



# WASHINGTON REPORT

FEDERAL RELATIONS REPORT OF THE ASSOCIATION OF AMERICAN UNIVERSITIES

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### CONGRESSIONAL SCHEDULE:

#### HOUSE AND SENATE IN SESSION UNTIL MEMORIAL DAY

Following the Easter recess that ended April 8, both the House and Senate will be in session for an extended period of seven weeks until the Memorial Day recess begins May 27.

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### BUDGET & APPROPRIATIONS:

#### FY2003 BUDGET RESOLUTION UNLIKELY

The statutory deadline for finishing the congressional budget resolution (April 15) has now arrived, but a final resolution still is nowhere in sight.

Analysts are unanimous that chances of a budget resolution passing Congress this year are extremely unlikely. The House approved its FY2003 budget resolution March 20, but the full Senate has not yet considered the budget resolution approved by the Senate Budget Committee March 21.

Senate Democratic leaders have not said publicly that they will not take the budget resolution to the

Senate floor, but there is speculation that they will choose not to.

One reason is that the measure might not pass: two Budget Committee Democrats who voted to report the measure, Russ Feingold (D-WI) and Ernest Hollings (D-SC), indicated that they could not support the budget resolution on the floor in its present form.

Senate Republicans also could use consideration of the budget resolution as an opportunity to force non-binding votes on highly charged policy issues. In addition, a budget resolution is not as important this year as it has been in previous years. With no major tax changes requested this year, there is no need for the procedural protections of a budget resolution.

As an alternative to a budget resolution, House and Senate leaders could simply reach bipartisan agreement on an overall spending cap for discretionary spending in FY2003. Given the election-year partisanship between the House and Senate, such an agreement might not be possible.

Another alternative for the Senate would be to try to pass a "deeming resolution" that would set an FY2003 discretionary spending limit to guide Senate appropriators. But even that move may not be possible because a deeming resolution would be subject to debate and amendment and would require 60 votes for passage. Under this scenario, Republicans could wield significant influence in setting the discretionary spending limit for FY2003 and could insist on enforceable measures to control spending.

Regardless of actions in the Senate, if no budget agreement is reached by the April 15 deadline, House rules allow the House Appropriations Committee to move ahead on its FY2003 appropriations bills, based on the discretionary spending levels called for in the House-passed budget resolution.

Following are some highlights of the House and Senate Budget Committee's budget resolutions:

#### HOUSE RESOLUTION

The House Budget Committee reported its FY2003 budget resolution (H. Con. Res. 353) March 13 on a party line vote of 23-17. The full text of the chairman's mark and summary documents and tables are available on the committee's website at [www.house.gov/budget](http://www.house.gov/budget).

The full House then passed the measure March 20 on a largely party line vote of 221-209. No amendments were considered during the floor debate,

and House Democratic leaders did not attempt to offer an alternative budget resolution, as they usually have done. Instead, they produced a letter, signed by 150 of their rank and file, endorsing an old proposal by Minority Leader Richard Gephardt (D-MO) for a budget summit between the Congress and the White House. The White House has ignored all previous calls for a budget summit.

The House resolution adheres to the outlines of the President's budget (WR 2/15/02), proposing an overall discretionary spending increase of 9 percent for FY2003. As was the case in the President's budget, much of that increase would go to defense and homeland security. The resolution's overall FY2003 discretionary spending figure is \$759 billion. (That figure is \$10 billion above the President's request but reflects the amount the Congressional Budget Office says is required to pay for the President's proposals.) Defense would receive \$393 billion, which represents a 13 percent increase over FY2002. Nondefense programs would receive \$366 billion, which represents a 1.1-percent increase.

The resolution shows a FY2003 deficit of \$45.572 billion. However, House GOP leaders are discounting that figure as insignificant, saying most of it (\$43 billion) is attributable to the economic stimulus bill enacted March 9.

