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NOTE: The next AAU Weekly Wrap-up will be published on January 6.

CONGRESSIONAL SCHEDULE  NEW

Congressional negotiators have reached agreement on the FY12 omnibus appropriations package (H.R. 2055), paving the way for final congressional approval of the measure before government funding provided by the current continuing resolution (CR) expires at midnight tonight.

The House passed the bill today and approved two related measures: a bill to provide $8.6 billion in emergency disaster aid for the rest of FY12 (H.R. 3672) and a bill to cover the costs of that aid with a 1.8 percent across-the-board cut in all discretionary spending expect in Defense and Military Construction-Veterans (H. Con. Res. 94). The Senate is likely to approve the disaster aid bill, reports CQ.com, but not the pay-for measure. CQ.com adds that Senate leaders may delay the vote on the omnibus until tomorrow, Saturday, as a means of ensuring that Senators remain in town for a vote on the tax-extender package. The publication adds that leaders say they have been assured by the White House that the delay would not force a partial government shutdown “because the agencies know that their spending authority will be renewed sometime this weekend.”
**BUDGET & APPROPRIATIONS**

**CONGRESSIONAL LEADERS APPEAR CLOSE TO TAX-EXTENDER DEAL** NEW

Democratic and Republican Senate leaders say they are close to reaching agreement on a legislative package to extend a variety of popular tax and other provisions that expire on December 31, reports CQ.com. The measure is expected to include extensions of the payroll tax cut, unemployment benefits, the Medicare “doc fix” to prevent a significant cut in Medicare payments to physicians, and a “patch” to keep large numbers of middle-class taxpayers from being subject to the Alternative Minimum Tax. It is not clear if the measure also will include expiring tax provisions such as the IRA charitable rollover, the above-the-line tuition tax deduction, and the R&D tax credit, but those could be renewed in the new year, as they have been in the past.

While Senate leaders say they are close to a deal, House Republican leaders appear to be holding out for more concessions on the policy provisions in the tax extender package (H.R. 3630) that the House approved on December 13 by a vote of 234 to 193. These include provisions to speed approval of the Keystone oil pipeline, reduce the length of unemployment benefits, impose a one-year pay freeze for federal employees, and cut funding for the health care reform law.

*Politico* reports that House approval of the bill “was largely a message vote—the GOP bill is dead on arrival in the Democratic Senate and faced a veto threat anyway—but it sets the stage again for a final, frenzied bout of deal making that has defined this divided Congress.”

**HOUSE APPROVES FY12 OMNIBUS FUNDING PACKAGE** NEW

Congressional leaders reached final agreement last night on the $912-billion FY12 omnibus appropriations bill, which covers spending in the nine remaining FY12 appropriations bills. The House approved the measure this afternoon by a vote of 296 to 121, and the Senate is expected to follow suit. The continuing resolution (CR) that has sustained funding for programs in the nine bills expires at midnight tonight. Agencies and programs of interest which are funded in the package include the National Institutes of Health (NIH), student aid and higher education programs, Departments of Energy (DOE) and Defense (DOD) science programs, and the National Endowment for the Humanities (NEH).

Additional information about funding for these agencies and programs will be provided as it becomes available.

**LABOR-HHS-EDUCATION**

The House summary says that the final Labor-HHS-Education section of the omnibus bill would provide a total of $156.3 billion, which is a cut of $1.1 billion, or 0.7 percent, from the FY11 level. This section of the conference agreement (Division F) includes a 0.189 percent across-the-board cut in discretionary spending, except Pell Grants.

**National Institutes of Health (NIH):**

The conference agreement says NIH would receive $30.69 billion in FY12, an increase of $1.7 million over FY11. However, the actual total for the agency is about $30.64 billion, an increase
of about $240 million over FY11. The difference is that the FY12 bill does NOT include the usual transfer of $300 million from NIH to the Global HIV/AIDS program (that funding is included in the State-Foreign Operations portion of the omnibus), but the total is affected by the across-the-board cut in the bill, which reduces NIH spending by $60 million.

