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WASHINGTON UPDATE

To: OSU Interested Parties
From: Kate Cusack, Director of Federal Relations
Date: July 1, 2008

CONGRESSIONAL CALENDAR:

The House began its July 4 recess on Friday, June 27. It will reconvene for legislative business on Tuesday, July 8, but no agenda has been announced.

The Senate is informally in recess however, to prevent the President from making recess appointments during the July 4 recess, it will reconvene in pro forma session on Monday, June 30. The Senate will reconvene for legislative business on Monday, July 7, when a cloture vote is expected on housing reform legislation (H.R. 3221).

BUDGET AND APPROPRIATIONS:

FY08 Supplemental Funding Bill

The President signed into law the FY08 supplemental appropriations bill (H.R. 2642) for the wars in Iraq and Afghanistan. The measure was approved by the House on June 19 and the Senate on June 26. Within the bill's $21 billion in domestic discretionary spending is $400 million for the National Institutes of Health (NIH), the National Science Foundation (NSF), the Department of Energy (DOE) Office of Science, and NASA.

After months of wrangling over the bill, House leaders negotiated a bipartisan compromise with the White House that eliminated restrictions on the war and boosted domestic spending. House and Senate Democratic leaders have said they might pursue another supplemental appropriations bill later this year.

The $400 million for science agencies is divided as follows: $150 million for NIH and $62.5 million each for NSF, the DOE Office of Science, and NASA. The remaining $62.5 million will fund DOE environmental management activities.

For NSF, the funds are broken down as follows:

> $22.5 million for Research and Related Activities, of which $5 million is set aside for a number of programs authorized by the America COMPETES Act; and
>
> $40 million for Education and Human Resources, divided among the Robert Noyce Scholarship program, Graduate Research Fellowships, Graduate Teaching Fellowships, and the Federal Scholarship for Service.

The NASA funds are directed to Science, Aeronautics, and Exploration.

Regarding the DOE Office of Science, the explanatory statement of the House amendment (page 38 of the document) directs that the $62.5 million be spent as follows:

> The Department of Energy is instructed to utilize this funding to eliminate all furloughs and reductions in force which are a direct result of budgetary constraints. Workforce reductions which are a result of completed work or realignment of mission should proceed as planned. This funding is intended to maintain technical expertise and capability at the Office of Science, and may be used for National Laboratory Research and Development including research related to new neutrino initiatives. Funding for research efforts shall not be allocated until the Office of Science has fully funded all personnel requirements.

The science funding is provided on an emergency basis. It is therefore considered a one-time appropriation that does not increase the spending baseline for future years.

An earlier Senate version of the supplemental bill included a total of $1.2 billion for NIH, NSF, DOE, and NASA. However, the White House said that the President would veto that bill, and House leaders decided to craft a bill with less domestic spending that could gain congressional approval and that the President would be willing to sign.

H.R. 2642 also contains increased veterans' education benefits, an extension of unemployment benefits, disaster funding for the recent tornadoes and flooding in the Midwest, and funding for a number of other priorities. The defense component of the bill totals $165.4 billion to support ongoing operations related to the wars in Iraq and Afghanastan.

The bill was structured in two parts to permit Members to vote separately on the war funding and the domestic spending in the legislation. The House approved the war funding portion on a vote of 268 to 155, while the domestic spending package was adopted on a 416 to12 vote. The Senate voted 92 to 6 to approve the domestic package but did not need to vote on the war funding because it had done so earlier.

Appropriations

The House and Senate continue to mark up the thirteen appropriations bills. To date eleven of the thirteen bills have seen committee action in the House and three of the thirteen bills have seen committee action in the Senate.

Senate Appropriations Committee Chairman Robert C. Byrd (D-WV) said last week that he intends to move all of the FY09 appropriations bills through the committee by the end of July.

While the Senate Appropriations Committee is moving forward with consideration of its FY09 appropriations bills, a contentious session of the House Appropriations Committee on June 26 may have delayed House action indefinitely.

The House panel was scheduled to consider two FY09 appropriations bills, Labor-HHS-Education and Agriculture. But Committee Republicans sought to bring up the Interior-

Environment funding bill in order to force votes on three amendments to expand domestic oil drilling. Following a series of tense procedural actions, Committee Democrats adjourned the markup by a roll call vote.

