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CONGRESSIONAL SCHEDULE  NEW

As the lame-duck session of the 111th Congress winds down, much of the agenda remains undone. House and Senate leaders hope to conclude the session by next Friday, December 17.

The Senate began debate today on the tax package negotiated between congressional Republicans and the Obama Administration (H.R. 4853), but took no roll call votes. When the chamber reconvenes on Monday, December 13, it will hold a cloture vote on the measure. CQToday reports that if Senate leaders can convince the Senate to approve the tax bill early in the week, much of the rest of the week could be devoted to the FY11 funding package (see item below). The Senate also may vote on the DREAM Act (see item below) and a separate bill to repeal the military’s “don’t ask, don’t tell” policy on gays. The White House also is pushing the Senate to ratify the nuclear arms treaty with Russia.

The House did not meet today. It will reconvene on Monday in pro forma session.

BUDGET & APPROPRIATIONS

HOUSE APPROVES FY11 CR  UPDATED
The House approved a continuing resolution (CR) late Wednesday that funds the federal government through the rest of fiscal year 2011, holding appropriations for most non-security
programs at their FY10 levels. The vote was 212 to 206, with all Republicans and 35 Democrats voting against it.

The legislation (H.R. 3082) now moves to the Senate, where Democrats are expected to try to replace the CR with an FY11 omnibus appropriations package—consisting of all 12 FY11 appropriations bills—that Appropriations Committee Chairman Daniel Inouye (D-HI) has been preparing.

Although few details about the omnibus package have been made public, the measure would provide about $18 billion more in discretionary spending than the CR—including a reported additional $750 million for the National Institutes of Health (NIH)—and would include congressional earmarks.

Further complicating the process in the Senate, CQToday reports that Republicans are expressing opposition to the year-long House-passed CR, in favor of a shorter term bill that lasts into February or March. This would enable Congress to make “long-term spending decisions early next year, when Republicans will take control of the House and have more seats in the Senate.”

**HOUSE CR WOULD FREEZE MOST FY11 DOMESTIC DISCRETIONARY SPENDING  UPDATED**

The House-passed CR provides nearly $46 billion less than the Obama Administration requested for FY11. The funding package would level fund most research agencies and programs, such as the National Institutes of Health (NIH), the National Science Foundation, the Department of Energy Office of Science, NASA Science, and the National Endowment for the Humanities, as well as most higher education programs.

The measure would provide the $5.7 billion needed to cover the current Pell Grant shortfall and ensure that the maximum award for academic year 2011-2012 remains at the current level of $5,550 through a combination of discretionary and mandatory spending. The measure also would adjust spending for the office of Federal Student Aid to “maintain services to students and families in implementing the transition to 100% direct student lending mandated by law.”

Among other provisions of interest: NIH would be allowed to use up to $25 million in funding within the Office of the Director to initiate the Cures Acceleration Network, designed to promote the translation of research into drugs and therapies (Section 2811, page 102 of the House Appropriations Committee text). The Department of Energy would be allowed to fund the Advanced Research Projects Agency-Energy at up to $300 million, but could do so only by transferring funds from the Office of Science or the Energy Efficiency and Renewable Energy program (Section 2410, page 54 of the House Appropriations Committee text).

**STUDENT AID ALLIANCE THANKS HOUSE FOR PELL GRANT FIX  NEW**

The Student Aid Alliance, a group of more than 60 higher education associations and institutions, including AAU, sent a letter to Members of the House on Wednesday thanking them for including the Pell Grant fix in the FY11 CR and urging them to vote in favor of the CR.
PROPOSED TAX PACKAGE INCLUDES HIGHER EDUCATION PROVISIONS

The tax package negotiated between the White House and congressional Republicans (H.R. 4853) would extend for two years the expired and expiring tax provisions of concern to higher education. The proposal would extend the American Opportunity Tax Credit, the student loan interest deduction, Section 127 employer-provided educational assistance, and Coverdell education savings accounts. It also would restore three tax benefits that expired at the end of 2009: the above-the-line deduction for qualified educational expenses, the IRA charitable rollover, and the R&D tax credit.

The higher education associations urged the extension of the higher education provisions in a letter that was sent to congressional tax leaders on December 1.

