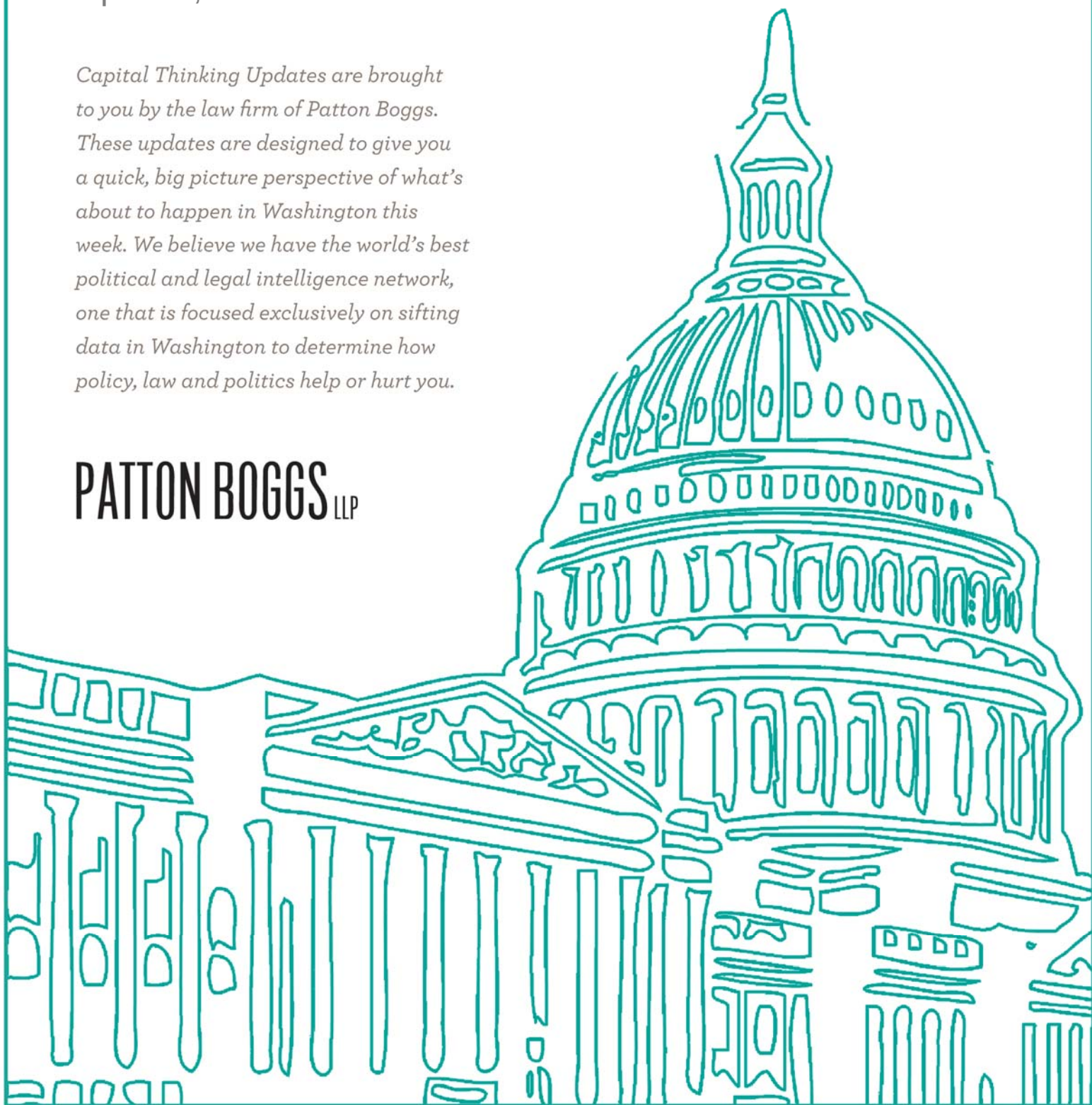


CAPITAL **thinking** UPDATES

April 23, 2012

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

PATTON BOGGS LLP



General Legislative

On Monday, April 23, 2012, the House will meet in pro forma session at 11:00 a.m. with no votes expected. On Tuesday, April 24, the House will meet at 12:00 p.m. for morning hour and at 2:00 p.m. for legislative business. The House will consider the following bills under suspension of the rules: H.R. 1038, a bill to authorize the conveyance of two small parcels of land within the boundaries of the Coconino National Forest containing private improvements that were developed based upon the reliance of the landowners in an erroneous survey conducted in May 1960; H.R. 2050, the Idaho Wilderness Water Resources Protection Act; H.R. 2157, a bill to facilitate the land exchange involving certain National Forest System lands in the Inyo National Forest; H.R. 2947, a bill to provide for the release of reversionary interest held by the United States in certain land conveyed in 1950 for the establishment of an airport in Cook County, Minnesota; H.R. 491, legislation to modify the boundaries of Cibola National Forest in the State of New Mexico, to transfer certain Bureau of Land Management land for inclusion in the national forest; and H.R. 2240, the Lowell National Historical Park Land Exchange Act of 2011. The Senate convenes at 12:00 p.m. on Monday and will resume consideration of the motion to proceed to S. 1925, the Violence Against Women Reauthorization Act. At 2:00 p.m., the Senate will begin consideration of the motion to proceed to S. J. Res. 36, a joint resolution of disapproval of a rule submitted by the National Labor Relations Board relating to representation election procedures.

