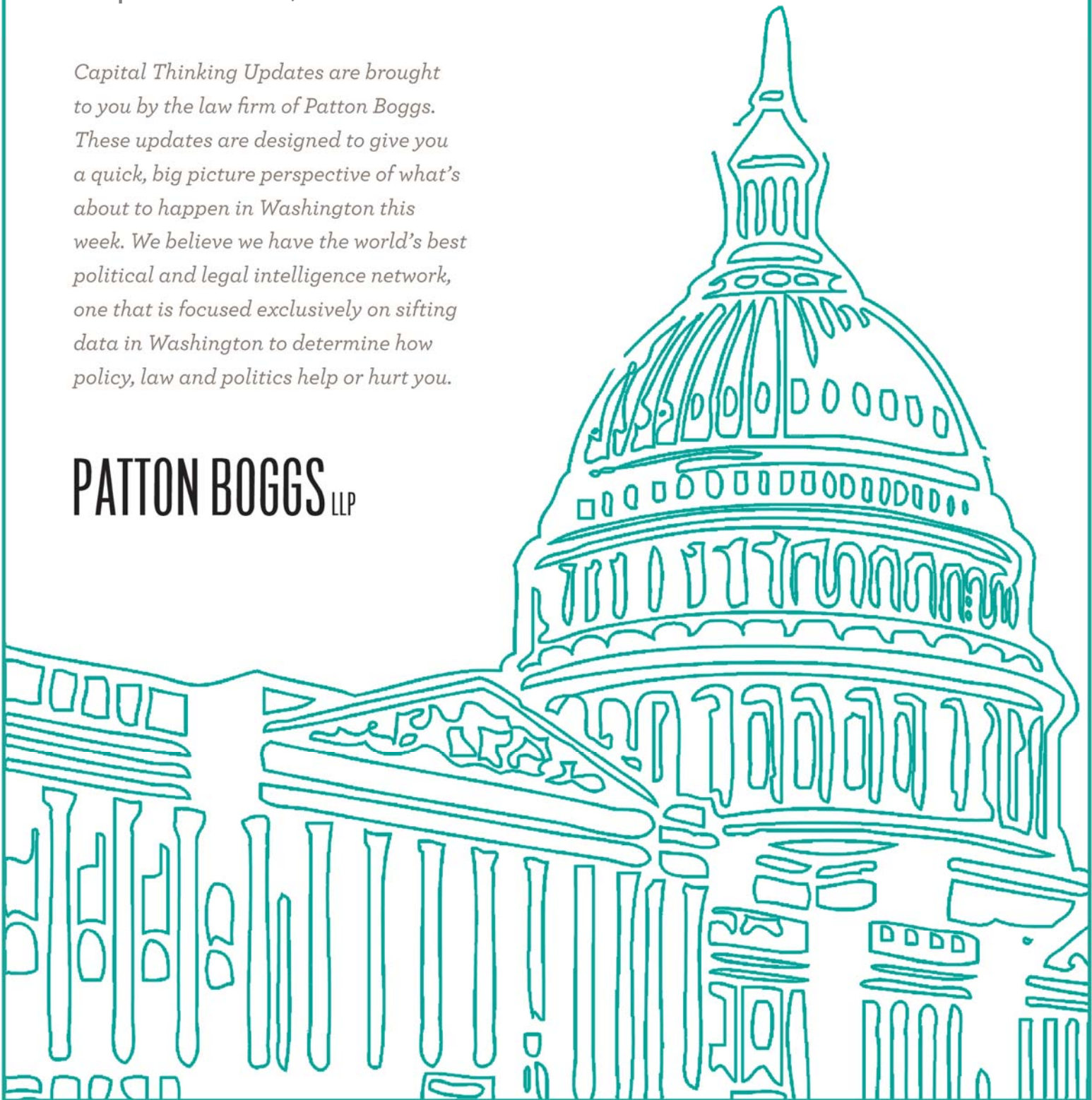


CAPITAL **thinking** UPDATES

September 10, 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, September 10, the House will meet at 2:00 p.m. for legislative business. Legislation considered under suspension of the rules will include, among other bills: H.R. 6186 – To require a study of voluntary community-based insurance options and how such options could be incorporated into the national flood insurance program, and for other purposes; H.R. 4264 – FHA Emergency Fiscal Solvency Act of 2012, as amended; and H.R. 406 – To amend the Federal Election Campaign Act of 1971 to permit candidates for election for Federal office to designate an individual who will be authorized to disburse funds of the authorized campaign committees of the candidate in the event of the death of the candidate.

