



WASHINGTON REPORT

FEDERAL RELATIONS REPORT OF THE ASSOCIATION OF AMERICAN UNIVERSITIES
1200 NEW YORK AVENUE NW, SUITE 550, WASHINGTON, D.C. 20005
Phone: 202-408-7500 Fax: 202-408-8184
www.aau.edu

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Congressional leaders are currently aiming to complete all action on appropriations and other matters by the end of October. However, the mood has shifted in Congress over the last month, and many members of both parties no longer seem eager to adjourn. Some now think this year's session may stretch well into November, and perhaps beyond.

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SOCIAL SECURITY SURPLUS ABANDONED

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The events of September 11 have fundamentally altered the context for discussion of federal spending issues—not only for this fall but for the foreseeable future. The motion of protecting the Social Security surplus has been abandoned and both parties now seem prepared to spend whatever it takes to clean up and rebuild, to beef up security, and to pursue military and intelligence responses against terrorism. An emergency

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appropriation of \$40 billion has already been enacted for these purposes, which will be divided about equally between FY2001 and FY2002 spending. In addition, another \$15 billion has been approved to assist the nation's airlines, and a broad economic stimulus package that will total \$75 billion or more is in the works. Most analysts are saying a return to deficit spending seems likely.

But this does not mean the spending floodgates will be similarly opened for more regular appropriations. On the contrary, at least for the time being, it appears that both parties are still committed to fiscal restraint in the normal operations of government. That means business as usual will likely prevail in the deliberations over most programs, with the White House and conservative congressional Republicans continuing to press for fiscal restraint and the Democrats and Republican moderates continuing to seek only marginal increases for programs they especially favor.

For example, the only real issue in settling a final FY2002 spending total in the wake of September 11 was the question of whether to add a relatively insignificant \$6.2 billion to the FY2002 budget, to increase funding for K-12 education and assistance for natural disasters (see below).

In other words, at least for now, it appears that the amounts of funding that wind up being provided for programs important to research universities will likely be about the same as they would have been before the September 11 attacks. There may be some exceptions. Defense research and other research programs with security implications may get some extra money (although most of the new defense and security-related spending will be for current operations, not things with long lead times like research.) But it is probably a mistake to expect broad windfalls.

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LITTLE PROGRESS ON APPROPRIATIONS

Although Congressional leaders were signaling in mid-September that they wanted to move quickly to wrap up FY2002 appropriations, that has not turned out to be the case. Fiscal Year 2002 is now nearly two weeks old and Congress still has not passed any of the year's 13 regular appropriations bills. The status of those bills is as follows:

- Seven more bills—Commerce/Justice/State (H.R. 2500), Energy and Water (H.R. 2311), Legislative Branch (H.R. 2647), Military Construction (H.R. 2904), Transportation (H.R. 2299), Treasury/Postal (H.R. 2590), and VA/HUD (H.R. 2620)—have passed both chambers but the conferences on those measures have yet to begin.
- The House has passed its versions of four of the remaining bills—Agriculture (H.R. 2330), District of Columbia (H.R. 2944), Foreign Operations (H.R. 2506), and Labor/HHS (H.R. 3061)—but the Senate has not yet brought its versions of those measures to the floor.
- The final bill—Defense—has been marked up in subcommittee in the House but has not yet seen any action in the Senate.

In the meantime, programs have been funded since October 1 through a two-week continuing resolution that expires on October 16. Another continuing resolution that will last through October 23 was passed by both chambers on October 11.

The lack of progress on appropriations over the past month has been due primarily to two factors: protracted negotiations between appropriators and the White House over a new discretionary spending total for the year, and Senate Republicans blocking all floor action on appropriations in that chamber to protest the slow pace of Senate action on the President's judicial nominations.

