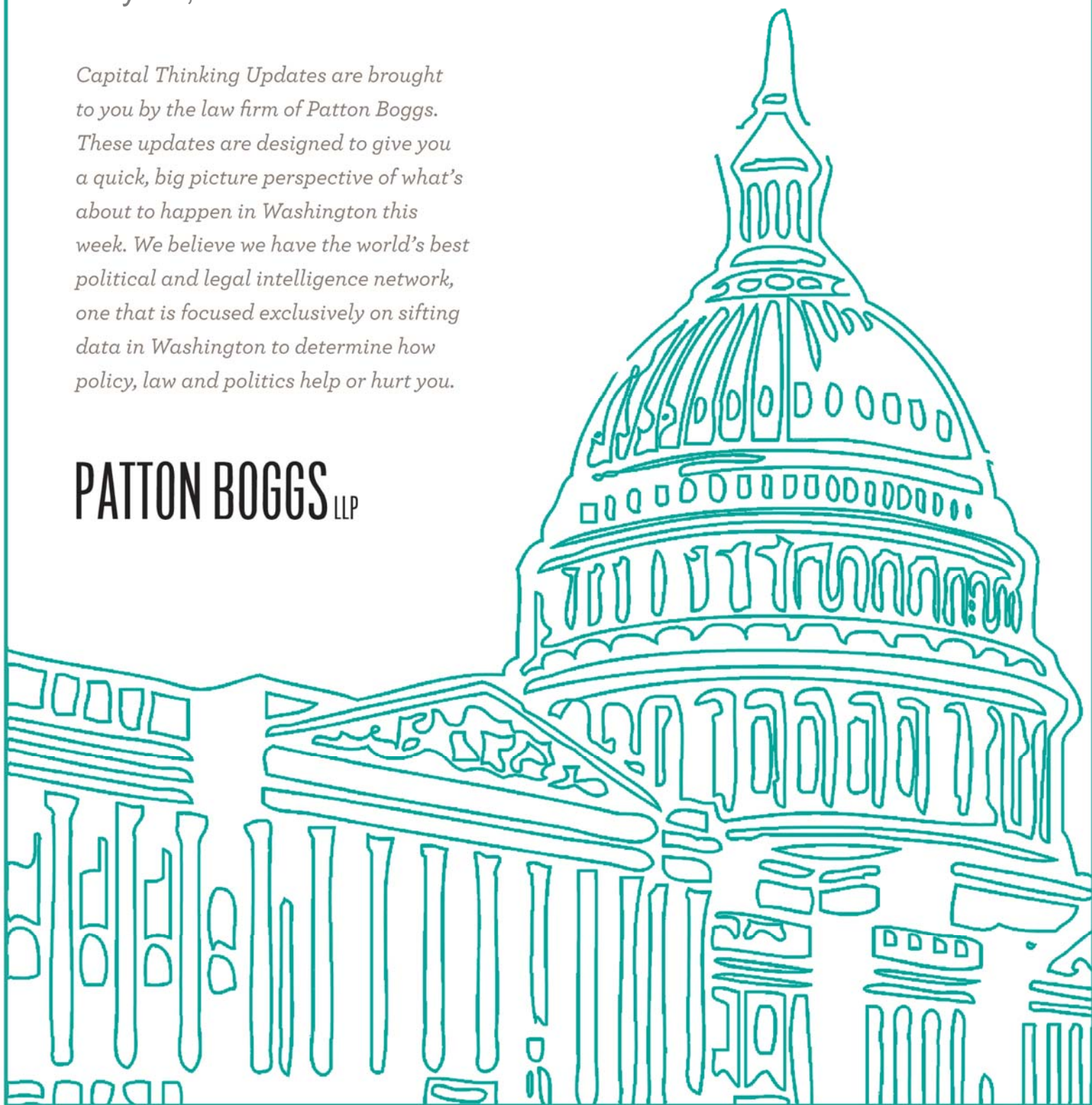


# CAPITAL **thinking** UPDATES

July 23, 2012

*Capital Thinking Updates are brought to you by the law firm of Patton Boggs. These updates are designed to give you a quick, big picture perspective of what's about to happen in Washington this week. We believe we have the world's best political and legal intelligence network, one that is focused exclusively on sifting data in Washington to determine how policy, law and politics help or hurt you.*

**PATTON BOGGS** LLP



## General Legislative

On Monday, July 23, the House will meet at 2:00 p.m. for legislative business. Votes will be postponed until 6:30 p.m. Legislation considered under suspension of the rules will include: H.R. 1237 – To provide for a land exchange with the Trinity Public Utilities District of Trinity County, California, involving the transfer of land to the Bureau of Land Management and the Six Rivers National Forest in exchange for National Forest System land in the Shasta-Trinity National Forest, and for other purposes, as amended; H.R. 4484 – Y Mountain Access Enhancement Act; H.R. 2467 – Bridgeport Indian Colony Land, Health, and Economic Development Act of 2011, as amended; H.R. 2362 – Indian Tribal Trade and Investment Demonstration Project Act of 2011; H.R. 3388 – Wood-Pawcatuck Watershed Protection Act; H.R. 5859 – To repeal an obsolete provision in title 49, United States Code, requiring motor vehicle insurance cost reporting; S. 1335 – Pilot’s Bill of Rights; and S. 2039 – A bill to allow a State or local government to construct levees on certain properties otherwise designated as open space lands. On Tuesday, July 24, and for the balance of the week, the House will consider H.R. 459 – Federal Reserve Transparency Act of 2011; H.R. 4157 – Preserving America’s Family Farms Act, as amended; H.R. 5986 – To amend the African Growth and Opportunity Act to extend the third-country fabric program and to add South Sudan to the list of countries eligible for designation under that Act, to make technical corrections to the Harmonized Tariff Schedule of the United States relating to the textile and apparel rules of origin for the Dominican Republic-Central America-United States Free Trade Agreement, to approve the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003, and for other purposes; H.R. 6082 – Congressional Replacement of President Obama’s Energy-Restricting and Job-Limiting Offshore Drilling Plan, Rules Committee Print; and H.R. 4078 – Red Tape Reduction and Small Business Job Creation Act, Rules Committee Print.

