FEDERAL UPDATE

The Report on Congressional & Administration Activities

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WASHINGTON UPDATE

On Dec. 20, Congress completed action on H.R. 1, the Tax Cuts and Jobs Act. The legislation is now headed to President Trump for his signature. Details about the final package and UC's advocacy are outlined below.

Just before the Dec. 22 deadline, Congress passed its third continuing resolution (CR) of Fiscal Year (FY) 2018. This will keep the government operating through Jan. 19. Congress is left with several outstanding issues to address in the new year, including many of importance to the University of California (UC). UC's Office Federal Governmental Relations (FGR) remains actively engaged in budget and appropriations advocacy efforts and is working with the California congressional delegation and other key policymakers to support the university's key priorities in advance of the passage of final FY 2018 appropriations legislation.

In addition, the university has been actively engaged on numerous issues, including the Deferred Action for Childhood Arrivals (DACA) program, 340B drug pricing and the reauthorization of the Higher Education Act (HEA). More details about these and additional topics are below.

BUDGET AND APPROPRIATIONS

On Dec. 21, Congress passed its third CR for FY 2018 keeping the government operating for an additional four weeks, through Jan. 19. The House passed the bill in a vote of 231-188, while the Senate passed the bill in a vote of 66-32. Both California Sens. Dianne Feinstein and Kamala Harris voted against the CR in part because it did not include a solution to the rescission of DACA and full funding for the Children's Health Insurance Program (CHIP). Prior to this agreement, the government was operating under a two-week CR from Dec. 9-22.

The CR also includes language to waive PAYGO as related to cost of the tax package. Throughout debate on the tax package, UC was concerned that, due to the increase to the deficit, the tax package would trigger automatic cuts under the Statutory PAYGO law to programs like Medicare and the Direct Subsidy Payments on Build America Bonds.

On Dec. 13, House appropriators unveiled H.J.Res.124, the House Republicans initial proposal for funding the government through Jan. 19. The initial draft of the legislation proposed to fund the Department of Defense for one year, but would have exceeded the defense caps without agreeing to new spending limits. Upon the legislation's introduction, 44 Democratic senators signed onto a letter to Republican leaders stating that they would oppose funding legislation that did not implement parity between defense and non-defense discretionary spending. The initial proposal also provided funding for CHIP, which provides low-cost health coverage to children in families that earn too much money to qualify for Medicaid yet too little to afford private health coverage, for five years – reflective of legislation passed in the House along party lines earlier this year – and other safety net programs, such as community health centers, for two years; however, the offsets for funding CHIP were unlikely to pass the Senate.

Given the challenges of passing the initially proposed CR, House Republicans instead brought H.R. 1370 to the floor, legislation to extend current funding levels for the government through Jan. 19. The CR provides temporary extensions for CHIP and Federally Qualified Health Centers; the National Flood Insurance Program; an extension of the Foreign Intelligence Surveillance Act Section 702; funding for the Veterans Choice Program; and extensions to certain expiring health care provisions, like Medicare's low-income outreach and assistance programs and therapy cap exception. While the bill does not fund the Department of Defense through the end of FY 2018, it will provide $4 billion for missile defense and $700 million to repair damaged Navy ships. The CR also includes language to waive PAYGO as related to cost of the tax package. Also of note, the legislation does not include disaster relief, but rather H.R. 4667, an $81 billion standalone disaster aid bill, was passed by the House on Dec. 21 in a vote of 251-169. The Senate has yet to take it up.

With the passage of this CR, Congress is left with several outstanding issues to address in the new year, including a fix for the rescission of the Deferred Action for Childhood Arrivals (DACA) program; increasing the statutory caps on defense and non-defense spending; funding cost-sharing reduction subsidies to defray exchange insurance issuers' costs of covering high-risk enrollees; full funding for CHIP, which expired on Oct. 1; postponing cuts to Medicaid Disproportionate Share Hospitals (DSH) that went into effect on Oct. 1; and funding for opioid treatment.

Budget and Appropriations Advocacy

On Dec. 5, UC participated in the Committee for Education Funding's Twitterstorm to #RaiseTheCaps. UC's tweets can be found here, here and here. Additionally, the UC Advocacy Network (UCAN) federal budget call-to-action campaign, focused on protecting funding for education, research and health programs in the final Fiscal Year 2018 budget, remains active.

