



**Weekly Washington Report**  
Friday, May 23, 2008

**Next Week in Congress**

*Congress has adjourned for its week-long Memorial Day recess. When Congress returns the week of June 2, it will begin a stretch of four legislative weeks before its week-long Independence Day recess. When the Senate reconvenes on June 2, it will hold a procedural vote in an attempt to bring up S. 3036, a modified version of S. 2191, America's Climate Security Act, the cap-and-trade climate change legislation sponsored by Senators Joe Lieberman (D-CT) and John Warner (R-VA). The House has a Senate-modified version of the Fiscal Year 2008 supplemental appropriations bill on its agenda, as well as a final vote on the FY09 budget resolution.*

**Budget/Appropriations**

On Thursday, the full Senate passed a narrower domestic spending package within its overall Fiscal Year 2008 supplemental appropriations bill than the proposal agreed to by the Senate Appropriations Committee last week. Senate approval of the overall bill volleys it back to the House, which approved its version last week with a larger domestic spending package, no funding for military operations in Iraq and Afghanistan, and a slew of defense policy recommendations specifically rejected by the Senate. The Senate version of the bill (H.R. 2642) contains a total of \$165 billion for Pentagon spending in FY08 as well as a "bridge" fund to continue operations through the beginning of the next administration. The Senate package also includes a non-emergency \$52 billion expansion of the Montgomery GI bill (without budgetary offsets); \$11 billion for an expansion of unemployment benefits; a provision delaying several proposed changes to the Medicaid program; funding for construction and maintenance of levees in New Orleans; and \$1 billion for the low income home energy assistance program. The House will not address the Senate changes until after the Memorial Day recess. The President continues to insist any supplemental bill adhere to his overall spending request and not contain major expansion of domestic programs like the veterans' education benefits.

Also delayed beyond next week's recess are final votes on the Fiscal Year 2009 federal budget conference agreement (S. Con. Res. 70). Initial plans to vote on the budget in the House on Wednesday were waylaid after an administrative snag caused activity to bog down on the farm bill, and a subsequent budget vote was put off. The final budget agreement, which is not acted on by the President, is nearly \$25 billion over the President's request of \$991 billion for discretionary spending and exceeds \$3 trillion in total spending. The President continues to insist he will veto any FY09 appropriations bill (few of which are expected to clear Congress before the Nov. elections) that exceed his budget request.

**Energy & Environment**

With members of Congress heading home for the week to face constituents struggling to afford steadily rising gas prices, concerns over the rising cost of oil and what (or who) is to blame for the increases continued to receive significant attention this week.

On Monday the President signed a bill to halt shipments of oil to the Strategic Petroleum Reserve, despite his belief that the measure will do little or nothing to lower the cost of gasoline. The bill (H.R. 6022) received overwhelming support in Congress (97 votes in the Senate; 385 in the House). On May 16 the Department of Energy announced that it, "will not sign contracts this year for the receipt and transportation of up to 13 million barrels of crude oil to the Nation's strategic petroleum reserve sites (SPR)." The legislation prohibits future SPR shipments until the price of oil dips below \$75 a barrel. The SPR stores over 700 millions of barrels of oil in facilities along the Gulf Coast as a security policy against a massive disruption of oil to the market, and is at nearly 97% of its current capacity. This week the price of a barrel of crude oil on the New York Mercantile Exchange breached \$135.

On Tuesday the House approved a bill (H.R. 6074, 324-84), the Gas Price Relief for Consumers Act, that aims to prevent the manipulation of oil markets by foreign countries or entities, like the Organization of Petroleum Exporting Countries. The bill (dubbed "NOPEC") authorizes the U.S. Attorney General to take anti-trust action in a U.S. District Court against any foreign group believed to be influencing oil markets or setting oil prices – recognizing oil exports as a "commercial" and not a "governmental" activity. Similar ideas have met with mixed success in the House, but have never advanced in the Senate. The President lodged a veto threat on Monday, predicting that the, "targeting of foreign direct investment in the United States as a source of damage awards would likely spur retaliatory action against American interests in those countries and lead to a reduction in oil available to U.S. refiners. The net effect would be to harm U.S. interests abroad, discourage investment in the U.S. economy, potentially limit the availability of gasoline, and possibly further increase fuel prices."

