



President Signals He Wants a “Grand Bargain” on Taxes and Spending After Election

Will Congress and the President Avoid or Dive Over the Fiscal Cliff?

After the November 6th elections, Congress will stew for a week over the electorates’ choice for president and new House and Senate majorities and return on November 13th to debate whether or not to delay or ameliorate sequestration and to extend the Bush tax cuts or let them expire. The President has publicly hinted that his preference would be to renew talks with Congress on a “grand bargain” which would result in a \$4 trillion deficit reduction plan over ten years. The Administration has made clear that tax rates for high-income individuals should revert to the levels prior to the Bush-era.

During the third presidential debate, **President Obama** avoided a discussion of the consequences of sequestration and said the sequester “will not happen”. Later the White House backtracked the statement saying that the sequester “should not happen.” The details of exactly how agencies will respond to the BCA mandated 10-year \$1.2 trillion in federal spending cuts are, for now, buried deep within the OMB so as not to become election fodder.

Regardless of the election outcome, it is possible that the President may hold Congress hostage to the full effect of the “fiscal cliff” unless

there is agreement to raise the tax rates for the “wealthy”. Prodding both Congress and the President to come to terms, business leaders warn that a dive over the fiscal cliff would result in a \$500 billion fiscal contraction next year which could again plunge the nation into recession.

During the debate **Mitt Romney** repeated his pledge to repeal the PPACA and also said he would reduce non-military discretionary spending by 5% in order to shore up the nation’s military.

Stung by criticism that the President does not have an agenda post-election, the Obama campaign released a 20-page “blue book” which promises a “balanced approach” to reduce the federal deficit.

Inside

Election Stakes High on Full Implementation of PPACA	2
President Obama Says SOTU Got PPACA Reasoning Wrong	2
Medicare Home Health Care Coverage Decision	3
House Oversight Committee Issues Subpoena	3
OIG Doc Watch	3
Draft Bill to Improve Drug Distribution Security	3

Election Stakes High on Full Implementation of PPACA

Republicans have been critical about the lack of regulations forthcoming from the Administration on key PPACA provisions. Treasury officials have indicated that the IRS will issue a “wave of guidance” on PPACA related matters over the next few months, including IRC section 9010 annual fees on health insurance providers and exceptions to the individual mandate. Final rules are expected with respect to the 2.3% excise tax on medical devices and the fees that will finance the Patient-Centered Outcomes Research Trust Fund.

Of note, in a letter to **Treasury Secretary Timothy Geithner** and **IRS Commissioner Douglas Shulman**, **House Oversight and Government Reform Committee Chairman Darrell Issa** threatened to subpoena the agencies if they do not fully comply with his request for a detailed accounting of their decision-making in allowing individuals to receive PPACA tax credits under the federal health

insurance exchange in states that do not set up their own exchanges. **Rep. Issa** said a prior response either intentionally withheld the requested information or was willfully misleading. A number of legal scholars have said the health law does not allow the IRS to make individual subsidies available under the federal default exchange.

Also of note, **Senator Orrin Hatch** sent a letter to **HHS Secretary Kathleen Sebelius** asking for a detailed accounting about each contractor HHS has paid to help construct the federally facilitated exchange (FFE). Whether or not the Obama OMB will release an onslaught of PPACA regulations right after the election remains to be seen, particularly if **Mitt Romney** is elected president. The Romney campaign has repeatedly said such regulations would be wiped away once **Mitt Romney** is inaugurated, although the candidate has said he would keep the provision allowing children to keep their parents coverage up to age 26. Only if

Republicans control both the House and Senate next year will it be possible for Congress to use the reconciliation process to overturn the individual mandate and other key provisions of the law.

The Independent Payment Advisory Board (IPAB) will come under increasing fire regardless of the election results. In this connection, **House Majority Leader Eric Cantor** released a report, “The Imperial Presidency”, stating that the IPAB is an unprecedented power that has the potential to dramatically impact the availability of health care for the nation’s seniors. Whether or not a Republican Congress would seek to repeal the law’s provisions partially closing the Part D prescription drug “doughnut hole” remains to be seen. HHS released a report stating that about 5.6 million beneficiaries have received a rebate or drug discount, including 2.3 million this year, thus saving each an average of \$657 after reaching the coverage gap.

President Obama Says SOTU Got PPACA Reasoning Wrong

In a published interview, the President unveiled his views on the Supreme Court’s decision upholding the constitutionality of the PPACA. He was quoted as stating “It was interesting to see them, or Justice Roberts in particular, take the approach that

this was constitutional under the taxing power... The truth is that if you look at the precedents dating back to the 1930s, this was clearly constitutional under the Commerce Clause.”

Medicare Home Health Care Coverage Decision

It was reported that HHS has proposed a settlement in a class-action lawsuit brought by the Center for Medicare Advocacy which alleges that CMS illegally denied thousands of chronically ill Medicare beneficiaries’

essential therapies and medical services under the “demonstrable improvements in functioning” coverage criteria. The change proposed by HHS would provide for skilled nursing and therapy services when they are needed

to “maintain the patient’s current condition or prevent or slow further deterioration.” CMS has not released a cost estimate of the proposed change.

House Oversight Committee Issues Subpoena

Last week the House Oversight and Government Affairs Committee sent a subpoena to HHS to compel the agency to provide certain previously requested documents related to the 10-year \$8.3 billion Medicare Advantage Quality Bonus Payment Demonstration. Republicans maintain the program is but an election year ploy to cover up cuts under the PPACA to the Medicare Advantage program.

OIG Doc Watch

The HHS Office of Inspector General’s 2013 work plan includes several initiatives to review possible improper physician payments, including place-of-service errors and the error rate for “incident-to” services performed by non-physicians. In addition, meaningful use payments for EHRs will come under scrutiny by the OIG.

Draft Bill to Improve Drug Distribution Security

The Senate HELP Committee and House Energy and Commerce Committee released draft legislation designed to help

improve pharmaceutical drug distribution security. The bipartisan “track and trace” bill would set standards for tracking prescription

drugs to prevent counterfeit or adulterated products to be introduced into the supply chain.