AAU WEEKLY WRAP-UP
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CONGRESSIONAL SCHEDULE  NEW

Congress this week completed its two-week April recess. Both chambers are scheduled to reconvene on Monday, May 2.

At this writing, the House schedule has not been announced. The Senate will take up executive branch nominations on May 2.

CQ.com reports that Senate Majority Leader Harry Reid (D-NV) and Minority Leader Mitch McConnell (R-KY) may work out an agreement to hold a paired vote on the House-passed FY12 budget resolution and the FY12 plan being developed by Senate Budget Committee Chairman Kent Conrad (D-ND). The publication notes that this would be similar to the process used for the FY11 continuing resolution (CR), in which neither the House-passed bill nor the Senate Democratic alternative received the 60 votes needed to pass, “clearing the way for House, Senate and White House negotiators to develop a compromise…”

BUDGET & APPROPRIATIONS

NIH RELEASES FY11 SPENDING PLAN

The National Institutes of Health (NIH) on April 25 announced its fiscal operations plan for the remainder of FY11, based on the approximately one-percent cut the agency received in the final FY11 appropriations act.
With the exception of the National Cancer Institute (NCI), non-competing research grants will be reduced one percent below the FY10 award level, while inflationary adjustments on non-competing awards will be set at two percent, based on the adjusted FY11 level. Non-competing NCI research grants will be reduced three percent below the FY10 level. There are a number of exceptions to these guidelines, such as Career Awards, so institutions are advised to read the notice carefully.

As part of the FY11 plan, NIH reaffirmed its commitment to new investigators, estimating that the policy will allow support of approximately 9,050 new and competing research project grants. The agency also will implement a two-percent stipend increase for Ruth Kirschstein National Research Service Awards for FY11. More detail on the stipend levels may be found in this related notice.

EXECUTIVE BRANCH

APPEALS COURT RULES IN FAVOR OF NIH ON FUNDING HUMAN EMBRYONIC STEM CELL RESEARCH NEW

The U.S. Court of Appeals today permanently lifted the preliminary injunction against federal funding of human embryonic stem cells (ESC) research, ruling in favor of the National Institutes of Health (NIH). The injunction was originally imposed by District Court Judge Royce Lamberth, in part on the grounds that the plaintiffs were likely to prevail in the case. The injunction had been stayed, however, allowing the research to move forward while the Appeals Court considered the case.

Today’s ruling was written by Judge Douglas Ginsberg, one of the judges who had previously granted standing to the two plaintiffs, adult stem cell researchers, in the case against the federal government. The ruling concluded, “The plaintiffs are unlikely to prevail because Dickey-Wicker is ambiguous and the NIH seems reasonably to have concluded that, although Dickey-Wicker bars funding for the destructive act of deriving an ESC from an embryo, it does not prohibit funding a research project in which an ESC will be used.” Dickey-Wicker is the amendment attached to annual appropriations bills which prohibits federal funding to be used for destruction of a human embryo.

Because this ruling is only on the preliminary injunction and not on the underlying merits of the case, there is still a possibility that Judge Lamberth could issue a ruling on the merits of the case. However, the Appeals Court dedicated a large part of its ruling to the unlikelihood of the case succeeding on its merits and strongly disagreed with the plaintiffs’ arguments both that the Dickey-Wicker amendment unambiguously applies to ESC research and that the term “research” should be defined as inclusive of derivation of ESC lines.

The fact that the ruling undermines the main tenets of the plaintiffs’ case may reduce the likelihood that Judge Lamberth would issue a contrary ruling on the merits only to have it returned to the same Appellate Court. However, the plaintiffs could appeal this most recent ruling by the Appeals Court.
The dissenting opinion, written by Judge Karen Henderson, disagreed with the majority’s finding that one could draw lines between research involving ESC and derivation of ESC. Her opinion, therefore, found that the funding was subject to the Dickey-Wicker prohibition.

It should be noted that the Appeals Court also upheld its previous opinion that the plaintiffs merited standing in this case because they “compete with ESC researchers for funding.” This precedent remains a cause for concern for competitive, peer reviewed research.

AAU PROVIDES COMMENTS ON DEPARTMENT OF ENERGY QUADRENNIAL TECHNOLOGY REVIEW

AAU submitted comments to the Department of Energy (DOE) on April 22 in response to the Department’s request for comments on its first-ever Quadrennial Technology Review (QTR). The review was inspired by the Defense Department’s quadrennial defense review and similar reviews in other agencies, and was recommended by the President’s Council of Advisors on Science and Technology.

The AAU comment letter stresses the role of universities in conducting the basic energy research and training needed for DOE and the Administration to achieve their goals of supplying the nation with clean energy, deploying electric vehicles, reducing greenhouse gas emissions, and reducing U.S. dependence on foreign oil. The response encourages DOE also to seek new ways to engage universities in applied energy, technology, and deployment, and speaks to the need for strong international collaboration.

AAU’s comments also reference two recent letters on innovation and competitiveness. The first is a letter sent by AAU and other associations to the Department of Commerce on April 1 providing comments on the Administration’s national innovation strategy. The second is an April 19 letter to the Secretary of Commerce signed by 137 university presidents and chancellors and endorsed by AAU, which pledges to make specific, expanded efforts to advance regional and economic growth.

ASSOCIATIONS URGE LAWMAKERS TO RESCIND PROPOSED EDUCATION REGULATIONS

A group of 70 higher education associations and accrediting organizations, including AAU, sent letters to leaders of the House and Senate education committees on April 26 urging them to rescind Department of Education regulations on state authorization and credit hour.

The letters note that the higher education groups have appreciated the Department’s attempt to clarify these regulations by issuing a series of dear colleague letters and providing a more reasonable path and timeline for institutions to comply on the distance education provisions. However, the organizations add, the dear colleague letters, particularly the most recent letter on distance education, have raised new questions. Department officials have admitted that the distance education letter will require further clarification.

The associations continue to question the need for federal involvement in these areas. The letter on state authorization makes the point that institutions are committed to working with states to
ensure full compliance with state laws, as well as achieving better coordination of state policies. It adds that laws regulating distance education and the enforcement of these laws are matters best left to the states, not the federal government. Similarly, by establishing a federal definition of a credit hour, the regulation opens the door to inappropriate federal interference in the core academic decisions surrounding curriculum. The associations believe this is the kind of interference expressly prohibited in the Department's enabling legislation.

Regardless of the higher education groups’ letters, the regulations go into effect on July 1, and institutions should be making a good-faith effort to comply with them. As appropriate, some campuses may wish to share the association letters with their congressional delegations.

**DOE TO HOLD ENERGY FRONTIER RESEARCH CENTERS SUMMIT**

The Department of Energy is holding its first-ever conference on the early successes of the Office of Science’s Energy Frontier Research Centers (EFRCs) in addressing the challenges and opportunities in energy research.

The meeting, titled *Science for Our Nation’s Energy Future*, will be held May 25-27, 2011, at the Renaissance Penn Quarter Hotel in Washington, D.C. The estimated 1,000 participants will include EFRC directors; scientific, industrial, and governmental leaders; students; young researchers; senior investigators; and members of the press. Attendees will have the opportunity to hear presentations by high-level officials and scientists, view posters explaining the work being done at each of the 46 EFRCs, and attend parallel technical sessions. The full Summit program and registration information are available [here](#). Registration is free and open to the public.

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