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OMB Watch Announces New Weblog

OMB Watch's budget group is pleased to announce the launch of a new federal budget "weblog."

A "weblog," also known as a "blog," is a popular term to denote a website (or a portion of a website) that contains short, frequent posts, often containing web links. The entries are usually sorted in reverse chronological order and are often archived by category as well as by date.

OMB Watch's new weblog will cover a wide range of tax and budget issues, and will be updated throughout the week by OMB Watch budget staff. We hope you will find this to be a useful resource.

The weblog is located at http://www.ombwatch.org/budget/weblog/.

HOUSE PASSES LABOR, HHS AND EDUCATION BILL

The Labor, Health and Human Services (HHS), Education appropriation bill passed by the House reveals a lack of commitment to education, providing everyone the tools to succeed, keeping low-income families warm, and preparing for bio-terrorism. Talk is cheap without the resources to make it real.

On July 10, the House passed its Labor, HHS, and Education appropriation bill by a vote of 215 to 208. Rep. David R. Obey (WI), the Ranking Minority Member, continued his efforts to restore funding to critical areas by reducing tax breaks for high-income taxpayers. Rep. Obey continues to call attention to the cuts in important American priorities being made due to the costs of the two huge tax bills passed during the Bush presidency. For instance, the bill passed by the House:

- Provides only a $2.3 billion increase in overall education funding, the smallest dollar increase in 4 years, far less than the $3 billion promised.
- Provides only a $382 million increase for the President's No Child Left Behind Initiative, which is $8 billion short of full funding, leaving the states struggling to implement reforms without the resources to do so.
- Funds special education funding (IDEA) by less than half of the promised increase, shorting this important program by $1.2 billion.
- Freezes the Pell Grant at $4,050, in spite of the rapidly escalating costs of college tuition.
- Cuts the Low-Income Home Energy Assistance Program (LIHEAP) to $1.8 billion, lowering the funding from last year.
- Cuts the Community Services Block Grant (CSBG) by $150.8 million.
- Gives state and local health departments $94 million less in bio-terrorism preparedness grants than last year.

What do these examples mean? In spite of being the "Education President," if there are inadequate resources, there is no evidence of a commitment to education. The federal resources necessary to the states for implementation of programs like "No Child Left Behind" and IDEA are not being expanded, but shrinking during what is the worst fiscal crises in the states since WWII. Programs that help low- and middle-income people get ahead — programs that allow the opportunities to succeed — like Pell Grants for college students or CSBG are being cut. Programs for the most vulnerable Americans, like LIHEAP, are being cut. In spite of the continued threat of biological terrorism, state and local health departments are not being given the resources to prepare.

HEAD START AND BLOCK GRANTS

The Bush administration and House leadership are proposing to block grant the Head Start program in eight states. This means states can use federal funds for their own early-childhood education programs and would no longer have to abide by national standards.

This represents the start of an effort to dismantle a hugely popular and successful federal effort. Historically, block granting inevitably results in funding cuts. Through the combination of reducing revenue through tax cuts for the wealthy, block granting programs to states, and privatization, the Bush Administration is following through on a radically conservative effort to shrink government. To paraphrase Grover Norquist, one of the chief strategists of reducing government, the goal is to shrink government to the size that can be drowned in the bathtub. Presumably, the baby then gets thrown out with the bath water, and the country cannot provide more than the barest minimum to its citizens. For more information about actions you can take to oppose the block granting of Head Start see this site.

LOW-INCOME FAMILIES STILL BEING HELD HOSTAGE

Extension of the child tax credit remains stalled with the House determined to add more deficit-deepening tax cuts.

Around the end of July, about 25 million middle-income taxpayers will begin receiving a child tax credit check as part of the $350 billion tax bill signed by President Bush in May. The 6.5 million plus low-income filers who were left out of the deal during tax bill negotiations cannot expect checks anytime soon, even though both the House and Senate passed bills to extend the credit. The Senate bill offsets its $10 billion cost so the total $350 billion cost of the tax bill will not be exceeded. However, the House bill adds other provisions that would benefit families making over $110,000 and will cost $82 billion over the next ten years, none of which is offset.

Most recently, House members have been hoping to add even more tax cuts. Some House leaders are promoting adding a provision to make either state sales taxes (in the seven states with a state sales tax and no state income tax: Florida, Nevada, South Dakota, Tennessee, Texas, Washington and Wyoming) or state income taxes, whichever is larger, deductible from federal tax payments. That provision would cost another $27 billion over the next ten years. Negotiations appear stalled on the child tax credit for low-income families, in spite of parliamentary efforts by Senate Democrats to force action. House Republicans insist on a larger bill with additional tax breaks.

