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Appropriations Update

While timeliness has not been a hallmark of appropriations bills in recent years, this year is proving exceptionally slow. According to budget procedures, appropriations bills are supposed to be finished by June 30 to leave plenty of time to reconcile differences between the House and Senate before the new fiscal year, which starts October 1. But this year, not a single appropriations bill has been sent to the president, and neither house has completed action on all 13 appropriations bills.

To continue to fund government operations, either appropriations or a Continuing Resolution (CR) to fund government must be passed. Otherwise, there is no funding for government, resulting in a government shutdown, a scenario that no one wants since either side could be blamed. What seems to be causing the delay?

- It's an election year. Given budget deficits (\$145 billion in 2003, if tax and spending policies remain unchanged) and the overall congressional disposition for "fiscal responsibility," there is less money for so-called "pork" projects that many legislators want to see enacted in their home states for reelection campaigning purposes. While these projects constitute a very small amount of the overall spending, they often bring important state benefits, besides being good public relations. Also, because it is an election year and appearances are important, there is more pressure to balance the contradictory positions of being "fiscally responsible" while still funding national priorities like education that are supported by the president. A Democratic [analysis](#) shows how much funding for the president's education initiative would be lacking under the budget resolution cap, including state-by-state figures.
- The House, which has a budget resolution setting an overall discretionary budget cap of \$759 billion, is a House divided, with the more fiscally conservative members resisting any efforts to exceed that level, and others recognizing that it is necessary to exceed the cap to fund the president's education initiative and other priorities, including the always-troublesome Health and Human Services appropriations bill. Still others are concerned that social spending, especially for low-income and working poor families, will be the target of spending cuts that will be required if the House keeps to its budget resolution limit.
- The Senate does not have a budget resolution, and is working with a higher spending limit (\$768 billion) from the previous year's resolution. But since there is a Constitutional requirement that spending bills be initiated in the House, the Senate is not considering any bills but those passed by the House (and then each bill must go to joint House/Senate conference to iron out the differences). The Senate is frequently in a holding pattern waiting for House-passed appropriations bills to come its way.

So, given the slow pace of appropriations, the first [Continuing Resolution](#) (CR) funding the government at current levels through Friday, October 4, 2002, was passed on September 26 by House vote (370-1) with the Senate assenting by voice vote. It is anticipated that a second resolution will be passed after that extending funding through October 11, which is when Congress is expected to recess for elections. After that, the decision has to be made whether it is possible to pass the 13 appropriations bills or whether a long-term continuing resolution that will fund government through the election,

and result in a post-election lame duck session of Congress, is a viable alternative. Continuing Resolutions, by the way, are jointly passed by the House and the Senate, signed by the President, and thus become law.

There are some compelling reasons to avoid a long-term CR, since it would require agencies to operate for FY 2003 under their 2002 "current" or "base" rate, without counting one-time only expenses like aid to New York City and the Pentagon (with other one-time only expenses, this comes to a total of \$16 billion) or new activities or programs that were planned but for which funding has not yet been appropriated. For obvious reasons, it is likely that the defense and military construction appropriations would be enacted before a long-term CR would be considered.

So what's the solution? The predicted budget deficits are not huge -- particularly as a percentage of the GDP -- and they should not be used as the reason to cut government spending. We are more concerned about the social deficits that result from continual spending cuts -- we cannot keep on making cuts in domestic programs and services and expect a strong, vital, well-educated and trained, and economically productive nation in the future. It all depends on good education, maintenance of infrastructure, job training, health care, provisions for unemployment, daycare, enough federal and state funding to ensure safe and livable communities -- the list could go on and on.

To keep the budget deficits from being an obstacle to adequately funding government, we think that postponing the Bush tax cuts should be put on the table, and we strongly oppose the continuing efforts to make the tax cuts, which will expire after 2010, permanent. However, legislators need public support to fight for increased spending in these miserly times, so calls and emails from voters that support making domestic priorities the priority are well worth the effort. A new [poll](#) done by Greenberg Quinlan Rosner Research and Public Opinion Strategies for National Public Radio shows that an increasing number of Americans will be basing their election decisions on attention to domestic issues.

