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CONGRESSIONAL SCHEDULE  NEW

The House and Senate took Friday off. Both reconvene on Monday, May 21. The Senate will consider comprehensive immigration legislation. The House will complete consideration of the Federal Housing Finance Reform Act. It will also consider a lobbying reform bill and a number of bills under suspension of the rules, including a measure (H.R. 2272) that combines several competitiveness and innovation bills already adopted by the House, such as the NSF reauthorization bill. The House and Senate also hope to consider a conference report on the Iraq supplemental bill before adjourning for the one-week Memorial Day recess.

BUDGET & APPROPRIATIONS

CONGRESS, WHITE HOUSE BEGIN NEGOTIATIONS ON FY07 SUPPLEMENTAL FUNDING BILL  NEW

Following Senate approval of a new version of the FY07 supplemental appropriations bill, intended primarily to fund the Iraq war, White House and Congressional negotiators met today in an effort to work out their differences over the legislation. Little progress was reported. According to CongressDaily, Democratic leaders offered to drop all domestic spending from the legislation and, while retaining a binding timeline and benchmarks, give the President the authority to waive them. The White House, according to CBS News, provided a list of benchmarks with a consequence for the Iraqi government for failure to meet them. However, the
The White House rejected a binding timeline of any kind. Congressional leaders and the Administration continue to express hope that the legislation will be completed by the end of next week.

CONGRESS APPROVES FY08 BUDGET RESOLUTION  UPDATED

The House and Senate agreed on the FY08 budget resolution this week, setting the stage for House appropriators to begin moving their FY08 funding bills. The budget resolution is not signed into law by the President but serves as a guide for congressional spending. Its discretionary spending assumptions reflect the intentions of congressional leaders but the only number that binds appropriators is the overall figure for discretionary spending.

According to a statement issued by the budget committees, the package (H. Rpt. 110-153) includes $954 billion for discretionary spending in FY08, which *CQ Today* reports is $21 billion above the President’s FY08 request. The agreement also includes a budget reconciliation provision that requires the House and Senate education committees to develop legislation to provide $750 million in net deficit reduction over six years. (See additional details below.) The conferees’ overview is available at: http://budget.house.gov/analyses/08Budget_Conference_Agreement_Overview051607.pdf.

The package assumes FY08 funding increases for several research and education agencies:

**Function 250, General Science, Space, and Technology.** The conference agreement includes $27.6 billion for this budget function, which includes the National Science Foundation (NSF), the Department of Energy Office of Science, and NASA. This is the same level as both the House and Senate numbers. It “provides significant increases for NSF and the DOE Office of Science, and fully funds the President’s 2008 request for NASA at $17.3 billion. For NASA, this represents an increase of $696 million, or 4 percent, above the 2007 level adjusted for inflation.”

**Function 500, Education, Training, Employment and Social Services.** The conference agreement assumes $93.9 billion for this function, as well as $2 billion in advance FY09 funding, which together would provide $9.5 billion above the President’s FY08 request. The agreement also “rejects the President’s program eliminations and cuts.” The conference report goes on to say that the agreement “recognizes that funding for education programs has been insufficient to meet the mandates created by federal laws, and, even more important, to ensure that every child receives a world-class education. The agreement envisions significant investments in this area.”

**Function 550, Health.** For this function, which includes the National Institutes of Health (NIH) and a number of other agencies and programs, the conference agreement appears to assume $54.97 billion in discretionary spending, which is $3 billion above the President’s request and $2.9 billion above FY07 funding. The conference report does not mention NIH.

--Agreement Includes Reconciliation Instructions for Higher Education

Budget conferees included reconciliation instructions for higher education in their agreement that would require the House and Senate education committees to provide $750 million in net deficit reduction over six years, rather than the $75 million proposed in the House version of the package. The agreement also allows the Senate to include reauthorization of the Higher Education Act in filibuster-proof reconciliation legislation.

Rep. George Miller (D-CA) and Senator Edward Kennedy (D-MA), chairs of the House and
Senate education committees, have said they will make the cuts by reducing federal subsidies to private student loan companies. They anticipate using some reconciliation savings to increase the Pell grant maximum award, cap student loan payments based on income, and provide loan forgiveness to some students.

