From: Cusack, Kate
To: FederalAffairsUpdate
Subject: Washington Update
Date: Monday, August 18, 2008 4:05:39 PM

WASHINGTON UPDATE

To: OSU Interested Parties
From: Kate Cusack, Director of Federal Relations
Date: August 8, 2008

CONGRESSIONAL CALENDAR:

The House and Senate are out of session and will return for legislative business on Monday, September 8. The Senate approved a "conditional" adjournment resolution that provides for several pro forma sessions until the second week of September in order to prevent the President from making recess appointments.

When the Senate returns to session on September 8, it will take up the FY09 Defense authorization bill (S. 3001). No legislative program has been announced for the House.

BUDGET AND APPROPRIATIONS:

Second Supplemental Funding Bill

Democratic leaders are expected to move a second FY08 supplemental funding bill next month that focuses on their election-year priorities. The higher education community is urging inclusion of research funding in the package, such as that contained in the measure unveiled by Senate Appropriations Committee Chairman Robert Byrd (D-WV), which would add $1.28 billion for several science agencies. Insiders speculate that even if an FY08 supplemental bill with science funding passes Congress and the President vetoes it, there will be a strong basis for negotiating increased FY09 funding for those agencies in the final Continuing Resolution.

Appropriations

As anticipated all year, it appears certain that the FY09 funding bills for key civilian agencies, such as the National Institutes of Health (NIH) and the National Science Foundation (NSF), will not be approved separately, but as part of a package of other bills in a massive continuing resolution (CR). Only the FY09 Defense, Homeland Security and Military Construction-Veterans Affairs bills are likely to pass Congress separately, and the Defense bill is likely to serve as the vehicle for the CR.

There is concern that under a CR, most agencies will be funded at their FY08 levels, which means they could be operating well into next year with their budgets frozen. Because the congressional

leadership and the White House can negotiate provisions of the CR, however, the higher education community will work to encourage them to provide added funding for key agencies and programs. The Administration has requested solid increases for NSF and the Department of Energy Office of Science—which will likely be sustained in a CR. In addition, congressional leaders have consistently advocated for increased funding to NIH and such support will likely continue in a proposed CR.

It is likely that the anticipated CR will extend until the spring of 2009 which will allow the new president to settle in for a month or so prior to passing an omnibus package that includes FY09 funding for the remainder of the year. All current OSU FY09 marks will be finalized when this potential omnibus package is considered. The alternative, and less popular option, would be for the new president to enter office and pass a year-long CR that would hold all budgets at FY08 spending levels with some exceptions. While this is not the preferred option, a similar situation occurred in FY07.

POLICY UPDATE:

Higher Education Act Reauthorization (H.R. 4137)

After more than five years of work and for the first time since 1998, the Higher Education Act (HEA) reauthorization bill was finalized and signed into law on August 14.

The bill includes provisions that will benefit students. It implements year-round Pell Grants and reauthorizes critical student aid programs, such as the Pell program, Supplemental Educational Opportunity Grants (SEOG), Perkins Loans, Federal Work Study, Leveraging Educational Assistance Partnerships (LEAP), TRIO, and GEAR UP programs.

As a result of active engagement and outreach from the higher education community, the final bill addresses or at least partially mitigates many of the concerns that the academic community had with earlier versions of the bill. While some positive changes were made during the legislative process, the legislation still contains some provisions that cause serious concern. If you would like additional information on the HEA, please contact me.

ADA Restoration Act (H.R. 3195, S. 3406)

H.R. 3195 expands the definition of “disability” under the Americans with Disabilities Act (ADA). The legislation has a good chance of being approved by Congress this fall. The House passed its bill by the overwhelming margin of 402 to 15 and the Senate bill, which its supporters hope to move in September, was introduced on July 31 with 65 sponsors.

Among other issues, the higher education community has been concerned that the measure would expand the definition of disability to include “thinking” and “concentrating,” which could be problematic for colleges and universities given the fundamental nature of these activities to higher education endeavors. The Senate bill, unlike its House counterpart, spells out that colleges and universities are not required to compromise academic standards to accommodate disabled

students.

The higher education community is working with Congress to address issues in this legislation as it moves forward this fall.

Defense Authorization Bill with Indirect Cost Language (H.R. 5658, S. 3001)

Congress is expected to approve this bill this fall, although the Administration has threatened a veto. Both the House-approved measure and the bill scheduled for consideration by the Senate on September 8 would authorize significant funding increases for Defense basic research.

The House bill also directs the Government Accountability Office (GAO) to study the indirect costs of Defense Department grants and contracts as a means of showing Congress the detailed processes that are used by the federal government to calculate indirect cost rates and to audit reimbursements. GAO also has been instructed to compare federal payments for indirect costs to universities with those paid to industry and government laboratories for the conduct of similar work. The goal of this report is that the information may encourage Members of Congress not to impose caps on DOD-funded basic research grants, as was done in the FY08 Defense appropriations bill.

