AAU Analysis of the FY22 Reconciliation Legislation

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OVERVIEW: The FY22 budget resolution passed by the House and Senate included instructions for congressional committees to craft sections of a $3.5 trillion budget reconciliation measure based on President Biden's Build Back Better agenda and the American Families Plan and American Jobs Plan he released earlier this year to effectuate that agenda. Several House committees are now considering elements of the reconciliation package and will continue consideration in the days ahead. House committees have been instructed to complete the markup process by Wednesday, September 15, but this is a non-binding deadline that is expected to slip. The Budget Committee has not yet announced when it will meet to package all of the other committees' legislation into a single measure to be considered on the floor. House Speaker Nancy Pelosi (D-CA) plans to bring the complete legislative package to the House floor by September 27 at the same time as the Senate-passed bipartisan infrastructure bill.

The following is an analysis of the budget reconciliation provisions affecting research and higher education. This document will continue to be updated as the legislation moves forward.

STUDENT AID AND HIGHER EDUCATION

The House Education and Labor Committee released its $761 billion budget reconciliation bill text and summary on Wednesday, September 8 and began marking it up on September 9. The bill passed with a 28-22 vote on September 10. Current plans would provide $111 billion in new funds for higher education, $450 billion toward lowering the cost of childcare/securing universal pre-K and $82 billion toward infrastructure investments for the nation's K-12 public schools. Please see AAU's table analyzing the FY22 Education and Labor reconciliation committee print.

The bill includes the following student aid and higher education provisions:

- **Pell Grant:** $500 increase to the maximum Pell award each year through award year 2029-2030. The House-passed FY22 appropriations bill raises the maximum Pell grant by $400, which in combination with this bill would result in a $900 increase for FY22.

- **Grants for Tuition-Free Community College:** For five years starting in award year 2023-24, provide two years of tuition-free community college for eligible students. The program creates a new federal-state partnership in which the federal government provides matching funds to states to achieve two years of tuition-free community or career and technical college.

- **Retention and Completion Grants:** $9 billion, beginning in award year 2023-24, in FY22 to make competitive grants to states that can be used to improve retention, transfer, and completion rates among students of color, low-income students, students with disabilities, first generation students, and other underserved student populations. State eligibility would be limited to those participating in the federal-state partnership to provide free community college or career and technical college.

- **Investments in HBCUs, TCUs, and MSIs:** $2 billion to support R&D infrastructure for HBCUs, TCUs, HSIs, and other MSIs. Priority would be given to institutions that receive less than $10 million in federal research funds. Institutions may use funds for deferred maintenance, building new physical facilities, including instructional program spaces, laboratories, or research facilities, hiring or retaining faculty, providing student fellowships and internships, and more. The bill also provides significant tuition and fee grants for two years at eligible HBCUs, TCUs, and MSIs, and provides additional funding over the next ten years for programs within Title III of the Higher Education Act: Title III, Part F Hispanic Serving-Institutions Science, Technology, Engineering, and Math and Articulation Program; Tribally Controlled Colleges & Universities; and Native American-Serving Nontribal Institutions.

- **Active-Duty Deferment Periods Counted Toward PSLF**: Provides for Public Service Loan Forgiveness for some military service members and allows servicemembers on active duty to count any deferment periods while on active duty toward the 120 eligible payments required to qualify for PSLF.

- **Federal Student Aid Eligibility:** Amends the Higher Education Act to provide eligibility for students with a grant of deferred enforced departure, DACA, or temporary protected status under section 244 of the Immigration and Nationality Act for Title IV federal student aid through the 2029-2030 award year.

RESEARCH AND DEVELOPMENT

The House Science, Space, and Technology Committee released its bill text along with an amendment in the nature of a substitute on September 8 and completed its markup on September 9. The bill passed on a 21-17 vote. The committee's bill outlines $45.5 billion in new spending over the next decade. For a detailed breakdown of funding levels, please see AAU's table analyzing the FY22 HSST reconciliation committee print.
The bill as approved by the Committee includes the following research funding provisions:

- **Department of Energy (DOE):** $12.8 billion for Office of Science laboratory construction, facilities, and infrastructure as well as research-and-development efforts, with a total of $15.6 billion provided to DOE.

- **National Aeronautics and Space Administration (NASA):** The bill would provide $4.4 billion to NASA, with most of it dedicated to repair and modernization of the agency's physical infrastructure and facilities.

