This Week in Congress

- **Senate** – The Senate was not in session.

Next Week in Congress

- **House** – The House is scheduled to finish consideration of the “Energy and Water Development and Related Agencies Appropriations Act, 2013” (H.R. 5325) and begin consideration of the “Legislative Branch Appropriations Act, 2013” (H.R. 5882), the “Protect Medical Innovation Act of 2011” (H.R. 436), and the “Department of Homeland Security Appropriations Act, 2013” (H.R. 5855).
- **Senate** – The Senate is scheduled to begin consideration of the “Paycheck Fairness Act” (S. 3220).

TAXES

House Ways and Means Committee Sends Packaged Health Care Tax Bill to the Floor

On May 31, the House Ways and Means Committee marked up and reported out four healthcare-related tax bills, two of which would repeal portions of the “Patient Protection and Affordable Care Act” (PPACA) while the other two would expand the use of health savings accounts and flexible spending arrangements. During the markup, both Democrats and some Republicans expressed concern that no “pay-for” was offered to offset the $42 billion cost of all four bills together. Democrats especially voiced disfavor in passing any bill that is not paid for.

The House will consider all four bills as part of a single package next week on the floor that includes a health care tax credit recapture offset.

The Committee first marked up H.R. 436, the “Protect Medical Innovation Act of 2011,” which would repeal the 2.3% excise tax on the sale of qualifying medical devices that was used as an offset in PPACA. The bill was approved on a 23-11 vote. The Committee next considered H.R. 5842, the “Restoring Access to Medication Act,” a proposal that would repeal the ban on using health-related savings accounts for over-the-counter (OTC) medication, which was approved on a 24-9 vote.
The Committee then moved to two proposals that would attempt to lower costs and increase flexibility for Health Savings Account (HSA) holders, as well as Flexible Spending Arrangement (FSA) participants. On a 23-6 vote, the Committee approved H.R. 1004, the “Medical FSA Improvement Act of 2011,” a bill that would allow money left in a participant’s flexible-spending arrangements at the end of a plan year to be distributed back to the individual and treated as normal, taxable income. Lastly, on a 21-7 vote, the Committee approved H.R. 5858, to amend the Internal Revenue Code of 1986 to improve health savings accounts. This bill would make several changes to the rules for health savings accounts (HSAs), including one that would prevent veterans from being ineligible to make HSA contributions because they receive VA medical benefits for a service-connected disability.

All four of the amended bills were reported favorably by the Committee. On June 1, the House Rules Committee indicated that the total cost of the combined bill will be offset by a recapture of certain overpayments of advance and refundable tax credit for health care coverage as established in PPACA. This offset was used in the House-passed reconciliation-sequestration relief legislation.

According to the section-by-section summary, the offset would generate $43.9 billion over ten years. Nonetheless, the offset will be somewhat controversial, since it is drawn from PPACA, and several Democrats have, in the past, argued the offset was a tax increase on middle and lower class taxpayers. Republicans, however, have asserted that those taxpayers are ineligible for the tax credit and should have to pay it back.

For more information about tax issues you may email or call Christopher Hatcher at 202-659-8201. Tess Illos contributed to this report.

FINANCIAL SERVICES

House Passes Flood Program Extension

On May 30, the House approved by voice vote a Senate-passed bill (H.R. 5740) that would extend the National Flood Insurance Program (NFIP) for 60 days and phase out the subsidized premium rates for second homes. Representative Judy Biggert (R-IL), the sponsor of H.R. 1309, spoke in support of the NFIP extension, noting that the Congressional Budget Office (CBO) estimates that the exclusion of subsidies for second or vacation homes will generate a savings of $2.5 billion over the next 10 years.

The NFIP was set to expire on May 31, but passage of the extension gives time for the Senate to consider a longer-term authorization and reform to the program. The House approved an NFIP reform bill (H.R. 1309) on July 12, 2011. Senate Majority Leader Harry Reid (D-NV) has indicated that the Senate would consider comprehensive NFIP reform legislation (S. 1940) in June.

House Committee Approves Bills on Bank Capital Calculations, Consumer Credit

At a May 31 markup, the House Financial Services Committee approved two bills:

- Bank Capital Calculations: H.R. 3128, which would amend the Dodd-Frank Act “to adjust the date on which consolidated assets are determined for purposes of exempting certain instruments of smaller institutions [those with less than $15 billion in assets] from capital deductions.” H.R.
3128 will allow the determination to be made as of December 31, 2009 or as of March 31, 2010. The Committee approved the bill by a vote of 35-15.

