



WASHINGTON REPORT

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CONGRESSIONAL SCHEDULE:

MEMORIAL DAY RECESS NEAR

Both the House and Senate will be in session through the week of May 24, after which the Memorial Day recess begins. When Congress returns from that one-week recess on June 4, both Houses will be in session through the month of June until the one-week July 4 recess begins on July 2.

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BUDGET & APPROPRIATIONS:
LITTLE PROGRESS ON
FY2003 BUDGET RESOLUTION

With the Memorial Day recess rapidly approaching, House and Senate leaders are still mulling over how to proceed on a budget resolution—or some reasonable facsimile of such—so that other FY2003 budget and appropriations work can get underway. One option being discussed is to bundle a budget resolution with several other key pieces of legislation, including the FY2002 supplemental appropriations bill, a debt ceiling increase, and provisions extending budget procedures.

Still at issue is whether to set total FY2003 discretionary spending at the \$759 billion approved earlier by the House or the \$768 billion approved by the Senate Budget Committee. That latter figure is that same as the President's request, but would not include the President's proposed shift of \$9 billion from the mandatory to the discretionary side of the budget.

Complicating consideration of these measures is the fact that both parties are using the budget and appropriations bills to position themselves on the issues that will define this fall's congressional elections.

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CONGRESS FACING DEBT CEILING DEADLINE

Still looming over congressional budget and appropriations deliberations is the politically difficult need to raise the statutory limit on the national debt. House Republican leaders still are considering attaching the debt ceiling increase to the FY2002 supplemental funding bill, which they hope to pass before the Memorial Day recess.

House Republican leaders are discussing the possibility of adding to the rule for floor consideration of the FY2002 supplemental bill language that would automatically attach a debt ceiling increase to the measure. This would enable Republicans to avoid a politically difficult vote on raising the debt ceiling limit.

In the meantime, the Treasury Department last month temporarily suspended investments in a federal employee benefits account to keep from hitting the debt ceiling and sending the government into default. But April 15 tax receipts were far lower than expected, so the Treasury now is warning that the current fix will be good only until June 28, at which time the government will go into default unless Congress acts.

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HOUSE COMMITTEE APPROVES
FY2002 SUPPLEMENTAL

The House Appropriations Committee May 15 finally approved on a voice vote the FY2002 supplemental appropriations bill, after dealing with several controversial amendments. Among the amendments was one by Martin Olav Sabo (D-MN) to prevent the Pentagon from closing down the Crusader artillery program, over which the Administration said it would veto the bill. Sabo withdrew his amendment and substituted non-binding report language calling on the Administration to maintain the Crusader program until Congress could consider it.

The supplemental bill will be considered on the House floor the week of May 20. The Senate Appropriations Committee expects to draft its version the first week of June.

The measure currently stands at \$29.4 billion. That is \$2.3 billion above what the President has requested, but below the \$30 billion ceiling set by House Republican leaders. Included in the package is \$1 billion to help make up the \$1.3 billion shortfall in the Pell student aid grant program.

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FY2003 APPROPRIATIONS DELAYED
UNTIL MID-JUNE

With the slow work on the FY2002 supplemental funding bill, Republican leaders in both chambers are acknowledging that work on the regular 13 appropriations bills for FY2003 will not begin until mid-June.

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TAXES:

O'NEILL WANTS TAX OVERHAUL NEXT YEAR

Treasury Secretary Paul O'Neill has said the Bush administration will propose a "major reform" of the federal tax code next year, following this fall's congressional elections. O'Neill said the goal was to simplify the tax code, consistent with "fairness, and understandability and ease." To avoid unnecessary controversy, he said, the proposal likely would neither raise nor lower tax revenues, but be revenue neutral.

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NONPROFITS URGE PERMANENT IRA
CHARITABLE DEDUCTION

More than 500 nonprofit organizations from around the country, including AAU, signed onto a May 10 letter to the chairman and ranking member of the Senate Finance Committee urging that the Individual Retirement Account (IRA) charitable deduction be

made permanent. The deduction would enable individuals to donate proceeds from their IRA accounts to nonprofit organizations tax free.

