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This is the last AAU Weekly Wrap-up of 2010. Happy holidays to all of our readers.

CONGRESSIONAL SCHEDULE  NEW

Following a busy and surprisingly productive lame-duck session, Congress has adjourned sine die, bringing the 111th Congress to a close. The new 112th Congress will convene on Wednesday, January 5.

Among the measures approved during the post-election lame-duck session—some of which are discussed below—were: a short-term continuing resolution to sustain government funding through early March; a two-year extension of expired and expiring tax cuts, including those of particular concern to higher education; reauthorization of the America COMPETES Act; reauthorization of Defense Department programs; ratification of the START treaty with Russia; a food safety bill; health care funding for 9-11 first-responders at Ground Zero in New York; and repeal of the military’s “don’t ask, don’t tell” policy.

BUDGET & APPROPRIATIONS

CONGRESS APPROVES SHORT-TERM FY11 CONTINUING RESOLUTION  NEW

Senate Majority Leader Harry Reid (D-NV) last week gave up trying to move an FY11 omnibus appropriations package through the Senate, settling for a short-term continuing resolution (CR)
that freezes most federal discretionary spending at FY10 levels through March 4. The House, which earlier had passed a full-year CR, approved the short-term measure on December 21 in a vote of 193 to 165.

The short-term extension means that the new Congress—which will be more fiscally conservative—will be able to weigh in again on FY11 funding levels and program priorities. Given House Republican leaders’ explicit support for returning discretionary spending to FY08 levels, this could mean efforts to seek rescissions, other targeted cuts, and/or across-the-board funding reductions for the remainder of the fiscal year.

The short-term CR will maintain Pell Grant funding at the FY10 levels, so that the maximum award does not drop in the 2011-2012 academic year. In addition, the CR eliminates the shortfall in the program.

**NOTE:** Below are the temporary funding levels provided in the CR for key agencies, but they are based on full-year appropriations. Because the 112th Congress will revisit FY11 funding early in the year, the actual levels may change.

For the National Institutes of Health (NIH), the CR level-funds the agency at $31 billion, with no funding or language to allow initiation of the Cures Acceleration Network (CAN). The Senate omnibus would have raised NIH funding by $750 million, including $50 million to initiate CAN; the House CR would have level funded the agency, but allowed officials to use up to $25 million from the Office of the Director for the new program.

The National Science Foundation (NSF) receives $6.9 billion, the same as in the House CR but $418 million below the Senate omnibus level of $7.3 billion. Within the total, Research and Related receives $5.5 billion, Education $873 million, and Major Research Equipment and Facilities $117 million.

Funding for NASA in the short-term CR is held at $18.7 billion, including $4.5 billion for NASA Science, $507 million for Aeronautics, and $184 million for Education. The Senate omnibus would have funded NASA at $18.9 billion; both the Senate omnibus and the House CR would have funded Science at $5 billion and Education at $180 million.

For the Department of Energy (DOE), the CR level-funds the DOE Office of Science at $4.9 billion, with no funding for the Advanced Research Projects Agency-Energy (ARPA-E) or for initiation of a new innovation hub for batteries and energy storage in the Office of Science. The Senate omnibus bill included funding for DOE to create the new innovation hub and would have provided $200 million for ARPA-E. The House CR included no funding for the new hub, but would have allowed DOE to provide ARPA-E with up to $300 million by transferring funds from the Office of Science or the Energy Efficiency and Renewable Energy program.

Department of Defense 6.1 basic research is level-funded at $1.874 billion. This is $182.5 million below the level approved by the Senate Appropriations Committee in September.

The National Endowment for the Humanities (NEH) is level-funded at $167.5 million, the same as the House CR and $6.2 million above the President’s FY11 request of about $161 million. The Senate omnibus would have added $2.5 million, funding the Endowment at $170 million.
OTHER CONGRESSIONAL ISSUES

CONGRESS APPROVES AMERICA COMPETES ACT REAUTHORIZATION  NEW

The House on December 21 voted final approval of the America COMPETES Act (H.R. 5116), sending the measure to the President for signature. The vote was 229 to 130. The Senate passed the bill on December 17 by unanimous consent.

The higher education and business communities expressed strong support for the measure, and worked together to encourage Members of Congress to approve it.

The final legislation is a slimmed-down version of the bill passed by the House in May, authorizing $45.2 billion for several science, technology, and education agencies and programs over three years, rather than the $85.6 billion over five years in the earlier House-approved bill. The bill reaffirms the 10-year budget doubling track of the National Science Foundation (NSF), the Department of Energy (DOE) Office of Science, and the National Institute of Standards and Technology (NIST), and includes specific authorization for the DOE Advanced Research Projects Agency-Energy (ARPA-E).

