**LEGISLATIVE UPDATE**

ML STRATEGIES

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# Post-Labor Day Preview

## INTRODUCTION

As Congress returns from its annual August recess on Monday, September 9, this update from ML Strategies is intended to provide an overview of the measures likely to be taken up during the remaining months of this first year of the 113th Congress.

We could conceivably see action on a number of legislative proposals, although there are a limited number of "must-pass" bills – appropriations (which could include efforts to address sequestration) and the nation's debt limit – leaving the remaining initiatives exposed to an even more hyper-partisan climate on Capitol Hill, not to mention the uncertainties of any unforeseen events which could arise and take precedence, such as the debate over a potential military intervention in Syria.

Members of the Senate and House foreign affairs, defense, and intelligence committees returned to Washington this week for briefings and meetings on the proposed use of military force in Syria. Both chambers of Congress are expected to debate a resolution authorizing use of military force immediately upon their return next week, delaying action on other legislative priorities.

## MUST-PASS LEGISLATION

**Fiscal Year 2014 Appropriations:** When Congress returns on September 9, the House has only nine scheduled legislative days on the calendar before the end of the current fiscal year, while the Senate has 16 in-session days. Given these dynamics – as well as widely divergent spending levels in the House and Senate spending allocations for FY14 – it is virtually guaranteed that Congress will, once again, pass a Continuing Resolution (CR) to keep the federal government operating when Fiscal Year 2014 begins on October 1. There will be some debate on the length of the CR, but it will likely last for 30 to 60 days until Congress passes another short- or long-term CR, or agrees to an omnibus appropriations bill that wraps all 12 spending measures into one legislative package.

While unlikely, there are some who have called for Congress to revisit the mandatory spending cuts of sequestration. If this happens, it will likely be in the appropriations process. It is important to remember that the very threat of sequestration in the Budget Control Act of 2011 (BCA) was intended as a means to spur Congress to reach agreement on a bipartisan package of spending cuts – in order to avoid automatic, mandatory, across-the-board spending cuts. With no agreement reached, the cuts went into effect, leading to furloughs and other cost-saving measures across the government. As sequestration has become a reality, many Democrats and President Obama have called for sequestration to end, and they have been joined in this call by some Republicans, especially in light of the defense budget and potential military action in Syria. The White House and Senate Republicans were engaged in discussions about how to end the sequestration, but those talks broke down in late August when they could not overcome their disagreement on taxes. For the sequester to end, there must be an agreement on some other means to reduce federal spending and/or increase revenues over the next nine years. Passing a CR for FY2014 without making other changes to end sequestration would extend the across-the-board cuts for non-exempt mandatory programs.

**Debt Limit:** Harkening back to the debt limit crisis of 2011, there is growing concern that, as Congress returns in September and tackles budget and appropriations, the national debt limit will once again become embroiled in broader debates on federal spending. The federal government reached its debt limit of $16.699 trillion in May, but the Treasury Department has used what it calls "extraordinary measures" to allow the government to continue to pay its bills. It is estimated that those measures will have run their course by sometime in October, necessitating an increase in the limit – although this could lapse until November as a result of increased tax revenues resulting from the improving economy and expired tax cuts on wealthy taxpayers, and spending reductions as a result of sequestration.

Given the political fallout from the 2011 debt limit debate – and the subsequent damage to the nation's credit rating – there is a general consensus that congressional Republicans and Democrats will work with the president to avert a showdown. However, while no one is suggesting that they want the federal government to default, some conservative Republicans are indicating that they will demand that any increase in the debt limit include more spending cuts as well as entitlement reform. Democrats, including the president, have generally balked at this and say that they will insist on a "clean" debt limit increase.

## OTHER KEY ISSUES THAT MAY SEE ACTION THIS YEAR

### CYBERSECURITY

Cybersecurity continues to be a high priority for both Congress and the Administration in 2013. After President Obama issued Executive Order 13636, Improving Critical Infrastructure Cybersecurity, the Department of Homeland Security and the National Institute of Standards and Technology (NIST) have been actively working to develop a framework for protecting critical infrastructure by 2014. As part of this process, NIST has held three Cybersecurity Framework Workshops for stakeholders to participate in the development of the framework. In addition to the workshops, stakeholders have been encouraged to provide comments on each draft of the proposed framework. The fourth Cybersecurity Framework Workshop will be held at the University of Texas at Dallas from September 11 to 13.

In addition to the work following the Executive Order, the many committees of jurisdiction in the House and Senate have been working on cybersecurity legislation. While the strategy in previous years has been to work toward a comprehensive cyber package, this year Congress is taking a more piecemeal approach. Each committee has been working on the areas of cybersecurity that fall under their jurisdiction.

