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## Administration Kills Contractor Responsibility Rule

Two days after Christmas, with no one around to object, the Bush administration quietly [revoked a Clinton-era rule that promotes greater accountability for federal contractors](#) -- to make sure they comply with important public protections. Specifically, this [contractor responsibility standard](#) instructed government contracting officers to look at a bidding company's compliance with the law (including tax laws, labor laws, employment laws, environmental laws, antitrust laws and consumer protection laws) before awarding taxpayer dollars.

Industry groups, such as the [U.S. Chamber of Commerce](#), fought aggressively against the rule, arguing that it amounts to "blacklisting" -- that companies could be barred from receiving federal contracts with no due process. In fact, each determination under the rule was to be made on a case-by-case basis for the contract in question, and would not constitute "debarment" for all federal contracts. In other words, a company that is denied one contract on the basis of its legal track record is still eligible to be considered for another federal contract. The blacklist existed only in the imagination of industry lobbyists.

The allegations of the rule's threat to due process were equally dubious. The rule required contracting officers to coordinate adverse determinations with agency legal counsel, to notify bidders if found non-responsible, and to provide the basis for that determination. If a company disagreed with that determination, the Federal Acquisition Regulation already provides for an appeal process (as directed in Executive Order 12979, Agency Procurement Protests). Moreover, the rule also made clear that in making a judgment, contracting officers should give the greatest weight to convictions or civil judgments rendered against the prospective contractor in the preceding three years.

Nonetheless, as in [other cases](#), the administration proved very responsive to industry's objections, first suspending the rule back on April 3, 2001, [signaling its eventual repeal](#). At the time, [OMB Watch submitted testimony](#) to the administration objecting to its proposed action.

## OMB Identifies Regulations for Repeal

As part of its annual report to Congress on the costs and benefits of federal regulation, [released last week](#), the [Office of Management and Budget \(OMB\)](#) published a list of 23 "high priority" regulations it believes should be rescinded or revised. Many of these regulations are health, safety, and environmental standards, including major clean air and water standards (e.g., [New Source Review](#) and [Total Maximum Daily Loads](#)). The Environmental Protection Agency (EPA) has the most rules on the list with eight, while the Department of Labor is second with five, including one under the Fair Labor Standards Act and another under the Family and Medical Leave Act.

This target list is another sign that John Graham, administrator of OMB's Office of Information and Regulatory Affairs (OIRA), which has responsibility for carrying out the report, intends to make his office an aggressive player in setting the regulatory agenda across agencies, likely at the expense of strong health, safety and environmental protections. It also marks a departure from the Clinton-era OIRA, which gave agencies greater deference to define their own objectives and priorities; agencies, after all, have the statutory authority delegated by Congress, the technical and scientific expertise, and the proximity to affected parties -- including regulated interests and the intended beneficiaries of regulation -- that OIRA lacks.

In its [draft report published last May](#), OMB asked for suggestions from the public on specific regulations that could be rescinded or changed to increase benefits to the public. OMB received 71 such suggestions -- 44 of which were from George Mason's conservative [Mercatus Center](#) -- and after its initial review of the comments, placed the suggestions into three categories: "high priority," "medium priority," and "low priority." There were 23 rules rated "high priority," which, OIRA explained, it is inclined to agree with and will examine further. There were 30 rules listed as "medium priority," about which OIRA decided it needs more information, and 24 other suggestions were listed as "low priority," the merits of which OIRA was not convinced.

As for the cumulative cost-benefit analysis, OMB's report estimated that the costs of complying with environmental, health, and safety regulations range from about \$150 billion to \$230 billion annually, while benefits range from \$250 billion to more than \$1 trillion. These estimates -- which [OMB Watch has argued contain enormous analytical limitations](#) -- are similar to estimates made by the Clinton administration in last year's report.

