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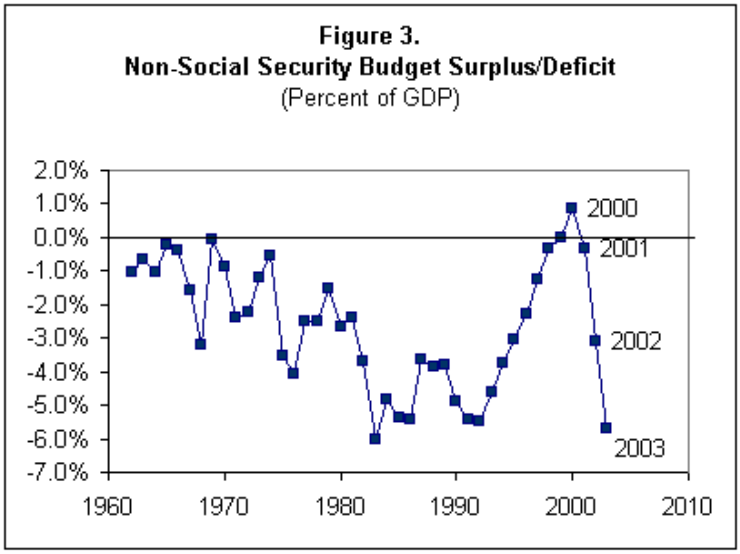
Economy and Jobs Watch: Soaring Deficits, Reckless Policy

The White House Office of Management and Budget (OMB) in its annual "Mid-Session Review" recently projected that the U.S. federal budget will see an unprecedented $691 billion deterioration in its budget situation -- moving from record surpluses of $236 billion in 2000 to record deficits of $455 billion in 2003.

When the social security surplus is excluded, the deficit is currently 5.7 percent of GDP and the second largest percentage since World War II -- only the 1983 budget under Reagan had a larger deficit (see graph).



In addition, the current $455 billion deficit is:

- the highest deficit in current dollar terms in history
- the highest deficit adjusted for inflation since World War II
- $1,561 per person
- 4.2 percent of GDP

There are several reasons for the dramatic deterioration of the budget situation. The primary cause has been the dramatic decline in revenues, which have dropped to 16.3 percent of GDP -- the lowest level since 1959. To a lesser extent, increased expenditures, especially on military activities, have played a role as well.

The role of the economy has also been debated. OMB claims that 53 percent of the deterioration in the deficit was due to economic factors. However, given the severity of the decline in revenue and the fact that the 2001 recession was relatively mild (in terms of GDP), a large part of the deterioration must also be attributed to the massive tax cuts enacted over the past three years.

Deficits do allow the government to finance vital national priorities, and can buffer the effects of economic fluctuations. However, the likely persistence and the magnitude of the deficits, especially considering current and future needs that are going unmet, as well as the unprecedented dive from surplus to deficit, are signs that the current administration is not acting in a responsible manner on tax and budget issues.

For more information, see the OMB Watch analysis Interpreting the Return to Budget Deficits.

Budget Cuts Strain State, County and Municipal Public Health Departments

The "invisible" infrastructure of the U.S. public health system is crumbling.

While the crises in Medicare, Medicaid, and private health insurance get most of the attention, the U.S. also faces a public health crisis. Public health is supported by our tax dollars as a service, exactly like the highways and bridges, public libraries, local water and sewage systems, public parks and national forests that we tend to take for granted.

What does public health do? Primarily it is our first line defense against the spread of communicable diseases and epidemics -- just a sample of public health work would include restaurant inspections; providing childhood or travelers' vaccinations; monitoring water samples at beaches and protecting against environmental toxins; community health education; operating public health clinics for well-babies, mental health, drug addiction, family planning and maternal health services; providing home health care for seniors; and monitoring and educating on chronic diseases, injury prevention, sexually transmitted diseases or viral threats like West Nile Virus, SARS, or monkey pox. Public health covers what the name implies -- health issues that go beyond individuals, but affect whole communities or the entire country. Public health is a public service that many of us do not even think about, but it plays a large role in the quality of life of everyone - rich or poor.

Public health departments are one part of the national "infrastructure" which has been forced to increase its workload with less funding. Only one percent of the $1.4 trillion spent by the federal government on health care in the U.S. is spent on public health. In spite of the increased threat of communicable diseases, state health agencies employ fewer epidemiologists today (1,400) than they did in 1992 (1,700).

Public health departments are now charged with new responsibilities for bio- and chemical terrorism preparedness. However, in this era of budget cuts at federal, state and community levels, any increases in funds for the new responsibilities posed by terrorist attacks are being offset by cuts in other programs. Ironically, the infusion of new federal money since 9/11 has, in many cases, weakened the public health infrastructure more than before. The availability of new federal funds for bioterrorism has become an excuse for states, desperately trying to balance their budgets, to make cuts in public health financing. Resources are being diverted from the vital core services of public health departments to the narrower (though essential) role of preparing for a terrorist threat. The costly federally mandated smallpox vaccination effort also has depleted funding.

This is likely to leave many more of us in danger. Domestic security should include not only protection from terrorist threats but also protection from communicable and chronic disease, environmental toxins, or unfit food and water -- these are not just threats, but realities.

Examples:

- In Colorado, state statute provided for state support to local and regional health services. Currently, local public health agencies have been contributing about $10 per person, and the state has been contributing $1.30. That state support, small but vital, is being totally eliminated due to state budget shortfalls.
- In Larimer County, Colorado, the health department gained $100,000 in federal bioterrorism funds, but lost $700,000 in state funds. It was forced to make cuts in family planning and child immunization programs. It is proposing to eliminate restaurant inspections.
- Denver City and County, Colorado, will no longer be able to provide regional services for sexually transmitted infections.
- Jefferson County, Colorado will not provide dental services to children or health education services to schools or senior resource centers.
- Los Angeles received $28 million for bioterrorism preparedness, but has an $800 million deficit for the next three years. It has closed 16 health centers and school clinics and is considering shutting two of its six public hospitals. It has reduced staffing, funding for chronic disease control, and communicable disease clinic hours.
- Several Milwaukee County, Wisconsin communities are considering sharing services, outsourcing, and merging departments because of state budget cuts.
- The Boston Public Health Commission cut positions because of state cuts.
- Maryland received federal funds to increase its epidemiology staff, but had to cut its state-funded food safety program.
- The Spokane Regional Health District (Washington) recently eliminated or reduced 29 positions, cutting resources for communicable disease prevention and diminishing services to children, families and seniors.
- In King County, Washington the amount spent per person on core public health work has dropped sharply since 1997, when $21.34 was spent per person on core public health. In 2003, only $14.35 is being spent per person-- a 33 percent drop in six years. This is in spite of vastly increased needs, including a recent and ongoing tuberculosis outbreak.
- In Connecticut, the Governor proposed a 50 percent cut to local health departments at the same time that capacity is increasing due to preparedness for bio- or chemical terrorism.

