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Federal Budget

Program Assessment And Budget Cuts Ahead

This Administration has not made reducing the size and effectiveness of government a stated goal; however, the strides that are being made to **devolve** responsibilities to the states and to privatize government functions, **deregulate** and limit government oversight, and **defund** government by reducing federal (and often state) revenue through huge tax cuts, make the words unnecessary. One new and potentially effective tool in this effort to delimit the role of the federal government is the "Program Assessment Rating Tool," or "PART."

Finding that the [Government Performance and Results Act \(GPRA\)](#) has fallen short of its goals, however well-intentioned -- most specifically in failing to link performance data and budget decisions -- President Bush has rapidly moved forward with his own performance budgeting effort. Since GPRA was signed into law in 1993, and thus cannot just be scuttled, an evaluation questionnaire called the Performance Assessment Rating Tool (PART), is being used by the Administration to "implement the objectives of GPRA." Already 20% of all federally funded programs, a total of 234 programs, were reviewed during preparation of the FY 2004 budget using the PART. The plan is to evaluate an additional 20% of programs each year, until the PART becomes government-wide. The President included an entirely new volume to the FY 2004 Budget containing the performance and management assessments that have already been accomplished. In addition, two chapters in the main Budget volume, "Governing with Accountability" and "Rating the Performance of Federal Programs" discuss the overall President's Management Agenda.

Despite all the hype, the PART cannot be characterized as a refined or sophisticated effort to gauge government performance. Rather, it gives the impression of the grade-school sticker method used to reward good work or punish bad work. Its very simplicity, however, makes it a potentially powerful method to justify budget cuts or increases. In spite of vocal protests that the President's agenda is not to downsize government or reduce its role, there are clear indications to the contrary. Huge tax expenditures that reduce government revenue are one such indication. Another is the current effort to devise a simple way to link the "performance" of government programs and services to the budgeting process.

While no one can argue that every government program is useful and operating at peak effectiveness, determining performance is a difficult process fraught with ambiguity. Linking performance evaluations with budget decisions brings into play underlying ideological positions about the role of government and the role of various programs according to which side of the aisle you sit.

What is the President's Management Initiative?

The President's Management Initiative consists of five initiatives:

- Strategic Management of Human Capital (making sure that the federal workforce has the right people with the right skills to do their work).
- Competitive Sourcing (opening up a 'sufficient' number of commercial activities to competition). An example of how "competition saves the taxpayer money" is cited. OMB requested bids on the printing of the FY 2004 budget. The result? The Government Printing Office did the printing at a 23% less cost than the year before.
- Improved Financial Performance (enhancing the quality and timeliness of financial information and preventing waste, fraud and abuse). The largest abusers cited are all programs for low-income people: Medicare, the EITC, Housing Subsidy Programs, and Supplemental Security Income.
- Expanded Electronic Government.
- Budget and Performance Integration (to "build a results-oriented government that funds what works and reforms or ends failing federal programs, redirecting or recapturing their funding.") This linkage of program performance and budget decisions is being accomplished by the PART.

A scorecard with "status" scores of green (agency meets all the standards for success), yellow (agency achieves some, but not all, of the criteria, and red (has any number of serious flaws) and "progress" scores of green (implementation is proceeding according to plans), yellow (slippage in implementation schedule), and red (initiative in serious jeopardy) is issued each quarter and ratings posted on the [Results.gov website](#). The FY 2004 Budget also has a scorecard.

Generally, the field of performance evaluation is based on judging not the **output**, the actual work done, but the **outcome**, i.e., the actual effects on the target audience of a program or service. Quantifying the outcome, while it makes good common sense (i.e., it doesn't matter if a program distributes 100,000 brochures about good nutrition, it matters whether the information is useful to people and makes them change their eating habits) is never going to be easy, and in some cases is impossible. If you provide quality job training to "x" number of people (output), but not very many people get jobs (outcome), your performance is not going to be found effective, no matter what intervening reasons might account for the failure of your clients to get jobs. How exactly do you show that your provision of HIV AIDS education to children (output) has lowered the number of deaths from AIDS (outcome)? If you clean up a Superfund site (output), how do you clearly demonstrate that there has been a corresponding improvement in the health of people in the area (outcome)? How do you figure out the starting points from which to set goals and judge improvement? How do you factor in external factors like the economy or improvements in medical care or other effects that may hamper or foster your efforts? GPRA was envisioned as a long-term, iterative process through which agencies could move towards effective evaluation that could be useful in the budget process. In his typical style, President Bush has effectively fast-tracked GPRA to focus on an immediate "fix," or, in his budget document's words, "to give true effect to the spirit as well as the letter of [GPRA]." This should be cause for concern.

What are the results of the first PART evaluations? Over half of the programs evaluated by the PART were "unable to demonstrate results." The following excerpt captures the "unable to demonstrate results" category well:

Despite enormous federal investments over the years, virtually none of the programs intended to reduce drug abuse are able to demonstrate results. Such a finding could reflect true failure or simply the difficulty of measurement, so further analysis is in order. (pg 51, Budget volume)

Or, this statement could be a hint that religious-based drug treatment programs, in line with the President's charitable choice initiatives, will become the privileged beneficiaries of government grants intended to reduce drug abuse.

What is PART and how is it scored?

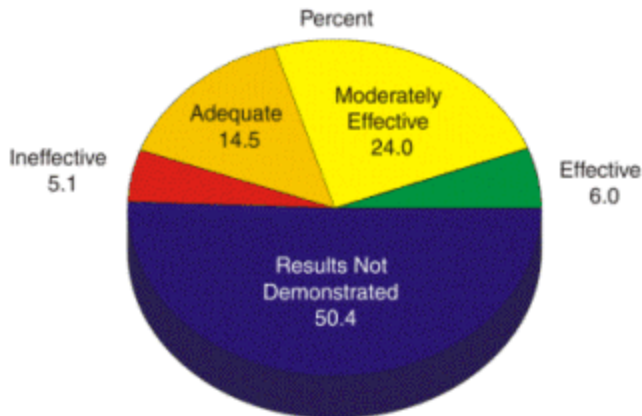
The PART is the questionnaire being used to achieve the fifth initiative of the President's Management Initiative, Budget and Performance Integration.

