Search

Register To VOTE

In This Issue

Read the Watcher in Full in Easy-to-Print PDF Format

For your convenience, the OMB Watcher is also available in full as a PDF document -- this will allow for viewing and printing of the entire issue in one document.

CBO Report Analyzes Effects of President's Budget Proposals

On March 7, the Congressional Budget Office (CBO) released its annual report analyzing the effects on revenue and spending of the President's budget proposals. The report was yet another blow to the President's proposals for additional tax cuts.

The report, entitled, "An Analysis of the President's Budgetary Proposals for Fiscal Year 2004: An Interim Report," is important because it deviates from CBO's usual reporting policy of projecting revenue and deficit/surplus totals based only on current law, and incorporates the President's budget proposals into its projections. This process provides a welcomed "reality check" on the President's own projections, though in many cases CBO reports that its numbers coincide with the White House's Office of Management and Budget's (OMB) estimates.

CBO incorporates the effects of the President's tax cut and other spending proposals into its projection of the deficits through 2013, for a $338 billion deficit in 2004 (OMB predicted a deficit of $307 billion) and a cumulative 10-year deficit of $1.8 trillion (an average 2 percent, annually, of the total economy). Without the tax cuts and other proposals, CBO estimates a cumulative $900 billion surplus for the same period and the report notes that, the "projected surplus relies heavily on the assumed expiration at the end of 2010 of the tax cuts enacted" in June 2001; "that assumption, which is required by law, contributes about $600 billion to the projection of the cumulative surplus."

In fact, according the Joint Committee on Taxation estimates, which CBO used, making these expiring tax cut provisions permanent would cost approximately $624 billion through 2013. In all, CBO projects that the President's tax cut proposals, excluding the additional costs resulting from increased interest payments on the debt) would result in a $1.5 trillion drop in revenue from 2004 to 2013. Of this $1.5 trillion total, 40 percent would occur in just the last 3 years (2011-

13) from the extension of the expiring tax cut provisions. An additional 15 percent of this total would arise in 2004 and 2005 as a result of the President's new tax cut proposals and the acceleration of the phase-in of existing tax cuts. The President's proposal to eliminate the dividend tax comprises 27 percent of the total 10-year revenue reduction. The report provides a closer look at these and other tax cuts proposed by the President.

When Good Surpluses Go Bad:

CBO's baseline accounting (which only calculates the effects of current law) estimates a **10-year $900 billion *surplus* for the years 2004-13**. When CBO incorporates the President's tax cut proposals, it projects a **10-year cumulative *$1.2 trillion deficit***.

WITH ASSOCIATED INCREASED INTEREST PAYMENTS ON THE DEBT, THIS AMOUNTS TO A *$2.7 TRILLION* TURNAROUND IN THE BUDGET FORECAST -- – AND THIS IS JUST THE MINIMUM, AS IT DOESN'T ACCOUNT FOR A WAR IN IRAQ OR EVEN FIXING THE AMT.

Tax Cuts and Deficits

CBO estimates that two-thirds of the increase stems from the President's tax cut proposals. Of the $1.5 trillion drop in revenue from 2004-13 proposed by the President:

- 55 percent pays for accelerating certain components of and then permanently extending all parts of the 2001 tax cut
- 27 percent pays for eliminating the dividend tax

By comparison, the President's proposals for other additional spending only total $725 billion for the 10-year period 2004-2013, most of which comes in the form of changes to mandatory spending, specifically the President's Medicare prescription drug plan, the details of which remain unclear. CBO estimates that the President's discretionary spending proposals will increase defense spending by an annual rate of 4.7 percent through 2008, and non-defense discretionary spending (basically everything outside of Social Security, Medicare, and the military) by only 2.3 percent. For more on the President's spending proposals, see the full CBO report.

It is important to note, as the CBO report does, that this additional program spending does not include the costs of any action in Iraq, about which CBO expressed much uncertainty. Though it did include an estimate of a few basic costs ($14 billion to move a "heavy ground force" to the Persian Gulf;" $10 billion for the first month of combat; $8 billion for each additional month; $9 billion to return troops their home bases; and $1 billion to $4 billion for each month of occupation), CBO warns that it cannot possibly estimate a total cost of a war for which there is so much uncertainty as to duration, chemical and biological decontamination and other clean-up costs, and subsequent re-building and foreign aid.

Finally, the CBO report mentions that while this analysis does not incorporate certain possible "macroeconomic" effects of the President's proposals, it is in the process of preparing an analysis of the "dynamic" macroeconomic effects that will be included in the final version of this current "interim" report. According to CBO, this final report will use "various models and assumptions to indicate the range of potential economic and budgetary impacts of the President's proposals." For a closer look at the use of "dynamic scoring," see this recent OMB Watcher article.