Fair Taxes for All coalition members have planned a series of events to publicize this issue and place pressure on Congress to pass the Senate version of the child tax credit bill before the July 25 recess.

State Supported Colleges and University See Massive Tuition Increases

States continue to feel the impact of low revenue and a lack of support from the federal government. As a result, many state-supported colleges and universities have seen dramatic budget cuts in recent years. In an effort to minimize the damage, colleges and universities are approving skyrocketing tuitions. An informal scan of recent headlines (see below) shows some of the steep increases, with most in the double digits extending up to 28%.

These increases are unfortunate because they will place the benefits of a college education out of the financial reach of many potential students. A recent survey by the Educational Testing Service indicated that “the public points to rising tuition and other costs as the biggest problem facing colleges and universities,” and “more than half (52%) of adults name rising tuition and other costs as the biggest problem facing colleges and universities.”

It appears that these increases are unnecessary, as there is strong support for public support of college and university students. The poll cited above also found that “66% of respondents are willing to pay more taxes to increase financial support for college students, while 61% are willing to pay more taxes to increase support for colleges and universities.”

Finally, there is also strong backing for federal support of higher education. “Eighty-four percent (84%) of adults say that the federal government should play a significant role in higher education.”

The benefits of education are widely known, and the electorate broadly supports higher education. It is puzzling that the federal government still refuses to provide states with more than just a fraction of their needed aid, given the budget crises in the states, which are causing cutbacks in needed programs such as higher education.

Some of the increases:

- University of Maryland: up to 21%
  Source
- Penn State: minimum 9.8% increase
  Source
- Ohio State University: 15.4% increase
  Source
- University of New Hampshire: 6.8% increase
  Source
- State University of New York (SUNY): 28% increase
  Source
- Kansas University: 20.7% increase
  Source
- University of Wisconsin: between 15 and 18% increase
  Source
- Oklahoma University: 17.5% increase
  Source
- Clemson: 18.8% increase
  Source
- Rutgers: 9% increase
  Source
- University of Illinois: asking for an 8% increase
  Source
- Auburn University: 16% increase
  Source
- University of Alabama: seeking 16.25%
  Source
- University of Tennessee: expected 14% increase
  Source
- University of Southern California: 15%
  Source
- University of Minnesota: 14.7%
  Source

Higher education is just one of many activities that are being cut back as a result of tax cuts and budget crunches.

Economy and Jobs Watch: Unemployment Up, Minimum Wage Down

Unemployment Up

The first week in July brought more bad news about the weak labor market. The Bureau of Labor Statistics announced that the unemployment rate for June rose by 0.3 percentage points to 6.4 percent - a nine year high. Total employment declined this last month for the fifth straight month, with 30,000 lost jobs. Since the start of the recession, total employment has declined by 2.6 million and the private sector has lost 3.1 million jobs. This may be the first administration since Hoover’s where total employment has dropped.

The continued weakness in the labor market has made life difficult for those responsible for declaring an end to the recession. (For a recent report see Number Crunchers vs. Recession.) The National Bureau of Economic Research (NBER) is commonly viewed as the authority on the precise dates of the beginnings and ends of

recessions. While total output in the economy has risen above its low point, employment has yet to recover from the recession that began in March 2001.

The NBER's latest announcement, dated July 9th, says that "the committee views real Gross Domestic Product (GDP) as the single best measure of aggregate economic activity," but that is also uses a variety of other data to determine the exact start and end of a recession. Using only GDP as an indicator, it appears that the recession likely ended sometime at the end of 2001, or the beginning of 2002. A survey of analysts by the Federal Reserve Bank of Philadelphia placed December 2001 as the top choice. (See A Closer Look at Jobless Recoveries, footnote 4.)

If the NBER does announce that the recession ended in late 2001, the current recovery will have proven to be rather weak, especially when it comes to employment. This would make the current recovery only the second "jobless recovery" in U.S. history, the first being the recovery from the 1990-91 recession. Recent analyses by Federal Reserve economists suggest that we are indeed in another jobless recovery. See Another Jobless Recovery?, A Closer Look at Jobless Recoveries, and A Jobless Expansion Isn't All Bad News.

Three major tax cuts occurred in the past three years, with a total cost of around $1.75 trillion over ten years (and this is a gross underestimate since the cost assumes that many of the provisions are allowed to sunset). Each of these cuts was sold as economic and job stimulus. The current employment situation shows that these tax cuts had very little to do with good counter-cyclical fiscal policy, and have left us with another jobless recovery.

Minimum wage down

The federal minimum wage, currently at $5.15 per hour, last increased in 1997, and since then its real value eroded by over 12 percent from inflation.