Information on the House budget resolution and accompanying documents are available online at <http://www.house.gov/budget/congbudget.htm>.

#### SENATE BUDGET COMMITTEE RESOLUTION

Although the Democrats have sharply attacked the GOP's budget proposals as fiscally irresponsible, the budget resolution (S. Con. Res. 100) proposed by Senate Budget Committee chairman Kent Conrad (D-ND) is not drastically different—at least for the near term. The measure was approved by the Senate Budget Committee March 21 on a party line vote of 12-10.

Senator Conrad's resolution provides somewhat more nondefense discretionary spending than the GOP's proposals and includes all of the funds the President has requested for defense for the next two years. While the measure does not call for any new tax cuts, neither does it repeal the existing GOP tax cuts.

Total discretionary spending in Conrad's resolution is \$768 billion. The \$9 billion difference from the House resolution comes from the fact that the President proposes shifting certain government

pension and health care costs from mandatory to discretionary spending. Unlike the House budget resolution, the Senate measure would leave those costs in the mandatory budget column, but take the \$9 billion and add it to domestic programs.

Like the Republicans' budget proposals, Conrad's resolution would result in deficit spending in the near term: \$59 billion in FY2003 according to Office of Management and Budget scoring. (The President's budget would result in an \$80-billion deficit in FY2003 under OMB scoring; the House GOP resolution would result in a \$45.6-billion deficit.)

Another key difference between Conrad's resolution and the Republicans' proposals lies in the outyears. There, starting in FY2005, Conrad would put all proposed defense increases into a "reserve fund" that would be applied to debt reduction if the defense increases turn out to be unnecessary. (Conrad said if this entire reserve fund were applied to debt reduction, his resolution would result in \$500 billion worth of debt reduction over the next ten years. Otherwise, it would reduce the debt by \$230 billion.)

Conrad also proposed a "circuit breaker" designed to stop the government from tapping the Social Security surplus after FY2008. This feature provides that if CBO projects a deficit requiring the use of Social Security funds to pay other government expenses for the coming year or any subsequent year, then the budget resolution for that year "must reduce the deficits and put the budget on a path to achieve balance."

The full text of Conrad's resolution and accompanying documents are available online at [www.senate.gov/~budget/democratic](http://www.senate.gov/~budget/democratic).

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#### **TREASURY BORROWS TO AVOID DEBT LIMIT**

With Congress unable to pass legislation raising the statutory debt limit before leaving on its Easter recess, Treasury Secretary Paul O'Neill April 4 borrowed funds from a federal retirement account to pay immediate government needs and avoid hitting the debt ceiling. Although the short-term problem will be addressed April 15 by the arrival of income tax payments, the Treasury Department warned that the debt ceiling will be reached again this summer unless Congress acts.

The move by Treasury has provided enough breathing room for House GOP leaders to attach the debt ceiling increase to the President's FY2002 supplemental appropriations bill. House Speaker Dennis Hastert has said such an action is "very

probable." By adding the debt ceiling measure to a bill with broad bipartisan support, House GOP leaders hope to reduce the chances of Democrats voting against the increase or using its passage as an occasion to blame Republicans for the disappearance of the budget surplus.

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#### **PRESIDENT SUBMITS**

##### **FY2002 SUPPLEMENTAL SPENDING BILL**

The president March 21 submitted to Congress an FY2002 supplemental funding bill totaling \$27.1 billion. The measure, which has broad bipartisan support, would allocate \$14 billion for defense, \$1.6 billion for international programs, \$3.3 billion for homeland security, and \$5.5 billion for New York City. As noted above, House Republican leaders are expected to attach a debt ceiling increase to the supplemental as a means of ensuring the debt ceiling is approved.

Although President Bush has threatened to veto appropriations bills that contain what he views as too much congressional spending, the measure is predicted to end up costing far more than the President's request. House and Senate appropriations committee leaders reportedly intend to take their time in considering the supplemental, with each planning to spend two weeks reviewing the request and taking testimony from interested parties.

