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## Nominate Someone for the Public Interest Hall of Fame

As part of our 20th Anniversary celebration, OMB Watch is creating a Public Interest Hall of Fame. Our aim is to call attention to individuals who have made extraordinary contributions to the causes OMB Watch cares about—government accountability, citizen participation, and social justice—and who have gone largely unrecognized.

We need your help in identifying these individuals. If you know of anyone who you would like to nominate, please go to [OMB Watch's webpage on information concerning the nominating process](#).

## Economy and Jobs Watch: 2001 Recession in Perspective

The recession that began in March 2001 was relatively mild by historical standards when measured by total output. The recession saw just three quarters of negative growth and a cumulative output decline of less than 1 percent of gross domestic product (GDP). By the end of 2001, GDP had fully recovered to pre-recession levels.

Economic performance since the end of the recession in November 2001, however, has been weak – averaging just over 2.5 percent, which was below the average growth rates in the previous two recoveries.

When looking at employment measures, recent economic performance has been much worse. The unemployment rate has increased from 4.2 percent at the beginning of the recession to the current rate of 6.2 percent. In addition, the number of jobs has fallen by around 2.6 million.

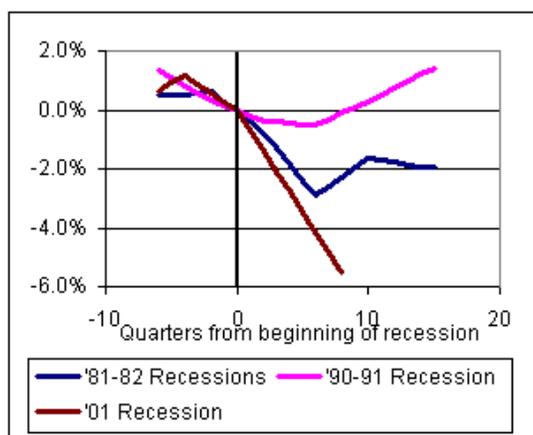
Despite the relatively small drop in total output, federal government revenue has dropped to 16.4 percent of gross domestic product (GDP) – the lowest level since 1959. Furthermore, deficits have reached a record \$455 billion after being in surplus at the start of the recession. See Figure 1 below.

A natural question to ask is whether the current economic and budget situation is somehow “normal” in the recovery period just after a recession. A new OMB Watch report attempts to provide an answer by comparing the economic and budget performance of the current recovery with that of the two previous recoveries. Each recession and recovery cycle contains unique characteristics; however, this comparison should shed some light on how the economy is currently performing, and on how successful economic policy has been in recent years.

Unfortunately, we find that policies that were sold as economic and job stimulus did not do their job. Instead we are faced with job losses, massive deficits, and very little stimulus “bang for the buck.”

**[Click here for the full report](#)**

Figure 1. Budget Surplus/Deficit (Change from cycle peak, % of GDP)



## **Help Us Put "A Face on the Numbers"!**

Have you ever felt frustrated that policy makers in D.C. don't seem to understand the lives of real people who depend on federal and state services? OMB Watch is launching a new web site to change this, and we need your help to make it happen.

Through this "[Face on the Numbers](#)" site, users will be able to search for stories about real people and communities by issue area, keywords, city, state, or congressional district. Currently, only a handful of stories (focused on child care in Chicago and Texas) are available through the site as we continue to test the system. To make the site useful, we need to collect many more in an array of different issue areas. That's where we need your help -- particularly nonprofit organizations, service providers, and beneficiaries of public services. **Face on the Numbers is a way to allow the people you serve to actually tell their story to a nation-wide audience and make a difference.**

If you are willing to contribute a story, contact Ellen Taylor by [email](#) or call at 202-234-8494. She will give you a user name and password, which will allow you or your organization to contribute stories anytime using an easy form on the web site. This will be an ongoing project, and we hope to collect a sizable number of stories that can be used over the long term, making special requests for stories around particular issues as they arise. Finally, since this is a new effort, if you have suggestions or comments about Face on the Numbers, or find any bugs, please [email](#) or call.

## **OMB Watch on Estate Tax Tour**

On behalf of [Americans for a Fair Estate Tax](#), a coalition of nonprofit organizations opposing the repeal of the estate tax, OMB Watch economist John Irons will be traveling the country in early September – from Washington, D.C., to Washington State, Portland, Oregon, to Portland, Maine, and a number of places in between – to discuss recent reports assessing the impact of estate tax repeal on charitable giving. These local events will be organized by [United for a Fair Economy](#), the [Fair Taxes for All](#) coalition, and their local affiliates.

