AAU WASHINGTON REPORT

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<u>CONGRESSIONAL SCHEDULE:</u> CONGRESS STRUGGLING TO ADJOURN

As this is being written, Congress has still not finished its work for the year.

The primary items still on the agenda include economic stimulus legislation, unfinished appropriations bills, and a bill dealing with terrorism risk insurance.

In the meantime, unappropriated programs are being kept running through a seventh continuing resolution that expires December 21.

Congressional leaders currently hope to adjourn by December 21.

-•-TENTATIVE 2002 SCHEDULES ANNOUNCED

House and Senate leaders have released tentative 2002 schedules for their respective chambers. The schedules call for both chambers to reconvene on January 23, with a target adjournment date of October 4. Recess periods are as follows:

Presidents' Day—Week of February 18-22 (both chambers)

Easter—Week of March 25-April 5 (both chambers)

December 15, 2001

Memorial Day—Week of May 27-31 (both chambers)

Independence Day—Week of July 1-5 (both chambers)

Summer Recess—House: July 29-September 4; Senate: August 5-September 3.

BUDGET & APPROPRIATIONS: THREE APPROPRIATIONS BILLS REMAIN

By now, Congress has completed work on 10 of the 13 regular FY2002 appropriations bills. The three remaining bills are the Labor/HHS bill (H.R. 3061), the Defense bill (H.R. 3338), and the Foreign Operations bill (H.R. 2506). Conference negotiations are underway on all of these bills. Observations on the Labor/HHS and Defense bills follow below.

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NO WORD YET ON FINAL NIH NUMBER

The contents of the House and Senate versions of the Labor/HHS bill have been described in the last two *Washington Reports*, as has the action on these measures. See Attachment 1 for an AAU chart that recaps the two bills' proposed appropriations.

Conference negotiations on this legislation began in earnest during the week of December 10. There has been no word concerning the directions the conferees may be taking on funding for the National Institutes of Health or higher education programs.

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DEFENSE BILL STILL HUNG UP ON SUPPLEMENTAL ISSUE

As was noted in the last *Washington Report*, one of the main issues surrounding the Defense bill for some time has been the question of whether to expand the \$20 billion in emergency supplemental funding the bill contains. Democrats have been pushing for such an expansion, and some GOP appropriators have been sympathetic towards these efforts. But the White House and GOP congressional leaders have been resisting any expansion. As this is being written, Democratic efforts to provide more supplemental funding are continuing in conference, and the issue remains unresolved.

The action on this legislation over the past month has been as follows:

• The House approved its bill on November 28 by a vote of 406-20 vote after narrowly adopting the rule for floor debate by a vote of 216-211. Democrats had sought to block the rule, which did not allow three Democratic amendments that would have added another \$20 billion in emergency supplemental funding.

- The Senate's Defense bill was marked up in subcommittee and full committee on December 4. As they had promised to do, Senate Democrats added \$15 billion in extra supplemental spending to the bill during markup. The White House responded by saying unequivocally that the President would veto any final Defense bill that contained this extra funding.
- The Senate began debating its bill December 6, and the Republicans immediately prevailed on as a series of procedural votes that had the effect of preventing the bill from moving to passage as long as it contained the Democrats' extra \$15 billion. The Senate then passed the bill by voice vote on December 7 after both sides agreed to a compromise that reallocated some of the \$20 billion worth of supplemental funding that was already in the bill. The reallocation boosted funding somewhat for "homeland security" and New York recovery, and reduced supplemental appropriations for military operations.

The Senate bill's proposed appropriations for 6.1 basic research programs and 6.2 applied research programs are, for the most part, higher than both the Administration's requests and the levels of the House bill. See Attachment 2 for an AAU chart that provides full details. In summary:

• The Senate bill's total for 6.1 basic research is \$1.361 billion. \$57 million more than the request and \$47 million more than the House bill. Army 6.1 would receive \$224 million, \$2 million more than the request and \$14 million less than the House bill. Navy 6.1 would receive \$415 million, \$9 million more than the request and \$16 million more than the House bill. Air Force 6.1 would receive \$221 million, the same as the request and \$6 million less than the House hill Defensewide 6.1 would receive \$501 million.

\$46 million more than the request and \$51 million more than the House bill.