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#### **OTHER CONGRESSIONAL DEVELOPMENTS:**

##### **BIOTERRORISM CONFERENCE CONTINUES**

House and Senate conferees at this writing still have not met to reconcile the different bioterrorism bills passed by both houses late last year (H.R. 3448 and S. 1765). The two measures reference provisions of last October's anti-terrorism act (H.R. 3162, the "USA Patriot Act") that restrict certain types of individuals from having access to or conducting research on certain biological agents and toxins.

The higher education community is working to have a waiver or appeals process for these restricted persons included in a final conference agreement. With a waiver process in place, restricted persons who pose no security threats but are key to making research advances might still be able to contribute to searches for vaccines and cures. An appeal process would allow for correction of mistakes.

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### SENATE ACTS ON VISA REFORM BILL

The Senate April 12 began consideration of H.R. 3525, the border security/student visa reform bill that has been stalled in the Senate since last December because of objections from Senator Robert Byrd (D-WV). Senate leaders expect floor action to be completed by April 16.

The version of the legislation being considered by the Senate is the original version of the House bill (HR 3525), which the House passed last December. That measure, which is nearly identical to the Senate bill (S. 1749), essentially was preconferenced last December. So if the Senate passes the bill with no amendments, it can go directly to the President for signature.

In anticipation of the Senate debate, American Council on Education president David Ward April 11 sent a letter in support of S. 1749 to the bill's primary sponsors: Edward Kennedy (D-MA), Jon Kyl (R-AZ), Dianne Feinstein (D-CA), and Sam Brownback (R-KS).

The letter was sent on behalf of ACE and 11 other associations, including the AAU. It voices strong support for implementation of the Student and Exchange Visitor Information System (SEVIS), as well as "interim steps to improve the monitoring of international students before SEVIS is fully operational." See Attachment 1 for the text of the letter. It also is available online at [www.acenet.edu/washington/letters/2002/04april/s1749.sevis.cfm](http://www.acenet.edu/washington/letters/2002/04april/s1749.sevis.cfm).

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### CLONING DEBATE HEATS UP

As the Senate prepares to vote on the issue of human cloning sometime before the Memorial Day recess, both sides are very publicly staking out their positions.

The Senate debate will revolve around two bills: one by Sam Brownback (R-KN) that would impose a total ban on human cloning (S. 1899), and another still-to-be-introduced bill by Edward Kennedy (D-MA) and others that would allow somatic cell nuclear transfer for research purposes (S. 1893). The House last July approved a cloning prohibition bill similar to Brownback's on a vote of 265-162.

The Brownback bill received some valuable but not unexpected support April 9 when Senator Bill Frist (R-TN) announced that he supported "99 percent" of the measure. As the only physician in the Senate, Senator Frist's views on medical issues are seen as particularly important. Frist said he had concluded that a full ban was justified on both scientific and

moral grounds, but that he would seek to change a provision of the Brownback bill that would make it a crime for U.S. doctors to use therapies developed abroad using human cloning techniques. See Attachment 2 for a copy of Senator Frist's statement.

President Bush similarly weighed in on the issue April 10 in a White House rose garden event in which he urged the Senate to join the House in banning all types of human cloning because "life is a creation, not a commodity." See Attachment 3 for the President's remarks, which are on the White House website at: <http://www.whitehouse.gov/news/releases/2002/04/print/20020410-4.html>.

On the other side of the issue, a group of 40 Nobel laureates April 10 wrote to all 100 senators opposing the Brownback bill because a total ban on cloning "would have a chilling effect on all scientific research in the United States." See Attachment 4 for a copy of the Nobelists' statement in the form of an ad that ran in the Washington-area publication, *Roll Call*. The letter is available online at <http://www.camradvocacy.org/Fastaction/news.asp?id=210>.