The Senate will convene at 2:00 p.m. on Monday, July 16 and recognize the Majority Leader. At 5:00 p.m., the Senate will proceed to executive session to consider the nomination of Michael A. Shipp to be United States District Judge for the District of New Jersey.

---

## Agriculture

### LEGISLATIVE ACTIVITY

- **Child Labor on Farms.** On Tuesday, July 17, the House Appropriations Committee released its draft Labor, Health and Human Services, and Education bill, which includes a provision blocking the Department of Labor from implementing a proposed rule on youth labor on farms. The Department withdrew the proposed rule in late April, as discussed in the [May 7 edition of \*Capital Thinking\*](#).
- **Disaster Aid.** On Wednesday, July 18, President Obama and Secretary Vilsack met to discuss disaster aid options for farmers in the Midwest affected by the drought. Options for livestock producers include extending the expired disaster aid programs or using the Commodity Credit Corporation to stabilize prices. On Thursday, July 19, Speaker of the House John Boehner (R-OH)

responded to Secretary Vilsack's call on Congress to assist farmers by stating that the current federally subsidized crop insurance program is "sufficient to deal with this problem in most conditions." As discussed in the [July 16 edition of \*Capital Thinking\*](#), last week, Senate Finance Chairman Max Baucus (D-MT) introduced legislation that would extend disaster aid programs through 2012 to assist farmers affected by the drought.

Over the next few weeks, the Department of Agriculture will release reports that further detail the drought's impact. On Wednesday, July 25, the Department's Economic Research Service (ERS) will release its monthly food price report. ERS has stated that the report will show significant increases in commodity prices. On August 10, the Department will release its crop production report, which will forecast the harvest. On August 28, the Department will release its next farm income forecast.

- **Permanent Normal Trade Relations Status to Russia.** On Wednesday, July 18, the Senate Finance committee passed by a vote of 24-0 legislation that would provide Permanent Normal Trade Relations status to Russia and Moldova (see the *International, Defense, Homeland Security* section for more information). One of the key issues for poultry producers is ensuring that Russian sanitary and phytosanitary (SPS) measures are equivalent to U.S. SPS measures.
- **Ethanol Policy and Renewable Fuel Standards.** On Thursday, July 19, the American Meat Institute (AMI) released a study finding current federal ethanol policy under the Renewable Fuels Standard has increased and destabilized corn, soybean, and wheat prices. AMI and a coalition of livestock and poultry groups are pressuring the Obama Administration to waive the corn ethanol mandate and reform the Renewable Fuel Standard by allowing for automatic adjustments to reduce incentives for ethanol production when corn stocks are forecast to reach low levels. Secretary Vilsack, however, has stated that there is no need to waive the corn ethanol mandate. Currently, corn futures have risen a little over \$8 a bushel for the first time.
- **House Farm Bill.** On Thursday, July 19, a bi-partisan group of 62 House Members (24 Democrats and 38 Republicans), led by Representatives Kristi Noem (R-SD) and Peter Welch (D-VT), sent a letter to Speaker of the House John Boehner (R-OH), Majority Leader Eric Cantor (R-VA), Democratic Leader Nancy Pelosi (D-CA), and Democratic Whip Steny Hoyer (D-MD) urging them to schedule floor time for the Farm Bill before the August recess. This week, Secretary of Agriculture Tom Vilsack used the drought to pressure House leadership to schedule floor time for the Farm Bill as well. House leadership has yet to schedule floor time for the Farm Bill.

## REGULATORY ACTIVITY

- **BPA.** On Tuesday, July 17, the Food and Drug Administration (FDA) issued a proposed rule and a final rule related to the use of additive bisphenol A (BPA). FDA issued a proposed rule to ban the use of epoxy resins as coatings in infant formula packaging. Representative Edward Markey (D-MA) filed the petition, and FDA has given until September 17 for the public to submit comments. In a separate action, FDA issued a final rule, effective July 17, banning the use of polycarbonate resins in sippy cups and baby bottles. The action was in response to a petition filed by the American Chemistry Council. Currently, manufacturers affected no longer use these two BPA-based additives in their

products; however, supporters of the rule have applauded the Agency's decision to move forward with banning these additives to prevent their future use.

---

## Budget, Appropriations

### LEGISLATIVE ACTIVITY

- **FY 2013 Appropriations Action.** After adopting a proposal to reduce the overall funding for the FY 2013 Defense Appropriations bill (H.R. 5856) by \$1 billion (excluding military personnel, health care, and overseas contingency operations accounts), the House approved the \$606 billion measure on July 19. As initially written, the bill exceeded current spending levels by \$1 billion and faced a Presidential veto because it also exceeded the cap established in the Budget Control Act of 2011 (P.L. 112-25). As passed, the bill provides funding equal to the current FY 2012 level, but remains \$6 billion over the level set in the Budget Control Act.

On Wednesday, July 18, the House Labor-HHS-Education Appropriations Subcommittee approved its FY 2013 spending bill. The bill provides \$150 billion in discretionary spending, which is \$6.3 billion below FY 2012 funding levels. The full House Appropriations Committee is expected to take up the measure this week.

