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The Week Ahead: October 3-7

The Senate will consider a bill to address Chinese currency manipulation.

The House will consider a bill that would return unclaimed funds for broadband awards, as well as a bill on EPA rules on cement plant emissions. The House Ways and Means committee will mark up the three pending trade agreements with South Korea, Panama and Colombia.

Banking & Financial Services

Sen. Richard Shelby (R-Ala.) introduced legislation on Thursday, September 22, which would require financial regulators to justify any new rules and to determine the effects of proposed rulemaking on economic growth and job creation. Shelby said the measure was necessary to prevent job losses that would result from implementation of the Dodd-Frank bill. The measure would forbid banking regulators from finalizing a rule if, according to an economic analysis, its costs outweigh its benefits. It also would create the position of chief economist council at each financial agency and require the councils to submit annual reports to Congress on the agency's activities.

The **Federal Reserve** announced on Wednesday, September 21, a new plan to drive down long-term interest rates in an effort to boost the economy. In this relatively modest new initiative, the central bank would buy \$400 billion in longer-term Treasury securities and sell an equal amount of shorter-term securities through June 2012. GOP lawmakers criticized the Fed for its continued intervention in the U.S. economy. But short of changing the Fed's charter with legislation, the bank is independent from the influence of Congress and the White House, and under no obligation to heed direction from either.

Defense

On Friday, September 23, 15 Senators wrote a letter to **Secretary of Defense Leon Panetta**, urging him not to touch the pensions of currently serving military personnel when offering potential budget cuts. Panetta has said repeatedly that "everything is on the table" when it comes to trimming the U.S. military's budget amid the push to slim down the nation's budget deficit, and many lawmakers have said the same. Other potential cuts include scaling back or killing new weapons programs and retiring older ones in the inventory, reducing the ranks of active-duty troops, and shutting down or shrinking military installations worldwide. However, Republicans on the **House Armed Services Committee** are unlikely to suggest to the joint deficit reduction committee any cutbacks to defense spending beyond the \$454 billion already likely to be reduced from the Pentagon's planned budgets over the next decade under the August debt ceiling law.

Panetta said Thursday, September 22, that he has asked the Pentagon to implement some, if not all, of the recommendations from the **Commission on Wartime Contracting in Iraq and Afghanistan**. The Commission released a report in late August that found as much as \$60 billion in federal contract funds were lost to waste and fraud in the two war zones. The panel issued 15 recommendations, including deploying more people to oversee contractors in war zones.



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Featured Strategies Team Member



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Douglas P. Faucette heads the Firm's Bank Regulatory and Transactional Practice Group and has more than 30 years of experience representing publicly and privately held companies in all types of corporate and securities transactions. He practices before the U.S. Treasury Department, the Securities and Exchange Commission, all the Federal bank regulatory agencies as well as the major state financial regulatory agencies. He has significant experience with the laws and regulations affecting public companies, banks and bank holding companies. His diverse practice areas include bank regulatory compliance, litigation and enforcement, international banking, mergers and acquisitions, securities issuance and registration and executive compensation. He also is a Locke Lord Strategies® team member.

Faucette is well-respected throughout the financial services industry for his mergers and acquisition, bank securities issuance and thrift demutualization practices and has been involved in the demutualization of the majority of the nation's savings institutions with assets over \$1 billion. His clients include financial services companies such as those engaged in the business of insurance, investment banking and real estate, bank holding companies, commercial banks, savings associations and credit unions.

For the past 20 years, Faucette has been involved in the passage of all major financial institution legislation, including the Dodd-Frank Act. He is one of the country's leading attorneys on the corporate governance of mutual institutions. As counsel to the advocacy group America's Mutual Banks, he has fought to promote the role of mutual savings institutions in America and has spoken and written extensively on the need to preserve them and avoid the trend toward standardization and over-regulation.

Prior to entering private practice, Faucette served in senior governmental positions, including Director of the Securities Division at the Federal Home Loan Bank Board. He is frequently quoted in the national media and has appeared on CBS Evening News and the MacNeil-Lehrer Report.