- **Consumer Credit:** H.R. 1588, the “Consumer Rental Purchase Agreement Act” which would provide “disclosures of the terms of rental-purchase agreements” relating to consumer costs and consumer rights in these agreements. The Committee approved the bill, as amended, by a vote of 33-21.

Chairman Spencer Bachus (R-AL) stated that while he is “rather agonistic” about the bill, H.R. 3128 is designed to correct an unintended consequence of the Dodd-Frank Act. Representative Michael Grimm (R-NY) explained that the bill would only affect Emigrant Bank. Ranking Member Barney Frank (D-MA) suggested that the markup for H.R. 3128 was necessary for the sake of transparency. He said that he “never had any objections to the substance of the bill”, but noted that the markup was held to uphold proper procedure. He also noted that no regulatory agency has taken a stance on H.R. 3128.

**Upcoming Hearings and Meetings**

**June 7**

**Housing Programs:** The House Financial Services Committee’s Insurance, Housing and Community Opportunity Subcommittee will hold a hearing entitled: “Oversight of Federal Housing Administration’s Multifamily Insurance Programs”.

**Investor Protection:** The House Financial Services Committee’s Capital Markets and Government Sponsored Enterprises Subcommittee will hold a hearing entitled, “Investor Protection: The Need to Protect Investors from the Government”.

**Economic Outlook:** The Joint Economic Committee (JEC) will hold a hearing entitled: “The Economic Outlook” with Federal Reserve Chairman Ben Bernanke testifying.

**International Bank Capital Requirements, Market Risk:** The Federal Reserve Board will hold an open meeting on: (1) a proposed interagency rulemakings: “strengthening and harmonizing the regulatory capital framework for banking organizations, including proposed rules for implementing Basel III for banking organizations and proposed consolidated capital requirements for savings and loan holding companies”; and (2) a final interagency rulemaking: “market risk capital rule”.

**DOJ Oversight:** The House Judiciary Committee will hold a hearing on the oversight of the United States Department of Justice.

**June 8**

**SEC Advisory Meeting on JOBS Act:** The Securities and Exchange Commission’s (SEC) Advisory Committee on Small and Emerging Companies announced a meeting to discuss “provisions of the Jumpstart Our Business Startups (JOBS) Act and other matters relating to rules and regulations affecting small and emerging companies under the federal securities laws.”

**June 12**

**Investor Advisory Committee Meeting:** The Securities and Exchange Commission’s (SEC) Investor Advisory Committee (“Committee”) will hold a meeting to include “discussion of issues for potential consideration by the Committee and division of responsibilities.”
June 13
Dodd-Frank Act Oversight and JP Morgan Chase Trading Loss: The Senate Banking Committee may hold a hearing on the implementation of the Dodd-Frank Act and the JP Morgan Chase Trading Loss. The Committee previously issued a press release indicating that the Committee would hear from Jamie Dimon, CEO of JP Morgan Chase.

For more information about financial services issues you may email or call Joel Oswald at 202-659-8201. Eric Robins, Rebecca Konst, and Alex Barcham contributed to the articles.

ENERGY AND ENVIRONMENT

House Panel Reviews Administration’s Energy Policies

On May 31, the House Oversight and Government Reform Committee held a hearing on the Obama Administration’s energy policies. Chairman Darrell Issa (R-CA) questioned whether President Obama’s rhetoric on an “all-of-the-above” energy strategy has been backed up by the actions of the Administration. He argued that the all-of-the-above goal is not being achieved, and that the Administration is “pursuing a narrower, special-interest, green-energy-only agenda.” Issa asserted that the U.S. has 1.4 trillion barrels of technically recoverable oil, which is enough to meet demand for up to 200 years. He questioned why the Administration has tried to take credit for increased oil production when that production is occurring on private, non-federal lands. Issa argued that projects such as the Keystone XL Pipeline are vital, but the Administration continues to stand in the way with “empty promises.”

Ranking Member Elijah Cummings (D-MD) declared that “it is clear that the Obama Administration supports an ‘all of the above’ energy strategy.” He noted that under President Obama, domestic oil production has increased by 14%, and in 2011 alone, over two billion barrels of oil were produced in the United States. He added that 2011 was the most productive year for onshore oil production since 2003 and offshore oil production had its most productive year in 2010. Cummings stated that natural gas production is now at record levels, while the Administration is also pursuing nuclear power options. He asserted that the Administration has invested significantly in clean energy technologies that promote global competitiveness. Cummings argued that new vehicle fuel economy standards will reduce oil consumption and save consumers money. He declared that “arguments that the Administration has been refusing to approve drilling permits in the Gulf of Mexico are a complete myth.” He said that since the BP disaster, the Administration has issued more than 400 deep water drilling permits.