House Appropriations Committee Chairman David Obey (D-WI) refused to commit to further markups or to take any of the FY09 funding bills to the House floor, saying that the appropriations process might already be over for the year. Some Capitol Hill insiders believe that tempers may cool over the recess, and that the committee could return to considering its bills in July. But House Defense Appropriations Subcommittee Chairman John Murtha (D-PA) predicted that all of the FY09 bills might be rolled into a continuing resolution. That would not be a surprise because conventional wisdom has held that congressional Democratic leaders would wait until the November election to decide how to finish the FY09 funding bills, and might postpone final action until early next year with a new President.

Specific information on program funding levels is provided below. Please contact me if you have specific questions about funding levels.

Commerce Justice State Appropriations Bill

The House Appropriations Committee on June 25 approved its FY09 Commerce-Justice-Science funding bill with the increases for the National Science Foundation (NSF) and NASA that were approved at the subcommittee level on June 12. Limited details are provided below:

For NSF, the measure would provide total funding of $6.85 billion, the same as the President's FY09 request and $789 million above the FY08 enacted level. The bill would redirect about $50 million from the Presidents' FY09 request for Research and Related Activities to Education and Human Resources.

Specifically, the bill would fund the Research and Related Activities Account at $5.55 billion, which, as noted above, is about $50 million below the President's request and an increase of $723 million above the FY08 level.

For Education and Human Resources, the measure would provide $840 million, an increase of about $50 million above the President's request and about $115 million above the FY08 level.

NSF's Major Research Equipment and Facilities Construction Account would be funded at $147.5 million, equal to the President's request and $73 million under the FY2008 level. The Committee denied the agency's request to use the account for late-stage design activities.

National Aeronautics and Space Administration (NASA) would receive $17.8 billion in FY2009, which reflects a $155-million increase over the Administration's request and $459 million above FY2008 spending levels. The Science account would receive $4.5 billion, which is $76 million over the Administration's request. The Education account would receive $187 million, which represents an increase of $71 million over the Administration's request.

National Oceanic and Atmospheric Administration (NOAA) would receive $4.2 billion in funding. This figure represents an increase of $181 million above the Administration's request and $388 million above the FY2008 funding level.

National Institutes of Standards and Technology (NIST) would receive $817 million, which is $179 million above the Administration's request. This amount also reflects a $55 million increase over FY2008 spending levels. This bill includes funding of $65.2 million for the Technology Innovation Program (TIP) despite the Administration's proposed elimination of the program.

On June 19 the Senate Appropriations Committee approved a bill that would increase FY 09 funding for Commerce, Justice, Science, and Related Agencies (CJS) by over $4 billion more than the amount requested by the Administration, and by over $6 billion more than current FY 08 funding. NSF would receive $6.9 billion, including $790 million for education and training programs.

Energy and Water Appropriations Bill

The FY2009 Energy and Water Appropriations bill was marked up in by the House Appropriations committee on June 25. The following figures are from the House Appropriations Committee report:

The bill would give the Department of Energy (DOE) Office of Science $4.9 billion, which represents a $138-million increase over the Administration's request and $842 million over FY2008 funding levels. The committee recommendations for the Office of Science includes the following funding levels:

- High Energy Physics - $805 million, same as Administration's request and $117 million over FY2008
- Nuclear Physics - $517 million, which is $7 million over Administration's request and $84 million over FY2008
- Biological and Environmental - $579 million, $10 million over Administration's request
- Basic Energy - $1.6 billion, $31 million over Administration's request and $329 million above FY2008 levels
- The Advanced Scientific Computing - $379 million, $27 million over FY2008 levels
- Fusion Energy - $499 million, $6 million over Administration's request and $212 million over FY2008 levels

The Senate is scheduled to mark up the bill July 10.

Labor-HHS-Education Appropriations Bill

The House Appropriations Committee will consider their version of the Labor-HHS-Ed spending bill after the 4th of July recess. A preliminary draft of the bill includes the following recommended funding levels:

The National Institutes of Health (NIH) would receive $30.38 billion which represents an increase of $1.15 billion over both the Administration's budget and the FY2008 spending levels.

