



U.S. CHAMBER OF COMMERCE

U.S. Chamber Policy Accomplishments for 2013

CAPITAL MARKETS, CORPORATE GOVERNANCE, AND SECURITIES REGULATION

Derivatives: CFTC Finalized Inter-Affiliate Swap exemption

- Due to the advocacy and efforts of the Chamber and the Chamber-led Coalition for Derivatives End-Users, the Commodity Futures Trading Commission (CFTC) created a regulatory clearing exemption for many swaps between affiliates of the same company.

Derivatives: CFTC Provides “No Action Relief” for Companies That Centralize Their Hedging Activity

- Due to the advocacy and efforts of the Chamber and the Chamber-led Coalition for Derivatives End-Users, the CFTC issued “no action relief” to clarify that many nonfinancial companies that use central treasury units to consolidate their hedging activity will still be eligible for the end-user clearing exemption.

Derivatives: End-User Legislation Passes House

- The Coalition for Derivatives End-Users, led by the Chamber, lobbied heavily for several bills that passed the House to address discrete issues with the derivatives provisions of Dodd-Frank, including legislation to ensure that there is a clear end-user margin exemption and legislation to address the extraterritorial application of the CFTC’s rules.
 - H.R. 634, the Business Risk Mitigation and Price Stabilization Act of 2013, would create a critical margin exemption for corporate end users.
 - H.R. 742, the Swap Data Repository and Clearinghouse Indemnification Correction Act of 2013, would eliminate an unworkable indemnification requirement in Dodd-Frank that would lead to a balkanized system for storing and accessing swap data.
 - H.R. 1256, the Swap Jurisdiction Certainty Act, would clarify the territorial reach of U.S. derivatives regulation by exempting transactions between non-U.S. swap dealers and non-U.S. counterparties.
 - H.R. 1038, the Public Power Risk Management Act, would help ensure that public utilities’ ability to hedge their risk and minimize customer costs would not be hindered by CFTC regulation.

- H.R. 992, the Swaps Regulatory Improvement Act, would modify section 716 of the Dodd-Frank Act to decrease risk for derivatives market participants while driving up costs for end users. Section 716 would add cost and complexity by requiring market participants to put in place multiple agreements and make multiple settlements on their derivatives transactions.

Fiduciary Duty:

- Due to advocacy by the Chamber, the House passed H.R. 2374, the Retail Investor Protection Act, on a bipartisan basis. This bill would require the SEC to finish a rulemaking on fiduciary standards for broker-dealers before the Department of Labor finalizes its rule redefining a fiduciary under the Employee Retirement Income Security Act.

CFPB: Remittance Rule Implementation Delay

- The Consumer Financial Protection Bureau (CFPB) agreed to revise a final rule that would have severely impeded the market for overseas remittance transfers. The new rule clarifies the error resolution process and eliminates certain unworkable disclosure requirements.

CFPB: Revision to Credit Card Rules

- The Chamber called on the CFPB to repropose a rule that could make it impossible for stay-at-home and military spouses to be approved for credit cards. In May 2013, CFPB finalized a change to the rule that will fix the problem.

CFPB: Stopped Sending Enforcement Attorneys to Supervisory Exams

- After pressure from the Chamber and others, the CFPB announced that it would cease the practice of bringing enforcement attorneys to supervisory exams. This is an important substantive step toward implementing a less adversarial supervisory program, and perhaps a broader indication that the CFPB is feeling pressure to explain and even modify some of its more arbitrary policies and processes.

CFPB: Shaped the Bureau's Arbitration Study

- The Chamber argued that the CFPB's study of predispute arbitration clauses in consumer financial contracts must include an analysis of the alternatives to arbitration, including individual lawsuits and class actions. The CFPB's preliminary study results included a commitment to examine consumer outcomes in court as a means of comparing those results with ones for consumers through arbitration.

Mandatory Audit Firm Rotation

- With the support of the Chamber, the House passed H.R. 1564, the Audit Integrity and Job Protection Act, which prohibits the Financial Accounting Standards Board (FASB) from requiring mandatory audit firm rotation.

Resource Extraction

- The Chamber filed a lawsuit with the American Petroleum Institute challenging the SEC's corporate disclosure of resource extraction payments. In a victory for the Chamber, the District Court threw out the SEC rules because it might have forced companies to disclose information contrary to applicable foreign law.

SEC Regulatory Accountability Act

- The House passed H.R. 1062, the SEC Regulatory Accountability Act, which mandates enhanced cost-benefit analysis as well as post-implementation review of regulations.

Private Equity Registration Legislation:

- The Chamber supported H.R. 1105, the Small Business Capital Access and Job Preservation Act that passed the House. This bill would amend the Investment Advisers Act of 1940 to exempt private equity fund investment advisers from its registration and reporting requirements, provided that each private equity fund has not borrowed and does not have outstanding a principal amount exceeding twice its invested capital commitments.

Proxy Advisory Firms: Congressional Hearing and SEC-Held Roundtable

- At the suggestion of the Chamber, the House Capital Markets subcommittee held a hearing exploring the role and influence of Proxy Advisory firms. In December 2013, the SEC held a full-day roundtable to discuss the need for a more accountable, transparent, and evidence-based policymaking process while eliminating core conflicts of interest in the corporate governance rating agencies.

DEFICITS AND DEBT

Debt Ceiling and Spending

- Successfully helped persuade Congress to avoid defaulting on the nation's debt and eventually to enact a budget agreement defining appropriated spending levels through fiscal year 2015.

EDUCATION AND WORKFORCE DEVELOPMENT

- H.R. 803, the Supporting Knowledge and Investing in Lifelong Skills (SKILLS) Act, passed the House. The Chamber backed the bill and is particularly pleased with the move toward addressing ineffective training programs and replacing them with competitive programs customized to the needs of a given locale.
- S. 1356, the Workforce Investment Act of 2013, passed the Senate Health, Education, Labor and Pensions Committee with bipartisan support. The Chamber supports a globally competitive workforce and efforts to promote a streamlined workforce investment program. The Chamber has and will continue to work closely

with committee staff to improve the bill in two key areas—increasing system accountability and addressing unnecessary programs.

- The Chamber advocated for H.R. 2637, the Supporting Academic Freedom Through Regulatory Relief Act, which passed the House Education and the Workforce Committee. This act repeals several Department of Education regulations that are particularly harmful to the for-profit higher education industry and prohibits the department from further issuing regulations until Congress has reauthorized the Higher Education Act.

Durbin Amendment

- Sen. Durbin (D-IL) filed an amendment to the National Defense Authorization Act (NDAA) that would have changed how for-profit institutions of higher education that accept money from the Department of Defense's voluntary military education programs account for those funds. Currently, the 90/10 rule states that for-profit schools cannot get more than 90% of their revenues from Title IV federal student aid.
- Schools are not prevented from including other federal funds, for instance, Tuition Assistance for service members and their families, in the remaining 10%. The Durbin amendment would have changed this by requiring for-profit schools to include military Tuition Assistance in the 90% part of the calculation. A number of Chamber members have significant concerns with changing the 90/10 rule, and the Chamber was successful in preventing the amendment from being added to the Senate's final NDAA bill.

ELECTIONS AND GRASSROOTS ADVOCACY

Elections

- The Chamber was involved in the AL-01 congressional special primary run-off election in support of pro-business candidate Bradley Byrne (R-AL), who won with 52% of the vote.
- Successfully established the Chamber's role as an active participant in primary elections and early engagement on behalf of pro-business candidates.
- Focused 2013 field program and Spirit of Enterprise awards on strategically significant districts and states.

Grassroots

- Mobilized the federation and grassroots network in support of the Chamber's policy agenda, including immigration reform, entitlement reform, comprehensive tax reform, domestic energy production, and reining in excessive regulations.
- Expanded the size, scope, and strength of the Chamber's grassroots and small business membership through the *Free Enterprise Network*, which was recognized as the best in class by the Showalter Awards, and *Friends of the U.S. Chamber*. The

network has grown to more than 10,000,000 assets, and it sent 500,000 letters to members of Congress on key legislative and regulatory issues.

