January 5, 2007

Issues for the 110th Congress

Short-Term Priorities. The Senate’s short-term priorities, as outlined by Majority Leader Harry Reid (D-Nev.) include a lobbying and ethics reform package (S. 1) and bills to raise the minimum wage (S. 2); reduce drug costs for seniors (S. 3); implement recommendations of the 9/11 Commission (S. 4); promote stem cell research (S. 5); address energy shortages (S. 6); increase federal assistance for college, lower interest rates for student loans, and expand tax breaks for college (S. 7); authorize funds for Army readiness, as well as the health care and education needs of active duty veterans and National Guard reservists (S. 8); overhaul the nation’s immigration laws (S. 9); and reinstate pay-as-you-go budget rules (S. 10).

The House last week approved a rules package (H. Res. 6) that includes ethics reform, budget enforcement (instituting a pay-as-you-go requirement for new tax cuts or entitlement programs) and earmark disclosure titles. The proposed package also includes a provision allowing expedited floor consideration for several pieces of legislation that reflect the immediate priorities of the new leadership. These bills would implement several recommendations of the 9/11 commission (for consideration on Tuesday, January 9); increase the $5.15 per hour federal minimum wage to $7.25 (for consideration on Wednesday, January 10); promote stem cell research (for consideration on Thursday, January 11); allow the government to negotiate lower prices on prescription drugs for Medicare recipients (for consideration on Friday, January 12); cut interest rates on student loans (for consideration on Wednesday, January 17); and repeal some subsidies for the oil and gas industry (for consideration on Thursday, January 18).

Academic Competitiveness Grants Negotiated Rulemaking. The Deficit Reduction Act authorized a new $790 million mandatory program to create “Academic Competitiveness and National SMART Grants,” which provide funding to Pell Grant-eligible postsecondary students who pursue a rigorous high school curriculum or who successfully pursue majors in math, science, technology, or critical foreign languages. As of July 1, 2006, Academic Competitiveness grants are available to Pell grant-eligible first- and second-year postsecondary students who have completed a “rigorous secondary school program of study established by a state or local educational agency and recognized as such by the Secretary.” NGA worked with the Department of Education to quickly establish short-term procedures for the 2006-07 school year by which states could identify a “rigorous program of study” to ensure that states and local districts retained their authority to determine high school curricula. NGA also successfully advocated that the definition of a “rigorous program of study” should include students in dual enrollment programs, which allow high school students to take some college-level courses. These terms are in place for the 2006-07 school year. Negotiated rulemaking will take place over the next few months for the AC/SMART Grants program for school year 2007-08 and beyond. The Administration has expressed its desire to raise academic rigor expectations in high schools through this process.

Appropriations and Budget
• Continuing Resolution. The 110th Congress will consider a year-long continuing resolution (CR) to fund programs contained in the nine unfinished fiscal year (FY) 2007 appropriations bills. Congressional leaders are expected to eliminate earmarks from the CR and redirect those funds ($7 billion) to other programs.
The current plan calls for the CR to be completed by the beginning of February, prior to the release of the President’s proposed FY 2008 budget. The current CR, which Congress passed before adjourning, remains in effect until Thursday, February 15.

- **FY 2008 Budget.** The President’s proposed FY 2008 budget is scheduled to be submitted on Monday, February 5. The President has indicated that his proposal will eliminate the federal deficit by 2012 and permanently extend several tax reductions set to expire in 2010. The budget submission begins the congressional process for drafting the FY 2008 budget resolution.

- **Pay-As-You-Go.** On Friday, January 5, the House approved a “pay-as-you-go” rule requiring that any new initiatives or tax cuts not increase the federal deficit.

**Energy Policy**

- **National Renewable Energy Portfolio Standard (RPS).** A top priority for incoming Senate Energy and Natural Resources Committee Chairman Jeff Bingaman (D-N.M.) is the creation of a national RPS that requires suppliers to produce 10 percent of their energy from renewable sources by 2020. Twenty-two states currently have their own RPS standards.

