

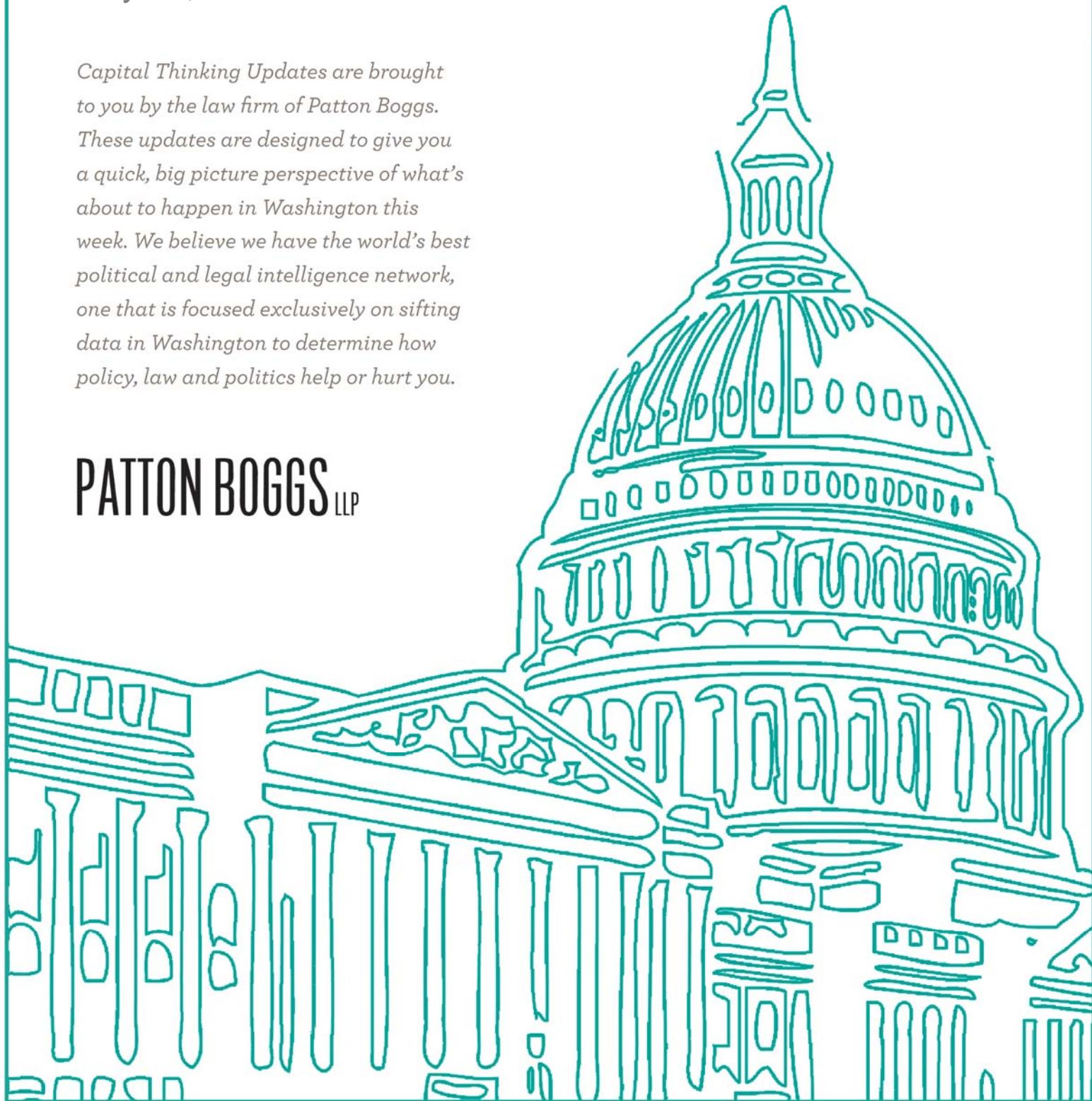
CAPITAL thinking

UPDATES

July 16, 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 Tuesday, July 17, the House will meet at 2:00 p.m. for legislative business. Votes will be postponed until 6:30 p.m. Legislation considered under suspension of the rules will include: S. 2039 – A bill to allow a State or local governments to construct levees on certain properties otherwise designated as open source lands; S. 1959 – Haqqani Network Terrorist Designation Act of 2011, as amended; H.R. 6018 – To authorize appropriations for the Department of State for fiscal year 2013, and for other purposes, as amended; S. 2165 – United States-Israel Enhanced Security Cooperation Act of 2012; and S. 2009 – Insular Areas Act of 2011. On Wednesday, July 18, and for the balance of the week, the House will consider H.R. 5872 – Sequestration Transparency Act of 2012, and H.R. 5856 – Department of Defense Appropriations Act, 2013.