• The Senate bill's total for 6.2 applied research is \$3,914 billion, \$255 million more than the request and \$592 million more than the House bill. Army 6.2 would receive \$827 million, \$138 million more than the request and \$25 million less than the House bill. Navy 6.2 would receive \$737 million, \$110 million more than the request and \$41 million less than the House bill. Defensewide 6.2 would receive \$1.610 million, \$36 million more than the request and \$596 million more than the House bill.

It should be noted that the House bill would transfer funds from defensewide 6.1 and 6.2 to a new Title IX, called Counter-Terrorism and Weapons of Mass Destruction. Some (but not all) of the funds apparently cut by the House below the Administration's request for defensewide basic and applied research are provided elsewhere in the House bill. The Senate bill would not create this new title.

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VA/HUD BILL ENACTED

The President November 26 signed the VA/HUD appropriations bill (H.R. 2620). As was noted in the last Washington Report, the bill will provide an 8.5-percent increase for the National Science Foundation, and an increase of 11.2 percent for NASA's science, aeronautics, and technology programs. (However, it should be noted that about \$160 million of the increase for NASA science, aeronautics and technology programs is earmarked for specific projects; when those earmarks are subtracted, the actual increase for regular program activities in this area is more like 9 percent.)

-•-WHITE HOUSE WORKING ON 2003 BUDGET

Work on the Administration's FY2003 budget proposal is now well underway within the White House. During the week after Thanksgiving, the Office of Management and Budget transmitted its specific FY2003 recommendations (so-called "passbacks") to each government agency. The agencies will have several weeks to appeal the recommendations they have received, if they wish.

In any case, it seems increasingly likely that the Administration's FY2003 budget proposal will be quite draconian. During October, OMB director Mitch Daniels warned that the Administration was intent on restricting future spending, and that programs not related to fighting terrorism or otherwise enhancing security would be under special scrutiny for reductions or elimination (*WR* 11/16/01). On November 28, in a speech to the National Press Club, Daniels racheted up this warning by announcing that OMB is now projecting annual budget deficits at least until FY2005, and possibly longer.

In his November 28 speech, Daniels attributed OMB's new, more pessimistic budget outlook to "a costly convergence of factors"—the current economic downturn, a reduction in long-term growth estimates, and new national security spending in the wake of September 11. He rejected Democratic contentions that the GOP's \$1.35-trillion tax cut was part of the problem, saying the economy would be in worse shape if that tax cut had not been enacted. He emphasized that the situation underscored the need for spending restraint, and said the Administration was redoubling its efforts to hold government programs to strict performance standards and to reallocate funds away from programs that do not meet those standards.

OMB's new outlook represented a sharp turnaround from previous projections, which as recently as August were envisioning a slight deficit in FY2002 but a quick return to robust annual surpluses after that. Reporting on Daniels' speech, the *Washington Post* said his "gloomy" presentation was in part a strategic move intended "to dampen congressional demands for additional spending." But the *Post* did not contest the new projections—it said congressional budget experts have also come to the conclusion that an extended period of deficit spending is now in the cards.

It is too early to tell how this changed fiscal landscape may affect the Administration's overall budget proposals for research and higher education programs in FY2003 and beyond. There seems to be no doubt that the Administration will seek increased funding for research that is related directly to bioterrorism, other terrorist threats, and computer security. Various federal agencies are already reaching out to the National Academies and others to tap scientific resources in universities and elsewhere. And White House science adviser John Marburger has also been working with the scientific community to develop a comprehensive, new federal research agenda.

OMB REPORTEDLY SEEKING NSF INCREASE OF 4-5 PERCENT

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Although the Office of Management and Budget's spending recommendations for specific agencies have

usually triggered a spate of press reports and rumors in past years, there has been almost nothing reported or said about this year's OMB recommendations.

The only exceptions have been the recommendations for the Smithsonian Institution and the National Science Foundation.

The *New York Times* and the *Washington Post* reported on December 6 that OMB had proposed to transfer \$35 million from three Smithsonian research programs to NSF in FY2003. The three programs were the Smithsonian Astrophysical Observatory, the Smithsonian Tropical Research Institute and the Smithsonian Environmental Research Center.

The newspapers said the Smithsonian and its supporters in Congress were resisting this transfer, but the *Post* reported on December 15 that OMB had rejected a formal Smithsonian appeal.