The PART has four sections:

- Program Purpose and Design (20% weight) to assess whether the program design makes sense and the purpose is clear.
- Strategic Planning (10% weight) to assess whether the agency sets valid annual and long-term goals for the program.
- Program Management (20% weight) to rate agency management of the program, including financial oversight and program improvement efforts.
- Program Results (50% weight) to rate program performance on goals reviewed in the strategic planning section and through other evaluations.

Each section has a series of questions, tailored to the type of program, requiring "yes" or "no" answers, except the "Results" section gets "refined" by including "yes," "no," "small extent" and "large extent." The President's Management Initiative Scorecard includes the same red, yellow and green scoring for each of its five initiatives, including the "Performance and Budget Integration" category.

Half of Federal Programs Have Not Shown Results



Source: ["Rating the Performance of Federal Programs," President's FY 2004 Budget](#)

44.5% of the evaluated programs were "adequate," "moderately effective" or "effective," and 51% were "ineffective" (see pie chart above). Unsurprisingly, grant programs received lower than average ratings, reflecting the inherent difficulty of evaluating the performance of a variety of grantees by a federally run program in a standardized fashion.

The Budget volume, [Performance and Management Assessments](#), lays out for each program that was evaluated:

- The PART rating (effective, ineffective, adequate, moderately affecting and results not demonstrated).
- The type of program (competitive grant, block/formula grant, regulatory, capital assets, credit, direct, and research and development).
- A program summary, a PART assessment summary, and the Administration's recommendations.
- A chart showing levels achieved of purpose, planning, management, and results/accountability.
- A chart showing long-term and annual measures, targets and accomplishments.
- The program funding levels for 2002, estimated 2003, and proposed 2004.

All the programs that were evaluated are indexed in the back of the volume by Department along with their rating.

The Office of Management and Budget (OMB) used the evaluations to make budget recommendations for FY 2004. Eleven programs were judged flat-out ineffective. While some did not receive proposed cuts, some did. For example:

- **Even Start (Department of Education block grants for family literacy programs, including early childhood education, adult education, and parenting education).** The Administration requested only enough funds to continue awards to current grantees and redirected the remainder of the funds to the "Early Reading First" program. FY 2002 budget was \$250 million; recommended FY 2004 budget is \$175 million.
- **Safe and Drug Free Schools State Grants (Department of Education block grants for programs to reduce youth crime and drug abuse).** Despite a RAND study cited in the

assessment that the grant funds are spread too thinly to support quality interventions, the Administration recommended a cut in funding with future funding tied to results, from \$472 million in FY 2002 to \$422 million in FY 2004.

- **Vocational Education State Grants (Department of Education block grants to support state-sponsored vocational education programs).** The Administration recommended that “grantee funding will be contingent on a rigorous assessment that student outcomes are being achieved”; grantees should be able to “focus” funds according to the needs of students in a particular locality; and states should be allowed to redirect funds to Title 1 of the Elementary and Secondary Education Act program. Recommended cut in funding from \$1.18 billion in 2002 to \$1.0 billion in 2004.
- **Project-Based Rental Assistance (Department of Housing and Urban Development capital asset program to fund landlords who rent affordable apartments to low-income families).** The Administration recommends no expansion in this program, with funding increases in FY 2004 only included because more properties are receiving renewing assistance contracts.
- **Juvenile Accountability Block Grants (Department of Justice block grant program to provide states with funds to support improvements in state and local juvenile justice systems).** The Administration recommends no funding for this program in 2004.
- **Earned Income Tax Credit (EITC) Compliance (Department of Treasury direct federal program to reduce erroneous payments of EITC credit).** Recommended budget increase from \$146 million in FY 2002 to \$251 million in 2004 to require “high-risk” EITC applicants to pre-certify that the children claimed on their return are really qualifying children under EITC. “High-risk” will be identified through databases having to do with child custody and include those taxpayers with characteristics like being relatives other than parents who claim a child for EITC purposes. Also, IRS is to delay refunds on returns deemed to be high risk while agents take action to resolve cases. (Would that corporate tax evaders were subject to similar actions!)

However, a program did not have to be ineffective to receive recommended funding cuts. The Community Oriented Policing Services (COPS) for hiring and redeploying police officers was not determined “ineffective,” but “unable to demonstrate results.” Nevertheless, since its impact on crimes is “inconclusive,” it was phased out. The COPS program is slated for a little funding to accomplish its other goals of reducing crime and increasing trust in police. Funding in FY 2002 was \$684 million and recommended funding in FY 2004 is \$164 million.

What does all this mean? The PART is a tool that will be used to “objectively” justify budget cuts or increases. Given the current Administration’s devolution, deregulation, and defunding triad, it will likely be used to reduce government. For more information about the PART see [OMB Watch’s previous Watcher article](#) and our [comments to OMB](#) or the [OMB website](#). The President has encouraged public comments to address the PART’s “limitations and shortcomings,” which include increasing consistency, defining “adequate” performance measures, minimizing subjectivity, measuring progress towards results, institutionalizing program ratings, assessing overall context, and increasing the use of rating information. Comments may be emailed to performance@omb.eop.gov.

Responses to President’s FY 2004 Budget Proposal

The President issued his [FY 2004 budget proposal](#) February 3, which was received with accolades by some and with great criticism by others worried that several key education, housing and environmental programs would suffer under his proposed funding levels. Included in this article are links to OMB Watch analyses, as well as the responses of other organizations and Members of Congress.