**HOUSE LEADERS PLAN APPROPRIATIONS PUSH IN JUNE  NEW**

*CQToday* reports that although House Democratic leaders do not expect any of the FY08 appropriations bills to be considered on the House floor this month as initially planned, House Majority Leader Steny Hoyer (D-MD) said they still hope to have the House approve all of the FY08 appropriations bills in June. For that reason, he said, “I have advised my members that June is going to be one of the hardest-working months that we will have in terms of [working] every Monday and every Friday, assuming we need them.”

The Defense spending bill is the only exception to that schedule, reports the publication, because that bill will not come to the House floor until mid- or late July, to serve as another means to debate the war in Iraq.

The first FY08 appropriations bill, for the Department of Homeland Security, was expected to be marked up today in subcommittee.

Senate markups are expected to begin in early June.

**SENATE FINANCE COMMITTEE PLANS STILL UNCLEAR  UPDATED**

As the Senate Finance Committee prepares to consider tax changes affecting higher education, the major question is what offsets the panel plans to use in order to expand such higher education tax benefits as the Hope and Lifetime Learning tax credits. The rumored source for offsets is cutting certain higher education tax benefits, but the committee staff says that no decisions have been made about specific measures.

Discussions with committee staff indicate that the panel hopes to mark up three bills next week, one involving higher education. However, at a committee meeting on May 16, Senators apparently did not focus on the higher education bill because they did not have complete scoring from the Joint Committee on Taxation. And Finance Committee Chairman Max Baucus (D-MT) said that markup of an education bill might not happen next week, which would mean a postponement until June.

The Finance Committee staff has requested revenue estimates from the Joint Tax Committee for a wide array of proposals for both enhancements and offsets involving higher education. There are many rumors about the proposals, but the most specific information from the staff is that potential changes to the Section 117 (d) qualified tuition reduction benefit, ranging from “reform” to elimination, are “on the table.” There also have been some discussions about the unrelated business income tax (UBIT) and the use of offshore hedge funds by universities, and about linking endowment payout rates and the use of tax-exempt bonds to tuition increases that rise above some undetermined threshold. But there are no details about any of these ideas.
OTHER CONGRESSIONAL DEVELOPMENTS

HOUSE PANEL APPROVES PATENT REFORM BILL WITHOUT AMENDMENT

The House Judiciary Subcommittee on Courts, the Internet, and Intellectual Property on May 16 took the first step in moving bipartisan, bicameral legislation to overhaul the U.S. patent system (H.R. 1908, S. 1145). The goals of the legislation are to improve patent quality, harmonize U.S. patent law with that of other countries, and eliminate subjective elements of the law that lead to wasteful and unnecessary litigation. One of the major elements of the bill is to change from a first-to-invent to a first-inventor-to-file system. This would harmonize U.S. patent law with that of other countries (the U.S. is the only country with a first-to-invent system), and it would, by replacing the determination of a first inventor with the objective identification of the first filer, reduce or eliminate the unpredictable and often substantial costs of interferences and litigation associated with determining first inventor.

Although Chairman Howard Berman (D-CA) had planned to offer a manager’s amendment during markup that included an important change recommended by the higher education community (see details below), he chose not to offer it because of the objections of James Sensenbrenner (R-WI), who said markup should be postponed until a subcommittee consensus had emerged. The bill was approved without amendment and is expected to be considered by the full Judiciary Committee in June.

--Higher Education Associations Submit Comments on Patent Reform Bill

In advance of the markup, five higher education associations, including AAU, submitted to the Judiciary Committee joint comments on the bill. Their statement said that the associations did not oppose changing the U.S. patent system from a first-to-invent to a first-inventor-to-file system, but it noted that some universities were concerned about their ability to operate effectively under such a patent system. The letter added that if Congress adopted a first-inventor-to-file system, it should maintain three vital components of the current U.S. system: (1) the opportunity to file provisional applications; (2) an effective grace period for publishing articles containing a disclosure of inventions; and (3) the requirement that an applicant sign an oath that he or she is an inventor of the claimed invention.

H.R. 1908 preserves current law on provisional applications—which the associations support—and strengthens the language governing an inventor’s oath or declaration. However, Chairman Berman’s managers’ amendment included important improvements regarding the one-year grace period for publications that contain a disclosure of an invention. The amendment also would have clarified that a patent could not be challenged in a post-grant review if a federal court had upheld the validity of the patent.