## OMB Issues Final "Data Quality" Rules

On January 3, 2002, the [Office of Management and Budget \(OMB\)](#) issued final "data quality" rules, effective immediately. The rules were published pursuant to a rider on the FY 2001 Treasury and General Government Appropriations Act (P.L. 106-554), which requires OMB to publish guidelines that "provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies." The rider requires agencies to issue their own implementing guidelines that include "administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency."

OMB proposed the data quality rules on June 28, 2001. After receiving a number of comments (see [OMB Watch's comments](#)), OMB published [interim final rules](#) on September 28, 2001, and sought additional comments on one provision. The rules published last week are final rules providing additions and refinements to the interim final rule published on September 28.

By April 1, 2002, each agency covered by the Paperwork Reduction Act must publish a notice for comment in the *Federal Register* providing guidelines for implementing the rider for its agency, along with how the agency will develop the administrative mechanism that allows people to seek and obtain appropriate correction of information maintained and disseminated by the agency. After consideration of public comments, each agency must submit its plan to OMB by July 1, 2002. The plan must be put into place by the start of the next fiscal year, October 1, 2002.

The administrative mechanism shall apply to all information that the agency disseminates, regardless of when the agency first disseminated the information. The agency must institute a pre-dissemination review for data quality for new information disseminated after October 1, 2002.

## Campaign Finance Reform Nearing Goal In House

OMB Watch has urged Reps. Christopher Shays (R-CT) and Marty Meehan (D-MA) to strengthen the portion of their bill dealing with exceptions to the ban on broadcast "issue advocacy" during an election cycle.

Last July the Shays-Meehan campaign finance reform bill ([H.R. 2356](#)) stalled in the House of Representatives over a procedural rule that campaign finance reform advocates said would have unfairly limited debate on the bill. A petition to discharge the bill from committee to the House floor gained strong momentum within days of being filed, and had 205 of the necessary 218 votes by the time Congress recessed on August 3. Then the issue was put on the back burner in the fall while Congress concentrated on the national response to the September 11 attacks.

But as the year drew to a close additional members signed, and brought the total to 214 by the end of 2001. Rep. Christopher Shays (R-CT) has expressed optimism about reaching the required 218 signatures soon after Congress reconvenes on January 23. At least one member, Rep. Richard Neal (D-MA), has said he would be the 218<sup>th</sup> signature.

Although discharge petitions are rarely successful, campaign finance reformers used them successfully in 1998 and 1999. Once 218 members sign the petition, the bill will come up for debate on the floor, with a rule allowing votes on several substitute bills. A [list of Representatives who have signed the Discharge Petition is available on the House website](#).

OMB Watch has urged Reps. Christopher Shays (R-CT) and Marty Meehan (D-MA) to strengthen the portion of their bill dealing with exceptions to the ban on broadcast "issue advocacy" during an election cycle. While an exception allowing nonprofits to air candidate debates and forums was included, other nonpartisan, non-electoral communications, such as grassroots lobbying calls-to-action and get-out-the-vote messages, could still be prohibited. Though the bill would allow the [Federal Election Commission \(FEC\)](#) to make rules exempting these activities, it does not require the FEC to act. If the FEC failed to deal with the issue, nonprofits would find their broadcast advocacy rights severely limited during federal election cycles. OMB Watch is urging the sponsors to require the FEC to come up with rules protecting these rights.

## FEC Won't Appeal Ruling Against Its Express Advocacy Definition

On December 11 the FEC decided not to seek Supreme Court review of a Virginia case finding their regulation, 11 CFR 100.22, unconstitutional. The vote was a 3-3 tie, and a majority is needed to request the Solicitor General to take up the case.

As the 2002 election cycle approaches, nonprofits wanting to know whether their public statements are unregulated issue advocacy or regulated electioneering ("express advocacy") will have to consult a map for the answers. The reason is that federal appeals courts in different parts of the country have issued contradictory rulings on whether or not the [Federal Election Commission's \(FEC\)](#) definition of what constitutes "express advocacy" is constitutional. On December 11 the FEC in effect decided not to seek Supreme Court review of a Virginia case finding their regulation, 11 CFR 100.22, unconstitutional. The vote was a 3-3 tie, and a majority is needed to request the Solicitor General to take up the case.

