CONGRESSIONAL SCHEDULE

With much important work remaining to be done before adjourning for the elections, and fiscal year 2009 beginning on Wednesday—Congress is expected to be in session through the weekend, and perhaps beyond.

House Speaker Nancy Pelosi (D-CA) plans to bring a second economic stimulus package to the House floor today (see item below), as well as a financial industry bailout bill, if congressional and White House negotiators are able to craft a final package by then.

Senate Majority Leader Harry Reid (D-NV) has said he will call for a cloture vote today on the House-passed FY09 continuing resolution (CR) for an expected vote on Saturday. In the absence of any approved FY09 appropriations bills, the CR will keep the government running through early March.

BUDGET & APPROPRIATIONS

SENATE TO TAKE UP FY09 CONTINUING RESOLUTION THIS WEEKEND  

CQToday is reporting that the Senate is unlikely to vote on an FY09 continuing resolution (CR) funding bill before Saturday.

The House approved a CR on September 24 by a vote of 370 to 58. The measure, which lasts through March 6, 2009, would freeze funding for most federal agencies at their FY08 levels during that period, including those domestic research agencies of major interest to AAU institutions: the National Institutes of Health (NIH), the National Science Foundation, the

To help address a projected $6 billion shortfall in the Pell Grant program over three academic years (07-08, 08-09, 09-10) and maintain the maximum award at its current level, the measure includes an additional $2.5 billion for the program. Some $750 million of that amount is a down payment on the shortfall. Language in the bill prohibits a ratable reduction in individual grants. The shortfall is a result of increased enrollments, an increase in grant eligibility levels because of the economic downturn, and eligibility changes enacted in the College Cost Reduction and Access Act of 2007 (P.L. 110-84).

CR WOULD INCREASE DEFENSE BASIC RESEARCH  UPDATED

Attached to the CR is a so-called “minibus” of three national security full-year appropriations bills—Defense, Homeland Security, and Military Construction-Veterans Affairs.

Within the DOD bill, funding for Defense basic research (budget function 6.1) is $1.842 billion, a 12.7-percent increase above FY08 and higher than either the House or Senate subcommittee-approved levels. The House subcommittee proposed $1.816 billion and the Senate subcommittee proposed $1.77 billion. Neither bill was considered in full committee or in the House or Senate. The basic research total in the CR is 8.4 percent above the Administration’s request of $1.70 billion.

For overall Defense Science & Technology (S&T) programs, the CR would provide $13.486 billion. This is an increase of $807.1 million, or 6.4 percent, above the FY08 level of $12.68 billion and $2.011 billion, or 17.5 percent, above the Administration’s request of $11.475 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, 6.2 applied research would receive $5.113 billion. This is a $54.5 million, or 1.1-percent, increase above the FY08 level of $5.058 billion, and an $867.8 million, or 20.4-percent, increase above the Administration's request of $4.245 billion. The 6.3 advanced technology development programs would receive $6.532 billion, a $544.5 million, or 9.1-percent, increase above the FY08 level of $5.987 billion, and a $999.7 million, or 18.1-percent, increase above the Administration's request of $5.532 billion.

The CR breakout for 6.1 basic research and 6.2 applied research across the services is as follows:

- Army 6.1: $439.2 million, a $60.1 million or 15.9-percent increase over FY08;
- Army 6.2: $1.234 billion, a $58.5 million or 5.0-percent increase over FY08;
- Navy 6.1: $547.4 million, a $49.7 million or 10.0-percent increase over FY08;
- Navy 6.2: $776.4 million, a $24.6 million or 3.1-percent cut from FY08;
- Air Force 6.1: $468.9 million, a $47.8 million or 11.4-percent increase over FY08;
- Air Force 6.2: $1.216 billion, a $47.4 million or 4.1-percent increase over FY08;
- Defense-wide 6.1: $386.4 million, a $50.4 million or 15.0-percent increase over FY08;
- Defense-wide 6.2: $1.886 billion, a $25.8 million or 1.3-percent cut from FY08.

The bill would fund the National Defense Education Program at the Administration's requested level of $69 million, an increase of $25 million above the FY08 level of $44.4 million.
Overall, the CR would provide $80.52 billion for Defense Research, Development, Test and Evaluation (RDT&E). This is an increase of $3.637 billion, or 4.7 percent, above the FY08 level, but $904.9 million, or 1.1 percent, above the Administration’s FY09 request.

A further breakout of the Defense appropriations levels for accounts of interest to research universities, including the University Research Initiative accounts, is available on the AAU Web site.

SENATE STIMULUS PACKAGE WOULD HAVE BOOSTED FUNDING FOR NIH, DOE SCIENCE, NASA NEW

The Senate today rejected an economic stimulus package proposed by Democratic leaders that contained significant funds for key research agencies. The vote was 52 to 48 in favor, eight short of the 60 votes needed for passage.

House leaders are also developing an economic stimulus measure. The details have not been made public, but it could be taken up as early as today. It is expected to contain additional funding for infrastructure, Medicaid funding for the states, an extension of unemployment insurance, and added funding for food stamps, but no additional funding for science agencies.

The Senate measure included substantial added funding for the National Institutes of Health (NIH), the Department of Energy (DOE) Office of Science, and NASA. Specifically, the $56.2 billion package included $1.2 billion for NIH, $150 million for the DOE Office of Science (as well as $300 million for advanced battery technology), and $250 million for NASA to help shorten the projected 5-year gap between the retirement of the Space Shuttle in 2010 and the availability of the new U.S. space vehicle in 2015.