Topics discussed at the hearing included: the Keystone XL Pipeline; coal; natural gas; oil production; the impact of regulations; energy tax policy; and energy efficiency.

For more information about energy and environment issues you may email or call Frank Vlossak at 202-659-8201. Chelsea Richards contributed to this report. Updates on energy and environment issues are available during the week on twitter.
**DEFENSE**

**OMB and DOD Confirm War Funds Subject to Sequestration**

Contrary to a November, 2011 assertion by the Secretary of Defense Leon Panetta, both the Office of Management and Budget (OMB) and the DOD indicated on May 31 that Overseas Contingency Operations accounts are not exempt from sequestration set for January, 2013. In response to a media inquiry, OMB Senior Advisor and Associate Director for Communications and Strategic Planning Kenneth Baer indicated that “[y]es, OCO is subject to a sequester” but cautioned that OMB has not yet determined if sequestration would be administered as across-the-board percentage cuts to all accounts or if departments and agencies would have some discretion in allocating the reductions. A DOD spokesperson tracked Baer’s comments and asserted in a statement that “[u]pon review of the Budget Control Act (BCA) and after consulting with OMB, DOD now understands that OCO funding is not exempt from sequester.”

Under the BCA, OMB will ultimately determine how sequestration will be applied. For example, last month, OMB set out its interpretation that all of the funding for the Department of Veterans Affairs (VA) would not be subject to sequestration after questions arose as to whether the VA’s medical programs were included in an exemption enumerated in the BCA. If OCO funds are included in sequestration, the projected $54.7 billion in reductions would be spread across more accounts, decreasing the impact of the automatic cuts to any one program. However, the President may choose to exempt personnel accounts, which consists of $135 billion of the Administration’s $619.9 billion request for the DOD (including OCO funds.) If that occurs, then the cuts to the other accounts (e.g. procurement and operations and maintenance) would increase.

In a November, 2011 letter to the Senate Armed Services Committee Chairman Carl Levin (D-MI) and Ranking Member John McCain (R-AZ), Panetta claimed that OCO funding was exempt from sequestration, an assertion a number of budget and defense experts have since contested. Last month before the House Budget Committee, an OMB witness provided the first indication that the Administration was examining the issue of whether OCO funds are exempt.

**Carter Speech at AEI**

In a speech this week, Deputy Secretary of Defense Ashton Carter echoed the criticisms voiced by Secretary of Defense Leon Panetta and Chairman of the Joint Chiefs of Staff General Martin Dempsey of the House versions of the FY 2013 DOD Appropriations bill and FY 2013 DOD Authorization. On May 30 Carter appeared at the American Enterprise Institute (AEI) event, “Budget Priorities for 21st Century Defense” and defended the Administration’s Defense Strategic Guidance and its FY 2013 DOD budget request. He went to some lengths to explain the DOD’s rationale in cutting certain weapons programs and, like Panetta has repeatedly done, placed the onus on Congress to address the sequestration set to occur in January, 2013 that “would have devastating effects” on the Pentagon. Carter asserted that the DOD “focused on the force we need to build for the future, and that remains our singular priority.” He argued that “I know Congress has gone through its mark, and on that, I just want to say that every dollar the United States spends on old and
unnecessary programs is a dollar we lose from new, necessary strategic investments.” He contended that “when something is added to our budget that is not needed, we are forced to take out something that matters, from readiness, from force structure, from modernization or from the health of the all-volunteer force.” Carter stated that “[w]hen we’re forced to hold onto older, less capable systems, we cannot buy newer and more capable systems...[and while] others can pick one item or another that they favor, but we have to balance them all.”

Carter said that “we have a responsibility to avoid sequester” and stated that the DOD has not planned for sequestration. He allowed that “[m]aybe later in the summer the Office of Management and Budget (OMB) will have to request that we take a look at it and try to determine what steps could be taken.” Carter argued that “Congress, in writing the Budget Control Act, did not design sequester to be rational...[and] was supposed to be the trigger, a trigger so irrational that the prospect of it would drive and force the leadership to do what was needed, which is to put together an overall budget package for the nation’s finances that could win wide support.” He reiterated Secretary of Defense Leon Panetta’s claim that “a sequester would have devastating effects on our readiness and our workforce, and disrupt thousands of contracts and programs.” Carter added that “under the law, DOD would have limited flexibility in how the cuts would be applied in FY 2013.” He maintained that “both the size and the nature of sequester would nullify the strategy for the postwar force of the future that we so carefully put together under the President’s guidance a few short months ago.”