Meanwhile, *Science* magazine has reported that this transfer from the Smithsonian to NSF is only one part of a larger OMB proposal boost NSF spending by 4 percent to 5 percent in FY2003, in part by transferring a total of \$121 million from other agencies. According to *Science*, OMB other proposed shifts to NSF include the entire \$57-million Sea Grant program from the National Oceanic and Atmospheric Administration; \$10 million from hydrology programs at the U.S. Geological Survey; and \$19 million from the Environmental Protection Agency's Science to Achieve Results program, which provides environmental grants and graduate fellowships.

Science has also reported that OMB wants to add \$60 million to the newly created, \$160-million NSF math and science education partnerships program, "but NSF may be forced to trim other programs."

In its first budget last year, the Bush Administration proposed to increase NSF funding by only 1.3 percent. As has been noted above, the final version of this year's VA/HUD appropriations bill will boost NSF funding by 8.5 percent for FY2002.

Interestingly OMB director Daniels had high praise for the NSF during his November 28 speech at the National Press Club. As he discussed performance standards in that speech, Daniels cited NSF as one of three "excellent federal programs" that "deserve to be singled out, deserve to be fortified and strengthened" (the other two programs were the National Weather Service and the Women, Infants, and Children's program).

Specifically, Daniels said NSF was one of the "true centers of excellence in this government . . . where more than 95 percent of the funds you provide as taxpayers go out on a competitive basis directly to researchers

pursuing the frontiers of science, at a very low overhead cost." He also emphasized that NSF "has supported eight of the 12 most recent Nobel awards . . . earned by Americans at some point in their careers."

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OTHER CONGRESSIONAL DEVELOPMENTS: BIOTERRORISM LEGISLATION MOVING

Bioterrorism legislation is still being considered in Congress, and now seems likely to be adopted as part of the FY2002 Defense appropriations bill. The key developments in this issue area over the past month have been the following:

- Senators Bill Frist (R-TN) and Edward Kennedy (D-MA) December 4 reintroduced the bioterrorism bill they had introduced in November (*WR* 11/16/01) with 66 cosponsors. The new bill is numbered S. 1765.
- As the Senate Defense appropriations subcommittee marked up its bill on December 4, Senator Dianne Feinstein (D-CA) offered her bioterrorism bill (S. 1661, which dealt solely with lab security) as an amendment, and the amendment was accepted by unanimous consent. But during the full Senate Appropriations Committee markup of the subcommittee bill later the same day, the full committee stripped the text of S. 1661 from the bill and substituted in its place the lab security provisions of the Frist-Kennedy bioterrorism bill. As has been noted above, the Senate adopted the Defense bill on December 7.
- On December 6, House Energy and Commerce chairman Billy Tauzin (R-LA) and ranking member John Dingell (D-MI) unveiled a broad bioterrorism bill of their own that included lab security provisions. The House subsequently adopted this measure (H.R. 3488) by a vote of 418-2 on December 12.
- As this is being written, the American Society for Microbiology is reporting that congressional staff are in the process of reconciling the lab security provisions in the Senate's Defense appropriations bill with the lab-security provisions of the Tauzin-Dingell

bill. Thus, it seems likely that the final version of the Defense measure will include some compromise between the Senate and House lab-security proposals.

The Tauzin-Dingell bill's lab security provisions are substantially similar to those of the Frist-Kennedy bill. Both bills would tighten the registration and certification requirements for laboratories that contain hazardous pathogens and agents such as anthrax and plague (called "select agents"). One of the main differences between the two bills is that the Tauzin-Dingell bill would not explicitly call for the Department of Justice to perform the background checks on individuals who need to handle or use select agents, as the Frist-Kennedy bill would do. Instead, the Tauzin-Dingell measure would direct the Secretary of Health and Human Services to develop a "personnel screening protocol" in consultation with the Department of Justice. Also, HHS could make grants to public and nonprofit private entities to address the cost of new security requirements.

Another difference between the two bills is that the Tauzin-Dingell bill would add to the list of restricted persons who are prohibited from handling or using select agents, people who are suspected of terrorist or criminal activity, or who participate in military or intelligence operations of a non-NATO foreign nation.