On Tuesday through Thursday, the House will meet at 10:00 am for morning hour and 12:00 p.m. for legislative business. On Friday, the House will meet at 9:00 am for legislative business. Last votes expected no later than 3:00 pm. Legislation considered under suspension of the rules will include, among other bills: H.R. 4631 – Government Spending Accountability Act of 2012, as amended; H.R. 538 – Government Customer Service Improvement Act, as amended; H.R. 4057 – Improving Transparency of Education Opportunities for Veterans Act of 2012, as amended; H.R. 6215 – To amend the Trademark Act of 1946 to correct an error in the provisions related to remedies for dilution, as amended; H.R. 1775 – Stolen Valor Act of 2011; H.R. 6080 – To make improvements in the enactment of title 41, United States Code, into a positive law title and to improve the code; H.R. 2800 – To amend the Violent Crime Control and Law Enforcement Act of 1994 to reauthorize the Missing Alzheimer’s Disease Patient Alert Program; S. 3245 – A bill to extend by 3 years the authorization of the EB-5 Regional Center Program, the E-Verify Program, the Special Immigrant Nonminister Religious Worker Program, and the Conrad State 30 J-1 Visa Waiver Program; H.R. 6131 – To extend the Undertaking Spam, Spyware, and Fraud Enforcement with Enforcers beyond Borders Act of 2006, and for other purposes; S. 710 – Hazardous Waste Electronic Manifest Establishment Act; H.R. 6028 – No-Hassle Flying Act of 2012; H.R. ____ - The National Security and Job Protection Act; and H.R. 6213 – No More Solyndras Act, Rules Committee Print.

The Senate will convene at 2:00 p.m. on Monday, September 10 and recognize the Majority Leader. At 5:00 p.m., the Senate will proceed to executive session to consider the nomination of Stephanie Marie Rose, of Iowa, to be United States Circuit Judge for the Southern District of Iowa.

Agriculture & Food

LEGISLATIVE ACTIVITY

- **Disaster Aid and Farm Bill Reauthorization.** On August 2, the House passed a stand-alone disaster aid package, the Agriculture Disaster Assistance Act of 2012 (H.R. 6233). The bill provides \$383 million for drought aid and cuts a number of conservation programs. However, the House did not consider a one-year extension of the Farm Bill, or the five-year Federal Agriculture Reform and

Risk Management (FARRM) Act (H.R. 6083) reported favorably by the House Agriculture Committee in July. Before the August recess, the Senate did not consider a disaster aid package, as Senate Agriculture Committee Chairwoman Debbie Stabenow (D-MI) stated that the five-year Agriculture Reform, Food, and Jobs Act (S. 3240) provides the requisite disaster assistance programs.

We expect that the earliest the House will consider an extension of the 2008 Farm Bill or a new five-year Farm Bill will be after the election, given that the House is in session only eight days in September before recessing to campaign. Although the 2008 Farm Bill expires on September 30, there will not be any effect of this expiration on farm programs until December 31. However, if no extension is passed by the September 30 deadline, some energy and conservation programs expiring on that date will be affected.

REGULATORY ACTIVITY

- **Renewable Fuel Standard.** On August 20, the Environmental Protection Agency (EPA) published a notice in the *Federal Register* soliciting comments on the petitions Governor Mike Beebe (D-AR) and Governor Beverly Perdue (D-NC) submitted requesting renewable fuel standard (RFS) mandate reductions in 2012 and 2013.

The deadline to submit comments is currently scheduled for September 26; however, the National Corn Growers Association (NCGA) sent a letter to EPA requesting that the agency extend the comment period to 60 days. The NCGA argued that this is the busiest time of year for corn producers, and that the agency should offer more time for comment on this issue of great importance to U.S. farmers. The EPA has yet to respond to the request for an extension.

In August, Governors Mike Beebe, Nathan Deal (D-GA), Jack Markell (D-DE), Susana Martinez (R-NM), Martin O'Malley (D-MD), Beverly Perdue, and Rick Perry (R-TX) petitioned EPA seeking a full or partial waiver of the 2012 and 2013 RFS requirements. They argued that the mandate for production of corn-based ethanol is inflating the price of corn at a time when the drought is already causing high corn prices, and that livestock producers are suffering severe harm as a result. Earlier in August, 156 House Members and 34 Senators sent letters to EPA Administrator Lisa Jackson urging a reduction in the RFS mandate.

Budget, Appropriations

LEGISLATIVE ACTIVITY

- **FY 2013 Continuing Resolution.** On July 31, Senate Majority Leader Harry Reid (D-NV) and Speaker of the House John Boehner (R-OH) announced a tentative deal on a six-month FY 2013 Continuing Resolution (CR). The deal will prevent a contentious fiscal showdown prior to the November elections and remove the FY 2013 spending bills from the already-packed Congressional agenda for the lame duck session. House Appropriators will start crafting the measure when they return from recess this week and the House may vote on it as early as September 13. It will likely be

a “clean” CR (free of policy provisions), that will fund the federal government through March 2013 at the \$1.047 trillion discretionary spending level established in the Budget Control Act of 2011 (BCA / P.L. 112-25), which, accounting for inflation, will maintain federal agency funding for the first six months of the fiscal year at approximately FY 2012 levels. Through this agreement, House conservative Republicans, in anticipation of gains in their majority after the November elections and the possibility of a Republican President and Senate, have temporarily given up their fight for the severe spending reductions reflected in the House FY 2013 Budget Resolution (H. Con. Res. 112), which capped FY 2013 spending at \$1.028 trillion.