For example, the Senate Commerce Committee passed the bipartisan Cybersecurity Act of 2013 (S. 1353) on July 30. This bill largely focuses on Department of Commerce's cybersecurity authority through NIST, which is under the Commerce Committee's jurisdiction. The Senate Homeland Security and Governmental Affairs Committee is focusing on Federal Information Security and Management Act (FISMA) and IT workforce issues, but it has not drafted a bill yet. The Senate Intelligence Committee is tasked with information sharing, which is more controversial than other cyber issues. Chairman Dianne Feinstein (D-CA) and Ranking Member Saxby Chambliss (R-GA) have drafted a bipartisan bill which would bolster cyber threat information sharing between government and industry. The Commerce Committee bill is the one most likely to see floor time before the end of the year.

On the House side, a number of cyber bills have passed earlier this year, including the Cyber Intelligence Sharing and Protection Act (CISPA) and the Federal Information Security Amendments Act of 2013. In addition, Chairman Michael McCaul (R-TX) of the Homeland Security Committee is working on the National Cybersecurity and Critical Infrastructure Protection Act, which addresses cybersecurity threats to critical infrastructure and seeks to facilitate actionable and real time cyber threat information sharing. The bill is expected to be formally introduced and marked up in the fall.

## DEFENSE & NATIONAL SECURITY

**Defense Authorization:** While the annual National Defense Authorization Act (NDAA) is technically not "must-pass" legislation, the House and Senate have overcome differences on defense policy and passed an authorization bill for 51 consecutive years. The House passed its FY14 NDAA on June 14th by a vote of 315-108. Consistent with the House-passed budget, the House bill authorizes $552.1 billion in national defense spending and an additional $85.8 billion for Overseas Contingency Operations (OCO). The authorization levels are above the targets set by the BCA and do not apply FY14 sequestration cuts to the military. On June 14, the Senate Armed Services Committee marked up its FY14 NDAA, reporting the bill by a vote of 23-3. Also above BCA levels and not accounting for sequestration, the Senate bill authorizes $526.6 billion for the Pentagon's base budget and $87 billion in OCO funding. Depending on how quickly Congress addresses the CR and the debt limit, the NDAA could be on the floor as soon as mid-September. Floor consideration could slip to October, or possibly even later this year.

**National Security Agency:** In the aftermath of former NSA contractor Edward Snowden's leak of documents detailing the National Security Agency's mass surveillance programs, the House Intelligence Committee held a hearing on the NSA's activities in June, where an array of federal officials defended the government's actions while decrying the actions of Mr. Snowden. With more details coming to light over the recess, Senate Judiciary Chairman Patrick Leahy (D-VT) said that his committee will convene a hearing in the near future to determine how the NSA is ensuring that it respects the rights of American citizens and to ensure that Congress and the Federal Intelligence Surveillance Court can conduct proper oversight.

**Authorization for Use of Military Force in Syria:** On August 31, following Secretary of State John Kerry's presentation of an unclassified report confirming the use of chemical weapons by Syrian President Bashar Assad against civilians, President Obama said the U.S. is prepared and should take military action against Syria. While claiming authority to authorize military action, President Obama asked Congress to go on record by voting to authorize the use of military force. On August 31, the White House delivered a draft resolution ordering a strike against Syria.

On September 3, Senate Foreign Relations Chairman Robert Menendez (D-NJ) and Ranking Member Bob Corker (R-TN) introduced new language limiting strikes to a 60-day window with one possible 30-day extension and barring the use of U.S. ground forces. On September 4, the resolution was amended and approved by the Foreign Relations Committee by a 10-7 vote. Senate Majority Leader Harry Reid (D-NV) will convene the Senate briefly on September 6 to file the bill, allowing full Senate consideration of the resolution to proceed as soon as September 9. Meanwhile, Senators Joe Manchin (D-WV) and Heidi Heitkamp (D-ND) are circulating a draft resolution that would allow Syria 45 days to sign and comply with the Chemical Weapons Convention before a U.S. military strike. At least 60 votes will be needed to bring up a resolution in the Senate without a unanimous consent agreement.

Meanwhile, House leaders are finding it difficult to draft a resolution that could garner enough votes for passage. Minority Leader Nancy Pelosi (D-CA) has come out in support of the president's request, but Representatives Chris Van Hollen (D-MD) and Gerry Connelly (D-VA) have indicated they are penning an alternative to the White House resolution, although the new language has yet to be unveiled. Republican leadership, including Speaker John Boehner (R-OH) and Majority Leader Eric Cantor (R-VA) support a resolution, but may bypass contentious debate in the House Foreign Affairs Committee by bringing the Senate resolution to the House Rules Committee and to then directly to the House floor. However, it remains unclear if there are enough votes in the House to pass the Senate resolution. Any differences between the House and Senate resolutions will ultimately need to be addressed by a conference committee.