For more on the President's budget, please see the following analyses from OMB Watch:

- [President's Budget Cuts Vital Programs and Makes Room for Costly Tax Breaks](#)
- [Bush Budget Calls for Permanent Estate Tax Repeal -- At Great Cost](#)
- [Program Assessment And Budget Cuts Ahead](#)

Response to Bush Budget Proposal

The Democratic Policy Committee hosted a joint House-Senate hearing on the President's proposed budget for FY 2004. Chaired by [Sen. Byron Dorgan \(D-ND\)](#), the hearing was attended by Senate Majority Leader Tom Daschle (D-SD), Senate Budget Committee Ranking Member Kent Conrad (D-ND), Sen. Ted Kennedy (D-MA), [House Minority Leader Nancy Pelosi \(D-CA\)](#), House Budget Committee Ranking Member John Spratt (D-SC), and Rep. Chris Van Hollen (D-MD). Each Member of Congress spoke about the significance of the President's budget as the proof of his true priorities and criticized these priorities as being too focused on costly tax cuts for the wealthiest that increased the deficit, while limiting the resources available for education and health care for low-income families and threatening Social Security and Medicare. Panelists included Center on Budget and Policy Priorities Executive Director Bob Greenstein, Conservative commentator and National Center for Policy Analysis Senior Fellow Bruce Bartlett, National Committee to Preserve Social Security and Medicare President, former [Rep. Barbara Kennelly](#), a retired resident of Washington, DC, speaking about her costly experiences with Medicare's PlusChoice program, a school teacher from Colorado discussing the inflexibility and underfunding of the President's "Leave No Child Behind Act," and [Michael O'Hanlon](#) of the Brookings Institution.

Ten Nobel Laureates Say the Bush Tax Cuts are the Wrong Approach

The [Economic Policy Institute](#) released a letter signed by [nearly 450 economists](#), including 10 Nobel Laureates, opposing the Bush tax cuts. The [economists assert](#) that, "The tax cut plan proposed by President Bush is not the answer to [the country's economic] problems. Regardless of how one views the specifics of the Bush plan, there is wide agreement that its purpose is a permanent change in the tax structure and not the creation of jobs and growth in the near-term." The letter warns that these tax cuts, especially the dividend tax cut, will worsen the long-term budget outlook, limit the country's ability to address its long-term needs (such as financing Social Security and Medicare benefits) and investing in education and health, and generate further inequalities in after-tax income

In a related matter, the **small business community** apparently feels that the major problem facing the federal government is the current level of non-defense spending. Many low-income families who rely on federal assistance for housing, heating, education, and health care assistance would likely agree. But the [Small Business Survival Committee](#) isn't concerned about recent and additional proposed cuts to these programs, but rather that non-defense spending is too high. Why is this group of business interests concerned? According to their "fact of the week" release last week, "Congress needs to get federal non-defense spending under control. If not, much-needed tax relief will be placed in jeopardy."

As reported in [OMB Watch's February 3 analysis of the Bush FY 2004 budget proposal](#), OMB is holding the overall FY 2004 spending increase to about 4% -- a number OMB claims is reflective of the average family's own budget increase over the last year. But a [February 5 New York Times article](#) points out that some members of the federal government's own family of agencies received much more than the average 4%. Specifically, OMB proposed an 8.5% increase for itself, arguing that it needs such a large increase to help cover the administrative costs of creating the new Department of Homeland Security.) For a quick look at other programs that received increases, and which were cut, see this [3-page analysis](#) from the National Priorities Project).

Children' Defense Fund "New Voices, New Choices" Conference, February 11-12, 2003:

CDF will be bringing together religious leaders, civil rights leaders, educators, economists, and Members of Congress to address the many unmet needs of children in this country and the additional threats posed by the President's tax cut package. [For more information, see CDF.](#)

Dynamic Dysfunctions

At the start of this Congress, the [Republican-led House Ways and Means Committee](#) made the implementation of the controversial practice of "dynamic scoring" for budget decisions one of its first orders of business.

In a process referred to as "scoring," the Congressional Budget Office (CBO) and the Congressional Joint Committee on Taxation (JCT) provide official analyses and revenue effects of each proposed House and

Senate bill that has the potential to change the amount of federal revenue available each year. For example, the estimated direct annual loss of revenue resulting from permanent estate tax repeal is \$56 billion. This is called "static scoring," in which the cost of a tax cut is calculated to be the gross loss of revenue. Given the number and extent of the tax cuts proposed by this administration, even though the President insists that even with the direct benefits going overwhelmingly to the wealthy, the tax cuts will still lift all boats, static scoring only shows the negative effect on the deficit of huge and costly tax cuts. In contrast, "dynamic scoring" refers to the factoring in of possible increases in economic growth when "scoring," or calculating, the amount of lost revenue a tax cut (or spending proposal) will create.

Advocates of dynamic scoring argue that the practice offers a more realistic view of the likely budget effects of tax cuts by incorporating increased business activity that they believe accompanies lower tax rates. Some proponents, including the [American Enterprise Institute's Kevin Hassett](#), claim that the current system of static scoring misrepresents and distorts the full impact on the federal budget. Hassett has also suggested that dynamic scoring offers results that are no more incorrect than the current static methods, and that legislators should have all scores presented to them so that they can decide which most accurately account for a tax cut package's impact.

Opponents point out that dynamic scoring masks the true costs of tax cuts by relying on the potential for an increase in revenue that many economists argue is unlikely and also difficult to predict with any real accuracy. One example of this problem is well illustrated by a [recent Washington Post article](#), which identifies no fewer than four different "scores" for the President's proposed dividend tax cut and the other elements of his most recent tax break package – the static 10-year cost of the total package has been estimated to be \$694 billion. The 10-year cost estimates for the dividend tax cut, alone, varied from a low of \$125 billion (from the Heritage Institute's dynamic score) to a high of \$394 billion (the static cost estimated by JCT).

A [paper by Deborah Kobes and Jeff Rohaly of The Urban Institute](#) demonstrates that instituting a formal policy for the use of dynamic scoring would require planning or estimating around future fiscal policy, taxpayers' future behavior, and future business cycles well beyond the window of time for which they can reliably be predicted. "Unfortunately," they conclude, "measures of macroeconomic feedback effects are very sensitive to assumptions that are subjective... Given the degree of uncertainty inherent in current methods of macroeconomic forecasting, true dynamic scoring would not allow the consistent and comparative cost estimates" provided by CBO and JCT.

CBO and JCT do currently provide estimates to illustrate potential effects on the economy of significant tax proposals, at the request of Members of Congress, but such estimates are not official and only offered as supplemental information. Even opponents of dynamic scoring have encouraged this practice to continue in the same sort of advisory, rather qualitative (and not quantitative) manner because, as Kobes and Rohaly explain, they "show how sensitive a proposal would be to various changes in these [macroeconomic] assumptions. However, producing an estimate in the form of a single revenue or cost number would be misleading."