Public health is one of the "invisible" services that we support with tax dollars. The sharp diminishment of a strong public health infrastructure, being foretold by budget cuts at the state and federal level, will soon become very visible. It is another "you don't miss the water till the well runs dry" story and waiting till the well runs dry may be too late. For more

information (from which much of this article was taken) see the National Association of County and City Health Departments' website.

A Forward Look at the Budget

How long can OMB's Rosy Scenario keep telling those pretty lies?

Most of the focus since the Office of Management and Budget's (OMB) release of the Mid-Session Review on July 15, 2003 has been on the $455 billion deficit projected for this fiscal year. Many have drawn attention to the fact that the new estimate is not just a marginal increase over its February estimate, but is 50 percent higher than the previous forecast.

Some have also focused on the "actual" deficit -- which is calculated by removing the Social Security and other trust funds since these are dedicated funds -- noting that it is the second highest deficit since 1946, with the highest being during the Reagan administration in 1983 when there was a public cry to reduce the deficit. When doing so, the 2003 deficit is projected to be 5.7% of the Gross Domestic Product; in 1983 it was 6%.

This is bad enough. But it misses the disaster in front of us. The OMB Mid-Session Review also announced that the deficit in FY 2004 will now jump to $475 billion. Then Ms. Rosy Scenario pays a long visit to OMB, allowing the White House agency to project declining deficits. Of course, OMB was dramatically wrong in its estimate this year - so why should projections for next year or the year after be any different?

In fact, a look at the economic assumptions OMB uses shows why the deficit projections are likely to be way low in the future:

- According to OMB, the economy is expected to have a robust rebound. OMB projects GDP to increase on average 3.4 percent a year between 2004 and 2008. Even more amazing is that the economy is predicted to grow at a 3.7 percent clip next year, the highest that is assumed in the five-year projection.
- OMB assumes that discretionary spending will only grow an average of 2.1 percent per year. OMB projects no sizable increases for homeland security, which is likely to put pressure on Congress as concerns about community vulnerabilities mount. Moreover, given planned increases in defense spending, the OMB numbers presumably mean there will be cuts in domestic programs. If that happens, it will likely put many Republicans out of a job since that those cuts are not very popular -- and if it does not, then the projections will be wrong.
- Total spending is projected to grow by only 4.5 percent per year. Total spending includes the cost of interest payments on the debt, which keeps increasing because of the jump in annual deficits. (The interest payments alone will grow to be larger than the annual spending of the largest government departments.) Total spending also includes the cost of entitlement programs, which are expected to increase, despite OMB's projections. Amazingly enough, these projections do not include the post-war costs of Iraq or Afghanistan.

On July 23, Congressional Budget Office (CBO) Director Douglas Holtz-Eakin told the House Budget Committee that the government faces huge spending demands, particularly from entitlement programs, over the long term. He noted that health entitlement programs, such as Medicare and Medicaid, alone could reach 20 percent of GDP. Using CBO assumptions about demographics, health care, and drug spending, he emphasized the exploding costs of the new prescription drug plan being debated in Congress: it could exceed $1 trillion in the second ten years and $2 trillion in the following decade.

Holtz-Eakin also noted that insured pension plans are under funded by an estimated $300 billion. This could result in new expenditures by the government to cover costs similar to what happened in the 1980s with the savings and loan debacle. This is just one example of unpredictable costs over the long term.

As Sen. Kent Conrad (D-ND) has repeatedly noted, it is important that the fiscal house finds order because around 2013 baby boomers will begin retiring, further driving up government costs. He also points out that the costs of the tax cuts explode after 2011. Goldman-Sachs and other independent analysts forecast deficits exceeding $500 billion a year when the baby boomers start to retire.

Several members of Congress, such as Rep. John Spratt (D-SC), the ranking Democrat on the House Budget Committee, have pointed out that the Bush tax cuts were the wrong policy.

The reappearance of Rosy Scenario at OMB is an attempt to disguise the real effect of the tax cuts during the coming decade. While OMB is trying hard to keep up appearances with Rosy's help, the real magnitude of the federal budget's deterioration will be difficult to keep under wraps for much longer.

Estate Tax Planning and Charitable Giving

Losses to charities and the people they serve would likely exceed the estimated $10 billion a year if the estate tax is repealed, because of the impacts on charitable giving behavior from total elimination of the tax.

Recent economic research demonstrates that the estate tax plays an important role in giving people an incentive to donate money to charity. have put the loss to charities from an estate tax repeal at around $10 billion per year; however, even this large estimate is likely to be too small.

Studies that estimate the effect of a repeal must infer their results from limited data, and most studies examining the effects of the estate tax are based on small-scale differences or changes in tax rates. When considering a larger change, such as the elimination of the tax altogether, there are other factors that can also significantly impact behavior that are not captured. For example, repealing the estate tax may cause many people to forgo estate planning, which is a time when many wealthy individuals are introduced to various options, including charitable giving.

Estate tax planners and fundraising professionals point out that the existence of the estate tax brings both the opportunity to discuss the value of charitable giving with potential donors and acts as a "selling point" to increase charitable bequests.

A recent survey by Charles Schwab and Harris Interactive illustrates this point. The survey found that among wealthy Americans over 45 years of age only 10 percent say they are very likely to leave money to charity. According to the IRS, twice that many, or 20 percent of estates worth over $1 million, include a deduction for charity. This suggests that part of the estate planning process involves examining charities as one part of a bequest strategy, and that without an estate tax, many people would never even consider charitable giving as an option.

In fact, the Charles Schwab website includes extensive information on charitable giving, including information describing the tax advantage of charitable giving and even a charity search tool.

Charities are already struggling with reduced support because of the decline in the stock market and added burdens from federal government cutbacks. A repeal of the estate tax would only make this situation worse.

Statements by Charles Schwab executives:

- "People with more than a million dollars in net worth have a lot to gain -- or a lot less to lose -- by giving to charity." - President of the Charles Schwab Corporation Foundation
- "There are any number of tax-smart strategies available for charitable giving. . . " - VP of the Schwab Center for Investment Research

Children Bear Brunt of Federal Tax Cuts

In the absence of federal assistance, childcare, education, and children's health programs are being slashed across the country despite their popularity and effectiveness.

For instance:

- Ohio cut $268 million in childcare assistance funding, leaving 18,500 fewer children without care;
- Massachusetts cut all $5 million in funding for after-school and out-of-school grants to communities;
- Georgia cut $156 million in K-12 education funding;
- Minnesota cut $350 million in healthcare for children and families, ending coverage for a projected 38,000 people;
- Texas cut $428 million in child health care, ending coverage for 170,000 children; and
- In Oregon, more than 50 school districts shortened the 2002-03 school year by up to 24 days to offset lost tax revenue.

The ability of states to provide these services has been greatly diminished by recent tax cuts, costing $1.7 trillion, decreased revenue as a result of the sluggish economy, and severe reductions in federal spending, including funding for

the Childcare and Development Block Grant.

