UC DAVIS
UNIVERSITY RELATIONS
GOVERNMENT AND COMMUNITY RELATIONS

UC DAVIS FEDERAL RELATIONS UPDATE
December 15, 2011

Gina Banks, Director, Federal Government Relations

About this update

This is the second in a series of monthly updates about recent federal activities. Information has been compiled from multiple sources including AAU, APLU and UCOP. I welcome any suggestions about content or format.

Washington Update

November was filled with Congressional activity. The House and Senate completed work on three appropriations bills and are currently considering the remaining appropriations bills for FY 2012. Additionally, Congress passed a short-term continuing resolution that funds the federal government through December 16th.

The Joint Committee on Deficit Reduction failed to reach an agreement on a proposal to reduce the federal budget by $1.5 trillion. Because of the lack of agreement, the process of sequestration will be implemented, beginning January 2013, to reduce the federal budget through cuts to discretionary and non-discretionary spending. Also, Congress repealed the 3% Withholding Rule.

The White House and congressional negotiators are continuing their behind-the-scenes efforts to work out year-end deals on FY12 appropriations and the extension of several policy and tax provisions, including the extension of the payroll tax cut, long-term employment insurance, the fix for the alternative minimum tax and the "doc fix" to prevent a large decrease in Medicare payments to physicians. Congress is expected to strike a deal and adjourn early next week.

Super Committee Fails, Sequestration Triggered

The Joint Select Committee on Deficit Reduction (Super Committee) failed to produce an agreement by its statutory deadline of November 23rd on federal budget deficit reduction legislation, as required by the Budget Control Act (BCA) enacted last August.

BCA stipulates that if the Super Committee fails to produce a bill, there will be across-the-board cuts sufficient to reduce the deficit by a total of $1.2 trillion, starting in 2013. Under this process, about $109 billion must be cut from the federal budget each year – roughly divided between defense and nondefense spending for a total of $1.2 trillion in spending cuts (and interest savings) - over a period of nine years between FY 2013 and 2021.
The 2013 impact of sequestration is estimated to be about:

- 9 percent cuts in most affected discretionary programs: $55 billion in defense and $39 billion in nondefense programs, and

- 8 percent cuts or $16 billion in affected mandatory programs other than Medicare, and a 2 percent cut to Medicare provider payments. Social Security, Medicaid, Federal retirement programs and programs assisting those with low incomes are exempt from the sequestration process.

Because defense spending is largely discretionary, the vast bulk of the BCA sequestration cuts ($814 billion of $984 billion) will affect discretionary, rather than mandatory programs. It is estimated that the full nine years of sequestration would produce the following cuts:

- Defense discretionary programs: $492 billion in total, with cuts ranging from 10 percent in 2013 to 8.5 percent in 2021.

- Nondefense discretionary programs: $322 billion in total, with cuts ranging from 7.8 percent in 2013 to 5.5 percent in 2021. Most federal research of interest to UC is funded in this category.

- Mandatory nonexempt nondefense programs: $170 billion. Cuts would be limited to 2 percent each year in most Medicare spending because of a special rule for that program, producing an estimated total cut of $123 billion. An additional $47 billion in cuts would come from other nondefense mandatory programs.

- Mandatory nonexempt defense programs: $100 million in total, with cuts ranging from 10 percent in 2013 to 8.5 percent in 2021.

The BCA exempted Pell Grants from the automatic sequester for the 2013 year while other educational programs would be cut by approximately 9.1 percent. However, in FY 2014, and in each following year, until 2021, sequestration will further lower the spending caps set in the BCA and the non-defense discretionary cuts will be decided through the appropriations bills. Within these vastly reduced spending limits, neither Pell Grants nor other protected discretionary programs will be granted special safeguards from cuts thus creating the potential for Pell Grants to undergo budget cuts beginning in 2014.

While the looming automatic budget cuts are of deep concern to both parties in Washington, there is currently no agreed upon path forward that would undo the sequestration process. Significant debate on possibly undoing or amending sequestration is expected in the upcoming year. The combination of the 2012 election season with the commencement of sequestration cuts in January 2013 and the impending expiration of the Bush tax cuts at the end of 2012 are certain to keep budget issues at the top of the Congressional agenda for the coming year.

Continuing Resolution and FY 2012 Appropriations Update

The first three of the FY 2012 appropriations bills were consolidated into one bill and signed into law on November 18th – funding the Departments of Agriculture, Commerce, Transportation and HUD, as well as National Science Foundation and National Aeronautics and Space Administration. The measure also carried another stop-gap continuing resolution through December 16th to fund other federal agencies while Congress continues to negotiate their funding levels.

House and Senate negotiators are working to finalize the remaining appropriations bills at funding levels consistent with the $1.043 trillion FY 2012 discretionary spending cap set by BCA. However, there are efforts to limit discretionary spending to last spring's House-passed budget resolution cap, which would be roughly $23 billion less than the August agreement and $30 billion less than FY 2011 appropriations.