The estate tax provides an incentive for charitable giving, and its repeal would mean an estimated \$10 billion annual reduction in giving to charities – greater than the charitable giving of the largest 110 foundations in the United States. This is an unwelcome side effect of the proposed legislation to eliminate the estate tax, and is not widely recognized by the public or the nonprofit community. Dr. Irons will also present the results from a new study on the consequences for state-level giving.

Currently, the tour includes stops in Seattle, Washington (Sept. 4); Portland, Oregon (Sept. 5); New Orleans, Louisiana; Little Rock, Arkansas; Portland, Maine; and Cleveland, Ohio. For more information on events in these areas, please email Dr. John Irons at [jsirons@ombwatch.org](mailto:jsirons@ombwatch.org).

## **The Bush Tax Cuts are No Worse than the Reagan Tax Cuts?**

There seems to be a common misperception that while things are pretty bad, the country survived the Reagan tax cuts, and the Bush tax cuts aren't that much worse. All that progressives need to do is continue working against any more tax cuts and advocating for adequate appropriations funding, and we'll get through it. This complacency is misplaced and dangerous. The tax cuts, the fiscal condition of the federal government and the states, and the politics are very different. Conservatives have been working on a long-term agenda of shrinking government by reducing revenue. Movement conservative Grover Norquist wants to cut spending on federal programs in half within the next generation; in his words: "kill the taxes and you kill the government."

Given the conservative agenda, we think it is vital for the public interest nonprofit community to sit up and take notice before any more hard-won ground is lost. We can no longer just defend against tax and spending cuts. To actually move forward, attention needs to be given to what a more progressive agenda would consist of and the development of a long-term strategy. It is time for the public interest community to present a positive vision for

the future of the country.

Over the next six to 12 months OMB Watch will begin a process for assessing whether a proactive campaign can be put together -- and what it might look like. We will be circulating a survey in late September or early October to gauge the viewpoints of groups around the country. In the meantime, if you are interested in helping either develop or distribute the survey, let Ellen Taylor at OMB Watch know (taylore@ombwatch.org).

