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WASHINGTON UPDATE

To: OSU Interested Parties
From: Kate Cusack, Director of Federal Relations
Date: June 17, 2008

CONGRESSIONAL CALENDAR:

The Senate and House are both in session this week.

This week the Senate will debate and vote on the cloture motion to move to reconsideration of the tax extenders bill (H.R. 6049). The Senate also may consider the FY08 Defense authorization bill (S. 3001).

The House is expected to complete work on the NASA reauthorization bill (H.R. 6063) early in the week. House leaders also plan to take up the FY08 emergency supplemental appropriations bill (H.R 2642). Bills dealing with paid parental leave for federal employees (H.R. 5781) and stopping abuse of teens at residential treatment facilities (H.R. 5876) may also be considered.

Both the House and Senate Appropriations Committees will begin to mark up federal spending bills at subcommittee and full committee levels.

BUDGET AND APPROPRIATIONS:

Budget Resolution

Congress has approved the FY09 budget resolution (S. Con. Res. 70), setting the stage for the FY09 appropriations process to begin. The House approved the budget resolution on June 5 by a vote of 214 to 210; the Senate approved the measure on June 4 by a vote of 48 to 45. The budget resolution sets guidelines for congressional tax and spending policies for the fiscal year; it is not signed into law by the President. The conference report assumes $21 billion more in discretionary spending in FY09 than the President's request.

Appropriations

The House has released FY2009 302(b) Appropriations Allocations. Last week, the House Appropriations Committee released its FY2009 302(b) allocations, providing funding allowances for each of the 12 Appropriations Subcommittees. Chairman Obey's press release stated that the allocations reject harmful cuts found in the Administration's budget and allow for modest increases in key priorities. The press release and chart of subcommittee allocations can be found at the following URL:
http://appropriations.house.gov/pdf/Obey302(b)s6-13-08.pdf.

The House Appropriation committee began moving fiscal 2009 spending bills on June 11, although Democrats readily admit the process probably won't be finished until next year.

Four bills were marked up in subcommittee last week and will be marked up by the full committee this week- Interior-Environment, Commerce-Justice-Science, Homeland Security and Military Construction-VA. Six additional bills will be marked up at the subcommittee level including- Energy and Water, Financial Services, Labor-HHS-Education, Agriculture, Legislative Branch, and Transportation-HUD. House Appropriations expects to complete committee action on 10 of the 12 bills this month, with Defense and State-Foreign Operations to be considered in July. Senate Appropriations will begin marking up bills this week with Commerce-Justice-State and Homeland Security.

The House and Senate panels follow two distinctly different paths in considering their bills; House Appropriations holds a subcommittee markup for a bill one week followed by full committee markup of the bill the following week, while Senate Appropriations usually holds subcommittee and full committee markups on a bill in the same week.

Democrats don't plan to finish work on the spending bills before the election unless President Bush agrees to negotiate over spending. The White House earlier this year said Bush would veto spending bills that exceed his request — mirroring the stance that created last year's appropriations standoff. Democrats, who eventually capitulated to Bush's demand at the end of the year, don't want to go through the same exercise again and are hoping they can complete the process next year under a Democratic president. Bush has proposed a total of $991.6 billion in discretionary spending, with an effective freeze on domestic programs, while the final Democratic budget adopted last week would allow an additional $21.1 billion in fiscal 2009 discretionary spending (including cap adjustments), plus $3.5 billion more than Bush proposed in advance appropriations. The Democrats' additional funding would be used for domestic programs.

Both House and Senate Appropriations intend to mark up and report each of the 12 fiscal 2009 spending bills, however, in order to set the stage for later completion of the process. Those bills will reflect funding priorities that Democrats can point to before the November elections. And they are expected to become the base for final appropriations action early next year, when Democrats believe they will have larger majorities in both chambers. But it's uncertain how many bills will be considered by the full chambers. House Majority Leader Steny H. Hoyer, D-Md., said last week he hoped to start bringing the first spending bills to the House floor before the July Fourth recess, while few if any bills are expected to reach the Senate floor.

House Appropriations Chairman David R. Obey, D-Wis., intends to include member-requested earmarks at the committee level. President Bush has vowed to veto any spending

bills that fail to cut earmarks from last year's levels, but of course that threat would be moot if no bills are sent to the president.

Specific information on program funding levels is slowly trickling out. Below is preliminary information about funding levels in the House bills. If you have specific questions, please contact me.

In addition, the bills should include earmarks when they are passed out of the full committee. I will be in contact with researchers regarding the status of OSU projects.

Commerce-Justice-State Appropriations Bill

The House Commerce-Justice-Science Appropriations Subcommittee last week approved its FY09 funding bill, apparently providing close to the President's request for the National Science Foundation (NSF) and additional funds for NASA. The measure will be marked up in full committee this Thursday, June 19. According to Subcommittee Chairman Alan Mollohan (D-WV), the measure would fund NSF at $6.9 billion; the President requested $6.85 billion. This increase would equate to a 14% increase from the current year. According to reports, the Education and Human Resources directorate would receive a large increase, nearly 16%, to $840 million (from the current $725 million). However, $50 million of that increase, according to *Inside Higher Ed*, is a result of shifting funds from "research and related activities" rather than additional money. This week the full House Appropriations Committee will take up the bill. NASA would receive $17.8 billion, which appears to be about $200 million above the President's request of $17.61 billion. Chairman Mollohan has indicated that the increase for NASA above the President's request is "spread nearly evenly" between science and aeronautics.