- **Continuing Resolution Discussions Begin.** With no prospect of passing any FY 2013 spending bills before the October 1 start of the fiscal year, talks have turned to the inevitable Continuing Resolution (CR). Twenty Congressional Republicans sent a letter to House Speaker John Boehner (R-OH) and Senate Minority Leader Mitch McConnell (R-KY) urging the leaders to push for a CR going beyond the lame duck session. Conservative House Republicans, who have strongly pushed for the FY 2013 funding level of \$1.028 trillion adopted by the House - which is \$19 billion less than the cap established in the Budget Control Act (P.L. 112-25) and \$15 billion less than current levels - are indicating they would support a higher funding level in a short-term CR. While House leaders would prefer a one-year CR, they likely will take advantage of this pledge of support and propose a three- or six-month CR maintaining level funding for the federal government. House and Senate Democrats also would like to avert another divisive fiscal fight heading into the November elections and likely will support such a proposal. This does not indicate that conservative Republicans are backing down, but that they are willing to accept spending limits higher than their preference in the short-term, with the hope that they will have a greater majority and thus, more support, in the next Congress for their efforts to reduce spending.

# Cybersecurity

## LEGISLATIVE ACTIVITY

- **Senate Cybersecurity Legislation.** The Senate will likely begin considering cybersecurity legislation on the floor this week. Co-sponsors of the *Cybersecurity Act of 2012*, including Homeland Security and Governmental Affairs Committee Chairman Joe Lieberman (I-CT) and Ranking Member Susan Collins (R-ME), along with Commerce Committee Chairman Jay Rockefeller (D-WV), Intelligence Committee Chairman Dianne Feinstein (D-CA), and Senator Tom Carper (D-DE), introduced a revised version of their legislation on Thursday evening. On Friday, the Wall Street Journal printed an op-ed from President Obama calling on the Senate to pass comprehensive cybersecurity legislation, specifically naming the *Cybersecurity Act of 2012* in the article and highlighting the cybersecurity threats to national security.

The revised Lieberman-Collins bill includes several compromises on key issues that have been controversial issues to date, including the regulation of critical infrastructure and concerns over privacy and civil liberties provisions. In order to address concerns about having mandatory standards for critical infrastructure proposed in the original bill, the revised bill makes compliance with the new cybersecurity standards voluntary for owners and operators of critical infrastructure. A group of bipartisan Senators including Jon Kyl (R-AZ) and Sheldon Whitehouse (D-RI) have focused on this approach and worked to create a bipartisan compromise on this section. The bill also includes additional privacy and civil liberties safeguards, which were praised by privacy advocates like the American Civil Liberties Union that did not previously support the bill.

This bill will be the basis of debate on the Senate floor but it is likely that the SECURE IT Act will be brought up as an amendment on the floor. Floor debate is expected to take several days considering the complexity and importance of the bill itself.

---

# Education

## LEGISLATIVE ACTIVITY

- **FY 2013 Appropriations.** As noted above, the House Labor-HHS-Education Appropriations Subcommittee approved its FY 2013 spending bill. The bill provides \$70 billion for the Department of Education, which is approximately \$1.1 billion below FY 2012 levels and \$2.9 billion below the President's Budget Request. Some highlights include:
  - Eliminates the Administration's Race to the Top, Investing in Innovation Grant, and the School Improvement Grant programs;
  - Prohibits the Department of Education from moving forward with regulations that define "gainful employment" and "credit hour," or dictate how states must license institutions of higher education;

- Provides \$24.5 billion for Pell grants, allowing for an authorized mandatory cost-of-living adjustment for maximum awards to \$5,635;
  - Provides for \$12.1 billion for special education grants to states, an increase of \$500 million over FY 2012 levels;
  - Funds Title I grants to school districts at \$15.2 billion, the same amount provided in FY 2012; and
  - Extends the highly qualified teacher provision under No Child Left Behind to allow alternative certification programs to count as "highly qualified" through the 2014-15 school year.
- **Hearings and Events.** The following hearings have been noticed:
    - Tuesday, July 24 – The Senate Banking Subcommittee on Financial Institutions and Consumer Protection will hold a hearing entitled “Private Student Loans: Providing Flexibility and Opportunity to Borrowers.” Mr. Rohit Chopra, Student Loan Ombudsman at the Consumer Financial Protection Bureau, is scheduled to testify.
    - Tuesday, July 24 – The Senate Judiciary Subcommittee on Immigration, Refugees and Border Security will hold a hearing titled "Strengthening the Integrity of the Student Visa System by Preventing and Detecting Sham Educational Institutions."
    - Tuesday, July 24 – House Education and the Workforce Subcommittee on Early Childhood, Elementary and Secondary Education will hold a hearing titled "Education Reforms: Discussing the Value of Alternative Teacher Certification Programs."
    - Wednesday, July 25 – The Senate Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies will hold a hearing on the impact of sequestration on education. Education Secretary Arne Duncan is scheduled to testify.
    - Wednesday, July 25 – The Senate Finance Committee will hold a hearing titled "Education Tax Incentives and Tax Reform."

## REGULATORY ACTIVITY

- **Income Contingent Repayment.** On Tuesday, July 17, the Department of Education issued a proposed rule that would (1) implement a new Income Contingent Repayment (ICR) plan in the Direct Loan program, (2) incorporate recent statutory changes to the Income Based Repayment (IBR) plan in the Direct Loan and Federal Family Education Loan (FFEL) program, and (3) streamline and add clarity to the total and permanent disability discharge process for borrowers in the Title IV loan program under the Higher Education Act, including the Perkins Loan program. Comments are due August 16, 2012.