#### Some Key Differences Between Today and Reagan Era

- **Make-up of Congress.** During the Reagan tax cuts, the Senate was Republican controlled, but Democrats were strong in the House -- at one time by a 100-seat margin. Currently, Republicans control the House and have a slim majority in the Senate. President Bush has gotten two major tax cut bills passed during his three years in office: the costliest in June 2001 has a ten-year price tag of \$1.35 trillion and the May 2003 "growth package" has a \$350 billion cost. The actual costs are even higher. A tax cut a year is a real possibility if conservatives have their way.
- **Pending Baby-boom Retirement.** When the Reagan tax cuts passed, we were a long way from the retirement of the baby boom generation and resultant huge drain on Social Security and Medicare. The first wave of baby boomers will become eligible for retirement benefits under Social Security in 2008; they will become eligible for Medicare in 2011. This administration has done nothing to prepare for the increasing demands on Social Security and Medicare. Rather, budget deficits are forecast for years to come, entailing an increasing national debt and higher interest payments. Yes, it took years to dig out from under the Reagan deficits, but they were years when Social Security was running a surplus and was not facing huge demands. Also, Reagan even slightly increased the Social Security tax rates. This administration has done nothing to prepare; instead we are in worse shape than ever.
- **Entitlement Spending.** Currently, just seven programs make up about 75 percent of all federal spending: Social Security, Medicare, Medicaid, military pensions, civil service pensions, defense, and interest on the debt. When the Reagan tax cuts passed, the drain on the country's resources for the provision of health care was not as large. Now, the retirement of the baby boom generation, increasing life spans, and changes in health care technology mean that increases in spending on Social Security, Medicare and Medicaid will far outstrip the rate of growth of the economy. That huge percentage is expected to rise even more as the aging population pushes up the costs of Social Security, Medicare, and Medicaid. Given the post-9/11 environment, defense spending and homeland security costs are also expected to rise. And, of course, the national debt will increase with each year's budget deficit. At the same time federal government revenue has dropped to 16.4 percent of Gross Domestic Product -- the lowest since 1959. There will simply be no revenue to support everything else that government does, including all the discretionary programs, from schools to fire departments, from drug counseling programs to museums, from environmental protections to build up of energy infrastructure, from housing programs to child nutrition efforts.
- **A Tax Cut a Year.** The Bush tax cuts are part of an ideologically driven conservative effort to reduce government by decimating the revenue that supports government. This is a sustained, methodical, long-term, well-funded, organized multi-level effort to cut taxes. By contrast, the 1981 Reagan tax cuts were accomplished after the assassination attempt on Reagan, through the Omnibus Budget Reconciliation Act (OBRA), discretely pushed through by Office of Management and Budget Director David Stockman. Recognizing that the 1981 tax cut was excessive, the Reagan administration scaled back the cuts through "revenue enhancers," i.e., tax increases, in the Tax Equity and Fiscal Responsibility Act of 1982. Nothing like that is happening now. There has been no Bush administration support for scaling back the tax cuts, like keeping some of the cuts from phasing in. Rather, the administration effort revolves around passing new tax cuts and making the tax cuts that are scheduled to "sunset" permanent.
- **Tax Cut Gimmicks.** The 1981 Reagan tax cut was permanent (although modified by the "revenue enhancers" the next year) and the costs were not hidden by the gimmick of "sunsets," such as the budget windows designed to disguise the actual cost, or the failure to include inevitable extensions of existing tax cuts or fixing the Alternative Minimum Tax. The Bush tax cuts use a variety of such gimmicks, which gives the impression that the cost is smaller than it really is. Given that the intent is to make the cuts permanent, it is important to assess the full costs of the Bush tax cuts, which begin to explode in the later years.
- **State Fiscal Crisis.** The states are facing their worst fiscal crisis since World War II. Even Republican governors are talking about raising taxes. The Medicaid burden on the states is the second largest state expenditure next to education. The combination of Medicaid growth and lower-than-projected revenue has created a situation where Medicaid costs are eating up state budgets, leaving nothing for other priorities. Any economic stimulus that might come from the federal tax cuts is being offset by state needs to raise taxes or cut programs.
- **Sharply Deteriorating Federal Budget.** The budget situation under the Bush administration has deteriorated at an unprecedented rate. Deficits are projected to reach a record \$455 billion for 2003. Over a decade, the change from the projected surpluses Bush inherited to the deficits he now expects is roughly \$9 trillion. The "actual" deficit -- which is calculated by removing the Social Security and other trust funds since these are dedicated funds -- is the second highest deficit since 1946, with the highest coming during the Reagan administration in 1983 when there was a public cry to reduce the deficit. The 2003 deficit is projected to be 5.7 percent of the Gross Domestic Product; in 1983 it was 6 percent.

## **Deficit May Reach \$500 billion in 2004**

that the (CBO) is expected to release deficit projections tomorrow showing deficits reaching approximately \$500 billion for fiscal year 2004. In addition, the CBOs report will also contain 10-year budget forecasts, unlike the Administrations official numbers released through the Office of Management and Budget (OMB), which only have a five-year horizon. These longer-range forecasts are expected to show significant long-run damage to the budget outlook.

These reports continue to show an unprecedented deterioration in the budget, which showed a \$236 billion surplus in 2000.

## **Can Companies Sue Critics for Bad Product Reviews? Supreme Court Asked to Decide**

Can companies sue critics who publish independent tests of products? The publishers of Consumers Reports have petitioned the Supreme Court to stop a suit that tests the right of consumers to be informed of independent test results.

In July 1988, Consumers Union reported that the Suzuki Samarai, a small-sized SUV, repeatedly tipped in the organization's standard test for vehicle emergency handling. Other vehicles navigated the same course without tipping. CU rated the Samarai "not acceptable" based on the rollover risk and mentioned the rating again in a 60th anniversary issue in 1996. Suzuki sued, claiming that CU knowingly made false statements. The first judge reviewing the case against CU threw out the case before going to trial, but two appeals courts have ruled that CU must stand trial. At issue partially in the case is whether the First Amendment protects speech that disagrees with the government.

## **Ashcroft on Tour to Defend Patriot**

Attorney General John Ashcroft and the Bush administration appear to be feeling the growing public opposition to the USA Patriot Act. Rather than push safeguards and increase transparency, Ashcroft has hit the road in a public relations campaign to convince the public that the Patriot Act is nothing to fear.

Public concern over the Patriot Act is gaining momentum, drawing opposition from a diverse set of players, including the [American Conservative Union](#) and the [American Civil Liberties Union](#). The Reporters Committee for Freedom of the Press recently issued [questions for reporters to ask Ashcroft](#) to illuminate how often the act has been used in government investigations and whether one of its provisions could require journalists to turn over notebooks and reveal sources. In a vote that even took the White House by surprise, the House recently voted overwhelmingly (309-118) to repeal the "sneak and peek" measures.