Several higher education programs in the Department of Education would be funded in the FY2009 spending bill including:

- Pell Grant - Max Pell Award $4,900 which includes $490 provided under the College Cost Reduction Act; an increase of $169 over FY2008
- SEOG - $757 million, proposed elimination by Administration; same as FY2008
- LEAP - $64 million, proposed elimination by Administration; same as FY2008
- Perkins Loans - $64 million, proposed elimination by Administration; same as FY2008
- Work Study - $980 million, equal to Administration's request and FY2008
- GEAR UP - $318 million, $14.5 million over both the Administration's request and FY2008
- TRIO - $858 million, $29.8 million over both the Administration's request and FY2008
- GAANN - $32.5 million, $2.9 million over FY2008
- Javits Fellowships - $9.8 million, $314,000 over FY2008

The Senate Appropriations Committee on June 26 approved its $626.5 billion FY09 Labor-HHS-Education bill, endorsing the funding for research and higher education programs that were approved at the subcommittee level on June 19.

The Senate bill would allocate $30.25 billion to NIH, a $1.025 billion increase over FY08. The Committee report says this funding would enable NIH to keep up with biomedical research inflation for the first time in six years and fund an estimated 10,471 new competitive awards. The legislation retains the annual $300 million transfer from NIH to the AIDS Global Fund that has been included in recent years.

The Senate bill does not appear to contain the House provision that would make permanent and mandatory the FY08 provision on public access to NIH-funded research.

The Senate bill would add $2.7 billion to the Pell Grant program, which would raise the maximum grant by $69. That is less than the $3 billion for the Pell Grant program included in the House bill, which would raise the maximum grant by $169. The Administration has requested an increase of $69.

The maximum grant for FY08 is $4,731, which includes $490 from mandatory funds under the budget reconciliation legislation enacted last year. With the additional discretionary funds under the Senate bill, the maximum Pell Grant would rise to $4,800, of which $4,310 would come from appropriated discretionary funds and $490 would come from mandatory funds. (The House bill would increase the maximum grant to $4,900, with $4,410 from discretionary funds.) The bill would funding the following student aid programs at the levels indicated below:

- SEOG - $757 million, proposed elimination by Administration; same as FY2008
- LEAP - $64 million, proposed elimination by Administration; same as FY2008
- Perkins Loans - $70 million, proposed elimination by Administration; $5 million over FY2008
- Work Study - $980 million, equal to Administration's request; equal to FY2008
- GEAR Up - $308 million, $5 million over both Administration's request and FY2008
- TRIO - $838 million, $10 million over both Administration's request and FY2008
- GAANN - $29.5 million, equal to FY2008
- Javits Fellowships - $9.5 million, equal to FY2008

<u>Agriculture Appropriations Bill</u>

The Agriculture bill has passed the House subcommittee however limited details are known. Preliminary information shows that the House bill contains the following funding levels:

- CSREES Overall - $1.19 billion, $18 million decrease from FY2008
- Hatch - $213 million, $18 million increase over FY2008
- Smith-Lever 3(b) & 3(c) - $290 million, $16 million over FY2008
- McIntire-Stennis - $26 million, $9 million decrease from FY2008
- Evans-Allen - $44 million, $3 million over FY2008

The Agriculture bill is not yet scheduled for House full committee mark up and is not yet scheduled for Senate committee consideration.

Homeland Security Appropriations Bill

On June 18 the House Appropriations committee approved a $45.9 billion Homeland Security bill that reverses cuts Bush sought for firefighters and other first-responders. The bill includes $39.9 billion in discretionary spending, while Bush sought to add only $60 million to the current funding of $37.6 billion. It also would provide $950 million for State Homeland Security grants, topping Bush's request by $750 million and keeping level with current funding. The bill would provide for $52 million dollars for university programs, which is $7.5 million above the Administration's requested amount.

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 has not been scheduled.

The Senate Appropriations Subcommittee has not scheduled their mark up.

Other Appropriations Bills

As stated above, the Defense Appropriations bill is scheduled for mark up in the House and Senate in mid-July

If you are interested in information about the Financial Services, Legislative Branch, Military Construction and Veterans Affairs, State and Foreign Operations or Transportation Housing and Urban Development bills, please contact me.

POLICY UPDATE:

Higher Education Act (HEA) Reauthorization

Congress has approved another one-month extension of the Higher Education Act (HEA) to provide additional time for House and Senate negotiators to complete the conference on the

HEA reauthorization bill (H.R. 4137, S. 1642). The extension, which the Senate approved on June 23 and the House on June 25, authorizes HEA programs through July 31.