Or as former CBO Director Rudolph Penner, now Senior Fellow at the Urban Institute, [explained](#), "There is nothing to prevent CBO from doing studies to inform the Congress of the findings of academics and others as to the complete dynamic effects of specific policy changes. In fact, CBO has done such studies on capital gains tax rate changes and other things. The Congress will probably be disappointed by the wide range of uncertainty on such matters, but it is no wider than CBO has to deal with when forecasting the economy more generally." Penner went on to make it clear that dynamic scoring becomes a nightmare when Congress expects to be able to get clear, reliable, constant estimates for complex tax packages.

In the meantime, however, a greater potential for confusion has been created by the House Ways and Means Committee's decision. Since neither CBO nor the Senate currently use dynamic scoring in calculating the costs of tax bills, a comparison of House and Senate versions of these bills will likely prove difficult over the course of this Congress, with House bills likely showing a substantially lower cost of a tax break package than that calculated in the other estimates.

Of course, in the end, the House's dynamically-scored estimates might not be lower than the static scores of the Senate and CBO. The Post article notes that many economists, even those in favor of dynamic scoring, have warned that the costs in the later years of these large tax cuts may outweigh the additional revenue dynamic scores predict for the first few years of the tax break package.

Update: FY 2003 Appropriations Drawing to a Close?

As reported in [today's Washington Post](#), House and Senate conferees are nearing completion on negotiations over [H.R. 2](#), the omnibus bill for the remaining 11 FY 2003 appropriations bills that were not enacted by last October 1.

As reported in the [issue of the Watcher](#), the bill passed by the Senate on January 23 employed 2.9 percent across-the-board cuts to ensure that the total cost of the omnibus appropriations bill held to the President's limit of \$390 billion. To allow for increases in some programs, such as Head Start, which were protected from these across-the-board cuts, however, the Senate used a few common accounting methods that calculated some of the additional costs of its bill as being FY 2004 expenditures – a process referred to as “advance funding” – which allowed for an additional \$5 billion in spending to fit into the President's capped total.

The White House Office of Management and Budget (OMB) released a [Statement of Administrative Policy \(SAP\)](#) on January 17, 2003, supporting the Senate's work to complete the FY 2003 appropriations process, noting that, with the exception of military and defense programs, the federal government has been operating under a “series of Continuing Resolutions” – which provide for level funding at the FY 2002 level – “for over one fourth of FY 2003.” The SAP also commended the Senate for meeting the President's spending limit for FY 2003 non-defense discretionary programs, but criticized some of the funding decisions for specific programs – and commented that these problems must be “dealt with before the bill would be acceptable to the President.” OMB was specifically critical of the Senate's use of “advance funding,” calling it a “misleading practice.” The SAP claims that the Senate's funding of the Federal Emergency Management Agency's Disaster Assistance is underfunded by \$1 billion, the Mother-to-Child AIDS Prevention Initiative by \$150 million, and the State Department's funding by more than \$300 million. OMB notes that “Congress is urged to restore funding for these high-priority programs within the acceptable top line.” In order to meet these requests, however, the Senate version of the bill would have to make substantial cuts in other program areas, which is precisely what the SAP recommends. Specifically, the SAP opposes Sen. Robert Byrd's (D-WV) increase in homeland security funding, arguing that its original proposal is sufficient to meet the country's needs. Finally, the SAP states that the President's “senior advisers would recommend he veto the bill” if the final omnibus bill did not “include all current law provisions prohibiting the use of federal funds for abortions.”

The Washington Post reports, however, that these differences are being addressed by negotiators, “spurred by Vice President Cheney's active involvement.” Negotiations have added \$6.1 billion for U.S. military activities in Afghanistan. This latest version also addresses the SAP's concerns over the level of funding for the State Department and the FBI. These additional increases will only make adhering to the White House's original \$390 billion cap that much more difficult, and could result in additional across-the-board cuts.

Treasury Department Warns U.S. Will Reach Debt Limit Soon

The Treasury Department issued a warning last week that the federal government would soon reach its current borrowing limit of \$6.4 trillion, if Congressional action were not taken to raise it. As reported in the [June 24 edition of the Watcher](#), this announcement regularly sets up a struggle between the Administration and Members of Congress, who do not want to appear to be spending beyond the government's debt limit. As this [Washington Post article](#) points out, this most recent announcement is particularly troublesome, given that the President is also requesting a \$674 billion tax cut.

Bush Sets Record on Deficit:

According to a [chart released by Reuters last week](#), this year's \$304 billion deficit that arose under the Bush Administration's watch is the largest in the last 30 years. Though many economists agree that temporary deficits at a time of a slowed economy are beneficial, most are concerned that the permanent commitment of the country's vital resources to providing permanent and costly tax cuts to the very wealthy will only create more trouble for the economy in the long-run.

State-by-State Analyses Show State Budget Deficits' Impact

In addition to the National Priorities Project's handy ["State of the States" reports](#) announced in the last Watcher, there is also a new set of fact sheets from [AFSCME](#) documenting the draconian cuts states have been forced to make to contend with their 3-year cumulative budget gap of \$189 billion. A [one-page fact sheet](#) looks comprehensively at the cuts used by many states to meet their own constitutions' mandates of a balanced budget. Some of the cuts recently used by states include releasing prisoners before completion of their sentences, cuts to higher education, increases in tuition at state universities, reducing funds for community services and child support enforcement, tightening eligibility requirements for the working poor and disabled for state Medicaid health plans, raiding state rainy day funds, and layoffs. Other state-by-state analyses will be available soon, which OMB Watch will note.

Information Policy

US Patriot Act, Part II

Attorney General John Ashcroft has apparently drafted a sweeping piece of legislation for the Bush Administration, entitled [The Domestic Security Enhancement Act of 2003](#). The bill is a comprehensive sequel to the USA Patriot Act and would give the government broad, sweeping new powers to increase domestic intelligence-gathering, surveillance and law enforcement prerogatives, and simultaneously decrease judicial review and public access to information.

