APPROPRIATIONS: HOUSE’S FIRST ATTEMPT TO PASS CONTINUING RESOLUTION FAILS; WORK CONTINUES ON FINAL MEASURE

By a vote of 195-230, the House failed to pass H.R. 2608, a continuing resolution to keep the government funded once the new fiscal year begins on October 1st. The stopgap bill would have kept the government operating through November 18.

Opposition to the legislation came primarily on two fronts – funding for recent natural disasters that have struck in several areas of the nation, and the need to make even further cuts in funding to reduce the budget deficit. Almost all of the House’s Democrats opposed the bill (only six voted for it) and 48 Republicans, including 18 freshman, also voted against it. The bill’s funding level reflected the $1.043 trillion cap set in the debt limit law this summer (P.L. 112-25). Republican opponents argued, however, that funding should be lower, tracking the $1.019 trillion level the House approved in its FY12 budget resolution (H. Con. Res. 34). Democrats opposed not only reducing the overall funding level agreed to this summer, but also the level and manner of disaster funding in the bill.

H.R. 2068 would have appropriated additional FY11 funding for FEMA’s Disaster Relief Fund, but would have for the first time offset it with cuts to other funding. To offset the additional $1 billion in FY11 money, the bill would have rescinded or transferred $1.5 billion from the Department of Energy’s Advanced Technology Vehicle Manufacturing program, which is aimed at encouraging the manufacture of energy efficient cars. The House CR also would have provided $2.65 billion in fiscal 2012 disaster spending.

The Senate passed a measure (H.J.Res. 66) on September 15th, that would provide $500 million in immediate FY11 funding without any offsets. It also includes $6.9 billion in FY12 funding.

The Disaster Relief Fund has been depleted significantly over the last few months – down from about $800 million in August to only about $215 million at the last count.

As of Thursday night, September 22nd, the House leadership was still working with its Republican conference to determine how to proceed. Both the House and Senate hope to be in recess next week. To keep
to that schedule, one or both chambers may have to work over the weekend. The general consensus at this point, however, is that a continuing resolution will be passed before the beginning of the new fiscal year on October 1.


### APPROPRIATIONS: FY12 TRANSPORTATION/HUD REPORTED BY SENATE APPROPRIATIONS COMMITTEE

On Tuesday, September 20, 2011, the Senate Appropriations Subcommittee on Transportation, Housing and Urban Development, and Related Agencies marked up its FY12 Transportation, Housing and Urban Development, and Related Agencies Appropriations Bill. The subcommittee mark proposed $55.3 billion in Budget Authority, with $109.5 billion in total resources. This reflects a decrease of $100 million from the FY11 enacted appropriation of $55.4 billion in Budget Authority and $109.6 billion in total resources. The full Committee approved the bill, with amendments, on September 21st.

The following summarizes the subcommittee’s proposed funding, according to five priority focus areas (not inclusive):

#### Transportation
- Significant Transportation Projects (“TIGER” program) - $550 million, with $120 million reserved for projects in rural communities
- Highway Investments - $41.1 billion for the Federal-aid Highway Program
- “New Starts” Program for Public Transportation - An additional $358 million above the fiscal year 2011 enacted level

#### Housing
- Section 8 Tenant-based rental assistance - $18.9 billion for housing choice vouchers, program administration, HUD-Veterans Affairs Supportive Housing, the Family Self Sufficiency Program, and a homeless demonstration program
- Public Housing - $1.9 billion
- Homeless Assistance grants - $1.9 billion

#### Foreclosure Crisis Provisions
- Community Development Block Grants (CDBG) - $2.85 billion
- HOME Investment Partnership - $1 billion for the creation and rehabilitation of low-income housing across the country
- Housing Counseling - $125 million, including $60 million for HUD housing counseling activities and $65 million for the National Foreclosure Mitigation Counseling program

#### Transportation System Safety
- Automobile Safety - $800 million for vehicle and driver safety programs, including funds for performance and incentive grants to States that enact distracted driver laws
- Pipeline and Hazardous Materials Safety - $81 million

#### Sustainable Communities
- Sustainable Communities Initiative - $90 million within HUD’s Community Development Fund to promote integrated housing and transportation planning
- Choice Neighborhoods - $120 million for HUD’s Choice Neighborhoods Initiative which will expand the HOPE VI program
- Transit Energy Efficiency Grants - $25 million

The full Committee approved the bill, with amendments, on September 21st by a vote of 28-2.