Nonetheless, this opposition is portrayed as marginal in talking points distributed as part of the Ashcroft summer tour (available through a special government [web site](#)).

The tour is not just about regaining support for the Patriot Act. Ashcroft is also looking to garner support for the new VICTORY Act (Vital Interdiction of Criminal Terrorist Organizations Act). Victory contains some of the provisions of the doomed [Patriot II](#), increasing secret searching capabilities, easing secret access to business records, and creating a new category of crime, "narco-terrorism" (an apparent merger of "the war on terrorism" with the "war on drugs"). Speculation is that Senator Orin Hatch (R-UT) will introduce that legislation when Congress reconvenes in the fall.

## **Congress Might Put Nuclear, Energy Programs Behind Closed Doors**

House and Senate conferees will have to decide whether the federal government's nuclear waste and energy programs can be closed off from media and public scrutiny. Included in the House version of the defense authorization bill (H.R. 1588) is a provision that would grant the Department of Energy (DOE) the ability to restrict unclassified information on these programs.

The Department of Energy already has the authority to restrict public access to unclassified information relating to nuclear weapons. The debate over what to do with the nation's growing stockpile of nuclear waste raged for years as Congress, scientists, and others considered the merits and risks associated with storing nuclear waste in Yucca Mountain, outside Las Vegas. This provision would allow government officials to preclude open, public discussion of the government's handling of nuclear waste. Public Citizen put together a letter opposing this action signed by a diverse set of 16 other groups, including National Security Archive, OMB Watch, the Reporters Committee for Freedom of the Press, and 20/20 Vision.

## **Illinois Strengthens Open Government Laws**

Illinois Gov. Rod Blagojevich (D) recently signed two pieces of legislation into law that expand current open government laws. The first requires local government bodies to record closed meetings; the second allows attorneys fees and court costs to be awarded to plaintiffs in Freedom of Information Act (FOIA) cases.

The "verbatim record" bill ([SB 1586](#)) requires closed meetings held by government to maintain a verbatim record, amending the state's open meetings law. Up until this law, closed meetings were not subject to any record keeping, allowing for a great deal of secrecy and inadequate government accountability. Illinois has over 6,700 government bodies that would be subject to the law and is the first state to pass such legislation.

The second bill ([SB 0690](#)) mandates that all costs and attorneys fees be awarded to the plaintiff when the individual successfully proves that a public body illegally withheld materials under FOIA. Previously, fees were only recoverable if plaintiffs could "prove that the record was highly significant to the general public and that the public body lacked a reasonable basis for the denial." The new law will allow those previously deterred from costly FOIA litigation to engage in the process. The increased threat of litigation could also encourage government agencies to be more open when considering FOIA requests.

## **Federal Secrecy Includes State and Local Officials**

[A new report](#) from the Democratic staff of the Senate Governmental Affairs Committee has found that federal secrecy and information restrictions imposed following the terrorist attacks of Sept. 11, 2001, are preventing state and local officials from accessing important security information.

Sen. Joe Lieberman (D-CT), the committee's ranking member, asked for the report to document the information needs of state and local officials and the progress made by the Bush administration in meeting those needs. The staff developed the report from interviews with state, county, and city officials from all across the nation, along with reviews of congressional testimony and a range of independent studies.

While the Bush administration has listed information-sharing as a priority in its plan to counter terrorism, the report found significant problems with the systems currently in place. Apparently, there is almost no way for state and local governments to communicate with federal officials, either to get information to them or get information from them. Often, there are no systems in place for states to communicate with each other either. Many officials interviewed identified cumbersome security clearances that take too long as another serious problem.

The report asserts that state and local officials "are being asked to fight the war against terrorism with incomplete and unreliable access to one of the most potent weapons in the homeland security arsenal: information."

Since 9/11 the Bush administration has instituted many policies to restrict information access in the name of Homeland Security. Apparently, the administration only views information as a threat and not as a tool. Time and time again the Bush administration has preferred to establish a "need-to-know" system in place of one premised on the public's "right-to-know." However, this report reveals that under the Bush administration's overly

restrictive approach to information that even first responders cannot get the information they need.