See Attachment 1 for a copy of the letter. The letter and the list of supporting organizations is available at: <http://www.nptaxpolicy.com/Charitable%20Giving/Sign-OnStatement.htm>

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OTHER CONGRESSIONAL DEVELOPMENTS:

PRESIDENT SIGNS VISA REFORM BILL

President Bush May 14 signed into law H.R. 3525, the border security/student visa reform bill. The House gave the bill final congressional approval May 8 on a vote of 411-0. The Senate had approved the measure April 18 on a vote of 97-0, but with provisions aimed at expediting the development of a new database to screen visa applicants. The House objected to the provisions and delayed final passage until the Senate agreed to drop the provisions. The Senate did so and the measure was approved.

Among other elements, the bill revises the application process for student visas, including F, J, and M visas, and establishes new information requirements from visa applicants. It also provides interim steps to improve monitoring of foreign students until the Student and Exchange Visitor Information System (SEVIS) is fully operational.

Those steps include the requirement that colleges and universities notify the Immigration and Naturalization Service (INS) within 30 days of the start of the academic term if an international student fails to enroll in an institution. The higher education community has supported the legislation.

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RATS, MICE, & BIRDS EXCLUSION APPROVED

The farm bill (H.R. 2646) approved by Congress and signed by the President May 13 includes the Senate provision that codifies the existing regulatory exclusion of rats, mice, and birds from oversight under the Animal Welfare Act. The conference report for the bill also includes a provision asking the National Research Council to report to Congress within 12 months on the cost implications of extending Animal Welfare Act oversight to rats, mice, and birds.

With the exclusion of rats, mice, and birds from the Animal Welfare Act now codified in statute, animal rights activists are expected to focus new efforts at the state government level.

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AGREEMENT ON BIOTERRORISM BILL

STILL PENDING

The House-Senate conference continues on the bioterrorism legislation that passed both chambers last December (H.R. 3448 and S. 1765). The conference committee will hold its first face-to-face meeting May 16, with the possibility of reaching an agreement.

Conference action has been complicated by food manufacturers' efforts to loosen provisions that would impose new food-safety measures. In addition, both House and Senate lawmakers want to use the measure as a vehicle for unrelated legislation to reauthorize pharmaceutical industry user fees to speed Food and Drug Administration review and approval of new drugs.

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DELAY LIKELY IN SENATE CLONING VOTE

Although Majority Leader Tom Daschle (D-SD) had promised Senator Sam Brownback (R-KS) a floor vote on cloning legislation before the Memorial Day recess, the vote now is expected to be postponed. Reports indicate that Senator Brownback has agreed to a delay in the vote until after the recess in order for the Senate to deal first with budget and trade issues.

Even as battlelines are firming up in the Senate on cloning, the issue may not be decided this year. Neither of the two key measures—Senator Brownback's bill to ban all human cloning (S. 1899) nor Senator Arlen Specter's (R-PA) bill to ban human reproductive cloning but allow cloning for medical research (S. 2439)—is expected to receive the 60 votes necessary to break a filibuster and pass the Senate.

The legislative deadlock would leave in place existing law, which prevents scientists from using federal funds to create or destroy cloned embryos but places no such limits on the use of embryos in privately funded research.

Senator Specter's bill was introduced April 30 when he, Edward Kennedy (D-MA), and Dianne Feinstein (D-CA) unveiled their "compromise" cloning legislation that merged two previously introduced bills: one by Kennedy and Feinstein, the other by Specter and Tom Harkin (D-IA).

Conservative Republican Senators Orrin Hatch (R-UT) and Strom Thurman (R-SC) announced their support for the Specter bill, as did Georgia Democrat Zell Miller.

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CONGRESS REVIEWS PROTECTION OF HUMAN SUBJECTS

The Senate Health, Education, Labor, and Pensions (HELP) Committee April 23 held a hearing on protecting human subjects in research. As has been discussed previously, Committee chairman Edward Kennedy (D-MA) has expressed strong interest in legislation to centralize the government's oversight of human research, require more training in medical ethics, and restrict most researchers from having financial stakes in their research.

At the hearing, Senator Kennedy was joined by committee members Patty Murray (D-WA) and Bill Frist (R-TN), who both agreed that bipartisan legislative action was needed to remedy a systematic breakdown in the oversight system. No legislative details were provided.