In the Virginia case, *Virginia Society for Human Life v. FEC*, the Court of Appeals for the 4<sup>th</sup> Circuit found the definition of "express advocacy" as statements "taken as a whole and with limited reference to external events, such as the proximity to an election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat" of a candidate, to be unconstitutionally vague. Similar rulings have been made in the 1<sup>st</sup> and 2<sup>nd</sup> Circuits, making the regulation unconstitutional in 12 states: Connecticut, Maine, Maryland, Massachusetts, New Hampshire, New York, North Carolina, Rhode Island, South Carolina, Vermont, Virginia and West Virginia. Puerto Rico is also covered by the 1<sup>st</sup> Circuit. The regulation was found constitutional in another case in the 9<sup>th</sup> circuit, so that it still applies in the remaining 38 states.

In states where the regulation has been found invalid, only messages that explicitly call for election or defeat of a federal candidate will be regulated by the FEC. The FEC only has jurisdiction over federal elections, so these court rulings do not affect state election laws.

## State And Local PACs Seek Exemption From IRS Disclosure Law

The difficulty for state and local PACs arises because of the way soft money is often spent. Only "hard money" is subject to FEC regulation and soft money spent on federal elections is often mixed with soft money spent on state and local elections. The law's purpose is to force disclosure of soft money spent on federal elections.

Since requirements for the disclosure of political action committees' (PACs) soft money expenditures became effective in 2000, there have been calls to exempt state and local PACs that report their expenditures to state election commissions. These efforts were renewed at the end of 2001, although no action was taken. House Ways and Means Committee Chair Bill Thomas (R-CA) has stated his support for some kind of exemption, and the issue can be expected to come up again in 2002.

The law requires nonprofits whose primary purpose is influencing elections (under Section 527 of the tax code) and who have annual receipts of \$25,000 or more to register with the [Internal Revenue Service \(IRS\)](#). They must also disclose contributions of \$200 or more and expenditures of \$500 or more. In addition, PACs with incomes over \$25,000 must file IRS Form 990, an information return that other nonprofits are also required to submit. There are three exceptions to these requirements: groups with annual gross receipts of less than \$25,000, those exempt under Section 501(c), or those subject to FEC regulation.

The difficulty for state and local PACs arises because of the way soft money is often spent. Only "hard money" is subject to FEC regulation and soft money spent on federal elections is often mixed with soft money spent on state and local elections. ("Hard money" refers to funds spent directly advocating for or against a specific federal candidate.) The law's purpose is to force disclosure of soft money spent on federal elections. To do that the bill sweeps in all PACs to prevent mingling of soft money spent on federal, state and local elections to evade disclosure.

The result is that PACs that only work on state and local elections are forced to register with the IRS, disclose contributions and spending, and file the annual information returns, creating a burdensome, duplicative reporting scheme. The challenge for lawmakers this year will be to find ways to eliminate duplicative reporting for state and local PACs, while retaining the ability to capture information on soft money expenditures. One element of a solution would be to continue requiring state and local PACs to register with the IRS and file Form 990, so that the IRS and the public can know how soft money is being spent.

## State Update: Michigan

Michigan House passes bill after dropping language that would have prohibited Michigan nonprofits from using any resources that are "from a public body or a person acting on behalf of a public body" for advocacy around a state ballot initiative.

As reported in the [last Watcher](#), the Michigan House was considering a bill that would prohibit Michigan nonprofits from using any resources that are "from a public body or a person acting on behalf of a public body" for advocacy around a state ballot initiative. This language was dropped from the bill before House passage, but House Speaker Rick Johnson (R) has said the language will likely end up "in another set of legislation." There has been no indication when this will come up again.

The original purpose of the bill, according to the Speaker, was to prohibit groups such as the Michigan Municipal League from using dues paid by government bodies in ballot campaigns. Michigan nonprofits, however, pointed out that the language was broad enough that moneys from government employee contribution campaigns might also have been affected.