Highlights of the final bill, including changes from the subcommittee’s mark, include:

- $100 million in high-speed and intercity passenger rail grants, which would be covered by rescissions
- Adoption of a manager’s amendment, which includes $400 million in emergency disaster relief funding for the Community Development Block Grant (CDBG) program and another $400 million in emergency aid for the Federal Highway Administration
- $2.3 billion in emergency funding from the Deficit Control Act of 2011, held separately from the spending bill’s allocation totals
- $41.8 billion for the Federal Highway Administration
- $39.5 billion for the Housing and Urban Development Department, a decrease of $1.3 billion than FY11 and $3.9 billion less than the President’s request
- Excluding emergency money, community development block grants administered by HUD would decrease by 15%, receiving $2.85 billion

The Institute will produce a more thorough report on the bill with California implications in the near future. For more information, please visit: [http://appropriations.senate.gov/](http://appropriations.senate.gov/).

**APPROPRIATIONS: SENATE COMMITTEE APPROVES FY12 LABOR, HHS, EDUCATION APPROPRIATIONS**

On Tuesday, September 20, 2011, the Senate Labor, Health and Human Services, and Education, and Related Agencies Appropriations Subcommittee approved its fiscal year 2012 appropriations bill. The bill calls for a program level of $165.4 billion for fiscal year 2012. (Program level is current year discretionary funding plus additional spending that is offset by savings in mandatory programs and other adjustments to discretionary funding, according to Committee documents.) Within this total, the bill included an additional $409 million in spending through cap adjustments on reducing fraud, waste and abuse in health care and at the Social Security Administration. When adjusted for this spending, the program level is $308 million below the fiscal year 2011 comparable level of $165.3 billion. This difference mirrors the reduction in the 302(b) allocation for this bill, before cap adjustments, from the fiscal year 2011 enacted level to fiscal year 2012, the Committee indicated.

Below is a summary of the major provisions in the Subcommittee’s bill:

**Discretionary program level funding for Agencies:**

- Department of Labor – $12.69 billion
- Department of HHS – $70.18 billion
- Department of Education – $68.43 billion
- Related Agencies – $14.09 billion

**Improving Fiscal Accountability and Reducing Waste, Fraud and Abuse:**

- Social Security Program Integrity – $896 million
- Unemployment Insurance Program Integrity – $59.9 million
- Program Eliminations – In fiscal year 2012, this bill eliminates 15 programs totaling $263.4 million.

**Leveraging Reforms in Health, Education and Worker Training:**

- The bill creates the National Center for Advancing Translational Sciences (NCATS) and provides $20,000,000 for the Cures Acceleration Network (CAN)
- Race to the Top-- $698.6 million for education
- Promoting School Readiness for Minors in SSI-- $4 million within the Department of Education and $10 million at the SSA for the new Promoting School Readiness for Minors in SSI (PROMISE) program.

**Investing in the Future:**
- Pell Grants— The bill maintains the discretionary portion of the maximum award level at $4,860; combined with mandatory funding, the total maximum award is maintained at $5,550 for the 2012-2013 school year.
- Head Start Program -- $340 million increase for Head Start, maintaining the recent expansion of 61,000 Head Start slots in FY 2009 and 2010.

**National Institutes of Health**
The bill provides $30.5 billion, a decrease of $190 million, to fund biomedical research at the 27 Institutes and Centers that comprise the NIH.

**Community Health Centers**
The bill includes $1.6 billion for CHCs. Combined with mandatory funding provided in the health reform law, the fiscal year 2012 program level for CHCs is $2.8 billion—an increase of $200 million. This level will allow for base grant adjustments for all existing CHCs and the expansion of the national network of clinics, according to Committee documents.

On September 21, 2011, the full Committee approved the bill by a vote of 16-14. During the full Committee mark up several offered amendments failed to get approval.

For more information, please visit: [http://appropriations.senate.gov/](http://appropriations.senate.gov/).

**Appropriations: Institute Reports On Senate FY12 CJS and Agriculture Appropriations Available**
The California Institute has produced two reports on recently approved Senate Appropriations bills that are now available on the website.


**Health: Ways & Means Subcommittee Examines Medicare Provider Payments**
The Ways and Means Subcommittee on Health, chaired by Rep. Wally Herger (Marysville) held a hearing on September 21, 2011 to examine certain expiring Medicare provider payment provisions that will expire on or before December 31, 2011.

Witnesses were: Rich Umbdenstock, President, American Hospital Association; Stephen Williamson, President, American Ambulance Association; Robert Wah, MD, Chairman, Board of Trustees, American Medical Association; Justin Moore, Vice President of Government Affairs, American Physical Therapy Association; and A. Bruce Steinwald, President, Steinwald Consulting.