Agriculture

LEGISLATIVE ACTIVITY

- **House Reconciliation Proposal.** On Wednesday, April 18, the House Committee on Agriculture passed a reconciliation measure, by voice vote, to cut the Supplemental Nutrition Assistance Program (SNAP), formerly known as the food stamp program, by \$35 billion. According to Chairman Frank Lucas (R-OK), the proposal satisfies reconciliation instructions required by the House Budget Resolution. Instructions included making policy changes that resulted in one-, five-, and ten-year saving estimates of \$7.7 billion, \$19.7 billion, and \$33.2 billion, respectively. Although the reconciliation measure is unlikely to become law, it is expected that a similar proposal will be introduced during the House Farm Bill reauthorization.
- **FDA User Fees for Food Companies.** On Thursday, April 19, Senate Agriculture Appropriations Subcommittee Chairman Herb Kohl (D-WI) told Food and Drug Administration Commissioner Margaret Hamburg at a hearing that user fees for food companies are “highly unlikely to be passed this year.” Chairman Kohl believes food safety activities will be flat-funded for FY 2013, despite FDA’s increased activity to implement the new Food Safety Modernization Act (FSMA). FDA estimates the user fee could raise \$220 million, which would assist the Agency in meeting its responsibilities under FSMA. However, without the user fee, Commissioner Hamburg thinks FDA will be unable to accomplish the goals of FSMA.

For FY 2013, the Agriculture Subcommittee was allocated \$20.8 billion for discretionary spending at FDA and the Department of Agriculture. This is a 4 percent increase from FY 2012 spending levels. The House, however, is expected to have a lower cap.

- **House Farm Bill Field Hearing.** On Friday, April 20, the House Committee on Agriculture concluded its final Farm Bill field hearing in Kansas. Witnesses included corn, wheat, and cow calf producers who highlighted the need for an effective risk management program, given the anticipated elimination of many direct payment programs.
- **Farm Bill Draft Legislation & Markup.** On Friday, April 20, Senate Agriculture Chairwoman Debbie Stabenow (D-MI) released a brief summary of the Senate's Farm Bill and the draft legislation. Similar to the proposal submitted to the Joint Select Committee on Deficit Reduction last fall, the draft bill would cut \$23 billion over 10 years.

The draft legislation eliminates direct payments and gives farmers the ability to tailor risk management coverage for their specific crops. In addition, the bill would expand access to crop insurance and consolidate 23 existing conservation programs into 13. The draft bill also looks to curb abusive practices under SNAP, including placing stronger accountability measures to crack down on retailers and recipients engaged in benefit trafficking, etc. The Committee scheduled a markup for Wednesday, April 25.

- **Upcoming Farm Bill Hearings.** On Wednesday, April 18, the House Committee on Agriculture announced its series of Farm Bill hearings in Washington, DC. The six subcommittees will hold the following eight hearings throughout April and May:
 - **Wednesday, April 25, 2012**
Subcommittee on Rural Development, Research, Biotechnology, and Foreign Agriculture
Re: Formulation of the 2012 Farm Bill: Rural Development Programs
 - **Thursday, April 26, 2012**
Subcommittee on Conservation, Energy, and Forestry
Re: Formulation of the 2012 Farm Bill: Conservation Programs
 - **Thursday, April 26, 2012**
Subcommittee on Livestock, Dairy, and Poultry
Re: Formulation of the 2012 Farm Bill: Dairy Programs
 - **Tuesday, May 8, 2012**
Subcommittee on Nutrition and Horticulture
Re: Formulation of the 2012 Farm Bill: Nutrition & Specialty Crop Programs
 - **Thursday, May 10, 2012**
Subcommittee on Department Operations, Oversight, and Credit
Re: Formulation of the 2012 Farm Bill: Credit Programs
 - **Wednesday, May 16, 2012**
Subcommittee on General Farm Commodities and Risk Management
Re: Formulation of the 2012 Farm Bill: Commodity Programs & Crop Insurance
 - **Thursday, May 17, 2012**
Subcommittee on General Farm Commodities and Risk Management
Re: Formulation of the 2012 Farm Bill: Commodity Programs & Crop Insurance

- o **Friday, May 18, 2012**

Subcommittee on Conservation, Energy, and Forestry

Re: Formulation of the 2012 Farm Bill: Energy & Forestry Programs

REGULATORY ACTIVITY

- **Interagency Agreement on Agricultural Education.** On Wednesday, April 18, the Department of Agriculture and Department of Education announced an agreement between the two agencies to promote career pathways and postsecondary education. The agreement calls for the departments to exchange a variety of information and participate in joint activities related to agricultural education, including webinars, conferences, outreach materials, and helping each other identify industry-validated standards, assessments, best practices, accreditations, and certifications. The departments will also work jointly to find and use pathways and career programs of study that can prepare students for careers related to agriculture, food and natural resources.

Budget, Appropriations

LEGISLATIVE ACTIVITY

- **Senate FY 2013 Budget Action.** Senate Budget Committee Chairman Kent Conrad (D-ND) retreated from his plan to markup an FY 2013 budget resolution and instead on April 18 introduced a deficit reduction plan modeled after the proposal put forth by the 2010 Simpson-Bowles Presidential Commission, of which Chairman Conrad was a member. Chairman Conrad did not hold a vote on or take amendments to the measure during the Committee meeting and it is not likely to come up for a floor vote. There are several Republican budget proposals that may make their way to a Senate vote, including a proposal by Senator Patrick Toomey (R-PA) (S. Con. Res. 37) that seeks to roll back non-defense discretionary funding to FY 2006 levels, lower marginal tax rates by 20 percent, reduce the corporate tax rate to 25 percent, repeal healthcare reform law (P.L. 111-148; P.L. 111-152), and overhaul Medicare and Medicaid. In May 2011, the Senate rejected a motion to proceed to Senator Toomey's proposal. Senate Republicans may also push for a vote on a budget resolution introduced by Senator Rand Paul (R-KY), the House Budget Resolution (H. Con. Res. 112), and the President's FY 2013 Budget Proposal.
- **FY 2013 Appropriations.** Last week, the Senate Appropriations Committee approved its FY 2013 302(b) allocations as well as the Commerce-Justice-Science (CJS) and Transportation-Housing (T/HUD) spending bills (302(b) allocations reflect how the Committee intends to divide the \$1.047 trillion discretionary spending cap among the twelve FY 2013 appropriations bills). On the House side, the Energy, Water, and Commerce-CJS Appropriations Subcommittees held markups of their FY 2013 spending bills.

