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CONGRESSIONAL SCHEDULE  NEW

The House and Senate were out of session this week for the Memorial Day recess.

The Senate will return on Monday, June 5, to begin debate on a constitutional amendment banning same-sex marriage, followed later in the week by a bill to repeal the estate tax. Neither measure is expected to receive sufficient votes to pass (the constitutional amendment requires 67 votes; the estate tax repeal, in effect, requires 60).

The House returns on Tuesday, June 6, with three FY07 appropriations bills scheduled for the floor: Homeland Security (which the House began but did not finish before the recess), Legislative Branch, and Homeland Security. Appropriations Committee Chairman Jerry Lewis (R-CA) has said he expects the House to approve all 11 of its FY07 appropriations bills before the July 4 recess. Also next week, the House may consider the conference report for the FY06 supplemental appropriations bill (H.R. 4939) and a bill to increase petroleum refinery capacity. TechDaily reports that the chamber also may consider comprehensive telecommunications legislation (see item below).

BUDGET & APPROPRIATIONS
NO CONFERENCE EXPECTED ON FY07 BUDGET RESOLUTION  NEW

It now seems clear there will be no final FY07 budget resolution. For that reason, the Senate will include in the FY06 supplemental spending bill (H.R. 4939) a provision deeming its FY07 discretionary spending cap to be $873 billion. That is the same level as the House-passed budget resolution and the President’s request, but it is about $16 billion less than the Senate approved in its version of the FY07 budget resolution. Without a deemed cap, the Senate would be forced to work under the FY07 discretionary spending ceiling approved in the FY06 budget resolution, which is $866 billion, or about $7 billion below the President’s request. Once the deeming resolution is passed, the Senate Appropriations Committee can begin allocating FY07 funds among its 12 subcommittees.

CQToday reported last week that Senate Appropriations Committee Chairman Thad Cochran (R-MS) plans to reduce the funding allocation for the Defense Appropriations Subcommittee by about $9 billion from the President’s request and transfer that money to subcommittees that fund domestic programs. The Defense spending likely would be made up later, as it has been in the past, through a supplemental funding bill.

Reports from Capitol Hill staff indicate that of the total that Senator Cochran would transfer to domestic spending, about half would go to the Labor-HHS-Education Appropriations Subcommittee, which funds higher education programs and the National Institutes of Health (NIH). That total would be somewhat higher than the $4.1 billion that House appropriators have agreed to shift to the House Labor-HHS-Education panel.

FY06 SUPPLEMENTAL APPROPRIATIONS BILL APPEARS CLOSE TO COMPLETION  NEW

House and Senate negotiators apparently are close to reaching final agreement on the FY06 emergency supplemental funding bill (H.R. 4939). Agreement has been delayed because the Senate version of the package is more than $14 billion above the level President Bush has said he would accept. Senate staff report that the latest plan is to conference the measure on Tuesday, June 6, with a House floor vote on Thursday, June 8, and a possible Senate floor vote the following week. As noted above, the measure includes a provision to deem the Senate FY07 discretionary spending cap at the $873 billion level approved by the House.

As reported last week, the Senate-passed version of the supplemental bill would provide disaster relief to higher education—$30 million in grants and about $200 million in bridge loans to Gulf Coast colleges and universities damaged in Hurricanes Katrina and Rita, as well as enhanced loan assistance for affected Historically Black Colleges and Universities.

SENATORS TO URGE APPROPRIATORS TO ADD $7 BILLION TO LABOR-HHS-EDUCATION FUNDING  NEW

Senator Olympia Snowe (R-ME) has asked her Senate colleagues to join in a letter to Senate Republican leaders urging them to allocate to the Labor-HHS-Education Appropriations Subcommittee the additional $7 billion called for in the Senate-passed FY07 budget resolution. During consideration of the budget resolution, the chamber approved by a vote of 73-27 an amendment offered by Senators Arlen Specter (R-PA) and Tom Harkin (D-IA) to add $7 billion above the Senate Budget Committee-approved level for the subcommittee. As noted above,
Senator Cochran currently is planning to add somewhat more than $4 billion above the President’s request to the subcommittee’s funding allocation.

