



WASHINGTON REPORT

FEDERAL RELATIONS REPORT OF THE ASSOCIATION OF AMERICAN UNIVERSITIES

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01-11

November 16, 2001

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CONGRESSIONAL SCHEDULE:

ADJOURNMENT NOT YET IN SIGHT

Both houses of Congress adjourned November 16 for a week-long Thanksgiving recess. They will return to session on Tuesday, November 27.

With five FY2002 spending bills, an economic stimulus package, and various other matters still awaiting completion, an exact timetable for adjournment still remains to be seen.

Unappropriated programs are currently being kept running through a continuing resolution that expires on December 7. Adjournment by that time seems possible, but most analysts believe Congress is likely to remain in session for a week or two beyond that date.

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BUDGET & APPROPRIATIONS:

FIVE APPROPRIATIONS BILLS STILL PENDING

Senate Republicans October 23 finally stopped blocking appropriations work to protest the Senate's pace of action on judicial nominations, and Congress has made significant progress on appropriations since that time. But a considerable amount of work remains to be done. In the meantime, as has been noted above,

unappropriated programs are being funded through a fifth continuing resolution (H.J.Res 74) that will expire on December 7.

See Attachment 1 for a chart that details the current status of all of the 13 FY2002 appropriations bills. In summary:

- Five bills have been signed into law (Energy and Water, Interior, Legislative Branch, Military Construction, and Treasury/Postal).
- The final versions of three bills have cleared Congress and are awaiting the President's signature (Agriculture, Commerce/Justice/State, and VA/HUD).
- House-Senate conferences are underway on the Foreign Operations and Transportation bills.
- Both chambers have passed their versions of the Labor/HHS and District of Columbia bills, and these bills are now awaiting conference.
- The House has completed all committee work on its Defense bill, and that measure is slated for floor action right after the Thanksgiving recess. The Senate has not yet marked up its version of this legislation.

Although various specific issues remain to be worked out within the uncompleted bills, the major impediment to completion of FY2002 appropriations at this time is the overarching issue of whether the \$40 billion in emergency funding that was agreed to in September (*WR* 10/15/01) should be expanded. Various members of both parties have been seeking to expand this funding, most notably Senate Appropriations chairman Robert Byrd (D-WV). But the Administration has been adamant that additional emergency spending is not needed at this time, and has been threatening to veto any legislation that contains such spending.

The dispute over this issue has been holding back the Defense bill in particular, since that bill is the vehicle for \$20 billion of the \$40 billion that was agreed to in September. Long-planned economic stimulus legislation is also caught up in this dispute, since Byrd wants to add his \$15-billion package to that legislation. Neither the Defense bill nor the economic stimulus bill can be wrapped up until this issue is settled.

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

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ENERGY AND WATER BILL ENACTED

House and Senate conferees reached agreement on a compromise Energy and Water appropriations bill (H.R. 2311) on October 30. The conference report was approved by both chambers on November 1. The vote in the House was 399-29, and the vote in the Senate was 96-2. The President signed the legislation on November 12.

The conference report funds the Energy Department's Office of Science at \$3,233.1 billion, which is \$77.6 million, or 2.5 percent, above the FY2001 funding level and \$73.2 million above the President's request.

The seemingly big winner among DOE science programs is Biological and Environmental Research, which gets a 9.3-percent increase. But this increase is deceptive, because most of the new money in this area consists of earmarks for specific projects at specific universities. The biggest loser among DOE science programs is Advanced Scientific Computing Research, which will get 4.6 percent less than it did in FY2002. The remaining DOE science programs will receive little or no increase.

The overall Energy Supply program is funded at \$666.7 million. This figure is \$5.4 million, or 0.8 percent, above the FY2001 funding level and \$161.7 million above the President's request.

See Attachment 2 for an AAU chart that provides full details.

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INTERIOR BILL ENACTED

The conference report on the Interior appropriations bill (H.R. 2217) was approved by the House and Senate on October 17 by votes of 380-28 and 95-3, respectively. The President signed the legislation on November 5.

As was noted in the last *Washington Report*, the conference report provides \$124.5 million for the National Endowment for the Humanities and \$115.2 million for the National Endowment for the Arts. The NEH figure represents a 3.8-percent increase. The NEA figure represents a 9.7-percent increase.

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VA/HUD BILL AWAITING SIGNATURE

House and Senate conferees reached agreement on a compromise VA/HUD appropriations bill (H.R. 2620) on November 6. The conference report was approved by both chambers on November 8. The vote in the House was 401-18, and the vote in the Senate was 87-7. The

President has not yet signed the measure but he is expected to do so.