In announcing the hearing, Chairman Herger stated, “With a likely price tag of a one year extension totaling more than $2.5 billion, the Subcommittee must ensure that taxpayers’ money will be spent wisely. As members of the Subcommittee on Health, we have an obligation to examine Medicare’s payment policies to determine whether they are sound and justified.”

Testimony focused on a number of expiring provisions. Mr. Umbdenstock discussed the continuing flaws in some Medicare provisions and the need to continue the expiring provisions to resolve those flaws.
Among other provisions, he cited the Section 508 wage index exception, which allows certain qualifying hospitals to receive wage index reclassifications and assignments that they otherwise would not have been eligible to receive. He also discussed the 340B Drug Discount Program under Medicaid, requires that pharmaceutical manufacturers supply their products to state Medicaid programs at the manufacturer's "best price" and which has been expanded to include providing outpatient drugs at discounted prices to taxpayer supported health care facilities that care for uninsured and low-income people. Mr. Umbdenstock argued that the extending the 340B discounts should also be extended to the purchases of drugs used during inpatient hospital stays for safety-net hospitals. Many of these hospitals are in urban settings and are the health care safety net for their communities, he said, and would allow these facilities to stretch their limited resources further.

Dr. Wah testified in support of a number of expiring provisions. He argued that these provisions and the “additional funding that has been allocated for many of these services has been necessary in the absence of a complete overhaul of the Medicare physician payment system. Due to the flawed sustainable growth rate (SGR), there has been a massive shortfall in Medicare funding for physicians’ services. Over the last decade, temporary patches have not kept up with the growth in physician practice costs and real inflation-adjusted Medicare payment rates have been cut 16 percent”, he said. In addition, physicians also face a 29.5 percent across-the-board payment cut scheduled for January 1, 2012, if Congress does not act to extend the current exemption.

For the testimony of all the witnesses, go to: http://waysandmeans.house.gov.

**Education: House Subcommittee Examines Education System Accountability to Parents and Communities**

On Wednesday, September 21, 2011, the House Subcommittee on Early Childhood, Elementary, and Secondary Education held a hearing entitled "Education Reforms: Ensuring the Education System is Accountable to Parents and Communities." Witnesses included: Dr. Benny L. Gooden, Superintendent, Fort Smith Public Schools, Arkansas; Dr. Jay P. Greene, Professor, University of Arkansas; Ms. Laura W. Kaloi, Public Policy Director, National Center for Learning Disabilities, Virginia; and Mr. Bill Jackson, Founder and CEO, GreatSchools, California.

Chairman Duncan Hunter (Alpine) announced that the hearing would focus on how states and local school districts can ensure public schools are held accountable to parents and communities for improving student achievement. Witnesses were asked to testify on improving student achievement through local and state measures, and not through federal "academic standards, assessments, Adequate Yearly Progress, and school improvement… the one-size-fits-all approach," Chairman Hunter said.

Mr. Jackson testified on what he believes to be three key elements for the accountability of schools to parents and communities. First, school performance data should continue to be offered to parents and third party providers, along with data that shows growth from year to year, as opposed to "absolute" test scores. Individualized student data should be provided to parents. Second, Mr. Jackson testified that "proficient" must mean students are prepared for good jobs and college and that the current practice in some states sets the bar too low. This must be made more transparent to inspire change.

Finally, parents must be "first and foremost motivated to ensure that their own children get a great education" and policymakers should "accelerate this process by catalyzing innovation that helps parents understand how their children are performing and that gives parents more tools to put their children on the path to success." Some considerations for this include: "new high-quality computer-based assessments that quickly and frequently provide parents with easy-to-understand feedback on their child's progress" and "new 'electronic education records,' similar to electronic health records, which could put more power in parents' hands by allowing them to share information about their children's achievement and progress with schools, after-school programs, summer programs, and online providers of educational services."
Other testimony highlighted the following:

- The benefits of No Child Left Behind (NCLB) for students with disabilities, including the dual NCLB requirements that students with disabilities "should be expected to achieve meaningful academic progress" and that "school accountability [to parents] and emphasis on doing what works to improve results for students with disabilities" is a necessity.

- Discussion about centralized approaches to education, including nationalized curriculums, which may not be necessarily better than decentralized systems. Testimony highlighted that choice and competition among different sets of standards, curricula, and assessments may better suit student needs and result in better outcomes.

- The benefits of NCLB's requirement for disaggregated data that allows analysis relative success among subgroups.

For more information, visit: http://edworkforce.house.gov/.

**Homeland Security: House Committee Approves Border Security Bill**

The House Homeland Security Committee has approved a bill that requires the Department of Homeland Security to develop a plan to secure the nation’s borders. On September 21, 2011, the Committee reported H.R. 1299 by voice vote.

