

A Battle over NIH Funds

Under pressure from Congress and threat of a lawsuit, OMB has instructed NIH to fund grants at the full appropriations level for FY 1987 even though the President has asked for a \$334-million reduction; the issue, therefore, is only partially resolved

WHEN it comes to the National Institutes of Health, Congress giveth and the Administration taketh away—or it would if it could. Congress appropriated \$6.2 billion for NIH for the current fiscal year—FY 1987. The Administration would like to cut that figure by \$334 million, eliminating 700 new grants at a savings of \$120 million and reducing overall funds for new and renewable grants by \$214 million. Of course, the Administration hasn't used the word "cut" with respect to NIH funds—it just wants to "extend their availability" by spending that \$334 million in FY 1988 instead of now. In his 5 January budget submission to the Congress, President Reagan talked about "extended availability," a new term in budget vocabulary that is brought to you from the same people in the White House Office of Management and Budget who invented "forward funding" a couple of years ago. A cut by any other name is still a cut.

Although there is every reason to think that Congress will reject the President's proposal out of hand, since early January NIH officials have been behaving as though it were real. It could be as late as summer before Congress acts legislatively on the

President's FY 1988 budget; meanwhile, NIH has decided that it is only "prudent management" to conserve funds this early in the year. As a result, fewer new grants are being awarded and grants up for routine renewal (the second year of a 3-year grant, for instance) are being negotiated downward by as much as 20%. "If we don't consider that \$334 million as lost for now, we could find ourselves in real trouble—out of money—in the fourth funding quarter if, for some reason, Congress were to go along with the President. It isn't likely but from a management point of view, we can't take that chance," one NIH official told *Science*.

Affected researchers and their institutions are furious. Research lobbying groups are up in arms and have been preparing to take the Administration to court, alleging violation of the budgetary Impoundment and Control Act of 1974. And many members of Congress are fed up by yet another attempt by the Administration to try to decrease the NIH budget by an end run.

Last week the Administration backed down. In a letter to Otis R. Bowen, Secretary of Health and Human Services, of which NIH is part, OMB director James C. Miller III said "If, on the basis of the

President's budget proposal, the Department is withholding or otherwise restricting the availability of funds, please cease such actions."

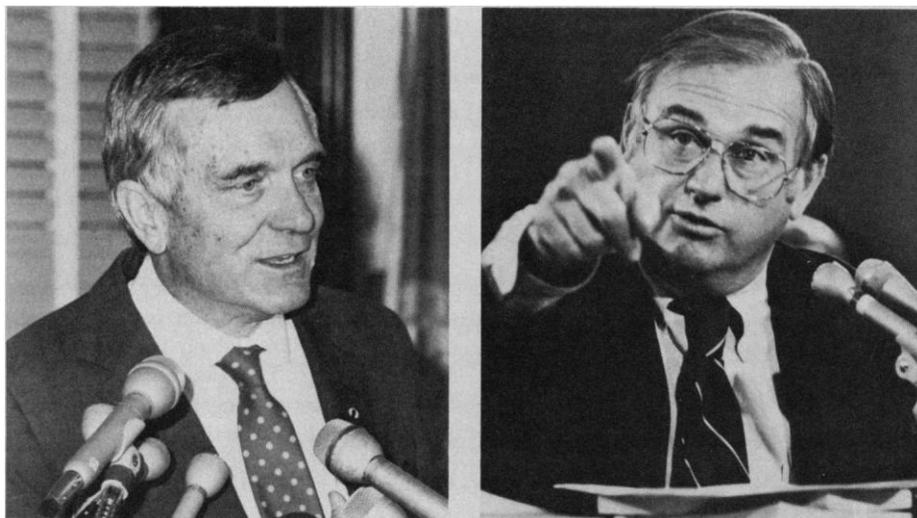
For grant recipients, this marks a battle won, but it is not the end of the war because the extended availability proposal is still alive. Miller's cease and desist letter in no way alters that. As one observer said off-the-record, "Miller's letter is as important for what it does not say as for what it does."