The conference report provides a total of \$4.8 billion for the National Science Foundation. This figure represents an increase of \$373.6 million, or 8.5 percent, over FY2001 funding. Within that total, major accounts will receive the following amounts:

- Research and Related Activities: \$3.6 billion, a 7.6-percent increase
- Major Research Equipment: \$139 million, a 14.4-percent increase
- Education and Human Resources: \$875 million, an 11.4-percent increase.

NASA will receive an overall appropriation of \$14.8 billion, which is 3.8 percent above FY2001. Specific appropriations for university-related NASA programs include the following

- Office of Space Science: \$2.85 billion, an 8.5-percent increase
- Office of Earth Science: \$1.57 billion, an 8.3-percent decrease but \$58.4 above the President's request
- Biological & Physical Research: \$714.4 million, an 89-percent increase
- Aerospace Technology: \$2.49 billion, a 12.4-percent increase
- Academic Programs: \$230.8 million, a 74-percent increase (however, most of the new money in this area is for earmarks for specific projects).

The conference report funds the International Space Station at \$1.96 billion, which is \$149.3 million—or 7.1 percent—below the FY2001 level and \$123.8 million below the President's request.

See Attachment 3 for an AAU chart that provides fuller details on the conference report's funding levels.

Language in the conference report requires the director of the Office of Management and Budget and the NASA administrator to submit to the House and Senate appropriations committees a report that lays out a

10-year program and funding profile for the Space Station research science program.

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LABOR/HHS BILL AWAITING CONFERENCE

The Senate began debating its version of the Labor/HHS appropriations bill (H.R. 3061) on October 30 and finally passed the bill amendment on November 6 by a vote of 89-10. No significant amendments were adopted.

Among the amendments offered on the floor were three by Sam Brownback (R-KN) dealing with human cloning, including cloning aimed at producing cells or tissues for transplantation. But on October 1, a deal was reached to delay all consideration of cloning and stem cell research issues until sometime next year. Under the deal, Labor/HHS appropriations ranking member Arlen Specter (R-PA) agreed to remove his stem cell language from the bill and Brownback agreed to drop his cloning amendments. "It would have been very, very difficult to grasp these issues," Specter said. "It can wait until the February-March time frame."

As was noted in the last *Washington Report*, the House passed its version of the bill on October 11. A conference on the measure has not yet been scheduled.

See Attachment 4 for an AAU chart that details the funding levels in the House and Senate bills. In summary:

NATIONAL INSTITUTES OF HEALTH

The Senate bill would fund the National Institutes of Health at \$23.7 billion, which represents an increase of \$3.4 billion, or 16.7 percent. This increase would keep NIH on track toward doubling its budget by FY2003. The House bill would increase NIH funding by \$2.6 billion, or 12.7 percent. See Attachment 5 for a chart that details the proposed House and Senate appropriations for specific institutes.

GRADUATE EDUCATION

Both bills would level-fund the Javits Fellowship and Graduate Assistance in Areas of National Need (GAANN) programs at \$10 million and \$31 million, respectively.

STUDENT AID

The House bill would provide a \$10.5 billion appropriation for the Pell Grant program, which represents an increase of \$1.7 billion, or 19.4 percent. The Senate bill would provide \$10.3 billion, for an

increase of \$1.5 billion, or 17.6 percent. Both these increases were intended to provide enough funds to raise the maximum Pell Grant by \$250, to \$4,000. However, the Office of Management and Budget informed Congress on November 1 that all of the new Pell Grant funding envisioned in both bills would be needed to cover an unexpected deficit in the program, and that the House's proposed increase was the minimum needed just to keep the maximum Pell Grant at its current level of \$3,750 for FY2002. Efforts are under way to try to fix this problem in conference.

Other student aid appropriations in the two bills are as follows:

- The House bill would hold overall Perkins Loan funding flat at \$160 million. The Senate bill would provide \$15 million in new Perkins funding, which would all be applied to loan cancellations.
- Both bills would level-fund the Work-Study program at \$1.011 billion.
- The House bill would level-fund the Leveraging Educational Assistance Partnership (LEAP) at \$55 million. The Senate bill would increase funding for this program by \$15 million, or 27.3 percent.
- The House bill would increase funding for Supplemental Education Opportunity Grants (SEOG) by \$34 million, or 4.9 percent, to \$725 million. The Senate bill would provide an increase of \$22 million, or 3.2 percent.
- The House bill would increase funding for the TRIO program by \$70 million, or 9.6 percent, to \$800 million. The Senate bill would provide an additional \$5 million, for an overall increase of 10.3 percent.

INTERNATIONAL PROGRAMS

The House bill would increase funding for domestic international programs by \$13 million, or 19 percent, to \$80 million. The Senate bill would hold this funding level at \$67 million.