The bill requires DHS to gain “operational control” of the border and ports of entry within five years. The bill responds to a Government Accountability Office report from earlier this year that found that over half of the southwest border’s 2,000 miles was not under “operational control” – meaning that no border patrol agents were deployed in those areas. The bill requires that the strategy developed must take into account personnel, technology and other resources available or needed to meet security requirements. It also requires that any new measure recommended by DHS be evaluated by a Department of Energy National Laboratory to ensure that it is suitable and statistically valid.

The Committee also approved by voice vote H.R. 915. It provides a five year authorization of $10 million annually to establish the Jaime Zapata Border Enforcement Security Task Force. Zapata was an Immigration and Customs Enforcement officer killed along the border earlier this year. The task force would be comprised of personnel from several federal agencies that would work with state, local, tribal, and foreign governments to raise security along the U.S. border.

**Taxes: Senate Finance Explores Innovation and Tax Policy**

On September 20, 2011, the Senate Finance Committee held a hearing entitled “Tax Reform Options: Incentives for Innovation.” Witnesses included: Dr. Scott Wallsten, Vice President for Research & Senior Fellow, Technology Policy Institute and Senior Policy Fellow, Georgetown Center for Business and Public Policy; Mr. Michael D. Rashkin, Author, Practical Guide to Research and Development Tax Incentives: Federal, State, and Foreign, Saratoga, CA; and Ms. Annette Nellen, Professor, Department of Accounting & Finance, College of Business at San Jose State University, San Jose, CA.

In his opening remarks, Chairman Max Baucus (MT) said: “Today, out of the 21 OECD [Organization for Economic Cooperation and Development] nations, the U.S. ranks 17th in tax incentives for research and development. American companies have little certainty that the main tax incentive for research and development – the R&D credit – will continue. Since 1981, we have relied on 14 short-term extensions to renew the credit. This undermines the potential of the tax credit to provide the certainty businesses need to generate meaningful growth.”

Mr. Rashkin argued that the United States is “witnessing a debilitating outsourcing cycle where taxpayer subsidized R&D is used to create overseas jobs.” He argued that this occurs because while some federal agencies underwrite basic research and the U.S. tax code provides incentives for companies to create products, through cost-sharing and other beneficial arrangements, companies “park” the resulting intellectual
property in tax havens and continue to shift jobs overseas, providing few U.S. jobs or tax revenues. He called for eliminating tax deferral for tax havens and increasing the R&D tax credit to 30 percent but make the credit applicable only to truly innovative research and breakthrough products.

Prof. Nellen cited several tax code provisions that encourage innovation, including Section 174 research and experimental expenditures and the Section 41 credit for increasing research activities. But she also noted other provisions that may hamper innovation and suggested possible remedies. For instance, she noted that because R&D credits only apply to U.S.-based research, companies with foreign subsidiary earnings offshore, in evaluating the after-tax costs of U.S. R&D activities, may find it is not cost effective to repatriate those earnings to be used in U.S. R&D activities. Therefore, she suggested that Congress consider some type of repatriation tax holiday to encourage corporations to bring earnings (cash) into the U.S. A requirement could be added, she said, that the funds be used for innovation projects (R&D, worker training, purchase of R&D equipment, hiring, or the like).

For the testimony of all the witnesses, go to: [http://finance.senate.gov](http://finance.senate.gov).

**Immigration: House Committee Approves Mandatory E-Verify**

On September 21, 2011 the House Judiciary Committee marked up H.R. 2885, the Legal Workforce Act, which requires all U.S. employers to use the E-Verify System. The bill was approved along party lines by a vote of 22-13. Developed over a decade ago, and championed by Rep. Ken Calvert (Corona), E-Verify electronically checks a new employee’s legal eligibility to work in the United States. Social Security numbers and other identifying information are electronically verified by the Social Security Administration and the Dept. of Homeland Security under the program.

Some of the major components of H.R. 2885 include:
- Complete replacement of the paper based I-9 System with fully electronic work eligibility check
- Gradual Phase-In, with larger businesses required to use E-Verify for new hires sooner than smaller businesses, according to a predefined schedule utilizing 6-month increments
- Employees performing “agricultural labor or services” will only be subject to an E-Verify check within 36 months of the date of enactment
- Federal Preemption, which preempts state laws requiring businesses to use E-Verify to determine employment eligibility, but retains the ability of states and localities to require an employer to use E-Verify under federal law in order to obtain a business license
- Safe Harbor, which protects businesses from prosecution if they use E-Verify but are given erroneous eligibility information through no fault of their own

Debate on the bill centered around the possible infringement on civil liberties. Specifically, although the system is 97.4% accurate at determining eligibility correctly, the remaining 2.6% disproportionately reflects workers who are legally eligible to work, but appear not to be because of user error or errors caused by name changes (i.e. in marriages and divorces) or changes related to immigration and naturalization. These workers are prevented from working while sorting out the error, even though they may be indeed eligible to work. Opponents also argued that at a time when the focus is on reducing unnecessary federal regulations, the bill will add to administrative burdens, especially on small businesses.