**HOUSE DHS FUNDING BILL PROVIDES $52 MILLION FOR UNIVERSITY PROGRAMS**

The House FY07 Homeland Security appropriations bill contains $51.97 million for university programs, the same as the President’s request but $10.4 million below FY06 funding. The House began considering the measure last week but did not finish; floor consideration is expected to continue next week when the congressional session resumes.

Language in the House Appropriations Committee report for the bill (H. Rpt. 109-476) says that the committee supports the Science and Technology Directorate’s efforts to educate the next generation of researchers but it is concerned that the University Programs/Fellowship Programs have an unobligated balance in mid-year of more than $67 million from FY05 and FY06 appropriations. The report directs the Science and Technology Directorate to report on activities funded under this appropriation by January 16, 2007.

**HOUSE LETTER URGING INCREASE IN PELL GRANT MAXIMUM GARNERS 142 SIGNATURES**

A letter to House Labor-HHS-Education Appropriations Subcommittee Chairman Ralph Regula (R-OH) urging his panel to increase the Pell Grant maximum award in FY07 was signed by 142 Members of the House. The letter, circulated by Rep. Ric Keller (R-FL), received more than three times as many signatures this year as the Pell Grant letter he circulated last year (which had 45 signatures).

A copy of the final letter to Chairman Regula is available on the AAU Web site at: [http://www.aau.edu/budget/Ltr_HouseApprops_PellGrant_53106.pdf](http://www.aau.edu/budget/Ltr_HouseApprops_PellGrant_53106.pdf).

**AAU URGES APPROPRIATORS TO INCREASE NASA SCIENCE AND AERONAUTICS FUNDING**

AAU President Robert Berdahl on May 30 sent letters to the chairs and ranking members of the House and Senate subcommittees that fund NASA urging them to increase funding for the space agency’s science and aeronautics directorates. The letters ask the appropriations leaders to provide NASA’s science directorate with $5.5 billion, up from the $5.3 billion requested by the Administration, and $959 million for NASA’s aeronautics directorate, up from the $724 million request.


**OTHER CONGRESSIONAL DEVELOPMENTS**

**HOUSE SCIENCE COMMITTEE PLANS JUNE 7 MARK-UP OF COMPETITIVENESS BILLS**
The House Science Committee plans to mark up three competitiveness bills (H.R. 5356, H.R. 5357, and H.R. 5358) on Wednesday, June 7. Background information about the three bills is available on the committee’s Web site at: http://www.house.gov/science/hot/Competitiveness/index.htm.

AAU issued a statement applauding the Science Committee for introducing this legislation on May 11 (http://www.aau.edu/research/AAU_Stmt-House_Science_Comm_Competitiveness_Leg.pdf). The association also has endorsed two bills introduced earlier by Science Committee Ranking Member Bart Gordon (D-TN): the “10,000 Teachers, 10 Million Minds Science and Math Scholarship Act” (H.R. 4434) and the “Sowing the Seeds Through Science and Engineering Research Act” (H.R. 4596).

The aim of the House legislation is to evaluate and strengthen existing research and math and science education programs. The House legislation thus differs from legislation reported by the Senate Commerce Committee (S. 2802) and by the Senate Energy and Natural Resources Committee (S. 2197), which would create several new research and science, technology, engineering, and mathematics (STEM) education programs. (See CFR Weekly Wrap-up, 05-19-06 for a story about the Senate Commerce Committee markup.)

The House Science Committee has tried to avoid introducing legislation that proposes new programs because the House leadership has made clear that it will not allow competitiveness bills to be considered on the floor that would create new programs and/or result in significant additional funding.