ENERGY AND THE ENVIRONMENT

Federal Helium Reserve

- Successfully advocated for passage of the Responsible Helium Administration and Stewardship Act in the House and Senate. The president signed the bill into law on October 2, 2013. The law will secure the supply of helium by preventing the closure of the Federal Helium Reserve, reforming the federal helium program by setting a market price for helium through auctions, and winding down the federal helium program responsibly with the private market assuming the role of supplying helium to private users.
- Helium is an essential component of numerous advanced manufacturing processes, including manufacturing hospital equipment, solar panels, and silicon chips for computers and cell phones. It is also critical to our national defense and scientific research.

Onshore Energy Production on Federal Lands

- Led a major grassroots effort resulting in the passage of H.R. 2728, the Protecting States' Rights to Promote American Energy Security Act, by a bipartisan vote of 235-187. This bill would prevent the Bureau of Land Management from regulating hydraulic fracturing on federal lands when a host state has existing regulations in place.

Offshore Energy Production

- Testified in support of and generated a successful push for the House to pass H.R. 2231, the Offshore Energy and Jobs Act. This important legislation would open additional areas of the Outer Continental Shelf (OCS) to energy development and provide for the sharing of royalty revenues from offshore development with adjacent states.

Hard Rock Mining Reform Legislation

- Supported and helped advance H.R. 761, the National Strategic and Critical Minerals Production Act of 2013. The bill would provide for the efficient development of and access to domestic critical and strategic minerals that are essential to our national security as well as to our manufacturing and economic security. This bill passed the House on September 18, 2013, by a vote of 246-178. It would reduce permitting delays while protecting the environment which would, in turn, increase domestic production of these much-needed minerals.

Millennial Bulk Terminal

- Successfully convinced the U.S. Army Corps of Engineers (the Corps) not to move forward on expanding the National Environmental Policy Act (NEPA) review for the Millennium Bulk Terminals. On November 18, 2013, the Chamber submitted a

comment letter to the Corps opposing an expansive environmental impacts review of a proposed coal export terminal in Longview, Washington. Advocacy groups had been pressuring the Corps to formally consider the U.S. environmental impacts from coal exported and combusted in Asia. The Chamber's comment letter noted that such an expansive review was beyond the scope of NEPA and otherwise without precedent. The Corps has twice publically stated that it will not move forward with the expanded review.

Gateway Pacific Project

- Successfully convinced the Corps not to move forward on expanding the NEPA review for the Gateway Pacific Project. On January 18, 2013, the Chamber submitted a comment letter to the Corps opposing an expansive environmental impacts review of a proposed coal export terminal in Longview, Washington. Advocacy groups had been pressuring the Corps to formally consider the U.S. environmental impacts from coal exported and combusted in Asia. The Chamber's comment letter noted that such an expansive review was beyond the scope of NEPA and otherwise without precedent. The Corps has twice publically stated that it will not move forward with the expanded review.

Permit Streamlining

- Successfully advocated for House Judiciary Committee passage of H.R. 2641, the Responsibly And Professionally Invigorating Development (RAPID) Act of 2013. As the Chamber's *Project No Project* report has demonstrated, there are millions of jobs that are never created because of a dysfunctional permitting system that delays or cancels major infrastructure projects. The RAPID Act of 2013 would speed up the permitting process for infrastructure projects, enabling jobs to be created and the economy to grow.

Keystone XL Pipeline

- Through the Chamber's Energy Institute's Partnership to Fuel America campaign, the Chamber mounted an aggressive push in the Senate to include language mandating the approval of the Keystone XL pipeline in its budget resolution. The Senate adopted this amendment by a vote of 62-37, demonstrating significant bipartisan support for the pipeline's approval. Hundreds of Partnership members generated letters and phone calls to their respective senators urging them to support the amendment.

Cross-State Air Pollution Rule

- The Chamber's ongoing efforts to challenge unnecessary air regulations from EPA helped contribute to a positive outcome on EPA's Cross-State Air Pollution Rule (CSAPR). In January 2013, the D.C. Circuit Court of Appeals denied EPA's petition for a full panel rehearing in the case challenging CSAPR. In August 2012, the same court essentially struck down CSAPR, finding that EPA exceeded its statutory authority because the states, not EPA, should create their own plans to tackle air emissions and because the rule could force states to account for more emissions than

required. The Chamber's Litigation Center has filed a friend-of-the-court brief urging the Supreme Court to uphold the Court of Appeal's decision.

Energy Savings and Industrial Competitiveness Act of 2013

- Successfully advocated for passage of S. 761, the Energy Savings and Industrial Competitiveness Act of 2013, out of the Senate Committee on Energy and Natural Resources on May 8, 2013. This bipartisan bill would spur the use of energy efficiency technologies in the residential, commercial, and industrial sectors of the U.S. economy while promoting job creation. Through various low-cost tools, S. 761 would reduce barriers for private sector energy users and drive the adoption of off-the-shelf efficiency technologies, saving businesses and consumers money, promoting U.S. energy independence, and reducing emissions.

Coal Ash

- Successfully advocated for passage of H.R. 2218, the Coal Ash Recycling and Oversight Act of 2013, which would protect public health and the environment by building on state programs to safely regulate coal combustion residuals (CCRs). The House passed the bill on July 25, 2013. The Chamber believes that the designation of CCRs under Subtitle C of the Resource Conservation Recovery Act (RCRA) would have an immediate negative economic impact on coal-dependent states and that bipartisan legislation is needed to provide certainty to the CCR reuse industry.

Social Cost of Carbon

- Successfully advocated for passage of Rep. Tim Murphy's (R-PA) amendment to H.R. 1582, the Energy Consumers Relief Act of 2013, on August 1, 2013. The amendment would prohibit EPA from using the "social cost of carbon"—an estimate of monetary damages from increased carbon emissions—in any energy-related rulemaking until a federal law is enacted authorizing such use.
- The Chamber also successfully advocated for a notice and comment period on the administration's "social cost of carbon" estimate through its filing of an Information Quality Act petition in September 2013, and several comments to the Department of Energy (DOE), challenging its use of the "social cost of carbon" in justifying proposed energy efficiency standards. On November 26, 2013, the Office of Management and Budget published a notice in the *Federal Register*, requesting public comment on the "social cost of carbon."

Natural Gas Pipeline Permitting

- Successfully advocated for passage of H.R. 1900, the Natural Gas Pipeline Permitting and Reform Act, in the House on November 21, 2013. The bill would ensure that natural gas pipeline permitting decisions are made in a timely manner by establishing set review periods for affected agencies once the Federal Energy Regulatory Commission (FERC) completes its review. This legislation would serve as an important tool to ensure that adequate natural gas pipeline capacity is available to support continued economic growth and the domestic manufacturing renaissance.

Energy Savings Performance Contracts

- The Chamber's ongoing efforts to support energy savings performance contracts (ESPCs) helped contribute to the administration's December 3, 2013, decision to extend its ESPCs initiative through 2016. The president's December 2011 ESPCs initiative, in which the Chamber played a significant role, has created a pipeline of \$2.3 billion in federal energy efficiency projects. The extension of the ESPCs initiative is important because these contracts lead to job creation in the private sector and increased energy efficiency in the federal government.

Formaldehyde Proposed Rulemakings

- Successfully secured two extensions of time for comments due on two proposed EPA rules for regulating formaldehyde. The first rule concerned formaldehyde emissions standards for composite wood products; the second, third-party certification framework for formaldehyde standards for composite wood products.

Bristol Bay Watershed Assessment

- Successfully secured an extension of time for comments on the Bristol Bay Watershed Assessment. On May 15, 2013, the Chamber submitted comments to the U.S. Army Corps of Engineers (the Corps) requesting an extension of time for the comment period, owing to the complexity of the document and the fact that this was an extra-regulatory action. Shortly thereafter, the Corps agreed to extend the comment period by 30 days.

FOOD AND AGRICULTURE

Food Safety Modernization Act

- Successfully requested and secured multiple extensions of time in two different proceedings regarding new Food Safety Modernization Act (FSMA) rules. In making this request, the Chamber argued that the complexity of the rules; the cumulative impact of the numerous FSMA rules, including those in the pipeline; and the novel aspect of the rules necessitated the extension so that our members could properly consider the impact of the information collection issues.