No matter how deliberately Congress acts to increase the NIH budget, the Reagan Administration has consistently tried to cut it back. Administration officials appear to be particularly concerned about the steadily increasing number of new and competing grants that have been mandated by Congress. When the number of grants increases, the base or cost of maintaining "current services" in future years rises. (This year NIH plans to fund more than 6300 new grants, compared to 5000 or so in the early 1980s.)

Thus, if you take the FY 1987 budget as Congress wrote it and calculate what it will cost simply to maintain current services in FY 1988, NIH will need an increase of \$661 million. In the past, Congress has indicated that increases of this magnitude are fine. (Indeed, the NIH budget increased slightly more than 17% from FY 1986 to FY 1987.)

The Administration is of a more cost-saving mind. This is one reason it has asked Congress to approve the idea of spending some FY 1987 money in FY 1988. The plan for "extended availability" is very much like the effort to institute "forward funding" a couple of years ago, the difference being that this round the President is asking for congressional permission, as the law requires. What has upset members of Congress and the research community is that NIH was obligated to institute a funding plan now based on the presumption that permission would be granted.

On 21 January, NIH director James B. Wyngaarden sent a memo to the heads of the institutes, along with a copy of the "implementation plan" that had been approved by HHS officials the previous day. "Under the FY 1987 revised budget, the



Senators Lawton Chiles and Lowell Weicker asked the Comptroller General to assess the legality of the Administration's decision to withhold some of the funds appropriated for NIH in FY 1987.

NIH average downward negotiation for noncompeting grants would increase from approximately 4 to 10 percent and for competing grants from approximately 6 to 14 percent," it said. That's the average.

No AIDS grants are to be reduced because of the proposed budget revision.

Accompanying these downward negotiated grants is a cover letter to researchers containing the following Alice in Wonderland paragraph. "The President has submitted a legislative proposal to revise the FY 1987 budget with the objective of ensuring a stable source of funds for biomedical research. We have awarded the grant for this budget period in an amount consistent with the proposal that was submitted to the Congress for its consideration. *The amount awarded may be increased prior to the end of the fiscal year* (emphasis added)."

How's that again? Simple, if the proposal is rejected, researchers will get their lost money back. "The most likely approach will be to return the funds to the grantees the same way they were taken," Wyngaarden's memo says. NIH has been thinking from the outset about "preparing the paperwork for two awards," but there was no plan to tell researchers that in so many words.

In fact, the implementation memo says explicitly that "The NIH does not plan to issue a general notice to the extramural community." However, it would respond to inquiries.

The Association of American Medical Colleges (AAMC), the Association of American Universities (AAU), and an umbrella organization called the Ad Hoc Group for Medical Research Funding were among those who wanted to know what was going on. And then lobbying and legal pressure was brought to bear.

The leaders of both the House and Senate appropriations subcommittees for NIH stepped in. Representative William H. Natcher (D-KY), chairman of the subcommittee on labor, health and human services and education appropriations, and ranking minority member Representative Silvio O. Conte (R-MA), challenged HHS Secretary Bowen. No formal request for a rescission or deferral has been submitted to Congress. In a letter to Bowen, Natcher and Conte said the deliberate withholding of NIH funds "violates both the letter and the spirit" of the impoundment control act. "It is also in direct contradiction to the unequivocal assurances of the President" who promised in his budget message that "There will be *no* Executive branch action to defer or otherwise restrict the funds currently available until after Congressional enactment of this proposal."

On the Senate side, the chairman of the subcommittee on Labor-HHS-Education appropriations, Senator Lawton Chiles (D-FL), and ranking minority member Senator Lowell Weicker, Jr. (R-CT) also complained to Bowen. In addition, Chiles and Weicker have asked the Comptroller General to evaluate the legality of withholding the \$334 million.