The negotiations over a FY2002 discretionary spending total were finally concluded on October 2 with an agreement on a figure of \$686 billion. That figure translates into a discretionary spending increase of about 7 percent, which is nearly double the 4-percent increase originally called for in both the President's budget request and this year's budget resolution. The figure will permit the expenditure of the \$661 billion specified in the budget resolution, plus the President's request for an additional \$18 billion for defense and extra funding appropriators had been seeking (an additional \$4 billion for K-12 education and \$2.2 billion more for natural-disaster relief).

The new FY2002 discretionary spending total is not meant to include the emergency spending Congress has approved so far in response to the September 11 terrorist attacks. Nor is the total meant to include any spending

- To date, only one bill—the Interior bill (H.R. 2217)—has emerged from a House-Senate conference. Neither chamber has yet acted on that measure.

proposals that may be included in economic stimulus legislation that is currently being developed.

As this is being written, Senate Republicans are continuing to block floor action on appropriations in that chamber.

Following are summaries of the actions over the past month on the appropriations bills of greatest interest to research universities.

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INTERIOR CONFERENCE CONCLUDED

House and Senate conferees October 10 reached agreement on a compromise Interior appropriations bill (H.R. 2217).

The conference report includes \$124.5 million for the National Endowment for the Humanities and \$115.2 million for the National Endowment for the Arts.

The NEA figure splits the difference between the House and Senate bills; the House bill would have provided \$123.5 million for the NEH, and the Senate bill would have provided \$125.5 million.

Both chamber's bills provided \$115.2 million for the NEA.

As this is being written, the conference report is still awaiting floor action. House leaders tried to bring the measure to the floor October 11 but they were forced to pull it back when conservative Republicans refused to give unanimous consent. The conservatives raised no specific objections to the measure; they simply said they wanted more time to review it.

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HOUSE LABOR/HHS BILL PASSED

The House's FY2002 Labor/HHS appropriations bill (H.R. 3061) was marked up in subcommittee on October 3, approved by the full Appropriations committee on October 9, and passed on the floor by a vote of 373-43 on October 11.

The bill totals \$123.1 billion, which is \$6.8 billion over the level of the President's original request and \$11.2 billion, or 10 percent, over the level of the FY2001 bill.

NIH PROVISIONS

The House bill's proposed appropriation for the National Institutes of Health was initially presented in a confusing manner in the documents distributed at the subcommittee markup. A press release said the measure would provide "the President's request of \$23 billion, \$2.5 billion more than last year." However, the President's request actually translates into an increase of \$2.65 billion. A summary table distributed at the

markup added to the confusion by providing only a "program level" figure of \$22.564 billion for NIH, and by indicating that that figure translated into a "program level" increase of \$2.462 billion.

But subsequent analysis confirmed that the House bill is, in fact, intended to fulfill at least the spirit of the President's requested appropriation for NIH. The House bill's overall appropriation for NIH is \$22.875 billion. The difference between that figure and the President's \$23-billion request is due primarily to a smaller House appropriation for the "evaluation tap"—the amount of money routinely transferred from NIH to pay for evaluation studies at other Public Health Service agencies. When that transfer and another transfer of NIH funds to global AIDS funding are subtracted from both the House bill and the request, the amount of funding left for all NIH programs is the same in both cases: \$22.564 billion. That sum is \$2.463 billion over the comparable figure for FY2001, which translates into an increase of 12.3 percent. However, the House bill would delay the obligation of \$2.875 billion in NIH funds until Sept. 30, 2002, the last day of FY2002.

The House bill incorporates the proposal from the President's budget to reverse the action taken last year to raise the National Institutes of Health salary cap to Level I of the Executive pay scale (which equaled \$161,200 in FY2001), and to put the cap back at Level II.

STEM CELL LANGUAGE

The report accompanying the House bill includes language intended to clarify that President's decision to permit stem cell research on already-extracted lines does not violate the statutory prohibition against research that uses or destroys embryos. The text of that language is as follows:

The Committee recommendation retains the limitation on the use of funds in the Act concerning research involving human embryos. However, this language should not be construed to limit federal support for research involving human embryonic stem cells listed on an NIH registry and carried out in accordance with policy outlined by the President.