- **Energy Security.** Proposals that may be considered by the 110th Congress to enhance the nation’s energy security include boosting incentives for the next generation of transportation fuels; expanding domestic energy production; increasing conservation and energy efficiency standards; and supporting renewable energy.

- **Nuclear Power.** Among the controversial proposals likely to return for consideration by the new Congress are interim storage of nuclear waste, streamlining the development of the Yucca Mountain (Nevada) waste repository, reprocessing of spent nuclear fuel, and construction of the next generation of nuclear power plants.

**Environmental Issues**

- **Climate.** Incoming Senate Environment and Public Works Committee Chair Barbara Boxer (D-Calif.) has made global climate change her top priority, creating two new subcommittees to focus respectively on public and private sector solutions.

- **Air.** The 110th Congress is expected to consider multi-pollutant legislation to tighten regulation of electric utilities, as well as to review EPA’s new controversial air quality standards.

- **Children’s Health (Superfund/Toxics).** To address children’s exposure to toxics, the new Congress is likely to consider increased funding for the hazardous waste cleanup program by renewing the expired Superfund polluter taxes, reauthorizing the popular Brownfields Redevelopment Act, and modernizing the U.S. toxic chemical laws.

- **Water.** Tight fiscal realities are expected to translate into continued pressure to reduce federal support of the water infrastructure financing mechanism - the Clean Water Act State Revolving Loan program.

- **Other Issues.** Numerous other controversial environmental issues remain on the agenda for the 110th Congress, including Endangered Species Act reform and reauthorization of the Water Resources Development Act.

**Farm Bill.** The 110th Congress is expected to debate wide-ranging U.S. farm policy issues since the farm bill is due to be reauthorized this year. Key issues include funding commodity programs, enhancing existing conservation and stewardship initiatives, promoting rural communities, and expanding alternative fuels and
renewable energy. Major agricultural groups, however, have called for a one-year extension of the farm bill until after the Doha round of World Trade Organization talks are complete. In addition, the reauthorization bill faces significant political challenges as an increased number of stakeholders are expected to be competing for the same or reduced resources.

**Head Start.** The 110th Congress will likely consider legislation to reauthorize Head Start, which is a federal discretionary grants program that provides comprehensive child development services to low-income children from birth to age five, pregnant women, and families. The program aims to improve the school readiness of young children by providing a range of services in the areas of education; medical, dental, and mental health; nutrition; and parent involvement. During the 109th Congress, the House approved H.R. 2123 on September 22, 2005, and the Senate Health, Education, Labor, and Pensions Committee approved S. 1107 on August 31, 2005.

**Health Information Technology (IT).** Legislation intended to spur the adoption of health care information technology is likely to be addressed by the 110th Congress. In the previous Congress, attempts to craft a compromise between the House and Senate bills (S. 1418 and H.R. 4157) were complicated by strong disagreements about several issues, including a provision in the House bill to allow hospitals to provide physicians with IT hardware and software without violating federal anti-kickback laws, and a provision in the House bill requiring insurers to convert to a new coding system (ICD-10) by 2010. The two bills also differed in the amount of grant funding provided for health care IT, with the House version containing $40 million and the Senate bill providing $650 million.

**Higher Education Act.** Reauthorization of the Higher Education Act (HEA), which provides programs for postsecondary students, institutions, and teachers, is expected to be addressed by the 110th Congress since the 109th Congress did not complete consideration of their measures. In addition, the new leadership of the Senate Health, Education, Labor, and Pensions (HELP) Committee and the House Education and the Workforce Committee has publicly expressed their priority for addressing college affordability in the 110th Congress, particularly through Pell Grants and student loan interest rates. During the 109th Congress, the House Education and the Workforce Committee approved H.R. 609 on September 22, 2005, and the Senate HELP Committee approved S. 1614 on November 17.