Budget Process Rules the Senate

As noted on these pages many times over the last few months, the Senate is unique in its traditions and rules. One feature that helped earn the Senate the title of the "world's greatest deliberative body" is its rules that allow for, and even necessitate, policy debates, which are a vital part of the legislative process. These rules push the Senate to work out differences between conflicting legislative proposals and help ensure that the voice of the minority is protected. To extend this principle to tax and spending issues, the Senate has special rules.

One of these budget process rules requires the approval of a "super-majority," or 60 members, to pass legislation authorizing any new expenditures, whether caused by cutting taxes or adding new mandatory spending legislation not provided for in the previous budget resolution. Another budget enforcement rule is the Senate's "pay-as-you-go" (or "pay-go") rule that requires 60 votes to pass tax cuts or mandatory spending legislation that would require use of the "off-budget" Social Security surplus. These rules, along with those requiring adherence to pre-set budget caps on discretionary spending, will expire tomorrow, October 1, 2002, unless they are renewed before then.

There is currently an effort in the Senate to extend the super-majority and pay-go rules for one additional year. Previous attempts this year to renew the budget enforcement rules would have made them effective for five years, and included budget caps. However, because of the inability to agree on the amount of budget caps, the provision was scaled down. This effort to renew the super-majority and pay-go rules is being spearheaded by Sens. Kent Conrad (D-ND), Pete Domenici (R-NM), and Russell Feingold (D-WI), and has the support of Senate Minority Leader Trent Lott (R-MS).

Though the measure appears to have broad support in the Senate (60 votes are also needed for it to pass), there are rumors that some senators will work to block it, with the hope that, without the required "super-majority" in the way, they will be able to push through efforts to make permanent costly tax cuts, such as the estate tax ([see related article](#)). As you might recall, the June Gramm-Kyl proposal to make the estate tax permanent did not succeed because the 60-vote supermajority rule was in effect.

This issue is expected to come up within the next day or two. You can contact your Senators to support extension of the super-majority rule by [clicking here](#) and entering your zip code in the "Federal Officials" box.

For more on these rules and what their expiration could mean for upcoming issues as diverse as estate tax repeal, Social Security and future appropriations, [see this OMB Watch analysis](#).

Increasing Poverty And More Uninsured In The US

The new U.S. Census Bureau publication "[Poverty in the United States: 2001](#)" shows an increase in poverty and a tie for the highest level of income inequality ever (if not a new record high, depending on the measures used). This should not be a surprise given the policies of the administration and the recent economic downturn.

The effects of this downturn have hurt even middle-income families -- with a decline, for the first time in ten years, of 2.2 percent in median household income across the country. Low-income and poor families have been especially devastated, with Congress and the president doing little to address problems of rising unemployment, Medicaid shortfalls due to state fiscal crises, and increases in the numbers without health insurance. (A US Census [report](#) released today shows an increase of Americans without health insurance from 14.2 percent in 2002 to 14.6 percent last year. An [analysis](#) by the Center on Budget and Policy priorities notes that without the State Children's Health Insurance Program and Medicaid, the number of uninsured would be much higher.)

Instead, passage of the Bush tax cuts that largely go to wealthier Americans, including the repeal of the estate tax that affects less than 2 percent of the very wealthiest, only worsen the situation, and more tax cuts are being proposed. For more information about the Census data, see the Center on Budget and Policy Priorities [analysis](#).

Estate Tax Update

Efforts to make the estate tax permanent continue in Congress. In the midst of all of the other issues facing the nation and the crowded congressional schedule, this shows how much importance conservatives attach to relieving the very wealthiest of Americans from paying taxes when they transfer their wealth.

On September 19, the House passed a non-binding "Sense of the House Resolution" ([House Resolution 524](#)) that Congress should complete action to permanently repeal the estate tax. Americans for a Fair Estate Tax, the nonprofit coalition headed by OMB Watch, sent a [letter](#) to the House opposing this resolution. On the same day, Sens. Jon Kyl (R-AZ) and Phil Gramm (R-TX) were at it again in the Senate, proposing to attach various versions of permanent repeal of the estate tax to the "Small Business and Farm Economic Recovery Act of 2002" bill, which was scheduled to be marked up in the Finance Committee but suddenly postponed. It was not clear how permanent repeal of the estate tax, at a cost of \$100 billion over ten years, could be "attached" to the Small Business bill that costs about \$15 billion over ten years, or where the offsets would come from. It is now unknown when or how permanent repeal of the estate tax will show up again, only that it probably will. We'll keep you posted.