And in an April 11 op-ed in the *Los Angeles Times*, former U.S. Senator Connie Mack (R-FL) argued that cloning for research purposes was a "life-saving effort" and not a harbinger of the "Brave New World" as critics have charged. He likened the debate on research cloning to the controversy in the 1970s over recombinant DNA. That technology, which faced bitter opposition at the time, he said, became "one of the most important recent advances in medical research." See Attachment 5 for Mack's op-ed, which also is available on the *Los Angeles Times* website at: <http://www.latimes.com/news/opinion/>.

Some observers have noted that Senate supporters of cloning for research purposes could filibuster Senator Brownback's bill, which could result in no ban at all on reproductive cloning. While current rules would prevent scientists from using federal funds to create or destroy cloned embryos, the limits on privately funded research would remain unclear.

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### SOVEREIGN IMMUNITY MARKUP DELAYED

The Senate Judiciary Committee postponed its April 11 markup of S. 2031, the Intellectual Property Protection Restoration Act, until its next business meeting during the week of April 15. The bill, introduced by committee chairman Patrick Leahy (D-VT), would force state entities—including state colleges and universities—to waive their immunity from federal lawsuits if they themselves seek the right

to sue under federal intellectual-property laws. Leahy and supporters argue that the immunity status that state entities have under the 11<sup>th</sup> Amendment to the Constitution gives them unfair advantage in federal legal disputes over intellectual property rights.

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#### **KENNEDY WANTS OVERHAUL OF RESEARCH PROTECTIONS**

The Public Health subcommittee of the Senate Health, Education, Labor and Pensions Committee has now set April 23 as the date for its long-delayed hearing on "safety and protection of individuals who volunteer to participate in clinical trials." Subcommittee chairman Edward Kennedy (D-MA) will preside. The hearing was originally scheduled to be held last spring, but was delayed first by the change in party control of the Senate and then by the events of September 11.

Senator Kennedy has been sharply critical of the current federal system for overseeing human-subject research. A March 25 story in the *Boston Globe* said that Kennedy "wants to enact the biggest overhaul of human research protections since he shepherded the National Research Act through Congress in 1974. Kennedy hopes to enact legislation that may centralize the government's oversight of human research, possibly by moving [the Office of Human Research Protections] into the FDA. Kennedy also wants to make changes that would require more training in medical ethics and restrict most researchers from having financial stakes in the outcome of their experiments."

See Attachment 6 for the *Globe* story, which is entitled "System for Protecting Humans in Research Faulted." The article also can be found on the newspaper's website at <http://www.boston.com/globe>.

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#### **EXECUTIVE BRANCH: STATE DEPARTMENT EASES ITAR REGULATIONS**

The State Department has agreed to ease some of the export restrictions that affect space scientists, even as it leaves other restrictions in place. The agency March 29 published revisions to the International Traffic in Arms Regulations (ITAR) as an interim final rule in the *Federal Register* (March 29, Volume 67, Number 61, Pages 15099-15101.)

Under the revisions, the State Department would exempt U.S. universities from obtaining licenses for

the export of space-related articles as long as those articles were fabricated for fundamental research purposes. Universities would not be required to secure ITAR licenses if they export satellite hardware or technical information to researchers in countries that are members of NATO, the European Union, or the European Space Agency, or countries that are "major non-NATO allies," such as Israel and Japan. However, universities still would need licenses for exports and information sent to researchers in such nations as India or China. Moreover, research collaborators in approved countries would have to guarantee that no researchers from unapproved countries had access to the restricted information.

The *Federal Register* notice is available online through the Government Printing Office website at [www.access.gpo.gov/su\\_docs/aces/aces140.html](http://www.access.gpo.gov/su_docs/aces/aces140.html).

