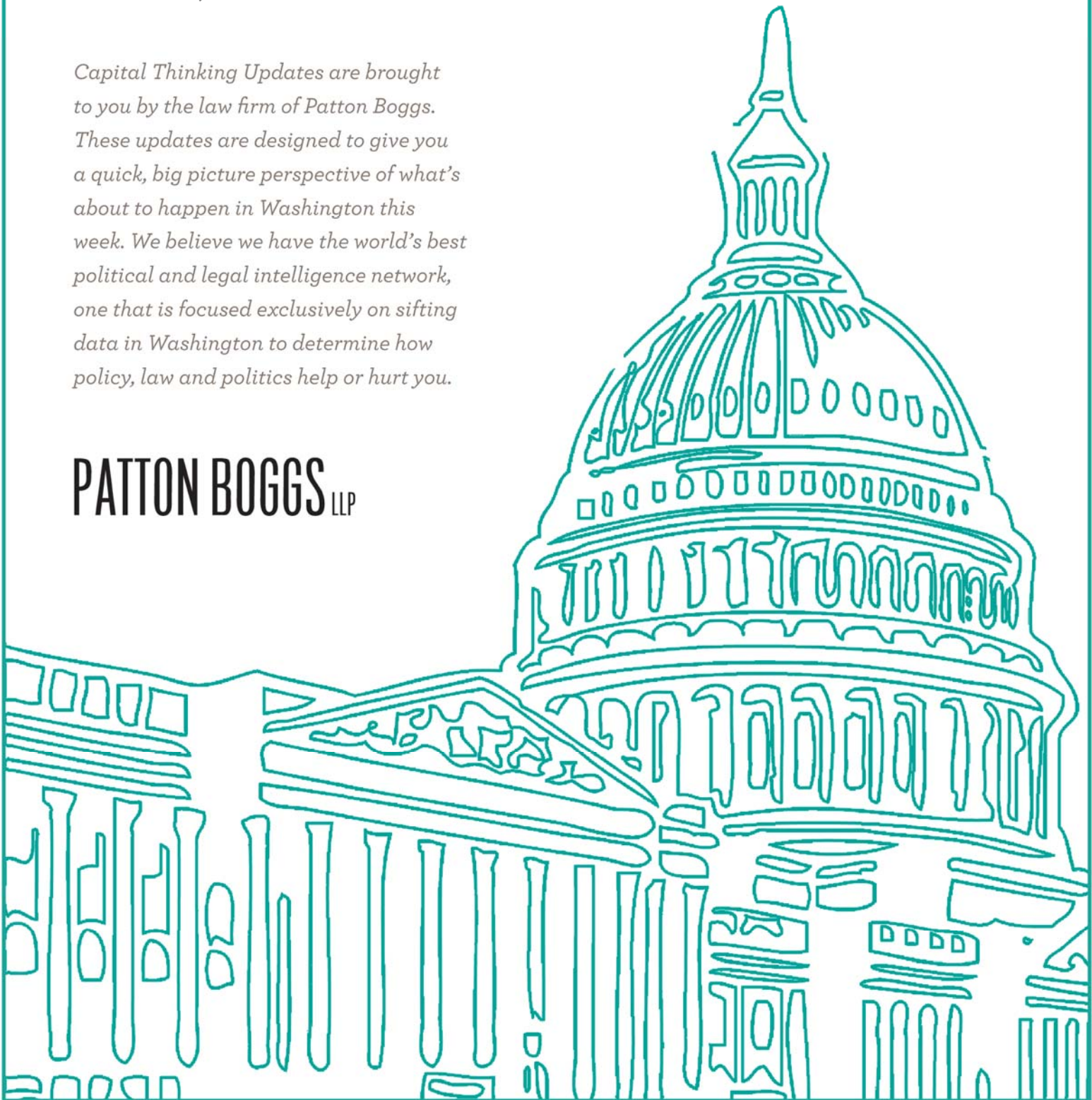


CAPITAL **thinking** UPDATES

June 18, 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, the House will meet at 2:00 p.m. for legislative business. The House will consider the following bills under suspension of the rules: (1) H.R. 4027 - To clarify authority granted under the Act entitled "An Act to define the exterior boundary of the Uintah and Ouray Indian Reservation in the State of Utah, and for other purposes;" (2) H.R. 1272 - Minnesota Chippewa Tribe Judgment Fund Distribution Act of 2012; (3) H.R. 1556 - To amend the Omnibus Indian Advancement Act to allow certain land to be used to generate income to provide funding for academic programs, and for other purposes; (4) S. 684 - A bill to provide for the conveyance of certain parcels of land to the town of Alta, Utah; (5) S. 404 - A bill to modify a land grant patent issued by the Secretary of the Interior; (6) S. 997 - East Bench Irrigation District Water Contract Extension Act; (7) H.R. 2938 - Gila Bend Indian Reservation Lands Replacement Clarification Act; (8) H.Res. 683 - Expressing the regret of the House of Representatives for the passage of laws that adversely affected the Chinese in the United States, including the Chinese Exclusion Act; (9) H.R. 3668 - Counterfeit Drug Penalty Enhancement Act of 2012, as amended. On Tuesday, the House will consider H.R. 2578, the Conservation and Economic Growth Act. On Wednesday, the House will consider a Motion to Instruct Conferees on H.R. 4348, the Surface Transportation Extension Act of 2012, Part II. Thereafter, the House will consider H.R. 4480, the Strategic Energy Production Act of 2012, for the balance of the week.