The Association of American Medical Colleges reports that the agreement includes language to create the National Center for Advancing Translational Sciences (NCATS) and eliminate the National Center for Research Resources (NCRR), transferring the various NCCR programs to other institutes and centers. The conferees also provide NCATS with up to $10 million for the Cures Acceleration Network. Additionally, the agreement reduces the salary cap on extramural grants from Executive Level I ($199,700 in 2011) to Executive Level II ($179,700).

**Student Aid and Higher Education Programs:**

The conference agreement maintains the maximum discretionary Pell Grant award at $4,860 (total maximum award, including mandatory funding, remains at $5,550). The agreement also level funds the Supplemental Educational Opportunity Grant program at $735 million, Federal Work-Study at $978.5 million, GEAR UP at $302.8 million, and Graduate Assistance in Areas of National Need (GAANN) at $30.9 million. Title VI International Education programs are cut by $1.55 million to $74.2 million ($66.7 million for domestic programs; $7.5 million for overseas programs). TRIO receives $841.5 million, an increase of $15 million. (NOTE: These totals do NOT reflect the 0.189 percent across-the-board cut.)

To help address the shortfall in the Pell Grant program, the agreement, beginning July 1, 2012, makes the following changes:

- Limits Pell Grant eligibility to the equivalent of six years or 12 semesters of full-time enrollment. The current limit is nine years or 18 semesters. The change applies to students already receiving Pell Grants. There is no grandfather clause. For example, if a student has received 11 semesters of Pell as of July 1, 2012, the student will be eligible for only one more semester.)

- Lowers the family income level at which a student automatically receives the maximum Pell Grant award from the current $32,000 down to $23,000.

- Raises the minimum eligibility level from five percent to 10 percent of the maximum Pell Grant award. In the past, students who qualified for a minimum Pell Grant award were eligible to receive five percent of the maximum award (i.e. five percent of $5,550 or $277). Recent law changed the formula so that all students who are eligible to receive between five percent and 10 percent of the maximum award automatically receive the minimum award of 10 percent (or $550). The conference agreement eliminates that bump, so only students who are eligible to receive at least 10 percent of the maximum award will receive a Pell Grant.

- Amends requirements related to the ability to benefit so that students without a high school degree or GED are only eligible for a Pell Grant if they have completed secondary school in a home-setting. Students enrolled prior to July 1, 2012, remain eligible for aid.

- Suspends for two years the federal government’s practice of paying the interest on subsidized loans during a six-month grace period after a student stops attending school.

In addition, the conference agreement:
- Eliminates the Javits Fellowship program, merging it into the GAANN program.

- Changes the index rate for special allowance payments on outstanding loans held by student loan lenders from the Commercial Paper (CP) Rate to the London Interbank Offered Rate (LIBOR) index. Currently, lenders (who still hold loans originated under the Federal Family Education Loan program) earn a market rate based on a statutorily set formula pegged to the CP rate. However, the LIBOR index is the global market index upon which the majority of student loans are financed.

**National Endowment for the Humanities (NEH):**

NEH is funded at $146.26 million, which is a cut of $9 million, or about six percent, from the FY11 level. The final FY12 total is essentially a split between the Senate mark of $155 million and the House mark of $135 million. The conference agreement urges NEH to provide no less than 40 percent of program funds “to support critical work of state humanities councils,” provides $3 million for the *We the People* initiative, and encourages NEH to work more closely with Native American communities.

**Department of Energy (DOE):**

The DOE Office of Science receives $4.89 billion, a $50 million, or one-percent, increase above the FY11 level of $4.84 billion. ARPA-E receives $275 million, a $95 million, or 53-percent, increase over the FY11 level.