- **National Science Foundation (NSF)**: $7.6 billion in funding for new or existing research grants, scholarships and fellowships in STEM fields, and other types of research and development activities. Of that amount, $700 million would go to MSIs, $400 million to climate research, and $25 million to the Office of Chief of Research Security Strategy and Policy. The agency would receive an additional $3.4 billion for infrastructure upgrades, including $1 billion for university academic research infrastructure modernization and renovation efforts. At least 20 percent of infrastructure funding must go to EPSCoR-eligible jurisdictions. The bill's total funding for NSF is approximately $11 billion.

- **National Institute of Standards and Technology (NIST)**: $1.2 billion for research in areas such as artificial intelligence, cybersecurity, quantum computing, biotechnology, advanced manufacturing, and resiliency to wildfires and climate change. NIST would also receive an additional $1 billion to construct new research facilities and renovate or maintain existing ones, and another $2 billion to support U.S. manufacturing activities. NISTs total funding in the bill is $4.2 billion.

- **National Oceanic and Atmospheric Administration (NOAA):** $1.2 billion for climate research and forecasting to increase the understanding, and predictive and forecasting capabilities, of weather and climate phenomena including, but not limited to, hurricanes, tornadoes, drought, wildland fires and associated fire weather, extreme precipitation, extreme heat and flooding.

- **Environmental Protection Agency (EPA):** $264 million for climate change R&D on mitigation of climate forcing emissions, adaptation to reduce the impacts of climate change, and approaches to build resilience to climate change.

- **Department of Commerce (DOC):** $5 billion to support regional innovation initiatives; no fewer than 1/3 of awards shall significantly benefit an EPSCoR state or a rural or other underserved community.

The Energy and Commerce Committee released an overview of its bill on September 9 and began markup on September 13. The bill passed with a 30-27 vote on September 15. Highlights the Committee designated for health research are below. The bill is still under consideration at the time of this writing.

- **Advanced Research Projects Agency for Health (ARPA-H):** $3 billion to establish ARPA-H which seeks to make pivotal investments in breakthrough technologies and broadly applicable platforms, capabilities, resources, and solutions that have the potential to transform important areas of medicine and health that cannot readily be accomplished through traditional biomedical research or commercial activity.

- **Biomedical Advanced Research and Development Authority (BARDA)**: $7 billion in total funding, including $500 million to support activities conducted by BARDA for advanced research, standards development, and domestic manufacturing capacity for diagnostics, vaccines, therapeutics, and personal protective equipment; and $500 million to support increased biosafety and biosecurity in research on infectious diseases, including facilities modernization and improvements.

The House Agriculture Committee approved its measure on September 10th. The overall funding for the Department of Agriculture is $89.1 billion.

- **Agriculture and Food Research Initiative (AFRI):** $500 million in total over five years.

- **Agriculture Advanced Research and Development Authority (AGARDA):** $380 million in total funding, including $10 million for FY22 and FY23; and $120 million for FY24 through FY26.

TAX

The House Ways and Means Committee approved their bill with provisions affecting health care, childcare, retirement plans, and more with a 24-19 vote on September 15. The Committee released legislative text during the week of September 6, including provisions affecting the aforementioned and infrastructure, which includes changes to tax policies affecting higher education.

The Committee's bill includes the following provisions affecting higher education:

- **Treatment of Federal Pell Grants for Income Tax Purposes** – Effective 2022, excludes the full value of Pell Grant awards from gross income, and for purposes of the American Opportunity Tax Credit, the Lifetime Learning Credit, and exclusion of qualified scholarship from income, qualified tuition and related expenses would not be reduced by any amount paid for the benefit of an individual as a Pell Grant.

- **AOTC and Felony Drug Convictions** – Repeals the prohibition excluding students convicted of a state or felony drug offence from claiming the American Opportunity Tax Credit.

- **Excise Tax on Investment Income of Private Universities** – Effective 2022, provides a phase out for an institution's investment income excise tax amount by the amount of qualified undergraduate scholarship and grant aid provided by the institution relative to its aggregate undergraduate tuition and fees collected during the taxable year. An institution's tax amount would be reduced proportionately as the amount of its qualified aid exceeds 20 percent of tuition and fees. Institutions seeking a reduction in the excise tax must report average Federal student loan debt of:

- all first-time, full-time undergraduates awarded a bachelor's degree during the taxable year;
- first-time, full-time undergraduates awarded a bachelor's degree during the taxable year who received a Pell Grant;
- first-time, full-time undergraduates awarded a bachelor's degree during the taxable year who received federal work-study; and
- first-time, full-time undergraduates awarded a bachelor's degree during the taxable year who received federal student loans.

The provision clarifies that the 500 tuition-paying student threshold for application of the tax only applies to private institutions with 500 or more tuition-paying *undergraduate* students. Also, it modifies the threshold of $500,000 aggregate value of assets per student to index it to inflation.