President Obama is scheduled to address the nation this Tuesday, making his case for action.

## ENERGY

**Shaheen-Portman Energy Efficiency Legislation:** This comprehensive energy efficiency legislation was expected to be the first item taken up on the Senate floor next week, but with the Syrian authorization of force resolution taking priority, the bill will have to wait for now. Shaheen-Portman would add, expand, and improve energy conservation standards for existing and new products; authorize a state-level revolving loan fund for financing manufacturing energy efficiency upgrades; and encourage states to adopt more stringent building code standards.

**National Helium Reserve:** Created in 1925 and managed by the Department of the Interior's bureau of land management, the National Helium Reserve is located outside Amarillo, TX and holds more than 1 billion cubic meters of helium gas – more than 30% of the world's supply. Funding for the reserve is set to expire on October 7 without congressional action. The House passed – in a 394-1 vote – the *Responsible Helium Administration and Stewardship Act* in April. In late July, just before departing for the August recess, the Senate Energy and Natural Resources Committee approved the *Helium Stewardship Act*. Technology companies – particularly in the semiconductor industry – are making a strong push for congressional action before the program expires, although as with other issues, it faces a tight congressional calendar and numerous competing issues.

**LNG Export Licenses:** The Department of Energy approved a third liquefied natural gas terminal to export LNG to non-free trade agreement countries on August 7, the second permit issued in about three months, triggering debate over whether the review of a long backlog of export applications is hastening. The Lake Charles Exports LLC facility in Louisiana has the capacity to export 2 billion cubic feet of natural gas a day for 20 years. The agency is now considering a fourth LNG export terminal at Dominion's Cove Point facility. The agency has recently indicated that roughly eight weeks are necessary to complete review of each of the nearly two dozen pending applications. Both Senator Ron Wyden (D-OR) and Senator Ed Markey (D-MA) have expressed some concern about LNG exports due to a preference for retaining LNG for domestic use and because they are concerned about security issues.

**Keystone Pipeline:** The proposed Keystone Pipeline – to transport oil sands bitumen from Canada to the Gulf of Mexico – has seen extensive debate in Congress, with the House and Senate both having passed measures supporting the project. The State Department was expected to issue a decision on the pipeline this year; however the department's Office of Inspector General now says that it will not issue its report on a conflict of interest complaint until 2014. This likely means that the State Department will not issue its decision until after that IG report is issued. In the meantime, Senate Foreign Relations Chairman Robert Menendez (D-NJ), an opponent of the pipeline, said on August 29 that he intends to hold a hearing on the pipeline in the near future.

**Renewable Fuels Standard:** Both the House and Senate will reexamine the Renewable Fuels Standard, which mandates volumes of biofuel to be blended into gasoline. The Senate Environment and Public Works Committee will hold a hearing on the RFS, though Chairman Barbara Boxer (D-CA) has suggested previously that she does not have a legislative fix in mind. The major action will be in the House, where a task force, led by Representative John Shimkus (R-IL) and which also includes GOP Representatives Lee Terry (R-NE), Cory Gardner (R-CO), and Steve Scalise (R-LA), will offer recommended modifications to the RFS as soon as this month. Shimkus has said the House lacks votes for a full repeal and so is looking at reform instead. By aiming at reform instead of repeal, the GOP hopes to pick up Democratic votes. House Energy and Commerce Ranking Member Henry Waxman (D-CA) wants to preserve the RFS's focus on reducing greenhouse gas emissions and encouraging new technologies, but he is open to tweaking and improving the RFS in certain limited areas. The committee has spent much of the recess considering how to reform the program.

In a much-publicized comment, House Majority Leader Eric Cantor (R-VA) suggested earlier this summer that an RFS-reform bill could be included on a debt ceiling bill. Even if the comment reflects actual strategy rather than messaging, it still largely depends on having the formal process set in motion by the task force play out first. As of yet, the group has not finalized legislation, though it is expected soon.

At the same time, the Environmental Protection Agency (EPA) has suggested it may lower volumes in 2014 to avoid impacts from ethanol blends exceeding ten per cent. That rule is currently at the White House for review.

**DOI Fracking Rule:** As state governments around the country debate how to regulate hydraulic fracturing, or fracking, the Department of the Interior (DOI) will continue its rulemaking for fracking on federal land. The public comment period for the proposed rule ended August 23, and now Interior is sorting through the 1.3 million comments received. Republicans and the oil and gas industry are fighting the rule, claiming it duplicates state-level regulation and imposes compliance costs. Several Democrats, including the senior Democrat on the House Natural Resources Committee, claim DOI's May 2013 proposal is weaker than the original 2012 draft and allows the oil and gas industry to avoid chemical disclosure requirements by claiming trade secrets. However, Senator Jim Inhofe (R-OK), the former Ranking Member of the Senate Committee on Environment and Public Works, wants the draft trade secret exemption expanded.