The lab security provisions of the Frist-Kennedy bill were described in the last *Washington Report*. See Attachment 3 for a House Energy and Commerce Committee summary of the comparable provisions in the Tauzin-Dingell bill. The full text of the Tauzin-Dingell bill is available online at http://energycommerce. house.gov/.

Meanwhile, the AAU November 28 sent a letter to Senator Frist expressing support for his legislation (Attachment 4). The letter was sent following consultations with university federal relations, legal, and biological safety professionals who agreed that the association should express its support for the bill, even though certain questions remained to be clarified in whatever final version of the legislation is adopted. Efforts to clarify those questions have been ongoing.

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NEW STUDENT VISA LEGISLATION PENDING IN SENATE

Compromise border security and student-visa-reform legislation was introduced in the Senate November 30 by Edward Kennedy (D-MA) and Sam Brownback (R-KN). The legislation, S. 1749, represents a reconciliation of the two Senate bills that had been introduced at the beginning of November, and that were described in the last *Washington Report*: S. 1618 Kennedy and Brownback, and S. 1627 by Dianne Feinstein (D-CA) and Jon Kyl (R-AZ). Feinstein and Kyl are cosponsoring the new measure.

Prospects for Senate passage are considered good if an opportunity can be found to bring the measure to the floor before the end of the current session, but this has not happened yet. A variety of border security and visa reform bills have been introduced in the House, but there are no measures pending there that are as comprehensive.

Following is an American Council on Education summary of the Kennedy-Brownback bill's student-visarelated provisions:

- Until SEVIS is up and running, no F, M, or J visa may be issued to an alien unless a consular officer confirms with an approved institution or program that the alien has been accepted to attend, and the officer has reviewed the applicant's complete visa history.
- In addition to information already required of applicants for an F, M, or J, aliens must also provide an address in the country of origin; the names and addresses of spouse, children, parents, and siblings; contacts within the country of residence who can verify personal information; and previous work history.
- The State Department must notify the accepting institution or program upon the issuance of an F, M, or J visa. The Immigration and Naturalization Service must notify the accepting institution/program upon the admittance of the alien to the U.S. (There is no timeliness requirement for either notification).
- Not later than 30 days after the commencement of an academic term, the institution or program shall inform the INS of any failure of the alien to enroll or to commence participation pursuant to the certification of that institution or program.
- Additional data-collection requirements include date of alien's enrollment, and date of

alien's termination of enrollment and reason for such termination.

- The departments of State and Justice are to establish an electronic means to monitor and verify the following: issuance and transmittal of documentation of acceptance, issuance of a visa, admission of a foreign student, notification to an institution of the student's admission to the US, registration and enrollment of the student; and any other relevant act (e.g., changing of school or termination of studies).
- Aliens from states that sponsor terrorism will be subject to special scrutiny.
- INS and the Department of Education will conduct periodic reviews of institutions certified to receive F, M, or J immigrants to check compliance with record keeping and reporting requirements. Failure to comply may result in termination of approval to receive students at the discretion of INS.

Campus reaction to the compromise legislation has been favorable.

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BID TO REENGAGE CLONING ISSUE FIZZLES

Researchers at a Massachusetts firm November 25 announced they had successfully cloned human embryonic cells. The firm, Advanced Cell Technology, said its eventual goal was to be able to harvest such cells for therapeutic purposes, not to develop human clones. But its announcement touched off a firestorm of criticism in Congress and a brief renewal of Senate efforts to engage the issue.

On November 26, Senator Sam Brownback (R-KN) said he would no longer abide by an earlier agreement to delay until next year the Senate's debate on House-passed anti cloning legislation (H.R. 2505), and would try anew to bring the House bill to the Senate floor before the end of this session.

On November 27, the Senate's Democratic leaders Tuesday blocked an effort by Brownback to secure a time agreement for debate on the House bill, saying they intended to stick with the earlier agreement.

On November 29, as part of a protest over the Democratic leadership's decision to bring up a controversial railroad retirement bill, Senate Minority Leader Trent Lott (R-MS) introduced an amendment that included a six-month moratorium on human cloning for any purpose. The amendment was essentially a symbolic gesture, and an attempt to invoke cloture on it failed by an overwhelming 94-1 vote on December 3.