GOVERNMENT CONTRACTING

Contractor Compensation

- Successfully urged the House against adopting the administration's proposal to arbitrarily cap allowable reimbursable rates for contractor compensation.

Procurement

- Successfully lobbied the House to remove open source and licensing limitation language from the Federal Information Technology Acquisition Reform Act (FITARA).

Buy American

- Successfully urged the House Interior subcommittee against imposing new domestic source requirements for “manufactured goods” for federally funded water system projects.

HEALTH CARE

Regulatory Activity

Following the passage of the Patient Protection and Affordable Care Act (PPACA), the Chamber has submitted 68 comment letters in response to 8 Interim Final Regulations (IFRs), 3 Final Rules, 20 Requests for Comments (RFCs), 27 Proposed Rules, 1 Information Collection Request (ICR), 2 Amendments to the IFRs, 6 Requests for Information (RFIs) and 1 Frequently Asked Questions document (FAQs). The Chamber’s comments have led to many positive changes in the regulations promulgated to implement the PPACA. These improvements include changes in the following areas:

- **Employer Mandate and Reporting Requirements Delayed Until 2015**
On July 2, 2013, the Obama administration announced that it would delay enforcement of the employer mandate provision of the PPACA until 2015, signifying the biggest modification so far to the health care law. The delay means that the employer mandate penalties will not apply until 2015, giving businesses an additional year to comply with the law’s requirements.

Also, information reporting requirements for employers and health insurers will not be mandatory until 2015. The Chamber has long supported repeal of the employer mandate provision and recently requested this type of “compliance assistance” delay approach for the business community in testimony before Congress and in the Chamber’s Health Care Solutions Council report. This delay provides much-needed relief for affected businesses and provides an opportunity to pursue additional reforms, including a restoration of the standard operating business definition of full-time employment constituting a 40-hour workweek.

- **Delay of Employee Choice in SHOP Until 2015**
In April 2013, the administration decided it would delay the employee choice option of what plans to offer in the federally run Small Business Health Options Program (SHOP) until 2015. Employers that purchase coverage through the SHOP will choose one health plan to offer their employees, which is similar to how many employers currently offer coverage to their employees. The Chamber had emphasized in its comments the importance of employer flexibility and maintaining the ability of an employer to choose which plans are offered to employees in the small business health insurance options programs or small business exchanges.
- **Medicare Advantage Payments Increased in 2014**
In February 2013, the Center for Medicare and Medicaid Services (CMS) proposed a 2.3% cut in Medicare Advantage payments, but it reversed its course by boosting

payments by 3.3%. This reversal was in response to industry feedback, including a comment letter from the Chamber urging CMS to revise the payment rates for calendar year 2014 to reflect the expected “doc fix” and to reverse the payment cuts and instead implement the traditional small positive rate increases historically given.

- **HIPAA Final Rule Maintains Accounting of Disclosures Rule**

On January 25, 2013, the Department of Health and Human Services (HHS) published an omnibus final rule to modify the HIPAA Privacy, Security, and Enforcement Rules and implement statutory amendments under the Health Information Technology for Economic and Clinical Health Act (HITECH Act). Specifically, among other things, the final rule makes no changes to the “accounting of disclosures rule” as had been suggested in earlier regulations. The Chamber has emphasized in various comment letters that the HIPAA accounting of disclosures rule should not be changed to include new requirements for electronic health records since this would overly burden the health care industry with new technology requirements and expenses, as well as create privacy risks for employees.

- **Treasury Allows Roll Over Up to \$500 for FSAs**

On October 31, 2013, the U.S. Department of the Treasury released guidance that permits employers to now allow employees to carry over up to \$500 of the unused amounts left in their health FSAs for expenses in the next year. This modification to the use-it-or-lose-it-rule allows plan sponsors to take advantage of the option to adopt a carryover provision as early as plan year 2013. In addition, the existing option for plan sponsors to allow employees a grace period after the end of the plan year remains in place, allowing plan sponsors to choose one or the other. The Chamber has long supported eliminating the use-it-or-lose-it-rule in favor of greater flexibility for these tax-preferred accounts.

- **Meaningful Use Stage 3 Delayed**

On December 6, 2013, CMS announced that it will extend the federal programs to encourage hospitals and physicians to adopt electronic health records with Stage 2 now starting in 2015 and continuing through 2016, and Stage 3 beginning in 2017 for providers that have completed two or more years at that lower level. These programs specify the standards for “meaningful use” of electronic health records and providers in the program that meet the standards for each stage receive incentive payments. The Chamber has supported greater flexibility for hospitals in the meaningful use programs as they work toward greater interoperability and use of information technology.

Legislative Activity

- **Employer Mandate Delay Bill Passed the House**

On July 17, 2013, the House passed the Authority for Mandate Delay, which provides a legislative delay of the employer mandate and corollary reporting requirements in addition to the Obama administration’s announcement that it would delay enforcement of the employer mandate provision of the PPACA until 2015. The

Chamber has expressed that a legislative delay would provide greater certainty for the business community as it works to comply with the myriad new health care regulations as implementation progresses.

○ **Federal Prescription Drug Track and Trace Bill Becomes Law**

On November 27, 2013, President Obama signed into law H.R. 3204, the Drug Quality and Security Act, which will institute a federal prescription drug track and trace system. The Chamber believes that efforts to bolster oversight of compounding pharmacies and institute a federal prescription drug track and trace system are vital to protecting Americans against counterfeit drugs. This bill will help alleviate confusion and reduce costs for businesses in the pharmaceutical sector, as well as improve the safety of patients generally.

Health Care Solution Council Report

In June 2013, the Chamber convened a Health Care Solutions Council composed of nearly 30 member companies from the hospital, health insurer, and pharmaceutical industries as well as small businesses and large international ones. With the help of facilitator Mark McClellan following a 12-month process, the council reached consensus and released a 64-page report outlining the next steps to improving the health care system.

IMMIGRATION AND TRAVEL

S. 744 Comprehensive Immigration Reform

- On June 27, 2013, the Senate passed S. 744, the Border Security, Economic Opportunity and Immigration Modernization Act of 2013, by a vote of 68-32. The legislation addresses the Chamber’s four major immigration reform priorities— increased border security, expansion of temporary worker programs and employer-sponsored green cards, some type of pathway to legalization and eventual citizenship under tight criteria, and a balanced and workable employment verification system.
- In addition, the bill includes language that would facilitate international travel to the United States, promote investment through the EB-5 immigrant investor program, and drive free enterprise by establishing a visa for immigrant entrepreneurs.
- Over the last weekend in March 2013, the Chamber reached a key agreement with the AFL-CIO on the creation of a temporary worker program for lesser-skilled workers, called the W nonimmigrant visa program, which led to the introduction of legislation in the Senate. The Chamber believes that the deal reached creates a workable program for employers and is a reasonable compromise given the political realities.

H.R. 2131 SKILLS Visa Act

- On June 26, 2013, by a vote of 20-14, H.R. 2131, the SKILLS Act, was approved by the House Judiciary Committee. The Chamber supported its passage. H.R. 2131 has better wage provisions than S. 744, increases H1B numbers from 85,000 to 195,000, including a special 50,000 carve out for STEM (science, technology, engineering, and mathematics) graduate students, and does not impose recruitment, nondisplacement,

or outplacement obligations on employers hiring nonimmigrant work-authorized foreign staff. While the bill awards additional employment-based green cards, it does not provide significant structural reforms to the nation's legal green card system and thus does nothing to address the ability of lesser-skilled workers to achieve permanent residency. Also, it does not award sufficient numbers of new employment-based green cards to clear the backlog or meet known or expected future demand.

H.R. 1772 Legal Workforce Act

- On June 26, 2013, by a vote of 22-9, H.R. 1772, the Legal Workforce Act, was approved by the House Judiciary Committee. The Chamber supported its passage. H.R. 1772's provisions are more pro-business compared with those in S. 744. The legislation includes strong safe harbor provisions for good faith compliance, the ability to condition employment on verification, federal preemption of state and local verification schemes, and no obligations for employers to reverify their current workforce.

Injunction Barring DOL Implementation of New H-2B Program Rule

- On April 1, 2013, the U.S. Court of Appeals for the Eleventh Circuit ruled against the government, upholding the district court's preliminary injunction (issued April 2012) blocking the Department of Labor (DOL) from enforcing the new H-2B program rule regulation. The DOL program rule makes the H-2B program unworkable for our members, especially small businesses that use the H-2B visa category, a classification for hiring foreign seasonal workers to fill nonagriculture jobs.

