal employment policies.

  The prohibition on employment for spouses of H-1B visa holders means that the U.S. economy loses the contributions of a highly educated, highly skilled pool of professionals; the additional income tax contributions that would accrue if those professionals were working; and the economic benefits that would accrue if those households had the increased purchasing power.

  The anomalous treatment among professional visa categories could be corrected by regulation. While Congress mandated spousal employer authorization in certain visa categories (such as the L), and has not done so for others (such as the H), DHS has clear and broad discretionary authority to permit employment without explicit Congressional authorization, and has done so in many other instances (as with practical training for students).

- **Narrowing Policy Through Individual Visa Adjudications:** Agency adjudications have become increasingly strict in many key professional visa areas. DHS, for example, has made it very difficult to qualify for an L-1 visa as a professional with "specialized knowledge." Cases of the type that have been approved for years are now being denied, and companies are being asked in individual cases to provide evidence to fulfill standards that are essentially impossible to meet.

  This is occurring even with respect to workers who have already been found by the U.S. government to have "specialized knowledge," who have been working in that capacity for three years, and are simply seeking to extend their status. And this is happening despite written agency policy not to second-guess initial determinations when deciding extension requests, unless there is some material change.

  The same patterns can be seen in the "labor certification" process, in which DOL makes determinations about the availability of U.S. workers when employers are seeking to sponsor a foreign professional for permanent residence. Recruitment methods that have been approved for years are suddenly being rejected in individual cases, without notice or stakeholder input, through novel agency approaches that appear to be designed simply to refuse labor certification in greater numbers of cases.

- **Proposed H-1B and L-1 Enforcement Legislation:** The so-called "REPAIR" concept draft for comprehensive immigration reform released last April suggests that the bill language will include additional enforcement measures for H-1B and L-1 visas. Although this draft did not contain actual bill language, the proposals suggested in REPAIR go beyond enforcement, such as arbitrary caps on the number of nonimmigrant visas an employer can sponsor, and prohibitions on employment of specialized professionals as third-party consultants. These and other restrictions are likely to have serious and unintended consequences for the U.S. economy, including higher costs of doing business in the U.S., the movement of existing and/or planned investment and high-paying, high-skilled jobs out of the U.S., and the risk of retaliatory action by foreign governments against U.S.-based companies.

  Strong and targeted enforcement mechanisms can be developed that do not unintentionally harm critical segments of the U.S. economy, compromise U.S. competitiveness, potentially put U.S. companies at a disadvantage with their global competitors, and risk the loss of investment and American jobs. Analysis of the potential economic, job and investment impacts of proposed immigration enforcement measures for skilled temporary visas is needed. For example, it was reported that new enforcement requirements imposed on TARP recipients in 2009 prompted several impacted companies to move planned investment and jobs for the U.S. to other countries. The proposals in the REPAIR draft suggest an even more significant level of enforcement restrictions on H-1B and L-1 visas than what was imposed on TARP recipients, and for that reason, a thorough economic impact analysis is needed.

- **Immigration Caps and Conditions for Skilled Workers:** Companies in need of highly skilled workers rely upon the H-1B visa program, a critical tool for hiring foreign nationals, especially those with advanced degrees from U.S. universities. Many years, the annual cap for these visas is hit the very first day the visas are available, limiting the ability of companies to attract the talent needed to remain competitive. Likewise, there has been a backlog of employment based (EB) green cards. Backlogs extending over years necessitate the costly and time consuming filing of visa extensions, while the inflexibility of the card limits the ability of employees to change positions within a company. Current policy drives skilled workers to

America's competitors and, indeed, may force U.S. employers to take projects abroad to where the workers with the necessary skills reside. Reform would promote domestic job creation and America's global competitiveness.

Deficit

We are extremely concerned about the government's recent rate of growth, the impact it will have on the country's status as an investment safe-haven and the cascading effects on private investment.

As the government's debt load increases, a greater and greater portion of government spending will be needed to service that debt, in turn crowding out private capital. Increased debt also brings an increased risk of having that debt downgraded. Because the United States Treasury's lending rates are considered "risk-free" they serve as the floor for corporate borrowing rates: if Treasury's lending rates go up, everyone's lending rates go up. We believe that unless the government takes action to manage its spending the consequences will include:

- Less capital available for corporate borrowers, which will retard future growth and investment.
- Rising interest rates for all borrowers.
- Potential loss of the United States' "safe haven" status.
- Erosion of the value of the U.S. dollar.
- Potential for accelerating inflation and resulting loss of consumer spending power.

Research and Innovation

The United States continues to lead the world in nurturing groundbreaking ideas which fuel new businesses and create jobs. In order to solidify our position as global leaders in innovation, companies have two areas of specific concern (in descending order of importance):

- **Intellectual Property:** The United States remains the global destination for investment capital in R&D and the leading generator of biopharmaceutical innovation, but the inability to protect these American innovations in emerging markets limits our ability to increase international product sales. Enhanced international IP protections would lead to a strong expansion in sales of innovative U.S. medicines in emerging markets and act as a major incentive for the creation of high quality R&D jobs in the United States.