**White House Climate Action Plan:** In June, the White House released the president's Climate Action Plan, which is based on three key pillars: 1) cut carbon pollution; 2) prepare the U.S. for the impacts of climate change; and 3) lead international efforts to address global climate change. Efforts to implement the specific proposals of the plan are underway, and the White House has laid out timelines and milestones for achieving every goal outlined in the Climate Action Plan by the end of the president's second term.

**EPA Regs:** One of the biggest issues to watch this fall will be the outcome of EPA work on greenhouse gas regulations. The EPA is working to issue final greenhouse gas regulations for existing power plants by June 2015, with proposed guidelines due the previous summer, and state implementation plans to follow a year later. The agency is expected to rely on Section 111(d) of the Clean Air Act, which has rarely been used, to propose carbon dioxide (CO2) emissions guidelines for existing plans in 2014. Before that happens, the agency must complete comparable new source performance standards (NSPS) for new units, which President Obama has directed the agency to propose by September 20. Section 111(d) requires the agency to issue emissions regulations that establish the "best system of emission reduction" for industrial facilities when it issues a NSPS for a pollutant not previously regulated by other provisions of the Clean Air Act.

**Power Africa:** On June 30, while visiting South Africa, President Obama announced a new Power Africa initiative. Due to the fanfare with the announcement of the new inter-agency program, Power Africa activities are expected to ramp up this fall as planning for a 2014 joint conference on African energy and infrastructure investment gets underway.

Power Africa intends to leverage more than $7 billion in public funding to double access to power in sub-Saharan Africa. Over the next five years, resources from the U.S. Agency for International Development (USAID), the Overseas Private Investment Corporation (OPIC), the Export-Import (Ex-Im) Bank, the U.S. Trade and Development Agency (USTDA), the Millennium Challenge Corporation (MCC), and the U.S. African Development Foundation (USADF) will be targeted towards assisting Ethiopia, Ghana, Kenya, Liberia, Nigeria, and Tanzania in meeting goals related to power generation, as well as achieving utility and energy sector reforms that serve as a foundation for investment and economic growth. Power Africa will also partner with Uganda and Mozambique on responsible oil and gas resource management. These activities will be supported by other U.S. government entities, including the State Department, the Department of Energy, and the Department of Commerce. In addition, Power Africa will capitalize on more than $9 billion in private sector commitments to support new electricity generation.

## FARM BILL

The House and Senate have each passed farm bills this year (H.R. 2642 and S. 954, respectively), but the two bills, which authorize food stamps and agricultural programs for five years, still need to be reconciled by a conference committee as they differ significantly.

The House-passed bill does not encompass funding for food stamps and does not include mandatory funding for energy, while the Senate bill cuts about $4 billion during the next decade from the food stamps program and contains $800 million in funding for clean energy programs. A new stand-alone House bill may be introduced this month cutting food stamp programs upwards of $40 billion, far from the bipartisan Senate compromise.

With only nine legislative days before the current programs expire, and with major votes on Syria and the debt ceiling imminent, Congress likely will address the farm bill later this year.

Farm bill stakeholders have waited a year for a new five year authorization: the last full farm bill expired in October 2012, with a one-year stop-gap extension expiring September 30, 2013. Stakeholders will have to wait a little longer for a new bill.

## FOOD SAFETY

**FDA Food Safety Rules:** On August 8, the Food and Drug Administration (FDA) issued Federal Register notices to extend the comment periods on the proposed rules for *Current Good Manufacturing Practice and Hazard Analysis and Risk-Based Preventive Controls for Human Food* and *Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption* 60 days until November 15, 2013. This is the second and final extension of the comment period for these two rules. The extension of the comment period also applies to the information collection provisions associated with the proposed rules. FDA is taking this action to allow interested persons the opportunity to consider the interrelationships between these two proposals, which were published on January 16, 2013, and the two new proposed rules that published on July 29, 2013, *Foreign Supplier Verification Programs for Importers of Food for Humans and Animals* and the *Accreditation of Third-Party Auditors/Certification Bodies to Conduct Food Safety Audits and to Issue Certifications*. These four proposed rules are part of the foundation of, and central framework for, the modern food safety system envisioned by Congress in the FDA Food Safety Modernization Act (FSMA).