Cybersecurity

LEGISLATIVE ACTIVITY

- **Cybersecurity Legislation.** Throughout the August recess, Members of the Senate continued to focus on the need for action on cybersecurity issues in a host of ways. A group of nine Republican Senators released a statement blaming the failure of cybersecurity legislation on Senate Democrats, while several Democratic members of Congress and the former White House Cybersecurity Coordinator Howard Schmidt made statements calling for the President to take executive action on cybersecurity given the Congress’ failure to act. Chairman of the Federal Energy Regulatory Commission Jon Wellinghoff also recently called on Congress to move forward on cybersecurity issues along with the need for enhanced authorities to protect critical infrastructure based on concerns over cybersecurity threats to the electric grid. Wellinghoff noted that there needs to be a more effective ways to communicate with utilities and to have enforcement authority to protect electric and natural gas infrastructure against cyber threats and vulnerabilities.

EXECUTIVE BRANCH ACTIVITY

- **Executive Order.** The Obama Administration has made it clear that they will move forward using their administrative authority and is working on both an Executive Order and a rewrite of an existing homeland security directive as it relates to critical infrastructure and cyber issues. The draft executive order may establish a voluntary program for critical infrastructure owners and operators to meet certain cybersecurity standards and best practices. It is still unclear when this executive order will be issued and the White House has said that this is only one of a number of measures that the Obama Administration is considering in order to effectively address cybersecurity.

POLITICAL ACTIVITY

- **Party Platforms.** Both the Democratic and Republican National Conventions Party Platform included concerns over cybersecurity and the need for quick action. The platforms did not stray far from the views that were expressed by Democrat and Republican Members of Congress during the course of debate over cybersecurity legislation. The Republican platform reiterated the party’s concern about over-regulation, the need to pass FISMA reform and a focus on information sharing as the most effective way of defending against cyber attacks. The Democratic Party platform credited the Obama

Administration with creating the first military cybersecurity command and stated that the President will continue to take executive action to strengthen the U.S.'s cyber capabilities, hinting at the future executive order.

Education

LEGISLATIVE ACTIVITY

- **Gainful Employment Rules.** On August 27, Representative John Kline (R-MN), Chairman of the House Education and the Workforce Committee, sent a letter to Secretary of Education Arne Duncan to warn the Department against any efforts made to circumvent a June 30 U.S. District Court ruling which struck down the program approval portion of the gainful employment regulations. The letter also asked the Secretary to provide information related to program participation agreements, particularly with regard to proprietary institutions of higher education, and required a response by September 7.
- **Hearings and Events.** On Tuesday, September 11, Robert Gordon, Executive Associate Director, at the Office of Management and Budget and Jon Carson, Director of the White House Office of Public Engagement, will address the Non-Defense Discretionary Coalition's town hall meeting to discuss sequestration implementation. On Wednesday, September 12, the Senate Committee on Veterans' Affairs will markup pending legislation, including Chairwoman Patty Murray's (D-WA) veteran education legislation – the GI Bill Consumer Awareness Act of 2012. On Thursday, September 13, the Senate HELP Committee will hold a hearing titled, "Improving College Affordability: A View from the States."

REGULATORY ACTIVITY

- **No Child Left Behind Waivers.** On August 8, the Department approved Nevada's waiver request, increasing the Department's total to 33 approved waiver requests.

The Department has granted waivers to the following states: Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington, and Wisconsin. The Department has also approved the District of Columbia's waiver request.

States with outstanding waiver requests are: California, Idaho, Illinois, and Iowa. States that have not requested a waiver are: Alabama, Alaska, Hawaii, Maine, Montana, Nebraska, New Hampshire, North Dakota, Pennsylvania, Texas, Vermont (request withdrawn), West Virginia, and Wyoming.

Energy

LEGISLATIVE ACTIVITY

- **Congressional Hearings.** On Tuesday, September 11, the House Natural Resources Committee will hold a hearing on Energy Secretary Steven Chu's March 16 memorandum to the Power Marketing Administrations and the House Financial Services Committee will hold a hearing on the future of the Terrorism Risk Insurance Program. On Wednesday, September 12, the Senate Energy and Natural Resources Committee will hold a hearing on the Nuclear Waste Administration Act of 2012 (S. 3469). On Thursday, September 13, the House Natural Resources Committee will hear from Interior Department officials regarding edits made to the Administration's Drilling Moratorium Report and the House Energy and Commerce Committee will hold a hearing regarding the "Outlook for Achieving North American Energy Independence Within the Decade".

REGULATORY ACTIVITY

- **Electric Vehicles.** Comments on the Department of Energy's guiding document for the new "EV Everywhere" challenge are due October 29. The initiative seeks to enable domestic companies "to be the first in the world to produce plug-in electric vehicles that are as affordable and convenient for the average American family as today's gasoline-powered vehicles within the next ten years."
- **National Advisory Council on Innovation and Entrepreneurship.** The Council will next meet on Tuesday, September 11, at the U.S. Department of Commerce to discuss the latest Administration initiatives related to innovation, entrepreneurship, and commercialization around manufacturing, exports, and investment.
- **DOE SEAB.** The Department of Energy will formally renew the Secretary of Energy Advisory Board for a two-year period beginning August 30. The Committee provides advice and recommendations on a wide range of energy-related policy issues.
- **Offshore Leases.** The Bureau of Ocean Energy Management has re-opened the comment period for the Western Planning Area Lease Sale 233 and Central Planning Area Lease Sale 231 due to an incorrect email address being listed. Any additional comments are due by Monday, September 10.
- **Offshore Drilling Safety Rule.** The Bureau of Safety and Environmental Enforcement's final drilling safety rule becomes effective October 22. The rule was formally released on August 22.
- **Hydraulic Fracturing.** Nominations to serve as experts on the Environmental Protection Agency's Science Advisory Board's Hydraulic Fracturing Advisory Panel are due by Tuesday, September 11.
- **Nuclear/Fukushima.** The Nuclear Regulatory Commission's Japan Lessons-Learned Project Directorate has issued Interim Staff Guidance regarding: Requirements for Mitigation Strategies for Beyond-Design-Basis External Events, Reliable Hardened Containment Vents, and Reliable Spent Fuel Pool Instrumentation.