Tax-extenders (H.R. 6049, S. 3335)

Although partisan differences have stalled this legislation in the Senate, it is still possible that Congress will approve a version of this popular package this fall. The House approved its bill on May 21, but negotiations continue in the Senate. The higher education community is working to see that a final package includes the above-the-line deduction for qualified tuition, the Individual Retirement Account Charitable Rollover, and the research & development tax credit.

Broader Tax Issues for Institutions of Higher Education

Congress almost surely will not consider legislation this fall regarding the major tax issues of concern to colleges and universities. But congressional and IRS interest in these issues—such as the use of university endowments, tax-exempt bonds, charitable contributions, and even universities' tax-exempt status, itself—are likely to grow. This heightened scrutiny is prompted by rising concerns about college costs and calls for "greater accountability" for higher education in the political and media spheres, as well as a tightening federal budget environment in which policymakers are in search of revenues that cannot be classified as "tax increases."

Orphan Works (H.R. 5889, S. 2913)

Orphan works legislation, which aims to balance the ability to make use of copyrighted works whose owners cannot be found against the interests of copyright owners, appears stalled in both the House and Senate Judiciary Committees.

The House Judiciary Committee postponed markup of its bill (H.R. 5889), which had been

scheduled for July 16, because the user groups the bill is intended to assist oppose two key provisions. Specifically, the libraries, museums, universities, and other user groups cannot support proposed language regarding the "best practices" for undertaking a qualifying search for the copyright owner, nor proposals offered by some copyright owner groups to allow injunctions in certain cases, which would undermine the basic structure of the bill.

Reports indicate that the bill would have incorporated language to address concerns about state sovereign immunity. This would be a welcome improvement in the bill, but the remaining problems preclude universities' support.

In the absence of support by the user groups, the Committee seems disinclined to move the bill. The user groups have indicated a willingness to continue to work with committee staff and other interested parties to address the outstanding concerns, but it is not clear if work will continue.

The Senate bill (S. 2913), which was reported from the Judiciary Committee on May 15, reportedly has not gone to the Senate floor because several Senators have placed holds on it. Committee staff are said to be working to clear the way for floor consideration. However, several higher education groups would continue to oppose the bill if it fails to include language to address concerns about state sovereign immunity. In addition, like the House bill, S. 2913 contains problematic provisions on a qualifying search. AAU and NASULGC sent Committee members a letter on June 30 addressing these and other issues.

Simon Study Abroad Act (H.R. 1469, S. 991)

The Paul Simon Study Abroad Act is included in the multi-bill, Advancing America's Priorities Act. The package of 35 bills failed to invoke cloture in the Senate in late July, prior to the August recess. The Senate will likely take up the legislation again in the fall, if they can find a way to appease the minority members of the Senate who are blocking the legislation.

ADMINISTRATIVE NEWS:

NSF Requests Public Comment on Cost-Sharing Policies

As part of a continuing review of cost-sharing policies at the National Science Foundation (NSF), a committee of the National Science Board (NSB) has issued a request for public comment on the use of cost-sharing in NSF-funded activities, with a focus on a list of specific topics. The NSB will use this information in developing the second of two reports on NSF cost-sharing, which will be more comprehensive than the first report and which the NSB plans to issue in early 2009.

The deadline for comments is October 1, 2008.

BACKGROUND
A provision of the America COMPETES Act tasked the NSB with conducting a comprehensive review of the "unintended consequences" of the agency's decision in 2004 to eliminate mandatory

cost-sharing for all NSF programs. In February 2008, the Board issued its first report to Congress, which focused on mandatory cost-sharing.

Based on recommendations in the first report, NSF will reinstate mandatory cost sharing in FY09 for the following programs: Engineering Research Centers, the Experimental Program to Stimulate Competitive Research, and Industry/University Cooperative Research Centers.

A statement accompanying the first report said that the Task Force would continue to examine this issue, with the goal of formulating a comprehensive set of recommendations on NSF cost-sharing policy.

Higher Education Associations Comment on Proposed E-Verify Requirements

The higher education community submitted comments to the General Services Administration on August 11 regarding the proposed rule that would require all federal contractors to use the E-Verify system to verify the eligibility of new and current employees to work in the United States.

The letter sent by a group of 12 higher education associations expresses support for effective efforts to enhance homeland and national security, but expresses serious concerns about the proposed mandate. These reservations include the concern that by requiring verification of existing employees, the proposed rule exceeds statutory limitations; that the E-Verify system lacks the capacity to handle a major new influx of participating employers and individuals in the short period of time provided; that there is no recourse for employers and employees in the event of a false non-confirmation of employment eligibility; and that the rule fails to account for problems that international workers experience in obtaining Social Security numbers.

Note: The text of this email has been compiled from various sources

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