For most states, the federal government provides between 50 percent and 70 percent of health and social service spending for children, which often encourages additional state and local funding, according to a new study by the Every Child Matters Education Fund. In 2001, for instance, $6.5 billion in federal funding for childcare assistance was matched by $1.6 billion in state funds. Without such assistance, states are being forced to roll back crucial services, as they face budget deficits in the range of $70 to $85 billion for state fiscal year 2004, according to the Center on Budget and Policy Priorities.

Moreover, assuming that states do not act to "decouple" their tax codes from federal law, the new 2003 tax cuts are estimated to reduce state revenues by $3 billion over the next two years, and if expiring provisions are extended, $16 billion or more over the next 10 years. In addition, repeal of taxes on inherited wealth is projected to cost the states $9 billion a year.

Meanwhile, the Bush administration has pressed to devolve formerly state and federal responsibilities to community-based nonprofits and other service providers, which are seeing their caseloads balloon just as the rug is being pulled out from under them, with federal funding down and private giving diminished as a result of the poor economy. This has led to further severe cutbacks in children's services, as detailed in a a recent report by Venture Philanthropy Partners.

Children's advocates view the administration's budget decisions as shortsighted. Greater investments in children's programs in the 1990s corresponded with improved outcomes. For instance, the Kids Count report by the Annie E. Casey Foundation found that eight out of 10 child-well-being indicators improved from 1990 and 2000.

In addition to research indicating the effectiveness of children's programs, there is evidence that the public is willing to pay for child and family services. In a recent national survey, 68 percent of registered voters preferred greater investments in their children and grandchildren over tax cuts, which received only 24 percent support.

Nonetheless, the Bush administration has gone in the other direction, forcing hundreds of millions of dollars in cuts for childcare, children's health care, as well as pre-kindergarten and after-school programs. Kids are beginning to feel the brunt of the severe drop in federal and state revenues, and without a dramatic change in the country's fiscal priorities, the worst is yet to come.

Still No Extension of Child Tax Credit for Low-Income Families

As 25 million families begin receiving their checks from the IRS for the $400 per child increases in the child tax credit, House Democrats used a series of procedural floor votes on July 23 to bring attention to the fact that no progress has been made to extend the credit to low-income families.

The Senate-passed bill will cost $9.8 billion over 11 years and includes offsets (extension of U.S. customs service fees) for the cost of extending the credit. The House-passed bill includes other tax cuts, benefiting wealthier families, and costs $82 billion without offsets. Senate Republican leaders have also offered a compromise bill that would cost $50 billion (primarily by using the sunset gimmick on some provisions of the House-passed $82 billion bill). See the Center on Budget and Policy Priorities analysis.

In spite of calls on President Bush from both parties to intervene, neither a compromise nor a vote on the original Senate passed bill appears to be in the works. With the House leaving for its August recess last Friday, there will be no action as House leaders strongly dislike any kind of offset that "raises" taxes, and remain adamant about including tax cuts for wealthier families with the low-income child tax credit.

Low-income families should receive the child tax credit. However, given OMB's recent report on the sharply increasing deficit for 2004, only a "clean" bill that extends the credit to low-income families and provides offsets is responsible. Further increases in the deficit due to more tax cuts will ensure that even more services and programs are cut in the future, wiping out the benefit of a child tax credit to low-income families by loss of other federal and state services. Low-income families will remain the losers.

The Earned Income Tax Credit "Pre-Certification" Plan Opposed by Senate Democrats

Efforts to stop the proposed "pre-certification" of Earned Income Tax Credit (EITC) recipients have growing support in the Senate.

Sen. Max Baucus (D-MT) and forty-four other Senators sent a letter to President Bush on July 18, 2003, asking that the proposed pre-certification of EITC recipients be halted. The letter says that the proposed program "unfairly discriminates against low-income taxpayers and imposes significant burdens on their families by requiring them to supply information to the IRS in a way not asked of any other U.S. taxpayer," and seeks alternative bipartisan approaches to improve EITC noncompliance. On July 22, Democrats and Independents on the Senate Finance Committee (of which Sen. Baucus is the Ranking Member) sent a letter to Finance Committee Chairman Charles Grassley (R-IA) asking for hearings on the proposed program.

For more information about the IRS plans see OMB Watch's comments.

9/11 Report Recommends Public Accountability, Greater Openness

The Joint House-Senate Inquiry released its long awaited report last week on the September 11th intelligence failures. One of the most interesting and disconcerting aspects of the report is what portions of the report the administration chose to classify. While the report outlines recommendations for increased accountability for intelligence agencies, reform of the classification system, and increased access to information for the American public, the administration chose to withhold information, seemingly to protect Saudi Arabia, a key foreign ally, rather than for national security reasons.

Among the still classified details are more than two dozen blank pages associated with the role of foreign countries in the attacks. Sens. Bob Graham (D- FL) and Richard Shelby (R-AL) criticized the excessive secrecy of the current administration. Graham told CBS News that the administration pushed to classify sections of the report to avoid political embarrassment rather than protect national security. To read Graham's floor statement, click here. For his part, Shelby agreed, noting to CNN that much more of the report could have been disclosed to the public. "My judgment is 95 percent of that information should be declassified, become uncensored, so the American people would know," Shelby told NBC's Meet The Press.

The report's release is interesting for advocates of government openness for several reasons. The report finds that the U.S. was fighting to prevent attacks "without the benefit of an alert, mobilized and committed American public." The report then notes that this may be the intelligence community's "most potent weapon" in the "'war' against Bin Laden." In addition, the administration and intelligence community refused or delayed turning over documents to the report's investigators such as Presidential Daily Briefings, critical to understanding what information Presidents and senior advisors received.

Bush Administration Ignores Whistleblowers

Public Employees for Environmental Responsibility (PEER) recently released statistics showing the government's failure to act on a growing backlog of whistleblower cases. The Office of Special Counsel (OSC) is the small federal office charged with reviewing whistleblower claims backlog of cases.

PEER represents employees who have filed whistleblower disclosures, defending an important avenue for employees looking to root out waste, fraud and corruption in federal agencies. However, even though employees are blowing the whistle more and more over the last few years, the Bush administration does not appear to be listening. Law requires OSC to resolve cases within 15 working days, however most of the reports in the backlog have sat for more than six months. At the beginning of June 2003, OSC had a backlog of 628 whistleblower allegations awaiting review.

While a recent increase in whistleblowing certainly contributes to the situation, it does not fully explain the ballooning backlog. Records show that the number of whistleblower cases were up 46 percent from 380 filed in fiscal year 2001 to 555 cases in fiscal year 2002. However, the backlog has grown far more than 46 percent. In fact, the current backlog is up more than 100 percent, or double the number of unresolved cases that OSC had at the end of fiscal year 2001.

Leadership is another factor affecting the backlog. Currently, the Special Counsel position is still vacant, depriving OSC of leadership. The Bush administration nominated Scott Bloch, currently deputy for "Faith-based Initiatives" at the Justice Department, for the Special Counsel position. PEER noted that Bloch has limited whistleblower experience and expressed

concern that he will not be a strong enough advocate for whistleblowers.