According to the Department, the proposed regulations implementing a new ICR plan and the statutory changes to the IBR plan would assist borrowers in repaying their loans. The proposed

changes to the total and permanent disability discharge process would reduce the burden for borrowers who are disabled and seeking a discharge of their Title IV debt.

- **STEM Master Teacher Corps.** On Wednesday, July 18, the Obama Administration announced its plan to create a national Science, Math, Technology and Engineering (STEM) Master Teacher Corps that will comprise 50 STEM Master teachers at each of the 50 locations nationwide. The Master Teachers will make a multi-year commitment to teach with the STEM Corps and receive a stipend in exchange for serving as mentors to math and science teachers in communities across the country. President Obama had requested \$1 billion for the Master Teacher Corps in his FY 2013 Budget proposal.
  
- **Advanced Manufacturing Agenda.** On Tuesday, July 17, the President's Council of Advisors on Science and Technology released a [report](#), urging for continued efforts to improve domestic manufacturing competitiveness and encouraging investment in the United States. As such, the report made recommendations to enable innovation, secure the talent pipeline, and improve the business climate, including several relevant to the higher education community:
  - develop a national advanced manufacturing strategy
  - increase research and development funding
  - establish a national network of manufacturing innovation (NNMI) institutes
  - change the treatment of tax-free bond-funded facilities at universities to enhance industry/university collaboration
  - create the right environment for commercialization of technologies
  - establish a National Advanced Manufacturing Portal
  - connect returning veterans with manufacturing employment opportunities
  - invest in community college level education
  - develop partnerships to provide coordinated skills certification and accreditation, including stackable credentials
  - enhance advanced manufacturing university programs, which bring new focus through the development of educational modules and courses
  - create national fellowships and internships in advanced manufacturing.
  
- **GEAR UP.** On Thursday, July 19, the Department of Education published a notice of submission for Office of Management and Budget review. The notice requests public comments on the effectiveness of a proposed project that would pair federally supported college savings accounts with GEAR UP activities as part of an overall college access and success strategy. Comments are due on August 20, 2012.

- **Private Student Loans.** On Friday, July 20, the Consumer Financial Protection Bureau (CFPB) submitted a report on private student loans to the Senate Committee on Banking, Housing, and Urban Affairs, the Senate Committee on Health, Education, Labor, and Pensions, the House of Representatives Committee on Financial Services, and the House of Representatives Committee on Education and the Workforce. The Dodd-Frank Wall Street Reform and Consumer Protection Act required CFPB and the Secretary of Education to submit a report on private student loans.

CFPB recommends the following:

- Allow private student loans to be discharged in bankruptcy similar to other forms of consumer debt
- Exclude Department of Health and Human Services student loans from the Truth in Lending Act requirements for private student loans
- Require the certification of private student loans by institutions of higher education
- Create a database for students and their families to track and repay their private student loans.

The Secretary of Education also recommends that Congress does the following:

- Amend the definition of private education loan to exclude other federal loans
- Require lender disclosures on the availability of federal student aid
- Require institutions of higher education to determine whether a private education loan borrower has exhausted eligibility for federal student aid
- Require institutions of higher education to certify a borrower's need for a private education loan before a private education lender issues the loan.
- Work with the CFPB and Department in providing greater flexibility to private student loan borrowers experiencing financial distress and identifying resources to provide a comprehensive outlook of student borrowing of both federal and private loans.

---

## Energy

### LEGISLATIVE ACTIVITY

- **Congressional Hearings.** On Tuesday, July 24, two House Energy and Commerce subcommittees will hold a joint hearing on the Nuclear Regulatory Commission's policies and governance and the Senate Energy and Natural Resources Committee will examine opportunities and obstacles for expanded use of natural gas in the transportation sector. On Wednesday, July 25, the House Natural Resources Committee will hold an oversight hearing regarding the Administration's decision to impose an offshore drilling moratorium following the April 2010 Deepwater Horizon disaster, and has



invited five Interior Department officials to testify; separately, a Senate Energy and Natural Resources subcommittee will examine the role of water use efficiency and its impact on energy use. On Thursday, July 26, a House Science, Space, and Technology subcommittee will review the management and activities of the Department of Energy's Vehicle Technologies Program.

## REGULATORY ACTIVITY

- **Biomass.** Nominations to serve on the Department of Energy's Biomass Research and Development Technical Advisory Committee are due by August 9.
- **Merchant Transmission Projects.** The Federal Energy Regulatory Commission has proposed to clarify and refine its policies governing capacity allocation for new merchant transmission projects and new non-incumbent, cost-based, participant-funded transmission projects. FERC is now proposing "to clarify and refine its capacity allocation policies in a manner that provides developers with the ability to bilaterally negotiate the terms for capacity allocation, while ensuring transparency in the capacity allocation process." Comments will be due 60 days after publication in an upcoming Federal Register notice.
- **National Petroleum Council.** The Council will next meet in Washington, DC on August 1, to consider the proposed final report on the future of transportation fuels, among other topics.

