

## WASHINGTON UPDATE

### LEGISLATIVE AND PUBLIC POLICY DEVELOPMENTS

JULY 31-AUGUST 6, 2010

*Please note that due to the upcoming Congressional recess, you will not be receiving another Washington update until after Congress reconvenes on September 13.*

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## ECONOMIC REGULATION AND OVERSIGHT

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### **Romer to Return to Berkley**

Christina Romer, chairwoman of the Council on Economic Advisors, will resign from her post with the Obama Administration to return to her position as an economics professor at the University of California at Berkley. Romer's resignation is effective September 3. This marks a second major departure from the President's economic team beginning with Budget Director Peter Orszag last month.

[The Hill \(Briefing Room Blog\)](#), August 5; [The Associated Press/Forbes.com](#), August 6; [The Politico](#), August 6.

### **Fannie Mae Requests More Federal Aid**

On Thursday, Fannie Mae requested \$1.5 billion more in government aid to help it overcome its second quarter losses. Net losses for the government-controlled mortgage giant were \$3.1 billion, which is comprised of \$1.2 billion in losses plus \$1.9 billion in dividends it must pay to the Treasury Department.

[The Hill \(On the Money Blog\)](#), August 5.

### **Administration's Fed Nominee Rejected by Senate**

On Thursday, the Senate sent back to the White House the Obama Administration's nomination of Peter Diamond to join the Federal Reserve, rejecting Diamond before a vote. "I don't believe he is ready to be a member of the Federal Reserve," Sen. Richard Shelby (R-AL), the top Republican on the Senate Banking Committee, said last week. Many Republicans believe that Diamond, an economist at the Massachusetts Institute of Technology, does not have the macroeconomic background required to join the Federal Reserve.

[Reuters](#), August 5; [The Wall Street Journal](#), August 6.

## **BANKRUPTCY AND CORPORATE LAW MATTERS**

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### **BP's Tax Benefit May Disappear**

This week, BP announced it is taking a second-quarter pretax charge of \$32.2 billion related to future costs associated with the ongoing cleanup of the Deepwater Horizon oil spill in the Gulf of Mexico. BP also plans to offset those future losses with a deferred tax benefit, which is a somewhat standard business practice, and allowed under current Internal Revenue Service rules.

Although the accounting in the BP situation is fairly standard, the imponderables are twofold: first, there is a question as to whether or not Congress will allow BP to deduct the expenses, and second, it is unclear what portion of the expenses might be reimbursed by the other parties involved in the oil spill (Transocean and Halliburton among them). If either or both of these contingencies materialize, BP would be required to "reverse" the tax credit it previously accrued.

[CFO Magazine](#), July 30.

### **I.R.S. Shifts to Combat Tax Evasion**

The Internal Revenue Service (IRS) said Wednesday that it would overhaul a unit devoted to scrutinizing large corporations and wealthy individuals, a shift that would bolster the agency's growing focus on international tax evasion. The IRS said that it would centralize operations at the core unit, which will now be known as the Large Business and International division, to give international examiners the authority to decide whether to pursue or settle contentious tax cases involving multinational corporations. The new unit will be in charge of examining whether financial institutions are complying with a new law, the Foreign Account Tax Compliance Act, which requires them to disclose, by 2013, the details of American clients with undeclared offshore accounts or else withhold a 35 percent tax on those accounts. The unit will also scrutinize partnerships and wealthy individuals with at least \$10 million in assets.

[The New York Times](#), Aug 4.

## **BROADBAND, BROADCAST, AND INTELLECTUAL PROPERTY**

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### **Senate Votes for Copyright Law Changes**

On August 2, the Senate introduced and unanimously passed, by voice vote, the Copyright Cleanup, Clarifications, and Corrections Act of 2010, which would modify and clarify several provisions of the Copyright Act, including publication rights, exclusive licensing, and judicial review. The modifications are based on the U.S. Copyright Office's suggestions.

S. 3689; [IP Law 360](#) , August 4; [BNA Patent, Trademark & Copyright Journal](#), August 6.

### **FCC Net Neutrality Talks End Without Consensus**

The Federal Communications Commission's (FCC) controversial secret talks with industry regarding proposed net neutrality regulations have apparently come to an end without consensus. The end of the FCC talks come on the heels of multiple reports that Verizon and Google have come to a network management agreement. Reports state that FCC staff believes that any Verizon-Google arrangement may undermine the FCC's talks and ultimate net neutrality plans by allowing for the paid prioritization of web traffic.

