In This Issue

House Passes Permanent Repeal of the Estate Tax (Again)

The House wanted its vote on Thurs. June 6th on permanent repeal of the estate tax (H.R. 2143) to send a signal to the Senate showing widening support for repeal. The vote did send a signal, though not the one the House had intended.

It was 256 in favor and 171 against. (Click here to view final vote results.) The House vote reveals not more, but less support for permanent repeal from its previous vote to make estate tax repeal permanent in April 2001 (H.R. 8, with 274 in favor and 154 against). Only 41 Democrats voted for repeal this time, as opposed to 58 last year. Moreover, the vote on a Democratic alternative, offered by Rep. Earl Pomeroy (D-ND), lost by the narrow margin of 245-190. The Pomeroy substitute included an immediate exemption of $3 million ($6 million per couple). Currently, $1 million (double for couples) is exempted, rising to $3.5 million (double for couples) in 2009.

The House vote yesterday shows that our efforts are making a difference. Now it's time to call or email your Senators to support fair and reasonable reform of the estate tax and to oppose making repeal of the estate tax permanent -- you can use this link to email your Senators directly.

Please see www.fairestatetax.org for more information.

Estate Tax Briefings

A successful nonprofit briefing on the estate tax was held on June 6. A press briefing to release the results of a nationwide poll by Greenberg Quinlan Rosner Research will be held Wednesday, June 12.

AFET Estate Tax Briefing for Nonprofits

The briefing held by Americans for a Fair Estate Tax (AFET) on June 5, 2002 provided a wealth of information about the value and fairness of the estate tax in the United States and the need to reform—and not repeal—the tax. Over sixty people attended and the event highlighted how the unique resources and energy of the nonprofit community are being mobilized to counterbalance the multi-million dollar campaign pro-repeal advocates are conducting.

Sen. Jon Corzine (D-NJ) and Bob Van Heuvelen, Chief of Staff for Senate Budget Committee Chair Kent Conrad (D-ND), discussed the loss of federal revenue from permanent repeal and the effect on the ability of the country to meet its priorities. Sen. Corzine spoke about repeal of the estate tax as “flying in the face of a meritocracy, a democracy, all the things this nation is about,” including the ideal that every American should have the opportunity to succeed. He noted that some reasonable reform measures might be needed to further protect truly small businesses and family farms, but emphasized that the benefits of permanent repeal would fall overwhelmingly to the very wealthiest few in the country. Sen. Corzine said that repeal would be good neither for the well-being of his own children, nor “for the betterment of the nation.” He concluded his speech with the question, “So, if it’s not fair, and it’s fiscally irresponsible, and doesn’t bring us together [as a nation] – why would we do it?”

Joel Friedman, from the Center on Budget and Policy Priorities examined some of the most egregious misrepresentations of the estate tax propagated by pro-repeal advocates in a recently issued summary. At the top of this list is the idea that

estate tax repeal won't really cost the country very much. A recent Joint Committee on Taxation (JCT) analysis of permanent repeal estimates the cost to be $56 billion in 2012, which skyrockets to nearly $750 billion in the 2nd decade – or just when the Baby Boomers will begin retiring. He further illustrated the importance of estate tax revenue by estimating that over the next 75 years, the revenue lost from estate tax repeal will equal approximately 40% of the projected Social Security shortfall over that period. The Center's full analysis reveals the misleading and inaccurate claims being made by proponents for repeal.

Among the other claims that the NFIB and others have made is that the estate tax destroys numerous small businesses every year. The reality is that since the exemption level is currently at $1 million and rising to $3.5 million, only about 3% of all estates paying an estate tax have a business that constitutes the majority of the estate's assets. So, most of the "family-owned businesses" that will benefit from repeal of the estate tax will be those not-so-small family-owned businesses: for instance, the Mars candy company, Levi-Strauss, and the E & J Gallo Winery, to name a few of the not-so-small businesses that are affected by the estate tax.