- **Personalized Medicine:** Academic and commercial institutions need clarity about the appropriate regulatory protocols for the application and development of new molecular tests. In fact, the question of appropriate agency oversight is itself unclear - while some laboratory-developed tests are regulated by CLIA, others, designated "in vitro diagnostics," are regulated by the FDA, which has substantially different regulatory requirements. We would like to eliminate ambiguity and ensure that new regulations promote safety and effectiveness without creating unrealistic cost burdens that stifle innovation.

Consumers

Regulations impact consumers and companies alike.

New policies should boost consumer confidence and reentry into the marketplace, while freeing up credit. However, some rules intended to help consumers will have the opposite effect, by driving up costs to business that are ultimately passed on to consumers.

Key areas of concern include (in descending order of importance):

- **Gift Cards:** A few months ago, the Federal Reserve Board issued the final rules under Regulation E to implement the gift card provisions in the Credit Card Accountability Responsibility and Disclosure (CARD) Act of 2009. Although these rules contain worthwhile provisions, because of the timing of the regulations and the approaching holiday season, millions of gift cards currently in the stream of commerce (in store, shipped, or in production) will be out of compliance. Replacement of that volume of product in that short of a time period is wasteful and costly for issuers and sellers of gift cards. The final rules do not allow for any transitional period, and nearly all of the estimated 100 million gift cards currently in the stream of commerce must be recalled and replaced by the August deadline. For one company surveyed, this means an additional expense of more than $7 million, which could have been invested to lower prices for consumers. The Administration should consider a transition period, where retailers could sell down the remaining cards while at the same time ensuring the cards comply with the new fee and expiration date provisions.

- **Fair Credit Laws:** Federal law dictates the manner in which a business can check a consumer's creditworthiness. States also enact credit-check laws which vary from the federal requirements. This multi-layer regulation creates a needlessly complex patchwork of laws making compliance difficult and very costly for businesses that operate on a national scale with little or no benefit to consumers. Congress should adopt a single federal fair credit law exempting businesses which operate in multiple states from state credit-check laws.

- **Cash-for-Clunkers:** The Administration advocated different bailout incentives for the automobile manufacturers, including the Cash-for-Clunker program. However, the Administration rejected including "nearly-new" used cars in the program, even though this could have ultimately led to more new car sales. Similar programs in the future would benefit from the inclusion of nearly-new cars.

Real Estate and Mortgages

The residential and commercial real estate sectors continue to face many challenges as they return to stability and contribute toward economic recovery.

Unfortunately, federal programs intended to help at-risk homeowners have proven to be a dismal failure. Instead of offering short-sighted and misguided relief, the government should expedite the process in which real estate owned properties (REOs) move into the marketplace. The longer it takes to work REOs through the system, the more protracted the housing correction becomes.

The Administration has also failed to adequately consider how its impending income tax increases will disincentivize home buying. With less disposable income, consumers will delay their buying decisions, perhaps indefinitely.

Finally, the Administration has failed to provide adequate relief to commercial real estate markets.

Key areas of concern include (in descending order of importance):

- **Home Affordable Modification Program (HAMP):** The HAMP program has been and will continue to be a dismal failure. There are reasons for the failure that cannot be mitigated and the continuation of the program cannot be financially or economically justified. A high percentage of the loans are high loan-to-value (LTV) loans and should not be eligible for assistance. At the minimum, 100% LTV loans do not deserve taxpayer assistance, and these loans are a substantially high percentage of the modified term loans that re-default within 6 months. The fundamental reason this program has failed is that it cannot and should not address the balance of the consumer debt held by a mortgagee in default. A person in default of their mortgage obligation is also in default of their high consumer debt (including credit cards, unsecured signature loans and car loans). Curing the mortgage obligation is temporary relief as they continue to be in default of their consumer debt. The savings on the mortgage obligation goes to satisfy the credit card obligations which they must keep current to maintain a credit lifeline. The banks and servicers will best serve an economic recovery by quickly moving their real estate owned properties (REOs) into the market place. REOs are selling at the fastest pace in history, and the accelerated REO correction process will mend the housing market faster than the current pace which unless curtailed could force a three to four year housing correction.

- **Income Tax Increases and Home Buying:** The impending income tax increases will dampen an economic recovery. Prospective home buyers facing materially significant income tax increases will delay their buying decisions, perhaps indefinitely.

- **Commercial Real Estate:** The commercial real estate markets have not been addressed by the Administration. A form of assistance intended to reduce the impact on the commercial markets will bolster a faster economic recovery. One particularly worthwhile step is accelerating depreciation on certain capital improvement projects and the underlying first liens.

Tort Reform

A major area of concern is the lack of meaningful discussion about tort reform. Pending legislation will affect many different industries, significantly add to costs, reduce personal incomes and increase regulations. Yet, in no case has the government included tort reform in the mix. This inaction will worsen a challenging environment for businesses as they try to comply with a large body of new law under the overhanging threat of litigation.