The House bill would increase funding for overseas Programs by \$1.5 million, or 15 percent, to \$11.5

million. The Senate bill would hold this funding level at \$10 million.

The House bill would increase funding for the Institute for International Public Policy by \$500,000, or 50 percent, to \$1.5 million. The Senate bill would hold this funding level at \$1 million.

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DEFENSE BILL STILL IN EARLY STAGES

As has been noted above, this year's Defense bill has been held up in both chambers by a dispute over expanding emergency funding. The bill has been affected by this dispute because it is serving as the vehicle for \$20 billion of the \$40 billion in emergency funding that has already been agreed to, and there have been efforts in both chambers to increase that \$20-billion appropriation.

As was noted in the last *Washington Report*, the House's Defense bill was marked up in a closed subcommittee session on October 10, but its contents were not revealed at that time. The full House Appropriations Committee marked up most of the bill on October 24, but it delayed final action on the measure until it could resolve the emergency-funding issue. That issue was finally resolved on November 16, when members of the New York delegation agreed to a deal that will increase the amount of emergency funding flowing to their state by reordering priorities within the \$20 billion already provided in the bill. However, there was not time to bring the bill to the floor before the Thanksgiving recess, and floor action has now been delayed until after the recess.

The Senate's version of this legislation is still awaiting subcommittee markup, and there will likely be a battle over adding more emergency funding to that measure.

On its face, the House bill would essentially hold overall funding for 6.1 basic research programs flat, cutting it by \$3 million, or a fraction of a percent, to \$1.314 billion. The bill would also cut overall funding for 6.2 applied research programs by \$342 million, or 9.3 percent, to \$3.322 billion.

However, these figures are deceptive because they reflect the transfer of some Defense-wide basic and applied research funding to a new Title IX, called Counter-Terrorism and Weapons of Mass Destruction. The basic research transfer to Title IX was \$39 million; the applied research transfer was \$561 million. In addition, the applied research total also reflects a \$103-million reduction in Defense-wide funding for the Defense Advance Research Projects Agency.

The House bill's proposed appropriations for basic and applied research programs within the different services would all provide increases, in some cases relatively robust ones. Those appropriations are as follows:

- Army 6.1—\$238 million, an increase of \$28 million, or 13.3 percent. The President had requested \$222 million.
- Navy 6.1—\$399 million, an increase of \$5 million, or 1.3 percent. The request was \$406 million.
- Air Force 6.1—\$227 million, an increase of \$14 million, or 6.6 percent. The request was \$221 million.
- Army 6.2—\$851.6 million, an increase of \$24.6 million, or 3 percent. The President had requested \$689 million.
- Navy 6.2—\$695.7 million, an increase of \$36.7 million, or 5.6 percent. The request was \$627 million.
- Air Force 6.2—\$760.7 million, an increase of \$103.7 million, or 15.8 percent. The request was \$696 million.

See Attachment 6 for an AAU chart that provides further details.

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AG BILL INCLUDES

RATS, MICE, AND BIRDS PROVISION

The conference report on the FY2002 Agriculture appropriations bill (H.R. 2330), which has cleared Congress and is awaiting the President's signature, includes a provision that will once again prohibit the U.S. Department of Agriculture from issuing a final rule on coverage of rats, mice, and birds under Animal Welfare Act regulations. The provision reads:

None of the funds appropriated or made available by this act shall be used to issue a proposed rule for which the comment period would close prior to Sept. 30th, 2002, final, or interim rule pursuant to notice and comment rulemaking in relation to any change or modification of the definition of "animal" in existing regulations pursuant to the Animal Welfare Act.

Two facets of this provision are worth noting. First, the use of rats, mice, and birds in research continues to be regulated by the Public Health Service Policy on Humane Care and Use of Laboratory Animals, the FDA's Good Laboratory Practices regulations, and by AAALAC's accreditation standards. Second, unlike the provision enacted in last year's Agriculture appropriations bill (which prohibited USDA from even proposing a regulation on this topic during FY2001), it would allow a regulatory change to be proposed—but not to become final or have its comment period close before the fiscal year is over.

For reference, last year's provision read as follows:

None of the funds appropriated or otherwise made available by this Act shall be used to issue a notice of proposed rulemaking, to promulgate a proposed rule, or to otherwise change or modify the definition of "animal" in existing regulations pursuant to the Animal Welfare Act.

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FY2003 BUDGET IN WORKS ;

DANIELS WARNS OF RESTRICTIONS

Little information is available so far on the FY2003 budget proposal being developed within the Administration. The Office of Management and Budget is currently scheduled to transmit its recommendations for specific agencies (so-called "passbacks") the week after Thanksgiving, but there has been no word yet concerning the contents of those recommendations.