Data Quality Arrives

Tomorrow, October 1, is the deadline set by [the Office of Management and Budget \(OMB\)](#) for agencies to finalize and begin to implement data quality guidelines, which seek to establish criteria for information disseminated by government agencies. Concerns have been raised that these guidelines may be misused by the regulated community to slow down the regulatory process, de-publish information critical of industry and its impacts, and possibly overturn long established regulations.

Since May, when most agencies drafted their guidelines, there has been little indication of what the final guidelines will contain. Each agency had a public comment period during which interested parties provided feedback to the agencies on their draft guidelines. After the agencies considered the comments and incorporated changes they deemed necessary, the guidelines were submitted to OMB for review and approval. These submissions to OMB are not available to the public.

OMB has only publicly released two memos regarding its review of the draft guidelines, raising only relatively minor issues. Specifically, OMB asked agencies to incorporate the following principles into their final guidelines:

- Agency web sites should keep the public informed about data quality;
- A separate data quality process is unnecessary and duplicative during rulemakings and other procedures that allow for complaints; and
- Agencies should commit to provide a written response within 60 calendar days of receiving a data quality request.

FEC Exempts Unpaid Broadcasts, Charities from New Rules

The Federal Election Commission (FEC) approved final regulations on September 26 implementing a ban on broadcasts by corporations (including nonprofits) and labor unions that refer to federal candidates within 60 days of an election or 30 days of a primary. The FEC used its authority under the Bipartisan Campaign Reform Act of 2002 (BCRA), which directed the ban, to carve out two important exceptions: free air time and broadcasts by charitable, educational and religious groups that are exempt under Section 501(c)(3) of the tax code.

The final rule has not been published. FEC's [draft rule](#) contained no exemptions, arguing that any reference to a federal candidate broadcast during an election cycle is likely to have some impact on the election. However, when the FEC commissioners met to discuss and vote on the draft, several amendments were proposed.

[Commissioner Scott Thomas](#), a Democrat, proposed an exception for broadcasts of grassroots lobbying that would permit mention of the candidate's name when urging him or her to take a position on pending executive or legislative matters, but would not permit mention of the candidate's position on the issue, party affiliation, or fitness for office or the election. This exemption would have applied to any nonprofit, corporation or labor union. It was defeated on a party line vote; by law, three of the commissioners are Democrats and three are Republicans.

Republican [Commissioner Bradley Smith](#) proposed several amendments, including one exempting 501(c)(3) organizations from the ban, as did Democratic [Commissioner Karl Sandstrom](#). By the end of the day the Commission voted 4-2 to exempt 501(c)(3) organizations from the rules. There are no lobbying or similar exemptions for other types of nonprofits.

At the [public hearing](#) many groups urged the Commission to create exemptions that would protect nonpartisan speech. [OMB Watch](#) and the [Alliance for Justice](#) argued for the exemption for 501(c)(3) organizations, noting that the tax code prohibits these groups from supporting or opposing candidates.

The new rules will become part of the record considered by the Supreme Court in a lawsuit challenging BCRA's constitutionality. The FEC action will weaken arguments that the law infringes on free speech rights, since the broadcast ban is now clearly targeted at the kind of soft-money-funded attack ads that flooded the airwaves during the 2000 election.

The next phase of rulemaking under BCRA involves the definition of prohibited coordination between candidates, campaigns and parties and outside entities, such as advocacy groups and labor unions. Coordinated expenditures can be considered illegal campaign contributions. For more information on the proposed coordination rule see the [September 16 issue](#) of the Watcher.

Coalition Opposes Church Electioneering Bill

Religious leaders from the Baptist Joint Committee on Public Affairs and the National Council of Churches, as well as OMB Watch and the Campaign and Media Legal Center, denounced pending legislation during a September 27 briefing for House members and staff that would allow faith-based organizations to endorse candidates and use a congregation's funds and facilities for partisan campaign activities.

On Tuesday, October 1, House leaders intend to bring [H.R. 2357](#), the Houses of Worship Political Speech Protection Act, up for a floor vote. The sponsors falsely claim that current law prevents religious leaders from commenting on public issues, and that this bill will not result in church funds being spent on campaign activities. Under current law, religious leaders can comment on issues, but they cannot endorse or oppose candidates. This bill would make it possible for religious organizations to spend tax-deductible funds and use their facilities for partisan electioneering. For details see our [Fact Sheet](#) and [Alert](#).

