



The University of Texas System
Nine Universities. Six Health Institutions. Unlimited Possibilities.

The Office of Federal Relations

1901 Pennsylvania Ave., NW, Suite 700
Washington, DC 20006
Phone: 202-955-9091
www.utsystem.edu/ofr

July 16, 2008

MEMORANDUM

TO: Chairman Caven
Chancellor ad Interim Shine

FROM: Bill Shute

CC: Executive Officers

RE: Mid-Year Federal Relations Report

The first six months of the Second Session of the 110th Congress have been quite active, with 2419 pieces of legislation introduced in the House and Senate. However, little progress has been made on matters of interest due to a charged atmosphere poisoned by frustration and anger with the Iraq War, a lame duck Administration, Congressional approval ratings in the single digits, and the impending Presidential election.

Little progress has been made on the major issues that were in play at the beginning of the year, including the Higher Education Act Reauthorization, reauthorization of the No Child Left Behind Act, healthcare reform, Health IT legislation, patent reform, and tax extenders to name a few. While there has been committee action and even some floor votes on subsets of these issues, there is no indication that much will be accomplished during the remaining months of this session. In fact, leaders from both chambers have suggested that Congress will adjourn at the end of September, well in advance of the November elections. Similar inertia has begun to settle in at federal agencies as the political appointees begin looking for the door in anticipation of a new Administration.

Within this context, attached is a summary of issues of importance to the UT System as they currently stand.

MID-YEAR FEDERAL RELATIONS REPORT

Appropriations

The Appropriations process has bogged down over various matters and it is becoming less likely that Congress will send any bills to the current President. The Majority believes it will have better success passing controversial spending bills after the election, betting on the likely prospect that their numbers will increase with the November elections. At the other end of Pennsylvania Avenue, the President has sated that he will veto any spending bill that increases spending above his FY09 request levels.

Regardless, Congress was able to pass a supplemental war funding bill which the President signed. One item of note included in the bill is additional funding for NIH (\$150M above the requested amount). As for FY09 measures, some progress was been made at the committee levels although the process has come to a temporary halt.

Labor, HHS, Education

The House Appropriations Committee has approved the FY09 Labor, HHS and Education appropriations bill which includes the following items of note:

- NIH – additional \$1.02B
- National Children’s Study - \$81M increase
- CDC - \$156M increase
- Health professions Title VII \$244M (\$50M increase) including:
 - Centers of Excellence (COE) - \$16M increase;
 - Health Careers Opportunity Program (HCOP) - \$18M increase;
 - Area Health Education Centers (AHEC) - \$8.7M increase.

The House bill increases Pell Grants by \$169, to \$4,900, and provides a small increase for TRIO and Gear Up. No additional money for Perkins Loan-forgiveness program.

In the Senate version, the comparable numbers are:

- NIH – additional \$1.025B
- National Children’s Study - \$81M increase
- CDC - \$76.8M increase
- Health professions Title VII \$196M with level funding for the HCOP, COE and AHEC programs.

In addition, the Senate version increases maximum Pell Grant awards by \$69, to \$4,800. Supplemental Educational Opportunity Grants and Federal Work Study programs would remain frozen at FY08 levels.

Both bills eliminate funds for Reading First.

Energy and Water

On June 17th the House Energy and Water Appropriations Subcommittee approved its \$33.3 billion spending package for FY09, a 21-percent boost. If enacted, funding for the Energy Department would increase by \$2.4 billion from FY08. Of the \$27 billion in the bill appropriated for the Energy Department, the measure provides \$2.52 billion for energy efficiency and renewable energy programs, \$1.26 billion more than the President's request and \$796.1 million more than the FY08 level. Specifically, the bill provides \$305 million for vehicle technology research, \$84 million more than the president's request and \$92 million over the FY08 level. The research is geared toward decreasing petroleum dependence for cars. The bill includes another \$250 million for biofuel research and development, \$25 million more than the president's request. The bill includes \$853.6 million, \$99.6 million more than the President's request, for fossil fuel research and development, including development of carbon-capture technologies. DoE's Office of Science's budget is set to increase to \$4.86 billion, outpacing the 19 percent requested by the President. The bill also includes \$100 million to establish roughly two dozen new interdisciplinary research programs, to be called Energy Frontier Research Centers, to study renewable energy and atmospheric-carbon sequestration.

NEA/NEH

The House Appropriations subcommittee approved a budget increase of \$15 million each for the National Endowments for the Arts and Humanities, bringing total spending on each endowment to \$160 million, a 10.6-percent increase over FY08.

NASA Authorization

The Senate Commerce Committee has approved a \$20.3 billion FY09 authorization measure for NASA. The House has passed a similar bill. The Senate bill authorizes \$19.2 billion for basic NASA programs including earth science, planetary science, astrophysics, heliophysics, aeronautics, exploration and space operations, agency support programs and the inspector general's office.