The hearing originally was scheduled for last spring, but was postponed first by the change in party control of the Senate and then by the events of September 11.

In the meantime, Reps. Diane DeGette (D-CO) and Jim Greenwood (R-PA) May 9 introduced their own legislation on human subject protections, H.R. 4697. Among other things, the measure would require that all research involving human subjects—regardless of its funding source—be approved by an institutional review board.

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SOVEREIGN IMMUNITY NEGOTIATIONS CONTINUE

Work continues on trying to resolve a thorny issue between the higher education community and content providers—publishers, software developers, and others who create commercial intellectual property—over the issue of state sovereign immunity and the protection of intellectual property.

Content providers have been concerned with a recent Supreme Court ruling that stipulates that under the Constitutional doctrine of state sovereign immunity, state governments—and their public universities—are able to enforce their own intellectual property rights under federal law, but cannot be sued for infringing the intellectual property rights of others.

Content providers have been insisting that Congress establish a "level playing field," while universities have been concerned that such efforts could eviscerate their technology transfer activities and related research and education activities, and impair their ability to recruit and retain strong faculty in certain disciplines.

To address the issue, Senate Judiciary Committee chairman Patrick Leahy (D-VT) developed legislation,

S. 2031, which he scheduled for markup on April 18. But the markup was postponed when committee member Dianne Feinstein (D-CA) said the committee needed to more fully understand the bill's implications for public universities.

Since then, the higher education community, under the leadership of the National Association of State Universities and Land Grant Colleges, AAU, and the American Council on Education, has been negotiating with content providers on a compromise. Although a variety of proposals have been discussed, no compromise has been reached so far, and negotiations have been suspended.

The original legislation would have required an entire state to waive its sovereign immunity from liability under federal intellectual property law in order for any state entity—including universities—to have access to federal remedies to protect its own intellectual property.

Because universities are the only significant producers and owners of intellectual property in most states, they are the only entities with a clear interest in maintaining intellectual property protection. For the rest of the state, a waiver of sovereign immunity subjects them to new liability for nothing in return. Moreover, many states would likely view such legislation as a federal intrusion on states' rights. Thus, public universities could have great difficulty convincing their state governments to waive sovereign immunity regarding intellectual property.

Reportedly, Senators Jon Kyle (R-AZ) and Jeff Sessions (R-AL) are developing a proposal that would provide remedies against state intellectual property infringement in a manner that would circumvent the problem of sovereign immunity.

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HOUSE NSF AUTHORIZATION BILL WOULD DOUBLE SPENDING

House Science Committee chairman Sherwood Boehlert (R-NY) May 8 introduced a National Science Foundation authorization bill (H.R. 4664) that calls for a 15-percent increase in the agency's funding in each of fiscal years 2003, 2004, and 2005. The goal is to double the NSF budget over five years. The measure is cosponsored by Research Subcommittee chairman Nick Smith (R-MI), whose panel held a hearing on the bill May 9 and marked it up that afternoon. The full Science Committee plans to take up the bill before the end of May. The measure has received broad support in the higher education and scientific communities.

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EHLERS TRYING TO BOOST NSF FUNDING

Rep. Vernon Ehlers (R-MI) and five colleagues from the House Science Committee April 30 circulated a Dear Colleague notice asking other Members of Congress to cosign a letter to House appropriators supporting a 15-percent funding increase in FY2003 for the National Science Foundation. The letter, which has 67 cosponsors at this writing, is expected to be sent the week of May 20.

See Attachment 2 for a copy of the draft Dear Colleague letter.

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SENATE IMPROVES ON HOUSE BILL FOR DEFENSE RESEARCH

The House passed its FY2003 Defense authorization bill (H.R. 4546) on May 9 by a vote of 359 to 58. The Senate Armed Services Committee marked up its version of the legislation (S. 2225) the same day.

The Senate committee bill authorizes significantly more funding for basic and applied research accounts (6.1 and 6.2 accounts) than the House bill..

Overall, the Senate bill (S. 2225) authorizes the same amount as the House bill (H.R. 4546) for Research, Development, Test and Evaluation (RDT&E): \$56 billion. (That sum is \$3 billion above the President's request and \$8 billion above the FY2002 level.)