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#### **HHS REVISES MEDICAL RECORDS PRIVACY REGS**

Health and Human Services Secretary Tommy Thompson March 21 unveiled proposed revisions to federal medical privacy regulations designed to address concerns raised by healthcare providers and medical researchers. The original privacy regulations had been issued just before the Clinton administration left office, and the incoming Bush administration had agreed to review them.

The HHS proposals were immediately criticized by Senator Edward Kennedy (D-MA) as loosening a central aspect of federal rules governing confidentiality of patient records. Kennedy said he would hold an oversight hearing on the proposed revisions April 16 in the Senate Health, Education, Labor, and Pensions Committee, which he chairs.

The proposed rules, which were published in the *Federal Register* March 27, are subject to a 30-day comment period, after which final rules will be issued.

Among other elements, the revisions would eliminate the need for researchers to use multiple consent forms—one for informed consent to the research and one or more related to information privacy rights. Instead, researchers could use a single combined form to accomplish both purposes. The proposal would also simplify other provisions so that the privacy regulations more closely follow the format of the "Common Rule," which governs federally funded research. The revisions would ensure that privacy-specific criteria would apply equally to publicly and privately funded research.

See Attachment 7 for a press release on Thompson's announcement. A fact sheet and related materials are available online at [www.hhs.gov/news](http://www.hhs.gov/news).

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#### **OHRP PUBLISHES IRB GUIDELINES**

The Office for Human Research Protections (OHRP) has posted on its website a document entitled "OHRP Guidance on Written IRB Procedures." The document, dated April 2, outlines the required elements of written Institutional Review Board (IRB) procedures under Department of Health and Human Services regulations for the protection of human subjects, and provides an overview of relevant OHRP guidance regarding each required element. The document can be found at <http://ohrp.osophs.dhhs.gov/humansubjects/guidance/wirbproc.pdf>.

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#### **PRESIDENT NOMINATES NEW NIH DIRECTOR**

The President March 27 announced he is nominating Dr. Elias Zerhouni, executive vice dean at Johns Hopkins School of Medicine, as director of the National Institutes of Health. He also announced he is nominating Dr. Richard Carmona, an Arizona trauma surgeon, as Surgeon General. Both nominations will require Senate confirmation.

The NIH directorship has been filled on an acting basis for more than two years. The Surgeon General's post was vacated last month when David Satcher, a Clinton appointee, finished out his term.

As executive vice dean, Zerhouni is the school's second highest-ranking official. He has been instrumental in developing the school's new Institute for Cell Engineering, which is devoted partly to stem-cell research. However, reports have indicated he has given assurances that he will adhere to the President's policy on stem-cell research, and to the President's position on therapeutic cloning.

Carmona, 52, is a clinical professor of Surgery, Public Health, and Family and Community Medicine at the University of Arizona. In addition to his faculty position at the University of Arizona, he is currently chairman of the State of Arizona Southern Regional Emergency Medical System. He has also been CEO of the Pima Health Care System, and a police officer with the Pima County, Arizona, Sheriff's SWAT team. In 1993, he was named Physician of the Year for Pima County. He was named one of the nation's 10 "Top Cops" by the National Association of Police Organizations in 2000.

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#### **INS ANNOUNCES NEW STUDENT VISA REGULATIONS**

The U.S. Immigration and Naturalization Service (INS) April 8 announced plans to tighten visa rules for foreign students, business travelers, and tourists. Two of the actions focus on visas for foreign students.

First, INS will issue a new interim rule that will require foreign visitors to obtain student visas before they enroll in U.S. education institutions.

Previously, such persons were allowed to begin their U.S. studies as long as INS was processing their student visa requests. To "facilitate" this new requirement, INS said it has set a "target" of processing all requests for such visas within 30 days.

This new rule will take effect immediately on publication, but INS will take public comment on it for 60 days. Foreign citizens who have already enrolled in U.S. education institutions pending approval of their student visa requests will be allowed to continue their studies.