For the full report go to http://www.cbo.gov/showdoc.cfm?index=4080&sequence=0. This new report follows a recent report from the Committee for Economic Development (CED), a group of business leaders, that opposed the proposed Bush tax cuts. The CED report was based on an earlier CBO report and in light of this new CBO estimate becomes even more compelling -- for more on the CED report, see this OMB Watcher article.

Committee for Economic Development (CED) Opposes the President's Plan

The Committee for Economic Development (CED), an influential organization of business leaders and educators, released a report on March 5, 2003, titled *"Exploding Deficits, Declining Growth: The Federal Budget and the Aging of America."*

One of its specific policy recommendations opposes the President's economic growth plan:

"CED strongly opposes any short-term stimulus program that is not combined with a plan to restore longer-term budget balance. We are specifically concerned that the Jobs and Growth Package proposed by the Administration would raise the cumulative 2003-2013 deficit by about $920 billion (including interest) and raise the annual deficit ten years from now by about $100 billion, does not meet this test."

The CED also finds that additional revenue will be necessary, in addition to spending cuts, and urges Congress and the Administration to forego, at this time, any additional tax reductions, including the permanent extension of the 2001 tax cuts which currently will expire after 2010. The CED encourages exploring alternative or additional long-term sources of revenue through taxation to support the country's growth objectives and energy needs. While it calls for restraining spending, it specifically objects to budget cuts that reduce public investments that are important for economic growth, like "education and training programs that build human capital, research and development activities that advance knowledge, and infrastructure investments that support the private sector."

While we may disagree with some other policy recommendations, like reducing non-security discretionary spending below its historical level, or restructuring Social Security and Medicare, this report, by business leaders, is important:

- For its opposition to the President's economic growth plan;
- For its call for increased taxation to insure that we have the revenue necessary to meet important priorities, and; and
- For its recognition that we should not scrimp on domestic investment that is important to economic growth and that reductions in discretionary spending should not be born by low-income and vulnerable Americans. The report specifically finds that "the burden of fiscal restraint should not be placed disproportionately on low-income families with little political voice."

The report also recognizes the fiscal difficulty of the states, almost all of which much balance their budgets. Those crises will be compounded if the federal government tries to solve its deficit problems by passing increased responsibilities to state governments without providing the long-term federal revenue sources that will be necessary for states to accomplish educational reforms, front-line homeland security, welfare reform, and Medicaid, for example.

The CED report finds that estimates by the Congressional Budget Office (CBO) sharply minimize the actual amount of deficits because they fail to take into account future policy decisions. The CBO estimates are based on current law, and do not include the costs of policies that have not yet been, but are likely to be, enacted. For example, the report cites the likely extension of the 2001 Bush tax cuts, the need to reform the Alternative Minimum Tax, and new national defense and homeland security requirements, all of which represent big costs that will vastly increase deficits.

Finally, it is noteworthy that the CED report also calls for seriously thinking about and examining long-term fiscal priorities and goals, in light of future needs and challenges. The costs of fiscal restraint must be distributed equitably, so the burden does not fall on low-income Americans who lack a strong political voice.

The CED and the Concord Coalition also issued a joint statement which is noteworthy for its recognition that "the Administration's new [economic growth] plan is problematic" because it will result in larger long-term deficits.

The CED report is evidence that opposition to the President's economic growth plan and extension of the 2001 tax cuts, including permanent repeal of the estate tax, is not limited to progressives, but is becoming widespread.

JCT Report Calculates Total Costs of President's Latest Tax Cut Proposals

On March 4, the Congressional Joint Committee on Taxation (JCT) released its estimates of the costs of the tax provisions contained in the President's FY 2004 budget proposal. Since the President's Budget proposal is just that – a proposal – these analyses are important for providing a neutral examination of these policy changes that can permanently affect the federal government's resources.

The JCT report puts the total 11-year (2003-13) cost of the President's latest tax cut proposals, labeled an "economic growth plan," (acceleration of the 2001 tax cut's individual marginal rate reductions, acceleration of child tax credit and married tax filers' deduction, increase business expensing provisions, and eliminate dividend tax) at $725.8 billion – more than $50 billion more than the White House estimated. Just the elimination of the corporate dividend tax, the most controversial element of the President's recent tax break proposals, costs $396 billion over ten years. The cost of this proposal rises steadily over the course of the 10 years covered by the analysis, such that the elimination of the corporate dividend tax drains $59 billion from the country's resources in 2013, alone.

The other extremely costly element of the President's tax cut proposal beyond his economic growth plan is the permanent extension of those 2001 tax cut proposals that expire over the course of the next 7 years. The cost through 2013 of this proposal totals $624 billion, with permanent repeal of the estate tax ($162 billion) and the permanent reduction of the marginal income tax rates ($351 billion) the most costly elements of the proposal.