It seems clear that the biggest cause of the backlog is that OSC has inadequate resources to handle these important cases. While OSC has not commented on the reason behind the backlog, Elaine Kaplan, who recently vacated the position of Special Counsel at OSC after five years, remarked that the current caseload warrants as many as 30 employees. Reportedly, OSC currently has fewer than eight full-time employees reviewing whistleblower cases.

PEER Executive Director Jeff Ruch noted that, "Hundreds of federal employees risk their careers to blow the whistle, only to find that no one is home to hear it — it's like dialing 911 and being put on hold."

Investigations Continue into the Texas Partisan Battle

In the aftermath of a partisan battle between Texas legislators in May, (see the June 2nd Watcher article) both the Department of Justice and the Federal Aviation Administration (FAA) are examining their possible misuse of resources.

Rep. Charlie Gonzalez (D-TX), unsatisfied with the information he has received from his inquiries, filed a lawsuit under the Freedom of Information Act (FOIA) on July 8th. The lawsuit seeks to force the Justice Department to release information detailing its role in tracking down Texas Democrats. Gonzalez believes the Department assisted in the manhunt by request of House Majority Leader Tom DeLay (R-TX). Gonzalez reports that he has exhausted all other procedures for getting the information before turning to the courts, but still feels that the Department is not being adequately forthcoming.

The Justice Department is conducting an internal investigation to determine if resource misuse did occur. At this point, the Justice Department is not disclosing any information on their involvement in the Texas incident. The Department has 30 days to file a response to Gonzalez's lawsuit.

Another federal agency embroiled in this matter, the FAA, has taken a more proactive approach, recently introducing new rules in order to limit information employees can give out upon request. The new rules address concerns surrounding phone calls DeLay made to FAA, requesting assistance in tracking down one of the missing legislators' plane. The proposed rules would restrict FAA employees from revealing the location of aircraft unless it was for an official government purpose or safety reason. DeLay stated he had no second thoughts about his decision to call FAA, despite FAA's inspector general's position that resources were abused.

An Attack on Nonprofit Speech

OMB Watch released a paper today, An Attack on Nonprofit Speech: Death by a Thousand Cuts, that provides a summary of how the Bush administration and conservative allies have effectively moved to control nonprofit speech. Instead of a single legislative or regulatory proposal that would limit nonprofit speech, the article notes, the Bush administration and conservative allies have proposed or begun implementing a number of proposals that are akin to a "death by a thousand cuts." These "cuts" have suddenly accelerated in the last year.

The article describes three areas in which nonprofit speech has been affected:

- Attacks on nonprofit advocacy, particularly when there are disagreements with Bush administration policies;
- Limits imposed by government on nonprofit speech, particularly targeted to those working on issues -- such as reproductive rights, HIV/AIDS, and international development -- where there may be ideological differences with the administration; and
- Changes made by nonprofits resulting from fear of how laws such as the USA Patriot Act are being implemented.

Statement on Support of Foundation General Operating to be Issued

In mid-June, five foundations convened roughly 55 foundations and grantees, including OMB Watch, for a day-long meeting to discuss general operating support and other funding issues. During the meeting there was considerable support for two points -- foundations should do more general operating support, and foundations should cover the real costs of overhead. The co-hosts of the meeting agreed to pursue more detailed documents on these points. They appointed two committees and have announced that a process will unfold allowing others who could not attend to provide comments on the materials once they are developed. Below is the statement of the foundation co-hosts.

On June 18, 2003, representatives of fifty-five foundations and other nonprofit organizations met in New York to discuss an array of common concerns. The meeting was convened by the Edna McConnell Clark Foundation, the William and Flora Hewlett Foundation, the Open Society Institute, the Rockefeller Brothers Fund, and the Surdna Foundation.

Much of the discussion focused on general operating support, overhead, and related funding issues. But the meeting also covered issues such as power relationships and trust between funders and grantees, collaboration among funders, organizations' different needs at different stages of growth, nonprofit consolidations, foundations' responsibilities when exiting a field, and foundations' accountability.

Although no votes were taken, there was a broad consensus about the critical importance of funders' providing grantee organizations with general operating support and of funders' covering a meaningful portion of grantees' overhead expenditures. Currently, only 11 percent of the grants budgets of large foundations provide general operating support, and most foundations cap overhead payments far below the grantees' actual indirect costs.

A working group has been established to propose good practices with respect to general operating, project support, overhead, and other issues of funder-grantee relations. Participants include Michael Bailin, President, Edna McConnell Clark Foundation; Gary Bass, Executive Director, OMB Watch; Elizabeth Boris, Center Director, Center on Nonprofits and Philanthropy at the Urban Institute; Paul Brest, President, William and Flora Hewlett Foundation; Geoffrey Canada, President, Harlem Children's Zone (Rheedlan Centers); Rick Cohen, President, National Committee for Responsive Philanthropy; Stephen Heintz, President, Rockefeller Brothers Fund; Gara LaMarche, Vice President and Director of U.S. Programs, Open Society Institute; Clara Miller, President, Nonprofit Finance Fund; Miles Rapoport, President, Demos; Ed Skloot, Executive Director, Surdna Foundation; and Melinda Tuan, Managing Director, Roberts Enterprise Development Fund.

The working group will begin this summer and hopes to circulate a statement for comment by foundations and nonprofits this fall or winter.

Do Faxes Speak For Themselves? FCC Adds New Hurdles for Nonprofit Communications

In a drive to harmonize its enforcement activity under the Telephone Consumer Protection Act of 1991 (TCPA) with that of the Federal Trade Commission (FTC), the Federal Communications Commission (FCC) amended and revised a number of do-not-call and do-not-fax restrictions on July 3, 2003, effective **August 25, 2003**. Restrictions regarding unsolicited commercial fax messages are of particular interest to nonprofit organizations.

Action alerts, legislative updates, event announcements (without fee notices), and member updates are all exempt from the amended rules. Banned messages include sponsorship requests for an entity or specific activities, solicitations for new memberships or renewals, requests for proposals for for-fee services, or messages mixing information with any form of commercial appeal. Violators may face up to $1500 as a result of actions filed by recipients through state lawsuits, FCC actions, and private lawsuits. The National Council of Nonprofit Associations has issued a **set of suggested guidelines** to assist nonprofits in understanding the impact and complying with the revised rules. On July 23, 2003 the American Society of Association Executives hosted a July 23, 2003 forum regarding the impact of the revised rules, and has provided a set of background materials, including an overview of the prior rules and a sample consent form.