---

# Environment

## LEGISLATIVE ACTIVITY

- **Toxic Chemicals.** On Tuesday, July 24, the Senate Committee on Environment and Public Works will hold a joint full and Subcommittee hearing on Superfund, toxics and environmental health entitled, "Oversight of EPA Authorities and Actions to Control Exposures to Toxic Chemicals." Jim Jones, Acting Assistant Administrator for the Office of Chemical Safety and Pollution Prevention at the U.S. Environmental Protection Agency, will testify.
- **Water Efficiency.** On Wednesday, July 25, the Senate Committee on Energy and Natural Resources, Subcommittee on Water and Power will hold a hearing entitled "Water Efficiency and Energy Impacts." The purpose of this oversight hearing is to examine the role of water use efficiency and its impact on energy use.
- **Gulf of Mexico.** On Wednesday, July 25, the House Committee on Natural Resources will hold a hearing entitled, "Investigation of President Obama's Gulf Drilling Moratorium: Questioning of Key Department of the Interior Officials." Invited witnesses include Steve Black, Counselor to the Secretary, U.S. Department of the Interior, and former administrators.
- **Forest Fires.** On Tuesday, July 24, the House Committee on Natural Resources will hold a hearing on the impact of catastrophic forest fires. The hearing will examine the impact of megafires on communities, endangered species and their habitats.

## REGULATORY ACTIVITY

- **Ozone.** The U.S. Environmental Protection Agency (EPA) is making available for public comment two draft assessment documents entitled, *Health Risk and Exposure Assessment for Ozone, First External Review Draft* and *Welfare Risk and Exposure Assessment for Ozone, First External Review Draft*. These two draft assessment documents describe the quantitative analyses the EPA is conducting as part of the review of the national ambient air quality standards (NAAQS) for ozone (O<sub>3</sub>). In addition, on or about August 13, 2012, the Office of Air Quality Planning and Standards will make available for public comment the first draft document titled, *Policy Assessment for the Review of the Ozone National Ambient Air Quality Standards, First External Review Draft*, as well as appendices and additional technical materials that support the first draft Policy Assessment and first draft Risk and Exposure Assessments. Comments on all documents should be received on or before September 11, 2012.
- **Green Infrastructure.** EPA has announced that it is providing \$950,000 in an effort to help 17 communities expand green infrastructure use to improve water quality and protect health. Green infrastructure uses vegetation and soil to manage rainwater where it falls, keeping polluted stormwater from entering sewer systems and waterways in local communities. The EPA funding is intended to increase incorporation of green infrastructure into stormwater management programs to protect water quality, provide job creation and neighborhood revitalization. EPA has awarded the funds to communities in 16 states.

---

## Financial Services

### LEGISLATIVE ACTIVITY

- **House Agriculture Committee to Review Dodd-Frank Act Two Years Later.** On Wednesday, July 25, the House Agriculture Committee will hold a hearing titled “Oversight of the Swaps and Futures Markets: Recent Events and Impending Regulatory Reforms.”
- **House Financial Services Subcommittee to Discuss Dodd-Frank Act Impact on Insurance Regulation.** On Tuesday, July 24, the House Financial Services Subcommittee on Insurance, Housing and Community Opportunity will hold a hearing titled “The Impact of Dodd-Frank’s Insurance Regulations on Consumers, Job Creators, and the Economy.”
- **Treasury Secretary Geithner to Appear Before House Financial Services Committee.** On Wednesday, July 25, Treasury Secretary Timothy Geithner will present the [Annual Report of the Financial Stability Oversight Council](#) to the House Financial Services Committee. The Financial Stability Oversight Council, created by the Dodd-Frank Act to identify and mitigate systemic risk to the financial system and chaired by the Treasury Secretary, recently made its first designation of systemically important entities, identifying eight systemically important “financial market utilities,” which include clearance and settlement facilities.

## REGULATORY ACTIVITY

- **CFTC Technology Advisory Committee to Hold Emergency Meeting.** On Thursday, July 26, the Commodity Futures Trading Commission (CFTC) Technology Advisory Committee (TAC) will hold an emergency meeting. The CFTC TAC is chaired by CFTC Commissioner Scott O'Malia. In response to recent developments with Peregrine Financial Group Inc., a future commission merchant that allegedly misappropriated funds, violated customer fund segregation laws, and made false statements in financial statements, the CFTC TAC will discuss possible technology solutions that will ensure that customers, self-regulatory organizations and the CFTC can verify the accuracy of account statements and thus the safety and whereabouts of customer funds.

---

## Health Care

### LEGISLATIVE ACTIVITY

- **House Approps Subcommittee Approves Labor-HHS Funding Bill.** The House Appropriations Subcommittee on Labor, Health and Human Services and Education approved the FY 2013 funding bill earlier this week, with the full Committee to take up the measure next week. The House bill contains \$8.8 billion less than the Senate bill, which has already been approved by the Senate Appropriations Committee. The House bill includes lower spending levels for most health agencies, and also eliminates funding for implementation of the Affordable Care Act. A continuing resolution, however, is the most likely outcome for the FY 2013 spending bills, with House members indicating they would accept the Senate spending levels in order to push further consideration into the next Congress.
- **Senate Commerce Hearing.** The Senate Committee on Commerce, Science and Transportation will hold a hearing on Wednesday, July 25 on "Short Supply Prescription Drugs: Shining a Light on the Gray Market." The hearing will examine the so called "gray market" drug companies who drive up the cost of short-supply prescriptions drugs, and how and why hospitals and other health care providers struggle to obtain these drugs to treat patients suffering from cancer and other life-threatening conditions. The hearing is a result of a joint Congressional investigation by Chairman John Rockefeller IV (D-WV), HELP Chairman Tom Harkin (D-IA), and Rep. Elijah Cummings (D-MD), Ranking Member of the House Committee on Oversight and Government Reform.
- **House Ways and Means Hearing.** The House Committee on Ways and Means Subcommittee on Health has scheduled a hearing on Tuesday, July 24, on Physician Organization Efforts to Promote High Quality Care and Implications for Medicare Physician Payment. The hearing will focus on how physician organization efforts to promote quality and efficiency can inform Medicare physician payment reform.