As expected, the Senate bills aligned closely with the funding priorities outlined in the President's FY 2013 Budget Proposal. The Transportation-Housing bill would provide a total of \$53.4 billion in discretionary funding for transportation and housing programs, which is \$4 billion, or seven percent, below the current FY 2012 funding level for those programs. The Commerce-Justice-Science bill would provide discretionary funding of \$51.9 billion for programs under its jurisdiction, which is \$1 billion, or two percent, below the current FY 2012 level.

The House Energy and Water Subcommittee approved a bill that would provide \$32.1 billion in discretionary funding to the Army Corps of Engineers, Department of Energy, and Bureau of Water Reclamation, among others. This level of funding is \$88 million above the current FY 2012 level and only three percent below what President Obama requested for FY 2013. The bill approved by the Commerce-Justice-Science Subcommittee would provide discretionary funding of \$51.1 billion, which is approximately \$800 million less than what the Senate Appropriations Committee proposed in its bill.

As the first FY 2013 spending bill addressed by the Appropriations Subcommittee / Committee in each chamber, the Commerce-Justice-Science bill may serve as a precursor for what to expect going forward. While overall funding levels are only \$800 million apart, the funding and policy priorities outlined in each are significantly different, particularly with regard to funding and satellite acquisition under the National Oceanic and Atmospheric Administration (NOAA) and law enforcement funding. A specific point of contention going forward will be the funding level for the Department of Justice's COPS program. While the Senate bill would increase the program by approximately \$50 million compared to the FY 2012 level, the House again proposes to drastically reduce the program, by 63.5 percent compared to FY 2012.

The House Appropriations Committee will likely release its 302(b) allocations this week, working with the \$1.028 trillion discretionary spending level approved in the House Budget Resolution (H. Con. Res. 112). Both Committees will continue to hold subcommittee and full committee markups (as of the writing of this report, the committee schedules for this week had not yet been determined).

Both chambers are expected to start floor consideration of appropriations bills in May; however, it is not likely any will be reconciled until after the November elections due to the \$19 billion gap in top line numbers. Moreover, in an April 18 letter to House Appropriations Chairman Hal Rogers (R-KY), Jeffrey Zients, Acting Director of the White House Office of Management and Budget, advised that the President would not sign any FY 2013 appropriations bills that do not abide by the funding agreement established in the Budget Control Act of 2011 (P.L. 112-25).

- **House Reconciliation Efforts.** As previously reported, the House FY 2013 Budget Resolution (H. Con. Res. 112) instructed six authorizing committees to come up with the spending cuts necessary to avoid sequestration in time for a May vote: Agriculture - \$33.2 billion for FY 2012 – FY 2022 (\$8.2 billion for FY 2012 and FY 2013); Energy and Commerce - \$96.76 billion for FY 2012 – FY 2022 (\$3.75 billion for FY 2012 and FY 2013); Financial Services - \$29.8 billion for FY 2012 – FY 2022 (\$3 billion for FY 2012 and FY 2013); Judiciary - \$39.7 billion for FY 2012 – FY 2022 (\$100 million for FY 2012 and FY 2013); Oversight and Government Reform - \$78.9 billion for FY 2012 – FY 2022 (\$2.2 billion for FY 2012 and FY 2013); and Ways and Means - \$53 billion for FY 2012 – FY 2022 (\$1.2 billion for FY 2012 and FY 2013).
- For a budget reconciliation to take effect, both chambers would have to approve the process and use the same budget resolution. Senate Majority Leader Harry Reid (D-NV) has repeatedly stated that an FY2013 budget resolution is unnecessary because the spending limit is already established (in the Budget Control Act). As conceded by Budget Committee Chairman Paul Ryan (R-WI), the reconciliation efforts of the House are mainly for political positioning leading up to the November elections.

The majority of these committees introduced reconciliation proposals this week, including:

- o Agriculture – On Wednesday, April 18, the House Agriculture Committee approved its budget reconciliation measure to cut \$33.2 billion over the next decade. The proposal makes several changes to the Supplemental Nutrition Assistance Program (SNAP), formerly known as food stamps. As stated

by Chairman Frank Lucas (R-OK), these changes are aimed at “closing loopholes, reducing waste and abuse, and increasing the integrity of the program to ensure that SNAP serves only those households who qualify for the program.” Financial Services – Also on Wednesday, the House Financial Services Committee approved legislation that would save an estimated \$35.1 billion over 10 years, which is over \$5 billion more than the \$29.8 billion that the House Budget Resolution instructed. These savings come from eliminating the Federal Deposit Insurance Corporation’s power to seize failing banks and bringing the Consumer Financial Protection Bureau (CFPB) within the appropriations process rather than funding it through the Federal Reserve. In addition, the measure eliminates the Home Affordable Modification Program (HAMP), reauthorizes the National Flood Insurance Program to include institutional reforms, and repeals the Office of Financial Research. Ways and Means – The House Ways and Means Committee approved three budget reconciliation bills last Wednesday that comprise the \$53 billion in spending cuts over ten years as instructed in the House Budget Resolution. The first measure was approved by voice vote and requires the capture of savings from overpayments in federally subsidized health insurance. The second bill was approved by a 22-12 vote along party lines and requires taxpayers to include their Social Security number on tax returns in order to claim a refund from the child tax credit. The third measure was approved by a 22-14 vote and repeals the Social Services Block Grant which provides funding for state programs to prevent, reduce or eliminate dependency on social services. Judiciary – The House Judiciary Committee began work last week on its draft budget reconciliation measure which would overhaul the medical liability system to cut \$39.7 billion over the next decade. The House passed this measure (H.R. 5) in March as part of a legislative package to repeal the Independent Payment Advisory Board (IPAB) that was created by the 2010 healthcare reform law. Although the reconciliation measure does not include language to repeal IPAB, it would cap non-economic damages at \$250,000, limit attorneys’ fees, and establish a statute of limitations for filing health care lawsuits. The Committee did not complete its work on the measure and will likely reconvene next week to resume consideration of the bill.