The report also goes on to state the following:

The Committee received testimony from NIH institute and center directors, representatives

of scientific and medical societies, and members of voluntary health organizations about the potential of both adult and embryonic stem cells for improving the lives of those who suffer with a host of disorders, including diabetes, Alzheimer's, Parkinson's, and cardiovascular disease. The Committee understands that a great deal of basic research is required to determine whether this potential can be realized. It is the Committee's intent, that the NIH move ahead expeditiously to implement the President's policy concerning support of scientifically meritorious research involving both adult and human embryonic stem cells. The Committee commends the NIH for moving quickly to negotiate material transfer agreements with holders of existing embryonic stem cell lines. The Director is requested to keep the Committee apprised of program initiatives as well as research progress concerning both adult and embryonic stem cells.

HIGHER ED PROVISIONS

For higher education programs, the House bill would:

- Increase the maximum Pell Grant to \$4,000, which is \$150 over the President's request and \$250 over FY2001.
- Fund the TRIO program for minority and disadvantaged students at \$800 million, which is \$20 million over the request and \$70 million over FY2001.
- Fund the Perkins loan program at \$160 million, which is the same level as the request and the same level as last year. The total includes \$100 million for capital contributions and \$60 million for loan cancellations.
- Fund the State Educational Opportunity Grant program at \$725 million, which is \$34 million above the request and \$34 million above last year's level.
- Fund Work Study at \$1.011 billion, which is the same level as the request and the same level as last year.
- Provide \$31 million for Graduate Assistance in Areas of National Need (GANN), the same level as the request and the same level as last year.
- Provide \$10 million for the Javits Fellowship program, the same level as the request and the same level as last year.

FLOOR ACTION

During floor action on the House bill October 11, the bill managers accepted without a vote a "reasonable pricing" amendment by Bernard Sanders (I-VT). The amendment was identical to an amendment that Sanders successfully attached to last year's Labor/HHS bill by a vote of 313-109. The text of the amendment is as follows:

Sec. 5. None of the funds made available in this Act for the Department of Health and Human Services may be used to grant an exclusive or partially exclusive license pursuant to chapter 18 of title 35, United States Code, except in accordance with Section 209 of such title (relating to the availability to the public of an invention and its benefits on reasonable terms).

Rep. Sanders says the amendment is intended to lower the price of prescription drugs by curbing licenses for drugs developed through National Institutes of Health funding. Section 209 currently applies only to federal agencies, so a concept behind the amendment could be the extension of this requirement to other entities funded by the federal government, such as universities. However, Sanders' amendment probably would have no practical effect on universities since university licensing operations are not supported by federal funds through either direct or indirect costs.

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SENATE LABOR/HHS BILL MARKED UP

The Senate Labor/HHS appropriations subcommittee marked up its bill on October 10, and the full Senate Appropriations Committee approved the measure October 11 without amendment. Full details of the bill

are not available as this is being written. Following is a summary of what is known so far.

NIH PROVISIONS

Unlike the House bill, the Senate bill would give the NIH the full, \$3.4-billion increase it needs to remain on its doubling path. This would bring the FY2002 appropriation to \$23.7 billion.

The amounts of NIH funding that the bill would transfer to other agencies are not yet known. Nor is it known whether the Senate bill, like the House bill, would delay the obligation of some NIH funds.

Unlike the House bill, the Senate bill would retain the NIH salary cap at Executive Level I.