Previous rules banned unsolicited commercial advertisements distributed by fax, including messages promoting goods, products, and services that entailed any fee. An exception was granted for instances in which *express permission* was granted by the recipient of such messages. Entities could meet that standard by demonstrating a prior *established business relationship,* usually by targeting messages to previous customers or event attendees or previous communication between recipients and an organization. The burden was placed on recipients to consciously "opt out" from receiving further communications. The amended rules, however, no longer allow an established business relationship to satisfy express permission for unsolicited commercial fax advertisements:

- Organizations and business must now actively seek "opt in" permission in the form of signed written consent from

potential fax message recipients, stating the specific number that can receive faxes. Recipients can revoke consent at any time. Requests for consent may be sought and collected via direct mail, e-mail, or web technology; and potential recipients can send consent via fax at any time. Entities, ironically, can only request consent via fax until the rules go into effect.
- Communications must clearly identify the date and time at which the fax was sent, the name of the actual author (not the sender) of the message, the official business name of the sending organization, and the telephone number of the sender/sending machine.
- Faxes include those sent between any combination of standalone fax machines, fax-servers, and direct modem connections (with the exclusion of fax messages sent or received as e-mail).
- Third party entities and broadcast fax services are liable if they supply the recipient fax numbers, are involved in any way with the content, or demonstrate a "high degree of involvement" in sending the fax in question.

Issues left without clarification by the rules include:

- what parties can grant consent for an organization and if organizations can grant blanket consent or denial for all of its stakeholders.
- whether consent is fixed only to an individual or an organization, in the event staff changes.
- whether consent given to a national entity automatically extends to state or local chapters or affiliates.
- whether written consent expires with an individual's term of membership.
- standardization with respect to either a printed or electronic consent form.
- type and degree of recordkeeping involved.
- additional specific types of existing nonprofit communications are exempt or permissible, including "save the date" notices, charitable solicitations, membership record updates, information-only messages directing recipients to online or third-party destinations that may entail a fee.

Both NCNA and ASAE are currently filing letters of clarification before the rules take effect. ASAE is also steering an FCC petition drive requesting a stay of the rules.

TCPA is enforced through regulations under both the FCC (which is responsible for activity conducted across the broad telecommunications spectrum including television, telephone, radio, television, cable, satellite, and wireless), and the FTC (which overseas antitrust and consumer protection measures, including deceptive commercial practices). Though the FTC developed and implemented the recently launched Do-Not-Call Registry, it is administered in conjunction with the FCC, which has broader regulatory authority over telemarketing activity.

House Charitable Giving Bill to Move in September

It appears the Charitable Giving Act (H.R. 7), a House bill providing incentives to increase charitable giving, may begin to move. A tentative mark-up of the bill is scheduled for September 4 in the Ways and Means Committee.

Introduced in the House on May 8th by Rep. Roy Blunt (R-MO) and Rep. Harold Ford, Jr. (D-TN), the bill has garnered national attention, particularly in philanthropic circles, for a small provision that would have the effect of increasing foundation payouts from 5 percent to roughly 5.4 percent. For example, today's Diane Rehm show on National Public Radio features a debate between Rick Cohen, Executive Director of the National Committee for Responsive Philanthropy, who supports the provision, and Dot Riding, President of the Council on Foundations, who opposes the provision. Currently, foundations can count administrative costs in meeting a requirement that mandates spending a rolling average of at least 5 percent of assets per year. The provisions would no longer allow foundations to count administrative costs in the payout calculation, thereby having the effect of increasing the payout rate from 5 percent.

While this payout provision has drawn most of the attention, the bill has other features that drew support from some charities. For example, taxpayers who do not itemize would be allowed to deduct charitable contribution in excess of $250 ($500 couple), but not more than $500 ($1000 couple). This nonitemizer deduction would be in place for 2004 and 2005 only. The bill would also allow people age 70½ and over to rollover distributions from Individual Retirement Accounts directly to an exempt organization staring in 2004. There are other provisions to encourage charitable contributions in the bill.

The comparable bill in the Senate, the Charity Aid Recovery and Empowerment Act (CARE Act), passed last April.

USDA Issues Long-Awaited Listeria Standards

The U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS) recently issued long-awaited standards to control listeria monocytogenes (commonly known as listeria), a dangerous food-borne bacterium often found in ready-to-eat foods.

The new measures require plants that produce certain ready-to-eat (RTE) meat and poultry products to develop plans to control listeria and to verify the effectiveness of such programs through testing. The standards, however, do not set a minimum requirement for testing, and as such have "no minimum guarantee of consumer protection," according to the Center for Science in the Public Interest (CSPI).

FSIS has stated that it will conduct random testing to authenticate each establishment's control program. These establishments must also provide FSIS with information on the production volume and "related information" on products affected by the measures.

In addition, the new standards allow establishments to make claims on the labels of RTE products about the processes they use to eliminate or reduce listeria, or any efforts they make to suppress or limit the bacterium's growth in products.

There are approximately 2,500 victims of listeria-contaminated food each year, 500 of which are deadly, according to the Centers for Disease Control and Prevention.

More than two years ago, the Bush administration allowed a Clinton-era proposal on listeria to be published for public comment after initially delaying it. However, it had begun to look like the administration had no intention of finalizing the standard. Perhaps it was the tragic listeria outbreak in the summer of 2002 that resulted in seven deaths, 46 illnesses, and three miscarriages that underscored the severity of the problem and prompted this recent action.

The standards are set to take effect this October but FSIS will accept comments on the matter through December of 2004 "for the purpose of reviewing and evaluating the effectiveness of these approaches," according to the agency.

Roadless Rule Struck Down (Again)

A federal district court in Wyoming recently struck down the Clinton-era roadless rule, which protects 58.5 million acres of pristine U.S. Forest Service lands from logging and development -- the latest in a series of court decisions concerning the measure.

A federal judge in Idaho previously struck down the rule in May of 2001, but it was subsequently reinstated on appeal in December of 2002. There are currently nine lawsuits over the rule pending in seven different states.

In the July 14th Wyoming decision, Judge Clarence Bremmer ruled that the Clinton administration, in a rush to issue the roadless rule before leaving office, failed to allow the public a sufficient opportunity to comment on the standards, even though the Forest Service held 187 public meetings on the issue, drawing about 16,000 people. Bremmer also called the rule a "thinly veiled attempt to designate 'wilderness areas'" -- a power reserved for Congress under the Wilderness Act.

"The roadless rule is probably the best conservation measure of this generation," said Jim Angell, an attorney at Earthjustice, a group that plans to appeal the ruling. "We believe the court of appeals will agree with us and reverse the lower court." The administration has declined to say whether it will join Earthjustice and other environmental organizations in an effort to have the rule reinstated.

However, even if the appeal is successful in preserving the road-building ban, Alaska's Tongass and Churgach National Forests, as well as other areas, will likely be exempt from logging and development restrictions. On July 15, the Bush administration, issued a temporary roadless rule exemption for the Tongass -- a move agreed to in a legal settlement between the Forest Service and the state of Alaska. The temporary measure allows timber sales to continue while the agency develops permanent standards for the area.

The administration is seeking comments on whether the exemption should be made permanent and whether it should be extended to Churgach as well. The Forest Service also plans to issue a rule this fall allowing governors to pursue exemptions from the roadless rule for select areas.