DOL Dispute Regarding Employer's Obligation

- On December 11, 2013, DOL settled an appeal pending before the Board of Alien Labor Certification Appeals (BALCA), where the employer, supported by an amicus brief by the Chamber, challenged DOL's denial of alien labor certification applications based on DOL's general, and vague, regulation governing "notify and consider" obligations. On the eve of an en banc hearing before BALCA, DOL signed a settlement agreement agreeing to approve the employer's applications and issue guidance to the regulated community. The Chamber had filed an amicus brief stating that the agency should engage in notice and comment rulemaking or otherwise provide public interpretive guidance.

INTELLECTUAL PROPERTY

International Trade and Intellectual Property (IP) Rights

- Led a coalition of business associations to create awareness about the deteriorating IP climate in India and successfully engaged senior-level U.S. government officials to raise concerns with their Indian government counterparts. The effort resulted in multiple bipartisan letters from members of Congress to the secretary of state and the president, a congressional hearing on India's IP environment, hundreds of media stories, and consistent communications from senior U.S. government officials,

including President Obama and Vice President Biden, to their India counterparts about India's poor IP environment.

- Coordinated with other trade associations to press for a Section 332 investigation of India's business practices by the International Trade Commission (ITC).
- The U.S. Chamber's Global Intellectual Property Center (GIPC) worked with other trade associations to get H.R. 3167, the Playing Fair on Trade and Innovation Act, introduced by Rep. Lee Terry (R-NE). H.R. 3167 makes IP protection a mandatory criterion when determining whether nations may qualify for Generalized System of Preferences (GSP) benefits.
- Submitted comments detailing cross-industry IP concerns to the Office of the United States Trade Representative (USTR) prior to the release of the *2013 Special 301* report. The USTR's final report highlighted the significant challenges to IP protection in many of the countries that GIPC had highlighted in its submission and in GIPC's *International IP Index, Measuring Momentum*.
- Coordinated IP industry advocacy with stakeholders and met with both the chief and IP negotiators at each round of the Trans-Pacific Partnership (TPP) negotiations, continually calling for the inclusion of strong IP rules.
- Testified before the Senate Finance Committee on the importance of a high-standards IP chapter in the TPP.
- Led a GIPC industry mission to Australia to meet with the new government and press for protection and enforcement of IP, particularly within the TPP.
- Achieved success in advocating to the U.S. and Chinese governments for China to address a policy that threatened the patent protection of innovative and lifesaving medicines. China agreed to strengthen the protection of pharmaceutical innovations by announcing during Vice President Biden's trip to China that patent holders will be able to submit additional data to support their patents after filing their initial applications.
- Led a GIPC industry mission to China to directly press with senior Chinese government officials for better IP protection.
- Coordinated efforts among the IP community on Trade Promotion Authority (TPA) and are leading efforts to press for an appropriate IP chapter in the TPA.
- Coordinated U.S.-China IP Cooperation Dialogue, which has led to strong recommendations being advocated by highly respected Chinese IP leaders for better protection and enforcement of IP.
- Continue to closely track IP developments in key priority markets including Canada, Brazil, Ukraine, Russia, and Mexico. Submitted a number of comments around the world in support of improved IP policies including to Australia, South Africa, China, and others and in opposition to proposed plain packaging proposals.
- Co-chaired the Business Coalition for Transatlantic Trade (BCTT) Intellectual Property Working Group, the leading business voice in the Transatlantic Trade and Investment Partnership (TTIP).

Enforcement of IP Rights in the United States

- Engaged with the White House IP enforcement coordinator on the joint IP strategy. This resulted in continued administration support for GIPC priorities, including law enforcement efforts and a focus on voluntary arrangements to counter IP theft, as well as an inquiry into possible legislative recommendations by the White House.
- Provided testimony to the U.S. Sentencing Commission to create stronger sentencing guidelines intended to provide deterrence for IP-related theft and crimes as prescribed in H.R. 6029, the Foreign and Economic Espionage Penalty Enhancement Act of 2012.
- Supported the introduction of the Trade Facilitation and Trade Enforcement (TFTE) Act (also known as the Customs Reauthorization Act) by the Senate Finance chairman and ranking member, to increase resources for IP enforcement and clarification of areas for increased coordination with federal enforcement agencies and rights holders.
- Submitted comments on the Department of Commerce Green Paper, *Copyright Policy, Creativity, and Innovation in the Digital Economy*, focused on articulating that the goal of any review of copyright issues should be to maintain the copyright's role of promoting jobs, economic growth, and creativity.
- In coordination with the U.S. Chamber Institute for Legal Reform (ILR), developed two letters commending House Judiciary Committee Chairman Robert Goodlatte (R-VA) for advancing the patent litigation reform debate by introducing H.R. 3309 and seeing it to final passage in the House. The Chamber noted that while it supports legislation to address patent litigation abuses, the effort must also preserve America's strong tradition of protecting IP rights.
- Supported the National Intellectual Property Coordination Center's initiative to stop online sales of counterfeit and pirated products by recognizing Director John Morton and in-the-field agents for key efforts, and providing written support to Congress with a GIPC-led industry coalition letter.

INTERNATIONAL TRADE, INVESTMENT, AND REGULATORY POLICY

Agreement on Trade Facilitation

- Successfully advocated in several business delegations to Geneva and in outreach to national capitals for the 159 members of the World Trade Organization (WTO) to reach a binding agreement to streamline the clearance of goods through customs by cutting red tape and bureaucracy, transitioning to electronic payments and data exchange, implementing express delivery commitments, and adopting modern risk management. Concluded in December 2013 at the WTO's 9th Ministerial Conference, the agreement will cut trade costs by an estimated 10% to 15% and will boost the global economy by as much as \$1 trillion when fully implemented, according to one study.

Bangladesh

- Successfully advocated for conclusion of the U.S.-Bangladesh Trade and Investment Cooperation Framework Agreement.

Brazil

- **Tax Information Exchange Agreement (TIEA):** In March 2013, the Brazilian Senate gave final approval to the U.S.-Brazil TIEA, an accord considered a stepping stone toward a bilateral tax treaty. Brazil is the largest economy in the world with which the United States does not have a treaty to avoid double taxation of income. The Chamber-affiliated Brazil-U.S. Business Council (BUSBC) led advocacy in Brasília for the TIEA's approval for several years.
- **Temporary Work Visas:** BUSBC advocacy helped secure creation of a new Brazil-U.S. visa regime expediting the issuance of visas to skilled professionals. In April 2013, Brazilian consulates were authorized to process work visa applications for foreign workers remaining in Brazil for up to 90 days, expediting visa issuance.
- **Spirits Recognition Agreement:** BUSBC successfully advocated for U.S. recognition of cachaça as a distinctive Brazilian product and reciprocal Brazilian recognition of Tennessee whiskey and bourbon as distinctive American products. In February and March 2013, the U.S. and Brazilian governments implemented the accord with a final rule and a decree, respectively.
- **Dry Ports Legal Framework:** In June 2013, the government of Brazil published Decree 8.033/13, creating a new regulatory framework changing port management from a public service concession to a more efficient arrangement that allows for private sector management as sought by BUSBC.
- **Implementation of Istanbul Convention on Temporary Imports:** BUSBC actively promoted Brazil's accession in August 2011 to the WCO Istanbul Convention and implementation of the ATA Carnet system. In August 2013, the Brazilian government published a notice in its official registry inviting companies to apply for a guarantor role of the Brazilian ATA Carnet system.

Canada and Mexico: Regulatory Cooperation and Border Facilitation Work Plans

- Led the business community's advocacy on the Regulatory Cooperation and Border Facilitation Work Plans with both Canada and Mexico, providing extensive input to U.S. agencies, with progress in a number of industrial sectors.

