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CONGRESSIONAL SCHEDULE  NEW

The House met today to approve the FY12 budget resolution (see item below); the Senate did not meet.

Congress will be out of session for the two-week April recess, returning on Monday, May 2.

BUDGET & APPROPRIATIONS

FY11 SPENDING PACKAGE TRIMS RESEARCH, PRESERVES PELL MAXIMUM AWARD  UPDATED

Congress has approved and the President has signed the FY11 continuing resolution (CR) to fund the federal government for the remainder of the fiscal year. The package reduces federal spending by about $38.5 billion from FY10 levels, including a 0.2 percent across-the-board (ATB) cut in non-security discretionary programs. The measure preserves the maximum Pell Grant award at $5,550 and make relatively modest cuts to basic research programs at most of the major federal agencies.

The House passed the CR on April 14 by a vote of 250 to 167, with 59 Republicans voting against it and 81 Democrats voting in favor of it. The Senate passed the CR later that evening by a vote of 81 to 19. The President signed the measure this afternoon. The current short-term CR expires at midnight tonight.
Approval of the measure came after weeks-long negotiations among congressional Republicans and Democrats and the White House; the final agreement was announced late on April 1, just hours before the government was poised to shut when the current CR expired at midnight. The shutdown was averted with another week-long CR to provide time to move the deal through Congress.

**--RESEARCH**

An [analysis](#) by the American Association for the Advancement of Science (AAAS) notes that basic research programs fared better than applied research programs, particularly at the Department of Energy (DOE). As stated in the analysis: “Basic research generally has broad, bipartisan support, but there is discussion as to how much the federal government should be involved in applied research and the role of industry in funding the applied research state of the innovation pipeline.”

**National Institutes of Health (NIH)**

NIH would receive $30.7 billion in FY11, a cut of $260 million (0.8 percent) from the FY10 level. The Ad Hoc Group for Medical Research reports that $210 million would come from a pro rata reduction across the institutes, centers, and the Office of the Director, with another $50 million cut from the intramural buildings and facilities account. Adding in the ATB cut of 0.2 percent would raise the total NIH reduction to about $300 million (one percent). This compares to a cut of $1.6 billion approved by the House earlier this year in H.R. 1.

There is no reference in the bill to the Cures Acceleration Network. The measure also does not include the statutory mandate on the number and size of NIH grants that was part of H. R. 1 and strongly [opposed](#) by the university research community.

**National Science Foundation (NSF)**

NSF would receive $6.8 billion in FY11, a cut of $67 million (one percent) from the FY10 level. This includes $5.5 billion for the Research and Related Activities Directorate, an increase of $11.1 million (0.2 percent) over FY10, and $862 million for the Education and Human Resources Directorate, a cut of $10.7 million (1.2 percent) from FY10.

**NASA**

Science would receive $4.945 billion in FY11, an increase of $448 million (10 percent) over the FY10 level of $4.497 billion. (NOTE: This week’s CFR Update mischaracterized this as a cut, not an increase.) Aeronautics would receive $535 million, an increase of $38 million (8 percent) above the FY10 level of $497 million. Education programs at NASA would be funded at $145 million, $35 million (19 percent) below the FY10 level of $180.1 million. The CR includes no funding for NASA’s Space Technology program.

**Department of Energy (DOE)**

The DOE Office of Science would receive $4.9 billion in FY11, a cut of $46.1 million from current levels, but about $264 million below the President’s FY11 request. However, the Office of Science would no longer be obligated to fund the $77 million in earmarks contained in the FY10 final appropriations bill, mitigating the impact of the cuts. (H.R. 1 would have cut the Office of Science budget by $883 million.) The applied research-oriented Energy Efficiency and
Renewable Energy program would receive $1.8 billion, a $408-billion (18.4 percent) cut from current levels.

The measure includes $180 million for the Advanced Research Projects Agency-Energy (ARPA-E), which is $130 million above H.R. 1 and $180 million above FY10.

National Endowment for the Humanities (NEH)
The NEH budget would be cut by $12.5 million from current funding of $167.5 million. This would preliminarily reduce funding for the Endowment to $155 million, the same level appropriated to the agency in FY09. Adding in the 0.2 percent ATB cut results in a final funding level of $154.7 million.

Department of Defense (DOD)
DOD 6.1 basic research would be funded largely at the Pentagon’s FY11 request level. For FY11, overall 6.1 basic research would be funded at approximately $1.95 billion, which is about a $130-million or seven-percent increase over FY10. The following is a breakout of 6.1 accounts by service:

- Army 6.1 basic research accounts would be funded at $403.3 million, $3.6 million below the FY11 request and $16.9 million below FY10.
- Navy 6.1 basic research accounts would be funded at $556.4 million, the same as the FY11 request and $12.5 million above FY10.
- Air Force 6.1 basic research accounts would be funded at $500.5 million, the same as the FY11 request, but $18.4 million below FY10.
- Defense Wide 6.1 basic research accounts would be funded at $486.9 million, $48.1 million below the FY11 request, but $109.8 million above FY10.