The Washington Post reported that, last Friday, Sen. Edward M. Kennedy (D-MA) tried to raise the minimum wage from $5.15 to $6.65, but was blocked by Republican opposition.

Without the minimum wage increasing in the next couple years, the real value will likely fall to levels not seen for 50 years. The minimum wage reached a relative low point in 1989 at $4.96 (in 2003 dollars), just 3.7% below the current rate. If inflation averages just 2% over the next two years, and no increase in the minimum wage occurs, the real value will fall to levels not seen since 1955.

Notes:

- For a graph of the inflation-adjusted minimum wage, see figure 1 of Step up, not out from the Economic Policy Institute.
- See the Department of Labor website for a chart of the unadjusted federal minimum wage.
- Inflation adjustments can be made using the calculator found at the Bureau of Labor Statistics CPI Homepage.

FOIA Officers Meet Over News of Secrecy

The principal administrative Freedom of Information Act (FOIA) officers gathered on June 25th for a conference on the relationship between homeland security matters and FOIA. Homeland security matters have been among the leading rationales used for recent broad restrictions in public access to government information.

Among the topics covered at the conference were the all of the major new secrecy policies that first amendment and good government advocates are complaining about. The subjects included; Ashcroft's FOIA Memorandum, Andrew Card's web-scrubbing Memorandum, the new FOIA exemption for critical infrastructure information (CII), and the Homeland Security Act's provisions for safeguarding "sensitive homeland security information" which includes "sensitive but unclassified" (SBU) information.

The focus of the conference seems to have been to remind FOIA officers of the numerous new reason information

should not be given out. In other words, the conference signaled FOIA officers that the administration wants even more caution and restriction used when responding to FOIA requests. The Ashcroft memo in particular, pushes for an overly broad approach when responding to FOIA requests. It is still unclear what final rules for SBU will look like, but they could massively limit the amount of information available to the public, including information about everyday risks people face in their communities and workplaces. Information access not only forces more accountability in government, but information about vulnerabilities and risk allows the public to insist that the problems in their communities be fixed.

Public Meeting for National Infrastructure Advisory Council

The Department of Homeland Security (DHS) announced in the Federal Register that the National Infrastructure Advisory Council (NIAC) will hold a public meeting on the security of information systems for critical infrastructure on Tuesday, July 22, 2002. The Council advises the President on issues around security of information systems relating to the critical infrastructure supporting sectors of the economy including banking, finance, transportation, energy, manufacturing, and emergency government services.

Agenda items include remarks by Under Secretary for Information Analysis and Infrastructure Protection (DHS) Lt. General Frank Libutti, and status reports on vulnerability disclosure initiatives. The Federal Register notice states that interested parties can submit written comments before or after the meeting, but are encouraged to forward presentation materials to the Office of Planning and Partnership ten days prior to the meeting. See the full Federal Register notice for more details.

The meeting is open to the public but reservations will not be taken and seating is listed as limited. The meeting, which is scheduled to run from 11:30 a.m. until 1:30 p.m, will be held in the Herman Lay room of the U.S. Chamber of Commerce, located at 1615 H Street, NW.

Critical Infrastructure Information Docket

The Department of Homeland Security (DHS) recently finished receiving public comments on its proposed rule for the handling of Critical Infrastructure Information (CII). While the June 16th deadline for comments was over a month ago, DHS is still not providing access to the public comments it received, nor has the agency announced any plans to do so.

Review of public comments is an important step in maintaining government accountability and should occur as soon as possible. Various pieces of legislation recently passed, such as the E-Government Act and E-Rulemaking, consistently recognize the importance of access to public comment dockets and encourage the use of ongoing online dockets as the best practice.

According to a DHS official, the agency's current thinking is that the docket of received public comments on the proposed CII rule will be made public when the final rule is published. The DHS official acknowledged that the agency had received extensive comments on the proposed CII rule. Opening the docket of public comments simultaneously with the release of the final rule makes it much harder for the public to track and evaluate the rule.

Head Start Group Wins Victory on Lobbying Rights

On July 2nd, the National Head Start Association (NHSA) won a big victory for nonprofit advocacy rights in its lawsuit against the Department of Health and Human Services (HHS). After a June 30th hearing in federal District Court, HHS agreed to withdraw a May 8 letter to Head Start grantees that contained confusing and inaccurate information about grantees' right to lobby on Head Start issues. The letter threatened sanctions against programs and parents who engaged in lobbying activity. HHS sent the corrected letter on July 2nd to all Head Start programs.