Environment

LEGISLATIVE ACTIVITY

- **Land and Minerals.** On Thursday, September 13, the House Committee on Natural Resources will hold an oversight hearing to ask questions of U.S. Department of Interior officials including Neal Kemkar, Special Assistant to the Counselor to the Secretary, and Mary Katherine Ishee, Senior Advisory and Deputy Chief of Staff to the Assistant Secretary for Land and Minerals Management.
- **Federal and Non-Federal Lands.** On Friday, September 14, the House Committee on Natural Resources, Subcommittee on Indian and Alaska Native Affairs will hold an oversight hearing entitled, "Per Capita Act and Federal Treatment of Trust Per Capita Distributions." The hearing will discuss the development of trust natural resources that provide benefits to tribal members.
- **Weather Forecasting.** On Wednesday, September 12, the House Committee on Science, Space and Technology, Subcommittee on Investigations and Oversight will hold a hearing on the funding of the National Weather Service and the impact of funding on the future of weather forecasting. The subcommittee will hear testimony from Dr. Kathryn D. Sullivan, Assistant Secretary of Commerce for Environmental Observation and Prediction and Deputy Administrator for the National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

REGULATORY ACTIVITY

- **Great Lakes.** On Friday, September 7, the U.S. and Canada signed an updated Great Lakes Water Quality Agreement. The agreement, last updated in 1987, addresses health issues in the Great Lakes region and is intended to be a model of binational cooperation to protect water quality. The two governments began negotiations in 2009 to strengthen the agreement.
- **Industrial Energy Efficiency.** President Obama has issued Executive Order No. 13624, *Accelerating Investment in Industrial Energy Efficiency*, in effort to promote American manufacturing by helping to facilitate investments in energy efficiency at industrial facilities. The Order outlines variety of approaches, including encouraging private sector investment by setting goals and highlighting the benefits of investment, improving coordination at the Federal level, partnering with and supporting States, and identifying investment models beneficial to the multiple stakeholders involved. The Order directs executive departments and agencies to convene national and regional stakeholders to identify, develop, and encourage the adoption of investment models and state best practice policies for industrial energy efficiency.
- **Diesel Engines.** EPA has issued a Final Rule establishing nonconformance penalties for manufacturers of heavy heavy-duty diesel engines (HHDDE) in model years 2012 and later for emissions of oxides of nitrogen (NOX). EPA had also proposed nonconformance penalties for medium heavy duty diesel engines, however, EPA is not taking final action with regard to these

engines at this time because it has not completed review of the data and comments regarding these engines. The HHDDE rule became effective September 5.

- **Logging.** EPA is proposing revisions to its Phase I stormwater regulations to clarify that stormwater discharges from logging roads do not constitute stormwater discharges associated with industrial activity and that a National Pollutant Discharge Elimination System (NPDES) permit is not required for these stormwater discharges. Comments on the proposed rule must be received on or before October 4.

Financial Services

LEGISLATIVE ACTIVITY

- **Senators to Discuss Consumer Protection Agency.** On Thursday, September 13, the Senate Banking Committee hearing will hold hearing titled “Holding the CFPB Accountable: Review of Semi-annual Report to Congress.” Richard Cordray, the Director of the Consumer Financial Protection Bureau, will testify.
- **House Hearing on JOBS Act.** On Thursday, September 13, the House Financial Services Capital Markets Subcommittee and the Oversight and Government Reform Subcommittee on TARP and Financial Services will hold a joint hearing on the implementation of the JOBS Act (Jumpstart Our Business Startups Act).
- **Financial Services Committee to Consider Legislative Proposals.** The House Financial Services Committee is scheduled to hold a mark-up session on Wednesday, September 12. Among those items likely to be addressed, Committee is expected to consider H.R. 2827, a proposal to address fiduciary duties for municipal advisors. The proposal was previously approved by the Capital Markets Subcommittee, with agreement from the bill's sponsor Representative Robert Dold (R-IL) that the definition of a municipal advisor would be amended to ensure bipartisan support.
- **Senate Committee Reportedly Investigating JPMorgan Derivatives Trading Losses.** According to recent media reports, the Senate Permanent Subcommittee on Investigations is reviewing information related to JPMorgan's \$6 billion in derivatives trading losses through its Chief Investment Office. The Subcommittee, chaired by Senator Carl Levin (D-MI), has previously held hearings on and issued reports related to the 2008 financial crisis.