Key areas of concern include (in descending order of importance):

- **Medical Liability Reform:** The new health care law failed to adequately address medical liability reform. Comprehensive reform must include ensuring appropriate remedies for negligence while limiting damages where there is no negligence; developing alternative mechanisms to resolve claims to so that those harmed by negligence can obtain appropriate relief; and encouraging providers to follow quality standards by supporting the adoption of medical practice guidelines by professional associations, that if followed by a physician, would serve as a complete defense to a malpractice action.

- **HR 4115 ("Open Access to Courts Act"):** This legislation would resurrect meritless complaints federal district courts could otherwise dismiss under U.S. Supreme Court standards expressed in the *Twombly* and *Lqbal* decisions. Those decisions allow the courts to dismiss complaints that allege no support for conclusory allegations and whose allegations are not credible. This bill, by prohibiting courts from dismissing a suit unless a defendant can prove beyond a reasonable doubt that there is no set of facts that would ever entitle the plaintiff to relief, will extend the life of meritless suits and will cost corporations (and therefore consumers) millions of dollars in litigation and discovery costs, diverting resources which could be productively used for investment, job creation and retention and economic growth. This bill should be rejected.

Education

President Obama has announced that one of his administration's primary domestic goals will be to make the United States number one in the world in the percentage of adults who have graduated from college. If this goal is to be achieved, private-sector colleges and universities, now accounting for seven percent of the students in the United States, must play a role.

Unfortunately, proposed regulations purporting to define "gainful employment" under the reauthorized Higher Education Act of 1965 place onerous new restrictions on the private-sector education industry.

The sector is already extensively regulated, and it should be. For-profit higher education has given rise to more than one fraud in its history.

But private sector education is rising rapidly in availability and quality. In its rush to keep a few students from enrolling in inappropriate programs, the United States Department of Education (ED) risks keeping tens of thousands more from the best chance of their life for a higher education.

The ED gainful employment (GE) proposal would impede economic recovery by (a) reducing millions of students' access to higher education and better jobs; and (b) causing significant job losses.

There are several key areas of concern regarding General Education (GE) reform:

- **Effect on Students:** The GE proposal effectively functions as a tuition cap, forcing proprietary (for-profit) schools to either discontinue teaching capital-intensive and longer length programs, or risk regulatory noncompliance. Ironically, Bachelor's and Associate's degree programs - the very programs which provide graduates with the greatest earnings increases - would be most negatively affected. Because of their higher borrowing needs, low-income, minority, female and working adult students would be most affected. These are the very students Congress was attempting to help through the Stafford and Pell programs, and for whom there are few other educational opportunities today. During 2006-2008, proprietary schools invested $2.4 billion in capital expenditures, primarily to drive innovation and increase capacity. Traditional schools will not be able to cover the gap created by the closure of proprietary post-secondary programs - leaving millions of students without the tools to acquire skills and credentials needed for employment.

- **Effect on Current Employees:** Proprietary schools employ approximately 300,000 people. With enrollments at proprietary schools slashed by up to 33 percent, the GE proposal could result in the loss of up to 100,000 current jobs. Worse, each faculty or school administration job lost represents the loss of an individual who helps students build their professional skills. These job losses have a negative multiplier effect as the students left untaught will never have the opportunity to use their new skills to improve their lives and strengthen the economy.

- **Economic Impact:** Not only has ED failed to publish any quantitative analysis in support of its GE proposal, it failed to label its draft regulations (including the GE proposal) as "economically significant regulatory action" when they were submitted to OMB on April 12, 2010. Under Executive Order 12866, Section 3(f)(1), a regulation is considered significant, and requires a higher level of economic scrutiny, if it is likely to result in a regulation that may: "Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, ... or communities." The GE

proposal will affect millions of students, employees, and future employees. Even if one were to ignore the job losses at proprietary schools and simply multiply the number of affected students by the average wage-increase lost, it becomes abundantly clear that the GE proposal's annual effect on the U.S. economy could easily run in the billions of dollars. Clearly, ED has failed to grasp the grave negative economic impact of its GE proposal.

SECTOR-SPECIFIC

Pharmaceuticals and Biotech

- Repeated cuts to Medicare rates for diagnostic imaging, despite sizable payment cuts under the Deficit Reduction Act, have resulted in a depressed US market and resultant reductions in force. When combined with the new medical device tax from the healthcare reform statute, as well as prior policy changes reducing overall physician practice expenses, physician ownership and related self-referral prohibitions, the new regulations are stifling a highly innovative U.S. industry.

- Applying fees to the molecular imaging/radiopharmaceutical tracer/personalized medicine market identical to big pharmaceutical manufacturing and new product applications will kill innovation in this emerging field.

