CONGRESSIONAL SCHEDULE  NEW

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BUDGET & APPROPRIATIONS

PRESIDENT SIGNS COLLEGE COST REDUCTION AND ACCESS ACT OF 2007

President Bush yesterday signed the College Cost Reduction and Access Act of 2007 (P.L. 110-84), the FY08 budget reconciliation bill that cuts $22.3 billion from federal student lender subsidies over five years and devotes most of the savings to increased student financial aid benefits.
In a lengthy signing statement, the President said, “I have the honor of signing a bill that will help millions of low-income Americans earn a college degree.” He added that he still hopes to work with Congress to make the Pell Grant available year-round, and he expressed concern that the bill would create “new and duplicative programs that divert resources from the Pell Grants.” The President’s full signing statement is available on the White House Web site at: http://www.whitehouse.gov/news/releases/2007/09/print/20070927-3.html.

The measure provides $11.7 billion in additional funds over five years to increase the Pell Grant maximum award from the current $4,310 to $5,400 by academic year 2012-2013. The new law also cuts the Stafford Loan interest rate in phases from the current 6.8 percent to 3.4 percent in 2011, and it provides for income-based student loan repayment.


**CONGRESS CLEARS CONTINUING RESOLUTION THROUGH NOVEMBER 16**

The Senate last night approved a continuing resolution (CR) to sustain funding for federal programs at their current FY07 levels until November 16. The House had approved the legislation on September 26.

The CR is necessary because Congress has not passed any of the 12 FY08 appropriations bills, and funding is needed to support programs beyond FY07, which ends September 30. The CR also includes short-term authorizations for some agencies and programs for which reauthorization measures have not yet been enacted. These include the State Children’s Health Insurance Program and taxes and fees to support the Federal Aviation Administration.

According to CQToday, Senate Majority Leader Harry Reid (D-NV) said yesterday that Democratic leaders hope to send three FY08 appropriations bills to the President within a few weeks “to see what he does with them.” Senator Reid did not specify which three bills might be sent to President Bush, and House leaders would not confirm that they agreed with this strategy. President Bush has threatened to veto several FY08 appropriations bill because total funding in the bills exceeds his request by about $23 billion.

The House has passed all 12 FY08 appropriations bills; the Senate has passed four bills and may approve two more next week and another the week of October 15 (see next item). None of the bills has been considered in a House-Senate conference and sent to the President.

**FY08 LABOR-HHS-EDUCATION FUNDING BILL TO SENATE FLOOR WEEK OF OCTOBER 15**

Senate leaders plan to take the FY08 Labor-HHS-Education appropriations bill (S. 1710, S. Rpt. 110-91) to the Senate floor during the week of October 15.

The bill contains about $2 billion less than the House-passed bill. Provisions of particular interest to research universities would: expand federal funding of embryonic stem cell research, require researchers funded by the National Institutes of Health (NIH) to publish research findings
on the NIH Web-based PubMed Central, and block the Department of Education from promulgating regulations regarding accreditation before Congress has a chance to act on the issue. Details of the bill are below.

**Funding.** Total funding in the bill is $152 billion, which is about $2 billion below the House total and $9 billion above the President’s FY08 request.

For NIH, the bill would provide $29.9 billion, which is about $250 million above the House-approved level and $1.2 billion more than the President’s FY08 request.

Unlike the House-passed measure, the Senate bill does not include funding to increase the Pell Grant maximum award. (The just-enacted FY08 budget reconciliation bill provides mandatory funding to increase the Pell Grant maximum over the next five years.) All other student aid programs would be funded at their FY07 levels, except for the TRIO and GEAR UP programs, which would receive increases of $30 million and $10 million, respectively. For additional details, see AAU chart of FY08 appropriations priorities at: http://www.aau.edu/budget/08_AAU_Priorities_Pkg.pdf.

**Stem Cells.** The stem cell provision in the Senate bill would move to June 15, 2007 the threshold date of the executive order issued by President Bush in 2001 that restricts federal funding of embryonic stem cell research to cell lines derived before August 9, 2001. The provision was added to the bill following President Bush’s June 20 veto of stem cell legislation (S.5) that would have allowed the research use of human stem cell colonies, or lines, derived from leftover embryos from fertility clinics. The appropriations provision contains ethical guidelines that are the same as those in S. 5.

**PubMed Central.** The bill includes a provision identical to one in the House bill that would require scientific articles based on research funded by NIH to be freely available to the public on NIH’s PubMed Central within 12 months of publication. AAU sent a letter to House Appropriations Committee Chairman David Obey (D-WI) on July 17 endorsing the provision. The letter is available at: http://www.aau.edu/budget/Ltr_PubMed_Central_2007-07-17.pdf.