Education

LEGISLATIVE ACTIVITY

- **Workforce Investment Legislation.** As previously reported, the House Education and the Workforce Committee held a hearing on Tuesday, April 17 to consider legislation (H.R. 4297) to revamp the Workforce Investment Act by consolidating 27 existing job training programs into a single Workforce Investment Fund. Two days later, from a community college in Iowa, the Obama Administration announced its workforce training blueprint (see details below), which seeks to reauthorize and restructure the federal law that funds and regulates career and technical education. Senate Democrats immediately rallied behind the plan, with Senators Tom Harkin (D-IA) and Patty Murray (D-WA) announcing a pair of bills (S. 2252 and S.830, respectively) on Thursday, April 19 to put the proposal into action.
- **Student Loan Interest Rates.** On Friday, April 20, House Education and the Workforce Chairman John Kline (R-MN) criticized President Obama and Democratic leaders for promises made to keep interest rates on student loans from rising. He stated that policymakers “must now choose between allowing interest rates to rise or piling billions of dollars on the backs of taxpayers” and noted that the Committee is exploring options to

find a responsible solution that serves both borrowers and taxpayers. The Committee also continues to focus on management of student debt by the Department of Education, particularly in rehabilitating defaulted loans, an acknowledgement of unfolding concerns related to the department's loan-servicing system.

- **Restrictions on Use of Federal Funds.** Senator Kay Hagan (D-NC) and Senate HELP Committee Chairman Tom Harkin (D-IA) unveiled legislation on Wednesday, April 18 aimed at curbing deceptive recruiting tactics by for-profit colleges by preventing higher education institutions from using federal student aid funds to pay for advertising, marketing and recruiting activities. The bill is not likely to advance in the House given that members of both parties in that chamber believe that such rules would restrict access to college for minorities and single parents.
- **Hearings.** On Friday, April 27 at 9:45 a.m., the House Veterans' Affairs Committee, will mark up pending legislation which may include measures related to veterans' education benefits. The Committee will announce the specific bills under consideration on Wednesday, April 25.

REGULATORY ACTIVITY

- **Interagency Agreement on Agricultural Education.** Last Wednesday, April 18, the Department of Education and Department of Agriculture announced an agreement between the two agencies to promote career pathways and post-secondary education. The agreement calls for the departments to exchange a variety of information and participate in joint activities related to agricultural education, including webinars, conferences, outreach materials, and helping each other identify industry-validated standards, assessments, best practices, accreditations and certifications. The departments also will work jointly to find and use pathways and career programs of study that can prepare students for careers related to agriculture, food and natural resources.
- **Together for Tomorrow.** Also, on Wednesday, April 18, Together for Tomorrow (TFT), the joint initiative of the Department of Education, White House Office of Faith-based and Neighborhood Partnerships, and the Corporation for National and Community Service, launched the School Improvement Challenge for the 2012-2013 school year. The Challenge allows for schools and districts, higher education institutions, and non-profit organizations to join with other partners in efforts to improve their neediest schools by raising key measurable student outcomes: attendance, behavior, course performance, and college access. According to the department, the Challenge is not a new grant program but, rather, an approach to better coordinate resources and initiatives. Selected applicants will also be invited to attend a special event in Washington, D.C. The deadline to submit plans is June 29.
- **Career and Technical Education.** On Thursday, April 19, the Department of Education released the Administration's Blueprint for reforming career and technical education (CTE) programs under the reauthorization of the *Carl D. Perkins Career and Technical Education Act*. The last reauthorization occurred in 2006.

The Blueprint primarily focuses on the following four areas:

- o **Alignment.** Ensuring the skills taught in CTE programs reflect the actual needs of the labor market so that CTE students acquire skills necessary for in-demand occupations within high-growth industry sectors.

- o **Collaboration.** Creating incentives for secondary schools, institutions of higher education, employers, and industry partners to work together to ensure that CTE programs offer high-quality learning opportunities.
 - o **Accountability.** Requiring CTE programs to show, through common definitions and related performance measures, that they are improving academic outcomes and enabling students to build job and technical skills.
 - o **Innovation.** Promoting systemic reform of state-level policies to support effective CTE implementation and innovation at the local level.
- **Promise Neighborhoods.** On Friday, April 20, the Department of Education released the 2012 application for the Promise Neighborhoods program. The department will provide \$60 million to continue support for existing implementation grantees and award a new group of planning and implementation grants. Non-profit organizations, institutions of higher education, and Indian tribes are eligible to apply. The Office of Innovation and Improvement will conduct several [webinars](#) for potential applicants. Applications are due on July 27, with winners selected and awards made in December 2012.
 - **Postsecondary Student Success.** The Department of Education released information on its [action plan](#) for improving measures of postsecondary student success in support of President Obama's college completion agenda. In the action plan, the department plans to broaden graduation rate reporting to include part-time and other students who have previously attended higher education.