China

- **Bilateral Investment Treaty (BIT):** China committed at the U.S.-China Strategic & Economic Dialogue (S&ED) in July 2013 that a BIT with the United States would provide national treatment at all stages of investment, including market access (pre-establishment), and it would be negotiated under a "negative list" approach in which all areas are covered unless specifically excluded, thus meeting the Chamber's goal that agreement on these issues should be a precondition to negotiations.
- **Patent Law:** China's patent office revised previously issued guidelines governing data disclosure for biopharmaceutical patents. The change brought China's patent system

in line with international standards, ended the practice of retroactively applying new guidelines, and allowed for submission of data during patent prosecution. The Chamber's high-level advocacy protected market access for innovative U.S. biopharmaceutical companies filing patents in China.

- **Utility Model Patents:** In March 2013, China's State Intellectual Property Office (SIPO) released draft *Patent Examination Guidelines* for public comment that for the first time permit substantive examination of utility model patents (UMPs), a classification of patents with lower inventiveness thresholds. Through publication in November 2012 of the report *China's Utility Model Patent System: Innovation Driver or Deterrent?* and follow-on in-country advocacy, the Chamber has led industry efforts against the proliferation of low-quality patents in China, which can be used as a weapon against foreign companies.
- **Auditing:** The Public Company Accounting Oversight Board and the China Securities Regulatory Commission (CSRC) signed a Memorandum of Understanding in May 2013 strengthening regulatory and enforcement cooperation. The two governments made additional progress on cross-border audit oversight cooperation prior to the July S&ED. The Chamber has led U.S. industry efforts to increase pressure on both governments to increase regulatory and enforcement cooperation in cross-border audits, bringing the two governments closer to a comprehensive regulatory framework for cooperation in this area.

Colombia

- **Auto Emissions:** Successfully advocated to delay implementation of a new emissions criterion for trucks and tractors until January 2015, providing U.S. companies time to comply with the regulation. The delay also ensures that exports of U.S. commercial vehicles can continue without interruption.
- **Patent Consent:** Helped avert legislation in the Colombian Congress that would have provided the Health Authority with prior review authority for all patent applications for pharmaceutical products and processes, which would have been inconsistent with the U.S.-Colombia Trade Promotion Agreement.
- **Pharmaceutical Pricing Regulation:** Successfully opposed a draft pricing regulation that would have made it impossible for U.S. companies to operate in Colombia.

European Union

- **Trans-Atlantic Trade and Investment Partnership (TTIP):** Successfully advocated for the initiation of U.S.-EU negotiations for a transatlantic trade and investment agreement, a longtime Chamber goal that the Obama administration and EU officials endorsed in March 2013 and launched in July 2013. The Chamber also launched the Business Coalition for Transatlantic Trade (BCTT), which provides substantive inputs to U.S. and EU negotiators.
- **Data Protection Regulation:** Organized a task force on the EU's draft data protection regulation, underwrote an influential economic impact study on its potential costs if enacted in its early form, and advocated for EU authorities to

reconsider their approach, securing a commitment to postpone implementation for at least a year as the EU works toward a less trade-restrictive solution.

- **Fuel Quality Directive:** Successfully advocated for a delay in, and possible reconsideration of, a European Commission proposal on transport fuels that could otherwise adversely impact \$15 billion of U.S. exports of diesel to the EU.

Indonesia

- **Data Storage:** Successfully obtained a delay, pending further consultations with the business community, on regulations requiring in-country processing and storage of data pertaining to a broad range of business transactions.
- **Private Sector Credit Reporting Services:** Successfully worked with Bank Indonesia, the central bank, to open up bidding to U.S. companies to provide private sector credit reporting services.

Korea

- **Korea-U.S. Free Trade Agreement Implementation:** Through engagement with Korean officials at multiple levels, including President Park Geun-Hye and Blue House officials, underscored the importance of full and faithful implementation of the trade accord, with particular focus on cross-border data provisions, pricing rules for pharmaceuticals and medical devices, and various nontariff measures affecting autos, with mixed progress.
- **Agreement for Peaceful Nuclear Cooperation (123 Agreement):** Successfully advocated for the House to pass a two-year extension of the current agreement with Senate passage pending. This extension would enable the United States and Korea to conclude a long-term agreement to provide opportunities for U.S. firms and maintain stability and predictability in joint commercial activities.

Mexico-U.S. Tomato Dispute

- Helped avert a potentially costly trade war by highlighting to the U.S. administration the significance of the U.S. economic relationship with Mexico and the costs to U.S. industry of potential retaliation.

Myanmar

- **Road Map for Removal of Entities From SDN List:** Worked with the State Department to develop a “road map” by which certain eligible Myanmar nationals and entities that are on the Specially Designated Nationals (SDN) list can be removed from the list. The road map, which is unique to Myanmar, involves full disclosure of assets, cessation of ties with the military or military-backed entities, resolution of land issues, and other requirements.
- **Repeal of Import Ban:** Successfully advocated for the repeal of the Burmese Freedom and Democracy Act’s ban on imports—excluding jadeites and rubies—from Myanmar in order to support the rebuilding of the U.S.-Myanmar trade and investment relationship.

Pacific Alliance (Chile, Colombia, Mexico, and Peru)

- Working with the members of the Pacific Alliance—the fastest-moving trade and investment integration effort afoot in the Americas—as well as the U.S. administration, successfully advocated for the United States to receive observer status within the Pacific Alliance.

Trans-Pacific Partnership

- Continued to lead the business community’s advocacy for U.S. negotiators to include strong disciplines in the Trans-Pacific Partnership (TPP) trade agreement on intellectual property, regulatory coherence, due process in antitrust enforcement, state-owned enterprises, and trade secrets, including in the “Technical Barriers to Trade” chapter to ensure coverage for conformity assessment requirements.
- Successfully advocated for the inclusion of Japan in the TPP negotiations with a clear commitment to include all sectors and commodities in the negotiations on the same terms as other parties and to address long-standing trade complaints.

LABOR

Appropriations

- **House Appropriations for the Departments of Commerce and Justice, Science, and Related Agencies bill.** The Chamber worked to secure the following funding limitations:
 - EEOC rider on ADEA Regulations. In March 2012, the Equal Employment Opportunity Commission (EEOC) finalized its controversial revisions to the section of the regulations under the Age Discrimination in Employment Act (ADEA) addressing the law’s principal employer defense: reasonable factors other than age (RFOA). The regulation is extremely difficult for employers to implement on many levels, in addition to being very costly. Like last year’s funding bill, the bill includes a rider that would deny funding for implementing the new regulations.
- **Riders blocking actions contained in the FY 2012 Omnibus appropriations package and carried forward:**
 - NLRB Electronic Balloting. The Chamber strongly supported a provision on the Omni that would prevent the National Labor Relations Board (NLRB) from moving forward with a directive or regulation that would permit union representation elections to be conducted electronically. The board had been evaluating whether to use remote, electronic voting technology that could subject employees to greater union coercion during the election process.
 - Musculoskeletal Disorders. The Omni prevents OSHA from finalizing a regulation designed to highlight and track ergonomic injuries.

National Labor Relations Board

- The United States Court of Appeals for the D.C. Circuit held that President Obama unconstitutionally appointed three members of the National Labor Relations Board (NLRB). The Chamber is litigating the case in the Supreme Court on behalf of its member, the Noel Canning Corp.
- The Chamber's support helped secure House passage of H.R. 1120, the Preventing Greater Uncertainty in Labor-Management Relations Act, on April 12, 2013. The bill would keep NLRB from taking actions that require a three-member quorum until NLRB has at least three Senate-confirmed members or the U.S. Supreme Court resolves the constitutionality of President Obama's recess appointments to the board.
- The United States Court of Appeals for the Fourth Circuit sided with the Chamber and upheld the district court's decision that NLRB had no authority under the National Labor Relations Act (NLRA) to issue its "notice posting" regulation.
- NLRB conceded defeat in the Chamber's challenge to the "ambush election rule" when the board voluntarily dismissed its appeal in the D.C. Circuit.

OSHA On-Site Consultation Program Enforcement Clarification

- Led effort that resulted in OSHA withdrawing a proposed regulation that would have undermined small business assistance. There has long been a firewall between OSHA's consultation services and enforcement activities. To reinforce its focus on enforcement, in September 2010, OSHA proposed revisions to its On-site Consultation Program and Safety and Health Achievement Recognition Program (SHARP) to allow sites in these programs to be referred for enforcement.
- The Chamber developed comments submitted by the Coalition for Workplace Safety criticizing this proposal as discouraging employers from participating in these programs, which could lead to resources being diverted, and also criticizing OSHA for not conducting a small business review panel before issuing the proposal since it directly affects small businesses. The Chamber orchestrated a coalition letter that was co-signed by 35 groups. In August 2013, OSHA announced that this rulemaking was being withdrawn.