**Department of Defense (DOD):**

Funding for DOD 6.1 basic research is significantly increased to $2.117 billion. This is $169.4 million, or 8.7 percent, above the estimated FY11 level of $1.947 billion, and $38.0 million, or 1.8 percent, above the Administration's request of about $2.078 billion.

For the broader Science & Technology (S&T) category, the conference agreement provides $12.428 billion, an increase of $488.8 million, or 4.1 percent, from the estimated FY11 level of $11.939 billion. S&T programs include defense-wide and military service funding for 6.1 basic research, 6.2 applied research, and 6.3 advanced technology development.

Within this total, applied research (6.2 programs) receives $4.748 billion, a $295.4 million, or 6.6-percent, increase from the estimated FY11 level of $4.453 billion. Advanced technology development (6.3 programs) receives $5.563 billion, a $24.0 million, or 0.4-percent, increase above the estimated FY11 level of $5.539 billion.

Unfortunately, the conference agreement includes a provision from the Senate version of the bill that cuts $7 million from the Minerva social sciences research program, allowing for no new awards. AAU strongly supports the Minerva program.

[AAU’s Defense Department research funding table provides additional details.](#)

**REPS. CUMMINGS, CONNOLLY EXPRESS CONCERNS ABOUT GRANT ACT**

Two House Democrats have sent a letter to leaders of the House Science Committee and a Dear Colleague letter to other House members expressing their concerns about the Grant Reform and
New Transparency (GRANT) Act of 2011 (H.R. 3433), which was reported from the House Oversight & Government Reform Committee on November 17.

Reps. Elijah Cummings (D-MD) and Gerald Connolly (D-VA), the Ranking Members of the Oversight Committee and its technology subcommittee, respectively, wrote to Science Committee Chair Ralph Hall (R-TX) and Ranking Member Eddie Bernice Johnson (D-TX) reviewing concerns about the bill raised by federal agencies and universities. Of particular concern is the provision mandating that agencies post full federal grant applications on the government-wide website required by the legislation. This mandate, says the letter, would “risk that foreign adversaries could access America’s vital intellectual property.”

Reps. Cummings and Connolly mention their desire to work with Reps. Hall and Johnson if the legislation is considered by the full House to change the posting provision, noting that they offered such an amendment during last month’s markup of the bill in the Oversight Committee, but it failed to pass.

Reps. Cummings and Connolly sent a similar “Dear Colleague” letter to House Members on November 28 that laid out their concerns about posting full grant applications online.

Last month, AAU, the Association of Public and Land-grant Universities (APLU), and the Council on Governmental Relations (COGR) sent a letter to Reps. Darrell Issa (R-CA) and James Lankford (R-OK) expressing the research university community’s concerns about this and other provisions in the GRANT Act.

CONGRESS REAUTHORIZES SMALL BUSINESS RESEARCH PROGRAMS

The Senate and House announced a deal on December 13 to reauthorize the Small Business Innovation Research (SBIR) and Technology Transfer (STTR) programs. The conferenced legislation was added as an amendment to the National Defense Authorization Act (H.R. 1540), which Congress has now approved.

Despite efforts by the university research community to prevent an increase in the small business research set-aside at major federal research agencies, the final deal increases the set-aside, phased in over six years, from the current level of 2.5 percent to 3.2 percent.

AAU supported the House SBIR/STTR reauthorization bill (H.R. 1425), which did not include the set-aside increase, because of concerns that the unjustified increase would take money away from the already constrained budgets of federal research agencies. While the final percentage increase is less than the 3.5 percent in the Senate bill (S. 493), the rate of increase is slightly accelerated because the reauthorization period was shortened from 10 years to six.

The final SBIR/STTR reauthorization agreement includes language offered by Rep. Daniel Lipinski (D-IL) to support a pilot program at the National Institutes of Health (NIH) for “proof of concept” research. The program, modeled after the Coulter Foundation Translational Research Award, allows NIH to award competitive grants of up to $1 million to universities and other research institutions, which then award grants to investigators for activities such as prototype development, market research, or developing an intellectual property strategy. AAU supported this amendment.
The final Defense authorization bill (H.R. 1540) includes a provision from the Senate bill that calls for the Government Accountability Office (GAO) to provide the congressional defense committees with a report on Defense science & technology programs.