The Senate will convene at 3:00 p.m. on Monday and recognize the Majority Leader. At 5:00, the Senate will proceed to executive session to consider the nomination of Mary Geiger Lewis, of South Carolina, to be United States District Judge for the District of South Carolina.

Agriculture

LEGISLATIVE ACTIVITY

- **Senate Farm Bill Timeline.** During the week of June 11, the Senate failed to adopt a unanimous consent agreement, despite efforts by Senate Majority Leader Harry Reid (D-NV), Senate Agriculture Committee Chairwoman Debbie Stabenow (D-MI), and Ranking Member Pat Roberts (R-KS). With the list of amendments totaling over 280, Senator Stabenow said on Thursday, June 14, that the leadership has begun to narrow the list of amendments, and she hopes to bring a few dozen amendments to the floor for a vote during the week of June 18.

The Senate adjourned on Thursday without announcing an agreement on which amendments to consider and will reconvene at 3:00 pm on Monday, June 18, to resume consideration of the Farm Bill. Several members, including Senator Tom Coburn (R-OK), argued for a more open debate on amendments.

- **Senate Farm Bill Votes.** During the week of June 11, the Senate debated and voted on two amendments.
 - **Sugar Reform.** On Wednesday, June 13, the Senate voted to table (50 to 46) Senator Jeanne Shaheen's (D-NH) amendment that would eliminate the U.S. sugar program. The vote effectively killed the amendment. During floor debate, Senator Stabenow defended sugar producers, stating that the program does not cost taxpayers a single dollar, nor does it impede imports. Senators Kent Conrad (D-ND), Amy Klobuchar (D-MN), Mike Enzi (R-WY), Mike Crapo (R-ID), and Max Baucus (D-MT) agreed. Senator Pat

Toomey (R-PA) suggested that the majority leader should have offered Senator Shaheen's "moderate" sugar amendment, which would have scaled back the sugar program. To this end, Senator Toomey filed an amendment later in the week.

- **Supplemental Nutrition Assistance Program.** On Wednesday, June 13, the Senate also voted to table (65 to 33) Senator Rand Paul's (R-KY) amendment that would restructure the Supplemental Nutrition Assistance Program (SNAP) as a block grant program. The vote effectively killed the amendment. During floor debate, Senator Stabenow argued that modifying the program in this way would cut over half of the current levels of SNAP funding and make the program less responsive to recipients' needs. Senators Frank Lautenberg (D-NJ) and Kirsten Gillibrand (D-NY) echoed these concerns. Senator Paul filed another SNAP block grant amendment later in the week.
- **Senate Farm Bill Amendments.** The question of which amendments will receive a vote next will depend on the negotiations that persist within the Senate leadership. As reported in last week's *Capital Thinking Update*, there remains a rift between southern Senators and the Senate Agriculture leadership regarding the treatment of rice and peanuts under the proposed Agriculture Risk Coverage program. To this end, Members have filed amendments regarding rice, peanut, and cotton farming.

Additional amendments filed this week included:

- Replacing the commodity title with a target-price based program.—Senator Kent Conrad (D-ND)
- Providing alternative counter-cyclical payments for rice and peanut producers.—Senator Saxby Chambliss (R-GA)
- Requiring a study on the operations of the crop insurance program and any regional disproportionate effects.—Senator John Thune (R-SD)
- Restricting the definition of food in the SNAP program to those "necessary for essential nutrition."—Senator Jim DeMint (R-SC)
- Replacing the current SNAP program with a block grant program.—Senator Rand Paul (R-KY)
- Allowing states to require labeling of genetically-engineered foods.—Senator Bernie Sanders (I-VT)
- Striking the dairy program.—Senator Jim DeMint (R-SC)
- Including shellfish fishermen in the bill.—Senator Lisa Murkowski (R-AK)
- Providing for studies into poultry grower issues.—Senator Christopher Coons (D-DE)
- Scaling back the sugar program.—Senator Pat Toomey (R-PA)
- **House Markups.** The House Appropriations Committee is scheduled to mark up the FY 2013 agriculture spending bill on Tuesday, June 19. The House Agriculture Committee markup of the Farm Bill is expected to be scheduled for the last week in June.

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Budget, Appropriations

LEGISLATIVE ACTIVITY

- **FY 2013 Appropriations Action.** Last week, the Senate Appropriations Committee approved its Labor-HHS-Education and Financial Services spending bills after considering a large number of amendments during mark up. The bills both passed the committee along party lines with votes of 16 to 14. Interestingly, during the Senate Labor-HHS subcommittee mark up earlier in the week, Republicans went against convention and demanded a roll call vote on the draft bill due to objections over several funding provisions, including \$4 billion for implementation of the 2010 healthcare law (most draft bills have been approved by voice vote or significant majority in previous Senate subcommittee markups). The Senate Labor-HHS-Education bill is approximately \$9 billion more than the allocation that House appropriators approved for their bill; this funding difference and the numerous policy differences make this the most controversial of all of the FY 2013 spending bills and likely the most difficult to reconcile.

The House Appropriations Committee plans to consider its Transportation-Housing and Agriculture bills on Tuesday, June 19 and we anticipate that the Committee will also take up the Financial Services bill this week. Additionally, the House Subcommittee on Labor-HHS-Education is expected to mark up its draft bill this week. As of this writing, the Senate Appropriations Committee has not released its schedule for this week.

House Republican Position on Debt Ceiling Increase. Following the lead of House Speaker John Boehner (R-OH), a group of 56 House Republicans sent a letter to President Obama last week demanding that any future increases in the debt ceiling be matched with equal spending cuts and no tax increases.