However, in an October 16 speech to the Conference Board in New York, OMB director Mitchell Daniels warned that the Administration would try to restrict spending for programs not directly related to security issues. Following are excerpts from the *Washington Post's* account of that speech, a subsequent interview, and some congressional reaction:

The White House signaled last night it will seek a reordering of federal budget priorities, with programs not related to fighting terrorism or enhancing security under scrutiny for reductions or elimination.

[OMB director Daniels] warned that permanent budget deficits may emerge again if lawmakers do not trim back parts of the government not dedicated to the military, law enforcement and intelligence-gathering.

"Many lesser priorities will have to yield while we ensure that the essential functions of government are provided for," [Daniels said]. . . . "The alternative is to discard discipline totally and imperil our long-term economic health."

While Daniels in an interview declined to specify which programs the administration will target, his comments represent an early shot in a growing debate between the parties over future spending. With the 2002 budget certain to go into deficit for the first time in five years, policymakers face politically unappealing choices—higher spending and continuing budget deficits, or higher taxes, or deep cuts in nonterrorism-related programs.

. . . . In an interview, Daniels made it clear the administration was opposed to either higher spending or tax increases. Daniels said he rejected the notion that much of the additional spending in the war on terrorism—by some estimates as much as \$50 billion a year—will need to be added on top of existing commitments. "Everything ought to be held up to scrutiny," he said. "Situations like this can have a clarifying benefit. People who could not identify a low priority or lousy program before may now see the need."

Daniels said the "two new imperatives are fully affordable [but] the real danger is that we will layer it on top of the government we have." He said that "what you don't do in a time of emergency is hold everything else sacrosanct," though he ruled out not implementing portions of the president's tax plan because "we don't want to do anything that hurts long-term growth."

But many Democrats charge the administration's commitment to fiscal discipline is merely a convenient way to slash funding for social and health programs dear to Democrats while pouring dollars into the military and law enforcement agencies that were always slated for big increases under President Bush. They question why

everything but the president's desire for more tax cuts needs to be on the table.

Rep. David R. Obey (Wis.), the senior Democrat on the House Appropriations Committee, said that Democrats were not planning to shortchange the war on terrorism. "There will be no difference between Republicans and Democrats on that front," he said. "But Democrats are not going to allow Osama bin Laden to accomplish what Mitch Daniels couldn't do on his own"—which Obey said included weakening spending on science, health care and other social programs.

Obey said that his office has received memos from a range of federal agencies indicating the White House has been "planning extraordinarily deep cuts in domestic programs in order to finance oversized tax cuts."

. . . . [Senate Majority Leader Daschle] acknowledged that the ongoing costs of funding the war on terrorism will have consequences for future spending. He said that he was not inclined to seek ways to pay for the emerging stimulus package, and he did not think the time was ripe to reopen the debate about the tax bill that passed in the spring.

But Daschle said it was clear that spending priorities will be shifted in the wake of Sept. 11. "There is no doubt that eventually it [spending to fight terrorism] will have to be offset," he said. "We can't permanently commit to spending that can't be paid for."

. . . . Daniels last night issued a stern warning to lawmakers who he said were making "opportunistic spending sorties masquerading as emergency needs."

"Overnight, a climate of fiscal restraint has been dispelled," he said. "We now face a great risk of runaway spending, the erosion of the long-term surpluses we have been anticipating, and the erection of a much larger permanent federal government."

In a similar vein, the *Blue Sheet* newsletter October 17 reported on remarks made two days before by Thomas Cooley, the National Science Foundation's chief financial officer, at the annual meeting of the Society of Research Administrators in Vancouver, British Columbia. The *Blue Sheet* indicated that Cooley had the following to say about the FY2003 budget:

Cooley said he has received "conflicting information" from the White House Office of Management and Budget "about once every seven days." The latest indication, he said, is that, because of the military situation facing the U.S., the President may flat-line FY 2003 budgets for all federal agencies at levels of the preceding year. "That way, as things unfold we can react and work with Congress to develop budget information and budget numbers in response to what is going on. That is probably a pretty good assumption," he asserted.

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OTHER CONGRESSIONAL DEVELOPMENTS: **ANTI-TERRORISM LEGISLATION ENACTED**

House and Senate conferees reached agreement on a compromise anti-terrorism bill (H.R. 3162) on October 17. The House passed the measure October 24 by a vote of 357-66, and the Senate cleared it the next day by a vote of 98-1. The President signed it on October 26.

The original House and Senate bills were described in the last *Washington Report*.