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

Agriculture

LEGISLATIVE ACTIVITY

- **House Farm Bill Markup.** On Wednesday, July 11, the House Agriculture Committee convened to mark up the Federal Agriculture Reform and Risk Management (FARRM) Act (H.R. 6083), which the Committee reported out favorably by a vote of 35 to 11 at 1:10 a.m. on Thursday, July 12. The bill reported out of Committee cuts \$35 billion in spending over ten years, cuts nutrition spending by \$16 billion over ten years, and creates Price Loss Coverage, a target price-based risk management option for commodities that was not included the Senate version of the bill. Below is a summary of key amendments considered at the mark up:
 - **Sugar Reform.** The Committee failed to adopt an amendment that would repeal provisions related to import restrictions, price supports, and the creation of the Feedstock Flexibility Program included in the 2008 Farm Bill.
 - **Dairy.** The Committee failed to adopt an amendment that would eliminate a new supply management program under the dairy program.
 - **Animal Welfare Standards and Production Rules.** The Committee adopted an amendment that would prohibit states from imposing animal-welfare standards or other production rules that would apply to eggs, meat, and other agricultural products produced in other states.
 - **Livestock and Poultry.** The Committee adopted an amendment that would repeal the Grain Inspection, Packers & Stockyards Administration (GIPSA) rules included in the 2008 Farm Bill and finalized by the Secretary of Agriculture since 2008. The Committee also adopted an amendment that would require the Department of Agriculture to present a report to Congress on how to make the country-of-origin-labeling regulations compliant with the World Trade Organization's recent decision. The Committee also passed two amendments that would require the Department to create a poultry business interruption insurance policy study and a study on a poultry catastrophic disease insurance program.

- **Supplemental Nutrition Assistance Program (SNAP).** The Committee failed to adopt an amendment that would restore the \$16 billion cut to SNAP. The Committee did adopt an amendment that would cut funding for advertising SNAP on the radio and redirect those funds to support The Emergency Food Assistance Program (TEFAP).
- **Farm Bill Timeline.** Following passage of the FARRM Act, House Speaker John Boehner (R-OH) stated that there has been no decision on scheduling floor time to consider the Farm Bill. During his remarks, Speaker Boehner opposed the supply management provisions included in the Committee's dairy program. Despite pressure from Agriculture Secretary Tom Vilsack, House Agriculture Committee Ranking Member Collin Peterson (D-MN), and Republicans—including House Agriculture Committee Chairman Frank Lucas (R-OK), and Representative Steve King (R-IA)—to reauthorize the Farm Bill before the current bill expires on September 30, the House seems to be moving toward passing a one-year extension of the bill.
- **Disaster Assistance.** On Thursday, July 12, Senate Committee on Finance Chairman Max Baucus (D-MT), along with Senators Jon Tester (D-MT), Kent Conrad (D-ND), and Tim Johnson (D-SD), introduced legislation that would provide a one-year extension of four disaster assistance programs to protect farmers and ranchers affected by this year's wildfires and drought. These programs are: (1) the Supplemental Revenue Assistance (SURE); (2) Livestock Indemnity Program (LIP); (3) Livestock Forage Program (LFP); and (4) Emergency Livestock Assistance Program (ELAP).

Congress established these disaster assistance programs under the 2008 Farm Bill; however, these programs expired at the end of FY 2011. This year's Senate-passed Farm Bill and House Agriculture Committee Farm Bill replace these disaster assistance programs with new programs designed to protect against revenue loss.

Budget, Appropriations

LEGISLATIVE ACTIVITY

- **FY 2013 Appropriations Action.** Following a week of appropriations inactivity in both chambers, the House is poised to take up its FY 2013 Defense Appropriations bill this week. Depending on the number of amendments and duration of debate on the Defense bill, the House may begin consideration of another bill later this week; queued up next for House floor consideration are the Financial Services and Agriculture bills.

The House Appropriations Committee will continue its work this week as well, with a scheduled July 18 subcommittee mark up of the FY 2013 Labor-HHS-Education spending bill.

In the meantime, much to the chagrin of Senate Appropriators and House Appropriations Chairman Harold Rogers (R-KY), Senate Majority Leader Harry Reid (D-NV) announced last week that because of the difference between the discretionary spending levels being utilized by the House and the Senate, the Senate may not bring any of its FY 2013 appropriations bills to the floor. This may hinder further efforts on FY 2013 spending bills in the Senate Appropriations Committee.

Majority Leader Reid's announcement effectively confirms the likelihood that final resolution of the FY 2013 spending bills will, along with many other legislative measures, be held until the Lame Duck session. However, Congress will have to act on a Continuing Resolution (CR) to keep the government operating

beyond the start of the new fiscal year on October 1. While the discretionary spending cap difference will cause some heated debate leading up to enactment of a CR – and the President has threatened to veto any FY 2013 appropriations measure that does not adhere to the cap established in the Budget Control Act of 2011 (P.L. 112-25) – it is most likely we will see a CR that continues funding the federal government at FY 2012 spending levels.