While rumors have been circulating about "the Patriot Act II" for some time, they were often denied. Even now the legislation has not been officially released. So far the legislation does not appear to have been shared with either the Senate or House Judiciary Committees.

This proposed law contains numerous troubling provisions that address access to government information, including:

- **Section 201, “Prohibition of Disclosure of Terrorism Investigation Detainee Information”:** This section attempts to codify the questionable policies of the Bush Administration to withhold information on suspected terrorists in government custody. The provisions would create specific authority under exemption 3 of the Freedom of Information Act which prohibits the disclosure of information “specifically exempted from disclosure by statute.” This would be a blanket secrecy policy for the government concerning detainees held under the suspicion of terrorism releasing the government from its burden to prove its need for secrecy in each case.
- **Section 202, “Distribution of ‘Worst Case Scenario’ Information”:** This section would also create new restrictions for information collected by the Environmental Protection Agency (EPA) under the Clean Air Act. Facilities that use large amounts of hazardous and flammable chemicals are required to file Risk Management Plans (RMPs) with the EPA. A portion of the plans is a “worst case scenario” report which describes the possible impact a catastrophic release of these chemicals would have on the surrounding community. These provisions would reduce public access to these worst case scenarios and any information that identifies, describes, or is derived from this section. Access would be limited to “read only” for those “who live and work in the geographical area likely to be affected by a worst-case scenario.” The provisions would make it illegal to even take notes on the worst case scenario or for any civil employee to disclose any of the information. The provisions also require that the information available to the public “does not disclose the identity or location of any facility or any information from which the identity or location of any facility could be deduced.” This subtitle would allow corporations to more easily hide and potentially ignore the risks that these facilities pose to workers and nearby residents.
- **Section 313, “Disclosure of Information”:** This section would grant civil immunity for corporations and employees that voluntarily provide information to federal law enforcement agencies to assist in the investigation and prevention of terrorist activities. Civil immunity is one of the corporate giveaways offered in the recently passed Homeland Security Act of 2003 for companies that provided the new Department of Homeland Security with “Critical Infrastructure Information.” The provision, which was viewed as easily manipulable by corporations to avoid accountability, was highly controversial in the Homeland Security Act. This section would widely expand the type of information that could be submitted as well as the number of government agencies that could receive it.

The Domestic Security Enhancement Act is the latest development in an on-going effort by the Bush Administration to increase secrecy within the federal government and reduce public access to government information.

Ray of Sunshine at SEC?

In the wake of retirees' losses piling into the millions from the Enron and Worldcom scandals, the president's budget proposes a much needed infusion of cash into [the Securities and Exchange Commission \(SEC\)](#), part of which is earmarked to help the public in efforts to track corporate wrongdoing.

In a rare exception to this administration's growing reputation for secrecy, the president's proposal of \$841.5 million for the SEC -- almost double what the president proposed for fiscal year 2002 -- includes \$100 million for upgrading the Commission's information technology systems, which includes the [publicly accessible EDGAR corporate filings system](#), BNA reports. EDGAR, which held promise for a wave of public scrutiny of corporate activities when launched, will make technical changes that would improve the public's ability to gain access to corporate filings, if the money is eventually approved by Congress.

For many years the SEC has been hampered in its ability to track corporations as it was starved for cash, suffered high staff turnover and a political environment friendly to business interests.

Separately, the SEC also ordered mutual funds to begin disclosing their proxy voting records. Investors in mutual funds often sign proxy statements allowing the fund managers to vote in corporate shareholder decisions on the investor's behalf. Proxy voting records had been a closely guarded secret until the commission voted unanimously to force disclosure.

Supreme Court to Hear Freedom of Information Case

Department of the Treasury v. City of Chicago, which likely will be heard by the Supreme Court next month, has the potential to significantly narrow the application of the Freedom of Information Act (FOIA). Any time a case involving FOIA comes before the Supreme Court it is a cause of concern for public access advocates since any Supreme Court ruling introduces a binding precedent throughout the legal system.

The case concerns a gun trace database maintained by Treasury's [Bureau of Alcohol, Tobacco and Firearms](#). The [Treasury Department](#) seeks to bar Chicago from obtaining information such as names and addresses of gun purchasers from the database. The Department of Treasury only recognizes the privacy interests of the information, and not the broader public interest in law enforcement or gun policy issues. The Treasury Department argues that Freedom of Information Act's disclosure requirements only applies to records that directly "cast light on he ATF's performance."

If the court finds in favor of the Treasury Department it would significantly narrow the reach of the FOIA. The legislative history of FOIA firmly establishes a broad disclosure mandate. Previously in this case the Seventh Circuit Court of Appeals reaffirmed that mandated ruling for the City of Chicago. So the Supreme Court would have to overturn that ruling to limit the disclosure of information. Such a holding could well end the use of FOIA to uncover critical information in government files that concerns the health, safety, security and welfare of the public.

Amicus briefs, statements from "friends of the court," supporting the City of Chicago have been filed by the [National Security Archive](#), the [Reporters Committee for Freedom of the Press](#), and the [Electronic Privacy Information Center](#).

CRS Resolution Would Make Congressional Reports Available to the Public

Sens. John McCain (R-AZ) and Patrick Leahy (D-VT) are preparing to introduce a resolution to make Congressional Research Service (CRS) reports and products publicly available on the Internet. The CRS is a research arm of the U.S. Congress, which authors numerous reports and products on issues ranging from the environment to budget.

While taxpayer dollars support CRS's operations and it's organizational website, the public is currently unable to access most CRS reports. Access through the [CRS website](#) is restricted to Congressional offices and as a Congressional entity, CRS is not subject to the Freedom of Information Act (FOIA).

Citizens can request CRS reports from their Members of Congress, attempt to find them online at other sites, or pay for them. The resolution would direct that Internet access be provided to "CRS publications, Senatorial gift report filings, and Senate and Joint Committee documents." The resolution is an inexpensive and simple way to improve our democracy.

CRS has prepared approximately 3,000 reports and products for Congress, but only about 750 of these are on the Internet, via the website of [Rep. Chris Shays](#). The National Council for Science and the Environment has also placed 1,210 CRS reports (mostly about the environment, and many are old) [online](#).

