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CONGRESSIONAL SCHEDULE  NEW

The House was not in session today; the Senate was in session with no votes.

The Senate next week will spend much of its time on the farm bill (H.R. 2419), but it also is expected to consider the conference report on the combined Labor-HHS-Education and Military Construction-Veterans Affairs appropriations bills (see item below).

Senate Majority Leader Harry Reid (D-NV) said today that the Senate might be in session next weekend and on Veterans’ Day to work on the appropriations bills, veto overrides, and other high-profile matters, according to CongressDaily.

The House next week also is expected to consider the appropriations conference report, the tax extender bill (H.R. 3996) (discussed below), a free trade agreement with Peru (H.R. 3688), and a measure to bolster state homeowner insurance funds (H.R. 3355).

Both chambers also are expected to override the President’s veto of a water resources bill (H.R. 1495).
House and Senate negotiators on November 1 agreed on a conference report on the FY08 Labor-HHS-Education appropriations bill (H.R. 3043) which provides an increase for the National Institutes of Health (NIH) above the House and Senate levels as well as an increase in the Pell Grant maximum award. Democratic leaders then added the FY08 Military Construction-Veterans Affairs funding bill (H.R. 2642) to the conference report, creating a two-bill package. An earlier plan to include the Defense bill (H.R. 3222) in the package was dropped, and the Defense bill will move separately.

The two-bill conference report is expected to be filed on Monday, November 5, with the House likely to take it up on Wednesday, November 7, and the Senate likely to follow soon after.

President Bush is expected to veto the package because the Labor-HHS-Education funding total in the conference report, $6.2 billion higher than the FY07 level, is $9.8 billion more than he requested. CongressDaily reports, however, that the bill may not make it out of the Senate. Senator Kay Bailey Hutchison (R-TX) said that Republicans plan to raise a point of order against the combined bill on the basis that adding the Military Construction-VA bill to the Labor-HHS-Education conference report violates the Senate rule against adding provisions in conference that were not in either of the original House- or Senate-passed bills.

--Provisions in the Labor-HHS-Education Conference Report--UPDATED

The conference report would provide $30 billion for the National Institutes of Health (NIH), which is higher than either the House or Senate numbers ($29.7 billion and $29.9 billion respectively) and about $1.1 billion above the FY07 level of $28.9 billion. The measure retains a provision in both the House and Senate bills 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 has endorsed the provision. The AAU letter to House Appropriations Committee Chairman David Obey (D-WI) on this subject is available at: http://www.aau.edu/budget/Ltr_PubMed_Central_2007-07-17.pdf.

Following are some highlights of funding for higher education programs (note that the figures for TRIO and International Education and Foreign Languages have been updated since yesterday’s CFR Update #91):

- The Pell Grant maximum award would be raised to $4,925 by adding $125 in discretionary funding on top of the $490 in mandatory funding added by the College Cost Reduction Act. Taken together, the Pell Grant maximum award would increase in FY08 by $615 over the current maximum award of $4,310.
- The Pell Grant program, as a whole, would be funded at $14.5 billion in discretionary funds, the same as the Senate-approved level. The total is $838 million, or 6.1 percent, above the FY07 level. The House proposed $15.58 billion.
- Unobligated funds within the ACG and SMART grant programs would be made available for Pell Grants in the 2008-2009 award year.
The TRIO program would be funded at $858.18 million, an increase of $30 million (3.6 percent) above the FY07 level. This is the same as the Senate-proposed level; the House proposed $868.18 million.

The GEAR UP program would be funded at $318.42 million, an increase of $20 million (6.6 percent) above the FY07 level. This is a split between the House-proposed level of $323.42 million and the Senate level of $313.42 million.

Campus-based programs would be level-funded, rejecting cuts proposed in the Administration’s FY08 budget.

Student aid, as a whole, would be funded at $16.38 billion, an increase of $838 million above FY07. The House proposed $17.46 billion and the Senate proposed $16.37 billion.

International Education and Foreign Languages programs would be funded at $110.7, which is a split between the House and Senate levels and an increase of $4.9 million above FY07.

The conference report did NOT include the $3.2 million proposed in the House bill to increase the number of academic year and summer foreign language fellowships for International Education and Foreign Language Domestic programs.

Also not included in the conference report was the House provision to establish a coordinating group on international education and foreign language studies.

As reported October 31, a coalition of health, education, and labor organizations and institutions, including AAU, will send all Members of Congress a joint letter on Monday urging them to approve the conference report.

DEFENSE APPROPRIATIONS CONFERENCE DELAYED

*CQToday* reports that the formal conference report on the FY08 Defense appropriations bill (H.R. 3222) has been delayed until next week, with House Defense Appropriations Subcommittee Chairman John Murtha (D-PA) saying he hopes to send the measure to the President before the Thanksgiving recess. Universities continue to urge members of the conference committee not to include a cap on indirect cost rates for Defense basic research as was included in the House version of the measure.