GOP leaders suggested they would try to bring up cloning-ban legislation again before the close of this year's session. However, they have not yet done so, and it seems highly unlikely that they will be able to do so in the few legislative days that remain.

Meanwhile, on December 4 the Senate Labor/HHS appropriations subcommittee held a hearing on the human cloning issue. During the hearing, subcommittee chairman Tom Harkin (D-IA) said he planned to introduce legislation that would ban cloning intended to produce a live birth, but still allow cloning to produce cells for research. "My legislation would protect our values by banning reproductive cloning, but protect our health by fostering research," he said.

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HOUSE PANEL MARKS UP CYBERTERRORISM BILL

The House Science Committee December 6 marked up legislation that would fund new research and other activities intended to beef up the nation's defenses against cyberterrorism. The bill, H.R. 3394, was introduced December 4 by Science Committee chairman Sherwood Boehlert (R-NY). It has also been referred to the Education and Workforce Committee, which has not yet acted upon it.

The measure would authorize a total of \$875 million, with \$568 million of the total going to the National Science Foundation and the remainder to the National Institute for Standards and Technology (NIST). The NSF funding, which would all be distributed through competitive, peer-reviewed grants, would be allocated as follows:

- \$233 million to individual researchers and teams working on cyber security issues
- \$144 million to colleges and universities to build "multidisciplinary Centers for Computer and Network Security Research"
- \$95 million for the formation of undergraduate and graduate degree programs in cyber security
- \$90 million for fellowship money and industry-oriented research opportunities

• \$6 million to community colleges for the development of training programs for security technicians.

The bill's NIST authorization includes \$275 million for academic researchers to work with private industry on security technology and \$32 million for a secure, internal NIST computer network.

The bill also calls for the National Academy of Sciences to prepare an assessment of the nation's critical infrastructure vulnerabilities.

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EXECUTIVE BRANCH: HHS REVIEWING LAB SECURITY

The Council on Governmental Relations (COGR) November 28 reported that the Inspector General of the Department of Health and Human Services will shortly begin reviewing university and medical center practices for safeguarding access to and use of biotoxins.

COGR said the review would involve visits to as many as ten institutions—four during December and January and up to six more during February and March. COGR said the Inspector General's office is currently consulting with the National Institutes of Health and the Centers for Disease Control on which sites to visit, and has already selected the first two sites.

According to COGR, the review will examine the following:

- Compliance with 1996 Anti-Terrorism Act provisions. Specific issues include registration of facilities with the CDC, procedures for tracking and reporting of transfers of select agents, and the question of whether the labs are properly equipped to handle and safeguard the materials.
- Compliance with the new anti-terrorism legislation enacted in October (*WR* 11/16/01). The main focus here will be on the restriction on access to select agents by individuals from the seven countries listed in the Act. If directed, the IG could also review other aspects of the Act, such as mechanisms in place to deny access to select agents to individuals that are convicted felons, illegal drug users, those dishonorably discharged from the military and others designated in the Act.
- The physical security of labs that house select agents and the buildings the labs are in.

• Information technology security for research data related to select agents.

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PCAST MEMBERSHIP ANNOUNCED

The President December 12 convened the first meeting of his Council of Advisors on Science and Technology (PCAST), and announced the group's full membership. In March, the President had named venture capitalist Floyd Kvamme to co-chair the Council (WR 4/16/01), but the group could not meet until after the other co-chair—the director of the White House Office of Science and Technology Policy—had been nominated and confirmed. The President's eventual nominee for that position, John Marburger, was confirmed in late October.

The Council, which will meet quarterly, will be organized into four subcommittees that will develop recommendations in the following areas: combating terrorism, improving energy efficiency, broadband infrastructure, and the federal investment in science and technology and its economic benefits.

One third of the panel's 24 members come from academe: Charles Arntzen, an Arizona State University plant biologist; Georgia Institute of Technology president Gerald Clough; North Carolina State University chancellor Marye Anne Fox; University of Missouri at Kansas City chancellor Martha Gilliland; Morehouse College president Walter Massey; University of Akron president Luis Proenza; and Massachusetts Institute of Technology president Charles Vest.

Also serving on the Council will be former National Science Foundation director Eric Bloch, who is now a corporate management consultant; Alfred P. Sloan Foundation president Ralph Gomory; and former National Institutes of Health director Bernadine Healy.