## Daschle's Speech, Fiscal Responsibility and Tax Cuts

Senate Majority Leader outlined the country's urgent domestic and military priorities and compared the pre-tax cut possibilities for domestic investment with the current post-tax cut reality's "unnecessary fiscal bind," but he did not directly call for a delay in the tax cut as a solution to this fiscal conservative's dilemma.

On Friday, January 4, in a speech at the [Center for National Policy](#) Senate Majority Leader Tom Daschle (D-SD) laid out his proposal for legislation to help the economy recover and sustain long-term growth. His "economic growth plan" is a combination of immediate one-year economic stimulus proposals and long-term domestic investment initiatives.

In addition to the original components of the [Democrats' economic stimulus package](#)-- an increase in weekly unemployment payments, an extension of the number of weeks a person may receive unemployment benefits, and a tax rebate for low-income workers -- Daschle added two new short-term elements in his speech. The first, a "Jobs Creation Tax Credit," would reimburse the cost of increased payroll taxes to any business that hires new employees or gives current employees a raise. The second is a revised version of the depreciation bonus for businesses proposed by Democrats and Republicans last month. In place of the Senate Democrats' original proposal of a one-year 10% depreciation bonus or the House Republican's three-year 30% bonus, Daschle has proposed a 40% bonus for the first 6 months and a 20% bonus for the next 6 months to provide an increased incentive to businesses to purchase new equipment sooner rather than later. (Daschle likened this proposal to the extremely popular 0% financing option car companies offered last month.) Both the Jobs Creation Tax Credit and the increased depreciation bonus are billed as one-year initiatives to encourage companies to spend (or hire) now, when the impact on the economy is most needed.

The other half of Daschle's economic recovery package, however, has a long-term focus and is aimed at maintaining growth and building capacity to generate future growth. It includes increased spending on homeland security and the public health system (to restore confidence and increase consumer spending) and spending on education, job training, and technology (to provide for well-educated, qualified American workers to spur on the next wave of technological development). Daschle also gave his full support to "fast track" trade authority for the President (for a view against "fast track," see [this Economic Policy Institute analysis](#)) though he coupled it with a demand for increased assistance in job training for workers displaced by increased trade. He cited the need for a revised energy plan both as a means of reducing US dependence on foreign oil and as a means of generating economic growth through the investment in alternative energy research. Daschle closed his speech with a criticism of the recommendations issued by [Bush's Social Security Commission](#). He stated that any proposal to create private accounts for Social Security, a program he called the "most successful government program in history," could come only as one part of a large plan to "restore fiscal discipline and ... extend the solvency of the Social Security system."

Daschle's attention to long-term investments in the nation's economy, students, low-wage workers, and national public health infrastructure is welcome. One element was noticeably absent -- a means to pay for these investments without bringing the budget further into deficit. Though he expressed confidence in the ability of the White House and Congress to devise legislation to generate economic growth, help alleviate some of the recent budget pressures and eventually return the budget to surplus, such legislation would, at least initially, enlarge the deficit. While many economists actually support temporary deficit spending as a means of recovering from a recession, Daschle seems to be focused on "fiscal discipline" and "fiscal responsibility" that is limited to avoiding deficits and the "mistakes of the past." Having eliminated temporary deficit spending as a means to accomplish our national priorities, Daschle described the remaining alternatives as a choice between ignoring the "critical needs" he identified and "raiding the Social Security surplus."

There is, however, one other option - one that is perceived by most as too politically damaging to address: delaying or even rolling back the tax cut signed into law in June. Daschle did address the problems of the tax cut and even cited the Congressional Budget Office's (CBO) August 2001 report that credited the tax cut for 2/3 of the drop in the 10-year budget surplus projections. He compared the pre-tax cut possibilities for domestic investment with the post-tax cut reality of an "unnecessary fiscal bind," but he did not make that final step and announce a delay in the tax cut as a solution to this fiscal conservative's dilemma.