At the hearing on NHSA's motion for an injunction, HHS presented the court with a draft second letter that was also misleading. The letter stated Head Start staff can lobby on their own time with their own money, but did not mention their legal right to lobby with non-federal funds. The judge told HHS to draft another letter or face a court order.

NHSA's suit also claimed that Head Start matching funds are not covered by the restriction on lobbying because the Head Start legislation only applies the restriction on lobbying to "appropriated funds". This issue was not heard during the hearing on the injunction, and after HHS sent the corrected letter NHSA decided to withdraw the claim on matching funds, leaving this legal issue unsettled for the time being.

For more details see the Save Head Start website

Senate Votes to Overturn Global Gag Rule

On July 9th, the Senate voted 53-43 in favor of an amendment to the foreign aid bill that allows federal grantees doing international work to use non-grant funds to provide information about abortion or advocacy on abortion rights. Current policy is known as the "global gag rule" because it bans international aid groups that provide abortion information from receiving federal grants. President Bush issued this policy in a memorandum sent to the Agency for International Development within days of his inauguration.

President Ronald Reagan first imposed the global gag rule in 1984, and President Bill Clinton rescinded the policy in 1993. The Senate amendment (S.AMDT.1141), sponsored by Sen. Barbara Boxer (D-CA), is the first step in removing the policy legislatively. However, the more conservative House is unlikely to approve the measure. Even if the bill gains House approval, Bush promised to veto the $27 billion foreign aid package if it lifts the gag rule.

The Senate vote does not alter existing requirements that federal funds cannot be used for abortions. Nonetheless, the bill is being characterized as pro-abortion, with Sen. Sam Brownback (R-KS) reported by Reuters as saying, "It's about the use of taxpayer dollars to fund abortions overseas."

New Study on Foundation Payout Continues Controversy

The National Committee for Responsive Philanthropy (NCRP) released a study on the impact pending legislation could have on grant amounts awarded by private foundations. The study, titled *A Billion Here, A Billion There: The Empirical Data Add Up* is available in PDF format on the NCRP website. A press release summarizes their findings.

Based on IRS data, the study predicts the impact of Section 105 of H.R. 7, the Charitable Giving Act of 2003, would increase annual grants by $3.2 billion. The Act excludes administrative costs from the annual 5% required foundation payout. The Council on Foundations opposes the measure, saying it could force some foundations out of business. The bill is currently assigned to the House Ways and Means Committee, but no date is set for action.

PAC Data Now Searchable on IRS Site

Soft money disclosure information became searchable and downloadable on the Internal Revenue Service (IRS) site July 1st, meeting a deadline set by Congress last November. The disclosure information is reported to the IRS by political action committees (PACs) under a law passed in 2000. The website only allows searches of reports that filed electronically. Over the past two years, most reports have been filed on paper and are available in PDF format. Beginning this month, PACs that raise or spend more than $50,000 a year will be required to file their reports electronically, so that the amount of searchable information will increase over time.

The IRS site allows both basic and advanced searches, contains a tip sheet to make it easier, and a database download feature. For example, searches can be made by the name of the organization, contributors, occupations of contributors, range of contributions by size, date of contribution and purpose of expenditures.

Political action committees are exempt under Section 527 of the tax code. Hard money contributions and expenditures on federal elections, which include direct campaign activities, are reported to the Federal Election Commission, which already has a searchable database. Before 2000, soft money contributions and expenditures, which are not used to expressly call for election or defeat of a federal candidate, were not reported.

Public Citizen, which lobbied to make PAC disclosure information searchable, has issued a press release on the new site.

The IRS is seeking comments on reporting forms for PACs, including Form 8871, Political Organization Notice of Section 527 Status and Form 8453-X, Political Organization Declaration for Electron Filing of Notice of Section 527 Status. In a July 3, 2003 Federal Register Notice the IRS set September 2nd as a deadline for comments on whether the information in the forms has practical utility and if the quality of the information collected can be improved.

Federal Grant Streamlining Update

The federal government is moving forward with implementation of a 1999 law requiring streamlining and simplification of the grants process. In late June, the Office of Management and Budget (OMB) published four announcements in the Federal Register on policies to standardize information and formats for grant announcements, and increase the threshold for organization-wide audits for grantees from $300,000 to $500,000. A policy requiring grant applicants to have a Dun and Bradstreet DUNS number after October 1, 2003 was also published.

The Office of Federal Financial Management, an arm of OMB, issued a Policy Directive on Financial Assistance Program Announcements on June 23, 2003, establishing a standard format for all grant announcements, whether online or in print. Another directive orders the use of standard data elements for the FIND website, which is located at grants.gov. OMB is seeking comments on requiring agencies to post all grant announcements on this site by July 23, 2003.