Cybersecurity

LEGISLATIVE ACTIVITY

- **Senate Cybersecurity Legislation.** Homeland Security and Government Affairs Committee (HSGAC) Chairman Joe Lieberman (I-CT) said this week that he is confident that the Senate will consider his cybersecurity legislation (S. 2105) before the August recess but acknowledged that the Senate's summer calendar is still undecided. Given the amount of work anticipated in the lame duck session after the November elections, Chairman Lieberman urged his Senate colleagues to move quickly this summer on the bipartisan cybersecurity bill that he and HSGAC Ranking Member Susan Collins (R-ME) introduced in February.

A bipartisan group, led by Senators Sheldon Whitehouse (D-RI) and Jon Kyl (R-AZ), is working on a compromise to address the ongoing challenge on how to handle critical infrastructure – one of the current sticking points between supporters of Chairman Lieberman's bill and those that support Senator John McCain's bill (S. 2151) that does not include any regulations for critical infrastructure. An outline of the draft compromise was circulated this week and would include voluntary security performance standards for owners and operators of critical infrastructure and incentives for companies to meet the standards. The U.S. Chamber of Commerce has spoken out against the proposed compromise given that it would still impose new

requirements on industry. It is unclear whether this compromise language may be offered as a floor amendment to Chairman Lieberman's bill or if this would be wrapped up in a larger compromise agreement.

- Chairman Lieberman also hosted a cybersecurity briefing this week for lawmakers, staff, and the media led by two of the Department of Homeland Security's (DHS) top cybersecurity officials: Under Secretary for the National Protection and Programs Directorate Rand Beers and DHS's Deputy Undersecretary for Cybersecurity Mark Weatherford. In addition to providing an opportunity for Chairman Lieberman to advocate for his legislation, the briefing was also used to demonstrate commonly used hacking methods that could be used to access and manipulate computer systems and networks.

Education

LEGISLATIVE ACTIVITY

- **Appropriations.** As noted above, the Senate Appropriations Committee approved its FY 2013 Labor, Health and Human Services, and Education appropriations bill along party lines (16-14) on Thursday, June 14. The measure would provide \$68.5 billion for the Department of Education, which is approximately \$410 million more than the FY 2012 funding level. A few highlights include:
 - **Pell Grants.** An increase is provided for the Pell Grant program, allowing for a maximum award amount of \$5,635. However, the committee noted it is "extremely concerned" with the expected funding cliff for the program in FY 2014. The report estimates that an additional \$6 billion would be needed to support the current maximum award if the program is level-funded again in FY 2014. Therefore, the committee makes three recommendations to reform student financial aid programs to allow for additional Pell funding: (1) limit the duration of new borrowers' in-school interest subsidy to 150 percent of the normal time required to complete the degree; (2) reduce the amount of loan rehabilitation funds that may be retained by guaranty agencies; and (3) limit Pell Grants to cover only tuition, fees, books, and supplies (not room and board) for student enrolled in distance education programs only.
 - **Other Financial Aid Reforms.** The bill includes language to prohibit all colleges and universities receiving Higher Education Act funding from spending federal educational program dollars on advertising, marketing, and recruitment.
 - **Innovation.** The measure also looks to fund the President's newly requested ARPA-ED (\$44.8 million) and First in the World programs (\$40 million). Moreover, it provides \$1 billion to create his proposed Race to the Top: College Affordability and Completion initiative, which provides grant incentives to states committed to increasing college affordability, quality, and value.
 - **Early Childhood & K-12 Education.** In general, the bill includes a \$100 million increase for both Title I grants to districts and special education grants to states. Also included is \$600 million (\$51 million more than FY 2012) for Race to the Top, the Administration's signature education reform program, with a significant portion to be used for the Early Learning Challenge. \$80 million (\$20 million more than FY 2012) is provided for the Promise Neighborhoods program, designed to establish cradle-to-career services and improve educational outcomes for students in distressed neighborhoods.

- **Hearings.** The Senate Health, Education, Labor and Pensions Committee will hold a hearing Tuesday, June 19, titled "Forty Years and Counting: The Triumphs of Title IX." Title IX, enacted in 1972, requires gender equity for boys and girls in every educational program that receives federal funding. Additionally, the Research and Science Education Subcommittee of the House Science, Space and Technology Committee will hold a hearing titled "The Role of Research Universities in Securing America's Future Prosperity: Challenges and Expectations" on Wednesday, June 27.

REGULATORY ACTIVITY

- **College Affordability Data.** On Tuesday, June 11, the Department of Education updated some of its lists available on the [College Affordability and Transparency Center](#), which highlight the following information about institutions: (1) highest and lowest tuition prices; (2) highest and lowest net prices; and (3) fastest rising prices. These lists are required by the Higher Education Opportunity Act of 2008 and released as part of the Administration's college affordability initiatives.

Last year, the department published its first set of College Affordability and Transparency Lists. Unlike last year, the department has released full lists for consumers to compare institutions by providing tuition and net price information for all institutions, broken out by sector. A total of 4,165 institutions are included on the combined lists.