- Healthcare Reform legislation included substantial new cuts to the Medicare clinical laboratory fee schedule--cuts in this fee schedule have been included in most of the annual Medicare and reconciliation measures over the last couple decades. These cuts exacerbate the comparatively low reimbursement for advanced lab tests that are integral to personalized medicine and make it a less attractive market for manufacturers and venture capitalists to invest in these advanced tests. In addition, these cuts in Medicare payments will harm the viability of small and mid-sized laboratories.

- Recently passed health reform legislation includes provisions for the formation of an Independent Payment Advisory Board (IPAB) with significant authority over Medicare payment rates. Since branded pharmaceuticals only account for around 10% of healthcare spending in the US, a narrow focus by IPAB on drug pricing would not achieve spending reform goals and would have a detrimental effect on the incentives for investment in biopharmaceutical R&D and patient health. The IPAB should be as broad as possible in its perspective and aim to maintain a balance between government cost and the incentives for innovation.

- The taxes on commodity type medical devices such as exam gloves and surgical drapes could require companies to pass along these costs to providers, who are already under pressure, or to consider exiting the industry.

Transportation/Infrastructure

Infrastructure

Our nation's infrastructure has physically deteriorated and is significantly undercapitalized. But we can't merely focus on spending more. Worthy and efficiently built infrastructure projects can do much more than stimulate the economy. If done right, these projects will have a positive and lasting impact on U.S. competitiveness. What's needed is a multi-year authorization of a robust Surface Transportation Act that provides contractors with the confidence to invest in equipment and hire workers.

- ***Surface Transportation Program:*** Not having a well-funded, multi-year national infrastructure policy hinders development and investment economy-wide. Failing infrastructure and transportation needs are dire.

Railroads

- ***Positive Train Control:*** There is no more expensive legislative/regulatory matter affecting railroads today than Positive Train Control (PTC). The Federal Railroad Administration estimates the cost to the industry of ten billion dollars, with a cost/benefit ratio of greater than 20:1. According to the FRA (Federal Railroad Administration), railroads will have to spend approximately $5 billion just to install PTC systems. After installation, railroads will also have to spend hundreds of millions of dollars each year thereafter to maintain their PTC systems.

  Because railroads have limited funds to devote to infrastructure projects, expenditures on PTC will mean reduced expenditures on other projects that would increase capacity for freight and passenger trains, promote economic recovery and job creation, improve service, provide environmental benefits, and enhance safety in more effective ways.

- ***Rail Safety Improvement Act of 2008:*** We have several concerns regarding provisions of the RSIA legislation.
  - Railroads are required to provide emergency escape breathing apparatus for train crews. While the FRA has not yet published a notice of proposed rulemaking, the initial cost of this mandate could be$100 million or more.
  - The FRA is required to promulgate training standards for "safety-related" employees. The initial draft regulation circulated by FRA is burdensome and counterproductive, encompassing ticket takers and actually requiring railroads to train employees on Code of Federal Regulation sections.
  - Railroads are required to formulate and get DOT approval of risk reduction programs. FRA has not yet issued a notice of proposed rulemaking. This has the potential to be very burdensome and the railroads are specifically concerned that FRA will try to use the risk-reduction program to expand the PTC mandate.
  - The draft regulation circulated by FRA regarding changes to the hours-of-service requirements for freight railroads relies on modeling that railroad companies believe is not scientifically valid.
  - DOT is required to issue regulations governing the use of technology in non-signal territory. Some of the technology identified in the Act can be very costly, with no corresponding safety benefit.
  - Additional concerns include:
    - Conductor certification

        - Track standards
        - Personal electronic devices
        - Critical incident stress plans
        - Alcohol and drug testing of maintenance-of-way employees and contractors
        - Tunnel records
        - Bridge standards
        - Sleeping quarters

- ***Medical standards:*** This is not an RSIA mandate, but it is a proceeding that could be very costly to the railroad industry. FRA, through RSAC, is proposing to expand its medical standards for railroad employees. FRA is proposing standards that go beyond what is required for other modes. The standards potentially could be problematic from an operational perspective and not provide benefits commensurate with the costs.

- ***Accident/Incident reporting requirements:*** On September 9, 2008, FRA proposed changes to the reporting requirements for accidents, injuries, and illnesses. FRA proposed an expansive approach to determining if an illness or injury is work related and thus reportable to FRA. The proposal would also expand the railroads' recordkeeping burden significantly by requiring railroads to record illnesses and injuries that manifest themselves in the workplace regardless of whether they are work related.

