Introduction

Perhaps like no year before it, 2011 has been dominated by partisanship and funding issues, pushing aside other legislative initiatives from active consideration in Congress. For community colleges, this means that legislation like the Workforce Investment Act (WIA) reauthorization remains pending and changes to the Pell Grants are being proposed via the appropriations process rather than in a Higher Education Act reauthorization. Looking forward, the focus on funding will continue for the rest of the year as Congress works to wrap up the FY 2012 appropriations bills and as the Super Committee approaches its deadline for producing a deficit reduction plan. The following is a snapshot of the most active legislative and regulatory issues on AACC’s agenda.

Fiscal Year 2012 Appropriations

Congress has yet to pass any of its 12 appropriations bills that fund the federal government for FY 2012, which began on October 1. At this point, the government is operating on a stop-gap spending measure that expires on November 18. Congress will likely pass another stop-gap measure that funds the government temporarily, followed by one or more omnibus appropriations bills that combine the usual 12 bills. Consequently, now is a critical time for community college leaders to make their voices heard on a number of key funding issues.

Just prior to the beginning of FY 2012, the House Appropriations Subcommittee on Labor, Health and Human Services, and Education released the “chairman’s mark” draft funding legislation for that fiscal year. The legislation was not brought to the subcommittee for a formal markup session, reportedly because it did not have the support of all the panel’s Republicans, some of whom thought the bill did not cut spending enough, despite the fact that it cuts more than is required under the summer’s budget agreement. The measure would provide $153.4 billion in discretionary funding, $4 billion below comparable FY 2011 levels. The subcommittee chairman’s plan would cut funding for the Department of Education by $2.378 billion, or 3.3%.

The draft House bill would preserve the current Pell Grant maximum of $5,550, but only by dramatically reducing Pell Grant eligibility and cutting $2.3 billion from the program in FY 2012. An estimated 500,000 students could lose their eligibility, and millions more would have their grants reduced due to these proposed changes:

- The elimination of Pell eligibility for less-than-half-time students.
- The reduction in the income protection allowances that govern student aid eligibility, thereby cutting the size of grants for hundreds of thousands of students.
- The reduction in the maximum number of semesters (or their equivalent) that a full-time student could receive a Pell Grant from 18 to 12 (this limitation is prorated based on a student’s enrollment status).
- The lowering of the family income that qualifies for an automatic zero expected family contribution.
• Changes in the definition of untaxed income that can be included in the needs analysis calculation for student aid eligibility, thereby reducing need and subsequent grant eligibility.
• The elimination from Pell Grant eligibility for students who are not high school graduates and lack a GED—so-called ability-to-benefit students.

The Senate’s appropriations bill was approved on September 21. It also maintains the Pell Grant maximum award at $5,550. However, the Senate achieves this result without making any of the eligibility changes contained in the House draft bill. To cover the remaining $1.3 billion program shortfall after the $10 billion provided through the Budget Control Act (see below), the Senate would end the 6-month grace period that students now have before they must start paying back their loans after leaving school.

AACC has written congressional leaders in strong opposition to the House’s Pell Grant cuts, urging Congress to adopt the approach taken by the Senate. While that approach is far from ideal, as it increases costs for student borrowers when many are having trouble finding jobs, the House’s proposed Pell Grant cuts would disproportionately affect community college students. Because of this, community colleges have voiced stronger opposition to the House Pell cuts than have other sectors of higher education.

Both the House and Senate bills would preserve funding at the FY 2011 levels for numerous other community college priorities, including Federal Supplemental Educational Opportunity Grants ($736 million), Federal Work Study ($978.5 million), TRIO ($826.5 million), and GEAR UP ($302.8 million). Overall, the Carl D. Perkins Act career technical programs and adult basic education funding also were preserved at current levels; the former was a significant achievement given that the president had proposed cutting the program.

However, the House measure would dramatically reduce institutional aid for minority-serving institutions, although funding for Strengthening Institutions (HEA Title III-A) was maintained. The biggest proposed cuts are presented in Table 1.

<table>
<thead>
<tr>
<th>HEA Title</th>
<th>Type of Minority-Serving Institution Funded</th>
<th>Funding (in $ millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Current</td>
</tr>
<tr>
<td>V</td>
<td>Hispanic</td>
<td>104.4</td>
</tr>
<tr>
<td>III</td>
<td>Historically Black</td>
<td>237.0</td>
</tr>
<tr>
<td>III</td>
<td>Tribal</td>
<td>26.8</td>
</tr>
<tr>
<td>III</td>
<td>Alaska Native and Native Hawaiian</td>
<td>13.4</td>
</tr>
<tr>
<td>III</td>
<td>Predominantly Black</td>
<td>9.6</td>
</tr>
<tr>
<td>III</td>
<td>Asian American/Pacific Islander</td>
<td>3.2</td>
</tr>
<tr>
<td>III</td>
<td>Native American, nontribal</td>
<td>3.2</td>
</tr>
<tr>
<td>Totals</td>
<td></td>
<td>$397.6</td>
</tr>
</tbody>
</table>

Job training programs continue to be a target of House Republicans. The draft FY 2012 funding legislation calls for significant cuts to WIA programs, with language that proposes to rescind 2011 advance funding and make additional cuts for FY 2012. These cuts could total more than $2 billion in the adult, dislocated worker, and youth formula programs.
No formal markup has been scheduled on the House draft, and the measure may never be brought before the subcommittee for action. Rather, it likely will serve as the House Republicans’ position when House and Senate appropriators negotiate final FY 2012 funding legislation later this year, or even next year. In the interim, Congress has passed a continuing resolution (CR) to avert a government shutdown.