The action plan also includes activities and grant opportunities to help institutions and states strengthen capacity to collect and disseminate quality data. Among them: developing templates that schools can use to meet the Higher Education Opportunity Act's (HEOA) disclosure requirements; making improved data collection and reporting a focus in its postsecondary education initiatives and grant programs; continuing to provide incentive funding to strengthen states' data infrastructure through Statewide Longitudinal Data System grants; and convening a summit, this year, to highlight practices in the collection of data related to student success, such as student learning and employment.

The action plan is based on the Committee on Measures of Student Success' recommendations discussed in its December 2011 [final report](#) to Secretary Arne Duncan. The committee was created under the HEOA to help two-year institutions comply with the law's disclosure requirements and develop alternate measures of student success. Although the committee's work focused on two-year institutions, the committee recommends that four-year institutions consider the proposed action items discussed in the final report.

Energy

LEGISLATIVE ACTIVITY

- **Congressional Hearings.** On Thursday, April 26, the Senate Energy and Natural Resources Committee will receive testimony on weather-related electrical outages; the House Natural Resources Committee will hold a hearing on increased electricity costs for American families and small businesses – Energy Secretary Steven Chu has been invited to testify regarding a March 16 memorandum on the Power Marketing Administrations' role.

REGULATORY ACTIVITY

- **Hydraulic Fracturing.** The EPA has formally released a final rule to revise the New Source Performance Standards covering emissions of volatile organic compounds (VOCs) in the production and storage of natural gas, including the first federal air rules for natural gas wells that are hydraulically fractured. The final rule will take effect 60 days after publication in an upcoming Federal Register notice. To achieve VOCs reductions, owners and/or operators *may* use “reduced emissions completions” (RECs) or “green completions” (such as flaring) until January 1, 2015; as of that date, owners and/or operators *must* use RECs and a completion combustion device. As specified in the final rule, the EPA will not require RECs where their use is not feasible. The EPA’s final rule also addresses emissions from storage tanks and other equipment.
- **FERC.** The Federal Energy Regulatory Commission is proposing to amend regulations to incorporate by reference the North American Energy Standards Board’s business practice standards for measuring and verifying demand response and energy efficiency resources participating in organized wholesale electricity markets. A Notice of Proposed Rulemaking will appear in an upcoming Federal Register notice, with public comments due 60 days thereafter.

Environment

LEGISLATIVE ACTIVITY

- **Wetlands and Wildlife.** On Tuesday, April 24, the Senate Committee on Environment and Public Works’ Subcommittee on Water and Wildlife will hold a legislative hearing to consider a number of bills, including S. 2282, which would extend the authorization of appropriations to carry out approved wetlands conservation projects under the North American Wetlands Conservation Act through fiscal year 2017. In addition, the Subcommittee will consider S. 357, which would authorize the Secretary of the Interior to declare wildlife disease emergencies and coordinate responses to those emergencies. The Honorable Daniel M. Ashe, Director, U.S. Fish and Wildlife Service, will testify.
- **Weather.** On Thursday, April 26, the Senate Committee on Energy and Natural Resources will hold a hearing to examine weather-related electrical outages.

REGULATORY ACTIVITY

- **National U.S. Greenhouse Gas Inventory.** The EPA has released the 17th annual U.S. greenhouse gas inventory. The final report shows overall emissions in 2010 increased by 3.2 percent from the previous year. The EPA attributes the trend to an increase in energy consumption across all economic sectors, due to increased demand for electricity for air conditioning due to warmer summer weather in 2010. The report indicates that overall emissions have grown by over 10 percent from 1990 to 2010. The inventory also calculates carbon dioxide emissions that are removed from the atmosphere by “sinks,” e.g., through the uptake of carbon by forests, vegetation, and soils. *The Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2010* is the latest annual report that the United States has submitted to the Secretariat of the United Nations Framework Convention on Climate Change, which sets an overall framework for intergovernmental efforts to tackle the challenge posed by climate change. The inventory tracks annual greenhouse gas emissions at the national level and presents historical emissions from 1990 to 2010.

Financial Services

LEGISLATIVE ACTIVITY

- **House Financial Services Committee Votes to Cut Programs.** On Wednesday, April 18, the House Financial Services Committee voted to eliminate several key provisions of the Dodd-Frank Act and other programs. The Committee approved a proposal to eliminate Title II of the Dodd-Frank Act, which provides authority for the orderly liquidation of failed systemically important financial firms, and to subject the Consumer Financial Protection Bureau to the appropriations process. These two measures would save nearly \$27 billion, according to the Congressional Budget Office, though the figure was disputed by Ranking Member Barney Frank (D-MA), who called it a “gimmick.” The approved measure also would eliminate the foreclosure mitigation Home Affordable Modification Program and reform the National Flood Insurance Program.
- **Senate Banking Committee to Discuss MF Global.** On Tuesday, April 24, the Senate Banking, Housing, and Urban Affairs Committee will conduct a hearing titled, “The Collapse of MF Global: Lessons Learned and Policy Implications.” The witnesses participating in the hearing will include Mr. James W. Giddens, Trustee, Securities Investment Protection Act Liquidation of MF Global Inc.; The Honorable Louis Freeh, Trustee, MF Global Holdings; The Honorable Jill Sommers, Commissioner, U.S. Commodity Futures Trading Commission; Mr. Robert Cook, Director, Division of Trading and Markets, U.S. Securities and Exchange Commission (SEC); Mr. Richard Ketchum, President, Chairman and CEO, Financial Industry Regulatory Authority; and Mr. Terrence A. Duffy, Executive Chairman, Chicago Mercantile Exchange.
- **House Financial Services Subcommittee to Hold SEC Oversight Hearing.** On Wednesday, April 25, the House Financial Services Subcommittee on Capital Markets and Government-Sponsored Enterprises will hold a hearing titled, “Oversight of the U.S. Securities and Exchange Commission.” This hearing will continue examining the SEC, after last week’s House Oversight Committee hearing on the SEC’s cost-benefit analyses.
- **Senate Banking Subcommittee to Discuss Homeowner Refinancing.** On Wednesday, April 25, the Senate Banking Subcommittee on Housing, Transportation, and Community Development will conduct a hearing at 10am titled “Helping Responsible Homeowners Save Money Through Refinancing.” The witnesses participating in the hearing will include Dr. Christopher Mayer, Professor of Real Estate, Finance, and Economics, Columbia Business School; and Ms. Debra Still, Chairman-Elect, Mortgage Bankers Association.