STEM CELL LANGUAGE

The Senate bill includes language that would codify the President's policy on stem cell research, as well as language that would authorize the President to allow federal funds to be used for stem cell research on discarded embryos, with consent from donors. This language promises to be highly controversial. The White House has not asked for the authority it contains, and officials there have indicated the President does not want it. This section of the bill reads as follows:

Section 510 (a) None of the funds made available in this Act may be used for:

- (1) the creation of a human embryo or embryos for research purposes; or
- (2) research in which human embryo or embryos are destroyed, discarded, or knowingly subjected to risk of injury or death greater than that allowed for research on fetuses in utero under 45 CFR 46.208(a)(2) and section 498(b) of the Public Health Service Act (42 U.S.C. 289g(b)).

a. For purposes of this section, the term "human embryo or embryos" includes any organism, not protected as a human subject under 45 CFR 46 as of the date of the enactment of this Act, that is derived by fertilization, parthenogenesis, cloning, or any other means from one or more human gametes or human diploid cells.

NEW TEXT ADDED

b. Federal dollars are permitted, at the discretion of the President, solely for the purpose of stem cell research, on embryos

that have been created in excess of clinical need and will be discarded, and donated with the written consent of the progenitors.

HIGHER ED PROVISIONS

The Senate bill would fund the maximum Pell Grant at \$4,000, the same amount as the House bill. The bill would fund the TRIO program at \$805 million, which is \$75 million over FY2001 and \$5 million more than the House-bill figure. For other higher education programs, the bill would:

- Fund the Perkins loan program at \$175 million, \$15 million more than the House bill. The extra funding would be used to boost the loan cancellations total to \$75 million..
- Fund the State Educational Opportunity Grant program at \$713 million, which \$12 million is below the House level.
- Fund Work Study at \$1.011 billion, which is the same as the House level.
- Provide the same levels as the House bill for Graduate Assistance in Areas of National Need (GANN) and the Javits Fellowship program: \$31 million and \$10 million, respectively.

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HOUSE DEFENSE BILL STILL UNDER WRAPS

The House Defense appropriations subcommittee marked up its bill in closed session on October 10. The contents of the bill will not be revealed until the measure goes to the full House Appropriations Committee, probably during the week of October 15. The Senate has not yet begun working on its version of this legislation.

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OTHER CONGRESSIONAL DEVELOPMENTS:

ANTI-TERRORISM LEGISLATION HEADED FOR CONFERENCE

The Administration in late September transmitted to Congress a package of anti-terrorism proposals intended to enhance national security in the wake of the September 11 terrorist attacks.

After lengthy negotiations with the Administration, the Senate Judiciary Committee developed a bipartisan bill that adhered fairly closely to the Administration's proposals (S. 1510), and brought the measure to the floor

without a formal committee markup on October 11. The measure was easily passed there by a vote of 96-1.

The House initially took a different approach to this legislation, marking up in committee a bill of its own without Administration input (H.R. 2975). However, under pressure from the White House the House finally agreed on October 11 to scrap that measure and to take up a substitute (H.R. 3108) that closely followed the Senate bill. The House then passed that bill October 12 by a vote of 337-79.

The main differences between the bills passed by the House and Senate are that the House bill does not include Senate-bill money-laundering provisions and would sunset various controversial provisions in five years.

The contents of both bills were continually shifting and evolving right up to the time they were brought to their respective floors, and full details of various aspects of both bills are still not clear as this is being written.

Research universities have been concerned about three aspects of this legislation: restrictions on the use of biological agents and toxins in research, access to student records, and responsibilities of Internet service providers.

With regard to the issue of biological agents and toxins, the Senate bill includes an explicit exemption for legitimate research purposes. Specifically, the bill would authorize prosecution of any person who knowingly possesses such substances "of a type or in a quantity that, under the circumstances, is not reasonably justified by a prophylactic, protective, bona fide research, or other peaceful purpose." Senate staff included "bona fide research" as an exempted purpose at the request of the academic and scientific community, including AAU.

The Senate bill would also authorize prosecution of anyone who possesses or receives any select agent if that person is: under indictment for, or has been convicted of, a crime punishable by imprisonment for more than one year; a fugitive from justice; a user of controlled substances; an illegal alien; a national of one of the countries designated by the State Department as supporting terrorism; or someone who was dishonorably discharged from the U.S. military.