- ***Requirement contained in the 9/11 Commissions Act of 2007:***
    - Railroads are required to transport TIH materials. The potential liability from such transportation, from both a security and safety perspective, is huge. Rail companies also incur significant additional costs associated with TIH transportation.
    - The 9/11 Commission Act required DOT to issue a regulation requiring railroads to analyze the routes used for TIH transportation. DOT issued a rule requiring railroads to choose routes posing the least overall safety and security risk. The Act provides that DHS is to issue regulations requiring railroads to conduct vulnerability assessments and approve industry security plans. DHS has not yet issued a notice of proposed rulemaking. However, the railroads took the initiative right after 9/11 to examine their vulnerabilities and implement security plans. Furthermore, DOT has requirements in place for railroad security plans. Companies are concerned that at best the DHS requirements will be duplicative and a waste of resources and at worst conflict with the existing security plans.
    - DHS is required to issue regulations addressing the training of railroad employees. DHS has not yet issued a notice of proposed rulemaking. Companies already have training programs in place and DOT has issued regulations addressing security training. This creates an opportunity for duplicative or inconsistent regulatory requirements.
    - The Act made amendments to the employee protection provisions of the Rail Safety Act allowing filing of complaints with OSHA rather than through the grievance process. This has led to a proliferation of cases filed by personal injury lawyers on behalf of employees alleging harassment for filing a personal injury claim.

Airlines

- ***Additional Department of Transportation consumer rule making:***
    - Not only does operational nature of contingency plans for lengthy tarmac make them ill-suited as contract terms, but also this particular proposal will have the perverse effect of

leading to more cancellations, increased passenger inconvenience and, ultimately, make flying more expensive.
    - Requirements on airlines to publish delay data on their web sites, if more information than what is currently reported to the government is needed, would be costly. In some cases, significant reprogramming of internal software, rebuilding portions of web sites and the delay of critical technology projects and of other government-mandated programming would be required.

- ***Lack of prioritization of NextGen For national airspace system infrastructure***

- ***Excessive burden of direct and indirect security costs on U.S. airlines*** and lack of transparency and accountability in government fee setting and expenditures:
    - 9/11 passenger security fee
    - Aviation Security Infrastructure Fee (ASIF)c. Federal inspection service fees
    - Cargo restrictions for passenger carriers
    - Proposed lithium battery shipping restriction (DOT/PHMSA proposed)
    - U.S. visa and passport fees
    - Lack of integration of domestic and international passenger prescreening programs
    - Passenger Facility Charge approval and management process

- ***Additional taxation and fee schemes on the airline industry:***
    - Potential taxation of ancillary revenues
    - Potential DOT/airport congestion management schemes (e.g. FAA's threatened congestion management schemes, involving forced or "voluntary" schedule changes, taxes, fees and/or other government inducements on airlines to modify service and schedules)

Auto Industry

- ***Auto Safety Legislation:*** In response to the Toyota recall, Congress is considering legislation to further regulate automobile safety, including new requirements for the automobile manufacturers and new powers for the National Highway Traffic Safety Administration (NHTSA). Companies are concerned that the legislation could become overly broad and create unnecessarily burdensome federal regulations for used car sales and dealers, especially in the area of recalls which are not safety-driven.

  A more significant concern is an amendment proposed in the House Energy & Commerce Committee to the House auto safety/NHTSA reform legislation. The amendment would have overturned a 2005 law, commonly known as the Graves Amendment, that reversed antiquated state laws of vicarious liability for automobile rental and leasing companies. Prior to 2005, a number of states held renting and leasing companies 100 percent liable for actions of their renters or lessors, even when the companies were not negligent. While the amendment was not offered in a subcommittee mark-up, allegations persist that injured parties are not compensated under certain circumstances involving rented or leased vehicles. In fact, because state insurance laws typically require a certain minimum level of insurance on every vehicle, insurance is normally available in every situation.

Food

The food manufacturing industry provides jobs to 1.6 million Americans, representing 10 percent of all manufacturing jobs. Its advertising generates sales that support jobs for millions more. Overall, the industry supports 14 million jobs and adds $1.1 trillion to the GDP of the United States. From a global competitiveness standpoint, the U.S. food industry has led the world in innovation which directly benefits the U.S. economy and jobs creation.

Increasingly, food companies have to address the likelihood of regulatory changes that are outside of the traditional rulemaking process and based on limited scientific justification. With respect to companies, the costs associated with uninformed regulations can hinder investments such as hiring, employee training, capital improvements and plant expansions

Key areas of concern include (in descending order of importance):

- **FDA Food Labeling Policies:** FDA food labeling policies impede the commercial success of healthful food and beverage products and the development of markets for products that support healthy dietary practices such as adequate intakes of essential nutrients.

    - FDA's policy concerning "Dietary Guidance Claims" is unduly restrictive. The policy fails to authorize marketing claims for conventional food and beverage products that characterize the well established disease prevention benefits of dietary practices that are recommended by the Dietary Guidelines for Americans.

    - FDA policies concerning "Structure Function Claims" for conventional food and beverage products are unduly restrictive. These policies hinder the effective communication of basic nutritional benefits of conventional food and beverage products and the ways they contribute to achieving Dietary Guidelines recommendations and help prevent obesity.

    - FDA's policy interpreting the FDCA "drug" definition to include conventional food and beverage products that are consumed as part of an ordinary diet impedes the effective communication of the disease prevention benefits associated with a healthy diet and the ways in which specific foods, beverages, and components can help consumers maintain healthy dietary practices and prevent obesity.

