



# WASHINGTON NEWSLETTER



BOX 54, 110 MARYLAND AVENUE, N.E. • WASHINGTON, D. C. 20002 • TEL. 202-547-4440  
TWX 710-822-1976 ISSN: 0001-1746

Vol. 34 May 14, 1982 No. 5

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### LSCA Impoundment

The 45-day period for congressional consideration of the Administration's request to rescind library funds ended April 23 without Congress having passed any such bill. The \$19,710,000 in Library Services and Construction Act funds withheld by the Administration was released by the Office of Management and Budget on April 26. On that same date the Education Department began sending final grant awards to the state library agencies. Over half the states have now received the full amount Congress provided; some states which had applied for the lower amount are in the process of filing amended applications and will receive funds as that process is completed.

On May 4 the federal government moved to dismiss the lawsuit which had been filed by ten states for release of the funds. On May 6 the General Accounting Office issued a third opinion on the impoundment issue. This report identified programs in certain rescission messages which involved mandatory spending provisions for which GAO feels the Impoundment Control Act does not authorize impoundments of funds. In addition to LSCA, these include the following education programs, either in whole or in part: ESEA I education for the disadvantaged, career education, Indian education, handicapped education, Rehabilitation Act, vocational education, Pell grants, public service fellowships, and aid to land-grant colleges.

### Congressional Budget

After months of delay and frustrating negotiations with President Reagan, both House and Senate Budget Committees have developed congressional budget resolutions which are about to reach the floor. Although budget resolutions do not set funding levels for library programs, they do provide lump sums within which the appropriations committees allocate funds among specific programs. S. Con. Res. 92, which the President has generally endorsed, provides \$25.5 billion for FY '83 for Function 500, a budget category which covers employment and training, social services, and education (including libraries). This is approximately the FY '82 level although that would include cuts in Guaranteed Student Loans and some deferred spending. Sen. Ernest Hollings (D-SC) plans to offer an amendment on the floor which would add \$1.4 billion to Function 500, including \$600 million for several education programs. Hollings' list of programs preferred for increases does not, at this writing, include libraries

or the school block grant, but if passed, the Appropriations Committee would not be bound by Hollings' preferences but would make its own decisions about placement of the additional dollars. The House Budget Committee, without Presidential approval, has completed its own budget resolution (unnumbered as yet). It provides \$27.45 billion for Function 500 for FY '83.

### FY 1982 Rescissions

In addition to LSCA, President Reagan had proposed rescission of all college library funds and portions of research library and elementary and secondary education block grant funds. By refusing to act on these proposals during the 45-day period which ended April 23, Congress reaffirmed the FY 1982 continuing resolution (PL 97-161) levels for library programs as follows:

	<u>FY '82 with Reagan- Proposed Rescission</u>	<u>Final FY 1982 Approp. (Cont. Res. PL 97-161)</u>
Library Services & Construction Act		
Title I, public lib. services	\$ 41,250,000	\$ 60,000,000
III, interlibrary coop.	10,560,000	11,520,000
Higher Education Act		
Title II-A, college libraries	-0-	1,920,000
II-B, training, research	no rescission	880,000
II-C, research libraries	5,280,000	5,760,000
Educ. Consolidation & Improvement		
Ch. 2 state block grant	470,400,000	483,840,000

### NLW Legislative Day

About 300 library supporters from some 40 states visited their members of Congress during the 8th annual Legislative Day in Washington, D.C. on April 20 during National Library Week. Participants reported finding very little support for the total elimination of library programs proposed in the FY 1983 budget. The very severe budget for libraries, the impoundment of FY 1982 LSCA funds, and the feeling of many legislators that they had cut far enough in FY 1981 and '82 all contributed to a much more receptive congressional climate than at last year's Legislative Day. Several Members were prompted to make published remarks about libraries. Constituents of the Members listed below may want to check the Congressional Record references and send thank yous:

- Rep. Mario Biaggi (D-NY), February 25 CR, pp. E590-91.
- Rep. Peter Peyser (D-NY), March 18 CR, p. H959; April 6 CR, p. H1430.
- Rep. Ted Weiss (D-NY), March 30 CR, p. H1163.
- Sen. Alfonse D'Amato (R-NY), April 22 CR, pp. S3944-45.
- Sen. Christopher Dodd (D-CT), April 22 CR, p. S3946.
- Rep. Benjamin Rosenthal (D-NY), April 27 CR, pp. E1848-49.
- Rep. Robert Garcia (D-NY), April 28 CR, pp. E1865-66.