Cybersecurity

LEGISLATIVE ACTIVITY

- **Senate Cybersecurity Legislation.** A recent Senate Homeland Security and Governmental Affairs Committee hearing focused on the tenth anniversary of the passage of the 2002 Homeland Security Act. During that time, a panel of security experts, including former Director of the CIA and National Security Agency General Michael Hayden, called on Congress to pass a cybersecurity bill to protect the U.S. from the threat of cyber attack. Earlier in the week at an American Enterprise Institute event, General Keith Alexander, the current chief of both the National Security Agency and U.S. Cyber Command, also spoke about the importance of enacting cybersecurity legislation. Although he declined to take a position on a specific bill, General Alexander noted that the U.S. has lost billions of dollars per year because of cyber espionage and cyber crime.

A group of bipartisan Senators continue to work on compromise agreements, including Senator Jon Kyl (R-AZ) who reportedly met with key businesses and the U.S. Chamber of Commerce in an attempt to find common ground on the critical infrastructure provisions in the bill. Senate Majority Leader Harry Reid (D-NV) continues to discuss floor time for the bill in the near future.
- **Electric Grid Hearing.** The Senate Energy and Natural Resources has tentatively scheduled a hearing on Tuesday regarding federal efforts to protect the electric grid from cyber attack. The hearing will feature officials from various agencies, including the Federal Energy Regulatory Commission (FERC), which is tasked with development of reliability standards for power systems. The hearing is currently scheduled for Tuesday, July 17 at 10 a.m.

Education

LEGISLATIVE ACTIVITY

- **Lobbying Against Sequestration.** As noted in the Sequestration section of this report, the Non-Defense Discretionary (NDD) Coalition letter to Congress concerning the impact of sequestration included many education-related stakeholders. The Association of American Universities and the Association of Public and Land-grant Universities coordinated a separate letter from member university presidents that was sent on July 11, also urging Congress to act before the mandatory spending cuts take effect due to sequestration. The letter defends NDD programs in the budget and calls on the federal government to prioritize investments, such as education and scientific research, and to “continue to play a critical role in fostering U.S. economic competitiveness and economic growth.”

Additionally, the National Education Association (NEA) and the American Association of School Administrators (AASA) released reports one day earlier on July 10 related to the impact of sequestration on education programs. The AASA report criticizes the lack of information about what would actually happen under a sequester scenario (e.g., when the cuts would start and which programs would be impacted) and focuses on how schools are preparing for such cuts, despite these unknowns. Meanwhile, the NEA report attempts to grasp the breadth of cuts across programs in the Department of Education based on estimates by the Congressional Budget Office and the Center for Budget and Policy Priorities.

- **Gainful Employment.** In a letter to Education Secretary Arne Duncan sent Friday, July 13, a bipartisan group of Members of Congress urged the Obama administration to stop further implementation of the controversial "gainful employment" regulation in light of the June 30 federal court decision striking down the Department of Education's gainful employment rules. The letter recommends that the Department "work with Congress to develop clearer and simpler policies ... that would apply to all Title IV funded schools" as part of the Higher Education Act reauthorization process next year.
- **Hearings and Events.** The House Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies is scheduled to mark up its FY 2013 spending bill on Wednesday, July 18. It is the only spending bill not yet approved by the Committee. Additionally, the following hearings and events have been noticed:
 - Tuesday, July 17 – The Brookings Institution will host a forum titled, "Education Technology, Distance Learning & the Innovative American Classroom," to review the growing use and influence of distance learning in transforming American education.
 - Wednesday, July 18 - The House Education and the Workforce Committee Subcommittee on Higher Education and Workforce Training will hold a hearing on "Keeping College Within Reach: Exploring State Efforts to Curb Costs."
 - Thursday, July 19 – The Senate Health, Education, Labor and Pensions Committee will hold a hearing titled "Making College Affordability a Priority: Promising Practices and Strategies."
 - Tuesday, July 31 – The American Enterprise Institute will hold a discussion titled "Parent Power: Grassroots Activism and the New Politics of K-12 Education Reform."

REGULATORY ACTIVITY

- **College Attainment Data.** On Thursday, July 12, the Department of Education released new figures showing college attainment state-by-state based on the Census Bureau's American Community Survey. To meet the President's goal for the United States to have the highest proportion of college graduates in the world by 2020, there must be an increase of 50 percent. According to the recently released data, however, the percentage of the population between the ages of 25 to 34 with some kind of postsecondary degree increased by half a percentage point, from 38.8 percent to 39.3 percent.
- **College Affordability.** On Thursday, July 12, as part of the Department of Education College Affordability Initiative, the department released a new tool (the Financial Awareness Counseling Tool) to provide the following five tutorials: (1) Understand Your Loans; (2) Manage Your Spending; (3) Plan to Repay; (4) Avoid Default; and (5) Make Finances a Priority.