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Education

The fiscal 2012 **House Labor-Health and Human Services Appropriations** bill released Thursday, September 29, would eliminate the Obama administration's signature education-grant program, Race to the Top, but would keep intact the tuition-assistance program for low-income college students. The draft bill would fund the **Department of Education** at \$69 billion, which is \$2.4 billion, or 3 percent, below fiscal 2011 and \$11.5 billion, or 14 percent, below the president's budget request. The measure would eliminate more than 30 programs that House Republicans have said are duplicative or inefficient, as well as those that have never been authorized.

After more than 10 months of bipartisan negotiations, **Sen. Tom Harkin (D-Iowa)** will introduce a broad overhaul of the outdated federal education law, known as "**No Child Left Behind**," when Congress returns. The bill language has not been released and will probably continue to evolve over the next few weeks. It is likely to include new standards for college and career readiness; a revised accountability system based on student growth; teacher evaluations based, in part, on student achievement; and additional flexibility for states and local school districts to use federal funding where it is most needed. The committee plans to mark up the proposal October 18.

Energy/Environment/Climate Change

The House on Friday, September 23, passed legislation that would change the way the **Environmental Protection Agency (EPA)** may use scientific data to regulate air pollution across state borders, significantly modifying the original bill. The amended measure, **HR 2401, the Transparency in Regulatory Analysis of Impacts on the Nation (TRAIN) Act of 2011**, passed 249-169, was originally introduced to establish a Cabinet-level committee to study the cumulative impact of a number of EPA regulations and actions on power plants. It was later amended in committee to include implementation delays of two major EPA air pollution regulations, setting back tougher rules on mercury and toxic emissions from fossil fuel-powered utilities, as well as a rule requiring 27 states to reduce utility emissions that impact air quality in downwind states.

The **Senate Environment and Public Works Committee** advanced a bill by voice vote on Wednesday, September 21, which would require 80 percent of the Clean Water Act penalties associated with the Deepwater Horizon oil spill to be deposited into a Gulf Coast restoration trust fund. A portion of that would go to Alabama, Florida, Louisiana, Mississippi and Texas for ecological and economic restoration activities. BP's fines are expected to be between \$5 billion and \$21 billion.

Health Care

House Republicans struck more than \$8.6 billion from their proposed fiscal 2012 bill to fund the **Departments of Labor, Health and Human Services (HHS), and Education**. The bill would prohibit HHS from continuing any implementation of the law until 90 days after the date when all legal challenges to it are finished. The measure would rescind \$15 million for the Independent Payment Advisory Board, \$1 billion from the law's Prevention and Public Health Fund, and reduce the Centers for Disease Control's budget by \$52 million from last year's level and \$220 million below the president's request. The Justice Department asked the Supreme Court this week to take up an appeals court ruling that a key element of the law is unconstitutional, which means a ruling could come by mid-2012.

HHS is shrinking the office charged with implementing a controversial long-term care insurance program and said the program may not get off the ground at all. But the department disputed rumors that it was shutting down the entire office. If the voluntary program is scuttled, it would be one of the biggest casualties of President Obama's signature health care law.

The **Senate Appropriations Labor-HHS-Education Subcommittee** approved on Tuesday, September 20, a fiscal 2012 spending bill for labor, health and education programs that includes funding to implement the 2010 health care law, despite intense GOP objections. The legislation would provide a total of \$742 billion, which



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Insurance

The President's deficit reduction plan released on Monday, September 19, calls for further streamlining of the **Federal Crop Insurance Program**. The plan would further reduce crop insurance subsidies by an estimated \$8.3 billion over 10 years. Crop insurance underwriters and producers have voiced opposition to the proposal.

It has been reported that the Reinsurance Task Force and the Financial Condition Committee of the **National Association of Insurance Commissioners (NAIC)**, on Monday, September 19, adopted changes to the Credit for Reinsurance Model Law and Regulation designed to permit reductions in the collateral non-U.S. reinsurers are required to post to secure their liabilities on risks assumed from U.S. ceding insurers.