When the Science Committee takes up the bills next week, a bipartisan manager's amendment is likely to be offered that will incorporate certain provisions from Rep. Gordon’s bills. Even so, committee Democrats are expected to offer amendments on programmatic ideas that the majority is unlikely to accept and possibly on agency authorization levels as well.

HOUSE LIKELY TO CONSIDER TELECOMMUNICATIONS BILL NEXT WEEK

TechDaily reports that the House next week is likely to consider comprehensive telecommunications legislation developed by the House Energy and Commerce Committee, the “Communications Opportunity, Promotion, and Enhancement Act of 2006” (H.R. 5252). A major issue will be “net neutrality,” the concept of ensuring that telephone and cable companies do not use the broadband networks they control to selectively favor or discriminate against Internet traffic.

Critics have charged that the net neutrality provisions in H.R. 5252 are not sufficient. For that reason and others, the chairman and ranking member of the House Judiciary Committee have introduced, and the committee has marked up, their own net neutrality bill (H.R. 5417). Chairman James Sensenbrenner (R-WI) and Ranking Member John Conyers, Jr. (D-MI) hope to offer the measure as a floor amendment to H.R. 5252. It is unclear if the House Rules Committee will allow them to do so. Complicating the issue is the fact that the Energy and Commerce Committee Democrats have introduced their own net neutrality bill (H.R. 5273), which could be combined with the Sensenbrenner measure or offered separately as an amendment.
Both bills address concerns that the net neutrality provisions in the Energy and Commerce bill are too weak. That measure would codify four network neutrality principles approved last year by the Federal Communications Commission (FCC) but provide minimal enforcement of them. A number of organizations, including AAU and other higher education associations, have expressed concern that the provisions do not prohibit network operators from giving preference to their own Internet services and content over the services provided by other service and content providers, including universities.

In the Senate, Commerce, Science, and Transportation Committee Chairman Ted Stevens (R-AK) postponed markup of his own telecommunications bill (S. 2686) from June 8 to June 20 in order to address committee members’ concerns about certain issues, including net neutrality. Senator Stevens’s bill would address net neutrality simply by requiring the FCC to conduct an annual study of how information is transmitted over the Internet and then recommend to Congress what authority the commission would need to address any problems identified.

Senate Commerce Committee Ranking Member Daniel Inouye (D-HI) joined with Senator Olympia Snowe (R-ME) and six Senate Democrats in introducing a separate net neutrality bill (S. 2917) that is similar to the bills offered by Rep. Sensenbrenner and the House Energy and Commerce Committee Democrats.

EXECUTIVE BRANCH

DEPARTMENT OF COMMERCE WITHDRAWS PROPOSED EXPORT CONTROL RULES

The Department of Commerce’s Bureau of Industry and Security (BIS) on May 31 announced that it was withdrawing proposed rules on deemed export controls affecting university research that it published in March 2005 in response to recommendations from the Department’s Office of Inspector General (OIG). The announcement specifically rejects several of the OIG recommendations, including those concerning the country of birth of foreign students and researchers and the definition of “use.” It follows the recent announcement by Commerce that it will create a Deemed Export Advisory Committee to review existing deemed export control policies.

With regard to the OIG’s recommendation to base deemed export licensing requirements on a foreign national’s country of birth, the announcement says, “BIS determined that the current licensing requirement based upon a foreign national’s country of citizenship or permanent residency is appropriate.” The current policy “recognizes the significance of declarative assertion of affiliation over the mere geographical circumstances of birth.”