Office of Federal Contract Compliance Programs

- **503/Veterans Regulations.** In 2011, the Office of Federal Contract Compliance Programs (OFCCP) issued separate Notices of Proposed Rulemakings relating to federal contractors' and subcontractors' hiring of both individuals with disabilities and veterans. In addition to filing regulatory comments and meeting with Department of Labor (DOL) officials, we conducted our own detailed survey of 108 companies regarding their current practices and estimated labor time and capital investment costs for compliance with each element of the proposed rules. The data derived from this survey were analyzed and set forth in a 60-page alternative cost report. We then presented this report at two separate meetings with the Office of Information and Regulatory Affairs (OIRA), in which DOL officials attended.
- In the end, although the new regulations impose new and costly regulatory burdens on federal contractors, the Chamber worked to negotiate approximately \$500 million

in cost reductions. Importantly, the final regulations eliminated three of the five costliest regulatory elements as identified by the Chamber.

International Labor

- **American Bar Association (ABA) Model Policy on Human Trafficking.** The ABA is in the process of drafting a model employer policy to address human trafficking. A concern exists that international unions and stakeholder groups may attempt to use the policy against employers that have not adopted it. Consequently, throughout 2013, the Chamber has worked closely with the ABA drafting committee to help draft a model policy acceptable to the business community.
- To date, the ABA has accepted nearly every suggestion change offered by the Chamber. Examples include making the document more aspirational as opposed to proscriptive, harmonizing the document with the UN Guiding Principles on Business and Human Rights, and recognizing employers' limited abilities to police their supply chains. Evaluation of the final ABA document will likely occur in early 2014.

Equal Employment Opportunity—Discrimination

- **ENDA.** The Employment Non-Discrimination Act (ENDA) prohibits employers from discriminating against an individual based on that person's actual or perceived sexual orientation or gender identity with respect to employment decisions and other terms, conditions, and privileges of employment. Though the Chamber normally opposes new mandates on employers, it has worked successfully to shape various versions of ENDA in ways that have enabled the organization to maintain a neutral position.
- The Senate passed ENDA on November 7, 2013, by a vote of 64-32. Though prospects of the bill's passage in the House are bleak, the Chamber will work with its allies in the House to ensure that any bill retains the carefully negotiated balance we achieved in the Senate. Some of the key compromises that we negotiated are set forth here.
 - **Preserving Preemption.** The Chamber successfully negotiated for the removal of language in past versions of the bill that allowed states to pass a law or establish a requirement impacting employee benefit provisions notwithstanding ERISA, which preempts such state laws.
 - **No Unintentional Discrimination.** ENDA previously allowed for disparate impact claims. The Chamber has negotiated—including in this latest version of the bill—language that specifically limits ENDA to disparate treatment claims.
 - **No Double Recovery.** Because discrimination based on gender stereotypes is already unlawful under Title VII of the Civil Rights Act of 1964, Chamber efforts have ensured that plaintiffs cannot recover under both Title VII and ENDA.

- Prohibition on Collection of Statistics. Some proponents of ENDA have sought to provide EEOC with the power to compel employers to produce statistics on sexual orientation or gender identity in the workforce. The Chamber has made sure that such language is not included, as statistics such as these are often used to fuel litigation or future legislative or regulatory efforts.
- Limitation on Employer Obligations. The Chamber has made certain that ENDA contains language that retains employers' abilities to enforce dress and grooming standards and also ensures that employers will not have to construct new facilities.

House Comp Time Bill

- At the specific request of House Majority Leader Eric Cantor (R-VA), the Chamber and other employer groups worked with House Republicans to pass a bill that would allow employers to offer employees paid time off at the rate of 1.5 hours for each overtime hour worked. The bill, H.R. 1406, the Working Families Flexibility Act of 2013, passed the House with bipartisan support, 223-204 on May 8, 2013.

LEGAL REFORM

State Attorneys General

- Helped secure passage of state attorney general contingency fee transparency legislation in Alabama and Wisconsin
- Successfully encouraged West Virginia's new attorney general to adopt a strong office policy on use of outside contingency fee counsel.

Lawsuit Lending

- Helped enact the nation's first law regulating lawsuit lending in Oklahoma.

Arbitration

- Engaged with the Consumer Financial Protection Bureau (CFPB) and the SEC against efforts to limit binding arbitration in consumer financial and securities broker-dealer agreements.

Asbestos Litigation Reform

- Secured U.S. House passage of the FACT Act (H.R. 982), which would encourage transparency in claims made to Section 524(g) asbestos bankruptcy compensation trusts. This marked the first time either house of Congress had passed asbestos-related legislation since 1994.
- Led successful campaign for the passage of asbestos bankruptcy trust transparency legislation in Oklahoma.
- Helped pass additional asbestos litigation reforms in Texas.

State Reforms

- Helped pass important legislation in Florida to reform expert evidence standards and keep junk science out of courtrooms.

Congressional Oversight

- Successfully implemented efforts to encourage the House Judiciary Committee to engage in oversight activities and hearings on the U.S. civil justice system. Key areas included asbestos litigation abuses, transnational torts, third-party litigation financing, the enforcement of foreign court judgments, class action abuses, and state attorney general contingency fee arrangements.

International Issues

- Secured significant concessions, including on retroactivity, to the Japanese consumer class action bill.
- Secured adoption of the U.S. Chamber Institute for Legal Reform's-promoted safeguards to the European Union (EU) Recommendation on collective redress.
- Successfully fought the inclusion of a collective redress clause in the pending EU competition/antitrust private action directive proposal.
- Successfully convinced the Australian attorney general to regulate third-party litigation financing.

NATIONAL CHAMBER LITIGATION CENTER

U.S. Supreme Court Victories

- During calendar year 2013, the Chamber's Litigation Center filed a record 40 briefs in the Supreme Court.
- The Chamber's litigation team filed in a record 22 cases during the Supreme Court's 2012–2013 Term. The Chamber's position prevailed in 18—or 81%—of those cases. In addition, the Court agreed to hear 13 of the 24 cases where the Chamber supported certiorari. In particular, the Chamber's position prevailed in the following key areas:
 - **Class Actions:** In *Comcast v. Behrend*, the Court reaffirmed limits on class action litigation. The Court also vacated four other costly and vexatious class action certification decisions in light of its decision in *Comcast*, sending a helpful signal to the lower courts.
 - **Arbitration:** In *American Express v. Italian Colors Restaurant*, the Court rebuffed an attempt by the plaintiffs' bar to evade arbitration provisions that prohibit class arbitration.
 - **Global Forum Shopping:** In *Kiobel v. Royal Dutch Petroleum*, the Court ruled that the Alien Tort Statute does not reach overseas conduct. In light of its decision in *Kiobel*, the Court reversed a Ninth Circuit case, *Rio Tinto v. Sarei*, and sent it back to the lower court for further consideration.
 - **Employment Law:** The Court clarified important questions of employment and benefits law in four decisions favorable to business.

- **Property Rights:** In *Horne v. Department of Agriculture* and *Koontz v. St. Johns River Water Management District*, the Court reinforced private property rights against unlawful governmental interference.
- **Transportation Regulation:** In *American Trucking Associations, Inc. v. City of Los Angeles*, the Court held that federal law preempted state and municipal attempts to subject transportation businesses to excessive liability and regulation.
- **Tax:** In *PPL Corp. v. Commissioner of Internal Revenue*, a unanimous Court held that the U.K. “windfall” tax was fully creditable under U.S. tax law.
- **Securities Law:** In *Gabelli v. SEC*, the Court unanimously held that the statute of limitations for SEC enforcement actions for civil penalties starts to run when the fraud allegedly occurs.
- To date, during the Supreme Court’s 2013–2014 Term, the Chamber has helped set the docket for business cases, with the Court granting certiorari in three cases in which the Chamber filed an amicus brief. The Chamber has also already helped defend the interests of business in the following favorable decisions:
 - **Forum Shopping:** In *Atlantic Martine Construction Co. v. U.S. District Court*, the Supreme Court curtailed forum shopping opportunities. And in *Sprint Communications Co. v. Jacobs*, the Court unanimously confirmed that a business may seek relief in a federal court against a state’s incorrect interpretation of federal law.
 - **Employee Benefits:** In *Heimeshoff v. Hartford Life & Accident Ins. Co.*, the Court unanimously held that employers may impose a reasonable contractual limitations period for claims of wrongful denial of benefits.

