Friday, July 27, 2007

CONGRESSIONAL SCHEDULE  NEW

The House is in session. The chamber voted final approval of the farm bill (H.R. 2419) earlier today and is now considering the conference report for legislation implementing recommendations of the 9/11 Commission (H.R. 1). The Senate was not in session.

The House next week is expected to consider the last of its FY08 appropriations bills: Agriculture (H.R. 3161) early in the week, followed by Defense (still unnumbered) on August 1 or 2. CQToday reports that the chamber also may consider legislation to mandate troop rest times, and possibly legislation on children’s health insurance and a conference report on a water resources bill. The publication adds that both chambers also may take up a “replacement measure” for lobbying and ethics reform bills passed earlier this year (S. 1, H.R. 2316).

The Senate will reconvene on Monday to take up the State Children’s Health Insurance Program (SCHIP) reauthorization. Senate Majority Leader Harry Reid (D-NV) said Tuesday that the Senate will not wrap up work this session until November 16, at the earliest, but that the chamber will take a week-long recess starting Oct. 8, Columbus Day. If Congress is unable to complete its work by mid-November, he said, the Senate would reconvene on December 3. He added that the Senate also would not be in session Sept. 13-14 for Rosh Hashanah.

BUDGET & APPROPRIATIONS

APPROPRIATIONS OVERVIEW  NEW

The House has approved 10 of 12 FY08 appropriations bills, with Agriculture and Defense slated for floor action next week.
The Senate yesterday approved the first of its FY08 appropriations bills, Homeland Security (S. 1644). Although the Military Construction-VA funding bill (S. 1645) may be debated on the floor next week, Senate leaders have indicated they do not expect to complete the bill until September. The Senate Appropriations Committee has marked up all of its FY08 appropriations bills except Defense. No date for markup of the Defense appropriations measure has been announced.

**HOUSE APPROVES FY08 COMMERCE-JUSTICE-SCIENCE BILL WITH $10 MILLION NSF CUT** *NEW*

The House on July 26 approved the FY08 Commerce-Justice-Science appropriations bill (H.R. 3093) by a vote of 281-142, just short of the two-thirds needed to overcome a potential presidential veto.

During consideration, Rep. Shelley Moore Capito (R-WV) offered an amendment to increase funding for the Office of Violence against Women Prevention and Prosecution Programs by $10 million, offset by a like reduction in operations and award management funding at the National Science Foundation (NSF). Although Commerce-Justice Science Subcommittee Chairman Alan Mollohan (D-WV) and Science Research and Education Subcommittee Chairman Brian Baird (D-WA) argued against reducing NSF’s management funding, the Capito amendment passed by a vote of 243-186.

Overall, the bill would provide $6.5 billion for the National Science Foundation (NSF), an increase of $80 million over the President’s request and $593 million over FY07 funding. Within that total, Research and Related Activities (R&RA) would receive $5.14 billion, an increase of $8 million over the request and $474 million above FY07 funding. The increase above the request is allocated to the Experimental Program to Stimulate Competitive Research program, which, as the Administration requested, would be moved from the education directorate to R&RA.

NSF’s Education and Human Resources directorate would receive $822.6 million, an increase of $72 million above the request and $122 million above FY07 funding. The Major Research Equipment and Facilities Construction account would receive the requested funding level of $244.7 million, an increase of nearly $11 million above FY07 funding.

NASA would receive $17.6 billion overall, or $290 million above the Administration’s FY08 request and $1.35 billion more than FY07 funding. Within that total, science would receive about $5.7 billion, or about $184 million above the FY08 request; aeronautics would receive $704 million, or $150 million above the request; and education programs would receive $223 million, or $70 million above the request.

President Bush has threatened to veto the measure because its funding level of $53.6 billion is $2.3 billion above the FY08 request. The Statement of Administration Policy (SAP) on the bill specifically opposes increases in NASA science, aeronautics, and education as unsustainable in the out years. The full SAP for H.R. 3093 is available at: [http://www.whitehouse.gov/omb/legislative/sap/110-1/hr3093sap-h.pdf](http://www.whitehouse.gov/omb/legislative/sap/110-1/hr3093sap-h.pdf).