Following are details of the ways in which the compromise bill treats issues of particular concern to research universities:

ACCESS TO STUDENT RECORDS

The House and Senate bills had identical provisions modifying the Family Educational Rights and Privacy Act (FERPA) to expand the circumstances governing nonconsensual release of student records, and the enacted compromise bill simply incorporated those provisions. It allows release of student records to appropriate federal officials, to aid in the investigation of terrorist activity, only if approved by a judge. In addition, the officials have to indicate how the information from the records would be used. The legislation also provides liability protection to institutions that release such records.

ACCESS TO BUSINESS RECORDS

Here, too, the House and Senate bills had identical provisions, and the enacted compromise simply incorporated those provisions.

The provisions modify the Foreign Intelligence Surveillance Act (FISA) to expand the business records that may be accessed by the FBI as part of an investigation to protect against international terrorism or clandestine intelligence activities. Under previous law, only records dealing with a "common carrier" (e.g., airline), "public accommodation facility" (e.g., hotel), "physical storage facility," or "vehicle rental facility" may be accessed by the FBI. The new provisions expand business records to include ". . . any tangible things (including books, records, papers, documents, and other items. . .)".

Under the new provisions, such investigations must be carried out under guidelines issued by the Attorney General and an order issued by a special court of judges established by FISA or by a magistrate judge designated for that purpose by the U.S. Chief Justice. The investigations may not be conducted "solely on the basis of activities protected by the first amendment to the Constitution." Any person who provides such records in compliance with an FBI request is indemnified against any liability for doing so.

BIOLOGICAL AGENTS AND TOXINS

The compromise bill incorporated all of the Senate-bill provisions concerning possession of biological agents and toxins. These provisions include the explicit exemption for legitimate research purposes that was sought by AAU and the American Society for Microbiology. The legislation authorizes 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." The Senate bill authorized 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. The enacted compromise includes all of this language and adds one other category of persons who are subject to prosecution: persons who have been

adjudicated as a "mental defective," or who have been committed to a mental institution.

INTERNET SERVICE PROVIDER RESPONSIBILITIES

The compromise incorporated the identical House and Senate provisions governing new circumstances under which service providers, including universities, may be called upon to permit government agents, without a court order, to intercept the wire or electronic communications of persons regarded as computer trespassers. The provisions stipulate that an agent can conduct such interceptions only if the owner or operator of the protected computer authorizes the interceptions, and that the interceptions cannot acquire communications other than those transmitted to or from the computer trespasser. In addition, the term "computer trespasser" cannot include anyone known to have an existing contractual relationship with the computer operators for access to all or part of the protected computer.

TRACKING FOREIGN STUDENTS

The compromise included authorization of \$36.8 million to speed up implementation of the Immigration and Naturalization Service's new foreign student tracking system, known as the Student and Exchange Visitor Information System (previously known as CIPRIS).

The program has been plagued with financial and administrative problems since its creation in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. INS claimed earlier this year that implementation of the program would take at least three years.

If the authorization in H.R. 3162 is fulfilled through the appropriations process, implementation of the program on university campuses will come sooner than previously expected. Student fees will provide the funds to maintain the administration of the program after it is fully implemented.

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BIOTERRORISM BILL INTRODUCED

After weeks of negotiations with the White House and others, Senators Bill Frist (R-TN) and Edward Kennedy (D-MA) November 15 introduced a bioterrorism bill.

The Frist-Kennedy bill goes far beyond the bioterrorism provisions of the broad anti-terrorism bill that was enacted on October 26. It expands on those provisions and would authorize \$3.2 billion for a wide

range of other kinds of steps to prevent, detect, and combat bioterrorism.

The measure, entitled "The Bioterrorism Preparedness Act," is numbered S. 1715. Senator Frist is the lead sponsor.

During a news conference to announce the bill, Frist and Kennedy said they plan to move the measure as a freestanding bill, hopefully by unanimous consent. They presented no firm timetable for doing so, but voiced confidence that the measure would be passed before the year is out.

The bill already has strong bipartisan support in the Senate. It is cosponsored by 38 other senators of both parties, including Dianne Feinstein (D-CA), who had been preparing bioterrorism legislation of her own, and Tom Harkin (D-IA), who—as chairman of the Labor/HHS appropriations subcommittee—will be key in helping to find funds to pay for the measure.

In addition, CNN November 15 quoted Administration and congressional sources as saying the President plans to endorse the legislation—although Health and Human Services Secretary Tommy Thompson was noncommittal about it during congressional testimony the same day.

It is not yet clear how the House will treat this legislation. Representative Greg Ganske (R-IA) introduced a companion measure in the House on November 16, and House Energy and Commerce chairman Billy Tauzin (R-LA) is planning to introduce a somewhat scaled-back bill of his own. The House could either move quickly to adopt the Ganske bill after the Senate acts or adopt the Tauzin bill and use that measure as the starting point for negotiations on a compromise bill.