- **Report on Investments in Research Universities.** On Thursday, June 14, the National Research Council, which is the policy arm of the National Academies, released "[Research Universities and the Future of America: Ten Breakthrough Actions Vital to Our Nation's Prosperity and Security.](#)" The report concludes that the United States cannot remain a global leader in research without a sustainable model for investing in its public and private universities. The report is a follow-up to the Academies' 2005 report "Rising Above the Gathering Storm," which recommended actions the federal government could take to leverage its global competitiveness in the area of science and technology. In addition, the recently released report responds to a call from a bipartisan group of Members of Congress, who requested the Academies to identify 10 actions the federal government, state governments, research universities, and other stakeholders could take to "maintain the excellence in research and doctoral education needed to help the United States compete, prosper, and achieve national goals for health, energy, the environment, and security in the global community of the 21st century."
 - **Executive Order on Broadband Construction.** On Thursday, June 14, President Obama issued an Executive Order requiring federal agencies charged with managing federal properties and roads to adopt a uniform approach for allowing broadband carriers to build networks on and through such property. More specifically, the departments of Agriculture, Commerce, Defense, Interior, Transportation, and Veterans Affairs, as well as the Postal Service must offer carriers a single approach to leasing federal assets for broadband deployment. The Administration believes the Order will make broadband construction along federal roadways and properties up to 90 percent cheaper and speed the delivery of connectivity to communities, businesses, and schools.
- "US Ignite" Public-Private Partnership.** On Thursday, June 14, the White House also announced a newly-formed public-private partnership between nearly 100 partners (more than 25 cities as well as corporate and non-profit entities) and 60 national research universities called "US Ignite." The partnership is aimed at bringing together software developers and engineers from government and industry, with representatives from communities, schools, hospitals, and other institutions, to create new services using programmable

broadband networks running up to 100 times faster than today's Internet. For the coalition of universities, the National Science Foundation is directing \$20 million to prototype and deploy new technologies to advance the development of high-speed, programmable broadband networks.

Energy

LEGISLATIVE ACTIVITY

- **Utility Rule.** The procedural timeline to vote on Senator James Inhofe's (R-OK) Senate Joint Resolution 37, to disapprove of the Environmental Protection Agency's (EPA) final emission standards for certain fossil fuel-fired power generation units under the Congressional Review Act, is set to expire on Monday, June 18. Under a unanimous consent motion to extend that timeline, Senate leaders have indicated that a vote will be forthcoming once the Senate finishes consideration of the Farm Bill. Senators Lamar Alexander (R-TN) and Mark Pryor (D-AR) also plan to offer legislation that would provide utilities three additional years to complete necessary retrofits to comply with stricter air pollution standards. Even if the resolution were to be approved by the Senate and then by the House, the President almost assuredly would veto it. At that point, the resolution would be adopted only if it garnered a two-thirds vote in both the House and the Senate to override the veto. For that reason, we expect the final emissions standards to go into effect (unless successfully challenged in court).
- **Congressional Hearings.** On Tuesday, a House Energy and Commerce Subcommittee will hold a hearing to examine the federal "green jobs" agenda; a Senate Environment and Public Works Subcommittee will hold a hearing to review recent EPA air standards for hydraulically fractured natural gas wells and oil and natural gas storage; and the Senate Energy and Natural Resources Committee will receive testimony on the potential for induced seismicity from energy technologies, including carbon capture and storage, enhanced geothermal systems, production from gas shales, and enhanced oil recovery.

REGULATORY ACTIVITY

- **Hydraulic Fracturing.** EPA will host a public meeting on June 29 to discuss draft permitting guidance for the use of diesel fuel in hydraulic fracturing activities and to solicit input during the open comment period. The meeting will be at EPA headquarters in Washington, DC.
- **Rooftop Solar.** The Department of Energy plans to award \$10 million in "SunShot" prize money for the first three teams that can install 4,000 small-scale rooftop solar systems at an average price of \$2 per watt before December 31, 2014 under the "America's Most Affordable Rooftop Solar Competition". [Registration](#) begins on August 1.
- **Keystone XL Pipeline.** The Department of State will accept public comments until July 30 on TransCanada's application to construct the crude oil pipeline segment from the United States border crossing at Phillips, Montana to Steele City, Nebraska (which will ultimately be connected to the Texas Gulf Coast area). To issue a Presidential Permit, the State Department must find that issuance would serve the national interest.
- **FERC.** On July 17, Federal Energy Regulatory Commission staff will hold a technical conference to review the Small Generator Interconnection Agreements and Procedure as it relates to a petition for rulemaking recently submitted by the Solar Energy Industries Association. A free [webcast](#) will be available.

- **Nuclear.** The Nuclear Regulatory Commission (NRC) will accept public comments through August 15 on draft regulatory guidance regarding the “Initial Test Program of Emergency Core Cooling Systems for Boiling-Water Reactors.” This guide describes methods that NRC staff considers acceptable to implement initial testing features of emergency core cooling systems for boiling-water reactors.

Environment

LEGISLATIVE ACTIVITY

- **Air Standards.** On Tuesday, June 19, the Senate Committee on Environment and Public Works Subcommittee on Clean Air and Nuclear Safety will hold a hearing entitled, “Review of Recent Environmental Protection Agency’s Air Standards for Hydraulically Fractured Natural Gas Wells and Oil and Natural Gas Storage.”
- **Seismic Activity.** On Tuesday, June 19, the Senate Committee on Energy and Natural Resources will hold a full committee hearing to receive testimony on the potential for induced seismicity from energy technologies, including carbon capture and storage, enhanced geothermal systems, production from gas shales and enhanced oil recovery.
- **Hunting.** On Tuesday, June 19, the House Committee on Science, Space and Technology, Subcommittee on Investigations and Oversight will hold a hearing regarding how hunting impacts species conservation and management.