On Monday, September 26, the Senate confirmed Roy Woodall (a former Commissioner of Insurance for the Commonwealth of Kentucky) to serve as the independent member of the **Financial Stability Oversight Council (FSOC)** with insurance expertise. Woodall is one of three insurance representatives on the FSOC and the only insurance member with voting power. Industry trade groups praised the confirmation of Woodall.

On Monday, September 26, the Senate approved legislation that includes a provision extending the **National Flood Insurance Program (NFIP)** through November 18, 2011. The provision is included in two continuing resolutions passed by the Senate: one for one week, and one through November 18.

David Miller, the former Administrator of the Iowa Division of Homeland Security and Emergency Management, has recently been appointed head of the NFIP.

includes approximately \$584 billion in mandatory funding and \$158 billion in discretionary funding, according to the panel.

Immigration

On Tuesday, September 27, 69 House Democrats sent a letter to **Janet Napolitano, Secretary of the Department of Homeland Security (DHS)**, and **Attorney General Eric Holder** which asked that agency guidance to field officers on the new deportation policy explicitly state that gay, lesbian, bisexual and transgender people be included in provisions protecting undocumented immigrants with family ties in the United States from deportation. On Monday, September 25, 19 Senate Republicans sent a letter to President Obama asking the administration to rescind the new policy. The administration deportation policy, issued in a Thursday, August 18, memo from Napolitano, states that the government will only seek to deport illegal immigrants convicted of serious offenses or who may pose a threat to public safety.

The **House Judiciary Committee** on Wednesday, September 21, advanced a controversial labor proposal that would require all U.S. businesses to systematically confirm the legal status of new hires. The bill would require all U.S. employers to use "E-Verify," an online verification system that matches job applicants' data with Social Security Administration and Department of Homeland Security records.

The **House Homeland Security Committee** on Wednesday, September 21, gave voice vote approval to **HR 1299, the Secure Border Act of 2011** that would require the DHS to submit to Congress a plan outlining how it would achieve "operational control" between ports of entry along the Mexican and Canadian borders. The department would be required to present its plan within 180 days of the bill's enactment. **Committee Chairman Peter T. King (R-N.Y.)** said he expects the legislation to reach the House floor sometime this fall.

Labor, Pensions & Retirement

The **House Labor-Health and Human Services Appropriations** bill released Thursday, September 29, would cut **Department of Labor** funding to \$10.4 billion for fiscal 2012, roughly 20 percent below the last fiscal year's levels and 19 percent below President Obama's budget request. The **National Labor Relations Board (NLRB)**, an independent agency, would see a 17 percent cut in funding over fiscal 2011 levels under the bill and a 19 percent cut compared with Obama's proposal.

The Senate Appropriations Committee advanced a fiscal 2012 spending bill for labor, health and education programs after turning back a GOP effort to curb the NLRB authority. The legislation would provide nearly \$726 billion in total budget authority, including \$158 billion in discretionary funding. Some of Wednesday's most heated debate centered around an amendment by **Sen. Lindsey Graham (R-S.C.)** that would bar the use of funds for the NLRB to order an employer to restore, shut down or relocate business operations except under certain conditions.

President Obama left **Social Security** out of his \$3 trillion plan to reduce the deficit, despite his proposal over the summer to find savings in the program. In his remarks at the White House on Monday, September 19, he acknowledged the need to overhaul the program but said those changes should take place independently of the effort to reduce the deficit. The White House may have decided that the political cost of suggesting changes to Social Security outweighs the projected savings.

Patent Reform

President Obama signed legislation on Friday, September 16, to overhaul the patent system, which included provisions intended to ensure that the **U.S. Patent and Trademark Office** will get to spend all the fees it collects. However, some are worried that the patent office will not receive enough funding in the first weeks of fiscal 2012, under whatever stopgap spending bill Congress eventually produces. Proponents had wanted to designate Patent and Trademark Office revenue as mandatory spending at the agency, but appropriators balked so the legislation was rewritten to say that the patent office would have access to all its funding, although appropriators would still have to give the



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Telecommunications

The **House Energy and Commerce Communications and Technology Subcommittee** is planning to mark up broad legislation on spectrum reallocation next week. The draft proposal introduced by **Reps. Greg Walden (R-Ore.)** and **Fred Upton (R-Mich.)** differs significantly from a bipartisan bill that has been approved by the **Senate Commerce Committee**. The Senate measure would reallocate a vacant slice of spectrum — known as the “D block” — to public safety agencies for a new communications network, while the House draft proposal would not.