## FINANCIAL SERVICES

**Dodd-Frank Act:** Following a meeting between the President and top financial services and banking regulators in late August where the President urged regulators to quickly finalize implementation of the Dodd-Frank Act, we anticipate increased attention on the implementation of some big ticket items, including the Volcker Rule and the Securities Exchange Commission (SEC) and Commodity Futures Trading Commission's (CFTC's) joint implementation of Title VII. In addition, it is expected that the President will nominate Federal Reserve Chairman Ben Bernanke's successor, ending the parlor game of guessing whether Janet Yellen, Larry Summers, or some unnamed third candidate will be selected. The choice, which may coincide with the tapering of the Fed's Quantitative Easing policy, could have as much an impact on the economy as any event this fall.

**Housing Finance Reform:** Legislation dealing with housing finance reform will be the main legislative issue, although other issues such as Terrorism Risk Insurance Act (TRIA) and Dodd-Frank oversight and technical corrections will continue to receive attention.

The House Financial Services Committee passed its version of housing finance reform legislation, the Protecting American Taxpayers and Homeowners (PATH) Act of 2013 in a near party-line vote before the August recess, signaling immediate focus for housing reform will shift to the Senate. On the Senate side, Chairman Tim Johnson (D-SD) and Ranking Member Mike Crapo (R-ID) have made clear they would not look toward a broad overhaul of the government sponsored enterprises (GSEs) until addressing solvency problems within the Federal Housing Administration (FHA), and have already advanced the FHA Solvency Act of 2013 (S. 1376) out of Committee. The Committee is now facing pressure to combine their efforts into a broader housing finance overhaul package like that passed by the House Financial Services Committee.

The most likely avenue to try to reach some bicameral consensus will be through the Warner-Corker bill, the Housing Finance Reform and Taxpayer Protection Act. That legislation takes a different approach from the House, and would phase out Fannie Mae and Freddie Mac replacing the GSEs with a government reinsurer, the Federal Mortgage Insurance Corp. (FMIC). The FMIC would replace the Federal Housing Finance Agency (FHFA) within one year of passage and would only back certain mortgage bonds issued by approved private firms and would only provide backstop insurance after a substantial amount of private capital is exhausted. The White House reportedly is more in favor of the Senate approach, and all stakeholders should anticipate a busy fall.

## HEALTH CARE

**Affordable Care Act Implementation:** With significant portions of the Affordable Care Act (ACA), including the individual mandate, pre-major market reforms, and insurance exchanges set to go live on January 1, 2014, the remainder of 2013 will likely be colored by a push to finalize and fine tune significant regulations and other portions of the law. In addition to continued implementation of the ACA by regulators -- open season for Exchanges begins on October 1 – there will likely be a push by Congressional Republicans to reverse a decision by the Office of Personnel Management (OPM) to allow Members of Congress and their staff to receive healthcare premium subsidies from their employer, and also to delay other provisions of the ACA following the Administration's decision to delay the employer mandate.

**Sustainable Growth Rate/Medicare Reform:** During the remainder of 2013, it is likely there will be an effort in the House to overhaul the Sustainable Growth Rate (SGR)—the Medicare physician fee schedule. Appetite to reform the SGR has only grown in recent months, as projections by the Congressional Budget Office (CBO) estimated that the cost of eliminating the SGR is shrinking. In January 2012, the CBO estimated that the cost of repeal would be $316 billion, whereas in February 2013, the CBO calculated that the repeal would cost only $138 billion over ten years.

While there are several proposals in the House to reform the SGR, the one most likely to advance is the Medicare Patient Access and Quality Improvement Act of 2013 (H.R. 2810) which was unanimously approved by the full Energy and Commerce Committee on July 31, just before the August recess. Last week the President of the American Medical Association expressed optimism for the prospects for a potential congressional SGR fix this year.

One important aspect to note is that the House Energy and Commerce Committee's SGR proposal does not include a method for paying for the proposal, which could ultimately be a very contentious issue despite the reduced CBO cost estimate. On that aspect, in April, the House Ways and Means Committee began a series of hearings on entitlement reform, including ways in which to reform Medicare and pay for an SGR fix. The Committee's hearings and materials have looked to the proposals found in the President's FY2014 budget, including a surcharge on the most generous Medigap plans, increasing the Part B deductible for new beneficiaries, and imposing a co-pay on home health services.

On August 29, the House Ways and Means Committee, jointly with the House Energy and Commerce Committee, released their first findings, outlining ways in which to modernize Medicare, such as establishing a single combined annual deductible for Medicare parts A and B, updating the current fee-for-service (FFS) cost-sharing framework, and addressing rising costs of supplemental plans such as Medigap.

The Senate has yet to put forth a proposal to reform the SGR. The Senate Finance Committee has held two full Committee hearings on the subject: "Advancing Reform: Medicare Physicians Payments" on May 14 and "Repealing the SGR and the Path Forward: A View from CMS" on July 13.