Once again, Congressional committees called executives from some of our nation's largest oil companies (BP, Shell, Chevron, ConocoPhillips, and ExxonMobil) to testify to shed light on the skyrocketing cost of oil and defend the levels of financial compensation received by company executives. The Senate Judiciary Committee hearing on Wednesday preceded a similar hearing in the House Judiciary Committee on Thursday, with both sessions uncovering little new information. Witnesses underscored the increase in global demand for oil and the need to increase domestic access to potentially fruitful areas of oil. On Wednesday a coalition of House Republicans unveiled an energy package similar to the one introduced by the Senate Minority Leader last week that was promptly batted down in the Senate. The package takes another run at opening portions of the Arctic National Wildlife Refuge (and areas of the Outer Continental Shelf) and stresses a commitment to the growth of nuclear energy.

A procedural error has potentially delayed the implementation of the farm bill. On Wednesday the House overrode the President's veto of the farm bill (H.R. 2419), and the Senate followed suit on Thursday (82-13). However, after the initial override vote on Wednesday (316-108), House leaders noticed they had transmitted an incomplete copy of the bill to the President to be considered (which the President vetoed regardless). After consultation with House parliamentary experts and a bit of

legislative maneuvering, the House held a second override vote on Thursday for a "new" farm bill, which includes the complete contents of H.R. 2419 under a new bill number, H.R. 6124. Members approved that measure 306-110. However, the Senate held its vote on the incomplete bill (containing 14 of the 15 titles of the original bill), and must address the final title (pertaining to trade policy) or the contents of the complete farm bill at a later time. Regardless of the error and any resulting action on the remaining title, Congressional intent to undertake the second sustained veto of the Bush Administration is clear. The farm bill, which outlines U.S. agricultural policy, as well as food and nutrition programs for five years, is anticipated to cost \$289 billion over five years, and over \$600 billion over the next decade according to the Congressional Budget Office.

## **Technology**

A rejuvenation of the expired research and development tax credit took another step forward on Wednesday, as the House approved a \$54 billion tax extenders measure that included a one-year extension of the R&D credit, retroactive to its expiration on Dec. 31. The bill, which mostly addresses tax initiatives that have expired or are set to expire, also includes significant emphasis (over \$17 billion) on continuing tax incentives for the development of wind, solar, and other forms of renewable energy. The bill, which does not include a one year "patch" for the alternative minimum tax (likely to be addressed later in the year), is fully off-set to comply with budget rules. This is likely to cause difficulty in the Senate where there seems to be a large enough coalition of opponents to offsetting the continuation of current tax policy through unrelated tax increases. The bill (H.R. 6049, the Renewable Energy and Job Creation Act) was approved 263-160 on the heels of the Administration lodging a veto threat against the bill. While specifically singling out its support for the R&D tax credit portion, the Administration criticized the overall bill, stating, "the Administration does not believe that efforts to avoid tax increases on Americans need to be coupled with provisions to increase revenue." One of the primary offsets in H.R. 6049 would modify the way a type of offshore income realized by hedge fund managers is classified for tax purposes.

Before final passage of the FY08 supplemental appropriations bill, the Senate version was stripped of a provision to expand the H-2B visa program that would allow former recipients of H-2B visas who have returned to their home countries be allowed back into the U.S. and not count against the annual H-2B cap of 66,000. These "returning worker" exemptions were in place in Fiscal Year 2007 for H-2Bs issued in the three previous fiscal years. However, Congress failed to reauthorize it for Fiscal Year 2008, and the Senate removed the returning worker provision from the version of H.R. 2642 agreed upon by the Senate Appropriations Committee.