The 2003-13 cost of all of the tax cut proposals included in the President's budget submission comes to a jaw-dropping $1.57 trillion total. This does not include increased interest costs on the national debt, nor does it count the full cost of adjusting the individual Alternative Minimum Tax (AMT). Even under the best budget, economic, and international circumstances this would amount to too much spending on the wrong priorities, but given the number of pressing domestic needs, our current economic slowdown, high unemployment rate, the states' worst budget crisis in more than 50 years, and an impending costly war with Iraq, the country simply cannot afford to waste money providing additional tax breaks to those who are least in need of these giveaways.

CBO Issues Analysis of Options for Repeal and Reform of Estate Tax

As part of its annual look at budget scenarios, which includes a wide array of tax and revenue options, the Congressional Budget Office (CBO) recently released an analysis of four different options for the estate tax and the revenue effects of each option.

Below are the four options examined (and the additional revenue saved – if any – by each over the ten-year period 2004-13):

- Retain estate/gift taxes, but freeze the amount of wealth exempted from any taxation ($1.5 million for individuals; $3 million for couples), as well as the top marginal tax rate (47 percent) at 2005 levels (10-year cost: $10.0 billion)
- Retain estate/gift taxes, but permanently set wealth exemption at $3.5 million and top tax rate at 50%, starting in 2004 (-$77.1 billion)
- Permanently repeal estate tax in 2004; retain gift tax, with a $1 million exemption and various allowances in the calculation of the basis of the transferred assets (-$357.0 billion)
- Make 2001 repeal provisions permanent in 2010 (-$161.7 billion)

In addition to outlining these various options and their effects, the report provides a comprehensive and accessible overview of the estate tax. It notes that the fact that the 2001 tax cut legislation "sunsets," or ends on December 31, 2010, and because all provisions for estate tax repeal also sunset and revert back to the law as it was before the 2001 legislation took effect "estate tax planning [has been made] significantly more complicated." Recognition of this problem has prompted many who worked against repeal in 2001 to devise a plan for reform of the estate tax that could be permanent, and thereby allow for a simplification of estate planning, while preserving this most progressive of all taxes and ensuring that only the wealthiest estates pay it.

The report concludes with a brief overview of the arguments made by repeal and reform advocates. Among the more commonly heard arguments from both sides, namely those centered around the value of the estate tax in preventing greater concentrations of wealth and in promoting charitable donations, the CBO report introduced another practical concern around the use of repeal to protect small businesses: though repeal advocates usually place the protection of

small businesses at the top of their list in arguing for estate tax repeal, this CBO analysis points out that even with total repeal of the federal estate tax, many small businesses will still have to file a state estate tax return.

The full report is available online.

FERC's Final CEII Rule

On March 3, 2003, the Federal Energy Regulatory Commission (FERC) published in the Federal Register its final rule restricting access to critical energy infrastructure information (CEII) and establishing new procedures outside of the Freedom of Information Act (FOIA) for requesting access. FERC began this process in response to the terrorist acts committed on September 11, 2001, and published its Notice of Proposed Rulemaking on September 13, 2002, to obtain public comments.

The final rule makes very few substantive changes to the extremely restrictive policy implemented in 2001 shortly after the terrorist attacks. The final rule notes the numerous objections to the policy raised by public interest groups but uniformly ignores the substance of these comments claiming that they "reflect a fundamental misunderstanding of this rulemaking."

While the final rule provides more detail on the definition of critical infrastructure information it is still overly vague and expansive. FERC notes that proposed facilities, as well as projects or portions of projects, are explicitly covered by the new rule. Specifically critical energy infrastructure information is defined as information about proposed or existing critical infrastructure that:

- Relates to the production, generation, transportation, transmission, or distribution of energy;
- Could be useful to a person in planning an attack on critical infrastructure;
- Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and
- Does not simply give the location of the critical infrastructure.

The rule goes on to define critical infrastructure to be "existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters."

The new FERC establishes and empowers a new position, the Critical Energy Infrastructure Information Coordinator, to handle requests for CEII and determine what information qualifies as CEII. Those interested in obtaining CEII must submit a request to the CEII Coordinator explaining what information they want, who they are, why they want it and what they plan to do with the information if they were to obtain it. The final rule allows for the possibility that a requestor may be required to sign an agreement of non-disclosure in order to obtain access to the information.

FERC claims that only information that would not be available to anyone under the Freedom of Information Act (FOIA) can qualify for CEII status. However, much, if not all, of the information that FERC considers CEII was publicly available online, in reading rooms and through FOIA before September 11, 2001. However the agency claims that the previous availability status of information is not relevant to its current decision. The agency includes an appendix which details FERC's new interpretations of FOIA exemptions to justify the new judgment to make that information unavailable under FOIA. Therefore, FERC claims in the final rule that these new restrictions on vast amounts of information represent an additional level of access to information since previously the agency only had to respond to FOIA requests.