**HOUSE DEFENSE SPENDING BILL WOULD CUT S&T FUNDING BELOW FY07 LEVELS AND CAP INDIRECT COSTS ON BASIC RESEARCH** *NEW*
The FY08 Defense appropriations bill approved July 25 by the House Appropriations Committee would provide $12.19 billion for science and technology (S&T) programs at the Department of Defense (DOD), a cut of $1.13 billion, or 8.5 percent, from the FY07 level. However, this funding level is $1.42 billion, or 13.2 percent, above the Administration’s request. As discussed below, the measure includes a provision to cap indirect cost reimbursements on basic research grants at 20 percent. 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.

For 6.1 basic research, the bill would provide $1.55 billion, a $10.3 million, or 0.66-percent cut, from the FY07 level of $1.56 billion, but a $125.2 million or 8.8-percent increase over the Administration's request of $1.43 billion. Applied research (6.2 programs) would receive $5.08 billion, a $248.3 million, or 4.7-percent cut, from the FY07 level of $5.33 billion, but a $724.3 million or 16.6-percent increase over the Administration's request of $4.99 billion. Advanced technology development (6.3 programs) would receive $5.56 billion, a $874.4 million, or 13.6-percent cut, from the FY07 level of $6.43 billion, but a $571.1 million or 11.5-percent increase over the Administration's request of $5.18 billion.

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

- Army 6.1: $354.0 million, a $11.9 million or 3.3-percent cut from FY07;
- Army 6.2: $1.11 billion, an $89.6 million or 7.4-percent cut from FY07;
- Navy 6.1: $489.8 million, a $2 million or 0.4-percent cut from FY07;
- Navy 6.2: $751.6 million, a $34.3 million or 4.4-percent cut from FY07;
- Air Force 6.1: $382.7 million, a $25.9 million or 6.3-percent cut from FY07;
- Air Force 6.2: $1.13 billion, a $30.9 million or 2.7-percent cut from FY07;
- Defense-wide 6.1: $326.9 million, a $29.4 million or 9.9-percent increase over FY07; and
- Defense-wide 6.2: $2.09 billion, a $93.5 million or 4.3-percent cut from FY07.

The bill also would fund the National Defense Education Program/SMART Program at the Administration's requested level of $44.4 million, an increase of $10 million above the FY07 level of $19.4 million.

A further breakout of the appropriations levels for research accounts of interest to research universities, including the University Research Initiative accounts, is available on the AAU Web site at: [http://www.aau.edu/budget/08DODTable.pdf](http://www.aau.edu/budget/08DODTable.pdf).

Overall, the committee approved $76.23 billion for Research, Development, Test and Evaluation (RDT&E). This is an increase of $274.6 million above the FY07 level and $1.11 billion above the Administration’s FY08 request.


--Bill Would Cap Indirect Cost Rates on Defense Basic Research.

The committee-approved FY08 Defense funding bill includes a provision that would sharply limit negotiated rates of reimbursement for indirect costs for Defense 6.1 basic research. Under this provision, DOD could pay no more than 20 percent of the total direct cost of a grant, contract, or other agreement for indirect costs.
If enacted, this limitation would make it far more costly for universities to conduct DOD basic research, and could prompt some universities to drop their participation in defense basic research programs. The language of the provision is as follows:

“Sec. 8105 -- Notwithstanding any other provision of law, none of the funds made available in this Act may be used to pay negotiated indirect cost rates on a contract, grant, or cooperative agreement (or similar arrangement) entered into by the Department of Defense and an entity in excess of 20 percent of the total direct cost of the contract, grant, or agreement (or similar arrangement) if the purpose of such contract, grant, or agreement (or similar arrangement) is to carry out a program or programs of mutual interest between the two parties: Provided, That this limitation shall apply only to funds made available in this Act for basic research.”

From Page 7 of the Committee Report:

“Basic Research: In testimony received by the Committee, and through information provided by the Department and third-party groups, the Committee learned that the percent of basic research funding allocated to Department and research organizations’ overhead costs has grown to unwarranted levels. To reverse this trend and ensure that the Department's basic research dollars are being used for the purposes intended by Congress, the Committee recommends a general provision limiting the percentage of overhead costs that can be covered in basic research contracts.”

From Page 416 of the Committee Report:

“Section 8105 provides limitations on the use of funds made available in this Act to pay negotiated indirect cost rates on agreements or arrangements between the Department of Defense and certain entities conducting basic research.”