Carter remarked that “as the wars [in Iraq and Afghanistan] wind down, we must look up and look beyond to what the nation and this world need next.” He asserted that “we must let go of the old and familiar and grab hold of the new to build what Chairman Dempsey calls the joint force of 2020, an agile and technologically advanced force of tomorrow.” Carter maintained that “we would need to make this transition even if we had all the money we wanted...[b]ut of course we don’t have all the money that we want and thereby springs a second great force impinging upon us which is the Budget Control Act.”

Carter explained that “the base defense budget is not decreasing over coming years, but neither is it continuing to rise in real terms as it has over the past few years and as we planned for it to do as recently as a year ago.” He said that “[t]he difference between our plans before the Budget Control Act and the plans imposed upon us under the Budget Control Act is the famous $487 billion over 10 years, about $262 billion over the Future Years Defense Program (FYDP,) an adjustment of about 9 percent of the total that we planned, which is a very substantial adjustment by any measure.” Carter said that when the reduction in “Overseas Contingency Operations” funding is included, the cuts become larger.

Carter cautioned that “altering the package [i.e. the Administration’s FY 2013 budget request] could lead to an unbalanced portfolio, for example, a hollowing of the force, and I want to specifically call out a couple of important decisions in that regard.” He argued that “in order to deliver high-quality health care, we need to control spiraling costs...[s]o we made some modest proposals respecting TRICARE, and we need these savings to balance and maintain investments in the military.” Carter contended that the DOD is “looking to retire some old single-purpose aircraft in favor of newer, multi-role aircraft, like the F-35, the new
bomber and the new tanker.” He contended that “[t]o keep older aircraft on-line would impede the Air Force from becoming the Air Force of the future that we need.” Carter said that the DOD has excess strategic and “intra-theater” lift capabilities (e.g. C-130s) and argued that “we need to be able to retire older single-purpose aircraft and aircraft in excess of need.”

Carter argued that if the DOD keeps “older ships, it’ll come at the expense of the new.” He claimed that “[w]e don’t want to hold onto older ships because we have to pay to modernize them, pay to man them, pay to operate them, and they’re not as capable as a new ship would be.” Carter asserted that “our shipbuilding plans call for a somewhat larger—at the end of our 10-year period—but decidedly more capable Navy.” He said that in terms of the end-strength of the Army and Marine Corps, the DOD is “trying to make a transition from this necessary focus on counterinsurgency, or COIN, over the last decade to a wider spectrum of capabilities that we need for the future so that they are the dominant ground force, full-spectrum combat capability, best in the world in the future.” Carter stated that “we are not going to size the Army or the Marine Corps for long, protracted stability operations any longer.” He argued that the Army and Marine Corps “want to be able to take down that end strength somewhat and make investments in creating the full spectrum force of the future.”

For more information on defense issues you may email or call Michael Kans at 202-659-8201.

TRANSPORTATION

Difficulties for Surface Transportation Conference Committee

The tenor of statements made by members of the Conference Committee on the surface transportation reauthorization changed this week. Whereas previous public comments have been positive, suggesting progress on narrowing House and Senate differences on a reauthorization package, some Members have begun making public and private remarks indicating that a draft conference report that Environment and Public Works Committee Chairman Barbara Boxer (D-CA) plans on circulating next week may be rejected by House Republicans. Conferee Representative James Lankford (R-OK) remarked that Senate conferees are “putting together a Senate proposal that they’re going to release out next Monday that we’re not part of the draft on.” Allegedly, House Republican conferees have insisted on the inclusion on language allowing greater flexibility for the use of Transportation Enhancement funding and for streamlining environmental reviews. Some Democratic conferees have likewise indicated that negotiations have hit an impasse, with some suggesting that Congress may have to pass another short-term extension of SAFETEA-LU in June.