**Drug Track and Trace and Compounding Reform Legislation:** On June 3, the House of Representatives passed the Safeguarding America's Pharmaceuticals Act (H.R. 1919). The legislation would establish a uniform tracking system for the nation's drug supply chain. The Senate version of the legislation, the Pharmaceutical Quality, Security, and Accountability Act (S. 959) combines the Pharmaceutical Compounding Quality and Accountability Act and the Drug Supply Chain Security Act. While the legislation passed the House under suspension of the rules, there will still be a somewhat uphill battle before the legislation can become law as there is little appetite in the House to address compounding safety. In addition, there remains a large distance between the two Chambers' approaches to track and trace, with the Senate's approach largely favored by stakeholder groups and House Democrats. The Senate bill, unlike the House bill which mandates regulations for tracing occur by 2027, would create self-effecting unit-level tracing requirements in 10 years.

**Medical Devices Legislation**: The possible repeal of the medical device tax has been under discussion since the beginning of the 113th Congress after the 2.3 percent tax went into effect on sales of taxable medical devices on December 31, 2012. There are several pieces of legislation already in play which could see stage time in the second half of the year, including: Protect Medical Innovation Act of 2013 (H.R. 523); First Responder Medical Device Tax Relief Act (H.R. 581); Medical Device Tax Elimination Act (H.R. 1295); and Medical Device Access and Innovation Protection Act (S. 232). However, as the Administration supports the 2.3 percent tax, it is unclear if the effort to repeal the tax will come to fruition.

In addition, the FDA issued final guidelines on August 19 regarding the design, testing and use of radio-frequency (RF) wireless medical devices. The guidelines find that medical devices are vulnerable to cybersecurity breaches through the internet or other wireless technology, and from infected flash drives and advise the industry on pre-market safeguards, testing, and how to address potential risks with the FDA. However, as these guidelines are non-enforceable, concerns that wireless and electronic medical devices could have their security compromised may still drive conversations among health care and technology stakeholders in Congress.

## IMMIGRATION

**Immigration Reform**: The Border Security, Economic Opportunity and Immigration Modernization Act (S. 744) was approved by the Senate on June 27 by a vote of 68 to 32. The measure was proposed by Senators Chuck Schumer (D-NY), John McCain (R-AZ), Robert Menendez (D-NJ), Marco Rubio (R-FL), Lindsey Graham (R-SC), Jeff Flake (R-AZ), Dick Durbin (D-IL), and Michael Bennet (D-CO), the so-called "Gang of Eight" leading the charge for immigration reform. The comprehensive reform plan strives to create a path to citizenship for roughly 11 million immigrants within the United States, increase border security, and expand several work visa programs. With increased public support for immigration reform and a growing faction of the GOP supporting reform efforts, immigration reform will remain a priority for Congress through the end of the year.

While the Senate has passed a comprehensive immigration package, House Leadership is in favor of a piecemeal approach. Regarding timing, House Republican leadership is in favor of moving quickly with reform measures with the goal of passing immigration bills in October. However, as previously discussed, other pressing issues, such as the debt ceiling deadline, will likely be higher priorities. If the government funding debate causes immigration reform to be delayed to 2014, it may be difficult for lawmakers to move anything in an election year. Because of this, advocates signal that it will be important for significant progress to be made on immigration reform in what remains of 2013.

## INFRASTRUCTURE

**Water Resources Development Act (WRDA):** WRDA authorizes the projects and programs of the U.S. Army Corps of Engineers (USACE) and allows Congress to set priorities for these project areas, which include maintenance of navigational routes and flood risk mitigation. The last WRDA legislation was enacted in 2007. In May of this year, the Senate approved, in a strong bipartisan vote of 83-14, a new WRDA bill which includes a new innovative funding mechanism, known as the Water Infrastructure and Finance Innovation Act (WIFIA) and based on the popular Transportation Infrastructure Finance and Innovation Act (TIFIA) program. WIFIA would allow the USACE to provide loans and loan guarantees for flood control, water supply, and wastewater infrastructure projects. On August 2, House Transportation and Infrastructure Chairman Bill Shuster (R-PA), along with Water Resources and Environment Subcommittee Chairman Bob Gibbs (R-OH), announced that they will begin consideration of a Water Resources Reform and Development Act (WRRDA) when Congress returns this month.

## POSTAL SERVICE

**Postal Service Reform:** The U.S. Postal Service (USPS) experienced a $15.9 billion loss in 2012, most of which was due to the requirement to pre-fund its future retiree health benefits. Another factor in the loss is declining first-class mail volume as well as a drop in all types of mail pieces. As the postal reform debate continues, preserving six day delivery and finding savings without closing post offices remain top priorities.