Regarding the OIG’s recommendation concerning the definition of “use” in the Export Administration Regulation (EAR), the announcement states that the existing definition of “use” in Section 772.1 of the EAR should remain unchanged. As a result, all six activities related to use (i.e. operation, installation, maintenance, repair, overhaul, and refurbishment) must be present in order to trigger a deemed export licensing requirement. According to the announcement, “only the totality of these activities would provide a foreign national with enough knowledge to replicate or improve the performance capabilities of the controlled item.” The OIG had recommended substituting the word “or” for “and,” a change that would potentially have imposed licensing requirements on use that involved any one of the six activities.
While the announcement, for the most part, represents good news for the research and higher education communities, there is one aspect of the announcement that remains contentious. In the announcement, BIS distinguishes the outputs of fundamental research (e.g. publishable information) from the inputs needed to conduct and enable such research (e.g. information concerning controlled technologies). Thus, while a research product is not subject to EAR, the announcement suggests that a license may be required “if during the conduct of research controlled technology is released to a foreign national.”

AAU and other organizations have consistently expressed the view that the conduct of fundamental research cannot be distinguished from the results (i.e. the product) of the research.

This remains an issue on which additional clarification from Commerce will be required; AAU will recommend that the newly formed Deemed Export Control Advisory Committee review this issue more fully. In any event, the potential impact of licensing requirements for foreign nationals’ access to preexisting technology will be greatly reduced by Commerce’s rejection of the OIG “and/or” recommendation on the use of equipment.

The BIS announcement is available in *Federal Register Vol. 71, No. 104*, pp. 30840-30844.

**RAY ORBACH CONFIRMED AS DOE UNDER SECRETARY FOR SCIENCE**  
NEW

The Senate on May 26 confirmed Dr. Raymond L. Orbach as the Department of Energy’s first-ever Undersecretary for Science. The new position was established by the Energy Policy Act of 2005. Dr. Orbach has been director of the Department of Energy Office of Science since 2002.

Secretary of Energy Samuel Bodman said in a written statement:

“I thank the Senate for their confirmation of Dr. Raymond Orbach as the department's first Under Secretary for Science. President Bush has placed a renewed emphasis on strengthening our nation's basic science research and education as part of the American Competitiveness Initiative. Ray will help oversee the expansion of basic science research at the department, including the doubling of the government's basic science budget over the next decade. With additional focus on basic science, our nation will continue to be the economic leader of the world. I congratulate Ray on today's confirmation and look forward to his continued service to the department and the nation.”

**JOHN NIEDERHUBER IS NEW ACTING DIRECTOR OF NCI**  
NEW

The National Institutes of Health has announced that Dr. John Niederhuber, a cancer surgeon from the University of Wisconsin, has been named acting director of the National Cancer Institute (NCI). Dr. Niederhuber has been serving as NCI deputy director since last fall. He succeeds Andrew Eschenbach, whom President Bush has nominated to head the Food and Drug Administration.

**OTHER**

**ASSOCIATIONS URGE NIH TO DELAY PROPOSED NRSA CHANGES**  
NEW
AAU and four other higher education associations wrote to the National Institutes of Health (NIH) today urging the agency to delay for one fiscal year implementation of its proposed payment cap on graduate tuition under the Ruth L. Kirschstein National Research Service Awards (NRSA). The letter, sent by AAU, the Association of American Medical Colleges, the Council of Graduate Schools, the Council on Governmental Relations, and the National Association of State Universities and Land-Grant Colleges, asks NIH to delay implementation of the $16,000 tuition cap on the program’s research training grants and fellowships in order “to allow more complete discussion and analysis of alternatives with all stakeholders.”

The letter says that cost sharing by all institutions under the existing tuition payment policy is already substantial, estimated at nearly $70 million a year. Imposing a $16,000 cap on tuition would increase that cost sharing by about 43 percent, to nearly $100 million. This would affect both public and private institutions. For many, “this shift will be difficult, if not impossible, to manage.”

The letter goes on to ask NIH to retain its existing policy through FY07, with the commitment of the associations “to work with NIH to find alternatives that distribute the adverse impacts of a constrained NRSA budget more equitably among all stakeholders.”

The associations’ letter, addressed to Norka Ruiz Bravo, NIH Deputy Director for Extramural Research, is available on the AAU Web site at: http://www.aau.edu/research/Ltr_NRSA_Delay_6206.pdf.

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