With regard to access to student records, several AAU member institutions have already been contacted by law enforcement authorities requesting such access. These records are currently protected by the Family Educational Rights and Privacy Act (FERPA), which prohibits disclosure of student information without consent. However, according to information provided

by the Department of Education's Family Policy Compliance Office, the institutions may disclose records, without consent, to several different people and organizations, including:

- certain government officials in order to carry out lawful functions,
- individuals who have obtained court orders or subpoenas, and
- persons who need to know in cases of health and safety emergencies.

AAU understands that there is specific language in the Senate bill that clarifies the rules regarding release of student records in relation to terrorism investigations and will not hold institutions liable for releasing such information.

However, a portion of the bill that would open business records to greater scrutiny could also affect access to student records--and perhaps library-use records and medical records as well. Under current law, only a fairly narrow set of business records can be accessed without a court order. But the Senate bill would greatly expand the range of business records that authorities could access in this manner. When the Senate bill went to the floor, Russell Feingold (D-WI) offered an amendment that would have maintained current standards of access for records that contain personal information. This amendment was tabled 98-8.

With regard to Internet service provider responsibilities, universities have been concerned about a stipulation that service providers may ask for assistance from the government in dealing with computer trespassers. The concern is that the government could pressure service providers (including universities) to ask for assistance as a means of gaining broad authority to intercept an individual's e-mail, websurfing, and other electronic transactions to pursue wider investigations. A Feingold amendment intended to address this concern was also tabled by the Senate, by a vote of 83-13.

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SENATE HUMAN-SUBJECT HEARING STILL ON HOLD

The Senate Health, Education, Labor and Pensions Committee is still searching for a date for its long-planned hearing on human-subject protection issues.

The hearing was originally scheduled for last May and then postponed to September 13. The September 13

hearing was cancelled in the wake of the September 11 terrorist attacks. For a time, the panel was hoping to reschedule the hearing to October 16 but that date has proved not to be feasible.

Committee staff say the hearing may be held on October 31, but that date is hardly certain.

The witness list for the hearing has not changed, and is expected to include representatives of the Office for Human Research Protections, the General Accounting Office, the Association of American Medical Colleges, and the American Academy of Pediatrics.

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FEINSTEIN WITHDRAWS STUDENT-VISA MORATORIUM PROPOSAL

Senator Dianne Feinstein (D-CA) September 27 announced that she intended to introduce legislation that would impose a six-month moratorium on the student visa program to give time to institute reforms. Feinstein's planned legislation also contained proposals for specific reforms and the authorization of \$32.3 million to the Immigration and Naturalization Service to speed implementation of that agency's electronic foreign-student tracking system known as CIPRIS.

Although the higher education community welcomed Feinstein's reform proposals, her proposal for a moratorium generated considerable concern within the community. After a series of discussions, the Senator announced on October 9 that she would "hold off" on that aspect of her legislation because of assurances from educators that they would "provide better cooperation with federal authorities with regard to reporting requirements."

Also on October 9, the Senator sent a letter to President Bush urging him to designate \$32.3 million for CIPRIS from the recently passed emergency supplemental appropriations bill.

On October 12, Feinstein's Subcommittee on Technology, Terrorism, and Government Information held a hearing on the ways in which the implementation of CIPRIS and other steps could help remedy deficiencies in the nation's immigration and visa system.

At the hearing, Feinstein made clear that she expects foreign students to pay fees that would support the CIPRIS system once it is up and running, and also expects universities to collect the fees and help finance the system.

See Attachment 1 for the Senator's September 27 news release. See Attachment 2 for an October 5 community letter to the Senator. See Attachment 3 for the Senator's October 9 news release. See Attachment 4

for the opening statement she presented at her October 12 hearing.

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EXECUTIVE BRANCH:

DANIELS MEETS WITH COMMUNITY LEADERS

On September 19, AAU president Nils Hasselmo and representatives of 10 other science- and university-related organizations participated in a meeting convened by Office of Management and Budget director Mitch Daniels.