[The New York Times](#), Aug. 5; [The Washington Post \(Tech Blog\)](#), Aug. 5; [Fierce Telecom](#), Aug. 6.

### **Legislation Introduced**

**S.3710** : A bill to improve broadband coverage and service throughout the United States, especially in rural and tribal areas, and spectrum coverage for public safety broadband communication services, and for other purposes.

**Sponsor:** [Sen Murray, Patty](#) [WA] (introduced 8/5/2010)

**Latest Major Action:** 8/5/2010 Referred to Senate committee. Status: Read twice and referred to the Committee on Finance.

**S.3731** : A bill to require the National Telecommunications and Information Administration to conduct a competition to award grants for the development of nonstationary radio over Internet protocol devices that support mission-critical broadband voice and data communications of public safety personnel, and for other purposes.

**Sponsor:** [Sen Warner, Mark R.](#) [VA] (introduced 8/5/2010)

**Latest Major Action:** 8/5/2010 Referred to Senate committee. Status: Read twice and referred to the Committee on Commerce, Science, and Transportation.

**S.3742** : A bill to protect consumers by requiring reasonable security policies and procedures to protect data containing personal information, and to provide for nationwide notice in the event of a security breach.

**Sponsor:** [Sen Pryor, Mark L.](#) [AR] (introduced 8/5/2010)

**Latest Major Action:** 8/5/2010 Referred to Senate committee. Status: Read twice and referred to the Committee on Commerce, Science, and Transportation.

**S.3756** : A bill to amend the Communications Act of 1934 to provide public safety providers an additional 10 megahertz of spectrum to support a national, interoperable wireless broadband network and authorize the Federal Communications Commission to hold incentive auctions to provide funding to support such a network, and for other purposes.

**Sponsor:** [Sen Rockefeller, John D., IV](#) [WV] (introduced 8/5/2010)

**Latest Major Action:** 8/5/2010 Referred to Senate committee. Status: Read twice and referred to the Committee on Commerce, Science, and Transportation.

## LABOR AND PENSIONS

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### Legislation Introduced

**S.3706** : A bill to extend unemployment insurance benefits and cut taxes for businesses to create hiring incentives, and for other purposes.

**Sponsor:** [Sen Stabenow, Debbie](#) [MI] (introduced 8/4/2010)

**Latest Major Action:** 8/4/2010 Referred to Senate committee. Status: Read twice and referred to the Committee on Finance.

**S.3760** : A bill to amend the Internal Revenue Code of 1986 to expand personal savings and retirement savings coverage by allowing employees not covered by qualified retirement plans to save for retirement through automatic IRAs, and for other purposes.

**Sponsor:** [Sen Bingaman, Jeff](#) [NM] (introduced 8/5/2010)

**Latest Major Action:** 8/5/2010 Referred to Senate committee. Status: Read twice and referred to the Committee on Finance.

## ENERGY AND ENVIRONMENT

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### Energy and Oil Spill Legislation

On Tuesday, Senate Majority Leader Harry Reid (D-NV) pulled energy and oil spill legislation from the floor amid doubts that S. 3663 and S. 3643 could garner enough votes for passage. S. 3663, a Democratically-supported bill, would eliminate a liability cap for all companies involved in an oil spill. A majority of Republicans are supporting S. 3643, which would create a liability formula and mandate that the federal government share royalty revenue with states that allow offshore drilling off their coasts. The House passed similar legislation on June 30 by a vote of 209 to 193. The Consolidated Land, Energy, and Aquatic Resources Act of 2010 (H.R. 3534) would increase penalties for oil rig safety violations, require independent drilling equipment certification, and prohibit the ability of companies to receive an environmental waiver for drilling projects.

When the Senate reconvenes after August recess, Majority Leader Reid plans to bring the legislation to the Senate floor. Currently, Senate leadership is continuing to work with moderate Democrats to reach a suitable compromise on the energy policy legislation. The compromise may include ensuring the ability for small and mid-sized oil companies to continue offshore operations. Additionally, the Senate may look to include a renewable energy standard in the bill.