The results of another key element of the AFET effort – a national poll conducted in May – will be released on Wednesday, June 12 at a national press briefing. The poll shows strong support for reform of the estate tax over permanent repeal. The poll results will be available on the Americans for a Fair Estate Tax website on Wednesday afternoon.

If you would like to get more involved in the work of Americans for a Fair Estate Tax, email estatetax@ombwatch.org. We urge everyone to learn about this issue, email and call your Senators, and urge others to do so. Repeal of the estate tax will be raised in the Senate sometime this month, so it is important to act now.

Comment Salvos Exchanged in Data Quality War

Extensions granted
In response to the extremely short public comment period most agencies were offering on their draft data quality guidelines, Citizens for Sensible Safeguards, a broad-based coalition of organizations representing health, safety, civil rights, and environmental concerns, sent a letter to Office of Information and Regulatory Affairs (OIRA) Administrator John Graham requesting an extension to the deadline for filing comments on federal agency data quality guidelines. Similar letters were sent to several key agencies requesting that they extend they public comment periods.

After some deliberation OIRA extended the deadline for agencies to submit their final guidelines to OMB for review and approval by 30 days, from July 1, 2002 to August 1, 2002. The Office of Management and Budget (OMB) still intends to hold firm to the October 1, 2002 deadline for agencies to implement the guidelines.

Sen. Joseph Lieberman (D-CT) also wrote OMB regarding an extension on comments. Lieberman also made the point that agencies should have until at least January, if not February, 2003. This is because the statute gives agencies one year after OMB publishes final guidelines to finalize their guideline. The OMB guidelines were published on Sept. 28, 2001, on an "interim final" basis and then significantly revised on January 3, 2002 as final guidelines. That version had errors and corrections that required it to be republished twice, withthe last one on February 22, 2002. OMB has not responded to Lieberman's point.

OMB left extension of public comment period entirely up to the individual agencies, most of which took at least some advantage of the opportunity. Most agencies offered extensions ranging from 2 weeks to the full 30 days

Public comments are filtering into the agencies as many rushed to meet the original deadline. Those agencies, such as the Environmental Protection Agency (EPA), with online dockets of the public comments being submitted offer an interesting insight into the debate that is raging around the issue of data quality guidelines.

Industry Comments
Some of the most extensive sets of comments being submitted to various agencies are, not surprisingly, from the Center for Regulatory Effectiveness. The CRE submitted to all federal agencies a 26 page long set of generic comments covering 16 major points. The full list of major issues the CRE raised in its generic comments are as follows:

- Exemptions from Applicability of the Data Quality Guidelines – requesting that no information or methods of dissemination be exempted from the data quality guidelines
- Retroactive Application of the Data Quality Guidelines – pressing agencies to apply the guidelines to all information disseminated on or after the October 1 implementation deadline regardless of when the information was first disseminated
- Individual Agency Guidelines Must Comply with OMB's Interagency Guidelines: and There Are No Case-By-Case Exemptions From Applicability Of The Guidelines – Demanding that all information be covered and that the guidelines be recognized as legally binding
- Inclusion of Rulemaking Information in the Data Quality Act Petition Process – stating that agencies should not exclude information handled under rulemaking
- Third-Party Submissions of Data to An Agency – asserting that all information submitted to agencies which is made public should be subject to the data quality guidelines
- Definition of "Affected Persons"/Definition of a "Person" – pushing for broad definitions
- Deadline for Deciding a Petition – advocating short restrictive deadlines for agency responses
- Who Decides the Initial Petition? – noting that a specific individual or office should be noted as responsible
- Who Decides Appeals? – urging that appeals be specifically handled independent of the original disseminator
- Must the Agency Correct Information When It Agrees with a Petition? – again pressing that the guidelines be binding and that agencies be required to act
- What is the Standard for Rebutting the Presumption of Objectivity Resulting from Peer Review? – asking agencies to specify requirements in proving that information is not objective
- How is "Influential Information" Defined? – calling on agencies to issue a specific but broad definition
- What is "Objective" and "Unbiased" Information on Risks to Human Health, Safety and the Environment? – urging that agencies also describe how they will ensure that assumptions, inferences and uncertainty factors in risk

assessments meet data quality standards
- Application of the SDWA Health Risk Assessment Standards – requests that SDWA standards be adopted rather than adapted
- Robustness Checks for CBI – requesting that robustness check of Confidential Business Information (CBI) be subject to the guidelines
- Use of Third-Party Proprietary Models – recommending that agencies adopt a prohibition against proprietary third party models