FGR continues to advocate, in partnership with our campus and laboratory colleagues, for the university's funding priorities throughout the budget and appropriations processes. For additional information, please contact Marjorie Duske at Marjorie.Duske@ucdc.edu or 202-974-6306, Julie Clements at Julie.Clements@ucdc.edu or 202-974-6309, or Crystal Martinez at Crystal.Martinez@ucdc.edu or 202-974-6308.

TAX REFORM

On Dec. 20, Congress completed action on H.R. 1, the Tax Cuts and Jobs Act, which makes sweeping changes to the nation's tax laws. The legislation is now on its way to President Trump. On Dec. 19, the House passed H.R. 1 by a vote of 227-203, with all Republicans voting in favor, except for twelve (including California Reps. Dana Rohrabacher and Darrell Issa), and all Democrats voting against it. The Senate also voted to approve H.R. 1 on Dec. 19 by a vote of 51 to 48 along party lines. Due to the Senate's procedural rules, the Senate made slight changes to the House-passed version, which necessitated the House re-voting on H.R. 1 on Dec. 20. The legislation passed in a vote of 224-201

UC advocacy efforts on H.R. 1, the Tax Cuts and Jobs Act:
Throughout the legislative process, in partnership with UCOP leadership and experts, the campuses, students and alumni, UC FGR engaged in significant advocacy efforts to raise awareness around the university's significant concerns with the House and Senate bills. Prior to the votes on final passage, on Dec. 19, UC President Janet Napolitano sent a letter to the California congressional delegation urging a no vote on the final bill. The letter expressed UC's appreciation that the final agreement addressed many of the university's concerns, such as protecting higher-education tax benefits and Private Activity Bonds, as well as preserving the Unrelated Business Income Tax exemption for certain investment income derived from UC's Retirement Plan (UCRP). However, the letter also explained that H.R. 1 still contained provisions that will harm institutions of higher education in California and across the country.

President Napolitano also sent a letter on Dec. 6 to the members of the House and Senate Conference Committee, who were tasked with putting a final tax package together, providing UC's recommendations and views for the final bill. In addition, on Dec. 8, President Napolitano and the leadership of the California State University and the California Community Colleges systems sent a joint letter to the California congressional delegation outlining the tax reform priorities of California's higher education systems.

In addition to providing letters and analysis to the House and Senate, UC conducted numerous meetings with the California delegation and other key House and Senate offices, on both sides of the aisle, to raise concerns about the impact of the bills on the university. UC also coordinated joint Capitol Hill meetings with California State University (CSU) colleagues to highlight issues of mutual concern. In addition, UC worked closely with our national associations as well as a broad range of coalitions on our advocacy.

The university also continued its UCAN call-to-action campaign leading up to the final votes. Throughout the effort, UC advocates called their legislators more than 500 times and sent more than 4,500 emails expressing their concerns with the tax reform proposals and specifically the proposed repeal of the higher education tax benefits.

FGR also worked with UC social media colleagues to tweet at all members of the California congressional delegation, highlighting the university's concerns with the tax reform proposals and sharing the President Napolitano's letter and the UC Newsroom article. A number of members of the California congressional delegation responded to the tweets expressing support for UC's position on the bill.

Outcome in Conference Agreement to H.R. 1, the Tax Cuts and Jobs Act, of provisions raised by the University of California:
Below are additional details on the outcome of UC's priorities in the final tax legislation. The items highlighted in **blue** below, reflect a positive outcome.

EDUCATION TAX BENEFITS

- **Section 117 Qualified Scholarships, including Section 117(d) Qualified Tuition Reductions:** The final agreement will not repeal Section 117, including 117(d) Qualified

Tuition Reductions, which allows for qualified tuition reductions provided by educational institutions to their employees to be excluded as taxable income for the employee, such as a graduate student receiving tuition benefits in exchange for serving as a teaching or research assistant. This represents a significant victory for students, UC and the higher education community all of whom have advocated vigorously to make the case that the House bill's language should be rejected.

- **Student Loan Interest Deduction**: The Student Loan Interest Deduction is preserved. This represents an additional victory for UC and the higher education community.
- **American Opportunity Tax Credit, Lifetime Learning Credit and the Hope Scholarship Credit** are preserved.
- **Deduction for Qualified Tuition and Fees,** the **exclusion for educational assistance programs, the exclusion for interest on United States Savings Bonds used for higher education expenses, and the exclusion for qualified tuition reductions** are protected.
- **The conference agreement does not make any changes to Coverdell Education Savings Accounts.**
- **Section 127 Employer-Provided Educational Assistance** is preserved.
- **The only education related provisions included in the Conference Agreement are:** **Section 11031, Treatment of Student Loans Discharged on Account of Death or Disability,** which expands the discharge of student loan debt upon death or disability of a student, and **Section 11032, 529 Account Funding for Elementary and Secondary Education,** which expands 529 Savings Plan options to pay for K-12 educational expenses at a private school.