On Thursday, the Senate Energy and Natural Resources Committee approved several bills including S. 679, which provides funding for the research of hybrid automobiles; S. 1320, which offers incentives to low-income families to buy energy-efficient homes; and S. 2900, which facilitates the development of efficient, natural gas-fired power plants. The bills will be sent to the floor for debate following the August recess.

The Senate is expected to recess on Friday, August 6 and reconvene on Monday, September 13. The House adjourned on July 30, but is expected to reconvene on Monday, August 9 to consider and vote on H.R. 1586, which would provide fiscal aid to states and local governments. H.R. 1586 passed the Senate on Thursday. A privileged resolution by Rep. Tom Price (R-GA), which would prohibit a lame duck session of Congress after the November elections, may also be considered. Once votes are completed, the House will adjourn once more until Tuesday, September 14.

[S. 3663](#); [S. 3643](#); [H.R. 3534](#); [H.R. 1586](#); [S.679](#); [S.1320](#); [S.2900](#); [Reuters](#), July 30; [CNN Politics](#), July 31; [The Hill](#), August 1; [CBS News](#), August 3; [E&E Publishing](#), August 4; [The New York Times](#), August 4; [The Wall Street Journal](#), August 5; [E&E Publishing](#), August 5; [The New York Times](#), August 5.

### Legislation Introduced

**S.3738** : A bill to amend the Internal Revenue Code of 1986 to provide incentives for clean energy manufacturing to reduce emissions, to produce renewable energy, to promote conservation, and for other purposes.

**Sponsor:** [Sen Kerry, John F.](#) [MA] (introduced 8/5/2010)

**Latest Major Action:** 8/5/2010 Referred to Senate committee. Status: Read twice and referred to the Committee on Finance.

**S.3715** : A bill to amend the Internal Revenue Code of 1986 to modify certain tax incentives for alternative vehicles, to establish a battery insurance program within the Department of Energy, and for other purposes.

**Sponsor:** [Sen Stabenow, Debbie](#) [MI] (introduced 8/5/2010)

**Latest Major Action:** 8/5/2010 Referred to Senate committee. Status: Read twice and referred to the Committee on Finance.

**S.3714** : A bill to amend the Internal Revenue Code of 1986 to provide tax incentives for clean coal technology, and for other purposes.

**Sponsor:** [Sen Conrad, Kent](#) [ND] (introduced 8/5/2010)

**Latest Major Action:** 8/5/2010 Referred to Senate committee. Status: Read twice and referred to the Committee on Finance.

## **IMPLEMENTATION OF HEALTH CARE REFORM**

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### **Republicans Plan To Block Health Law By Withholding Implementation Funds**

Republicans may not have the numbers to repeal the health overhaul, even after the election, but they are increasingly likely to try to deny the Obama administration the money it needs to implement the law, *The Politico* reports. Republicans have proposed a bill to deny funding to any part of the law. "But a more likely scenario is to choke off funding for pieces of the legislation that they find particularly troublesome, such as the requirement to buy insurance, changes to Medicare and the one most cited by House Minority Leader John Boehner (R-OH): the 'army of new IRS agents' to implement new requirements for business." About 120 candidates for the House and Senate have signed on to a letter pledging to defund the overhaul.

[The Politico](#), August 2; [The Washington Post](#), August 2; [CQ News](#), August 2.

### **Judge Gives The Go-Ahead To Virginia's Health Overhaul Challenge**

In a ruling issued Monday, U.S. District Judge Henry Hudson refused to dismiss the lawsuit filed by Virginia challenging a key aspect of the health care overhaul. The next round of arguments in this case is scheduled for October.

[The Politico](#), August 2; [The Associate Press](#), August 2; [The Washington Post](#), August 3;

[The Los Angeles Times](#), August 3; [The CongressDaily](#), August 3.

### **Missouri Voters Reject Health Reform Law's 'Individual Mandate' To Buy Insurance**

Missouri voters rejected by a wide margin Tuesday a federal health overhaul requirement that residents carry insurance coverage or pay a tax penalty, meaning Missouri law now contains a direct challenge to the federal health care law passed earlier this year. The measure is intended to invalidate in Missouri a key element of the federal health care law passed by Congress and signed by President Obama in March. That law requires individuals to purchase health insurance beginning in 2014.

Legislatures in Arizona, Georgia, Idaho, Louisiana and Virginia have passed similar statutes without referring them to the ballot. Missouri was the first state to challenge aspects of the federal law in a referendum.