The overarching effect of the CRE comments is clearly to make the data quality guidelines apply to as much as possible and to be as binding as possible. The CRE decried the exemptions of certain types of information and dissemination from the data quality guidelines comments. OMB established numerous exemptions in the guidelines it provided agencies. Several agencies expanded on these exemptions in their draft guidelines. The CRE takes issue with the method that several agencies have proposed to reduce duplicative efforts by excluding information handled under rulemaking processes from consideration under data quality act, since procedures exist within the rulemaking process to handle these issues. The CRE also complains that agencies are indicating that the guidelines are not legally binding.

The CRE rates the agency guidelines as "satisfactory" or "unsatisfactory" on 14 major points. It is interesting, and more than a bit telling, that on 6 of these 14 points no agency has drafted its guidelines in agreement with CRE's point of view. According to the CRE's generic comments, there doesn't seem to be any shortage of "unsatisfactory examples" among the data quality guideline drafts.

Other Comments
Several public interest groups, including NRDC, have submitted comments to several agencies, particularly to EPA. OMB Watch is also drafting both generic comments, which will be submitted on behalf of various public interest groups concerned with data quality guidelines, and specific analysis and comments for selected agencies. It is probably not that surprising that the generic comments, based strongly on the basic sensible principles developed by members of Citizens for Sensible Safeguards, run in almost direct opposition to those submitted by the CRE. The comments support and encourage agency efforts to minimize the coverage of the guidelines and to avoid establishing extensive new procedures that would be burdensome to agencies. In the general comments public interest groups urge agencies to:

- Include statements explaining the agency's commitment to, and the usefulness of, public dissemination of information
- Explain that "data quality" is only one factor to consider (along with budget constraints, importance of information, timeliness of information, etc.) and that it should not supercede the agency's primary mission
- Clearly state that the data quality guidelines are not legally binding on agencies
- Expand and detail the types of information and dissemination exempt
- Develop an administrative mechanism that places the burden of proof on the requestor, accepts only data corrections, and minimizes the undue burden on the agencies by eliminating duplicative requests including those more appropriately handled through other processes such as rulemaking
- Limit reconsideration to showing due diligence in the initial consideration of a request
- Resist efforts to develop too stringent requirements on risk analysis and to only consider adaptation of the Safe Drinking Water Act (SDWA) principles
- Limit the requirement for peer review and when used strive for balanced panels free of conflicts of interest and require reporting of those conflicts that are unavoidable
- Define "influential" information narrowly, employing a high threshold for coverage
- Establish a running public docket of requests and changes
- Clearly state that the data quality guidelines do not apply to third party information.

Survey Conducted on Streamlining Government Grants

Last month, as part of the Streamlining Nonprofit Grants Management Project, OMB Watch conducted an online survey of nonprofits that receive government grants to determine priorities in the implementation of the Federal Financial Assistance Management Improvement Act of 1999. 365 groups responded, representing national, state and local groups and faith and community based organizations.

Those who took the survey listed finding grant opportunities and applying for grants as very high priorities for simplification. Coordinating grants between government agencies is also a high priority, as 48% of respondents receive funding from 4 or more agencies. The survey also suggests that coordinating grants streamlining across all levels of government is important as 58% of those responding get multiple grants from different levels of government for the same program.

For the full results click here.