For Defense-Wide 6.1 basic research, two accounts were not funded at the levels requested by the Pentagon. Defense Research Services would receive $295.7 million, which is $32.5 million less that the request, but about $100 million above the FY10 funding level of $194 million. The National Defense Education Program would receive $94.3 million, which is $15.6 million below the request, but $19 million above FY10.

--STUDENT AID AND HIGHER EDUCATION

Pell Grants. The CR maintains the maximum $5,550 Pell Grant for the 2011-12 academic year. In contrast, H.R. 1 called for an $845 cut to the maximum grant, reducing it to $4,705. The 0.2 percent ATB cut in discretionary spending will not affect Pell Grants.

Eliminating Year-Round Pell. The CR calls for a permanent repeal of the year-round Pell Grant, beginning with the second scheduled award for the 2011-2012 academic year. This proposal was included in the President’s FY12 budget request. The elimination is projected to save $3 billion in FY11 and a total of $9 billion from FY11 to FY16, effectively helping lower the $20 billion Pell Grant shortfall projected by the Department of Education in the 2012-13 academic year.
NOTE: AAU has prepared the following budget estimates by first taking the 0.2 percent ATB cut in each affected program and then subtracting the specific cut made to that program. House Appropriations Committee staff expect to publish detailed funding charts soon.

Campus-Based Student Aid Programs. SEOG declined by $20 million plus the 0.2 percent ATB cut, reducing its funding to $736 million. Federal Work-Study also is cut by the 0.2 percent across-the-board reduction, reducing its budget to $978.5 million.

TRIO is cut by $25 million plus the 0.2 percent ATP reduction, reducing its funding to $826.4 million. GEAR UP is cut by $20 million, plus the 0.2 percent reduction, reducing its funding to $302.6 million. LEAP is eliminated (it was funded at $63.9 million in FY10).

Graduate Education. The Javits Fellowship Program is cut by $1.6 million plus the 0.2 percent ATB reduction, reducing its funding to $8.07 million. The GAANN program is cut by the 0.2 percent ATB reduction, reducing its funding to $31 million.

Title VI International Education. The cuts to Title VI programs remain unclear. The text of the CR reflects a 0.2 percent ATB reduction, cutting funding to $125.6 million (a reduction of $251,762). But House documents and staff have stated that the programs are cut an additional $50.3 million (40 percent) on top of the 0.2 percent reduction.

**HOUSE APPROVES FY12 BUDGET RESOLUTION UPDATED**

The House today approved the FY12 budget resolution (H. Con. Res. 34) developed by House Budget Committee Chairman Paul Ryan (R-WI). The vote was 235 to 193 on a near-party line vote, with no support from Democrats. Before approving the measure, the chamber defeated four other FY12 budget plans offered by House Democrats, liberals in the Congressional Black Caucus, the Progressive Caucus, and the Republican Study Committee.

Chairman Ryan’s budget plan would cut about $6 trillion over the next 10 years through a combination of discretionary spending cuts and significant changes to Medicare and Medicaid. The plan also calls for simplifying the tax system and reducing tax rates, but does not endorse higher tax revenues.

For non-security discretionary spending, Chairman Ryan’s plan would cut FY12 spending below FY08 levels, where it would be held for five years, with inflation increases thereafter. The proposal accepts the President’s FY12 plan for defense, cutting a net $78 billion in FY12 and then limiting growth to inflation. It would not cut spending in the Departments of Homeland Security and Veterans Affairs.

The plan singles out Pell Grants for cuts, with a call for reducing funding to “pre-stimulus levels.” It is not clear if this means reducing the maximum award to the FY08 level of $4,731 (the maximum award currently is $5,550) or bringing total spending in the program back to the FY08 level of $16.3 billion. By comparison, the Administration requested $41 billion in discretionary and mandatory funding for Pell Grants in FY12 in order to maintain the maximum grant.
While it contains significant discretionary spending cuts overall, Rep. Ryan’s budget appears to be silent on NIH and other research funding, except for energy research, where it differentiates between basic and applied research. The document says, “This budget would continue funding essential government missions, including energy security and basic research and development, while paring back spending in areas of duplication or non-core functions, such as applied and commercial research or development projects best left to the private sector.”

STUDENT AID ALLIANCE OPPOSES CHAIRMAN RYAN’S FY12 BUDGET RESOLUTION  NEW

The Student Aid Alliance, in which AAU participates, wrote to all Members of the House of Representatives on April 14 expressing opposition to House Budget Committee Chairman Paul Ryan’s proposed FY12 budget resolution (H. Con. Res. 34) for its cut to student aid programs, including Pell Grants. The letter also challenges the suggestion in the budget plan that cutting Pell Grants would reduce the cost of tuition: “Two noteworthy studies of the relationship between federal student aid and tuition produced during the George W. Bush and Clinton administrations found no evidence of a link between federal financial aid and tuition increase.”