Commerce Department Extends and Amends ICANN MOU

On September 20, the Commerce Department announced its intention to extend its memorandum of understanding (MOU) with the nonprofit Internet Corporation for Assigned Names and Numbers (ICANN), which is charged with management of the Internet domain system, for another year until September 2003. ICANN's arrangement with the Commerce Department dates back to November 1998, but has long been fraught with dissatisfaction and contention around issues of accountability, scope of governance, and representation of public and public interest perspectives within ICANN. Read more about the amended MOU on [OMB Watch's Internet Governance](#) section.

Administration Mixes Politics with Science

The Bush administration is overhauling scientific advisory committees that were reaching conclusions contrary to its political objectives, according to [a recent article in the Washington Post](#). Findings by these committees, which are made up by private experts and are found at virtually every agency, frequently form the foundation for regulatory action, which the administration seems determined to avoid at all costs. Not surprisingly, the administration is moving to stack the deck in favor of its predetermined views.

Specifically:

- The Food and Drug Administration (FDA) recently disbanded a committee that had recommended regulation of genetic testing, which reads DNA to suggest a person's chances of getting a disease. Currently, companies are marketing tests for genes, frequently through the Internet, even where there is no established link to disease, needlessly worrying consumers and conning them out of their money. As a result of the committee's recommendations, FDA initiated a rulemaking during the Clinton administration to oversee the marketing of such testing. However, this rulemaking has now been abandoned, according to the Post, along with the committee.
- The Department of Health and Human Services (HHS) recently scrapped a committee that had recommended new protections for human research subjects, tightening up conflict-of-interest rules and putting in place new restrictions on research involving the mentally ill -- recommendations that drew scorn from the pharmaceutical industry. Perhaps the death knell came when the committee failed to support the administration's effort to include fetuses under a regulation involving research on newborns, angering religious conservatives. According to the Post, HHS officials plan to name Mildred Jefferson, a founder and former president of the National Right to Life Committee, as head of a reincarnated version of the committee.
- The administration put 15 new members on an 18-person panel advising the Center for Disease Control's National Center for Environmental Health -- a move environmental health advocates charge stacks the deck in industry's favor. In particular, the new committee includes Dennis Paustenbach, who conducts paid risk assessment for industry and testified on behalf of Pacific Gas & Electric, which was ultimately found guilty of poisoning drinking water, in the trial that made Erin Brockovich famous; Roger McClellan, the former director of the Chemical Industry Institute of Toxicology; and Becky Norton Dunlop, a vice president at the Heritage Foundation and former head of Virginia's natural resources department, where she aggressively fought against environmental protection.

Bush Directs Expedited Environmental Reviews for Transportation Projects

President Bush issued [an executive order](#) on September 18 that directs federal agencies to speed environmental reviews for major transportation projects.

As part of this effort, the Department of Transportation is to designate "high priority" projects "that should receive expedited agency reviews," and an interagency task force is to, among other things, "identify and promote policies that can effectively streamline the process required to provide approvals for transportation infrastructure projects, in compliance with applicable law, while maintaining safety, public health, and environmental protection." There remains concern, however, that environmental considerations will be given short shrift in the interest of new roads. How is full consideration possible in the context of an "expedited review?"

In other news, at [a hearing before a House subcommittee](#), the administration announced its intent to open a new rulemaking to reconsider protections for hundreds of thousands of miles of streams, tributaries and wetlands. The decision

comes in response to a controversial 5-4 ruling by the Supreme Court last year, which struck down protections for non-navigable ponds and wetlands that do not cross state lines. Given the administration's track record, environmentalists worry the new rulemaking will be used to gut protections generally, as urged by home builders and developers, which have contributed generously to the president.

Report Links Environmental Rollbacks to Industry Contributions

Earthjustice and Public Campaign recently released [a joint report](#) that links recent Bush rollbacks of environmental protections to industry campaign contributions.

Specifically:

- The administration [revoked protections against hard rock mining](#) -- allowing increased dumping in streams, rivers and wetlands -- as mining interests forked over a total of \$3.1 million to the Bush-Cheney campaign and the Republican National Committee during the 2000-2002 election cycles;
- The administration moved to allow [increased logging in national forests](#) after the timber industry made \$3.4 million in donations;
- The chemical industry and other manufacturers contributed \$18.6 million as the administration asked taxpayers, not polluting industry, to pick up the burden for the cleanup of hazardous waste;
- The oil and gas industry contributed \$17 million as the administration proposed to open sensitive areas in and near national monuments and parks to increased drilling; and
- Coal burning utilities donated \$2 million as the administration moved to [relax standards and enforcement efforts to clean up aging coal-fired power plants](#).