H.R. 5116 would provide the following funding authorization levels for FY11 through FY13:

- NSF: the President’s budget request numbers for three years, beginning at $7.4 billion (FY11 funding under the current CR is $6.9 billion);
- NIST: the President’s budget numbers for three years, beginning at $585 million (FY11 funding under the current CR is $515 million);
- DOE Office of Science: beginning at $5.2 billion, rising to $5.6 billion and $6 billion in the out years; (FY11 funding under the current CR is $4.9 billion) and
- ARPA-E: $300 million, and adjusted for inflation for years two and three (The agency receives no funding in the current CR.)

AMERICA COMPETES LEGISLATION WOULD CREATE INTERAGENCY PUBLIC ACCESS COMMITTEE  UPDATED

The America COMPETES Act contains language in the Office of Science and Technology Policy (OSTP) section that creates an interagency public access committee to coordinate federal policies on expanding public access to the results of federally supported research. The provision incorporates key recommendations made by the Scholarly Publishing Roundtable, an expert panel of librarians, library scientists, publishers, and university academic leaders, for which AAU has provided leadership.

SENATE FAILS TO PASS DREAM ACT  UPDATED

The Senate on December 18 failed to garner the 60 votes needed to consider the House-passed version of the Development, Relief, and Education for Alien Minors (DREAM) Act (S. 3992, H.R. 6497), dooming the chances of approving the bill during the lame-duck session. The Senate vote was 55 to 41. The House approved the bill on December 6 by a vote of 216-198.
At a press conference on December 22, President Obama expressed his disappointment at Congress’ inability to pass the DREAM Act and pledged that the Administration would pursue immigration reform legislation in the new year.

The DREAM Act would provide a legal pathway for young adults brought to the United States as children who have completed two years of either college or military service.

**CONGRESS FAILS TO PASS SBIR-STTR BILL WITH ADDED RESEARCH SET-ASIDE**

Congress this week did not give final approval to a bill reauthorizing the Small Business Innovation Research (SBIR) and the Small Business Technology Transfer (STTR) programs that was opposed by AAU and several other higher education associations and institutions because it would have raised the small business set-aside in federal agency research budgets.

The Senate approved the SBIR/STTR Reauthorization Act of 2010 (S. 4053) by unanimous consent on December 22, but the House did not consider the measure before adjournment.

The Senate bill would have raised the SBIR set-aside at 10 federal agencies with annual extramural research budgets of $100 million or more from the current 2.5 percent to 3.5 percent over 10 years, and doubled the STTR set-aside at five covered agencies from 0.3 percent to 0.6 percent over six years.

AAU supports reauthorization of these small business programs with set-asides, but has opposed increasing the set-asides. As described in AAU President Robert Berdahl’s testimony before the Subcommittee on Innovation and Technology of the House Science Committee on April 9, 2009:

> “While supportive of the current set-aside, we oppose any increases in the SBIR set-aside because there is no clear justification for such increases. We question whether there is enough small business research—and of sufficient quality—to merit SBIR funding that would come at the expense of peer-reviewed basic and applied research programs at agencies such as NIH and NSF, where success rates unfortunately have hit all-time lows in recent years. In our view, increasing the set-aside would reduce even further the number of successful research grants that are awarded by federal research agencies.

> This is not to suggest that we do not favor increasing the amount of funds going to SBIR and STTR. Our view is that the best way to increase the amount of funding available to these programs is to provide steady and sustained funding increases for federally supported research…”

**EXECUTIVE BRANCH**

**IMMIGRATION SERVICE DELAYS REQUIRING H-1B VISA APPLICANTS TO ANSWER EXPORT CONTROL QUESTION**

The U.S. Citizenship and Immigration Service (USCIS) has postponed until February the requirement that H-1B visa petitioners answer Part 6 of the Form I-129, which requires petitioners to state whether or not they will be required to have a deemed export control license.
The requirement to answer the new question, “Certification Regarding the Release of Controlled Technology or Technical Data to Foreign Persons in the United States,” was set to go into effect on December 23, but has been postponed to February 20, 2011. A press release about the postponement is available here on the USCIS website.

The delay may have been prompted, at least in part, by numerous comments expressing opposition to the provision submitted by the higher education community and other stakeholders. As AAU and the Council on Governmental Relations said in their comment letter of April 9:

“…the purpose of the Form I-129 is for an employer to petition for a foreign worker to come to the U.S. temporarily to perform services, not to collect information concerning deemed export licenses. We do not understand how USCIS plans to use this information or how it is appropriate or necessary for the visa process.”

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