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CONGRESSIONAL SCHEDULE  NEW

Both houses of Congress were out of session today and will reconvene on Monday, July 21.

When the Senate reconvenes on Monday, it will resume consideration of legislation aimed at cracking down on energy futures speculation (S. 3268).

The House will be in pro forma session on Monday, with no legislative business. Later in the week, the House is expected to consider a major bill to overhaul housing policy and regulation (H.R. 3221), a bill to reauthorize international AIDS, malaria, and tuberculosis programs (H.R. 5501), and a bill to reauthorize bridge reconstruction and beef up federal bridge inspection standards and training (H.R. 3999). The House also may take up unspecified energy legislation next week.

BUDGET & APPROPRIATIONS

DEMOCRATIC LEADERS PLAN TO PASS FY09 DEFENSE APPROPRIATIONS BILL  NEW
House and Senate Democratic leaders said yesterday that they expect Congress to approve the FY09 Defense appropriations bill by September, even if the rest of the 12 FY09 spending bills are bundled into a continuing resolution (CR). CQToday reports that Democratic leaders did not say if the Defense bill would be sent to the President separately for signature or used as a vehicle to move additional spending provisions or legislation, or the CR. The publication notes that using the Defense bill as the vehicle for the CR would “make it difficult for congressional Republicans or the White House to object to temporarily funding the government until a new administration assumes power.”

Last week, Senate Majority Leader Harry Reid (D-NV) said he expected only the Defense and Military Construction-Veterans bills to be considered on the Senate floor this fall before a CR. The Senate Appropriations Committee is on track to complete all of its FY09 funding bills this month, as Chairman Robert Byrd (D-WV) has promised. The panel has completed work on nine bills, with markups scheduled July 24 for the remaining Defense, Interior & Related Agencies, and Legislative Branch bills. (Markup of the Defense bill could be postponed until September.)

Speaker Nancy Pelosi (D-CA) said the House would approve the FY09 Defense funding bill, even though the appropriations process in the House remains stymied. House Appropriations Committee Chairman David Obey (D-WI) suspended markup of the FY09 Labor-HHS-Education bill on June 26 after Ranking Member Jerry Lewis (R-CA) sought to bring up the Interior bill in order to force votes on amendments to expand domestic oil drilling. Chairman Obey said then that he would resume work on the remaining seven FY09 appropriations bills only if Republicans agreed to “regular order” in considering the appropriations bills. Rep. Lewis said he would like the committee to return to work but wanted assurances that consideration of the Interior bill would not be postponed indefinitely. He reiterated that position in a letter he sent to Chairman Obey earlier this week.

House Defense Appropriations Subcommittee Chairman John Murtha (D-PA) is readying the Defense bill, CQToday reports, but may not mark it up in subcommittee until September. The Senate Appropriations Committee may delay its markup of the bill until September, as well, because the Senate traditionally prefers to follow the House on the Defense funding bill.

**HARKIN-SPECTER NIH FUNDING BILL COULD BE ADDED TO SECOND FY08 SUPPLEMENTAL**

Senators Tom Harkin (D-IA) and Arlen Specter (R-PA) introduced legislation (S. 3272) on July 16 to provide an additional $5.2 billion in FY08 funding for NIH. The measure is intended to restore the purchasing power that NIH has lost to inflation since its budget doubling was completed in FY03.

CQToday reports that some of that funding could be added to the second FY08 supplemental appropriations bill, which the Senate Appropriations Committee plans to mark up on July 22. Democratic leaders in the House and Senate have been discussing a second FY08 supplemental funding bill to accommodate some of their domestic priorities that were not included in the first supplemental funding bill (P.L. 110-252), such as food stamps, infrastructure projects, and low-income home heating assistance.

**OTHER CONGRESSIONAL ISSUES**
SENATOR HARKIN SKEPTICAL ABOUT HIGHER EDUCATION CONCERNS OVER ADA LEGISLATION

Earlier this week, Senator Tom Harkin (D-IA) convened a public meeting of representatives from several communities, including higher education, to discuss concerns about legislation approved by the House (H.R. 3195) that would modify the Americans with Disabilities Act (ADA). Senator Harkin said the Senate Health, Education, Labor and Pensions Committee would mark up the bill in the near future.