REGULATORY ACTIVITY

- **Motor Vehicle Air Conditioning.** The U.S. Environmental Protection Agency (EPA) has announced a final rule concerning motor vehicle air conditioning. Pursuant to the EPA’s Significant New Alternatives Policy (SNAP) program, this action lists carbon dioxide (CO₂), or R-744, as an acceptable substitute, subject to use conditions in motor vehicle air conditioning (MVAC) for passenger cars, light-duty and heavy-duty vehicles. This final rule only concerns the use of CO₂ in MVAC systems designed specifically for the use of CO₂ refrigerant. The substitute is non-ozone depleting and therefore does not contribute to stratospheric ozone depletion. This final rule becomes effective August 6, 2012.
- **Energy Efficiency.** The U.S. Department of Energy (DOE) has announced an upcoming energy efficiency and renewable energy webinar. The Energy Department will present a live webcast entitled “Brookhaven National Laboratory’s (BNL) Low-Platinum Electrocatalysts for Fuel Cell Electric Vehicles” on June 19, 2012, from 12:00 to 1:00 p.m. EST. The webcast will showcase electrocatalysts developed by BNL scientists that use less costly platinum and increase the effectiveness of fuel cells for use in electric vehicles. The session is targeted toward stakeholders in the fuel cell research community and will focus on BNL’s method to synthesize catalysts.
- **Environmental Jobs.** The EPA and the U.S. Department of Veterans Affairs (VA) Vocational Rehabilitation and Employment Program have announced a memorandum of understanding to connect veterans with disabilities to career opportunities in the water sector -- such as at wastewater plants and drinking water facilities -- as part of EPA’s Water Sector Workforce Initiative. EPA and the VA will work with water utilities, states and local VA counselors to promote water sector careers and resources for finding water jobs for

veterans as well as educational programs to help veterans transition into careers in water industries. More than one-third of all current water operators are eligible to retire within seven years, according to the U.S. Department of Labor, and employment for water and wastewater operators is expected to grow by 20 percent between 2008 and 2018, faster than the national average for all other occupations. For more on EPA's Water Sector Workforce Initiative, click here: http://water.epa.gov/infrastructure/sustain/ws_workforce.cfm. For more about VA connecting qualified veterans with employer needs, click here: <http://www.vetsuccess.gov>

- **Rio+20 Conference.** The United Nations (UN) Conference on Sustainable Development, Rio+20, will be held in Rio de Janeiro, Brazil from June 20-22. The Conference will be attended by world leaders and other participants from government, the private sector and NGOs. The focus of the Conference will be on two themes and seven priority areas:

Themes:

- Green economy with respect to sustainable development and poverty eradication
- Institutional framework for sustainable development

Priority Areas:

- Jobs
- Energy
- Sustainable cities
- Food security and sustainable agriculture
- Water
- Oceans
- Disaster readiness

Financial Services

LEGISLATIVE ACTIVITY

- **JPMorgan CEO, Regulators to Testify Before House Financial Services Committee.** On Tuesday, June 19, Jamie Dimon will appear before the House Financial Services Committee for a hearing titled, "Examining Bank Supervision and Risk Management in Light of JPMorgan Chase's Trading Loss." This hearing follows Mr. Dimon's appearance before the Senate Banking Committee last week. In addition to Mr. Dimon, the hearing will include Thomas J. Curry, Comptroller of the Currency; Mary Schapiro, Chairman, U.S. Securities and Exchange Commission (SEC); Gary Gensler, Chairman, U.S. Commodity Futures Trading Commission (CFTC); Martin J. Gruenberg, Acting Chairman, Federal Deposit Insurance Corporation; and Scott Alvarez, General Counsel, Federal Reserve Board of Governors.
- **Legislators to Discuss Market Structure.** On Wednesday, June 20, the House Financial Services Subcommittee on Capital Markets and Government Sponsored Enterprises Subcommittee will hold a hearing titled, "Market Structure: Ensuring Orderly, Efficient, Innovative and Competitive Markets for Issuers and Investors," focused on U.S. market structure. Witnesses include representatives from the NYSE, Quantlab, Getco, Knight Capital, and DirectEdge. The hearing will evaluate recent SEC proposals to change the current structure and the impact such a change would have on market competition, product innovation, market quality, smaller issuers and investors.
- **Senate Banking Subcommittee to Discuss Initial Public Offerings.** On Wednesday, June 20, the Senate Banking Subcommittee on Securities, Insurance, and Investment will conduct a hearing titled "Examining the

IPO Process: Is It Working for Ordinary Investors?" The witnesses will be: Ann Sherman, DePaul University; Joel H. Trotter, Latham & Watkins LLP; and Lise Buyer, Class V Group, LLC.

- **House Subcommittee to Discuss Money Services Business.** On Thursday, June 21, the House Financial Services Financial Institutions and Consumer Credit Subcommittee will meet for a hearing titled, "Safe and Fair Supervision of Money Services Businesses." This hearing will discuss issues surrounding the provision of retail banking services to money service businesses.
- **SEC Chairman to Discuss Money Market Mutual Funds.** On Thursday, June 21, the Senate Banking Committee will conduct a hearing titled "Perspectives on Money Market Mutual Fund Reforms." Mary Schapiro, SEC Chairman, will testify.

REGULATORY ACTIVITY

- **CFTC Technology Advisory Committee to Hold Meeting.** On Wednesday, June 20, the CFTC Technology Advisory Committee (TAC) will hold a meeting. The agenda is expected to include an update from the TAC's Subcommittee on High Frequency Trading and a discussion about aggregating liquidity for over-the-counter swaps traded on designated contract markets and swap execution facilities.
- **CFTC to Hold Open Meeting.** On Thursday, June 21, the CFTC will hold an open meeting to consider Proposed Interpretive Guidance on Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act (CEA) and Regulations thereunder, and a Proposed Exemptive Order Regarding Compliance with Certain Swap Regulations under the CEA.