MEMBERS OF CONGRESS URGE ROBUST DEFENSE S&T FUNDING IN FY09

A bipartisan group of six Members of Congress on October 30 sent a letter to Secretary of Defense Robert M. Gates asking that the Department provide significant funding increases for Defense science and technology (S&T) programs, particularly basic research, in the FY09 budget request.

The letter discusses the underfunding of Defense S&T in recent years and highlights its importance to national defense and economic development, as well as its critical role in training the next generation of scientists and engineers. The congressional letter specifically references an internal Defense Department memorandum, dated August 24, by John Young, Director of Defense Research and Engineering, that calls for expanding Defense S&T funding by $10 billion over five years to “keep pace with emerging threats.” The letter asks Secretary Gates to “give serious consideration” to Dr. Young’s recommendations.

OTHER CONGRESSIONAL DEVELOPMENTS

HOUSE COMMITTEE MARKS UP TAX EXTENDER BILL WITH EDUCATION PROVISIONS  NEW

The House Ways and Means Committee approved a tax extender bill November 1 that includes two education provisions requested by the higher education community. The $80 billion measure (H.R. 3996), which focuses on preventing expansion of the alternative minimum tax to more taxpayers, would extend several expiring tax provisions, including the above-the-line deduction for qualified tuition and related expenses and the Individual Retirement Account (IRA) charitable rollover. The measure also would extend the R&D tax credit.

*CongressDaily* reports that the extensions would be offset by new tax provisions for private equity executives, venture capitalists, multinational corporations, and hedge fund managers. The measure faces an uncertain future in the Senate, says *CQToday*, because members are less eager to “find costly offsets.”

On October 29, a group of higher education associations, including AAU, sent a letter to House Ways and Means Committee Chairman Charles Rangel (D-NY) urging him to add the two expiring education tax credits to the tax extender package.

The associations’ letter is available on the ACE Web site at: http://www.acenet.edu/AM/Template.cfm?Section=LettersGovt&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=24250

HOUSE EDUCATION AND LABOR PANEL MAY HOLD HEA MARKUP NEXT WEEK  UPDATED

The House Education and Labor Committee hopes to mark up its version of the Higher Education Act (HEA) reauthorization bill in subcommittee next week. The date is not confirmed, but the committee reportedly is working hard to meet that schedule.

HIGHER EDUCATION ASSOCIATIONS REQUEST DISASTER LOAN PROGRAM IN HEA RENEWAL

A group of 14 higher education associations, including AAU, on October 30 wrote to the leadership of the House Education and Labor Committee asking them to include in their reauthorization of the Higher Education Act (HEA) a disaster loan program to help colleges and universities recover from man-made and natural disasters such as Hurricane Katrina.

The proposal would allow eligible institutions to receive low-interest loans in the immediate aftermath of a disaster to “support reimbursement for lost tuition and other revenues; faculty salaries and incentives for retaining faculty; and construction costs for replacement or renovation associated with the disaster.” The loans, which would be repaid over 30 years, would
supplement, not replace, assistance from the Federal Emergency Management Agency (FEMA) and insurance reimbursement. The letter notes that it took more than a year after Katrina for universities in the Gulf Coast region to receive aid from FEMA and insurance carriers.


SENATE JUDICIARY COMMITTEE HOLDS HEARING ON BAYH-DOLE ACT

The Senate Judiciary Committee held a hearing October 24 to examine the successes and shortcomings of the Bayh-Dole Act, the law that allows universities and other nonprofit organizations to retain title to inventions developed with federal funds. The focus of the hearing was on provisions that govern patent royalties earned by universities’ government-owned, contractor-operated facilities (GOs), such as the Ames Laboratory at Iowa State University (ISU). Senators attending the hearing were Chairman Patrick Leahy (D-VT) and Ranking Member Charles Grassley (R-IA).

Iowa State University (ISU) Provost Elizabeth Hoffman told the Senators that the ISU-operated Ames Laboratory had to pay back nearly $1 million to the Department of Energy in FY06 because a Bayh-Dole provision limits earnings from royalties on federal licenses retained by GOCO laboratories to five percent of their annual budgets. Dr. Hoffman asked that Congress raise the threshold in order to fix the “inequitable impact on a single, small, and successful national laboratory.”

Dr. Charles Louis, Vice Chancellor for Research at the University of California, Riverside, spoke more broadly about the success of the Bayh-Dole Act in making new technologies available to the public. “Laws like Bayh-Dole…encourage industrial partners… [to] commit to moving laboratory-based discovery through the…often risky development and commercialization process,” he said. He expressed appreciation for the Senate’s commitment to the system and urged the Senators not to change the Bayh-Dole Act in ways that could threaten the strength, reliability, and predictability of the current patent system.