During the roundtable discussion, Terry Hartle, Senior Vice President of the American Council on Education, said the higher education community welcomed the broadening of the ADA but wanted to protect the authority of colleges and universities to preserve their academic standards. He encouraged Senators to affirm that principle in statute. Senator Harkin, who played a key role in passing the ADA 18 years ago, expressed skepticism about higher education’s position and said simply, “We can’t do that.”

Additional information about the roundtable, including testimony of the participants, is available on the Senate HELP Committee Web site.

ORPHAN WORKS LEGISLATION APPEARS STALLED IN HOUSE AND SENATE COMMITTEES

Orphan works legislation, which aims to balance the ability to make use of copyrighted works whose owners cannot be found against the interests of copyright owners, appears stalled in both the House and Senate Judiciary Committees.

The House Judiciary Committee postponed markup of its bill (H.R. 5889), which had been scheduled for July 16, because the user groups the bill is intended to assist oppose two key provisions. Specifically, the libraries, museums, universities, and other user groups cannot support proposed language regarding the “best practices” for undertaking a qualifying search for the copyright owner, nor proposals offered by some copyright owner groups to allow injunctions in certain cases, which would undermine the basic structure of the bill.

Reports indicate that the bill would have incorporated language to address concerns about state sovereign immunity. This would be a welcome improvement in the bill, but the remaining problems preclude universities’ support.

In the absence of support by the user groups, the Committee seems disinclined to move the bill. The user groups have indicated a willingness to continue to work with committee staff and other interested parties to address the outstanding concerns, but it is not clear if work will continue.

Additional information about the legislation is available in a June 18 letter sent to the committee by AAU and the National Association of State Universities and Land-Grant Colleges (NASULGC).

The Senate bill (S. 2913), which was reported from the Judiciary Committee on May 15, reportedly has not gone to the Senate floor because several Senators have placed holds on it. Committee staff are said to be working to clear the way for floor consideration. However, several higher education groups would continue to oppose the bill if it fails to include language
to address concerns about state sovereign immunity. In addition, like the House bill, S. 2913 contains problematic provisions on a qualifying search. AAU and NASULGC sent Committee members a letter on June 30 addressing these and other issues.

HOUSE JUDICIARY COMMITTEE APPROVES FALSE CLAIMS ACT BILL

The House Judiciary Committee on July 16 marked up and approved the False Claims Correction Act of 2007 (H.R. 4854). As AAU explained in a July 15 letter to members of the Judiciary Committee, the higher education community has been especially concerned about provisions that would significantly increase institutional liability in the event of overpayments and make institutions significantly more vulnerable to lawsuits.

During the markup, committee members discussed university concerns about the “unintended consequences” of the legislation. The bill’s sponsor, Rep. Howard Berman (D-CA), offered a manager’s amendment that partially addresses the overpayment and statute of limitations issues raised in AAU’s letter but leaves unchanged provisions on the public disclosure bar and pleading rules for relators. Regarding overpayment, the manager’s amendment would require that intent to defraud be proved but does not acknowledge existing reconciliation processes followed by universities, the Department of Health and Human Services, and the National Institutes of Health. The statute of limitations provision in the manager’s amendment essentially would split the difference between current law and the original draft, setting it at eight years.

Committee staff members indicate that they intend to work with the higher education community as the legislative process advances.

ASSOCIATIONS URGE IMPROVEMENTS IN LEGISLATION TO EXTEND E-VERIFY PILOT PROGRAM

A group of employment, human resources, and higher education associations, including AAU, wrote to House leaders on July 16 urging them to ensure that changes are made to legislation extending the E-Verify employment verification program (H.R. 5518) before the bill is approved by the House.

Congress is working to extend the E-Verify pilot program before it expires in November. Although hearings in the House Ways and Means and Judiciary committees have shown serious problems with the current pilot program—such as errors in the Social Security System databases used for verification and the potential for fraud and identity theft—pending legislation would simply extend the program without addressing these shortcomings.

The House bill, supported by Judiciary Committee Chairman John Conyers (D-MI), Immigration Subcommittee Chair Zoe Lofgren (D-CA), and Rep. Ken Calvert (R-CA), would extend E-Verify for 10 years. In the Senate, Senators Arlen Specter (R-PA), Chuck Hagel (R-NE), and Sam Brownback (R-KS) on July 14 introduced legislation (S. 3257) to extend the program by five years.