House Votes to Block Country of Origin Meat Labeling

The House, acting with the support of the Bush administration, recently voted to block implementation of standards that require meat and meat products to bear a label indicating their country of origin.

These country of origin labeling (COOL) requirements, which were mandated by the 2002 farm bill, were conceived to help consumers identify American-made products, and are seen as increasingly important due to the recent discovery of mad cow disease in Canada.

Rep. Henry Bonilla (R-TX), motivated by opposition from the meat industry, tacked on a provision to the FY 2004 agriculture appropriations bill prohibiting the use of funds to implement country of origin labeling for meat and meat products. This restriction does not affect COOL requirements for other foods such as seafood, produce and peanuts.

Rep. Dennis Rehberg (R-MT) offered an amendment to strip Bonilla's rider from the bill, but the effort failed by a vote of 193 to 208.

The effort to block the COOL requirements is expected to face greater opposition in the Senate, where the labeling proposal originated.

EPA: No Permits Required for Pesticides In or Over U.S. Waters

The Environmental Protection Agency (EPA), in a recent guidance document, declared that applying pesticides directly in or above U.S. waters with the purpose of controlling insects does not require a pollutant discharge permit under the Clean Water Act (CWA).

EPA has stated that the guidance, which was released July 11, is temporary and that the agency plans to solicit public comment on the matter before issuing final standards. The agency has concluded, for the time being, that so long as pesticides are applied consistently in accordance to all relevant requirements under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), applicators will not be required to obtain permits.

EPA issued the guidance partly in response to a recent case from the U.S. Court of Appeals for the Second Circuit (Altman v. Town of Amherst) in which a couple sued the town of Amherst, N.Y., for not having procured a permit for its application of pesticides to wetlands as part of a mosquito control program. The court remanded the case for further consideration and issued an order stating that EPA should articulate a clear interpretation of the law regarding permitting requirements for pesticides applied into or over water.

Previously, the U.S. Court of Appeals for the Ninth Circuit (*Headwaters, Inc. v. Talent Irrigation District*) held that applying herbicide to canals without a permit was a violation of the CWA.

Graham Advises Ose to Scale Back Bill on Regulatory Budgeting

The House Government Reform committee recently held a hearing on a bill (H.R. 2432), sponsored by Rep. Doug Ose (R-CA), that would test regulatory budgeting at five agencies, including EPA and the departments of Labor and Transportation.

John Graham, administrator of OMB's Office of Information and Regulatory Affairs (OIRA), discussed the administration's concerns, but was generally supportive, while Lisa Heinzerling, professor at the Georgetown University Law Center, attacked the bill, calling it "deregulation in disguise." Majority Leader Tom DeLay (R-TX) was originally scheduled to testify -- implying that the bill is a leadership priority -- but did not show.

Under the bill's "pilot projects," the participating agencies -- including two to be designated by OMB -- must present the "varying levels of costs and benefits to the public that would result from different budgeted amounts" for at least one of their "major regulatory programs." OMB is to include these regulatory budgets in the president's budget submission to Congress for fiscal year 2007. At this point, these pilot projects appear designed to test the preparation of agency regulatory budgets, and would not actually implement them by setting a hard cap on regulatory expenditures.

Graham expressed support for the idea of pilot projects but found the plan outlined in the bill to be overly ambitious. He suggested that the project be scaled back to focus on EPA's air office and Transportation's National Highway Traffic and Safety Administration (NHTSA). "OMB does not have adequate staffing to accomplish effective oversight of more than two modest pilots," Graham testified.

Heinzerling took issue with the underlying premise of the bill -- to restrict the amount of money businesses must spend to comply with federal regulatory requirements. She pointed out that agencies impose requirements on private entities in accordance with laws, which generally do not set limits -- or "budget" for -- the costs businesses and others must incur to achieve compliance. A regulatory budget, if fully implemented, would seem to condone legal violations in cases where compliance with the law would exceed artificial caps on expenditures.

In addition to the pilot projects, the bill directs each agency to prepare its own annual estimates of the costs and benefits of federal rules and paperwork for "each agency program" and in the aggregate. Each of these "accounting statements" is to cover not only the current fiscal year and the year prior, but also each of the five subsequent fiscal years. In other words, agencies must predict the future regulatory impacts of rules that are either still in development or haven't yet been considered.

As Heinzerling pointed out in her testimony, costs estimated in advance of regulation frequently prove overblown in the real world. In most cases, regulated entities, which have an incentive to exaggerate costs to avoid regulation, provide cost estimates themselves. These often-inflated estimates also do not account for technological innovation and unanticipated efficiencies associated with regulation -- "learning by doing" -- that allow entities to achieve compliance at a lower cost.

Graham raised questions about the exact contents of these accounting statements, which are not described in much detail in the bill. OMB would not support an accounting of all federal rules; nor would it back a requirement for agencies to produce cost-benefit information for non-major rules since this could force agencies to collect extensive information from regulated entities, creating even more paperwork, according to Graham. Overall, however, Graham was supportive of giving greater attention to regulatory accounting and budgeting and suggested that the committee explore ways to measure costs and benefits that are difficult to quantify.

Graham also opposed a provision of the bill mandating that OIRA assign at least two staff to review IRS paperwork -- which accounts for more than 80 percent of all government paperwork -- under the Paperwork Reduction Act. This is not surprising since such a requirement would likely force Graham to transfer staff away from scrutinizing and often weakening the actions of health, safety and environmental agencies. For example, EPA, which accounts for two percent of government paperwork, has six staff overseeing its work.

Other witnesses included Thomas Sullivan, Chief Counsel for the Small Business Administration's Office of Advocacy; Fred Smith of the Competitive Enterprise Institute; Wendy Lee Gramm of the Mercatus Center; John Sample representing the National Association of Manufacturers; and Raymond Arth of the National Small Business Association. Not surprisingly, all spoke in strong support of the legislation.

EPA to Assess Carper Bill with Same Model Used on Clear Skies

The Environmental Protection Agency (EPA) has agreed to analyze Sen. Tom Carper's (D-DE) "Clean Air Planning Act" (S. 3135) with the same model used to show increased benefits for President Bush's Clear Skies plan.

As OMB Watch previously reported, administration officials acknowledged that Carper's bill to reduce air pollution from power plants would achieve reductions in emissions earlier and by larger amounts than the president's plan. Shortly thereafter, EPA released a new, more favorable estimate of the health and environmental benefits associated with Clear Skies, 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 showed increased benefits and decreased costs, bringing the Clear Skies figures closer in line with those attached to Carper's bill. EPA Assistant Administrator Jeffrey Holmstead, who admitted that the new analytical model would show comparable benefit and cost changes for the Carper plan, claimed the formula was applied only to the president's proposal because the administration believes Clear Skies to be "far superior from a public policy perspective," according to the July 1 Washington Post.