Health Care

LEGISLATIVE ACTIVITY

- **Boustany Requests CMMI Info.** House Ways and Means Oversight Subcommittee Chairman Charles Boustany (R-LA) sent a letter to Health and Human Services (HHS) Secretary Kathleen Sebelius requesting information on the \$123 million in grants awarded to providers through the Center for Medicare and Medicaid Innovation (CMMI). The first round of Health Care Innovation Challenge grants were awarded to twenty-six organizations to test innovative payment and service delivery models to reduce expenditures while preserving and enhancing the quality of care, but require no Congressional review. The letter seeks to provide transparency on the application and selection process, and requests a response by June 27, 2012.
- **House Ways and Means Hearing.** The House Committee on Ways and Means Subcommittee on Health will hold a hearing on Tuesday, June 19, 2012 on the Medicare Payment and Advisory Commission's (MedPAC) June report to Congress on reforming Medicare and its payment policies.
- **House Budget Hearing.** The House Committee on the Budget will meet on Tuesday, June 19, 2012 to mark up the Activities and Summary Report of the Committee.
- **Senate Finance Hearing.** The Senate Committee on Finance will hold a hearing on Tuesday, June 19, 2012 on "Confronting the Looming Fiscal Crisis." The Honorable Pete Domenici and Alice Rivlin, co-chairs of the Debt Reduction Task Force, are scheduled to testify.

- **House Judiciary Hearing.** The House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security has scheduled a hearing on Wednesday, June 20, 2012 on the Drug Enforcement Administration.
- **House Energy and Commerce Hearing.** The House Committee on Energy and Commerce Subcommittee on Health has scheduled a hearing on Thursday, June 21, 2012 on “The National Institutes of Health – a Review of its Reforms, Priorities and Progress.” Dr. Francis Collins, Director of the NIH, is scheduled to testify.
- **Senate VA Hearing.** The Senate Committee on Veterans’ Affairs will hold a hearing on Wednesday June 27, 2012 on health and benefits legislation.
- **MedPAC Releases June Report to Congress.** The Medicare Payment and Advisory Commission (MedPAC) released its June 2012 Report to Congress on Medicare and the Health Care Delivery System, which focuses particularly on the role of individuals who receive the Medicare benefit. The report discusses the beneficiary as it relates to reforming Medicare’s benefit design, care coordination in fee for service Medicare, and care coordination programs for dual eligible beneficiaries.

REGULATORY ACTIVITY

- **CMMI Grants.** The Center for Medicare and Medicaid Innovation (CMMI) at the Center for Medicare and Medicaid Services (CMS) announced the second and final round of Health Care Innovation Awards, that aim to deliver better health, improved care, and lower costs to people enrolled in Medicare, Medicaid and the Children’s Health Insurance Program (CHIP). Eighty one recipients join the original twenty-six awards, that are intended to save the health care system an estimated \$1.9 billion over three years.
- **Reg Watch.** The U.S. Department of Health and Human Services (HHS) and the Center for Medicare and Medicaid Services (CMS) is expected to release a number of regulations in the coming weeks that will impact a wide variety of health care stakeholders. These include the End Stage Renal Disease (ESRD) Prospective Payment System (PPS) and Quality Incentive Program (QIP) Proposed Rule, Modifications to the HIPAA Privacy, Security, Enforcement and Breach Notification Rules Final Rule, the Physician Fee Schedule Proposed Rule, the Home Health PPS Rate for CY 2013 Proposed Rule, the Hospital Outpatient PPS Final Rule, and regulations regarding Essential Health Benefits.

OTHER HEALTH NEWS

- **IOM Meeting.** The first meeting of the Committee to Review the Health Effects in Vietnam Veterans of Exposure to Herbicides (Ninth Biennial Update) will be held on June 28-29, 2012. This committee will undertake an updated review and evaluation of the available scientific evidence regarding the statistical association between exposure to dioxin and other chemicals in the herbicides used in Vietnam and various adverse health outcomes. This updated review would build upon the information developed in previous IOM studies in the Veterans and Agent Orange Updates. An open session will take place on Thursday, June 28, from 1:00 pm to 3:00 pm in the National Academy of Sciences Boardroom. This open session is being held to discuss the health effects in veterans associated with the herbicides sprayed during the Vietnam War. All Vietnam veterans are invited, and anyone who wishes to share a personal experience with the committee is encouraged to attend.
- **SCOTUS Watch.** The Supreme Court is expected to release their decision on the challenge against the Affordable Care Act the last week of the month, as early as Monday, June 25.