This CR contains a 1.5% across-the-board cut on all nonexempt programs. Since most education programs are forward funded (i.e., funds are not drawn down until the new academic year begins in July), this 1.5% cut appears to have little impact on most education programs. However, unlike in previous years’ CRs, the current CR applies the 1.5% cut to advance appropriations made in the FY 2011 appropriations bill. This affects, among other programs, the Perkins CTE Basic State Grants, which could lose as much as $12 million before Congress reaches an accord on the FY 2012 funding measure.

**Budget Control Act**

From the beginning of the year, Congress has focused on deficit reduction, which has been achieved to date solely through spending cuts. The Budget Control Act of 2011 (BCA), enacted on August 2, authorized increases in the debt ceiling while imposing annual caps on discretionary appropriations for the next decade. These caps were projected to produce savings of more than $900 billion and will make it extremely difficult to secure needed resources that benefit community colleges and their students.

BCA also created a new Joint Select Committee on Deficit Reduction (the Super Committee), charged with developing a bill that would produce another $1.2 trillion to $1.5 trillion in deficit reduction over the same period. If the Super Committee fails to report legislation by November 23 or if Congress fails to pass the legislation by December 23, automatic cuts—known as sequestration—would be triggered. Even if Congress passes the legislation, if the projected savings from the committee’s bill are less than $1.2 trillion, sequestration would be required to make up the difference between the enacted cuts and $1.2 trillion. The required cuts would be made on all nonexempt programs beginning in January 2013 and be taken through FY 2021. Numerous entitlement programs such as Medicaid, Social Security, and veterans’ pensions are exempt and some others are at least partially protected, including the Pell Grant program. However, both defense and nondefense programs would be cut beginning in 2013, absent enactment of legislation from the Super Committee that achieves the required savings. The process is intended to encourage congressional agreement to avoid draconian automatic spending cuts.

On a much brighter note, community college students will benefit from the infusion of $17 billion of funding for Pell Grants in BCA. These savings are from the elimination of in-school interest subsidies on federal student loans for graduate and professional students. This inclusion of funding for Pell is essential to maintaining the Pell Grant maximum at $5,550 given the enormous growth of the program and the estimated $11 billion Pell shortfall this year. BCA provides $10 billion for the Pell Grant program in FY 2012 and the balance in FY 2013. These amounts still left a $1.3 billion shortfall to be covered in FY 2012, leading to the House and Senate proposals described above.

**American Jobs Act/FAST Act**

President Obama has proposed $5 billion for community college modernization as part of his $447 billion American Jobs Act. All funds would be made available in FY 2012 and offset by revenue enhancements. States would receive funds on the basis of their community college enrollments and then would have broad latitude to award funds as they see fit. One tremendously positive aspect of this proposal is that funds would be not be subject to a match and could not supplant current funding.
The president’s proposal reflects his ongoing support for community colleges. It is remarkable that President Obama has once again singled out community colleges for assistance. The sum that he has proposed represents more than half of what community colleges would have received under the American Graduation Initiative, and the money would be made available immediately, rather than over a 10-year period.

The president’s proposal has been included in House and Senate legislation, the Fix America’s Schools Today (FAST) Act, introduced by Representative Rosa DeLauro and Senator Sherrod Brown (H.R. 2948 and S. 1597, respectively). AACC has urged all of its members to contact their federal legislators and tell them to support this legislation. Although getting the legislation enacted will be a difficult fight, it is clear that absent concerted efforts from the broad community college membership the efforts cannot be successful.

Senate Democrats have attempted to take up the entire jobs act, and failing that, individual pieces of the package. Each such attempt has failed to garner the 60 votes necessary to overcome Republican filibusters. The FAST Act is expected to come up in early November.

The American Jobs Act also includes provisions to modernize unemployment insurance and training funds for low-income adults and youth that, should they be enacted, would likely include community colleges as partners. It is unclear whether this piece of the jobs bill will be considered as separate legislation.

**Trade Adjustment Assistance Act Reauthorization**

Congress recently passed legislation to reauthorize and preserve some, although not all, of the expansions to the Trade Adjustment Assistance (TAA) program that were included in the 2009 stimulus bill. The American Recovery and Reinvestment Act (ARRA) included a significant expansion of TAA. The most notable features of this expansion included first-time eligibility for service industry workers, a greatly increased amount of money available for TAA-eligible worker training, and authorization of the Trade Adjustment Assistance Community College and Career Training (TAACCCT) grants program. This expanded authorization originally lapsed at the end of 2010, and was subsequently, briefly expanded through February 12 of this year. Since that time, the program has been operating under the pre-ARRA authorization terms.