- **Advance Refunding Bonds** – Reinstates advanced refunding bonds. Allows interest on advance refunding bonds issued by state and local governments to be exempt from tax. This provision applies to advance refunding bonds issued more than 30 days after date of enactment.

- **Public University Research Infrastructure Credit** – Provides a 40 percent general business credit for cash contributions made *by a taxpayer* to a public college or university (or a non-profit organization to which authority has been delegated by the institution to apply for administering credit amounts on behalf of the institution) in connection with a qualifying research infrastructure program. Taxpayers may elect to claim this credit with respect to a qualifying cash contribution in lieu of treating such contribution as a charitable deduction. The amount of cash contributions an institution may designate as qualified cash contributions may not exceed 250% of the credit amount allocated to it under this provision. The Treasury Department certifies institutions have been allocated a credit amount with respect to a qualifying infrastructure project.

  The provision provides $500 million of credits for calendar years 2022-26 to be awarded by the Treasury Department on a project application basis. The credits would be awarded based on the extent of expected expansion of an institution's targeted research in STEM disciplines. Institutions with less than 12,000 full-time students are ensured consideration for awards. An institution's allocation may not exceed $100 million per calendar year.

- **Credit to Issuer for Certain Infrastructure Bonds –** Based on Build America Bonds program enacted in the 2009 American Recovery and Reinvestment Act, issuers of qualified infrastructure bonds would receive a tax credit equal to an applicable percentage of the interest, providing direct financing support for infrastructure investments made by state and local governments. The percentage amount of the credit for interest paid is determined in the year the bond is issued: 2022-2024 – 35 percent; 2025 – 32 percent; 2026 – 30% percent; and 2027 and thereafter – 28 percent.

  State and local governments may claim the credit for bonds whose interest would otherwise be eligible for tax-exempt status in the Internal Revenue Code, and the entirety of whose net proceeds are used for capital expenditures or the operation and maintenance of capital expenditures. This provision requires that 100% of the proceeds of a bond issued under this provision meet the requirements in the Davis-Bacon Act.

- **Paid Family and Medical Leave** – Creates new "Paid Family and Medical Leave Benefits," effective July 2023, as part of the Social Security Act (Title XXII) that would provide for 12 weeks of paid family and medical leave benefits for all workers and related conditions of funding. The employer paid leave tax credit created under the Families First Coronavirus Response Act (FFCRA) would be terminated on December 31, 2023.

- **Qualified Environmental Justice Program Credit** – Creates a capped refundable competitive credit of $1 billion for each year from 2022-2031 for universities with environmental justice (EJ) programs. The credit is 20 percent of costs to be spent within five years by an institution. The credit would be 30 percent for programs with "material participation" by HBCUs and MSIs. Qualifying environmental justice programs must be designed to address or improve data about environmental stressors (such as contamination of the air, water, soil, or food or a change relative to historical norms of the weather conditions) "for the primary purpose of improving or facilitating the improvement of health and economic outcomes of individuals residing in low-income areas or areas that experience or are at risk of experiencing, multiple exposures to qualified environmental stressors."

IMMIGRATION

The House Judiciary Committee released its bill text along with an amendment in the nature of a substitute on September 10 and completed its markup on September 13. The bill passed on a 25-19 vote.

The bill as approved by the Committee includes the following immigration provisions:

- **Lawful Permanent Residence for Certain Entrants –** Provides a path to lawful permanent resident status for Dreamers, essential workers, and TPS/DED recipients. The provision defines essential workers using the DHS CISA definition. Individuals who qualify for adjustment of status under this provision would pay a supplemental fee of $1,500 and must pass security and background checks. This would take effect 180 days after passage or May 1, 2022.

- **Recapture of Unused Immigrant Visa Numbers –** Recaptures family- and employment-based immigrant visas (green cards) which went unused between FY92 and FY21. It also fixes the issue going forward to allow for automatic recapture of green cards in any fiscal year after FY21.

- **Adjustment of Status –** Allows for filing of an adjustment of status application for most family-based and employment-based applicants upon the approval of the immigrant visa petition for a supplemental fee of $1,500 for the principal applicant and $250 for each derivative beneficiary. Through September 30, 2031, this provision also creates an exemption from the annual and per-country family- and employment-based immigrant visa numerical limitations for individuals who have filed adjustment of status applications for an additional supplemental fee. This would take effect 180 days after passage or May 1, 2022.

- **Additional Supplemental Fees** – Establishes additional supplemental fees for immigrant visa petitions (in addition to filing fees, early adjustment fees, and waiver of numerical limitation fees).

- **U.S. Citizenship and Immigration Services Funding** – Appropriates an additional $2.8 billion to USCIS for efficient adjudication of these new programs.