### Library Postage Stamps

A handsome 20-cent stamp commemorating the Library of Congress was issued at a first day of issue ceremony April 21. Librarian of Congress and Postmaster General William Bolger both spoke at the ceremony attended by a standing room only audience in the Library's Coolidge Auditorium. Following the ceremony the Librarian and the Postmaster joined stamp designer Bradbury Thompson in autographing first day covers and envelopes for a large crowd of LC employees, library visitors and stamp collectors.

The 20-cent postage stamp commemorating libraries in America will be issued at a first day of issue ceremony on July 13 during the ALA Annual Conference in Philadelphia. Library supporters and stamp collectors should watch for further information about first day covers to be available at the Conference and by mail.

National Commission on Libraries and Information Science (NCLIS)

Appropriations. Before a full hearing room audience of Legislative Day library supporters, NCLIS Chairman Charles Benton, Commissioner Margaret Warden, and Executive Director Toni Carbo Bearman, testified April 20 before the House Labor-HHS-Education Appropriations Subcommittee. Although normally executive branch agencies must defend the President's budget (in this case zero funding), as a permanent independent agency established by law to advise both Congress and the President, the NCLIS witnesses were able to recommend \$700,000 in funding for FY 1983.

Noting that the audience included Elinor Hashim, nominated to become the new NCLIS Chair upon Senate confirmation, Subcommittee Chair William Natcher (D-KY) said he would ask Benton to answer why President Reagan has appointed you but requested no money for NCLIS. Asked if private sector contributions could fund NCLIS adequately, Bearman responded that to ensure objective advice for Congress about information policy, the Commission's basic funding should come from the federal government rather than from private sector firms. Ranking minority member Silvio Conte (R-MA), who arrived at the hearing with several library constituents, said that if NCLIS commissioners could help him get \$80 million for his (Education Dept.) library programs, he would give NCLIS \$700,000. At the conclusion of the leisurely hearing, Rep. Louis Stokes (D-OH) commented that "It's good for us to see the excitement you feel about the work of the Commission; that's exciting for us."

Appointments. The House Postsecondary Education Subcommittee held an oversight hearing April 27 to investigate the Administration's attempt to remove prematurely three NCLIS Commissioners. The three -- Frances Naftalin, Clara Jones and Joan Gross -- were notified of the action last September 21, ten months before their terms were due to expire. President Reagan has since named three new commissioners to complete the terms expiring July 19, 1982.

Dr. Frederick Burkhardt, NCLIS Chairman Emeritus, charged that the White House, in attempting to dismiss the Commissioners prior to official conclusion of their terms, had violated congressional directives. Complete autonomy, according to Burkhardt, was a key requisite for establishing the NCLIS as an information policy-making agency. "One of the few points that both the House and Senate bills were in complete agreement on was that the commissioners be appointed for fixed five-year terms, and that the terms be staggered, so that most of the commissioners at any given time would have had several years of experience on the Commission," he said. "This arrangement was obviously intended both to insulate the Commission from shifting political winds and to provide assurance of continuity."

Dr. Burkhardt went on to cite three separate legal precedents -- two Supreme Court decisions and one District court decision -- which recently were instrumental in deciding a similar case involving the premature removal of U.S. Parole Commissioner Oliver J. Keller. All three cases (Humphrey's Executor vs. United States, 1935; Weiner vs. United States, 1958; Borders vs. Reagan, 1981) tested the separation of power theory in regard to the President's authority to terminate commission appointments. Burkhardt quoted three essential conclusions of the cases:

1. There are some offices that by their nature and function are meant to be independent of control, direction or interference by the President;
2. The power to remove persons in such offices, at will, effectively destroys that independence;
3. The President, therefore, does not have such a power of removal.

Dr. Burkhardt added, "With less than a year to serve, it might seem to some that contest and contention were not worth the trouble. But the principle is very much worthwhile, and we must vigorously oppose any precedent which would make it easy to embark on wholesale replacements of incumbents in positions whose nature and function require freedom from executive interference." Commissioners Clara Stanton Jones and Frances Healy Naftalin also testified at the hearing. Noting that the law says, "The terms of office of the appointive members of the Commission shall be five years," Mrs. Jones concluded, "There is no equivocation: Commissioners' tenure of service is established by Public Law 91-345; this authority is not delegated to the President."

Rep. Paul Simon (D-IL), who chaired the hearing, said he would write to the Justice Department, which apparently declined to testify, for some answers. Also under consideration is a "sense of the Congress" resolution deploring the Administration's tactics. Rep. Arlen Erdahl (R-MN) was also disturbed at the politicizing of the appointments, noting there are certain basic concepts on which Republicans and Democrats agree. Meanwhile the Senate, which must confirm NCLIS appointments, has taken no action on President Reagan's nominees.