Based on current intelligence, an omnibus that will include 8 or 9 of the remaining bills, is likely to be taken up the week of December 12th. It remains unclear, however, whether the appropriations legislation will move on its own or be linked to other year-end efforts to extend unemployment benefits and the payroll tax cut, as well as an extension of the perennial "doc fix" to forestall deep (27%) cuts in Medicare reimbursement rates for doctors.

A number of politically contentious issues continue to surround the Labor, HHS and Education and Interior-Environment appropriations bills. Completion of these bills remains uncertain with the potential for a year-long CR emerging to cover these select agencies and programs.

Some highlights from Agriculture-Commerce, Justice, Science-Transportation HUD Appropriations:

Agricultural Research and Extension
The priority agricultural research and extension programs of interest to UC were funded at FY 2011 levels, including the Agriculture and Food Research Initiative (AFRI), the Sustainable Agriculture Research and Education (SARE) program, EFNEP, and the primary NIFA Formula and Block Grant programs.

NSF
NSF is funded at $7.033 billion, which is a $173 million increase over FY 2011, and higher than both the House- and Senate-passed FY 2012 levels:

- **Research and Related Activities**: $5.719 billion, $155 million above FY 2011
- **Major Research Equipment and Facilities Construction (MREFC)**: $167 million, $50 million above FY 2011
- **Education and Human Resources**: $829 million, $32 million below FY 2011
- **Agency Operations and Award Management**: $299 million, equal to FY 2011

NSF report language for MREFC: NSF must spend MREFC funds to first complete projects under construction before funding projects in earlier stages of development. NSF is directed to review the current MREFC portfolio and report to Congress on any recommended changes to the project funding profiles contained in the FY13 request. NSF is also directed to report on its efforts to control project costs, especially related to contingency funding.

Policy and Regulatory Update

Medicare Sustainable Growth Update
House Republican leaders met on December 1st with the Congressional Doctor's Caucus to discuss how to stave off a 27 percent cut in Medicare payments to physicians that will hit in January. While lawmakers are seeking a long-term permanent solution to what is widely viewed as a flawed physician payment formula under the Sustainable Growth Rate (SGR), the first order of business is coming up with a short-term fix by the end of the year to prevent the reductions that will be triggered by the SGR. Although details of the proposals under discussion are not yet available, lawmakers are reportedly revisiting earlier ideas for financing a patch, which costs an estimated $21-$36 billion depending on the duration of the patch, such as recapturing health reform exchange subsidies and using war savings from planned troop withdrawals.

Any SGR fix that is developed prior to the end of the year is likely to be wrapped up in a package that includes extensions of expiring Medicare programs, some of which are crucial to hospitals. Given that other provisions in a Medicare extenders package will likely add at least $3 to $6 billion in provider adjustments, this raises questions about whether a longer-term two year patch is feasible, or if lawmakers will resort to a one-year to 18-month patch to reduce some of the pressure on other provider offsets.

The estimated annual impact of a 27 percent cut to Medicare physician payments on the UC faculty practice plans is approximately $70 million. On behalf of UC Health's 4,800 physician faculty, UC's SVP for Health Sciences and Services Dr. Jack Stobo weighed-in the week of December 5th with a letter to members of the California congressional delegation expressing support for an SGR fix.

3 Percent Withholding Rule
A permanent repeal of the 3% Withholding Rule has been enacted as part of the veterans legislation (P.L. 112-56), which was signed into law on November 21st. The legislation also included additional tax credits for employers to hire certain qualified veterans. Specifically, the 3% Withholding Rule, which had been set to go into effect in January of 2013, would have required government entities at the federal, state and local levels, including UC, to deduct 3% of vendor and contractor payments for tax purposes. Passage of the legislation is welcome news as it will eliminate a burdensome new requirement that would have impacted a large number of financial transactions between UC and its vendors.

GRANT Act
UC FGR has been closely monitoring developments regarding H.R. 3433, the "Grant Reform and New Transparency (GRANT) Act of 2011", which was introduced on November 16th and approved by the House Committee on Oversight and Government Reform on November 17th. The legislation is intended to increase transparency and accountability in the federal grant making process. However, as approved by the Committee, the bill raises a number of significant concerns to UC and to the entire university research community.

Among the concerns, the legislation would increase regulatory burdens associated with the federal grant making process for federal agencies as well as for grant applicants; require the posting online of all completed grant applications; require the posting online of the names and titles or a unique identifier about peer reviewers; put a focus on awarding grants strictly on a numerical ranking basis; potentially limit the ability of federal agencies to consider unsolicited proposals, and a number of other issues.

The UC DC office has contacted Hill offices to discuss UC's concerns over the GRANT Act, and is working with the UCOP Office of Research to evaluate the legislation, and to coordinate next steps with regard to advocacy in addition to working closely with the higher education associations. At this point, the legislation has not been scheduled for a vote in the House of Representatives, and there is not a Senate companion bill.