The Council's industry members are:

Norman Augustine, former chairman and chief executive officer, Lockheed Martin Corporation

Carol Bartz, chairman and chief executive officer, Autodesk Inc.

M. Kathleen Behrens, managing director, Robertson Stephens & Company

Stephen Burke, president, Comcast Cable Communications

Michael Dell, chairman and chief executive officer, Dell Computer Corporation

Raul Fernandez, chief executive officer, Dimension Data of North America

Robert Herbold, executive vice president, Microsoft Corporation

Barbara Kilberg, president, Northern Virginia Technology Council

Gordon Moore, chairman emeritus, Intel Corporation

E. Kenneth Nwabueze, chief executive officer, SageMetrics

Steven Papermaster, chairman, Powershift Group

George Scalise, president, Semiconductor Industry Association.

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WHITE HOUSE BIOETHICS COUNCIL FORMALLY ESTABLISHED

The President November 28 signed an executive order formally establishing the White House Council on Bioethics that he announced last August (*WR* 8/15/01). The 18-member panel will be chaired by Dr. Leon Kass, a biomedical ethics expert from the University of Chicago. White House officials said they expect the panel to be fully operational by the end of the year.

On November 30, Health and Human Services Secretary Tommy Thompson announced that Dean Clancy had been appointed as executive director of the new council. Clancy has been a senior policy advisor for House Majority Leader Dick Armey (R-TX) since 1993. Previously he was a speechwriter for Housing and Urban Development Secretary Jack Kemp and a staff writer for Vice President Dan Quayle.

The Council will advise the President on "ethical issues connected with specific technological activities, such as embryo and stem-cell research, assisted reproduction, cloning, uses of knowledge and techniques derived from human genetics or the neurosciences, and end-of-life issues." Recognizing the volatility of many of these issues, the executive order said the council "may choose to proceed by offering a variety of views . . . rather than attempt to reach a single consensus position."

"In pursuit of this goal, the council shall be guided by the need to articulate fully the complex and often competing moral positions on any given issue," the executive order said. The Council will not review or approve specific projects, or propose regulations. The full text of the President's executive order can be found on the White House website at www.whitehouse. gov/news/releases/2001/11/20011128-13.html.

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PHYSICIST TAPPED FOR ENERGY DEPT. SCIENCE POST

The President December 11 announced his intention to nominate Raymond Orbach to fill the long-vacant directorship of the Energy Department's Office of Science.

Orbach, a physicist, is currently chancellor of the University of California, Riverside. He received his undergraduate degree from the California Institute of Technology, and his Ph.D. from the University of California, Berkeley.

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NIH BOOSTS GRAD STUDENT COMPENSATION

The National Institutes of Health's Office of Extramural Research December 10 is sued a new policy concerning compensation for graduate students supported by NIH research grants and cooperative agreements.

Under the new policy, the maximum compensation for such graduate students will be tied to the "zero level" National Research Service Award (NRSA) stipend in effect at the time the grant award is issued. This stipend is currently \$28,260, which is \$2.260 higher than the current maximum compensation level. And tying the research compensation levels to the NRSA stipend schedule provides at least the potential for annual cost-of-living increases, which did not occur under the previous policy.

As was the case under the previous policy, universities will still be allowed to rebudget grant funds from other categories to provide more than the NIH maximum compensation level as long as they can justify this through comparison to the compensation provided to first-year postdoctoral students doing comparable work.

The full text of the notice describing the new policy is available online at http://grants.nih.gov/grants/guide/notice-files/NOT-OD-02-017.html.

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OTHER SECTORS:

NEH CHANGES JEFFERSON LECTURE DATE

The National Endowment for the Humanities has announced that the date for next year's Jefferson Lecture has been moved up from Monday, March 25 to Friday, March 22. No explanation for the switch was provided. This means the dates of the Jefferson Day humanities advocacy events will also likely change. Previously, those events had been scheduled for March 25 and 26 (WR 10/12/01).

The organizers of the advocacy events are considering several options, and a final decision will be announced as soon as possible.

-•-<u>CFR:</u>

NEXT MEETING IS WINTER RETREAT

The next meeting of the CFR will be the annual winter retreat in Tucson, AZ, January 12-15. See Attachment 5 for the meeting dates for the remainder of 2002.