The stated purpose of the meeting was to discuss three topics: FY2002 appropriations, the upcoming FY2003 budget, and "congressional earmarking of academic research." In reality, most of the meeting was focused on earmarking.

AAU president Hasselmo said the association has always believed that federal support for scientific research should be allocated primarily on the basis of excellence determined by merit review, and that the association is delighted that the Administration is embracing that principle. He said the AAU executive committee has been discussing the issue and the full AAU membership will discuss it at its upcoming October meeting. He informed Daniels that the AAU was collaborating with the American Association for the Advancement of Science, the National Academies, and NASULGC on an October 3 workshop that would address the issue (see separate story below under "AAU"). He said it was also important for the government to seek alternatives to earmarks, such as mechanisms that would allow capacity-building by institutions, and he stressed the importance of evaluating the outcomes of such efforts.

No conclusions were reached in the meeting, although there seemed to be a general consensus that the October 3 workshop constituted a good first step for further deliberations on the issue. Daniels said he would continue to seek advice on the best ways to tackle the problem.

The other participants in the meeting included representatives of the National Academies, AAAS, NASULGC, the Association of American Medical Colleges, the Science Coalition, the American Physical Society, the American Astronomy Society, the American Mathematical Society, the American Chemical Society, and the American Society for Microbiology.

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OMB ISSUES

FINAL DATA-QUALITY GUIDELINES

The Office of Management and Budget September 28 published in the *Federal Register* (Vol. 66, No. 189, pps.

49718-49725) the final version of its "Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by Federal Agencies."

The guidelines became effective October 1, although the Office of Management and Budget will take comments on certain aspects of them until October 31.

Several of the issues the AAU raised in its August 13 comment letter (*WR* 8/15/01; www.aau.edu/research/OMBLtr8.13.01.html) were addressed in the final guidelines. While the changes that have been made may not fully settle every potential problem the guidelines may pose for the government's ability to disseminate information, they appear to represent reasonable efforts on the part of OMB to incorporate the concerns of the science and academic community while at the same time complying with the statutory mandate.

Most significantly, under the definition of "objectivity" in the publication of scientific or statistical data, the final guidelines state that information "can generally be considered of acceptable objectivity" if "the results have been subject to formal, independent, external peer review."

The community's concern over a requirement that scientific data must be "substantially reproducible" is also addressed, and the definition of that term is narrowed.

The concern over harassment of scientists and frivolous complaints is also addressed: in the explanatory materials, agencies are given latitude not to respond to inconsequential or trivial complaints.

The guidelines were mandated under an FY2001 Treasury/Postal appropriations bill amendment by Rep. JoAnne Emerson (R-MO).

The September 28 issue of the *Federal Register* is available on the Government Printing Office website at <http://frwebgate.access.gpo.gov>.

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MARBURGER NOMINATION ADVANCES

The White House September 21 formally nominated John Marburger III as Assistant to the President for Science and Technology Policy. The nomination was originally announced on June 25 (*WR* 7/13/01).

The Senate Commerce, Science and Transportation Committee held a hearing on the nomination on October 9. In his testimony at the hearing, Marburger stressed the importance of a balanced national research portfolio that supported work in the physical sciences as well as the biomedical arena. Marburger received bipartisan support from the panel.

AAU president Nils Hasselmo supported the nomination in a September 24 letter to the Senate Committee (Attachment 5).

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COLE CONFIRMED AS NEH CHAIRMAN

The Senate September 14 confirmed Bruce Cole, a professor of art history at Indiana University, as the new chairman of the National Endowment for the Humanities.

Cole, who is teaching this term at Indiana, plans to assume the NEH position in December.

There was no confirmation hearing for Cole. Instead, Senate Health, Education, Labor and Pensions Committee chairman Edward Kennedy (D-MA) posed a series of written questions to the nominee. The questions and Cole's answers appeared on pages S9498-S9500 in the September 19 issue of the *Congressional Record* (Attachment 6). The answers to questions number four through seven will be of most interest to universities since they concern Cole's views on NEH's research, preservation, and education efforts.