Regulatory Litigation Victories

- During 2013, the Chamber was involved in an all-time high 18 cases in which it was a plaintiff, petitioner, or an intervenor in litigation challenging regulations that would impose more than \$390 billion in costs on free enterprise, including EPA’s greenhouse gas rule and SEC’s conflict minerals rule.
- The United States Court of Appeals for the D.C. Circuit held that President Obama unconstitutionally appointed three members of the National Labor Relations Board (NLRB). The Chamber is litigating the case in the Supreme Court on behalf of its member, the Noel Canning Corp.
- The Chamber won its lawsuit challenging the SEC’s “extractive industries rule,” which would have required public companies to disclose payments of more than \$100,000 made to foreign governments for “projects” relating to the commercial development of oil, natural gas, or minerals. The U.S. district court in Washington, D.C., ruled in the Chamber’s favor, and the SEC did not appeal.
- The United States Court of Appeals for the Fourth Circuit sided with the Chamber and upheld the district court’s decision that the NLRB had no authority under the National Labor Relations Act (NLRA) to issue its “notice posting” regulation.
- The United States Court of Appeals for the Eleventh Circuit court sided with the Chamber when it upheld a district court’s grant of a preliminary injunction of the Department of Labor’s H-2B regulations.

- The NLRB conceded defeat in the Chamber’s challenge to the “ambush election rule” when the board voluntarily dismissed its appeal in the D.C. Circuit.

State Court Victories

- The Chamber filed a record-setting 27 amicus briefs in the state courts, up from 16 in 2011 and 20 in 2012.
- The Chamber earned a significant victory for business in the areas of mass torts and product liability, arbitration, and class actions, including the following:
 - **Class Action:** In *Cullen v. State Farm Automobile Insurance Co.*, the Ohio Supreme Court aligned state and federal class certification rules, clarifying that Ohio courts must rigorously scrutinize purported class actions.
 - **Arbitration:** In *Sonic-Calabasas, Inc. v. Moreno*, the Chamber’s position prevailed in a decision from the California Supreme Court ruling that the Federal Arbitration Act preempts California’s labor code requiring an administrative hearing before enforcing an employer’s arbitration agreement.
 - **Mass Tort:** In *Caronia v. Philip Morris USA, Inc.*, one of the most important product liability cases of the year, the Chamber assembled a broad coalition of trade associations to persuade the New York Court of Appeals to reject the “no injury liability” theories of the plaintiffs’ bar.

Federal Appellate Victories

- The Chamber filed 34 amicus briefs in federal appellate courts (and another 4 in federal district courts) in 2013 and earned significant victories, including the following:
 - **Class Actions:** In *re Rail Freight Surcharge Antitrust Litigation*, the D.C. Circuit, relying on the victory in *Comcast*, held that class actions must undergo rigorous scrutiny to ensure that uninjured parties are not receiving windfall damages.
 - **Arbitration:** In *D.R. Horton, Inc. v. NLRB*, The Fifth Circuit became the latest court to reject the NLRB’s attempt to prohibit employee arbitration agreements
 - **Forum Shopping:** The Second Circuit rejected attempts to reassign the judge in Chevron’s case regarding a fraudulent judgment obtained in Ecuador.

NATIONAL SECURITY AND EMERGENCY PREPAREDNESS

Cybersecurity Policy

- The Chamber persuaded administration officials to focus on regulatory harmonization—and not the creation of new rules—with the pending launch of version 1.0 of the *Preliminary Cybersecurity Framework*. We believe that the framework, led by the National Institute of Standards and Technology (NIST), must be collaborative, flexible, and innovative over the long term to genuinely help businesses counter cyber threats.
- The Chamber steered the direction of cybersecurity legislation—particularly S. 1353, the Cybersecurity Act of 2013, which was passed in July 2013 out of the Senate

Commerce Committee—toward a nonregulatory outcome. The bill would authorize NIST to work closely with industry on an ongoing basis to develop voluntary guidelines and best practices to reduce cyber risks to U.S. critical infrastructure. S. 1353 earned broad industry support.

- The Chamber led a multisector coalition that spurred House passage in April 2013 of four nonregulatory cybersecurity bills, especially information-sharing legislation, which would help businesses counter cyber thieves and other bad actors.

The bills included H.R. 624, the Cyber Intelligence Sharing and Protection Act (CISPA); two cybersecurity research and development bills, H.R. 756, the Cybersecurity Enhancement Act of 2013, and H.R. 967, the Advancing America's Networking and Information Technology Research and Development Act of 2013; and H.R. 1163, the Federal Information Security Amendments Act of 2013 (FISMA), which would enable the government to proactively counter risks based on continuous monitoring of civilian government networks and system activity.

- The Chamber prevented problematic cybersecurity measures, such as the Deter Cyber Theft Act (S. 884), from being added to the fiscal 2014 National Defense Authorization Act (NDAA). A principal objection to these measures was that they would have been added to the defense bill without proceeding through regular order, including hearings and markups.
- The Chamber worked constructively with congressional staff on writing H.R. 2281, the Cyber Economic Espionage Accountability Act. The bill would deny foreign actors that participate in cybercrimes from applying for visas to enter the United States. The legislation, as originally conceived, would have gone much further than visa restrictions and directly targeted trade and investment relationships between countries such as the United States, China, and Russia.
- The Chamber sidelined an amendment to H.R. 756, the Cybersecurity Enhancement Act of 2013, which would have prematurely codified elements of Executive Order 13636, *Improving Critical Infrastructure Cybersecurity*, with potentially negative outcomes for critical infrastructure. Since the beginning of 2013, the Chamber has urged lawmakers to conduct oversight of the presidential order to ensure that the private sector is an equal partner in its design and implementation.
- The Chamber developed a new policy statement on cybersecurity, the information and communications technology (ICT) supply chain, and government regulatory regimes. The statement supports efforts by policymakers to enhance the security of government ICT networks and systems, or the cyber supply chain. However, the Chamber urges policymakers to reject prescriptive supply chain or software assurance regimes and, instead, embrace globally recognized standards to manage risk.

Global Supply Chain, Customs and Trade Facilitation Initiatives

- **World Trade Organization and Trade Facilitation Agreement:** On December 6, 2013, the 159 members of the World Trade Organization (WTO) reached agreement on the first multilateral trade pact in nearly two decades. The Trade Facilitation Agreement (TFA) focused on global customs modernization and decreasing border, security, customs, and regulatory barriers to trade. The Chamber has been actively engaged on the TFA to ensure that the final agreement produced commercially meaningful results. This victory will go a long way to remove cross-border barriers, red tape and bureaucracy and could boost the world economy by as much as \$1 trillion.
- **Trade Facilitation and Trade Enforcement Act of 2013 (S. 662):** The Chamber is working with the Senate Committee on Finance and the House Committee on Ways and Means to advance the *Trade Facilitation and Trade Enforcement Act of 2013*. This legislation would improve and reorganize U.S. Customs and Border Protection refocusing its efforts and resources on trade facilitation. Both the House and Senate chairmen have expressed their commitment to move this legislation forward in the 113th Congress. On October 29, 2013, the Chamber organized an industrywide letter of support for the legislation, with 50 companies and associations urging Congress to press forward with legislation.
- **The Transatlantic Trade and Investment Partnership (TTIP) and Setting a Global Standard for Trade Facilitation:** The Chamber launched and leads the Business Coalition for Transatlantic Trade: Supply Chain, Customs and Trade Facilitation Working Group.

The working group covers the supply chain, customs and trade facilitation, business competitiveness, and express delivery-related issues in TTIP. The working group now includes more than 80 companies and associations and is actively engaging negotiators on both sides of the Atlantic to ensure that businesses' priorities are included in the text of the final agreement. In October 2013, members of the working group met with lead negotiators, government, and business stakeholders in Brussels to advance our interests for trade facilitation.