The report makes a number of recommendations, including creating national and regional task forces to coordinate information sharing needs, refining the Homeland Security Threat Advisory System to provide more detailed information, and evaluating federal officials on how well they share information. Unfortunately, the report does not address the information-sharing responsibilities the government has to the public, nor the significant shortcomings of the Bush administration's policies on this issue.

## **Federal Agencies Launching Grants.gov Web Site**

OMB Watch has been monitoring implementation of the federal government's grants streamlining project, which is required by the Federal Financial Assistance Management Improvement Act of 1999. The federal government has developed a web site for all agencies to post grant opportunities, and is also piloting a site for electronic submission of grant applications. You can view these at [Grants.gov](http://Grants.gov).

By Oct. 1, all federal agencies will be required to post their grant announcements on Grants.gov, which has a standard format for all announcements. This type of streamlining effort will allow applicants to quickly and easily find the information they need to decide whether or not a particular funding opportunity is of interest. In addition, all federal agencies must provide one or more ways (e.g., Internet site, telephone, or postal mail) to receive the full grant announcement.

Grants.gov will be more than just a vehicle to find discretionary grant announcements; it will also serve as a tool for applying for a particular grant as well. All federal agencies will be required to tell potential applicants how to get application forms, kits, and all other materials needed to apply. Additionally, they must make these materials available online. While the process for applying for grants will change somewhat, the Department of Health and Human Services ensures OMB Watch that it is taking the appropriate steps to provide help and support services.

A Federal Register notice of final policy issuance requires that starting on Oct. 1, all grant applicants will have to provide a number from the Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) when applying for Federal grants or cooperative agreements. This number will act as an identifier for tracking and contacting purposes. Any prospective grantee can request and receive a DUNS number for free by calling 1-866-705-5711 or [apply online](#).

Along with the new DUNS number requirement, there will also be a one-time, four-step setup process for all those interested in applying for federal grants online with Grants.gov. After obtaining a DUNS number (step one) all applicants must register with the Central Contractors Registry (CCR) (step two). The CCR is a tool to centralize the information about grant recipients and provide a central location for grantees and applicants to change their organizational information. Information for registering for CCR and online documents can be found at [www.ccr.gov](http://www.ccr.gov). Step three requires all potential grantees to register with a credential provider after Oct. 1, which can be done on Grants.gov. A credential provider is an investigator for the granting agency and provides information on the authenticity of the applicant. Last, the applicant will have to register with Grants.gov as an Authorized Organization Representative (AOR). Once registered and approved the entity that made it through the process will forever be able to submit grant applications online to Grants.gov.

It is crucial that all nonprofits, government agencies, nongovernmental agencies, and the like that are interested in applying for federal grants or currently do rely on federal dollars participate in the grants streamlining process. Please take the time to visit [Grants.gov](http://Grants.gov) to cruise around and inspect the quality of the site. All the tools you need to setup for applying for grants should be available at the site. In order to ensure success in the implementation of the grants streamlining project, engage in the public discussion; visit [OMB Watch's Nonprofit Forum](#) where your comments and suggestions will guide our input to agencies to make Grants.gov more efficient.

For background information on grant streamlining, see the [special section of our website](#).

## FCC Postpones New Rule on 'Junk' Faxes

The Federal Communications Commission (FCC) postponed implementation of its "do not fax rule" for 16 months thanks to the many concerns voiced by nonprofit organizations and business groups.

The rule was scheduled to take effect on Aug. 25, and will now take effect on January 1, 2005, according to a [FCC news release](#). The do-not-fax rule, which was adopted late June, requires companies and organizations to get written permission before sending unsolicited faxes that include information on financial transactions. This could include conference registration forms or membership-dues notices.

Organizations are already required to have express written permission or an established business relationship with the recipient before sending fax solicitations or advertisements. The new FCC rule, however, attempts to tighten these rules by eliminating this exception and adding a requirement that written permission must be obtained.

The new rule has been viewed by many as exceptionally burdensome. According to a [Washington Post](#) article, the American Society of Association Executives has formed a coalition of almost 1,500 organizations to protest the rule change. Trade associations are also working to overturn the new rules during the stay period, and the National Council for Nonprofit Organizations is monitoring this issue.

"Serious issues remain," the Alliance for Justice stated. "If an organization were to send a fax that contained policy information, but also contained a notice of a meeting with a cost, the organization would be in violation." Dirk Van Dongen, the president of the National Association of Wholesaler-Distributors, which joined the Chamber of Commerce in filing a petition to delay implementation of the rule, called the proposed measure "draconian" and "phenomenally disruptive."