- **Pell Grant Study.** On Tuesday, July 10, the Department of Education proposed conducting a study to review how expanding access to the Pell Grant program could affect students' earnings and employment outcomes. As such, the department intends to include approximately 10,000 students in its two-part, five-year study. The department is seeking public comments before August 9, 2012.
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Energy

LEGISLATIVE ACTIVITY

- **Congressional Hearings.** On Tuesday, July 17, a House Energy and Commerce subcommittee will hold a hearing on federal government perspectives regarding alternative fuels and vehicles. Separately, the Senate Energy and Natural Resources Committee will examine the status of actions taken to protect the electric grid from cyber attacks.
- **Congressional Mark Up.** On Wednesday, July 18, the House Natural Resources Committee will mark up H.R. 6082, a bill offered by Chairman Doc Hastings (R-WA) to replace the Administration's Final Proposed Five-Year Outer Continental Shelf Oil and Gas Leasing Program (2012-2017) with one that would open offshore energy development off the Atlantic Coast, Southern California, and expand offshore development in Alaska and the Gulf of Mexico. If passed by the House, the plan is not expected to gain any traction in the Democratic-controlled Senate and the President would almost assuredly veto it should it clear the Senate.

REGULATORY ACTIVITY

- **BESAC.** The Department of Energy's Basic Energy Sciences Advisory Committee will meet in Bethesda, Maryland on July 26-27 to discuss the future of the Advanced Research Projects Agency-Energy (ARPA-E) program, among other topics.
 - **2012-2017 OCS Leasing Program.** The Bureau of Ocean Energy Management has released the Proposed Final Five-Year Outer Continental Shelf Oil and Gas Leasing Program, the third and last proposal required by law before the Interior Secretary can approve a new five-year leasing program. The Secretary may approve the program 60 days after it is formally submitted to the President and the Congress.
 - **Hydraulic Fracturing.** The Department of Energy's National Energy Technology Laboratory has begun monitoring a commercial drilling site in Pennsylvania to determine whether drilling fluids move up or sideways within Marcellus Shale zones. Monitoring will continue for another year, though some background data may be released later this year – particularly if the research demonstrates that fluids migrate upwards.
 - **Deepwater Horizon.** The independent federal Chemical Safety Board will release preliminary findings from its investigation into the April 2010 Deepwater Horizon disaster in Houston during a July 23-24 public hearing.
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Environment

LEGISLATIVE ACTIVITY

- **Water.** On Wednesday, July 25, the Senate Committee on Energy and Natural Resources will hold a hearing on the role of water use efficiency and its impact on energy use.
- **Stream Buffer Zone Rule.** On Thursday, July 19, the House Committee on Natural Resources will hold an oversight hearing on the Stream Buffer Zone Rule. The hearing will examine 1) the current status of the proposed rewrite and the status of the court settlement agreement providing for the rewrite, and 2) the U.S. Department of Interior's compliance effort to date with two subpoenas for documents on the rewrite. Secretary Ken Salazar of the U.S. Department of the Interior and Director Joseph Pizarchik of the Department's Office of Surface Mining Reclamation and Enforcement have been invited to testify.
- **Outer Continental Shelf.** On Wednesday, July 18, the House Committee on Natural Resources will hold a mark up on H.R. 6082 in effort to replace the Proposed Final Outer Continental Shelf Oil & Gas Leasing Program (2012–2017) with a congressional plan that aims to conduct additional oil and natural gas lease sales.
- **Tribes.** On Thursday, July 19, the Senate Committee on Indian Affairs will hold an oversight hearing to examine the impacts of environmental changes on treaty rights, lifestyles and tribal homelands.

REGULATORY ACTIVITY

- **Clean Air Standards.** On Tuesday, July 17 and Thursday, July 19, the U.S. Environmental Protection Agency (EPA) will hold a public hearing on the proposed updates to the national air quality standards for fine particle pollution (PM2.5). A federal court ruling required EPA to update the standards based on best available science. The proposed updates, which intend to meet that requirement, build on steps by EPA to reduce pollution in communities across the country. The hearing will take place on July 17 at 9:00 am at the William J. Green Federal Building, 600 Arch Street, Philadelphia, PA, 19106. The hearing will take place on July 19 at 9:00 am at the Sacramento California Air Resources Board, 1001 "I" Street, Sacramento, CA, 95814.
- **Greenhouse Gas Emissions.** EPA is promulgating the third step of its phase-in approach to permitting sources of greenhouse gas (GHG) emissions that it proposed in the GHG Tailoring Rule. This rule completes Step 3 by determining not to lower the current Prevention of Significant Deterioration (PSD) and Title V applicability thresholds for GHG-emitting sources established in the Tailoring Rule for Steps 1 and 2. The EPA is also promulgating regulatory revisions for establishing plant wide applicability limitations (PALs) for GHG emissions. This action is effective on August 13.

