May 18, 2007

The Honorable Bart Gordon and Ralph M. Hall  
Chairman and Ranking Member  
House Committee on Science and Technology  
2320 Rayburn House Office Building  
Washington, D.C. 20515-6301

Dear Chairman Gordon and Ranking Member Hall:

On behalf of the Association of American Universities (AAU) and the National Association of State Universities and Land Grant Colleges (NASULGC), which together represent leading public and private research universities in the nation, we write to express our opposition to the recoupment provision contained in Section 4 of H.R. 364, legislation to create an Advanced Research Projects Agency-Energy (ARPA-E). We urge that this provision be dropped from the legislation when it is considered by the House Science and Technology Committee next week.

Both AAU and NASULGC appreciate and support the Committee’s efforts to respond to the National Academies’ recommendation in its 2005 report, “Rising Above the Gathering Storm,” to create a DARPA-like entity intended to facilitate the rapid development and commercialization of clean energy technologies.

We are concerned, however, that the recoupment provision in the bill actually provides a significant disincentive for the very “out-of-the-box” type of thinking the bill is attempting to promote, especially at universities. In its current form, the language states that the “recoupment shall occur within a reasonable period of time” following project completion, but within 20 years. While the provision permits the Secretary to take into consideration the impact of recoupment on the commercial viability of a technology and profitability of the research project in determining if recoupment might be waived, it is very unclear from the language in the bill under what circumstances waivers might be granted.

The provision, therefore, transforms what should be a government research “grants” program into a government “loan” program. Under such conditions, we see it as highly unlikely that universities will want to seek such funds or participate in the program.

Even if recoupment were tied more directly to the profitability of technologies, we would still have significant concerns about the inclusion of such a provision in the bill. The provision is contrary to the Bayh-Dole Act, which allows U.S. universities, small businesses and non-profit research institutions the flexibility to craft appropriate strategies on a technology-by-technology basis to ensure that federally-funded research results are commercialized for the public benefit. The Bayh-Dole Act inspired universities to take the initiative – previously not being taken by the government – to see that promising research and resulting technologies are, in fact, commercialized. Moreover, under Bayh-Dole, any royalties received by the institution from its technology transfer activities are required to be funneled back into additional research and education at the institution; they are not required to be repaid to the government.
Recoupment was not and is not a requirement of DARPA, after which this agency is modeled. Requiring the repayment of federally sponsored university research grants would set a dangerous precedent. Universities act as engines for innovation in our country. They are, however, non-profit institutions that generally operate on a cost-reimbursement basis and do not have a pool of funds from which they can repay federal awards. In fact, universities have increasingly been subsidizing with their own funds the costs of the research that they perform on behalf of the federal government. If revenues are generated from university-based research, these revenues tend to be small and occur far down stream from the original research produced with federal funding.

We would also point out that the science and technologies resulting from ARPA-E will be utilized in a variety of ways – not all of which will or should be licensed for commercialization. Knowledge transfer at our universities, in fact, occurs in a number of forms other than licensing, including publication of research results, and education and training of students who become employees of companies and government laboratories. Promoting all of these means of knowledge transfer should be a goal of ARPA-E. In our view, one of the primary objectives of a new ARPA-E should be to create a strong and cohesive community of researchers with a culture focused not solely on basic or applied research, but rather on high-risk, high payoff and potentially transformational energy research solutions, much as DARPA did for the Department of Defense. ARPA-E-sponsored researchers and the institutions that support them should not be burdened at the outset with thinking about the potential profitability of their work.

Any APRA-E proposal should view the government’s investments as just that, a national *investment*. Repayment to the government should not be required. The greatest return to the government from the creation of a new ARPA-E should be to decrease national dependence on fossil fuels and to increase energy security and environmental sustainability. The creation of marketable new energy technologies is a critical challenge for our nation, one for which our universities have tremendous resources in the form of human talent to offer. It is a challenge which clearly calls for expanding the long-standing partnership between universities and the federal government. Achieving the goal of marketable new energy technologies would provide an enormous return to the nation’s taxpayers and to the government, one worthy of substantial federal resources and worth every penny spent.

We hope that you will seriously consider our views on this matter as you move to advance the ARPA-E legislation.

Sincerely,

Robert M. Berdahl
President
Association of American Universities

Peter McPherson
President
National Association of State Universities and Land-Grant Colleges