OMB also announced an amendment to its policy on audits for grantees, which increases the threshold for organization wide audits of grantees to $500,000. The policy will be effective for fiscal years ending after December 31, 2003. The move will affect less than one half of one percent of federal grant dollars, but will relieve nearly 6,000 grantees from the expense and burden of the single entity audit. Program audits are required from grantees, limited to their federal funds.

FDA Relaxes Standards for Health Claims on Food Labels

The Food and Drug Administration (FDA) recently announced its intent to relax restrictions on food manufacturers for making claims about the health benefits of products.

FDA will allow companies to petition the agency for review of claims about the healthfulness of their products based on preliminary scientific information—a departure from its current practice of approving only those claims supported by conclusive scientific evidence.

The agency plans to use an A-through-D scale to rate health claims, with "A" indicating significant scientific agreement backing the assertion. Those claims ranked at levels B-through-D will be considered qualified health claims and will be accompanied by disclaimer language. The lowest level claim, "D," will be qualified by such statements as "Very limited and preliminary scientific research suggests that... FDA concludes that there is little scientific evidence supporting this claim," according to the agency.

"This action represents the biggest rollback in food-labeling standards in 20 years," according to the Center for Science in the Public Interest. "The FDA's grading system for health claims is untested and shouldn't be used until the agency has completed consumer behavior research that shows that consumers will not be misled."

FDA will post petitions under consideration on its web site, allowing the public 60 days to submit comments on each set of health claims. The agency will begin accepting proposals as of Sept. 1.

EPA Misleadingly Pads Enforcement Record

The Environmental Protection Agency (EPA), under the leadership of the Bush administration, has misrepresented its record of criminal enforcement and overstated its successes in cracking down on polluters, according to an investigative report by the Sacramento Bee.

Specifically, the agency has:

- **Inflated its count of criminal investigations initiated.** The agency included 190 counterterrorism-related investigations in a count of criminal investigations. One-time phone conversations between EPA and FBI agents were considered criminal investigations for reporting purposes as well. Agency officials claimed that there is no other way to record agents' time, but staff counter that time sheets have pay codes for work unrelated to pollution investigations.

  Not only is the number of criminal investigations being misreported by EPA officials, but agency sources also allege that there is pressure for agents to open cases that have little or no chance of prosecution instead of pursuing the most egregious violations.

- **Distorted its record of referring cases to federal prosecutors.** EPA, in its annual performance report, claims the agency referred 506 criminal cases to the Department of Justice (DOJ) for prosecution in FY 2001 and 2002 combined, and compared that with 477 referrals that took place in the last two years of the Clinton administration. In fact, only 396 of the reported 506 cases were actually sent to DOJ, with the other 110 referred to state prosecutors. The number of referrals to DOJ is considered a good indicator of the agency's enforcement efforts.

- **Exaggerated the length of prison terms imposed on environmental criminals.** EPA has boasted that offenders of environmental crimes were sentenced to 471 prison years in 2001 and 2002 combined. In fact, as the Bee reports, these numbers are "seriously misleading" in that they include sentences stemming from other agencies' narcotics cases, where hazardous waste charges were brought against methamphetamine lab operators. An EPA staff attorney pointed this out in an e-mail to top enforcement officials, who defended the practice of taking credit for such figures.

These findings follow reports earlier this year that criminal agents were being diverted to then-Administrator

Christie Whitman's "personal security detail."

Administration Hides Favorable Data for 'Clear Skies' Alternative

The Bush administration recently attempted to hide an analysis showing that a rival Senate plan would achieve greater public health and environmental benefits than the president's Clear Skies Initiative, at only a slightly higher cost.

The competing bill (S. 3135), introduced by Sen. Thomas Carper (D-DE) and endorsed by a bipartisan group of senators, would tighten an existing cap on sulfur dioxide (SO_2) emissions and would impose new restrictions on nitrogen oxides (NO_x) and mercury. Unlike the administration's plan, Carper's bill, dubbed the "Clean Air Planning Act," also calls for cuts in carbon dioxide (CO_2) emissions, which are largely responsible for global warming.

Administration officials acknowledged that Carper's plan would achieve reductions in emissions earlier and by larger amounts than Clear Skies. EPA, however, withheld an internal analysis showing that the Carper alternative would raise electricity prices just two-tenths of a cent per kilowatt more than the Clear Skies plan. Leaked copies of these findings, prepared last fall for EPA Assistant Administrator Jeffrey Holmstead, found their way to environmentalists, the press, and others, generating criticism of the agency.

Shortly thereafter, on July 1, EPA released a new, more favorable estimate of health and environmental benefits to be achieved by the Clear Skies Initiative, updating calculations performed in 2002. The agency claimed the revised figures were needed to take into account new air quality data, census information, and modeling techniques.