#### Classified Information Expanded

The President signed April 2 an executive order broadening the reasons for classifying information on grounds of national security. Several recent Presidents have issued orders on classifying information, orders which can be implemented without congressional action, but the latest one reverses a trend toward making information about government more widely available to the public.

Besides expanding the categories of classifiable information, the new order eliminates the requirement that government officials balance the public's right to know against national security concerns before classifying information. It also eliminates the requirement that classification be based on the potential for "identifiable damage" to national security. Any doubt about the need to classify information is to be resolved in favor of more secrecy. Requirements for periodic review for possible declassification have been dropped. The new order gives the U.S. Archivist the authority to review classified records accessioned into the National Archives, but severe budget cuts cast doubt on the Archives' ability to accession agency records or conduct declassification reviews without years of delay.

When the new order becomes effective August 1, it will have far-reaching effects, some immediate and some longer-term. Information which might formerly have been published, either directly by government agencies or as research results, may not be published. Journalists, scholars, legislators and curious citizens who use the Freedom of Information Act may have less information released to them, and will be less able to sue successfully for release of improperly classified documents. Historians and other scholars who make use of older records will have to wait much longer for access to historical documents.

Executive Order 12356 of April 2 on National Security Information was published in the April 6 Federal Register (pp. 14874-84). A minor correction was published in the April 12 FR, p. 15557, and the list of officials authorized to classify information in the May 11 FR, pp. 20105-6. Various Members of Congress on both sides of the aisle have expressed concern about upsetting the balance between government and its citizens regarding access to information. The House Government Information and Individual Rights Subcommittee, chaired by Rep. Glenn English (D-OK), held a hearing on the executive order May 5. Sen. David Durenberger (R-MN) introduced April 28 the Freedom of Information Protection Act of 1982 (S. 2452) which would incorporate within the FOIA itself two of the key safeguards against overclassification eliminated by President Reagan's order -- the "identifiable damage" standard and the requirement that agencies balance the public interest in disclosure of information.

## National Technical Information Service

On April 29, the Senate passed two bills dealing with the National Technical Information Service: S. 2271, authorizing appropriations for FY 1983 of \$11.5 million for the National Bureau of Standards and \$1.98 million for the National Technical Information Service; and S. 2272, authorizing funds to establish a Technical Information Clearinghouse Fund. The Fund would receive a one-time appropriation of up to \$5 million to establish a revolving fund of working capital to finance inventories and provide support during low cash periods. The House version of the NBS and NTIS appropriations bill, HR 5726, has not been voted as yet. A bill authorizing the Technical Information Clearinghouse Fund has not been introduced in the House. Meanwhile, a study of the future of NTIS is currently underway at the Department of Commerce.

## Federal Register Notices

International Education Programs. The Department of Education issued final regulations for the International Education Programs in the April 1 FR, pp. 14114-26, and technical corrections May 13, pp. 20582-3. Regulations are included in this document for: 1) National Resource Centers Program for Language and Area or Language and International Studies; 2) Foreign Language and Area Studies Fellowships Program; 3) Undergraduate International Studies and Foreign Language Program; and 4) The International Research and Studies Program. For further information contact Dr. Richard T. Thompson. Telephone: 202/245-2356.

A deadline of May 21, 1982 for applications to the Undergraduate International Studies and Foreign Language Program for FY 1982 was announced in the April 6 FR, p. 14755). Eligible applicants include institutions of higher education and public and nonprofit private agencies and organizations, including professional and scholarly associations. Among the projects and activities which can be assisted are "developing ways to use the media, or developing projects to improve the effectiveness of sharing resources and materials." For further information, contact Susanna Easton, International Studies Branch, International Education Programs, U.S. Dept. of Education (Room 3916, ROB 3), 7th & D Streets, S.W., Washington, D.C. 20202 (202/245-2794).

FIPSE. Final regulations for the Fund for the Improvement of Postsecondary Education (FIPSE) were published in the April 9 FR, pp. 15552-15555. The revision continues the Fund's existing priorities and makes institutions of postsecondary education, a combination of institutions of postsecondary education, and other public and private educational institutions and agencies eligible to receive an award. Contact for further information: Russell Y. Garth, U.S. Dept. of Education, FIPSE, 400 Maryland Avenue, S.W., (Room 3100, ROB 3), Washington, D.C. 20202 (202/245-8091).