According to the final rule companies will significantly alter the way in which they submit information to FERC as the companies themselves are responsible for labeling all CEII. The rule allows companies also to declare portions of required submissions CEII and restrict them. The final rule also adds a process under which companies that submit information labeled CEII will be notified and allowed to comment when a request for the information is received by FERC. Companies will also receive notice and an opportunity to comment prior to a release of any information that was submitted with a CEII label. These procedures provide corporations with undue influence and opportunity to manipulate a process that is supposed to ensure the public's right to know.

OMB Watch will be developing a more detailed analysis of FERC's final CEII rule.

Data Quality Cases and Decisions Begin to Mount

As the first challenges under the Data Quality Act are being decided and appeals are being considered, new industry challenges are being filed: recently two data quality challenges to the Environmental Protection Agency (EPA) have been decided at least in part; and two new challenges have been filed, one also with the EPA and another with the National Highway Traffic Safety Administration (NHSTA).

Data Quality Challenges Answered

Atrazine
Initially, EPA responded to the Atrazine challenge with a brief letter. In a 2-page letter to the Kansas Corn Growers Association and Triazine Network dated January 30, EPA notified the petitioners that it would handle the request for correction within the public comment process for the Draft Interim Reregistration Eligibility Decision (IRED) for Atrazine. However, EPA letter did state that the EPA felt it would be "inappropriate" to amend the risk assessment as suggested to show that there is "no reliable evidence that atrazine causes 'endocrine effects' in the environment." Additionally EPA stated that it was unable to locate the particular passage the petitioners contested in the risk assessment. The agency

asserted that their use of the studies was appropriate and consistent with the data quality guidelines. The letter concludes with a statement that the IRED "response to comments" document would provide more detail on the agency's plans to improve the clarity of their communication.

EPA's Interim Reregistration Eligibility Decision for Atrazine was approved January 31, 2003. While the document made several minor changes to its presentation of Atrazine's possible endocrine disrupting effects clearly in response to the data quality challenge, it did not present a final decision on the matter. While EPA concedes in the IRED that atrazine's "endocrine disruption, or potential effects on endocrine-mediated pathways" should not be regarded as a regulatory endpoint at this time, the IRED does not deny the troubling evidence that atrazine does cause these effects. In fact, in clear refutation of the data quality request EPA included a rather confusing statement to deny the specific assertion that petitioner wanted included. The EPA stated that "the Agency [does not] have evidence to state that there is no reliable evidence that atrazine causes endocrine effects in the environment." This double negative is EPA's refusal to allow the data quality challenge to silence the agency on this issue.

The IRED goes on to note the "uncertainties in the available database" and acknowledges, "atrazine should be subject to more definitive testing once the appropriate protocols have been established." EPA's wording for this statement is fairly troubling. The possibility that EPA could set a limiting precedent to require that protocols be established before testing would be extremely problematic for an agency that is charged with protecting the environment and which must act at times with limited information. Fortunately the EPA immediately goes on to state that, "several pertinent studies are being performed at this time" that "may reduce some of the uncertainties in understanding potential atrazine effects on amphibian endocrinology and reproductive and developmental responses." Therefore EPA's actions establish that even without established protocols, studies will continue and that these studies have the ability to resolve uncertainties. EPA delays any final decision on its statement of atrazine's endocrine disrupting effects until these studies can be presented. The IRED notes that the new studies along with other information will be made available for external scientific review by the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) Science Advisory Panel (SAP). The SAP has a public meeting scheduled for June 2003.

Much of this position was also summarized and expanded upon in EPA's response to comments about the EPA Reregistration Eligibility Science Chapter for Atrazine, Environmental Fate and Effects . Among the comments summarized and responded to were the data quality issues raised by the Triazine Network and the Center for Regulatory Effectiveness. EPA clearly refutes the petitioner's claims that the Data Quality Act requires proper test validation before it is used to generate information to support regulatory decisions. Specifically EPA notes that the "availability of a final guideline does not in any way affect the Agency's authority to collect the data." The response goes on to state that, "if data are submitted prior to the development of appropriate protocols, the Agency will consider the data provided they permit sound scientific judgements to be made." EPA notes that it has specifically stated that "data will not be rejected merely because they were not developed in accordance with suggested protocols." Finally the EPA reminded commenters that it retains the authority to "implement changes in the data requirements on a case-by-case basis."

