



AAU WEEKLY WRAP-UP

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CONGRESSIONAL SCHEDULE *NEW*

Both the House and Senate met today. The Senate continued its consideration of the FY09 omnibus appropriations bill (H.R. 1105). However, because the Senate leadership had concluded that the Senate could not complete work on the measure by midnight tonight, when the current FY09 continuing resolution (CR) expires, both chambers today approved a short-term extension (H.J. Res. 38) of the CR, which will last through Wednesday, March 11 (see item below).

The Senate next week will return to work on the FY09 omnibus bill, with consideration of amendments Monday evening and a possible cloture vote on Tuesday. The House next week will consider a number of bills under suspension, as well as a water quality bill (H.R. 1262) and legislation to provide House voting rights for the District of Columbia (H.R. 157).

House Majority Leader Steny Hoyer (D-MD) yesterday also laid out a possible longer-term schedule for the chamber. CQToday reports that he said Democratic leaders hope to consider the House version of the FY10 budget resolution during the week of March 30. The measure would invest in health care, education, and energy and likely include a reserve fund for healthcare reform. President Obama released an outline of his FY10 budget proposal last week, which the publication reports will be followed by a more detailed budget in April.

Democratic leaders hope to have the House consider energy legislation before Memorial Day and healthcare reform by August, Rep. Hoyer said. While no decisions have been made, House and Senate Democratic leaders are considering using the budget reconciliation process to move healthcare reform, climate change legislation, and a student loan bill that would shift all new federally guaranteed student loans into the Federal Direct Loan program. (Reconciliation legislation requires only a simple majority to pass the Senate because it is not subject to filibuster.)

However, CQToday reports that Senate Finance Committee Chairman Max Baucus (D-MT) opposes using the reconciliation process for healthcare reform because he believes such

legislation must be bipartisan. Senate Budget Committee Chairman Kent Conrad (D-ND) also is resisting use of reconciliation for either healthcare reform or climate change legislation.

BUDGET & APPROPRIATIONS

SENATE POSTPONES FINAL VOTES ON FY09 OMNIBUS FUNDING BILL *NEW*

Senate Majority Leader Harry Reid (D-NV) was forced last night to delay until next week final consideration of the FY09 omnibus appropriations bill (H.R. 1105) when it became clear that he was just shy of the 60 votes needed to overcome a potential filibuster. With some Democrats either opposed to the bill or wavering, and some Republicans who favor the bill seeking to protect senators' ability to offer additional amendments, Sen. Reid delayed the cloture vote. The Senate will resume consideration of amendments on Monday, with votes possible that evening and a cloture vote possible on Tuesday.

CQToday reports that after four days of Senate debate, no amendments have been added to the bill. House Speaker Nancy Pelosi (D-CA) has strongly resisted having to consider an amended bill in the House, which passed the measure on February 25. She has warned that if the Senate approves an amended bill, she may pull the plug and settle for a year-long CR. There is concern that a reworked omnibus bill might have difficulty getting through the House because of the publicity about its earmarks and spending totals.

In the meantime, both chambers today approved an extension of the FY09 continuing resolution (H.J. Res. 38), which will run through next Wednesday, March 11.

The omnibus bill is needed to provide full-year funding for agencies and programs in the nine FY09 appropriations bills that were not finished last year. Agencies supported through these bills have been funded by the CR largely at their FY08 levels. The \$410-billion omnibus bill would provide about \$30 billion, or eight percent, more for the programs in the nine bills than they received in FY08. (See last week's [AAU Weekly Wrap-up](#) for highlights of the research and higher education funding in the package.)

AAU POSTS FEDERAL AGENCY RECOVERY ACT WEBSITES *UPDATED*

Federal agencies have created webpages to provide information about how they plan to allocate funding received under the Economic Recovery Act, and then to allow monitoring of their actual spending.

AAU has posted on its website a [listing](#) of such sites for the agencies the association tracks, along with the government-wide side at the Office of Management and Budget.

Although AAU does not generally track the National Institute of Standards and Technology, the agency is listed on the AAU webpage because it received significant funding in the Recovery Act for university-related activities.

OTHER CONGRESSIONAL ISSUES

JUDICIARY COMMITTEE LEADERS INTRODUCE PATENT REFORM LEGISLATION

Leaders of the House and Senate judiciary committees introduced “bipartisan, bicameral” patent reform legislation on March 3, which they hope to see approved in this, the third Congress in which it will have been considered. The Patent Reform Act of 2009 was introduced by Senators Patrick Leahy (D-VT) and Orrin Hatch (R-UT), and by Representatives John Conyers (D-MI) and Lamar Smith (R-TX).

In a press [release](#) issued by the four legislators, Senator Hatch said, “We all agree that more work needs to be done on the damages and inequitable-conduct provisions. I am confident we can rely upon well-reasoned and persuasive case law, scholarship and other texts to achieve consensus on these two key provisions. Now is the time for patent reform.”

The Senate Judiciary Committee will hold a [hearing](#) on the measure next Tuesday, March 10; no House Judiciary Committee hearing has been announced by Chairman Conyers.

Staff representatives of the five associations that have been working together on patent reform—AAU, the Association of American Medical Colleges, the American Council on Education, the Council on Governmental Relations, and the National Association of State Universities and Land-Grant Colleges—will provide a more detailed assessment of the new bill shortly, but here are some initial observations:

- The damages language appears to be placeholder language. It is the language from S. 1145, the bill approved last session by the Senate Judiciary Committee, which had little prospect of broad acceptance.
- Inequitable conduct language has been omitted, although Senator Hatch is expected to seek to reinstate language modifying current inequitable conduct provisions.
- The new bill eliminates the requirement that all applications be published 18 months after their effective filing date, a provision recommended by the National Academies and supported by the higher education associations.
- On the issue of post-grant “second window,” the bill adopts the treatment contained in H.R. 1908, the patent reform bill approved by the House last session. Instead of a post-grant second window, the new bill includes the improved *inter partes* re-examination procedure of H.R. 1908, which was endorsed by the higher education associations.
- The applicant quality submissions provision, which required mandatory submission by patent applicants of prior art and other material relevant to patentability, has been omitted. This provision was opposed by virtually all sectors of the patent community.

Background information on patent reform legislation is available on the AAU [website](#), including a detailed [letter](#) the five higher education associations developed last year regarding the Senate Judiciary Committee version of the bill.

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