While the Senate bill would transfer some RDT&E funding elsewhere, none of the transferred funding would come out of basic and applied (6.1 and 6.2) research accounts.

In contrast, the House bill would transfer \$162 million from Defensewide basic and applied research accounts to H.R. 4547, the Cost of War on Terrorism Authorization Act. This latter bill is intended to supplement the Defense authorization bill by covering costs associated specifically with the war on terrorism. The latter bill also is intended to serve as the legislative vehicle for further authorization action once the Administration submits a detailed budget proposal for a \$10-billion Defense contingency fund identified in the budget request.

In sum, the Senate bill would authorize a total of \$1.41 billion for 6.1 basic research programs in FY2003. The total is \$59 million more than the House authorization of \$1.35 billion.

For 6.2 applied research programs, the Senate bill would provide \$3.97 billion. That is \$143 million above the House total of \$3.83 billion.

Details of the bill's RDT&E figures are as follows:

6.1 basic research programs (6.1):

- Army 6.1 -- \$249 million. This sum is \$18 million (8 percent) above FY2002, \$12 million above the President's request, and \$12 million above the House bill.
- Navy 6.1 -- \$420 million, \$15 million (4 percent) above FY2002, \$10 million above the request, and \$8 million above the House bill.
- Air Force 6.1 -- \$219 million, \$7 million (3 percent) below FY2002, the same as the request, and \$5 million below the House bill.
- Defensewide 6.1 -- \$524 million, \$11 million (2 percent) above FY2002, \$25 million above the request, and \$44 million above the House bill.

6.2 applied research programs:

- Army 6.2 -- \$732 million, \$178 million (20 percent) below FY2002, \$90 million above the request, and \$34 million above the House bill.
- Navy 6.2 -- \$609 million, \$168 million (22 percent) below FY2002, \$29 million above the request, and \$45 million below the House bill.
- Air Force 6.2 -- \$731 million, \$37 million (5 percent) below FY2002, \$33 million above the request, and \$46 million below the House bill.
- Defensewide 6.2 -- \$1.9 billion, \$267 million (16 percent) above FY2002, \$39 million above the request, and \$200 million above the House bill.

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HOUSE BILL AIMS TO STRENGTHEN EDUCATION RESEARCH

The House April 30 passed H.R. 3801, a bill to replace the Department of Education's Office of Educational Research and Improvement with a new Academy of Education Sciences. The new entity would operate as a separate office within the

Department of Education under the direction of a national board whose members would be appointed by the President and approved by the Senate.

The goal is to strengthen the scientific approach in educational research. The Senate is expected to introduce its own version of the legislation.

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SENATE APPROVES ENERGY BILL

Although the Senate finally approved its energy bill (S. 517) on May 2, the chances for a conference agreement between the House and Senate this year on energy legislation is considered iffy, at best.

The Senate bill emphasizes conservation and alternative energy, while the House bill, H.R. 4, emphasizes increased production. However, the Senate bill does contain provisions that would benefit research and development.

Specifically, the Senate bill would authorize significant funding increases for the Department of Energy's Office of Science: \$3.8 billion for FY2003 (a 17-percent increase); \$4.15 billion for FY2004 (a near-10-percent increase); and \$5 billion for FY2006 (a nine-percent increase).

The bill also would authorize a 30-percent increase in FY2003 for DOE's applied research programs, including those in energy efficiency, renewables, fossil, and nuclear energy.

Additionally, the measure would create a new DOE Undersecretary of Science position by reconfiguring the duties of the current DOE Undersecretary.

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EXECUTIVE BRANCH:

JUSTICE DEPARTMENT ISSUES PROPOSED SEVIS REGULATIONS

The Justice Department May 16 published in the Federal Register a proposed rule for implementing the Student and Exchange Visitor Information System (SEVIS). The proposed rule includes a January 30, 2003 deadline for all universities and colleges to begin using the electronic database tracking system.

The higher education community had been hoping for a longer compliance deadline. This is a significant issue because the Immigration and Naturalization Service will not have SEVIS up and running for institutions to connect to until later this fall, and institutions then will have to acquire and implement new software to connect to and use the system.

The higher education community plans to review the proposed rule and develop a community comment letter. The deadline for comment is 30 days after the proposed rule is published.