Charitable Choice Advocates Continue Regulatory, Legislative Efforts

While the CARE Act has hit a snag in the Senate over the costs of tax cuts for charitable giving, non-tax portions of the bill dealing with federal grant rules for faith-based organizations could become even more controversial if the bill passes the Senate and goes to conference with the House.

There have been private assurances that the Senate CARE Act, if it passes, would bypass a House-Senate conference. But advocates opposing the faith-based provisions in the House bill are very nervous that the House – as well as federal agencies -- will try to impose the "charitable choice" approach in HR 7, which passed the House last summer, to allow religious activity to be interwoven with government programs and relax grant rules and regulations for faith-based groups. For example:

National Service Reauthorization: The National and Community Service Act of 1990 expressly prohibits discrimination based on religion by grantees in providing benefits and hiring of staff for federally funded positions. In late May Rep. Peter Hoekstra (R-MI), chair of the House Education and Workforce Committee's Subcommittee on Education, unsuccessfully sought repeal of this language in the Citizens Service Act Act (HR 4854), the recently approved reauthorization of the program. Rep. Hoekstra's proposal would have eliminated requirements that grant applicants file statements certifying that program funds would not be used to provide a direct benefit to "instruction as part of a program that includes religious worship" or to "construct or operate facilities devoted to religious worship and to maintain facilities primarily or inherently devoted to religious instruction or worship." (Title 42 Chapter 129 Section 12584). He did not propose elimination of the ban on using federal funds for direct religious instruction or proselytization. The proposal was withdrawn in the face of a major public fight and opposition from Ranking Member George Miller (D-CA) and Rep. Bobby Scott (D-VA). The conservative Family Research Council furiously responded, claiming the "AmeriCorpse" bill "should not become the standard for the President's faith-based efforts."

Department of Labor Grants: On April 17 Dept. of Labor Secretary Elaine Chao announced "the first new grant program in the entire federal government targeted specifically at the faith-based and community groups." A total of $15.5 million for programs under the Workforce Investment Act of 1998 will have three components: $10 million to states and $5 million for regional intermediaries to link and develop networks of faith-based and community organizations with the One-Stop Career System, and $500,000 for 25 grants of $20,000-25,000 for faith and community based groups for employment training and other services.

Like the National and Community Service Act, Workforce Investment Act the Workforce Investment Act expressly prohibits discrimination based on religion by grantees in providing benefits and hiring of staff for federally funded positions. The April 17 grant announcements for state and intermediaries included requirements for compliance with this non-discrimination language, but the announcement for the small faith based and grassroots organizations failed to include it. On May 1 Americans United for Separation of Church and State sent DOL a letter objecting to the omission and requesting an amended grant announcement. The amended announcement was published in the Federal Register on May 13, stating that grant funds cannot be used for "instruction in religion or sacred literature, worship, prayer, proselytizing or other inherently religious practices", and that grant recipients "may not and will not be defined by reference to religion." In addition, the amended announcement makes it clear that religion may not be a requirement for receiving benefits or consideration for employment in the program.

The announcement defines grassroots and small faith-based organizations as groups that have their headquarters in the community where they provide services, a social service budget of $300,000 or less and no more than six full time equivalent employees.

Department of Education: Early this year the Dept. of Education also omitted civil rights protection requirements in its grant announcement for the 21st Century After School Program, created by the "Leave No Child Behind Act of 2001". A coalition of civil rights, education and other organizations wrote to Education Secretary Roderick Paige in March, stating that the guidance must be amended to include the civil rights standards in the law. However, a new draft issued on May 13 only prohibits discrimination against beneficiaries, and contains confusing references to employment discrimination exemptions for religious organizations that only apply to non-federal funds. Another letter has been sent objecting that the new guidance does not mention the prohibition on religious discrimination against program staff that is part of the law.