- **Commercial Operations Advisory Committee:** The Chamber continues to serve on its second term of the Commercial Operations Advisory Committee (COAC). The committee advises the secretaries of both the U.S. Department of the Treasury and the U.S. Department of Homeland Security on the commercial operations of U.S. Customs and Border Protection (CBP) and related trade functions. The Chamber also serves on three subcommittees: One Government at the Border, Trade Facilitation, and Global Supply Chain Security Air Cargo. In this position, the Chamber advances reforms at CBP and other border agencies to facilitate trade and promote programs such as the International Trade Data System, the Automated Commercial Environment, Simplified Entry, the Centers of Excellence and Expertise, Trusted

Trader programs, One Government at the Border, Mutual Recognition, and Global Customs Modernization.

- **Single Window and Executive Order:** The Chamber is working with the administration to advance the completion and secure funding for the Automated Commercial Environment/International Trade Data System (ACE/ITDS) single window.

This program was in danger of being cut completely from the budget. The completion is critical to simplifying trade for business of all sizes by creating a single window for data submission and eliminating redundant regulation and processes at our borders.

The Chamber is working with the White House as it drafts an executive order that would mandate all government agencies with a role at the border to participate in the initiative. The executive order would facilitate trade, eliminate government redundancy, and lower the transaction cost of trade for businesses.

- **Aviation Security Stakeholder Participation Act of 2013 (H.R. 1204)**
The House passed Chamber-supported legislation, the Aviation Security Stakeholder Participation Act of 2013. Given the tremendous impact that the Transportation Security Administration has on the aviation industry, this legislation mandates that the agencies develop, maintain, and consult with an Aviation Security Advisory Committee. The advisory committee would have representatives of the travel and trade community to advise the secretary and administrator on policy and regulatory issues impacting the private sector. The legislation has been in the Senate Committee on Commerce, Science, and Transportation.
- **Low Value Shipment Regulatory Modernization Act of 2013 (S. 489 and H.R. 1020)**
There is overwhelming bipartisan support for the Low Value Shipment Regulatory Modernization Act, with 140 co-sponsors in the House and 11 in the Senate. The legislation would raise the de minimis level and simplify the entry process for goods entering the United States. It would also require the USTR to push our trade partners to take similar steps. We continue to look for a vehicle to move this bill forward.

PENSIONS

Reportable Events

- Successfully lobbied the Pension Benefit Guaranty Corporation (PBGC) to repropose a proposed regulation on reportable events under ERISA. The repropose rule is substantially revised from the original proposal and has removed many of the burdens that the Chamber identified as unduly burdensome on plan sponsors without providing a corresponding benefit to the PBGC.

Nondiscrimination Testing in Frozen Plans

- Successfully lobbied the Treasury Department and the IRS to issue helpful guidance on discrimination testing in frozen defined benefit plans.

REGULATORY AFFAIRS

Environmental Protection Agency

- Successfully identified critical errors in EPA's economic cost modeling methods. In response, EPA agreed to modify its cost modeling protocols based on the recommendations to be provided by a panel of outside economists.

Department of Labor

- Successfully identified critical errors in the Department of Labor's regulation regarding wage determinations for the H2B temporary foreign worker program. This analysis was instrumental in the department's recent decision to suspend the effective date of the regulation.

Sue and Settle

- Successfully advocated for House Judiciary Committee passage of H.R. 1493, the Sunshine for Regulatory Decrees and Settlements Act of 2013. The Chamber led the effort to educate policymakers about the sue and settle problem through extensive research, release of the report *Sue and Settle: Regulating Behind Closed Doors*, and congressional testimony. The sue and settle process enables agencies to develop regulations without proper public input. This legislation would promote greater transparency and public participation prior to agencies entering into consent decrees with environmental activists.

Permit Streamlining

- Successfully advocated for House Judiciary Committee passage of H.R. 2641, the Responsibly And Professionally Invigorating Development (RAPID) Act of 2013. As the Chamber's *Project No Project* report demonstrates, there are millions of jobs that are never created because of a dysfunctional permitting system that delays or cancels major infrastructure projects. The RAPID Act of 2013 would speed up the permitting process for infrastructure projects, enabling jobs to be created and the economy to grow.

Regulations from the Executive in Need of Scrutiny Act

- Successfully advocated for House passage of H.R. 367, the Regulations from the Executive in Need of Scrutiny Act (REINS). The bill would strengthen congressional oversight of the regulatory process, increase the quality of agency rulemakings, and better ensure that all branches of government are accountable. The bill would require new rules with an estimated annual cost of \$100 million or more to receive affirmative approval from both houses of Congress and the president.

Regulatory Accountability Act

- Successfully advocated for House Judiciary Committee passage of H.R. 2122, the Regulatory Accountability Act of 2013. The bill would modernize the 66-year-old Administrative Procedure Act and bring additional transparency and agency accountability to the regulations' development process.

SMALL BUSINESS

1099-K Regulatory Reporting Mandate

- In 2013, the IRS began efforts to use information reported from the 1099-K credit card information returns to notify businesses of discrepancies that may be due to underreporting revenue. The Chamber successfully encouraged the IRS to implement a pilot program with a small sample of returns to enable the agency to better understand the use and meaning of the information. This mitigated potential costly paperwork burdens on many compliant businesses. The Chamber will continue to monitor IRS efforts to make the 1099-K an effective tool for tax compliance while minimizing the impact on compliant businesses.

Home Office Deduction

- The Chamber successfully lobbied the IRS and Congress for a simplified option for calculating the home office deduction. Businesses will now be able to use a simplified option when claiming the home office expense on their taxes for up to \$1,500. This Chamber win saves business 1.6 million hours of regulatory burden a year. In tax year 2010, nearly 3.4 million taxpayers claimed this deduction.

TAXES

Tax Increases to Pay for Deficit Reduction

- Successfully advocated to prevent passage of S. 388, a bill to replace sequestration with tax increases on American businesses, because it failed to address the federal government's spending problems and would, instead, replace spending cuts with tax increases.

House Fiscal Year 2014 Budget Resolution

- Successfully advocated for House passage of H. Con. Res. 25, the House fiscal year 2014 budget resolution, because it focuses on the deficit in the near term without raising taxes, addresses entitlement spending, and calls for pro-growth comprehensive tax reform.

Tax Hikes on American Worldwide Businesses

- Successfully advocated to defeat S. 953, and an amendment to S. 954, which would have paid for the federal student loan interest rate extension with permanent tax increases on American worldwide companies.

TECHNOLOGY AND E-COMMERCE

Electronic Communications Privacy Act Modernization

- Successfully advocated for Senate Judiciary Committee passage of S. 607, the Electronic Communications Privacy Act Amendments Act of 2013, that would require, except in emergencies, law enforcement to obtain a warrant to access personal or proprietary emails and other documents stored by third-party service providers that offer cloud-based storage and other services.

Federal Communications Commission Reform

- With strong support from the Chamber, the House Energy and Commerce Committee passed by voice vote H.R. 3675, the Federal Communications Commission Process Reform Act of 2013. The legislation would improve the transparency and predictability of the decision-making process at the Federal Communications Commission (FCC).
- Successfully achieved House passage, by a vote of 415-0, of H.R. 2844, the Federal Communications Commission Consolidated Reporting Act of 2013. The legislation would consolidate various FCC reports to Congress into a more useful comprehensive report occurring every two years on the state of the communications marketplace.

TRANSPORTATION

Marine Transportation

- Successfully achieved Senate passage of the Water Resources Development Act (WRDA) of 2013 with a strong, favorable vote of 83-14. This legislation would reform and authorize the U.S. Army Corps of Engineers' Civil Works programs and policies related to navigation, flood risk management, recreation, infrastructure, and environmental stewardship.
- Successfully achieved House passage of the Water Resources Reform and Development Act (WRRDA) of 2013 with a strong, favorable vote of 417-3.

Public-Private Partnerships

- Helped establish and launch the Congressional Public Private Partnerships (P3) Caucus to develop a more robust federal role in facilitating public-private partnerships in transportation infrastructure.

January 2014