The proposed rule does not address the fee-collection system or the fee amount. A separate rule dealing with those matters will be issued sometime in the future.

Representatives of the higher education community met April 26 with Administration officials to discuss concerns regarding collection of the SEVIS fee.

Higher education representatives reiterated to officials from the Office of Management and Budget, the Immigration and Naturalization Service (INS) and from the Departments of State, Justice, and Education that the community did not oppose the new tracking system nor collection of the fee, but had serious concern about the mechanism the Administration has chosen to use.

Rather than have foreign students pay the fee to BankOne in Chicago, which would issue them a paper receipt, the community recommended that the fee be collected by the State Department at the time a visa is applied for. Details of the community's concerns and recommendations are contained in a statement by American Council of Education Vice-President Terry Hartle.

See Attachment 3 for a copy of Hartle's remarks.

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SENSITIVE AREAS OF STUDY PLAN ANNOUNCED

Administration officials May 7 briefed members of the higher education community on the Administration's plan for implementing the provisions of the President's October 29, 2001, Homeland Security directive that relate to access by international students to education and training in sensitive areas of study.

The plan will create a new Interagency Panel on Advanced Science and Security (IPASS) that will provide an additional level of review for all specialized visas—including student visas (F visas), visas for postdoctoral students and researchers (J visas), and visas for students pursuing vocational programs (M visas).

IPASS reviews would be triggered whenever regular reviews of visa applications find that applicants fit certain criteria, such as being citizens of countries known to sponsor terrorism and applying for study in specific areas of study that are "uniquely available in the U.S." and in "sensitive areas."

These criteria—especially the definition of "sensitive areas"—remain to be worked out. Administration officials say this will be done in

consultation with various federal agencies and community representatives.

Once IPASS has completed its review of a visa applicant, the panel's findings and recommendations would be forwarded for action to the Immigration and Naturalization Service or the State Department, depending on the circumstances of the particular case. The role of IPASS would be strictly advisory, and the panel could take no formal action itself.

IPASS will use the same criteria to review the cases of current visa holders who wish to change their courses of study.

Administration officials expect IPASS to be created by a special presidential order or directive rather than by the normal federal rulemaking process. The timetable for this is not yet spelled out.

Higher education representatives' initial reaction to the plan was that it seemed positive, but they would like to see written details on the proposal.

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DEFENSE DEPARTMENT RECONSIDERS RESEARCH RESTRICTIONS

A March 25 Department of Defense draft memorandum entitled "Research and Technology Protection within the DOD" is being reviewed and redrafted by a group of senior Pentagon officials.

This memorandum suggested that new security controls should be imposed on some grantees in Pentagon basic and applied research programs, including a requirement that scientists conducting basic defense research receive clearance before publishing or discussing their work.

Although the memorandum was not intended to be circulated outside the Pentagon, it was distributed widely and raised serious concerns in the university community. See Attachment 4 for the *Chronicle of Higher Education* article on the issue.

The DOD group that is reviewing and redrafting the March 25 memorandum is being headed by Dr. John Hopps, Deputy Director of Defense Research and Engineering and Deputy Under Secretary of Defense for Laboratories and Basic Sciences. Dr. Hopps has said that in overseeing the drafting of new regulations to protect technologies, his goal is to resolve issues of concern to universities. The university community will be providing informal suggestions to Dr. Hopps.

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ZERHOUNI CONFIRMED AS NIH DIRECTOR

The Senate May 2 by voice vote confirmed the nomination of Elias Zerhouni to be director of the

National Institutes of Health (NIH). Zerhouni's nomination had been reported unanimously out of the Health, Education, Labor, and Pensions Committee (HELP) earlier in the day.

At his confirmation hearing on April 30, Zerhouni stressed to members of the Senate HELP committee that NIH needed to support multi-disciplinary teams and cross-cutting initiatives to deal with current biomedical research challenges.

Along with committing himself to ensuring that NIH resources were well spent, Zerhouni emphasized that "disease knows no politics. The NIH and its director should not be made to be factional but must always remain factual." He went on to say, "My role as NIH director will be to inform the debate by developing and communicating the most objective scientific data. The NIH director should actively promote the necessary research within the policy guidelines laid out by the President, and in strict compliance with all laws passed by Congress."