The **Senate Judiciary Committee** advanced three similar bills Thursday, September 22, that would establish nationwide standards for security breaches involving personal data, despite GOP objections that the new mandates could harm businesses and result in job losses. The measures would require businesses to notify individuals when personal information has been stolen as a result of a breach, and would toughen penalties for non-compliance. It is unclear when leaders would try to call up the measures in the full Senate.

go-ahead for the office to spend it. But there is no language along those lines in the House-passed continuing resolution.

Tax

Although the **Joint Deficit Reduction Committee's** members are expressing near unanimous support for overhauling the tax code, the dozen lawmakers have significantly different ideas over how to make those revisions. Democrats in particular are weighing tax changes as one of their options for coming up with their mandated \$1.2 trillion in savings over the next decade, while Republicans have said that the committee could lay the groundwork for a tax overhaul in the mold of the deficit-neutral Tax Reform Act of 1986, which lowered tax rates and eliminated tax breaks.

President Obama on Monday, September 19, called for a mix of tax increases and spending cuts to reduce the deficit by more than \$3 trillion over the next decade, calling it a balanced plan that would spread the sacrifice and require wealthy Americans to shoulder some of the burden. Obama wants to raise tax revenues by \$1.5 trillion and reduce spending by \$1.1 trillion by drawing down the U.S. military presence in Iraq and Afghanistan. An additional \$430 billion in deficit reduction would come from savings on lower interest payments on the government's debt.

Trade

On Monday, September 26, **Senate Majority Leader Harry Reid** filed for cloture on a motion to proceed to a measure that would threaten economic sanctions if the **Treasury Department** finds that a trading partner's currency is “misaligned,” based on a set of objective economic indicators. Many experts agree that the Chinese government has kept its currency, the yuan, at an artificially low value to keep Chinese exports cheap and imports expensive — putting some U.S. businesses at a disadvantage. However, the Treasury Department has declined to cite the country as a currency manipulator.

On Thursday, September 22, the Senate passed the **Trade Adjustment Assistance (TAA)** legislative vehicle. Clearing TAA, in accordance with Democratic demands, was a requirement for moving ahead with three trade agreements long sought by many Republicans. Congressional leaders have agreed to a complex legislative process that would link passage of expanded TAA benefits with action on trade deals with South Korea, Colombia and Panama. Shortly after the Senate passage of the TAA bill, **House Speaker John A. Boehner (R-Ohio)** pressed President Obama to transmit the three pending trade pacts to Congress before the House takes action on the Senate bill.

Transportation & Infrastructure

Government-subsidized passenger flights to otherwise unprofitable rural airports will continue next year if Senate appropriators get their way — although new airports would be barred from joining the program, and airlines would be allowed to use smaller planes. The proposed changes to the **Essential Air Service** come after a House-Senate showdown over the subsidy program temporarily shut down most **Federal Aviation Administration** operations this summer. The fiscal 2012 **Transportation-HUD** spending bill would set aside \$143 million for the subsidies, which is \$19.8 million more than President Obama sought and \$6.7 million less than enacted in fiscal 2011.

House Transportation and Infrastructure Chairman John L. Mica (R-Fla.) said Republican leaders had given him the green light to search for additional revenue for the bill that authorizes highway and surface transportation programs. This could be a game-changer for the surface transportation bill: adopting the Senate's approach of finding just enough revenue to keep funding at current levels. Senate Democrats are working on a \$109 billion, two-year bill that would maintain current levels of spending plus inflation. The **Senate Environment and Public Works Committee** is done with its draft version of a surface transportation bill but is waiting on the **Senate Finance Committee** to come up with a bipartisan set of revenue-raisers to bridge the \$12 billion gap between what the **Highway Trust Fund** can sustain and what that version of the bill would spend.