The Deficit Reduction Act of 2005 already reauthorized a portion of HEA Title IV, which contains the majority of the federal funding for higher education. The reforms provided $12.7 billion in savings and included increased loan limits, changes and increases in certain federal loan interest rates, a reduction in student loan fees, a reduction in federal subsidies to lenders, and an extension and expansion of the teacher loan forgiveness program from $5,000 to $17,500.

**Immigration Reform.** The Senate is expected to consider immigration legislation early in the 110th Congress. During the 109th Congress, the Senate passed a comprehensive immigration bill (S. 2611) that would allow most of the 12 million illegal immigrants to stay in the United States by participating in a guest worker program and earning U.S. citizenship after paying several fines and meeting specific requirements. The guest worker proposal in S. 2611 would create three categories of illegal immigrants based on the amount of time they have been in the country and provide a path to citizenship for some of the illegal immigrants. It is unclear what provisions from S. 2611 will be included during the Senate debate this year.
Innovation and Competitiveness. Since there is bipartisan support for the competitiveness agenda, it is very likely that it will be considered by the 110th Congress. A number of federal competitiveness initiatives emerged in the 109th Congress, including two introduced in the Senate (the Protect America’s Competitive Edge (PACE) Act and the National Innovation Act of 2005), and the President’s American Competitiveness Initiative. These proposals all contained approaches to accomplish the common goal of keeping the U.S. competitive in a global economy. On Thursday, January 4, Chairman of the Senate Finance Committee, introduced legislation (S. 41) to make the research and development (R&D) tax credit permanent and provide tax-exempt bond authority for improving research capabilities.

Insurance Regulation. It appears likely that passage of legislation to preempt state insurance regulation and oversight will be a priority for the 110th Congress. The new bill probably will be similar to the National Insurance Act (S. 2509), which was introduced in the 109th Congress by Senator John Sununu (R-N.H.) and Senator Tim Johnson (D-S.D.). S. 2509 significantly preempted state authority to regulate the insurance industry and was the subject of two hearings in July before the Senate Banking, Housing, and Urban Affairs Committee. The measure would cost states more than $1.7 billion in existing revenues from insurance fees and assessments, and force state taxpayers (through state guarantee associations) to pay for any insolvency that results from inadequate federal oversight of national insurers.

Medicaid and SCHIP. The State Children’s Health Insurance Program (SCHIP) will receive considerable attention in 2007 since the program is up for reauthorization at the end of the fiscal year and a number of states continue to face substantial federal funding shortfalls. Because Medicaid is intertwined with SCHIP, Medicaid reforms (particularly for children) could be part of the reauthorization debate. In addition, Congress may revisit the Medicaid reforms enacted in the Deficit Reduction Act (DRA) of 2005, and may attempt to limit the new flexibilities for states in rules governing benefits and cost-sharing.

The Centers for Medicare and Medicaid Services (CMS) is expected to continue to move forward through regulation on a number of proposed administrative changes that will result in significant cost shifts to states. The 109th Congress did act late in the session to prevent administrative action on a proposed 3 percent cut in allowable Medicaid provider taxes; however, a number of other changes proposed in the FY 2007 budget are anticipated, including limits to payments to government providers, and changes to reimbursement policies for rehabilitation, transportation, and school-based health services. CMS will also continue its work through regulation on DRA implementation.

Medicare Prescription Drug Benefit (Medicare Part D). Congress has signaled an interest in evaluating the Medicare prescription drug benefit (Medicare Part D) and will likely schedule a number of hearings in 2007. House Speaker Nancy Pelosi (D-Calif.) has also included the Part D Benefit as an issue to be addressed in the first 100 hours of the 110th Congress.