He may as well have though, since President Bush in his weekend speeches to workers in Oregon and California, called a delay in the implementation of the June tax cut a "tax raise" and warned that "not [sic] over my dead body will they raise your taxes." But in his response, Daschle denied this charge and explained that, far from raising taxes, he was actually proposing additional tax cuts in the form of the Jobs Creation Tax credit and the accelerated depreciation bonuses for businesses.

All of this may be entirely beside the point, anyway, for as many political pundits have observed, last week's speeches are more an indication of the rhetorical and political battles to come in this year's elections and less so of any true legislative agenda of either side. With everyone from Office of Management and Budget (OMB) Director Mitch Daniels to House Budget Committee Ranking Member John Spratt (D-SC) predicting deficits for the next few years (see [related story, this issue](#)), many people, like Republican strategist Grover Norquist, are predicting that all other issues will be subordinate to the budget debate. It seems unlikely that with this divided Congress and in an election year, there will be much substantive agreement. However, the focus on the budget, which represents the resources necessary to accomplish our national priorities, may present an opportunity for a real debate about federal investments to strengthen our communities, schools, health systems, and education and job training programs. Perhaps. But, we must urge our representatives to understand "fiscal responsibility" much more broadly than the absence of a deficit.

## More Budget Deficit Estimates Released

Though estimates by Democrats and Republicans of the size of the deficits differ, and will continue to grow substantially depending on the amount of additional homeland security and defense spending approved this year, both sides agree that the deficit will likely be at least \$15 billion -- the Democrats are predicting it could be as large as \$70 billion.

[Sunday's New York Times](#) reported that the Democratic staff of the House Budget Committee and the Republican staff of the Senate Budget Committee are both predicting budget deficits for the next few years. Though the size of the deficits differ, and will grow substantially depending on the amount of additional homeland security and defense spending approved this year, both sides agree that the deficit will likely be at least \$15 billion -- the Democrats are predicting it could be as large as \$70 billion. These deficits will continue for the next few years, but there will still be an overall surplus for the 10-year period ending in 2011 -- though the government will have to use some of the Social Security surplus to meet its general needs, instead of to pay down the national debt. The 10-year surplus estimates vary slightly, with the House Democratic staff predicting \$1.79 trillion and Senate Republican staff predicting \$1.86 trillion.

Both predictions are a far cry from the massive surpluses estimated last January, when the [White House Office of Management and Budget \(OMB\)](#) was predicting a 10-year surplus of \$5.6 trillion and a FY 2002 surplus of \$231 billion. A mid-year revised estimate of the 10-year federal budget picture issued by the [Congressional Budget Office \(CBO\)](#) in [August 2001](#) indicated that 2/3 of the then-\$2.2 trillion drop in the 10-year budget surplus was due to the effects of the tax cut signed in June. CBO is expected to release its latest 10-year estimate of the budget in late January, and the President will issue his budget for 2003 on February 4, which will also contain estimates of the budget picture for the next few years.

### FY 2002 Appropriations Update

Congress completed its work on the last 3 FY 2002 appropriations bills (Defense, Foreign Operations, and Labor-HHS-Education) on December 21 and the President is expected to sign all three of them and bring the appropriations season to an official completion. According to [usbudget.com](#), the bills are being readied for the President's signature and he is expected to sign them on January 10, when the Continuing Resolution - passed on December 20 - expires.

## NPTalk: Community Technology Centers Policy Overview

Existing federal programs emphasize collaboration among important community-based and community-focused actors and institutions. Though popular among grant recipients and vital to program beneficiaries, the supporter base has not been effective in sustaining widespread support and visibility on the Hill around broader community technology policy goals and objectives.