Financial Services

LEGISLATIVE ACTIVITY

- **Chairman Ben Bernanke to Report on the U.S. Monetary Policy.** On Tuesday, July 17, the Senate Committee on Banking, Housing, and Urban Affairs will hold a hearing titled, "The Semiannual Monetary

Policy Report to the Congress." On Wednesday, July 18, the House Committee on Financial Services will hold a hearing with the same title. The Board of Governors of the Federal Reserve System Chairman Ben Bernanke will testify at both hearings. During these hearings, Chairman Bernanke will be expected to field questions regarding market manipulation and the LIBOR scandal.

- **Senate Committee on Agriculture to Discuss Dodd-Frank Act.** On Tuesday, July 17, the Senate Committee on Agriculture will hold a hearing titled "Dodd-Frank Wall Street Reform and Consumer Protection Act: 2 Years Later". The first panel of witnesses will include Chairman Gary Gensler, from the Commodities and Futures Trading Commission (CFTC) and Mr. Robert Cook, Director of Division of Trading at the Securities and Exchange Commission (SEC). The second panel of witnesses will include Mr. Robert Pickel, CEO of International Swaps and Derivatives Association; Mr. Dennis Kelleher, President and CEO of Better Markets; and Mr. Thomas Erickson, VP of Government Affairs of Bunge North America.
- **House Financial Services Subcommittees to Continue Addressing the Impact of the Dodd-Frank Act.** Based on the upcoming two-year anniversary of the Dodd-Frank Act, the House Committee on Financial Services will continue the series of Dodd-Frank Act hearings. On Tuesday, July 19, the House Committee on Financial Services, Subcommittee on Oversight and Investigations will hold a hearing titled "Who's in your Wallet? Dodd-Frank's Impact on Families, Communities, and Small Businesses." On the same day, the House Committee on Financial Services, Subcommittee on Financial Institutions and Credit will hold a hearing titled "The Impact of Dodd-Frank on Consumer Choice and Access to Credit".
- **House Financial Services Subcommittee to Address Regulations Impacting Municipal Advisors.** On Friday, July 20, the House Committee on Financial Services, Subcommittee on Capital Markets and Government Sponsored Enterprises will discuss H.R. 2827 and the impact Dodd-Frank is having on municipal advisors.

REGULATORY ACTIVITY

- **CFTC and SEC Adopt Final Definitional Rules on Swap Products.** On Monday, July 9, the SEC held a closed meeting, approving by unanimous vote the final definitional rules on swap products. On Tuesday, July 10, the CFTC held an open meeting approving the same rules by a 4-1 vote (Commissioner Bart Chilton voting no). The final rule, which had not been released on the Federal Register as of July 13, defines the terms "swap," "security-based swap," and "security-based swap agreement"; mixed swaps; and security-based swap agreement recordkeeping.
- **CFTC Approves Exceptions to the Clearing Requirement.** On Tuesday, July 10, the CFTC adopted by unanimous vote a final rule related to the end-user exception to the clearing requirement for swaps. The CFTC also approved by unanimous vote a proposed rule related to the clearing exemption for certain swaps entered into by cooperatives.
- **SEC to Hold Open Meeting to Address Conflict Minerals Rule and Other Matters.** On Wednesday, August 22, the SEC will hold an open meeting to consider whether to adopt rules regarding disclosure and reporting obligations with respect to the use of conflict minerals to implement the requirements of Sections 1502 and 1504 of the Dodd-Frank Act. The SEC will also consider rules to eliminate the prohibition against general solicitation and general advertising in securities offerings conducted pursuant to Rule 506 of Regulation D under the Securities Act and Rule 144A under the Securities Act, as mandated by Section 201(a) of the Jumpstart Our Business Startups Act (JOBS Act).