Second, INS will propose another rule change that would prohibit foreigners who enter the country on business or tourist visas from changing those visas to student visas unless they had stated their intent to study in the U.S. when they initially applied for admission. Federal inspectors would have to note on the person's arrival and departure record that he or she was a "prospective student." This proposed rule change will be subject to public comment for 30 days before it goes into effect. INS commissioner James Zigler last month announced that his agency was considering these steps when he testified before the House Judiciary Committee's Immigration subcommittee.

See Attachment 8 for a news release and fact sheet. The documents also are available at [www.ins.usdoj.gov/graphics/publicaffairs/pachron.htm](http://www.ins.usdoj.gov/graphics/publicaffairs/pachron.htm)

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#### **WORK ON SEVIS CONTINUES**

At a March 20 hearing before the House Judiciary Committee's immigration subcommittee, Immigration & Naturalization (INS) commissioner James Zigler assured the panel that the Student Exchange and Visitor Information System (SEVIS) would be operational as a pilot program by July 1, and be fully operational by January 1, 2003. In the meantime, he said he would immediately order that I20 forms be sent promptly to schools when a foreign national is approved for student status. He said INS would also



send letters reminding schools of their responsibility to notify INS if a student fails to attend classes.

As discussed in this publication last month, the INS still plans to delay publication of fee-collection regulations for SEVIS, and instead operate the system initially using the \$36 million appropriated for that purpose in the FY2002 Defense appropriations bill.

But INS remains at loggerheads with the State Department over how the student fee should be collected. INS and the higher education community would like the fee collected by the State Department when the student first applies for a visa; the State Department is resisting that proposal. As a result of the agencies' disagreement, the issue apparently has been bumped up to the White House for resolution. The American Council on Education has scheduled a meeting April 25 with officials at the Office of Management and Budget (OMB) to discuss the higher education community's concerns.

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**REYNOLDS APPOINTED TO CIVIL RIGHTS POST**

The President March 29 made five recess appointments, including the appointment of Gerald Reynolds, an opponent of affirmative action, to head the Education Department's Office of Civil Rights. Reynolds's nomination has been held up in the Senate because of strong opposition from civil rights groups. Recess appointments are effective only through the end of the calendar year.

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**OTHER SECTORS:  
NEW CONSORTIUM TO STUDY HUMAN RESEARCH PROTECTIONS**

Duke University has established a national "Consortium to Examine Clinical Research Ethics" (CECRE) to develop detailed information about oversight of clinical trials at medical centers and to find new ways to protect human subjects involved in such trials.

Using information from 20 to 25 research centers, the consortium will develop a comprehensive database on clinical research characteristics, including the number and nature of clinical trials being conducted, the numbers of participants enrolled, the costs of oversight, and the sources of research funding.

The consortium also plans to create a framework for identifying which types of research projects—such

as those involving vulnerable populations—might warrant greater oversight.

See Attachment 9 for a press release on the consortium. The material also is available on the Duke University website at <http://www.dukemednews.duke.edu>.

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**AAU:  
DOD DAY SET FOR MAY 10**

AAU and the Coalition for National Security Research (CNSR) are sponsoring the 8<sup>th</sup> annual Department of Defense Day on the Hill Wednesday, July 10.

The program will begin with an informal lunch briefing at noon in the Rayburn House Office Building foyer, followed by visits with Members of Congress and staff. The program will conclude at 4:30 p.m. with a reception in the foyer.

Featured at this year's event will be an exhibition of emerging technologies being developed at university and defense laboratories.

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**CFR:  
NEXT MEETING IS MAY 8**

The next meeting of the Council on Federal Relations will be held at 9:30 a.m. Wednesday, May 8, in the second floor conference rooms at 1200 New York Avenue, NW.

The CFR semi-annual retreat will be held in Washington, D.C. on Tuesday, June 4 from 12-7:30 p.m. and on Wednesday, June 5 from 8:00 a.m. to 12:00 p.m.

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