Other panelists raised concerns about Bayh-Dole. Robert Weissman, director of Essential Action, a nonprofit organization that focuses on pharmaceutical access, said Bayh-Dole has distorted and concentrated markets, resulting in excessive drug prices. He recommended in written testimony that the federal government more actively assert its ownership rights in government-funded inventions and that reporting mechanisms be strengthened and made more transparent. Duke University law professor Arti Rai said that major reform of Bayh-Dole was not needed, but he suggested that the standard of “exceptional circumstances” under which a federal agency may declare that patenting is the wrong approach to commercialization in a particular instance might be too high.

Senator Leahy’s opening statement and written testimony of the four witnesses are available on the Senate Judiciary Committee Web site at: http://judiciary.senate.gov/hearing.cfm?id=2998.

EXECUTIVE BRANCH

DEPARTMENT OF EDUCATION ISSUES FINAL REGULATIONS ON STUDENT LOANS
The Department of Education has issued final rules for student loan programs that are intended to strengthen and improve their regulation, including providing greater “sunshine” on loan arrangements between lenders and institutions. The regulations, which cover the Perkins Loan Program, the Federal Family Education Loan Program (FFEL), and the William D. Ford Direct Loan Program, reflect changes in law prompted by the 2006 reconciliation act and the negotiated rulemaking process that occurred earlier this year. The regulations note that there are no significant differences between the Notice of Proposed Rulemaking and these final regulations. The regulations take effect July 1, 2008, but the Department is encouraging the voluntary implementation of many of the provisions before the effective date.

The regulations can be viewed at:
http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/07-5332.htm.

DHS RELEASES LIST OF DANGEROUS CHEMICALS FOR TRACKING NEW

The Department of Homeland Security (DHS) today released a pre-publication, revised list of chemicals that institutions must inventory and report on because of their potential for misuse and criminal activity. As expected, the revised “Appendix A” of the Chemical Facility Anti-Terrorism Standards lists fewer chemicals than initially proposed and includes specific threshold amounts for the chemicals listed.

A press release and the revised Appendix A can be viewed on the DHS Web site at: http://www.dhs.gov/xnews/releases/pr_1193971111885.shtm. Appendix A will not become legally effective until it is published in the Federal Register on November 16. AAU and other associations plan to issue a statement on the revised Appendix A on Monday, November 5.

Background:

When DHS published its proposed regulations on April 9, colleges and universities were concerned about the onerous burden imposed by their requirement that institutions conduct a detailed inventory of some 342 chemicals on campus, called a “top screen,” across each institution’s hundreds, if not thousands, of laboratories and classrooms. A group of higher education associations, including AAU, detailed these concerns in a comment letter sent to DHS on May 9. The letter can be viewed at: http://www.aau.edu/homeland/ACE_DHS_ChemAgts_5-9-07.pdf.

In subsequent discussions, agency officials would not agree to exempt higher education institutions from the requirements but did agree to consider providing colleges and universities with additional time to comply and to look for ways to make the rules more manageable, while still providing for the security of dangerous chemicals.

According to the DHS press release about today’s release of the revised Appendix A, “facilities that possess chemicals of interest at or above the listed screening threshold quantities are required to complete the Top-Screen within 60 calendar days of the publication of Appendix A.” As a result, facilities will have 60 calendar days from the date of publication of the final rule in the Federal Register to conduct their inventory of chemicals and complete the online Top-Screen assessment. DHS will allow universities that need more than 60 days to request an extension of up to 60 additional calendar days to submit this information. AAU will post a template for
requesting such extensions on its Web site when Appendix A is published in the *Federal Register*.

Additional guidance for campuses is being developed by a group of associations that includes AAU, the American Council on Education, the National Association of State Universities and Land-Grant Colleges, the Council on Governmental Relations, the National Association of College and University Business Officers, and the Campus Safety, Health and Environmental Management Association. This guidance will include information on how best to complete the top screens required by the new regulations and how to develop an appropriate chemical security plan in those instances where, based upon the top screens, such plans will be required. This information also will be posted on the AAU Web site.

**OTHER**

**AAU AND COGR COMMENT ON COMMERCE CONTROL LIST**  *NEW*

AAU and the Council on Governmental Relations (COGR) on November 1 submitted comments to the Department of Commerce in response to the agency’s systematic review of the Commerce Control List (CCL), which is the listing of technologies subject to the export licensing authority of the Department’s Bureau of Industry and Security (BIS).

The letter suggests that the list of controlled technologies be simplified, shortened, and focused on cutting-edge technologies where the U.S. is a clear leader and which have a real bearing on national security. Among its eight major recommendations, the letter suggests that the controlled list be updated regularly so that technologies that have become widely available or were developed overseas can be dropped, and that protection of commercial proprietary information not be a factor in whether technologies are added to or excluded from the list.

The AAU-COGR letter is available at:  [http://www.aau.edu/research/Ltr_AAU-COGR_CCL_11-1-07.pdf](http://www.aau.edu/research/Ltr_AAU-COGR_CCL_11-1-07.pdf)

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