Research and Development Contracting. The Office of Federal Procurement Policy within the Office of Management and Budget wants comments before June 15, 1982 on draft Federal Acquisition Regulations (FAR) concerning research and development contracting, indirect cost rates, and disallowance of costs and suspension of payments. The FAR is being developed to replace the current system of procurement regulations. Obtain copies of the draft regulation from and submit comments to William Maraist, Assistant Administrator for Regulations, Office of Federal Procurement Policy, 726 Jackson Place, N.W., Room 9025, Washington, D.C. 20503 (202/395-3300).

Technical Assistance and Energy Conservation Grant Program Cycle IV. The April 13 FR, pp. 15765-15767 includes final regulations for the Grant Programs for Schools and Hospitals, and for Buildings Owned by Units of Local Government and Public Care Institutions, and an announcement of the grant program Cycle IV. The

Department of Energy grant cycle for technical assistance and energy conservation measures for schools and hospitals, and for technical assistance for local government and public care buildings began April 13. Applications recommended by the state for funding must be submitted to the appropriate Department of Energy Operations/Support Offices by June 30, 1982. The notice contains fund allocations by state for schools and hospitals and for units of local government and public care institutions. Up to fifteen percent of the funds allocated to each state for schools and hospitals may be used for technical assistance analysis. For further information contact: Frank M. Stewart, Office Institutional Conservation Programs, Office of Conservation and Renewable Energy, Department of Energy, Mail Stop 6B-025, 1000 Independence Ave., S.W., Washington, D.C. 20585 (202/252-2198).

Training Program for Special Programs Staff and Leadership Personnel. The Department of Education issued final regulations in the April 23 FR, pp. 17786-17790, to govern the funding of grants to train Special Programs staff and leadership personnel employed in or preparing for employment in projects under the Special Programs for Students from Disadvantaged Backgrounds. Further information: Mary Kathleen Smith (202/245-2511).

#### National Endowment for the Humanities Grant Deadlines

June 15, 1982 is the application deadline for the NEH humanities projects in libraries beginning after January 1983. Further information from: Thomas Phelps, Humanities Projects in Libraries, NEH Mail Stop 406, 806 15th St., N.W. Washington, D.C. 20506 (202/724-0760).

Anticipating the 200th Anniversary of the U.S. Constitution, NEH will provide planning grants of up to \$25,000 for one year to plan a wide variety of public programs for a general audience which focus on this document. Non-profit organizations and institutions (may apply alone or in collaboration with others) are eligible if they have 1) resources in the humanities, particularly in the disciplines of philosophy, classics, political theory, U.S. history and literature, European intellectual history and literature, comparative religion, cultural anthropology, or jurisprudence; and 2) the ability to reach a large, general audience (national, regional, metropolitan). The purpose of the grants is to plan humanities activities focused on the Constitution and designed for adults and/or for young people outside the regular school or college curriculum. Application deadline is June 1, 1982. Further information is available from Special Projects Office, Mail Stop 401, National Endowment for the Humanities, 806 15th Street, N.W., Washington, D.C. 20506 (202/724-0398).

Other NEH divisions are sponsoring programs for projects on the Constitution, as well. Organizations and institutions interested in developing major television or radio projects for adult audiences should contact the NEH Media Program, Mail Stop 403; individuals and institutions interested in scholarly research projects should contact the Division of Research Programs, Mail Stop 350; and proposals for the development of curriculum materials for use in schools, colleges and universities should contact the Division of Education Programs, Mail Stop 202.

June 15 is the application deadline for proposals to study conditions in the humanities through analysis of existing data resources. While any humanities-related topic is eligible, NEH is particularly interested in three broad subjects: career patterns of humanities professionals, trends in financial support for the humanities and trends in the demand for and use of humanities resources. Proposals are invited from academic institutions, units of government, non-academic, non-profit or profit-making organizations, individuals, or a combination of these. NEH anticipates making from 6 to 10 awards of up to \$25,000. Copies of the application forms can be obtained from: Evaluation and Assessment Studies Branch, Office of Planning and Policy Assessment, Mail Stop 303, NEH, Washington, D.C. 20506.

## OFF-AIR RECORDING GUIDELINES PUBLISHED IN HOUSE REPORT

The "Guidelines for Off-Air Taping of Copyrighted Programs for Educational Use" became part of the legislative history of the 1976 copyright law with their publication in a House Judiciary Committee report issued April 29. The report (H. Rept. 97-495) accompanies HR 3530, a bill passed by the House May 10 to strengthen criminal penalties against record, tape, and film piracy and counterfeiting for commercial use. The House then passed a similar Senate-passed bill, S. 691. The section on off-air taping guidelines in H. Rept. 97-495 includes the introduction below plus the text of the guidelines and accompanying letters as appended to the October 20, 1981 ALA Washington Newsletter (Vol. 33, No. 12). (See also the Nov. 13, 1981 and April 23, 1982 issues of the ALA Washington Newsletter on the guidelines.)