Barium

In a detailed 8-page letter with over a page of references EPA flatly denied the barium challenge which requested that information about the oral dose for barium in EPA's Integrated Risk Information System (IRIS) be changed. The response letter detailed seven separate issues that were raised in the data quality challenge. EPA responded in general to the challenge by explaining the IRIS program's consensus process. The letter also addressed in detail each individual issue raised by the challenge.

EPA concluded that the request was actually "an alternative assessment of the relevant science" but did not demonstrate that EPA's assessment is not consistent with the guidelines. The agency points out that the new assessment offered is not based on any new studies and that since no major new scientific studies are available since the last assessment of the IRIS barium file, a reassessment of barium is not a priority.

EPA noted that it may update the barium assessment at a future time in accordance with its annual priority setting for the IRIS program and available resources and that when a reassessment occurs the petitioner's alternative assessment will be considered. The petitioner, the Chemical Products Corporation, has 90 days from the date of this decision to file an administrative appeal.

New Challenges

Chamber of Commerce's challenge of EPA's SAB Minutes

In a letter dated December 17, 2002, the U.S. Chamber of Commerce requested that EPA "correct" the minutes from the October 1, 2002, meeting of the EPA Science Advisory Board (SAB). The correction request states that since the minutes do not quote or reference a statement made by Committee Chair Dr. William Glaze the minutes do not meet standards of objectivity, which require that information be "accurate, clear, complete, and unbiased." Dr. Glaze apparently made a statement that he had recently been informed by an unnamed high-ranking EPA official that a high fraction of models used by EPA have never been validated. This challenge seems to be another component of industry's efforts to establish the argument that without validation agencies can not use information, models, etc.

One problem immediately apparent in this challenge is that the Chamber of Commerce argues that it is affected by the EPA's use of models, but it fails to establish that it is affected by the dissemination of these minutes. It attempts to argue that the statement is an important step in the process of the agency's use of valid models.

The second major problem is that Dr. Glaze's statement, which the Chamber of Commerce wants included in the minutes, would not meet the data quality guidelines. While including the statement may improve the objectivity and completeness of reporting on the occurrences and statements of the meeting, the statement would not meet the transparency or objectivity standards. Since Dr. Glaze's source of information about EPA's lack of validating the models is an "unnamed official" the statement cannot be considered either transparent or objective since the source is unknown. The Chamber of Commerce is also claiming that the statement is "an important step" in the process to altering EPA's management and use of models, and intend for this information to be used in policy decisions and agency management. By its own statement the Chamber of Commerce is explaining that it wishes the statement to be "influential" to agency decisions -- under data quality guidelines, "influential information" must meet even higher standards of quality.

Center for Regulatory Effectiveness challenge of NTSA's tire performance requirements rulemaking.
In a letter dated December 26, 2002 to the National Highway Traffic Safety Administration (NHTSA), the Center for Regulatory Effectiveness (CRE) asserts that the agency's FMVSS No. 139 tire performance rulemaking does not comply with data quality guidelines. The letter introduces a 15-page report "FMVSS No. 139 Proposed Performance Requirements Compliance with OMB and DOT Data Quality Guidelines: Necessary Steps" which details the numerous areas where CRE believes the rulemaking does not meet data quality standards. The report concludes with 16 separate steps that CRE claims NHTSA must take in order to comply with data quality standards. The steps include: demonstrating, with sound analytic techniques, the benefits to public safety; publishing a Federal Register notice discussing the information with a public comment period; and documenting the quality of all information disseminated in the rulemaking. All of the steps would create significant and undue delay to the rulemaking process. CRE is attempting to use the data quality standards to add time-consuming new requirements to the rulemaking procedure. This is consistent with its previous data quality challenge to NHTSA's information collection request, in which CRE demanded that NHTSA demonstrate that information to be collected would meet quality standards before it was collected and that plans to use the data should be submitted to the Federal Register with a public comment period.

OMB Watch Comments Oppose Rule Allowing Federal Funding for Church Buildings

On January 6 the Department of Housing and Urban Development (HUD) proposed new regulations implementing the President's December 12, 2002, Executive Order requiring "equal treatment" of faith-based organizations in the federal grant process. The proposal is similar to regulations proposed last month by the Department of Health and Human Services (HHS). However, they go further, allowing religious organizations to partially fund construction, acquisition or rehabilitation of structures to be used for both religious and government funded purposes. OMB Watch opposed this proposal, writing, "This is a can of worms that should not be opened."

The comments go on to say, "Current law, guided by Supreme Court cases, restricts capital improvement funds for structures that are permanently dedicated to exclusively secular purposes. See *Tilton v. Richardson*, 403 U.S. 672 (1971) and *Committee for Public Education v. Nyquist*, 413 U.S. 756 (1973)."