REGULATORY ACTIVITY

- **SEC, CFTC Adopt Swap Dealer, Major Swap Participant Definitions.** On Wednesday, April 18, the Securities and Exchange Commission and the Commodity Futures Trading Commission jointly adopted final rules further defining “swap dealer,” “security-based swap dealer,” “major swap participant,” “major security-based swap dealer,” and “eligible contract participant.” These so-called entity definitions are one of the two primary rulemakings to be jointly completed by the two agencies, the remaining rulemaking related to the definition of “swap” and “security-based swap.” The final rule is notable for a significant increase in the de minimis exception for dealer categorization, which was raised drastically from the proposed rulemaking issued in December 2010.

- **Regulators Clarify Volcker Rule Compliance Period.** On Thursday, April 19, the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, and the Commodity Futures Trading Commission released a statement clarifying that entities subject to the Volcker Rule, which restricts (i) proprietary trading activities, and (ii) hedge fund and private equity fund activities and investments, must be in compliance within two years after the statutory effective date, which would be until July 21, 2014. Until that date, banking entities should engage in “good-faith planning efforts,” appropriate for their activities and investments, to enable them to conform their activities and investments to the Volcker Rule.
- **SEC Seeks Input on JOBS Act Implementation.** The SEC announced it would accept public comments on implementation of the recently-enacted Jumpstart Our Business Startups Act, or JOBS Act, prior to issuing formal proposed rules for comment. The JOBS Act, in part, requires regulators to conduct studies and amend its disclosure and registration requirements and separates Wall Street research analysts from investment bankers in an attempt to prevent analysts from improperly promoting stocks to generate business for their firms.
- **Federal Deposit Insurance Corporation to Discuss the Deposit Insurance Fund’s Restoration Plan.** On Monday, April 23, the Federal Deposit Insurance Corporation (FDIC) will hold an open meeting to discuss the projected deposit insurance fund losses, income, and reserve ratios for the restoration plan. The meeting will also look at the FDIC’s memoranda and resolutions regarding the final rule for calculating the maximum obligation the FDIC may incur in liquidating a covered financial company and the final rule providing for the treatment of a Mutual Insurance Holding Company as an insurance company.

Health Care

LEGISLATIVE ACTIVITY

- **FDA User Fee Reauthorization.** Following the release of the House Energy and Commerce Committee draft legislation and a hearing on their discussion draft to revise and extend the user-fee programs for prescription drugs and medical devices, the Senate Committee on Health, Education, Labor and Pensions will meet in executive session on Wednesday, April 25 to consider its version of user fee legislation. The legislative draft includes language regarding new manufacturer use fees for generic and biosimilar drugs as well as programs to address critical drug shortages and encourage the development of pediatric medications. Sens. Reed (D-RI), Alexander (R-TN), Murray (D-WA) and Roberts (R-KS) introduced the bipartisan “Better Pharmaceuticals and Devices for Children Act” last Tuesday, April 17 to reauthorize the pediatric drug and device laws, including clinical trial mandates, marketing exclusivity incentives and grants to incent the development of pediatric devices. However, the HELP Committee is still working to identify offsets that pay for the pediatric incentives outlined in the bill in order to include such provisions in the legislative draft marked up this week. Currently, the Senate draft includes a “sense of the Senate” provision that the pediatric drug and device laws should be reauthorized (the House draft includes language that would permanently reauthorize the laws).
- **Senate VA Hearings.** The Senate Committee on Veterans’ Affairs will hold a field hearing on Saturday, April 21 in Billings, MT, on “Improving Access to Quality Healthcare for Rural Veterans.” The Committee has also

scheduled a hearing on Wednesday, April 25 titled “VA Mental Health Care: Evaluating Access and Assessing Care.”

- **Senate HELP Executive Session.** The Senate Committee on Health, Education, Labor and Pensions will meet in executive session on Wednesday, April 25 to consider S. ___, the Food and Drug Administration Safety and Innovation Act. The Committee print and supporting documents are available on the Committee’s website.
- **House Budget Hearing.** On Wednesday, April 25 the House Committee on the Budget will hold a hearing on “Replacing the Sequester.” Witnesses include Daniel Werfel, Office of Federal Financial Management, Office of Management and Budget and Susan Poling, Deputy General Counsel, Government Accountability Office.
- **House Oversight Hearing.** The House Committee on Oversight and Government Reform will hold a full committee business meeting on Wednesday, April 25 titled “Is Government Adequately Protecting Taxpayers from Medicaid Fraud?”
- **House Ways and Means Hearing.** The House Committee on Ways and Means has scheduled a hearing on Wednesday, April 25 on the “Impact of Limitations on the Use of Tax-Advantaged Accounts for the Purchase of Over-the-Counter Medication.” The hearing will focus on reviewing the rules affecting FSAs, HSAs and HRAs and the impact the rules have on consumers, physicians, and employers.
- **House Small Business Hearing.** The Subcommittee on Healthcare and Technology will hold a joint hearing with the Committee on Science, Space and Technology Subcommittee on Investigations and Oversight on “How the Report on Carcinogens Uses Science to Meet its Statutory Obligations.”