    - FDA's "fortification policy" and related policies concerning nutrient content claims discourage companies from developing and marketing conventional food and beverage products formulated with essential nutrients that have well established benefits in preventing inadequate intakes of essential nutrients.

    - Economic studies published by the FTC and other authoritative bodies have shown that FDA food labeling policies like these mentioned above impede innovation. FDA policy reforms are needed to strengthen incentives to encourage the development of markets for such food and beverage products and to address these impediments to healthy food marketing.

- **Beverage Taxes:** According to a 2009 study "The Potential Economic Impact of a U.S. Excise Tax on Select Beverages," by Robert Hahn, a 3-cent tax per 12 ounces of beverage sold applied to all beverages would result in a $22 billion in lost economic output and 110,000 lost jobs.

- A tax of that level would reduce government tax revenues by $2.5 billion per year. Additionally, lost wages paid to the 110,000 workers would total approximately $5 billion per year.

- A beverage tax is regressive. A CRS (Congressional Research Service) Report in 2009 showed that 70.6% of the cost of a beverage tax would be paid by those earning less than $91,000. Middle and lower class families should not carry any more burdens, especially during an economic turndown.

- A beverage tax will not help address the problem of childhood obesity – sugar sweetened beverages are not a unique contributor to obesity. It is a complex issue which needs a comprehensive solution.

- **U.S. Competiveness:** Some companies are concerned the Administration will propose regulatory or legislative changes that will limit the ability to organize and operate supply chains that enable companies to provide the particular products that domestic and international buyers wish to procure at a price they are willing to pay.

  - The US should lead the way on creating a modernized food safety system that is consistent with international standards and based on a risk based system to protect public health. The Administration should then be aggressively committed to international harmonization.

  - The passage of FDA reform legislation could impede American competitiveness if new food safety requirements create barriers to trade or impose substantial new costs on business.

  - In regard to food safety legislation, OMB should take an active role in ensuring that legislation, and regulations required to implement food safety legislation, provide for coordination between USDA, FDA and ICE-CBP so that companies are not forced to comply with a costly collection of overlapping or contradictory rules. Trade and investment will be hindered if the legislation and regulations allow the agencies to move forward in a disconnected way.

- **Nutrition Standards and Marketing:** In a report due to Congress this summer, the FTC, in collaboration with the FDA, USDA, and CDC, has developed nutrition standards for food marketed to children under the age of 18. The proposed criteria are so stringent that hundreds of otherwise nutritious food products, including peanut butter, vegetable soup, yogurt, and most cereals, would not qualify. If companies were required to follow these standards, virtually *all* advertising of food products to this age group – 18 and under – would cease. As a result, this proposal would substantially impact the media, the availability of children's programming, and the jobs associated with those industries.

- **Centers for Disease Control (CDC) Grants:** The CDC is supporting recipients' use of tax dollars to specifically target sugar-sweetened beverages and is singling them out for discriminatory treatment by reducing their availability in public areas, making the beverages more expensive (presumably through taxation) and running counter-advertising to discourage consumption. These efforts will not advance the goal to improve American's health and will undoubtedly hurt the beverage industry which would in turn affect jobs and revenue.

- **Product Safety:** The Consumer Product Safety Improvement Act (CPSIA) and the Consumer Product Safety Commission's (CPSC) implementing regulations are more expansive than necessary to protect consumers and impose unjustifiable regulatory and economic burdens on the regulated industry.

- **FDA Warning Letters and Administrative Enforcement Procedures:** FDA enforcement policies provide inadequate protection of the rights of those accused of violating the Federal Food Drug & Cosmetic Act and amplify the legal liability and economic risks associated with regulatory compliance. Often the only course left to a company is to comply with the demand of the letter, which can cost many millions of dollars in lost sales (with associated job losses) and can inhibit innovation and introduction of similar products across the food and beverage sector.

- **Menu Labeling:** Legislation requires that the Secretary of Health and Human Services issue regulations concerning the labeling requirements. Companies are concerned that the scope of the regulations will extend to in-store bakeries, salad bars, cheese stands and deli counters which often contain tens of thousands of items. Menu labeling would be difficult and costly for those locations and seemingly goes beyond the intent of the legislation.

- **Anti-Trust:** The policy to disregard established anti-trust laws for the agriculture and food sector industry is not sustainable. U.S. business expansion plans are being put on hold, because the preponderance of evidence does not reveal concentrations producing adverse or illegal effects.

- **Agriculture Commodity Programs:** The Administration's policy fails to reform commodity programs constrains innovation and flexibility. With reformed programs, productivity and competitiveness would be enhanced.

- **Food Recalls:** Type II and Type III recalls of food products that are not related to human health issues should be evaluated from a scientific and reasonableness standpoint.