## **Financial Services**

The Senate Banking, Housing, and Urban Affairs Committee approved a bill this week that mirrors a House-approved bill (H.R. 3221) in dramatically expanding the loan authority given to the Federal Housing Administration and creates a long-debated oversight regulator for Government Sponsored Enterprises Fannie Mae and Freddie Mac. The regulator for Fannie and Freddie would have the ability to determine parameters and boundaries for the mortgage companies' portfolios and capital limits. Like its House counterpart, the Senate Banking Committee bill (approved 19-2) creates an affordable housing trust fund within the GSEs that will be funded through a portion of their profits. However, the Senate uses a percentage of those resources

over three years to cover possible losses from the \$300 billion loan-guarantee expansion of the FHA, a program that will voluntarily allow homeowners to refinance into FHA-insured mortgages (at a fixed rate for 30 years) as long as the original lender voluntarily agrees to reduce the loan's outstanding principal to bring it more in line with the home's market value. The Congressional Budget Office has estimated the \$300 billion expansion will realize less than \$3 billion in losses from Fiscal Year 2008-2013. Under the House bill the trust fund proceeds would be used to improve areas along the Gulf Coast damaged during the 2005 hurricane season. Both bills contain permanent increases in the upper limit of loans that Fannie and Freddie can buy, an ability given to the mortgage giants on a temporary basis through the end of the year from the economic stimulus plan passed in February.

Congress cleared a measure this week to clarify a provision of the Fair and Accurate Credit Transaction Act, a 2003 law to combat identity theft. The provision in question limits the amount of information merchants can print about a consumer's credit card on receipts. Supporters of the measure passed this week, the Credit and Debit Card Receipt Clarification Act, believe the provisions in the original FACTA bill were vague, leaving businesses of all sizes that lawmakers believe were trying to comply with the spirit of the original law subject to hundreds of lawsuits. The bill, H.R. 4008, has now passed the Senate (unanimous consent) and House (407-0) and is at the White House for the President's consideration.

## **Transportation**

A five-year Amtrak reauthorization bill kept steaming along this week when the House Transportation and Infrastructure Committee approved the measure on Thursday. H.R. 6003 contains a \$14.4 billion outline for Amtrak over the next five years, a blueprint representing a stark departure from funding levels for Amtrak in the recent past, which languished at just over \$1.3 billion in FY08. The President's budget tickets Amtrak for \$800 million next year, and Amtrak itself has only requested \$1.7 billion. Last fall the Senate approved a six-year, \$11.4 billion Amtrak bill (S. 294). The House measure calls for a substantial commitment to the development of privately-run high speed rail and a state of good repair in the northeast corridor, as well as finances the payment of back wages to rail workers. The Chairman of the House T&I Committee praised the bill as a, "historic milestone, because the legislation we approved today is a truly significant and long overdue investment in the nation's passenger rail system. We can address many of the nation's most pressing transportation problems by improving Amtrak's service and operations, because increased passenger rail ridership will alleviate growing highway and airport congestion," Amtrak has operated without a long-range funding and operations blueprint for years but continues to be funded on a year-to-year basis.

## **Health Care**

On Wednesday the Chairman of the Senate Finance Committee, Sen. Max Baucus (D-MT), stated that although he has reached bipartisan agreement on portions of a Medicare reform bill, he will continue to move forward without reaching agreement on a comprehensive package. On June 30, a 10.6% reduction in physician reimbursement rates will kick in, with an additional cut scheduled for 2009, without Congressional action to delay the cuts – something Congress has done on a number of occasions since the reimbursement rates were scheduled to be reduced in 2002. Physicians and other supporters of a "doc fix" contend that if the cuts are allowed to take place physicians will see fewer Medicare patients or refrain from seeing

Medicare patients altogether. Baucus stated that a bipartisan group of Finance Committee members have, "found some areas of agreement surrounding an 18-month physician payment update, extensions of expiring provisions, and stopping unscrupulous marketing of plans to Medicare beneficiaries. But it's clear to me that in the time left to complete a bill, we're unlikely to get a bipartisan agreement ...With the expiration of the current physician payment fix approaching on June 30, I will spend the Memorial Day recess crafting legislation that my Democratic colleagues and I believe is in the best interest of America's seniors – including an increase in physician payments." The Chairman predicted a bill on the Senate floor by early June.