Between now and full committee markup, committee members and representatives of the communities involved in patent legislation will discuss and negotiate unresolved issues in Chairman Berman’s amendment and others.
The five associations that submitted the joint comments are AAU, the American Council on Education, the National Association of State Universities and Land-Grant Colleges, the Association of American Medical Colleges, and the Council on Governmental Relations.

The associations’ letter is available on the AAU Web site at:

**RESEARCH UNIVERSITIES OPPOSE PROVISION OF ARPA-E MEASURE**

AAU and the National Association of State Universities and Land-Grant Colleges (NASULGC) wrote to the House Science and Technology Committee today to express concern about a key provision of the ARPA-E legislation approved by that panel’s Subcommittee on Energy and Environment May 10.

The overall bill (H.R. 364) would authorize creation of an Advanced Research Projects Agency at the Department of Energy (DOE), termed ARPA-E, which would be charged with rapidly developing and commercializing clean energy technologies. H.R. 364 responds to a recommendation in the National Academies’ 2005 report, “Rising Above the Gathering Storm.” ARPA-E would be modeled on the Defense Advanced Research Projects Agency (DARPA).

In a letter from AAU President Robert M. Berdahl and NASULGC President Peter McPherson to committee chairman Bart Gordon (D-TN) and ranking member Ralph Hall (R-TX), the two organizations expressed support for the subcommittee’s effort to respond to the Gathering Storm recommendation. However, they expressed opposition to the “recoupment” provision, which would require that, for any invention created through ARPA-E that was commercialized and made money, a university would have to return to DOE the federal government’s investment in the research. The research university letter states that the provision “actually provides a significant disincentive for the very ‘out-of-the-box’ type of thinking the bill is attempting to promote, especially at universities.”

They noted that the provision, which does not directly tie the refund of money to an invention’s actual profitability, “transforms what should be a government research ‘grants’ program into a government ‘loan’ program.” They added, “Under such conditions, we see it as highly unlikely that universities will want to seek such funds or participate in the program.”

The letter also points out that the provision contradicts the Bayh-Dole Act, which for more than two decades has encouraged universities to seek the commercialization of their inventions. That law requires that any resulting profits be funneled into additional university research, not returned to the government.

“Requiring the repayment of federally sponsored university research grants would set a dangerous precedent,” the association heads wrote. “Universities act as engines for innovation in our country. They are, however, non-profit institutions that generally operate on a cost-reimbursement basis and do not have a pool of funds from which they can repay federal awards.”

They added, “Any APRA-E proposal should view the government’s investments as just that, a national investment. Repayment to the government should not be required. The greatest return to the government from the creation of a new ARPA-E should be to decrease national dependence on fossil fuels and to increase energy security and environmental sustainability… Achieving the goal of marketable new energy technologies would provide an enormous return to
the nation’s taxpayers and to the government, one worthy of substantial federal resources and worth every penny spent.”

EXECUTIVE BRANCH

DOE SCIENCE LEADER DISCUSSES ENERGY SCIENCE AGENDA

Raymond Orbach, Undersecretary for Science at the Department of Energy (DOE), discussed the Department’s energy sciences agenda and related issues at a May 15 meeting of the Energy Sciences Coalition. Dr. Orbach told the group of association and university representatives about the Department’s plans for “transformational” science in energy and the environment, as well as its efforts to better coordinate basic research in the DOE Office of Science with applied research funded elsewhere in the Department.

Dr. Orbach also mentioned two key positions in the Office of Science that he hopes to fill soon: a deputy for programs and an associate director of biological and environmental research. CFR members with nominations, or with questions about these two positions, should contact Todd Harding, senior advisor to Dr. Orbach, at 202-586-2086 or todd.harding@science.doe.gov

A presentation on the transformational science plan and the Department’s plan for analysis and coordination of its research portfolio are available on the AAU Web site at:
http://www.aau.edu/research/esc.cfm.

Information about the two open positions at the DOE Office of Science is available at:

OTHER

CFR INVITED TO MAY 22 HILL BRIEFING ON STEM EDUCATION

The University of Maryland, College Park is cosponsoring a Capitol Hill briefing on May 22 to discuss public-private partnerships for improving K-12 education in science, technology, engineering, and mathematics (STEM). The session will be held on Tuesday, May 22, from 12:00-1:30 p.m. EDT in Room B-340 of the U.S. Capitol. Those interested in attending are asked to RSVP to rmckoy@umd.edu or by calling 301-405-0903.

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