Health Care

LEGISLATIVE ACTIVITY

- **House Set to Begin Labor-HHS Consideration.** The House Appropriations Committee is set to begin consideration of FY 2013 funding for the Departments of Labor, Health and Human Services, and Education. The Subcommittee is expected to mark up draft legislation next week, with Subcommittee Chairman Denny Rehberg (R-MT) indicating there will be significant cuts. The Senate Appropriations Committee has already completed action on the bill, which awaits floor consideration.
- **House Appropriations Mark Up.** The House Committee on Appropriations Subcommittee on Labor, Health and Human Services, Education and Related Agencies will meet on Wednesday, July 18, to mark up the FY 2013 Appropriations bill.
- **House Energy and Commerce Hearing.** The House Committee on Energy and Commerce Subcommittee on Health has scheduled a hearing on Wednesday, July 18, on "Using Innovation to Reform Medicare Physician Payment.
- **House Energy and Commerce Mark Up.** The House Committee on Energy and Commerce Subcommittee on Energy and Power has scheduled a legislative hearing on Wednesday, July 18, to consider H.R. ___, the Asthma Inhalers Relief Act of 2012. The bill would direct the Administrator of the Environmental Protection Agency to allow for the distribution, sale and consumption in the United States of the remaining inventories of over the counter CFC epinephrine inhalers.
- **Senate Aging Hearing.** The Senate Special Aging Committee has scheduled a hearing on Wednesday, July 18, on "Medicare and Medicaid Coordination for Dual-Eligibles."
- **House Small Business Hearing.** The House Committee on Small Business Subcommittee on Investigations, Oversight and Regulations will hold a hearing on Thursday, July 19, on "Health Care Realignment and Regulation: The Demise of Small and Solo Medical Practices?" Witnesses include Dr. Louis McIntyre on behalf of the American Academy of Orthopedic Surgeons and Dr. Tracey Meyer McLoone on behalf of the American Academy of Family Physicians.

REGULATORY ACTIVITY

- **Reg Watch.** The Centers for Medicare and Medicaid Services (CMS) is expected to release a number of regulations including proposed Medicare payments to Inpatient Rehabilitation Facilities (IRFs) and Skilled Nursing Facilities (SNFs). We also expect regulations regarding the Patient Protection and Affordable Care Act Data Collection to Support Standards Related to Essential Health Benefits, Recognition of Entities for the Accreditation of Qualified Health Plans this month. Other anticipated regulations include the Medicare Reporting and Returning of Overpayments Final Rule, the ICD-10 final rule, HIPAA regulations (currently under review at the Office of Management and Budget) as well as guidance in the near future from the Internal Revenue Service (IRS) regarding premium tax credits for exchanges.

INTERNATIONAL HEALTH NEWS

- **House Foreign Affairs Hearing.** The House Committee on Foreign Affairs, Subcommittee on Africa, Global Health and Human Rights will hold a hearing on Tuesday, July 17, on “Global Challenges in Diagnosing and Managing Lyme Disease- Closing Knowledge Gaps.” Witnesses include Stephen Barhold, Ph.D. with the University of California, Davis, Raphael Stricker, M.D. with the International Lyme and Associated Diseases Society, Mark Eshoo, Ph.D. with Abbott, Patricia Smith of the Lyme Disease Association, and Evan White who is a Lyme disease patient.

OTHER HEALTH NEWS

- **IOM Meetings.** The Institute of Medicine will hold a workshop on Assessing the Economics of Genomic Medicine on Tuesday, July 17 and Wednesday, July 18. This workshop will assess the potential economic impact that the advent of genomic medicine may have on clinical practice and research. The workshop will feature presentations and discussions from an array of stakeholders which may include health economists, providers, payers, guideline developers, patients, and regulators. The goal of the workshop will be to advance discussions around the clinical implementation of genetic and genomic technologies by examining costs associated with the development and use of genetic and genomic information in the care of individual patients.

The Committee on Geographic Adjustment Payment will also meet on Tuesday July 17, to discuss the findings and recommendations from the committee's new report entitled Geographic Adjustment in Medicare Payment Phase II: Implications for Access, Quality and Efficiency.

International, Defense, Homeland Security

- **Iran Sanctions Developments.** On Thursday, July 12, the Obama Administration announced new sanctions against subsidiaries and personnel connected to Iran's primary tanker company and oil exporter. The U.S. Department of the Treasury labeled Petro Suisse Intertrade Co. SA, Hong Kong Intertrade Co., Noor Energy Ltd., and Petro Energy Intertrade Co. as front companies for Iran's effort to circumvent previously imposed sanctions. The Treasury Department also cited twenty financial institutions and 58 National Iranian Tanker Company vessels as complicit in Iran's sanctions evasion attempts, including via the repainting and reflagging of Iranian oil tankers. Treasury also imposed restrictions on several technology companies, laboratories, and individuals the Department deemed to be aiding the Iranian nuclear and missile programs.

Meanwhile, in the wake of the unsuccessful P5 + 1 talks with Iran in Moscow last month, key figures in Congress are once again ramping up efforts for further sanctions on transactions affecting Iran. It is unclear at this point exactly what a new sanctions package would look like, but it is clear the Administration questions whether some further restrictions on third-country transactions with Iran would prove beneficial, given the overall cooperation with the U.S. and multilateral sanctions regime shown by several U.S. allies in the region.