Agriculture

Many companies remain concerned about a potential shift in the U.S. Department of Agriculture's (USDA) biotechnology regulatory policy or practice, which would require Environmental Impact Statements (EIS) on most or potentially all product deregulations for genetically engineered plants. Any such shift in policy or practice would greatly hamper the trait approval process, and would unnecessarily lengthen the potential timeline for trait approvals by at least an additional three to five years (or longer). This shift in policy or practice also would have a detrimental impact on economic recovery and job creation, would negatively affect new product innovation on a global scale, and would be inconsistent with the sustainable policies and principles established under National Environmental Policy Act (NEPA). Moreover, such a shift in regulatory policy or practice would have additional negative impacts, including, but not limited to:

- Both U.S. and international farmers would suffer economic harm because they would not have timely access to the latest seed technologies to support improved crop yields, to produce more nutritional crops, and to combat geographical stresses such as drought, disease, salinity, and nitrogen deprivation.

- U.S. seed manufacturers would experience significant economic losses because preparation of EISs are very costly and seed manufacturers would not be able to commercialize their products for years, while waiting for deregulation from USDA. These economic losses necessarily would drive up food prices, thereby also harming the end consumer.

- Such a policy shift would undermine the claims that the U.S. has made internationally in support of a global science-based regulatory regime for biotechnology crops. A U.S. policy that requires an EIS for each deregulation decision strongly suggests to international regulators that these genetically engineered products do in fact impact the environment differently than their conventional counterparts. A critical step towards global food security is to achieve a more efficient global market that is based on established international rules that eliminate barriers, reduce costs, and increase the reliability of trading systems. A potential policy shift towards EISs would undercut these important objectives.

Communications

While regulation is not intrinsically bad, its benefits must be very real to justify its costs. In contrast, several FCC proposals would generate huge costs and damage severely the vitality of an industry that brought tangible value to consumers during the economic downturn.

It is clear from the reaction of financial analysts and investors that just the announcement of an FCC initiative can create a high degree of uncertainty and fear of protracted litigation that could further chill economic investment. In light of this, we urge the FCC to carefully consider the importance of telecommunications in the modern economy; FCC regulations will have ripple effects far beyond companies they directly impact.

Companies' concerns can be broken into 6 key areas of concern (in descending order of importance):

- **Net Neutrality and Title II Classification:** The FCC has proposed "net neutrality" regulations that would place significant ex ante restrictions on highly technical network management practices employed by broadband companies and on the commercial arrangements that would be permitted among companies contracting for broadband Internet services. The proposed neutrality limitations on permitted network management would severely hamper the ability of networks to handle Internet traffic efficiently or assure reliability and security. Further, because the FCC has been unable to articulate clearly the particular network managements it would allow or prohibit, fear of violating these vague specifications will chill networks' further development of broadband capabilities.

  These proposed regulations would impose an unprecedented strict nondiscrimination standard that would prohibit even *voluntary* commercial agreements between networks and Internet content or application providers for the receipt of differentiated or guaranteed broadband transmission quality-of-service.

  Net neutrality regulations would apply to wireless broadband as well as fixed line broadband – even though wireless technology and spectrum scarcity makes the need for flexible and innovative network management even more acute. The uncertainty surrounding net neutrality's potential impact on wireless broadband is evidenced by the FCC's recent 700 MHz C Block auction which demonstrates that net neutrality rules would devalue new licenses at auction and could impact the long-term health and vitality of the market.

  Closely associated with the net neutrality issue is the FCC's attempt to reclassify wireless and wireless broadband under Title II of the Communications Act.

  The move to classify broadband Internet access as a common carrier service could have broad implications for the regulatory treatment of all online services and applications that are delivered over the Internet, and subject these services to the same common carrier regulation that it proposes to impose on broadband access

  While the FCC chairman has indicated he does not intend to impose pricing or other burdensome regulations on networks or online services, it is unclear whether the 1934 law permits selective or credible forbearance from its requirements. Uncertainty could reign for years as the substance, scope and legal basis for this proposed regulatory framework is made clear and before its validity or invalidity is confirmed by the courts.

- **Frequency Spectrum:** We are concerned about the delays and uncertainty surrounding wireless spectrum auctions, our specific concerns are that:

    - Almost two years have passed since the FCC issued a final order in its white spaces proceeding, and it has been six years since the FCC began the proceeding in May of 2004. Nonetheless, there are a number of outstanding issues remain unresolved. Concluding these issues will increase broadband connectivity and drive new products in the marketplace.

    - The FCC's National Broadband Plan called for 500 MHz of spectrum to be brought to market; this is a positive development for both investment and innovation. Unfortunately, both NTIA and the FCC continue to consider plans to require an auction winner to provide a free broadband service in one block of that spectrum. Not only would this impact investment in broadband networks, but this model has failed numerous times in municipal Wi-Fi plans throughout the country, and will deprive the Treasury needed resources per the 700 MHz auction experience.

    - The FCC's decision to limit the ability of larger carriers to lease spectrum from current holders or to purchase new spectrum in future auctions distorts competition by creating a cost discount or price umbrella to smaller or less successful carriers. We are also concerned that proposed FCC rules would withhold spectrum and degrade incentives to develop innovative devices from the larger or more successful wireless carriers.