### Guidelines for Off-Air Taping of Copyrighted Works for Educational Use

The Committee has been involved in a review of the 1976 Copyright Act and has been studying several issues in addition to the piracy and counterfeiting issues addressed in H.R. 3530. For example: The Committee has recently approved H.R. 5949 which addresses the copyright liability of cable television; legislation to provide a performance right in sound recordings has been considered; bills which address the issues raised by the home video-recording litigation are currently under review; also, H.R. 4441 which permits a greater retention of copyright registration fees has recently been approved by the Committee. Many of these issues were ones which were initially addressed in the 1976 Act and have required adjustment given changing times. Some are new issues. The Committee remains hopeful there will be an equitable resolution of each of these controversies. The Committee calls upon each of the interested parties in these issues to remain open to compromise. The most notable feature of the 15-year effort to revise the Nation's copyright laws, which was largely completed in 1976, was the cooperative nature of that effort.

Of course, there were fierce struggles over particular issues. However, in the last analysis, almost every affected group desired that the revision effort succeed, and contributed to that success by modifying and compromising their initial positions.

The spirit of cooperation was expressed most visibly in efforts on the part of proprietors and users in working out a series of guidelines defining fair use in certain situations. Three sets of guidelines were ultimately agreed upon and were published as part of the official legislative history of the act.

These guidelines covered classroom copying of books and periodicals in nonprofit educational institutions, educational uses of music and photocopying by libraries.

One area in which parties had been negotiating, but in which guidelines were not forthcoming, was off-the-air taping of copyrighted broadcast programs for educational purposes.

The Committee is pleased to include in this official Committee report a new set of guidelines negotiated by a committee of interested parties for use by copyright owners and educators which will go a long way toward resolving the lingering problems associated with off-air video-taping of copyrighted works for educational purposes.

The Committee is pleased to endorse these guidelines and include them here as part of the legislative history of our Nation's copyright law.

STATUS OF LEGISLATION OF INTEREST TO LIBRARIANS  97th Congress, 2nd Session  Convened January 25, 1982  Chart Date: May 14, 1982	HOUSE					SENATE					FINAL ACTION		
	Introduced	Hearings Reported by Subcommittee	Committee Report	Floor Action	Introduced	Hearings Reported by Subcommittee	Committee Report	Floor Action	Conference Committee	Final Passage	Public Law		
Congressional Budget Targets		X			SConRes. 92	X		385					
Copyright - home video taping	HR 4783, etc.				S 1758	X							
Copyright manufacturing clause	HR 6198	X			S 1880								
Copyright Piracy Act	HR 3530		X	495	X								
Dept. of Education termination					S 691			274	X				
Florence Protocol	HR 6093				S 1821								
Foreign language program assistance	HR 3231	X	X	316	TreatyDoc97-2	X		X					
Freedom of Information Act Amendments	HR 4805	X			S 1817								
Information Science & Technology Act	HR 3137	X			S 1730,2452	X	X						
Medical Library Assistance Act	HR 6338	X	X		S 2311			X					
National Archives - Indep. Agency					S 1421			X					
NHPRC Extension					S 2501								
National Library & Info. Services Act					S 1431								
NTIS & NBS Authorization	HR 5726			501	S 2271			337	X				
Taxation - Indep. Research Libraries					S 696			X					
Taxation - Manuscript donations	HR 2823,2835,etc.				S 2225			X					
Taxation - Technology Education	HR 5573				S 2281			X					
Taxation - Thor Power Tool ruling	HR 1016,1936				S 578			X					
Technical Info. Clearinghouse (NTIS)					S 2272			335	X				
Telecommunications - Cable TV					S 2172,2445			X					
Telecommunications Competition & Dereg.	HR 5158	X	X		S 898			X		170	X		
Vocational & Adult Ed. Consolidation		X			S 2325								
<u>Appropriations</u>													
Continuing Resolution, FY 1982	HJRes 325			223	X	HJRes 325		none	X	260	X	PL 97-51	
Further Continuing Resolution, FY 1982	HJRes 357			319	X	HJRes 357		none	X	352	X	Vetoed	
Further Cont. Res., FY 1982 thru 3/31/82	HJRes 370			372	X	HJRes 370		none	X	none	X	PL 97-92	
Further Continuing Resolution, FY 1982	HJRes 409			465	X	HJRes 409		none	X	none	X	PL 97-161	

For bills, reports & laws write: House & Senate Doc. Rms., U.S. Capitol, Washington, D.C. 20515 & 20510 respectively.