Partial government funding of buildings used for worship and other religious activities raises a host of problems that are best avoided, and does nothing to simplify or streamline the process for religious organizations. For instance, what happens once the government no longer funds a program within such a building? Is the religious organization required to continue the program, or seek another organization to set up shop in its house of worship? What kind of record keeping would be necessary for a religious organization to demonstrate it has not exceeded the allowable portion of religious use of the facility? Will designated space be set aside where religious activity is prohibited? How would "religious" and "non-religious activities" be defined? Would a house of worship be required to open its building to the general community for meetings, events or programs? Who would own the non-religious interest in the building?

These questions are only a few examples of the kinds of complications this proposed rule would create. The Establishment Clause was intended to avoid this level of entanglement. HUD should revise the rule and bring it into line with current law, so that no partial government funding of structures used for religious activities is allowed.

See the full text of the comments. Also see our comments on HHS proposed charitable choice rules.

Congress, OMB Won't Deliver on Bush's AmeriCorps Promises

Despite rhetorical support for AmeriCorps from the Bush administration, Congressional Republicans and the Office of Management and Budget have effectively halved the number of AmeriCorps volunteers for this year.

In the wake of the September 11, 2001, attacks, Bush issued a call for national service, and promised to increase the number of AmeriCorps volunteers from 50,000 to 75,000 in his 2002 State of the Union address. Now, however, AmeriCorps is facing a severe fiscal crisis that could not only halt the enrollment of new volunteers, but also cut the program to 26,000.

Despite the promises of the Administration, Congress only approved a $35 million increase in AmeriCorps funding as part of the FY 2003 omnibus appropriations bill (funding the program at $275 million, up from $240 million). Of this funding, Congress mandated that $100 million be used to repay money taken by AmeriCorps from the trust fund of educational grants given to each volunteer, which was used to pay for living stipends following a higher than expected volunteer enrollment in the previous two years. In January, OMB accused AmeriCorps of using "Enron-like accounting" in using education trust fund moneys for living stipends and insisted that the trust fund be repaid. OMB did not request additional funds from Congress to repay the trust fund, deciding instead to withdraw funds from this year's appropriation. This situation has effectively cut AmeriCorps funding by 30%.

In addition to effectively cutting funding, the appropriations bill also imposed a cap on membership, so that even if funding is somehow found, the program cannot recruit more than 50,000 volunteers for the current year, far short of the 75,000 Bush promised in 2002.

Critics have complained that the administration could have used its clout in Congress to increase funding in order to both pay back the education trust fund and increase current enrollment, but acquiesced to the wishes of Congressional conservatives, who have been vocal critics of AmeriCorps since its inception under the Clinton Administration. While it is unlikely that the 50,000 volunteer cap for this year will be removed, Sandy Scott, a spokesperson for the Corporation for National Service (AmeriCorps' parent organization) has said that the number of volunteers for this year would eventually reach last year's 50,000 level, but he has not said how this will be accomplished, given the funding crunch.

Air Toxics Rule Approved Without 'Risk-Based' Exemptions

The Environmental Protection Agency (EPA) approved a final rule February 28 establishing air toxics limits for the brick and clay industry that does not include controversial provisions exempting lower-risk facilities from control.

In the proposed version of the rule, EPA suggested offering exemptions to facilities that emit hazardous air pollutants (HAPs) based on the level of health risks posed to surrounding communities. As OMB Watch previously reported, the American Forestry and Paper Association pushed such "risk-based exemptions" in the context of a related air rule, outlining their case in three white papers given to EPA and the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) (which has the authority to approve or reject major EPA proposals).

With OIRA's backing, EPA incorporated these suggestions and specifically referenced the industry white papers in the brick and clay rule, as well as proposals (still yet to be finalized) to regulate HAPS in five other areas: automobile and truck coating; combustion turbines; industrial boilers; plywood and composite wood products; and reciprocating internal combustion engines.

Under the Clean Air Act, EPA regulates air toxics -- pollutants that cause cancer and other serious health problems -- through a technology-based approach, setting an emission standard for various categories of industrial facilities. These limits, known as Maximum Achievable Control Technology (MACT) standards, are based on the average emission limitation achieved by the best performing 12 percent of existing sources. Risk-based standards, such as the approach pushed by the American Forestry and Paper Association, would be much more difficult to craft than current MACT standards, and would significantly weaken clean air controls, resulting in more pollution over time. Furthermore, risk-based exemptions violate the Clean Air Act, which "plainly does not allow EPA to make facility-by-facility exemptions from MACT standards," according to attorneys at the Natural Resources Defense Council.

EPA Issues Guidelines for Assessing Cancer Risks

The Environmental Protection Agency (EPA) recently issued near final guidelines for agency scientists and other risk assessors to use in assessing cancer risks from chemicals or other environmental agents.