National Guard. During the 109th Congress, the fiscal year 2007 Department of Defense Authorization Act was amended with a provision that allows the President to call-up the National Guard without a Governor’s consent in times of “natural disaster, epidemic, or other serious public health emergency, terrorist attack or incident or
other condition.” The Chair and Ranking Member of the Senate Armed Services Committee indicated that the amendment was intended to clarify the Insurrection Act, which provided the President with power in specified circumstances and conditions to call-up the active military or Guard to enforce laws and maintain order. However, NGA and a bipartisan group of House and Senate Members have argued that the provision goes too far in expanding the role and authority of the President in matters of the National Guard. An attempt will be made to strike the provision, or at least to define and limit these powers, in the 110th Congress. The incoming Chairman of the House Armed Services Committee, Rep. Ike Skeleton (D-Mo.), has stated his intention to consider the measure in the new Congress but has not committed to a position on the provision. The Co-Chairs of the Senate National Guard Caucus - Senator Patrick Leahy (D-Vt.) and Senator Christopher Bond (R-Mo.) - have indicated their support to return the provision to the original intent of the Insurrection Act.

**No Child Left Behind.** The No Child Left Behind (NCLB) Act is due for reauthorization this year, and this month marks the fifth anniversary of the law. Congressional hearings have been held in the House, but no other major congressional activity has occurred. The timing of the reauthorization process has yet to be solidified, but it is possible that the reauthorization process could begin shortly. Public discussions between Congress and the Administration have focused on several areas, including accountability measures (particularly related to growth measures), high school reform (and the possibility of expanding testing in high school to new grade levels), academic standards, capacity to turn around schools in need of improvement, highly qualified teacher provisions, and timing/priority of the reauthorization.

**Prisoner Reentry.** The 110th Congress is expected to consider prisoner reentry legislation early in the session since the 109th Congress failed to pass the Second Chance Act (H.R. 1704). H.R. 1704 would have authorized funds to the U.S. Department of Justice for the purpose of allowing public and nonprofit organizations to provide people newly released from prison with drug treatment, job training, mentoring, and housing. A hold was placed on the measure last year by Senator Tom Coburn (R-Okla.), who wanted offsets for funding authorized in the legislation and evidence that the programs worked to reduce recidivism.

**Real ID.** The U.S. Department of Homeland Security transmitted its draft regulations on Real ID to the Office and Management and Budget (OMB) on January 2, 2007. If OMB takes its full 90 days to review the regulations, then proposed rules will not be published until the beginning of April. With a May 2008 deadline rapidly approaching - and an estimated price tag of more than $11 billion over five years - Real ID is likely to receive considerable attention from House and Senate oversight committees. At the end of the previous Congress, Senator Daniel Akaka (D-Hawaii) and Senator John Sununu (R-N.H.) cosponsored a bill to extend the deadline, restore the negotiated rulemaking process, and authorize billions of dollars to assist states in enhancing their drivers’ license processes. NGA, the National Conference of State Legislatures, and the American Association of Motor Vehicle Administrators worked together last year to develop recommendations for implementing Real ID, including extending the compliance deadline, providing federal funding, granting states greater flexibility in re-enrolling certain populations, and setting performance standards for security features.
Tax Issues

• **Business Activity Tax (BAT).** Although legislation to mandate a physical presence nexus standard in states for business activity taxes was introduced in both the House (H.R. 1956) and Senate (S. 2721) last year, there is less support for the measure in this Congress. Recent court decisions in New Jersey and West Virginia have strengthened the states’ constitutional arguments for an economic presence standard, and the new leadership of the House Judiciary Committee and Senate Finance Committee oppose the legislation. BAT is most likely to be raised again if a streamlined sales tax bill gains momentum, with business interests asking for BAT relief in exchange for granting states the authority to collect sales taxes on remote sales.

• **Streamlined Sales Tax.** Legislation to authorize remote sales tax collection by states that are part of the Streamlined Sales Tax Agreement is likely to receive a warmer reception in the House this year. Currently 15 states are full members of the agreement and more than 1000 vendors have volunteered to collect sales taxes on remote sales in those states. Although five more states are poised to become full members, federal legislation may be necessary to compel additional states to join the agreement. The House Judiciary Committee has indicated a willingness to hold hearings on the legislation and the status of the agreement. Support for the measure in the Senate depends largely on how actively Senator Byron Dorgan (D-N.D.) and Senator Mike Enzi (R-Wyo.) push the measure. Business interests have indicated that they will pursue significant changes to the agreement through federal legislation, including requiring compensation for the cost of collection for all sellers, a physical presence standard to establish nexus for business activity taxes, an exception from collection requirements for small businesses, and federal court review of actions by the Streamlined Governing Board.