Farm Bill

The five-year authorization of agriculture programs became law June 18 when Congress overrode President Bush's veto a second time.

The House voted, 317-109, to override the veto of the bill (H.R. 6124), and the Senate followed suit, 80-14, several hours later. The votes in both chambers exceeded the two-thirds majority needed to enact a law over a presidential veto.

Orphan Works Legislation

The House Judiciary Committee, Subcommittee on Courts, the Internet, and Intellectual Property has marked up H.R. 5889, the Orphan Works Act of 2008. The bill awaits markup in full committee. In the Senate, the comparable bill is S. 2913, The Shawn Bentley Orphan Works Act of 2008. The Senate bill has been marked up by the Senate Judiciary Committee and could go to the floor soon.

The higher education community has weighed in on the legislation with a letter which expresses strong support of universities for efforts to develop an effective, balanced program for using orphan works, copyrighted works whose owners cannot be found. The letter notes that the framework of H.R. 5889 balances the importance of making orphan works available against the interests of copyright owners in not having their works inappropriately categorized as orphan works. The letter identifies three issues of concern in the proposed legislation:

- The current requirements or "best practices" for a qualifying search are overly burdensome. The letter states that they must be sufficiently flexible to accommodate search processes appropriate to universities and other nonprofit entities. Search requirements that are unreasonably burdensome will preclude effective use of the program by universities. Legislative language defining diligent but flexible search procedures is attached to the letter.

- The Notice of Use filing requirement would be extremely costly and burdensome without significant benefit to copyright owners, and universities should not be subjected to such a requirement.

- For public universities, certain provisions of the legislation need to be modified to clarify that these institutions can participate in the orphan works program under terms comparable to those applying to other entities without having to waive state sovereign immunity, which most public universities are not free to do; language providing such clarification is attached to the letter.

The Senate bill is similar or identical to the House bill in most respects but it improves the legislation by omitting a Notice of Use filing requirement.

Disability Legislation

The House on June 25 approved the ADA Restoration Act (H.R. 3195) by an overwhelming vote of 402 to 15.

H.R. 3195 seeks to address several Supreme Court decisions over the past decade that have narrowed the definition of "disability." The bill represents a compromise worked out by committee staff with the employer and disability communities; the higher education community was not consulted until late in the process.

The American Council on Education on June 17 sent a letter to members of the House Education and Labor Committee, the chairman and ranking member of the Judiciary Committee, and Rep. Hoyer detailing the specific concerns of the higher education community. The letter included suggested language for addressing these issues.

The higher education associations are concerned about three issues. One provision would expand the list of individuals who qualify as disabled under the ADA to include those who are substantially limited in the major life activities of "thinking" and "concentrating," the very abilities students are expected to improve as a result of their education. The second provision would add "learned behavioral or adaptive neurological modifications" to the list of mitigating measures that may not be considered in determining if an individual is disabled under ADA. Thus, students who have used improved study habits and memory aids to succeed in school without accommodations could claim to need accommodation in college because those study improvements could not be considered in determining disability.

The third issue is that the bill does not include report language provided by the higher education community that would reaffirm the principle that higher education institutions need not provide requested accommodations if they would alter elements that the institution believes are fundamental to its academic programs, requirements for degree attainment, or other credentialing requirements.

The higher education community is now focused on expressing its concerns about the bill to the Senate.

NASA Reauthorization

The House passed the NASA FY09 Reauthorization Bill (H.R. 6063) on June 18. The bill has been referred to the Senate where it is likely to be considered after the recess.

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

Last month, the Department of Commerce's Bureau of Industry and Security (BIS) announced that it was seeking candidates for a new advisory panel, the Emerging Technology and Research Advisory Committee, to help the agency "ensure that export controls continue to apply to sensitive items and keep pace with technological and research innovation without stifling U.S. competitiveness."

The Department on June 26 extended the deadline for submitting nominations for the

committee to Tuesday, July 22 (the previous deadline was June 24).

AAU continues to encourage universities to nominate highly qualified candidates for this panel. Participation on the advisory committee is an important opportunity for the academic community to assist the federal government in developing dual-use policies that protect national security and allow the appropriate participation of foreign students and scholars in research activities on university campuses.

Information about the advisory committee and requirements for nominees is available in a May 23 Federal Register notice. The announcement of the nomination extension is in the June 26 Federal Register.

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