TAX-EXEMPT BONDS

- **Private Activity Bonds:** The conference agreement retains Private Activity Bonds, which is a positive outcome.
- **Advance Refunding Bonds:** The conferees repealed advance refunding bonds as of December 31, 2017. UC had asked they be retained and in the event, they not be retained, for a transition period. This was not included in the agreement.
- **Tax Credit Bonds:** The conference agreement repeals tax credit bonds as of December 31, 2017.

EMPLOYER/ EMPLOYEE AND OTHER ISSUES

- **Repeal of deduction for personal exemptions:** The conference agreement repeals the deduction for personal exemptions.
- **Limitation on exclusion for employer-provided housing:** The conference agreement does not include House Section 1401 that would have limited the exclusion from income for employer-provided housing. This is a positive outcome.
- **Medical expenses deduction:** The final agreement follows the Senate version of H.R. 1, retaining the current taxpayer deduction for high out-of-pocket medical expenses. The agreement lowers the threshold for medical expense deductions from exceeding 10 percent to 7.5 percent for two years, as included in the Senate bill, and then it reverts to expenses exceeding 10 percent of an individual's adjusted gross income.
- **Excise tax on excess tax-exempt organization executive compensation:** There is agreement on this among the conferees. All tax-exempt organizations, including colleges and universities, would face a 21 percent excise tax on compensation above $1 million that they provide to their top five highest-paid employees. However, language was added to the

Conference Agreement which appears to exclude income paid to licensed medical professionals for providing medical services in making determinations regarding covered employees to which the excise tax may apply.

- **Repeal of Deduction for Amounts Paid in Exchange for College Athletic Event Seating Rights:** The conference agreement repeals the special rule for College Athletic Seating Rights that allowed donors to take a charitable deduction for 80 percent of the amount paid for the right to purchase seating for athletic events.
- **Repeal of Deduction for Moving Expenses:** The conference agreement suspends the deduction for moving expenses from 2018-2025, except for members of the Armed Forces.

CHARITABLE GIVING

- The conference agreement retains the deduction for charitable giving. However, by increasing the standard deduction, there will likely be fewer itemizers using the charitable deduction to minimize their personal tax liability, which will likely result in diminished charitable contributions to tax-exempt organizations like UC. The conference agreement does not include language sought by UC and other tax-exempt organizations that would have allowed for inclusion of a universal above-the-line charitable deduction allowing non-itemizers as well as itemizers to make charitable contributions. The conference agreement increases the estate tax exemption amount from $5 million to $10 million, but does not eliminate the estate tax.

ENDOWMENTS

- **Excise Tax Based on Investment Income of Private Colleges and Universities:** The conference agreement imposes a 1.4 percent excise tax on the "net investment income" of certain <u>private</u> university endowments of colleges and universities that enroll at least 500 students and have endowments valued at $500,000 per student, or greater.

UNRELATED BUSINESS INCOME TAXATION (UBIT)

- **Clarification of unrelated business income tax treatment of entities treated as exempt from taxation under section 501(a):** The conference agreement rejected the inclusion of Section 5001 of the House-passed bill which would have repealed the UBIT exemption for income derived from the public pension plans of government-sponsored entities, such as the UCRP, and treated certain UCRP investment income as subject to UBIT. This is a positive outcome.
- **Unrelated Business Taxable Income (UBTI) Separately Computed for Each Trade or Business:** The conference agreement requires net operating loss calculations for all unrelated trades or businesses to be calculated separately for each trade or business activity, rather than the current law's practice of allowing tax-exempt entities to determine the net income and losses from all unrelated trade or business activities. UC opposed the inclusion of this provision.
- **Exclusion of research income from unrelated business taxable income limited to publicly available research:** The conference agreement rejected the House bill Section 5002, which would have eliminated the current exemption from UBIT for income derived from research performed at UC campuses to allow for an exclusion from UBIT of research income to be available only if the results are freely made available to the public.

- **Name and Logo Royalties:** The conference agreement does not include language which had been included in the original Senate bill to treat name and logo royalties as subject to UBIT.