**Accreditation.** The bill contains language similar to that in the House bill which would block the Secretary of Education from promulgating new regulations regarding accreditation before Congress has a chance to act on the issue. Education Secretary Margaret Spellings sent a letter to members of the Senate Health, Education, Labor and Pensions Committee on June 20 stating that her department would not propose regulations on accreditation at this time.


**OTHER CONGRESSIONAL DEVELOPMENTS**

**SENATE FINANCE COMMITTEE POSTS INFORMATION ON SEPTEMBER 26 HEARING ON OFFSHORE HEDGE FUNDS AND UNIVERSITY ENDOWMENTS**

The Senate Finance Committee has posted on its Web site opening remarks and written statements of witnesses from its September 26 hearing on offshore investment tax issues, including discussion of the investment policies and practices of large university endowments. The material is available at: http://finance.senate.gov/sitepages/hearing092607.htm.
ASSOCIATIONS SEEK ADDITIONAL CHANGES IN SENATE PATENT REFORM BILL

Now that the House has approved its version of patent reform legislation (H.R. 1908), leaders of the Senate Judiciary Committee are working to resolve concerns within the patent community about their committee-passed bill (S. 1145) before taking the measure to the Senate floor.

Committee Chairman Patrick Leahy (D-VT) and Senator Orrin Hatch (R-UT) on September 24 convened representatives of the major patent sectors, including the university community, to discuss areas of continuing concern. Judiciary Committee staff has asked groups seeking changes to provide specific legislative language. After considering and acting on the submissions, staff is expected to reconvene the patent groups to seek resolution of remaining issues. Committee staff expects S. 1145 to go to the floor at the end of October or early November.

In May, the five higher education associations working together on patent reform—AAU, the Association of American Medical Colleges, the American Council on Education, the Council on Governmental Relations, and the National Association of State Universities and Land-Grant Colleges—analyzed the House and Senate bills and identified several issues of concern. (See the associations’ May statement at: http://www.aau.edu/intellect/STMT_ASSN_HR1908_51607.pdf.)

The associations’ analysis of the two bills in early September, however, noted that most of the higher education community’s concerns had been addressed. Still remaining were the issues of 1) expansion of prior-user rights as a defense to infringement, and 2) apportionment of damages. Prior-user rights were an issue only in the House bill, since the expansion of prior-user rights had been eliminated in the Senate bill during Judiciary Committee markup. The House amended H.R. 1908 when it passed the bill on September 7 to eliminate the expansion of prior user rights.

As a result of the House action, the most contentious area of concern for many sectors of the patent community—and the primary area of focus for the higher education associations—remains the determination of damages in patent infringement cases.

In addition to the determination of damages, however, the associations have raised two other issues: 1) the need to improve the Senate bill’s post-grant review “second window,” and 2) a requirement that patent applicants conduct prior art searches, which was added after the bills were introduced.

Provisions in the two bills requiring prior art searches—referred to as “Applicant Quality Submissions” in S. 1145—appear to have been added when the broad rulemaking authority for the U.S. Patent and Trademark Office in the original bills was eliminated (Senate bill) or substantially scaled back (House bill). Virtually all sectors of the patent community are concerned that these provisions would add significantly to the burden and expense of the patent application process and potentially expose applicants to charges of inequitable conduct or failure to meet their duty of candor.
The associations believe that the bill as reported by the Judiciary Committee is a significant improvement over the measure as introduced, but that it is not ready for floor consideration.

The associations are seeking the following modifications to S. 1145:

- To change the language on damages. This would include clarifying that 1) the determination of damages is based on an economic rather than technical analysis and that 2) the determination is based on economic value at the time of infringement rather than at the time of the patent application.

- To replace the post-grant review second window of S. 1145, preferably with either the enhanced inter-parties reexamination procedure of H.R. 1908, or with a narrowing of the scope of the second window provision in S. 1145 from any issue of patentability to considerations of prior art only. (The broad second window provision in the current Senate bill would allow for the complex and costly processes of discovery, which should be reserved for court proceedings.)

- Eliminate or sharply narrow and shield from charges of liability the prior art searches required in the new Applicant Quality Submissions provisions.

Although the associations believe that S. 1145 in its current form should not be brought to the floor for consideration, the bill contains a number of provisions that will benefit universities and improve the patent system overall. Processes underway hold promise for resolving the concerns noted above, paving the way for university support of S. 1145.

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