The stay in the rule does not necessarily signify a retreat, but instead gives the FCC time to respond to concerned parties. K. Dane Snowden, chief of the FCC's bureau of consumer and governmental affairs tells the [Washington Post](#), "We have a very open process here and we want to hear all sides of the issue."

The North Carolina Center for Nonprofits suggests nonprofits remove anyone who does not want to receive communications by whatever means -- fax, email, phone, or regular mail -- off distribution lists. We suggest letting your voice be heard by contacting the FCC directly with your concerns and suggestions.

For more information, [see OMB Watch's previous article](#) and the [of Nonprofit Associations web site](#).

## More Evidence of Retaliatory Grant Audits Emerges

The Department of Health and Human Services (HHS) has launched another audit of a federal grantee, [Advocates for Youth](#), apparently based on the group's opposition to the administration's abstinence-only strategy for HIV/AIDS prevention and health education. The audit will be the third review in a year, although the previous two audits found no problems. The new review, which is being conducted by the Centers for Disease Control and Prevention (CDC), responds to a complaint by Rep. Joseph Pitts (R-PA), an abstinence-only advocate. Pitts sponsored an amendment to this year's international AIDS bill that requires one-third of federal HIV/AIDS prevention funds to be spent on abstinence-only programs.

If you know of organizations experiencing the problems outlined in this article or other types of actions taken by the government to control nonprofit speech please send a message to Kay Guinane at [guinane@ombwatch.org](mailto:guinane@ombwatch.org)

Pitts and 23 other members of Congress complained to CDC about a web site sponsored by [Advocates for Youth](#), [NoNewMoney.org](#), that urges opposition to funding for abstinence-only programs. The congressmen reportedly asked CDC to examine whether [Advocates for Youth](#) is spending federal dollars on lobbying.

Bill Barker, a spokesman and [Advocates for Youth](#), told the [Washington Post](#) on Aug. 16 that the group has been receiving federal funds for 15 years and never had an audit until the last year, when they were audited by both CDC and the General Accounting Office (GAO). "Advocates is concerned that it appears that the selective and political use of these audits is to intimidate organizations such as ours that support comprehensive sex education," Barker said. "They want to impose a kind of censorship."

The trend toward ideologically-based audits has drawn the attention of Rep. Henry Waxman (D-CA), the ranking member of the House Committee on Government Reform, who sent a [letter](#) to HHS on Aug. 15 expressing "growing concern" that "an ideological test is determining whether grantees in the HIV/AIDS prevention programs are audited."

Advocates for Youth's problems started two years ago when an internal HHS memo identified the group as "critics of the Bush administration" because of its opposition to abstinence-only programs. As described by Waxman, "Shortly thereafter, several of my Republican colleagues asked the Centers for Disease Control and Prevention (CDC) to audit Advocates for Youth. In January 2003, GAO, at the request of House Republican members, also obtained copies of Advocates for Youth's financial records." According to the Washington Post, neither audit found any problems with Advocates for Youth's handling of its federal funds.

Why another audit so soon? The real reason appears to be the NoNewMoney website and grassroots campaign to oppose further funding for abstinence-only programs. CDC filed an audit plan for Advocates of Youth on July, 20, 2003, citing the need to investigate "possible misuse of grant funds for lobbying efforts." This plan identified two "deficiencies" in Advocates for Youth's file -- failure to file a report that is not due until Dec. 29, 2003, and incorrect information about the group's arrangements for services of a certified public accountant.

In his letter protesting the latest audit of Advocates for Youth, Waxman asks HHS to provide him with:

- A list of all audits and reviews of HIV/AIDS programs since January 2001;
- The rationale for each audit or review; and
- Any policies or written standards used by HHS to determine which grantees will be audited.

Waxman has requested that the information be provided by Aug. 29, 2003.

The selective use of audits to target groups that disagree with the Bush administration is an unacceptable attempt to limit debate on important questions of public policy. OMB Watch has published a report, [An Attack on Nonprofit Speech: Death by a Thousand Cuts](#) that details similar audits and actions by the administration and its allies in Congress.