ADDITIONAL ISSUES

- **Individual Mandate repeal:** The conference agreement includes the Senate provision which repeals the individual healthcare coverage mandate under the Affordable Care Act (ACA). UC is concerned that with the repeal of the individual mandate, many Californians dependent upon exchange health plans would likely see their health plan premiums increase, as younger, healthier people no longer have a requirement to purchase health insurance. UC's twelve public hospitals would still be required by law to treat individuals presenting with emergent medical conditions regardless of their ability to pay.
- **State and Local Income Tax Deduction (SALT):** The conference agreement will allow tax payers to deduct a total of $10,000 in property taxes or state and local income taxes combined. The tax filer will be able to choose how to allocate the deduction which is capped at $10,000 between his or her property and state and local income taxes. This could be problematic in high cost-of-living states with high property values.

OTHER IMPACTS

- **PAYGO Rules:** UC was concerned that, due to the increase to the deficit, the tax package would trigger automatic cuts under the Statutory PAYGO law to programs like Medicare and the Direct Subsidy Payments on Build America Bonds. The CR that Congress passed on Dec. 21 included language to waive PAYGO.

ADDITIONAL CONGRESSIONAL LEGISLATIVE ACTIVITY

Higher Education Act (HEA) Reauthorization

On. Dec. 12, the House Committee on Education and the Workforce held a markup on its HEA reauthorization legislation, H.R. 4508, the PROSPER Act. Included in this proposal are provisions that committee Chair Virginia Foxx (R-NC) anticipates will simplify student aid and reduce the regulatory burden on institutions of higher education. The legislation was approved by the committee along party lines and sent to the full House for further consideration. Due to competing legislative priorities, it is currently expected that HEA reauthorization will remain on the House legislative docket for some time before potentially receiving further consideration.

In anticipation of action on the House's version of HEA reauthorization, FGR developed – with the support and analysis of Academic Affairs, including the systemwide Title IX coordinator and Provost Brown's office – a priorities document that will serve as the university's roadmap for advocacy efforts throughout the reauthorization process. The document was shared with the California congressional delegation and House Education and Workforce Committee staff prior to the markup of the House legislation, and we will continue to circulate it on Capitol Hill and with the broader education community as appropriate. (This document will be updated throughout the reauthorization process as issues emerge and proposals are presented.)

Chairman Lamar Alexander (R-TN) and Ranking Member Patty Murray (D-WA) of the Senate Committee on Health, Education, Labor and Pensions have begun conversations related to reauthorization of HEA, though they have not indicated progress beyond informal conversations. The House HEA reauthorization bill will require 60 votes for approval in the Senate, an impossibility without substantial bipartisan negotiations and compromises. As such, even if the House clears its version of HEA reauthorization through the full chamber, it is unlikely that the PROSPER Act as currently written will become law. For additional information, please contact Crystal Martinez at Crystal.Martinez@ucdc.edu or (202) 974-6308.

Deferred Action for Childhood Arrivals (DACA)

UC FGR continues to advocate for a permanent bipartisan solution in response to the rescission of DACA earlier this year. Negotiations to continue funding the federal government involve several outstanding issues that demand congressional attention, including resolving the uncertainty for individuals with DACA, though the most recently passed CR did not include any provisions to address the issue. Senate Republican leadership has indicated that Congress has sufficient time to negotiate an agreement before DACA expires, and a working group of bipartisan senators has indicated progress towards a solution that pairs a DACA fix with border security and other enforcement measures, though the extent of those measures has not yet been agreed upon. We are optimistic that Democratic support of a bipartisan compromise to address the DACA rescission is contingent on inclusion of the Dream Act or a similar piece of bipartisan legislation to provide a pathway to legal status and eventual citizenship to undocumented young immigrants. On Dec. 6, advocates held a rally on Capitol Hill to call on Congress to pass a clean Dream Act. UC social media participated in the event. Additionally, the UCAN DACA call-to-action campaign, focused on supporting a bipartisan legislative solution to protect our DACA recipients, remains active. For additional information, please contact Crystal Martinez at Crystal.Martinez@ucdc.edu or (202) 974-6308.