In the draft Guidelines for Carcinogen Risk Assessment, announced in the Federal Register March 3, EPA proposes using five descriptors to characterize a chemical's potential for human carcinogenicity: carcinogenic to humans; likely to be carcinogenic to humans; suggestive evidence of carcinogenic potential; inadequate information to assess carcinogenic potential; and not likely to be carcinogenic to humans.

Along with the draft guidelines, EPA also released supplemental guidance for assessing early-life exposure to carcinogens, acknowledging that children are much more likely to get cancer from exposure to certain chemicals.

The publication of this draft marks a final step in the revision of guidelines first published in 1986. EPA will be accepting public comments on the draft until May 1.

EPA Report Finds Mercury a Growing Threat to Children's Health

The Environmental Protection Agency (EPA) recently released its long-awaited report on children's health and the environment, ("America's Children and the Environment: Measures of Contaminants, Body Burdens, and Illnesses"), finding that mercury emissions pose an increasing threat to children.

EPA found that 8 percent of women of childbearing age (16 to 49) have at least 5.8 parts per billion of mercury in their blood -- the level at which EPA says there is an increased risk of adverse health effects to a fetus. "Like lead, mercury is a developmental neurotoxin that causes most damage as the brain and central nervous system develop in the fetus and young child. Exposures have been linked to lowering of IQ and gross motor skills as well as other neurological diseases," according to the Natural Resources Defense Council. The report also acknowledges that states have been issuing more and more warnings about dangerous mercury levels in fish.

The report clearly indicates that mercury emissions, mainly from coal-fired power plants and other industrial sources, need much stricter controls, yet the Bush administration continues to promote its feeble "Clear Skies Initiative," which would actually slow down the reduction of mercury emissions scheduled under the Clean Air Act, giving industry more than 15 years to cut emissions by 70 percent.

EPA also found:

- Childhood asthma rates doubled over two decades, climbing from 3.6 percent in 1980 to 8.7 percent in 2001;
- The number of children with elevated levels of lead in their blood has decreased dramatically -- from 4.7 million in 1978 to 300,000 in 2000 -- mostly due to the phase-out of lead in gasoline as well as a reduction in the number of homes with lead-based paint; and
- Levels of cotinine in children's blood, an indicator of exposure to secondhand smoke, were 56 percent lower than they were in 1988 -- the result of a decrease in adult smokers.

The report, which updates a 2001 study, was released on February 24 after being held up by the White House Office of Management and Budget for more than nine months. OMB Watch will discuss the controversy surrounding the delay of the report's release in our upcoming edition of the Executive Report.

Clean Air Rollback Takes Effect As Legal Challenges Move Forward

Fourteen states and a coalition of five environmental health organizations have launched legal challenges to the Bush administration's overhaul of the Environmental Protection Agency's New Source Review program, which relaxes limits on air pollution from factories, refineries, and power plants.

The U.S. Court of Appeals for the D.C. Circuit recently denied a request by ten Northeastern states to stay the administration's changes pending the outcome of litigation, which allowed the rule to take effect on March 3. California, Illinois, Delaware, and Wisconsin have also filed challenges to the rule.

The coalition of environmental health groups -- which includes Earthjustice, American Lung Association, Communities for a Better Environment, Environmental Defense, Natural Resources Defense Council, and Sierra Club -- explains its objections here.

Illinois Bill Reinstating FOIA Fee-Shifting

In an effort to encourage use of the Freedom of Information Act (FOIA) to access information, Illinois State Reps. Barbara Flynn Currie and Mary K. O'Brien have introduced House Bill 438 to the Illinois state legislature. The bill would provide reimbursement for court costs and attorney fees for individuals who are successful in lawsuits brought under the Illinois FOIA. This would ensure that individuals previously constrained due to financial burdens, as well as attorneys who were discouraged by fees, could utilize opportunities to access information and participate in democracy. This bill was passed by the Illinois House on March 4, 2003, and is currently being read by the Senate.

Illinois has a poor history of compliance with information requests: a 1999 study by the Associated Press cited a compliance rate of less than one-third. Illinois residents can support this legislation through the American Civil Liberties Union's Take Action page.

Original federal FOIA legislation contained a FOIA attorney fee subsection, (a)(4)(E), as part of the 1974 FOIA amendments which used the "catalyst theory" to award attorneys' fees to plaintiffs who catalyze a defendant's change in conduct. As long as the process resulted in a release of the requested records, the FOIA plaintiff could recover fees even if the ruling were not in their favor. A 2002 D.C. Circuit Court of Appeals ruling, *Oil, Chemical & Atomic Workers v. Department of Energy* changed this atmosphere under FOIA, ruling that unless the plaintiff wins a final judgment or a consent decree from a judge, it will be extremely unlikely that attorneys' fees could be recovered. This was a strategic move in order to limit the amount of government information sought and created a disincentive for attorneys to litigate. A valuable public good and tool for democracy was lost and fewer FOIA cases were brought to the courts.