Recently-passed FY 2002 appropriations present a mixed picture for federal community technology funding. The Department of Education's [Community Technology Centers \(CTC\) program](#), funded at \$65 million in FY '01, will receive \$32.5 million under the [Labor-HHS-Education appropriations bill](#) passed by Congress in late December and awaiting President Bush's signature. The [Technology Opportunities Program \(TOP\)](#), housed under the Department of Commerce's National Technology Infrastructure Administration, receives \$12.4 million under the [FY 2002 Commerce-Justice-State appropriations](#) signed into law last November, down from \$45 million in FY '01. But the Department of Housing and Urban Development's [Neighborhood Networks program](#), an initiative which has received no funding since its inception in 1995, will receive a total of \$20 million in [VA-HUD spending](#) under the Public Housing Capital Fund and HOPE VI funds to revitalize severely distressed public housing.

The Bush Administration's first budget request emphasized a consolidation, if not elimination, of individual technology access and education technology programs -- especially those thought to be duplicating efforts and perceived as inaccessible to small, local community efforts. The Administration's request, however, called for both higher funding for CTCs, and a shift in program administration to the HUD Neighborhood Networks program, at a funding level of \$80 million. While this would have represented an increase in the amount spent for community technology overall, in keeping with the President's [campaign pledge](#), it also raised concerns among supporters and current recipients of the Education Department grants. Among them were fears that support for existing projects, funded by three-year matching grants, might be at risk, as well as the [America Connects Consortium](#), the only federally-sponsored CTC coordination, improvement, and outreach network.

More fundamental was the worry that community technology would continue to be viewed as a range of disparate, if not competing, interests among schools, libraries, nonprofit organizations, businesses, and other community institutions, contributing to the confusion around what each accomplishes. The Education CTC program provides matching grants to develop access points for computers, information and telecommunications technology in the context of educational services and skills training for those lacking such access at home, work or school. TOP supports public-private-nonprofit efforts to help develop the national advanced telecommunications and information technology infrastructure to help deliver social services -- including education, health, employment, and public safety -- to underserved rural and urban areas across the country. Neighborhood Networks works through private/public partnerships to establish multi-service central points utilizing information technology in areas of low- and moderate-income multi-family housing. In addition, there are technology access and training initiatives administered by a number of other federal agencies, yet with little to no coordination among them.

Last May, Sens. Edward Kennedy (D-MA) and Barbara Mikulski (D-MD) were successful in getting the first-ever authorizing language for the federal CTC program added to the [Senate version](#) of the Elementary and Secondary Education Act (ESEA) bill, which included \$100 million for the creation and expansion of more than 1,000 CTCs. Mikulski, who became chair of the Senate VA-HUD Appropriations subcommittee last spring, however, also pushed for full funding of the President's CTC request under HUD, signaling that support of both programs might be possible. By mid-November, however, the [reauthorized ESEA bill](#) lacked the proposed \$100 million program funding level, elimination of TOP (long threatened throughout most of the year) seemed likely, and funding for community technology centers was in jeopardy -- barring approval of a last-minute Senate request for current level funding of CTCs under the Education Department's Fund for Improving Education, and reduced funding for HUD Neighborhood Networks.

The existing federal programs emphasize collaboration among important community-based and community-focused actors and institutions, as well as innovation, dissemination of promising practices, and evaluation and replication of successful models. Though popular among grant recipients and vital to program beneficiaries, the supporter base has not been effective in sustaining widespread support and visibility on the Hill around broader community technology policy goals and objectives. This has resulted in a shift away from rallying cries attacking the digital divide, and towards the daunting question of "access to what, by whom, towards what end?"

More troubling has been growing criticism from smaller community-based organizations and initiatives that federal funding is difficult to access, administer, or sustain, due to burdensome application and reporting procedures, and competition from groups with more resources, experience, and expertise in garnering support. In response to these concerns, the Education Department posted its [final rules](#) regarding competitive funding on November 30, 2001, allowing the secretary of education latitude in holding separate competitive rounds for, or assigning competitive preference to, novice applicants in discretionary grant programs.

Given the current economic uncertainty around sustainable funding for new and existing programs, there is heightened urgency upon the broader community of technology access interests to articulate their needs for coordinated federal investments to help spur innovative and effective approaches to technology access, knowledge and skills, and utilization for individual and community development and participation in civic, social, and economic life.

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