OTHER CONGRESSIONAL ISSUES

CONGRESS COULD STILL APPROVE DREAM ACT

The House on December 6 approved the Development, Relief, and Education for Alien Minors Act of 2010 (H.R. 6497) by a vote of 216-198. The DREAM Act would provide a legal pathway for young adults brought to the United States as children who have either completed two years of college or military service.

In the Senate, Democrats yesterday voted to table the motion to proceed on the Senate version of the bill (S. 3992), opting instead to try to pass the House bill next week. Senate Majority Leader Harry Reid (D-NV) said, “Now that it’s passed the House, the way to proceed would be to have a vote on that matter, because if we’re able to pass it, it goes directly to the president.”

EXECUTIVE BRANCH

NIH REVIEW BOARD CALLS FOR NEW TRANSLATIONAL RESEARCH CENTER

NIH’s Scientific Management Review Board (SMRB) recommended at its meeting on December 7 that NIH create a new center for translational research and therapeutics development. The panel did not recommend elimination of the National Center for Research Resources (NCRR)—as had been rumored in news reports. Instead, the SMRB encouraged NIH to study the impact of the new center on the NCRR more closely and report back at the Board’s February meeting.

NIH Director Francis Collins noted that he had already asked two NIH officials to lead a committee to examine that potential impact. At a meeting of the Director’s advisory committee on December 9, Dr. Collins announced that NIH hopes to have the new center up and running by October 1, 2011.

A new translational research center at NIH presumably would bring together a number of programs, including the NCRR’s Clinical and Translational Science Awards and the soon-to-be established Cures Acceleration Network. NCRR stakeholders have expressed concern that creation of the new center would prompt elimination of the NCRR, leaving several important
programs without an obvious home. These include construction and instrumentation awards and support for the NIH primate centers.

The SMRB was established in 2007 under the NIH Reform Act. It is tasked with making recommendations related to NIH organization and structure. To be implemented, the latest SMRB recommendations must receive the formal endorsement of the NIH Director, be approved by the Secretary of Health and Human Services, and then be approved by Congress, which has 180 days to act.

OTHER

APPEALS COURT HEARS ORAL ARGUMENTS IN STEM CELL CASE

A U.S. Court of Appeals panel heard a final set of oral arguments on December 6 on the appeal by the U.S. Department of Justice of a U.S. District Court judge’s decision to halt NIH funding of human embryonic stem cell (hESC) research while he considered the underlying case about federal funding of hESC research. Earlier this year, the Court of Appeals imposed a stay on Judge Royce Lamberth’s preliminary injunction, allowing NIH to continue funding the research while the injunction is under appeal.

Most of the questions that the three-judge panel asked of attorneys for the Justice Department and the plaintiffs revolved around the definition of research and whether a line can be drawn between derivation of human embryonic stem cells and their use in research. The government contends there is a line between derivation and use; the plaintiffs suggest there is an inseparable continuum of research.

The Appeals Court must decide if the preliminary injunction stands up to a four-part test: harm suffered by the plaintiffs in the absence of an injunction; the balance of harms between the plaintiffs and the interests of the government; if the injunction is in the public interest; and whether the plaintiffs are likely to succeed on the merits. How extensive their ruling is on the latter point, the merits of the case, may ultimately affect the lower court’s ruling. While the Appeals Court is under no particular timeline to rule on the question of the preliminary injunction, a ruling likely will be issued between mid-December and mid-January.

As discussed previously, the employer of one of the plaintiffs in the case has been granted permission by the Court of Appeals to join the amicus brief opposing the plaintiff’s position. That brief was filed in October by the state of Wisconsin, the Genetics Policy Institute, and the Coalition for the Advancement of Research (CAMR), which includes AAU. The amicus brief argues that U.S. District Court judge Royce Lamberth erred in issuing a preliminary injunction halting federally funded hESC research last August while he considered the case.

The Justice Department appealed the judge’s decision to the Court of Appeals, which issued a stay of Judge Lamberth’s preliminary injunction, allowing the National Institutes of Health (NIH) to continue funding hESC research. Judge Lamberth is expected to allow the Court of Appeals to make a final ruling on the preliminary injunction before he rules on the case.

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