After the release of the new Clear Skies figures, Carper requested that EPA conduct a similar analysis of his bill, and in a June 22 letter, the agency agreed. "I appreciate that EPA has responded to my July 1 request and that the agency has recognized the need for Congress to have up-to-date information on the clean air proposals under consideration," Carper said. "In my letter to EPA on July 1, I asked that EPA not only conduct an updated analysis of the Clean Air Planning Act, but that the agency also include an interpretation of that analysis that describes the economic costs and environmental and health benefits of the bill. I look forward to receiving that information as soon as possible."

Meanwhile, Sen. Lamar Alexander (R-TN) recently announced he is co-sponsoring the Carper bill, stating, "The Clear Skies legislation is a good start but it does not go far enough, fast enough in my backyard." The Clean Air Planning Act, unlike Clear Skies, calls for cuts in carbon dioxide (CO_2) emissions, which are largely responsible for global warming.

President Bush has strongly opposed any efforts to impose mandatory caps on greenhouse gases, such as carbon dioxide. Most recently, the administration unveiled a strategic plan to further study the issue of climate change. "Most climate scientists around the world will see this as fiddling while Rome burns," Philip Clapp, president of the National Environmental Trust, told the Washington Post. "More research is always welcome, but the goal here is just to delay doing anything about the problem."

Increased Rollovers Leads to Highest Highway Fatality Rate Since 1990

Highway fatalities, boosted by a rise in the number of rollover crashes, increased by 1.5 percent in 2002, reaching the highest level since 1990, according to data released by the National Highway Traffic Safety Administration (NHTSA).

Rollover crashes -- which increased by 5 percent, from 10,157 in 2001 to 10,666 in 2002 -- accounted for 82 percent of the total fatality increase. The number of persons killed in sport utility vehicles (SUVs) that rolled over increased as well – by 14 percent.

The data highlights the dangers of SUVs, showing that in fatal crashes between passenger cars and LTVs (light trucks and vans, a category that includes SUVs), the occupants of the car were more often fatally injured. When a car was struck in the side by an LTV, the fatality was 20.8 times more likely to have occurred in the passenger car. Similarly, in a head-on collision between a car and an LTV, the fatality was 3.3 times more likely to be among car occupants.

NHTSA also reported that:

- Motorcycle fatalities increased for the fifth year in a row, with 3,244 riders killed in 2002 -- up slightly from 3,197 in 2001;
- Deaths in low alcohol-related crashes dropped 5.5 percent from 2001 to 2,401 deaths; and
- Fatalities from large truck crashes dropped 4.2 percent -- from 5,111 in 2001 to 4,897 in 2002.

Meanwhile, the National Transportation Safety Board (NTSB) recently released a report evaluating the rollover propensity of 15-passenger vans. These vehicles, which are often used to transport school sports teams, church groups, van pools

and other groups, have been involved in a higher number of single-vehicle accidents involving rollovers than any other passenger vehicle.

NTSB looked into two fatal crashes involving 15-passenger vans that rolled over, concluding that the probable cause of both was tire failure, the drivers' response to that failure, and the drivers' inability to maintain control of their vans.

NTSB recommended that:

- NHTSA adopt tougher tire pressure detection standards, since even pressure at the current standard -- 25 or 30 percent below manufacturer-suggested levels -- can have an adverse effect on the handling of vehicles, especially 15-passenger vans;
- NHTSA extend its dynamic and rollover resistance programs to test the performance of 15-passenger vans, especially under various load conditions; and
- The 50 states and the District of Columbia establish a driver's license endorsement for 15-passenger vans requiring drivers to complete a training program on the operation of these vehicles and pass a written and skills test.

NTSB also highlighted the fact that the most frequent harmful contact points for non-ejected occupants of 15-passenger vans are the roof, pillars, rails, and headers, but that NHTSA does not require 15-passenger vans to meet the same occupant protection and roof crush standards as passenger vehicles. The board suggested that manufacturers voluntarily address these issues.

What Chemicals are in Your Water?

The chemical revolution over the last 50 years has brought great benefits; it has also exposed us to unknown risks from thousands of untested chemicals that now circulate around us and inside of us.

In a pioneering private study led by Mount Sinai School of Medicine in New York, researchers ran tests on nine adult volunteers from five states who did not work with chemicals on the job or live near an industrial facility. Before running out of money for testing, they found 167 industrial compounds, pesticides, pollutants, and other chemicals: 76 causing cancer in humans or animals, 94 toxic to the brain and nervous system, and 79 causing birth defects or abnormal development. The dangers of exposure to these chemicals in combination has never been studied.

Except for chemicals used in drugs, food, and feed for animals, most chemicals are never tested for safety. By 2000, EPA logged 78,000 chemicals in commerce, only one-fifth with recorded tests for health risks.

Faced with this great number of chemicals circulating in and around us, Congress demanded that the Environmental Protection Agency (EPA) tackle the greatest risks first, by determining which contaminants in tap water are the most widespread, harmful, and cost-effective to regulate.

The Safe Drinking Water Act (SWDA) of 1996 requires EPA to publish a list of the most prevalent and worrisome unregulated contaminants. From the nation's thousands of unregulated chemicals and microbes, in 1998 EPA chose about 60 for monitoring and potential regulation, known as its "Contaminant Candidate List" (CCL). To check the contaminants in your local water supply, see EPA's National Contaminant Occurrence Database (NCOD).

On July 18, EPA announced it was dropping nine contaminants from its candidate list as not posing serious enough health risks to control or remove them from tap water: "no regulatory action is appropriate." The nine contaminants dropped by EPA include three inorganic compounds (manganese, sodium, sulfate); three synthetic organic compounds (aldrin, dieldrin, metribuzin); two volatile organic compounds (hexachlorobutadiene, naphthalene); and one microbial contaminant, acanthamoeba.

Instead of regulating these contaminants, "EPA intends to release a guidance document for Acanthamoeba that will be directed mainly to contact lens wearers and will address the risks of Acanthamoeba eye infection associated with improper care of contact lenses." EPA will also issue a "sodium advisory" that "provides appropriate cautions for individuals on low-sodium or sodium-restricted diets."

EPA is still studying the other 51 contaminants, including the toxic chemical perchlorate, the main ingredient in rocket and missile fuel. Perchlorate "contaminates drinking water supplies, groundwater or soil in hundreds of locations in at least 43 states," according to the Environmental Working Group (EWG).

The chemical can cause thyroid disease as well as a wide range of neurological problems for infants and children. “I don’t think too many scientists within EPA would dispute that perchlorate is bad and that we know enough to begin placing some regulations on it,” Bill Walker of the EWG told Environment and Energy Daily.

Also on July 18, EPA announced it had completed reviewing half the 69 tap water contaminants regulated prior to 1997, as required every six years by the Safe Drinking Water Act of 1996. Thirty-four contaminants were still under review.

Of the 35 completed, EPA decided 16 contaminants were still appropriately regulated, and 18 were ruled too “low priority” to change or EPA lacked enough information to decide. EPA will revise the rules for “total coliform” bacteria.

EPA to Reconsider Roll Back of Air Standards

The Bush administration has agreed to reconsider a final rule issued in December that weakens air-pollution standards for factories, refineries, and power plants.