The April 30 hearing originally was scheduled to include Surgeon General nominee Richard Carmona, but the White House has not yet sent his paperwork to Congress. Reports indicate that Carmona's hearing probably will not be held for several weeks.

It is interesting to note that the five-week period between the White House announcement of Zerhouni's nomination and his Senate confirmation was significantly shorter than that for his two most recent predecessors: 11 weeks for Harold Varmus and 13 weeks for Bernadine Healy.

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OHRP ANNOUNCES "QUALITY IMPROVEMENT PROGRAM"

The Office for Human Research Protections (OHRP) April 15 announced it is launching a new, voluntary "Quality Improvement Program" that is intended to help institutions improve the quality of their human research protection programs. Individual campuses will assess if they wish to participate in this program.

See Attachment 5 for an overview of the program. Details also can be found on the OHRP website at: <http://ohrp.osophs.dhhs.gov/humansubjects/qip/qipdesc.pdf>.

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COUNCIL ON BIOETHICS MEETS

The President's Council on Bioethics held its third meeting April 25-26 in the Washington, D.C. area. The first day's sessions focused on the medical promise of embryonic and adult stem cell research, the

ethics of stem cell research, and the ethics of cloning for biomedical research. The second day's sessions dealt with gene therapy versus gene enhancement, and regulatory approaches to new biotechnologies.

The Council's meeting schedule and meeting transcripts are available on the Council's website at: <http://www.bioethics.gov/meetings>.

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LOAN CONSOLIDATION PLAN FIZZLES

Facing strong opposition from Congress, the White House dropped its proposal to change the consolidated student loan program so that students could only consolidate loans at a variable rate of interest rather than at the low fixed rates available now. The White House had offered the plan in its FY2002 supplemental funding bill as a means of offsetting the projected \$1.3 billion shortfall in the Pell Grant program.

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OTHER SECTORS: STUDY SHOWS GAP

IN MEETING COLLEGE COSTS

The National Center for Public Policy and Higher Education, an independent think tank, May 1 published a report showing that public college and university tuition is requiring a greater and greater share of the annual income of most American families.

The report found that the percentage of annual income needed to cover tuition at public institutions over the past 20 years has nearly doubled for low- and middle-income families: from 13 percent to 25 percent for the former and from 4 percent to 7 percent for the latter. In contrast, the report said, the wealthiest families are spending the same percentage of annual income to send their children to college as they were 20 years ago: about 2 percent.

Tuition increases have been exacerbated, the report added, because college costs have risen fastest during recessions when families can least afford them.

The report suggests that states consider adopting policies that create "moderate, gradual, and predictable" tuition increases, which take family income into account, and focusing student financial aid on students with financial need.

See Attachment 6 for a press release and *Chronicle of Higher Education* story about the report. The report is available online at http://www.highereducation.org/reports/losing_ground/ar.shtml.

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AAU:

DOD DAY ON THE HILL SET FOR JULY 10

AAU and the Coalition for National Security Research (CNSR) are sponsoring the 8th 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 through university and defense laboratories.

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GROUP BEGINS ADVOCACY ON RESEARCH FACILITIES

A working group of the AAU Health Issues Forum, co-chaired by Tom Etten of Johns Hopkins University and Jennifer Poulakidas of the University of California, is developing an advocacy outreach effort to members of the House and Senate Appropriations Committees aimed at increasing FY2003 funding for biomedical research facilities. The group has prepared a two-page advocacy document about the subject.

See Attachment 7 for a copy of the document.

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CASE WESTERN INITIATES NEW MEDICAL EDUCATION PROGRAM

Case Western Reserve University and The Cleveland Clinic Foundation May 14 announced creation of a new medical education and research program to prepare "physician-investigators and scientists" for careers in clinical research and practice. According to the National Academy of Sciences' Institute of Medicine, fewer than two percent of U.S. physicians are prepared to perform clinical research.

The new Cleveland Clinic College of Medicine of Case Western Reserve University will enroll its first entering class in 2004. More information on the program is available at: <http://www.cwru.edu/pubaff/univcomm/news.htm>

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CFR:

RETREAT SCHEDULED FOR JUNE 4-5

The Council on Federal Relations 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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