The microscope put on Advocates for Youth and similar groups stands in stark contrast to grantees that advocate for administration policies. In response to Waxman on Nov. 27, 2002, HHS explained that its Office of Inspector General has only performed audits of programs that use comprehensive approaches to sex education, and no audits of abstinence-only programs are being conducted. In another example, the Department of Education awarded a \$600,000 grant in October 2002 to a group that promotes charter schools and vouchers, the [Black Alliance for Educational Options](#). A board member, state Rep. Dwight Evans (D-Phila.), told the Philadelphia Inquirer that some of the funds would be used to lobby for a bill he is sponsoring on the subject. However, Pitts and others have not requested audits, even though the group's spokesman specifically referred to a planned expenditure that would violate federal law.

## **Bush Picks Utah Governor to Head EPA**

President Bush recently nominated Utah Gov. Michael Leavitt (R) to head the EPA, replacing Christie Whitman, who resigned in May.

During his more than 10 years as governor, Leavitt touted an environmental philosophy he called "[Enlibra](#)," which is defined as a move toward balance. Yet, in practice, many of his decisions tilted against environmental protections.

For example, Leavitt sought to build a highway near Salt Lake City, with part of it running through the wetlands of Great Salt Lake. He also worked out a secret deal with Interior Secretary Gale Norton that strips away protections for millions of acres of pristine Utah lands.

"Governor Leavitt's appointment to head the EPA puts an anti-environmental politician in charge of regulating industries that pollute the nation's air and water," said [Earthjustice Denver attorney Jim Angell](#).

Leavitt must now be confirmed by the Senate and is expected to face tough questioning by Democrats.

## Administration Pushes for Increased Oil and Gas Development

The Bureau of Land Management (BLM) recently instructed federal land-use planners to clear the way for increased oil and gas drilling on federal lands.

This action stems from a study, requested by Congress in 2000, that inventoried oil and gas resources underlying five Western basins and examined environmental restrictions on access to those resources.

The study found that 57 percent of the oil and 63 percent of the natural gas in those basins were completely open to drilling, while just 15 percent of the oil and 12 percent of the gas were completely closed to exploration -- much lower than claimed by industry and congressional Republicans.

The study also found that 25 percent of the land was partially restricted to leasing. Many of these limitations are in place to protect endangered species during critical time periods during the year, such as nesting or migration seasons. BLM instructed land managers to review these partial development restrictions and encouraged officials to consider modifications, with an emphasis on loosening environmental protections that might impede energy development.

“Americans expect our federal agencies to be stewards of our public lands, but the Bush administration prefers that the Bureau of Land Management spend its time and our tax dollars giving away our national treasures to the energy industry,” said Sharon Buccino of the Natural Resources Defense Council (NRDC).

The action, which takes effect immediately, also requires BLM offices with “a significant oil and gas program” to hold at least one meeting within the next year to discuss oil and gas-related policy changes with industry representatives.

## EPA Agrees to Act on Air Pollution in National Parks

In a recent court settlement, EPA agreed to issue new standards by April 15, 2005, to reduce air pollution in national parks and wilderness areas.

The settlement stems from a lawsuit against the agency, brought by Earthjustice on behalf of Environmental Defense, to compel new regulations requiring power plants and factories to install the best available retrofit technology (BART) to control sulfur dioxide and other emissions. These emissions lead to visibility impairment, which is widespread throughout the national park system.

The mean visual range in Eastern “Class I” areas, which include national parks and wilderness areas, was 14.4 miles in 1999; yet without man-made air pollution, visibility would be about 45-90 miles, according to EPA. In the West, the mean visual range was 48 miles for Class I areas, compared to an estimated natural visibility of 120-180 miles.

“Cleaning up the power plants and other industrial sources that pollute our national parks and wilderness areas will protect some of the nation’s most revered scenic vistas,” said Environmental Defense senior attorney Vickie Patton.

EPA previously issued standards requiring power plants and factories to install BART to control emissions as part of a regional haze program established in 1999. In 2001, at the very end of the Clinton administration, the agency also completed proposed standards to help states determine which plants should install BART controls.

In 2002, however, efforts to implement the BART controls stalled when the U.S. Court of Appeals for the D.C. Circuit overturned parts of the 1999 regional haze rule related to BART, saying they improperly infringed on state authority. The court ordered EPA to re-write



A good visibility day in Smoky Mountains National Park



The effects of air pollution are apparent in this shot, taken in the same spot as shown above.

the BART provisions, yet up until this point, the agency has failed to even issue a proposal.

In settling the lawsuit, EPA agreed to issue proposed rules by April 2004 and adopt final rules one year later. The settlement will be opened for a public comment period and must be approved by the court before it is finalized.