For more information on environmental rollbacks by the Bush administration, see the Natural Resources Defense Council's report, "[Rewriting the Rules: The Bush Administration's Assault on the Environment](#)."

Correction and New Information on EPA's Children's Health Report

In the September 3, 2002, issue of the Watcher, [we reported](#) that OMB's Office of Information and Regulatory Affairs (OIRA) requested to review an EPA report on children's health prior to publication. Further conversation with EPA staff clarified that although OIRA participated in the review, it was OMB budget staff that made the request. We have revised our original article to reflect this new understanding.

As part of this review, EPA received feedback on its draft report during an interagency meeting on August 28 attended by staff from the White House, OMB, OIRA, and other agencies. The names of participants and the content of the discussion are not publicly available because the review falls outside of an official rulemaking, which has formal transparency requirements.

Such a review by OMB of a purely technical document, which contains no policy or regulatory action, is to our knowledge unprecedented, and raises questions about potential political motives. OMB, after all, has no scientific expertise on the environmental factors affecting children's health.

FOIA Constancy in Senate Homeland Security

The latest homeland security bill in the Senate, sponsored by Sens. Phil Gramm (R-TX) and Zell Miller (D-GA), contains information provisions that would exempt documents voluntarily provided to the new Department of Homeland Security from disclosure under the Freedom of Information Act. The language is exactly the same as the Leahy-Bennett-Levin amendment that resolved this issue in Sen. Joseph Lieberman's (D-CT) bill on homeland security. Lieberman's bill failed to pass a cloture vote after Sen. Robert Byrd (D-WV) filibustered the bill.

There is no certainty that the Gramm-Miller bill will be the basis for Senate action on establishing a new Department of Homeland Security or that there will be any action at all this session. However, the continued use of the bipartisan compromise FOIA language is encouraging, especially since the Homeland Security bill that passed out of the House ([H.R. 5005](#)) contained much more restrictive information provisions. Along with a broader FOIA exemption, the House bill precluded civil action based on information that is voluntarily disclosed, pre-empted state disclosure laws, and criminalized the releasing of critical infrastructure information. Even if the narrower FOIA exemption crafted by Sens. Patrick Leahy (D-VT), Robert Bennett (R-UT) and Carl Levin (D-MI) remains in whatever homeland security bill the Senate chooses to pass, it will require continued bipartisan support as it is conferenced with the more restrictive House provisions.

Compromise on Chemical Security

There have been plans to offer Sen. Jon Corzine's (D-NJ) Chemical Security Act as an amendment to the Senate's bill to establish a new department of Homeland Security. However, since the homeland bill has been taking so long in the Senate there is a strong probability that no controversial amendments are going to be allowed. Facing such a situation, there is tremendous pressure to water down Sen. Corzine's bill to make it palatable for everyone. Sen. James Inhofe (R- OK) appears to be the lead for negotiating a compromise with Corzine. Unfortunately, the compromises being discussed go so far that they may make the bill essentially useless.

The most significant changes being considered are:

- 1) Within the vulnerability assessments required by the bill, inherently safer technologies may be demoted from a required consideration to one item on a list of things facilities may examine.
- 2) The entire responsibility for the program may be placed within the new department of Homeland Security rather than within the [Environmental Protection Agency](#) (EPA). Although EPA has the most experience with chemicals plants, it may be relegated to a consulting role on the program with no responsibility in certification or approval of the assessments.
- 3) New provisions may be added that would allow prior standards, such as industry programs or protocols, to be deemed sufficient to fulfill the bill's assessment requirements. This may allow facilities to avoid doing the government assessment by getting approval for less strict industry association efforts.

While the three proposed changes listed above seem to be the most troublesome, there are additional possible changes that also raise concerns. One alteration might exempt water treatment facilities that conduct bio-terrorism assessments from these chemical security assessments. Another new provision may allow for de-listing of toxic chemicals from the assessment.

Neither the compromise nor any of the provisions are finalized; however, as the end of this congressional session approaches, negotiations are moving fast and furious.

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