During consideration, the Committee approved an amendment, 19-12, by Rep. Howard Berman (North Hollywood) that struck a provision in the bill that exempted a worker from being considered a new hire and therefore subject to verification if the individual was employed in seasonal agricultural work and was returning to an employer for whom he or she had previously worked. Rep. Zoe Lofgren, Ranking Member on the Immigration Subcommittee, also offered several amendments that were defeated. An amendment by Rep. Dan Lungren (Gold River) that would have attached his agricultural guestworker bill to the E-Verify bill was found non-germane.
The Committee was also scheduled to mark up H.R. 2847, the American Specialty Agriculture Act, which would establish a new category of agricultural guestworker visas, but did not complete consideration of the bill.

For more information, visit: http://judiciary.house.gov/.

**RESOURCES: SENATE EPW APPROVES BAY DELTA RESTORATION BILL**

On September 21, 2011, the Senate Environment and Public Works Committee, chaired by Senator Barbara Boxer, approved S. 97, the San Francisco Bay Restoration Act.

The bill, introduced by Senator Dianne Feinstein and Senator Boxer, amends the Clean Water Act to establish a grant program for the restoration of the San Francisco Bay. The Environmental Protection Agency (EPA) is authorized to provide funding to state and local agencies, special districts, and public or nonprofit agencies, institutions, and organizations for activities, studies, or projects identified in an annual priority list, including restoration projects and habitat improvement for fish, waterfowl, and wildlife, that advance the goals and objectives of the comprehensive management plan for the San Francisco estuary. The bill limits funding amounts to 75% of the total cost of eligible activities to be carried out under the grant.

The EPA, the State of California, local governments, non-governmental agencies, and other stakeholders have developed a Comprehensive Conservation and Management Plan to improve water quality and the health of the Bay. This legislation would assist in the implementation of that plan.

For further information, go to: http://epw.senate.gov.

**BRIEFING: WATEREUSE ASSOCIATION ADDRESSES "FUTURE OF ALTERNATIVE WATER SUPPLIES"**

The WateReuse Association hosted a congressional lunch briefing on September 22, 2011. The briefing focused on current water crises in the U.S. and around the world, while highlighting innovations for the future, including water reuse and desalinization.

Reps. Grace Napolitano (Norwalk) and Joe Baca (Rialto), provided opening remarks and Rep. George Miller (Martinez) was also in attendance. All have been very involved in California water policy during their tenures in Washington, and Rep. Napolitano now serves as Ranking Member of the House Resources Water and Power Subcommittee. A panel of several experts addressed critical water issues. Some of the speakers on the panel were:

- Ms. Lauren Azar, Senior Advisor to Secretary Chu, U.S. Department of Energy
- Mr. Richard Nagel, General Manager, West Basin Municipal Water District, Southern California
- Mr. Robb Whitaker, General Manager, Water Replenishment District, Southern Los Angeles County, California
- Ms. Kira Finkler, Deputy Commissioner, External and Intergovernmental Affairs, Bureau of Reclamation, U.S. Department of Interior and
- Mr. Jay Jensen, Assistant Director for Land and Water Resources, Council on Environmental Quality, The White House

The panel began by emphasizing the importance of water, and the current crisis spreading across the U.S. in regard to water shortages and a growing population. Additionally, the panel emphasized how undervalued and underappreciated water is both by business and by the public. Finally, the connection between water and energy was highlighted. Water transport is fueled by energy, but the production of energy is also usually made possible through the use of water for cooling.

Regarding solutions to the water problem, panel members agreed that investing in water infrastructure is not only good for the public economy (every $1 billion invested would result in 28,500 new green jobs, increase competitiveness, and other benefits) but also good for individuals and businesses who not only want to be environmentally responsible, but also profitable. The panel as a whole also emphasized
the innovations of water reuse and desalinization. According to Mr. Nagal, desalinization has now become a cheaper and more viable option than it was 15 years ago. Water deficient areas should invest if possible in this technology, he said, as his utility district in California has done.

To obtain more information, please visit: http://www.watereuse.org/association.