President Bush signed the Genetic Information Nondiscrimination Act of 2007 (S. 493) on Wednesday, which bans the use of genetic information by healthcare providers to determine eligibility requirements or premiums, and by employers to deny employment, promotions, or healthcare coverage. Described by sponsor Sen. Edward M. Kennedy (D-MA), Chairman of the Senate Health, Education, Labor, and Pensions Committee as, "the first major new civil rights bill of the new century," S. 493 allows patients to take advantage of the more than 1,100 genetic tests now available without fear of discrimination. The bill passed unanimously in the Senate for the third time last month (95-0), and finally passed in the House after two previous failures in 2003 and 2005.

The Senate supplemental bill includes a provision to delay (until April 2009) an August 2007 Bush Administration directive to limit state expansion of the State Children's Health Insurance Program to discourage "crowd-out," or the voluntary dropping of private coverage when public health care is available. The Administration directive established a new set of standards states must meet before expanding SCHIP coverage to children of families earning income exceeding 250% of the poverty level. States contend these new benchmarks, requiring proof that that 95 percent of children from families earning less than twice the poverty level (\$42,400 for a family of four) are covered under SCHIP, are virtually impossible to reach.

In hearing before the House Energy and Commerce Subcommittee on Health this week representatives from the U.S. Government Accountability Office and the Congressional Research Service testified that the SCHIP directive was improperly issued and therefore invalid. According to Dayna K. Shah, GAO managing associate general counsel, and Morton Rosenberg, CRS legal specialist, the letter should have been issued as an administrative rule, which must be submitted to Congress for approval. CBO Director Peter Orszag stated in testimony before the Subcommittee on May 15 that, "CBO's analysis suggests that the directive's impact on enrollment is likely to be modest under current law, given the way CMS appears to be implementing it and, more important, given the funding levels assumed in CBO's baseline.

## **Higher Education**

Two weeks after the President signed the Ensuring Continued Access to Student Loans Act of 2008, on Wednesday U.S. Secretary of Education Margaret Spellings sent a letter to lenders participating in the Federal Family Education Loan Program outlining the federal government's response to the ongoing trouble in the student loan market. The four-part plan includes a, "specific package using authority granted to the Secretary...to offer to purchase loans from lenders for the 2008-2009 academic year and to offer lenders access to short-term liquidity; a continued

commitment to working with the student lending community to ensure FFELP and other student lending programs serve the best interest of the students and taxpayers; an enhanced lender-of-last-resort program to ensure all students continue to have access to FFELP loans; and the capability of doubling the capacity of our Direct Loan Program should it be needed." Lenders continue to leave the student loan market at a time when demand for students loans spikes in preparation for the coming school year.

According to summary materials, the Department of Education appears ready to purchase the face value of federally-insured loans (FFELP loans) from May 2008 to June 2009, in addition to fees, interest, and a set \$75 fee for administrative costs for the right to service the loan. After reviewing the details of the Administration's plan, Al Lord, the Chief Executive Officer of Sallie Mae, the country's largest lender of student loans, reaffirmed the lending giant's commitment to providing critical student loans. No cost estimate is available for the program. However, the student loan bill specifies that even as a short-term measure, the program must not have a net cost to taxpayers so the profitability of interest on the loans must be balanced against the possibility of defaults.

Secretary Spellings' 3-page letter outlining the proposal in greater detail can be found at:

<http://ifap.ed.gov/eannouncements/attachments/052108FFELPMonitoring.pdf>

Congress passed another extension of the Higher Education Act this week. The month-long extension (the sixth needed this year) will give negotiators until June 30 to reach an agreement after the current May 31<sup>st</sup> deadline passes (a certainty since Congress is not in session next week). Outstanding issues include a provision that would penalize states that reduce funding for higher education below a certain threshold and require greater disclosure of the cost of textbooks when students register for classes.

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