REGULATORY ACTIVITY

- **SEC Reschedules Market Technology Roundtable.** The Securities and Exchange Commission will hold its market technology roundtable on October 2, instead of September 14, to accommodate scheduling conflicts and to better respond to strong interest from individuals and groups wishing to participate in the roundtable discussion. The roundtable will consist of two panels focused on the relationship between the operational stability and integrity of the securities markets and the ways that

market participants design, implement, and manage complex and interconnected trading technologies.

- **CFTC to Hold Rulemaking Open Meeting.** On Wednesday, September 12, the Commodity Futures Trading Commission (CFTC) will hold a public meeting to consider (i) Proposed Rules on Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations and (ii) Final Rules on Adaptation of Existing Regulations to Incorporate Swaps.

Health Care

LEGISLATIVE ACTIVITY

- **House Small Business Hearing.** The House Committee on Small Business Subcommittee on Healthcare and Technology will hold a hearing on Tuesday, September 11 on “Medicare’s Durable Medical Equipment Competitive Bidding Program: How are Small Suppliers Faring?” Witnesses include Laurence Wilson, Director of the Chronic Care Policy Group at the Centers for Medicare and Medicaid Services (CMS), Dr. Peter Cramton of the University of Maryland, Tammy Zelenko with Advacare Home Services on behalf of the American Association for Home Care, and Randy Mire, Owner of Gem Drugs on behalf of the National Community Pharmacists Association.
- **House Ways and Means Hearings.** The House Committee on Ways and Means Subcommittee on Oversight will hold a hearing on Tuesday, September 11 on the “Internal Revenue Service’s Implementation and Administration of the Democrats’ Health Care Law.” The hearing will focus on the IRS’s implementation of various tax provisions enacted in the Democrats’ health care law and consider how the agency’s implementation of the law will affect taxpayers and its core revenue-collection mission. The Subcommittee on Health will also hold a hearing on Wednesday, September 12, on the “Implementation of Health Insurance Exchanges and Related Provisions.” The hearing will focus on the implementation status of health insurance exchanges and related regulations.
- **House Oversight Hearing.** The House Committee on Oversight and Government Reform will hold a hearing on Wednesday, September 12, on “Dawood National Military Hospital, Afghanistan: What Happened and What Went Wrong? Part II”.
- **House VA Hearing.** The House Committee on Veterans’ Affairs Subcommittee on Health has scheduled a hearing on Friday, September 14, entitled “VA Fee Basis Care: Flawed Policies not a Fix for a Flawed System.”

REGULATORY ACTIVITY

- **Mental Health Executive Order.** The Executive Office of the President has released an Executive Order entitled “Improving Access to Mental Health Services for Veterans, Service Members, and Military Families.” As part of the Administration’s ongoing efforts to improve all facets of military mental health, this order directs the Secretaries of Defense, Health and Human Services, Education,

Veterans Affairs, and Homeland Security to expand suicide prevention strategies and take steps to meet the current and future demand for mental health and substance abuse treatment services for veterans, service members, and their families. The Order directs agencies to boost research on the prevention, diagnosis, and treatment of mental health conditions, expand the mental health workforce, and establish a suicide prevention network.

- **IRS and HHS Employer Guidance Released.** The Administration issued two new guidance documents on employer health care responsibilities under the Affordable Care Act (ACA). The Internal Revenue Service (IRS) guidance attempts to define who counts as a full-time employee and offers an explanation of safe harbors. The second document, issued by the Centers for Medicare and Medicaid Services (CMS), provides temporary guidance regarding the 90-day waiting period limitation in the Public Health Service Act. Both notices may be revised after the end of 2014.

OTHER HEALTH NEWS

- **MACPAC Meeting.** The Medicaid and CHIP Payment and Access Commission (MACPAC) has scheduled a public meeting on September 20 and 21. An agenda will be released in advance of the meeting.
- **IOM Meeting.** The Institute of Medicine's Forum on Microbial Threats will host a public symposium to explore the scientific and policy dimensions of developing and maintaining an effective public health system and workforce for the surveillance, detection, and response to infectious disease threats to health. Topics to be discussed may include: the changing nature of communicable and non-communicable diseases and their impact on global health and economic well-being; the current level of preparedness of domestic and international public health systems for anticipating, preventing, detecting, and responding to communicable disease outbreaks; opportunities to improve and sustain public health preparedness at the local, state, regional, national, and international levels; and, the impact of real or anticipated budget cutbacks on the health of the public and public health agencies in general -- particularly in times of fiscal austerity.
- **IOM Report.** The Institute of Medicine has released a report entitled "Best Care at Lower Cost: The Path to Continuously Learning Health Care in America." IOM convened the Committee on the Learning Health Care System in America to explore central challenges to health care today. The product of the committee's deliberations, [Best Care at Lower Cost](#), identifies three major imperatives for change: the rising complexity of modern health care, unsustainable cost increases, and outcomes below the system's potential.