Finding funding for the bill is likely to be an issue, particularly in the context of the Administration's opposition to expanding the \$40 billion in emergency funding that was agreed to in September. But during their news conference, Frist and Kennedy voiced confidence that the money could be found.

As this is being written, the text of the bill is not yet available on the Library of Congress's legislative website. However, the text is available on Senator Frist's website at www.senate.gov/~frist/Press_Center/News_Releases/01-234/01-234.html.

Title II of the bill incorporates provisions that relate to laboratory use of biological agents and toxins. These provisions include the following:

- The Secretary of Health and Human Services "shall by regulation establish and maintain a

list of each biological agent and toxin that has the potential to pose a severe threat to public health and safety." The Secretary may exempt from the list "attenuated or inactive biological agents or toxins used in biomedical research or for legitimate medical purposes," as well as products that are cleared or approved under the federal Food Drug and Cosmetic Act or the Virus-Serum-Toxin Act.

- The Secretary must by regulation provide for:
 - the establishment and enforcement of safety procedures for the transfer of listed biological agents and toxins, including "measures to ensure proper training and appropriate skills to handle such agents and toxins" and "proper laboratory facilities to contain and dispose of such agents and toxins";
 - safeguards "to prevent access to such agents and toxins for use in domestic or international terrorism or for any criminal purpose"; and
 - "appropriate availability of biological agents and toxins for research, education, and other legitimate purposes."
- The Secretary must also promulgate regulations for the establishment and enforcement of standards and procedures governing the possession and use of listed biological agents and toxins.
- All of the above regulations "shall be developed in consultation with research-performing organization, including universities, and implemented with timeframes that take into account the need to continue research and education using [listed] biological agents and toxins."
- The Secretary will have the authority to inspect persons subject to these regulations to ensure their compliance.
- All of the above regulations must require registration of the possession, use, and transfer of listed biological agents and toxins, and such registration "shall include (if available to the registered person) information regarding the characterization of such biological agents and toxins to facilitate their identification and traceability." The Secretary will be required to maintain a national database of the location of these materials with information.
- The Secretary will have the authority to establish exemptions from all of the above regulations "for the use of attenuated or inactive biological agents or toxins in biomedical research or for legitimate medical purposes." The Secretary may also exempt clinical laboratories "and other persons that possess, use, or transfer biological agents and toxins . . . only when (A) such agents and toxins are presented for diagnosis, verification, or proficiency testing; (B) the identification of such agents and toxins is, when required under Federal and State law, reported to the Secretary or other public health authorities; and (C) such agents and toxins are transferred or destroyed in a manner set forth by the Secretary in regulation."
- The Secretary "shall establish appropriate security requirements for persons possessing, using, or transferring biological agents and toxins . . . , considering existing standards developed by the Attorney General for the security of government facilities, and shall ensure compliance with such requirements as a condition of registration."
- The regulations governing possession, use, and transfer of biological agents and toxins must include provisions to "restrict access . . . only to those individuals who need to handle or use such agents and toxins," and to "provide that registered persons promptly submit the names and other identifying information for such individuals to the Attorney General. The Attorney General must then "promptly" determine whether such individuals are restricted persons according to the definitions established in the broad anti-terrorism bill that was enacted

October 27 (e.g., illegal aliens or nationals of one of the countries designated by the State Department as supporting terrorism, etc.).

In the wake of the passage of the October 27 anti-terrorism legislation, and in anticipation of further legislation dealing specifically with bioterrorism, the American Council on Education November 1 sent a letter to all college and university presidents. The letter asking these campus leaders to take "extra care" to see that their institutions are in full compliance with federal laws regulating the use, storage, and security of biohazardous materials.

The letter was signed by ACE president David Ward on behalf of seven other higher education associations, including the AAU.

See Attachment 7 for this letter and a news release that ACE issued shortly afterwards.

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EFFORTS CONTINUE TO TIGHTEN STUDENT VISAS

Efforts to tighten controls on student visas continue in the capitol. The major congressional action on this issue currently revolves around two immigration reform bills introduced in the Senate on November 1: S. 1618 by Edward Kennedy (D-MA) and Sam Brownback (R-KS), and S. 1627 by Dianne Feinstein (D-CA) and Jon Kyl (R-AZ). Both bills would take various steps to tighten screening and tracking of foreign students; neither would impose a moratorium on student visas. See Attachment 8 for an AAU comparison of the bills' student-visa provisions.

Efforts are underway to negotiate a compromise between the two measures, and it is expected that this compromise bill will be adopted by the House. It is also expected that the compromise will be generally acceptable to the higher education community.

Meanwhile, the President October 29 issued a Presidential Directive on "Combating Terrorism Through Immigration Policies." Of particular interest to universities is a section (part three) of the Directive entitled "Abuse of International Student Status." This section reads as follows:

The United States benefits greatly from international students who study in our country. The United States Government shall continue to foster and support international students.