In November, voters in Oklahoma and Arizona will also consider amendments to their state constitutions that would attempt to head off the insurance mandate.

[The New York Times](#), August 3; [Reuters](#), August 3; [The Wall Street Journal](#), August 4; [The Associate Press](#), August 4;

[The Washington Post](#), August 5; [The Wall Street Journal](#), August 5.

## **State Lawsuits, Implementation Efforts Attract Attention**

Today, 20 states and the National Federation of Independent Business are planning to file their response to the government's attempt to dismiss their lawsuit challenging President Barack Obama's health care overhaul. The Justice Department in June asked a federal judge to dismiss the lawsuit, saying the U.S. District Court in Pensacola lacks subject-matter jurisdiction over some of the lawsuit's claims. A key issue raised by their lawsuit is whether the federal government can require individuals to purchase health care insurance and fine those who don't.

[The Hill](#), August 6.

## ESTATE TAX

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### **Lincoln Urges Quick Action on the Estate Tax**

Sen. Blanche Lincoln (D-AR) on Thursday urged quick action on addressing the estate tax, which is scheduled to return in five months. Their proposal would tax estates worth more than \$5 million at 35 percent. These amounts would be phased in over a 10-year period and be indexed for inflation. Absent congressional intervention, Lincoln warns that farmers will be hit hard by the tax because their assets are tied up in the equipment and land they use to keep their businesses afloat.

Republicans, with some supporting Democrats, want to exempt up to \$10 million per couple and reduce the rate to 35 percent, arguing that this would help to preserve small family businesses and farms. At the 2009 rates, only one in every 400 estates paid any levy and, according to the Tax Policy Center, there were only about 100 genuinely small business or family farms. Another Republican proposal would create around \$7 billion in more red ink than the 2009 rates in the first year, and more than \$15 billion over two years. The Democrats come to the table in a position of strength in two respects. First are the congressional budgetary rules, which allow for simple extension of the middle-income tax cuts. Second is a requirement that an extension of the upper bracket tax cuts must be offset with other tax increases or spending cuts.

[The Hill](#), July 29; [Bloomberg](#), Aug 1.

## HIGHER EDUCATION

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### **Senate Committee Members Grill For-Profit Sector in Senate Hearing**

On Wednesday, the Senate Health, Education, Labor and Pension (HELP) Committee held a hearing entitled “For-Profit Schools: The Student Recruitment Experience.” The hearing was in response to a recently published Government Accountability Office report detailing the Office’s investigation into 15 for-profit educational institutions. Specifically, the investigation involved “secret sellers,” who, while posing as potential enrollees, secretly filmed for-profit recruiters engaging in what GAO described as overly aggressive, deceitful, and in four cases, fraudulent recruitment behavior. The committee released a video at the start of the hearing that depicted several incidents of such (to see the video, click on the *Inside Higher Ed* link below).

The hearing was the second in the series by the Committee investigating the for-profit sector. HELP Committee Chairman Tom Harkin (D-IA) plans at least one and as many as three more hearing on the subject this fall.

[The New York Times](#), August 3; [The Chronicle of Higher Education](#), August 4;

[The New York Times](#), August 4; [Business Week](#), August 4; [Inside Higher Ed](#), August 5.

### **NYT: “Corporate Funds Aid Center Tied to Lawmakers”**

According to *The New York Times*, privately financed university endowments are partially financed by several companies with business before Congress. These endowments honor nearly a dozen current and former federal lawmakers, including “powerful committee chairmen or party leaders,” thus creating conflicts of interest “like that attributed to Representative Charles B. Rangel.”

[The New York Times](#), August 5; [The Chronicle of Higher Education](#), August 6.

### **Webb, Durbin Investigate For-Profit Targeting of Vets for Tuition Assistance**

On Wednesday, Senators Jim Webb (D-VA) and Richard J. Durbin (D-IL) sent a letter to the secretaries of defense and veterans affairs asking for more information on their receipt of tuition assistance. The letter was sent in response to reports that some for-profit colleges are aggressively recruiting veterans and members of the military. The letter “asks for the amount of veteran and military tuition assistance that has gone to for-profits over the last 10 years, along with information on the criteria used in awarding the aid.”

[The Chronicle of Higher Education](#), August 5.