## REGULATORY ACTIVITY

- **CHIP, DSH Allotments and State Allotments for Part B Regs Released.** The Center for Medicare and Medicaid Services (CMS) released the following regulations today: Medicaid Disproportionate Share Hospital Allotments and Institutions for Mental Disease DSH Limits for Fiscal Years 2010 and 2011, with preliminary allotments for FY 2012 (CMS-2384-N); Medicaid State Allotments for Payment of Medicare Part B Premiums for Qualifying Individuals for Fiscal Year 2012 (CMS-2385-N); and Final CHIP Allotments to States, the District of Columbia and U.S. Territories and Commonwealths for Fiscal Year 2012 (CMS-2383-N).
- **EHB Final Rule.** The Department of Health and Human Services (HHS) issued The Data Collection to Define Essential Health Benefits; Recognition of Entities for Accreditation of Qualified Health Plans Final Rule. The regulation finalizes policies related to: (1) data reporting standards for health plans that represent potential State-specific benchmark plans; and (2) the first phase of a two-phased approach for recognizing accrediting entities for qualified health plans (QHPs). The National Committee for Quality Assurance (NCQA) and URAC are recognized as accrediting entities on an interim basis. The Final Rule notes that HHS will provide guidance on a number of areas related to essential health benefits (EHBs) in a future rulemaking, including definition of essential health benefits, timeline, financial, and operational requirements for accreditation, federally-facilitated exchange (FFE), quality requirements outlined in the ACA, network adequacy and access standards for QHPs, coordination of quality requirements inside and outside exchanges, and Exchange requirements.
- **CMMI State Innovation Models.** The Center for Medicare and Medicaid Innovation has announced a new initiative for States to design and test innovative health care systems to improve quality and decrease the cost of care provided. The State Innovation Models initiative is a competitive funding opportunity for States to design and test multi-payer payment and delivery models that deliver high-quality health care and improve health system performance. The CMS Innovation Center staff will be hosting a webinar on Thursday, July 26, from 3:00 p.m. to 4:00 p.m. ET to provide an overview of the State Innovation Models initiative.
- **HHS Regional Implementation Forums.** The U.S. Department of Health and Human Services (HHS) is holding a series of "Regional Implementation Forums" during August to provide an opportunity for states and stakeholders to learn more about the next steps in implementation of the health care law and ask questions about efforts to build health insurance exchanges in every state. HHS leadership will provide an overview of topics related to coverage provisions of the Affordable Care Act effective in 2014. Each session will run from 9:00 a.m. to 4:30 p.m. and is open to the public. The dates and locations include August 14: Washington, DC, August 15: Atlanta, GA, August 21: Chicago, IL and August 22: Denver, CO.
- **CMS Part D Low-Income Subsidy Redeeming.** The Centers for Medicare & Medicaid Services (CMS) is now preparing for the annual re-determination of Medicare Part D low-income subsidy (LIS) deemed status, also known as "re-deeming." The Medicare LIS provides extra help for beneficiaries who have limited income and resources to help pay their Medicare prescription drug plan's premiums, co-payments, and the annual deductible. Individuals reported as full-benefit dual eligible

beneficiaries, partial dual eligible beneficiaries (QMB-only, SLMB-only, or QI), or SSI recipients will have their LIS deemed status extended to the next calendar year.

- **Medicare Hospital and Nursing Home Compare Redesign.** CMS announced enhanced tools for patients to compare hospitals and nursing homes with the redesign of two websites, Hospital Compare and Nursing Home Compare. The redesign enhanced navigation ease for users, and added new data to help beneficiaries make informed choices about hospital and nursing home services.
- **15 New Advance Payment ACOs.** This week, CMS announced that fifteen of the recently selected organizations participating in the Medicare Shared Savings Program will serve as Advance Payment ACO Models. This model is designed to support physician based and rural ACOs in the MSSP that have less access to capital. Participants will receive upfront and monthly payments which can be used as investments in care coordination infrastructure.

## INTERNATIONAL HEALTH NEWS

- **International AIDS Society Conference.** The International AIDS Conference will be held July 22-27 at the Washington Convention Center. The biennial International AIDS Conference is a gathering for those working in the field of HIV, as well as policymakers, people living with HIV and others committed to ending the epidemic and is expected to convene more than 20,000 delegates from nearly 200 countries, including 2,000 journalists.

## OTHER HEALTH NEWS

- **IOM Meetings.** The Institute of Medicine will hold a workshop on July 31 and August 1, 2012 on Developing and Strengthening the Global Supply Chain for Second-Line Drugs (SLDs) for Multidrug-Resistant Tuberculosis (TB). This public workshop will explore innovative solutions to the problem of how to get the right SLDs for multidrug-resistant TB to people who critically need them. More specifically, the workshop will examine current problems and potential opportunities for coordinated international efforts to ensure that a reliable and affordable supply of high-quality SLDs is available.

The IOM also released the Phase II report on Geographic Adjustment in Medicare Payment: Implications for Access, Quality and Efficiency. In this report, the committee applies the first report's recommendations in order to determine their potential effect on Medicare payments to hospitals and clinical practitioners. The report offers recommendations to improve access to efficient and appropriate levels of care. The committee also notes the importance of ensuring the availability of a sufficient health care workforce to serve all beneficiaries, regardless of where they live.