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PRESIDENT ANNOUNCES NEA NOMINEE

The President September 19 announced he will nominate Michael Hammond, dean of the Shepherd School of Music at Rice University, to be chairman of the National Endowment for the Arts.

Hammond, 69, is a composer, conductor, and scholar whose specialties include medieval, Renaissance, and Southeast Asian music. He is also a faculty fellow in Neuroscience at Rice.

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OTHER SECTORS:

MARYLAND COURT DROPS

"ZERO RISK" STANDARD

The last issue of this newsletter cited a controversial August 16 ruling by the Maryland Court of Appeals in a case involving two lawsuits against the Kennedy Krieger Institute, a research facility affiliated with the Johns Hopkins University. The lawsuits have been brought by parents who allege the Institute did not fully inform them of the risks of a lead-paint abatement study, and did not advise them in a timely manner when their children's blood-lead levels rose. The Appeals Court ruling allowed the lawsuits to proceed. But the Appeals Court also went much farther than that—the Court condemned the manner in which the entire study was conducted, and it ruled broadly that it is illegal in Maryland for parents or guardians to give consent for children or legally impaired adults to participate in nontherapeutic research that poses any level of risk.

On September 17, the Kennedy Krieger Institute filed a motion asking the Court of Appeals to reconsider its broad ruling about parents and guardians granting consent. The Institute argued that this ruling would make a great deal of research involving children or legally impaired adults impossible to conduct in Maryland, since most medical research is nontherapeutic in nature and virtually all research involves some level of risk.

The same day, the AAU joined with the American Association of Medical Colleges, Johns Hopkins, and the University of Maryland Medical System in filing an *amicus* brief supporting the Institute's motion concerning the broad ruling. The *amicus* brief did not ask the Court to reverse the portion of its ruling that allowed the lawsuits to proceed. It simply argued that the Court had gone too far in demanding a zero-risk standard for research involving children and legally impaired adults.

On October 11, the Court of Appeals denied the motion to reconsider its August 16 ruling. However, the Court also clarified its position on the issue of subjecting children to risk in research studies, saying it had never intended to imply that children should not be subject to any risk. The Court said: "In the [August 16] Opinion, we said at one point that a parent 'cannot consent to the participation of a child . . . in nontherapeutic research or studies in which there is any risk of injury or damage to the health of the subject.' As we think is clear from Section VI of the Opinion, by 'any risk' we meant any articulable risk beyond the minimal kind of risk that is inherent in any endeavor."

In effect, the Court's latest statement brings the Court's position into conformity with current federal regulations, which allow pediatric research that presents "no greater than minimal risk to children."

Johns Hopkins University officials say the Court's latest statement "will permit our researchers to continue to conduct their studies in accordance with the terms laid out in the federal regulations."

See Attachment 7 for the Court's October 11 statement. The full texts of the Institute's September 17 motion and the accompanying *amicus* brief are available on the AAU website at www.aau.edu/research/integri.html.

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2002 JEFFERSON DAY SET

Next year's Jefferson Day activities have been scheduled for March 25-26, 2002.

The centerpiece of the activities, the Jefferson Lecture, will be held at the Kennedy Center the evening of March 25.

Advocacy efforts, organized by the National Humanities Alliance and cosponsored by AAU, NASULGC and others, will take place the following day.

Jefferson Day is intended to demonstrate community support for the National Endowment for the Humanities.

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AAU:

AAU ISSUES CONFLICT-OF-INTEREST REPORT

The AAU October 9 issued a report that makes specific recommendations for strengthening universities' oversight of potential financial conflicts of interest in research. The goal of the report is to help universities sustain public confidence in their research activities in a time when commercialization of university research is becoming more common.

The report deals with conflicts of interest affecting both individual researchers and whole institutions.