The Senate Appropriations Subcommittee and Full Committee are scheduled to mark up the bill on June 18 and 19.

Interior Appropriations Bill

The House Interior Appropriations Subcommittee voted June 11 to fund the National Endowment for the Humanities (NEH) at $160 million in FY09. This represents an increase of $15.6 million, or 10.8%, above the Administration's FY09 request, and $15.3 million, or 10.6%, above FY08 funding. (The National Endowment for the Arts also was funded at $160 million in the subcommittee's bill.) Full committee markup is scheduled for this Wednesday, June 18.

The Senate Appropriations Subcommittee is scheduled to mark up the bill on June 24.

Homeland Security Appropriations Bill

Last Wednesday, June 11, the House Appropriations Committee's Subcommittee on Homeland Security marked up legislation to fund the Department for Fiscal Year 2009. The resulting bill would provide over $2 billion more than the President's request. The Department of Homeland Security's (DHS) Science and Technology section would receive nearly $900 million, an increase of more than $56 million over current funding. A proposed funding level for the University Programs line item is expected to be available this week when the full Committee meets to mark up the bill.

The Senate Appropriations Subcommittee and Full Committee are scheduled to mark up the bill on June 18 and 19.

Energy and Water Appropriations Bill

This bill was marked up in the House subcommittee today and will be marked up by the full committee next Tuesday, June 24. The subcommittee has put forward a $33.3 billion discretionary funding allocation, which would top Bush's request by $1.91 billion, or 6.1%, and is an increase over fiscal 2008 funding by $2.4 billion, or 7.7%.

This bill is not currently scheduled for Senate Appropriations Committee mark up.

Financial Services Appropriations Bill

The House Financial Services Subcommittee marked up this bill today. The measure has a discretionary spending allocation of $22.4 billion, just $150 million over the president's request, but $1.5 billion, or 7.4%, over current funding.

This bill is not currently scheduled for Senate Appropriations Committee mark up.

Other Appropriations Bills

The House subcommittees will mark up the USDA Approps bill as well as the Labor-HHS-Education, Legislative Branch, and Transportation-HUD bills later this week. As indicated above, the Defense and Foreign Ops bills will be marked up by the House in July.

FY08 Supplemental Funding Bill

The House is moving forward with its plan to bring to the floor later this week a war spending bill similar to what the chamber already approved last month. If it passes, the measure will be sent back to the Senate, which would be expected to make additional changes before returning it to the House.

Congressional Democratic leaders say they plan to send the President the FY08 emergency supplemental appropriations bill (H.R. 2642) before the July 4 recess, but major sticking points remain. The Senate, for example, would likely add back the extension of unemployment benefits. The House approved the extension as a separate bill (H.R. 5749) last week because it is one of the items over which the President has threatened to veto the supplemental funding package.

Negotiations between House leaders and White House officials over the supplemental spending measure are ongoing, but the latest version would provide, in addition to the war funding and unemployment benefits, an expanded veterans' education benefit. The House Democratic leadership has been negotiating with the White House over the supplemental war funding measure in hopes of getting a version that President Bush would sign.

It appears unlikely that the final bill will retain any of the $10 billion in extra domestic spending added by the Senate, including the $1.2 billion package for four science agencies. The Senate's $1.2 billion package for the science agencies would provide $400 million for the National Institutes of Health (NIH), $200 million for the National Science Foundation, $200 million for NASA, and $400 million for the Department of Energy ($100

million for the DOE Office of Science and $300 million for environmental remediation.) CQToday reports, “Several Senate Democrats said they were still frustrated that many of the domestic spending priorities they included in their version of the bill, which passed by a vote of 75-22 on May 22, might not be in the latest iteration. Still they seemed resigned to the fact that the shuffling of the bill back and forth between the two chambers must end.”

POLICY UPDATE:

Higher Education Act (HEA) Reauthorization

House-Senate conference negotiations on legislation to reauthorize the HEA continue under the leadership of Sen. Barbara Mikulski (D-MD). The negotiations remain primarily at the staff level. It is rumored that an updated draft of the bill will be made public in the coming weeks and it is assumed that the bill is unlikely to be completed before the July 4th Congressional recess. If so, another extension will be necessary.

One negotiation point to note is an important change on accreditation standards. Senator Mikulski, who is negotiating in the conference on behalf of Senator Edward Kennedy (D-MA), has prompted committee staff negotiators to restore the House- and Senate-passed language that prohibits the Secretary of Education from regulating all accreditation standards. This is a critical and welcome development and one that will be verified once the next draft of the bill is available. The current draft conference agreement released last month explicitly prohibited the Secretary from regulating course and curriculum matters, but, by omission, left open the door for regulation of faculty, facilities, and other components of higher education. This has been the most serious issue for the higher education community.