International, Defense, Homeland Security

- **National Security on the Campaign Trail.** Several prominent Republican and Democratic Convention speakers seized the opportunity to criticize their opponents on national security grounds over the past two weeks. On the Republican side, former Bush Secretary of State Condoleezza Rice, 2008 GOP nominee Senator John McCain (R-AZ), and Senate Foreign Relations Committee Member

Marco Rubio (R-FL) served as the Romney-Ryan campaign's most high-profile foreign policy surrogates. All three GOP speakers accused the Obama-Biden Administration of insufficient leadership on international challenges ranging from responding to opportunities emerging from the Arab Spring to managing the Russian reaction to missile defense deployments in Europe. Senator McCain particularly chastised the Administration for what he deemed an overly passive approach to the conflicts in Syria, Iraq, Afghanistan, and Libya and the nuclear threat from Iran, as well as its openness to drastic defense cuts under sequestration. Governor Romney echoed those themes in his own remarks in Tampa, although he spent comparatively less time on national security issues. Notably, though, Republican Convention speakers did not focus their criticisms on the Administration's homeland security or trade record.

For their part, conscious of recent polling's indications of a war-weary U.S. electorate, the Democrats did not shy away from the very same national security topics that the Republicans covered. To the contrary, Democratic luminaries in Charlotte embraced the chance to expand President Obama's solid polling edge on national security matters by emphasizing the Administration's foreign policy record. From Vice President Biden to Senate Foreign Relations Committee Chairman and 2004 nominee John Kerry (D-MA) to former Clinton Secretary of State Madeleine Albright to President Obama himself, Democratic speakers stressed the Administration's role in the demise of Osama bin Laden and the Gaddafi regime in Libya, the winding down of the U.S. troop presence in Iraq and Afghanistan, human rights improvements in Burma, and political liberalization in the Middle East. Even while defending the Obama-Biden national security record, as on domestic policy, a key component of the Democratic strategy was to frame the election as a choice, rather than a referendum. In that regard, Senator Kerry arguably took the lead in portraying Governor Romney as unprepared and out-of-touch on foreign policy matters. A prospective Secretary of State in a second Obama term, Senator Kerry said Romney "talks like he's only seen Russia by watching Rocky IV" and lambasted the Governor's criticism of the Olympic preparations of "our closest ally" as part of a "blooper reel" of a foreign trip.

- **Russia PNTR Developments.** The U.S. business community has begun a major push to encourage the House and Senate to take up legislation when Congress returns to lift Jackson-Vanik trade restrictions and grant Permanent Normal Trade Relations (PNTR) status to Russia and Moldova. The House Ways and Means Committee and the Senate Finance Committee reported out PNTR legislation before the August recess, but both chambers await floor action. Prior to a House floor vote on Russia PNTR, which could come in September if the Administration and Senate Leadership signal their support, the House Leadership will add targeted "Magnitsky bill" human rights sanctions that already have passed the House Foreign Affairs Committee (HFAC). Following that action, Russia PNTR is expected to pass the House, with solid support from both sides of the aisle.

Sequestration

To offset the required increase in the debt ceiling, the Budget Control Act of 2011 (BCA / P.L. 112-25) mandated that a sequestration process would commence on January 2, 2013 if the Joint Select Committee on Deficit Reduction and Congress failed to craft a \$1.2 trillion deficit reduction plan. The sequestration process will include automatic, across-the-board reductions in defense and non-defense discretionary spending.

- **Sequestration Transparency Act.** As the January 2, 2013 implementation date for sequestration nears, there is mounting concern regarding the lack of progress in forestalling the sequestration process. On August 7, President Barack Obama signed the Sequestration Transparency Act of 2012 (P.L. 112-155) which instructs the Administration to detail, within 30 days, how federal agencies would implement the initial \$109 billion in automatic sequestration cuts scheduled to go into effect on January 2, 2013. While the deadline was September 6, the Administration is reportedly delaying release of the document until late this week.
- **House Armed Services Committee Hearing.** On Tuesday, September 11, the House Subcommittee on Oversight and Investigations of the House Armed Services Committee will meet to receive testimony on Navy shipbuilding and impacts on the defense industrial base in a time of fiscal uncertainty. Sequestration will likely be a key issue of discussion. Scheduled to testify are the Honorable Sean J. Stackley, Assistant Secretary of the Navy for Research, Development and Acquisition, and Rear Admiral Thomas J. Eccles, USN Chief Engineer and Deputy Commander for Naval Systems Engineering, Naval Sea Systems Command.
- **Stakeholder Efforts / WARN Act Layoff Notices.** Increased advocacy efforts by a number of diverse interest groups and defense industry representatives have heightened awareness of the harmful impact and job loss sequestration poses to public safety, education, the military and defense industry, as well as national security activities. Of particular concern were anticipated government contractor layoff notices required by the 1988 Worker Adjustment and Retraining Notification (WARN) Act (P.L. 100-379). The WARN Act requires government contractors, including defense companies, to provide workers with 60 days notice before mass layoffs. However, on July 31 the Department of Labor issued guidance that excused these notices due to the uncertainty of the implementation of the sequestration process.
- On Tuesday, September 18, Deputy Defense Secretary Ashton Carter will meet with the 18-member executive committee of the Aerospace Industries Association (AIA) to discuss sequestration and how contracts will be handled. The committee includes key executives from Pratt & Whitney, Lockheed Martin Corp, Northrop Grumman, Boeing and General Dynamics. The AIA has forecast that sequestration would result in the loss of 2.14 million jobs.