Reforming the USPS remains a priority for lawmakers and committees of jurisdiction in the House and Senate have drafted bills to address these issues. The House Oversight and Government Reform Committee passed the Postal Reform Act of 2013 (H.R. 2748) on July 24. Sponsored by Chairman Darrell Issa (R-CA) and co-sponsored by Representatives Blake Farenthold (R-TX) and Dennis Ross (R-FL), the bill was approved by a party line vote of 22 to 17. On the Senate side, Chairman Tom Carper (D-DE) and Ranking Member Tom Coburn (R-OK) of the Homeland Security and Governmental Affairs Committee introduced the bipartisan Postal Reform Act (PRA) of 2013 (S. 1486) on August 1.

The purpose of this legislation is to address the Postal Service's financial challenges while preserving essential services. In order to achieve this goal, both bills contain provisions that would reform the current USPS pension system and also eliminate the Postal Service's statutory retiree health pre-funding requirement. In addition, both bills provide for an increase in revenue generating services and cost effective means of delivery.

The House and Senate bills differ in their approach to six day delivery and post office closings. While the Senate bill would codify the Postal Service's current plan to find savings without closing post offices, the House bill leaves the door open for rural locations to close. However, the House bill also includes language to require the Post Office to consider factors such as broadband penetration and distance to closest replacement service in determining whether to close a location. As for six day delivery, the Senate bill preserves Saturday delivery for at least a year, while the House bill allows the Postal Service to shift to a modified Saturday delivery schedule that would maintain delivery of packages and medicine while phasing out delivery of paper mail and advertisements.

## TAX

**Comprehensive Tax Reform:** In the last two years, the House Ways and Means Committee and the Senate Finance Committee have held nearly 60 hearings on tax reform. On June 27, Senate

Finance Chairman Max Baucus (D-MT) and Ranking Member Orin Hatch (R-UT) sent a letter to their colleagues stating that they would pursue a "blank slate" approach to comprehensive tax reform, and asking for senators to submit letters defending tax provisions that they want to see included in a comprehensive bill.

Republican leadership in the Senate has urged colleagues to oppose any tax reform effort that includes new revenues. Meanwhile the president, in the eyes of some, diminished the chances for comprehensive tax reform to move forward when, in a speech in late July, he proposed a "grand bargain" focused on corporate tax reform and stating that such reform should be used as a means to generate funding for new stimulus programs. Republicans will insist that any tax reform be comprehensive and include reform of the tax code for individuals.

Although the road ahead for tax reform is tough, House Ways and Means Chairman Dave Camp (R-MI) is said to be aiming for a draft tax reform proposal to be completed this month with an October mark-up that he hopes will reduce the top tax rate – for corporations and individuals – to 25 percent. The difficulties in building support for comprehensive tax reform on Capitol Hill are significant, but as a part of their commitment to moving reform forward, Chairman Baucus and Chairman Camp continued their summer "road show" over the August recess, traveling around the country in an attempt to take the debate out of Washington.

**Tax Extenders:** The various provisions in the tax code fall into one of two camps—permanent provisions and provisions that sunset after a certain date. In an annual ritual, Congress engages in a perfunctory end-of-year dance about how and whether to extend dozens of various expiring provisions, including the research and development (R&D) credit and the renewable energy production/investment tax credits. This year, the ritual is complicated by the efforts of Chairman Camp and Chairman Baucus to promote comprehensive tax reform and their reluctance to move forward on short-term extensions. While many observers question whether such comprehensive reform is possible this Congress, tax extenders could move as part of part of a debt limit/appropriations "grand bargain;" otherwise, there could be a retroactive extenders package next year.

## TELECOMMUNICATIONS

**Federal Communications Commission:** The Senate is expected to vote on nominations to fill vacancies at the FCC before the end of the year. Thomas Wheeler has been nominated for Chairman, and the nomination was reported favorably out of the Senate Commerce Committee in July. Michael O'Reilly has been nominated to fill the Republican spot vacated by former Commissioner Robert McDowell earlier this year. The Senate Commerce Committee is expected to hold a nominations hearing for Mr. O'Reilly on September 18. After Mr. O'Reilly's nomination is considered by the Commerce Committee, the full Senate may vote on both nominations in late September or October. One roadblock to these confirmations may be the concerns Senator Ted Cruz (R-TX) has expressed regarding the FCC's role in political advertising.

**Spectrum and Video:** These issues will continue to be telecommunications priorities through the end of 2013. Ongoing telecommunications efforts include oversight of the FCC's incentive auction process and the development of FirstNet. As the FCC moves forward with implementing the incentive auction process, with the goal of completing the auction in 2014, this oversight role remains critical. However, it is unlikely that any spectrum related legislation will be introduced before the end of the year.