OTHER CONGRESSIONAL DEVELOPMENTS

SENATE PASSES HEA REAUTHORIZATION BILL UNANIMOUSLY

The Senate on July 24 overwhelmingly approved its Higher Education Act (HEA) reauthorization bill (S. 1642) by a vote of 95-0. AAU joined other higher education associations that day in sending a letter to the Senate endorsing the measure before consideration. The associations’ letter is available at: http://www.acenet.edu/AM/Template.cfm?Section=LettersGovt&CONTENTID=23030&TEMP LATE=/CM/ContentDisplay.cfm.


A companion measure has not yet been introduced in the House. The House Education and Labor Committee is expected to consider a reauthorization bill this fall.

Senate Approves Modified Coburn Amendment
During debate on the bill, Senator Tom Coburn (R-OK) offered an amendment that would have required institutions to demonstrate and certify annually to the Secretary of Education that no student tuition funds or funds received from a federal grant, loan, or contract "were used to hire a registered lobbyist or to pay any person or entity for influencing or attempting to influence" Congress or an agency of the federal government "in connection with any federal action." The higher education community strongly opposed the amendment for a number of reasons, including that 1) its far-reaching language would make it illegal for faculty members to testify before Congress; 2) existing federal laws and regulations already make clear that institutions may not use federal funds for lobbying of any sort; and 3) the provision would stifle free speech of college and university personnel.

To address these issues, Senator Kennedy worked with Senator Coburn to modify his amendment. The resulting Coburn-Kennedy amendment was then approved this morning by a vote of 93-0.

The modified Coburn amendment would prohibit colleges and universities from using federal funds to pay any person to lobby a federal agency or Congress for federal contracts, grants, loans, cooperative agreements, or any extension of the aforementioned. It also would prohibit colleges and universities from using federal student aid funding to hire a registered lobbyist or any person or entity to secure a federal earmark.

**Other Amendments of Concern Not Considered**

Three other amendments of major concern to AAU and the higher education community were not brought to a vote.

Majority Leader Harry Reid (D-NV) offered and then withdrew an amendment that would have expanded the Secretary of Education’s role in policing illegal peer-to-peer (P2P) file sharing on campus. Instead of this amendment, Chairman Kennedy and HELP Committee Ranking Member Michael Enzi (R-WY) agreed to include language in the manager's amendment to strengthen campus P2P disclosure requirements in the underlying bill. As passed by the Senate, S. 1642 would require institutions to inform their students that illegal file sharing may be subject to civil or criminal penalties under federal copyright law, as well as provide them with information on the institution’s own policies and penalties for illegal file sharing. The measure does NOT require reporting to the Secretary of Education.

Regarding the two other amendments of concern, Senator Richard Durbin (D-IL) decided not to offer his textbook affordability amendment (S. 945), and Senator Judd Gregg (R-NH) did not offer his amendment to create new reporting requirements on tuition increases, which was based on the faulty assumption that tuition increases are linked to increases in the Pell Grant maximum award.

**Outcome on Other Amendments**

The Senate adopted the following amendments by voice vote yesterday, July 23:

- an amendment by Byron Dorgan (D-ND) to establish a student loan clearinghouse on federal and private loans;
- an amendment by Jim DeMint (R-SC) to authorize a Government Accountability Office (GAO) study on workforce issues;
- an amendment by Barbara Boxer (D-CA) on the Upward Bound program;
• an amendment by John Warner (R-VA) on an advanced technology program for minority-serving institutions;
• an amendment by Daniel Akaka (D-HI) on eligibility of Native Hawaiians and Pacific Islanders for the Ronald McNair Program;
• an amendment by Jeff Session (R-AL) on the use of federal student aid funding at foreign medical schools;
• an amendment by Richard Burr (R-NC) to authorize a study on simplification of the Free Application for Federal Student Aid (FAFSA);
• an amendment by Senator Burr on Title II teacher education programs; and
• an amendment by Senator Durbin to make public prosecutors and defenders, as well as other civil attorneys, eligible for federal student loan forgiveness; this amendment was modified by a second degree amendment by Tom Harkin (D-IA).

An amendment offered by Senator Sherrod Brown (D-OH) to create a new federal loan program as an alternative to private education loans was defeated by a vote of 38-53.