This week, Representative Paul Broun (R-GA) had planned on allowing the House to vote on indicating its support for limiting a final package to using only the funds provided by the Highway Trust Fund. However, Broun opted to delay until next week offering a non-binding motion to instruct conferees because, according to his spokesperson, of an error in drafting the non-binding language that would make it applicable to FY 2012 funds, most of which has already been obligated.
It has been estimated that the Trust Fund will have between $33 and $37 billion available for FY 2013 while S. 1813 would authorize appropriations in excess of Trust Fund revenues. The Congressional Budget Office (CBO) found that the “Moving Ahead for Progress in the 21st Century” (S. 1813) “would have discretionary costs of $50.6 billion over the 2012-2017 period, assuming appropriation actions consistent with the legislation.” CBO noted that its estimate (developed with the Joint Committee on Taxation) found that between FY 2012 and FY 2022 “S. 1813 would require transfers totaling $13.9 billion to the Highway Trust Fund from the General Fund of the Treasury ($5 billion), certain tariffs collected on imported goods ($4.5 billion), a portion of the balances and future amounts expected to be credited to the Leaking Underground Storage Tank Trust Fund ($4.7 billion), and amounts expected to be collected from the existing gas guzzler tax on certain vehicles ($0.7 billion).”

In a statement, Broun argued that “[i]t would be inexcusable to have to bail out the Highway Trust Fund for a fourth time since 2009 — and that’s the road we’re headed down if this bill passes as it stands today.” He claimed that “[o]ur motion to instruct would simply restore the inherent limits which were built into the Highway Trust Fund and ask that the conferees only obligate funds, which are equal to what the CBO projects the government will take in via the federal gas tax through the end of fiscal year 2013.”

**Hearing on FAA Facilities and NextGen**

On May 30, the House Transportation and Infrastructure Committee’s Aviation Subcommittee held a hearing to examine the Federal Aviation Administration’s (FAA) progress in realigning and consolidating its facilities, particularly in light of the ongoing development of NextGen, which would move the FAA from ground-based air traffic control to a satellite and GPS system. Chairman Tom Petri (R-WI) remarked that “NextGen touches every aspect of the [FAA’s] mission and current costs roughly $1 billion per year.” He stated that five years ago “the Department of Transportation Inspector General pointed out that a major factor in both capital and operating costs for NextGen is the degree to which the agency eliminates or consolidates FAA facilities.” Petri stated that “Congress agrees with the need for FAA to address its aging, run down and obsolete facilities while furthering next gen and making smart investments.” He said that “[i]t’s been pointed out to me that the FAA’s Facility Consolidation and Realignment effort has actually been in the works for decades now…[b]ut [o]ver the years this effort has resulted in some successes, but overall very little progress has been achieved in terms of addressing the needs of next gen, the FAA’s aging facilities, some of which are well past their useful life, and the poor working conditions endured by many FAA employees.”

Ranking Member Jerry Costello (D-IL) asserted that “the FAA stated that consolidation would improve safety and efficiency and lower infrastructure costs by making new technologies available for controllers…[n]evertheless, much of what we have heard five years ago is still true today.” He declared that “[m]any FAA facilities are outdated and deteriorating…[a]nd [t]he average age for an in-route center is 49 years with an average age of the terminal facility is 28 years.” Costello explained that “last year I warned that if we authorized the capital funding levels that were too low in the FAA bill we could hamstring facility consolidation efforts…[a]nd [i]n fact, the FAA estimates that its required capital expenditures, including the cost of
consolidation will greatly exceed the funding that Congress provided in the FAA bill for the next few years.”

David Grizzle, the Chief Operating Officer of the FAA’s Air Traffic Organization explained that “we at the FAA view Section 804 of the FAA Modernization and Reform Act of 2012 as an invaluable opportunity to obtain congressional support to move forward with the transformation of our air traffic control facilities infrastructure.” He added that “[t]he provision directs the FAA with input from labor and industry to develop consensus recommendations on the realignment and consolidation of FAA services and facilities, and to report to Congress on those recommendations.” Grizzle observed that “[a]s the facilities aged and required more and more maintenance, it became evident that short-term facility specific investments by themselves were not a long-term cost effective method of maintaining our critical infrastructure and could not adequately support the implementation of next-gen.”

Lou Dixon, Principal Assistant Inspector General for Auditing and Evaluation in the Office of the Inspector General at the Department of Transportation said that “[s]uccessfully implementing FAA’s consolidation and realignment plan and mitigating future risk will require the agency to address a number of challenges…[including] [the] FAA must align previously approved construction projects with its plan…[the] FAA must make key decisions related to automation platforms and equipment, airspace redesign and other technical factors…[and the] FAA must finalize budget cost estimates and funding sources to construct, staff and maintain the first integrated facility, a critical element of a long-term effort of this magnitude.”

For more information on transportation issues you may email or call Michael Kans at 202-659-8201.

This Week in Congress was written by Kayla Kotila and Marc Pitarresi.