College Costs
There has been increased activity in recent days on the subject of college costs. U.S. Secretary of Education Arne Duncan gave a national speech calling for urgency in addressing rising college costs. The Subcommittee on Higher Education and Workforce Training, chaired by Rep. Virginia Foxx (R-NC), held a hearing entitled, "Keeping College within Reach: Discussing Ways Institutions Can Streamline Costs and Reduce Tuition." Also, several university presidents attended a private meeting at the White House to talk about college affordability.

All sides seem to agree that earning a college degree is essential for Americans to compete in the global marketplace, and that there needs to be urgent efforts to recruit more Americans to attend college and increased attention focused on helping current students complete college. There is also renewed debate about financial barriers that may hinder college access, affordability, and success for students, and calls from policy makers to make college more affordable for students and find innovative ways to reduce campus costs.

Early reports about President Obama's private meeting with college presidents provided the following information:

- The administration wants new ideas about how to improve college affordability and may offer new proposals in the next few months;
- New policies will have to affect all sectors of higher education and focus on recruiting more students to attend college and complete college;

- Higher education leaders can help develop creative innovations and management ideas that will help students succeed and control college costs;
- The traditional economic landscape for financing higher education has changed and colleges will have to maintain quality while operating with reduced resources; and
- The administration is looking for ways to replicate successful cost-saving strategies to have more of an impact than we are now experiencing.

AAU is calling on its members to provide examples of how they are achieving efficiencies and cutting costs in new and innovative ways. Vice Chancellor John Meyer and Mitchel Benson have agreed to send information to AAU on the campus's behalf.

While most of the higher education community welcomes Education Secretary Arne Duncan's recent call for a national conversation about college costs, the American Council on Education VP Terry Hartle expressed two important points in a letter to the editor at the Washington Post after a recent article decrying increased college costs:

- First, we cannot underestimate the impact of states walking away from their responsibility to fund public higher education. The vast majority of college students—80 percent—attend public colleges and universities. When states impose draconian funding cuts on their institutions, as they have in recent years, they are forcing tuitions up.
- Second, we must do away with one of the most persistent and pernicious myths of higher education—that increases in federal aid drive up the cost of college. Numerous studies, including two by the U.S. Department of Education, show there is no link between federal student aid and tuition increases. But there are still those who would have people believe that modest increases in student aid programs are the driving force behind institutions' decisions about tuition and fees.

DOD MOU on Tuition Assistance

The Department of Defense (DOD) issued a deadline of January 1, 2012 for institutions of higher education to sign a new Memorandum of Understanding (MOU) in order to participate in the Military Tuition Assistance (TA) program, which provides financial assistance to active duty and reserve military personnel taking courses at UC and other colleges and universities. The DOD TA program is not related to the Post-9/11 GI bill education benefits.

The TA program currently benefits about 40 UC students across both extension and regular programs at all our campuses. Despite its small size at UC, the program is an important tool in UC's commitment to provide access to educational opportunities to military personnel and veterans.

The problem is the new MOU contains provisions that UC campuses cannot meet, related for example, to the acceptance of transfer credit, which go well beyond the standards adopted by UC's Academic Senate. In one instance, UC would be expected to accept transfer credit, military experience, and coursework that are not equivalent to courses taught at UC. In addition, UC would be expected to accept transfer credits from other accredited institutions rather than individually review courses to determine if they meet UC's standards as we do now. The MOU would also expect UC to award credit through third-party tests not recognized by UC, and includes a number of problematic administrative requirements.

UC along with other universities and the national higher education associations have advocated for changes to the MOU that would make it acceptable, and are now petitioning US Secretary of Defense Leon Panetta to intervene. DOD staff did not intend for the MOU to prevent institutions like UC from participating. Instead, their aim was to curb abuses on the part of low-quality, high-cost, for-profit higher education programs with questionable practices and poor student outcomes, which were targeting military personnel. These institutions for the most part are signing the MOU.

UC will continue to press for modifications to the MOU to allow it to remain in the program.

UC Davis faculty and leadership in Washington, DC

During the week of December 5th, I was in Washington, DC for the AAU CFR meeting and Hill meetings. I met with several Congressional offices to discuss the pepper spray incident and gauge their feelings about the situation. I focused on members who have close ties to the UC Davis community, including offices that have staff who graduated from UC Davis.

I met with the offices of Congressman McClintock, Congressman Herger, Congresswoman Matsui, Congressman Thompson, Senator Boxer and Senator Feinstein. In general, the offices are supportive of UC Davis and said that the pepper spray incident has not changed the way that they feel about the campus or campus leadership. Many staffers remarked that they did not want to rush to judgment about what happened and said that people should wait to comment until after the investigations have concluded.

Congresswoman Matsui and Congressman Thompson have personally reached out to Chancellor Katehi to offer their support and their staff said that they remain steadfast in that support. I promised to keep the offices informed about the results of the investigations and any steps that the campus takes as a result of the findings.

If you have upcoming meetings in Washington, DC, please let me know how I and/or the UC DC staff can be of assistance.

Questions or need assistance

If you have questions, need additional information about any of the above items, or would like assistance in connecting with senior federal officials, please let me know. I can be reached at gabanks@ucdavis.edu or at 530-752-9795.