This Illinois bill is an important example for other states and the federal government that access to information and proper use of FOIA is vital to an open and transparent government. Reinstating the ability to more easily recoup attorney fees in successful FOIA cases would reinvigorate a critical aspect of the struggle to achieve an accountable and transparent government. The courts are an important check and balance on the executive branch, which typically tends to be fairly restrictive with information. Unfortunately, the courts have become more and more silent on FOIA and access to government information as cases are brought less frequently, due to the reduced possibility of recovering the significant financial expense that these cases represent.

GAO Authority Undermined

The recent decision by the General Accounting Office (GAO) to drop its lawsuit against Vice President Dick Cheney likely further weakens the agency's ability to get information from an already overly secretive administration. The GAO lawsuit set an important precedent as the first time in GAO's 81 years that the agency sued the Executive Branch in order to obtain information. This raised the struggle for transparency and accountability in government to a new level. Unfortunately, the decision to drop the case will likely strengthen the administration's resolve to widely withhold information from GAO specifically, but also more broadly from Congress and the general public.

GAO filed the suit at the request of House Democrats, in order to obtain records from secret meetings of the Energy Task Force. This task force was charged with the examination and formulation of the nation's energy policy. Initial concerns arose around the involvement of large Bush campaign contributors and industry leaders, particularly because of Cheney and President Bush's strong ties to the energy industry.

A GAO press statement issued February 7, 2003, expressed disappointment over a December decision by Bush-appointed U.S. District Court Judge John Bates, which declared that GAO lacked sufficient grounds for the inquiry and that disclosure of the information would violate the separation of powers. The GAO asserted that the ruling was incorrect and that the Judge misapplied a past Supreme Court decision. Congressman John Dingell (D-MI) commented, "It is regrettable, but not surprising, that a newly appointed federal judge chose to look the other way."

Apparently, following the court ruling, as GAO considered appealing, immense pressure was placed on GAO to drop the

lawsuit. Sen. Ted Stevens (R-AK), chairman of the Appropriations Committee, met with GAO Comptroller General David Walker earlier in the year, and sources have reported that sharp cuts in the GAO $440 million budget were threatened if the lawsuit was pursued further.

The long-term implications of this decision by Walker are extremely troubling. GAO is usually perceived as an unbiased, influential body in the midst of a politically charged environment. House Democrats believe GAO will no longer be able to fulfill their duty as a nonpartisan investigative branch of Congress. It is possible that in the future sensitive information might be shielded if permission from the majority party is not granted. Dropping the lawsuit undermines GAO's authority to gather information and investigate effectively. The fact that GAO caved in to financial threats also decreases its credibility in challenging the Administration in the future. It is highly likely that while the Energy Task Force has been the highest profile information that GAO has been denied, it will not be the last.

Senate Briefing Focuses on CARE Act and Discrimination

Comment on grant competition in an era of budget cuts in our forum.

On March 10 leaders of civil rights and religious groups held a Senate briefing for members of the Senate and their staff to discuss the serious civil rights and religious liberty problems inherent in the "equal treatment" provisions of S. 272, the version of the CARE Act proposed by Sens. Rick Santorum (R-PA) and Joe Lieberman (D-CT). Another version of CARE, S. 476 has passed the Senate Finance Committee and may reach the floor soon. It has charitable giving and oversight provisions, but not the faith-based provisions in the Santorum-Lieberman "equal treatment" bill. It is expected that the "equal treatment" faith-based language the White House supports will be added to the Finance Committee when it gets to the Senate floor.

A number of speakers addressed these issues. Rep. Chet Edwards (D-TX) stated that, "No American citizen should have to take someone else's religious test to qualify for a federal job." Representatives from the United Church of Christ, United Methodist Church, American Jewish Committee and Human Rights Campaign noted recent actions by the Administration, through Executive Order and proposed regulations, that have endorsed religious based discrimination for jobs funded by federal grants. Edwards warned that, "The ultimate impact on our society would be devastating and divisive."

The S. 272 version of the faith-based initiative legislation does not contain safeguards to protect the civil rights and religious liberty of employees and beneficiaries in federally funded social service programs. For instance, speakers noted that there is no ban on proselytization to program participants.

Rev. Marvin Silver, United Church of Christ Justice & Witness Ministries, described his denomination's long history of anti-poverty advocacy, including cooperative efforts with government. Asking "Why change what is already working?" Silver said an influx of huge sums of federal dollars into church coffers would "damage rather than improve cooperative efforts between church and government."

For more detail see our web update on CARE.

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