The new analysis shows increased benefits and decreased costs, bringing the Clear Skies figures closer in line with those attached to Carper's bill. Holmstead acknowledged that the new analytical model would show comparable benefit and cost changes for the Carper plan. He claimed the formula was applied to the president's plan and not to Carper's because the administration believes Clear Skies to be "far superior from a public policy perspective," according to the Washington Post. Sen. Carper has requested a new analysis of his bill using EPA's updated data.

Meanwhile, electric power utilities have begun mobilizing support for the polluter-friendly Clear Skies plan. Edison Electric Institute, in particular, recently established a web site and sent an e-mail to power company officials in support of the administration's air pollution plan, according to the Cincinnati Enquirer.

The House Committee on Energy and Commerce convened a hearing on the Clear Skies Initiative July 8, but members indicate that there are number of issues needing to be addressed before the group can act on the bill.

GAO Finds USDA Breaking Rules by Promoting Tobacco Exports

The U.S. Department of Agriculture (USDA) is helping American tobacco companies promote their products overseas despite congressional restrictions banning such activity, according to a recent report by the Government Accounting Office (GAO).

Congress, concerned about the government's promotion of American tobacco products in foreign markets, passed legislation in the 1990s prohibiting agencies -- including the USDA's Foreign Agricultural Service (FAS) -- from funding tobacco export programs.

GAO has found, however, that FAS, which works to improve export opportunities for U.S products abroad, has continually gathered and disseminated information related to foreign tobacco production, importation, and consumption rates -- including tobacco and brand preference information. In addition, the report states that FAS has provided negotiators from the Office of the U.S. Trade Representative with information on foreign tariff rates,

U.S. market shares, as well as the potential impact of trade concessions on exports.

Sen. Richard Durbin (D-IL) and Rep. Henry Waxman (D-CA) wrote to Agriculture Secretary Ann Veneman following release of the report, requesting an investigation of FAS's tobacco-related activities. The two raised questions about the service's involvement in recent tobacco trade negotiations involving South Korea and Chile, citing e-mail communications between a Philip Morris executive and an FAS analyst among others.

"We believe that GAO's findings and the recent e-mail communications between Philip Morris and USDA raise serious questions about whether the Department has violated Congressional prohibitions on the use of federal funds to promote tobacco exports," the letter said. Sen. Durbin and Rep. Waxman have requested a response from Secretary Veneman by July 15.

FDA Requires Food Labels to List Trans Fatty Acids

The Food and Drug Administration (FDA) recently issued standards requiring labels to list the amount of trans fatty acids in foods -- helping consumers make better-informed decisions about products they eat.

Trans fatty acids (or "trans fat"), which have been linked with an increased risk of coronary heart disease, are fats found in foods such as vegetable shortening, snack foods, fried foods, and salad dressings.

The new standards require labels to list grams of trans fat, but do not include a provision, contained in FDA's 1999 proposal, requiring trans fatty acids to be included in the amount and percent Daily Value (%DV) declared for saturated fatty acids (another heart disease promoting fat). Canada requires food manufacturers to label trans fat in this way, according to the Center for Science in the Public Interest (CSPI).

"The new labels will let consumers compare trans fat content from product to product, and that will be a great step forward," said Margo Wootan, CSPI's nutrition policy director. "It will be hard, though, for people to tell if a given number of grams of trans fat is a lot or a little. Five grams may not seem like a lot, but it is."

The new standards follow a September 2001 "prompt letter" from John Graham, administrator of OMB's Office of Information and Regulatory Affairs (OIRA), asking the FDA to make labeling requirements for trans fatty acids a priority. Graham, who throughout his tenure has exercised a great deal of upfront influence in agency affairs, also recently urged the departments of Agriculture and Health and Human Services to revise dietary guidelines and the food pyramid to reflect the dangers of trans fatty acids.

Along with the new standards, FDA also issued an "advanced notice of proposed rulemaking" to gather information that could lead to further labeling changes related to trans fat, saturated fat, and cholesterol.

Food manufacturers must comply with the new requirements by Jan. 1, 2006.

GAO Finds Oversight of Medicaid Waivers Lacking

The Bush administration, through the use of waivers, has given states flexibility in administering Medicaid, but has failed to adequately oversee these programs, according to a recent report by the Government Accounting Office (GAO).

The use of Medicaid waivers, which exempt states from federal regulations and potentially enable them to tailor programs to meet state-specific needs, has grown significantly over the past decade. In particular, states have increasingly sought home and community-based services (HCBS) waivers in order to provide non-institutional long-term care for the elderly.