NSF

Both House and Senate Appropriations subcommittees have approved a 14-percent budget increase for FY09. Under the legislation, the NSF would get \$6.9 billion for the 2009 fiscal year, 13.67 percent more than in 2008. Within that budget, \$790 million would go to the science foundation's education programs, while \$5.6 billion would be used for research grants.

Academic Legislation/Issues

HEA Reauthorization

Last month, the Senate passed another short-term Higher Education Act (HEA) Extension, which would authorize current HEA programs through July 31 to allow for Senate and House members to finish conferencing on the HEA reauthorization bill. The draft measure is currently still being debated as leaders between the House and Senate Higher Education committees try to knock out a compromise version of the legislation passed by each of their respective chambers. Sens. Edward M. Kennedy (D-Mass.) and

Michael B. Enzi (R-Wyo.) and Reps. George Miller (D-Calif.) and Howard P. (Buck) McKeon (R-Calif.) and their staffs are conducting the closely held negotiations.

GI Bill/Education Benefits Expansion

An expansion of the Montgomery G.I. Bill is set to increase education benefits for service members and, for the first time, would allow service members to transfer unused educational benefits they have earned through the G.I. Bill to their spouses or children. The tuition benefits are included in a domestic-spending package that was added to a larger bill that would provide \$162-billion to finance the wars well into next year — sparing Congress the need to vote on war spending again before the November elections. Under the tuition-benefits measure, veterans who have served in the military for at least three years since September 11, 2001, could receive up to the full cost of a four-year education at a public college, plus a monthly stipend for housing and funds for books and supplies.

Student Lender Rescue Plan

On May 22, the Department of Education outlined a financial rescue plan for student loan companies, offering to buy federally subsidized loans that lenders such as Sallie Mae said have become unprofitable. The action is intended to protect lenders from losses over the next year and make sure that students have uninterrupted access to loans. Among other provisions, the legislation increased the amount undergraduates can borrow under the federal loan programs by \$2,000 a year, further reducing the need for students to pursue private loans. Undergraduates will now be allowed to borrow up to \$5,500 in federally subsidized loans in their freshman year, \$6,500 as sophomores, and \$7,500 each year after that. The total per-student limit was also raised to \$31,000 from \$23,000. However, under the new plan, total loan benefits offered to students in the coming academic year by the top 10 lenders is still expected to be 66 percent lower than the previous year. On April 10, 2008, the House Committee on Education and Labor marked up H.R. 5715, the Ensuring Continued Access to Student Loans Act of 2008. This closely followed the introduction of S. 2815, the Strengthening Student Aid for All Act, in the Senate on April 3, 2008.

Climate Legislation

Both House and Senate chambers debated legislation to combat global warming recently. Both House and Senate bills would reduce U.S. heat-trapping greenhouse gas emissions by establishing a market-based emissions cap-and-trade program, following up on the precedent established in EPA's acid rain program for sulfur dioxide. The Senate bill aims to reduce U.S. emission by 70 percent by 2050, while the House bill aims for a target emissions reduction somewhere between 60 percent and 80 percent. Each measure also contains provisions for investment in renewable fuel and energy efficiency technologies. Progress, however, was limited in both chambers by partisan bickering over gas prices and judicial nominations.

Student-Exchange Programs

The State Department has issued a new rule that will allow American colleges and universities to sponsor foreign students to work in the United States for up to 12 months.

The rule, published in the *Federal Register*, amends the Exchange Visitor Program. Under existing regulations, it is difficult for American colleges to sponsor foreign students to be placed in companies or organizations as interns because there is no provision for that purpose.

Nanotechnology R&D

On June 5, the House passed H.R. 5940, the National Nanotechnology Initiative Amendments Act aimed at expanding innovation and research in nanotechnology. Provisions of the bill include a requirement for participating agencies to support the setting of standards for nanotechnology, one or more grants to establish Nanotechnology Education Partnerships, support for nanotechnology research and development in areas of national importance, support for nanomanufacturing research (including green nanomanufacturing research).

Copyright Reform/Orphan Works

On April 24, Rep. Berman (Chairman, Judiciary Subcommittee on Courts, the Internet, and Intellectual Property) introduced a bill to limit the judicial remedies for infringement of copyright in orphan works, or works that are within the subject matter of copyright, but whose copyright owners cannot be identified or whose copyright status cannot be determined. Under current law, university libraries, museums, and other public-service entities holding orphan works are not able to make these resources accessible because of the potential cost in monetary damages that can occur if the copyright owner later appears. H.R. 5889 (and its Senate counterpart by Sen. Leahy, S. 2913) would amend current law to create an exemption for monetary compensation in cases of copyright infringement performed without commercial advantage and for primarily a charitable, religious, scholarly, or educational purpose.