The move comes in response to a legal challenge launched by nine northeastern states from Maine to Maryland, which charge that EPA violated the Clean Air Act in altering its New Source Review program. “I think the significance of this announcement is that the Justice Department looked at the case and realized they were very likely to lose in court because the rule changes are flatly illegal,” Frank O’Donnell of the Clean Air Trust told the Washington Post. “We think the rule changes would just illegally grant exemptions from the Clean Air Act that would allow industries to pollute more.”

Nonetheless, EPA still seems strongly behind these revisions -- which it has refused to stay and remain in effect -- stating the reconsideration “does not mean that EPA has decided to change any aspect of the rule at this time.” Indeed, the action, which includes a 30-day public comment period and public hearing, appears to be an effort to strengthen the agency’s hand in court, allowing EPA to claim it fully considered a range of viewpoints.

The northeastern states argue, among other things, that EPA acted capriciously in ignoring key information that pointed to an increase in emissions under the December revisions. They also have objected that certain parts of the final rule were not included in the agency’s proposal for public comment -- which did not allow for a response. EPA’s reconsideration seeks comment on these specific elements and not the entire rule.

American Chemistry Council’s Comments Demonstrate Need for Public CII Docket

Industry’s willingness to use homeland security as an excuse to expand secrecy and limit public access to information is apparent in the American Chemistry Council’s (ACC) comments on the Department of Homeland Security’s (DHS) proposed Critical Infrastructure Information (CII) rule. While DHS has yet to decide on when to allow access to the docket of public comments on the proposed CII rule, OMB Watch was able to obtain a copy of ACC’s comments. The comments from this industry association demonstrate the importance of allowing the public to understand the input it received from special interests.

ACC first professes their support for the CII Act, being a proclaimed part of the nation’s critical infrastructure. The Council asserts that adequate information sharing does not occur because of concerns about information release under the Freedom of Information Act (FOIA), state open record laws, antitrust, tort or compliance liability, and Federal Advisory Committee Act (FACA) applications. ACC emphasizes its support for the extension of CII submission to other agencies, the presumption of protection of information, the reliance on submitter discretion, destruction of non-CII information, and DHS’s intent to protect CII to the fullest extent of the law. All of these items are new developments in the proposed rule which OMB Watch and other access advocates expressed strong objections to in comments submitted to DHS. (Read OMB Watch’s comments on CII.)

The issues for which ACC expressed concern reveal industry’s preference that government limit their use of the information submitted. First, they object to the CII Program Manager’s ability to determine the “good faith” of submissions without notifying submitters of the outcome. The Council suggests that the final rule should create an automatic preemption of state and local open record laws. ACC is concerned that the requirement for disclosure

agreements between government and industry is not enough to keep the information secret. Lastly, the Council believes that, should CII status be lifted from information, the submitter should be contacted in order to determine if he or she wishes the information destroyed. These suggestions would make information sharing within the government harder, and would undermine the usefulness of CII information in addressing critical infrastructure vulnerabilities.

ACC also offers a number of suggestions for implementation of CII in its comments. ACC believes that making the CII provision effective immediately is the most urgent action. . The Council worries that information currently held by the government is not protected. The comments also address other technical concerns such as where exactly the CII program will be located, how DHS will interact with the Chemical Sector Information Sharing and Analysis Center, and if the Defense Production Act will protect industry from antitrust lawsuits relating to CII.

In addition to its suggestions on the CII rule, ACC uses it comments as an opportunity to advance some unusual and alarming recommendations completely outside of the CII process. These comments relate to Subtitle I of the Homeland Security Act, which addresses the safeguarding of "sensitive but unclassified" information. ACC encourages the administration to implement this statute immediately. The Council also advocates for the creation of a "Facility Security Officer" (FSO) program, which would grant the chief security officers of CII companies secret security clearance under a special status within Subtitle I. This suggestion, ludicrous at best, would unfairly grant corporations unrestricted access to all CII information, while maintaining severe restrictions on access by other federal agencies, state and local authorities and the general public.

OMB Watch continues to urge DHS to release all public comments before the final CII rule is published.

Public Comments Sought for Online Federal Contract Pilot

In a June Federal Register notice, the General Service Administration (GSA) announced a planned pilot project to make Federal contracts publicly available online. The project would require all federal departments and agencies to post contracts on the Internet. This proposal signals a major attempt to increase the level of transparency and accountability in the contract process. Public comments are sought by GSA in order to set priorities for the project.

Currently, the government signs about 10,000 contracts annually worth over $200 billion, as reported in a recent Heritage Foundation article. Most of these contracts remain secret, even when requested under the Freedom of Information Act (FOIA). The pilot project, first advanced by former Office of Management and Budget (OMB) Director Mitch Daniels, would provide all details of the contracts, including officials' names. This pilot project comes at a time when the government is increasing the number of private contracts with government, including the outsourcing of jobs.

The goal of GSA's pilot project is to arm taxpayers with knowledge on how their dollars are being used and generate a more confident public. In addition, heightened public scrutiny should reduce government waste and keep bids as low as possible.

The GSA is seeking public comments on priorities for the pilot project until August 5, 2003. Specifically, the agency is looking for comments on the scope and availability of information (size or type of contract; amount of competition sought; length of contract availability) and the type of guidance implemented to ensure consistent postings. The office will guide the pilot according to these comments, taking the costs and limitations of the agency's current technology into consideration.

Comments should be submitted to: General Services Administration, Regulatory Secretariat (MVA), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 2045. Electronic comments may be submitted to Notice.2003-N01@gsa.gov.

EPA Requests Comments on Changes to TRI Reporting

The Environmental Protection Agency recently proposed several changes to the Form R under the Toxic Release Inventory (TRI) in an attempt to better organize data collection, after receiving feedback from stakeholders.

Under the TRI program, companies are required to annually submit the Form R, which details their environmental releases and other waste management activities involving a specific list of tracked chemicals. EPA asserts that the proposed changes continue collecting the same information, merely in a different format. Specifically, the proposed format would only make changes to part II of the Form R, where information on releases and waste management activities are reported. The new format more clearly identifies the categories for reporting releases and waste management activities of toxic chemicals with descriptive labels instead of codes.

Another notable change is that the new Form R will subcategorize information collected on releases into four areas: total onsite uncontained releases; total onsite contained disposal; total offsite uncontained releases; and total offsite contained disposal. EPA hopes that these changes will provide more clarity in the organization of data being collected.

EPA published the notice in the Federal Register on July 1, 2003 explaining the changes and providing a revised form. The notice is part of an official Information Collection Request (ICR), a protocol in which the agency receives input and approval for the information collection procedures it proposes. This notice addresses a collection activity that is currently approved, but scheduled to expire on October 31, 2003. While renewing approval, EPA is proposing to revise the Form R in an effort to collect information in a more logical, simplistic manner.

EPA is requesting comments on the proposed changes before submitting the new Form R to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act. The agency will be accepting comments from interested parties up to September 2, 2003.

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