- **Syria Developments.** Negotiations at the United Nations Security Council (UNSC) regarding dueling British and Russian draft resolutions on Syria. The United States supports the United Kingdom's offering, which would extend the UN monitoring mission in Syria and would impose new Chapter 7 sanctions on the Assad

regime if government forces do pull back heavy weaponry from population centers within ten days after enactment. Russia's alternative would extend the mission without the possibility of sanctions. Faced with Moscow's ability to veto the British resolution, U.K. and U.S. diplomats have limited leverage. However, the Assad forces' continued shelling of civilian areas, combined with steadily growing cracks in President Assad's previously relatively strong support in Damascus, does provide a modest window of opportunity to convince Russia of the need to isolate the Syrian government further.

- **Port Security Developments.** Just before the July 4 recess, the House of Representatives passed Congresswoman Candice Miller's (R-MI) H.R. 4251 port security legislation. The House voted 402-21 in favor of the bill, offered by the Chair of the House Homeland Security Committee's Border and Maritime Security Subcommittee. The legislation emphasizes a targeted, risk-based approach toward Customs and Border Protection's (CBP's) efforts in foreign ports, including via greater reciprocity with foreign trusted shipper programs, in contrast to the repeatedly-postponed 100% foreign scanning requirement contained in the 9/11 Commission Recommendations Act of 2007. The bill also aims to improve coordination between CBP and the Department of Homeland Security's (DHS's) other agencies with a role in port security, as well as with state and local law enforcement. H.R. 4251 also would require the Obama Administration to produce a detailed plan for global supply chain security. In so doing, the bill calls for the Administration to provide incentives for the private sector's maximum private compliance with concrete measurements of supply chain security. The Senate Commerce Committee has not yet taken action on H.R. 4251 or alternative port security legislation in this Congress.
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Sequestration

- **Congressional Action.** Pressure to address the harmful impacts of sequestration is growing as time passes without any Administration or Congressional action to avoid the impending cuts.

House Majority Leader Eric Cantor announced that the House will be voting on a bill (H.R. 5872) this week to require the Administration to explain the effect of sequestration. A similar measure was added to the Senate version of the Farm Bill (S. 3240) last month.

The Pentagon, which had previously taken the position that it was not planning for sequestration, is now stating that some planning is occurring, but has not disclosed any details. Meanwhile, a group of six Republican Senators on the Senate Armed Services Committee are reported to be open to discussing both cuts and raising revenues from closing a series of tax loopholes. Others on the Senate prefer to manage tax reform as part of a more comprehensive effort.

On Wednesday, July 18, the House Armed Services Committee will hear from several defense industry representatives on their perspectives regarding sequestration effects on national defense. On August 1, Acting Office of Management and Budget (OMB) Director Jeffrey Zients will testify before the committee on the impacts of sequestration on DOD and other agencies. Deputy Defense Secretary Ashton Carter is also scheduled to testify at the hearing. Acting Direct Zients is appearing at the request of Committee Chairman Buck McKeon (R-CA), who has been among the most vocal in pushing the administration to explain how nearly \$500 billion in sequestration cuts to defense spending would be implemented.

Earlier this month, seven Senators – John McCain (R-AZ), James Inhofe (R-OK), Saxby Chambliss (R-GA), Lindsey Graham (R-SC), John Cornyn (R-TX), Kelly Ayotte (R-NH), and Joe Lieberman (I-CT) – sent a letter to 15 major defense contractors requesting information on what effects sequestration would have on their industry.

- **Stakeholder Efforts.** A number of diverse interest groups and defense industry representatives have also increased their advocacy efforts against sequestration and joined the push for the administration to provide clarity on how the process would be implemented.

On Tuesday, July 12, the Non-Defense Discretionary (NDD) Coalition - a contingency of nonprofit organizations with an interest in funding areas outside of the defense industry sent a letter urging Members of Congress to find “a balanced approach to deficit reduction that does not include further cuts to NDD programs, which have already done their part to reduce the deficit.” According to the letter, sequestration would be devastating to the nation, and if it takes effect, “between fiscal 2010 and 2021 NDD programs will have been cut by 20 percent overall.” Over 3,000 organizations, including many health and education organizations, signed on to the letter.

With impending layoff notices looming in the defense industry, on Tuesday, July 17, the Aerospace Industries Association will hold a press conference unveiling an industry impact analysis of the potential consequences of sequestration prepared by Dr. Stephen S. Fuller, George Mason University. Phoenix Mayor Greg Stanton (D) and San Diego Mayor Jerry Sanders (R) will also participate in the press conference to raise awareness of the potential impacts of sequestration to their local economies, which are heavily driven by the defense industry.