The Government shall implement measures to end the abuse of student visas and prohibit

certain international students from receiving education and training in sensitive areas, including areas of study with direct application to the development and use of weapons of mass destruction. The Government shall also prohibit the education and training of foreign nationals who would use such training to harm the United States or its Allies.

The Secretary of State and the Attorney General, working in conjunction with the Secretary of Education, the Director of the Office of Science and Technology Policy, the Secretary of Defense, the Secretary of Energy, and any other departments or entities they deem necessary, shall develop a program to accomplish this goal. The program shall identify sensitive courses of study, and shall include measures whereby the Department of State, the Department of Justice, and United States academic institutions, working together, can identify problematic applicants for student visas and deny their applications. The program shall provide for tracking the status of a foreign student who receives a visa (to include the proposed major course of study, the status of the individual as a full-time student, the classes in which the student enrolls, and the source of the funds supporting the student's education).

The program shall develop guidelines that may include control mechanisms, such as limited duration student immigration status, and may implement strict criteria for renewing such student immigration status. The program shall include guidelines for exempting students from countries or groups of countries from this set of requirements.

In developing this new program of control, the Secretary of State, the Attorney General, and the Secretary of Education shall consult with the academic community and other interested parties. This new program shall be presented through the Homeland Security Council to the President within 60 days.

The INS, in consultation with the Department of Education, shall conduct periodic reviews

of all institutions certified to receive nonimmigrant students and exchange visitor program students. These reviews shall include checks for compliance with record keeping and reporting requirements. Failure of institutions to comply may result in the termination of the institution's approval to receive such students.

The full text of the directive is available on the White House website at www.whitehouse.gov/news/releases/2001/10/20011030-2.html.

In response to the President's directive, the American Council on Education October 31 sent a letter to Homeland Security director Tom Ridge offering higher education's assistance and support for the President's "efforts to protect the safety of our citizens." See Attachment 9 for a copy of the letter.

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"TECH TALENT" BILL INTRODUCED

A bipartisan group of five Senators—Joe Lieberman (D-CT), Barbara Mikulski (D-MD), Christopher Bond (R-MO), Bill Frist (R-TN), and Pete Domenici (R-NM)—October 15 introduced the "Tech Talent bill," a measure aimed at increasing the number of scientists, engineers, and technology workers in the U.S.

A companion measure was introduced in the House the next day by Science Committee chairman Sherwood Boehlert (R-NY) and Reps. John Larson (D-CT), Melissa Hart (R-PA), Michael Honda (D-CA), and Mark Udall (D-CO). The Senate bill is numbered S. 1549. The House bill is numbered H.R. 3130.

The legislation would establish, on a pilot basis, a National Science Foundation competitive grant program that would reward universities, colleges and community colleges pledging to increase the number of U.S. citizens or permanent residents obtaining degrees in science, math, engineering, and technology fields.

The pilot program, which would award three-year grants, would be authorized at \$25 million in FY2002 with funding expected to increase in the future.

The sponsors envision an ultimate funding level of \$200 million a year for the program.

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EXECUTIVE BRANCH:

NIH POSTS STEM CELL REGISTRY

The National Institutes of Health November 7 released its listing of human embryonic stem cell lines that meet the eligibility criteria laid out by President Bush on August 9 (WR 8/15/01). The Human

Embryonic Stem Cell Registry is posted on the NIH website at <http://escr.nih.gov>

NIH also has published three related notices in the NIH Guide. Those notices, and their locations online, are as follows:

- a notice on the President's criteria (<http://grants.nih.gov/grants/guide/notice-files/NOT-OD-02-005.html>).
- a notice withdrawing the existing NIH Guidelines on using pluripotent stem cells (<http://grants.nih.gov/grants/guide/notice-files/NOT-OD-02-007.html>).
- and a notice informing the community that applicants who wish to submit for the Oct. 1 receipt date for new, competing applications or Nov. 1 for competing renewals and competing supplements may do so (<http://grants.nih.gov/grants/guide/notice-files/NOT-OD-02-006.html>). Applications for the use of human embryonic stem cells will be considered as late as November 27, 2001 for this one round only.

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MARBURGER CONFIRMED

The Senate Commerce Committee October 17 reported the nomination of John Marburger III to be director of the White House Office of Science and Technology Policy, and the full Senate confirmed the nomination October 23 by voice vote.

The nomination had been pending since June 25 (WR 7/13/01).

On October 26, the President announced his intention to nominate Richard Russell as associate OSTP director.