Nonprofit Issues

Limited CARE Bill Passes Senate Finance Committee

On February 5, the Senate Finance Committee passed a scaled back version of the Charity Aid, Relief and Empowerment Act that has tax incentives for charitable giving, eliminates the distinction between direct and grassroots lobbying, restores funding for the Social Services Block Grant and increases oversight of nonprofits. The bill, [S. 256](#), does not include the provisions on "equal treatment" of faith-based and community organizations applying for federal grants that were in last year's CARE bill. However, Sens. Rick Santorum (R-PA) and Joseph Lieberman (D-CT) have filed another version of CARE, [S. 272](#), that does have the "equal treatment" provisions. It is expected that if the bill moves to the Senate floor the charitable giving and faith-based provisions will be merged.

Tax policy expert Matt Hamill of the Institute for Higher Education Policy has put together a [comparison of the charitable giving portions of H.R. 7, CARE Act 2002 and 2003 and the Bush Budget for FY 04](#).

While Santorum said he expects the full Senate to consider the bill in the next few weeks, delays are likely as the debate on conditions for government grants to faith-based groups are added to the debate. The faith-based provisions in S. 272 will likely be offered as an amendment, and Sen. Dick Durbin (D-IL) plans an amendment to prevent faith-based groups from "using federal dollars to force religious views" on people seeking assistance. Sen. Jack Reed (D-RI) will offer an amendment prohibiting employment discrimination based on religion for government-funded jobs.

A major issue in the committee meeting was Sen. Blanche Lincoln's (D-AR) proposal changing rules for corporate foundations holding company stock. Current law allows foundations five years to divest excess holdings, or pay hefty excise taxes. Lincoln's proposal would allow foundations the option of taking up to ten years to divest if they also increase their payout in grants from the required minimum of 5% to 6%, and restrict compensation to certain directors and/or employees.

In the mark-up of the CARE Act, Sen. Jeff Bingaman (D-NM) raised questions about the cost and effectiveness of the non-itemizer deduction, noting that it is by far the costliest item in the bill. Last year the Joint Committee on Taxation predicted losses to the Treasury of \$204 million in 2003, \$1.368 billion in 2004 and \$1.218 billion in 2005. Studies by the [Congressional Budget Office and Congressional Research Service](#) found it would be unlikely to increase giving by more than 4%. The bill would eliminate several tax shelters that would offset these costs, but only if Congress allows the nonitemizer to sunset at the end of 2004.

A part of the bill contains a provision to simplify lobbying reporting by nonprofits. It would allow both grassroots and direct lobbying to be counted as one type of lobbying, using the more generous direct lobbying expenditures limits as the maximum amount that can be spent.

After the vote in committee, Finance Committee Chair Charles Grassley (R-IA) told the press he will push to include unspecified revisions in the manager's amendment when the bill goes to the floor. An amendment increasing authority for nonprofit nursing homes to issue tax-exempt bonds was filed by Sens. Jim Bunning (R-KY); and Sen. Gordon Smith (R-OR) is seeking an amendment changing IRS rules for 501(c)(3) organizations involved in timber conservation.

It is also not clear whether the Senate will go forward with a version that House GOP leaders do not support. (They want a bill that allows faith-based organizations to discriminate in hiring for government-funded jobs based on religious beliefs.)

For more information see our [summary of both bills](#).

Regulatory Matters

OMB Proposes Changes in Regulatory Decision-Making

OMB's Office of Information and Regulatory Affairs (OIRA) [proposed new guidance February 3](#) that instructs federal agencies how to make regulatory decisions, including the specific analytical methods that should be employed.

In many ways, this proposed guidance (which is open for public comment until April 3 as part of OIRA's draft annual report on the costs and benefits of regulation) mirrors the old [Clinton-era guidance](#) it revises. But there are subtle differences -- which OIRA is in position to enforce through its regulatory review authority -- that raise the bar for new health, safety and environmental protections. Specifically, the guidance:

- [Emphasizes monetization and “net benefits” decision-making \(follow the anchor link for further discussion\)](#). OIRA's proposed guidance demands that agencies put health and safety benefits in terms of dollars and cents, so they can calculate and demonstrate “net benefits” (benefits minus costs).
- [Requires discounting of lives saved in the future](#). OIRA's proposed guidance directs agencies to use two separate discount rates -- 7 percent and 3 percent -- in calculating the “value of a statistical life” and present the results of both. This rests on the assumption that a life saved in the future is worth less than a life saved today.
- [Demands cost-effectiveness analysis for all major health and safety standards](#). OIRA's proposed guidance requires cost-effectiveness analysis -- looking at the ratio of costs to units of benefits (i.e., number of lives saved) -- for all major health and safety rules.
- [Promotes use of “life years” in evaluating fatality benefits](#). Agencies commonly base benefit estimates on the “value of a statistical life” (VSL), drawn from the number of lives expected to be saved by regulatory action. On top of VSL estimates, OIRA's proposed guidance asks agencies to consider using “value of statistical life years” (VSLY), which looks at the number of life years saved as opposed to the number of lives. This would skew against protections for the elderly, who have fewer life years remaining.
- [Implies that OIRA will revise agency analysis to compare one protective measure against another](#). OIRA asks agencies to hand over underlying data, so that it can standardize analysis and compare the costs and benefits of protective measures government-wide.
- [Advises agencies to consider potential technological innovations by regulated entities](#). Frequently, regulated entities are able to drive down compliance costs over time through technological advances or “learning by doing,” which are not typically predicted by cost-benefit analysis. OIRA's proposed guidance instructs, “Estimates of costs should be based on credible changes in technology over time,” adding that “regulatory performance standards and incentive-based policies may lead to cost-saving innovations that should be taken into account.”

Emphasizes monetization and “net benefits” decision-making. OIRA, under the leadership of John Graham, places cost-benefit analysis at the heart of regulatory decision-making. The phrase “cost-benefit analysis” conjures the image of even-handed, dispassionate decision-making. Yet in the regulatory context, this means putting health, safety and environmental benefits in terms of dollars and cents to show “net benefits” -- benefits minus costs. This process is not easy and involves many value-laden choices, which OIRA's guidance specifies (see discussion of “discounting” below).