For *individual* conflicts of interest, the report focuses on improving existing university management systems and regulatory compliance. The report breaks new ground in this area by providing, for the first time, suggested operating guidelines intended to help reduce the variation among institutions in their approaches to this issue. Several specific guidelines go beyond current federal regulations by calling for the following:

- annual disclosure of all relevant financial interests
- disclosure of financial interests related to nonfederally sponsored research as well as federally sponsored research
- not allowing researchers to have financial interests in research involving human participants unless there are "compelling circumstances" to justify an exception.
- connecting conflict of interest review processes with Institutional Review Board processes.

The entire section of the report dealing with *institutional* conflicts of interest breaks new ground, since there is currently no federal regulation or even guidance in this area and no university group has previously addressed this issue in such a comprehensive manner. The report defines institutional conflict of interest as involving conflicts between campus research and a university's equity holdings or royalty

arrangements as well as the financial holdings of senior university officers. The report urges that campuses develop policies governing disclosure, management, and occasional prohibition of all such financial interests.

The report was produced by the task force of AAU-university presidents who in June 2000 developed an AAU report on protections of human participants in research. The task force is co-chaired by University of Southern California president Steven B. Sample and University of Nebraska president L. Dennis Smith. Other members include Columbia University president George Rupp, University of Iowa president Mary Sue Coleman, and Robert C. Dynes, chancellor of the University of California, San Diego.

The report has been endorsed by the association's executive committee and has been transmitted to the presidents and other key officials of the association's member institutions.

The report is available on the AAU website at www.aau.edu/research/COI.01.pdf. Printed copies are available through the AAU office.

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AAU COSPONSORS EARMARKING WORKSHOP

The American Association for the Advancement of Science, the AAU, the National Academies, and NASULGC, October 3, jointly sponsored a Washington, D.C., workshop entitled "Earmarking of Science: Definitions, Interpretations, and Implications."

The workshop included two panel presentations. The first panel presented and evaluated different definitions that have been employed by the Office of Management and Budget, AAAS, the *Chronicle of Higher Education* and the late Congressman George Brown (D-CA) to quantify the extent of noncompetitive, specified earmarks in the research budgets of federal agencies. Speakers in the first session included OMB budget analyst Sarah Horrigan, *Chronicle of Higher Education* reporters Jeff Brainard and Ron Southwick, AAAS analyst Kei Koizumi, and House Science Committee Democratic analyst Dan Pearson.

A second session discussed the reasons why earmarking occurs, the perspectives of research universities, and efforts in federal agencies--such as the National Institute of Health's Institutional Development Award (IDeA) program -- to distribute research funds to non-research-intensive states on a peer-reviewed basis. Participants in this session included former U.S. Senator J. Bennett Johnston (D-LA), NIH National Center for Research Resources director Judith Vaitukaitis, and Florida State University vice president for research

Raymond Bye. University of Virginia president John T. Casteen III moderated both sessions.

A transcript of the workshop will be posted on the AAU web site before the end of October.

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AAU SPONSORS TEACHER ED FORUM

The AAU recently sponsored a three-day forum in Cambridge, MA, on teacher education.

The forum was held September 30-October 2. It was organized by the AAU's Task Force on K-16 Education, which is chaired by Ron Latanision, of the Massachusetts Institute of Technology. It was supported by funds from the National Science Foundation.

The forum was attended by more than 80 participants, and included presentations by faculty-administrative teams from 16 AAU universities on innovative approaches to teacher education. The keynote address was delivered by University of Iowa president Mary Sue Coleman, who chairs the AAU's Committee on Undergraduate Education.

A webcast of the proceedings is available through November at <http://web.mit.edu/webcast/aauforum>.

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CFR:

NEXT MEETING IS NOV. 7

The next meeting of the CFR will be held Wednesday, November 7 in the second floor conference rooms at 1200 New York Avenue NW. A December CFR meeting is not envisioned at this time.

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