FATE OF TAX EXTENDER PACKAGE REMAINS UNCLEAR NEW

As the congressional session winds down, the fate of tax extenders, including three provisions of major interest to higher education, is unclear. Among several differences between the House and Senate positions on extenders legislation is the continuing disagreement over which tax benefits should be “paid for” with equivalent tax increases or spending cuts. While Congress may end up agreeing to a one-year “patch” for the alternative minimum tax (AMT), tax breaks for disaster victims, and a mental health parity package, there might be no agreement on the tax extenders.

The Senate approved a comprehensive tax package (H.R. 6049) on September 23 by a vote of 93 to 2, which would extend a number of expiring and expired tax benefits (H.R. 6049), including the tuition tax deduction, the IRA charitable rollover, and the research and development tax credit. The White House announced that same day that the President supports the Senate package, despite some reservations. CQToday reports that the measure also includes a one-year “patch” to the alternative minimum tax (AMT), an energy tax package with offsets, disaster tax breaks, mental health parity legislation, and the tax extenders with some offsets.

The House divided its version of the Senate measure into four separate bills: an AMT patch with no offsets (H.R. 7005), disaster tax breaks with no offsets (H.R. 7006), mental health parity with some offsets (H.R. 6983), and the remaining energy and business tax extenders with significant offsets (H.R. 6049). The House has approved the first three bills, and is expected to take up its extenders package today.
However, Senate leaders have shown little willingness to negotiate on the legislation and have urged House leaders to simply take up the Senate bill without delay. They argue that the Senate bill is a hard-fought but delicate compromise worked out over many months of effort.

OTHER CONGRESSIONAL ISSUES

CONGRESS CLOSE TO APPROVING DOD AUTHORIZATION BILL

With support from the Administration, Congress is expected to give final approval to the FY09 Defense authorization bill (S. 3001). The House approved the bill on September 24 by a vote of 392 to 39. The Senate is expected to approve it before adjournment and send it to the President for signature.

--GAO Study of Defense Indirect Costs

Of particular interest is report language that accompanied the House version of the bill, which directs the Government Accountability Office (GAO) to study the indirect costs of Defense grants and contracts. Although this language is not in the conference report, the GAO study will move forward. Senate negotiators did not dispute the proposed study in conference and GAO does not require a specific appropriation in order to undertake the review.

AAU staff views the study as an opportunity to demonstrate that federal agencies use specific, well-documented processes to calculate indirect cost rates and to audit reimbursements. The report is to be completed within one year.

Last year during the FY08 appropriations process, Rep. John Murtha (D-PA), chairman of the House Defense Appropriations Subcommittee, raised questions about university indirect cost rates and placed a one-year cap on such reimbursements (the FY09 appropriations bill extends the cap). The limitation is a 35-percent cap on the amount of an overall grant, not on the negotiated rate.

Following is the report language requesting the GAO report on indirect costs:

Review of Cost Reimbursements on Defense Research Grants and Contracts

The committee strongly supports federally-sponsored research and believes the relationship between the Department of Defense, universities, and other research institutions depends on each party bearing a fair share of the costs of conducting research. The committee believes that such partnerships should also rely on deliberate policies and procedures to ensure that taxpayer dollars are well used and that research institutions and scientists are adequately reimbursed for the costs of the research performed.

The committee is obligated to ensure that taxpayer dollars are properly executed and that federal policies and procedures governing payments and reimbursements for research costs are sound. The committee therefore directs the Comptroller General to conduct a review of the existing Office of Management and Budget (OMB) policies, practices, and procedures, as well as those included in the federal acquisition regulations.

At a minimum, this report shall:
1) describe the OMB rules and regulations that guide research institutions’ facilities and administration (F&A) cost reimbursements on DOD research grants and contracts;

2) describe and assess the F&A costs that are reimbursable under current rules and explain if similar payments for such costs are made to support industry and federal laboratories that conduct research and development research on behalf of the government;

3) assess the extent to which the rules for reimbursement of F&A costs are different for the Department of Defense than for other federal agencies;

4) assess trends in negotiated F&A rates and effective (based on actual reimbursement) F&A rates for universities that receive DOD extramural research grants and contracts;

5) assess the impact to F&A costs as a result of increased federal regulations such as environmental, security, and visa issues, assess trends in actual payments by the Department of Defense for direct and indirect costs on DOD extramural research grants;

6) document current procedures DOD uses to ensure compliance with OMB guidance in reimbursing F&A costs; and

7) report on the methodology used by the government entities responsible for determining F&A rates—the Department of Health and Human Services, Division of Cost Allocation, and the Department of Defense, Office of Naval Research—to review, audit, negotiate, and ensure that F&A rates are fair and equitable to the federal government.

EXECUTIVE BRANCH

NIH DIRECTOR ANNOUNCES RESIGNATION

NIH Director Elias A. Zerhouni announced on September 24 that he will step down from his post at the end of October 2008 “to pursue writing projects and explore other professional opportunities.” Dr. Zerhouni’s personal statement about his retirement also is available on the NIH website.

An AAU statement about Dr. Zerhouni’s announcement said that he “was the right leader for NIH in trying times.” The statement by AAU President Robert M. Berdahl continued, “In an atmosphere of constrained national resources, Elias became NIH's most articulate and effective advocate, and in the past several years succeeded in restoring NIH as a top priority for our nation's leadership.”

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