POLICY AND REGULATORY UPDATE

340B Drug Pricing Program

On Jan. 1, 340B Disproportionate Share Hospital (DSH) 340B covered entities expect to experience a 28.5 percent cut in the reimbursement they get in return for purchasing Part B drugs. Under a provision of the Outpatient Prospective Payment System (OPPS) final rule, UC Health stands to lose nearly $50 million annually. UC FGR has asked members of the California delegation and relevant committees with health care jurisdiction to cosponsor legislation, H.R. 4392, introduced by Reps. David McKinley (R-WV) and Mike Thompson (D-CA) that would put a moratorium on this provision of the final Medicare OPPS final rule going into effect. UC FGR has been actively meeting with legislative offices to ask that legislative language in H.R. 4392 be wrapped into the final FY 2018 spending package to stop these reimbursement cuts.

On Dec. 5, Sens. Shelley Moore Capito (R-WV), Rob Portman (R-OH) and John Thune (R-SD) joined with Democratic senators in issuing a letter to Senate leaders asking that these cuts not go into effect.

Republican leadership has indicated to hospitals that the Part B drug payment cuts could be postponed, but in return for other potential cuts to integral hospital programs, like Indirect Medical Education, or altering the 340B Drug Pricing Program reporting rules with which 340B DSH participants must comply. Any moratorium on these Part B drug reimbursement cuts would be budget-neutral. Should the OPPS payment cuts go into effect, the $1.6 billion that DSH hospitals generate in 340B savings for their purchase of Part B drugs would be distributed among all OPPS participants, including for-profit hospitals and non-profit hospitals that fail to deliver much uncompensated care. UC FGR is committed to advocating that this crucial funding remains with safety net hospitals.

A legal hearing concerning the future of the OPPS Part B drug reimbursement cuts took place on Dec. 21 before U.S. District Court Judge Rudolph Contreras in Washington, DC. Plaintiffs requesting a preliminary injunction to stop the cuts from going into effect included UC's partner associations: American Hospital Association, America's Essential Hospitals and the Association of American Medical Colleges. Judge Contreras bypassed the heightened legal standard needed to get a preliminary injunction. Instead, he asked the government whether he could just rule on the issue as a motion for summary judgment, thereby allowing the court to address the merits of the legal arguments specifically related to the 340B reimbursement cuts. Judge Contreras stated that he will issue a ruling before Jan. 1. For additional information, please contact Julie Clements at Julie.Clements@ucdc.edu or (202) 974-6309.

Net Neutrality

On Dec. 14, the Federal Communications Commission (FCC) voted 3-2, on a party line vote, to repeal the Obama Administration's net neutrality rules, which protected the principle that Internet traffic should not be impeded based on the type of traffic that is involved. The FCC voted to adopt a new regulatory framework, Restoring Internet Freedom, which it says represents a "light-touch" way to foster Internet freedom. Prior to the FCC's actions, several higher education associations, of which UC is a member, including the American Council on Education, Association of American Universities, Association of Public and Land-grant Universities and EDUCAUSE, wrote a joint letter urging the FCC commissioners to retain the existing net neutrality rules, and argueing that "open and neutral access to the Internet is essential to our nation's freedom of speech, educational achievement, and economic growth." UC supports net neutrality principles and the higher education associations' comments to the FCC. Litigation is being contemplated by supporters and opponents of net neutrality, and challenges to the FCC's repeal of net neutrality regulations may be filed in court. UC FGR is engaged and working with UC information technology experts to understand further what impacts on UC may be related to the FCC's actions. For additional information, please contact Kamala Lyon at Kamala.Lyon@ucdc.edu or (202) 974-6312.

FEDERAL CAMPUS ENGAGEMENT

- On Nov. 27, Rep. **Jimmy Panetta** (CA-20) visited **UC Santa Cruz** and met with students at the Undocumented Student Service Center.
- On Nov. 27, Rep. **Ted Lieu** (CA-33) visited **UCLA** and gave opening remarks at an open house of the Veterans Administration and the UCLA Veterans Family Wellness Center.
- On Nov. 27, Rep. **Salud Carbajal** (CA-24) visited **UC Santa Barbara**. The UCSB Associated Students hosted an event titled "How the GOP Tax Plan Hurts Students: A Conversation with Congressman Carbajal."
- On Dec. 4, **Jessica Rider**, senior economist, and **Nora Boretti**, senior analyst education, workforce and income security issues, both at the U.S. Government Accountability Office, visited UC Office of the President and **UC Berkeley** to discuss food insecurity on college campuses.
- On Dec. 15, Rep**. John Garamendi** (CA-03) visited **UC Davis** for the retirement of Marjorie Dickinson, assistant chancellor for government and community relations.

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