The recent GAO report found, however, that the Centers for Medicare and Medicaid Services (CMS), which reviews and approves state requests for waivers, has allowed states to obtain waivers without first presenting a detailed

plan for assessing quality of care. CMS itself has neglected to even develop guidance for states on acceptable quality assurance measures.

The report also reveals that 228 HCBS waivers had been in place for three years or more as of June 2002. However, 42 of these waivers, serving 132,000 beneficiaries, had either never been reviewed by CMS regional offices as required or were renewed without review. Reviews were conducted for an additional 36 waivers, but reports summarizing the findings were never completed, "raising a question as to whether any weaknesses were identified and, if so, had been corrected," according to GAO.

Following the release of the report, Sens. Charles Grassley (R-IA) and John Breaux (D-LA), who requested the GAO investigation, wrote to Secretary of Health and Human Services Tommy Thompson, stating, "HHS has jurisdiction for protecting the health and welfare of each and every waiver beneficiary receiving services through these home and community-based waivers. Without improved guidance to the states and strengthened oversight activities such assurances will continue to be compromised. That is unacceptable."

The Senators requested a plan to address the oversight weaknesses by July 28.

Proposal to Cut Overtime Pay Elicits Huge Response

More than 75,000 people have written to the Department of Labor (DOL) in response to its proposed changes to overtime standards -- the most mail the agency has received on any similar issue in at least a decade, according to the Washington Post.

DOL's proposed changes, issued March 31, 2003, would significantly alter current overtime rules -- stripping eight million workers of their right to time-and-a-half pay for hours worked beyond 40 in a single week, according to a recent analysis by the Economic Policy Institute.

More than 100 workers gathered outside DOL headquarters on June 30, the final day of the agency's public comment period, to protest the proposal. Unions had rented a room at DOL weeks in advance -- planning a rally and news conference -- but agency officials reneged on the deal just days beforehand, denying the group the space.

The White House has further responded to this intense opposition by threatening a veto of the Fiscal Year 2004 Labor-HHS appropriations bill if an amendment is added blocking the overtime changes. The threat may have proven critical since an amendment by Reps. David Obey (D-WI) and George Miller (D-CA) to block the DOL rules failed on a 213-210 vote.

DOL will now review public comments and could issue final standards as early as this fall.

New Guidelines Open Door to Logging

The U.S. Forest Service and the Department of the Interior (DOI) recently issued joint interim guidelines to implement stewardship contracts that allow timber companies to harvest trees in exchange for broadly defined "land management services" -- opening the door to increased logging in forests.

The new guidelines give timber companies dangerous power to manage forest areas as they see fit. They do not place limits on the types of activities or services that can be performed as payment for timber harvests, stating: "the land management goals for stewardship projects may include treatments to improve, maintain, or restore forest or rangeland health; restore or maintain water quality; improve fish and wildlife habitat; and reduce hazardous fuels that pose risks to communities and ecosystem values, reestablish native plant species, or other land management objectives." The guidelines also fail to limit the amount of forest or the types of trees that can

be logged -- allowing timber companies to decide which trees to cut.

The Forest Service and the DOI's Bureau of Land Management (BLM) typically engage in individual contracts for land management and harvest projects with various independent contractors. Stewardship contracts were conceived as a cost-effective way to reduce paperwork and deal with fewer contractors by combining harvest and maintenance projects.

Congress first granted the Forest Service the authority to establish pilot stewardship projects in its FY 1999 appropriations and more recently extended this power to BLM in authorizing funds for FY 2003.

Stewardship contracts are often viewed as an exchange of goods for services but in this case, the new guidelines look more like a giveaway to the timber industry. The Forest Service will be accepting public comments on the guidelines through July 28, 2003.

Feedback Meeting on ECHO

On July 8th Environmental Protection Agency (EPA) officials from the Office of Enforcement and Compliance Assurance (OECA) met with various environmental and public interest groups to hear feedback on the Enforcement and Compliance History Online (ECHO) project. JP Suarez, the Assistant Administrator for Enforcement and Compliance Assurance, chaired the meeting.

Both EPA and the public interest groups present felt that the ECHO project is a strong first step in providing greater access to environmental compliance data. OECA expressed its interest in making improvements to the project and solicited suggestions from the meeting participants. Recommendations ranged from increased detail on the information already provided on the site to adding entirely new sources of information. It was noted that budget restraints would need to be strongly considered, with costs for maintaining the site already rising with its increased use.