EXECUTIVE BRANCH

DOE OFFICE OF SCIENCE ANNOUNCES DISTRIBUTION OF FY08 SUPPLEMENTAL FUNDING
The Department of Energy (DOE) Office of Science announced on July 8 how it will distribute the $62.5 million it received in the newly enacted FY08 emergency supplemental funding bill (H.R. 2642). Because the funding is emergency spending, it will not be added to the DOE funding base.

DOE’s distribution of the FY08 funds would allocate $13.5 million to Basic Energy Sciences, $15.5 million to Fusion Energy Science, $32 million to High Energy Physics, and $1.5 million to Nuclear Physics. The DOE statement contains specific funding allocations and a discussion of priorities.

Language in the House report accompanying the bill instructs DOE to use the funding to “eliminate all furloughs and reductions in force which are a direct result of budgetary constraints” before it funds any additional research efforts.

AAU AND COGR RELEASE “TROUBLESOME CLAUSES” REPORT

AAU and the Council on Governmental Relations (COGR) on July 17 released a report which shows that federal research agencies, particularly the Department of Defense (DOD), are adding clauses to fundamental research contracts and grants that inappropriately restrict publication of research results and participation of foreign nationals.

“Restrictions on Research Awards: Troublesome Clauses 2007/2008” is based on a survey of 20 U.S. research universities that conduct significant amounts of federally funded research. It follows up on a 2003/2004 survey of the same institutions. The new report shows that despite the concerns and recommendations contained in the earlier report, the situation among federal funding agencies has not improved over the past four years. Federal research funding agencies have not only expanded the nature of the controls imposed on award terms but have extended such terms beyond contracts to grants and cooperative agreements.

The findings of the AAU-COGR report reinforce those of the National Academies of Science 2007 report, “Science and Security in a Post 9/11 World,” which similarly found increasing use of the “sensitive but unclassified” category and other restrictive language in federal agency contracts for fundamental research.

In response to the National Academies report, Undersecretary of Defense John J. Young, Jr. conducted an internal DOD review of these issues, which was informed by information from the AAU-COGR report. On June 26, Dr. Young issued a memorandum to the military services and defense agencies reiterating that the DOD will not restrict disclosure of DOD-funded basic and applied research results unless the research is classified for national security reasons or otherwise restricted by statute, regulation, or executive order.

ASSOCIATIONS OFFER COMMENTS ON PROPOSED FRAMEWORK FOR OVERSIGHT OF DUAL-USE BIOLOGICAL RESEARCH

A group of six higher education and science associations, including AAU, submitted comments to the National Science Advisory Board for Biosecurity (NSABB) on July 15 regarding the Board’s proposed framework for identifying and managing “dual-use” biological research. Dual-use biological research is defined as research that could be misused to threaten public health or national security.
The associations’ comment letter was submitted during the NSABB’s July 15 meeting to take public comments on its June 2007 report, “Proposed Framework for the Oversight of Dual Use Life Science Research: Strategies for Minimizing the Potential Misuse of Research Information.” The proposed framework, which has been formally submitted to the White House and the Department of Homeland Security, calls for researchers and research institutions to increase their efforts to identify “dual-use research of concern” and outlines ways that institutions should establish and implement internal oversight policies.

The association comment letter was developed under the leadership of the Federation of American Societies for Experimental Biology (FASEB) and was also signed by AAU, the American Association for the Advancement of Science, the Association of American Medical Colleges, the Council on Governmental Relations, and the National Association of State Universities and Land-Grant Colleges.

**NSF Solicits Nominations for Alan T. Waterman Award**

The National Science Foundation (NSF) is accepting nominations through December 5 for the Alan T. Waterman Award, which recognizes an outstanding young researcher in any field of science or engineering supported by NSF. Each awardee receives a medal and a three-year research or advanced study grant of $500,000.

**Justice Department Program Offers Campus Safety Materials for Colleges and Universities**

The Department of Justice Office of Community Oriented Policing Services (COPS) has developed a series of materials aimed at helping colleges and universities address campus safety and disorder issues. The Campus Safety Toolkit is available online and printed copies can be ordered free of charge by calling the COPS Office Response Center at 800-421-6770.

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