The Department of Health and Human Services issued a grant announcement for the Compassion Capital Fund on June 5. $25 million of the $30 million in the program will go to intermediary organizations that provide technical assistance to faith and community based groups. A 50% match will be required. Intermediaries will be able to make sub-grants for start up costs, operation or expansion of social service programs. The remaining $2 million will be used to create a National Resource Center to coordinate the intermediary grantees and "work directly" with then "to ensure that faith- and community based organizations receive effective and appropriate assistance". It will also develop tools for general use by small organizations, including a web site. Another $1.6 million is set aside for research on model programs and best practices of grantees, and $1 million will be used for short-term research on "roles and promising approaches by diverse types of faith- and community-based organizations that focus on homelessness, hunger, at-risk children, the transition from welfare to work, and intensive services for those most in need such as addicts and prisoners." The announcement states that funds cannot be used for worship, prayer or religious instruction. During Senate consideration of funding for the program last November a colloquy between Senators Jack Reed (D-RI), Tom Harkin (D-IA) and Arlen Specter (R-PA) stated "It is important to note that this appropriations bill is not changing any of the rules or standards for government funding of religious organizations…"

Is the FBI Watching You?

The Department of Justice announced new guidelines for the Federal Bureau of Investigation (FBI) that dramatically expand their authority to conduct investigations that are not related to criminal activity and engage in surveillance of religious, political and advocacy organizations.

A broad coalition of national organizations lead by the Electronic Privacy Information Center sent a letter to the Senate Judiciary Committee and the House Committee on Judiciary asking for oversight hearings on the new guidelines. The letter cites concerns about the "FBI's authority to search through electronic databases without satisfying any legal standards" and "unchecked surveillance of lawful religious and political activity". The coalition asked that the hearings address the Attorney General's legal authority to make the changes, the impact on constitutionally protected activity, and how Congress will oversee implementation of the new guidelines and report to the public.

For a detailed analysis of the new guidelines see the Center for Democracy and Technology's summary.

EPA Announces New Online Rulemaking System

The Environmental Protection Agency (EPA) recently announced the launching of a new web service, called EPA Dockets, to allow the public to search regulatory documents and submit comments on rulemakings electronically.

EPA's previous online rulemaking system, the Regulatory Public Access System (RPAS), which served as a pilot for the new system, similarly allowed users to submit comments electronically, but did not provide complete access to rulemaking dockets, including public comments, which could only be viewed in paper format at various EPA docket libraries in Washington, D.C. Unlike other agencies, EPA will also accept comments on an anonymous basis through its new web site, though it encourages users to identify themselves to ensure consideration.

EPA will use a phased-in approach to bring all of its dockets into the new system -- which began on May 31 with the Office of Solid Waste and Emergency Response, the Office of Air and Radiation, the Office of Water, and the Office of Prevention, Pesticides, and Toxic Substances. However, at the moment, not all rulemaking materials from these offices are available through the new site; some public comments are only indexed -- and still available only through paper copy -- and the site only provides docket information for rulemakings in which the comment period is still open, not old rulemakings.

Dockets from other offices, including the Office of Environmental Information and the Office of Enforcement and Compliance Assurance, are to be added to the system in the fall of 2002. Look for an upcoming article comparing various agency online rulemaking systems in the next issue of OMB Watch's Executive Report.

NHTSA Issues Weakened Tire Pressure Monitoring Rule

On June 5, the National Highway Traffic Safety Administration (NHTSA) issued a watered down standard to guard against under-inflated tires -- which are linked to numerous deaths each year -- after its first attempt was rejected by OMB's Office of Information and Regulatory Affairs (OIRA), which must approve all major regulatory actions.

The new final rule will allow manufacturers to choose between installing a "direct" system, which relies on a pressure sensor in each tire that could alert the driver of an under-inflated tire through a dashboard monitor, and a less reliable, yet cheaper, "indirect" system, which works with anti-lock brakes to measure the rotational difference between the tires, determining whether the speed is slower for one tire compared to the others.

Over the next three years, NHTSA will continue to study and accept input on whether to require direct systems, as it originally proposed to do, with a final verdict to be announced by November 2006. Such a delay pushes back the date of full implementation should NHTSA ultimately decide in favor of direct systems, as there would undoubtedly be a phase-in period of at least several years -- potentially costing lives in the meantime.