## **Jailed Whistleblower Files Appeal**

After serving a 16-month sentence for exposing an email vulnerability to his company's customers, Bret McDanel is appealing his conviction in an effort to clear his name and send a message that discussing flaws and vulnerabilities is acceptable.

While working for Tornado Development, McDanel discovered the email flaw and reported it to the company. Six months after severing his employment with Tornado, McDanel discovered that the company had never fixed the vulnerability. McDanel then informed each email user of the Tornado system of the vulnerability in an email from "Secret Squirrel."

In response, the federal government prosecuted McDanel under a federal computer crime law by stretching the statute to not only include attacks on computers and networks but also the dissemination of information about vulnerabilities. This conviction could easily lead to a major decline in the discussion of computer problems in various forums, which often lead to quick solutions.

Without a doubt, Bret McDanel is not the model whistleblower. As a dissatisfied former employee of the company he blew the whistle on, his motives are not entirely pure. The level of detail may have been irresponsible, but it is a slippery slope to claim he could not inform those affected by the vulnerability. Indeed, he did not use his knowledge of the vulnerability to hack the email system, nor did he post the information to the entire public or to the press. He told those most affected that they were at risk and he went to jail.

The U.S Attorney's answering brief is due on Aug. 28.

## **Whistleblowers Face Alleged Criminal Investigation**

A Transportation Security Administration (TSA) investigation is targeting whistleblowers that have spoken with the media, as reported by [MSNBC.com](http://MSNBC.com). The investigation stems from media reports that TSA removed air marshals from flights. The Department of Homeland Security (DHS), which oversees TSA, denies any whistleblower investigation is taking place, but is looking into the removal of the air marshals from flights.

Air marshals work as undercover law enforcement officers aboard airlines and sign non-disclosure agreements in order to receive access to classified information. An earlier MSNBC.com report claims that air marshals were pulled from high-risk flights to save money. Some air marshals believed this action breached security and relayed these concerns to the media. Several Senate Democrats, including Sen. Barbara Boxer (D-CA) voiced gratitude to the air marshals for bringing attention to the security issue, but DHS is concerned that classified information was released.

DHS says it will prosecute any cases where classified information was released under non-disclosure agreements. Some air marshals stated that TSA was briefing field offices about the situation and threatened to use the USA Patriot Act to track officers who spoke with the media. However, TSA cannot invoke the Patriot Act because it is not a law enforcement agency.

If the investigation does find that federal employees leaked information about the security vulnerabilities, it is unclear how well they would be protected under the Whistleblower Protection Act. Given that the air marshals appear to have simply been trying to improve airline security by blowing the whistle on this troubling practice, they certainly fit the spirit of the law. However, any protection would depend on whether the information was classified, what information is covered by their non-disclosure agreements, and how much information was released and to whom.

## **EPA Reponse to 9/11 Influenced by the White House**

The Environmental Protection Agency (EPA) Inspector General released a [report](#) Aug. 21 revealing that EPA communications to the public immediately after 9/11 were misleading. Statements made by EPA did not fully represent the data the agency possessed, and were strongly influenced by the White House. The report follows an investigation by the Inspector General into EPA's overall response to 9/11.

The report examined several news releases to the public in the weeks after 9/11 and found several EPA statements were deceptive. All statements to the media from EPA were required to be cleared by the National Security Council via the White House Council on Environmental Quality (CEQ). EPA accepted all of the edits CEQ made to the draft releases. News releases omitted important information on risks, such as potential health effects for vulnerable populations like children and the elderly. In their place, more reassuring statements were added.

In addition to the White House editing, pressure to allay national security concerns and to reopen Wall Street overrode concerns about gaps in data and analysis. A Sept. 18, 2001, announcement reported that the air around the World Trade Center site was safe to breathe; the report finds that EPA "did not have sufficient data and analyses to make such a blanket statement."

EPA's acting administrator, Marianne Lamont Horinko, responded with irritation to the investigation and formal rebuttals are contained in the report. She claims CEQ has an "appropriate role" to play in coordination of information, and at the time EPA wanted to focus on reassuring the public. Sen. Hillary Clinton (D-NY) and Rep. Jerrold Nadler (D-NY) are calling for further investigations into the role the White House played in censoring EPA.

This adds to the administration's disturbing record of skewing science and information to suit its interests. The Democratic staff of the House Committee on Government Reform recently released a [report](#) examining the Bush administration's handling of scientific matters. Rep. Henry Waxman (D-CA) has launched a [website](#) to track how the administration is interfering in science.