Tax

LEGISLATIVE ACTIVITY

- **Summer Wrap-Up and Look-Ahead.** Action should remain light on tax-related issues through the fall campaign until the lame duck session when major tax issues must be addressed, including the looming expiration of the Bush tax cuts for all taxpayers, tax extenders, and the AMT, which is not yet patched for 2012. The parties may also discuss a framework for comprehensive tax reform that could take shape in early 2013.
- **Bush Tax Cuts.** Shortly before adjourning for August recess, Senate Democrats and House Republicans each passed dueling extensions of the so-called Bush tax cuts. By a 51-48 margin, the Democratic-controlled Senate approved legislation that would extend for one year (through 2013) the current tax structure for individuals with adjusted gross income below \$200,000 (\$250,000 in the case of married taxpayers filing jointly). The legislation would allow tax rates to rise for taxpayers with income above \$200,000/\$250,000, which would affect both ordinary and investment income. The bill did not include any provisions relating to the estate tax, which, absent legislation, reverts to pre-2001 policy (\$1 million exemption, with a top rate of 55 percent) come January, though Senate Democrats stated they would turn to that issue later this year. Meanwhile, the Republican-controlled House, by a 256-171 margin, passed legislation that would extend the Bush tax cuts for all taxpayers, including the 2011-2012 estate tax structure (\$5.12 million per spouse exemption, indexed for inflation, with a 35 percent rate for larger estates) through 2013.
- **Tax Extenders:** In addition, in early August, the Senate Finance Committee reported legislation focused on the tax “extender” provisions that expired at the end of 2011 and those that are due to expire at the end of 2012. The Committee acted to extend most, but not all, of the business and individual extenders through 2013 (retroactive to the beginning of 2012 for those provisions that have already expired). Key provisions in the bill include: extension and modification of the research and development (R&D) tax credit, extension of the active financing exception, and an extension allowing taxpayers to deduct state and local sales taxes in lieu of State and local income taxes. The legislation also included a two-year (through 2013) AMT patch for individuals.

It is not expected that this legislation will move through the Senate prior to November, but it could serve as a starting point for discussions during the lame-duck session. The House has not yet acted on tax extenders, though the Ways and Means Committee, which has held two hearings on extenders, continues to evaluate all provisions with an eye toward narrowing the extender list when it acts later this year.

- **Rhetoric Sharpened in Convention Speeches.** Although activity on tax was light during August, the rhetoric at the Republican and Democratic convention speeches has continued the sharp debate over extension of the Bush tax cuts and the proper role of tax reform. At the Republican Convention, Mitt Romney stated that he would “not raise taxes on the middle class,” which in effect is a reminder

that he plans to extend, in full, the Bush tax cuts while using tax reform to broaden the tax base and lower rates on a revenue-neutral basis, rather than for deficit reduction purposes.

On the other hand, at the Democratic Convention, President Obama reiterated his desire to let the Bush tax cuts expire on those earning above \$250,000 and stated emphatically that he would not "ask middle class families to give up their deductions for owning a home or raising their kids just to pay for another millionaire's tax cut." The President also used sharp rhetoric with regards to corporate taxation, stating that voters "have a choice: we can give more tax breaks to corporations that ship jobs overseas, or we can start rewarding companies that open new plants and train new workers and create new jobs here, in the United States of America."

- **Tax Hearings Next Week.** The following tax hearings are scheduled in the House Ways and Means and Senate Finance Committees next week:

Tuesday, September 11: House Ways and Means Subcommittee on Oversight hearing on the Internal Revenue Service's Implementation and Administration of the Democrats' Health Care Law.

TechComm

LEGISLATIVE ACTIVITY

- **Government Spectrum.** The House Subcommittee on Communications and Technology has scheduled a hearing on September 13 entitled "Creating Opportunities through Improved Government Spectrum Efficiency." Witnesses have not been announced yet.
- **Wireless Surveillance.** Congressman Ed Markey (D-MA) has circulated a draft legislation that would call on courts and law enforcement to report on wireless surveillance practices that so far have gone unreported. Markey released the discussion draft as part of his ongoing investigation that indicated that more than 1.3 million requests were made last year by law enforcement for consumer mobile phone information. In July, Rep. Markey released responses from nine wireless carriers to his inquires requests by law enforcement for consumers' mobile phone data, including text messages, call records, geolocation, and cell phone tower "dumps." Markey also sent the Department of Justice a letter asking the agency about its current mobile phone surveillance activities. Among other issues, Markey's discussion draft of The Wireless Surveillance Act of 2012 would require regular disclosures from law enforcement on the nature and volume of requests they make; discourage information requests such as cell tower "dumps;" and direct the Federal Communications Commission (FCC) to limit how long carriers can keep consumers' personal information. Markey hopes to build consensus for the discussion draft with the intent to introduce the bill when Congress returns in early September.