PRESIDENT OUTLINES HIS BUDGET FRAMEWORK FOR DEFICIT REDUCTION, CONTINUED INVESTMENT

President Obama laid out a general outline for addressing the nation’s budget deficits on April 13, with the goal of reducing deficits by $4 trillion over 12 years or less, while “supporting our economic recovery and ensuring we are making the investments we need to win the future.” During his speech to an audience at George Washington University, he said the federal government “would continue to invest” in medical research, clean energy technology, education, and infrastructure.

The President said that his strategy balances spending cuts with tax reform, includes reforms in health care and other mandatory spending, would cut non-security discretionary spending to “levels consistent with the Fiscal Commission” and seeks to hold down growth in “base” security spending. The plan includes a “debt failsafe” trigger that would force ATB cuts in direct spending and spending through the tax code in 2014 if “the projected ratio of debt to gross domestic product is not stabilized or declining toward the end of the decade.”

The President has asked each of the four House and Senate leaders to designate four members from their caucuses to “participate in bipartisan, bicameral negotiations led by the Vice President, beginning in early May, to “agree on a legislative framework for comprehensive debt reduction.”

OTHER CONGRESSIONAL ISSUES

HOUSE JUDICIARY COMMITTEE APPROVES STRONG PATENT REFORM BILL  NEW

The House Judiciary Committee on April 14 approved patent reform legislation (H.R. 1249) that not only addresses two principal concerns of universities, but has succeeded in uniting in support
for the first time major patent reform coalitions such as the 21st Century Coalition and the Coalition for Patent Fairness.

Four higher education associations, including AAU, sent a letter to House Judiciary Committee Chairman Lamar Smith (R-TX) that day expressing appreciation for the considerable improvements to H.R. 1249 contained in the manager’s amendment, particularly the provisions on prior user rights and inter partes review.

Like the Senate-passed bill, H.R. 1249 would move the U.S. patent system from a “first to invent” to a “first inventor to file” system for establishing patent application priority, thus harmonizing the system with most of the rest of the world. Also like the Senate bill, H.R. 1249 would create a post-grant review system administered by the U.S. Patent and Trademark Office (USPTO) that would provide a lower-cost alternative to litigation for challenging patents on issues of patent validity. And like the Senate bill, it would provide greater resources to the USPTO to address the backlog of patent applications.

Universities had two major concerns with H.R. 1249: 1.) a broad expansion of prior user rights, which under certain circumstances provide a defense against infringement of patented products by competing products developed through trade secret procedures, and 2.) elimination of the elevated threshold for instituting an inter partes review that is included in the Senate bill. Both issues were addressed in the manager’s amendment and amendments adopted during the markup.

Regarding prior user rights, the committee included a provision that requires that a product for which a company is asserting a prior user rights defense must have been in commercial use for at least one year before the effective filing date of any patent against which the defense would be asserted. This change fully protects an inventor’s disclosure about a patent during the one-year grace period.

Regarding the threshold for inter partes review—a procedure administered by the USPTO through which patents may be challenged throughout the life of the patent—the manager’s amendment raises the threshold for initiating an inter partes review to one requiring the petitioner to show a “reasonable likelihood” that at least one claim in the challenged patent would be invalidated. An amendment accepted during the markup corrected an inadvertent omission by reinstating language in the Senate bill that would require USPTO to consider a patent owner’s response to a petition for inter partes review before deciding whether to initiate a review.

While there are remaining issues to be addressed, the higher education associations believe that the committee-reported bill is strong and increases the likelihood that after six years of work, Congress may finally be able to pass comprehensive patent reform legislation that will strengthen the U.S. patent system and thereby enhance the nation’s innovative capacity and economic competitiveness.

EXECUTIVE BRANCH

AAU, COGR SEND DHS RECOMMENDATIONS FOR REDUCING REGULATORY BURDEN  NEW
AAU and the Council on Governmental Relations (COGR) sent a letter to the Department of Homeland Security (DHS) on April 13 providing recommendations to the agency for reducing regulatory burden. The recommendations, which were prompted by the agency’s request for information, focus on two areas: how universities are treated under the DHS chemical facilities anti-terrorism standards and a requirement that H-1B visa petitioners complete a new Part 6 certification on the I-129 form regarding deemed export controls. The associations’ letter includes as an attachment the recommendations for regulatory reform that AAU, COGR, and the Association of Public and Land-grant Universities submitted in January to the National Research Council panel that is studying the future of research universities.

Federal agencies have been re-examining their regulations since the White House issued an executive order on January 18 charging the agencies with identifying regulations that may be “outmoded, ineffective, insufficient or excessively burdensome” and considering how to change them. AAU has been working closely with COGR as it has responded to this and other federal agency reviews. Additional information about the White House executive order and letters to other federal agencies are available on the COGR website.

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