The conference report directs GAO to expand the report beyond the Senate bill’s focus on the “Department’s various technology transition programs:”

“The conferees direct that the Comptroller General expand its study efforts in the area of defense S&T over the longer term and focus on non-basic research activities to conduct a holistic review of the Defense S&T enterprise, including its investment strategy, technology development and transition activities. In addition, the scope of this broader review should include the Department’s S&T related interactions with industry and academia.”

SENATORS WARNER, MORAN UNVEIL STARTUP ACT UPDATED

Earlier this month, Senators Mark Warner (D-VA) and Jerry Moran (R-KS) unveiled legislation aimed at jumpstarting the economy and creating economic growth and new businesses. The legislation is based upon the “Startup Act” proposed in July by the Ewing Marion Kauffman Foundation. The authors also provided a section-by-section summary.

Among other provisions, the bill calls for eliminating unnecessary regulatory requirements that undermine economic growth and would grant permanent resident status to foreign nationals with advanced degrees in science, technology, engineering, and mathematics. However, two particular provisions are likely to raise concerns on campus.

The first would create a new “Collaborative Commercialization Grants” program, to be administered by the Department of Commerce. This program would provide funding to research institutions that choose to allow their faculty to use university technology transfer programs other than those based at their home institutions to commercialize technologies they develop. The bill states that institutions would be eligible to apply for these grants only if there was “a licensing revenue sharing agreement between the institution of higher education where the research originates and the institution that commercializes the research.” In addition, “the first right of refusal in commercializing research belongs to the institution of higher education where the research originates.”

The second provision deals with how to pay for the program. The bill proposes to cover the cost of this and another new “Commercialization Accelerator Grants” program, by transferring to the Department of Commerce .15 percent of the budgets of existing research agencies with R&D budgets in excess of $100 million.

AAU has currently taken no formal position on the bill. AAU staff is working with other associations, including COGR, APLU, AAMC, and the American Council on Education (ACE), to analyze and comment on the measure.

HOUSE JUDICIARY COMMITTEE HALTS WORK ON STOP ONLINE PIRACY ACT UPDATED
The controversial Stop Online Privacy Act (SOPA) (H.R. 3261) was the subject of a heated debate in the House Judiciary Committee markup yesterday and today. The panel recessed at 2:00 p.m. without finishing SOPA, and announced late this afternoon that it would resume consideration of the bill on Wednesday, December 21, at 9:00 a.m.

Rep. Darrell Issa (R-CA) and Senator Ron Wyden (D-OR) have introduced an alternative anti-piracy bill, the Online Protection and Enforcement of Digital Trade Act, which aims to address some of the most contentious provisions in the bill.

A group of four associations, including AAU, sent a letter dated December 13 to Committee Chair Lamar Smith (R-TX) and Ranking Member John Conyers (D-MI) commending them for addressing a number of concerns the associations had raised with the bill as introduced but noting that the recently circulated manager’s amendment carries forward problematic provisions from the bill as introduced. The letter, sent by EDUCAUSE, AAU, APLU, and ACE, expressed particular concern about provisions governing video streaming. They said that, as written, the provision could impose criminal liability on non-profit, good-faith institutions and their employees.

The associations will track developments in both the House and Senate concerning these bills when Congress reconvenes.

EXECUTIVE BRANCH

DOD EXTENDS TUITION ASSISTANCE MOU BY 60 DAYS  NEW

The Department of Defense has agreed to delay by 90 days the deadline by which higher education institutions must sign a Memorandum of Understanding (MOU) for the Military Tuition Assistance (TA) program or lose their eligibility to participate in the TA program. The Pentagon said in a letter to Senators dated December 15 that the delay in implementation to March 30 “will permit the Department to work with Congress and other key stakeholders to address their concerns and ensure our Service members are afforded the widest variety of choices for their continued education.”