With regard to the possibility that Congress might approve the President's proposal, Weicker, who has been a strong and consistent supporter of NIH, has said it "reveals a total lack of understanding" of biomedical research needs and opportunities. Chiles has stated his doubts about the proposal and Senator Dave Durenberger (R-MN) has called it "unequivocally wrong."

While the Congress was making known its displeasure, the AAMC was galvanizing

support for a legal assault of another kind. The Washington office of Fulbright and Jaworski was retained to bring suit against the government. Affidavits were taken from researchers and institutions that had received reduced grants, the plan being to assert that what the NIH was calling prudent management was causing grant recipients immediate and irreparable harm. Although it is common for some downward negotiation for the second and third years of grants, the cuts of 14% or more specified in NIH documents went way beyond the level of business as usual and, therefore, represent something other than just prudent management.

A legal strategy was worked out and the plan was to file suit around noon on Wednesday 25 February. The cease and desist letter to Secretary Bowen from OMB director Miller came just the afternoon before.

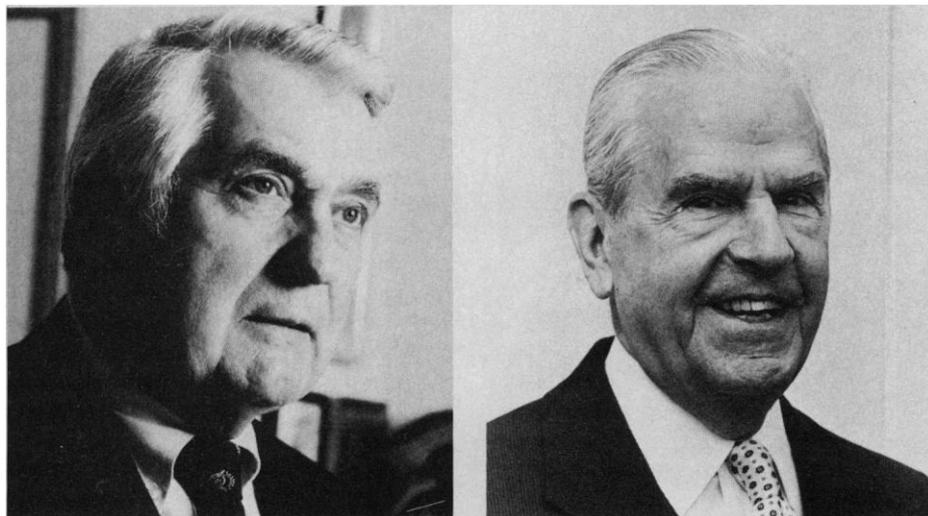
What now?

NIH already is readying a new spending plan. Wyngaarden told *Science* that by next week the institutes expect to be operating at the level of the full FY 1987 figure of \$6.181 billion. Furthermore, researchers who suffered large downward negotiations may see some of their money restored. However, even at the FY 1987 budgetary level, some downward negotiation is still necessary because the total number of dollars is not sufficient to fund in full the total number of grants mandated by Congress—which is to say no fewer than 6200. In addition, it will fund more than 13,400 noncompeting renewal grants.

Three figures go into the equation as downward negotiation is considered: the total available dollars for grants, the total number of grants, and the funding levels recommended by study sections. Even with the FY 1987 budget at full force, there is a gap of about 5%. Therefore, a grant that had been cut 15% might see only a 10% restoration.

Meanwhile, NIH watchers in Washington at the AAMC, AAU, and elsewhere described themselves as both "breathing a sigh of relief" and "maintaining eternal vigilance." The "extended availability" ploy appears to be dead—for this year anyway—but the Administration has not retreated from its stated goal of reducing the number of new grants by 700. The issue is not likely to be resolved until Congress settles budget questions much later in the fiscal year. However, additional clues to the attitude of Congress, and to any division among its members, can be expected during NIH appropriations hearings for FY 1988, which begin this month. ■

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Representatives Silvio Conte and William Natcher noted that withholding FY 1987 NIH funds is in contradiction of the President's assurance that it would not happen.