---

## International, Defense, Homeland Security

- **Russia PNTR Developments.** On Wednesday, July 18, the Senate Finance Committee voted 24-0 to move legislation (S. 3285) to the Senate floor that would remove Jackson-Vanik trade restrictions

and grant Permanent Normal Trade Relations (PNTR) status to Russia and Moldova. Every Committee Member voted in favor of the bill, including Senators who are often cautious on trade liberalization matters, such as Senator Ben Cardin (D-MD), Senator Jay Rockefeller (D-WV), Senator Debbie Stabenow (D-MI), and Senator Olympia Snowe (R-ME). Senator Cardin and others had convinced Chairman Max Baucus (D-MT) to include in the PNTR package language targeting Russian human rights violators. The agreement to include a version of Senator Cardin's Sergei Magnitsky Rule of Law Accountability Act (S. 1039) that is considered crucial for garnering sufficient Senate floor support for the Russia PNTR bill.

Russia PNTR might be able to pass the House without including the human rights sanctions provisions. However, Senate negotiators, House Foreign Affairs Committee (HFAC) Chairwoman Ileana Ros-Lehtinen (R-FL), House Ways and Means Committee Ranking Member Sander Levin (D-MI), U.S. business community leaders, and other key players appear to have convinced the House Republican Leadership of the need to add the "Magnitsky language" before the full House votes on Russia PNTR. In fact, Ways and Means Chairman Dave Camp (R-MI) now plans to hold a markup of a Russia PNTR bill this coming week, with an understanding the HFAC-passed human rights sanctions will be added on the House floor. With Russia set to join the World Trade Organisation in August, trade leaders in Congress and the private sector hope for final passage of the PNTR legislation in both chambers before the summer recess.

- **Israel and the Neighborhood.** A series of regional developments contributed to increasingly public signs of nervousness this week by Israeli Prime Minister Benjamin Netanyahu and his governing coalition. Early in the week, reports of increasing lawlessness and radical Islamist activity in the Sinai Peninsula heightened the already-elevated Israeli discomfort with the administration of new Egyptian President Mohamed Morsi and Egypt's precarious civil-military balance. Meanwhile, as Syrian rebels advanced further into Damascus, the Israeli security establishment's reaction has been decidedly mixed. Longtime Israeli antipathy toward the Assad regime contrasted with Israel's concern about the security of post-Assad Syria's chemical weapons stockpile and, in the words of Defense Minister Ehud Barak, "...concern that the collapse of the Syrian government could lead to a civil war in Lebanon." The Russian and Chinese veto of UN Security Council sanctions against the Assad government augmented the Israeli (and U.S.) sense of increasing inability to affect developments in the ground in Syria. Furthermore, Wednesday's tragic terrorist attack against Israeli tourists in Bulgaria led Prime Minister Netanyahu to threaten retaliation against Iran, even as public evidence has not confirmed a role in the attacks by Iran or Iranian-supplied Hezbollah. Finally, the centrist Kadima Party announced it would withdraw from Prime Minister Netanyahu's coalition over its opposition to continued exemptions from Israeli military service for many Orthodox Jews. The politically popular Netanyahu and his comfortable Knesset majority can sustain the loss of Kadima, but it is safe to say the Prime Minister did not welcome the news.
- **Defense Appropriations and Authorization Developments.** On Thursday evening, July 19, the House passed an amended FY13 defense appropriations bill that would limit defense spending to FY12 levels. That amount is \$1.1 billion less than the House Republican Leadership initially desired, although still \$6 billion more than called for under the Budget Control Act. Congressman Mick Mulvaney (R-SC) sponsored the amendment to limit FY13 defense spending, which drew the support

of 158 Democrats and 89 Republicans. Still, the path for enactment of a separate FY13 defense appropriations bill, as opposed to a Continuing Resolution, remains hazy at best. Similarly, Senate Majority Leader Harry Reid (D-NV) appears unlikely to turn next to the FY13 defense authorization bill, instead likely moving cybersecurity legislation forward for Senate floor consideration.

---

## Sequestration

- **Congressional Action.** The Congress continues to pressure the Administration to report on the potential impacts of sequestration on the Executive Branch. On Wednesday, July 18, the House overwhelmingly passed the H.R. 5872, the Sequestration Transparency Act of 2012 with hopes the Senate would also bring the bill to the floor quickly. The bill would require the Obama administration to report within 30 days how the 2013 sequestration would be implemented across domestic and defense programs. A similar measure was added to the Senate version of the Farm Bill (S. 3240) as well.
- To date, the Obama administration has instructed agencies to prepare budget requests for FY 2013 under the assumption the sequester will be averted. The call for additional information comes amid growing concerns from Congress and from core constituency in the both the defense sectors as well as the domestic sectors who are concerned about the impact on cuts in the non-defense side such as public safety, law enforcement, education and other areas.
- On Wednesday, July 18, the House Armed Services held a full committee hearing entitled “Sequestration Implementation Options and the Effects on National Defense: Industry Perspectives.” Della Williams, president and chief executive officer of Williams-Pyro and National Association of Manufacturers (NAM) Board Member testified before the committee. In her testimony, Mrs. Williams made it clear that the negative effects will not occur in a vacuum, but rather across our entire economy, threatening the jobs of thousands of skilled workers. The NAM recently released a study that shows the impending cuts will cost over one million jobs across the country. Lockheed Martin Chairman and CEO Robert Stevens, also testified before the committee, stating that “the impact on industry would be devastating, with a significant disruption to ongoing programs and initiatives, leading to facility closures and personnel reductions that would significantly disrupt advanced manufacturing operations, erode engineering expertise, and accelerate the loss of skills and knowledge.” Stevens estimated that his company would be forced to lay off 10,000 people.

The House Armed Service Committee has a hearing set for August 1 with two senior Obama administration officials to discuss the estimated \$54 billion in cuts the Pentagon faces under sequester. Jeff Zients, acting director of the Office of Management and Budget (OMB), and Deputy Secretary of Defense Ashton B. Carter, who earlier was the Pentagon’s chief for acquisition, technology and logistics, will appear before the Committee to discuss the potential impact of the sequester.