REGULATORY NEWS

- **HHS ACL Program Announcement.** This week, the Department of Health and Human Services (HHS) released a notice announcing the establishment of the Administration for Community Living (ACL). The objectives of the ACL include: (1) reducing the fragmentation that currently exists in Federal programs addressing the community living service and support needs of both the aging and disability populations; (2) enhancing access to quality health care and long-term services and supports for all individuals; (3) promoting consistency in community living policy across other areas of the Federal government; and (4) complementing the community infrastructure, as supported by both Medicaid and other Federal programs, in order to better respond to the full spectrum of needs of seniors and persons with disabilities.

International, Defense, Homeland Security

- **First Responder Appropriations Battles.** Last week, the Senate and House Appropriations Committees began to mark up their Fiscal Year 2013 (FY13) Commerce, Justice, Science, and Related Agencies (CJS) Appropriations bills. At the full committee level on Thursday, April 19, Senate Chairman Daniel Inouye (D-HI), CJS Subcommittee Chair Barbara Mikulski (D-MD), and other Appropriations Committee Democrats, with some Republican support, included funding levels for the Byrne Justice Assistance Grants (\$392 million) and Community Oriented Policing Services “COPS” (\$248 million) grant programs that are close to the Obama

administration's requested amounts. On the other hand, House Appropriations CJS Subcommittee Chairman Frank Wolf (R-VA) reported out a Republican-supported bill that proposes \$370 million (the FY 2012 funding level) for Byrne grants and \$72.5 million for the COPS program. Chairman Wolf and other Republicans had tried to zero out the politically popular COPS program in FY 2012, claiming that the federal government should not subsidize the poor budgetary decisions of states and localities, but his subcommittee's FY 2013 proposal suggests that Republicans are willing to compromise more on the issue in this election year.

- **Iran Developments.** State Department sources and Senate Foreign Relations Committee Chairman John Kerry (D-MA) continue to feel relatively encouraged about the results of P5+1 talks with Iran in Turkey during the weekend of April 14, as well as the follow-up discussions planned for late May in Iraq. Administration officials, along with much of the foreign policy establishment in the media and academia, believe that Iran wants to strike a face-saving deal on its nuclear program. Indeed, they believe the outlines of such a deal, including on enrichment levels and verification, are largely in place already. Israeli Prime Minister Benjamin Netanyahu has stated his mild disapproval with the outcome so far, which the P5+1 have interpreted as a signal to press onward.

However, ardent sanctions advocates in Congress, including Senator Robert Menendez (D-NJ), House Foreign Affairs Committee Chairwoman Ileana Ros-Lehtinen (R-FL), House Foreign Affairs Nonproliferation Subcommittee Ranking Member Brad Sherman (D-CA), and many others, remain steadfast in their call for additional sanctions against Iran. Indeed, the Senate Banking Committee reported out S. 2101, Chairman Tim Johnson's (D-SD) and Ranking Member Richard Shelby's (R-AL) sanctions legislation, on April 13. Senate Majority Leader Harry Reid (D-NV) was anxious to move Senator Johnson's bill, but Senate Republicans blocked the move in order to consider proposing strengthening amendments. One such amendment, authored by Senator Mark Kirk (R-IL), would target the Iranian financial sector as a whole, in addition to applying bilateral sanctions to companies or individuals who conduct business with Iran's natural gas, petroleum, or petrochemical industries. Administration officials continue to discuss the Johnson-Shelby bill and Senator Kirk's approach with the key players in Congress, suggesting that White House acquiescence to additional bilateral sanctions remains a distinct possibility, despite the awkwardly-timed parallel to the P5+1 talks, and on top of the already-substantial bilateral and multilateral sanctions regime.

Tax

LEGISLATIVE ACTIVITY

- **Senate Rejects High-Profile Buffett Rule.** Along mostly party lines, the Senate rejected the "Paying A Fair Share Act" of 2012 (S. 2230), the so-called Buffett Rule measure named after billionaire investor Warren Buffett. The 51-45 vote fell nine votes short of the 60 needed to advance the legislation. One Democrat, Senator Mark Pryor (D-AR) voted against, while one Republican, Susan Collins (R-ME) voted for the legislation. The bill would have imposed a minimum 30 percent tax on adjusted gross income in excess of \$1 million.

On April 10, President Obama's National Economic Council released a report titled "The Buffett Rule: A Basic Principle of Tax Fairness," arguing that the Buffett Rule should be adopted as a way to bring fairness to the tax code. That same day, the highest-ranking Republicans on the House and Senate tax writing committees,

Senate Finance Ranking Member Orrin Hatch (R-UT) and House Ways and Means Chairman Dave Camp (R-MI), came out in strong opposition to the proposal, arguing that the politically-charged Buffet Rule would fail to strengthen the economy.