Manager's Amendment: Accreditation and Transfer of Credit Provisions

The manager's amendment adopted during consideration of S. 1642 addressed AAU's serious concerns about accreditation provisions in the bill and further refined the transfer of credit language.

Among other provisions, the Senate-passed bill (as modified by the manager's amendment) would require institutions to disclose: 1) "the retention rate of certificate- or degree-seeking, full-time, undergraduate students" and the transfer of credit policies "established by the institution"; 2) "any established criteria the institution uses regarding the transfer of credit"; and 3) a list of institutions with which an institution has established an articulation agreement. The Senate-passed bill no longer specifies that accreditors base standards for student achievement on "empirical evidence and external criteria," "enrollment in graduate and professional programs," or "other student performance information." Instead, the Senate-passed bill, as modified by the manager's amendment, requires accreditors to have standards for accreditation that assess the institution's:

"success with respect to student achievement in relation to the institution's mission, which may include different standards for different institutions or programs, as established by the institution, including, as appropriate, consideration of State licensing examinations and job placement rates;"

This language is similar to current law. Moreover, the bill would prohibit the Secretary of Education from issuing regulations on this specific part of the statute.

CONGRESS EXTENDS HEA THROUGH OCTOBER 31  UPDATED

Congress has now passed and cleared for the President’s signature a three-month extension of programs funded under the Higher Education Act (HEA). The Senate approved the bill (S. 1868) July 24 by unanimous consent following passage of the HEA reauthorization bill. The House approved the extension by voice vote July 25.  S. 1868 will extend authorization of HEA programs through October 31.
The House Homeland Security Subcommittee on Transportation Security and Infrastructure Protection held a hearing July 24 on how new regulations on chemical inventory and security promulgated by the Department of Homeland Security (DHS) would affect the public and private sectors. A university witness noted that DHS is establishing a higher education working group to help address university concerns.

Dr. Ara Tahmassian, Associate Vice President for Research Compliance at Boston University, testified at the hearing on behalf of several higher education associations, including AAU. While emphasizing universities’ commitment to the safe conduct of research, Dr. Tahmassian expressed the higher education community’s concerns about the new regulations, including the proposed 60-day time frame for conducting a campus-wide inventory of chemicals.

Dr. Tahmassian stressed that DHS officials have been responsive to the issues raised by the university community. He noted that the agency will establish a working group of experts from the higher education community, including AAU, to “consider rational and efficient strategies for inventorying and securing chemicals on campuses, consistent with the intent of the new standards. The consultation should result in a better rule, greater compliance, and less unintended disruption to teaching and research.”

Subcommittee Chair Sheila Jackson Lee (D-TX) said that because universities are vulnerable to the same terrorist actions and threats as the chemical industry, they should not expect to be exempt from the chemical rules. Dr. Tahmassian reiterated that universities are not seeking an exemption from the chemical regulations and are working with DHS officials to tailor their implementation at universities in a manner that better addresses those institutions’ unique characteristics.


Rep. Lee also asked about the use of background checks on campus. Dr. Tahmassian said there are certain positions for which universities already conduct background checks, such as individuals dealing with financial matters.

ADDITIONAL BACKGROUND

When the Department of Homeland Security issued an interim final rule earlier this year requiring organizations to identify certain chemicals at facilities that could be used in terrorist activities, AAU, the American Council on Education, and other associations expressed concern that the inventory requirements would prove onerous and unworkable for colleges and universities. (See associations’ letter at: http://www.aau.edu/homeland/ACE_DHS_ChemAgts_5-9-07.pdf.)

Although the rule is final, organizations are not required to inventory their chemicals until the final list of covered chemicals and their threshold reporting amounts is published—some time in the next month or so—as an appendix to the rule.
At a meeting in late June with higher education representatives, Lawrence Stanton, acting director of the DHS chemical security compliance division, said he expected that changes to be made in the list of chemicals and reporting thresholds should help reduce some of the burden on universities.

During a conference call last week, DHS officials and staff from AAU and other higher education associations discussed a process for moving forward to determine a reasonable approach and timeframe for campus compliance. DHS officials again expressed their intention to delay implementation of the rules for universities. The specifics of how and when the university community will be formally notified of this delay are under discussion.

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