**The Satellite Television Extension and Localism Act (STELA)**: This legislation will expire in 2014, so reauthorization continues to be a top priority and may serve as a vehicle for other video related legislation.  STELA falls under the jurisdiction of both the House Judiciary and Energy & Commerce Committees.  The Energy and Commerce Committee has held a number of hearings on STELA and video issues this year, with another scheduled for September 11, and Judiciary is planning a hearing for September 10.  The goal of the Judiciary hearing is to educate new members about the satellite television laws and give an overview of how the laws impact different industry stakeholders.  The Senate Commerce Committee has held a number of hearings this year examining the current status of different sectors of the telecommunications industry, including the video industry.  STELA and programming issues were discussed at the State of Video hearing in May.

Because the Energy and Commerce Committee examined STELA earlier this year, next week's hearing will likely examine the broader video regulatory landscape beyond STELA, and tackle issues such as retransmission consent, programming costs and over the top video services.  As high profile retransmission consent disputes continue to cause problems for consumers, such as the most recent dispute between CBS and Time Warner, lawmakers continue to work on possible reforms.  Another important issue likely to be addressed at the Energy and Commerce hearing next week is set top box competition.  It is likely that legislation addressing the set top integration ban will be introduced before the end of the year.

## TRADE

**Generalized System of Preferences (GSP):** This program provides non-reciprocal, duty-free tariff treatment to certain products from designated developing and least-developed beneficiary countries. The GSP was last renewed in October 2011. That renewal was a short-term extension and expired on July 31. Legislation to extend the GSP has been introduced in the House by Ways and Means Committee Chairman Dave Camp (R-MI) and in the Senate by Finance Committee Chairman Max Baucus (D-MT). Both measures would renew the GSP through September 30, 2015. While there is no timetable for consideration of a renewal of the program, there is strong support for action this year, although the GSP did expire two years ago and Congress waited 11 months to renew the program.

**Miscellaneous Tariff Bill (MTB):** The last MTB expired at the end of 2012, when the previous Congress was not successful in passing a new MTB. However, this year, the leadership of the House Ways and Means Committee and its Subcommittee on Trade reintroduced the legislation in January, and then reintroduced it in July with technical corrections. Considering that the previous MTB has expired, and that this legislation has broad support, we expect that that it will be a priority for passage before year's end.

**Trans-Pacific Partnership (TPP):** As a part of the Obama Administration's "pivot to Asia," the TPP is a trade agreement between the U.S., Australia, Brunei, Darussalam, Chile, Canada, Malaysia, Mexico, New Zealand, Singapore, and Vietnam. The TPP is the first international trade agreement negotiated fully by the Obama administration, with those passed in the previous 112$^{th}$ Congress having begun during the administration of George W. Bush. The Obama administration will continue its work in support of the TPP over the coming months, and most recently participated in the 19$^{th}$ Round of negotiations in Bandar Seri Begawan, Brunei from August 23-30.

**Transatlantic Trade and Investment Partnership (TTIP):** On June 17, President Obama, together with European Council President Van Rompuy, European Commission President Barroso, and British Prime Minister Cameron, announced that the United States and the European Union (EU) would launch negotiations on the Transatlantic Trade and Investment Partnership agreement. The TTIP would cover more than 40% of the world's GD, making it the biggest trade agreement in history. The 1st Round of TTIP negotiations was held the week of July 8 in Washington, and talks will continue throughout the rest of 2013.

## TOXIC SUBSTANCES CONTROL ACT REFORM

With the death of five-term Senator Frank Lautenberg (D-NJ) on June 3, reform of the Toxic Substances Control Act (TSCA) hangs in the balance. Senator Lautenberg was a long-time champion for TSCA reform, identifying it as one of his highest priorities for accomplishing before his planned 2015 retirement, and it is now uncertain who among the bill's 15 remaining sponsors will lead an effort to negotiate amendments to the bipartisan agreement he recently negotiated with Senator David Vitter (R-LA). The May 22 measure is the first bipartisan compromise on a major TSCA overhaul since the law was enacted in 1976, and the deal came after Senator Lautenberg dropped some of his long-standing calls for strict new provisions, including a safety standard and pre-emption provisions. The bill has been hailed as a positive step for chemical reform by both the Environmental Defense Fund and the American Chemistry Council, though some environmental groups wished for a stronger stance on the regulations. The compromise measure, the Chemical Safety Improvement Act of 2013 (S. 1009) faces an uphill battle in the Senate Environment and Public Works due to opposition Chairman Barbara Boxer (D-CA) is hearing from various groups in her home state, and though Senator Kirsten Gillibrand (D-NY) is stepping in as the measure's new champion, Senate staff have offered few details about the internal debate since the committee held a July 31 hearing on the bill and its predecessor, the Safe Chemicals Act (S. 696), except that interested members have met over the August recess with various parties to hear comments on the language. Chairman Boxer is expected to introduce a manager's amendment to S. 696 soon after the August recess that combines what she believes to be the best elements of both bills.

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