- **Regulations and Regulatory Structure:** The FCC has proposed or is considering a number of regulations that will limit innovation or investment incentives. Examples include mandating wireless carriers provide data roaming services to any requesting carrier – even in areas where those carriers possess their own spectrum but have chosen not to invest in the capital infrastructure necessary to use it; and prohibiting commercial partnerships between carriers and handset manufacturers to develop and market innovative devices.

  The FCC also recently issued a press release finding that consumers are routinely "shocked" by the amount on their wireless bills and contemplating that carriers undertake large scale overhauls of their billing systems and infrastructure to provide the tools the FCC deems appropriate. Initiatives to mandate onerous network outage requirements – designed and implemented for the legacy circuit-switched world – and to require mandatory levels of backup power at every cell site similarly threaten to take wireless investment dollars away from meeting consumer needs and toward meeting regulatory mandates.

  While we fully support the mission of the Federal Trade Commission (FTC) to prevent and punish unfair and deceptive acts or practices, we are concerned that provisions in Section 4901 of H.R. 4173, the financial services regulatory reform legislation, which would remove existing procedural safeguards on the rulemaking and enforcement capabilities of the FTC and would unduly burden the communications companies.

  H.R. 4173 would couple unrestrained regulatory authority with new enforcement authority giving the FTC the power to seek immediate civil penalties for unfair or deceptive acts even if it had not issued rules or orders on the conduct in advance. Under current law, the FTC typically must conclude an investigation of acts or practices that may be deemed unfair or deceptive and then issue an administrative order to bring the party into compliance. If the party then violates

the administrative order or rules, the FTC may impose civil penalties. This system has worked extremely well and it allows those acting in good faith to come into compliance without being put out of business by excessive penalties for behavior that was not a known violation.

The bill also would allow the FTC to seek such penalties without coordinating with the Department of Justice (DOJ). Independent litigating authority would eliminate the checks and balances that DOJ currently provides for FTC actions, removing an important part of the enforcement decision-making process.

Further, it would allow the FTC to pursue companies that allegedly provide "substantial assistance" in an FTC Act violation, even without actual knowledge of the violation. Adding this new grounds for liability would make third party service providers such as broadcasters, advertising firms, and broadband access providers, and others responsible for a company's marketing claims.

Taken together, these provisions grant the FTC sweeping powers. Given the extremely broad scope of the FTC's jurisdiction the existing procedural protections remain necessary and appropriate in those cases when the FTC seeks to outlaw business acts or practices.

- **The Prepaid Mobile Device Identification Act:** The legislation would increase the cost of pre-paid service to law-abiding citizens during a challenging economic period; indeed, half of customers who terminate prepaid service forgo wireless services entirely- for economic reasons. Prepaid service may mean the call for a job and an end to unemployment; prepaid provides access to emergency services; prepaid means a simple purchase method. A key market driver is the ease of use in obtaining prepaid wireless phones and service. While intended to combat criminal activity, for many reasons, it would not, in fact have that practical effect.

- **Universal Service High Cost Fund:** The federal Universal Service High Cost Fund currently costs telecom consumers and businesses approximately $4.5B per year. The fund rewards inefficiency, discourages competition and broadband deployment, and unduly benefits specific companies rather than consumers. The majority of high cost funding is distributed to incumbent wireline local exchange carriers without any serious demonstration of need and with little or no accountability as to how the money is used. The cost of this subsidy system is borne by consumers and businesses through steadily increasing USF surcharges which effectively inflate their cost of acquiring telecom services.

- **Inter-carrier Compensation:** There is widespread industry agreement that the rules governing compensation are broken. In early 2005, FCC Commissioner Copps characterized the multi-billion dollar system as "Byzantine and broken" and a "hodgepodge of rates that looks more like a historical curiosity than a rational system of compensation." Yet, in 2010, despite the well-chronicled inefficiencies, distortions to competition, and harm to consumers caused by the "system," reform remains elusive. As a result, the industry is embroiled in costly litigation which diverts scarce resources from innovation, economic growth, and job creation, to hearing rooms and courts.

Insurance

The current state by state regulation of insurance has created a patchwork system that lacks uniformity across state boundaries, and results in inefficiencies. We support the efforts of the administration and Congress to create a system within which we could streamline our compliance efforts.

Government Contracts

Many companies rely on the government for a large portion of their overall revenue and have an active interest in streamlining the procurement process as well as reducing waste, fraud and abuse.

Two key areas of concern are:

- **The Definition of an Inherently Governmental Function:** The continued uncertainty surrounding activities deemed inherently governmental leaves companies in doubt when determining whether key support services contract areas and performance based contracting are within the qualifying definition or subject to insourcing initiatives.

- **Defense Federal Acquisition Regulation System (DFARS) Proposed Rule Case 2009-D038:** Arbitrary withholding on contract payments will reduce the cash flow necessary for contract operations and investment.