REGULATORY ACTIVITY

- **FCC Incentive Auction.** The Federal Communications Commission (FCC) released the agenda for its September 28 meeting, which includes a notice of proposed rulemaking (NPRM) to implement an

incentive auction of spectrum voluntarily returned by television broadcasters, with plans to conduct both the “reverse” and “forward” auctions in 2014. The Middle Class Tax Relief and Job Creation Act of 2012 authorizes the FCC to conduct a “reverse” auction under which broadcasters could bid on the amount of payments that would convince them to relinquish their spectrum and stop broadcasting, move to another channel, or share spectrum with other stations. Low bids would generally be accepted and contribute to payment for the deployment of a public safety broadband network and deficit reduction. The FCC also would propose steps to relocate and “repack” the remaining broadcast signals and then hold a “forward” auction.

The draft NPRM was being circulated among the FCC Commissioners on September 7. In its present form, according to media reports, it would seek comment on proposals for how to conduct reverse auctions, in which full-power and class A broadcast licensees would compete to supply spectrum at a low price, and forward auctions, in which parties would compete to be high bidders for licenses to use the relinquished broadcast spectrum for mobile broadband services. The draft NPRM also would seek comment on how to design a band plan for the spectrum and on how to conduct the transition during which broadcast operations would be repacked.

According to sources, the FCC intends to provide 60 days for public comment on the NPRM and 45 days for reply comments. A report and order would follow sometime in mid 2013. The target date for both auctions, which the draft NPRM proposed be held concurrently, would occur in 2014.

By holding the auctions concurrently, the Commission would be able to determine how far the bids in the forward auction will go toward covering spectrum offers in the reverse auction. Among the other issues on which the draft NPRM would seek comment are eligibility to participate in the auctions, how bids should be submitted, and how to preserve service areas for broadcasters during the repacking process.

In a statement, FCC Chairman Julius Genachowski said “If adopted, the incentive auction proposal before the Commission will accelerate these strategies. Incentive auctions will help create jobs and strengthen U.S. competitiveness in a world where, increasingly, mobile leadership is required for leadership in the global innovation economy. The proposal would also free up a significant amount of unlicensed spectrum for innovative WiFi-like uses, and create the first uniform, national low-band unlicensed spectrum in any country.” A separate item on the September 28 agenda calls for the Commission to review the way it makes decisions about mobile spectrum holdings that would lead to too much spectrum being controlled by a single entity. If that proceeding is completed in time, it could impact Commission decisions about eligibility to participate in the forward auction of the incentive auction proceeding.

- **State/Local Implementation Grants.** The Commerce Department’s National Telecommunications and Information Administration (NTIA) on August 21 NTIA issued a Notice announcing requirements for the State and Local Implementation Grant Program authorized the Middle Class Tax Relief and Job Creation Act of 2012 (Act). The Notice describes the programmatic requirements under which NTIA will award grants to assist state, local, and tribal governments with planning for a nationwide interoperable public safety broadband network. In its Notice, NTIA did not announce procedures for the submission of grant applications. Instead NTIA intends to release a Federal Funding Opportunity

(FFO) notice that will provide information on topics including: the amount of funding available for award and how NTIA will allocate funds to applicants, instructions on the application process, and the evaluation criteria for application review. NTIA expects to issue the FFO and open the application window during the first quarter of calendar year 2013. Up to \$135 million will be available through the State and Local Implementation grant program. Witnesses have not been announced.

- **Public Safety STAs.** The FCC on August 29 adopted an Order on Reconsideration to expand the scope of applications for Special Temporary Authority (STA) to operate public safety broadband networks to include both existing public safety broadband spectrum and spectrum in the 700 MHz band known as the "D block." The latest FCC action expands the agency's earlier thinking in a July 31 Order that permitted applications only for STAs of the existing public safety broadband spectrum (763-768 MHz/793-798 MHz). Under the Order on Reconsideration, the FCC will now also consider STAs for operations that span the both the existing public safety broadband spectrum and the 700 MHz D Block (758-763 MHz/788-793 MHz). The FCC based its latest decision on an August 17 letter from the National Telecommunications and Information Administration (NTIA) requesting that the FCC provide STA authority for the entire 20 MHz of public safety broadband spectrum in order to "further the critical goal of advancing interoperability as well as mitigating cost concerns associated with the deployment of a nationwide public safety broadband network."

Transportation

LEGISLATIVE ACTIVITY

- **Implementation of MAP-21 (SAFETEA-LU Reauthorization).** Since the passage of the Moving Ahead for Progress in the 21st Century Act (MAP-21) (H.R.4348), the Department of Transportation has focused on the rollout of new policy provisions and programs. The new law will go into effect on October 1, 2012 and both the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) have stated their intent to release guidance on the implementation of MAP-21 in September.
- **TIFIA.** The TIFIA program provides Federal credit assistance in the form of direct loans, loan guarantees, and lines of credit to finance surface transportation projects of national and regional significance. Under MAP-21, funding for the TIFIA program was increased from \$122 million annually to \$750 million in FY 2013 and \$1 billion in FY 2014. A notice of funding availability (NOFA) and request for comments was published in the Federal Register on August 1. This NOFA announced the availability of TIFIA credit assistance for fiscal years 2013 and 2014 and invited eligible applicants to submit Letters of Interest (LOI) for the newly authorized funding. Under MAP-21, LOIs will now be accepted and reviewed on a rolling basis.