Congressional leaders have worked throughout the year to reauthorize TAA, and the bill that eventually passed was a bipartisan compromise forged by the chairs of the House and Senate committees of jurisdiction, Rep. Dave Camp (R-MI) and Sen. Max Baucus (D-MT). The compromise bill maintains eligibility for service industry workers, but not for public sector workers as under the ARRA reauthorization. The Camp–Baucus bill also provides $575 million for worker training, the same amount as under the ARRA authorization, but these funds must now be used for a wider array of services that previously had separate funding. The bill splits the difference between the pre-ARRA and ARRA authorizations in a number of other areas, including the amount of time that TAA-eligible workers have to use their benefits.

Despite the fact that bipartisan consensus on the TAA authorization was reached earlier this year, the bill nonetheless was caught up in political maneuvering surrounding free trade agreements. The White House and congressional Democrats demanded that TAA pass alongside the trade agreements, while
many Republicans objected to this demand. In the end, the two sides reached agreement on a legislative process that satisfied both parties.

On September 26, the Department of Labor (DOL) announced the first round of grants in the TAACCCT programs. In all, 32 grants were announced, totaling approximately $450 million in funding, and DOL indicated that it was still working with 17 states to modify existing proposals or create new ones that would be funded at $2.7 million each in order to meet the statutory requirement that each state receive at least $2.5 million each year. The announced grants ranged in size from $2.5 million to over $24 million, averaging around $14 million. Most grants went to multi-institutional consortia. DOL hopes to issue a solicitation for grant applications for the next annual round of grants very early in 2012.

Committee on Measures of Student Success

The Department of Education’s legislatively mandated Committee on Measures of Student Success (CMSS) held its fourth meeting on September 7 in Washington, DC. At this meeting, members discussed the draft of the report they plan to submit to Secretary of Education Arne Duncan. The committee’s legislative charge, included in the 2008 reauthorization of the Higher Education Act, indicates that it

- Will develop recommendations for the Secretary of Education regarding the accurate calculation and reporting of completion or graduation rates of entering certificate- or degree-seeking, full-time, undergraduate students by two-year degree-granting institutions of higher education.
- May also recommend additional or alternative measures of student success that are comparable alternatives to the completion or graduation rates of entering degree-seeking full-time undergraduate students, taking into account the mission and role of two-year degree-granting higher education institutions.

AACC staff has been closely following the committee’s deliberations. The committee’s work is extremely important because it could ultimately result in ED adopting a new graduation/completion rate standard that is much more reflective of the real performance and successes of community colleges. There is widespread agreement that the current Student Right-to-Know calculation has major shortcomings in this respect.

During the committee’s discussions, AACC staff briefed panel members on the metrics proposed for the Voluntary Framework of Accountability (VFA). While there cannot be complete consistency between the VFA and ED’s completion rate calculation, particularly since ED’s metrics have to reflect all of higher education, AACC hopes to see largely similar approaches emerge.

AACC provided comments to the committee following the release of the draft report. AACC is trying to balance competing objectives of wanting a more accurate picture of how community colleges perform while keeping new mandatory IPEDS reporting requirements to a minimum. The committee will be having another meeting November 29 to discuss a revised draft of the recommendations. Once that report is complete, ED Secretary Duncan will have the option of modifying the current graduation rate measures. ED is apparently planning on altering reporting for all institutions, not just for 2-year colleges. AACC plans to comment on the final report and, more importantly, to influence Duncan’s action.
Gainful Employment Regulations

In June 2011, ED issued its final rule concerning gainful employment regulations. The rule applies to most programs at proprietary institutions and certificate programs at public and not-for-profit institutions, and it requires new accountability measurements in order for an institution to be eligible for Title IV funds. The new regulations include a number of new disclosure and reporting requirements that were promulgated in October 2010.

In August, ED announced an extension to one of the reporting dates. Institutions were initially required to report gainful employment program information for students enrolled from the 2006–2007 through the 2009–2010 award years by October 1, but ED will continue to accept information until November 15 (when data for the 2010–2011 award year is due) without penalty. (For additional information on institutional requirements under gainful employment, visit http://www.ifap.ed.gov/GainfulEmploymentInfo/index.html).

State Authorization Regulations

Another regulation issued by ED under Title IV program integrity rules was the federal enforcement of state authorization law and regulations for postsecondary institutions. In particular, a portion of that regulation dealing with state authorizations for distance learning has been highly criticized. This portion of the regulation would require that Title IV–receiving institutions remain in compliance with individual state authorization requirements for distance learning, which means that institutions with out-of-state students taking distance-learning courses must abide by that state’s authorization requirements. For institutions that have not sought authorizations in each state where they have distance education students, this regulation will create significant work and expense.

In July, a federal court struck down the distance education provision, not because of their content, but because the rules did not sufficiently adhere to federal regulatory procedure. ED has formally indicated its intent to appeal this ruling.