Frequently, benefits prove extremely difficult or even impossible to monetize, which skews cost-benefit analysis to favor inaction. For instance, EPA recently proposed a rule to protect the trillions of fish and aquatic organisms that are sucked up and killed each year by power plants, which use rivers, estuaries, and oceans to cool their systems. In performing its cost-benefit analysis, EPA did not monetize losses of

invertebrate species, such as lobsters, crabs, and shrimp, as well as endangered or threatened species, nor did it consider the interrelationships of the species affected. Rather, EPA's estimate was based exclusively on the commercial value of the fish that would have been caught had they not already been killed by power plants. This accounts for less than 20 percent of the total fish killed by cooling systems.

EPA acknowledged the problems with its analysis, and used the non-monetized benefits to argue for a relatively protective standard, which it submitted to OIRA for review on September 10, 2001. During its review, however, OIRA forced EPA to adopt a less protective option that showed fewer benefits, but greater "net benefits" by EPA's estimates ([click here](#) for an extensive discussion). This meant the qualitative benefits -- because they could not be monetized -- were essentially ignored.

OIRA's guidance enshrines this dismissive treatment of non-quantifiable factors: "Non-quantifiable benefits or costs may be important in tipping an analysis one way or the other, but you should not use non-quantifiables as 'trump cards,' especially in cases where the measured net benefits overwhelmingly favor a particular alternative." It's not clear exactly what this means (What's meant by "tipping" or "trump cards"?). But there's no question about the message to agencies: If you want it counted, it better be monetized. The Clinton guidance also pushes agencies to monetize, but adds that "we recognize that monetizing some of the effects of regulations is difficult, if not impossible."

Requires discounting of lives saved in the future. "Discounting" -- already common practice in monetizing benefits -- rests on the premise that a life saved today is worth more than a life saved tomorrow. The further in the future a life is saved as a result of regulatory action today, the more it will be discounted from its "present value," and the less likely the action will pass a cost-benefit test. OIRA's proposed guidance directs agencies to use two separate discount rates -- 7 percent and 3 percent -- in calculating the "value of a statistical life" and present the results of both. The Clinton guidance refers agencies to [OMB Circular A-94](#), which was revised at the end of the first Bush administration and also advises a 7 percent discount rate. Perhaps the biggest difference is the current OIRA's commitment and aggressiveness in enforcing this approach.

This analytical and value-laden choice has significant implications for regulation aimed at preventing cancer, which frequently has a long latency period, or other diseases of old age. For example, in the case of EPA's standard for arsenic in drinking water, the agency argued that it did not have enough data on the latency period for cancer caused by arsenic to apply a discount rate. Yet in an independent analysis that almost led to the repeal of the standard, Robert Hahn and Jason Burnett of the AEI-Brookings Joint Center for Regulatory Studies (a leading proponent of cost-benefit analysis) rejected EPA's analysis, and instead assumed a latency period of 30 years, applying a 7 percent discount rate over this period -- which OIRA's guidance describes as "the base-case for regulatory analysis." This reduced the "value of a statistical life" from \$6.1 million (EPA's estimate based on studies measuring the extra amount -- or "wage premium" -- required to attract workers to dangerous jobs) to \$1.1 million. (For further discussion, [click here](#).)

Perhaps even more striking, at a discount rate of 5 percent, one life saved today is worth more than one billion lives saved 500 years from now, as Professors Lisa Heinzerling and Frank Ackerman point out in their excellent booklet, [Pricing the Priceless](#).

Demands cost-effectiveness analysis for all major health and safety standards. Cost-effectiveness analysis does not monetize benefits. Rather, it looks at the ratio of costs to units of benefits (i.e., number of lives saved). The Clinton guidance says that agencies may use cost-effectiveness analysis in place of a "net benefits" analysis if they have difficulty monetizing. The new proposed guidance, on the other hand, requires both types of analyses for all major health and safety rules.

Cost-effectiveness analysis avoids some of the problems of monetization of benefits, but nonetheless, it too can lead to skewed and timid decision-making. For example, a cost-effectiveness analysis that looks at costs relative to the number of lives saved would miss a whole slew of other significant benefits, such as non-fatal disease or injury, effects on ecosystems, and equity considerations. Moreover, the least

protective regulatory alternatives are frequently estimated to be the most cost-effective. This is because additional levels of protection are forecast to require increasingly demanding and more costly methods. Forcing decisions based on a cost-effectiveness test may lead an agency to inappropriately choose a less protective alternative -- because it is the most "cost-effective."

In addition, OIRA's proposed guidance requires agencies to incorporate the concept of discounting for cost-effectiveness analysis, meaning it will appear less cost-effective to save lives in the future as opposed to right away. Again, this could mean fewer protections to prevent cancer or other diseases of old age that have a long latency period.

Promotes use of "life years" in evaluating fatality benefits. Agencies commonly base benefit estimates on the "value of a statistical life" (VSL), drawn from the number of lives expected to be saved by regulatory action. During his time as OIRA administrator, however, Graham has promoted the use of "value of statistical life years" (VSLY), which looks at the number of life years saved as opposed to the number of lives. Again, this skews decision-making against protections for the elderly, who have fewer life years remaining.

OIRA's proposed guidance does not direct agencies to use VSL or VSLY. Instead, it says that "agencies should consider providing estimates of both VSL and VSLY, while recognizing the developing states of knowledge in this area." The Clinton guidance also notes VSLY as a way to measure fatality benefits, but adds, "You should keep in mind that regulations with greater numbers of life-years extended are not necessarily better than regulations with fewer numbers of life-years extended. Longevity may be only one of a number of relevant considerations pertaining to the rule."

Implies that OMB will revise agency analysis to compare one protective measure against another. In the president's budget submission to Congress last year, [Graham stresses the importance of "league tables"](#) for setting regulatory priorities across federal agencies. These tables are intended to compare the costs and benefits of one type of regulation, such as auto safety, to another, such as environmental protection. In presenting his own league table ([discussed further here](#)), Graham implies the administration should contract efforts at environmental protection (e.g., health standards) because safety regulation (e.g., addressing accidents) is more cost-effective and produces greater "net benefits." Yet this presents a false choice (leaving aside whether it is true), forcing an unnecessary tradeoff between one protection and another. In reality, we can do both -- and we do.