Russell has been serving as OSTP chief of staff since January. Previously, he served with the House Science Committee, first as a staff member on the Energy and Environment Subcommittee, then as staff director for the Technology Subcommittee, and finally as deputy chief of staff for the full committee.

He has a bachelor's degree from Yale University.

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GOLDIN RESIGNS;

O'KEEFE NOMINATED AS SUCCESSOR

Longtime NASA Administrator Daniel Goldin October 17 announced he would resign on November 17.

On November 14, the President announced he was nominating Sean O'Keefe, deputy director of the Office of Management and Budget, to succeed Goldin.

O'Keefe, who was named to his current OMB post in February, does not have a technical background in NASA-related issues. Instead, he is widely regarded as an expert troubleshooter, manager, and financial administrator.

He served as comptroller and chief financial officer of the Department of Defense and later Secretary of the Navy in the first Bush administration. After he left the Defense Department, he was a professor of Business Administration at Pennsylvania State University, and then a professor of Business and Government Policy at Syracuse University's Maxwell School of Citizenship and Public Affairs. Before joining the Defense Department, he served on the staff of the Senate Appropriations Committee for eight years, and was staff director of the Defense subcommittee.

O'Keefe holds a bachelor's degree from Loyola University in New Orleans and a Masters in Public Administration from the Maxwell School.

Goldin has accepted an interim position as a senior fellow at the Council on Competitiveness, as he transitions into the private sector.

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SLATER NAMED TO HEALTH POST

The President October 16 announced his intention to nominate Eve Slater as assistant secretary of Health and Human Services for health.

Slater, a M.D., is currently senior vice president for clinical and regulatory development at Merck Research Laboratories. Previously, she held several positions with Merck Sharp & Dohme Research Laboratories from 1986 to 1994, including executive director of biochemistry and molecular biology and vice president for clinical and regulatory development.

Her medical career includes service as the chief of the Hypertension Unit at Massachusetts General from 1977 to 1983.

She is a graduate of Vassar College and Columbia University College of Physicians and Surgeons.

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STROUP NAMED TO POSTSECONDARY ED POST

The President October 16 announced his intention to nominate Sally Stroup as assistant secretary of Education for postsecondary education.

Stroup is currently director of industry and government affairs for the Apollo Group Inc., and the University of Phoenix. Previously she was a professional staff member at the House Education and Workforce Committee.

Stroup is a graduate of Indiana University of Pennsylvania and Loyola University School of Law in New Orleans.

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OTHER SECTORS:

AAHRPP PROPOSES

ACCREDITATION STANDARDS

The Association for the Accreditation of Human Research Protection Programs (AAHRPP) October 15 released its proposed standards for accrediting universities and other research institutions that conduct biomedical and behavioral research involving human subjects. The standards can be found online at www.aahrpp.org/interimprocedures.pdf. AAHRPP will take comments on them until December 3.

The standards exceed minimum federal standards in several respects. They call for safeguarding the well-being and privacy of participants in low-risk studies that are currently exempt from oversight by Institutional Review Boards, strict management of both institutional and individual conflicts of interest, and strong programs for educating researchers.

AAHRPP is a nonprofit entity founded earlier this year by several organizations, including Public Responsibility in Medicine and Research, the Association of American Medical Colleges, AAU, and NASULGC.

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FINEBERG NAMED TO HEAD IOM

Harvey Fineberg, former provost of Harvard University and dean of Harvard's School of Public Health, has been appointed to succeed Kenneth Shine as the president of the National Academies' Institute of Medicine. The appointment carries a six-year term. Fineberg will assume the post in July 2002.

A cardiologist and physiologist, Shine received his A.B. from Harvard College, and his M.D. from Harvard Medical School. He is currently a clinical professor of medicine at Georgetown University.

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LESHNER NAMED AS NEW AAAS CEO

The American Association for the Advancement of Science October 24 announced the appointment of Alan Leshner as its new chief executive officer, effective December 3.

Leshner, a neuroscientist and psychologist, has been director of the National Institute on Drug Abuse at the National Institutes of Health since 1994.

From 1988 to 1994, Leshner had been with the National Institute of Mental Health, serving for two

years as acting director of the agency. Previously, he held several senior positions at the National Science Foundation, where he focused on basic research in the biological, behavioral and social sciences, and on science education. Before he went to NSF, he was a professor of Psychology at Bucknell University.

Leshner holds an undergraduate degree from Franklin and Marshall College, and M.S. and Ph.D. degrees in physiological psychology from Rutgers University. He is a member of the Institute of Medicine.

He succeeds Richard Nicholson, who is retiring after 12 years in the AAAS post.

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CFR:

NEXT MEETING IS ANNUAL WINTER RETREAT

The CFR will not meet in December. The next meeting will be the annual winter retreat, which will be held in Tucson, AZ January 12-15.

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