- **Stakeholder Efforts.** On Tuesday, July 17, as part of an escalated campaign by defense contractors and others to warn Congress and the Administration that the sequester would trigger severe economic damage and job losses, the Aerospace Industries Association (AIA), an Arlington, Va.-based trade group, held a press conference unveiling an economic impact analysis of sequestration prepared by Dr. Stephen S. Fuller, George Mason University, [The Economic Impact of the Budget Control Act of 2011 on DOD and Non-DOD Agencies](#). The report concluded the sequester in 2013 could reduce the nation's gross domestic product by \$215 billion, decrease personal earnings of the workforce by \$109 billion, and cost the U.S. economy as a whole 2.14 million jobs. New Hampshire Senators Kelly Ayotte (R) and Jeanne Shaheen (D) each praised the report and stressed the need for a bipartisan effort to come up with an alternative to sequestration. However, the Senators' remarks also reflected Democratic and Republican differences in achieving deficit reduction. Senator Ayotte noted she would support a one-year, \$109 billion package of spending cuts which should be enacted prior to the elections, while Senator Shaheen stressed her preference for a long-term, comprehensive solution addressing all aspects of the budget – spending cuts, mandatory spending, and revenue. Phoenix Mayor Greg Stanton (D) and San Diego Mayor Jerry Sanders (R) also participated in the press conference, highlighting the potential defense and non-defense impacts that sequestration would have on their local economies.
- 

## Tax

### LEGISLATIVE ACTIVITY

- **Senate Democrats Eliminate Estate Tax Provisions from Bill to Extend Bush Tax Cuts.** On Thursday, July 19, Senate Democrats removed the estate tax provisions from their version of legislation to extend the 2001 and 2003 Bush tax cuts for couples earning less than \$250,000 a year and individuals earning less than \$200,000. Originally, the Middle Class Tax Cut Act (S. 3393) included a provision that would have set the individual exemption level from estate tax at \$3.5 million and instituted a top estate tax rate of 45 percent. Senate Republicans introduced a counterproposal that would extend all of the Bush tax cuts and keep the estate tax at current levels (an exemption level of \$5.12 million and a top rate of 35 percent) through 2013. President Obama has repeatedly called for a limited extension of the Bush tax cuts, but only for couples earning less than \$250,000 a year and individuals earning less than \$200,000.

House Speaker John Boehner (R-OH) has announced that the House will vote in July on a straight one-year extension of the 2001 and 2003 tax provisions. Though House Minority Leader Nancy Pelosi (D-CA) previously sent a letter to House Majority Leadership proposing extension of the cuts only for those earning less than \$1 million annually, an approach also championed by Sen. Chuck Schumer (D-NY), Congressional Democratic leadership has voiced support for President Obama's approach. Speaker Boehner has rejected both the President and Pelosi's proposals, reiterating that before adjourning for August recess the House will vote to extend all of the Bush tax cuts through 2013.



- **Senate Fails to Advance Insourcing Legislation.** On Thursday, July 19, the Bring Jobs Home Act (S. 3364), introduced by Senate Finance Committee member Debbie Stabenow (D-MI), fell four votes short of the 60 votes necessary to bring the measure to the floor for consideration. The legislation would have denied companies a deduction for expenses related to outsourcing of operations and jobs. Further, the bill would have provided a 20 percent credit for expenses related to “insourcing” – bringing overseas jobs back to the U.S. That same day, Ways and Means Committee member Bill Pascrell (D-NJ) introduced a similar measure in the House.
- **Senate Finance May Mark Up Extenders Legislation.** Senate Finance Committee members are still discussing the possibility of marking up a tax extenders bill in Committee, with the possibility that such action could occur prior to the August recess. Distinct from extension of the 2001 and 2003 Bush tax cuts, the measure would address year-to-year expiring corporate and individual tax provisions, such as the research and development (R&D) tax credit, active financing exception and State sales tax deduction. However, no official mark up has been scheduled.
- **Ways and Means Holds Hearing on Tax Reform and Manufacturing.** On Thursday, July 19, the House Ways and Means Committee held a hearing on tax reform and the potential implications for the U.S. manufacturing sector. In general, Republicans focused on those expenditures that can be eliminated in order to reduce corporate tax rates to 25 percent. Democrats, on the other hand, pointed to alternatives for alleviating manufacturing problems, such as reducing healthcare costs and improving the nation’s infrastructure.
- **Tax Hearings Next Week.** The following tax hearings are scheduled next week in the House Ways and Means and Senate Finance Committees:

July 25: Senate Finance Committee hearing on Education Tax Incentives and Tax Reform.

July 25: House Ways and Means Committee, Subcommittee on Oversight hearing on Public Charity Organizational Issues, Unrelated Business Income Tax, and the Revised Form 990.

---

## Transportation

### LEGISLATIVE ACTIVITY

- **MAP-21 (SAFETEA-LU Reauthorization).** As previously reported in Capital Thinking, the President signed into law Moving Ahead for Progress in the 21<sup>st</sup> Century (MAP-21) (H.R. 4348), a 27-month surface transportation bill, on July 6. The law included an extension of current law through September 31. The new law will take effect on October 1, 2012 and carry through September 2014. The Department of Transportation and its agencies are now beginning the process of implementing MAP-21, which includes hundreds of rulemakings, guidance documents, and various studies required by the law.

- Patton Boggs has prepared a detailed summary and analysis of MAP-21. If you would like a copy or have question about the reauthorization legislation, please contact Carolina Mederos at [cmederos@pattonboggs.com](mailto:cmederos@pattonboggs.com).