- **House Approves Small Business Tax Cut Act.** On a mostly party line vote (235-173), the House approved the Small Business Tax Cut Act (H.R. 9) unveiled by House Majority Leader Eric Cantor (R-VA) in late March. The measure would allow all types of small businesses to deduct 20 percent of their active business income. Specifically, businesses with fewer than 500 employees would be permitted to deduct 20 percent of their income from taxes, up to 50 percent of their W-2 wages, regardless of whether the companies file as a pass-through or C-corporation. The Senate is not expected to approve the legislation.
- **Ways and Means Committee Hearing on Retirement Accounts.** On Tuesday, April 17, the House Committee on Ways and Means held a hearing titled “Tax Reform and Tax-Favored Retirement Accounts.” The hearing addressed whether and how reform of defined contribution plans (DC Plans) and individual retirement accounts (IRAs), as part of comprehensive tax reform, can achieve the three goals of simplification, efficiency, and increasing retirement and financial security for American families. The inquiry was prompted by a concern that the ad hoc development of retirement savings incentives has led to undue complexity and inefficiency that reduces the effectiveness of the tax incentives for retirement savings programs.
- **Tax Hearings Next Week.** The following hearings are scheduled next week in the House Ways and Means and Senate Finance Committees:
 - **Wednesday, April 25**
House Ways and Means Subcommittee on Oversight hearing on the Impact of Limitations on the Use of Tax-Advantaged Accounts for the Purchase of Over-the-Counter Medication.
 - **Wednesday, April 25**
Senate Finance Committee hearing on Tax Reform: What It Means for State and Local Tax and Fiscal Policy.
 - **Wednesday, April 26**
House Ways and Means Subcommittee on Select Revenue Measures hearing on Certain Expiring Tax Provisions.

Transportation

LEGISLATIVE ACTIVITY

- **SAFETEA-LU Reauthorization.** On Wednesday, April 18, the House passed H.R. 4348, a vehicle to get to conference with the Senate on SAFETEA-LU reauthorization and a milestone event in the process to reauthorize the nation’s surface transportation laws. H.R. 4348, which passed by a vote of 293-127, is technically a 90-day extension of current law, but in reality it is a “shell” vehicle designed to get the surface transportation bill out of the House and into conference with the Senate. The House leadership moved to the shell bill strategy after it became clear that the House’s five-year, \$260 billion reauthorization (H.R. 7) could

not garner even enough Republican votes to pass the chamber, largely due to conservative concerns about voting for such a large “spending bill.”

In addition to the extension, H.R. 4348 includes language directing the approval of the Keystone XL pipeline; a slightly modified version of the RESTORE Act directing the proceeds from BP Clean Water Act penalties from the BP oil spill to the Gulf States; the environmental streamlining title of H.R. 7; a coal-ash amendment advanced by Rep. David McKinley (R-WV); and a non-controversial amendment on the Harbor Maintenance Trust Fund advanced by Rep. Charles Boustany (R-LA).

Under the terms of the unanimous consent agreement governing MAP-21, the Senate will consider H.R. 4348 as the disagreeing version of S. 1813 and take the procedural steps to proceed to conference. Notably, H.R. 4348 passed with significant Democratic support – 69 Democrats joined 224 Republicans in voting for the bill – from members eager to get to conference with the Senate in an effort to move towards a final bill.

- **Conference Dynamics:** One of the main questions is how conference will work on substantive policy and funding issues as the House passed only a shell bill. House Transportation and Infrastructure Chairman John Mica (R-FL) maintains that everything in H.R. 7 would remain on the table in a conference with the Senate and that “H.R. 7 is the document I will be working off of.” In response to questioning on this subject, Mica told reporters, “I would say that everything on H.R. 7 is still in play. That’s my position. And if I couldn’t get enough of what’s in H.R. 7, I would not agree to a deal.” Mica also said he would like to see a conference begin “as soon as possible, but I intend to fully negotiate the provisions of any completed bill, and we’ll work to include as many provisions as we’ve passed in committee or passed in the House.” Rep. Bill Shuster, Chairman of the Railroads, Pipelines and Hazardous Materials Subcommittee, and a key player on the reauthorization in the House, also told reporters that House Republican conferees are “going to be working hard to get more of our policies into the [final] bill...I think we’ve got a lot of good things in there, that they have a lot of merit to them, and the Senate ought to take them up.”

Many observers note that the House will have diminished leverage in conference from not having been able to pass its own substantive bill. This is certain to be true, although to what degree remains to be seen. From a practical negotiating standpoint, the implication and resulting strategy is that the House will work to advance a more focused set of core priorities during conference negotiations, and that such negotiations will be based on MAP-21 as the blueprint and framework. That being said, other observers have noted that the strong desire of Senate leaders to get a bill passed may increase the Senate’s amenability to compromise with the House Conferees in the name of getting agreement on an overall bill.

- **Next Steps:** Speaker Boehner has said that he will appoint conferees this week, and both Chairman Mica and Ranking Member Nick Rahall (D-WV) have encouraged him to do so while extending their recommendations. Majority Leader Cantor stated that the House has “every intention of going forward” into conference negotiations and Minority Whip has pledged Democratic votes for a motion to proceed to conference as well. Senate Majority Leader Harry Reid (D-NV) also indicated to Senate EPW Chairman Barbara Boxer (D-CA) that he would be taking the procedural steps to move into conference. Under the terms of the Senate’s unanimous consent agreement governing S.1813, the Senate should

be able to appoint conferees and move to proceed to conference even next week without any additional floor votes.

- **Overall Prospects:** All indications are that the House and Senate will appoint conferees and proceed to conference. More so than at any time over the past weeks, this increases the likelihood of getting a reauthorization bill and provides a path for passage. However, there remain fundamental questions ahead, in particular whether conference negotiations are able to produce a mutually agreeable Conference Report that can be taken back to both chambers; and whether that product in particular will be able to pass the House with sufficient Republican votes to make the Republican leadership willing to let it come to that.

- **Transportation Appropriations:** On Thursday, April 19, the full Senate Appropriations Committee approved the FY 2013 Transportation, Housing and Urban Development (T/HUD) appropriations bill (S. 2322) by a vote of 28-1. The bill would appropriate \$18.24 in discretionary funding for the Department of Transportation, which is an increase of \$299 million over the FY 2012 enacted level and includes continued funding for the TIGER program. The bill also maintains the obligation limitation on contract authority from the Highway Trust Fund at FY 2012 levels.