NHTSA's original standard, rejected by OIRA, required direct tire pressure monitoring systems to be installed in all vehicles by 2007, which NHTSA estimated would avert 10,271 injuries and 141 fatalities a year. According to OIRA's estimates, indirect systems would avert 5,000 injuries and 70 fatalities.

Yet incredibly, OIRA Administrator John Graham argued in his return letter that a standard allowing indirect systems would actually produce greater safety benefits overall because it would serve as an incentive for manufacturers to install anti-lock brakes, which are necessary for an indirect system to work.

Pointing to a recent study by Charles Farmer of the Insurance Institute for Highway Safety, Graham concluded that the resulting increase in anti-lock brakes would save 118 to 266 lives a year, on top of the 70 fatalities averted from indirect systems. According to Graham, this "yields a total of 188 - 336 fatalities averted or between 47 and 195 more than with direct systems."

Yet Graham appears to be overly enthusiastic in his appraisal of anti-lock brakes based on the available evidence, as discussed in detail here. After Graham's return letter, Farmer met with NHTSA on March 23 to discuss his study -- which Graham calls the "best estimate" available -- and according to the meeting log filed by NHTSA, "Mr. Farmer thought that Dr. Graham of OMB was being optimistic in assuming that antilock brakes would produce fatality benefits." *That's any fatality benefits at all!*

In other words, the author of the study that formed the foundation of OIRA's return letter explicitly rejected Graham's

conclusions, yet Graham chose to ignore this, insisting that NHTSA allow indirect systems anyway. This willful misinterpretation of the evidence seems to indicate that the concern over anti-lock brakes was really just a diversion tactic, meant to distract from the bottom-line action: Graham has rejected the safest possible standard as a result of cost objections from the auto industry, which incidentally has contributed generously over the years to the Harvard Center for Risk Analysis, where Graham served as director prior to his confirmation as OIRA administrator.

EPA Likely to Require "Terror Checks" at Chemical Plants

According to Associated Press reports last week, the Environmental Protection Agency (EPA) may finally begin to require chemical plants to assess their vulnerabilities to a terrorist attack, and then take measures to reduce those risks.

While chemical plants have always posed significant risks to communities from “routine” accidents, the terrorist attacks of Sept. 11 prompted a reassessment of these threats and greater sense of urgency in addressing these risks, and as OMB Watch previously reported here, chemical plants have failed to effectively address the threats on their own.

A senior EPA official reported that EPA wants to require plants to conduct mandatory vulnerability assessments, which would be similar to the Risk Management Plans that facilities are required to submit under the Clean Air Act that document what might happen in the case of an accidental release of chemicals from the plant. Chemical facilities would be required to assess how they might be vulnerable to an attack, and take measures to minimize the harmful effects of a potential attack.

EPA is reportedly unsure whether or not a law is needed in order to enforce the new "principles" for chemical plants, which are due to be released by EPA Administrator Whitman any day now. However, a law such as Sen. Jon Corzine's (D – NJ) Chemical Security Act (S. 1602), would go a long way in giving EPA the enforcement authority to protect communities from the great risk of accidents or terrorist attacks at a chemical plant. S. 1602 directs the EPA and Department of Justice (DOJ) to work with state and local agencies to inventory hazardous chemical sources and determine which are a high-priority risk. EPA and DOJ would then work to reduce those risks by requiring the companies that manufacture, use, or store hazardous chemicals to make processes inherently safer by reducing chemical quantities, switching to safer chemicals, or storing chemicals under safer conditions, starting with the facilities that pose the greatest risk.

Though S. 1602 has been sitting in the Senate since it was introduced in October 2001, it will reportedly be marked up in the next couple of months.

1742 Connecticut Avenue, N.W., Washington, D.C. 20009
202-234-8494 (phone)
202-234-8584 (fax)
ombwatch@ombwatch.org