DHS OPT Interim Final Rule

On April 4, the Department of Homeland Security issued an interim final rule extending the period of Optional Practical Training (OPT) from 12 to 29 months for qualified F-1 non-immigrant students. The extension will be available to F-1 students with a degree in science, technology, engineering, or mathematics who are employed by businesses enrolled in the E-Verify program.

Americans with Disabilities Restoration Act

The House 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, but the higher education community was not consulted until late in the process.

The three issues of concern to the higher education associations involve institutions’ roles as educators, not as employers. 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.

Conrad 30 Reauthorization: In May, the House has passed reauthorization of the Conrad State 30 J-1 visa waiver program. The program expired June 1, 2008. The program allows physicians on J-1 visas to waive the J-1 requirement to return to their home country for two years if they agree to serve for three years in an underserved area. Each state is allowed 30 such waivers. The Senate has not yet passed its version of the reauthorization, but it is possible that it could be added to another must-pass bill later in the session.

Health Legislation/Issues

Medicaid Moratorium:

On June 19, 2008, the House passed the FY09 supplemental appropriations package that includes provisions to delay until April 1, 2009 the Medicaid GME proposed rule; Medicaid final rule regarding cost limit/units of government (the "IGT rule"); and four other Medicaid regulations. The moratorium does apply to the proposed rule affecting certain outpatient clinic and hospital services.

Medicare Physician Payment Cuts:

On June 24, 2008 the House of Representatives passed its Medicare package (HR 6331) by a vote of 355-59. The bill includes provisions that would extend the current 0.5% physician update through December 31, 2008 and averts a projected 5.4% cut for Calendar Year (CY) 2009 by establishing a 1.1% update. It would also extend the availability of incentive payments for physician quality reporting through CY 2010. The cost of the bill is partially offset by phasing out the IME payments made to Medicare Advantage plans (it preserves the IME payments made directly to teaching hospitals for treating Medicare Advantage beneficiaries).

After initially failing to pass procedural legislation allowing for the bill’s consideration, The Senate approved the measure on July 9. The President vetoed HR 6331 on July 15 stating that it contains cuts to certain Medicare Advantage programs and “undermines efforts to promote fiscal solvency” in the Medicare and Medicaid programs. Later that day, the House voted 383-41 to override President Bush’s veto and the Senate followed with a vote of 70-26. Both Texas Senators voted to override.

Medicare Inpatient PPS Proposed Rule:

On April 30, 2008, CMS published a proposed rule on the Medicare hospital inpatient prospective payment system. The finalized policies will become effective October 1, 2008. The proposed rule would implement the current law requirement that base payments be increased by the full market basket increase (estimated at 3 percent for hospitals that report quality measures). Other particular items of interest are:

- **IME** – While there are no proposed changes to GME or IME, CMS is again asking for comments on its decision to eliminate the capital IME adjustment beginning in FY09. Interim Chancellor Shine expressed the UT System's concern with this provision in letters to Senator Hutchison and Rep. Barton.
- **EMTALA** – The proposed rule expands EMTALA to the inpatient setting. CMS believes that the EMTALA obligation for the hospital where the individual is admitted as an inpatient ends once the patient is admitted. UTMB filed comments with CMS disagreeing with these changes.

KBH/Kennedy Comprehensive Cancer Bill:

Senator Hutchison and Senator Kennedy are currently drafting comprehensive cancer legislation aimed at increasing cancer research and clinical trials for cancer drugs. Other potential areas covered in the bill include:

- Increasing prevention and detection measures such as screening and behavior modification tools
- Improving access to care (such as mobile mammography vans for rural areas)
- Encouraging public/private partnerships
- Reforming health insurance by encouraging small business health plans and allowing coverage of clinical trials
- Reauthorizing the patient navigator program
- Improving health disparities in cancer
- Reforming the FDA to get drugs in the pipeline faster

Select Agent Program Reauthorization: Senators Burr and Kennedy filed legislation 6/12/08 reauthorizing the select agent program. We have been working closely with their staffs to ensure that the bill improves the program and does not place additional burdens on universities. They are also looking at provisions regarding oversight of BSL3 and 4 labs and have sought UTMB's expertise in this area. We are working to incorporate UTMB's proposed BSL3/4 training program.

False Claims Act Amendments: Senators Grassley and Durbin introduced the False Claims Act Corrections Act in September 2007 and the Senate has held several hearings on the legislation. While the legislation is described as simply being technical corrections, many believe that it could result expose public universities to potential FCA claims made by DOJ, faculty, employees and others. Moreover, universities could be subject to treble damages for the entire amount of a grant, not just actual damages.

Health Professional Shortage Areas: On February 29, 2008, HHS released a proposed rule that changes the methodology for designating federal health professions shortage and medically underserved areas. The proposal consolidates the criteria for designating MUPs and HPSAs into a single methodology called the Index of Primary Care Underservice. These changes could affect eligibility for Title VII health professions, funding J-1 visa waivers for international medical graduates, and other programs.