International, Defense, Homeland Security

- **Russia PNTR and Syria Developments.** Russia's decision to refurbish and return attack helicopters to the Syrian government has further clouded the chances for Congress approving Permanent Normal Trade Relations (PNTR) status to Moscow this year. Russian Foreign Minister Sergei Lavrov did not satisfy Secretary of State Clinton or Congressional critics when he subsequently suggested that the Assad regime could not use such helicopters against civilians. Indeed, Senator John Cornyn (R-TX) and six other Senators, including four Democrats and two Republicans, introduced a resolution Thursday calling on Russia to suspend arms sales to Syria. Senate Finance Committee Chairman Max Baucus (D-MT) is not considered likely to attach Syria-related language to his legislation (S. 3285, introduced on Tuesday) authorizing PNTR for Russia, which the Senator would like to move before the August recess. However, Senator Baucus has committed to including Senator Ben Cardin's (D-MD) Sergei Magnitsky legislation, S. 1039, authorizing targeted human rights-related sanctions against Russian officials, in the PNTR markup.
- **Homeland Security Developments.** With Friday's decision by the Obama Administration to suspend deportation proceedings against many undocumented aliens under age 30, Secretary of Homeland Security Janet Napolitano obviously will devote much of the rest of her upcoming time to explaining the scope of and rationale behind the policy change. On scope, Secretary Napolitano will continue to note to illegal immigration hardliners that potential deportees must meet several criteria to be eligible to remain in the country, including: a) not constituting a known threat to national security; b) having arrived in the United States prior to age 16; c) residing here for at least the previous five years; d) not possessing a serious criminal record; and e) being a student, high school graduate, or on active duty or a veteran of the military or Coast Guard. On the other hand, the Secretary also will continue to explain to immigration advocates that, without further action from Congress on the stalled DREAM Act or similar legislation, the Administration lacks the authority to designate a path to U.S. citizenship even for those who meet all of the above criteria. As for rationale, President Obama, Secretary Napolitano, Attorney General Eric Holder, and numerous other Administration officials will stress that the Department of Homeland Security and the Department of Justice's use of prosecutorial discretion in this instance is simply a matter of devoting scarce law enforcement resources more effectively, in order to combat the most severe national security threats. Immigration hawks, notably including many Congressional Republicans such as House Judiciary Committee Chairman Lamar Smith (R-TX), will view the Administration's use of discretion in this case as counter-productive and, in the eyes of some, an improper circumvention of Congressional authority.

Tax

LEGISLATIVE ACTIVITY

- **Baucus Unveils Outline for Tax Reform.** On June 11, Senate Finance Committee Chairman Max Baucus (D-MT) delivered a speech at the Bipartisan Policy Center outlining his vision for fundamental tax reform. Chairman Baucus was introduced by Pete Domenici, former New Mexico Senator and co-author of the Domenici-Rivlin Deficit Reduction Plan. The Chairman stressed the need for tax reform that broadens the base and lowers rates. While he generally avoided specifics, some themes emerged from the remarks.

According to Chairman Baucus, tax reform must raise revenues, and the merit of all tax extenders must be reviewed individually to determine continued inclusion in the Code. Chairman Baucus also indicated a willingness to consider a mechanism (to be agreed upon in the lame duck session of Congress following the November elections) that would fast-track tax reform in 2013. The Chairman expressed his intent to soon offer a bipartisan tax reform proposal following more discussions with Senate Finance Committee members.

A panel discussion followed, featuring former White House Budget Director Alice Rivlin, former Senate Finance Committee Chairman Bob Packwood, former House Ways & Means Committee Chairman Bill Thomas, and President of the Center on Budget and Policy Priorities Robert Greenstein.

- **Senate Finance Holds Hearing on Energy Incentives.** On June 12, the Senate Finance Committee held a hearing on tax reform and its impact on U.S. energy policy. Appearing before the committee were four witnesses: The Honorable Don Nickles, former U.S. Senator from Oklahoma; The Honorable Philip Sharp, former U.S. Representative from Indiana; Dr. Dale Jorgenson, Samuel W. Morris University Professor, Harvard University; and Mr. Harold Hamm, Chief Executive Office, Continental Resources Inc. The hearing focused on a few specific incentives, including the Production Tax Credit (PTC), the incentive for Intangible Drilling Costs (IDCs), the Section 199 Domestic Production Activities Deduction and percentage depletion. Discussion of the issues did not fall along party lines, with some Democrats arguing in favor of certain energy incentives, such as IDCs, while other Democrats argued in favor of repealing all energy incentives for oil and gas companies. Meanwhile, some Republicans argued that all energy incentives could be eliminated if tax rates were significantly lowered through comprehensive tax reform.
- **Senate Finance Members Meet to Discuss Extenders.** This week, Members of the Senate Finance Committee held a closed-door meeting to discuss a broad array of business tax incentives in the Code, known as “tax extenders.” At the meeting, Senate Finance Committee Chairman Baucus urged Members to help advance a pre-Election Day package of these extenders. However, the Chairman insisted that both sides table particularly partisan issues such as the expiring Bush tax cuts and the Buffett Tax on high-income earners and focus on the tax extenders package exclusively. There is no specific timetable for action as Members are expected to continue to discuss how and if to move a bill.
- **Tax Hearings Next Week.** The following tax hearings are scheduled next week in the House Ways and Means and Senate Finance Committees:

June 19: Senate Finance Committee hearing on “Confronting the Looming Fiscal Crisis”

TechComm

LEGISLATIVE ACTIVITY

- **FCC Appropriations.** The Senate Appropriations Committee on June 14 passed its FY 2013 Financial Services Appropriations bill. The Federal Communications Commission received its full request of \$347.8 million, which is \$7.9 million above FY 2012 enacted levels. The bill was approved 16-14 along party lines. The Committee also recommended that up to \$99 million be retained from spectrum auction activities to fund administrative expenses of conducting the auctions. The recommendation is an increase of \$14 million over both the FY 2012 enacted amount and the budget request due to the cost of the FCC’s expanded responsibilities related to the implementation of incentive auctions provisions included in the Middle Class Tax

Relief and Job Creation Act of 2012, also known as the Spectrum Act. The Committee has included language (section 510) to extend FCC's exemption from the Anti-deficiency Act (ADA) until December 31, 2014. The report accompanying the bill contains language on several telecommunications issues including:

- USF reform – The Committee has included language that would limit universal support to one line. The Committee noted “this would be harmful to small businesses, especially in rural areas, which often need additional lines for a fax or for other business purposes.” The report supports the FCC’s goal to modernize the Universal Service Fund to put America on a path to universal broadband by the end of the decade. Because transforming USF presents challenges to certain telecommunications providers transitioning to a new universal service system, the Committee encourages the FCC to implement the waiver process in a “transparent, timely and equitable manner.”
- Cramming – The report urges the FCC to consider implementing an opt-in requirement for third-party billing on wireline bills and to seek a solution to address cramming on wireless bills.
- Public Inspection File – The Committee commends the FCC for requiring that broadcasters’ public inspection files be made available online and in a searchable format. Such files contain important information regarding broadcasters’ fulfillment of public interest obligations, and information on political advertisements. The requirement will modernize disclosure requirements, inform the public on the use of the public’s airtime, and increase the transparency of campaign advertising purchases.
- Online privacy – The report directs the FCC to study the privacy policies governing the collection and use of personal information online and issue guidance on best practices for disclosing terms and conditions of these policies in a written agreements that are concise and easily understood. The Committee also directs the FCC to work with the FTC and issue guidance to consumers on best practices for protecting personal information transmitted over wireless networks, including through encryption and other practices

The Senate bill would provide greater funding than that approved by the House Appropriations Subcommittee on June 6. The House bill contains \$323 million for the FCC – a cut of \$17 million below last year’s level.

- **Hearings.** The House Communications and Technology Subcommittee announced two upcoming hearings. The first is on June 27, and will address the future of video media. Specifically, Subcommittee Chairman Greg Walden (R-OR) said the hearing will “examine how advances in consumer electronics, broadcasting, cable, satellite, the Internet and other platforms are changing how consumers access video content, how those changes are impacted by existing regulations, and what type of regimes should apply going forward.” The second hearing will be held on July 10 and will focus on FCC oversight. All five commissioners will present testimony to Members of the subcommittee regarding current proceedings before the FCC, the FCC’s regulatory process, and the implementation of congressional priorities. Separately, the House Judiciary Subcommittee on Intellectual Property, Competition, and the Internet will hold a hearing on June 19 titled “New Technologies and Innovations in the Mobile and Online Space, and the Implications for Public Policy.” No witnesses have been announced thus far.
- Senator Joe Lieberman (I-CT) lauded the compromise effort by Senators Jon Kyl (R-AZ) and Sheldon Whitehouse (D-RI), but did not endorse it. When asked whether he would vote for the framework put forward

in the proposal, Lieberman said he has "to take a longer look at it." But he noted that the effort "brought some people into the discussion on the cybersecurity bill that were not comfortable with" his bill or the Republican alternative from Senators John McCain (R-AZ), Kay Bailey Hutchison (R-TX) and Saxby Chambliss (R-GA). "That's why I think these efforts by Sen. Whitehouse are really important, because he has the ability to do that." Senator Kyl's proposal has yet to be crafted into language and he called it "still very, very general."

- Since early 2009, Senator Jay Rockefeller has been working on cybersecurity legislation that creates a partnership between the private sector and the federal government to protect our country from threats to critical infrastructure. The Cybersecurity Act of 2012, S. 2105, introduced by Senators Rockefeller, Joe Lieberman, Susan Collins, and Dianne Feinstein, would give the Department of Homeland Security authority to collaborate with the private sector to establish minimum security standards for the systems that control the nation's most critical infrastructure.

REGULATORY ACTIVITY

- **Spectrum:** President Obama signed an executive order on June 14 directing the creation of a federal working group to address broadband deployment access issues for government lands, buildings, and rights-of-way. The Broadband Deployment on Federal Property Working group will include representatives from six cabinet-level agencies (the departments of Defense, Interior, Agriculture, Commerce, Transportation, and Veterans Affairs), U.S. Postal Service, Federal Communications Commission, Council on Environmental Quality, Advisory Council on Historic Preservation, and the National Security Staff. The working group's task is to create a consistent, streamlined approach to policy and permit requirements for deployment of broadband facilities on federally owned lands, buildings, rights-of-way, tribal lands, and highways that receive federal assistance. The intent is to give carriers a single approach to leasing federal assets for broadband deployment. The government controls nearly 30 percent of land in the United States, thousands of miles of roads, and more than 10,000 buildings.

Transportation

LEGISLATIVE ACTIVITY

- **SAFETEA-LU Reauthorization.** Next week is expected to be the decisive week as to whether there will be a Conference Report before the current extension expires or whether there will have to be another extension of some duration. Over the past week, progress in the Conference appeared to break down as little headway was made through offers and counteroffers on key issues including transportation enhancements and NEPA streamlining. On Thursday, Chairman Boxer and Democratic Conferees held a rally in front of the Capitol to urge passage of the bill before June 30, in which Republican Conferees were called "extremists" and "militants" by some of their Democratic Counterparts. In addition, the Transportation Construction Coalition (TCC) began running negative radio ads in the Districts of four House Republican Conferees. Chairman Mica for his part issued a statement afterwards saying that the Senate was not negotiating in good faith on key House reform proposals - including language approving the Keystone Pipeline. Other Republican Conferees held a conference call saying much the same, and questioning whether Chairman Boxer really wanted a bill. Meanwhile, the House and Senate staff were exchanging offers and counteroffers, but remain far apart on a range of important issues. The result is that most observers believe that there will either have to be a high-level Leadership deal reached early next week on the most significant issues, including Keystone

and the pay-fors, with the other issues simply getting worked out with the highest-profile pieces already in place. Should that not happen, and there are no indications that such a deal is even yet in the works, the debate will turn to how long of an extension Congress should enact. The House will have the greater leverage in that back-and-forth as the House must originate the extension. Chairman Boxer is expected to push hard for as short an extension as possible to 'keep the pressure on' the Conference. In the House, Speaker Boehner has previously expressed his view that an extension should last six months until the lame duck session, but that is not thought to be necessarily set in stone as to the House's direction.