• **Internet Access Tax Moratorium.** The moratorium on state taxes of Internet access expires in November of 2007. Last year, Senator Ron Wyden (D-Ore.) and former Senator George Allen pushed to make the moratorium permanent, attaching amendments to tax bills and telecommunications legislation that were not considered before adjournment. The current moratorium uses an expanded definition of Internet access to cover high speed DSL lines and to exempt backbone telecommunications services used for Internet access from taxation. Although a recent study indicated that taxes on Internet access do not hinder deployment or subscription to the service, proponents will continue to push to make the moratorium permanent. On Thursday, January 4, Senators Wyden John McCain (R-Ariz.), and John Sununu (R-N.H.) introduced legislation (S. 156) to make the moratorium permanent and have it apply to all types of Internet access, including DSL dial-up, cable modem, or wireless service. Senator Sununu has also indicated that he would like to see the moratorium expanded to prohibit state tax practices not affected by the current moratorium.

Telecommunications. It is anticipated that the 110th Congress will revisit telecommunications issues, with national franchising, universal service, build-out requirements, and telecommunication taxes expected to be top priorities. During the 109th Congress, the House and the Senate worked to pass sweeping telecommunications reform bills. The House bill (H.R. 5252), which passed on June 8, 2006, focused primarily on creating a national telecommunications franchising framework. However, the bill did not provide an opt-out for states that have passed - or are planning to pass - state-wide franchising. The Senate bill, as reported by the Commerce, Science and Transportation Committee, contained numerous sweeping preemptions of state taxing authority and existing state telecommunications laws.
Temporary Assistance for Needy Families (TANF). There appears to be some congressional interest to make legislative changes to the Temporary Assistance for Needy Families (TANF) program, which was reauthorized in the DRA of 2005. Significant limitations on state flexibility and policy changes to the program were made in the DRA. It is unclear what legislative changes the 110th Congress will consider; however, NGA does intend to weigh-in on legislative priorities for TANF that would restore state flexibility as well as make it easier for states to administer the program.

Transportation Finance. The Department of the Treasury and the Congressional Budget Office each prepare semiannual estimates of future receipts for the Highway Trust Fund. Their most recent estimates show that the Highway Account within the Highway Trust Fund could have a negative balance as early as 2009, raising concerns about whether funding for federal highway programs can continue to be met using existing revenue sources. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) authorized the National Surface Transportation Policy and Revenue Study Commission to examine this issue. The Commission is statutorily required to release their report on their recommendations on July 1, 2007, although an extension is likely. It is expected that Congress will wait for the report before attempting to legislate on this issue.

Workforce Investment Act. It is anticipated that the 110th Congress will consider a measure to reauthorize the Workforce Investment Act (WIA) - a federal discretionary grants program administered by states to provide career assistance, unemployment assistance, and training to adults and youth. During the 109th Congress, the House and Senate both approved WIA reauthorization bills but did not conference the measures due to unresolved differences over provisions dealing with faith-based hiring and block grant issues. The House bill combined funding streams for three major programs within WIA at the federal level: WIA Adult, Dislocated Workers, and Employment Services, while the Senate bill allowed transferability between WIA Adult and WIA Dislocated Workers. These funding stream issues are expected to be revisited by the 110th Congress.

On a related issue, the Department of Labor issued a Notice of Proposed Rulemaking (NPRM) for the WIA and Wagner-Peyser Act Regulations on December 20, 2006, which would implement several policy changes. The deadline for comments on this NPRM is February 20, 2007.