The higher education community will continue to press for additional modifications to the draft legislation, which includes numerous new federal requirements pertaining to a host of matters, including alumni outcomes, tuition price estimates, college costs, graduation rates, peer-to-peer file sharing, campus emergency situations, fire and campus safety, textbooks, lobbying, and gift reporting.

Farm Bill

The House and Senate have both passed the complete farm bill that will again be sent to the President. This is the second time Congress has passed what they though to be the complete farm bill. Most of the bill was passed by Congress last month, when one of the 15 titles in the original version of the bill was inadvertently dropped before being sent to Bush for his veto. Both the House and Senate subsequently voted to override Bush’s veto and enact the 14 included titles, but it was decided that the most constitutional way to correct the omission was to enact a new, complete version of the legislation. The House passed the replacement bill on May 22. The Senate cleared the new bill on June 5. Bush is expected to veto it, too, and the House and Senate are again prepared to override him.

Orphan Works

Congress is considering legislation which would allow for the use of "orphan works"

materials stored in libraries, museums and archives for whom the copyright owner cannot be located. The Senate bill (S. 2913) has passed the Senate Judiciary Committee. Committee Chairman Pat Leahy (D-VT) has expressed his desire to bring the bill to the floor as soon as possible. The House Judiciary Committee is planning to act on its version of the bill (H.R. 5889) in the near future.

While the higher education and library communities support Congressional efforts to address the problem of orphan works, both bills have problems that still need to be addressed.

The legislation, as currently drafted, would require most public universities to waive their state sovereign immunity protections (as guaranteed under the 11th amendment of the Constitution) in order to participate in the orphan works program. Yet, most public institutions do not have the authority to waive sovereign immunity. Compromise language on the state sovereign immunity issues has been agreed to by the higher education community, the publishing industry and the U.S. Copyright Office. It has been jointly submitted to both Committees for consideration, but has not yet been incorporated into either bill. The higher education community urges the House and Senate to adopt the compromise language regarding state sovereign immunity.

In addition to state sovereign immunity, several areas of concern with the pending legislation have been raised with the Judiciary Committees by the library, museum and archive communities, which need to be resolved. These issues include: Qualifying Search ("Best Practices"); Good Faith Negotiations; Safe Harbor; and Notice of Use ("Dark Archives").

Disability Legislation

The House Education and Labor and Judiciary Committees plan to mark up a bill on Wednesday that would expand the definition of “disability” under the Americans with Disabilities Act (ADA), with little apparent concern about the potentially high added burden this would create for colleges and universities**.** The ADA Restoration Act (H.R. 3195) aims to address concerns that certain Supreme Court decisions have narrowed the scope of the Act. A group of higher education representatives met with committee staff and employer and disability groups last week to discuss the impact this measure would have on higher education institutions. At this point, those concerns have not been addressed in a compromise version of the bill worked out with the employer and disability groups.

At this point, the higher education community does not oppose provisions in the bill that would affect educational institutions as employers. However, there is great concern about the lack of discussion about the educational implications of this bill and that Congress, with very little discussion, may enact legislation that would significantly affect the number and type of educational accommodations colleges and universities must provide to students.

Tax Extenders

Today, the Senate voted on cloture for a second time on H. R. 6049, the tax extenders legislation. It failed by a vote of 52-44. It is unclear what the next steps are in the Senate with respect to this bill.

The measure would extend a number of expired and expiring tax provisions relevant to the higher education community including the tuition tax deduction, the IRA charitable rollover, and the research and development tax credit.

At issue is Republican Senators' opposition to including revenue-raising offsets in the package. A similar disagreement blocked approval of an extenders bill last year. According to CongressDaily, Senate Democratic leaders hope that pressure from business groups and a threat by House Democratic leaders to kill the bill if it does not include offsets "will be enough to turn the tide."

NASA Reauthorization

The House began debate last week on the NASA FY09 Reauthorization Bill (H.R. 6063), but postponed final action until today. The bill will be marked up in the Senate Commerce committee this week.

The legislation raises NASA's authorized funding level to $19.2 billion in FY09 and includes increased authorizations for both the Science and Aeronautics mission directorates.

ADMINISTRATIVE NEWS:

Commerce Department Seeking Advisory Panel Candidates

The Department of Commerce's Bureau of Industry and Security (BIS) is seeking candidates for a newly established advisory panel, the Emerging Technology and Research Advisory Committee (ETRAC). The panel would advise BIS on emerging technologies on research and development advances and to ensure that export controls continue to apply to sensitive technologies.

BIS hopes to have one-third of ETRAC's members from academe and are looking for PhD level researchers. Researchers who are actively working in research and/or leading research or technology development programs are preferable. The rest of the committee would be comprised of representatives from research laboratories and industry. The deadline for submitting nominations is Wednesday, June 24 at 5pm. Those interested can submit their resume or send nominations to Yvette Springer at YSpringer@bis.doc.gov.

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