Tax

LEGISLATIVE ACTIVITY

- **Measure Touted to Promote Small Business Fails Procedural Vote in Senate.** Senate Democrats' Small Business Jobs and Tax Relief Act (S. 2237) failed, by a vote of 53 to 44, to reach the 60 votes necessary to invoke cloture and cut-off debate on the bill. The measure, touted as a small business bill, would extend the 100 percent bonus depreciation tax break for 2012 and provide a new tax credit equal to 10 percent of the cost of new job creation or wage increases in 2012 (capped at \$500,000).
- **Obama Again Calls for Limited Extension of Bush Tax Cuts.** On July 9, President Obama called for a one-year extension of the Bush tax cuts for Americans making less than \$250,000 a year, reiterating his previously stated position that the tax cuts should be extended only for couples earning less than \$250,000 a year and individuals earning less than \$200,000. Later in the week, Senate Majority Leader Harry Reid (D-NV) indicated that Senate Democrats are working to introduce a bill in-line with the Administration's proposal. House Speaker John Boehner (R-OH) has announced that the House will vote in July on a straight one-year extension of the 2001 and 2003 tax provisions. Though House Minority Leader Nancy Pelosi (D-CA) previously sent a letter to House Majority Leadership proposing extension of the cuts only for those earning less than \$1 million annually, an approach also championed by Sen. Chuck Schumer (D-NY), Congressional Democratic leadership has voiced support for President Obama's approach. Speaker Boehner has rejected

both the President and Pelosi's proposals, reiterating that before adjourning for the August recess the House will vote to extend all of the Bush tax cuts through 2013.

- **Ways and Means Holds Hearing on Tax Aspects of Supreme Court Health Care Decision.** On July 10, the House Ways and Means Committee held a hearing on the tax ramifications of the Supreme Court's ruling on the constitutionality of the Affordable Care Act (ACA). Four witnesses appeared before the Committee: Steven G. Bradbury, Partner, Dechert LLP; Carrie Severino, Chief Counsel, Policy Director, Judicial Crisis Network; Lee A. Casey, Partner, Baker Hostetler; Walter Dellinger, Partner, O'Melveny & Myers LLP. In general, Republicans argued that the Supreme Court's ruling allows for an unprecedented extension of Congress's taxing power, while Democrats defended the law as one that provides the government the ability to encourage or discourage certain types of activity, akin to college savings.
- **Senate Finance Holds Hearing on Enhancing Economic Mobility.** On July 10, the Senate Finance Committee held a hearing entitled "Boosting Opportunities and Growth through Tax Reform: Helping More Young People Achieve the American Dream." The following witnesses appeared before the Committee: Dr. Katherine S. Newman, James B. Knapp Dean of the Zanvyl Krieger School of Arts and Sciences, The Johns Hopkins University; Dr. Miles Corak, Graduate School of Public and International Affairs, University of Ottawa; Dr. Lars J. Lefgren, Associate Professor, Department of Economics, Brigham Young University; Ms. Erin Currier, Project Manager, Economic Mobility Project, The Pew Charitable Trusts; and Dr. Eugene Steuerle, Richard B. Fisher Chair and Institute Fellow, The Urban Institute. The hearing addressed the many factors that enhance and depress economic mobility, including tax policy, education, job creation, military service, and monetary incentives. The discussion focused on the status of economic mobility in the U.S. and using the tax code to strengthen youth ability to attain economic success.
- **Tax Hearings Next Week.** The following tax hearings are scheduled next week in the House Ways and Means and Senate Finance Committees: Thursday, July 19: House Ways and Means Committee hearing on Tax Reform and the U.S. Manufacturing Sector.

Transportation

LEGISLATIVE ACTIVITY

- **MAP-21 (SAFETEA-LU Reauthorization).** As reported in the last edition of Capital Thinking, the President signed into law Moving Ahead for Progress in the 21st Century (MAP-21) (H.R. 4348), a 27-month surface transportation bill, on July 6. The law included an extension of current law through September 30. The new law will take effect on October 1, 2012 and carry through September 2014. The Department of Transportation and its agencies are now beginning the process of implementing MAP-21, which includes hundreds of rulemakings, guidance documents, and various studies required by the law. On July 12, the Federal Transit Administration (FTA) announced their new webpage for MAP-21 (<http://www.fta.dot.gov/map21>), which provides information on the law and updates on the implementation of its transit provisions.

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

- **National Infrastructure Bank.** On July 12, the Congressional Budget Office (CBO) released a report that analyzes an illustrative federal infrastructure bank that is similar to those proposed by President Obama in his FY 2013 Budget and the BUILD ACT (S. 652), which gained traction during reauthorization discussions and had the bipartisan support of several Senators including Mark Warner (D-VA), Kay Bailey Hutchison (R-TX), Lindsey Graham (R-SC), and John Kerry (D-MA). Ultimately no proposals for a national infrastructure bank were included in the final version of MAP-21. A copy of the CBO report can be found [here](#).