A bipartisan group of 51 Senators wrote to Defense Secretary Leon Panetta on December 8 asking him to delay implementation of the January 1 MOU deadline. Several higher education associations, including AAU, along with individual institutions also urged the delay.

The associations’ letter noted that many colleges and universities are concerned that the Department, in making a good-faith effort to ensure better educational outcomes for service members and protect against fraud, has included provisions in the MOU “that are inconsistent and, in many cases, incompatible with [institutions’] well-established academic policies and administrative practices.” The provisions deal with the awarding of academic credit, in-school residency requirements, education plans, tuition policies, and payment processing, among other academic policies. “These provisions are at odds with traditional assumptions about federal versus institutional control over academic affairs and thus have far reaching implications,” the associations said, adding that if these issues cannot be addressed, many institutions will be unable to sign the MOU “despite their strong desire to do so and their ongoing commitment to educating Service members.”
REPORT FINDS TODAY’S HUMAN SUBJECTS RESEARCH PROTECTIONS OFFER ADEQUATE SAFEGUARDS

The President’s Commission for the Study of Bioethical Issues has released a report on human research subjects protection which concludes that current rules and regulations provide adequate safeguards to mitigate risk.

The report, “Moral Science: Protecting Participants in Human Subjects Research,” resulted from the Commission’s examination of a series of unethical studies conducted in Guatemala by the U.S. in the 1940’s. The panel found that current regulatory safeguards would make what happened in Guatemala 70 years ago nearly impossible today. The Commission also concluded that the U.S. government should compensate subjects harmed by participation in research and create a central database of all federally funded research involving human subjects.

The Commission is chaired by University of Pennsylvania President Amy Gutmann. Emory University President James Wagner is vice-chair.

NIH TO FOLLOW IOM GUIDELINES ON USE OF CHIMPANZEES IN RESEARCH

NIH Director Francis Collins announced during a conference call briefing on December 15 that NIH will adopt the recommendations of the Institute of Medicine (IOM) report on the use of chimpanzees in research. He said that the agency will use specific criteria to determine when chimpanzees should be used in NIH-supported research, and that he will create a working group within the NIH Council of Councils to provide advice on implementation of the recommendations. NIH is likely to issue a grants notice about the policy in the next few days.

While ongoing research will not be affected by the changes, no new awards involving chimpanzees will be granted until the new review process is set up. Once the working group is established, NIH will review current and ongoing studies on a project-by-project basis to determine if they meet the IOM criteria and determine if funding will be continued. Grants currently under review, if determined to be eligible for an award, will be held until they can be reviewed by the working group.

IOM RECOMMENDATIONS:

The National Institutes of Health should limit the use of chimpanzees in biomedical research to those studies that meet the following three criteria:

1. There is no other suitable model available, such as in vitro, non-human in vivo, or other models, for the research in question; and
2. The research in question cannot be performed ethically on human subjects, and
3. Forgoing the use of chimpanzees for the research in question will significantly slow or prevent important advancements to prevent, control and/or treat life-threatening or debilitating conditions.

Animals used in the proposed research must either be maintained in ethologically appropriate physical and social environments or in natural habitats. Biomedical research utilizing stored samples is exempt from these criteria.
The National Institutes of Health should limit the use of chimpanzees in comparative genomics and behavioral research to those studies that meet the following two criteria:

1. Studies provide otherwise unattainable insight into comparative genomics, normal and abnormal behavior, mental health, emotion, or cognition, and
2. All experiments are performed on acquiescent animals, using techniques that are minimally invasive, and in a manner that minimizes pain and distress.

Animals used in the proposed research must either be maintained in ethologically appropriate physical and social environment or in natural habitats. Comparative genomics and behavioral research utilizing stored samples are exempt from these criteria.

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