Accuracy of information on the site was also discussed. EPA reported that it received thousands of error reports during the public comment period, of which about half pertained to compliance issues. The EPA's response time averaged 26 days, with approximately 60 percent of the requests resulting in a correction. The agency also noted that on average it received an error report for every 76 searches conducted on ECHO during the public comment period. Since the public comment period, that average has dropped to roughly an error report for every three searches. This clearly demonstrates the useful role that information dissemination plays in improving data quality.

EPA received a great deal of comments from industry representatives during the website's public comment period, including recommendations that the ECHO project be suspended because of inaccurate or misleading information. However, EPA now reports that in other feedback meetings, members of the regulated community focused more on specific changes they would like to see rather than objections to the entire project.

EPA expects to transition the ECHO website from a "pilot site" to permanent site very soon. The agency's anticipates publication of its response to public comments by late September. Once OECA has an idea of what its budget for the next fiscal year, it will put together a schedule of modifications for the ECHO website.

EPA Refuses to Release RMP Data

The Environmental Protection Agency (EPA) has denied OMB Watch's request under the Freedom of Information Act (FOIA) for Executive Summaries of the Risk Management Plans (RMPs). This marks the first instance, of which OMB Watch is aware, that EPA has denied a request for information specifically collected to inform the public about homeland security risks they face.

The RMP program requires every facility that uses or stores extremely hazardous chemicals to file an RMP. The RMPs are required by law to be made available to the public under Section 112(r) of the Clean Air Act. The information includes measures taken by a facility to prevent an accidental release, and response plans to protect human health and the environment in the event of a release. Congress did restrict electronic access to the worst-case scenario section of the RMPs, making it available only in 50 "reading rooms" around the country.

In separate FOIA requests, OMB Watch asked for electronic copies of the RMP Executive Summaries and Five Year Accident Histories, which are in two sections of the RMP. EPA provided us with the RMP's accident histories, but denied our request for the executive summaries.

EPA claimed FOIA exemption 2, internal agency rules:
"We are unable to provide you with the remaining materials you requested, electronic copies of all Executive Summaries submitted to EPA for facilities covered by the RMP program. These materials have been determined to be exempt from mandatory disclosure by virtue of 5 U.S.C 552(b)(2)(2000), Exemption 2, Internal Agency Rules. This Exemption is applied in light of recent terrorism events and heightened security awareness, and in recognition of the concomitant need to protect the nation's critical infrastructure (both its elements and records about them)."

The EPA previously provided online access to all RMP information, except for the worst case scenarios, but after the September 11th terrorist attacks, EPA removed all of the RMP data from its website. Currently, OMB Watch provides the only public online access to executive summaries through RTK NET. OMB Watch requested the data in order to update the information it presents to the public. EPA does still provide public access to the information through the mandated reading rooms. This raises the question of the legality in EPA's denial of a FOIA request for information it already makes public.

OMB Watch will be appealing the FOIA denial in an effort to educate the public about the chemical risks it faces.

Another Court Denies Secrecy of Cheney Files

In a 2-1 ruling last Tuesday, a federal appeals court rejected Vice President Dick Cheney's request to keep documents about his energy task force secret. The decision upholds a lower court ruling that ordered the limited release of documents in a discovery process. Justice Department lawyers defending Cheney then approached the D.C. Court of Appeals to halt that order. The Court of Appeals agreed with the lower courts ruling, stating that current laws would safeguard genuinely privileged information.

Judge David S. Tatel drew on two rulings under President Clinton to determine the administration had not provided evidence that irreparable harm would occur if documents were released, as the lower court ruled. Judge Tatel was an appointee under Clinton. The other vote against Cheney came from Judge Harry T. Edwards, a Carter appointee. The dissenting opinion came from a President George H. W. Bush appointee, Judge A. Raymond Randolph.

Judicial Watch, a conservative group, brought the initial case before the court in 2001. Sierra Club also filed suit shortly after, and the two cases were consolidated and brought before the U.S. District Court in Washington. The plaintiffs argued that the energy task force was comprised of, not only government employees, but also industry figures and should then be subject to public scrutiny.

The White House argued that only government employees were part of the task force and any proceedings should remain secret. The administration has stated that it believes any court decision to release the information would represent an overstep of the court system's constitutional authority. However, that seems like an overstatement of the facts. While it may be true that the courts have heard a case about the release of documents from the administration, it falls inline with the system of checks and balances set up in the constitution.

This court decision is an important step in slowing the administration's shift towards increased secrecy and reduced accountability. The fact that the administration requires intercession by the courts to allow access to information does not bode well for other controversial policies of secrecy that have recently been passed. The result of this case may influence how broadly the administration tried to apply those policies.

In next steps, the Justice Department could request the full panel of the appeals court hear the case, or even bring it before the Supreme Court. The Sierra club believes the government will take all steps available to drag out the case.

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