Nonetheless, OIRA seems to have league tables in mind when it says, "It is difficult for OMB to draw meaningful cost-effectiveness comparisons between rulemakings that employ different cost-effectiveness measurements. As a result, agencies should provide OMB with the underlying data, including mortality and morbidity data, the age distribution of the affected population, and the severity and duration of disease conditions or trauma, so that OMB can make apples-to-apples comparisons between rulemakings that employ different measures."

Advises agencies to consider potential technological innovations by regulated entities. Cost considerations are inherently easier to monetize than benefits. For example, they may involve purchases of new equipment or the hiring of additional personnel. Yet ironically, this does not mean cost estimates are any more accurate.

Frequently, regulated entities are able to drive down compliance costs over time through technological advances or "learning by doing," which are not typically predicted by cost-benefit analysis. As a result, agency cost estimates often prove overblown in the real world. In examining estimated costs next to actual costs for 13 major rules, [economists Eban Goodstein and Hart Hodges found](#) estimated costs were at least double the actual costs for all but one. For instance, EPA estimated in 1990 that acid rain controls would cost electrical utilities about \$750 per ton of sulfur dioxide emissions; yet the actual cost today is less than \$100 per ton, billions of dollars less than what was initially anticipated.

To its credit, OIRA seems to indicate that agencies should incorporate likely adaptive responses. OIRA's proposed guidance instructs, "Estimates of costs should be based on credible changes in technology over time," adding "regulatory performance standards and incentive-based policies may lead to cost-saving innovations that should be taken into account."

EPA Sidesteps Action on Dangerous Herbicide in Drinking Water

EPA will continue to allow widespread use of the weed killer atrazine despite evidence that it has contaminated certain drinking water systems at levels 12 times greater than allowed by law.

EPA recently completed an [assessment of atrazine](#), the most heavily used herbicide in the United States, finding that numerous communities have dangerous levels in their water. Yet the agency ignored calls for a ban on the product -- which [studies have linked to cancer](#) in both humans and animals -- and instead entered into an agreement with Syngenta, the largest manufacturer of atrazine, under which the company itself will perform increased testing of raw water entering community water systems where atrazine is used.

Syngenta already monitors water for atrazine, yet nearly 200 community water systems, serving more than 3.6 million people, [have shown levels of atrazine close to or above the legal limit](#).

"We're flabbergasted," [said Jennifer Sass, a senior scientist at the Natural Resources Defense Council \(NRDC\)](#). "We've reviewed the science on atrazine, and it is clear that it is dangerous at levels the EPA says are harmless."

EPA performed its assessment of atrazine, which is used mainly on corn, sugarcane and residential lawns, as the result of a lawsuit filed by NRDC.

New Marine Diesel Rule Falls Short

EPA is issuing a weak [final rule](#) to limit nitrogen oxide (NOx) emissions from new marine diesel engines in large ships and tankers. The standards are equivalent to those contained in a [previous international agreement](#), which manufacturers are already meeting, and are not expected to have much effect.

Initially, EPA favored taking stronger action, but OMB's Office of Information and Regulatory Affairs [blocked this effort in its review of the agency's proposed rule](#).

The EPA standards fail to address harmful large vessel emissions such as hydrocarbons, carbon monoxide and particulate matter and do not apply to foreign ships entering U.S. ports -- which account for 95 percent of all calls made to U.S. ports, [according to Environmental Defense](#). Instead, the final rule merely alludes to a future rulemaking to address foreign ships.

The rule, signed by EPA administrator Christie Whitman on January 31, will apply to engines built on or after January 1, 2004.

Court Ruling Overturned: Mining Companies Free to Bury Streams Once Again

To the delight of the mining industry, a federal appeals court overturned [a ruling](#) that blocked the U.S. Army Corps of Engineers from issuing permits to allow the dumping of waste from mountaintop mining into rivers and valleys.

Previously, in May of 2002, the Bush administration [published a final rule](#) that grants the Corps new discretion to approve dumping in river valleys -- virtually inevitable in mountaintop mining -- under Section 404 of the Clean Water Act. However, only a day earlier, U.S. District Judge Charles Haden found that Section 404 does not permit such dumping for the sole purpose of waste disposal, throwing the administration's action into doubt ([Kentuckians for the Commonwealth v. Corps of Engineers, S.D. W.Va., No. 2:01-0770, May 8, 2002](#)).

On January 29, the [U.S. 4th Circuit Court in Richmond, Va., reversed Haden](#), allowing implementation of the rule to move forward and clearing the way for mining companies to dump in the nation's rivers and streams.

"While the judges and lawyers argue the technicalities and interpretations of the law, strip mining is destroying our mountains and streams and taking away a future for our children," [said Patty Wallace of Kentuckians for the Commonwealth](#), which initiated the litigation against the Corps.

Bipartisan Bill Seeks to Increase SUV Fuel Efficiency

Sens. Dianne Feinstein (D-CA) and Olympia Snowe (R-ME) introduced a bill ([S. 265](#)) that would require sport utility vehicles (SUVs) to meet the same fuel efficiency standards as passenger cars.

The bill, introduced January 30, would require auto manufacturers to raise the fuel economy standards for light trucks and SUVs from the current 21 miles per gallon (mpg) to 27.5 mpg -- the standard that passenger cars meet today. The legislation calls for gradual increases in fuel efficiency, climbing to 23.5 mpg by 2008, 24.8 mpg by 2009, and 26.1 mpg by 2010, reaching 27.5 mpg in 2011.

The bill would also increase the weight range of vehicles regulated by corporate average fuel economy (CAFE) standards, making it more difficult for manufacturers to build SUVs too big to be bound by CAFE standards.

"Simply put, this legislation is the single most important step the United States can take to limit dependence on foreign oil and better protect our environment," [Feinstein said](#). The bill is a great improvement upon the [Bush administration's weak proposal](#) to increase fuel economy for light trucks and SUVs by a mere 1.5 miles per gallon (mpg), from 20.7 mpg today to 22.2 mpg by 2007 -- well below what is technologically feasible.